

Testimony of Nate Cloutier on Behalf of HospitalityMaine
Before the Joint Standing Committee on Labor & Housing

May 25, 2023

In Opposition to LD 1964

"An Act to Implement the Recommendations of the Commission to Develop a Paid Family and Medical Leave Benefits Program"

Senator Tipping, Representative Roeder, and distinguished members of the Labor & Housing Committee: I am Nate Cloutier, and I am here today on behalf of HospitalityMaine representing more than 1,200 restaurant and lodging operators of all sizes across the state. HospitalityMaine opposes LD 1964, "An Act to Implement the Recommendations of the Commission to Develop a Paid Family and Medical Leave Benefits Program."

Overview

Maine's hospitality industry is prepared to work with the legislature on a practical proposal for paid leave. Unfortunately, we do not see LD 1964 as the best mechanism to accomplish that.

Timeline

- December 2022: Commission to Develop a Paid Family and Medical Leave Benefits Program released.
- March 2023: Meeting with lawmakers and stakeholders to discuss concerns from business community. We were told the bill was in the Revisors Office and would be available by the end of March. The bill would include Sponsor Amendments to the Task Force Report.
- April 2023: The bill was not released.
- May 10, 2023: A unpublished Sponsor Amendment is circulated including supposed changes to the bill.
- May 18, 2023: The bill is referenced with the Task Force Recommendations.
- May 25, 2023: Paid FMLA Public Hearing.

Context

I am detailing this timeline to underscore two things. I had been under the impression that the bill was taking so long to be released from the Revisors' Office because it would include substantive changes from the Task Force Report that addressed some concerns raised by businesses. Had it been clear the bill would simply replicate the recommendations outlined in the Task Force Report, I believe conversations could have been more productive and forthcoming. Instead, we obtained an unpublished Sponsors' Amendment in Mid-May, which is closely aligned with the ballot initiative introduced by the Maine People's Alliance. We were upfront in our conversations that the provisions in the Task Force Report and the Ballot Initiative Proposal were too extreme and unaligned with what is practical and workable for Maine.

LD 1964 concerns

1. **This is not paid FMLA** - Paid FMLA would be making Maine's existing unpaid FMLA, paid. This goes far beyond that and creates a new short-term disability program. In this proposal, an employee becomes eligible for benefits once they've earned just over \$6000, entitling them to 16 weeks of leave. Not only is the duration unaligned with existing FMLA law, but the reasons also to qualify for use are vastly different. Employees could qualify for leave for anyone they consider having "like a family relationship", regardless of actual blood or familial relation. This would be 100% subjective.

2. **New tax on wages** – The Task Force Actuarial Table indicates that LD 1964 would cost nearly \$400M annually. The Sponsors' Amendment would cost an estimated \$325M-\$350M annually. §850-C, Payment of benefits, Section 3 in the bill states, "the authority may adjust the maximum benefit amount in order to maintain solvency of the fund at a level of at least 140% of the benefits paid in the preceding year." This would allow for potential annual tax increases.
3. **Absenteeism, Worsens the Workforce Crisis** – The hospitality industry, and nearly every other job sector is experiencing concerning workforce shortages, with no signs of rebounding soon. This bill proposes that an individual may qualify for 16 weeks of leave annually. 4-month absences from the workplace would provide no certainty to employers trying to secure stable staffing levels. Maine's seasonal businesses are large contributors to the state's economy; a 4-month absence could be an entire operating season for some businesses, and that length of leave would be devastating on our small businesses.

How is LD 1964 an outlier in New England? – LD 1964 is extreme relative to New England and would make us an outlier regionally. Here's the evidence:

- Only 11 states have a paid FMLA program. This is not a mainstream proposal.
- It is true that Maine is the only state in New England without a paid leave policy, however the bill establishes this program to be one of the most benefit-rich and expensive programs in New England, **and** the entire country.
- Our two neighboring states, New Hampshire, and Vermont both have voluntary programs.
- Maine would be the first state in New England to require an employer share of financing for family leave. Massachusetts is also the only state that requires employers to contribute to the portion of medical leave. The other states are employee funded.
- The bill proposes the highest wage replacement percentage in the country at 90%. The average New England wage replacement percentage is about 60%.

What is the reasonable argument for Maine's proposal being so different than what exists in other states?

What would a Northern New England Model Look Like?

- Voluntary – Our sister New England states Vermont and New Hampshire both have voluntary programs that are optional for employers.
- Employee financed – As stated before the majority of existing programs are solely employee funded.

We are disappointed that the bill, and even the Sponsors' Amendment is not in line with New England states as the proponents have claimed it would be. We also believe it is a missed opportunity to utilize a known quantity, the state's existing Family Medical Leave Law, as the basis for this proposal.

No matter how this Committee chooses to move forward, it is going to be a massive disruption and a new tax on employers and employees. We would ask that minimizing this disruption where reasonably possible should be the goal. Although our concerns were largely rebuffed, we remain committed to discussing a reasonable paid leave proposal.

Thank you for your time and attention. I would be happy to answer any questions and will be available for the work session.

FAMILY MEDICAL LEAVE ACT PROPOSAL COMPARISONS
MAY 2023

| Topic | <u>LR 9, Sponsor's Amendment to LD 1956</u> | <u>Maine People's Alliance Initiative</u> |
|--|---|--|
| Annual Tax Projection | TBD | TBD |
| Collection & Program Start Dates | Collection: 1/1/25 Program: 5/1/26 | Collection: 1/1/25 Program: 7/1/26 |
| Small Businesses (14 employees & under) | Included | Included |
| Part-time, Seasonal, Temporary Employee Exemptions | None | None |
| Solo Practitioner | Opt-in for minimum 3-year period; pay 50% of premium | Opt-in |
| Family Members Covered | "Family" as described in existing unpaid FMLA statute + "affinity" | "Family" as described in existing unpaid FMLA statute + "affinity" |
| Employee/Employer Share of Financing | 0.7-1.0% to 2028 (50:50 split; no tax on small employers). 2028 and beyond, tax adjustable to ensure solvency of Fund | 50% (small employers exempt) |

FAMILY MEDICAL LEAVE ACT PROPOSAL COMPARISONS
MAY 2023

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| Wage Replacement State Average Weekly Wage (SAWW) | 90% if > 50% of SAWW 75% if 50% or < than SAWW | 95% if > 50% of SAWW 65% if 50% or < than SAWW |
| Benefit Cap (SAWW) | 100% | 100% |
| Leave Duration | 12 weeks total in aggregate | 12 weeks or either family or medical, 16 total |
| Waiting Period (Medical only) | 7 days | 7 days |
| Taxable Wage Cap | Social Security (\$160,200 in 2023) | Social Security |
| Private Plan Option | Yes | Yes |
| Program Administration | Defaults to private (includes fiduciary duty) | Maine DOL |