



Legislation Details (With Text)

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Title: Discussion regarding opting out of the Colorado Family and Medical Leave Insurance Program (FAMLI) Act.
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Department of City Manager

Reference: FAMLI Act Opt Out

To: Mayor Gregory Mills and Members of City Council
Through: Michael P. Martinez, City Manager
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Date Prepared: July 14, 2022

PURPOSE

To consider whether the City of Brighton should opt out of employer premium participation in the Colorado Paid Family and Medical Leave Insurance Program (FAMLI) Act.

STRATEGIC FOCUS AREA

Financially Responsible

BACKGROUND

In November 2020, Colorado voters approved Proposition 118, which paved the way for a state-run Paid Family Medical Leave Insurance (FAMLI) program. The program is a state-run social insurance program that allows covered employees to take paid leave from work for certain qualifying reasons. The program requires employers in the program to start collecting and remitting premiums effective January 2023, but benefits will not be available until January 2024. Employers who wish to opt out are required to make a decision prior to this date. All municipalities are included in FAMLI by default, but we may opt out and avoid the employer

portion of premiums.

Under the FAMLI Act, covered employees can take up to 12 days of paid family or medical leave for the following qualifying reasons:

1. To care for a new child;
2. Pregnancy and childbirth complications;
3. Care for their own health or a family member;
4. Exigency leave; or
5. Safe leave (employee is the victim of domestic abuse, stalking, sexual assault/abuse).

Effective January 1, 2024, FAMLI covered employees have the right to take paid family medical leave and to receive paid family and medical leave under the following circumstance:

1. Employee earns at least \$2,500 in wages within the last 4 calendar quarters;
2. Individual is employed at least 180 days prior to the leave request;
3. Elects coverage through the State of Colorado; and
4. Submits an application for benefits to the State of Colorado.

The paid leave amount equals:

1. 90% of an employee's average weekly wage for the portion of their wages equal to or less than 50% of the State average weekly wage;
2. 50% of the portion of their wages that exceeds the State average weekly wage;
3. Maximum weekly benefit of \$1,100;
4. Wages are subject to FAMLI payroll tax used to calculate the benefit include salary/hourly wages, bonuses and other forms of compensation.
5. Employees on FAMLI leave may use sick leave and PTO to supplement their pay but cannot exceed the actual combined FAMLI benefits and City paid wages.

***Please note:** Rulemaking regarding how FAMLI affects Worker's Compensation, Domestic Abuse Leave, and other programs, is currently underway.

Premiums are calculated under new administrative rules. A participating municipality must contribute 50% of the premium and the employee contributes the remaining 50%. Individual employees may opt into the Act themselves if the City opts out. If City opts out of the program, the City has the option to facilitate the collection of employee-only premiums through payroll deductions and remittance of employee-only premiums to the Program Fund for all City employees who elect coverage or require employees remit premiums director to the Program Fund.

The premium for 2023 is .9% of each employee's gross wages. By law, the FAMLI Division Director is required to recalculate the premium rate every year past 2025 and determine if adjustments to the premium rate need to be made. Employees are not required to pay more than 50% of the total premium. For example, the annual deduction for 2023 for an employee making \$40,000 would be \$180.

The City's existing short-term and long-term disability benefits provide a safety net for most eligible City employees. The City also has robust medical benefits, to include Zero Card, in the event of unforeseen qualifying reasons. Each year employees are given 80 hours of sick leave annually and accumulate Paid Time Off (PTO) based on years of service. Individual employees may opt into the Act themselves. The City will facilitate the collection of employee-only premiums through payroll deductions and remittance of employee-only premiums to the Program Fund for all City employees who elect coverage.

City employees will receive notice of the FAMLI Act, the date of the impending vote by City Council and have the opportunity to submit any comments either verbally or in writing. After the vote is taken, employees will also be notified of the outcome.

FINANCIAL IMPACT

The financial impact is expected to be approximately \$268,041.06 annually. If the City splits the cost with employees, the cost would be \$134,020.53 annually for the City and then \$134,020.53 annually divided by the number of employees.

Administrative rules require that a municipality renew its decision to opt out of FAMLI every eight years. Otherwise, the municipality will, by default, be opted back into the FAMLI program. Municipalities that opt into the program must stay in for at least three fiscal years.

OPTIONS FOR COUNCIL CONSIDERATION

1. Opt out of the FAMLI program, to include declining to collect and remit employee premiums to the State for those employees who elect coverage under FAMLI.
2. Take no action thereby automatically requiring the City to participate in the state-run FAMLI Program and follow the rules set forth in the Program.
3. Give staff further direction.

STAFF RECOMMENDATION

Staff recommends approving the opt out, since the City currently offers a short-term disability and PTO/sick leave benefits for employees. The paid leave benefits provided under FAMLI are not comparable to existing paid leave available to eligible City employees.