CO Paid Family Leave Act (FAMLI)

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Key Dates and What is FAMLI?

- November 3, 2020 – CO voters approved Prop 118 that established the creation of a Paid Family Medical Leave (PFML) program
- As of 2022: 10 states have a PFML program in place and by 2025, 14 states are expected to have a program
- January 1, 2023 – Contributions to the CO State fund are scheduled to begin being collected
- January 1, 2024 – Benefits are scheduled to begin for employees
- The FAMLI program (Family and Medical Leave Insurance Program) will ensure all Colorado workers have access to paid leave in order to take care of themselves or their family during life circumstances that pull them away from their jobs — like growing their family or taking care of a loved one with a serious health condition
- Eligible employees will receive up to twelve weeks of leave in a 12 month period with an additional 4 weeks for pregnancy complications

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Covered Employers and Employees

EMPLOYERS:

- Nearly all Colorado private employers with one or more employee working in Colorado will be required to participate in the program
- Local government employers may decline to participate, but their individual employees may be eligible to opt in
- Self-employed individuals may opt-in to participate in the program
- Federal employers and employees are excluded

EMPLOYEES:

- Employees must be employed 180 day to be eligible
- Earned at least $2,500 during the base, or alternate base, period
  - Base period = first four of the last five completed quarters immediately preceding the benefit year
  - Alternate base period = last four completed calendar quarters immediately preceding the benefit year
- Note: no active employment requirement and no waiting period to collect FAMLI benefits

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Benefits Provided Under FAMLI

- What Circumstances Can Paid Leave Be Used For?
  - Care for new child, including newborns, adopted and foster children
  - Care for themselves, if they have a serious health condition
  - Care for a family member's serious health condition – Family member is defined as a child, parent, parent of a spouse/domestic partner, grandparent, sibling or <u>any individual with whom the employee has a significant personal bond that is a like a family relationship</u>
  - Make arrangements for a family member's military deployment
  - Address the immediate safety needs and impact of domestic violence and/or sexual assault

  NOTE: Leave can be taken intermittently in the same increments as other leave, with an increment of no less than one hour, but will only be paid once 8 hours have accumulated

- What Is the Benefit?
  - The maximum weekly benefit is 90% of the employee's earnings up to 50% of the state average weekly wage (AWW) + 50% of the wages that exceed the state AWW
  - 2024 maximum benefit is $1,100/week
  - 2025 and beyond is 90% of the state average weekly wage

  NOTE: State average weekly wage is estimated at $1,340 for 2024

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Sample Benefit Calculations

- Employee makes $50k annually
  - Weekly Employee Contribution: $4.33; Annual Employee Contribution: $225.16
  - Weekly Employer Contribution: $4.33; Annual Employer Contribution: $225.16
  - Weekly Benefit under FAMLI: $707.37

- Employee makes $75k annually
  - Weekly Employee Contribution: $6.49; Annual Employee Contribution: $337.48
  - Weekly Employer Contribution: $6.49; Annual Employer Contribution: $337.48
  - Weekly Benefit under FAMLI: $947.75

- Employee makes $110k annually
  - Weekly Employee Contribution: $9.52; Annual Employee Contribution: $495.04
  - Weekly Employer Contribution: $9.52; Annual Employer Contribution: $495.04
  - Weekly Benefit under FAMLI: $1,100.00

NOTE: Employee making $91,000 will max out on weekly benefit of $1,100

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How Is The Program Funded?

- Using the State offered program, the contributions are 0.90% of employees wages, up to the Social Security Wage Base (the rate is statutorily capped at 1.20%)
  - At approx. $22 million in payroll for RFTA, RFTA's cost would be $99,000 annually and the employee cost would be $99,000
- Employers can deduct up to 0.45% from employee's pay to fund the program and the employer must pay the remainder of the cost
- Employers do have the option to pay the entire amount and not charge employees
- REMINDER: Under the state program, contributions must begin 1/1/2023, however, benefits will be payable until 1/1/2024
- Private insurers are offering FAMLI and will be releasing quotes this fall. Under private plans, contributions will not be required until 1/1/2024, thus saving a year worth of contributions to the program
- NOTE: Until private rates are released, we do not know if they will be higher, lower or equal to the state of the state program

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Ability to Opt Out

- Local government employers are not required to provide a paid family and medical leave plan by Colorado law. Local government employers choosing to offer a private plan, or their own self-insured plan are not required by Proposition 118 to submit the details of the plan they provide to employees for pre-approval by the Colorado Division of Insurance for an analysis as to if the plan they offer is of equivalent quality

- Link below outlines the process Local Governments need to take to Opt out of program

Section 522 Basis and Purpose Local Government 11 30 2021 - Lydia Waligorski - CDLE (colorado.gov)

- Local Governments must notify CO Department of Labor and Employment (CDLE) of opt out before 1/1/23. Recommend holding vote no later than 12/1/22.

- If RFTA opts out and employees would like to join on their own, they do have the ability to participate directly through the State and pay the State directly fro the benefit

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Pros and Cons of Opt Out

PROS:

- Avoidance of cost to RFTA of 0.45% of wages. Funds can be used for other employee programs that benefit all employees
- Unknown financial savings to RFTA for avoiding backfill and training costs for expected added leaves allowed under the program due to the broad definition in the program
- Employees can opt into the program even if RFTA opts out – RFTA is not required to collect employee premiums, but can choose to do so
- Benefits are the same for employees who opt in, even if RFTA opts out and pays nothing
- The definition of "family member" is fairly broad and could lead to fraud or abuse of the program.
- Those who feel they don't need this benefit would save 0.45% of their wages in a time of significant increases to the cost of living

CONS:

- Employees don't always make the best choices for themselves, so compulsory participation may help some who would not otherwise elect to participate
- Employees coming from private employers may inquire about why RFTA does not provide the benefit

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What Are Others Doing?

A survey was conducted including 63 public entities in the state of Colorado regarding what they are planning to do with FAMLI:

- 17 have confirmed that they are opting out
- 30 are leaning towards opting out
- 14 have not yet discussed or are undecided
- 0 are leaning towards opting in
- 2 are opting in

As you can see 74% are either opting out or leaning towards opting out

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Short-Term Disability Impact

- A short-term disability (STD) plan will not suffice to meet the requirements for a CO FAMLI plan, as the STD only pays out when someone is disabled and FAMLI pays out to care for another family member, baby bonding time, etc.

- If an employer has both FAMLI and STD, the FAMLI will pay out first and then the STD plan will coordinate with the payment of FAMLI. This means that if FAMLI pays out more than the STD would have paid, STD will pay nothing. Due to this, we expect to see decreases in STD rates since they will pay much less effective 1/1/24

- Now if RFTA opts out, the STD rate will not go down as there would be no FAMLI to coordinate

- The FAMLI is not intended to be a replacement for STD

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Recommendation

- RFTA to opt out of FAMLI and allow employees to opt in if they choose
- The opt out is consistent with most governmental entities surveyed in Colorado
- If employee opts in, employee would enroll and pay the state directly – this limits the administrative responsibility to RFTA
- RFTA could use the savings associated with opting out to increase other benefits
- RFTA should expect a significant increase effective 1/1/23 on short-term disability due to poor experience/high utilization and will need $ to continue to fund the STD benefit
- If RFTA wanted to increase benefits, they could decrease the elimination period from 30 days to 14 days

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Questions?

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