



GBS COMPLIANCE

Colorado Paid Leave 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 two sets of regulations to implement the statute (located [here](#) and [here](#)) and has made a toolkit, FAQs and other guidance available on the FAMLI website. Additional regulations are expected.

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 beginning **Jan. 1, 2023**.

Paid leave under FAMLI becomes 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.

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 may 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.

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.

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 FAML I will be 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.

Employers' Notice Obligations

Employers will be required to post a notice that describes details of the FAML I program in a prominent location in the workplace. 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 FAML I benefits.

Paid Family and Medical Leave Benefits

Under the FAML I 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%. Benefits are capped at 90% of the SAWW, and (for FAML I 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 FAML I 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.

Beginning Jan. 1, 2023, employers must remit premiums to the state, in the total amount of 0.9% of the employee's wages. Employers with fewer than 10 employees nationwide must remit the employee portion of the premium, even though they are not required to submit an employer portion.

Employers may collect the employee portion (up to 50% of the .9% premium) as an additional wage deduction in existing payroll processes. Employers will not be 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 will 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.

Employee Protections

It is unlawful for an employer to:

- › Interfere with, restrain or deny an employee their FAML I rights
- › Retaliate or otherwise discriminate against a person for exercising their FAML I rights, including filing a claim or complaint, or testifying or assisting in any investigation, hearing or proceeding
- › Count FAML I 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 FAML I 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 FAML I law runs concurrently with FMLA leave. In addition, if they provide written notice to their employees, employers may require that FAML I 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 FAML I benefits, unless the aggregate amount an employee would receive would exceed their average weekly wage.

The FAML I 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 FAML I are not required to provide FAML I. However, private plans must be approved by the division. 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 your GBS Consultant for more information on employee leave laws in Colorado.

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