

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

RULES CONCERNING INVESTIGATIONS, DETERMINATIONS, AND APPEALS

7 CCR 1107-8

8.1 Statement of Authority, Purpose and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the “APA”), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the “FAMLI Act”).
2. The general purpose of these rules is to exercise 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 investigating, making determinations, and hearing appeals for violations of the Act and its implementing regulations.
3. Article 13.3, Title 8 (2023), Article 12, Title 5 (2023), and Article 4, Title 24 (2023), C.R.S., and 29 C.F.R. § 1602.14 (2023) 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.

8.2 Definitions and Clarifications

1. “Aggrieved party” means an individual or entity who alleges that their rights under the FAMLI Act or its implementing regulations have been violated.
2. “Authorized representative” means a person designated by a party to an agency action or investigation to represent the party during the Division’s investigative process. To designate an authorized representative, the party must comply with the requirements of Section 8.3.9.
3. “Complainant” means an aggrieved party who files a complaint alleging violations under the FAMLI Act with the Division.
4. “Complaint” means the official form submitted to the FAMLI Division by an aggrieved party alleging a violation of the FAMLI Act or its implementing regulations.

5. "Correct address" can include, but is not limited to, an email address reported to the Division or posted on a party's website, an address on file with the Colorado Secretary of State, the address of a registered agent on file with the Colorado Secretary of State, or an address provided to the Division by the party. A notice is deemed sent to a party when placed in the U.S. mail, sent by electronic means, personally delivered to a party or a party's representative, or personally delivered to a party's correct address.
6. "Covered individual" has the same meaning as set forth in C.R.S. § 8-13.3-503(3).
7. "Determination letter" means a letter detailing a decision by a Division compliance investigator upon the conclusion of an investigation.
8. "Good cause" has the same meaning as 7 CCR 1107-3, Section 3.2.12.
9. "Investigative process" means the processes and procedures used by the Division to commence and conclude an investigation, including but not limited to the receipt and recording of complaints and responses, conducting witness interviews, performing document analysis, and drafting and delivering determinations and notices of dismissal.
10. "Notice of Dismissal" under this Section means a written notification provided to a Complainant and Respondent by the Division dismissing the complaint in its entirety without prejudice. A Notice of Dismissal may be issued at any time during the proceedings, for any reason.
11. "Other protected party," as to the rights and responsibilities under the FAMLI Act, means a person who has, or is perceived as having, any of the following relationships protected against retaliation under the FAMLI Act, including but not limited to:
 - A. a "familial...relationship" with an employee which encompasses (1) a spousal relationship (including a common-law marriage, civil union, or domestic partner), (2) any of the following relationships by blood, marriage, or adoption: parent, grandparent, son, daughter, grandson, granddaughter, brother, sister, stepparent, stepbrother, stepsister, stepson, stepdaughter, uncle, aunt, niece, nephew, or cousin (i.e., a "relative" as defined by C.R.S. § 26-6-102(32)), or (3) another person with whom the employee similarly "has a significant personal bond . . . regardless of biological or legal relationship" (C.R.S. § 8-13.3-503(11)(e)), such as a longtime household member.
 - B. a "workplace relationship" with a covered employee which encompasses any person with whom the employee has interacted repeatedly in the scope of their employment, regardless of the person's employer or employment status.
12. "Respondent" means an individual or entity against whom a complaint has been filed.
13. Nothing in this rule governs appeals at 7 CCR 1107-3, Section 3.10 or 7 CCR 1107-5, Section 5.19.

8.3 Filing a Complaint

1. An aggrieved party who wishes to file a complaint with the Division shall use the Division approved form(s), and shall comply with any other Division instructions as to information or submissions required by the Division.
2. A complaint filed with the Division may be filed by an aggrieved party or an authorized representative.

3. A complaint shall include the complainant's signature and contact information, employer's contact information, and basis for the complaint. Failure to comply with this Rule may result in dismissal of the complaint.
4. The failure of a complainant to respond in a timely manner to informational or investigatory requests by the Division may result in dismissal of the complaint. If the Division issues a Notice of Dismissal for failure to comply with this Rule, and the Complainant provides the information within fifteen (15) days of receipt of the notice, the Division may at its discretion reopen the complaint. Nothing in this subsection shall be construed to extend the deadlines described at C.R.S. § 8-13.3-509(6)(c)-(d).
5. Investigations are conducted at the Division's discretion.
6. An aggrieved party under this section may pursue relief for any violation arising under C.R.S. § 8-13.3-509 through either the court system or the Division's established procedures and processes.
7. Aggrieved parties under C.R.S. § 8-13.3-509 are not required to first pursue the Division's administrative remedies prior to initiating a lawsuit in the court system.
8. The Division does not have jurisdiction over any violation arising under this section that has been adjudicated or is currently being adjudicated by the court system or by another government administrative body.
9. Any party to a complaint may designate an authorized representative to represent the party during the Division's investigative, enforcement, and/or appeals process.
 - A. The party may designate an authorized representative by filing the Division-approved form with the Division.
 - B. The party may revoke the authorized representative's authority by contacting the Division in writing.

8.4 Filing, Notification, and Deadlines

1. A complaint or appeal to the Division is considered "filed" with the Division when the complaint or appeal is received via mail or online submission. Any complaint or appeal to the Division received after 11:59 p.m. Mountain Standard Time is considered filed the next business day.
2. Any complaint or appeal to the Division is considered "signed," or to have a "signature," if it has either an ink signature, a scanned signature, an electronically drawn or generated signature, a mark, or a typed name entered by the party or authorized representative in the signature area. By signing in any such fashion, the individual is deemed to have agreed and assented that the document is signed by them.
3. Deadlines in these Rules may be extended for good cause.
4. Within sixty (60) days of a complaint being filed (or within sixty (60) days of the effective date of these Rules, whichever is later), the Division will assess whether it will exercise its discretion to investigate the complaint or dismiss the complaint. The Division will inform the parties of its decision in writing.

8.5 Investigations

1. The Division has the authority and discretion to initiate investigations, audits, or any other compliance oversight activities upon its own initiative or upon the receipt of a complaint filed by an aggrieved party or their authorized representative.
2. The Division may utilize the following as part of the investigatory process:
 - A. Interviews of parties or witnesses;
 - B. Information gathering, fact-finding, and reviews of written submissions; and
 - C. Any other lawful techniques that enable the Division to assess compliance with the FAML I Act and its implementing regulations.
3. Whenever a complaint or investigation arising under the Act or its implementing regulations is filed or commenced, the Respondent shall comply with the federal "Preservation of Records Made or Kept" rule, 29 C.F.R. § 1602.14, requiring that the Respondent "shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action." For purposes of complaints arising under C.R.S. § 8-13.3-509, relevant "personnel records" include but are not limited to:
 - A. Records related to family and medical leave insurance benefits;
 - B. Records related to other benefits that that relate to, impact, or are impacted by family and medical leave insurance benefits;
 - C. Requests or statements by the individual that are claimed to be protected activity;
 - D. Responses to, or analyses of, such request(s) or statement(s); and
 - E. Policies or decisions, formal or informal, that may apply to such request(s) or statements(s).
4. At the commencement of an investigation into a complaint, the Division will send a Notice of Complaint to the Respondent at the Respondent's correct address. A Respondent must respond within thirty (30) days after a complaint is sent to them, unless an extension is granted for good cause. An incomplete response may be considered a failure to respond.
 - A. If the Notice of Complaint cannot be delivered, the Division's investigative process cannot be commenced. If a correct address is located or provided, the Division will resend the Notice of Complaint, and the Respondent's deadline to respond will be calculated from the date of the subsequent notice.
 - B. If the Division cannot determine the Respondent's correct address, it may contact the Complainant to request the Respondent's correct address. The Division may dismiss the complaint without prejudice if neither the Complainant nor the Division can determine the Respondent's correct address.
 - C. All parties to a complaint are responsible for ensuring the Division has current contact information.
 1. All parties must promptly notify the Division of any change in contact information, including mailing address, email address, and phone number.

2. Parties should not rely on the U.S. Postal Service to forward mail. Failure to respond to a notice because mail was not forwarded to a new address will not be excused.
5. Upon receipt of the Respondent's response, the Division shall review all of the documentation received.
6. Upon conclusion of the investigation, the Division may issue a determination, or a Notice of Dismissal.
7. The Division may exercise its discretion to consolidate complaints, or to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation.
8. An aggrieved party under C.R.S. § 8-13.3-509 may withdraw the complaint, or their participation in the complaint filed on their behalf, at any time prior to the issuance of a determination by notifying the Division in writing.

8.6 Determinations

1. Upon conclusion of an investigation, the Division will issue and deliver to the parties a determination with appeal rights or a notice of dismissal.
2. The date of issuance of the Division's determination is the date the Division's determination is sent. The appeal deadlines are calculated from the Division's date of issuance.
3. The Division shall send the determination letter to the party's correct address on the date the determination is issued.
4. Determinations by the Division may include the following remedies or fines, depending on which, if any, the Division's findings support:
 - A. Monetary or other relief authorized by the FMLI Act or its implementing regulations, including any remedies under C.R.S. § 8-13.3-509(6)(b)-(7); and/or
 - B. An assessment of an amount owed (benefit overpayment, premium underpayment, fines, interest);
5. For any award under these rules, the Division will issue a certified copy of the final Division decision imposing relief or remedies, signed by the Director of the Division, or their designee, certifying that the document is a true and accurate copy of the final decision. The certified copy may be filed with the clerk of court having jurisdiction over the parties at any time after the entry of the determination. Such a filing can be in a county or district court and will thereby have the effect of a judgment from which execution may issue.
6. When a determination letter is issued in regards to a benefit overpayment or premium underpayment, within forty-five (45) calendar days of the date the determination letter was issued, the Respondent must take action either by:
 - A. Complying with the order made by the Division by:
 1. Paying any outstanding balance owed to the Fund;
 2. Requesting a payment plan for any outstanding balance owed to the Fund; or

3. Requesting to have the outstanding balance taken out of future FAMLII benefit payments; or
 - B. Filing an appeal.
7. Any determination made by the Division that is subject to appeal under this section shall be deemed final, and any information contained in any document or notice issued by the Division that is subject to appeal under this section shall be deemed correct unless the Respondent files a timely request for appeal in accordance with this regulation or establishes to the satisfaction of the Division that said Respondent had good cause for the failure to do so.

8.7 Burdens of Proof

1. Complaints alleging retaliation under C.R.S. § 8-13.3-509 are analyzed as follows, with the preponderance of the evidence standard applying to all burdens of proof.
 - A. The Complainant has the burden of proving all elements of a claim, including that unlawful retaliation occurred. The Respondent must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. If an employer takes an adverse employment action, as described in 7 CCR 1107-7 Section 7.2.4.B, against an other protected party within ninety (90) days of the other protected party engaging in protected activity, such adverse employment action creates a rebuttable presumption of retaliation, shifting the burden of proof to the Respondent to offer any such rebuttal.
 - B. If the Complainant proves unlawful retaliation or discrimination was a motivating factor for the complained-of practice, then a violation is proven. However, if a violation is proven but the Respondent proves that the complained-of practice would have occurred for another lawful reason, then the Division shall not award any damages.
2. Complaints alleging interference under C.R.S. § 8-13.3-509 are analyzed as follows, with the preponderance of the evidence standard applying to all burdens of proof.
 - A. The Complainant has the burden of proving all elements of a claim, including that unlawful interference occurred. The Respondent must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. Interference is established when a Complainant shows the Respondent engaged in conduct that tends to or does result in at least slight harm to rights guaranteed by the FAMLII Act.
 - B. If the Complainant meets its burden of proof, then a violation is proven. However, if a violation is proven but the Respondent demonstrates the violation resulted from circumstances beyond its control and that no alternative course of action was available, then the Division shall not award any damages.

8.8 Appeals

1. Any party to a determination may appeal the Division's determination. Parties may not appeal the Division's dismissals without prejudice or discretionary decisions as to whether or not to investigate a complaint.
2. Parties are encouraged, though not required, to use the Division's appeal form. A valid appeal is a written statement that is timely filed with the Division, explains the clear error in the determination that is the basis for the appeal, and has been signed by the party or the party's authorized representative.

3. The Division will only consider appeals submitted within forty-five (45) days of the date the Division issued its determination letter.
4. The Division may consider an appeal received as late as sixty (60) days after the date the Division issued its determination letter if the party submits the appeal with evidence establishing good cause for the late appeal.
5. If no appeal is filed within the timeline listed above in 7 CCR 1107-8, Sections 8.8.3 and 8.8.4, the determination shall be conclusive and final.
6. An appeal may, in the discretion of the hearing officer, be sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more decisions and/or phases of the appeal.
7. A party that timely files a valid appeal of the Division's determination will be afforded an administrative appeal hearing before a Division hearing officer. Parties may appear in person or remotely.
8. Upon receipt of the appeal, the Division will notify the parties of the date of the hearing and any interim deadlines via U.S. postal mail, electronic means, or personal delivery.
9. If the party that filed the appeal does not participate in the hearing, the appeal may be dismissed.
10. The hearing officer shall have the power and authority to call, preside at, and conduct hearings. The hearing officer has the power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of documents deemed necessary as evidence in connection with the disputed redetermination.
11. Parties participating in a hearing before the Division may submit new testimonial evidence to the hearing officer in accordance with deadlines imposed by the Division. The parties may submit new documentary or other non-testimonial evidence in accordance with deadlines imposed by the Division and upon showing "good cause," which may be assessed based on any relevant factors, including but not limited to:
 - A. That the new evidence was previously not known or obtainable, despite diligent evidence-gathering efforts by the party offering the new evidence;
 - B. That the party failed to receive fair notice of the investigation or of a key filing by another party or by the Division to which the new evidence is responsive;
 - C. That factors outside the control of the party prevented a timely action or interfered with the opportunity to act, except that the acts and omissions of a party's authorized representative are considered the acts and omissions of the party and are not considered to be a factor outside the party's control as intended by this rule;
 - D. That a determination raised a new issue or argument that cannot be responded to adequately without the new evidence;
 - E. That, at the investigation stage, the party offering new evidence requested more time to submit evidence, yet was denied, and in the hearing officer's judgment (a) the need for more time was legitimate and did not reflect neglect by the party, (b) the denial of the request for more time was unwarranted, and (c) exclusion of the evidence would cause substantial injustice to the party; and/or

- F. That failure to admit the evidence otherwise would cause substantial injustice and did not arise from neglect by the party.
12. New evidence must be sent to all other parties to the appeal. Failure to send all new evidence to all other parties to the appeal may result in the evidence being excluded from the record.
 13. The Division shall keep a full and complete record of all proceedings in connection with the investigation. All testimony at a hearing must be recorded by the Division but need not be transcribed unless the hearing officer's decision is appealed.
 14. The hearing officer may, upon application of any party or on their own motion, convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters that may simplify further proceedings.
 15. The hearing officer shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The hearing officer will decide whether the Division's redetermination is based on a clear error of fact or law.
 16. The hearing officer shall not engage in ex parte communication with any party to an appeal.
 17. The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. The Division shall promptly send a copy of the hearing officer's decision to each party's correct address.
 18. Any party to the administrative proceeding may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five (35) days after the date the decision of the agency was sent to the party's correct address. The hearing officer's decision constitutes final agency action pursuant to C.R.S. § 24-4-106. Judicial review is limited to appeal briefs and the record designated on appeal.

8.9 Recovery

1. Any outstanding amount owed to the Division as determined by a final agency action may be collected by the Division through any and all legal means available, including, but not limited to benefit offsets, garnishments, liens, or the Federal Treasury Offset Program.
2. The Division may share information with other criminal or civil enforcement authorities if it believes that a violation implicating their enforcement authority has occurred. However, the Division will not voluntarily provide any person or entity information concerning immigration status.

8.10 Interest

1. Any outstanding balance past due shall accrue interest at the rate allowed pursuant to C.R.S. § 5-12-101, until payment is received in full.