



MEMO TO: Mayor Vandernail and the Board of Trustees
FROM: Ed Cannon, Town Manager
DATE: May 18, 2022
SUBJECT: Colorado Paid Family and Medical Leave Insurance Act (FAMLI)

MATTER BEFORE BOARD:

Non-participation option for FAMLI

BACKGROUND:

Proposition 118, passed in November of 2020, created the Colorado Paid Family and Medical Leave Insurance Act ("FAMLI" or "Act"). FAMLI requires all employers and employees in Colorado to pay a payroll premium to finance paid family and medical leave insurance benefits beginning January 1, 2023.

The Act allows eligible employees up to 12 weeks of paid family and medical leave insurance benefits annually beginning January 1, 2024 and creates job protections for employees who take paid family and medical leave.

Participation is mandatory for local governments unless the elected board or council formally votes to decline participation FAMLI, ("Opt Out"), by July 1, 2022.

A copy of the Paid Family and Medical Leave Insurance Act and a CML Knowledge Now overview is included as attachments to this report.

FINANCIAL CONSIDERATIONS:

FAMLI requires employers and employees to split premium costs. The premium is based on 0.90% of taxable wages per employee for the first two years. Beginning in 2025, the program director can set the premium to up to 1.2% of an employee's taxable wages.

The following table shows Fraser’s bi-weekly and annual premium scenarios beginning in 2023:

Weekly and Annual FAML I Premium Scenarios for 2023					
Bi-Weekly Wages	Employer Bi-Weekly Premium	Employee Bi-Weekly Premium	Annual Wages	Employer Annual Premium	Employee Annual Premium
\$500	\$2.25	\$2.25	\$26,000	\$117	\$117
\$1,000	\$4.50	\$4.50	\$52,000	\$234	\$234
\$1,500	\$6.75	\$6.75	\$78,000	\$351	\$351
\$2,000	\$9.00	\$9.00	\$104,000	\$468	\$468
\$3,000	\$13.50	\$13.50	\$156,000	\$702	\$702

Based on 2023 payroll estimates, the total annual premium cost estimate for the Town contribution in 2023 will be \$10,256, which represented 0.45% of total payroll costs. The bi-weekly premium cost for each employee will range between \$7.50 and \$29.01.

A survey of 44 Colorado municipalities shows that only 3 municipalities are considering opting into the state mandated FAML I program, 19 are considering opting out, 5 have already opted out, and the remaining 17 are still undecided.

On April 20, we held an all-staff meeting to discuss FAML I and Fraser’s current PSLB policy. Staff indicated a desire for the Town to opt-out of FAML I and restructure its PTO policy to offer better protections for sick leave.

SUGGESTED ALTERNATIVE TO FAML I:

Fraser can offer similar levels of benefits to its employees without cost to either the Town or the employee.

The Fraser Personnel Policy Handbook (PPH) allows full-time employees to accrue Paid Time Off (PTO). PTO is for employees to do with as they desire or need. For example, PTO may be used to take time off for vacations, sickness, family illness, personal matters, or for any other reason.

According to Fraser’s PPH, “employees should use good judgment when utilizing PTO. Obviously, if an employee uses all of their accrued PTO for vacation and leisure time and an illness strikes, no accrued PTO will be available for the absence. Employees are urged to use PTO to ensure a good personal balance between leisure time-off and for those unexpected absences that affect us all.”

The PPH allows employees to carry over PTO hours under certain conditions, and excess hours can also accumulate in a **Personal Sick Leave Balance (PSLB)** as follows:

“Up to 80 hours of PTO accrued, but not used at the end of the fiscal year, will be carried over to the following fiscal year for use as PTO by the employee. The Town

Manager may authorize additional carryover in special circumstances. Requests for additional carryover must be provided in writing, specify the purpose of the carryover, and detail when the PTO will be utilized. *All accrued, unused PTO in excess of 80 hours will be converted on a 1:1 basis to Personal Sick Leave Bank (PSLB) hours at the end of the fiscal year* (emphasis added).

There are a couple of problems with Fraser's PSLB policy. First, any employee with a PSLB balance must use up to 3 days of PTO before their PSLB benefits kick in. Second, PSLB accrual requires an employee to carry over MORE than 80 hours accrued but unused PTO hours at the end of the fiscal year. This opportunity is difficult for Fraser employees to achieve because it would require the employee to either limit their PTO to create sufficient carryover, or by building enough tenure with the Town so that their PTO accrual allows a moderate level of PTO plus carryover.

Examples:

1. A new Fraser employee earns 104 hours of PTO the first year. If they do not take PTO during the year, they can carry over 80 hours of PTO to the following year, and the additional 24 hours goes into their PSLB. However, if the employee takes PTO, he/she will reduce or eliminate any hours that would go into their PSLB.
2. A Fraser employee with 7 – 9 years tenure receives 204 hours of PTO each year. If that employee takes 2 weeks PTO (80 hours) during the course of the year, they will have a balance of 124 hours at the end of the year. 80 of those hours carry over to the following year, and 44 hours rolls into their PSLB.

The examples above show that it would take an employee a long time to accumulate sufficient PSLB to protect them in the event of a medical or family emergency. Currently, Fraser only has seven (7) employees with a PSBL, and only two of those employees have a balance of more than 25 hours (both employees have more than 10 years with the Town).

The worst-case scenario would be an employee with a medical or family emergency but does not have sufficient PTO or PSLB to cover their absence. In this event, the employee would not be paid, nor would they have protections that their job would still be available to them after an extended absence.

One solution would be to restructure PTO accumulation into personal leave and sick leave.

Sick leave would be a standalone accrual that provides time off for illness and other situations. Employees would accrue sick leave at a constant rate throughout their tenure, and accrual would be capped at 480 hours (12 weeks). Sick leave can be used for personal illness and to care for a family member or for parental maternity leave. Sick leave ensures the employee continues to get paid and preserves the employee's job the event of an illness.

There are several advantages to a separate sick leave policy:

1. Employees are less likely to come to work sick
2. Preserves personal leave benefits
3. Allows accumulation of hours to offset an extended illness

Staff is reviewing sick leave/personal leave policies offered by other municipalities and will present recommendations once that study is complete.

RECOMMENDATION:

Staff recommends the Fraser Town Board “opt-out” of FAMLII.

To opt-out, the governing body must vote via a resolution. Opt-Out also requires pre-vote notices with special notices provided to employees to allow the opportunity to submit comments to the Board of Trustees. As mentioned above, an all-staff meeting was held on April 20th and employees gave overwhelming support to opt-out. A special notice was also issued to employees via a Bamboo survey on May 12th with a deadline for comments on May 17th. The results of that survey will be provided to the BOT on June 1st during a Public Hearing. Opting out also requires the governing body to take testimony before voting.

A formal opt-out vote will be scheduled for the June 15th BOT meeting.