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Checklist

Colorado Paid Family and Medical Leave

Summary:

The Family and Medical Leave Insurance Program (FAMLI) is a State-run family leave program that will begin to be funded by employers on January 1, 2023 and will provide benefits to employees beginning January 1, 2024. The voter-approved law passed in 2020 ensures that Colorado employees will have access to paid leave to care for themselves or their family members during a serious health event or to grow their family. FAMLI will start providing benefits on January 1, 2024, when most Colorado employers will need to allow eligible employees to take up to 12 weeks of job-protected leave in a 12-month period for specified family and medical reasons. Those who experience pregnancy or childbirth complications will receive an additional four weeks. This document provides an overview of current FAMLI requirements.

Important Notice:

The information provided herein is general in nature and designed to serve as a guide to understanding. These materials are not to be construed as the rendering of legal or management advice. If the reader has a specific need or problem, the services of a competent professional should be sought to address the particular situation.

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I. What to do before January 1, 2023

- ☐ Work with your payroll company to set up contributions to be taken from employees' pay.
 - ☐ Employers with nine or fewer employees do not have to contribute to the program but do need to remit their employees' share (0.45%) of premium payments on their behalf each quarter. The employee share is intended to be taken from wages, but the employer also has the option to pay the share as a benefit.
 - ☐ Employers with 10 or more employees share responsibility for funding the program with their employees and may split the cost 50/50. The premiums are set to 0.9% of the employee's wage, with 0.45% paid by the employer and 0.45% paid by the employee.
 - ☐ Employers with 10 or more employees may also elect to pay the full amount if they choose to offer this as an added benefit for their employees.
 - ☐ The upper limit of what an employer may be required to pay for a senior-level or executive employee is capped at the same rate as their Social Security withholding.
 - ☐ Submit a quarterly payment schedule similar to UI benefit payments.
 - ☐ Employers who offer their own paid leave program may apply for an exemption. A qualified private plan needs to convey the same or a greater level of benefits for the employee as the FAMLI program. It must cover the same length of time and rate of pay for the employee and be provided at the same or lesser cost to the employee.
- ☐ Determine how FAMLI will apply to your business.
 - ☐ How many people do you employ?
 - ☐ What portion of the costs will you cover?
- ☐ Estimate your premium liability.
 - ☐ Use the calculator on the [FAMLI website](#), or for multiple employees, use the set formula and rate to create a spreadsheet that works for your business needs.
- ☐ Consider your plan options.
 - ☐ While markets for private plans are not yet available and details on self-insured options are still forthcoming, you should plan conversations with your insurance brokers and financial planners.
- ☐ Update your HR handbooks and communicate with your employees.
 - ☐ Beginning in fall 2022, you will want to begin incorporating language into employee handbooks regarding premium deductions.
 - ☐ Consider how this paid time off benefit will coordinate with other leaves (including FMLA) and time-off policies.

- ☐ Employers Council can review your handbook. (Consulting and Enterprise members)
- ☐ Beginning in fall 2023, you will want to adopt clear guidance and communications to employees around FAMLI benefits.
- ☐ Register with the FAMLI Division.
 - ☐ Set up your account and notify the FAMLI Division about your private plan, if applicable. Expect forthcoming information about how to complete this process.
- ☐ Be ready to collect premiums.
 - ☐ If you use a payroll company or if you process payroll yourself, you will need a plan to have the FAMLI premiums deducted and submitted to CDLE beginning January 1, 2023.

What to Do Before Fall of 2022 for Public Employers

- ☐ Decide whether to opt out of FAMLI and take an affirmative vote.
- ☐ Choices are:
 - ☐ Participate in FAMLI. This option means the local government agency agrees to pay the employer share of the premium (0.45% of wages if the local government has 10 or more employees, and 0% of wages if the local government has fewer than 10 employees) and remit employees' share of the premium (0.45% of wages) along with wage data to the FAMLI Division once a quarter.
 - ☐ Decline participation in FAMLI. In order to decline participation in the FAMLI program, the local government's governing body must vote to do so. The local government must then notify the FAMLI Division of their vote to decline participation. The decision to decline is good for eight years from the date of the vote to decline participation. The local government must hold another vote if it wishes to continue opting out beyond eight years.
 - ☐ Decline employer participation in FAMLI. This option allows a local government agency to decline participation as described above, while allowing the agency to assist employees who want to individually participate in the FAMLI program by facilitating voluntary payroll deductions, with remittance of the employee share of the premium (0.45% of wages) and wage data once a quarter to the FAMLI Division.
- ☐ Notify FAMLI Division of choice whether to opt in by Jan 1, 2023.
 - ☐ Local governments can vote to opt out of FAMLI at any time during 2022, and local governments are not required to give the FAMLI Division notice of their decision to opt out by January 1, 2023. However, local governments that do not notify the FAMLI Division of a vote to opt out by January 1, 2023 will be identified as participants in the FAMLI program. The FAMLI Division will expect

both wage data and premium payments due on April 1, 2023. **To avoid paying premiums, they must notify the Division ahead of January 1, 2023.**

Reasons for Leave

- ☐ A serious health condition is defined as illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential care facility, or continuing treatment by a health care provider.
- ☐ FAMLI leave is different from paid sick days and will require documentation of need before the benefit is approved by the FAMLI Division.
- ☐ When can a covered individual use FAMLI Leave?
 - ☐ Their own serious health condition
 - ☐ Serious health condition of a family member
 - ☐ Care for a new child (birth, foster placement, adoption, caring for a child within the first year of birth)
 - ☐ To make arrangements for military deployments
 - ☐ Immediate safety needs and impact of domestic violence/sexual assault

Wages Paid Under Leave

- ☐ While an employee is on leave, employers are not responsible for paying wages at that time. Because of this, you may have access to vacancy savings to spend as needed.
 - ☐ Should you contract with a temporary worker to supplement your staffing needs?
- ☐ Your employee will only be receiving a portion of their paycheck dependent on their average weekly wage and not the full amount. The benefit is capped at \$1,100.00 a week. Employees are not required to use earned paid time off (PTO) before taking leave under the FAMLI program.
 - ☐ Will you allow employees to use their accrued PTO to “top off” or cover the remaining balance of their typical weekly wage to “make whole” their take-home pay while on leave?
- ☐ As the employer, you are not responsible for the salary or wages while someone is on leave. However, you are required to continue any portion of employee health care, retirement, or other benefits you normally cover.
 - ☐ Will you choose to require the employee to continue to pay their share of their contribution to these benefits while they are on leave?

Amount and Type of Leave

- ☐ The FAMLI benefit can only be taken once a year across a rolling annual calendar year. For example, if an employee takes paternity leave on February 11, 2024 for the full 12 weeks, they would not be eligible for any other FAMLI leave period covered until February 11, 2025.
 - ☐ Intermittent leave or reduced leave schedule?
- ☐ Depending on the reason and need for leave, the leave period may be up to 12 weeks. For people experiencing pregnancy and childbirth complications, this may be extended an additional four weeks, for a total of 16 weeks.
 - ☐ How long will the leave be granted?
- ☐ Most Colorado employees become eligible to take paid leave after they have earned at least \$2,500 in wages within the State within the last four calendar quarters.
 - ☐ Employee eligible?
 - ☐ After an employee has worked at your business for 180 days, their leave through the FAMLI program is a “job-protected” leave similar to the federal FMLA.
 - ☐ Eligibility and access to the FAMLI program are not limited by the age of the employee and include both seasonal employees and people who work for multiple employers. The “look back” or determination period to establish eligibility is four quarters with an alternate fifth, and the wage amount may be accrued across multiple employers. This will be determined by the FAMLI Division.

Interaction With other Laws

The FAMLI program was designed to be able to run concurrently with the FMLA. For more information, see U.S. Department of Labor Office of Wage and Hour [Opinion Letter FMLA-2019-1-A](#).

- ☐ Have they used their HFWA leave?
- ☐ An employee is permitted to apply for and access FAMLI leave before or after they have used their earned paid time off.
- ☐ Wages will remain taxable in Colorado. Premiums and benefit payments are exempt from state taxes. The federal IRS has yet to issue guidance regarding federal tax treatment of premiums and benefits from state PFML programs. We anticipate the Division will be able to issue 1099 tax forms.
- ☐ Will this affect out-of-state employers that have an office in Colorado?
 - ☐ Yes. Similar to the mechanism under unemployment insurance, where an employee is “localized” to the State of Colorado and their out-of-state employer

would pay into Colorado's Unemployment Insurance, the FAMLI program follows the same model. This best practice has also been adopted by other states with paid family medical leave programs.

Request for Leave

- ☐ Employers will be notified when an employee applies for FAMLI benefits and will be given the opportunity to provide information to the Division.

Posting

- ☐ Employers must post a legible copy of the Department of Labor's fact sheet "Colorado Family and Medical Leave Insurance" (FAMLI).
- ☐ Post in a prominent place at each worksite.
- ☐ The poster is [available](#) on the CDLE website.

Recordkeeping

- ☐ Keep all employee wage records up to date. The FAMLI Division uses an employer's wage records to determine the benefit an employee receives, so employers are reminded and encouraged to maintain wage records as usual and understand that those records may be requested by the Division either by letter or subpoena.