

Insights, News & Events

COLORADO EMPLOYERS FACE TWO ROUNDS OF NEW PAID SICK LEAVE REQUIREMENTS (UPDATED)

Insights
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Colorado now joins the growing number of states requiring most employers to provide paid sick leave – not only extending COVID-19-related sick leave protections to take effect immediately, but also creating a traditional paid sick leave requirement beginning January 1, 2021. What do Colorado employers need to know about the Healthy Families and Workplaces Act?

FEDERAL EMERGENCY PAID SICK LEAVE APPLIES TO ALL COLORADO EMPLOYERS

From the effective date of this Act through December 31, 2020, all employers in Colorado must provide paid sick leave for reasons related to the COVID-19 pandemic in the amounts and for the purposes specified in the federal [“Families First Coronavirus Response Act.”](#) Colorado’s new law provides that it applies to all employers, “regardless of size.”

As a result once signed, the FFCRA’s Emergency Paid Sick Leave Provisions will become applicable to Colorado employers with more than 500 employees. The Act is unclear if the exemption for businesses with less than 50 employees remains in effect.

[Ed. Note: Governor Polis signed this law into effect on July 14, and the COVID-19-related paid sick leave provisions took effect immediately.]

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Kristin R.B. White

Partner

303.218.3658

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COLORADO PAID SICK LEAVE STARTS JANUARY 1, 2021

Beyond the immediate revisions, beginning January 1, 2021, the Act requires employers with 16 or more employees to provide paid sick leave to their employees, accrued at one hour of paid sick leave for every 30 hours worked, up to a maximum of 48 hours. Beginning January 1, 2022, the Act applies to all employers regardless of size.

An employee:

- Begins accruing paid sick leave when the employee's employment begins;
- May use paid sick leave as it is accrued; and
- May carry forward and use in subsequent calendar years paid sick leave that is not used in the year in which it is accrued.

If an employer already has a more generous PTO, vacation, or sick leave policy (meaning providing at least 48 hours of sick leave), the employer does not need to provide additional leave. But the accrual must be as generous as that required in the Act and be available immediately and for part-time employees.

Additionally, while the Act refers to paid sick leave as "wages," it specifically provides that unused paid sick leave need not be paid out at termination. Any unused paid sick days must be reinstated if the employee is rehired within six months of termination. The paid sick leave also carries over to any successor employer.

Employees may use accrued paid sick leave to be absent from work for the following purposes:

- The employee has a mental or physical illness, injury, or health condition; needs a medical diagnosis, care, or treatment related to such illness, injury, or condition; or needs to obtain preventive medical care;
- The employee needs to care for a family member who has a mental or physical illness, injury, or health condition; needs a medical diagnosis, care, or treatment related to such illness, injury, or condition; or needs to obtain preventive medical care;

- The employee or family member has been the victim of domestic abuse, sexual assault, or harassment and needs to be absent from work for purposes related to such crime; or
- A public official has ordered the closure of the school or place of care of the employee's child or of the employee's place of business due to a public health emergency, necessitating the employee's absence from work.

Employers may require documentation from the employee if they take four or more consecutive paid sick days.

PUBLIC HEALTH EMERGENCY PAID SICK LEAVE

In addition to the paid sick leave accrued by an employee, the Act requires an employer to provide its employees an additional amount of paid sick leave during a public health emergency in an amount based on the number of hours the employee works. There is no documentation requirement for an employee to take this leave for self-isolation due to a positive diagnosis, seeking medical treatment with respect to a disease, caring for a family member or a child, or inability to work due to pre-existing health conditions.

For full-time employees, this amounts to 80 hours of total paid sick leave. For employees who regularly work less than 40 hours per week, employers must provide the greater of the number of hours the employee is scheduled to work in a 14-day period or the average time the employee works in a 14-day period as additional leave on top of the 48 hours already being provided.

ANTI-RETALIATION PROVISIONS

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

WHAT SHOULD EMPLOYERS DO?

There are immediate steps Colorado employers must take to come into compliance, and some preparations to consider in advance of the 2021 requirements.

- The Colorado Division of Labor will issue regulations regarding the leave requirements in the near future, and you should be aware of these rules to the extent they expand or clarify your requirements.
- Colorado employers with more than 500 employees who have not been subject to FFCRA will need to ensure compliance once signed through the end of the year. FFCRA's Paid Sick Leave Provisions provide two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis.
- The law also requires two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

Once 2021 arrives, employers must provide employees with a written notice of their rights. You should work with your counsel to develop a compliant form and train your managers on the proper use of the form. Before the new year, you should also plan to revise your policies and train your human resources staff and managers on the new requirements.

You will also need to display a poster detailing employees' rights under the Act. Stay tuned for a sample poster we anticipate being released by the Division of Labor before the end of 2020.

The new law will also require employers to retain records documenting by employee the hours worked, paid sick leave

accrued, and paid sick leave used. This is a critical requirement because you will need to make such records available to the Division of Labor upon request.

Fisher Phillips will continue to monitor this situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any attorney in [our Denver office](#).

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