

CML LEGAL CORNER



What municipalities need to know about FAMLI

By Megan Decker, CML law clerk

In November 2020, Colorado voters approved Proposition 118, which paved the way for a state-run Paid Family Medical Leave Insurance (FAMLI) program. Although the program is not effective until January 2023, now is the time to start making decisions regarding your municipality and FAMLI participation and compliance. Local decisions can impact budgets, employee compensation, and human resources issues.

Overview of FAMLI

FAMLI provides workers 12 weeks of paid leave to take care of themselves or a family member during life events like injury, serious illness, or pregnancy. Participating employers and employees will contribute to premiums for FAMLI. Employers start collecting and remitting premiums Jan. 1, 2023, and benefits will be available starting Jan. 1, 2024.

Premiums are calculated under new administrative rules. A participating municipality must contribute 50% of the premium and the employee contributes the remainder. If a municipality does not participate, the employee is responsible for 50% of the premium and the municipality can, but need not, deduct the employee portion from payroll and remit it to the state. A municipality that miscalculates premiums is responsible for the difference and cannot collect that amount from the employee.

Opting out

All municipalities are included in FAMLI by default, but a municipality may opt out and avoid the employer portion of premiums by a vote of a governing body. The municipality must give prior notice of the vote in the same manner it notices other public business, must provide special notice to employees, and must take testimony before voting. Declination takes effect in 180 days so employees can

individually opt in to the FAMLI program at their own cost. Within 30 days of the vote, a municipality must provide various notices that include:

- An explanation of differences between the FAMLI plan and any municipal private plan
- Employee eligibility for job protection under the federal Family and Medical Leave Act
- Information on opt in to FAMLI
- Contact information

All notices, whether for opting out or back in, must be posted in conspicuous and accessible places where employees work. If the municipality does not maintain a physical workspace or has employees who telecommute, the notice must be posted in a conspicuous place through a web-based or app-based platform. Notices must be posted in English and any language representing the first language spoken by at least five percent of the local government's workforce.

Administrative rules require that a municipality renew its decision to opt out of FAMLI every eight years. Otherwise, the local government will, by default, be opted back into the FAMLI program. **A vote to opt out starting in 2023 should occur by July 1, 2022, to ensure compliance with the timing requirements.**

Opting back in

A municipality that previously opted out of FAMLI may opt back in if the governing body elects FAMLI program coverage at the beginning of the annual local budgeting cycle. After the vote, the municipality must register as an employer with the FAMLI Division before collecting employer premiums. Coverage would begin no later than the first quarter after the municipality's notice to the FAMLI Division of the vote and submission of at least one quarter's premium amount on

behalf of the employer and its employees. Municipalities who opt into FAMLI must stay in the program for at least three fiscal years. The first year begins on the first day of employee coverage — not the first day a municipality collects premiums.

No more than 90 days after the vote, individual employees who opted in must be personally notified in writing that the municipality has opted back into FAMLI. The notice must include that date for the municipality's first submittal of quarterly premiums and any potential lapses or changes in benefits eligibility.

The local government must publicly post a notice of the date the employer will begin paying FAMLI premiums and when coverage is expected to start.

Employees who did not opt in must also be notified in writing both publicly and personally no later than 180 days after the vote to opt back into FAMLI. The notice must contain a detailed explanation of employee rights under the FAMLI program, including program requirements, benefits, claims processes, payroll deductions, premiums, and employee protections like the right to job protection and benefit continuation and protection against retaliatory or discriminatory information, among other things.

Additional resources

The Colorado Supreme Court recently agreed to hear an immediate challenge to FAMLI premiums brought under TABOR. The Denver District Court upheld the FAMLI premium requirement in 2021. Additional information regarding FAMLI can be found at famli.colorado.gov.

Correction: The Feb. 11 Legal Corner should have been attributed to Rachel Bender, CML associate counsel.

This column is not intended and should not be taken as legal advice. Municipal officials are always encouraged to consult with their own attorney.