



# Colorado Employers Brace for Confirmation that Public Health Emergency Leave Applies to Monkeypox

Insights

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Given the recent federal declaration of a public health emergency to stop the monkeypox outbreak, Colorado employers are bracing for, what, if anything, more they should be doing to address the latest threat. In addition to our colleagues' guidance, Colorado employers also should be prepared to provide Public Health Emergency (PHE) leave to employees for monkeypox. Colorado has confirmed at least 80 cases since May, with 66 of those reported in July alone. With increasing numbers across the U.S., Colorado PHE leave for monkeypox may be imminent – what should you do to prepare?

**(Ed. Note: Still reeling from COVID-19 ping-ponging, Colorado employers received some relief from CDLE as it announced on August 9 that monkeypox does not require employers to provide PHE Leave at this time. CDLE based the update on evidence that the current strain of monkeypox has not been shown to be “highly fatal.” The agency, however, expressly reserved the right to change direction if the evidence dictates in the future. Employees can still use accrued sick leave if they become ill with monkeypox but a new two-week PHE entitlement is not required.)**

## Background on Colorado PHE Leave

All employers in Colorado have been obligated to provide PHE leave since January 1, 2021 for COVID-19 related absences. The law was enacted to address the COVID-19 pandemic and contains broad language applicable to any public health emergency declared by federal, state, or local public health agency.

Even prior to the recent federal monkeypox public health emergency declaration, the Colorado Department of Labor and Employment's (CDLE's) website reminded employers that accrued paid sick leave would be available for monkeypox. It also states, “If a federal, state, or local emergency is declared that requires a new two week PHE leave supplement for Monkeypox-related reasons, this webpage will be updated as soon as possible.” We anticipate CDLE updating its website shortly to confirm whether PHE is available for employees with monkeypox.

## Use of PHE Leave

As background, the Colorado Healthy Families and Workplaces Act's (HFWA) PHE leave provision 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 hours of total leave for monkeypox-related absences. 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.

Employees are only entitled *up to* 80 hours for each leave during the declared public health emergency, and employers can consider any previously accrued leave towards the 80 total hours when an employee requests leave. For employers who already provide at least 80 hours of total leave and have notified employees that their policy complies with HFWA, those employers only have to supplement with additional time if an employee does not have 80 hours available at the time supplemental leave is required.

### **What Should Employers Do?**

You should ensure your leave policies are up to date, and ensure human resources staff and managers are continuing to follow HFWA 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 authors of this Insight, or any attorney in [our Denver office](#).

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