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COLORADO PROPOSES PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

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Colorado lawmakers are considering legislation ([SB 19-188](#)) to create a paid family and medical leave program that would provide partial wage replacement for 12–16 weeks of leave, depending on the circumstances. Under the proposed Family and Medical Leave Insurance (FAMLI) program, employees could take paid leave for many of the same reasons permitted under the federal Family and Medical Leave Act (FMLA). The program would also extend paid leave so victims of domestic violence, sexual assault or stalking can handle related issues.

ADMINISTRATION

Program implementation would begin July 1, 2020, with benefits becoming available to eligible employees on Jan. 1, 2022. A new [Department of Labor and Employment](#) agency, the Division of Family and Medical Leave Insurance, would administer the program, collect contributions and pay benefits.

COVERED EMPLOYERS AND EMPLOYEES

All employers that did business in Colorado for at least 20 calendar weeks or had a Colorado payroll of \$500 or more in any calendar quarter of the prior year would have to participate in the FAMLI program. Self-employed individuals could elect to participate. Employees could qualify for benefits and certain job protections after working 680 hours in Colorado. Flight crews would qualify after 504 hours. The hours worked could be with just one employer or multiple employers in the state.

FUNDING

Most employers and employees would each pay 50% toward the premium, but smaller and governmental employers would pay smaller amounts. From July 2021 through the end of 2022, the contribution would be 0.64% of an employee's wages. For later years, regulators would determine the applicable rate, but under the bill's current language, premiums would never exceed 0.99% of an employee's wages.

As currently written, the bill caps wages subject to the annual contribution at 140% of the state's average weekly wage (SAWW) (currently \$1,042.00). The bill's sponsors argue that the FAMLI charges are "fees" rather than "taxes," so Colorado's constitutional requirement — known as the [Taxpayers' Bill of Rights](#) or TABOR — for voters to approve all new taxes would not apply.

QUALIFYING LEAVE

Eligible employees could take up to 12 weeks of paid leave for any of the reasons permitted under the FMLA, including bonding with a new child, caring for an employee's own or a family member's serious health condition, or handling a military exigency. Employees could also use this leave to address issues related to domestic violence, sexual assault or stalking.

An additional four weeks would be available for complications related to pregnancy and childbirth. Eligible employees with multiple qualifying reasons in a 52-week period could take up to 14 total weeks of leave.

Although some of the bill's provisions mirror the federal FMLA, they may differ in scope. For example, "family member" is defined more broadly under the Colorado proposal to include domestic partners and anyone with whom the employee "has a significant personal bond that is like a family relationship."

BENEFITS

Benefits would be based on wages earned in the first four of the previous five completed calendar quarters. An employee's weekly wage would be 1/13 of wages paid during the highest earnings quarter in the base period. Benefits would replace 90% of an employee's weekly wage up to 50% of the SAWW and 50% of any amounts exceeding 50% of the SAWW. The total weekly benefit wouldn't exceed an annually adjusted maximum of 90% of the SAWW.

COORDINATION WITH OTHER LEAVE

Both FMLA and FAML I would run concurrently whenever the leave qualifies under both laws. Colorado's FAML I benefits would wrap around any existing benefit paid by an employer, so combined state and employer benefits would not exceed the employee's weekly wage.

JOB PROTECTIONS

FAML I would offer job protections substantially similar to those provided by FMLA, and an employer would need to continue providing health benefits during the leave. The bill excludes seasonal workers from these job protections. However, many employees not protected by the FMLA could qualify for job protection under the Colorado measure. Unlike the FMLA, the state proposal doesn't condition eligibility on hours worked and requires only 90 days of employment under a single employer. In addition, the broad definition of family member and expanded use of leave for certain domestic-violence issues could cause some employees to qualify for a job-protected paid leave under FAML I and additional job-protected unpaid leave under FMLA within the same year.

Example. Tammy is the victim of domestic violence and takes four weeks of FAML I leave to file a police report, testify in court and relocate for safety reasons. Tammy is later seriously injured in an automobile crash. She still qualifies for 10 weeks of paid FAML I leave, which will run concurrently with FMLA leave, leaving her with two weeks of unpaid job-protected FMLA leave.

LOOKING AHEAD

The Senate Business, Labor, & Technology Committee quickly [cleared](#) the FAML I bill with a few amendments. The measure may undergo many more changes, and enactment is not assured. The House last year approved a substantially similar bill ([HB 18-1001](#)), but it failed to pass the Senate. If the measure is enacted, multistate employers may need to coordinate with a growing number of similar state programs.

RELATED RESOURCES

Non-Mercer Resources

- [SB 19-188](#) (Colorado Legislature, March 7, 2019)
- [Status of SB 19-188](#) (Colorado Legislature)
- [HB 18-1001](#) (Colorado Legislature, April 16, 2018)

Mercer Law & Policy Resources

Links to resources in the Mercer Select archive are accessible to Mercer consultants. Clients may contact their consultants for free copies:

- [2019 Outlook for State Health and Leave Initiatives](#) (Feb. 6, 2019)
- [2019 State-Mandated Disability Contributions and Benefits](#) (Jan. 31, 2019)
- [States Mandating Paid Sick Leave](#) (Jan. 29, 2019)

Other Mercer Resources

- [Employers Seeking Tax Credit for Paid Family and Medical Leave Get IRS Guidance](#) (Jan. 23, 2019)
- [The Pressure Is on to Modernize Time-off Benefits: 6 Survey Findings](#) (Jan. 16, 2019)
- [Will You Be the Last Kid on the Block to Add Paid Parental Leave?](#) (Oct. 22, 2018)
- [Life, Absence & Disability](#)

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