

## Division of Family And Medical Leave Insurance (FAMLI)

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### **STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS Local Government Rules, 7 CCR 1107-2 (2021), as adopted on XXX, 2022.**

**(1) BASIS.** The purpose of these rules concerning the Paid Family and Medical Leave Insurance (FAMLI) Rules (or “Rules”) is to implement and enforce the Paid Family and Medical Leave Insurance Act, in particular C.R.S § 8-13.3-522 and related sections pertaining to Premium Liability and Premium Collection.

**(2) SPECIFIC STATUTORY AUTHORITY.** The Director is authorized to adopt rules and regulations to enforce, execute, implement, apply, and interpret C.R.S. Title 8, Article 13.3, by C.R.S. §§ 8-13.3 -507, -508, -509,-514, -522; and §§ 24-4-103 and -105. These rules are intended to be consistent with the requirements of Colorado’s Administrative Procedures Act, C.R.S. §§ 24-4-101, et seq..

**(3) FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION.** Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds: **(A)** demonstrated need exists for the rules (detailed in Part 5, which this finding incorporates); **(B)** proper statutory authority exists for the rules (detailed in Part 2, which this finding incorporates); **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

#### **(4) SPECIFIC FINDINGS FOR ADOPTION**

##### **(A) Broad Purpose of Rules**

The FAMLI Act, a new “Part 5” of C.R.S. Title 8, Article 13.3 (§ § 8-13.3-501 to -524), establishes a new Division within the Colorado Department of Labor and Employment (CDLE), the Director of which is responsible for promulgating rules and coordinating the FAMLI program (§ 8-13.3-508 (1)). The Division is an enterprise (§ 8-13.3-508(2)(a)). The Division shall establish and administer a family and medical leave insurance program, begin collecting premiums as specified by Part 5 (C.R.S. § § 8-13.3-507 & 514), in order to finance Family and Medical leave Insurance benefits and program

administration costs, premiums will be collected through payroll deductions beginning January 1, 2023.

The Division initiated rulemaking in the Fall of 2021. It is the intent of the Division to promulgate rules for local governments prior to the date premium collection begins to allow time for local governments to hold relevant discussions and votes during calendar year 2022.

This set of Rules (7 CCR1107-2) is notably limited to the provisions related to local government employers and employees and are needed imminently to implement the Division's mandatory authority by the statutory effective date. The promulgation of these Rules does not preclude any later implementation and/or rulemaking as to the Division's authority under the Administrative Procedure Act, C.R.S. § 24-4-103.

These rules apply only to local government employers and do not address the coordination of benefits or give direction to local government employers regarding the interplay between the FAML I programs and other insurance plans.

Local government employers are not required to provide a paid family and medical leave plan by Colorado law. Local government employers choosing to offer a private plan, or their own self-insured plan are not required by Proposition 118, to submit the details of the plan they provide to employees for pre-approval by the Colorado Division of Insurance for an analysis as to if the plan they offer is of equivalent quality.

Another unique distinction limited to local government employers under the ballot is the exclusion of employment protection. Local governments are not required by Proposition 118, to guarantee or offer job protection to employees who elect coverage with the state FAML I program under C.R.S § 8-13.3-509. The Division will be promulgating more detailed rules concerning leave and employment protections at a future date, and has not included more information directly related to employment protection in this set of Rules.

It is also noteworthy to mention that many local government employees, including those employed by school districts may have access to job protected leave under the federal Family and Medical Leave Act<sup>1</sup>. The interplay of the FAML I program and other federal and state laws will be addressed in future rulemaking.

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<sup>1</sup> [The Family and Medical Leave Act/employee guide](#)

## **(B) Rules 2.1 through 2.4 : Statutory Framework and Definitions**

Rule 2.1 through 2.4 details the relationship of these Rules to relevant statutes, and the Division's intent for these Rules to remain in effect to the maximum extent possible if a portion is held invalid<sup>2</sup>. Throughout these rules the Division has capitalized the words "Rule" and "Rules" when referring to the specific rules found in this section impacting local government's interaction with the FAMLI program.

## **(C) Rules Related to Local Government Employer Participation**

The mechanism of employer participation in Proposition 118, was intended for all Colorado employers, other than sole proprietors, to provide paid leave benefits for all eligible workers. Due to prior existing statutory provisions concerning local governments and special districts as employers operating within Colorado, a specific provision allowing local government employers to decline participation was included in statute at C.R.S § 8-13.3-522. This same section gives authority to the FAMLI Director to "promulgate reasonable rules for the implementation of this section." The ballot prescribes three rules as a minimum threshold for compliance.

At this time, the Division has chosen not to create rules other than the three key provisions outlined in the ballot which include:

"The process by which a local government may decline participation in the program

The process by which a local government that has previously declined participation may subsequently elect coverage in the program and;

The notice by which a local government is required to provide its employees regarding whether the local government is participating in the program, the ability of the employees of a local government that has declined participation to elect coverage pursuant to C.R.S § 8-13.3-514, and any other necessary requirements."

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<sup>2</sup> *E.g., High Gear & Toke Shop v. Beacom*, 689 P.2d 624, 633 n.10 (Colo.1984)(§ 2-4-204, C.R.S., "can be used not only to sever separate sections, subsections, or sentences, but may also be used to sever words and phrases" even in statutes lacking severability provisions) (citing *Shroyer v. Sokol*, 191 Colo. 32, 34, 550 P.2d 309, 311 (1976)).

All employers wishing to decline FAML I participation either through participation in an eligible and pre-approved private plan or by their classification as a local government employer must notify the Division in writing, with proper documentation of timely communication with employees.

Local government employers are responsible for notifying the Division of their intent to decline to participate in the FAML I program. Section 2.5 of these Rules addresses the way a local government employer may decline coverage and the mechanism by which a local government employer can opt back into the program.

Local governments may choose to opt into the FAML I program at the beginning of their budget cycle and it is at the discretion of the governing body as to when the cycle starts.

Section 2.5 (3) of 7 CCR 1107-2, also clarifies a local government employer who decides to participate in the FAML I program, chooses to participate in the full FAML I program, which will include leave and employment protection for covered employees as this is an essential element of the state program.

#### **(D) Rules Related to Process and Notification of FAML I Program Declination**

Most workers across Colorado will become eligible for FAML I benefits across 2023 and be able to access benefits beginning in 2024. This section of rules outlines the need for local government employers to notify employees of their participation in the FAML I program and any changes in availability of benefits in a timely manner.

#### **(E) Overpayments**

Local government employees who elect FAML I coverage whose local government employer is not participating in the program, enter the program with the same rights and benefits as a self-employed individual. Self-covered individuals are only responsible to pay the half premium rate granted to sole proprietors.

FAML I premiums and benefits are tied directly to wages from employment and additional payments made to the program above the premium amount will not provide additional benefits during the claims process.

Employees who work for multiple employers, including those who have secondary employment income through self employment are eligible, but not required, to have all of their wages computed toward their FAML I benefit.

Rule 2.7 of 7 CCR 1107-2, only applies to local government employees who have previously self-elected to pay FAMLl premiums and there is a change in the participation and collection of premiums by their local government employer.