FAMILIES AND ECONOMIC SECURITY

House Bill 228 - Montana FAMLI Act: A Policy Design Supporting Families and Businesses

January 2021

What Is Paid Family and Medical Leave Insurance?

The Montana Family and Medical Leave Insurance Act (the FAMLI Act) would pool small contributions from employees and employers to create a dedicated funding stream for workers when they need time off to care for themselves or a loved one. From these small contributions, representing less than half of 1 percent of wages, eligible workers would receive a portion of their wages while on leave.

Several states have implemented this model, demonstrating a cost-effective approach that helps employers retain workers, boosts workers' economic security, and improves families' well-being, public health, and the overall economy.

Who Is Covered?

Covering as many workers as possible is essential to program success, not only to ensure workers get the benefits they need, but also to spread out the overall costs and keep the contribution levels lower.

The FAMLI Act eligibility criteria for both employers and employees matches eligibility criteria under unemployment insurance (UI).[1] In general, the FAMLI Act will cover the vast majority of workers. In order to qualify for FAMLI benefits, the eligible employee must earn qualifying wages under UI benefits and have contributed into the FAMLI Fund.[2] Pursuant to federal law, FAMLI Act would not apply to wages earned under federal or tribal government employment. The FAMLI Act also provides elective coverage for self-employed individuals. A self-employed worker could elect coverage during an open enrollment period and would pay the full employer/employee contribution amount to be eligible for coverage.

What Types of Leave Are Covered?

Under this program, a covered individual can take leave to care for:

- one's own serious health condition;
- a family member's serious health condition;
- a new child within the first year of birth, adoption, or foster placement; or
- a family member called to active duty (for defined limited leave periods).

Serious health condition is a situation where the individual or family member either requires inpatient care in a hospital or other medical care facility or requires ongoing treatment by a health-care provider.[3]

Workers would be eligible for a maximum of 12 weeks of leave.

How Long Can People Take Leave?

Workers would be eligible for a maximum of 12 weeks of leave benefits in a benefit year. The leave does not have to be taken all at once and can be split between more than one qualifying reason.

Who Counts as Family?

Family member is defined to include a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or a spouse of any of the previously mentioned, or any individual related to the eligible employee by blood or close association that is the equivalent of an acknowledged family relationship. This definition ensures workers are able to care for their family, recognizing that families vary across the state. An inclusive definition of family ensures that workers who face various family circumstances are covered, including those who need time off to care for a seriously ill parent, domestic partner, or sibling.

What Benefits Will the Program Pay?

A covered individual who applies for benefits will receive a portion of their weekly wages, based on income. Wages will be calculated similarly to UI.[4] In order to ensure the program is viable for all workers, workers with the lowest wages would receive a higher portion of their wages.

Weekly Benefits Under FAMLI Act

If you earn this much a year...	*Which is about this much a week...*	*Your weekly benefits will be...*	*Or, this percent of your usual pay...*
$10,000	$192	$192	100%
$20,000	$385	$385	100%
$30,000	$577	$492	87%
$40,000	$769	$588	78%
$50,000	$962	$684	72%
$60,000	$1,154	$780	68%
$70,000	$1,346	$876	66%
Above $85,000	Above $1,635	$1,000 max	61% or less

Workers who earn less than half of the state average annual wage under the UI program ($22,062 for 2019) will receive 100 percent of their wages during qualifying leave.[5] For workers earning more than half the state average annual wage, their benefits would scale down as income increases. The FAMLI Act uses the UI laws to calculate average annual wage and the base wages for the covered individual. The maximum weekly wage would be capped at $1,000.

How Does One Apply for Leave?

An eligible individual will need to apply through the Montana Department of Labor and Industry (DLI) in a process similar to applying for UI. DLI may require proof of medical condition and reason for accessing benefits. Once approved, the benefit will be distributed to the qualified individual on a weekly basis. An employer may require the employee to take FAMLI benefits concurrently with a short-term disability or family leave policy under a collective bargaining agreement or employer policy.

How Is the Program Funded?

Contributions will be split equally between the employer and employee. DLI will set contribution rates through rule to ensure solvency of the fund, but those total contributions cannot exceed 1 percent of employee wages. The contribution rate would apply to a worker's wages up to the base wages amount (approximately $85,000), at an amount consistent with the maximum weekly benefit level of $1,000.

In a comprehensive analysis by the Montana Budget & Policy Center, using similar eligibility and benefit criteria and a study of take-up rates seen in existing statewide family and medical leave insurance programs, contributions are estimated to be less than half of 1 percent of employees' earnings.[6] **These contributions would cover the annual benefits paid out in a benefit year, estimated to be approximately $65 million in the first year.**[7]

Employees and Employers Would Contribute Equally Contributions Would Represent Less Than Half of 1% of Wages		
If an eligible employee earns annual wages totaling...	*The employee's monthly contribution would be...*	*And the employer's monthly contribution would be...*
$20,000	$3.17	$3.17
$30,000	$5.25	$5.25
$40,000	$7.33	$7.33
$50,000	$9.42	$9.42
$60,000	$11.50	$11.50
$70,000	$15.67	$15.67
Max Contributions (on incomes above $85,000)	$17.50	$17.50

How Will the Elective Coverage for Self-Employed Individuals Work?

Consistent with other state family leave insurance programs, the FAMLI Act provides a voluntary opt-in coverage for a self-employed individual.[8] A self-employed individual can elect coverage at the start of the program, within 60 days of becoming self-employed (as defined by DLI), or during an open enrollment period (similar to the health marketplace). A self-employed individual must elect coverage for three years. If a self-employed individual drops coverage two or more times during a two-year period, they will be ineligible to reenroll for five years (unless an individual no longer is considered self-employed). A self-employed individual electing coverage will submit contributions equal to the full employer and employee level based on the prior year's self-employed income.

How Does Investing in Paid Leave Benefit Working Parents in Montana?

Paid leave helps parents remain financially secure while balancing home and work demands. Access to paid leave increases the likelihood that women will return to work after leave, enabling them to earn more over their lifetime and progress in their careers.[9]

How Does Investing in Paid Leave Benefit Older Workers and Adult Caregivers?

As our population ages, caring for an aging family member is a growing responsibility. In Montana, 1 in 4 four Montana workers are 55 years or older, and 114,000 people are responsible for caring for an adult family member, like spouses and aging parents.[10,11] Paid leave would help them remain financially secure when they care for seriously ill family members.

How Does Investing in Paid Leave Benefit Businesses?

Growth in Montana's labor force will slow over the next several years as 100,000 workers approach retirement and too few skilled workers move into jobs.[12] Paid leave helps businesses attract and retain skilled workers and allows small businesses to compete by providing employee benefits packages. Employers with paid leave experience reduced turnover costs. In Montana, retaining one employee in a year could save an employer up to $13,611.[13] In states with paid family and medical leave programs, employers have experienced improved worker attitudes and productivity and almost no abuse of the program.[14,15]

How Does Investing in Paid Leave Benefit Montana's Economy?

Paid leave helps keep workers attached to the workforce and can increase their earnings over their lifetime. In one study, new mothers who took paid family leave were 93 percent more likely to return to their employers and earn more the year after giving birth.[16] In Montana, approximately 13,000 parents faced potential lost wages of about $45 million because of unpaid parental leave taken.[17] Women working for low wages and using paid leave were less likely to need SNAP benefits and reported receiving an average of $800 less in public assistance the year after giving birth.[18]

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[1] Mont. Code Ann. 39-51-202 through 39-51-204. Under unemployment insurance, a covered employer is defined to be one of the following: (1) total payroll for current or previous calendar year exceeds $1,000; (2) an employer that acquires a business already subject to Montana UI; (3) an employer that is subject to Federal Unemployment Tax Act (FUTA); (4) an employer that employs agricultural workers and pays more than $20,000 in cash for ag labor in any quarter from the previous or current year; (5) an employer that employs 10 or more ag workers in 20 different weeks during the current or previous year; or (6) employ domestic or household workers and pay more than $1,000 in a quarter of current or previous year.

[2] Qualifying wages is defined in Mont. Code Ann. 39-51-2105. "To qualify for benefits, an individual must have been paid total wages for employment in the base period in an amount: (1) not less than 1 ½ times the wages earned in the calendar quarter in which wages were the highest during the base period; however, the total wages in the base period must be equal to or greater than 7% of the average annual wage described in 39-51-2201; or (2) equal to or greater than 50% of the average annual wage described in 39-51-2201."

[3] This definition of serious health condition is similar to federal Family Medical Leave Act. This includes: (i) continuing treatment by a health-care provider that results in incapacity of more than three consecutive calendar days, such as pneumonia, surgery, or broken bones; (ii) chronic conditions that require periodic visits to provider, continue over extended period, and cause episodic, rather than continuing, periods of incapacity, such as diabetes or epilepsy; or (iii) conditions requiring multiple treatments and recovery from treatments, such as cancer. See Code of Federal Regulations, Title 29, Section 825.114, as of Dec. 26, 2018.

[4] Wages is defined in MCA 39-51-201(25).

[5] MBPC calculation using Department of Labor and Industry, "Quarterly News," accessed Oct. 2020.

[6] Workers contribute less than half of 1 percent of their total earnings (0.451%). $10 * 0.00451 = 4.5 cents. Premium estimated through program cost model created by the Colorado Fiscal Institute and adjusted by the Montana Budget & Policy Center. Montana Budget & Policy Center, "Helping People Balance Work and Family: It's within Montana's reach," June 2016,

[7] Governor's Office of Budget and Program Planning, Fiscal Note, HB208, Jan 25, 2019. The fiscal note for HB 208, which estimated total benefit expenditures at $65 million for FY 2022 and $68 million for FY 2023, is consistent with the analysis by Montana Budget & Policy Center, "Helping People Balance Work and Family: It's Within Montana's Reach," June 2016.

[8] Self-employed individual is defined as an individual who has net earnings from self-employment in a trade or business, which may be a sole proprietor, an independent contractor, or a member of a partnership, and includes those net earnings in reporting self-employment income for social security purposes provided in 42 U.S.C. 411 or in Code of Federal Regulations, Title 20, Section 404.1065.

[9] Montana Budget & Policy Center, "Paid Family and Medical Leave: Supporting Families, Business, and the Economy," Nov. 2015.

[10] U.S. Census Bureau, "Sex by Age by Employment Status for the Population 16 Years and Over, 2018 American Community Survey 5-Year Estimates,", accessed on Oct. 4, 2020.

[11] Reinhard, S.C., et. al., "Valuing the Invaluable 2019 Update," AARP Public Policy Institute, Nov. 2019.

[12] Department of Labor and Industry, "Montana 2019 Labor Day Report," Sept. 3, 2019.

[13] Meta-analysis found that turnover of an employee earning up to $75,000 annually could cost a business between 10%-30% of that original employee's earnings. Boushey, H. and Glynn, S., "There are Significant Business Costs to Replacing Employees," Center for American Progress, Nov. 2012. Average earnings in Montana in 2017 were $45,370. Ten percent and 30 percent of average annual wage is $4,537 and $13,611, respectively. Bureau of Labor Statistics, "State Occupational Employment Statistics Montana," May 2019, accessed on Oct. 3, 2019,

[14] Appelbaum, E., and Milkman, R., "Leaves That Pay: Employer and Work Experiences with Paid Family Leave in California," Center for Economic and Policy Research, 2011.

[15] Houser, L., and Vartanian, T., "Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses, and the Public," Center for Women and Work, Jan. 2012.

[16] Houser, L., and Vartanian, T. "Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses, and the Public."

[17] Equal Pay for Equal Work Montana Task Force, "Equal Pay in Montana Fact Sheet," accessed on Sept. 18, 2020.

[18] Houser, L., and Vartanian, T. "Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses, and the Public."