

# HR Compliance Consulting

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## **Voters Pass the Colorado Paid Family and Medical Leave Insurance Act (Proposition 118)**

On Tuesday, November 3, 2020, Colorado voters did what the state legislature could not earlier in the year when the Colorado Paid Family and Medical Leave Insurance Act (the "Colorado PFMLI Act") was passed.

This appears to be the most generous paid medical and family leave act yet to be implemented by a state. The Colorado PFMLI Act provides up to 12 weeks of paid time off annually to Colorado workers to address family and medical needs, funded through both employee and employer contributions. A statewide Paid Family and Medical Leave Insurance Enterprise will be created and authorized to collect premiums and pay benefits.

### **What does this mean for employers?**

The Colorado PFMLI Act applies to most private employers statewide who employ at least one person in Colorado. Employers must begin withholding wages and making premium payments on January 1, 2023. Benefits do not begin until January 1, 2024. An employer may offer a private plan which confers all of the same rights, protections and benefits provided to employees with approval from the Division of Insurance. We don't know yet if our carrier partners will offer products to help employers comply with this law.

Beginning January 1, 2023, through December 31, 2024, the premium amount is 0.9% of an employee's wages. Employers with 10 or more employees must contribute at least 50% of the premium required and may deduct the remaining premium from employee's wages. Employers with fewer than 10 employees are required to withhold the employee portion of the premium from the employee's wages, but are not required to contribute the employer's premium portion to the fund. Similarly, self-employed persons and local government employees who elect coverage only pay 50% of the required premium.

The maximum wages for which the premium applies is the Social Security benefit base. For earnings in 2023, this projected base is \$161,700, which means an employee's 2023 maximum contribution to the fund is likely to be \$727.65 (0.045%). Beginning January 1, 2025, the premium amount is subject to increase depending on the benefits paid during the preceding calendar year and the cost associated with administering the payments. At no point will the premium exceed 1.2% of an employee's wages.

### **Who is a covered employee under the Colorado PFMLI Act?**

Employees employed for 180 days and who earned at least \$2,500 in wages during the defined "base period" or "alternative base period" are covered. The weekly benefit depends on the state average weekly wage (SAWW). Employees earning an average weekly wage equal to or less than 50% of the SAWW, receive a benefit

amounting to 90% of their average weekly wage. The portion of the individual's average weekly wage that is greater than 50% of the SAWW will be replaced at a rate of 50%. In 2024 the maximum weekly benefit is \$1,000. Starting January 1, 2025, the maximum weekly benefit is 90% of the SAWW.

## What types of leave does the Colorado PFMLI Act cover?

Beginning January 1, 2024, a covered individual may take leave: (1) for the birth of a child, adoption or foster care placement or caring for a new child within one year of birth, adoption, foster placement; (2) to care for a family member with a serious health condition; (3) for the employee's own serious health condition; (4) because of any qualifying military exigency leave; or (5) relating to the need for safe leave. The maximum allowed benefit is 12 weeks with the exception of complications related to pregnancy or childbirth, in which case an additional 4 weeks are provided.

## What makes this Act so generous?

While an employee may seek 12 weeks of paid leave to care for a "family member" with a serious health condition, the Colorado PFMLI Act expands the definition of family member to include a grandparent, grandchild or sibling (whether a biological, foster, adoptive or step relationship) of the covered individual or covered individual's spouse or domestic partner; or, as shown by the covered individual, any other individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

## This is protected leave

A covered individual employed for at least 180 days prior to the commencement of leave who exercises the right to leave is entitled to be restored to the same or equivalent position. The employer must maintain healthcare benefits during leave.

## Key dates

- By January 1, 2022, the complete program rules and regulations should be finalized.
- By July 1, 2022, the Division shall develop and implement outreach services to educate the public about the FMLI program and availability of PFML and benefits for covered individuals.
- By January 1, 2023, the Division shall establish and administer an FMLI program and begin collecting premiums.
- By January 1, 2024, the division shall start receiving claims from and paying FMLI benefits to covered individuals.

With compliance years down the road, we will closely follow future developments and provide updates as more information is available.

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