Fact Sheet: Senate Bill 188 – Family and Medical Leave Insurance Program

Senate Bill 188 creates a costly, government-run employee leave program that is funded through a payroll tax on Colorado private, nonprofit and public sector employers and employees. While we agree that paid leave is an important benefit, we also believe a flexible program that incents employers to provide more leave and balances costs and benefits is a far better approach than a one-size-fits-all mandate such as Senate Bill 188.

The facts:

- This bill creates a mandatory Family and Medical Leave Insurance (FAMLI) program, providing partial wage replacement (up to $1,000 per week) to eligible individuals who take leave from work to care for a new child or a family member with a serious medical condition, because of a serious medical condition of their own or due to certain needs arising from a family member's active duty service.
- It requires employees and employers to each pay 50 percent of the cost of the premium, which will start at .64 percent of an employees' annual earnings. The percentage payroll tax will adjust based on premium needs in subsequent years and is capped at .99 percent for employers.
- Premiums are discounted for the public sector and companies with less than 10 employees.
- The program will be implemented in January 2022, with the collection of payroll tax beginning in July 2020.
- Employees are eligible for up to 16 weeks of leave after working 680 hours – or 17 full-time weeks – in a one-year period.

Our concerns:

There are no exceptions to this mandate, potentially resulting in a reduction of benefits for employees who already have more generous paid leave.

- Senate Bill 188 mandates participation via payroll tax by all employers and employees, including those who today offer a paid leave program. Rather than incenting companies to do more, this bill punishes companies that already offer generous leave programs, forcing them to administer multiple programs and weave together benefits. Although they bear an administrative burden with the state program, no employers will be compensated for their administrative costs.
    - We remain concerned that the passage of Senate Bill 188 will result in a reduction of benefits for many Colorado employees who today have paid leave programs.

The stakes are incredibly high.

- The effectiveness of the administration of the program is a total unknown as it's a new program with higher payouts and broader eligibility than almost every other state-sponsored program in the country. We're risking the fiscal health of our state and critical paid leave for our employees on a new, government-run program that in just four years will cost almost $1 billion.

- In Washington, the cost just to create the technology infrastructure and staffing was $80 million, and will continue to cost more than $100 million each year, before any benefits are paid out. As we look at estimates here in Colorado, we're deeply concerned that costs are being underestimated to start and maintain this program. Currently, legislators are setting aside $50 million to start this program. But once it's in its first full year of operations, the cost to run and pay benefits will approach $1 billion.

The private sector is forced to subsidize the public sector to help pay for the costly program.

- Government has provided itself a deep discount on the payroll tax.
- Employers, including nonprofits, with more than 10 workers are left to pick up the tab for public sector employees and employers, who receive a deep discount on the contribution rate. This is particularly important for any worker who works for a company with more than 10 employees, as they are expected to subsidize the program for businesses with less than 10 employees and for all public employees.

The proposal provides among the highest payouts in the country, with eligibility requirements that don't align with federal family leave programs.

- Under Senate Bill 188, employees could be eligible for up to 16 weeks of leave after only 17 weeks of full-time employment, which concerns all businesses, but in particular organizations that employ seasonal and short-term workers.
- Eligibility under Senate Bill 188 fails to align with the Federal Family & Medical Leave Act (FMLA), creating eligibility inconsistencies and confusion.
    - Allows covered person leave for any individual with which they have a "significant personal bond." It's unclear how the state will ensure that people do not abuse this system.
    - Senate Bill 188 triggers leave in increments as low as one hour.

The cost and administrative burden on small businesses is crippling.

- This is an inflexible mandate. If the goal is to help families, then policy should focus on flexibility and choice that allows employers and employees to work together to build a leave policy that balances the benefits and costs.
    - Employers, especially small- and medium-sized employers and nonprofits, will struggle to comply with such an inflexible mandate, making it harder to accommodate the very employees this policy is intended to help. For low-wage jobs, such a policy could even reduce hiring, further impacting the Coloradans this policy is designed to help most.

The program could hurt employees, rather than help them.

- The passage of Senate Bill 188 risks a reduction of benefits for many Colorado employees who today have paid leave programs.

- Many employees will never realize the benefit of the taxes they pay into the program – either because they don't need to take leave or because they will only be paid a small portion of their salary when they do need the benefit.