LFC Hearing Brief

NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

AGENCY: Workforce Solutions Department

DATE: September 28, 2023

PURPOSE OF HEARING: Paid Family Medical Leave

WITNESS: Jeff Hayes, Survey Statistician, U.S. Department of Labor; Sarah Jane Glynn, Senior Advisor, Women's Bureau, U.S. Department of Labor

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EXPECTED OUTCOME: Informational

Quick Facts

- PFMLA wage replacement rates range from a low in Delaware of $900 weekly to a high in Washington state of 120 percent of the state's average wage, including additional adjustments for dependents.
- Some states program's cap income subject to payroll deductions. New York's cap is at $83 thousand while Maryland's cap is estimated to be $168.6 thousand in 2026.
- New Hampshire's program is a voluntary plan where workers and employers can choose to purchase coverage.
- Payroll tax rates range from a high of 1.2 percent in California to a low of 0.26 percent in Washington D.C.

BACKGROUND INFORMATION:

As of August 2023, 12 states plus the District of Columbia (D.C.) had enacted mandatory paid family and medical leave (PFML) policies, with the laws in D.C. and eight states currently active. Additionally, Virginia and New Hampshire oversee voluntary and privately operated PFML programs. During the 2023 legislative session, New Mexico considered enacting a PFML law, Senate Bill 11, that would have established a paid family medical leave entitlement of 12 weeks for nearly all New Mexico workers, initiated a PFML fund, instituted a new payroll tax of 0.5 percent for employees and 0.4 percent for employers, and tasked the Workforce Solutions Department with establishing rules and administering the leave program. The bill passed the Senate but did not make it through the House Consumer and Economic Development Committee.

Paid Family and Medical Leave in Other States

In 1993, the federal government enacted the Family and Medical Leave Act (FMLA), requiring employers to provide 12 weeks of unpaid leave if the employees have worked for their employer for at least 12 months and have worked at least 1,250 hours in those 12 months. To be eligible, workers must be employed at a location with at least 50 or more employees. Employees can qualify for FMLA through the birth of a child, the adoption or fostering of a child, pregnancy, the need for self-care related to a serious health condition, or care of a sick child, spouse, or parent.

States adopting paid family and medical leave (PFML) policies early on modeled their programs closely to the federal law but allowed for a portion of wage replacement while the worker was on leave to avoid financial hardship. The early adopting states, including California, New Jersey, and Rhode Island, tended to keep the eligible uses of paid leave relatively narrow and similar to the unpaid federal FMLA law.

More recent PFML laws vary widely in terms of eligibility requirements, qualifying reasons, payroll tax rates, caps on income subject to payroll deductions, permitted lengths of leave, and required participants.

Voluntary Paid Family Medical Leave Programs

Both Viginia and New Hampshire operate voluntary PFML programs where employers are permitted to choose whether they want to provide benefits for their employees and pay into a PFML program. In New Hampshire, employers can choose to cover all or part of the costs or pass the costs on to their employees for leave programs of six or 12 weeks. The state selects an insurance carrier to offer the plan to employers and employers can decide whether to opt in. The New Hampshire model creates a market for PFML insurance products. Qualifying reasons for leave in New Hampshire are similar to federal FMLA except that the law allows for military exigency or to care for a service member with a serious injury or illness. The state provides 60 percent of wage replacement.

Early Paid Family Medical Leave Programs and Uptake Rates

Early PFML laws' eligibility requirements are defined narrower than more recently adopted programs and may have lower uptake rates than other programs because of this. For example, California allows leave to be taken to care for a child, spouse, parent, or registered domestic partner. Relatively lower uptake rates in these states may be caused by narrower definitions. For example, California and Rhose Island's uptake rates were about 1.6 percent in 2022. While New Jersey's uptake rate was 2.8 percent.

Uptake Rates

When estimating the cost of potential PFML programs, estimating uptake rates is essential. Uptake rates are calculated by dividing the number of approved claims by the number of eligible workers. Based on provisions in 2023 SB11, an uptake rate of 4 percent would lead to significant fund balances in just a few years. However, higher uptake rates could lead to fund insolvency or the administrator of the fund adjusting the payroll tax rate to avoid shortfalls.

Recently Enacted Programs and Uncertain Uptake Rates

States passing PFML programs in the last several years have expanded on the qualifying reasons for taking leave. For example, Colorado's 2020 law allows a worker to take leave to care for a child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or any individual with whom the employee has a significant personal bond that is like a family relationship. This definition is similar to New Mexico's 2023 Senate Bill 11, which would have allowed for the "equivalent of a family relationship." Also similar to SB11, Colorado's law, which does not start paying benefits until 2024, allows for safe leave for victims of domestic violence, stalking, sexual assault, or abuse or to care for a victim of these crimes.

None of the states with qualifying reasons defined as including "an individual with whom the employee has a significant personal bond" or "an individual with the equivalent of a family relationship to the employee," are active yet. However, Washington state's law is close. Because of these expanded definitions, the inclusion of safe leave, and a lack of experience, it is nearly impossible to predict uptake rates for Colorado or any other state with these expanded program definitions and uses.

PFML in New Mexico and Uptake

If it were to adopt a PFML program, New Mexico could have higher uptake rates than rates experienced in other states, even when holding everything else constant, for many reasons.

Poor Health Outcomes

New Mexico has poor health outcomes compared to many other states and demand for PFML would likely be greater. For example, New Mexico has higher rates of diabetes, chronic liver disease death, chronic lower respiratory death rates, and injury than the national average. Because of this and other reasons, 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 also had the highest alcohol-related death rate in the United States since 1997.

Other States' Caps on Income Subject to Tax

Many states with paid family medical leave programs instituted caps on the amount of income an individual is required to pay the tax on, while other states have no cap. The lowest cap is in New York and set at $82.9 thousand annually, while the highest cap is in Washington and New Hampshire at and set at $160.2 thousand annually.

New Mexico's SB11 did not include a cap.

Lower Wages

New Mexico also has one of the highest rates of workers earning under $15 hourly at about 44.5 percent. If New Mexico were to enact a PFML policy and cap the maximum benefit at the $26 per hour average wage of all New Mexicans (as proposed in SB11), PFML would likely be more attractive than it is in wealthier states like New York, where the maximum benefit is capped at 67 percent of average wages and only 25 percent of workers earn less than $15 hourly.

For example, the average clerk in New Mexico makes a salary of about $15 hourly so the clerk's salary replacement would be 100 percent. However, the average nurse in New Mexico makes about $37.31 hourly. Under Senate Bill 11, the maximum wage replacement was equal to the average wage of all workers at $26 hourly. If the average nurse were to take paid leave they would experience more than an $11 reduction in hourly salary. Since most New Mexico workers fall on the lower end of the wage scale many more would likely receive 100 percent wage replacement and more workers would likely take advantage of the program.

Additionally, data from the U.S. Department of Labor shows low-wage workers have a 3 percent higher rate of taking leave for FMLA reasons, and New Mexico has the highest percentage of low-wage workers in the nation.

PFMLA Wage Replacement Examples

	$15/hr	$30/hr	$60/hr	$80/hr	$100/hr
Annual Wage	$31,200.0	$62,400.0	$124,800.0	$166,400.0	$208,000.0
12-Week Wage While not Earning Benefit	$7,200.0	$14,400.0	$28,800.0	$38,400.0	$48,000.0
12-Week Maximum Wage Replacement	$7,200.0	$13,153.8	$13,153.8	$13,153.8	$13,153.8
Wage Replacement Rate	100%	91%	46%	34%	27%
Annual Employer/Employee Payroll Taxes	$2,808.0	$5,616.0	$11,232.0	$14,976.0	$18,720.0

State Employee and UNM Parental Leave Programs

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 federal FMLA. Even with this much narrower definition, the uptake rate for the state's parental leave policy in 2022 was about 3.7 percent.

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The University of New Mexico (UNM) also operates a paid parental leave (PPL) program that provides for 4 weeks of paid leave to be used in conjunction with other available employee sick and annual leave. UNM's PPL program allows employees to be compensated at their current base pay, and at no cost to the employee. Additionally, UNM provides other programs, such as a catastrophic leave, to safeguard employees who are required to be out of the office for extended periods of time for medical reasons. UNM reported a roughly 5 percent uptake rate for its paid parental leave program. This program is also much narrower than federal FMLA.

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U.S. Department of Labor Paid Leave Usage Simulation Model

During the 2023 legislative session, the U.S. Department of Labor (DOL) used a model to simulate outcomes New Mexico could expect from enacting SB11. The simulation results calculated that 37 thousand workers would take benefits for about 40 thousand medical leave reasons. The model estimated about 5.3 percent of covered workers would experience a covered family or medical need and take advantage of the leave program. However, the model is based on the experiences of the early adopting states of California, New Jersey, and Rhode Island.

As already noted, New Mexico would likely have higher uptake rates than these healthier, younger, and wealthier states. Additionally, the model does not take into account safe leave as included in SB11 and does not include the larger number of family members and friends that could take leave related to a single leave episode.

Revenue Estimates

Total Unemployment Insurance tax revenues are only 40 percent of the projected revenue from PFMLA.

Using the Department of Labor's reported Unemployment Insurance taxable wage base, total PFMLA tax revenue is projected at $243 million.

The Workforce Solutions FY22 audit shows tax revenue from Unemployment Insurance was about $102 million.

Most of the states with enacted PFML laws levy a payroll tax on the employee, the employer, or both. SB11 proposed a payroll tax of 0.4 percent of wages for the employer and 0.5 percent of wages for the employee for a total of 0.9 percent of wages. In 2022, the federal Department of Labor reported New Mexico's taxable wage base was $28.7 billion, an amount that also aligns with tax data from the state Taxation and Revenue Department. Applying a 0.9 percent tax rate to the $28.7 billion results in $258.3 million in revenue annually if all revenue were to be collected and no businesses were to seek exemptions. This figure also does not account for businesses with five or fewer employees, which SB11 would have excluded from paying the payroll tax.

Using a 4 percent uptake rate, as was used in the lower cost scenario in SB11's fiscal impact report, the program would experience a shortfall of revenue within a few years as seen in the table below.

Low-Cost Scenario, Based on Taskforce Parameters (with 0.4% employer and 0.5% employee payroll tax contributions)

	2025	2026	2027	2028
Eligible Workers	871,247	883,184	895,121	907,058
Take Up Rate (TF report 4%)	35,211	35,253	35,729	36,206
Annual Payout w/10 Week Average Utilization		$307,053,630	$317,635,032	$328,387,966
Administrative Costs	$61,368,706	$62,657,449	$29,000,000	$29,000,000
Reimburse General Fund	$6,000,000	$6,000,000	$6,000,000	$6,000,000
Total Estimated Cost	**$67,368,706**	**$375,711,079**	**$352,635,032**	**$363,387,966**
Fund Balance Prior Year		**$175,907,935**	**$58,496,856**	**($33,124,714)**
Estimated Revenue to FMLA Fund	**$243,276,641**	**$258,300,000**	**$261,013,462**	**$270,000,000**
Fund Balance (deficit)	**$175,907,935**	**$58,496,856**	**($33,124,714)**	**($126,512,680)**

Other Important Considerations

- Data from the U.S. Department of Labor shows low-wage workers have a 3 percent higher rate of taking leave for FMLA reasons, and New Mexico has the highest percentage of low-wage workers in the nation.
- 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.

- In 2019, the state enacted Section 10-16H-1 NMSA 1978 expanding 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.

- 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.

State Paid Family Medical Leave Program Comparisons

	To Care For?	Payroll Deduction Rate	Timeline	Voluntary or Mandatory Partcipation	Social or Private Insurance	wage replacement rate	Parental	Family Caregiving	Personal Medical	Safety Leave	Total Paid Leave Avail. in One Year	Eligibility Requirement (Wages or Tenure in One-Year Base Period	Cap on Income Subject to Payroll Deduction	Who Pays the premium
California	Child, spouse, parent or registered domestic partner.	1.20%	Enacted 2002, effective 2004	Mandatory	Social Insurance	60-70 % cap of $1,620	8 weeks	8 weeks	52 weeks	None	52 weeks	$ 300.00	$ 145,600.00	Employee
Colorado	Child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or any individual with whom the employee has a significant personal bond that is like a family relationship.	0.90%	Enacted 2020, effective 2023/24	Mandatory	Social Insurance	Up to 90% the states average wage	12 weeks	12 weeks	12 weeks	12 weeks	12 weeks	$ 2,500.00	$161,700 (2023 estimated)	Employee: 50% Employer: 50%
Connecticut	Child, spouse, parent, civil union partner, parent-in-law or stepparent.	0.50%	Enacted 2019, effective 2021/22	Mandatory	Social Insurance	95% for minimum wage workers plus 60% of the wage earned over minimum wage	12 weeks	12 weeks	12 weeks	12 days	12 weeks	$2,325 in highest-earning quarter	$160,200	Employee
Delaware	to care for a child after birth, adoption, or placement through foster care, or to care for oneself or a family member with a serious health condition.	0.80%	Enacted 2022, effective 2025/26	Mandatory	Social Insurance	Maximum benefit of $900 weekly adjusted to inflation in future years	12 weeks	One period of leave of up to 6 weeks in any 24-month period	One period of leave of up to 6 weeks in any 24-month period	None	12 weeks	Tenure with employer of >12 months and >1,250 hours of work in last 12 months	none	Employee: 50% Employer: 50%
Maryland		TBD	Enacted 2022, effective 2024/26	Mandatory	Social Insurance	$1,000 max per week with 90% max replacement	12 weeks	12 weeks	12 weeks	None	24 weeks	680 hours of work the 12-month period immediately preceding the date on which the leave i scheduled to	$168,600 (2026, estimated)	Employee: 50% Employer: 50%
Massachusetts	Child, step-children, spouse, domestic partner, domestic partner's children, spouse or domestic partner's parents, grandchildren, domestic partner's grandchildren, grandparents, grandparent's domestic partner, siblings or step-siblings.	0.68%	Enacted 2018, effective 2019/21	Mandatory	Social Insurance	$1,129 max with 80% max	12 weeks	12 weeks	20 weeks	None	26 weeks	$5,700 and 30x benefit amount	none	Employee: 50.59% Employer: 49.41%
New Hampshire	personal serious health condition, to care for a family member's serious health condition, to care for an infant in the first year after the child's birth, to be with a child after placement for adoption or foster care, to attend to matters arising from a family member being on active military duty.		Enacted 2021, effective 2022/23	Voluntary	Private Insurance		At least 6 weeks	At least 6 weeks	At least 6 weeks	None	At least 6 weeks	Employer Plan: None Individual plan:TBD	160,200	Set by employer
New Jersey	Child, spouse, parent, in-laws or domestic partner.	0.14%	Enacted 2008, effectvie 2009	Mandatory	Social Insurance	up to 70% of of the statewide average weekly wage.	12 weeks	12 weeks	26 weeks	None	38 weeks	20 weeks of work earning at least $240 weekly or $12,000	$ 156,800.00	Employee

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New Mexico	**SB11 Family leave for:** Child (biological, adopted, foster, legal ward, child of domestic partner, loco parentis relationship) parent (biological, adopted, foster, stepparent, legal guardian, spouse's parent, domestic partner's parent, and loco parentis relationship to an employee, employee's spouse, or employee's domestic partner) spouse, domestic partner, grandparent, great grandparent, grandchild, sibling (whether biological, foster, adoptive, step relationship or employee's spouse or domestic partner relationship) or any other individual related by blood or affinity whose close association with the employee or employee's spouse or domestic partner is the equivalent of a family relationship. **Safe leave for:** victims of domestic violence (DV) family member of victim of DV, victim of stalking, family member of victim of DV, victim of sexual assault, family member of victim of sexual assault, victim of abuse, family member of victim of abuse. **Medical Leave (to care for oneself)**	0.90%	N/A	Mandatory	Social Insurance	Equal to annual mean wage of all occupations in NM	12 weeks	12 weeks	12 weeks	12 weeks	12 weeks	Must earn wages for a least 6 months prior to taking leave	None	0.4 percent employer and 0.5 percent employee of total wages earned
New York	Child, spouse, parent, parent-in-law, step-parent, grandparent, grandchild, sibling, domestic partner, or a person with whom the employee has or had an *in loco parentis relationship* .	0.51%	Enacted 2016, effectvie 2018	Mandatory	Private Insurance	67 percent of an individual's average weekly wage capped at 67 of the state's average weekly wage	12 weeks	12 weeks	26 weeks	None	26 weeks	With a single employee: 26 consecutive weeks of full-time (20+ hours) employment or 175 part-time working days	$ 82,918.00	Employee
Oregon	Child, spouse, parent, grandparent, grandchild or parent-in-law, or a person with whom the employee has or had an in *loco parentis* relationship.	1.00%	Enacted 2019, effectvie 2023	Mandatory	Social Insurance	up to 120% of the state's average weekly wage	12 weeks	12 weeks	12 weeks	12 weeks	12 weeks	$1,000	$132,900	Employee: 60% Employer: 40%
Rhode Island	Child, parent, parent-in-law, grandparent, spouse, domestic partner	1.10%	Enacted 2013, effectvie 2014	Mandatory	Social Insurance	60% of individuals average wage up to $1,007	6 weeks	6 weeks	30 weeks	1 week	30 weeks	$14,700 or total wages > $4,900 and $2,450 in one quarter AND total wages > 1.5x highest quarter of earnings	$ 84,000.00	Employee
Virginia			Enacted 2022, effectvie 2022	Voluntary	Private Insurance		Set by insurer	Set by insurer	Set by insurer	None	Set by insurer	Set by insurer/employer	N/A	Set by employer
Washington	Child, step-child, spouse, domestic partner, parent, parent-in-law, sibling, grandchildren, grandparents, spouse's grandparents, son- or daughter-in-law, any individual who expects to rely on the employee for care.	0.60%	Enacted 2017, effectvie 2019/2020	Mandatory	Social Insurance	up to 120 % of of the states average montly wage with adjustments for number of dependents	12 weeks	12 weeks	12 weeks	None	16 weeks	820 hours work	$ 160,200.00	Employee: 72.76% & Employer 27.24
Washington, D.C.	All relatives by blood, legal custody, or marriage, and anyone with whom an employee lives and has a committed relationship.	0.26%	Enacted 2017, effectvie 2020	Mandatory	Social Insurance	90% of individual's wages capped at $1,000 per week.	12 weeks	12 weeks	12 weeks	None	12 weeks	Any income in one base period quarter	None	Employer