

Date:

(Filing No. S-)

LABOR

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STATE OF MAINE

SENATE

132ND LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to S.P. 383, L.D. 894, “An Act to Amend the Laws Governing Paid Family and Medical Leave”

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-D, sub-§2**, as enacted by PL 2023, c. 412, Pt. AAA, §7, is
10 repealed and the following enacted in its place:

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

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

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

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

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

23 **Sec. 8. 26 MRSA §850-F, sub-§5**, as enacted by PL 2023, c. 412, Pt. AAA, §7, is
24 amended to read:

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

26 A. An employer with 15 or more employees may deduct up to 50% of the premium
27 required for an employee by subsection 3 from that employee's wages and shall remit
28 100% of the combined premium contribution required by subsection 3 to the fund. The
29 employee shall pay 50% of the premium amount as required by subsection 3, unless
30 the employer chooses to deduct up to 50% of the premium required for an employee
31 by subsection 3 from that employee's wages.

32 B. An employer with fewer than 15 employees may deduct up to 50% of the premium
33 required for an employee by subsection 3 from that employee's wages and shall remit
34 50% of the premium required by subsection 3 to the fund. The employee shall pay
35 50% of the premium amount as required by subsection 3, unless the employer chooses
36 to deduct up to 50% of the premium required for an employee by subsection 3 from
37 that employee's wages.

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

40 **9. Failure or refusal to make premium contributions.** An employer that fails or
41 refuses to make premium contributions as required in this section ~~must~~ may be assessed
42 1.0% of its total annual payroll for each year it so failed to comply in addition to any
43 amounts previously owed, or fraction thereof, in addition to the total amount of family

1 leave benefits and medical leave benefits paid to covered individuals for whom it failed to
2 make premium contributions. The rate of assessment imposed by this subsection must be
3 adjusted annually consistent with subsection 3, paragraph B. The department shall exercise
4 discretion to waive, in whole or in part, the amount of any such payments if the recovery
5 would be against equity and good conscience.

6 **Sec. 10. 26 MRSA §850-F, sub-§11** is enacted to read:

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

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

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

17 **Sec. 11. 26 MRSA §850-F, sub-§12** is enacted to read:

18 **12. Liability of successor for delinquent premium contributions, penalties and**
19 **assessments.** An individual or organization that acquires an employer's organization, trade
20 or business or a substantial part of the assets of that organization, trade or business is liable
21 to the department for any premium contributions, penalties and assessments unpaid by the
22 employer in the amount owed. The individual's or organization's liability under this
23 subsection may not exceed the reasonable value of the organization, trade or business or
24 assets acquired. Upon written request, the department shall provide the successor individual
25 or organization with information about the amount owed and other information as
26 determined necessary.

27 **Sec. 12. 26 MRSA §850-H, sub-§6**, as enacted by PL 2023, c. 412, Pt. AAA, §7,
28 is amended to read:

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

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

41 **7. Cost of administration.** ~~The department shall annually determine the total amount~~
42 ~~expended by the department for costs arising out of the administration of private plans. An~~
43 ~~employer offering a private plan pursuant to this section shall reimburse the department for~~

1 the costs arising out of the private plan in the amount, form and manner determined by the
2 department by rule. The department may recover reasonable expenses incurred by the
3 department for the oversight of private plans by assessing a renewal fee on each employer
4 offering a private plan. The renewal fee may not exceed \$250 for an employer with fewer
5 than 50 employees and \$500 for an employer with 50 or more employees. The department
6 shall transfer payments received pursuant to this subsection to the fund. The department
7 shall report to the authority annually the amount of money collected pursuant to this
8 subsection in the preceding year.

9 **Sec. 14. 26 MRSA §850-H, sub-§9** is enacted to read:

10 **9. Refund of premium contributions.** Premium contributions may be refunded
11 pursuant to this subsection.

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

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

28 **Sec. 15. 26 MRSA §850-H, sub-§10** is enacted to read:

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

34 **Sec. 16. 26 MRSA §850-J, sub-§1,** as enacted by PL 2023, c. 412, Pt. AAA, §7,
35 is amended to read:

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

43 **Sec. 17. 26 MRSA §850-M, sub-§1-A** is enacted to read:

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

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

7 B. Requirements exist pertaining to estimated tax payments;

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

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

11 **Sec. 18. 26 MRSA §1401-A, sub-§2,** as amended by PL 2017, c. 110, §10, is
12 further amended to read:

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

19 A. The Bureau of Unemployment Compensation;

20 B. The Bureau of Employment Services;

21 C. The Bureau of Labor Standards;

22 D. The Bureau of Rehabilitation Services;

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

24 I. The State Workforce Board; and

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

26 **Sec. 19. 36 MRSA §5122, sub-§1, ¶QQ** is enacted to read:

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

31 **Sec. 20. 36 MRSA §5122, sub-§2, ¶AAA** is enacted to read:

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

36 **Sec. 21. 36 MRSA §5255-D** is enacted to read:

37 **§5255-D. Withholding on paid family and medical leave benefits**

38 When an individual receiving family leave benefits or medical leave benefits under the
39 paid family and medical leave benefits program established in Title 26, section 850-B

1 makes an election pursuant to Title 26, section 850-M, subsection 1-A, the administrator
 2 of the paid family and medical leave benefits program shall deduct and withhold state
 3 income tax at the rate of 5% from the family leave benefits or medical leave benefits paid
 4 to the individual pursuant to Title 26, sections 850-B and 850-C.

5 **Sec. 22. Rules establishing expedited refund process and waiver of payroll**
 6 **premiums by November 1, 2025.** Pursuant to its rule-making authority under the
 7 Maine Revised Statutes, Title 26, section 850-Q, the Department of Labor shall amend
 8 12-702 C.M.R. Chapter 1: Rules governing the Maine Paid Family and Medical Leave
 9 Program to:

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

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

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

17 **Sec. 23. Appropriations and allocations.** The following appropriations and
 18 allocations are made.

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

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

22 GENERAL FUND	2025-26	2026-27
23 All Other	\$0	\$12,844
24		
25 GENERAL FUND TOTAL	<u>\$0</u>	<u>\$12,844</u>

26
 27 **ADMINISTRATIVE AND FINANCIAL**
 28 **SERVICES, DEPARTMENT OF**
 29 **DEPARTMENT TOTALS**

30	2025-26	2026-27
31 GENERAL FUND	\$0	\$12,844
32		
33 DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$12,844</u>

34 **LABOR, DEPARTMENT OF**

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

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

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

PAID FAMILY AND MEDICAL LEAVE	\$20,000	\$0
INSURANCE FUND TOTAL		

**LABOR, DEPARTMENT OF
DEPARTMENT TOTALS**

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

DEPARTMENT TOTAL - ALL FUNDS	\$20,000	\$0
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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
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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.

1 6. It establishes in statute the Bureau of Paid Family and Medical Leave within the
2 Department of Labor to administer the paid family and medical leave benefits program.

3 7. It requires an employee to file an application for family leave benefits no more than
4 15 days after the start of family leave and to file an application for medical leave benefits
5 no more than 30 days after the start of the medical leave.

6 8. It provides that it is the obligation of the employee to pay premiums unless the
7 employer chooses to deduct premiums from the employee's wages.

8 9. It changes the applications of penalties against employers from mandatory to
9 discretionary.

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

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

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

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

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

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

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

41 17. It places limits on the fees charged for private plan substitutions.

42 **FISCAL NOTE REQUIRED**

43 **(See attached)**