



Colorado's Paid Sick Leave Law

On July 14, 2020, Governor Jared Polis signed the "Healthy Families and Workplaces Act" ("HFWA"). Last month, we discussed the emergency COVID-19 provisions [here](#). The emergency provisions are effective from July 15 to December 31, 2020. In this Part 2, we will discuss the paid sick leave provisions of HFWA that go into effect January 1, 2021.

HFWA will be phased in during a two-year period. Starting January 1, 2021, employers with 16 or more employees will be covered by the paid sick leave requirements. On January 1, 2022, all employers in Colorado, excluding the federal government, will be required to provide paid sick leave.

Employers Must Provide Up to 48 Hours of Paid Sick Leave Per Year

Employers who are covered by the law must provide their employees a minimum of one hour of paid leave for every 30 hours worked, up to 48 hours per year. Employees may use paid sick leave as soon as it accrues, and must use it in hourly increments. Employees may carry over up to 48 hours per year, but the employer need not allow use of more than 48 hours of paid sick leave per year. These are minimums—an employer may have more generous provisions at its option. For example, employers may grant all 48 hours at the start of the year.

Sick leave must be paid at the same hourly rate or salary as the employee normally earns. The employer has no obligation to pay employees for unused sick leave upon separation or at any other time.

Reasons for Use of Paid Sick Leave

Employees may use paid sick leave for any of the following needs:

1. The employee's mental or physical illness, injury, or health condition that prevents him or her from working;
2. Obtaining preventive medical care, or medical diagnosis, care, or treatment of any mental or physical illness, injury, or health condition;
3. Caring for a family member who has a mental or physical illness, injury, or health condition, or who needs the kind of care or treatment in category 2;
4. The employee or family member has been a victim of domestic abuse, sexual assault, or criminal harassment, and needs leave for related medical attention, mental health care or other counseling, victim services (including legal services), or relocation; or
5. Due to a public health emergency, a public official having closed either (A) the employee's place of business, or (B) the school or daycare provider of the employee's child, requiring the employee to be absent to care for the child.

When possible, the employee must notify the employer of the expected duration of the absence under the paid sick leave law. Employers may provide written procedures for employees to utilize, but may not deny paid sick leave for noncompliance with a policy. For sick leave of four or more consecutive days, the employer may require reasonable documentation that the leave is for an authorized purpose.

The employer can comply with the HFWA by having a regular sick leave or paid time off policy, so long as the policy provides as much time off and covers all the conditions and situations under the HFWA.

Additional Sick Leave for Public Health Emergency

In addition to regular paid sick leave, full-time employees will be allowed up to 80 hours of paid sick leave, and part-time employees an amount equal to their average hours in a fourteen-day period, for a public health emergency. The reasons for this supplemental sick leave are similar to those in the COVID-related sick leave under the HFWA effective from July 15 to December 31, 2020, and the emergency paid sick leave under the Families First Coronavirus Response Act passed earlier this year by Congress, e.g., to self-isolate or seek a medical diagnosis or care for such illness, to care for a family member who is self-isolating or seeking a medical diagnosis, or to care for a child whose school or daycare provider is unavailable because of the

public health emergency.

Notices, Record Retention, and Prohibition of Retaliation

The employer must notify employees in writing of their right to take paid sick leave, in the amounts and for the purposes in the HFWA. In addition, the employer must post the approved poster, which will be issued by the Colorado Division of Labor Standards and Statistics later this year. The employer must retain records for a two-year period documenting hours worked, sick leave accrued, and sick leave used.

The HFWA prohibits an employer from retaliating against an employee who requests or takes paid sick leave under the statute, informs someone else about their rights under the statute, files a complaint, or assists in an investigation about paid sick leave.

Key Takeaways

- Employers in Colorado with 16 or more employees should review their policies and determine how they will address compliance under the HFWA. Employers should review their existing policies with employment counsel to ensure compliance with the HFWA.
- Employers should begin preparing their payroll and administrative procedures to implement the paid sick leave provisions of the HFWA in January. Smaller employers have a grace period to January 2022.

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