



Proposition 118: A Brave New World

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Background

- Similar legislation failed to pass in 2019
- Truncated 2020 Legislative Session
- Intense opposition by business organizations
- Some sponsors withdrew support
- Bill Not Proposed
- Ballot Initiative Passed

Effective Dates

- January 1, 2023—Payment of Premiums
- January 1, 2024—Leave

Administration

- New Division in CDLE: “The Division of Family and Medical Leave Insurance”
- Many provisions left to regulations to be drafted by the New Division
- Much discretion to New Division

Financing

- Financed by a premium paid by employer per employee; amount set by CDLE (set at 9/10ths of 1% of wages per employee for 2023-2024)
- Employers may deduct employee premiums from wages.

Small Business Exemption for Premiums

- Businesses with fewer than 10 employees are exempt from paying the premiums.
- But, they are not exempt from the leave requirements.

Opt In/Opt Out

- Self-employed individuals may opt into the program.
- Local governments may opt out.
 - Employees of local governments may opt in.

Employee Eligibility

- After \$2,500 in wages have been subject to premiums

Definitions

- Family member – includes any other individual with whom the person has a significant personal bond that is like a family relationship
- Safe Leave – domestic violence, sexual assault...

Employers' Posting Requirements

- Notice to be drafted by New Division.
- Employers must post notice.

Reasons for Leave

- Employee has serious health condition
- Caring for family member with serious health conditions
- Caring for a new child during the first year after the birth, adoption, or placement of child.
- Qualifying exigency (military)
- Safe leave

Requests for Leave

- Employee must give 30 days' notice if need for leave is foreseeable.
- If not, Employee must give as much notice as practicable.
- Employee must make reasonable effort to schedule leave so as not to unduly disrupt employer's operations.

Leave Determinations

- New Division to establish a system for filing and determination of claims, including denial of benefits, and appeals.
- Employer to be notified of decision within 5 days.
- After exhausting administrative remedies, employee may file an action in court. (What about the employer?)

Documentation

- New Division to establish documentation requirements.

Amount of Leave

- 12 weeks
- Plus an additional 4 weeks for serious health conditions related to pregnancy or childbirth complications

During Leave

- Maintain insurance
- Cannot require employee to use PTO

Intermittent Leave

- Employee may take intermittent leave in one-hour increments or shorter periods if the employer typically uses shorter periods.

After Leave

If an employee has been employed for 180 days, after leave employee is entitled to:

- reinstatement to the same position or
- a position with equivalent pay, benefits and terms and conditions of employment.

Concurrent with FMLA (?)

- Leave for reasons also recognized by FMLA
- Leave for reasons not recognized by FMLA

Concurrent with Disability Insurance (?)

“An employer may require that payment or leave under this part 4 be made or taken concurrently with or coordinated with payments made or leave allowed under the terms of a disability policy...”

Not Concurrent with Other Leave Laws

- Families First Coronavirus Response Act (“FFCRA”)
- Colorado Healthy Families and Workplaces Act (“HFWA”)

Amount of Benefit

- 90% of comp that is under 50% of state average weekly wage
- 50% that is over 50%
- Maximum weekly benefit is 90% of state average weekly wage; after 1/1/25, the maximum is \$1,100

Exemption for Private Plans

- Must provide all the rights, protections and benefits of Proposition 118.
- Must apply and be approved by New Division.
 - Process to be determined by New Division.

Enforcement and Remedies

- Interference and retaliation prohibited
- Fines by CDLE
- Private right of action for employees
- Reinstatement, back pay, etc.
- Attorneys' fees

Erroneous Payments/Fraud

- If employee makes false statement or material omission, employee is disqualified from benefits for 1 year.
- New Division may recover from employee benefits paid erroneously or due to false statement or material omission.

HFWA

- Colorado Healthy Families and Workplaces Act (“HFWA”)
- Replaces HELP Rule
- Substantial changes starting 1/1/2021
- Posting Requirements

HFWA – Through 12/31/2020

- All Colorado employers, regardless of the number of employees employed (including those with over 500), must comply with the leave provisions of the FFCRA.

HFWA – Starting 1/1/2021

Employers < 15 exempt in 2021

HFWA – Starting 1/1/2021

Two Categories

- Paid Leave
- Paid Leave During Public Health Emergency

HFWA – Paid Leave

Reasons for Leave:

- Employee's own healthcare condition
- Caring for family member who has healthcare condition
- Employee or family member suffering from domestic violence, sexual assault or harassment
- Place of business or childcare closed due to public health emergency

HFWA – Paid Leave

- Up to 48 hours of paid leave
- Accrued 1 hour leave for every 30 hours worked
- Maximum 48 hours per year
- Same rate of pay and benefits
- Need not pay on termination
- May carry-over but not more than 48 per year

HFWA – Leave During Public Health Emergency

Up to 80 Hours

Reasons

- Self-isolation
- Seeking diagnosis or treatment
- Unable to work due to symptoms
- Caring for child or family member for above reasons or school closure

HFWA – Documentation

- “Reasonable Documentation” allowable if 4+ consecutive days of leave.
- Cannot require “details” of health info.
- **Documentation is not required to take leave, but only as soon as employee can reasonably provide it.**

HFWA – Enforcement

- Retaliation, interference, discrimination prohibited
- Enforcement by CDLE
- Private right of action for employees, including, back pay, attorneys' fees, etc.

HFWA – Collective Bargaining Agreements

- HFWA does not apply to an employer subject to a bona fide collective bargaining agreement which provides the same, or more generous benefits, to employees.

HFWA – Record Keeping

- Employers must maintain records for two years documenting hours worked, leave accrued and leave taken.
- If not, and issue arises, employer is presumed to have violated the Act.

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