

Family and Medical Leave Implementation (FAMLI)

FAMLI Task Force Final Report

As directed by SB 19-188

January 8, 2020

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This report is also available online at:
<https://sites.google.com/state.co.us/famli/home?authuser=0>

Executive Summary

The Charge: The United States is the only industrialized nation in the world that does not mandate access to paid family and medical leave (PFML) benefits. Simultaneously, nearly half of Americans live paycheck-to-paycheck and are unable to access two thousand dollars in the event of an emergency. On May 30, 2019 Senate Bill 19-188 ([SB 19-188](#)) was passed to prepare for the implementation of a paid family and medical leave program in Colorado by establishing a family and medical leave implementation task force (henceforth Task Force), charged with providing a final recommendation on 16 factors, as enumerated in [SB 19-188](#), to state congressional committees and the Governor, regarding a paid family and medical leave program for all employees in the state.

Over the course of a 6-month time period, the Task Force studied paid family and medical leave models, received presentations from experts in the field, received and reviewed expert reports, State agency reports, and an actuarial report on the administration and establishment of paid family and medical leave programs, and received and considered public comments. This executive summary presents the Task Force's findings and recommendations with links to relevant reports informing their work, as well as comments from the public. This Task Force report will address all enumerated factors totaling 26 independent factors on which the Task Force voted (as broken down for clarity from the original 16 factors listed in [SB 19-88](#)) and make final recommendations on a paid family and medical leave program for all employees in the state.

The Process: The FAMLI Task Force was comprised of a balanced set of 13 voting members representing private employers, organized labor, worker advocates, and labor economists, as well as two ex officio representatives from two State departments. For a full roster of the members of the Task Force, please click [here](#). The Task Force met 12 times (please click [here](#) to access the meeting minutes), for a total of approximately 43 hours to debate the elements required by the [legislation](#). To aid the Task Force in their deliberations, three expert reports were commissioned, which included reports from the University of Minnesota, the University of Denver, and the Urban Institute, and three experts in the field of paid family and medical leave presented their experiences to the Task Force. The Colorado Departments of Labor and Employment (CDLE) and Public Health and Environment (CDPHE) each also completed a report on the potential administrative costs and the health impacts of paid family and medical leave, respectively. The expert reports and the two State agency reports can be located [here](#). The Task Force also received and reviewed 973 public comments. The public comments provided a variety of perspectives, both in favor and against the implementation of a paid family and medical leave program in the state. All public comments received by the comment deadline can be located [here](#) in their entirety.

On September 26, 2019, the Task Force also received a comment from the Governor asking the Task Force to consider, alongside their work outlined in SB 19-188, an option requiring employers above a certain size to provide a defined minimum paid-leave benefit to employees, which an employer could choose to administer either by itself or through insurance provided through the private market. To access the full comment from the Governor, please click [here](#). To provide additional information to the Task Force regarding a private insurance market model, Pinnacol Assurance submitted a [public comment](#) to the Task Force outlining a proposal for a paid family and medical leave program which would require employers in the state to purchase paid family and medical leave insurance through private insurance companies.

Based on its initial review of the expert reports, State agency reports, received comments, and presentations from experts in the field, the Task Force submitted an [initial recommendation](#) regarding a paid family and medical leave program in the state to an actuary on October 22, 2019. The initial recommendation from the

Task Force to the actuary requested an analysis of both a high-benefits and a low-benefits model, to provide the Task Force with a better understanding of the solvency of a chosen paid family and medical leave program based on the ranges of various features in such a program that impact viability and cost. The actuary delivered its final report to the Task Force on December 9, 2019. The final report and a supplemental report from the actuary can each be accessed [here](#).

Pinnacol Assurance also independently contracted for an actuary to perform an analysis of the Task Force’s initial recommendations in a private insurance market model. Additionally, the Task Force received two presentations from Pinnacol Assurance. On October 17, 2019, Pinnacol Assurance presented to the Task Force a proposed private market model. Presentation materials can be found [here](#). On December 17, 2019, Pinnacol Assurance presented an overview of the anticipated actuarial analysis conducted by its contracted actuary. Presentation materials regarding that actuarial analysis can be found [here](#). On December 23, 2019, Pinnacol Assurance provided the Task Force a summary of the actuary’s conclusions, which can be located [here](#).

After reviewing and considering all expert reports, expert presentations, reports from two State agencies, comments from the public, and the actuarial report, the Task Force deliberated and voted on 26 factors. The Task Force final recommendations on the 26 factors are summarized in the output section of this report and analyzed in greater depth in the issue analysis section following immediately after.

The Output: The Task Force analyzed each issue as directed by the legislation and was able to reach broad consensus on 14 of the 16 elements, resulting in 21 recommendations. On the remaining 2 elements where consensus was not reached, the Task Force provided minority opinions and/or rationales. A summary of each element is presented in the Issue Analysis portion of this report. Below is a summary with links to each of the relevant issues.

SB19-188 Elements (click to view the Issue Analysis for each)	Related Recommendations	Date of Vote
(I) Purposes of leave	<p>1. Paid leave should be available to Colorado workers for these reasons:</p> <ul style="list-style-type: none"> ● Family—Bonding (parental leave after child birth/ adoption), care for family members, foster care and military service related leave. ● Medical—Own disability (including actual childbirth and time to recover from childbirth), domestic violence, sexual assault, & stalking, and organ donation. <p>Vote count: Unanimous</p>	12/17/19
(II) Self-employed workers’ access to leave	<p>1. Self-employed workers should have the option to access paid family and medical leave with a 3-year minimum requirement of remaining in the program after opting in.</p> <p>Vote count: Unanimous</p>	12/17/19
(III) Eligibility to take leave	<p>1. Workers with at least the unemployment insurance minimum (currently \$2,500) of earnings in a given period will be eligible for wage replacement benefits.</p>	12/17/19

	Vote count: Unanimous	
<u>(IV) The definition of family or family member</u>	<p>1. Definition of Family: The definition of family should include child, parent, spouse, domestic partner, grandchild, grandparent, sibling, parent-in-law or parent of a domestic partner. Not blood relation and close association. Vote count: Unanimous</p> <p>2. Consideration of Other Models: The legislature should consider other family definition models of caring for loved ones who are not included by the listed family relationships above. Based on the many conversations already had, taking into account use of other models by the federal government and other states, clarity of the definition and any related factors, required documentation, and the diversity of Colorado's families. Vote count: 8 ayes; 5 nays</p>	<p>12/17/19</p> <p>12/17/19</p>
<u>(V) Job protection</u>	<p>1. The Task Force <i>did not</i> reach a consensus opinion regarding job protection and therefore offers rationales for each timeframe listed: Vote count: 120 days: 7 ayes 180 days: 3 ayes 1 year: 3 ayes</p> <p>2. The Task Force <i>did not</i> reach a consensus opinion regarding possible exemptions. The Task Force offers rationale on the following possible exemptions:</p> <ul style="list-style-type: none"> i) No exemptions (6 ayes) ii) Small business (6 ayes) iii) Phase in by business size (4 ayes) iv) Seasonal employers (7 ayes) v) Key position/small business (3 ayes) vi) H2B/H2A visa holders (3 ayes) vii) Overtime exemption (1 aye) 	<p>11/12/19</p>
<u>(VI) Duration of leave</u>	<p>1. Maximum duration per event: The Task Force <i>did not</i> reach a consensus on maximum duration of leave per event and will be authoring an opinion on the low-benefits model (LBM) and high-benefits model (HBM), as submitted to the actuary in the Task Force's initial recommendation. Recommendations to actuary:</p> <ul style="list-style-type: none"> ● LBM: 6 weeks for family leave/6 weeks for medical leave. ● HBM: 14 weeks for family leave/14 weeks for medical leave <p>Vote count: 7 ayes; 6 nays</p>	<p>12/17/19</p>

	<p>2. The Task Force did not reach a consensus opinion regarding a 26-week extended bonding period and will be offering minority opinions. Vote count: 7 ayes; 6 nays</p> <p>3. Maximum duration in a 52-week claim period: The Task Force did not reach a consensus opinion regarding maximum duration of leave in a 52-week period and will be authoring an opinion on the low-benefits model and high-benefits model, as submitted to the actuary in the Task Force’s initial recommendation. Recommendations to actuary:</p> <ul style="list-style-type: none"> ● LBM: 12 weeks ● HBM: 28 weeks <p>Separate vote not held.</p>	12/17/19
<u>(VII) Wage replacement amount</u>	<p>1. For those with earnings less than 50% of the statewide Average Weekly Wage (AWW), the weekly benefit rate is 90% of the worker’s AWW. For workers paid more than 50% of the statewide AWW, the weekly benefit rate is 90% of the employee’s AWW up to 50% of the statewide AWW, plus 50% of the employee’s AWW that is more than 50% of the statewide AWW. The AWW would be calculated according to the unemployment insurance benefits calculation. Vote count: Unanimous</p>	12/17/19
<u>(VIII) Maximum weekly wage replacement amount</u>	<p>1. The benefit is capped at 95% of the statewide AWW. Vote count: Unanimous</p>	12/17/19
<u>(IX) Program funding structure</u>	<p>1. A 100% employee funded program. Vote count: 8 ayes; 5 nays</p> <p>2. In the case of an employer/worker split, small businesses (15 or fewer employees) would be exempt from paying the employer side premium. Vote count: 9 ayes; 4 nays</p> <p>3. Recommend the legislature consider various mechanisms to lower the cost burden on small business (EG: tax break, premium exemption, grant program premium reduction). Vote count: 11 ayes; 2 nays</p> <p>4. Collect paid family and medical leave premiums up to wages equal to 80% (\$106,320) of the Social Security wage base maximum (\$132,900). Indexed to the Social Security wage base. Vote count: Unanimous</p>	<p>12/17/19</p> <p>12/17/19</p> <p>12/17/19</p> <p>12/17/19</p>

<p><u>(X) Program Implementation</u></p>	<p>1. CDLE will be tasked with the regulation, execution, and management of a universal social insurance program. Vote count: Unanimous</p> <p>2. The State should fund, develop, and implement a plan for an education program for both workers and employers and engage other community providers (doctors, Medicaid, WIC program, Planned Parenthood, faith communities, etc.) who may play a role in raising awareness of these benefits. Vote count: Unanimous</p>	<p>12/16/19</p> <p>12/16/19</p>
<p><u>(XI) Role of third-party vendors on program sustainability</u></p>	<p>1. The CDLE has full control of the program and should engage vendors to provide services that allow the program to run more efficiently and economically (e.g. technology, actuarial services, etc.) that the Department cannot provide in-house but core program functions (e.g. claims determination decisions, enforcement, etc.) should remain with the CDLE. Vote count: Unanimous</p>	<p>12/16/19</p>
<p><u>(XII) Fund solvency under various models</u></p>	<p>1. Enact a paid family medical leave program as a social insurance model administered by the state. Vote count: 9 ayes; 3 nays; 1 abstention</p> <p>2. Allow employers to offer equivalent private plans in place of a state plan. Private plans would be responsible for the cost of certification by the state. Vote count: Unanimous</p>	<p>11/12/19</p> <p>12/17/19</p>
<p><u>(XIII) Benefit portability</u></p>	<p>1. Based on eligibility standard (i.e. unemployment insurance threshold), portability is assumed and as such, the Task Force did not hold a separate vote on this factor. See Element III.</p>	<p>N/A</p>
<p><u>(XIV) Sustainability of the program</u></p>	<p>1. Establish mechanisms to perform regular reviews and make needed adjustments to ensure sustainability and solvency of any paid family and medical leave program. Vote count: Unanimous</p>	<p>12/17/19</p>
<p><u>(XV) How the program would interact with other benefits</u></p>	<p>1. Consistent with the final version of the FAML bill from the last legislative session, if a worker is receiving Workers' Compensation benefits, weekly paid family/medical leave benefits are reduced the equivalent of 75% (but not less than \$0) of any temporary disability or permanent total disability benefits and the total Workers' Compensation and PFML benefit combined cannot exceed the worker's weekly wage. The reduction must be concurrent.</p>	<p>12/16/19</p>

	<p>Additionally, the worker cannot concurrently collect unemployment insurance benefits and paid family and medical leave.</p> <p>Vote count: Unanimous</p> <p>2. A paid family and medical leave program that would not allow stacking of like benefits (i.e. disability benefits could not be stacked with the medical component of the PFML program). Additionally, employers would not be allowed to require employees to exhaust or concurrently use their accrued leave (vacation, paid time off, or sick leave) before or while taking paid family or medical leave under the state program.</p> <p>Vote count: Unanimous</p>	11/12/19
<u>(XVI) Implementation timelines</u>	<p>1. A timeline that presumes a paid family and medical leave program that is established by July 1, 2020; begins education and outreach on January 1, 2022; establishes the funding stream on January 1, 2023; and starts paying benefits on January 1, 2024.</p> <p>Vote count: 11 ayes; 2 nays</p>	12/16/19

Issue Analysis

SB 19-188 Element (I) *The purposes of the leave, including serious illness, caring for a loved one with a serious illness, bonding with a new child, and needs arising from military deployment and the effects of domestic violence, stalking, and sexual assault;*

Recommendation(s):

1. Paid leave should be available to Colorado workers for these reasons:
 - Family—Bonding (parental leave after childbirth/ adoption), care for family members, foster care and military service related leave.
 - Medical—Own disability (including actual childbirth and time to recover from childbirth), domestic violence, sexual assault, & stalking, and organ donation.

The Task Force unanimously supported this recommendation.

Supporting Evidence:

- The above purposes of leave were recommended by all three expert reports, each of which offered evidence to demonstrate the short and long-term health and economic benefits that access to paid leave for these purposes provides.
- A worker’s own serious illness, to care for a seriously ill family member, organ donation, military deployment and to bond with a new child by birth, adoption or foster care are all needs currently covered by the federal FMLA and consistent with most other state programs.
- The CDPHE documented evidence of the extensive maternal, child, and family health benefits that result from access to paid leave in its report to the Task Force.¹
- According to the University of Minnesota/Institute for Women’s Policy Research (UMN)² report, more than 50,000 Coloradans are active duty and reserve members of the military (p. 19); additionally, according to the Urban Institute (URBI)³ report, Colorado’s military families are the 10th largest in the U.S. and more than 80 percent of enlisted personnel are in the sandwich generation and likely to benefit from leave related to military service (p. 20).
- Leave related to domestic violence (DV), sexual assault, and stalking, while newer, is emerging as a core purpose in other states. Current access to *any* paid time off for workers dealing with DV, sexual assault, or stalking is patchwork (UMN, p. 20; URBI, p. 20) and allowing leave for this purpose would fill a gap in coverage that presents barriers for workers today. Given the demographics and average wages of workers needing leave under this purpose, this leave would be low in cost and an “important equity component of a paid leave policy” (UMN, p. 20 URBI, p. 21).
- These purposes were highlighted by Colorado workers or businesses as needed reasons for leave in the nearly 1,000 public comments received by the Task Force.⁴

¹ Johnson Holm, A. (2019). *The Health and Benefits of Paid Medical and Family Leave: A Report For the Colorado Department of Labor and Employment’s Family and Medical Leave Implementation Task Force* (pp. 1-35). Denver, CO: Colorado Department of Public Health and Environment. Retrieved from <https://drive.google.com/file/d/1oJWlYfnDpnHpCtPlwG4j9mONUVzoJIWi/view>

² Fitzpatrick, D., & Hayes, J. (2019). *Colorado Paid Family and Medical Leave: Program Design and Implementation*. Colorado Paid Family and Medical Leave: Program Design and Implementation (pp. 1–70). Minneapolis, MN: University of Minnesota. Retrieved from <https://drive.google.com/file/d/1nN9QAwS0cfL5QqnIKIJb3dxKbxbob/view>

³ Jacobs, E. (2019). *An Evidence Based Framework for Paid Family and Medical Leave in Colorado*. An Evidence Based Framework for Paid Family and Medical Leave in Colorado (pp. 1–53). Washington, DC: Urban Institute. Retrieved from <https://drive.google.com/file/d/1n0IOSptfbT2AenR7QvHrafrylv03o8Zf/view>

⁴FAMLI Task Force Website (2019). Retrieved from <https://sites.google.com/state.co.us/famli/public-comment?authuser=0>

SB 19-188 Element (II) *Self-employed workers’ access to paid family and medical leave and a mechanism to allow self-employed workers to participate;*

Recommendation(s):

1. Self-employed workers should have the option to access paid family and medical leave with a 3-year minimum requirement of remaining in the program after opting in.

The Task Force members unanimously supported this recommendation; concerns and clarifications are shared below.

Supporting Evidence:

- Self-employed workers should have the option to participate in the paid leave program, but should not be required to participate. As with any insurance market, individuals should not be allowed to enter only to receive the benefit and then immediately exit once the benefit is received. Therefore, self-employed individuals who opt to participate should be required to pay into the program for a minimum of 3 years. Self-employed workers who opt in become eligible for paid benefits once they pay premiums on a wage base that meets the earnings eligibility threshold designated in [Section III](#).
- The University of Denver (DU)⁵ report notes, “this sector of the workforce is large—nearly 12% of the Colorado workforce—and growing significantly with the rise of businesses like Uber, Lyft, Care.com, and Rover.com” (p. 15). Approximately 277,000 Colorado households rely on self-employment income (UMN, p. 41).
- A majority of the states with paid family and medical leave programs allow these workers to opt-in to the program (DU, p. 15).

Concerns and Clarifications:

- Self-employed workers who opt to participate will typically expect higher utilization and higher wage replacement than those who do not. It is therefore likely, even with the requirement to pay in for 3 years, that the premiums paid into the program by self-employed workers will not cover the benefits paid out to self-employed workers. Some paid leave programs do not require self-employed workers to pay the employer share of the premium. Reducing premiums paid by self-employed workers in this way exacerbates the extent to which self-employed workers must be subsidized by the rest of the funding pool.
- In California, which has the most experience with allowing self-employed individuals to opt in, “individual professional corporations,” such as doctors and lawyers opt in more than low wage independent contractors in the “gig economy” (UMN, p. 42). As a result, Washington State—which has a joint contribution from employers and employees—only required self-employed individuals to pay the employee share of premiums “[i]n an attempt to create parity for self-employed individuals and other workers and encourage more to join the program” (UMN, p. 42). In effect, the State treats self-employed workers like small employers, who are also exempt from the employer share of premiums.

⁵ Greenfield, J. C., & Cole, P. M. (2019). Expert Analysis for Potential Colorado Paid Family and Medical Leave Program. Expert Analysis for Potential Colorado Paid Family and Medical Leave Program (pp. 1–40). Denver, CO: University of Denver. Retrieved from <https://drive.google.com/file/d/1nHrayv2WBjQJxauaoWMUnhL-iKJgz5r8/view>; also see <https://drive.google.com/file/d/1IFeVqESH3qLkllq0YyJoMbvN892u3gy4/view>

SB 19-188 Element (III) Eligibility to take leave;

Recommendation(s):

1. Workers with at least the unemployment insurance minimum (currently \$2,500) of earnings in a given period will be eligible for wage replacement benefits.

The Task Force unanimously supported this recommendation; concerns and clarifications are shared below.

Supporting Evidence:

- It is important to note that this recommendation only concerns eligibility for a worker to access wage replacement benefits; the requirement for employers to hold a job open for a worker who takes leave has separate eligibility tied to the length of employment with the specific employer, as discussed in [Element V](#).
- No state paid family and medical leave insurance programs tie eligibility for wage replacement benefits to length of employment with a specific employer. Rather, wage replacement benefits are an *earned* benefit that workers qualify for after they have worked or earned a certain amount in Colorado, an approach that promotes portability and accessibility. This model also ensures that workers who contribute to the cost of premiums and qualify based on earnings can access their earned benefit.
- Mirroring Colorado's unemployment insurance eligibility requirements for paid family and medical leave benefits will lead to efficiency and ease of administration; employers and the state are already tracking income earned quarterly for the majority of workers in the state for purposes of the unemployment insurance program.
- This benefit eligibility standard demonstrates an adequate attachment to the Colorado labor force. It represents the midpoint between the High Benefit Model (HBM) and Low Benefit Model (LBM) thresholds for eligibility, provided to the actuary, both of which were shown to be solvent by the independent actuarial analysis by AMI Risk Consultants, Inc.
- The \$2,500 eligibility standard for benefits is an appropriate mid-range for paid family and medical leave compared to the benefit eligibility thresholds in several other states; a number of state paid family and medical leave insurance programs allow workers to qualify with less earnings e.g. \$300 in CA, \$1,000 in OR, \$2,325 in CT, and \$12,600 in RI (UMN, p. 25; DU Appendix 1, pp. 36-39).

Concerns and Clarifications:

- Three Task Force members in a separate vote also supported as an element of eligibility a minimum of hours worked as an employer-based benefit. Please see [Element XIII Benefit Portability](#) for more information.

SB 19-188 Element (IV) *The definition of family or family member for whom an individual may take leave for purposes of providing care;*

Recommendation(s):

- 1) Family should include child, parent, spouse, domestic partner, grandchild, grandparent, sibling, parent-in-law or parent of a domestic partner but not include blood relation and close association.

The Task Force members unanimously supported this recommendation.

- 2) The legislature should consider other family definition models of caring for loved ones who are not included by the listed family relationships above. Based on the many conversations already had, taking into account use of other models by the federal government and other states, clarity of the definition and any related factors, required documentation, and the diversity of Colorado's families.

8 Task Force members supported this recommendation; minority opinion(s) are shared below.

Supporting Evidence:

1) Definition of Family Member

- When an individual has a need for paid family leave, they often turn to the individuals described in this recommendation. As stated in the UMN expert report, 78% of Colorado households do not fit into the “nuclear family” model, defined as a married couple and their minor child (p. 28).
- This recommendation is consistent with the 9 paid family and medical leave laws that have passed around the country. As detailed in the expert reports and reflected in the state-by-state comparison chart from the National Partnership for Women & Families,⁶ all 9 existing programs cover children, parents, spouses, and grandparents. Eight of 9 programs cover domestic partners explicitly, while the ninth covers unmarried couples under separate language. Seven of 9 programs cover grandchildren and siblings. The state programs also tend to cover parents-in-law and/or parents of domestic partners, although the exact language and mechanism varies (whether explicit or through the law’s “parent” definition).
- Although a majority of workers who use the federal Family and Medical Leave Act or a state paid family leave program to care for a family member provide such care to a parent, child, or spouse, the UMN expert report notes that “a significant number have cared for a sibling, grandparent, grandchild or another family member (4-6% total)” (p. 28).
- The expert report from DU states that approximately 28% of children in Colorado live in a single-parent household, and another 4% live in households with no parent present; family caregiving in these households often includes extended family members (p. 17). Furthermore, more than 73,000 children in Colorado live with a grandparent (UMN, p. 28).

2) Further Considerations

⁶ National Partnership for Women & Families. (2019, August). State Paid Family and Medical Leave Insurance Laws. Retrieved from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/state-paid-family-leave-laws.pdf>

- The largest employer in the country, the federal government, defines “family” for federal workers to include loved ones who have a close relationship with an employee that is equivalent to family; the federal government adopted this language for funeral leave in 1969 and extended it—reflecting it has been a workable model—to sick/annual leave in 1994 (including the ability to accumulate and use 12 weeks to care for a seriously ill loved one).⁷
- NJ, OR, and CT define family in their paid family leave laws to include loved ones who are not biologically or legally related.⁸
- The UMN report emphasizes that a “broad definition of family is unlikely to jeopardize the sustainability of the program since caregiving claims are shorter in duration, dependent on a qualifying event and multiple family members can potentially provide care” (p. 27). The actuary used by the Task Force also found that a more inclusive family definition would not jeopardize program solvency.
- In public comments to the Task Force, many workers said the FMLA’s limited family definition (parent/minor child/spouse) does not reflect their families.
- An inclusive family definition is especially important to LGBTQ, immigrant, rural, disabled individuals and workers of color (UMN, p. 27). LGBTQ individuals facing rejection from biological family often turn to other loved ones for care—especially relevant given Colorado’s larger-than-average LGBTQ population (DU, p. 17). Nearly 17% of rural caregivers also care for a non-relative, which is noteworthy since three-quarters of Colorado counties are rural (UMN, p. 28).
- In addition to weighing the federal government approach, the Legislature could examine other models that list out specific factors to establish a close relationship (living together, financial interdependence, health care proxy, etc.) and weigh the forms of proof a worker can provide to evidence the relationship (affidavits, doctor certifications, etc.).

Minority Opinion(s):

1. Definition of family

- Colorado’s legislature should limit the definition of family to those covered under the federal Family and Medical Leave Act of 1993 (“FMLA”), (covering spouses, parents, and minor children)⁹; 825.200(a), and/or should adopt a definition of family consistent with how most existing PFML laws define family member.
- Broadening coverage to members beyond how FMLA and the majority of existing PFML laws define family will lead to greater stacking of legally-required and employer-provided leaves, increase absenteeism and result in increased cost for many employers.¹⁰
- If a definition of family is adopted that is broader than the FMLA and the majority of existing PFML laws, Colorado’s legislature should follow Dr. Appelbaum’s

⁷ The exact language is “an individual related by blood or affinity to the employee whose close association with the employee is the equivalent of a family relationship.” See Funeral Leave, Fed. Reg., Vol. 34, No. 163 (Aug. 26, 1969) (codified at 5 C.F.R. pt. 630); and Absence and Leave; Sick Leave, 59 Fed. Reg. 62266-01 (December 2, 1994) (codified at 5 C.F.R. pt. 630).

⁸ National Partnership for Women & Families. (2019, August). State Paid Family and Medical Leave Insurance Laws. Retrieved from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/state-paid-family-leave-laws.pdf>.

⁹ See 29 CFR § 825.102

¹⁰ See Written Commentary of Joshua D. Seidman to the Colorado Paid Family and Medical Leave Implementation (FAMLI) Task Force in Support of November 12, 2019 Oral Commentary. Retrieved from <https://drive.google.com/file/d/1yZgP3PWY9fVW-8-JgFrnmEyQTFPhWxcK/view>

recommendation and ensure that appropriate safe guards, i.e., some form of documentation, etc., are put in place requiring employees to identify their *family members* (other than defined above) at the beginning of their employment (with the opportunity to update throughout employment) verses identifying the *family member* on the day leave may be needed.

SB 19-188 Element (V) *Job protection and other employment protections, including their effect on an individual's ability to take leave;*

Recommendation(s):

1. The Task Force **did not** reach a consensus opinion regarding job protection and therefore offers the rationales below for each timeframe:
 - 7 Task Force members supported job protection starting at 120 days of employment;
 - 3 Task Force members supported job protection starting at 180 days of employment;
 - 3 Task Force members supported job protection starting at 1 year of employment.

2. The Task Force **did not** reach a consensus opinion regarding possible exemptions. The Task Force considered the following positions on exemptions:
 - No exemptions (6 Task Force members supported this recommendation)
 - Small business (6 Task Force members supported this recommendation)
 - Phase in by business size (4 Task Force members supported this recommendation)
 - Seasonal employers (7 Task Force members supported this recommendation)
 - Key position/small business (3 Task Force members supported this recommendation)
 - H2B/H2A (3 Task Force members supported this recommendation)
 - Overtime exemption (1 Task Force member supported this recommendation)

Below is the rationale for Task Force member positions.

Rationale for job protection at 120 days:

- 7 members of the Task Force supported providing workers with job protection after they have been employed by an employer for 120 days; it is important to note that this recommendation concerns eligibility for a worker's right to be reinstated to the same or an equivalent job after taking their leave, and it does not concern separate eligibility for receiving wage replacement benefits under the law.
- The separate UMN and DU expert reports recommended a shorter, 90-day waiting period, based on the available research and experience in other states (UMN, pp. 33-34; DU, pp. 19, 26). A 120-day waiting period is longer than these experts recommended and longer than the approach taken by MA, CT, and OR in their paid family and medical leave laws, but it strikes a sufficient balance between protecting workers' jobs and addressing employer concerns about holding a job open for a new employee (DU, p. 26).
- A 120-day waiting period for job protection establishes a sufficient connection to an employer. When workers contribute in part or in full towards the cost of their paid family and medical leave benefits, they should not face termination for accessing the benefit for which they paid. The expert reports emphasized that workers who lack access to job protection are much less likely to use the benefit: "this effect was most pronounced among lower-wage workers, which indicates that not only is job protection important as a way to incentivize workers to take leave when needed, but is also a key tool to help ensure that the program is equitably accessible" (DU, p. 26). Sixty-two percent of workers from households earning less than \$30,000 a year say their supervisor was not supportive when taking time off, and 45% of leave takers under Rhode Island's paid family leave law say they would not have taken leave if it was not job protected (UMN, p. 34). Research from the expert reports also suggested lack of job protection may particularly disadvantage communities of color that face employment discrimination (UMN, p. 34). Many workers in the public comments to the Task Force said job

protection was critically important and would be necessary to take paid family and medical leave.

Rationale for job protection at 180 days:

- The FAMLI Task Force had a variety of discussions about how long an employee should work at a company before they have job protection when using leave under the FAMLI program. There are members of the Task Force that believe having some sort of waiting period for job protection is a more balanced approach. Having waiting periods for benefits is a common practice in the U.S. Some Task Force members believe that having workers complete 180 days of employment gives the necessary time for the employer and the employee to determine whether they want to proceed with employment. With this approach, employers can still decide to hold a position for an employee where it makes sense for the situation, their workforce, and the company.
- Having employees be able to take leave with job protection with no waiting period can be challenging and expensive for employers to adequately cover the absence, especially for new employees who are still learning their responsibilities. There are states who have adopted paid leave legislation that do not provide additional job protection, but rather only monetary benefits (note: job protection may be available through other federal laws - such as FMLA - or other state laws). In addition, having job protection without a waiting period can create hardships for smaller companies and seasonal employers. While the length of waiting periods can vary, we believe 180 days makes sense as it balances how the program is administered with the company and its employees both having standards that must be met under FAMLI.

Rationale for job protection at 1 year:

- Colorado's legislature should only provide job protection consistent with the FMLA, i.e., when an employee has worked for the employer for at least 12 months and 1,250 hours during the 12 months prior,¹¹ which allows for longevity of employment with a likely intent to return to the job after the leave. This approach exists under Washington's PFML Law and the concept of providing a waiting period (although shorter than 12 months) is also consistent with Oregon's (90-day waiting period) and Connecticut's (three (3) month-waiting period) PFML laws.¹²
- The Colorado Legislature should consider the balance between the employee's need for leave and wage replacement benefits with the employer's need to manage its workforce and continue to productively operate its business when considering job protection for PFML. Providing for a longer employment period before being eligible for job protection helps provide the needed balance.¹³
- Protecting the job for employees on leave who have not established a long-term employee-employer relationship potentially leads to a higher likelihood that the employee does not return to the job and decreases overall employer productivity. During the leave period, the employer will have used other existing employees or temporary workers to fill the position or do the work, but would likely have hired permanently for that position, and increased its

¹¹ See 29 U.S.C.A. § 2611(2)

¹² See Written Commentary of Joshua D. Seidman. Retrieved from <https://drive.google.com/file/d/1yZgP3PWY9fVW-8-JgFrnmEyQTFPhWxcK/view>; see also Seyfarth Law, L.L.P. (2019, June 27) *Connecticut Becomes Seventh State to Enact Paid Family Leave Law*. Retrieved from <https://www.seyfarth.com/news-insights/connecticut-becomes-seventh-state-to-enact-paid-family-leave-law.html>; <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled>.

¹³ See Written Commentary of Joshua D. Seidman. Retrieved from <https://drive.google.com/file/d/1yZgP3PWY9fVW-8-JgFrnmEyQTFPhWxcK/view>; see also <https://www.seyfarth.com/news-insights/connecticut-becomes-seventh-state-to-enact-paid-family-leave-law.html>; <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2005/Enrolled>.

productivity during the leave period, had the employer known the employee on leave was not returning to work.

Rationale for no exemptions:

- Any job protection exemptions for certain categories of workers or employers is inequitable and contrary to the expert reports. Two expert reports recommend universal job protection once a worker has been employed with their employer for 90 days; the third noted that any job protection restrictions depress low-wage workers’ take up rates (UMN, pp. 9, 33; URBI, p.2) As emphasized in the UMN report, “the most economically and socially vulnerable workers, including low-income workers, will be less likely to use the program if their job is in jeopardy,” and research shows workers of color will be less likely to take leave without job protection (p. 34). In public comments to the Task Force, many workers shared concerns of job loss when they need to take leave.
- When workers contribute to the cost of paid family and medical leave (and 8 Task Force members supported a model where employees *fully* cover the cost), no worker should risk job loss for accessing the insurance benefit. Otherwise, workers will pay for a benefit they are much less likely to use.
- Many, if not most, seasonal workers will be removed from job protection under a 90-day waiting period to all workers (UMN, p. 33; DU, p. 19). A universal job protection waiting period can address seasonal employer concerns, rather than a specific, inequitable exclusion.
- Although some Task Force members highlighted the cost of job protection to employers, it is critical to recognize that workers taking leave are paid through the program and not by the employer, allowing the employer to use the workers’ usual salary/wages for other purposes, including temporary staffing or overtime for other workers. Even though employers could use these wage savings for overtime or temporary staffing most businesses with 2-99 employees temporarily reassign work to other employees when workers take family and medical leave.¹⁴

Rationale for all other exemptions considered above:

- Small businesses (15 and fewer workers) – Small businesses already face disproportionately high compliance burdens because they lack the resources to staff a full HR department. Exempting them from job protection requirements of a PFML program would recognize, as many other labor regulations do, the challenges small businesses face, and would encourage entrepreneurship and growth.
**Please see Appendix C for more information on potential impacts of a PFML Program on Colorado’s small businesses.*
- Phase in by business size – Similar rationale to the above. Rather than a full, permanent exemption, some Task Force members support a phase-in approach that would allow medium-sized and small businesses more time to prepare for PFML.
- Key position in small business limitation – Similar rationale to the above. Rather than a full exemption or phase in, some Task Force members support allowing small businesses to designate some jobs as “key positions,” unique in a critical role in the business for limited job protection (i.e. fewer weeks of job protection than the Task Force recommends broadly). This would limit the amount of time small businesses will struggle to continue doing business while key staff members are out on leave. Providing limited job protection for small business key-positions is the only compromise that will protect for vast majority of small business

¹⁴ Center for American Progress. *Opinion Poll: Small Businesses Support Paid Family Leave Programs*. Retrieved from <https://new.smallbusinessmajority.org/sites/default/files/research-reports/033017-paid-leave-poll.pdf> (page 9).

worker while balancing the critical need of small businesses to fill key-positions in order to survive.

- Seasonal employers – Seasonal employers face difficulty replacing workers outside of particular hiring seasons. PFML will increase the number of workers who take leaves of absence and seasonal industries will struggle to replace those who take leave at inopportune times.
- H2B/H2A –The legislature should develop special rules for workers whose employment and work authorization are dependent upon special immigration visas.
- Nonexempt overtime workers – Similar but broader than the “key position” idea: Workers who are not eligible for overtime pay under the Fair Labor Standard Act are often salaried workers in managerial positions who are more likely to have access to benefits like paid leave. This would be one way of targeting a PFML program to workers with lower incomes in non-managerial positions.

SB 19-188 Element (VI) The duration of leave;

Recommendation(s):

1. The Task Force **did not** reach a consensus opinion regarding maximum duration per event and will be authoring an opinion on the low-benefits model and high-benefits model, as submitted to the actuary in the Task Force’s initial recommendation.
 - LBM: 6 weeks for family leave/6 weeks for medical leave.
 - HBM: 14 weeks for family leave/14 weeks for medical leave
2. The Task Force **did not** reach consensus on a 26-week extended bonding period.
3. The Task Force **did not** reach a consensus opinion regarding maximum duration in a 52-week period and will be authoring an opinion on the low-benefits model and high-benefits model, as submitted to the actuary in the Task Force’s initial recommendation.
 - LBM: 12 weeks.
 - HBM: 28 weeks

Below is the rationale for each of the low-benefit value and the high-benefit value.

Rationale for Low-Benefit Model:

- Program costs are primarily determined by the maximum leave duration, eligibility threshold, and wage replacement formula. It is preferable to control costs with a lower maximum duration rather than with a high eligibility threshold or low wage replacement. The latter two options disproportionately exclude low wage workers from taking paid leave.
- Costs uncertainty is much less of an issue when maximum duration is set to six (6) weeks because the actuarial analysis of that model assumes that most recipients will use most of the allowed weeks. There is much less scope for costs to exceed projections. There is considerable uncertainty in projected costs for the program when a high maximum duration of leave is allowed, because of differences between the proposed program and existing programs in other states.
- With respect to PFML, from a business productivity and profitability standpoint, the employer must consider the expense of recruiting

Rationale for High-Benefit Model:

- The high-benefit model provided to the actuary for an upper-bound estimate is much closer to expert recommendations. The UMN report recommends up to 12 weeks of medical leave and 12 weeks of family leave—with a potential total of 24 weeks—which “falls in the middle of maximum combined durations among states and developed countries....” (p. 21). All implemented state leave laws provide more generous medical leave (including pregnancy and childbirth recovery), “with most offering around 20-26 weeks” (URBI, p. 22).
- Most workers do not have a qualifying event in any given year, and average leave duration in other states is lower than the maximum; medical certification also limits duration for 75% of claims. (UMN, p. 21). Maximum allowed weeks should not be lowered based on averages; some workers face critical illnesses or emergencies necessitating more time.
- Leading public health organizations endorse 12 weeks as the minimum amount of leave for new moms.¹⁶ Mothers’ physical health

¹⁶ Examples include the American Public Health Association, American Academy of Pediatrics, and Pediatric Policy Council (CDPHE, p. 29).

<p>additional or temporary help, training and supervision, and/or overtime pay for existing employees as well as any risk to customers/client satisfaction and regulatory obligations. Costs can only be absorbed so much before a business has to reduce labor or wages and benefits. Due to the impact from other government policies (federal, state, and local), a business’s ability to absorb these costs has been strained and may become unsustainable.</p> <ul style="list-style-type: none"> • Several members of the Task Force discourage the Colorado Legislature from creating a one-size-fits-all PFML policy, but encouraged the creation of a PFML policy as a "floor," which should act as a benefits floor that individual workers and employers can enhance as they see fit. Other PFML programs have demonstrated negative distributional effects, i.e., they distribute money from low-income workers to high-income workers. Keeping premiums low and wage replacement for low-income workers high helps avoid this outcome. Shorter leaves allow for lower premiums and/or higher wage replacement, an important aspect for low-income workers for whom every dollar counts. • Even when longer leaves are offered, people take shorter leaves on average. This demonstrates that usually the need for leave is not for a long-leave period, but for a brief time. • The DU and CDPHE reports emphasized that the benefits of family leave are optimal for mother and baby at a minimum of 12 weeks (compared to 8 or 6 weeks).¹⁵ The low benefit model allows birth mothers 12 weeks of leave, i.e., combining six (6) weeks of bonding leave time with six (6) 	<p>typically improves—and postpartum depression risks decrease—after 12 weeks of leave. Mothers with 12 or more weeks are 40% more likely to breastfeed exclusively and 69% more likely to return to work; their infants are also more likely to receive immunizations and checkups. (CDPHE, 2019).</p> <ul style="list-style-type: none"> • The low-benefit model will not allow mothers adequate time to recover from childbirth (6-8 weeks without complications) and then bond with their child. Nor is six weeks enough medical leave for a worker with a serious illness like cancer, heart attack, or stroke. • Fourteen weeks of family leave allows fathers and adoptive/foster parents sufficient bonding time, and supports workers who typically need less time for safe leave, military caregiving, or to care for a seriously ill loved one. <p>Extended Parental Bonding Time:</p> <ul style="list-style-type: none"> • The scientific consensus suggests that a minimum of six months of maternity leave is necessary for maximizing both the short- and long-term health benefits to mothers and babies. • The international standard for paid parental leave is four months for the purposes of childcare, over and above maternity leave, under the European Union’s 2010 Parental Leave Directive. International data shows “significant evidence that leaves up to 12 months in length are optimal for new parents and their infants...” (DU, p. 25). • Leave entitlements under one year can improve job continuity and labor force trajectories for women several years after childbirth. • By 26 weeks of leave, 95% of parents in the US have returned to work. In MA, NJ, and NY, the maximum weeks of wage
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¹⁵ See Greenfield, J. C., & Cole, P. M. (2019). *Expert Analysis for Potential Colorado Paid Family and Medical Leave Program*. *Expert Analysis for Potential Colorado Paid Family and Medical Leave Program* (pp. 1–40). Denver, CO: University of Denver.

<p>weeks of medical leave time. Given the above and the need to balance the employee’s need for leave with the employer’s business-operational needs, a 26- or 28-week leave in a 12-month period is excessive and should not be adopted by the Colorado Legislature.</p>	<p>replacement for a birth parent with a normal vaginal birth is 22 weeks, due to the ability to combine medical leave and family bonding leave (UMN, p. 22). For a Cesarean section, the duration is likely to be longer.</p> <ul style="list-style-type: none">● Moreover, a dollar value cannot be placed on the wellbeing, safety, and healing of the birth mother nor the efficient development of the child. The insurance premium paid by the recipients of the coverage (earned benefit) grants access to the paid program, which leads to better quality of life for the mom and baby.● Extending parental bonding to 26 weeks is the optimal period according to World Health Organization and the United Nations Children’s Fund (UNICEF). At \$2.70 per \$1,000 wage, it is an affordable way to improve parental and infant health and well-being while reducing health care cost for our state. It is a win-win for Coloradans!
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SB 19-188 Element (VII) *The amount of the wage replacement;*

Recommendation(s):

1. For those with earnings less than 50% of the statewide AWW, the weekly benefit rate is 90% of the worker's AWW. For workers paid more than 50% of the statewide AWW, the weekly benefit rate is 90% of the employee's AWW up to 50% of the statewide AWW, plus 50% of the employee's AWW that is more than 50% of the statewide AWW. The AWW would be calculated according to the unemployment insurance benefits calculation.

The Task Force members unanimously supported this recommendation; concerns and considerations are shared below.

Supporting Evidence:

- A progressive wage replacement formula, such as the one above, is the norm among state programs and ensures that the lowest income earners are able to access the program (UMN, p. 29; URBI, p. 23; DU, pp. 26-27).
- Research shows that low-wage workers are unlikely to use any paid leave benefit, even when they pay into the program, if the wage replacement is too low to support their families while on leave; adequate wage replacement is a key concern for designing an equitable paid leave program (UMN, p. 29-32; URBI, pp. 23-24; DU, pp. 26-28).
- Ensuring adequate wage replacement is one method to enhance gender parity in paid leave policies and encourage men to use the benefit to bond with children born, adopted, or fostered into their families (UMN, p. 31; URBI, pp. 10-11). Research from other countries shows that policy designs, including adequate wage replacement, not only increases gender equity in family caregiving responsibilities, but also boosts the labor force participation, career development and total lifetime pay of women (URBI, p. 11; UMN, p. 31).
- AMI Risk Consultants Inc., the independent actuarial firm, modeled a generous progressive wage replacement benefit in both the HBM and LBM and both were found to be solvent over the 10-year window.

Concerns and Clarifications:

- It is important to note that two states, OR and CT, have adopted wage replacement levels that exceed this recommendation by providing even greater percentage of wage replacement for the lowest income workers. This approach should also be noted and considered by legislators, since wage replacement is a critical component for meeting the needs of low-wage workers.
- Connecticut provides 95% of a worker's AWW up to an amount equal to 40 times the state minimum wage and 60% of a worker's AWW above an amount equal to 40 times the state minimum wage. Oregon provides 100% of a worker's AWW up to an amount equal to 65% of the statewide AWW and 50% of a worker's AWW above an amount equal to 65% of the statewide AWW (UMN, p. 30).

SB 19-188 Element (VIII) *The maximum weekly wage replacement amount;*

Recommendation(s):

1. The benefit is capped at 95% of the statewide AWW.

The Task Force members unanimously supported this recommendation; concerns and considerations are shared below.

Supporting Evidence:

- An adequate maximum weekly benefit means that higher income workers would participate and see value in the program, while the redistributive aspects of the program would remain equitable (UMN, p.29, 31-32; DU, p. 28).
- A maximum weekly benefit tied to a dynamic indicator means less continuous regulation and annual legislative or administrative adjustment is required (similar to the unemployment insurance system today).

This threshold is comparable to states with newly adopted programs and revisions that states with established programs are adopting; relatively high weekly maximum is emerging as a best practice to address equity in paid leave programs between utilization by men and women.

Concerns and Clarifications:

- One Task Force member supports the idea of offering \$0 in benefits above a certain income threshold (for high earners) in an effort to focus the program into more a safety net for those with greatest need (as high earners can typically save ahead for unpaid leave or negotiate better on-the-job benefits). A safety net program (in contrast to a universal social insurance program) is a model lawmakers could consider.

SB 19-188 Element (IX) *The program funding structure;*

Recommendation(s):

1. The program for paid family and medical leave should be 100% funded by employees.

8 Task Force members supported this recommendation; minority opinion(s) are shared below

2. In the case of an employer/worker split, small businesses (15 or fewer employees) would be exempt from paying the employer side premium.

9 Task Force members supported this recommendation; minority opinion(s) are shared below.

3. Recommend the legislature consider various mechanisms to lower the cost burden on small business (e.g.: tax break, premium exemption, grant program premium reduction).

11 Task Force members supported this recommendation; minority opinion(s) are shared below.

4. Collect paid family and medical leave premiums up to wages equal to 80% (\$106,320) of the Social Security wage base maximum (\$132,900). Indexed to the Social Security wage base.

The Task Force members unanimously supported this recommendation.

Supporting Evidence:

1. **Program Funding**

Economists generally agree that the costs of any payroll tax are ultimately born by the worker, even if the tax is initially paid by the employer.¹⁷ When a payroll tax is paid by employers, wages, wage growth and other benefits are affected so that workers ultimately pay for the tax.

With a 100% worker funded program, workers will fully observe the costs they are paying and the benefits they receive. This allows workers and voters to make a fully informed choice about what size of program to support. When the premium is “split” between the worker and employer, this hides part of the costs the workers are paying, as workers will not attribute the resulting changes in their wages and benefits to the paid leave program. This may make the program more politically popular, but workers and voters may end up supporting a larger program than they would if they could fully observe the costs they are paying.

2. **Exemptions for employers with 15 or fewer employees:** A paid family and medical leave insurance premium would be a financial hardship on particularly small businesses in Colorado, so those small businesses should not have to pay the premium. Lawmakers should consider relief for small businesses for the following reasons:

- If Colorado’s legislature pursues an employer/employee PFML insurance premium split, it should exempt employers with 15 or fewer employees from having to pay

¹⁷ See, for example, Congressional Budget Office (CBO). 2007. Historical Effective Federal Tax Rates: 1979 to 2005. Retrieved from <https://www.cbo.gov/publication/41654>: “[CBO] assumes, as do most economists, that the employers share of payroll taxes is passed on to employees in the form of lower wages than would otherwise be paid.” (p.3).

the employer-side portion of any PFML insurance premiums, given financial strains on Colorado's smallest businesses from the cost of other employer expenses such as rising property taxes, potential (and actual) local minimum wage increases, new overtime rules, and other recently proposed expenses.

- The federal FMLA (although an unpaid program) also exempts small employers (with 50 or fewer employees) from providing FMLA leave to its employee.¹⁸ Despite acknowledging that FMLA does not cover small employers, several Task Force members felt it important to note that FMLA also does not involve premiums, an insurance product, or wage replacement.
- Many smaller businesses lack the resources for legal and human resources expertise, and payroll support. This puts them at a relative disadvantage to their larger competitors who may have more available resources and infrastructure. Therefore, exempting these small employers from paying the premium can help to address this relative disadvantage.
- Of the states with PFML policies that have a shared funding between employee and employer, Washington, Massachusetts, and Oregon exempt small firms at employment thresholds of 25 (MA and OR) or 50 (WA) from all or parts of their mandated PFML premium contribution.

For the same reasoning regarding financial challenges for small businesses, as described above in response to #2, a majority of the Task Force also recommends that the Legislature consider other potential mechanisms that could provide support for small employers, including any tax breaks or relief, an employer-side premium exemption (if the Legislature pursues joint contributions from employers and employees), and a potential grant program that reduces premiums or provides support for small businesses. For example, Washington State's paid family and medical leave program includes certain small business assistance grants that are available under certain circumstances.

3. Wage Base

The annual limit on the wage base should be sufficiently high to facilitate the redistribution needed to fund higher wage replacement for low wage workers. Based on the proposed wage replacement formula in Sections VII and VIII, and assuming a state AWW of \$1,085, a worker earning the proposed maximum of \$106,320 would receive 50% wage replacement, while workers earning less than \$542.50 a week would receive 90% wage replacement. If an even higher wage base limit is used, the amount high wage workers pay in premiums could far exceed their expected benefit. A higher wage base limit could also incentivize firms that employ a disproportionate share of high wage workers to instead provide private plans and opt out of the funding pool.

Minority Opinion(s):

1. Program Funding

- 5 members of the Task Force supported a shared contribution model in which workers and employers both contribute to the fund.
- It is important to note that a shared contribution model is becoming more common with the newer states passing paid family and medical leave programs. As described in the UMN expert report, four states NJ, WA, MA, and OR have a shared contribution structure. In these states the percentage of contributions made by workers and employers vary. In NJ, WA, and MA, workers pay 100% of the costs for family leave

¹⁸ See 29 U.S.C.A. § 2611(2); 29 C.F.R. § 825.102, 825.110; see also Written Commentary of Joshua D. Seidman. Retrieved from <https://drive.google.com/file/d/1yZgP3PWY9fVW-8-JgFrnmEyQTFPhWxcK/view>

benefits and employers cover the majority of costs for medical leave benefits (UMN, pp. 35-36)

- NJ: For medical, workers pay 41% and employers pay 59%, for family care, workers pay 100%.
- WA: For medical, workers pay 45% and employers pay 55%, for family care, workers pay 100%.
- MA: For medical, workers pay 40% and employers pay 60%, for family care, workers pay 100%.
- OR: For medical, workers pay 60% and employers pay 40%, for family care, workers pay 60% and employers pay 40%
- Since medical leave claims are a majority of claims and are generally more expensive, the combined contribution across family and medical leave may be more equitable between worker and employer. (UMN, p. 36)
 - NJ: Effective Combined Contribution: workers 48% and employers 52%
 - WA: Effective Combined Contribution: workers 63% and employers 37%
 - MA: Effective Combined Contribution: workers 50% and employers 50%
 - OR: Effective Combined Contribution: workers 60% and employers 40%
- In a poll conducted for Small Business Majority between March 11 and March 20, 2019 of 300 Colorado small business owners with 2 to 50 employees, 63% of small business owners support a publicly administered insurance program funded equally by employees and employers.¹⁹

2. Small Employer Exemption from Premium Contributions

- The Task Force recognizes that small employers, new employers and those with a majority of low-wage workers face unique challenges in providing PFML. These challenges include paying premiums for a public or private program; reinstating an employee who needs to take PFML; or struggling to comply with any basic administrative requirements of a private or public plan. The Task Force had good conversations around these issues. The Task Force's concerns were not determined so much by the size of the business, as the nature, quality, and age of the business. For example, a small boutique law firm with highly paid employees, accounting and HR could likely provide any model of PFML benefit for all its employees. However, a small food truck or new business would struggle to do the same. The Task Force members wanted to target assistance to the needs of individual businesses, but because that proved difficult, a premium exemption served as the best proxy. Whether it is a good substitute for *targeted* aid was not determined by the Task Force.
- Exempting employers with 19 or fewer employees would exclude 87% of all employers in Colorado from paying any premium (UMN, p. 37).
- An equitable playing field includes treating similarly situated businesses the same, meaning a restaurant with 15 employees similarly to a restaurant with 16 people. Without this, voluntary compliance becomes challenging as some businesses perceive "unfair or unequal" treatment, perverse incentives are created (e.g. a 15-employee restaurant refuses to grow to 16), and rules appear arbitrary (note : there is no universally accepted definition of "small business").

¹⁹ Small Business Majority. (2019, March 28) "Colorado small business owners support paid family and medical leave insurance program." Retrieved from <https://smallbusinessmajority.org/sites/default/files/research-reports/Colorado-Small-Business-Paid-Family-Leave-Poll-2019.pdf>

- Exempting small businesses from contributing could incentivize larger businesses to opt to self-insure or seek a voluntary private plan option, weakening the redistributive aspects of the program that are essential to solvency, affordability and accessibility for small businesses and low-wage earners.

3. Cost Burden on Small Business

- As the legislature considers small business breaks or financial incentives for paid leave it is important to look at the research and data on what tools can be effective, will not exclude vulnerable workers from access to paid leave, and/or destabilize the insurance program.
- Research has found that tax credits or breaks for small businesses are an ineffective way of addressing the need for paid family and medical leave. Tax credits for businesses that provide paid family and medical leave are "voluntary and fail to guarantee any additional access to paid leave for working families. Moreover, past experiences with business tax credits have shown that they are unlikely to significantly compel employers to change their policies." "For example, a tax credit included in the Economic Recovery Tax Act of 1981 was intended to encourage employers to create child care centers for their workers, but those programs remain exceedingly rare."²⁰
- Job Protection Exemptions: Job protection is an important component of a successful paid leave program and ensures access to the most marginalized workers. If job protection exemptions are considered it is important to note that vulnerable workers are less likely to take paid leave if they do not have job protection. "Paid leave programs should include job protection so that workers of color can take paid leave without fear of losing their jobs. Research from current state paid leave programs finds that workers of color – particularly low-income workers of color – are less likely to take paid leave if they do not have job protection."²¹
- Full Exemptions: No state fully allows exemptions to small business from BOTH job protection and wage replacement; no state provides any business size exemption from wage replacement. This practice is not favorable as small businesses lose a competitive edge to larger employers, as they cannot provide paid leave and retain workers. Currently 87.5% of companies employ 20 or less employees (DU, p.12). On the worker perspective: there will be workers in Colorado that have access to paid leave and see financial stability while a sector of the workforce will be excluded and will continue facing financial insecurity. This may widen income and wealth disparities for marginalized communities.

²⁰Sunny Frothingham and Sarah Jane Glynn, "Rhetoric vs. Reality: Paid Family and Medical Leave. Proposed Business Tax Credits and Pregnancy 401(k)s Fall Short for Working Families." August 11, 2016.

²¹National Partnership for Women and Families. "Paid Family and Medical Leave: A Racial Justice Issue – and Opportunity." August 2018.

SB 19-188 Element (X) Program implementation;

Recommendation(s):

1. CDLE will be tasked with the regulation, execution and management of a universal social insurance program.

The Task Force members unanimously supported this recommendation.

****Also see Supplemental Report in Appendix A for distribution of costs under private market pricing.***

2. The State should fund, develop, and implement a plan for an education program for both workers and employers and engage other community providers (doctors, Medicaid, WIC program, Planned Parenthood, faith communities, etc.) who may play a role in raising awareness of these benefits.

The Task Force members unanimously supported this recommendation.

Supporting Evidence:

1. Regulation, Execution and Management

- Under a social insurance model, the Task Force believes the CDLE is well positioned and has the expertise to regulate, implement, and manage a paid family and medical leave insurance program. In addition to expertise with employment-related issues, the agency’s experience with Unemployment Insurance—another type of social insurance program—equips them to implement a new paid family and medical leave insurance law.
- Other states have similarly drawn on the expertise of its labor department and labor officials when starting a paid family and medical leave program. Paid family and medical leave laws in California, New Jersey, Rhode Island, Washington State, Washington D.C., Massachusetts, and Oregon have all been—or are currently being—implemented and managed by the relevant jurisdiction’s labor and/or employment department (or a new department/division housed within the state’s labor department).

2. Education and Outreach

- Education and outreach will reduce both worker confusion and the burden of businesses to manage the program “Long-standing paid leave programs universally stress the importance of outreach to and feedback from employers and workers during all stages of program development and eventual ongoing operation, including implementation” (UMN, p. 46).
- “Community-based organizations can be critically important partners. Workers may be in crisis when leave is needed and may not recall information shared months or years ago. Healthcare-related organizations and individuals may be particularly important messengers and will also play a critical role in verifying eligibility based on serious health conditions. Organizations that support and connect with human resources staff, as well as small or new employers, can also play a vital role.” (UMN, p. 46).

- “Lack of program awareness is harmful for a number of reasons: 1) it may erode trust in the state if workers perceive that they are paying premiums for programs to which they do not have access; 2) workers may elect to apply for more expensive public benefit programs because they are unaware of their eligibility for paid leave; and, 3) workers may forego taking leave even when it is needed, which puts them at higher risk of long-term health problems, absenteeism, and lower productivity workers” (DU, p. 21).
- “Those who earn less than \$15 per hour are nearly 30% less likely than those who earn more than \$15 per hour to know about the state’s paid leave program. Immigrants, Latinos, workers without access to paid sick or vacation days, less-educated workers, and those who earn less than \$80,000 annually are all less likely than their counterparts to be aware of paid leave options” (URBI, p.29).

SB 19-188 Element (XI) Role of third-party vendors;

Recommendation(s):

1. The CDLE has full control of the program and should engage vendors to provide services that allow the program to run more efficiently and economically (e.g. technology, actuarial services, etc.) that the Department cannot provide in-house but core program functions (e.g. claims determination decisions, enforcement, etc.) should remain with the CDLE.

The Task Force members unanimously supported this recommendation.

Supporting Evidence:

- This recommendation is consistent with all three of the expert reports submitted to the Task Force. All of the expert reports recommended that a paid family and medical leave insurance program should be housed and run by a public agency, while potentially allowing use of some third-party vendors, as described below.
- Both the UMN and DU expert reports emphasize that no states have outsourced administration of a paid family and medical leave program to a third-party company (UMN, p. 50; DU, p. 14). However, the experts did provide examples of where limited third-party vendors have been utilized elsewhere to provide support to the state. For example, Washington State’s paid family and medical leave program (which is being administered by the State’s Employment Security Department) has used a third-party vendor for support with developing its data/revenue collection and claim processing information technology (IT) needs (UMN, p. 50).
- As described earlier in the program implementation section, the State has the expertise around employment issues, labor enforcement, and social insurance to administer the program’s core functions. Additionally, the State has access to data that can be utilized for paid family and medical leave eligibility, allowing for more efficient integration and administration.
- The UMN report notes, “Outsourcing an entire paid family and medical leave program to a third-party vendor has not been tried in any state-level paid leave program and would incur significant risk, including potential data breaches, conflicting incentives, and significant oversight challenges” (p. 49). The Task Force also discussed how outsourcing an entire program—as opposed to discrete, non-core functions—could be a cause of concern in case a third party administrator does not meet its obligations or leaves the field, which could cause disruption for both employers and workers.

SB 19-188 Element (XII) *The solvency of a paid family and medical leave fund under various models ;*

Recommendation(s):

1. Enact a paid family and medical leave program in the state as a social insurance model administered by the state.

9 Task Force members supported this recommendation; minority opinion(s) are shared below.

2. Allow employers to offer equivalent private plans in place of a state plan. Private plans would be responsible for the cost of certification by the state.

The Task Force members unanimously supported this recommendation.

Supporting Evidence:

1. Social Insurance Model:

- After robust discussion, a review of research, and consideration to alternative proposals advocated by key stakeholders, it is recommended that Colorado enact paid family and medical leave through a social insurance program administered by the State. As summarized by the UMN expert report, [a]most all US state-level paid leave programs and paid leave programs around the globe are structured as social insurance programs” (UMN, p. 35). The social insurance model is one where workers and/or employers contribute to a state-run trust fund through payroll contributions and then receive wage replacement when they have an eligible purpose for leave. A primary reason this model is recommended is because it has worked successfully elsewhere, as demonstrated by more than a decade of research on California’s and New Jersey’s paid family and medical leave social insurance programs. Recent paid family and medical leave programs at the state level have also been structured as social insurance programs. All three expert reports to the Task Force recommended a social insurance model akin to the other state programs in the United States.
 - The Task Force considered but did not adopt proposals regarding a mandate on employers that could be satisfied by purchasing insurance from the private market; although the State would have oversight and enforce a private mandate, the proposal would not see the State serve as insurer of last resort or otherwise maintain a competitive state-run insurance product. As underscored by the expert reports, this is an untested model that has not been adopted in other states, raising concerns about the level of risk in pursuing a model with significant speculation, especially when employees contribute in part or full to the cost of premiums.
- The social insurance model is also recommended due to the large, statewide pool, which helps lead to stability and lower, uniform premiums across the board. As noted in the UMN expert report, “[s]ocial insurance trust funds create the broadest possible risk pool and keep costs low for all workers. . . . The three states with the longest-running programs have fairly stable contribution rates of around 1%” (UMN, p. 35).
 - In contrast, it is not clear that there will be sufficient private insurance providers for paid family and medical leave insurance, especially since rates of voluntary temporary disability insurance are lower in Colorado and the

Mountain West than the country as a whole (UMN, p. 13). The Task Force received anecdotal information that some national insurers had expressed interest in a private market approach to paid family and medical leave; even so, there was an acknowledgment that it could be several years before national insurers would decide to enter the market, leaving a company like Colorado-based Pinnacle with nearly the entire market in initial years. If one company has a huge market share, it could lead to outsized leverage over the program, consequences for pricing without competition, and potential disruptive implications if the company decides to leave the market (especially without the state as an insurer of last resort).

- States that administer social insurance programs do not have the same incentives to differentiate premiums by risk; rather they can use community rating, where all workers and/or employers are charged the same rate, leading to more uniformity and predictability. Such programs are based on uniform premium rates, regardless of industry, program usage, or gender, a result that is more equitable. For private insurance companies to profitably provide paid family and medical leave benefits, these companies would need to set premiums based on claim risks. Under this approach, premiums will be highest for those most likely to use benefits and will consequently increase financial burdens for women. The Task Force considered two private market approaches that involved rating based on risk, and both raised significant equity concerns:
 - *Rating based on the demographics of an employer's workforce:* If a private employer mandate plan allows insurance carriers to charge employers more based on their workers' demographics or perceived risk of needing to access paid family and medical leave, research shows that there are increased incentives for prejudicial treatment against these same workers—especially in hiring decisions regarding women of childbearing age; in addition to harming women of childbearing age, this approach could lead to inequality at work against older adults and people with disabilities.²²
 - *Rating based on industry demographics:* The Task Force received information that private insurances would consider an alternative approach to employer-specific risk rating by instead charging based on industry demographics; under this approach, premium rates will vary by industry with rates highest in those industries with the highest probability of program usage and claims. Since women are disproportionately employed in particular industries (such as education and health care) and are more likely to take paid family leave, a private insurance mandate would shift more of the costs of the program to

²² See Glynn, S.J. (2015, November). *Administering Paid Family and Medical Leave: Learning from International and Domestic Examples*. 9-11. Retrieved from Center for American Progress website: <https://cdn.americanprogress.org/wp-content/uploads/2015/11/19060022/PaidLeaveProposal-report-11.19.15.pdf>; see also International Labour Organization. (2014). *Maternity and Paternity at Work: Law and Practice Across the World*. 20-21, 51. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf

women. For example, approximately 80% of elementary and middle school teachers, 88% of registered nurses, and 89% of nursing, psychiatric, and home health aides are women.²³

- As documented in Appendix A by Task Force member Terra McKinnish, a private insurance mandate with a progressive wage replacement (as recommended by the Task Force), could lead to variations based on differences in the distribution of worker wages. When benefits are determined by a progressive wage replacement formula, firms and industries that employ more low wage workers will have higher paid leave costs as a percent of payroll.
- As reported by the National Academy of Social Insurance, an employer mandate to provide paid family leave—either directly or through private insurance—could lead to profit-based incentives to deny claims and interpret eligibility criteria restrictively, which also increases the likelihood of litigation; under a state-run social insurance model, the state—rather than an employer or for-profit insurance carrier—determines eligibility and issues such as the duration of disability.²⁴
- A social insurance program is the most portable form of paid family and medical leave, and access to the wage replacement benefits (separate from job protection) does not depend on your current employer. The portability of this model helps workers, who are much less likely to face different carriers or coverage (such as varying premiums and different employer buy-ups through private insurance) if they change jobs. As mentioned by a small business owner on the Task Force, it is also administratively easier for small businesses to get coverage through a default statewide fund rather than have to shop for different private plans.
- A social insurance program leads to administrative efficiencies. Even under a private insurance mandate, the State will still need to hire staff and create infrastructure to regulate the program, provide oversight, and enforce the law; without a statewide social insurance program that funds such administration, the State will have to finance these administrative costs through either general revenue or by passing the cost on to private insurers, who in turn are likely to provide related cost assessments on employers and employees.²⁵
- In a state-run social insurance model, administrative expenditures would remain in the government and employ Colorado workers, who in turn would spend their earnings within the state and their communities. Under a private insurance mandate, more of the funds—collected within Colorado—to administer the program would be used to employ workers in other states, and in turn stimulate out-of-state businesses and economies. Although a private insurance mandate could include participation of

²³ Hegewisch, A. & Tesfaselassie, A. (2019, April) The Gender Wage Gap by Occupation 2018. Retrieved from Institute for Women’s Policy Research website: <https://iwpr.org/publications/gender-wage-gap-occupation-2018/>; see also Washington Center for Equitable Growth. (2017, September). *Occupational Segregation in the United States*. Retrieved from <http://equitablegrowth.org/wp-content/uploads/2017/09/092717-occupational-seg.pdf>

²⁴ Glynn, S.J., Bradley, A.L. & Veghte, B.W. (2017, September). Paid Family and Medical Leave Programs: State Pathways and Design Options. 15. Retrieved from National Academy of Social Insurance website: <https://www.nasi.org/sites/default/files/research/NASI%20PFML%20brief%202017-%20Final.pdf>

²⁵ Glynn, S.J., Bradley, A.L. & Veghte, B.W. (2017, September). Paid Family and Medical Leave Programs: State Pathways and Design Options. 14. Retrieved from National Academy of Social Insurance website: <https://www.nasi.org/sites/default/files/research/NASI%20PFML%20brief%202017-%20Final.pdf>

Colorado-based Pinnacle, this model requires the participation of out-of-state insurance providers as well. The participation of these national carriers represents a leakage of program administration funds out of Colorado.

- Rather than representing a one-size-fit-all model that prevents flexibility for employers, a statewide social insurance program establishes a new floor or minimum right to paid family and medical leave (of which the U.S. is an extreme outlier in lacking). Employers still have the ability to build on the state program in countless ways, and as described below, the Task Force unanimously recommended allowing employers to meet the law's requirements through their own private plans that meet or exceed the State's requirements. Although a minority of Task Force members raised concerns about social insurance programs based on lower usage rates among lower-income women in California (the country's first paid family and medical leave program), Dr. Eileen Appelbaum presented to the Task Force about how usage rates can be more equitable through program design, such as guaranteeing job protection, higher wage replacement, and robust public education.²⁶

2. Equivalent Private Plans

- The Task Force voted unanimously to allow "equivalent private plans" as part of the proposal for employers who are already offering their own paid family and medical leave benefit programs, as long as these plans meet or exceed the state's program. Except for RI, all state PFML programs have a similar option (UMN, p. 39).
- To prove an employer's private plan meets/exceeds the Colorado program, employers must formally apply and submit information to the state about their plans. If the State approves a company's plan, the business and its employees can continue to use this coverage and be in compliance with the state's FAMLl mandate. Approximately 17% of employers currently offer paid leave programs.²⁷ The actuary who provided data about program costs indicated that allowing for an Equivalency Standard did NOT significantly impact the plan or its solvency. If the state determines a voluntary plan does not meet FAMLl requirements, employers would be required to cover their employees under the state's plan.
- After a private plan is approved, the Task Force recommends that plans would not be reviewed again for a specified period (e.g., 2-3 years) unless the employer or State makes changes to their plan. Private plan applications could be subject to a processing fee to help off-set costs of the program (e.g., \$250 in OR and WA; in CA, employers pay a small fraction—0.14% of the usual employee contribution) (UMN, p. 39).
- Governor Polis wrote Task Force members and shared his perspective about FAMLl that aligns with Task Force recommendations. As for "model" employers currently providing paid leave programs, he wrote: "Colorado's program should not reduce any employee's existing paid benefits or penalize or cost employees who are already

²⁶ For additional commentary from Dr. Appelbaum regarding California and program design, see Appelbaum, E. (2019, February 1). Legislation Even A Divided Congress Can Pass. *The Hill*. Retrieved from <https://thehill.com/opinion/finance/428042-legislation-even-a-divided-congress-can-pass>

²⁷ Appelbaum, E. (2019, August 27). Other States' Lessons Learned. FAMLl Task Force Meeting, Denver, CO. <https://sites.google.com/state.co.us/famli/meeting-minutes-agendas?authuser=0>

receiving these benefits, nor cost employers who are already providing benefits above the minimum level proposed in this legislation.”

Minority Opinion(s):

- While all members of the Task Force support broadening access to paid family/medical leave, the minority believes that a social insurance program in Colorado is not the right approach. They believe this approach would:
 1. Exacerbate inequality:
 - a. Social insurance programs have been shown to distribute money from low-income workers to those with higher incomes. Given that the problem of a lack of paid family/medical leave is most pronounced among low-income people, the state should not establish a program that disadvantages this group further. Evidence:
 - In California, multiple²⁸ studies²⁹ have shown that low-income workers are less likely to receive paid leave benefits from the state. For example, a survey³⁰ of working women in San Francisco revealed that only 36% of new mothers with annual household incomes under \$32,000 received benefits, compared to 79% of those with annual household incomes above \$97,000.
 - In Canada, only approximately³¹ 45%³² of low-income mothers receive benefits, compared to approximately 75%³³ to 85%³⁴ of high-income mothers. As scholars put it,³⁵ “parental leaves paid for by all employers and employees are unevenly supporting the social reproduction of higher earners.”
 - Similar patterns appear in other countries.³⁶ Scholars concluded that the expansion of Norway’s program³⁷ constituted a “pure leisure

²⁸ Pihl A. and Basso, G. (2016, May). Policy Brief: Paid Family Leave, Job Protection and Low Take-up among Low-wage Workers. University of California–Davis, Center for Poverty Research. Retrieved from https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-pihl_basso_pfl_brief.pdf

²⁹ Lindsey, B. & Hunt, D. (2014, July). California’s Paid Family Leave Program: Ten Years After the Implementation, Who Has Benefitted and What Has Been Learned? California Senate Office of Research. Retrieved from <https://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Californias%20Paid%20Family%20Leave%20Program.pdf>

³⁰ Goodman, J., Dow, W., & Elser, H. (2019, February). Evaluating the San Francisco Paid Parental Leave Ordinance: Employer Perspectives. University of California–Berkeley, Center for Population Sciences. Retrieved from <https://www.populationsciences.berkeley.edu/sites/default/files/PPLO%20Issue%20Brief%202%20FINAL.pdf>

³¹ McKay, L., Mathieu, S., & Doucet, A. (2016). Parental-leave rich and parental-leave poor: Inequality in Canadian labour market based leave policies. *Journal of Industrial Relations*, 0(0), pp. 1-21. http://www.andreadoucet.com/wp-content/uploads/2016/11/Doc-10_McKay-Mathieu-Doucet-2016-JIR-FINAL.pdf

³² Margolis, R., Hou, F., Haan, M., & Holm, A. (2018). Use of Parental Benefits by Family Income in Canada: Two Policy Changes. *Journal of Marriage and Family*, 81(2), 450-467. <https://doi.org/10.1111/jomf.12542>

³³ McKay, L., Mathieu, S., & Doucet, A. (2016). Parental-leave rich and parental-leave poor: Inequality in Canadian labour market based leave policies. *Journal of Industrial Relations*, 0(0), pp. 1-21. http://www.andreadoucet.com/wp-content/uploads/2016/11/Doc-10_McKay-Mathieu-Doucet-2016-JIR-FINAL.pdf

³⁴ Margolis, R., Hou, F., Haan, M., & Holm, A. (2018). Use of Parental Benefits by Family Income in Canada: Two Policy Changes. *Journal of Marriage and Family*, 81(2), 450-467. <https://doi.org/10.1111/jomf.12542>

³⁵ McKay, L., Mathieu, S., & Doucet, A. (2016). Parental-leave rich and parental-leave poor: Inequality in Canadian labour market based leave policies. *Journal of Industrial Relations*, 0(0), pp. 1-21. http://www.andreadoucet.com/wp-content/uploads/2016/11/Doc-10_McKay-Mathieu-Doucet-2016-JIR-FINAL.pdf

³⁶ Shapiro, K. (2019, July). Policy Focus: Expanding Paid Family Leave Without Disadvantaging Low-Income Families. Independent Women’s Forum. Retrieved from http://pdf.iwf.org/PFL_For_Low-Income_Families.pdf

³⁷ Dahl, G., Loken, K., Mogstad, M., & Vea Salvanes, K. (2015, April). *What Is the Case for Paid Maternity Leave?* University of California–San Diego. Retrieved from <https://econweb.ucsd.edu/~gdahl/papers/paid-maternity-leave.pdf>

transfer to middle and upper income families ... at the expense of some of the least well off in society.”

- b. Social insurance programs charge everyone the same premium regardless of risk (or propensity for use). This would unfairly burden families with stay-at-home parents/caregivers as well as childless families who have less need for caregiving and parental leave benefits.

2. Backfire on workers:

- a. Social insurance programs prescribe a one-size-fits-all, state-funded paid family/medical need benefit. This would discourage employers from offering their own paid leave benefits or workplace flexibility and displace myriad private arrangements. Employers will focus on compliance with a state program rather than individualized, customized leave and flexibility benefits.
- b. Social insurance programs are more often used by women, elderly workers, and workers with high medical needs. Despite an individual’s propensity for leave-taking, the availability of state-provided benefits will increase perceptions among employers that workers in these groups will take longer and more frequent leaves from work. This will encourage discrimination in the workplace. Evidence:

- A recent study³⁸ of California’s paid leave program, which studied the program’s first mothers who accessed the program in the first quarter after it took effect 15 years ago, found “...paid leave policies may have the unintended effect of reducing labor-market equality between the sexes,” and found that in California, “for new mothers, taking up PFLA [defined in the article as “Paid Family Leave Act”] reduced employment by 7 percent and lowered annual wages by 8 percent six to ten years after giving birth.” Although this study had a limited focus on the women who first used the program for bonding, and there is evidence initial users were higher-income and may have been more inclined to later step away from the workforce, the results are still worth further consideration in designing a paid family and medical leave program and assessing whether any potential discrimination or adverse consequences could result due to program design.³⁹
- Pew Research⁴⁰ provides this helpful graph that demonstrates the strong positive correlation between paid family leave and the gender pay gap. Pew points to data from the Organization for Economic Cooperation and Development (OECD), saying, “Some countries that offer more liberal parental leave policies have higher pay gaps⁴¹ among men and women ages 30 to 34, according to analyses of 16

³⁸ Bailey, M., Byker, T., Patel, E., & Ramnath, S. (2019, October). The Long-Term Effects of California’s 2004 Paid Family Leave Act on Women’s Careers: Evidence from U.S. Tax Data. University of Michigan. Retrieved from http://www-personal.umich.edu/~baileymj/Bailey_Byker_Patel_Ramnath.pdf

³⁹ Cain Miller, C. (2019, September 12). *A Surprising Finding on Paid Leave: ‘This Is Not the Way We Teach This.’* The New York Times. Retrieved from <https://www.nytimes.com/2019/11/11/upshot/paid-family-leave-research-surprise.html>

⁴⁰ Livingston, G. (2013, December). *The Link Between Parental Leave and the Gender Pay Gap*. Pew Research Center. Retrieved from <https://www.pewresearch.org/fact-tank/2013/12/20/the-link-between-parental-leave-and-the-gender-pay-gap/>

⁴¹ *Gender Publication - Closing the Gender Gap: Act Now*. (2012, December). Organization for Economic Cooperation and Development. Retrieved from <http://www.oecd.org/gender/closingthegap.htm>

countries...OECD theorizes that this link may be driven by the fact that women are more likely than men to actually use their parental leave, and that time out of the workforce is associated with lower wages.”

3. Burden taxpayers and reduce overall economic opportunity:
 - a. Regardless of what it is called (“premium,” “fee,” etc.), the funding mechanism for a social insurance program truly functions as a new payroll tax. Increased taxes and labor costs will suppress job creation and wage growth.
 - b. The funding mechanism for the program is not the only cost for businesses: Enhanced job protection requirements create new costs and burdens for employers and workers alike as workplaces adjust to accommodate leaves.

**For a discussion on alternative approaches to the social insurance model, please see [Appendix B](#).*

SB 19-188 Element (XIII) *The portability of paid family and medical leave benefits;*

Recommendation(s):

1. Based on eligibility standard (i.e. unemployment insurance threshold), portability is assumed and as such, the Task Force did not hold a separate vote on this factor.

Minority opinion(s) are shared below.

Supporting Evidence:

- Once a worker has paid into benefits and met the eligibility threshold, they should be able to access the PFML benefit without the barrier of connection to a specific employer and should not have gaps in wage replacement coverage associated with an employer change. An estimated 1 in 4 workers switch jobs each year. Portability offers help to workers at all income levels that may change jobs during a given year and provides families with greater protection against the financial consequences of unforeseen illness and injury (UMN, p. 44).
- Benefit portability is associated with increases in entrepreneurship given the rise of the “gig” economy. It is increasingly important to develop strategies by which self-employed or contract workers can maintain financial independence even when illness or a family care need interrupts their ability to work. Paid leave is of critical importance to those types of workers (DU, p. 29).
- The low wage work sector is characterized by rapid employee turnover, part-time hours and multiple simultaneous or successive employers over the course of a year. Portability of benefits results in correcting employment access disparities, especially for low wage workers that are less likely to secure the long term, full-time jobs that come with benefits (URBI, p. 24).

Minority Opinion(s):

- There is a direct tension and tradeoff associated with portability and employment continuity. While Task Force members are interested in expanding benefits to the maximum number of people to help with all manner of life circumstances, some Task Force members also realize that a relatively low eligibility threshold (without any requirement for being with a specific employer for any time or wages earned), will increase turnover and make it harder for employers to have continuity in their workforce.
- Three members of the Task Force voted for an additional eligibility requirement that employees work for the employer from which an employee will take leave from for at least six months before becoming eligible to take leave. This concern was raised with a specific focus on the impacts to seasonal employers and their unique challenges in Colorado’s economy.
- Seasonal businesses invest significant resources in recruiting, training and in many cases housing or subsidizing housing for seasonal employees and will face major disruptions and business challenges if members of its seasonal labor force take leave days or weeks within starting a job.
- It is not reasonable for workers who sign on for a seasonal position lasting six months or less to expect to take paid leave from a seasonal employer.
- The legislature should consider a program that exempts seasonal employees, as defined in Colorado law as those that work for an employer for less than 26 weeks, from eligibility or an eligibility requirement that an employee work for the employer from which the employee will take leave for a certain amount of time before being eligible to take leave.

SB 19-188 Element (XIV) <i>The sustainability of a paid family and medical leave program;</i>	
Recommendation(s):	
<ol style="list-style-type: none"> 1. Establish mechanisms to perform regular reviews and make needed adjustments to ensure sustainability and solvency of any paid family and medical leave program. <p><i>The Task Force members unanimously supported this recommendation.</i></p>	
Supporting Evidence	
<ul style="list-style-type: none"> ● In the interest of protecting Colorado taxpayers, the Task Force recommends that the state conduct regular reviews of the program to ensure that it is sufficiently funded. This is particularly important in light of the facts that: <ul style="list-style-type: none"> ○ All state PFML programs are relatively new, and several states have made recent reforms in an attempt to mitigate the negative distributional effect characteristic of so many PFML social insurance programs. These reforms include more progressive wage replacement formulas, lower thresholds for eligibility, broader caregiving relationships and leave purposes, and imposition of broader job protection provisions to legally enforce the right to take leave and to be reinstated regardless of the needs of their employer. This makes it very difficult to make any dependable cost projection for a new program in Colorado. 	<ul style="list-style-type: none"> ● Some Task Force members supported this recommendation because it is common for social insurance programs to include regular reviews to ensure continued program success. These members emphasize that the expert reports and actuarial study demonstrate the solvency and sustainability of a paid family and medical leave social insurance program: <ul style="list-style-type: none"> ○ All three expert reports independently emphasized the stability and solvency of existing state programs⁴³: “The three longest-running state-level paid family and medical (temporary disability) leave programs have been solvent for multiple years, with fairly stable contribution rates from one year to the next” (UMN, p. 44). The DU expert report notes, “[a]ll other states with programs in place find that they are sustainable over time and, in fact, thrive,” and the URBI expert report says, “[e]xisting state paid leave trust funds have experienced no solvency problems....” (DU, p. 14, URBI, p. 2).⁴⁴

⁴³ On April 2, 2019, Robert Asaro-Angelo, Commissioner of the NJ Department of Labor and Workforce Development, sent a letter to the Colorado Legislature affirming that “New Jersey’s [paid family and medical leave] program has been a success, and it has not faced issues with solvency. Based on the success of our long-standing temporary disability insurance program, the Legislature has built on the program to add—and recently expand—paid family leave. The State of New Jersey has operated a temporary disability insurance fund for more than seventy years. This fund has enjoyed consistent solvency and stability....Since 2009, the temporary disability insurance fund has been expanded to also provide paid family leave insurance benefits. Even with these new purposes, the fund has continued to be stable and solvent, and it provides workers with the benefits they are entitled to by law at a low and affordable cost.”

⁴⁴ California’s Employment Development Department has reported that since adding paid family leave to its long-standing disability insurance fund, the “State Disability Insurance Fund has remained solvent, even when California experienced the Great Recession where a record number of workers lost their jobs and were no longer contributing to the State Disability Insurance program.” State of California Employment Development Department. (2019). Overview of California’s Paid Family Leave Program: 2019. DE 2530, Rev. 1 (6-19), p. 3.

<ul style="list-style-type: none"> ○ Because use rates in PFML programs are initially very low, there is tremendous opportunity for these rates to rise. When they do, the costs of the program will increase. ○ Keeping the “premium” or payroll tax that funds the program low is especially important for low-income workers and households, due to the regressive nature of payroll taxes. ● Solvency: In the face of uncertain use rates, that pose risk of rising premiums to Colorado workers, a paid family leave program using the Universal Social Insurance Model should consider an option in Connecticut’s recently passed bill that directs an adjustment to benefits rather than exceeding a predetermined premium cap. <ul style="list-style-type: none"> ○ From Connecticut’s SB001: “...if employee contributions are the maximum percentage allowed and the authority determines that employee contributions are not sufficient to ensure solvency of the program, the authority shall reduce the benefit for covered employees by the minimum amount necessary in order to ensure the solvency of the program.”⁴² 	<ul style="list-style-type: none"> ○ The Task Force recommended an initial year of premium collection, which increased the actuary’s solvency confidence levels from the industry standard of 75% to 87% over the 10-year projection period. ○ Life events precipitating a need for leave are fairly predictable (e.g., birth rates, serious illness incidence, etc.). ○ This evidence contradicts the solvency and stability concern of some Task Force members. Although these members raised solvency concerns due to more generous leave provisions (seen in recent state leave laws) and increasing usage as workers learn about their benefits, national experts have independently accounted for these factors in modeling and reached fairly similar cost predictions (DU, pp. 10-14; UMN, pp. 54-55). ○ Even though paid family and medical leave programs have been stable and solvent, Task Force members support the ability to make adjustments if necessary: “States approach the issue of solvency primarily through a forward-looking adjusted contribution rate,” and have taken varying approaches to address speculative pre-passage concerns regarding greater-than-anticipated costs (UMN, p. 44).
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Retrieved from https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf. CA’s premium rates in the Fund have experienced minimal change over the past reported 10 years, going up or down 1/100th of a percentage point each year. Id. at p. 6. CA’s premium rates have experienced minimal change over the past reported 10 years, going up or down 1/100th of a percentage point each year (p. 6). See https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf for more.

⁴² See page 12 of pdf for additional context: <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>

SB 19-188 Element (XV) How a paid family and medical leave program would interact with other benefits;

Recommendation(s):

1. Consistent with the final version of the FAML bill from the last legislative session, if a worker is receiving Workers' Compensation benefits, weekly paid family/medical leave benefits are reduced the equivalent of 75% (but not less than \$0) of any temporary disability or permanent total disability benefits and the total Workers' Compensation and PFML benefit combined cannot exceed the worker's weekly wage. The reduction must be concurrent. Additionally, the worker cannot concurrently collect unemployment insurance benefits and paid family and medical leave.

The Task Force members unanimously supported this recommendation.

2. A paid family and medical leave program that would not allow stacking of like benefits (i.e. disability benefits could not be stacked with the medical component of the PFML program). Additionally, employers would not be allowed to require employees to exhaust or concurrently use their accrued leave (vacation, paid time off, or sick leave) before or while taking paid family or medical leave under the state program.

The Task Force members unanimously supported this recommendation.

Supporting Evidence:

1. Public Benefits

a. Interaction with Workers' Compensation:

Workers' compensation benefits are set at 66.6% of an employee's AWW. Reducing the PFML benefits by 75% of the workers' compensation benefit will help to mitigate the financial harm suffered because of the workers' compensation injury while preventing double-recovery windfalls and ensuring employers continue to meet their statutory obligation to provide insurance coverage for employees injured on the job.

Every Colorado employer is required to obtain workers' compensation coverage for its employees. Among other benefits, workers' compensation provides wage replacement benefits to individuals unable to work because of job-related injuries. Those same workers will also be eligible for wage replacement benefits under PFML. Access to both types of benefit could lead to double recovery, where an injured worker actually receives more in benefits than their typical wages. A reduction in PFML benefits equal to 75% of the workers' compensation benefits prevents such a windfall.

It is essential that injured workers have a clear incentive to report work-related injuries and that employers remain primarily responsible for the financial impact of those injuries. Like all insurance, premiums for workers' compensation are based on risk. An employer with work that is more dangerous or a poor safety record will pay higher premiums than other businesses. Without the financial incentive provided by the increased combined benefits of PFML and workers' compensation, some injured workers might elect to rely strictly upon PFML. This would shift the financial burden of the injury away from the employer and onto every individual who pays into the PFML program.

A 75% offset means injured workers will still have a reason to pursue a workers' compensation claim against their employer. This will ensure claims are reported and that the primary responsibility for compensating injured workers remains with their employers.

b. Interaction with Unemployment Insurance:

Individuals who qualify for PFML benefits are unlikely to be eligible to collect unemployment insurance benefits. To prevent potential overpayment of unemployment insurance benefits and/or PFML benefits and to reduce the potential administrative burden of collecting overpaid benefits from individuals improperly paid, it is recommended that individuals collecting PFML benefits should not be eligible to collect simultaneous unemployment insurance benefits. This approach is consistent with PFML programs in 7 of the 10 other states/territories that also bar concurrent collection of unemployment insurance and PFML benefits (California, Hawaii, Massachusetts, New Jersey, New York, Washington D.C., and Washington State).

- Unemployment insurance benefits are for individuals that separate from employment but are otherwise able, available, and seeking new employment. PFML benefits are for those that may or may not be separated from work but have qualifying events that prevent them from working their usual or any schedule.
- It is highly unlikely that individuals who qualify for PFML benefits would be able and available to accept work or able to seek work. An individual collecting PFML benefits would not be eligible to collect unemployment insurance benefits under current unemployment insurance law.
- However, the PFML program and the unemployment insurance program would be two distinct programs with their own adjudication and appeals units, creating the potential for legally inconsistent decisions resulting in the payment of both benefits simultaneously and in a greater instance of improper payments.
- To prevent possible overpayments and the administrative burden of collecting overpaid benefits, individuals who are collecting PFML benefits should be barred from concurrent collection of unemployment insurance benefits.

2. Private Benefits:

- Colorado statute should clearly articulate PFML benefits are in addition to currently provided paid time off (PTO).
- Most state programs expressly prohibit an employer's ability to require employees to exhaust existing accumulated PTO before turning to PFML benefits. State laws are consistent, however, that this decision should reside with employees.
- It is important to note that there may be secondary savings to employers as a result of implementation of the paid leave benefit, as benefits will be paid from the PFML fund, employers can keep other types of paid time off as a separate benefit that is offered to help recruit workers. Employers in states with paid leave programs have also found that their workplaces experience less absenteeism (UMN, p. 53).

SB 19-188 Element (XVI) *A timeline that presumes a paid family and medical leave program that is established by July 1, 2020; begins education and outreach on January 1, 2022; establishes a funding stream on January 1, 2023; and start paying benefits on January 1, 2024.*

Recommendation(s):

1. A timeline that presumes a paid family and medical leave program that is established by July 1, 2020; begins education and outreach on January 1, 2022; establishes the funding stream on January 1, 2023; and starts paying benefits on January 1, 2024.

9 Task Force members supported this recommendation; minority opinion(s) are shared below.

Supporting Evidence:

- This timeline compared to other states is both reasonable and practical, with many states establishing programs in shorter times, and others with similar timelines.
- This timeline allows for a year of premium collection that increases the independent actuary's solvency confidence levels from the industry standard of 75% to 87% over the 10-year projection period.

Minority Opinion(s):

- For obvious reasons, the PFML program was studied by the Task Force and will ultimately lead to a bill for lawmakers to decide the components and implementation. The four-year period between a final recommendation and the first payout to workers is believed to be far more time than is necessary to start the program. The legislation is expected to be established by July 2020. The entire year of 2021 will include groundwork and structure creation. If that project could be managed between July 2020 and July 2021, education and awareness should begin or run simultaneously. A funding stream could start as early as 2022 and a solvent program could begin in 2023. This would give workers access to the program one year earlier.
- Funding stream established in two years in WA, DC, CT, and one year in MA. Benefit payments begin in the third year (URBI, 2019).
- It is important to note that a faster timeline is possible for creation of a paid family and medical leave social insurance program. As noted by both the UMN and URBI expert reports, three recent states--Washington, Massachusetts, and Connecticut--have followed shorter implementation timelines (UMN, p. 48; URBI, p. 29).
- WA, MA, and CT all passed implementation timelines where benefits would be available to workers 2.5 years after passage of the social insurance program (UMN, p. 48). A similar timeline is workable for CO and would see benefits paid out in 2023, starting a year earlier than recommended here. This is especially noteworthy when critics of the social insurance model argue for different approaches to this issue based on the implementation timeline.

Appendices

Appendix A: Supplemental Report on Distribution of Costs under Private Market Pricing
Prepared by Terra McKinnish, Professor of Economics, University of Colorado Boulder December 22, 2019

Private insurance markets price to differences in costs across individuals or groups of individuals. In paid leave programs, costs vary due to: a) utilization (leave take-up and duration) and b) the wage replacement rate. When benefits are determined by a progressive wage replacement formula, firms and industries that employ more low wage workers will have higher paid leave costs as a percent of payroll. Even if insurance carriers calculate utilization at the state level, so that firms or industries are not priced differently based on demographic composition, considerable variation in premiums could result purely from differences in the distribution of worker wages.

Table 1 uses 2018 Colorado Unemployment Insurance data to calculate the distribution of premiums under different pricing models, assuming no differences in utilization across workers. All premiums are calculated as the percent of wage base required to cover 2018 benefits payments with 2018 wage base. Administrative costs and reserves are not considered. Total payments are identical across all columns. These calculations are therefore not designed to compare total costs between the private market and social insurance models, but instead illustrate the distributional effects of different pricing models.

All workers are assumed to have a 6% annual take up rate and use 9 weeks of leave if they take up. Benefits are calculated according to the formula recommended in [Elements VII](#) and [VIII](#) of the Task Force report, and, following [Element III](#), workers with at least \$2,500 in earnings are eligible for paid benefits. As recommended in [Element IX](#), the wage base excludes worker annual earnings greater than 80% of the Social Security wage base limit.

Table 1 divides workers into 6 groups based on 2018 earnings. Column 1 reports that the bottom 10% of earners would receive 90% wage replacement and the top 10% of earners would on average receive 35% wage replacement, reflecting the progressive wage replacement formula.

Column 2 of Table 1 reports average premiums by group when premiums are priced at the firm level. Average premiums are 1.040% of wages for the bottom 10% of earners and are 0.705% of taxable wages for the top 10%. Columns 3-5 calculate premiums priced to the industry, rather than firm. Column 3 uses 6 digit North American Industry Classification System (NAICS) codes (976 industries), Column 4 uses 3 digit codes (97 industries), and Column 5 uses 2 digit codes (25 industries). Column 6 reports the premium calculated as a flat percent of taxable wages for the whole market (social insurance model).

Moderate premium differentials exist even when premiums are set as a percent of taxable payroll for each of 25 industry categories.

Table 1: Average Premium Rates under Different Pricing Models

2018 Earnings	% of workers	Wage Replacement Rate ^a	Premium as % of Taxable Wages, Priced by:				
			Firm	Industry:			Full Market (Soc Ins)
				6 digit (997 codes)	3 digit (97 codes)	2 digit (25 codes)	
		(1)	(2)	(3)	(4)	(5)	(6)
<2,082	10%	0.90	1.040	0.963	0.932	0.916	0.819
2,082-10,682	15%	0.90	1.058	0.952	0.925	0.910	0.819
10,682-30,490	25%	0.86	0.999	0.924	0.901	0.888	0.819
30,490-58,605	25%	0.73	0.873	0.855	0.846	0.841	0.819
58,605-98,575	15%	0.61	0.780	0.796	0.800	0.803	0.819
>98,575	10%	0.35	0.705 (0.514) ^b	0.748 (0.544)	0.765 (0.556)	0.774 (0.562)	0.819 (0.593)

^a Column 1 reports the wage replacement rate workers would receive if they qualify for paid benefits. Workers are eligible for benefits if they earn at least \$2,500 in a 12-month base period prior to their qualifying event. This would likely exclude many workers in the bottom 10% of the 2018 earnings distribution. When calculating premiums for columns (2)-(6), payments are set to 0 for all workers earnings less than \$2,500 in 2018.

^b The bottom row reports two separate calculations for the top 10% of earners. The top number in Columns 2-6 reports the average % of taxable wages paid by the top 10% of earners. Annual wages above 80% of the Social Security wage base limit ($0.8 * \$128,400 = \$102,720$ in 2018) are not taxed. The bottom number in parentheses reports the average premiums paid as a percent of total 2018 earnings, as opposed to just taxable earnings.

Appendix B: Other Approaches to Administering PFML Benefits Prepared by Hadley Manning, Director of Policy, Independent Women’s Forum December 25, 2019

Task force members who voted in the minority against the social insurance model believe lawmakers should consider other policy changes to broaden access to PFML. We spent a great deal of time examining one private-sector solution offered by Pinnacol Assurance. Please see the [memo](#) and [actuarial analysis](#) of a market-based PFML plan provided by Pinnacol for more information.

Other approaches to broadening PFML that state lawmakers may consider:

State Level

- Offering tax credits to employers to incent them to offer or reward them for offering paid family and medical leave. This solution has been offered as a bill in past legislative sessions by Rep. Susan Beckman, Rep Landgraf, and Sen. Priola.
- Offering tax-free savings vehicles similar to health savings accounts (HSA) at the state level that would encourage workers to save ahead for family/medical leave. This solution has been offered as a bill in past legislative sessions. The state could also consider funding or matching contributions for low-income workers.
- Reforming and expanding existing social safety net programs designed to help low-income workers and families (such as Medicaid, childcare supports, etc.) to provide income support during family/medical leaves. Coupled with enhanced job protection, a targeted safety-net solution would better expand access to PFML to low-income workers without disrupting the existing benefits that are presently more widely available to those with higher incomes. Or the state could establish a new non-universal entitlement that would tax all workers but offer benefits only to those with the lowest incomes.

State lawmakers should be aware that there is a dynamic debate about this issue at the federal level as well, as context for the debate in our State. Sen. Kirsten Gillibrand has sponsored the FAMILY Act that would create a national social insurance program. But alternative proposals on PFML at the national level include:

- Reforming Social Security to allow workers to take Earned Parental Leave Benefits after the addition of a new child in exchange for one day delaying their retirement benefits. This solution is offered as a bill sponsored by Sens. Rubio and Romney and Reps. Wagner and Crenshaw, among others.
- Reforming the Child Tax Credit to offer parents a large benefit upon the addition of a new child in exchange for reduced future Child Tax Credits. This solution is offered as a bipartisan bill sponsored by Sens. Cassidy and Sinema.
- Reforming the Fair Labor Standards Act to give private-sector workers the option to accrue 1.5 times paid time off instead of 1.5 times pay for overtime hours worked. This solution is offered as a bill sponsored by Sen. Mike Lee.
- Reforming savings vehicles such as HSAs to allow workers to use funds to support their families during family and medical leaves from work and to make these accounts more attractive and useful to workers with lower incomes. This solution is offered as a bill, the Freedom for Families Act, sponsored by Rep. Andy Biggs.

A minority of Task Force members would implore lawmakers to fully consider alternative models and their impacts on equity, affordability, accessibility and adequacy for employers and employees with different demographic compositions before creating a universal social insurance program in Colorado.

Appendix C: Supplemental Report Concerns, Clarifications, and Considerations for Impacts of a PFML Program on Colorado’s Small Businesses Prepared by Diana Petrak January 3rd, 2020

A PFML leave of absence could expose a business to costs and risks that are difficult to quantify and track. The potential for rising PFML use rates along with limited options to manage staffing raises concerns that we risk imposing burdens on small businesses that may be unsustainable. FMLA job protection creates a legally enforceable right to take leave and to be reinstated, which prohibits employers from interfering in a decision by an eligible employee to take leave, or their decision when to return from leave. Those decisions are guided by the policy with supervision from the state agency administering PFML. Because the employer is required to hold that position open, limited available options may impose considerable expense, legal risks, loss of customer/client loyalty and business revenues, and threaten their operations and sustainability.

- Overtime may strain existing employees and operating budgets.
- Any recruitment process introduces costs, and to recruit a candidate for what is a known short-term position is difficult.
- Temporary staffing may be in short supply and is not always affordable, as this valuable service is priced at a premium. While costs vary by local market conditions and skill and/or experience levels, they may be as low as 140% or closer to 175% for technical, short term, or licensed professionals, of the gross wages incurred for that position.
- Training can be a long and expensive process, depending on the role and business, and assumes a period of reduced productivity and risks associated with a temporary hire who may lack proficiency or adequate time to learn rules and procedures. Risks include a wide range of actions performed in the line of work. Mistakes -errors and omissions- for which employers are ultimately held responsible, may introduce litigation risks and impacts that are detrimental to the business.
- Training may involve shifting productivity from another position that may be required to provide supervision and support.
- Teams that rely on interdependent tasks and assignments may be disrupted, decreasing productivity.
- Many small employers are left covering that work themselves which can strain what may be an already overstretched role.
- Businesses that are subject to regulations stipulating staffing numbers, certifications, or licensing, face an additional challenge, making a replacement a more critical and/or less likely option.
- Because labor markets vary widely across the state, businesses in communities outside of the urban corridor may face higher risks and burdens.

If job protection is included in a Colorado PFML law, consideration should be given to exempting firms with fewer than 50 employees, like FMLA. Because they have not had to comply previously, job protection in addition to wage replacement provisions, in what is already a broad and complex law, risks overburdening many small businesses with compliance and operational challenges.

At a bare minimum, Colorado’s Legislature should consider relieving small businesses employing 20 or fewer employees from any PFML job protection. Otherwise, we risk eliminating the space for new entrepreneurs - an opportunity that we should strive to make accessible to all - and for young start-ups with the potential to introduce innovations and significant job creation and growth, as well as for all small firms that strengthen the fabric of Colorado’s communities through dynamism and commerce, developing vibrant local economies and social bonds.