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## **Testimony in Opposition to LD 1964-An Act to Implement the Recommendations of the Commission to Develop a Paid Family and Medical Leave Benefits Program**

Joint Standing Committee on Labor and Housing  
May 25, 2023

Senator Tipping, Representative Roeder, and members of the Committee on Labor and Housing,

I am Quincy Hentzel, President and CEO of the Portland Regional Chamber of Commerce. On behalf of our 1,300 member businesses, employing over 65,000 hardworking Mainers, I present this testimony to express our opposition to LD 1964.

Approaching the Commission's process with an open mind, we actively followed the Commission's meetings, shared their employer survey with our members, and carefully reviewed their final report and actuarial analysis. While a few of our members currently offer some version of a paid medical and/or family leave benefit, the majority do not. Nevertheless, we remained willing to explore a state-level solution that would provide a comprehensive program accessible to all our members and their employees, regardless of size or industry. Our Advocacy Committee diligently deliberated on the report and the legislation before you today. We met with the sponsors, held informative sessions with numerous members to gauge their thoughts and concerns, and organized a town hall with the sponsors and our membership to provide businesses an opportunity to express their concerns directly. Additionally, we consulted the Delaware Chamber of Commerce, which stands as the only Chamber in the country to not testify in opposition to PFMLA legislation. At every step, our aim was to find workable common ground. Regrettably, despite these steps, we have concluded that the current proposal fails to adequately address the concerns voiced by many of our members.

Our opposition was not an inevitable outcome. Since the release of the Commission report, both the business community and the administration have consistently raised core concerns, which could have been readily addressed. However, there seemed to be little inclination to resolve these issues. Furthermore, we have been waiting for months for this bill to be printed hoping that this committee would invest the necessary time to foster consensus. Unfortunately, the bill was only released last week, followed by an unofficial release of the sponsor's amendment. Consequently, we are now compelled to discuss the most substantial change to Maine's employment landscape in decades, with only a few weeks remaining in the first session. Our members acknowledge the importance of addressing family and medical leave for employees, but as it stands, this proposal represents an unworkable and costly approach to achieving that goal. Without significant modifications to the legislation before you, Maine's workforce and economy will suffer.

### **Concerns Raised by Our Members**

**Employee Absenteeism in Small Businesses:** Throughout our discussions with members, one issue consistently emerged as the top concern—the impracticality of extended employee leave, particularly for small businesses and those employing individuals with highly specialized skills and certifications. Maine is a small business state, and the proposed benefit level and leave duration would undeniably undermine the operational capacity of many businesses. Seasonal employers face an even more acute challenge, as an employee taking leave could miss an entire season's worth of work. To address these well-founded concerns, comprehensive exemptions should be incorporated into an amendment to this bill, especially for employers who have never been subject to the existing state leave law.



**Eligibility:** Another major concern expressed by our members pertains to the exceedingly low threshold for qualifying for leave under this proposal. Presently, Maine's unpaid leave law necessitates 12 consecutive months of an employment with a specific employer, while federal FMLA mandates 1,250 hours worked for an employer to be eligible for leave. In Massachusetts, an employee must have earned \$5,700 plus 30 times the benefit to qualify under their PFMLA law. Similarly, Rhode Island requires employees to have earned \$14,700, while Maryland requires 680 hours of work. Under Delaware's PFMLA law, an employee must have worked for an employer for 12 consecutive months for at least 1,250 hours.

However, under this proposal employees could start a job and be eligible for 12 weeks of leave on day two if they made just \$6,000 in the prior 12 months. This represents a radical change in eligibility, deviating from other progressive states, and exacerbating the concerns about absenteeism outlined earlier.

**Affinity Relationships:** The expansion of family leave benefits under the bill to include individuals defined under subsection 20-G raises concerns about the potential for limitless expansion of this benefit. The bill states that eligibility can extend to "any individual with whom the covered individual has a significant personal bond that is like a family relationship, regardless of biological or legal relationship." This subjective determination would allow an employee to take leave to care for virtually anyone which we feel is too broad of a category to cover under a paid leave benefit program. Furthermore, the expansive definition leaves room for abuse, and we have not heard sufficient evidence from other states where affinity relationships are eligible for family leave to prove that this does not lead to an increase in benefit abuse.

It is easy to think of many individuals in all our lives who would meet this standard. Employees determined to take a full 12 weeks of paid leave annually would have little trouble identifying eligible individuals with whom they have an "affinity". The absence of guidance in this text on how an eventual administrator could establish appropriate guardrails around this provision raises concerns about potential overuse, fraud and abuse.

**Hardship Exemption:** The exemption granted to small employers fails to address the concerns our members have raised regarding the job protection components of the legislation. Under this proposed language, small employers would face a lengthy and costly appeals process at both the administrative and judicial levels. This process is not feasible for the types of smaller employers this section aims to protect. The terms defining permissible exemptions are broad and subjective, making it doubtful that any employer would feel confident in taking advantage of the exemption given the cost and time it would take to go through the appeals process. Language that fully exempts these employers without qualification is of paramount importance to our small business members.

**Penalties:** The penalty for covered individuals who willfully make false statements or misrepresentations in pursuit of benefits is incredibly light, considering the concerns outlined above about opportunities for fraud and abuse. The penalty of only one year of ineligibility for benefits does not serve as an effective deterrent to fraudulent claims. While penalties for employers are left to the broad discretion of the administrator, the penalty for covered individuals is proscribed in a manner that lacks effectiveness in deterring fraud.



**Composition of the PFMLA Authority:** We have serious concerns regarding the composition of the PFMLA Authority, which currently includes only three employers out of its 13-person membership. This lack of proportional representation for employers is problematic considering the disproportionate burdens and responsibilities that will fall on them in managing the implementation of this program. For this program to be successful, it is crucial to ensure the active involvement and support of employers in its administration and implementation. Unfortunately, the current composition does not achieve this objective.

### **Suggested Alternatives**

**Expansion of Maine’s Existing FMLA Program:** As we explore alternatives to this proposed legislation, we strongly believe the best starting point is to enhance Maine’s existing family medical leave requirement in Title 26 by adding a paid benefit component. This existing program is familiar to employers and provides a framework that addresses many, if not all, of the concerns we raised above. Under the existing law, employees are entitled to up to 10 weeks of family medical leave every two years after having worked for an employer for 12 consecutive months. Additionally, it exempts employers with fewer than 15 employees. By introducing a paid component to this law, we can offer a meaningful benefit to thousands of Maine workers while ensuring that employers can practically implement and comply with the parameters.

**Adoption of a Voluntary Program:** Absent an expansion of the existing family medical leave law in Maine, we suggest the committee consider our Northern New England neighbors, Vermont<sup>1</sup> and New Hampshire<sup>2</sup>, which both have voluntary PFMLA programs. A voluntary program allows employers – of any size - to proactively offer this benefit in an affordable manner. Over time, if this program proves to be the workforce attraction imperative that supporters of this bill believe it to be, more and more employers will recognize the need to adopt such a state-sponsored voluntary benefit.

We thank you for your time and commitment to all Mainers, and we ask that given the current form of this legislation the committee vote Ought Not to Pass on LD 1964.

Respectfully,

A handwritten signature in blue ink that reads "Quincy Hentzel".

Quincy Hentzel  
President & CEO

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<sup>1</sup> <https://governor.vermont.gov/press-release/governor-phil-scott-launches-voluntary-paid-family-and-medical-leave-program>

<sup>2</sup> <https://www.paidfamilymedicalleave.nh.gov/>