

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING LOCAL GOVERNMENT PARTICIPATION WITH THE PAID FAMILY MEDICAL LEAVE PROGRAM

7 CCR 1107-2

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

2.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq. and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").
2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the FAMLI Act with regard to local governments.
3. Article XII Section 13 of the Colorado Constitution (2023); Title 29 Article 1, Title 8 Article 13.3, and Title 24 Article 50 of the Colorado Revised Statutes (2023); and 7 CCR 1107-1 (2023) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.
4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

2.2

~~This regulation is adopted pursuant to the authority in section C.R.S. 8-13.3-522, and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. 8-13.3-501, et seq. (the "Act").~~

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, 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 FAMLI Program, after initial declination.~~

~~C. This regulation will govern the notification requirements of local government employers to their employees regarding any vote to decline FAMLII 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.~~

~~If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.~~

~~2.4 Definitions and Clarifications~~

~~1. Unless otherwise indicated, terms used here that are defined in the FAMLII Act have the same definition as they do under the FAMLII Act.~~

~~2. "Governing Body" has the same meaning as in C.R.S. § 29-1-102(12).~~

~~"FAMLII" is defined as the Paid Family and Medical Leave Insurance Act, C.R.S. 8-13.3-501 through 524 (the "Act").~~

~~"Division" has the same definition as C.R.S. 8-13.3-503(5) as created in C.R.S. 8-13.3-508.~~

~~3. "Local Government" has the same meaning as defined at C.R.S. § 8-13.3-503(14), and is limited to Colorado local governments. "Local government" does not include: (1) a governmental entity with one or more employees in the state personnel system pursuant to Art. XII Section 13 of the Colorado Constitution and the State Personnel System Act, C.R.S. § 24-50-101 et seq.; or (2) a governmental entity for which premiums were paid pursuant to C.R.S. § 8-13.3-518(4)(b).~~

~~4. "Premium" has the same meaning as in 7 CCR 1107-1 Section 1.2.6 is defined as the money payments required pursuant to C.R.S. 8-13.3-507, to finance the payment of family and medical leave insurance benefits and administer the family and medical leave insurance program.~~

~~2.3. Process and Notification of Program Declination~~

~~1. Local government employers are permitted to decline participation in the family and medical leave insurance program after a written notice has been delivered to the Division memorializing the decision by an affirmative vote of the local government's governing body to decline participation in the program. Such a vote must follow the local government's procedures for other votes of the governing body for similar decisions.~~

~~A. If a local government participates in the family and medical leave program on or after January 1, 2024, and later votes to decline participation, the declination will not take effect until at least 180 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, should individuals choose to elect coverage.~~

~~B. Public notice must be given in the same manner as any similar business before the governing body, and the local government must take/hear public comment testimony prior to the vote if the local government has established procedures for public comment testimony for similar business. The local government's employees must also be~~

notified in writing prior to the vote and provided both information regarding the vote process and the opportunity to submit comments through a public process to the governing body.

C. Within 30 days following a local government declination vote, the local government must provide its local government employees with a written individual notice of the local government's declination vote and the impact toward coverage under the FAMLI Act, or other paid family and leave insurance coverage. The written notice, must at a minimum, explain the differences between benefits offered by the state program and any other paid leave plan offered by the local government. The notice must also state which employees, if any, are eligible for job protection under the federal Family and Medical Leave Act (FMLA) benefits or other local provisions where applicable. The notice must also be delivered to all new employees hired after the date of the declination vote.

D. The written notice described at Section 2.3.1.C must contain information regarding the right of local government employees to voluntarily elect coverage pursuant to C.R.S. § 8-13.3-514, and the contact information for the Division. In addition to providing written notices to individual employees in accordance with Section 2.3.1.C of this rule, local government employers must also post 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 must be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform. The individual and posted notices required in Sections 2.3.1.C and 2.3.1.D must 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 notices to comply with the requirements of this section.

1. It is the responsibility of the local government employer to request printed materials from the Division. Local government employers may be responsible for the printing and mailing costs of such materials.

2. 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.

2. Local governments without employees are not employers, and as such, do not need to register, vote, decline coverage, or otherwise participate in the family and medical leave insurance program.

2.4.5 Local Government Employer Participation

A1. Pursuant to 7 CCR 1107-2 Section 2.6, local government employers are required to formally notify the Division in writing and provide both the date of the vote, and the local government's decision to decline participation in the family and medical leave insurance FAMLI program.

4A. Local governments which have previously declined participation in the family and medical leave insurance FAMLI program pursuant to C.R.S. § 8-13.3-522, may subsequently elect coverage at any time by a vote of the governing body.

2B. A local government may not decline participation in the family and medical leave insurance FAMLI program in part. Any declination by a local government is a full

declination of ~~family and medical leave insurance~~FAMLI program participation for that local government employer, except such an employer may enter into an agreement with an employee who elects coverage pursuant to C.R.S. § 8-13.3-514, whereby the employer agrees to provide administrative support to the employee with regard to the employee's ~~program~~ FAMLI obligations, including but not limited to deducting premiums from the employee's wages and remitting premiums and wage reports to the Division on behalf of the employee.

- ~~2.B.~~ ~~Local government employers which have previously declined coverage and now wish to elect coverage of FAMLI benefits for their employees pursuant to C.R.S. 8-13.3-522(3)(b), may subsequently elect coverage by a vote of the governing body. C. A vote to decline coverage is not permanent. A local government which has previously declined coverage may vote to renew the declination through a similar vote process and margin no later than every eight years. The Division will notify the local government of the end of the eight-year declination period one year in advance.~~ In the absence of a vote further declining coverage, the local government will become a covered employer ~~immediately after the end of the eight-year declination period~~. The local government must inform the Division of a declination vote in writing which includes the date the vote was taken.
- ~~D3.~~ When a local government employer returns to coverage pursuant to ~~these rules~~7 CCR 1107-2 Sections 2.5.B or 2.5.C, the employer will be covered and subject to premium liability beginning on the earlier of: (1) the effective date specified by the local government employer in its notification to the Division; or (2) the first day after the local government employer's deadline to renew its declination has passed.
- ~~4E.~~ ~~Employees of local governments who elect coverage pursuant to C.R.S. 8-13.3-514 are eligible for benefits immediately upon electing coverage. F.~~ Local government employers that have previously declined participation and then subsequently elect or otherwise return to coverage under the ~~family and medical leave insurance~~FAMLI program pursuant to these regulations must remain in the program for a minimum of twelve complete calendar quarters after the elected coverage begins. If such an employer chooses to again decline FAMLI participation, notice of such declination must be delivered in writing to the Division at least one complete calendar quarter in advance of the end of the twelve calendar quarter cycle pursuant to this regulation.
- ~~G5.~~ Employees must also be notified directly in writing, and at least 180 days before the pending or upcoming return to or withdrawal of coverage pursuant to this regulation.
- ~~A.~~ Local government employers must 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 must be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform.
- ~~2B.~~ The written notice and posting must contain an explanation of employee rights under the FAMLI 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, protection against retaliatory personnel actions or other discrimination, relevant contact information for the Division, and other pertinent information.
- ~~3C.~~ The notice and poster required by this regulation must 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.

2.65 Process and Notification of FAML I Program Declination

- ~~A. Local government employers are permitted to decline to participate in the FAML I program after a written notice has been delivered to the FAML I Division memorializing the decision by an affirmative vote of the local government's governing body to decline participation in the program. Such a vote must follow the local government's procedures for other votes of the governing body.~~
- ~~1. A declination vote that occurs after a period of FAML I coverage will not take effect until at least 180 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, should individuals choose to elect coverage.~~
 - ~~2. Public notice must be given in the same manner as any other business before the governing body, and the local government must take/hear testimony prior to the vote if the local government has established procedures for public testimony. The local government's employees must also be notified in writing prior to the vote and provided both information regarding the vote process and the 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 a written individual notice of the local government's declination vote and the impact toward FAML I coverage, or other paid family and leave insurance coverage. The written notice, must at a minimum, explain the differences between benefits offered by the FAML I program and any other paid leave plan offered by the local government. The notice must also state which employees, if any, are eligible for job protection under the federal Family and Medical Leave Act (FMLA) benefits or other local provisions where applicable.~~
 - ~~4. Written notices must contain information regarding the right of local government employees to voluntarily elect coverage pursuant to C.R.S. 8-13.3-514, and the contact information for the Division. Local government employers must 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 must 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 must 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 notices 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 and participation must be reconsidered, and the Division notified at a minimum of every 8 years.~~

~~2.7~~ **Overpayments**

In the event of an overpayment of premiums by a local government employee whose employer elects coverage after having previously declined ~~FAMLI~~ coverage, any overpaid premiums 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 C.R.S. [§ 8-13.3-514](#), and ensure there is not a lapse in coverage prior to the local government's reinstatement of coverage.

Editor's Notes

History

New rule eff. [01/01/2024](#)~~03/17/2022~~.