



COLORADO
BOARD OF COUNTY COMMISSIONERS

District 1 - John Justman 970-244-1605
 District 2 - Scott McInnis 970-244-1604
 District 3 - Rose Pugliese 970-244-1606

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March 13, 2019

The Honorable Angela Williams, Chair
 Senate Business, Labor, & Technology Committee
 200 E. Colfax Ave.
 Denver, CO 80203

Re: Letter in Opposition to Senate Bill 19-188

Dear Chairwoman Williams and Committee Members:

The Board of Mesa County Commissioners submits this letter in strong opposition to Senate Bill 188, Family Medical Leave Insurance (FAMLI) Program.

Passage of SB19-188 creates a mandatory state paid leave program that applies to every employer regardless of the size of the business. The program's benefits are paid for through a fee assessed as a payroll deduction where half is collected from the employee and half from the employer. However, employers are already mandated to provide a similar benefit through the federal Family and Medical Leave Act (FMLA). SB19-188 is redundant and costly to both the employer and the employee.

Additionally, this bill grows government by creating a new division of family and medical leave insurance within the Colorado Department of Labor and Employment (CDLE), which will be established as a state enterprise. Not to mention, the premiums paid into the fund do not count against the state's Taxpayer Bill of Rights (TABOR) revenue cap, even though they are classified as fees. Senate Bill 188 is clearly a new tax, and therefore under Colorado state law, it should go to the vote of the people.

Furthermore, the director of the division is authorized to set the annual premium rate to cover the benefits and the costs to administer the program giving the state the power to dictate fee increases without input from stakeholders. This bill is so broad and costly to implement that it will hurt thousands of small businesses and it gives the state the authority to mandate employee benefits without the option for employers or employees to opt out.

Mesa County strongly urges you to oppose SB19-188 to help employers across Colorado with this overly burdensome and costly piece of legislation. Let the people of Colorado decide.

Thank you for the opportunity to comment.

Sincerely,

Rose Pugliese, Chair
 Board of County Commissioners

John Justman
 Commissioner

Scott McInnis
 Commissioner

Testimony FAMLI Medical Leave Insurance Program, Senate bill 19-188

Senator(s) Winter and A. Williams and Representative

My name is Tony Gagliardi and I am the NFIB Colorado and Wyoming State Director.

NFIB is a 76-year-old, membership driven organization. Today, we are America's largest small business association with over 325,000 members nationwide. NFIB's focus is on small and independent business. Our members come from every sector of the economy and industry imaginable with the average member having between 5 -9 employees.

I am here on behalf of NFIB Colorado in opposition to Senate bill 188, the FAMLI Medical Leave and Insurance Program.

First and foremost, our opposition is based upon an October 2018 member survey pertaining to the FAMLI leave bill. The results indicated 82 percent of those responding opposed the measure.

Furthermore, No one opposes paid family leave. Many of our members already offer the benefit. What our members oppose is a government mandate that assumes every business of any type or size can afford to offer the same benefits as large companies offer their employees.

As one of our members commented on Sb 188, I own a small business in Denver area. Thus, I speak from firsthand experience that we and most small businesses we associate with value our employees and try to work with them when they encounter personal situations requiring time off. Every business is different and has its own special situations. Please, for the sake of a healthy business climate in Colorado, vote no on SB 19-188."- Lowell W.

How does a small business cope when a worker is absent for 12 weeks? If the business is technical in nature, it could be nearly impossible to find a temporary employee with the skills to perform the job. If a temporary worker is hired, how does the employer handle the awkward situation which occurs when the permanent employee returns to work. Do the sponsors of Senate bill 188 expect the owner to absorb the expense of an additional employee?

As another member stated, "As a restaurant, I must have staff on hand for every shift and cannot afford to have an open position for up to 3 months with no one to fill that server, cook or dishwasher position during that time. I cannot afford the unemployment fee implications if I hire someone for that interim period and then must lay them off after the other staff leave is complete. Not to mention the added expense of hiring and training someone to fill a temporary position."-Kim V.

Advocates insist that paid leave is good for business because workers will be happier and more productive. Advocates are assuming they know more than business owners, which is silly. When our members, who are main street entrepreneurs and business owners, tell us they can't afford to offer the benefit, it is because they can't afford the benefit.



Impact of a Paid Family and Medical Leave Program on Colorado's Economy

Using the PI+ model by Regional Economic Models, Inc. (REMI),¹ the NFIB Research Center forecast the impact of a statewide mandate that would require all Colorado employers to participate in a paid family and medical leave program that would provide partial wage-replacement benefits to eligible individuals who take leave from work to care for a new child or a family member with a serious health condition or who is unable to work due to the individual's own serious health condition.

Colorado's paid family and medical leave program would be funded by a state-run family and medical leave insurance fund financed by an employee-side payroll tax which would require each employee in the state to pay a premium based on a percentage of the employee's yearly wages (0.99% in this analysis).

The NFIB Research Center's forecast assumes that the economic burden of the payroll tax would be split 50-50 between employers and employees. Under this assumption, the wage and salary trajectories of employees continue according to their projected paths prior to the introduction of the paid family and medical leave program. The premiums paid to the insurance fund through a payroll tax deduction are split between employers and employees with (1) employers paying an additional amount of pre-tax wage and salary to employees equal to 50 percent of the full amount of the insurance premiums and (2) employees experiencing a reduction in their take-home pay also equal to 50 percent of the full amount of the insurance premiums.

Because the payroll tax for public sector employees requires a reduction in state government spending equal to the full amount of the payroll tax revenue, this forecast models both (1) the case in which excess revenues are assumed to be added to the General Fund balance and (2) the case in which the government collects no excess revenue due to contemporaneously reducing the tax burden on taxpayers by the dollar amount of the insurance fund anticipated to be paid for by public sector employees.

Under the modeled assumptions:²

- **Business owners are forecast to reduce the number of employees hired to adjust to a higher tax burden, which outweighs any demand-side effects due to additional private consumption in the healthcare sector. There would be nearly 14,000 fewer**

jobs in Colorado in 2029. Even where Colorado offsets excess revenues by reducing its tax burden, 12,000 jobs are forecast to be lost.

- **Colorado's economic growth would slow down as a result of the proposal.** Real GDP is also forecast to decrease by approximately \$1.5 billion by 2029. Over the ten-year forecast window, the **cumulative real GDP lost is forecast to exceed \$13.5 billion.** Real GDP is forecast to decrease by \$1.3 billion by 2029 and \$13.5 cumulatively over the ten-year forecast window under the scenario where Colorado offsets excess revenues by reducing its tax burden.
- **Coloradans will take home less income as a result of this program.** Personal income is forecast to **decrease by \$2.4 billion** by 2029 (\$2.2 billion with an offsetting tax reduction).
- **Colorado's paid family and medical leave program would not bring workers back into the labor force.** Colorado's **labor force is expected to decrease by nearly 13,000 participants** by 2029 (more than 10,000 with an offsetting tax reduction).

Testimony electronically submitted, March 13, 2019, 13:28hrs.

SB19-188 - FAMILI Family Medical Leave Insurance Program

Wednesday March 13th, 2019

MIZRAIM CORDERO

VP of Government Affairs

Denver Metro Chamber of Commerce

TESTIMONY

Thank you, Senators Winter and Williams, we commend you for thoughtfully exploring the best means for helping ensure that working people can take paid family and medical leave when a new child arrives, a seriously ill family member needs care or a serious personal injury or illness arises.

As you know, the Denver Metro Chamber of Commerce has been in business in Colorado for 152 years. We represent 3000 members and their 300,000 employees. Key to our success has been our commitment and discipline to develop public policy and economic strategies that serve our diverse membership and support the work of our public and non-profit partners.

Our members care deeply about their employees and teams. We know it's our workforce that makes our companies and our region so successful and economically competitive. So, you can imagine that our companies do their best to provide competitive benefits and flexibility to their employees. As a matter of fact, we are hard-pressed to find a single member that doesn't provide some paid leave for their employees. We know that a number of our employers actually provide far richer benefits for their employees than SB 188 would provide. And with 90 percent of our members having less than 100 employees, their concerns focus on the fact they can't afford to pay for both their current level of benefits in addition to the mandates in SB 188, so benefits for some employees will decrease. Businesses also have concerns about the complications of applying multiple leave programs and are hesitant to sign on to such a costly, one-size-fits all mandate.

We understand that amendments we support, such as a cap on the employer contribution, will be offered later in this hearing and we thank you for your openness and willingness to work with the business stakeholders.

To that end, we have additional concerns about the bill including the lack of alignment with FMLA, the lack of actuarial analysis, the cost of such a program and the scope – which is greater than paid family leave programs in any other state. We would like to continue conversations about these critical concerns from our members.

Washington state reinforces our concerns about the cost and scope of this proposal. Washington passed a less expansive program than what's being proposed in this bill yet it still carried a price tag of \$600 million per year just to pay for the cost of administering

the program (additional state employees, office space, and the data infrastructure). This fact caused Washington State to back off implementing their program. Our employers can't imagine risking the leave their employees deserve to be able to count on.

In the end, our request has been simple — allow employers to opt out if they currently provide paid leave to their employees — particularly considering those that provide a richer benefit. Let's incent employers to do more, rather than mandate a one-size-fits-all approach that punishes those that have already taken steps to provide leave to their employees. Colorado's employees deserve to have confidence that their family medical leave will be there when they need it.

Senator Williams,

In and a number of my friends, had hoped to testify at today's hearing but are prevented from traveling to do so. I am hopeful that you have elected to postpone the hearing so you and your fellow committee members can stay safe, warm, and dry!

In case the hearing proceeds as scheduled I wish to provide a brief synopsis of my planned testimony. We believe section 8-13.3-310 will present an excessive burden on small professional services businesses such as ours that employ fewer than 10 employees. Holding open a position that represents 10% - 20% - 50+ of our billable hours will impose a burden that'll require us to – at a minimum – fire healthy employees that are not producing any revenue in order to preserve the position for the lost revenue that was generated by the person on leave.

Depending on the amount of the lost revenue, and certainly in the event 2 employees elect to take overlapping leaves, we'll be faced with decisions up to and including closing the business and re-incorporating in a state other than Colorado – simply to continue producing income and protecting those other jobs.

Sincerely,

Bill Lee



COLORADO FARM BUREAU

Promoting and protecting the future of agriculture and rural values.

March 13, 2019

Dear members of the Colorado Senate Business, Labor & Technology Committee;

Due to the inclement weather, I am submitting my testimony on SB19-188: Creation of Family and Medical Leave Program in writing.

I write you today on behalf of the farm and ranch families of the Colorado Farm Bureau (CFB). We represent 23,000 members across the state.

CFB is opposed to SB 188. Family farms, ranches, and small agricultural businesses are very concerned about this bill. These businesses are not like other businesses in other industries. These businesses are 98 percent family owned and operated. That means, when something happens in the family, everyone steps up and fills in the gaps. They don't necessarily take time off, they don't necessarily officially go on leave, but instead, they work when they can, the family picks up the slack and the work still gets done. This bill requires both the farmer and his employees to pay into a program that they will never benefit from. This is not a fee. It is a tax for these businesses.

The Ag industry is also unique in the types of labor they employ. Our skilled employees are not replaceable on a temporary basis. Sixteen weeks in the Ag industry may mean you have lost an employee that can deliver baby calves, run a tractor with a 24 row planter on it, breed cattle, drive a semi and then irrigate the corn. What temp agency do you know of that can help my father in law replace that worker for 16 weeks? Those employees can't just be replaced.

This bill also could have implications on the federal H-2A program because it includes temporary and migrant workers. I know first hand the burdens our farmers have to go through in the H-2A and other migrant labor programs to get labor to the field gate. This program will just be another overhead cost, another paperwork document, and another burden on farmers who are working on very low margins already. It often takes between 90-180 days to get a H-2A contract approved or reapproved. This Colorado FAMILI program will increase the technical issues in these contracts, further increasing the amount of time for approval and increasing the potential of the contract not being approved and finalized at all. We also have concerns because it applies to people that have no intention of staying in the US or on the farm for more than the few weeks it takes to bring in the crop. Some, wouldn't even be on my farm for the 16 weeks that they could take off.

So I ask you, please consider Rural Colorado and the unique situation that they represent. Vote no on additional costs for an already struggling industry.

Sincerely,
Chad Vorthmann
Executive Vice President



I am writing to you to ask you to vote "No" on SB 19-188 the FAMLI bill. Because I cannot travel to the Capitol today due to the weather conditions, I ask you to read this into the record as my testimony.

These are my reasons why:

- This is an illegal tax increase. Money taken by government force to fund government programs are TAXES, not "premiums", and in Colorado are subject to voter approval under TABOR. I know the bill specifically calls FAMLI a government-run business, or "enterprise" to evade this law, but a tax is still a tax, no matter what you call it. Colorado voters made their will on tax increases quite clear last November, when they voted No on Prop 110 and Amendment 73.
- This is an uncapped tax. There is no limiting language in the bill for how high the tax can go. Because government programs have no incentive to control costs, and because the benefits are so lavish and widely available, there is no reason to suspect this tax won't get out of control quickly.
- There is no limiting language with regard to the revenue bonds that can be issued, and again, under TABOR I believe that debt issuances must be approved by the voters.
- There is no limiting language with regard to the fines that can be levied by the director of this program.
- This bill gives far too much discretion and power to an unelected bureaucrat – the "director" – without adequate legislative or executive oversight.

This bill is not a proper function of government and is bad for Colorado. Please respect our Constitution and vote "No".

Sincerely,

Richard D. Turnquist

Parker, CO



SB19-188 - FAMLl Family Medical Leave Insurance Program

Wednesday March 13th, 2019

Nicholas Colglazier
Director of the Colorado Competitive Council

TESTIMONY

I'd like to begin by recognizing and thanking Senator Winter for her many years of leadership on this issue and for carefully listening to stakeholders from all perspectives.

C3's members agree that paid time off for family or medical leave benefits both employers and employees. Paid time off contributes to better morale, higher retention and participation, and - in the case of maternity and paternity leave - measurably better outcomes for both moms and babies. For those reasons and others, many of our members already voluntarily offer such benefits.

However, despite our agreement with the aim of Senate Bill 188, we harbor deep reserve over the mechanics of a one-size-fits-all, state-wide mandate on every business - and every employee - in Colorado.

We understand that amendments will be offered today that address some of the concerns of the business community, and for that, we again thank Senators Winter and Williams. We appreciate their effort in working with us toward a solution that might work for both employers and employees.

In particular, capping in statute the premium assessment on employees and employers is a good start. The notion that an unelected bureaucrat can unilaterally set the assessment on every employee in the state was troublesome. Colorado is nearly alone in assessing employers, and every other state with this kind of policy has a cap on premiums.

Also, establishing an administrative enforcement mechanism prior to filing a lawsuit is a key amendment. The vast majority of employers want to comply with the law. At the same time, most Colorado businesses have fewer than 50 employees and thus have no prior experience with federal FMLA rules and procedures. This will be a major learning curve for them, and the Department should focus on compliance assistance rather than gotcha enforcement.

Nevertheless, Senate Bill 188 goes farther than any other state program currently operating in the country. The proposed wage replacement rate is higher, the duration of leave is longer, the employee eligibility is broader, and the allowable reasons for leave are more flexible - so questions of cost, solvency and workability with other states are truly apples to oranges comparisons.

I won't reiterate a laundry list of concerns that have been shared by other employers here today, but we will be taking the version of this bill as it passed this committee back to our members for further reflection and comment and communicate our priorities to the sponsors.



Please be assured that we remain committed to working in good faith with the sponsors to craft policy that is ethical, workable and fiscally sound.

Dear Senate Business, Labor, and Technology Committee Members:

I am writing on behalf of the Glenwood Springs Chamber Resort Association (GSCRA) to express our concern regarding SB19-188.

This is a very complex and extensive bill. As written, this would negatively impact employers, small and large with 1-1,000,000 employees.

Here are a few of our concerns:

- The definition of “family member” is too broad and needs to be clarified.
- The bill does not clearly state that an individual cannot take leave under both FMLA and FAMLI.
- The premium is costly for both private and public sector employers, and there is no cap on the costs for benefits for either an employer or employee.
- The draft allows for up to 16 weeks of leave which is burdensome for employer operations and does not align with current FMLA which allows 12 weeks. Requiring all employers to hold a position for the duration of leave is costly, especially for small employers who may not be able to secure temporary, skilled workers.
- The 90-day eligibility standard is in contrast with federal standards. Under FMLA, eligibility doesn't begin until after the employee has demonstrated some value to the business and at least minimal loyalty (must have been employed for 1 year). Productivity is challenged when a business hires and trains an employee, only to have them on extended leave quickly with a loose eligibility requirement.
- The bill does not allow for adverse employment action by an employer if the employee fails to provide notice to the employer for taking leave or fails to communicate with an employer about their absence. Regardless, the employee remains eligible for leave and continues to have job protection.
- It is unclear whether if FAMLI leave and FMLA are taken concurrently, if an employer can require accrued paid leave to be used before an employee is on unpaid status.
- Some employers currently provide paid leave that meets or exceeds the benefits provided under the FMLA leave, and therefore the bill should include language that recognizes those circumstances.
- The bill potentially allows an individual to take the duration of the leave for different employers, and an individual could stack their leave if they work at multiple jobs.

On behalf of the GSCRA and our membership representing over 400 businesses, I respectfully request you address the concerns outlined above in SB19-188 before considering it.

Sincerely,

Angie Anderson, IOM

President & CEO

Glenwood Springs Chamber Resort Association

PO Box 1238 | 802 Grand Avenue

Glenwood Springs, CO 81602



March 13, 2019

Senate Business, Labor & Technology Committee
State Capitol
200 East Colfax
Denver, Colorado 80203

Madam Chair and Honorable Members of the Committee:

On behalf of the Colorado Hospital Association (CHA) and its 110 hospitals and health systems, employing 75,000 Coloradans across the state, I write today to provide testimony on Senate Bill (SB)19-188.

CHA appreciates the sponsors bringing this important conversation forward. Colorado Hospitals understand the importance of strong leave policies in the event of a serious health condition or to care for a loved one. And, as the father of a six-month old, I can tell you personally the importance of being with your child for those first weeks.

However, while well-intentioned, CHA has concerns with the bill as introduced. For instance, the bill doesn't take into consideration those employers that already have robust leave policies in place to support our employees and their families during difficult times. The Association also believes that the bill as drafted creates a conflict between state and federal regulations that will likely be difficult to manage. Specifically, the ability for the FMLA and the FAMILI programs to overlap would cause a significant impact on employers all over Colorado, making it difficult to maintain routine business initiatives.

Finally, the Association has concerns with the potential cost of the FAMILI program at a time when hospitals are working diligently to address rising cost of health care. CHA has not been directly engaged in negotiations on SB 19-188, so we have only had a few days since introduction to conduct a financial analysis. That said, our preliminary numbers show an estimated cost to Colorado hospitals and their employees of \$43.15 million in 2021. By 2027, the FAMILI program is estimated to cost Colorado hospitals and their employees somewhere between \$59 million and nearly \$240 million annually.

For these reasons, CHA is opposed to SB 19-188 as introduced and would ask the sponsors to continue working with the business community to address its outstanding concerns. The Association remains optimistic that this collaboration will result in more viable program that everyone can support.

Thank you for your work on this vital issue and your consideration of this written testimony.

Best,

A handwritten signature in black ink, appearing to read 'J. Ewing', is written over a white background.

Joshua Ewing
Associate Vice President, Legislative Affairs

To Whom It May Concern:

I am a small business owner writing this letter in response to SB19-188; the Family Medical Leave Insurance Program (FAMLI). This bill being run through the state senate at an alarming speed and is a huge concern to many small businesses. The speed and the fact that this bill is being heard on potentially one of the worst weather days in the state clearly states this bill is not sound for Colorado. Small business owners, such as myself, are extremely concerned with the bill's contents and the subsequent ramifications. To merely imply that small business is opposed to family and medical paid leave is not only false, but outright deceptive to Coloradans. Myself, and many of the small business owners I know, not only care about their employees but do everything they can to accommodate their employee's individual circumstances, such as working part-time, working remotely and working flex hours to name just a few. Without our employees, we would be not be able to provide the services and products to our customers that we are so proud to deliver.

The accommodations so many of us offer can eliminate a one-size-fits-all approach that this bill is mandating. Many small businesses operate on very small margins. Forcing small businesses into additional financial obligations may have unforeseen circumstances such as needing to reduce their workforce, in turn, possibly eliminating jobs that certain employees may desperately need and are happy to fill. With employee/employer collaboration, many of the monumental challenges can be overcome without mandates from any state government. Why not follow the federal standards that are already in place? Why make business comply with yet one more regulatory requirement that is duplicative and more demanding than the federal mandate?

Other items in the bill that are alarming are 1) the generous provisions of this bill that have never been tried, much less proven in any other area; 2) underestimating demand for this program and overestimating the employee/employer contributions; 3) the generous wage replacement rate which some states may have passed but have not yet been implemented to fully understand the ramifications of this egregious bill; 4) the duration of leave putting business owner in precarious situations where they cannot go without employees for that length of time but find themselves bound by a state mandate that is a detriment, if not the death of their business; 5) large contribution rates which employees may not be willing or able; 6) potential unlimited business contributions; 7) a planned premium discount for state and government employees which forces us, private employers, to subsidize yet another government program that will inevitably fail as most do.

But the biggest issue with the bill is that employees are eligible for this "benefit" after only 90-days on the job. The possibility that many employees will job-hop from one business to the next and receive this "benefit" multiple times for a variety of reasons. There is no doubt that an unimaginable number of job creators will be taken endless advantage of by needing to hire employees to back-fill positions where employees are already on leave only to have the new hires, after 90-days, take their leave time too. This is an endless, lawless cycle that will put many of those job creators out of business entirely. Then who pays for this program? When does our government relish in a good economy and not regulate and tax gainful employers out of business?

I have worked hard my entire life. I own a small business that employs five people. These employees are like family and they depend on me to maintain a healthy business to keep them financially secure. My family supported me emotionally but never had the means financially. I have worked endlessly for everything that I have. I have paid for all my own education, taken jobs I did not necessarily want to take, moved to places I did not want to live, and survived on a lot of Ramen. I am blessed and proud to

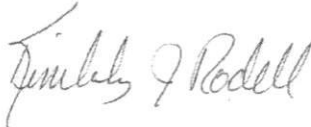
have succeeded in life, but it has been by virtue and hard-work, not handouts. Many of my past employers could not financially offer benefits like paid family leave, but because I have done well, I am proud to be able offer these types of benefits to my employees, not by force but by will. I have paid out on this and other benefits and understand the impact it has on the business, not only the bottom dollar, but also on those who must pick up additional duties and responsibilities to cover for the absent employee. However, we all have jobs and are proud of what we contribute to Colorado's thriving economy.

I know my employees appreciate this benefit, along with others, but if I could not afford these benefits, as many businesses operate on very small profit margins, my employees would much rather have a job than unlimited unpaid family leave, also known as unemployment.

Threatening fines and civil action against business owners that do not participate will not alleviate the financial burdens these companies may face. Employees must also take some responsibility to discuss their issues with their employers to come to a common ground. Forcing business to comply with such outrageously, abhorrent financial burdens is deplorable, and will only lead to higher unemployment and a weak economy.

Please consider input for the bill prior to rushing it through the Colorado legislature. This bill needs to be vetted and have some stakeholder input. Consider what those of us who employ many others have to say from experience. We are the people, we are the job creators, we are the driving force behind Colorado's economy and we, along with our employment force, cannot be ruined by a few who sit in a building and make decisions based on what you believe is best for rest of us.

Sincerely,

A handwritten signature in cursive script that reads "Kimberly Rodell".

Kimberly Rodell
Small Business Owner



ARAPAHOE COUNTY
COLORADO'S FIRST

Board of County Commissioners

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March 13, 2019

Dear Senator Williams, Senator Winter, and Honorable Committee Members,

The Arapahoe County Board of County Commissioners are unanimous in our opposition to SB19-188, the FAMLI Family Medical Leave Insurance Program.

While the Commissioners support the concept of paid family leave, SB19-188 fails to recognize employers such as Arapahoe County for existing programs, leaves significant questions about the State's ability to implement such an expansive program, and address fraud. Further, the County is concerned with the impacts to our employee's paychecks, our 22,196 employers within the County, and the County's budget.

KATHLEEN CONTI
District 1
NANCY N. SHARPE
District 2
JEFF BAKER
District 3
NANCY JACKSON
District 4
BILL L. HOLEN
District 5

Existing Programs

- Arapahoe County already provides generous vacation and sick paid time off for employee use, which can be applied for caring of spouses, domestic partners, children and parents.
- Employees can also take advantage of an emergency leave bank (created with peer leave contributions) if needed.
- The proposed \$1,000 weekly pay is less than the County's current short-term disability benefit (up to \$2,500 weekly) and payments are made directly to the employee within 2 weeks of claim.
- Further, the County's long-term disability coverage is granted to all employees and begins paying after 60 days and covers up to \$5,000/month.

The County respectfully requests the Sponsors and Committee members consider amendments that allow entities to opt out if they provide similar or better programs or create an opt-in program.

Financial Impacts

- The proposed cost-sharing represents an unfunded mandate.
- As introduced, Arapahoe County would incur \$305,000 in costs, while passing along another \$305,000 to employees, reducing their take-home pay. Our employees would see a \$364/year annual cost – which is a significant amount for many of our 2,100 employees.
- For higher-paid employees, there is a disproportionate affect as they would pay a higher than average premium but not receive a sustainable benefit while out on leave.
- For critical public safety and human service caseworker positions, the county would need to over-hire full time employees for coverage or reduce service levels.
- The administrative burdens placed on employers would require the County to hire an additional FTE to monitor and implement the program.

The County respectfully requests the Sponsors and Committee members consider amendments that allow entities to opt out if they provide similar or better programs or create an opt-in program.

Implementation Concerns

- The County is concerned with the lack of alignment with federal Family Medical Leave Act (FMLA) definitions and timings, which can result in stacking coverages and administrative burdens.

MISSION

Enhancing your quality of life through exceptional delivery of services and efficient use of public funds.

- The County has numerous questions about the State's ability to implement this policy adequately by July 1, 2020, from establishing premiums and claims processes, to technology implementation and automation.

The County respectfully requests the sponsors and committee members consider amendments that:

- Ensure alignment with FMLA definitions and timings.
- Establish actuarial-based premiums or implement a premium cap and create a public review process for increases.
- Ensure a robust rule-making process and stakeholder oversight committee to guide creation of the new division.
- Defer final implementation until the State successfully demonstrates implementation of technology and automation systems.

Fraud Concerns

- The inability to manage or enforce fraudulent claims places an undue burden on employers.
- The definition of family member is too broad and difficult to interpret.

The County respectfully requests the sponsors and committee members consider amendments that:

- Narrows the definition of "significant personal bond" for applicable events. Please consider a definition that is similar to "Family is anyone related by or through blood or by or through legal definitions."
- Clarify the claim process, including denials and medical certifications; require medical certification for after-effects of violence situations so tie it back to serious health condition – not just a protection order or police report.
- Place the burden of eligible event notification on the employee instead of employers and implement some accountability consequences.
- Include audit and reporting requirements for the State.

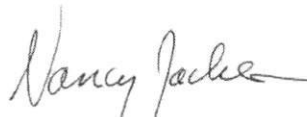
Thank you for your consideration of our concerns and proposed amendments.

Sincerely,

ARAPAHOE COUNTY BOARD OF COMMISSIONERS



Commissioner Jeff Baker, Chair
District 3



Commissioner Nancy Jackson, Chair Pro Tem
District 4



Commissioner Kathleen Conti
District 1



Commissioner Nancy Sharpe
District 2



Commissioner Bill Holen
District 5



Sabrina Pacha <sabrinapacha.aide@gmail.com>

Fwd: SB 19-188 - CML opposition and concern with inability to offer testimony

1 message

Faith Winter <faithwinter@gmail.com>

Wed, Mar 13, 2019 at 10:35 AM

To: sabrinapachaaide@gmail.com

----- Forwarded message -----

From: **Kevin Bommer** <kbommer@cml.org>

Date: Wed, Mar 13, 2019, 10:15 AM

Subject: SB 19-188 - CML opposition and concern with inability to offer testimony

To: Angela Williams <angela.williams.senate@state.co.us>, Jessie Danielson <jessie.danielson.senate@state.co.us>, Kevin Priola <kpriola@gmail.com>, Tammy.Story.Senate@state.co.us <Tammy.Story.Senate@state.co.us>, Jack Tate <jack.tate.senate@state.co.us>

Cc: Faith Winter <faithwinter@gmail.com>

Members of the Senate Business, Labor & Technology Committee:

I am writing to you to express the opposition of the Colorado Municipal League to SB 19-188 and the objection to the inability to offer testimony to the committee about the numerous issues CML has with the bill. While I can attest to and commend the sponsors for their transparency and willingness to discuss the legislation prior to its introduction, it is unfortunate witnesses (for and against) will not have the opportunity to place testimony into the record and respond to questions from committee members to further clarify the numerous points of opposition to the legislation as introduced.

I am personally unable to attend because I am at the National League of Cities Congressional Cities Conference in Washington, DC and would not have made it home, regardless of the blizzard currently descending on Colorado. However, one of my colleagues was prepared to testify in my absence. But I cannot in good conscience require anyone from my team to testify, and I have thus sent my lobbying team home for the day to be safe with their families.

Respectfully, CML is opposed to the legislation without a number of changes too detailed to list here. The sponsors and proponents are aware of all or most of them, again thanks to their transparency. Should the legislation advance, though, the League will address our concerns at

other points along the bill's path. I regret that I cannot testify before the committee in person, and respectfully request the committee table the bill to a later date when the committee can hear from all supporters and proponents wishing to testify.

Best regards and best wishes for everyone's safety,

Kevin



Kevin Bommer

Deputy Director

Colorado Municipal League
1144 Sherman Street, Denver, CO 80203

(303) 831-6411 · (866) 578-0936

kbommer@cml.org · www.cml.org

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2 attachments



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image001.jpg

Jim Noon, Owner
Centennial Container

My problem with this one is:

One size fits all government mandate. It will not stay at \$200 per year. We will be lucky if it is not 10 times that. If it becomes law I plan to take the max myself. So do all my employees since it is free money now.

One more thing I have to keep track of, collect from employees and remit and be reasonable for that the business has nothing to gain.

As an enterprise we have no control over how it is run or the money spent. No elected person has control over it.

As a small company it will be hard to have every employee trying to take off the max. I will have to hire 2 to 3 more people just to cover the absent people. That may put me under. Especially the recycle part.

Mike Donahue, Owner
Spectrum Properties

SB 19-188

Chairman Williams, Committee Members, my name is Mike Donahue. I am a small business owner from Lakewood. Thank you for hearing my testimony.

I am here in opposition to SB 19-188.

I am the owner of a Real Estate Brokerage firm with several Broker Associates. I am also the owner of a Commercial Construction Company.

With my limited time I want to testify how this bill could negatively affect my construction company.

If we have a project where we assign two electricians and we have one of the electricians no-call / no-show for several days and we cannot contact the electrician, we would believe that employee has moved on to another company and would then hire a replacement electrician.

We have had this situation occur in the past. Another company might offer a construction employee an extra dollar or two wage rate and the employee would leave. When we had a branch in Las Vegas, there were several times an employee would hit a jackpot over the weekend and we would not see them for, maybe, several days, maybe never again. If we hired a replacement and the former employee did show up days later and we had a position we needed to fill, we might hire him back.

With SB 188 we could have a dilemma:

1) We have hired a replacement electrician (electrician #2)

- 2) Electrician #1 shows up two weeks after we hire electrician #2 and says he will be filing an application for FML benefits and will be out another 4 to 10 weeks and wants to return to work when ready.
- 3) What do we do with electrician #2? Do we fire electrician #2, who is competent and has been a good hire, when electrician #1 returns?
- 4) Under SB 188 it is clear even if this electrician #1 failed to notify the employer the individual is still covered. If we tell electrician #1 he has been replaced we risk a lawsuit.
- 5) Under SB 188 we would need to bring electrician #1 back when he is ready and fire electrician #2.
- 6) After firing electrician #2, SHE files a lawsuit under HB 13-1136 for discrimination. A bill passed the last time the Democrats controlled both houses and the Governorship.
- 7) A week after we are sued for discrimination by the lady electrician, electrician #1 lets us know he has taken another job with an employer he applied for a position with while he was on Paid Family Leave.
- 8) As the employer, we now must find another electrician and prepare to defend a lawsuit and we have no cause of action against electrician #1 for failure of notice to the employer per SB 188, lack of "Good Faith" and completely disrupting our business.

A large company may have been able to make room for both electricians but small companies many times cannot.

There is little doubt this bill will pass and very likely the Governor will sign. The least that the bill sponsors can do is mirror the guidelines of the Federal FMLA and Amend this bill to apply only to companies with more than 50 employees.

I ask you for a no vote on this bill but if you cannot vote no, please amend SB 19-188 to over 50 employees to not place this terrible burden on small business in this state.

Thank you,

Mike Donahue

Anthony F. Gagliardi
NFIB - State Director
303-831-6099



To:
Cc:
Bcc:
Subject: Fw: Independent Women's Voice Testimony Against SB 188

From: Hadley Heath Manning <hadley@iwv.org>
To: jeanette.chapman@state.co.us
Cc: jack.tate.senate@state.co.us
Date: 03/13/2019 04:39 PM
Subject: Independent Women's Voice Testimony Against SB 188

Hello,

Due to today's weather I was unable to travel to the Business, Labor and Technology hearing on SB 188 to testify. I'm including my written testimony below.

Thank you,
Hadley Heath Manning

Thank you. Today I'm speaking on behalf of Independent Women's Voice, a nonprofit organization dedicated to developing and promoting policies that aren't just well-intended but actually enhance people's freedoms, choices and opportunities. IWV and our sister organization Independent Women's Forum have thoughtfully advanced several policy solutions geared toward expanding access to paid family leave and I'm happy to share about a couple of those ideas here.

I've also taken two family leaves myself in the last three years, so I understand the importance of this issue on a very personal level!

Independent Women's Voice strongly opposes S.B. 188, the FAMILI Act, which would create a state-run entitlement or insurance program. The ever-increasing diversity of our workplaces, our workforce, and our families should caution against a one-size-fits-all solution for paid family leave.

Women, in particular, should be concerned about the FAMILI Act: In other countries with generous family leave pay-replacement programs, we see larger gender wage gaps and larger gaps in the number of women working in managerial positions.

Furthermore a state-run entitlement program for paid leave would displace the myriad private arrangements that so many Colorado women have negotiated for themselves with their employers. Employers will not be as willing to offer paid leave or other flexible work arrangements if the state provides a new benefit for family and medical leave (and collects taxes from businesses in order to do so).

It's understandable that lawmakers want to help families – particularly low-income families – who are least likely to have access to paid time off from work. However, evidence from similar programs suggests that while low-income workers bear the tax burden associated with paid-leave programs, these programs ultimately create a wealth transfer to high-income families, who are more likely to enjoy the leave benefits and to take longer

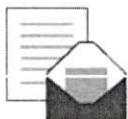
leaves.

I strongly urge lawmakers on this committee to consider the best ways to expand access to paid family leave for those Coloradans who need it. But we should take care not to do harm to economic opportunities or existing arrangements, as the FAMLI Act would do.

We should seek to encourage, not discourage, private-sector solutions, and we should offer all workers the greatest amount of freedom and flexibility when it comes to family leave. Please reject this misguided proposal that would hurt Colorado's workers and families. Thank you.

Hadley Heath Manning
Director of Policy
Independent Women's
Voice
202-631-0180
hadley@iwvoice.org

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To:
Cc:
Bcc:
Subject: Fw: SB19-188 Concerns - Already Expressed via Email to Sen Danielson and Rep Titione

From: **Karen Brown** <karen.peffer.brown@gmail.com>

Date: Wed, Mar 13, 2019 at 2:30 PM

Subject: Fwd: SB19-188 Concerns - Already Expressed via Email to Sen Danielson and Rep Titione

To: <jack.tate.senate@state.co.us>

I do not support the bill as it is written or with the proposed amendments. I would ask the bill be further amended to:

1. Define immediate family as children and parents - older adults - I would actually like the words in there -- it says child people (and also not include all blood-related family members like aunts and uncles and nieces and nephews).
2. Must have worked one year before qualifying
3. Must be a Colorado resident and citizen of US
4. Allow that if a company has a program that individual can choose between company program and this program (not t
5. Only allowed to use it every three years not annually...
6. Need to use "some" of existing vacation and/or other time off - draw down at least 50% before accessing FAMLi

While this bill appears to focus on kids - I think it will be used ALOT for caregiving for older people in 5 or 10 or 15 years projections are way underestimated. by2030 - there will be more than 1.2 million people over 65. It will be much more c start slow - perhaps as a pilot so we can actually assess the costs and how to structure it to help families AND allow bus

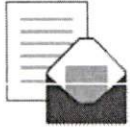
I am speaking on behalf of myself only. I have served on the Strategic Action Planning Group on Aging on the Executive Chair and Vice Chair and currently serve on the group as a Commission member. I have also been a caregiver for older years. While I support the concept, the bill as it currently stands would put small businesses out of business.

My family's business has had at most eight employees -- some with children and some with older people -- all who could would allow all of them to take up to 12 weeks off and in the family business annually - fully disrupting the business - and business. There should be more modifications for small businesses. The bulk of the employees could take time and hu people don't get any job.

As well, there should be adjustments in the event a large corporation has an existing leave plan or job sharing mechanism they are being penalized and asked to give twice.

I personally support much more incentives to companies to offer job sharing and flexibility to the job.

Karen M. Brown
6464 Umber Circle
Arvada, CO 80007



To:
Cc:
Bcc:
Subject: Fw: Today's hearing on Senate Bill SB19-188 FAMIL Family Medical Leave Insurance Program

From: Bill Lee
Sent: Wednesday, March 13, 2019 1:04 PM
To: 'angela.williams.senate@state.co.us' <angela.williams.senate@state.co.us>
Subject: Today's hearing on Senate Bill SB19-188 FAMIL Family Medical Leave Insurance Program
Importance: High

Senator Williams,

In and a number of my friends, had hoped to testify at today's hearing but are prevented from traveling to do so. I am hopeful that you have elected to postpone the hearing so you and your fellow committee members can stay safe, warm, and dry!

In case the hearing proceeds as scheduled I wish to provide a brief synopsis of my planned testimony. We believe section 8-13.3-310 will present an excessive burden on small professional services businesses such as ours that employ fewer than 10 employees. Holding open a position that represents 10% - 20% - 50+ of our billable hours will impose a burden that'll require us to – at a minimum – fire healthy employees that are not producing any revenue in order to preserve the position for the lost revenue that was generated by the person on leave.

Depending on the amount of the lost revenue, and certainly in the event 2 employees elect to take overlapping leaves, we'll be faced with decisions up to and including closing the business and re-incorporating in a state other than Colorado – simply to continue producing income and protecting those other jobs.

=====

I have BCC'd each of them here to preserve their choice of also testifying via email in lieu of their presence in the hearing room today.

=====

Kind regards,

Bill

~

Bill Lee

Vice President | Phone: +1 303.773.2406 | Fax: +1 303.721.9796 | E-mail: cwlee@klagroup.com|www.klagroup.com

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Dear Representative/Senator XXXXX,

I'm writing to you today as a concerned citizen.

When I saw what was proposed in Senate Bill 19-181, I became gravely concerned about what it could mean for the thousands of families that rely on the industry for good paying jobs. The proposed changes will not just impact those who are directly employed by the industry, but will impact everyone that supports the industry such as hotel workers, restaurant owners and workers, and the teachers who are funded with tax revenue from oil and gas drilling. We are community members as well, we do not want the places we live to be unsafe or spoiled. Colorado already has the most stringent regulations concerning oil and gas I'm concerned about the lack of definitive language around what constitutes "public health" concerns and that the state government will essentially cede all regulatory control to the local level by stating that whichever regulation allows "greater protection" to stand. I'm disappointed that the sponsors of this bill worked with the organization behind ballot initiative 112 to craft this legislation. Voters in November soundly rejected that measure. Those were also the voters that put you in office. Please consider the will of the voters and vote no on Senate Bill 19-181.

Remember, we are all in this together and can't keep harmful legislation like this from hurting our industry and state unless we make our voices heard.

Kind regards,
Jim & Pat Shoemaker



To:
Cc:
Bcc:
Subject: Fw: Family Medical Leave

From: **Barb** <barbara.holmes1@comcast.net>

Date: Wed, Mar 13, 2019 at 4:19 PM

Subject: Family Medical Leave

To: angela.williams.senate@state.co.us <angela.williams.senate@state.co.us>, kpriola@gmail.com <kpriola@gmail.com>, jack.tate.senate@state.co.us <jack.tate.senate@state.co.us>, Jessie.danielson.senate@state.co.us <Jessie.danielson.senate@state.co.us>, tammy.story.senate@state.co.us <tammy.story.senate@state.co.us>

Dear service members of Colorado,

I understand there will be a hearing/reading of a bill to fund a paid family medical leave program. I further understand that each employee and employer will pay a certain percent of their wages to fund this program.

- How do you qualify for the paid leave?
- What happens if you pay into the program, but never use it? Do you get your money back?
- Can you receive more in paid leave than you contributed to the program?
- Can you opt out of the insurance program?
- Some employers already offer paid family medical leave. Will they and their employees be required to contribute to this fund?
- Since this is an fee/deduction from the employee's paycheck, we as citizens of the State of Colorado, should be able to vote on this measure. It is like a payroll tax, which should be approved by the voters.

Do the citizens of Colorado have a voice in the passage or defeat of this bill?

I do not support this type of bill and am against being forced to pay a premium into this fund. The citizens of Colorado should have a voice and vote on such a measure.

Barbara Holmes

Sent from Mail for Windows 10

2019 FAMLI Testimony by Colorado Chamber of Commerce

Introduction: Loren Furman, Vice President State & Federal Gov't Affairs, CO Chamber of Commerce speaking in opposition to SB 188.

First, let me thank the sponsors for the time that they took with representatives of the Colorado Chamber to discuss this issue.

We spent several hours over three weeks trying to work through the concerns that our members have shared with us on this bill – many of which you have heard already from other witnesses.

I'll be clear that our members absolutely support giving their workers family and medical leave and approached this issue with a completely open mind.

In fact, we began work on this issue with our partner business organizations and a large coalition of businesses, local chambers and trade associations last summer to get consensus on a program that could work for employers and employees.

Unfortunately many of the issues we raised were not agreed upon by the proponents, especially the most significant ones such as:

- alignment with the federal family medical leave law;
- expansion of the benefits beyond the federal law;
- the lack of alignment with eligibility requirements currently required in federal law;
- and the contribution requirement for employers which has not been in prior versions of this legislation.

In fact, some of the same concerns that employers have raised about the eligibility requirements have also been raised in the fiscal note which was released late last night.

Other states that have adopted a program such as this made adjustments for businesses and workers. It is our hope that the sponsors and proponents will reconsider the recommendations we have made to ensure that this program operates smoothly and fairly for all workers and employers.

Thank you,
Loren Furman

Colorado Ski Country Senate Business Committee FMLI Testimony

Thank you, Madam Chair and members of the Senate Business Affairs, Labor and Technology Committee. I'm Chris Linsmayer, I am the Public Affairs Director with Colorado Ski Country, we represent 23 ski areas across the state. Unfortunately, I am not able to be in the committee today because of the storm and I apologize for my absence, but I wanted to share feedback from the ski industry. We are opposed to the current scope and reach of the bill. Our members believe this is a burdensome, one size fits all mandate that doesn't work for our seasonal business. We generally agree with many of the concerns that have been raised with the sponsors and believe they would improve the bill, but I want to highlight four specific things as well. First, the definition of family member needs to be tightened. Second, is the duration of leave and benefits. The maximum amount of leave in any 52-week period should be 12 weeks. Third, we have serious concerns about employers paying 50 percent of the premiums and the lack of a cap on premiums in future years. Finally, we believe language that clarifies an employee must work for the employer from which it is going to take leave is needed. Thank you.



STATEMENT OF THE AMERICAN COUNCIL OF LIFE INSURERS

Before The
Senate Business, Labor and Technology Committee

March 13, 2019

Senate Bill 188 – An Act Concerning the Creation of a Family and Medical Leave Insurance Program

Madam Chairperson Williams and members of the Senate Business, Labor and Technology Committee, the American Council of Life Insurers (ACLI) appreciates the opportunity to offer the following statement on Senate Bill 188, which would create a paid family medical leave (PFML) program to be administered by the division of family and medical leave insurance (division) in the department of labor and employment. ACLI members are the leading writers of life insurance, annuities, disability income insurance, long-term care insurance and supplemental benefit insurance here in Colorado and across the country.

The PFML program would allow an eligible employee to take leave not only to care for a family member, but also for their own personal medical reasons. However, many employers already provide their employees with paid leave benefits for their own personal medical reasons through disability income policies underwritten by life insurers or through self-insured plans. Life insurers offering disability income insurance are well-equipped with the organizational structure, professional staff and expertise to administer employee benefit programs. Of the handful of states that currently require employers to provide disability and/or family medical leave benefits to their employees, almost all permit and encourage private insurer involvement in providing and administering those benefits. Further, as the fiscal notes associated with these bills indicate, there can be significant administrative and personnel costs to the state associated with establishing PFML programs. Accordingly, should the Colorado Legislature establish a PFML program, ACLI respectfully recommends that the legislation recognize and encourage private sector and self-insured employer plans that meet or exceed those benefits provided by the program. This can be accomplished by adding a new section to read as follows:

An employer may satisfy the requirements of this chapter through a private employer plan consisting of employer-provided benefits, insurance or a combination of both, if the employer plan meets or exceeds the rights, protections and benefits provided to all eligible employees under this chapter. Employers must file their plans with the Director of the Division, who shall approve the employer plan if it meets or exceed program requirements. Employees covered under an approved employer plan shall be exempt from program contributions but may be required to contribute to employer plan premiums subject to applicable limitations or restrictions.

We appreciate the opportunity to provide our comments on Senate Bill 188. For your convenience, we include below a more detailed issue paper on state PFML programs.

Respectfully submitted,

A handwritten signature in black ink that reads "James D. Hall". The signature is written in a cursive style with a large, stylized initial "J".

James D. Hall
Regional Vice President, State Relations
jameshall@acfi.com
913-599-2320

Paid Family (and Medical) Leave Laws Private Insurer Perspective (Involvement)

Overview. In 2017, there had been a dramatic increase in the filing of proposed federal and state legislation that creates rights for employees to have paid leave to (1) bond with new children, (2) care for family members with serious health conditions, (3) attend to a qualifying exigency created by a family member being called to active military duty and/or (4) for the employee's own medical condition. Some of the proposed legislation permits self-funded and/or insured solutions while other legislation contemplates the creation of new governmental departments that will have the exclusive responsibility for handling premium related to these leaves and administration of the leaves.

Many private insurers are well-equipped to provide these important employee benefits as they have the capital, organizational structure, and professional staff with expertise to handle benefits including paid family and medical leave. Insurers have a deep reservoir of customer service, claims and administrative staff who are skilled at administering these benefits. Many insurers currently offer "absence management" services for employers that include tracking and administration of the Family and Medical Leave Act (FMLA) and hundreds of state and local unpaid leave laws. Insurers also provide insured solutions to employers who offer both short- and long-term disability benefits to their employees and also assist employers with self-insured benefits on an administrative services only (ASO) basis. There are a number of states that currently require employers to provide statutory disability and/or family leave benefits to their employees, and almost all of these states permit and encourage private insurer involvement in providing these benefits. Virtually all states require workers' compensation insurance and, again, these benefits are provided through private insurers. For example, New York State (NY) has long had a statutory disability program that provides employees with 26 weeks of paid benefits for absences due to the employee's nonwork-related disability (NY DBL). Under the NY DBL law, employers may use private insurers to comply with these legal requirements. On January 1, 2018, NY also becomes one of 4 states (the others are CA, NJ and RI) now offering paid family leave benefits so that employees may take paid leave to bond with a new child, to care for a family member with a serious health condition or for a qualifying military exigency caused by a covered family member being called to military duty (PFML).² These leaves, in essence, mirror rights under the FMLA but enhance those rights by providing paid benefits.

¹ The American Council of Life Insurers (ACLI) advocates on behalf of approximately 290 member companies dedicated to providing products and services that contribute to consumers' financial and retirement security. ACLI members represent 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States. 75 million families depend on our members' life insurance, annuities, retirement plans, long-term care insurance, disability income insurance and reinsurance products. Taking into account additional products including dental, vision, and other supplemental benefits, ACLI member companies provide financial protection to 90 million American families. Learn more at www.acli.com.

² Washington State and the District of Columbia also have legislation and leaves under those laws begin on January 1, 2020. San Francisco has a paid parental leave law pursuant to which employers are required to "top up" the CA PFL benefits to full pay for employees who take leave to bond with a new child.

NY has created a legislative scheme that permits private insurers to also provide PFML benefits and/or allows employers to self-insure these benefits. Many insurers and third-party administrators are investing substantial sums in creating the systems and employing professionals with the skills to administer these claims.

As discussed below, it makes sense from a number of policy perspectives for other jurisdictions that are contemplating PFML legislation to also draft the legislation in a way that permits private insurer involvement. Having insurers provide and administer these benefits makes sense for the following three key reasons:

- It will reduce the financial and administrative burden on government agencies.
- Insurers already have the expertise, systems, and staff in providing and administering like benefits.
- It provides employers with a way to manage a number of leave and benefits in one consolidated platform thereby increasing ease of use and compliance.

We believe that the following are key features that should be included in Paid Family and Medical Leave legislation to effectively accomplish the goal of permitting private insurer involvement:

1. **Flexibility of Design.** Set minimum standards but allow insurers and employers the flexibility to design and offer coverage that provides equal or richer benefits than any designated state benefits. The law should provide flexibility of private plans in the following ways;
 - No obligation to contribute to state fund
 - State law may outline minimum benefit levels, leaving private plan flexibility above minimum benefit levels
 - Benefits should be paid according to employer and carrier private contract
 - Family Medical Leave (FML) should run concurrently with any applicable state mandated coverage
2. **Flexibility in rates.** To maintain a healthy and competitive market, insurers should be allowed to establish appropriate rates based on market forces as is currently the case with other employee benefit coverages. To protect employees, the legislation could require that the benefit be funded equally by both the employer and employee and/or could set maximum rates that can be charged to employees. If insurers and employers have the ability to negotiate rates, it will be more likely that fair market prices will be established that accurately reflect claim incidence.
3. **Leaves run concurrently with FMLA.** Insurers recommend that the legislation be clear that the paid family/medical leave run concurrently with unpaid FMLA leave so that employees cannot "stack" their leaves and end up with double or more the amount of leave contemplated by the statutes. For example, if the paid family/medical leave permits 12 weeks of leave. Employees should be required to have those paid family/medical leave benefits run concurrently with the 12 weeks of unpaid leave under the FMLA to the extent the leave qualifies under both statutes.

4. **Length of family leave vs. medical leave.** Some states have proposed legislation that is comprehensive and addresses both the need for leave for an employee's own health condition as well as leave to bond with a new child and/or care for a family member with a serious health condition. Insurers recommend that statutory disability leave for an employee's own health condition provide for 26 weeks of leave, which is the standard period of privately insured short term disability policies, and that family leave be limited to a shorter period of time up to the 12 weeks of FMLA leave. States who have adopted comprehensive schemes have generally followed this approach. Further, they have generally had a combined entitlement of 26 weeks on the total amount of either family or medical leave that can be taken in one year.

5. **Alternative approach: Tax credits.** Some of the legislation that has been proposed takes the approach of offering tax benefits to employers who adopt paid family and medical leave that meets certain minimum criteria. The benefit of this legislative approach is that it provides the greatest flexibility to employers and is the simplest legislation to draft and administer. Insurers recommend that legislators consider this efficient and more flexible approach.

Contact:

Steven Clayburn, FSA, MAAA
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American Council of Life Insurers
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