

# An Employer's Guide to FAMLI

Colorado's Family and Medical Leave Insurance Program



**COLORADO**

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

Department of Labor and Employment





## COLORADO

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

Department of Labor and Employment

The Colorado Department of Labor and Employment (CLDE) and its Division of Family and Medical Leave Insurance (FAMLI) created this guide as a public service. 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. Liability and eligibility determinations will be made on a case by case basis. FAMLI reserves the right to update the material and information as necessary. [The Colorado Paid Family and Medical Leave Insurance Act](#) and all [related rules and regulations](#) remain the legal sources for information related to the FAMLI program.

# Contents

---

## Understanding FAML . . . . . **4**

What is FAML? . . . . . **5**

How FAML is Funded . . . . . **6**

- *Premium Responsibility by Employer Type*

Employer Participation . . . . . **7**

Private Plans . . . . . **8**

Employer Responsibilities . . . . . **9**

---

## Implementing FAML . . . . . **10**

Getting Started . . . . . **11**

Registering with the FAML Division . . . . . **12**

Counting Your Employees . . . . . **13**

- *Counting Remote Workers*
- *Counting Nationwide Workers*

Calculating Wages . . . . . **17**

- *Wages Subject to FAML Premiums*
- *Submitting Wage Reports*
- *Paying Contributions*

FAML for Third Party Administrators . . . . . **20**

Coordination of Benefits . . . . . **21**

- *Employer-Provided PTO*
- *FAML and FMLA*
- *Health Care Insurance Benefits*
- *Short-term and Long-term Disability Plans*
- *Unemployment Insurance*
- *Workers' Compensation*

---

## Employees and FAML . . . . . **25**

Who is covered? . . . . . **26**

When can employees use FAML? . . . . . **27**

Benefit Application Process . . . . . **28**

---

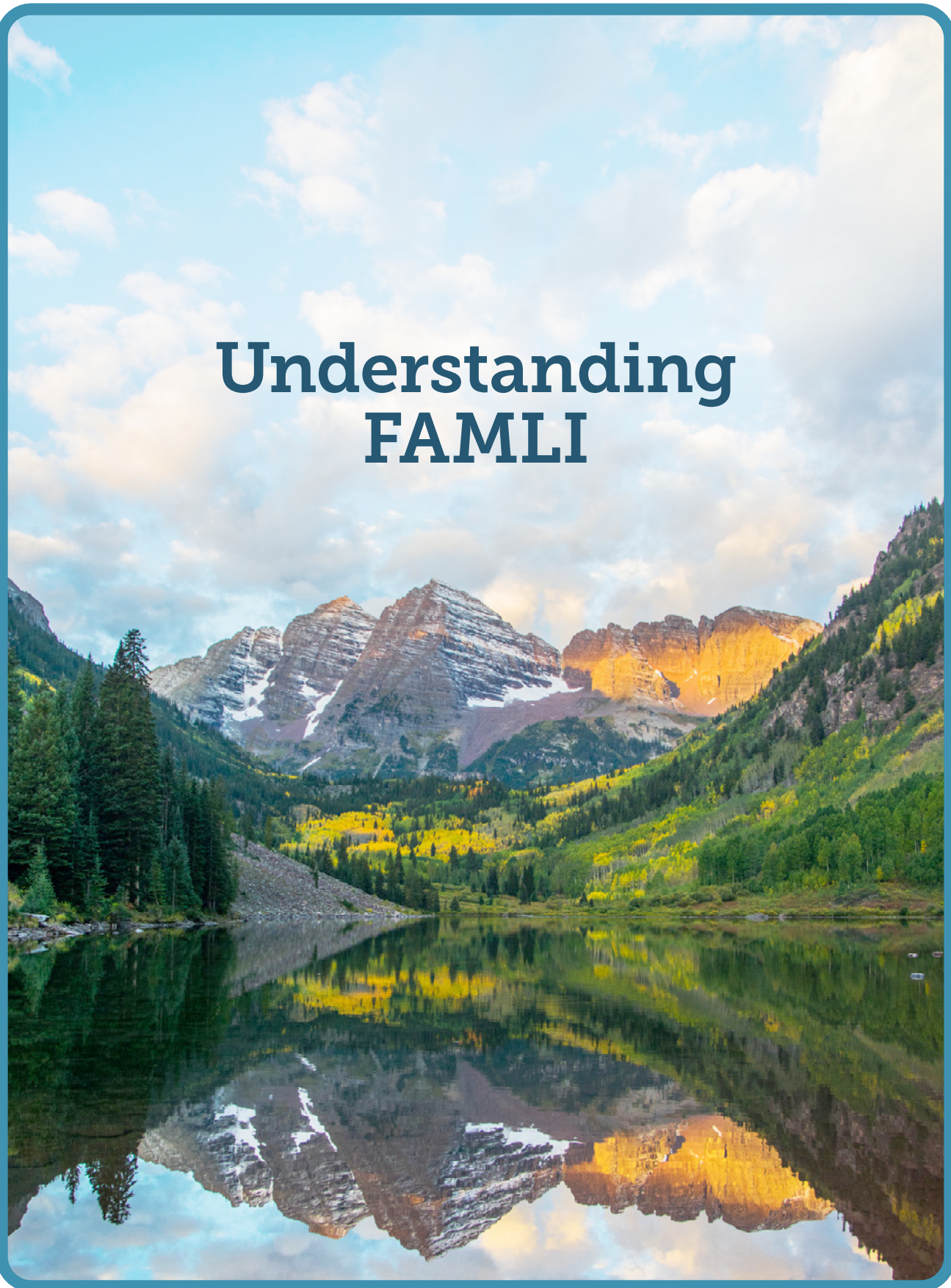
## FAML and Taxes . . . . . **29**

---

## Glossary . . . . . **31**



# Understanding FAMLI



# What is FAMLI?

The Family and Medical Leave Insurance (FAMLI) 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. FAMLI is a social insurance program funded through a premium that is paid into a fund.

**If you have employees in Colorado, FAMLI impacts you!**

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.

**FAMLI will start providing benefits to employees beginning January 1, 2024.**



# How FAML I is 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 employer and 0.45% paid by the employee. Employers may elect to pay the full amount of 0.9% if they choose to offer this as a benefit for their employees. Employers will be responsible for collecting the employee’s contribution of the premium through payroll deductions and sending the full amount to the Division once a quarter.

An employer’s premium liability depends on the size and type of employers.

## Premium Responsibility by Employer Type

- **Employers with 10 or more employees =** the employer will pay the employer share of the premium 0.45% of wages and will deduct and remit the 0.45% of the employees’ share to the FAML I Division for a total of 0.9% of wages.
- **Employers with 9 or fewer employees =** the employer does not have to pay the 0.45% of the employer share, but is still responsible for deducting and remitting the 0.45% of the employees’ share for a total of 0.45% of wages.

In both scenarios, the employer will need to submit wage data to the Division once a quarter along with their employees’ share of the premium (0.45% of wages). If an employer voluntarily decides to cover the employees’ share as an added benefit, they will be responsible for paying the full 0.9% (0.45% if they have 9 or fewer employees) to the Division once a quarter.

The premium rate through 2024 is 0.9%. For 2025 and beyond, the director of the FAML I Division sets the premium rate according to a formula based on the monetary value of the FAML I fund.

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			✓

*Table originally published in Colorado Blue Book 2020. Legislative Council of the Colorado General Assembly Research Publication No. 748-1*

**FAML I premiums are currently capped at 1.2% per statute. It’s been demonstrated in several states that premiums have decreased and benefits have been able to increase over time.**

# Employer Participation

Participation in FAML I is required for most Colorado employers and their employees. However, FAML I statute was written to give local government employers options to participate.

**Local government employers are the only organizations that have the option to vote to opt out of the program. All other employers need to meet their FAML I requirements in some way.**

*Please see our [Local Government Guide](#) for more details*

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.

**All employers-even Local Governments-must register with the FAML I Division .**

Private sector employers may decide to meet their FAML I requirements by using a private plan.



# Private Plans

The following is a summary of the regulations regarding [Private Plans \(7 CCR 1107-5\)](#). Please refer to the complete legal requirements published at [famli.colorado.gov/proposed/adopted-rules](https://famli.colorado.gov/proposed/adopted-rules) for more details.

Employers interested in using a private plan, or self-insurance, will need to have their plan approved by the FAML I Division to ensure that it offers the same benefits and protections as the FAML I plan.

The private plan marketplace and approval application process is expected to open in the early part of 2023. Further instructions and guidance will be published on [famli.colorado.gov](https://famli.colorado.gov) and a subsequent Private Plan Guide in the near future. Until then, here's what you need to know about private plans:



## Private plans must

- Offer the same number of weeks of benefits
- Offer the same level of wage replacement
- Have no additional requirements or conditions
- Deduct no more than the same amount from employee paychecks as the state plan
- Cover all employees through the duration of their employment
- Remain compliant with any additional requirements established by the FAML I Division
- Self-insured plans are a subset of private plans, and will need to follow the same rules, provisions and get approved by the Division. However, employers using self-insured plans will also need to secure a surety bond in order for the Division to vet the financial standing of the company.

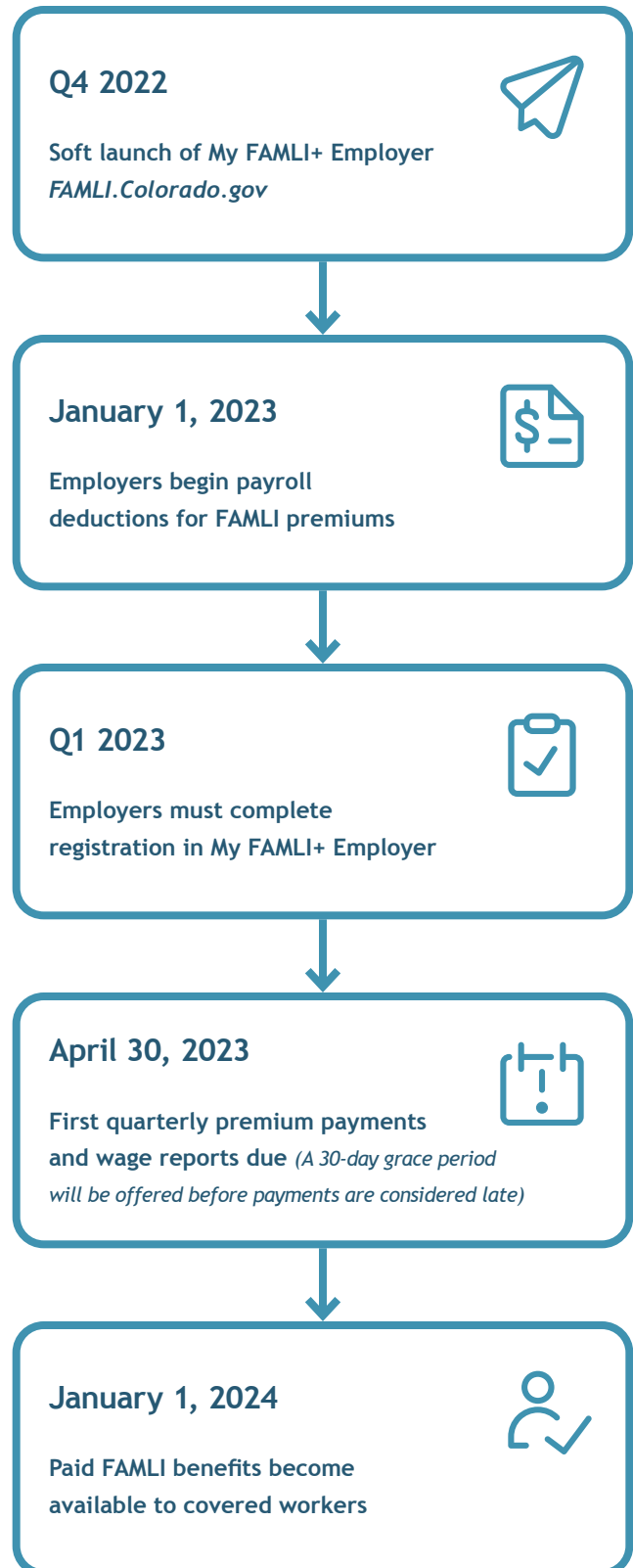
All employers will be expected to submit their wage data and pay their premiums in 2023 until they receive private plan approval from the FAML I Division. Refunds for 2023 premiums paid will be available if a private plan with an effective date on or before January 1, 2024 is approved by the Division before October 31, 2022.



# Employer Responsibilities

Employers are required to notify employees about the FAML I program, including its payroll deductions, program requirements, benefits and claims process.

- The [2023 Required Program Notice](#) must be posted in a prominent location in the workplace by January 1, 2023. (The program notice is available in multiple languages on [famli.colorado.gov](#).) Employers must also share the Required Program Notice with their employees to inform them about the FAML I program in writing when an employee is hired and when learning an employee is experiencing an event that triggers eligibility.
- Employers must register with the Division by creating an account on My FAML I+ Employer, the online employer services system employers will use to submit wage data and premiums payments at the end of each quarter. These quarterly filings will be similar to how many companies submit their unemployment insurance today.
- Employers considering to meet their FAML I requirements by using a private plan still need to register with the Division in order to apply for their private plan approval.
- Employers must notify the Division whenever operations close, or whenever the organization no longer employs workers in Colorado. The employer will no longer be required to pay premiums, submit wage reports, or otherwise participate in the FAML I program.



# Implementing FAMLI



# Getting Started

## 1. Communicate with your Employees about FAML I

Post the required program notice by January 1, 2023 and update your HR materials. We have several tools to help you do this in our [Employer Toolkit](#) on [famli.colorado.gov](http://famli.colorado.gov).

## 2. Determine how FAML I will apply to your business

How many people do you employ? What portion of the costs will you cover?

## 3. Estimate your Premium Liability

Use the [premium and benefits calculator](#) on the FAML I website, or for multiple employees, use the set formula and rate to create a spreadsheet that works for your business needs.

## 4. Consider Your Plan Options

The market for private plans will be coming soon and self-insurance requirements will be published to [famli.colorado.gov](http://famli.colorado.gov). Please refer to the adopted [Private Plan rules](#) for details.

## 5. Register with the FAML I Division

Register your My FAML I+ Employer account online at [famli.colorado.gov](http://famli.colorado.gov). Registration can be completed any time before the first premium payments are due.

## 6. Collect Premium Deductions

If you use a payroll company, or if you process payroll yourself, you will need to prepare your systems to have the FAML I premiums deducted from paychecks beginning January 1, 2023.

## 7. Submit Wage Data and Pay Your Premiums

Employers are required to submit wage data and pay their premiums to the Division once a quarter. The first payment is due April 30, 2022. A 30-day grace period will be offered until the first payment is considered late.

## 8. Ask Us Questions

we are committed to helping you navigate the new program and ensuring your success. Reach out to us at [CDLE\\_FAML I\\_info@state.co.us](mailto:CDLE_FAML I_info@state.co.us).

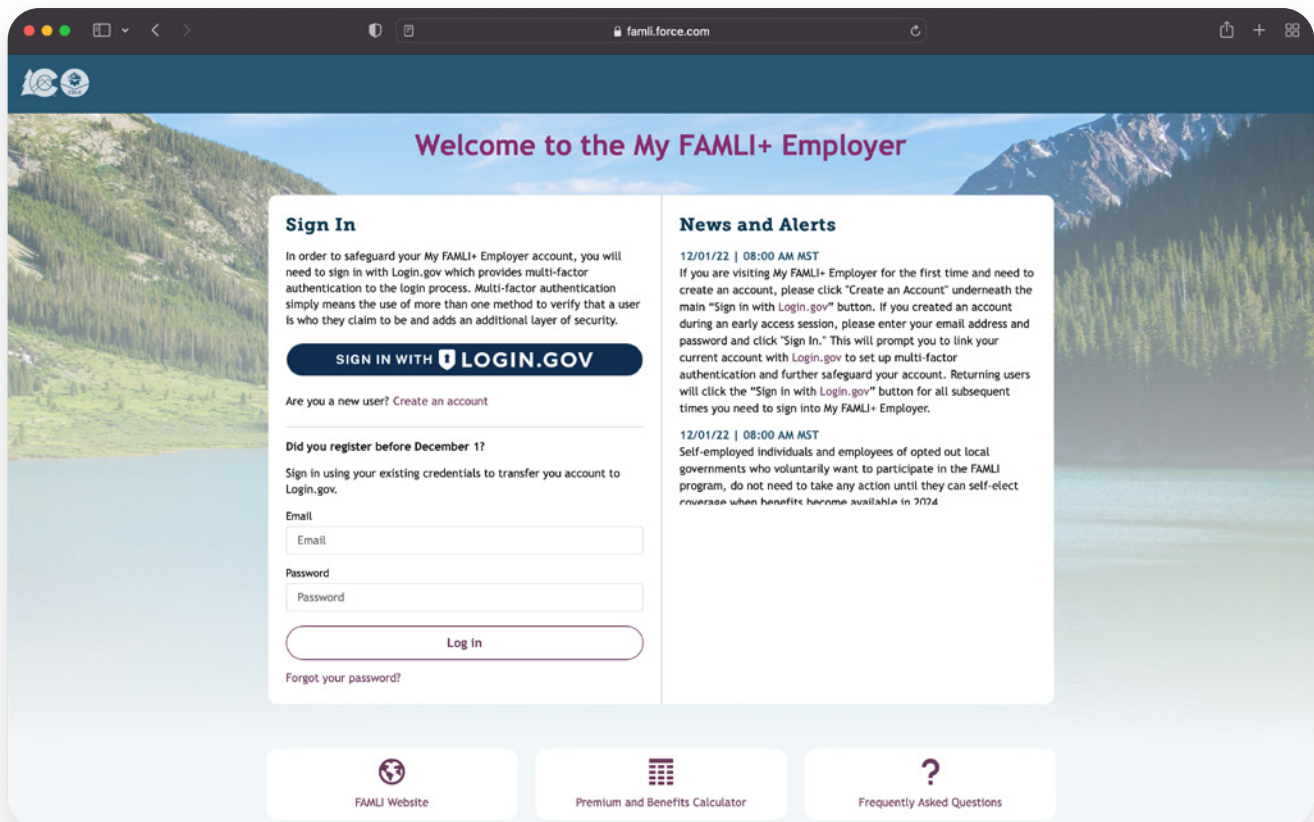
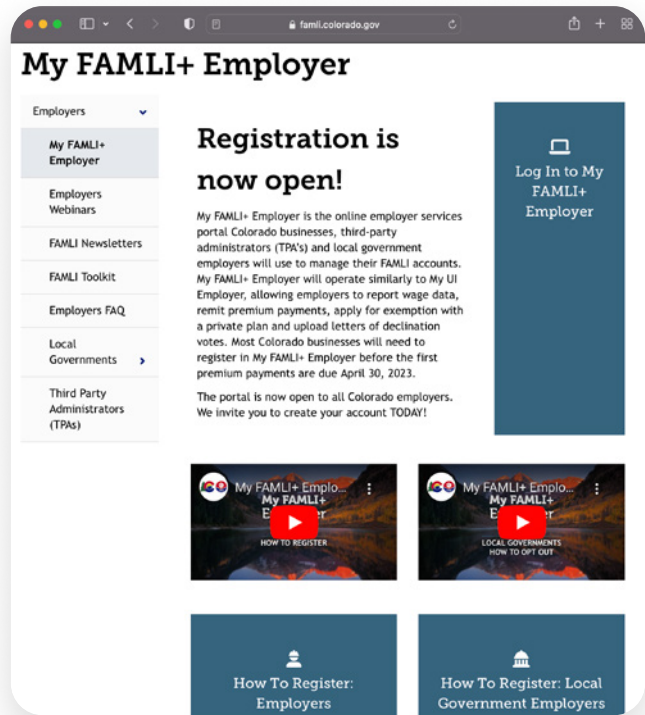


# Registering With My FAML I+ Employer

All employers are required to register with the FAML I Division.

You'll do this on [My FAML I+ Employer](#), the online employer services portal Colorado businesses, third party administrators (TPAs) and local government employers will use to manage their FAML I accounts. My FAML I+ 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 FAML I+ Employer before the first premium payments are due April 30, 2023.

Employers can access [My FAML I+ Employer](#) on [famli.colorado.gov](#), where we also have additional user guides and how-to videos to support employers through the registration process.



# Counting Your Employees

Your total employee headcount will impact your premium liability, so it's important to know exactly how to count your employees.

- Your employee headcount will be calculated **once a year**. You'll report this to the Division upon initial registration and in the first quarter of every year thereafter.
- Your total # of employees = # of individuals 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.
- If an employer has ten or more employees who were employed 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.
- If an employer has 9 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.
- Companies will include all nationwide employees within their organization to determine if they have ten or more employees.



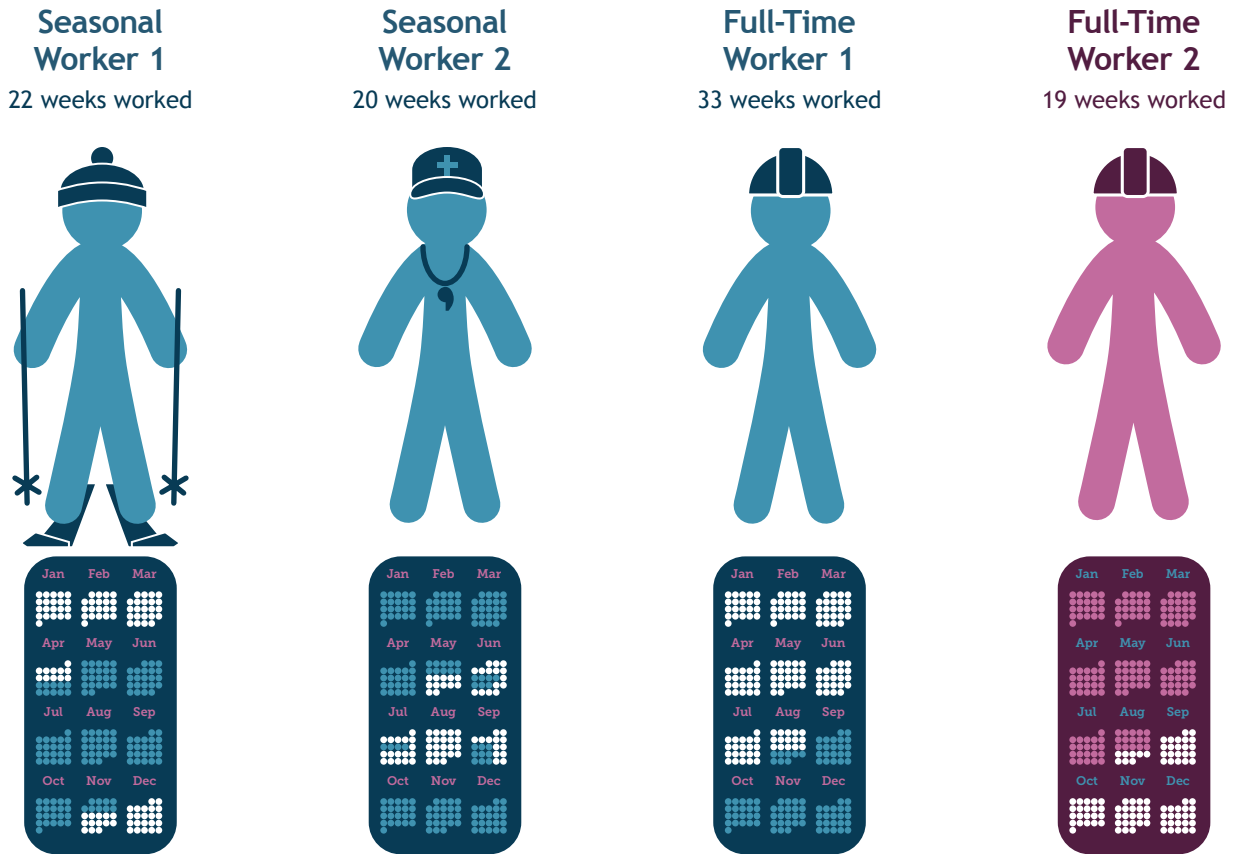
# Counting Your Employees

The graphic below visualizes 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 you can see this worker left the company in August.

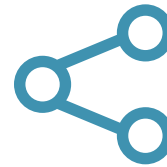
Moving to the final full time worker in pink. In this scenario, this worker was hired to replace the previous one. Since he only worked during 19 weeks of the year, this worker would not count toward your total headcount.



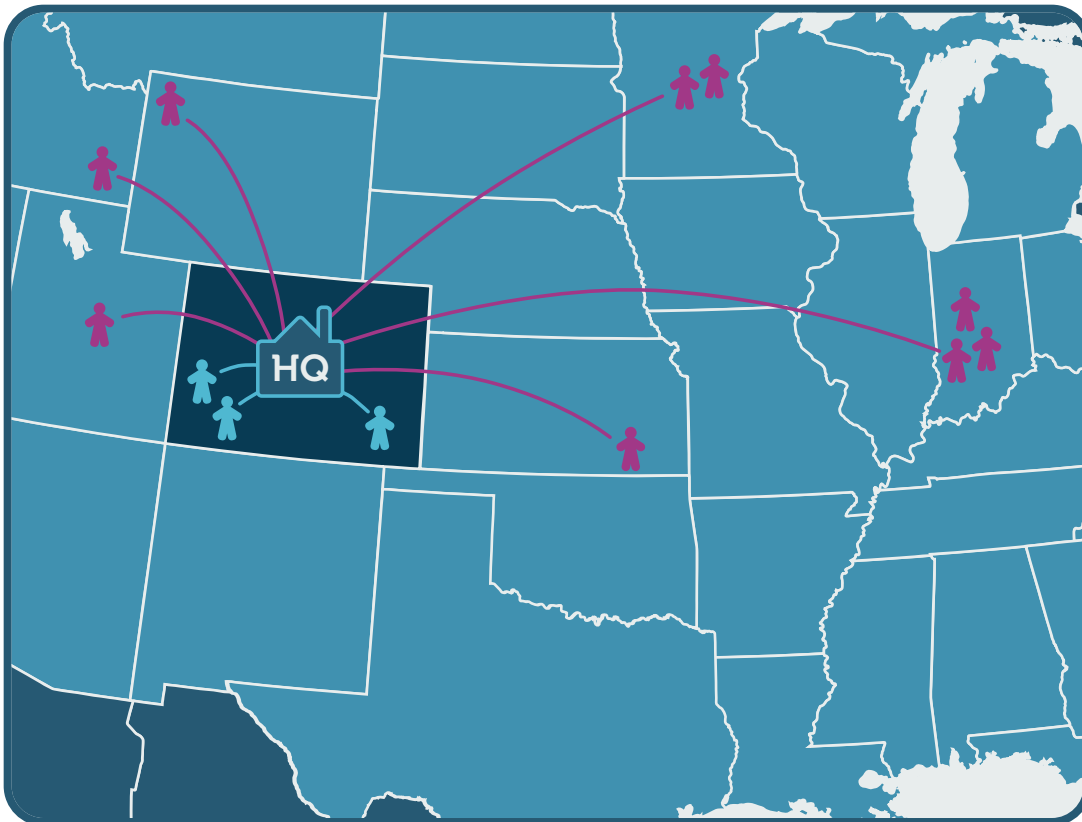
It's important to note that employers are responsible for deducting and remitting premiums for every employee as soon as they are hired. This 20-week concept should only be used to determine whether or not your business is categorized as having 10 or more employees.

# Remote Workers

When it comes to counting remote employees, 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.



In the example below, the employer would be 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.



○ Total remote employees outside Colorado: 9

○ Total employees in Colorado: 3

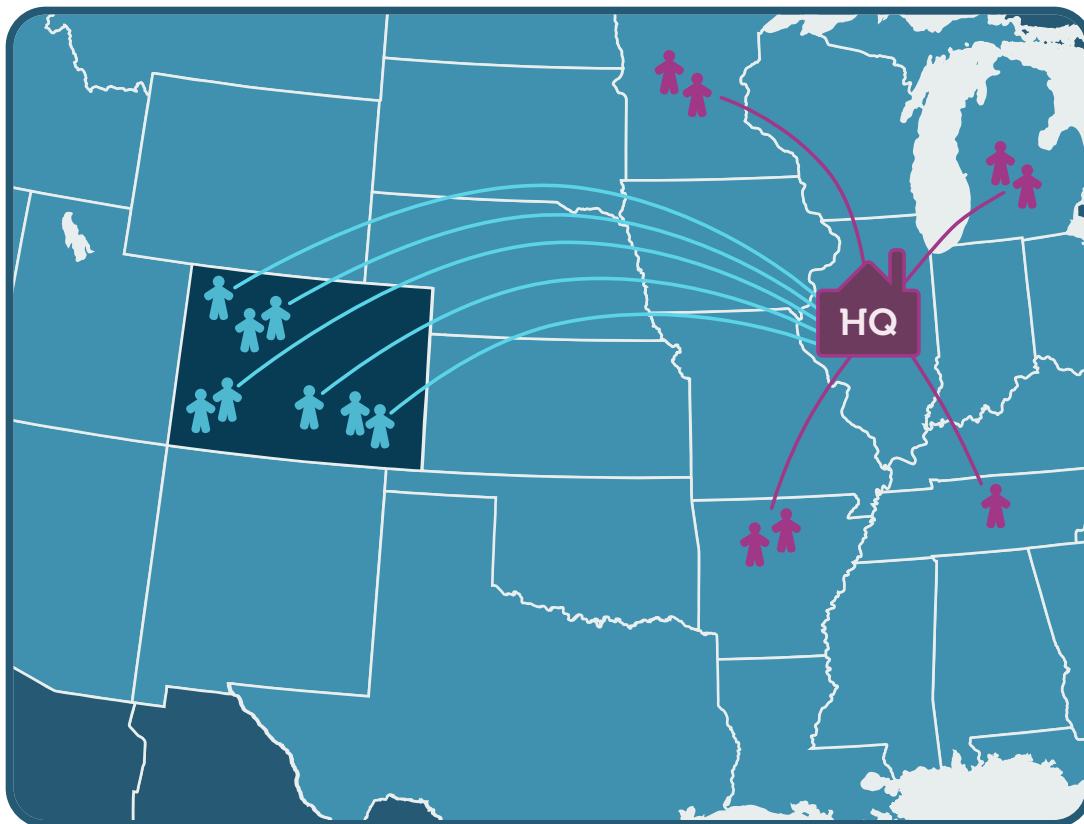
○ Employer is required to pay and remit the full 0.9% premium for its 3 Colorado employees.

# Nationwide Workers

If you are a national employer with employees based all over the country, you will need to use your total employee headcount to determine your premium responsibility for your Colorado-based employees.



As you can see on the map below, this employer has 15 total employees, so it will be required to send in the full 0.9% premium for the eight employees who are based in Colorado.



○ Total nationwide employees: **15**

○ Total employees in Colorado: **8**

○ Employer is required to pay and remit the full 0.9% premium for its **8** Colorado employees.



# Calculating Wages

## Wages Subject to FAMILI Premiums

The FAMILI definition of included and excluded wages mirrors the Unemployment definition of included and excluded wages. These employers should refer to the following list to determine what counts as wages:

### Wages

#### *Subject to FAMILI Premiums*

- 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

**Employers who are exempt from paying unemployment premiums are NOT exempt from paying FAMILI premiums.**

### Not Wages

#### *Exempt from FAMILI Premiums*

- 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

# Calculating Wages

## Submitting Your Wage Reports

Every three months you'll need to submit your quarterly wage reports to the FAML I Division before you can pay your premiums. Wage reports will be submitted by using our online employer services portal, My FAML I+ Employer.

Within My FAML I+ Employer, employers will have options to submit wage data to the Division:

- Manually input wage data for each employee individually.
- Bulk upload wage data for all employees by uploading a file within My FAML I+ Employer. Please refer to our [Wage Reporting File Specifications](#) and use one of the following single filer wage report sample templates to build your wage report files:
  - [.CSV Sample Single Filer Wage Report](#)
  - [.XML Sample Single Filer Wage Report](#)
- Submit wage reports using API technology. Please refer to our [Wage Reporting API Specifications](#) for instructions.



# Calculating Wages

## Paying Your Premiums

Starting in 2023, premium payments and wage reports will be due on the same schedule as is typical with Unemployment Insurance (UI). If an employer fails to submit wage reports and premium payments, the employer may face a fine of up to \$50.00 per employee whose wages are not reported. The 2023 schedule is:

- April 30, 2023
- July 31, 2023
- October 31, 2023
- January 31, 2024

*A 30-day grace period will be offered before the first premium payments and wage reports are considered late.*

Employers will need to submit their FAML premium separately from UI premiums they may owe.

How premium payments can be rounded using the following guidelines:

- 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. Example:
  - \$137.7045 should be rounded *down* to \$137.70
  - \$137.7054 should be rounded *up* to \$137.71

Employers will have several payment type options to submit their quarterly premium payments to the FAML Division:

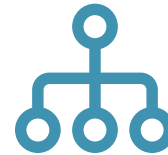
- **Online Payments**  
*Employers can log into their My FAML+ Employer account and pay their premiums online.*
- **ACH Credit**
- **Payment by Check**
- **Online Bill Pay**

Instructions for paying by ACH Credit, Check and Online Bill Pay will be published on the [Employers page](#) of [famli.colorado.gov](http://famli.colorado.gov).



# Calculating Wages

## FAML I and Third Party Administrators



Third Party Administrators (TPAs) will play a critical role in ensuring many employers are set up for success and remain in compliance with FAML I. If your organization works with a TPA to manage your payroll systems and/or support your Unemployment Insurance obligations, please refer them to our dedicated [TPA page](#) at famli.colorado.gov. There TPAs will find several tools to support them, including file specifications, quick reference guides and sample file templates.

TPAs will be able to use the following methods to submit wage data and premium payments to the FAML I Division on behalf of the employers they serve:

Method / Function	Employer Registration	Wage Reporting	Payments
	<i>Creating an employer account with FAML I</i>	<i>Submitting employee wage data to FAML I</i>	<i>Electronic (ACH) payment of premium contributions</i>
Online <i>via FAML I Employer portal</i>	✓	✓	✓
API (JSON)	✓	✓	✓
File Upload (XML) <i>via FAML I Employer portal</i>	✓	✓	✗
File Upload (CSV) <i>via FAML I Employer portal</i>	✓	✓	✗
Other Payment Methods <i>ACH Credit via NACHA File, Check or Bill Pay</i>	n/a	n/a	✓

# Coordination of Benefits

The following is a summary of the regulations regarding *Coordination of Benefits (7 CCR 1107-4)*. Please refer to the complete legal requirements published at [famli.colorado.gov/proposed/adopted-rules](https://famli.colorado.gov/proposed/adopted-rules) for more details.



## Employer-Provided PTO

When it comes to coordinating FAMILI leave benefits with your employer-provided Paid Time Off (PTO), employers cannot require their employees to use their accrued PTO before or during their FAMILI leave. However, an employee may voluntarily choose to use their PTO before taking FAMILI leave.

Employers and employees can mutually agree to use any accrued PTO to top off the FAMILI benefit payments allowing the employee to receive a full wage replacement while on leave. However, such an agreement must be documented in writing. If PTO is used to supplement FAMILI leave, the total amount paid from both sources may not exceed the employee’s average weekly wage. If it does, or if the employee receives payments from PTO and there wasn’t a written mutual agreement between the employer and the employee for that top-off, employers can consider those portions of the employer-provided leave to be an overpayment that they may recoup through a lawful deduction or by other legal means.



# Coordination of Benefits

## FAMILI and FMLA

The FAMILI Division does not manage or adjudicate FMLA claims.

When an employee applies for FMLA, you as the employer must tell them that they may be eligible for paid leave benefits under the FAMILI program. For questions related to FMLA, please visit the [U.S. Department of Labor website](#).

**Colorado's FAMILI program is designed to run concurrently with FMLA.**



## Health Care Benefits

While an employee is out on FAMILI leave, employers are required to maintain the employee's health care benefits, and employees are still required to pay their premium obligations toward those healthcare benefits during their leave. Healthcare benefits include any of the following that is provided by the employer:

- Health insurance
- Dental insurance
- Vision insurance
- Mental health benefits
- Counseling
- Addiction services

Employers have a few options with regard to collecting healthcare insurance premiums from their employees while they are on FAMILI leave:

- You can deduct from PTO paid to the employee meant to "top off" their FAMILI benefits.
- You can deduct from wages when the employee returns to work, so long as the deductions are in accordance with the Colorado Wage Act.
- You can enter into a repayment plan with the employee.
- You can collect the amount through other legal means.

The FAMILI Act and its implementing regulations do not entitle employees to continue accruing employer-provided leave, or any other benefits, while they are out on FAMILI leave.

# Coordination of Benefits

## Short-term and Long-term Disability Plans

Many employers may have existing short-term and long-term disability plans in place that they intend to keep when FAMILI benefits become available in 2024. Here's what you need to know about how FAMILI benefits will coordinate with short-term and long-term disability policies:



- If the reason for FAMILI leave also qualifies for short-term or long-term disability benefits offered by the employer, you as the employer may count both the wage replacement amount and the duration of the FAMILI leave towards the limits included in the short-term or long-term disability policies, so long as you first give written notice to the employee.
- It's important to note that most short-term and long-term disability plans are not designed to fully match the benefits, protections and broad definitions under the FAMILI program. Having an existing short-term disability plan does not automatically constitute an equivalent private plan. **All private plans must be approved by the FAMILI Division.**



# Coordination of Benefits

## Unemployment Insurance

When it comes to FAMILI leave and Unemployment Insurance (UI), employees cannot collect benefits from both the FAMILI Division and the UI Division at the same time.

If an absence is caused by a situation that would provide unemployment benefits for workers, workers cannot also collect FAMILI Benefits.

Workers must disclose to the FAMILI Division any unemployment payments received while they are out on FAMILI leave.

## Workers' Compensation

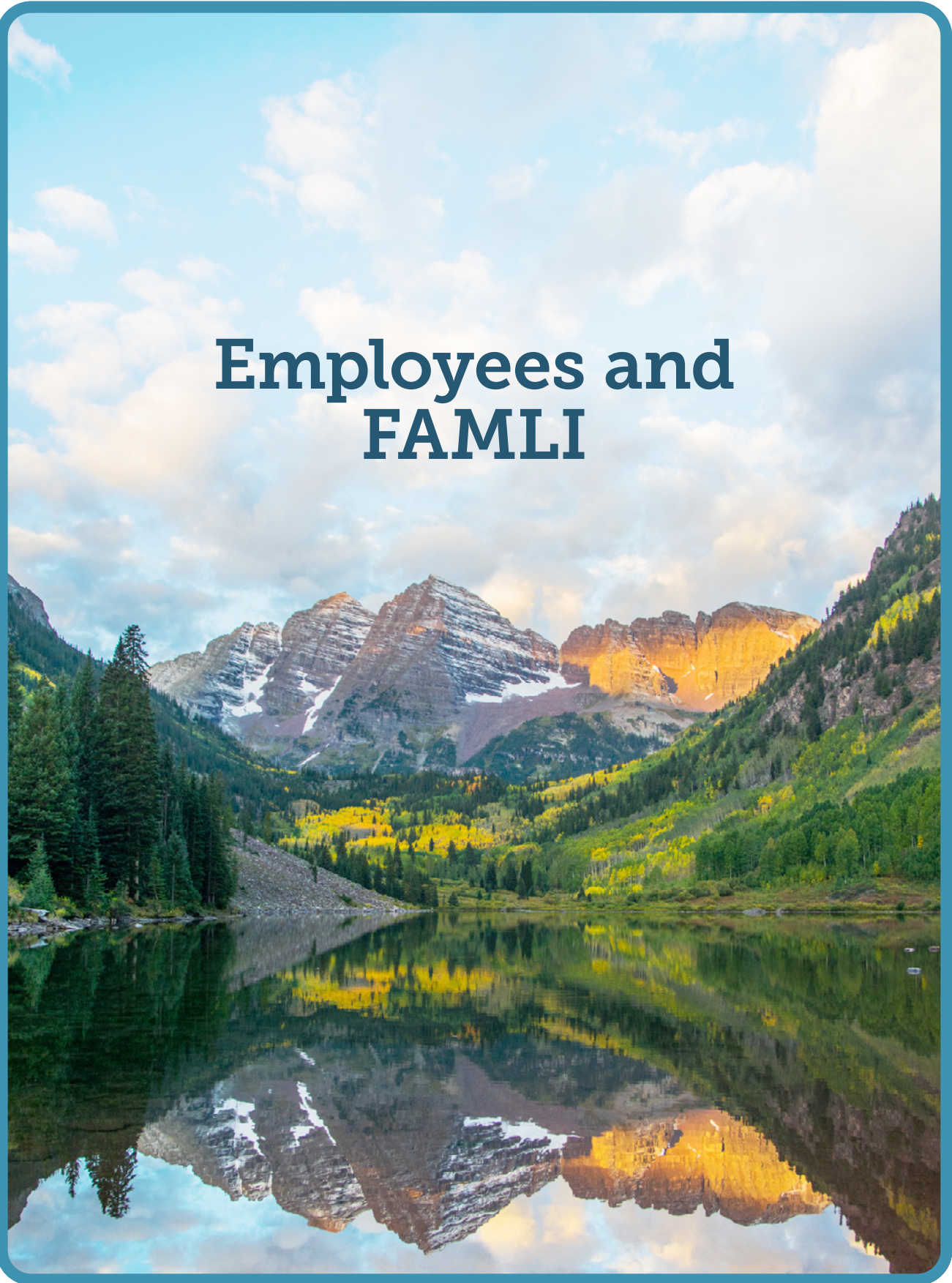
FAMILI benefits may not be taken with Workers' Compensation benefits for the same reason for the absence. If an employee is absent from work because of a work-related injury or illness, they cannot simultaneously claim FAMILI benefits for that same condition. However, if they are still working after the injury or illness and need to take leave for an unrelated issue, FAMILI benefits may be used.

Any condition compensable under the Workers' Compensation umbrella is not eligible for FAMILI benefits. Those applying for FAMILI benefits, and their health care providers must disclose this information on the FAMILI application. If they don't, then benefits paid may be considered an overpayment, and they may be disqualified from receiving FAMILI benefits.





# Employees and FAMLI



## Who is Covered?

The following is a summary of the regulations regarding [Benefits Rules \(7 CCR 1107-3\)](#). Please refer to the complete legal requirements published at [famli.colorado.gov/proposed/adopted-rules](https://famli.colorado.gov/proposed/adopted-rules) for more details.

**While FAMLI premium deductions begin in January 2023, FAMLI benefit payments will become available to employees in January 2024.**

- Benefits are available to most Colorado workers who have earned \$2,500 over the previous year for work performed in Colorado.
- During FAMLI leave, benefits are calculated on a sliding scale using the individual's average weekly wage from the previous five calendar quarters in relation to the average weekly wage for the state of Colorado and may increase over time. Benefits are capped at \$1,100 per week. Employees may estimate their benefit payments and payroll deductions by using the [benefits calculator](#) on [famli.colorado.gov](https://famli.colorado.gov).
- While there is no requirement for the amount of time worked to be eligible to take paid family and medical leave, employees must have worked for their current employer for at least 180 days (roughly six months) before they will be eligible for job protection. The Family and Medical Leave Act also protects employees from any retaliation from the employer, regardless of how long they've worked for their current employer.



# When Can Covered Workers Use FAMLI?

Starting in 2024, employees will be able to apply for FAMLI leave benefits to support them through the following life events:

- To manage their own serious health condition.
- To care for a family member with a serious health condition.
- To care for a new child (within the first year after birth, or foster placement, or adoption.)
- To make arrangements for military deployments.
- To address immediate safety needs and impact of domestic violence/sexual assault.



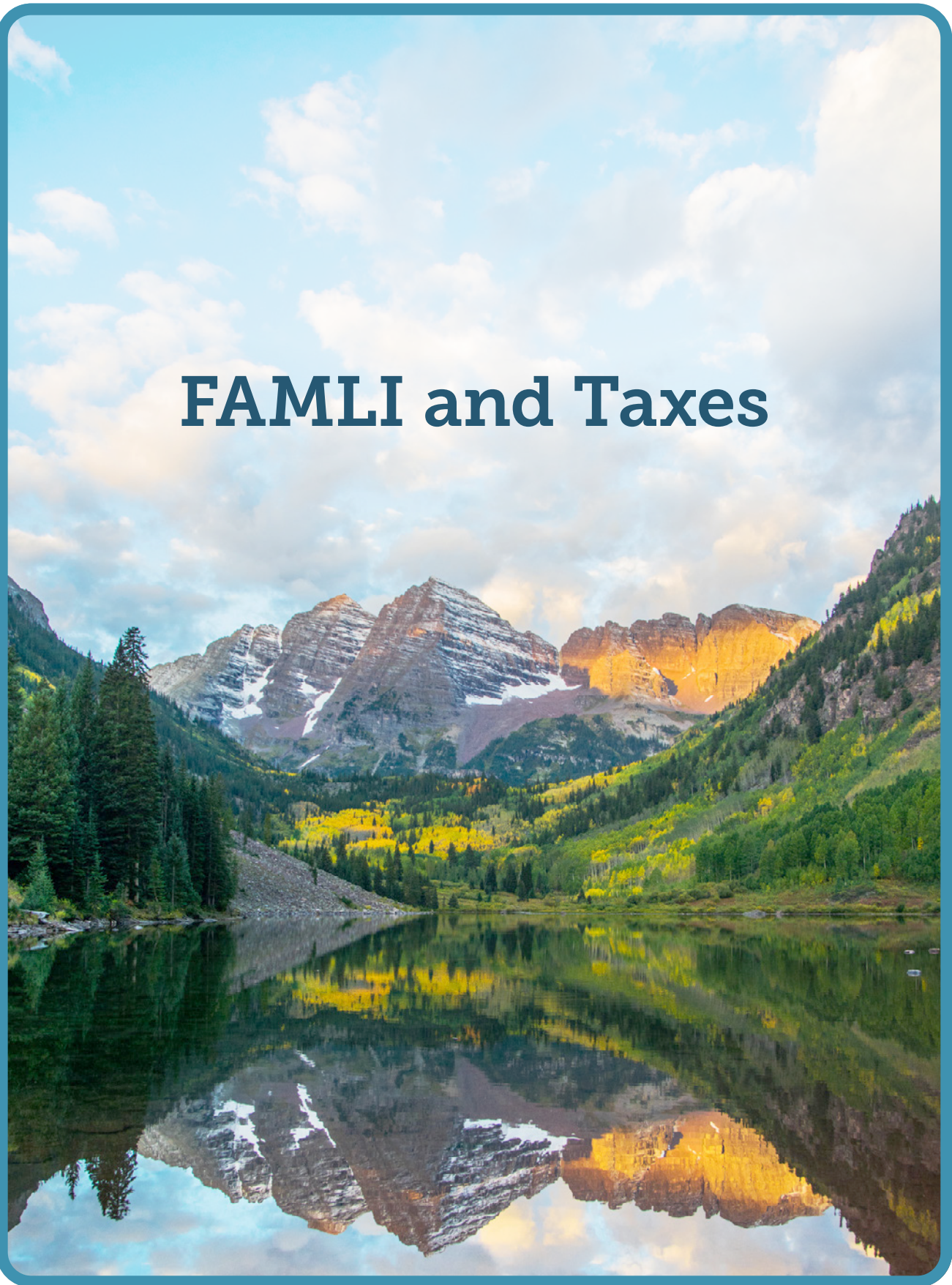
# Benefit Application Process

Once benefits become available, employees will apply for FAML I leave directly with the State similar to how they would file a claim for Unemployment Insurance. The online system Colorado workers will use to apply for FAML I leave benefits is currently in development and will be deployed in late 2023. Additional guidance and how-to guides will be made available to workers on [famli.colorado.gov](http://famli.colorado.gov) at that time. Here's what employers need to know now about the claim filing process:

- Employees or their designated representative may apply for FAML I leave by submitting an application along with required documents to the FAML I Division.
- Applications may be submitted in advance of the absence from work and in some emergency circumstances they may be submitted after the absence has begun.
- As an employer, the FAML I Division will notify you within 5 business days of when your employee applies for FAML I. You will have an opportunity to provide information and the Division will have fraud measures in place.
- **While formal appeal rights are limited to the claimant applying for benefits, additional provisions allow employers to file a grievance with the Division if it has a good-faith belief, supported by evidence, that the Division has granted FAML I benefits to a claimant in an amount, duration or frequency beyond what the claimant is entitled or in a way that unduly disrupts the employer's operations.**
- Individuals who attempt to defraud the FAML I program may be disqualified from receiving benefits.
- The program will determine eligibility based on submitted documentation.
- You will receive a notification when the application is approved, and the notice will include the leave start date, the leave duration, any denied segments of requested leave, and a description of any approved requests for a reduced leave schedule or intermittent leave if applicable.
- Employers will be able to request limited additional information, including the benefit amount and reason for the leave, that is necessary for the employer to coordinate FAML I benefits with other benefits for which the employee may be eligible.
- **FAML I leave is paid by the state, you DO NOT have to pay your employee when they are out on leave.**
- Employers have the flexibility to use those dollars to meet vacancy needs in whatever way makes sense for your business, whether that's hiring a temporary worker or offering a pay differential to other employees, etc.



# FAMILY and Taxes



# FAMLI and Taxes



Here is what you need to know about how FAMLI deductions and premium payments impact tax filings:

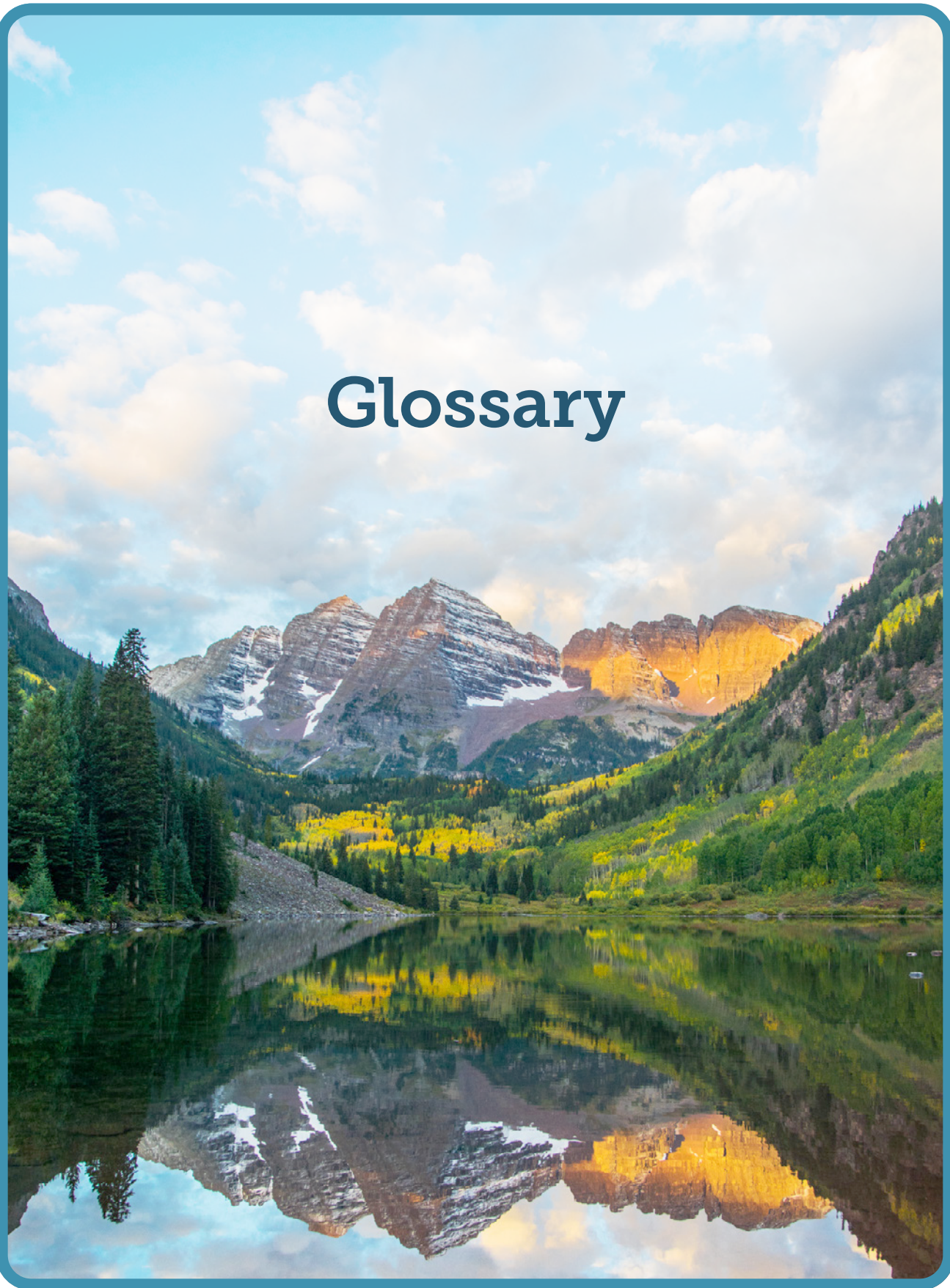
- FAMLI premiums should be considered post-tax deductions that do not reduce an employee’s taxable income.
- Employers should report such deductions on IRS form W-2 in Box 14, and list “FAMLI” as the label.
- The FAMLI Division will issue IRS form 1099-G to each employee who receives FAMLI benefits, and the benefits paid will be reported in Box 1, which is labeled “unemployment compensation.” Per IRS instructions, this box is also used for governmental paid family leave programs.

**The FAMLI Act makes it clear that FAMLI benefits are not subject to state income tax.**

However, the IRS has not made a clear decision as to whether or not FAMLI benefits are subject to federal income tax, and the FAMLI Division can’t advise individuals on their tax compliance. Therefore, we recommend that employees consult a tax professional for advice.



# Glossary



For legal definitions, please refer to the FAML I Statute and all adopted FAML I rules published at [famli.colorado.gov/proposed/adopted-rules](http://famli.colorado.gov/proposed/adopted-rules).

**Covered Individual**

A Colorado worker can be a Covered Individual once they have earned at least \$2,500 in wages subject to premiums within the State, over a period of roughly a year in either the employee’s base period or alternative base period. The FAML I base period is the first four of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year, and the alternative base period is the last four completed calendar quarters immediately preceding the benefit year.  
*Reference: §8-13.3-503 (3) C.R.S.*

**Designated Representative**

A person or entity legally authorized to make decisions on behalf of a claimant, with regard to the FAML I program. That legal authorization may be through written designation from the claimant or through legal status as a parent, guardian, conservator, or power of attorney. If the claimant is unable to file a claim or authorize a designated representative due to the claimant’s medical incapacitation, a claimant’s family member may serve as a designated representative without prior authorization from the claimant. For safe leave applications, the alleged perpetrator of domestic violence, stalking, sexual assault, or sexual abuse may not be the claimant’s designated representative.

**Caring for a new child**

Caring, bonding, and providing the basic needs of a child that is under the age of 18 and sometimes up to the age of 21 if still under jurisdiction of the juvenile court. The FAML I benefit can be used once during the fostering and adopting of the same child. When using leave to “care for a new child,” benefits are limited to parents and individuals standing in loco parentis to the child.

**Employee**

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 FAML I Act’s definition of “employee” includes a two-prong exception. If a person is both primarily free from control in the performance of their work, and that work is part of their independent profession or trade, then that person is not an employee under the FAML I Act, and payments to them would not be subject to premiums.  
*Reference: §8-13.3-503 (7) C.R.S.*

**FAML I**

The Family and Medical Leave Insurance (FAML I) program was voted in by the citizens of Colorado during the 2020 election. The vote was bi-partisan.  
*Colorado law that covers this program is §8-13.3-501 et seq.*

**Family Member**

A covered individual’s child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or someone with whom they have a significant personal bond as described in detail in the [FAML I Benefits Rules 3.4.6](#). Understanding that families are not always traditional, the Division will determine familial relationships by looking to the totality of the circumstances by weighing non-dispositive factors including but not limited to:

- Shared financial responsibilities
- Expectation of care created by the relationship
- Emergency contact designations
- Cohabitation and geographical proximity.



**FMLA**

The Family and Medical Leave Act (FMLA) is a federal program that provides certain qualifying employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave. Colorado's FAML I program is designed to run concurrently with FMLA. Reference: 29 U.S.C. Chapter 28. However, it is important to note that individual FMLA coverage may vary among employees based on hours worked in the prior year.

**Governing Body**

The group of leaders who has the authority to exercise governance over a local government or political subdivision. Examples include but are not limited to: public school boards, board(s) of directors etc. A local government's vote to opt out of FAML I must be conducted by its governing body.

**Local Government**

Any county, city and county, city, or town, whether home rule or statutory, or any school district, special district, authority, or other political subdivision of the state. Charter Schools are considered Local Governments under the FAML I Act. Any government entity with at least one employee in the State Personnel System is NOT considered a Local Government under the FAML I Act. Any government entity for which the state prepaid premiums under 2022 law ([HB22-1133](#)) is NOT a local government.

*References: §29-1-304.5(3)(b) C.R.S., C.R.S. 8-13.3-518(4)(b)*

**Qualifying Exigency Leave**

Leave based on a need arising out of a covered individual's family member's active duty service or notice of an impending call or order to active duty in the armed forces. This type of leave includes things like providing for the care or other needs of the military member's child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member.

**Serious Health Condition**

An illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.

*Reference: §8-13.3-503 (19) C.R.S.*

**Safe Leave**

"Safe leave" means any leave needed because the covered individual or the covered individual's family member is the victim of domestic violence, the victim of stalking, or the victim of sexual assault or abuse as described in 16-11.7-102(3). Individuals applying for "safe leave" to address the needs in response to domestic violence, stalking, sexual assault, or sexual abuse do not need to initially prove that they are a victim of a violent circumstance. Benefits may be awarded based on the victim's good-faith attestation that the need for leave satisfies the elements of the offense. *References: 16-11.7-102(3) C.R.S., §18-3-402 C.R.S. and §8-13.3-503 (20) C.R.S.*



**COLORADO**

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

Department of Labor and Employment