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Date: (Filing No. H-)

LABOR

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
132ND LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1147, L.D. 1712, “An Act to Amend the Paid Family and Medical Leave Benefits Program to Balance Support of Businesses and Employees”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 26 MRSA §850-A, sub-§9, as enacted by PL 2023, c. 412, Pt. AAA, §7, is amended to read:

- 9. Covered individual.** "Covered individual" means a person who:
 - A. Earned at least 6 times the state average weekly wage in wages subject to premiums under this subchapter during the individual's base period or elects coverage and meets the requirements of section 850-G; ~~and~~
 - B. Meets the administrative requirements outlined in this subchapter and any rules adopted pursuant to this subchapter and files an application for family leave benefits or medical leave benefits; and
 - C. Has been employed for at least 120 days by the employer from whom the employee is taking leave.

Sec. 2. 26 MRSA §850-B, sub-§5, as amended by PL 2023, c. 643, Pt. ZZZ, §4, is further amended to read:

5. Intermittent leave requirements. Leave permitted by this section may be taken by an employee intermittently in increments equaling not less than one work day, ~~or on a reduced leave schedule otherwise unless a lesser increment is~~ agreed to by the employee and the employer, except that the employee and employer may not agree ~~for to~~ leave under this section to be taken in increments of less than one hour. ~~The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection may not result in a reduction in the total amount of leave to which the covered individual is entitled under this subchapter.~~

COMMITTEE AMENDMENT

1 **Sec. 3. 26 MRSA §850-B, sub-§7**, as enacted by PL 2023, c. 412, Pt. AAA, §7, is
2 amended to read:

3 **7. Notice to employer.** Absent an emergency, illness or other sudden necessity for
4 taking leave, an employee shall give reasonable notice to the employee's supervisor of the
5 employee's intent to use leave under this subchapter. Use of such leave must be scheduled
6 to prevent undue hardship on the employer as reasonably determined by the employer. If
7 an employer fails to provide notice as required under section 850-I, the employee's
8 obligation to provide notice under this subsection is waived. For purposes of this
9 subsection, the conditions that constitute undue hardship include, but are not limited to:

10 A. The employer employs fewer than 15 employees;

11 B. When, during the period between 3 days before Memorial Day until Labor Day, the
12 employer is experiencing a labor shortage;

13 C. The employer generates at least 60% of the employer's annual revenue or
14 production during a 5-month period, and it is during that 5-month period; or

15 D. When more than 25% of the employer's employees are already on leave or have
16 requested and been approved for leave, including, but not limited to, vacation or
17 medical or family leave.

18 An employer may determine additional conditions that constitute undue hardship based on
19 an individualized assessment of the effect of the leave request on that employer's
20 operations.

21 A decision of an employer to deny the requested scheduling of leave based on undue
22 hardship as determined under paragraphs A to D is not reviewable by the department or
23 subject to appeal pursuant to section 850-K. A decision of an employer to deny the
24 scheduling of leave based on undue hardship for any condition other than those listed in
25 paragraphs A to D is reviewable by the department and subject to appeal pursuant to section
26 850-K. This subsection may not be construed to prevent an employer from granting leave
27 despite a determination of undue hardship by the employer.

28 **Sec. 4. 26 MRSA §850-B, sub-§10, ¶D**, as enacted by PL 2023, c. 412, Pt. AAA,
29 §7, is amended to read:

30 D. Require a public employer, ~~as defined in section 962, subsection 7,~~ or employee of
31 ~~a public~~ an employer that is a party to a collective bargaining agreement in existence
32 ~~on the effective date of this subchapter~~ October 25, 2023 to apply any of the rights and
33 responsibilities under this subchapter until the existing collective bargaining agreement
34 expires.

35 **Sec. 5. 26 MRSA §850-B, sub-§11**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
36 is amended to read:

37 **11. Concurrent with leave under state and federal law.** Leave taken under this
38 subchapter runs concurrently with leave taken under the federal Family and Medical Leave
39 Act of 1993, 29 United States Code, Section 2611, et seq., and under subchapter 6-A.
40 Employees may take leave under this subchapter while ineligible for leave under the federal
41 Family and Medical Leave Act of 1993 in the same benefit year. An employee may not
42 take leave under this subchapter unless leave available to the employee under the federal
43 Family and Medical Leave Act of 1993 is taken concurrently.

1 **Sec. 6. 26 MRSA §850-B, sub-§13** is enacted to read:

2 **13. Bureau of Paid Family and Medical Leave; responsibilities of commissioner.**
3 Except as otherwise provided in this subchapter, the Commissioner of Labor shall
4 administer this subchapter through the Bureau of Paid Family and Medical Leave. The
5 commissioner may employ persons, make expenditures, require reports, make
6 investigations, impose assessments, coordinate with other departments and bureaus and
7 take other actions the commissioner determines necessary or suitable to administer this
8 subchapter. The commissioner shall determine methods of operational procedures in
9 accordance with the provisions of this subchapter.

10 **Sec. 7. 26 MRSA §850-C, sub-§2**, as enacted by PL 2023, c. 412, Pt. AAA, §7, is
11 amended to read:

12 **2. Determination of weekly benefit amount.** The weekly benefit amount paid to
13 ~~employees and an employee or self-employed individuals~~ individual on family leave or
14 ~~medical leave is calculated as follows: 65% of that employee's or self-employed~~
15 ~~individual's average weekly wage.~~

16 ~~A. The portion of the covered individual's average weekly wage that is equal to or less~~
17 ~~than 50% of the state average weekly wage must be replaced at a rate of 90%; and~~

18 ~~B. The portion of the covered individual's average weekly wage that is more than 50%~~
19 ~~of the state average weekly wage must be replaced at a rate of 66% up to the maximum~~
20 ~~weekly benefit.~~

21 **Sec. 8. 26 MRSA §850-D, sub-§2**, as enacted by PL 2023, c. 412, Pt. AAA, §7, is
22 repealed and the following enacted in its place:

23 **2. Filing of application.** The filing of an application for family leave and medical
24 leave benefits is governed by this subsection.

25 A. An individual may file an application for family leave benefits or medical leave
26 benefits no more than 60 days before the anticipated start date of family leave and
27 medical leave.

28 B. An individual may file an application for family leave benefits no more than 15
29 days after the start date of family leave.

30 C. An individual may file an application for medical leave benefits no more than 30
31 days after the start date of medical leave. The administrator shall waive the 30-day
32 filing deadline for good cause.

33 The administrator shall institute forms and procedures that are not unduly burdensome to
34 an individual claiming benefits.

35 **Sec. 9. 26 MRSA §850-F, sub-§5**, as enacted by PL 2023, c. 412, Pt. AAA, §7, is
36 amended to read:

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

38 A. An employer with 15 or more employees may deduct up to 50% of the premium
39 required for an employee by subsection 3 from that employee's wages and shall remit
40 100% of the combined premium contribution required by subsection 3 to the fund. The
41 employee shall pay 50% of the premium amount as required by subsection 3, unless

1 the employer chooses to deduct up to 50% of the premium required for an employee
2 by subsection 3 from that employee's wages.

3 B. An employer with fewer than 15 employees may deduct up to 50% of the premium
4 required for an employee by subsection 3 from that employee's wages and shall remit
5 50% of the premium required by subsection 3 to the fund. The employee shall pay 50%
6 of the premium amount as required by subsection 3, unless the employer chooses to
7 deduct up to 50% of the premium required for an employee by subsection 3 from that
8 employee's wages.

9 **Sec. 10. 26 MRSA §850-F, sub-§9**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
10 is amended to read:

11 **9. Failure or refusal to make premium contributions.** An employer that fails or
12 refuses to make premium contributions as required in this section ~~must~~ may be assessed
13 1.0% of its total annual payroll for each year it so failed to comply in addition to any
14 amounts previously owed, or fraction thereof, in addition to the total amount of family
15 leave benefits and medical leave benefits paid to covered individuals for whom it failed to
16 make premium contributions. The rate of assessment imposed by this subsection must be
17 adjusted annually consistent with subsection 3, paragraph B. The department shall exercise
18 discretion to waive, in whole or in part, the amount of any such payments if the recovery
19 would be against equity and good conscience.

20 **Sec. 11. 26 MRSA §850-F, sub-§11** is enacted to read:

21 **11. Enforcement to collect delinquent premium contributions, penalties and**
22 **assessments.** If an employer fails to make a payment in whole or in part of premium
23 contributions, including penalties or assessments imposed, and the employer has exhausted
24 all rights to an appeal, the department may enforce collection by:

25 A. Filing a civil action to collect unpaid premium contributions, penalties and
26 assessments in the name of the commissioner, and the employer may be ordered to pay
27 the costs of that action; and

28 B. Collecting by levy on a 3rd party that has possession or control of property in which
29 the employer may have an interest the amount owed to the department for delinquent
30 premium contributions, penalties and assessments consistent with section 1233.

31 **Sec. 12. 26 MRSA §850-H, sub-§2**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
32 is amended to read:

33 **2. Additional requirements.** ~~In~~ Except as provided in subsection 2-A, in order to be
34 approved as meeting an employer's obligations under this subchapter, a private plan must
35 also comply with the following provisions:

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

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

41 C. If the plan is in the form of a 3rd party that provides for insurance, the forms of the
42 policy must be issued by an insurer authorized to do business in the State.

1 **Sec. 13. 26 MRSA §850-H, sub-§2-A** is enacted to read:

2 **2-A. Self-insurance when member of group self-insurance trust.** If the private plan
3 is in the form of self-insurance in which the employer is a member of a group self-insurance
4 trust, the employer is not required to furnish a bond as required by subsection 2 if the group
5 self-insurance trust meets the following criteria as determined by the Superintendent of
6 Insurance:

7 A. The group self-insurance trust guarantees the obligation of the employer to meet its
8 obligations under this subchapter;

9 B. Each employer that is a member of the group self-insurance trust is jointly and
10 severally liable for the obligations of those employers under this subchapter; and

11 C. The financial assets of the group self-insurance trust are sufficient to meet the
12 obligations of the employers that are members of the group self-insurance trust.

13 **Sec. 14. 26 MRSA §850-H, sub-§6**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
14 is amended to read:

15 **6. Violations.** Employers offering private plans that violate this section are subject to
16 a fine of \$100 per violation. If an employer's private plan benefit coverage is found to have
17 lapsed during a period of a private plan substitution approved under this section, the
18 employer may be assessed a fine equal to the amount of the premiums the employer would
19 owe to the fund pursuant to section 850-F for the time period in which coverage was not
20 provided plus a penalty of 1.0% of that employer's total payroll for the same period. An
21 employer may not deduct any employee portion of the premiums to pay this fine. The
22 department shall transfer any fines collected pursuant to this subsection to the fund. The
23 department by rule shall establish a process for the assessment and appeal of fines under
24 this subsection.

25 **Sec. 15. 26 MRSA §850-H, sub-§7**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
26 is amended to read:

27 **7. Cost of administration.** ~~The department shall annually determine the total amount~~
28 ~~expended by the department for costs arising out of the administration of private plans. An~~
29 ~~employer offering a private plan pursuant to this section shall reimburse the department for~~
30 ~~the costs arising out of the private plan in the amount, form and manner determined by the~~
31 ~~department by rule. The department may recover reasonable expenses incurred by the~~
32 ~~department for the oversight of private plans by assessing a renewal fee on each employer~~
33 ~~offering a private plan. The renewal fee may not exceed \$250 for an employer with fewer~~
34 ~~than 50 employees and \$500 for an employer with 50 or more employees. The department~~
35 ~~shall transfer payments received pursuant to this subsection to the fund. The department~~
36 ~~shall report to the authority annually the amount of money collected pursuant to this~~
37 ~~subsection in the preceding year.~~

38 **Sec. 16. 26 MRSA §850-H, sub-§9** is enacted to read:

39 **9. Refund of premium contributions.** Premium contributions may be refunded
40 pursuant to this subsection.

41 A. An employer that remitted premium contributions to the fund on or after January
42 1, 2025 and that received approval to substitute a private plan pursuant to this section
43 before January 1, 2026 is entitled to reimbursement of all premium contributions made

1 to the fund, together with any interest earned thereon, upon written request submitted
2 by mail to the department. Within 30 days of receipt of an employer's written request
3 for reimbursement of premium contributions under this paragraph, the department shall
4 refund the employer's premium contributions to the employer, together with any
5 interest earned thereon from the date of receipt of the request. For purposes of this
6 paragraph, an employer's request for reimbursement is deemed to be received by the
7 department on the date on which the employer's request for reimbursement was mailed
8 to the department.

9 B. An employer that elected to deduct any portion of its premium contribution from
10 its employees' wages as permitted by section 850-F, subsection 5 shall refund its
11 employees for their portion of premium contributions, together with any interest earned
12 thereon, within 30 days of receipt of the refund from the department under paragraph
13 A.

14 **Sec. 17. 26 MRSA §850-H, sub-§10** is enacted to read:

15 **10. Time limit for processing applications.** When the department receives a
16 completed application for approval of a private plan, the department shall make a
17 determination within 30 days of the date of receipt. If the department approves the private
18 plan, the effective date for the purposes of a refund of any premiums paid to the department
19 is the date the application was received by the department.

20 **Sec. 18. 26 MRSA §850-J, sub-§1**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
21 is amended to read:

22 **1. Restoration to position upon return to work.** ~~Except for an employee who has~~
23 ~~not been employed for at least 120 days, an~~ An employee who exercises the right to family
24 leave or medical leave under this subchapter is entitled, upon return from that leave, to be
25 restored by the employer to the position held by the employee when the leave commenced
26 or to be restored to an equivalent position with equivalent employment benefits, pay and
27 other terms and conditions of employment. This subsection does not apply to an employee
28 who is absent from work for more than 10 days without providing notice to the employer.

29 **Sec. 19. 26 MRSA §850-M, sub-§1-A** is enacted to read:

30 **1-A. State tax.** An individual filing a new claim for family leave benefits or medical
31 leave benefits under this subchapter may elect to have the administrator deduct and
32 withhold state income tax from the individual's payment of benefits at the rate of 5%. The
33 department shall advise an individual filing a new claim, at the time the individual files the
34 claim, that:

35 A. The benefits are subject to state income tax;

36 B. Requirements exist pertaining to estimated tax payments;

37 C. The individual may elect to have state income tax deducted and withheld from the
38 individual's payment of benefits at the rate of 5%; and

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

40 **Sec. 20. 26 MRSA §1401-A, sub-§2**, as amended by PL 2017, c. 110, §10, is
41 further amended to read:

1 **2. Commissioner; entities incorporated.** The department consists of a
2 Commissioner of Labor, referred to in this chapter as "the "commissioner," appointed by
3 the Governor and subject to review by the joint standing committee of the Legislature
4 having jurisdiction over labor matters and to confirmation by the Legislature, to serve at
5 the pleasure of the Governor, and the following entities as ~~previously created or established~~
6 are incorporated into the Department of Labor:

- 7 A. The Bureau of Unemployment Compensation;
8 B. The Bureau of Employment Services;
9 C. The Bureau of Labor Standards;
10 D. The Bureau of Rehabilitation Services;
11 F. The Center for Workforce Research and Information; ~~and~~
12 I. The State Workforce Board; and
13 J. The Bureau of Paid Family and Medical Leave.

14 **Sec. 21. 36 MRSA §5122, sub-§1, ¶QQ** is enacted to read:

15 QQ. For each taxable year beginning on or after January 1, 2026, an amount equal to
16 the amount of family leave benefits or medical leave benefits paid pursuant to Title 26,
17 section 850-C, to the extent those benefits are not included in the taxpayer's federal
18 adjusted gross income.

19 **Sec. 22. 36 MRSA §5122, sub-§2, ¶AAA** is enacted to read:

20 AAA. For each taxable year beginning on or after January 1, 2026, an amount equal
21 to the amount of any family leave benefits or medical leave benefits that were repaid
22 by the taxpayer pursuant to Title 26, section 850-L, subsection 2 that have been
23 previously taxed under this Part.

24 **Sec. 23. 36 MRSA §5255-D** is enacted to read:

25 **§5255-D. Withholding on paid family and medical leave benefits**

26 When an individual receiving family leave benefits or medical leave benefits under the
27 paid family and medical leave benefits program established in Title 26, section 850-B
28 makes an election pursuant to Title 26, section 850-M, subsection 1-A, the administrator
29 of the paid family and medical leave benefits program shall deduct and withhold state
30 income tax at the rate of 5% from the family leave benefits or medical leave benefits paid
31 to the individual pursuant to Title 26, sections 850-B and 850-C.

32 **Sec. 24. Rules establishing expedited refund process and waiver of payroll**
33 **premiums by November 1, 2025.** Pursuant to its rule-making authority under the
34 Maine Revised Statutes, Title 26, section 850-Q, the Department of Labor shall amend
35 12-702 C.M.R. Chapter 1: Rules governing the Maine Paid Family and Medical Leave
36 Program to:

37 1. Implement a specified timeline for decisions on applications for substitution of
38 private plans that meet the requirements of Title 26, section 850-H, not to exceed 30 days
39 from the department's receipt of an employer's application for substitution of a private plan;
40 and

1 2. Conform to the provisions of Title 26, section 850-H, subsection 9 as provided in
2 this Act.

3 The rules must be in effect no later than November 1, 2025.

4 **Sec. 25. Appropriations and allocations.** The following appropriations and
5 allocations are made.

6 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**
7 **Revenue Services, Bureau of 0002**

8 Initiative: Provides one-time funding for computer programming costs.

9	GENERAL FUND	2025-26	2026-27
10	All Other	\$0	\$12,844
11			
12	GENERAL FUND TOTAL	\$0	\$12,844

13

14 **ADMINISTRATIVE AND FINANCIAL**
15 **SERVICES, DEPARTMENT OF**
16 **DEPARTMENT TOTALS**

17		2025-26	2026-27
18	GENERAL FUND	\$0	\$12,844
19			
20	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$12,844

21 **LABOR, DEPARTMENT OF**

22 **Paid Family and Medical Leave Insurance Fund Z383**

23 Initiative: Allocates one-time funds for the cost to calculate and refund contributions paid
24 by employers that had a private plan in place before January 1, 2026 that is approved by
25 the Department of Labor.

26	PAID FAMILY AND MEDICAL LEAVE	2025-26	2026-27
27	INSURANCE FUND		
28	All Other	\$20,000	\$0
29			
30	PAID FAMILY AND MEDICAL LEAVE	\$20,000	\$0
31	INSURANCE FUND TOTAL		

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33 **LABOR, DEPARTMENT OF**
34 **DEPARTMENT TOTALS**

35		2025-26	2026-27
36	PAID FAMILY AND MEDICAL LEAVE	\$20,000	\$0
37	INSURANCE FUND		
38			
39	DEPARTMENT TOTAL - ALL FUNDS	\$20,000	\$0

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41	SECTION TOTALS	2025-26	2026-27
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GENERAL FUND	\$0	\$12,844
PAID FAMILY AND MEDICAL LEAVE	\$20,000	\$0
INSURANCE FUND		
SECTION TOTAL - ALL FUNDS	\$20,000	\$12,844

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment is the minority report of the committee. The amendment replaces the bill. The amendment makes the following changes to the paid family and medical leave benefits program.

1. It requires an employee to be employed with an employer for 120 days before being eligible to take leave.
2. It clarifies that intermittent leave of an employee of less than one work day may not be taken unless it is agreed to by the employee and the employer.
3. It provides examples of what type 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. It also provides that the decision of an employer to deny the requested scheduling of leave based on the examples provided is not reviewable by the Department of Labor. It clarifies that a decision of an employer to deny the scheduling of leave based on undue hardship for any condition other than the examples is reviewable by the department.
4. It applies the same delay of implementation to private employers with collective bargaining agreements as currently applies to public employers.
5. It prohibits the taking of paid leave unless the employee simultaneously takes any available unpaid leave.
6. It establishes in statute the Bureau of Paid Family and Medical Leave within the Department of Labor to administer the paid family and medical leave benefits program.
7. It establishes a benefit amount, regardless of income, of 65% of an employee's average weekly wage.
8. It requires an employee to file an application for family leave benefits no more than 15 days after the start of family leave and to file an application for medical leave benefits no more than 30 days after the start of the medical leave.
9. It provides that it is the obligation of the employee to pay premiums unless the employer chooses to deduct premiums from the employee's wages.
10. It changes the applications of penalties against employers from mandatory to discretionary.

1 11. It establishes remedies for the Department of Labor to enforce the collection of
2 delinquent premium contributions, penalties and assessments on employers that fail to
3 make payments required by the program.

4 12. It provides that an employer that provides a private plan in the form of self-
5 insurance in which the employer is a member of a group self-insurance trust that meets
6 specific criteria does not have to furnish a bond to the State.

7 13. It establishes penalties for employers that allow private plan benefit coverage to
8 lapse during a period of an approved private plan substitution.

9 14. It allows an employer whose private plan is approved by the Department of Labor
10 to request a refund of the premiums paid if that employer had a substantially equivalent
11 private plan in place before January 1, 2026. The department, after verifying the amount
12 paid by the employer, is required, within 30 days of receipt of the refund request, to refund
13 the employer the premiums paid, plus interest that accrues to the date the refund payment
14 is issued. It requires the employer to reimburse any employee from whom a premium was
15 collected and submitted to the department.

16 15. It establishes that the Department of Labor must determine approval of a private
17 plan within 30 days of receipt of an application and requires the department to update its
18 rules.

19 16. It clarifies that the provision that provides that an employee who takes leave is
20 entitled to be restored to the employee's former position does not apply to an employee who
21 is taking retroactive paid leave and who did not notify the employer for more than 10 days
22 of the employee's absence.

23 17. It provides that benefits paid from the program are subject to state income tax to
24 the extent those benefits are not included in the taxpayer's federal adjusted gross income.
25 It also provides that a taxpayer's federal adjusted gross income may be reduced by the
26 amount subject to repayment that has been previously taxed by the State. It also allows
27 individuals filing a new claim for family leave benefits or medical leave benefits to elect
28 to have the administrator of the program deduct and withhold state income tax from the
29 individual's payment of benefits at the rate of 5% and requires the administrator of the
30 program to deduct and withhold state income tax. It also requires the department to advise
31 individuals filing a new claim for benefits that the benefits are subject to state income tax.

32 18. It places limits on the fees charged for private plan substitutions.

33 **FISCAL NOTE REQUIRED**

34 **(See attached)**