



August 5, 2022

Ms. Tracy Marshall, Colorado FAMLI Division Director
Colorado Department of Labor and Employment
633 17th Street, Suite 600
Denver, Colorado 80202

RE: Colorado FAMLI's proposed benefits rules, 7 CCR 1107-3

Dear Ms. Marshall:

As a leading representative of more than 674,000 small businesses in Colorado, Small Business Majority writes today to comment on the proposed benefits rules of the Paid Family Medical Leave Insurance (FAMLI) program.

Small Business Majority is a national small business organization that empowers Colorado's diverse entrepreneurs to build a thriving and equitable economy. We engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth.

Colorado small business owners and self-employed applicants are thrilled about the establishment of the FAMLI program, given its direct impact in providing and accessing essential benefits, which will greatly impact workforce recruitment and retention. But we would be remiss if we didn't structure FAMLI as a business-friendly program, especially considering the many roles business owners play in their enterprises, with reduced capacity and stressful challenges that arise.

As part of our commitment to support public policy solutions in the small business ecosystem, we would like to highlight the importance of building the FAMLI program as an accessible, affordable, easy-to-use and high-quality program for all.

- We strongly support the proposed rule 3.4(5)(E), which reflects clear and statutory language and does not unduly restrict the right to intermittent leave or require employer consent for specific purposes. Small business owners play many roles in their businesses and cannot often manage complex benefits packages, which is why it should be up to the FAMLI Division to approve or deny paid leave claims.
- The proposed rule's calculation of weekly FAMLI benefits must consider the applicant's entire average weekly wage, including past earnings during the base or alternative base period, to disburse benefits. Hours worked at a small business can fluctuate depending on market conditions and myriad factors, which is why basing FAMLI benefits on a limited time would undermine the program and make it more difficult for applicants to receive paid leave. In fact, we encourage you to design the FAMLI program with a focus on portability to provide greater flexibility for entrepreneurs and their workers who choose to move to different enterprises and/or launch their own.
- Additionally, the FAMLI Division should increase timelines for taking action or asserting the rights of applicants to accommodate unexpected events. Small businesses, the self-employed,

and their workforce need more realistic timelines to gather evidence and file claims to receive FAMLI benefits. Life events are not often foreseeable and can take a toll on applicants' time and capacity. Therefore, imposing short filing timelines on small employers and their employees could dramatically hamper fair competition practices, especially in comparison to larger businesses that may offer their paid leave programs. We recommend the Colorado Department of Labor and Employment (CDLE) adopt a timeframe of at least 45 days after leave begins to file a claim and provide evidence, with the possibility of an extension of up to 90 days for good cause.

- In contrast, CDLE's timeframes to take specific actions, such as evaluating and paying claims, are too long. Such delays in claim processing and disbursement of FAMLI benefits will negatively impact small employers, sole proprietors, and their employees, as qualifying applicants will face challenges paying their bills during this extended waiting period. These delays may also hamper the success of the program, driving businesses to less affordable and accessible private options.
- We urge CDLE to make reasonable efforts to process incomplete claims. Applicants may not be unaware that their claims lack additional documentation or are incomplete, so it's imperative for CDLE to notify applicants of their incomplete applications. Failure to do so will severely impact the program's intended purpose, and therefore put small businesses and other applicants at a disadvantage in receiving proper assistance.
- Furthermore, we are encouraged by CDLE's benefits rules regarding claim appeals. Employers should have the right to appeal a decision on FAMLI benefits, including special requests to appeal a decision on a FAMLI claim before the worker appeals a claim decision. In both circumstances, employers should have a voice and the right to appeal a decision on behalf of their employees or even themselves.
- Small employers, even while being applicants themselves, may not readily know which events qualify applicants to participate in the program. We urge CDLE to help and support small employers in the decision-making process to determine whether an applicant can qualify for FAMLI benefits, thereby making the program much more accessible to all.
- Moreover, we are concerned about the provision in the benefits rules that stipulate applicants may risk eligibility, should they leave the state of Colorado. FAMLI applicants may often be forced to temporarily relocate to care for a family member, adopt a child in a different state, or receive specialized medical care in another state for themselves or a family member. If that were the case, FAMLI applicants should be required to report such changes directly to CDLE, and only permanent relocation outside of Colorado should affect their benefits.

We must ensure that the FAMLI program can effectively serve small businesses, their employees and self-employed applicants. The CDLE must work to remove the employer burden from the decision-making process. Many smaller firms operate with limited staff and do not have the resources to implement such a complex program into their hiring practices. We urge you to release the rules for proposed private plans as soon as possible so that small businesses can begin to plan their upcoming expenses.

We are confident that FAMLI will give small businesses a competitive advantage, but only when CDLE considers the challenges and circumstances surrounding the small business ecosystem.

Sincerely,

Lindsey Vigoda
Colorado Director, Small Business Majority