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Understanding Maine's Proposed Paid Family and Medical Leave Program Rules

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Why are we here?

- The Proposed Rules could still change—but only if we all speak up
  - Public Hearing: Monday, June 10, 9 am – DOL Augusta
    - Testimony can be provided
    - Maine Department of Labors Frances Perkins Room at 45 Commerce Drive, Augusta
  - Provide comment through July 8, 2024
    - Paid Family and Medical Leave Program, 50 State House Station, Augusta, Maine 04333-0050
- Current timeline:
  - Payroll contributions begin: January 1, 2025
  - Benefits begin: May 1, 2026

Top of Mind Concerns

These are the key aspects that you should be considering

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Private Plans

- What the Rules Provide:
  - Fully-insured Private Plan
  - Self-insured Plan
  - Timing
    - Made after 1/1/2026, but not effective prior to 4/1/26, but have to pay until quarter end (6/30/26)
  - Application fee
  - Cannot reapply for substitution for three years from date of cancellation of previous plan

- What You Can Do
  - Ask for a change in timeline so that private plans are available 1/1/25 with employers applying following finalization of rules
  - Decreases employers paying into the system for 18 months if they are going to use a private plan
  - Ask for a certification process to show desire to use private plan which requires payment into plan with back charges if not in effect by April 1, 2026

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Affinity Relationship

- The Proposed Rule:
  - *Defined as "a significant personal bond between a covered individual and another individual that is or is like a family relationship, regardless of biological or legal relationship*
  - *Limited to "one such designated individual per benefit year." (IV.B.3)*
- The Problem:
  - No examples given of what qualifies/does not qualify
  - No definition of de facto relationship; who determines and how is the employer suppose to know
- Proposed Alternative:
  - Define de facto and elements considered as to affinity relationship
  - Include affinity relationship when "family" leave is used (Section VI(A)(8), VI(A)(4), etc.)

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Undue Hardship – The Statute

- Recall that the statute provides the following in 850-B:
  - 7. Notice to employer. Absent an emergency, illness or other sudden necessity for taking leave, an employee shall give reasonable notice to the employee's supervisor of the employee's intent to use leave under this subchapter. Use of such leave must be scheduled to prevent undue hardship on the employer ***as reasonably determined by the employer.*** If an employer fails to provide notice as required under section 850-I, the employee's obligation to provide notice under this subsection is waived.

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Undue Hardship (the Proposed Rules)

- Burden on Employer (V.C.) – But not as determined by the Employer
- Means: “a significant impact on the operation of the business or significant expenses, considering the financial resources of the employer, the size of the workforce, and the nature of the industry.”
- Focuses on notice or lack thereof by the employee
- No requirement that request for leave be provided in writing
- If undue, Employer and Employee talk
- If they cannot decide, Administrator “shall set a schedule it deems reasonable and such decision shall not be subject to review.”
- If employer does not object to claim within 10 days of notice, then no obligation to later argue undue hardship

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Employment Protections

- Section IV(A)(2) allows employees to submit an application for benefits up to 90 days AFTER leave has begun.
  - Or more than 90 days if Department finds “good cause”
- Section V has a general obligation on employees to provide 30 days ADVANCE notice of the intent to take leave, EXCEPT in emergency circumstances in which case notice must only be provided “as soon as is feasible.”
- The Problem:
  - Someone doesn’t show up for 3 weeks and doesn’t contact employer, under these rules entitled to job protection
  - This is unfair to the employer and will result in having to maintain employees after no call no show
- Proposed Alternative:
  - Absence with no notice should permit an employer who has refilled position, employee should not be entitled to job protection even after 120 days

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Employer Role/Notice of Decision

- The Proposed Rule
  - Section VI (H) of the rule (page 8) provides employers with notice than an employee has filed an *application* for benefits.
  - Section VII details the various notices provided to the applicant regarding the decision of the Administrator to approve or deny the application.
- Problem:
  - No copies of notices provided to employer
- What You Can Do:
  - Ask that employers be provided with all notices provided to employees

Other Concerns

Still concerning and things which may impact your business in ways that don’t impact all business

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Employer Size

- The Proposed Rule
  - (X.F.) *The employer size for the purposes of determining premium liability for calendar year 2025 is determined by the number of covered employees employed for the employer in the State of Maine on* ***October 1, 2024.***
  - *The number of employees includes full-time, part-time, seasonal employees and temporary employees. On October 1, 2025, and October 1 of each year thereafter, the employer shall calculate its size for the purpose of determining premium liability for calendar year 2026 and each calendar year thereafter.*
- The Problem
  - Will this change hiring practices in the organization?
- The Solution
  - This depends on your industry and your hiring cycle

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Ability to Work

- The Statute:850-B(3)
  - Medical leave eligibility. A covered individual with a serious health condition that makes the covered individual unable to work is eligible for medical leave.
- Multiple Simultaneous Employers

- The Problem:
  - No ability for the employer to ask if there is a reasonable alternative to employment as a result of medical condition
    - Light duty/restricted duty
  - Ability to make more money on leave
    - From a handbook perspective, check as to moonlighting provisions
- The Solution
  - In Section VI(H), employers should be asked if there is “reasonable employment” available to the employee given the employee’s medical condition

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Wages/Benefits

- The Proposed Rule
  - Wages includes tips, gratuities, commissions, and bonuses
  - If an employer fails to deduct the required employee share of the premium from wages paid during a pay period, the employer is considered to have elected to pay that portion of the employee share. The employer shall not deduct this amount from a future paycheck of the employee for a different pay period.
  - Employers shall include in the employee's pay statement that a premium deduction for Paid Family and Medical Leave has been deducted from the employee's wages
- The Issue
  - How are other forms of compensation treated?
    - Stock options, etc?
  - Section IIX Calculation of Benefits
    - How and where do we report benefits
    - Why does a business have to hold this obligation, can Revenue Services do this based on information that they already have?
- The Solution:
  - Ask that employers not have to report the information; that the data be collected from government sources that have the data
  - Request similar consideration for errors that employees receive if they make a good-faith mistake

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The Statute: Leave Time & Workweek

- The Rule: “Partial weeks or partial days of leave will be prorated against the employee’s scheduled workweek”
- *Workweek defined as: the number of hours an employee is scheduled to work in a particular week. . . . A salaried employee . . .have a scheduled workweek of 40 hours, Monday-Friday, 8 hours per day.*
- The Problem: Smallest increment is 8 hours for a salary employee. “Intermittent and reduced schedule leave may be taken by the covered individual in increments of not less than a scheduled workday,” unless “employer and employee agree in writing,” then with a minimum increment of 1 hour.
- The Solution:
  - Ask that workweek be re-defined as the employee’s normal schedule over the 4 weeks prior to leave

Questions?

Thank you.