FLEX Act v1.6

FLEX ACT — FAMILY CAREGIVER FLEXIBLE WORK ACT

Colorado House/Senate Bill __-___

BY REPRESENTATIVE(S) _____

ALSO SENATOR(S) _____

Version 1.6 — October 2026 | Draft for sponsor conversations

*Operational short name: **FLEX Act** (Family Caregiver Flexible Work Act, § 8-13.3-601)*

Prepared for 2027 Colorado Legislative Session sponsor conversations (Senate Business, Labor & Technology; House Business Affairs & Labor)

CONCERNING WORKPLACE FLEXIBILITY FOR EMPLOYEES WITH FAMILY CAREGIVING RESPONSIBILITIES, AND, IN CONNECTION THEREWITH, ESTABLISHING A RIGHT TO REQUEST A FLEXIBLE WORK ARRANGEMENT, EXTENDING JOB PROTECTION TO EMPLOYEES OF LOCAL GOVERNMENTS THAT HAVE DECLINED PARTICIPATION IN THE PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM, AND MAKING CONFORMING AMENDMENTS.

SECTION 1. LEGISLATIVE FINDINGS AND DECLARATIONS The General Assembly finds and declares that:

(1) Family caregivers in Colorado provide an estimated sixteen billion dollars annually in unpaid care to family members with disabilities, chronic illnesses, and age-related conditions. Caregiving-related turnover, absenteeism, and lost productivity cost Colorado employers an estimated five hundred sixty-four million dollars in 2015, a figure projected to approach one billion dollars by 2030.

(2) Predictable access to modest schedule and location flexibility is among the least costly means of retaining employed family caregivers in the workforce. Employee turnover is the largest employer cost of caregiving and the cost that flexible arrangements most clearly reduce. The majority of such arrangements — adjusted start and end times, compressed schedules, and temporary or recurring remote or hybrid work — impose minimal cost on employers and are already granted informally in many workplaces. What is absent is a *procedure*: a reliable way for an employee to ask, a reliable obligation on the employer to consider and respond in writing, and protection against retaliation for asking.

(2.5) A substantial cohort of Colorado’s employed caregivers has developed caregiving expertise of a complexity and duration equivalent to that of credentialed caregivers through lived experience and sustained family caregiving rather than through formal credentialing or occupational classification. This cohort is systematically excluded from existing caregiver workforce data instruments, which define caregiving through credentialing, and is a specific subject of the evaluation and data provisions of section 8-13.3-612, C.R.S.

(2.7) The General Assembly finds that a recurring pattern in Colorado workplaces, including public employers, is the revocation of previously granted remote, hybrid, or flexible arrangements through a uniform directive applied to an entire workforce or class of employees — frequently justified on grounds of uniformity, solidarity, equity among employees, or workplace culture — without individualized consideration of employees with known caregiving responsibilities, and without advance notice that would allow those employees to request continuation of the arrangement. Such directives, when applied to an employee whose arrangement the employer has previously acknowledged as a caregiving accommodation, are a recurring opening step in the pattern of constructive discharge this Part is intended to interrupt. A generalized rationale of this kind is not a bona fide operational necessity under section 8-13.3-605, C.R.S.

(3) The federal Family and Medical Leave Act and the Colorado Family and Medical Leave Insurance Act are leave statutes gated by eligibility thresholds. Local government employers, including school districts, are the only category of employer permitted under section 8-13.3-522, C.R.S., to decline participation in the FAMLI program. An employee of a declining local government who elects individual coverage under section 8-13.3-514, C.R.S., pays premiums into the program but does not receive the job protection and anti-retaliation provisions of section 8-13.3-509, C.R.S. The General Assembly finds that an employee who pays into the program should receive the same job protection as every other covered employee, and that the absence of any accommodation procedure for such employees leaves them exposed to constructive discharge through the accumulation of facially neutral administrative actions.

(4) A statutory right to request a flexible work arrangement, with a defined employer response obligation and enumerated grounds for refusal, is an established and tested model. The United Kingdom has operated such a right since 2003 and made it a day-one right in 2024; Australia's Fair Work Act requires a written response within twenty-one days and, since 2023, permits binding arbitration of refused requests by the Fair Work Commission. Vermont and Oregon provide a right to request a schedule change, and New Hampshire protects employees from retaliation for making one. Several states and localities prohibit employment discrimination on the basis of familial status or family responsibilities. This Part combines, for employees with caregiving responsibilities, a defined employer response obligation, enumerated grounds for refusal, and a private right of action. The General Assembly intends this Part to serve as a model for other states and directs the division to make it available for that purpose under section 8-13.3-612, C.R.S.

(5) Placing this right in Title 8, alongside the Healthy Families and Workplaces Act and the Family and Medical Leave Insurance Act, aligns enforcement with the agency that already administers Colorado's leave and workplace-standards framework and permits the use of existing complaint, investigation, and private-action procedures. The General Assembly further declares its intent to evaluate, following the report required by section 8-13.3-612, C.R.S., whether caregiver status should be added to the classes protected under part 4 of article 34 of title 24, C.R.S.

SECTION 2. NEW PART — FAMILY CAREGIVER FLEXIBLE WORK ARRANGEMENTS

Article 13.3 of title 8, Colorado Revised Statutes, is amended by the addition of a new part to read:

PART 6 — FAMILY CAREGIVER FLEXIBLE WORK ARRANGEMENTS

8-13.3-601. Short title.

The short title of this part 6 is the "Family Caregiver Flexible Work Act."

8-13.3-602. Definitions.

As used in this part 6, unless the context otherwise requires:

(1) "Caregiver status" means the status of an individual who provides ongoing care, supervision, or support to a covered family member with a disability, serious health condition, chronic illness, or age-related condition — including cognitive, neurological, or functional decline whether or not formally diagnosed at the time of the request, and regardless of the age at which the condition first manifested — that requires regular assistance with activities of daily living, medical management, or personal care. Caregiver status includes care provided in a multigenerational household, caregiving responsibilities that have changed in nature, frequency, or intensity due to changes in the care recipient's condition, and caregiving expertise developed through lived experience rather than formal credentialing. Caregiver status does not require formal documentation, credentialing, or prior disclosure to the employer except as requested through the interactive process described in section 8-13.3-604.

(2) "Covered family member" means an employee's spouse, domestic partner, child, parent, parent-in-law, sibling, grandparent, grandchild, or any other individual with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship, for whom the employee has assumed primary or co-primary caregiving responsibility.

(3) "Division" means the division of labor standards and statistics in the department of labor and employment.

(4) "Employee" has the meaning set forth in section 8-4-101(5), except that it also includes any individual employed by an employer described in subsection (5)(b) of this section.

(5) "Employer" means:

(a) Every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, employing fifteen or more employees in the state; and

(b) The state and every agency, institution, and instrumentality of the state; every county, city and county, city, town, and municipality, whether or not organized under a home rule charter; every school district, charter school, and board of cooperative services; and every special district, authority, and other political subdivision of the state, regardless of the number of persons employed.

(c) "Employer" includes an entity described in paragraph (b) of this subsection (5) regardless of whether the entity has declined participation in the paid family and

medical leave insurance program pursuant to section 8-13.3-522, and a declination under that section has no effect on any obligation under this part 6.

(6) “Flexible work arrangement” means a modification or adjustment to work schedule, work location, or work arrangement — and not a physical modification to a workspace, the provision of equipment, or any other accommodation associated with disability under section 24-34-402 — that enables an employee to perform the essential functions of the employee’s position while meeting ongoing caregiving responsibilities. A flexible work arrangement includes, without limitation: (a) adjusted start and end times; (b) a compressed workweek; (c) remote or hybrid work on a temporary or recurring basis; (d) schedule adjustments during periods of a care recipient’s medical crisis or medical appointments; (e) shift swaps or rotations that do not eliminate essential functions; (f) a temporary reduction or modification of hours; and (g) scheduling coordinated with leave to which the employee is otherwise entitled under any other law. A flexible work arrangement does not include paid or unpaid leave, and nothing in this part 6 creates a leave entitlement.

(7) “Interactive process” means a good-faith, documented, bilateral dialogue between an employer and an employee with caregiver status conducted in accordance with section 8-13.3-604.

(8) “Request” means a written or oral communication by an employee to the employee’s employer or a supervisor, manager, or human resources personnel of the employer, stating that the employee has caregiving responsibilities and seeking a flexible work arrangement. A request need not use specific legal language.

(9) “Undue hardship” means a significant difficulty or expense incurred by the employer after consideration of the factors enumerated in section 8-13.3-605(2), taking into account the nature and size of the employer’s operation and the availability of alternative arrangements, including arrangements not requested by the employee.

(10) “Constructive discharge” means the separation of an employee with caregiver status from employment resulting from the accumulation of facially neutral administrative actions — including but not limited to reduction of hours, schedule changes, location reassignments, and performance review downgrades — that individually would not constitute an adverse employment action but in combination foreseeably coerce the employee’s resignation or other separation. This definition tracks the constructive discharge standard as applied in Colorado employment law.

(11) “Bona fide operational necessity” means a legitimate, documented business reason that is specific to the requested flexible work arrangement and is not a pretext for denying the request on the basis of caregiver status. A bona fide operational necessity must be stated in the employer’s written determination under section 8-13.3-604(3) with sufficient specificity to allow the employee to understand the basis for the denial and, if applicable, to propose an alternative arrangement.

8-13.3-603. Right to request a flexible work arrangement.

(1) An employee with caregiver status has the right to request a flexible work arrangement from the employee’s employer.

(2) An employee may make a request under this section at any time, including upon hire, upon a change in the employee’s caregiving responsibilities, or upon a material change in the employee’s work arrangement.

(3) An employer shall not require an employee to exhaust leave entitlements under any other law before making a request under this section.

(4) For purposes of this section, a “material change in circumstances” includes, without limitation: (a) a change in the care recipient’s medical condition or functional capacity; (b) a change in the availability of other caregivers; (c) a change in the employee’s work schedule, location, or assignment imposed by the employer; and (d) the revocation or material modification of a previously granted flexible work arrangement, where the employer did not initiate the interactive process required by section 8-13.3-604(4) prior to such revocation or modification.

8-13.3-604. Interactive process — written determination.

(1) Within five calendar days after receiving a request under section 8-13.3-603, the employer shall acknowledge the request in writing and initiate the interactive process.

(2) The interactive process shall be completed and the employer shall issue a written determination within twenty-one calendar days after the employer’s acknowledgment, unless the employee agrees in writing to an extension.

(3) The employer’s written determination shall: (a) grant the request as submitted; (b) grant a modified arrangement agreed to by the employee; or (c) deny the request and state with specificity the bona fide operational necessity or ground enumerated in

section 8-13.3-605 on which the denial is based, the facts specific to the employee's position and request that support the denial, and any alternative arrangements the employer considered.

(4) An employer that has previously granted a flexible work arrangement to an employee with caregiver status and seeks to revoke or materially modify the arrangement shall provide the employee with written notice of the proposed revocation or modification at least fourteen calendar days in advance, and shall initiate a new interactive process under this section before the revocation or modification takes effect.

(5) An employer shall retain each written acknowledgment, determination, and notice issued under this section for three years after the date of the determination and shall make such records available to the division upon request in connection with an investigation under section 8-13.3-608.

8-13.3-605. Grounds for denial — undue hardship.

(1) An employer may deny a request for a flexible work arrangement only on the ground that: (a) the arrangement would impose an undue hardship on the employer, as defined in section 8-13.3-602(9); (b) the arrangement would prevent the employee from performing the essential functions of the employee's position; or (c) another ground specified in this section applies.

(2) In determining whether an undue hardship exists, the employer shall consider: (a) the nature and cost of the arrangement; (b) the overall financial resources of the employer; (c) the number of employees and the structure of the workforce; (d) the employer's type of operation and the composition of its workforce; and (e) the impact of the arrangement on the ability of other employees to perform their duties.

(3) The following are not bona fide operational necessities and do not constitute grounds for denial: (a) the mere inconvenience of accommodating the request; (b) the employer's preference for in-person work as a general policy, absent a showing that in-person presence is essential to the specific functions of the employee's position; (c) the fact that other employees have not been granted similar arrangements; (d) a uniform or blanket directive requiring in-person attendance or a standard schedule that was applied to an entire workforce or class of employees without individualized consideration of employees with known caregiving responsibilities, including where such a directive is justified on grounds of uniformity, solidarity, equity among employees, or workplace culture; (e) an employer's failure to engage in the interactive process required by section 8-13.3-604; and (f) the operational necessity of providing continuous staffing coverage for a position does not, standing alone, constitute an undue hardship; however, where an employer demonstrates that a specific flexible work arrangement requested would directly interfere with a documented, non-discretionary requirement for continuous physical presence — including positions designated as essential 24/7 emergency response, mandatory public safety staffing ratio positions, or critical infrastructure operations requiring uninterrupted shift coverage — the employer may deny that specific arrangement while engaging in good faith to identify an alternative arrangement under section 8-13.3-604(3)(c).

8-13.3-606. Anti-retaliation — inference of retaliation.

(1) An employer shall not retaliate against an employee for: (a) making a request under section 8-13.3-603; (b) participating in an interactive process under section 8-13.3-604; (c) opposing a practice made unlawful by this part 6; or (d) filing a complaint, testifying, or assisting in a proceeding under this part 6.

(2) An adverse employment action taken within ninety days after an employee makes a request under this part 6 creates a rebuttable presumption of retaliation. An employer may rebut this presumption by demonstrating, by a preponderance of the evidence, a legitimate, non-retaliatory reason for the adverse action that is supported by documentation predating the request.

(3) "Adverse employment action" includes, without limitation: (a) termination; (b) demotion; (c) reduction in pay or hours; (d) change in schedule or location imposed by the employer; (e) negative performance review; (f) denial of promotion or transfer; and (g) constructive discharge as defined in section 8-13.3-602(10).

8-13.3-607. Enforcement — private right of action.

(1) An employee aggrieved by a violation of this part 6 may: (a) file a complaint with the division; or (b) after exhausting the administrative remedy described in subsection (2) of this section, bring a civil action in a court of competent jurisdiction.

(2) Before bringing a civil action under subsection (1)(b) of this section, an employee shall file a complaint with the division and receive either: (a) a written determination

from the division; or (b) a notice of right to sue issued by the division. The division shall issue a notice of right to sue upon request after the complaint has been pending for ninety days without a final determination. Nothing in this subsection requires an employee to accept any determination or resolution offered through the administrative process before bringing a civil action.

(3) In a civil action under this section, the court may award: (a) injunctive relief; (b) reinstatement; (c) back pay and lost benefits; (d) compensatory damages; (e) statutory damages of not less than one hundred dollars nor more than one thousand dollars per violation; and (f) reasonable attorney fees and costs to a prevailing employee.

8-13.3-608. Division enforcement — penalties.

(1) The division may investigate complaints, conduct audits, and issue compliance orders under this part 6 using the procedures and authorities available to the division under part 4 of this article 13.3.

(2) An employer that violates this part 6 is subject to a civil penalty of not less than fifty dollars nor more than five hundred dollars per violation, in addition to any remedy available under section 8-13.3-607.

(3) Civil penalties collected under this section shall be deposited in the wage theft enforcement fund created in section 8-4-124, with a directed expenditure of not less than twenty-five percent of amounts collected under this section for caregiver education and technical assistance programs administered by the division.

8-13.3-609. Relationship to other laws.

(1) The rights and obligations established in this part 6 are independent of, and not diminished, satisfied, or excused by, an employee's eligibility or ineligibility for leave under the federal "Family and Medical Leave Act of 1993", 29 U.S.C. sec. 2601 et seq., part 4 or part 5 of this article 13.3, or any other law, and apply without limitation where:

(a) A local government employer has declined participation in the paid family and medical leave insurance program under section 8-13.3-522;

(b) An employee has, or has not, elected individual coverage under section 8-13.3-514; or

(c) An employee has not met any tenure, hours-worked, or employer-size threshold under any leave law.

(2) Nothing in this part 6 creates a new leave entitlement or requires an employer to provide paid or unpaid leave beyond what is required under other law.

(3) This part 6 supplements and does not limit any right or remedy under part 4 or part 5 of this article 13.3, the "Colorado Anti-Discrimination Act", part 4 of article 34 of title 24, section 24-34-402.3, or any other law, and an employee may pursue remedies under this part 6 and any other applicable law concurrently. A collective bargaining agreement or employer policy may provide greater rights, but shall not waive or reduce any right under this part 6.

(4) Where an employee requests a flexible work arrangement under this part 6 and also requests, or is entitled to, a reasonable accommodation for the employee's own disability under section 24-34-402 or the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., or for pregnancy or a related condition under section 24-34-402.3: (a) the employer shall conduct a single, coordinated interactive process that satisfies the requirements of each applicable law; (b) the employer may not deny, delay, or condition a flexible work arrangement on the ground that a schedule- or location-based modification could instead be characterized as a disability or pregnancy accommodation, or vice versa; (c) the shortest applicable response timeline governs; and (d) the employee retains every right and remedy under each applicable law. The exclusion of physical workspace modifications and equipment from the definition of flexible work arrangement in section 8-13.3-602(6) limits only what may be requested under this part 6 and does not limit any accommodation available under other law.

8-13.3-610. Rules — model policy safe harbor.

(1) The director of the division may adopt rules to implement this part 6, including a model policy, a model written-determination form, and guidance on the grounds enumerated in section 8-13.3-605 for particular industries and for public employers. Rules adopted under this section may address the consequences of an employer's failure to comply with the procedural timelines in section 8-13.3-604.

(2) The director shall develop and publish a Public Sector Interactive Process Model Policy providing standardized procedures for local government employers to conduct

the interactive process required by section 8-13.3-604. A local government employer that adopts and implements the division's published model policy in good faith shall be entitled to a rebuttable presumption of procedural compliance with section 8-13.3-604 in any proceeding under this part 6. Nothing in this subsection limits the substantive rights of an employee under this part 6 or prevents a finding of liability for a substantive denial made in bad faith.

8-13.3-611. [RESERVED]

8-13.3-612. Reporting — evaluation.

(1) On or before November 1, 2030, and within existing resources, the division shall report to the business, labor, and technology committee of the senate and the business affairs and labor committee of the house of representatives, or their successor committees, on the number and disposition of complaints and civil actions under this part 6 of which the division is aware, the grounds for denial most frequently invoked, and, in consultation with the department of health care policy and financing to the extent data are available, any observed relationship between flexible work arrangements and caregiver workforce retention. The report shall include the division's recommendation on whether caregiver status should be added to the classes protected under section 24-34-402.

(2) The division may, within existing resources or with gifts, grants, and donations, collaborate with the department of health care policy and financing, the department of public health and environment, or any entity that administers a state-sponsored health or workforce survey, to identify or include measures of caregiver flexible work arrangements and their outcomes, and may include any resulting findings in the report required by subsection (1) of this section.

8-13.3-613. Caregiver flexible work advisory committee.

(1) The director of the division may convene a caregiver flexible work advisory committee to advise the division on model policies, guidance under section 8-13.3-610, industry and sector-specific application of the grounds enumerated in section 8-13.3-605, technical assistance for small and public employers, and the report required by section 8-13.3-612.

(2) If convened, the committee shall include representatives of: statewide and regional chambers of commerce and small business associations; the Colorado Municipal League, Colorado Counties, Inc., and the Colorado Association of School Boards, or their successors; the Special District Association of Colorado; organized labor; at least one employee of a school district, in a classified or non-licensed position, who is not represented by a collective bargaining unit for purposes of workplace flexibility; at least one employee of a county or municipality; family caregiver advocacy organizations, including at least one organization led by family caregivers; the department of health care policy and financing; and the Colorado civil rights division. Members serve without compensation and are not entitled to reimbursement of expenses. The committee is not subject to section 2-3-1203 (sunset review of advisory committees).

SECTION 3. FAMLI — JOB PROTECTION FOR EMPLOYEES OF DECLINING LOCAL GOVERNMENTS

(1) Section 8-13.3-514, Colorado Revised Statutes, is amended by the addition of a new subsection to read:

8-13.3-514. Elective coverage.

( ) (a) An employee of a local government that has declined participation under section 8-13.3-522 and who has elected coverage under this section is entitled, with respect to any leave for which the employee receives or is eligible to receive benefits under this part 5, to the employment protection, benefit continuation, and anti-retaliation provisions of section 8-13.3-509 to the same extent as an employee of a participating employer, and the local government shall comply with section 8-13.3-509 with respect to that employee.

(b) The obligations imposed on a local government by this subsection do not require the local government to pay premiums under section 8-13.3-507 or otherwise participate in the program.

(c) For purposes of paragraph (a) of this subsection, the one-hundred-eighty-day employment requirement of section 8-13.3-509(1) is satisfied by an employee who has been continuously employed by the local government for one hundred eighty days, or who has been employed by the local government while continuously enrolled in elective coverage under this section for a combined total of one hundred eighty days, whichever occurs first. Nothing in this paragraph (c) grants job protection under section 8-13.3-

509 to any employee who has not completed at least one hundred eighty days of continuous employment with their current local government employer, nor does it apply to any employee who has not elected coverage under this section.

(2) Section 8-13.3-522, Colorado Revised Statutes, is amended by the addition of new subsections to read:

( ) A local government that declines participation under this section shall, within thirty days after the declination and annually thereafter, provide written notice to each of its employees of: (a) the employee's right to elect individual coverage under section 8-13.3-514; (b) the employment protection available under section 8-13.3-514( ) to an employee who so elects; and (c) the employee's rights under part 6 of this article 13.3. The division may prescribe a model notice.

( ) A declination under this section does not relieve a local government of any obligation under part 6 of this article 13.3.

SECTION 4. CONFORMING AMENDMENT — CADA CROSS-REFERENCE

Section 24-34-402.3, Colorado Revised Statutes, is amended by the addition of a new subsection to read:

( ) Nothing in this section limits the rights of an employee with caregiver status under part 6 of article 13.3 of title 8.

SECTION 5. APPLICABILITY

Drafter recommendation: phased version (mirrors HFWA model; reduces business-coalition surface area).

(1) Part 6 of article 13.3 of title 8, as enacted in Section 2, applies to employers described in section 8-13.3-602(5)(b) (public employers) and to private employers with fifty or more employees beginning January 1, 2028, and to all other employers beginning January 1, 2029.

(2) Section 3 applies to leave commencing on or after January 1, 2028.

SECTION 6. EFFECTIVE DATE

This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2028 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

PREPARED BY:

Mark Fukae, Director of Advocacy, CASI — Caregiver Advocacy Support Initiative; Registered Colorado Volunteer Lobbyist

(303) 817-6995 | mark_fukae@casiadvocacy.org | casiadvocacy.org

DRAFT STATUS: Draft v1.6 — draft for sponsor conversations; not introduced legislation. No legislator has sponsored or committed to sponsor this bill. Phase 1 of a two-phase plan; the CARE Act is Phase 2.

v1.6 changes from v1.5 (Oct. 12, 2026): finding (2.7) "the most common" → "a recurring"; finding (4) now names Vermont and Oregon as right-to-request states and New Hampshire as protecting requests, and states what this Part combines rather than asserting that no state has done so; finding (5) no longer states that the Part does not require a general fund appropriation. No operative section changed.