

FAML I Policy Guidance

Localization

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Issue

Under [Labor and Employment Article §8.3-101\(d\)](#) and Code of Maryland Regulations (COMAR) [09.42.01.01B\(36\)](#) all employees whose work is localized in Maryland and their employers are subject to all of the provisions of Maryland's Family and Medical Leave Insurance (FAML I), including job protection, the submission of Quarterly Wage and Hour Reports, remission of contributions, and benefits.¹

This guidance explains how an employer can determine if their employee is localized in Maryland and thus subject to FAML I. **Please note: if your employees are covered under Maryland Unemployment Insurance (UI), there is no need to read this guidance. Your employees are covered under FAML I.** Per COMAR [09.42.02.04B\(1\)](#), if an employee is properly localized in Maryland for the purpose of Maryland Unemployment Insurance (UI), they are also considered localized in Maryland for the purpose of FAML I. Per COMAR [09.42.02.04C](#), if an employee is properly localized in another state-level jurisdiction for the purpose of that jurisdiction's UI, they are considered not localized in Maryland for the purpose of FAML I.

The audience for this guidance is employers whose employees are exempt from Maryland UI but are still performing qualified employment localized in Maryland for the purposes of FAML I. Several professions are [statutorily exempt](#) from Maryland UI, but FAML I may still be applicable to those employees.

¹ Employers who choose to provide an equivalent private insurance plan are also required to submit Quarterly Claims Data Reports.

If your employees are covered under Maryland UI, there is no need to read this guidance. Please refer instead to [federal rules](#), [related provisions](#), and [state regulations](#) on determining UI localization. This guidance is only for the limited number of employees not covered under Maryland UI.

Definitions

In this document, the following terms have the meanings indicated:

- FAMLI definitions:
 - Employee – defined in COMAR 09.42.01.01B(20).
 - Employer – defined in COMAR 09.42.01.01B(21).
 - Qualified employment – defined in COMAR [09.42.01B\(36\)](#). See also COMAR [09.42.02.04](#).
- Maryland Unemployment Insurance definitions:
 - Base of operations – the primary location from which an employee starts work and returns to regularly. FAMLI uses the Maryland Unemployment Insurance definition, which can be found in COMAR [09.32.01.20C](#).
 - Directed or controlled – place at which the employer’s basic authority exists and from which the general control emanates rather than the place at which a manager directly supervises the performance of services. FAMLI uses the Maryland Unemployment Insurance definition, which can be found in COMAR [09.32.01.20D](#).
 - Direct seller – salesperson who sells consumer products outside of a retail establishment, exempt from Maryland Unemployment Insurance under [Labor and Employment Article §8–206\(b\)](#), Annotated Code of Maryland.
 - Incidental work – work that is temporary or transitory for fewer than 12 months, or that consists of isolated transactions. FAMLI uses the Maryland Unemployment Insurance definition and interpretation, which can be found in COMAR [09.32.01.20A\(2\)](#) and COMAR [09.32.01.20B](#) respectively, as well as associated [federal guidance](#).
 - Unemployment Insurance Interstate Reciprocal Coverage Arrangement – defined in COMAR [09.32.01.20F](#). See also COMAR [09.32.04](#).
 - Wages – FAMLI uses the Maryland Unemployment Insurance (UI) definition which can be found in Maryland [Labor and Employment Art. §8–101\(aa\)](#).

Policy discussion & procedure

FAMLI uses a similar localization test as that applied under Maryland's Unemployment Insurance (UI) program and associated [federal rules](#), [related provisions](#), and [state regulations](#). An employee could fall under one of three scenarios:

A. Subject to Maryland UI

Per COMAR [09.42.02.04B\(1\)](#), if an employee is subject to Maryland UI, that employee's work is localized in Maryland and their work is considered qualified employment for FAMLI. **If your employees are subject to Maryland UI, they are subject to FAMLI and you do not need to proceed with reading this guidance.**

B. Subject to UI in another state-level jurisdiction

Per COMAR [09.42.02.04C](#), if an employee is subject to UI in a jurisdiction other than Maryland, that employee's work is localized in that jurisdiction, and their work is not considered qualified employment for FAMLI. **If your employees are subject to UI in a jurisdiction other than Maryland, they are not subject to FAMLI and you do not need to proceed with reading this guidance.**

C. Not subject to UI in either Maryland or another jurisdiction

Maryland Unemployment Insurance law exempts a number of employment positions, outlined in [Labor and Employment Title 8, Subtitle 2](#), including but not limited to: certain agricultural workers, barbers, church employees, clergy, cosmetologists, direct sellers, home workers, insurance agents, owner-operator truck drivers, real estate agents, student interns, and taxi drivers, among others. If an employee is not subject to UI either in Maryland or UI in another jurisdiction, the employer should take the following steps to determine if the employee's work is considered qualified employment for FAMLI.

Step 1. Identify the jurisdiction where work is performed:

Where work is performed	Subject to FAMLI
100% in Maryland	Yes

100% in another jurisdiction	No
Some work in Maryland <i>and</i> some work in another jurisdiction(s). The <i>work in the other jurisdiction(s) is incidental</i> to the work performed in Maryland.	Yes
Some work in Maryland <i>and</i> some work in another jurisdiction(s). The <i>work in Maryland is incidental</i> to the work performed in the other jurisdiction.	No

If the employee performs some work in Maryland and some work in another jurisdiction, or jurisdictions, and the work in Maryland cannot be said to be incidental to work in any jurisdiction, the work cannot yet be said to be localized in any jurisdiction. In this case, continue to the next step.

Step 2. If FAMILI qualified employment cannot be determined from Step 1, next examine the employee's base of operations:

- a) If the employee performs some work in Maryland and their base of operations is in Maryland, the employee is subject to FAMILI.
- b) Continue to the next step if:
 - i) there is no base of operations, or
 - ii) the base of operations is in another jurisdiction in which the employee performs no work, or
 - iii) the base of operations moves from state to state.

Step 3. If FAMILI qualified employment cannot be determined from Step 1 and Step 2, next examine the jurisdiction from which the employee's service is directed or controlled:

- a) If the employee performs some work in Maryland and the work is directed or controlled from Maryland, the employee is subject to FAMILI.
- b) Continue to the next step if the work is directed or controlled from a state other than Maryland in which the employee does not perform work.

Step 4. If FAMILI qualified employment cannot be determined using Steps 1 through 3, next examine the employee's jurisdiction of residence:

- a) If the employee performs some work in Maryland, and their work is directed or controlled from a state other than Maryland in which the employee does not perform work, but the employee resides in Maryland, the employee is subject to FAMILI.

Please review the examples in the appendix to see how the localization of work framework is applied.

Unemployment Insurance Reciprocal Coverage Agreements

FAMILI does not recognize Unemployment Insurance Reciprocal Coverage Agreements.

Under COMAR [09.32.01.20F](#) and [09.32.04.03](#), employers may request from the Maryland Department of Labor a Reciprocal Coverage Agreement to determine the state of coverage under Unemployment Insurance.

Localization for the purposes of FAMILI cannot be determined by an Unemployment Insurance Reciprocal Coverage Agreement. Therefore, the localization steps provided in this guidance must be used to determine localization for any employees covered under an Unemployment Insurance Reciprocal Coverage Agreement.

References

- U.S. Dept. of Labor, Employment and Training Administration (USDOL/ETA), Unemployment Insurance Program Letter (UIPL) [20-04](#) and [Attachment 1: Localization of Work Provisions](#)
- Labor and Employment Article, [§8-101](#), Annotated Code of Maryland
- Labor and Employment Article, [§8, Subtitle 2](#), Annotated Code of Maryland
- Labor and Employment Article, [§8.3-101](#), Annotated Code of Maryland
- COMAR [09.32.01.20](#)
- COMAR [09.32.04.03](#)
- COMAR [09.42.01.01B](#)
- COMAR [09.42.02.04](#)

FAMLI contact

If you have additional questions about this guidance, please contact FAMLI's Customer Care Center at (410) 525-4010 or paid.leave@maryland.gov.

Appendix: Examples

Applying the baseline scenario A & B: Is the employee subject to Maryland's or another jurisdiction's unemployment insurance (UI) law?

If so, the unemployment insurance localization of work rules apply. Please see [federal guidance](#) and [related provisions](#) which offer many relevant examples. For ease of access, the following examples derived from federal guidance apply the localization of work framework to UI-covered workers:

- **Fully remote for Virginia-based employer (Localized service in Maryland)**
 - An employee lives in Florida and is hired to work 100% remotely for a Virginia-based employer. Because the employee's work is performed entirely within Florida, her work is localized in Florida for the purposes of UI. Because she is subject to another jurisdiction's UI, she is not subject to Maryland FAMILI.
 - Later, the employee relocates her residence to Maryland while remaining 100% remote for the same Virginia-based employer. Because her work is now performed entirely within Maryland, her employment becomes localized in Maryland. After her move, her employment is covered by Maryland UI, and thus is also subject to Maryland FAMILI.
- **In-office work in Virginia, with isolated and incidental work from home in Maryland (Localized service out-of-state)**
 - An employee typically works in-person at a Virginia-based employer office in Virginia, and works remotely from her home in Maryland only on rare occasions. The employee's work in Maryland is incidental to her work in Virginia. Therefore, the employee's work is localized in Virginia and is covered by Virginia UI. Because the employee is covered by UI in another state, she is not subject to Maryland FAMILI.
- **Worker who performs service in multiple states, with base of operations in Maryland (Base of operations in Maryland)**
 - An employee, a resident of Maryland, works in Maryland, Virginia, and Pennsylvania for his employer whose place of business is in New York. The employee operates from his home in Maryland where he receives

instructions from his employer, communicates with his clients, and maintains his records. Once a year, the employee travels to New York for a two-week work meeting. His service is not localized in any single state, but his base of operations is in Maryland, and he performed some service in Maryland. Therefore, all of his service is covered by Maryland UI and thus also considered qualified employment for Maryland FAMLII.

- **Worker performs service in both Maryland and Virginia (Directed or controlled in Maryland)**
 - A construction worker whose main office is in Maryland is regularly engaged in road construction work in Maryland and Virginia. All operations are under direction of a general superintendent whose office is in Maryland. Work in each state is directly supervised by field supervisors working from field offices located in each of the two states; however, all staffing requests must be cleared through the central office. Employees report for work at the field offices. Time cards are sent weekly to the main office in Maryland where payroll is prepared. Employees regularly perform services in both Maryland and Virginia. Because the construction worker's work is not localized in either Maryland or Virginia, and there is no fixed base of operations, the direction or control test applies. Because the central office in Maryland has ultimate direction and control over the employee's work, the services are covered by Maryland UI, and thus considered qualified employment for Maryland FAMLII.
- **Worker performs service in multiple states (Place of residence in Maryland)**
 - An employee working for a Delaware company lives in Maryland and performs work in Pennsylvania, Virginia, and Maryland. The employee's service is not localized in any state. He uses his employer's Delaware office as his base of operations, and his service is directed from that office. He performs no service in the state in which his base of operations is located, nor in the state from which his service is directed and controlled (Delaware). He does some work in Maryland, the state in which he lives. Consequently, all of his service is covered by Maryland UI and thus considered qualified employment for Maryland FAMLII.

Applying scenario C: For positions exempt from Maryland UI but not subject to another state's UI, continue to Step 1.

Applying Step 1: Jurisdiction where work is performed

- **Entirely in Maryland**
 - An insurance agent who works on commission is employed by a company headquartered in New York, lives in Virginia, and performs all work at a local office in Maryland. The insurance agent is statutorily exempt from Maryland UI. However, the agent is performing qualified employment for FAMLII because all work is performed in Maryland, even though the company is headquartered in New York and they live in Virginia.
- **Some work in Maryland and incidental in-person work in another jurisdiction**
 - A clergy member employed by a Maryland association or convention of churches for the past decade is temporarily assigned to a different association or convention of churches in Pennsylvania. After six months working in Pennsylvania, the clergy member returns to work within the Maryland association or convention of churches. The clergy member is statutorily exempt from Maryland UI. However, the clergy member is performing qualified employment for FAMLII because the work in Pennsylvania was incidental to the work performed in Maryland.
- **Some work in Maryland and incidental remote work in another jurisdiction**
 - A paid student intern works at their university in Maryland and lives in Virginia. The intern works in the office in Maryland two days a week and is only permitted to telework in Virginia on an adhoc basis. Telework in this case is deemed incidental. The intern is statutorily exempt from Maryland UI. However, they are localized in Maryland for the purposes of FAMLII.

Applying Step 2: Base of operations

- **Some work in Maryland and some work in other states, none incidental**
 - A salesperson, referred to in Maryland statute as a “direct seller,” is a resident of Pennsylvania, and sells products in Maryland, Virginia, and the District of Columbia (DC). They have a written agreement with a company in New York. The salesperson has a physical office in Maryland where they receive instructions from the company in New York and

communications from customers, but they regularly work in Virginia and DC. Once a year the salesperson also attends a two-week sales meeting in New York. The salesperson's work outside of Maryland is not incidental to their work in Maryland. The salesperson is statutorily exempt from Maryland UI. Because the salesperson performs some work in Maryland and has a base of operations in Maryland, all of their work is subject to FAMLII.

- **Some work in Maryland and some regular telework in another jurisdiction**
 - A paid student intern works at their university in Maryland and lives in Virginia. The intern works in the office in Maryland two days per week and is scheduled to telework from Virginia one day per week. Because the hybrid work is regularly scheduled (see COMAR [09.32.01.20B](#)), the work in Virginia is not incidental to the work in Maryland. The student intern is statutorily exempt from UI. Because the intern's base of operations—the primary location from which an employee starts work and returns to regularly—is in Maryland, the intern is subject to FAMLII.

Applying Step 3: Jurisdiction from which the employee's service is directed or controlled

- **Some work in Maryland and some work in other states, none incidental**
 - A direct seller resides in West Virginia and works for a company whose factory and selling office are in Maryland. The salesperson's territory is Pennsylvania, New Jersey, Delaware, and Maryland. They do not use either the Maryland office or their home in West Virginia as their base of operations. The direct seller is statutorily exempt from UI. Since their work is not located in any state and they have no base of operations, all of their service is subject to FAMLII because their work is directed and controlled from the Maryland office and some of their service is in Maryland.
- **Some work in Maryland and some regular telework in another jurisdiction**
 - A student intern works at their university in Maryland and lives in Virginia. The intern works in the office in Maryland two days per week and is scheduled to telework from Virginia two days per week. Because the hybrid work is regularly scheduled (see COMAR [09.32.01.20B](#)), the work in Virginia is not incidental to the work in Maryland. The student intern is statutorily exempt from UI. Next examine the base of operations. Because the intern reports two days to Maryland and two days to Virginia, they have no base of operations. Because the intern's

work is directed or controlled from Maryland, the intern is subject to FAMLII.

Applying Step 4: Jurisdiction of residence

- **Some work in Maryland and some work in other states**
 - An owner-operator truck driver lives in Maryland and is statutorily exempt from UI. The truck driver picks up orders from various places in Delaware, DC, and Maryland, so they have no fixed base of operations. The truck driver has a written agreement with a motor carrier that directs their service from Virginia. The truck driver performs no service in the state from which their service is directed and controlled. They do some work in Maryland, the state in which they live. Consequently, all of their service is subject to FAMLII.