PORTLAND
Regional Chamber of Commerce

93 Exchange Street Portland, ME 04101 • (207) 772-2811
chamber@portlandregion.com • PortlandRegion.com

Cape Elizabeth • Cumberland • Falmouth • Gorham • Scarborough • South Portland • Portland • Westbrook

Regarding LD 575—An Act to Ensure Equitable Access to the Paid Family and Medical Leave Benefits Program by Removing the Requirement That Leave Must Be Scheduled to Prevent Undue Hardship on the Employer, LD 1221—Resolution, Proposing an Amendment to the Constitution of Maine to Prohibit the Legislature from Using Paid Family and Medical Leave Program Funds for Any Other Purpose, LD 1307—An Act to Suspend the Remittance Obligation for Paid Family and Medical Leave Private Plan Users, and LD 1712—An Act to Amend the Paid Family and Medical Leave Benefits Program to Balance Support of Businesses and Employees

Joint Standing Committee on Labor
April 22, 2025

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

I am Eamonn Dundon, the Director of Advocacy for the Portland Regional Chamber of Commerce. We represent 1,300 businesses in across region, collectively employing over 75,000 Mainers. Thank you for the opportunity to provide testimony on several bills relating to Maine's newly established Paid Family and Medical Leave (PFML) program.

General Comments

The rollout of the PFML program has been a mixed experience. While we appreciate the Department's efforts to provide robust communication and training to employers and payroll processors, the rulemaking process repeatedly departed from the statue's plain language and legislative intent. This has left employers with significant uncertainty and growing mistrust in the process, particularly around issues of fund solvency, rule consistency, and implementation timelines. Thus, we welcome the committee's consideration of these bills to clarify concerns raised and ensure Maine is on strong ground for full rollout of this program next year when benefits are scheduled to commence.

Throughout the legislative and rulemaking process, our top priorities have remained:

1. **Reasonable protections for small businesses,** especially regarding leave scheduling;
2. **A fair and predictable process for employers who elect to use private plans;** and
3. **Long-term solvency of the PFML fund** to ensure its sustainability for employers and employees alike.

Our positions on the following bills reflect these priorities and seek to improve the implementation of PFML—not repeal or delay it—while aligning Maine's program with the best practices of other states.

In Opposition to LD 575—An Act to Ensure Equitable Access to the Paid Family and Medical Leave Benefits Program by Removing the Requirement That Leave Must Be Scheduled to Prevent Undue Hardship on the Employer

LD 575 would eliminate a core provision of the original statute that allows employers and employees to coordinate scheduled leave—when not due to an emergency, illness, or other sudden necessity—in a way that avoids undue hardship for the employer. This commonsense language mirrors the standard in Maine's Earned Paid Leave (EPL) law (26 MRSA §637), which has functioned effectively since its enactment.

PORTLAND
Regional Chamber of Commerce
93 Exchange Street Portland, ME 04101 • (207) 772-2811
chamber@portlandregion.com • PortlandRegion.com
Cape Elizabeth • Cumberland • Falmouth • Gorham • Scarborough • South Portland • Portland • Westbrook

Maintaining consistency across wage and benefit laws is vital for implementation. Undoing this provision before PFML benefits have even begun would create unnecessary inconsistency and confusion, especially when there is no evidence that this language has negatively impacted EPL implementation. We urge the committee to retain this safeguard and reject LD 575.

Neither for Nor Against LD 1221—Resolution, Proposing an Amendment to the Constitution of Maine to Prohibit the Legislature from Using Paid Family and Medical Leave Program Funds for Any Other Purpose

While we take no formal position on the constitutional amendment, we share the concern that PFML payroll tax revenues, paid by both employers and employees, could be redirected to other uses in the future. If the PFML fund accrues a surplus, those funds should be used to lower contribution rates, not to fill unrelated budget gaps. This is especially important considering that, after 2028, the statute places **no cap on the tax rate,** which could be increased at the discretion of the Department. We support the principle that this fund must remain dedicated to PFML and should not become a target for future legislatures seeking flexible revenue.

In Support of LD 1307—An Act to Suspend the Remittance Obligation for Paid Family and Medical Leave Private Plan Users (*As Amended*)

We support LD 1307, as proposed to be amended by Senator Bradstreet. This legislation addresses a critical conflict between the Department's adopted rule and the unambiguous language of the statute governing PFML. Under current rules, employers that intend to offer private plans were required to begin submitting contributions on January 1, 2025, even if they plan to apply for substitution before benefits begin in 2026. This directly contradicts multiple sections of statute, and if left unaddressed, risks significant legal, fiscal, and administrative consequences for the program.

The law, as enacted by the Legislature, provides a clear and concurrent pathway for employers to substitute and private plan **without being required to pay into the state fund.** Consider the following statutory directives:

- §850-F(2) requires employers to make reports and pay premiums starting on January 1, 2025.
- §850-F(8) explicitly exempts from that requirement any "employer with an approved private plan under section §850-H"
- 850-H(1) established the right of employers to submit a private plan for approval with **no statutory delay or deferral** tied to that application.
- §850-H(8) limits the Department's rulemaking authority to determining "what constitutes a private plan", not the timing or remittance obligations of employers applying for one.

Nowhere in the statute is the Department granted the authority to delay or condition an employer's exemption from state contributions based on an arbitrary application date. The Department's adopted rule, which effectively mandates at least three months of contributions from employers seeking private plans, is both unsupported by statute and legally vulnerable.

PORTLAND
Regional Chamber of Commerce
93 Exchange Street Portland, ME 04101 • (207) 772-2811
chamber@portlandregion.com • PortlandRegion.com
Cape Elizabeth • Cumberland • Falmouth • Gorham • Scarborough • South Portland • Portland • Westbrook

We acknowledge the Department likely included this delay out of concern for early fund solvency. However, solving a statutory problem with unauthorized rulemaking is not a sustainable or legal solution. If the Law Court rules in favor of the plaintiffs in the pending legal challenge, the State may be required to refund millions in contributions to private plan employers. That outcome would jeopardize the financial footing of the PFML program just months before benefits are scheduled to being.

This litigation presents a significant risk, and absent legislative intervention before adjournment, the state could find itself unprepared to respond if the Law Court strikes down this rule after the Legislature is out of session. That would leave the Department scrambling to plug a funding gap, manage refunds, and potentially delay benefit availability, all without a clear legislative fix in place.

LD 1307 offers a responsible and legally sound clarification. It reaffirms the Legislature's original intent and ensures that both employers and the State can plan accordingly. The alternative—waiting for a Law Court ruling a reacting retroactively—is a recipe for fiscal instability and confusion. For these reasons, we urge the committee to support LD 1307 and ensure the PFML program launches with the legal clarify and financial security it needs to succeed.

In Support of LD 1712—An Act to Amend the Paid Family and Medical Leave Benefits Program to Balance Support of Businesses and Employees

LD 1712 is the most comprehensive vehicle before the committee to make necessary clarifications and course corrections to the PFML statute. We urge strong bipartisan support for this legislation, which incorporates multiple thoughtful provisions that respond to employer concerns without undermining the core purpose of the program.

Section 1 addresses a critical issue for many of our members, especially in the seasonal hospitality sector. As written, the "undue hardship" provision in the current statute lacks the flexibility needed to protect employers from serious operational disruption in cases where multiple employees might take leave during peak seasons. These businesses often operate within narrow seasonal windows, and in some cases, even the temporary absence of a few employees with job protection could upend operations, particularly when no long-term replacement is legally permitted.

Importantly, this amendment does not diminish an employee's right to take leave for emergencies, sudden illness, or other urgent needs. Instead, it offers a balanced, last-resort mechanism when employers and employees are unable to agree on a leave schedule in advance. Most leave scenarios will be worked out cooperatively, but this provision ensures that in rare, business-critical instances, businesses can continue to function without being forced into an untenable position.

Section 4 is vital to the long-term health of the PFML fund and the financial stability of both employers and workers. One of the clearest lessons from other states is that early solvency issues can spiral quickly, leading to public frustration, delayed payments, and ultimately, rate hikes. Washington state provides a cautionary tale. After early program deficits, lawmakers were forced to implement a "solvency surcharge", and despite that, the fund remains under fiscal pressure, with projections suggesting insolvency could return as early as 2029. Legislators there are now considering contribution rates as high as 2%, double Maine's current rate.

PORTLAND
Regional Chamber of Commerce

93 Exchange Street Portland, ME 04101 • (207) 772-2811
chamber@portlandregion.com • PortlandRegion.com

Cape Elizabeth • Cumberland • Falmouth • Gorham • Scarborough • South Portland • Portland • Westbrook

Maine must act now to avoid repeating this trajectory. The flat-rate 65% wage replacement in this bill strikes the right balance, providing meaningful financial support while reinforcing the program's original intent to provide temporary income assistance during a period of leave, not an alternative to long-term wage replacement. Should the fund show consistent surpluses in future years, the Legislature would retain the flexibility to revisit benefit levels, but it is far more prudent to start with a sustainable model than to risk cuts or emergency tax hikes down the road.

Finally, **Section 8** delivers commonsense fairness in the enforcement of penalties. As the statute and rule are currently written, there is no distinction between willful noncompliance with the law and minor, good-faith administrative errors. This could lead to outsized penalties for small mistakes like being $1 short on a quarterly remittance, or filing a form a few hours late, resulting in fines that could easily exceed $5,000 for a small business.

Section 8 provides vital clarity by creating a flat penalty structure, allowing for a waiver and appeal process when the facts support such relief, and providing employers with a reasonable "grace period" through January 1, 2026 to adjust to the new system without being hit with punitive fines. Employers want to comply, and Section 8 helps ensure they can, without being punished in the early stages of a complex program rollout.

Taken together, the provisions in LD 1712 reflect the kind of good-faith collaboration that will be essential for Maine's PFML program to succeed. We urge the committee to advance this bill and give employers, employees, and the Department the tools they need to ensure this landmark program is implemented with clarity, fairness, and fiscal stability.