

**FAMLI Program FAQ, with Example Resolution and Notification Letter:**

*July 25, 2022*

*September 1, 2022 (updates to the July 25, 2022 in redlines), the updates are:*

- The Employer Portal is not yet ready, but the Division is taking requests for early access; and*
- The Division has published a Local Government Guide that may be useful for your District.*

*September 7, 2022 (updates to the July 25, 2022 in greenlines), the updates are:*

- Link to new employer poster; and*
- Link to the Division’s post-vote employee notification template.*

*September 9, 2022 (updates to the July 25, 2022 in purplelines), the updates are:*

- Link to Division’s Local Government FAQs (already below); and*
- Reminder that these FAQs include the Division’s clarification on whether a District Board Director’s are “employees” under FAMLI.*

These two Q&A sections below address some general questions about the Colorado Family Medical Leave Insurance (FAMLI) Program and overview local government employer options. Also, below are examples of a Resolution to Opt-Out of the FAMLI Program and a companion Notification to Employees of the opt-out action.

This information is provided as an SDA Member service; it is not intended as legal advice. If you have questions or need assistance, please reach out to your district’s legal counsel, human resource professionals, or use CSD Pool resources if your district is a Pool Member.

If your District elects to opt-out of the FAMLI Program, your District Board **must take action** to notify the Division of Family Medical Leave Insurance (the “Division”) **before January 1, 2023** to avoid automatic enrollment and premium payment obligation.

**I. General information about FAMLI**

| <b>Question</b>                            | <b>Answer</b>  |
|--|--|
| What is FAMLI?                             | The Colorado Family Medical Leave Insurance (FAMLI) Program was approved at the 2020 statewide election and generally requires payment of payroll premiums starting <u>January 1, 2023</u> , to provide up to twelve (12) weeks of paid FAMLI leave beginning <u>January 1, 2024</u> . |
| What agency is administering this program? | The Division of Family Medical Leave Insurance (the “Division”) in the Colorado Department of Labor and Employment is administering the FAMLI Program.<br><br>The Division has an active <a href="#">webpage</a> , with training and information.                                      |
| To which employers                         | Unlike the federal Family and Medical Leave Act (FMLA), the new  |

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| <p>does this apply?</p>  | <p>Colorado FAMLI requirement applies to employers of any size, public or private.</p> <p>There are exceptions from participating for:</p> <ul style="list-style-type: none"> <li>• employers providing leave through a private plan that meets or exceeds the requirements of FAMLI, or</li> <li>• local government employers declining to participate. <i>See below.</i></li> </ul>  |
| <p>How are premiums collected and benefits paid?</p>                     | <p>In general, employers and employees will both pay premiums, which is similar to unemployment benefits (UI).</p> <ul style="list-style-type: none"> <li>• Employers with 10 or more employees will pay a premium of 0.45% of wages.</li> <li>• Employers with fewer than 10 employees will not pay an employer premium.</li> <li>• Employees will pay a premium of 0.45% of wages.</li> </ul> <p>Employers will collect and remit employee premiums, unless the employer has been granted a waiver or is a local government employer that has opted-out entirely.</p>  |
| <p>How do employees get paid?</p>  | <p>Similar to UI, employees make a claim to the Division for FAMLI benefits and will be paid through the FAMLI Program during their leave (rather than being paid by the employer.)</p>  |
| <p>How does leave under FAMLI differ from other types of paid leave?</p> | <p>The Division has information and training on this issue. The March 31, 2022 Division webinar may be viewed at this <a href="#">link</a>, the slides are available at this <a href="#">link</a>, and the FAQs are <a href="#">here</a>.</p> <p>The Division FAQ document responds to a lot of questions on how leave benefits under FAMLI may differ or interact with federal FMLA and other types of paid sick leave or paid time off.</p> <p>Materials from the March 31, 2022 webinar indicate that additional information, including a matrix describing how leave programs may interact, will be published in 2023.</p> |

**II. Local government employer options**

The Division has a page dedicated to Local Governments [here](#), which provides an overview of timelines, [FAQs](#), a [Fact Sheet](#), and other information. Earlier this year, the Division adopted the [Local Government Opt-Out rule](#) that provides direction to local government employers, including special districts, that choose to participate or decline to participate in the FAMLI Program.

*[July Update: the Division’s Local Government FAQ is updated continuously, so if you have a question that was not previously addressed, check the FAQ link for new information – and feel*

free to send the Division any additional questions that are not yet on the FAQ page and consider cc.ing your SDA colleagues.]

[September Update: the Division has published a “Local Government Guide” [here](#).]

The Division conducted a “FAMLI and Local Governments” webinar on April 29, 2022. A recording of that webinar is available [here](#), the slides are available [here](#), and the Division guidance document, “Preparing for FAMLI – Local Governments,” is available at this [link](#). The Division conducted a training for the Special Districts Association of Colorado on June 17, 2022, a recording of this webinar is available at the SDA website [here](#).

| Question   | Answer  |
|--|---|
| <p>What options does a local government employer have?</p>                             | <p>1. Participate in FAMLI<br/>                 2. Decline participation in FAMLI<br/>                 3. Decline employer participation in FAMLI</p> <p><i>See below for more information on each option.</i></p> <p><i>Please also note that employers providing the same or better benefits may apply for an <del>waiver</del> exemption; however, as of the publication of this FAQ, the Division has not yet provided specific guidance on <del>waivers</del> exemptions but has indicated that rulemaking on this process will likely occur in late <del>May and June</del> 2023. Local government employers that are changing or expanding family leave benefits may choose to opt-out and adopt benefits changes locally, rather than pursue an exemption-for-same-or-better-leave-benefits. For example, the City and County decided to opt-out and to expand a city paid leave program.</i></p> |
| <p>Option 1: how does a local government employer participate?</p>                     | <p>A local government employer which does not notify the Division by January 1, 2023 will be identified by the Division as participants.</p> <p>Premiums starting on January 1, 2023 will be due on April 1, 2023, along with wage data reporting.</p>  |
| <p>Option 2: how does a local government employer decline to participate entirely?</p> | <ul style="list-style-type: none"> <li>• The Board of Directors of the special district must vote (official action, public meeting) to opt-out; and</li> <li>• Before January 1, 2023, notify the Division of the vote by uploading into the Division’s online system a letter on special district letterhead, reporting:                         <ul style="list-style-type: none"> <li>○ the date of the vote,</li> <li>○ the result, and</li> <li>○ that the special district is opting-out of the employer obligation, including collecting and remitting employee premiums.</li> </ul> </li> </ul> <p><i>The Division’s online system will not be available until fall of 2022. If your district chooses to opt-out earlier than the fall, please note</i></p>   |

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|  | <p><i>the requirement 30 days' notice to employees of the vote below.</i></p> <p><i>Please note that on August 31, 2022 the Division released a process to request early access to My FAMLII+ at this <a href="#">link</a>, the employer portal at which special district employers will register, whether participating in the FAMLII Program or not.</i></p>  |
| <p>Option 2: how does a local government employer decline to participate by paying the employer premium, but agreeing to collect and remit the employee premium?</p> | <ul style="list-style-type: none"> <li>• The Board of Directors of the special district must vote (official action, public meeting) to opt-out; and</li> <li>• Notify the Division of the vote by uploading into the Division's online system a letter on special district letterhead, reporting: <ul style="list-style-type: none"> <li>○ the date of the vote,</li> <li>○ the result, and</li> <li>○ that the special district is opting-out of the employer obligation, but will be collecting and remitting employee premiums for employees wishing to participate.</li> </ul> </li> </ul> <p><i>The Division's online system will not be available until fall of 2022. If your district chooses to opt-out earlier than the fall, please note the requirement 30 days' notice to employees of the vote below.</i></p>  |
| <p>What time frames apply for local government employers?</p>  | <ul style="list-style-type: none"> <li>• An official action to exercise opt-out in the near term can occur at any time in 2022.</li> <li>• A local government proposing to opt-out must provide notice of the public meeting <u>and</u> give written notice to employees prior to the meeting with information regarding the vote process and the opportunity to submit comments through a public process to the governing body. <i>See "Discussion – Advance Notice to Employees of the Public Meeting" below for further explanation and see § 2.6.A.2. of the Local Government Opt-Out Rule.</i></li> <li>• A local government employer must provide notice of the Board's decision to the opt-out of the FAMLII program to its employees within <b>30 days</b> after the vote on the resolution. This notice should be posted; however, if the local government employer does not maintain a physical workspace, or an employee teleworks, electronic mail or web-based notification may be substituted. Written notice must: (1) explain the differences between benefits offered by the FAMLII program and leave plans of the employer; (2) state which employees, if any, are eligible for federal FMLA; (3) provide information regarding the right of employees to voluntarily opt into the FAMLII program with contact information for the Division. <i>Additional information and procedures are further explained in the below Post-Vote Employee Notification Example and see §§ 2.6.A.3. and 2.6.A.4. of the Local Government Opt-Out Rule.</i></li> <li>• The opt-out action of a local government employer may last for up to eight (8) years.</li> </ul> |

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|                                  | <ul style="list-style-type: none"><li>• A local government that participates must stay in the FAMLI Program for at least three (3) years.</li><li>• An opt-out action in 2022 does not require advanced notice to employees. But, after benefits begin in 2024, a local government employer must give 180 days’ advance notice to employee before any change.</li><li>• When a local government employer participating in the FAMLI Program (again, minimum 3 years) decides later to opt-out, it must give the Division 90 days’ advance notice.</li></ul>   |
| Are Board Directors “employees”? | <p>The Division posted their response to the question about whether elected officials are “employees” for purposes of FAMLI <a href="#">here</a>. Below is the relevant portion of that FAQ:</p> <p><b><u>Are elected officials counted in employment numbers?</u></b></p> <p>The FAMLI 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 considered an employee under the FAMLI Act. <u>Elected officials will generally satisfy this two-prong exception and should not be counted as employees, and payments made to them for their services will not be subject to premiums.</u></p> |

## **Discussion – Advance Notice to Employees of the Public Meeting**

*This is a discussion of the required written, advanced notice to employees of a public meeting at which a resolution to decline participation in the FAMLI Program [declining any and all participation; or declining but willing to facilitate the collection and remittance of employee-premiums] is under consideration for a vote. This discussion is provided as a member service; any drafting or legal questions should be referred to your District's general counsel.*

*Please note that, of the date of the publication of this document, the Division has not provided additional guidance on this written, advanced notice to employees other than the text of the Local Government Opt-Out Rule.*

### **What Advanced Notice to Employees Is Required?**

*See § 2.6.A.2. of the Local Government Opt-Out Rule, [7 CCR 1107-2](#), which sets forth that notice of the public meeting at which a resolution is under consideration should be provided under the District's notice procedures, as well as providing written notice to employees in advance of the public meeting with information regarding the vote process and the opportunity to submit comments through a public process to the governing body.*

### **Method of Written Notice?**

*§ 2.6.A.2. of the Local Government Opt-Out Rule does not specify if written, advanced notice must be in hard copy or if it may be made by e-mail. It may be reasonable to follow the same method of communication for this notice as your District would typically use to communicate other employment or benefits information to employees.*

### **From Whom Is Notice Sent?**

*§ 2.6.A.2. of the Local Government Opt-Out Rule does not specify from whom the written, advanced notice should be sent. It may be reasonable to direct the District employee or official who would typically communicate about employment or benefits information employees to send this notice.*

*Some Districts considering a proposal to decline participation in the FAMLI Program may choose to send notice well in advance and/or to send the information out more than one time.*

### **What Information Is Required?**

*§ 2.6.A.2. of the Local Government Opt-Out Rule only specifies that the required written, advanced notice must include information regarding the vote process and the opportunity to submit comments through a public process.*

*Some Districts considering a proposal to decline participation in the FAMLI Program may choose to provide similar information to employees as would be included in the post-*

*vote notice, as well as a copy of the proposed resolution, and an explanation of procedures adopted or used by the District Board of Directors to take public comment.*

**Example – Resolution**

*This is an example provided as a member service; any drafting or legal questions should be referred to your District’s general counsel.*

**Declining All Participation or Willing to Facilitate Employee Premiums?**

*In the below, please note that the resolution should indicate whether the local government employer is declining all participation in the FAMLI Program or whether it is declining to participate as an employer (no employer contribution), but willing to facilitate the collection and remittance of the employee-premiums of its employees choosing to participate.*

**Typical Notice of Public Meeting and Advanced Notice to Employees**

*Please note that the § 2.6.A.2. of the Local Government Opt-Out Rule, [7 CCR 1107-2](#), requires typical public notice of the meeting be provided, as well as providing written notice to employees in advance of the public meeting with information regarding the vote process and the opportunity to submit comments through a public process to the governing body.*

**Filing Notification of the Vote with the Division**

*As of the date of the publication of this document, the Division has not yet deployed the Online Employer Service System, (My FAMLI+) through which all employers must register. **Please note that on August 31, 2022 the Division released a process to request early access to My FAMLI+ at this [link](#), the employer portal at which special district employers will register, whether participating in the FAMLI Program or not.***

*~~This My FAMLI+~~ is the system on which any District declining participation must both register and upload a letter of notification to the Division of the District’s Resolution – and date thereof – to Decline Participation. See § 2.5. of the Local Government Opt-Out Rule.*

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**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION DECLINING *[declining any and all employer participation; or declining participation as an employer, but willing to facilitate employee premiums]* PARTICIPATION  
IN THE COLORADO PAID FAMILY AND MEDICAL LEAVE INSURANCE  
PROGRAM**

WHEREAS, in November of 2020, Colorado voters approved Proposition 118, codified in Part 5, Article 13.3 of Title 8, Colorado Revised Statutes (C.R.S.), establishing the Family and Medical Leave Insurance (“FAMLI”) Program, a state insurance plan providing paid leave for Colorado workers during certain life circumstances; and



WHEREAS, under the FAMLI Program, employers and their employees are both responsible for funding the program and may split the cost 50/50; the premiums are set at 0.9% of the employee's wage, with 0.45% paid by the employer and 0.45% paid by the employee; and

WHEREAS, the premiums required for FAMLI will be collected starting January 1, 2023, and benefits will begin January 1, 2024; and

WHEREAS, as a local government as defined by C.R.S. §§ 8-13.3-503(14) and 29-1-304.5(3)(b), the *[official name or designation of the special district, the "District"]* may decline to participate in FAMLI following a public hearing and vote of its governing body pursuant to C.R.S. § 8-13.3-522; and

*[Option 1 – District declines or opt-outs entirely – no facilitating/withholding premiums and submitting employee contributions]* WHEREAS, should the District decline to participate in FAMLI, its employees will still have the option to participate in the program and remit premiums to the State; **OR** *[Option 2 – District declines employer participation – but will facilitate/withhold premiums and submit employee contributions]* WHEREAS, should the District decline participation in the FAMLI Program as an employer and the statutory provisions of the FAMLI Program will not apply, the District may facilitate the premiums for any of its employees choosing to participate individually in the FAMLI Program; and

WHEREAS, at a public meeting held *[date of the resolution]*, the Board of Directors held a public hearing on the decision whether to participate in FAMLI; and

WHEREAS, *[the Resolution could include other findings regarding cost of participation, limited resources/revenues, inflation, other cost-drivers, or the benefits or short-term disability coverage currently provided ...]*; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE DISTRICT AS FOLLOWS:

1. The Board of Directors finds and determines that, with regard to the public hearing on the decision of whether to decline participation in FAMLI, notice was given and the hearing was conducted in accordance with the regulations adopted by the Colorado Department of Labor and Employment and codified at 7 CCR 1107-2.
2. *[Option 1 – District declines or opt-outs entirely – no facilitating/withholding premiums and submitting employee contributions]* The Board of Directors, acting by and on behalf of the District, declines any and all participation in the FAMLI Program.

**OR**

*[Option 2 – District declines employer participation – but will facilitate/withhold premiums and submit employee contributions]* The Board of Directors, acting by and on behalf of the District, declines participation in the FAMLI Program as an employer, but will collect and remit employee premiums to the State for those employees who elect coverage under FAMLI.

3. The Board of Directors further directs its staff to bring the matter of revisiting the decision to decline participation in FAMLI before a future Board by no later than eight years from the date of the vote on this Resolution 2022-\_\_\_\_\_.

APPROVED AND ADOPTED this \_\_\_\_\_day of \_\_\_\_\_, 2022 by the Board of Directors of *[official name or designation of the special district]*.

*[Signatures and Attestations]*

## Example – Post-Vote Notification to Employees

*This is an example provided as a member service; any drafting or legal questions should be referred to your District’s general counsel.*

*See §§ 2.6.A.3. and 2.6.A.4. of the Local Government Opt-Out Rule, [7 CCR 1107-2](#), for the provisions related to this post-vote notice requirement.*

*Per §2.6.A.4. of the Local Government Opt-Out Rule, ~~indicates that~~ the Division ~~posted will create and make available~~ a posters and template notices in early September on its website to meet the post-vote notice to employees requirement; ~~however, as of the date of the publication of this document, no such posters or notices have been published.~~ The link to the poster is [here](#) and the link to the Division post-notice to employee template is [here](#).*

*Please note that the Division’s post-vote notice template to employees is a different approach to the SDA example below. First, SDA example includes the date on which the action passing or adopting the Resolution occurred. Second, the Division post-vote notice template gives an alternative to setting out a list of differences between the District’s benefits and FAMILI, which is that the employer does not offer a paid family and medical leave plan and directs employees to “see more information” on how to opt-in as an individual. Third, the Division’s template includes more explanation of how an employee wishing to opt-in would do so. Forth, the Division template includes language to encourage employees to contact an human resources representative with questions – your District may or may not have such a person on staff, or may have someone else in a finance or other role that handles benefits matters. Finally, the Division’s template explains the FMLA at the end (rather than in the comparison of benefits section).*

*The Division has indicated that it will publish a leave chart which illustrates how other types of paid leave will interact with FAMILI leave (does other leave run concurrently with FAMILI Leave) in the fall of 2022. That information may be useful to include, when available, in the individualized post-vote notification to employees.*

### **Declining All Participation or Willing to Facilitate Employee Premiums?**

*In the below, please note that the notification should indicate whether the local government employer is declining all participation in the FAMILI Program or whether it is declining to participate as an employer (no employer contribution), but willing to facilitate the collection and remittance of the employee-premiums of its employees choosing to participate.*

### **When, How, and What Notice to Employees Is Required?**

*A local government employer must provide notice of the Board’s decision to the opt-out of the FAMILI program to its employees within 30 days after the vote on the resolution.*

*The Local Government Opt-Out Rule requires that this post-vote notice must be provided to employees individually as well as being posted in a conspicuous and accessible place in each establishment where employees are employed. However, if the local government employer does not maintain a physical workspace, or an employee teleworks, electronic mail or web-based notification may be substituted. Notice will be in English and in any language representing the first language spoken by at least 5% of employees.*

Written notice must:

- (1) inform the employee of the vote and explain the differences between benefits offered by the FAML I program and leave plans of the employer;*
- (2) state which employees, if any, are eligible for federal FMLA; and*
- (3) provide information regarding the right of employees to voluntarily opt into the FAML I program with contact information for the Division.*

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**NOTICE TO EMPLOYEES OF THE DECISION TO DECLINE PARTICIPATION IN THE FAMILY AND MEDICAL LEAVE INSURANCE (FAML I) PROGRAM, AND THE RIGHT TO VOLUNTARILY OPT INTO THE FAML I PROGRAM**

Notice is hereby given to District Employees that a vote on Resolution No. \_\_\_\_\_ was held on \_\_\_\_\_, 2022, in which the Board of Directors *[declined participation or declined participation, but will facilitate withholding and remittance of the premiums of individual employees opting in]* in the Family and Medical Leave Insurance (“FAML I”) Program. This notice explains how the vote affects employees' rights and benefits.

*Date of providing notice to employees, including posting notice when and where required: \_\_\_\_\_ (this date is within 30 days of the vote on Resolution No. \_\_\_\_\_). [The Division’s template includes this, which is not expressly required by the Local Government Opt-Out Rule, but may be helpful if any questions about timely notice and posting come up.]*

**I. LEAVE COMPARISON: FAML I PROGRAM, DISTRICT’S LEAVE PROGRAM**

**The FAML I Program**

Under the FAML I Program, covered individuals may take up to 12 weeks of paid aggregate family/medical leave (up to 16 weeks for pregnancy complications) in a 12-month period for:

- Birth, adoption, placement, care of a new child during first year after birth, adoption or foster care;
- Care for a family member with a “serious health condition” (including pregnancy);
- An employee’s own serious health condition;
- Exigency leave (active duty military; post deployment or death); or
- Safe leave (employee or employee’s family member is the victim of domestic abuse, stalking or sexual assault/abuse)

Employers participating in FAMLI Program must submit insurance premiums to the state starting on January 1, 2023 through a payroll premium split between employers and employees. Paid leave benefits start no sooner than January 1, 2024. Paid leave is a partial income replacement as follows: 90% of an employee’s average weekly wage for the portion of their wages equal to or less than 50% of the state average weekly wage; and 50% of the portion of their wages that exceeds the state average weekly wage. The maximum weekly benefit is \$1,100. For more information, see the FAMLI Premium and Benefits Calculator: <https://famli.colorado.gov/individuals-and-families/premium-and-benefits-calculator>.

The District has *[declined participation or declined participation, but will facilitate withholding and remittance of the premiums of individual employees opting in. If declining all participation, consider inserting this statement: “The District is not responsible for deducting an employee’s premium or to forward the premium to the FAMLI Division.” If declining participation, but willing to facilitate employee premiums, consider inserting this statement: “The District has declined to participate in the FAMLI Program as an employer; however, if an employee wishes to opt in to the FAMLI Program individually, the District is willing to facilitate the collection of the employee’s individual premium and to remit it to the Division on behalf of the employee.”]*

### **District Employee Benefit Program**

Paid Holidays of the District are:

- ...
- ...
- ...

The Paid Sick/Personal Leave Policy of the District is:

*[Explanation of District’s Paid Sick/Personal or Paid Leave Program – how many hours annually by FTE, when can leave be used, can the leave be carried over]*

The Paid Vacation Leave Policy of the District is:

*[Explanation of District’s Vacation Leave Program – how many hours annually by FTE, when can leave be used, can the leave be carried over]*

Short-Term Disability Coverage:

*[Explanation of any short-term disability coverage, and eligibility therefore, that the District has in place]*

Long-Term Disability Coverage:

*[Explanation of any long-term disability coverage, and eligibility therefore, that the District has in place]*

Workers' Compensation:

*[Explanation of the Workers' Compensation program]*

Federal Family Medical Leave Act (FMLA):

*[Explanation of FMLA and to which employees the protections apply]*

*[If your District has other employee benefits, list and provide a description]*

*[It may be helpful to refer to other, more detailed policies of the District, with a statement such as: "District employees should refer to the District's Personnel Guidelines/Employment Manual for more details."]*

## **II. EMPLOYEE'S RIGHT TO VOLUNTARILY OPT-IN AS AN INDIVIDUAL PARTICIPANT**

Even though the District has declined participation in the FAMLI Program, a District employee may individually opt into the program by contacting the FAMLI Division at [CDLE FAMLI info@state.co.us](mailto:CDLE_FAMLI_info@state.co.us).

*[If the District is not going to facilitate the collection and remittance to the state of the premiums of individually opting-in employees, consider including the following statement: "PLEASE NOTE: Any District employee voluntarily opting into the program as an individual will be responsible to remit premiums directly to the State of Colorado. The District will not be deducting the premium from paychecks nor will it remit any premium payments on your behalf to the State."]*

*[The Division's template includes more description of the individual participation process, which is not expressly required by the Local Government Opt-Out Rule. If your District wishes to include more description, please refer to the Division's post-vote notice to employees template at this [link](#).]*