



COLORADO CHAMBER OF COMMERCE

Comments by the Colorado Chamber of Commerce to the Family & Medical Leave Task Force

9/20/19

Background: The Colorado Chamber of Commerce represents hundreds of businesses across the State of Colorado of all sizes including 44 local chambers of commerce, 27 trade associations and several economic development organizations. These businesses and organizations represent all sectors of industries and employ hundreds of thousands of workers in Colorado.

The Colorado Chamber led a large coalition of public and private employers that were actively involved with the family and medical leave legislation (Senate Bill 19-188) introduced during the 2019 Legislative Session. This legislation mandated that all employers and employees contribute and comply with a State mandated paid program. In response, Colorado Chamber members, hundreds of public and private employers, and employees across the State voiced their concerns to the bill sponsors, members of the CO General Assembly and Governor Jared Polis and his staff.

Based on this enormous outcry, we believe it is the responsibility of this Task Force to identify a balanced perspective of businesses, workers, experts and other stakeholders when submitting its report to the Colorado General Assembly. The Task Force should ensure that no single viewpoint dictates the outcome of such a report and should find consensus among the stakeholders – something that the Colorado Chamber tried to achieve and that Senate Bill 188 failed to do.

The feedback we heard from employers and employees on a State family and medical leave program and that should be considered by the Task Force includes the following:

Current Compliance Requirements with Federal Family & Medical Leave Act:

- Employers with 50 or more employees are currently required to comply with the federal Family and Medical Leave Act (FMLA). Colorado Chamber members with 50 or more employees have often conveyed the complicated nature of the FMLA law, however, they have an understanding of the requirements of the federal law and strongly encourage that any recommendations for implementing a State paid family and medical leave program follow as closely as possible the same requirements as FMLA including:
 - FMLA definition of eligibility to one year or 1280 hours on the job;

- FMLA definition of a family member & benefits;
- FMLA definition of a serious medical condition.

If the State chooses to implement a program that deviates greatly from federal law, this will create significant administrative and compliance burdens on employers, cause unintentional compliance mistakes and subsequently create delays in the benefits that employees are seeking. Additionally, deviations between federal law and a State program could result in potential “stacking” of leave in which a worker could be on leave for six months or more: 12+ weeks under a State program and 12 weeks through the federal FMLA which is an unreasonable burden on employers of all sizes.

Existing Paid Benefits by Employers:

- Many Colorado employers already offer a variety of employment benefits that meet or exceed any benefits that a State mandated program could offer. These employer benefits are often 100% paid benefits to an employee unlike the limited paid benefits that a State program would include. If employers are required to pay for a State leave program, it is likely that they will re-evaluate their current benefits and reduce or eliminate their current benefits. This will ultimately adversely impact the employees that the State program is seeking to help.

Actuarial Analysis and Utilization Projections:

- There has been no actuarial analysis conducted by the State or the Colorado General Assembly that accurately determines future costs for employers or employees or an accurate range of benefit utilization rates. It is critical that the Task Force have an accurate projection of program utilization since that number drives the total cost of the program.

Small Employers:

- A state mandated leave program is an incredibly significant burden on small employers. Small employers will unlikely be able to replace a worker with specialized skills for a temporary period of time thereby causing their operations to suffer. The Federal law and many other states provide exemptions or accommodations for small employers because they recognize the limitations of smaller employers. Some of those states include an exemption for small employers with 25 or less employees and some states do not include a job protection requirement for small employers. The Task Force should consider the federal law and other state laws that have provided options to accommodate small employers in Colorado.

Choice by employees:

- The 2019 legislation as amended attempted to treat public and private employers and their employees differently. Employees of local government entities had the ability to opt-in to participate in a State program while private sector employees were mandated to participate. Any recommendations by the Task Force should not create disparities

among public or private employees nor their employers and it should also conduct an analysis on the number of Colorado employees who would support paying for a program since some may never use the benefits.

Responsibility for Payment of Benefits:

- The Task Force should take into consideration the financial limitations of employers and employees when evaluating payment of benefits. Several states have different approaches including requiring that benefits be paid only by employees; creating exemptions for small employers and creating exemptions for employers with equal or better paid benefits.

Seasonal Workers:

- We received feedback from employers that hire seasonal workers and who have concerns that a mandated paid leave program is not contemplating the adverse impact to employers that hire seasonal workers. The Task Force should consider exceptions for employers that hire seasonal employees considering the limited period those workers are employed.

Enforcement & Jurisdictional Application:

- Enforcement of employer participation should be conducted by the Colorado Department of Labor & Employment through an administrative complaint process and all local laws should be pre-empted as a matter of state-wide concern.

Thank you for consideration of these comments on behalf of the Colorado Chamber of Commerce, and we appreciate the hard work being conducted by the family and medical leave Task Force. Please contact Loren Furman at lfurman@cochamber.com with any questions regarding these comments.