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Colorado enacts paid sick leave law

On July 14, Colorado enacted the Healthy Families and Workplaces Act, joining more than a dozen states that have paid sick leave laws. The Act generally requires Colorado employers to provide employees with up to 48 hours of paid sick leave per year beginning in 2021 and immediately extends COVID-related paid sick leave protections to employees not previously covered by the federal Families First Coronavirus Response Act.

Background

Earlier this year, Congress enacted the Families First Coronavirus Response Act (FFCRA) in response to the COVID-19 pandemic. Among other things, this emergency legislation requires private employers with fewer than 500 employees and governmental employers of any size to provide up to 12 weeks of emergency paid sick leave and expanded paid family and medical leave to employees for reasons related to the coronavirus outbreak. (See our [March 18, 2020 FYI](#).) Since then, a number of states (such as California, Connecticut, and New Jersey) and the District of Columbia have adopted measures to temporarily expand existing leave laws to address COVID-19.

On March 11, Colorado Governor Jared Polis declared a state of emergency in response to COVID-19, and the state's Department of Labor and Employment (CDLE) released emergency rules requiring employers in select industries to provide up to four days of paid sick leave for employees with flu-like symptoms while awaiting COVID-19 testing. The CDLE subsequently expanded coverage to other industries and increased available leave from four days at full pay to two weeks (up to 80 hours) at two-thirds pay. Additionally, it extended coverage to include employees: with other respiratory illness symptoms; subject to quarantine or isolation instructions from a health care provider or government official; or under instructions to quarantine or isolate even if not being tested. The emergency rules remained in effect until the Healthy Families and Workplaces Act (HFWA or Act) was enacted on July 14.

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Healthy Family and Workplaces Act

Effective January 1, 2021, the HFWA will require Colorado employers with 16 or more employees to provide up to 48 hours of paid sick leave per year and supplemental sick leave during a public health emergency. Smaller employers will be covered under the Act beginning in 2022.

Reasons for leave

Beginning next year, covered employers must provide employees with paid sick leave for:

- Employees' or their family member's mental or physical injuries or illnesses, need for medical diagnosis or treatment, or preventative care
- Medical attention, counseling, relocation, or other victim or legal services for employees or their family members who are victims of domestic violence, harassment, or sexual abuse
- Closure of the employee's place of business by a public health official or of the employee's child's school or place of care due to a public health emergency requiring the employee to provide child care

Accruals

Beginning on January 1, 2021 or their hire date if later, covered employees will accrue one hour of basic paid sick leave for every 30 hours worked, capped at 48 hours per year. Alternatively, employers may frontload the employee's full annual allotment of paid sick leave at the beginning of each year. While employees may carry over up to 48 hours accrued but unused paid sick leave to a subsequent year, employers may limit the use of paid sick leave to 48 hours in any given year.

Employers are not required to pay out unused, accrued paid sick leave on termination, retirement, or other separation from employment. However, employees who are rehired by the same employer within six months after their separation are entitled to have any accrued but unused paid sick leave reinstated — unless the leave was paid out at termination. Employees transferred to a separate division, entity, or location with the same employer are entitled to all leave accrued at the prior location. Similarly, employees of a successor employer are entitled to all leave accrued with the original employer.

Increments of use

Employees may use paid sick leave as it is accrued and may be required to use it in hourly increments unless the employer expressly allows leave to be taken in smaller increments. Employers may require reasonable documentation that leave is for a permissible purpose — but only if an employee uses it for four or more consecutive work days. Employers will be required to track sick time that is accrued and used and maintain records documenting hours worked, paid sick leave accrued, and paid sick leave used for two years.

Pay rate

Paid sick leave is compensated at the same hourly rate or salary and with the same benefits (including health care benefits) as the employee normally earns during hours worked (excluding overtime, bonuses, or holiday pay). Employees paid solely on a commission basis must be paid at a rate no less than the applicable minimum wage.

Existing policies

Employers that already have a paid leave policy that would satisfy the HFWA's requirements, including its accrual and use requirements, would not be required to provide additional paid sick leave. Importantly, the HFWA does not diminish employer compliance obligations with existing contracts, collective bargaining agreements, benefit plans, or other agreements with more generous policy provisions. Employers will be required to post notices to inform employees about their rights under the Act.

Supplemental leave

In addition, the HFWA requires employers to supplement employees' available accrued paid sick leave with up to an additional two weeks of leave during a public health emergency — even if leave under the Act's general provisions has been exhausted. It requires employers to ensure that employees who normally work 40 hours per week may take at least 80 hours of paid sick leave and employees who work fewer than 40 hours per week may take at least the greater of the number of hours the employee is scheduled to work in a 14-day period or the average number of hours the employee actually works in a 14-day period during the emergency. Employers may count an employee's accrued but unused time toward this supplemental leave requirement.

Supplemental leave may be used until four weeks after the public health emergency is terminated or suspended. Employees may use the leave to:

- Self-isolate due to a positive diagnosis, experiencing symptoms, seeking medical treatment or preventative care for the illness causing the public health emergency
- Care for a family member who is self-isolating for the same reasons
- Comply with a public health official's or employer's determination that it would be unsafe for the employee to come to work due to their exposure to, or displaying symptoms of, the illness causing the public health emergency regardless of whether they have been diagnosed with the communicable illness
- Care for a family member after a determination by a public health official or their employer that it would be unsafe for the family member to come to work due to their exposure to, or displaying symptoms of, the illness causing the public health emergency regardless of whether they have been diagnosed with the communicable illness
- Care for a child or other family member whose school or place of care is closed due to the public health emergency

- Deal with their inability to work because of a pre-existing condition that may make them more susceptible to serious harm if infected with the illness causing the public health emergency

Notably, an employer may not require documentation to support taking supplemental paid sick leave under the public health emergency provisions of the Act. However, employees are only eligible for this supplemental leave once during the entirety of a public health emergency — even if it is amended, extended, restated, or prolonged.

Anti-retaliation

The Act prohibits retaliation against an employee who uses their paid sick leave or otherwise exercises their rights under the Act. Employees who believe their rights were violated may file a charge with the state Division of Labor and may bring a civil action within two years provided they exhaust all administrative remedies.

COVID-19 paid sick leave

The HFWA paid sick leave and supplemental leave provisions discussed above become effective beginning in 2021. To fill the current coverage gap, the HFWA extended immediate COVID-related paid sick leave protections to employees not covered by the FFCRA's Emergency Paid Sick Leave Act (EPSLA) — those who work for employers with 500 or more employees. Through December 31, 2020, it requires employers — regardless of size — to provide paid sick leave in the amount and for the purposes provided in the EPSLA to each employee who is not covered under that Act. (See our [March 26, 2020 FYI](#) for more information about the FFCRA's paid sick leave requirements.)

Buck comment. Unlike the expanded paid sick leave protections, the HFWA did not extend COVID-related emergency family and medical leave protections to employees not covered by the FFCRA's Emergency Family and Medical Leave Expansion Act. That law provides up to 12 weeks of paid leave to care for children whose school or place of care is closed, or child care provider is unavailable, for COVID-19 related reasons.

In closing

Colorado's new paid sick leave obligations are generally effective on January 1, 2021. However, employers are subject to a temporary COVID-19 related paid leave mandate to bridge the coverage gap until then. Employers with operations in Colorado should review their leave policies, particularly as they relate to COVID-19, and make any necessary revisions to ensure compliance.

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