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(Filing No. H-)

LABOR

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

COMMITTEE AMENDMENT “ ” to H.P. 868, L.D. 1333, “An Act to Make Changes to the Paid Family and Medical Leave Benefits Program”

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.~~

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

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

8 A. The employer employs fewer than 15 employees;

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

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

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

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

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

26 **Sec. 4. 26 MRSA §850-B, sub-§10, ¶D,** as enacted by PL 2023, c. 412, Pt. AAA,
27 §7, is amended to read:

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

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

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

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

1 **13. Bureau of Paid Family and Medical Leave; responsibilities of commissioner.**

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

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

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

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

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

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

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

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

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

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

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

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

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 combined premium contribution required by subsection 3 to the fund. The
40 employee shall pay 50% of the premium amount as required by subsection 3, unless
41 the employer chooses to deduct up to 50% of the premium required for an employee
42 by subsection 3 from that employee's wages.

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

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

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

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

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

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

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

29 **Sec. 12. 26 MRSA §850-F, sub-§12** is enacted to read:

30 **12. Liability of successor for delinquent premium contributions, penalties and**
31 **assessments.** An individual or organization that acquires an employer's organization, trade
32 or business or a substantial part of the assets of that organization, trade or business is liable
33 to the department for any premium contributions, penalties and assessments unpaid by the
34 employer in the amount owed. The individual's or organization's liability under this
35 subsection may not exceed the reasonable value of the organization, trade or business or
36 assets acquired. Upon written request, the department shall provide the successor individual
37 or organization with information about the amount owed and other information as
38 determined necessary.

39 **Sec. 13. 26 MRSA §850-H, sub-§2**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
40 is amended to read:

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

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

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

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

8 **Sec. 14. 26 MRSA §850-H, sub-§2-A** is enacted to read:

9 **2-A. Self-insurance when member of group self-insurance trust.** If the private plan
10 is in the form of self-insurance in which the employer is a member of a group self-insurance
11 trust, the employer is not required to furnish a bond as required by subsection 2 if the group
12 self-insurance trust meets the following criteria as determined by the Superintendent of
13 Insurance:

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

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

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

20 **Sec. 15. 26 MRSA §850-H, sub-§6**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
21 is amended to read:

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

32 **Sec. 16. 26 MRSA §850-H, sub-§7**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
33 is amended to read:

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

1 shall report to the authority annually the amount of money collected pursuant to this
2 subsection in the preceding year.

3 **Sec. 17. 26 MRSA §850-H, sub-§9** is enacted to read:

4 **9. Refund of premium contributions.** Premium contributions may be refunded
5 pursuant to this subsection.

6 A. An employer that remitted premium contributions to the fund on or after January 1,
7 2025 and that received approval to substitute a private plan pursuant to this section
8 before January 1, 2026 is entitled to reimbursement of all premium contributions made
9 to the fund, together with any interest earned thereon, upon written request submitted
10 by mail to the department. Within 30 days of receipt of an employer's written request
11 for reimbursement of premium contributions under this paragraph, the department shall
12 refund the employer's premium contributions to the employer, together with any
13 interest earned thereon from the date of receipt of the request. For purposes of this
14 paragraph, an employer's request for reimbursement is deemed to be received by the
15 department on the date on which the employer's request for reimbursement was mailed
16 to the department.

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

22 **Sec. 18. 26 MRSA §850-H, sub-§10** is enacted to read:

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

28 **Sec. 19. 26 MRSA §850-J, sub-§1,** as enacted by PL 2023, c. 412, Pt. AAA, §7,
29 is amended to read:

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

37 **Sec. 20. 26 MRSA §850-M, sub-§1-A** is enacted to read:

38 **1-A. State tax.** An individual filing a new claim for family leave benefits or medical
39 leave benefits under this subchapter may elect to have the administrator deduct and
40 withhold state income tax from the individual's payment of benefits at the rate of 5%. The
41 department shall advise an individual filing a new claim, at the time the individual files the
42 claim, that:

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

1 B. Requirements exist pertaining to estimated tax payments;

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

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

5 **Sec. 21. 26 MRSA §1401-A, sub-§2**, as amended by PL 2017, c. 110, §10, is
6 further amended to read:

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

13 A. The Bureau of Unemployment Compensation;

14 B. The Bureau of Employment Services;

15 C. The Bureau of Labor Standards;

16 D. The Bureau of Rehabilitation Services;

17 F. The Center for Workforce Research and Information; ~~and~~

18 I. The State Workforce Board; and

19 J. The Bureau of Paid Family and Medical Leave.

20 **Sec. 22. 36 MRSA §5122, sub-§1, ¶QQ** is enacted to read:

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

25 **Sec. 23. 36 MRSA §5122, sub-§2, ¶AAA** is enacted to read:

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

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

31 **§5255-D. Withholding on paid family and medical leave benefits**

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

38 **Sec. 25. Rules establishing expedited refund process and waiver of payroll**
39 **premiums by November 1, 2025.** Pursuant to its rule-making authority under the

Maine Revised Statutes, Title 26, section 850-Q, the Department of Labor shall amend 12-702 C.M.R. Chapter 1: Rules governing the Maine Paid Family and Medical Leave Program to:

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

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

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

Sec. 26. Appropriations and allocations. The following appropriations and allocations are made.

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

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

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

**ADMINISTRATIVE AND FINANCIAL
SERVICES, DEPARTMENT OF
DEPARTMENT TOTALS**

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

LABOR, DEPARTMENT OF

Paid Family and Medical Leave Insurance Fund Z383

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

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

**LABOR, DEPARTMENT OF
DEPARTMENT TOTALS**

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

1 8. It requires an employee to file an application for family leave benefits no more than
2 15 days after the start of family leave and to file an application for medical leave benefits
3 no more than 30 days after the start of the medical leave.

4 9. It provides that it is the obligation of the employee to pay premiums unless the
5 employer chooses to deduct premiums from the employee's wages.

6 10. It changes the applications of penalties against employers from mandatory to
7 discretionary.

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

11 12. It establishes liability for individuals or organizations with respect to premium
12 contributions, penalties and assessments owed by employers acquired by those individuals
13 or organizations.

14 13. It provides that an employer that provides a private plan in the form of self-
15 insurance in which the employer is a member of a group self-insurance trust that meets
16 specific criteria does not have to furnish a bond to the State.

17 14. It establishes penalties for employers that allow private plan benefit coverage to
18 lapse during a period of an approved private plan substitution.

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

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

29 17. It clarifies that the provision that provides that an employee who takes leave is
30 entitled to be restored to the employee's former position does not apply to an employee who
31 is taking retroactive paid leave and who did not notify the employer for more than 10 days
32 of the employee's absence.

33 18. It provides that benefits paid from the program are subject to state income tax to
34 the extent those benefits are not included in the taxpayer's federal adjusted gross income.
35 It also provides that a taxpayer's federal adjusted gross income may be reduced by the
36 amount subject to repayment that has been previously taxed by the State. It also allows
37 individuals filing a new claim for family leave benefits or medical leave benefits to elect
38 to have the administrator of the program deduct and withhold state income tax from the
39 individual's payment of benefits at the rate of 5% and requires the administrator of the
40 program to deduct and withhold state income tax. It also requires the department to advise
41 individuals filing a new claim for benefits that the benefits are subject to state income tax.

FISCAL NOTE REQUIRED
(See attached)