



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
BUREAU OF HUMAN RESOURCES  
4 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0004

ADMINISTRATIVE & FINANCIAL SERVICES

KIRSTEN LC FIGUEROA  
COMMISSIONER

BUREAU OF HUMAN RESOURCES

BREENA D. BISSELL  
DIRECTOR

SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

April 11, 2023

Re: L.D. 999 – *An Act to Support Family Caregivers by Expanding Family Medical Leave*

Senator Tipping, Representative Roeder, and esteemed members of the Joint Standing Committee on Labor and Housing, I am Michael Dunn, State EEO Coordinator, and I am here to testify on behalf of the Administration in opposition, in part, and neither for nor against, in part, of this proposed legislation.

Currently, under the Family Medical Leave Act (“FMLA”), leave may be provided for an employee caring for a child, domestic partner's child, grandchild, domestic partner’s grandchild, parent, domestic partner, sibling or spouse with a serious health condition. L.D. 999 seeks to add grandparent and great-grandparents with serious health conditions to the list of persons that an employee may take protected leave under the FMLA. The L.D. goes on to say that an employee may take FMLA for one of these family relations, “whether related to the employee by blood, adoption, legal custody, marriage or domestic partnership.” The Administration respectfully offers the following considerations for the committee’s consideration.

#### A. Opposition

The Administration respectfully opposes the addition of the “marriage or domestic partnership” language. The addition of this language would expand the number of relations

covered by this section of law significantly.<sup>1</sup> For example, an employee could take FMLA for their parents in-law, grandparents in-law, and great-grandparents in-law. Furthermore, if the employee's parents married other people, then the employee's step-grandparents, and step-great-grandparents would also be covered under FMLA.

Under state and federal FMLA laws there is an assumption that the covered individuals are responsible for the common welfare with the employee. For instance, "sibling" is defined to mean a sibling who is "jointly responsible with the employee for each other's common welfare..." 26 M.R.S. § 843(9). In that case, the nature of the relationship is insufficient for FMLA, there must also be a responsibility for the common welfare with the employee.

By expanding this definition to include "in-law" relations and "step" relations without considering the common welfare principle, the L.D. would create an incongruity, where an employee could take FMLA for their spouse's great-grandparent but could only take FMLA for their own sibling if there is a joint living or financial arrangement.

#### B. Neither For Nor Against

The Administration also wishes to submit the following comments for consideration, which are neither for nor against L.D. 999.

L.D. 999 proposes adding grandparents and great-grandparents with a serious health condition to the list of persons that an employee may take FMLA to care for. The 130<sup>th</sup> Legislature passed L.D. 61, which added grandchild to this list of covered persons. It seems consistent to add grandparent to the persons covered under this provision of law, since grandchild has already been included. The addition of great-grandparents would be an expansion, but the Administration recognizes the many potential stresses on the health of Maine

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<sup>1</sup> Compare the attached charts.

employees and their families and sees the reasons in including great-grandparents under the policy.

L.D. 999 also seeks to add “whether related to the employee by blood, adoption, [or] legal custody...” to the definition of Family Medical Leave. Adding the terms “blood” and “adoption” seems unnecessary. The State of Maine treats relationships by blood or adoption as the same relationship. The term “legal custody” also seems unnecessary. Under existing law, if there is or was a caretaker relationship, similar to a parent-child relationship, then an employee may take leave to care for that person even if they are not actually the employee’s parent or child. For instance, an aunt or uncle that is responsible for caring for a niece or nephew could qualify as a “parent” due to the caretaker relationship.

### C. Conclusion

For the foregoing reasons, the Administration respectfully urges the committee to strike the “whether related to the employee by blood, adoption, legal custody, marriage or domestic partnership” language because the relation by “blood, adoption, [or] legal custody” is unnecessary under existing policy, and the

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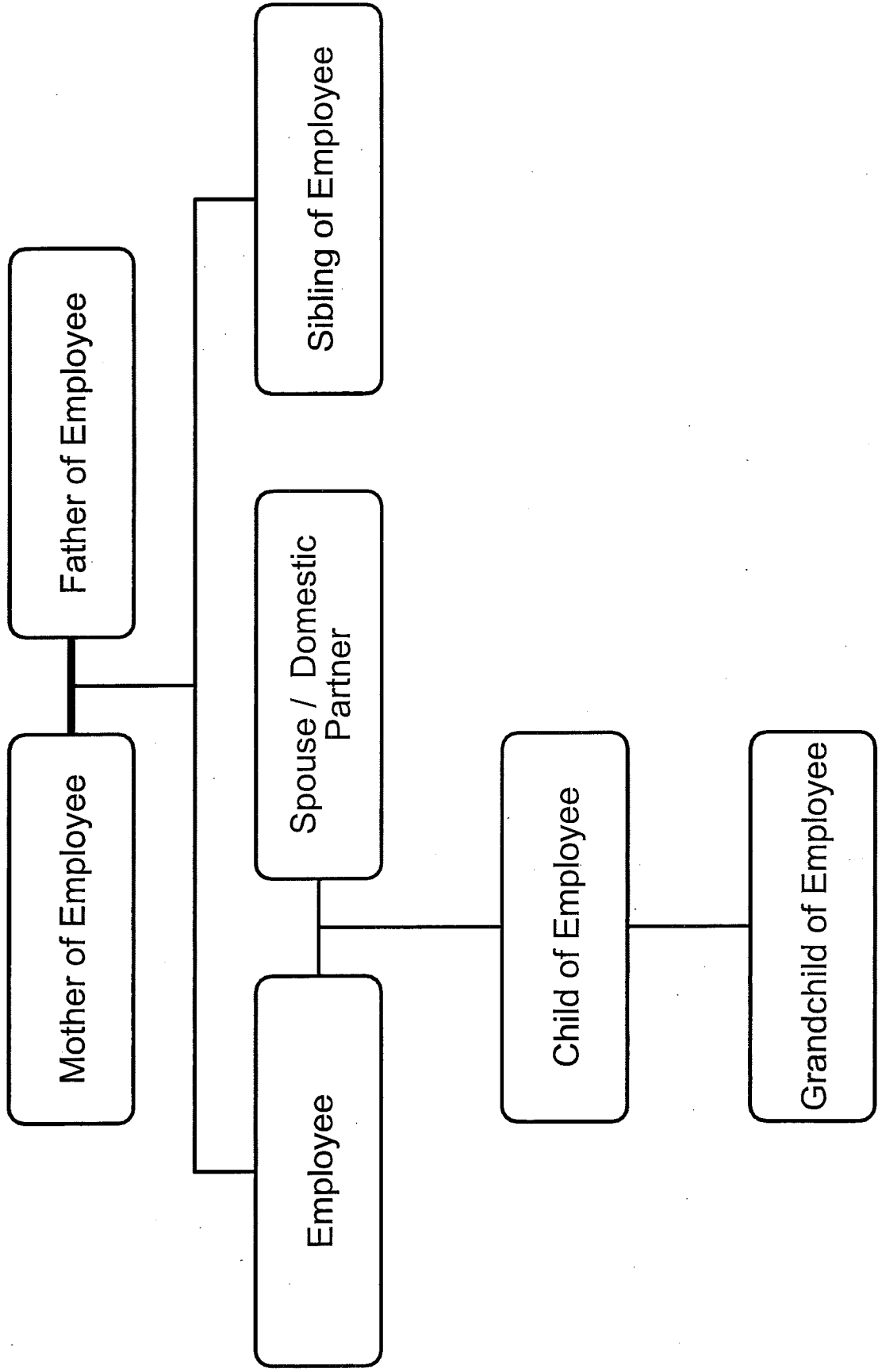
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# Current FMLA



# LD 999

