



## Colorado Passes Paid Sick Leave and Whistleblower Laws

On July 14, 2020, Governor Jared Polis signed the “Healthy Families and Workplaces Act” (“HFWA”). Several provisions of this law are effective immediately (July 15, 2020), and require paid sick leave specifically for COVID-19 related issues. Starting January 1, 2021, the HFWA will require that most employers provide their employees with up to 48 hours of paid sick leave per year. This article is Part 1 of a two-part series, and focuses on the immediately effective laws relating to COVID-19. We will discuss the details of the general paid sick leave in Part 2. Governor Polis also recently signed the Public Health Emergency Whistleblower Law (“PHEW”), effective July 11, 2020, which we will discuss briefly below.

### **Sick Leave for COVID-Related Reasons from July 15 to December 31, 2020**

For the remainder of this year, the HFWA requires that employers must provide paid sick leave up to two weeks (80 hours) for specified reasons related to the COVID-19 pandemic. These reasons are the same as in the federal “Emergency Paid Sick Leave Act,” which the HFWA adopted from the Families First Coronavirus Response Act (“FFCRA”). However, **the state law applies to all employers** regardless of number of employees. Therefore, Colorado employers who may not have been covered by the provisions of the FFCRA (including those not covered because they have more than 500 employees) should immediately take steps to ensure compliance with the emergency provisions of the HFWA.

#### **Reasons for Paid Sick Leave**

To be eligible, an employee must be:

1. Having COVID-19 symptoms and seeking a medical diagnosis;
2. Ordered by a government authority (local, state, or federal) or advised by a health care provider to quarantine or isolate due to a risk of COVID-19; or
3. Taking care of someone else (not limited to family members) due to COVID-19 precautions—either someone ordered to quarantine or isolate, or a child whose school or child care facility is closed or unavailable.

### **Up to Two Weeks of Paid Leave**

For full-time employees, the employer must provide up to two weeks (80 hours) of paid sick leave. For part-time employees, the employer must provide up to the average number of hours worked by the employee in a two-week period. Sick leave must be paid at the employee's regular rate of pay, except that sick leave to care for a child or someone else, category 3 above, is paid at  $\frac{2}{3}$  the employee's regular rate of pay. The pay rate is straight time or salary, and need not include overtime, bonuses, or holiday pay. If an employee has already been provided paid sick leave for any of these COVID-19 reasons, such as earlier in 2020 before the HFWA was passed, the employer can count the previously paid sick leave hours towards the two weeks required by the HFWA.

### **Documentation Requirements**

The employer can require "reasonable documentation" of the need for leave, which may be in the form of a signed statement from the employee. The employer cannot require advance documentation or advance notice for taking such leave, but instead can require it as soon as practicable. Paid sick leave cannot be counted towards an employee's attendance or as an occasion under an employer's attendance policy.

### **Option to Use Employer's Own Sick or PTO Leave Program**

Unlike the FFCRA, if an employer has its own paid time off or paid sick leave policy, the employer may use its regular paid leave policy to provide the paid sick leave afforded by the HFWA, so long as the employer's policy provides as much time off and covers the conditions and situations provided by the HFWA.

## **Retaliation Prohibited**

The HFWA prohibits retaliation against employees for requesting or taking paid sick leave, informing another employee about or supporting another employee's exercise of HFWA rights, or filing a complaint or cooperating in an investigation of a complaint by the Colorado Division of Labor Standards and Statistics.

## **Notices and Poster Required**

The HFWA has two distinct notice requirements. First, the employer must provide written notice to each employee of the right to take paid sick leave, in the amounts and for the purposes provided by the HFWA. The employer may provide such notice by giving each employee a copy, in paper form or electronically, of the "Interpretive Notice & Formal Opinion ('INFO') #6A," from the Colorado Department of Labor and Employment, which is linked [here](#). In the alternative, the employer may provide each employee with a copy of the poster specified below.

Second, the employer must post an approved poster in each facility where employees work, in a "conspicuous and accessible" place, usually an employee bulletin board where similar posters are posted. [Here is the link](#) to the poster, entitled the Colorado Paid Leave & Whistleblower Poster.

## **Public Health Emergency Whistleblower Law ("PHEW")**

Governor Polis also signed PHEW recently, which is covered by the same poster as the HFWA. PHEW prohibits employers from retaliating against employees who—during a public health emergency such as the current COVID-19 pandemic—raise "reasonable concerns, whether a formal complaint or informally to any person, about workplace violations of government health or safety rules, or about a significant workplace threat to health or safety." PHEW also protects an employee's right to wear his or her own personal protective equipment (PPE), such as a face covering or mask, if it provides more protection than the PPE provided by the employer and meets other standards. PHEW protects the rights of employees who express good faith concerns, even if mistaken, about workplace health or safety issues related to the COVID-19 pandemic.

## **Key Takeaways**

- Employers in Colorado who have not already implemented emergency paid sick leave under federal law should take steps to ensure compliance with the emergency provisions of the HFWA immediately.
- Colorado employers should be cautious about taking disciplinary action against employees who complain about COVID-related conditions in the workplace, even if the employer believes that the employee is wrong about the allegedly unsafe conditions.

This blog was prepared by [Michael Belo](#) of the Spencer Fane office in Denver, Colorado.