

# What to Know About the New Colorado Family and Medical Leave Insurance Program

By Ted R. Batson, Jr., Partner and Tax Counsel

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Organizations with employees who work in Colorado need to prepare for Colorado's new state-run Family and Medical Leave Insurance (FAMLI) program. **Note that the program applies to employees who work in Colorado, regardless of where they reside, and there are no exceptions for churches or other nonprofit entities.**

Created by a voter-approved law ([CO Rev. Stat. § 8-13.3-501-524](#)), the FAMLI program will provide most eligible employees with partial replacement wages for up to 12 weeks of leave, with up to four additional weeks per year for pregnancy and childbirth complications.

## Program Highlights

The Colorado Department of Labor has made several employer resources available on its FAMLI website. While we summarize key points of the FAMLI program here, we recommend that your organization review the [employer FAQs](#) and [these answers to additional questions submitted by employers](#) for important details on administering and communicating with employees about the program. This includes information on how FAMLI leave works with other leave and benefits, your responsibilities as an employer, how employee counts are determined, and more.

In addition, the Colorado Department of Labor and Employment's Division of Family and Medical Leave Insurance (the Division) has launched a new [My FAMLI+ Employer portal](#) to assist employers and payroll service providers in managing an employer's obligations under the program.

Note that:

- The FAMLI program will be funded by employers and employees. While the employer's portion is determined by the total number of employees the organization has nationwide, the FAMLI premium is only paid for Colorado employees.
- In 2023, premiums are set at 0.9% of the employee's wage, with employers with 10 or more employees paying 0.45% and employees paying 0.45%. However, employers may choose to pay the employee's share (i.e., pay the full 0.9%) as an additional employee benefit. Premiums are based on wages up to the federal Social Security wage cap, which for 2023 is projected to be \$155,100.
- Employers with nine or fewer employees, participating self-employed individuals, and certain government employers do not have to provide the employer contribution but must collect and remit employee contributions. This can be done through a payroll deduction. Employees are never required to pay more than 50% of the total premium. Employers that are not required to pay the employee contribution may opt to pay some or all of the employee premium on their employees' behalf as an additional benefit.
- Ministers and other church employees are covered workers under the program so long as they are properly classified as employees for payroll purposes (i.e., they receive a Form W-2).
- The minister's housing allowance is includable in wages that are subject to employee withholding and employer premium payments.
- Local government employers are not required to participate in the plan and are not required to withhold and remit employee contributions to the plan. Rather, a local government employee who elects FAMLI coverage must remit his or her premium payments directly to the FAMLI division.
- Self-employed individuals may optionally elect to participate in the plan. Those who choose to participate are only required to pay 50% of the per-

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employee premium, or 0.45%. They remit this payment directly to the FAML I division. Note, it may be tempting to reclassify workers from employees to self-employed independent contractors to take advantage of this provision. However, improper worker classification is an IRS hot-button issue and care should be exercised to ensure that workers meet the definition of an independent contractor before reclassifying them as such.

- Wages paid to part-time and seasonal employees are subject to employee withholding and employer premium payments.
- Employers that opt to provide their own paid leave program may apply for an exemption. All private plans must be reviewed and approved by the Division. You can learn more on the [Private Plan Guidance page](#) of the FAML I website.

### Key Actions and Due Dates

Beginning January 1, 2023, employers must make premium deductions from employees' paychecks. In addition, employers must notify employees of the payroll deductions by posting a [Required Program Notice](#) by January 1, 2023.

All employers, regardless of size, must register with the Division before April 30, 2023, the due date for the first premium payment. Registration is done online using the Division's new [My FAML I+ Employer portal](#) tool.

Employers will be required to submit quarterly wage reports along with the 0.9% premium payments to the Division through an online system that the Division will make available. The reports and payments will be due by the end of the first month after each calendar quarter, which for the first year will be April 30, July 31, and October 31, 2023, and January 31, 2024. The Division will notify employers (electronically or by postal mail) of their expected premium on the first day of the calendar month the premium is due. Employers may opt to have their payroll vendor or other representative receive this notice.

In a [July 2022 webinar](#), the Division said that employers may face a fine of up to \$50 per employee whose wages are not reported. A 30-day grace period will be offered for the April 30, 2023, due date.

Eligible employees can begin applying for benefits through the FAML I program on January 1, 2024. For information about this and other aspects of employee eligibility, when FAML I leave can be used, how to apply, and more, visit the [Individuals and Families section](#) of the FAML I website.

### Next Steps

If your organization has employees working in Colorado, you should begin communicating with your payroll processor or internal team to create a process for collecting and remitting contributions to the FAML I program starting in January 2023.

If your organization uses a third-party administrator for payroll, they can register on your behalf and submit your wage reports and payments. More information is available on the [Third Party Administrators \(TPAs\) page](#) of the FAML I website

The [FAML I Toolkit for Employers](#) has a number of useful resources, including a fact sheet for HR/benefit administrators and a sample pay stub showing what FAML I deductions may look like. The full regulations for the FAML I program are set out at [7 CCR 1107-1](#).

Looking ahead, note that by law, the FAML I Division Director must recalculate the premium rate every year after 2025 and determine whether rate adjustments are needed. Current Colorado law caps the premium rate at 1.2% of employee wages.

Please [contact us](#) with any questions about how this may affect your organization.

*This article has been updated.*

### About the Author

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**Note: Although licensed to practice law in Indiana, Ted's services through CapinCrouse do not involve the practice of law and consequently do not result in the creation of an attorney-client relationship.**

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