

LFC Requester:	Rachel-Garcia Mercer
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(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: 1/23/2025 *Check all that apply:*
Bill Number: HB11 Original Correction
 Amendment Substitute

Sponsor:	Christine Chandler; Mimi Stewart; Patricia Roybal	Agency Name and Code	632
	<u>Caballero</u>		Number: _____
Short Title:	<u>Paid Family & Medical Leave Act</u>	Person Writing	<u>Michael J. Holt</u>
		Phone	<u>(505)841-6822</u> Email: <u>Michael.Holt@wca.nm.wca</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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	0	22.8	47.6	70.4	Recurring	98200

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 11 establishes the Paid Family and Medical Leave Act to be administered by the Department of Workforce Solutions and creates the Paid Family and Medical Leave Fund. The bill outlines: how the paid FML fund is funded through employer and employee contributions and investment; how the fund shall be maintained to ensure solvency and self-sufficiency; how funds are disbursed; how employer and employee contributions are calculated; provides requirements for quarterly reporting and remittance of employer and employee contributions to DWS; employee eligibility and documentation requirements for compensation; how compensation is calculated for continuous and intermittent leave; employee requirements regarding notification to employer of approved leave application and scheduling leave; benefits and requirements for self-employed individuals; confidentiality; appeal procedures and DWS disciplinary powers; employer and employee requirements upon return to employment; the structure, membership, and administration of the Paid Family and Medical Leave Implementation Advisory Committee.

FISCAL IMPLICATIONS

The bill has fiscal implications for the Workers' Compensation Administration in that, like other state agencies, the WCA would need to make required contributions as an employer beginning January 1, 2027. The contribution level is four-tenths of one percent of wages for each WCA participating employee subject to the federal social security program cap.

Methodology for calculating impact on WCA operating budget: To determine the operating budget impact for our agency, the WCA used projected payroll data for fiscal year 26 (starting employer contributions as of January 1, 2027) and for the complete fiscal year 2027. The WCA applied the proposed assessed amount of four-tenths percent (0.4%).

The WCA payroll data included projected total wages or salary amounts to be paid to our employees for each of these fiscal years.

SIGNIFICANT ISSUES

The Workers' Compensation Administration believes that HB 11 may interact with the Workers' Compensation and the Occupational Disease Disablement Acts in unforeseen ways. Namely:

1. HB 11 incentivizes possible collusion between employers and employees to seek paid FML benefits to cover periods of temporary total disability otherwise payable as part of a timely reported work injury to the employer's workers' compensation carrier. If the medical leave is triggered by the applicant's own "serious health condition" which arose from a work injury, the employer and employee may forego pursuit of a workers' compensation claim and seek paid FML benefits instead. If the above were to occur, and 9-12 weeks of FML benefits were paid, the employer and employee could thereafter pursue the workers' compensation claim

once FML benefits were exhausted. Under this scenario, the workers' compensation claim becomes potentially compromised as certain statutes and rules have not been followed, namely:

(a) The required notice of accident pursuant to NMSA 1978, §52-1-29(A) (1990) may not be timely completed by the worker;

(b) The payment of required temporary total disability benefits, which are to commence within 14 days following the worker missing 7 days of lost time, whether consecutive or not, may not take place, in violation of NMSA 1978, §52-1-30 (2003);

(c) The required written notice of accident by the employer to the Workers' Compensation Administration may not be provided, in violation of NMSA 1978, § 52-1-58. Such notices shall be provided within 10 days of the worker's accident or disability;

(d) The required written notice by the insurance company to the Director following the initial payment of benefits within 10 days of such payment may not be made, in violation of NMSA 1978, §52-1-60 (1993);

(e) The choice of the initial health care provider to treat worker's injury, per NMSA 1978, § 52-1-49(B), may not occur, thereby compromising the workers' compensation carrier's ability to later direct medical care in the workers' compensation case. Under this statutory provision, the employer shall initially either select the health care provider for the injured worker or permit the injured worker to make the selection.

2. Generally accepted statistics in workers' compensation show that the longer the period of temporary total disability benefits, and the longer necessary medical treatment is delayed, the worse the outcome of the workers' compensation case.

3. The WCA collects and analyzes the initial and subsequent reports of injuries provided to it for the purpose of collecting statistics and administering the Workers' Compensation and Occupational Disease Disablement Acts.

4. The current language of the bill (page 17, lines 3-6) provides that "an applicant is ineligible to receive leave compensation if ... (4) the leave compensation would duplicate the amount the applicant is receiving or has received in temporary total disability benefits from a workers' compensation claim for the same time period." The WCA believes this provision, or another bill provision should better track the current statutory mechanism regarding how unemployment benefits are treated relative to a worker's receipt of temporary total disability or disablement benefits which are payable pursuant to the Workers' Compensation Act (see §52-1-70) and the Occupational Disease Disablement Law (see §52-3-60). These provisions provide that no total disability or disablement benefits are payable for any weeks in which the injured worker has received or is receiving unemployment compensation benefits. Further, if both unemployment and total disability/disablement benefits are payable to the worker, the unemployment benefits are primary and the disability/disablement benefits are secondary. Lastly, the sum of the two benefits shall not exceed the amount of total disability or disablement benefits that would otherwise be payable. This statutory language provides an analogous mechanism to deal with the interplay between paid FML benefits and TTD benefits.

The WCA is working with the bill's sponsors and "subject matter expert" to address the WCA's concerns.

PERFORMANCE IMPLICATIONS: The WCA collects reports from employers and insurers about work accidents and the benefits paid by employers, carriers and third-party administrators. HB 11 could impact these statutory and rule reporting requirements as noted herein. There are other performance implications to the workers' compensation system more generally as described herein.

ADMINISTRATIVE IMPLICATIONS: None other than as discussed herein.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP: None known

TECHNICAL ISSUES: None known

OTHER SUBSTANTIVE ISSUES: None known

ALTERNATIVES: None known

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: The Workers' Compensation and the Occupational Disease Disablement Acts will not be adversely affected.

AMENDMENTS: The WCA proposes the following alternative bill language at page 17, lines 3-6 as follows:

(4) the employee or self-employed individual is seeking medical leave due to circumstances that would entitle the employee or self-employed individual to compensation under the Workers' Compensation Act or the Occupational Disease Disablement Law.

A related change (see underline) is suggested to Section 6B (page 21, lines 20-25) of the bill:

B. The department shall require an employee or self-employed individual who seeks medical leave compensation to certify that the medical leave is not being sought due to circumstances that would entitle the employee or self-employed individual to compensation under the Workers' Compensation Act or the Occupational Disease Disablement Law, or to demonstrate that a claim has been properly filed and the employee or self-employed individual has been denied compensation under the Workers' Compensation Act and the Occupational Disease Disablement Law, and to provide, in accordance with department rules, verification by a health care provider that the employee or self-employed individual has a serious health condition that supports the employee's or self-employed individual's claim for leave compensation; provided that any verification by a health care provider shall include an expected time line for the employee's or self-employed individual's return to work.

Note these proposed amendments would preclude paid FML where the serious health condition arises from a workplace injury which should be pursued instead as a workers' compensation or occupational disease act claim, unless such claim has been denied by the employer, workers' compensation carrier or third-party claims administrator.

In the event both FML and TTD benefits are paid, such as where a workers' compensation claim is denied, FML benefits paid, yet later TTD is paid or awarded due to litigation, another suggested amendment, as discussed above, is as follows: Amend HB 11 to preclude duplication of disability/disablement benefits and paid FML benefits by borrowing the statutory framework set forth at §52-1-70 and §52-3-60 of the Workers' Compensation and Occupational Disease

Disablement Acts.