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Proposition 118

EMPLOYMENT

PAID FAMILY AND MEDICAL LEAVE ENTERPRISE

CML IS <u>OPPOSED</u> TO PROPOSITION 118

Background

Proposition 118 creates a state-run paid family and medical leave (PFML) insurance enterprise in Colorado that allows employees to take up to 12 weeks of leave. An eligible employee may take leave for reasons such as caring for their own health condition, caring for a new child, or caring for a family member. The maximum number of weeks an eligible employee may take paid leave in a year is 12 weeks, except that employees with a serious health condition related to pregnancy or childbirth complications may take up to an additional 4 weeks (16 weeks in total). Employees are not required to take leave consecutively. Both employers and employees will pay into a new Family and Medical Leave Insurance Fund. The state will use money in the fund to pay wage benefits to employees during their leave, similar to unemployment insurance. The amount an employee will receive during leave is based on the employee's average weekly wage. Most employees become eligible to take paid leave after they have earned at least $2,500 in wages and become eligible for certain job protections after being employed with their current employer for at least 180 days.

Proposition 118 allows a municipality to "opt out" of the program. However, there are operational aspects of the initiative that will still impact the employer-employee relationship, even if the municipality opts out.

Why CML Opposes Proposition 118 even with the "opt out"

The process that a municipality must follow to opt-out will be decided by the state. Proposition 118 directs the director of the Department of Labor and Employment to promulgate rules to develop the process and does not allow the municipality to follow their own. In addition, the department will develop the notice a municipality is required to provide their employees should the municipality choose to opt out.

Even if a municipal employer does opt-out, their employees may still opt-in. If a municipality follows the state-created process to opt out, an employee of that municipality may choose to be enrolled in the program if he or she pays the full premium necessary for coverage. For example, beginning in 2023, an employee who earns $52,000 annually could pay an annual premium of $468 in order to receive a maximum annual benefit of $9,216. While the municipality will not need to pay into the program for that employee, it will be obligated to allow that employee to take 12-16 weeks off, regardless of the municipality's existing employment policy. Proposition 118 also allows for an individual who was employed for 180 days with a municipality to move to a new job and receive benefits. In both scenarios, a municipality that has opted out of the program must allow for an employee to take 12-16 weeks of leave. This creates inequity between municipal employees and requires additional resources to fulfill the duties of that position during the 12-16 weeks of leave. The latter being especially difficult for rural municipalities with small employment pools.

The proposed PFML program has significant conflicts with the federally-required Family Medical Leave Act (FMLA). PFML allows for up to 16 weeks paid leave, while FMLA allows for up to 12 weeks, which is unpaid. Unlike FMLA, PFML does not require that an employee be employed for 12 months before they can receive the benefit. An employee must make $2,500 in wages subject to the premium and then qualify for benefits. Finally, the definition of family member is more expansive in the PFML program than in FMLA.

The proposed PFML program conflicts with current state law. Though CML opposed SB 20-205 due to the unfunded mandate, that legislation created minimum standards for sick leave rather than a state-run insurance program. Municipalities with 50 or more employees must already comply with the obligations of FMLA, and all municipalities must comply with SB 20-205. The passage of Proposition 118 would create further burdens on municipal employers that will translate into more staff for administration and potential inequities between employees of any given municipality.

For more information, contact Legislative Advocacy Manager Meghan Dollar at mdollar@cml.org.