

MANCHESTER AREA HUMAN RESOURCES ASSOCIATION

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LEGAL AND LEGISLATIVE UPDATE

by

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INTRODUCTION

One of the few workplace bills to gain traction and considerable attention in this legislative session has been HB 628 – a bill that would establish a paid family and medical leave insurance program. “Paid FMLA?”; “What?!!”;; “Are we adopting European socialism?”; “You want employers to pay for no work?”; “Seriously, you want to create another social welfare benefit as an incentive not to come to work?!”; “Doesn’t private insurance cover this?” and “Can we build the wall already?” These are just some of the initial reactions to this bill and the concept of paid FMLA leave. However, once the provisions of the bill were explained many of those opposed to the bill softened their comments to more practical concerns. We would like your thoughts.

This is what that bill provides:

CHAPTER 282-B PROPOSED FAMILY AND MEDICAL LEAVE INSURANCE

Intended purpose: The bill sponsors proposed that family and medical leave insurance (FMLI) will help New Hampshire attract and retain workers, including younger workers, will enable parents to bond with biological, adopted, or foster children, will help meet the needs of an aging population, will advance the health of New Hampshire’s workforce and workplace stability, and will enhance worker retention and productivity.

Objective: Establishing a system of FMLI with benefits to be provided to qualified workers on a limited basis.

Employer Applicability. This would apply to all nongovernmental employers, provided that any employer participating in a self-insured plan or who is self-insured may opt out of this chapter upon certification by the Commissioner of the Department of Employment Security (NHES) that the employer provides an equivalent insurance plan for its employees. The state or its political subdivisions may opt into this chapter upon certification by the Commissioner that this chapter's insurance benefits are at least equivalent to the benefits provided under the collective bargaining agreement, provided the applicable bargaining unit has first ratified this option.

Premium Contributions. All participating employers would remit FMLI premium payments on a calendar quarter basis. These quarterly insurance premium payments shall amount to 0.5 percent of wages per employee per week for each week of the preceding quarter. Employers may withhold or divert no greater than 0.5 percent of wages per week per employee to satisfy this paragraph. The bill establishes penalties for noncompliance or false reports by employers.

Family and Medical Leave Insurance Fund Administration. NHES would create and administer a FMLI fund for deposits of insurance payments paid into the fund and accept any other deposit of moneys as authorized by law or by the Commissioner. No FMLI fund moneys shall be co-mingled with unemployment insurance fund moneys.

Employer and Employee Responsibilities. An employee who elects to participate in the FMLI would need to file an application with NHES, including any applicable medical certification or birth certificate, and provide his or her employer with written notice of intent to take a leave of absence at least 30 days before the leave will begin unless the leave was not reasonably foreseeable or the time of the leave changes due to circumstances that were not reasonably foreseeable. An employee's failure to provide required notice may delay or reduce benefits. Any employee of an employer covered under the federal Family and Medical Leave Act who takes leave under this chapter shall be restored to the position he or she held in the application period or to an equivalent position by his or her employer. Employers shall continue to provide health insurance to employees during the leave, but employees remain responsible for any employee-shared costs associated with the health insurance benefits. Employers shall not retaliate against any employee solely for exercising his or her rights under this chapter.

An employer may require that leave taken under this chapter be taken concurrently or otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or employer policy. Employers must give their employees written notice of this requirement.

Eligibility Process, Calculation and Appeals. An employee shall be limited up to 12 weeks of FMLI in any one application period. An employee shall have worked in employment resulting in wages in the amount of at least 1,040 multiplied by the applicable minimum wage, in either the "base period" or "alternative base period", as those terms are defined in RSA 282-A:2.

An employee shall be eligible for FMLI for reasons identified in paragraph I and RSA 282-B:2, IX. Those are:

- (a) Because of the birth of a child of the employee, within the past 12 months; or
- (b) Because of the placement of a child with the employee for adoption or fostering, within the past 12 months; or

- (c) Because of a serious health condition of a family member; or
- (d) Because of a serious health condition of the employee that isn't related to employment.

The calculation of weekly FMLI benefits shall be the highest quarter of wages in either the base period or alternate base period as defined in RSA 282-A:2, then divided by 13 and multiplied by 0.6, provided that no such calculation of FMLI benefits shall be less than \$125 per week or greater than 0.85 of the average weekly wage in New Hampshire. The calculation for partial FMLI benefits shall be in a manner consistent with RSA 282-A:14.

The process for FMLI benefits claims, violations, and any resulting appeals shall be in accordance and consistent with RSA 282-A:42 through RSA 282:68 and RSA 282-A:118. The standard and process for handling overpayments shall be in accordance and consistent with RSA 282-A:29, RSA 282-A:141-RSA 282-A:156 and RSA 282-A:165. In addition, an individual shall be disqualified from FMLI benefits beginning with the first day of the calendar week, and continuing for the next 26 weeks, in which the individual has been found to willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter.

Limitations. Nothing in this chapter shall diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, nor does this chapter, or any decision by the commissioner or authorized representative under this chapter, limit the ability of employers to provide FMLI benefits or benefits beyond what is required by this chapter.

Proposed Effective Date. This act shall take effect January 1, 2018.

Comments/Call to Action. A public work session before the House Labor Committee was held on May 24th. There was testimony on both sides of the debate. This bill has been retained in Committee but the Committee is still accepting questions and comments. Those can be sent to: <http://gencourt.state.nh.us/house/committees/committeedetails.aspx?code=H11>
At this link, you will find the list of committee members. When you click on each name, you will get to their individual webpage which has all of their contact information. If any of these members represent the district in which you live or work, your thoughts and comments will be especially important for those reps to hear!

Here are some suggestions for what your comments should address (but feel free to deviate from these suggestions in order to provide authentic information that is appropriate to your situation):

- Who you are, and where you live (reps want to know if you are one of their constituents and that you are from NH)
- What organization you work for, and its workforce size (if you are reticent about disclosing the name of your organization, then you can state the type of place you work at – for example “manufacturing facility,” “social service agency,” “large non-profit,” etc.)
- What your organization provides in terms of family and medical leave, and paid leave benefits (vacation, sick time, PTO, short-term disability benefits, etc.)
- How this bill (HB628) will affect your employees:

- Do you see employees struggle with family and medical issues but are concerned about taking too much time off without pay;
- Do you think employees are willing to pay the tax, which is a 0.5% (or half of 1 percent) of their weekly wages;
- If the bill becomes law, how would it affect what your organization offers for paid time off benefits.

We have an opportunity to have our voices heard now before this bill evolves further. Please take a few minutes and ask questions, share your concerns or voice your support for this program. Thank you.

Attorney Jim Reidy is a partner at Sheehan Phinney where he is the Chair of the Firm's Labor and Employment law practice group. Jim is also MAHRA's VP of Legal and Legislative Affairs.

Disclaimer

Please note: This outline is intended as general guidance and not specific legal advice. Your legal counsel should be consulted with specific questions or for advice on how to proceed with these matters.