

## DEPARTMENT OF LABOR AND EMPLOYMENT

### Division of FAML I

## REGULATIONS CONCERNING PAID FAMILY MEDICAL LEAVE PROGRAM

### 7 CCR 1107-2

#### 2.1 Authority

This regulation is adopted pursuant to the authority in section 8-13.3-501 C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the “APA”), C.R.S. and the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 et seq. (the “Act”), C.R.S.

#### 2.2 Scope and Purpose

- A. This regulation will govern the Family and Medical Leave Insurance program pursuant to ~~C.R.S.~~ 8-13.3-522 **C.R.S.**, concerning the process for local government employers to decline participation in the program.
- B. This regulation will govern the process of a local government electing into the FAML I Program, after initial declination.
- C. This regulation will govern the notification requirements of local government employers to their employees regarding any vote to decline FAML I coverage, the outcome of such a vote, and the ability of local government employees to voluntarily elect coverage as individuals.
- D. This regulation does not apply to any other employer classifications within the State of Colorado, including but not limited to people who are self -employed.

#### 2.3 Applicability

The provisions of this section will be applicable to all local government entities within the State of Colorado.

#### 2.4 Definitions

“FAML I” is defined as the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 through 524 (the “Act”), C.R.S.

“Fund” has the same meaning as in **§8-13.3-503 (12) C.R.S.**

**“Governing Body” has the same meaning as in both §31-1-101(4) C.R.S and §32-1-103(8) C.R.S.**

“Local government” has the same meaning as a county, city and county, city, or town whether home rule or statutory, or any school district or a special district created pursuant to the “Special District Act,” article 1 of title 32, C.R.S. and as outlined in 24-19-102. C.R.S., authority or other political subdivision of the state.

“Premium” is defined as the money payments required pursuant to 8-13.3-507 C.R.S., to finance the payment of family and medical leave insurance benefits and administer the family and medical leave insurance program.

## 2.5 Local Government Employer Participation

- A. Pursuant to Regulation 2.6, local Government Employers are required to notify the Division of the local government’s decision to decline participation in the FAML I program to fulfill requirements in ~~C.R.S. 8-13.3-522~~ **C.R.S.**
1. Local governments which have previously declined participation in the FAML I program pursuant to ~~C.R.S. 8-13.3-522~~ **C.R.S.**, may subsequently elect coverage by registering as an employer with the FAML I Division prior to the collection of employer premiums.
  2. Local governments which have previously declined participation in the FAML I program pursuant to ~~C.R.S. 8-13.3-522~~ **C.R.S.**, may elect FAML I Program coverage at the beginning of the annual cycle relevant to the local government’s budgeting cycle.
  3. The ability of a local government to **decline participation in the FAML I** program or elect coverage following a previous declination is subject to a ~~formal~~ vote of the governing body of each local government entity pursuant to this Regulation and Regulation 2.6 of **7 CCR 1107-2**, A local government may not decline participation in the FAML I program in part. Any such declination of a local government is a full declination of FAML I program participation for that local government employer.
- B. Local governments ~~employers~~ which have previously declined coverage and now wish to elect coverage of FAML I benefits for their employees pursuant to ~~C.R.S. §§8-13.3-522 (3)(b)~~ **C.R.S.**, may subsequently elect coverage by an **affirmative formal** vote **of a majority of a quorum** of the **local government’s** governing body. ~~with at least a 51% majority vote.~~
- ~~C. A local government which has previously declined coverage must renew the declination through a similar vote process and margin every four years. If a local government does not renew the declination of the FAML I program through a formal vote, pursuant to Rule 2.6, the local government will become a covered employer of the FAML I program and its coverage in the program will be renewed.~~
- D. When a local government **employer** returns to coverage pursuant to Regulation **§§ 2.5 (B) or §§ 2.5 (C) of 7 CCR 1107-2**, coverage will begin ~~two~~ no **later** than **one** quarters after the local government has notified the Division of a change of the ~~formal~~ vote to elect coverage pursuant to **7 CCR 1107-2, §§ 2.5 (B) or its deadline to renew its declination**

pursuant to **7 CCR 1107-2, §§ 2.5** (C) and have submitted at least one quarter's premium amount on behalf of both the employer and its employees into the fund.

E. Local government employees who have individually opted into the benefits program pursuant to ~~C.R.S. 8-13.3-514~~ **C.R.S.**, will not pay a double premium amount, and must be given ~~formal~~ notice by the local government employer of a date corresponding with the beginning of a calendar quarter at which a premium amount will be submitted to the Division on their behalf. ~~Any overpayment by a local government employee whose employer opts back into the program will be repaid to the employee by the Division. The Division will ensure a continuation of coverage for local government employees who have individually opted into the benefits program pursuant to 8-13.3-514 and ensure no lapse in coverage prior to the local government's reinstatement of coverage.~~

(1) **The purpose of the notice by the local government employer of the date at which a premium amount will be submitted to the Division on behalf of an employer is to inform the employee of any potential lapses in eligibility. This notice is vital to ensure there is no lapse in the employees eligibility to the program** or to prevent a decreased benefit calculation.

(2) This notice must be delivered in writing and or through electronic communication to the employee by their local government employer no later than 90 days after the ~~formal~~ vote.

(3) The local **government** employer must also publicly post **notice of** the date of the first day the employer will begin paying FAMLl premiums.

F. Eligible employees who have not been previously covered as individual participants employed by a newly participating local government will begin full benefit eligibility the first day of the following quarter after the premiums are received by the Division.

(1) Local governments **employers** that have **previously** declined participation and **then** subsequently elect or return to coverage under the FAMLl program must remain in the program for a minimum of three fiscal ~~calendar~~ years corresponding to the date the local government elected coverage began.

- a. The three year cycle begins on the first day of employee coverage.
- b. The ~~formal~~ notice of the intent to decline **future** coverage must be delivered in writing to the Division no later than ~~180~~ **120** days prior to the end of the three year cycle pursuant to this regulation.

(2) Employees must be notified in writing, both posted and directly notified of the pending or upcoming return to coverage pursuant to this regulation.

1. Notice related to local government employer's new participation pursuant to this regulation must be delivered individually in writing to all of the local government employees no later than 90 days after FMLI coverage is reinstated.
2. Local government employers will display a notice containing the information required in this regulation in a conspicuous and accessible place in each establishment where employees are employed; provided, however, in cases where the **local government** employer 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.
3. The written notice and posting will contain an explanation of employee rights under the FMLI program including but not limited to program requirements, benefits, claims process, payroll deductions and premiums, the right to job protection and benefit continuation under ~~C.R.S.-8-13.3-509~~ **C.R.S.**, protection against retaliatory personnel actions or other discrimination, relevant contact information for the Division, and other pertinent information.
4. The notice and poster required by this regulation will be in English and in any language representing the first language spoken by at least five percent of the **local governments** employer's workplace. The Division will create and make available to **local government** employers posters and notices containing information required in this regulation, and **local government** employers may use the posters and notices to comply with the requirements of this section.

## 2.6 Process and Notification of FMLI Program Declination

- A. Local government **employers** are permitted to decline to participate in the FMLI program after a ~~formal~~ notice has been delivered to the FMLI Division memorializing the decision by **an affirmative vote of a majority of a quorum** ~~at least a 51% vote~~ of the local government's or special district's individual governing body to decline participation in the program. Such a vote will follow the local government's or special district's procedures for other formal votes of the governing body.
  1. ~~The~~ **A** declination vote will not take effect until after ~~180~~ **120** days **after the vote**, to allow individual employees the opportunity to opt into the benefits program pursuant to ~~C.R.S.-8-13.3-514~~ **C.R.S.**, should individuals choose to elect coverage.
  2. Public notice ~~of the vote~~ must be given in the same manner as any other business before the governing body, and the local government will ~~accept comments~~ **take/hear testimony** ~~from its constituents and employees~~ prior to the vote, **pursuant to the procedural rules of the governing body**. ~~The local government's employees must also be notified in writing prior to the vote and provided both information regarding the vote process and opportunity to submit comments through a public process to the governing body.~~

3. Within 30 days following a local government declination vote, the local government must provide its local government employees with an individual notice in writing of the local government's declination **vote** and the **impact toward loss of FAML I or other paid family and leave insurance** coverage, information regarding the right of local government employees to voluntarily opt into FAML I benefits pursuant to ~~C.R.S.~~ 8-13.3-514 **C.R.S.** and contact information for the Division. Local government employers will display a notice containing the information in a conspicuous and accessible place in each establishment where employees are employed; provided, however, in cases where the **local government** employer 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 in this regulation will be in English and in any language representing the first language spoken by at least five percent of the **local government** employer's workforce. The Division will create and make available to **local government** employers posters and notices containing the information required in this regulation, and **local government** employers may use the posters and notice to comply with the requirements of this section.

- (a) It is the responsibility of the local government employers to request printed materials from the Division. Local government employers may be responsible for the printing and mailing costs of such materials.
- (b) It is the responsibility of the local government to provide written notification to the Division of the local government employers interpretation needs of printed notices for languages other than English or Spanish.

B. The declination period is not permanent. The governing body may reconsider **and elect** ~~electing~~ coverage annually pursuant to **7 CCR 1107-2, Regulation 2.5**

## **2.7 Overpayments**

Any overpayment by a local government employee whose employer opts back into the program will be repaid to the employee by the Division. The Division will ensure a continuation of coverage for local government employees who have individually opted into the benefits program pursuant to 8-13.3-514 C.R.S., and ensure no lapse in coverage prior to the local government's reinstatement of coverage.