

Draft FAMLl Contributions Regulatory Outline

For Discussion Purposes Only

Many stakeholders submitted feedback to the FAMLl Division regarding our Contributions Discussion Document. Below is a draft outline of possible regulatory language, which was heavily influenced by the stakeholder feedback. The Division welcomes additional comments, feedback, and suggestions as we further refine the policy. This section focuses on Contributions.

The Division will be accepting written comments via email - FAMLl.policy@maryland.gov and asks that comments be submitted by August 17, 2023.

Contributions

General.

Definitions¹

A. Contribution means the payments made pursuant to Md. Code Ann., Lab. & Empl. § 8.3-601 by an employer or a self-employed individual electing coverage.

B. Employer is defined by Md. Code Ann., Lab. & Empl. § 8.3-101 (h).

C. Employee means an individual who performs work for remuneration unless an employer demonstrates that:

- (1) the individual who performs the work is free from control and direction over its performance both in fact and under the contract;
- (2) the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and
- (3) the work is:
 - (a) outside of the usual course of business of the person for whom the work is performed; or
 - (b) performed outside of any place of business of the person for whom the work is performed.

D. Small Employer means a person or governmental entity which meets the definition of Employer and employs 14 or fewer employees, as calculated using the method provided below.

E. Social Security Wage Base means the maximum wage subject to tax under the Federal Insurance Contributions Act for any particular year, as published by the Social Security Administration.

F. Total Rate of Contribution means the percent of wages published by the Maryland Department of Labor for any particular year, pursuant to the Division's authority under Md. Code Ann., Lab. & Empl. § 8.3-601.

G. Wages means the sum of all of the following:

- (1) Commission, which means the amount an employee receives from a sale made in income from the employer;
- (2) Compensatory pay, which means remuneration paid to employees for the extra time they put in at work over their weekly hourly requirement;

¹ Please note, the FAMLl Team is in the process of creating a list of numerous terms to be defined via regulation.

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(3) Holiday pay, which means any remuneration that an employer pays an employee for a holiday, including, but not limited to, full or partial paid time off or additional pay for work on a holiday;

(4) Hourly wage, which means the amount an employee is paid per hour they work;

(5) Paid leave, which means compensated time away from work provided by an employer that the employee can choose to use for any reason, including, but not limited to, vacation, sickness, and personal time;

(6) Salary, which means a fixed regular payment, including stipend remuneration, typically paid on a monthly or biweekly basis but often expressed as an annual sum, made by an employer to an employee;

(7) Severance pay, which means gross amount of severance pay, dismissal pay, pay instead of notice of termination, wage continuation, or other remuneration paid or payable to the claimant upon separation from employment;

(8) Sick pay, which means remuneration paid by an employer to an employee for time away from work due to sickness.

(9) Standby pay, which means remuneration paid by an employer to an employee who is required to be immediately available for work;

(10) Tip or gratuity, which means compensation that: (1) an individual receives from a customer of the individual's employer while performing covered employment; and (2) is included in a written statement provided to the employer under § 6053(a) of the Internal Revenue Code;

(11) Vacation pay, which means remuneration paid by an employer to an employee for time away from work provided by an employer to an employee to use for any reason the employee chooses but does not include leave for sick pay, compensatory time, holiday, or other special leave;

(12) Wages does not mean:

(a) 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 employing unit that provides for employees generally or for their dependents or for a class of employees and their dependents on account of:

(i) retirement;

(ii) sickness or accident disability payments under a workers' compensation law;

(iii) medical or hospitalization expenses in connection with sickness or accident disability;

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

(v) dependent care assistance to the extent that the assistance payments would be excludable from gross income under the provisions of 26 U.S.C. § 127 or § 129; or

(vi) death;

(b) any amount that an employing unit pays for insurance or an annuity or into a fund to provide for a payment described in item (a) of this paragraph;

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

(d) any payment made to or on behalf of an employee or beneficiary of the employee:

(i) 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

- (ii) 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;
- (e) any payment required from an employee under a state unemployment insurance law;
- (f) compensation paid in any medium other than cash to an employee for service not in the course of the trade or business of the employing unit;
- (g) any payment, including an amount paid into a fund to provide for any payment by an employing unit to or on behalf of an employee under a plan or system that an employing unit establishes that provides for employees of the employing unit generally or a class or group of employees to supplement unemployment benefits; or
- (h) 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.

Registration Requirements.

Employers maintain an online account necessary to make required information reports, remit contribution payments, and both receive and provide any necessary communication with the State Government regarding reporting and contribution obligations under the Act.

New employers after contributions begin.

Employers who commence operations after October 1, 2024 shall create such an online account within 20 days of commencing operations.

Covered Individuals with multiple jobs.

All wages paid by each employer to an employee each calendar year are subject to contributions up to the amount of the Social Security wage base.

How does an employer determine if an employee is a covered employee in the State of Maryland?²

Localized Service. The Division will model their localization regulations on Unemployment Insurance.

Employee Contributions.

A. Employers are responsible for remitting the contributions due each quarter. Pursuant to Md. Code Ann., Lab. & Empl. § 8.3-601, employers may withhold from the pay of employees an amount equal to 50% of the total rate of contribution.

B. Employers may elect to pay their employees' contribution amounts, 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.³

² The Division is aware of questions regarding reciprocal arrangements with neighboring jurisdictions which also provide paid family and medical leave. At this time the Division does not intend to address this matter via regulation, but that may change.

³ There will be a more robust discussion of notice requirements in Phase 6 - Miscellaneous.

C. Employers shall provide written notice of any changes to employee contributions at least one pay period prior to the change.

Employer Size.

A. The number of employees shall be counted by using the total number of employees (in and out of Maryland) to whom the employer paid any wages.

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. If the average is below 15, the employer is exempt from paying 50% of the contribution amount for a full year from the next July 1-June 30.

C. Until an employer has four quarters of reports and contributions in one calendar year, which would include all employers starting in 2024, employee size shall be determined quarterly by counting the total number of employees to whom the employer paid any wages in that calendar quarter.

D. SMALL EMPLOYERS. Small employers shall not be required to submit the employer half of contributions to the Division.

Payroll Deductions.

A. In the event 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 shall not recoup the employee share attributable to a past pay cycle on future pay cycles.

Wage Reporting and Payment Schedule.

A. Employers shall make contributions for each employee every quarter equal to the total contribution rate multiplied by the total wages up to the Social Security Wage Base paid to each employee localized in the State.

B. Quarterly informational wage and hour reports, which shall include the amount of wages (as defined above) and hours worked⁴ for each employee localized 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 localized in the State to whom wages were paid in the quarter. If the employer does not provide a number of employees not localized in the state, the employer will be deemed to not be a Small Employer.

⁴ The Division is aware that there is some concern regarding the calculation of hours for salaried and adjunct style employees and is still working on rules pursuant thereto. In the meantime, the Division welcomes additional thoughts from stakeholders regarding this issue.

D. CONTRIBUTION PAYMENT DUE DATE. Contributions are due and shall be paid on or before the last day of the month immediately following each calendar quarter. The initial quarter for contributions shall be October 1-December 31, 2024 with payment due on or before January 30, 2025.

Contribution Delinquencies.

In the event an employer fails to pay the required contributions in the prescribed manner, the employer shall be given time to cure any deficiencies. In the event deficiencies are not cured, penalties, pursuant to Md. Code Ann., Lab. & Empl. § 8.3-903, shall be imposed as follows:

- (1) assess the amount of contributions and interest due;
- (2) make an additional assessment in an amount not to exceed two 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 this title and Titles 3, 8, and 9 of this article.