

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Maryland Department of Labor**
(DLS Control No. 25-195)

Overview and Legal and Fiscal Impact

These regulations implement the claims procedures and notice requirements under the new Family and Medical Leave Insurance (FAMLI) Program. Benefits under the FAMLI program are currently scheduled to begin in July 2026.

The regulations present a potential legal issue of concern. Please see the Legal Issues section of the Legal Analysis below for additional comments.

There is no material fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Department of Labor:

Family and Medical Leave Insurance Program:

Claims: COMAR 09.42.04.01 – .12

Legal Analysis

Background

Chapter 48 of 2022 established the Family and Medical Leave Insurance (FAMLI) Program, to be administered by the FAMLI Division within the Maryland Department of Labor. Chapters 258 and 259 of 2023, Chapters 266 and 267 of 2024, and Chapters 5, 6, and 363 of 2025 made several modifications to the program, including delaying the program's start date. The program provides up to 12 weeks of benefits to a covered individual who is taking leave from employment due to caring for certain family members, the individual's own serious health condition, or a qualifying exigency arising out of a family member's military deployment. The weekly benefit is based on a covered individual's average weekly wage and is indexed to inflation. Required contributions to the program, which are shared between employers and employees, are also based on a covered individual's wages.

An employer may satisfy the legislative requirements through a private employer plan consisting of employer-provided benefits, insurance, or a combination of both if the plan is offered to all eligible employees and is at least equivalent to the rights, protections, and benefits provided to a covered employee under the FAMLI program. If an employer provides covered employees with a private employer plan approved by the division, those covered employees are exempt from the required contributions.

Summary of Regulations

Chapter .04 of Subtitle .42 implements the claims procedures and notice requirements for the FAMLI program.

General

Regulation .01 provides for the applicability of Chapter .04 to equivalent private practice insurance plans (EIPs), which means a FAMLI Division– approved commercially insured or self-insured insurance plan provided by an employer to employees that meets or exceeds the requirements of the State plan, whether the EIP is administered by the employer, a third-party administrator, or a carrier.

Definitions

Regulation .02 defines several terms, which are derived from or related to statutory requirements.

Qualifying Events

Regulation .03 establishes the qualifying events under which an employee may be eligible for FAMLI leave or benefits. Qualifying events conform to the statutory requirements under § 8.3-701 of the Labor and Employment Article, including bonding time with a child, caring for oneself or a family member with a serious health condition, or events pertaining to a service member who is a family member of the employee.

Application Process

An individual who is covered under FAMLI must apply for benefits within the time frames prescribed in the regulation, but those time frames may be waived for good cause. These requirements conform to the statutory requirements in § 8.3-701 of the Labor and Employment Article.

Additionally, Regulation .04 specifies the required documents that a claimant must provide to the FAMLI Division to establish a “complete claim application.” These documents include, for example, personal identifying information for claimants, United States government documentation for servicemember-related qualifying events, a certificate of live birth for birth of a child, and medical information from a licensed health care professional for cases of serious health conditions.

An employer has a specified amount of time to respond to an application after the employer receives notice from the FAMLI Division or an EIP that an employee of the employer has filed a claim. Depending on whether and how the employer responds, a claim may be deemed a complete claim application or an investigation into the claim may occur. Even if an employer responds beyond the initial timeframe, that response may still be considered under specified circumstances.

Claims must be updated within 10 days or as soon as practicable with good cause shown, if (1) a claimant submitted an incomplete claim application; (2) there is information that alters the basis, start date, duration, or end date of leave; or (3) a claimant has started receiving Workers' Compensation or Unemployment Insurance benefits.

Finally, a claimant may withdraw an application for FAMLI benefits and, if necessary, any period of FAMLI leave already taken may be assessed against the claimant's FAMLI leave balance for that application year.

Determination of Length of FAMLI Leave

Regulation .05A provides that a claimant may receive up to 12 weeks of FAMLI leave and benefits per employer per application year (but may receive up to 12 weeks of additional leave and benefits under certain circumstances, the basis for which conforms to statute). As noted in the Legal Issues section below, the language in this part of the regulation may pose a legal issue.

Regulation .05 further specifies the details of the qualifying events under which FAMLI leave and benefits may be used, including providing for the eligible timeframes surrounding the qualifying events, and the type of individual events that fall under a qualifying event that may be eligible, such as medical appointments or legal appointments related to foster care or adoption proceedings.

FAMLI Benefit Calculation

Regulation .06 provides for the calculations of a claimant's average weekly wage and the methods for determining the monetary amount of FAMLI benefits a claimant may receive on a continuous or intermittent basis. The calculation methods generally conform with statutory requirements under § 8.3–703 of the Labor and Employment Article.

Intermittent FAMLI Leave Benefit Request Process

Claims approved for intermittent FAMLI leave and benefits must be submitted within 5 business days of leave being taken or for good cause shown; they may not be taken for less than 4 hours unless the claimant's scheduled shift was for fewer than 4 hours, and benefits will not be issued for requests that significantly exceed the expected duration and frequency listed on a medical certification unless a new certification is provided. Approved claims expire after one year.

Notice Requirements

An employer is required to provide notice about FAMLI leave and benefits to employees as specified in the regulation. These notice requirements conform with statutory provisions under § 8.3-801 of the Labor and Employment Article.

Similarly, an employee is required to provide notice to their employer, with differing requirements depending on whether the need for FAMLI leave is foreseeable or unforeseeable. An employer is deemed to have waived this notice requirement from an employee if the employer

(1) does not invoke it when notified by the FAMLI Division that a claim is filed or (2) fails to inform the employee that notice is required. If an employee fails to provide proper notice of an intermittent leave schedule, the employee may be subject to the employer's absence policy to the extent allowed by the regulation.

Lastly, the FAMLI Division is required to provide notice to employers and claimants as specified by the regulation, the basis for which is generally outlined in § 8.3-703 of the Labor and Employment Article.

Coordination of Benefits

Regulation .09 implements the requirements of § 8.3-702 of the Labor and Employment Article, which establishes when FAMLI leave and benefits may run concurrently with other types of leave and benefits, such as leave under the federal Family and Medical Leave Act and employer-provided leave and benefits. The regulation generally conforms with statute but provides more detail.

An employer may require an employee to use "alternative family purpose leave" (AFPL), an employer-provided leave which is a separate bank of time off for certain defined purposes, and FAMLI leave concurrently or in coordination with each other, if the employer provides written notice of this requirement to the employee. The ways in which AFPL may interact with FAMLI is specified in the regulation.

An employer may not require employer-provided "general purpose leave" to be used in substitution of FAMLI leave; however, the leave can be used to supplement FAMLI benefits up to 100% of the employee's average weekly wage. The methods for supplementing in this way are specified in the regulation. A mutual agreement between the employer and employee must be in place before general purpose leave may be supplemented with FAMLI leave.

As provided in statute, FAMLI leave and benefits may not be received if the individual is also receiving Workers' Compensation or Unemployment Insurance benefits.

Benefit Payment Process

The regulations implement certain requirements under §§ 8.3-703 and 8.3-902 of the Labor and Employment Article pertaining to FAMLI payment scheduling and repayments of overpaid benefits, in addition to establishing more detailed procedures relating to payments and overpayments that are not contained in law. The regulations establish notice requirements to inform claimants of possible overpayment; a claimant then has 30 days to agree to pay or request a waiver of repayment. If the waiver is denied, the claimant may request a reconsideration.

If an EPIP seeks reimbursement for an overpayment, the EPIP administrator must notify the FAMLI Division simultaneously with its notice to the claimant. If a claimant's employer has terminated enrollment in the State FAMLI plan and enrolled in an EPIP, any claimant who filed a valid claim for benefits under the State plan before the effective date of the employer's EPIP enrollment must be paid or continue to be paid benefits from and under the terms of the State plan

until the total amount of the benefit claim is paid, the duration of leave ends, or the application year ends, whichever occurs first.

Finding of Fraud After Benefit Approval

If benefits are approved and issued and job and anti-retaliation provisions have attached in accordance with statute and subsequently, fraud is proven, then (1) any benefits issued will be treated as overpayment, and (2) job and anti-retaliation protections do not apply.

Special EPIP Provisions

For EIPs, Regulation .12 provides that, to the extent the claim procedures, including timelines and good cause, outlined in Chapter .04 are more restrictive with respect to claimants than those claim procedures outlined by the Maryland Insurance Administration, the administration's procedures are controlling.

Also relating to EIPs, to the extent the claim procedures, including notice requirements and for good cause, outlined in Chapter .04 are less restrictive with respect to employers and carriers than those claim procedures outlined by the administration, the administration's procedures are controlling.

Legal Issues

It is the opinion of the Department of Legislative Services that Regulation .05A(1) likely presents a legal issue with respect to legislative intent. Specifically, subsection (1) states: "Except as outlined in §A(2) of this Regulation, any claimant may receive up to 12 weeks of FAML leave *per employer* per application year." Section 8.3-702(a)(1) of the Labor and Employment Article is the relevant authorizing statutory provision and states "Except as provided in paragraph (2) of this subsection, a covered individual may not receive more than 12 weeks of benefits in an application year." While it may be possible that the plain language of the statute allows for the Maryland Department of Labor's interpretation, the legislative intent may not.

According to the department, the *per employer* language in the regulation means that if a claimant has worked the requisite 680 hours combined across multiple employers in the claimant's base period (the four most recently completed calendar quarters before FAML leave begins) then, within the same application year of 12 months, the claimant may receive up to 12 weeks of FAML leave and benefits from each employer that employs the claimant during that application year. This potentially allows for scenarios to exist where a claimant may receive more than the statutory 12 weeks of FAML leave and benefits seemingly intended by the General Assembly with the passage of Chapter 48 of 2022 and subsequent amending laws (both statute and regulation allow for up to 12 additional weeks – 24 weeks total – of FAML leave and benefits under certain circumstances, but that is separate from the situation potentially created by the "*per employer*" language). For example, the department indicates that a claimant may receive up to 12 weeks of FAML leave and benefits from multiple different employers if the claimant holds multiple jobs simultaneously, but also for multiple periods of employment at different employers occurring consecutively to each other.

In response to the legal issue raised by the Department of Legislative Services, the department responded that it would proceed with the *per employer* language as proposed in the regulations; it had not relied on the legislative record when developing this language, but rather it considered practical and administrative concerns.

Statutory Authority and Legislative Intent

The department cites §§ 8.3-101, 8.3-403, 8.3-701, 8.3-702, 8.3-703, and 8.3-902 of the Labor and Employment Article as statutory authority for the regulations. Section 8.3-101 generally provides definitions that mirror those in the regulations. Section 8.3-403 generally establishes procedures for the claim filing process itself, while also requiring the Secretary of Labor to establish procedures regarding various matters such as claim filing procedures and notice requirements. More specifically, § 8.3-403(a)(1) requires the Secretary, in consultation with other State agencies and relevant stakeholders, to adopt regulations necessary to carry out Title 8.3 of the Labor and Employment Article. Section 8.3-701 establishes the reasons for which an individual may apply for FAMLI leave and benefits, as well as providing notice requirements and procedures for using intermittent leave. Section 8.3-702 provides for the usage of employer-provided and federally provided benefits in concurrence with FAMLI leave and benefits. Lastly, § 8.3-902 authorizes the department to seek repayment of benefits and for the Secretary of Labor to waive repayments.

Although not cited by the department, § 8.3-703 of the Labor and Employment Article provides for the calculation of FAMLI benefits and establishes other notice requirements relevant to the regulations and § 8.3-801 requires employers to provide notice to employees about FAMLI at times specified under law, which are incorporated in the regulations.

With the addition of §§ 8.3-703 and 8.3-801 of the Labor and Employment Article, this authority is correct and complete. Except as noted in the Legal Issues section above, the regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs as the fiscal impact of the regulations was already assumed in the fiscal and policy note for Senate Bill 275 of 2022 (Chapter 48), which established the FAMLI Program. The FAMLI Program was modified by Senate Bill 828 and House Bill 988 of 2023 (Chapters 259 and 258), Senate Bill 485 and House Bill 571 of 2024 (Chapters 266 and 267), and House Bill 102 of 2025 (Chapter 363), which most recently further delayed the program's start dates.

Under Chapter 363, employer and employee contributions to the program begin on January 1, 2027, and claims for benefits begin no later than January 3, 2028, as determined and announced by the Secretary of Labor. The 18-month delay in FAML I contributions means that FAML I Fund revenues are not available to support the program during that time. The fiscal and policy note for Chapter 363 estimates general fund expenditures for the Maryland Department of Labor increase by \$37.3 million in fiscal 2026 to fund existing personnel, contracts, and related FAML I expenses that cannot be deferred; the fiscal 2026 budget includes a contingent \$37.3 million general fund appropriation, effectuated by Chapter 363.

The fiscal and policy note for Senate Bill 275 of 2022 assumed special fund expenditures would increase by at least \$685.1 million on an annual basis once benefit payments commence, but that the actual benefit payments could vary significantly because they depend on the number of employers opting to have private plans, the number of employees claiming FAML I benefits, the wages of those employees, and the number of days for which employees take leave. More recently, the fiscal and policy note for House Bill 102 of 2025 estimated that special fund expenditures will total up to \$1.8 billion in the first full year that benefits commence, though the actual amount will be less since the State as an employer will self-insure, along with other employers participating in private plans. The actual amount cannot be reliably quantified at this time.

Impact on Budget

There is no material impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs as the fiscal and policy note for Senate Bill 275 of 2022 already accounted for a meaningful impact on small businesses as a result of establishing the FAML I Program. The fiscal and policy note stated that, by establishing a FAML I Program, more employees may take leave and take leave for longer periods of time. There is no new impact due to these regulations.

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