



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 828

Family and Medical Leave Insurance Program – Modifications

Senate Finance Committee

Thursday, March 2, 2023

Dear Chairwoman Griffith and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,400 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Senate Bill 828 makes modifications to the Family and Medical Leave Insurance Program which was passed during the 2022 legislative session. While the bill makes several technical changes to the legislation passed last year, more significant changes are also introduced like expanding definitions, altering certain notification and application requirements, changing the total contribution rate and split, and modifying the leave concurrence language.

The Maryland Chamber concurs with many of the technical changes made throughout SB 828 to better align Maryland's program with the federal FMLA program, we continue to have serious concerns about the administrative burden Maryland employers will face as a result of SB 828 and other programmatic components at large.

Application and Notification Periods

Changes to Section 8.3-403(a)(2)(i) shortens the timeframe in which the Maryland Department of Labor (MDDOL) is required to notify an employer of certain actions regarding an employees claim from 5 days to 3 days. While employer notification and certainty is a top concern for businesses regarding the program, we want to be cognizant of MDDOLs burden.

- We suggest working alongside MDDOL to establish timeframes they can commit and adhere to so businesses can have a reliable understanding of the process.

The new Section 8.3-701(B) addresses application periods for unforeseen leave. **These application/notification provisions are unreasonably long.**

- 60 days to file for benefits if the leave is unforeseen.
- 10 days for MDDOL to turnaround a benefit decision.
- 30 to file an appeal in a case where the initial application is denied.
- 10 days for MDDOL to turnaround a decision for an appeal.

In a worst-case scenario, an employee can be away from their job for 110 days before a final benefit determination is made. This period is longer than the initial 12 weeks of leave an employee would be able to receive under the program. Furthermore, SB 828 does not address if the leave is protected during the benefit application timeframe.

- **An application for benefits for unforeseen leave should be made as soon as practical. This would mirror the requirement in the federal FMLA program.**
- **At a minimum these application periods should be cut in half to 30 days to file for benefits and 15 days to file an appeal.**
- 30 days to apply for unforeseen leave would match the requirement for 30 days' notice in the case of foreseen leave which already exist in the statute

Employer Sponsored Leave – Concurrence

Employers should have the right to decide if their employees should exhaust their employer sponsored leave concurrently with the 12-week paid leave benefit, The new language in SB 828 precludes this and only allows for an employee option to take the leave concurrently. Additionally, the current language is confusing and is likely to cause overpayments and the need for reconciliation to employees.

- **We suggest striking “not” after “may” in Section 8.3-702(c)(1). You would then strike 8.3-702(c)(3).**

Total Contribution Rate

SB 828 calls for the MDDOL to make an annual determination based on certain cost analysis of the program, this is likely burdensome to MDDOL and different to then the biennial requirement passed in 2022. A legislative cap is also necessary to provide certainty, consistency and to avoid surprises to employers and employees. This guardrail will prevent large increases in annual contributions like we've seen in Washington State.

- **The committee should reinstate the 1% total contribution cap which existed in a previous version of the legislation.**

Delayed Implementation

Overall, more work needs to be done to balance the needs of employers and employees to ensure Maryland establishes a Family and Medical Leave Insurance program that works fairly for everyone. SB 828 only calls for a three-month delay for contribution payments. It is disingenuous to institute a new payroll tax on both employers and employees when a rate hasn't even been set.

- **The General Assembly must delay the effective date of the paid leave program for both contributions and benefits by an additional year.**



Significant concerns remain about Maryland's Family Medical Leave Insurance Program such as clarifying when a position is protected, what an employer should do if they suspect fraud or abuse, important terms remain undefined, and the Maryland Department of Labor is facing crucial staffing shortages.

Other states have successfully passed paid leave insurance programs with the support of the business community, however, those programs were the product of years of negotiations. Simply put, that work has not gone into the program before you. The Maryland Chamber stands ready to work alongside MDDOL, the proponents and members of the General Assembly to craft a fair and equitable program.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 828**.

