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Compliance Connection

October 2025

Federal Compliance Update

DOL Clarifies FMLA Leave Calculation for Shift Workers With Overtime

The U.S. Department of Labor's (DOL) recent Opinion Letter [FMLA2025-02-A](#) responds to an employer's question about how to calculate intermittent or reduced schedule leave under the federal Family and Medical Leave Act (FMLA). The question concerns correctional employees working 12-hour shifts plus mandatory and voluntary overtime. The letter was issued Sept. 30, 2025.

Background: The FMLA Statute and Regulations

12 Workweeks of Leave

The FMLA provides eligible employees of covered employers with unpaid, job-protected leave for specific reasons related to the well-being of themselves and their families. Employees are generally entitled to 12 "workweeks" of leave in a 12-month period.

Conversion of Workweeks to Hours

When an employee takes intermittent or reduced-schedule FMLA leave, the FMLA regulations allow employers to convert the employee's workweeks into hours to calculate the employee's FMLA leave entitlement and the amount of leave taken.

For employees who work a standard 40-hour per week schedule, this results in a 480-hour FMLA entitlement per benefit year. The DOL notes in the letter that the specific employee's actual schedule determines the conversion calculation. Thus, the letter explains, an employee who works 30 hours per workweek would be entitled to 360 hours of leave per leave year (30 hours per workweek multiplied by 12 workweeks), and an employee who works 60 hours per workweek would be entitled to 720 hours (60 hours per workweek multiplied by 12 workweeks).

Opinion Letter FMLA2025-02-A

The employees at issue in the letter work under a "Pitman" schedule mandating 84 hours of work every two weeks. The employer therefore calculated an FMLA leave entitlement for these employees of 504 hours (42 hours per week multiplied by 12 weeks).

The DOL agreed with the employer's approach, opining that the employer properly converted the 12-week FMLA benefit to an hourly equivalent, based on the work time in an employee's normal, actual workweek. Mandatory overtime that an employee was scheduled to work should be included in the calculation of the employee's FMLA entitlement and counted as FMLA leave for an employee who did not work the hours because they were on FMLA leave. However, the DOL advised that the employer could not count voluntary overtime hours the employee could potentially work as part of the employee's FMLA leave entitlement or FMLA leave taken.

Employer Takeaway

The letter is useful for employers when calculating FMLA leave time for intermittent or reduced-schedule leave, which can be challenging. The DOL clarifies that any conversion of workweeks to hours must follow the employee's actual schedule, and the calculation may count mandatory overtime but not extra voluntary hours.

State Compliance Update

We understand there's been some confusion about how to stay compliant with Colorado's Family and Medical Leave Insurance (FAMLI) program, so we wanted to take a moment to clear things up.

FAMLI Gets Taxable: What Colorado Employers Need to Know Before 2026

As of September 30, 2025, Colorado's Family and Medical Leave Insurance (FAMLI) Division has issued guidance implementing IRS Revenue Ruling 2025-4.

Employee Premiums (Withheld Contributions)

These are taxable wages and must be included on the employee's Form W-2. They are also wages for employment tax purposes (FICA/FUTA/withholding). Employees who itemize may treat the withheld amount as a state income tax deduction subject to the SALT cap.

See: IRS Revenue Ruling 2025-4 (<https://www.irs.gov/pub/irs-drop/rr-25-04.pdf>) and Colorado FAMLI Division (<https://famli.colorado.gov/>).

Employer Premiums (Employer Share Paid from Employer Funds)

These are the employer's own state excise taxes—not taxable to the employee and not considered wages.

Reference: IRS Revenue Ruling 2025-4 (<https://www.irs.gov/pub/irs-drop/rr-25-04.pdf>).

Employer "Pick-Up" of the Employee's Required Contribution

If the employer voluntarily pays the employee's share, that amount is additional taxable compensation to the employee, is wages for employment tax purposes (FICA/FUTA/withholding), and must be reported on the employee's W-2.

See: IRS Revenue Ruling 2025-4 (<https://www.irs.gov/pub/irs-drop/rr-25-04.pdf>).

Family Leave Benefits (Caregiving/Bonding/Etc.)

Benefits paid by the State are taxable income to the employee but not wages for employment tax purposes (i.e., not subject to FICA or FUTA). The State must report these benefits on Form 1099 when $\geq$ \$600 for the year.

References: IRS Revenue Ruling 2025-4 (<https://www.irs.gov/pub/irs-drop/rr-25-04.pdf>) and Colorado Department of Labor and Employment (<https://cdle.colorado.gov/famli>).

Medical Leave Benefits (Employee's Own Serious Health Condition, Including Pregnancy)

- The portion attributable to employer contributions is taxable income and wages for employment tax purposes (treated as third-party sick pay). FICA and FUTA apply, and sick-pay reporting rules govern.
- The portion attributable to employee contributions (including employer pick-up of the employee share) is excluded from income and not wages. States must allocate benefits between employer and employee contribution sources.

See: IRS Revenue Ruling 2025-4 (<https://www.irs.gov/pub/irs-drop/rr-25-04.pdf>).

Effective Date and Transition Relief

The ruling is effective for payments made on or after January 1, 2025. Calendar year 2025 is a transition period: for employer-attributable medical leave benefits paid in 2025, states and employers are not required to apply third-party sick-pay withholding/reporting or withhold/pay associated employment taxes; no penalties will apply for those items in 2025. Full enforcement begins January 1, 2026.

- Colorado FAMLI Division confirms this transition timeline and provides operational details at <https://famli.colorado.gov/employers>.
- Official IRS Ruling: <https://www.irs.gov/pub/irs-drop/rr-25-04.pdf>.

Key Points

- Employee premiums are taxable wages and must be reported on the W-2; they're also wages for FICA/FUTA/withholding.
- Employer premiums are not taxable to employees and are not wages.
- If the employer pays the employee's share, that amount is taxable compensation and wages; report on the W-2.
- Medical benefits: only the employer-attributable portion is taxable and wages (third-party sick pay, subject to FICA/FUTA); the employee-attributable portion is excluded and not wages.
- Family benefits: taxable income but not wages; the State issues a 1099 if benefits ≥ \$600.
- Timing: Effective Jan 1, 2025; 2025 is a transition year (relief for medical-benefit employment tax/withholding/reporting); full enforcement Jan 1.

FAQs for FAMLI

Q – Does the FAMLI law include an undue hardship exception like the federal FMLA does?

A – Under Colorado's FAMLI Act, an employer may not deny an employee's request for full or intermittent paid family and medical leave on the basis that granting the leave would impose operational difficulties or hardship on the employer.

Additionally, an employer may not place an employee on leave of absence or take other adverse employment action because the employee uses intermittent FAMLI leave. Such actions could constitute prohibited retaliation or interference under the statute.

R – Resources:

- [C.R.S. § 8-13.3-509 – Section 1](#) – Job Protection
- [C.R.S. § 8-13.3-509 – Section 4](#) – Retaliation Protection
- [C.R.S. § 8-13.3-509 – Section 5](#) – Discipline Due to Absence Protection
- [7 CCR 1107-7 – Definitions](#) – Definitions including “Retaliation” and “Interference”

Q – What are the nuances of requiring the employee to apply FMLA and FAMLI at the same time?

A – When an employee takes paid leave under the FAMLI program for a reason that also qualifies under the federal Family and Medical Leave Act (FMLA) (or the Colorado Family Care Act, where applicable), the leave with wage replacement under FAMLI may be required to run concurrently with leave taken under the FMLA.

However, this concurrency is one-way only: the statute requires that FAMLI leave (when wage replacement is claimed) run concurrently with FMLA leave, but the statute does not require that FMLA leave automatically triggers FAMLI wage replacement. This means if an employee uses FMLA leave but chooses not to apply for FAMLI wage-replacement benefits, there are no FAMLI benefits to “trigger” concurrency.

In that circumstance, while the employer must still inform the employee of their possible eligibility for FAMLI (as required by regulation), the employee is not obligated to apply for FAMLI benefits.

R – Resources:

- [C.R.S. § 8-13.3-510](#) – Coordination of Benefits
- [7 CCR 1107-4.8](#) (Effective 7/1/2025) – FAMLI Benefits and the FMLA and the Family Care Act

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However, this concurrency is one-way only: the statute requires that FAML leave (when wage replacement is claimed) run concurrently with FMLA leave, but the statute does not require that FMLA leave automatically triggers FAML wage replacement. This means if an employee uses FMLA leave but chooses not to apply for FAML wage-replacement benefits, there are no FAML benefits to “trigger” concurrency.

In that circumstance, while the employer must still inform the employee of their possible eligibility for FAML (as required by regulation), the employee is not obligated to apply for FAML benefits nor can the employer mandate the employee file for a FAML claim.

R – Resources:

- [C.R.S. § 8-13.3-510\(1\)\(a\)](#) – Coordination of Benefits
- [7 CCR 1107-4.8\(1\)](#) - Running Concurrently with FMLA

Q – How long does an employee have to file a FAML claim?

A – Applications may be submitted up to thirty (30) days after the leave has begun. If the Division receives an application after thirty (30) days, but before ninety (90) days, the Division will consider the application if it includes evidence establishing good cause for the claimant’s failure to submit the application within thirty (30) days.

R – Resources:

- [C.R.S. § 8-13.3-516\(1\)](#) – Filing Claims
- [7 CCR 1107-3.5\(B\)](#) – Amount, Duration, and Format of Benefits

Q – How does the Division calculate and track the total “12 weeks” of leave entitlement when an employee is approved for intermittent leave?

A – Under FAML, eligible employees can take up to 12 weeks of leave (or up to 16 weeks if the leave is due to pregnancy or childbirth complications).

The regulations state that, for intermittent leave, “weekly usage shall be determined by dividing the number of hours of family and medical leave the individual takes per week by their aggregate regular work schedule for that week.”

Practically, this means that an employee’s total 12-week entitlement is converted into hours based on their normal work week (for example, 40 hours/week × 12 weeks = 480 hours). Each hour of intermittent leave is counted and subtracted from that total.

For example, if an employee is approved for 60 hours of intermittent leave per month, their leave is deducted from their total entitlement based on actual usage. If any employee typically works 40 hours per week, 12 weeks would equate to 480 hours (12 weeks × 40 hours). Each hour of intermittent leave is subtracted from this total. If the employee typically works 60 hours per week, 12 weeks would equate to 720 hours (12 weeks × 60 hours).

R – Resources:

- [7 CCR 1107-3.5](#) – Amount, Duration, and Format of Benefits
- [7 CCR 1107 – 3.2](#) – Definitions and Clarifications (Application Year)

Q – What does job-protected leave look like for employees taking intermittent leave rather than continuous leave? Are protections under C.R.S. § 8-13.3-509 (job restoration and anti-retaliation) applied identically for both continuous and intermittent leave?

A – The job restoration and anti-retaliation provisions apply to leave under FMLI, whether it is continuous or intermittent. For example, the statute provides that a covered individual employed at least 180 days prior to the leave has the right to be restored to their previous position or an equivalent one.

So, in an intermittent-leave scenario, “protected leave” means the employee may take approved blocks of leave (in irregular intervals) and the employer must treat those usages as part of the entitlement, cannot deny the leave on a hardship basis (since there is no “undue hardship” employer exception under the Act), and cannot take adverse employment actions because the employee uses intermittent leave.

R – Resources:

- [7 CCR 1107-7.3](#) – Job Reinstatement/Equivalent Position

Compliance Calendar

November

Nothing to report

December

12/31 – Gag Clause Prohibition Compliance Attestation – group health plans and health insurers

January

Get caught up on year end!

Disclaimer:

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