

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1410

H.P. 1023

House of Representatives, March 26, 2019

An Act To Create Paid Family and Medical Leave Benefits

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Speaker GIDEON of Freeport.

Cosponsored by Senator SANBORN, H. of Cumberland and

Representatives: CARNEY of Cape Elizabeth, CUDDY of Winterport, DOORE of Augusta,

FECTEAU of Biddeford, McDONALD of Stonington, MORALES of South Portland,

SYLVESTER of Portland, Senator: CARSON of Cumberland.

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

2 **Sec. 1. 26 MRSA c. 7, sub-c. 6-C** is enacted to read:

3 **SUBCHAPTER 6-C**

4 **PAID FAMILY AND MEDICAL LEAVE**

5 **§850-A. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 **1. Application year.** "Application year" means the 12-month period beginning on
9 the first day of the calendar year in which an individual files an application for family
10 leave or medical leave benefits.

11 **2. Average weekly wage.** "Average weekly wage," as used to establish the
12 maximum weekly benefit amount for purposes of this subchapter, means 1/52 of
13 aggregate total wages paid in the State for covered employment, as reported on employer
14 contribution reports for the calendar year, divided by the arithmetic mean of midmonth
15 weekly covered employment reported on employer contribution reports for the calendar
16 year.

17 **3. Commissioner.** "Commissioner" means the Commissioner of Labor.

18 **4. Contributions.** "Contributions" means the payments made by an employee or
19 self-employed individual to the fund, as required by this subchapter.

20 **5. Covered individual.** "Covered individual" means a person who:

21 A. Worked for 26 or more weeks for any employer during the 12-month period prior
22 to submitting an application for family leave or medical leave or is a self-employed
23 individual who elects coverage under this subchapter; and

24 B. Meets the administrative requirements outlined in this subchapter and any rules
25 adopted pursuant to this subchapter and submits an application for leave.

26 **6. Covered service member.** "Covered service member" means:

27 A. A member of the United States Armed Forces, including the National Guard and
28 the Reserves of the United States Armed Forces, who is:

29 (1) Undergoing medical treatment, recuperation or therapy or otherwise
30 receiving outpatient treatment; or

31 (2) Otherwise on the United States Armed Forces' temporary disability retired
32 list for a serious injury or illness that was incurred by the member in the line of
33 duty in the United States Armed Forces or a serious injury or illness that existed
34 before the beginning of the member's active duty and was aggravated by service
35 in the line of duty on active duty in the United States Armed Forces; or

1 B. A former member of the United States Armed Forces, including the National
2 Guard and the Reserves of the United States Armed Forces, who is undergoing
3 medical treatment, recuperation or therapy for a serious injury or illness that was
4 incurred by the member in the line of duty in the United States Armed Forces or a
5 serious injury or illness that existed before the beginning of the member's active duty
6 and was aggravated by service in the line of duty on active duty in the United States
7 Armed Forces and manifested before or after the member was discharged or released
8 from service.

9 **7. Department.** "Department" means the Department of Labor.

10 **8. Director.** "Director" means the director of the fund.

11 **9. Domestic partner.** "Domestic partner" has the same meaning as in section 843,
12 subsubsection 7.

13 **10. Employee.** "Employee" means a person who may be permitted, required or
14 directed by an employer in consideration of direct or indirect gain or profit to engage in
15 any employment but does not include an independent contractor.

16 **11. Employer.** "Employer" means:

17 A. Any person, sole proprietorship, partnership, corporation, association or other
18 business entity that employs employees at one location in this State;

19 B. The State, including the executive, legislative and judicial branches, and a state
20 department or agency;

21 C. A county, city, town or municipal agency; and

22 D. An agent of an employer, the State or a political subdivision of the State.

23 **12. Employment.** "Employment" means a service performed for wages.

24 **13. Employment benefits.** "Employment benefits" means all benefits provided or
25 made available to employees by an employer, including, but not limited to, group life
26 insurance, health insurance, disability insurance, sick leave, annual or vacation leave,
27 educational benefits and pensions.

28 **14. Family leave.** "Family leave" means leave taken pursuant to section 850-B,
29 subsubsection 1.

30 **15. Family leave benefits.** "Family leave benefits" means wage replacement paid
31 pursuant to sections 850-B and 850-C to a covered individual while the covered
32 individual is on family leave.

33 **16. Family member.** "Family member" means, with respect to a covered individual
34 or spouse or domestic partner of a covered individual:

35 A. A child, including a child whose parentage has been determined under the Maine
36 Parentage Act or any other biological child, adopted child, foster child or stepchild,
37 or a child to whom the covered individual or spouse or domestic partner of the

1 covered individual stands in loco parentis or a child the covered individual or spouse
2 or domestic partner of the covered individual has under legal guardianship or any
3 individual to whom the covered individual or spouse or domestic partner of the
4 covered individual stood in any of these relationships when the individual was a
5 minor child;

6 B. A parent, including a legal parent, biological parent, adoptive parent, foster
7 parent, stepparent, de facto parent or legal guardian or a person who stood in loco
8 parentis when the covered individual or spouse or domestic partner of the covered
9 individual was a minor child;

10 C. A grandparent, including a legal grandparent, biological grandparent, adoptive
11 grandparent, foster grandparent, stepgrandparent or de facto grandparent;

12 D. A sibling, including a legal sibling, biological sibling, adoptive sibling, foster
13 sibling, stepsibling or de facto sibling; and

14 E. A spouse or domestic partner of a covered individual.

15 **17. Fund.** "Fund" means the Family and Medical Leave Insurance Fund established
16 under section 850-E.

17 **18. Health care provider.** "Health care provider" means an individual licensed to
18 practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy or
19 any other individual determined by the department to be capable of providing health care
20 services.

21 **19. Medical leave.** "Medical leave" means leave taken pursuant to section 850-B,
22 subsection 2.

23 **20. Medical leave benefits.** "Medical leave benefits" means wage replacement paid
24 pursuant to sections 850-B and 850-C to a covered individual while the covered
25 individual is on medical leave.

26 **21. Program.** "Program" means the family and medical leave benefits program
27 established in section 850-B.

28 **22. Qualifying exigency.** "Qualifying exigency" means a need arising out of a
29 covered individual's family member's active duty service or notice of an impending call
30 or order to active duty in the United States Armed Forces, including, but not limited to,
31 providing for the care or other needs of the military member's child or other family
32 member, making financial or legal arrangements for the military member, attending
33 counseling, attending military events or ceremonies, spending time with the military
34 member during rest and recuperation leave or following return from deployment or
35 making arrangements following the death of the military member.

36 **23. Self-employed individual.** "Self-employed individual" means a sole proprietor,
37 a member of a limited liability company or limited liability partnership or an individual
38 whose net profit or loss from a business must be reported to the Department of
39 Administrative and Financial Services, Bureau of Revenue Services and resides in the
40 State.

1 **24. Serious health condition.** "Serious health condition" means an illness, injury,
2 impairment, pregnancy, recovery from childbirth or physical, mental or psychological
3 condition that involves inpatient care in a hospital, hospice or residential medical care
4 center or continuing treatment by a health care provider.

5 **25. Spouse.** "Spouse" has the same meaning as in Title 18-C, section 1-201,
6 subsection 54.

7 **26. State average weekly wage.** "State average weekly wage" means the average
8 weekly wage as published by the department for the State as a whole for the 12 most
9 recently reported months.

10 **27. Wages.** "Wages" means actual compensation paid to an employee for the
11 performance of services.

12 **28. Weekly benefit amount.** "Weekly benefit amount" means the amount of wage
13 replacement paid to a covered individual on a weekly basis while the covered individual
14 is on family or medical leave as provided in section 850-C.

15 **§850-B. Family and medical leave benefits program established**

16 The family and medical leave benefits program is established effective October 1,
17 2020. The program is administered by the department.

18 **1. Family leave eligibility.** Family leave is available to a covered individual for
19 any of the following reasons:

20 A. To bond with the covered individual's child during the first 12 months after the
21 child's birth or the first 12 months after the placement of the child for adoption or
22 foster care with the covered individual for a child born, adopted or placed on or after
23 October 1, 2020;

24 B. If the covered individual is caring for a family member with a serious health
25 condition;

26 C. Because of any qualifying exigency arising out of the fact that a family member
27 of the covered individual is on active duty or has been notified of an impending call
28 or order to active duty in the United States Armed Forces;

29 D. In order to care for a family member of the covered individual who is a covered
30 service member; or

31 E. Any other reason set forth in section 843, subsection 4.

32 **2. Medical leave.** Medical leave is available to a covered individual with a serious
33 health condition that makes the covered individual unable to perform the job functions for
34 the position held by that covered individual.

35 **3. Leave requirements.** The following requirements must be met.

36 A. A covered individual is not eligible for more than 12 weeks of family leave in an
37 application year, except that a covered individual taking family leave in order to care

1 for a covered service member is eligible for up to 20 weeks of family leave in an
2 application year.

3 B. A covered individual is not eligible for medical leave for more than 20 weeks in
4 an application year.

5 C. A covered individual may not take more than 20 weeks, in the aggregate, of
6 family leave and medical leave under this subchapter in the same application year.

7 This subsection does not prevent a covered individual from taking medical leave during
8 pregnancy or recovery from childbirth if supported by documentation from a health care
9 provider that is immediately followed by family leave, in which case the 5-day waiting
10 period for family leave under section 850-C, subsection 1 is not required.

11 **4. Intermittent leave requirements.** Leave permitted by this section may not be
12 taken by an employee intermittently or on a reduced leave schedule unless the employee
13 and the employer agree otherwise. An employee may take leave intermittently or on a
14 reduced leave schedule when medically necessary if the employee is caring for a covered
15 service member under subsection 1, paragraph D, has a serious health condition under
16 subsection 2 or is caring for a family member with a serious health condition under
17 subsection 1, paragraph B. The taking of leave intermittently or on a reduced leave
18 schedule pursuant to this subsection may not result in a reduction in the total amount of
19 leave to which the covered individual is entitled under this subchapter.

20 **5. Weekly benefit.** While on family leave or medical leave pursuant to this
21 subchapter, a covered individual receives a weekly benefit amount as provided in section
22 850-C.

23 **6. Restoration to previous position.** An employee who has taken family leave or
24 medical leave must be restored to the position the employee held when the leave
25 commenced or to an equivalent position, with the same status, pay, employment benefits,
26 length of service credit and seniority. An employee is not entitled to restoration under
27 this subsection if the employee cannot be restored to the same position or an equivalent
28 position because of conditions unrelated to the employee's exercise of rights under this
29 subchapter.

30 **7. Right to benefits; accrual.** The taking of family leave or medical leave may not
31 affect an employee's right to accrue vacation time, sick time, bonuses, advancement,
32 seniority, length of service credit or other employment benefits, plans or programs.
33 During the duration of an employee's family or medical leave, the employer shall
34 continue to provide for and contribute to the employee's employment-related health
35 insurance benefits, if any, at the level and under the conditions coverage would have been
36 provided if the employee had continued working continuously for the duration of leave.

37 **8. Treatment of self-employed individuals.** Subsections 6 and 7 do not apply to a
38 self-employed individual taking family leave or medical leave under this subchapter or to
39 a person who was a former employee when that person began taking family or medical
40 leave under this subchapter.

41 **9. Collective bargaining.** This subchapter does not:

1 A. Obviate an employer's obligations to comply with any employer policy, law or
2 collective bargaining agreement that provides for greater or additional rights to leave
3 than those provided by this subchapter;

4 B. In any way curtail the rights, privileges or remedies of any employee under any
5 collective bargaining agreement or employment contract; or

6 C. Allow an employer to compel an employee to exhaust rights to any sick, vacation
7 or personal time prior to or while taking leave under this subchapter.

8 **10. Concurrent with leave under state and federal law.** Leave taken under this
9 subchapter runs concurrently with leave taken under the federal Family and Medical
10 Leave Act of 1993, 29 United States Code, Section 2611, et seq., and under subchapter
11 6-A. Employees may take leave under this subchapter while ineligible for leave under
12 the Family and Medical Leave Act of 1993 in the same application year.

13 **11. Election of coverage by self-employed individual.** A self-employed individual
14 may elect coverage under this subchapter and become a covered individual for an initial
15 period of not less than 3 years by filing a notice of election in writing with the department
16 and making contributions as required in section 850-E, subsection 6 to the fund. A self-
17 employed individual who elects coverage under this subsection is not eligible for benefits
18 until that individual has made the required contributions for at least 2 calendar quarters of
19 the individual's last 4 completed calendar quarters. The election becomes effective on the
20 date of filing of the notice. The department shall establish a process by which self-
21 employed individuals elect coverage under this subchapter.

22 **§850-C. Payment of benefits**

23 **1. Waiting period.** No family leave or medical leave benefits are payable during the
24 first 5 calendar days of the leave, except that an employee may use accrued sick or
25 vacation pay or other paid leave provided under a collective bargaining agreement or
26 employer policy during the first 5 calendar days of the leave.

27 **2. Payment for waiting period.** If a covered individual uses 10 or more days of
28 family leave or medical leave benefits in an application year, the covered individual must
29 be paid for the waiting period described in subsection 1. The department may impose a
30 waiting period on a covered individual only once every application year.

31 **3. Determination of weekly benefit amount.** The weekly benefit amount for
32 employees and self-employed individuals on family leave or medical leave is determined
33 as follows:

34 A. The portion of an employee's or self-employed individual's average weekly wage
35 that is equal to or less than 50% of the state average weekly wage must be replaced at
36 a rate of 90%; and

37 B. The portion of an employee's or self-employed individual's average weekly wage
38 that is more than 50% of the state average weekly wage must be replaced at a rate of
39 67%.

1 **4. Maximum benefit amount adjustment.** The maximum weekly benefit amount
2 calculated under subsection 3 is 100% of the state average weekly wage. By October 1,
3 2021 and annually thereafter, the commissioner shall adjust the maximum weekly benefit
4 amount as necessary, and the adjusted maximum weekly benefit amount takes effect on
5 January 1st of the year following the adjustment.

6 **5. Prorated benefit.** If a covered individual takes family leave or medical leave on
7 an intermittent or reduced leave schedule, the weekly benefit amount must be prorated as
8 determined by the department.

9 **6. Reduction of benefit.** The weekly benefit amount must be reduced by the amount
10 of wages or wage replacement that a covered individual receives for that period under any
11 of the following while on family leave or medical leave:

12 A. A government program or law, including, but not limited to, workers'
13 compensation under Title 39-A, other than for permanent partial disability incurred
14 prior to the family leave or medical leave claim, or under other state or federal
15 temporary or permanent disability benefits law; or

16 B. A permanent disability policy or program of an employer.

17 **7. Temporary disability or employer paid leave benefit.** The weekly benefit
18 amount may not be reduced by the amount of wage replacement that an employee
19 receives while on family leave or medical leave under the following conditions:

20 A. A temporary disability policy or program of an employer; or

21 B. A paid family leave or medical leave policy of an employer.

22 **§850-D. Filing for benefits**

23 **1. Claim.** A covered individual shall file a benefit claim pursuant to any rules
24 adopted by the department. If a claim is filed more than 90 calendar days after the start of
25 leave, the covered individual may receive reduced benefits. All claims must include a
26 certification submitted in accordance with this section supporting a request for leave
27 under this subchapter. The department shall establish good-cause exemptions from the
28 certification requirement deadline in the event that a serious health condition of the
29 covered individual prevents the covered individual from providing the required
30 certification within the 90 calendar days.

31 **2. Certification for medical leave of covered individual.** The certification for a
32 covered individual taking medical leave is sufficient if it states the date on which the
33 serious health condition commenced, the probable duration of the condition and the
34 appropriate medical facts within the knowledge of the health care provider as required by
35 the department.

36 **3. Certification for family leave; serious health condition of family member.**
37 The certification for a covered individual taking family leave because of a serious health
38 condition of a family member is sufficient if it states the date on which the serious health
39 condition commenced, the probable duration of the condition, the appropriate medical
40 facts within the knowledge of the health care provider as required by the department, a

1 statement that the covered individual is needed to care for the family member and an
2 estimate of the amount of time that the covered individual is needed to care for the family
3 member.

4 **4. Certification for family leave; birth of child.** The certification for a covered
5 individual taking family leave because of the birth of a child of the covered individual is
6 sufficient if the covered individual provides either the birth certificate or a document
7 issued by the health care provider of the child or of the person who gave birth stating the
8 child's birth date.

9 **5. Certification for family leave; adoption or foster care.** The certification for a
10 covered individual taking family leave because of the placement of a child with the
11 covered individual for adoption or foster care is sufficient if the covered individual
12 provides a document that confirms the placement and date of placement issued by the
13 health care provider of the child, by an adoption or foster care agency involved in the
14 placement or by other persons as determined by the department. If the status of a covered
15 individual as an adoptive or foster parent changes while an application for benefits is
16 pending or while the covered individual is receiving benefits, the covered individual shall
17 notify the department of the change in writing. The Department of Health and Human
18 Services may confirm in writing the status of the covered individual as an adoptive or
19 foster parent while an application for benefits is pending or while a covered individual is
20 receiving benefits.

21 **6. Certification for family leave; qualifying exigency.** The certification for a
22 covered individual taking family leave because of a qualifying exigency is sufficient if it
23 includes a copy of the family member's active duty orders, other documentation issued by
24 the United States Armed Forces or other documentation permitted by the department.

25 **7. Certification for family leave; covered service member.** The certification for a
26 covered individual taking family leave to care for a family member who is a covered
27 service member is sufficient if it includes:

28 A. The date on which the serious health condition commenced;

29 B. The probable duration of the serious health condition;

30 C. The appropriate medical facts within the knowledge of the covered service
31 member's health care provider as required by the department;

32 D. A statement that the covered individual is needed to care for the family member;

33 E. An estimate of the amount of time that the covered individual is needed to care for
34 the family member; and

35 F. An attestation by the covered individual that the serious health condition is
36 connected to the covered service member's military service as required by this
37 subchapter.

38 **8. Certification for leave for other reason.** The certification for a covered
39 individual taking family leave based on a reason set forth in section 843, subsection 4 is
40 sufficient if it states the reason for the leave, the probable duration of the amount of time
41 needed for leave and any other documentation required by the department.

1 **9. Confidentiality.** Any medical or health information required under this section
2 must be treated as confidential and may not be disclosed except with permission from the
3 covered individual who provided it unless disclosure is otherwise required by law.
4 Nothing in this section may be construed to require a covered individual to provide as
5 certification any information from a health care provider that would be in violation of
6 Section 1177 of the federal Social Security Act, 42 United States Code, Section 1320d-6.

7 **10. Ineligibility.** A covered individual is not eligible to receive family leave or
8 medical leave benefits if the department finds, through a process established by rule, that
9 the covered individual, for the purpose of obtaining these benefits, has willfully made a
10 false statement or misrepresentation regarding a material fact or has willfully withheld a
11 material fact concerning the facts required to be certified pursuant to this section. The
12 department shall establish a process by rule for the determination of eligibility under this
13 section, including a grievance process for a covered individual determined to be
14 ineligible.

15 **§850-E. Family and Medical Leave Insurance Fund**

16 **1. Fund established.** The Family and Medical Leave Insurance Fund is established
17 to carry out the purposes of this subchapter. The fund is administered by the Treasurer of
18 State. Any sums received under this section are not considered revenue of the State, but
19 must be held in trust for the exclusive benefit of covered individuals eligible for benefits
20 under this subchapter and for the administration of this subchapter by the department.
21 Funds may not be expended, released, appropriated or otherwise disposed of for any other
22 purpose and must be expended by the director as required by this subchapter to pay
23 family leave and medical leave benefits to covered individuals eligible to receive benefits
24 and to pay the administrative costs of the department.

25 **2. Deposits in fund.** The fund consists of:

26 A. Contributions collected pursuant to subsection 6 together with any interest earned
27 thereon;

28 B. Property or securities acquired through the use of money belonging to the fund
29 together with any earnings of such property or securities;

30 C. Fines and penalties collected under this subchapter; and

31 D. Any other money received from any source, including grants, gifts, bequests or
32 money specifically designated to be credited to the fund.

33 **3. Annualized amount.** The fund must maintain an annualized amount of not less
34 than 140% of the previous fiscal year's expenditures for benefits paid and for the
35 administration of the program by the department.

36 **4. Administrative costs.** The costs of administering the program by the department
37 may not exceed 5% of the amount deposited under subsection 2 for each fiscal year
38 following the initial year benefits are paid. Money may not be commingled with other
39 state funds and must be maintained in a separate account.

1 **5. Payment of benefits.** The director shall expend money from the fund to provide
2 weekly benefits under section 850-C. Family leave and medical leave benefits must be
3 paid from the fund to covered individuals eligible for benefits. An employer's bankruptcy
4 or noncompliance with this subchapter does not interfere with an employee's ability to
5 collect family and medical leave benefits under this subchapter. Family or medical leave
6 benefits paid from the fund to such an employee may be recovered through bankruptcy
7 proceedings or from the noncomplying employer. The director shall institute
8 administrative and legal action to recover family and medical leave benefits paid through
9 the fund.

10 **6. Contributions.** To accumulate funds for the payment of family leave and medical
11 leave benefits and administrative costs, payroll contributions must be paid by employees
12 in an amount determined by 0.55% of wages except that wages below \$12,000 in a 12-
13 month period are not subject to the contribution required by this subsection. In no case
14 may payroll contributions exceed 0.55% of wages in any 12-month period. The
15 department is responsible for evaluating and determining on an annual basis the amount
16 of payroll contributions and maximum employee contribution necessary to finance the
17 program. This subsection does not prohibit an employer from making a contribution on
18 behalf of an employee through a collective bargaining agreement or as part of an
19 employer's employment benefits.

20 **7. Report.** Annually, by October 1st, the director shall publish a report providing
21 the following information concerning the program for the previous fiscal year:

22 A. The total eligible claims;

23 B. The percentage of such claims attributable to medical leave;

24 C. The percentage of such claims attributable to family leave for the serious health
25 condition of a family member;

26 D. The percentage of such claims attributable to family leave other than for the birth,
27 adoption or fostering of a child;

28 E. The percentage of such claims attributable to family leave for the birth, adoption
29 or fostering of a child;

30 F. The percentage of such claims attributable to family leave for a qualifying
31 exigency;

32 G. The percentage of such claims attributable to family leave for a covered service
33 member;

34 H. The claimant demographics by age, gender identification, average weekly wage,
35 occupation and the type of leave taken;

36 I. The percentage of claims denied and the reasons for the denials;

37 J. The average weekly benefit amount paid for all claims and by category of leave;
38 and

39 K. Any changes in gross benefits paid compared to previous fiscal years.

1 **§850-F. Notice**

2 **1. Posted notice.** An employer shall post in a conspicuous place on each of its
3 premises a workplace notice provided or approved by the department providing notice of
4 benefits available under this subchapter. The department shall issue the workplace notice
5 in English, Spanish, French, Somali, Portuguese and any other language that is the
6 primary language of at least 2,000 residents of the State. The employer shall post the
7 workplace notice in English and each language other than English that is the primary
8 language of 3 or more employees of that workplace, if such notice is available from the
9 department.

10 **2. Written notice.** An employer shall issue to each employee not more than 30 days
11 from the beginning date of the employee's employment the following written information
12 provided or approved by the department in the employee's primary language:

13 A. An explanation of the availability of family leave and medical leave benefits
14 provided under this subchapter, including rights to reinstatement and continuation of
15 health insurance;

16 B. The employee's contribution amount and obligations under this subchapter;

17 C. The name and mailing address of the employer;

18 D. The identification number assigned to the employer by the department;

19 E. Instructions on how to file a claim for family leave or medical leave benefits;

20 F. The mailing address, e-mail address and telephone number of the department; and

21 G. Any other information deemed necessary by the department.

22 The employee shall provide written acknowledgment of receipt of information or sign a
23 statement indicating the employee's refusal to sign the acknowledgement.

24 **3. Failure to comply.** An employer that fails to comply with this section must be
25 assessed, for a first violation, a civil penalty of \$50 per employee and \$150 per employee
26 for each subsequent violation. The employer has the burden of demonstrating compliance
27 with this section.

28 **4. Notice to employer.** An employee shall give at least 30 days' notice to the
29 employer of the anticipated starting date of leave, the anticipated length of leave and the
30 expected date of return or shall provide notice as soon as practicable if the delay is due to
31 exigent circumstances or for reasons beyond the employee's control. If an employer fails
32 to provide notice as required under this section, the employee's obligation to provide
33 notice under this subsection is waived.

34 **§850-G. Prohibited practices**

35 **1. Retaliation prohibited.** It is unlawful for an employer to retaliate by discharging,
36 firing, suspending, expelling or disciplining, through the application of attendance
37 policies or otherwise, or threatening or in any manner discriminating against an employee
38 for exercising any right to which the employee is entitled under this subchapter or with

1 the purpose of interfering with the exercise of any right to which the employee is entitled
2 under this chapter.

3 **2. Change in status.** An employer may not make any negative change in the
4 seniority, status, employment benefits, pay or other terms or conditions of employment of
5 an employee who applies and qualifies for family leave or medical leave benefits under
6 this subchapter.

7 **3. Enforcement; violation.** The department shall take enforcement action against
8 an employer for a violation of this section.

9 **§850-H. Appeals**

10 **1. Process for appeals.** The director shall establish a system for appeals in the case
11 of a denial of family leave or medical leave benefits. In establishing the system, the
12 director may use any procedures or appeals mechanisms established under chapter 13.

13 **2. Judicial review.** Judicial review of any decision with respect to family leave or
14 medical leave benefits must be permitted in a court of competent jurisdiction after a party
15 aggrieved by the decision has exhausted all administrative remedies established by the
16 director.

17 **3. Information related to appeals; confidentiality.** The director shall implement
18 procedures to ensure confidentiality, to the maximum extent permitted by applicable
19 laws, of all information related to any claims filed or appeals taken under this subchapter.

20 **§850-I. Disqualification of covered individual**

21 **1. False statement; misrepresentation.** A covered individual is disqualified from
22 family leave and medical leave benefits for one year if the individual is determined by the
23 director to have willfully made a false statement or misrepresentation regarding a material
24 fact, or willfully failed to report a material fact, to obtain benefits under this subchapter.

25 **2. Erroneous payment.** If family leave or medical leave benefits are paid
26 erroneously or as the result of willful misrepresentation or a claim for family or medical
27 leave benefits is rejected after benefits are paid, the department may seek repayment of
28 benefits from the recipient. The director shall exercise discretion to waive, in whole or in
29 part, the amount of any such payments if the recovery would be against equity and good
30 conscience.

31 **§850-J. Tax treatment**

32 **1. Federal tax.** If the federal Internal Revenue Service determines that family leave
33 or medical leave benefits under this subchapter are subject to federal income tax, the
34 department must advise an individual filing a new claim for family or medical leave
35 benefits, at the time the individual files the claim, that:

36 A. The federal Internal Revenue Service has determined that benefits are subject to
37 federal income tax;

38 B. Requirements exist pertaining to estimated tax payments;

1 C. The individual may elect to have federal income tax deducted and withheld from
2 the individual's payment of benefits in the amount specified in the United States
3 Internal Revenue Code of 1986; and

4 D. The individual is permitted to change a previously elected withholding status.

5 **2. Withholding of federal income tax payments.** If an individual elects to have
6 federal income tax payments withheld from the individual's family leave or medical leave
7 benefits payments, the department shall deduct and withhold the amount specified in the
8 United States Internal Revenue Code of 1986 in a manner consistent with the
9 requirements in Title 36. Amounts deducted and withheld from benefits must remain in
10 the fund until transferred to the federal taxing authority as a payment of income tax.

11 **3. Conformity to Internal Revenue Service procedures.** The department shall
12 follow all procedures specified by the federal Internal Revenue Service pertaining to the
13 deducting and withholding of income tax.

14 **§850-K. Data collection and technology**

15 The department shall use state data collection procedures and technology to the
16 extent possible to integrate the program with existing state policies.

17 **§850-L. Implementation**

18 Contributions begin January 1, 2021 to provide funds for the fund. The department
19 shall begin processing claims beginning January 1, 2022.

20 The department shall establish reasonable procedures and forms for filing claims for
21 benefits under this subchapter and shall specify what supporting documentation is
22 necessary to support a claim for benefits, including documentation required from a health
23 care provider for proof of a serious health condition.

24 **§850-M. Rulemaking**

25 The department may adopt rules as necessary to implement this subchapter. Rules
26 adopted pursuant to this subchapter are routine technical rules as defined in Title 5,
27 chapter 375, subchapter 2-A.

28 **§850-N. Effect of existing employer benefits for family and medical leave**

29 This subchapter may not be construed to prohibit an employee entitled to receive
30 benefits for family or medical leave under a collective bargaining agreement or employer
31 policy from also receiving benefits under this subchapter as long as the employee is
32 otherwise eligible for benefits under this subchapter.

33 **SUMMARY**

34 This bill establishes a paid family and medical leave benefits program administered
35 by the Department of Labor. The program provides up to 12 weeks of family leave and
36 up to 20 weeks of medical leave to eligible covered individuals. No more than 20 weeks

1 of family leave and medical leave in the aggregate may be taken in a 12-month period.
2 An individual is eligible for leave under the program after working 26 weeks or more for
3 any employer in the 12 months prior to submitting an application or if the individual is
4 self-employed and has elected to be part of the program.

5 The maximum weekly benefit amount is capped at 100% of the state average weekly
6 wage. The weekly benefit amount is 90% of the portion of the covered individual's
7 average weekly wage that is equal to or less than 50% of the state average weekly wage
8 and 67% of the portion of the covered individual's average weekly wage that is more than
9 50% of the state average weekly wage.

10 Covered individuals are required to file claims for benefits in accordance with rules
11 adopted by the department and to provide certification that they qualify for family leave
12 or medical leave.

13 This bill establishes the Family and Medical Leave Insurance Fund to support the
14 program. The funds for administrative costs and payment of benefits will come from
15 payroll contributions by employees.

16 The bill requires payroll contributions to begin January 1, 2021, and benefits will be
17 paid out beginning January 1, 2022.