Paid Family and Medical Leave is Starting in Colorado: Actions the State Legislature Can Take to Mitigate Long-term Risks and Unintended Economic Impacts

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FAMLI Premiums Started January 1st, Benefits Start Next Year

Next month, employers and employees will begin paying payroll premiums into Colorado's new Paid Family and Medical Leave (FAMLI) program initiated by the passage of Proposition 118 in 2020. Beginning this year, most employers and employees will be responsible for splitting this premium, which will begin at a total of .9% of each employee's pay. Benefits will not become available until 2024.

The program, which was initially estimated to collect a total of $1.3 billion of premiums in 2023, will allow eligible workers to claim up to 16 weeks of paid leave at wage replacement rates as high as 90% for reasons such as newborn bonding, personal injury, and care for ailing family members. Several other states have already enacted paid family leave programs, most of which are significantly less generous than FAMLI.

Long-term Fund Solvency Risk

Washington's paid family and medical leave program, which is the most similar to Colorado's, has had serious solvency problems since its launch in 2020. It has experienced higher-than-expected utilization and/or required employee premium hikes each year since it came into force. Its premium started at .4% of wages; next year, despite another hike the year prior, that premium will increase to .8% at the recommendation of a study which found that the program would be insolvent at the end of 2022.[i] Already, the Washington State Legislature has allocated $350 million of the state budget to address the paid family leave fund's deficits.[ii]

FAMLI, likewise, is at financial risk in the medium and long term, according to CSI's modeling. **As it stands, the program could overburden Colorado employers with costs or become insolvent over the next several years.** If that risk materializes, either premium rates will have to be raised above 1.2% (the cap under the current law), benefits will have to be curtailed, or the state will have to allocate General Fund money to keep the program afloat.

- Though it will offer higher benefit levels than do most existing programs in other states, it does not include any provisions that allow it to adapt if costs grow out of control.
- According to CSI's modeling, it is possible that the cost of the program will exceed its revenues at the initial premium rate of .9% and could even force premiums higher than the statutory cap of 1.2% in order to remain solvent without reducing benefit levels.[iii]
    - CSI modeling of FAMLI under higher cost assumptions, which were within the range presented in a report by the University of Denver, showed that the premium would need to grow to 1.7% to keep the fund solvent.

- Program utilization will determine FAMLI's long-term success. CSI has found that, based upon other studies about paid leave in Colorado and the experiences of other states, utilization is likely to considerably exceed the state's official projections.
  - This will especially impact businesses with low margins and those that need to replace the labor of employees on leave.

Impacts to Employers and Employees

Whether or not the program remains solvent, it will add greatly to the cost of doing business in Colorado. In 2021, the state collected $1.1 billion of corporate income taxes and $10.3 billion of individual income taxes. **In 2025, both employers and employees could each pay totals of more than $670 million into FAMLI. This would be equivalent to a nearly 61% corporate income tax increase plus a 6.5% individual income tax increase.**

Some businesses will face much higher costs than others. According to CSI's analysis, companies that operate in high-wage and high-tech industries will only experience small reductions in output and relatively low premium costs. Conversely, businesses like restaurants, which have slim margins and employ many low-income Coloradans, will struggle to replace labor lost to paid leave and could lose large shares of profitability. Alongside other trends that are reducing the affordability of living and working in Colorado, this could force jobs out of the state, encourage automation, and discourage new economic investment.

That voters approved FAMLI in 2020 despite the program's structural problems indicates that Coloradans value paid family leave highly. Still, the program could cause unintended harm to businesses and workers if it isn't managed responsibly—it's important to Colorado's economic health that FAMLI remains fiscally solvent and doesn't burden employers with unsustainable costs.

Legislative Reforms to Address Solvency and Economic Risk

The state legislature should consider developing policies that would provide better transparency about FAMLI's impacts on employers and give the Division of Family and Medical Leave Insurance the ability to modify the program's benefit design if utilization exceeds the program's financial capacity.

- **Increase reporting requirements** – Over the long run, policymakers and the public would benefit from more robust program reporting which can help inform necessary policy adjustments. The Division of Family and Medical Leave Insurance is required to provide detailed reporting about program utilization by leave type and some demographic indicators, but should additionally report the numbers of individuals and average lengths of leave by categories such as wage level, industry, and county. The Division should also find ways to combine this information with data collected from employers that reflects indirect costs associated with FAMLI. This could be accomplished by periodic surveys or through direct annual reporting as part of other forms employers are required to submit.

- **Require benefits to be reduced if premium cap is exceeded** – At least one other state has already implemented such an approach: under Connecticut's program, "if employee contributions are the maximum percentage allowed and the [state] determines that employee contributions are not sufficient to ensure solvency of the program, the [state] shall reduce the benefit for covered employees by the minimum amount necessary in order to ensure the solvency of the program."[iv] Developing a mechanism which triggers a reduction of FAMLI's benefit levels when the premium rate hits its cap could address the risk of insolvency and keep Colorado businesses' costs in check without dishonoring voters' intentions.
- **Avoid expanding benefits until full costs are better known** – Reforms to the benefit structure that would increase costs should not be added until the full costs of the program are better understood. Other states' experiences with their paid leave programs indicate that utilization increases over time as public awareness of the program grows. Unless benefit-reduction mechanisms are enacted according to the previous recommendation, new benefit increases combined with rising utilization will only worsen FAMLI's insolvency risk.

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[i] https://ofm.wa.gov/sites/default/files/public/publications/WashingtonPFMLActuarialReport.pdf
[ii] https://leg.wa.gov/JointCommittees/PFMLIP/Documents/PFML-TaskForce-FinalReport.pdf
[iii] https://commonsenseinstituteco.org/proposition-118-a-statewide-paid-family-and-medical-leave-program-for-colorado-but-at-what-cost/
[iv] https://www.cga.ct.gov/current/pub/chap_557.htm#sec_31-49