

**Division of Family And Medical Leave Insurance (FAMLI)**

633 17th Street

Denver, CO 80202-2107 | (303) 318-8441 |

**STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS Regulations Concerning Benefits And Employer Participation Requirements Rules, 7 CCR 1107-3 (2022), as adopted on XXXX, 2022.**

**(1) BASIS.** These rules concerning the Paid Family and Medical Leave Insurance (FAMLI) Rules (or “Rules”) implement and enforce benefits and employer participation provisions under the Paid Family and Medical Leave Insurance Act (“FAMLI Act”), C.R.S. 8-13.3-501 *et seq.*

**(2) SPECIFIC STATUTORY AUTHORITY.** The FAMLI Act tasks the Director of the FAMLI Division with adopting “rules as necessary or as specified in this part 5 to implement and administer this part 5.” C.R.S. 8-13.3-516(6). Adopting rules regarding benefits and employer participation requirements is necessary for the implementation and administration of the FAMLI Act. These rules are intended to be consistent with the requirements of Colorado’s Administrative Procedures Act, C.R.S. 24-4-101, *et seq.*

**(3) FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION.** Pursuant to C.R.S. 24-4-103(4)(b), the Director finds: **(A)** demonstrated need exists for the rules ; **(B)** proper statutory authority exists for the rules; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

**(4) SPECIFIC FINDINGS FOR ADOPTION.**

**(A) 3.1 Statements of Authority, Purpose, and Incorporation by Reference**

This section of the rules describes the authority under which the rules are adopted, the general purpose of the rules, which sources of law and regulation are incorporated by reference, and the severability of any part of the rule held to be invalid.

**(B) Rules 3.2 Definitions and clarifications**

This section defines and clarifies terms used in the FAMLI Act and this proposed rule.

**(C) 3.3. Employer Participation Requirements**

This rule clarifies the requirements for employers to register with the FAMLI Division, submit wage reports to the FAMLI Division, and notify the Division if their business operations end or they otherwise stop employing Colorado workers.

#### **(D) 3.4. Clarifications Regarding Use of Paid Family and Medical Leave Insurance Benefits**

This section of the rules clarifies certain aspects of the use of paid family and medical leave insurance benefits, including (1) limiting such benefits to absences caused by a qualifying condition described at C.R.S. 8-13.3-504(2); (2) determining an individual's status as a "covered individual"; (3) aligning the meaning of "serious health condition" under the FAMLI Act with that under the Family and Medical Leave Act's implementing regulations at 29 C.F.R. 825 *et seq.*, except where those regulations conflict with the FAMLI Act or its implementing regulations; (4) determining whether an individual is a family member under C.R.S. 8-13.3-503(11)(e) because the individual is someone with whom the covered individual has a significant personal bond that is or is like a family relationship; (5) clarifying paid family and medical leave insurance benefits to care for a new child; and (6) clarifying paid family and medical leave insurance benefits for safe leave.

#### **(E) 3.5. Amount, Duration, and Format of Benefits**

This rule clarifies: (1) the calculation of benefit amounts; (2) leave duration; (3) leave formats; and (4) the reduction of paid family and medical leave insurance benefits due to the covered individual receiving benefits from one or more other sources, as will be detailed in forthcoming rules regarding the coordination of benefits, to be published at 7 CCR 1107-4.

#### **(F) 3.6. Applying for Benefits**

This section of the rules clarifies who can apply for benefits, creates application timeframes, establishes documentation requirements based on the qualifying reason for leave, establishes methods by which applications may be submitted, and establishes the conditions under which an application will be considered properly filed.

#### **(G) 3.7. Employer Notification Requirements**

This section clarifies: (1) an employee's obligations with regard to scheduling leave and providing notice to their employer of the leave; (2) what information an employer may require an employee to include in their notice of the leave; (3) the manner of notification; (4) the ability of an employer to establish and impose consequences for failure to

provide adequate notice, so long as the employer posts the program notice required at C.R.S. 8-13.3-511; (5) information the Division will share with the employer, with or without consent from the claimant; and (6) employer obligations regarding the maintenance of confidential medical records.

### **(H) 3.8. Division Review of Applications**

This section clarifies the procedures and timeframes by which the Division adjudicates applications for benefits, notifies employees and employers of the outcome, and pays approved benefits. This section also establishes an applicant's obligation to notify the Division upon commencement of approved leave, where the Division has approved an application in advance of the needed leave.

### **(I) 3.9. Covered Individual Obligations During Leave**

This section (1) establishes a covered individual's obligation to notify the Division of any event that could change the amount or duration of approved leave; (2) describes the Division's right to require additional documentation if the covered individual notifies the Division of an event that would increase the amount or duration of benefits; and (3) establishes a covered individual's obligation to recertify their need for reduced-schedule or intermittent leave every six months.

### **(J) 3.10. Appeals**

This section (1) establishes the process by which a claimant may appeal an adverse claim determination; (2) establishes the powers and duties of hearing officers designated to preside over appeals; (3) establishes the process by which a claimant or an employer may seek judicial review of a hearing officer's decision; (4) establishes the timeframe within which the Division will pay benefits in the event the Division reverses a benefits denial; and (5) clarifies the intersection of pending appeals and the leave and employment protection provided by C.R.S. 8-13.3-509.

### **(K) 3.11. Disqualification from Benefits**

This section: (1) clarifies the circumstances under which the Division may disqualify a covered individual from family and medical leave insurance benefits; (2) describes an individual's right to appeal a disqualification from benefits; (3) establishes the Division's obligation to notify the individual and the individual's employers of the disqualification; and (4) clarifies that an employer of a disqualified individual must still remit premiums for that individual, and remains entitled to require the individual to contribute their share of the premiums in accordance with the FMLI Act.

### **(L) 3.12. Erroneous Payments of Benefits**

This section clarifies the circumstances under which, and the procedures by which, the Division may seek repayment of benefit overpayments.