

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original Amendment
Correction Substitute

Date January 17, 2024

Bill No: HB 6

Sponsor: Christine Chandler, Linda Serrato, Mimi Stewart and Patricia Roybal Caballero
Short Title: Paid Family and Medical Leave Act

Agency Name and Code

Number: 63100-NMDWS

Person Writing Sarita Nair

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
	\$200,000	\$417,000	Recurring	Newly established, Paid Family Medical Leave Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	24,362.5	\$23,215		47,487.5	Non-Recurring	Unknown
			\$28,725.0		Recurring	Paid Family and Medical Leave Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 6 creates the Paid Family Medical Leave Act (PFMLA or Act) which would establish a paid family and medical leave program in New Mexico, to be administered by the workforce solutions department (WSD). Employees and self-employed individuals can take up to twelve (12) weeks of leave per year for personal medical reasons or those of their family members, seeking protection from domestic violence, stalking, or sexual assault, and other specified reasons. Individuals on approved leave are to receive weekly “leave compensation” payments from WSD. January 1, 2027 is the first date by which WSD is must be able to start paying leave compensation. The program is funded through contributions to a “paid family medical leave fund” (“fund”). Employees, employers with five or more employees, and self-employed individuals opting into the program are all required to make quarterly contributions to the fund. Additional details about how the program is to operate appear below.

How it works. Eligible individuals may take time off from work for up to twelve (12) weeks per year, either all at once or intermittently, and receive leave compensation while on leave. The leave and accompanying compensation under the Act may be used:

- to care for oneself or family members with a “serious health condition” (physical or mental), bonding with newborn or recently adopted children, after the death of a child.
- as “safe leave” to seek protective measures against domestic violence, stalking, or sexual assault or abuse for oneself or family member(s).
- as “qualifying exigency leave” for individuals on active military duty or who’ve received an impending call to active duty. Note: this is a new category.

How much is leave compensation? An employee’s weekly leave compensation payment is calculated by first determining their average weekly wage in the 12 months leading up to the application for leave. Next, multiply the current state minimum wage by the number of hours per week the employee works. To that figure, add 67% of the employee’s average weekly wage to determine the amount of their weekly leave compensation payment.

For the self-employed, multiply the current state minimum wage by the number of weekly hours a person working full time (presumably in the self-employed individual’s position) would work.

To that figure, add 67% of the self-employed person's annual net income divided by 52.

For both employees and self-employed persons, weekly payments are capped and may not exceed 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.

Who is eligible? Eligible individuals include anyone who has:

- filed a claim for leave compensation, and
- contributed to the PFML fund for at least six months in the 12-month period before applying.

Who is not eligible? The following individuals are ineligible:

- individuals who have not contributed to the PFML fund for at least six months in the 12-month period preceding application;
- those who file fraudulent claims for leave or have done so within the previous three years;
- those who receive unemployment insurance (UI) benefits during the claimed leave period;
- persons who, during leave, fail to provide the care or use the leave as described in their application;
- persons receiving temporary total disability benefits from a workers' compensation claim; and
- persons who earn wages while on leave such that the leave compensation received "duplicates" what the employee earns for the same time period.

How is the program funded? The program is funded by quarterly contributions by employees, certain employers, and self-employed individuals starting January 1, 2026. These contributions go into the PFML fund. Money from the fund will then be appropriated to pay for leave compensation payments, administrative costs, and outreach activity required by the Act.

No later than January 1, 2025, the WSD secretary shall contract the services of a "qualified independent actuarial consultant" to determine an actuarially sound premium rate as well as a "future premium rate-setting mechanism" for the program. It is unclear why this occurs so early in the timeline for establishing the benefit, as there may not be enough information on utilization and the number of employers who choose to opt out at this time.

Beginning January 1, 2028, the WSD secretary shall ensure and maintain the self-sufficiency and solvency of the fund, perform annual financial analysis, and set premium rates for the upcoming calendar year. Essentially, the secretary shall set the premium at the rate necessary to obtain total contributions (for the next year) equal to 135 percent of benefits paid and administrative costs incurred during the previous fiscal year, minus the amount of net assets remaining in the fund as of June 30 of the current calendar year. However, HB 6 caps premium increases at one-tenth percent of wages per employee per year.

How are contributions determined?

For employees. From January 1, 2026 to January 1, 2029, each employee will be assessed one-half

percent of their quarterly wages as contributions, up to the earnings cap set by the federal social security program. Starting January 1, 2029, each employee will have an assessment on their wages at 55 percent of the premium set by WSD for the current year.

For employers. From January 1, 2026 to January 1, 2029, employers with five or more employees will be assessed an amount equal to four-tenths percent of each participating employee's quarterly wages as contributions, up to the earnings cap set by the federal social security program. Then starting January 1, 2029, employers with five or more employees will be assessed an amount equal to each participating employee's wages at 45 percent of the premium set by WSD for the current year.

For the self-employed. From January 1, 2026 to January 1, 2029, self-employed persons will be assessed one-half percent of their net income, then from January 1, 2029 forward, self-employed persons will have an assessment on their net income at 55 percent of the premium set by WSD for the current year.

Who must pay contributions?

- All public and private employees subject to state jurisdiction, except employees of the United States.
- All employers of public and private employees, regardless of whether they are physically located in the state, except those with fewer than five employees.
- Self-employed individuals subject to state jurisdiction who opt into the program.
- Indian nations, tribes and pueblos that elect to be covered in the program for their employees.
- Employers and their employees if they are granted an exemption or waiver from participation by WSD (see below).

Exemptions authorized. Employers with paid family and medical leave plans or programs for the benefit of their employees that provide leave and leave compensation substantially similar to or greater than the leave and leave compensation offered under HB 6 may apply for a waiver to exempt the employer and its employees from participating in the PFML program. HB 6 sets forth a number of requirements with regard to exclusions and waivers, including, for example, the right of employers and employees to appeal WSD's grant or denial of a waiver of participating in the program.

Claims processing. WSD shall process and claims according to the timelines and protocols expressly stated in HB 6. For example, WSD must protect the confidentiality of information received, provide claimants notice of approval of their claim within 20 business days, and afford the parties with appeal rights that comport with procedural due process (notice, hearing, etc.). There are additional provisions not addressed here in the interest of brevity.

Several PFMLA provisions apply to employees and self-employed individuals. For example, the bill imposes certain notice and documentation on them. There are several others that are not addressed here. HB 6 prohibits a number of employer practices—for example, retaliation—while at the same time requiring employers to maintain employees' health coverage while they are on leave. There are numerous other provisions, again, not addressed here for the sake of brevity.

Administrative Actions. Individuals or DWS on its own motion can bring “administrative actions” for alleged violations of the PFML by a public or privately run leave program by filing a complaint with WSD. WSD’s secretary or designee must then afford the parties a due process, on-the-record hearing and issue a ruling on the complaint within 20 days of the hearing.

HB 6 grants the WSD secretary or designee authority to take disciplinary action against parties, such as fines, censure or revocation of a waivers of participation in the state PFML program. Appeals or judicial review of the agency’s final decision on an appeal or administrative action would be pursuant to Section 39-3-1.1.

Preemption. HB 6 preempts cities, counties, and other political subdivisions from having their own laws governing paid family and medical leave, with the exception of paid-time-off or paid-sick-leave ordinances, policies, or resolutions, or leave policies for its employees.

Collective bargaining. Nothing in the bill shall be construed to diminish the rights, privileges or remedies of any employee under any collective bargaining agreement.

Promulgation of Rules. WSD is obligated to promulgate rules and regulations necessary to carry out the purposes of the PFMLA. The deadline to promulgate rules to implement Sections 3, 4 and 5 of the Act is July 1, 2025.

PFMLA Advisory Committee. Section 14 creates a 16-member “paid family and medical leave implementation advisory committee” in WSD whose purpose is to provide input regarding best practices for the efficient and timely development, implementation and promulgation of rules and educational materials to carry out the provisions of the PFMLA. The WSD secretary shall consult with the committee at least quarterly and provide staff for it. The deadline to appoint the committee is October 1, 2024.

FISCAL IMPLICATIONS

The following is the DWS estimate of costs.

Program Year	Year 1	Year 2	Year 3	Ongoing
Fiscal Year	State Fiscal Year 2025 7/1/24 to 6/30/25	State Fiscal Year 2026 7/1/25 - 6/30/26	State Fiscal Year 2027 7/1/26 to 6/30/27	State Fiscal Year 2028+ 7/1/28 +
Activities	Planning/Rule Making/ Initial Contract Awards/ Start IT build	Operational Builds and IT and Facilities, Half Operations	Full implementation, O&M, post-implementation improvements	Running Full Program
Milestones	Rulemaking Complete 6/30/2025	Premium Collections begin 1/1/26	Benefit begins 1/1/27 New governor 1/1/27	Subject to annual escalation related to COLA pay increases, etc.
IT	\$ 17,000,000	\$ 10,500,000	\$ 9,250,000	\$ 4,000,000
Ops	\$ 2,490,000	\$ 8,000,000	\$ 13,730,000	\$ 14,279,200
Totals	\$ 19,490,000	\$ 18,500,000	\$ 22,980,000	\$ 18,279,200
With AS&T	\$ 24,362,500	\$ 23,125,000	\$ 28,725,000	\$ 22,849,000

DWS used a variety of methods to compute staffing, including receiving data from states with existing programs, evaluating the bill for program requirements and modeling staffing based on the UI staffing structure. Direct comparables to other states were difficult to obtain because we could find no other state in which the contributions, benefit administration, appeals and enforcement were all in one agency.

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

- The timeline of twenty (20) days for DWS to issue a determination of eligibility after an application is complete is likely onerous. PFML cases may entail medical documents that require review and evaluation under strict confidentiality requirements pursuant to the HIPAA. Washington State for example [reports](#) over four average weeks, and over 5 weeks as a median for processing claims, with a median of 2.3 weeks, now that its program is mature. The provision that defers the 20-day timeline to start running when all information has been received is helpful on this issue.
- Similarly, Section 10(A)(2)(a) of the bill prescribes narrow time frames for hearings to be held within ten business (10) days with a ruling and final decision twenty (20) business days later. While this is an improvement from past years' version of this bill, these narrow time frames entail significant amounts of staffing and resources dedicated to the hearing procedures to ensure timeliness and compliance. Also as a practical matter, it is unlikely that all parties will always be available and prepared to present all relevant evidence at hearing within these narrow time frames. Timeliness and compliance will require significant staffing and resources dedicated to meet PFMLA's objectives.
- Making government agencies subject to PFML means DWS (like all agencies) will need to staff in anticipation of coverage issues. Many states do not mandate that public agencies are covered (RI, CA, NJ, DC).

Estimates related to fund solvency are difficult to make with any degree of confidence.

Utilization rates vary widely from state to state and change over time. For example, Washington State has [found](#) that demand for leave increased dramatically over time, receiving 40,000 more applications in FY23 than in FY22.

We note that Section 5(A)(2) states that an employee's time with an opt-out employer counts towards the 6-month contribution requirement. Employees in this situation will be drawing from the fund without having contributed to it.

SIGNIFICANT ISSUES

The Department is tasked with substantial rulemaking efforts to clarify every aspect of the bill. This would include topics related to eligibility, documentation of claims, how or whether WSD is to investigate, prosecute, or adjudicate fraudulent claims, or recoup leave compensation obtained fraudulently.

Section 4(A) repeatedly uses the phrase "subject to state jurisdiction" to define who is covered by the Act. Unfortunately, the phrase is not entirely clear, which might lead to disputes over who is subject to PFMLA requirements. Some clarification of what is meant would be helpful.

No appropriation related to this program appears in the bill, the LFC budget recommendation, or the executive budget recommendation. It is unclear how DWS would fund the substantial start-up costs of the program.

In discussions with other states, the cost of processing applications to opt-out of the fund and program and address related claims is substantial. Because opt-out programs do not pay into the fund, this is an unfair burden on participating employers. Other states have imposed fees on the opt-out application and related appeals and claims in order to address this issue.

PERFORMANCE IMPLICATIONS

The bill states specific timeline requirements that will directly impact the requirements on operational staffing and system automation. Appropriate funding is required to ensure effective implementation to meet these performance standards. The volume of claims will also impact performance levels and operational support requirements. We note that in Washington State, which has a similarly structured program, the current processing time for applications and requests for review is 4 weeks (<https://paidleave.wa.gov/about-the-program/>).

ADMINISTRATIVE IMPLICATIONS

The Act would create a program about equal in size to the Unemployment Insurance program, effectively increasing the size of DWS by about one-third. This will necessitate new facilities under current personnel policies of the State.

Nothing in the bill appears to prohibit DWS from outsourcing components of the program. For example, Colorado outsources the call center for its PFML program.

Part of the basis of DWS's staffing analysis is the estimated number of annual claims. Estimates of the number of annual claims vary quite widely. BBER estimated a little over 35,000 claims annually. However, applying Washington State's claim numbers proportionally to New Mexico's

population yields a number of estimated annual claims of 53,000. Direct comparisons are challenging because each state has its own definitions of covered conditions, and each state has unique population characteristics. DWS believes estimating based on UI staffing levels with certain adjustments is the best method of approximation.

- Using the UI staffing base as a comparator, DWS projects an increase for PFML processing staff to reflect the statutory timelines for processing claims and hearings that we do not have in UI.
- In comparison to certain other states with lower relative staffing levels, DWS allows filing by phone and in person for UI, and would anticipate the same for PFML. New Mexicans require phone and in-person service because of broadband access, computer literacy, familiarity with government services. WA, RI and CA do not do in person claims, while NJ started in 2022. DC does not allow filing by phone or in person.
- Comparison to other states' staffing levels is also challenging because states with lower relative staffing levels have different roles and less administrative burden. For example, CA appeals from PFML go to a different agency. Job protection is not available (so doesn't need to be enforced) in CA, in the initial NJ law, or for an employee's own health issues in RI and DC. RI and DC do not have waiver programs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 3 is a duplicate of HB 6.

TECHNICAL ISSUES

WSD is required to coordinate with the Department of Information Technology concerning this project effort. This will impact the timeline and require consideration in increased cost for IVV. Target and existing technology solutions are cloud-based and technical architectural plans will need to be approved through exception which could impact timelines.

In Section 4(A)(4), it is unclear what is meant by stating that the Act applies to "Indian nations, tribes and pueblos that elect to be covered, or to terminate coverage, in the program for their employees." DWS is unsure what the underlined phrase intends.

Sections 4(G) et seq. refer to an opt-out as a "waiver." Our colleagues in other states have indicated that this is not consistent with common industry language and suggest that an "opt-out" would be more clear. It is also not clear from the language of the bill that an employee does not pay into the fund while they work for an opt-out employer.

In Section 5(J), would it make more sense to put this language in the notification of approval of an application rather than when an application is first filed.

OTHER SUBSTANTIVE ISSUES

This version of the bill resolves a number of issues that concerned DWS in the 2023 SB 11, including issues related to intermittent leave, the time for measuring exhaustion of the benefit,

and adding benefit industry expertise to the advisory committee.

ALTERNATIVES

DWS has not reviewed an alternative bill as of the date of this FIA.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Paid family and medical leave will not be a legal requirement.

AMENDMENTS