

MEMORANDUM

TO: Grand Lake Board of Trustees

FROM: Dan Krob, Town Attorney

DATE: 5.31.22

RE: Proposition 118 - Paid Family and Medical Leave Insurance Program (FAMLI)

The State of Colorado's Paid Family and Medical Leave Insurance Act ("FAMLI Act"), C.R.S. § 8-13.3-501 et seq., provides Colorado workers state-administered paid time off to address family and medical needs, funded through payroll premiums paid by employers and employees. The FAMLI Act permits a local government to decline participation in the program, and Regulation 2.6 of 7 C.C.R. 1107-2, adopted by the Colorado Department of Labor and Employment, Division of FAMLI, states that a local government may decline participation in the FAMLI program by an affirmative vote of the local government's governing body to decline participation following the local government's procedures for formal votes.

Regulation 2.6 of 7 C.C.R. 1107-2 states that: the declination decision is not permanent; local governments that have previously declined participation in the FAMLI program may subsequently elect FAMLI program coverage at the beginning of the annual cycle relevant to the local government's budgeting cycle; and the local government's declination decision must be renewed every eight years or the local government will become a covered employer under the FAMLI Act.

The FAMLI Act allows any employee of a local government that has declined participation in the FAMLI program to elect coverage individually under the FAMLI program. Pursuant to Regulation 2.6 of 7 C.C.R. 1107-2 the process for declining participation is as follows:

1. A resolution, following a public hearing, declining participation must be adopted by December 31, 2022.
2. Town Board of Trustees must provide opportunity to give testimony prior to the vote.
3. Town's employees must be previously notified in writing of the vote process on the Resolution and have had an opportunity to submit comments through a public process to the Town Board of Trustees.
4. Written notice of Town Board of Trustees' decision to decline participation must be provided to the CDLE's FAMLI Division.
5. A local government's decision declining FAMLI Act participation will not take effect for 180 days to allow employees to individually opt into benefits coverage pursuant to C.R.S. 8-13.3-514.
6. Within 30 days following a local government declination vote, the local government must provide its local government employees with a written individual notice of the local government's declination vote and the impact toward FAMLI, or other paid family and leave insurance coverage. The written notice, must at a minimum, explain the differences

between benefits offered by the FAMLII program and any private plan offered by the local government. The notice must also state which employees, if any, are eligible for job protection under the federal Family and Medical Leave Act (FMLA) benefits or other local provisions were applicable.

7. Written notices must contain information regarding the right of local government employees to voluntarily opt into FAMLII benefits pursuant to 8-13.3-514 C.R.S., and the contact information for the Division.
8. Local government employers must display a notice containing the information in a conspicuous and accessible place in each establishment where employees are employed. The Division will create and make available to local government employers posters and notices.
9. It is the responsibility of the local government employers to request printed materials from the Division.
10. As noted, the declination period is not permanent and participation must be reconsidered, and the Division notified at a minimum of every 8 years. The governing body may reconsider and elect coverage annually pursuant to 7 CCR 1107-2, Regulation 2.5.

Staff should take the following steps:

1. Determine whether declining to participate in the FAMLII program is a good idea by explaining the differences between benefits offered by the FAMLII program and benefits the Town already provides.
2. Assess the costs of FAMLII Act coverage to the Town given that FAMLII offers up to 12 weeks of paid family and medical leave through a mandatory payroll tax, paid by employers and employees in a 50/50 split. Premiums are paid by the employer, and employer can choose to take up to 50% of the premium out of the employee's check or pay the entire premium on behalf of the employee. From January 1, 2021 to December 31, 2023 the total payroll tax amount is 0.9% (0.45% employer and 0.45% employee). After January 1, 2025, the premium amount will be adjusted upward based on previous years claims and administering the program as much as 1.2%.
3. Schedule the public hearing on the resolution declining participation by December 31, 2022.
4. Register with the FAMLII system (Fall 2022). The system will request the agency to upload a letter with the date and decision of the letter.
5. Notify FAMLII of the Town's decision following a vote by January 1, 2023, to avoid paying premiums. If an employer decides to fully participate, no action is needed. If the state does not receive a notice by January 1, 2023, the FAMLII division will assume the entity intends to participate and will expect premium payments due on April 1, 2023. Benefits do not start until January 2024.

Please review this and, as always, feel free to contact me with any questions at 970-231-8026.