



Colorado Family and Medical Leave

Making Sense of Leave under the New State Leave Laws

AGENDA

- Two new laws: Colorado Healthy Families and Workplaces Act (“CHFVA”) and the Colorado Paid Family and Medical Leave Insurance Act (“CPFML”)
- CHFVA Requirements
 - Considerations for compliance and coordination
- CPFML
 - Differences from FMLA
 - Coordination of Leave
- HR perspectives
- To do or not to do?

Colorado Healthy Families & Workplaces Act

- June 14, 2020 Colorado enacted the CHFVA, SB 20-205, codified as C.R.S. 8-13.3-401 *et. seq.*
- Continuation of FCRA through 12/31/20
- Applies to employers with 16 or more employees eff. 1/1/21 and for all employers 1/1/22
- Two types of leave: (1) Paid Sick Leave; and (2) Emergency Paid Sick Leave

Paid Sick Leave

- Employers are required to provide at least 1 hour of paid sick leave for every 30 hours worked
- Exempt employees, use 40 hours/week to calculate; non-exempt use the higher of normal work week or 14 day average
- May be either accrued at a rate of 1 hour per 30 hours worked or provided as a lump sum at the beginning of the year
- This is a floor, employers may provide more

Paid Sick Leave

- Accrual begins when employment begins
- Employees must be able to use it as soon as it is accrued and employers may loan leave to employees
- Employers may advance paid sick time but are not required to do so
- *Up to 48 hours* may be used in one year
- Employers *must permit carry forward* of up to 48 hours

Paid Sick Leave

- Existing employers' plans (including a PTO policy) may qualify if they allow accrual of the same amount of leave and permit use under the same conditions
 - * * Note: accrual and ability to use leave must begin immediately upon employment
 - Must cover variable hour and part time employees
- Not required to pay out upon separation
- But, if employee returns within 6 months, you must return their leave accrued at the time they left

Use of Paid Sick Leave

- Any illness, condition or injury (mental or physical) that prevents an employee from working
- Diagnosis, care, or treatment
- Preventative care
- Employee needs to care for a family member for any of the above reasons

Use of Paid Sick Leave

- Two additional qualifying events:
 - Employee or family member was the victim of domestic abuse, sexual abuse or harassment (criminal, ex: stalking)
 - Medical attention
 - Victim services
 - Relocation
 - Legal services (criminal or civil)
 - * * Note: confidential medical record, separate from personnel file
 - Public Health Emergency closure of business or school (and employee must care for kids)

Definition of “Family Member”

- Immediate family member
- Child to whom stand “in loco parentis”
- “A person for whom the employee is responsible for providing or arranging health or safety related care.”

C.R.S. 8-13.3-402(6)

Use of Paid Sick Leave

- Employee may request leave orally, in writing, electronically, or by other means acceptable to the employer
- Employer may provide a written policy with a reasonable procedure for the employee to provide notice but shall not deny paid sick leave based on that policy
- Employee is required to include duration when possible; and shall make a good faith effort when the use is foreseeable to provide notice and make reasonable efforts to schedule when the absence will not be unduly disruptive to operations

Use of Paid Sick Leave

- Employee to use paid sick in hour increments unless employer allows for smaller
- Use of sick leave cannot be conditioned upon finding a replacement
- Employer may request documentation when 4 or more consecutive days of paid sick leave are used

Public Health Emergency Leave

“Public Health Emergency”

- Act of bioterrorism, pandemic or epidemic for which an emergency is declared by a
 - (1) **federal, state, or local** public health agency;
 - OR (2) an emergency is declared by the governor;
 - OR (3) a highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the governor.
- * * State, federal or local order

Public Health Emergency Leave

- This is in addition to paid sick leave
- This is also in addition to federal leave provided in 2020
- Employer shall provide this time on the date a Public Health Emergency is declared (as a practical matter, January 1, 2021)

Public Health Emergency Leave Use

- Isolate; seek diagnosis care or treatment; experiencing symptoms; preventative care (vaccine) or care for family member for these reasons; or
- Employee cannot attend workplace because it is closed, they are deemed a danger (includes exposure or symptoms and does not require a diagnosis), or to care for family member whose childcare or school is closed (remote school is considered closure); or
- Employee is at risk due to condition

Public Health Emergency Leave

- ONE TIME (per PHE) supplement of up to 80 hours; may be multiple events
- Part time employees – number of hours scheduled to work in 14 day period after request or prior to the leave request
- Must permit use until 4 weeks past expiration of emergency
- Employees must still accrue PSL
- Cannot require use of PSL or exhaustion prior to PHE leave

Existing Plans

- Amount of leave
- Conditions for use
- Purpose of leave
- PTO programs OK

Collective Bargaining

- Law does not require additional leave
- But CBA must provide equivalent or more generous amount of leave
 - Accrual and carryover
 - Use and conditions
 - Protection (e.g., anti-retaliation, notice etc.)
- HFWA does not apply to a CBA negotiated after effective date (7/20) if it contains equivalent or more generous leave and if expressly “waived”
 - REGULATIONS NOT NECESSARILY CONSISTENT (defining “equivalent” leave to mean it follows all of the conditions above).
 - What is anyone waiving?

Penalties

- Legal and Equitable Relief
- Economic damages
- Liquidated damages
- Attorneys fees

Commerce City Policy

- **Initial Paid Sick Leave:** Employees will accrue limited purpose sick leave to be used during the first 6 months of employment at the rate of 1 hour per 30 hours worked (up to a maximum of 48 hours) for the first 6 months of employment (“Initial Paid Sick Leave”) for purposes of compliance with and for the reasons permitted in the Colorado Healthy Families and Workplaces Act (C.R.S. § 8-13.3-401 et seq.) (“Paid Sick Leave Law”). Initial Paid Sick Leave is not general leave and is not carried over beyond 6 months except as set forth in subsection A(1)(d), below. Subsection A(3)(a-b) do not apply to employees during the first 6 months of employment.
 - At the conclusion of the first 6 months of employment, when the pro-rated general leave bank is granted, a portion of the general leave bank will be designated as Paid Sick Leave in an amount equal to any unused Initial Paid Sick Leave remaining from the initial bank or accrual plus 1 hour for every 30 hours of work remaining in the employee’s schedule for the remainder of the benefit year up to a maximum of 48 hours, as defined below. If there is an insufficient amount of general leave available to satisfy this requirement, additional Paid Sick Leave will be granted to make up the difference. Subsection (A)(3) will apply to this Paid Sick Leave.
- **Annual General Leave Bank.** The City’s benefit year, for general leave and that portion of it designated as Paid Sick Leave, runs from the first day of the first pay period of each year through the final day of the final pay period of each year and does not necessarily correspond to the calendar year; there will be 26 pay periods each year. On the first day of the each new benefit year, non-FOP and non-GWU employees who have completed their initial six months of service are awarded general leave as follows:

Years of Service*	Hours Awarded
6 months through 4 years	152
5 through 9 years	200
10 through 14 years	232
15 or more years	272

City of Fort Collins Policy

A. All employees are eligible to use paid sick leave in accordance with this policy.

B. Part-time classified and unclassified employees are granted sick leave on a pro rata basis based on the position's designated FTE. For example, an eligible employee who is a "0.75 FTE" receives 75 percent of the sick leave granted to an eligible full-time employee. Part-time classified and unclassified employees may use sick leave based on their regularly scheduled hours at the time of use. However, in no event may the use of sick time in any work week exceed the designated FTE for the position. Sick leave hours previously granted to employees who change from full-time to part-time, or vice versa, will be adjusted in accordance with the hours they are currently regularly scheduled to work.

C. Hourly Employees are granted sick leave based an average of hours worked

At the beginning of each Leave Benefit Year, all employees who are not classified or unclassified management shall receive 1 hour for every 30 hours worked up to a maximum of 48 hours in the Leave Benefit Year.

Forfeiture at End of Leave Benefit Year

For classified and unclassified management employees, sick leave not used during a Leave Benefit Year will be forfeited at the end of that Leave Benefit Year.

Sick leave Rollover for Hourly Employees

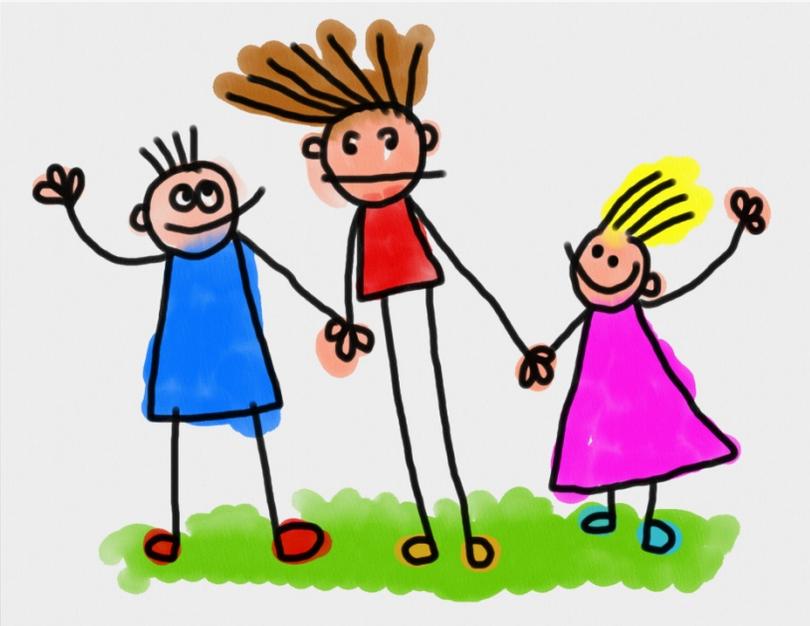
- Hourly employees are allowed to rollover any unused accrued sick leave from the prior year up to a cap of 48 hours.

HR Perspective

- For ESL we offered additional leaves
- Use donation program
- Continue to support remote or hybrid work when possible to reduce the spread of COVID-19
- Looking at creative ways to attract and retain talent during “The Great Resignation”
- In some instances, the City of Fort Collins expanded coverage past the law. We had one employee leave for child care needs during the pandemic.

PAID FAMILY AND MEDICAL LEAVE INSURANCE ACT, C.R.S. 8-13.3-501 *et. seq.*

GOVERNMENT EMPLOYERS



HISTORY

- 19% of the American workforce does not have access to paid family leave. (National Partnership for Women and Families)
- Number of attempts at bills; House tried in 2018, and the Senate in 2019 (19-188) ("FAMLI Bill")
- November 3, 2020 voters passed Proposition 118, now codified into law at C.R.S. 8-13.3-501, *et. seq.*
- Phased implementation
- Division of Family and Medical Leave Insurance ("Division") will collect premiums and pay benefits
 - Employees will receive between 65% to 95% of their pay during leave based on formula

IMPORTANT DATES

- **JANUARY 1, 2022**
- **JANUARY 1, 2023**
- **JANUARY 1, 2024**

Local Government Employers

(1) Local Government may **opt out**—Specifics will be determined by rule

- At a minimum, govt. employer must notify employees that they may elect to participate.

(2) Employees may elect coverage for a minimum of a three year period.

- Must file notice of election with the Director

Paid Family and Medical Leave Insurance Act: Benefits

- Effective 1/1/24, covered individuals have the right to TAKE paid family medical leave and to RECEIVE paid family and medical leave insurance benefits.
 - \$2500 in wages
 - Elects coverage for government employees
 - Submits an application for benefits
 - Birth, adoption, placement, caring for new child during first year after birth, adoption or foster care
 - Caring for family member with a “serious health condition” (includes pregnancy)
 - Has a serious health condition
 - Exigency leave (active duty military, post deployment or death)
 - Safe leave
- Premiums begin 1/1/23

Duration

- Up to 12 weeks
- Up to 16 weeks if pregnancy complications
- Intermittent leave **OK**

Benefit Payments

- Employers and Employees will remit into the fund beginning 1/1/23 for 0.9% of wages for employees and the next year, the director sets premiums, but not to exceed 1.2% per employee.
- Self employed only 50% of premium
- **Employee of a local government electing coverage will only pay 50% of premium directly to the division.**
- Employers of 10 or greater employees may deduct up to 50% of the premium from an employee's check and remit 100% required premium to the Division
- Employers with less than 10 employees need only remit 50% of the premium and may deduct that amount from an employee's check.
- No premiums required for wages above the benefit base limit est. by federal social security (\$142,800 was 2021).
- 50% of average state weekly wage at 90% and then additional wage replaced at 50% (maximum benefit 1/1/25 is \$1100)
- Payments within 2 weeks of claim and every 2 weeks

Protections

- If employed at least 180 days prior to leave, job restoration rights
 - Same position or “equivalent position” with equivalent benefits, pay and other terms
- Health benefits continue, but employee pays share
- Unlawful to interfere, restrain or deny any right
- No retaliation or discrimination
- Cannot contribute to discipline, discharge etc.
- Civil action with damages
- Fines up to \$500 per violation
- **Penalties do not apply in the case of an employee of a local govt. electing coverage.**
- **No waivers**

Coordination of Leave FMLA

- Leave can run concurrently with FMLA leave
 - **However, PFML is broader than FMLA
- Employers may require leave taken pursuant to disability policies to run concurrently with written notice.
- Employers are *prohibited* from requiring use or exhaustion of vacation or sick leave while on PFML.
 - Employee may agree to use such leave as long as \$ does not exceed actual wages.

DIFFERENCES FROM FMLA

- Eligibility
 - Based on wages (\$2500 earned in base period), not 12 months of work plus 1,250 hours of work
 - Job restoration based on 180 days of work
- Purpose
 - PFML adds Safe leave
- Definition of “Family Member”
 - FMLA definition is narrower: term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is--under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability.
- PFML child regardless of age and family member includes:
 - Grandparents
 - Siblings
 - Any individual with whom one has a “significant personal bond”
- Duration
 - Adds 4 weeks for pregnancy or child birth complications
- Employer cannot require use of vacation or PTO leave concurrently

Notice

- Poster notice required and employers must notify all employees upon hiring and when leave is requested.

Private Plans

- Employers may meet obligations with a private plan.
- It must be approved by the Division.
- The plan must mirror all the benefits of the program.
 - Note most short term disability policies do not
- Plans must reimburse the Division for all costs of administration.

Collective Bargaining

- No mention in the law, other than the law does not relieve an employer from any obligation under a CBA
- Consider mandatory bargaining subjects
- Injury leave etc.?

Benefits of not opting out

- All employees on a level playing field for benefits
- Division will deal with the claims and administer the benefits

CHAT

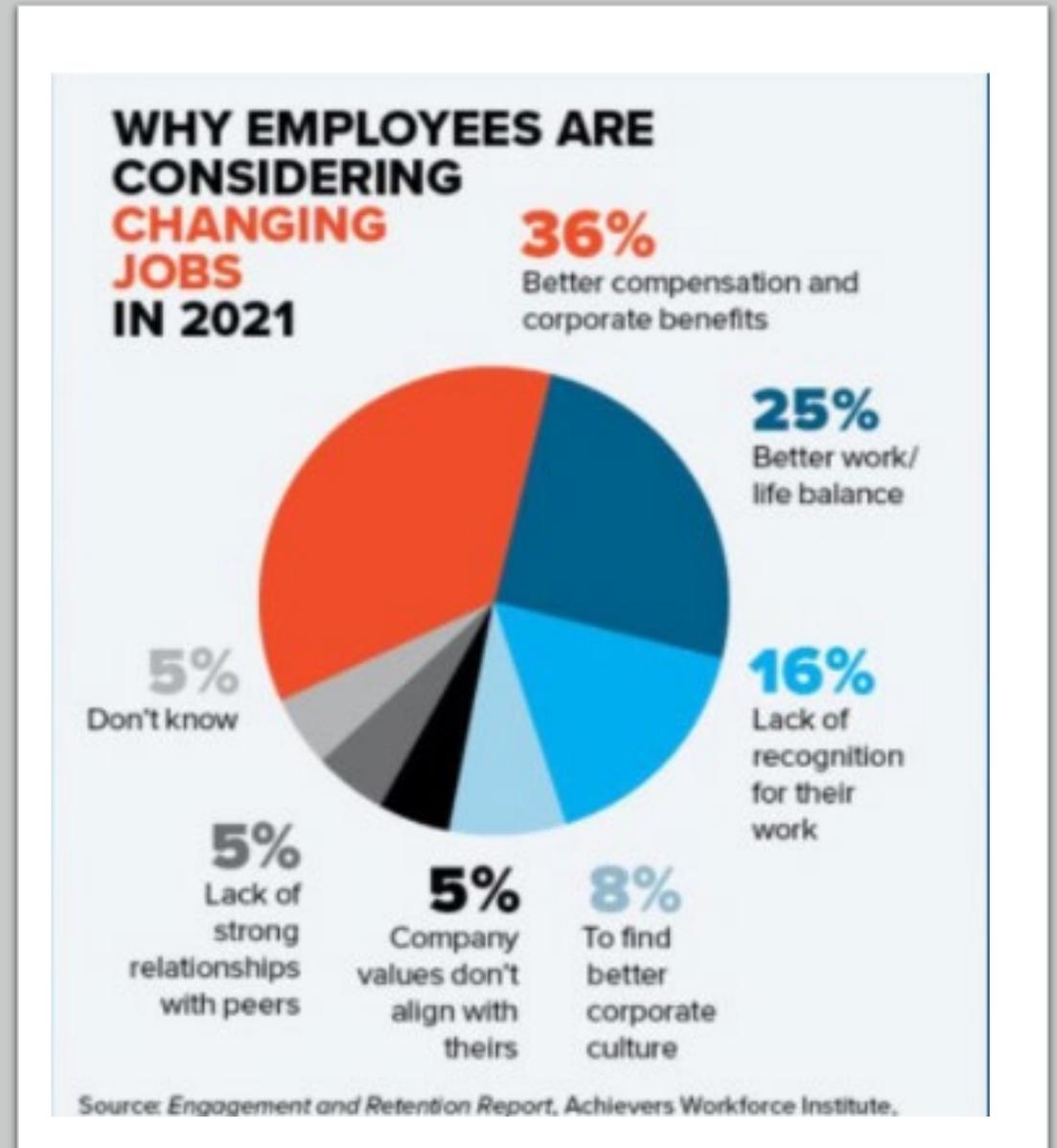
****TALK TO PAYROLL, FINANCE, AND HUMAN RESOURCES NOW**

(EMPLOYEES WILL ASK)

****CONSIDER PRESENTATIONS TO YOUR RESPECTIVE
GOVERNING BODIES**

**Think about other jurisdictions with paid family leave programs
(e.g., Boulder County).**

Attract, Engage, Retain



Great Resignation

- A Microsoft survey of more than 30,000 workers showed that 41% were considering quitting or changing professions. In the US, April 2021 saw more than four million people quit their jobs, according to a summary from the Department of Labor – the biggest jump on record.
- The mass departure is happening at all levels of work, and is especially evident in service and retail jobs.

HR Perspective

- Attract, attract, attract!
- The savings on wages will help off set the cost
- Savings from employees returning from leave and not leaving employment
- US one of the few countries that doesn't guarantee some paid amount of maternity and sick leave
- It is estimated that 10% of Colorado's workforce, or roughly 500,000 provide some care work for someone aged 50 and above
- Pro or Con? Do employees want to participate

HR Perspective

- The Federal Reserve Board of San Francisco found recently that a lack of paid leave access among new mothers contributes significantly to low workforce moral.
- A number of studies find that paid leave is associated with better mental health, especially for new mothers—and that these benefits can be long-lasting.
- Increasing employees over all health
- Improved infant health outcomes

STAY TUNED!

Rules due out 1/1/22