

FAMLI: Opt Out Deadline is Approaching!

In 2020, Colorado passed a statewide family and medical leave insurance program ("FAMLI") that covers nearly all employers in the state, including school districts and charter schools. FAMLI entitles employees covered by the program to take paid leave for any of the following reasons:

- To care for their own serious health condition.
- To care for a family member's serious health condition.
- To care for a new child, including adopted and fostered children, during the first year after birth, adoption, or placement of the child.
- To make arrangements for a family member's military deployment.
- To take "safe leave," meaning leave because the employee or employee's family member is the victim of domestic violence, stalking, or sexual assault or abuse.

Covered employees can take 12 weeks of paid leave, unless leave is necessary due to a pregnancy- or childbirth-related complication. In that event, an employee can receive an additional 4 weeks of paid leave, for a total of 16 weeks. FAMLI leave is not full wage replacement but rather is intended to be partial wage replacement depending on the employee's income level.

FAMLI is funded by contributions from both the employer and employee in the form of a .09% payroll tax, with the employee portion deducted from the employee's paycheck. While employees cannot take FAMLI leave until January 1, 2024, premiums must be collected to fund the program beginning January 1, 2023.

Can School Districts and Charter Schools Opt Out?

FAMLI allows "local government" entities to decline participation in the program. School Districts and charter schools are both included in the definition of "local government" and may opt out.

Even if your school or District opts out, your employees still may voluntarily participate by opting in, which means they will pay their half of the .09% payroll tax but with no corresponding employer contribution. In this regard, there does not appear to be a significant penalty to employees should you opt out. In other words, employees may still participate if they wish, and you are simply not responsible for the employer half of the premium.

The deadline for local government employers to opt out is the end of this calendar year (12/31/22).