



STATEMENT FOR THE RECORD BEFORE THE COLORADO DEPARTMENT OF LABOR & EMPLOYMENT, FAMLI DIVISION

October 17, 2023
Lindsey Vigoda, Colorado Director
Small Business Majority

Thank you Tracy Marshall, David Gallivan and Evan Grimes:

My name is Lindsey Vigoda and I'm the Colorado Director for Small Business Majority, a small business organization with offices nationwide, including here in Colorado. Our mission is to empower America's diverse entrepreneurs to build a thriving and equitable economy. I am here to share comments on the Colorado Family and Medical Leave Insurance Program (FAMLI) rulemaking process, particularly around the newest rules that will surely impact small businesses.

As we get closer to the 2024 FAMLI benefit rollout, it's more important than ever to ensure the rules governing this critical program are inclusive, equitable and fair for Coloradans, especially for small business owners, their employees and the self-employed. We are pleased to share comments on how some of these proposed rules can support those who will benefit from the FAMLI program, and how others may severely hamper the program's intended use.

In particular, we're supportive of:

- **7 CCR 1107-3; Requirements Regarding Notice to Employers (3.8.2-5):** A [Small Business Majority survey](#) found nearly two-thirds of Colorado small business owners (64%) support establishing a publicly-administered family and medical leave insurance program in the state. This is a clear need that will be met with the implementation of the FAMLI program, but small employers also need to be able to run a functioning business—even during times when they need to access or provide leave to their employees. This is why we are appreciative of the balance struck in this proposed rule, which will help alleviate the needs of employers while also protecting workers.
- **7 CCR 1107-3; Employer Grievance (3.11.1):** We appreciate this amendment to the rules, to ensure small business owners understand they are not able to object to participating in the FAMLI program, simply because paid family leave may be disruptive to their businesses. This isn't sufficient cause for grievance or objection to provide leave under the statute, and it needs to clarify small employers' rights under the law.
- **7 CCR 1107-5; General Private Plan Requirements (5.3.1 + 6):** We support the Colorado Department of Labor & Employment's move to maintain the current legislation on requirements that mirror the statute and leaves no ambiguity on the FAMLI's standard for approval and compliance. This helps clarify for small employers what constitutes as "same rights, protections and benefits provided to employees by the FAMLI Act." For example, for employers who want to enroll in private paid leave plans instead of the FAMLI program, standards must be set to ensure all leave programs are offering the same benefits set forth by the FAMLI division, and therefore, level the playing field for small businesses.
- **7 CCR 1107-5; Application Requirements and Effective Date of New Private Plans (5.4.7):** We've seen a rise in private plan insolvency in recent months, so we are appreciative of the FAMLI Division's continual forecasting of solvencies for state and privately-owned insurance carriers. When this happens, small employers and their employees are left in a precarious

position where they lose coverage and are stuck with myriad questions they don't know the answers to. In addition, we encourage the FAMLI Division to create requirements for private insurance companies to refer their clients to the state program to access coverage, as stated in the amendments. Many business owners do not have the capacity to check on potential solvencies of their many insurance programs (healthcare, life insurance, and paid family and medical leave) and would need clear guidelines to ensure they are protected.

- **7 CCR 1107-5; Reporting Requirements (5.12.3):** We appreciate the FAMLI Division's proposed amendments that will require disclosures from approved private plans. In particular, we appreciate data collection of gender, race, ethnicity and preferred language for those who are approved to access leave, as well as for those whose leave was denied in part or completely. This allows the Colorado Department of Labor & Employment to properly assess equitable access to FAMLI benefits.

We would also like to comment on the following proposed rules.

- **7 CCR 1107-3; Regular Work Schedule (3.2.16):** The new proposed calculation for a regular work schedule may create some confusion for small employers who have part-time employees. We recommend that the FAMLI Division amend this proposed rule by creating a fallback standard in circumstances where there isn't a "typical" number of hours worked by an entrepreneur or their employees. We suggest a 4-week look back as a fallback method, as it is an appropriate estimate of time worked.
- **7 CCR 1107-5; Private Plan Reporting (5.12.3):** Currently, FAMLI requires a quarterly reporting during the first three years of a private plan's operation. Changing this rule will not only weaken the purpose of reporting on new private plans, but also may lead to violation and compliance issues. We oppose this proposed rule and encourage the FAMLI Division to maintain quarterly reporting, as it will allow the Division to more quickly and accurately identify and respond to such violations. This will also ensure small business owners and their employees are protected and covered.

We appreciate the opportunity to testify and comment on these proposed rules, as it ensures that small business advocates and entrepreneurs can appropriately weigh in on rules that will impact them and their ability to access paid family and medical leave. This is an important program that will help level the playing field for small employers. Your swift action on these proposed rules will dictate the success or failure of the FAMLI program.

Thank you,

Lindsey Vigoda
Colorado Director
Small Business Majority