



Implementing FAMLI

A QuickStart Guide for Colorado Employers



COLORADO

**Family and Medical Leave
Insurance Program (FAMLI)**

Department of Labor and Employment

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DISCLAIMER

This Guide has been adapted from the information and publications available at <https://famli.colorado.gov>. It is intended to be a source of general information only and does not constitute legal advice. Each employer’s circumstances are different. For individualized information and counsel, please contact any member of the Lewis Roca team found on the last page of this Guide.

Introduction

What is FAML I?

The Family and Medical Leave Insurance (FAML I) program will ensure most Colorado workers have access to paid leave in order to take care of themselves or their family during life circumstances that pull them away from their jobs - like growing their family or taking care of a loved one with a serious health condition or preparing for a military deployment. FAML I is a social insurance program funded through a premium that is paid into a fund.

Eligible employees can receive up to 12 weeks of leave per year. 16 weeks may be given in cases of a complicated pregnancy or childbirth situations. FAML I will start providing benefits to employees beginning January 1, 2024.

How is FAML I funded?

FAML I is funded by both employers and employees. The premium is currently set to 0.9% of the employee's wage, with 0.45% paid by the employee and 0.45% paid by the employer, if the employer has 10 or more employees. Employers will be responsible for collecting the employee's contribution of the premium through payroll deductions and sending the full amount to the Colorado Department of Labor and Employment Division of Family and Medical Leave Insurance once per quarter.

Which employers must participate?

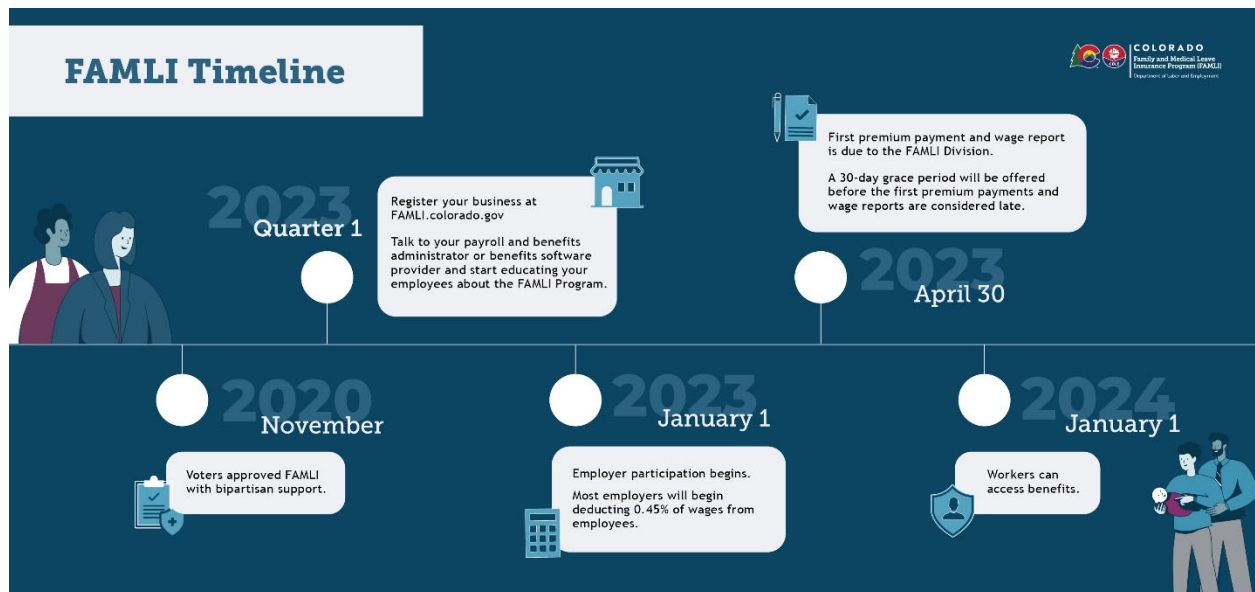
Participation in FAML I is required for most Colorado employers and their employees. Self-employed workers and independent contractors have the option of voluntarily opting into the program. Federal employees and some railroad workers are not covered under FAML I. Everyone else, including domestic workers, clergy, and nonprofit organizations, will be required to comply with the premium payments. Private sector employers may decide to meet their FAML I requirements by using a private plan that must be approved by the FAML I Division. This approval application process is expected to open in the early part of 2023.

Roadmap

I'm a Colorado employer required to participate in FAMILI. Now what?

Although FAMILI will not start providing benefits to employees until January 1, 2024, employers must begin payroll deductions for FAMILI premiums on January 1, 2023. There are four steps all employers need to take at the beginning of the year:

1. Register your business at FAMILI.colorado.gov.
2. Count your employees and calculate their wages to estimate your premium liability.
3. Collect premium deductions from paychecks beginning January 1, 2023.
4. Submit wage data and pay Q1 premiums on April 30, 2023.

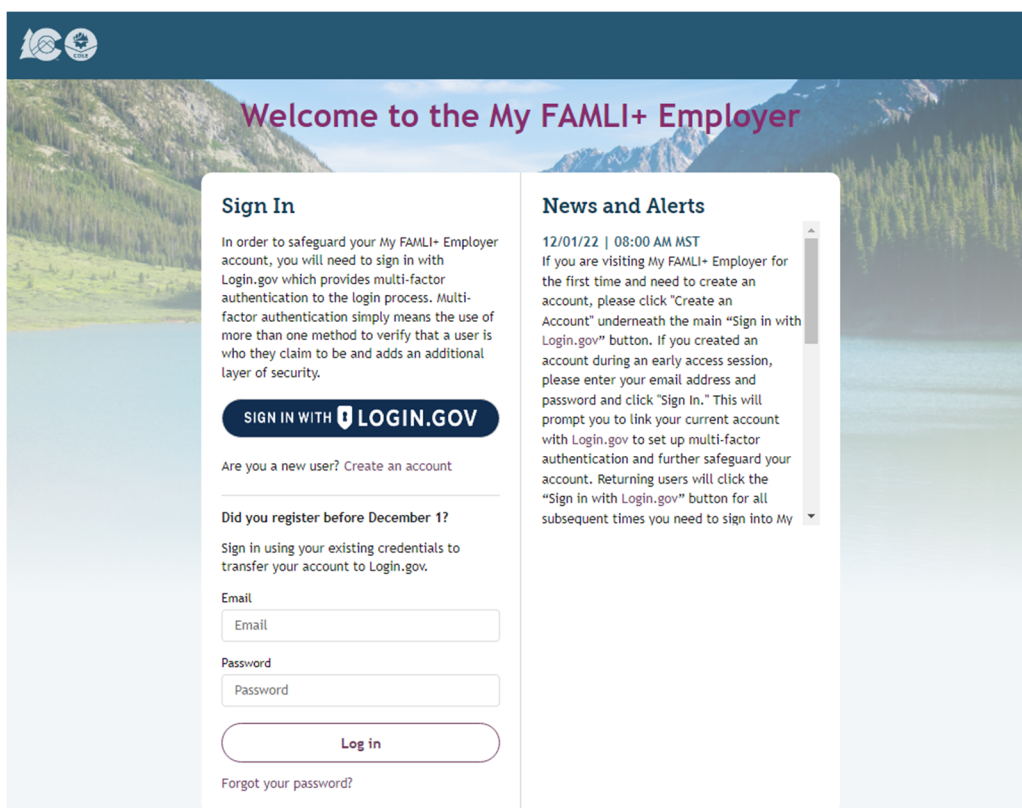


Register Your Business

All employers are required to register with the FAMLl Division.

You'll do this on My FAMLl+ Employer, the online employer services portal Colorado businesses, third party administrators, and local government employers will use to manage their FAMLl accounts. My FAMLl+ Employer will operate similarly to My UI Employer, allowing employers to report wage data, remit premium payments, apply for private plan approval, and upload letters of declination votes. Most Colorado employers will need to register in My FAMLl+ Employer before the first premium payments are due on April 30, 2023.

Employers can access My FAMLl+ Employer on famli.colorado.gov where you can also find user guides and how-to videos to support employers through the registration process.



Welcome to the My FAMLl+ Employer

Sign In

In order to safeguard your My FAMLl+ Employer account, you will need to sign in with Login.gov which provides multi-factor authentication to the login process. Multi-factor authentication simply means the use of more than one method to verify that a user is who they claim to be and adds an additional layer of security.

SIGN IN WITH LOGIN.GOV

[Are you a new user? Create an account](#)

Did you register before December 1?

Sign in using your existing credentials to transfer your account to Login.gov.

Email

Password

Log in

[Forgot your password?](#)

News and Alerts

12/01/22 | 08:00 AM MST

If you are visiting My FAMLl+ Employer for the first time and need to create an account, please click "Create an Account" underneath the main "Sign in with Login.gov" button. If you created an account during an early access session, please enter your email address and password and click "Sign in." This will prompt you to link your current account with Login.gov to set up multi-factor authentication and further safeguard your account. Returning users will click the "Sign in with Login.gov" button for all subsequent times you need to sign into My

Count Your Employees

Why does this matter?

Your total employee headcount will impact your premium liability, so it's important to know exactly how to count your employees. If you have 10 or more employees, you as the employer will be responsible for the 0.45% employer share of the premium. If you have fewer than 10 employees, you are not responsible for the 0.45% employer share, but you must still remit the 0.45% employee share of the premium collected via payroll deduction.

Your employee headcount will be calculated once a year. You'll report this to the FAML Division upon initial registration and in the first quarter of every year thereafter. Employers do not need to report new hires as they occur.

Who qualifies as an employee?

FAML defines "employee" as "any individual, including a migratory laborer, performing labor or services for the benefit of another, irrespective of whether the common-law relationship of master and servant exists." These individuals are subject to the FAML premium requirements.

Conversely, "an individual primarily free from control and direction in the performance of the labor or services, both under the individual's contract for the performance of the labor or services and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the labor or services performed is not an 'employee.'" These individuals are not subject to the FAML premium requirements.

Is there a time-worked threshold?

Yes. To qualify as an employee for purposes of determining whether the employer has ten or more employees and is therefore required to submit the 0.45% employer share of the premium, and individual must be employed during each of 20 or more calendar workweeks in the preceding

calendar year regardless of how many hours and/or days they worked during each week.

The graphic below illustrates this 20-calendar-week concept in four examples. The first two employees are seasonal workers who both work during 20 or more weeks throughout the calendar year. Note that they both work intermittent schedules throughout the year and may only work one or two days during some work weeks, but they are still included in your headcount.

The third full time worker worked for more than 20 weeks so would also be counted even though this worker left the company in August. The fourth full time worker was hired to replace the previous one. Since she only worked during 19 weeks of the year, this worker would not count toward your total headcount.



What about remote workers and those outside Colorado?

Your total nationwide employee count will be what determines whether or not you pay the employer share of the premium. You will only need to

pay premiums for the employees who are localized in Colorado. In other words, if the employer has more than ten TOTAL employees - even if they work outside of Colorado - the employer will still be responsible for sending in the full 0.9% premium once a quarter, but only for those employees working in Colorado.

Examples:

If you have seven employees in Montana and eight in Colorado, you as the employer are required to pay the 0.45% employer share (because you have more than ten total employees) and collect and remit the 0.45% employee share for each of the eight Colorado employees.

If you have eight employees in Utah and one in Colorado, you as the employer are not required to pay the 0.45% employer share (because you have fewer than ten total employees) but you are still required to collect and remit the 0.45% employee share for the one employee in Colorado.

Are pastors, ministers, and other religious leaders considered employees?

If the religious leader meets the definition of employee and does not fall within the two-prong exception (primarily free from control in the performance of their work, and performing work that is part of their independent profession or trade), they would not be considered a self-employed worker and should be counted as an employee and contribute premiums the same way all other employees in the organization do. If the religious leader performs his duties as he sees fit without being controlled by others, and being a religious leader is his independent trade, then he would not be considered an employee under FAML and his wages would not be subject to FAML premiums. If he satisfies only one prong of the two-prong exception, or neither, then he is considered an employee.

Calculate Wages

The premium contribution is a percentage of employees' "wages." Refer to the following chart to determine what counts as wages under FAMI:

Wages <i>Subject to FAMI Premiums</i>	Not Wages <i>Exempt from FAMI Premiums</i>
<ul style="list-style-type: none">○ Payments defined as wages under the Federal Unemployment Tax Act (FUTA)○ Tips○ Employee contribution to 401(k) or IRC 408 simplified Retirement Plans○ Disability payments paid in first 6 months after an employee worked for you○ Employer contributions to a Medical Savings Account○ Employee-matching contributions into IRC 219 simplified employee pension plan○ Payments made by public school or 501(c)(3) into annuity contract or by governmental entity into deferred compensation plan because of a salary-reduction agreement○ Payments for personal services, including anything other than cash that has cash value, like a housing allowance, (except payments to agricultural or domestic workers, which must be cash to be wages)○ Employee contributions to a Salary Reduction Simplified Employee Pension Plan (SARSEP)○ 125 Cafeteria Plan if cash is chosen	<ul style="list-style-type: none">○ Payments for moving expenses if deduction is allowed in the federal Internal Revenue Code (IRC), IRC 127○ Group Term Life Insurance○ Employer contribution to 401(k) or IRC 408 simplified Retirement Plans, all PERA contributions○ Amounts paid or incurred for a dependent care plan (IRC 129) or a educational assistance program (IRC 127)○ Employee Contributions to a Medical Savings Account○ Employer contributions into IRC 219 simplified employee pension plan○ Payments into a deferred compensation plan if you are a government entity○ Value of meals or lodging furnished by employer if such items are excluded from income as described in IRC 119○ Employer contributions to a Salary Reduction Simplified Employee Pension Plan (SARSEP)○ 125 Cafeteria Plan if qualified benefit chosen

Importantly, employers who are excluded from paying unemployment premiums under IRS section 501(c)(3), including religious organizations and non-profit organizations, are NOT exempt from paying FAMI premiums.

Submit Your Wage Reports

Every three months you'll need to submit your quarterly wage reports to the FAMLl Division before you can pay your premiums. Wage reports will be submitted using the My FAMLl+ Employer portal. Within My FAMLl+ Employer, employers will have several options to submit wage data to the FAMLl Division:

- Manually input wage data for each employee individually.
- Submit wage reports using API (JSON) technology.
- Bulk upload wage data for all employees by uploading a file within My FAMLl+ Employer. Wage reporting file specifications and sample .CSV and .XML templates can be found on famli.colorado.gov.

If your organization works with a Third-Party Administrator to manage your payroll systems and/or support your unemployment insurance obligations, please refer them to <https://famli.colorado.gov/employers/third-party-administrators-tpas> for file specifications, quick reference guides, and sample file templates.

Pay Your Premiums

Starting in 2023, FAMLl premium payments and wage reports will be due on the same schedule as is typical with unemployment insurance. The 2023 schedule is:

- Q1 Premium Payment: April 30, 2023
- Q2 Premium Payment: July 31, 2023
- Q3 Premium Payment: October 31, 2023
- Q4 Premium Payment: January 31, 2024

Employers will need to submit their FAMLl premiums separately from UI premiums they may owe. If an employer fails to submit wage reports and premium payments, the employer may face a fine of up to \$50 per employee whose wages are not reported.

Employers will have several payment options to submit their quarterly premium payments to the FAMLl Division, including online payments through My FAMLl+ Employer, ACH Credit, payment by check, and online bill pay. Instructions for each method of payment can be found on famli.colorado.gov.

What's Next?

Private Plan Approval

Although FAMLl will be mandatory for all employers with one or more employees working in Colorado, there is an option to meet your FAMLl obligations by using an approved private plan. Employers will need to prove their private plan provides equal or greater benefits and protections than the state-run FAMLl plan by submitting their private plan documents to the FAMLl Division for approval.

Employers planning to offer a private plan are not exempt from paying FAMLl premiums until the FAMLl Division has reviewed and approved the private plan documentation. Employers will be able to request a refund for premiums paid in 2023 if (1) their private plan has an effective date on or before January 1, 2024, and (2) they get the plan approved by the Division before October 31, 2023. Employers will use My FAMLl+ Employer to submit their private plan application. More information on this process will be available soon.

Benefits Begin

FAMLl will start providing benefits to eligible employees (those who have earned at least \$2,500 in wages within the state over a year) beginning January 1, 2024. Most eligible employees will receive up to twelve weeks of leave to care for a new child; care for their own serious health condition; care for a family member's serious health condition; make arrangements for a family member's military deployment; or address the immediate safety needs and impact of domestic violence and/or sexual assault. Those who experience pregnancy or childbirth complications may receive an additional four weeks. During their leave, the FAMLl Division will pay employees up to 90% of their wages based on a sliding scale and proportional to Colorado's average weekly wage. Low wage earners will qualify for a higher percentage of wage replacement. Benefits are capped at \$1,100 per week.

More information regarding coordination of benefits, reporting requirements, and procedures while employees are on leave will be available soon.

Contact

Questions?

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