

§850-H. Substitution of private plans

1. Application for approval of private plan. An employer may apply to the department for approval to meet its obligations under this subchapter through a private plan. In order to be approved, a private plan must confer rights, protections and benefits substantially equivalent to those provided to employees under this subchapter, including, but not limited to:

A. Allowing family leave and medical leave to be taken for all purposes specified in section 850-B, subsections 2 and 3; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

B. Providing family leave benefits and medical leave benefits to a covered individual for a maximum number of weeks substantially equivalent to the maximum number of weeks required in section 850-B, subsection 4 in a benefit year; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

C. Providing a wage replacement rate for all family leave benefits and medical leave benefits that is substantially equivalent to the amount required by section 850-C, subsection 2; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

D. Providing a maximum weekly benefit for all family leave benefits and medical leave benefits that is substantially equivalent to the amount specified in section 850-C, subsection 3; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

E. Allowing a covered individual to take intermittent leave as authorized by section 850-B, subsection 5; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

F. Imposing no additional conditions or restrictions on family leave benefits and medical leave benefits, or on family leave and medical leave taken in connection with those benefits, beyond those explicitly authorized by this subchapter or rules adopted pursuant to this subchapter; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

G. Allowing any employee covered under the private plan who is eligible for family leave benefits and medical leave benefits under this subchapter to receive benefits and take family leave and medical leave under the private plan; and [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

H. Providing that the cost to employees covered by the private plan may not be greater than the cost charged to employees under section 850-F. [PL 2023, c. 412, Pt. AAA, §7 (NEW).]
[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

2. Additional requirements. In order to be approved as meeting an employer's obligations under this subchapter, a private plan must also comply with the following provisions:

A. If the private plan is in the form of self-insurance, the employer must furnish a bond to the State with a surety company authorized to transact business in the State, in the form, amount and manner required by the department; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

B. The plan must provide coverage for all employees of the employer throughout the employee's period of employment with that employer; and [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

C. If the plan is in the form of a 3rd party that provides for insurance, the forms of the policy must be issued by an insurer authorized to do business in the State. [PL 2023, c. 412, Pt. AAA, §7 (NEW).]
[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

3. Withdrawal of approval. The department shall withdraw approval for a private plan granted under subsection 1 when terms or conditions of the plan have been violated. Causes for plan termination include, but are not limited to, the following:

A. Failure to pay family leave benefits or medical leave benefits; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

B. Failure to pay family leave benefits or medical leave benefits timely and in a manner consistent with this subchapter; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

C. Failure to maintain an adequate surety bond under subsection 2, paragraph A; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

D. Misuse of private plan money; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

E. Failure to submit reports or comply with other requirements as required by the commissioner by rule; or [PL 2023, c. 412, Pt. AAA, §7 (NEW).]

F. Failure to comply with this subchapter or the rules adopted pursuant to this subchapter. [PL 2023, c. 412, Pt. AAA, §7 (NEW).]
[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

4. Rights retained. An employee covered by a private plan approved under this section retains all applicable rights otherwise provided under federal and state law.
[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

5. Appeal. A contested determination or denial of family leave benefits or medical leave benefits by a private plan is subject to appeal before the department and a court of competent jurisdiction as provided in section 850-K.
[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

6. Violations. Employers offering private plans that violate this section are subject to a fine of \$100 per violation. The department shall transfer any fines collected pursuant to this subsection to the fund. The department by rule shall establish a process for the assessment and appeal of fines under this subsection.
[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

7. Cost of administration. The department shall annually determine the total amount expended by the department for costs arising out of the administration of private plans. An employer offering a private plan pursuant to this section shall reimburse the department for the costs arising out of the private plan in the amount, form and manner determined by the department by rule. The department shall transfer payments received pursuant to this subsection to the fund.
[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

8. Rules. The department shall adopt rules in accordance with section 850-Q regarding the determination of what constitutes a private plan that may be approved under this section.
[PL 2023, c. 412, Pt. AAA, §7 (NEW).]

SECTION HISTORY

PL 2023, c. 412, Pt. AAA, §7 (NEW).

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