

# Proposition 118 Colorado Paid Family Medical Leave

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# Proposition 118 Colorado Paid Family Medical Leave



## EFFECTIVE DATES

### Contributions

January 1, 2023

### Benefits

January 1, 2024

- 12 weeks of paid family and medical leave in a 12-month period
  - Additional 4 weeks if pregnancy complications
- 50/50 split funding between employee and employer
- Job protected
- Private plans permitted

# Paid Family and Medical Leave Insurance Programs

## What are they?

- Mandatory programs – employers and employees can't "opt out"
- Income replacement for employees out of work for specified reasons
- Employee work location drives applicability/eligibility
- Many provide job protection and/or health benefit continuation

## How are they funded?

- Employees and/or employers pay premium to the state

## Who pays the benefits?

- Typically, the state but some programs allow employers to create and administer a comparable plan

## What's covered?

- Employee's own health condition
- Care of a sick family member
- Parental leave
- Family military reasons

# Employer Coverage and Financial Contributions

- Most employers are required to participate in the program and pay premiums.
- Exclusions apply to:
  - Local governments that decline participation in the program
  - Federal Government
  - Self-employed individuals (may opt in)

**Premiums are set at 0.9% of wages through 2024\***

- Capped at annual Social Security max (2023 = \$160,200 = \$1,441/year max).
- Employee pays 50% and the Employer pays 50%.
- Employers with less than 10 employees do not contribute the employer share.
- Self-employed individuals who opt-in pay only their 50% share but receive full benefits.

**\*Adjusted annually but the adjustment cannot exceed 1.2%**

<b>Weekly Wage</b>	<b>Weekly Deduction (Employee)</b>	<b>Weekly Benefit</b>	<b>Maximum Annual Benefit</b>	<b>Percent of Weekly Wage</b>
\$500	\$2.25	\$450	\$5,400	90%
\$1,000	\$6.75	\$976.60	\$12,216	65%
\$2,000	\$9.00	\$1,100	\$13,200	55%
\$2,500	\$11.25	\$1,100	\$13,200	44%
\$3,000	\$13.50	\$1,100	\$13,200	37%

# Qualifying Reasons for Leave

- Caring for their own serious health condition
- Caring for a new child during the first year after the birth or adoption or for foster care of a new child
- Caring for a family member with a serious health condition
- A family member that is on active-duty military service or is called for active-duty military service
- An employee or a family member is a victim of domestic violence, stalking, or sexual assault

Employees who take leave under Proposition 118 are entitled to return to the same position or a position with the same pay, benefits, and seniority or status.

Employees cannot lose their health benefits during their leave, and they are required to pay their health insurance premiums while on leave.

# “Covered Family Members” Include:

- Child (any age)
- Sibling (includes in-laws)
- Parent (includes in-laws; step-parents)
- Individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship
- Spouse/Domestic Partner
- Grandchild
- Grandparent

Leave can be taken intermittently in the same increments as other leave.

# Private Plan Options

Private plans must include:

- The same number of weeks of benefits (12 weeks paid leave)
- Same level of wage replacement
- Include no additional requirements or conditions
- Deduct no more than the same amount from employee paychecks
- Cover all employees through the duration of their employment

All private employers will pay premiums starting January 1, 2023. Private plan applications must be received by October 31, 2023 in order to secure a refund for premiums paid in 2023.

**The same protections of FAMILI apply to leave/benefits provided under a private plan.**

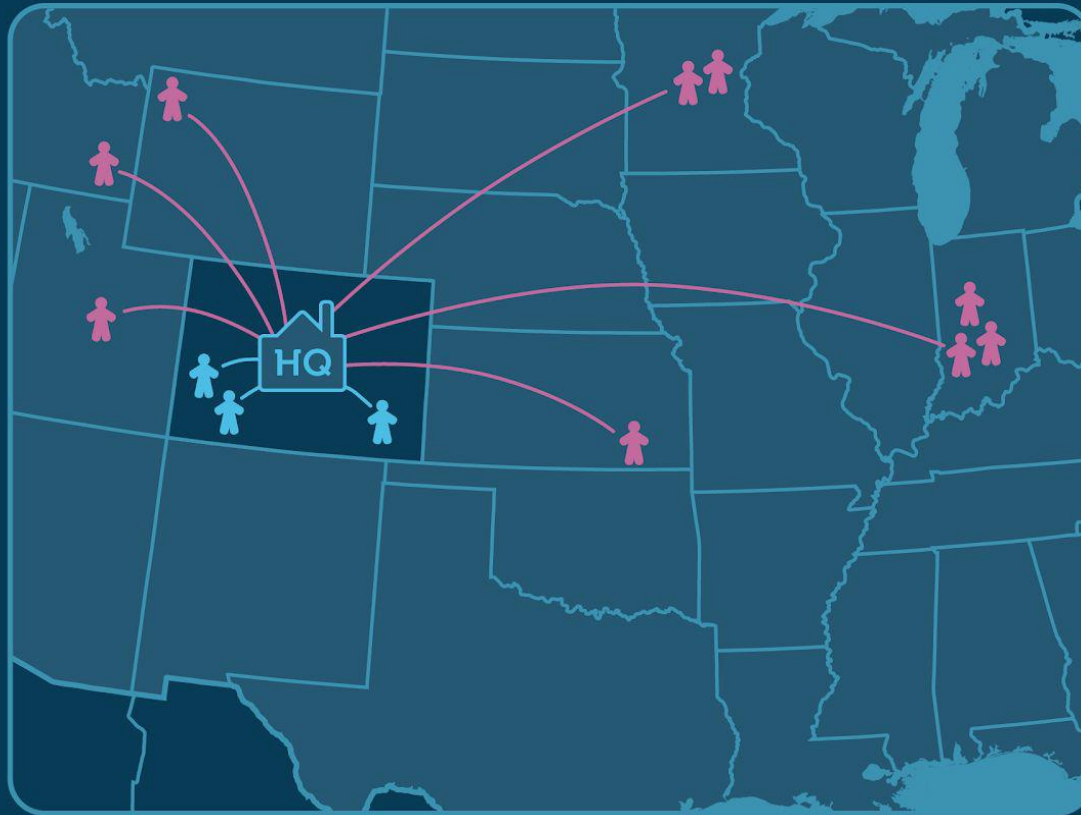




# Counting Employees

- Employer count will be calculated once a year.
- Total # of employees = # of employees on the payroll for a total of 20 or more calendar workweeks in the *preceding calendar year*.
- If an employer has ten or more employees who worked during 20 or more weeks in all of 2022, the employer is required to pay the employer share of the premium for all four quarters in 2023.
- Employees on leave must be counted if they are expected to return to active employment including:
  - Paid/unpaid leave
  - Sick or medical leave
  - Other leaves of absence,
  - Disciplinary suspension, etc.

# Counting Remote Employees for **FAMLI**



- » **Total remote employees outside Colorado: 9**
- » Colorado employees: **3**
- » Employer is required to pay and remit the full 0.9% premium for its **3** Colorado employees.

**Q:** Who counts toward the company's total number of employees if some employees work outside of Colorado?

**A:** If the total number of employees, including those working outside Colorado is 10 or greater, the employer is responsible for sending the full 0.9% premium (0.45% from employees and 0.45% from the employer) along with wage reports for its **Colorado** employees to the Division once a quarter.

## Poster for Employees

### Deductions from Employee Wages start January 1, 2023

- The employee share of FAMLI premiums is set at 0.45% of employee wages through 2024. For 2025 and beyond, the director of the FAMLI Division sets the premium rate according to a formula based on the monetary value of the fund each year. Employers with ten or more employees must also contribute an additional 0.45% of wages for a total of 0.9%, but employers with nine or fewer employees are only responsible for the 0.45% employee share.
- Employers are not required to deduct FAMLI contributions from employees' wages. However, **starting in 2023, employers are allowed to deduct up to 0.45% from employees' wages for FAMLI contributions.** For every \$100.00 an employee makes, an employer may deduct up to \$0.45.

### Benefits start January 1, 2024

- Starting in 2024, paid family and medical leave benefits are available to most Colorado employees who have a qualifying condition and who earned \$2,500 over the previous year for work performed in Colorado.
- The qualifying conditions for paid family and medical leave are:
  - Caring for a new child during the first year after the birth, adoption, or foster care placement of that child.
  - Caring for a family member with a serious health condition.
  - Caring for your own serious health condition.
  - Making arrangements for a family member's military deployment.
  - Obtaining safe housing, care, and/or legal assistance in response to domestic violence, stalking, sexual assault, or sexual abuse.
- Covered employees are entitled to up to 12 weeks of paid family and medical leave per year. Individuals with serious health conditions caused by pregnancy complications or childbirth complications are entitled to up to 4 more weeks of paid family and medical leave per year for a total of 16 weeks.
- Leave may be taken continuously, intermittently, or in the form of a reduced schedule.
- Leave will be paid at a rate of up to 90% of the employee's average weekly wage, based on a sliding scale. Employees may estimate their benefits by using the benefits calculator available at [famli.colorado.gov](http://famli.colorado.gov).
- You don't have to work for your employer a minimum amount of time in order to qualify for paid family and medical leave benefits.
- If FAMLI leave is used for a reason that also qualifies as leave under the federal FMLA, then the leave will also count as FMLA leave used.
- Employees may choose to use sick leave or other paid time off before using FAMLI benefits, but they are not required to do so.
- Employers and employees may mutually agree to supplement FAMLI benefits with sick leave or other paid time off in order to provide full wage replacement.

### Filing Claims

- Employees will not be able to file for benefits until the last quarter of 2023. Benefits will be available starting January 2024. Instructions on how to apply for benefits will be available on [famli.colorado.gov](http://famli.colorado.gov) in the last quarter of 2023.
- Employees or their designated representatives apply for FAMLI benefits by submitting an application, along with required documentation, directly to the FAMLI Division. Employers cannot make employees apply for FAMLI benefits.
- Applications may be submitted in advance of the absence from work, and in some circumstances, they may be submitted after the absence has begun.
- Approved applications will be paid by the FAMLI Division within two weeks after the claim is properly filed, and every two weeks thereafter for the duration of the approved leave.
- Employees can appeal claim determinations to the FAMLI Division.
- Individuals who attempt to defraud the FAMLI program may be disqualified from receiving benefits.

### Job protection and continued benefits

- Employers must maintain health care benefits for employees while they are on FAMLI leave, and both the employer and the employee remain responsible for paying for those benefits in the same amounts as before the leave began.
- An employee who has worked for the employer for at least 180 days is entitled to return to the same position, or an equivalent position, upon their return from FAMLI leave.

### Retaliation, Discrimination, and Interference Prohibited

- Employers may not interfere with employees' rights under FAMLI, and may not discriminate or retaliate against them for exercising those rights.
- Employees who suffer retaliation, discrimination, or interference may file suit in court, or may file a complaint with the FAMLI Division.

### Other Important Information

- An employer may offer a private plan that provides the same benefits as the state FAMLI plan, and imposes no additional costs or restrictions. Private plans must be approved by the FAMLI Division.
- Employees and employers are encouraged to report FAMLI violations to the FAMLI Division.



# Paycheck Stuffer

## Your FAMLI Contributions Start in January.



Starting January 1, 2023, most Colorado workers (full-time, part-time and seasonal) will see a new deduction on their paychecks of 0.45% of their wages.

This small deduction covers your contribution to Colorado's new, voter-approved Paid Family and Medical Leave Insurance Program (FAMLI). For someone making \$45,000/year that's a deduction of less than \$8 per biweekly paycheck. To see what your estimated deduction will be, visit [famli.colorado.gov](http://famli.colorado.gov).

You will be able to apply for FAMLI benefits—like paid leave for up to 12 weeks when you or a family member experiences a qualifying health issue—starting in January 2024.

### Frequently Asked Questions

*Why am I paying now for a benefit I cannot use for a year?*

The FAMLI program is funded by premiums made by both employers and employees. Contributions made in 2023 will establish the fund that will eventually pay out benefits to Colorado workers in 2024. The gap year is needed to build the funds before benefits can be paid.

*I did not vote for this, why must I contribute part of my paycheck?*

When Colorado voters passed Prop 118 in 2020, that established the FAMLI Act for all of Colorado. With the law now in effect, most businesses and most workers across the state are required to comply.

*Can I opt out?*

No. The FAMLI Act does not allow employees to opt out of the program.

*I don't plan on ever using this benefit, do I still need to contribute?*

Yes. The FAMLI program is a social insurance program, and does not operate like a personal health savings account. Your individual contributions are not tied to when you apply for benefits. Contributions made by both employees and employers will fund the social insurance pool that will eventually pay out benefits in 2024.

*Can I file a claim now?*

No. FAMLI benefits will not be available until 2024. We are in the process of building the technology and corresponding processes to accept claims. Expect to see more guidance from the FAMLI Division on how to apply for benefits in the second half of 2023.

[famli.colorado.gov](http://famli.colorado.gov)



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COLORADO

Family and Medical Leave  
Insurance Program (FAMLI)

Department of Labor and Employment

# FAMLI Employee Handbook

- [Employee Handbook](#)
- Eligible Colorado workers have the right to take FAMLI leave for covered circumstances at any point in their employment. Once you have worked for the same employer for at least 180 days (about six months), your job is protected under the law. That means you're entitled to return to the same position, or an equivalent position, when your leave ends. You can still take FAMLI leave before you meet that 180 day threshold, but your employer is not required to keep your job for you when your leave is over. As long as you are eligible and qualify to use paid leave, your employer cannot prevent you from taking leave, and cannot penalize you for taking paid leave. You are also entitled to the same healthcare benefits while you are on FAMLI leave, but you also remain responsible for paying for those benefits in the same amounts as before the leave began.
- Additional Information FAMLI leave is designed to run concurrently with the federal FMLA. If FAMLI leave is used for a reason that also qualifies as leave under FMLA, then the leave may also count as FMLA leave used. Employees may choose to use sick leave or other employer-provided paid time off before using FAMLI benefits, but they are not required to do so. As long as mutually agreed upon with your employer, you may supplement your FAMLI benefit payments with sick leave or other paid time off in order to receive full wage replacement.

# Colorado SecureSavings

[Colorado SecureSavings](#) is a new retirement savings program, created by the Colorado Secure Savings Board in the Colorado Department of the Treasury.

Employer eligibility includes:

- All Colorado businesses with five or more employees
- Employee must have worked for employer for at least 180 days
- Employer who has been in business for two or more years

Employer will be required to register for the program if they don't already offer a tax-qualified retirement savings plan to their employees.

This program will launch in 2023.

# Colorado SecureSavings

- Colorado employers will be required to offer their employees some sort of retirement savings. This can be a traditional pension, a 401(k) plan, a 403(b) plan, a SEP Plan, a SIMPLE IRA plan, a governmental deferred compensation plan or an account from **Colorado SecureSavings**.
- There are no employer fees. Employers are not required, nor permitted, to match employee contributions to the program.
- **Colorado SecureSavings** will be fully available across the state in early 2023. Employers will receive an invite or reminder via email or mail. They then enter their EIN and the Access Code supplied by the program. The registration checklist is here: [cl97nyal056yg0jo7b8yg6a24-co-registration-checklist.pdf \(coloradosecuresavings.com\)](#)
- Accounts will be securely tracked using tax ID numbers or Social Security numbers.
- Employees will receive information directly from the **Colorado SecureSavings** program and can choose to stay automatically enrolled in **Colorado SecureSavings** or opt out. They have 30 days to decide after they are added to the program. If they stay enrolled, the payroll deductions that they elect and that **you** set up for them in your employer portal will start as soon as your next payroll. If they choose to opt out, they will be removed automatically from the program and can always rejoin later.
- Employers should not provide any advice about the program or investments. They only have to facilitate the program. Instead, advise the employee to visit [ColoradoSecureSavings.com](#) or call **1-844-711-5001**.
- Employees who live in other states are eligible for this if their employment is based in Colorado.
- If an employer has employees in multiple states, including Colorado, the program is only facilitated for employees with income in Colorado.

# Family Glitch Fix – What is the Problem?

- On Tuesday, October 11, Treasury and IRS issued final regulations amending the regulations under the Affordable Care Act regarding the affordability determination for an employee's family members of employer-sponsored health. The 2022 regulations are effective beginning with the 2023 tax year.
- Under the existing regulations from 2012 the affordability of employer-sponsored coverage for a family member is determined based on the affordability of self-only coverage, rather than the affordability of family coverage—this has come to be known as the family glitch.
- The 2022 Regulations fix this “glitch” by basing the affordability of employer-sponsored coverage for a family member on the cost of family coverage, rather than self-only coverage.
- If a family has to pay more than a certain percentage of household income (9.12% in 2023) for the employer-sponsored plan, they will potentially be eligible for premium tax credits in the marketplace.
- Depending on how an employer subsidizes the cost of family coverage, it's possible that coverage could be considered affordable for the employee but not for family members. In that case, the family members would potentially be eligible for a premium tax credit in the marketplace, but the employee would not.



# BenefitMall's Compliance & Legislative Team



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# Questions?

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