Here's what is in the paid-family-leave bill coming this week at the Colorado Legislature

By Ed Sealover – Reporter, Denver Business Journal

March 6, 2019

Legislative Democrats will introduce a retooled paid-family-leave bill later this week that requires businesses to pay half the cost of a proposed mandatory statewide program and to reinstate anyone taking as many as 16 weeks of leave to the same position when they return to work.

Business leaders have engaged in several months of discussions over details of the bill, whose previous iterations have failed four times in the past five years, typically at the hands of Republicans who controlled the Senate up until this year. Many business organizations expressed frustration this week, however, at what they viewed as sponsors' unwillingness to consider their concerns about the costs of the program to small companies in particular, the broad eligibility for the program and the role of the state government — rather than individual employers — in reviewing and approving requests for leave under the potential new law.

Co-sponsoring Sen. Angela Williams, a Denver Democrat and former small business owner who jumped onto the bill this year to try to work out the differences between advocates and business groups that have led to the death of past iterations of the proposal, said that she believes the new measure is better for companies because it creates an atmosphere of shared responsibility for the new program. It is expected to go for its first hearing in a Senate committee on the afternoon of March 13.

“I feel like it is a structure that employees and employers are used to. It you have health insurance, that is a shared responsibility. If you have life insurance, that is a shared responsibility,” said Williams, who is sponsoring the measure with Democratic Sen. Faith Winter of Westminster, in a recent interview. “I feel like it will help businesses and the employees both have a plan.”

The idea behind the proposal long has been to create a system under which workers at all Colorado companies can take time off to attend to a new child, to their own serious health issues or to the health needs of a close relative and to receive a portion of their paycheck while doing so. Advocates have noted in past years that more than 80 percent of Colorado workers don't have access to a plan that would pay to take such leave for up to three months, and they argue that workers who now quit their jobs after giving birth or because they need to care for an ailing parent are taking money out of the economy and facing decisions, particularly for new mothers, that they don't have to face in other countries that require paid leave.

Most of the past bills, however, have put the cost of creating what is expected to be a multi-billion-dollar system on the employees through a fee that automatically deducts a portion of their paychecks to fund the program. The mechanism remains the same in this year's proposal, but instead of having workers shoulder the load, it would be split 50/50 between the employer and the worker.

While final calculations are still being done, that likely equates to a fee of between 0.4 percent and 0.6 percent being taken from each worker's paycheck and an equal amount being paid by the employer, said Debra Brown, executive director of Good Business Colorado, a business group whose members favor more government intervention than many other business groups and which supports the paid-family-leave effort. And that percentage can only be applied to the first $100,000 of a worker's salary, so that highly-paid athletes and CEOs are not funding a disproportionate share of the program's cost.

Workers making less than half of Colorado's average weekly wage would receive 90 percent of their pay while on leave. Those making 50 percent or greater of the average weekly wage would make just 50 percent of their pay levels while on leave, with a maximum benefit of $1,000 a week, according to a draft copy of the bill obtained by Denver Business Journal.

Good Business Colorado members originally were concerned about the shared responsibility mandate, Brown said. But as they talked more, they realized there was still a savings for them versus the cost of finding a new worker, and that concern largely went away, she said.

But Loren Furman, senior vice president of state and federal relations for the Colorado Chamber of Commerce, noted that of the five other states that have enacted a similar program, four of them fund the program completely based upon fees on workers. And the fifth, Washington, requires employer contributions only for medical leave and requires that family leave expenses come solely from employees.

Local governments are concerned as well, as they see the fee as an unfunded mandate passed along from state government — a requirement that is outlawed in the Taxpayer's Bill of Rights, said Kevin Bommer, deputy director of the Colorado Municipal League. Those costs particularly will weigh on smaller city governments, as will the cost of having to pay a temporary replacement worker or else reduce a service during an extended leave.

Both Furman and Bommer noted that the federal Family Medical Leave Act, which requires employers to give 12 weeks of unpaid leave to workers dealing with personal or family health issues, applies only to companies of 50 or more employees, while the state proposal affects any company with a single employee on its payroll.

"I understand what the proponents are doing. But there's a reason that FMLA applies to 50 or more — because there are specific needs of small employers, whether they be public or private," Bommer said. "At this point, we haven't seen a good response as to how employers are supposed to deal with those issues, just the employees."

Business groups' concerns extend beyond the financial outlay they will have to make to the way that the bill is required to be administered — particularly the differences between it and FMLA.

Where FMLA requires a worker to be on the job for 1,250 hours before taking leave, the Colorado proposal requires just 680 hours — the equivalent of 17 40-hour weeks.

Where FMLA limits leave for helping family members to spouses, children, parents and grandparents of the worker, the Colorado bill allows leave for any "individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship."

And where FMLA is limited to 12 weeks, sponsors of the bill said in negotiations that they are looking to allow for 12 weeks, two extra weeks for pregnancy complications and an additional two weeks instances involving both family and medical situations, Furman said.

In addition, there is no exemption for companies that already offer paid leave, even if those plans are more generous than that required by the state. Plus, sponsors have rebuffed business leaders' request that workers be required to use leave already granted by their company before they use the state program, in which Colorado Department of Labor and Employment officials are the final arbiter of whether that employee will be allowed to access the benefits in the state pool, Furman said.

Williams said that in the name of fairness, she did not want to make a carve-out for small companies or for companies that already have such benefits. Brown said that she believes that companies with benefits that are greater than the state requirements can use that as a competitive advantage when trying to recruit workers.

"I've bent over backward ... trying to work through some of the concerns they have. It's all about negotiations and compromise," Williams said. "At the end of the day, we have to come up with the best policy for Colorado workers."

But Furman said that all of the requirements on businesses add up to a heavy burden, from the required pay for employees who aren't working to the mandate to keep jobs available even at small companies to the broader requirements that large companies already are complying with on the federal law. And she said that with the state and local laws written so differently, she worries that some workers could stack the two leaves on top of each other and be off for more than half the year.

"It's a significant cost for them, especially the smaller and mid-sized employers," she said. "We're disappointed that we've reached a point where the concerns that we've raised over and over again, the majority have not been responded to."

But groups like Good Business Colorado and **Small Business Majority** say that their members, slow to back the bill at first, have come around as they see that it will allow them, with the state's help, to retain employees they otherwise may lose and to pay less to bring on temporary replacement workers than to hire and train someone new every time an employee has to take extended leave.

And what's more, they believe it's time that state governments catch up to foreign governments in offering such benefits.

"The way the forward-thinking businesses are looking at it, it's about setting a precedent about how businesses do business in the state of Colorado," Brown said. "You can't get away with externalizing your operating costs anymore ... I think people who are pounding their fists and shouting about it, they just need to get out of the way and let the new leaders take over."

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