

# PAID FAMILY AND MEDICAL LEAVE TASK FORCE



New Mexico

**Paid Family and Medical Leave**

Taskforce

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Report and Recommendations to the New Mexico  
Legislature

October 2022

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# Paid Family & Medical Leave Task Force – Final Report and Recommendations

## SECTION 1 - Introduction

### The Intention

The United States remains a global outlier as the only industrialized country in the world without any mandated paid family and medical leave benefits provided to workers. Federally, little progress has been made in improving access to leave for workers who need to take time away from the labor force due to a serious medical condition, family caregiving responsibilities, or bonding with a new child since the federal Family & Medical Leave Act of 1993 (FMLA).

FMLA provides unpaid leave to a limited category of workers. To qualify, workers must work for an employer with at least fifty employees for at least 12 months. Additionally, the employee must have worked at least 1,250 hours during the last 12 months. The benefits of FMLA are limited in New Mexico (NM), where less than 4% of all employers have more than 50 employees.<sup>1</sup> Even for the minority of NM workers who qualify for FMLA, few can afford to take unpaid leave.

Many working NM families live paycheck-to-paycheck, and any disruption in income can have devastating impacts on a family's financial wellbeing.<sup>2</sup> Research finds that people who take unpaid FMLA leave are more likely to be white, highly educated, higher-income, and married.<sup>3</sup> Therefore, those who are most likely to benefit from FMLA are least likely to access the program. Single-parent and multi-generational households, women, people of color, low-wage workers, and people with disabilities face higher rates of chronic disease and have fewer resources to manage medical bills or the costs of welcoming a new child.<sup>4</sup> This means that in practice, FMLA can exacerbate existing disparities.

In contrast, a Paid Family & Medical Leave (PFML) program can address disparities while supporting small businesses, promoting innovation and entrepreneurship, and contributing to a more vibrant and resilient economy.<sup>3</sup> Key components that ensure a PFML program will be equitably accessible and address racial and gender disparities include:

- The establishment of a state-administered Trust Fund to disburse compensation payments to PFML recipients funded by employee and employer contributions
- Universal coverage for all employees regardless of the duration of employment, size of employer, industry, or number of hours worked in current employment
- Optional participation for self-employed individuals and contract workers
- Portability of benefit across all jobs worked by an employee (concurrently or sequentially)
- Compensation payments adequate to ensure that low-wage earners can afford to participate
- Contributions adequate to ensure continued Trust Fund solvency while minimizing financial impacts on businesses and working New Mexicans

### The History

The New Mexico legislature has had Paid Family & Medical Leave under consideration since at least 2002, when a Joint Memorial sponsored by Senator Mimi Stewart was passed to study PFML. Even before that, advocates were exploring the issue through polling and surveys with employers and employees in the state. See Figure 1 for a timeline of related bills and memorials.

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<sup>1</sup> University of New Mexico Bureau of Business and Economic Research analysis. See Section 6 of this report.

<sup>2</sup> Prosperity Now Scorecard for NM economic wellbeing ranking. <https://scorecard.prosperitynow.org/data-by-location#state/nm>

<sup>3</sup> United States Bureau of Labor Statistics. (2019). Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets. <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>

<sup>4</sup> National Partnership for Women and Families. (2018). Paid Family and Medical Leave. A racial justice issue and opportunity. <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-family-and-medical-leave-racial-justice-issue-and-opportunity.pdf>

## HISTORY OF PAID FAMILY AND MEDICAL LEAVE LEGISLATION IN NEW MEXICO

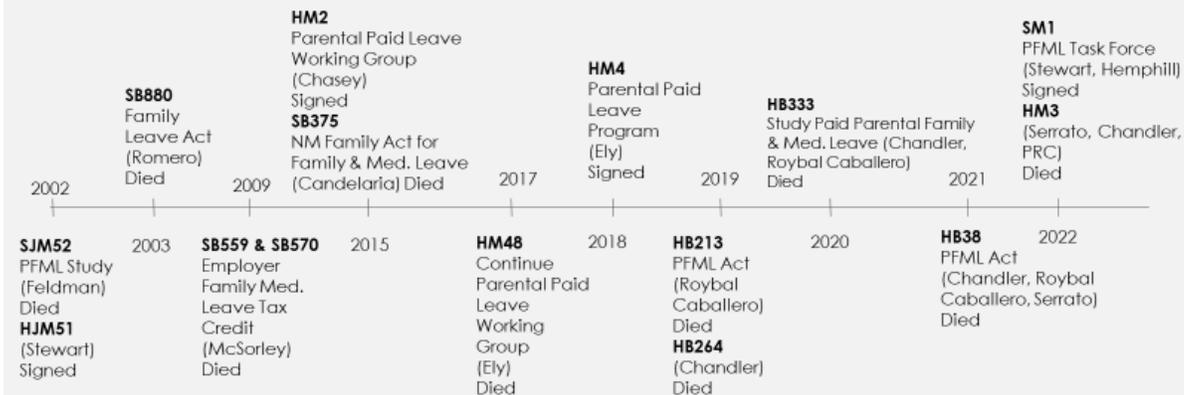


Figure 1: History of Paid Family and Medical Leave legislation considered in NM state legislature<sup>5</sup>

In 2015, Representative Chasey sponsored [HM2](#), which requested the Family-friendly Workplace Task Force to convene a parental paid leave working group to develop recommendations for a parental paid leave program and a publicly managed parenting workers' leave fund. Although business groups were invited to participate, most refused, and the recommendations were primarily provided by advocacy organizations and governmental agencies.<sup>6</sup>

Recommendations from that Working Group were then utilized to draft a Paid Family & Medical Leave Act (PFMLA) bill, which was first considered in the 2019 legislative session. A revised version of the Paid Family & Medical Leave Act was again considered in the 2021 legislative session. In each of those legislative sessions, specific areas of disagreement were identified by stakeholders during public comment periods and by legislators during hearings.

### The Purpose

In 2022, the Senate passed Senate Memorial 1 – [New Mexico Paid Family and Medical Leave Task Force](#), co-sponsored by Senators Mimi Stewart and Siah Correa Hemphill.<sup>7</sup> A mirror memorial (House Memorial 3) received a “do pass” vote in the House Labor, Veteran, and Military Affairs Committee but was not debated on the House floor before the end of the legislative session. HM3 was sponsored by Representatives Linda Serrato, Christine Chandler, and Patricia Roybal Caballero.

Representatives Serrato, Chandler, and Roybal Caballero each allocated funds in SB1 (2022 3<sup>rd</sup> Special Session) to support NMDWS in achieving the goals of the Task Force.<sup>8</sup> The total allocation for the Task Force was \$160,000.

SM1/HM3 requests the Workforce Solutions Department to “convene a Task Force to finish the work of recommending legislation for Paid Family and Medical Leave and report to the Governor and the legislature by October 1, 2022.” SM1/HM3 also instructs “the task force to present its report and recommendations to the governor and the legislative finance committee, the legislative health and human services committee and other

<sup>5</sup> Access bills through New Mexico State Legislature website. <https://www.nmlegis.gov/Legislation/BillFinder/Number>

<sup>6</sup> Southwest Women’s Law Center. Paid Family Leave Report. <https://www.swwomenslaw.org/wp-content/uploads/2018/12/Paid-Family-Leave-Report2-3.pdf>

<sup>7</sup> Senate Memorial 1 is included in Appendix I of this report.

<sup>8</sup> New Mexico state legislature. Senate Bill 1. Third Special Session 2022.

<https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=1&year=22s>

appropriate legislative interim committees by October 1, 2022". The report should contain "economic modeling of estimated yearly program costs and revenue and comprehensive cost assessments of initial and continuing implementation of a paid family and medical leave act."

The Memorial delineates a balanced Task Force composition to include:

- A statewide nonprofit organization that provides legal services and policy expertise for women and girls;
- A statewide nonprofit organization that provides policy expertise on the interests of children;
- The New Mexico public health association;
- A statewide nonprofit organization with legal and policy expertise on elder rights;
- A statewide coalition that focuses on perinatal issues;
- An organization representing persons with disabilities;
- Two statewide organizations representing labor, at least one of which represents health care employees;
- Native American tribal government;
- The American Indian chamber of commerce of New Mexico;
- Two statewide organizations representing businesses;
- A statewide organization representing Hispano business owners;
- A statewide organization representing lesbian, gay, bisexual and transgender persons;
- A statewide organization representing African American business owners;
- The bureau of business and economic research at the university of New Mexico;
- A member of the acequia association;
- One small business owner appointed by the senate president pro tempore; and
- One small business owner appointed by the minority floor leader of the senate.

### The Process

The NM Department of Workforce Solutions (NMDWS) issued a call for applications for Task Force members on May 18, 2022. NMDWS received a total of 19 applications with some falling into the same category. Seventeen members were appointed to the Task Force to fill 17 of 19 slots. Although additional efforts to identify members were undertaken by NMDWS and the contracted convener for the Task Force, Kesselman-Jones, participants to represent Native American tribal government and a statewide organization representing African American business owners were not identified. Appointed membership of the Task Force is listed on page 7.

The Task Force was first convened for an orientation and organizing meeting on June 24, 2022. Following the organizing meeting, the meeting schedule and planned topics were as follows:

- July 18 – Definitions
- August 3 – Request Process & Communications
- August 16 – Economic Modeling
- August 31 – Administration
- September 12 – Final Recommendations

The Task Force met for a total of approximately 12 hours using videoconferencing in a 90-day period. Recordings of each meeting and agendas are available and accessible to the public.<sup>9</sup>

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<sup>9</sup> Materials available here: <https://www.dws.state.nm.us/PFML>

### 2022 Paid Family and Medical Leave Task Force Appointees

Full Name	Affiliation	Organization
McDaniel, Tracy	A. A statewide nonprofit organization that provides legal services and policy expertise for women and girls	Southwest Women's Law Center
Vigil, Jacob	B. A statewide nonprofit organization that provides policy expertise on the interests of children	New Mexico Voices for Children
Gonzales, Janis	B. A statewide nonprofit organization that provides policy expertise on the interests of children	NM Pediatric Society
Abeyta, Tessa	C. The New Mexico Public Health Association	The New Mexico Public Health Association
Umi, Othiamba	D. A statewide nonprofit organization with legal and policy expertise on elder rights	AARP New Mexico
Muse, Sunshine	E. A statewide coalition that focuses on perinatal issues	New Mexico Birth Equity Collaborative
Leroi, Chris	F. An organization representing persons with disabilities	The Arc of New Mexico
Aubert, Robert	G. Two statewide organizations representing labor, at least one of which represents health care employees	IUPAT District Council 88 Local 823
Lipshutz, Jon	G. Two statewide organizations representing labor, at least one of which represents health care employees	New Mexico Federation of Labor, AFL-CIO
Aragon, Marvis	I. The American Indian chamber of commerce of New Mexico	American Indian Chamber of Commerce of New Mexico
Black, Rob	J. Two statewide organizations representing businesses	New Mexico Chamber of Commerce
Sonntag, Carla J.	J. Two statewide organizations representing businesses	New Mexico Business Coalition
Martinez, Justin	K. A statewide organization representing Hispano business owners	Albuquerque Hispano Chamber of Commerce
Meyers, Pamm	L. A statewide organization representing lesbian, gay, bisexual and transgender persons	The New Mexico Out Business Alliance
Reagan, Suzan	N. The bureau of business and economic research at the university of New Mexico	UNM Bureau of Business and Economic Research
Garcia, Paula	O. A member of the acequia association	New Mexico Acequia Association
Tsuzuki, Kei	P. Small Business owner	Kei and Molly Textiles

All meetings after the orientation meeting were open to the public and were announced in advance on the NMDWS website as well as through regular email communications. Thirty minutes were reserved at the

beginning of each meeting to provide time for public comment. Interested members of the public could sign up for oral or written public comment in advance.<sup>10</sup> Written comments were read into the record during this portion of the meeting.

At the orientation meeting on June 24, Southwest Women’s Law Center presented an overview of Paid Family & Medical Leave and outlined the identified areas of concern. Task Force members were invited to contribute additional areas of discussion for Task Force consideration.

As the reference point for initial discussion, the Task Force used the most recent version of the Paid Family & Medical Leave Act to be considered by the legislature, [2021 House Bill 38 as amended](#) by House Commerce & Economic Development Committee and House Judiciary Committee.

To the extent possible, the group worked toward consensus on issues. In the topic-focused meetings, polls were used to gauge the level of agreement among participants on each area of interest. This polling process helped planners determine where additional time, research, and consideration were needed and in which areas there was sufficient agreement to consider issues resolved. An issue was considered to reach consensus with at least 80% concurrence or neutrality.

On September 10, Kesselman-Jones distributed a draft copy of this report to Task Force members along with a survey asking members to vote on the topics without consensus in prior meetings. For each issue, Task Force members were asked to vote on a proposed recommendation reflecting prior Task Force discussion. Task Force members were offered three options – “support”, “oppose”, or “neutral” – and given opportunity to provide comment. On September 12, the Task Force convened for a final meeting. At this meeting, the Task Force was given opportunity for discussion and reflection on the Task Force process and the draft report. Time was given to discussing several items that had arisen out of the Task Force process and for which proposed recommendations had not been previously formally discussed by the Task Force. Additional polling was conducted on those issues at that time.

Following the September 12 meeting, Kesselman-Jones reached out to members who had not yet completed the survey distributed on September 10. Fifteen of 17 Task Force members participated in the final vote. For issues without consensus, the Issue Analysis section includes all comments provided by Task Force members on the final survey. Issues discussed and Task Force votes on each are summarized in Section 2. In Section 3, a more detailed analysis of each issue is provided with highlights of considerations and concerns raised by the Task Force during deliberations.

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<sup>10</sup> Form can be accessed and viewed here. <https://form.jotform.com/KessJones/nmpfml-task-force-public-comment>

## SECTION 2 - The Output

The Task Force analyzed each issue area and were able to quickly reach general consensus on some areas. Other topic areas needed additional research and consideration, including those that emerged through the Task Force process. A summary of topics and recommendations are below. Additional exploration of the rationale and opposing viewpoints are presented in Section 3 of this report.

HB38 (2021) Element	Related Recommendations	Discussion Dates
<p><b>1. Definitions of family</b> Section 2, subsections A, D, H, and P</p>	<p><b>Recommendation:</b> Family Definitions, including the definition of child, domestic partner, family member, and spouse should remain unchanged in future versions of the legislation.</p> <p><u>Task Force poll – 7/18/2022</u> <i>Question: Please indicate the extent to which the definitions listed should be modified in order to accommodate the interests of your constituency.</i> 9 of 11 - there are no concerns with the existing definitions. 2 of 11 - there may be one or two minor concerns with the definitions.</p>	<p>7/18/2022</p>
<p><b>2. Employee definition</b> Section 2 subsection E &amp; Section 4 subsection A</p>	<p><b>Recommendation:</b> Adopt the current proposed definitions of employee in final PFMLA legislation. Consider separately whether employers are required to provide job protected leave for new employees.</p> <p><u>Task Force poll votes – 7/18/2022</u> <i>Question: Please indicate the extent to which the definitions listed should be modified in order to accommodate the interests of your constituency.</i> 7 of 11 - there are no concerns with the existing definition 4 of 11 - there are one or two minor concerns with this definition</p> <p><u>Vote on proposed recommendation – 9/30/2022*</u> 11 of 15 – support 4 of 15 – oppose *73.3% of Task Force members voted to support. Consensus was not reached. Member comments provided in Section 3.</p>	<p>7/18/2022</p> <p>Electronic vote on proposed recommendation closed 9/30/2022</p>
<p><b>3. Employer definition</b> Section 2 subsection F &amp; Section 4 subsection A</p>	<p><b>Recommendation:</b> Employer definition should remain unchanged in future versions of PFML legislation.</p> <p><u>Task Force poll – 7/18/2022</u> <i>Q: Please indicate the extent to which the definitions listed should be modified in order to accommodate the interests of your constituency.</i> 9 of 11 - this definition should not be modified. 2 of 11 - one or two minor concerns with this definition</p>	<p>7/18/2022</p>
<p><b>4. Serious health condition definition</b> Section 2 subsection O</p>	<p><b>Recommendation:</b> Serious health condition definition should remain unchanged in future versions of PFML legislation.</p> <p><u>Task Force poll – 7/18/2022</u> <i>Q: Please indicate the extent to which the definitions listed should be modified in order to accommodate the interests of your constituency.</i> 12 of 12 - this definition should not be modified.</p>	<p>7/18/2022</p>

HB38 (2021) Element	Related Recommendations	Discussion Dates
<b>5. Medical leave definition</b> Section 2 subsection M	<p><b>Recommendation:</b> Medical leave definition should remain unchanged in future versions of PFML legislation.</p> <p><u>Task Force poll – 7/18/2022</u></p> <p><i>Q: Please indicate the extent to which the definitions listed should be modified in order to accommodate the interests of your constituency.</i></p> <p>11 of 11 - this definition should not be modified.</p>	7/18/2022
<b>6. Family leave definition</b> Section 2 subsection G	<p><b>Recommendation:</b> Family leave definition should remain unchanged in future versions of PFML legislation.</p> <p><u>Task Force poll – 7/18/2022</u></p> <p><i>Q: Please indicate the extent to which the definitions listed should be modified in order to accommodate the interests of your constituency.</i></p> <p>10 of 12 - this definition should not be modified.            2 of 12 - one or two minor concerns with this definition.</p>	7/18/2022
<b>7. Additional causes for leave</b> Would be added to future versions of PFMLA legislation	<p><b>Recommendation:</b> Include bereavement following the loss of a child, and leave due to domestic violence, sexual assault or stalking in the final version of PFML legislation.</p> <p><u>Task Force poll – 7/18/2022</u></p> <p><i>Q: Should any of the following be included in PFML as a cause for leave?</i></p> <p>8 of 10 - Leave necessary due to domestic violence, sexual assault, or stalking            10 of 10 - Bereavement for loss of a child            5 of 10 - Circumstances arising out of a family member being on active-duty military service</p> <p><u>Task Force poll – 9/12/2022</u></p> <p>8 of 8 voted to support “<i>recommendation to include leave for bereavement for a child under 18 who is sick</i>”            7 of 8 voted to support “<i>recommendation to include leave for bereavement in cases of stillbirth and miscarriage in the report.</i>”</p> <p><u>Vote on proposed recommendation – 9/30/2022*</u></p> <p>11 of 15 – support            1 of 15 – neutral            3 of 15 – oppose</p> <p>*The proposed recommendation was amended during the 9/12 meeting. One Task Force member voted to oppose because the survey language did not align with the amended recommendation to include bereavement for the loss of a child due to illness or injury.</p>	7/18/2022  Follow-up on 9/12/2022  Electronic vote on proposed recommendation closed 9/30/2022

HB38 (2021) Element	Related Recommendations	Discussion Dates
<b>8. Maximum length of leave</b> Section 5 subsection C	<p><b>Recommendation:</b> Maintain 12 weeks as the maximum leave amount for all causes.</p> <p><u>Task Force poll – 7/18/2022</u>  <i>Q: What should be the standard maximum length of leave to care for a family member?</i>            10 of 11 - the maximum duration of leave should not be modified            1 of 11 - “none of the above” (options ranged from 8 to 26 weeks)</p> <p><u>Task Force poll – 7/18/2022</u>  <i>Q: Should any of the following circumstances warrant longer than the standard length of leave determined to care for a family member?</i>            2 of 11 – one’s own disability            3 of 11 – one’s own serious health condition            6 of 11 – pregnancy complications            4 of 11 – bereavement for a child            1 of 11 – bonding with a new child            1 of 11 – domestic violence, sexual assault, stalking            0 of 11 – military deployment            5 of 11 – None</p> <p><u>Vote on proposed recommendation – 9/30/2022*</u>            10 of 15 – support            1 of 15 - neutral            4 of 15 – oppose            *73.3% of Task Force members voted to support or remain neutral. Consensus was not reached. Member comments provided in Section 3.</p>	7/18/2022  Electronic vote on proposed recommendation closed 9/30/2022

HB38 (2021) Element	Related Recommendations	Discussion Dates
<p><b>9. Minimum increments of leave</b> Would be added to future versions of PFMLA legislation</p>	<p><b>Recommendation:</b> Include a minimum leave increment of four hours. <u>Task Force poll – 7/18/2022</u> <i>Q: The bill does currently not specify minimum leave. Should there be a minimum increment?</i> 7 of 10 - legislation should include minimum increments of leave 3 of 10 - legislation should not include minimum increments of leave</p> <p><u>Task Force poll – 7/18/2022</u> <i>Q: What should be the minimum length of leave?</i> 2 of 11 – one hour 6 of 11 - four hours 3 of 11 votes – eight hours</p> <p><u>Vote on proposed recommendation – 9/30/2022*</u> 9 of 15 – support 2 of 15 - neutral 4 of 15 – oppose *73.3% of Task Force members voted to support or remain neutral. Consensus was not reached. Member comments provided in Section 3.</p>	<p>7/18/2022</p> <p>Electronic vote on proposed recommendation closed 9/30/2022</p>
<p><b>10. Implementation timeline</b> Section 15 subsection E Section 14 subsection A Section 4 subsections B-D Section 5 subsections A-B</p>	<p><b>Recommendation:</b> Change Section 4 subsections B-D to January 1, 2025 to provide time for NMDWS to provide training, education, and support to employers and workers after rulemaking is complete on July 1, 2024. <u>Task Force poll – 8/3/2022</u> <i>Q: Recommended Start Date?</i> 6 of 8 - extend first contributions to 1/1/2025 2 of 8 - leave the proposal ‘as-is’</p> <p><u>Vote on proposed recommendation – 9/30/2022</u> 6 of 12 – support 4 of 12 - neutral 2 of 12 – oppose</p>	<p>8/3/2022</p>
<p><b>11. Notice of Determination timeline</b> Section 5 subsection I</p>	<p><b>Recommendation:</b> Timelines related to notice of determination should remain unchanged in future versions of PFMLA legislation. <u>Task Force poll – 8/3/2022</u> <i>Q: Notice of Determination Timeline - Does this seem reasonable?</i> 7 of 7 - the timeline currently proposed is reasonable.</p>	<p>8/3/2022</p>

HB38 (2021) Element	Related Recommendations	Discussion Dates
<p><b>12. Return to Work Notification timeline</b> Section 8 subsections A &amp; B</p>	<p><b>Recommendation:</b> Revise current proposal to specify that both employers and self-employed individuals “shall notify the department within 10 business days of the self-employed individual’s return to work” <u>Task Force poll – 8/3/2022</u> <i>Q: Return to Work Notification Timeline - Does this seem reasonable?</i> 4 of 6 - timeline currently proposed is reasonable 2 of 6 - timeline currently proposed is not reasonable  <u>Vote on proposed recommendation – 9/30/2022</u> 13 of 15 – support 2 of 15 – oppose</p>	<p>8/3/2022  Electronic vote on proposed recommendation closed 9/30/2022</p>
<p><b>13. Appeal procedure timelines</b> Section 10 subsection A</p>	<p><b>Recommendation:</b> Revise to include “the employee, the self-employed individual or an authorized representative” in application, appeals, and administrative action sections. <u>Task Force poll – 8/3/2022</u> <i>Q: Appeal Procedures - Does this seem reasonable?</i> 7 of 8 - timeline currently proposed is reasonable 1 of 8 - timeline currently proposed is not reasonable  <u>Vote on proposed recommendation – 9/30/2022</u> 12 of 15 – support 1 of 15 - neutral 2 of 15 – oppose</p>	<p>8/3/2022  Electronic vote on proposed recommendation closed 9/30/2022</p>
<p><b>14. Administrative Action timelines</b> Section 10 subsections B &amp; C</p>	<p><b>Recommendation:</b> Revise to include “the secretary or an authorized representative” to Section 10 – “Adverse Determinations, Appeals Procedures, Administrative Actions, Departmental Disciplinary Powers.” <u>Task Force poll – 8/3/2022</u> <i>Q: Administrative Action Timeline - Does this seem reasonable?</i> 6 of 9 - the timeline currently proposed is reasonable 3 of 9 - the timeline currently proposed is not reasonable  <u>Vote on proposed recommendation – 9/30/2022</u> 13 of 15 – support 2 of 15 – oppose</p>	<p>8/3/2022  Electronic vote on proposed recommendation closed 9/30/2022</p>

HB38 (2021) Element	Related Recommendations	Discussion Dates
<p><b>15. Maximum wage replacement and adjustments to maximum</b> Section 5 subsections F(1), F(3), G(4)</p>	<p><b>Recommendation:</b> Create consistency by selecting the maximum wage replacement as either the annual mean wage of all occupations in New Mexico OR \$60,000. If a maximum of \$60,000 is selected, include revision authorizing the Secretary to adjust the maximum compensation payments without requiring legislative action.</p> <p><u>Task Force poll – 8/16/2022</u>  <i>Q: Which should be utilized in the bill?</i>            5 of 9 - \$60,000            2 of 9 - Occupational Employment and Wage Statistics (OEWS) Median Wage            2 of 9 - Percentage above median wage</p> <p><u>Task Force poll votes – 8/16/2022</u>  <i>Q: Adjustments to max (\$60K)</i>            4 of 11 - leave the language unchanged            4 of 11 - include verbiage so secretary can make adjustments without going to the legislature            3 of 11 - “other”</p> <p><u>Vote on proposed recommendation – 9/30/2022</u>            11 of 15 – support            2 of 15 – neutral            2 of 15 – oppose</p>	<p>8/16/2022</p> <p>Electronic vote on proposed recommendation closed 9/30/2022</p>
<p><b>16. Solvency adjustments</b> Section 3 subsection D</p>	<p><b>Recommendation:</b> Include a solvency trigger in future versions of PFMLA legislation. At minimum, the bill should include a formula based on benefits paid in the prior fiscal year, administration costs in the prior fiscal year, and net assets remaining in the fund</p> <p><u>Task Force poll - 8/16/2022</u>  <i>Q: Solvency</i>            11 of 12 - revisit and make the solvency trigger more specific            1 of 12 - leave the language unchanged</p> <p><u>Task Force poll - 9/12/2022</u>  <i>Q: Include in solvency trigger:</i>            5 of 8 - formula for assessing rate adjustment needs            4 of 8 - annual date of assessment            2 of 8 - cap on the maximum annual increase</p>	<p>8/16/2022</p> <p>Follow-up on 9/12/2022</p>
<p><b>17. Wage definition</b> Would be added to future versions of PFMLA legislation</p>	<p><b>Recommendation:</b> Include a definition of wages that is clear, easy to understand, and aligns with existing statutes.</p> <p><u>Task Force poll – 8/16/2022</u>  <i>Q: Wage Definition</i>            9 of 11 – use a simpler wage definition            2 of 11 - use the Unemployment Insurance wage definition</p>	<p>8/16/2022</p>

HB38 (2021) Element	Related Recommendations	Discussion Dates
<p><b>18. Waiver of employer contributions for small businesses and sole proprietors</b></p> <p>Would be added to future versions of PFMLA legislation</p>	<p><b>Recommendation:</b> Waive employer contributions for businesses with fewer than five employees. Waive the equivalent of the employer contribution for self-employed individuals who opt in.</p> <p><u>Task Force poll – 8/16/2022</u></p> <p><i>Q: Exclusions for Small business under 20 employees</i></p> <p>8 of 10 – no exclusions for businesses of any size</p> <p>2 of 10 - create exclusions for small businesses under 10 employees</p> <p><u>Task Force poll – 8/16/2022</u></p> <p><i>Q: Should a small business or sole-proprietor have to pay their portion plus .05 for a total of .09?</i></p> <p>3 of 10 - no waivers for small businesses</p> <p>4 of 10 - waive for sole-proprietors and small businesses under 5 employees</p> <p>1 of 10 - waive for sole-proprietors and small businesses under 10 employees</p> <p>1 of 10 - waive for sole-proprietors and small businesses under 20 employees</p> <p>1 of 10 - “none of the above”</p> <p><u>Task Force poll – 9/12/2022</u></p> <p><i>Q: Small Business Waiver</i></p> <p>10 of 10 voted to waive contributions for sole-proprietors and businesses with fewer than 5 employees</p> <p><u>Vote on proposed recommendation – 9/30/2022*</u></p> <p>10 of 15 – support</p> <p>1 of 15 - neutral</p> <p>4 of 15 – oppose</p> <p>*73.3% of Task Force members voted to support or remain neutral. Consensus was not reached. Member comments provided in Section 3.</p>	<p>8/16/2022</p> <p>Follow-up on 9/12/2022</p> <p>Electronic vote on proposed recommendation closed 9/30/2022</p>
<p><b>19. Job protection dependent on length of employment</b></p> <p>Section 8 subsection B</p>	<p><b>Recommendation:</b> Revise section 8 subsection B to state that employees who have been employed with the current employer for at least 90 days have the right to return to a position which is “the same as or greater than those of the position from which the employee took leave.”</p> <p><u>Task Force poll – 8/31/2022</u></p> <p><i>Q: What is the appropriate length of employment before an employee is granted job protection for paid family and medical leave?</i></p> <p>1 of 10 - immediate job protection</p> <p>0 of 10 - no job protection beyond what exists in federal FMLA</p> <p>6 of 10 - job protection after 90 days of employment</p> <p>1 of 10 - job protection after 180 days of employment</p> <p>2 of 10 - job protection after one year of employment</p> <p><u>Vote on proposed recommendation - 9/30/2022*</u></p> <p>9 of 15 – support</p> <p>1 of 15 - neutral</p> <p>5 of 15 – oppose</p> <p>*67% of Task Force members voted to support or remain neutral. Consensus was not reached. Member comments provided in Section 3.</p>	<p>8/31/2022</p> <p>Electronic vote on proposed recommendation closed 9/30/2022</p>

## SECTION 3 - Issue Analysis

### 1. Definitions of Family

HB38w/a Section 2, subsections A, D, H, and P

A. “child” – a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis, who is:

- (1) under 18 years of age; or
- (2) eighteen years of age or older and incapable of self-care because of mental or physical disability

D. “domestic partner” – a person with whom another person maintains a household and a mutual committed relationship, without a legally recognized marriage

H. “family member” – child, parent, spouse or domestic partner, grandparent, great-grandparent, grandchild or sibling, any other individual related by blood or affinity whose close association ... is the equivalent of a family relationship

P. “spouse” – a partner to a lawful marriage

#### **Recommendation(s):**

- Adopt the current proposed family definitions in final PFMLA legislation
- Use rulemaking to ensure proper verification of family relationships, particularly in cases involving domestic partnership and “by blood or affinity” relationships

#### **Rationale:**

- New Mexico families are diverse in their composition, and the definition of family is designed to ensure that all families, including multigenerational, LGBTQIA, and other diverse families have equal access to PFMLA benefits.
- 37% of NM children live in single-parent families, and 3% are being raised by grandparents.<sup>11</sup> In total, there are 37,000 NM children in kinship care.<sup>12</sup>
- 29% of LGBTQIA+ adults in New Mexico are raising children.<sup>13</sup> Using gender-neutral language is important to ensure that all families have equal access to the program, regardless of gender identity.
- Equal access to bonding leave for both birthing and non-birthing parents can reduce gender discrimination in the workplace, disrupting the assumption that women of childbearing age are more likely than men to take parental leave.<sup>14</sup>
- When men and non-birthing parents have equal access to bonding leave, they report more balanced household responsibilities, improved bonding, parental engagement, and workplace satisfaction.<sup>15</sup>
- As the nation’s largest employer, the Federal government has been using “blood or affinity” language in its leave policies since 1969. Today, federal workers can use up to 12 weeks of sick leave annually to care for family members (including extended family members) with serious health conditions.<sup>16</sup>
- The only difference between HB38w/a and U.S. OPM definition is the inclusion of “great-grandparent”, which is included in New Mexico’s Public and Private Caregiver Leave Acts ([2019 SB123](#)).

<sup>11</sup> New Mexico Voices for Children. 2021 New Mexico KIDS COUNT Data Book. <https://www.nmvoices.org/archives/16481>

<sup>12</sup> Kids Count Data Center. Children in kinship care. <https://datacenter.kidscount.org/data/tables/10455-children-in-kinship-care>

<sup>13</sup> Movement Advancement Project. State Profiles. [https://www.lgbtmap.org/equality-maps/profile\\_state/NM](https://www.lgbtmap.org/equality-maps/profile_state/NM)

<sup>14</sup> U.S. Department of Labor. Policy Brief: Paternity Leave: why parental leave for fathers is so important for working families. <https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/PaternityBrief.pdf>

<sup>15</sup> Bartel A, Rossin-Slater M, Ruhm C, Stearns J, Waldfogel J. Paid Family Leave, Fathers’ Leave-Taking, and Leave-Sharing in Dual-Earner Households. <https://www.dol.gov/>

<sup>16</sup> Definitions Related to Family Member for Certain Federal Leave Purposes. U.S. Office of Personnel Management. Accessed September 3, 2022. <https://www.opm.gov/>

## 2. Employee definition

HB38w/amendments

### Section 2

E. "employee" means a person working within the state who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, and includes a person employed by the state or a political subdivision of the state; "employee" does not mean an employee of an employer subject to the provisions of Title II of the federal Railway Labor Act or an employee as defined in either the federal Railroad Unemployment Insurance Act or the federal Employers' Liability Act or other comparable federal law

### Section 4

A. The Paid Family and Medical Leave Act applies to:

- (1) All public and private employees who are subject to state jurisdiction, except those employees who are employed by the United States;
- (3) self-employed individuals subject to state jurisdiction who opt into the program.

### Proposed Recommendation(s):

- Adopt the current proposed definitions of employee in final PFMLA legislation.
- Consider separately whether employers are required to provide job protected leave for new employees.

### Rationale:

- This definition includes all employees except railroad workers and federal employees.
- Employees of the state or political subdivisions of the state are included, and self-employed individuals can opt into the program.
- This broad definition ensures that the largest number of workers in the state are included in the program. This serves two purposes:
  - Maximizing the pool of individuals contributing to the Trust Fund ensures adequacy and predictability of revenues into the Trust Fund, securing continued solvency.
  - Creating protections for all employees regardless of wages, size of employer, or length of employment with their current employer.
- At some point in our working lives, nearly all NM workers will face a disruption in our working lives due to an unexpected illness for ourselves or a family member or to welcome a new child. The causes for leave are not always anticipated. Even young workers who do not expect to need this benefit in the near term may experience a disruption due to an accident or unexpected illness. Mandatory participation creates protections for those with unexpected injuries or illnesses.

### Member comments accompanying electronic survey responses:

- *Oppose*: I am not of the position that self-employed individuals should be under the definition of "employee."
- *Oppose*: The current definition appears to include part-time, seasonal workers as well as domestic workers. It also appears to incorporate all "employers" even if that employer is a family hiring the neighbor's child for childcare or pet care services. Employees under the definition should work for employers that are required to have a business license with the secretary of state's office at a minimum.
- *Support*: The language is consistent with other definitions.
- *Support*: Reduced definitions are detrimental to the overall public health of the community. As stated above events that require the use of PFML can happen to anyone and in any industry.
- *Oppose*: The Albuquerque Hispano Chamber of Commerce does not support the New Mexico PFMLA.
- *Oppose*: Employers cannot afford another government mandate on their business or in-state operations. This program is more stringent than the federal FMLA and should be OPTIONAL for all employees and employers.

### 3. Employer definition

HB38w/amendments

Section 2

F. “employer” means a person that has one or more employees within the state and includes an agent of an employer and the state or a political subdivision of the state

Section 4

A. The Paid Family and Medical Leave Act applies to:

(2) the employers of employees as described in Paragraph (1) of this subsection, whether the employer is physically located in the state

#### **Recommendation(s):**

- Adopt the current proposed employer definition in final PFMLA legislation.
- Consider separately whether employers are required to provide job protected leave for new employees.
- Consider separately whether employer contributions should be waived for small employers.

#### **Rationale:**

- This broad definition ensures that the largest number of workers in the state are included in the program. This serves two purposes:
  - Creating protections for all employees regardless of wages, size of employer, or length of employment with their current employer.
  - Ensuring predictability of revenues into the Trust Fund, securing long-term solvency, and reducing premium rates by maximizing the pool of individuals contributing to the Trust Fund.
- In recent years, remote work has grown increasingly common for employers of all sizes and many sectors.<sup>17</sup> The inclusion of employees whose employer is not physically located in the state will continue to grow in importance for New Mexico workers.
- The inclusion of remote workers residing in New Mexico may incentivize more remote workers to relocate to the state, growing both the economy and the population of working adults.<sup>18</sup>
- The majority of New Mexico employers are small employers. Only 4% of employers have greater than 50 employees. This means that 96% of employers in the state are not covered under federal FMLA, and the majority of employees lack even unpaid Family & Medical Leave protections.<sup>19</sup>
- Regardless of employer size or sector, all employees face medical and caregiving responsibilities. Ensuring that all employees are covered by state PFMLA is critical to creating an equitable program.
- However, small businesses may experience greater disruptions due to the financial costs and operational challenges associated with job protections. Those were considered separately by the Task Force and will be addressed later in this report.

<sup>17</sup> Global Workplace Analytics. Work-at-Home After Covid-19 - Our Forecast. <https://globalworkplaceanalytics.com/work-at-home-after-covid-19-our-forecast>

<sup>18</sup> Willis. D.D. (2021). Could a future with more remote working bring jobs to Doña Ana County? <https://www.lcsun-news.com/story/money/business/2021/04/07/could-future-more-remote-working-bring-jobs-las-cruces/7115111002/>

<sup>19</sup> University of New Mexico Bureau of Business and Economic Research. See Section 6.

#### 4. Serious Health Condition definition

HB38w/amendments

Section 2

O. “serious health condition” means an illness, injury, impairment or physical or mental condition that involves:

- (1) inpatient care in a hospital, hospice or residential medical facility\*; or
- (2) continuing treatment by a health care provider\*\*

#### **Recommendation(s):**

- Adopt the current proposed definition of “Serious health condition” in final PFMLA legislation.
- Adopt U.S. Department of Labor regulations defining inpatient care and continuing treatment through rulemaking.

#### **Rationale:**

- HB38w/amendments (Section 7 subsection C) states that employers subject to the federal Family and Medical Leave Act of 1993 may require an employee to take FMLA and PFMLA leave concurrently. Therefore, aligning the causes for leave as closely as possible with the FMLA qualifying conditions prevents employees from ‘stacking’ types of leave that would not qualify under FMLA and those that do qualify under FMLA consecutively within a 12-month period. Therefore, this definition aligns directly with FMLA qualifying conditions.<sup>20</sup>
- U.S. Department of Labor has further clarified definitions through regulation:<sup>21</sup>
  - Inpatient care is defined as an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care.
  - Continuing treatment is defined as a period of incapacity of more than three consecutive calendar days and any subsequent treatment of incapacity relating to the same condition than involves
    - Treatment two or more times by a health care provider; or,
    - Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment
    - Any period of incapacity due to pregnancy or for prenatal care
    - Any period of incapacity or treatment for incapacity due to a chronic serious health condition
    - A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, terminal stages of a disease)

<sup>20</sup> United States Department of Labor. Family and Medical Leave Frequently Asked Questions.

<https://www.dol.gov/agencies/whd/fmla/faq#6>

<sup>21</sup> United States Government Publishing Office. U.S. Department of Labor Wage and Hour Division regulations.

<https://www.govinfo.gov/content/pkg/CFR-2012-title29-vol3/pdf/CFR-2012-title29-vol3-sec825-114.pdf>

## 5. Medical Leave definition

HB38w/amendments

Section 2

M. “medical leave” means leave for which an employee can apply for leave compensation pursuant to the Paid Family & Medical Leave Act to allow the employee to provide care for the employee’s own serious health condition or to care for a family member with a serious health condition

### **Recommendation(s):**

- Adopt the current proposed “medical leave” definition in final PFMLA legislation.

### **Rationale:**

- HB38w/amendments (Section 7 subsection C) states that employers subject to the federal Family and Medical Leave Act of 1993 may require an employee to take FMLA and PFMLA leave concurrently. Therefore, aligning the causes for leave as closely as possible with the FMLA qualifying conditions prevents employees from ‘stacking’ types of leave that would not qualify under FMLA and those that do qualify under FMLA consecutively within a 12-month period. This definition aligns directly with FMLA qualifying conditions.

## 6. Family Leave definition

HB38w/amendments

Section 2 G. “family leave” means leave for which an employee can apply for leave compensation pursuant to the Paid Family & Medical Leave Act and that is granted to the employee to allow the employee to bond with a child of the employee within twelve months of the birth or adoption of a child or placement of a foster child with the employee or to care for a family member if the family member has a serious health condition

### **Recommendation(s):**

- Adopt the current proposed “family leave” definition in final PFMLA legislation.

### **Rationale:**

- HB38w/amendments (Section 7 subsection C) states that employers subject to the federal Family and Medical Leave Act of 1993 may require an employee to take FMLA and PFMLA leave concurrently. Therefore, aligning the causes for leave as closely as possible with the FMLA qualifying conditions prevents employees from ‘stacking’ types of leave that would not qualify under FMLA and those that do qualify under FMLA consecutively within a 12-month period.
- This definition aligns directly with FMLA qualifying conditions, except that FMLA also includes: “for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on covered active duty or call to covered active-duty status as a member of the National Guard, Reserves, or Regular Armed Forces.”<sup>22</sup>
- Although HB38 w/amendments does not include military deployment as a cause for leave, it is included in state 8 of 12 existing state PFMLA policies (CA, CO, CT, DE, MA, MD, NY, WA).<sup>23</sup> This recommendation will be considered separately below.

<sup>22</sup> United States Department of Labor. Family and Medical Leave Act webpage. <https://www.dol.gov/agencies/whd/fmla>

<sup>23</sup> National Partnership for Women and Families. State Paid Leave Laws. <http://www.nationalpartnership.org/our-work/economic-justice/state-paid-leave-laws.html>

## 7. Additional Causes for Leave

HB38w/amendments includes only the standard causes for leave (serious medical condition and family leave), which are included in federal FMLA and all state PFMLA policies.

Other causes for leave included in some state PFMLA programs include:<sup>24</sup>

- For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active-duty status as a member of the National Guard, Reserves, or Regular Armed Forces. (Federal, CA, CO, CT, DE, MA, MD, NY, WA)
- Leave necessary due to domestic violence, sexual assault, or stalking (CO, CT, NJ, OR)
- Bereavement (WA) - Effective June 9, 2022, specific to the seven days following the loss of a child if:
  - You would have qualified for prenatal or postnatal medical leave for the birth of your child,
  - You would have qualified for family leave to bond with your child during the first 12 months after birth, or
  - You had a child under the age of 18 placed in your home and qualified for bonding leave within the first 12 months of placement.
  - It does not include leave for the death of any other family member.

### Recommendation(s):

- Include bereavement leave following the loss of a child and safe leave due to domestic violence, sexual assault or stalking in the final version of PFML legislation.

### Rationale:

- Bereavement: Non-birthing parents would not be eligible to receive leave compensation following a stillbirth or death of a child shortly after birth. A birthing parent's ability to remain on leave postpartum would be dependent on their doctor's assessment of their need for continued medical care.
- Regardless of the cause of death, families experiencing the loss of a child need time away to manage legal, emotional, and family challenges. Providing short-term leave provides some relief to grieving families. As outlined above, Washington included bereavement of a child in their PFMLA program causes for leave.<sup>25</sup> Individuals who would have been eligible for bonding leave following birth or adoption if the child had not died (a stillbirth for example) would be eligible for seven days of leave following the loss.
- The PFML Task Force recommends including bereavement for the loss of a child due to illness or injury for which an employee would have been eligible for caregiving leave if the child had not died.
- Leave necessary due to domestic violence, sexual assault, or stalking: Financial independence is crucial for people fleeing domestic or sexual violence situations. Yet, the workplace is often the place where people in hiding from an abusive partner or family member continue to routinely visit, leaving them vulnerable to stalking and assault in the workplace. According to the U.S. Department of Labor, 27% of all workplace violence is attributed to domestic violence.<sup>26</sup> Nationally, half a million women miss work due to domestic violence each year.<sup>27</sup> This type of leave would protect both victims and their workplace.
- Exigencies related to military deployment: Adding this would bring the causes for leave would bring the state PFMLA policy in line with the federal FMLA policy. It also provides flexibility for families who are impacted by military operations and increases supports for military personnel and their families.<sup>28</sup>

<sup>24</sup> National Partnership for Women and Families. State Paid Leave Laws. <http://www.nationalpartnership.org/our-work/economic-justice/state-paid-leave-laws.html>

<sup>25</sup> Washington state government. What is family leave? <https://paidleave.wa.gov/question/what-is-family-leave/>

<sup>26</sup> ALICE. Workplace violence statistics and facts. <https://www.alicetraining.com/our-program/alice-training/workplace/workplace-violence/>

<sup>27</sup> Dalrymple, A. (2021). Eliminating violence and harassment in the world of work. U.S. Department of Labor. <https://blog.dol.gov/2021/12/09/eliminating-violence-and-harassment-in-the-world-of-work>

<sup>28</sup> A Better Balance. (2021). Military families and the need for paid leave. <https://www.abetterbalance.org/resources/military-families-the-need-for-paid-leave/>

## 8: Maximum Length of Leave

### HB38w/amendments

Section 5 C. An employee or self-employed individual is eligible for a maximum of twelve weeks of leave compensation during any twelve-month period; provided that an employee or self-employed individual may receive leave compensation taken intermittently and is not required to use twelve weeks of leave at any one time.

#### **Recommendation(s):**

- Adopt the current maximum of 12 weeks of leave compensation for all combined causes during any twelve-month period in final PFMLA legislation.
- Adopt intermittent leave provisions in final PFMLA legislation.

#### **Rationale:**

- Twelve weeks aligns with federal FMLA policy and is considered by PFMLA experts to be the minimum for a strong PFMLA policy.<sup>29</sup>
- The American Academy of Pediatrics and American Public Health Association both recommend that infants should not enter into child care settings until at least three months of age due to risks of communicable illness and its impacts on very young infants.
- Duration of postpartum leave is correlated with better maternal and child health outcomes, including breastfeeding initiation and duration, well-child care, vaccination rates, and improved maternal mental health.<sup>30</sup>
- In Washington, the average length of leave in 2021 was 7.2 weeks, which varies substantially based on cause of leave. Pregnancy complication claims had the highest number of weeks at 8.2. Individuals with medical claims took an average of 6.8. Those with military exigencies took the smallest duration of leave at 3.5 weeks.<sup>31</sup>
- For those managing a serious health condition or caring for a family member with a serious health condition, the length of leave would be based on a medical provider's assessment of the length of time needed for care and recovery, limiting potential for abuse of the program by those who are healthy enough to return to work.
- As demonstrated by Washington's data above, pregnancy complications can often require long-term medical treatment, including bedrest. For those who give birth following a complicated pregnancy, it is likely that they have expended some or all of their standard PFMLA benefits prior to the birth of their child. Allowing additional time for bonding leave or bereavement following a complicated pregnancy ensures the greatest likelihood that an employee will be fully recovered and have supports in place for their new child prior to returning to the workplace.

#### **Member comments accompanying electronic survey responses:**

- *Oppose:* There should be a special provision to extend leave with documentation and recommendation from a licensed physician.
- *Support:* Would support alignment with FMLA amount but also believe this could be reduced by two to four weeks.
- *Support:* As the state affiliate for the American Public Health Association, we concur that adding in 12 weeks of PFML would be best practice to ensure that infants are not prematurely placed in public settings, which increases their risk of disease and illness.
- *Oppose:* As a Midwife, lactation provider and mental health provider we understand that the postpartum period is at least 1yr. We also know that PP depression is on the rise in New Mexico and across our nation. Bonding with baby, and breastfeeding and healing from the birth of the newborn are key factors that support one's mental health and long term well being. Given New Mexico cutting direction to expand postpartum care and benefits up to one year through Medicaid, which covers 80% of the births

<sup>29</sup> A Better Balance. (2022). Key components: the essential elements of a strong paid family and medical leave program.

<https://www.abetterbalance.org/resources/key-components-the-essential-elements-of-strong-paid-family-and-medical-leave-law/>

<sup>30</sup> National Resource Center for Health and Safety In Child Care and Early Education. Caring for our children: National health and safety performance standards. [https://nrckids.org/files/cfoc3\\_updated\\_final.pdf](https://nrckids.org/files/cfoc3_updated_final.pdf)

<sup>31</sup> Washington Employment Security Department. Paid Family and Medical Leave claims data.

<https://esd.wa.gov/labormarketinfo/paidleave/claims-data>

in our state, it makes sense for this policy to follow that cutting edge framework instead of limiting it to be one of the most progressive states in the country and this is the time in reproductive health care to do it. Our request is for 6 months to a year.

- *Oppose:* The Albuquerque Hispano Chamber of Commerce does not support the New Mexico PFMLA.
- *Oppose:* Employers cannot afford another government mandate on their business or in-state operations. This program is more stringent than the federal FMLA and should be OPTIONAL for all employees and employers.

## 9. Minimum Increments of Leave

HB38w/amendments does not currently specify minimum increments of leave.

### **Recommendation(s):**

- Include a minimum leave increment of four hours in final PFMLA legislation.

### **Rationale:**

- While FMLA does not include a specific minimum increment of time, seven of twelve state policies do include this.<sup>3233</sup> Setting a minimum increment can provide clarity to the employee, the employer, and the NMDWS.
- Three proposed minimum increments of leave have been considered by the PFML Task Force. The rationale and concerns for each are outlined below.
- One-hour increments would create the greatest flexibility for workers who need to take a partial day away from work to attend medical appointments or care for family members. However, this would create the greatest administrative burden for businesses and NMDWS. This would create up to 480 “units” of leave for both the employer and NMDWS to track.
- Four-hour increments allow flexibility for employees and time to reset and prepare for work after an appointment or medical treatment. This also recognizes the reality that “it is difficult to accomplish anything in this state in an hour”. Maximum 120 “units” of leave.
- 8-hour increments would be the easiest for DWS and employers to process with only 60 “units”. However, it would limit flexibility and require workers to expend more leave than necessary. It may limit the usability of intermittent leave.

### **Member comments accompanying electronic survey responses:**

- *Oppose:* We need to have a minimum specified.
- *Oppose:* Should be 8 hours or one day. This becomes too difficult to track for the department and employers.
- *Support:* Seems like a reasonable time frame allowing for flexibility of leave taking and potentially less overhead in managing leave time.
- *Oppose:* The Albuquerque Hispano Chamber of Commerce does not support the New Mexico PFMLA.
- *Oppose:* Employers cannot afford another government mandate on their business or in-state operations. This program is more stringent than the federal FMLA and should be OPTIONAL for all employees and employers.

<sup>32</sup> United States Department of Labor. Wage and Hour fact sheet #28I. Calculation of leave under the Family and Medical Leave Act <https://www.dol.gov/agencies/whd/fact-sheets/28i-fmla-leave-calculation#:~:text=FMLA%20leave%20may%20be%20taken,no%20more%20than%20one%20hour.>

<sup>33</sup> National Partnership for Women and Families. State Paid Leave Laws. <http://www.nationalpartnership.org/our-work/economic-justice/state-paid-leave-laws.html>

## 10. Implementation Timeline

HB38w/amendments<sup>34</sup>

Section 15 E. The paid family and medical leave implementation advisory committee shall function from the date of its appointment, which shall be no later than July 1, 2023 until July 1, 2024.

Section 14 A. By July 1, 2024, the department shall adopt and promulgate rules to implement the provisions of the Paid Family and Medical Leave Act.

### Section 4

B. Beginning July 1, 2024 and for each calendar quarter thereafter, there is assessed against each participating employee one-half percent of the employee's earnings to fund leave compensation payments.

C. Beginning July 1, 2024 and for each calendar quarter thereafter, there is assessed against each employer with participating employees an amount equal to four-tenths percent of each participating employee's earnings to fund administrative costs and leave compensation payments.

D. Beginning July 1, 2024 and for each calendar quarter thereafter, there is assessed against each self-employed individual . . . nine-tenths percent of the individual's net income as designated by the self-employed individual.

### Section 5

A. Beginning July 1, 2025, the department shall provide leave compensation to an eligible employee who takes family leave or medical leave....

B. Beginning July 1, 2025, the department shall provide leave compensation to an eligible self-employed individual....

### Section 7

A. Beginning July 1, 2025, an employer shall allow an employee to take up to a combined total of twelve weeks of family leave and medical leave...

### **Recommendation(s):**

- Revise the dates related to contribution collections in Section 4 subsections B, C, and D to "January 1, 2025".
- Revise the dates related to compensation payments in Section 5 subsections A and B, to "January 1, 2026".
- Revise the dates related to employee notice to employer in Section 7 subsection A to "January 1, 2026."

### **Rationale:**

- In states without prior Temporary Disability Insurance programs, the mean time from enactment to first benefit payments is approximately 33 months. The mean time from enactment to first contributions is approximately 20 months.<sup>35</sup>
- This change would provide 19 months between enactment and first contributions and 31 months between enactment and benefits. These timelines are closer to what we can anticipate based on the experiences of other states.
- The twelve-month interval between first contribution to first disbursement is necessary to ensure fund solvency. Delaying the first contribution date necessitates delaying the first disbursements by six months also.
- As currently proposed, HB38w/a would require NMDWS to complete rulemaking on the same day that contributions would begin, limiting NMDWS capacity to provide training, support, and public education about the program prior to contribution collection. The recommended change in the date of first contributions would allow six months from the finalization of rules for the NMDWS to:
  - Make any changes to staffing and the IT system that may be impacted by rules,
  - Implement a robust public information campaign about the program and how it will work,
  - Provide employer and employee education about new payroll procedures and technical assistance with the new IT system.

<sup>34</sup> Dates are revised from the 2021 bill to reflect 2023 passage.

<sup>35</sup> A Better Balance. State Paid Leave Program Implementation Timelines. <https://www.abetterbalance.org/resources/paid-leave-program-implementation-timelines/>

## 11. Notice of Determination timeline

HB38w/amendments

### Section 5

I. The department shall notify the employer and employee or self-employed individual in writing within ten business days of application:

- (1) if approved, and shall notify the employee or self-employed individual of the amount of leave compensation that the employee or self-employed individual is eligible to receive biweekly; provided that an eligible employee or self-employed individual shall begin receiving leave compensation within ten business days of the date of submission of a properly completed application or ten business days after approved leave begins;
- (2) if denied, and shall notify the employee or self-employed individual of the grounds for denying the employee's or self-employed individual's application for eligibility and of the employee's or self-employed individual's right to appeal; and
- (3) if further information or supporting documentation is required to determine the employee's or self-employed individual's eligibility for paid leave or the amount of leave compensation; provided that when the department receives sufficient information or supporting documentation from the employee or self-employed individual to make an eligibility determination, the department shall adhere to the notification provision of this subsection.

### Recommendation(s):

- Adopt the current proposed timelines for notice of determination in Section 5I of HB38w/amendments in final PFMLA legislation.

### Rationale:

- There was unanimous agreement among Task Force members that the timelines from application to determination are clear and reasonable.
- This timeline provides adequate time to the department for processing while balancing the needs of the applicant for a speedy determination.

## 12. Return to Work Notification timeline

HB38 w/amendments

### Section 8

- A. A self-employed individual shall notify the department within ten business days of the self-employed individual's return to work.
- B. Upon an employee's return after leave, an employer shall:
- (1) restore the employee to the position of employment held by the employee when the leave commenced or place the employee in a position for which employee benefits, wages and other terms and conditions of employment are the same as or greater than those of the position from which the employee took leave; and
  - (2) immediately notify the department that the employee has returned to work.

### Recommendation(s):

- Revise Section 8 subsection B(2) by striking "immediately" and replacing it "within ten business days"

### Rationale:

- There is no specific benefit in this section to having different rules for self-employed individuals than those for employers.
- The term "immediately" is imprecise. Although it could be clarified in rulemaking, creating uniformity between expectations of self-employed individuals and employers can improve efficiencies and decrease confusion among NMDWS staff, employers, and PFMLA beneficiaries.

### 13. Appeals procedure timeline

HB38 w/amendments

#### Section 10

A. An employee or a self-employed individual named in an application for leave may appeal an adverse determination of that application to the department as follows:

(1) the aggrieved party shall:

- (a) file an appeal in writing with the department within fifteen business days of receiving notice of the adverse decision;
- (b) set forth the reasons for appeal; and
- (c) provide notice to all parties that an appeal has been filed; and

(2) the secretary shall:

- (a) hold a hearing within ten business days after an appeal is properly made, due notice is given to the parties in dispute and mediation is refused by any party;
- (b) develop a record of the proceedings; and
- (c) rule on the appeal within five business days after the completion of the hearing and issue a final decision

#### **Recommendation(s):**

- Revise to include “the employee, self-employed individual or an authorized representative” in Section 10 (appeals and administrative action) and Section 5H (submitting a claim for leave compensation).

#### **Rationale:**

- Individuals with serious health conditions may be incapacitated and unable to submit their own applications or file appeals within the designated timeframes. Adding language that ensures that an advocate, family member, or other authorized individual can file the appropriate paperwork within the specified time frames improves usability of the program for those individuals.

#### 14. Administrative Action timelines

HB38 w/amendments

##### Section 10

B. An aggrieved party or the department on its own motion may bring an administrative action for an alleged violation of the Paid Family and Medical Leave Act under a public or privately run leave program as follows:

(1) the aggrieved party or the department shall:

- (a) file a complaint alleging a violation of the Paid Family and Medical Leave Act in writing with the department within thirty business days of becoming aware of the alleged violation;
- (b) set forth the grounds of the complaint; and
- (c) provide notice to parties to the alleged violation that a complaint has been filed; and

(2) the secretary shall:

- (a) upon receipt of a complaint alleging a violation, first allow for mediation upon agreement by all parties;
- (b) hold a hearing within ten business days after an appeal is properly made, due notice is given to the parties in dispute and mediation is refused by any party;
- (c) develop a record of the proceedings;
- (d) have power to take disciplinary action, including investigating, fining, censuring or reprimanding a party or suspending or revoking a waiver issued pursuant to the Paid Family and Medical Leave Act; and
- (e) rule on the appeal within five business days after the completion of the hearing and issue a final decision in accordance with Subsection B of Section 39-3-1.1 NMSA 1978.

##### **Recommendation(s):**

- Revise to include “the secretary or an authorized representative” in Section 10 – Adverse Determinations, Appeals Procedures, Administrative Actions, Departmental Disciplinary Powers.

##### **Rationale:**

- Violations of the Act are not strictly related to claims adjudication. Violations may include failure to post required signage, disputes related to adequacy of private PFML plans covered under the waiver allowed under Section 4, fraud accusations, etc. Some of these will require additional investigation and NMDWS staff time and resources, while others may be more quickly resolved.
- Revising the bill to clearly state that the Secretary can appoint someone to oversee administrative actions and appeals proceedings will create more efficiencies in the process and ensure timely management of appeals, administrative actions, and disciplinary measures.

## 15. Maximum Wage Replacement and Adjustments to Maximum

### HB38 w/amendments

Section 5F. The department shall issue leave compensation from the fund to an eligible employee whose claim has been approved as follows:

(1) the calculation of weekly leave compensation shall be based on the employee's average weekly earnings during the twelve months immediately preceding the date of the claim for leave up to a maximum of sixty thousand dollars (\$60,000) in gross earnings per year. If the employee worked fewer than twelve months, then weekly leave compensation

shall be based on the employee's average weekly earnings during the weeks the employee worked up to a maximum of sixty thousand dollars (\$60,000) in gross earnings;

(3) the maximum amount of weekly leave compensation shall be no more than the annual mean wage of all occupations in New Mexico as calculated by the United States bureau of labor statistics state occupational employment and wage estimates for the most recent year available divided by fifty-two.

G. The department shall issue leave compensation from the fund to self-employed individuals as follows:

(4) the maximum amount of weekly leave compensation shall be no more than the annual mean wage of all occupations in New Mexico as calculated by the United States bureau of labor statistics state occupational employment and wage estimates for the most recent year available divided by fifty-two.

### **Recommendation(s):**

- Create consistency by selecting one definition of the other.
- If a maximum of \$60,000 is selected, include revision authorizing the secretary to adjust the maximum compensation payments without requiring legislative action.

### **Rationale:**

- HB38w/amendments contradicts itself in the clauses above. Section 5 subsection F(1) sets the maximum compensation payments based on a maximum of \$60,000 of annual earnings. Section 5 subsections F(3) and G(4) sets the maximum weekly leave compensation based on annual mean wage data published by the U.S. Bureau of Labor Statistics.
- Experts recommend setting a cap based on a percentage of the state average weekly wage rather than a fixed dollar amount to ensure that the cap self-adjusts with inflation.<sup>36</sup>

The Task Force considered three proposals. The rationale and concerns for each are outlined below:

- Occupational Employment and Wage Statistics (OEWS) median wage data adjust annually, allowing the formulas to automatically adjust for fluctuations in wages and eliminating the need to return to the legislature or take any other administrative action to adjust maximum disbursement over time. Currently, this amount is under \$60,000, so it would decrease disbursements for people making ~\$52-\$60k currently. It is also less concrete, which may create confusion for legislators, for claimants budgeting for leave, and may create uncertainties in economic modeling.
- \$60,000 in annual gross earnings (\$1154/week) is concrete and higher than the current OEWS amount. However, adjusting this maximum to account for inflation and wage fluctuations would require either legislative or administrative action. Giving authority to the Secretary to adjust the maximum compensation payments would improve efficiencies.
- OEWS plus an additional percentage would bring the maximum wage closer to or equal to \$60k while eliminating the need for future legislative or administrative action. This would resolve the issue for benefit reduction from the current proposal for workers earning between \$52-\$60k per year currently. However, it does not address the other concerns described above for using OEWS wage data to set maximum compensation rate.

<sup>36</sup> A Better Balance. (2022). Key components: the essential elements of a strong paid family and medical leave program.

<https://www.abetterbalance.org/resources/key-components-the-essential-elements-of-strong-paid-family-and-medical-leave-law/>

## 16. Solvency adjustments

HB38 w/amendments

### Section 3

D. The secretary shall ensure and maintain the self-sufficiency and solvency of the fund by performing an annual financial analysis and reporting the results and recommendations based on the analysis to the appropriate legislative body for adjustment of the formula used to determine employer and employee contributions to the fund.

#### **Recommendation(s):**

- Include a clear and specific solvency trigger in the final PFMLA legislation.
- Solvency adjustments should be based on a formula that takes into consideration the prior year's revenue and expenses and current fund balance.
- Any premium increases should include an annual or permanent maximum rate increase.

#### **Rationale:**

- Solvency adjustments may become necessary to ensure that fluctuations in yearly revenue and claims filed do not impact sustainability of the program.
- Solvency should be reviewed annually, which is stated in the bill language above. However, more specificity in solvency assessment and adjustments are needed.
- The Task Force considered proposals based on approaches in other states, but no decisions have been made.
- The review should occur annually and should be based on a formula, which should consider:
  - Benefits paid in the prior fiscal year
  - Administration costs in the prior fiscal year
  - Net assets remaining in the fund at end of fiscal year
- Any annual adjustments should be capped at 0.1% of wages to protect employers and employees from unexpected changes.
- Consideration should be given to setting an overall maximum contribution rather than an annual cap. Colorado set a maximum contribution rate of 1.2% of wages, creating additional protections from premium increases.<sup>37</sup> Identifying the maximum contribution required to maintain solvency permanently would require additional actuarial analysis.

## 17. Wage definition

HB38 w/amendments does not include a wage definition. This would be included in final PFMLA legislation.

#### **Recommendation(s):**

- Adopt a simple, clear, and easy to understand definition of wages in the final PFMLA legislation that aligns with existing state statutes.

#### **Rationale:**

- Weekly wages are the basis for both the collection of contributions and the disbursements from the Trust Fund. A definition of wages is necessary to provide specificity and prevent abuses and/or underreporting of compensation by employers, employees, and self-employed individuals.
- The definition of wages used for the Unemployment Insurance Trust Fund is very complex but is used routinely by the NMDWS in interactions with employers and workers.<sup>38</sup>
- Wage and Hour definition: "Wages" shall mean all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.<sup>39</sup>

<sup>37</sup> Colorado State Assembly. (2021) Legislative Counsel Staff memorandum on state paid family and medical leave laws.

[https://leg.colorado.gov/sites/default/files/other\\_state\\_pfml\\_laws\\_memo.pdf](https://leg.colorado.gov/sites/default/files/other_state_pfml_laws_memo.pdf)

<sup>38</sup> NM Stat § 51-1-42 (2020). Chapter 51 - Unemployment Compensation Article 1 - Unemployment Compensation Section 51-1-42 - Definitions. <https://law.justia.com/codes/new-mexico/2020/chapter-51/article-1/section-51-1-42/>

<sup>39</sup> NM Stat § 50-4-1 (2018). Chapter 50 - Employment Law Article 4 - Labor Conditions; Payment of Wages

## 18. Exclusions and/or contribution waivers for small businesses

HB38 w/amendments does not include contribution waivers for small businesses. This would be included in final PFMLA legislation.

### **Recommendation(s):**

- Include all employers in the program regardless of size.
- Waive employer contributions for businesses with fewer than five employees.
- Waive the equivalent of the employer contribution for self-employed individuals who opt into the program.

### **Rationale:**

- All working New Mexicans need access to PFML, regardless of employer size, sector, or the length of their tenure in their current position.
- Benefit portability across all employment (simultaneous or consecutive) is a key feature of a state administered PFML plan. Any employer exclusions create coverage gaps for beneficiaries.
- Most New Mexico businesses are small or micro businesses. In fact, 90% of all businesses in the state have fewer than 20 employees and nearly 66% have fewer than 5 employees.<sup>40</sup>
- Because these businesses are smaller, they employ a smaller percentage of the workforce. Approximately 31% of workers are employed by businesses with fewer than 20 employees, and around 8% are employed by businesses with fewer than 5 employees.<sup>39</sup>
- Waiving employer contributions can offset any financial burdens for the smallest employers, including emerging businesses and entrepreneurs who opt into the program as self-employed individuals. Employers would still be responsible for submitting employee contributions, and all employees would be covered.
- Other states have created similar structures. In Washington, businesses with fewer than 50 employees are responsible for submitting employee contributions but are not required to submit the employer portion. In Oregon and Massachusetts, employer contributions are waived for businesses with fewer than 25 employees. In Colorado, employer contributions are waived for all employers with fewer than 10 employees, and in Maryland, employer contributions are waived for employers with fewer than 15 employees.<sup>41</sup>
- Washington and Oregon have created a program allowing small employers to opt-in to paying the employer contribution and offer grants to support their operations during an employee's leave period. [Note that Washington is experiencing solvency shortfalls.<sup>42</sup> Oregon has not fully implemented yet.]
- To ensure that the fund can withstand the reduced revenue associated with a waiver for small employers, economic modeling is critical to determining the appropriate employer size for any waiver of contributions for small businesses. UNM BBER's economic modeling indicates that the Trust Fund could withstand the loss of employer contributions for those with fewer than five employees. Solvency may be impacted slightly in the first year after disbursements begin.<sup>38</sup>

### **Member comments accompanying electronic survey responses:**

- *Oppose:* Opposed to including businesses with less than 10 employees
- *Oppose:* The definition appears to be too broad including part-time, temporary and seasonal workers. The broad definition also pulls in "employers" that maybe less formal like for yard work, domestic chores, etc. Employees covered under the law should be self employed or employed full-time by an employer that is required to register as a business with the secretary of state. Also the small business number of 5 is too low and could be increased by reducing either the number of weeks in the benefit or the amount of the benefit.
- *Support:* Feel that all business regardless of size should participate; However, recognize that business with less than 5 employees could be waived without hurting the solvency of the trust fund.
- *Oppose:* The Albuquerque Hispano Chamber of Commerce does not support the New Mexico PFMLA.

Section 50-4-1 - Definitions. <https://law.justia.com/codes/new-mexico/2018/chapter-50/article-4/section-50-4-1/#:~:text=New%20Mexico%20Statutes%0AChapter%2050%20%2D%20Employment%20Law%0AArticle%204%20%2D%20Labor%20Conditions%3B%20Payment%20of%20Wages%0ASection%2050%2D4%2D1%20%2D%20Definitions.>

<sup>40</sup> University of New Mexico Bureau of Business and Economic Research economic modeling. See Section 6 of this report.

<sup>41</sup> National Partnership for Women and Families. State Paid Leave Laws. <http://www.nationalpartnership.org/our-work/economic-justice/state-paid-leave-laws.html>

<sup>42</sup> Washington State Employment Security Department. (2022). ESD update: paid family and medical leave presentation. <https://app.leg.wa.gov/committeeschedules/Home/Document/237804>

- *Oppose*: Employers cannot afford another government mandate on their business or in-state operations. This program is more stringent than the federal FMLA and should be OPTIONAL for all employees and employers.

## 19. Job protection provisions

HB38 w/amendments

Section 8

B. Upon an employee's return after leave, an employer shall:

(1) restore the employee to the position of employment held by the employee when the leave commenced or place the employee in a position for which employee benefits, wages and other terms and conditions of employment are the same as or greater than those of the position from which the employee took leave . . .

C. Nothing in this section shall be construed to entitle a restored employee to:

- (1) the accrual of seniority or employment benefits during the period the employee is using leave; or
- (2) the right to any benefit or position of employment other than the right the employee would have been entitled to had the employee not taken the leave.

### Recommendation(s):

- Revise section 8 subsection B to state that employees who have been employed with the current employer for at least 90 days have the right to return to a position which is “the same as or greater than those of the position from which the employee took leave.”

### Rationale:

- Employers report that job protection is a bigger concern than the financial costs of premiums, especially holding a position for a new hire. Setting parameters around job protection would ensure that the business could continue to operate effectively. This could be particularly important for those who employ seasonal workers (e.g., ski areas and other tourism, agriculture).
- The most vulnerable workers, including low-wage workers, immigrants, and single parents, will be less likely to take advantage of the program if they fear job loss. This creates a situation in which those who can least afford to do so may pay into a program that they are afraid or unable to access, exacerbating inequity.<sup>43</sup>
- A 90-day probationary period is common for employers to ensure good fit between the employee and the company. A 90-day minimum length of employment before providing job protection strikes a balance between the needs of the employer and the needs of the employee.

### Member comments accompanying electronic survey responses:

- *Oppose*: We would like to see this reduced to 30 days
- *Oppose*: If you work 90 days, you can take 84 days off and then are guaranteed your job back. That would mean a person could be gone for the first 6 months of employment for half the time, but the employer still has to hold the position. I believe this should be 180 days, not 90 days.
- *Oppose*: Prefer a longer time period of work before guaranteeing job security.
- *Oppose*: The Albuquerque Hispano Chamber of Commerce does not support the New Mexico PFMLA.
- *Oppose*: Employers cannot afford another government mandate on their business or in-state operations. This program is more stringent than the federal FMLA and should be OPTIONAL for all employees and employers.

<sup>43</sup> Brown, S. Roy, R. Klerman, J.A. (2020). Leave experiences of low-wage workers. Retrieved from U.S. Department of Labor. [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_FMLA\\_LowWageWorkers\\_January2021.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA_LowWageWorkers_January2021.pdf)

## SECTION 4 - Administrative Requirements

The NM Department of Workforce Solutions (NMDWS) presented at the August 3 and August 31 Task Force meetings on considerations regarding initial and ongoing administrative requirements for a Paid Family & Medical Leave program as described in the Paid Family & Medical Leave Act. This section will summarize those presentations and highlight related funding considerations, which inform the implementation costs and economic modeling in Sections 5 and 6 of this report.

### PART 1 – History of Departmental Efforts Related to PFML

The 2015 Paid Family Leave Task Force determined that NMDWS is the appropriate department of state government to oversee the PFML Trust Fund due to the similarities between PFML and other programs administered by NMDWS.<sup>44</sup> Of all NMDWS programs, PFML is most like Unemployment Insurance (UI). NMDWS experience in implementing and enforcing UI aids in our understanding of administrative requirements and personnel needs for a PFML program.

NMDWS has been engaged in efforts to better understand administrative requirements and implementation issues related to PFML enactment since California passed the nation's first PFML law in 2002. They have:

- Reviewed proposed bills
- Provided Fiscal Impact Reports (FIRs)
- Attended webinars and trainings hosted by the National Association of State Workforce Agencies (NASWA)
- Collected and reviewed lessons learned, best practices, technology alternatives and cost drivers in other state programs
- Reviewed existing DWS service delivery costs including staffing, systems, technology foundation and future roadmap
- Implemented the Healthy Workplaces Act

Each of these activities has helped to shape the expectations and projections presented in this section of the report. The first states to implement PFML programs used existing infrastructure and staffing from state-administered Temporary Disability Insurance programs. The state of Washington was the first to implement a comprehensive PFML program from the ground up, and NMDWS has engaged with their counterparts in Washington to better understand the requirements for both initial design and implementation timelines, processes, and ongoing requirements for program administration.

### PART 2 – Considerations for Program Administration and Service Provision

Using knowledge from managing the UI Trust Fund and engagement with their counterparts in Washington (WA), NMDWS provided projections on the service provision areas and associated staffing requirements.

#### PFML Business Process and Basic Functions

PFML is a multiparty benefits program involving claimants, employers, medical providers, and care recipients.

- Claimants – employees or self-employed individuals who contribute to the PFML Trust Fund, file for PFML benefits, provide evidence of health condition and relationship to care recipients, if applying for a family member
- Care recipients – employees, self-employed individuals, or their family members who are receiving care for a serious health condition and new children welcomed by employees
- Medical Providers – are licensed professionals who certify a care recipient's medical condition, need for care, and estimated duration

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<sup>44</sup> Southwest Women's Law Center. Paid Family Leave Report. <https://www.swwomenslaw.org/wp-content/uploads/2018/12/Paid-Family-Leave-Report2-3.pdf>

- Employers – report worker earnings, submit payments to the fund, contribute to the PFML Trust Fund, and receive notice of PFML claim filing

NMDWS will interact with each of these stakeholders in different ways. Overall, NMDWS will answer queries, calculate contribution amounts, receive contributions into the PFML Trust Fund, receive claim forms, determine benefit eligibility, calculate benefits, issue payments, and manage appeals. Each of these functions includes multiple processes. Some factors will be decided during planning and rulemaking, and each has different impacts on quality, efficiency, and expense of implementation and administration. These factors include delivery modalities (e.g. web-based, phone, mail, in-person service options), identity management, information security, wage calculations, language access, financial management, and monitoring and auditing functions.

Services associated with PFML implementation fall into five categories: employer services, benefit services, adjudication and appeals, program integrity, and administrative services. Each of these functions has distinct costs and staffing requirements, which are highlighted below.

#### Employer Services

- Employer account registration, maintenance, and reactivation
- Employee account registration, monitoring, maintenance, and reactivation
- Processing waivers
- Processing and adjusting wage reports
- Processing and adjusting contribution payments
- Managing Third Party Employer representatives
- Contribution payment services
- Administering field audits

In comparison to UI, PFML will require more employers to participate, including small businesses, nonprofits, those employing agricultural and domestic workers, and self-employed individuals. In addition to a higher volume of employers engaged, these “first timers” to NMDWS interaction will need more guidance and support in setting up accounts, submitting contribution payments, and understanding their rights, roles, and responsibilities.

PFMLA also provides a waiver for employers who offer an equivalent or greater private PFML plan than the one administered by the state. There is nothing analogous to this in the UI program, and the waiver application, processing, approval, and monitoring processes would be new functions for NMDWS.

#### Benefit Services

- Claim filing and eligibility
- Determinations (monetary and non-monetary)
- Claimant self service and maintenance
- Benefit payments
- Benefit recomputation, overpayments and collections

This is the most resource-intensive component of PFML administration with the most significant staffing requirements. It is also the category of service provision that differs the most from UI. When an individual files a claim for UI, they are doing so without an ongoing relationship with their employer. Therefore, the interaction related to claim filing, determination, and claim closure is a two-party relationship. In PFML, there is an expectation that the employer and employee will continue their employment relationship. When the employee’s leave period ends, they are expected to return to work with the same employer. This means that NMDWS interfaces with both the employee and the employer throughout benefit services. The employee is required to provide notice of leave to the employer, and the employer is required to provide notice of return to work to NMDWS. When an employee takes intermittent leave, the claims process will require multiple interactions among these parties over a longer period.

Additionally, for those taking time away to manage a serious health condition or care for a family member with a serious health condition, there are additional parties to the claims process. These include the care recipient (if other than the employee) and the medical provider who will verify the need for leave and length of leave required.

This multiparty application and verification process creates added complexity for the department, increasing the staffing requirements for PFML Benefits Services in comparison to UI Benefits Services.

Other differences between UI and PFML benefits services have smaller impacts on the complexities of administration. PFML claims have no impact on employer rates (as opposed to the experience rating in UI). The UI requirement of “able and available to work” is also not applicable to the PFML system.

#### Adjudication and Appeals

- Non-monetary issues and adjudication
- File and process appeals

See Issues 16 and 17 in the Issue Analysis section of this report for additional detail on the considerations related to appeals and administrative action.

Similar to the added complexities of PFML Benefits Services, appeals and administrative action/adjudication may include multiple parties. For employees with more than one employer at the time of leave, there may be multiple employers involved in an application and appeal process. Depending on the reasons for the appeal, medical providers or other parties responsible for verification of cause for leave may be involved in the appeal and investigation. The department estimates 15,000 plus appeals for PFML based on their finding that 22% of UI claims result in appeals.

#### Program Integrity

- Integrity analytics
- Integrity cross matches
- Fiscal reports
- Management reports
- Statistical reports

Identity verification will be different in PFML than in UI. Because UI is a federal program, NMDWS can utilize Social Security Administration authentication and the national repository to verify identity. That system will not be available for identity verification in PFML. Similarly, UI has nationally provided tools for eligibility verification and program fraud mitigation, which will not be available for PFML.

NMDWS will oversee wage verification for self-employed individuals and verification of family relationships and medical information. The collection of certain health information requires particular attention to technology standards, security, audits, and oversight.

#### Administrative Services

- Workload management
- Education, training and communications
- Human resource management

This area of service provision will require an actuary for solvency monitoring. As opposed to UI administration, PFML report development and monitoring will be state driven rather than federally prescribed. Although NMDWS has engaged with their counterparts in other states, there remains a lack of federal guidance and standards that would provide benefits and lessons learned from national uniform application.

## Role of Labor Relations Division in the Enforcement of PFMLA

The Labor Relations Division (LRD) will have responsibilities related to education and enforcement of PFMLA. This will include the development of resources and materials to ensure all parties have the information needed to participate and comply with the various aspects of the program.

LRD will be required to conduct training for both employers and employees and make these materials available online. LRD will be responsible for the promulgation of rules and regulations outlining LRD's processes and needed timeframes. In addition, LRD will be responsible for the investigation and mediation of allegations of violations of the Act.

## Staffing Model Estimate

In all, NMDWS projects that full implementation of the PFMLA will require a total Departmental staffing of 216 FTEs. This includes staffing for customer service, quality control, adjudication and investigation, economic and policy analysis, education and training, and financial management and oversight. See Figure 2 for the detailed breakdown of anticipated staffing requirements.

<b>Labor Category</b>	<b>FTE</b>
Division Director	1
Division Management	3
Supervisors	10
Business Analyst/Testers	10
Customer Service Agent – Specialist	9
Customer Service Agent – Advanced	20
Customer Service Agent – Basic	40
Customer Service Agent – Operational	60
Tax Specialists	13
Quality Control	4
Collections Specialist	4
Adjudication Law Judges	13
Administrative Support	6
Attorney	4
Paralegal	2
Policy Analyst	2
Trainer	2
Public Relations Coordinator (PB65)	2
Economist	2
Financial Coordinator	2
Accountant & Auditor	1
State Investigator	6
<b>TOTAL ESTIMATED FULL-TIME EQUIVALENT (FTE)</b>	<b>216</b>

**FIGURE 2: Permanent Staffing Model Estimate**

## SECTION 5 - Implementation Costs and Initial Appropriation Considerations

NMDWS estimates appropriations requirements in Fiscal Year 2024 (FY24) of \$36.5 million for initial implementation of the program. This implementation cost estimate includes \$1.5 million for rulemaking, assessments, and Request for Proposal processes; \$32 million for the initial IT systems build; \$1.5 million for operations build; and \$1.5 million for facilities and infrastructure build. See Figure 3 for detail.

FY24 ESTIMATES	
INITIAL ESTIMATED PROJECT COSTS	
Planning Activities:	
RuleMaking, Assessments & RFP Process	\$ 1,500,000.00
IT Systems PFML Build	\$ 32,000,000.00
Operations PFML Build	\$ 1,500,000.00
Facilities & Infrastructure Build	\$ 1,500,000.00
<b>TOTAL</b>	<b>\$ 36,500,000.00</b>
YEAR ONE STAFFING COST BREAKDOWN	
Program Officer	\$ 150,000.00
Project Manager	\$ 115,000.00
Admin Person	\$ 70,000.00
Actuary	\$ 150,000.00
Policy Analyst (2)	\$ 190,000.00
Legal Consultant	\$ 140,000.00
Contract Support	\$ 575,000.00
Travel	\$ 25,000.00
Supplies including IT set up	\$ 60,000.00
Facilities	\$ 25,000.00
<b>TOTAL</b>	<b>\$ 1,500,000.00</b>

**Figure 3: Year 1 Implementation Cost Estimates**

The most significant year one expenditure will be related to the build out of a new IT system, which will be the primary mode of service delivery. The IT system will serve as the user interface for both employers and employees in submitting contributions, filing claims, and other processes described previously. The website will also provide public education about the program. The IT system will need to be sophisticated enough to handle significant traffic while maintaining data security and systems integrity.

NMDWS estimates appropriations requirements of approximately \$45 million for year two of implementation planning. During FY25, NMDWS activities will include:

- Hiring permanent program staff
- Training of permanent program staff
- Employer education
- Employee education
- Completion of IT systems build, reflecting any changes needed in response to final rules
- Development of forms and written materials
- Communications campaign to educate the general public about the program
- Collection of contributions, beginning January 1, 2025

The first quarterly payments of PFML contributions have an expected due date of April 15, 2024. Once adequate contributions have been collected, the administrative costs associated with the program will be fully funded by contributions into the Trust Fund. The anticipated annual cost of program administration is approximately \$59 million. After the initial appropriations for years one and two of the program, the Trust Fund is expected to be fully self-sustaining without recurring appropriations required.

## SECTION 6 - Economic Modeling of PFML Revenue and Expenses

On August 16, the University of New Mexico Bureau of Business and Economic Research (BBER) presented their economic model for the Paid Family and Medical Leave Trust Fund, providing projections for the first four years of implementation. Several issues considered by the PFML Task Force have impacts on these models, and the Task Force utilized the modeling to inform the practicality of some decisions. This section summarizes the modeling discussion at the August 16 meeting and subsequent meetings, and the decision points that influence the modeling.

### Revenue

The primary source of ongoing revenue into the Trust Fund are small payroll contributions funded by employers and employees. These contributions will be submitted to NMDWS by employers on a quarterly basis. Several factors considered by the Task Force would impact revenue into the fund, particularly the contribution rate, whether to waive the employer contribution for small businesses with fewer than 5 employees and self-employed individuals, and solvency adjustments.

The secondary source of ongoing revenue into the Trust Fund are any administrative penalties assessed for fraud or willful violation of the act by employees, employers, or self-employed individuals. The current proposed legislation sets a maximum penalty of \$10,000 per violation of the act. This revenue source is not included in BBER's economic modeling.

### Revenue Modeling Assumptions

The initial economic modeling of revenue through contribution collections assumes a total contribution rate of 0.9% of employee wages, 0.9% of wages for self-employed individuals who opt into participation, and quarterly payments by employers to NMDWS. Based on Census Bureau PUMS data, 801,781 New Mexicans worked at least 26 weeks in the last 12 months in 2020. Employment projections from 2019 base are from BBER employment growth forecast.

Paid Family Leave Premium Based on Annual Wages Revised 1/24/2022					
Employee				Employer	
Annual Wages	Hourly Wages	Yearly Premium	Bi-weekly Premium	Yearly	Quarterly
\$ 24,960	\$ 12.00	\$ 124.80	\$ 4.80	\$ 99.84	\$ 24.96
\$ 25,000	\$ 12.02	\$ 125.00	\$ 4.81	\$ 100.00	\$ 25.00
\$ 30,000	\$ 14.42	\$ 150.00	\$ 5.77	\$ 120.00	\$ 30.00
\$ 31,200	\$ 15.00	\$ 156.00	\$ 6.00	\$ 124.80	\$ 31.20
\$ 40,000	\$ 19.23	\$ 200.00	\$ 7.69	\$ 160.00	\$ 40.00
\$ 49,650	\$ 23.87	\$ 248.25	\$ 9.55	\$ 198.60	\$ 49.65
\$ 50,000	\$ 24.04	\$ 250.00	\$ 9.62	\$ 200.00	\$ 50.00
\$ 60,000	\$ 28.85	\$ 300.00	\$ 11.54	\$ 240.00	\$ 60.00
\$ 65,000	\$ 31.25	\$ 325.00	\$ 12.50	\$ 260.00	\$ 65.00
\$ 80,000	\$ 38.46	\$ 400.00	\$ 15.38	\$ 320.00	\$ 80.00
\$ 90,000	\$ 43.27	\$ 450.00	\$ 17.31	\$ 360.00	\$ 90.00
\$ 100,000	\$ 48.08	\$ 500.00	\$ 19.23	\$ 400.00	\$ 100.00
\$ 110,000	\$ 52.88	\$ 550.00	\$ 21.15	\$ 440.00	\$ 110.00



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Figure 4: Individual contribution costs

## Contribution Rate

BBER's economic modeling uses a total contribution rate of 0.9% of employee wages. In the proposed legislation, this total is split with employee contribution of 0.5% and employer contribution of 0.4% of wages. Contribution rates vary from state to state, ranging from 0.6% - 1.1%.<sup>45</sup> Most states with PFML programs, including nearly all of those without a pre-existing TDI program, require employer contributions.<sup>44</sup> See figure 4 for the breakdown of individual contribution rates and real costs to employers and employees respectively.

Using the assumptions outlined above, projections for Trust Fund collections show that total revenues into the fund from employer and employee contributions will total an estimated \$427,896,529 in year one of full implementation, increasing annually to an estimated \$470,115,560 in year four. See Figure 5 for detail.

Summary Paid Family Leave Estimates Revised 1/24/2022					
Based on 2020 U.S. Census American Community Survey 1-Year PUMS Experimental					
	Estimated 2023	Estimated 2024	Estimated 2025	Estimated 2026	
Eligible Workers (Weeks based)	846,469	859,234	871,247	883,184	
Eligible Claims by Workers	35,126	35,168	35,211	35,253	
Average Weekly Payout	\$ 819	\$ 840	\$ 853	\$ 871	
Admin cost per employee	\$ 69.62	\$ 70.37	\$ 70.44	\$ 70.94	
Admin cost per claim	\$ 1,677.66	\$ 1,719.21	\$ 1,742.91	\$ 1,777.38	
Employer average premium per employee	\$ 247.03	\$ 253.45	\$ 257.25	\$ 262.65	
Cost paid family leave	\$ 345,172,718	\$ 354,572,185	\$ 360,322,637	\$ 368,330,880	
Administrative Cost	\$ 58,929,610	\$ 60,461,780	\$ 61,368,706	\$ 62,657,449	
Amortization of Fixed Costs DWS	\$ 8,152,373	\$ 8,152,373	\$ 8,152,373	\$ 8,152,373	
<b>Total Est. Cost</b>	<b>\$ 412,254,701</b>	<b>\$ 423,186,338</b>	<b>\$ 429,843,716</b>	<b>\$ 439,140,702</b>	
<b>Total Est. Collections</b>	<b>\$ 427,896,529</b>	<b>\$ 451,430,838</b>	<b>\$ 463,168,040</b>	<b>\$ 470,115,560</b>	
<b>Balance<sup>1</sup></b>	<b>\$ 15,641,828</b>	<b>\$ 28,244,500</b>	<b>\$ 33,324,323</b>	<b>\$ 30,974,858</b>	
Total Wages Paid	\$ 49,515,283,291	\$ 50,802,680,657	\$ 51,564,720,866	\$ 52,647,580,005	

Figure 5: Trust Fund projections for years 1-4 of full program implementation

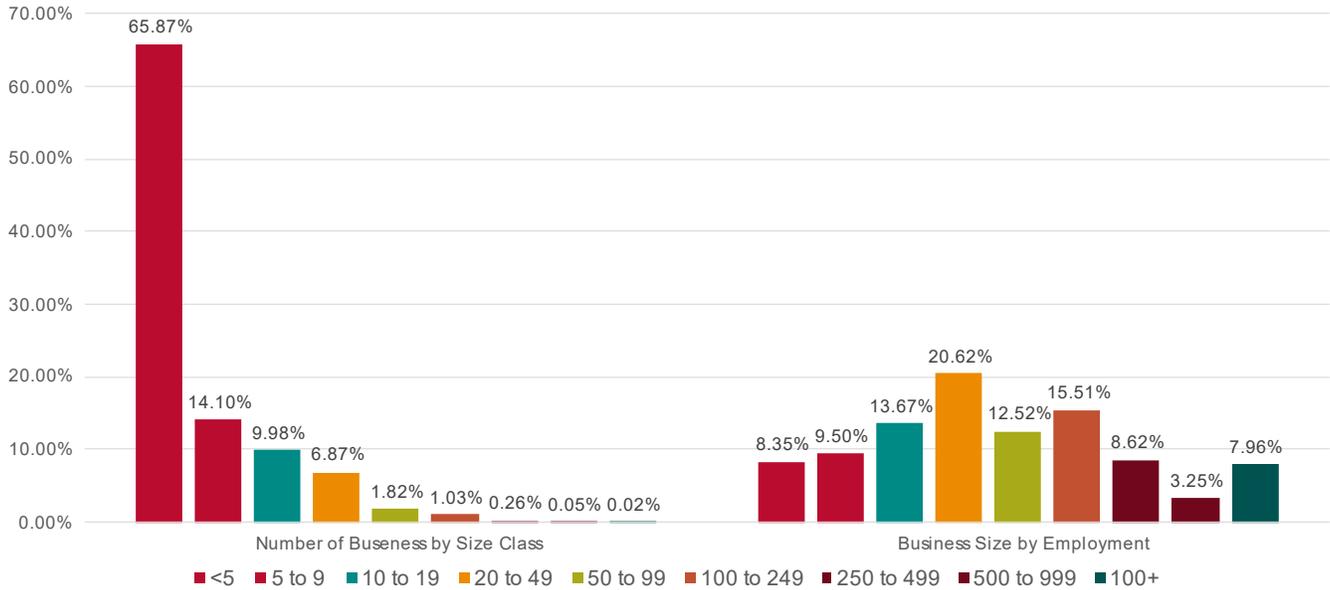
## Small Business and Self-employed Contribution Waiver

The Task Force spent considerable time reviewing the modeling projections as we considered whether it was possible to waive employer contributions for the smallest employers without impacting the solvency of the Trust Fund. See Issue Analysis section #21 – *Exclusions and/or contribution waivers for small businesses* – for a summary of the factors considered by the Task Force on this issue.

Revenue loss is the most significant concern in waiving any employer contributions. In comparison to other states that have implemented PFML programs, New Mexico has a much higher percentage of small employers. As mentioned previously, fewer than 4% of employers employ 50 or more employees. 65.87% of employers have fewer than five employees, and nearly 90% employ fewer than 20. See Figure 6 for business size class details.

<sup>45</sup> National Partnership for Women and Families. State Paid Leave Laws. <http://www.nationalpartnership.org/our-work/economic-justice/state-paid-leave-laws.html>

### New Mexico Business Size Class 2021\*



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\*Data are preliminary

Source: NMDWS Quarterly Census of Employment and Wages program

**FIGURE 6: NM business size class by percent of businesses (left) and percent of all NM employees (right)**

BBER has estimated the anticipated Trust Fund impacts of waiving contributions for employers of various size classes. The anticipated impacts are outlined in Figure 7 below. If we assume an average of the maximum (100%) of 12 weeks of leave per claim, none of the size classes could be exempted from paying the employer

100% duration and exclusion of 5<				
Total Est. Cost	\$ 412,254,701	\$ 423,186,338	\$ 429,843,716	\$ 439,140,702
Total Est. Collections	\$ 412,110,752	\$ 435,162,551	\$ 446,411,027	\$ 452,826,580
Balance	\$ (43,949)	\$ 11,976,213	\$ 16,567,311	\$ 13,685,878

90% duration (10.8 weeks) and exclusion of 5<				
Total Est. Cost	\$ 377,737,429	\$ 387,729,119	\$ 393,811,453	\$ 402,307,614
Total Est. Collections	\$ 412,110,752	\$ 435,162,551	\$ 446,411,027	\$ 452,826,580
Balance	\$ 34,373,323	\$ 47,433,432	\$ 52,599,574	\$ 50,518,966

90% duration and exclusion of 10<				
Total Est. Cost	\$ 377,737,429	\$ 387,729,119	\$ 393,811,453	\$ 402,307,614
Total Est. Collections	\$ 394,150,886	\$ 416,653,722	\$ 427,346,162	\$ 433,156,482
Balance	\$ 16,413,457	\$ 28,924,603	\$ 33,534,710	\$ 30,848,869

90% duration and exclusions 20<				
Total Est. Cost	\$ 377,737,429	\$ 387,729,119	\$ 393,811,453	\$ 402,307,614
Total Est. Collections	\$ 368,213,058	\$ 389,923,077	\$ 399,812,484	\$ 404,748,721
Balance	\$ (9,524,371)	\$ 2,193,957	\$ 6,001,032	\$ 2,441,107

80% (9.6 weeks) duration and exclusion 20<				
Total Est. Cost	\$ 343,220,157	\$ 352,271,901	\$ 357,779,189	\$ 365,474,526
Total Est. Collections	\$ 368,213,058	\$ 389,923,077	\$ 399,812,484	\$ 404,748,721
Balance	\$ 24,992,901	\$ 37,651,176	\$ 42,033,295	\$ 39,274,195



Note: Washington average duration 7.5 weeks for 2021.

**Figure 7: Trust Fund impacts of employer contribution waiver of different size classes**

contribution without risking insolvency. However, as outlined elsewhere in this report, the average length of leave taken is 7.2 weeks in Washington.<sup>46</sup> In California where the maximum length of family leave is 8 weeks, the average length of leave is 6.7 weeks.<sup>47</sup> Therefore, we can assume that the average length of leave would be less than 100%.

When we apply an assumption that the average claimant will only utilize 90% of maximum leave time, waiving employer contributions for businesses with fewer than five employees is feasible without the risk of Trust Fund insolvency. See figure 7 for the breakdown of projected fund solvency waiving employers in the following size classes: fewer than 5, fewer than 10, and fewer than 20 employees.

### Expenditures

Expenditures include both administrative costs and disbursements from the Trust Fund to qualified claimants. Issues that the Task Force considered which impact the expenditures from the fund include service provision modalities, claim processing, appeal and adjudication timelines, maximum length of leave, causes for leave, and maximum wage replacement.

### Cost Modeling Assumptions

BBER estimates a total of 35,000 initial claims in year one, which is the sum of annual number of births and disability claims in NM. In the baseline modeling, BBER assumes that all 35,000 claimants will use 100% of 12 weeks of leave. BBER also incorporated inflation projections into the cost modeling. Both total number of claims and total amount of leave used per claimant are most likely overestimates, ensuring that the system could withstand the greatest stress. Lastly, BBER’s initial cost modeling assumes repayment of \$50 million state investment for initial implementation as outlined in Section 5 of this report with 5% interest over the first seven years of program implementation.

### Anticipated Annual Claims Paid

BBER modeling estimates slightly more than 35,000 claims per year for the first four years of the program with an average weekly cost per claim ranging from \$819 in year one to \$871 in year four. PFMLA provides compensation equivalent to 100% of minimum wage plus 67% of wages greater than minimum wage. See Figure 8 for examples of weekly wage replacement for individual job holders – one with multiple jobs, one who works more than 40 hours weekly, and one who works fewer than 40 hours per week. The total annual program expenditure on disbursements to claimants is expected to grow from \$345,172,718 in year one to \$368,330,880 in year four. See figure 5 for detail.

Multiple job holder to make full time wages				
	Hours worked per week	Hourly Pay	Total Pay	Pay out
Job 1	12	\$ 11.50	\$ 138.00	\$ 138.00
Job 2	13	\$ 11.50	\$ 149.50	\$ 149.50
Job 3	15	\$ 12.50	\$ 187.50	\$ 182.55
Total all jobs	40		\$ 475.00	\$ 470.05

Multiple job holder to make more than 40 hours				
	Hours worked per week	Hourly Pay	Total Pay	Pay out
Job 1	40	\$ 15.00	\$ 600.00	\$ 501.00
Job 2	12	\$ 11.50	\$ 138.00	\$ 138.00
Total all jobs	52		\$ 738.00	\$ 639.00

Job holder with less than 40 hours				
	Hours worked per week	Hourly Pay	Total Pay	Pay out
Job 1	32	\$ 15.00	\$ 600.00	\$ 501.00

Figure 8: Examples of Weekly Wage Replacement Amounts

<sup>46</sup> Washington Paid Family & Medical Leave Advisory Committee. <https://paidleave.wa.gov/advisory-committee/>

<sup>47</sup> State of California Employment Development Department Quick Statistics.

[https://edd.ca.gov/siteassets/files/about\\_edd/pdf/qspl\\_pfl\\_program\\_statistics.pdf](https://edd.ca.gov/siteassets/files/about_edd/pdf/qspl_pfl_program_statistics.pdf)

### Maximum Wage Replacement

BBER modeling uses the maximum wage replacement cap as \$931 weekly, which correlates with annual wages of \$60,000. An alternative has been proposed – using the OEWS average wage rather than a set \$60,000, which would slightly reduce the maximum wage replacement. See Issue Analysis #18 – *Maximum Wage Replacement* – for a synopsis of factors considered by the Task Force on this issue.

### Administrative Cost Considerations

The administrative cost requirements are detailed in Section 4 of this report. As shown in Figure 5, annual administrative costs are estimated to be \$58,929,610 in year one, increasing to \$62,657,449 in year four of implementation.

### Amortization Costs

In Figure 5 above, the line item “Amortization of Fixed Costs DWS” shows an anticipated \$8,152,373 expense annually for the first four years of the program. This line item reflects the costs to repay the initial General Fund expenditures associated with implementation planning in FY24 and FY25. The cost modeling reflects a repayment of \$50 million of the initial state investment plus 5% interest, totaling \$57,066,611 over the first seven years of program implementation. Beginning in year eight, that investment will be repaid, and those costs will no longer be a factor in the annual program budget.

### Solvency Considerations

As opposed to Unemployment Insurance funds, which can fluctuate substantially based on state and national employment trends and larger economic conditions, PFML usage and Trust Funds tend to be relatively stable over time. It is also important to note that industry and employer factors do not impact utilization of PFML in the same way that those factors influence UI utilization. Therefore, there is nothing analogous to an “experience rating” in the UI system, which sets rates based on those employer factors.

Of all state Trust Funds, only the state of Washington has faced significant risk of insolvency. When Washington began collecting contributions in 2019, they set the total contribution rate at 0.4% of wages, which is significantly lower than the rates in most other states. Washington also exempted employers with fewer than 50 employees from paying the employer contribution, while still covering the employees of those employers, in effect making their actual collected premium rate lower than the nominal rate of 0.4%, as the fund absorbed the costs of the exemption. As noted above, waiving contributions for a significant percentage of employers can have a disruptive impact on fund solvency. In 2021, Washington adjusted the rates upward to 0.6%, effective January 1, 2022. Washington recently announced that their contribution rate will increase to 0.8% in 2023.<sup>48</sup>

The contribution rate of 0.9% in the proposed NM PFMLA legislation significantly lessens risks of insolvency like those Washington has experienced. In BBER’s economic modeling shown in Figure 5, the remaining balance in any year is not carried over to the following year, demonstrating the fund solvency for each year independently of any variation in prior years.

The Task Force recommended revising the bill to include specific guidelines for annual solvency review. If contribution rate increases were needed, they would be very small. No state PFML program has needed to increase rates above 1.1% of total wages. The annual solvency review may also signal the ability to decrease contribution rates due to higher Trust Fund balances than required to fund disbursements and administration of the fund. For instance, when the initial state investment is repaid, rates may be adjusted to reflect the reduction of costs associated with the \$8 million yearly repayment of DWS fixed costs.

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<sup>48</sup> Washington State Employment Security Department. Paid Family & Medical Leave premiums to increase in 2023. <https://esd.wa.gov/newsroom/pr/paid-family-medical-leave-premiums-to-increase-in-2023#:~:text=To%20keep%20pace%20with%20more,premium%20rate%20will%20be%200.8%25.>

## Appendix List

- I. Senate Memorial 1 – Paid Family and Medical Leave Task Force
- II. Paid Family and Medical Leave Task Force Meeting Reports
- III. University of New Mexico Bureau of Business and Economic Research Cost Modeling
- IV. University of New Mexico Bureau of Business and Economic Research Methods

## APPENDIX I – 2022 Senate Memorial 1

1 A MEMORIAL

2 REQUESTING THE WORKFORCE SOLUTIONS DEPARTMENT TO CONVENE A  
3 TASK FORCE TO FINISH THE WORK OF RECOMMENDING LEGISLATION FOR  
4 PAID FAMILY AND MEDICAL LEAVE AND REPORT TO THE GOVERNOR AND  
5 THE LEGISLATURE BY OCTOBER 1, 2022.

6  
7 WHEREAS, paid family and medical leave programs have  
8 been enacted in nine states and the District of Columbia; and

9 WHEREAS, the urban institute reports that states with  
10 established paid family and medical leave programs in 2020  
11 were better able to withstand the impacts of the economic  
12 downturn related to the coronavirus disease 2019 pandemic and  
13 experienced lesser burdens on their unemployment insurance  
14 programs; and

15 WHEREAS, paid family and medical leave programs are  
16 associated with improved outcomes in the earliest years of  
17 life, including higher rates of breastfeeding and  
18 immunization and lower rates of child abuse, domestic  
19 violence and financial instability; and

20 WHEREAS, the number of workers providing unpaid care for  
21 elder family members is increasing as the United States  
22 population over age sixty-five grows; and

23 WHEREAS, many working New Mexicans who experience  
24 serious medical conditions currently have limited access to  
25 paid or unpaid leave through their employers and often delay

1 medical treatment until an emergency arises; and

2 WHEREAS, in 2021, the New Mexico legislature passed the  
3 Healthy Workplaces Act, which requires that employers provide  
4 at least one hour of sick leave to an employee for every  
5 thirty hours worked; and

6 WHEREAS, while a step in the right direction, the  
7 Healthy Workplaces Act is not comparable to the federal  
8 Family and Medical Leave Act of 1993 or the family and  
9 medical leave programs in other states; and

10 WHEREAS, women-led households and communities of color  
11 face the greatest burden of caregiving for children and  
12 elders; and

13 WHEREAS, paternity leave can promote parent-child  
14 bonding, improve outcomes for children, and even increase  
15 gender equity at home and at the workplace. Paid paternal  
16 leave for fathers, as well as for mothers, provides a real  
17 advantage to working families; and

18 WHEREAS, the coronavirus disease 2019 pandemic has  
19 forced millions of women in the country, especially mothers,  
20 out of the workforce due to increasing family caregiving  
21 responsibilities; and

22 WHEREAS, New Mexico businesses are facing a worker  
23 shortage, and paid family and medical leave is associated  
24 with improved employee recruitment, retention and morale; and

25 WHEREAS, ninety-six percent of New Mexico businesses

1 have fewer than fifty employees and are not required to  
2 provide unpaid leave through the federal Family and Medical  
3 Leave Act of 1993; and

4 WHEREAS, the costs of hiring and training new employees  
5 are a significant burden for employers; and

6 WHEREAS, most small businesses in New Mexico cannot  
7 afford to consistently provide employer-based paid leave  
8 benefits to their employees; and

9 WHEREAS, a state-administered paid family and medical  
10 leave trust fund is significantly less expensive for  
11 employers than a privately funded paid leave program; and

12 WHEREAS, the coronavirus disease 2019 pandemic has  
13 demonstrated that paid leave is critical to protecting public  
14 health and promoting economic stability and resilience;

15 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE  
16 STATE OF NEW MEXICO that the workforce solutions department  
17 be requested to convene a task force to develop  
18 recommendations for the enactment and implementation of a  
19 paid family and medical leave act, including the  
20 establishment and administration of a paid family and medical  
21 leave trust fund administered by the department; and

22 BE IT FURTHER RESOLVED that the task force include  
23 members representing:

24 A. a statewide nonprofit organization that  
25 provides legal services and policy expertise for women and

1 girls;

2 B. a statewide nonprofit organization that  
3 provides policy expertise on the interests of children;

4 C. the New Mexico public health association;

5 D. a statewide nonprofit organization with legal  
6 and policy expertise on elder rights;

7 E. a statewide coalition that focuses on perinatal  
8 issues;

9 F. an organization representing persons with  
10 disabilities;

11 G. two statewide organizations representing labor,  
12 at least one of which represents health care employees;

13 H. Native American tribal government;

14 I. the American Indian chamber of commerce of  
15 New Mexico;

16 J. two statewide organizations representing  
17 businesses;

18 K. a statewide organization representing Hispano  
19 business owners;

20 L. a statewide organization representing lesbian,  
21 gay, bisexual and transgender persons;

22 M. a statewide organization representing African  
23 American business owners;

24 N. the bureau of business and economic research at  
25 the university of New Mexico;

1 O. a member of the acequia association; and

2 BE IT FURTHER RESOLVED that the minority floor leader of  
3 the senate and the senate president pro tempore each appoint  
4 one small business owner; and

5 BE IT FURTHER RESOLVED that the task force present its  
6 report and recommendations to the governor and the  
7 legislative finance committee, the legislative health and  
8 human services committee and other appropriate legislative  
9 interim committees by October 1, 2022; and

10 BE IT FURTHER RESOLVED that the report contain economic  
11 modeling of estimated yearly program costs and revenue and  
12 comprehensive cost assessments of initial and continuing  
13 implementation of a paid family and medical leave act; and

14 BE IT FURTHER RESOLVED that a copy of this memorial be  
15 transmitted to the secretary of workforce solutions for  
16 distribution to the governor's cabinet and other interested  
17 persons.

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## APPENDIX II – Paid Family and Medical Leave Task Force Meeting Reports



New Mexico  
**Paid Family and Medical Leave**  
Taskforce

# MEETING REPORT

Prepared by Kesselman-Jones, Inc.

*These notes represent a summary of discussions, decisions and action items and do not purport to be a verbatim transcript of what transpired. Corrections or additions should be reported to the individual that prepared the report (listed below) within three (3) calendar days of distribution of this document. Thank you.*

Details			
Date:	6/24/2022	Topic:	Orientation
Start time:	10:00 AM	End time:	11:30 AM
In attendance:	New Mexico Family & Medical Leave Taskforce Members:	<ul style="list-style-type: none"><li>• Tessa Abeyta (The New Mexico Public Health Association)</li><li>• Marvis Aragon (American Indian Chamber of Commerce of New Mexico)</li><li>• Rob Black (New Mexico Chamber of Commerce)</li><li>• Janis Gonzales (NM Pediatric Society)</li><li>• Jon Lipshutz (New Mexico Federation of Labor, AFL-CIO)</li><li>• Justin Martinez (Albuquerque Hispano Chamber of Commerce)</li><li>• Suzan Reagan (UNM Bureau of Business and Economic Research)</li><li>• Carla Sonntag (New Mexico Business Coalition)</li><li>• Kei Tsuzuki (Kei and Molly)</li><li>• Othiamba Umi (AARP NM)</li><li>• Jacob Vigil (New Mexico Voices for Children)</li></ul>	
	Other Attendees:	<ul style="list-style-type: none"><li>• Sue Anne Athens (New Mexico Department of Workforce Solutions)</li><li>• Richard Brand (NMDWS)</li><li>• Rep. Chris Chandler</li><li>• Tiffany Delgado (SWLC)</li><li>• Julianna Koob (SWLC)</li><li>• Westley Logan (NMDWS)</li></ul>	

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		<ul style="list-style-type: none"> <li>• Serafina Lombardi (New Mexico Acequia Association)</li> <li>• Yolanda Montoya-Cordova (NMDWS)</li> <li>• Rachel Moskowitz (NMDWS)</li> <li>• Rep. Linda Serrato</li> </ul>
	Kesselman-Jones:	Laura Kesselman, Zena Goodman, Ashley Clough
<b>Preparer:</b>	Ashley Clough	
<b>Next meeting:</b>	7/18/22	

**Notes**

*The PowerPoint presentations for this meeting are available at [kessjones.com/resource-page](http://kessjones.com/resource-page).*

**Introduction:**

- Kesselman-Jones’s role will be to support everyone’s involvement, ensure productivity of meetings, gather feedback and recommendations to provide a report to the governor.

**Requirements and Direction of SM1 from Yolanda Montoya-Cordova**

- Yolanda Montoya-Cordova discussed the requirements and direction of SM1
  - Facilitate process to develop recommendations for the enactment and implementation of a paid family medical leave act.
  - Includes establishment and administration of a PEMLA trust fund administer by DWS.
  - The taskforce will present its report and recommendations to the Governor and the legislative finance committee, the legislative health and human service committees and other appropriate legislative interim committees by October 1, 2022.
  - The report must contain economic modeling of estimated yearly program cost, revenue, and comprehensive cost assessments of initial and continuing implementation of a PFMLA.

**Overview of Paid Family & Medical Leave from Tracy McDaniel**

- Paid Family and Medical Leave is NOT Paid Sick Leave.
- Discussed Federal actions on leave policies.
- Overall view of what Paid Family and Medical Leave is for, what it does, and how do you pay it.

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- Discussed equity considerations and health disparities
- Discussed the benefits of Paid Family & Medical Leave

### Procedures:

- Structure of a typical meeting.
  - General agenda overview will be sent out typically 5-7 days before the scheduled meeting.
  - Opportunity for public comment. This will be limited to 30 minutes, 5 minutes per speaker. Written public comment will be accepted via email and summarized for the group at the beginning of the meeting.
  - Presentations on the topic at hand for meetings. If anyone is interested in presenting, please email KJ.
  - After presentations, questions and discussions on issue will be available.
- Rules of Engagement/Other considerations:
  - “Raise Hand” function to be used for speaking
  - Chat is open and monitored
  - Topics will be selected for each meeting and any potential complicated topics will be discussed at later sessions.
  - Cameras on during discussions and microphone muted unless speaking.
  - Polls will be utilized throughout the meeting.
  - Meetings are recorded and attendance is crucial.
  - Live transcript will be enabled.
- Proposed Topics & Schedule:
  - **Convening #2** will be focused on definitions – what is the definition of family? What are appropriate causes for leave? What is the maximum length of leave?
  - **Convening #3** will discuss the process of requesting paid leave and communicating this change to employers and employees. What are key components of the interface? What are strategies for getting a message out?
  - **Convening #4** will be on financial modeling. We will have presentations regarding funding projections and fundamental limitations for any program. This session will ask questions like “How much should an employer or employee contribute? If small employers are exempted from paying a contribution, how many employees is the cap?”
  - **Convening #5** will focus on the administration of paid leave. It will be a technical discussion about the initial implementation. What funds could the state add at the initial stage? What’s the likely timeline?
  - Last convening open if needed for further discussions.

**Other Discussion Items:**

- There was a general discussion about the purpose of the taskforce and the extent to which the taskforce is to provide guidance on existing policy proposal versus supply feedback.
- There was a discussion in the chat about the need to cover appeal procedures, and judicial review for denied/paid claims.

**Chat**

0:22:29	Yolanda Montoya-Cordova:	Yolanda Montoya-Cordova, Deputy Secretary, Dept. of Workforce Solutions
0:22:33	Jon Lipshutz, NMFL:	Jon Lipshutz, NM Federation of Labor
0:22:34	sreagan:	Suzan Reagan - UNM Bureau of Business and Economic Research.
0:22:35	Justin Martinez   AHCC:	Hello all! Thanks for having me. Justin Martinez, Human Resources Manager - Albuquerque Hispano Chamber of Commerce.
0:22:44	Tracy McDaniel   SWLC:	Good morning, everyone. Thanks for being here. Tracy McDaniel, Policy Advocate with Southwest Women's Law Center. tmcdaniel@swwomenslaw.org
0:22:56	Richard Branch:	Richard Branch, Attorney NM Dept. Workforce Sols.
0:23:00	Kei Tsuzuki:	Kei Tsuzuki, Kei & Molly Textiles
0:23:01	Tessa Abeyta (she/her) NMPHA:	Tessa Abeyta Co-Executive Director for the New Mexico Public Health Association
0:23:11	Chris Chandler:	Rep Christine Chandler from Los Alamos. Co-sponsor of the Paid Family and Medical Leave Act as well as the Memorial establishing the task force.
0:23:35	Marvis:	Good morning, Marvis Aragon with the American Indian Chamber of Commerce of New Mexico.
0:23:37	Othiamba Umi - AARP NM:	Good Morning! Othiamba Umi, Associate State Director Advocacy & Outreach, AARP New Mexico
0:23:46	Serafina NMAA:	Serafina, NM Acequia Association, on behalf of Paula Garcia.
0:24:09	Tiffany Delgado   SWLC Policy Intern:	Hi everyone. Tiffany Delgado - Policy Intern for SWLC Thank you for letting me listen in!
0:24:17	Sue Anne Athens - DWS:	Sue Anne Athens, CIO , Department of Work Force Solutions
0:24:28	Carla Sonntag:	Hi everyone. Carla Sonntag, president, New Mexico Business Coalition.
0:25:56	Jacob Vigil:	Jacob Vigil he/him, Senior Research and Policy Analyst, New Mexico Voices for Children
0:26:34	Janis Gonzales:	Dr Janis Gonzales, Immediate Past President NM Pediatric Society and Chief Health Officer at ECECD. Sorry I cannot be on camera today because I am home sick
0:37:19	Laura Kesselman:	The AI transcription is on if anyone would find this helpful. Click the CC below to view.
0:55:43	Laura Kesselman:	If you have questions, you are welcome to put them in the chat. We will address if we have time, or table to the next meeting.

1:16:19	Rob Black NM Chamber:	Other questions: preemption, leave categories, coordination of benefits, treatment of existing private plans
1:16:41	Rob Black NM Chamber:	As well as enforcement and penalties
1:17:50	Richard Branch:	in line with Rob's thinking, there will be a need to cover appeal procedures, judicial review for denied/paid claims, etc. Lots of moving parts...
1:19:52	Rob Black NM Chamber:	Will cost modeling also include costs associated for stakeholder (ie employer)?
1:20:03	Chris Chandler:	The bills that have been filed answer the nearly all the questions raised and points made. The policies are embedded in the bills.
1:20:10	Serafina NMAA:	Will you all send out a survey with major questions to resolve?
1:31:27	Rob Black NM Chamber:	When were date questionnaires sent out? I did not receive a questionnaire.
1:33:38	Zena Goodman:	Questionnaire: <a href="https://form.jotform.com/KessJones/nmpfmla-participant-questionnaire">https://form.jotform.com/KessJones/nmpfmla-participant-questionnaire</a> .
1:39:23	Othiamba Umi - AARP NM:	Thanks for convening this. Great first meeting! See you all next time.



New Mexico  
**Paid Family and Medical Leave**  
Taskforce

# MEETING REPORT

Prepared by Kesselman-Jones, Inc.

*These notes represent a summary of discussions, decisions and action items and do not purport to be a verbatim transcript of what transpired. Corrections or additions should be reported to the individual that prepared the report (listed below) within three (3) calendar days of distribution of this document. Thank you.*

Details			
<b>Date:</b>	7/18/2022	<b>Topic:</b>	Definitions
<b>Start time:</b>	2:00 pm MT	<b>End time:</b>	4:00 pm MT
<b>In attendance:</b>	New Mexico Family & Medical Leave Taskforce Members:	<ul style="list-style-type: none"><li>• Jon Lipshutz (New Mexico Federation of Labor, AFL CIO)</li><li>• Suzan Reagan (UNM Bureau of Business and Economic Research)</li><li>• Carla Sonntag (New Mexico Business Coalition)</li><li>• Kei Tsuzuki (Kei and Molly)</li><li>• Othiamba Umi (AARP NM)</li><li>• Pamm Meyers (The New Mexico Out Business Alliance)</li><li>• Justin Martinez (Albuquerque Hispano Chamber of Commerce)</li><li>• Jennifer Webber in for Rob Black (New Mexico Chamber of Commerce)</li><li>• Robert Aubert (IUPAT District Council 88 Local 823)</li><li>• Janis Gonzales (NM Pediatric Society/ECECD)</li><li>• Tracy McDaniel (Southwest Women’s Law Center)</li></ul>	

	Other Attendees:	<ul style="list-style-type: none"> <li>• Yolanda Montoya-Cordova (NMDWS)</li> <li>• Kimberly Souders (Department of Workforce Solutions)</li> <li>• Jacob Vigil (New Mexico Voices for Children)</li> <li>• Erin Hegarty (Southwest Women's Law Center)</li> <li>• Westley Logan (NMDWS)</li> </ul>
	Kesselman-Jones:	Laura Kesselman, Zena Goodman
Preparer:	Laura Kesselman	
Next meeting:	<b>August 3rd, 10:00 am to 12:00 pm</b>	

## Notes

### Welcome

- The Modeling discussion on 8/16/2022 has been extended one hour, calendar invitation will be updated
- If you attended the last meeting but are not listed on previous meeting note attendees, please let us know so notes can be updated

### Public Comment

- No comments were submitted for today's meeting. Comments or feedback will be accepted in writing, please send to the Kesselman-Jones office at [nmpfml@kessjones.com](mailto:nmpfml@kessjones.com)

### Overview and Discussion on Definitions

**Presenter: Tracy McDaniel, Southwest Women's Law Center**

Family is defined as a child, domestic partner, family member, or spouse

- The Federal government has been using "blood affinity" language in its leave policies since 1969
  - 83% of attendees had no concerns with these definitions
  - Robert Aubert asked if the definition of blood affinity includes in-laws. The definition does not include in-laws.

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## Causes for Leave

- Family leave
  - Carla Sonntag asked if there will be a way to verify the commitment of domestic relationships. The Workforce administration would be responsible for this verification and stated this would be something to look into
- Medical leave aligns with FMLA qualifying conditions
- Serious health condition
  - Laura Kesselman asked if the FMLA qualifying conditions details carry over into the bill. Tracy McDaniel clarified it is included in the rules and legislation itself but not the bill
- Leave necessary due to domestic violence, sexual assault, or stalking
  - Discussion piece on the Administration side as to if this should be included in the bill or not
- Bereavement for loss of a child (does not include other family members)
  - Kei Tsuzuki asked why is this leave only for children and not family members? The response was that there is an issue of administration and how to verify the relationship with other family members using blood affinity, whereas loss of a child is easy to verify
- Circumstances arising out of a family member being on active-duty military service

## Length of Leave

- Bill currently includes a 12 weeks minimum of leave to care for a family member
  - Majority agrees (92%) with stated minimum
    - Carla Sonntag asked will there be exemptions for part-time, seasonal, or small employers? The response received was anyone who pays into the system for 6-months will receive benefits
  - Small business owners can opt in to the system and be covered as well
    - Kei Tsuzuki states small businesses want to invest in individuals and want employees to feel they're a part of the company culture before taking an extended leave. Holding a position for individuals that have only worked at the company for three months is a large burden on small businesses

- Carla Sonntag asks how do we manage our finances with multiple employees on leave for extended periods of time?
- Jon Lipshutz states there needs to be room for exceptions as to what types of leave and lengths of leave an individual can have and take
- 54% believed additional leave is warranted for pregnancy complications
  - There were no suggestions on a timeframe that seemed appropriate
- Most states do not experience all 12 weeks of leave being utilized, the average sits at 2 weeks
- The bill does not currently specify minimum increment leave however 75% of the group felt a specified minimum should be included
  - Kei Tsuzuki stated on the business side, doing less than a day of leave is difficult to track. A full day would also allow individuals to take the time needed to heal
  - Suzan Reagan stated as a caregiver of a parent, a full day of leave is not necessary and unnecessarily digs into an individual's personal leave time
- Laura Kesselman asked the group if there is a danger to not having a minimum?
  - Yolanda Montoya-Cordova noted on the administration side there are tracking difficulties. Could this be paid out similarly to a regular paycheck weekly or bi-weekly?
    - Kimberly Souders agrees with Yolanda's point. Tracking of hours is essential, if there are no parameters around increments and someone submits a claim against an employer for non-compliance it will be very difficult to make a determination
- Group did not agree on what should be the minimum length of incremental leave (1 hour, 4 hours, 8 hours, or none)
  - Multiple individuals noted it is difficult to accomplish anything in the state in an hour
  - On an employer and administrative side, 8 hours is easier to track

## Employer

- Suzan Reagan asked if as an owner of a small business in New Mexico, does the company fall under the proposed definition of employee? For small companies unable to pay high insurance fees, this bill would be a big benefit
- Anyone performing services on tribal lands cannot be included
- Military, such as individuals in the national guard, are excluded from the definition of employee
- If an employer is out of state but employs an individual in New Mexico, the employer must adhere to New Mexico's regulations
- What is the obligation of the employer to retain a position for a part-time or seasonal employee taking leave?

## Closing

**The next meeting is August 3rd, 10:00 am to 12:00 pm.**

*The PowerPoint presentations for this meeting are available at [kessjones.com/resource-page](http://kessjones.com/resource-page).*

**Chat**

13:05:40	Tracy McDaniel	Tracy McDaniel, <a href="mailto:tmcdaniel@swwomenslaw.org">tmcdaniel@swwomenslaw.org</a>
13:05:41	Kei Tsuzuki	Hello! Kei Tsuzuki is present.
13:05:45	Othiamba Umi - AARP NM	Othiamba Umi - AARP N
13:05:50	pamm (she/ her / hers) meyers	pamm meyers present
13:05:52	Justin Martinez	Justin Martinez - Present
13:05:55	sreagan	Suzan Reagan <a href="mailto:sreagan@unm.edu">sreagan@unm.edu</a>
13:05:57	Kimberly Souders Dept of Workforce Solutions	Kimberly Souders Dept of Workforce Solutions is present
13:06:0	Jacob Vigil (he/him)	Jacob Vigil, NM Voices for Children
13:06:05	Erin Hegarty, SWLC (she/her)	Erin Hegarty—Southwest Women's Law Center
13:06:06	Jennifer Webber	Jenn Webber in for Rob Black, NM Chamber of Commerce
13:06:11	Robert Aubert	Hello Everyone, Robert Aubert IUPAT Local 823
13:06:28	Westley Logan	Westley Logan NMDWS
13:07:02	Yolanda Montoya-Cordova	Yolanda Montoya-Cordova, Deputy Secretary, NMDWS
13:07:26	Janis Gonzales	Janis Gonzales, NM Pediatric Society/ECECD
13:07:44	Zena Goodman	<a href="mailto:nmpfml@kessjones.com">nmpfml@kessjones.com</a>
13:14:48	Tracy McDaniel   SWLC	Not at all - no concerns

13:17:56	KJ	Please remember to add to chat any additional thoughts that may arise that you would like to share with group and have documented in the discussion.
13:20:18	Carla Sonnta	Including 'Domestic partner' in this act will greatly increase opportunities and associated expense for employers. Will there be any way to verify a 'committed relationship' so that it's not just a 'paper' option taken?
13:21:51	Tracy McDaniel   SWLC	Not at all - no concerns
13:22:19	pamm (she/ her / hers) meyers	Just backing up what Carla Sonntag just put in the chat.
13:22:44	pamm (she/ her / hers) meyers	How is a committed relationship determined.
13:41:57	Carla Sonntag	Will there be exemptions for part time, seasonal, or small employers?
13:44:29	Zena Goodman	A question for the group - there are a lot of variants in answers for that second question (about time longer than maximum). How are you coming to this conclusion? Is this based on feedback from others in your organization? Are there anecdotes that you are thinking about? Would love to hear your logic behind those answers.
13:54:44	pamm (she/ her / hers) meyer	16 weeks seems adequate.
14:08:41	Kei Tsuzuki	Suzan, that totally makes sense! Thank you for sharing.
14:09:13	Janis Gonzales	I agree with that. I often had to take my daughter to appointments but they didn't take all day. Taking full days uses the leave too quickly
14:09:17	pamm (she/ her / hers) meyers	Can you give an example of a danger of not having a minimum?
14:24:06	Jennifer Webber	Is this how employee is defined elsewhere in NM statute?
14:24:33	KJ	How does this impact remote workers?
14:24:58	Westley Logan	Employee: what about full time members of the NM National Guard
14:28:48	Jennifer Webber	Is this how employer is defined elsewhere in statute?

14:32:09	Suzan Reagan	There are other laws that cite an employer-employee relationship.
14:33:32	Suzan Reagan	6 months was the parameter given for the modeling
14:36:10	Suzan Reagan	For discussion, some people chain together multiple jobs to have full-time work. They truly need access to PFML.
14:37:43	Kei Tsuzuki	Thank you for you work, everyone!



New Mexico  
**Paid Family and Medical Leave**  
Taskforce

# MEETING REPORT

Prepared by Kesselman-Jones, Inc.

*These notes represent a summary of discussions, decisions and action items and do not purport to be a verbatim transcript of what transpired. Corrections or additions should be reported to the individual that prepared the report (listed below) within three (3) calendar days of distribution of this document. Thank you.*

Details			
Date:	8/3/2022	Topic:	Request Process & Communication
Start time:	10:00 am MT	End time:	12:00 pm MT
In attendance:	New Mexico Family & Medical Leave Taskforce Members:	<ul style="list-style-type: none"><li>• Robert Aubert (Painters DC36 Local Union 823)</li><li>• Rob Black (NM Chamber of Commerce)</li><li>• Janis Gonzales (NM Pediatric Society/ECECD)</li><li>• Jeanne Hamrick (AARP NM)</li><li>• Chris Leroi ( The Arc of NM)</li><li>• Jon Lipshutz (NM Federation of Labor)</li><li>• Tracy McDaniel (Southwest Women’s Law Center)</li><li>• Suzan Reagan (UNM Bureau of Business and Economic Research)</li><li>• Lee Rynis (UNM Bureau of Business and Economic Research)</li><li>• Carla Sonntag (New Mexico Business Coalition)</li><li>• Kei Tsuzuki (Kei &amp; Molly)</li><li>• Jacob Vigil (New Mexico Voices for Children)</li></ul>	

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	Other Attendees:	<ul style="list-style-type: none"> <li>• Sue Anne Athens (DWS)</li> <li>• Richard Branch (DWS)</li> <li>• Sarah Koob (Southwest Women’s Law Center)</li> <li>• Westly Logan (DWS)</li> <li>• Yolanda Montoya-Cordova (NMDWS)</li> <li>• Rachael Moskowitz, (NMDWS)</li> <li>• Sarita Nair (Secretary of NMDWS on 8/15)</li> <li>• Kimberly Souders (DWS)</li> </ul>
	Kesselman-Jones:	Laura Kesselman Monica Aspacher
<b>Preparer:</b>	Ariana Higginson, Kesselman-Jones Inc.	
<b>Next meeting:</b>	Tuesday, August 16th from 2:00 - 5:00 pm MT	

## Notes

### New Mexico Department of Workforce Solutions Technology Division Considerations Sue Anne Athens (CIO, New Mexico Department of Workforce Solutions)

#### Agency Overview and Work Efforts on Paid Family & Medical Leave (PFML)

- Department of Workforce Solutions mission: Educate, Empower, Employ & Enforce
- Poll: How many states require employers to provide some kind of paid leave?
  - 6
  - 28
  - **16 & DC (answer)**
  - 32

#### Function comparison with existing state capabilities

- PFML is a multi-party program that involves claimants, employers, medical providers, and care recipients
- When looking at the basic functions of PFML big steps (employee, employer, both parties) are first considered, then program factors are looked at as well as other factors, such as identity management, security, and multilingual framework
- The PFML is very similar to the states Unemployment Insurance program

#### Cost Factors for IT Resourcing

- Program factors, such as service modalities will impact the project cost of IT
- Poll: What was the initial start-up cost for Washington state?
  - \$82.5 million
  - **\$63.2 million (answer)**

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- \$35.2 million
- \$243.1 million
- Poll: What was the timeline for Washington state from start to first benefit?
  - July 2017 to July 2018
  - July 2017 to July 2019
  - **July 2017 to January 2020 (answer)**
  - July 2017 to July 2020
- Cost drivers for FY20 Estimates: Service Delivery Model, Programs Staffing, Technology Reuse, Timeline to Deliver, Complexity of program

#### Examples of Impacts

- Areas of impact include the timeline for the project, timeframes of program functions, interfaces/cross checks required, the complexity of calculations, solvency and finding formulas flexibility, self-employed participation, and new customers for the agency

#### **Paid Family and Medical Leave Act Constraints**

**Tracy McDaniel, MPH (Policy Advocate, South West Law Center)**

#### Timeline Considerations

##### Implementation timeline - Enactment (June 2023)

- Sect. 15E - PFML Implementation Advisory Committee appointed (July 1, 2023)
  - Sect. 14A - Rules Adopted, promulgated, implemented (July 1, 2024)
    - Sect 48-D - Contributions begin (July 1, 2024)
      - Sect. 5A-B - Compensation payment begin (July 1, 2025)
- Rob Black asked if there are examples of how other states have implemented PMFL
  - Colorado has passed PFML as a ballot measure and has not yet completed the planning phase. Washington is the first state to build PFML from scratch. Washington and Oregon would be the best states to look to as examples.
- Kei Tsuzuki asked if Washington experienced any difficulties that could have been avoided with a longer implementation timeline
  - Washington had a phased-in approach to implementation which allowed them to be more agile but presented its own set of difficulties. There needs to be room for flexibility in implementation to respond to unpredicted roadblocks
- Jon Lipshutz asked if we can use the rules involving paid sick leave to help guide any rule-making for PFML
  - We would need at least a year to go through the rules, which was the advice received from Washington and might not all be completed in the first year
  - Having a longer period of time would help significantly with implementation and allows for better communication with everyone involved with the implementation
- Poll: Does the proposed timeline seem reasonable?

- Yes (42%)
  - Suzan Reagan said yes because other states pushed this program out in 2 to 3 years and the proposed timeline is 3 years
    - Sarita Nair clarified this is a 2-year timeline
- No (58%)
  - Kei Tsuzuki would like this process to feel inclusive of small business owners rather than another thing to deal with. She felt having a longer timeline would promote more communication with those involved in the implementation process
- Poll: Recommended start date for contributions beginning?
  - As is
  - January 1, 2025 (73%)
  - Something else
- Westley Logan asked with state agencies considered employers under the Act, doesn't this complicate the implementation process?
  - State Agencies have paid parental leave, which was established through executive order in January 2020.
  - State agencies are not exempted from participation in the program and the current paid parental leave would not be enough to qualify for a waiver for private plans.

Application, Return to Work, Appeals, and Administrative Action Timeline  
 Notice of Determination Timeline

- Sect. 51 - "Department shall notify the employer and employee or self-employed individual in writing within ten business days at application"
  - Sect. 51(1) - If approved... "individual shall begin receiving leave compensation within 10 business days of the date of submission of a properly completed application or 10 business days after approved leave begins"
  - Sect. 51(2) - If denied, provide grounds for denying right to appeal within 10 business days of application submission
    - Sect. 51(3) - If further information or supporting documentation is required, the department will adhere to the process above once a properly completed application is submitted
- Kimberly Souders states at least 15 days may be needed, and 10 would be rushed, but this depends on the level of automation in the process and the number of staff
  - It was noted that similar UI claims take 25 business days to be processed
- It was noted the term "business days" needs to be consistent between existing programs
- Poll: Does this seem reasonable?
  - Yes (89%)
  - No (11%)

### Return to Work Notification Timeline

- Sect. 8A - Self-employed individual shall notify the department within ten business days of the self-employed individual's return to work
  - Sect. 8B(2) - Upon an employee's return to work, an employer shall: immediately notify the department that the employee has returned to work
    - Many questioned the timeframe of "immediately" and what that means, along with the intention
      - Rob Black noted the immediacy of an employer notifying an employee's return to work creates an ongoing obligation versus a cadence of reporting that becomes an administration obligation or challenge for both small and large businesses
        - 10-day timeframe should be across the board, not just for self-employed
- Poll: Does this seem reasonable?
  - Yes (71%)
  - No (29%)

### Appeal Procedure Timeline

- Sect. 10A(1)a - An employee or self-employed individual may file an appeal in writing within 15 business days of receiving notice of the adverse decision
  - Sect. 10A(2)a - The secretary shall hold a hearing within 10 business days after an appeal is properly made, due notice is given to the parties in dispute and mediation is refused by any party
    - Sect. 10A(2)c - The secretary shall rule on the appeal within 5 business days after the completion of the hearing
- It was noted the projected timeline of 15 business days will only be reasonable with proper automation and adequate staffing to handle the claims
- Jon Lipshutz asked if an advocate can file an appeal, and if not, it would be fair to have the timeline extended until the individual can file an appeal themselves
  - In UI advocates can file on someone else's behalf
- Poll: Does this seem reasonable?
  - Yes (73%)
  - No (27%)

### Administrative Action Timeline

- Sect. 10B(1)a - Aggrieved party or department shall file a complaint in writing with the department within 30 business days of becoming aware of the violation
  - Sect. 10B(2)a - Upon receipt of complaint, first allow mediation upon agreement by all parties

- Sect. 10B2(b) - Hold a hearing within 10 business days after the appeal is properly made, due notice given to parties in dispute and mediation is refused by any party
  - Sect. 10C - A party may appeal a final decision made by the department to the district court (no deadline indicated)
- Kei Tsuzuki asked who is responsible for conducting the mediation process should an employee file an appeal
  - Yolanda Montoya-Cordova thought this was something they would do. NMDWS currently does mediation for their Wage-to-Hour.
- Multiple individuals questioned the difference between violation and dispute. The terms need to be better defined
- Poll: Does this seem reasonable?
  - Yes (60%)
  - No (40%)

The next meeting is August 16th, 2:00 - 5:00 pm MT

*The PowerPoint presentations for this meeting are available at [kessjones.com/resource-page](http://kessjones.com/resource-page).*

**Chat**

09:01:48	Robert Aubert	Good morning everyone!
09:02:17	Richard Branch	hello
09:03:26	Yolanda Montoya-Cordova	Yolanda Montoya-Cordova, Deputy Secretary, Department of Workforce Solutions
09:03:37	Sue Anne Athens	Sue Anne Athens, CIO, DWS
09:03:39	Kei Tsuzuki	Hello! Kei Tsuzuki from Kei & Molly Textiles, LLC
09:03:40	Richard Branch	Richard Branch, Attorney, DWS
09:03:46	Jacob Vigil	Jacob Vigil he/him, New Mexico Voices for Children
09:03:47	Sarita Nair	Sarita Nair, soon to be Secretary of NMDWS (as of 8/15)
09:03:50	Kimberly Souders	Kimberly Souders, Department of Workforce Solution
09:03:52	Westley Logan	Westley Logan GC
09:03:53	Rob Black	Rob Black, NM Chamber of Commerce
09:03:54	Jon Lipshutz	Hello! Jon Lipshutz, NM Federation of Labor
09:03:54	Chris Leroi	Hello. Chris Leroi from The Arc of NM, Public Policy Office
09:04:01	Carla Sonntag	Hi everyone! Carla Sonntag, New Mexico Business Coalition
09:04:03	Suzan Reagan	Hello, Suzan Reagan, UNM Bureau of Business and Economic Research
09:04:08	Robert Aubert	Robert Aubert, Painters DC36 Local Union 823
09:04:09	Tracy McDaniel	Good morning! Tracy McDaniel, Policy Advocate, Southwest Women's Law Center, <a href="mailto:tmcdaniel@swwomenslaw.org">tmcdaniel@swwomenslaw.org</a>
09:04:09	Jeanne Hamrick	Jeanne Hamrick AARP NM Good morning,

09:04:15	Westley Logan	Westley Logan DWS Legal
09:05:42	Sarah Koob	Hello All! Sarah Koob, Assistant to Julianna Koob Lobbyist for Southwest Women's Law Center
09:10:26	Laura Kesselman	Please don't forget to put your name and organization in the chat for our attendance record.
09:11:14	Liesl Gonzales	Janis Gonzales NM Pediatric Society/ECECD
09:12:03	Suzan Reagan	Joining me is Lee Rynis
09:21:47	Monica A. Kesselman-Jones	From Carla Sonntag: For clarification is the 16 states + DC the states that have any paid leave policy or those that have paid family medical leave?
09:22:11	Tracy McDaniel	That's any paid leave program (including sick leave).
09:23:21	Carla Sonntag	How many states have both paid sick leave and paid FML?
09:26:38	Tracy McDaniel	I believe that all states with PFML also have paid sick leave, except Delaware. I would have to confirm, though.
09:27:09	Carla Sonntag	Thanks. Please let us know.
09:30:13	Carla Sonntag	What have been the ongoing and average annual costs for Washington state?
09:36:45	Laura Kesselman	I will put that link in the chat shortly.
09:36:48	Rob Black	Please put the link for Washington in the chat
09:40:11	Laura Kesselman	<a href="https://www.opportunityinstitute.org/research/post/preliminary-lessons-from-implementing-paid-family-medical-leave-in-washington/">https://www.opportunityinstitute.org/research/post/preliminary-lessons-from-implementing-paid-family-medical-leave-in-washington/</a>
09:42:01	Rob Black	Carla, I believe there are 9 or 10 states with Paid family leave of some sort, including Washington DC.
09:44:34	Suzan Reagan	The timeline seems reasonable to me.
09:46:07	Kei Tsuzuki	WA's timeline was 3 years (2017-2020). Did they experience difficulties that could've been avoided with a longer time frame?

09:46:37	Jon Lipshutz	Can we use rules involving paid sick leave to help us guide any rule making for PFML? Potentially expediting the rule making process?
09:50:58	Jon Lipshutz	yes, sorry
09:54:02	Sue Anne Athens	Rules determine the system and operations - that needs to be aligned and flexibility needs to be in the act.
09:58:46	Richard Branch	Rob is right. There needs to be more lead in time for rulemaking to education to implementation.
10:01:06	Richard Branch	3 years from what? passage of the legislation or right now?
10:04:11	Sarita Nair	Just to be clear, this is a two-year timeline from passage.
10:04:43	Jon Lipshutz	That's a good point Sarita
10:06:19	Westley Logan	Aren't state agencies considered employers under the act? If so are they being taken in account in the development of timelines?
10:08:11	Carla Sonntag	Will state agencies be subject to this law or exempt as they are with the paid sick leave?
10:08:18	Richard Branch	2026
10:08:31	Suzan Reagan	Yes state employees would be included.
10:10:02	Rob Black	Given Tracy's comments regarding solvency, I think 2026 is probably as early as you could reasonably do.
10:11:49	Jon Lipshutz	Is there any reason why contributions can't be collected while rules are being created?
10:13:33	Tracy McDaniel	Welcome, Sarita! Congratulations on your new role!
10:14:01	Kei Tsuzuki	Congratulations, Sarita Nair!
10:14:32	Westley Logan	With state agencies considered employers under the Act, doesn't this complicate the implementation process? (Sue Ann?)
10:15:02	Jeanne Hamrick	Congratulations Sarita!
10:15:18	Suzan Reagan	State Agencies already do FMLA

10:17:55	Sarita Nair	Thanks everyone!
10:22:08	Sue Anne Athens	Parking Lot Question: Self - employed is different. What 'multi-party' validation would be in place?
10:23:19	Jon Lipshutz	how long does the appeal process take?
10:25:59	Richard Branch	yes business days. But from my experience in UI, 10 is too short.
10:28:45	Suzan Reagan	Will employers in other state be paying into this fund and not UI?
10:32:30	Westley Logan	Current (post pandemic) average time for ALJ adjudication of UI appeals in 20 days.
10:32:48	Kei Tsuzuki	Can this be automatically done through third parties for Employers, ie Quickbooks Payroll?
10:34:49	Suzan Reagan	instead of 'immediately' how about the same day employee returned to work.
10:36:28	Sue Anne Athens	What is the notification? Notify when they returned to work... provide the date....
10:36:54	Jon Lipshutz	Sounds reasonable Rob
10:38:41	Rob Black	Can we look at other states for this guidance?
10:42:38	Jon Lipshutz	Can an advocate file an appeal on behalf of the applicant if the applicant is unable to file the appeal themselves?
10:55:29	Rachel Moskowitz	I have to leave for another meeting. Thank you everyone.



New Mexico  
**Paid Family and Medical Leave**  
Taskforce

# MEETING REPORT

Prepared by Kesselman-Jones, Inc.

*These notes represent a summary of discussions, decisions and action items and do not purport to be a verbatim transcript of what transpired. Corrections or additions should be reported to the individual that prepared the report (listed below) within three (3) calendar days of distribution of this document. Thank you.*

Details			
Date:	8/16/2022	Topic:	Modeling
Start time:	2:00 pm MT	End time:	5:00 pm MT
In attendance:	New Mexico Family & Medical Leave Taskforce Members:	<ul style="list-style-type: none"><li>• Tessa Abeyta (New Mexico Public Health Association)</li><li>• Marvis Aragon (American Indian Chamber of Commerce of New Mexico)</li><li>• Robert Aubert (Painters DC36 Local Union 823)</li><li>• Rob Black (NM Chamber of Commerce)</li><li>• Jon Lipshutz (NM Federation of Labor)</li><li>• Pamm Meyers (The New Mexico Out Business Alliance)</li><li>• Tracy McDaniel (Southwest Women’s Law Center)</li><li>• Suzan Reagan (UNM Bureau of Business and Economic Research)</li><li>• Carla Sonntag (UNM Bureau of Business and Economic Research)</li><li>• Kei Tsuzuki (Kei &amp; Molly)</li><li>• Othiamba Umi (AARP New Mexico)</li><li>• Jacob Vigil (New Mexico Voices for Children)</li></ul>	
	Other Attendees:	<ul style="list-style-type: none"><li>• Sue Anne Athens (DWS)</li><li>• Richard Branch (DWS)</li><li>• Tiffany Delgato (Southwest Women’s Law Center)</li><li>• Jeanne Hamrick (AARP New Mexico)</li><li>• Westly Logan (DWS)</li><li>• Yolanda Montoya-Cordova (NMDWS)</li><li>• Terrelene Massey (Southwest Women’s Law Center)</li><li>• Donyelle Miller (Black Health New Mexico)</li></ul>	

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		<ul style="list-style-type: none"> <li>• Sarita Nair (Secretary of NMDWS on 8/15)</li> </ul>
	Kesselman-Jones:	Laura Kesselman
<b>Preparer:</b>	Ari Higginson, Kesselman-Jones Inc.	
<b>Materials</b>	A recording of this meeting and all associated documents can be found at: <a href="https://kessjones.com/resource-page/">https://kessjones.com/resource-page/</a>	
<b>Next meeting:</b>	<b>August 31st, 10:00 - 12:00 pm</b>	

## Notes

### Welcome

#### Public Comment (written submission only)

My mother whom I care for has dementia. She has lost her cognitive function such as thinking, remembering, and reasoning that interferes with her daily life and activities. My mother cannot control her emotions and sometimes she can be deeply crying and very emotional and other times she can get very aggressive.

My husband and I work full-time. For a while I was able to work from home however my work is inquiring me to go back to the office. This makes it difficult to leave my mother at home alone while my husband and I are at work. I am hoping I can get some paid leave to care for my mother. Since I prepare her meals, bathe her, dress her, wash her cloths and clean her room. I assist her with all daily duties. She needs care and support, and it can be very difficult to care for someone with dementia. I need patience and guidance from her doctor and any resources they have to offer. I would be better having time off to care for her, and Paid Family Medical Leave would be beneficial. -Veronica Lopez-Barraza

*Submitted August 4, 2022 to be entered into comment August 16, 2022*

#### The Funding Model

**Presenter: Suzan Reagan (UNM Bureau of Business and Economic Research (UNM BBER))**

#### Modeling Goals

- Modeling High Level answers to collections or premiums, pay outs, and fund balance
- Economic Considerations: Number of Employers, employment growth, total wages paid, median wages, inflation, and population (births, seniors, disabilities)

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## Legislation

- Collections
  - Page 7 Sections B and D
  - Page 10 Section 5A(3)
- Pay Outs
  - Page 13 Section 5F(1)-(3)
    - What is the mechanism for changing the maximum salary? How do we make this easy to implement if it's adjusting annually
    - Poll: Which should be utilized in the bill
      - \$60,000 (54%)
      - Occupational Employment and Wage Statistics (OEWS) Median Wage (31%)
      - Percentage above median wage (15%)
    - Poll: Adjustments to max (\$60k)
      - Leave as is (31%)
      - Include verbiage to secretary to make adjustments without going to legislature (38%)
      - Other (31%)
  - Page 17 Section 7A
  - A cap maximum is necessary to prevent solvency issues. The current cap, \$60k, could be raised, but issues begin to appear when the cap is raised above \$100k
  - Hours worked by employees are not currently reported but will need to be collected with the proposed pay out structure

## The PFML Fund

- Page 6 Section 3D
  - California had half the number of projected claims in the first year while Washington had twice the projected amount
    - All funds are solvent except Washington's - they had too many exceptions for employers and also implemented in the middle of the pandemic, having more claims than expected
  - Sarita Nair asked, what was the assumption on the length of leave taken and did you calculate how many person-hours/days of leave would be taken per week or per year based on that assumption?
    - It's based on full 12 weeks, though in reality, most individuals do not utilize all 12 weeks
- Sue Anne Athens asked, for those states you compare on solvency are all of them also using the fund for administrative support as well?
  - \$58 million for administrative support
- Kei Tsuzuki stated the figures projected are doable, but to increase premiums by double makes this no longer doable for small businesses. She likes California's language.
  - Pamm Meyers agrees that the language needs to be written carefully, particularly with the concern for covering costs

- Solvency assessment per HB38: The secretary shall ensure and maintain the self-sufficiency and solvency of the fund by performing an annual financial analysis and reporting the results and recommendations based on the analysis to the appropriate legislative body for adjustment of the formula used to determine employer and employee contributions to the fund
  - Kei Tsuzuki would like to see more specificity
  - Rob Black believes there needs to be a more balanced approach
    - Pamm Meyers agrees with Rob. We have to have specific guidelines in place to protect the small businesses and employees
  - Poll: Solvency
    - Language is ok as is (6%)
    - Revisit and make more specific (94%)
    - Other

#### UI Definition of Wages

- Wage definition proposed - wages include all cash payments made to employees for services rendered, including salaries, commissions, vacation allowance, fees, bonuses, pay back, and many fringe benefits
  - Sue Anne Athens states we can't have two different definitions of wages. Two definitions add complexity
  - Rob Blacks stated simplicity is key for small business owners
    - Kei Tsuzuki agrees
- One thing to consider is how many small businesses will be paying in that don't have an individual to do complicated calculations to determine wages of employees
- Sue Anne Athens asked, did you factor in the self-employed contributions?
  - Yes
- Poll: Wage definition
  - Use UI Wage definition (33%)
  - Use simpler definition (67%)

#### Paid Family Medical Leave Costs to Employers

- Richard Branch asked, how will unregistered employers be handled?
- Westly Logan asked, do we know how many businesses have PTO programs that would qualify them for exclusion under the Act and how that might impact solvency?
- Kei Tsuzuki states for small businesses, the monetary impacts aren't an issue, but replacing the person utilizing the benefits is more problematic and doesn't allow small businesses to build and maintain a sense of company culture
  - Pamm Meyers and Carla Sonntag agreed with this sentiment
- Poll: Should a small business or sole-proprietor have to pay their portion plus .05 for a total of .09
  - No exclusion for business (33%)
  - Exclusions or specifics for sole-proprietor under 5 employees (33%)
  - Exclusions for small businesses under 10 employees (17%)
  - None of the above (8%)

- Exclusions for small businesses under 20 employees (8%)

Task Force Member Vacancies

- Please send any suggestions to Laura Kesselman
  - Native American tribal government
  - A statewide organization representing African American business owners

The next meeting is August 31st, from 10:00 - 12:00 pm MT

*The PowerPoint presentations for this meeting are available at [kessjones.com/resource-page](http://kessjones.com/resource-page).*

**Chat Log 8/16/2022**

13:04:24	Suzan Reagan	Suzan Reagan UNM Bureau of Business and Economic Research
13:04:37	Donyelle Miller	Donyelle Miller Black Health New Mexico
13:05:02	Sue Anne Athens	Sue Anne Athens, CIO/DWS
13:05:03	Tracy McDaniel	Tracy McDaniel, Southwest Women's Law Center, <a href="mailto:tmcdaniel@swwomenslaw.org">tmcdaniel@swwomenslaw.org</a>
13:05:05	Yolanda M Cordova	Yolanda Montoya-Cordova, Deputy Secretary, Dept of Workforce Solutions
13:05:11	Kei Tsuzuki	Kei Tsuzuki, Kei & Molly Textiles, LLC
13:05:29	Sarita Nair	Sarita Nair, Secretary, Dept of Workforce Solutions
13:05:42	Tiffany Delgado	Tiffany Delgado, Southwest Women's Law Center Policy Intern
13:05:44	Tessa Abeyta	Tessa Abeyta, New Mexico Public Health Association
13:05:57	Jon Lipshutz	Jon Lipshutz, NM Federation of Labor, AFL-CIO
13:06:04	Terrelene Massey	Terrelene Massey, SWLC Executive Director
13:07:07	Carla Sonntag	Carla Sonntag, New Mexico Business Coalition
13:07:27	Othiamba Umi	Othiamba Umi, Advocacy Director, AARP New Mexico
13:11:09	Jacob Vigil	Jacob Vigil he/him, NM Voices for Children
13:11:54	Laura Kesselman	Please go ahead and put your name and organization in the chat for "attendance."
13:12:15	Richard Branch	Richard Branch, NMDWS
13:12:20	Marvis Aragon	Marvis Aragon, American Indian Chamber of Commerce of New Mexico
13:12:47	Jeanne Hamrick	Jeanne Hamrick, AARP NM
13:13:05	Westley Logan	Westley Logan DWS
13:16:53	Pamm Meyers	pamm meyers, exec. dir. NM Out Business Alliance
13:25:26	Richard Branch	it is not reported now
13:27:46	Rachel Moskowitz	Brb

13:28:00	Kei Tsuzuki	For the solvency of the fund, are we assuming that all employers, regardless of size, are paying into this fund. No exceptions for small businesses, correct?
13:29:24	Tracy McDaniel	That conversation on impacts of exempting small businesses will happen later in this meeting, Kei. Stay tuned. :-)
13:29:34	Rachel Moskowitz	back, thanks
13:31:58	Laura Kesselman	For those that just join us, be sure to put your name and organization in the chat for "attendance."
13:32:39	Robert Aubert	Hi Everyone, Robert Aubert, IUPAT DC36 Local 823
13:35:44	Sarita Nair	What was the assumption on the length of leave taken and did you calculate how many person-hours/days of leave would be taken per week or per year based on that assumption?
13:42:01	Sarita Nair	Great, thank you
13:45:03	Sue Anne Athens	For those state you compare on solvency are all of them also using the fund for administrative support as well
13:46:51	Laura Kesselman	Please put in the chat if you have any strong feelings about state approaches presented.
13:50:01	Pamm Meyers	I agree with Kei., we need that language written carefully. Particularly with the concern for covering cost.
13:51:15	Kei Tsuzuki	I like CA's language, too.
13:52:57	Sue Anne Athens	Did you factor in the self - employed contributions? I don't know if we have that factored before.
13:53:46	Rachel Moskowitz	Yes she did.
13:55:34	Sue Anne Athens	We can't have two different definitions of wages.
13:58:23	Laura Kesselman	One thing to consider is how many small business will be paying in that don't have someone to do those complicated calculations.
13:58:52	Kei Tsuzuki	I agree with Rob. Simplicity is key for small business owners.
13:59:30	Pamm Meyers	Wages: cash payments made too employees and back pay. Anything else seems to convoluted.
14:01:45	Richard Branch	Here's the wage and hour definition, 50-4-1B

14:01:48	Richard Branch	B. "wages" means all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece or commission basis or other method of calculating such amount.
14:06:39	Richard Branch	how will unregistered employers be handled?
14:12:18	Westley Logan	Do we know how many business have PTO programs that would qualify them for exclusion under the Act and how that might impact solvency?
14:22:31	Westley Logan	Keep in mind that state employees already get paid time of for birth of a child. 12 weeks I think
14:24:06	Laura Kesselman	<a href="https://kessjones.com/resource-page/">https://kessjones.com/resource-page/</a>
14:29:19	Tracy McDaniel	This is what we currently have in HB38 related to solvency assessment: D. The secretary shall ensure and maintain the self-sufficiency and solvency of the fund by performing an annual financial analysis and reporting the results and recommendations based on the analysis to the appropriate legislative body for adjustment of the formula used to determine employer and employee contributions to the fund.
14:30:52	Kei Tsuzuki	I would like to see more specificity.
14:32:54	Pamm Meyers	I agree with Rob. We have to have specific guidelines in place to protect the small businesses and employees.
14:44:51	Richard Branch	can always call it something else.
14:59:48	Rachel Moskowitz	brb
15:00:59	Rachel Moskowitz	back
15:08:06	Rob Black	I am going to have to leave for the Health department's healthcare hero's event. Sorry to have to leave early.
15:08:28	Suzan Reagan	Thank You Rob for your feedback!
15:08:46	Yolanda M Cordova	I need to sign off. My borrowed office here in Santa Fe is no longer available.
15:30:08	Westley Logan	Is there anything in the legislation as proposed that provides job protection?
15:34:50	Suzan Reagan	@carla Sonntag He might not realize he doesn't pay salary during the time off.

15:37:50	Carla Sonntag	@Suzan Reagan: He was talking about the policy of what is allowed - not how it is paid.
15:39:24	Suzan Reagan	Thank You Carla I appreciate the comment. Do you have a suggestion on how the policy could be better formulated to work?
15:40:55	Rachel Moskowitz	SAA--those figures come out of my shop!
15:41:34	Rachel Moskowitz	Thanks Suzan
15:44:38	Rachel Moskowitz	This information is updated annually and can be found at: <a href="https://www.dws.state.nm.us/Portals/0/DM/LMI/SizeClass2021.pdf">https://www.dws.state.nm.us/Portals/0/DM/LMI/SizeClass2021.pdf</a>
15:46:10	Carla Sonntag	Suzan, I don't at this time. Maybe our member survey will help.
15:46:32	Suzan Reagan	Thank You all for putting up with me this afternoon!!!



New Mexico  
**Paid Family and Medical Leave**  
Taskforce

# MEETING REPORT

Prepared by Kesselman-Jones, Inc.

*These notes represent a summary of discussions, decisions and action items and do not purport to be a verbatim transcript of what transpired. Corrections or additions should be reported to the individual that prepared the report (listed below) within three (3) calendar days of distribution of this document. Thank you.*

Details			
Date:	8/31/2022	Topic:	Administration
Start time:	10:00 am MT	End time:	12:00 pm MT
In attendance:	New Mexico Family & Medical Leave Taskforce Members:	<ul style="list-style-type: none"><li>• Robert Aubert (Painter DC36 Local Union 823)</li><li>• Tracy McDaniel (Southwest Women's Law Center)</li><li>• Suzan Reagan (UNM Bureau of Business and Economic Research)</li><li>• Carla Sonntag (UNM Bureau of Business and Economic Research)</li><li>• Kei Tsuzuki (Kei and Molly Textiles)</li><li>• Jacob Vigil (New Mexico Voices for Children)</li></ul>	

	Other Attendees:	<ul style="list-style-type: none"> <li>• Sue Anne Athens (Department of Workplace Solutions)</li> <li>• Janis Gonzales (ECECD)</li> <li>• Fallon Grafe ( FSG)</li> <li>• Westley Logan (DWS)</li> <li>• Yolanda Montoya-Cordova (NMDWS)</li> <li>• Sarita Nair (Secretary of NMDWS)</li> <li>• Kimberly Souders (DWS)</li> </ul>
	Kesselman-Jones:	<ul style="list-style-type: none"> <li>• Zena Goodman</li> <li>• Laura Kesselman</li> </ul>
<b>Preparer:</b>	Ari Higginson, Kesselman-Jones Inc.	
<b>Materials:</b>	A recording of this meeting and all associated documents can be found at: <a href="https://kessiones.com/resource-page/">https://kessiones.com/resource-page/</a>	
<b>Next meeting:</b>	<b>September 12, 2:00 - 4:00 pm</b>	

## Notes

### **Administration of NMPFML Act New Mexico Department of Workforce Solutions**

#### Overview of Services

#### *Staffing Model Estimate - 216 permanent FTEs*

#### Employer Services - Sections 4 (Estimated 17 FTEs)

- Registering, reactivation, and maintaining employer accounts
- Creating and maintaining employee accounts
- Processing Waivers
- Processing and Adjusting Wage Reports
- Contributions Payment Services
- Administering Field Audits
- Managing Employers Representatives

#### Benefit Services - Sections 5, 6 (Estimated 93 FTEs)

- Claim filing and eligibility
- Determination (Monetary and Non-Monetary)
- Claimant Self-Service and Maintenance

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- Benefit Payments
- Benefit Recomputation, overpayments, and collections
- Key differences between UI and PFMLA
  - In UI the employer and employee are “divorced” - in PFML they are still married
  - Mandatory time for completing claim processing
  - Claim history does not affect employers
  - If claimant is the one incapacitated, other party will file claim - able and available doesn't apply here

#### Adjudication and Appeals - Section 10A (Estimated 20 FTEs)

- Non-monetary Issues and Adjudication
- File and Process Appeals
- Key differences between UI and PFMLA
  - Multi-party appeal - what is included where do the medical providers come in, multiple employer
  - Complexity of adjudications - what are disqualifying issues
  - 22% of IC in UI have appeals resulting in approximately 9,600 appeals yearly
    - 15,000 plus appeals for PFML estimated based on projections and same percentage

#### Program Integrity (Estimated 10 FTEs)

- Integrity Analytics
- Integrity Cross-Matches
- Fiscal Reports
- Management Reports
- Statistical Reports
- Key differences between UI and PFMLA
  - Identify verification - Use of SSA authentication, national repository for UI
  - Eligibility verification/program fraud mitigations
  - Self-employed verifications for wages/income will need to be completed
  - Additional certification for relationships, for medical information
  - Security and compliance - fraud, technology standards, health information collections, audits, and oversights

#### Administrative Services (Estimated 7 FTEs)

- Workload Management
- Education, Training, and Communications
- Human Resource Management
- Financial and Accounting
- Key differences between UI and PFMLA
  - Required actuary for solvency monitoring and complexity
  - Reports development and monitoring - state driven

- Lack of federal guidance and standards which provide benefits in lessons learned from national uniform application

#### Role of LRD in the Enforcement of PFMLA - Sections 7, 8, 10B, 10C, 10D, 11

- Resources & Education on Labor Law Compliance
  - Develop materials and resources
  - Ongoing training/presentations for employees and employers
  - Interactive website
- Promulgation of Rules and Regulations obliging LRD's processes and needed timelines
- Investigation & Mediation of Allegations

#### Compliance Investigation Process

- Intake (review and decide)
  - Notice Complaint (send notice)
    - Investigation
      - Determination (take appropriate actions)

#### Case Scenarios

Poll: What is the appropriate length of employment before an employee is granted job protection for Paid Family Medical Leave?

- Immediate job protection - MA, DE, MD (30%)
- No additional job protection beyond FMLA - CA, NJ, D.C., WA (10%)
- Job protection after 90 days - OR, CT (40%)
- Job protection after 180 days - CO (10%)
- Job protection after one year (10%)

Per FMLA, an employee needs to have worked at a company for at least one year to be eligible for FMLA job protection, and the company needs to have 50 or more employees

The next meeting is September 12th from 2:00 - 4:00 pm MT

*The PowerPoint presentations for this meeting are available at [kessjones.com/resource-page](http://kessjones.com/resource-page).*

## Chat

09:01:42	Sue Anne Athens	Sue Anne Athens, DWS
09:01:44	Sarita Nair	Sarita Nair, NMDWS
09:01:47	Yolanda Montoya-Cordova	Yolanda Montoya-Cordova, NMDWS
09:02:03	Tracy McDaniel	Tracy McDaniel, Southwest Women's Law Center
09:02:04	Suzan Reagan	Suzan Reagan, UNM Bureau of Business and Economic Research
09:02:13	Westley Logan	Westley Logan DWS
09:02:25	Kimberly Souders	Kimberly Souders, Department of Workforce Solutions, Labor Relations Division
09:02:41	Jacob Vigil	Jacob Vigil, NM Voice for Children
09:03:10	Carla Sonntag	Carla Sonntag, NMBC
09:03:24	Robert Uubert	Robert Aubert, IUPAT DC88 Local 823
09:07:28	Fallon Grafe	Fallon Grafe, FSG
09:16:04	Rob Black	I am very sorry that I will not be able to participate today. I am participating with the AG, DA, Mayor on a press event at 10:30. I am very sorry I will not be able to participate this morning.
09:16:33	Zena Goodman	Hello to everyone who joined us! This is a dense session, please put your comments and questions in the chat as we go along.
09:16:49	Janis Gonzales	Will we get these slides?
09:16:59	Zena Goodman	Yes, they will be posted to <a href="http://KessJones.com/resource-page">KessJones.com/resource-page</a> .
09:17:15	Zena Goodman	I can also email out right now if they would be helpful to reference.
09:19:08	Janis Gonzales	thank you!
09:41:45	Zena Goodman	If you can, please turn on your video feed.

09:46:55	Suzan Reagan	Correct me if I'm wrong, the benefit payout is based only on the last 12 months of work history.
09:56:05	Kei Tsuzuki	So sorry for joining late... Kei from Kei & Molly Textiles
10:36:18	Sarita Nair	Everyone, please feel free to contact our department with other questions on administration. I will get you to the right person <a href="mailto:Sarita.nair@state.nm.us">Sarita.nair@state.nm.us</a>



New Mexico  
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# MEETING REPORT

Prepared by Kesselman-Jones, Inc.

*These notes represent a summary of discussions, decisions and action items and do not purport to be a verbatim transcript of what transpired. Corrections or additions should be reported to the individual that prepared the report (listed below) within three (3) calendar days of distribution of this document. Thank you.*

Details			
Date:	9/12/2022	Topic:	Final Recommendations
Start time:	2:00 pm	End time:	4:00 pm
In attendance:	New Mexico Family & Medical Leave Taskforce Members:	<ul style="list-style-type: none"><li>● Robert Aubert (Painter DC36 Local Union 823)</li><li>● Tracy McDaniel (Southwest Women’s Law Center)</li><li>● Suzan Reagan (UNM Bureau of Business and Economic Research)</li><li>● Carla Sonntag (UNM Bureau of Business and Economic Research)</li><li>● Kei Tsuzuki (Kei and Molly Textiles)</li><li>● Janis Gonzales (New Mexico Early Childhood Education and Care)</li><li>● Donyelle Miller (Black Health New Mexico)</li><li>● Leah Sanchez (New Mexico Public Health Association)</li><li>● Othiamba Umi (AARPNew Mexico)</li></ul>	
	Other Attendees:	<ul style="list-style-type: none"><li>● Sue Anne Athens (Department of Workplace Solutions)</li><li>● Yolanda Montoya-Cordova (NMDWS)</li><li>● Sarita Nair (Secretary of NMDWS)</li></ul>	
	Kesselman-Jones:	Zena Goodman	
Preparer:	Ari Higginson, Kesselman-Jones, Inc.		

**Materials:**

A recording of this meeting and all associated documents can be found at:  
<https://kessjones.com/resource-page/>

**Notes**

*If you haven't already, please submit your final Task Member comments at  
<https://form.jotform.com/KessJones/nmpfml-final-taskmember-comment>*

**Review of Draft Report and Consensus Issues**

**Tracy McDaniel, Southwest Women's Law Center**

If you were explaining this to you constituents, where would you stumble? What are you clarifying questions?

- No response from the Task Force

**Family Leave**

- Leave for which an employee can apply for leave compensation pursuant to the Paid Family & Medical Leave Act and that is granted to the employee to allow the employee to bond with a child of the employee within twelve months of the birth or adoption of a child or placement of a foster child with the employee or to care for a family member if the family member has a serious health condition
- During the original meeting this topic was discussed, the group agreed the loss of a child warranted paid leave, but the group was unsure if leave was warranted for domestic violence
  - Multiple individuals agreed leave for the loss of a child should cover the loss of any child under 18 years of age
- Poll: Recommendation to include leave for bereavement in cases of stillbirth and miscarriage in the report
  - Support
  - Oppose
  - Neutral
- Poll: Recommendation to include leave for bereavement for a child under 18 or in cases of a child under 18 who is sick
  - Support
  - Oppose
  - Neutral

"Small" business waiver

- This could offset any financial impacts on an emerging business and could encourage entrepreneurship and support start-ups, allowing them to keep more of their earnings to reinvest as they grow their businesses without impacting access for employees
- Poll: Small Business Waiver
  - No waivers
  - Waive for sole-proprietors (0.05%) and small businesses under 5 employees

#### Self-employed contribution reduction

- A self-employed individual opting in would pay .09%. This would need to be changed in the bill separately from employers. Reducing the costs for self-employed individuals whom opt in would likely increase the number of people contributing to the fund. This would make this safety net more accessible and possibly promote innovation and entrepreneurship
- Poll: Self-Employed
  - No waivers
  - Waive self-employed contribution to 0.09%

#### Solvency Adjustments

- In the meeting this was discussed, 92% of the Task Force agreed the language was too vague
  - Recommendation - Solvency trigger should be included in the law and should include:
    - Annual date of assessment
    - Formula for determining whether a rate increase is warranted based on:
      - Benefits paid in the prior fiscal year
      - Administration costs in the prior fiscal year
      - Net assessments remaining in the fund at the end of the fiscal year
    - A cap on the maximum annual increase
- Poll: Include in solvency trigger (multiple choice)
  - Annual date of assessment (50%)
  - Formula for determining whether a rate increase is warranted based on benefits paid in the prior fiscal year, administration costs in the prior fiscal year, and net assets remaining in the fund (63%)
  - A cap on the maximum annual increase (25%)

#### Feedback on Task Force process

- Yolanda Montoya-Cordova thanked the group for their efforts
- Donyelle Miller said this was a really good learning experience and asked when or if there would be an opportunity for public comment on the final report
  - Tracy McDaniel stated public comment was offered at the beginning of each meeting. The hope is that the report will be heard in front of the interim

committees listed in the memorial. There will be time for public comment at these meetings as well.

- These dates will be shared with the Task Force e-mail list

*The PowerPoint presentations for this meeting are available at [kessjones.com/resource-page](http://kessjones.com/resource-page).*

**Chat**

13:00:17	Tracy McDaniel	Good afternoon, everyone
13:00:27	Chris Leroi	Chris Leroi - The Arc of NM - Public Policy Officer
13:00:30	Sarita Nair	Sarita Nair, NMDWS
13:00:32	Yolanda Montoya-Cordova	Yolanda Montoya-Cordova, NMDWS
13:00:37	Tracy McDaniel	Tracy McDaniel, Southwest Women's Law Center
13:00:40	Sue Anne Athens	Sue Anne Athens, NMDWS
13:00:42	Carla Sonntag	Carla Sonntag, New Mexico Business Coalition.
13:00:43	Othiamba Umi	Othiamba Umi - Advocacy Director - AARP New Mexico
13:01:20	Robert Aubert	Robert Aubert
13:01:35	Robert Aubert	Robert Aubert, IUPAT DC36 Local 823
13:03:14	Suzan Reagan	Suzan Reagan UNM Bureau of Business and Economic Research
13:04:03	Leah Sanchez	Hi everyone—I'm Leah Sanchez from NMPHA
13:04:21	Janis Gonzales	Janis Gonzales from NM Pediatric society and ECECD
13:04:41	Donyelle Miller	Good afternoon everyone. Donyelle Miller from Black Health New Mexico
13:13:51	Leah Sanchez	I agree wholeheartedly w/ Donyelle and Janis
13:18:19	Janis Gonzales	I thought you were editing it also - I support both
13:18:38	Donyelle Miller	I support leaving in the proposal loss of child and miscarriage and still birth
13:23:39	Suzan Reagan	Tracy you are correct! I'm on the phone.
13:24:0	Tracy McDaniel	Thank you, Suzan!
13:25:13	Sue Anne Athens	The waiver process referenced a comparable medical leave program. Are we going to exclude these employer population or will there need to be a process for that to happen?

13:31:52	Kei Tsuzuki	Sorry to be joining late. Kei Tsuzuki from Kei & Molly Textiles, LLC
13:32:23	Suzan Reagan	I believe the 1.2 works for NM numbers, also.
13:32:24	Rachel Moskowitz	If there is a cap, and the fund runs out, we will have to either shut down the program or ask the legislature to fund it
13:32:4	Rachel Moskowitz	That may not happen, but just telling you what may happen
13:33:00	Leah Sanchez	Are we concerned about having enough support in the legislature if we don't include a cap on the max annual increase?
13:33:31	Sue Anne Athens	WASHINGTON - had to borrow/ get loan for the administrative cost covered.
13:37:04	Rachel Moskowitz	mathematically yes that could be done
13:47:38	Rachel Moskowitz	thank you!!
13:47:40	Marvis Aragon	Thank you for facilitating this process
13:47:41	Leah Sanchez	Thank you all!

## APPENDIX III – University of New Mexico Bureau of Business and Economic Research Methodology

The bill with respect to workers is written in the broadest terms to ensure that all workers in New Mexico would be eligible for paid family medical leave especially low-income families who are more at risk for poor outcomes for children.

The model takes into account:

- Broadest measure of employment,
- Estimate of workers eligible to make a claim (worked at least 6 months contributing to fund),
- Employment growth forecast,
- Wage growth forecast including inflation,
- Number of Births in New Mexico,
- Number of disability claims in New Mexico, and
- Assumption of 100% of 12 weeks, although most states don't experience this.

The Census Bureau Public Use Microdata Sample (PUMS) 1-year estimates from the American Community Survey were used to calculate employment, months worked and wages. This data set includes all workers covered by the proposed bill including workers of low income and otherwise who might not be captured in Quarterly Covered Employment and Wages (QCEW) data (i.e., covered under the unemployment insurance program). The total employment number for NM 2019 PUMS is 973,538 that compares with QCEW 2019 annual average employment is 836,687. The total employment number for NM 2020 PUMS is 938,533 that compares to QCEW 2020 annual average employment of 782,136.

For 2020 eligible workers for PFML are estimated at 782,136. The estimate of total number of workers eligible to make a claim is based on PUMS records having worked at least 26 weeks (6 months) during the past 12 months. Projections from the base year 2020 through 2026 include BBER's FOR-UNM employment growth forecast and for wages HIS Markit's (formerly Global Insight) inflation forecast for total compensation are used to account for inflation.

Workers making less than minimum wage were screened out of the calculations for paying into the PFML fund. From the PUMS data this is about 9.3% of total wages.

Premiums collected from employees are calculated at 5 tenths of total wages and from employers at 4 tenths. For workers who have wages at \$12.00 per hour the minimum wage when the act will be effective; this would work out to a bi-weekly premium of \$4.80 for a yearly contribution of \$124.80. A worker making \$60,000 would contribute \$300.00 yearly. Employers would pay slightly less with quarterly premiums at \$24.96 for minimum wage workers and \$60.00 for workers making \$60,000 (See table on Paid Family Leave Premiums: Employee and Employer based on annual wages.) Employers on average would pay for each employee 247.03 in 2023 (see Summary Paid Family Leave Estimates).

PFML is tax neutral as all income is subject to taxes, i.e., an individual is still expected to pay taxes on all income which does include any type of paid leave.

Eligible claims are based on the assumption that births in New Mexico are around 25,000 per year and disability claims run about 5,000 per year. There is a bit of cushion in the births number as US Census Bureau Population Estimate program had 2018 to 2019 births at 22,966 and from 2019 to 2020 was 20,088. Projected years from the base 2020 through 2025 include in the UNM Geospatial and Population Studies population growth estimates.

Employee wage replacement - Wage replacement is set to 100 percent for wages up to minimum wage of \$12.00 per hour with 67 percent for any part above minimum wage (See Employee Wage Replacement table). Employees holding multiple jobs could claim for each job and the replacement rate would be dependent on salary for each job. In the case where the employee is using several jobs to add up to 40 hours a week the replacement rate would be 100 percent for hours at minimum wage plus the 67 percent for hours above. In the case where an employee was working more than a

40-hour week between two jobs, again the guaranteed \$12.00 per hour plus the 67 percent of wages above the minimum would apply.

For validating the PFML fund would collect enough premiums to cover claims both for current year and out years, a few assumptions have been implemented. The maximum paid leave duration is 12 weeks. In other states the duration of claims experience has been that not every claim exhausts the full time allowed. For New Jersey's 2010 experience where max leave was 6 weeks average duration was 5 weeks. For the purpose of testing fund soundness for New Mexico a 100% for average claim duration was used. It is recognized that very high wage earners could drain the PFML fund, so a maximum payout has been applied. Currently the maximum payout has been set to annual wage of \$60,000. Census Bureau Table S2001 ACS 1 Year estimates for 2019 Median earning are \$30,276 and Mean for full-time year-round \$55,313. The act does say to use \$60,000 in one place and OESW average statewide wage in another. Finally, the annual cost of fifty million for administering the program was used in the base year with inflation and growth of employment and related claims applied in following years. A seven-year amortization of fixed costs to DWS was included to pay back the initial startup cost over time. The initial startup cost of 36,000,000 was used as an estimate of these costs. The model shows that enough premiums would be collected to support claims (See table Summary Paid Family Leave Estimates). The bill includes a section for maintaining a unit at NMDWS to insure the funds solvency every year and update calculations on actual costs and premiums.

### Parameters and definitions

**Maximum wage payout:** Wage earners earning above the maximum wage would receive benefits at the maximum wage. This prevents very high wage earners from depleting the fund. Note that occasionally name brand actors declare wages in New Mexico while filming. In some cases, wages could be a million dollars.

**Wage Minimum:** There are wage earners who earn less than minimum wage. For example tipped employees; Employers are supposed to make up the difference to the minimum wage. Calculations assume that all who have qualifying hours of paying into the fund will earn the current \$10.50 per hour.

**Leave Duration:** Set to 12 weeks. Experience in other states show that most time leave duration is about 85 percent.

**Months Contribute to fund to Qualify:** The worker must work and contribute to the fund for at least 6 months and have a qualifying event to receive benefits.

**Premium Rate:** Percent amount applied to total gross wages to determine contribution.

**Initial costs:** An amount that NMDWS indicated they needed to start up the program

**Administrative Cost:** An annual amount estimated by NMDWS needed to administer the program. The initial year is based on 5,000,000 and each subsequent year increases are estimated off providing increases by inflation and employment.

**Amortization of Fixed Costs DWS:** Initial cost amortized at 5% over 10 years.

**Maximum Wage Collection Cap:** It was determined that there would be no maximum wage collection cap at this time.

### Paid Family Medical Leave Data and Variables used in the calculations:

- 1) Data set which has employed workers with wages used to run model is US Census Bureau Public Use Microdata Sample for New Mexico one-year estimates for 2018 data which contains a sample of actual responses to the American Community Survey and includes variables for:
  - a. PWGTP: Person's weight for generating statistics on individuals (such as age).
  - b. ADJINC: Adjustment factor for income and earnings dollar amounts (6 implied decimal places) 1011189 .2017 factor (1.011189)
  - c. WAGP: Wages or salary income past 12 months (use ADJINC to adjust WAGP to constant dollars)

- d. WKHP: Usual hours worked per week past 12 months
  - e. WKW: Weeks worked during past 12 months -
    - i. b .N/A (less than 16 years old/did not work during the past 12 .months)
    - ii. 1 .50 to 52 weeks worked during past 12 months
    - iii. 2 .48 to 49 weeks worked during past 12 months
    - iv. 3 .40 to 47 weeks worked during past 12 months
    - v. 4 .27 to 39 weeks worked during past 12 months
    - vi. 5 .14 to 26 weeks worked during past 12 months
    - vii. 6 .less than 14 weeks worked during past 12 months
  - f. WKL: When last worked – screen for no work but had either hours worked or wages and not both.
    - i. b .N/A (less than 16 years old)
    - ii. 1 .Within the past 12 months
    - iii. 2 .1-5 years ago
    - iv. 3 .Over 5 years ago or never worked
- 2) For inflation projections the model uses Global Insights total compensation growth percent change. This includes significant growth in healthcare benefits.
  - 3) BBER FORUNM employment forecast growth to estimate eligible workers.
  - 4) Population growth as estimated by UNM Geospatial and Population Studies is used to estimate births and disability for eligible claims.

## APPENDIX IV – University of New Mexico Summary Paid Family and Medical Leave Estimates

<b>Summary Paid Family Leave Estimates Revised 1/24/2022</b>				
<b>Based on 2020 U.S. Census American Community Survey 1-Year PUMS Experimental</b>				
	Estimated	Estimated	Estimated	Estimated
	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>
Eligible Workers (Weeks based)	846,469	859,234	871,247	883,184
Eligible Claims by Workers	35,126	35,168	35,211	35,253
Average Weekly Payout	\$ 819	\$ 840	\$ 853	\$ 871
Admin cost per employee	\$ 69.62	\$ 70.37	\$ 70.44	\$ 70.94
Admin cost per claim	\$ 1,677.66	\$ 1,719.21	\$ 1,742.91	\$ 1,777.38
Employer average premium per employee	\$ 247.03	\$ 253.45	\$ 257.25	\$ 262.65
Cost paid family leave	\$ 345,172,718	\$ 354,572,185	\$ 360,322,637	\$ 368,330,880
Administrative Cost	\$ 58,929,610	\$ 60,461,780	\$ 61,368,706	\$ 62,657,449
Amortization of Fixed Costs DWS	\$ 8,152,373	\$ 8,152,373	\$ 8,152,373	\$ 8,152,373
<b>Total Est. Cost</b>	<b>\$ 412,254,701</b>	<b>\$ 423,186,338</b>	<b>\$ 429,843,716</b>	<b>\$ 439,140,702</b>
Total Est. Collections	\$ 427,896,529	\$ 451,430,838	\$ 463,168,040	\$ 470,115,560
<b>Balance<sup>1</sup></b>	<b>\$ 15,641,828</b>	<b>\$ 28,244,500</b>	<b>\$ 33,324,323</b>	<b>\$ 30,974,858</b>
Total Wages Paid	\$ 49,515,283,291	\$ 50,802,680,657	\$ 51,564,720,866	\$ 52,647,580,005
<b>Based on:</b>				
Max wage payout		\$ 60,000		
Months Contribute to Qualify		6		
Maximum Paid Leave Duration in Weeks		12		
Premium on Wages paid by Employer		0.40%		
Premium on Wages paid by Employee		0.50%		
Average Duration		100%		
2020 Base year Initial Claims		35,000		
Initial Fixed Costs Estimate		\$ 36,000,000		
Amortization cost are paid monthly but the annual amount is used.				
1 Balance is not carried forward to show that each year the fund is solvent.				
Source: UNM Bureau of Business and Economic Research				
<b>Based on 2020 U.S. Census American Community Survey 1-Year PUMS Experimental</b>				