HOUSE OF REPRESENTATIVES
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1440
TTY: (207) 287-4469

Jennifer L. Poirier
78 Palmer Road
Skowhegan, ME 04976
Phone: (207) 399-9784
Jennifer.Poirier@legislature.maine.gov

Testimony of Representative Jennifer Poirier on
LD 1333, "An Act to Make Changes to the Paid Family and Medical Leave Benefits Program"
Before the Joint Standing Committee on Labor

April 23, 2025

Senator Tipping, Representative Roeder and esteemed members of the Joint Standing Committee on Labor, my name is Jennifer Poirier, and I proudly represent House District 70 – Skowhegan. I am pleased to present **LD 1333, "An Act to Make Changes to the Paid Family and Medical Leave Benefits Program."**

Earlier this year, I started hearing from a number of constituents, including small businesses and employees, who were surprised by a new tax tied to the paid family and medical leave program. Many were unsure what the program would mean for their businesses and their employees. Some felt discouraged and frustrated and told me they didn't feel heard in Augusta.

I took their concerns seriously and spent time listening—working with stakeholders not just to help shape the bill but to better understand the real-world impact of the program on Maine businesses and workers.

LD 1333 includes 18 minor changes intended to make the law more responsive to the needs of Mainers. I will outline those changes below.

1. **It requires an employee to be employed with an employer for 120 days before being eligible to take leave.** (Sec. 3.)

   The genesis of this proposal is a comment the lead sponsor, Sen. Daughtry made at a press conference at the beginning of the year.

   When I looked at the law, I didn't see a requirement to work 120 days before benefits became available.
   So, I thought I would add a provision consistent with the comments.

2. **It clarifies that the definition of "self-employed individual" applies only to employers with less than 15 employees.** (Sec. 4.)

   Self-employed individuals include "member of an LLC." Some LLCs have more than 15 employees, some don't. This should be clarified that anyone who is identified as "self-employed" and is in a firm of 15 or more must pay both the employer and employee tax.

3. **It allows employers to have intermittent leave schedules reviewed by the program administrator.** (Sec. 5.)

   Things may change over time and an intermittent leave schedule that worked at one point in time may not at a future point in time. These schedules should be able to be revisited.

4. **It applies the same delay of implementation to private employers with collective bargaining agreements as currently applies to public employers.** (Sec. 6.)

   This is self-explanatory; Why should public employee unions be treated differently than other unions.

5. **It prohibits the taking of paid leave unless the employee simultaneously takes any available unpaid leave.** (Sec. 7.)

   Repeatedly we were told that you can't take paid leave and unpaid leave back-to-back such that an employee would be out for over 20 weeks.

   The DOL rule prohibits taking paid state leave if you've already taken unpaid federal leave. It should also say that you can't take paid state leave unless you file for unpaid federal leave at the same time.

6. **It reduces the retroactive application deadline from 90 days to 30 days.** (Sec. 8.)

   The law allows an employee to file for benefits for up to 90 days <u>after</u> a medical or other qualifying event. It would seem that 30 days is enough.

7. **It requires the paid family and medical leave benefits program administrator to give employers 5 days' notice of leave being approved for an employee.** (Sec. 9).

   This was addressed by rule; I believe it should be included in statute as well.

8. **It requires the Department of Labor to post on its publicly accessible website no later than February 1st of each year the dates by which contribution reports and premiums must be remitted.** (Sec. 10.)

   This is a rather modest request. The law says contributions are due quarterly. The Department should identify the exact date they are due at the beginning of each year and post that publicly. Better that DOL do it once than literally thousands of employers determine it themselves.

9. **It relieves employers with collective bargaining agreements of the obligation to bargain over the employee's share of the premium.** (Sec. 11-part 1.)

   My understanding is that there are some labor lawyers telling workers they don't have to pay their ½ share of the tax unless their employer gives them something in return. This seems crazy to me. Everyone was told that employers pay half, and employees pay half of this new tax. That is the law, and employers shouldn't have to bargain over following the law. If income taxes or Medicare taxes or social security taxes change, employers don't need to bargain over the issue; nor should they have to bargain over this.

10. **It allows employers to correct mistakes in the employee share of taxes for up to 3 months** (Sec. 11-part 2.)

    Payroll processors and employers make mistakes. The rule requires employers to completely absorb the mistake if it is in the employee's favor. There should be a reasonable make-up period for good faith mistakes.

11. **It establishes a 52-week formula for calculating the 15-employee threshold.** (Sec. 11-part 3).

    Self-explanatory.

12. **It changes the applications of penalties against employers from mandatory to discretionary.** (Sec. 12.)

    Generally, state agencies have discretion over whether to impose a penalty. In the FMLA law, DOL has discretion to waive penalties to employees. The language in section 12 is that same exact language. DOL should have the same discretion to waive penalties that might otherwise be due from employers.

13. **It requires self-employed individuals who elect coverage to pay 1/4 of a year's worth of premiums upon first applying for coverage.** (Sec. 13).

    As long as large employers have to pay at least one-quarter's worth of premiums into the system, even if they don't use it, self-employed workers should have to pay as well.

    Think about it. Large employers who use the system will have to pay FIVE quarters of taxes before the program starts.

    All the while, self-employed individuals can sit on the sidelines and pay nothing.

    Then in 2026, they can sign-up and take advantage of the program that was pre-funded by others. That is wrong.

14. **It places limits on the fees charged for private plan substitutions.** (Sec. 14).

    As far as I can tell, there is no limit on what DOL can charge for the costs of "oversight" of private plans. There should be a cap.

15. **It requires the Department of Labor to post on its publicly accessible website the appropriate tax forms, based on guidance from the United States Internal Revenue Service and the Department of Administrative and Financial Services, Maine Revenue Services, that employers with approved private plans must provide to employees taking leave.** (Sec. 15.)

    A general public policy concept is that rules should provide more clarity not less. A provision in the rule requires employers to offer to employees "appropriate" tax forms. No such obligation exists in the statute.

    More importantly, the rule never says what those forms are. Either the rule should be stricken; or, the rule should identify for employers what those forms are. It is a complete waste of time for thousands of employers to try and guess as to what the rule means by "appropriate" tax forms. It's the DOL's rule, they should tell everyone what they mean.

16. **It clarifies that the provision that provides that an employee who takes leave is entitled to be restored to the employee's former position does not apply to an employee who is taking retroactive paid leave and who did not notify the employer for more than 5 days of the employee's absence.** (Sec. 16.)

    While this fact pattern may be unusual, the current structure of the law and rule are unreasonable. Since workers have 90 days to file a claim after an event, an employee could conceivably not show up to work for 90 days without any communication to the employer. Employers would have to keep the job open for 3 months for an employee that they have not heard from.

    People should be able to get their benefits; but, employers need to be able to move on if they don't hear from an employee for days and days. I chose a 5-day requirement for an employer to be notified of an employee's absence in order to preserve job protections.

17. **It changes rules from routine technical to major substantive.** (Sec. 17.)

    Self-explanatory.

18. **It clarifies that at no time may an employee receive benefits of over 100% of the employee's wages.** (Sec. 18.)

    Self-explanatory.

    I appreciate your patience in hearing this list of proposals. None of them change the level of benefits. None of them change the duration of benefits. None of them change the rate of taxation. This legislation does not undermine or weaken the program as some coming later may try to say. These are clarifications and minor policy changes.

    Thank you for your consideration of this legislation. I'm happy to answer any questions.

    Jennifer Poirier
    State Representative