

**12-174**  
**Chapter 1**  
**Rules Governing the Maine Paid Family and Medical Leave Program**

**BASIS STATEMENT**  
**AND SUMMARY AND RESPONSE TO COMMENTS**

**SUMMARY:**

The Maine legislature enacted the Paid Family and Medical Leave (PFML) law in October 2023, establishing the program effective January 1, 2026. The PFML law is codified at 26 M.R.S. §§ 850-A – 850-R. The PFML law, at 26 M.R.S. § 850-Q, directs the Department of Labor to adopt rules necessary to implement the law by January 1, 2025. The PFML law and this rule will apply to most employees and employers in the State of Maine. PFML will provide up to 12 weeks of paid leave per benefit year for family, medical or safe leave, with such benefits beginning in mid-2026. Premium contributions will begin January 2025.

Before the formal rulemaking process began, the Department held informal listening sessions to solicit feedback from the public about questions or issues surrounding PFML that may benefit from further detail or clarification in rule. The Department hosted four informal listening sessions on the following topics: January 25, 2024 (Contributions), February 1, 2024 (Eligibility), February 12, 2024 (Private plans) and, February 28, 2024 (Any provisions related to the PFML law). Furthermore, the Department consulted with other paid leave states as to their experiences with implementing their respective programs to further inform the Department’s rulemaking. The Department considered United States Department of Labor regulations and guidance with respect to federal Family Medical Leave. Furthermore, the Department considered the legislative history of the statute. The Department also held meetings with the Paid Family Leave Authority and considered their recommendations. The Department also relied upon the expertise and experience of its staff.

On May 20, 2024, the Maine Department of Labor (“The Department”) invited comments on the new Chapter 1 of the rules governing the Maine Paid Family and Medical Leave Program (PFML). Comments were accepted through July 8, 2024.

On August 28, 2024, the Department invited a second round of comments on amendments to the proposed Rule based on comments submitted in the first comment period. The second comment period ended on September 30, 2024. The Department carefully considered more than 1,600 comments submitted by approximately 500 commenters during both comment periods. This statement contains the factual and policy basis for each section, comments from the first and second round and the response to the comments in each round. In addition to the changes set forth below, the Department made minor grammatical and formatting changes.

## **General comments on Paid Family and Medical Leave Law or Rule**

### **General comments:**

**Summary of comments in round 1:** Commenters AC 5, 001,002 003, 004, 006, 007, 008, 010, 011, 012, 013, 017, 018, 021, 022, 023, 024, 027, 028, 030, 031, 032, 033, 034, 035, 036, 042, 046, 047, 048, 049, 051, 055, 057, 059, 064, 067, 068, 069, 070, 071, 072, 074, 075, 076, 077, 078, 079, 080, 081, 093, 094, 095, 096, 098, 099, 101, 116, 117, 121, 125, 127, 128, 129, 138, 139, 140, 141, 142, 145, 149, 152, 153, 156, 165, 172, 173, 174, 180, 182, 183, 184, 187, 190, 191, 192, 193, 194, 197, 200, 202, 203, 205, 207, 209, 210, 211, 212, 213, 218, 220, 229, 230, 269, and 277 provided general opinions or suggestions regarding the Paid Family and Medical Leave law. Some comments expressed concerns about burdens on businesses as a result of the law creating a paid family and medical leave program. One comment suggested the proposed rule should be a major substantive rule. Other comments provided general support of the creation of the law and asked general questions that did not address any specifics about the rule.

**Round 1 response to comments:** The Department does not have the authority in Rule to eliminate or broadly change the PFML Law, and therefore no changes were made to the Rule in response to these comments. The statute explicitly states at 26 M.R.S. § 850-J that this rule is a routine technical rule.

**Comments received in round 2:** Commenters 016, 048, 057, 059, 061, 063, 090, 124, 127, 137, 140, 148, 166, 168, 182, 207, 235, 242, 250, 258, 266, 268, 267, 279, 282, 283, 284, 285, 286, 289, 292, 293, 294, 308, 311, 312, 313, 314, 317, 318, 320, 321, 324, 325, 326, 330, 334, 335, 336, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 357, 358, 360, 361, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 391, 392, 393, 394, 395, 396, 397, 399, 401, 403, 405, 406, 407, 408, 409, 410, 413, 414, 415, 416, 417, 418, 419, 420 421, 422, 423, 425, 426, 427, 428, 429, 432, 434, 435, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 473, 474, 475, 476, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502 provided general opinions or suggestions regarding the Paid Family and Medical Leave law and the proposed rule. The comments provided ranged on various subjects such as the overall impact on the state's workforce that could affect the operations of businesses with the creation of the Paid Family and Medical Leave law, the impact on small businesses with the addition of another tax (or premium) imposed. One comment suggested the proposed rule should be a major substantive rule. Other comments encouraged the Department to find ways to strengthen the law or the rule that provides greater protections employees without specifics on what should be changed in rule. This also includes over 150 comments offered to encourage the Maine Department of Labor to ensure the proposed rule remains strong to support workers in accessing the Paid Family and Medical Leave Program.

**Round 2 response to comments:** The Department does not have the authority in Rule to eliminate or broadly change the PFML Law, and therefore no changes were made to the Rule in response to these comments. The statute explicitly states at 26 M.R.S. § 850-J that this rule is a routine technical rule.

## **Section I - Definitions**

**Factual and policy basis:** This section implements and furthers the goals of the law by clarifying certain definitions contained in 26 M.R.S § 850-A and by adding other definitions that will facilitate operationalization of the law.

### **Section I(A)(2) – Definition of “Administrator” –Second version of proposed rule**

*Note: The Department added a definition of “Administrator” Section I(A)(10) in the second version of the proposed rule, for the sake of clarification. The rule states that “Administrator” has the same meaning as 26 M.R.S. § 850-A(1).*

No comments were received on this change.

### **Section I(A)(2) – Definition of “affinity relationship”**

*Note: In the second draft of the proposed rule, the Department struck the definition of “affinity relationship” that had been in Section I(A)(2). This change was made in response to comments, as explained below.*

**Round 1 comment summary:** Commenters 059, 060, 065, 073, 111, 115, 116, 118, 120, 122, 136, 142, 147, 148, 151, 154, 157, 158, 160, 162, 171, 185, 196, 198, 205, 219, 221, 222, 225, 226, 232, 237, 241, 242, 246, 256, 257, 258, 259, 262, 263, 268, 271,274,276, and 280 commented the definition in the proposed rule is too broad and recommended the Department provide additional guidance to determine what constitutes an affinity relationship. Commenters 115 (PFML Authority), 122, 185, 205, 221, 225, 232, 242 and 268 suggested the Department adopt the Oregon model that uses the “totality of the circumstances” approach to define affinity relationships. Commenter 073 stated the Oregon model would add ambiguity and uncertainty in the processing of claims.

**Round 1 response to comment:** The Department removed the term “affinity relationships” in the second proposed rule because that phrase is not in the statute. Instead, the second draft of the proposed rule at Section I(A)(12) refers back to 26 M.R.S. § 850-A(19) which uses the phrase “an individual with whom the covered individual has a significant personal bond.” Additionally, in accordance with the recommendation of the Paid Family Medical Leave Authority, the Department added criteria for establishing the “existence of a significant personal bond” similar to those used in Oregon. Those additional clarifying criteria appear in the second proposed rule sent out for comment in Section VI(A)(4).

**Round 2 comment summary:** Commenters 059, 157 and 408 note the removal of the term “affinity relationships” but state that the definition in the statute is still too broad lacking appropriate criteria. Commenters 059, 257 and 314 suggested reinstating the provision limiting a covered individual to one designee with whom they have a significant bond per year. Commenter 257 recommends there be some form of verification of the significant personal bond relationship.

**Round 2 response to comment:** The Department removed the definition of affinity relationship in favor of reliance on the existing statutory definition of family member coupled with more specific criteria in Section VI (A)(4) for demonstrating a significant personal bond. The Department finds that this approach establishes an appropriate balance in demonstrating a significant personal bond.

**Section I(A)(5) – Second version of proposed rule -Definition of “business day” –**

*Note: The Department added a definition of “business day” at Section I(A)(5), in the second draft of the proposed rule, for the sake of clarity, as that phrase was used in the rule.*

**Round 2 comment summary:** Commenter 168 suggested adding the term “federal holiday” in the list of exclusions from the definition of “business day.”

**Round 2 response to comment:** The Department declines to make this change as the definition includes all state holidays, which encompasses all federal holidays.

**Section I(A)(5) – Definition of “calendar week”**

*Note: The definition of “calendar week” was at Section I(A)(5) in the first proposed rule; it moved to Section ((A)(6) in the second draft of the proposed rule.*

**Round 1 comment summary:** Commenter 061 stated the current definition of calendar week with the calendar week beginning on a Sunday impacts the definition of a benefit year causing a benefit year to commence on the Sunday before leave starts. The commenter feels if this is accurate, it should be made clearer and notes that by starting on a Sunday, the Maine Paid Family and Medical Leave law would conflict with unpaid FMLA. Additionally, the commenter believes employers should be able to define the start of the benefit period according to their workweek or to align it with unpaid FMLA.

**Round 1 response to comment:** The Department made no changes as it determined the provisions in the rule are sufficiently clear. While the Department sought to align Maine PFML with Federal and State unpaid family and medical leave requirements, it was not feasible to do so in all instances.

**Section I(A)(6) – Definition of “calendar week” -second version of proposed rule**

**Round 2 comment summary:** Commenter 061 reiterated its Round 1 comment since no change was made by the Department.

**Round 2 response to comment:** The Department made no changes as it determined the provisions in the rule are sufficiently clear. While the Department sought to align Maine PFML with Federal and State unpaid family and medical leave requirements, it was not feasible to do so in all instances.

**Section I(A)(6) – Definition of “continuous leave” –**

*Note: Section I(A)(6) defining “continuous leave” became subparagraph 7 in the second draft of the proposed rule.*

**Round 1 comment summary:** Commenters 124 and 168 suggested the Department revise the definition of continuous leave to clarify that a leave may be requested only on a one-time basis and encouraged the Department to adopt a definition and examples of intermittent leave similar to that used in Massachusetts.

**Round 1 response to comment:** The Department declined to make the suggested change as it conflicts with the language and intention of the intermittent leave provisions contained in the statute.

**Section I(A)(7) – Second version of proposed rule**

*Note: In the second proposed version of the rule, the Department changed the word “leaving” to “leave,” for the sake of clarity.*

**Round 2 comment summary:** Commenters 124 and 168 suggest the Department make the word “block” singular rather than plural.

**Round 2 comment response:** To avoid confusion and provide clarity, in the final version of the rule, the Department will change the rule from “blocks for” to “a block of” consecutive days or weeks.

Thus, the definition of “continuous leave” in the final rule is “leave occurring in a bloc of consecutive days or weeks.”

**Section I(A)(10) – Definition of “employer” –Second version of proposed rule**

*Note: The Department added a definition of “employer” at Section I(A)(10) in the second version of the proposed rule in response to comments, for the sake of clarification.*

**Round 1 comment summary:** Commenter 137 suggested the Department add language to the rule to clarify that an employer in leasing contractual arrangements means a client company.

**Round 1 comment response:** The Department added a definition of “employer” to the second version of the proposed rule. That definition notes that for purposes of employee leasing arrangements, the employer is the client company as defined in 32 M.R.S. § 14051(1).

**Round 2 comment summary:** Commenter 140 expressed support for the clarification that the client company is the employer in employee leasing arrangements for the purpose of the Paid Family and Medical Leave law. Commenter 168 suggested the Department not incorporate the provisions pertaining to employee leasing companies at this time. The commenter suggested that, in the case of an employee leasing company, the employer should not be the client but, rather, the employee leasing company. The concern was raised that Professional Employer Organizations may be considered an employer under the Federal Family Medical Leave Act (FMLA) and employees of a PEO could qualify for FMLA for leave that would not be concurrent with the Maine Paid Family and Medical Leave law.

**Round 2 response to comment:** The Department made no additional changes as it determined that the clarification that the client company is the employer in employee leasing arrangements is an appropriate policy.

**Round 2 comment summary:** Commenter 137 suggested the Department use the term “Employer Account Number (EAN)” rather than “Federal Employer Identification Number (FEIN).” The suggested change would make the definition consistent with Maine’s Employment Security Law (Title 26, chapter 13, hereinafter referred to as “unemployment law.”)

**Round 2 comment response:** The Department finds that virtually all employers have a FEIN, and therefore declines to use the Bureau of Unemployment Compensation’s EAN, as that account number has a more narrow use. Therefore, no change was made to the Rule.

### **Section I (A)(9) – Definition of “family leave”**

*Note: Section I(A)(9) defining “family leave” became subparagraph 11 in the second draft of the proposed rule.*

**Round 1 comment summary:** Commenter 061 suggests the Department clarify the definition of “family leave” in the proposed rule since, like medical leave, the definition of family leave includes leave due to a family member’s serious health condition. The commenter believes this creates confusion since there is a separate definition of medical leave.

**Round 1 response to comment:** The Department made no changes in the rule as the rule and the statute are sufficiently clear.

### **Section I (A)(11) – Second version of proposed rule - Definition of “family leave”**

**Round 2 comment summary:** Commenter 061 reiterated its Round 1 comments set forth above since the Department did not make any changes.

**Round 2 response to comment:** The Department made no changes in the rule as the rule accurately reflects the legislative intent.

**Round 2 comment summary:** Commenters 124 and 168 note the reference to Maine’s unpaid Family and Medical Leave law and state that the reference will result in confusion given conflicting provisions throughout. Commenter 168 suggested the Department remove reference to 26 M.R.S. § 843(4) since by including a citation to the definition, the rule incorporates by reference all provisions of Maine’s unpaid Family and Medical Leave law including those that are conflicting.

**Round 2 response to comment:** The Department made no changes as the rule is consistent with the PFML statute which cites 26 M.R.S. § 843(4) in setting forth the parameters of family leave eligibility at 26 M.R.S. § 850-B(2)(f).

**Section I(A)(12) – Second version of proposed rule - Definition of “family member”**

*Note: The Department added a definition of “family member” at Section I(A)(12) in the second version of the proposed rule. New section I(A)(12) states, for the sake of clarity, that “family member” has the same meaning as 26 M.R.S. § 850-A(19).*

**Round 1 comment summary:** Commenters 115 suggested that the Department add a definition of “family member” that includes any of the relationships identified in 26 M.R.S. § 850-A(19), including those with an affinity relationship as defined in rule.

**Round 1 comment response:** The Department added a definition of “family member” as suggested by the Commenter, for the sake of clarity and because it is consistent with statute.

**Round 2 comment summary:** Commenters 140, 258, 267 and 268 suggested the definition should not be changed.

**Round 2 comment response:** The Department retains the definition and makes no changes in response to this comment.

**Round 2 comment summary:** Commenter 408 suggested the Department narrow the definition of family member since a definition of family member with no legal or familial relationship is too broad.

**Round 2 comment response:** The Department notes that requiring a legal or family relationship would be contrary to the statute, 26 M.R.S. § 850-A (19)(G). The Department made changes in section VI of the rule to add more specific criteria for demonstrating a significant personal bond.

**Section I(A)(13) – Definition of “good cause” in final version of rule**

**Department Finding:** The Department added a definition of “good cause” at Section I(A)(13) of the final rule, for the sake of clarity, as the term good cause is used in various places throughout the rule.

**Section I (A)(10) – Definition of “health care provider”**

*Note: Section I(A)(10) defining “health care provider” became subparagraph 13 in the second draft of the proposed rule and then became subparagraph 14 in the final rule.*

**Round 1 comment summary:** Commenters 144, 147, 151, 223, 226 and 255 remarked that the Department’s current definition of “health care provider” in the proposed rule should remain broad without changes. Meanwhile commenter 217 and 276 commented that the definition is too broad and should be narrowed noting that pharmacists can be considered health care providers under some provisions of Maine law.

**Round 1 response to comment:** The definition of “health care provider” in the rule refers back to the statutory definition and provides further clarification by reference to the definition and to the list of providers set forth in the federal Family and Medical Leave Act of 1983. The Department finds that aligning the definition with the federal law provides consistency and clarity for employers, employees and for the Department. The Department further notes that neither the definition in the Maine Paid Family Medical Leave law nor the federal Family and Medical Leave Act of 1983 include pharmacists within the list of providers. Therefore, the Department made no changes as a result of this comment.

**Section I (A)(11) – Definition of “intermittent leave”**

*Note: Section I(A)(11) defining “intermittent leave” became subparagraph 14 in the second draft of the proposed rule, and it became subparagraph 15 in the final rule.*

**Round 1 comment summary:** Commenters 124 and 168 suggested the Department revise the definition of intermittent leave to clarify that a leave may be requested only on a one-time basis and encouraged the Department to adopt a definition and examples of intermittent leave similar to that used in Massachusetts.

**Round 1 response to comment:** The Department made no changes as the suggestion is inconsistent with the language and the intention of the intermittent leave provisions contained in the statute.

**Round 1 comment summary:** Commenters 059 states that the rule should clarify how the seven-day waiting period impacts the use of intermittent leave. Additionally, the commenter believes that the rule, as written, would allow employees to stretch intermittent leave throughout the course or the entire year which the commenter states is contrary to the intention of the law.



**Round 1 response to comment:** The Department made no changes as the provision in the rule are consistent with the language and the intention of the intermittent leave provisions contained in the statute. In fact, intermittent leave may be used throughout the course of the entire year, within the limits set forth in the law.

**Section I (A)(14) – Second version of proposed rule– Definition of “intermittent leave”**

**Round 2 comment summary:** Commenter 059 reiterated its Round 1 comments.

**Round 2 response to comment:** The Department made no changes as the provisions in the rule are consistent with the language and intent of the law. In fact, intermittent leave may be used throughout the course of the entire year, within the limits set forth in the law.

**Section I (A)(12) – Definition of “independent contractor”**

*Note: Section I(A)(12) defining “intermittent leave” became subparagraph 15 in the second draft of the proposed rule, and it became subparagraph 16 in the final rule.*

**Round 1 comment summary:** Commenter 061 stated the reference to “salaried employee” is vague and suggested that if the intent is to refer to employees exempt from overtime under the Fair Labor Standards Act, that should be clearly stated.

**Round 1 comment response:** The Department made no changes. The citation to 26 M.R.S. § 663(3)(K) provides clarity.

**Section I(A)(15) – Definition of “reduced schedule leave”**

*Note: Section I(A)(15) defining “reduced schedule leave” became subparagraph 18 in the second draft of the proposed rule and subparagraph 18 in the final rule.*

**Round 1 comment summary:** Commenter 059 suggests that the definition of reduced schedule leave conflicts with the requirement that intermittent or reduced schedule leave be taken in increments of not less than one scheduled workday. The commenter also asks the Department to clarify whether employers can refuse increments less than one hour.

**Round 2 comment response:** The Department made no changes to this section as it determined the provisions in the rule, including Section II.B., are clear and are consistent with 26 M.R.S. § 850-B(10)(C).

**Section I(A)(18) – Second version of proposed rule - Definition of “reduced schedule leave”**

**Round 2 comment summary:** Commenter 059 commented that employees should be required to exhaust sick leave before using increments of leave that are less than a full scheduled

workday. The commenter also suggests that the definition of reduced schedule leave conflicts with the requirement that intermittent or reduced schedule leave be taken in increments of not less than a scheduled workday.

**Round 2 comment response:** The Department made no changes as it determined the provisions in the rule are consistent with 26 M.R.S. § 850-B (10)(C). The Department further notes that the use of intermittent and reduced leave is explained in detail in Section III.B. of the rule. The Department also notes that the employee and the employer may agree to a reduced leave schedule in increments of less than a scheduled workday. 26 M.R.S. § 850-B(5).

**Round 2 comment summary:** Commenter 059 reiterated its Round 1 comments and commented that employees should be required to exhaust sick leave before using increments of leave that are less than a full scheduled workday.

**Round 2 comment response:** The Department made no changes as it determined the suggestion conflicts with 26 M.R.S. § 850-B (10)(C).

#### **Section I(A)(16) – Definition of “safe leave”**

*Note: Section I(A)(16) defining “safe leave” became subparagraph 19 in the second draft of the proposed rule and subparagraph 20 in the final rule.*

**Round 1 comment summary:** Commenter 232 and 268 suggests the Department clarify that a protection order or court finding is not required to qualify for safe leave.

**Round 1 response to comment:** The Department makes no change to the definition. Section VI(C) was changed to clarify that an application for safe leave must include an “attestation” that the applicant meets the requirements for safe leave set forth in the act. The word “signed statement” was changed to “attestation” for the sake of consistency as an applicant must attest to the truthfulness of the entire application.

#### **Section I(A)(19) – Second version of proposed rule - Definition of “safe leave”**

**Round 2 comment summary:** Commenter 258 recommends that the definition make clear that documentation of violence or abuse, whether through a court order or police report, is not required to qualify for safe leave. Alternatively, the commenter asks for clarification in Section VI (C) of the proposed rule.

**Round 2 comment response:** The Department notes that documentation for safe leave is not required in section VI (C). The Department further notes, as set forth above, that Section VI(C) of the final rule was amended to change “signed statement” to attestation” for the sake of consistency throughout the rule.

#### **Section I (A)(17) – Definition of “scheduled workweek”**

*Note: Section I(A)(17) defining “scheduled workweek” became subparagraph 20 in the second draft of the proposed rule and then became subparagraph 21 in the final rule.*

**Round 1 comment summary:** Commenters 061, 069 and 181 suggested changes to the definition of scheduled work week based on the federal Family Medical Leave Act or employee work schedules.

**Round 1 comment response:** The Department made no changes as it is using the concept of scheduled workweek for a specific purpose of determining benefit proration and to clarify schedules for irregular work weeks. The Department determined that this approach appropriately balances the interests of employees and employers.

**Section I(A)(21) – Definition of “scheduled workweek” - Second version of proposed rule**

**Round 2 comment summary:** Commenters 061 and 063 suggested the definition be amended to allow an employer to use the work week as established by the employer or the 12-month period as established in the Federal Family and Medical Leave Act in order to have more consistency.

**Round 2 response to comment:** The Department made no changes as it determined the provisions in the rule strike a balance as to the interests of employees and employers and is administratively feasible.

**Section I(A)(21) – Definition of “State Average Weekly Wage” -Second version of proposed rule**

**Department Finding:** In the second version of proposed rule, the Department added a definition of “State Average Weekly Wage” (SAWW) at Section I.(A)(21), which became subparagraph 22 in final rule. The rule refers to the statutory definition at 26 M.R.S. § 850-A(30) and further clarified that for purposes of the rule, the SAWW is updated annually on July 1. This change was made for the sake of clarity as comments were made to other section asking about the logistics of using the SAWW.

**Round 2 comment summary:** Commenters 060, 063 and 503 suggested clarifying the definition of Average Weekly Wage as the definition may create confusion with the definition of State Average Weekly Wage.

**Round 2 response to comment:** The Department made no changes as it determined the provisions in the rule are sufficiently clear. "Average weekly wage" for the purposes of determining the weekly benefit for an individual and “state average weekly wage” as published by the state are two different concepts and both are defined in the statute.

**Sections I(A)(18) and I(A)(22) – Definitions of “Tier 1 wages” and “Tier 2 wages”**

*Note: Section I(A)(18) defining “Tier 1 wages” became subparagraph 22 in the second draft of the proposed rule and subparagraph 23 in the final rule. Section I(A)(22) defining “Tier 2 wages” became subparagraph 24 in the second draft of the proposed rule and subparagraph 25 in the final rule.*

**Round 1 comment summary:** Commenter 234 suggested the Department provide clarification on the application of tier 1 and tier 2 wages to benefits.

**Round 1 comment response:** The Department made no changes as it determined the provisions in the statute and rule are sufficiently clear. These definitions are used to calculate the portion of wages attributable to the two statutory wage replacement rates. The Department may provide additional guidance with examples.

**Sections I(A)(22) and I(A)(24) – Definitions of “Tier 1 wages” and “Tier 2 wages” -Second version of proposed rule**

**Round 2 comment summary:** Commenter 168 recommends that the definitions of “Tier 1 wages” and “Tier 2 wages” be removed suggesting that their inclusion creates confusion with the general definition of “wages.”

**Round 2 response to comment:** The Department made no changes as it determined the provisions in the rule are sufficiently clear and are useful. These definitions are used to calculate the portion of wages attributable to the two statutory wage replacement rates.

**Section I (A)(22) - Definition of “waiting period”**

*Note: Section I(A)(22) defining “waiting period” became subparagraph 26 in the second draft of the proposed rule and subparagraph 27 of the final rule. Minor changes were made as explained below.*

**Round 1 comment summary:** Commenters 124, 168 and 227 suggested the Department revise the definition of the waiting period to reflect that the waiting period begins on the first day of leave taken rather than on the day that the claim was filed consistent with the Maine paid leave law related to the waiting period for medical leave claims.

**Round 1 response to comment:** In the second proposed rule, the Department amended the rule to clarify that the waiting period commences on the first day of leave to be consistent with the statute.

**Round 1 comment summary:** Commenters 061 and 181 suggested the Department clarify that the waiting period counts toward the employee’s 12-week leave.

**Round 1 response to comment:** The Department made no changes in response to this particular comment as this suggestion would conflict with statute.

### **Section I(A)(26) – Definition of “waiting period” - Second version of proposed rule**

**Round 2 comment summary:** Commenter 061 suggested the Department clarify whether an individual’s waiting period will count towards the totally allowable weeks allowed under the Paid Family and Medical Leave Program.

**Round 2 response to comment:** The Department made no changes as it determined this suggestion would conflict with statute.

**Round 2 comment summary:** Commenter 063 suggests the Department revise the definition so the waiting period begins on the first day of leave rather than the day the claim is filed.

**Round 2 response to comment:** The Department further amended the final rule to clarify that the waiting period means that medical leave benefits are not payable for the first 7 calendar days at the start of the leave. This is consistent with the statute.

### **Section I (A)(27) – Definition of “Wages” – Second set of proposed rules**

*Note: The Department added a definition of “wages” at Section I(A)(27) in the second draft of the proposed rule in response to the comments below. This definition became subparagraph 29 in the final rule, with no additional changes .*

**Round 1 comment summary:** Commenter 050 noted that while there is a definition of wages for self-employed individuals, there is no definition of wages for employees in either the law or the proposed rule.

**Round 1 comment response:** The Department added a definition of wages applicable to employees in the second version of the proposed rule at Section I(A)(28). The rule refers to the definition of wages in the Maine’s unemployment law, 26 M.R.S. § 1043(19)(B-E), and notes that it generally means wages subject to Maine unemployment tax.

**Round 2 comment summary:** Commenter 250 suggested that the Department make the definition of wages consistent with what is tracked by an employer and reported to tax authorities to reduce the burden on small employers.

**Round 2 comment response:** The definition of wages do mirror the definition in Maine’s unemployment law. The Department finds that the definition in the rule balances the requirements of the law with efforts to reduce administrative burdens for employers.

**Round 2 comment summary:** Commenter 311 suggested removing the final sentence in the definition of wages as it appears to be duplicative of the first two sentences of the definition.

**Round 2 comment response:** The Department finds that the last sentence is not duplicative as it refers to the localization of work analysis in Maine’s unemployment law, and provides guidance as to whether wages are earned in Maine.

**Round 2 comment summary:** Commenter 140 suggests the Department remove any reference to the federal Social Security wage limit in the proposed rule.

**Round 2 comment response:** The Department made no changes as it determined that such reference is necessary for clarity and consistency with statute.

**Round 2 comment summary:** Commenter 148 asked whether premiums deducted from employees' wages will be considered a taxable benefit.

**Round 2 comment response:** The Department made no changes. The taxability question cannot be determined by the Department and must be made by the United States Internal Revenue Service (IRS). The Department, and other states, are awaiting such guidance such the IRS.

### **Section I (A)(23) – Definition of “Wages for self-employed individuals” –**

*Note: Section I(A)(23) defining “wages for self-employed individuals” became subparagraph 28 in the second draft of the proposed rule and subparagraph 29 in the final rule.*

**Round 1 comment summary:** Commenter 101 encouraged the Department to clarify whether wages for self-employed individuals who elect coverage will be based on federal net wages or Maine net wages.

**Department response:** The Department made no changes as it determined the provisions in the rule are sufficiently clear.

### **General Comments on Definitions**

**Round 1 comment summary:** Commenter 124 encouraged the Department to clarify the definitions of Average Weekly Wage, Base Period, Benefit Year, Covered Individual, Employee, Employment and Serious Health Condition without additional context on what those clarifications should be.

**Round 1 comment response:** The Department made no changes as it determined the provisions in the rule are sufficiently clear and definitions of these terms can be found in statute.

**Round 1 comment summary:** Commenter 168 suggested the Department add additional definitions to the rule that are currently in statute as it would add additional context to the rule.

**Round 1 comment response:** The Department made no changes as it determined the definitions in the rule are sufficient and no additional definitions to clarify provisions in the rule is necessary.

**Round 1 comment summary:** Commenter 181 suggested the Department provide clarification on the definition of average weekly wage. There was concern that the current definition may cause confusion on how a claimant's average weekly wage is determined.

**Round 1 comment response:** The Department added subsection A.3. to Section VIII of the Rule to add clarity as to the calculated of an applicant’s Average Weekly Wage.

**Round 1 comment summary:** Commenter 201 suggested the Department provide clarification as to what constitutes a de facto relationship.

**Round 1 comment response:** The term “de facto parent,” “de facto grandparent,” “de facto child,” and “de facto grandchild,” appear in the definition of “family member” in the statute. The Department made no changes as it determined the definition of some terms can be found in the Maine Parentage Act and the terms are sufficiently clear for purposes of PFML.

**Round 1 comment summary:** Commenter 233 asked the Department to clarify that the 12-month period for a PFML benefit year is a 12 month period measured forward, effective 5/1/2026.

**Round 1 comment response:** The Department made no changes as it determined 26 M.R.S. § 850-A(5) sufficiently defines benefit year.

**Round 1 comment summary:** Commenter 267 suggests that the word “employee” be changed to “individual” throughout the definition section so that definitions include those who are self-employed.

**Round 1 comment response:** The Department made no changes as it determined the provisions in the rule are sufficiently clear.

**Round 2 comment summary:** Commenter 267 reiterated their round 1 comments regarding various definitions.

**Round 2 response to comment:** The Department made no changes as it determined the provisions in the rule are sufficiently clear.

**Round 2 comment summary:** Commenter 127 asked the Department to clarify how wages will be deducted on a W-2 form.

**Round 2 comment response:** The Department made no changes as it determined the provisions in the rule are sufficiently clear for purposes of the PFML program. Additional practical information, such as reporting employee contributions on a W-2 form, may be found on the program’s website.

## **II. Coverage**

**Factual and policy basis:** This section implements definitions and clarifies individuals that are eligible for paid family and medical leave benefits. The Department defined wages based on Maine’s unemployment law, which already applies to the vast majority of employers and employees. The Department also identified categories of individuals who are not eligible based

on preemption by federal law, an attempt to be consistent with certain aspects of other state laws, or due to the unique circumstances of certain categories of individuals.

### **Section II(A)(1) – Covered employees**

*Note: The Department moved the wage eligibility for benefits (6 times the state average weekly wage earned during the first 4 of the last 5 completed calendar quarters immediately proceeding the first day of the individual's benefit year) to Eligibility, Section IV (A)(2). This clarifies that all employees who earn wages paid in the State are covered employees, but they are not eligible for benefits until they meet the wage eligibility threshold.*

**Round 1 comment summary:** Commenters AC3, 011, 034, 086, 117, 160, 161, 181, 198, 241, and 267 suggested the Department clarify how the State Average Weekly Wage (SAWW) is calculated and applied, the commenters also raised concerns about potential exclusions due to earnings thresholds.

**Round 1 response to comments:** The Department notes this wage eligibility language was moved to Section IV (A)(2). The Department notes that “state average weekly wage” is published by the Workers’ Compensation Board on their website. The Department will post relevant information about “state average weekly wage” on its website for further administrative ease.

**Round 1 Comment Summary:** Commenter 267 suggests that covered employees include those who are recently unemployed but still meet the financial eligibility provisions.

**Round 1 response to comments:** The Department finds that the intention of the program is to provide paid family and medical leave from work. The Department notes that a change was made in the second proposed rule in Section IV.A.4., as discussed in that section below. The second proposed rule clarified that an applicant must be employed on the date of application if applying in advance of leave, or be employed as of the date of leave beginning if applying retroactively for leave.

**Round 1 Comment Summary:** Commenters 085, 095, 116, 124, 166, 168, 179, 198, 205, 225, 227, 228, 232, 244, 258, 267, and 268 suggested that the Department use the statutory term “covered individual” rather than “covered employees” to avoid confusion.

**Round 1 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 2 comment summary:** Commenters 140 and 205 suggested to remove “covered employees” to be consistent with the statute language of “covered individuals” and to make this change throughout the entire rule.

**Round 2 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.



## **Section II (A)(1)(a) – “wages paid in the State”**

*Note: In the second version of the proposed rule, the Department clarified that wages include severance and terminal pay, as such payments are considered wages in other contexts. As requested by some commenters, the Department revised the definition of wages to align with Maine’s unemployment law, 26 M.R.S. § 1043 (11)(E). In the final version of the rule, in response to additional comments and questions, the Department clarified that the determination of whether wages are “paid in the State” is pursuant to the localization portion of Maine’s unemployment law, 26 M.R.S. § 1043 (11)(A) and (D).*

**Round 1 comment summary:** Commenters 144, 147, 151, and 158, 196, 208, 226, 232, 242, 251, 258, 263, and 268 stated that they support the Department for including all tips and gratuities.

**Round 1 response to comments:** The Department acknowledges the comment and made no changes to the Rule.

**Round 1 comment summary:** Commenter 223 said wages should include tips.

**Round 1 response to comment:** The Department made no changes as the definition of wages in statute, 26 M.R.S. § 850-A(31) expressly states that tips and gratuities are included as wages.

**Round 1 comment summary:** Commenters AC3, 116, 161, 166 suggested a need to have a more complete and thorough definition of wages to calculate premiums.

**Round 1 response to comments:** In the second proposed rules, the Department updated the definition of wages paid in the state to provide more clarity and align with Maine’s unemployment law as it relates to calculating total wages and determining the locality of work.

**Round 2 comment summary:** Commenters 105 and 166 recommend aligning the definition of wages that are subject to premiums with that of Maine’s unemployment law and using the Social Security wage limit as the cap for premiums and using these same rules to determine where work is performed.

**Round 2 response to comments:** The Department made no changes as it determined the Department sufficiently clarified the definition of wages in the updated language in the second draft of proposed rules.

**Round 2 comment summary:** Commenter 061 expressed concern that taking premiums from severance can result in financial hardship for the employee.

**Round 2 response to comments:** The Department acknowledges the comment but makes no changes in the rule, finding that severance pay is considered wages in other contexts.

**Round 2 comment summary:** Commenter 311 and 250 suggested to remove “wages” as it is already defined in Section I.

**Round 2 response to comments:** The Department finds that the duplication of the definition in Section two is necessary to clearly define the concept of a “covered employee”.

**Round 2 comment summary:** Commenters 284 and 250 asked the Department how a Maine employer who employs out-of-state employees would qualify for Maine Paid Family Medical Leave benefits.

**Round 2 response to comments:** The Department made no changes as it determined the rule is sufficiently clear as it refers to the localization of work criteria set forth in unemployment law, 26 M.R.S. § 1043 (11)(A). The Department may issue guidance to assist employers in applying the localization of work criteria.

**Round 2 comment summary:** Commenter 471 asked the Department to clarify whether temporary and seasonal employees would qualify for Paid Family Medical Leave.

**Round 2 response to comments:** Yes, temporary and seasonal workers who earn wages in the state are covered. The Department made no changes as it determined the statute and rule are sufficiently clear.

#### **Section II (A)(2) – individuals who elect coverage**

**Round 1 comment summary:** Commenter 181 suggested the Department clarify whether self-employed individuals or tribal governments that can elect coverage would be subject to similar income requirements such as meeting the six times the state average weekly wage requirement.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 061 recommends the rule be clarified to identify what employees, beyond those covered by the unemployment law are included in the wage calculation.

**Round 2 response to comments:** The Department made no changes as the rule is sufficiently clear.

**Round 2 comment summary:** Commentor 166 suggested clarifying that independent contractors can elect coverage similar to self-employed individuals.

**Round 2 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.

#### **Section II (B) – Types of employment not covered by the PFML Act**

*Note: In the second proposed rule, the Department clarified that volunteers and employees of the federal government are not covered. In the final rule, the Department further clarified that the exclusion for students earning wages as part of federal work-study, includes students employed at any public or private higher educational institution in the state of Maine. The Department also clarified that employees of the United States Postal Service are considered federal employees for purposes of the PFML program and are not covered.*

**Round 1 comment summary:** Commenters 027, 154, 225, and 266 suggest the Department expand the exclusion to include all enrolled college students in Maine. Commenter 266 suggested the rule should also include students earning wages from the Maine Maritime Academy.

**Round 1 response to comments:** In the second proposed rule, the Department made no changes, but clarified in the final rule that the exclusion includes all student earnings from any public or private higher educational institution in Maine, adding the words “any other public” to Section II.B.4.

**Round 1 comment summary:** Commenters 205, 232, 258, 267, and 268 suggested removing exclusions such as employees subject to the federal Railroad Unemployment Insurance Act, incarcerated people, and Federal Work Study.

**Round 1 response to comments:** The Department did not adopt this change. These populations each bring unique legal and situational circumstances that make their income differ from wages of other types of employees.

**Round 1 comment summary:** Commenter 257 suggested adding an exclusion for foreign visa workers who are in the United States for a limited period of time.

**Round 1 response to comments:** The Department did not adopt this change as it finds the intent of the statute is to broadly cover all workers, including seasonal workers.

**Round 2 comment summary:** Commenter 140 asked why “incarcerated” individuals are exempt from Paid Family and Medical Leave benefits.

**Round 2 response to comments:** The Department determined that these individuals have unique legal and situational circumstances. No change was made to the rule.

**Round 2 comment summary:** Commenters 294 and 338 suggested to exclude “elected officials” from benefits because they are different than regular employees while another suggested school employees should be exempt from Paid Family and Medical Leave benefits because they already qualify for numerous other benefits. Commenter 059 suggested that state, municipal, and school employees should be exempt since their inclusion would result in creases taxes for citizens.

**Round 2 comment response:** The Department declines to adopt these suggestion as they are inconsistent with statute.

**Round 2 comment summary:** Commenter 474 suggested exempting agricultural seasonal employees from benefits as it's an undue hardship for farmers.

**Round 2 comment response:** The Department did not adopt this change as it is inconsistent with the intention of the statute.

### **Section III-Use and types of Leave**

**Factual and policy basis:** This section clarifies the administration of each type of leave that is authorized under the Maine paid family and medical leave law. This section also clarifies 26 M.R.S §850(B)(5) regarding the use of intermittent leave to include reporting and notice requirements for the use of internment and reduced leave.

#### **Section III (A) – types of leave**

**Round 1 Comment Summary:** Commenters 006 asked the Department how the Paid Family and Medical Leave Program intersects with the Family Federal Medical Leave Act (FMLA) in terms of the use of leave and if employees can take both leaves and use sick time.

**Round 1 response to comments:** 26 M.R.S. § 850-B (11) states that Maine PFML runs concurrent with federal FML. Section VIII(C)(3) of the rule explains that the weekly benefit amount (WBA) is not deducted if the employer pays the difference between the WBA and the typical weekly wage. Sick leave may be used to pay this difference. The Department made no changes in response to comment.

**Round 2 comment summary:** Commenters 140, 326 and 474 commented on the types of leave that can be taken. Commenters 326 and 474 suggested the three different leave types need additional clarification regarding intermittent and reduced leave since it appears it is the same type of leave. Commenter 326 suggested that intermittent leave be used in full consecutive weeks instead of smaller increments. Commenter 140 suggested the types of leave described in the rule should not be changed.

**Round 2 response to comment:** The Department makes no changes in response to comment. The Department finds that the rule is sufficiently clear on how leave may be taken pursuant to Paid Family and Medical Leave law.

**Round 1 Comment Summary:** Commenter 088 asked the Department to clarify what happens if an employee does not take any type of leave during a benefit year.

**Round 1 response to comments:** In the second proposed rule the Department made no changes as it determined this suggestion does not need additional clarification in rule.

### **Section III (B)(1) – Use of Intermittent and Reduced Schedule Leave**

**Department Finding:** *In the final rule, in response to a comment, the Department changed the phrase “full 12 weeks of leave” to “up to 12 weeks of approved leave,” for the sake of clarification. This is consistent with the statute, which provides that an individual may take no more than 12 weeks.*

**Round 1 Comment Summary:** Commenter 063, 065 and 181 suggested the Department clarify whether the use of intermittent or reduced leave reduces the total number of weeks allowed for leave in a benefit year.

**Round 1 response to comment:** The Department made no changes as it determined that the statute and the rule are sufficiently clear. Use of intermittent and reduced leave will reduce available leave in a benefit year by a prorated amount. For example, 8 hours of intermittent leave in a 40-hour workweek will not reduce the 12 weeks of leave by one full week, but will reduce leave by 1/5 of one week.

**Round 2 comment summary:** Commenter 279 suggested the Department add the word “up to” instead of “full” 12 weeks of leave and mirror language in the Federal Family and Medical Leave Act (FMLA) and the Maine Family Medical Leave Act.

**Round 2 response to comment:** The Department made this change in the final rule.

### **Section III (B)(2) – increments of a scheduled workday**

**Round 1 Comment Summary:** Commenter 034 asked the Department to clarify reporting and tracking requirements of intermittent and reduced leave.

**Round 1 response to comment:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 059 and 136 stated that some employers with multiple worksites could have employees that work different set schedules, such as 8-hour shifts and 12-hour shifts and therefore have different workdays, creating inconsistency within the company.

**Round 1 response to comments:** The department acknowledges that employers may have different work schedules for its workers and finds that the law and rule provide sufficient flexibilities for these scenarios. No changes are made.

**Round 1 Comment Summary:** Commenter 164 recommended to the Department language that the employer may approve intermittent or reduced leave on a case-by-case basis with the employee.

**Round 1 response to comment:** The Department made no changes in rule as it finds that the rule is sufficiently clear, as nothing written in rule prohibits an employer from allowing less than a full day use of intermittent leave on a case-by-case basis.

**Round 1 comment summary:** Commenter 169 suggested the Department clarify the type of notice for intermittent leave that will be required for workers that may use safe leave on an intermittent leave basis.

**Round 1 response to comment:** The Department made no changes as it determined the law and the rule are sufficiently clear. Section V of the rule and these responses to comments in Section VI address notice requirements in more detail.

**Round 1 comment summary:** Commenter 198 suggested to the Department to clarify in rule to require employers to offer half day increments. Commenter 275 suggested the Department revise the rule to allow an employee to take leave in increments that do not require a full workday as it may cause additional undue burden on workers and will help create more scheduling stability for employers.

**Round 1 response to comment:** The Department made no changes as it determined these suggestions would conflict with statute, 26 M.R.S. § 850-B(5).

**Round 1 comment summary:** Commenter 205 suggested the Department state in rule that approval of an intermittent leave application should not depend on an employer's agreement on the proposed intermittent schedule.

**Round 1 response to comment:** The Department made no changes to this section. The employer may claim undue hardship as explained in Section V of the rule and in these responses to comments, for any leave, including intermittent leave.

**Round 1 comment summary:** Commenter 232 suggested the Department allow self-employed individuals to have the ability to take leave in hourly increments.

**Round 1 response to comments:** In the second proposed rule the Department made no changes as it determined it is not administratively feasible.

**Round 1 Comment Summary:** Commenter 016 recommended that the use of intermittent leave not be required to be in writing.

**Round 1 response to comment:** The Department made no changes as it determined this suggestion may cause an administrative burden on the Department in determining whether the applicant has satisfied the requirements for complete application for benefits. The Department notes that Section VI of the rule further explains the application requirements.

**Round 2 comment summary:** Commenter 016 reiterated the comment not to require the use of intermittent and reduced leave to be required in writing and if it still is required, suggested that the Department provide a sample agreement.

**Round 2 response to comment:** The Department makes no changes as it determined this suggestion may cause an administrative burden on the Department in determining whether the applicant has satisfied the requirements for complete application for benefits.

**Round 1 comment summary:** Commenter 061 seeks clarification of intermittent leave and the impacts on benefit amount if any and to address the intersection between Maine Paid Family Medical Leave and Family Medical Leave Act.

**Round 1 response to comment:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 061 reiterated its Round 1 comments since the Department made no change.

**Round 2 response to comment:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 059 asked how the 7-day waiting period in the statute on medical leave claims impacts intermittent and reduced leave. The commenter further suggested that an employee should exhaust sick leave before taking Paid Family Medical Leave benefits.

**Round 2 response to comment:** The Department made no changes as it determined the rule is sufficiently clear that the waiting period applies to the first week of intermittent or reduced leave. A requirement that an employee exhaust sick leave before taking PFML benefits would violate the statute.

### **Section III (B)(3)**

**Round 1 Comment Summary:** Commenter 034 questioned who the administrator is and if they will be the one gathering the information from employers.

**Round 1 response to comments:** The Department made no changes as it determined the rule refers to the statute, 26 M.R.S. § 850-A(2), and is sufficiently clear.

**Round 1 Comment Summary:** Commenters 053 and 061 required more clarification on how Maine Paid Family and Medical Leave Program will run concurrently with the Federal Family Medical Leave Act (FMLA) and whether one will be reduced or affected.

**Round 1 response to comments:** In the second proposed rule, in Section IV.B.2., the Department made minor changes to the rule to clarify how leave not taken concurrently with other types of leave will be reduced.

**Round 1 Comment Summary:** Commenter 061 asked the Department to clarify the process to confirm the hours a covered individual would have worked were they not taking leave..

**Round 1 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 058 asked the Department for clarification on how individuals that use intermittent leave will also be entitled to 12 weeks of leave under the law.

**Round 1 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 1 Comment Summary:** Commenter 092 asked the Department to clarify the process for an employee taking intermittent leave when they work a schedule other than five 8-hour days.

**Round 1 response to comments:** The department finds that Section III(B)(2) and (3) provide sufficient guidance for this scenario. No changes are made.

**Round 1 comment summary:** Commenter 099 asked the Department if the applicant can apply their average weekly hours over the last 12 weeks

**Round 1 response to comments:** The Department made no changes in this section as it determined the rule is sufficiently clear. The Department further notes that reduction and proration of benefits is explained in detail in Section XVIII(C) of the rule.

**Round 1 comment summary:** Commenter 114 asked the Department to use and to maintain the employees' average number of hours worked prior to the leave being taken as it was suggested hours could fluctuate which could affect their benefit payment based on the demand of the employer.

**Round 1 response to comments:** In the second proposed rule the Department made no changes to this section as it determined the current rule appropriately balances the interests of workers and employers and is administratively feasible. The Department further notes that reduction and proration of benefits is explained in detail in Section XVIII(C) of the rule.

**Round 1 comment summary:** Commenter 126 suggests an annual weekly average hour's approach as it may be more administratively efficient and potentially fair for the employee.

**Round 1 response to comments:** The Department made no changes in the proposed rule as it determined the current rule appropriately balances the interests of workers and employers, is administratively feasible for all parties and for the Department, and is consistent with the statute.

**Round 1 comment summary:** Commenter 160 suggested the Department amend the rule to use the term "hours worked" to "hours scheduled" to reduce confusion.

**Round 1 response to comment:** In the second proposed rule, the Department made no change to the rule as it determined using the terms hours work has been correctly defined.



**Round 2 comment summary:** Commenter 016, 061 and 148 commented on the terms used such as “variable”, “workweek, or “workday.”

Commenter 016 asked if the Department will define the process of determining if an employee schedule is variable enough where the covered individual worked a full work week.

Commenter 061 suggested the Department clarify the terms “workweek” or “workday” as it will be administratively burdensome and complex to determine payments for each applicant that applies for leave.

Commenter 148 suggested to the Department that the proration of benefits needs more explanation for the use of interment leave or to define the definition of workweek or workday.

**Round 2 response to comment:** The Department made no changes as it determined the rule is sufficiently clear and properly balances the interests of employees and employers.

**Round 2 comment summary:** Commenter 063 asked the Department to consider moving this subsection of determining employee’s workweek to the definition of “schedule workweek”

**Round 2 response to comment:** The Department made no changes in the proposed rule as it determined this suggestion would result in confusion.

### **Section III (B)(4)**

*Note: The second proposed rule, in response to comments, added language clarifying that, although a separate application is not required for each occurrence of intermittent leave, a covered individual must still inform their employer of intermittent leave use according to the employer’s reporting policies.*

**Round 1 Comment Summary:** Commenter 061 asks the Department to clarify in the rule whether employees will have to include information in their request for intermittent leave about the frequency and duration of absences and the steps an employer should take if the estimated frequency and duration is exceeded. Commenter 034 commented whether the use of intermittent will be required to be self-reported and what role the employer play in the leave.

**Round 1 response to comment:** The Department changed the rule to clarify that a covered individual must inform their employer of any intermittent leave use according to the employer’s reporting policies. The intention of the statute and the rule is that the employee will provide the employer the best estimate with information available at the time, but actual frequency and duration may change from the estimate based upon the actual medical situation.

**Round 1 Comment Summary:** Commenters 061, 154, 168, and 275 commented that 15 days may be too long to report a missed day of work and to consider aligning with the Federal Family and Medical Leave Act (FMLA) reporting and tracking requirements.

**Round 1 response to comment:** The Department makes no changes in the proposed rule to reduce the amount of time to report intermittent leave as the current rule appropriately balances the interests of workers and employers and is administratively feasible.

**Round 1 Comment Summary:** Commenter 275 suggested the Department streamline the process for the reporting of intermittent leave and allow the employee to report the leave schedule in advance.

**Round 1 response to comment:** The Department made no changes in the proposed rule as it determined the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 232, 258, and 276 suggested clarifying in the proposed rule using business days to align with how days are used in other parts of the rule and ensure consistency.

**Round 1 response to comment:** “Business day” was defined in the second proposed rule and updated throughout the rule for consistency.

**Round 2 comment summary:** Commenters 061 and 063 suggested the Department clarify the consequences for an employee who fails to meet the reporting requirements for intermittent leave.

**Round 2 response to comment:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 140 suggested removing or rephrasing the last sentence in the subsection because the Department should be deciding on reasonable notice.

**Round 2 response to comment:** In the second proposed rule, the Department made no changes as the proposed rule appropriately balances the interests of workers and employers and is administratively feasible.

**Round 2 comment summary:** Commenter 250 suggests pre-approved intermittent leave blocks of 5 to 10 days at a time.

**Round 2 response to comment:** The Department makes no changes in the rule as the proposed rule appropriately balances the interests of workers and employers and is administratively feasible.

### **Section III(B)(5) – proration of intermittent leave from 2 or more employers**

**Round 1 Comment Summary:** Commenters 142, 151, 158, 179, 181, 185, 205, 208, 219, 226, 228, 242, 253, 258, 268 and 275 commented that intermittent leave should not require agreement from all employee’s employers and suggested it be removed or amended.

**Round 1 response to comment:** The Department made no changes as the statute allows individual employers the right to agree on intermittent leave schedules with their employees. The rule is consistent with 26 M.R.S. §§ 850-B(5) and (7).

**Round 1 comment summary:** Commenter 164 suggested that benefits be prorated on a “per employer” basis.

**Round 1 response to comment:** The Department makes no changes in the rule as the proposed rule appropriately balances the interests of workers and employers.

**Round 2 Comment Summary:** Commenters 061 and 063 suggested that benefits should be prorated on a “per employer” basis to streamline the process and reduce administrative burden especially when employers are not part of the same plan.

**Round 2 response to comment:** The Department makes no changes in the rule as the proposed rule appropriately balances the interests of workers and employers and is administratively feasible for employers and for the Department.

**Round 1 Comment Summary:** Commenter 061 suggested an employer should be permitted to claim undue hardship for the use of intermittent leave.

**Round 1 response to comment:** The Department makes no changes in the rule as undue hardship is clearly addressed in Section V, and the rule sets forth no prohibition on an employer claiming undue hardship for the use of intermittent leave.

**Round 2 Comment Summary:** Commenter 061 reiterated its Round 1 comment suggesting an employer should be permitted to claim undue hardship for the use of intermittent leave.

**Round 2 response to comment:** The Department makes no changes in the rule as undue hardship is clearly addressed in Section V, and the rule sets forth no prohibition on an employer claiming undue hardship for the use of intermittent leave.

## **Section IV-Eligibility**

**Factual and policy basis:** This section implements and clarifies 26 M.R.S. §850-B regarding the eligibility of individuals to apply for Maine Paid Family and Medical Leave benefits.

### **Section IV(A)**

**Round 1 comment summary:** Commenters 140, 163 and 263 supported the work of the Department in this section.

**Round 1 response to comments:** The Department acknowledges the comments.

**Round 2 comment summary:** Commenter 205 suggested that the term “covered employee” should be changed to “covered individual” to conform with the statute.

**Round 2 response to comment:** The Department makes no changes as these are two distinct terms describing different concepts and are used intentionally and separately throughout rule.

### **Section IV(A)(2)**

**Department Findings:** *In the second proposed rule, the wage eligibility was moved from Section II(A)(1), Covered Individual, to the Eligibility section because the Department found that this paragraph better fits in the section describing eligibility for leave. This language is from statute, 26 M.R.S. § 850-A(9). In the final rule, the Department added language to clarify the intention that the calculation of eligibility based on wages is based upon the amount of state average weekly wage on July 1 preceding the date of the application for benefits. As set forth in other sections herein, the Department will state that dollar amount on its website.*

**Round 2 comment summary:** Commenters 063 and 168 suggested to the Department to use the State Average Weekly Wage (SAWW) in place at the time leave begins rather than at the time the application is filed.

**Round 2 response to comments:** The Department made no additional changes as it determined the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 307 asked the Department how to treat employees that may not meet the earnings requirements, but premiums would still be deducted from their wages.

**Round 2 response to comment:** The Department makes no changes in rule in response to comment as statute rule are clear that premiums are owed on any wages earned in Maine. The Department will review all information of the applicant to determine whether the earnings requirement has been met.

### **Section IV(A)(3) - formerly Section IV(A)(2) – time for filing an application**

**Round 1 comment summary:** Commenter 232 supports the Department ability to give flexibility to employees for taking leave especially in emergency situations.

**Round 1 response to comments:** The Department acknowledges the comments.

**Round 1 comment summary:** Commenters 034, 059, 060, 126, 136, 143, 154, 168, 232 and 233 noted concerns to the Department regarding applicants applying for leave retroactively after 90 days of absence, recommending applying for benefits within 5 days after leave, finding it

unrealistic for employers to hold positions open during such extended periods of absence without prior notice.

**Round 1 response to comments:** The Department made no changes as the suggestion conflicts with statute, 26 M.R.S. section 850-D (2).

**Round 2 comment summary:** Commenter 157 stated that the provision in rule that allows an individual to apply for benefits 90 days after the leave has begun will cause undue hardship for the employer.

**Round 2 response to comments:** The Department made no changes in rule as the provision is in statute, 26 M.R.S. section 850-D (2).

**Round 2 comment summary:** Commenters 168 and 199 suggested to the Department to amend the ability for an individual to apply for benefits from 90 days to 30 days.

**Round 2 response to comments:** The Department made no changes in rule as suggestion conflicts with the statute, 26 M.R.S. section 850-D (2).

#### **Section IV(A)(4)**

**Department Finding:** *A new Section IV(A)(4) was added to the second draft proposed rules, stating that to be covered, an individual must be employed as of the date of application if applying in advance or leave, or be employed as of the date of leave beginning if applying retroactively for leave. The Department found, in reviewing the totality of the comments, that such clarification was needed. The Department considered the intention of the statute, the need to protect the PFML fund, and balanced the interests of employees and employers in making this clarification.*

**Round 2 comment summary:** Commenters 059, 061, 140, 167, 178, 179, 205, 221, 232, 246, 258, 267, 268, 290, 291, 310, 332, 333, and 400 offered comments regarding this section. The commenters suggested the Department remove this requirement that the applicant be employed at the time of application as it may conflict with the intent of the Act authorizing Paid Family and Medical Leave.

**Round 2 response to comments:** The Department made no changes in rule as the Department finds this provision is consistent with the intention of the statute.

**Round 2 comment summary:** Commenter 217 supported the requirement that an individual must be employed at the time the application for benefits is filed.

**Round 2 response to comments:** The Department acknowledges the comment and makes no change as a result.

**Round 2 comment summary:** Commenters 063, 124, 168 and 311 suggested the Department offer clarity on the provision that an applicant must be employed to avoid any confusion regarding eligibility to obtain benefits.

**Round 2 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.

#### **Section IV(B)(1)**

**Round 1 comment summary:** Commenter 232 suggested that the provision to allow an applicant to take family leave immediately after taking medical leave should remain in the rule.

**Round 1 response to comments:** The Department made no changes as it is consistent with the intention of the statute.

**Round 1 comment summary:** Commenters 013, 160 and 227 commented asking for clarification if the 12 weeks are for the entire benefit year and not 12 weeks for each leave totaling 24 weeks.

**Round 1 response to comments:** The Department made no changes as it determined the statute and the rule are sufficiently clear, and the last sentence of IV(B)(1) expressly addresses this.

#### **Section IV(B)(2)**

**Round 1 comment summary:** Commenter 009 suggested the Department should not require an individual to use any leave under the Federal Family and Medical Leave Act and Paid Family and Medical Leave if the leave is the result of an injury on the job.

**Round 1 response to comment:** The Department made no changes as the Paid Family and Medical Leave statute anticipates an employee sometimes receiving workers compensation and PFML benefits at the same time as specified in 26 M.R.S. 850-C(5)(A).

**Round 1 comment summary:** Commenters 045, 053, 061, 092, 154, 164, 181, 232, 258, 267, and 268 seek clarification from the Department on the alignment of both the state and federal medical leave laws in the proposed rule.

**Round 1 response to comments:** In the second proposed rule the Department made changes to the rule to clarify the alignment of leave taken concurrently under both leave laws. The Department clarified that PFML leave will be reduced by any leave taken under other leave programs in the 12-month period preceding the leave.

**Round 2 comment summary:** Commenter 016 asked the Department to clarify whether the date of incorporation is the correct date for the enactment of the Federal Family Medical Leave Act.

**Round 2 response to comments:** The Department is using the correct date for purposes of incorporating by reference the federal Family Medical Leave Act, that is, it is relying on the version of the federal law as of December 30, 2019.

**Round 2 comment summary:** Commenter 060 and 449 suggested that the Department require that leave under the Federal Family and Medical Leave Act should be taken first prior to leave being taken under the Paid Family and Medical Leave Program. Commenter 060 suggested that the Department make taking FMLA a pre-requisite to obtaining PFML.

**Round 2 response to comments:** The Department finds this suggestion is inconsistent with statute, and therefore makes no changes.

**Round 2 comment summary:** Commenter 124 suggested the Department clarify the types of leave under the Federal Family and Medical Leave Act that may result in a reduction of leave time taken under the Paid Family and Medical Leave Program.

**Round 2 response to comments:** The Department made no changes as it determined the statute rule are sufficiently clear. The statute requires leave taken under any of the unpaid leave programs to run concurrently with paid family and medical leave program.

**Round 2 comment summary:** Commenters 140, 179, 205, 221, 232, 246, 258, 267, 314, 333 and 337 offered comment regarding the current provision that will require a reduction of leave under the Paid Family and Medical Leave Program if an individual has used leave under the Federal Family Medical Leave Act or the Maine Unpaid Leave Program in the 12 months prior to taking leave under the Paid Family and Medical Leave Program. The commenters suggested the Department reinstate the provision that will not reduce an individual's leave time if use of the unpaid leave programs were used.

**Round 2 response to comments:** The Department made no additional changes as statute requires leave taken under any of the unpaid leave programs to run concurrently with paid family and medical leave program. The Department finds that the current language is consistent with the intention of the statute.

**Round 2 comment summary:** Commenter 168 recommends that the Department clarify as to when leave taken under Federal Family and Medical Leave Act and the Maine unpaid Family and Medical Leave Program will also reduce an employee's leave under the Maine Paid Family and Medical Leave Program.

**Round 2 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 199 asked the Department to clarify whether an employee can take leave under the Federal Family and Medical Leave Act prior to leave taken under the Maine Paid Family and Medical Leave Program.

**Round 2 response to comments:** The Department made no changes as statute, as Section 850-B (11), requires leave taken under any of the unpaid leave programs to run concurrently with paid family and medical leave program.

**Round 2 comment summary:** Commenter 293 ask the Department to clarify whether benefits run concurrently with the federal FMLA.

**Round 2 comment response:** The statute at Section 850-B(11) states “Leave taken under this subchapter runs concurrently with leave taken under the federal Family and Medical Leave Act of 1993...” The Department does not believe that further clarification is needed in the rule.

### **Section IV (B)(3)**

*Note: In response to comments, in the second proposed rule, the Department removed the language limiting leave to one person per year with whom the employee has an infinity relationship. The Department found that this language was inconsistent with the statute, which only limits the amount of leave.*

**Round 1 comment summary:** Commenters 59, 60, 111, 115 (PFML Authority), 122, 125, 133, 139, 140, 142, 144, 145, 147, 151, 158, 167,181, 185, 196, 201,205, 208, 215, 217, 219, 223, 226, 232, 234, 239, 242, 246, 251, 253, 258, 267, 268 and 275 suggested that the Department remove the one person per year limitations while some further recommended to remove all or any limitations on affinity relationships that an employee can claim for leave.

**Round 1 response to comments:** The Department removed this language in the second draft of proposed rules as it determined that the limit is inconsistent with the statute, which only limits the total amount of leave.

**Round 1 comment summary:** Commenter 061 suggested there be no increase to or removal of the one person per year limitation. Further the commenter asked the Department to limit an employee’s ability to take leave for an affinity relationship if there is some other caretaker available. Finally, the commenter asked the Department to clarify the process for claiming an affinity relationship including requiring an attestation from the employee.

**Round 1 response to comments:** The Department removed this one person per benefit year language in the second draft of proposed rules, as explained in response to the preceding comment. The Department further notes that it made changes to Section VI(A)(4), explaining the process for applying for leave to care for an individual with whom the employee has a significant personal bond. The Department finds that the current version of the rule, with these changes, is an appropriate balance of the interests of employers and workers, and is administratively feasible, and is consistent with the intention of the statute.

**Round 2 comment summary:** Commenter 061 notes the removal of the section on affinity relationships but reiterates the comment regarding their view that leave to care for someone with



whom the employee has a close personal bond should be limited to one person per year and leave should not be granted if there is some other caretaker available. Commenter 059 disagrees with the removal of the provision and suggests that additional guardrails be put in place to prevent abuse.

**Round 2 response to comments:** The Department finds that the current version of the rule is consistent with the intention of the statute. The Department further notes that changes were made to Section VI.4. to set forth information that should be provided at the time of application to demonstrate the existence of a significant family bond.

#### **Section IV(B)(4)**

*Note: This section became IV(B)(3) in the second proposed rule when previous section IV(B)(3) was removed.*

**Round 1 comment summary:** Commenters 024, 036, 059, 111, 160, 227, 253, and 260 commented that the Department should reconsider and change taking leave on day one of employment due to creating unpredictability for employers. One person recommended mirroring language found in the Federal Family and Medical Leave Act (FMLA)

**Round 1 response to comments:** The Department will not adopt this suggestion as it is inconsistent with statute. The Department further notes that 26 M.R.S. § 850-J does not require an employer to restore an employee to their former position if the employee has been employed by less than 120 days by that employer when the leave started.

**Round 1 comment summary:** Commenters 170, 140, 208, and 226 provided a comment that employees should be eligible for benefits regardless of how long they worked at a particular place of employment.

**Round 1 response to comments:** The Department notes that such eligibility is consistent with statute and expressly set forth in the rule.

#### **General comments regarding Eligibility**

**Round 1 comment summary:** Commenter 186 suggested that fathers should not be eligible to receive up to 12 weeks of benefits for childbirth unless the birthing parent or child had medical issues to warrant the time.

**Round 1 response to comment:** The Department finds this would be inconsistent with statute.

**Round 1 comment summary:** Commenter 216 generally supported the presumed eligibility of workers in the eligibility section.

**Round 1 response to comment:** The Department acknowledges the response.

**Round 1 comment summary:** Commenter 273 suggested aligning Maine Paid Family and Medical Leave eligibility criteria with Federal Family Medical and Leave Act requirements.

**Round 2 response to comments:** The Department made no changes. The Department attempted to make Maine PFML consistent with FMLA, but that was not always feasible, given the differences between the two statutes.

**Round 2 comment summary:** Commenter 063 suggested the Department specify if benefits are payable for claims that began prior to May 1, 2026, but have a need for leave that continues beyond that date. The commenter highlighted an example of an individual that gave birth in late 2025 and asked if someone would be able to take 12 weeks of bonding leave under the program as long as they are within 12 months of birth. Similarly, if someone needs 12 weeks of leave for knee replacement beginning April 1, 2026, can they begin receiving benefits as of May 1, 2026.

**Round 2 response to comments:** The Department made no changes as it determined the statute and rule are sufficiently clear.

**Round 2 comment summary:** Commenter 063 suggested to the Department to provide clarity on what happens to a claim for an employee who becomes unemployed during the claim.

**Round 2 response to comments:** If an applicant loses their employment during the period they are on leave, the remainder of the benefits that were approved before the loss of employment will continue. The Department made no changes as it determined the provisions in the rule are sufficiently clear.

**Round 2 comment summary:** Commenter 264 asked the Department to clarify eligibility for an employee for the Paid Family and Medical Leave Program and to obtain benefits.

**Round 2 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 281 asked the Department to clarify whether the employer is required to comply with the job protections provision in the Act authorizing Paid Family and Medical Leave.

**Round 2 response to comments:** The Department made no changes as it determined the provisions in the statute and the rule are sufficiently clear.

**Round 2 comment summary:** Commenters 293 and 314 suggested to the Department to require a waiting period prior to an individual applying for benefits.

**Round 2 response to comments:** The Department finds this suggestion is inconsistent with statute.

## **V. Notice and Undue Hardship**

**Factual and policy basis:** This section clarifies 26 M.R.S. §850-F(7) to explain an employee’s responsibility to provide reasonable notice of intent to use Paid Family and Medical leave and outlines the process by which an employer can reasonably determine an undue hardship as it pertains to the scheduling of the leave request.

*Note: In response to comments, as explained below, the Department made changes to Section V in the second proposed version of the Rule. The Department made additional clarifying changes in the final version of the Rule. The Department finds that the final rule is based upon consideration of many comments and is an appropriate balance of the interests of workers and employers, in a manner that is consistent with the statute and administratively feasible.*

### **Section V(A)**

#### **Comments on rule provision that thirty days written notice presumed to be reasonable**

**Round 1 comment summary:** Commenter 053 asked the Department to define a reasonable timeframe for notice.

**Round 1 response to comments:** Section V (A) of the proposed rule states that 30 days’ notice shall be presumed to constitute presumed reasonable notice.

**Round 1 comment summary:** Commenters 059 and 136 suggested the Department extend the time for notice for foreseeable leave to be increased from 30 days to 60 days. Commenter 059 suggested that 60 days’ notice would be consistent with statutory language that allows an applicant to apply no more than 60 days prior to the leave beginning.

**Round 1 response to comments:** The Department did not adopt this suggestion. The designation of 30 days as presumed reasonable notice is consistent with the Federal Family and Medical Leave Act (FMLA), and the administration of most other State Paid Family and Medical Leave laws.

**Round 1 comment summary:** Commenters 061, 168, 258 and 267 suggested the Department amend this section to conform to the Federal Family Medical Leave Act standard where it states 30 days’ notice when practicable, or as soon as is practicable if 30 days’ notice is not practicable.

**Round 1 response to comments:** The Department finds that the rule already addresses this suggestion.

**Round 1 comment summary:** Commenter 181 suggested the Department add a specific consequence if an employee does not provide proper notice.

**Round 1 response to comments:** The Department made no changes as the rule is consistent with the intent of the statute. The rule already provides that the employer may claim undue hardship if reasonable notice is not provided.

**Round 1 comment summary:** Commenter 010 suggested the Department define good faith in section A of the rule.

**Round 1 response to comments** The Department made changes to Section V, but retains the language, in section V(D)(3) that the employer makes a good faith attempt to work out a schedule. “Good faith” is a commonly used phrase, and the department does not define it in rule.

**Round 1 comment summary:** Commenters 059 reiterated its Round 1 comment that the time for notice for foreseeable leave to be increased from 30 days to 60 days.

**Round 1 response to comments:** The Department did not adopt this suggestion. The designation of 30 days as presumed reasonable notice is consistent with the Federal Family and Medical Leave Act (FMLA), and the administration of most other State Paid Family and Medical Leave laws.

**Round 2 comment summary:** Commenter 279 suggested to the Department to adopt a provision that the notice provided to the employer must be acknowledged by the employer. The concern from the commenter stemmed from possible delays either by email or electronic communication that could occur.

**Round 2 response to comments:** The Department made no changes as it determined that such a requirement would be unnecessarily burdensome and would be inconsistent with statute.

**Round 2 comment summary:** Commenter 181 suggested the Department clarify the consequences of when an employee fails to provide notice to the employer to schedule leave. Commenter 258 asks the Department to include language stating if the employer fails to provide any statutorily required notices, the employee’s notice obligations are waived.

**Round 2 comment response:** The Department makes no change since, when read in conjunction with the statute, the rule is sufficiently clear.

**Section V(A) - Comments on notice in the case of “emergency, illness or other sudden necessity” and comments on safe leave**

**Round 1 comment summary:** Commenters 232, 258 and 268 suggest that safety concerns related to safe leave be clearly identified as an emergency or sudden necessity exempt from the 30 days’ notice requirement. Commenter 268 reiterated their comment in the second round.

**Round 1 response to comment:** The Department acknowledges the comments, and finds that safe leave will often, but not always, be considered an emergency, and makes no change to the rule based on this comment.

**Round 1 comment summary:** Commenter 235 provided a general comment that 30 days for leave where an emergency exists for life-threatening events is not reasonable and should be changed. Commenter 257 suggested requiring the employee or some family member to provide notice to the employer within 5 business days of an emergency circumstance.

**Round 1 response to comments:** The Department made no changes as it determined the provisions in the rule are sufficiently clear, as it specifies that in the case of emergency, illness, or other sudden necessity, the employee should make a good faith effort to provide written notice as soon as is feasible under the circumstances

**Round 1 comment summary:** Commenter 205 asked the Department to clarify that a “sudden necessity” does not necessarily have to constitute an emergency.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear.

**Round 2 comment summary:** Commenters 167, 179, 198, 215, 221, 245, 246, 257, 258, 328, 329, 331, 333, 338, 390 and 412 suggested the Department make explicit in the rule that requests for safe leave should be considered an emergency notice which does not require an employee to provide at least 30 days’ notice to the employer.

**Round 2 response to comments:** The Department acknowledges the comments, and finds that safe leave will often, but not always, be considered an emergency situation, and makes no change to the rule based on this comment.

**Section V(A) - Comments on undue hardship when employee has provided thirty days’ notice**

**Round 1 comment summary:** Commenters 134, 189 and 272 suggested the Department use the undue hardship provisions that were established in the Maine Earned Paid Leave law. Commenter 189 also suggested the Department develop a standard form that may assist with information to include in the notice to schedule leave.

**Round 1 response to comments:** The Department made some changes and finds that the final version of the rule is consistent with the language and the intention of the statute. The Department determined and set forth in Rule that a prescribed form not be required.

**Round 2 comment summary:** Commenters 061 and 157 offered a comment regarding the presumption that 30-days is sufficient for an employee providing reasonable notice to the employer when scheduling leave. The commenters elaborated this provision conflicts with the statutory language as they emphasized that undue hardship is to be reasonably determined by the employer without the constraints the proposed rule imposes.

**Round 2 response to comments:** The final rules were clarified to outline that the employer retains the ability to challenge 30 days’ notice as insufficient in the process specified in rule.

**Round 2 comment summary:** Commenter 082 offered comment regarding the 30-day notice provision to schedule leave with the employer is reasonable and should not be changed.

**Round 2 response to comments:** The Department did not change the 30-day notice provision as it determined that notice period is consistent with the federal FMLA and the administrative of most other State Paid Family and Medical Leave laws. The final rules were further clarified to outline that the employer retains the ability to challenge 30 days' notice as insufficient in the process specified in rule.

### **Section V(B) – Comments on requirement that notice be in writing.**

*Note: The second version of the proposed rule deleted language in V(B)(4). The rule now requires that notice be “written.”*

*Note: Previous Section V(B)(5) (providing that the 10-day review period for undue hardship may be waived) was moved to its own section as Section V(C) in final rule, for the sake of clarity.*

**Round 1 comment summary:** Commenters 017, 059, 084, 119, 124, 130, 136, 145, 160, 205, 241, 275 and 276 suggested the Department clarify whether notice needs to be in writing as there appears to be conflicting language between Section A and Section B where it states notice providing information to the employer describing the scheduling of leave that is foreseeable does not need to be in writing.

**Round 1 response to comments:** In response to these comments, the Department revised the second draft proposed rules. The rule now requires that the employee notice must be in writing.

**Round 1 comment summary:** Commenters 139, 142, 147, 151, 158, 185, 196, 205, 219 and 221 suggested the Department provide flexibility on how an employee may provide notice to the employer when scheduling leave to include text messaging or email when communicating with the employer.

**Round 1 response to comments:** In the second proposed rule, the Department clarified in Section V(B)(4) in that notice in writing can include text messages and emails.

**Round 2 comment summary:** Commenter 140 suggested the Department reinstate the provision that notice does not need to be in writing when the employee is providing notice to the employer.

**Round 2 response to comments:** The Department will retain the provision that notice will need to be in writing to ensure documentation of the date of leave request.

### **Section V(B) – Comments on form of notice**

**Round 1 comment summary:** Commenter 090 asked the Department to clarify whether employers may still require employees to fill out FMLA paperwork when the employer receives notice that the reason for leave may also qualify for FMLA given the restrictions for employees to use forms when requesting leave for the Maine Paid Family and Medical Leave Program.

**Round 1 response to comments:** The Department made no changes as the rule is not intended to address federal FMLA and the Department has no jurisdiction to enforce federal FMLA.

**Round 1 comment summary:** Commenters 169, 178, 205, 242, 246, 258, 263 and 275 suggested the Department limit the employer in asking for specific information to be disclosed from the employee to ensure the applicant's privacy is protected on the reason to take leave. Commenters 242 and 263 encouraged the Department to allow employees to use questions from the Federal Family Medical Leave Act (FMLA).

**Round 1 response to comments:** The Department made no changes as it determined the provisions in the statute and the rule are sufficiently clear.

**Round 1 comment summary:** Commenters 252 and 268 suggested the Department clarify the type of information the employer can request when an employee is providing information to schedule leave. Commenter 258 suggested the Department require only general information from the employee with the ability of the employer to follow up with a request for additional information.

**Round 1 response to comments:** The Department made no changes as it determined the provisions in the rule are sufficiently clear.

**Round 1 comment summary:** Commenters 179 and 228 suggested to the Department that the applicant should not disclose any additional information pertaining to the request for leave if it is for safe leave.

**Round 1 response to comments:** The Department made no changes as it determined the provisions in the rule are sufficiently clear.

**Round 1 comment summary:** Commenter 274 suggested to the Department to strike the language that prohibits an employer from using a prescribed form when an employee is scheduling leave for the Maine Paid Family and Medical Leave Program.

**Round 1 response to comments:** The Department finds that the provisions in the rule are sufficiently clear on this issue and consistent with statute. The Department did clarify in the second draft proposed rules that the notice must be in writing.

**Round 2 comment summary:** Commenters 199 and 408 offered comments regarding the information that is to be provided in the notice section when scheduling leave. Commenter 199 encouraged the Department to create a standard template form that will assist the employee in providing proper notice. Similarly, commenter 408 asked the Department to clarify what relevant details should be.

**Round 2 response to comments:** The Department finds that the provisions in the rule are sufficiently clear and makes no change to the rule.

**Round 2 comment summary:** Commenters 016 and 101 suggested the Department clarify if the notice requirements are the same for the use of intermittent leave in Section III(B)(2).

**Round 2 response to comments:** The Department made no changes as it determined the provisions in the rule are sufficiently clear.

**Section V (C) – Note: Previous Section V(C) became section V(D) in final rule.**

**Round 1 comment summary:** Commenter 010 suggested the Department define good faith in section C(3), now D(3) of the rule.

**Round 1 response to comment:** The Department made changes in the second proposed rule and in the final rule with respect to this section and finds that the provisions in the rule are sufficiently clear. “Good faith” is a commonly used phrase, and the department does not define it in rule.

**Round 1 comment summary:** Commenter 061 suggested the Department remove the requirement placing the burden to prove undue hardship on the employer and enumerate reasons for businesses to be able to reasonably assert hardship stating the statute makes it the business’s determination and not the Department’s. Additionally, the commenter stated the rule places added burdens on the employer and creates a presumption that employee notice suffices to overcome undue hardship which is not supported by the statute.

**Round 1 response to comments:** In the second version of the proposed rule, the Department removed the burden of proof and made additional changes in the second proposed rule and in the final rule to clarify what may constitute undue hardship. The current rule is consistent with the statute.

**Round 1 comment summary:** Commenter 114 suggested to the Department to develop a template for employers to use regarding undue hardship claims under this section and provide it to their employees.

**Round 1 response to comments:** The Department finds that the rule, with the changes in the second proposed rule and the final rule, are sufficiently clear, and makes no additional change to address this comment. The Department will consider developing templates and forms as it deems appropriate and useful before benefits are effective.

**Round 1 comment summary:** Commenter 134 and 252 suggested the Department add an additional consideration to account for situations where an employer could have multiple employees out on Paid Family Medical Leave simultaneously under an undue hardship analysis. Furthermore, they suggested the Department remove the phrase or modify the language “approval of the employee’s health care provider” as it may override or fail to account the employer’s ability to decide whether an undue hardship claim exists.



**Round 1 response to comments:** The Department notes that it made changes to this section in the second proposed rule and in the final rule, and finds that the provisions in the final rule are sufficiently clear and are consistent with statute.

**Round 1 comment summary:** Commenter 181 commented that the Department should apply the undue hardship provision to only non-medical leaves, potentially providing employers even more control by leveraging the Federal Family and Medical Leave Act (FMLA) language for the scheduling of intermittent and reduced schedule leaves. Commenter 063 made this same comment in the second round of comments.

**Round 1 response to comments:** The Department finds it is inconsistent with statute to limit undue hardship to only non-medical leave claims. The Department made no change after either round of comments.

**Round 1 comment summary:** Commenter 267 and 268 stated that comment regarding the provisions of this section are consistent with other leave laws around the country and Maine's paid family and medical leave statute. In addition, commenter 268 believes the requirements are clear and are consistent with the statute.

**Round 1 response to comments:** The Department acknowledges the comments and makes no change to the rule as a result, although other changes are made as explained herein.

**Round 2 comment summary:** Commenters 061, 090, 140, 167, 178, 179, 199, 205, 221, 250, 258, 267, 268, 280, 290, 291, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 309, 310, 323, 390, 400, 412 and 477 offered comments both for and against the deference to the employer in this section.

**Round 2 response to comments:** The Department made further clarifications in the final rule and finds that the provisions in the final rule are sufficiently clear and are consistent with statute.

**Round 2 comment summary:** Commenters 061, 090, 199, 295, 296, 297, 298, 299, 306 and 309 suggested this provision conflicts with the intent of the Act authorizing Paid Family and Medical Leave based on the text of § 850 (B)(7) that the scheduling of leave may not cause undue hardship as reasonably determined by the employer and believe the rules should provide more deference to the employer to determine a reasonable undue hardship.

**Round 2 response to comments:** The Department made further clarification in the final rule and finds that the provisions in the final rule are sufficiently clear and consistent with statute.

**Round 2 comment summary:** Commenters 140, 167, 178, 179, 198, 205, 221, 232, 250, 258, 268, 290, 291, 310, 323, 390, 412 and 477 suggested this provision may create barriers for

applicants to schedule leave given the burden for the employer to prove undue hardship is now removed.

**Round 2 response to comments:** The Department considered many comments and made changes to appropriate balance the interests of workers and employers, in a manner that is consistent with the statute and administratively feasible.

**Round 2 comment summary:** Commenter 115 suggested the Department requires the employer to establish the burden of undue hardship when the employee is scheduling leave.

**Round 2 response to comments:** The Department considered many comments and made changes to appropriate balance the interests of workers and employers, in a manner that is consistent with the statute and administratively feasible

**Round 2 comment summary:** Commenter 198 suggests that an employer should not be able to claim undue hardship as long as 30 days written notice has been given or there are emergency or sudden necessity circumstances. The commenter recommends deleting the phrase “unless the employer establishes that, in the specific context of the employer’s business, the amount of notice provided was insufficient.”

**Round 2 response to comment:** The Department does not make the recommended change. The final rule appropriately balances the interests of workers and employers, in a manner that is consistent with the statute and administratively feasible

### **Section V(D) - Undue Hardship**

*Note - Section V(D) was removed and replaced with a new section V(D) in the second draft of proposed rules. In final rule, previous Section V(C) was moved to section V(D) and previous section previous Section V(D) was subsumed as subsection V(D)(4). Additional clarifying changes were made in the final rule to balance the interests of workers and employers in a manner that is consistent with the statute.*

**Round 1 comment summary:** Commenter 232 stated that the provision placing the burden on the employer to prove undue hardship should not be changed.

**Round 1 response to comments:** The Department made various changes to this provision, to appropriately balance the interests of workers and employers, in a manner that is consistent with the statute.

**Round 1 comment summary:** Commenters 134 and 257 commented this section conflicts with statutory language in 850-B(7) regarding the employer determination of undue hardship and suggested to the Department that the rule should conform to the language in statute. Commenter 268 suggested the provision be removed from the rule or have sufficient guardrails put in place,

**Round 1 response to comments:** In the second proposed rule, this section was changed to appropriately balance the interests of workers and employers, in a manner that is consistent with the statute and administratively feasible

**Round 1 comment summary:** Commenters 116, 205, 258, 267 and 268 commented this section conflicts with section V(A) of the rule. Commenters believed section V(A) allows an employer to have sufficient notice of 30 days for leave that is foreseeable. Commenters were concerned that section D may allow an employer to place additional barriers on applicants to be approved for leave if some employers believed 30 days would not be enough to constitute reasonable notice. Commenters suggested the Department remove part of the rule allowing employers to claim undue hardship despite receiving sufficient notice. In the alternative, commenters encouraged the Department to place guardrails in the proposed rule to ensure employees know how much notice to provide the employer. Commenter 232 stated that an employer should be required to inform all employees if an employer needs more than 30 days' notice for leave.

**Round 1 response to comments:** In the second proposed rule, this section was changed to appropriately balance the interests of workers and employers, in a manner that is consistent with the statute and administratively feasible

**Round 2 comment summary:** Commenters 060 and 503 offered a suggestion to the Department to consider providing additional guidance to medical providers by developing criteria or standards for a medical provider to use when determining whether a proposed leave schedule is unreasonable.

**Round 2 response to comments:** The Department declines to make changes in the rule, but defers to medical expertise.

**Round 2 comment summary:** Commenter 198 suggests that if the employee is taking family leave for the medical condition of a family member, the family member's medical provider should be able to determine whether undue hardship should apply.

**Round 2 response to comment:** The Department made no changes in response to comment as the determination of reasonable undue hardship is made by the employer, and subject to the review of the employee's health care provider in medical claims only.

**Round 2 comment summary:** Commenters 032, 061, 205, 217, 267 and 398 offered comments regarding the provision that states if the employer's proposed schedule is found to be unreasonable by the employee's health care provider that the undue hardship claim does not apply, expressing various concerns including the concern it is contrary to the intent of the law.

**Round 2 response to comments:** The Department finds it is important that the employer's proposed schedule accommodate the needs of the employee in the judgment of the employee's medical provider. The Department made changes in the second proposed to clarify

the limits of the health care provider's review. The Department finds that this section of rule appropriately balances the interests of workers and employers, in a manner that is consistent with the statute and administratively feasible

**Round 2 comment summary:** Commenter 168 posed two questions to the Department regarding the party responsible for reimbursement of a provider offering a medical opinion on the proposed schedule and whether there will be an opportunity for the employer to modify a rejected schedule and resubmit it to the health care provider.

**Round 2 response to comments:** The ideal solution is for the employer and the employee to agree on a proposed schedule that meets the healthcare needs of the employee. Such attempts on a mutually agreed schedule may continue after a schedule proposed is rejected. If agreement cannot be reached, the process set forth in Section VI(H) will apply and the employer may appeal a denial of the employer's undue hardship claim. Payment to the provider is in accordance with customary arrangements for such payment, which may include the employee's health care plan. The Department makes no changes to the rule to allow the employer multiple attempts to claim undue hardship once that claim has been rejected.

**Round 2 comment summary:** Commenters 178, 198, 246, 258 and 474 offered comments regarding the provision that states if the employer's proposed schedule is unreasonable the undue hardship claim does not apply should not be changed. The commenters also suggested expanding this provision to all of types of qualifying leave under the Act authorizing Paid Family and Medical Leave.

**Round 2 response to comments:** The Department determines no additional changes will be made to expand the undue hardship provision to other types on leave.

### **Section V (E) – Note: Section V (E) was stricken in second draft of rules**

*Note: The standards for undue hardship are now set forth in Section V(D)(1). The Department made an additional clarifying change in the final rule that the timing and/or the duration of the leave may be the basis of undue hardship.*

**Round 1 comment summary:** Commenter 126 suggested the Department consider that medically necessary leaves be considered "reasonable" in terms of scheduling when they follow the recommendation of a health care provider. Any other factors that may pose a burden on the employee's ability to take leave should not be considered regarding undue hardship.

**Round 1 response to comments:** In the second proposed rule, section V(E) was stricken in its entirety in second draft of proposed rules. The final version of the Rule, at Section V(D)(4) states that the employer's proposed schedule must be sufficient to accommodate the healthcare needs of the employee seeking medical leave, in the judgment of the employee's healthcare

provider. The Department finds that the final rule balances the interests of workers and employers, and is consistent with the language and the intention of the statute.

**Round 1 comment summary:** Commenter 134 suggested to the Department to add to the list of factors on whether undue hardship was reasonable to include the number of employees out on leave at one time and the employee’s roles, responsibilities and specialized expertise that may preclude an employee’s preferred leave schedule.

**Round 1 response to comments:** In the second proposed rule, section V(E) was stricken in its entirety in second draft of proposed rules. Section V(D)(1) now states that, in asserting an undue hardship, the employer may explain the impact of the absence of the specific employee and the impact on the operation of the business.

**Round 1 comment summary:** Commenter 181 suggested the Department apply undue hardship to only non-medical leave that could leverage the Federal Family Medical Leave Act regarding the scheduling of intermittent leave and reduced leave.

**Round 1 response to comments:** The Department declines to make this change, as it is inconsistent with the statute.

### **General comments on Notice and Undue Hardship**

**Round 1 comment summary:** Commenters 135, 158, 169, 185, 196, 221 and 228 suggested the Department allow a safe leave exemption when an employee is scheduling leave.

**Round 1 response to comments:** Situations surrounding safe leave will be considered during application to determine whether this is a “sudden necessity of leave” that prevents at least 30 days presumed reasonable notice. No change is made to the rule for a blanket exemption.

**Round 1 comment summary:** Commenter 124 suggested the Department narrow the notice requirement for foreseeable leave to be limited to only bonding claims pertaining to undue hardship while other types of leave such as medical (employees own serious health condition), undue hardship requirements should not be included as those are often less scheduled.

**Round 1 response to comments:** The Department did not adopt this suggestion as it is not consistent with statute.

**Round 1 comment summary:** Commenter 140 suggested the Department put in the rule to limit the number of times an employer can claim an undue hardship when an employee is scheduling leave.

**Round 1 response to comments:** The Department makes no changes in rule with respect to this specific comment. The rule, including Section VI.H., as amended in the second proposed

rule and in the final rule, is sufficiently clear, balances the interests of the employer and the worker, and is consistent with the statute.

**Round 1 comment summary:** Commenters 230, 236, 251 and 253 offered comments supporting the undue hardship provisions established in the proposed rule and offered no changes to be made to this section.

**Round 1 response to comments:** The Department acknowledges the comments, and notes that changes were made to the rule as explained herein.

**Round 1 comment summary:** Commenters 061, 097, 102, 119, 146, 160, 199, 204, 217, 224 and 250 offered comments to the section pertaining to undue hardship. The commenters believed the provisions in the rule to not align with statutory language regarding undue hardship and should either be removed from the rule entirely or significant changes to be made to simplify the process.

**Round 1 response to comments:** In the second proposed rule, the Department amended the rule to simplify and clarify the process for employers and employees.

**Round 1 comment summary:** Commenters 168 and 205 suggested the proposed rule on undue hardship should align with notice requirements similar to the Federal Family Medical Leave Act (FMLA).

**Round 1 response to comments:** The Department makes no changes in rule as the federal Medical Leave Act is not consistent with the Maine PFML Act and it is not feasible to align the 2 laws on undue hardship.

**Round 1 comment summary:** Commenter 202 suggested the Department cross reference the paid family and medical leave statute regarding notice.

**Round 1 response to comments:** The Department made no changes as it determined the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 063 recommended the Department provide additional clarity on the consequences if proper notice is not provided.

**Round 2 response to comments:** If the employee does not provide reasonable notice on their intent to take leave, and the employer establishes an undue hardship, the leave may be subject to the employer's proposed schedule. No additional change is made, other than the clarifications made in the second proposed rule and the final rule as to such procedures.

**Round 2 comment summary:** 080 suggested for the Department consider the nature of the business when considering undue hardship given current staffing shortages and the needs of the business if an employee takes leave.

**Round 2 response to comments:** The Department finds that the final rule balances the interests of workers and employers and is consistent with the statute.

**Round 2 comment summary:** Commenter 145 suggested to the Department add additional specificity around undue hardship to ensure employers do not subject it to abuse.

**Round 2 response to comments:** The Department made no changes in response to the specific comment as it determined the rule is sufficiently clear and strikes a proper balance to avoid abuse by employers.

**Round 2 comment summary:** Commenters 310, 319 and 337 suggested that standards on undue hardship must be universal and consistent. The commenter further suggested that without consistent standards it could harm workers and make it easier for employers to avoid providing leave when it's needed.

**Round 2 response to comments:** The Department acknowledges the comment but makes no changes in rule. The changes in the second proposed rule and the final rule strike a proper balance between the interests of the employer and the employee and is consistent with the statute.

**Round 2 comment summary:** Commenter 311 suggested to the Department if leave under the Federal Family and Medical Leave Act (FMLA) runs concurrently with Maine Paid Family and Medical Leave, notice and certification requirements under FMLA should take precedence.

**Round 2 response to comments:** The Department made no changes. The Department attempted to make Maine PFML consistent with FMLA, but that was not always feasible, given the differences between the two statutes.

## **VI. Process for Application and Approval of Benefits**

**Factual and policy basis:** This section implements 26 M.R.S. §850-D regarding the process for applications and approval of benefits. It clarifies the responsibilities of the employer and employee in the application process to obtain benefits; these include documentation, medical authorization, timeline to submit information, and application submission and employer notification.

**Department Finding:** The Department made a change in the final rule to Section VI (8) and (9) to clarify that documentation from the health care provider of the applications or the family member's serious health condition must include the anticipated duration of the leave. This explicit requirement is consistent with the statute which provides leave for a covered individual with a serious health condition that makes the covered individual unable to work. 26 M.R.S. § 850-B (2) and (3). This information is routinely required for federal Family Medical Leave.

### **Section VI(A) - Application**

**Round 1 comment summary:** Commenter 061 states the rule should have specific requirements for qualifying for medical leave including requiring that an employee establish they are "incapacitated from work and daily activities due to a covered medical condition."

**Round 1 response to comment:** The Department made a change in the final rule specifying that documentation of a serious health condition should include the anticipated duration of the leave, as the statute states that leave is for a serious health condition that makes an individual unable to work.

**Round 1 comment summary:** Commenters 205 and 267 suggested that the methods for filing an application should be expanded to include methods other than online.

**Round 1 response to comment:** The Department makes no changes as the rule is sufficiently clear that an application may be submitted online but does not preclude the ability to file an application using other methods.

**Round 1 comment summary:** Commenter 116 states that the rule should require all requests for leave by an employee be put in writing and provided to the employer.

**Round 1 response to comment:** The Department made no changes. Section V requires the employee to provide notice of the intent to use leave. The rule requires that the notice be in writing absent an emergency or sudden necessity.

### **Section VI (A) (1) – Proof of personal identity**

**Round 1 comment summary:** Commenters 205, 232, 267 and 268 suggest that the Department clarify what is required to establish proof of identity. Commenters 232, 258 and 267 suggest that the rule include a specific list of documentation that would be acceptable for establishing proof of identity. Commenter 205 asks the Department to limit the number of documents required.

**Round 1 response to comment:** The Department makes not changes as the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 140 suggested the Department provide a list of suitable documents for establishing proof of identity as well as listing a variety of ways claimants can submit documents.



**Round 2 response to comment:** The Department made no changes as the rule is sufficiently clear.

**Section VI(A)(3) – Proof of personal identity of family member if applying for paid family leave**

**Round 1 comment summary:** Commenters 129, 140, 142, 185, 205, 214, 232, 246, 258 and 268 suggested that the Department remove the requirement that proof of identity for a family member must be provided for an application to take leave to care for the family member. Some Commenters suggested that requiring proof of identity could create barriers for older individuals who may not be able verify their identity or may have expired information. Commenters 168 and 124 suggested that the Department remove the requirement to prove the identity of a family member and instead allow the applicant to attest to their relationship because requiring proof of identity of the family member may delay the application process.

**Round 1 response to comment:** The Department made no changes in response to comments because the requirement to prove identity protects the integrity of the program from potential fraud.

**Round 1 comment summary:** Commenters 233 and 258 suggested that the Department clarify the type of information needed to prove the identity of family members when applying for leave.

**Round 1 response to comment:** The Department made no changes in response to these comments as the provisions in the rule are sufficiently clear.

**Section VI(A)(4) – Information regarding the existence of a significant personal bond**

*Note: As explained below, in response to comments, the Department removed the word “affinity relationship,” as it is not in the statute, and added language to set forth factors to demonstrate a significant personal bond.*

**Round 1 comment summary:** Commenters 035, 060, 258 and 268 suggested the rule provide more guidance on what constitutes an affinity relationship. Commenter 60 also suggested including adding “affinity” in all places where there is reference to family member. Further, Commenter 60 stated that only one affinity relationship should be allowed at a time. Commenter 115 (PFML Authority) specifically recommended that the family-like bond be determined based upon six factors that are set forth in Oregon law. (Similar comments were made under the definition section, I (A)(2).

**Round 1 response to comment:** The Department made changes in the second version of the rule to remove the use of the term “affinity relationship” and to clarify factors that may demonstrate the type of family member relationship described in 26 M.R.S. § 850-A(19)(G), drawing on similar factors used by the State of Oregon, as recommended by the PFML Authority. The Department finds that these changes appropriately address the requirement to provide for leave for all types of family members outlined in the statute. The six factors set forth in the final rule are:

- a. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
- b. Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
- c. The expectation to provide care because of the relationship or the prior provision of care;
- d. Cohabitation and its duration and purpose;
- e. Geographic proximity; and
- f. Any other factor that demonstrates the existence of a family-like relationship

**Round 1 comment summary:** Commenters 122, 134 and 164 suggested that the Department require applicants filing claims for affinity relationship family members to provide either an attestation or a signed affidavit to provide greater assurance that claims are not subject to fraud or abuse.

**Round 1 response to comment:** The Department did not make this specific requested change. The Department made changes in the second version of the rule to clarify factors that may demonstrate the type of relationship described in 26 M.R.S. § 850-A(19)(G), set forth above. The Department finds these changes, along with the requirement in Section VI(D) that all applications must be signed by the applicant, attesting that the information contained is true and accurate to the best of the applicant's knowledge, appropriately balance the goal of preventing fraud with the requirement to provide for leave for all types of family members outlined in statute.

**Round 2 comment summary:** Commenters 059, 060, 061, 105, 157, 254, 257 and 398 expressed that "significant personal bond" is too broad, geographic proximity is not an appropriate sign of a family like bond, and suggested that this section to be further refined. The commenters suggested if the claimant applies for leave for a family member, that family member should be required to confirm the relationship and not just the applicant.

**Round 2 response to comment:** The Department made no changes to the rule in response to the comments. "Significant personal bond" is the standard in 26 M.R.S. § 850-A(19)(G), and the Department is bound by the statute. The Department finds that the factors for determining a significant personal bond set forth in the second version of the rule is consistent with the intention of the statute.

**Round 2 comment summary:** Commenters 232, 258 and 323 liked the additional clarity of language explaining a "significant personal bond" and encouraged the Department to keep the language in rule.

**Round 2 response to comment:** The Department acknowledges the comments and made no further changes as a result.

**Round 2 comment summary:** Commenters 217 and 398 suggested that the Department add a limit on how many times a claimant may take leave for a family member or claim “significant personal bond”.

**Round 2 response to comment:** The Department notes that it removed this limitation that was in the initial version of Section IV(B)(3) in response to comments asking for the removal of that limitation. The Department finds that the statute does not permit a limit on how many claims a claimant may make or on how many family members such claims may be based on.

### **Section VI(A)(6) Proposed Scheduling and Duration of Leave**

**Round 1 comment summary:** Commenter 061 asked the Department to include information in the rule on how the Department will obtain information confirming the employee gave appropriate notice and worked with the employer to reach agreement on a schedule.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear.

### **Section VI (A) (7) – Waiver of Undue Hardship – new in second proposed Rule**

**Department Finding and Change to Rule:** In the second version of the Rule, the Department added section VI (A)(7), that documentation in an application may include “*a waiver signed by the employer that the proposed schedule of leave is not an undue hardship, if applicable,*” finding that an application could be processed more quickly if the employer signed a waiver that the proposed schedule of leave is not an undue hardship.

**Round 2 comment Summary:** Commenters 167, 246 and 258 recommend removing the undue hardship waiver from the application process and that all applications be processed within 5 days of being filed.

**Round 2 response to comment:** The Department made no changes in the rule in response to the commenters’ suggestion. The proposed rule appropriately balances the interests of workers and employers and is administratively feasible.

**Round 2 comment summary:** Commenters 061 and 258 suggested that the provision allowing the employer to sign a waiver acknowledging that claimant’s leave does not cause undue hardship should be removed from rule. Commenter 61 claimed that it creates an additional burden on the employer. Commenter 258 claimed that it creates an additional burden on the employee applying for leave.

**Round 2 response to comment:** The Department made no changes in rule as the inclusion of a signed waiver by an employer encourages proactive conversation between both parties in advance of leave as is the intent of the reasonable notice and allows faster processing

of claims where undue hardship is not at issue. The Department finds that the waiver does not create an additional undue burden.

**Round 2 comment summary:** Commenter 61 suggested that after signing a waiver, an employer should be able to change its mind if there is a change in circumstances for the business.

**Round 2 response to comment:** The Department made no changes in the rule as once a determination on leave is made, both the employer and employee have an interest in a level of certainty.

### **Section VI (A) (8) and (9) Documentation from health care provider**

**Department Finding:** In the final rule, the Department added language that the documentation from the health care provider must include information as to the duration of time that the applicant is expected to be unable to work. This was presumed, as it is the practice in federal FML, and because 26 M.R.S. § 850-B (3) expressly states that medical leave eligibility is for a serious health condition that makes the covered individual unable to work. The added language clarifies the intention of the statute.

**Round 2 comment summary:** Commenter 474 supports the requirement of documentation from a healthcare provider.

**Round 2 response summary:** The Department acknowledges the comments and notes there is a change in the final rule as explained in the Department Finding above.

### **Section VI(B) - Authorization for medical information**

**Round 1 comment summary:** Commenters 232 and 268 suggested that the provision allowing applicants to authorize the Administrator to directly obtain medical information should not be changed in rule.

**Round 1 response to comment:** The Department made no changes to this section of the rule and acknowledges the comment.

**Round 1 comment summary:** Commenter 061 suggests the rule clarify that an application can be delayed or denied if an employee refuses to sign an authorization statement.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear that not signing the Authorization Statement may cause a delay in processing of the application, for a failure to provide required information The Administrator may not deny an application solely because the applicant chose not to sign an Authorization Statement.

### **Section VI(C) signed statement for safe leave**

**Round 1 comment summary:** Commenters 061 and 169 suggested the Department clarify the type of information that is needed for applicants that apply for safe leave.

**Round 1 response to comment:** The Department made no changes to the rule in response to comment as the rule is sufficiently clear.

**Round 2 response to comment:** Commenter 061 suggested to the Department to require documentation for safe leave be consistent with documentation required in statute in the proposed rule.

**Round 2 response to comment:** The Department made no changes in rule in response to comment as the rule is sufficiently clear.

**Round 1 comment summary:** Commenters 232 and 245 suggested the Department provide a template form for applicants that may request safe leave.

**Round 1 response to comment:** The Department made no changes to the rule in response to comment as the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 245 and 268 provided positive feedback on the ability of safe leave to be verified through self-attestation and not requiring court paperwork which may not be available in all safe leave cases.

**Round 1 response to comment:** The Department acknowledges the comment and makes no changes in rule in response to comment.

**Round 2 comment summary:** Commenter 245 suggested the proposed rule should explicitly note that, for safe leave requests, the worker need only provide a short, plain statement that they meet the requirements of 26 M.R.S. § 850-A. The Commenter expressed that the rule should limit either the employer or the program administrator from requiring more details about their victimization unless there is a good faith basis to believe false information was given by the employee

**Round 2 response to comment:** The Department made no changes in rule in response to comment as the rule is sufficiently clear.

**Section VI(D) – Signed statement with completed application attesting that information is true**

*Note: In the second proposed rule, the Department amended the rule in response to the comment, and changed the word “declaring” to “attesting.”*

**Round 1 comment summary:** Commenter 115 (PFML Authority) suggested that the Department amend the rule to state than an applicant “attest” rather than “declare” regarding the

signed statement that must be completed for relationships that have a personal significant bond as a family member.

**Round 1 response to comment:** In the second proposed rule, the Department amended the rule in response to the comment, and changed the word “declaring” to “attesting.”

#### **Section VI(E) – Incomplete applications**

*Note: In the second proposed rule, the Department changed the time for an applicant to provide outstanding information on an incomplete application from 7 days to 10 business days.*

**Round 1 comment summary:** Commenter 061 suggests the rule make it clear that an application can be delayed or denied if the Department does not receive enough information to adjudicate the claim.

**Round 1 response to comment:** Section VI(E) states that failure to provide “reasonably necessary information or documentation” may result in a delay or a denial of the application. The Department made no changes in the rule as the rule is sufficiently clear.

**Round 1 comment summary:** Commenters 122, 140,160, 176, 205, 214, 226, 253, 258, 263, 268 and 275 suggested that the Department extend the time an applicant can submit incomplete information to the Administration from 7 days to 10 days. Commenters 125, 208, 226 and 253 suggested that the Department extend the time to allow an applicant to submit incomplete information but did not specify the time to extend the application.

**Round 1 response to comment:** In the second proposed rule, The Department amended the rule and extended the submission period from 7 days to 10 business days for applicants to submit incomplete information.

**Round 2 comment summary:** Commenter 217 offered a positive comment on expanding the number of days from 7 days to 10 days to allow an applicant to finalize an incomplete application.

**Round 2 response to comment:** The Department acknowledges comment and made no additional changes as a result.

**Round 2 comment summary:** Commenter 061 suggested that the revised 10 business day period to remedy an incomplete application is too long. Additionally, the commenter suggested that the rule should say an application “shall” be denied if information is not provided.

**Round 2 response to comment:** The Department made no changes as the rule provides an appropriate balance between the needs of applicants, employers and administrative efficiency.

#### **Section VI (F) Timing of submission of application**

**Round 1 comment summary:** Commenters 015, 59, 61, 116, 133, 148, 154,158, and 280 commented that the provision that allows an individual to apply for leave 90 days after the start of leave is too long. Commenters 061, 116,168, and 277 suggested that the length of time should be no more than 30 days.

**Round 1 response summary:** The Department made no change to the rule as the statute set the application window of 60 days prior to and 90 days after the start of leave, and the Department is bound by the statute.

**Round 1 comment summary:** Commenters 140 and 267 suggested that the Department should not change the provision that an applicant may apply for benefits 90 days after the start of leave.

**Response 1 response to comment:** The Department acknowledges the comments and made no changes to the rule in response.

**Round 2 comment summary:** Commenter 059 expressed concern about the 90-day timeframe an applicant can apply for leave and asked whether the employer is required to hold the position open in these circumstances.

**Round 2 response to comment:** Section XIV addresses the employer’s obligations regarding restoration of the employee. The Department makes no change to rule in response to the comment as the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 061 suggested that the Department amend the deadline an individual may apply retroactively for leave to 30 days instead of 90 days to minimize disruption and enhance the predictability of leave. The commenter recognized that this may require a statutory change.

**Round 2 response to comment:** The Department made no change to the rule as the statute set the application window of 60 days prior to and 90 days after the start of leave, and the Department is bound by statute.

#### **Section VI(G) Waiver of application deadline**

**Department Finding and Note:** *In the final rule, the definition of “good cause” is deleted from this section and moved to Section I (A)(13) Definitions, with appropriate modifications. The Department found, in reviewing the totality of comments, that the phrase “good cause” existed in other parts of the rule, and therefore the definition is the same throughout the rule.*

**Round 1 comment summary:** Commenter 267 suggests the list of examples of good cause include when the employer fails to provide an employee notice of their rights as required by the statute.

**Round 1 response to comment:** In the final rules, the Department removed the good cause language from this section and added a full definition in Section I applicable throughout the rule. The Department finds that the new definition is sufficiently clear as to what may constitute good cause. The situation described by the Commenter may qualify under that

definition, but the Department declines to add it as an independent basis for finding good cause and therefore makes no changes to the rule in response.

**Round 2 comment summary:** Commenter 250 suggested that the Department’s provision on good cause for retroactive applications after a qualifying event for leave in the law should be restricted to circumstances that prevented an application being made prior to the leave beginning.

**Round 2 response to comment:** The Department changed the rule to remove the examples of good cause and added a specific definition of good cause in Section I. The Department chose not to update this section to restrict good cause as suggested above, as the Department finds that that is too restrictive on the applicant in considering the emergent reasons that might prevent an applicant from applying before leave begins.

**Round 2 comment summary:** Commenter 217 suggested that the Department clarify the term “Administrator” as the language in this section may be read to mean an employer’s Third-Party Administrator (TPA).

**Round 2 response to comment:** The Department makes no changes to the rule as it is sufficiently clear. Administrator is defined in 26 M.R.S. § 850-A(1).

#### **Section VI(H) – Notification to Employer and process for claiming Undue Hardship**

*Note: In response to comments, the Department made clarifying changes to this subsection. The Department also clarified that an application will be processed immediately if there is an agreement as to the scheduling of leave. The Department also clarified that either an employee or an employer may appeal an Administrator’s finding with respect to undue hardship.*

**Round 1 comment summary:** Commenters 101, 136, 148, 217, 252, 257 and 258 suggested that the Department remove the provision that allows an employer only 10 days to claim an undue hardship when an applicant is scheduling leave.

**Round 1 response to comment:** The Department makes no changes to rule. The proposed rule appropriately balances the interests of workers and employers and is administratively feasible.

**Round 1 comment summary:** Commenter 140 appreciated that if an employer does not provide objections to an employee’s leave schedule application within the 10 day employer review, that the schedule requested by the employee is used if the claim is approved.

**Round 1 response to comment:** The Department acknowledges the comment and makes no changes to the rule in response to comment.

**Round 1 comment summary:** Commenter 059 and 267 suggests the Department include the ability of the employee to appeal a finding of undue hardship.

**Round 1 response to comment:** The Department included the ability of an employee to appeal in the second version of the proposed rule. The Department further notes that a paragraph



was added to Section XV, Appeals, to allow for appeals for denial of a claim for benefits due to a finding of reasonable undue hardship.

**Round 1 comment summary:** Commenter 160 asked the Department why the employee can't notify the employer on the filing of a claim at the same time that the employee files the claim with the Administrator.

**Round 1 response to comment:** Section V addresses the notice required by the employee to the employer. The Department makes no changes in response to this comment as the rule is sufficiently clear as to the notice required by the Administrator to the employer.

**Round 1 comment summary:** Commenter 169 suggested that the Department consider the confidentiality of victims of gender-based violence when an employer is required to be notified of an employee filing a claim within 5 business days by limiting the amount of information disclosed to the employer.

**Round 1 response summary:** The Department acknowledges the comment and makes no changes in response to comment as the rule is sufficiently clear that the employer will receive the basic claim information, but not confidential employee information.

**Round 1 comment summary:** Commenter 232 suggested that the Department shorten the time an employer will have to provide any additional facts regarding an applicant's claim before it is processed.

**Round 1 response to comment:** The Department made no changes to the rule in response to the comment as the rule reflects an appropriate balance to ensure fairness in the review of claims for both the employee and employer.

**Round 1 comment summary:** Commenter 268 suggested the Department allow an employer to claim an undue hardship when providing information on an applicant's request for leave, but otherwise not be able to provide any other information that might infringe on the applicant's right to take leave related to the certification of the reasons for leave.

**Round 1 response to comment:** In the second proposed rule, the Department made no changes to the rule in response to the comment as the rule reflects an appropriate balance to ensure fairness in the review of claims for both the employee and employer. The employer is asked to provide information pertinent to the scheduling of leave and other information pertinent to eligibility, and the applicant is asked to provide documentation that supports the verification of eligibility criteria. The Administrator will review the pertinent information provided by both parties as specified in rule.

**Round 1 comment summary:** Commenters 258, 267 and 268 asked the Department to clarify whether it is the Department or the Administrator that makes the determination on undue hardship since this section appears to conflict with Section V(E).

**Round 1 response to comment:** Section V(E) was removed from the rule leaving undue hardship determinations to the process set forth in Section VI, which is performed by the Administrator.

**Round 1 comment summary:** Commenter 267 asked the Department to clarify that if an employee appeals a determination that undue hardship is reasonable, the employee will still have access to PFML and job protections.

**Round 1 response to comment:** The employee will have job protection for any approved leave, including leave that is taken by the employer's proposed schedule in a case in which reasonable undue hardship is found. The Department finds that no change to the rule is needed.

**Round 1 comment summary:** Commenter 133 suggested that the Department establish an online portal to manage communications regarding the notification to the employers within five days of an employee filing a claim.

**Round 1 response to comment:** The Department acknowledges the comment and makes no changes in rule in response to comment as the suggestion is operational.

**Round 1 comment summary:** Commenter 136 suggested that the Department remove the provision that if an employer's claim of undue hardship is determined reasonable that the Administrator will instruct employee and employer to determine a schedule that does not constitute an undue hardship within 14 days. The commenter believes this provision should be removed to reflect the unique needs of each business regarding the scheduling of leave.

**Round 1 response to comment:** In the second proposed rule this provision was amended and allows an employer to determine the reasonable schedule if a reasonable undue hardship has been shown.

**Round 2 comment summary:** Commenter 232 suggested that the Department restore the previous language regarding the negotiation of a schedule.

**Round 2 response to comment:** The Department made no changes to the rule in response to comment. The proposed rule appropriately balances the interests of workers and employers and is administratively feasible.

**Round 2 comment summary:** Commenter 267 suggested that an employee be allowed to start their paid leave while the Administrator is considering the employer's assertion of an undue hardship.

**Round 2 response to comment:** The Department makes no change to the rule in response as the Administrator must consider an employer's claim of reasonable undue hardship prior to approving the employee's proposed schedule of such leave.

**Round 2 comment summary:** Commenter 408 suggested that the Department strike the 10-day period for an employer to provide additional information regarding the applicant claim to allow greater flexibility for employers as circumstances change for the employer.

**Round 2 response to comment:** The Department made no change to the rule in response to the suggestion. The proposed rule appropriately balances the interests of workers and employers and is administratively feasible.

**Round 2 comment summary:** Commenters 205, 221, 258 and 268 suggested that the Department separate undue hardship claims from the application process and process claims within five business days after the claim was filed.

**Round 2 response to comment:** The Department made no changes in response to the suggestion as the proposed rule appropriately balances the interests of workers and employers and is administratively feasible.

**Round 2 comment summary:** Commenter 311 suggested that the provision that states the employer submitting any additional facts regarding the applicant's eligibility needs additional clarification as to when the 10 day review period begins.

**Round 2 response to comment:** The Department made no changes as the rule is sufficiently clear that it begins after the employer is notified by the administrator of the employee's application.

**Round 2 comment summary:** Commenters 140, 145, 221, 246, 332 and 398 expressed concerns regarding the Administrator determining undue hardship claims. The commenters suggested the Maine Department of Labor should determine the reasonableness of undue hardship claims rather than leaving it to the Administrator that will likely to be a third-party entity.

**Round 2 response to comments:** The Department made no changes as it would not be administratively feasible to have the Administrator, which may be a third party vendor of the Department, process some types of claims and the Department to process some types of claims. The Administrator will process all initial and reconsideration claims and the Department will consider all appeals of denials of reconsideration claims.

**Round 2 comment summary:** Commenter 059 appreciated the revised version of the rule that allows the employer to impose a reasonable schedule if they make a reasonable undue hardship determination.

**Round 2 response to comment:** The Department acknowledges the comment and makes no changes in rule in response to comment.

### **General Comments Regarding the Process for Application and Approval of Benefits**

**Round 1 comment summary:** Commenter 188 suggested that Department ensure that communication is offered digitally and within the same day if an employer is notified of an applicant's claim.

**Round 1 response to comment:** In the second proposed rule, the Department added a provision that clarified that the Administrator will notify the employer 5 business days after the claim is approved. The Department chose 5 business days to ensure consistency with the notice to the employer of a claim being filed.

**Round 1 comment summary:** Commenters 061 and 087 suggested that the employer should be able to ask for a second medical opinion for claims related to medical leave with a medical provider identified by the employer, and that such second opinions should be at the employer's expense.

**Round 1 response to comment:** The Department made no changes as it determined the provisions in the rule are sufficiently clear that the only medical documentation and review is that provided by the employee's health care provider, including any additional documentation required by the Administrator during its review.

**Round 1 comment summary:** Commenter 117 asked the Department to clarify the type of applications that will be available from the Administrator for individuals to apply for paid leave benefits.

**Round 1 response to comment:** In the second proposed rule, the Department made no changes as the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 201 expressed concerns about health care staffing challenges that may make deadlines to provide medical information difficult and may lead to denials of claims due to incomplete information.

**Round 1 response to comment:** In the second proposed rule, the Department extended the applicant to provide incomplete information from 7 to 10 business days. The rule appropriately balances the needs of workers, employers and program administration.

**Round 1 comment summary:** Commenters 120 and 219 suggested the Department clarify or provide greater privacy protections for applications to ensure medical information is not disclosed to others including the employer.

**Round 1 response to comment:** The Department made no changes to the rule in response to the suggestion as the statute rule are sufficiently clear.

**Round 1 comment summary:** Commenter 102 suggested that the Department clarify what types of information an employer can ask for from the employee to support a leave request.

**Round 1 response to comment:** The Department made no changes as the provisions in the rule are sufficiently clear as to what information an employee is required to provide an employer related to a leave request and confidential health or medical information provided to the Administrator cannot be shared with the employer without the employee’s permission. An employer may still request documentation needed for their determination of leave under the Federal Family and Medical Leave Act.

**Round 1 comment summary:** Commenter 217 suggested that the Department explicitly state that written consent to obtain medical information for an affinity relationship family member is necessary.

**Round 1 response to comment:** The Department made no changes in the rule in response to the comment as Section VI(B) addresses the process for obtaining medical information for family members and the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 158 offered a comment that all provisions in section VI should not be changed.

**Round 1 response to comment:** In the second proposed rule, the Department made several changes to the rule in Section IV including subsections VI(A), (D), (E) and (H) to strengthen the application process and provide clarity.

**Round 1 comment summary:** Commenters 133, 169 and 274 suggested that the Department provide additional information on the type of documentation, including medical information, necessary for claims for leave to care for an affinity relationship family member.

**Round 1 response to comment:** The Department made clarifications in second draft of rule that a relationship with a “significant personal bond” is a type of family member, and as such all documentation required for a family leave claim is also required for this type of relationship.

**Round 1 comment summary:** Commenter 061 suggested the Department clarify in the rule whether leave can be taken for events that predate the start of the program.

**Round 1 response to comment:** The Department makes no changes as the rule is sufficiently clear that the Administrator will evaluate applications beginning on May 1, 2026 based on the need for medical leave or the need for family leave, consistent with these rules. Approved leave benefits will only be payable from May 1, 2026 onward.

**Round 1 comment summary:** Commenter 060 suggested the Department clarify how the statutory requirement that medical leave means the employee is unable to work will be operationalized.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear that medical certification will be required to prove a “serious health condition,” as defined in statute, by a health care provider.

**Round 1 comment summary:** Commenter 181 suggested the Department provide more detail in the rule about the claims adjudication process including timelines for decisions and payments, standards for when an employee has to provide updated medical information, and what information must be included in any notification to the employer.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 116 suggests that if an employee takes leave while their application is pending and then their application for benefits is denied, the employee should be subject to termination for being away without leave.

**Round 1 response to comment:** The Department made no changes as rule is sufficiently clear that job protections provided by the law applies to only approved leave.

**Round 2 comment summary:** Commenters 061 and 063 suggested the Department develop standards for the claim adjudication process including required timelines for claim decisions and payments. This will assist both the state and private plans when processing applications and ensure accountability.

**Round 2 response to comment:** In the second proposed rule, the Department made no changes as the Administrator will determine the appropriate prioritization of claims for review balancing the needs of claimants, employers and administrative efficiency.

**Round 2 comment summary:** Commenter 063 commented that employees frequently need leave on an ongoing basis, especially intermittent leave. In addition, the Commenter suggested that the rules should specify when an employee can be required to provide updated medical information to support continued need for leave. The commenter cited the Federal Family and Medical Leave Act (FMLA), 29 CFR 825.308 as a potential good model to follow.

**Round 2 response to comment:** The Department made no changes as the rule is clear that medical certification is provided at the time of application and will cover the approved period of leave, including intermittent leave.

**Round 2 comment summary:** Commenter 168 asks the Department to provide further clarification about the undue hardship process and develop a checklist that provides objective standards for determining whether there is a reasonable undue hardship.

**Round 2 response to comments:** The Department made no changes as the rule is sufficiently clear.

## **Section VII- Review of Claims for Benefits**

**Factual and policy basis:** This section specifies the process for how the Administrator will review claims submitted for paid family and medical leave benefits. This section also outlines how the applicant and the employer will be notified of the status of the claim and applicants' rights to seek reconsideration of the Administrator's determination for benefits.

*Note: The Department made clarifications in the second proposed rule and in the final rule with respect to review and processing of claims. The Department added subparagraph E in the second proposed rule to state that the employer will receive notice of an employee's approved leave within 5 business days of the approval date. The Department added subparagraph F in the final rule to clarify that all notifications will be in writing which may include email or electronic portal notifications.*

### **Section VII(A)**

**Round 1 comment summary:** Commenters 139, 144, 178, 205, 223, 232, 242, 258, 268, and 275 suggested that the Department develop a process to allow claims to be reviewed on an emergency basis if requested.

**Round 1 response to comment:** The Department made no changes. Operational decisions as to the appropriate prioritization of claims for review balancing the needs of claimants, employers and administrative efficiency are not required in rule.

**Round 1 comment summary:** Commenters 101 and 268 suggested that the 10-day timeframe for the review of applicants may be too long if applicants submit claims immediately before taking leave. Commenter 202 recommended that the Department strike the 10-day period and allow it to be open for an indeterminate time period.

**Round 1 response to comment:** The Department made no changes as the 10-day period appropriately balances the needs of claimants with the requirement to obtain information from employers and is administratively feasible.

**Round 1 comment summary:** Commenter 227 commented that the Department should provide better clarity on the length of time to review claims as it remains unknown in the proposed rule.

**Round 1 response to comment:** The Department made no changes. Claims will be processed as quickly as possible, balancing the needs of claimants, employers and administrative efficiency.

### **Section VII(B) (C) and (D)**

*Note: Minor changes were made to these sections for the sake of clarity.*

**Round 1 comment summary:** Commenter 091 suggested removing the word "by" in section B in the second sentence between the word "administrator" and "in writing" as it is a typo.

**Round 1 response to comment:** The Department fixed this typo in the final version of the rule.

**Round 1 comment summary:** Commenters 059, 060, 061, 075, 087, 092, 134, 136, 148, 150, 160, 164, 171, 217, 233, 260, 272,276, and 280 suggested that the Department clarify that the Administrator should also notify the employer of whether the individual has been approved, denied or seeking reconsideration of paid family and medical leave benefits.

**Round 1 response to comment:** In the second proposed rule the Department amended the rule to provide that the Administrator notify the employer of the approval, reconsideration or denial of a claim.

**Round 1 comment summary:** Commenter 140 suggested that the Department clarify that notices from the Administrator will be in writing to applicants.

**Round 1 response to comment:** In final rule, the Department added subsection F to clarify that notifications provided by the Administrator will be in writing, which may include email or electronic portal notifications.

**Round 1 comment summary:** Commenter 181 suggested that the Department change the language of “receive the notification” to be the date of actual decision/date notification sent.

**Round 1 response to comment:** In final rule the Department clarified the timeframes for review in this section start from the date the notification is issued.

**Round 2 comment summary:** Commenter 063 recommended removing the terms “receives notification” of decision and replace with the date of actual decision/date notification is sent.

**Round 2 response to comment:** In final rule the Department clarified the time frame starts from the date the notification is issued.

**Round 2 comment summary:** Commenter 168 suggested that the Department clarify that employers may only be notified of the reasons for denial as permitted by law.

**Round 2 response to comment:** The Department makes no changes in rule as the rule is sufficiently clear, and the statute, 26 M.R.S. § 850-D(4) prohibits disclosure of health or medical information without the permission of the covered individual.

**Section VII(E) (section added in second version of proposed rule)**

No comments were submitted on this section in the second round of comments.

**Section VII(F) (section added in second version of proposed rule)**

**Department Finding:** In final rule, the Department added subsection F to clarify that notifications provided by the Administrator will be in writing, which may include email or electronic portal notifications.



### **General comments related to review of claims for benefits:**

**Round 1 comment summary:** Commenter 267 recommends that all timelines for reconsideration and appeal in this section be changed to 30 days.

**Round 1 response to comment:** The Department makes no changes in the rule as it provides an appropriate balance between the needs of workers and employers and is administratively feasible.

**Department Finding:** In final rule the Department added some additional clarifying language to Section VII(B), (C), and (D). The Department decided to make changes to the appeal rights throughout the rule to ensure consistency in language and application and to provide clarity on when the appeal period runs.

### **Section VIII-Calculation of Benefits**

**Factual and Policy Basis:** This section implements 26 M.R.S §850-C regarding the calculation and payment of benefits. This section clarifies how benefits will be calculated, including the proration of benefits and when benefits may be subject to reduction. This section was developed based on the Department's review of the Paid Family and Medical Leave Law, Maine's unemployment law, and other states' paid leave laws and rules.

**Department Finding:** In the second proposed rule the Department added subsection (A)(2)(d) and (A)(2)(e) in order to clarify when the applicable State Average Weekly Wage and the applicable Average Weekly wage are set relative to a claim for benefits being filed, as both numbers may change quarterly or yearly, and the Department finds that it is important for claimants, employers and other stakeholders to understand which value is used during the duration of a claim.

**Department Finding:** In the final proposed rule, the Department added a new subsection (A)(3) in response to comments and also to clarify that the determination of the average weekly wage done at application remains static for the duration of that claim, subject to rules on benefit reduction and prorations.

#### **Section VIII (A) – Calculation of Benefits**

**Round 1 comment summary:** Commenters 133 and 160 suggested that the Department simplify the mathematical formula used in the rule to calculate benefits or provide examples of how the calculation of benefits will work as the mathematical formula is confusing.

**Round 1 response to comment:** The Department made no changes as the statute and rule are sufficiently clear.

**Round 1 comment summary:** Commenter 061 asked the Department to provide the process it will use to seek information regarding wages received by a specific employee.

**Round 1 response to comment:** The Department made no changes in response to this comment as the rule is sufficiently clear as to the data relied upon. Section VIII(A)(1) states that the covered individual's average weekly wage will be calculated based on the "applicable earnings data" reported by the employer. If no report had been filed for an individual who seeks to submit an application, the Department may conduct an audit, and based upon the findings of the audit, take appropriate action.

**Round 1 comment summary:** Commenter 254 asked the Department to clarify the type of income that will be considered when determining an applicant's average weekly wage. The commenter also suggested that wages from overtime, bonuses or other financial incentives should be excluded.

**Round 1 response to comment:** In the second proposed rule, the Department made changes to the rule in response to other comments to clarify the definition of wages are calculated in the same manner as Maine's unemployment law, in 26 M.R.S. § 1043(19)(B) – 1043(19)(E), and remain unchanged in Section II (A) of the rule. In addition, the suggestion to remove other wages conflicts with statute.

**Round 1 comment summary:** Commenter 274 suggested that the Department exclude bonuses from the calculation formula for benefits as bonuses are one-time payments.

**Round 1 response to comment:** In the second proposed rule, the Department made changes to the rule in response to other comments (as set forth to clarify the definition of wages are calculated in the same manner as Maine's unemployment law, 26 M.R.S. § 1043(19)(B) – 1043(19)(E), and remain unchanged in Section II (A) of the rule. In addition, the suggestion to remove other wages conflicts with statute.

**Round 2 comment summary:** Commenters 063, 124, 168, 311 and 477 asked the Department to clarify when the weekly benefit amount is determined, suggesting that it should be calculated based on wages as of the first day of leave. The commenters recommended the weekly benefit amount remain fixed throughout the benefit year, even if the State Average Weekly Wage (SAWW) or the employee's wages change.

**Round 2 response to comment:** The Statute establishes that benefits are based on the Average Weekly Wage, which is calculated using wages averaged over a 52-week period. In the second draft of proposed rule, the Department clarified that the State Average Weekly Wage and Average Weekly Wage, as calculated when the application is filed, are used for the benefit amount for the duration of that claim.

**Round 2 comment summary:** Commenters 060, 168 and 503 asked questions as to whether the Average Weekly Wage mentioned in rule is the same as the statutory definition, and if so, how

the arithmetic mean in the statute applies to the actual calculation of benefits, as they need to know how to correctly calculate benefits for private plan policies.

**Round 2 response to comment:** Yes, the Average Weekly Wage mentioned in rule is the same as the statutory definition. In final rule the Department added a subsection, VIII(A)(3) to clarify how Average Weekly Wage is determined. The added language is:

*The Average Weekly Wage is calculated by dividing the reported wages for the applicant in their base period by 52. Once the Weekly Benefit Amount is established for a claim it will remain consistent through the life of the claim, subject to the subsection C below.*

### **Section VIII (B) – Payment of Benefits**

**Round 1 comment summary:** Commenter 247 believes the language of not paying medical claim benefits for the first 7 consecutive calendar days restricts ability of people taking 1-day intermittent leave use throughout the year for chronic conditions to be ineligible. Commenter 276 asked for clarification about how intermittent leave is affected by the 7 consecutive calendar day non-payment in medical claims.

**Round 1 response to comment:** The Department made no changes as it finds that the statute and rule are sufficiently clear.

**Round 1 comment summary:** Commenter 034 suggested that the Department add into the rule how long it will take for an application to be processed and for an applicant to receive a benefit.

**Round 1 response to comment:** The Department made no changes. Claims will be processed as quickly as possible, balancing the needs of claimants, employers and administrative efficiency.

**Round 1 comment summary:** Commenter 114 suggested that benefits may also be received by paper check and payments from self-insured plans may be issued by the self-insured plan.

**Round 1 response to comment:** The Department agrees that self-insured plans may issue benefits by paper check, direct deposit, or by debit card. The Department made no changes in response to the comment. as this section is intended to refer to payments made by the PFML program.

**Round 1 comment summary:** Commenter 168 suggested that the Department change the rule to allow benefits to be paid by debit card.

**Round 1 response to comment:** The Department made no change as the rule already allows for debit cards in Section VIII(B)(1).

**Round 1 comment summary:** Commenters 136 asked whether employees are eligible to utilize sick time in the first 7 days and whether, as a result, the leave period extends from 12 weeks to 13 weeks.

**Round 1 response to comment:** The statute, 26 M.R.S §850-C(1), allows an employee to use sick or vacation time during the waiting period. The waiting period does not reduce the amount of paid medical leave under the PFML program. In response to this Comment, Section VI(A)(8) was clarified in the final rule to state that the provider must provide documentation that includes the time period that the covered individual is expected to be unable to work.

**Round 1 comment summary:** Commenters 242 and 268 support this provision of the rule and suggested no changes.

**Round 1 response to comment:** The Department acknowledges these comments and makes no changes in response.

**Round 2 comment summary:** Commenter 059 asked whether employees are eligible to utilize sick time in the first 7 days and whether, as a result, the leave period extends from 12 weeks to 13 weeks.

**Round 2 response to comment:** The statute, 26 M.R.S §850-C(1), allows an employee to use sick or vacation time during the waiting period. The waiting period does not reduce the amount of paid medical leave under the PFML program. In response to this Comment, Section VI(A)(8) was clarified in the final rule to state that the provider must provide documentation that includes the time period that the covered individual is expected to be unable to work.

**Round 2 comment summary:** Commenter 063 suggested clarifying whether employers who have an approved private plan will be required to follow the payment system outlined in this section. The commenter also recommended having various payment options for employees who don't have direct deposit.

**Round 2 response to comment:** The Department agrees that private plans may issue benefits by paper check, direct deposit, or by debit card. The Department made no changes in response to the comment. as this section is intended to refer to payments made by the PFML program.

### **Section VIII (C) (1) – Reduction and Proration of Benefits**

*Note: The Department made a change to subsection (C)(3)(e) of the final rule that supplemental payments from short term disability, combined with FLML benefits, cannot exceed the employee's typical weekly wage. The Department finds that this change is consistent with the intention of the statute.*

**Round 1 comment summary:** Commenter 016 asked the Department which week the benefits will be prorated if individuals are taking leave for less than a week.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 061 asks the Department to clarify how proration of benefits interacts with entitlement of 12 weeks of available leave time so that there is consistency.

**Round 2 response to comment:** The Department made no changes as the rule is sufficiently clear that the aggregate leave time is prorated based on partial use of work weeks as well as the benefit. For example – if an employee works half their normal work week, and used leave for half the week, their available leave time is reduced by half a week.

**Round 2 comment summary:** Commenters 168 and 477 suggested that employers with private plans should be exempt from any requirements to aggregate work schedules for claimants with more than one employer. Commenter 061 suggests benefits should be determined on a per employer basis not overall.

**Round 2 response to comment:** The Department agrees, but makes no changes to the rule. Private plans will be approved, without any requirement that such plans aggregate work schedules when prorating benefits.

**Round 2 comment summary:** Commenter 217 asked the Department to clarify the process that a private plan employer should use to prorate benefits based on scheduled work “for any employers” for whom the employer works.

**Round 2 response to comment:** The Department acknowledges that a private plan will only be able to base benefits on the wages for that employer. Their requirement to prorate scheduled work for any employer applies to the state plan. The Department made no changes.

### **Section VIII (C) (2)**

**Round 1 comment summary:** Commenter 114 suggested the Department define the term “permanent disability program” or policy in the rule.

**Round 1 response to comment:** The Department made no changes to the rule as it determined that short term and long-term disability policies are defined by the insurance policy.

**Round 1 comment summary:** Commenter 233 asked the Department to clarify if the employer can require that any accrued paid time off can be paid to the employee to cover employee insurance premiums or other agreed upon payroll deductions.

**Round 1 response to comment:** The Department made no changes as 26 M.R.S. section 850-B(10)(C) restricts an employer from compelling an employee to exhaust rights to any sick, vacation, or personal time prior to or while taking leave, which would include requiring an employee to use leave time to cover insurance premiums or other payroll deductions. The rule permits employers, with employee’s permission pursuant to section 850-B(10)(C), to charge employees’ leave time only if the employer pays the difference between the employee’s Weekly Benefit Amount and their typical weekly wage and only for the amount of that difference.

**Round 2 comment summary:** Commenter 311 suggested the weekly benefit amount must be reduced by any other state’s paid family medical leave.

**Round 2 response to comment:** The Department made no changes to the rule in response to this comment as 26 M.R.S. § 850-C(5) established limited circumstances in which benefits may be reduced, and the Department is bound by the statute. The Department further notes that the weekly benefit amount will not be based on wages earned in another state.

**Round 2 comment summary:** Commenter 061 suggests that wages be calculated per employer since the benefit will not be offset by wages received from any other employer. The commenter also suggested that the terms “authorized leave” and “typical weekly wages” should be defined.

**Round 2 comment summary:** The Department made no changes since the rule is sufficiently clear.

### **Section VIII(C)(3)(a)**

**Round 1 comment summary:** Commenters 125, 196, 205, 242, 253, 263, 268 and 275 suggested that this provision should not change.

**Round 1 response to comment:** The Department acknowledges the comment and makes no changes in the rule in response.

### **Section VIII (C) (3) (b)**

**Round 2 comment summary:** Commenter 059 expressed concern about allowing employees to work other jobs while also getting Paid Family Medical Leave benefits, thus potentially opening the program to abuse.

**Round 2 response to comment:** The Department made no changes to the rule in response to this comment as 26 M.R.S. § 850-C(5) established limited circumstances in which benefits may be reduced. The Department notes that an individual may be eligible for leave, and unable to work one job, while still able to work a different job. The Department further notes that this scenario would result in a proration of benefits as set forth in Section VIII (C)(1), but not a reduction of benefits in Section VIII(C)(2) and (3).

### **Section VIII (C) (3) (d)**

**Round 2 Comment summary:** Commenter 063 suggested that the Department allow employer reimbursement if the employer allows for salary continuation so there is not a break in the employees’ wages. The commenter stated once the claim is adjudicated the benefit amount could be reimbursed back to the employer.

**Round 2 response summary:** The Department made no changes to the rule. The employer may voluntarily pay the difference between the covered individual’s Weekly Benefit Amount and their typical weekly wage, but will not be reimbursed for them.

**Section VIII(C)(3)(e)**

**Round 1 comment summary:** Commenter 005 supported that supplemental benefits from short term disability plans not offsetting Paid Family and Medical Leave Benefits, saying it better protects high-income earners.

**Round 1 response to comment:** The Department acknowledges the response.

**Round 1 comment summary:** Commenter 130 suggested that the Department define “supplemental wages” because paying supplemental wages for short-term disability benefits could lead to overpaying the employees’ typical weekly wage if they are also receiving paid leave benefits and an offset is not done.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 060 asked why short-term disability payments are not offset under the Paid Family Medical Leave Program.

**Round 2 response summary:** Short term disability payments were specified not to offset Paid Family and Medical Leave benefits so that employers could choose to supplement the partial wage replacement of Paid Family and Medical Leave benefits if they choose to offer these benefit plans. In the final rule, the Department clarified that short-term disability benefits and benefits under FLML may not exceed the typical weekly wage of the employee.

**General comments regarding calculation of benefits:**

**Round 1 comment summary:** Commenter 014 asked whether a covered individual may be able to receive wages from a second employer and collect the leave benefit. Commenter 034 asked the Department to clarify how income that an employee receives from a second job is factored into the benefit amount they receive while on leave if they take leave from one employer and not the other.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear that a covered individual’s weekly benefit amount may not be reduced by wages received from another employer from whom the individual is not on leave.

**Round 1 response summary:** Commenter 053 asked whether employers are required to report if employee receive supplemental wages while an employee collecting paid family and medical leave benefits.

**Round 1 response to comment:** In the second proposed rule, the Department made no changes as the rule is sufficiently clear that employers must submit quarterly wage reports pursuant to Section X. Supplemental wages, such as sick leave to pay the difference between PFML benefits and the regular wage, are considered wages.

**Round 1 comment summary:** Commenter 083 asked whether an employee can obtain benefits under the Paid Family and Medical Leave program and short-term disability benefits at the same time.

**Round 1 response to comment:** In the second proposed rule, the Department made no changes as it determined the provisions in the rule are sufficiently clear.

**Round 1 comment summary:** Commenter 084 requested that the Department provide information about whether benefits will be taxable.

**Round 1 response to comment:** In the second proposed rule, the Department made no changes to the rule in response to comment. 26 M.R.S §850-M(1) requires the Department to advise individuals whether benefits are taxable based on the determination from the U.S Internal Revenue Service (IRS) that benefits may be subject to the federal income tax. The Department is awaiting guidance from the IRS.

**Round 1 comment summary:** Commenters 099, 136, 217, 241, 262 and 274 offered comments regarding employees that receive paid family and medical leave benefits being able to obtain supplemental wages from another employer or from other sources of income listed in the rule. The commenters stated recipients should not be able to receive supplemental wages while the employee is also using paid family and medical leave benefits.

**Round 1 response to comment:** The Department determined that supplemental wages or other sources of income are allowed under statute with the exception of benefits received under unemployment law or workers' compensation law. The Department clarified, in the final rule, that supplemental wages combined with PFML benefits may not exceed the amount the employee would have earned if working.

**Round 1 comment summary:** Commenter 217 expressed that an individual should not be able to use both workers compensation and paid family and medical leave benefits at the same time.

**Round 1 response to comment:** The Department made no changes as the statute and rule are sufficiently clear that paid family and medical leave benefits must be reduced if the employee is receiving supplemental wages from a workers compensation program for the same week, and thus, there is a presumption that both may be received at the same time.

**Round 1 comment summary:** Commenter 151 suggested the Department retain all of the provisions in section VIII without changes.



**Round 1 response to comment:** The Department acknowledges the comment. However, in the second proposed rule, the Department made minor changes to some subsections of this section to clarify calculation of benefits and proration of benefits.

**Round 1 comment summary:** Commenter 140 suggested the Department also include stipends for training programs such as the Competitive Skills Scholarship Program (CSSP) to not be subject to a reduction of benefits.

**Round 1 response summary:** The Department made no changes as in the rare instances in which a person taking medical or family leave from work would be actively engaged in the CSSP program, there will be a case-by-case determination as to whether that stipend is considered a wage replacement. Stipends are generally not considered to be wage replacement.

**Round 1 comment summary:** Commenters 159 suggested that the Department clarify whether a company-sponsored paid parental or family leave program that pays benefits from those programs are also subject to a reduction of benefits if both the state and private plan benefits are running concurrently.

**Round 1 response to comment:** The Department made no changes as it determined the provisions in the statute and the rule are sufficiently clear that if such payments are considered wages, they will be offset.

**Round 1 comment summary:** Commenter 164 suggested adding language to the rule stating that a company's paid leave program benefits are not subject to a reduction of benefits.

**Round 1 response to comment:** The Department declined to make this change as the Department finds that the reductions listed are consistent with the intent of statute.

**Round 1 comment summary:** Commenter 181 recommended that the Department include more detail in the rule clarifying how certain specific circumstances would be handled including situations when an employee goes on leave, returns, and then needs to take leave again or when an employee becomes unemployed while receiving benefits.

**Round 1 response to comment:** The Department made no change to the rule as the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 181 suggests the Department allow for an employer to continue to pay salary and then be reimbursed when a claim is approved.

**Round 1 response to comment:** The Department made no change since the change would conflict with the statute which requires that benefits be paid to the covered individual.

**Round 1 comment summary:** Commenter 233 asked whether the employer can require premiums to be repaid back to the employer for missed health insurance premiums as employers can do under the Federal Family and Medical Leave Act (FMLA).

**Round 1 response to comment:** The Department made no change to the rule as this is addressed by 26 M.R.S §850-B(8), which requires employers to continue to provide for and contribute to the employees' health insurance benefits during the employees' leave. The employer should follow their normal procedures for funding health insurance during the employee's absence.

## **Section IX- Fraud and Ineligibility**

**Factual and policy basis:** This section implements and clarifies the procedure for possible disqualification based upon false statements or material misrepresentations made during the benefit application process as set forth in 26 M.R.S § 850-L.

### **Section IX (A) – Definitions**

*Note: The Department added the word “willful” to the definition of fraud in the second version of the proposed rule, for the sake of consistency with the statute, 26 M.R.S. §§ 850-D(5) and 850-L.*

**Round 1 Comment Summary:** Commenters 125, 139,140, 142, 151,178,185, 196, 205, 232, 242, 253, 258, 263, 267 and 268 stated that the Department should clarify or add the word “willful” to the rule to ensure applicants that make a mistake in their application and receive benefits are not deemed to have intentionally misled the Department in applying for and obtaining benefits. Some commenters also noted the word “willful” is currently included in statute and suggested the rule should align.

**Round 1 response to comment:** The Department added the term “willful” in the second draft of the proposed rule that was sent out for further comment, for the sake of consistency with the statute, 26 M.R.S. §§ 850-D(5) and 850-L.

**Round 2 Comment Summary:** Commenter 061 suggests that fraud should be found to exist whenever a false statement is made regardless of whether it is willful.

Commenters 140, 205, 232, 258, and 267 suggested addition of the term “willful” should remain in the rule. for the Department’s addition of “willful” in this section.

Commenter 257 suggests developing consistent, clear standards for determining “willingness.”

**Round 2 response to comment:** The Department determined that “willful” should be in the rule, for the sake of consistency with the statute, 26 M.R.S. §§ 850-D(5) and 850-L. Therefore, the Department makes no further changes to the rule.

### **Section IX (B) – Investigations and Audits**

**Round 1 Comment Summary:** Commenter 061 recommended the rule set forth a process for an employer to alert the Department of suspected fraud.

**Round 1 response to comment:** The procedures for reports of fraud are operational and are not required in rule.

**Round 1 comment summary:** Commenter 267 suggests the rule require notice in writing to a person being interviewed including providing documentary evidence prior to the interview.

**Round 1 response to comment:** In final proposed rules, the Department clarified that notices of interview would be provided in writing.

**Round 1 Comment Summary:** Commenter 124 suggests that private plan substitutions can conduct fraud investigations as efficiently as the Department and suggests the rule be changed to include allowing private plans to investigate suspected fraud.

**Round 1 response to comment:** The Department made no changes to proposed rule, as Section IX applies to the Department investigating claims of fraud related to the use of the public plan. It is presumed that private plans will investigate suspected fraud related to those plans in accordance with their usual business practices.

**Round 2 Comment Summary:** Commenters 060 and 257 recommend that the Department accept complaints made by the public and employers and provide specific procedures and requirements in the rule for reporting such fraud. Additionally, the commenters recommend that the rule includes notice to employers when an employee is disqualified. Commenter 257 notes inconsistencies in the standards for demonstrating “willfulness” across the bureaus within the Department, and questions why an individual under investigation would be provided with 10 days’ notice prior to an interview.

**Round 2 response to comment:** Such processes are operational and not required in rule.

**Section IX (D):**

**Round 1 Comment Summary:** Commenters 014, 026, 059, 061, 073, 099, 157, 171, 186, 241, 257, and 280 remarked that the fraud provisions in the proposed rule should be strengthened to deter fraud by imposing a longer penalty and making repayment of fraudulent benefits mandatory.

**Round 1 response to comment:** The Department declines to make the suggested changes since they conflict with 26 M.R.S. § 850-L.

**Round 1 Comment Summary:** Commenter 116 suggests that employees who take leave they were not entitled to due to fraud should be subject to termination for being absent without leave.

**Round 1 response to comment:** The Department made no changes as the rule is clear that job protections provided by the Statute only applies to approved leave time.

**Round 2 Comment Summary:** Commenters 059, 061 and 257 stated that one year’s disqualification for fraud is not adequate and suggested that a permanent disqualification should be applied while also requiring repayment.

**Round 2 response to comment:** The Department declines to make the suggested changes since they conflict with 26 M.R.S. § 850-L.

### **Section IX (E)**

**Round 1 Comment Summary:** Commenters 091, 140, 217 and 241 commented on the provision that allows the Department to waive repayment of benefits, in whole or in part, after a finding of fraud would be against equity and good conscience be removed from the rule.

**Round 1 response to comment:** The Department declines to make the suggested changes since they conflict with the statute.

### **Section IX (F) - Appeals**

**Department Finding:** In final rule the Department added clarifying language to Section IX(F). The Department decided to make changes to the appeal rights throughout the rule to ensure consistency in language and application and to provide clarity as to when the appeal period runs. Additionally, the Department decided to change the showing of “good cause” to a showing that immediate ineligibility and termination of benefits would be “against equity and good conscience” so that this provision aligns with the standard in the statute at 26 M.R.S. § 850-L(2).

**Round 1 Comment Summary:** Commenter 267 suggests the rule be changed so that any individual, not just covered individuals, can appeal a finding of fraud.

**Round 1 response to comment:** The Department makes no changes since the suggestion would conflict with the statute and fundamental principles of administrative law, as individuals must have been a party below to have standing to appeal.

**Round 2 Comment Summary:** Commenter 267 reiterates its suggestion that the rule be changed so that any individual, not just covered individuals, can appeal a finding of fraud.

**Round 2 response to comment:** The Department makes no changes since the suggestion would conflict with the statute and fundamental principles of administrative law, as individuals must have been a party below to have standing to appeal.

### **Section X-Premiums**

**Factual and policy basis:** This section implements 26 M.R.S. §850-F regarding premiums. This section also clarifies the responsibilities of the employer to remit premiums and wage reports to the Department on a quarterly basis, specifies how employers count employees for the purposes of premium liability, and establishes how premiums will be calculated for self-employed individuals and tribal governments that elect coverage. This section was developed based on the

Department's review of the paid family and medical leave law on premiums, feedback received from the listening session held by the Department on January 25, 2024 on the topic of contributions, and research gathered from other states' paid family and medical leave programs on the administration and implementation of premiums.

### **Section X(A)**

**Department Finding:** *The Department made an addition to Section X(A) in the second proposed rule after the development of the online contributions system commenced to specify that all employers must register for an account in the system.* No comments were received on this change.

**Round 1 comment summary:** Commenter AC 1 and 059 suggested that employers with less than 15 employees should be exempt from premium contributions.

**Round 1 comment summary:** The Department made no changes in rule in response to comment as the suggestion conflicts with statute.

**Round 1 comment summary:** Commenter 273 requested that agricultural businesses be exempted from the Paid Family and Medical Leave program as they are for many other programs.

**Round 1 response to comment:** The Department made no changes because the suggestion is inconsistent with statute.

**Round 1 comment summary:** Commenters 065, 175, 206, 243, and 265 asked the Department to exempt Medicare/Medicaid reimbursed organizations to be exempted from the premiums as there has not been an increase in these reimbursement rates to account for the new premium cost.

**Round 1 comment summary:** The Department made no changes in rule in response to comment as suggestion conflicts with statute.

**Round 1 comment summary:** Commenter 054 and 137 asked the Department to clarify whether Professional Employer Organization (PEO) reporting of premiums will be done at the client level or at the PEO level.

**Round 1 response to comment:** In the second proposed rule, the Department amended the definition of employer to clarify that, for the purposes of the Maine Paid Family and Medical Leave program, the employer is considered the client company. The Department also clarified that an authorized third party, including a PEO, may remit premium payments or submit contribution reports on behalf of the employer. No comments were offered in the second round regarding this suggestion.

**Round 1 comment summary:** Commenter 143 expressed concern that postal mail will create significant delays, and recommended that the Department use an online portal.

**Round 1 response to comment:** The Department notes that it will use an online portal. The Department made no changes in response to this comment as the rule is sufficiently clear that premium payments and contribution reports will be considered timely if postmarked on or before the due date, and may also be submitted electronically.

**Round 1 comment summary:** Commenter 160 suggested employers should utilize the quarterly 941 tax form to calculate the quarterly salary as the basis for premium payment.

**Round 1 response to comment:** The Department makes no changes in response to this comment as it finds the rule is sufficiently clear how premiums will be calculated.

**Round 1 comment summary:** Commenter 263 encouraged the Department to retain the language in this section unchanged.

**Round 1 response to comment:** The Department acknowledges the comment but in the second proposed rule the Department made changes to this section in response to other comments that required clarification of this section.

**Round 2 comment summary:** Commenter 166 seeks clarification on whether employers that have received a private plan substitution are subject to the same quarterly wage reporting requirements as the public plan.

**Round 2 response to comment:** The Department made no changes as the rule is sufficiently clear that employers with approved private plan substitutions are exempt from paying premiums but must still file wage reports quarterly with the Department, as set forth in XIII(A)(11).

**Section X(B) (added in second proposed rule)**

**Department Finding:** The Department added Section X(B) to the second proposed rules to clarify exactly when employers must begin to withhold contributions from wages for the purposes of paying premiums. The revised language states that such withholding of contributions should begin for the first pay period with a payment date in January 2025.

No comments were received in response to this clarification.

**Section X(C) (added in second proposed rule)**

**Department Finding:** The Department added Section X(C) to the second proposed rules to clarify rounding rules for how employers must report wages and how employers must calculate premiums.

No comments were received in response to this clarification.

**Section X(D) - (was subsection B in the first proposed rules)**

**Round 1 comment summary:** Commenter 108 asked the Department whether an employee is entitled to a refund if premiums exceed the Social Security contribution and benefit base limit when the employee worked for more than one employer in a calendar year.

**Round 1 response to comment:** The Department makes no changes in response to this comment as the rule is sufficiently clear that an employee may seek a refund if the employee believes they have paid premiums above this wage cap in a given calendar year, regardless of how many employers the employee worked for.

**Section X(E) (was subsection C in second version of proposed rule)**

**Round 1 comment summary:** Commenter 267 expressed that this is a good provision and should not be changed.

**Round 1 response to comment:** The Department acknowledges the comment and made no changes in response.

**Round 1 comment summary:** Commenter 108 asked the Department to clarify whether employees are entitled to receive a refund if they overpay premiums.

**Round 1 response to comment:** The Department makes no changes as the rule is sufficiently clear that an employee may seek a refund if the employee believes they have paid premiums above the wage cap set by the Social Security Administration in a given calendar year.

**Section X(F) (was subsection D in first proposed rules)**

**Round 1 comment summary:** Commenters 166 and 232 asked for clarification of how “net income” is defined for self-employed individuals. Commenter 166 suggested this provision conflicts with wage definition in section XII(3)(a) of the proposed rule while Commenter 232 suggested aligning it with Section I(A)(23).

**Round 1 response to comment:** In the second proposed rule, the Department clarified that a self-employed individual’s net income will be based on the prior tax year to clarify which year will be reviewed to determine the self-employed individual’s premium amount. No comments were offered in the second round regarding this suggestion.

**Section X(H) (was subsection F in first proposed rules)**

*Note: The Department changed the method for determining employee size in accordance with a recommendation by the PFML Authority and others. The new language states:*

For the purposes of determining premium liability, any employer that employed 15 or more covered employees per that employer's Federal Employer

Identification Number (FEIN) on their established payroll in 20 or more calendar workweeks in the 12-month period preceding September 30th of each year will be considered to be an employer of 15 or more employees for the calendar year thereafter. This count includes the total number of persons on establishment payrolls employed full or part time who received pay for any part of the pay period. Temporary and intermittent employees are included, as are any workers who are on paid sick leave, on paid holiday, or who work during only part of the specified pay period. On October 1, 2024, and October 1 of each year thereafter, the employer shall calculate its size for the purpose of determining premium liability for calendar year 2025 and each calendar year thereafter.

**Round 1 comment summary:** Commenter AC2 asked for clarification whether the employer size count for October 1, 2024 will be based on a report provided or if they employer will self-report the information to the Department.

**Round 1 response to comment:** Employers will conduct their own employer size count in accordance with process in rule and will report that count when they first register for the Maine Paid Leave portal, and yearly thereafter. The Department will check accuracy through audits.

**Round 1 comment summary:** Commenter 108 asked the Department to clarify what the consequences are of misclassifying an employee.

**Round 1 response to comment:** Misclassification of employees can lead to premiums and penalties owed for failure to remit premiums on behalf of misclassified employees. Title 26, Chapters 7 and 13 set forth other consequences for misclassifying an employee.

**Round 1 comment summary:** Commenter 267 suggested the Department change “covered employee” to “employee” so that all of an employer’s employees are included in the count for premium purposes.

**Round 1 response to comment:** In the second proposed rule, the Department moved the wage threshold, but continued to require that an employer must count all “covered employees” (regardless of the wage threshold) when determining employer size for premium liability.

**Round 1 comment summary:** Commenters 027, 029, 056, 085, 095, 115 (PFML Authority), 116, 122, 126, 140, 161, 166, 205, 232, 241, 250, 256, 257, 267, 275, and 280 suggested different methods for determining employer size. Commenters asked the Department whether the Department will use the “payroll method”, averaging workforce size over the previous calendar year or a 12-month period, or a 20-week count within the year ending September 30<sup>th</sup>.

**Round 1 response to comment:** In the second proposed rule, the Department amended this section to a standard recommended unanimously by the PFML Authority, set forth above. The Department found that the revised language is consistent with the method for determining



employer size under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e(b), and therefore is a calculation already done by many employers.

**Round 2 comment summary:** Commenter 061 and 166 asked whether an employer should apply the employer size determination to only state employees or also include out of state employees and sought clarity on the definition of covered employees.

**Round 2 response to comment:** The Department makes no changes the rule is sufficiently clear that the employer only counts “covered employees” when calculating their employer size for the purpose of premium liability. Covered employees are employees who earn wages in the State of Maine, as defined in Section II.

**Round 2 comment summary:** Commenter 137 recommended replacing FEIN (Federal Employer Identification Number) with EAN (*Employer Access Number*) while commenter 140 suggested defining an employer by FEIN as employers can reduce their taxable payroll by creating separate FEINs.

**Round 2 response to comment:** The Department makes no changes in rule as the Department finds that the Federal Employer Identification Number (FEIN) is commonly used by employers and is a consistent approach used in other State Paid Family and Medical Leave programs.

**Round 2 comment summary:** Commenters 217 and 250 expressed concerns about how small employers, specifically seasonal employers, can determine their employee size. Commenter 217 suggested using 150 days instead of the 20-week threshold over the previous 12 months and Commenter 257 suggested using a 27-week threshold.

**Round 2 response to comment:** The Department makes no changes as the Department finds that the method to count employees in the rule provides a reasonable and consistent method to establish employer size and was the recommendation made by a motion of the Paid Family and Medical Leave Authority in their formal comments in round 1 after a discussion about the appropriate method to use.

**Round 2 comment summary:** Commenters 205, 232 and 267 suggested that the new language in this section should not be changed.

**Round 2 response to comment:** The Department acknowledges the comments.

**Round 2 comment summary:** Commenter 311 suggested to change the second sentence to refer to total number of “covered employees” to limit count to employees in the state.

**Round 2 response to comment:** The Department makes no changes as the rule is sufficiently clear, as further explained in Section I(A)(28) and Section II.

**Round 2 comment summary:** Commenters 318 suggested the Department should allow employees to opt out of participation in the PFML program and therefore not have premiums deducted from their wages.

**Round 2 response to comment:** The Department makes no changes to the rule as the statute provides no mechanism for employees to opt out.

**Round 2 comment summary:** Commenter 334 suggested the Department increase the employer size moving the employer count from 15 to 25 employees to determine whether the employer will be required to pay the 0.5 percent employer share.

**Round 2 response to comment:** The Department makes no changes in response to comments as the statute set the standard on the size of the employer for the purposes of determining liability for premiums, and the Department is bound by the statute.

### **Section X(I) (was subsection G in the first proposed rules)**

**Round 1 comment summary:** Commenter 108 asked the Department whether there is a grace period if an employer fails to remit premiums before penalties are imposed.

**Round 1 response to comment:** The Department makes no changes in response to this comment as Section XI(B) is sufficiently clear that employers must submit late payments on or before the due date established in the notice of delinquent payment issued by the Department or penalties will be assessed.

**Round 1 commenter Summary:** Commenter 178 and 198 commented that this provision might undermine the negotiation requirements for collective bargaining agreements and not address differences between bargaining units.

**Round 1 response to comment:** In the second proposed rule the Department revised the language to allow for different rates to be paid as required by separate collective bargaining agreements with the same employer.

**Round 1 comment summary:** Commenter 241 suggested that the Department should consider allowing an employer's decision regarding payment of the employee's share of premiums to apply to all similarly classified employees rather than all employees.

**Round 1 response to comment:** In the second proposed rule, the Department clarified the employer's decision regarding payment of the employee's share of premiums must apply to all workers, except for employers whose employees are covered by two or more separate collective bargaining agreements, as required by the terms of the relevant collective bargaining agreement.

**Round 1 comment summary:** Commenter 095 asked the Department which premium employers should pay when an employee works in a different state that also offers paid family and medical leave.

**Round 1 response to comment:** The Department makes no changes as the rule is sufficiently clear that employers are obligated to pay Maine PFML premiums for covered employees. The Department expresses no opinion on whether employers may also be obligated to pay premiums in other states.

**Round 1 comment summary:** Commenters 141 asked the Department whether employers can deduct between 0% and 50% of the premium from employees. Commenter 178 suggested that employers with collective bargaining agreements should negotiate premium deductions, as terms may vary between bargaining units.

**Round 1 response to comment:** In the second proposed rule, the Department revised the rule to clarify that the level at which an employer covers the employee's portion of the premium must be the same for all employees, unless there are 2 or more collective bargaining agreements. An employer may choose to pay all, some, or none of the employee's portion.

**Round 2 comment summary:** Commenters 084, 095, 148, 166, 178, 274, 287, 321, 338 and 449 asked whether the premium amount must equally be deducted from employees' wages and if employees are mandated to pay half of the premium. The Commenters suggested that the Department provide further clarity and remove "may" from the sentence. Commenter 449 sought clarity that unless an employer chooses to pay for their employee portion of premium, both employer and employee are liable for premium contribution.

**Round 2 response to comment:** The Department makes no changes as the rule is sufficiently clear that employers may, but are not obligated to, deduct up to 50% of the premium from employees' wages. Employers are obligated to remit 100% of the premium.

**Round 2 comment summary:** Commenters 178, 198 and 287 expressed concern about employers deducting premiums from employees who are covered by collective bargaining agreement. and thus these employees should not have premiums deducted from their pay without negotiation.

**Round 2 response to comment:** The Department makes no changes as the rule and statute are sufficiently clear that all employers must remit 100% of premiums for covered employees beginning January 1, 2025, except that pursuant to 26 M.R.S. § 850-B(10), employers and employees who are subject to a public sector collective bargaining agreement in effect on October 25, 2023 are exempt until that agreement expires.

**Round 2 comment summary:** Commenter 322 suggested the Department making the premiums for the paid family and medical leave program to either be a mandatory split between the employee and employer or employer paid premium.

**Round 2 response to comment:** The Department makes no changes to rule in response to comment as it determined the provisions in the rule are sufficiently clear. Under 26 M.R.S § 850-F(5), premiums deducted for the program may be split between the employee or employer.

### **Section X (J) (was subsection H in first proposed rules)**

**Round 1 comment summary:** Commenter 267 suggested that the Department change this section to make it consistent with the time frame for private plan exemptions from premiums in Section XIII of the rule.

**Round 1 response to comment:** The Department amended this provision to make the two sections consistent.

**Round 2 comment summary:** Commenter 063 noted that the timeframe of private plan substitution exemptions from premiums in this section conflicted with the start time frame of private plan exemptions from premiums in Section XIII of rule.

**Round 2 response to comment:** The Department amended this provision to make consistent with the private plan substitution from premium time frame as specified in Section XIII of rule.

### **Section X(K)**

**Round 1 comment summary:** Commenter 155 commented if employer premiums deductions will be reported separately on paychecks and W-2s.

**Round 1 response to comment:** In the second proposed rule, the Department made no changes to Rule. Such practice issues may be addressed in guidance.

**Round 1 comment summary:** Commenter 240 expressed concerns about whether it's practical to require a specific notation for PFML deductions, as most systems only list taxes generally.

**Round 1 response to comment:** The Department makes no changes as the rule is sufficiently clear that the premium deduction must be reflected on employees' pay statements, consistent with 26 M.R.S. § 665, but the rule does not dictate how the deduction must be listed.

**Round 2 comment summary:** Commenter 140 recommended restoring the language that was struck in what was Section L, stating that employees have the right to know premium deductions for PFML in their pay statement.

**Round 2 response to comments:** The Department makes no changes as the struck language was not eliminated but instead was moved to subsection K for clarity.

**Round 2 comment summary:** Commenter 166 seeks clarification on what label employers should use to report employee deductions on their pay statements.

**Round 2 response to comment:** The Department makes no changes to the rule. Such practice issues may be addressed in guidance.

**Section X(L) (was section I in the first version of proposed rule) deleted and moved to K with clarifying additions**

**Round 1 comment summary:** Commenters 108 and 126 commented on the employers having the ability to collect premiums from an employee's pay retroactively. Meanwhile Commenter 126 commented that employers should be allowed to collect overdue premiums due to insufficient pay. Commenter 166 suggested that an employer may have valid reasons to deduct or adjust premiums due to errors or paycheck calculation errors, tips or fringe benefits paid through a third party.

Commenters 140, 151, 205, 208, 253, and 258 suggested that the provision to state the employer is liable for the employee's deduction of premiums for failure to deduct should not change.

**Round 1 response to comment:** The Department amended this subsection to allow an employer to deduct premiums from one or more future paychecks if an employee pay has insufficient wages to cover premiums.

**Round 1 comment summary:** Commenter 108 asked what the consequences are for employers that fail to deduct premiums from an employee's pay.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear that an employer's failure to deduct premiums from an employee's pay shall be considered an election to pay the employee's share.

**Round 2 comment summary:** Commenter 288 suggests allowing employers to correct payroll errors within a reasonable time instead of the Department having the employer be considered to have elected to pay the portion of the employee share.

**Round 2 response to comment:** The Department makes no changes in rule in response to this comment. Notwithstanding the exception of allowing an employer to deduct premiums due to insufficient funds, the employer is ultimately responsible for payment of premiums. This is consistent with a review of other states' PFML programs that hold employers liable for the employee's share of premiums for failure to deduct premiums in a timely manner.

**General comments regarding premiums:**

**Round 1 comment summary:** Commenter 101 asked whether private plans must still submit wage information and asked if the private plan substitution exemption covers all premiums for the year, even if the employer was under the state plan part of the year.

**Round 1 response to comment:** Employers must still submit wage reports quarterly if approved for a private plan substitution but exempted from paying premiums on those wages. Section X(J) was clarified that the start of the exemption date is specified in Section XIII.

**Round 1 comment summary:** Commenter 095 asked the Department whether premiums paid by the employer increase an employee's wages.

**Round 1 response to comment:** Guidance is needed from the Federal Internal Revenue Services as to whether premiums paid by an employer to cover an employee's portion of State Paid Family and Medical Leave programs changes the imputed wages for employees.

**Round 1 comment summary:** Commenters 123 asked what constitutes taxable wages for family and medical leave premiums.

**Round 1 response to comment:** The Department clarified the definition of wages in the second draft of proposed rules, Section I(28).

**Round 1 comment summary:** Commenter 181 asked whether contributions should be deducted pre-tax or post-tax.

**Round 1 response to comment:** The Department awaits IRS guidance on the tax treatment of contributions.

**Round 1 comment summary:** Commenter 282 suggested providing premium contribution example.

**Round 1 response to comment:** The Department does not set forth examples in the rule, but may issue guidance.

**Round 1 comment summary:** Commenter 104 asked if payments made to employees on sick leave by a third-party administrator are subject to premiums.

**Round 1 response to summary:** The Department made no changes as rule is sufficiently clear that any wages, as defined in rule, are subject to premiums.

## **Section XI: Failure to Remit Premiums and Contribution Reports**

**Factual and policy basis:** This section implements 26 M.R.S. §850-F(1), 850-F(2), 850-F(9) and 850-F(10) regarding the responsibilities and penalties for self-employed individuals or employers who fail to pay premiums or make contributions reports to the Department. This section was developed based on the Department's review of the paid family and medical leave law on this section and information gathered from other states' paid family and medical leave programs.

### **Section XI (A)**

**Round 1 comment summary:** Commenter 059, 060, 069, 126, 136, 217, 267 and 275 offered comments on the application of the 1 percent penalty. Commenter 060 suggested the 1 percent penalty should be capped at the amount owed equal to part of any premiums owed by the employer, saying it is not fair to charge the full payroll amount as penalty if only partial premiums are owed. Commenter 069 suggested that employees should also face a similar penalty of 1 percent for failing to remit premiums.

Commenter 126 suggested that the penalty should be reduced to 0.5 percent.

Commenter 129 suggested that employers should be able to recover missed premiums from employees' wages at a rate of 5% per pay period, like health insurance practices.

Commenters 134 and 217 commented that the employer penalty may be excessive as the provision does not recognize the difference between a willful act of an employer failing to remit premiums and the employer coming up short on the amount due to the Department and making a good faith effort to pay the amount.

Commenters 059 and 136 suggested that self-employed individuals should face a similar penalty of 1 percent for delinquent premiums.

Commenter 267 suggested the rule clarify that the percentage of assessment fluctuates based on the adjustment to the premium rate.

Commenter 275 supported the section of the rule and suggested that it should not be changed.

**Round 1 response to comments:** 26 M.R.S. section 850-F(9) sets the penalty for failure or refusal to make premium contributions at 1 percent of total annual payroll, plus the total amount of family leave benefits and medical leave benefits paid to covered individuals for whom it failed to make premium contributions. The Department makes no changes in response to these comments as the Department has no authority to set a penalty level contrary to that set in statute.

**Round 1 comment summary:** Commenter 061 suggested any penalty should be based on Maine wages only and the Department should have the ability to waive any penalties for honest mistakes if the employer pays retroactive premiums within 30 days of request.

**Round 1 response to comments:** The Department makes no changes as the rule is sufficiently clear.

**Round 2 comment summary:** Commenter 267 suggested the rule clarify that the percentage of assessment fluctuates based on the adjustment to the premium rate.

**Round 2 response to comments:** 26 M.R.S. section 850-F(9) sets the penalty for failure or refusal to make premium contributions at 1 percent of total annual payroll, plus the total amount of family leave benefits and medical leave benefits paid to covered individuals for whom it failed to make premium contributions. The Department makes no changes in response to this comment as the Department has no authority to set a penalty level contrary to that set in statute.

**Round 2 comment summary:** Commenters 059, 060, 061, 134, 157, 217, 398 and 503 suggested that the penalty due to failure to remit contribution should be less severe and should be proportionate to the unpaid amount instead of a flat 1 percent. Commenter 059 suggested that penalties should be consistent for both employees and employers to prevent fraud.

**Round 2 response to comment:** 26 M.R.S. section 850-F(9) sets the penalty for failure or refusal to make premium contributions at 1 percent of total annual payroll, plus the total amount of family leave benefits and medical leave benefits paid to covered individuals for whom it failed to make premium contributions. The Department makes no changes in response to these comments as the Department has no authority to set a penalty level contrary to that set in statute.

**Round 2 comment summary:** Commenters 059, 061, 105, and 398 asked whether the penalty is based on Maine payroll or whether it includes payroll in other states.

**Round 2 response to comment:** The penalty is based on total wages in Maine.

### **Section XI(B)**

**Round 1 comment summary:** Commenter 217 suggested switching subsections A and B within the proposed rule to align with what the commenter believed the procedure should be, to notify employers of delinquent payments first, allowing time to correct issues, then imposing penalties third.

**Round 1 response to comments:** The Department makes no changes as the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 125 provided a comment thanking the Department for allowing a grace period for employers to remit premiums and submit wage reports.

**Round 1 response to comment:** The Department acknowledges the comment and makes no changes in response.

**Round 1 comment summary:** Commenter 116 commented that more advance notice should be given to employers for missed premium payments and failure to submit wage reports.

**Round 1 response to comments:** The Department makes no changes as the rule is sufficiently clear and administratively feasible.

**Round 2 comment summary:** Commenter 398 suggested adding a clear deadline for employers to remit premiums after receiving a delinquency notice.

**Round 2 response to comment:** The Department made no changes as the rule provides a deadline.



### **Section XI(D)**

**Round 1 comment summary:** Commenters 205 and 258 thanked the Department for providing self-employed individuals that have missed premium payments a “catch up period” that allows them to complete payments.

**Round 1 response to comment:** The Department acknowledges the comment and makes no changes in response.

### **Section XI (E)**

**Round 1 comment summary:** Commenter 253 provided a comment that they supported the language in this subsection of the rule and suggested no changes be made.

**Round 1 response to comment:** The Department acknowledges the comment and makes no changes in response.

### **General comments on Failure to Remit Premiums and Contribution Reports**

**Round 1 comment summary:** Commenter 166 commented that the Department should include in the rule a list of requirements that are needed such as what should be reported, by whom, what frequency and due date regarding the submission of wage reports and premiums.

**Round 1 response to comments:** The Department makes no changes as the rule is sufficiently clear on this point.

**Round 2 comment summary:** Commenter 166 asked whether private plans are subject to the same penalties and reporting requirements.

**Round 2 response to comments:** The Department makes no changes as the rule is sufficiently that employers with an approved private plan substitution must still file quarterly wage reports and may have penalties assessed for failure to do so.

## **Section XII: Elective Coverage**

**Factual and policy basis:** This section sets forth the procedures and requirements for elective coverage for self-employment individuals and tribal governments pursuant to 26 M.R.S. §850-G. regarding elective coverage.

### **Section XII(A)(1)**

**Round 1 comment summary:** Commenters 125, 151, 208, 242, 253, 258 and 275 provided comments about the rule allowing for both self-employed individuals and tribal governments to elect coverage to the PFML program and encouraged the Department to make no changes to this section.

**Round 1 response to comments:** The Department acknowledges the comment and makes no changes in the second proposed rule.

### **Section XII (A)(3)**

**Round 1 comment summary:** Commenter 166 suggested the Department clarify or streamline the difference between the definition of wages for a worker that is provided in Section II of the rule and the definition of wages for a self-employed individual.

**Round 1 response to comment:** In the second proposed rule, the Department made clarifications that, self-employed individuals electing coverage, wages are based on net earnings from all self-employment. This revised definition of wages is based on federal law for independent contractors. No comments were offered in the second round regarding this change.

### **Section XII (A)(4)**

**Round 1 comment summary:** Commenters 130, 205, 241 and 267 offered comments on withdrawal of coverage for self-employed individuals. Comments 130 suggested clarifying that an individual electing coverage may withdraw by completing a form provided by the Department within 30 days following the end of the coverage period. Commenter 205 suggested the Department clarify in the rule the process for when an individual may withdraw from elective coverage if they have found employment with another employer. Commenter 241 commented with a question of why the self-employed individual or tribal government may withdraw from coverage a form provided by the Department within 30 days following the end of the coverage period. The question raised a concern that a self-employed individual or tribal government could be paying premiums in subsequent quarters after termination of coverage. Commenter 267 suggested the Department clarify the rule to say a self-employed individual can withdraw if they move outside of Maine.

**Round 1 response to comment:** In the second proposed rule, the Department did not adopt these suggestions as the proposed rule sets forth a reasonable process and timeframe for withdrawal of coverage that is consistent with the statute.

## **XIII: Substitution of Private Plans**

**Factual and policy basis:** This section specifies the procedures and requirements regarding substitution of private plans set forth in 26 M.R.S. §850-H. This section establishes the process for an employer to apply for a private plan substitution, establishing minimum criteria of substantially equivalent plans, revocation of private plans, rights to appeal of a revocation of

plans, cancellation of private plans, application fees to apply for a substitution and the reporting requirements necessary to maintain the substitution.

**Department Finding:** The Department added a sentence to Section XIII(A)(2) in the final rule to specify that: *Substitutions are made in accordance with the employer's Federal Employer Identification Number (FEIN) and must provide coverage for all employees within that employer's FEIN.* The Department finds that the explicit requirement that a substituted plan must cover all of an employer's employees is consistent with the intention of the statute and the rule, and is administrative feasible. The Department further finds that this clarification is implied in the PFML law.

### **Section XIII(A)(2) – Date for Accepting Applications for Substitution of Private Plans**

**Round 1 comment summary:** Commenters AC 4, 014, 019, 020, 025, 037, 038, 039, 040, 041, 043, 044, 052, 059, 060, 061, 062, 063, 066, 069, 073, 082, 085, 089, 091, 096, 099, 100, 102, 103, 105, 106, 107, 109, 110, 112, 113, 114, 115, 116, 119, 122, 124, 126, 129, 131, 132, 134, 136, 143, 145, 146, 148, 150, 154, 157, 160, 164, 166, 168, 171, 176, 181, 183, 185, 188, 189, 201, 202, 217, 224, 227, 230, 231, 232, 237, 239, 240, 241, 242, 249, 252, 254, 257, 259, 260, 261, 262, 264, 267, 270, 272,276,277, and 280 provided comments to the Department regarding private plan application beginning January 1, 2026. Some commenters proposed to allow a declaration of intent if a commenter wishes to purchase a fully funded plan or believe they have a currently employer offered plan that is “substantially equivalent” to the state plan. Some commenters suggested the Department open the private plan application process beginning on January 1, 2025, when premium deductions are to begin. Meanwhile commenters 96 and 230 suggested the Department’s proposal to open private plan applications beginning January 1, 2026, and should not be changed. The PFML Authority (115) suggested that the Department allow an employer to apply for approval of a private plan no sooner than January 1, 2026, provided the employer continue to make contributions until they have a private plan that has been approved and has gone live.

**Round 1 response to comments:** In the second proposed rule, the Department revised the rule to allow the private plan application process to open April 1, 2025.

The second proposed rule further provides, at subsection (A)(4), for exemption from benefits on the first day of the quarter in which the substitution is approved, if the application is received at least 30 days prior to the end of the quarter. The second proposed rule also provides that, if the application is submitted less than 30 days prior to the end of the quarter, the exemption is effective the first day of the quarter following the application, assuming it is approved.

The changes were in response to the multiple comments listed above. The Department finds that the changes balance the interest of employers and the interest of establishing a fiscally sound Paid Family and Medical Leave Fund. The Department also considered the experiences of

other states that have recently established a paid family and medical leave program. The timing is also based upon administrative feasibility.

**Round 1 comment summary:** Commenter 268 supported the oversight, process for private plan approvals, and data collection requirements outlined.

**Round 1 response to comment:** The Department acknowledges the comments.

**Round 1 comment summary:** Commenter 205 suggests the Department include a mechanism to fund the cost of oversight for private plan substitutions.

**Round 1 response to comment:** The Department revised the rule to include an administrative reimbursement fee for the cost of administering private plans as provided by the statute.

**Round 2 comment summary:** Commenters 014, 059, 062, 082, 105, 157, 199,232, 254, 264, 408, and 449 offered comments regarding the Department’s proposal to require premiums to be paid into the Paid Family and Medical Leave Fund beginning on January 1, 2025. The commenters believed that there should be an opportunity for employers to opt out if they intend to apply for a private plan substitution or encouraged the department to open private plan substitutions prior to the proposed date of April 1, 2025. On the other hand, commenters 059 and 232 and 503 suggested the Department revised proposal regarding when private plan applications should remain April 1, 2025.

**Round 2 response to comments:** The Department will maintain the provision to open private plan applications beginning on April 1, 2025 and to require premium deductions beginning on January 1, 2025, with exemptions from premium deductions no sooner than the quarter the application is received, as set forth above and in the second proposed rule. The Department did not make any change in response to the suggestion to allow an exemption from payment of premiums based on a certification of intent to apply for a private plan substitution. The Department’s decision is based upon review of comments from multiple stakeholders, the experiences of other states that have recently established a paid family and medical leave program, and is a reasonable balance of the interests of employers with the interest of establishing a fiscally sound Paid Family and Medical Leave Fund.

**Round 2 comment summary:** Commenter 030 suggested that the reimbursement for the application of private plans was excessive.

**Round 2 response to comment:** The Department established the fee amount based on a review of other states with paid family and medical leave application fees. The Department finds that \$500 is reasonable considering the administrative time to process and review applications. No comment was offered in the first round as this was a new provision included in the second proposed rule.

**Section XIII(A)(3)- Approved Substitution valid for 3 years**

**Round 1 comment summary:** Commenter 181 asked the Department to clarify that a fully insured private plan substitution is valid for three years regardless of whether the employer changes insurance carriers.

**Round 1 response to comment:** The Department makes no changes as the rule is sufficiently clear that an employer may apply for a new 3-year substitution within a previous 3 year substitution if an employer changes carriers previously approved insurance plan. If the new substitution is approved, it will begin a new 3-year substitution period.

**Round 1 comment summary:** Commenter 267 suggested the rule be changed so an approved private plan substitution is valid for one year subject to annual renewal.

**Round 1 response to comment:** The Department makes no changes since the rule provides an appropriate balance of interests, aligns with other timelines in the rule such as elective coverage, and is administratively feasible.

**Round 2 comment summary:** Commenters 314 and 398 offered a comment regarding the employer requirement to resubmit an application after the conclusion of the initial three-year approval of a private plan substitution. The commenter was concerned that it would create unnecessary costs and barriers for the employer.

**Round 2 response to comment:** The Department makes no changes in rule in order to ensure requirements established in rule on private plans have been met after the conclusion of the three-year period of a substitution. No comments were offered on this suggestion in the first round.

#### **Section XIII(A)(4) – Date of exemption from obligation of premiums**

*Note: In response to comments to Section XIII(A)(2) regarding the start date for applications and exemptions, the Department made changes to subsection (A)(4) in the second proposed rule. The Department finds that the changes are a reasonable balance of the interests of employers with the interest of establishing a fiscally sound Paid Family and Medical Leave Fund. In the final rule, the Department made formatting changes to this section, for the sake of clarity.*

**Round 2 comment summary:** Commenters 060, 063, 105, 124, 257 and 503 suggested to the Department that the effective date for a substitution to take effect should be when the application has been filed with the Department. Commenter 063 elaborated that other states with paid family and medical leave law allow that the effective date is the date an application was submitted.

Commenters 060 and 503 suggested revised language regarding the refund of premiums after the effective date of the private plan substitution.

*“An employer must remit to its employees any tax amount withheld after the effective date of the tax exemption granted pursuant to an approval of an employer private plan.”*

**Round 2 response to comment:** The Department makes no additional substantive changes in response to these comments. In the final rule, formatting changes were made. The Department must review applications to ensure minimum criteria is met before determining that remittance for premiums to the Paid Family and Medical Leave Fund will cease.

**Round 2 comment summary:** Commenters 060, 105, 124, 166, 168 and 311 asked for clarification to the Department on whether a private plan submitted by an employer on April 1, 2025, and approved by the State on May 1, 2025, means that all employee premiums withheld from employees' pay for the month of April 2025 are required to be refunded to the employee.

**Round 2 response to comment:** Yes. The Department made no substantive changes to this section as it finds the statutes and rules are sufficiently clear on this point.

**Round 2 comment summary:** Commenters 124, 166, 168 and 311 suggested to the Department to clarify the approval process and whether premiums will still be collected while the application is under review by the Department.

**Round 2 response to comment:** The Department made no changes in response to these comments as it finds that the rule is sufficiently clear on the timing of the exemption of premiums once a private plan substitution is approved.

**Round 2 comment summary:** Commenter 166 suggested to the Department to provide clarity as to whether employees of employers who elect substitute plans are covered under the state plan for periods prior to the substitute plan effective date.

**Round 2 response to comment:** Employees will be covered by the State plan after benefits begin for all employees on May 1, 2026 (or thereafter, as provided by 26 M.R.S. § 850-P) and before benefit coverage under the private plan begins, if coverage by that private plan is not otherwise provided to those employees.

**Round 2 comment summary:** Commenter 279 posed a question to the Department asking the length of time it will take to review a private plan substitution and whether there will be a maximum fee range for the submission of the application for substitution.

**Round 2 response to comment:** The Department makes no changes in rule as it finds the rule is sufficiently clear on fee range and anticipated length of review.

**Round 2 comment summary:** Commenters 217 and 327 suggested an employer should be refunded previous premiums remitted to the Department if an employer receives an approved private plan substitution.

**Round 2 response to comment:** The Department will not provide refunds to employers for premiums remitted prior to the approval of a private plan substitution. The Department notes that approval or denial of a private plan will take place before premiums are due for that quarter.

The substitution application process was developed balancing the interest of employers and the interest of establishing a fiscally sound Paid Family and Medical Leave Fund. The Department also considered the experiences of other states that have recently established a paid family and medical leave program. The timing is also based upon administrative feasibility.

### **Section XIII(A)(5) – Cancellation of private plans**

**Department Finding:** *In final rule the Department added some additional clarifying language to Section XIII(A)(5). As a general rule, businesses assess the potential impact of numerous variables in order to plan for a viable future. The Department decided that a more appropriate standard in reviewing a request to cancel a private plan substitution are issues causing a negative impact on the business such that the employer believes cancellation is the best solution. Additionally, the Department decided to clarify that it did not intend to allow any and all premium increases to meet the standard for cancellation but, rather, only those that are unanticipated and unreasonable.*

**Round 1 comment summary:** Commenter 267 suggests employers be permitted to withdraw their private plan substitution at any time without the need to establish good cause for doing so. Commenter 059 suggests that an employee should not have to wait three years to reapply if they change insurance carriers or plans as long as the employees do not have a lapse in coverage.

**Round 1 response to comment:** The Department makes no changes in response to this comment as the rule reflects an appropriate balance between the needs of workers, employers and administrative efficiency.

**Round 2 comment summary:** Commenters 314 and 398 offered a comment regarding the cancellation of a substitution prior to the conclusion of the three-year period unless for good cause. The commenter was concerned this provision would restrict the flexibility of employers to assess plans that would also be in the best interest of employees and could counteract the state’s policy goals on creating access to paid family and medical leave.

**Round 2 response to comment:** The Department does not change the prohibition on cancellation during the three-year period because that provision in the rule ensures consistency in the application of private plans offered by insurers and employers, and protects workers and the fiscal integrity of the Fund. Finding that the term “good cause” was not consistently used in the rule, the Department changed the criterion for allowing cancellation upon showing “direct negative business impact,” defined as an unanticipated and unreasonable premium increase.

### **Section XIII(A)(6) – notification of material change**

**Round 1 comment summary:** Commenter 181 suggested the Department provide additional clarity on what constitutes materials changes to the plan.

**Round 1 response to comment:** The Department made no changes in the rule as the rule is sufficiently clear. The rule states that material change is any change which affects the rights, benefits or protections afforded to employees under the Paid Family and Medical Leave law.

**Round 2 comment summary:** Commenters 061 and 063 suggested to the Department to provide additional clarity on what constitutes material changes to the plan.

**Round 2 response to comment:** The Department makes no changes in rule in response to comment as the rule states that material change is any change which affects the rights, benefits or protections afforded to employees under the Paid Family and Medical Leave law.

### **Section XIII(A)(7) Audits and investigations**

**Round 1 comment summary:** Commenter 267 asked the Department to change its permissive authority to investigate employee complaints to mandatory.

**Round 1 response to comment:** The Department declines to make this change as it finds that the current language appropriately permits the Department to exercise discretion as to how to respond to a complaint. The Department further notes this is consistent with fundamental principles of agency enforcement discretion.

### **Section XIII(A)(10) data submission**

*Note: The Department clarified this section in round of the proposed rule to state that data reports prepared for fully insured private plans to insurance companies offering such plans to several employers may meet the requirement, and to state that failure to submit data reports may result in revocation of the substitution.*

**Round 1 comment summary:** Commenter 232 suggested that the Department include a breakout of data for private plans compared with the public plan.

**Round 1 response to comment:** The Department makes no changes as the statute and the rule are sufficiently clear.

**Round 1 comment summary:** Commenter 181 noted that insurance carriers do not collect data on race and ethnicity since it could infer discrimination in the claims process. The commenter suggested that insurers should be excluded from providing this data.

**Round 1 response to comment:** The Department makes no changes in the rule in response to the comment to ensure consistency in data collection between what is required by the Department and what is required from employers with approved private plan substitutions.



**Round 1 comment summary:** Commenter 168 asked that the data reporting provisions be deferred to future rulemaking so insurers could consult on the types of data they might provide on an aggregated basis for their insured customers.

**Round 1 response to comment:** The Department makes no changes in the rule since the statute requires the reporting of certain data and the Department finds that it is reasonable to ensure consistency between what is required by the Department and employers under an approved private plan substitution.

**Round 2 comment summary:** Commenter 063 offered a comment about data reporting requirements for private plans. The Commenter expressed that insurance carriers do not collect data on race and ethnicity and by collecting this type of data could infer discrimination in the claims process. The commenter suggested that carriers should be excluded by the Department to collect this data.

**Round 2 response to comment:** The Department makes no changes in rule in response to comment to ensure consistency in data collection between what is required by the Department and any employers that is under an approved private plan substitution.

**Round 2 comment summary:** Commenter 168 asks the Department to clarify whether data reports prepared by insurers for fully insured private plans can be aggregated across the entire block of business.

**Round 2 response to comment:** The Department makes no change as the rule is sufficiently clear that aggregate reports for the specific plan are sufficient.

**Round 2 comment summary:** Commenter 232 suggested that the Department clarify what “may” means in reporting requirements.

**Round 2 response to comment:** The Department will require information reported by insurance companies to be similar to reporting requirements to meet 26 M.R.S. § 850-E(6).

### **Section XIII(A)(11) Contribution reports**

*Note: The Department clarified this section in the second round to expressly state that failure to file contribution reports may result in revocation of the substitution.*

**Round 1 comment summary:** Commenter 061 states private plans should be exempt from filing contribution reports as well as from remitting contributions.

**Round 1 response to comment:** The Department makes no change in the rule. The Department disagrees that the substitution of a private plan removes the requirement to report wages. Title 26 Section 850-F(2) requires employers to remit both employer contribution reports and premiums. Title 26 Section 850-F(8) states that employers with approved private plans are not required to remit premiums, but does not waive the contribution/wage reports.

**Round 2 comment summary:** Commenter 061 states that private plan employers should not be required to submit quarterly contribution/wage reports to the Department since the employer would not be required to submit contributions to the Department.

**Round 2 response to comment:** The Department makes no additional changes. The Department disagrees that the substitution of a private plan removes the requirement to report wages. Title 26 Section 850-F(2) requires employers to remit both employer contribution reports and premiums. Title 26 Section 850-F(8) states that employers with approved private plans are not required to remit premiums, but does not waive the contribution/wage reports.

### **Section XIII(A)(12)**

**Department Finding:** In the second proposed rule, the Department added subsection 12 to require employers with an approved substituted plan to provide appropriate tax forms to employees taking leave. This section was added for the sake of clarity.

No comments were received in the second round of comments on this particular section of rule.

### **Section XIII(A)(13) Appeals**

**Department Finding:** In final rule the Department added some additional clarifying language to Section XIII(A)(13). The Department made changes to the appeal rights throughout the rule to ensure consistency in language and application and to provide clarity as to when the appeal period runs.

### **Section XIII (B)(1) – Fully-Insured Private Plans**

**Round 1 comment summary:** Commenter 160 suggested the Department explain the difference between a fully insured plan and a self-insured plan.

**Round 1 response to comment:** The Department makes no changes in response to this general comment in rule as it finds the statute and rule in Sections XIII(B) and (C) are sufficiently clear as distinguishing between a fully-insured plan and a self-insured plan. No additional comments were made in the second round regarding this suggestion.

**Round 1 comment summary:** Commenter 267 suggested the Department incorporate language in the rule that the Administrator of the Paid Family and Medical Leave Program cannot offer private plan insurance coverage in Maine to avoid any potential conflicts of interest. This provision will ensure that there will be a key safeguard to include if the Department chooses to contract with a third-party administrator for the purpose of program administration.

**Round 1 response to comment:** The Department made no changes in response to this comment in rule as such a change would unduly limit potential qualified bidders to be the Administrator of the program.

**Round 1 comment summary:** Commenter 168 suggested the Department clarify that fully insured plans may include an internal reconsideration process like what is included in Section XIII(D)(2)(e) [now subsection (f) in the final rule].

**Round 1 response to comment:** The Department made no changes. The internal reconsideration process set forth in Section XIII(D)(2)(e) is applicable to both fully-insured and self-insured private plan substitutions. The plan's internal reconsideration process must be exhausted before a denied private claim can be appealed to the state.

### **Section XIII(B)(2)**

**Department Finding:** In final rule the Department added some additional clarifying language to Section XIII(B)(2). The Department will explicitly an employer with a fully-insured private plan to notify the Department if an insurer intends to cancel or non-renew the policy supporting the plan. This notice will allow the Department to determine appropriate next steps to ensure continued availability of benefits and premium contributions into the fund, as appropriate.

### **Section XIII(B)(5) Notification of Cancellation or Non-Renewal**

**Round 1 comment summary:** Commenter 073 suggested the Department revise language in the proposed rule to state that the Department may use a checklist to determine whether or self-insured plan meets the minimum requirements to be determined a substantially equivalent private plan.

**Round 1 response to comment:** In the second proposed rule, the Department amended language to state the Department will work with the Maine Bureau of Insurance to develop a check list to determine the minimum criteria for substantially equivalent plans based on the Bureau's experience in reviewing insurance policies. The Department will then issue a certificate of eligibility.

### **Section XIII(C)(1) – Self-Insured Private Plans**

**Round 2 comment summary:** Commenters 073, 082 and 168 encouraged the Department to work with the Maine Bureau of Insurance on developing a policy filing checklist to allow a more streamlined process for insurers to comply with law without having to seek secondary approval by the Department.

**Round 2 response to comments:** The Department amended language to state that the Department may use the checklist developed with the Maine Bureau of Insurance, but the Department retains the Authority in 26 M.R.S §850(H)(1) to review private plan substitutions.

Insurers will make their filings with the Bureau of Insurance, and the Department will make the certification.

### **Section XIII(C)(3)**

**Round 1 comment summary:** Commenters 061 and 232 suggested the Department specify the minimum amount in rule that an employer must pay for a bond for a self-insured plan to prevent either an under or overpayment to the Department.

**Round 1 response to comment:** The Department made no changes in response to this comment. As set forth in the rule, the Department will determine the required bond amount and will publish it as part of the application process. The cost of the bond will be determined by the bonding company. The Department does not receive any funds unless there is a default.

### **Section XIII(D)(1) – Determination of Substantial Equivalence**

#### **Section XIII(D)(2)(a)**

**Round 1 comment summary:** Commenter 267 suggests the Department clarify that it is the sole decisionmaker as to whether a private plan is substantially equivalent although the Department may consult with the Bureau of Insurance in making that determination.

**Round 1 response to comment:** The Department revised this section to remove “or the Bureau of Insurance as its delegee” and replace it with “in consultation with the BOI as necessary.”

**Round 2 comment summary:** Commenter 398 stated the proposed rules do not require the Department or the Maine Bureau of Insurance (BOI) to explain to an applying employer the specific reasons why their proposed private benefit plan was denied. The commenter further elaborated that an explanation or justification of the agency’s decision is critical to employers’ ability to augment and improve proposed private plans in order to gain approval in the future.

**Round 2 response to comment:** The Department made no changes in rule in response to this comment. The Department will provide proper notification and state reasons for approval or denial of the application. No comments were offered in the first round regarding this suggestion.

#### **Section XIII(D)(2)(b)**

**Round 1 comment summary:** Commenters 122, 258 and 268 ask the Department to clarify that “family member” includes all family members required in the statute. Commenter 122 stated that a plan must provide leave to care for a family member as defined in statute.

**Round 1 response to comment:** The Department changed the second version of the proposed rule noted to expressly state a substantially equivalent plan must account for all definitions of family listed in §.850-A(19). The revised rule is consistent with the language and the intent of the statute.

**Round 2 comment summary:** Commenters 232 suggested additional language to clarify that “family member” includes all family members required in the statute.

**Round 2 response to comment:** The Department notes that second version of the proposed rule noted to expressly state a substantially equivalent plan must account for all definitions of family listed in §.850-A(19).

**Round 2 comment summary:** Commenter 061 asks whether an employer can satisfy the minimum requirements if the plan uses the same definition of family member as is in the federal FMLA.

**Round 2 response to comment:** The final rule clarifies that the plan must, at a minimum, include all definitions of family listed in 26 M.R.S.§.850-A(19). The Department made no additional changes to the rule in response to this comment.

### **Section XIII(D)(2)(c)**

**Round 1 Comment summary:** Commenters 125, 140, 145, 147, 151, 160, 162, 163, 167, 178, 195, 198, 205, 208, 212, 214, 215, 221, 222, 223,225, 230, 232, 236, 238, 239, 242, 246, 250, 251, 253, 255, 258, 263, 267, 268, 275, 356, 359, 362 suggested the Department when establishing the minimum criteria to determine a substantially equivalent plan must be similar to the rights, benefits and protections must be similar to the state plan with emphasis. An emphasis was placed on ensuring the maximum amount of time an individual can take leave, wage replacement and family members covered are similar to the state plan. Commenter 122 stated that an additional subsection should be added to explicitly state that a private plan must provide at least 12 weeks of leave. Commenter 232 suggested that the requirement that private plans be equivalent in the number of weeks and wage replacement contradicts the statute.

**Round 1 response to comment:** In the second proposed rule, the Department added a provision that 10 weeks of leave may constitute substantially equivalent plan. The Department cited 10 weeks from the Maine Family Medical Leave Act (26 M.R.S §844) to ensure familiarity and consistency in similar leave laws in Maine. The Department finds that the requirement that a private plan provide at least 10 weeks of leave to be substantially equivalent is consistent with the language and the intention of the statute.

**Round 2 comment summary:** Commenters 115 (PFML Authority), 205, 232, 246, 255, 258, 267, 268, 279, 291, 311, 315, 316, 319, 332, 333, 400, 402, 404, 411, 412, 424, 430, 431, 433, 436, 448, 472, 477, 478, 479, and 481 suggested to the Department to ensure that private plans that are available and utilized provide at least 12 weeks of leave compared to the 10 weeks in the

proposed rule. The PFML Authority (115) suggested language in the rule be changed to read “in general, the plan must allow for at least 12 weeks of aggregate leave per benefit year, except by voluntary agreement between the employer and the employee.” Commenters 279 and 311 posed a question seeking clarity on whether the intent of the Department was to allow 10 weeks as the maximum amount of leave for private plans.

**Round 2 response to comment:** The Department made no additional changes in response to the comments. The Department finds that the statute does not require a private plan to provide 12 weeks of leave in order to be substantially equivalent. The Department finds that the requirement that a private plan provide at least 10 weeks of leave to be substantially equivalent is consistent with the language and the intention of the statute.

**Round 1 comment summary:** Commenter 181 requested clarification of claim ownership when an employee on leave moves from one employer to another, either between private plan employers or between private and state plan employers.

**Round 1 response to comment:** Claim facts, including ownership, are set on the date of either application or leave beginning, whichever is earlier. The employer of record on that date is the employer that owns the claim. The Department made no changes in response to the comments in rule.

#### **Section XIII(D)(2)(d)**

**Round 1 comment summary:** Commenters 061 and 181 note the reference to section II(B) appears incorrect.

**Round 1 response summary:** The Department corrected the reference to section III(B) in the second proposed rule.

#### **Section XIII(D)(3)**

**Round 1 comment summary:** Commenter 061 asked the Department to clarify the application of this section.

**Round 1 response summary:** The Department made no changes in response to the comment, finding that the language in the rule is sufficiently clear.

**Round 1 comment summary:** Commenters 258, 267 and 268 ask the Department to clarify that a private plan does not meet the requirements unless it provides at least twelve weeks of leave in a benefit year and mirrors the family member relationships set forth in the statute. This comment was reiterated in Round 2.

**Round 1 response to comment:** In the second proposed rule, the Department added a provision in Section XIII(D)(2)(c) that 10 weeks of leave may constitute substantially equivalent plan. The Department cited 10 weeks from the Maine Family Medical Leave Act (26 M.R.S §844) to ensure familiarity and consistency in similar leave laws in Maine. The Department

finds that the requirement that a private plan provide at least 10 weeks of leave to be substantially equivalent is consistent with the language and the intention of the statute.

**Round 1 comment summary:** Commenters 258, 267, and 268 suggest that the Department include all private plan criteria set forth in the statute to avoid confusion.

**Round 1 response to comment:** The Department did not make the requested change since the rule is sufficiently clear and consistent with statute.

**Round 2 comment summary:** Commenters 060 and 503 stated that the requirement of a substantially equivalent plan to provide a monetary greater than or equal to that of the State plan is contrary to the intent of the law

**Round 2 response to comment:** The Department makes no changes in response to the comment in rule. The Department finds that calculating the monetary requirement using the formula established in rule is consistent with the law. No comments were offered in the first round regarding this suggestion.

#### **Section XIII(D)(4)(c)**

**Round 2 comment summary:** Commenter 061 suggests that the provisions that includes the ability to have a different lookback period should clearly explain how the provision would be applied.

**Round 2 response to comment:** The rule is sufficiently clear and is intended to provide discretion in the public plan. The Department made no change.

#### **General comments pertaining to substitution of private plans:**

**Round 1 comment summary:** Commenters 041 and 248 asked the Department to allow employers who give generous paid time off or other benefits like short term disability to be considered as an acceptable private plan substitution.

**Round 1 response to comments:** The Department made no changes as this conflicts with statute that notes that private plans must be fully or self insured, must provide coverage of benefits irrespective to length of employment with the employer, and must provide for all leave types.

**Round 1 comment summary:** Commenter 267 suggested that the Department incorporate all grounds for revocation of a private plan substitution that are included in the statute. Additionally, the commenter suggested the rule require employers to provide employees notice whenever there is a material change, revocation, withdrawal or approval of a private plan.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 133 provided a comment as the criteria established for private plans are clear and recommended should not be changed.

**Round 1 response to comment:** The Department acknowledges this comment and makes no changes in response to these general comments, but makes specific changes described herein.

**Round 1 comment summary:** Commenter 137 suggested the Department adopt in the rule another provision in Section XIII(D) that a plan provided by an employee leasing company, if approved as substantially equivalent, can apply to all client companies of the employee leasing company.

**Round 1 response to comment:** The Department clarified in second draft proposed rules in the definition of Employer that in the case of Employee Leasing Companies that the client company is considered the employer for the purposes of the program. As such, each client company will need to apply for a private plan substitution using the process noted in rule.

**Round 2 comment summary:** Commenter 131 encouraged the Department to expedite approval of private plan applications.

**Round 2 response to comment:** The Department intends to review private plan applications as quickly as possible.

**Round 2 comment summary:** Commenter 063 suggested to the Department to adopt rules to address when an employer has a merger/acquisition. The commenter recommended that on the effective date of the corporate change, the acquired employees are automatically covered under the existing policy. The employer should just notify the Department at least 30 days in advance.

**Round 2 response to comment:** This is a material change to a plan that the employer would need to notify the Department of in advance to receive approval.

**Round 2 comment summary:** Commenter 168 suggested the Department develop a checklist that will assist both the state plans and employers with approved private plan substitutions with objective criteria to determine undue hardship claims.

**Round 2 response to comment:** The Department made no changes as it determined the provisions in the rule are sufficiently clear.

**Round 2 comment summary:** Commenter 311 posed a question to the Department about how an employer should hold withholdings if an employee is no longer with an employer.

**Round 2 response to comment:** The Department makes no changes in the second proposed rule as it finds that the rule is sufficiently clear. The withholding of employee's contributions does not change in the employee's last paycheck after an employment situation.



## **Section XIV: Returning From Leave**

**Factual and policy basis:** This section of the rule implements 26 M.R.S §850-J regarding job restoration of an employee to their position after the completion of leave. This section also clarifies enforcement of the protection from retaliation of an individual exercising any rights under the Paid Family and Medical Leave law. This section incorporates by reference Federal Family and Medical Leave standards related to equivalent positions.

### **Section XIV (A)**

**Round 1 comment summary:** Commenters 139, 140, 142, 151, 178, 196, 205, 208, 232, 253, 258, 267, 268, 275 suggested that the Department remove the word “consecutive” from this section. Commenters 140, 142, 151, 178, 253, 275, added that using the word “consecutive” may negatively impact workers who work seasonal or part-time jobs and who do not work consecutive schedules. Commenters 232, 258, and-268 elaborated adding the word consecutive goes beyond the intent of the law.

**Round 1 response to comment:** The Department makes no changes as the rule reflects an appropriate balance between the needs of workers and employers and is consistent with both similar Maine laws and other states’ PFML programs.

**Round 1 comment summary:** Commenter 125 suggested clarification of the meaning of the word consecutive.

**Round 1 response to comment:** The Department makes no changes as the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 160 suggested that the Department change the 120-day threshold for job restoration to 365 days.

**Round 1 response to comment:** The Department makes no changes as the 120-day threshold is set by statute and the Department has no authority to change it by rule.

**Round 1 comment summary:** Commenters 198 and 268 suggested that the Department clarify the definition of “a position with equivalent employment benefits, pay and other terms and conditions of employment.” The commenter suggested that the employer should return the employee to the position prior to taking leave unless an undue hardship exists.

**Round 1 response to comment:** The Department makes no changes as the rule is sufficiently clear.

**Round 1 comment summary:** Commenter 233 asked the Department to clarify the requirements for job restoration for an employee who was employed less than 120 days before commencing leave.

**Round 1 response to comment:** The Department makes no changes as the statute and rule are sufficiently clear that an employee who has not been employed for at least 120 days does not have the right to be restored to their previous position.

**Round 1 comment summary:** Commenter 267 suggested the Department remove references to the federal FMLA as the commenter does not believe it was the intent of the statute to have these provisions apply.

**Round 1 response to comment:** The Department makes no changes as the Department finds that it is helpful and reasonable to align Maine rules with comparable existing federal standards.

**Round 1 comment summary:** Commenter 280 recommends an employee who takes leave without notice should not be guaranteed job protection.

**Round 1 response to comment:** The Department made no changes in rule as the suggestion conflicts with the statute.

#### **Section XIV(B)**

**Round 1 comment summary:** Commenter 198 suggested that the Department clarify or revise the provision regarding the effect of leave on initial probationary periods. The commenter believed this provision is not accurate for employees that are under a collective bargaining agreement.

**Round 1 response to comment:** The Department makes no changes in response to the comment as the rule is sufficiently clear that the employer is permitted to toll an initial probationary period but is not required to do so.

#### **Section XIV(C)**

**Round 1 comment summary:** Commenter 117 asked the Department whether the employee may receive the full 12 weeks of benefits if the employee notifies the employer in writing that they do not intend to return to their job at the end of their leave. Commenter 159 suggested that the Department clarify whether an employee that provides notice in writing of their intent to not return to their job after taking leave will be still entitled to weekly benefits under paid family and medical leave.

**Round 1 response to comments:** In the second draft of rules, the Department clarified in Section IV that a covered employee must be employed when applying for leave or taking leave to receive benefits and will continue to receive benefits. The right to continued benefits changes only if the employee actually separates from employment. The Department makes no changes in response to these comments.

### **General comments regarding returning from leave**

**Round 1 comment summary:** Commenter 060 suggested that employers should not be obligated to restore an employee to work if the employee is (1) absent from work 30 days or longer (2) when the employer is not given notice from any source and (3) the employer has re-filled the position with another employee.

**Round 1 response to comment:** The Department makes no changes as the obligation to restore an employee to work is set by 26 M.R.S. section 850-J and the Department is bound by the statute.

**Round 1 comment summary:** Commenters 125, 140, 142, 151, 178, 196, 198, 205, 232, 253, 258, 268, 275 and 278 suggested the Department add additional language into the rule to provide greater protections for employees from retaliation for using paid family and medical leave.

**Round 1 response to comment:** The Department makes no changes in response to this comment as the protections from retaliation are set by 26 M.R.S. section 850-J, and the Department is bound by the statute.

**Round 1 comment summary:** Commenters 178, 268 and 275 suggested that the Department require that an employer restore an employee to the position held by the employee prior to taking leave rather to an equivalent position unless the employer can demonstrate an undue hardship.

**Round 1 response to comment:** The Department makes no changes in response to comment as the suggestion would conflict with 26 M.R.S §850-B in that an undue hardship finding is not required.

**Round 1 comment summary:** Commenter 181 suggested that the Department incorporate provisions similar to the Federal Family Medical Leave Act such as provisions related to employers ability to recoup the cost of the employee's portion of their health insurance while they were on leave.

**Round 1 response to comment:** The Department made no changes as the employer may make health insurance deductions after reinstatement of an employee after leave subject to State and Federal law. The employer should follow their normal practice.

**Round 1 comment summary:** Commenter 249 suggested that the rule should include a provision allowing a staffing company opportunities to accommodate a returning temporary employee after the assignment has ended as well as a provision that clients of staffing companies to refuse to restore a temporary worker returning from leave if the client determines that doing so would disrupt their optimal operations.

**Round 1 response to comment:** Employees of a temporary staffing agency must be restored to an equivalent position, with equivalent benefits, pay and other terms and conditions of employment, with that staffing agency. This does not necessarily require restoring the employee to the same position with the same client agency. No further changes are made to the rule.

**Round 1 comment summary:** Commenters 178 and 275 suggested that the Department should restrict an employer to returning an employee to their original position when returning from leave unless the employer can demonstrate that it would be an undue hardship to do so and therefore the employer must return the employee to an equivalent position. Additionally, they suggested a return to an equivalent position as opposed to the original positions be subject to appeal rights.

**Round 1 response to comment:** The Department makes no changes in response to comment as the suggestion would conflict with 26 M.R.S §850-B in that an undue hardship finding is not required.

**Round 2 comment summary:** Commenter 060 suggested that employers should not be obligated to restore an employee to work if the employee is (1) absent from work 30 days or longer (2) when the employer is not given notice from any source and (3) the employer has re-filled the position with another employee.

**Round 2 response to comment:** The Department makes no changes as the obligation to restore an employee to work is set by 26 M.R.S. section 850-J and the Department is bound by the statute.

**Round 2 comment summary:** Commenter 063 suggested that the Department clarify that the protections of the Maine Paid Family and Medical Leave Program do not apply if and when an employee does not comply with an employer's established policies for providing notice of leave.

**Round 2 response to comment:** The Department makes no changes in response to this comment as the suggestion is inconsistent with 26 M.R.S. section 850-J.

## **Section XV-Appeals**

**Factual and policy basis:** This section of the rule sets forth an appeals process under 26 M.R.S §850-K regarding appeals and the process for an aggrieved party to request an appeal. The appeals process explains the reasons an aggrieved party may seek an appeal, notice requirements and the decision-making process for Hearing Officers regarding appeals.

### **Section XV(A)**

**Department Findings:** In the final rule the Department added clarifying language to Section XV(A). The Department made changes to the appeal rights throughout the rule to ensure consistency in language and application and to provide clarity as to when the appeal period runs.

In the final rule, the Department clarified that an appeal must be made within 15 business days from the date the decision is issued. In the interest of due process, the Department also added a good cause provision for requests to appeal that are filed late. Additionally, the Department clarified the standard for good cause for both a late application for benefits and request to appeal by adding a definition of “good cause” to Section I of the rule.

**Round 1 comment summary:** Commenter 061 suggested the Department add a time limit for requesting an appeal.

**Round 1 response to comment:** In the second rule proposal, the Department made changes, as described in the Department Findings above.

**Round 1 comment summary:** Commenters 129, 134, 140, 144, 151, 178, 181, 185, 198, 205, 208, 219, 242, 253, 258, 267, 268 and 275 suggested the Department add to the list an aggrieved party should be allowed to appeal an undue hardship claim from an employer regarding the employee seeking to schedule leave. Commenter 059 suggested that the Department allow an employer to appeal a schedule set by the Administrator following a finding that the claim of undue hardship is reasonable.

**Round 1 Response to comments:** In the second proposed rule, the Department added undue hardship as a reason an aggrieved party may seek an appeal.

**Round 2 comment summary:** Commenters 205 and 258 provided a positive comment that allows an appeal for the finding of unreasonable undue hardship.

**Response to comments in round 2:** The Department acknowledges the comments and makes no additional changes as a result.

**Round 1 comment summary:** Commenter 134 suggested that assessments imposed by the Department should be subject to appeal.

**Round 1 response to comment:** In the second proposed rule, the Department added that any fine or penalty imposed, including fines related to late or non-payment of premiums, may be appealed.

**Round 1 comment summary:** Commenters 178 and 198 encouraged the Department to allow an employee to file an appeal with the Department if the position they return to is not equivalent to the position before taking leave.

**Round 1 response to comment:** The Department did not make any changes in response to comments as this is outside the Department's authority to allow an appeal on this issue.

**Round 1 comment summary:** Commenters 160, 178, 181 and 198 commented or had a question regarding the right to appeal decisions made by employers with private plans. Commenter 181 suggested that an employee should first file an appeal though the process outlined by a private plan. Commenter 063 suggested to the Department to require employees in a private plan must first ask for reconsideration through the insurer before going to the Department.

**Round 1 response to comment:** In Section XIII.D.2.f., the Department set forth an internal reconsideration process as a minimum requirement for a determination of substantial equivalence, in order for a private plan to be approved. If the private plan upholds the denial of benefits after reconsideration, an individual can seek an appeal to the Department.

**Round 1 Comment Summary:** Commenters 139 and 196 encouraged the Department to affirm that employees have the same right to appeal a finding by the Department equal to what an employer has.

**Round 1 response to comment:** The rule provides appeal rights to an aggrieved party, which may be either the employer or employee. No further changes were made to the rule.

**Round 1 Comment Summary:** Commenter 275 encouraged the Department to create better access to allow hearings to be remote.

**Round 1 response to comment:** The rule provides that hearings may be conducted by telephone or by video conference. No changes are made to the rule, as none are necessary to address this concern.

**Round 2 Comment Summary:** Commenter 267 suggests the time period for filing an appeal be changed to 30 days. Additionally, the commenter asks the Department to clarify the date from which the deadline is measured and to add a good cause provision for any untimely appeal.

**Round 2 response to comment:** The Department did not change the timeframe in the final rule as the 15 day standard reflects an appropriate balance between the interests of workers, employers and administrative feasibility. The Department did clarify how the appeal time period is set consistently throughout the rule as 15 business days from the date the decision is issued. Further, the Department added a good cause provision in the interest of due process, incorporating the same good cause standard as used throughout the rule.

**Round 2 Comment Summary:** Commenter 267 suggests the rule be revised to make it clear that only employees can appeal benefits decisions, fraud determinations, and denials of a waiver of overpayment of benefits.

**Round 2 response to comment:** The Department made no changes since the rule is sufficiently clear.

### **Section XV(F) Notice of Hearing**

**Round 1 Comment Summary:** Commenters 061,148, 164, 171 and 181 and 227 commented that 5 days' notice to relevant parties regarding any appeals that are question is insufficient and does not allow the parties time to prepare. The commenters suggested extending the notice of a hearing from 5 days to 15 days.

**Round 1 response to comment:** In the second proposed rule, the Department extended the notice to the parties from 5 days to 10 days balancing the interest of administrative efficiencies of the Department in processing appeals and the ability of all parties to prepare for an appeal.

**Round 2 Comment Summary:** Commenters 178 and 198 suggested to the Department to reinstate a prior provision of the proposed rule to allow a notice of appeal back to 5 days rather than 10 days. The concern was that employees may not be able to access benefits while they are waiting for an appeal.

**Round 2 response to comment:** The Department will retain the allowance of 10 days for notice of appeal to balance the interest of all parties.

### **Section XV(G)**

**Round 1 comment summary:** Commenters 061, 148, 181 and 224 commented that the Administrator submitting documents to the Hearing Officer relating to the issue on appeal and any reconsideration decision 5 days in advance of the hearing is insufficient time. The commenters did recommend a time it should be extended for the Department's consideration.

**Round 1 response to comments:** In the second proposed rule, the Department modified the timeline of appeals to provide for documents be provided 5 days after notification as opposed to 5 days prior to hearing.

### **Section XV(I)**

**Round 1 comment summary:** Commenter 164 commented that the Department does not provide information in the rule on when the parties that will be notified and suggested the employer also be notified of the decision made by the Department on items that were appealed.

**Round 1 response to comment:** The Department made no changes as it finds that rule is sufficiently clear that parties involved in the appeal will be notified of the outcome.

**Round 1 comment summary:** Commenter 061 suggested the rule set a time limit within which the decision must be issued.

**Round 1 response to comment:** The Department made no changes as the rule is sufficiently clear. The Department will issue decisions on appeals as expeditiously as possible, but declines to set a time limit.

### **Section XVI-Advisory Rulings (Section added in second proposed rule)**

**Factual and policy basis:** This section is required under 5 M.R.S §9001(4) to establish a process for requesting an advisory ruling regarding the applicability of any statute or rule administered by the Paid Family and Medical Leave Program. In the second proposed rule, the Department added this section to the rule to comply with existing law on advisory rulings.

#### **Section XVI(A)**

**Comments received in round 2:** Commenters 061 and 257 offered a comment pertaining to the Advisory Rule section and expressed concern that advisory rulings offered by the Department may lead to binding decisions on employers without going through the formal rulemaking process. The commenters suggested this provision be removed.

**Round 2 response to comments:** The Department makes no change as a result of these comments as the Administrative Procedures Act requires a process for requesting an advisory ruling.

**(f) Department Finding:** In the final rule, the Department fixed a technical error and changed the word “Commission” to “Department.”

#### **General comments pertaining to Advisory Rulings:**

**Round 2 comment received:** Commenter 168 offered several questions regarding the process for the Department to issue advisory rulings, regarding whether the rulings are made public, due process for the parties involved, and whether all parties involved in an advisory ruling must consent to a review. In addition, concern was expressed about the findings being made by the Department that do not provide due process considerations afforded to the parties involved in the matter.

**Round 2 response to comment:** The Department made no changes as this section complies with the requirements of the Administrative Procedures Act governing advisory rulings.



**Round 2 comment received:** Commenter 267 provided a positive comment regarding section XVI and encouraged the Department to retain all sections without changes.

**Round 2 response to comment:** The Department made no changes to this section in final rule.

**Round 2 comment received:** Commenter 311 offered a suggestion to the Department to amend all areas of this section this section to say “Advisory Opinions” rather than “Advisory Rulings” as it will be consistent with language used by the United States Department of Labor.

**Round 2 response to comment:** The Department uses the term “Advisory Rulings” because that is the term in Maine’s Administrative Procedures Act.

**Commenter Key<sup>12</sup>**

<b>Commenter #</b>	<b>Name</b>	<b>Organization</b>
AC 1	No name provided.	No organization provided.
AC 2	No name provided	No organization provided.
AC 3	No name provided	No organization provided.
AC 4	No name provided	No organization provided.
AC 5	No name provided	No organization provided.
001	Brian Murph	Burger King
002	Gary Smith	Wealth Smith Financial Planning
003	Kevin Plowman	Plowman Construction
004	Tim (no last name provided)	No organization provided
005	Nicholas Consoles	The Financial Group
006	Sandra Brackett	RSU 14
007	Vanessa Bissell	Highroller Lobster Co
008	Dr. Christine Blake Smith	Portland West family practice
009	Michael D. Kaplan	UPS
010	Field Glover	Nichols Plumbing and Drain Cleaning
011	Jen Goddard	No organization provided
012	Linda Chisholm	No organization provided
013	Jen Horton	The Holy Donut
014	Jackie Curtis	No organization provided
015	Kelsey D	No organization provided
016	Brice Caswell	No organization provided
017	Suzanna Gallant	Lewiston Public Schools
018	Ted Pitas	American Carpentry Service
019	Kevin Platukis	Cross Insurance
020	Glenn Tulloch	Varney Benefits Advisors
021	Lucille Hood	Hood Farm LLC
022	Richard Hackel	No organization provided
023	Holly Roberts	York Region Chamber of Commerce
024	Grant Byras	Soleras Advanced Coatings
025	Stephanie Morse	United Insurance
026	Ramsey Lafayette	Norseman Resort
027	Mary Cote	Bowdoin College

<sup>1</sup> \* In the commenter key indicates commenters unintentionally received two commenter numbers.

<sup>2</sup> Number 177 was not assigned to a commenter.

028	Jennifer Gosselin	No organization provided
029	Jeannine McDonald	Saddleback Ski ops
030	Stacey Lynn Morrison	Ganneston Construction Corp
031	Laurel J Bouchard	LBouchardLLC.com
032	Rebecca Vigue	ROS, LLC
033	Rhyne Robidoux	Ellsworth-Bucksport Dental Associates
034	Nicole Vachon	Kennebec Dental Excellence
035	Tracey Higgins	Ganneston Construction
036	Liz Allen	Roman Catholic Bishop of Portland, Maine
037	Maine Eye Center	Maine Eye Center
038	Kelly J Landry	Everett J Prescott, Inc.
039	Jill Rivas	Crooker Construction
040	Susan Norton	First National Bank
041	Gretchen Gardner	Brewer School Department
042	Christine Welch	Damariscotta Veterinary Clinic
043	Mark Zajkowski	Oral Surgery Associates
044	Russell Young	Russell Young LLC
045	Natasha Winslow	RSU 50
046	Gerry Ouellette	Maine Commercial Tire
047	Alanna Stetson	No organization provided
048	Alicia F Boulette	Quinn Hardware CO INC
049	Diana Nelson	Black Fly Media
*050	Christy Occhiena	Vertex Inc
051	Dale Carrier	Sea Dog Brew Pub South Portland
052	Tim Longstaff	National Distributors Inc.
053	Michelle Brackin	Biddeford and Dayton Schools
054	Raleigh Hudson	Obsidian HR
055	Rebecca J Kord	No organization provided
056	James Cox	Old Farm Christmas Place and Old Farm Store, LLC
057	Jade Stuart	No organization provided
058	Ryan (no last name provided)	No organization provided
059	Krysta West	Maine Forest Products Council
060	Jeff Austin	Maine Hospital Association
061	Patrick Woodcock	Maine State Chamber of Commerce
062	Lisa Harvey McPherson	Northern Light Health
063	Umberto Speranza	Unum
064	Amy Carson	D. A. Carson Carpentry Inc.
065	Lori Lefferts	Skills
066	Robin Saindon	Bangor Housing
067	Michael Allen	Winterport Boot Shop

068	Heather Perry	Gorham School Dept
069	Donna Cassese	Sappi
070	Rep. Austin Theriault	Maine Legislature
071	Kimberly Chonko	Kid O'Therapy LLC
072	Kurtis Mello	Lewiston
073	Robert L. Carey	Maine Bureau of Insurance
074	Charles Vadakin	No organization provided
075	Dana Guillereault	No organization provided
076	Tim Walton	CIANBRO
077	Stephen Lowit	Fabian Oil Inc
078	Tim Fitzgerald	Industrial Packing, Inc.
079	Emelle Ferland	Ganneston Construction
080	Paula Goode	Comfort Keepers
081	Jaimie Worster	Camden National Bank
082	James Bruen	No organization provided
083	Robin Wood	Reed & Reed, Inc.
084	Michelle Paules	Acadia Benefits
085	A Listener	No organization provided
086	Amy Bundt	Maine Special Education/Mental Health Collaborative
087	Kristy Kilfoyle	Camden Public Library
088	Anonymous	No organization provided
089	Lisa Horn	Province Automation
090	Kathleen Wade	No organization provided
091	Lauren Gallant	Eastern Area Agency on Aging
092	Fran Beaulieu	Town of Old Orchard Beach
093	Carol J Rand	WT Rand Transport LLC
094	Frank Kolovic	Sol Prop
095	Elaine Kantrowitz	ADP
096	David Paul Henry	No organization provided
097	Greg Soutiea	Craignair Inn by the Sea and The Causeway Restaurant
098	Dale Joyce	No organization provided
099	Jason Clay	Governor's Restaurant & Bakery
100	Kara George	Town of Thomaston
101	Shannon Ball	Paid Leave Oregon
102	Sarah Kramlich	Garmin International
103	Ann M Brett	Norway Savings Bank
104	Comment	No organization provided
105	Bobbie Kallner	University of New England
106	Kaitlynn Bonne	Mutual of Omaha
107	Jennifer Fleck	Knitwit Yarn Shop

108	T Brooks	UK
109	Cori Cantrell	Maine State Parent Ambassador
110	Shauna MacDonald	Machis Savings Bank
111	James Robbins	Robbins Lumber
112	Laurie Skalski	Spectrum Healthcare Partners
113	Tim Robinson	Drover True Value
114	Gina Rutledge	MetLife
115	Paid Family and Medical Leave Benefits Authority	No organization provided
116	Kate Dufour	Maine Municipal Association
117	Heather Ulmer	No organization provided
118	Stacy Mannke	Assistance Plus
119	Casey Cramton	Dead River Company
120	Aspen Ruhlin	Mabal Wadsworth Center
121	Michael Christensen	No organization provided
122	Maria Fox	Murray Plumb & Murray
123	Interested Party	No organization provided
124	Abigail OConnell	Sun Life
125	Kimberly Simmons	No organization provided
126	Wendy Estabrook	L.L.BEAN
127	Jason Lowit	Maine Radiator
128	Stacy Andrews	Motivational Services
129	Lacey Donle	No organization provided
130	Marysol Negretti	Wright-Pierce
131	Melanie Tinto	WEX
132	Alice Olcott	No organization provided
133	Lindsay Bourgoine	Revision Energy
134	Eamonn Dundon	Portland Regional Chamber of Commerce
135	Nacole Palmer	Maine Gun Safety Coalition
136	Jennifer Buckingham	Northeast Society for Human Resource Management
137	Tim Graham	National Association of Professional Employer Organizations
138	Lori Welty, Patricia Zuniga	FINEOS
139	Lauren Jacobs	No organization provided
140	Catherine Buxton	Peer Workforce Navigator Project
*141	Christy Occhiena	Vertex Inc
142	Rose Barboza	Black Owned Maine
143	Kimberly Jenkins	Hollywood Casino Hotel & Raceway
144	Constance Adler, MD	Grandmothers for Reproductive Rights

145	Sen. Mattie Daughtry and Rep. Kristen Cloutier	Maine <sup>34</sup> Legislature
146	Unicorn LLC	CFO Accounting
147	Meghan Gardner	No organization provided
148	Nicole Pellenz	Maine Water Utilities Association (MWUA)
149	Adam Bloom-Paicopolos	Alliance for Addiction and Mental Health Services, Maine
150	Lisa Roye	OHI
151	Josie Phillips	No organization provided
152	Vivian Walls	Walls TV and Appliance
153	Michael Allen	Maine-ly Red Wing Inc.
154	Mary Cote	Bowdoin College
155	Interested Party	No organization provided
156	Amy Madge	No organization provided
157	Dana Doran	Professional Logging Contractors
158	Samantha Paradis	No organization provided
159	Katrina Meade	Wright-Pierce
160	Pete Plummer	Woodfords Family Services
161	Christopher Babigian	PrismHR
162	Jessica D Linzer	No organization provided
163	Gary Friedmann	No organization provided
164	Katie Fulham Harris	Maine Health
165	Bill Thornton	Thornton Bros
166	Kurt Shoemaker	NPRC
167	Lisa Margulies	Planned Parenthood of Northern New England
168	Sarah Montgomery	ACLI
169	Maria McCabe	Legal Momentum
170	Marya Goettsche Spurling	No organization provided
171	Cathy Callahan	Mardens
172	Christine Watson	No organization provided
173	Susan Wood	State Sand and Gravel
174	Jill M McKenney	Brighter Heights Maine
175	Todd Goodwin	John F. Murphy Homes, Inc.
176	Kim Daigle	CU Insurance Solutions
178	Adam Goode	Maine AFL-CIO
*179	Melissa Martin	MECASA
180	Laura L Cordes	MACSP (Maine Association for Community Service Providers)
181	Daris Freeman	Unum

182	Melinda Ward	OHI
183	Tim Curtis	Somerset County
184	Tania Gardiner Hassard	Gardiner Eyecare
185	Gia Drew	Equality Maine
186	Gregory Nemi	No organization provided
187	Barbara Lovejoy	Elevator Evolution, LLC
188	Ben Hawkins	Maine Health Care Association
189	Elise Baldacci	Maine Credit Union League
190	Darryl Wood	LEAP, Inc.
191	Ryan Gallant	Gallant Therapy Services
192	Kim McLaughlin	Independence Advocates of Maine
193	Heidi Mansir	Uplift, Inc.
194	Fawn Palmer	Hope Association
195	Evan LeBrun	Mainers for Working Families
196	Preston Van Vliet	Family Values At Work
197	Chantel King	Danforth Habilitation Association
198	Grace Leavitt/Jan Kosinski	Maine Educational Association
199	Sara Ratcliffe	Home Care & Hospice Alliance of Maine
200	Deborah Petrin	No organization provided
201	Melinda Kinney	Martin's Point Health Care
*202	Amanda Johnson	Somic America Inc.
203	Cheryl (no last name provided)	No organization provided
204	Tim Walton	Maine Aggregate Association
205	Cate Blackford	Maine Peoples Alliance
206	Jovin Bayingana	Quality Care Access LLC
207	Rep. Michael Sobolski	Maine Legislature
208	Emily Follo	No organization provided
209	Jill M McKenney	Brighter Heights Maine
210	Stella Frank	Twomin, LLC
211	Lisa Willette	Legends Residential Care
212	Kate Emery McCarthy	Birth Roots
213	Dianne L. Cote	Personal Onsite Development
214	Grace Daphnia	Southern Maine Worker's Center
215	Sydney Avitia-Jacques	Southern Maine Worker's Center
216	Dorothea Kerry	Maine Chapter, American Academy of Pediatrics
217	Curtis Picard	Retail Association of Maine / Maine Grocers and Food Producers Association
218	Debora Riley	State Sand & Gravel, Inc.
219	Bre Danvers-Kidman	MaineTransNet
220	Lynn Augustine	Creative Options

221	Ronny Flannery	Southern Maine Worker's Center
222	Erin Dodge	No organization provided
223	Ruby Parker	AARP
224	Jon Fitzgerald	BIW
225	Rita Furlow	Maine Children's Alliance
226	Kathy Kilrain del Rio	Maine Equal Justice
227	Dominik Kolodziejczyk	ShelterPoint Life Insurance Company
*228	Melissa Martin	Maine Coalition Against Sexual Assault
229	Brendan M. Wolf	Woodland Pulp, LLC
230	Jeffrey Neil Young	Solidarity Law
231	Tim Ouellette	No organization provided
232	James Myall	Maine Center for Economic Policy
233	Patricia Rumsey	Androscoggin Bank
234	Brenda Alden	No organization provided
235	Janet M Duncan	No organization provided
236	Lili Simmons	No organization provided
237	Susan Morrison	No organization provided
238	Rachel P. Riendeau Caughey	Southern Maine Workers Center
239	Sarah Tewhey	Maine Doula Coalition
240	Timothy Ouellette	No organization provided
241	Jack Bjorn	Eaton Peabody
242	Bridget Sakowski	No organization provided
243	Robert Swindlehurst	Commonsense Housing
244	Sally Wagley	No organization provided
245	Andrea Mancuso	Maine Coalition to End Domestic Violence
246	Olivia Pennington	Maine Family Planning
247	Andrew (No last name provided)	No organization provided
248	Kendra Amaral	Town of Kittery
249	David Clough	Maine Staffing Association
250	David Clough	NFIB Maine
251	Matthew Wellington	Maine Public Health Association
*252	Amanda Johnson	Somic America, Inc.
253	Ruben Torres	Maine Immigrants' Rights Coalition
254	Paul R. Wainman	Hancock Lumber Company, Inc
255	Brianna Keefe-Oates, PhD	No organization provided
256	Leigh Ann Snyder	Kennebec Behavioral Health
257	Nate Cloutier	Hospitality Maine
258	Catie Reed	Maine Paid Leave Coalition
259	Jill Walsh	Haley Ward, Inc.



260	Alexander Price	Maine Jobs Council
261	June Tait	Scarborough Physical Therapy
262	Glenn Adams	Sargent Corporation
263	Bridget Quinn	AARP Maine
264	Adelia Soremekun	The Jackson Laboratory
265	Ray Nagel	Independence Association
266	William Fletcher	Maine Community College System
267	Cassandra Gomez	A Better Balance
268	Destie Hohman Sprague	Maine Womens Lobby
269	Elizabeth M Wilkins	No organization provided
270	Sarah Marble	The Guardian Life Insurance Company of America
271	David G Cole	American Forest Management, Inc.
272	Joshua Steirman	Maine Bankers Association
273	Annie Watson	Maine Dairy Industry Association
274	Ashley Bjornson	Waypoint Maine
275	Nat Baldino	The Center for Law and Social Policy (CLASP)
276	Thomas Brown	Automobile Dealers Association INC
277	Scott Ferguson	Maine County Commissioners Association/ Maine Association of County Clerks, Administrators, Managers
278	Debbie Laurie	City of Bangor
279	Aimee Adams	Home, Hope and Healing
280	Andrew Blanchard	Hamilton Marine Inc.
281	Lynne Choate	Cives Steel Co New England
282	Christopher Hyfield	Prescott Metal, Inc
283	Rosalie Grondin	Northwood Manor
284	Kerry Hoyt	Site Structures Landscape
285	Catherine Teixeira	No organization provided
286	Steven Knowlton	Northeast Truck
287	Sherry Moody	Mid-Coast School of Technology
288	Chris Cluff	Paper Trails
289	Al Michel	No organization provided
290	Leah Johnson	No organization provided
291	Mary Sedlock	No organization provided
292	Colby Morrell	Uniship Inc.
293	Donna Zdanis	Downeast Community Partners
294	Carrie Kipfer	Lincoln County Government
295	Shad Hall	No organization provided
296	Todd MacDonald	No organization provided
297	Zip Weeman	Maine Conveyor Inc.
298	Corey Staples	Diesel Fuel Systems
299	Mark Curtis	Gorham Sand & Graval, Inc.

300	Kevin Stine	PTE Precision Machining
301	Amanda Linton	Edgar Clark & Sons Inc.
302	Robert Fogg	Q-Teams, Inc.
303	Julie Schafer	2 Unique LLC
304	Daniel Morris	Kennebec Equipment Rental
305	Timothy C Dumont	KennebecBuilders Inc.
306	Karlene Maine	Heartwood Kitchen & Bath
307	Shirlene Lindsey	Town of Dixmont
308	Tanya Philips	Blethen Tax & Accounting Inc.
309	Tracey Benson	Paws Applause
310	Ashley Sabine	No organization provided
311	Michelli Rivera	Alliant Insurance Services
312	Terence K. Gray, DO	Maine Comprehensive Pain Management, PC
313	Donald Curtiss	No organization
314	Jed Whiting	Stratton Lumber Inc
315	Eleanor Villforth	No organization provided
316	Jeffery Adams	No organization provided
317	Ann Harris	No organization provided
318	Scott Beauregard	Kyocera-AVX
319	Shaun Donnelly	No organization provided
320	Jennifer Belanger	No organization provided
321	Patrick Driscoll	Driscoll Diesel LLC
322	Mandy Rae Fitzgerald	No organization provided
323	Amy Larkin	No organization provided
324	Audra Cowperthwaite	No organization provided
325	Cassie Nedwell	No organization provided
326	Shauntez Williams	No organization provided
327	Julia Fusari	Tyler Technologies, Inc
328	Courtney Chasse	Hope and Justice Project
329	Rebecca Austin	Safe Voices
330	Laurel Tarbell	No organization provided
331	Amanda Cost	Partners for Peace
332	Emily Follo	No organization provided
333	Emily Ingwersen	Ginger Hill Design + Build
334	Marty Wilson	No organization provided
335	Ella Cressy	Town of Denmark
336	Rebecca Laliberte	Mount Pleasant Dental Wellness
337	Tobin Williamson	No Organization
338	Joya Maynard	Waldo County Technical Center
339	Belyse Ndayishimiye	No organization provided
340	Liz Kovarsky	No organization provided

341	Jeff Toorish	No organization provided
342	Natalie Allen	No organization provided
343	Katheryn Casale	No organization provided
344	Joan Bromage	No organization provided
345	Thom Courtney	No organization provided
346	Judith Sides	No organization provided
347	Katharine Man	No organization provided
348	Laurent And June Hourcle	No organization provided
349	Otrell Mcdaniel	No organization provided
350	China McHold	No organization provided
351	Rania Campbell-Bussiere	No organization provided
352	Maxine Collins	No organization provided
353	Kathleen Conrad	No organization provided
354	Gwendlyn DeYoung-Reynolds	No organization provided
355	Anna Dembska	No organization provided
356	Helen Boucher	No organization provided
357	Katherine Charbonneau	No organization provided
358	Steve Linnell	No organization provided
359	Samuel Dahlin	No organization provided
360	John and Elizabeth Reinsborough	No organization provided
361	Kathryn Bourgoin	No organization provided
362	Elizabeth Park	No organization provided
363	Olivia Simpson	No organization provided
364	Gloria Clarke	No organization provided
365	Catherine Barnes	No organization provided
366	Christopher Proulx	No organization provided
367	Lynn Kovitch	No organization provided
368	Joseph Mailey	No organization provided
369	Cathy Roberts	No organization provided
370	Thomas Chase	No organization provided
371	Cindy Julian	No organization provided
372	Eleanor Weisman	No organization provided
373	Sara Wilder	No organization provided
374	Judy O'Keefe	No organization provided
375	Kelly Rand	No organization provided
376	Christy McCaw	No organization provided
377	Sarah Baker	No organization provided
378	Jonathan Hopps	No organization provided
379	Nikki Williams	No organization provided

380	Sara Fawcett	No organization provided
381	Almyra Hornberger	No organization provided
382	Stephen Beckett	No organization provided
383	Jennifer McCann	No organization provided
384	David Travers	No organization provided
385	Robert Bushover	Bushover's Biologicals
386	Diane Fitzgerald	No organization provided
387	Fred Kimball	No organization provided
388	Jane Wesinstein	No organization provided
389	Rina Rengouwa	No organization provided
390	Lili Joseph	No organization provided
391	Deb Williams	No organization provided
392	Susan McGovern	No organization provided
393	Anna-Sophie Poost	No organization provided
394	Kermit Smyth	No organization provided
395	Deirdre Smith	No organization provided
396	Lindsay Pesner	No organization provided
397	Erin Daly	No organization provided
398	Dillon Clair	The ERISA Industry Committee
399	Heather Spalding	Maine Organic Farmers and Gardeners Association
400	Carrie Mead	No organization provided
401	Karin Vannostrand	No organization provided
402	Virginia Lopez-Anido	No organization provided
403	Nancy Earle	No organization provided
404	Jeremiah Stevens	No organization provided
405	Sonja Gerken	No organization provided
406	Kate Beaver	No organization
407	MaryAnn Larson	No organization provided
408	Daniel W. Walker	Maine Independent College Association
409	William Brewster	No organization provided
410	Gail Shields	No organization provided
411	Ellie Autumn	No organization provided
412	Kristen Erickson	No organization provided
413	Cass Barnard	No organization provided
414	Julia Ruth	No organization provided
415	Roger Pierce	No organization provided
416	Chris Fontes	No organization provided
417	Sam Feldman	No organization provided
418	Nan Smith	No organization provided
419	Jennifer Reynolds	No organization provided
420	Phil Bailey	No organization provided
421	Cassidy Jones	No organization provided

422	Gary Mcgrane	No organization provided
423	Kate Mcpherson	No organization provided
424	Brenda Cartwright	No organization provided
425	Christine Bennett	No organization provided
426	Beverly Feldt	No organization provided
427	Harlan Baker	No organization provided
428	Janice Kendrick	No organization provided
429	Jan Baker	No organization provided
430	Andres Llorente	No organization provided
431	Ivy Moser	No organization provided
432	Martin Lang	No organization provided
433	David Jolly	No organization provided
434	Adrienne Powers Johnson	No organization provided
435	Christopher McKinnon	No organization provided
436	Jessica Eller	No organization provided
437	Jane Scease	No organization provided
438	Shyla B Yerxa	No Organization
439	Savannah Mirisola- Sullivan	No organization provided
440	Sam Tracy	No organization provided
441	Jacob Gamache	No organization provided
442	Susan Feiner	No organization provided
443	Sandra Phoenix	No organization provided
444	David Wadstrup	No organization provided
445	D Gordon Mott	No organization provided
446	Dean Corner	No organization provided
447	Mary Duffy	No organization provided
448	Jeffery Reynolds	No organization provided
449	Steve Bailey/Eileen King	Maine School Boards Association/Maine School Superintendents Association
450	Stephen Lumbra	Lumbra Hardwoods Inc.
451	John Minahan	No organization provided
452	Victoria Bernard	No organization provided
453	Marianne OConnor	No organization provided
454	Joan Richert	No organization provided
455	Amy Larkin	No organization provided
456	Michael Fasulo	No organization provided
457	Hamda Ahmed	No organization provided
458	Deborah Showalter	No organization provided
459	Randi Smith	No organization provided
460	Peg Hoffman	No organization provided

461	Daniel Faraone	No organization provided
462	Kevin Sullivan	No organization provided
463	Linda West	No organization provided
464	Susan Barnard	No organization provided
465	Robin Steinwand	No organization provided
466	Annie Ropeik	No organization provided
467	Janet Kuech	No organization provided
468	Noreen Mullaney	No organization provided
469	Robert Gordon	No organization provided
470	Anne Keith	No organization provided
471	Betsy Oulton	Maine Local Government Human Resources
472	Kaitlyn Payne	No organization provided
473	Valerie Lovelace	Chaplaincy Institute of Maine
474	Jeannie Tapley	Maine Potato Board
475	Ben Roberts-Pierel	No organization provided
476	James McCoy	No organization provided
477	Ian-Meredythe Lindsey	Majesco
478	Mary Ellen Randall	No organization provided
479	Lucy Atkins	No organization provided
480	Brad Sherwood	No organization provided
481	Bryan Wells	No organization provided
482	Stacie Field	RSU 16
483	Dorothy Lippencott	No organization provided
484	Jan Wilkinson	No organization provided
485	Leah Kovitch	No organization provided
486	Susan D'alessandro	No organization provided
487	Patrick Eisenhart	No organization provided
488	Ed Hunt	No organization provided
489	Layne Gregory	No organization provided
490	Judith Long	No organization provided
491	Valerie Dornan	No organization provided
492	Brien Carleton	No organization provided
493	Janet Clough	No organization provided
494	Connie Netherton	No organization provided
495	Tim and Theresa Burch	No organization provided
496	Sidney Pew	No organization provided
497	Susan Drucker	No organization provided
498	Rori Knott	No organization provided
499	Vanessa Newman	No organization provided
500	Shawne McCord	No organization provided
501	Vanessa Erickson	No organization provided

502	Donna Blanchette	No organization provided
503	Scott Ballard	Maine Health