

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING PRIVATE PLANS

7 CCR 1107-5

5.1. Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section 8-13.3-501 C.R.S. et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S. and the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 et seq. (the "FAMLI Act"), C.R.S.
2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. 8-13.3-501 et seq.) with regard to private plans.
3. Articles 4 and 13.3 of C.R.S. Title 8 (2022) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.
4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

5.2. Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.
2. "Additional conditions or restrictions" as used in C.R.S. 8-13.3-521(1)(i) means material conditions or restrictions, and does not include incidental conditions or restrictions that do not interfere with, restrict, or lessen an employee's rights under FAMLI Act.
3. "Adverse determination" means either a complete denial of benefits, or a determination to award a claimant benefits in a frequency or duration less than the claimant requested, or a determination to award a wage replacement amount less than what the claimant believes they are entitled to under the FAMLI Act and its implementing regulations.

4. "Insurer approved by the state" as used in C.R.S. 8-13.3-521(2)(c) and these rules means an insurance provider licensed by the Division of Insurance within the Colorado Department of Regulatory Agencies, and in good standing with the Division of Insurance in accordance with its regulations.
5. "Private plan administrator" means an entity or individual tasked with the administration of an approved private plan, and can include the employer, a contracted benefits administrator, a labor union, and/or an insurer approved by the state.
6. "Rights, protections, and benefits provided to employees under this part 5" as used in 521(1) includes any rights, protections, and benefits conferred by rules promulgated under the FMLI Act.
7. "Wages subject to premiums under this part 5" as used in C.R.S. 8-13.3-503(3)(a) include wages paid to an employee by an employer with an approved private plan, wages paid to an employee by an employer under the state plan, and income earned from either self employment or local government employment by individuals who have elected coverage pursuant to C.R.S. 8-13.3-514.

5.3. Private Plan Requirements

1. An employer may comply with the FMLI Act by providing an approved private plan that provides all of the same rights, protections and benefits provided to employees by the FMLI Act, including but not limited to:
 - A. Allowing family and medical leave insurance benefits to be taken for all purposes specified in C.R.S. 8-13.3-504(2);
 - B. Providing family and medical leave insurance benefits to a covered individual for any of the purposes, including multiple purposes in the aggregate, as set forth in C.R.S. 8-13.3-504(2), for the maximum number of weeks required in C.R.S. 8-13.3-505(1) in a benefit year as defined in 7 CCR 1107-3 Section 3.2.4;
 - C. Allowing family and medical leave insurance benefits under C.R.S. 8-13.3-504(2)(b) to be taken to care for any family member as defined under C.R.S. 13.3-503(11) and 7 CCR 1107-3 Section 3.4.6;
 - D. Allowing family and medical leave insurance benefits under C.R.S. 8-13.3-504(2)(c) to be taken by a covered individual with any serious health condition;
 - E. Allowing family and medical leave insurance benefits under C.R.S. 8-13.3-504(2)(e) to be taken for any safe leave purposes;
 - F. Providing a wage replacement rate for all family and medical leave insurance benefits of at least the amount required by C.R.S. 8-13.3-506(1)(a);
 - G. Providing a maximum weekly benefit for all family and medical leave insurance benefits of at least the amount specified in C.R.S. 8-13.3-506(1)(b);
 - H. Allowing a covered individual to take intermittent leave as authorized by C.R.S. 8-13.3-505(3) or a reduced leave schedule pursuant to 7 CCR 1107-3;

- I. Imposing no additional conditions or restrictions on family and medical leave insurance benefits, or paid family and medical leave taken in connection therewith, beyond those explicitly authorized by the FMLI Act or regulations issued pursuant to the FMLI Act;
 - J. Allowing any employee covered under the private plan who is eligible for family and medical leave insurance benefits under the FMLI Act to receive benefits and take paid family and medical leave under the private plan; and
 - K. Providing that the cost to employees covered by a private plan shall not be greater than the cost charged to employees under the state plan under C.R.S. 8-13.3-507.
2. An approved private plan shall be in the form of either self-insurance or a policy obtained through an insurer approved by the state.
 3. Private plans must offer benefits to all covered individuals employed by the employer. Nothing prohibits a private plan from covering multiple employers' workforces.
 4. The earnings requirement necessary to be a "covered individual" pursuant to C.R.S. 8-13.3-503(3)(a)(l) is not "per-employer" and private plans may not deny or otherwise limit benefits to which the covered individual would otherwise be entitled.
 5. Employers who are approved to self-insure to provide FMLI benefits must establish and maintain a separate account: (1) into which all employee contributions are deposited and kept; and (2) from which all benefits must be paid, and from which private plan administrative costs may be paid.
 6. All private plans must provide for the confidentiality of employee information related to FMLI benefits, and such information must be kept separate from all other employment records.
 7. All private plans must allow an employee to access the information upon which the employee's benefit determinations are made.
 8. All private plans shall either utilize the forms provided by the Division, or utilize forms that are no more onerous than the forms provided by the Division.

5.4. Application Requirements and Effective Date of New Private Plans

1. Private plans must be approved by the Division prior to implementation.
2. To obtain approval of a private plan, an employer must first submit a completed application for private plan approval to the Division. Applications may be submitted at any time, and the Division will review applications as they are received.
3. An application for private plan approval must include:
 - A. The employer's federal employer identification number ("EIN");
 - B. The employer's name;
 - C. The employer's business address;
 - D. The employer's mailing address;

- E. A designated contact person, with that person's name and contact information;
 - F. A copy of the employer's self-insured private plan, or if the private plan is in the form of an insurance policy provided by an insurer approved by the state, a copy of that template insurance policy;
 - G. If the private plan is in the form of self-insurance, the employer seeking private plan approval must submit to the Division a surety bond, issued by a surety company authorized to transact business in Colorado, in an amount equal to one year of total premiums calculated pursuant to C.R.S. 8-13.3-507, along with payroll documentation supporting the surety bond calculation;
 - H. If the private plan is in the form of self-insurance, attestation that the employer has complied with the separate account requirements at 7 CCR 1107-5 Section 5.3.5.
 - I. An attestation, completed by the employer, that the employer understands, and the private plan satisfies, the requirements set forth in the FAML I Act and its implementing regulations;
 - J. A copy of the benefits application form that will be used by employees;
 - K. A copy of the posted notice required by 7 CCR 1107-5 Section 5.9.3;
 - L. Other information as required on the application form; and
 - M. An administration fee of:
 - 1. \$1,200.00 for private plan applications received through 2024; and
 - 2. For private plan applications received in 2025 and later, in the amount determined by the Director, pursuant to C.R.S. 8-13.3-521(7), and published on the Division's website.
4. Approved private plans must take effect no earlier than the first day of the second calendar quarter following the date of application.
5. Employers remain liable to the FAML I Division for premiums on wages paid until the effective date of the approved private plan, and remain entitled under C.R.S. 8-13.3-507(5) to withhold the employees' share of premiums from wages paid until the effective date of the approved private plan.
6. Employees remain eligible to apply to the FAML I Division for benefits under the FAML I Act until the effective date of the approved private plan.
7. Benefits awarded to an employee must be paid by the plan that awarded the benefits for the full duration of the employee's approved FAML I benefits claim.
- 5.5. Denial of Private Plan Applications**
1. If the Division denies an application for a private plan, the Division shall notify the applicant in writing of the deficiencies that led to the disapproval.

2. The applicant may submit another application for private plan approval after curing any identified deficiencies.
3. If an applicant submits another application within thirty (30) calendar days of a denial and successfully cures the deficiencies, the applicant will not need to submit an additional administration fee.
4. Each application is a separate application for purposes of determining the effective date of an approved private plan.
5. Private plan denials are not subject to an appeal.

5.6. Surety Bond Requirement for Employer Self-Insured Private Plan

1. The Division will only accept a surety bond issued by a surety company authorized by the Colorado Insurance Commissioner to transact such business in Colorado.
2. The bond amount must be an amount equal to one year of total premiums calculated pursuant to C.R.S. 8-13.3-507.
3. The bond amount must be based on:
 - A. The previous four quarters of wages reported by the employer to the Colorado Unemployment Insurance Division, in accordance with 7 CCR 1101-2, Section 7.2.4; or
 - B. If the employer has not reported wages to the Colorado Unemployment Insurance Division for four quarters, the previous four quarters of wages paid to its employees; or
 - C. If neither of the above is possible, a reasonable estimate of one year of projected wages supported by documentation.
4. The Division may disapprove a private plan if an employer fails to provide documentation the Division deems necessary for purposes of calculating an appropriate surety bond amount.
5. If an employer has reason to believe that available documentation does not accurately reflect its projection of the next year of wages, the employer must notify the Division and provide an explanation as to why, along with any supporting documentation.
6. A surety bond shall be issued on a form prescribed by the Division.
7. The bond must include a statement that the bonding company must give ninety (90) days' notice of its intent to terminate liability to both the principal and the Division.
8. The employer must maintain surety bond coverage for the duration of its approved self-insured private plan.
9. The Division will review the bond annually to ensure that the amount corresponds with the wage projections as described in this rule. The employer must provide the Division with any documentation necessary to review the bond amount. If the Division determines that the bond amount must be increased, the employer must do so to maintain private plan approval.

5.7. Duration of Private Plan Approval; Renewal Requirements

1. Unless otherwise authorized by the Division pursuant to these rules, private plan approval expires after two years from the date that the private plan went into effect.
2. Employers are encouraged to submit an application for private plan renewal no later than one calendar quarter before the approval expiration date.
 - A. If an employer submits an application for private plan renewal no later than one calendar quarter before the approval expiration date, the Division will review the application, notify the employer of any deficiencies, give the employer an opportunity to cure the deficiencies, and issue a final renewal approval decision before the approval expiration date.
 - B. If an employer submits an application for private plan renewal less than one calendar quarter before the approval expiration date, the Division will make a reasonable effort to review the application, notify the employer of any deficiencies, give the employer an opportunity to cure the deficiencies, and issue a final renewal approval decision before the approval expiration date. However, if in such a circumstance the Division issues a final renewal approval decision after the approval expiration date and a lapse in private plan coverage occurs, the employer will be liable to the Division for premiums in accordance with C.R.S. 8-13.3-507 and 7 CCR 1107-1.
3. After two consecutive private plan renewals, an employer may apply for a longer duration of approval, not to exceed eight years. Awarding a longer duration of approval is solely at the discretion of the Division. An employer must notify the Division of any changes to a private plan in accordance with 7 CCR 1107-5 Section 5.13 regardless of the approval duration.

5.8. Partial Colorado Workforce Coverage Prohibited

An approved private plan must cover all of the employer's employees localized in Colorado, in accordance with 7 CCR 1107-1 Section 1.5.6.C.

5.9. Notice to Employees of Private Plan Benefits and Administration

1. No later than thirty (30) days before the effective date of an approved private plan, an employer must deliver to its employees a written notice of its election to offer a private plan in lieu of participating in the public plan. For an employee whose start date is later than two weeks before the effective date of an approved private plan, an employer must deliver the written notice to the employee immediately upon hire.
2. The written notice must include:
 - A. The effective date of the approved private plan;
 - B. A description of the private plan's wage replacement benefits;
 - C. A description of the private plan's leave and employment protection benefits;
 - D. A description of how employee eligibility is determined;
 - E. A description of how employee premiums are calculated and collected;

- F. A description of how an employee may file a claim for benefits under the approved private plan;
 - G. A notification to the employee of the employee's appeal rights pursuant to the FAMLI Act, and if applicable, under the private plan;
 - H. Contact information for the FAMLI Division; and
 - I. A notification to the employee of the employee's rights under C.R.S. 8-13.3-509.
3. In addition to delivering the written notice to its employees, an employer must post a notice containing the same information.
- A. The notice must be posted in a conspicuous and accessible place in each establishment where employees are employed.
 - B. The notice must be in English, Spanish, and in any language that is the first language spoken by at least five percent of the employer's workforce.
 - C. If the employer does not maintain a physical workplace, or an employee works remotely, the employer may satisfy the posting requirement by sending the notice via email or through a conspicuous posting in a web-based or app-based platform that the employee regularly uses.

5.10. Collection of Employee Contributions Authorized

Where an employer lawfully deducts premium contributions from an employee's wages pursuant to C.R.S. 8-13.3-507(5) or the terms of an approved private plan, then for the purposes of compliance with C.R.S. 8-4-105, premium contributions are considered wages paid for the benefit on the employee, and collecting such premium contributions does not violate C.R.S. 8-4-105(2).

5.11. Calculation of Benefits Under Private Plans

- 1. In accordance with C.R.S. 8-13.3-521(1)(f), and notwithstanding the provisions of 7 CCR 1107-3 Section 3.5.1.A, private plans must provide a wage replacement rate for all family and medical leave insurance benefits of at least the amount required by section 8-13.3-506(1)(a).
- 2. If an employee who applies for family and medical leave insurance benefits has been employed by an employer for less than five completed calendar quarters, the private plan administrator shall obtain from the Division information necessary to calculate the employee's average weekly wage, as defined by C.R.S. 8-13.3-503(2).

5.12. Recordkeeping and Reporting Requirements; Division Access to Records

- 1. A private plan administrator must keep and maintain documentation of the following for a minimum of six years:
 - A. Applications for benefits;
 - B. Benefits paid;
 - C. Adverse determinations of benefits applications;

- D. Appeals received;
 - E. The outcome of appeals received; and
 - F. Documents, including wage reports, containing the information upon which benefits determinations were based.
2. An employer must keep and maintain, for a minimum of six years, records of any premium contributions it collected from employees.
 3. On April 1 of each year, beginning April 1, 2025, the private plan administrator must submit to the Division a private plan administration summary of the previous calendar year, which must include an aggregate summary of benefits applications received, benefit amounts paid, adverse determinations of benefits applications, appeals received, and the outcome of appeals received.
 4. Within twenty-eight (28) days of the Division's written request, a private plan administrator or an employer with an approved private plan shall provide any documentation either is obligated to maintain pursuant to 7 CCR 1107-5 Section 5.12. If the employer requests an extension and provides good cause for the extension, the Division may extend the 28-day deadline. If the employer does not provide the requested documentation by the deadline, the Division may withdraw its approval of the private plan.

5.13. Modification of a Private Plan

1. An employer shall notify the Division, in writing, of any change to an approved private plan within fourteen (14) calendar days before the change is to take effect. The notification shall include:
 - A. A detailed explanation of all changes; and
 - B. A statement describing how any changes do not reduce benefits or impose new requirements on covered employees.
2. The Division will review the change to the approved private plan. If the Division can conclude, with minimal review, that the change to the approved private plan does not affect its approval status, the Division will notify the private plan administrator that no further action is required for the change to go into effect. If the Division cannot conclude with minimal review that the change to the approved private plan does not affect its approval status, the Division will notify the employer that the change may not go into effect before an in-depth review of the change, will conduct an in-depth review of the change, and will require an administration fee from the private plan administrator.
3. For employers whose approved private plan is in the form of a policy issued by an insurer approved by the state, changing insurance providers constitutes a change to an approved private plan and as a result, requires the employer to follow the same notification process outlined in this section.
4. A change to an approved private plan will not extend the duration of its approval.

5.14. Voluntary Termination of an Approved Private Plan by an Employer

1. An employer may terminate its approved private plan by notifying the Division in writing.

2. The employer must notify employees of the voluntary termination no later than thirty (30) calendar days before the termination's effective date.
3. The effective date of the approved private plan's termination will be:
 - A. The first day of the first calendar quarter following the date of notification to the Division, if the date of notification is more than thirty (30) calendar days before the first day of the following calendar quarter; or
 - B. The first day of the second calendar quarter following the date of notification to the Division, if the date of notification is thirty (30) or fewer calendar days before the first day of the following calendar quarter.
4. If an employer does not continue the approved private plan's coverage through the termination's effective date, the Division shall assess against the employer a fine, per employee per day the employee was not covered through the termination's effective date. The fine amount will equal the employer's and employee's total premium amount for a year, divided by 365, not to exceed \$500.00.
5. Within twenty-eight (28) calendar days after the termination's effective date:
 - A. The employer shall remit to the Division an amount equal to premiums the employer would have remitted to the Division over the previous four completed calendar quarters, if the employer had not had an approved private plan in place. The employer may not collect any of this amount from its employees.
 - B. If the private plan is in the form of self-insurance, the Division will notify the employer in writing that if the employer does not remit the amount described above within twenty-eight (28) calendar days after the termination's effective date, the Division will collect on the surety bond provided in accordance with 7 CCR 1107-5 Section 5.4.3.G. If the employer does not remit the amount described above within twenty-eight (28) calendar days after the termination's effective date, the Division will collect on the surety bond provided in accordance with 7 CCR 1107-5 Section 5.4.3.G.

5.15. Expiration of an Approved Private Plan

If an employer does not renew its private plan in accordance with 7 CCR 1107-5 Section 5.7, the employer will be deemed to have voluntarily terminated its private plan, and will be subject to the requirements in 7 CCR 1107-5 Section 5.14.

5.16. Involuntary Termination of a Private Plan by the Division

1. The Division will withdraw approval for a private plan when terms or conditions of the plan have been violated. Causes for plan termination shall include, but not be limited to, the following:
 - A. Failure to pay benefits in the amount and duration required by the FMLI Act and its implementing regulations;
 - B. Failure to pay benefits in the amount and duration required by the private plan, where the private provides benefits in a greater amount or duration than is required by the FMLI Act and its implementing regulations;

- C. Failure to pay benefits within the timeframes and in the manner specified by the FAML I Act and its implementing regulations;
 - D. Failure to maintain an adequate surety bond in accordance with the FAML I Act and its implementing regulations;
 - E. Misuse of private plan money, including the use of private plan funds for anything other than paying out and administering benefits, or transferring private plan funds from an account established pursuant to 7 CCR 1107-5 Section 5.3.5 to any account not exclusively for holding private plan funds;
 - F. Failure to submit reports or comply with other compliance requirements as required by the FAML I Act and/or its implementing regulations; or
 - G. Failure to otherwise comply with the FAML I Act and its implementing regulations.
2. The Division will conclude that the terms or conditions of the plan have been violated, and therefore withdraw approval of the private plan, if the Division determines that the employer or the private plan administrator has repeatedly violated the private plan's terms and/or the FAML I Act and its implementing rules, has willfully or recklessly violated the private plan's terms and/or the FAML I Act or its implementing rules, or has otherwise violated the private plan's terms and/or the FAML I Act or its implementing rules in such a way that indicates a widespread compliance concern.
3. If the Division withdraws approval of an employer's private plan, the Division will issue the employer a Notice of Withdrawal of Private Plan Approval with an effective date fourteen days after the date of the Notice. The employer may appeal that withdrawal to the Division before its effective date.
4. Within twenty-eight (28) calendar days after the termination's effective date:
- A. The employer shall remit to the Division an amount equal to premiums the employer would have remitted to the Division over the previous four completed calendar quarters, if the employer had not had an approved private plan in place. The employer may not collect any of this amount from its employees.
 - B. If the private plan is in the form of self-insurance, the Division will notify the employer in writing that if the employer does not remit the amount described above within twenty-eight (28) calendar days after the termination's effective date, the Division will collect on the surety bond provided in accordance with 7 CCR 1107-5 Section 5.4.3.G. If the employer does not remit the amount described above within twenty-eight (28) calendar days after the termination's effective date, the Division will collect on the surety bond provided in accordance with 7 CCR 1107-5 Section 5.4.3.G.

5.17. Division Oversight of Private Plans

- 1. The Division may, at any time at its sole discretion, initiate a review of a private plan to determine whether the private plan is in accordance with the FAML I Act and its implementing regulations.
- 2. Upon initiation of a review and request by the Division, the private plan administrator and the employer shall provide all information and documentation necessary to conduct the review.

3. The Division will ensure confidentiality of records.
4. The Division will set reasonable deadlines for information and documentation requests.
5. Failure to cooperate with the Division's review of a private plan will result in the Division's withdrawal of the private plan's approval.

5.18. Appeals

1. Claimants under an approved private plan may appeal a private plan administrator's failure to issue a determination within two weeks of filing, and may also appeal the following determinations:
 - A. A private plan's adverse determination of a claim for benefits;
 - B. A private plan's failure to pay the full claim it approved;
 - C. A private plan's closure of a claim based on its determination that the claim was not properly filed in accordance with 7 CCR 1107-3 Section 3.6.7;
 - D. A private plan's determination that an employee is disqualified from benefits due to its conclusion that the employee willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits; or
 - E. A private plan's identification and collection of an overpayment.
2. A claimant under an approved private plan may file an appeal with either the private plan administrator or the FAML Division in accordance with 7 CCR 1107-3, Section 3.10.
3. If a claimant chooses to file an appeal with the private plan administrator, the claimant may appeal the outcome of that appeal to the Division in accordance with 7 CCR 1107-3, Section 3.10.
4. If a claimant appeals to the Division a determination under an approved private plan, either the claimant or the private plan administrator may seek judicial review of the Division's determination in accordance with C.R.S. 8-13.3-521(5).
5. If a covered individual appeals a benefit determination under an approved private plan, and the Division determines that the covered individual is entitled to additional payment, the private plan administrator must pay the additional amount within the same time frames the Division would have to pay additional amounts pursuant to 7 CCR 1107-3, Section 3.10.
6. The Division will specify the benefit amount due and when such additional payments are due in its determination.
7. If the Division overturns or modifies a benefits determination under an approved private plan, and the private plan administrator seeks judicial review of the Division's decision, the private plan administrator must still pay the additional amount within the timeframes above. However, if the Division's determination is overturned or modified by a court upon judicial review, the private plan administrator may:
 - A. Deduct any overpayment from an employee's wages in accordance with C.R.S. 8-4-105, if the private plan administrator is the employee's employer;

- B. Enter into a repayment plan with the employee; or
- C. File suit against the employee in a court of competent jurisdiction to recover the overpayment.

5.19. Fines

1. If, upon appeal, the Division determines that the private plan administrator owes additional payments to a covered individual, and the private plan administrator fails to pay the benefits by the date or dates specified by the Division in its determination, then the Division may assess fines upon the private plan administrator.
2. Each day after the due date that additional payments owed by a private plan to an individual claimant go unpaid constitutes a separate violation.
3. The Division may assess fines as follows:
 - A. For the first day of nonpayment after the due date, a fine of up to \$100.00 per individual claimant;
 - B. For the second day of nonpayment after the due date, a fine of up to \$200.00 per individual claimant;
 - C. For the third day of nonpayment after the due date, a fine of up to \$300.00 per individual claimant;
 - D. For the fourth day of nonpayment after the due date, a fine of up to \$400.00 per individual claimant; and
 - E. For the fifth day of nonpayment after the due date, and for every additional day thereafter, separate fines of up to \$500.00 per day per individual claimant.

5.20. Approved Private Plans Effective On or Before January 1, 2024

1. If an employer remits premiums to the Division in 2023, and later obtains approval of a private plan with an effective benefits date no later than January 1, 2024, the employer may apply to the Division for reimbursement, and the Division will, within 90 days, reimburse the employer the amount of premiums paid in 2023, minus the required private plan administration fee described in 7 CCR 1107-5 Section 5.4.3.M.
2. If an employer has collected premium contributions from its employees in 2023, and the Division later reimburses the employer for premiums remitted in 2023, the employer must reimburse its employees for any premium contributions collected, unless the terms of the approved private plan allow the employer to collect premiums from employees in 2023, in which case the employer need not reimburse employees for premium contributions collected.
 - A. If an employer must reimburse employees under this Section, and one or more of those employees is no longer employed by the employer, the employer must identify those employees in its application for reimbursement. The Division will issue the refund to the employer, minus the premiums paid by those employees, and will make reasonable efforts to issue the refund directly to those employees. If an employee leaves employment after the employer submits an application for reimbursement, but before the

Division issues the reimbursement, the employer must refund to the Division the amount of that reimbursement that equals premiums paid by that employee, so that the Division can issue a refund to that employee.

- B. If the Division cannot locate an employee to whom it must pay a refund, the Division will make the amount available as unclaimed property through the Department of Treasury.
3. As an exception to 7 CCR 1107-5 Section 5.4.4., employers must apply to the FAML I Division for a private plan exemption approval by October 31, 2023 to ensure an effective date of January 1, 2024.