

1-2003

# Final Report of the Commission to Continue the Study of Benefits and Costs for Increasing Access to Family and Medical Leave for Maine Families

Maine State Legislature

Office of Policy and Legal Analysis

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*Maine State Legislature*

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## Recommended Citation

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**STATE OF MAINE  
120TH LEGISLATURE  
SECOND REGULAR SESSION**

**Final Report  
of the  
Committee to Continue to Study the Benefits  
and Costs For Increasing Access to  
Family and Medical Leave**

**January 2003**

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## **Executive Summary**

Family and medical leave laws exist in most states as well as in federal law. The laws provide job protection for a worker who takes leave from a job because of the worker's serious illness, the serious illness of a family member, or the birth or adoption of a child. The laws preserve the worker's job so that he or she can return to that job or a comparable one when the leave ends, but do not require the employer to pay the employee while he or she is on leave.

A report issued by the United States Department of Labor in 1996 indicated that a large number of Americans who needed family or medical leave said that they did not take a leave because they could not afford to do so without being paid. This report, as well as concerns about the changing demographics of workers and research on the importance of early interactions between parents and babies, have led to proposals in many states to provide for income to employees during family or medical leave.

During the First Session of the 120<sup>th</sup> Legislature, the Maine Legislature created the Committee to Study the Benefits and Costs for Increasing Access to Family and Medical Leave by Joint Order on June 21<sup>st</sup>, 2001. The committee met four times during the interim and collected extensive data and information on state and national methodologies to estimate the costs and benefits of a paid family and medical leave program. In addition, the committee heard testimony from a number of Maine employers and employees who spoke on the effect of a paid family and medical leave program on them. The committee concluded that it needed more information on the costs and benefits of paid leave, as well as on methodologies and expertise for estimating the costs and benefits before it can make a substantive recommendation on the issue of paid leave. The committee recommended that the study group continue its work in the 2002 interim.

As a result, the Maine Legislature created the Committee to Continue to Study the Costs and Benefits of Increasing Access to Family and Medical leave for Maine Families during the Second session of the 120<sup>th</sup> Legislature through Resolves 2001, Chapter 115. This Resolve called for the appointment of a 15-member committee, including legislators and a state labor department official, as well as representatives from a number of interest groups.

The Committee to Continue to Study the Benefits and Costs for Increasing Access to Family and Medical Leave for Maine Families convened in September of 2002. Two primary goals were to find and evaluate methodologies employed by other states to estimate costs and benefits of a paid family and medical leave program, and to develop Maine specific sources of data. The committee reviewed developments regarding paid family and medical leave programs over the past year, including the passage of a California Paid Family and Medical Leave program, and two economics-based methodologies to analyze the costs and benefits of a paid family and medical leave program and resulting analysis.

## RECOMMENDATIONS

### **Majority report:**

The Committee's majority report recommends creating a Temporary Disability Insurance program, entitled the Family Security Fund, to provide replacement income for employees while they are unable to work due to illness or maternity disability. This program will be housed within the Department of Labor.

1. The Family Security Fund will include the following components:

- The maximum duration of leave under the program is 26 weeks.
- Employers will have the option of selecting the state-operated program or an equivalent or superior private plan with no additional cost to employees.
- The employer must pay at least half of the premium and may pay the entire premium.
- All private employers with one or more employees must participate; the program is optional for government entities.
- Persons in family employment are excluded.
- For an employee to be eligible for benefits, they must have had earnings from work in 12 of the previous 52 weeks.
- The weekly benefit rate is 66 2/3% of the employees average weekly wage in the highest two quarters in the last 52 weeks. The weekly benefit cap is 100% of the state average weekly wage<sup>1</sup>.
- A maximum limit on employee payroll deductions of 90 cents a week. The actual amount of an individual employee's contribution up to this cap will be determined by a sliding scale based on wages in accordance with rules promulgated by the Department of Labor.
- Benefits will be reduced by unemployment insurance and sick pay. Benefits would not be reduced by other disability benefits, pension payments, and other earnings.
- The waiting period is seven days; however, payment for the first seven days must be made retroactively if the disability lasts 3 weeks or more.
- Maternity disabilities with no medical complications are covered for up to 12 weeks postpartum. If there are complications associated with a pregnancy, a disability is treated the same as any other disability and is covered for up to 26 weeks.
- Maternity disabilities with no complications are covered for up to 2 weeks prior to delivery.

2. While an employee is receiving disability benefits, their job will be protected until they return to work.

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<sup>1</sup> A recent estimate for 100% of the average weekly wage in Maine is \$546. This is based on the average weekly wage for worker's compensation as of July 1, 2002.

3. Legislation to enact a program will include a report back date in three years to evaluate program effectiveness and consider including leave for the illness of a parent, child or spouse or the birth and adoption of a child.

The majority proposal originally included a separate program that would have allowed parents to stay home with their newborns or newly-adopted child for up to 12 weeks. The basis for this program was recently-adopted federal regulations allowing states to use the unemployment compensation system to provide benefits for new parents. However, because the U.S. Department of Labor announced that it plans to repeal these federal rules, committee members decided not to pursue this option.

### **Minority report:**

Those opposing the majority proposal submitted a minority report. They stated the following:

For the past two years, the Commission to Study Paid Family Medical Leave in Maine (FMLA) has met periodically to determine the feasibility of providing some type of compensation for leave taken by Maine employees. The original mission of the commission was to gather information on the possibility of expanding certain segments of family medical leave, primarily for the illness of a family member or birth and adoption of children through a paid leave format of a duration of between one and 12 weeks, the outer maximum of FMLA in the state of Maine.

The Commission had a significant amount of interesting discussions concerning proposals from other states as well as an opportunity to review a variety of studies undertaken around this issue; however, in the end a minority of the committee has concluded that Maine is in no position, economically or financially to require any type of paid leave from Maine businesses. Nor are employees and employers in the position to afford an additional tax to fund the type of temporary disability insurance being proposed in the majority plan.

A strong minority of this commission believes that in a perfect world, every Maine worker would have insurance coverage for a portion of income lost due to short-term disability. This could include coverage for employees taking time from work for the birth of a child. However, the practical reality in Maine is that neither our businesses, nor our employees, and certainly not our state government can afford to take on the burden of this type of program, and the administrative infrastructure it would require, as proposed by the majority of the commission. We oppose the establishment of a state-run temporary disability insurance program (TDI).





## **I. INTRODUCTION**

### **A. Creation of the Study**

The Committee to Continue to Study the Benefits and Costs for Increasing Access to Family and Medical Leave was created by Resolves 2001, Chapter 115.

The Resolve called for appointment of a 15-member committee, including legislators and a state labor department official, as well as representatives of public and private employers, labor, parents, child care organizations, senior citizens, women's groups and low-income advocacy organizations.

A copy of Resolves 2001, Chapter 115 is included as Appendix A. A membership list, including the interests represented by each member, is included as Appendix B.

### **B. The Study Process**

The study committee was convened for the first time on September 9<sup>th</sup>, 2002. Subsequent meetings were held on October 7<sup>th</sup>, October 21<sup>st</sup>, October 30<sup>th</sup> and November 18<sup>th</sup>. The committee reviewed the legal, legislative and methodological developments over the past year, took testimony from a child development specialist, an expert on Alzheimer's, a small business owner, and reviewed other state disability programs and two cost/benefit estimates for Maine.

The committee invited Dr. Vickie Lovell from the Institute for Women's Policy Research to provide economic assistance. Dr. Lovell provided an analysis of paid family and medical leave costs based on Maine specific demographic and employment data. In addition, the authors of a recent study entitled "Paid Family Leave in California: An Analysis of Costs and Benefits" provided a cost/benefit analysis for Maine based on the same methodology used in the California study. In its final meeting, the study committee majority endorsed a recommendation to create a Temporary Disability Program for an employee's own illness and maternity disability.

## **II. BACKGROUND**

### **A. The Maine and Federal Family and Medical Leave Laws**

Maine passed the Family and Medical Leave Act (FMLA) in 1988, and the federal government followed a few years later by passing a national FMLA in 1993. Family and medical leave laws in Maine and nationally share many common elements. They enable workers to take time off from their jobs when the worker or a family member is seriously ill and when the worker has or adopts a child. The laws preserve the workers' job so that he or she can return to that job or a comparable one when the leave ends and enable the worker to continue receiving benefits such as health insurance.<sup>2</sup> The employer is not required to pay the worker while he or she is on leave. The history of the Maine and national family and medical leave laws is thoroughly reviewed in the "Final Report of the Committee to Study the Benefits and Costs For Increasing Access to Family and Medical Leave", December 2001.

### **B. Impetus for Paid Family and Medical Leave**

Proposals to provide some form of income for persons on family and medical leave have been made in more than half of the states in recent years. Advocates in Maine and nationally cite a number of reasons for the upsurge in proposals. For a complete review of this issue, refer to the "Final Report of the Committee to Study the Benefits and Costs For Increasing Access to Family and Medical Leave", December 2001.

### **C. Other State Paid Leave Programs – California's new law**

In September 2002, California Governor Gray Davis enacted new legislation that expands California's mandatory temporary disability insurance (TDI) program to include a paid family leave component. The following is a summary of the new law:

- Beginning July 1, 2004, workers will receive up to 6 weeks of paid leave per year to care for a new child (birth, adoption, or foster care) or seriously ill family member (parent, child, spouse, or domestic partner).
- Worker payments begin January 1, 2004. Benefits begin July 1, 2004. This time delay allows for administrative systems and funding to be established.
- This program is 100% employee-funded. A minimum wage earner will pay an additional \$11.23 a year into the TDI program, while the estimated average cost is \$27 per worker per year.

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<sup>2</sup> Employees may be required, under state law, to pay the cost of the benefit. Federal law requires that the benefit be continued under the same conditions as prior to the leave.

- The benefit will replace up to 55% of wages, up to a maximum of \$728 per week in 2004. The maximum benefit will increase automatically each year in accordance with increases in the state's average weekly wage.
- There is a one-week waiting period before workers can apply for paid family.
- Employers can require a worker to use a maximum of two weeks of vacation time first before receiving paid family leave. One week will be used to cover the waiting period.
- Businesses with fewer than 50 employees are not required to hold a job for a worker who goes on paid family leave. Collective bargaining agreements may offer different protections for these workers.
- New mothers eligible for pregnancy-related disability will also be eligible for paid family leave.

No other state currently requires employers to pay for family and medical leave. Many employees on FMLA leave are entitled to pay from one or more of a variety of sources provided voluntarily by employers, through collective bargaining agreements and in some cases as required by law: paid sick leave, vacation leave, and individual or employer-funded disability policies. In addition, five states (including California) and Puerto Rico require employers to provide temporary disability insurance, either through a state program or by the purchase of insurance in the private market.<sup>3</sup> Some states require that an employer allow an employee to use any sick leave he or she has to take care of sick children.<sup>4</sup>

#### **D. Need for Paid Family and Medical Leave in Maine**

The Committee heard testimony from a health care advocate and a child development specialist. In each case, the goal was to gain insight into the existing need for paid family and medical leave, and the potential benefits for employees and employers.

##### ***1. The Business and Public Health costs of Alzheimer's disease***

Kathryn Pears from the Alzheimer's Association spoke to the study committee on the difficulties faced by workers with family members afflicted with Alzheimer's Disease, and discussed some of the public health costs associated with Alzheimer's Disease. The greatest burden of Alzheimer's falls on the families, and women in particular. Serving as a primary caregiver for an ill family member can take a toll economically, physically and emotionally.

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<sup>3</sup> New York, California, New Jersey, Rhode Island, Hawaii and Puerto Rico have temporary disability insurance programs or require employers to provide such insurance.

<sup>4</sup> California, Minnesota and Washington, according to National Partnership for Women and Families

Ms. Pears referenced a study conducted by Ross Koppel, Ph.D. of the Social Research Corporation<sup>5</sup> estimating the cost to businesses of Alzheimer's disease. He estimated that on a national scale, Alzheimer's disease will cost businesses more than \$61 billion in 2002. Of that, \$36.5 billion alone will be the business cost for workers who are caregivers specifically for people with Alzheimer's disease. He identifies three primary factors for this cost: absenteeism, productivity losses, and replacement costs of workers who leave their employment.

Ms. Pears recommendations for mitigating the financial impact of Alzheimer's Disease include supporting family caregivers by allowing flexible work schedules. She said that a paid family and medical leave would greatly benefit families in this regard. Allowing workers, for example, up to 12 weeks of time off would provide tremendous value – it would give them the time to deal with a crisis and set up a system of care.

## ***2. Child Development in Maine***

Sue Reed, child development expert from the Muskie Institute, spoke to the committee about the state of childcare in Maine and emphasized the importance of primary caregivers for the healthy development of human infants.

Ms. Reed stated that the current ratio of infants to caregivers in Maine is four to one. According to Ms. Reed, ninety percent of childcare in Maine is sub-standard in terms of optimal conditions for a child to flourish and forty percent of childcare situations are harmful. A major consequence of substandard childcare is behavioral problems. She noted that the lower the ratio of infants to childcare providers, the better it is for the child; one on one care is the best situation for an infant. Ms. Reed cited statistics that reveal an increasing trend in special education costs. She believes this trend is at least partially a result of inadequate childcare.

Ms. Reed stated that the first three months with a primary caregiver are critical and allowing a caregiver to stay home with a child for two years is optimal. She provided a rough figure that for every dollar spent on early child care, seven dollars are saved in the long term.

## **E. Impact on Small Businesses**

Jim Amaral, owner of Borealis Bread and member of Maine Businesses for Social Responsibility, shared information regarding his perspective on paid family and medical leave as a small business owner. He stated that he views a state disability program as a value to employees and businesses down the road. Mr. Amaral also noted that as a business owner, he does not want to be making health care decisions for his employees or shopping for insurance programs. He would prefer that there be a state program for him to access.

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<sup>5</sup> "Alzheimer's Disease: The Costs to U.S. Businesses in 2002", Ross Koppel, Ph.D. Social Research Corporation, Wyncote, PA and Department of Sociology, University of Pennsylvania, Philadelphia, PA, September, 2002.

In response to concerns about employee absenteeism, Mr. Amaral stated that due to the nature of his business as a bread maker, daily production is critical. Absenteeism is difficult to manage; however, his staff usually “step-up” to help out co-workers. He believes that if Borealis can deal with staff shortages, most businesses should also be able to manage them. Mr. Amaral also believes that paid family and medical leave might serve to attract talent from out of state and encourage employees to become more vested in the company. He added that he believes it’s good for business to let families be families. Most employees who need leave to take care of their own health or the health of family members use their personal time and vacation time for these situations. As a result, they do not take vacations, which can be difficult on morale. A paid family and medical leave program would provide employees with more options for taking time off.

## **F. Options for Providing Paid Benefits**

### ***1. Extend unemployment compensation benefits to new parents***

Recently-adopted federal regulations<sup>6</sup> allow states to use the unemployment compensation system to provide benefits to parents of newborns or newly-adopted children. However, the U.S. Department of Labor announced in December 2002 that it will repeal these regulations; there will be a 60-day comment period on the proposed repeal. In 16 states, lawmakers had drafted legislation to use the unemployment funds to provide several months of income to workers who become parents. Four other states had commissioned studies to determine if the programs could be used in this way without endangering their trust funds. No state has enacted legislation to allow unemployment compensation funds to be used for this purpose.

### ***2. Require Temporary Disability Insurance programs***

Five states and Puerto Rico require employers to provide temporary disability coverage. Temporary Disability Insurance (TDI) programs provide partial wage replacement for employees with non-work-related injuries or illnesses (workers’ compensation would cover work-related injuries and illnesses). In three of the states, employers may elect to participate in a state-run program or to purchase private insurance or to self-insure with programs that meet state standards. In Rhode Island, all employers must participate in the state program. In Hawaii, there is no state program and all insurance is purchased on the private market or is self-insured. Most programs require an employee contribution as well as an employer contribution toward the cost of coverage.

Phillip Bruen from UnumProvident presented additional information on state disability programs. Mr. Bruen provided a chart outlining the program components for each jurisdiction, such as minimum and maximum benefits, and maximum duration of benefits. (Appendix C) He elaborated on the self-insurance option, stating that in all five states, an employer may choose to self-insure its program – or administer the program internally.

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<sup>6</sup> 20 CFR Part 604 (2001)

Because of the high administrative burden, not many companies choose this option. This comparison also revealed that the benefit amount and duration of benefits varies among the states. The most common duration is 26 weeks, after a 7-day waiting period. Benefit amounts range from 50% to 66% of average weekly wages. A chart comparing the costs of several TDI programs is included in Appendix D.

Mr. Bruen also commented that estimating costs for a program that covers all the leaves allowed under the Maine FMLA law would be difficult. UnumProvident has data on maternity leaves and employee illness, but not family-related leaves.

## **G. Cost/Benefit methodologies and results**

### *1. Estimating Costs*

One of the duties of the Committee was to arrange for the assistance of experts in economic analysis to prepare cost and benefit estimates for a paid family and medical leave program in Maine. The Committee was fortunate to be able enlist the assistance of two sources of expertise – Dr. Vickie Lovell from the Institute For Women’s Policy Research, and Arin Dube and Ethan Kaplan, authors of a cost/benefit analysis for a paid family leave program in California. Both groups developed economic models designed specifically for estimating the costs of implementing a paid family and medical leave program. To tailor the results for Maine, both models used two datasets prepared by the U.S. Department of Labor: *Balancing the Needs of Families and Employers* (Cantor et al. 2001), which contains the results of a survey of employees and employers conducted in 2000, and Maine Current Population Survey data (CPS), which is demographic data about workers in Maine.

Both models employ methodologies that include assumptions regarding potential changes in leave-taking behaviors of employees due to a paid family and medical leave program. These assumptions are derived from the following program utilization factors:

*Rate of Leave take-up:* Both methodologies estimate the substitution effect of implementing a paid family and medical leave program. They quantify changes in the number of people that will start using a paid family leave program instead of using their sick or vacation leave for FMLA leaves.

*Leave length:* Both methodologies provide estimates for the impact of implementing a paid family and medical leave program on changes in leave length. Specifically, they address the extent to which people will now take longer leaves because all leave is paid.

#### **a. Economists -- California Study**

Arin Dube (University of Chicago) and Ethan Kaplan (University of California, Berkeley) contracted with the study committee to create a spreadsheet to evaluate the costs and benefits for a number of policy options. The spreadsheet calculates costs based on user selections for what groups are covered, who is eligible, what types of

leave are covered, the maximum benefit duration, and whether there will be a seven day waiting period. An example of the type of analysis is included in Appendix E

*Methodology and Cost Factors:* Mr. Dube and Mr. Kaplan based their spreadsheet calculations on the methodology employed in their California study. They identified four components as determining the full cost of a paid family leave program: 1) leave take-up, 2) leave length, 3) weekly benefit amounts, and 4) administrative costs. As noted earlier, their methodology draws on data from a DOL survey (2000) and CPS data (2002).

Since no data are available for several cost variables, certain assumptions are made based on the DOL survey data. These assumptions allow them to estimate changes in employee leave utilization and leave length due to a paid family leave program. In addition, estimates for three “scenarios” are calculated: a “lower estimate” and an “upper estimate” represent outer limits of the cost impact, and a “likely estimate” that represents the most likely outcome and falls in between the lower and upper estimates. A complete description of their methodology is included as Appendix F.

b. Institute for Women’s Policy Research (IWPR)

The Institute for Women’s Policy Research, working with the Labor Resource Center of the University of Massachusetts Boston, recently completed construction of an econometric model for estimating the cost of paid family and medical leave policies. Dr. Lovell made a presentation that details the results from this model on the cost of paid family leave program in Maine. Outcomes from the model include identifying the likely range of costs for a paid family leave program in Maine; illustrating how costs will vary with different usage rates (different levels of program participation); and comparing the impact of different policy parameters, such as eligibility criteria and employer size thresholds.

*Methodology and Costs:* Since there are currently no states with universal paid leave programs, there are no data documenting what decisions workers would make with a universal paid leave program.<sup>7</sup> IWPR’S model employs available data about workers’ need for and use of family and medical leave and information about Maine’s workforce.

Using this model, IWPR provided an estimate for a paid family leave program that includes all employers regardless of the number of employees and would cover all employees that worked at least 1250 hours in the past 26 weeks. They estimated that a program paying 50 percent of wages to a maximum of \$273 per week, for a maximum of 12 weeks, would cost a total of \$14.1 to \$27.8 million per year in benefit payments, depending on the program participation rate. Benefit payments would average \$231 per week and leave lengths would average 12 work days (seven days of paid leave). Funding

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<sup>7</sup> In September 2002, California Governor Gray Davis enacted new legislation that expands California’s mandatory temporary disability insurance program with paid family leave. The program will begin in January 2004, with the first payments scheduled to be made in July 2004.



this program would cost \$21 to \$42 per employee annually. The complete report is included as Appendix G.

Using a this same model, IWPR provided an estimate for a Temporary Disability Insurance program including all private sector employers and covering all employees with earnings in 12 of the previous 52 weeks. They estimated that a program paying 66 2/3 percent of wages to a maximum of \$546 (100% of the average weekly wage), for a maximum of 26 weeks, would cost a total of \$45 to \$56 million annually in benefits. The average weekly benefit payment under this program is estimated to be \$321 during the weeks in which program benefits are received. The estimated per-worker annual cost of benefits under this program is \$95. The complete report is included as Appendix H.

For both estimates, the range for total costs reflects differences in expected participation rates over time. For example, the lower estimate for the TDI program is based on a 67% program participation rate in the program's startup years. As employees and employers learn about the program, the participation is expected to rise; the higher estimate represents a participation rate of 80%. Dr. Lovell has suggested that the lower cost estimates are, therefore, more likely to be an accurate projection of the costs of a TDI or paid family and medical leave program in its early years.

## ***2. Estimating Benefits***

Measuring the benefits of providing paid family and medical leave is more difficult than measuring the cost, since many of the benefits are intangible and not immediate. However, Mr. Dube and Mr. Kaplan developed a methodology for a rough estimate of the benefits. They identified two components to include in calculating the benefits: 1) benefits accruing to firms and 2) benefits accruing to the government.

### **a. Turnover Cost Savings to Firms**

The calculation of benefits accruing to firms is based on savings due to reduced turnover costs. Workers are less likely to leave a job if they get paid leave with the job. With their methodology, the total savings to firms is based on the number of people who don't quit their jobs due to the paid family leave policy and the cost per person to the firm of turnover. The costs per person of turnover are derived from the 1990 Small Business Employee Survey<sup>8</sup>. According to Mr. Dube and Mr. Kaplan, it is an old study and the lowest cost estimate for turnover they could find. Therefore, they consider these numbers to be a lower bound estimate of the per person costs of turnover.

### **b. Decreased public assistance expenditures**

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<sup>8</sup> The SBA commissioned a nationally representative survey that requested data on company policies on various types of family medical leaves. It also asked questions about costs of leaves and terminations to employers. This questionnaire was forwarded to 10,000 business executives, and the response rate was 31.3%.

Use of public assistance programs will most likely decrease due to the availability of paid family leave. Currently, when workers take family leave, some make use of Food Stamps and TANF. There is a large difference, however, between the percentage of those taking unpaid leave who go on public assistance and those taking paid leave who go on public assistance. Based on the Department of Labor survey (2000), approximately 11% of those on unpaid family leave end up on some form of public assistance during leave; on the other hand, only 5% of those on paid family leave end up on some form of public assistance. These data are used to impute the change in use of other public assistance policies due to paid family leave.

The calculation of the savings to governments is equal to the change in percentage using public benefits due to paid family leave multiplied by the number of people taking leaves. This number is multiplied by the average benefit level to find the total savings.

### c. Other Benefits

Advocates of paid leave suggest that there are additional benefits that will accompany a paid family leave program, such as decreased health and nursing home costs, and lowered rates of children with developmental problems. The Committee received some cost information related to each of these issues, although this information is not comprehensive. Sue Reed, from the Muskie Institute, provided an estimate that for every dollar spent on child care, seven dollars is saved down the road in education and mental health costs. (Look at literature for figures).

In addition, Kathy Pears, from the Alzheimer's Association, provided a study entitled "Alzheimer's Disease: The Costs to U.S. Businesses in 2002". As the title indicates, this study focuses on the costs of Alzheimer's Disease (AD) to businesses. However, it also considers the more general question of the cost to the nation of Alzheimer's Disease. Researchers estimate this disease costs the nation from between \$67.1 billion to twice that figure<sup>9</sup>. The more inclusive cost calculations include estimates for "lost" work time of care-givers and the economic value of care-givers. This would suggest that providing income during a leave so that an employee can care for an ill, elderly parent at home rather than placing the parent in a nursing home would benefit the parent and the employee as well as saving nursing home costs.

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<sup>9</sup> Wimo, A; Ljunggren, G.; and Winblad, B., "Cost of dementia and dementia care: a review", International Journal of Geriatric Psychiatry 12. 1997

### III. Recommendations

#### Majority report:

The Committee's majority report recommends creating a Temporary Disability Insurance program, entitled the Family Security Fund, to provide replacement income for employees while they are unable to work due to illness or maternity disability. This program will be housed within the Department of Labor.

1. The Family Security Fund will include the following components:
  - The maximum duration of leave under the program is 26 weeks.
  - Employers will have the option of selecting the state-operated program or an equivalent or superior private plan with no additional cost to employees.
  - The employer must pay at least half of the premium and may pay the entire premium.
  - All private employers with one or more employees must participate; the program is optional for government entities.
  - Persons in family employment are excluded.
  - For an employee to be eligible for benefits, they must have had earnings in 12 of the previous 52 weeks.
  - The weekly benefit rate is 66 2/3% of the employees average weekly wage in the highest two quarters in the last 52 weeks. The weekly benefit cap is 100% of the state average weekly wage.
  - A maximum limit on employee payroll deductions of 90 cents per week. A graduated weekly deduction limit based on income will also be developed.
  - Benefits will be reduced by unemployment insurance, workers compensation and sick pay. Benefits would not be reduced by other disability benefits, pension payments, and other earnings.
  - The waiting period is seven days; however, payment for the first seven days must be made retroactively if the disability lasts 3 weeks or more.
  - Maternity disabilities with no medical complications are covered for up to 12 weeks postpartum. If there are complications associated with a pregnancy, a disability is treated the same as any other disability and is covered for up to 26 weeks.
  - Maternity disabilities with no complications are covered for up to 2 weeks prior to delivery.
  
2. While an employee is receiving disability benefits, their job will be protected until they return to work.
  
3. Legislation to enact a program will include a report back date in three years to evaluate program effectiveness and consider including leave for the illness of a parent, child or spouse or the birth and adoption of a child.

The proposal originally included a birth and adoption program to be administered through the State's Unemployment Compensation program as permitted under the recently adopted federal rules. The program would have allowed maternity and paternity leave for birth and adoptive children for up to 12 weeks. However, because the U.S. Department of Labor announced that it plans to repeal these federal rules, committee members decided to incorporate pregnancy leaves into the disability program.

### **Minority report:**

Those opposing the majority proposal submitted a minority report. They stated the following:

For the past two years, the Commission to Study Paid Family Medical Leave in Maine (FMLA) has met periodically to determine the feasibility of providing some type of compensation for leave taken by Maine employees. The original mission of the commission was to gather information on the possibility of expanding certain segments of family medical leave, primarily for the illness of a family member, or birth and adoption of children through a paid leave format of a duration of between one and 12 weeks, the outer maximum of FMLA in the state of Maine.

The Commission had a significant amount of interesting discussions concerning proposals from other states as well as an opportunity to review a variety of studies undertaken around this issue; however, in the end a minority of the committee has concluded that Maine is in no position, economically or financially to require any type of paid leave from Maine businesses. Nor are employees and employers in the position to afford an additional tax to fund the type of temporary disability insurance being proposed in the majority plan.

A strong minority of this commission believes that in a perfect world, every Maine worker would have insurance coverage for a portion of income lost due to short-term disability. This could include coverage for employees taking time from work for the birth of a child. However, the practical reality in Maine is that neither our businesses, nor our employees, and certainly not our state government can afford to take on the burden of this type of program, and the administrative infrastructure it would require, as proposed by the majority of the commission. We oppose the establishment of a state-run temporary disability insurance program (TDI) for the following reasons:

- As one of the highest taxed states in the nation, Maine cannot tolerate additional taxes on its businesses or on its working citizens to finance a temporary disability program for Maine workers. Conducting business in Maine is already significantly higher than other states; the possibility of a new tax on employers to pay for a TDI program would exacerbate the problem. At the same time it is unimaginable for a state facing a massive budget deficit as we do through the next biennium to add a multi-million dollar program. A major weakness of the majority plan is that there is currently no administrative infrastructure in place for claims in-take, claims adjudication, certification of disabilities, and assisting claimants to return to work. This would

require a significant investment in state bureaucracy. In addition, the majority report lacks specificity as to the criteria for determining benefit eligibility, such as definition of disability, which will significantly affect the cost of the program.

- At this time, the majority of the commission proposes to place surtaxes on both employers and employees based on payroll to fund such a TDI program. The minority of the committee opposes this. From an employer's standpoint, we believe it would only contribute to economic problems this state already faces and increase the overall costs of doing business in Maine. This makes our ability to compete for new jobs, plan expansions, or relocations to this state, and new opportunities for our citizens more difficult.
- Additional costs to employees are equally troublesome. Employees in Maine are being asked to pay a greater contribution toward their health insurance by Maine employers, whether in higher premiums, greater co-pays or higher deductibles. Health insurance rates in the small group market have skyrocketed. Increases of 30-40 percent are not unusual. Small businesses in this state are hardest hit by these rate increases. Additional taxes levied on employees toward a state TDI fund removes additional disposable income that they may need to put toward other expenses, such as health insurance premiums. At the very least, employees should have the opportunity to decide how they want to spend their benefit dollars rather than a mandate to all Maine employees.
- Many Maine workers already have private short-term disability (STD) insurance coverage, including paid maternity leave through their employers. These employers often provide STD coverage as part of their benefits package to attract workers. However, many employers cannot afford such coverage for their employees. Many of the types of these employers that cannot afford this coverage represent the backbone of the Maine economy, businesses with 10 or fewer employees. Currently, those employers who do provide the disability coverage, as well as those who do not, continue to struggle with the cost of health care insurance. Employees in Maine are seeing a greater increase in their portions of their paychecks devoted to their health insurance premiums. As stated earlier, we think that given the choice, employers and employees would consider health insurance a much higher priority for their limited dollars than any TDI program.
- Currently, only five states in the country have long-established TDI programs. No state has added a TDI program in many years. The state of Rhode Island's program has been in existence for over 60 years. Last year the cost of the program was \$142 million funded totally by taxes on employees. Given the fact that the state of Maine faces a budget shortfall in the neighborhood of greater than \$1 billion over the biennium, we feel the establishment of a state-run program, even funded by taxes on employers and employees, is unsound and unrealistic. In weak economic times, austerity is called for by the state and the state budget process. Creating a new level of state government with commensurate administrative costs is simply not responsible.

- We believe any new state TDI program will tend to be understaffed and is unlikely to include adequate staff to manage benefits and return people to work as quickly as possible. In the current TDI states, claims durations tend to be longer than private disability insurance, and incidence of claims higher than private insurance. Because there is often little disability management, employers lose their employees for longer periods of time, resulting in increased costs. In addition, state TDI programs do not integrate with private long-term disability programs that employers often offer their employees. Again, because state programs do not manage disabilities well, employees can end up using the employer's long-term disability plan unnecessarily, resulting in higher overall employer costs.
- Finally, and most importantly, for a minority of the committee, the impact of yet another state mandated program that includes taxes on all Maine employers and employees, represent another layer of government regulation. Nationally, Maine is recognized as being one of the most unfriendly business states in the country. A recent study provided in the Small Business Survival guide, ranked Maine 49<sup>th</sup> out of 50 states in terms of its friendliness to small businesses.
- A recent study by the National Center for Policy Analyses in Washington and Canada's Fraser Institute, Maine ranked as having one of the worse levels of economic freedom in the country. In their study, Maine was tied with North Dakota for 46<sup>th</sup> out of 50 states. The study found the overall tax burden among states range from 9.9 percent of income in Delaware, to 12.7 percent in Maine. The study concluded that Maine lost \$3,328 per person per year in economic efficiency compared to the average state.

The committee majority was unable to produce any valid data that indicated costs savings would be available to Maine employers as a result of implementation of their report. Furthermore, no data was produced which adequately represented the cost to Maine employers if the proposals contained in the majority report were actually implemented. What cannot be denied is the proposals contained in the majority report represent a new level of government regulation mandate as well as additional taxes and a burden on Maine employers. For these reasons, we submit our report opposing these proposals.



