COLORADO
Family and Medical Leave Insurance Program (FAMLI)
Department of Labor and Employment

FAMILY AND MEDICAL LEAVE INSURANCE

LOCAL GOVERNMENT GUIDE

FAMLI

Contents

What is FAMLI?

FAMLI is Colorado's Family and Medical Leave Insurance (FAMLI) program.

FAMLI will ensure most Colorado workers have access to paid leave during certain circumstances and won't have to choose between earning a paycheck and taking care of themselves or their loved ones when life happens. Most eligible workers will be able to take up to 12 weeks of paid leave depending on need and up to 16 weeks for those who experience pregnancy or childbirth complications.

The initiative was approved by Colorado voters in November 2020 with 57% voter support.

Colorado is the ninth state to facilitate a paid family medical leave program, and more states continue to pass similar state-run programs.

Both employers and employees will contribute premiums to the fund that will pay out benefits to workers. There are some exceptions for Local Governments and private sector employers who offer qualifying private plans that provide equal or greater benefits than those provided by the FAMLI program.

How does FAMLI benefit my organization?

It's Easy: FAMLI is easy to administer. It will largely work in the same way and on the same schedule as the Unemployment Insurance program.

It's Cost Effective: FAMLI is a cost effective program and a benefit that Colorado workers want. Employers that are currently paying out-of-pocket to provide maternity leave or other paid family leave may be able to realize cost savings.

You Become an Employer of Choice: With the current on-going labor shortage, FAMLI will enable local government employers across Colorado to better compete for top talent with other, private employers in the state. While larger employers might be able to provide paid family and medical leave out of pocket, FAMLI allows smaller, public employers with tighter budgets to affordably provide paid time off to care for personal or family medical emergencies, bond with a new child, respond to domestic of sexual violence, and address military family needs.

It Increases Worker Satisfaction: Research shows that access to paid family leave can boost employee morale *(California's Paid Family Leave Law, 2014)*, and employees with access to paid leave are more likely to return to their jobs and remain in the workforce *(Rutgers Center for Women and Work, n.d.)*. High job satisfaction will help Local Governments retain talent, productivity, and boost labor force participation which will in turn provide savings by reducing the need to hire and train new employees.

It's Flexible: The FAMLI program provides Local Governments flexibility. While the employee is out on FAMLI leave, the vacancy savings can provide Local Governments the freedom to temporarily fill the resulting work needs in whatever way that is best for the organization.

How does FAMLI benefit workers?

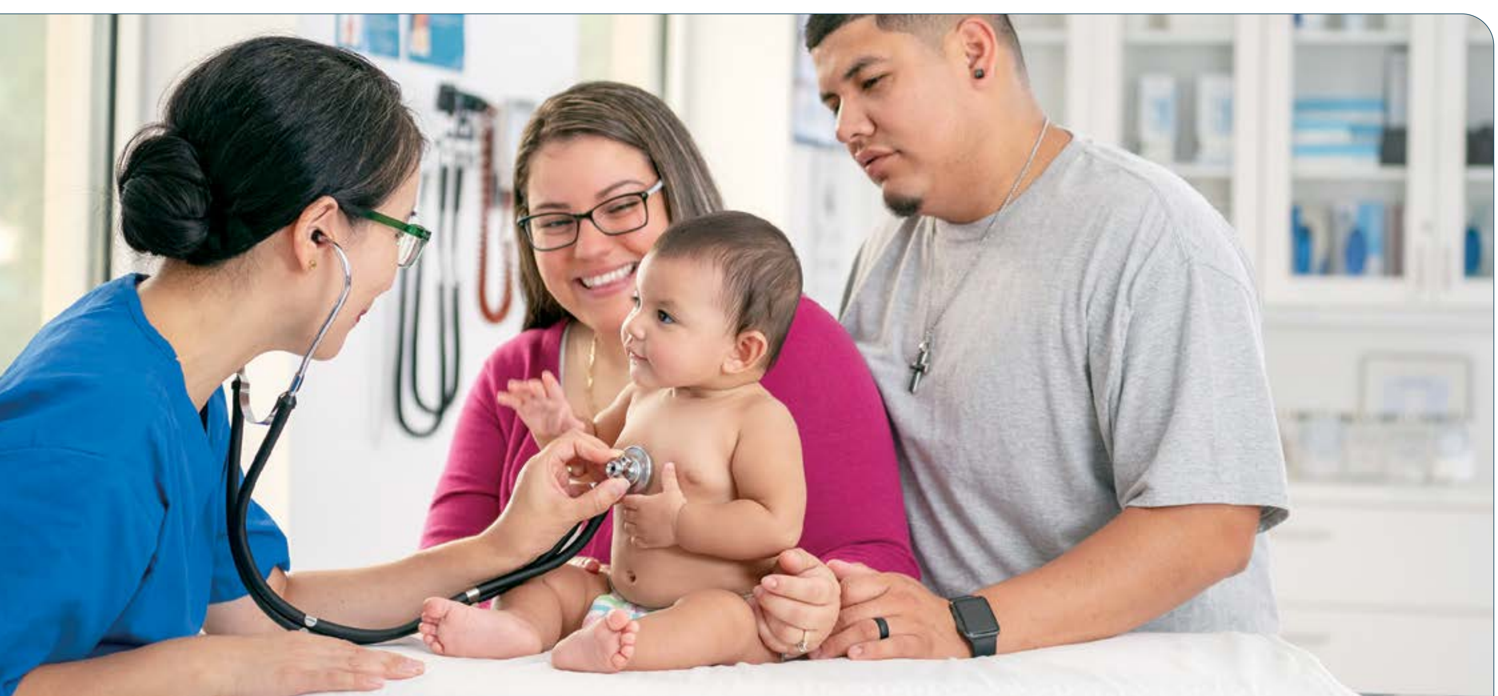
Ensuring new parents have **paid time off to care for a newborn,** recently adopted or foster child contributes to a family's healthy development, improves maternal health, and enhances a family's economic security. *(Equitable Growth, n.d.)*

Research shows paid parental leave not only has a positive impact on health outcomes for new parents, but also has **significant health benefits for children** lasting beyond early childhood. *(Lichtman-Sadot & Bell, 2017, Pages 790-827)*

Offering more workplace flexibility and access to **increased paid leave for fathers** can positively impact maternal postpartum health. *(Rossin-Slater, 2021)*

Paid medical and caregiving leave lets workers care for themselves and loved ones when ill or injured, and reduces financial insecurity and stress during times that could lead to economic shock. *(Equitable Growth, n.d.)*

Research further shows paid family and medical leave reduces incidents of on-the-job injuries and makes it less likely that workers with chronic health conditions could relapse or reinjure themselves by returning to work before they have recovered. *(Economic Opportunity Institute, 2012)*



How is FAMLI funded?

FAMLI is a social insurance program funded through a premium that is paid into a fund.

The premium rate through 2024 is 0.9%.

Local Governments with 10+ employees who choose to participate in the program will split the cost of the premium with employees. Employees will contribute 0.45% of their wages, and their local government employer will also pay 0.45% of their wages. Local Governments with nine or fewer employees, will not have to contribute the employer's share of the premium and will just remit the 0.45% of their employees' wages.

Just like private sector employers, Local Governments have the option to pay some or all of the employees' share of the premium as an added employee benefit.

Beginning in 2025, the FAMLI premium rate may be adjusted by formula, but the premium is statutorily capped at 1.2%.

Participation Levels for Local Governments

Unlike private employers, the FAMLI statute was written to give Colorado Local Governments the ability to opt out of the program. Local Governments have three options regarding their participation in the state-run program. A local government employer can:

» **Participate in FAMLI just like any other private sector employer.**

» **Decline ALL participation**

» **Decline EMPLOYER Participation.**

Participate in FAMLI

The Local Government must register in the FAMLI system and create an account like any typical private sector employer. If the Local Government plans to participate in the program, no vote is required.

Size of Local Government

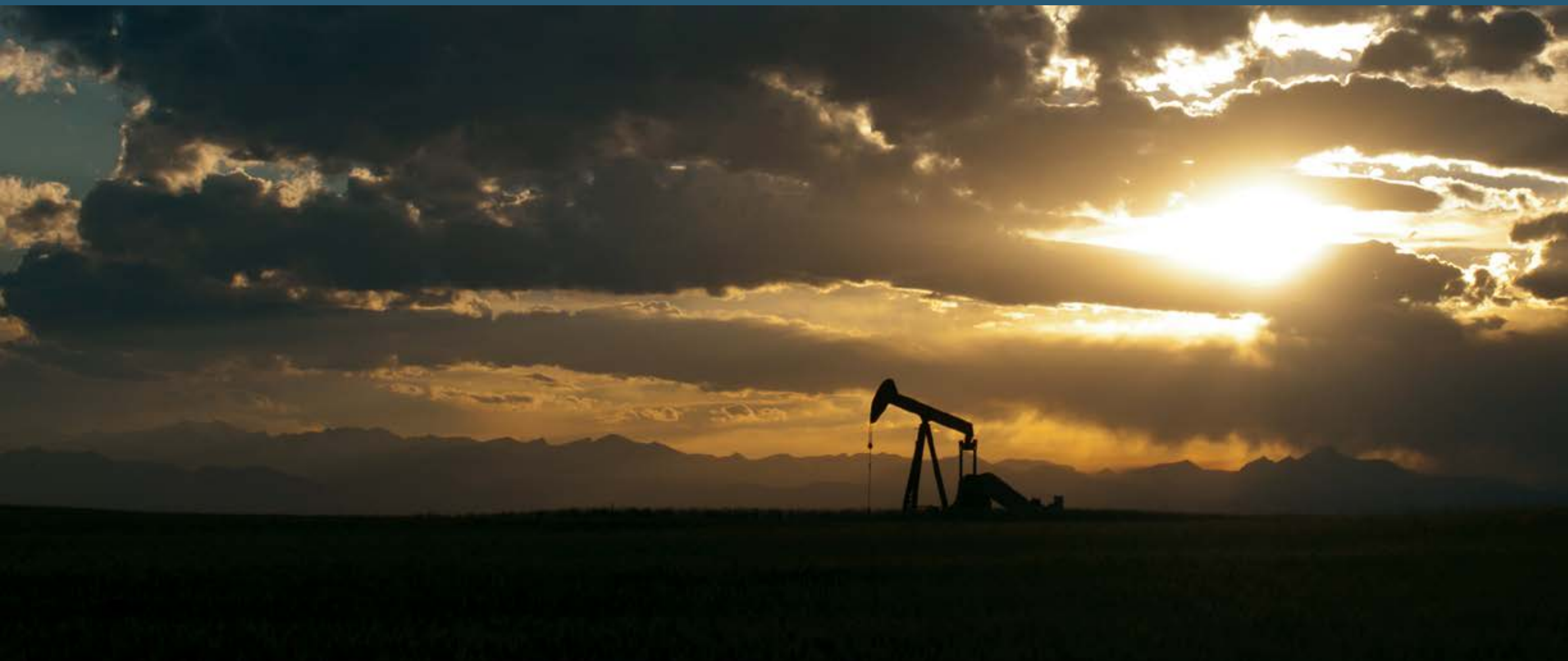
» **10 or more employees »** the Local Government will pay the employer share of the premium, 0.45% of wages,* and will remit the 0.45% of the employees' share to the FAMLI Division for a total of 0.9% of wages.

» **Fewer than 10 employees »** the Local Government does not have to pay the 0.45% of the employer share, but is still responsible for remitting the 0.45% of the employees' share for a total of 0.45% of wages.

» In both scenarios, the Local Government will need to submit wage data to the Division once a quarter along with their employees' share of the premium (0.45% of wages).

Decline ALL participation

- The Local Government's governing body must vote to decline all participation.
- The Local Government must register in the FAMLI system to notify the FAMLI Division of their vote to decline participation.
- Local Governments who vote to decline participation in the FAMLI program are not required to have an equivalent paid leave plan in place.
- Employees of Local Governments that vote to opt out of the program, still have the option of participating if they so choose.
- Employees who voluntarily choose to participate will need to report their own wages and remit their own premium payments. These employees would only be required to pay the 0.45% of the employee premium.
- These employees would self-elect coverage in the same manner and form a self employed person would via the online FAMLI system.
- The individual employee will create their own account and will be responsible for self reporting their wage data and remitting a quarterly premium into the system.
- Upon voluntarily opting into the program, these individuals are required to commit to participate for at least three years to avoid opting in only when leave is foreseeable.
- There is no enrollment period. These employees can opt in at any point.



Decline Employer Participation

- This option allows a Local Government to decline its responsibility to pay the employer share of the premium but still assist its employees who want to individually participate in FAMLI.
- The Local Government's governing body must still vote to opt out of paying the employer premium, but the Local Government would facilitate an employee's voluntary payroll deductions and remit the employee's share of the premium (0.45% of wages) and corresponding wage data once a quarter to the FAMLI Division.
- This allows employees to voluntarily opt into the program without having to worry about the administrative burden of remitting their own premiums and wage data every quarter.
- Employees who choose to opt in after their Local Government opts out, will not be covered by the job protection benefit of the FAMLI program.

How to Prepare for FAMLI

These are the following steps Local Governments should take to prepare for FAMLI.

1. Determine your Local Government's participation in FAMLI

- The Local Government's governing body must vote to decline to participate. No vote is required to participate.
- Public notice of the vote must be given in the same manner as any other business before the governing body, and employees must also be notified in writing prior to the vote with information regarding the vote process and how to submit public comments. If a local government has public testimony procedures already in place, the local government will need to allow public testimony in regards to its vote on FAMLI participation.
- The decision to decline is good for eight years from the date of the vote.
- The Local Government must hold another vote if it wishes to continue to opt-out beyond eight years.

2. Register with the FAMLI system (Q4 2022)

- **Every** Local Government employer must register with FAMLI's online system, including those that choose not to participate in FAMLI.
- Local Governments which vote to decline participation in the FAMLI program must notify the Division of their decision after registering in the system by January 1, 2023.

When can we vote to opt out of FAMLI?

Local Governments can hold their initial vote to opt out anytime during 2022.

3. Notify FAMLI of your Local Government's decision

- After registration, a Local Government that votes to opt-out of the FAMLI program must notify the FAMLI Division on letterhead and must indicate the date the vote was taken and the result of the vote. This document must be uploaded into the FAMLI employer services system once it deploys in late 2022.
- If the local government has voted to opt out, but intends to assist its employees who choose to individually participate in the FAMLI program, this information must be included in the notification as well. **This notification must be received within the system — not postmarked or emailed — by January 1, 2023.**

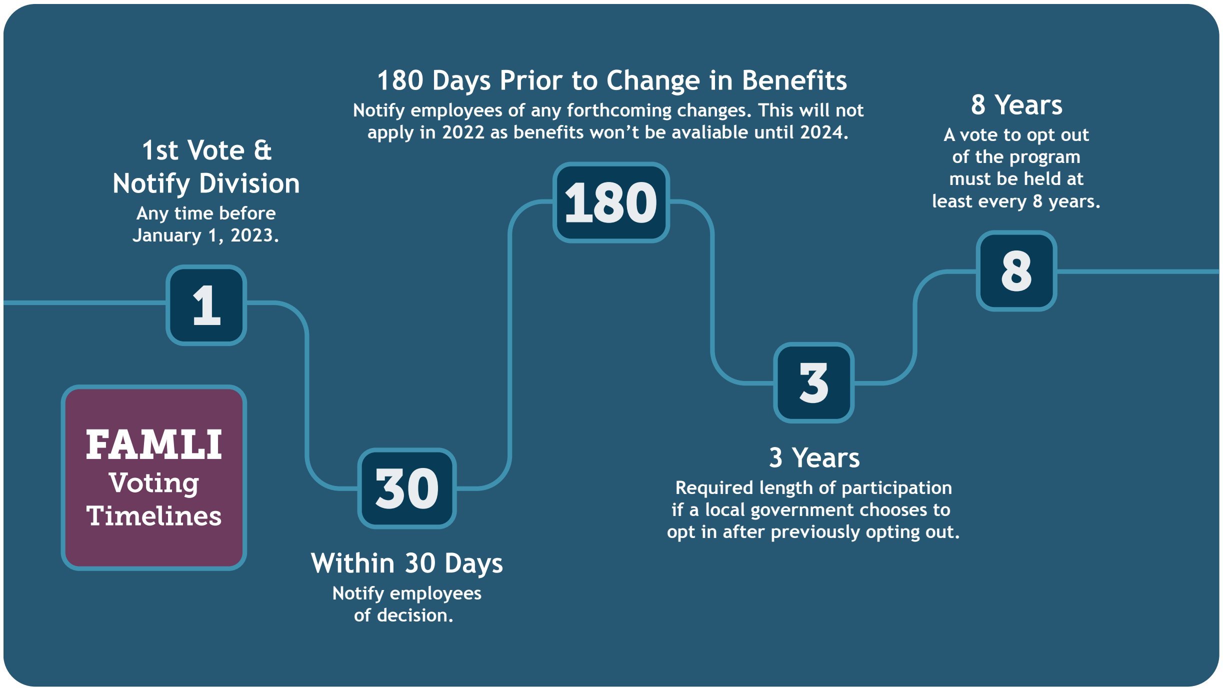
FAMLI's online employer premiums system is expected to be available for registration during the Fall of 2022. Local Governments will be invited to register before private employers, during which time we will have support staff available to help Local Governments navigate the process. This will be the same online system all participating employers will use to remit premium payments and all wage data to the Division once a quarter.

4. Notify your employees of your Local Government's decision

- There are two employee notification requirements that Local Governments must abide by when voting to opt out of the FAMLI program (7 CCR 1107-2). One notice must be delivered individually to employees after a declination vote, and one must be posted (with other labor notices etc). The written individual notices may be emails, or employee policies published in a handbook.
- Local Governments must display the notice containing the required information in a conspicuous and accessible place in each establishment where employees are employed. In cases where the Local Government does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification will be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform.
- The notice and poster required should be in English and in any language representing the first language spoken by at least five percent of the Local Governments' workforce.
- The Division has created posters and customizable notices containing the required information in this regulation and are available at famli.colorado.gov.

Employees of local governments who have opted out do not need to take any action to self-elect FAMLI coverage until benefits become available in 2024.

Voting Timelines



Key Dates to Consider

- Local governments must notify employees of their decision on FAMLI participation within **30 days after** the deciding vote.
- **180 days notice** must be given to employees before any change regarding access to FAMLI benefits is effective. This gives workers time to make arrangements and self-select coverage.
- Local governments which choose to fully participate in FAMLI after previously voting to decline participation must remain in the program and agree to pay premiums for a **minimum of three years.**
- Individuals who self-elect coverage, must remain in the program and agree to pay premiums for a **minimum of three years.**
- If the local government chooses to decline to fully participate in the FAMLI program, the decision must be revisited **every eight years** at a minimum.
- If a local government wishes to withdraw from the program at the end of the three-year period, the FAMLI Division requires a **minimum of 90 days notice,** so we can change systems to avoid overpayments and miscommunication.

Please refer to 7 CCR 1107-2 for additional information.

Tools

Break Room Poster for Local Governments Who Opt Out

Standard Break Room Poster for All Participating Employers

Customizable Employee Email Notification Template

Local government employers who vote to decline participation in the FAMLI program are not required to have an equivalent paid leave plan in place.

What happens if we do not take a vote, or send a letter?

Local Governments which do not notify the FAMLI Division of a vote to opt-out by January 1, 2023 will be identified as participants in the FAMLI program. The FAMLI Division will expect both wage data and premium payments due on April 1, 2023. You must notify the Division ahead of January 1, 2023 to avoid paying premiums.

Who's Who in FAMLI?

Covered Individual » A Colorado worker who has earned at least $2,500 in wages within the State, over a period of roughly a year. *Reference: §8-13.3-503 (3) C.R.S.*

Employee » Any individual, including a migratory laborer, performing labor or services for the benefit of another, irrespective of whether the common-law relationship of master and servant exists. The FAMLI Act's definition of "employee" includes a two-prong exception.

- » If a person is both primarily free from control in the performance of their work, and that work is part of their independent profession or trade, then that person is not an employee under the FAMLI Act, and payments to them would not be subject to premiums. *Reference: §8-13.3-503 (7) C.R.S.*
- » Elected officials will generally satisfy this two-prong exception, will not be considered employees, and payments to them for their services will not be subject to premiums.

FAMLI » The Family and Medical Leave Insurance (FAMLI) program was voted in by the citizens of Colorado during the 2020 election. The vote was bi-partisan. Colorado law that covers this program is §8-13.3-501 et seq. Individuals can use FAMLI leave to take time away from work in order to:

- » Care for a new child, including adopted and fostered children
- » Care for themselves, if they have a serious health condition
- » Care for a family member's serious health condition
- » Make arrangements for a family member's military deployment
- » Address the immediate safety needs and impact of domestic violence and/or sexual assault.

Family Member » A covered individual's child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or someone with whom they have a significant personal bond as described in detail in §8-13.3-503 (11) C.R.S.

FMLA » The Family and Medical Leave Act (FMLA) is a federal program that provides certain qualifying employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave. FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees. Colorado's FAMLI program is designed to run concurrently with FMLA. *Reference: 29 U.S.C. Chapter 28.* However, it is important to note that individual FMLA coverage may vary among employees based on hours worked in the prior year.

Governing Body » The group of leaders who has the authority to exercise governance over a local government or political subdivision. Examples include but are not limited to: public school boards, board of regents, board(s) of directors etc. A local government's vote to opt out of FAMLI must be conducted by its governing body.

Local Government » Any county, city and county, city, or town, whether home rule or statutory, or any school district, special district, authority, or other political subdivision of the state. Charter Schools are considered Local Governments under the FAMLI Act. Any government entity with at least one employee in the State Personnel System is NOT considered a Local Government under the FAMLI Act. Any government entity for which the state prepaid premiums under 2022 law (**HB22-1133**) is NOT a local government. *References: §29-1-304.5(3)(b) C.R.S., C.R.S. 8-13.3-518(4)(b)*

Paid family and medical leave » The general description for paid leave taken from employment in connection with family and medical leave insurance benefits.

Serious Health Condition » 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. *§8-13.3-503 (19) C.R.S.*

Sexual Assault or Abuse » Any offense or sexual assault committed by a person against another person regardless of the relationship between the actor and the victim. *References: 16-11.7-102(3) C.R.S., §18-3-402 C.R.S. and §8-13.3-503 (20) C.R.S.*

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