

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 69

S.P. 22

In Senate, January 15, 2019

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**An Act To Provide Economic Security to Maine Families through  
the Creation of a Paid Family Medical Leave System**

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Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator HERBIG of Waldo.  
Cosponsored by Representative DAUGHTRY of Brunswick and  
Senators: President JACKSON of Aroostook, LUCHINI of Hancock, MOORE of Washington,  
POULIOT of Kennebec, Representatives: ACKLEY of Monmouth, CUDDY of Winterport,  
FECTEAU of Biddeford, HYMANSON of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §843, sub-§1-A** is enacted to read:

3 **1-A. Bureau.** "Bureau" means the Bureau of Unemployment Compensation as  
4 defined in section 1043, subsection 5-A.

5 **Sec. 2. 26 MRSA §843, sub-§3-A** is enacted to read:

6 **3-A. Fund.** "Fund" means the Family Medical Leave Fund established in section  
7 1167.

8 **Sec. 3. 26 MRSA §843, sub-§4, ¶D,** as repealed and replaced by PL 2007, c.  
9 519, §1, is amended to read:

10 D. A child, domestic partner's child, parent, domestic partner, sibling, parent-in-law,  
11 brother-in-law, sister-in-law or spouse with a serious health condition;

12 **Sec. 4. 26 MRSA §843, sub-§4, ¶F,** as amended by PL 2007, c. 519, §2, is  
13 further amended to read:

14 F. The death or serious health condition of the employee's spouse, domestic partner,  
15 parent, sibling, parent-in-law, brother-in-law, sister-in-law or child if the spouse,  
16 domestic partner, parent, sibling, parent-in-law, brother-in-law, sister-in-law or child  
17 as a member of the state military forces, as defined in Title 37-B, section 102, or the  
18 United States Armed Forces, including the National Guard and Reserves, dies or  
19 incurs a serious health condition while on active duty.

20 **Sec. 5. 26 MRSA §843, sub-§4-B,** as enacted by PL 2007, c. 233, §1, is amended  
21 to read:

22 **4-B. Reduced leave schedule.** "Reduced leave schedule" means a leave schedule  
23 that reduces the usual number of hours per workweek, or hours per workday, of an  
24 employee.

25 This subsection is repealed October 1, 2020.

26 **Sec. 6. 26 MRSA §843, sub-§8,** as enacted by PL 2007, c. 519, §3, is amended to  
27 read:

28 **8. Sibling.** "Sibling" means a sibling of an employee ~~who is jointly responsible with~~  
29 ~~the employee for each other's common welfare as evidenced by joint living arrangements~~  
30 ~~and joint financial arrangements, including a half-sibling or step-sibling.~~

31 **Sec. 7. 26 MRSA §844, sub-§4** is enacted to read:

32 **4. Repeal.** This section is repealed October 1, 2020.

33 **Sec. 8. 26 MRSA §844-A** is enacted to read:

1           **§844-A. Family medical leave**

2           **1. Family medical leave entitlement.** An employee of an employer that employs 15  
3 or more employees who has been employed by the same employer or a self-employed  
4 person who has made contributions under subsection 2 for 12 of the prior 18 months is  
5 entitled to benefits for up to 8 workweeks of family medical leave per year. The  
6 following conditions apply to family medical leave benefits granted under this  
7 subchapter:

8           A. Unless prevented by a medical emergency from giving notice, an employee shall  
9 provide at least 30 days' notice to the employee's employer and a self-employed  
10 person shall provide at least 30 days' notice to the bureau of the intended dates upon  
11 which family medical leave will commence and terminate; and

12           B. An employee or self-employed person shall obtain certification from a physician  
13 to be submitted to the bureau pursuant to subsection 4 to verify the amount of leave  
14 requested by the employee or self-employed person, except that an employee or  
15 self-employed person who in good faith relies on treatment by prayer or spiritual  
16 means, in accordance with the tenets and practice of a recognized church or religious  
17 denomination, may submit certification from an accredited practitioner of those  
18 healing methods.

19           **2. Contribution.** An employee entitled to benefits under chapter 13 shall pay a  
20 contribution to the fund in an amount equal to a percentage of the employee's wages in  
21 accordance with the rate of contribution determined by the bureau in subsection 3. The  
22 employer of the employee shall deduct the amount of the contribution from the  
23 employee's wages. Contributions under this subsection become due and must be paid by  
24 each employer to the bureau for the fund on or before the last day of the month following  
25 the close of the calendar quarter to which the contributions relate. In the calculation of  
26 any contribution, a fractional part of a cent must be disregarded unless it amounts to 1/2¢  
27 or more, in which case it must be increased to one cent. A person who is self-employed  
28 may receive benefits from the fund upon application to the bureau and payment to the  
29 bureau of a contribution in the amount determined by the bureau under subsection 3.

30           **3. Rate of contribution.** The bureau shall calculate annually the rate of contribution  
31 pursuant to subsection 2 of an employee or self-employed person entitled to family  
32 medical leave. The rate of contribution may not exceed 0.5% of an employee's gross  
33 wages or a self-employed person's gross earnings. The bureau may employ a 3rd-party  
34 actuary or other qualified person to determine the rate of contribution necessary to  
35 properly administer the fund.

36           **4. Notice.** When an employee has notified an employer pursuant to subsection 1 of a  
37 circumstance allowing family medical leave, the employer shall report the notice to the  
38 bureau within the 7-day period immediately following the employer's receipt of the  
39 notice. Certification required under subsection 1, paragraph B must accompany the  
40 employer's report under this subsection or the self-employed person's notice under  
41 subsection 1. An employer or self-employed person shall also report the average weekly  
42 wages or earnings of the employee or self-employed person, pursuant to the calculation  
43 for an injured employee under Title 39-A, section 102, subsection 4, together with any

1 other information required by the bureau. The statement must report the wages or  
2 earnings of the employee or self-employed person on a weekly basis, unless the employee  
3 or self-employed person is paid on other than a weekly basis, in which case the employer  
4 or self-employed person may report the wages or earnings on the same basis as wages or  
5 earnings are paid. A copy of the wage information must be mailed to the employee. If the  
6 bureau determines that a notice does not provide a circumstance allowing family medical  
7 leave under or is otherwise in violation of this subchapter, the bureau may not pay a  
8 benefit under subsection 5 and shall notify the employer and employee or self-employed  
9 person as soon as possible after the determination is made.

10 **5. Benefits.** The bureau shall pay from the fund a family medical leave benefit to an  
11 employee or self-employed person who pays a contribution under subsection 2 within a  
12 reasonable time after the bureau's receiving notice for that employee or from that self-  
13 employed person under subsection 4. A benefit under this subsection must be 66% of the  
14 weekly wages or earnings of the employee or self-employed person, except that the  
15 benefit may not exceed the maximum benefit allowed under chapter 13. If an employer  
16 provides a family medical leave benefit to an employee entitled to a benefit under this  
17 subchapter, the employee shall receive the greater of the employer-provided benefit and  
18 the benefit under this subsection. If an employer provides a family medical leave benefit  
19 to an employee entitled to a benefit under this subchapter that is greater than the benefit  
20 calculated under this subsection, the bureau shall pay to the employer the benefit to which  
21 the employee is entitled as calculated under this subsection.

22 **6. Leave taken intermittently or on reduced leave schedule.** Intermittent or  
23 reduced leave schedule family medical leave may be taken subject to the following  
24 limitations.

25 A. Leave for a reason described in section 843, subsection 4, paragraph B or C may  
26 not be taken by an employee intermittently or on a reduced leave schedule unless the  
27 employee and the employer agree otherwise. Subject to subsection 1, paragraphs A  
28 and B, leave for a reason described in section 843, subsection 4, paragraph A, D or E  
29 may be taken intermittently or on a reduced leave schedule when medically  
30 necessary. The taking of leave intermittently or on a reduced leave schedule pursuant  
31 to this paragraph may not result in a reduction in the total amount of leave to which  
32 the employee is entitled under subsection 1 beyond the amount of leave actually  
33 taken.

34 B. If an employee requests intermittent leave, or leave on a reduced leave schedule,  
35 for a reason described in section 843, subsection 4, paragraph A, D or E that is  
36 foreseeable based on planned medical treatment, the employer may require the  
37 employee to transfer temporarily to an available alternative position offered by the  
38 employer for which the employee is qualified and that:

39 (1) Has equivalent pay and benefits; and

40 (2) Better accommodates recurring periods of leave than the regular employment  
41 position of the employee.

42 **7. Small employers.** An employer that employs fewer than 15 employees may opt  
43 to participate in family medical leave under this section on a year-to-year basis. The

1 department may extend by rule the period of participation in family medical leave under  
2 this subsection up to 3 years if the department determines that a longer participation  
3 period is necessary for the stability of the fund or to carry out the provisions of this  
4 section.

5 **8. Self-employed persons.** A self-employed person who has elected to participate in  
6 family medical leave under this section must participate for a period of at least 2 years.  
7 The department may extend by rule the period of participation in family medical leave  
8 under this subsection up to 4 years if the department determines that a longer  
9 participation period is necessary for the stability of the fund or to carry out the provisions  
10 of this section.

11 **9. Rules.** The bureau may adopt routine technical rules as defined by Title 5, chapter  
12 375, subchapter 2-A to carry out the provisions of this subchapter.

13 **10. Effective date.** This section takes effect October 1, 2020.

14 **Sec. 9. 26 MRSA §1082, sub-§15** is enacted to read:

15 **15. Family medical leave.** The commissioner, through the bureau, shall administer  
16 chapter 7, subchapter 6-A and the Family Medical Leave Fund under section 1167.

17 **Sec. 10. 26 MRSA §1167** is enacted to read:

18 **§1167. Family Medical Leave Fund**

19 **1. Fund established.** The Family Medical Leave Fund, referred to in this section as  
20 "the fund," is established in the bureau to issue benefits to employees and self-employed  
21 persons entitled to benefits under chapter 7, subchapter 6-A and to cover reasonable  
22 administrative expenses of the bureau in administering the fund. The fund consists of  
23 revenues received from contributions collected under section 844-A, subsection 2,  
24 appropriations, allocations and contributions from private and public sources. The fund,  
25 to be accounted within the bureau, must be held separate and apart from all other money,  
26 funds and accounts. Eligible investment earnings credited to the assets of the fund  
27 become part of the assets of the fund. Any unexpended balances remaining in the fund at  
28 the end of any fiscal year do not lapse and must be carried forward to the next fiscal year.

29 **2. Rules.** The bureau may adopt routine technical rules as defined in Title 5, chapter  
30 375, subchapter 2-A to carry out the purposes of the fund.

31 **Sec. 11. Department of Labor to develop implementation plan for family**  
32 **medical leave program; report.** The Department of Labor shall develop a plan to  
33 implement the family medical leave program under the Maine Revised Statutes, Title 26,  
34 section 844-A, referred to in this section as "the program." The plan must include  
35 elements necessary for implementation of the program, including:

- 36 1. Staffing and technology needed to operate the program;  
37 2. Rulemaking required to implement the program;

- 1 3. Initial start-up costs to begin the program;
  - 2 4. Determination of the initial rate of contribution necessary to properly administer  
3 the program. The Department of Labor, Bureau of Unemployment Compensation may  
4 employ a 3rd-party actuary or other qualified person to assist in making this  
5 determination;
  - 6 5. A timeline that schedules implementation benchmarks to meet the program's  
7 effective date of October 1, 2020; and
  - 8 6. Any recommended legislation, including a provision to allocate or appropriate  
9 \$150,000 or another amount the department determines appropriate to the Family  
10 Medical Leave Fund under Title 26, section 1167 to provide for start-up expenses.
- 11 The Department of Labor shall submit the plan required under this section to the joint  
12 standing committee of the Legislature having jurisdiction over labor, commerce, research  
13 and economic development matters no later than October 1, 2019.

#### 14 **SUMMARY**

15 This bill creates a paid family medical leave program, patterned after the unpaid  
16 family medical leave program existing in current law but requiring a contribution from an  
17 eligible employee, or a self-employed person on a voluntary basis, of no more than 0.5%  
18 of the employee's or self-employed person's wages or earnings. The program requires  
19 employers to deduct the contributions from employee paychecks and requires the  
20 employers and self-employed persons to submit contributions to the Department of  
21 Labor, Bureau of Unemployment Compensation, which is charged with administering the  
22 program. The program pays benefits of up to 66% of an employee's wages or self-  
23 employed person's earnings, capped at the same maximum amount as unemployment  
24 benefits for leave taken by the employee or self-employed person for various family-  
25 related medical issues. The bill makes participation optional for employers that employ  
26 fewer than 15 employees. The bill also directs the Department of Labor to develop an  
27 implementation plan dealing with staffing, technology, start-up expenses, rulemaking and  
28 scheduling to begin the program on its effective date of October 1, 2020.