

Colorado Passes Paid Family and Medical Leave Insurance Program

By Kristin White © Fisher Phillips

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Colorado voters passed Proposition 118, creating paid family and medical leave obligations for all employers in the state. This initiative mandates that employers provide 12 weeks of leave for Colorado employees, plus an additional four weeks in case of medical complications.

Here's what employers need to know about this groundbreaking new law.

Employee Eligibility

Beginning Jan. 1, 2024, employees can take paid family and medical leave and receive family and medical leave insurance benefits while taking leave. They will be eligible for such leave and benefits if they have earned at least \$2500 at their job and need leave for (1) birth of a child, (2) a serious health condition, (3) care for a family member with a serious health condition, or (4) safe leave due to domestic violence. An employee may take intermittent leave if the employer typically provides for intermittent leave in its policies. However, benefits are not payable until the employee accumulates at least eight hours of Family and Medical Leave Insurance benefits.

Employer Obligations

Colorado employers still have work to do before the beginning of 2024, however. Beginning Jan. 1, 2023, each employer must remit a payroll tax to the fund to provide for these benefits with the tax being paid 50/50 by the employer and employee. From Jan. 1, 2023 to Dec. 31, 2024, the total payroll tax amount is 0.9%.

After Jan. 1, 2025, the director of the fund will set the premium amount based on a percentage of employee wages and at a rate to fund 135 percent of the benefits paid during the prior calendar year.

Businesses with fewer than 10 employees would be exempt from the employer premium, and companies could apply to use a private leave program instead of participating in the statewide program if it meets set criteria approved by the Division of Family and Medical Leave Insurance within the State Department of Labor.

The amount of leave insurance benefits is determined based on a comparison of the employee's average weekly wage and the state average weekly wage. The portion of an employee's average weekly wage that is equal to or less than 50 percent of the state average weekly wage is replaced at a rate of 90 percent, and the portion of the employee's average weekly wage that is more than 50 percent of the state average weekly wage is replaced at a rate of 50 percent. The maximum weekly benefit is 90 percent of the state's average weekly wage, except any leave taken in 2024 has a maximum weekly benefit of \$1100.

Further Changes

The initiative further guarantees an employee cannot be fired while on leave if they have been on the job for at least 180 days. Similar to the federal Family and Medical Leave Act (FMLA), an employee must be restored to an equivalent job upon returning from leave.

Employers are further prohibited from retaliating against employees for using this leave. Employers can require that leave taken under the state program run concurrently with any leave taken under the federal FMLA.

To administer this fund and collect the tax, the initiative creates a Division of Family and Medical Leave Insurance within the Colorado Department of Labor and Employment. This division is responsible for establishing the fund and providing notice to the regulated community regarding payment of tax of filing for claims prior to Jan. 1, 2023.

What Should Employers Do Now?

Colorado employers should be proactive in creating a timeline for implementing this new payroll tax. You will need to communicate this new policy to your employees and provide for procedures related to implementing this initiative. We encourage you to work with your employment law counsel to develop the best practices to integrate this new law into your existing obligations, and to use the time between now and the date the law kicks in to prepare for the significant changes to come.

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