



GBS Compliance

New Colorado Law Requires 3 Types of Employer-Paid Sick Leave

The evolution of the COVID-19 epidemic is constantly evolving. The information in this document is based on what known at this time. As things change, we will continue to update you as it affects employee benefits compliance rules.

July 2020

Executive Summary

During the COVID-19 pandemic, both the federal and Colorado governments passed forms of temporary paid leave requirements to help employees through illness, treatment, and school/daycare shutdowns. Paid leave is now a permanent requirement for employers in the state of Colorado under newly signed legislation.

On July 14, 2020, Colorado Governor Jared Polis signed the [Healthy Families and Workplaces Act](#) (HFWA). The HFWA requires employers to provide employees working in Colorado with the following types of paid sick leave:

- COVID-19 emergency paid sick leave (effective until December 31, 2020)
- Paid sick leave (beginning in 2021 or 2022, depending on employer size)
- Supplemental paid leave during a public health emergency (beginning in 2021 or 2022, depending on employer size)

Employers with employees working in Colorado should, (1) update leave policies to comply with the HFWA, (2) display required posters, and (3) distribute required notice to employees informing of HFWA paid leave rights.

COVID-19 Emergency Paid Sick Leave

Effectively immediately, the HFWA expands the provisions of the federal Emergency Paid Sick Leave Act (EPSLA), within the Families First Coronavirus Response Act (FFCRA), to all employers regardless of size. The EPSLA applies to certain public employers and private employers with fewer than 500 employees. But, the HFWA expands the provisions of the EPSLA to apply to all employers, including those with 500+ employees. The EPSLA requires employers to provide employees with paid sick leave for two weeks (up to 80 hours) for COVID-19 related reasons including quarantine, experiencing COVID-19-type symptoms, caring for others subject to quarantine, or caring for a child because school or daycare has been closed due to COVID-19. The EPSLA expires on December 31, 2020. See the [DOL FFCRA Page](#) for additional information on the EPSLA.

General Paid Sick Leave

The general paid sick leave obligations discussed here, and the supplemental paid leave during a public health emergency discussed below, become effective on January 1, 2021 for employers with 16 or more employees and on January 1, 2022 for all other employers regardless of number of employees.

The new general paid sick leave under the HFWA allows covered employees to accrue at least one hour of paid sick leave for every 30 hours worked by the employee (up to 48 hours each year). Paid sick leave must be paid in an amount equal to the hourly rate or salary, and with the same benefits, that the employee normally earns.

Employees may use paid sick leave for the following reasons:

- Having a mental or physical illness, injury, or health condition that prevents the employee from working
- Needing to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition
- Needing to obtain preventive medical care
- Having been a victim of domestic abuse, sexual assault, or harassment and the leave is to seek medical attention, obtain services from a victim services organization, obtain mental health or other counseling, seek relocation, or seek legal services
- Needing to care for a family member experiencing the circumstances above

The HFWA allows employees to use paid sick leave as it is accrued (no waiting period requirement). An employee may carry over up to 48 hours of paid sick leave that the employee accrues in a year but does not use, however, an employer can limit the amount of leave an employee may take in any year to 48 hours.

The HFWA does not preclude employers from providing employees with more paid sick leave than is required by the act. If an employer already has a paid leave policy that satisfies the paid sick leave provisions of the HFWA, it is not required to provide additional paid sick leave to employees.

Employers are required to allow an employee to use paid sick leave upon employee's request, and such request may be made orally, in writing, electronically, or by any other means acceptable to the employer. Although employers may provide written policies that contain procedures for employees to provide notice when the use of paid sick leave is foreseeable, an employer cannot deny paid sick leave to employees for noncompliance with any such policy. Moreover, employers may require documentation for use of paid sick leave only where the leave is for four or more consecutive days.

Paid leave under the HFWA is considered wages. However, unlike other forms of wages under Colorado law, accrued but unused paid sick leave does not ordinarily need to be paid out upon an employee's termination of employment.

Supplemental Paid Leave During a Public Health Emergency

The HFWA requires supplemental paid sick leave in the event a public health emergency is declared. For employees who normally work at least 40 hours in a workweek, employers will be required to provide employees with at least 80 hours of paid sick leave. For those employees working fewer than 40 hours per week, an employee will be eligible for the amount of time the employee is scheduled to work or actually work in a 14-day period, whichever is greater. The supplemental sick leave prompted by a public health emergency may be used until four weeks after the official termination or suspension of the public health emergency.

Employees do not need to provide documentation to take supplemental paid sick leave prompted by a public health emergency. However, employees may take such leave only once during the entirety of a public health emergency even if the public health emergency is extended. Employers may count an employee's unused general paid sick leave towards this supplemental paid leave during a public health emergency.

Employers must retain records for each employee for a two-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used. If an issue arises as to an employee's right to paid sick leave and the employer has not maintained or retained adequate records, or does not allow the state of Colorado reasonable access to such records, the employer is presumed to have violated the law unless it demonstrates compliance by a preponderance of the evidence.

Notice to Employees and Poster Requirement

HFWA requires employers to both notify employees in writing of the right to take paid leave under the HFWA and display an informational [poster](#) at the workplace.

The notice requirement can be satisfied by giving employees the latest version of the [Interpretive Notice & Formal Opinion \("INFO"\) # 6A](#) or an electronic or paper version of the poster. As of January 1, 2021, there will be an updated 2021 poster to replace the 2020 version, and [Interpretive Notice & Formal Opinion \("INFO"\) #6B](#) will replace INFO #6A. See the [Colorado DOL website](#) for the latest INFO and poster versions.

If an employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, the employer must provide the notice/poster through electronic communication or a conspicuous posting in the web-based platform. If an employer's business is closed due to a public health emergency or a disaster emergency due to a public health concern, the notice-posting requirement is waived for the period during which the business is closed.

Recommended Next Steps

Employers' obligations to provide paid leave consistent with the EPSLA started immediately upon the effective date of the HFWA. Therefore, employers that were previously exempt from the EPSLA should verify compliance through the end of this year. Additionally, employers with 16 or more employees should update policies to implement the HFWA's paid sick leave requirements in advance of January 1, 2021, and all other employers will need to update their policies before January 1, 2022. The Colorado DOL will issue regulations regarding the HFWA paid leave requirements in the near future, and employers should look out for and review those regulations when released.

July 30, 2020

This information is provided as educational material only and is not intended as legal, financial or tax advice. Consult your legal counsel for complete details on your compliance requirements for your plan(s).

