



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 69

S.P. 22

In Senate, January 15, 2019

**An Act To Provide Economic Security to Maine Families through
the Creation of a Paid Family Medical Leave System**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator HERBIG of Waldo.
Cosponsored by Representative DAUGHTRY of Brunswick and
Senators: President JACKSON of Aroostook, LUCHINI of Hancock, MOORE of Washington,
POULIOT of Kennebec, Representatives: ACKLEY of Monmouth, CUDDY of Winterport,
FECTEAU of Biddeford, HYMANSON of York.

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

2 **Sec. 1. 26 MRSA §843, sub-§1-A** is enacted to read:

3 **1-A. Bureau.** "Bureau" means the Bureau of Unemployment Compensation as
4 defined in section 1043, subsection 5-A.

5 **Sec. 2. 26 MRSA §843, sub-§3-A** is enacted to read:

6 **3-A. Fund.** "Fund" means the Family Medical Leave Fund established in section
7 1167.

8 **Sec. 3. 26 MRSA §843, sub-§4, ¶D,** as repealed and replaced by PL 2007, c.
9 519, §1, is amended to read:

10 D. A child, domestic partner's child, parent, domestic partner, sibling, parent-in-law,
11 brother-in-law, sister-in-law or spouse with a serious health condition;

12 **Sec. 4. 26 MRSA §843, sub-§4, ¶F,** as amended by PL 2007, c. 519, §2, is
13 further amended to read:

14 F. The death or serious health condition of the employee's spouse, domestic partner,
15 parent, sibling, parent-in-law, brother-in-law, sister-in-law or child if the spouse,
16 domestic partner, parent, sibling, parent-in-law, brother-in-law, sister-in-law or child
17 as a member of the state military forces, as defined in Title 37-B, section 102, or the
18 United States Armed Forces, including the National Guard and Reserves, dies or
19 incurs a serious health condition while on active duty.

20 **Sec. 5. 26 MRSA §843, sub-§4-B,** as enacted by PL 2007, c. 233, §1, is amended
21 to read:

22 **4-B. Reduced leave schedule.** "Reduced leave schedule" means a leave schedule
23 that reduces the usual number of hours per workweek, or hours per workday, of an
24 employee.

25 This subsection is repealed October 1, 2020.

26 **Sec. 6. 26 MRSA §843, sub-§8,** as enacted by PL 2007, c. 519, §3, is amended to
27 read:

28 **8. Sibling.** "Sibling" means a sibling of an employee ~~who is jointly responsible with~~
29 ~~the employee for each other's common welfare as evidenced by joint living arrangements~~
30 ~~and joint financial arrangements, including a half-sibling or step-sibling.~~

31 **Sec. 7. 26 MRSA §844, sub-§4** is enacted to read:

32 **4. Repeal.** This section is repealed October 1, 2020.

33 **Sec. 8. 26 MRSA §844-A** is enacted to read:

1 **§844-A. Family medical leave**

2 **1. Family medical leave entitlement.** An employee of an employer that employs 15
3 or more employees who has been employed by the same employer or a self-employed
4 person who has made contributions under subsection 2 for 12 of the prior 18 months is
5 entitled to benefits for up to 8 workweeks of family medical leave per year. The
6 following conditions apply to family medical leave benefits granted under this
7 subchapter:

8 A. Unless prevented by a medical emergency from giving notice, an employee shall
9 provide at least 30 days' notice to the employee's employer and a self-employed
10 person shall provide at least 30 days' notice to the bureau of the intended dates upon
11 which family medical leave will commence and terminate; and

12 B. An employee or self-employed person shall obtain certification from a physician
13 to be submitted to the bureau pursuant to subsection 4 to verify the amount of leave
14 requested by the employee or self-employed person, except that an employee or
15 self-employed person who in good faith relies on treatment by prayer or spiritual
16 means, in accordance with the tenets and practice of a recognized church or religious
17 denomination, may submit certification from an accredited practitioner of those
18 healing methods.

19 **2. Contribution.** An employee entitled to benefits under chapter 13 shall pay a
20 contribution to the fund in an amount equal to a percentage of the employee's wages in
21 accordance with the rate of contribution determined by the bureau in subsection 3. The
22 employer of the employee shall deduct the amount of the contribution from the
23 employee's wages. Contributions under this subsection become due and must be paid by
24 each employer to the bureau for the fund on or before the last day of the month following
25 the close of the calendar quarter to which the contributions relate. In the calculation of
26 any contribution, a fractional part of a cent must be disregarded unless it amounts to 1/2¢
27 or more, in which case it must be increased to one cent. A person who is self-employed
28 may receive benefits from the fund upon application to the bureau and payment to the
29 bureau of a contribution in the amount determined by the bureau under subsection 3.

30 **3. Rate of contribution.** The bureau shall calculate annually the rate of contribution
31 pursuant to subsection 2 of an employee or self-employed person entitled to family
32 medical leave. The rate of contribution may not exceed 0.5% of an employee's gross
33 wages or a self-employed person's gross earnings. The bureau may employ a 3rd-party
34 actuary or other qualified person to determine the rate of contribution necessary to
35 properly administer the fund.

36 **4. Notice.** When an employee has notified an employer pursuant to subsection 1 of a
37 circumstance allowing family medical leave, the employer shall report the notice to the
38 bureau within the 7-day period immediately following the employer's receipt of the
39 notice. Certification required under subsection 1, paragraph B must accompany the
40 employer's report under this subsection or the self-employed person's notice under
41 subsection 1. An employer or self-employed person shall also report the average weekly
42 wages or earnings of the employee or self-employed person, pursuant to the calculation
43 for an injured employee under Title 39-A, section 102, subsection 4, together with any

1 other information required by the bureau. The statement must report the wages or
2 earnings of the employee or self-employed person on a weekly basis, unless the employee
3 or self-employed person is paid on other than a weekly basis, in which case the employer
4 or self-employed person may report the wages or earnings on the same basis as wages or
5 earnings are paid. A copy of the wage information must be mailed to the employee. If the
6 bureau determines that a notice does not provide a circumstance allowing family medical
7 leave under or is otherwise in violation of this subchapter, the bureau may not pay a
8 benefit under subsection 5 and shall notify the employer and employee or self-employed
9 person as soon as possible after the determination is made.

10 **5. Benefits.** The bureau shall pay from the fund a family medical leave benefit to an
11 employee or self-employed person who pays a contribution under subsection 2 within a
12 reasonable time after the bureau's receiving notice for that employee or from that self-
13 employed person under subsection 4. A benefit under this subsection must be 66% of the
14 weekly wages or earnings of the employee or self-employed person, except that the
15 benefit may not exceed the maximum benefit allowed under chapter 13. If an employer
16 provides a family medical leave benefit to an employee entitled to a benefit under this
17 subchapter, the employee shall receive the greater of the employer-provided benefit and
18 the benefit under this subsection. If an employer provides a family medical leave benefit
19 to an employee entitled to a benefit under this subchapter that is greater than the benefit
20 calculated under this subsection, the bureau shall pay to the employer the benefit to which
21 the employee is entitled as calculated under this subsection.

22 **6. Leave taken intermittently or on reduced leave schedule.** Intermittent or
23 reduced leave schedule family medical leave may be taken subject to the following
24 limitations.

25 A. Leave for a reason described in section 843, subsection 4, paragraph B or C may
26 not be taken by an employee intermittently or on a reduced leave schedule unless the
27 employee and the employer agree otherwise. Subject to subsection 1, paragraphs A
28 and B, leave for a reason described in section 843, subsection 4, paragraph A, D or E
29 may be taken intermittently or on a reduced leave schedule when medically
30 necessary. The taking of leave intermittently or on a reduced leave schedule pursuant
31 to this paragraph may not result in a reduction in the total amount of leave to which
32 the employee is entitled under subsection 1 beyond the amount of leave actually
33 taken.

34 B. If an employee requests intermittent leave, or leave on a reduced leave schedule,
35 for a reason described in section 843, subsection 4, paragraph A, D or E that is
36 foreseeable based on planned medical treatment, the employer may require the
37 employee to transfer temporarily to an available alternative position offered by the
38 employer for which the employee is qualified and that:

39 (1) Has equivalent pay and benefits; and

40 (2) Better accommodates recurring periods of leave than the regular employment
41 position of the employee.

42 **7. Small employers.** An employer that employs fewer than 15 employees may opt
43 to participate in family medical leave under this section on a year-to-year basis. The

1 department may extend by rule the period of participation in family medical leave under
2 this subsection up to 3 years if the department determines that a longer participation
3 period is necessary for the stability of the fund or to carry out the provisions of this
4 section.

5 **8. Self-employed persons.** A self-employed person who has elected to participate in
6 family medical leave under this section must participate for a period of at least 2 years.
7 The department may extend by rule the period of participation in family medical leave
8 under this subsection up to 4 years if the department determines that a longer
9 participation period is necessary for the stability of the fund or to carry out the provisions
10 of this section.

11 **9. Rules.** The bureau may adopt routine technical rules as defined by Title 5, chapter
12 375, subchapter 2-A to carry out the provisions of this subchapter.

13 **10. Effective date.** This section takes effect October 1, 2020.

14 **Sec. 9. 26 MRSA §1082, sub-§15** is enacted to read:

15 **15. Family medical leave.** The commissioner, through the bureau, shall administer
16 chapter 7, subchapter 6-A and the Family Medical Leave Fund under section 1167.

17 **Sec. 10. 26 MRSA §1167** is enacted to read:

18 **§1167. Family Medical Leave Fund**

19 **1. Fund established.** The Family Medical Leave Fund, referred to in this section as
20 "the fund," is established in the bureau to issue benefits to employees and self-employed
21 persons entitled to benefits under chapter 7, subchapter 6-A and to cover reasonable
22 administrative expenses of the bureau in administering the fund. The fund consists of
23 revenues received from contributions collected under section 844-A, subsection 2,
24 appropriations, allocations and contributions from private and public sources. The fund,
25 to be accounted within the bureau, must be held separate and apart from all other money,
26 funds and accounts. Eligible investment earnings credited to the assets of the fund
27 become part of the assets of the fund. Any unexpended balances remaining in the fund at
28 the end of any fiscal year do not lapse and must be carried forward to the next fiscal year.

29 **2. Rules.** The bureau may adopt routine technical rules as defined in Title 5, chapter
30 375, subchapter 2-A to carry out the purposes of the fund.

31 **Sec. 11. Department of Labor to develop implementation plan for family**
32 **medical leave program; report.** The Department of Labor shall develop a plan to
33 implement the family medical leave program under the Maine Revised Statutes, Title 26,
34 section 844-A, referred to in this section as "the program." The plan must include
35 elements necessary for implementation of the program, including:

- 36 1. Staffing and technology needed to operate the program;
37 2. Rulemaking required to implement the program;

