LFC Requester:	Garcia

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/9/25
Bill Number: HB 11

Check all that apply:
Original X Correction __
Amendment __ Substitute __

Sponsor: Rep. Christine Chandler
Short Title: Paid Family & Medical Leave Act

Agency Name and Code Number: AOC 218
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 11 enacts the "Paid Family and Medical Leave Act", (PFMLA) to provide for a maximum of twelve weeks of family leave for an eligible applicant or eligible self-employed individual who meets specified criteria, beginning January 1, 2028. This legislation would provide partial wage replacement while the employee is out for qualifying reasons, which would include care of family members, family leave, qualifying exigency leave, safe leave, or medical leave.

HB11 applies to public and private employees subject to state jurisdiction, excluding federal employees. The Act allows self-employed individuals the ability to opt out of the program. The Act also allows Indian nations, tribes, and pueblos to elect to be covered or to terminate coverage.

HB11 apply to employers with five or more employees. Beginning January 1, 2027, and for each calendar quarter thereafter until January 1, 2030, each employer will be assessed a fee equal to four-tenths percent of each participating employee's wages up to the earning cap established by the federal social security program, pursuant to the Federal Insurance Contributions Act. Then, Beginning on January 1, 2030, and for each calendar year thereafter, the employer fee will be 45% of the premium yet to be set by the WSD Secretary.

HB 11 permits an employer that has adopted and operates a substantially similar paid family and medical leave plan or program to apply for a waiver to exempt the employer and its employees from participating in the paid family and medical leave program. Employers who require employees to use their own accrued leave while on federal Family and Medical Leave would not satisfy this exemption. The Act provides an employer granted a waiver and the employer's employees the same rights and protections enjoyed by employers and employees covered pursuant to the PFMLA, including the right to appeal a waiver granted or denied to the Workforce Solutions Department (hereinafter "department"). HB 11 permits employees to appeal to the department if any right granted pursuant to the PFMLA is violated.

HB 11 grants the employer a right to appeal a determination to the department within 15 calendar days after receipt of documentation of the approved leave compensation request.

HB 11, Section 9 provides the following prohibitions and requirements:

- It is unlawful for an employer or any other person to interfere with, restrain or deny the exercise of, or the attempt to exercise, any right protected pursuant to the PFMLA.
- Any employer is required to timely provide to the employee documents required to apply for leave.
- An employer, employee organization or other person is prohibited from taking retaliatory personnel action or otherwise discriminate against a person because the person exercised rights protected pursuant to the PFMLA.
- It is unlawful for an employer's absence policy to count leave taken pursuant to the

PFMLA as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.

HB 11 requires the protections provided in Section 9 to apply to any person who reasonably but mistakenly alleges violations of the PFMLA. The Act requires an employer that is found by a hearing officer or court to have discharged a worker in violation of Section 9 to rehire that employee, if the worker agrees to be rehired.

HB 11 provides the procedures an applicant or authorized representative named in an application for leave is required to follow in appealing an adverse determination of that application to the party. The Act permits the department secretary or authorized representative to hold a hearing within 10 business days after an appeal is properly made, due notice is given to the parties in dispute and mediation is refused by any party, develop a record of the proceedings and rule on the appeal within 20 business days after the completion of the hearing and issue a final decision in accordance with Section 39-3-1.1(B) NMSA 1978.

HB 11, Section 10 permits an aggrieved party, including an employee or former employee, of the department on its own motion to bring an administrative action for an alleged violation of the PFMLA under a public or privately run leave program. HB 11 permits a party to appeal a final decision made by the department pursuant to the provisions of Section 10 to the district court pursuant to Section 39-3-1.1 NMSA 1978. The Act permits the department to appear in its own name in district court in actions for injunctive relief to prevent any person or entity from violating the provisions of the PFMLA or rules promulgated by the department.

HB 11, Section 11 prohibits a city, county, home rule municipality or other political subdivision of the state shall not adopt or continue in effect any ordinance, rule, regulation, resolution or statute that establishes a program of rights and benefits as set out in the Paid Family and Medical Leave Act, excluding a paid sick leave or paid time off ordinance, policy or resolution. Subject to the requirements of the PFMLA, the provisions of Section 11(A) shall not prevent a city, county, home rule municipality or other political subdivision of the state from establishing any leave policies for its employees.

HB 11, Section 12 provides that nothing in the PFMLA shall be construed to diminish the rights, privileges or remedies of any employee under any collective bargaining agreement.

FISCAL IMPLICATIONS
HB11 does not include an appropriation.

HB11 would require substantial start-up costs. The DWS estimates the PFML program will require an approximate increase of 33% in staffing and personal services budget. When similar legislation was proposed during the 2023 legislative session, the LFC's analysis estimated **administrative** initial two-year costs of approximately $51.7 million.

Based on Section 15 and the requirement that the PFML fund reimburse the state general fund six million dollars ($6,000,000) annually until the total transfers pursuant to the section equal the total amount of an appropriation made to the WSD, the initial appropriation needed in FY2030 appears to be significant. The passing of HB11 will require that future funding be approved and does not include a provision should the state not have sufficient funding at that time. Has a study or assessment of anticipated costs been conducted?

There is no mechanism in HB11 to address solvency issues in the fund.

A full fiscal analysis might need clarity on the following questions: If HB11 is passed into law without known or anticipated costs or known or anticipated fund balances, what will be the financial obligation of the DWS if they do not have $6,000,000 in the PFML fund to make the statutorily required annual payment to the GF? What provisions or exception process does the DWS have if the fund does not have sufficient funding to make the statutorily required annual payment, e.g., will DWS be required to request supplemental funding to make this payment? What happens if a supplemental funding request is not approved in full or part?

SIGNIFICANT ISSUES

Section 4. B. requires employees to contribute one-half percent of the employee's wages up to the earning cap established by the federal Social Security Administration program, and "An employee shall **not** be required to make any contributions to the fund **from leave compensation** (emphasis added)."

It may be challenging to separate an employee's compensation between hours worked and leave taken, resulting in a possible additional burden on employers. Depending upon the size of the employer, this may result in a need for additional staff. Questions raised - will the employer or DWS will be responsible for the determination? Will this require specific or additional programming in the SHARE HCM system for state employers, including DWS? If so, will DWS and/or DFA/DoIT require an appropriation? Additionally, this is not required on the employer side. Section 4. C. requires employers to pay "four-tenths percent of each participating employee's wages up to the earnings cap established by the federal social security program…" and does not separate the assessment only on hours worked.

The assessment to employers beginning January 1, 2027, until January 1, 2030, is four-tenths percent. For an employee earning $50,000, the annual assessment would be approximately .004% or $200. Starting January 1, 2030, and each calendar year thereafter, the assessment will be forty-five percent of the premium set by the DWS secretary. Similarly, the assessment for an employee starting on January 1, 2030, increases to 55% of the premium set by the DWS secretary. There is no estimate of if or how much the employee or employer portion will increase or mention of a cap. Will there be a way to manage the premium to ensure that if the cost increases, it does not become overly burdensome for an employee, or a small private business employer?

Possibly confusing language: the bill defines an employer as "a person that has **one or more** employees within the state and includes an agency of an employer and the state or a political subdivision of the state" (emphasis added). However, subsection 4 states that "each employer with **five or more** employees" must submit contributions (emphasis added).

HB 11 permits an employer that has adopted and operates a substantially similar paid family and medical leave plan or program to apply for a waiver to exempt the employer and its employees from participating in the paid family and medical leave program. Separate from the Paid Parental Leave program, state employers require employees to use their accrued leave, which would not provide similar paid family and medical leave. Will executive, legislative and judicial branch entities receive appropriations, if the premium set by the DWS secretary results in a substantial budgetary increase? If yes, how will substantial be defined?

Contradictory language exists in Section 5. C.

Section 5.C. states, "Beginning **January 1, 2028**, an applicant shall be eligible for a maximum of twelve weeks of family leave in an application year. In calendar years **2028 and 2029**, an applicant shall receive a **maximum of nine weeks** of medical leave, safe leave or qualifying exigency leave in an application year. Thereafter, the maximum medical leave, safe leave or qualifying exigency leave compensation pursuant to this subsection **shall remain at nine weeks** per application year until the subsequent annual financial analysis determines that the fund is solvent after taking into account any permissible premium changes, at which point the maximum leave compensation for the following calendar year and thereafter shall be increased to twelve weeks" (emphasis added).

1) The federal Family and Medical Leave Act of 1993, 29 U.S.C. Section 2601, requires employers of a certain size to provide up to 12 weeks of unpaid, job-protected leave for certain family and medical reasons.

   As of January 2025, 13 states and the District of Columbia have enacted Paid Family Medical Leave (PFML) laws, and those in 9 states and D.C. are currently in effect. A new PFML policy went into effect in Colorado on January 1, 2024, and PMFL policies are scheduled to take effect on January 1, 2026 in Delaware and Minnesota, on May 1, 2026 in Maine, and on July 1, 2026 in Maryland. See *Paid Family and Medical Leave (PFML) by State*, Investopedia, January 2025, https://www.investopedia.com/paid-family-and-medical-leave-by-state-5089907#:~:text=Which%20States%20Offer%20Paid%20Family,go%20into%20effect%20in%202026 . See also, *State Family and Medical Leave Laws*, National Conference of State Legislatures, August 21, 2024, https://www.ncsl.org/labor-and-employment/state-family-and-medical-leave-laws#:~:text=Mandatory%20Paid%20Family%20and%20Medical,leave%20coverage%20from%20private%20insurers .

2) See the extensive FIR for 2024's HB 6 at https://www.nmlegis.gov/Sessions/24%20Regular/firs/HB0006.PDF .

HB11 states that the employer may require an employee who uses leave to report periodically to the employer on the status and intention of the employee to return to work. The federal FMLA includes regulations that recertification can be no more than every 30 days. If an employee is using leave under the Act concurrently with their federal entitlement, additional guidance should be included protecting both the employer and employee from a violation of the regulation. An employer may comply with the state PFML but violate the federal FMLA, resulting in a potential liability to the employer.

HB11 provides reinstatement rights to employees who have worked for their employer for 90 or more days. If an employer is exempt and therefore their employees are exempt and enact their rights under the federal FMLA, they must have worked for their employer for 1250 hours in the past 12 months (over the past 7 years, need not be concurrent). It should be noted that employees taking paid leave under the PFML are provided greater benefits than those taking leave under the federal FMLA.

HB11 Section 4. A. (1) applies to employers of employees who are in the state of New Mexico, and (2) clarifies regardless if the employer is not physically located in the state. It does not clarify which state law supersedes should the employer's state provide greater, different, or

conflicting benefits under a different state's PFML plan.

PERFORMANCE IMPLICATIONS
The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS
See "Fiscal Implications," above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP
None.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS