

Informal Regulatory Stakeholder Engagement Process
Phase 6
Discussion Document – Miscellaneous

The Division of Family and Medical Leave Insurance (the “Division”) has identified outstanding questions and received feedback from stakeholders on questions that remained after the first 5 phases of the regulatory engagement process. Some of those questions are listed below for discussion. The Division seeks feedback from stakeholders on the questions presented.

The Division realizes that there are other outstanding issues that have not been addressed in the informal regulatory engagement process. These issues include job protection, retaliation, reimbursement for community Medicaid providers and certain definitions. Work continues on these issues and stakeholders will be engaged on these topics at a later date.

Comments regarding the questions presented can be submitted by offering oral remarks at the August 31, 2023 informal regulatory stakeholder meeting and/or by submitting written comments via email to FAMLI.policy@maryland.gov. The Division would prefer to receive written comments by September 4, 2023.

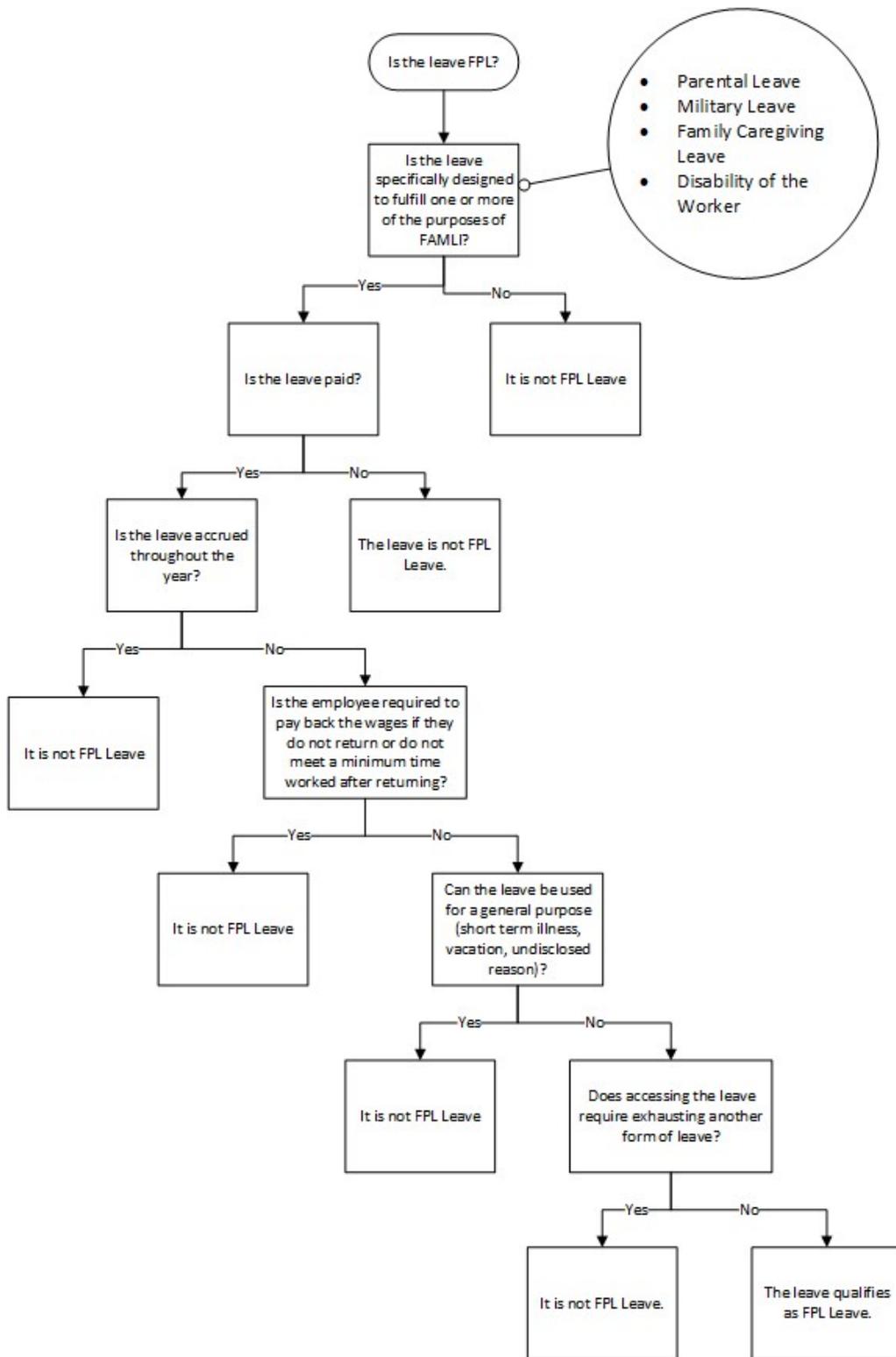
1. What might the notice requirements be for an employer to notify an employee regarding FAMLI?
 - Under §8.3–801, employers have notice requirements at hire, on an annual basis and when the employer knows that an employee’s leave may be eligible for FAMLI.
 - Under §8.3-702, in certain circumstances, an employee’s use of FMLA can be used to reduce their FAMLI benefit if the employee had notice of FAMLI and declined to apply. A signed copy of the notice could be proof of notice.
 - The Division is considering publishing templates for employer use so that employers can remain in compliance.
2. What will the claim process be for a claimant requesting intermittent leave benefits?
 - Claimants receiving intermittent leave may need to submit weekly requests including amount of hours taken for leave during the week.
 - Claimants may be subject to random auditing of intermittent leave claims based on the hour and wage data the Division receives from employers.
3. How will employers be notified when an employee submits a claim for benefits?
 - An employer may be notified electronically when an employee has applied for benefits, when a decision is made on the application, if an appeal on the decision is filed, and if a change is made to a decision regarding benefits.
 - The Division seeks feedback from stakeholders regarding the contents of the notifications. What information should be shared? What information should be kept private?

4. How might the federal FMLA work with FAMLI?
 - When a covered employee's leaves qualify for both FMLA and FAMLI, the leaves shall run concurrently if the employer notifies the employee that the leave may also qualify for FAMLI benefits and job protection using the Division's template. The Division will accept acknowledgement of receipt as proof of notification.
 - Claimants will be asked on the application if they used FMLA leave in the past year.

5. How might general employer-provided paid time off interact with FAMLI leave?
 - Under § 8.3–702(d)(1), in general a covered individual may not be required to use or exhaust paid vacation, paid sick leave, or other paid time off under an employer policy before, or while, receiving benefits under this title. (There is an exception discussed in Question 6 for leave specifically designated for a FAMLI purpose.)
 - However, a covered individual and an employer may agree to use paid time off while a covered individual is receiving benefits available under this title to replace the covered individual's wages up to 100% of the covered individual's average weekly wage during the period of leave for which benefits are received under this title.
 - If the employer and employee agree to use employer provided leave to supplement the FAMLI benefit, the following process could be used:
 - The agreement would be in writing using the Division's template.
 - FAMLI benefits would be considered primary and the employer provided leave could be used to supplement the FAMLI benefit.
 - The calculation for the supplement could be made using the following process:
 - The employee shares their weekly FAMLI benefit amount with the employer;
 - The employer calculates the dollar amount of the supplement, not to exceed the employee's average weekly wage;
 - The employer converts the dollar amount of the supplement into the corresponding number of employer-provided paid leave hours; and
 - The employer subtracts those hours from the employee's balance of employer-provided leave.

6. When might an employer require the employee to use employer-provided leave concurrently or coordinated with FAMLI leave?
 - Under § 8.3–702(d)(3), an employer may require the employee to coordinate their FAMLI benefits with a separate employer-provided leave policy for parental leave, family care, or military leave or under a disability policy. The Division is collectively calling these leave policies FAMLI Purpose Leave (FPL) as they are designed to fulfill one of the purposes of FAMLI.

7. What might qualify as FAMLI Purpose Leave (FPL)?



8. How could FPL be accounted for if a claimant receives 100% of their wages through FPL and decides not to apply for FAMLI, but later that year files a claim for FAMLI?
 - When an employer is notified that a claimant applied for FAMLI, the employer may have the ability to alert the Division that an employee already took FPL that year.
 - The employer may be asked to demonstrate that the employee received notification that FPL and FAMLI leave eligibility run concurrently.

9. How might FPL be coordinated with FAMLI if an employee is receiving wage replacement from both at the same time? (For example, an employee is able to receive benefits from both FAMLI and an employer sponsored short-term disability policy at the same time.)
 - The FAMLI benefit could be primary. The FPL benefit could then be used to supplement the employee's wage to equal 100% of their average weekly wage.
 - An employer could then choose to deduct the full amount of time taken under both policies from the FPL policy even if the employee only received partial wage replacement from the employer.