

# LABOR & EMPLOYMENT ADVISORY

## Paid Sick Leave Becomes Permanent in Colorado



During the COVID-19 pandemic, both the federal and Colorado state governments used some form of paid sick leave as a tool to help employees through illness, medical treatments, and school and daycare shutdowns. Now, paid sick leave is a permanent requirement for employers in the state of Colorado.

On July 14, Governor Polis signed into law the Healthy Families and Workplaces Act (HFWA), S.B. 20-205. The HFWA mandates a paid sick leave benefit for employees working in Colorado and establishes an enhanced sick leave benefit in the time of a public health emergency.

### COVID-19 AND PUBLIC HEALTH EMERGENCIES

The public health emergency provisions take effect immediately and apply to the current COVID-19 public health emergency through December 31, 2020. All employers, regardless of size, must provide up to two weeks (80 hours) of paid sick leave to an employee (1) experiencing symptoms of COVID-19 and seeking a medical diagnosis; (2) in quarantine or isolation due to a risk of COVID-19 as ordered or advised by a government agent or health care provider; or (3) caring for someone in quarantine or isolation due to COVID-19 or caring for a child whose school or daycare is closed or unavailable. Part-time employees are entitled to sick leave for the average or scheduled number of hours worked in a two-week period. Employers must pay employees full pay for sick leave taken due to categories (1) and (2) but may pay sick leave at 2/3 pay for leave taking under category (3). Overtime, bonuses, and holiday pay do not need to be considered in determining the pay rate for sick leave. An employer need not pay sick leave if the business is closed for a reason other than a temporary shutdown due to a government quarantine or isolation order.

If an employer already provided an employee with paid sick leave in 2020 for one of the three COVID-19 categories, the employer may count that leave toward the HFWA requirement provided that the sick leave was paid at the rate required by HFWA. If the paid sick leave was not paid at the rate required by



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the HFWA, the leave counts toward the HFWA requirement with a discount for how much the pay was reduced.

For paid sick leave through December 31, 2020, employers may require reasonable documentation of the need for leave. The applicable guidance, available [HERE](#), outlines the documentation that can be requested for leave through December 31, 2020 only.

Paid sick leave is treated as "wages" under Colorado law, and an employee denied paid sick leave can pursue the remedies available under the Colorado Department of Labor and Employment wage claim process. Employers are also prohibited from interfering with an employee's right to take paid sick leave and from retaliating against employees for taking leave or making or supporting a complaint related to paid sick leave.

Employers are required to notify employees in writing of the right to take paid sick leave without retaliation and are required to post a notice of employee rights under HFWA. The Division's INFO document and Division Poster, available [HERE](#), satisfies the written notice requirement and the posting requirement respectively.

The COVID-19 requirements applicable through December 31, 2020 generally will be applicable to any future public health emergency.

## PAID SICK LEAVE GENERALLY

The paid sick leave entitlement for non-public health emergencies begins January 1, 2021. Employers with more than 15 employees must begin providing paid sick leave on that date. Employers with fewer than 15 employees are exempt in 2021 but must begin providing paid sick leave on January 1, 2022.

Beginning on the first day of employment or on the employer's applicable HFWA effective date, employees accrue at least one hour of paid sick leave for every 30 hours worked, up to 48 hours per year. The leave must be paid at the same hourly rate or salary that the employee earns for working those hours, but overtime, bonuses, and holiday pay need not be included. Exempt employees are assumed to work 40 hours per week for purposes of accrual of paid sick leave, unless they routinely work fewer hours.

Employees may take paid sick leave for one or more of the following circumstances:

- Having a mental or physical illness, injury, or health condition that prevents them from working
- Seeking preventative medical care or a medical diagnosis, treatment, or care for a mental or physical illness, injury, or health condition
- Needing to care for a family member experiencing the circumstances in category (1) or (2)
- Having been, or a family member having been, the victim of domestic abuse, sexual assault, or criminal harassment and needing to seek medical attention, mental health care, or other counseling, victim's services, or relocation
- Due to a public health emergency, a public official having closed either the employee's place of business or schools or daycare facilities, requiring the employees to stay home to care for children

During a public health emergency, the leave requirement increases to two weeks (80) hours of leave. The employee's balance of accrued, unused paid sick leave counts toward the 80 hours or two weeks of public health emergency leave, but employers must add paid time to reach 80 hours.

Employees carry up to forty-eight hours of accrued, unused paid sick leave over from year to year, but an employer is not required to allow an employee to use more than 48 hours in a given year, except in the circumstance of a public health emergency.

For general paid sick leave, employers may request reasonable documentation only if the leave exceeds four consecutive work days. The specific information that can be requested is described in the Division's INFO sheet, available [HERE](#).

Employers must comply with the same notice and posting requirements as are in place for COVID-19 related leave in 2020, and employees may use the same wage claim processes as are available for COVID-19 leave and regular wage disputes. The approved notice and poster are available [HERE](#).

Paid sick leave is a new facet of obligation for employers. Sherman & Howard's Labor & Employment attorneys are available to assist you in interpreting and implementing Colorado's new paid sick leave requirements.