



COLORADO CHAMBER OF COMMERCE

Colorado Chamber of Commerce Comments on Family Medical Leave Insurance Program Draft Premium Rules

8/18/21

Qualifying wages (page 3) – The Chamber believes that the categories of qualifying wages are far too expansive and in particular, the inclusion of separation pay as a qualifying wage. Wages in lieu of notice are one thing, as they are arguably wages to begin with, however, employers will not want to pay premiums on separation and severance pay, which is not compensation provided for work performed but almost always given only as consideration for a waiver and release of legal claims. The Chamber notes that the Colorado Wage Act specifically excludes severance pay from the definition of “wages and compensation,” even though this pay is almost always taxed as though it were wages, to avoid any tax issues.

Exempted From Wages section (pages 3-4): The Chamber suggests adding the following wages to be exempt: Paid Family Leave and Parental Leave as well as state mandated disaster relief pay.

Premiums Remitted by an Employer (page 4) – the CO Chamber seeks clarification on this rule. The rule indicates that small amounts (less than \$5) are not subject to quarterly payment. Do those amounts disappear? Or are they carried forward until the next quarter for which amounts exceed \$5?

Determining in-state status of employees subject to premium liability (page 7) - The CO Chamber suggests that a percentage of work that is controlled or performed in Colorado should be the basis of reporting requirements and premiums (*i.e.*, having an out of state employee perform less than 20% of work **shall not be** included in the basis of reporting requirements and premium)

The definition of “employee” is also expansive – Colorado wage and hour law typically has been limited to work performed within the borders of Colorado. The regulations purport to adopt that definition but under the “Determining in-state status of employees subject to premium liability” (p.7) the regulations introduce this concept of “localization,” which can be read as attempting to broaden employees for whom premiums must be paid.

Determination of employer size for premium collection (page 7) – the CO Chamber deems it unfair that employee numbers are “averaged” for premiums in 2024 rather than going with the employee count in the most recent quarter, which is more accurate.

Areas requiring clarification:

Definition of wages: The proposed rule appears to define wages as those defined in 8-70-141, C.R.S. and that are subject to the State's unemployment tax. This language should be clarified if this is not accurate.

Withholding Amount: The amount to be withheld from an employee's wages are not specified in the proposed rule. Clarification is needed in the language for the following:

- What is amount/percentage required to be withheld from employees' wages?
- Will the amount be changed annually and if so, what is that range?
- What is maximum amount to be withheld? Referenced in proposed rule but not defined;
- Are withholding amounts subject to an annual threshold?

Employer contribution: The proposed rule includes a reference to an employer assuming responsibility for employee deductions if they choose not to withhold wages, however, the same questions apply as outlined above regarding amounts, timing, maximum amounts.

Thank you for your consideration of the Colorado Chamber's concerns and proposed changes to the draft rule. If you should have any questions regarding this matter, please contact Loren Furman, Senior Vice President, Colorado Chamber at lfurman@cochamber.com or 303-866-9642 or Larry Hudson at larry@hudsonga.com.