

**TESTIMONY OF MAINE EMPLOYMENT LAWYERS ASSOCIATION
IN SUPPORT OF LD 1559
RESOLVE, TO CREATE THE COMMISSION TO DEVELOP A PAID FAMILY
AND MEDICAL LEAVE BENEFITS PROGRAM**

My name is Jeffrey Neil Young. I am an attorney with Solidarity Law and practice in Cumberland. I serve as an executive Board member of the National Employment Lawyers Association (NELA), and as vice-president of the Maine Employment Lawyers Association (MELA). NELA is the largest organization of civil rights lawyers in the country with about 4,000 national and affiliate attorney members. MELA is the largest organization of civil rights lawyers in Maine with about 75 member attorneys who represent employees in labor and employment matters across the state as at least 2/3 of their practice. I have been practicing labor and employment law for 35 years, the last 30 years here in Maine.

MELA supports the enactment of LD 1559, A Resolve to Create the Commission to Develop a Paid Family and Medical Leave Benefits Program. A paid family leave bill is desperately needed with both parents working in 61% of families with children and 71% of women with children under 18 at work.¹ Some 86% of American workers lack any paid family leave.² The United States is the **only** industrialized country in the world that does not provide paid family leave.³

Passage of such legislation will make Maine more attractive to workers who have a choice where to work. Paid family leave has become the norm in our neighboring states—Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. The failure to pass such legislation will make Maine unattractive to workers and put Maine at a competitive disadvantage. Conversely, passage of family medical leave legislation will encourage workers to remain or move to Maine to start their families—particularly important in the oldest state in the nation.

When I testified on a predecessor to this bill in 2019, six states—California, Rhode Island, New Jersey, New York, Washington, and Massachusetts—and the District of Columbia had enacted legislation providing for paid family leave through an insurance-type system similar to that proposed by the Speaker's bill.⁴ In the

¹ <https://www.bls.gov/news.release/famee.nr0.htm>

² <https://www.npr.org/2019/03/05/698336019/paid-family-leave-gains-momentum-in-states-as-bipartisan-support-grows>

³ <https://www.bostonglobe.com/opinion/2019/03/13/america-backward-approach-paid-family-leave/M02JqPQRW2f4qrwhvr7Sck/story.html>

⁴ See Exhibit A hereto, chart prepared by National Partnership for Women and Families analyzing each jurisdiction's bill, including reasons for leave, definition of family member, maximum duration of leave, minimum

ensuing two years, three other states—Colorado, Connecticut, and Oregon—have joined the chorus.⁵ Of those jurisdictions, six states⁶ provide for a shared employer/employee premium. In two states 100% of the premium is paid by the employee, similar to what is proposed by LD 1410.⁷ Employers pay 100% of the premium in the District of Columbia.⁸ Paid family leave bills are pending in several state legislatures, including South Carolina (H3560; state employees); Georgia (HB 146; state employees)⁹; On the national level, President Biden has proposed paid family leave as part of his American Families Act, but passage is uncertain.

Benefit duration ranges from anywhere from 4 to 20 weeks; California is proposing 26 weeks.¹⁰ Most countries provide an average of 18 weeks to an individual and over 52 weeks when maternity, paternity, home care, and parental leave is combined.¹¹ Experts generally have concluded that 26 weeks is optimal for parent-child bonding without harming career opportunities.¹² Research has shown

increment, eligibility requirements, how program is funded, size of employer covered, benefit calculation, job protection provisions, and waiting period.

⁵ <https://www.abetterbalance.org/our-issues/paid-family-medical-leave/>

⁶ New Jersey, New York, Washington, Massachusetts, Oregon, and Connecticut. In Washington State, the total premium paid is .4% of earnings; workers pay about 63% and employers about 37% of the weekly premium.

<https://www.seattletimes.com/business/employers-would-be-parents-get-set-for-new-washington-state-medical-and-family-leave/> . In Massachusetts, the total paid premium is .63% of earnings divided evenly between employers and employees (except employers with fewer than 25 employees do not contribute anything; employees still pay the 50% share).

<https://www.bostonglobe.com/business/2018/06/22/here-what-know-about-state-paid-leave-program/ocDMJRG6gUjrGZtxqZyewK/story.html>. In New Jersey, the first \$131,000 in wages is taxed.

<https://www.law360.com/articles/1127057/more-states-propose-paid-family-leave-policies>

⁷ California Rhode Island, and Connecticut. In California, workers pay .09% on the first \$115,000 of income.

<https://www.law360.com/articles/1127057/more-states-propose-paid-family-leave-policies>. Connecticut workers contribute .5% of wages up to the Social Security contribution base. <https://www.abetterbalance.org/our-issues/paid-family-medical-leave/> Rhode Islanders pay 1.3% of wages. *Id.*

⁸ This may be explained by the fact that the District of Columbia lacks authority to tax commuters.

⁹ <https://www.abetterbalance.org/resources/fact-sheet-paid-parental-leave-for-georgia-state-employees/>

¹⁰ <https://www.nytimes.com/2019/01/06/upshot/a-california-dream-for-paid-leave-has-an-old-problem-how-to-pay-for-it.html>

¹¹ https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

¹² <https://www.nber.org/papers/w5065>

that providing maternity leave benefits results in improved performance and productivity, worker retention, and economic growth.¹³

Weekly payments generally are 2/3 of the employee's average weekly wage, often capped at no more than the State's average weekly wage. New Jersey recently increased benefits to 85% of an employee's wages capped at \$860.¹⁴ California pays up to \$1216/week.¹⁵

MELA supports the resolve and offers the following comments:

First, the cost of family leave should not be borne solely by employees but should be shared by both employers and employees. Paid family leave benefits both groups.

Second, any family leave bill should provide for a private right of action. Eliminating a private right of action could effectively neuter the bill. The MDOL currently has five inspectors who only have time to respond to complaints about current laws and have no time to conduct proactive audits. Without additional staff, how would the Bureau of Labor Standards or the Maine Department of Labor be able to enforce additional labor protections like the paid family leave bill? The Maine Family Leave Requirements Act (MFMLRA) provides for a private right of action. 26 M.R.S. §848. How many lawsuits have been filed by employees for violation of the MFMLRA in the almost 15 years since it was enacted in 2005? Not many that I am aware of even though the MFMLRA provides for back pay, liquidated damages, and attorney's fees. Private attorneys can perform an important role in ensuring that the law is enforced. A model like the Maine Severance Pay Act, where both the Attorney General's office and private counsel can bring suit, would make a lot of sense if the Committee does not want to adopt the same provisions as the MFMLRA. Perhaps give the AG's office a period of time after a complaint is filed with the MDOL to file suit. If the AG does not do so, then the employee can bring a private cause of action in which the AG could intervene.

Third, consistent with research showing 26 weeks is optimal for parent-child bonding, MELA would like to see paid family leave extended for child birth and adoption from 12 (possibly 20 weeks), to a maximum of 26 weeks without regard to the need medical leave.

¹³ <http://www.nationalpartnership.org/our-work/resources/workplace/paid-leave/family-act-fact-sheet.pdf>

¹⁴ <https://www.lexology.com/library/detail.aspx?g=852b6a41-9acc-4023-8eef-eef4f71ede62>

¹⁵ <http://www.thenation.com/article/paid-family-leave-score/> Thi

Fourth, any reduction for permanent and temporary disability should be based on the proportion of payment of such benefits by the employer and the employee. If the employee contributes 100% of the premium, there should be no offset.

Thank you for your consideration.