

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of ~~Family and Medical Leave Insurance~~ ~~AMLI~~

REGULATIONS CONCERNING ~~P~~ ~~PREMIUMS AND INDIVIDUALS ELECTING COVERAGE~~ ~~AID FAMILY~~ ~~MEDICAL LEAVE PROGRAM~~

7 CCR 1107-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

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

1. This regulation is adopted pursuant to the authority in section C.R.S. 8-13.3-501 et seq. and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. 8-13.3-501 through 524 (the "FAMLI Act").

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 premiums and individuals electing coverage.

3. Title 8 Articles 4, 13.3, and 70 of the Colorado Revised Statutes (2023), 26 U.S.C. § 1402 (2023), 42 U.S.C. § 430 (2023), 38 U.S.C. §§ 4301-4334 (2023), 7 CCR 1103-1 (2023), 7 CCR 1107-4 (2023), and 7 CCR 1107-8 (2023) 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.

1.2 — Scope and Purpose

A. This regulation implements the procedural and substantive provisions for the Family and Medical Leave Insurance program pursuant to C.R.S. 8-13.3-507, concerning the establishment, collection, and administration of premium collections.

B. This regulation does not apply to any other premiums, fees, taxes, or collections outlined in unemployment insurance, worker compensation, private temporary disability insurance or private family leave insurance programs or other programs not administered by the Division.

1.3 — Applicability

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~~The provision of this Section will apply to employers as defined in C.R.S. 8-13.3-503(8) who are operating within the State of Colorado, no matter what State, county, or territory the employer is physically located in or claims as a base of operations, unless otherwise specified by exemptions in C.R.S. 8-13.3-503(8) or federal law.~~

~~The provisions of this Section will be applicable to self-employed persons who elect coverage under C.R.S. 8-13.3-514 and employees of any local government who elect coverage under C.R.S. 8-13.3-514.~~

~~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.~~

1.24 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. “Calendar Quarter” has the same definition as C.R.S. 8-70-103(6).

3. “Gross income from self-employment” means the gross income derived by an individual from any trade or business carried on by such individual, as used in 26 U.S.C. § 1402, has the same meaning as defined at 26 CFR § 1.61-1 through 1.61-14.

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

~~“Employee” has the same definition as C.R.S. 8-13.3-503(7).~~

~~“Employee share” is defined as 50 percent of the premium required for an employee by section C.R.S. 8-13.3-507(3).~~

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

~~“Employer share” is defined as 50 percent of the premium required for an employee by section C.R.S. 8-13.3-507(3).~~

~~“FAMLI” is defined as the Paid Family and Medical Leave Insurance Act, C.R.S. 8-13.3-501 through 524 (the “Act”).~~

~~“Net earnings from self-employment” has the same meaning as in the Internal Revenue Code at 26 U.S.C. § 1402(a), in effect for the taxable year, and the implementing regulations at 26 CFR 1.1402(a).~~

4. “Individual electing coverage” means either an employee of a local government that has declined participation in the family and medical leave insurance program or a self-employed person, who elects family and medical leave insurance individual who elects FAMLI coverage pursuant to C.R.S. 8-13.3-514.

5. “My FAMLI+ Employer” means the online portal through which employers and individuals will interact with the FAMLI Division. Activities completed through this portal include, but are not limited to, electing coverage, declining coverage, reporting wages, and remitting premiums pursuant to the FAMLI Act and its implementing regulations.

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

7. “Self-Employed Person” or “self-employed individual,” means an individual who either: (1) carries on a trade or business as a sole proprietor or an independent contractor; (2) is a member of a partnership

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that carries on a trade or business; or (3) is otherwise in business for himself or herself (including a part-time business or a "gig worker"). An individual as used in the FAMLI Act and its implementing regulations includes individuals who does not meet the FAMLI Act's two-prong exception to the definition of "employee" at C.R.S. 8-13.3-503(7) is not a self-employed person or individual.

8. "Tax transcript" means a full copy of the individual's "record of account transcript" from the Internal Revenue Service ("IRS").

9. "Wages" as used in the FAMLI Act and its implementing regulations means "gross wages," and includes monetary compensation described by C.R.S. 8-4-101(14)(a), employer-provided paid leave pursuant to 7 CCR 1107-4 Section 4.2.2., and leave from a separate bank of time off solely for the purpose of paid family and medical leave as described by 7 CCR 1107-4 Section 4.2.5., if such leave is paid to the employee by the employer and not by a third party. "Wages" does not include compensation described by C.R.S. 8-4-101(14)(b), compensation described by C.R.S. 8-4-103(3), or any non-monetary payment except for the portion of any non-monetary payment used as credit toward the minimum wage pursuant to 7 CCR 1103-1 Sections 6.2.1 and 6.2.2. "Wages" for self-employed individuals who elected coverage means "gross income from self-employment" as defined in these rules. has the same meaning as C.R.S. 8-70-141 and its implementing regulations at 7 CCR 1101-2, and excludes remuneration described by C.R.S. 8-70-142.

1.35 Individuals Electing Coverage Assessing and Collecting Premiums

1.5.1 Election, Withdrawal, and Cancellation of Coverage for Individuals Electing Coverage

A1. Individuals electing coverage may elect coverage under C.R.S. 8-13.3-514 for an initial period of coverage of three years.

A4. Notice of election of coverage must be submitted to the Division via My FAMLI+ Employer. For self-employed individuals, the notice of election must include a copy of their most recent tax transcript, and no communication from a self-employed individual will constitute a notice of election without it.

B2. Elective coverage becomes effective on:

1. The date of filing the notice of election; or

2. If the individual so chooses, the first day of one of the five most recent closed calendar quarters.

C3. A period of coverage is defined as:

1.(a) The three years following the first day of elective coverage or any gap in coverage; and

2.(b) Each subsequent year.

D4. Any individual electing coverage may file a notice of withdrawal within thirty calendar days after the end of a each-period of coverage.

E. The notice of withdrawal must include an effective date of the withdrawal, which must be no sooner than thirty days after the filing of the notice of withdrawal.

F5. A notice of withdrawal from coverage must be submitted to the Division online or in another format approved by the Division.

G6. Upon termination of coverage, due and unpaid premiums must be paid, as well as any interest or fines, or penalties assessed.

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2. Provisions specific to self-employed individuals electing coverage:

A. When the Division receives a completed notice of election from a self-employed individual, it will review the tax transcript to confirm gross income from self-employment.

B. If the tax transcript includes gross income from self-employment:

1. The Division will presume that the tax transcript reflects four quarters of gross income from self-employment.

2. The Division will determine prospective quarterly gross income from self-employment by dividing the tax transcript's total gross income from self-employment by four.

3. If the individual submits evidence sufficient for the Division to conclude that the tax transcript reflects fewer than four quarters of gross income from self-employment, the Division will adjust its calculation accordingly in order to determine prospective quarterly gross income from self-employment. For example, if the Division concludes that an individual's tax transcript reflects only two quarters of gross income from self-employment, then the Division will determine prospective quarterly gross income from self-employment by dividing the tax transcript's total gross income from self-employment by two.

4. The individual's premium liability and wage replacement benefits will be based on the prospective quarterly gross income from self-employment until the individual submits subsequent tax transcripts in accordance with these rules, at which point the Division will make any necessary adjustments to prior premium liability and wage replacement benefits, and will recalculate prospective quarterly gross income from self-employment for the following year.

C. If the tax transcript does not include gross income from self-employment, then the individual's premium liability and wage replacement benefits will be based on actual gross income reported quarterly in accordance with these rules. The individual must submit invoices, payment records, and bank records to verify actual gross income reported. After the individual submits subsequent tax transcripts in accordance with these rules, the individual's premium liability and wage replacement benefits will be based on prospective gross income from self-employment, calculated by the Division in accordance with these rules.

D. In addition to the tax transcript required in the notice of election, a self-employed individual electing coverage must annually submit to the Division a tax transcript by June 1 or within fourteen (14) days after filing their income tax return with the IRS, whichever is later. The Division may accept a tax transcript outside of these timeframes upon a showing of good cause by a self-employed individual.

3. All individuals electing coverage must report wages and remit premium payments no later than the last day of the month immediately following the end of the calendar quarter for which the premiums have accrued. The Division may require additional information or documentation from any individual electing coverage when such information is necessary to accurately calculate and administer premiums obligations and benefit entitlements. The Division may require additional information or documentation from any individual electing coverage when such information is necessary to accurately calculate and administer premiums obligations and benefit entitlements.

1.45.2 Determining Wages Earned for Self-Employed Persons Regarding Premium Assessment

A. An individual electing coverage must submit earnings reports and remit premium payments no later than the last day of the month immediately following the end of the calendar quarter for which the premiums have accrued.

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~~B. Pursuant to C.R.S. 8-13.3-507(4)(a), an individual electing coverage is required to submit only 50 percent of the premium required for an employee by section C.R.S. 8-13.3-507(3) on that individual's income.~~

~~C. Upon electing coverage, self-employed individuals shall choose between reporting gross income or net earnings from self-employment, for purposes of calculating premiums and benefits.~~

~~D. A self-employed individual may elect to change their premium and benefit calculation basis between gross and net one time within a coverage period.~~

~~E. The Division may require copies of tax returns, bank records, self-attestations, or any other documents deemed necessary by the Division to verify or determine the income of an individual electing coverage.~~

1.45.3 Premiums Remitted by an Employer

~~A1. Premiums must be paid not less than quarterly in the form and manner determined by the Division. Quarterly payments must include all premiums with respect to wages paid during the calendar quarter.~~

~~21. Due Date of Premiums. Premiums must be paid no later than the last day of the month immediately following the end of the calendar quarter for which the premiums have accrued. (a) Payment will be considered timely if postmarked or received electronically on or before the due date. If the due date of premiums falls on a Saturday, Sunday, or legal holiday, payment will be considered timely if postmarked or received in person or electronically on the next business day that is not a Saturday, Sunday, or legal holiday.~~

~~(b) Quarterly payment will not be required when the total amount of any premiums due, including any penalties and interest accrued for an untimely or incorrect report, is less than five dollars.~~

~~3. 2. Erroneous Rate Notice. If, as a result of an incorrect notification or computation by the Division of premiums due, an employer is required to make an additional payment of premiums, such additional payment will not accrue interest until thirty days after notification by the Division that such additional payments are due.~~

~~34. UFirst payment of a new employer, unless stated otherwise by exemption:~~

~~A(a) The first premium payment of any person or entity employing unit that becomes an employer subject to C.R.S. 8.13.3-501 et seq., at any time during a calendar year must be paid on or before the last day of the month immediately following the calendar quarter in which such person or entityan employing unit becomes an employer.~~

~~B (b) Said payment must include the FAMILI premiums with respect to wages paid beginning the first day the person or entity becomes an employer, for employment occurring on and from the first day of the calendar year through all payroll periods that end within the calendar quarter in which the employing unit becomes an employer.~~

~~5. 1. An employer required to remit premiums pursuant to C.R.S. 8-13.3-507 may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.~~

~~B. Employers ability to deduct premiums from employees~~

~~A(a) If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under C.R.S. 8-13.3-507, and the employer cannot deduct this amount from a future~~

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paycheck of the employee for a different pay period. ~~However, (b) — Notwithstanding Rule 1.5.3.B.1(a) above,~~ where there is a lack of sufficient employee wages to cover the employee share of premiums for a pay period, the employer may deduct the uncollected portion of the employee share from one or more paychecks for future pay periods.

~~B(e) —~~ In the payment of any premiums to the Division, and in the collection of any premium contributions from an employee, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

~~2. — Employers not required to pay the Employer share of the FAMLII premium due to employer size of business pursuant to C.R.S. 8-13.3-507(5) must remit the employees' share of the premium in the manner outlined by the Division. Such employers may deduct up to 50 percent of the premium required for an employee by C.R.S. 8-13.3-507(3), from the employee's wages and must remit 50 percent of the premium required by C.R.S. 8-13.3-507(3), to the Division.~~

~~6.~~ Premium payments to the Division will be applied in the following order:

A. Premiums owed for the current calendar quarter; and

B. Then beginning with the oldest quarter to the most recent past calendar quarter in which a balance is owed:

1. Fines;

2. Fees;

3. Interest charges;

4. Premiums; and

5. Any other debt owed to the Division.

7. If the Division receives payment in an amount that exceeds the total of any premiums, fines, interest, or other debt owed to the Division, then:

A. Application of payments made to premiums

~~1. — A payment received by the Division as a premium payment will be applied to the quarter for which the premium assessment applies.~~

~~(a) — A payment exceeding the legal fees, fines, penalties, interest and premiums due for that quarter will be applied to any other debt owed to the Division in accordance with these rules.~~

~~(b) — If no debt exists, premium overpayments of if the amount in excess is less than fifty dollars, it will be credited to future payments due; and.~~

B. If the amount in excess is (e) — If no debt exists, premium overpayments of fifty dollars or more, it may be refunded to the employer at the employer's request. Otherwise, itsuch overpayments will be credited to future payments due.

8. If an employer or an individual electing coverage fails to remit premiums by the due dates described in these rules, the Division may assess upon the employer or individual a fine of up to \$50.00 per individual whose premiums were not timely paid.

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~~9. D.~~ Pursuant to C.R.S. 8-13.3-507(6), premiums will not be required for wages, ~~gross income, or net earnings from self-employment~~ above the contribution and benefit base limit established annually for the federal social security administration for purposes of the federal old-age survivors, and disability insurance program limits pursuant to 42 U.S.C. § 430.

~~2.~~ Payments received will be applied in the following order of priority:

~~(a)~~ Current quarter balance;

~~(b)~~ Any previous quarter premium balance due starting with the oldest quarter;

~~(c)~~ Then beginning with the oldest quarter in which a balance is owed:

~~(1)~~ Penalties;

~~(2)~~ Fines;

~~(3)~~ Fees; and

~~(4)~~ Interest charges.

1.5.4 Calculating Employer Size ~~Related To Premium Exemptions~~

~~A1.~~ For determining employer size for the purpose of determining premium liability pursuant to C.R.S. 8-13.3-507(5), an employee counts toward the total number of employees if he or she is employed in any state of the United States, the District of Columbia, or any territory or possession of the United States during 20 or more workweeks in the preceding calendar year. A person is considered "employed" during a workweek for the purpose of determining premium liability if: (1) he or she performs any work for the employer during the workweek; or (2) he or she is on any type of paid or unpaid leave during the workweek, and the employer has a reasonable expectation that the employee will later return to active employment, including leave taken under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4334.

~~A1.~~ ~~If the Division determines the employer's status has changed as it relates to premium liability, the Division will notify the employer as to their premium liability.~~ ~~2.~~ An employer's size for purposes of this ~~ruleregulation 1.5.4~~ will be calculated upon registration with the My FAMLI+ Employer portal and annually thereafter during the first calendar quarter of the year. Any change to premium liability as a result of a change in employer size will happen no more frequently than one time per calendar year.

~~B.~~ If the Division determines the employer's status has changed as it relates to premium liability, the Division will notify the employer as to their premium liability.

1.6. ~~B.~~ Colorado Localization of Employees

~~1.~~ ~~Determining in-state status of employees~~ ~~1.~~ An employee is localized to Colorado, and their's wages will be subject to premiums, if

A. ~~(a)~~ The employee's entire service is performed within Colorado;

B. ~~(b)~~ The employee's service is performed both within and outside of Colorado, but the service performed outside the state is incidental to the employee's work within Colorado or, for example is, temporary or transitory in nature and consists of isolated transactions; or

C. ~~(c)~~ Services are not localized in any state, but some of the services are performed in Colorado, and

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1.~~(1)~~—The ~~employee's~~ base of operations is in Colorado, or if there is no base of operations, then the place from which such services are directed or controlled is in Colorado as established in C.R.S. 8-70-117, or

2.~~(2)~~—The base of operations or place from which some part of the service is directed or controlled is not in any state in which part of the service is performed, but the employee's residence is in Colorado.

2. ~~Payment to Another Jurisdiction~~—An employer who has ~~erroneously~~ paid to another jurisdiction an amount as premiums properly payable to Colorado will not be delinquent if premiums properly payable to Colorado are paid within thirty days of the date on which the Division determines that such premiums are payable to Colorado.

1.75.5. Assessments and Recomputations of FAMILI Premiums

~~1A.~~ If, ~~in the judgment of the Division or upon its information and knowledge,~~ the report of wages included in an employer's ~~FAMILI~~ premium report is incomplete or in error, the Division may require, ~~and the employer shall respond within the time allotted,~~ may examine the employer's relevant books and records, or may use other reasonable measures to the extent necessary to obtain an accurate report.

~~2B.~~ If an ~~contributing~~ employer is delinquent in filing a wage report within the time prescribed by the Division, or fails to provide the Division with additional records needed to make a proper determination of an amount of indebtedness, the Division may, in its discretion:

~~4A.~~ Use the information and knowledge available to the Division to estimate the ~~amount of chargeable~~ wages paid by an ~~contributing~~ employer during the premium period or periods. The amount of ~~chargeable~~ wages so determined will be deemed to have been paid by the employer ~~and will be used to determine the annual payroll;~~

~~2B.~~ Assess the employer for ~~FAMILI~~ premiums calculated on the basis of the estimated wages; and

~~3C.~~ Issue a subpoena duces tecum to compel an employer to release books and records to the Division for use in obtaining the required information.

~~63.~~ The Division will notify an~~A contributing~~ employer who is delinquent in filing reports or paying ~~FAMILI~~ premiums by sending a determination letter to the employer's correct address~~will be promptly notified of the assessment by the communication method the employer elected during FAMILI registration. Premiums will not be considered delinquent if paid within thirty days after the date on which the Division notifies the employer of the delinquent payment. Any outstanding premiums past due shall accrue interest pursuant to 7 CCR 1107-8 Section 8.10.~~

~~D4.~~ The Division may correct errors of computation whenever such erroneous computations are found or brought to the Division's attention.

~~1.6~~ Notification of FAMILI Premium Liability

~~A.~~—The Division will ~~notify employers and individuals electing coverage of their expected premium amount on the first business day of the calendar month the premium is due to be paid.~~

~~1.~~—Notification will be sent electronically, either via My FAMILI+ Employer or to the email address provided to the Colorado Department of Labor and Employment.

~~(a)~~—Employers, including self-employed persons may choose a business representative such as a payroll service provider, attorney, or accountant to receive notification on their behalf.

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~~(b) — Local governments that have declined participation in the FAMLI program pursuant to C.R.S. 8-13.3-522, but which have agreed to withhold and remit the employee share of premiums for employees who elect coverage under C.R.S. 8-13.3-514, will be provided a quarterly list of employees who have elected coverage pursuant to C.R.S. 8-13.3-514. Local governments which have declined participation in the FAMLI program pursuant to section C.R.S. 8-13.3-522, and have declined to withhold and remit the employee share of premiums for employees who elect coverage under C.R.S. 8-13.3-514, will receive no such quarterly list.~~

~~2. — A schedule of due dates as well as guidance as to how to remit premiums will be posted by the Division on the FAMLI website and will remain publicly available.~~

~~B. — Employers not subject to a premium liability due to coverage through a pre-approved substitute private plan under C.R.S. 8-13.3-521 will not receive quarterly notifications of premium liability from the Division.~~

Editor's Notes

History

New rule eff. 01/01/2022.