



Colorado voters approve paid family and medical leave law

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Colorado must launch a paid family and medical leave insurance (PFMLI) program, with contributions beginning in 2023 and benefits available in 2024. The ballot measure ([Proposition 118](#)) approved by voters is similar in many respects to a bill ([SB 19-188](#)) considered by state lawmakers in 2019. The PFMLI program will provide partial wage replacement for 12–16 weeks of leave, depending on the circumstances. Employees will be able to take paid leave for many of the same reasons permitted under the federal [Family and Medical Leave Act \(FMLA\)](#). The program also will extend paid leave so victims of domestic violence, sexual assault or stalking can handle related issues.

Administration

A new Division of Family and Medical Leave Insurance (DFMLI) within the state's [Department of Labor and Employment](#) will implement and administer the program, collect contributions and pay benefits.

Covered employers and employees

Employers that did business in Colorado for at least 20 calendar workweeks in the previous year or had a Colorado payroll of \$1,500 or more in any calendar quarter of the prior year will have to participate in the PFMLI program. Government employers may opt out, but individual government employees and self-employed individuals can elect to participate.

The program will cover employees who have earned at least \$2,500 in wages subject to contributions during the base period defined in the state's unemployment insurance law (CO Rev. Stat. [§ 8-70-103](#)). Job protections will apply to employees who have worked at least 180 days for the same employer.

Funding

Employers will be able to charge employees up to 50% of the premium. Employers with fewer than 10 employees, participating self-employed individuals and certain governmental employers will be exempt from the employer contribution, but must continue to collect and remit employee contributions. From January 2023 through the end of 2024, the contribution will be 0.9% of a covered employee's wages up to the [Social Security maximum taxable wages](#). For later years, regulators will determine the applicable rate, but the law caps premiums at 1.2% of an employee's wages.

Qualifying leave

Eligible employees will be able to take up to 12 weeks of paid leave for any of the reasons permitted under the federal 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. The law also allows employees to use this leave to address issues related to domestic violence, sexual assault, or stalking. An additional four weeks will be available for complications related to pregnancy and childbirth.

While many of the measure's provisions overlap the federal FMLA, they may differ in scope. For example, the Colorado measure's broader definition of "family member" includes a domestic partner and anyone with whom the employee "has a significant personal bond that is or is like a family relationship." Unlike the FMLA definition of [child](#), the Colorado definition encompasses a child of any age, as well as a domestic partner's child. Eligibility for job protections under the state law also differs from the federal FMLA's terms.

Example. Vera takes 12 weeks of qualifying leave under Colorado's law to care for her ailing grandmother. She has exhausted her Colorado PFMLI but hasn't used any FMLA leave. As a result, she may still qualify for another 12 weeks of unpaid, job-protected FMLA leave in the same year.

Benefits

Benefits will be based on wages earned in the first four of the previous five completed calendar quarters. An employee's average weekly wage will be 1/13 of wages paid during the quarter with the highest earnings in the base period. Benefits will replace 90% of an employee's weekly wage up to 50% of the state average weekly wage (SAWW) and 50% of any amounts exceeding 50% of the SAWW. The total weekly benefit won't exceed 90% of the annually adjusted SAWW. For leave taken in 2024, weekly benefits will be capped at \$1,100.

Example. From Jan. 1, 2023 to April 1, 2024, Gary's highest quarterly earnings equal \$26,000, making his average weekly wage \$2,000 ($\$26,000 \div 13$). If calculated using Colorado's current SAWW (\$1,227), Gary's weekly benefit would be \$1,245.40, as shown below. However, his weekly benefit is capped at \$1,100, the state maximum benefit.

— $\$1,227 \times 50\% = \613.50

— $\$613.5 \times 90\% = \552.15

— $\$2,000 - 613.50 = \$1,386.50$

— $\$1,386.50 \times 50\% = \693.25

— $\$552.15 + \$693.25 = \$1,245.40$

Notice

The DFMLI will develop a notice explaining program requirements, rights, benefits and other details that employers will have to post in a prominent location at the worksite. Employers will also have to give employees a written notice about the program at hire and "upon learning" of an employee's triggering event.

Private plans

Employers will have the opportunity to opt out of participation in the state-run program by obtaining approval for a private plan. To qualify, a private plan must provide all of the same rights, protections and benefits as the state program and extend to all eligible employees. Only Colorado-approved insurers can offer insured private plans. Self-insured plans will have to post a bond to the state.

Coordination with other leave

Colorado PFMLI and federal FMLA leave can run concurrently whenever the leave qualifies under each law. Colorado employers can't require employees to exhaust any accrued paid time off (PTO) before taking PFML, but an employer and an employee may mutually agree to use PTO to supplement PFMLI benefits up to the employee's regular weekly wage. Employers also can require that PFML run concurrently with any employer-sponsored paid leave offered for the same purposes, such as disability or parental leave, and may offset any existing employer-paid benefits by available PFML benefits.

Looking ahead

The measure's approval sets in motion the steps for creating another state-mandated paid family and medical leave program. Employers operating in Colorado will want to watch for additional details and

regulatory guidance on the new program. Contributions won't begin until 2023, giving employers time to work with vendors to weave the Colorado program or a private plan into existing leave programs and payroll systems.

Related resources

Non-Mercer resources

- [Proposition 118 \(Initiative 283\)](#) (Colorado Secretary of State, March 6, 2020)
- [Colorado Department of Labor and Employment](#)

Mercer Law & Policy resources

- [Mercer supports national paid leave standard in comments to DOL](#) (Sept. 15, 2020)
- [Colorado enacts paid sick leave law, emergency leave requirements](#) (Aug. 19, 2020)
- [Top 10 compliance issues for health and leave benefits in 2021](#) (July 20, 2020)
- [2020 state paid family and medical leave contributions and benefits](#) (Feb. 14, 2020)
- [Colorado proposes paid family and medical leave insurance program](#) (March 15, 2019)

Other Mercer resources

- [Life, Absence & Disability](#)
- [State paid leaves: Three things employers should do in 2020 besides comply](#) (Jan. 30, 2020)
- [The pressure is on to modernize time-off benefits: 6 survey findings](#) (Jan. 16, 2019)

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