

**Informal Regulatory Stakeholder Engagement Process
Phase 3
Discussion Document – Contributions**

Contributions to the FAMLI Trust Fund will come from employees, employers with 15 or more employees, and self-employed individuals. The Division of Family and Medical Leave Insurance’s considerations for setting up the contribution process are described on the following pages. The Division of Family and Medical Leave Insurance (hereinafter referred to as the “Division”) seeks feedback from stakeholders on the questions presented on the following pages.

Comments can be submitted by offering oral remarks at the July 20, 2023 informal regulatory stakeholder meeting and/or by submitting written comments via email to FAMLI.policy@maryland.gov. The Division would prefer to receive written comments by July 24, 2023.

The following questions are being considered by the Division. Below each question is a possible answer, intended to spark feedback and discussion.

1. What will be the registration requirements for existing businesses?

- The Division is building the employer web based portal. Employers will be required to create an online account in that portal before contributions are due.

2. How might new employers be required to register with the State after contributions begin?

- Employers may register using the same protocol as the Division of Unemployment Insurance requiring registration within 20 days of beginning operations.

3. When might the Department set the rate for contributions?

- Section 8.3-601(b)(1) of the Labor and Employment Title of the Maryland Code lays out the initial schedule for setting rates. The initial rate shall be set by October 1, 2024. That rate will be in effect from October 1, 2024 through June 30, 2026.
- Section 8.3-601(d)(1) establishes that by February 1, 2026 and each subsequent year, the Department shall set a rate that begins on July 1 of that calendar year and is in effect for 1 year.

4. How will wages be defined?

- Section 8.3-101(r) establishes wages for an employee as:
 - an hourly wage or a salary;
 - a commission;
 - compensatory pay;
 - severance pay;
 - standby pay;
 - a tip or gratuity;
 - holiday or vacation pay; or
 - any other paid leave, including sick leave, that is paid to the employee entirely by the employer

5. How will the maximum wage be applied to an employee with multiple jobs?

- The relevant statutory language is:

(a)(1) Beginning October 1, 2024, each employee of an employer, each employer with 15 or more employees, and each self-employed individual participating in the Program shall contribute to the Fund.

(2) The total rate of contribution established under this section:

(i) may not exceed 1.2% of an employee's wages; and

(ii) shall be applied to all wages up to and including the Social Security wage base.

- One possible way of reading this text is that all wages paid by an employer to an employee each calendar year are subject to contributions up to the amount of the Social Security wage base.

6. How does an employer determine if an employee is a covered employee in the State of Maryland?

- The same localization rules as the Division of Unemployment Insurance per COMAR 09.32.01.20 could be used.

7. How might the Division determine if an employer has 15 or more employees?

- The number of employees may be counted by using the total number of employees (in and out of Maryland) to whom the employer paid any wages.
- There are two possible methods for calculations. The first method is responsive to fluctuations in employer size but provides less predictability. The second method provides certainty for a year, but is not immediately responsive to changes in size.
 - i. Method one: A quarterly determination could be made by counting the total number of employees to whom the employer paid any wages in that calendar quarter. If the number of employees is below 15, the employer would be exempt from paying the employer's share of contributions during that calendar quarter. OR
 - ii. Method two: An annual determination could be made by averaging the number of employees to whom the employer paid wages each quarter for the previous calendar year. If the average is below 15, the employer would be exempt from paying employer contributions for a full year from the next July 1-June 30.
- Transition period and new employers:
 - i. Until an employer has four quarters of reports and contributions, which would include all employers starting in 2024, employee size may be determined using method one.

8. What might an employer have to do if they opt to pay in whole or in part the employee share of the contribution?

- An employer may be able to elect to pay the employee's contribution, in whole or in part for all employees, if they provide a written notice to the employees or enter into a collective bargaining agreement with the employee specifying that the employer is electing to pay the employee contribution, making the employer liable for that portion of the employee contribution.
- The employer may be required to provide written notice of an update to the employee at least one pay period prior to any reduction by the employer of the elected employee contribution amount.

9. What might the consequence be if an employer fails to deduct the allowable employee contribution amount from an employee's pay during that pay cycle?

- An employer may be considered to have elected to pay that portion of the employee's contribution if an employer fails to deduct the maximum allowable employee share of the contribution rate in a pay period.
- The employer may be liable to pay the portion of the employee share and may not be permitted to recoup the employee share attributable to a past pay cycle on future pay cycles.

10. What might be the reporting and payment schedule for employers?

- As currently written, a worker's benefit amount is based on the worker's average weekly wage, which "shall be calculated as 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." In order to determine the number of weeks over which an employee most recently worked up to the 680-hour total, informational reports from employers containing the number of hours each worker in Maryland worked during each calendar week would be required. Furthermore, the phrase "the last 680 hours for which the covered individual was paid" could be read as requiring a determination of the number of hours worked up to and including the most recent week before leave commenced. This level of recency may require wage and hour informational reports from employers on each of their employees as often as on a weekly cadence.
- A legislative change may be required to achieve a reporting and contribution schedule that would be the same as for the Division of Unemployment Insurance. Under that schedule, contributions may be due the last day of the month immediately following the close of each calendar quarter. Informational wage and hour reports may be due on or before the contribution payment date.

11. How might an employer be able to pay the contribution amount?

- Payments may be received via ACH debit.

12. How might the Division handle delinquent payments?

- The remedies available in Section 8.3-903 may be used by the Division.