

## **Alert | Labor & Employment**



**November 2020**

### **Colorado Voters Approve Paid Family and Medical Leave Insurance Program**

Colorado joins a small group of states with paid family and medical leave insurance programs. On Nov. 3, 2020, Colorado voters passed Proposition 118, the Paid Family and Medical Leave Initiative (PFML), which creates a state-run paid leave insurance benefit for Colorado employees. The PFML program, which exempts employers with nine or fewer employees, requires employers to provide 12 weeks of paid leave in most instances, and up to 16 weeks under certain circumstances. The Colorado Department of Labor and Employment will administer the program through a new division, the Division of Family and Medical Leave Insurance (the Division). Employers and employees will pay fees to fund the PFML program. In reviewing the PFML's various requirements, it will be important for employers to understand both the fiscal and the logistical requirements of adhering to this new program, which becomes effective Jan. 1, 2024.

#### **Eligibility and General Benefits**

The PFML program defines a “covered individual” as an employee who has worked at least 180 days and who has earned \$2,500 in wages. If an employee meets these eligibility requirements, they may take paid family and medical leave and receive family and medical leave insurance benefits:

- a. for the birth, adoption, or placement through foster care of a child,
- b. for a serious health condition,

- c. to care for family member with a serious health condition,
- d. for any qualifying exigency leave (like military service), or
- e. for safe leave due to domestic violence.

The PFML program and related benefits can be used for up to 12 weeks in one calendar year. Employers can require leave taken under the program to run concurrently with leave taken pursuant to the federal Family and Medical Leave Act, which provides job protection but no pay mechanism for individuals employed by employers with 50 or more employees. If an employee experiences complications with a pregnancy or during childbirth, she will be eligible for an additional four weeks of paid leave. The Division will calculate an employee's weekly benefit amount, which is capped at \$1,100 for all benefits prior to Jan. 1, 2025. Subsequently, the Division will use statutory calculations to determine the maximum benefit amount.

### **Fiscal Requirements**

Beginning Jan. 1, 2023, payroll premiums will be paid into a State Treasury Fund for the purposes of funding the benefits under the PFML program. The initial premium amount is nine-tenths of one percent (0.9%) of wages per employee. This percentage only applies from Jan. 1, 2023, to Dec. 31, 2024. Significant to employers is the uncertainty about future premium amounts. Premiums for years 2025 and beyond will be set by the Director of the Division. This allows for some leeway, as it is clear that the intent is to fully fund the PFML program. The premium could rise in order to fulfill the PFML program's mandate. However, there is a limit currently in the law that no premium shall exceed one and two tenths of a percent (1.2%) of wages per employee.

### **Applicability and Logistical Requirements**

Employers can use a private plan and therefore be substituted out of the PFML program. Most of the statutory requirements to do so are related to providing the same benefits to an employee as would the program. It is important to fully consider the legal requirements to successfully run a private plan. If an employer's private plan does not adhere to the statutory requirements, it can be fined an amount not to exceed five hundred dollars (\$500) *per violation*.

Employees who do not receive PFML program benefits due to a rejection may appeal such rejection. Likewise, employees who try to willfully deceive or make false statements to access PFML benefits will face certain punitive measures.

### **Retaliation Prohibitions and Notice Requirements**

As with many employment schemes, the new law includes a strict prohibition against retaliation. Furthermore, covered individuals employed for at least 180 days receive certain job protections when they exercise their rights under the new law.

The Division is creating a notice for employers to post in a prominent location in the workplace. In addition, employers will be required to provide written notice to an employee upon hiring and upon learning of an employee experiencing an event that triggers program eligibility.

If an employee is aggrieved, either by retaliation or a reduction in employment rights (assuming 180 days of employment), the legal recourse is civil action in court. An employer will be potentially liable for both damages and equitable relief.

Colorado employers are encouraged to seek the assistance of experienced employment counsel as they navigate the intricacies of this new law.

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