

Colorado issues guidance on paid sick leave through 2020

The Colorado Department of Labor and Employment, via its Division of Labor Standards and Statistics, has issued guidance on paid sick leave under the Healthy Families and Workplaces Act (HFWA), which took effect on July 15, 2020. The law gives workers in the state the right to paid sick leave, including for COVID-19-related reasons. Its coverage broadens on January 1, 2021.

Covered employers. Each employer in the state, regardless of size must provide the paid leave for COVID-related needs that HFWA requires in 2020. An employer that, under a collective bargaining agreement, already provides equivalent or more paid leave, is exempt from other HFWA requirements, as long as the ways the CBA differs from HFWA would not diminish employee rights to equivalent paid leave.

COVID-related needs. Through December 31, 2020, an employer must provide paid leave to an employee in any of these categories related to COVID-19:

1. having COVID-19 symptoms and seeking a medical diagnosis;
2. being ordered by a government agent (federal, state, or local), or advised by a health provider, to quarantine or isolate due to a risk of COVID-19; or
3. taking care of someone else due to COVID-19 precautions. This includes either someone in category (2) or a child whose school, place of care, or child care is closed or unavailable.

Closed business. Unless a workplace is closed due to a temporary government quarantine/isolation order, no paid leave applies if an entire business is completely closed (whether temporarily or permanently). The guidance indicates that employees in that situation are not on leave but instead are on furlough or layoff. Unemployment insurance, rather than paid leave, might apply in that case.

Amount of leave. Through December 31, 2020, an employer must provide up to two weeks of paid leave (up to 80 paid hours) for the three categories of COVID-related needs. An employer can offer more than 80 hours' leave if it chooses. Offering more generous leave is optional, though it may become binding if offered in a way that makes it a contractual commitment.

Pay while on leave. Leave is at the employee's regular pay rate and hours, except that leave in category 3 (care for someone else) can be at 2/3 pay. The rate must be at least the applicable minimum wage, but need not include overtime, bonuses, or holiday pay. Employees paid commissions or other sales-based pay must receive their hourly or salaried rate or minimum wage, whichever is greater.

If an employee already received paid leave in 2020 for any of the three categories of COVID-related needs that HFWA covers, the employer can count that as part of the two weeks that HFWA requires in 2020. However, if the prior leave was at less than full pay for a condition in

category 1 or 2 (the categories HFWA requires full pay for), then it counts toward the HFWA requirement with a discount for how much the pay was reduced.

Notice by employee. An employer may not require an employee to provide notice in advance of needing to take paid leave. An employer may require reasonable notice “as soon as practicable” after the first workday (or portion thereof) when leave is taken. However, if leave is for childcare due to a COVID-related closure, advance notice must be provided if the need is “foreseeable.”

Notice by employer. HFWA requires employers to both notify employees in writing of the right to take paid leave, in the amounts and for the purposes in HFWA, without retaliation, and display an informational Division poster in a conspicuous and accessible place in each establishment where employees work.

The first requirement can be satisfied by giving employees the latest version of the Division’s Interpretive Notice and Formal Opinions (INFOs) or the poster (on paper or electronically). The second requirement is satisfied by posting the Division poster.

Both requirements are waived during any time an employer’s business is closed due to a public health related emergency. For employees working remotely, and for all employees of employers without a physical workspace, complying with the first requirement is enough and can be done electronically.

Employers must provide notices and posters in any language that is the first language spoken by at least five percent of its workforce. ([*Interpretive Notice and Formal Opinion \(INFO\) No. 6A, August 2020.*](#))