

COLORADO EMPLOYERS RECEIVE A HOLIDAY “GIFT” IN THE FORM OF MORE PAID SICK LEAVE FOR 2021

Insights
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Right before the Christmas holiday, the Colorado Department of Labor and Employment (CDLE) released [new guidance](#) requiring that all employers supply up to an additional 80 hours of Public Health Emergency Paid Sick Leave to all employees beginning on January 1, 2021 under the Healthy Families and Workplaces Act (HFWA). What do Colorado employers need to know about this unexpected gift delivered on December 23?

Unexpected Interpretations

The guidance includes two unexpected interpretations:

- Employers of all sizes must provide Public Health Emergency Paid Sick Leave in 2021;
- and*
- Employers must provide up to 80 hours of Public Health Emergency Paid Sick Leave in 2021 regardless of whether they already supplied paid leave related to COVID-19 in 2020.

Justifying its interpretation, the CDLE states that the current public health emergency triggers Section 405 of the state sick leave law, which states that employers must provide leave once per public health emergency without regard for other leave laws or sections of the HFWA. Previous Colorado COVID sick leave rules and Section 406 of the state sick leave law, which applied the federal FFCRA sick leave law to

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Colorado employers, do not change the fact that Section 405 requires up to 80 hours of additional paid leave.

Employers Do Receive Some Relief

Although this could be onerous for struggling businesses, several portions of the new guidance and other related factors provide some measure of relief:

- The “up to 80 hours” language means that employees who already have paid leave, which can include PTO, sick, and vacation, only receive the difference between their accrued leave and 80 hours. This is different than FFCRA and COVID-19-related leave provided in 2020.
- Public Health Emergency sick leave can only be used for leave related to the current COVID-19 Public Health Emergency.
- Any grant of paid sick leave under Section 405 expires four weeks after the emergency ends.
- The new stimulus bill awaiting the president’s signature will likely provide tax credits for Paid Sick Leave, which business can use to cover their Paid Sick Leave expenses under the HFWA until March 31, 2021. Fisher Phillips summarized that pending bill, which still requires presidential approval, [here](#).

All employers must provide up to 80 hours of paid sick leave to all employees for potentially a second time during the current public health emergency beginning on January 1, 2021 if an employee needs more leave for COVID-19-related reasons.

Conclusion

We will monitor the developments related to this new interpretation and the HFWA and provide updates as warranted, so you should ensure that you are subscribed to [Fisher Phillips’ alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Denver office](#).

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