

THE SMALL BUSINESS GUIDE TO FAMLI



COLORADO

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

Department of Labor and Employment





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The Colorado Department of Labor and Employment (CLDE) and its Division of Family and Medical Leave Insurance (FAMLI) created this handbook as a public service to small businesses that want to understand their FAMLI obligations. It is designed to provide employers with an overview of their rights and responsibilities under Colorado's voter-approved Family and Medical Leave Insurance program. It is intended to be a source of general information only and does not carry the force of a legal opinion. FAMLI reserves the right to update the material and information as necessary. [The Colorado Paid Family and Medical Leave Insurance Act](#), and its rules and regulations remain the legal sources for information.

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UNDERSTANDING FAML I

What is FAML I?

The Family and Medical Leave Insurance (FAML I) program ensures that 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 premiums that are paid into a fund. Both employers and employees contribute a portion of the premium with employers paying half and employees paying half through simple payroll deductions. Employers have the option to pay the full share of the premium as an added benefit for their employees.

If you have even one employee in Colorado, **FAML I** impacts you!

Remember, small businesses are **not exempt** from FAML I. Nearly every Colorado employer is required to comply with the **FAML I Act's requirements** by either participating in the state program or providing a private plan approved by the state.

The only employers that are not required to participate in the state plan or provide an equal or greater paid leave program are local government employers that have voted to opt -out and federal employers.

Self-employed workers and independent contractors have the option of voluntarily opting into the FAML I program. Federal employees and some railroad workers are not covered under FAML I. **Everyone else**, including domestic workers, clergy, nonprofit organizations and businesses with just one employee, are required to comply with the premium payments.

How will FAML I be funded?

Premium Responsibilities Under Proposition 118

EMPLOYER TYPE	EMPLOYER PREMIUM	EMPLOYEE PREMIUM	NO PREMIUM
9 or Fewer Employees		✓	
10+ Employees	✓	✓	
Participating Self-Employed		✓	
Participating Local Government Employee		✓	
Nonparticipating Local Government			✓
Nonparticipating Self-Employed			✓
Employer with Approved Private Plan			✓

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All private employers must register and remit wage data and employee premiums to the FAMILI Division every quarter. Even if you have 9 or fewer employees and don't have to pay the employer's share of the premium, you are still responsible for sending the 0.45% employee share to the Division.

Employer Responsibilities

Many entrepreneurs aren't sure if they qualify as an employer, especially if they pay only themselves or a family member.

If you are a business owner, and only pay yourself as your sole employee, then you would be considered self-employed for FAMILI purposes, and your participation is voluntary. Once you hire your first employee, then you will be required to comply with all of the FAMILI rules and regulations and remit premiums on behalf of that one employee.

Under the FAMILI Act, an "employee" is 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.

The FAMILI Act's definition of "employee" includes a two-prong exception. If a person is both:

1. Primarily free from control in the performance of their work
2. Performing work is part of their independent profession or trade then that person is **NOT an employee** under the FAMILI Act. Payments to them would not be subject to premiums and this person should **NOT be counted** within your total employee headcount (see C.R.S. 8-13.3-503(7)).

Individuals who meet the self-employed definition are not required to register or remit premiums or wage data. Self-employed individuals do not need to take any action to opt out if they do not wish to participate in FAMILI. For more details about family-leave options for self-employed workers, check out our explainer at famli.colorado.gov.



FAMLI AND BUSINESS STRUCTURE

The structure of a business isn't what matters for FAMLI compliance. Businesses have identical obligations whether they are organized as S-corps, C-corps or any other structure with specific tax and liability requirements.

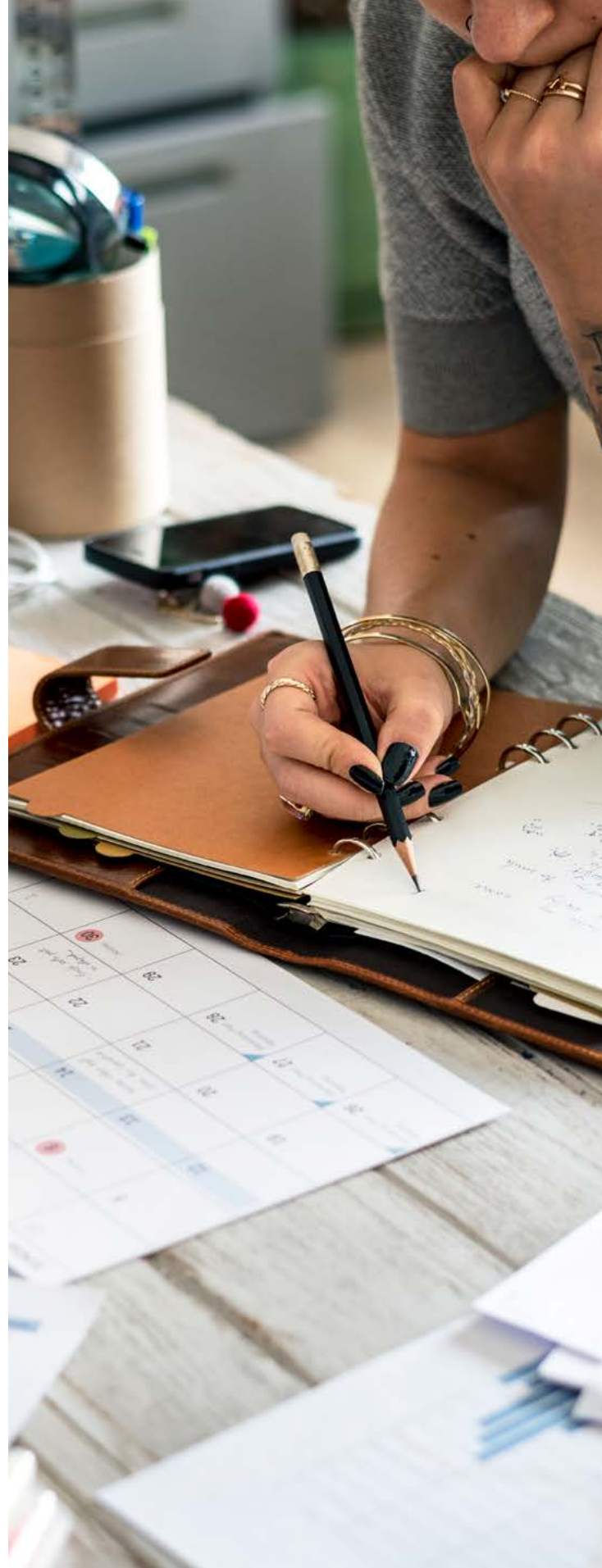
What matters is whether your business has qualifying employees. If you have at least one qualifying employee, you must register with the Division, submit wage data and send in premiums on behalf of that employee. See the section above, **EMPLOYER RESPONSIBILITIES**, to determine if you have any employees.

COUNTING YOUR EMPLOYEES

20 Calendar Workweeks

Your total employee headcount impacts your premium liability, so it's important to know exactly how to count your employees. **Having 10 total employees is the key threshold to keep in mind for FAMLII.** Businesses with 10 more total employees are responsible for sending 0.9% of wages to the Division every quarter. Businesses with 9 or fewer employees are responsible for 0.45% of wages. Businesses of either size can decide whether or not they deduct up to 0.45% from their employee's paychecks to contribute to that quarterly payment.

- » Your employee headcount is calculated **once a year**. You report this to the Division upon initial registration and in the first quarter of every year thereafter.
- » Your total number of employees equals the number of individuals employed during 20 or more calendar workweeks in the preceding calendar year regardless of how many hours and/or days they worked during each week.
- » If an employer has nine or fewer employees, the employer is not required to submit the 0.45% employer portion of the premium, but is **still required to send in the 0.45% employee portion on behalf of its employees.**
- » If an employer has nine or fewer employees, the employer is not required to submit the 0.45% employer portion of the premium, but is **still required to send in the 0.45% employee portion on behalf of its employees.**
- » Employees on leave must be counted if they are expected to return to active employment including those on paid/unpaid leave, sick or medical leave, other leaves of absence, disciplinary suspension etc.
- » Businesses need to count all nationwide employees within their organization to determine if they have ten or more employees, but will only be responsible for paying premiums for employees in Colorado.



The graphic below visualizes this 20-calendar-week concept in four examples.

Counting Your Employees for FAMLI



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 you can see this worker left the company in August.

Moving to the final full-time worker in the red box. In this scenario, this worker was hired to replace the previous one. Since he only worked during 19 weeks of the year, this worker would not count toward your total headcount.

It's important to note that employers are responsible for deducting and remitting premiums for every employee as soon as they are hired. This 20-week concept should only be used to determine whether or not your business is categorized as having 10 or more employees.

Remote & Nationwide Workers

When it comes to counting remote employees, if the employer has 10 or more **TOTAL** employees - even if they work outside of Colorado - the employer is still responsible for sending in the full 0.9% premium once a quarter.



In the example below, the employer is responsible for both the 0.45% employee share and the 0.45% employer share for the three employees who work in Colorado because it has 12 total employees.

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.

Colorado Localization

If you're struggling to determine whether or not an employee would be subject to FAMLI based on where they are located, here's what you need to know:

An employee will be subject to FAMLI if:

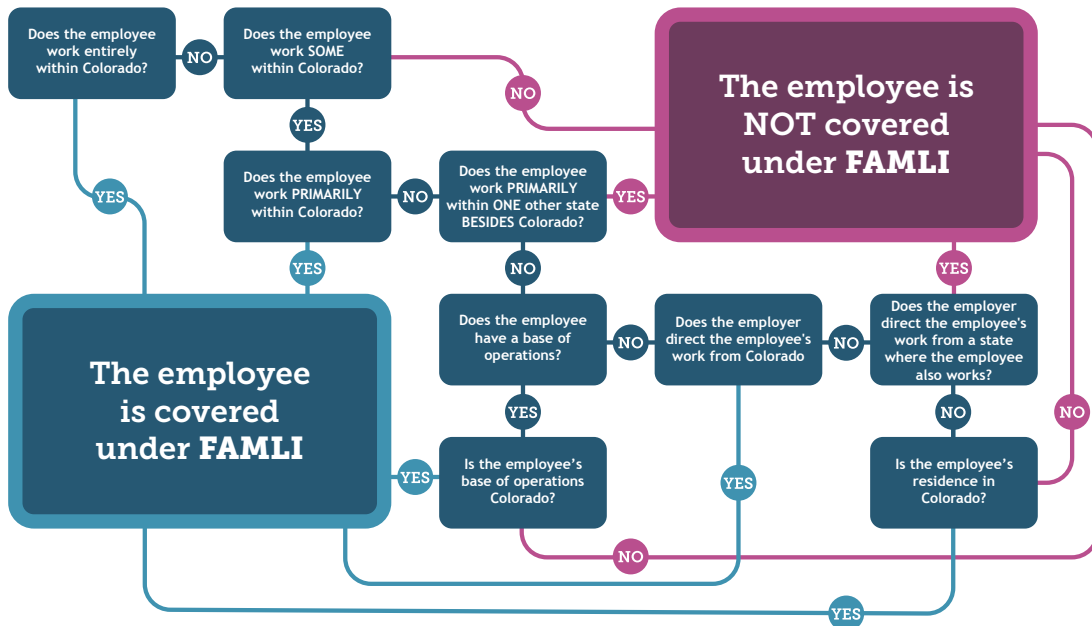
- The employee's work is performed entirely within Colorado;
- The employee performs work both within and outside of Colorado, but the work performed outside of Colorado is incidental to the employee's work within Colorado, or is temporary or transitory and consists of isolated transactions; or
- The employee's work is not primarily localized in any state, but some work is performed in Colorado, and one of the following is true:
 - » The employee's base of operations is in Colorado, or if there is no base of operations, the place from which the employee's work is directed or controlled is in Colorado; or
 - » Neither the base of operations nor the place from which some part of the work is directed or controlled is not in any state in which part of the employee's work is performed, but the employee's individual residence is in Colorado. More information regarding localization can be found in the FAMLI Division's [Premium Rules at 7 CCR 1107-1, Section 1.5.6.C](#).





We know this is complicated, so we created the following decision tree to help you determine Colorado localization when it comes to employees being subject to FAMLI:

Is this employee covered under FAMLI?



**For more detailed information about localization, please see the Premiums Rules at 7 CCR 1107-1, Section 1.6. If you still need help determining an employee's localization, please contact us at 1-866-CO-FAMLI (1-866-263-2654) Monday-Friday 7:30 a.m.-4:30 p.m.*

FAMLI AND TAXES



FAMLI premiums should be considered post-tax deductions that do not reduce an employee's taxable income.



Employers should report FAMLI deductions on IRS form W-2 in Box 14, and list "FAMLI" as the label.



FAMLI benefits are not subject to state income tax. However, the FAMLI Division cannot provide advice on federal taxation.



The FAMLI Division will issue a 1099-G form to claimants who receive FAMLI benefits.

SMALL BUSINESS FAQs

Q I'm a small employer with less than ten employees. Can I cover the premiums for some employees but not all?

A Yes. All employers may collect from their employees a premium contribution of up to 0.45% of their wages. Whether an employer chooses to require less of a contribution from some or all employees is up to the employer.

Q I'm a new company. Do I need to register with the FAMILI Division right away?

A Yes. You should conduct employee count upon registration, and in Q1 of every year thereafter. Brand-new employers will often fall into the "9 or fewer" category upon initial registration, and some may remain in that size category when they do their count again in Q1. This may mean that new employers may see a premium "discount" in their first year and will only owe 0.45% of wages (rather than 0.9% for employers with 10 or more employees).

Q Which employees are eligible for FAMILI leave?

A Most Colorado employees become eligible to take paid leave after they have earned at least \$2,500 in wages within the State within the last 4 calendar quarters. Self-employed workers (gig workers, 1099 or contract workers) may also be eligible if they voluntarily opt into coverage and live and work in Colorado. Self-employed individuals will need to agree to pay premiums and submit wage data for three years when they opt in.

Q What about FMLA? Can an employee take double leave?

A Colorado's FAMILI program is designed to run concurrently with FMLA. The FAMILI Division does not manage or adjudicate FMLA claims. FMLA, operated on the federal level, impacts employers with 50 or more employees. When a worker applies for FMLA, the Employer must tell them that they may be eligible for paid leave under the FAMILI Program. For questions related to FMLA, please visit the [U.S. Department of Labor website](#).



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