Concerns, Clarifications, and Considerations for Impacts of a PFML Program on Colorado's Small Businesses

A PFML leave of absence exposes a business to many costs and risks that are difficult to quantify and track. The potential for rising PFML use rates, in combination with limited options to manage staffing and operational disruption, risks imposing burdens on especially our 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 strains 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, or even 200% for short-term, technical 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, 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.