

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1473 Bannock St., Rm. 256 Denver, CO 80202	DATE FILED: July 13, 2021 3:00 AM FILING ID: 80AD1BBF76CC6 CASE NUMBER: 2021CV32203
Plaintiff: Chronos Builders, LLC v. Defendants: Department of Labor and Employment, Division of Family and Medical Leave Insurance, and Department of the Treasury	
Attorney: Name: Daniel E. Burrows Address: Public Trust Institute 98 Wadsworth Blvd. #127-3071 Lakewood, CO 80226 Phone Number: (720) 588-2008 E-mail: dburrows@publictrustinstitute.org Atty. Reg. #: 40284	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: Div.: Ctrm.:
COMPLAINT	

THE CLAIMS & THE OPERATIVE FACTS

1. The Paid Family and Medical Leave Insurance Act (also known as Proposition 118) violates the Colorado Constitution.
2. Proposition 118 was an initiative to create a state-run family and medical leave “insurance” program. It was approved by voters in the November 2020 statewide election and became statutory law with the governor’s proclamation.
3. Under the law, this program is funded by a “premium,” paid by employers and measured as a percentage of each employee’s wages.
4. According to analysis by the General Assembly’s Legislative Council, the premium requirement will funnel \$1.2 billion into government coffers in the program’s first full year of operation.

5. Initially, the premium is set at 0.9% of each employee's wages.
6. After 2024, the director of Defendant Division of Family and Medical Leave Insurance has authority to set the premium at a level not to exceed 1.2% of each employee's wages.
7. The premium, however, is not uniformly applied to all wages or wage earners in the state.
8. Regardless of the precise premium rate in a particular year, it is subject to a cap—i.e., the premium is only assessed on the first so many dollars in wages that an employee earns. The precise cap is pegged to a calculation from the federal Social Security program.
9. Employers may opt out of the program entirely by providing their own family and medical leave plan that is approved by the Division. Employers who receive such approval are exempt from paying the wage premium.
10. Local government employers may, at their discretion, opt out of the program. Local governments who exercise this option are exempt from paying the wage premium. Their employees may nonetheless elect to participate in the program as individuals, but if they do so, those employees only pay half of the premium.
11. Self-employed persons are exempt from the program, but may elect to participate. If they do so, they only pay half of the premium.
12. Employers with fewer than ten employees are only required to pay half of the premium.
13. Employers with ten or more employees must pay the whole premium but may choose to obtain up to half of the premium directly from employees' paychecks—effectively transferring part of the premium obligation to the employee at the employer's discretion.
14. Our Constitution generally requires "all taxable net income to be taxed at one rate . . . with no added tax or surcharge." Colo. Const. art. X, § 20(8)(a).
15. The so-called "premium" in Proposition 118 is an added tax or surcharge on certain taxable income. It is, therefore, unconstitutional.
16. Alternatively, the so-called "premium" in Proposition 118 is an income tax. Because it is not applied uniformly, it is unconstitutional.

THE PARTIES

17. Proposition 118 created Defendant Division of Family and Medical Leave Insurance in the Department of Labor and Employment. The Division's primary duty is to administer the new family and medical leave program.
18. Defendant Department of the Treasury manages the state treasury.
19. Proposition 118 "created in the state treasury the family and medical leave

insurance fund.” Colo. Rev. Stat. § 8-13.3-418. Payments of the premium discussed above are made to this fund.

20. Proposition 118 also requires payments the Division receives to be transferred to the treasury for deposit into the fund.

21. The purpose of the fund is to provide money for the program discussed herein.

22. Plaintiff, Chronos Builders, LLC, is a custom home builder with its primary place of business in Grand Junction, Colorado.

23. Chronos operates as a limited liability company and is registered as such with the Colorado Secretary of State.

24. Chronos will be required to pay the “premium” discussed above for each of its employees beginning January 1, 2023.

25. As of the date of this complaint, Chronos employs eight persons and is looking to hire a ninth.

26. As recently as early 2021, Chronos had more than ten employees.

27. However, the increased premium for companies with ten or more employees has made Chronos hesitant to cross that threshold again.

28. Prior to Proposition 118, Chronos did not have a formal family and medical leave policy.

29. However, full-time employees earned annual leave, based on a set schedule, to be used at the employee’s discretion.

30. Chronos also had a practice and informal policy of working with employees when a situation arose that would now be covered by Proposition 118.

31. Chronos also had a practice and informal policy of not charging employees annual leave for sick days.

JURISDICTION

32. This Court has jurisdiction under article VI, section 9(1), and article X, section 20(1) of the Colorado Constitution.

33. Venue is proper in this district under C.R.C.P. 98(b).

PRAYER FOR RELIEF

34. Wherefore, Plaintiffs ask for the following relief:

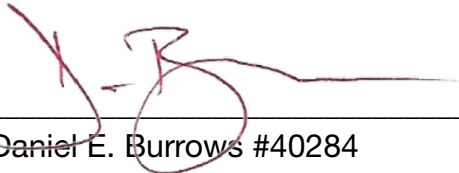
a. an injunction prohibiting Defendants from collecting Proposition 118’s “premium” from Plaintiff;

b. a declaration that Proposition 118’s funding mechanism is inseverable from the statutory scheme at large and, therefore, the proposition is

unenforceable as a whole;

c. costs and reasonable attorney fees as allowed by article X, section 20(1);

d. such other relief as the Court finds just and proper.



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