

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING COORDINATION OF BENEFITS AND REIMBURSEMENT OF ADVANCE PAYMENTS

7 CCR 1107-4

4.1 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 Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to coordination of benefits and reimbursement of advance payments.
3. Article 34 of C.R.S. Title 24 (2022), Articles 4, 13.3, 40, and 70 of C.R.S. Title 8 (2022), and 45 U.S.C. section 2601 et seq. (2022) 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.

4.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.
2. “Employer-provided paid leave” means vacation leave, paid sick leave, paid personal leave and any other employer-paid time off. Employer-provided paid leave does not include benefits under a short-term disability policy, long term disability policy, or a separate bank of time off solely for the purpose of paid family and medical leave.
3. “Health care benefits” as used at C.R.S. § 8-13.3-509(2) means benefits provided to an employee by an employer related to the improvement or maintenance of the employee’s health, including but not limited to:
 - A. Health insurance;

- B. Dental insurance;
 - C. Vision insurance; and
 - D. Mental health, counseling, and addiction services.
4. "Paid sick leave" has the same meaning as in C.R.S. § 8-13.3-402(8).
 5. "Separate bank of time off solely for the purpose of paid family and medical leave" means time off provided by an employer which may only be used for a purpose listed in C.R.S. § 8-13.3-504(2), including but not limited to, paid parental leave, and paid leave under C.R.S. § 24-34-402.7, and is separate from employer-provided paid leave defined in 7 CCR 1107-4 Section 4.2.2.
 6. Family and medical leave insurance benefits are only reduced by unemployment insurance or workers' compensation benefits as provided in these rules.

4.3 FAMILI Benefits and Workers' Compensation Benefits

1. Benefits under the FAMILI Act and its implementing regulations are separate benefits claims from benefits under the Workers' Compensation Act of Colorado, C.R.S. § 8-40-101 et seq. or its implementing regulations (the "Workers' Compensation Act"). Regardless of an individual's status as a covered individual, if an absence from work is caused by circumstances that would entitle an individual to temporary indemnity benefits under the Workers' Compensation Act, the individual is not entitled to family and medical leave insurance benefits for that absence.
2. An individual applying for family and medical leave insurance benefits must disclose whether their serious health condition was caused by or otherwise related to a workplace injury or illness.
3. Health care providers, in completing a "Serious Health Condition Certification - Self Form," must disclose any information or belief that the individual's serious health condition was caused by or otherwise related to a workplace injury.
4. If either the individual applying for family and medical leave insurance benefits or the health care provider completing the "Serious Health Condition Certification - Self Form" indicates that the individual's serious health condition was caused by or otherwise related to a workplace injury, then:
 - A. The application for benefits will not be considered filed in accordance with 7 CCR 1107-3;
 - B. The application will be closed; and
 - C. The application will be reopened for good cause if the individual applies for and is denied benefits via a final order under the Workers' Compensation Act with regard to the same serious health condition.
5. An individual must notify the FAMILI Division if they receive any benefits under the Workers' Compensation Act during a period of paid family and medical leave and may be required to complete a release for records relating to the workers' compensation injury.
6. If an individual is paid any temporary indemnity benefits under the Workers' Compensation Act during a period of paid family and medical leave, then any wage replacement benefits paid to the individual in association with the same job as the temporary indemnity benefits under the Workers' Compensation Act will be considered an overpayment of family and medical leave insurance benefits.

7. An individual's failure to disclose either a workplace injury related to an application for family and medical leave insurance benefits, or the receipt of benefits under the Workers' Compensation Act related to an injury that is related to the receipt of family and medical leave insurance benefits, may constitute grounds for disqualification of benefits pursuant to C.R.S. § 8-13.3-513.

4.4 FAMI Benefits and Unemployment Insurance Benefits

1. Benefits under the FAMI Act and its implementing regulations do not run concurrently with benefits under the Colorado Employment Security Act, C.R.S. § 8-70-101 et seq., or its implementing regulations ("CESA").
2. Regardless of an individual's status as a covered individual, if an absence from work is caused by circumstances that would entitle an individual to benefits under CESA, the individual is not entitled to family and medical leave insurance benefits.
3. An individual must notify the FAMI Division if they apply for or receive any benefits under CESA during a period of paid family and medical leave.
4. If an individual is paid any benefits under CESA during a period of paid family and medical leave, then any wage replacement benefits paid to the individual in association with the same job as the benefits under CESA will be considered an overpayment.
5. An individual's failure to disclose either the application for or the receipt of benefits under CESA during any period of paid family and medical leave may constitute grounds for disqualification of benefits pursuant to C.R.S. § 8-13.3-513.

4.5 FAMI Benefits and Employer-provided Paid Leave

1. The FAMI Act and its implementing regulations do not entitle an employee to receive both wage replacement benefits under the FAMI Act and employer-provided paid leave for the same hours absent, except that pursuant to C.R.S. § 8-13.3-510(1)(c), an employer and an employee may mutually agree that the employee may use any accrued employer-provided leave as a supplement to family and medical leave insurance benefits in an amount not to exceed the difference between the individual's wage replacement benefits under the FAMI Act and the individual's average weekly wage.
 - A. If employer-provided paid leave is used to supplement FAMI wage replacement benefits, the employer may: (1) convert the dollar amount of the supplement into the corresponding number of employer-provided paid leave hours; and (2) subtract those hours from the employee's balance of accrued and unused employer-provided leave.
 - B. The use of employer-provided paid leave to supplement FAMI wage replacement benefits requires mutual agreement between the employer and the employee. If either the employer or the employee does not so mutually agree, employer-provided paid leave may not be used to supplement FAMI wage replacement benefits. Any such agreement must be in writing and must be retained by the employer
 - C. Mutual agreement between the employer and the employee is not necessary in order for an employee to use paid sick leave prior to receiving family and medical leave insurance benefits.
2. If an individual receives both wage replacement benefits under the FAMI Act and employer-provided paid leave for the same hours absent, and the employer and the employee have mutually agreed to supplement FAMI wage replacement benefits with employer-provided leave,

then any employer-provided paid leave in excess of the amount authorized by 7 CCR 1107-4 Section 4.5.1 may be considered an overpayment.

3. If an individual receives both wage replacement benefits under the FAMLI Act and employer-provided paid leave for the same hours absent, and the employer and the employee have not mutually agreed to supplement FAMLI wage replacement benefits with employer-provided leave, then any employer-provided paid leave for the same hours absent may be considered an overpayment.
4. If an employer considers employer-provided paid leave to be an overpayment pursuant to either 7 CCR 1107-4 Sections 4.5.2 or 4.5.3, then:
 - A. The employer may recoup the overpayment by any legal means, including via one or more lawful deductions in accordance with C.R.S. § 8-4-105;
 - B. The employer must replenish the employee's bank of accrued employer-provided paid leave in an amount equal to the amount recouped as an overpayment; and
 - C. If the employer-provided paid leave so recouped as an overpayment is paid sick leave, an employer's failure to replenish the employee's bank of paid sick leave in accordance with 7 CCR 1107-4 Section 4.5.4.B shall constitute a violation of the Healthy Families and Workplaces Act, C.R.S. § 8-13.3-401 et seq ("HFWA").
5. To the extent possible, the FAMLI Act and its implementing regulations shall not be read to reduce rights under HFWA and its implementing regulations, and HFWA and its implementing regulations shall not be read to reduce rights under the FAMLI Act and its implementing regulations.

4.6 Employer-provided benefits during paid family and medical leave

1. The FAMLI Act and its implementing regulations only require an employer to maintain health care benefits in accordance with C.R.S. § 8-13.3-509(2), and do not entitle an employee to the continued accrual of employer-provided leave or any other benefits during a period of paid family and medical leave.
2. With regard to a covered individual's obligation to pay their share of the cost of health benefits pursuant to C.R.S. § 8-13.3-509(2), the employer may collect such payment via:
 - A. Lawful deductions from employer-provided paid leave used to supplement FAMLI wage replacement benefits, in accordance with C.R.S. § 8-4-105;
 - B. Lawful deductions from wages paid upon the employee's return to work, in accordance with C.R.S. § 8-4-105;
 - C. A repayment plan entered into by the employer and the employee; or
 - D. Any other legal means.
3. Pursuant to C.R.S. § 8-13.3-509(8), if a local government employer has declined coverage pursuant to C.R.S. § 8-13.3-522, FAMLI does not require the local government employer to maintain health care benefits during a period of paid family and medical leave for its employees who elect coverage pursuant to C.C.R. § 8-13.3-514.
4. If an employer and an employee mutually agree to supplement FAMLI wage replacement benefits with paid sick leave, then the extent to which the employer must maintain benefits beyond the

requirements in C.R.S. § 8-13.3-509(2) and 7 CCR 1107-4 Sections 4.6.1 and 4.6.2 is governed by HFWA.

4.7 FAMILI Benefits, short-term disability benefits, long-term disability benefits, and benefits from a separate bank of time off solely for the purpose of paid family and medical leave

1. If paid family and medical leave is taken for a reason that also qualifies for benefits from a short-term disability policy, long-term disability policy, or a separate bank of time off solely for the purpose of paid family and medical leave offered by the employer, then so long as the employer satisfies the notice requirement of C.R.S. § 8-13.3-510(1)(b), the employer may count both the wage replacement amount and the duration of the paid family and medical leave against the benefit amounts and leave duration provided under such policy of bank of time .
2. If the employer requires paid family and medical leave insurance benefits to run concurrent with its short-term or long-term disability benefits, then the terms of the short-term or long-term disability policy shall govern whether the employer, the employee, or both must notify the policy's program administrator of concurrent paid family and medical leave insurance benefits received by the employee.

4.8 FAMILI Benefits and the FMLA and the Family Care Act

1. As provided in C.R.S. § 8-13.3-510(1)(a), Leave taken with wage replacement under the FAMILI Act that also qualifies as leave under the "Family and Medical Leave Act," as amended, Pub. L. 103-3, codified at 29 U.S.C. sec. 2601 et. seq., or part 2 of article 13.3 of title 8 runs concurrently with leave taken under the "Family and Medical Leave Act" or part 2 of article 13.3 of title 8, as applicable.
2. If the qualifying reason for paid family and medical leave does not constitute a qualifying reason for leave under the Family and Medical Leave Act, then the extent to which paid family and medical leave runs concurrently with leave taken under the Family and Medical Leave Act, if at all, is governed by the Family and Medical Leave Act and its implementing regulations.
3. If an employee requests leave under the Family and Medical Leave Act, the employer must notify the employee that they may be eligible for paid leave under the FAMILI Act.

4.9 Reimbursement of Advance Payments by Employers

1. An employer may qualify for a reimbursement of advance payments made to an employee when:
 - A. The employer pays FAMILI wage replacement benefits in advance of an adjudication decision without using any employer-provided paid leave;
 - B. The employee applies for paid family and medical leave insurance benefits; and
 - C. The employer requests reimbursement from the Division prior to the Division's payment of benefits to the employee.
2. Any wage replacement benefits awarded pursuant to such an application are paid directly to the employer, not to the employee.
3. An employer assumes the risk that an employee for whom it paid FAMILI wage replacement benefits in advance will not apply for paid family and medical leave insurance benefits, that the FAMILI Division will award wage replacement benefits in an amount less than that which the

- employer advanced to the employee, or that the FAML I Division will award no wage replacement benefits.
4. If an employer is not reimbursed, or is reimbursed an amount less than that which it paid an employee, it may not recoup from the employee the difference between the amount it paid and the amount it was reimbursed.
 5. An employer's prepayment of benefits does not modify the appeal rights or procedures described in 7 CCR 1107-3.
 6. An employer must verify to the Division that it proactively paid the employee a payment designated as a paid family and medical leave benefit consisting of partial or full wage replacement prior to receiving reimbursement.