



FYI

Colorado Healthy Families and Workplaces Act **COLORADO**

Revised: August 2020

On July 14, 2020, Colorado enacted the Healthy Families and Workplaces Act (“HFWA”), which requires Colorado employers to provide three types of paid leave to its employees: 1) COVID-19-related paid leave; 2) paid sick leave; and 3) public health emergency-related paid leave.

Important Notice:

The information provided herein is general in nature and designed to serve as a guide to understanding. These materials are not to be construed as the rendering of legal or management advice. If the reader has a specific need or problem, the services of a competent professional should be sought to address the particular situation.

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Overview

On July 14, 2020, Colorado enacted the Healthy Families and Workplaces Act (“HFWA”), which requires Colorado employers to provide three types of paid leave to its employees: 1) COVID-19-related paid leave; 2) paid sick leave; and 3) public health emergency-related paid leave. Certain provisions of the Act, in particular the paid sick leave and public health emergency-related paid leave, will not take effect until 2021 and 2022, depending on the size of the employer.

The HFWA covers all employers and employees, except employers that, under a collective bargaining agreement, already provide equivalent or more paid leave than required by HFWA, the federal government, and employees covered by the federal Railroad Unemployment Insurance Act.

COVID-19-RELATED PAID LEAVE

Starting July 15, 2020, through December 31, 2020, Colorado employers, regardless of size, must comply with the Emergency Paid Sick Leave Act (EPSLA) provisions of the federal Family First Coronavirus Response Act (FFCRA) and provide up to two weeks (up to 80 hours) of paid leave to full-time employees. For employees working fewer than 40 hours a week, an employer is required to provide up to the employee’s two-week equivalent of work hours. Paid leave already provided to an employee for any of the COVID-19-related reasons below may be counted toward the two weeks of leave required by the HFWA in 2020.

QUALIFYING REASONS FOR TAKING LEAVE

An employee is eligible to take paid leave if the employee is unable to work or telework due to the employee :

1. Being ordered by a government agent (federal, state, or local) to quarantine or isolate due to a risk of COVID-19;
2. Being advised by a health care provider to self-quarantine due to a risk of COVID-19;
3. Experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Having to take care of someone else who is ordered by a government agent or health care provider to quarantine or isolate due to a risk of COVID-19;
5. Having to care for his or her child whose school, place of care, or child care is closed or unavailable due to COVID-19-related reasons; or
6. Experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

PAY RATE

An employee taking leave for reasons #1 to #3 above must be compensated at the same hourly rate or salary and with the same benefits as the employee normally earns, or 2/3 of that rate for leave taken for reasons #4 to #6.

The rate of pay must not be less than the applicable minimum wage and doesn't include overtime, bonuses, or holiday pay. Employees who are paid commissions must be paid the greater of: (A) their hourly or salaried rate; or (B) minimum wage.

EMPLOYER POLICIES

The HFWA allows employers to require that an employee provide "reasonable documentation" to support a COVID-19-related paid leave request.

If an employee is requesting paid leave for reasons #1 to #4, an employer may ask the employee to provide a signed statement containing the employee's name and the following information:

- The date(s) for the leave;
- The reason for the leave;
- A statement that the employee is unable to work or telework due to the reason for their leave; and
- The name of the healthcare provider or the government entity that advised the employee (or the employee's family member) to self-quarantine or isolate due to COVID-19;

If an employee is requesting paid leave for reason #5, an employer may ask the employee to provide a signed statement containing the employee's name and the following information:

- The date(s) for the leave;
- The name of the child requiring care;
- The name of the school, place of care, or child care provider that is closed or unavailable; and
- A statement that no other suitable person is available to care for the child.

An employer may not require the employee to provide documentation for the employee to take paid leave, but it can require documentation as soon as the employee reasonably can provide it.

PAID SICK LEAVE

Effective January 1, 2021, employers with 16 or more employees must provide each employee one hour of paid sick leave for every 30 hours worked, up to 48 hours per year.¹ An employee must be allowed to use their paid sick leave as it accrues. Therefore, a paid leave policy that requires an

¹ A full-time employee is presumed to work 40 hours a week, unless the employee regularly works fewer than 40 hours a week, then the employee's paid sick leave accrual rate would be based on the employee's work hours.

employee to wait a certain period before being allowed to take leave would not be compliant with the HFWA.

Moreover, employees must be allowed to roll over year to year up to 48 hours of unused paid sick leave, but an employer can restrict an employee from using more than 48 hours of paid sick leave in a year.

Upon termination of employment, employers are not required to pay out to employees earned, but unused paid sick leave. However, if an employee leaves the organization and is rehired within 6 months, the employer must reinstate all previously earned, but unused paid sick leave, unless such leave was paid out to the employee upon separation. The employer may not require the employee to provide documentation for the employee to take sick leave, but it can require documentation as soon as the employee reasonably can provide it.

These same requirements will apply to employers with 15 or fewer employees, effective January 1, 2022.

QUALIFYING REASONS FOR TAKING LEAVE

Employers must allow employees to use their paid sick leave if the employee:

1. Has a mental or physical illness, injury, or health condition that prevents the employee from working;
2. Needs to obtain preventive medical care, or a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition;
3. Needs to obtain preventive care;
4. Needs to care for a family member who falls under the three categories above;
5. The employee or the employee's family member² has been the victim of domestic abuse, sexual assault, or criminal harassment, and the use of leave is to:
 - seek medical attention for the employee or the employee's family member to recover from a mental or physical illness, injury, or health condition caused by domestic abuse, sexual assault, or harassment;
 - obtain services from a victim services organization;
 - obtain mental health or other counseling;
 - seek relocation due to domestic abuse, sexual assault, or harassment; or
 - seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment;
6. Due to a public health emergency, a public official closed either:

² "Family member" means (a) immediate family related by blood, adoption, marriage, or civil union, or anyone else for whom the employee is responsible for providing or arranging health- or safety-related care.

- the employee’s place of business, or
- the school or place of care of the employee’s child, requiring the employee needing to be absent from work to care for the child.

PAY RATE

An employee taking paid sick leave must be compensated at the same hourly rate or salary and with the same benefits as the employee normally earns for hours worked. The rate must not be less than the applicable minimum wage and doesn’t include overtime, bonuses, or holiday pay. Employees who are paid commissions must be paid the greater of: (A) their hourly or salaried rate; or (B) minimum wage.

EMPLOYER POLICIES

An employee may request paid sick leave orally, in writing, electronically, or by any other means acceptable to the employer. Employees should be allowed to take sick leave in at least one-hour increments, unless the employer allows for leaves to be taken in smaller increments.

If an employee has taken paid sick leave for four or more consecutive days, the employer can require that the employee provide reasonable documentation that support the reason for the leave request. However, the employer may not require more documentation than is necessary. The law prohibits employers from requiring the employee to disclose details concerning the employee’s (or the employee’s family) health information, domestic or sexual violence, or stalking.

PUBLIC HEALTH EMERGENCY-RELATED PAID LEAVE

Effective January 1, 2021 (for employers with 16 or more employees) and January 1, 2022 (for employers with 15 or fewer employees), during a public health emergency, an employer must provide employees up to 80 hours of paid leave (or, for an employee working fewer than 40 hours per week, two weeks of their regular hours). Up to 48 hours of unused paid sick leave accrued by the employee can be counted toward the Public Health Emergency Paid Leave required by the HFWA.

QUALIFYING REASONS FOR TAKING LEAVE

Employees can use public health emergency leave for any of the following purposes:

1. To self-isolate (or care for a family member who is self-isolating) due to the employee (or family member) being diagnosed with, or having symptoms of, a communicable illness that is the cause of a public health emergency;
2. To seek or obtain (or care for a family member needing) medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a public health emergency;
3. To seek for oneself (or care for a family member needing) preventive care concerning a communicable illness that is the cause of a public health emergency; or

4. If the employee is excluded from work or has to care for a family member who's excluded from work, by a government health official, or by an employer, due to the employee or the employee's family member having exposure to, or symptoms of, such an illness (whether or not they are actually diagnosed with the illness);
5. Being unable to work due to a health condition that may increase susceptibility or risk of such an illness; or
6. To care for a child or other family member whose school, child care provider, or other care provider is either unavailable, closed, or providing remote instruction due to the public health emergency.

PAY RATE

An employee taking paid sick leave must be compensated at the same hourly rate or salary and with the same benefits as the employee normally earns for hours worked. The rate must not be less than the applicable minimum wage and doesn't include overtime, bonuses, or holiday pay. Employees who are paid commissions must be paid the greater of: (A) their hourly or salaried rate; or (B) minimum wage.

NOTICE, POSTING, AND RECORDKEEPING REQUIREMENTS

HFWA requires employers to notify employees about their paid leave entitlements under the law. The notice must:

1. Specify the amount of paid sick leave to which employees are entitled and the terms of its use under the law;
2. Notify employees that employers cannot retaliate against them for requesting or using paid sick leave; and
3. Notify employees that they have the right to file a complaint or bring a civil action if paid sick leave is denied or they are retaliated against for exercising their rights under the law.

An employer can comply with those requirements by supplying each employee a written notice, containing the information above, that is in English and in any language that is the first language spoken by at least 5% of the employer's workforce, and displaying a poster in a conspicuous and accessible location in each establishment where the employer's employees work. For employees working remotely or without a physical workspace, a notice via electronic means would suffice. The notice and posting requirements are waived during the period that an employer's business is closed due to a public health-related emergency.

The HFWA requires employers to maintain records for two years for each employee, documenting hours worked, paid sick leave accrued, and paid sick leave used under the HFWA. In a dispute between an employer and an employee regarding the employee's paid leave entitlements, an employer who failed to maintain or retain adequate records will be presumed to have violated the law, unless the employer can show by a preponderance of the evidence that it did not.