

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT
EMPLOYER WEBINAR SERIES

New Rules on Retaliation, Job Protection & More

June 29, 2023

FAMLI.Colorado.gov

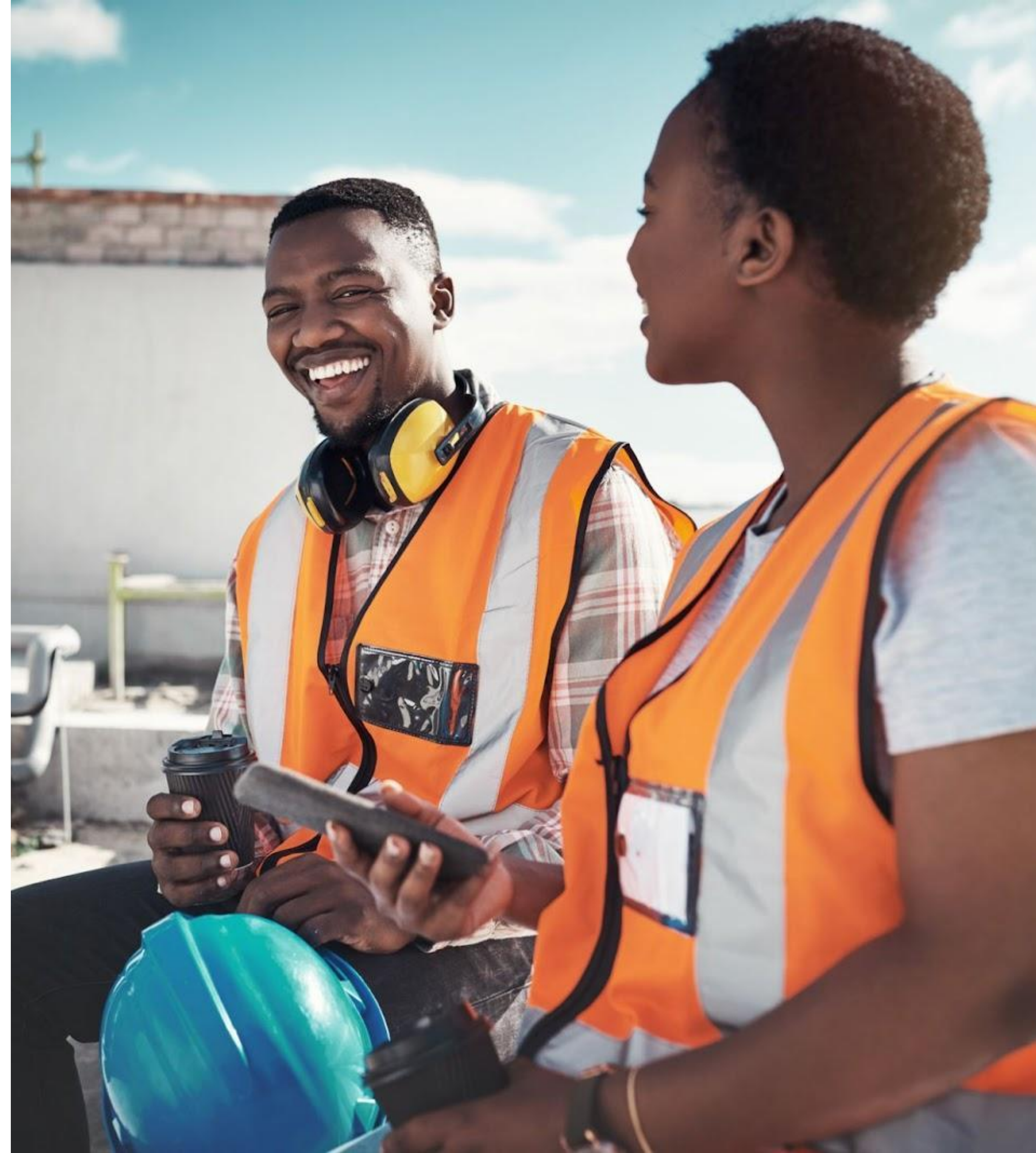


COLORADO
Family and Medical Leave
Insurance Program (FAMLI)
Department of Labor and Employment

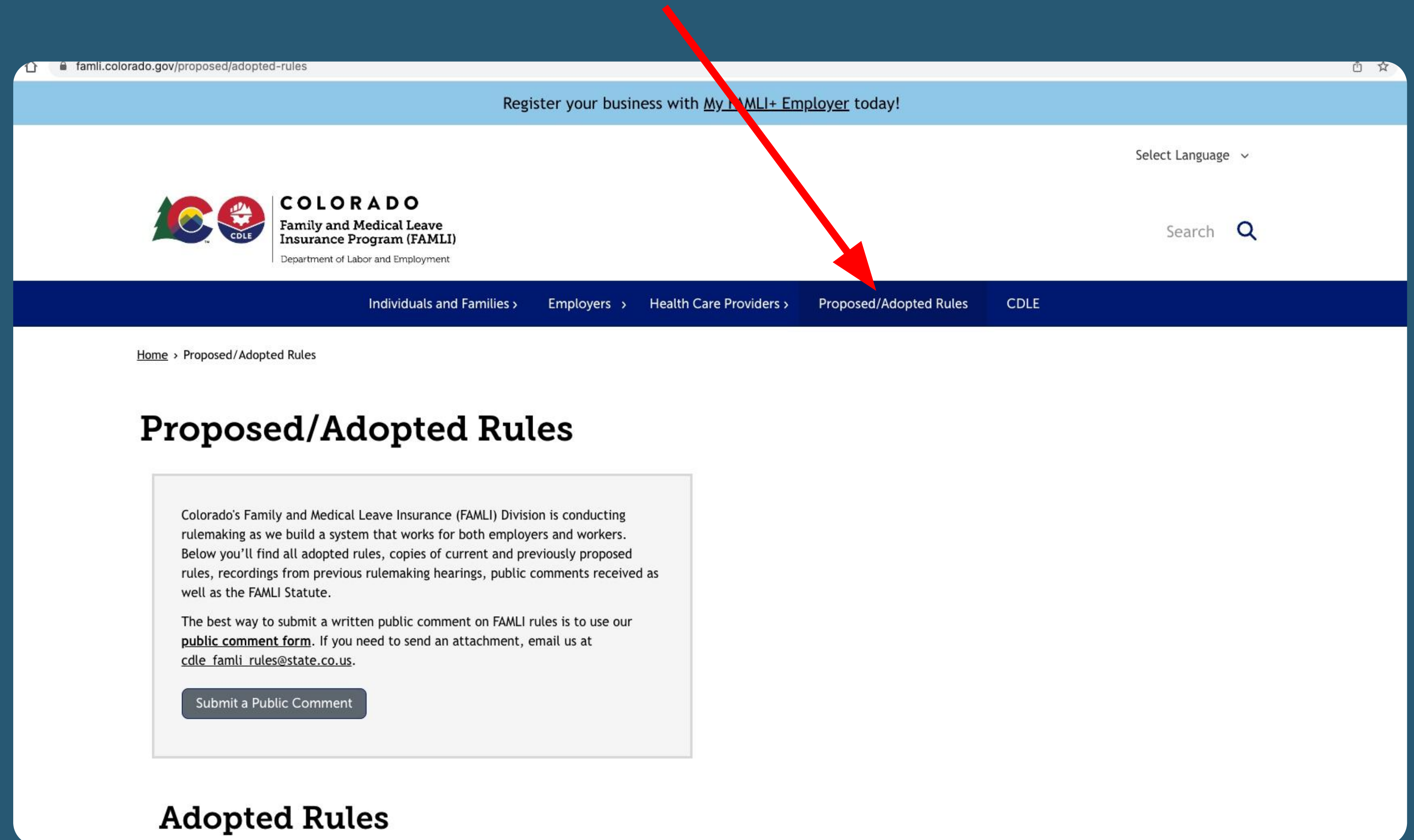


Agenda

- New rules:
 - [Retaliation](#)
 - [Interference](#)
 - [Job Protection](#)
 - [Reinstatement](#)
 - [Investigations](#)
 - [Appeals](#)
 - [Coordination of Benefits](#)
 - [Program Integrity](#)
- Poll
- Live Questions



Check out all the rules under the Proposed / Adopted Rules tab at: famli.colorado.gov



“Retaliation” means: *discrimination based on protected activity*

Examples:

—

Subjecting an employee to an adverse employment action, including **discipline, discharge, suspension, transfer, or assignment to a lesser position** in terms of job classification, job security, or another term or condition of employment.

—

Failing to **reinstate** an employee following a return from leave.

—

Failing to maintain the **confidentiality** of employee information related to requests for leave under the FAMLI Act.





“Interference” means:
any act or omission that, regardless of intent, interferes with any right or protected activity under the FAMLI Act

Examples:

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- Intimidating or threatening conduct intended to discourage an employee from accessing FAMLI benefits
- Providing false or misleading information intended to interfere with an employee's ability to access FAMLI benefits

Things to know about reinstatement rules:



- Employees who take FAMLI leave are entitled to be restored by the employer to the position they held when the leave started.
- An individual is considered employed on any day they work, on their days off, and during any leave (paid or unpaid) where the employer reasonably believes the individual will return to work.
- An employer is **not obligated** to reinstate an employee IF an employee's position is eliminated due to **legitimate downsizing or reorganization**.
- An employer is **not obligated** to reinstate an employee IF the employee **cannot perform the essential functions of their job** any longer following the period of leave.

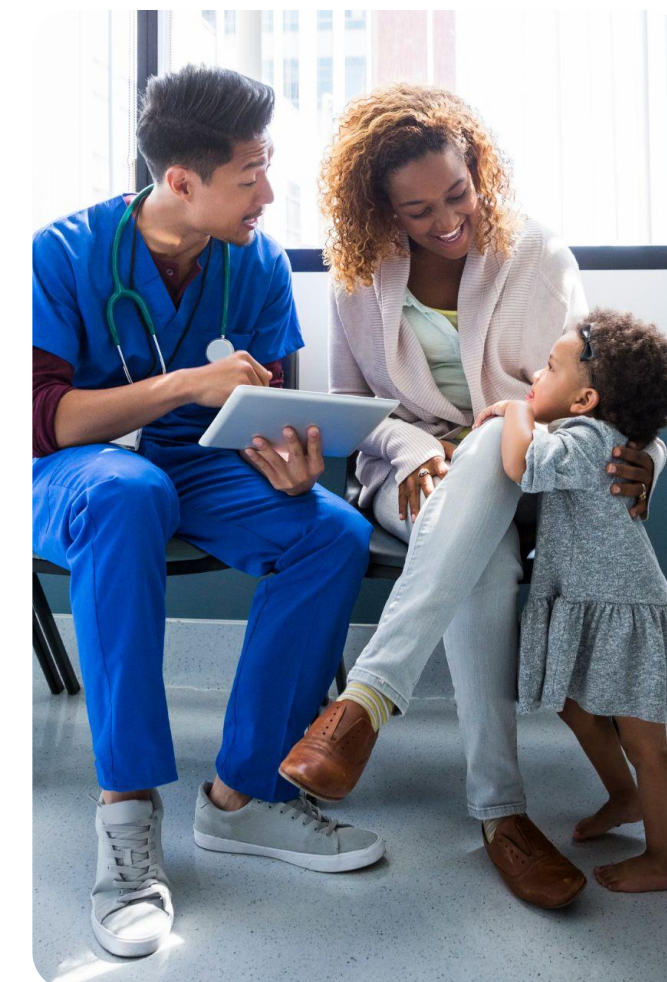
What about seasonal workers?

Where employment is seasonal, an individual is not considered employed between seasons.



How will the FAMLI Division investigate complaints?

- Individuals who wish to file a complaint will be given a form to return within 35 days.
- Aggrieved individuals have the burden of proving all elements of a claim.
- The FAMLI Division has 60 days to investigate or dismiss a complaint.





How do employers appeal a FAMLI decision?

- Employers have **45 days** after a FAMLI decision is made to file an appeal.
- Employers are encouraged but not required, to use the Division's appeal form. A valid appeal is a **written statement** that is filed timely with the Division, **explains the clear error** in the determination that is the basis for the appeal, and has been signed by the party or the party's authorized representative.

Coordination of Benefits



Family and medical leave insurance benefits **cannot be combined** with unemployment insurance payments.



Workers are **not entitled** to receive FAMLI benefits and employer-provided leave for the same hours absent.



Mutual agreement between the employer and the employee is **not necessary** in order for an employee to use paid sick leave prior to receiving FAMLI benefits.

Benefit overpayments and premium underpayments:

- Can be identified through any lawful means including audits, investigations, and external tips.
- Employers and claimants can be fined.
- Private Plan administrators can also pursue repayment. Private Plans that overpay by \$25 or more must also notify the FAMLI Division.



Let's take a poll!

QUESTIONS:

1. How have you learned about Colorado's Family and Medical Insurance Leave program?
2. My understanding of Colorado's Paid Family Medical Leave is:



We want to hear from you!

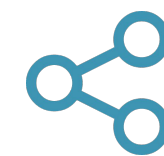
We want to build a FAML I program that is fair and meets the needs of both employers and workers.



WEBSITE
FAML I.Colorado.gov



PHONE
1-866-CO-FAML I
(1-866-263-2654)



SOCIAL MEDIA
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Monday - Friday
8 A.M. - 4 P.M.



QUESTIONS?

