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PREPARING FOR COLORADO'S NEW PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

In November 2020, Colorado voters approved Proposition 118, making Colorado the ninth state to adopt a state-run paid Family and Medical Leave Insurance ("FAMLI") Program for employees. Beginning January 1, 2024, eligible Colorado workers who have a qualifying condition will have the right to take up to 12 weeks of paid leave. The administration of claims and benefits will be handled by the State of Colorado. However, in order to fund the FAMLI Program prior to 2024, employers must collect and pay premiums based on their employees' wages beginning January 1, 2023. This summary addresses the most significant considerations for employers in preparing for implementation of the FAMLI Program and navigating its requirements in the coming year.

A. EMPLOYER COVERAGE AND PARTICIPATION

All employers that employ at least one employee (full-time, part-time, or seasonal) in Colorado are required to participate in the FAMLI Program by collecting and remitting premiums calculated at the rate of .45% of an employee's wages. Employers with 10 or more employees are also required to remit the employer's share of the premium payment at a rate of .45% of the employee's wages.

When calculating the number of employees for purposes of determining whether an employer is obligated to pay the additional employer premium, the employer must count all employees within the organization who were employed during 20 or more workweeks in the previous calendar year, including any employees working outside the State of Colorado.

An employer headquartered outside of Colorado must still abide by FAMLI if it has *any* employees in Colorado. Conversely, employers headquartered in Colorado with employees across multiple states are only obligated to pay premiums for employees working in Colorado. The premiums must be remitted quarterly to the state through the FAMLI Program portal (discussed below).

B. LIMITED EXCEPTIONS TO EMPLOYER AND EMPLOYEE PARTICIPATION OBLIGATIONS

An employee's wages are subject to premiums, and the employee is entitled to collect benefits under the FAMLI Program if: (1) the employee's work is performed entirely within the State of Colorado; or (2) the employee performs work both within and outside of the State of Colorado, but the work completed outside of the state is incidental, temporary, or transitory.

The FAMLI Program does not mandate premium payments or provide benefits to individuals who are self-employed unless they opt into the Program. Benefits also are not required to be provided to individuals working as independent contractors. However, employers found to have misclassified their employees as "self-employed" independent contractors may be

required to pay premiums, fines, and penalties in accordance with the FAMLI Program and its implementing regulations.

All employers with one or more employees in Colorado are required to abide by the FAMLI Program and may not opt out of its obligations. However, where an employer has implemented a private paid medical and family leave plan for its employees which is equal to or more generous in its benefits than the FAMLI Program, such employer may apply to the FAMLI Division for an exemption. Employers who wish to apply for an exemption must do so no later than October 31, 2023, for a plan with an effective date of January 1, 2024. If approved, an employer may submit a request for reimbursement of any premiums paid in 2023.

C. PREPARING FOR THE FAMLI PROGRAM

Employers can prepare now by taking several steps. First, the FAMLI Program portal – *FAMLI+Employer* – opened for business registration on December 1, 2022. The portal can be found here: [My FAMLI+ Employer | Family and Medical Leave Insurance \(colorado.gov\)](https://myfamli.com). Employers can register now and receive guidance on calculating and submitting premiums. The portal also includes guidance and resources for human resources personnel and payroll managers.

In addition, employers should begin informing their employees about the FAMLI Program and the employer's obligation to collect premiums. Prior to January 1, 2023, all employers must post in a prominent space in the workplace the required FAMLI Program Notice. The FAMLI Program has also issued an employer toolkit with a paycheck brochure and handbook to assist employers with compliance. Those resources, and more, can be accessed at the FAMLI website: [Employers | Family and Medical Leave Insurance \(colorado.gov\)](https://myfamli.com).

D. THE PROGRAM'S INTERACTION WITH OTHER FEDERAL AND STATE LAWS

The implementation of the FAMLI Program in Colorado will not impact existing federal and state leave laws. The federal Family and Medical Leave Act ("FMLA") entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. The Colorado Healthy Families and Workplaces Act ("HWFA") requires almost all public and private employers in Colorado to provide two types of paid sick leave to their employees. The FAMLI Program is designed to run concurrently with the FMLA and the HWFA and is intended to supplement the two existing programs. If FAMLI leave is taken for a reason that also qualifies as FMLA leave, the leave may count towards both programs. In addition, employees may have the option to choose between using employer-provided sick leave or paid time off and FAMLI leave, but an employer cannot require that an employee use FAMLI leave prior to or in lieu of employer-provided leave.

The FAMLI Program intends to issue additional guidance relating to implementation and administration prior to January 1, 2024. For more information about Colorado's new FAMLI Program and employer obligations under the Program, please reach out to the authors of this article, [Cristin M. McGarry](#) and [Lauren M. Taylor](#), or another member of [Cline Williams' Labor and Employment Law Section](#) at www.clinewilliams.com.

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