F I S C A L   I M P A C T   R E P O R T

		LAST UPDATED	
SPONSOR	Matthews	**ORIGINAL DATE**	1/23/24
SHORT TITLE	Paid Family & Medical Leave Insurance Act	**BILL NUMBER**	House Bill 11
		ANALYST	Faubion/Mercer-Garcia

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Contributions	$0	$102,503.3	$209,002.5	$217,094.4	$225,473.0	Recurring	PFML Fund
Benefits Paid	$0	$0	($63,021.1) to ($115,840.1)	($128,466.1) to ($236,135.7)	($133,424.1) to ($245,249.2)	Recurring	PFML Fund

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
WSD Startup Costs	$24,362.5	$23,125.0	$28,725.0	$76,212.5	Nonrecurring	General Fund
WSD Ongoing Operating Costs	$22,849.0 ongoing costs starting in FY28				Recurring	PFML Fund
NMAG Legal Counsel		$100.0	$100.0	$200.0	Recurring	General Fund
State Employer Contributions	$0	$0	$0	$0	Recurring	General Fund
Total	**$24,362.5**	**$23,225.0**	**$28,825.0**	$76,412.5	Recurring/Nonrecurring	**General Fund**

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 6 and Senate Bill 3.

Sources of Information

LFC Files

<u>Agency Analysis Received From</u>
Attorney General's Office (NMAG)
State Personnel Office (SPO)
Economic Development Department (EDD)

Health Care Authority (HCA) (formerly the Human Services Department)
Workforce Solutions Department (WSD)

<u>Agency Analysis was Solicited but Not Received From</u>
University of New Mexico (UNM)
Taxation and Revenue Department (TRD)
Higher Education Department (HED)
Public Education Department (PED)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of House Bill 11

House Bill 11 would codify a six-week paid family medical leave (PFML) benefit for nearly all workers in the state and establish a state-run PFML insurance program for employees who do not receive a qualifying benefit from their employer. The bill establishes procedures for administering and overseeing the state PFML program, calculating payroll tax contributions and leave benefits, and establishes mechanisms to maintain fund solvency.

Contributions. The bill requires employee contributions of up to 0.5 percent of wages into the newly established PFML fund. The rate is set by the new PFML authority at a rate that ensures solvency of the PFML fund. Taxable income is capped at the maximum income subject to the social security payroll tax, set at $168.6 thousand in 2024.

Starting on January 1, 2027, the authority would be required to ensure the fund is self-sufficient by performing an annual actuarial analysis. Based on the result of this analysis, the authority can adjust the premium rate to ensure the fund reaches its reserve target, as set by the authority.

The bill includes a provision allowing the department to waive employers and employees from contributing to the fund if the employer already has a leave program in place that is equal to or more generous than the proposed PFML benefit for an equal or lesser contribution premium by the employee.

Benefits. The six-week benefit can be taken consecutively or intermittently and in increments of no less than eight hours. To receive the benefit, the employee would have to pay into the fund for at least a six-month period in the year prior to taking leave and earn at least $2,325 during that time. Benefits paid equal 95 percent of the state minimum wage plus 60 percent of the employees wage above the minimum wage up to 150 percent of the state minimum wage. Individuals who have made fraudulent claims or who are receiving unemployment insurance benefits during the leave period are ineligible. The bill specifies potential beneficiaries must provide verification documentation from a health care provider.

Definitions. Leave can be taken for oneself or to care for a family member in the event of a serious health condition. A family member is defined as the employee's:
- spouse or domestic partner
- sibling
- son or daughter
- grandparent

- grandchild
- parent
- any other individual that is the equivalent of a family relationship

Leave can be taken for oneself following birth, adoption, or foster placement of one's child. The bill allows for leave associated with the birth, adoption, or foster placement of a child to be taken prior to the qualifying event but does not allow for intermittent leave unless an employer agrees.

Administration. The PFML benefit would be paid for with money in the PFML fund, with some of the money in the fund going toward administrative costs. Public education and information initiatives are funded when specifically authorized by the Legislature through a dedicated appropriation.

The bill creates a PFML insurance authority to be administratively attached to the workforce solutions department. The authority is governed by a board, known as the paid family and medical leave insurance board. This board consists of eleven voting members with diverse backgrounds and expertise. Members include government officials, representatives advocating for employee interests, individuals with knowledge of various relevant areas, and appointees by the governor. The insurance authority is responsible for making key decisions related to the PFML program, including setting contribution rates, conducting actuarial studies, evaluating fund sustainability, and adjusting the program based on the study findings. In addition, the bill outlines procedures for reviewing and determining appeals, requiring appeal determinations within 15 days.

The bill explicitly allows the authority to contract out the administration of the PFML program and mandates other state departments cooperate with the authority to carry out the mandate outlined in the bill.

Fraud. The bill defines fraudulent benefit claims and outlines procedures and penalties that may be levied in instances of fraud.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Fund Solvency

Three scenarios were used to provide a range of potential costs depending on the assumed uptake rate. In one of the three scenarios, the fund becomes insolvent, triggering a provision requiring the secretary to increase the premium rates. However, in the insolvent scenario, there are many years before insolvency, giving the department and the Legislature time to adjust if deemed necessary. Two of the three scenarios show revenues into the fund outpacing benefit payments out of the fund, resulting in fund sustainability and the possibility to lower the premium rate.

Contribution payments by employees and employers into the PFML fund begin January 1, 2026. Leave compensation benefit payments to employees from the PFML fund begin January 1, 2027. The estimated contributions and payouts included in the tables represent a range of scenarios given varying, but plausible, estimates of the number, duration, and average amount of leave compensation claims, as well as varying estimates of the value of contributions. Other assumptions—such as wage levels, employment duration, length of leave, number of claims per qualifying event, and others—could have significant impacts on the estimates of the fund's revenues and disbursements. While the bill provides the PFML authority with the ability to adjust contribution rates down, depending on fund targets, the bill does not provide the authority to increase contribution rates above 0.5 percent if analysis suggests the fund will fall below targets.

Low Uptake Scenario					
	2026	2027	2028	2029	2030
Eligible Workers	748,790	753,178	757,058	761,225	765,416
Leave Takers	48,070	48,352	48,601	48,869	49,138
Annual Benefits Paid		$126,042,174	$130,889,981	$135,958,283	$141,222,838
Administrative Costs*	$47,487,500	$28,725,000	$22,849,000	$22,849,000	$22,849,000
Total Estimated Cost	**$47,487,500**	**$154,767,174**	**$153,738,981**	**$158,807,283**	**$164,071,838**
Estimated Revenue to FMLA Fund	**$ 205,006,699.3**	**$212,998,249**	**$221,190,543**	**$229,755,449**	**$238,652,003**
Calendar Year Cash Flow	**$ 205,006,699.3**	**$ 58,231,075.9**	**$ 67,451,562.2**	**$ 70,948,166.4**	**$ 74,580,165.6**
Fund Balance Prior Year		$205,006,699	$263,237,775	$330,689,337	$401,637,504
FMLA Fund Balance (deficit)	**$205,006,699**	**$263,237,775**	**$330,689,337**	**$401,637,504**	**$476,217,669**

Middle Uptake Scenario					
	2026	2027	2028	2029	2030
Eligible Workers	748,790	753,178	757,058	761,225	765,416
Leave Takers	65,744	66,129	66,470	66,836	67,204
Annual Benefits Paid		$187,399,098	$194,606,803	$202,142,337	$209,969,661
Administrative Costs*	$47,487,500	$28,725,000	$22,849,000	$22,849,000	$22,849,000
Total Estimated Cost	**$47,487,500**	**$216,124,098**	**$217,455,803**	**$224,991,337**	**$232,818,661**
Estimated Revenue to FMLA Fund	**$ 205,006,699.3**	**$212,998,249**	**$221,190,543**	**$229,755,449**	**$238,652,003**
Calendar Year Cash Flow	**$ 205,006,699.3**	**$ (3,125,849.0)**	**$ 3,734,740.1**	**$ 4,764,111.6**	**$ 5,833,342.2**
Fund Balance Prior Year		$205,006,699	$201,880,850	$205,615,590	$210,379,702
FMLA Fund Balance (deficit)	**$205,006,699**	**$201,880,850**	**$205,615,590**	**$210,379,702**	**$216,213,044**

High Uptake Scenario					
	2026	2027	2028	2029	2030
Eligible Workers	748,790	753,178	757,058	761,225	765,416
Leave Takers	80,185	80,655	81,070	81,517	81,966
Annual Benefits Paid		$231,680,275	$240,591,113	$249,907,245	$259,584,114
Administrative Costs*	$47,487,500	$28,725,000	$22,849,000	$22,849,000	$22,849,000
Total Estimated Cost	**$47,487,500**	**$260,405,275**	**$263,440,113**	**$272,756,245**	**$282,433,114**
Estimated Revenue to FMLA Fund	**$ 205,006,699.3**	**$212,998,249**	**$221,190,543**	**$229,755,449**	**$238,652,003**
Calendar Year Cash Flow	**$ 205,006,699.3**	**$ (47,407,025.9)**	**$ (42,249,570.1)**	**$ (43,000,795.9)**	**$ (43,781,110.6)**
Fund Balance Prior Year		$205,006,699	$157,599,673	$115,350,103	$72,349,307
FMLA Fund Balance (deficit)	**$205,006,699**	**$157,599,673**	**$115,350,103**	**$72,349,307**	**$28,568,197**

2026 administrative costs include startup costs estimated for 2025 and 2026 and is not calculated as part of the PFML fund cashflow as it is a separate general fund appropriation. Subsequent years only reflect ongoing operating expenses.

Risk: Uptake Rates. Uptake rates are extremely difficult to predict because every state and program is unique. Differing health outcomes, wages, existing leave landscape, number of births, and other factors could greatly affect uptake rates relative to other states. All existing state PFML programs are in wealthier states with higher wages and larger wage bases, and their uptake rates may be quite a bit lower than in New Mexico, given the state's demographics. There are several reasons to suggest more New Mexicans will utilize a PFML program, and New Mexico could have a higher uptake rate than existing programs:

- Data from the U.S. Department of Labor shows low-wage workers have a 3 percent higher rate of taking unpaid leave under the federal Family and Medical Leave Act (FMLA).
    - New Mexico has one of the highest rates of workers earning under $15 hourly at about 44.5 percent.
    - Leave utilization increases as duration allowed and benefit amounts increase. This proposal has a more generous leave benefit calculation than many other states.
- New Mexico ranks unfavorably on several potentially impactful, qualifying health indicators that may elevate the number of people qualifying for leave.
    - New Mexico has higher rates of diabetes, chronic liver disease death, chronic lower respiratory death rates, and injury than the national average.
    - New Mexico has the seventh highest premature death rate among states, with about 9,789 years of potential life lost per 100 thousand population based on a 75-year life span.
    - New Mexico has had the highest alcohol-related death rate in the United States since 1997.

Federal workers under FMLA with a qualifying event, whose criteria match very closely to the eligibility criteria outlined in this bill, tend to be around 14 percent of workers, supported by federal studies.[1] While some of these workers may not claim family medical leave or claim federal medical leave and use existing benefits, like accrued sick leave, instead of PFML, these higher rates suggest a high-end estimate of PFML uptake around 10 percent. It is well documented that more people will apply for and utilize leave when it is paid. More people are taking leave than ever before. The percentage of U.S. workers taking leave for FMLA reasons increased by 2 percent from 2012 to 2018, even while number of eligible workers declined by 3 percent over the same period.

Other NM Leave Programs' Uptake Rates. In Executive Order 2019-036, the governor created a 12-week paid parental leave program for state employees after employees complete one full year in the position. The Legislature passed a similar policy for legislative staff in 2022. In the executive order, the qualifying reasons for taking leave are following the birth or adoption of a child. The policy is much more narrowly defined than proposed in this bill. Even with this much narrower definition, the uptake rate for the state's parental leave policy in 2022 was about 3.7 percent. The University of New Mexico previously reported a roughly 5 percent uptake rate for its paid parental leave program.

Risk: Waived or Reduced Contributions. This bill allows self-employed individuals to opt out of the program. To limit "dine and dashers"—people who pay into the fund for a qualifying event, take leave, and then exit the program—this bill requires self-employed individuals to remain enrolled for three years with an option to withdraw with written notice. Notably, the legislation does not provide detailed information on the specific circumstances or conditions under which a self-employed individual may choose to withdraw within these three years. The

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[1]Department of Labor:
https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_Appendices_Aug2020.pdf

withdrawal option seems to be based on the self-employed individual's discretion within the specified notice period.

This bill also allows organizations to waive their participation if they provide a PFML program that offers equal or greater benefits than the PFML requirements outlined in the state plan. This would overwhelmingly apply to larger, higher paying industries and businesses, jeopardizing the revenues flowing into the fund. The payroll tax on higher wages helps sustain the fund, which is used disproportionately by lower wage earners.

The bill caps the income that can be taxed for the program at the social security taxable income level, which is $168.6 thousand in 2024[2]. This renders the PFML payroll tax regressive becuase those with income higher than $168 thousand are taxed at a lower rate than those at lower incomes. Additionally, taxes on higher incomes help sustain the fund and capping the income level that can be taxed may not be prudent in a low-income state. However, the maximum weekly benefit is capped at 150 percent of the minimum wage, so it may not be fair to tax all income, especially once the amount paid into the fund far exceeds the benefit one could claim.

Microsimulation Background, Model Specifications, and Limitations. This analysis uses the Worker PLUS model developed by the U.S. Department of Labor to model the costs and revenues of hypothetical or real paid family and medical leave programs across states. The Worker PLUS model uses the DOL FMLA employee survey public microdata to predict leave behavior given the state's underlying demographic makeup. With user-supplied paid leave program parameters (such as eligibility rules), the model then simulates specific leave-taking behavior and outcomes (including number of leaves, leave lengths, benefit levels, and benefit eligibility) with individual workers in a state using data from the five-year American community survey (ACS) public use microdata sample (PUMS).

The model has its limitations within the New Mexico context that require some out-of-model adjustments. Arguably the most crucial assumption for predicting PFML costs is uptake rates, or the share of eligible workers that utilize the program by taking leave. The Worker PLUS model does not approximate uptake rates. Users approximate uptake rates for each leave type and input them into the model on the front-end. The model uses the specified uptake rates for each type of leave-taker within the demographic makeup of the state to predict leave behavior. The model has preset uptake rates by leave type from three states, California, New Jersey, and Rhode Island, or users can input their own uptake rates into the model. Uptake rates have the largest impact on cost of any other variable input for any given program.

The model cannot accommodate additional types of leave beyond the six types already built in (own medical event, maternity leave, child bonding, ill parent, ill child, and ill spouse). This bill includes more reasons for leave, including caring for a sibling, grandparent, or other extended relative, that are not accounted for in the DOL model. The model also cannot approximate leave for optional participants, such as self-employed individuals who may or may not participate under this bill's proposal. This analysis assumes no participation of the self-employed to provide a baseline estimate of revenues consistent across the analysis. Their participation will increase both revenues and costs of the program. The estimated magnitude of those increases is unknown.

[2] https://www.ssa.gov/oact/cola/cbb.html

When the DOL compared the model output to actual program results, they found the model underestimated both revenues and benefit costs. The model used for the purpose of this analysis underpredicts program costs by 3 percent to 19.8 percent, depending on the program[3]. This model also underpredicts revenue by approximately 10 percent to 15 percent[4]. This range of discrepancy supports the LFC's practice of presenting a range of possible outcomes.

Lastly, the DOL microsimulation is run on 2020 data, and therefore, the results must be adjusted to forecast years 2026 and beyond when the program is in effect. It is also important to run the model using 2020 specifications, such as the 2020 average wage, minimum wage, maximum taxable income, etc. to get the most accurate results possible.

New Mexico Model Specifications and Results. A first analysis was run on the DOL model using the 2020 Rhode Island uptake rates, which are considerably lower than the 2014-2018 uptake rates. 2020 was an unusual year because it was the peak of the coronavirus pandemic, and data from this period should be used with extreme caution. It is unclear why uptake rates would drop during this period. Rhode Island's demographics on health, family makeup, income, and workplace benefits suggest its uptake rates may be lower than New Mexico's. This simulation is considered a low uptake scenario.

The second run of the model uses actual uptake rates from the Rhode Island PFML program from 2014-2018 with some adjustments for the New Mexico context, particularly accounting for some differing underlying demographic makeup, such as a higher fertility rate and having a greater share of people under age 18 and over 65. This simulation is considered a middle uptake rate scenario.

The last run of the model uses actual uptake rates from the Rhode Island PFML program from 2014-2018 with a 20 percent upward adjustment to each uptake rate by type. This is to account for any state-to-state differences, program eligibility differences, and model underestimation. This is considered a high uptake scenario.

A summary of the key components of each model is presented in the charts below.

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[3] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/microsim_issue_brief_4_model_testing_508.pdf

[4] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/microsim_issue_brief_6_benefit_financing_508.pdf

Constant model parameters						
	2020 (simulation year)	**2026**	**2027**	**2028**	**2029**	**2030**
Minimum wage annualized	*$ 18,720*	$ 27,040	$ 28,080	$ 29,120	$ 30,160	$ 31,200
Minimum wage	*$ 9.00*	$ 13.00	$ 13.50	$ 14.00	$ 14.50	$ 15.00
Average wage annualized	*$ 50,336*	$ 54,392	$ 54,392	$ 54,392	$ 54,392	$ 54,392
Average wage	*$ 24.20*	$ 26.15	$ 26.15	$ 26.15	$ 26.15	$ 26.15
Weekly benefit at mean wage	*$ 540*	$ 780	$ 810	$ 840	$ 870	$ 900
Maximum weekly benefit	*$ 540*	$ 780	$ 810	$ 840	$ 870	$ 900
Taxable income threshold	*$ 137,700*	$180,979	$188,034	$195,266	$202,827	$210,681

	Low Uptake	Middle Uptake	High Uptake
Uptake Rates (in model)			
own health	5.4%	7.6%	9.1%
maternity	1.8%	2.8%	3.4%
new child	1.1%	1.3%	1.5%
ill child	0.5%	0.6%	0.7%
ill spouse	0.1%	0.2%	0.2%
ill parent	0.1%	0.1%	0.1%

The authority is required to conduct an actuarial study annually, starting from January 1, 2027, to evaluate the sustainability of the fund. The study assesses various factors, including fund balance, contributions, compensation provided, administrative costs, and the impact of adjusting contribution rates. Based on the actuarial study, the authority may adjust the contribution rate starting January 1, 2028, and annually thereafter. The adjustment aims to ensure the sustainability of the fund, allowing for both increases and decreases in the contribution rate, provided it does not exceed one-half percent of subject earnings.

The Office of the Attorney General states:

> HB11 would fund the insurance pool through a payroll tax on employees. The tax shall not exceed "one-half percent of subject earnings" even if an actuarial study determines that a payroll tax set at or below that percentage would be inadequate to meet fund obligations. This could result in a deficit that would require a legislative appropriation to meet those obligations. Currently, the New Mexico patient compensation fund and the state employee healthcare insurance fund are in deficit positions because of inadequate assessments. Absent the ability to set tax rates based on actuarial studies, the parental leave fund could also end up running a deficit.

Appropriations

There are no appropriations included in this bill for startup costs. If the Legislature adopts HB11, funding will need to be included in the General Appropriations Act or other legislation.

In addition, the Workforce Solutions Department notes, unlike other paid family leave proposals, the bill does not provide a mechanism for repaying the general fund for start-up costs and does not provide the PFML authority with the ability to issue bonds.

Direct Costs to State Agencies

The state may choose to give employees a raise to cover the employee contribution above other planned compensation increases. If state agencies absorb the 0.5 percent employee contribution in the form of higher salaries, the cost is $25.1 million. A high-level breakdown can be found in the table below.

	Salary	0.5% employee contribution
Legislative	$13,808,400	$69,042
Judicial	$239,578,900	$1,197,895
Executive	$1,189,111,360	$5,945,557
Public Education	$2,503,728,400	$12,518,642
Higher Education	$1,070,487,100	$5,352,436
Total	**$5,016,714,160**	**$25,083,571**

Agency analysis may vary. This analysis uses payroll figures as reported in Volume III of the 2024 LFC report to the Legislature, *Legislating for Results: Supplemental Tables and Graphs*, for consistency.

Workforce Solutions Department

According to the Workforce Solutions Department (WSD), the estimated cost associated with this new program would be approximately $47.5 million. This includes direct operational staffing, IT infrastructure and support, and indirect cost for operational sustainment, such as facilities and administrative services.

Year	Estimated Costs
Year 1: Fiscal Year 2025 Planning, initial staffing to build program, rulemaking, initial contracts	$24,362,500
Year 2: Fiscal Year 2026 Operational builds for IT and facilities; hire significant staff; public education; employer contributions begin	$23,125,000
Year 3: Fiscal Year 2027 Full hiring; full program implementation; general fund payback	$28,725,000
Recurring thereafter	$22,849,000

WSD uses a variety of methods to compute staffing, including receiving data from states with existing programs, evaluating the bill for program requirements, and modeling staffing based on the unemployment insurance staffing structure. Comparisons with other states were difficult to obtain because no other state seems to include contributions, benefit administration, appeals and enforcement all in one agency, and estimates of uptake rates vary. As such, WSD used unemployment insurance benefit staffing levels with a few adjustments to estimate administrative costs. The department also notes the decision to outsource any portion of program administration would impact costs, and the PFML authority would make any outsourcing determination following bids. WSD would not make this determination.

In addition, WSD noted other states have incurred considerable costs associated with processing waiver applications, though entities receiving waivers will not pay into the fund.

A 2021 Department of Labor (DOL) report suggests states implementing paid family leave have generally assumed two to three years of start-up costs for programs before they begin to disburse program benefits. IT costs are generally the largest start-up costs, accounting for 48 to 91 percent of start-up costs reported in implementing states. Among analyzed states, the DOL report noted projected and actual start-up costs up to $82 million.

The 2021 DOL report noted claims processing and review staff are the largest drivers of ongoing administrative costs, and the number of processing staff is driven by the expected number of claims and time to process determinations. The DOL report included ongoing administrative costs ranging between $8 million and $239 million in implementing states, and noted costs tend to increase incrementally over time. Among existing and operating programs included in the DOL report, costs per processed claims ranged between $155 in Rhode Island and $256 per claim in California, or between 4 percent and 6 percent of benefit disbursements. In addition, a 2023 brief published by National Partnership for Women analyzed administrative costs in the District of Columbia, Washington State, Massachusetts, and Connecticut and reported operating costs to range between 4.6 percent and 10.5 percent of premiums collected annually.

SIGNIFICANT ISSUES

Workforce

This bill could improve labor force participation in New Mexico, particularly among women. New Mexico's labor force participation rate is consistently lower than the national average and the fifth lowest in the country, as of 2021. According to analysis released by WSD in 2021, the labor force participation rate of women ages 16 years and older in New Mexico was 51.1 percent, 5 percentage points lower than the U.S. rate of 56.1 percent. New Mexico had the fourth lowest LFPR in the United States. In this analysis, the impact of children is one of the reasons WSD cited for low LFPR, particularly among women, in New Mexico.

Research published in the *American Economic Review* suggests short-duration paid leave in the months directly proceeding and following a birth increases the labor force attachment of women who otherwise would have exited the labor force temporarily in the months around a birth. Analysis of the impact of paid leave laws in California and New Jersey concluded short leave is unlikely to alter the behavior of women who would otherwise exit the labor force for prolonged periods after a birth, but reducing a brief interruption following a birth may have long-term employment benefits for affected women.[5]

The Economic Development Department notes the following:

> The positive result of implementing a paid family and medical leave program is not only to preserve an individual's employment while on family medical leave but to also provide

[5] Byker TS. Paid Parental Leave Laws in the United States: Does Short-Duration Leave Affect Women's Labor-Force Attachment? *The American economic review*. 2016;106(5):242-246. doi:10.1257/aer.p20161118

a source of income for up to six weeks if the individual does not have enough paid leave accumulated to cover the time off, making the benefits available to a larger population and easing the financial burden that often results with having to take unpaid time off for family or medical leave. The recommendation would be to ensure that all lines of communication between employee and employer remain open and that the employee's experience is regularly evaluated to ensure that they are supported. It is equally important to maintain a business-friendly environment that promotes expansion, job creation and retention.

Business Environment

This bill acts as a 0.5 percent payroll increase on employees. The *Tax Foundation 2023 State Business Tax Climate Rankings* currently rank New Mexico at 22nd overall, with corporate taxes ranking 12th and unemployment insurance taxes (one of the primary payroll taxes) ranked ninth.[6] Increasing taxes on businesses will likely make New Mexico less competitive compared with other and neighboring states.

The reporting and administrative requirements outlined in this bill may present increase costs of doing business in New Mexico, especially smaller businesses and those without a full human resources department or staff (see "Administrative Implications" for further discussion).

Other Significant Issues

- In Executive Order 2019-036, the governor created a 12-week paid parental leave program for state employees after employees complete one full year in the position. The Legislature passed a similar policy for legislative staff in 2022.
- In 2019, the state enacted Section 10-16H-1 NMSA 1978, which expanded state employee and public-school employee use of accrued sick leave for extended family members.
- In 2021, in Section 50-17-1 NMSA 1978 the state enacted the Healthy Workplaces Act requiring all public and private employers to allow employees to accrue earned sick leave of 64 hours per year.
- As of August 2023, 12 states and the District of Columbia offer paid family and medical leave. All state programs are funded through employee-paid payroll taxes, and some are also partially funded by employer-paid payroll taxes.
- Federal social security disability benefits apply to those with a terminal diagnosis or if the disability diagnosis is determined to last at least 12 months.
- The bill does not include guardrails around WSD's authority to adjust the benefit in the event of surpluses in the fund as opposed to adjusting the rate.

WSD notes the following significant issues:

The bill lacks the customary provisions associated with creating a new political subdivision, and it is unclear if the PFML authority would have the broad powers of similar entities, including the ability to issue contracts.

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[6] https://statetaxindex.org/state/new-mexico/

The bill defines "Indian Tribes" but does not exempt employees of Indian tribes from the bill, which could raise issues of tribal sovereignty.

The bill does not specify how to address certain instances, including intermittent leave, workers receiving workers' compensation benefits, workers receiving other wages during the benefits period, certain situations related to self-employed workers, requirements for a healthcare provider to specify a leave duration, or clarify fraud involves the intent to deceive.

ADMINISTRATIVE IMPLICATIONS

Workforce Solutions Department

WSD notes, though the authority would be a separate entity, WSD anticipates setting up the authority and providing guidance in the first year would represent a significant investment of time and resources. WSD reports at least 4 FTE would be needed for at least two years to provide this level of support, and WSD included these estimates in start-up costs.

The bill states specific timeline requirements that will directly impact the requirements on operational staffing and system automation. Appropriate funding is required to ensure effective implementation to meet these performance standards. The volume of claims will also impact performance levels and operational support requirements.

Building and administering the PFML program is an immense administrative undertaking. WSD estimates a need for 216 staff positions—roughly the same staffing as the entire unemployment insurance (UI) program.

- Part of the basis of WSD's staffing analysis is the estimated number of annual claims. Estimates of the number of annual claims vary quite widely. The University of New Mexico's Bureau of Business and Economic Research estimated a little over 35 thousand claims annually. However, applying Washington State's claim numbers proportionally to New Mexico's population yields estimated annual claims of 53 thousand. Direct comparisons are challenging because each state has its own definitions of covered conditions, and each state has unique population characteristics. WSD believes estimating based on UI staffing levels with certain adjustments is the best method of approximation.
- Using the UI staffing base as a comparator, WSD projects an increase for PFML processing staff to reflect the statutory timelines for processing claims and hearings that do not exist in UI.
- In comparison to certain other states with lower relative staffing levels, WSD allows filing by phone and in person for UI and would anticipate the same for PFML. New Mexicans require phone and in-person service because of limits in broadband access, computer literacy, and familiarity with government services. Washington, Rhode Island, and California do not do in person claims, while New Jersey started in 2022. District of Columbia does not allow filing by phone or in person.
- Comparison to other states' staffing levels is also challenging because states with lower relative staffing levels have different roles and less administrative burden. For example, California appeals from PFML go to a different agency. Job protection is not available (so doesn't need to be enforced) in California, in the initial New Jersey law, or for an

employee's own health issues in Rhode Island and the District of Columbia. Rhode Island and the District of Columbia do not have waiver programs.

The following policy choices would affect WSD staffing, and as a result, funding estimates:

- Sections 13(A)(2) and 13(B)(2) of the bill prescribe narrow timeframes for hearings to be held within 10 business days of receipt of those appeals or complaints, with a ruling and final decision five business days later. These timeframes (shorter than those in the related House Bill 6) entail significant amounts of staffing and resources dedicated to the hearing procedures to ensure timeliness and compliance. Also, as a practical matter, all parties are unlikely to always be available and prepared to present all relevant evidence at hearing within these narrow timeframes. Timeliness and compliance will require the PFML authority to have significant staffing and resources dedicated to meet the authority's objectives.
- Making government agencies subject to PFML means WSD (like all agencies) will need to staff in anticipation of coverage issues. Rhode Island, California, New Jersey, and the District of Columbia do not mandate that public agencies are covered.

Finally, WSD notes the bill does not contain an appropriation, and neither the executive nor LFC budget recommendations included an appropriation for start-up costs. The department notes it is unclear how WSD or the authority would fund start-up costs.

Other Departments

The New Mexico Attorney General (NMAG) provides legal counsel for the Regulations and Licensing Department's Boards and Commissions Division, which does not have budget or authority to retain staff legal counsel. Because HB11 makes no provision for retention of counsel by the Boards and Commissions Division, NMAG would fulfill its legal needs. If HB11 were enacted, the division would likely require 80 hours of legal services monthly, or one-half an FTE. The fiscal impact of staffing this role would be approximately $100 thousand.

If HB11 passes, the State Personnel Office's Human Resources Services Division will likely provide strategic oversight and services for the development of the authority. SPO would need to absorb this cost in FY24 without additional funding. In addition, SPO charges $1,042.76 per FTE for a month-to-month contract to provide all HR functions to agencies that do not fund their own HR or that are filling HR positions on creation. In the event of the creation of a new agency, SPO's Workforce Planning Division would assign an analyst to assist with the strategic planning of creating an agency structure (this would be addition to the work done by HR services). SPO would process the creation of those positions through the normal SPO approval process pursuant to board rule.

PERFORMANCE IMPLICATIONS

WSD notes the following regarding performance implications derived the implementation of a similar PMFL program in Connecticut and outsourced claims administration:

Based on conversations with Connecticut, it is not feasible to tie the premium contribution system to other existing tax payment systems when a separate entity is administering the paid leave program. Assuming the authority came to the same conclusion, employers remitting contributions would need to interface with a third system for this program, as connection to NMTAP [taxpayer web portal] or the UI system would not be feasible.

Connecticut's experience with AFLAC as a third-party administrator suggests that if the authority followed a similar path, the program could achieve extremely strong wait and processing times. Eighty percent of their calls are currently answered within 90 seconds, with an abandonment rate of less than 3 percent. This is primarily because a private administrator can be considerably more flexible in its staffing structure than any state entity can be. The AFLAC operation is fully remote. Although initial problems arose with claim denial rates and a lack of transparency, those were addressed over the first year of operations and AFLAC was penalized pursuant to its contract.

The other tremendous benefit Connecticut derived from outsourcing claims administration to a third party was in the speed of setting up the system and coming online. AFLAC altered an existing benefits system and built a document tracking system that has proven highly popular.

Participating Workplaces

The reporting and administrative requirements outlined in this bill may present more administrative duties and costs for business owners, state agencies, and other eligible places of work, especially smaller businesses and those without a full human resources department or staff. For example, the business owner must work with the WSD to report employees applying for PFML and help certify their leave. Additionally, businesses must hold a position for employees that take PFML and who have worked for that business for at least six months. This requirement could be difficult for businesses with a small workforce where a single worker may constitute a large share of the business output. They may be forced to stretch their remaining employees' duties to cover the absent coworker, or the business may hire someone new to cover their duties and be forced to release the new worker or be overstaffed on return of the worker on PFML.

The state PFML program may also help local businesses keep employees during and after leave that may otherwise leave the workforce, stabilizing their workforce, reducing onboarding and training costs, and possibly reducing the cost to provide paid leave. Employers may want to provide leave to their employees for emergencies or after the birth of a child but cannot afford the cost of an independent program, given a small workforce and slim profit margins. This program may extend that benefit and provide an affordable program for employers.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with House Bill 6 and Senate Bill 3, which are duplicate bills for a different proposal for a state PFML program.

TECHNICAL ISSUES

WSD notes the following:

- Section 2(F) does not require self-employed individuals to meet the earnings criteria set forth in 2(F)(1) because of the "or" between (1) and (2). It is unclear if this is intentional.

- The bill begins to discuss the Paid Family and Medical Leave Insurance Fund before defining and creating the Fund. Section 5 should come after Section 6.
- Section 5(F)(1) is unclear. DWS is not sure what is meant by “a process by which employers may credit covered employee contributions to the fund.”
- In Section 7(C), it is unclear what the difference is between the rules for bonding leave (“shall not be taken intermittently unless the covered employee and the employer agree otherwise”) and the rules for other leave (“may be taken intermittently if both the covered employee and employer agree”). All intermittent leave arrangements require agreement of the employer, so it is unclear why these two cases are treated differently.
- Section 7(H)(2) suggests that the Authority would need to request certification of the employee’s need for leave. This conflicts with Section 9(A) that requires such documentation.
- Sections 10(A) et seq. refer to an opt-out as a “waiver.” Our colleagues in other states have indicated that this is not consistent with common industry language and suggest that an “opt-out” would be clearer. It also appears that employees are effectively penalized if they work for an optout employer, because they must work at an in-fund employer and make contributions for 6 months before becoming eligible. It may be advisable to disclose this information in the required notice to employees of opt-out employers.
- In Section 5(J), would it make more sense to put this language in the notification of approval of an application rather than when an application is first filed.

OTHER SUBSTANTIVE ISSUES

WSD notes the concept of a dedicated authority to administer a program as complex a paid medical leave could provide a depth of expertise and potentially result in cost savings, including potential cost savings associated with outsourcing claims administration. However, WSD notes the agency does not require statutory authority to outsource program administration, absent an express prohibition. WSD also notes:

- The bill lacks the customary provisions associated with creating a new political subdivision or agency. See for example, NMSA § 5-11-10 (powers of a Public Improvement District), §72-1-10 (ABC Water Utility Authority powers), or §10-7C-7 (Duties of Retiree Healthcare Authority). The shorter list of duties in Section 4(B), together with the specific authority to contract for certain services in Section 5(G), may create uncertainty as to whether the Authority has the broad powers of other similar entities. Similarly, the specific authority to contract for program administration, actuarial studies and public outreach in Section 5(G) may cause uncertainty about the Authority’s ability to undertake other types of contracts (for example, audit, legal services, IT).
- Although the bill defines “Indian Tribe,” Section 2(G) and (H) do not exempt employees of Indian Tribes from the bill. DWS was unable to find any other section exempting Indian nations. This raises issues of tribal sovereignty. This omission may be inadvertent.
- Section 7(C) limits “intermittent leave” to 8-hour intervals. The absence management industry distinguishes between “intermittent leave” and “reduced schedule.” An example of a “reduced schedule” would be an employee taking their parent to dialysis every Tuesday at 3. Intermittent leave refers to leave that is unpredictable, for example, an employee who needs to take time off when they have a flare up of lupus. It is unclear which of these situations is contemplated by the limitation on “intermittent leave” in this bill. DWS has also heard from employers that they want to retain the flexibility to have

an employee take off one hour on a day, as opposed to losing that employee for the entire day.

- Section 7(G) does not specify that workers' compensation benefits preclude paid leave only if the benefits are being claimed for the same time period.
- Section 7(G) does not preclude an employee from receiving benefits if they are earning duplicate wages for the same time period.
- Section 7(H)(4) requires an employee seeking medical leave to certify that the condition is not eligible for benefits under Worker's Comp or the NM Occupational Disease Disablement Law. Eligibility may involve complex legal determinations. It is unclear whether the Authority would be required to validate these determinations or would simply accept self-certification. It is unclear how a claimant would make this determination for themselves.
- Section 8(A) requires self-employed individuals to be enrolled for 3 years, but it does not explain the consequences if they are not. It is also not clear if "enrolled in the program" would include making contributions as an employee of a covered employer.
- Section 9 does not require a healthcare provider to specify the duration of leave necessitated by the serious medical condition. It is unclear whether the Authority would need to make an independent determination of leave duration.
- Section 11(A) purports to define "fraud" but does not contain the element of intent to deceive that is ordinarily associated with common law fraud. As written, an unintentional misstatement would constitute fraud. This is particularly troubling given the criminal penalties set forth in
- Section 11(B). It is highly unlikely that any law enforcement agency in the state would have the capacity to pursue the criminal charges set forth in Section 11(B).
- The bill does not address giving notice of an employee's return to work.
- No appropriation related to this program appears in the bill, the LFC budget recommendation, or the executive budget recommendation. It is unclear how DWS or the Authority would fund the substantial start-up costs of the program. There is also no mechanism to loan money to or repay money from the Fund or the Authority, if general funds were used for start-up. The Authority does not have the ability to issue bonds.
- In discussions with other states, the cost of processing applications to opt out of the fund and program and address related claims is substantial. Because opt-out programs do not pay into the fund, this is an unfair burden on participating employers. Other states have imposed fees on the opt-out application and related appeals and claims in order to address this issue. It is unclear whether the Authority would be permitted to impose such fees.

The Health Care Authority (formerly the Human Services Department) notes the following unaddressed issues:

- HB 11 created the director of the Paid Family and Medical Leave Insurance Authority, and that the director may employ additional staff but does not establish initial administrative funding for these activities.
- HB 11 does not define how the leave how the paid leave is awarded and utilized by covered employees. It is not clear if the covered employees will receive monetary compensation for time away for work or is credited for leave that the covered employee may utilize.
- HB 11 does not identify or require an employer contribution into the fund.
- HB 11 does not specify how employee contributions will be collected (payroll deduction or employee pays third party administrator).

- HB 11 does not address whether an employee is allowed to utilize their own accrued leave in conjunction with their claim for leave compensation under the Paid Family and Medical Leave Act. HSD currently allows employees to utilize their own accrued leave while approved for leave taken under the federal Family and Medical Leave Act (FMLA) and other medical leave policies. Employees often utilize their accrued leave to pay for their portion of benefits contributions while out on medical leave.
- Covered employee eligibility does not match federal FMLA regulation. This will cause situations where a covered employee is eligible for Paid Family and Medical Leave Insurance but not eligible for the federal FMLA job protections.

The New Mexico Attorney General states:

- HB 11 could provide more clarity regarding the penalties against an employer who interferes with or retaliates against employees exercising their rights under the Act, or who would enforce such violations.
- HB 11 does not detail the enrollment process and whether employees are required to "opt-in" to the program, or if enrollment will be automatic.
- HB 11 does not address when an application for compensation must be made, before or after the period of leave begins, and whether such compensation would be backdated.
- HB 11 could use more clarity regarding notice to employers of an employee's intent to seek leave. Section 7(E)(2) provides detailed requirements for employees seeking intermittent leave but does not extend those requirements to non-intermittent leave.

POSSIBLE QUESTIONS

How does this program affect Medicaid enrollment and eligibility for other benefit programs? Could PFML bump some people out of Medicaid income eligibility **because** they will not lose as much income when taking leave?

How does this bill affect labor supply and demand? A full review of the labor market and the New Mexico economy is needed to determine the impact of PFML and the associated payroll tax.

How does this apply to New Mexico residents who work for out-of-state employers? How does this apply to nonresidents who work for a New Mexico-based company?

JF/RMG/al/hg