

Testimony on FAMLI Proposed Rule on Benefits & Participation

8/2/22

Introduction: Loren Furman, Prez of the CO Chamber of Commerce. The Chamber represents thousands of companies of all sizes & industries across the State.

And has been actively involved in the family & medical insurance leave issue for many years - our members & their employees are all impacted by the program and its success.

First and foremost: The biggest concern and interest by employers is the ability to have a private plan option.

Many employers have told us that they have benefit programs that will exceed the State program or that may need some adjustments to meet the requirements of the new law.

Employers want to see a rule in place asap so that they can plan ahead.

They want language that:

- clearly defines the requirements for a private plan,
- how the plans will be regulated, and
- requirements & frequency for sharing their plan design w/the Division.

Appreciate Division's guidance it sent recently, but there continue to be strong concerns about a requirement to pay benefits in advance if an employer plans to use a private plan.

We look forward to working with the Division on that rule.

Moving onto concerns with proposed “Benefits” rule:

Approval of leave:

- Rule seems to only contemplate leave requested in advance.
 - However, that may be the case in some instances but not all.
 - For example: worker could get into car accident or have an unexpected illness.
 - Will employers be allowed to make their own determinations to approve the leave while waiting on the State to approve/deny the leave?
- The proposed rule includes restrictions on what application information can or will be given to an employer.
 - An employer needs to be fully informed on the reason for the leave so they can determine whether FAMLI runs concurrently w/other types of leave.
- Need clarification on how employment on the job would be calculated. If an individual works for Company A but then leaves that job mid-year & works for company #B. Are they eligible on their first day w/company #B? *[we know this is going to be addressed in the rule but wanted to raise it].*
- The regulation doesn't require repayment of the leave unless the request for leave was made in bad faith.
 - Believe the rule should specify how that will be determined;
 - There will likely be situations where a worker made an improper request that was approved but did not necessarily make it in bad faith.
- Proposed rule includes limitations on medical documentation - says an employer can only receive med docs if the worker agrees to share it. Again, employers need all of that info to determine whether FAMLI leave runs concurrently w/federal FML or other leave.

- Holiday leave: some companies already have leave plans that include holidays as a day of paid leave. Recommendation to include holidays as a day of leave but give guidance as to which holidays would be included.
- The proposed rule includes a limitation of 2 weeks for an adjudication of a claim. That amt of time only contemplates advance leave notices and not a sudden illness or accident.
- Proposed rule doesn't include language allowing an employer to appeal a claim determination – it limits the appeal to a hearing officer's decision based on an employee's appeal. Believe an employer should be able to file an appeal & not just the employee.

We appreciate the opportunity to comment on behalf of Colorado employers across the State and look forward to working with the Division staff on clarifications to this proposed rule.