Meeting of the Paid Family and Medical Leave Benefits Authority

Tuesday March 12, 2024 9:00am Champlain A Room, 45 Commerce Drive, Augusta, ME

Authority members in attendance:

* Maria Fox
* Jay Naliboff
* Christopher Washburn
* David Barber
* Sarah Conroy
* Michelle Corry
* Samuel Hight
* Ranae L’Italien
* Jenni Tilton-Flood
* Benjamin Grant
* Kim Smith
* Joan Cohen
* Brieanna Guttierez
* Douglas Cotnoir

DOL staff in attendance:

* Commissioner Laura Fortman
* Director Luke Monahan
* Deputy Director Reggie Parson
* Program Manager Sarah Brydon
* AAG Nancy Macirowski
* Communications Director Jessica Picard

Commissioner Fortman welcomed attendees and introduced DOL staff members.

AAG Macirowski explained the remote meeting policy. Remote participation is allowed as long as the authority adopts a written remote participation policy. AAG Macirowski shared a proposed policy stating that individual authority members can join remotely if physical presence at a meeting is not practicable. The policy further states that if any board member participates remotely, the public can also access the meeting remotely. At future authority meetings, if remote participation is available and if the public is allowed to provide comment, there must be a mechanism to provide such comment remotely as well.

Authority Member Barber made a motion to approve the policy as drafted, seconded by Authority Member Tilton-Flood. There was no discussion on the motion. The Authority voted unanimously to approve the remote participation policy.

Director Monahan gave an overview of the meeting agenda.

Deputy Director Parson gave an overview of the PFML implementation process, including work done to date and key dates to be aware of moving forward.

Work done to date:

* PFML legislation signed into law July 2023 and effective October 25, 2023.
* PFML Authority appointed January 1, 2024.
* Listening sessions conducted in January and February of 2024.

Key dates to be aware of moving forward:

* Rules must be adopted by MDOL by January 1, 2025.
* Contributions to the PFML fund begin on January 1, 2025.
* Benefits will be available on May 1, 2026.

The rulemaking process will begin in the spring of 2024.

When draft rules are made available, the public can comment on them. The law requires a 30 day public comment period but staff intends to provide a 45-day public comment period.

Deputy Director Parson also provided an overview of how the PFML program will operate, including covered leave reasons and calculation of benefits. Authority Member Washburn asked how the State Average Weekly Wage is calculated and AAG Macirowski indicated a state economist would be better able to answer that.

Director Monahan listed three staff priorities for this year:

* Rulemaking activity culminating in formal adoption of rules by January 1, 2025.
* Create new technology to track contributions as they come in. Existing technology is not suited to PFML needs, so an RFP will be needed, and that will be made public within approximately the next month.
* Public education effort, initially to explain contributions and eventually to explain benefits as well. There is an RFP for this as well.

Authority Member Naliboff asked what authority members should do when members of the community ask them questions. Director Monahan indicated that the FAQ page of the MDOL’s PFML website will continue to provide more detailed information as rulemaking activity progresses.

AAG Macirowski provided an overview of the PFML Authority. There are 14 members, and there must be a quorum of 8 in order to act. Members elect a chair and a vice chair. The chair is responsible for running meetings, and for setting and distributing the agenda, with staff support. Meetings must be held at least once a quarter, but members can decide to meet more frequently. At least once per year there must be a meeting to solicit commentary from the public.

AAG Macirowski listed the two main duties of the Authority as follows:

* To advise MDOL staff (by providing policy oversight, making recommendations, and proposing changes)
* Fiduciary role: the Authority must conduct an actuarial study by February 1, 2026 to ensure solvency of the fund. If additional contributions are required based on the findings of that actuarial study, then the Authority can, by majority vote of the members, delay the program’s benefit start date from May 1, 2026 to a date as late as August 1, 2026. By January 1, 2027 and annually thereafter, the Authority can also recommend to MDOL that the maximum Weekly Benefit Amount be adjusted if that is necessary to maintain solvency of the PFML fund.

Authority Member Naliboff asked, with respect to the question of claims administration being done by public staff or by a third party vendor, what the role of the Authority would be in reviewing a contract for a third party vendor. Authority Member Fox sought to clarify specifically whether the Authority will decide whether to use a third party vendor. Director Monahan clarified that this will be a staff decision.

AAG Macirowski explained that Authority members can’t conduct business outside of meetings. Business can only be done during the public meetings. Authority members can have conversations with community members, but cannot do substantial business with other Authority members between meetings, including via email. Exceptions where emails between meetings would be permissible include scheduling of meetings and raising a potential conflict of interest to determine whether a conflict is indeed present. AAG Macirowski explained that conflict of interest means, for example, that an Authority member could not recommend a vendor (e.g., an actuarial firm) if the Authority member has an ownership interest in the vendor company or would otherwise benefit personally. If a conflict is present, the Authority member would be allowed to participate in conversation but would abstain from voting on the matter.

AAG Macirowski explained the rulemaking process. MDOL staff will post a draft rule. All Authority members are on the Interested Persons list and so will be emailed when the Secretary of State posts the draft rule. The public can submit written comments during a 45-day comment period. Authority members can submit public comment in this manner in their capacity as individuals. The Department will hold a public hearing on the draft rule as well. The Department is required to respond to all comments received (although they can be grouped by topic). The Authority can choose to make a comment as a body, but that would have to be done during an Authority meeting.

The Department must finalize the rule within 120 days of the close of the 45-day comment period. If there are substantial changes at that point, the rule can be reposted with an additional 30-day comment period.

Authority Member Fox asked whether the Authority will have to vote on comments as a body. AAG Macirowski answered that no, the Authority does not have to submit comments as a body, but it can. AAG Macirowski also indicated that if Authority members have opinions and choose to discuss them during a meeting, that can be helpful for staff to hear.

Authority Member Naliboff asked whether the Authority votes on final adoption of the rule. AAG Macirowski answered that no, the Authority does not vote on final adoption of the rule. Final adoption of rules is a staff responsibility as dictated by statute.

AAG Macirowski asked for a motion to nominate a chair of the Authority. Authority Member Naliboff made a motion to nominate Authority Member Fox as chair. Authority Member Fox accepted the nomination. The Authority voted unanimously to approve Authority Member Fox as chair.

Authority Member Tilton-Flood nominated Authority Member Hight as vice chair. Authority Member Hight accepted the nomination. The Authority voted unanimously to approve Authority Member Hight as vice chair.

Authority Member Tilton-Flood asked what would be best for the Authority members to focus on, in order to be prepared for future meetings. Director Monahan answered that key areas of focus would be the ME PFML statute, federal FMLA, and other states’ PFML programs.

Chair Fox set the day and time of the next two meetings:

* Tuesday May 7 9:00am – 11:00am
* Tuesday June 11 9:00am – 11:00am

Deputy Director Parson provided forms for Authority members to have their travel to meetings reimbursed.

Vice Chair Hight moved to adjourn, seconded by Michelle Corry. The Authority voted to adjourn by a unanimous show of hands.