

Colorado Voters Approve Paid Medical and Family Leave Initiative

By

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Colorado voters approved the Paid Medical and Family Leave (PMFL) Initiative, Proposition 118, on Election Day. PMFL creates a state-run paid family and medical leave insurance program in Colorado that allows employees to take up to 12 weeks of leave and keep their job. The program, which begins on January 1, 2024, is similar in many ways to unemployment insurance and what exists in California and New Jersey.

PMFL will be funded through a 0.9% tax on an employee's annual pay; however, the costs may be shared by the employer and employee evenly. For instance, a Coloradan making \$52,000 a year would pay \$234 in annual premiums that would be matched by the employer.

Colorado's Department of Labor and Employment will administer this new insurance program through its newly created Division of Family and Medical Leave Insurance.

Employee Entitlements

Beginning January 1, 2024, Colorado allows employees to take up to 12 weeks of leave and keep their job; however, up to four additional weeks of paid leave are available for a serious health condition related to pregnancy or childbirth complications.

Eligibility and Reasons for Taking Leave

Employees are eligible to take PMFL leave after they:

1. Have worked at least 180 days; and
2. Have earned \$2,500 in wages that were subject to PMFL premiums.

Employees may take PMFL leave for the following reasons:

1. Birth of a child or adoption or placement of a child through foster care;
2. To care for a new child during the first year after birth;
3. To care for a new child during the first year of adoption or foster placement of the child;
4. To care for a family member with a serious health condition;
5. The employee has a serious health condition;
6. For any qualifying exigency leave (*e.g.*, military service); and
7. Employee has a need for safe leave (*e.g.*, domestic violence, stalking, or sexual abuse).

Employers Covered and Exempted

Employers with at least 10 employees are covered by PMFL.

PMFL exempts small businesses with nine employees or fewer. However, workers of small businesses could choose to pay premiums and be covered.

Local governments and businesses that already provide a paid family and medical leave benefit similar to PMFL may choose to opt out.

Interplay with Family and Medical Leave Act, Other Leave

PMFL leave runs concurrently with the leave under the federal Family and Medical Leave Act (FMLA). However, it may not be congruent, considering the PMFL's additional four weeks available for serious health conditions related to pregnancy and childbirth complications and the fact that employees are eligible for leave after six months of employment, as opposed to 12 months under the FMLA.

An employer may require that PMFL leave be taken concurrently with other leave provided under the employer's disability leave policy, but the employer must provide written notice of this requirement. Additionally, an employee cannot be required to exhaust accrued vacation leave, sick leave, or other paid time off (PTO) before or while receiving PMFL insurance benefits. However, an employee and employer may agree to use any accrued vacation, sick leave, or other PTO while receiving PMFL insurance benefits, unless the aggregate amount exceeds the average weekly wage.

Intermittent Leave

PMFL intermittent leave can be taken in increments of one hour or shorter periods, if that is consistent with the increments the employer typically uses to measure employee leave taken. However, PMFL benefits are not payable until the employee accumulates at least eight hours of benefits.

Premiums

In calendar year 2023, employers and employees will start paying into the program. Beginning January 1, 2024, employees may begin receiving \$1,100 each week for up to 12 weeks while taking leave.

Calculation of PMFL Benefits

In 2024, when employees take paid leave under the PMFL, the portion of their average weekly wage will be paid based on a formula that provides a greater percentage of pay to lower earners. An employee who makes \$500 per week, for example, would be eligible to receive 90% of their normal wage, while an employee who earns \$3,000 per week would be entitled only to 37% of normal compensation.

The maximum annual per-employee premium is estimated to be \$1,455 in 2023. The employer is responsible for paying 100% of the premium, but it may deduct up to 50% of the amount from the employee's wages.

Similar to unemployment benefits, the newly created Division of Family and Medical Leave Insurance will pay PMFL benefits to eligible employees on a biweekly basis.

Examples of PMFL benefits:

Weekly wage	Weekly benefit	Maximum annual benefit	Percent of weekly wage
\$500	\$450	\$5,400	90%
\$1,000	\$768	\$9,216	77%
\$1,500	\$1,018	\$12,216	68%

\$2,000	\$1,100	\$13,200	55%
\$3,000	\$1,100	\$13,200	37%

Notice, Posting Requirement

Each employer must post the PMFL program notice in writing in a prominent location in the workplace and notify its employees of the program in writing upon hiring and learning of an employee experiencing an event that triggers eligibility. The Division will develop a notice detailing the requirements and benefits of the PMFL for employers to post.

Please contact a Jackson Lewis attorney if you have questions PMFL or other workplace laws.

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