

EMPLOYMENT LAW SUMMARY

Colorado Paid Family and Medical Leave



On Nov. 3, 2020, Colorado voters passed [Proposition 118](#), creating a paid family and medical leave insurance program (FAMLI) for workers in the state. The Division of Family and Medical Leave Insurance within the Colorado Department of Labor and Employment administers the program and has created a [website](#) about the benefit. The division has also issued [regulations](#) to implement the statute and has made a toolkit, FAQs and other guidance available on the FAMLI website.

Overview

The program covers virtually all employers (including state but not federal government employers) and applies to workers who have earned at least \$2,500 during a base period.

FAMLI is funded by premiums of 0.9% of an employee's wages, shared evenly between employers and workers, and remitted by the employer to the division. Payroll deductions began **Jan. 1, 2023**, which was also the deadline for employers to register with the division.

Paid leave under FAMLI became available to employees **Jan. 1, 2024**, for the following purposes:

- To care for a new child during the first year after the child's birth, adoption or foster care placement;
- To care for a family member with a serious health condition;
- For the worker's own serious health condition;
- For a qualifying military exigency; or
- Because the worker has a need for safe leave.

Employers with **fewer than 10 employees** are not required to contribute to premiums. Employers with approved private plans may opt out of the program.

Covered Employers

The new law covers all employers that pay wages of at least \$1,500 during any calendar quarter in the preceding year, including the state—but not federal—government, and people acting in the employer's interest with regard to an employee. **All employers were required to register with the division by Jan. 1, 2023.**

Local governments [may decline to participate](#) in the program, in accordance with regulations on the topic. In brief, local governments must vote on declining to participate and comply with notice requirements both before and after the vote. The initial vote was required to take place any time in 2022. The division has created [FAQs](#) and a [fact sheet](#) specifically for local governments.

Covered Employees

Workers are eligible for benefits under the program if:

- They perform labor or services for the benefit of another; and

- They have earned at least \$2,500 during the first four of the last five completed calendar quarters immediately preceding the first day of their benefit year. (The \$2,500 can be wages from any employer, not just the current employer.)

Migratory laborers are covered, as are workers for whom the common-law relationship of master and servant does not apply. Self-employed individuals may opt in to the program. Employees of local governments that have opted out of the program may also opt in.

Workers are covered if their work is performed entirely within Colorado or if they perform work both in and outside Colorado, but the work outside Colorado is incidental to the work in Colorado, or it is temporary or transitory and consists of isolated transactions. Workers are also covered if their work is not primarily localized in any state, but some work is performed in Colorado and one of the following is true:

1. The employer's base of operations is in Colorado, or if there is no base of operations, the place from which the employee's work is directed or controlled is in Colorado; or
2. Neither the base of operations nor the place from which some part of the work is directed or controlled is in any state in which part of the employee's work is performed, but the employee's residence is in Colorado.

The FAMLI program does not cover individuals who are primarily free from control and direction in the performance of the labor or services they perform (in contract and in fact), and who are customarily engaged in an independent trade, occupation, profession or business related to the labor or services.

Employees subject to the federal Railroad Unemployment Insurance Act are not covered.

Duration of Paid Family and Medical Leave

Under the FAMLI program, covered workers may take up to 12 weeks of leave per year, or 16 weeks for a serious condition related to pregnancy or childbirth complications.

Workers may take intermittent leave in increments of an hour, or for shorter periods consistent with the employer's leave policies. However, benefits under the program are not payable until at least eight hours of leave are accumulated.

Permitted Use of Paid Family and Medical Leave

Beginning Jan. 1, 2024, covered workers may take FAMLI leave:

- To care for a new child during the first year after the child's birth, adoption or foster care placement;
- To care for a family member with a serious health condition;
- For the worker's own serious health condition;
- For a qualifying exigency; or
- Because the worker has a need for safe leave.

"Family member" means, regardless of age:

- A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor;
- A biological, adoptive or foster parent, stepparent or legal guardian of a covered individual or covered individual's spouse or domestic partner, or a person who stood in loco parentis when the covered individual or covered individual's spouse or domestic partner was a minor child;
- A person to whom the covered individual is legally married under the laws of any state, or a domestic partner of a covered individual as defined by Oregon law;
- A grandparent, grandchild or sibling (whether a biological, foster, adoptive or step relationship) of the covered individual or covered individual's spouse or domestic partner; or
- As shown by the covered individual, any other 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.

Qualifying exigency leave is leave based on a need arising out of the worker's family member's active duty service (or notice of an impending call or order to active duty) in the armed forces. The need could include, for example, providing for the care or other needs of the military member's child or other family members, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member. Other such needs may qualify for coverage as well.

Serious Health Condition

"Serious health condition" is defined as an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.

Safe leave is any leave resulting from the worker or the worker's family member being the victim of domestic violence, stalking, or sexual assault or abuse. Safe leave may be used to protect the worker or family member by:

- Seeking a court order;
- Obtaining medical care or mental health counseling;
- Making the worker's home secure; or
- Seeking legal assistance.

Claims for FAMLl are filed with the division.

Employees' Notice Obligations

The law requires employees to provide at least 30 days' advance notice of leave when the leave is foreseeable. When leave is not foreseeable, or when providing 30 days' notice is not possible, notice must be provided as soon as practicable.

In addition, in scheduling their leave, employees must make a reasonable effort not to unduly disrupt the operations of the employer. FAMLl regulations outline an employer grievance procedure for undue disruption of employer operations.

Employers' Notice Obligations

Employers are required to post a [notice](#) that describes details of the FAMLl program in a prominent location in the workplace. This requirement went into effect Jan. 1, 2023. Employers must also provide employees with written notice about the program upon hiring and when learning that an employee has experienced an event that triggers eligibility for FAMLl benefits. Employers must provide the notice electronically if they do not maintain a physical workplace or if an employee works through a web-based or app-based platform. Employers must deliver the program notice to employees in the first language spoken by the employee if the employer is aware of the first language spoken by the employee; otherwise, the program notice must be delivered in that language on employee request. The program notice must be in English, Spanish, and in any language representing the first language spoken by at least 5% of the employer's workplace. The division will make a reasonable effort to provide a program notice in any language upon request from an employer.

Furthermore, under FAMLl regulations, if an employee requests FMLA leave, the employer must notify the employee that they may be eligible for FAMLl leave and benefits.

In addition to the required poster, the division has created a "[paycheck stuffer](#)" and an [employee handbook](#) for employers to use in communicating about the program with their employees.

Paid Family and Medical Leave Benefits

Under the FAMLl program, workers on leave collect 90% of the part of their weekly wage that is equal to or less than 50% of the state average weekly wage (SAWW). Any portion of the employee's weekly wage that exceeds 50% of the SAWW is compensated at a rate of 50%. A worker's weekly benefit amount is based on total earnings during the individual's base period or alternative base period, and not just on earnings from their current job at the time of taking leave. Benefits are capped at 90% of the SAWW, and (for FAMLl beginning before Jan. 1, 2025) at a weekly benefit amount of \$1,100.

Employees may take leave from one or more of the jobs they hold.

Program Funding

Funding for the FAMLI program is split evenly between employers and employees, although employers with fewer than **10** employees nationwide **are exempt** from contributing. In determining employer size for this purpose, federal Family and Medical Leave Act (FMLA) counting rules apply: the number of employees counted is the number employed for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Any employee whose name appears on the employer's payroll will be considered employed each working day of the calendar week, and must be counted whether or not any compensation is received for the week. Employees on paid or unpaid leave, including sick or medical leave, leaves of absence, disciplinary suspension, etc. are counted as long as the employer has a reasonable expectation the employee will later return to active employment. A corporation is a single employer rather than its separate establishments or divisions.

Employers and employees were required begin paying into the FAMLI fund on **Jan. 1, 2023**, through payroll deductions. Employers submit to the division both their share (if required) and their employee's share of the premium, along with wage reports, through an online system at the end of each quarter.

Employers with fewer than 10 employees are not required to pay the employer share. Employers with 10 or more employees may deduct up to 50% of the 0.9% premium as a standard payroll deduction. Employers are not required to pay more than half the premium into the program from their own business expenses.

Because the rate has already been set through 2024, this formula is used to calculate premiums:

- $(\text{Annual income} \times .009) / 2 = \text{employer share}$
- $(\text{Annual income} \times .009) / 2 = \text{employee share}$

Starting with the 2025 calendar year and thereafter, the division will set the premium rate, up to 1.2% of each employee's wages. The amount of wages subject to premium assessment is capped at the maximum wages [subject to social security tax](#).

Employers remit the premium payments through an online system at the end of each quarter. The division has created an online [premiums and benefits calculator](#).

Job Protection and Continuation of Benefits

Workers who have been employed with their current employer for at least 180 days before taking leave are entitled to be restored to their previous position—or an equivalent—with equivalent benefits, pay and terms on returning from leave. Employees do not accrue employment or seniority benefits while on leave.

Employers are required to maintain health care benefits for employees on leave as if they had not taken leave. Employees must continue to pay any share of health benefits required before the leave.

Employers may require fitness-for-duty certifications for returning workers, but they must keep medical information confidential under specific safeguards.

Employee Protections

It is unlawful for an employer to:

- Interfere with, restrain or deny an employee their FAMLI rights
- Retaliate or otherwise discriminate against a person for exercising their FAMLI rights, including filing a claim or complaint, or testifying or assisting in any investigation, hearing or proceeding
- Count FAMLI as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action

Employees alleging a violation of their FAMLI rights may bring a civil action for the damages and equitable relief available for violations of the FMLA. In addition, the division may impose fines of up to \$500 for each violation.

Interaction With Other Laws

Leave under the FAMLI law runs concurrently with FMLA leave. In addition, if they provide written notice to their employees, employers may require that FAMLI leave and payment run concurrently with, or be coordinated with, benefits under any disability policy or separate bank of time off provided solely for the purpose of family and medical leave.

However, employees may not be required to use any accrued vacation leave, sick leave or other paid time off before or while receiving FAMLI benefits. An employee and an employer may mutually agree in writing that the employee may use any accrued vacation leave, sick leave or other paid time off while receiving FAMLI benefits, unless the aggregate amount a covered individual would receive would exceed the covered individual's average weekly wage.

The FAMLI law does not diminish an employee's rights under any law that provides more leave benefits.

Private Plans

Employers with private plans providing the same rights, protections and benefits as FAMLI are not required to provide FAMLI. However, private plans must be approved by the division, following a process set forth in [regulations](#).

The application fee for private plan approval is \$500, and employers with approved plans must pay an annual maintenance fee. In addition, if the private plan is self-insured, the employer must furnish a bond to the state. If the plan is provided by a third-party insurer, the insurer must be approved by the state.

More Information

Contact Heffernan Insurance Brokers for more information on employee leave laws in Colorado.

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