



Testimony of

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**Before the Joint Standing Committee on Labor Regarding Legislation to
Make Changes to the Paid Family Medical Leave Program**

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Senator Tipping, Representative Roeder, and members of the Joint Standing Committee on Labor, my name is Dana Doran, and I am the Executive Director of the Professional Logging Contractors of the Northeast (PLC). The PLC is a non-profit organization that educates the public on the interests of logging and associated trucking contractors throughout the Northeast, predominately in the state of Maine.

As background, the PLC was created in 1995 to give logging and associated trucking contractors a voice in a rapidly changing forest products industry. As of 2021, logging and trucking contractors in Maine employed over 3,000 people directly and were indirectly responsible for the creation of an additional 2,500 jobs. This employment and the investments that contractors make contributed \$582 million to the state's economy. Our membership, which includes over 220 contractor members in the state of Maine and an additional 125 associate members, is responsible for more than 80% of Maine's annual timber harvest.

Thank you for providing me the opportunity to testify on behalf of our membership regarding legislation to make changes to the Paid Family Medical Leave Program (PFML). Our comments today will be directed toward specific legislation highlighted later in my testimony and how the program impacts logging and trucking companies throughout the state.

Since the current law was passed in 2023, it has been determined that the logging and trucking community will have an extremely hard time navigating and implementing the program, based on two factors: 1) affordability and 2) demonstrating undue hardship.

The logging industry is unlike any other in the state of Maine due to its cyclical nature, diversity of ownership and reliance upon landowners and markets that are outside of its control. As a result, the PFML program provides great uncertainty and anxiety to

contractors that are faced with limited workforce supply and increased costs that they cannot pass along to anyone as a result of being price takers in the marketplace.

With respect to undue hardship, let me illustrate the issue with an example of how operations work. One position in this business is completely dependent on another. If a company loses an employee who operates a delimber, it could shut down a crew for multiple days unless the contractor is able to replace that employee in a reasonable amount of time. A contractor may also have to lay off other crew members if the delimber operator cannot be replaced.

The logging industry is production based and requires highly skilled employees. It is also completely dependent upon markets that set the rates for what they will pay for their material. As a result, contractors in the industry are price takers and not price setters. For this reason, they cannot simply hire anyone off the street to work in the business, and they cannot afford to absorb new taxes for their business or their employees because there is no ability to pass along the cost. This impacts their ability to provide competitive wages and benefits.

As a result of these two factors (hardship and affordability), contractors cannot plan strategically for gaps in employment or cost, especially during their busiest times of the year. The logging industry is fast paced and having equipment sitting idle for just an hour, let alone a day or even a week can be very costly and nearly catastrophic. The program was created with a one-size-fits-all approach and logging and trucking businesses simply don't fit the mold.

Steve Hanington, President of Hanington Bros. located in Macwahoc, ME said it this way, "This is just the beginning and PFML will be an ongoing legislative issue. When Workers Compensation was reformed, it took more than 6 years to get the kinks worked out. If provisions like undue hardship are not clear for an employer to comply, businesses are going to suffer."

Chuck Ames, PLC President, and Owner of SDR Logging, located in Sebec, said this, "Our main issue with the PFML Program is the possibility of losing the employee for a timeframe of 12 weeks. Finding an interim worker or a replacement is extremely difficult due to the specialized skills and links in the chain required to run equipment."

Lastly, in addition to undue hardship and cost, the other key issue our membership has identified is the definition of a family member. While it was updated in the final rules, it still lacks clarity and will likely lead to fraud within the program. Put simply, there is no way to determine if multiple employees of different companies are claiming the same individual under their care. Fraud within this area is concerning and without proper accountability and penalties in place, the program could be taken advantage of. There are fines for employers who do not comply, but an employee who files a fraudulent claim will be disqualified from benefits for only one year. Not only should there be an additional fine for fraud, but employers and employees should not be treated differently.

For these reasons, we ask you to please consider the following legislation before you:

LD 1712 – An Act to Amend the Paid Family and Medical Leave Benefits Program to Balance Support of Businesses and Employees

The PLC is in Support of LD 1712. This bill provides examples of what types of conditions constitute undue hardship for an employer and allows an employer to determine other conditions, based on that employer's specific business, that constitute undue hardship.

Although not perfect, this bill aims to correct one of the issues our organization identified during the rulemaking process. The undue hardship provision of the statute states specifically, "Use of such leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer." However, in the final version of the rules, when the employee provides a 30-day notice of leave, it will essentially eliminate the statutory authority of the employer to claim an undue hardship. The ability to claim undue hardship should remain with the employer as they are the only ones that can determine if there is an undue hardship on their businesses.

LD 1333 - An Act To Make Changes To The Paid Family And Medical Leave Benefits Program

The PLC is in support of LD 1333 as it would provide changes important to logging and trucking businesses by making it more manageable for employers to implement the program in their businesses.

First, LD 1333 would require an employee to be employed with an employer for a minimum of 120 days before being eligible to take leave. This is a common-sense change and would allow the employee to be established with the employer and pay in the first quarter portion of the benefit program.

Second, it attempts to clear up an issue we had during the final rulemaking process by reducing the retroactive application for benefits window from 90 days to 30 days. The program must implement a system of checks and balances to ensure accountability. Currently, an employee is provided with a 90-day window during which a claim can be made after leave has begun. This would allow for an employee to not show up for work and provide the application, well after leave was taken. There is no deference provided to the employer as a result, making it nearly impossible for an employer to prepare for the absence. The logging and trucking industry has struggled to find and keep employees, and the 90-day timeframe would create undue hardship for contractors to determine staffing for pieces of equipment critical to their operation.

Finally, LD 1333 would put important guardrails in place to prohibit an employee from receiving over 100% of the employees' wages. In addition, it would change the program rules from routine technical to major substantive rules. It is crucial to have provisions such as these in place to provide proper oversight and limit fraud within the program.

LD 1307 - An Act To Suspend The Remittance Obligation For Paid Family And Medical Leave Private Plan Users

The PLC is in Support of LD 1307 because it would simply reimburse an employer for premiums paid into the program who then later received approval for a substitute plan. Additionally, if the employer deducted the employee portion of the premium from their wages, it would allow them to reimburse them for what was paid in. It is our opinion that if the employer has applied for an alternative plan and has no intention of enrolling in the state plan, they should be reimbursed for the overpayment, just like what is done with income taxes.

LD 952 - An Act to Exempt Agricultural Employers and Employees from the Maine Paid Family and Medical Leave Benefits Program

LD 952 would exempt agricultural employers and employees from the Maine PFML program. At the moment, this is written to only include farms and farm workers. The logging industry is similar to agriculture as it is a production-based industry. We respectfully ask to have timber harvesting and hauling included in LD 952 to continue to provide parity to the heritage industries in Maine.

In conclusion, as of today, we are seven days away from the first quarter employer payments being due. We are all here today to legislate changes to the PFML Program at a time of great uncertainty. As Steve Hanington stated, it will take years to iron out the issues in the program. As a result, it is essential that no one is harmed, and issue areas are not only identified but rectified without penalty. We are asking you to make calculated changes to the program that will help remove ambiguity for businesses and provide consistency, so family logging businesses don't get left in the lurch, putting their businesses at risk.

Thank you for your time and consideration, I would be happy to answer any questions you may have.