MARYLAND DEPARTMENT OF LABOR

Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Chapter 01 General Provisions

Authority: Labor and Employment Article, §§8.3-101, 401, 402, and 403, Annotated Code of Maryland

.01 Definitions.

A. In this Subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administration" means the Maryland Insurance Administration.

(2) "Adverse determination" means a disqualification of an individual or denial, in full or in part, of Family and Medical Leave Insurance (FAMLI) leave or benefits to a claimant made under the Division's reconsideration process.

(3) "Application year" means the 12-month period beginning on the Sunday of the calendar week of which FAMLI leave begin.

(4) "Assistant Secretary" means the Assistant Secretary for the FAMLI Division established by COMAR 09.42.01.02.

(5) "Business day" means a day that the State is open for the transaction of business and begins at 12:00.00 a.m. and ends at 11:59.59 p.m. Eastern Standard Time.

(6) "Claim" means a claim for FAMLI leave and benefits under Labor and Employment Article §8.3-101 *et seq.,* Annotated Code of Maryland.

(7) "Claimant" means an individual who applies for FAMLI leave and benefits under this Subtitle.

(8) "Continuing treatment by a licensed health care provider" means any one or more of the following:

(a) Incapacity and treatment.

(i) A period of incapacity of more than 3 full, consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

1. Treatment 2 or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a licensed health care provider; or

2. Treatment ordered by a licensed health care provider on at least 1 occasion, which results in a regimen of continuing treatment, including home care administered by a competent individual under the direction of a licensed health care provider.

(ii) The requirement in §B(8)(a)(i) of this Regulation for treatment by a licensed health care provider means an in-person visit or synchronous tele-health appointment with a licensed health care provider.

(iii) The first (or only) in-person treatment visit or synchronous tele-health appointment shall take place within 7 days of the first day of incapacity.

(iv) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the licensed health care provider.

(v) The term *extenuating circumstances* in §B(8)(a)(i) of this Regulation means circumstances beyond the claimant's control that prevent the follow-up visit from occurring as planned by the licensed health care provider.

(b) Pregnancy or prenatal care. Any period of incapacity due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care.

(c) Chronic conditions. Any period of incapacity or treatment for the incapacity due to a chronic serious health condition which:

(i) Requires periodic visits (defined as at least twice a year) for treatment ordered by a licensed health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(d) Permanent or long-term conditions. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective and requires continuing supervision, but need not be receiving active treatment by, a licensed health care provider.

(e) Conditions requiring multiple treatments. Any period of absence to receive multiple treatments (including any period of recovery therefrom) ordered by a licensed health care provider, for:

(i) Restorative surgery after an accident or other injury; or

(ii) A condition that would likely result in a period of incapacity of more than 3 full, consecutive days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

(f) Absences attributable to incapacity under §B(8)(b) or (c) of this Regulation qualify for FAMLI leave even though the claimant or the family member does not receive treatment from a licensed health care provider during the absence, and even if the absence does not last more than 3 full, consecutive days.

(9) "Contribution" means the payments made under Labor and Employment Article §8.3-601 *et seq.*, Annotated Code of Maryland by an employer.

(10) "Covered employee" means an employee who has worked at least 680 hours performing services under employment located in the State over the four most recently completed calendar quarters for which quarterly reports have been required immediately preceding the date on which leave is to begin.

(11) "Covered individual" means a covered employee, qualified previous employee, or an OSEE participant.

(12) "Department" means the Maryland Department of Labor.

(13) "Division" means the FAMLI Division established by COMAR 09.42.01.02.

(14) "Domestic partner" means the person with whom someone is in a domestic partnership with.

(15) "Domestic partnership" means a relationship between two individuals who:

(a) Are at least 18 years old;

(b) Are not related to each other by blood or marriage within 4 degrees of consanguinity under civil law rule;

(c) Are not married or in a civil union or domestic partnership with another individual; and

(d) Agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship.

(16) Employee.

(a) "Employee" means an individual who performs work for remuneration.

(b) "Employee" does not mean an individual who meets the following requirements:

(i) The individual who performs the work is free from control and direction over its performance both in fact and under a contract;

(ii) The individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and

(iii) The work is:

1. Outside of the usual course of business of the person for whom the work is performed; or
2. Performed outside of any place of business of the person for whom the work is performed.

(17) Employer.

(a) "Employer" means a person or governmental entity that employs at least 1 individual who performs qualified employment.

(b) "Employer" does not mean:

(i) An individual who: is the sole owner of a sole proprietorship, limited liability company, C Corporation or S Corporation; and

(ii) Is the only individual employed by the sole proprietorship, limited liability company, C corporation or S Corporation.

(18) "Equivalent-private insurance plan (EPIP)" means a Division approved insurance plan provided by an employer to employees that meets or exceeds the State plan, whether it is administered by the employer or a third-party administrator.

(19) "EPIP administrator" means either an employer self-administering an approved self-insured EPIP or an insurance carrier/company, third-party administrator, or payroll company acting on behalf of an employer to provide administration and oversight of an approved EPIP.

(20) "Family leave" means leave used:

(a) To care for or bond with a child of the covered individual during the first year after the child's birth;

(b) During the process through which a child is being placed with the covered individual through foster care, kinship care, or adoption and to care for or bond with the child during the first year after the placement;

(c) To care for a family member with a serious health condition; or

(d) To care for a service member with a serious health condition for whom the covered individual is next of kin.

(21) "Family member" means

(a) A biological child, an adopted child, a foster child, or a stepchild of the covered individual;

(b) A child for whom the covered individual has legal or physical custody or guardianship;

(c) A child for whom the covered individual stands in loco parentis, regardless of the child's age;

(d) A biological parent, an adoptive parent, a foster parent, or a stepparent of the covered individual or of the covered individual's spouse;

(e) The legal guardian of the covered individual or the ward of the covered individual or of the covered individual's spouse;

(f) An individual who acted as a parent or stood in loco parentis to the covered individual or the covered individual's spouse when the covered individual or the covered individual's spouse was a minor;

(g) The spouse of the covered individual;

(h) A domestic partner of the covered individual;

(i) A biological grandparent, an adopted grandparent, a foster grandparent, or a stepgrandparent of the covered individual;

(j) A biological grandchild, an adopted grandchild, a foster grandchild, or a stepgrandchild of the covered individual; or

(k) A biological sibling, an adopted sibling, a foster sibling, or a stepsibling of the covered individual.

(22) "FAMLI benefits" means the money payable under Labor and Employment Article, §8.3-101, *et seq.*, Annotated Code of Maryland and this Subtitle.

(23) "FAMLI leave" means family leave, medical leave, and/or qualified exigency leave that a covered individual is entitled to under Labor and Employment Article §8.3-101 *et seq.,* Annotated Code of Maryland.

(24) "Medical leave" means leave taken because the covered individual has a serious health condition that results in the covered individual being unable to perform the functions of the covered individual's position.

(25) "The Family and Medical Leave Act (FMLA)" means the Family and Medical Leave Act of 1993, 29 U.S.C. §§2601–2654 (2006).

(26) "Incapacity" means the inability to perform at least 1 essential job function, or to attend school or perform regular daily activities.

(27) "Kinship care" means informal kinship care and formal kinship care.

(a) Informal kinship care has the meaning as stated in the Education Article §4-122.1, Annotated Code of Maryland.

(b) Formal kinship care has the meaning for kinship care as stated in the Family Law Article §5-501, Annotated Code of Maryland.

(28) "Licensed health care provider" means:

(a) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(b) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(c) Nurse practitioners, nurse midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(d) Any health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(e) The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

(29) "Next of kin of a service member" means the nearest blood relative other than the service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under FMLA.

(a) When no such designation is made, and there are multiple family members with the same level of relationship to the service member, all such family members shall be considered the service member's next of kin and may take FAMLI leave to provide care to the service member, either consecutively or simultaneously.

(b) When such designation has been made, the designated individual shall be deemed to be the service member's only next of kin.

(30) "OSEE participant" means a qualified self-employed individual whose application to enroll in the State plan has been approved by the Division.

(31) "Qualified employment" means:

(a) The provision of services entirely within the State by an employee to an employer; or

(b) The provision of services localized within the State under COMAR 09.42.02.04 by an employee to an employer.

(32) "Qualified exigency leave" means leave taken when a qualifying exigency as defined in Labor and Employment Article §8.3-101 (m), Annotated Code of Maryland arises out of the deployment of a service member who is a family member of the covered individual.

(33) "Qualified previous employee" means an individual who is currently unemployed and not connected to any employment or self-employment but who worked in a position providing qualified employment for sufficient hours in the eligibility base period to establish initial qualification for FAMLI leave and benefits.

(34) "Qualified self-employed individual" means a person who earns self-employment income and is a resident of Maryland as defined in Tax-General Article §10-101(k)(1)(i), Annotated Code of Maryland.

(35) "Secretary" means the Secretary of Labor.

(36) "Self-employment income" means income reportable to the Internal Revenue Service on which the federal self-employment tax is payable as defined by the Self-Employment Contributions Act of 1954, as amended and incorporated into 26 U.S. Code §1402(b).

(37) "Self-insured EPIP" means an EPIP in which the employer offers a private plan which the employer self-funds and for which the employer assumes all financial risk associated with the benefits and administration of the EPIP, whether it is administered by the employer or a third-party administrator.

(38) "Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that:

(a) Requires inpatient care;

(b) Requires continuing treatment by a licensed health care provider; or

(c) Involves the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.

(39) "State plan" means the State provided FAMLI plan including the Fund from which benefits shall be paid.

(40) "Treatment" means, with the exception of routine physical examinations, eye examinations, or dental examinations, examinations to determine if a serious health condition exists and evaluations of a serious health condition.

(41) Wages.

(a) "Wages" means the term as defined in Labor and Employment Article, §8.3-101(r)(1), Annotated Code of Maryland.

(b) "Wages" for a self-employed individual means the term as defined in Labor and Employment Article, §8.3-101(r)(2), Annotated Code of Maryland.

(c) "Wages" does not mean:

(i) The amount of any payment made to or on behalf of an employee or any dependent of an employee under a plan or system established by an employer that provides for employees generally or for their dependents or for a class of employees and their dependents on account of:

1. Retirement;

2. Sickness or accident disability payments under a workers' compensation law;

3. Medical or hospitalization expenses in connection with sickness or accident disability;

4. A cafeteria plan as defined in 26 U.S.C. §125, if the payments would not be treated as wages outside a cafeteria plan;

5. Dependent care assistance to the extent that the assistance payments would be excludable from gross income under 26 U.S.C. §127 or §129; or

6. Death.

(ii) Any amount that an employer pays for insurance or an annuity or into a fund to provide for a payment described in §A(38)(c)(i) of this Regulation;

(iii) Any payment on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability made by the employer to or on behalf of an employee at least 6 calendar months after the last calendar month in which the employee worked for the employer;

(iv) Any payment made to or on behalf of an employee or beneficiary of the employee:

1. From or to a trust exempt from tax under §401(a) of the Internal Revenue Code at the time of the payment, unless the payment is made to an employee of the trust as compensation for services rendered as an employee and not as beneficiary of the trust; or

2. Under or to an annuity plan that, at the time of payment, meets the requirements of §401(a)(3) through (6) of the Internal Revenue Code;

(v) Any payment required from an employee under a state unemployment insurance law;

(vi) Compensation paid in any medium other than cash to an employee for service not in the course of the trade or business of the employer;

(vii) Any payment, including an amount paid into a fund to provide for any payment by an employer to or on behalf of an employee under a plan or system that an employer establishes that provides for employees of the employer generally or a class or group of employees to supplement unemployment benefits; or

(viii) Any payment to an individual as allowance or reimbursement for travel or other expenses incurred on the business of the employer up to the amount of expenses actually incurred and accounted for by the individual to the employer.

.02 General Regulations.

A. There is a FAMLI Division within the Department.

B. The FAMLI Division shall administer the FAMLI program.

C. The Assistant Secretary has been delegated by the Secretary powers and duties reasonable and proper for the administration of Labor and Employment Article, §8.3-101, *et seq.*, Annotated Code of Maryland and this Subtitle.

.03 Required Templates and Forms.

A. The Division may mandate the use of approved templates and forms by EPIPs, employers, and claimants including:
(1) Employer notice to employee templates.
(2) Claims.
(a) Claim application form;
(b) Certification of qualifying event forms;
(c) Proof of relationship template;
(d) Good cause exemption form; and
(e) Intermittent leave use template.
(3) Dispute Resolution.
(a) Request forms;
(b) Reconsideration scheduling template;
(c) Decision templates; and
(d) Good cause exemption form.

B. The Division shall make prescribed templates and forms available for download from its website.

C. Any changes to the fields on the templates or forms prescribed by the Division shall be provided to the Division no less than 30 days before the changed template or form would go into effect.

MARYLAND DEPARTMENT OF LABOR

Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Chapter 02 Contributions

Authority: Labor and Employment Article, §§8.3-101, 201, and 601, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Small employer" means a person or governmental entity that meets the definition of employer and employs 14 or fewer employees, as calculated using the method under COMAR 09.42.02.06.

(2) "Social security wage base" means the maximum wage subject to tax under the Federal Insurance Contributions Act, 26 U.S.C. § 3101, *et seq*. for any particular year, as published by the Social Security Administration.

(3) "Total rate of contribution" means the percent of wages published by the Department for any particular year, under the Division's authority under Labor and Employment Article, §8.3-601, Annotated Code of Maryland.

.02 Employer Registration Requirements.

An employer shall maintain an online account necessary to make required information reports, remit contribution payments, and both receive and provide any necessary communication with the State regarding reporting and contribution obligations under Labor and Employment Article, §8.3-101, *et seq*. Annotated Code of Maryland.

.03 Registration of New Employers After Contributions Begin.

An employer who commences operations after contributions begin shall, within 20 days of their first payment of wages to an employee, create and maintain an online account necessary to make required information reports, remit contribution payments, and both receive and provide any necessary communication with the State regarding reporting and contribution obligations under Labor and Employment Article, §8.3-101, *et seq*. Annotated Code of Maryland.

.04 Qualified Employment.

A. All wages paid by each employer to an employee for performing qualified employment are subject to contributions up to the amount of the social security wage base each calendar year.

B. Employment is qualified employment if the employment is performed in the State, including:

(1) Employment performed on land that the United States government holds or owns; and

(2) Employment performed in interstate commerce.

C. Employment that is performed partly in this State is qualified employment in its entirety if:

(1) The employment that is performed outside this State is incidental to the employment that is performed in this State, including employment that is temporary or transitory or that consists of isolated transactions;

(2) The employment that is performed in this State is not incidental to employment that is performed in any other state and:

(a) The base of operations is in this State; or

(b) The place from which the employment is controlled or directed is in this State; or

(c) The employment:

(i) Is performed by an individual who is a resident of this State; and

(ii) Is not performed in part in a state in which the employment is controlled or directed or in which the base of operations is located.

.05 Employer Contributions.

A. Employers are responsible for remitting 100 percent of contributions due each quarter.

B. Under Labor and Employment Article §8.3-601, Annotated Code of Maryland, an employer may withhold from the pay of an employee an amount up to 50 percent of the total rate of contribution.

C. An employer may elect to pay their employees' contribution amounts required under §B of this Regulation, in whole or in part, and shall notify employees of the election to pay employee contributions or not, in writing, using the Division's template.

D. An employer shall provide written notice of any changes to employee contributions at least 1 pay period prior to the change.

.06 Employer Size.

A. The number of employees shall be counted by using the total number of employees both within and without the State to whom the employer paid any wages whether the employee is performing qualified employment.

B. An annual determination of employer size shall be made by averaging the number of employees to whom the employer paid any wages each quarter for the previous calendar year.

C. Until an employer has 4 quarters of reports and contributions in 1 calendar year, employer size shall be determined quarterly by counting the total number of employees to whom the employer paid any wages in that calendar quarter.

D. The employer is only responsible for remitting 50 percent of the total rate of contribution if the employer size determined under §§ A, B, and C of this Regulation is below 15.

.07 Failure to Deduct Contributions from Payroll.

A. If an employer fails to make the proper deduction from an employee's pay, that employer is considered to have elected to pay that portion of the employee's contribution for each pay period the employer fails to make the deduction.

B. The employer is liable to pay the portion of the employee share and may not recoup the employee share attributable to a past pay cycle on future pay cycles.

.08 Wage Reporting and Payment Schedule.

A. An employer shall remit contributions for each employee every quarter equal to the total rate of contribution multiplied by the total wages up to the social security wage base paid to each employee performing qualified employment in the State.

B. Quarterly informational wage and hour reports, which shall include the amount of wages and hours worked for each employee performing qualified employment in the State for each week in the immediately preceding quarter, shall be due on or before the quarterly contribution payment due date.

C. If the employer wants to be considered for classification as a small employer, the informational report shall include the number of employees not performing qualified employment in the State to whom wages were paid in the quarter.

D. If the employer fails to provide a number of employees not performing qualified employment in the State, the employer will be deemed to not be a small employer.

E. Contributions are due and shall be paid on or before the last day of the month immediately following each calendar quarter.

F. Amendments by employers to quarterly wage and hour reports shall be submitted to the Division on or before the due date for the immediately following report.

.09 Contribution Delinquencies.

A. If an employer fails to pay the required contributions in the prescribed manner, the employer shall be given reasonable time to cure any deficiencies and may be required to pay interest to the Division on unpaid contributions.

B. If deficiencies are not cured, penalties, under Labor and Employment Article §8.3-903, Annotated Code of Maryland, may be imposed as follows:

(1) Assess the amount of contributions and interest due;

(2) Make an additional assessment in an amount not to exceed 2 times the contributions withheld, as a penalty for failure to pay the contributions due; and

(3) Order an audit of the employer for the immediately following fiscal year to investigate and determine compliance with Labor and Employment Article, §8.3-101, *et seq*. Annotated Code of Maryland.

.10 Contribution Overpayments.

A. An employer may request from the Division reimbursement of overpayment of contributions no later than the due date for submission of amended reports under Regulation .08 of this Chapter.

B. An employer who receives a reimbursement under §A of this Regulation shall return employee contributions to the employees from whom they were withheld.

C. If a former employee owed reimbursed contributions from their employer cannot be located as required under §B of this Regulation, the employee's contributions shall be remitted to the State plan.

MARYLAND DEPARTMENT OF LABOR

Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Chapter 03 Equivalent-Private Insurance Plan

Authority: Labor and Employment Article, §§8.3-101, 403, and 705, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Commercially insured EPIP" means an EPIP in which the employer purchases an insurance policy from an insurance company approved to sell paid FAMLI products by Administration and the benefits related to the plan are administered through the insurance policy.

(2) "Declaration of intent (DOI)" means a legally binding, signed attestation from an employer documenting the employer's intent and commitment to provide an approved EPIP with an effective date of July 1, 2026.

(3) "EPIP application" means an application submitted to the Division for approval of an EPIP in which the employer offers a private plan where the employer assumes all financial risk associated with the benefits and administration of the EPIP, whether it is administered by the employer or a third-party administrator.

(4) "Insurance producer" has the meaning as defined in Insurance Article §1-101 (u), Annotated Code of Maryland

(5) "Seeding period" means the time during which contributions will accrue before benefits are available, July 1, 2025 – June 30, 2026.

(6) "Utilization rate" means the anticipated number of approved claims in the State plan divided by the anticipated total number of workers in the State plan which shall be announced by the Division each February for the following fiscal year based on the actuarial cost analysis performed in accordance with Labor and Employment Article §8.3-601, Annotated Code of Maryland.

.02 General.

An employer shall participate in the State plan until the policy effective date of a Division approved EPIP application.

.03 EPIP Requirements.

A. An EPIP shall cover all individuals employed by the employer who perform qualified employment.

B. Except for qualified previous employees, benefits shall be paid to any employee who would be eligible for benefits under the State plan, had the employer chosen coverage under the State plan.

C. All forms required to be completed by an employee or healthcare provider under an EPIP shall be forms prescribed by the Division in COMAR 09.42.01.03.

D. An EPIP shall allow FAMLI benefits to be taken for all purposes specified in the State plan.

E. An EPIP shall allow a covered employee to take family leave or medical leave or qualified exigency leave in an application year for periods of time equal to or longer than the duration of leave provided under the State plan.

F. An EPIP benefit calculation shall result in a weekly benefit that is equal to or greater than what the benefit would be if the employee received benefits from the State plan.

G. If an employee has less than the requisite hours needed to make a benefit determination with their current employer, the current employer shall confirm the employee's previously reported hours and benefit amount with the Division.

H. An EPIP shall allow leave to be taken in increments or nonconsecutive periods as provided under the State plan.

I. An EPIP may not impose additional conditions, restrictions, or barriers on the use of leave beyond those explicitly authorized by the State plan and shall meet or exceed the rights, protections, and benefits provided under the State plan.

J. The amount at which employee contributions are made to an EPIP cannot exceed the amount the same employee would contribute under the State plan.

K. An approved EPIP may not begin contribution collection until the policy effective date.

L. Employee contributions received or retained under an EPIP are not considered part of an employer's assets for any purpose other than paying benefits or premiums under this Subtitle.

M. An EPIP shall establish claims processing procedures under COMAR 09.42.04.

N. An EPIP shall establish reconsideration and appeal procedures under COMAR 09.42.05.

O. An employer participating in an EPIP shall be subject to the notice requirements in Labor and Employment Article §8.3-801, Annotated Code of Maryland.

P. An employer participating in an EPIP shall use the written notices prescribed by the Division under COMAR 09.42.01.03.

Q. All EPIP documents and communications shall be subject to the same accessibility, language access, and translation requirements as the Division.

R. An employer shall ensure compliance with relevant federal and State laws regarding confidentiality of records.

S. The Division, as a result of an appeal by a covered employee, may pay benefits from the State plan to a covered employee whom an EPIP was obligated to pay, if the Division determines both of the following:

(1) Some benefits went unpaid; and

(2) It is unlikely that the covered employee will otherwise be paid the benefits.

T. An employer and/or EPIP administrator shall reimburse the State plan for the amounts and the Division may pursue all legal means to collect the amounts from the employer and/or EPIP administrator if the Division pays benefits from the State plan to a covered employee whom the EPIP was obligated to pay.

.04 Job Protection and Retaliation.

Participation in an EPIP does not negate employer obligations with respect to job protection and retaliation under Labor and Employment Article §§8.3-706; 801(b)(2)(v); and 8.3-904, Annotated Code of Maryland.

.05 Employer Application Process.

A. To obtain approval of an EPIP, an employer shall first submit a completed EPIP application to the Division.

B. The Division shall mandate the EPIP application form.

C. An EPIP application may be submitted at any time.

D. EPIP Application Review Process.

(1) The Division will review complete EPIP applications as they are received.

(2) Employers will be notified of deficiencies in EPIP applications.

(3) Deficiencies must be cured within 90 days of the date of the notification.

(4) If deficiencies are not cured within 90 days, the EPIP application will be denied.

E. EPIP Application Fees.

(1) For a commercially insured EPIP the application fees shall be as follows:

(a) $100.00 for an employer with 1-14 employees.

(b) $250.00 for an employer with 15-49 employees.

(c) $500.00 for an employer with 50-199 employees.

(d) $600.00 for an employer with 200-499 employees.

(e) $750.00 for an employer with 500-999 employees.

(f) $1,000.00 for an employer with 1000 or more employees.

(2) For a self-insured EPIP the application fee is $1,000.00.

F. An approved EPIP application becomes effective, and the employer is released from its contributions obligation on the first day of the calendar quarter following the date of approval by the Division of its EPIP application.

G. An employer's EPIP approval and release from contributions obligation expires 1 year after the effective date in §F of this Regulation, and if a complete application has been timely filed and approval is pending after expiration, the Division may extend the previous approval.

H. EPIPs shall make benefits available to all covered employees.

I. An employer shall submit an EPIP application annually at least 90 days before the employer's current EPIP approval expires.

J. Special Requirements for a Self-Insured EPIP.

(1) Any employer with 50 or more employees may apply for a self-insured EPIP.

(2) Proof of Solvency.

(a) An employer desiring to establish a self-insured EPIP shall provide proof of assured funds as demonstrated by obtaining a surety bond issued by a surety company certified by the United States Treasury Department Bureau of the Fiscal Service and authorized to do business in the State.

(b) The surety bond shall be conditioned that the employer shall:

(i) Comply with all State laws and regulations governing the EPIP; and

(ii) Fulfill all obligations to pay employee claims.

(c) A surety bond shall be issued in amount equal to 1 year of expected future benefits as determined by the following formula: Product of the number of employees rounded up to the nearest 50 multiplied by 12 weeks multiplied by the utilization rate multiplied by the maximum benefit amount.

(d) A surety bond shall be issued on a form prescribed by the Division.

(e) A surety bond shall include a statement that the bonding company shall give 90 days notice in writing of its intent to terminate coverage to both the principal and the Division, except that if the bonding company is terminating liability because it is issuing a replacement bond, it may do so without providing prior notice.

(f) If a replacement bond is issued, the surety company and the employer shall notify the Division no later than 14 days after its effective date.

(g) A surety bond shall continue for 3 years after the later of the date on which:

(i) The bond is canceled; or

(ii) The EPIP is terminated.

(h) The liability of the surety:

(i) Shall be continuous;
(ii) May not be aggregated or cumulative, whether the bond is renewed, continued, replaced, or modified;
(iii) May not be determined by adding together the penal sum of the bond, or any part of the penal sum of the bond, in existence at any two or more points in time;
(iv) Shall be considered to be one continuous obligation, regardless of increases or decreases in the penal sum of the bond;
(v) May not be affected by:
1. The insolvency or bankruptcy of the employer;
2. Any misrepresentation, breach of warranty, failure to pay a premium, or any other act or omission of the employer; or
3. The termination of the employer's EPIP;
(vi) May not require an administrative enforcement action by the Division as a prerequisite to liability; and
(vii) Shall continue for 3 years after the later of the date on which:
1. The bond is canceled; or
2. The licensee, for any reason, ceases to be licensed.

(i) The Division may review the bond annually to ensure that the amount corresponds with the benefit projections and the employer:
(i) Shall provide the Division with any documentation necessary to review the bond amount;
(ii) Shall increase the bond amount if the Division determines an increase is necessary; and
(iii) May decrease the bond amount if the Division determines that the bond amount exceeds the projected benefits.

(j) A claim against the bond may be filed with the surety by the Division:
(i) Under COMAR 09.42.03.03(T);
(ii) To cover any outstanding contributions due to the Division; or
(iii) For fees and penalties owed to the Division.

(3) Separate Account.
(a) If an employer who is approved to self-insure to provide FAMLI benefits collects contributions from employees, the employer shall establish and maintain a separate account:
(i) Into which all employee contributions are deposited and kept; and
(ii) From which only benefits shall be paid.
(b) Funds collected from employee contributions shall be:
(i) Held separately from all other employer funds; and
(ii) Separately accounted for.
(c) Account records shall be made available for audits by the Division.
(d) The separate fund does not represent the extent of liability of the employer.
(4) Any employer may apply to the Division for a waiver of the surety bond requirement based on its capitalization and existing bondedness under Labor and Employment Article §8.3-705 (b)(2).

.**06 Oversight of EPIPs by the Division**.
A. The Division may, at any time at its sole discretion, initiate a review of an EPIP to determine whether the EPIP is compliant with Labor and Employment Article §§8.3-101, *et seq.*, Annotated Code of Maryland or this Subtitle.
B. On initiation of a review by the Division, within 10 business days of a request from the Division, the EPIP administrator and the employer shall provide all information and documentation requested.
C. The Division may extend the 10 business day deadline under §B of this Regulation once upon request from the EPIP administrator and/or the employer.
D. The Division shall ensure compliance with relevant federal and state laws regarding confidentiality of records.
E. Failure by an employer to cooperate with a Division review of an EPIP may result in the Division's termination of the employer's EPIP approval.

.**07 Record Keeping Requirements**.
A. An EPIP administrator or employer shall collect and maintain documentation of all of the following for a minimum of 5 years:
(1) Applications for benefits;
(2) Benefits paid, including payment dates and amounts;
(3) Adverse determinations of benefits applications;
(4) Internal reconsideration requests received;
(5) The outcome of internal reconsiderations;
(6) Documents, including wage data or other evidence, containing the information on which benefits determinations and reconsiderations were based; and
(7) Contributions received by employees.

B. Within 30 days of the Division's written request, an EPIP administrator or an employer with an approved EPIP shall provide any documentation either is obligated to maintain.

C. If the employer or EPIP administrator requests an extension and provides good cause for the extension, the Division may extend the 30-day deadline.

D. If the employer or EPIP administrator does not provide the requested documentation by the deadline, the Division may terminate its approval of the EPIP.

.08 Reporting Requirements for Employers who Have Selected an EPIP.

A. While an employer may authorize EPIP administrators to report on their behalf, the employer shall be responsible for the accuracy of the data and subject to any adverse actions related to inaccurate, late, or incomplete reporting.

B. All reported data shall represent totals for each approved EPIP.

C. Quarterly claims level and employer level data reports to the Division shall be submitted on or before the last day of the month immediately following the close of the previous quarter via an electronic template provided by the Division.

D. Failure to submit timely and complete reports shall result in the involuntary termination of the EPIP by the Division.

E. An employer with an approved EPIP shall report wage and hour data quarterly in the same manner as an employer in the State plan.

.09 EPIP Termination Rules.

A. Voluntary. Provided an employer has joined the State plan or has an approved application for a different EPIP:

(1) The employer may voluntarily terminate enrollment in an EPIP provided the employer has been enrolled in the EPIP for at least 1 year.

(2) The employer shall provide the requisite notice to the Division of the voluntary termination no later than 30 days before the termination's effective date.

(3) The employer shall provide the requisite notice to employees prescribed by COMAR 09.42.01.03 of the voluntary termination no later than 30 days before the termination's effective date.

(4) The employer shall continue the approved EPIP's coverage through the termination's effective date.

(5) The voluntary termination shall become effective on the first date of the calendar quarter following the expiration of the 30 day period.

B. Involuntary. An employer's EPIP enrollment may be terminated by the Division when the Division determines that terms or conditions of the plan have been repeatedly or egregiously violated in a manner that necessitates termination.

(1) Causes for plan termination may include:

(a) Failure to pay benefits in the amount and duration required by Labor and Employment Article §§8.3-101, *et seq.*, Annotated Code of Maryland and this Subtitle;

(b) Failure to make timely benefit determinations or reconsiderations;

(c) Failure to pay benefits in the amount and duration required by the EPIP, where the EPIP provides benefits in a greater amount or duration than is required by Labor and Employment Article §§8.3-101, *et seq.*, Annotated Code of Maryland and this Subtitle;

(d) Failure to pay benefits within the timeframes and in the manner specified by Labor and Employment Article §§8.3-101, *et seq.*, Annotated Code of Maryland and this Subtitle;

(e) Failure to maintain an adequate surety bond in accordance with this Subtitle;

(f) Misuse of EPIP money, including the use of EPIP funds for anything other than paying out benefits, or transferring EPIP funds from an account established under Labor and Employment Article §§8.3-101, *et seq.*, Annotated Code of Maryland to any account not exclusively for holding EPIP funds;

(g) Failure to submit reports or comply with other compliance requirements as required by Labor and Employment Article §§8.3-101, *et seq.*, Annotated Code of Maryland or this Subtitle;

(h) Failure to otherwise comply with Labor and Employment Article §§8.3-101, *et seq.*, Annotated Code of Maryland or this Subtitle;

(i) Failure to notify the Division that their plan has been cancelled by their carrier; or

(j) Failure to notify the Division that the product is no longer offered by their carrier.

(2) If the Division withdraws approval of an employer's EPIP, the Division shall issue to the employer and the EPIP administrator a notice of involuntary termination of EPIP approval with an effective date 14 days after the date of the notice.

(3) An employer may request a review under COMAR 09.42.05 of the withdrawal of EPIP approval before its effective date by filing with the Division.

(4) Involuntary terminations shall result in the establishment of past-due mandatory contribution debt in the amount that would have been owed to the State plan had the employer been in the State plan for a period of 1 year prior to the date of the notice of termination of EPIP approval.

(5) Involuntary terminations may result in civil penalties against an employer, including but not limited to execution on and collection of any bond amount.

(6) An employer shall provide the requisite notice to employees prescribed by COMAR 09.42.01.03 of the involuntary termination no later than 5 days after the termination's effective date.

C. Termination Generally.

(1) Continuation of Benefits.

(a) An EPIP shall pay or continue to pay benefits under the terms of the EPIP to an employee who filed a valid claim for benefits under the EPIP before the effective date of termination until the total amount of the benefit claim is paid, the duration of leave ends, or the application year ends, whichever occurs first.

(b) If the employer or EPIP administrator does not pay the benefits, the employee may seek relief with the Division under COMAR 09.42.05.

(2) Within 60 days after the effective date of the termination of an EPIP, the employer shall send to the Division all reporting requirement information on benefit claims paid and amounts of contributions collected or owing from the date of the last report provided to the Division under the EPIP reporting requirements to the date of termination.

(3) Outstanding Contributions.

(a) On receipt of the report specified in §C(2) of this Regulation, the Division will provide an invoice of the contribution amounts due, if any.

(b) The contribution amount due shall be calculated based on any contributions withheld from employees' wages that remain in the possession of the employer on the effective date of the EPIP termination, minus an amount equal to the amount of any benefits due to be paid as required under §C(1) of this Regulation.

(c) Once all required benefits are paid under §C(1) of this Regulation, the employer shall send to the Division the final report on any additional benefit claims paid or administrative expenses incurred after the date of the last report provided under §C(2) of this Regulation within 5 business days.

(d) The Division will provide an invoice of any additional contribution amounts due.

(4) Any employer whose EPIP approval has been terminated, either voluntarily or involuntarily, shall be immediately enrolled in the State plan, with contribution obligations going back to the most recent quarter start date, unless and until the employer is approved for a new EPIP.

D. To the extent that any of the Regulations in this section conflict with the Temporary Provisions applicable to EPIP termination in Regulation .10 of this Chapter, the provisions in Regulation .10 of this Chapter control.

.10 Temporary Provisions.

A. Declaration of Intent to Obtain Approval of EPIP.

(1) On or after May 1, 2025 and until August 31, 2025, any employer who intends to enroll in an EPIP may submit a DOI, signed by the employer, acknowledging, attesting, and agreeing to certain requirements, including but not limited to:

(a) The employer intends to provide an EPIP to all its employees that meets or exceeds all the requirements of Labor and Employment Article §§8.3-101, *et seq.*, Annotated Code of Maryland and this Subtitle.

(b) The employer met with an Insurance producer about available commercially insured EPIPs.

(c) A signature from the Insurance producer acknowledging the meeting in §A(1)(b) of this Regulation.

(d) Beginning on the effective date of a DOI and continuing until the Division has approved the EPIP application, the employer shall collect and hold all contributions from both the employer and employees that would otherwise be due to the State plan in an escrow account, provided that:

(i) The employer collects employee contributions via payroll deduction or makes contributions on behalf of the employee.

(ii) Employee contributions are withheld during the pay period for which they are being collected.

(iii) Employee contributions are not retroactively collected.

(e) If, after the submission of a DOI, an EPIP is approved, the employer shall return employee contributions held in escrow to the employees from whom they were withheld, or if the EPIP approved is a self-insured EPIP the contributions held in escrow may be used to seed the separately accounted self-insured EPIP fund.

(f) If a former employee cannot be located, the employee's contributions shall be remitted to the State plan.

(g) The employer shall submit an EPIP application no later than April 1, 2026 if the EPIP is a self-insured EPIP and June 1, 2026 if the EPIP is a commercially insured EPIP.

(h) If, after the submission of a DOI, the employer is not approved for an EPIP before June 30, 2026, the employer is liable for remitting to the State plan an amount equal to the sum of all unpaid employer and employee contribution payments due for the periods contributions were not made plus any interest and penalties for late payment.

(i) If necessary, the funds held in escrow under §A(1)(d) of this Regulation shall be used to remit payment under §A(1)(h) of this Regulation.

(2) The Division shall approve or deny a DOI within 15 business days of submittal.

(3) An approved DOI becomes effective on the first day of the calendar quarter following the date of approval by the Division.

(4) The Division may terminate a DOI for:

(a) Misuse of employee contributions by the employer;

(b) Failure to hold funds in escrow as required;

(c) Failure to adhere to applicable FAMLI program requirements;

(d) Excessive withholding of contributions from the pay of employees beyond the amount that would have been withheld under the State plan;

(e) Failure to respond timely to a reasonable request from the Division for information about the EPIP or DOI;

(f) Failure to submit quarterly wage and hour reports;

(g) Failure to submit an EPIP application; or

(h) Denial by the Division of an EPIP application.

(5) All DOIs expire June 30, 2026.

B. DOI and Contributions.

(1) Any employer whose DOI is approved on or before May 31, 2025, shall be exempt from contributions owed the State during the seeding period.

(2) Any employer whose DOI is approved between June–1 - August 31, 2025, shall be exempt from contributions owed to the State beginning October 1, 2025, through the end of the seeding period.

C. Initial EPIP Enrollment.

(1) Initial self-insured EPIP applications shall be submitted to the Division from January 1, 2026 - April 1, 2026, for an effective date of July 1, 2026.

(2) Initial commercially insured EPIP applications shall be submitted to the Division March 1, 2026-June 1, 2026, for an effective date of July 1, 2026.

(3) If an employer is approved to be exempt from contributions to the State plan via a DOI and their subsequent EPIP application is approved, the employer shall remain in an EPIP for a minimum of 4 calendar quarters.

(4) Failure to complete the initial EPIP enrollment as outlined in §C (1) or (2) of this Regulation shall result in the employer's automatic enrollment in the State plan and remittance to the Division an amount equal to the total contributions that would have been paid to the State plan beginning October 1, 2025 minus any contributions made to the State plan prior to approval of the EPIP plus any interest and penalties for late payment.

(5) If an employer whose DOI was approved enters into an EPIP and the EPIP is terminated before June 30, 2027, either by the employer or the Division, the employer shall remit to the Division the contributions and interest from which they were exempted as a result of the DOI.

(6) If an employer whose DOI was approved enters into an EPIP and the EPIP is terminated before June 30, 2028, either by the employer or the Division, the employer is responsible for half the contributions and interest from which they were exempted as a result of the DOI.

MARYLAND DEPARTMENT OF LABOR

Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Chapter 04 Claims

Authority: Labor and Employment Article, §§8.3-101, 403, 701, and 902, *et seq.* Annotated Code of Maryland

.01 General.

Unless expressly provided otherwise, all requirements in this chapter apply to EPIPs.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Alternative FAMLI purpose leave (AFPL)" means employer-provided leave specifically designated as a separate bank of time off for medical leave, family leave, and/or qualified exigency leave and that is not leave provided under an EPIP.

(2) "Claim application" means a claimant's submission to the Division or an EPIP for FAMLI leave and benefits.

(3) "Claimant's average weekly wage" means the amount calculated in Regulation .06 of this Chapter.

(4) "Complete claim application" means an application submitted by a claimant with all required supporting documentation, including the response from an employer and any investigation, under Regulation .04 of this Chapter.

(5) "Fraud" means a misrepresentation or concealment of a material fact made by a claimant which induces the State plan or an EPIP to provide benefits when the claimant would have otherwise not qualified.

(6) "General purpose leave" means employer-provided paid leave–such as general paid time off, personal leave, vacation leave, or sick leave–that is not AFPL or leave provided under an EPIP.

(7) "Good cause" means a demonstration by a claimant that a failure to file a complete claim application was due to:

(a) A serious health condition that resulted in an unanticipated and prolonged period of incapacity and that prevented an individual from filing a claim in a timely manner;

(b) A demonstrated inability to reasonably access a means to file a claim in a timely manner, such as due to a natural disaster, power outage, or a significant and prolonged Department system outage; or

(c) A demonstrated failure of the employer to provide the notification required under this Subtitle to the claimant.

(8) "Inpatient care" means an overnight stay in a hospital, as defined in Health General Article §19-301, *et seq.* Annotated Code of Maryland, or related institution, as defined in Health General Article §19-301, *et seq.* Annotated Code of Maryland, or a hospice, as defined in Health General Article §19-901, *et seq.* Annotated Code of Maryland, or any subsequent treatment in connection with inpatient care.

(9) "Recipient" means a claimant whose application for FAMLI leave and benefits has been approved and is receiving benefits.

(10) "State average weekly wage" means the wage calculated under Labor and Employment Article, §9-603, Annotated Code of Maryland.

(11) "Weekly benefit amount" means the total weekly dollar amount provided to a recipient by the State plan or EPIP.

.03 Qualifying Events.

A. Childcare or bonding is a qualifying event in the following circumstances:

(1) To care for or bond with a child of the claimant during the first 12 months after the child's birth; or

(2) During the process through which a child is being placed with the claimant through foster care, kinship care, or adoption and to care for or bond with the child during the first 12 months after the placement.

B. Caring for a family member with a serious health condition is a qualifying event.

C. The diagnosis, occurrence, or tending to of one's own serious health condition is a qualifying event.

D. Caring for a service member with a serious health condition is a qualifying event if:

(1) The claimant is the service member's next of kin; and

(2) The serious health condition resulted from, or was exacerbated by, military service.

E. A qualifying exigency arising out of the deployment of a service member who is a family member of the claimant is a qualifying event.

.04 Application Process.

A. Eligibility. A covered individual experiencing a qualifying event is eligible to receive FAMLI benefits if they file a complete claim application within 60 days of taking leave that would qualify as FAMLI leave.

(1) The 60 day filing deadline shall be waived for good cause, up to 1 year from the leave commencing.

(2) On or after the date on which applications for benefits may be submitted to the Division, applications may be accepted up to 60 days before the first day of FAMLI leave requested.

(3) Except as provided in (4), a covered individual shall file their application with their employer's plan.

(4) A qualified previous employee shall only be eligible to file their application with the State plan.

B. Required Documentation.

(1) A claimant shall provide personal identifying information as required by the Division.

(2) A claimant shall provide information regarding the employer from which they intend to take FAMLI leave as required by the Division.

(3) A claimant seeking FAMLI leave for bonding or to care for another shall provide any of the following as proof of relationship:

(a) An affidavit signed by the claimant attesting to qualifying relationships as provided by the Division;

(b) Copies of official orders, certifications, or registrations from a government entity; or

(c) Copies of documentation from licensed foster care and/or adoption providers.

(4) Certification of Qualifying Event.

(a) Care or Bonding with a Child. An application for FAMLI leave to care for or bond with a child of the claimant shall include:

(i) A certification of live birth;

(ii) Documentation of placement from a licensed child placement agency or government agency responsible for child placement, and documentation of any court appearances, appointments, or travel in anticipation of placement, if applicable, including:

1. A court order; or

2. Affidavit of an informal kinship care arrangement; or

(iii) Other reasonable documentation determined by the Division.

(b) Family Member's Serious Health Condition. An application for FAMLI leave to care for a family member with a serious health condition, shall include a complete certification form, approved by the Division, from a licensed health care provider, establishing:

(i) The first date on which the covered individual took or intends to take FAMLI leave from employment and whether the FAMLI leave will or is intended to be taken for a continuous period of time or intermittently;

(ii) Date of diagnosis;

(iii) The date on which the serious health condition of the family member commenced;

(iv) The probable duration of the serious health condition;

(v) The appropriate facts related to the serious health condition within the knowledge of the licensed health care provider;

(vi) A statement that the covered individual needs to care for a family member and an estimate of the amount of time required to provide the care; and

(vii) If intermittent FAMLI leave is requested, the expected frequency and duration of the intermittent FAMLI leave.

(c) Own Serious Health Condition. An application for FAMLI leave for one's own serious health condition, shall include a complete certification form, approved by the Division, from a licensed health care provider, establishing:

(i) The first date on which the covered individual took or intends to take FAMLI leave from employment and whether the FAMLI leave will or is intended to be taken for a continuous period of time or intermittently;

(ii) The date on which the serious health condition of the covered individual commenced;

(iii) Treatment dates;

(iv) Period of incapacity;

(v) The probable duration of the serious health condition;

(vi) The appropriate facts related to the serious health condition within the knowledge of the licensed health care provider;

(vii) A statement that the covered individual is unable to perform the functions of the covered individual's position; and

(viii) If intermittent FAMLI leave is requested, the expected frequency and duration of the intermittent FAMLI leave.

(d) Military Caregiving. An application for FAMLI leave to care for a service member for whom the claimant is next of kin with a serious health condition, shall include a complete certification form, approved by the Division, from a licensed health care provider, establishing:

(i) That the serious health condition was caused, or exacerbated by, military service;

(ii) The first date on which the covered individual took or intends to take FAMLI leave from employment and whether the FAMLI leave will or is intended to be taken for a continuous period of time or intermittently;

(iii) The date on which the serious health condition of the service member commenced or was exacerbated;

(iv) The probable duration of the serious health condition;

(v) The appropriate facts related to the serious health condition within the knowledge of the licensed health care provider; and

(vi) If intermittent FAMLI leave is requested, a statement that the covered individual needs to care for a service member and the expected frequency and duration of the intermittent FAMLI leave.

(e) Qualified Exigency. An application for FAMLI leave for a qualifying exigency arising out of the deployment of a service member who is a family member, shall include a copy of the family member's active duty orders or other documentation issued by the military that indicates that the service member is on covered active duty or call to covered active duty status, and the dates of the service member's covered active duty service.

(5) Attestations. The Division may require claimants to attest that information provided in their applications is true to the best of their knowledge and that there are no disqualifying criteria.

(6) Employer Response to Claim Application.

(a) An employer shall have 5 business days to respond to notice from the Division or an EPIP of an employee's submitted claim application.

(b) At the conclusion of the 5 business day period in §B(6)(a) of this Regulation, if there is no employer response, the claim application is considered a complete claim application.

(c) At the conclusion of the 5 business day period in §B(6)(a) of this Regulation, if the employer has challenged the claimant's eligibility, the Division or EPIP shall investigate which may include a request for a response from the claimant.

(d) At the conclusion of the investigation in §B(6)(c) of this Regulation, the claim application is considered a complete claim application.

(e) If benefits are approved and issued and job and anti-retaliation protections have thus attached and an employer provides a response after the time period provided in §B(6)(a) of this Regulation, the response may still be considered and if the information negates the recipient's eligibility:

(i) The recipient is still entitled to the benefits received;

(ii) Continuation of benefits will cease; and

(iii) Job and anti-retaliation protections apply for the time period from approval of benefits to revocation of benefits.

(f) If FAMLI leave has been retroactively approved and additional information as described in §B(6)(e) of this Regulation has been provided then any benefits issued shall be considered an overpayment and job and anti-retaliation protections may not apply.

C. Updating a Claim Application.

(1) This provision applies to the incomplete application notification requirements in Labor and Employment Article §8.3-703, Annotated Code of Maryland.

(2) A claim shall be updated within 10 days, or as soon as practicable with good cause shown, of any changes to the following information provided on an application:

(a) Basis for leave;

(b) Start date of leave;

(c) Duration of leave;

(d) End date of leave; or

(e) Whether the claimant has begun to receive Workers' Compensation or Unemployment Insurance benefits.

(3) Failure to update a claim with any changes to the information provided on an application for benefits may result in a delay, underpayment, overpayment, or denial of benefits.

D. Cancelation of a Claim.

(1) If a claimant no longer requires FAMLI benefits, their application may be withdrawn.

(2) If the FAMLI leave period has already commenced, the total amount of FAMLI leave actually taken, not the total amount applied for, will be assessed against the claimant's FAMLI leave balance for the application year.

.05 Determination of Length of FAMLI Leave.

A. General.

(1) Any claimant may receive up to 12 weeks of FAMLI leave per employer per application year.

(2) Regardless of the qualifying event for medical leave, any claimant may receive up to 12 weeks of FAMLI leave per employer per application year for medical leave and 12 weeks per employer per application year for bonding leave.

(3) For each claim, a claimant may be approved for the lesser of:

(a) 12 weeks;

(b) The remaining FAMLI leave balance for the claimant for the application year;

(c) The amount requested; or

(d) If applicable, the amount supported by any required documentation.

B. Family Leave.

(1) Bonding Leave.

(a) Birth of a Child. Any claimant seeking leave for bonding with a child may apply for up to 12 weeks of FAMLI leave within the first 12 months beginning on the date of the birth.

(b) Adoption, Foster Care or Kinship Care.

(i) Any claimant seeking leave for bonding with a child placed through adoption, fostering, or kinship care may apply for up to 12 weeks of FAMLI leave within 12 months of the placement.

(ii) FAMLI leave may also be used in anticipation of placement for the following events, provided they are substantiated by documentation required:

1. Court appearances;
2. Legal appointments;
3. Placement agency appointments;
4. Counseling appointments;
5. Medical appointments; and
6. Travel.

(2) Caring for a Family Member.

(a) A claimant seeking leave to care for a family member may apply for up to 12 weeks of FAMLI leave provided documentation from a licensed health care provider substantiating the time period requested is submitted with the application.

(b) Death of Family Member. If the covered individual is on approved FAMLI leave and the person they are caring for dies, the reason for that leave has ended.

(i) Benefits shall continue to be paid to the covered individual until 7 days after the death of the family member or the previously approved end date for the leave, whichever date is soonest.

(ii) The covered individual shall provide notice of the date of death of the family member for whom the covered individual was caring within 72 hours of the person's passing.

(3) Military Caregiving. A claimant seeking leave to care for a service member may apply for up to 12 weeks of FAMLI leave provided documentation from a licensed health care provider substantiating the time period requested is submitted with the application.

C. Medical Leave. A claimant seeking leave for their own serious health condition may apply for up to 12 weeks of FAMLI leave provided documentation from a licensed health care provider substantiating the time period requested is submitted with the application.

D. Qualified Exigency Leave. A claimant seeking leave for a qualifying exigency may apply for up to 12 weeks of FAMLI leave provided documentation outlined in 09.42.04.04(B)(4)(e) substantiating the time period requested is submitted with the application.

.06 FAMLI Benefit Calculation.

A. Claimant Average Weekly Wage.

(1) An employed claimant's average weekly wage shall be calculated by dividing the wages earned from the employer from whom the claimant is taking FAMLI leave over the highest of the previous 4 completed calendar quarters for which quarterly reports have been required prior to the benefit start date by 13.

(2) If the Division does not have completed wage and hour reports for at least 2 quarters for an employed claimant with the employer from which they have requested leave, the Division will use the highest quarter of the most recent 4 quarters the claimant worked for any employer to calculate the employed claimant's average weekly wage.

(3) For a claimant who applies for FAMLI benefits as a qualified previous employee the Division will use the highest quarter of the most recent 4 quarters the claimant worked for any employer to calculate the employed claimant's average weekly wage..

B. Continuous FAMLI Leave Benefit Calculation.

(1) If the claimant's average weekly wage is 65 percent or less of the State average weekly wage, benefits will be 90 percent of the claimant's average weekly wage; or, if the claimant's average weekly wage is greater than 65 percent of the State average weekly wage, benefits will be the sum of:

(a) 90 percent of the claimant's average weekly wage up to 65 percent of the State average weekly wage; and

(b) 50 percent of the claimant's average weekly wage that is greater than 65 percent of the State average weekly wage up to the maximum benefit amount.

(2) Changes to the State average weekly wage and maximum benefit amount only apply to claims that begin after the date the increase becomes effective.

C. Intermittent FAMLI Leave Benefit Calculation.

(1) For intermittent FAMLI leave an hourly benefit amount will be calculated by dividing the weekly benefit amount by the average number of hours worked per week during the highest of the previous 4 completed calendar quarters for which quarterly reports have been required.

(2) The benefit amount to be disbursed will be calculated by multiplying the hourly benefit amount by the number of hours of intermittent FAMLI leave taken in a week.

.07 Intermittent FAMLI Leave Benefit Request Process.

A. Claimants approved for intermittent FAMLI leave shall submit requests for benefits within 5 business days of leave being taken unless good cause can be shown.

B. Intermittent FAMLI leave shall be taken in an increment of not less than 4 hours unless the claimant's scheduled shift was fewer than 4 hours.

C. Benefits will not be issued for requests that exceed the expected duration and frequency listed on the medical certification without an updated certification.

.08 Notice Requirements.

A. Employer to Employee.

(1) An employer shall give an employee notice about FAMLI leave and benefits in the following circumstances:

(a) 6 months prior to the commencement of benefits, either through an EPIP or with the State plan;

(b) At hire;

(c) Annually;

(d) 30 days before any changes to the employer's FAMLI procedures or plan go into effect; and

(e) When the employer knows that an employee's leave or leave request may be eligible for FAMLI.

(2) The Division will publish prescribed forms and templates for employer use under COMAR 09.42.01.03.

(3) If the employer collects an electronic or physical acknowledgement of receipt by the claimant (such as an electronic or wet signature) of the notice, the claimant is considered notified.

B. Employee to Employer.

(1) FAMLI Leave.

(a) Foreseeable FAMLI Leave. If the need for FAMLI leave is foreseeable, an employee shall provide 30 days notice to an employer.

(b) Unforeseeable FAMLI Leave. If an employee did not or could not have known about the need for FAMLI leave 30 days before the FAMLI leave commencement date, the employee shall be required to provide notice as soon as practicable of the need for FAMLI leave to their employer.

(c) An employer may waive the notice requirement.

(d) An employer is deemed to have waived the notice requirement under §B(1)(a) of this Regulation if the employer:

(i) Did not invoke it when notified of the claim by the Division or the EPIP; or

(ii) Failed to notify the claimant that the employer requires notice under §B(1)(a) of this Regulation.

(2) Intermittent FAMLI Leave.

(a) If FAMLI leave is to be taken on an intermittent schedule, the employee shall:

(i) Make a reasonable effort to schedule the intermittent FAMLI leave in a manner that does not disrupt unduly the employer's operations; and

(ii) Provide the employer with reasonable and practicable prior notice of the reason, dates, and duration for which intermittent FAMLI leave is necessary.

(b) Notice of Intermittent Leave Schedule.

(i) A recipient who is approved for intermittent FAMLI leave who fails to provide reasonable and practicable prior notice to their employer of the intermittent leave schedule may be subject to the employer's established absence policy.

(ii) An employer, whether enrolled in the State plan or an EPIP, shall notify the Division when a recipient approved for intermittent FAMLI leave fails to provide the notice detailed in §B(2)(a) of this Regulation.

(iii) If a recipient's utilization of intermittent FAMLI leave is inconsistent with the FAMLI leave approval, it may not be considered retaliation for an employer to request additional information related to the use of FAMLI leave.

C. State Plan or EPIP to Claimant. Claimants shall be provided notice in the following circumstances:

(1) When a claimant's application is submitted.

(2) When an incomplete application is submitted, within 5 business days of application submission.

(3) When a notice is sent to the claimant's employer (confidentiality restrictions).

(4) When their employer's response is submitted.

(5) Whether their application is approved, within 10 business days of complete claim application submission including:

(a) Benefit amount;

(b) FAMLI benefits beginning date;

(c) FAMLI leave period beginning date;

(d) FAMLI benefits ending date;

(e) FAMLI leave period ending date;

(f) Duration and frequency of intermittent FAMLI leave (if applied for); and

(g) The claimant's appeal rights.

(6)Whether their application is denied (in full or in part) within 10 business days of complete claim application submission and the notice shall:

(a) State concisely and simply:

(i) The reasons for denial;

(ii) The claimant's appeal rights;
(iii) The facts that are asserted; or
(iv) If the facts cannot be stated in detail when the notice is given, the issues that are involved;
(b) State the pertinent statutory and regulatory sections under which the action was taken;
(c) State that the party receiving the notice has the opportunity to request a reconsideration, including:
(i) What, if anything, a person must do to receive a reconsideration; and
(ii) All relevant time requirements; and
(d) State the direct consequences, if any, or remedy of the party receiving the notice's failure to exercise in a timely manner the opportunity for a reconsideration.

D. State Plan or EPIP to Employer. An employer shall be provided notice of any of the following circumstances occurring:
(1) An employee files an application;
(2) An employee files a complete claim application;
(2) A determination regarding a claim for benefits is made;
(3) A reconsideration or an appeal of a determination regarding a claim for benefits is filed; or
(4) A change is made to a determination regarding a claim for benefits.

.09 Coordination of Benefits.

A. FMLA. An employee's annual maximum duration of FAMLI leave may be reduced by the employee's use of FMLA if:
(1) The employee's FMLA leave was also eligible for FAMLI;
(2) The employer notified the employee of their potential eligibility for FAMLI when the employee took FMLA; and
(3) The employee did not apply for FAMLI leave.

B. Employer-Provided Leave.
(1) Alternative FAMLI Purpose Leave (AFPL).
(a) An employer may require an employee to use AFPL concurrently or in coordination with FAMLI provided the AFPL is:
(i) Specifically designed to fulfill a purpose of FAMLI;
(ii) Paid;
(iii) Not accrued;
(iv) Not subject to repayment if the employee leaves their position;
(v) Not available for general purposes; and
(vi) Available without a requirement to exhaust another form of leave.
(b) If an employer chooses to require an employee to use AFPL concurrently or in coordination with FAMLI leave, the employer shall provide advanced written notice to its employees of this requirement.
(c) When an employer requires concurrent or coordinated usage of AFPL and FAMLI and has satisfied the written notice requirement, and the employee declines to apply for FAMLI benefits, the employee's FAMLI eligibility is reduced by the amount of AFPL time taken.
(d) If a recipient receives wage replacement from both FAMLI and AFPL concurrently, the FAMLI benefit is primary and the AFPL benefit may be used to supplement the recipient's wage to equal no more than 100 percent of the recipient's average weekly wage.
(e) An employer may deduct the full amount of time taken under both forms of leave from the recipient's AFPL balance even if the recipient only received partial wage replacement from the AFPL.
(f) An employee's decision to use AFPL concurrently or in coordination with FAMLI does not negate the job protection or retaliation provisions of Labor and Employment Article §8.3-706 and §8.3-904, Annotated Code of Maryland.
(2) General Purpose Leave.
(a) Neither the employee nor the employer may require the substitution of general purpose leave for FAMLI leave.
(b) An employer and an employee may agree to have general purpose leave wages supplement FAMLI benefits, up to 100 percent of the employee's average weekly wage.
(c) If general purpose leave is used to supplement FAMLI benefits, the employer may:
(i) Convert the dollar amount of the supplement into the corresponding number of employer-provided general purpose leave hours; and
(ii) Subtract those hours from the employee's balance of accrued and unused employer-provided general purpose leave.
(d) Documentation of use of general purpose leave.
(i) The use of employer-provided general purpose leave to supplement FAMLI benefits requires mutual agreement in writing between the employer and the employee.
(ii) If either the employer or the employee does not so mutually agree, employer-provided general purpose leave may not be used to supplement FAMLI benefits.

(iii) Any agreement under §B(2)(d)(ii) of this Regulation shall be documented and retained by the employer.

(e) Mutual agreement between the employer and the employee is not necessary in order for an employee to use paid sick leave prior to receiving FAMLI leave benefits.

C. Workers' Compensation and Unemployment Benefits.

(1) Under Labor and Employment Article §8.3-702 (e), Annotated Code of Maryland, an individual receiving Unemployment Insurance benefits from the State may not be eligible for FAMLI benefits.

(2) Except in the case of benefits for a permanent partial disability, under Labor and Employment Article §8.3-702 (e), Annotated Code of Maryland, an individual receiving Workers' Compensation wage replacement benefits may not be eligible for FAMLI benefits.

.10 Benefit Payment Process.

A. Payment Schedule.

(1) The first payment to a recipient shall be within 5 business days after the complete claim application is approved or the FAMLI leave has started, whichever is later.

(2) Subsequent benefit payments to recipients shall be made every 2 weeks until the benefit period ends.

B. Overpayment.

(1) On learning of overpayment of benefits, written notice will be sent to the recipient, including that:

(a) Repayment of the overpayment is being sought; or

(b) A waiver of the repayment is being offered.

(2) In cases of seeking repayment, the recipient shall have 30 days to reply to the notice as follows:

(a) The recipient agrees to repay; or

(b) The recipient requests a waiver under §C(4) of this Regulation.

(3) Repayment. Repayment of benefits may be sought from an individual who received benefits under this Subtitle if:

(a) Benefits were paid erroneously or as a result of willful misrepresentation by the recipient; or

(b) A claim for benefits under this Subtitle is rejected after the benefits were paid.

(4) Waiver. Repayment of benefits may be waived if:

(a) The error in payment was not due to any knowingly false statement, nondisclosure of material fact, or misrepresentation by a covered individual; or

(b) The repayment would be against equity and good conscience or administrative efficiency.

(5) Denial of waiver. If a recipient requests a waiver and the request is denied, the recipient may file a request for reconsideration.

(6) If an EPIP seeks reimbursement of an overpayment of benefits, the EPIP administrator shall notify the Division of its intent to seek reimbursement simultaneously with its notice to the recipient.

(7) If a recipient's employer has terminated enrollment in the State plan and enrolled in an EPIP, any recipient who filed a valid claim for benefits under the State plan before the effective date of the employer's EPIP enrollment shall be paid or continue to be paid benefits from and under the terms of the State plan until the total amount of the benefit claim is paid, the duration of leave ends, or the application year ends, whichever occurs first.

.11 Finding of Fraud After Benefit Approval.

If benefits are approved and issued and job and anti-retaliation protections have thus attached, and then fraud is proven:

(1) Any benefits issued will be treated as an overpayment; and

(2) Job and anti-retaliation protections will not apply.

.12 Special EPIP Provisions.

A. To the extent the claim procedures, including timelines and good cause, outlined in this chapter are more restrictive with respect to claimants than those claim procedures outlined by the Administration, the Administration's procedures shall control.

B. To the extent the claim procedures, including notice requirements and good cause, outlined in this chapter are less restrictive with respect to employers and insurers than those claim procedures outlined by the Administration, the Administration's procedures shall control.

MARYLAND DEPARTMENT OF LABOR

Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Chapter 05 Dispute Resolution

Authority: Labor and Employment Article, §§8.3-101, 403, and 906 Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative Procedure Act" means State Government Article, §§10-201--10-217, Annotated Code of Maryland.

(2) "Authorized representative" means a person designated by a party to represent the party during the Division's dispute resolution process.

(3) "Final order" means the final decision of the hearing officer which contains findings of fact, conclusions of law, and a disposition which grants or denies FAMLI benefits and/or FAMLI leave.

(4) "Good cause" means a demonstration by a party that a failure to timely file for EPIP denial or termination review, reconsideration, appeal, or postponement was due to:

(a) A serious health condition that resulted in an unanticipated and prolonged period of incapacity and that prevented an individual from filing in a timely manner;

(b) A demonstrated inability to reasonably access a means to file in a timely manner, such as due to a natural disaster, power outage, or a significant and prolonged Department system outage; or

(c) A demonstrated failure of the entity which issued the adverse determination to provide notice of dispute resolution procedures.

(5) "Hearing officer" means the individual or entity who issues the final order in a FAMLI appeal.

(6) "Party" means a claimant, an EPIP administrator, or the Division, or all or some of them, as applicable.

.02 Dispute Resolution Procedures.

A. EPIP Denial or Termination Review.

(1) An employer whose application to opt-out of the State plan and into an EPIP was denied or whose EPIP was involuntarily terminated may file a request for review.

(2) Manner of Filing.

(a) Requests for review shall be filed with the Division within 10 business days of the application denial or termination unless good cause for a delay can be shown.

(b) Requests for review shall be in writing.

(c) Requests for review shall include why the requestor believes the application denial or termination was in error.

(3) Review shall be conducted by Division personnel who did not participate in the initial application denial or termination at issue.

(4) The Division shall issue a decision electronically on a request for review within 20 business days.

(5) The Division may schedule an informal conference to discuss the review request.

(6) If the Division schedules an informal conference, it shall be held within the required time period for a decision to be issued.

B. Claimant FAMLI Reconsideration & Appeals.

(1) Reconsideration. Any claimant is entitled to request reconsideration of any determination by the Division or an EPIP administrator.

(a) Manner of Filing.

(i) Requests for reconsideration shall be filed within 30 days, unless good cause can be shown, of the adverse determination with the issuing entity.

(ii) Requests for reconsideration shall be in writing.

(iii) Requests shall include why the requestor believes the adverse determination to be in error.

(b) Notice of Reconsideration. When a reconsideration request is filed, the Division or EPIP administrator shall notify in a timely manner all parties to the adverse determination being reconsidered and the employer.

(c) Reconsideration shall be conducted by Division or EPIP administrator personnel, as applicable, who did not participate in the adverse determination at issue.

(d) A decision on the reconsideration shall be issued within 10 business days.

(e) An informal conference to discuss the reconsideration may be held.

(f) If an informal conference is scheduled, it shall be held within the required time period for a decision to be issued.

(2) Appeals. Any claimant whose claim has been denied, in part or in full, whose benefits have been underpaid, or any individual who has been disqualified from receiving benefits under Labor and Employment Article §8.3-901, Annotated Code of Maryland is entitled to file appeals of adverse determinations.

(a) The appeals process is only available to parties who have completed the reconsideration process as described in §B(1) of this Regulation.

(b) The appeal shall be filed with the Division within 30 days of the adverse determination unless the claimant or individual can show good cause.

(c) The Division shall be a party to every appeal under this section regardless of which entity issued the adverse determination on appeal.

(d) Notice of Appeal. When an appeal is filed, the Division shall notify in a timely manner all parties to the adverse determination being appealed, including the issuer of the benefits at issue and the employer.

(e) Informal Mediation. There may be an informal mediation process activated at the time of filing of the appeal and proceeding with it shall be at the discretion of the Division.

(f) Absent unusual circumstances, a hearing shall be held on the appeal within 30 days of filing of the appeal.

(g) Hearing Notice. Parties to appeals shall be provided with reasonable written notice of a hearing to the parties.

(i) The hearing notice shall contain:

1. The date, time, place, and nature of the hearing;
2. A statement of the right to present witnesses, documents, and other forms of evidence, and the right to cross-examine witnesses of another party;
3. A statement of the right to request subpoenas for witnesses and evidence, specifying the costs, if any, associated with the request;
4. A copy of the hearing procedure;
5. A statement of the right or restrictions pertaining to representation;
6. A statement that failure to appear for the scheduled hearing may result in an adverse action against that party; and
7. A statement that the parties may agree to the evidence and waive their right to appear at the hearing.

(ii) Service of Notices, Orders, and Other Documents. Except as provided by prior agreement of the parties, the hearing officer shall serve notices, orders, and other documents to the parties in one of the following ways:

1. Electronically;
2. By personal delivery; or
3. By mailing a copy of the document, first class, postage prepaid, to the person's last known business or home address; and
4. If the person is represented by counsel, also by delivering or mailing a copy of the document, first class, postage prepaid, to the person's attorney.

(iii) The hearing officer shall send the hearing notice to the parties to the appeal electronically and by certified mail to the person's last known address:

1. At least 10 days before the hearing; or
2. If the parties have agreed to a date for which 10 days notice cannot be given, at the earliest time possible.

(h) Representation.

(i) A party to a proceeding may:

1. Appear individually or, if appearance by a representative is permitted by law, through a representative; or
2. Be represented by an attorney authorized to practice in Maryland.

(ii) Any notice, decision, or other matter required to be sent to a party may also be sent to the party's attorney of record at the attorney's address.

(iii) If a party is represented by an attorney or appears through an authorized representative, then examination and cross-examination of witnesses, and objections and motions on the party's behalf shall be made solely by the attorney or the authorized representative.

(i) Failure to Appear. A hearing may proceed as scheduled in the absence of a party if the party has:

(i) Been served in accordance with §B(2)(g) of this Regulation; and

(ii) Failed to obtain a postponement of the hearing from the hearing officer under these requirements.

(j) Postponement.

(i) The hearing officer may postpone a hearing only if a written request for postponement is filed with the hearing officer not later than 10 days before the date of the hearing.

(ii) If a request for postponement is received later than 10 days before the date of the hearing, the hearing officer shall deny the request unless they determine that there was good cause which justified the delay.

(iii) Failure to retain counsel or to timely request a subpoena may not be considered good cause under this regulation.

(iv) A request for postponement based on failure to obtain service on a witness may not be granted if the party has failed to comply with the subpoena procedures set forth at COMAR 09.01.02.

(k) Discovery. There is no pre hearing discovery.

(l) The documents used by the provider of benefits in determining the claim and shared with the Division shall be part of the record.

(m) Subpoenas. Subpoena procedures are governed by COMAR 09.01.02.

(n) Conduct of the Proceedings.

(i) The hearing officer may impose reasonable time limitations.

(ii) The Maryland Rules of Civil Procedure may be used as a guide in resolving procedural issues governing the conduct of the hearing that are not addressed in this chapter and the Administrative Procedure Act.

(iii) The hearing officer may conduct all or any part of the hearing by telephone, video conference, or other electronic means, in accordance with State Government Article, §10-211, Annotated Code of Maryland.

(iv) Order of Proceedings. Absent unusual circumstances, the order of proceedings shall be as follows:

1. Opening statements and preliminary matters may be heard;
2. All individuals planning to testify shall be sworn before testifying;
3. The claimant or individual or their attorney or authorized representative may present the claimant's case;
4. The EPIP administrator may present the EPIP administrator's case;
5. The Division may present the Division's case;
6. The claimant shall be entitled to a brief rebuttal after the conclusion of the EPIP administrator's case and/or the Division's case;
7. The hearing officer may hear closing arguments in the same order as the presentation of evidence;
8. Dispositive motions are prohibited.

(o) Evidence.

(i) The rules of evidence under this chapter shall be under State Government Article, §10-213, Annotated Code of Maryland.

(ii) Hearsay, in the form of medical records and certified forms filled out by licensed heath care providers, shall be permitted at the hearing.

(p) The record shall include:

(i) All pleadings, motions, responses, correspondence, memoranda, including proposed findings of fact and conclusions of law, and requests filed by the parties;

(ii) All hearing notices;

(iii) All documentary and other tangible evidence received or considered;

(iv) A statement of each fact officially noticed;

(v) All stipulations;

(vi) All offers of proof and objections;

(vii) All rulings, orders, and decisions, proposed or final;

(viii) Matters placed on the record in connection with ex parte communication;

(ix) The recording of the hearing, and any prehearing proceeding, and any transcript of the recording prepared by a court reporting service; and

(x) Any other item required by law.

(q) Interpreters.

(i) If a party or witness cannot readily hear, speak, or understand the spoken or written English language, and applies to the hearing officer in advance of the hearing for the appointment of a qualified interpreter to assist that party or witness, the hearing officer shall appoint a qualified interpreter to provide assistance during the hearing.

(ii) With the approval of the hearing officer, a party who intends to offer the testimony of a witness who cannot readily hear, speak, or understand the spoken or written English language, may arrange for a qualified interpreter to assist the witness.

(iii) An interpreter shall take an oath or affirm that the interpreter will accurately translate.

(r) Burden of Proof.

(i) The claimant shall bear the burden of proving, by a preponderance of the evidence, that the claimant is entitled to FAMLI leave and/or benefits, including, as applicable, the amount of FAMLI leave and/or benefits.

(ii) The individual who has been disqualified from receiving benefits under Labor and Employment Article §8.3-901, Annotated Code of Maryland shall bear the burden of proving, by a preponderance of the evidence, that the individual should not have been disqualified.

(s) Closed Hearings. Unless otherwise provided by statute, all hearings conducted under this chapter are closed to the public.

(t) Recording.

(i) The proceedings shall be recorded.

(ii) The record need not be transcribed unless requested by a party.

(iii) The cost of a typewritten transcript of any proceeding or part of a proceeding shall be paid by the party requesting the transcript.

(iv) Except as provided under §B(2)(t)(i) of this Regulation, cameras, tape recorders, and other electronic and photographic equipment of any type are not permitted at the hearing, unless the equipment is intended to be introduced into evidence or used to present evidence.

(u) Recusal. A hearing officer shall be recused from the review of an appeal and from participating in a hearing if the hearing officer:

(i) Has personal knowledge of the facts which gave rise to the appeal;

(ii) Has a personal or business relationship with any of the parties or witnesses; or

(iii) For any other reason may be unable to act impartially in the matter.

(v) Decisions. After consideration of the testimony and other evidence the hearing officer shall issue a final written order, including any penalties or fees issued under Labor and Employment Article §8.3-101 *et seq.,* Annotated Code of Maryland, to the parties at the conclusion of the hearing.

(w) Decision to Employer. Upon receipt of the decision by the Division, the Division shall forward a copy of the decision to the employer.

(x) Judicial Review. A party aggrieved by the final order is entitled to judicial review of the decision under State Government Article, §10-222, Annotated Code of Maryland.

.03 Special EPIP Provisions.

A. To the extent the dispute resolution procedures, including timelines and good cause, outlined in this chapter are more restrictive with respect to claimants and recipients than those dispute resolution procedures outlined by the Administration, the Administration's procedures shall control.

B. To the extent the dispute resolution procedures, including notice requirements and good cause, outlined in this chapter are less restrictive with respect to employers and insurers than those dispute resolution procedures outlined by the Administration, the Administration's procedures shall control.

MARYLAND DEPARTMENT OF LABOR

Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Chapter 06 Enforcement

Authority: Labor and Employment Article, §§8.3-101, 403, 706, 901, and 904 Annotated Code of Maryland

.01 Definitions.

.02 Job Protection.

.03 Retaliation.

.04 False Statements.

.05 Prohibited Acts.

.06 Penalties.

.07 Contribution Amount Disputes.