

THESE ARE NOT OFFICIALLY ADOPTED OR PROPOSED REGULATIONS. THESE ARE DRAFT REGULATIONS THE FAMILI DIVISION INTENDS TO PROPOSE BUT ANTICIPATES THAT CHANGES TO THE EXISTING LAWS OF THE STATE DURING THE 2024 MARYLAND GENERAL ASSEMBLY SESSION WILL REQUIRE ADDITIONAL AMENDMENTS HERETO *INCLUDING CHANGES TO ANY DATES PROVIDED HEREIN*. THE FAMILI DIVISION WILL ANNOUNCE WHEN IT INTENDS TO SUBMIT REGULATIONS TO THE MARYLAND REGISTER TO COMMENCE THE FORMAL PROCESS.

# 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) "Assistant Secretary" means the Assistant Secretary for the FAMLI Division established by COMAR 42.01.02.

(4) "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.

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

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

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

(8) "Covered employee" means an individual who has worked sufficient hours in qualified employment in the eligibility base period to establish initial qualification for FAMLI leave and benefits and includes a qualified previous employee.

(9) "Covered individual" means an individual who has worked sufficient hours in the eligibility base period to establish initial qualification for FAMLI leave and benefits and includes a qualified previous employee.

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

(11) "Division" means the FAMLI Division established by COMAR 42.01.02.

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

(13) "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.

(14) 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.

(15) Employer.

(a) "Employer" means a person or governmental entity that employs at least one 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.

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(16) “Equivalent-private insurance plan (EPIP)” means a Division approved insurance plan in which the employer purchases an insurance policy from an insurance company approved to sell paid FAMILI products by the Administration or offers a Division approved 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.

(17) “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.

(18) “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 who is the covered individual's next of kin.

(19) “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.

(20) “FAMILI benefits” means the money payable under Labor and Employment Article, §8.3-101, *et seq.*, Annotated Code of Maryland and this Subtitle.

(21) “FAMILI 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.

(22) “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.

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

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

(25) “Qualified employment” means:

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

(26) “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.

(27) “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 FAMILI leave and benefits.

(28) “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.

(29) “Secretary” means the Secretary of Labor.

(30) “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).

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(31) "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.

(32) "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, including home care administered by a licensed health care provider or other competent individual; or

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

(33) "State plan" means the State provided FAMILI plan including the fund from which benefits shall be paid.

(34) Wages.

(a) "Wages" means the sum of the following:

(i) Commission, which means the amount an employee receives from a sale made in income from the employer;

(ii) Compensatory pay, which means remuneration paid to an employee for the extra time they put in at work over their weekly hourly requirement;

(iii) 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;

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

(v) 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;

(vi) Salary, which means a fixed regular payment, including stipend remuneration, typically paid on a monthly or once every 2 weeks basis but often expressed as an annual sum, made by an employer to an employee;

(vii) 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 on separation from employment;

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

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

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

(xi) 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;

(b) "Wages" for a self-employed individual means self-employment income.

(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(29)(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;

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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 EIPs, 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.

# **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.

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**.02 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 New Employers After Contributions Begin.**

An employer who commences operations after contributions begin shall create an account within 20 days of commencing operations.

**.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 particular state but:

- (i) The base of operations is in this State; or
  - (ii) The place from which the employment is controlled or directed is in this State; or
- (3) 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 equal 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 one 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. The employer is only responsible for 50 percent of the total rate of contribution if the employer size determined under §§ A and B of this Regulation is below 15.

D. Until an employer has four 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.

**.07 Failure to Deduct Contributions from Payroll.**

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 may not recoup the employee share attributable to a past pay cycle on future pay cycles.

**.08 Optional Self-Employed Enrollment Contributions.**

A. An OSEE participant shall pay the total rate of contribution.

B. The tax base on which the contribution rate is applied shall be equal to the social security wage base.

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C. The tax base on which the contribution rate is applied shall be computed for total self-employment income without regard to other forms of income.

**.09 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. Reporting requirements for OSEE participants.

(1) An OSEE participant shall make the same quarterly wage and hour reports on the same schedule as an employer in the State.

(2) The Division may allow OSEE participants to satisfy the quarterly reporting requirements annually if contributions are paid upfront on an annual basis.

(3) An OSEE participant may authorize a third party to report on their behalf, but OSEE participants shall be responsible for the accuracy of the data and subject to any adverse actions related to inaccurate, late, or incomplete reporting.

(4) An OSEE participant shall submit complete tax information showing annual self-employment income, including all federal tax forms, to the Division annually.

(5) The submission detailed in §F(4) of this Regulation shall be used by the Division in the reconciliation process outlined in §G of this Regulation.

G. OSEE contribution payments and annual reconciliation.

(1) An OSEE participant shall remit contributions on the same schedule as an employer in the State, quarterly.

(2) An OSEE participant may remit the entire estimated annual contribution amount upfront.

(3) An OSEE participant shall make estimated quarterly contribution payments calculated by the Division based on the amount of the OSEE participant's expected net income subject to the self-employment tax for the calendar year, as used in the computation of federal estimated tax.

(4) An OSEE participant will be required to reconcile net income for each tax year by April 30 of the following year.

(i) If an OSEE participant's final reported income amount is less than the amount paid in estimated payments during the year, the Division will issue a refund to the OSEE participant.

(ii) If an OSEE participant's reported income amount is more than the amount paid in estimated payments during the year, the OSEE participant shall pay the difference.

**.10 Contribution Delinquencies.**

A. In the event an employer fails to pay the required contributions in the prescribed manner, the employer shall be given reasonable time to cure any deficiencies.

B. In the event deficiencies are not cured, penalties, under Labor and Employment Article §8.3-903, Annotated Code of Maryland, 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 Labor and Employment Article, §8.3-101, *et seq.* Annotated Code of Maryland.

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# MARYLAND DEPARTMENT OF LABOR

## Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

### Chapter 03 Optional Self-Employed Enrollment

Authority: Labor and Employment Article, §§8.3-101, 201, and 403, Annotated Code of Maryland

#### **.01 General.**

There is an option for qualified self-employed individuals to enroll in the State plan.

#### **.02 Definitions.**

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

B. Terms Defined.

(1) "OSEE applicant" means a self-employed individual who has applied to participate in the State plan with the Division.

#### **.03 OSEE State Plan Enrollment Process.**

A. Registration. Any qualified self-employed individual who wishes to enroll in the State plan shall register with the Division and file an application in the form prescribed by the Division.

B. The application shall include all of the following:

(1) Identifying information about the OSEE applicant;

(2) Identifying information about the OSEE applicant's business;

(3) The OSEE applicant's total reported income from self-employment for the preceding four calendar quarters;

(4) Documentation verifying:

(a) The OSEE applicant's identity;

(b) The OSEE applicant's taxable income from self-employment, including but not limited to, self-employment income reported to the Internal Revenue Service on the personal income tax return from the preceding calendar year; and

(c) The OSEE applicant's intent to earn self-employment income in the forthcoming year;

(5) An affirmation statement as prescribed by the Division which shall include an agreement by the OSEE applicant to all of the following:

(a) Pay contributions for a period of not less than three years;

(b) Submit required reports;

(c) Provide any information and documentation on the OSEE applicant's taxable income from self-employment necessary for the administration of State plan participation; and

(d) Provide additional information to confirm eligibility for enrollment if requested; and

(6) Acknowledgement of the conditions for termination of OSEE participation established in COMAR 09.42.03.06.

C. Enrollment Effective Date. Enrollment in the State plan becomes effective on the date the completed application is filed with the Division.

#### **.04 Benefit Calculation for OSEE Participants.**

A. An OSEE participant's benefit calculation shall be under COMAR 09.42.05.06.

B. Calculation of benefits for an OSEE participant may not be made until the OSEE participant has reported at least 1 quarter of wages to the Division.

C. An OSEE participant is only eligible for benefits if the OSEE participant has made their most recent quarterly payment per the State plan.

#### **.05 Renewal of State Plan Participation.**

A. Under Labor and Employment Article §8.3-201 (c), Annotated Code of Maryland, once enrolled in the State plan, OSEE participants shall participate in the State plan for 3 years.

B. State plan participation will automatically renew each year thereafter, unless the OSEE participant notifies the Division of their intent to voluntarily terminate under COMAR 09.42.03.06.

#### **.06 Termination and Suspension.**

A. Voluntary Termination.

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(1) After 3 years of participation, an OSEE participant can voluntarily terminate enrollment in the State plan by providing written notice to the Division 30 days in advance of the annual renewal date.

(2) An OSEE participant who voluntarily terminates may not reenroll in the State plan as a self-employed individual for 1 year following the date of termination.

(3) An OSEE participant's reporting requirements to the Division cease on the effective date of the termination.

**B. Termination Due to Change in Employment Status.**

(1) An OSEE participant may terminate enrollment in the State plan if they are no longer a qualified self-employed individual by filing a written notice with the Division.

(2) The termination shall take effect 30 days after the written notice to terminate is received by the Division, unless a later date is requested by the OSEE participant on the written notice.

(3) The notice to terminate enrollment shall include:

(a) Details regarding the OSEE participant's employment change; and

(b) Any supporting documentation.

(4) An OSEE participant whose enrollment in the State plan is terminated due to change in employment status may not reenroll in the State plan as a self-employed individual for 1 year following the date of termination.

(5) An OSEE participant's reporting requirements to the Division cease on the effective date of the termination.

**C. Involuntary Termination or Suspension.** The Division may terminate or suspend an OSEE participant.

(1) Termination or suspension may be ordered by the Division for the following reasons:

(a) Failure to pay contributions completely or timely;

(b) Falsification of documents;

(c) 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; or

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

(2) An OSEE participant whose enrollment is involuntarily terminated by the Division may not reenroll in the State plan as a self-employed individual for 3 years following the date of termination.

(3) An OSEE participant's reporting requirements to the Division cease on the effective date of the termination.

D. Nothing in this section shall prevent a self-employed individual from insurance coverage under the State plan or an EPIP, if the self-employed individual is also a covered employee who is employed by an employer participating in the State plan or with an approved EPIP.

E. In the event an OSEE participant voluntarily terminates, is suspended, terminates due to a change in employment status, or is involuntarily terminated from the State plan and wishes to reenroll in the State plan as a qualified self-employed individual after the required waiting period has expired, they shall initially be required to participate for 3 years under COMAR 09.42.03.05.

# MARYLAND DEPARTMENT OF LABOR

## Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

### Chapter 04 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 product" means an EPIP in which the employer purchases an insurance policy from an insurance company approved to sell paid family and medical leave 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 agreement from an employer documenting the employer's intent and commitment to provide an approved EPIP with an effective date of January 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) "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

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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 FAMILI 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 a benefit 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. An employer shall confirm eligibility and a benefit amount with the Division if an employee has less than the requisite hours needed to make a benefit determination with the employer.
- 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 09.42.05.
- N. An EPIP shall establish reconsideration and appeal procedures under COMAR 09.42.06.
- 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, in its sole discretion, may pay benefits from the State plan to a covered individual 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 individual 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 individual 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 application for an EPIP to the Division.
- B. The Division shall mandate the EPIP application form.
- C. An application may be submitted at any time.
- D. The Division will review applications as they are received.
- E. An approved EPIP application becomes effective on the first day of the calendar quarter following the date of approval by the Division.
- F. EPIPs shall make benefits available to all covered employees.

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G. Recertification. An employer shall submit an EPIP recertification application annually for the first 3 years and every 3 years thereafter.

H. Special Requirements for a Self-Insured Plan.

(1) 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 authorized to do business in the State and holds a certificate of authority issued.

(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) In the event of a replacement bond, 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 09.42.04.03(T);

(ii) To cover any outstanding contributions due to the Division; or

(iii) For fees and penalties owed to the Division.

(2) Separate Account.

(a) An employer who is approved to self-insure to provide FAMILI benefits 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.

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(d) The separate fund does not represent the extent of liability of the employer.

**.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:

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(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; or

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

(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 FAML I supervisor review under COMAR 09.42.06 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 benefit 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 09.42.06.

(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.

#### .10 Temporary Provisions.

##### A. Declaration of Intent to Obtain Approval of EPIP.

(1) If, before August 31, 2025, an employer is unable to submit a complete EPIP application, the Division may allow an employer to submit a DOI acknowledging and agreeing to the following:

(a) The employer intends to provide an EPIP to all its employees that meet all the requirements of this Subtitle.

(b) Beginning on the first day of the calendar quarter that begins at least 30 days after submission of the DOI and continuing until the Division has approved the EPIP application, the employer shall collect and hold all

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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 may collect employee contributions via payroll deduction or make contributions on behalf of the employee.

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

(iii) An employer may not retroactively collect contributions from an employee.

(c) 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 in the event 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.

(d) In the event a former employee cannot be located, the employee's contributions shall be remitted to the State plan.

(e) The employer shall submit an EPIP application no later than November 1, 2025 if the EPIP is self-insured and December 1, 2025 if the EPIP is a commercial plan.

(f) If, after the submission of a DOI, the employer is not approved for an EPIP before January 1, 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.

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

(2) After Division acceptance of the DOI, an employer shall be exempt from remitting mandatory contribution payments to the State plan beginning on the first day of the calendar quarter that begins at least 30 days after the date of submission of the DOI.

(3) The Division may cancel 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 pursuant to participation in 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.

(4) The Division will announce the final date to submit the DOI, no later than August 31, 2025, with 30 days notice.

#### B. Initial EPIP Enrollment.

(1) In the event an employer is approved to be exempt from contributions to the State plan via a DOI or approved EPIP between October 1, 2024, and January 1, 2026, the employer shall remain in an EPIP for a minimum of 5 calendar quarters counting only those quarters occurring on or after the first quarter of calendar year 2026.

(2) Failure to complete the initial EPIP enrollment as outlined in §B(1) of this Regulation shall result in the employer's remittance to the Division an amount equal to the total contributions that would have been paid to the State plan beginning October 1, 2024 minus any contributions made to the State plan prior to approval of the EPIP plus any interest and penalties for late payment.

## MARYLAND DEPARTMENT OF LABOR

### Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

#### Chapter 05 Claims

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

#### .01 General.

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

#### .02 Definitions.

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

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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 pursuant to an EPIP.

(2) “Application year” means the 12-month period beginning on the Sunday of the calendar week for which benefits begin.

(3) “Claim application” means a claimant’s submission to the Division or an EPIP for FAMLI leave and benefits.

(4) “Claimant’s average weekly wage” means the amount calculated in COMAR 42.05.06.A.

(5) “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 COMAR 09.42.05.04.

(6) “Continuing treatment by a licensed health care provider” means any one or more of the following:

(a) Incapacity and treatment. 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:

(i) 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

(ii) Treatment ordered by a licensed health care provider on at least 1 occasion, which results in a regimen of continuing treatment.

(iii) The requirement in §B(6)(a)(i) and (ii) 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.

(iv) 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.

(v) 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.

(vi) The term *extenuating circumstances* in §B(6)(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(6)(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.

(7) “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.

(8) “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 pursuant to an EPIP.

(9) “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

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

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

(11) "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.

(12) "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.

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

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

(15) "State average weekly wage" means the wage calculated under Labor and Employment Article, §9-603.

(16) "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.

(17) "Weekly benefit amount" means the total 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 service member is the claimant'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.

(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 the following identifying information:

(a) Legal name;

(b) Any previous legal names the claimant has gone by;

(c) Permanent address and mailing address if different from permanent;

(d) Email address;

(e) Telephone number;

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- (f) Bank account and bank routing information if available; and
- (g) Federal or state tax identification number, if available.
- (2) A claimant shall provide the following information regarding their employer:
  - (a) Name of employer from whom the claimant is requesting FAML I leave;
  - (b) Telephone number of employer from whom the claimant is requesting FAML I leave;
  - (c) Business address of employer from whom the claimant is requesting FAML I leave; and
  - (d) Email address of employer from whom the claimant is requesting FAML I leave.
- (3) A claimant seeking FAML I 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 FAML I leave to care for or bond with a child of the claimant, 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 FAML I 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 FAML I leave from employment and whether the FAML I 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 FAML I leave is requested, the expected frequency and duration of the intermittent FAML I leave.
  - (c) Own Serious Health Condition. An application for FAML I 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 FAML I leave from employment and whether the FAML I 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 FAML I leave is requested, the expected frequency and duration of the intermittent FAML I leave.
  - (d) Military Caregiving. An application for FAML I leave to care for a service member who is the claimant's 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 FAML I leave from employment and whether the FAML I leave will or is intended to be taken for a continuous period of time or intermittently;

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(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 and shall be enumerated in the application.

(6) Employer response to claim application.

(a) An employer shall have 3 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 3 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 3 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) In the event 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. Cancellation of a Claim.

(1) In the event 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 application year.

(2) Any claimant may receive up to 12 weeks of FAMLI leave per application year for medical leave and 12 weeks 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;

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(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 FAMILI 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 FAMILI leave within 12 months of the placement.

(ii) FAMILI 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 FAMILI 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 FAMILI 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 FAMILI 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 FAMILI 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 FAMILI leave provided documentation outlined in 09.42.05.04(B)(4)(e) substantiating the time period requested is submitted with the application.

**.06 FAMILI Benefit Calculation.**

A. 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 FAMILI leave over the last 680 hours in which the claimant was paid prior to the benefit start date by the number of weeks worked.

(2) If an employed claimant has worked fewer than 680 hours for their employer, the most recent wages and hours from other employment shall be used to calculate the claimant's average weekly wage.

(3) A claimant who meets the definition of qualified previous employee's average weekly wage shall be calculated by dividing the wages earned for their previous employers during the most recent 680 hours paid by the number of weeks worked.

B. Continuous FAMILI 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 FAMILI Leave Benefit Calculation.

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(1) For intermittent FAML I 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 qualifying period.

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

**.07 Intermittent FAML I Leave Benefit Request Process.**

A. Claimants approved for intermittent FAML I leave shall submit requests for benefits once every 2 weeks.

B. Intermittent FAML I 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 FAML I 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 FAML I procedures or plan go into effect, and

(e) When the employer knows that an employee’s leave or leave request may be eligible for FAML I.

(2) The Division will publish prescribed forms and templates for employer use pursuant to COMAR 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) FAML I leave.

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

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

1. Did not invoke it when notified of the claim by the Division or the EPIP; or

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

(2) Intermittent FAML I leave.

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

(i) Make a reasonable effort to schedule the intermittent FAML I 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 and duration for which intermittent FAML I leave is necessary.

(b) Notice of Intermittent Leave Schedule.

(i) A recipient who is approved for intermittent FAML I 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 shall notify the Division when a recipient approved for intermittent FAML I leave fails to provide notice.

(iii) In the event that a recipient’s utilization of intermittent FAML I leave is inconsistent with the FAML I leave approval, it may not be considered retaliation for an employer to request additional information related to the use of FAML I leave.

C. Plan 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 days of complete claim application submission including:

(a) Benefit amount;

(b) FAML I benefits beginning date;

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- (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) Claimants shall be notified if their application is denied (in full or in part) within 10 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 within 5 business days of any of the following circumstances occurring:
- (1) An employee files an application for benefits;
  - (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 Family 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.

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- (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. Payment Methods.** FAMLI benefit payments to recipients will be made through electronic transfer of funds.

**C. 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 pursuant to Regulation .10 C (4).
- (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. In the event a recipient requests a waiver and the request is denied, the recipient may file a request for reconsideration.
- (6) In the event 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.

**.11 Finding of Fraud After Benefit Approval.**

In the event 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.

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# MARYLAND DEPARTMENT OF LABOR

## Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

### Chapter 06 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 supervisor 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. OSEE & EPIP Requests for FAMLI Supervisor Review.

(1) Self-employed individuals whose application to participate in the State plan was denied or participation in the State plan was involuntarily terminated may file a request for supervisor review.

(2) 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 supervisor review.

(3) Manner of Filing.

(a) Requests for supervisor 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 supervisor review shall be in writing.

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

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

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

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

(7) 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.

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(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.

(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 in one of the following ways:

1. By personal delivery; or

2. By mailing a copy of the document, first class, postage prepaid, to the person's last known business or home address; and

3. 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:

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- (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 health 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.

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(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)(r)(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.

(s) 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.

(u) Decisions. After consideration of the testimony and other evidence at the conclusion of the hearing the hearing officer shall issue a final written order to the parties at the conclusion of the hearing.

(v) 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.

# MARYLAND DEPARTMENT OF LABOR

## Subtitle 42 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

### Chapter 07 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.**

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