

Colorado Voters Approve Paid Medical and Family Leave Program

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Joining just a handful of other states with similar laws, Colorado voters approved a ballot initiative—Proposition 118—last night which will create a state-run insurance program providing paid medical and family leave to Colorado employees. The paid leave program will be funded through a new payroll tax split evenly between employers and employees with the tax initially set at 0.9% of an employee's wages (up to an applicable limit discussed below). Employers and employees will begin paying into this new insurance program on January 1, 2023, and benefits will be available to employees under the program beginning on January 1, 2024.

The new paid family and medical leave program—which Colorado legislators failed to pass during the 2020 legislative session and subsequently placed on the November 2020 ballot after securing enough signatures in August 2020—will provide most Colorado employees with up to 12 weeks of partial pay and job security for various family- and medical-related absences from work, plus four additional weeks of paid leave if workers have a serious health condition related to pregnancy or childbirth complications.

Qualifying reasons for paid leave under the new program include having a serious health condition; caring for a family member with a serious health condition; caring for a new child during the first year after the birth, adoption, or placement of that child; a need arising from a family member's active duty service in the armed forces or notice of impending call to active duty service; and when an individual or a family member is a victim of domestic violence, stalking, or sexual assault or abuse. Individuals are generally covered under the program if they earn at least \$2,500 in wages subject to premium payments during an applicable period. Individuals will receive paid leave amounting to 90% of their average weekly wage for that portion of their wages which is equal to or less than 50% of the state average weekly wage, and they will receive 50% of that portion of their wages which exceeds the state average weekly wage. The maximum weekly benefit is 90% of the state average weekly wage, except for 2024, during which the maximum benefit will be \$1,100.

As noted above, the payroll tax initially paid by employers and employees under the new program will be 0.9% of an employee's wages in 2023, up to a \$161,700 per person wage limit. (This limit is the Social Security Administrator's projected contribution and benefit base limit for 2023; this limit may change in 2023 or subsequent years.) In 2023, this will equate to \$1,455 in total insurance premium payments for an employee making

\$161,700 or more. The total premium amount will be split evenly between employers and employees, such that each pays 0.45% of the employee's wages as the program's premium. The employee's portion of this premium may be deducted from his or her paycheck. Beginning in 2025, the premium amounts will be adjusted upward to account for the previous year's claims and costs of administering the program. Notwithstanding any annual increases, premiums will be capped at 1.2% of each employee's wages.

Businesses with fewer than 10 employees will be exempt from paying the matching employer premiums. Self-employed individuals may opt into the program (and only pay the employee, but not the employer, premium amount) and local governments may opt out. But even where local governments opt out, individual employees of these governments may opt back in under certain circumstances.

The new program provides robust job protections for employees who have been employed by their employers for at least 180 days prior to taking leave. These include prohibitions on disciplinary or retaliatory actions against employees who request or use paid leave under the program. Employees are also entitled to return to their same position, or to an equivalent position (in terms of pay, benefits, and other terms and conditions of employment), after returning from paid leave. Employees may not lose their health insurance during paid leave but must continue paying their portions of the health insurance premiums while on leave.

The new paid medical and family leave program provides exemptions for employers who offer their own, approved private paid medical and family leave plans. To be approved, a private plan must confer all the same rights, protections, and benefits provided under the new program. The new program also permits employers to require that any paid leave provided under the program run concurrently with any qualifying (unpaid) leave under the federal Family and Medical Leave Act (FMLA) and/or with any leave provided under any disability policy provided by the employer. Employers cannot require employees to use or exhaust any accrued vacation leave, sick leave, or other paid time off prior to or while receiving paid medical and family leave under the new program.

As noted above, the new program will be state-run and administered under the auspices of a new Division of Family and Medical Leave Insurance within the Colorado Department of Labor and Employment. The Division will create processes for collecting premiums and administering the program; for determining and reviewing claims; and for permitting appeals of denied claims.

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