

COLORADO EMPLOYERS FACE PAID SICK LEAVE OBLIGATIONS FOR 2022

Insights
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As of January 1, 2022, all Colorado employers – regardless of size – are subject to traditional paid sick leave requirements thanks to the Healthy Families and Workplaces Act. Additionally, public health emergency leave is still in effect for all Colorado employers given that the pandemic is still with us in the new year. What do Colorado employers need to know about your new and continuing paid sick leave obligations?

Health Families and Workplaces Act

Beginning January 1, 2022, the Act requires all employers 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. Employers with more than 16 employees have been providing this leave since January 1, 2021.

Employee Rights and Employer Obligations Under the Act

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 you already have a more generous PTO, vacation, or sick leave policy (meaning providing at least 48 hours of sick

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leave), you do 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, the PTO policy must provide notice to an employee that additional leave will not be provided as the PTO policy meets the requirements of HFWA.

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.

What Can Leave be Used For?

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.

Documentation

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 new paid sick leave law that just went into effect, all employers in Colorado have been obligated to

provide public health emergency leave since January 1, 2021. Under state law, all Colorado employers must provide this leave if there is a federal, state, or local declaration of emergency. While our state declaration has been lifted, the federal declaration is currently still in place, and therefore the obligation to provide PHE leave is still currently in place.

However, PHE leave is a one-time leave obligation. If an employee used all of their supplemental PHE leave in 2021, they must rely on their accrued leave or take any additional COVID-19 leave unpaid.

Use of PHE Leave

As background, 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.

Amount of Leave

For full-time employees, this amounts to up to 80 total hours of 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.

What Should Employers Do?

Employers should make sure they have updated their Paid Leave and COMPS posters and are providing COMPS Order #38 to employees with any handbook updates. The Paid Leave poster and notice provides employees with a written notice of their rights under HFWA. You should also ensure your policies are up to date, and you should schedule an internal training for your human resources staff and managers on the new and continued requirements.

We will continue to monitor the paid leave situation in Colorado and provide updates as necessary. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. For

further information, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in [our Denver office](#).