

COLORADO ISSUES TEMPORARY EMERGENCY RULE REQUIRING PAID SICK LEAVE (UPDATED)

Insights
Apr 28, 2020

Many Colorado employers will need to immediately provide paid sick leave to certain workers as a response to the COVID-19 coronavirus outbreak. As part of Governor Jared Polis's March 10 State of Disaster Emergency declaration, the Colorado Department of Labor and Employment was instructed to issue emergency regulations requiring paid and unpaid sick leave for certain industries. Yesterday, the agency released an emergency rule governing paid sick leave for certain industries. The rule temporarily requires employers in these industries to provide four days of paid sick leave to employees with flu-like symptoms who are being tested for the COVID-19 coronavirus.

[Ed. Note: On March 26, the Colorado Department of Labor and Employment modified the Emergency Rule Requiring Paid Sick Leave to add coverage for not just those "being tested" for COVID-19, but also those "under instructions from a health care provider to quarantine or isolate due to a risk of having COVID-19."]

[Ed. Note: On April 27, the Colorado Department of Labor and Employment expanded the amount of sick leave required to be provided by Colorado employers from four days' full pay to two weeks (up to 80 hours) at 2/3 pay for employees with either flu-like or other respiratory illness symptoms and who is being tested for COVID-19, or those under instructions to quarantine or isolate from either a health care provider or an authorized government official.]

WHICH EMPLOYERS ARE AFFECTED?

Related People



Kristin R.B. White

Partner

303.218.3658

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Employers in the following sectors are affected by this new rule:

- Leisure and hospitality;
- Food Services;
- Child Care;
- Education, including transportation, food service, and related work with educational establishments;
- Home health, if working with elderly, disabled ill, or otherwise high-risk individuals;
- Nursing homes; and
- Community living facilities.

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WHAT ARE THE RULE'S REQUIREMENTS?

Based on this temporary rule, employers must immediately provide up to four days of paid sick leave for an employee with flu-like symptoms who is being tested for COVID-19. If an employer already provides at least four days of sick pay, the employer does not have to provide more. However, if an employee has exhausted their sick leave, and then has flu-like symptoms and is being tested for COVID-19, they are entitled to an additional four days of paid sick leave.

Employers must pay these workers at their regular rate and for their regularly worked hours. If an employee's rate of pay

or hours worked varies, employers must pay them their average daily pay for the preceding month.

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The rule requests that employers and employees comply with the procedures of the federal Family and Medical Leave Act (FMLA) in pursuing leave. However, no employee can be terminated if they are unable to provide documentation during an illness that is due to the coronavirus.

HOW LONG WILL THE RULE REMAIN IN EFFECT?

This rule will remain in effect for 30 days or longer if the state of emergency continues.

WHAT SHOULD COLORADO EMPLOYERS DO?

Employers in these covered industries should consider drafting policies now to cover this emergency rule. Considerations for your policy include:

- Providing four days of paid sick leave to affected employees;
- Determining how to handle any unpaid leave based on a positive test;
- Requiring a doctor's release prior to returning to work after a positive test;
- Emphasizing that the sick leave will only be provided as long as Colorado remains in the state of emergency; and

Stating that the sick pay does not constitute wages and will not be paid out at termination if unused.

CONCLUSION

Fisher Phillips will continue to monitor related developments, including whether additional emergency rules are issued based on the state of emergency. Our firm's COVID-19 Taskforce has also created [an updated and comprehensive FAQ for employers](#). To get the most up-to-date information, ensure you are subscribed to [Fisher Phillips' Alert System](#).

If you have questions, please contact [the author](#), your Fisher Phillips attorney, or any attorney in [our Denver office](#).

This Legal Alert provides an overview of a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.