

## **DEPARTMENT OF LABOR AND EMPLOYMENT**

### **Division of FAML I**

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

### **7 CCR 1107-2**

#### **2.1 Authority**

This regulation is adopted pursuant to the authority in section 8-13.3-522 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 et seq. (the "Act"), C.R.S.

#### **2.2 Scope and Purpose**

- A. This regulation will govern the Family and Medical Leave Insurance program pursuant to 8-13.3-522 C.R.S., 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 FAML I Program, after initial declination.
- C. This regulation will govern the notification requirements of local government employers to their employees regarding any vote to decline FAML I 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**

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

"Fund" has the same meaning as in §8-13.3-503 (12) C.R.S.

“Division” has the same definition as 8-13.3-503 (5) C.R.S.

“Governing Body” has the same meaning as in both §31-1-101(4) C.R.S and §32-1-103(8) C.R.S.

“Local Government” has the same meaning as a county, city and county, city, or town whether home rule or statutory, or any school district or a special district created pursuant to the “Special District Act,” article 1 of title 32, C.R.S. and as outlined in 24-19-102. C.R.S., authority or other political subdivision of the state.

“Premium” is defined as the money payments required pursuant to 8-13.3-507 C.R.S., to finance the payment of family and medical leave insurance benefits and administer the family and medical leave insurance program.

## **2.5 Local Government Employer Participation**

- A. Pursuant to Regulation 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 FAML I program.
1. Local governments which have previously declined participation in the FAML I program pursuant to 8-13.3-522 C.R.S., may subsequently elect coverage by first registering as an employer with the FAML I Division prior to the collection of employer premiums.
  2. Local governments which have previously declined participation in the FAML I program pursuant to 8-13.3-522 C.R.S., may subsequently elect FAML I Program coverage at the beginning of the annual cycle relevant to the local government’s budgeting cycle.
  3. The ability of a local government to either decline participation in the FAML I program or elect coverage following a previous declination is subject to a vote of the governing body of each local government entity pursuant to this Regulation and Regulation 2.6 of 7 CCR 1107-2, A local government may not decline participation in the FAML I program in part. Any such declination of a local government is a full declination of FAML I program participation for that local government employer.
- B. Local government employers which have previously declined coverage and now wish to elect coverage of FAML I benefits for their employees pursuant to §§8-13.3-522 (3)(b) C.R.S., may subsequently elect coverage by an affirmative vote of a majority of a quorum of the local government’s governing body.
- C. A local government which has previously declined coverage must renew the declination through a similar vote process and margin no later than every eight years. In the absence of a vote further declining coverage, the local government will become a

covered employer. The local government must inform the Division of a declination vote in writing which includes the date the vote was taken.

- D. When a local government employer returns to coverage pursuant to Regulation §§ 2.5 (B) or §§ 2.5 (C) of 7 CCR 1107-2, coverage will begin no later than one quarter after the local government has notified the Division of a change of the vote to elect coverage pursuant to 7 CCR 1107-2, §§ 2.5 (B) or its deadline to renew its declination pursuant to 7 CCR 1107-2, §§ 2.5 (C) and have submitted at least one quarter's premium amount on behalf of both the employer and its employees into the fund.
- E. Local government employees who have individually opted into the benefits program pursuant to 8-13.3-514 C.R.S., will not pay a double premium amount, and must be given notice by the local government employer of a date corresponding with the beginning of a calendar quarter at which a premium amount will be submitted to the Division on their behalf.
  - 1. The purpose of the notice by the local government employer of the date at which a premium amount will be submitted to the Division on behalf of an employer is to inform the employee of any potential lapses or changes in benefits eligibility.
  - 2. This notice must be delivered in writing and or through electronic communication to the employee by their local government employer no later than 90 days after the vote.
  - 3. The local government employer must also publicly post notice of the date of the first day the employer will begin paying FAMLl premiums and when coverage is expected to start.
- F. Eligible employees who have not been previously covered as individual participants employed by a newly participating local government will begin full benefit eligibility the first day of the following quarter after the premiums are received by the Division.
  - 1. Local government employers that have previously declined participation and then subsequently elect or return to coverage under the FAMLl program must remain in the program for a minimum of three fiscal years corresponding to the date the local government elected coverage began.
    - a. The three year cycle begins on the first day of employee coverage.
    - b. The notice of the intent to decline future coverage must be delivered in writing to the Division no later than 90 days prior to the end of the three year cycle pursuant to this regulation.
  - 2. Employees must also be notified in writing, both posted and directly notified no later than 180 days of the pending or upcoming return to or withdrawal of coverage pursuant to this regulation.

- a. Local government employers will 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 will be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform.
- b. The written notice and posting will 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 8-13.3-509 C.R.S., protection against retaliatory personnel actions or other discrimination, relevant contact information for the Division, and other pertinent information.
- c. The notice and poster required by this regulation will 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.

## **2.6 Process and Notification of FAMLI Program Declination**

- A. Local government employers are permitted to decline to participate in the FAMLI program after a written notice has been delivered to the FAMLI Division memorializing the decision by an affirmative vote of the local government's governing body to decline participation in the program. Such a vote will follow the local government's or special district's procedures for other formal votes of the governing body.
  1. A declination vote will not take effect with a resulting change in coverage until after 180 days after the vote, to allow individual employees the opportunity to opt into the benefits program pursuant to 8-13.3-514 C.R.S., 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 will take/hear testimony prior to the vote, pursuant to the procedural rules of the governing body. The local government's employees must also be notified in writing prior to the vote and provided both information regarding the vote process and 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 FAMLI ,or other paid family and leave insurance coverage. The written notice, must at a minimum, explain the differences between benefits offered by the FAMLI program and any private 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 were applicable.

4. Written notices must contain information regarding the right of local government employees to voluntarily opt into FAMLI benefits pursuant to 8-13.3-514 C.R.S., and the contact information for the Division. Local government employers will 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 will 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 will 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 notice 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. The governing body may reconsider and elect coverage annually pursuant to 7 CCR 1107-2, Regulation 2.5.

## **2.7 Overpayments**

Any overpayment by a local government employee whose employer opts back into the program 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 8-13.3-514 C.R.S., and ensure no lapse in coverage prior to the local government's reinstatement of coverage.