

COLORADO PASSES PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM: WHAT DO EMPLOYERS NEED TO DO NOW?

Insights
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Colorado voters passed Proposition 118 yesterday, 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. What do employers need to know about this groundbreaking new law?

LEAVE BENEFITS WILL KICK IN BY 2024

Beginning January 1, 2024, an employee 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.

BUT EMPLOYERS' WORK BEGINS SOONER THAN THAT

Colorado employers still have work to do before the beginning of 2024, however. Beginning January 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

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the employer and employee. From January 1, 2023 to December 31, 2024, the total payroll tax amount is 0.9%.

After January 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% 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% of the state average weekly wage is replaced at a rate of 90%; and the portion of the employee's average weekly wage that is more than 50% of the state average weekly wage is replaced at a rate of 50%. The maximum weekly benefit is 90% of the state's average weekly wage, except any leave taken in 2024 has a maximum weekly benefit of \$1100.

FURTHER CHANGES BROUGHT ABOUT BY NEW LAW

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, 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 Family and Medical Leave Act.

To administer this fund and collect the tax, the initiative creates a Division of Family and Medical Leave Insurance within the State Department of Labor. 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 January 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.

We will monitor the developments related to this new law and provide updates as warranted, so you should ensure you are subscribed to Fisher Phillips' alert system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Denver office](#).

This Legal Alert provides an overview of a new state law. It is not intended to be, and should not be construed as, legal advice for any particular situation.