



September 28, 2023

Elliott Schreur
Assistant Secretary, Family and Medical Leave Insurance (FAMLI)
Maryland Department of Labor
1100 N. Eutaw Street
Baltimore, MD 21201

Re: FAMLI Claims Regulatory Outline

Dear Assistant Secretary Schreur:

The Maryland Association of Counties (MACo) respectfully submits the following comments on the FAMLI Claims Regulatory Outline. County governments recognize the hard work and thoughtfulness of the FAMLI Division in developing the entire FAMLI framework. Counties are pleased with the level of collaboration and transparency offered by the Division thus far in the drafting process, and we look forward to continued collaboration on remaining questions and concerns as the Division develops final regulations.

The FAMLI Claims Regulatory Outline has interpreted many of the considerations MACo and other local government stakeholders raised during the prior engagement period. However, MACo respectfully notes that the FAMLI Claims Regulatory Outline raises further questions and concerns.

As such, MACo submits the following comments and questions:

Definitions

- *C. "Application year" means the 12-month period beginning on the Sunday of the calendar week for which benefits are first approved.*
 - This definition appears to suggest a "rolling 12-month year." If that is the Division's intention, counties suggest that final regulations adopt the same language as used by FMLA for a rolling 12-month year. Consistency in this language will make understanding and compliance more manageable for the employer and employee.
- *W. "Qualified previous employee" means an individual who is currently unemployed and not connected to any employment or self-employment but who worked in positions localized in Maryland for sufficient hours in the base period to establish initial qualification for FAMLI benefits.*
 - The suggested definition suggests that all "qualified previous employees" are unemployed when applying for FAMLI benefits. It is MACo's understanding that the law intends that "qualified previous employees" are those employed by a new employer and, therefore, not unemployed.

- X. *“Qualifying exigency leave” means leave taken when a qualifying exigency arises out of the deployment of a service member who is a family member of the covered individual.*
 - FMLA should be referenced in this definition similarly to how it is referenced in definition U. *“next of kin of a service member”...*

Benefit Calculation

- A. *Average Weekly Wage.*

(1) (a) *If an employed Claimant has worked fewer than 680 hours for their employer, the most recent wages and hours from other employment can be used to calculate average weekly wage.*

 - Counties seek clarification on how an equivalent private insurance plan will receive this information.
- B. *Continuous FAMLI Leave Benefit Calculation.*

(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.*

 - Counties seek clarification on this: if an employee is out on FAMLI leave and the State changes the average weekly wage, then there is no change to the employee's benefit amount for the leave they are currently approved to take?

Notice Requirements

- A. *Employers to employees.*

(1) (c) *When the employer knows that an employee’s leave or leave request or leave request may be eligible for FAMLI. (i) When an employee seeks leave for the first time for a qualifying event, the employee need not assert rights under FAMLI or even mention family or medical leave. In all cases, the employer should seek further information from the employee to determine whether paid FAMLI leave is being sought by the employee.*

 - Counties are concerned with the implications of management and Human Resources staff assuming and investigating if an employee’s leave/leave request may be eligible for FAMLI. Draft regulations stipulate that employers must notify employees of FAMLI benefits at the time of hire and annually, as well as in physical form in the workplace via posters or similar means. As drafted, this regulation would require supervisors to guess whether or not first-time leave users are eligible for FAMLI leave and to further inquire with the employee about their condition or that of a family member. Counties are concerned with the Human Resources and privacy implications of doing so.
- B. *Employees to employers.*

(2) *Unforeseeable FAMLI leave. If an employee did not or could not have known about the need for FAMLI leave 30 days before the FAMLI leave commencement date, employees shall not be required to provide notice of the need for FAMLI leave to their employers.*

 - Counties strongly suggest the following amended language: (2) *Unforeseeable FAMLI leave. If an employee did not or could not have known about the need for FAMLI leave 30 days before the FAMLI leave commencement date, employees shall ~~not~~ be required to provide notice **as soon as practicable** of the need for FAMLI leave to their employers.*

Benefit Payment Process

- *C. Overpayment.*

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

- Counties are concerned with leaving repayment up to subjective considerations of “equity” and “good conscience.” Instead, this could cause situations where one employee’s repayment was waived, and another employee’s was not based on subjective reasoning, resulting in legal and ethical challenges.

MACo appreciates the Division’s consideration of counties’ comments and questions outlined above – local-state partnership is critical for the successful implementation and management of an employee benefit as expansive as the FMLI law. Please do not hesitate to contact MACo Associate Policy Director Brianna January at bjanuary@mdcounties.org or 410-269-0043 if you have any questions about these comments.

Respectfully,



Michael Sanderson
Executive Director, MACo