

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING BENEFITS AND EMPLOYER PARTICIPATION REQUIREMENTS

7 CCR 1107-3

3.1. Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section 8-13.3-501 C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 *et seq.* (the “APA”), C.R.S. and the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 through 524 (the “Act”), C.R.S.
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 benefits and employer participation.
3. Article 6 of C.R.S. Title 26 (2022), Articles 13.3 and 70 of C.R.S. Title 8 (2022), Articles 4 and 11 of C.R.S. Title 24 (2022), Article 13 of C.R.S. Title 38 (2022), 29 C.F.R. 825, *et seq.* (2022), and 45 U.S.C. section 351 *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.

3.2. 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. “Application year” as used at C.R.S. 8-13.3-505(1), and as described at C.R.S. 8-13.3-521(1)(b) as a “benefit year,” means the 12-month period beginning on the first day of the calendar week in which an individual’s benefit start date occurs. The 12-month period is measured backward from the date an employee uses paid family and medical leave insurance benefits. Under this “rolling” 12-month period, each time an employee takes paid family and medical leave, the remaining

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- leave entitlement would be the balance which has not been used during the immediately preceding 12 months.
3. "Benefit start date" means the first day the covered individual is unable to work for which benefits are approved.
 4. "Benefit year," for purposes of applying the definitions of "base period" at C.R.S. 8-70-103(2) and "alternative base period" at C.R.S. 8-70-103(1.5), means "application year" as defined at 7 CCR 1107-3, Section 3.2.2.
 5. "Business Days" means Monday, Tuesday, Wednesday, Thursday, and Friday, and excludes any Colorado state holidays, as listed in C.R.S. 24-11-101.
 6. "Calendar week" means any period of seven consecutive days.
 7. "Claimant" means a person who has filed a claim for paid family and medical leave insurance benefits, regardless of whether the person is a covered individual pursuant to C.R.S. 8-13.3-503(3).
 8. "Continuous leave" means one non-recurring uninterrupted period of leave.
 9. "Days" means calendar days unless otherwise specified as a business day, as defined by these rules.
 10. "Designated Representative" means a person or entity legally authorized to make decisions on behalf of a claimant, with regard to the FAMLI program. That legal authorization may be through written designation from the claimant or through legal status as a parent, guardian, conservator, or power of attorney. If the claimant is unable to file a claim or authorize a designated representative due to the claimant's medical incapacitation, a claimant's family member may serve as a designated representative without prior authorization from the claimant. For safe leave applications, the alleged perpetrator of domestic violence, stalking, sexual assault, or sexual abuse may not be the claimant's designated representative.
 11. "Employer" as used throughout 7 CCR 1107-3, does not, unless otherwise specified, include local government employers that decline participation in the FAMLI program, or employers who meet their obligations under the FAMLI Act through an approved private plan.
 12. "Good cause" shall exist if the Division determines that a reasonably prudent individual under the same or similar circumstances would have been prevented from complying with deadlines established by the FAMLI Act and its implementing regulations. In determining whether good cause exists, the Division shall consider all factors that it deems relevant, including but not limited to:
 1. Whether the requestor received timely and adequate notice of the need to act;
 2. Administrative error by the Division or its representatives, or the failure of the Division or its representatives to discharge its responsibilities;
 3. Factors outside the control of the requestor which prevented a timely action;

4. The requestor's physical or mental impairment, particularly if the impairment is related to the request for paid leave;
 5. Whether the requestor acted diligently in submitting the request once the reason for the late request no longer existed;
 6. The total length of time that the action was untimely;
 7. Whether the delay affects the ability for the Division to determine the validity of the request for paid family and medical leave insurance benefits; and
 8. Good faith error, provided that in determining whether good faith error constitutes good cause, the Division shall consider any prior history of such errors, whether the request is excessively late, and whether the requestor otherwise acted with due diligence.
13. "In loco parentis" means a relationship in which a person puts himself or herself in the situation of a parent by assuming and discharging the obligations of a parent to a child. Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand in loco parentis to a child as long as the relative satisfies the in loco parentis requirements. Persons who are in loco parentis include those with day-to-day responsibilities to care for or financially support a child. In determining in loco parentis status, the Division will consider the age of the child; the degree to which the child is dependent on the person; the amount of financial support, if any, provided; and the extent to which duties commonly associated with parenthood are exercised. The fact that a child has a biological parent in the home, or has both a mother and a father, does not prevent an employee from standing in loco parentis to that child. The FAMLI act does not restrict the number of parents a child may have. The specific facts of each situation will determine whether an employee stands in loco parentis to a child.
14. "Intermittent leave" means leave taken in separate blocks of time due to a single qualifying reason.
15. "Reduced leave schedule" means a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.
16. "Regular work schedule" means the days of the week and the number of hours typically worked by the covered individual in the job or jobs held by the covered individual as of the first date of the leave. Regular work schedule shall be determined by taking an average of the schedule worked during the 4 weeks prior to the last day worked. If the covered individual has worked fewer than 4 weeks, the average shall only include the weeks in which the Covered Employee was employed. For purposes of calculating a regular work schedule, days missed due to paid sick leave, paid time off, holiday pay, or other employer-provided leave must be included. If a covered individual is unable to provide evidence sufficient for the Division to determine their regular work schedule, the Division may, at its discretion, assign a regular work schedule equal to 8 hours per weekday, 40 hours per week.

17. “Self-employed individual” as used in the FAML I Act and its implementing regulations includes individuals who meet the FAML I Act’s two-prong exception to the definition of “employee” at C.R.S. 8-13.3-503(7).
18. “Wage replacement benefit” means the monetary weekly benefit amount described at C.R.S. 8-13.3-506.
19. “Willful” or “willfully” as used in the FAML I Act or its implementing regulations means the employer or individual knew or showed reckless disregard for whether its conduct was prohibited by the FAML I Act.

3.3. Employer Participation Requirements

1. Employers, including local government employers that decline participation in the FAML I program, and employers who meet their obligations under the FAML I Act through an approved private plan, must register with the FAML I Division via “MyFAML I+ Employer” by January 1, 2023, or when they become an employer, whichever occurs later.
2. Employers must submit wage reports to the Division on the same quarterly schedule as they must submit premiums to the Division pursuant to 7 CCR 1107-1. If an employer fails to timely submit wage reports, the Division may assess upon the employer a fine of up to \$50.00 per employee whose wages were not reported.
3. An employer must notify the Division within 10 business days if it ceases business operations in Colorado or otherwise ceases to employ Colorado employees, in accordance with the provisions of 7 CCR 1107-1 regarding in-state status of employees. An employer with no Colorado employees will not be required to remit premiums, submit wage reports, or otherwise participate in the FAML I program. If the employer later resumes business operations or again employs workers in Colorado, it must register with the FAML I Division via “MyFAML I+ Employer.”

3.4. Clarifications Regarding Use of Paid Family and Medical Leave Insurance Benefits

1. The use of paid family and medical leave insurance benefits is restricted to absences caused by a qualifying condition described at C.R.S. 8-13.3-504(2). If the absence is caused by a reason other than a qualifying condition described at C.R.S. 8-13.3-504(2), paid family and medical leave insurance benefits are not available.
 - A. If a covered individual is awarded continuous leave for an absence caused by a qualifying condition described at C.R.S. 8-13.3-504(2), the duration of the awarded leave is not impacted by subsequent unemployment.
 - B. If a covered individual is awarded intermittent leave or reduced leave schedule for an absence caused by a qualifying condition described at C.R.S. 8-13.3-504(2), and subsequently becomes unemployed, the awarded leave terminates upon unemployment, and the covered individual may apply for benefits upon reemployment.
2. For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FAML I leave has no effect; the week is counted as a week of

FAMLI leave. However, if an employee is using FAMLI leave in increments of less than one week, the holiday will not count against the employee's FAMLI entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks, the days the employer's activities have ceased do not count against the employee's FAMLI leave entitlement.

3. Paid family and medical leave insurance benefits are available to an individual while taking paid family and medical leave if the individual meets the definition of "covered individual" under C.R.S. 8-13.3-503(3) and has a qualifying condition described at C.R.S. 8-13.3-504(2).
 - A. To determine whether an individual has met the \$2,500.00 threshold described at C.R.S. 8-13.3-503(3)(a)(I), the Division will rely on wages reported to the Division by the employer pursuant to these rules. If a claim for benefits is denied because the reported wages do not establish that the individual has met the \$2,500.00 threshold, the individual may appeal the Division's denial and submit evidence that they have met the threshold.
 - B. An individual claimant can meet the \$2,500.00 threshold described at C.R.S. 8-13.3-503(3)(a)(I) by earning wages subject to premiums from any combination of employers, and a claimant need not earn \$2,500.00 from their current employer to meet the threshold.
 - C. An individual meets the \$2,500.00 threshold described at C.R.S. 8-13.3-503(3)(a)(I) if the individual has been paid that amount of wages during either the individual's base period, as defined at C.R.S. 8-70-103(2), or the individual's alternative base period, as defined at C.R.S. 8-70-103(1.5).
4. Paid family and medical leave insurance benefits are available for absences occurring on or after January 1, 2024 caused by a qualifying condition described at C.R.S. 8-13.3-504(2), regardless of the onset date of the qualifying condition.
5. "Serious health condition" determinations by the Division will be in accordance with the Family and Medical Leave Act's provisions regarding "serious health conditions" at 29 C.F.R. 825 *et seq.*, except where those regulations conflict with the FAMLI Act or its implementing regulations.
6. To determine whether an individual is a family member under C.R.S. 8-13.3-503(11)(e) because the individual is someone with whom the covered individual has a significant personal bond that is or is like a family relationship, the Division will look to the totality of the circumstances surrounding the relationship, including, but not limited to, the following non-dispositive factors:
 - A. Shared financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
 - B. Emergency contact designations;
 - C. The expectation of care created by the relationship and/or the prior provision of care;
 - D. Cohabitation and the duration thereof; and

- E. Geographical proximity.
7. Clarifications regarding “caring for a new child” under C.R.S. 8-13.3-504(2)(a):
- A. “Caring” includes bonding with and providing basic needs for a new child.
 - B. “Child” means a person who is either under the age of 18, or between the ages of 18 and 21 and remains under the jurisdiction of a juvenile court.
 - C. Benefits under C.R.S. 8-13.3-504(2)(a) are limited to individuals standing in loco parentis to the child.
 - D. If a person has received benefits under C.R.S. 8-13.3-504(2)(a) to care for a new child placed through foster care, and the person later adopts the child, the person is not entitled to again receive benefits under C.R.S. 8-13.3-504(2)(a) in relation to the adoption of the same child.
 - E. Paid family and medical leave under C.R.S. 8-13.3-504(2)(a) may be continuous, reduced leave schedule, or intermittent leave.
8. Clarifications regarding “safe leave” under C.R.S. 8-13.3-503(18) and 504(2)(e):
- A. To determine whether an individual is the victim of domestic violence, the victim of stalking, or the victim of sexual assault or abuse, for purposes of determining eligibility for safe leave, an individual need not prove that a court has determined that the individual was the victim of domestic violence, stalking, sexual assault, or sexual abuse.
 - B. Benefits may be awarded based on the victim’s good-faith attestation that the circumstances giving rise to the safe leave satisfy the elements of the offense.
 - C. If an individual is granted safe leave based on their good-faith attestations, and is later found by a court not to have been a victim of domestic violence, stalking, sexual assault, or sexual abuse, benefits paid for the leave will not be considered an overpayment unless a court’s findings show that the attestations were not in good faith.

3.5. Amount, Duration, and Format of Benefits

- 1. Benefit Amounts
 - A. A covered individual’s weekly benefit will be determined as follows:
 - 1. The portion of the covered individual’s average weekly wage, from the employer or employers from which the covered individual is taking leave, that is equal to or less than 50 percent of the state average weekly wage shall be replaced at a rate of 90 percent; and
 - 2. The portion of the covered individual’s average weekly wage, from the employer or employers from which the covered individual is taking leave, that is more than

50 percent of the state average weekly wage shall be replaced at a rate of 50 percent.

- B. The maximum weekly benefit for a covered individual is 90 percent of the state average weekly wage, except that for paid family and medical leave beginning before January 1, 2025, the maximum weekly benefit is \$1,100.00.
 - C. To determine an individual's average weekly wage in accordance with C.R.S. 8-13.3-503(2), the Division will rely on earnings reported to the Division pursuant to these rules. If the Division cannot sufficiently calculate an individual's average weekly wage based on earnings reported to the Division pursuant to these rules, the Division may request from the individual and/or the individual's current employer or employers documentation of the individual's earnings during the individual's base period or alternative base period, and may rely on that documentation and any other information that is reasonable or reliable.
 - D. If a covered individual has multiple jobs, has multiple sources of self-employment, or has a job in addition to being self-employed, and the covered individual does not take paid family and medical leave from all sources of employment or self-employment, then the individual's weekly benefit will be determined by first calculating the amount described at 7 CCR 1107-3 Sections 3.5.1.A and 3.5.1.B, and then prorating that amount based on the portion of the individual's current weekly earnings lost due to the absence from work.
 - E. If some or all awarded leave is for a duration of less than a week, the benefit amount will be prorated based on the portion of work missed for the week. That proration shall be as follows:
 - 1. Determine the wage replacement benefit for a full week of leave;
 - 2. Divide the approved duration of leave by claimant's regular work schedule; and
 - 3. Multiply these two numbers together.
 - F. Absences of less than 8 hours may be approved, but wage replacement benefits will be paid in accordance with C.R.S. 8-13.3-505(3).
 - G. At the beginning of every calendar quarter, the Division will recalculate wage replacement benefit awards for in-progress awards of paid family and medical leave. If the recalculation increases or decreases the wage replacement benefit amount, the Division will notify the covered individual and will adjust future payments accordingly. If the covered individual's employer has made a valid request for benefit amounts in accordance with 7 CCR 1107-3, Section 3.7.6., the Division will notify the employer of any increases or decreases in the covered individual's wage replacement benefit amount.
2. Duration of Leave
- A. The Division will award benefits for a reasonable duration in accordance with the details in the application, the documentation submitted, and where applicable, known standards

of care. The awarded benefits must not exceed the duration limits described at C.R.S. 8-13.3-505(1).

- B. The hourly expression of a covered individual's total allotted leave duration is equal to the total number of hours in the covered individual's regular work schedule, multiplied by the number of weeks of leave the individual is entitled to pursuant to C.R.S. 8-13.3-505(1).
 - C. Approved leave may be taken in increments of one hour or less, in accordance with C.R.S. 8-13.3-505(3).
- 3. Approved leave may be in the form of continuous leave, intermittent leave, or reduced leave schedule.
 - 4. The amount and duration of family and medical leave benefits may be reduced by the receipt of other benefits, as detailed in 7 CCR 1107-4.

3.6. Applying for Benefits

- 1. To request paid family and medical leave insurance benefits, the claimant or the claimant's designated representative must apply to the Division for benefits.
- 2. Applications may be submitted up to thirty (30) days prior to the benefit start date.
- 3. The Division will notify the claimant's employer of the application submission within five (5) business days.
- 4. If the need for leave is unforeseeable, or if submitting an application in advance of the leave is otherwise impracticable, applications may be submitted up to thirty (30) days after the leave has begun. If the Division receives an application after thirty (30) days, but before ninety (90) days, the Division will consider the application if it includes evidence establishing good cause for the claimant's failure to submit the application within thirty (30) days.
- 5. Additional Documentation Requirements
 - A. For leave necessary to care for a child because of birth, the claimant must submit the following documentation with their application:
 - 1. Proof of birth, which may include a birth certificate, an application for a birth certificate, documentation from a health care provider who provided care during the birth or recovery, or other vital records showing birth;
 - 2. A statement establishing in loco parentis status; and
 - 3. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.
 - B. For leave necessary to care for a child because of adoption, the claimant must submit the following documentation with their application:

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1. Proof of adoption placement, which may include documentation from a court or an adoption agency; and
 2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.
- C. For leave necessary to care for a child because of placement through foster care, the claimant must submit the following documentation with their application:
1. Either:
 - a. Proof that the claimant is either a licensed or certified foster parent and the child has been placed in their care; or
 - b. Documentation from a child placement agency as defined in C.R.S. 26-6-102, the state department of human services, a county department of human services, or a court indicating a kinship or emergency placement was necessary to provide for the immediate care and safety of a minor child, and the person will be standing in loco parentis through a power of attorney or other legal designation; and
 2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.
- D. For leave necessary to care for a family member with a serious health condition, the claimant must submit the following documentation with their application:
1. A "Serious Health Condition Certification - Family Member Form" completed and signed by the family member's health care provider; and
 2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.
- E. For leave necessary because of the claimant's own serious health condition, the claimant must submit the following documentation with their application:
1. A "Serious Health Condition Certification - Self Form" completed and signed by the health care provider; and
 2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.
- F. For leave due to a need for qualifying exigency leave, the claimant must submit the following documentation with their application:
1. A "Military Exigency Leave Attestation Form" completed by the claimant; and
 2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

- G. For leave due to a need for safe leave, the claimant must submit the following documentation with their application:
 - 1. A “Safe Leave Attestation Form” completed by the victim or a family member of the victim; and
 - 2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.
- 6. Applications may be submitted using the FAML I Division’s online system, by mail, or by email.
- 7. Requirements for an Application to be Considered Filed
 - A. Upon receipt of an application for benefits, the Division will review the application. If the Division needs more information or documentation to adjudicate the claim for benefits, it will make a reasonable effort to promptly obtain the additional information or documentation from the claimant, using the claimant’s preferred language and method of contact.
 - B. An application will not be considered filed until all required information and documentation has been received by the Division, and the Division has been notified that the paid family and medical leave has begun.
 - C. If an application is not properly filed within sixty (60) days after the Division receives it, the application will be closed and the Division will take no further action on it, absent a finding of good cause based on evidence submitted by the claimant. The Division will notify the claimant prior to any such closure in their preferred language and method of contact, and will describe the claimant’s opportunity to establish good cause to keep the application open.
 - D. Once an application is properly filed, the Division will notify the claimant and the employer of the proper filing within five (5) business days.

3.7. Requirements Regarding Notice to Employers

- 1. A claimant must schedule leave in accordance with C.R.S. 8-13.3-505(4), and must notify their employer or employers of the need for leave in accordance with C.R.S. 8-13.3-505(5). For individuals on intermittent leave, these scheduling and notice requirements apply to each absence. Notification need not include any specific terms or reference specific provisions of the FAML I Act or its implementing regulations, but must reasonably implicate qualifying leave under the FAML I Act to satisfy the notification requirement at C.R.S. 8-13.3-505(5).
- 2. Employers may require the notice to contain the anticipated start time, anticipated duration, and where applicable, anticipated frequency of leave.
- 3. Such notification must be in the same manner as the claimant and employer typically communicate work availability, and absent unusual circumstances, must comply with the employer’s usual and customary notice and procedural requirements for leave, unless those

requirements are contrary to rights, benefits, or protections afforded to the claimant under the FMLI Act and its implementing regulations.

4. If an employer fails to post the program notice required at C.R.S. 8-13.3-511, the employer may not punish or discipline an employee for failing to provide notice in accordance with C.R.S. 8-13.3-505(5).
5. Nothing in the FMLI Act or its implementing regulations prohibit an employer in compliance with C.R.S. 8-13.3-511 from disciplining an employee for failing to provide notice in accordance with C.R.S. 8-13.3-505(5), so long as the discipline is not pretext for retaliation, discrimination, or interference in violation of C.R.S. 8-13.3-509.
6. By submitting an application for benefits, the claimant consents to the Division sharing with the employer, upon the employer's request, limited information necessary for the employer to coordinate FMLI benefits with other benefits for which the claimant is eligible, in accordance with the information-sharing provisions of 7 CCR 1107-4, including the wage replacement amount and the reason for leave. The employer shall not request, and the Division will not provide, information that is not absolutely necessary for such benefit coordination, and a request for information not absolutely necessary for such benefit coordination may constitute discrimination, retaliation, and/or interference in violation of C.R.S. 8-13.3-509. The employer must store and maintain the confidentiality of such information in accordance with all applicable federal, state, and local laws and regulations, and failure to do so may constitute discrimination, retaliation, and/or interference in violation of C.R.S. 8-13.3-509.
7. Records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for purposes of the FMLI must be maintained as confidential medical records in separate files/records from the usual personnel files. If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLI containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA (see 29 CFR 1635.9). If the Americans with Disabilities Act (ADA) is also applicable, such records should be maintained in conformance with ADA confidentiality requirements, except that:
 - A. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
 - B. First aid and safety personnel may be informed if the employee's physical or medical condition might require emergency treatment; and
 - C. Division and/or other government officials investigating compliance with the FMLI Act should be provided relevant information upon request.

3.8. Division Review of Applications

1. After an application is properly filed, the Division will adjudicate the claim within two weeks after filing.

2. The Division will contemporaneously notify the claimant and the employer of the outcome of the adjudication, and will provide information on how the claimant can appeal the outcome.
 - A. If the outcome is a denial of benefits, the Division will send separate notices to the claimant and to the claimant's employer or employers. The notice to the claimant will explain the reason for the benefits denial and will identify information or documentation necessary to perfect their claim for benefits. The notice to the claimant's employer or employers will state that the claim for benefits has been denied, include the date of the denial, and include a description of the claimant's appeal rights.
 - B. If the outcome of the adjudication is to award benefits, the notices will include the leave start date, the leave duration, any denied segments of requested leave, and where applicable, a description of any approved reduced leave schedule or intermittent leave. Upon the employer's valid request, the Division will share with the employer the benefit amount and reason for leave, in accordance with 7 CCR 1107-3, Section 3.7.6.
3. If the Division awards benefits, it will issue payment for the benefits within two weeks after the application is filed, and where applicable, every two weeks thereafter.
4. For applications approved in advance of the needed leave, the claimant must notify the Division once the leave begins.

3.9. Covered Individual Obligations During Leave

1. A covered individual or their designated representative must notify the FAML I Division within ten (10) days after the occurrence of any event, or the foreseeability of any event, that could change the amount or duration of approved leave, including but not limited to the following:
 - A. A change in the covered individual's need to care for a new child, including death of the child, placement of the child in another home, or a caregiving arrangement whereby someone other than the covered individual provides care;
 - B. A change in the covered individual's own serious health condition or need to care for a family member with a serious health condition, including including death of the family member or any increase or decrease in the care the covered individual must provide;
 - C. A change in the covered individual's need for exigency leave;
 - D. A change in the covered individual's need for safe leave;
 - E. Any event resulting in the covered individual no longer being localized to Colorado, pursuant to 7 CCR 1107-1 and its provisions regarding in-state status of employees;
 - F. An addition or loss of one or more jobs;
 - G. A change in the covered individual's regular work schedule; or
 - H. A change in employment that could result in non-coverage, including unemployment, retirement, obtaining employment with the federal government, obtaining employment

with a local government that has declined participation pursuant to C.R.S. 8-13.3-522, or obtaining employment as an "employee" as defined by 45 U.S.C. section 351(d) who is subject to the federal "Railroad Unemployment Insurance Act," 45 U.S.C. section 351 *et seq.*

2. If a covered individual notifies the Division of an event that would increase the amount, duration, or frequency of benefits, the Division may require the covered individual to submit additional documentation in support of their claim.
3. If information reported to the Division results in an increase or decrease in the duration or frequency of leave awarded to a covered individual, the Division will promptly and contemporaneously notify the employer and the covered individual of the change.
4. If a covered individual receives a reduced leave schedule or intermittent leave, the covered individual must submit documentation sufficient to recertify their need for leave every six months, or as requested by the Division for claim management purposes. Upon recertification, the Division will notify the covered individual and the employer or employers from which the covered individual is taking leave, and will include in that notification any changes in the duration or frequency of the approved leave. If an individual fails to recertify, the approval for the leave will expire and the Division will notify the employer or employers from which the covered individual was taking leave.
5. A covered individual receiving intermittent leave must notify the Division of the individual absences in order to receive wage replacement benefits for the absences.

3.10. Appeals

1. A claimant may appeal an adverse claim determination by submitting a completed "Appeal Request Form" to the FAML I Division.
2. For the appeal to be considered, the FAML I Division must receive the completed form within forty-five (45) days of the Division issuing its initial benefits determination. The Division may consider an appeal received later than forty-five (45) days after issuing its initial benefits determination, but within sixty (60) days after issuing its initial benefits determination, if the claimant submits with the Appeal Request Form evidence establishing good cause for the late appeal.
3. Upon receipt of a timely appeal, the Division will designate a hearing officer to preside over the matter. The hearing officer will have the power and authority to call, preside at, and conduct hearings. The hearing officer will have the power to administer oaths and affirmations, take depositions, certify to official acts, permit parties to participate by telephone, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with an appealed benefits determination.
 - A. In case of a failure to obey a subpoena issued to any person by the hearing officer, upon application by the Division or its duly authorized representative, any court of this state has jurisdiction to issue to the person an order requiring him or her to appear before the hearing officer to produce evidence or give testimony touching the matter under appeal. The court may issue an order of contempt to a person who fails to obey the order.

- B. Any failure to obey such an order of the court may be punished by said court as a contempt thereof. Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do in obedience to a subpoena of the Division or its duly authorized representative, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment. Each day such violation continues shall be deemed a separate offense.
- 4. The hearing may be bifurcated at the hearing officer's discretion.
 - 5. The hearing officer, after affording the claimant a reasonable opportunity for a fair hearing, shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The Division shall promptly provide the claimant with a copy of the hearing officer's decision. The Division shall also contemporaneously provide a copy of the hearing officer's decision to the claimant's employer, with protected health information, the reason for leave, and wage replacement benefit amounts redacted. If the hearing officer's decision results in an award of benefits, the employer may request information necessary for coordination of benefits in accordance with 7 CCR 1107-3 Section 3.7.6.
 - 6. The claimant may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five (35) days after the effective date of the hearing officer's decision. The hearing officer's decision constitutes a final agency action pursuant to C.R.S. 24-4-106. Judicial review is limited to appeal briefs and the record designated on appeal.
 - 7. If the Division reverses a benefits denial upon either appeal or judicial review, the Division will pay the benefits within five (5) business days after the order awarding benefits.
 - 8. Leave and employment protection provided by C.R.S. 8-13.3-509(1) is limited to the benefit duration provided by C.R.S. 8-13.3-505. An employer may not treat an absence that is subject to appeal or judicial review as an absence not protected by the FMLI Act unless and until the leave is denied and the claimant exhausts any right to appeal or judicial review. However, if the outcome of an appeal or judicial review is pending outside of the benefits duration provided by C.R.S. 8-13.3-505, it does not extend the leave and employment protection provided by C.R.S. 8-13.3-509(1).

3.11. Employer Grievances

- 1. An employer may file a grievance with the Division if it has a good-faith belief, supported by evidence, that the Division has granted and/or paid family and medical leave insurance benefits to a claimant:
 - A. In an amount, duration, or frequency beyond which the claimant is entitled to under the FMLI Act and its implementing regulations; or
 - B. In a way that unduly disrupts the employer's operations.

2. The grievance must contain a detailed explanation of the employer's belief, and must include any evidence supporting that belief.
3. The Division will review all grievances in good faith, and may initiate an investigation as a result of the grievance.
4. If an investigation results in a change in the duration or frequency of a covered individual's paid family and medical leave insurance benefits, the Division will notify the covered individual and the covered individual's employer. If an investigation results in a change in the covered individual's wage replacement benefit amount, the Division will notify the covered individual, and the Division will also notify the employer if the covered individual's employer has made a valid request for benefit amounts in accordance with 7 CCR 1107-3, Section 3.7.6.
5. Excessive, frivolous, unsubstantiated, or bad-faith grievances may constitute discrimination, retaliation, and/or interference in violation of C.R.S. 8-13.3-509.

3.12. Fitness for Duty

Nothing in the FAMLI Act or its implementing regulations prohibits an employer from requiring a covered individual to provide certification of his or her fitness for duty prior to returning to work from a FAMLI-approved absence, so long as such a requirement does not constitute discrimination, retaliation, or interference in violation of C.R.S. 8-13.3-509.

3.13. Disqualification from Benefits

1. If the Division determines that a covered individual has willfully made a false statement or misrepresentation regarding a material fact in order to obtain family and medical leave insurance benefits, or has willfully failed to report a material fact in order to obtain family and medical leave insurance benefits, the covered individual will be disqualified from family and medical leave insurance benefits for one year after the effective date of the disqualification.
2. The Division will notify the claimant of any disqualification of benefits, and the claimant may appeal the disqualification in accordance with the timelines and procedures of a benefits denial, as detailed in 7 CCR 1107-3, Section 3.10.
3. If the claimant does not appeal the disqualification, the effective date of the disqualification shall be the earlier of:
 - A. The day after the appeal deadline; or
 - B. The day the Division receives notification from the claimant of the claimant's decision not to contest the disqualification.
4. If the claimant does not appeal the disqualification, or if the Division upholds the claimant's disqualification upon appeal, the Division will notify the claimant's employer or employers of the disqualification.

5. If the Division or a court upholds the claimant's disqualification upon appeal, the effective date of the disqualification shall become the date of the decision or order upholding the initial disqualification
6. If a claimant is disqualified from family and medical leave insurance benefits, the claimant's employer or employers remain obligated to remit premiums for the claimant in accordance with the FAML I Act, and remain entitled to require premium contributions from the employee in accordance with the FAML I Act.

3.14. Erroneous Payments of Benefits

1. If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected after benefits are paid, the Division may seek repayment of benefits from the recipient in accordance with C.R.S. 8-13.3-513.
2. If the Division identifies a benefit overpayment, the Division will notify the claimant of the overpayment, and will notify the claimant of any amount for which it will seek repayment. If the Division seeks repayment of a benefit, the claimant may appeal the repayment decision in accordance with the timelines and procedures of a benefits denial.
3. If the Division identifies a benefit underpayment, it will make a reasonable effort to obtain accurate contact information from the underpaid individual, and will issue the underpaid amount to the individual as soon as practicable. If the Division cannot obtain accurate contact information from the underpaid individual, the Division will remit the underpaid amount to the Colorado Department of Treasury in accordance with the Colorado Revised Uniform Unclaimed Property Act, C.R.S. 38-13-101 *et seq.*
4. The Division may seek repayment of benefits in accordance with the procedures set forth in the FAML I Act and its implementing regulations, which may include entering into an agreement with the claimant to repay the overpayment in installments.