



## Colorado Paid Family and Medical Leave

By Dan Graeve

### Paid Family and Medical Leave Insurance (FAMLI)

In November 2020, Colorado voters approved Proposition 118, known as the Paid Family and Medical Leave Act (act).<sup>1</sup> The act created the Division of Family and Medical Leave Insurance (division) within Colorado Department of Labor and Employment (CDLE) to administer the program, which is known as FAMLI.

**Benefits.** The act established an administrative system to direct leave benefits beginning in 2024 for workers who take leave due to childbirth, adoption, foster care placement, military deployment or to care for themselves or a family member with a serious health condition. Paid leave may be used for a maximum of 12 weeks, plus an additional 4 weeks for individuals who experience complications during childbirth.

In addition to paid leave, FAMLI guarantees employment protection for employees who have been employed for at least 180 days. Leave may be taken continuously, intermittently, or in the form of a reduced schedule. Benefits cover a portion of an individual's average weekly wage as compared to the state average weekly wage, which is determined annually by CDLE, and are capped at \$1,100 per week. The CDLE FAMLI premiums and benefits calculator can be found [here](#).

**Definitions.** The law defines a serious health condition as an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a

hospital, hospice, or residential care facility, or continuing treatment by a healthcare provider. A family member is defined as an eligible employee's child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or any individual with whom the employee has a significant personal bond that is like a family relationship.

**Funding.** FAMLI is funded equally by employer and employee payroll premiums. The division is fully cash funded as an enterprise for purposes of Article X Section 20 of the Colorado Constitution, otherwise known as the Taxpayer's Bill of Rights, or TABOR.

**Eligibility.** The act allows businesses with fewer than ten employees, as well as local governments, to be exempt from contributing the employer share of the payroll premium. Businesses that are exempt from paying premiums are still required to pay a 50 percent employee premium share to the division, and may deduct this portion from the employee's wages. Employees of a local government entity that has opted out of the program, as well as self-employed individuals, may still participate in the program and opt in to contribute their share of the premium.<sup>2</sup>

**Private Plans.** In addition, any employer may offer a private plan that provides the same benefits as the FAMLI plan, and imposes no additional costs or restrictions. Private plans must be approved by the division. As of publication, employers planning to offer a private plan (including self-insurance models) are not exempt from paying FAMLI premiums until the division has reviewed and

<sup>1</sup>Section 8-13.3-501 *et seq.*, C.R.S.

<sup>2</sup>Section 8-13.3-507 (4), C.R.S.

approved the private plan or self-insurance documentation in accordance with the division's private plan regulations. Once approved, employers and employees are exempt from paying premiums.

## 2021 and 2022 Legislative Funding

The legislature addressed funding related to the rollout of the program during the 2021 and 2022 legislative sessions, through the following two bills.

[Senate Bill 21-251](#). Senate Bill 21-251 loaned the division \$1.5 million from the General Fund to cover program expenses until collection of premiums began in January 2023. The bill specifies that the loan and interest must be repaid by December 31, 2023.

[House Bill 22-1133](#). House Bill 22-1133 transferred \$57 million from the General Fund to the Family and Medical Leave Insurance Fund as advance premium payments for state employees under the program. When the funding from these advance premium payments runs out, the state will begin paying quarterly premiums.

## 2023 Implementation Updates

**Notice and registration.** Employers must post a [2023 Required Program Notice](#) in a prominent location in the workplace by January 1, 2023, as well as register with [My FAMILI+ Employer](#), the online employer services portal that businesses, third-party administrators, and local government employers will use to manage their FAMILI accounts. According to the division, the My FAMILI+ Employer portal will operate similarly to the My UI Employer portal, allowing employers to report wage data, remit premium payments, apply for an exemption with a private plan, and upload letters of declination votes. The portal opened at the end of 2022, and CDLE reports that over 42,000 employers have registered as of the first week of January 2023.

**Premiums and benefits.** The division began collecting employer premiums on January 1, 2023,

for employers that registered with the My FAMILI+ Employer portal. All initial premium payments are due by April 30, 2023. While the act sets an initial employee payroll deduction rate of .45 percent, beginning in 2025, the director of the division will set the premium rate according to a formula based on the fund's monetary value each year. Premiums are statutorily capped at 1.2 percent of employee wages.

According to the division, employees will not be able to file for benefits until the last quarter of 2023 for benefits starting in January 2024.

**Communication and staffing.** The division has proactively communicated the availability of benefits to certain types of workers, including [domestic workers](#) and [self-employed](#) individuals. The division published an [Employer's Guide to FAMILI](#), an [Employee Handbook to FAMILI](#), and a [Local Government Fact Sheet](#). As of January 2023, CDLE has hired 56 new staff with an anticipated need of 320 by the launch of benefits in January 2024.

**Rulemaking.** Rulemaking for the program was conducted by the division throughout 2022. The division provides adopted rules, current and previously proposed rules, recordings from rulemaking hearings, public comments received, and state law pertaining to FAMILI on its website, linked [here](#).

## Other Paid Sick Leave

[Senate Bill 21-205](#). The Colorado Healthy Families and Workplaces Act (HFWA) became effective January 1, 2022, requiring that Colorado employers provide each employee paid sick leave. The HFWA mandates that employers provide a minimum amount of sick leave to employees that can be used for the employee only for mental or physical illness, injury, or a health condition. Colorado employers are required to provide two types of paid sick leave to their employees: public health emergency leave and accrued leave. The changes to paid leave under HFWA are distinct from the requirements pertaining to paid leave under FAMILI.