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Final Countdown to FAMLI: Key Steps for Employers in Colorado

The big day is finally here! More than three years after voter approval of Colorado's Family and Medical Leave Insurance program (FAMLI), the program goes live on January 1, 2024. For the past 12 months, employers participating in the state-run program have been preparing, paying premiums to the Colorado Department of Labor and Employment (CDLE), and submitting wage reports. For employers that have chosen to participate in private plans, they have been either been working with third-party providers or internally working out the details of how they can provide leave in compliance with the law. In less than two weeks, FAMLI will allow employees to take qualifying leave and seek limited wage replacement from the FAMLI program. Here are the essential steps for employers to take to ensure your organization is prepared:

1. Give Notice: Make your workforce and HR departments aware that employees may now begin to submit FAMLI claims for qualifying leave expected to begin within the next 30 days.

FAMLI permits Colorado-based employees to apply for qualified paid leave by submitting a claim up to 30 days ahead of the start of their expected leave. Employees seeking FAMLI leave for unexpected reasons must submit a claim within 30 days of their leave beginning. With the launch of the CDLE's My FAMLI+ portal in December 2023, employees seeking leave within 30 days may now submit claims. For employers who have opted for a private plan, confirm that your private administrator's application and claims process are similarly available.

Colorado employers must notify employees of the FAMLI program by posting notices in prominent locations and informing new hires of their rights under FAMLI, as well as reminding employees that leave occurring on or after January 1, 2024 may qualify as partially paid leave under FAMLI.

2. Designate: Establish a point of contact in the My FAMLI+ employer portal.

For employers participating in the state-run program, a specific contact person (usually a manager of HR Benefits) needs to be designated to receive communications about claims. This is a similar role as employer administrators of unemployment and workers compensation claims. Employers should add this point of contact information in the My FAMLI+ Employer portal. The point of contact will receive notifications when employees apply for FAMLI leave either by email or mail. If an employer does not add a designated point of contact, employee benefit documentation will be sent by default to the main mailing address listed on the employer's account, potentially delaying your ability to prepare for employee absences.

Employers using a private plan should confirm how the employer will be notified about employee claims.

3. Plan: Determine how FAMLI will interact with other types of employment-related insurance or employer-sponsored leave.

Other types of employer-sponsored leave may be taken concurrently or consecutively with FAMLI leave, including paid sick or vacation leave, or short-term or long-term disability. Since these types of paid leave are largely provided at the employer's discretion, employers must decide how these other leave policies, if offered, will interact with FAMLI. Ensure your company's leave policies are updated accordingly. The state has published some guidance.

4. Update: Update your employment policies to reflect the FAMLI application and claims processes, but keep it brief.

Regardless of whether your organization uses the state-run or a private plan, employers should expect implementation pains throughout the next few months. So, while your employment policies should provide a basic overview of FAMLI, employers should ultimately direct employees to either the My FAMLI+ portal and other information at famli.colorado.gov or their organization's private insurance plan materials for guidance regarding the individualized claims process. Directing employees to these resources will ensure that employees are always provided with the most up-to-date information.

For most employers, you should be updating your handbook or employee policies. For multistate employers, consider issuing a new Colorado-based supplement or policy.

5. Educate: Ensure your employees know their responsibilities under FAMLI.

Employees are responsible for submitting their own FAMLI benefits claims. However, employees' responsibilities do not end there. For the state-run plan, even after claims have been approved, employees (or their approved representative) are responsible for logging into their My FAMLI+ portal

on the first day their leave begins to confirm the start of their leave. This triggers FAMLII payments to begin. If an employee has opted to take FAMLII leave intermittently or in the form of a reduced schedule, the employee is also responsible for logging into the employee's My FAMLII+ portal on a weekly basis to report the employee's actual time away from work to ensure the employee is receiving accurate payments. Employers will need to verify the employee's reported hours on a weekly basis. Employers using a private plan should confirm how employees will report and how employers will verify the start of an employee's leave, as well as reported hours away.

Additionally, in instances where an employee earns more than the maximum FAMLII benefit amount of \$1,100 per week, employers and employees may mutually agree that the employee can "top-off" the employee's weekly FAMLII benefits, up to the average weekly wage amount, with pay from other employer-provided paid leave sources, such as paid time off or sick leave. If employer-provided paid leave is used to supplement FAMLII benefits, the employer may convert the dollar amount of the supplement into the corresponding number of employer-provided paid leave hours and subtract those hours from the employee's balance of accrued and unused employer-provided leave. Employers should plan to execute these joint agreements in writing. Employers cannot force employees to exhaust paid leave (whether provided by the employer or by the Colorado Healthy Families and Workplaces Act) before utilizing FAMLII leave.

6. FAQs: Review FAMLII resources in preparation for employee questions.

Employers can prepare to answer their employees' questions by reviewing the state's resources at famli.colorado.gov. Husch Blackwell has also issued guidance and summaries of the law's requirements. Some of the most common questions from employees (and suggested responses by the employer) include the following:

Do I qualify for FAMLII leave? FAMLII applies to all employers in Colorado that have at least one qualified employee. Employees become eligible to take paid leave after they have earned at least \$2,500 in wages within the state, over a period of a year.

What can I use FAMLII leave for? FAMLII provides for five categories of leave: 1) to care for a new child anytime within the first 12 months after a birth, adoption, or foster care placement; 2) to care for one's self if the employee has a serious health condition; 3) to care for an employee's family member with a serious health condition; 4) to make arrangements for a family member's military deployment; and 5) to address the immediate safety needs and impact of domestic violence and/or sexual assault. Note that these policies are gender neutral, and a non-birth parent is equally qualified for leave to care for a new child.

How long is FAMLII leave for? Most employees are eligible to receive up to 12 weeks of paid leave per 12 months. Employees who experience pregnancy or childbirth complications may receive an additional four weeks of leave.

Can I be penalized for taking FAMLII leave? No. FAMLII offers job-protected leave once an employee has been working for the employer for 180 days. FAMLII also protects employees against retaliation.

What kinds of information will I need to submit a FAMLII claim? This will depend on the type of leave the employee is applying for: medical leave, bonding leave, safe leave, or exigency leave. Generally speaking, however, the employee should have 1) contact information for the employee (or the employee's designated representative), in order to create a FAMLII account; 2) the company's information; 3) for bonding leave, a birth certificate or other documentation of birth or adoption for foster care or kinship care placement; 4) the expected start and end dates of leave; and 5) an anticipated schedule of how the employee would like to use the leave – continuously, intermittently, or on a reduced hours' basis.

Who makes a determination about my FAMLII claim? The insurer—so either the state or a private insurer (if the employer has opted for a private plan exemption).

What do I do if my claim is denied? Employees, employers, and private plan administrators can file an appeal if they do not agree with a decision made by the Colorado Division of FAMLII or a private plan administrator.

Are FAMLII benefits taxed? FAMLII benefits are not subject to state income tax. The IRS has not issued guidance on whether FAMLII benefits are subject to federal income tax, but all recipients of FAMLII benefits will be issued a 1099-G form.

Contact us

If you have questions about the FAMLII program's impact on your business or other Labor & Employment questions, contact Barbara Grandjean, Ashley Jordaan, Chris Ottele, Shawna Ruetz, Keith Ybanez, Owen Davis, Marina Fleming, or your Husch Blackwell attorney.