

LEGAL UPDATES

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Colorado's Employers Should Expect Enactment of Paid Family Leave For All

COLORADO EMPLOYERS SHOULD BRACE THEMSELVES FOR MAJOR CHANGES

Colorado employees, like most employees in the country, currently have no statutory right to paid leave for health issues or to care for family members. In what could be one of the most sweeping and significant legal changes to the workplace in years, Colorado employees soon may be entitled to paid leave under an expansive new Colorado law.

Earlier this week, Senate Bill 188 – which would create a paid family and medical leave insurance (FAMLI) program for Colorado employees – took an important step toward becoming law. The Colorado General Assembly Senate Finance Committee approved FAMLI. FAMLI now moves to the Senate Appropriations Committee and, if approved, will move to the Senate floor for a vote. The House is expected to pass the bill in substantially similar form, and the governor is expected to sign the bill into law. While there may be some changes to the bill before it is enacted, it now seems likely that the general structure of the bill is in place.

Proposed FAMLI Provisions

FAMLI, if ultimately enacted, will weave a new, complex and multi-faceted framework into the workplace that will impact all employers and employees in Colorado.

Much like workers compensation and unemployment insurance, the state will take an active role in administering this new entitlement. Colorado will create

an entirely new division within Colorado's Department of Labor, the Division of Family and Medical Leave Insurance, which is required to inform the public about the new law, establish premium rates, develop procedures and forms for filing claims, administer the program, promulgate rules, ensure employer compliance, establish administrative review of claims determinations and perform a host of other tasks;

A FAMLI fund will be created, into which insurance premiums will be paid (with employers to pay 40% of those premiums under the current bill), and out of which will be paid family and medical leave benefits to eligible individuals; and

Employees will have the right to take 12 weeks of paid leave in any 52-week continuous period.

Perhaps the biggest, and most controversial, part of FAMLI is its sweeping scope. Federal law currently requires employers with more than 50 employees to provide unpaid family and medical leave to eligible employees. The current version of FAMLI goes far beyond the current federal requirements, and not merely because leave must now be paid out of the new insurance fund. All private employers, regardless of size, will be required to provide paid leave, a burden that small employers will undoubtedly struggle to meet.

In addition, employees will be eligible for leave after they have been employed by and worked for "one or more" employers for a combined total of at least 680 hours, while the federal Family and Medical Leave Act of 1993 (FMLA) requires eligible employees to have worked nearly double that amount, 1250 hours, for the *same* employer. Employers that already provide paid family leave will not be exempt, but instead must obtain approval to use a private plan that "confers all of the same rights, protections, and benefits" provided by the state law. Employers using private plans will have to reimburse the State of Colorado for the costs it incurs administering private plans, and employers using such plans are subject to fines for violations.

The definition of family members for whom an employee might take leave to provide care is also broader than the standard definition of "family member" under the federal law. The term under FAMLI includes anyone who is "in a committed relationship," which is broadly defined to exist where there is "shared financial interdependence" or "responsibility for each other's common welfare," so long as there is an intent to marry or to have "the relationship last indefinitely."

Notably, the handful of other states that have enacted paid family laws such as Washington and New Jersey have a more restricted scope of eligibility and more limited benefits than FAMLI would provide.

What This Means to You

Under the proposed law, employees will begin paying insurance premiums in 2023, and employees will be eligible to take paid leave beginning January 1, 2024. As a result, if the law is passed, employers will have time to prepare for the law's implementation. Nevertheless, because the proposed changes are so far reaching and significant, employers should begin the process of understanding and adapting to the leave law as early as possible.

If FAMLI is signed into law, employers will have a long to-do list, including, but not limited to, the following:

Understanding how to work with an entirely new government agency, as well as the process by which employees will be granted leave benefits;

Knowing what type of notice employers should expect to receive when employees take leave, and what type of remedies exist if employees try to take leave improperly;

Withholding insurance premiums from paychecks and remitting those amounts to the Division of Family and Medical Leave Insurance;

Determining how current benefits and other laws, such as paid time off, vacation, sick leave or unpaid leave under FMLA, interact with one another under the law's new requirements;

Providing notice of the law to employees;

Revising policies and procedures to ensure compliance with the law;

Training managers on how to follow the law (e.g., when employers learn that a need to take leave may exist, they must notify employees of their right to take leave);

Ensuring that employees are not discriminated or retaliated against for requesting or using leave;

Figuring out how to accommodate leave requests under the conflicting provisions of federal and state law, including allowing intermittent leave;

Developing a process for accommodating employees' rights to be restored to the same or an equivalent position upon return from leave;

Ensuring that employees' health benefits are not affected while employees are on leave; and

Other considerations that will become apparent after the law is enacted and regulations implemented.

If Senate Bill 188 becomes law, Husch Blackwell's labor and employment attorneys will be discussing the new requirements in-depth at Husch Blackwell's Labor and Employment Seminar on Wednesday, May 22, 2019, from 7:30 a.m. – 1:00 p.m. at the Magnolia Hotel, 818 17th St, Denver, CO 80202. The seminar is complimentary, but registration is required by May 15, 2019.

Contact Us

If you have questions about the implications of this Bill or a related issue, please contact Chad Grell, Chris Ottele or your Husch Blackwell attorney.