



# ACTION ALERT

## **ACTION ALERT: Establishing a Family & Medical Leave Insurance Program**

Hearings have been scheduled in both the House and Senate next week on [HB 839](#) and [SB 539](#), legislation that would establish a Family & Medical Leave Insurance (FAMLI) Program to be administered under the supervision of the Department of Labor's Unemployment Insurance (UI) Division.

The program generally provides up to 12 weeks of benefits to an employee who is taking partially paid or unpaid leave for certain reasons, except that an additional 12 weeks for benefits appears to be provided in certain circumstances. Leave with benefits is provided for the following reasons: 1) to care for a child during the first year after the child's birth or after the placement of the child through foster care or adoption; 2) to care for a family member with a serious health condition, 3) because the employee has a health condition that results in their being unable to perform the functions of their job, 4) to care for a service member who is the employee's next of kin, or 5) because the employee has an exigency arising out of the deployment of a service member who is a family member.

The bill establishes the FAMLI Fund, which will consist of contributions from employees and employers. Beginning January 1, 2021, each employee and employer shall contribute to the fund at a rate to be set by the Maryland Department of Labor. Self-employed individuals may also participate.

The total rate of contribution:

1. may not exceed 0.5% of an employee's wages,
2. shall be applied to all wages up to and including the Social Security wage base,
3. **shall be shared equally by employers and employees**,
4. shall be sufficient to fund the benefits payable.

There are any number of additional nuances and complexities outlined in the language, and the Chamber is **very concerned** that the implementation of this legislation will result in additional costs and administrative burden to employers, and especially small businesses. It is anticipated that the law will result in significantly higher absentee rates. As of this writing, no fiscal note has been published for either bill. Through our MDCC Paid Family & Medical Leave (PFML) Workgroup, the Chamber has attempted to work with the advocates for this program to outline our concerns and encourage changes to the bill. Unfortunately, these changes, some of which help the bill more closely align with federal law and seek to address some of the challenges for small businesses,

were not accepted. The Chamber will continue to work with stakeholders toward a better outcome on this issue. A comprehensive list of our main concerns is outlined below.

## UPCOMING HEARINGS:

- **HB 839** has a hearing scheduled in the House Economic Matters Committee on **Monday, February 24, at 1 p.m.**
- **SB 539** has a hearing scheduled in the Senate Finance Committee on **Thursday, February 27, at 1 p.m.**

## ACTION REQUESTED:

In advance of these hearings, [we urge you to contact your legislators to share your concerns](#) with the bill. Feel free to use any of the talking points below. If you wish to participate in either hearing in opposition, please contact Ashley Duckman ([aduckman@mdchamber.org](mailto:aduckman@mdchamber.org)).

## Our main concerns are as follows:

### Cost impact, particularly for small businesses and non-profits

- The bill establishes the FAML I Fund, which will consist of contributions from employees, employers and self-employed individuals. Beginning January 1, 2021, each employee, employer and self-employed individual shall contribute to the fund. The total rate of contribution: 1) may not exceed 0.5% of an employee's wages, 2) shall be applied to all wages up to and including the Social Security wage base, 3) shall be shared equally by employers and employees, and 4) shall be sufficient to fund the benefits payable.
- The cost to employers presents additional financial strain to already burdened businesses.
- Mandated employer contributions are an additional financial demand that small businesses and nonprofits simply cannot afford, particularly given the layering of other employer mandates (sick and safe leave, \$15 minimum wage) that Maryland has implemented in the recent past.
- The bill does not permit an employer to require an employee to use any accrued paid leave in addition to benefits provided under this bill, thus increasing employers' A/P liability.
- With no fiscal note just three days before the first scheduled hearing, employers may not have time to consider the fiscal implications.

### Definitions of eligibility

- The definitions contained in the bill language are far broader than what are outlined by FMLA.

- It will undoubtedly be complex and challenging to administer and comply with two vastly different sets of definitions for eligibility.
- Through the Chamber's PFML workgroup, we drafted changes that attempted to bridge this gap and bring the definitions into line with federal law. Those changes have not yet been addressed and/or accepted by bill sponsors.

### **Length of leave- up to 24 weeks**

- The bill does not clarify whether or not this program is meant to provide wage replacement for leave to which an employee is already entitled, or if it is meant to apply to a separate bank of leave, leaving the door open to the possibility that an employee could be eligible for up to 24 weeks of paid leave.
- Having an employee out for that length of time presents innumerable challenges for a business in terms of productivity and for the other employees who are left to fill in the gaps.

### **Verification/ abuse**

- Verification and abuse of benefits are already a major challenge for employers as it relates to the implementation of the sick and safe mandate. This program, as written, would exacerbate those challenges.

### **Implementation/ administrative complexity**

- The bill would require large-scale tracking and verification systems to ensure compliance. Employers would be left to create, manage and administer obtuse tracking systems. Many employers do not have this internal capability and would incur additional costs if they are required to contract out that responsibility.

### **Communication**

- The bill language is unclear on how these benefits would be communicated to employees—e.g., is this done annually based on a specific date or based on an employee's date of hire? Communicating eligibility, separate and apart from FMLA, will be a challenge—particularly if you are a business where your employees do not all report to a central location.

## Uncertainty of benefits

- This is not a predictable benefit like sick and safe leave; not all employees can plan for or predict a benefit they may never use.
- This legislation is premature. Only five states have passed a related law. Each is different from the other. One state (MA) faced challenges resulting in delayed implementation and technical amendments. Two states fund the paid leave through a tax on employees only, including California. Let's not add to the patchwork of state laws with which multistate employers must comply. Congress currently has at least four paid family leave bills pending. Let's work to shape a uniform, paid family leave program administered at the federal level.

## Alternative planning

- Private, elective options already exist (e.g., short-term disability).

## Legality of UI's role in administration of the program

- The UI program was administered using federal funding (FUTA Tax), which includes the salary of the staff of the UI Division, office space, fees and equipment.

