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June 28, 2024

Commissioner Laura Fortman  
Maine Department of Labor  
54 State House Station  
Augusta, ME 04333-0054

Dear Commissioner Fortman,

Please accept this letter as the Maine Municipal Association's (MMA) comments on the Department of Labor's proposed rules guiding implementation of the Maine Paid Family and Medical Leave (PFML) Act (26 M.R.S, chapter 7, subchapter 6-C.), which at the request of MMA's governing board is being shared with our member communities.

The Association appreciates the department's efforts, as several sections of the rule provide employers and employees with the clarity needed to implement and adhere to the leave act. However, there remain several provisions in the rule (and law) that, from the perspective of MMA as an employer and membership organization, would benefit from greater review and development. To that end, what follows are our concerns and questions about specific provisions in the rule, and should the department elect to submit a state agency bill to the 132<sup>nd</sup> Maine State Legislature, a few suggestions for amendments to the paid leave act for consideration.

### **Amendments to the Rule**

Affinity Relationship Definition. The rule defines an "affinity relationship" (Section I) 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." We understand that the intent is to expand on the historic legal definition of an affinity relationship, which is generally created as the result of marriage. While the Association appreciates the proposed rule (Section IV) limits the use of this leave to once annually, the definition remains far too broad, and it will be difficult for regulators to decide what constitutes a "family like relationship." It is too subjective of a standard and additional guidance is needed with respect to what these relationships entail. Building more certainty into the rules will mitigate the need to turn to the courts to determine the nature of affinity relationships.

Contributions and Reports. As provided for in statute (26 M. R.S. §850-F) and the proposed rule (Section XI), employers who fail to remit timely premium payments are subjected to a penalty. However, nothing in the statute or rule provides instruction on how employers will make quarterly contributions and file reports. It may be the case that municipalities need to update software programs, at a cost to the local unit of government, and therefore more advanced notice would be appreciated.

Maintaining Written Records. While potentially unintended, it seems as though the balance between employee and employer rights has been significantly tipped, as employers are

prohibited from requiring employees to submit requests for leave in writing, but all communications from employers must be in writing. Written documentation of these proceedings should be viewed as a means of protecting both the interests of the employer and employee. Having a written account simply provides a record that is available for review at a future date when memories surrounding the event may not be as sharp. Municipal leaders believe the adage should apply equitably here, as the sauce for the goose is sauce for the gander.

Unemployment & PFMLA Interface. Some employers are raising concerns regarding the act's impact on unemployment benefits. The questions are: (1) whether an employee can take leave early in employment and not return; and (2) whether that time, under implementation of the leave act, is counted towards the employer's obligations to pay unemployment. It is the Association's understanding that nothing in rule or law addresses this issue.

Education & Training. Finally, although the law and rules are replete with mandates and directives placed on employers, there is nothing in the statutes and supporting regulatory provisions that require the state to provide training and technical assistance. As a representative of municipal employers who have many unanswered questions, we are urging the state to develop a free and on-demand education and training program dedicated to the implementation of the leave act. Employers should be provided with every tool available to successfully execute the program.

### **Amendments to State Statute**

Process for Application & Approval of Benefits. 26 M. R.S., §850 and Section VI of the rule, require claimants to submit applications to the program administrator "no more than 60 days prior to the start...of the leave and no more than 90 days after the start date of...leave." The Association believes that the 90-day window needs to be reduced, with a preference for capping the deadline to no later than 30 days after initiating leave.

Considering the act and proposed rule already include a "good cause" provision allowing for the late submission of an application and further deference is provided to employees in emergency situations, as family members or health care providers are authorized to provide notice of leave on behalf of an incapacitated employee, a reduction in the timing for filing a notice is not an unreasonable request.

Additionally, we believe the rules should be amended to include a provision that states employees who are found ineligible for the benefit after taking leave are subject to termination. Without a clear process for addressing without cause absenteeism, the potential for termination could help ensure that employers are, at a minimum, kept in the loop with respect to the use of the leave, and provided a necessary enforcement tool.

Complexity & Interplay Among Leave Laws. As mentioned in the comments MMA submitted earlier this year as part of the department's listening sessions, discrepancies regarding when an employee is eligible, and the extent of the benefits found in Maine's leave acts, are also of concern. Under Maine's Family Leave Act, individuals who have been employed for 12 consecutive months with a single employer are eligible for up to 10 weeks of unpaid leave, provided notice and other criteria are met. Under PFML, an employee is eligible for up to 12 weeks of either family, medical, or a combination of family and medical leave, once having earned six times the state average weekly wage over the course of 12 months. While the benefits

under the two programs are somewhat similar, the most significant difference is the permanency of the PFML benefit, since the law provides that once the earnings and 12-month criteria have been met, the benefit is portable from employer to employer and potentially available on the first day of employment.

Impacts on the Property Taxpayers. Since the employer premium contribution provisions of the act apply to public employers (26 M.R.S. §850-A), including schools, counties and municipalities, much of the premium costs will be borne by the property taxpayers.

Statewide estimates show that property taxpayers fund roughly 65% of K-12 education programs, 80% of county government services, and 75% of municipal government operations. Continuing to increase these burdens, without an appropriate assessment of its impacts, is a concern that must be addressed by the Maine State Legislature and Administration. To that end, if there is any question with respect to the costs associated with this program, one only needs to look to PART ZZZ of the supplemental FY 2024 – FY 2025 General Fund budget (PL 2023, c. 643). Of relevance, this section of the budget increases the cap on the cost of administering the program from 5% to 10% of the amount annually deposited into the Paid Family and Medical Leave Insurance Fund.

Depending on the nature of the work, the leave benefits impact certain employers differently. Employers, such as municipalities, that have no other choice but to find a replacement for an individual on intermittent leave, will increase the wages paid and again, the burdens placed on property taxpayers. In many cases, overtime wages will need to be provided to snowplow drivers, firefighters, or law enforcement officers to ensure needed public safety services are provided. As is the case for many municipal positions, a replacement must be found at added costs.

Calculating Premium Amounts. Clarity is also needed on whether employers are to calculate the premium amounts and deduct employee contributions based on only the wages of “covered employees” or all “wages,” as defined by the statute, paid by an employer generally. According to 26 M.R.S. §850-F(2), the premium amount is not to exceed a combined rate of 1% of “wages.” The term “wages” is defined in §850-A(30) very broadly to include “salary, wages, tips, commissions and other compensation as determined by the rule.” The definition is not limited to such compensation earned by “covered employees.” The rule does not provide further detail in determining the “wages” that incorporate the premium payment. However, definitions of “wages,” in the rule, which are used to determine benefit payments, reference only the “covered employee” or “covered individual” weekly wage. In addition, the calculation of employer size for purposes of determining premium liability is determined by the number of “covered employees.” If the intent of the premium payment is to compensate for the payment of benefits only to covered employees, the law should expressly state in the statutory definition of “wages” that it is limited to that of “covered employees/individuals.”

Timing of Premium Payments & Notices of Increases. As provided for in 26 M.R.S. §850-F and Section XI, employers must submit required payroll contributions beginning on January 1, 2025. Additionally, starting with the 2028 calendar year and each subsequent year, the department is authorized to set the premium for the coming calendar year. Unless the premium is reduced, the timing of the notice of an increase will be problematic for the towns, cities and plantations that normally commit taxes in September. Property taxes can only be committed once annually. Unless a community has surplus revenues or related designated funds, the revenue does not exist. Municipal leaders question how the



employer's share of the premium will be raised, which is a concern exacerbated by the department's authority to assess a penalty of 1% of the employer's total payroll for the quarter if payment is not received. Even if a community had access to surplus or designated revenues, in town meeting communities the expenditure of those funds would require scheduling and conducting a special town meeting, which will come with added costs. For your information, attached to this memo is a related Paid Family Medical Leave updated guidance document prepared and published by MMA's Legal Services Department.

Funding Two Programs. Continuing in the vein of property taxpayer burden, the regulations do not allow employers to apply to provide benefits under a substantially equivalent plan, either a self- or fully insured product, until January 1, 2026, with a delayed effective date of April 1, 2026. This means that all employers will need to pay into the fund in 2025 and the first quarter of 2026, even if they don't intend to participate in the program. However, they will also need to maintain some disability coverage for employees at the same time, as benefits are not available under PFML until at least May 1, 2026. Again, this calls into question the ability of the property taxpayers to fund the transition process.

Lack of Municipal Representation on Authority. Compounding these concerns is the fact that the law appointing members to the Paid Family Medical Leave Benefit Authority (26 M. R.S., §850-O), an advisory committee directed to monitor the program, does not include a member with local government expertise. Since the property tax implications are real and related policies complex, at the very least, someone familiar with property taxpayer impacts should have a seat at the table.

For all the concerns raised above, we ask that you keep these comments in mind as you implement the program's rules and continue to work with the Legislature and the PFML Benefits Authority to implement the law.

If you have any questions about these comments, please do not hesitate to contact Kate Dufour, Director of Advocacy & Communications at either [kdufour@memun.org](mailto:kdufour@memun.org) or 1-800-452-8786.

Thank you for taking the time to consider our concerns.

Sincerely,



Catherine M. Conlow  
Executive Director  
Maine Municipal Association

**BUDGETING FOR PAID FAMILY & MEDICAL LEAVE  
&  
REQUEST FOR COMMENTS ON DRAFT REGULATIONS  
MMA Legal Services Update**

As municipal employers know, the Maine Legislature enacted a new Paid Family & Medical Leave (“PFML”) law in 2023. (See [26 M.R.S. §§ 850-A – 850-R](#)). The law provides eligible public and private sector employees with up to 12 weeks of paid time off for family or medical reasons including illness, to care for a relative, or for the birth of a child.

**Employer Contributions/Budgeting:**

Although benefits under the program will not be available until 2026, employer contributions will be required beginning January 1, 2025. For that reason, we want to remind municipal employers to plan for any required contributions to the PFML program within municipal budgets covering all or part of calendar year 2025.

Both employers and employees will contribute to the PFML Fund, which will pool contributions to pay for future claims and administrative costs. For calendar years 2025 - 2027, the combined contribution rate is set at either 0.5% or 1% of employee wages, based on the size of the employer. Employers with 15 or more employees must contribute an amount equal to 1% of employee wages to the Fund but may deduct up to half of the contribution from the employees’ wages. Employers with fewer than 15 employees must contribute an amount equal to 0.5% of wages and may deduct the entire amount from the employees’ wages. These requirements may be altered for public employees covered by a collective bargaining agreement.

Some details concerning calculation of employment levels and contributions will not be finalized until program regulations are issued later this year. However, that fact should not prevent municipalities from developing a rough estimate of their premium obligation (if any) and planning for those additional costs.

Depending on factors such as the municipal fiscal year, the timing of municipal budget approvals and the content of compensation budget lines/appropriations, upcoming PFML premium costs might be addressed within the annual budget or funded by a special town meeting or council meeting held at another time. Note that because funds may not be raised from taxation after property taxes are committed, any funds that will be raised from taxation this year must be approved prior to the municipality’s 2024 property tax commitment. Alternatively, funds may generally be transferred from existing accounts or from unappropriated surplus at any time, including during calendar 2025, unless a municipal charter provides otherwise.





MMA Legal Services

June 5, 2024

Contact MMA Legal Services to discuss local funding options, warrant articles or charter provisions.

Contact Reginald Parson, Deputy Director of the Maine Department of Labor's PFML program at (207) 623-7900 or [Reginald.Parson@maine.gov](mailto:Reginald.Parson@maine.gov) with questions or for assistance in estimating premium costs.

Also see the Maine DOL's [PFML webpage](https://www.maine.gov/labor/pfml/) (https://www.maine.gov/labor/pfml/ ) for additional information about the program.

### **Draft PFML Regulations Issued: Public Hearing & Request For Comments:**

The Maine DOL has issued a draft regulation to provide definitions and to implement the PFML law. The draft regulation explains in detail the rights and responsibilities of employers, employees, self-employed individuals and tribal governments concerning contributions and benefits, and also outlines application procedures, notice requirements and options for employers to seek approval of a substitute a private plan.

The draft regulations can be accessed on the Maine DOL's [PFML webpage](https://www.maine.gov/labor/pfml/) under the "Rulemaking Process" tab or by visiting the following link:

[https://www.maine.gov/labor/docs/2024/rulemaking/12\\_702PFMLDraftRule.pdf](https://www.maine.gov/labor/docs/2024/rulemaking/12_702PFMLDraftRule.pdf)

**Request for Comments:** The Maine DOL is accepting comments on the draft rule until Friday July 8, 2024. Comments may be submitted in writing via an online portal at the following link: <https://www.maine.gov/labor/rulemaking/>

**Public Hearing:** A public hearing will be held on the draft rule on Monday June 10, 2024, at 9:00 a.m., at the Maine Department of Labor, Frances Perkins Room, 45 Commerce Drive, Augusta, Maine 04330.

Municipal employers are urged to provide any comments, suggestions or concerns they may have with the draft rule through the public hearing or comment submission process.

Contact Reginald Parson, Deputy Director of the Maine Department of Labor's PFML program at (207) 623-7900 or [Reginald.Parson@maine.gov](mailto:Reginald.Parson@maine.gov) with questions about filing comments or the rulemaking process.

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For more information or questions, please contact:

**MMA Legal Services**

**800-452-8786**

**[legal@memun.org](mailto:legal@memun.org)**