

CORRECTED FRONT PAGE

May 17, 2023

**(PLEASE REPLACE
THIS FRONT PAGE ONLY)**



131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1964

S.P. 800

In Senate, May 18, 2023

An Act to Implement the Recommendations of the Commission to Develop a Paid Family and Medical Leave Benefits Program

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

A handwritten signature in black ink, appearing to read 'DAREK M. GRANT'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator DAUGHTRY of Cumberland.

Cosponsored by Representative CLOUTIER of Lewiston and

Senators: BAILEY of York, BALDACCI of Penobscot, BEEBE-CENTER of Knox, BENNETT of Oxford, BRENNER of Cumberland, CARNEY of Cumberland, CHIPMAN of Cumberland, CURRY of Waldo, DUSON of Cumberland, GROHOSKI of Hancock, HICKMAN of Kennebec, INGWERSEN of York, President JACKSON of Aroostook, LaFOUNTAIN of Kennebec, LAWRENCE of York, NANGLE of Cumberland, PIERCE of Cumberland, RAFFERTY of York, RENY of Lincoln, ROTUNDO of Androscoggin, TIPPING of Penobscot, VITELLI of Sagadahoc, Representatives: ABDI of Lewiston, ANKELES of Brunswick, ARFORD of Brunswick, BELL of Yarmouth, BOYLE of Gorham, BRENNAN of Portland, BRIDGEO of Augusta, CLUCHEY of Bowdoinham, COLLINGS of Portland, COPELAND of Saco, CRAFTS of Newcastle, CRAVER of Lewiston, CROCKETT of Portland, DHALAC of South Portland, DODGE of Belfast, DOUDERA of Camden, EATON of Deer Isle, FAY of Raymond, GATTINE of Westbrook, GEIGER of Rockland, GERE of Kennebunkport, GOLEK of Harpswell, GRAHAM of North Yarmouth, GRAMLICH of Old Orchard Beach, HEPLER of Woolwich, HOBBS of Wells, JAUCH of Topsham, KESSLER of South Portland, KUHN of Falmouth, LAJOIE of Lewiston, LaROCHELLE of Augusta, LEE of Auburn, LOOKNER of Portland, MADIGAN of Waterville, MALON of Biddeford, MASTRACCIO of Sanford, MATHIESON of Kittery, MATLACK of St. George, MEYER of Eliot, MILLETT of Cape Elizabeth, MILLIKEN of Blue Hill, MONTELL of Gardiner, MOONEN of Portland, MORIARTY of Cumberland, MURPHY of Scarborough, O'CONNELL of Brewer, O'NEIL of Saco, OSHER of Orono, PAULHUS of Bath, PERRY of Calais, PERRY of Bangor, PRINGLE of Windham, RANA of Bangor, RECKITT of South Portland, RIELLY of Westbrook, ROBERTS of South Berwick, ROEDER of Bangor, RUNTE of York, RUSSELL of Verona Island, SACHS of Freeport, SALISBURY of Westbrook, SARGENT of York, SAYRE of Kennebunk, SHAGOURY of Hallowell, SHAW of Auburn, SHEEHAN of Biddeford, SKOLD of Portland, STOVER of Boothbay, SUPICA of Bangor, Speaker TALBOT ROSS of Portland, TERRY of Gorham, WARREN of Scarborough, WHITE of Waterville, WILLIAMS of Bar Harbor, WORTH of Ellsworth, ZAGER of Portland, ZEIGLER of Montville.

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

2 **Sec. 1. 3 MRSA §959, sub-§1, ¶I**, as amended by PL 2021, c. 617, §1, is further
3 amended to read:

4 I. The joint standing committee of the Legislature having jurisdiction over labor
5 matters shall use the following list as a guideline for scheduling reviews:

- 6 (2) Department of Labor in 2023;
- 7 (3) Maine Labor Relations Board in 2025; ~~and~~
- 8 (4) Workers' Compensation Board in 2025-; and
- 9 (5) The paid family and medical leave benefits program established in Title 26,
10 chapter 7, subchapter 6-C in 2029.

11 **Sec. 2. 5 MRSA §12004-I, sub-§54-F** is enacted to read:

12 **54-F.**

13 <u>Labor</u>	<u>Paid Family and Medical Leave Benefits</u>	<u>Expenses Only</u>	<u>26 MRSA</u>
14	<u>Authority</u>		<u>§850-O</u>

15 **Sec. 3. 5 MRSA §13056, sub-§4**, as enacted by PL 1987, c. 534, Pt. A, §§17 and
16 19, is amended to read:

17 **4. Communication with private sector.** Communicate, on a regular basis, with the
18 private sector to inform the private sector of departmental programs and services and the
19 paid family and medical leave benefits program established in Title 26, chapter 7,
20 subchapter 6-C and to determine the needs, problems and opportunities of the private
21 sector;

22 **Sec. 4. 5 MRSA §13056, sub-§5**, as amended by PL 2003, c. 159, §1, is further
23 amended to read:

- 24 **5. Prepare and distribute publications.** Prepare and distribute publications that:
 - 25 A. Describe various business development programs within the State that are available
 - 26 to Maine businesses;
 - 27 B. Describe the various community and economic development programs of the State;
 - 28 ~~and~~
 - 29 C. Market the State of Maine and its communities as suitable areas for business
 - 30 development; and
 - 31 D. Describe the paid family and medical leave benefits program established in Title
32 26, chapter 7, subchapter 6-C to educate businesses within the State about the program.

33 **Sec. 5. 26 MRSA c. 7, sub-c. 6-C** is enacted to read:

34 **SUBCHAPTER 6-C**

35 **PAID FAMILY AND MEDICAL LEAVE**

36 **§850-A. Definitions**

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

3 **1. Administrator.** "Administrator" means the department administering the program
4 or an authorized 3rd party conducting any functions necessary to implement the program.

5 **2. Application year.** "Application year" means the 12-month period beginning on the
6 first day of the calendar year in which an individual files an application for family leave
7 benefits or medical leave benefits.

8 **3. Authority.** "Authority" means the Paid Family and Medical Leave Benefits
9 Authority, under section 850-O.

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

15 **5. Base period.** "Base period" means the first 4 calendar quarters immediately
16 preceding the first day of an individual's benefit year.

17 **6. Benefit year.** "Benefit year" means the 12-month period beginning on the first day
18 of the calendar week in which an individual files an application for family leave benefits
19 or medical leave benefits.

20 **7. Commissioner.** "Commissioner" means the Commissioner of Labor.

21 **8. Contributions.** "Contributions" means the payments made by an employee or self-
22 employed individual to the fund, as required by this subchapter.

23 **9. Controller.** "Controller" means the State Controller.

24 **10. Covered individual.** "Covered individual" means a person who:

25 A. Earned at least 6 times the state average weekly wage in wages subject to premiums
26 under this subchapter during the individual's base period or elects coverage and meets
27 the requirements of section 850-G; and

28 B. Meets the administrative requirements outlined in this subchapter and any rules
29 adopted pursuant to this subchapter and files an application for family leave benefits
30 or medical leave benefits.

31 **11. Covered service member.** "Covered service member" means:

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

34 (1) Undergoing medical treatment, recuperation or therapy or otherwise receiving
35 outpatient treatment; or

36 (2) Otherwise on the United States Armed Forces' temporary disability retired list
37 for a serious injury or illness that was incurred by the member in the line of duty
38 in the United States Armed Forces or a serious injury or illness that existed before
39 the beginning of the member's active duty and was aggravated by service in the
40 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 Guard
2 and the Reserves of the United States Armed Forces, who is undergoing medical
3 treatment, recuperation or therapy for a serious injury or illness that was incurred by
4 the member in the line of duty in the United States Armed Forces or a serious injury or
5 illness that existed before the beginning of the member's active duty and was
6 aggravated by service in the line of duty on active duty in the United States Armed
7 Forces and manifested before or after the member was discharged or released from
8 service.

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

10 **13. Domestic partner.** "Domestic partner" has the same meaning as in Title 1, section
11 72, subsection 2-C.

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

15 **15. Employer.** "Employer" means:

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

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

20 C. A county, city, town or municipal agency;

21 D. An agent of an employer, the State or a political subdivision of the State; and

22 E. A public employer, as defined in section 962, subsection 7.

23 "Employer" does not include the Federal Government.

24 **16. Employment.** "Employment" means a service performed for wages.

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

29 **18. Family leave.** "Family leave" means leave taken pursuant to section 850-B,
30 subsection 1.

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

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

36 A. Regardless of age, a child, including a child whose parentage has been determined
37 under the Maine Parentage Act or any other biological child, adopted child, foster child
38 or stepchild, or a child to whom the covered individual or spouse or domestic partner
39 of the covered individual stands in loco parentis or a child the covered individual or
40 spouse or domestic partner of the covered individual has under legal guardianship or
41 any individual to whom the covered individual or spouse or domestic partner of the

1 covered individual stood in any of these relationships when the individual was a minor
2 child;

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

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

9 D. A grandchild, including a legal grandchild, biological grandchild, adoptive
10 grandchild, foster grandchild, stepgrandchild or de facto grandchild;

11 E. A sibling, including a legal sibling, biological sibling, adoptive sibling, foster
12 sibling, stepsibling or de facto sibling;

13 F. A spouse or domestic partner of a covered individual; or

14 G. As shown by the covered individual, any other individual with whom the covered
15 individual has a significant personal bond that is or is like a family relationship,
16 regardless of biological or legal relationship.

17 **21. Fund.** "Fund" means the Paid Family and Medical Leave Insurance Fund
18 established under section 850-E.

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

23 **23. Medical leave.** "Medical leave" means leave taken pursuant to section 850-B,
24 subsection 2.

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

28 **25. Program.** "Program" means the paid family and medical leave benefits program
29 established in section 850-B.

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

38 **27. Safe leave.** "Safe leave" means any leave taken because the covered individual or
39 the covered individual's family member is a victim of violence, assault, sexual assault under
40 Title 17-A, chapter 11, stalking or any act that would support an order for protection under
41 Title 19-A, chapter 103. Safe leave under this subchapter applies if the covered individual

1 is using the leave to protect the covered individual or the covered individual's family
2 member by:

3 A. Seeking an order for protection under Title 19-A, chapter 103;

4 B. Obtaining medical care or mental health counseling for the covered individual or
5 for the covered individual's family member to address physical or psychological
6 injuries resulting from the act of violence, assault, sexual assault or stalking or act that
7 would support an order for protection under Title 19-A, chapter 103;

8 C. Making the covered individual's or the covered individual's family member's home
9 secure from the perpetrator of the act of violence, assault, sexual assault or stalking or
10 act that would support an order for protection under Title 19-A, chapter 103 or seeking
11 new housing to escape the perpetrator; or

12 D. Seeking legal assistance to address issues arising from the act of violence, assault,
13 sexual assault or stalking or act that would support an order for protection under Title
14 19-A, chapter 103 or attending and preparing for court-related proceedings arising from
15 the act or crime.

16 **28. Self-employed individual.** "Self-employed individual" means a sole proprietor,
17 a member of a limited liability company or limited liability partnership or an individual
18 whose net profit or loss from a business must be reported to the Department of
19 Administrative and Financial Services, Bureau of Revenue Services and who resides in the
20 State.

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

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

27 **31. State average weekly wage.** "State average weekly wage" means the average
28 weekly wage as published by the administrator for the State as a whole for the 12 most
29 recently reported months.

30 **32. Wages.** "Wages" means actual compensation paid to an employee for the
31 performance of services.

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

35 **§850-B. Paid family and medical leave benefits program established**

36 The paid family and medical leave benefits program is established effective January 1,
37 2026. The program is administered by the department. The department may, through
38 contract after a competitive bidding process, authorize a 3rd party to conduct any functions
39 necessary to implement the program. Any 3rd party acting under a contract to conduct any
40 functions of the program must have a meaningful physical presence in the State.

41 **1. Family leave eligibility.** A covered individual is eligible for family leave for any
42 of the following reasons:

1 A. To bond with the covered individual's child during the first 12 months after the
2 child's birth or the first 12 months after the placement of the child for adoption or foster
3 care with the covered individual;

4 B. To care for a family member with a serious health condition;

5 C. To attend to a qualifying exigency;

6 D. To care for a family member of the covered individual who is a covered service
7 member;

8 E. To take safe leave; or

9 F. Any other reason set forth in section 843, subsection 4.

10 **2. Medical leave eligibility.** A covered individual with a serious health condition that
11 makes the covered individual unable to perform the job functions for the position held by
12 that covered individual is eligible for medical leave.

13 **3. Maximum leave requirements.** The following requirements apply.

14 A. A covered individual is not eligible for more than 12 weeks of family leave in an
15 application year.

16 B. A covered individual is not eligible for medical leave for more than 12 weeks in an
17 application year.

18 C. A covered individual may not take more than 16 weeks, in the aggregate, of family
19 leave and medical leave under this subchapter in the same application year.

20 This subsection does not prevent a covered individual from taking medical leave that is
21 immediately followed by family leave when the medical leave is taken during pregnancy
22 or recovery from childbirth and is supported by documentation from a health care provider.

23 **4. Intermittent leave requirements.** Leave permitted by this section may be taken
24 by an employee intermittently in increments of not less than 8 hours or on a reduced leave
25 schedule otherwise agreed to by the employee and the employer. The taking of leave
26 intermittently or on a reduced leave schedule pursuant to this subsection may not result in
27 a reduction in the total amount of leave to which the covered individual is entitled under
28 this subchapter.

29 **5. Weekly benefit.** While on family leave or medical leave pursuant to this
30 subchapter, a covered individual receives a weekly benefit amount as provided in section
31 850-C.

32 **6. Notice.** In any case in which the necessity for leave under this subchapter is
33 foreseeable, an employee shall provide notice to the individual's employer not less than 30
34 days before the date the leave is to begin. If the necessity for leave is not foreseeable or
35 providing 30 days' notice is not possible, the employee shall provide notice as soon as
36 practicable.

37 **7. Right to benefits; accrual.** The taking of family leave or medical leave may not
38 affect an employee's right to accrue vacation time, sick time, bonuses, advancement,
39 seniority, length of service credit or other employment benefits, plans or programs. During
40 the duration of an employee's family leave or medical leave, the employer shall continue
41 to provide for and contribute to the employee's employment-related health insurance

1 benefits, if any, at the level and under the conditions coverage would have been provided
2 if the employee had continued working continuously for the duration of leave.

3 **8. Treatment of self-employed individuals.** Subsection 7 does not apply to a self-
4 employed individual taking family leave or medical leave under this subchapter or to a
5 person who is no longer an employee who was an employee when that person began taking
6 family leave or medical leave under this subchapter.

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

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

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

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

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

20 **§850-C. Payment of benefits**

21 **1. Waiting period for medical leave.** Medical leave benefits are not payable during
22 the first 7 calendar days of the leave, except that an employee may use accrued sick or
23 vacation pay or other paid leave provided under a collective bargaining agreement or
24 employer policy during the first 7 calendar days of the leave.

25 **2. Determination of weekly benefit amount.** The weekly benefit amount paid to
26 employees and self-employed individuals on family leave or medical leave is 90% of an
27 employee's or self-employed individual's average weekly wage calculated over the past 4
28 quarters, except for any bonus pay.

29 **3. Maximum benefit amount adjustment.** The maximum weekly benefit amount
30 calculated under subsection 2 is 120% of the state average weekly wage. By October 1,
31 2026 and annually thereafter, the commissioner shall adjust the maximum weekly benefit
32 amount as necessary, and the adjusted maximum weekly benefit amount takes effect on
33 January 1st of the year following the adjustment.

34 **4. Prorated benefit.** If a covered individual takes family leave or medical leave on
35 an intermittent or reduced leave schedule, the weekly benefit amount must be prorated as
36 determined by the administrator.

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

40 A. A government program or law, including, but not limited to, workers' compensation
41 under Title 39-A other than for permanent partial disability incurred prior to the family

1 leave or medical leave claim, or under other state or federal temporary or permanent
2 disability benefits law; or

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

4 **§850-D. Applications and claims for benefits**

5 **1. Procedures and forms.** The administrator shall establish reasonable procedures
6 and forms for filing claims for family leave benefits and medical leave benefits under this
7 subchapter and shall specify what supporting documentation is necessary to support a claim
8 for benefits, including any documentation required from a health care provider for proof of
9 a serious health condition and any documentation required by the administrator with regard
10 to a claim for safe leave or qualifying exigency leave.

11 **2. Filing of application.** An individual may file an application for family leave
12 benefits or medical leave benefits no more than 60 days before the anticipated start date of
13 family leave and medical leave and no more than 90 days after the start date of family leave
14 and medical leave. The administrator shall waive the 90-day filing deadline for good cause.
15 The administrator shall institute forms and procedures that are not unduly burdensome to
16 an individual claiming benefits.

17 **3. Notification of employer.** The administrator shall notify the relevant employer
18 within 5 business days of a claim being filed pursuant to this subchapter.

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

25 **5. Ineligibility.** A covered individual is not eligible to receive family leave benefits
26 or medical leave benefits if the administrator finds, through a process established by rule,
27 that the covered individual, for the purpose of obtaining these benefits, has willfully made
28 a false statement or misrepresentation regarding a material fact or has willfully withheld a
29 material fact concerning the facts required to be certified pursuant to this section. The
30 administrator shall establish a process by rule for the determination of eligibility under this
31 section, including a grievance process for a covered individual determined to be ineligible.

32 **§850-E. Paid Family and Medical Leave Insurance Fund**

33 **1. Fund established.** The Paid Family and Medical Leave Insurance Fund is
34 established to carry out the purposes of this subchapter. The fund is administered by the
35 Treasurer of State. Any sums received under this section are not considered revenue of the
36 State, but must be held in trust for the exclusive benefit of covered individuals eligible for
37 family leave benefits and medical leave benefits under this subchapter and for the
38 administration of this subchapter by the administrator. Funds may not be expended,
39 released, appropriated or otherwise disposed of for any other purpose and must be expended
40 by the administrator as required by this subchapter to pay family leave benefits and medical
41 leave benefits to covered individuals eligible to receive benefits and to pay the
42 administrative costs of the administrator.

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

1 A. Contributions collected pursuant to section 850-F together with any interest earned
2 thereon;

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

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

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

8 **3. Annualized amount.** The fund must maintain an annualized amount of not less
9 than 140% of the previous fiscal year's expenditures for family leave benefits and medical
10 leave benefits paid and for the administration of the program by the administrator.

11 **4. Administrative costs.** The costs of administering the program by the administrator
12 may not exceed 5% of the amount deposited under subsection 2 for each fiscal year
13 following the initial year family leave benefits and medical leave benefits are paid. Money
14 may not be commingled with other state funds and must be maintained in a separate
15 account.

16 **5. Payment of benefits.** The administrator shall expend money from the fund to
17 provide weekly family leave benefits and medical leave benefits under section 850-C.
18 Family leave benefits and medical leave benefits must be paid from the fund to covered
19 individuals eligible for benefits. An employer's bankruptcy or noncompliance with this
20 subchapter does not interfere with an employee's ability to collect family leave benefits and
21 medical leave benefits under this subchapter. Family leave benefits and medical leave
22 benefits paid from the fund to such an employee may be recovered through bankruptcy
23 proceedings or from the noncomplying employer. The administrator shall institute
24 administrative and legal action to recover family leave benefits and medical leave benefits
25 paid through the fund.

26 **6. Report.** Beginning October 1, 2026 and annually thereafter, the administrator shall
27 publish a report providing the following information concerning the program for the
28 previous fiscal year:

29 A. The total eligible claims;

30 B. The percentage of eligible claims attributable to medical leave;

31 C. The percentage of eligible claims attributable to family leave for the serious health
32 condition of a family member;

33 D. The percentage of eligible claims attributable to family leave other than for the
34 birth, adoption or fostering of a child;

35 E. The percentage of eligible claims attributable to family leave for the birth, adoption
36 or fostering of a child;

37 F. The percentage of eligible claims attributable to family leave for a qualifying
38 exigency;

39 G. The percentage of eligible claims attributable to family leave for a covered service
40 member;

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

- 1 I. The percentage of claims denied and the reasons for the denials;
- 2 J. The average weekly benefit amount paid for all claims and by the type of leave
- 3 taken; and
- 4 K. Any changes in gross benefits paid compared to the previous fiscal year.

5 **§850-F. Premiums**

6 **1. Authorized.** Payroll premiums must be paid in order to finance the payment of

7 family leave benefits and medical leave benefits under this subchapter and administration

8 of the program.

9 **2. Employer to remit premiums to fund.** Beginning January 1, 2025, for each

10 employee, an employer shall remit to the fund premiums in the form and manner

11 determined by the administrator. Premiums must be remitted quarterly.

12 **3. Premium amount.** The following provisions govern the premium amount.

13 A. Beginning January 1, 2025, the premium amount may not be more than a combined

14 rate of 1.0% of wages.

15 B. Annually, for the 2028 calendar year and each calendar year thereafter, not later

16 than October 1st, the administrator shall set the premium for the coming calendar year

17 based on a percentage of employee wages and at the rate necessary to obtain a total

18 amount of premium contributions equal to 140% of the benefits paid during the

19 previous fiscal year plus an amount equal to 100% of the cost of administration of the

20 payment of those benefits during the previous fiscal year, less the amount of net assets

21 remaining in the fund as of June 30th of the current calendar year. If, for the 2028

22 calendar year or any calendar year thereafter, the premium rate adjustment pursuant to

23 this subsection is an increase and results in the difference between the rate of the

24 upcoming calendar year and the current calendar year equaling more than 0.1% of

25 wages paid, the administrator shall submit a report regarding fund solvency and factors

26 contributing to rate setting to the joint standing committee of the Legislature having

27 jurisdiction over labor matters.

28 **4. Self-employed individuals.** The following provisions govern self-employed

29 individuals.

30 A. A self-employed individual who elects coverage under section 850-G shall pay 50%

31 of the premium required for an employee by subsection 3 on that individual's income

32 from self-employment.

33 B. A self-employed individual who elects coverage under section 850-G shall remit

34 the premium amount required by this subsection directly to the administrator, in the

35 form and manner required by the commissioner by rule.

36 **5. Employers.** The following provisions govern employers.

37 A. An employer with 15 or more employees may deduct up to 50% of the premium

38 required for an employee by subsection 3 from that employee's wages and shall remit

39 100% of the premium required by subsection 3 to the fund.

40 B. An employer with fewer than 15 employees may deduct up to 50% of the premium

41 required for an employee by subsection 3 from that employee's wages and shall remit

42 50% of the premium required by subsection 3 to the fund.

1 **6. Limit on wages to determine premiums.** Premiums are required up to the
2 contribution and benefit base limit established annually by the federal Social Security
3 Administration for purposes of the federal Old-Age, Survivors, and Disability Insurance
4 program limits pursuant to 42 United States Code, Section 430.

5 **7. Use.** The premiums collected under this subchapter must be used exclusively for
6 the payment of family leave benefits and medical leave benefits and the costs of
7 administration of the program.

8 **8. Approved private plan.** An employer with an approved private plan under section
9 850-H is not required to remit premiums under this section to the fund.

10 **9. Failure or refusal to make premium contributions.** An employer that fails or
11 refuses to make premium contributions as required in this section must be assessed 1.0%
12 of its total annual payroll for each year it so failed to comply in addition to any amounts
13 previously owed, or fraction thereof, in addition to the total amount of family leave benefits
14 and medical leave benefits paid to covered individuals for whom it failed to make premium
15 contributions. The rate of assessment imposed by this subsection must be adjusted for the
16 2028 calendar year and annually thereafter consistent with subsection 3, paragraph B.

17 **10. Self-employed individual who elects coverage and fails or refuses to make**
18 **premium contributions.** A self-employed individual who elects coverage under section
19 850-G and who fails or refuses to make premium contributions for at least 2 quarters as
20 required in this section may be disqualified from family leave benefits and medical leave
21 benefits. The self-employed individual's disqualification terminates upon:

22 A. The self-employed individual's remittance of all previously owed premium
23 contributions as required in this section; and

24 B. Following remittance as required by paragraph A, the self-employed individual's
25 remittance of premium contributions as required in this section for an additional
26 number of quarters equivalent to the number of quarters for which the self-employed
27 individual failed or refused to make premium contributions.

28 **§850-G. Elective coverage**

29 **1. Self-employed individual.** A self-employed individual, including an independent
30 contractor, sole proprietor or partner, may elect coverage under this subchapter for an initial
31 period of not less than 3 years. The self-employed individual shall file a notice of election
32 in writing with the commissioner, as required by the administrator. The election becomes
33 effective on the date of filing the notice. As a condition of election, the self-employed
34 individual must agree to supply any information concerning wages that the administrator
35 considers necessary.

36 **2. Withdrawal from coverage.** A self-employed individual who has elected coverage
37 may withdraw from coverage within 30 days after the end of the 3-year period of coverage,
38 or at such other times as the commissioner may prescribe by rule, by filing written notice
39 with the commissioner. A withdrawal may not take effect sooner than 30 days after filing
40 the notice.

41 **3. Individual no longer self-employed.** An individual who has elected coverage
42 under this section and is no longer a self-employed individual must be excused from that
43 individual's obligations under this section, as the administrator prescribes by rule.

1 **§850-H. Substitution of private plans**

2 **1. Application for approval of private plan.** An employer may apply to the
3 administrator for approval to meet its obligations under this subchapter through a private
4 plan. In order to be approved, a private plan must confer all of the same rights, protections
5 and benefits provided to employees under this subchapter, including, but not limited to:

6 A. Allowing family leave and medical leave to be taken for all purposes specified in
7 section 850-B, subsections 1 and 2;

8 B. Providing family leave benefits and medical leave benefits to a covered individual
9 for the maximum number of weeks required in section 850-B, subsection 3 in a benefit
10 year;

11 C. Providing a wage replacement rate for all family leave benefits and medical leave
12 benefits of at least the amount required by section 850-C, subsection 2;

13 D. Providing a maximum weekly benefit for all family leave benefits and medical
14 leave benefits of at least the amount specified in section 850-C, subsection 3;

15 E. Allowing a covered individual to take intermittent leave as authorized by section
16 850-B, subsection 4;

17 F. Imposing no additional conditions or restrictions on family leave benefits and
18 medical leave benefits, or on family leave and medical leave taken in connection with
19 those benefits, beyond those explicitly authorized by this subchapter or rules adopted
20 pursuant to this subchapter;

21 G. Allowing any employee covered under the private plan who is eligible for family
22 leave benefits and medical leave benefits under this subchapter to receive benefits and
23 take family leave and medical leave under the private plan; and

24 H. Providing that the cost to employees covered by the private plan may not be greater
25 than the cost charged to employees under section 850-F.

26 **2. Additional requirements.** In order to be approved as meeting an employer's
27 obligations under this subchapter, a private plan must also comply with the following
28 provisions:

29 A. If the private plan is in the form of self-insurance, the employer must furnish a bond
30 to the State with a surety company authorized to transact business in the State, in the
31 form, amount and manner required by the administrator;

32 B. The plan must provide coverage for all employees of the employer throughout the
33 employee's period of employment with that employer; and

34 C. If the plan is in the form of a 3rd party that provides for insurance, the forms of the
35 policy must be issued by an insurer approved by the State.

36 **3. Withdrawal of approval.** The administrator shall withdraw approval for a private
37 plan granted under subsection 1 when terms or conditions of the plan have been violated.
38 Causes for plan termination include, but are not limited to, the following:

39 A. Failure to pay family leave benefits or medical leave benefits;

40 B. Failure to pay family leave benefits or medical leave benefits timely and in a manner
41 consistent with this subchapter;

- 1 C. Failure to maintain an adequate surety bond under subsection 2, paragraph A;
- 2 D. Misuse of private plan money;
- 3 E. Failure to submit reports or comply with other requirements as required by the
- 4 commissioner by rule; or
- 5 F. Failure to comply with this subchapter or the rules adopted pursuant to this
- 6 subchapter.

7 **4. Rights retained.** An employee covered by a private plan approved under this

8 section retains all applicable rights otherwise provided under federal and state law.

9 **5. Appeal.** A contested determination or denial of family leave benefits or medical

10 leave benefits by a private plan is subject to appeal before the administrator and a court of

11 competent jurisdiction as provided in section 850-K.

12 **6. Violations.** Employers offering private plans that violate this section are subject to

13 a fine of \$100 per violation. The administrator shall transfer any fines collected pursuant

14 to this subsection to the fund. The administrator by rule shall establish a process for the

15 assessment and appeal of fines under this subsection.

16 **7. Cost of administration.** The administrator shall annually determine the total

17 amount expended by the administrator for costs arising out of the administration of private

18 plans. An employer offering a private plan pursuant to this section shall reimburse the

19 administrator for the costs arising out of the private plan in the amount, form and manner

20 determined by the administrator by rule. The administrator shall transfer payments received

21 pursuant to this subsection to the fund.

22 **§850-I. Notice**

23 **1. Posted notice.** An employer shall post in a conspicuous place on each of its

24 premises a workplace notice provided or approved by the administrator providing notice of

25 benefits available under this subchapter. The administrator shall issue the workplace notice

26 in English, Spanish, French, Somali and Portuguese and any other language that is the

27 primary language of at least 2,000 residents of the State. The employer shall post the

28 workplace notice in English and each language other than English that is the primary

29 language of 3 or more employees of that workplace, if such notice is available from the

30 administrator.

31 **2. Written notice.** An employer shall issue to each employee not more than 30 days

32 from the beginning date of the employee's employment the following written information

33 provided or approved by the administrator in the employee's primary language:

34 A. An explanation of the availability of family leave benefits and medical leave

35 benefits provided under this subchapter, including rights to reinstatement of

36 employment and continuation of health insurance;

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

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

39 D. The identification number assigned to the employer by the administrator;

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

41 benefits;

- 1 F. The mailing address, e-mail address and telephone number of the administrator; and
- 2 G. Any other information deemed necessary by the administrator.

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

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

13 **§850-J. Prohibited practices**

14 **1. Retaliation prohibited.** It is unlawful for an employer to retaliate by discharging,
15 firing, suspending, expelling or disciplining, through the application of attendance policies
16 or otherwise, or threatening or in any manner discriminating against an employee for
17 exercising any right to which the employee is entitled under this subchapter or with the
18 purpose of interfering with the exercise of any right to which the employee is entitled under
19 this chapter.

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

24 **3. Enforcement; violation.** The administrator shall take enforcement action against
25 an employer for a violation of this section.

26 **§850-K. Appeals**

27 **1. System for appeals.** The administrator shall establish a system for appeals in the
28 case of a denial of family leave benefits or medical leave benefits. In establishing the
29 system, the administrator may use any procedures or appeals mechanisms established under
30 chapter 13.

31 **2. Judicial review.** Judicial review of any decision with respect to family leave
32 benefits or medical leave benefits must be permitted in a court of competent jurisdiction
33 after a party aggrieved by the decision has exhausted all administrative remedies
34 established by the administrator.

35 **3. Information related to appeals; confidentiality.** The administrator shall
36 implement procedures to ensure confidentiality, to the maximum extent permitted by
37 applicable laws, of all information related to any claims filed or appeals made under this
38 subchapter.

39 **§850-L. Disqualification of covered individual**

40 **1. False statement; misrepresentation.** A covered individual is disqualified from
41 family leave benefits and medical leave benefits for one year if the individual is determined
42 by the administrator to have willfully made a false statement or misrepresentation regarding

1 a material fact, or willfully failed to report a material fact, to obtain benefits under this
2 subchapter.

3 **2. Erroneous payment.** If family leave benefits or medical leave benefits are paid
4 erroneously or as the result of willful misrepresentation or a claim for family leave benefits
5 or medical leave benefits is rejected after benefits are paid, the administrator may seek
6 repayment of benefits from the recipient. The administrator shall exercise discretion to
7 waive, in whole or in part, the amount of any such payments if the recovery would be
8 against equity and good conscience.

9 **§850-M. Tax treatment**

10 **1. Federal tax.** If the federal Internal Revenue Service determines that family leave
11 benefits or medical leave benefits under this subchapter are subject to federal income tax,
12 the administrator shall advise an individual filing a new claim for family leave benefits or
13 medical leave benefits, at the time the individual files the claim, that:

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

16 B. Requirements exist pertaining to estimated tax payments;

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

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

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

27 **3. Conformity to Internal Revenue Service procedures.** The administrator shall
28 follow all procedures specified by the federal Internal Revenue Service pertaining to the
29 deducting and withholding of income tax.

30 **4. Benefits not subject to state income tax.** Family leave benefits and medical leave
31 benefits received pursuant to this subchapter are not subject to state income tax.

32 **5. Rules.** The administrator, in consultation with the Department of Administrative
33 and Financial Services, Bureau of Revenue Services, shall adopt rules regarding tax
34 treatment and related procedures regarding family leave benefits and medical leave benefits
35 and the sharing of necessary information between the administrator and the Bureau of
36 Revenue Services.

37 **§850-N. Data collection and technology**

38 The administrator shall use state data collection procedures and technology to the
39 extent possible to integrate the program with existing state policies.

40 **§850-O. Paid Family and Medical Leave Benefits Authority**

1 The Paid Family and Medical Leave Benefits Authority, established in Title 5, section
2 12004-I, subsection 54-F, shall advise the administrator on the implementation and
3 administration of the program in accordance with this subchapter.

4 **1. Membership; appointments.** The authority consists of the following 13 members:

5 A. Eleven members appointed by the Governor:

6 (1) One member with expertise in issues affecting labor and independent
7 contractors;

8 (2) One employer with more than 50 employees;

9 (3) One member with expertise in issues related to paid family leave benefits and
10 paid medical leave benefits;

11 (4) One employer with 50 or fewer employees;

12 (5) One member who is self-employed;

13 (6) One member who is an employer in the hospitality industry;

14 (7) One member with expertise in issues affecting maternity and postpartum care;

15 (8) One member with expertise in agriculture, or a seasonal workforce, or a
16 heritage industry;

17 (9) One member with expertise in issues affecting elder care;

18 (10) One member who is an actuary with expertise in paid family leave benefits
19 and paid medical leave benefits; and

20 (11) One member who is a representative of insurance carriers in the State;

21 B. The commissioner or the commissioner's designee; and

22 C. The controller or the controller's designee.

23 **2. Terms.** Members of the authority serve 3-year terms. When a vacancy occurs, the
24 Governor shall fill the vacancy by appointing a member from the same category as the
25 member who vacated the authority, and that new member continues to serve for the
26 remainder of the term.

27 **3. Chair; election of board officers.** The members of the authority shall annually
28 elect one of its members as chair and one of its members as vice-chair. The chair is
29 responsible for scheduling at least 4 authority meetings a year and for preparing the agenda
30 for each meeting.

31 **4. Quorum.** A majority of the authority members constitutes a quorum.

32 **5. Staffing of authority.** The administrator shall provide administrative and staff
33 support to the authority. Administrator staff shall attend all meetings of the authority.

34 **6. Meetings.** The authority shall meet at least quarterly each year. Additional
35 meetings may be held as necessary to conduct the business of the authority. At least once
36 per year, the authority and the administrator shall convene a meeting to solicit public
37 comment on any issues related to paid family leave benefits and paid medical leave benefits
38 and on the experiences of employers and employees with the program.

39 **7. Duties.** The authority:

- 1 A. Shall monitor the program on an ongoing basis to ensure the program's efficacy and
2 performance, including its fiscal accountability and its financial solvency;
- 3 B. Shall propose changes to or advise the administrator on the laws, rules, administrator
4 policies and other significant issues related to paid family leave benefits and paid
5 medical leave benefits;
- 6 C. Shall provide policy oversight and recommendations on the administration and
7 structure of the program;
- 8 D. Shall review and make recommendations to the commissioner related to the
9 relationship between the administrator and the employers and employees participating
10 in the program and any education and outreach needs of the program;
- 11 E. Shall solicit and consider public comment on the administration of the program; and
- 12 F. May introduce legislation to the Legislature.

13 **§850-P. Implementation**

14 Contributions must begin January 1, 2025 to provide funds for the fund. The
15 administrator shall begin processing claims beginning January 1, 2026, except that, by
16 February 1, 2026, the authority shall conduct an actuarial study to ensure the solvency of
17 the fund at a level of at least 140% of the benefits paid in the preceding year. If additional
18 contributions are required based on the results of the actuarial study, the authority, through
19 a majority vote, may require a one-time suspension of claims payments of no longer than
20 3 months.

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

25 **§850-Q. Rulemaking**

26 The administrator shall adopt rules as necessary to implement this subchapter. Initial
27 rules necessary for implementation of this subchapter must be adopted by the administrator
28 by January 1, 2025. Rules adopted pursuant to this subchapter are routine technical rules
29 as defined in Title 5, chapter 375, subchapter 2-A.

30 **§850-R. Effect of existing employer benefits for family and medical leave**

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

35 **Sec. 6. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 26,
36 section 850-O, subsection 2, of the initial members appointed to the Paid Family and
37 Medical Leave Benefits Authority pursuant to Title 26, section 850-O, subsection 1,
38 paragraph A, the members appointed pursuant to subparagraphs (1), (3) and (5) must be
39 appointed to a term of one year; the members appointed pursuant to subparagraphs (2), (7),
40 (8) and (11) must be appointed to a term of 2 years; and the members appointed pursuant
41 to subparagraphs (4), (6), (9) and (10) must be appointed to a term of 3 years.

1 **SUMMARY**

2 This bill implements a paid family and medical leave benefits program based on the
3 recommendations of the Commission to Develop a Paid Family and Medical Leave
4 Benefits Program established by the 130th Legislature. The program provides up to 12
5 weeks of family leave and up to 12 weeks of medical leave to eligible covered individuals.
6 No more than 16 weeks of family leave and medical leave in the aggregate may be taken
7 in a 12-month period. An individual is eligible for leave under the program after earning at
8 least 6 times the state average weekly wage in the preceding 4 calendar quarters prior to
9 submitting an application or if the individual is self-employed and has elected to be part of
10 the program.

11 The maximum weekly benefit amount is capped at 120% of the state average weekly
12 wage. The weekly benefit amount is 90% of the covered individual's average weekly wage.

13 Covered individuals are required to file claims for benefits in accordance with rules
14 adopted by the department administering the program and to provide certification that they
15 qualify for family leave or medical leave.

16 The bill establishes the Paid Family and Medical Leave Insurance Fund to support the
17 program. The funds for administrative costs and payment of benefits come from payroll
18 contributions of no more than 1% of wages shared by employers and employees, except
19 that employers with fewer than 15 employees are not required to make employer
20 contributions to the program. The bill also authorizes employers to provide these benefits
21 through a private plan as long as the benefits for family and medical leave provided to their
22 employees are the same as provided in the program.

23 The bill establishes the Paid Family and Medical Leave Benefits Authority to advise
24 the administrator on the implementation and administration of the program.

25 The bill requires payroll contributions to begin January 1, 2025 and benefit claims to
26 be processed beginning January 1, 2026.

27 The bill authorizes the Department of Economic and Community Development to
28 conduct outreach with businesses about the paid family and medical leave benefits
29 program.

30 The bill requires the program to be reviewed under the State Government Evaluation
31 Act in 2029.