Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 485 (Senator Hayes)
Finance Economic Matters

Family and Medical Leave Insurance Program - Modifications

This bill modifies the Family and Medical Leave Insurance (FAMLI) Program by altering key administrative deadlines, definitions, and components of the program's administration, and authorizing the Maryland Department of Labor (MDL) to adopt regulations that establish fees for private employer plans. The start dates are delayed by nine months to July 1, 2025, for required contributions and six months to July 1, 2026, for benefit payments.

Fiscal Summary

State Effect: Special fund FAMLI revenues decrease by up to $915.5 million in FY 2025 and $457.8 million in FY 2026, and special fund FAMLI expenditures decrease by up to $869.4 million in FY 2026 due to the delay in contributions and benefit payments. State expenditures (all funds) decrease by up to $26.1 million in FY 2025 and by up to $8.9 million in FY 2026 due to the delay in required contributions as an employer. General fund expenditures decrease by $12.4 million in FY 2025 relating to provider reimbursements. Beginning in FY 2026, FAMLI special fund revenues increase by the fees for private plans and any assessed MDL appeal costs, and general fund revenues may increase minimally due to imposed penalties. **This bill eliminates a mandated appropriation for FY 2025.**

($ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	$0	-	-	-	-
SF Revenue	($915.5)	($457.8)	-	-	-
GF Expenditure	($21.2)	($2.9)	$0	$0	$0
SF Expenditure	($3.8)	($870.7)	$0	$0	$0
FF Expenditure	($1.9)	($0.6)	$0	$0	$0
NonBud Exp.	($0.5)	($0.2)	$0	$0	$0
Higher Ed Exp.	($11.2)	($3.7)	$0	$0	$0
Net Effect	($877.0)	$420.3	$-	$-	$-

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures for employer contributions are delayed by nine months until July 1, 2025; at that time, local governments that opt to provide a private plan may be subject to fees, as discussed below. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: In addition to various minor, technical, and conforming changes to the FAMLI Program and its administrative processes, the bill's significant changes include changes to the program's timeline, private employer plans, enforcement and penalties, and administration, as discussed below.

Timeline

The program's start dates are delayed by nine months to July 1, 2025, for required contributions and six months to July 1, 2026, for benefit payments. The Secretary of Labor must set the initial total rate of contribution by February 1, 2025, instead of by October 1, 2023, which then applies from July 1, 2025, through June 30, 2026. By November 15, instead of September 1, each year, the Secretary of Labor must submit an annual report on the program, which must include information on any grants issued to facilitate community partnerships.

Private Employer Plans

An employer must be authorized by the Secretary of Labor to provide a private employer plan, which consists of employer-provided benefits or insurance. The Secretary of Labor must establish reasonable criteria, including as specified in the bill, for determining which employers are authorized to meet the requirements of the program through employer-provided benefits. MDL may adopt regulations that establish reasonable application and application renewal fees for private employer plans that are paid to the FAMLI Fund and may only be used for administrative purposes of the program. An employer that provides a private employer plan may not deduct from an employee more than 50% of the contribution amount set by MDL (instead of no more than the maximum contribution amount set by MDL).

Enforcement and Penalties

A self-employed individual who fails to pay FAMLI contributions is subject to the same actions as an employer that fails to pay FAMLI contributions. If an employee or MDL (instead of only an employee) believes that an employer, a self-employed individual, or an insurer (instead of only an employer) has violated the FAMLI law or regulations (instead of only the law), the employee or MDL may file a written complaint with the Secretary of Labor's designee. The Secretary of Labor's designee, instead of the Secretary, must investigate and enforce the program, and civil penalties may be assessed at the discretion of the Secretary's designee. If a covered individual prevails in an appeal of an adverse decision of an employer or an insurer, MDL may assess MDL's appeal costs against the employer or insurer. Among other sources, the FAMLI Fund consists of money collected from (1) assessed contributions and interest for an employer's or a self-employed individual's failure to pay contributions and (2) MDL's appeal costs assessed against the employer or insurer.

Administrative Changes

The Secretary of Labor may use a portion of FAMLI funds or other available funding to award grants to facilitate community partnerships in amounts that, in the aggregate, do not exceed the amount appropriated in MDL's annual budget for that purpose. The Secretary must establish procedures and forms for electronic filing of specified items. The bill exempts employers whose employees have filed claims with MDL from the prohibition against disclosing specified information for claims administration, and the bill prohibits MDL employees from disclosing personal identifying information as specified.

The definition of "wages" is changed to confirm with the definition of "wages" under the Maryland Unemployment Insurance Law, and the bill also expands what is included as compensation for a self-employed individual. The definition of a "covered employee" is altered to be based on performing services under employment in the State over the four most recently completed calendar quarters for which quarterly reports have been required, as opposed to over the 12-month period.

The average weekly wage that benefits are based on is calculated as the total wages received by the covered individual in the highest of the previous four completed calendar quarters for which quarterly reports have been required, divided by 13, instead of being based on the total wages received by the covered individual over the last 680 hours for which the covered individual was paid divided by the number of weeks worked.

A self-employed individual must be a resident of the State to participate in FAMLI.

Current Law: Chapter 48 of 2022 established the FAMLI Program, to be administered by MDL, and Chapters 258 and 259 of 2023 made several modifications to the program, including delaying the program's start date by one year.

The program generally provides up to 12 weeks of benefits to a covered individual who is taking leave from employment due to caring for or bonding with certain family members, the individual's own serious health condition, or a qualifying exigency arising out of a family member's military deployment. The weekly benefit is based on an individual's average weekly wage and is indexed to inflation.

By September 1 each year, the Secretary of Labor must submit an annual report on the FAMLI Program to the Governor and the General Assembly.

Family and Medical Leave Insurance Fund

Chapter 48 also establishes the FAMLI Fund, which is a special fund administered by the Secretary of Labor consisting of employee, employer, and self-employed individual contributions and other specified sources of funds. Funds must be used to pay FAMLI benefits and may be used to pay for public education on the FAMLI Program and any other costs associated with the initial implementation and ongoing administration of the FAMLI Program.

MDL must establish the new program using general funds until monies from required contributions become available. Employer and employee contributions to the program begin October 1, 2024, and claims for benefits begin January 1, 2026.

Contributions

Required contributions to the program, which are shared equally between employers and employees, are also based on employee wages, although employers with 14 or fewer employees are not required to contribute. The Secretary of Labor must set the initial total rate of contribution by October 1, 2023, which applies from October 1, 2024, through June 30, 2026, and may not exceed 1.2% of an employee's wages up to and including the Social Security wage base. In September 2023, MDL set the initial total rate of contribution at 0.9% of covered wages. This rate will apply from the start of contributions in October 2024 through the end of June 2026. Thus, beginning October 1, 2024, each employee, each employer with 15 or more employees, and each participating self-employed individual must pay to the Secretary of Labor 0.9% of covered wages up to the Social Security cap, equally divided between employees and employers.

Benefits

A covered individual may not receive more than 12 weeks of benefits in an application year, except under specified circumstances. A covered individual may take eligible leave on an intermittent leave schedule under specified conditions.

The weekly benefit payable to a covered individual is calculated based on the employee's average weekly wage and ranges from a minimum of $50 to a maximum of $1,000 for the

12-month period beginning January 1, 2026. Beginning January 1, 2027, the maximum weekly benefit must be increased by the annual percentage growth in the Consumer Price Index, subject to a determination by the Board of Public Works based on expected economic conditions.

Private Employer Plan

An employer may satisfy the FAMLI Program's requirements through a private employer plan consisting of employer-provided benefits, insurance, or a combination of both, if the plan is offered to all eligible employees and at least meets the rights, protections, and benefits provided to a covered employee under the program. An employer that provides covered employees with a private employer plan approved by MDL and those covered employees are exempt from the program's required contributions. An employer that offers a private plan may not deduct from an employee more than the maximum contribution amount set by MDL.

Prohibited Acts and Penalties

An individual is disqualified from receiving benefits for one year if the individual willfully makes a false statement or misrepresentation regarding a material fact or willfully fails to report a material fact to obtain benefits. An employer is subject to a civil penalty of up to $1,000 for each occurrence if the employer willfully makes or causes a false statement to be made or willfully fails to report a material fact regarding an employee's claim for benefits. In addition, an employer is prohibited from retaliating against an employee who exercises their rights under the program. The FAMLI Program also specifies how the Secretary must investigate and enforce the program, which includes mediation, issuing orders, assessing a civil penalty of up to $1,000 for each employee for whom the employer is not in compliance, and asking the Attorney General to bring an action on behalf of the employee.

Provider Reimbursements for Employer Share of Family and Medical Leave Insurance Contributions

The Maryland Department of Health (MDH) is required to reimburse certain service providers for some or all of the employer share of FAMLI contributions on at least a quarterly basis, as follows:

- community provider that is required to be licensed or certified under Title 7 of the Health-General Article for 100% of the employer FAMLI contribution for employees who manage or provide services under that title;
- community provider that is required to be licensed or certified under Title 7.5 of the Health-General Article for a percentage of the employer FAMLI contribution for

employees who manage or provide services under that title that is equal to the percentage of revenue that is attributable to federal and State Medicaid funding and any other State funding received by the provider for the services during the period covered by the reimbursement; or

- provider, as defined in § 16-201.4 of the Health-General Article, for a percentage of the FAMLI employer contribution for employees who manage or provide specified related services that is equal to the percentage of revenue attributable to federal and State Medicaid funding and any other State funding received by the provider for the services during the period covered by the reimbursement.

State Revenues: Delaying the FAMLI Program's start date by nine months from October 1, 2024, to July 1, 2025, for required contributions decreases special fund revenues from employer and employee contributions. Based on a 0.9% rate, 100% employer participation, and the timing of when quarterly contributions are paid, MDL estimates FAMLI special fund revenues decrease by $915.5 million in fiscal 2025 and $457.75 million in fiscal 2026 as a result of the delay. To the extent employers participate in private plans, the actual decrease in revenues is less.

However, MDL may adopt regulations that establish application and renewal fees for private employer plans, so some of the FAMLI revenue loss may be offset in fiscal 2026 and FAMLI revenues annually increase beyond fiscal 2026 due to any such fees. The actual revenue impact will depend on the fees for private plans that MDL may establish in regulations and the number of employers that will participate in private plans, which is unknown at this time.

Additionally, the bill broadens the authority to impose penalties and assess MDL's appeal costs against the employer or insurer. Thus, general fund revenues may increase minimally beginning in fiscal 2026 from fines and FAMLI special fund revenues increase minimally beginning in fiscal 2026 from assessing MDL's appeal costs in certain situations.

State Expenditures: MDL does not anticipate any change in operational expenditures under the bill, and the Department of Legislative Services concurs that MDL does not need any additional resources to implement the bill. The bill authorizes the Secretary of Labor to use a portion of FAMLI funds or other available funding to award grants to facilitate community partnerships, and the fiscal 2025 budget as introduced includes $445,000 in funding for grants to local community organizations to inform individuals about the benefits that FAMLI will provide. The fiscal 2025 budget as introduced includes $40.4 million ($24.2 million in federal funds and $16.2 million in general funds) for the FAMLI Program.

Family and Medical Leave Insurance Benefits

Delaying the start of FAMLI benefits by six months to July 1, 2026, results in no FAMLI benefits being paid in fiscal 2026. Thus, based on existing projections of future benefit payments under current law, special fund expenditures for FAMLI benefits decrease by $869.4 million in fiscal 2026, assuming no employers participate in private plans.

Employer Contributions for State Employee

The State will incur costs under the FAMLI Program related to employer contributions for State employees if the State opts not to self-insure. Thus, based on the timing of when quarterly FAMLI payments are due, delaying the start of contributions generates potential savings to the State, as an employer, of up to approximately $26.1 million in total funds (almost $9 million in general funds) in fiscal 2025 and up to approximately $8.9 million (almost $3 million in general funds) in fiscal 2026. However, the State is still considering self-insuring, and no funding is included in the fiscal 2025 budget as introduced for these FAMLI costs; absent the bill, funds would have to be included in a future deficiency appropriation to cover the necessary payments in fiscal 2025. If the State opts to self-insure, expenditures increase beginning in fiscal 2026 due to the application and renewal fees that MDL establishes in regulations for private plans.

Service Providers

MDH must reimburse certain service providers for some or all of the employer share of FAMLI contributions on at least a quarterly basis. The fiscal 2025 allowance includes $12.4 million in general funds in MDH for community provider contributions, which is reduced contingent on legislation delaying FAMLI implementation. As this bill delays the implementation of FAMLI and thereby activates the contingency, MDH expenditures in fiscal 2025 decrease by $12.4 million, with additional cost savings in fiscal 2026.

Local Expenditures: Local jurisdictions that do not participate in a private plan experience savings from FAMLI contributions being delayed by nine months until July 1, 2025. However, expenditures may increase beginning in fiscal 2026 for local jurisdictions that participate in private plans by the amount of fees MDL establishes in regulations for private plans.

Small Business Effect: The bill makes several significant changes to the FAMLI Program, including delaying employer contributions by nine months and authorizing MDL to establish fees for private employer plans. Such changes are likely significant for small businesses.

Additional Comments: The bill takes effect October 1, 2024, the same date on which contributions are required to start under current law.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 571 (Delegate Qi, *et al.*) - Economic Matters.

Information Source(s): Department of Budget and Management; Maryland Department of Labor; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2024
rh/mcr Third Reader - March 20, 2024
Revised - Amendment(s) - March 20, 2024

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