

LFC Requester:	
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 1/18/24
Bill No: SB3

Sponsor: Stewart/Chandler
Short Title: Paid Family & Medical Leave Act

Agency Name and Code Economic Development Department
Number: 41900
Person Writing Sara Gutierrez
Phone: 505-231-4224 **Email:** Sara.gutierrez@edd.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: HB6

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 3 (SB3) establishes the Paid Family and Medical Leave Act, creates a Paid Family and Medical Leave Fund, and creates a temporary advisory committee, the “Paid Family and Medical Leave Implementation Advisory Committee,” in the Department of Workforce Solutions (DWS). An appropriation to DWS for administrative costs associated with the implementation of the Paid Family Medical Leave Act is contingent on the passage of legislation in the current legislative session appropriating funds for the purposes of the Paid Family Medical Leave Act.

The purpose of the bill is to establish a formal program that provides compensation to employees who need to take leave for the following reasons: to bond with a child; to protect an employee or family member who is a victim of domestic violence, stalking or sexual assault; to provide care for themselves or family members who are seriously ill, or following the death of a minor child, or to take leave for a family member who is on active military leave.

The Paid Family and Medical Leave Act creates a mandatory state Family Medical Leave Act (FMLA) program that requires participation of all employers that employ one or more people within New Mexico, unless they can demonstrate their participation in a private, paid FMLA program that provides equal or greater benefits than the state program. DWS is required to promulgate and adopt rules for this program by July 1, 2024.

The bill provides for the re-payment of an appropriation to the general fund from the Paid Family and Medical Leave fund, beginning July 1, 2026, making annual transfers of \$6,000,000 until the total appropriation is re-paid.

The bill also outlines:

- how the Paid Family and Medical Leave fund is funded through employer and employee contributions and investment,
- how the fund shall be maintained to ensure solvency and self-sufficiency,
- how funds are disbursed,
- how employer and employee contributions are calculated,
- requirements for quarterly reporting and remittance of employer and employee contributions to DWS,
- employee eligibility and documentation requirements for compensation,

- how compensation is calculated for continuous and intermittent leave,
- employee requirements regarding notification to employer of approved leave application and scheduling leave,
- benefits and requirements for self-employed individuals,
- confidentiality,
- appeal procedures and DWS disciplinary powers,
- employer and employee requirements upon return to employment,
- the structure, membership, and administration of the Paid Family and Medical Leave Implementation Advisory Committee.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

Human Resources (HR) is the department primarily responsible for important tasks like recruiting talent, signing on new hires, and managing payroll and benefits administration. A high-performing HR team is key to running a successful business, or government department. However, there may be instances when it makes sense to outsource certain tasks, like FMLA management, to a third party, like DWS. When doing so, it's important to consider potential drawbacks to outsourcing HR functions, such as:

- HR manages many important tasks that have to do with a company's employees. Outsourcing those tasks may result in loss of internal controls.
- Employees may feel disconnected from the company or department and prefer to interact with internal HR staff.
- A company or government department may have less capacity for flexibility with their employees if they are required to adhere to policies and procedures mandated by an external entity.

The positive result of implementing a mandatory paid family and medical leave program, and presumably the intent, is to make the benefits available to a larger population and to ease 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 and job creation.

SB3 does not fully address the following items:

- The federal Family and Medical Leave Act (FMLA) requires private employers with 50 or more employees to provide FMLA benefits as outlined in the federal program. The state FMLA program requires employers of one or more employees to contribute to the program for those employees who opt in. Most start-up companies and small businesses younger than 3-5 years have very little resources, and often are not yet realizing a profit. The requirement to contribute to the fund in the early stages of the company's development may create a financial burden on the employers to the extent that it could negatively impact their hiring plans, and subsequently result in delayed or reduced job creation.
- It does not appear that there is any requirement that the employee request approval or notify the employer that they are applying for this program. DWS is required to notify the employer of the approved application and the employee is required to provide a copy of that approved application to the employer, but the employer has no knowledge of the

employee's application until it has been completed and approved by DWS. This could put the employer in a burdensome situation if they have little or no notice that the employee will be out on extended leave and the employer is forced to find a temporary replacement quickly.

- It appears that participation in the state FMLA program on the part of the employee is voluntary but is mandatory for the employer. There are no provisions that would allow the employee who opted out of the paid family and medical leave program to exhaust accrued leave without penalty if they find themselves in a situation that requires extended unpaid family or medical leave.
- The bill does not address the potential fiscal impact of the paid family and medical leave program to state agencies, which currently adhere to the federal FMLA requirements, which include unpaid leave.
- The bill does not address whether an employee may use accrued leave in conjunction with the Paid Family and Medical Leave Act.
- The bill does not address whether DWS or an employer may require an employee to exhaust accrued leave before implementing the Paid Family and Medical Leave Act compensation.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicate of House Bill 6.

TECHNICAL ISSUES

Section 2, paragraph E of SB3 defines an employer as “a person that has one or more employees within the state.” However, in Section 4, paragraph C of the bill, it notes that the employer contribution will be assessed for companies with five or more employees.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS