

LABOR & EMPLOYMENT ADVISORY

New Colorado Wage Protection Rules Effective January 1, 2020



The Colorado Department of Labor and Employment Division of Labor Standards and Statistics (the Division) recently issued its final, revised [Wage Protection Rules](#) (the Rules), which are set to take effect on January 1, 2021. The Division promulgated the Rules to implement the Colorado Wage Act (CWA), as amended by the Wage Protection Act (WPA) and the Healthy Families and Workplaces Act (the HFWA).

The Rules set forth the procedure for employees to file wage complaints with the Division and the procedure for Division investigations, determinations, and appeal of Division determinations. However, the most notable revisions concern the HFWA.

Under the HFWA, wages and compensation include accrued paid sick leave. Thus, a failure to provide entitled sick leave will be deemed a failure to pay wages. However, the Act provides that employers are not obligated to pay out unused HFWA leave upon an employee's termination. At the same time, the Rules make clear that accrued vacation time will also constitute wages or compensation. The Rules render "use it or lose it" vacation and paid time off policies impermissible, attempting to overturn by regulation a recent Court of Appeals decision permitting such policies. The Court of Appeals' decision is currently before the Colorado Supreme Court, and the issue of accrued but unused leave is complex. Employers should proceed with caution.

The Rules include new HFWA definitions of employee, employer, and successor employer. The Rules also advise that, when determining employer coverage for the purposes of the HFWA, employers should count employees under the same methodology used to determine coverage under the Family and Medical Leave Act.

The Rules set forth the procedure for paid leave accrual and use and detail other compliance issues related to the HFWA. By January 1, 2021, paid leave must begin to accrue for all covered employees. Leave must accrue at a rate of at



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least one hour of leave for every 30 hours worked, up to 48 hours per benefit year. However, additional leave must be immediately provided when a public health emergency is declared. In that case, employees are entitled to supplemental hours sufficient to give the employees roughly equal to two weeks of paid leave. There are different amounts of leave that must be provided to full-time and part-time employees. The Rules provide calculations for determining the rate of pay employees earn while on paid leave.

The accrual of leave and pay rates are complex issues, and there are many other nuanced requirements about which an employer must be mindful, including the circumstances in which an employee may use leave, increments of leave use, restrictions on documentation requests, and carryover from one benefit year to another. Due to the specificity of the Act's mandates, it is unlikely that current employer policies are fully compliant. Additionally, while there is an exemption for currently existing collective bargaining agreements, those agreements must conform to certain specifications detailed in the Rules.

The HFWA and Wage Protection Rules present perhaps the most complex state wage and hour issues to be faced by employers in the upcoming year.