COLORADO'S PAID FAMILY AND MEDICAL LEAVE INSURANCE ACT

NOVEMBER 2020

OVERVIEW OF PROPOSITION 118

- Known as the Paid Family and Medical Leave Insurance Act (PFMLIA)
- Creates a **state-run insurance program** for providing 12 weeks of partially-paid leave to employees for 5 types of family and medical leave *(and up to an additional 4 weeks for complications in pregnancy/childbirth)*
  - Statute calls this "paid family and medical leave" so we'll refer to it as **PFML**
  - But the Family and Medical Leave Insurance task force is hoping the FAMLI acronym will catch on
- **Premiums begin 2023**, and **benefits start 2024**
- Establishes a new Division of Family and Medical Leave Insurance (DFMLI) within the Colorado Department of Labor and Employment (CDLE) to administer the program, collect premiums, determine eligibility and pay benefits *(estimated to need 200 state employees to process claims)*

QUALIFYING REASONS FOR LEAVE

Beginning 1/1/24, employees may take PFML for the following reasons:

1. Caring for a child during the first year after a birth, adoption or foster care placement
2. Caring for a family member with a serious health condition
3. Employee's own serious health condition
4. Qualifying exigencies due to a family member's military service
5. Safe leave for domestic violence, stalking, sexual assault or abuse issues

"Qualifying exigency" is a need due to a family member's active duty or call to active duty in the armed forces, such as:

- ✓ Providing care for the military member's family
- ✓ Making financial or legal arrangements for the military member
- ✓ Attending counseling
- ✓ Attending military ceremonies or events
- ✓ Spending time with the military member during a rest period or return from deployment
- ✓ Making arrangements after the military member's death

"Family member" is defined broadly:

- ✓ Children (including biological, adopted, foster, stepchildren, legal wards, and children of a domestic partner)
- ✓ Parents (including biological, adoptive, foster, stepparents, legal guardians, and parents of the employee's spouse or domestic partner)
- ✓ Spouses and domestic partners
- ✓ Grandparents, grandchildren and siblings (including biological, adoptive, foster, step relationships) of the employee or employee's spouse or domestic partner
- ✓ "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"

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ELIGIBILITY FOR LEAVE

- The PFMLIA covers private employers with at least **one employee** during 20 or more workweeks in the current or previous calendar year
  - ✓ Local government employers may decline participation in the PFML program *(but their employees may choose to participate if they commit with the DFMLI for at least 3 years)*
  - ✓ Self-employed individuals and gig workers may also choose to participate *(with a 3-year commitment)*
  - ✓ Federal government employers are exempt
- Benefits are available to any individual that **earned at least $2,500** in wages during a preceding one-year "base period"
- Duration of leave
  - ✓ Employees may generally take up to **12 weeks of PFML per "application year,"** beginning the week the individual files an application for benefits
  - ✓ An **additional four weeks** are available for pregnancy complications or childbirth complications.
- PFML may be taken intermittently in increments of one hour *(or shorter if consistent with the employer's policy)*
  - ✓ However, benefits are not payable until the employee accumulates at least eight hours of benefits

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PREMIUMS

- Beginning 1/1/23, both employers and employees will contribute premiums to finance the PFMLI "Fund"
- For 2023 and 2024, the premium amount will be 0.9% of employees' wages
  - ✓ Employers with 10 or more employees must pay the full 0.9% into the fund but can decide whether to absorb the entire premium, half the premium, or somewhere in between. Employers cannot deduct more than half from employees' pay.
  - ✓ Employers with fewer than 10 employees are not required to make employer contributions, but their employees will still be required to contribute half (so 0.45% of wages to start)
  - ✓ Based on CO median income of $52K/yr ($1K/wk), that's a cost of $468/yr ($9/wk), with up to $234/yr ($4.50/wk) of that able to be charged to employees' paychecks
- Starting in 2025, the DFMLI can set a new premium amount each year, up to a maximum of 1.2% of wages, with employees never paying more than half
- Premiums are not required for wages above the Contribution and Benefit Base limit for Social Security ($142,800 for 2021…the Social Security Administration has estimated this to be $161,700 in 2023)
- Covered employers must collect and pay premiums to the DFMLI *(but employees of exempt entities that elect coverage must pay premiums directly)*

BENEFITS DURING LEAVE

- The amount of benefits payable to an employee during leave is based on a combination of the employee's average weekly wage (AWW) and the state average weekly wage (SAWW, currently $1,180.47)
- Weekly benefits are calculated as follows:
  - ✓ 90% of the employee's AWW that is equal to or less than 50% of the SAWW

  PLUS

  - ✓ 50% of the employee's AWW that is more than 50% of the SAWW

  Up to a maximum of 90% of the SAWW (for 2024, the maximum is set at $1,100/week)
- Individuals working multiple jobs may elect to take leave from one or more of those jobs
  - ✓ If an employee works at another job while receiving PFML benefits, those earnings will not be considered when calculating the employee's weekly benefit amount

Sample Wage	Sample Benefit w/current SAWW and $1,100/wk cap
$15/hr @ 40 hrs/wk = $31K or $600/wk	90% of $590 is $531.21 + 50% of rest is 4.88 = $536/wk (89.3%)
$25/hr @ 40 hrs/wk = $52K or $1,000/wk	90% of $590 is $531.21 + 50% of rest is 204.88 = $736/wk (73.6%)
$35/hr @ 40 hrs/wk = $73K or $1,400/wk	90% of $590 is $531.21 + 50% of rest is 404.88 = $936/wk (66.9%)
$45/hr @ 40 hrs/wk = $94K or $1,800/wk	90% of $590 is $531.21 + 50% of rest is 604.88 = $1,100 cap/wk (61.1%)
$55/hr @ 40 hrs/wk = $114K or $2,200/wk	90% of $590 is $531.21 + 50% of rest is 804.88 = $1,100 cap/wk (50%)
$65/hr @ 40 hrs/wk = $135K or $2,600/wk	90% of $590 is $531.21 + 50% of rest is 1,004.88 = $1,100 cap/wk (42.3%)

PROTECTIONS DURING LEAVE

- Employers must continue to provide health care benefits during leave on the same terms as if the employee had continued working
  - ✓ Employees will still be responsible for their share of benefit premiums during PFML
- If the employee has worked for an employer for at least 180 days, he or she will be entitled to job protection during leave
  - ✓ Protected employees must be restored to the same or an equivalent position with equivalent pay, benefits and other terms and conditions of employment upon return
- Employers are prohibited from interfering with employees' PFML rights or retaliating against employees for exercising any rights under the PFMLIA
  - ✓ Employees can enforce these provisions by bringing private actions against employers with the same remedies as claims under the FMLA
  - ✓ Employers are also subject to fines of up to $500 per violation

INTERACTION WITH OTHER LEAVE AND WAGE REPLACEMENT BENEFITS

- If an employee's PFML also qualifies as leave under the federal FMLA, the two leaves will run concurrently
- Employers can require PFML be "taken concurrently or otherwise coordinated with" payments or leave under a disability policy
- Employers generally may not require employees to use other PTO, vacation or sick leave before or while receiving PFML benefits
  - ✓ BUT: if the employer offers a separate bank of paid family and medical leave, the employer can require that leave be taken concurrently with PFML under the state program
  - ✓ Employees can agree to use accrued PTO to supplement the PFML benefits up to the employee's average weekly wage
- The PFMLIA does not diminish or replace employees' rights under a CBA, employer policy/contract, or other law that provides greater leave
- The DFMLI is directed to issue further rules concerning the interaction between PFML and:
  - ✓ Workers' compensation benefits
  - ✓ Three days' safe leave currently mandated by Colorado law

SUBSTITUTION OF PRIVATE PLANS

- Employers can apply for DFMLI approval to satisfy these requirements through a private plan
- The plan must provide all the same rights and protections as the state program and impose no additional restrictions or costs on employees
- Fully insured private plans may only be issued by insurers approved by the state
- In order to self-insure these benefits, employers must also post a bond with the state
- Entities offering private plans must also reimburse the DFMLI for the “costs arising out of the administration of private plans” each year
- If a private plan denies an employee’s request for benefits, the employee may contest the determination with the DFMLI or in court
- Private plans that fail to meet the requirements will be subject to civil fines of up to $500 per violation

WHAT'S NEXT

Main timelines to keep in mind:

- HFWA begins 1/1/21 for employers 16+ (1/1/22 for employers <16), so probably need to focus first on PSL and PHEL benefits under the HFWA

https://imacorp.com/benefits/colorado-passes-new-law-benefits

- PFML taxes will start being collected 1/1/23 at 0.9%, up to half may be charged to employees
  - Employers under 10 will not have to pay the employer's half
  - Local governmental employers can opt out, but their employees can opt in and have leave/benefits/job protections
- Benefits become available 1/1/24, at which point employees taking PFML have new protections
  - Might need to update benefit plan language, paid time off, and employee handbooks
- A poster will be required, which we expect in future regulations and guidance. We'll share updates with you as we learn more!

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MAKING A DIFFERENCE IS WHO WE ARE.

– **ROB COHEN,** Chairman & CEO, The IMA Financial Group

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