

THOUGHT LEADERSHIP

LEGAL UPDATES

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FAQs for Colorado Paid Family Leave Law (FAMLI)

On November 3, 2020, Colorado voters approved Proposition 118, the culmination of a long-running effort to mandate paid family and medical leave for all Colorado employees. This law continues the recent uptick of major legislative and regulatory changes impacting Colorado workplaces, including the pay equity law, mandatory paid sick leave and protections for workers relating to the ongoing pandemic. The Paid Family and Medical Leave Insurance Act, shortened to FAMLI by its supporters, will provide benefits to employees beginning January 1, 2024. The premiums for the program, which come in the form of wage deductions, begin a year earlier, on January 1, 2023, to ensure the program's fiscal solvency.

Q: What is different between federal FMLA and FAMLI?

A: A lot, but there are three major changes you should be aware of. For starters, more employees are covered. Employees of mid-sized and larger employers—50 or more employees—have long been eligible for unpaid family and medical leave under the federal FMLA, but not employees of smaller employers. FAMLI extends its mandates to effectively all employers, meaning that employees of smaller companies will receive a benefit that they are not currently entitled to under federal law.

Second, FAMLI is paid leave. Colorado will join eight other states and the District of Columbia in enacting some version of paid family and medical leave.

Third, FAMLI creates a new division, the Division of Family and Medical Leave Insurance (the “Division”) within the Department of Labor to administer the program. FAMLI’s structure bears some similarities to the workers’ compensation insurance program that employers are familiar with in

which a government division will set and collect premiums, pay benefits and determine employee eligibility.

Q: How much leave will eligible employees receive?

A: Up to twelve weeks, plus an additional four weeks in the event a mother experiences pregnancy or childbirth complications. Eligible employees may also take intermittent leave.

Q: What benefits will employees receive when taking FAMLI leave?

A: Employees will receive between 65% and 90% of their wages during FAMLI leave according to a complicated formula that compares the employee's wages to the Colorado average weekly wage. Low-wage workers will receive the greatest share of their regular wages. Benefits are capped at \$1,100 a week.

Q: How are the benefits of FAMLI funded?

A: Employees and employers are jointly responsible for funding the program, each paying .45% (.90% total) of an employee's wages for the initial years of the program. After two years, the Division may adjust the premiums, up to 1.2% total. Businesses with nine or fewer employees are not required to contribute the employer half of the premium.

Q: What employees are eligible to take leave?

A: Employees are eligible for FAMLI leave under the following circumstances:

Parental leave to care for a new child, including adoption and foster care

Medical leave for the employee's own serious health condition

Family leave to care for a family member's serious health condition

Exigency leave to make arrangements for a family member's military deployment

Safe leave for victims of domestic violence or sexual assault.

Q: What job protections do employees have?

A: After 180 days of employment, employees have job restoration rights that are similar to FMLA. Specifically, employees taking FAMLI leave are "entitled . . . to be restored" to the position held before the leave began or an equivalent position.

Similar to FMLA, employers are prohibited from interfering with employees exercising their FAMLI rights. FAMLI also prohibits employers from retaliating against employees that engage in a wide

variety of activities, including obvious ones like taking leave or testifying at a hearing, but also including less obvious ones like communicating an intent to file a claim or informing a person of their FAMLI rights. These less obvious protected activities are sure to spawn litigation.

Q: Are non-employees, such as independent contractors, eligible to participate?

A: Yes. Self-employed workers may elect to participate in the program.

Q: Does FAMLI replace or impact sick leave provided by the recently enacted Healthy Families and Workplaces Act (HFWA)?

A: No. While FAMLI and HFWA may have some areas where they overlap, the two laws are focused on different issues. For example, a major focus of FAMLI is on providing paid leave for serious health conditions. HFWA's focus is more broad including providing paid sick leave for preventative care and for pandemic-related school closures. The Division will issue regulations by January 1, 2022, that will clarify the interplay between the two laws and the areas where they overlap.

Contact us

If you have questions on how the new FAMLI program impacts your business or other Labor & Employment questions, contact Chris Ottele, Barbara Grandjean, Ashley Jordaan, Sonia Anderson or your Husch Blackwell attorney.