Legislation Text

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Ordinance No. 22-59 declining the participation of the City of Colorado Springs in the Colorado Paid Family and Medical Leave Insurance Program

Presenter:
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Summary:
Attached is an ordinance indicating the City of Colorado Springs and Colorado Springs Utilities intent to decline all participation in the Colorado Paid Family and Medical Leave Insurance Program.

Background:

Proposition 118, which created the Colorado Paid Family and Medical Leave Insurance (FAMLI) Program, was passed by voters in 2020 to ensure that all eligible Colorado workers have access to paid leave. This Act provides for up to twelve (12) weeks of paid family and medical leave (PFML), and an additional four (4) weeks for pregnancy/birth related complications. This Act applies to all employers within the state of CO and is funded by a new payroll premium for participating employees and employers. The Act also requires a new division to be created at the state level to administer this new program. To allow time to implement this new division and develop guidance and regulations on how the program is administered, the payroll contributions are scheduled to start as of January 2023, and the paid benefits are scheduled to begin January 2024.

There are provisions which allow local government employers to opt out of or decline participation in this program. Colorado Municipal League (CML) surveyed municipalities regarding their intentions under FAMLI of the forty-five 45 jurisdictions responding, only three (3) said they were considering participating; twenty-four (24) were considering declining participating and eighteen (18) were undecided as of mid-April 2022. City and Colorado Springs Utilities Administration are recommending to decline participation in the program due to the robust leave and supplemental voluntary benefits already afforded to our employees. If the Council declines participation, the City of Colorado Springs would be following suit with most municipalities.

Paid family and medical leave has been a growing trend nationwide in the last three (3) years. Many mid to large size employers have reviewed their offerings and have expanded PFML policies to cover maternity/paternity leave. In recent years, nine (9) states and the District of Columbia (California, Colorado, Connecticut, Massachusetts, New Jersey, New York, Oregon Rhode Island, and Washington) have enacted paid family and medical leave regulations. Of the states that have PFML policies, six (6) states and D.C. are presently in effect. The Colorado Healthy Families and Workplaces Act was passed in 2020 with effective dates in January 2021 and January 2022 (depending on employer size), which requires all Colorado employers to provide a minimum standard for paid sick time off. This Act was enacted in part in response to the COVID-19 pandemic and ensures employers provide paid sick time off both during and outside of a local, state, or national pandemic event.

The CO Paid FAMLI program is designed to be a statewide program to provide supplemental income in the event the employee is off work due to illness, pregnancy/birth, or to care for a family member. The funding for the program is via a new payroll premium. The employee can be charged up to 50% of the formula, which is a maximum of 0.45%, and employers are required to pay the remaining portion, totaling 0.90%. It is also available to the self-employed and local government employees who elect coverage after their employer has declined participation, who pay into the program at the 50% formula rate. This program is like a short-term disability program (STD), which is a wage replacement program, offered by many employers both in the private and public sector. The City's voluntary STD pays 60% up to $1,250 weekly for illness or pregnancy/birth reasons for the employee only. Colorado Springs Utilities' voluntary STD pays 60% up to $1,500 weekly for illness or pregnancy/birth reasons once sick leave accruals have been exhausted.

The FAMLI Program has a 'Weekly Income Formula' (see chart below) with the maximum weekly benefit being $1,100 for employee and eligible family members' illnesses, pregnancy/birth and select reasons for leave. Premiums are required regardless if the employee ever uses the leave.

Most Colorado employees become eligible to take paid leave after they have earned at least $2,500 in wages within the State within the last four (4) calendar quarters. Self-employed workers (including 1099 or contract workers) may also be eligible if they elect coverage and live and work in Colorado.

Weekly Income Formula: During their leave, employees will receive between 37% and 90% of their wages. Benefits are capped at $1,100 per week.

Weekly Wage	Weekly Benefit	Maximum Annual Benefit	Percent of Weekly Wage
$500	$450	$5,400	90%
$1,000	$768	$9,216	77%
$1,500	$1,018	$12,216	68%
$2,000	$1,100	$13,200	55%
$3,000	$1,100	$13,200	37%

Under the FAMLI Act, covered individuals may take up to twelve (12) weeks of paid aggregate family/medical leave (up to sixteen (16) weeks for pregnancy complications) in a twelve (12) month period for:

- Birth, adoption, placement, care of a new child during first year after birth, adoption, or foster care
- Care for a family member with a "serious health condition" (including pregnancy)
- An employee's own serious health condition
- Exigency leave (active-duty military; post deployment or death); or
- "Safe" leave (employee or employee's family member is the victim of domestic abuse, stalking

or sexual assault/abuse)
- Family Medical Leave Act (FMLA) runs concurrent with FAMLI leave

Employers that are required to or that elect to participate in the FAMLI program must submit payroll premiums to the state on behalf of their employees with the premium initially set at 0.45%, and which eventually may increase to .60% of the employee's annual wages. Premiums would begin in 2023 with the benefit starting in 2024. The program enrollment and subsequent payroll premium withholdings are mandatory for all employees if the employer is required to or elects to participate in the FAMLI program. Employees are not required to use earned paid time off (such as PTO, vacation and/or sick) before taking leave under the FAMLI program, but employers may allow employees to use their accrued PTO, vacation and/sick leave to “top off” or cover the remaining balance of their typical weekly wage in order to “make whole” their take-home pay while on paid FAMLI leave. Disability programs such as Short-Term and Long-Term Disability will run concurrently with paid FAMLI. Further details on how the paid FAMLI benefit program will work concurrently with other employer leave and disability programs will be addressed by the State in the fall 2022. More information on this program can be found at: https://famli.colorado.gov/.

Differences between FAMLI and Family Medical Leave Act (FMLA):

- Eligibility
- Based on $2,500 wages earned in the past four (4) quarters (FAMLI) versus twelve (12) months of work plus 1,250 hours worked in that twelve (12) months for employers with 50 or more employees (FMLA)
- No job restoration or benefit maintenance under FAMLI versus job restoration and benefit maintenance under FMLA
- FAMLI adds additional “safe” leave provisions not included in FMLA
- FMLA is not paid vs FAMLI is paid
- Definition of “Family Member”
- FMLA definition is narrower:

Term “son or daughter” means a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in “loco parentis” who is under eighteen (18) years of age; or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.
- FAMLI’s definition:

Child - regardless of age

Family Member includes:
- Grandparents
- Siblings
- Any individual with whom one has a “significant personal bond”
- Duration:
- FAMLI adds an additional paid four (4) weeks for pregnancy or childbirth complications
- Due to the expanded definition of a family member, FAMLI may not run concurrently with FMLA and therefore the employee could receive up to twenty-four (24) weeks off each year.

The City offers a robust health and welfare package to include paid time off. These competitive annual paid leaves consist of eleven (11) holidays, one (1) personal day, ninety-six (96) hours of sick leave, and eighty-eight (88) hours of vacation (which increases with seniority and is capped at 168 hours). Sworn Fire employees earn additional time and have a higher maximum to coincide with their fifty-six (56) hour week schedule. Included in the paid time off programs are the option to purchase an additional forty (40) hours of Vacation Buy, and other approved paid time off for various reasons. Please refer to the Policies and Procedures Manual for more information. For those employees who have exhausted all their available leaves the City also has “Vacation Donation” and “Sick Leave Advance” programs. Employees are provided with optional disability income replacement programs and are responsible for paying the premiums. The City’s voluntary Short-Term Disability (STD) benefit pays 60% up to $1,250 weekly and Long-Term Disability (LTD) benefit pays 66.67% up to $7,500 per month. Employees who are vested with PERA have an additional short-term disability benefit at no charge to the employee. Additionally, due to our organization size, we also comply with the federal Family and Medical Leave Act provisions, which allows job protection and benefit maintenance for leaves of absence to care for self or an eligible family member.

Colorado Springs Utilities offers a robust total rewards package to include paid time off. The annual paid leaves consist of ten (10) holidays, three (3) personal leave days, ninety-six (96) hours of sick leave, and 13 days of vacation (which increases with seniority and is capped at 24 days annually). Included in the paid time off programs are the option to purchase an additional forty (40) hours of vacation annually, and other approved paid time off for various reasons. Please refer to the Policies and Procedures Manual for more information. For those employees who have exhausted all their available leaves Utilities also has a vacation donation/leave sharing program. Employees can enroll in voluntary disability income replacement programs and are responsible for paying the premiums. The voluntary Short-Term Disability (STD) benefit pays 60% up to $1,500 weekly and Long-Term Disability (LTD) benefit pays 60% up to $10,000 per month. Employees who are vested with PERA have an additional short-term disability benefit at no charge to the employee. Additionally, we also comply with the federal Family and Medical Leave Act (FMLA) provisions, which allows job protection and benefit maintenance for leaves of absence to care for self or an eligible family member.

Benefits of declining participation in the FAMLI Program:

- Allows for the employee to have the choice to enroll in the program versus mandated to participate and have required payroll premium deductions.
- The paid FAMLI program provides a lesser weekly benefit than the City’s Short-Term Disability program.
- Employees may not delineate administration of the programs between the City/Utilities and the paid FAMLI Insurance Division run by the State, thus causing confusion on where to go for assistance.
- More employees eligible for leave due to minimal eligibility requirements under FAMLI could lead to difficulty meeting staffing needs and other operational difficulties.
- Additional administrative support needed to administer the program in conjunction with other leave and benefit programs.
- Lessen potential financial liabilities to include any mistakes made by the employer.
- Must commit to enrolling in the program for three (3) years.
- Premiums are required regardless if the employee ever uses the program.
- After the first two (2) years based on funding and utilization of the programs, the State may increase the required employee premium from .45% to .60% and impose potential additional mandated premium increases in the future.
- Definition of a “Family Member" expands under the Paid FAMLI program and thus employees may be eligible to take up to twenty-four (24) weeks off in a twelve (12) month period which may cause operational and staffing challenges.

Benefits of participating in the FAMLI Program

- Provide help with the financial burden many employees face when out on an unpaid approved FMLA and/or ADA event.
- Allows for paid leave not only for employee's illness, which is covered by short-term disability (if employee elected), but their qualified family member as well.
- Makes us competitive in the market as all private sector employers in CO must comply unless they offer a program that meets or exceeds the State's program.

Previous Council Action:
N/A

Financial Implications:
If the City were to participate in the program and evenly share the required payroll premium with the employee, there is an approximate $1,000,000 cost for both the employer and employee. Utilities would experience a similar cost of approximately $900K annually. Additionally, if the City were to fully decline participation, there is no payroll premium required of the City or employee; however, employees can still elect coverage on their own and pay 50% of the required premium. In all options there is an administrative burden to support coordination and administration of the paid FAMLI program.

City Council Appointed Board/Commission/Committee Recommendation:
None

Stakeholder Process:
City Finance, Human Resources, Legal, and Utilities Human Resources and Chief Executive Officer have reviewed the program and requirements. Employees were made aware of the City's and CSU's proposed ordinance to decline participation in the program and their opportunity to provide comments through a public process.

Alternatives:
There are two options for consideration:

- Option 1: Participate in FAMLI. Local government agrees to remit employees' share of the premium along with wage data to the FAMLI division once a quarter. This would require all employees participate towards the mandated premiums. Additional staff resources would be required to collect and remit the premiums to the state, as well as coordinate this leave program against the City's and Colorado Springs Utilities' current offerings, which becomes more complex to administer.

- Option 2: Decline participation in FAMLI. To decline participation in the FAMLI program, the local government body must vote to do so and notify the state of their decision by January 1, 2023. Decision to decline is in effect for up to eight (8) years from the date of the vote to decline participation. The declination period is not permanent, and the City may consider electing coverage annually. The City must hold another vote if it wishes to continue opting out beyond eight (8) years. Employees can still voluntarily elect FAMLI coverage and benefits and remit their premiums directly to the FAMLI division. Additional staff resources would be required to coordinate this leave program against the City's and Colorado Springs Utilities current offerings.

Proposed Motion:

Move to approve the attached Ordinance declining participation of the City of Colorado Springs and Colorado Springs Utilities in the Colorado Paid Family and Medical Leave Insurance Program (Option 2).

An ordinance declining the participation of the City of Colorado Springs in the Colorado Paid Family and Medical Leave Insurance Program.