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Paid Leave Requirements During a Public Health Emergency

Frequently Questions and Answers for Employees and Employers

This document addresses paid leave requirements during a public health emergency, as required under Colorado's Healthy Families and Workplaces Act ([SB20-205](#), July 14, 2020) ("HFWA"). The HFWA requires accrued leave in addition to public health emergency leave for most employers. While employers with fewer than 16 employees are exempt from accrued leave requirements until 2022, employers of any size must immediately comply with HFWA public health emergency leave requirements. Public health emergency leave requirements under the HFWA went into effect on January 1, 2021 and are distinct from leave required in 2020 under the [Federal Emergency Paid Sick Leave Act](#) and [the Colorado Health Emergency Leave with Pay \(Colorado "HELP"\) Rules](#).

1. What is Paid Leave?

Paid leave is time off work, provided by an employer to an employee, compensated at the same hourly rate or salary and with the same benefits. In a public health emergency, leave is to be made available immediately, rather than accrued over time.

2. Are employers currently required to provide paid leave to their employees?

Yes. Under Colorado's Healthy Families and Workplaces Act (HFWA) and the declared public health emergency, all employers, regardless of size, must provide COVID-related leave to all employees. This requirement continues until four weeks after the expiration of any and all applicable public health declarations. Governor Polis first declared a public health emergency due to the presence of COVID-19 on March 11, 2020 and has extended this declaration every 30-days since, most recently on June 11, 2021. For all public health emergency declarations, see the Colorado Department of Public Health and Environment's [Public Health and Executive Orders page](#).

3. How much paid leave is required?

Employees normally working 40 or more hours in a week are entitled to 80 hours of paid leave. Employees normally working under 40 hours in a week are entitled to **(1)** the number of hours the employee is scheduled to work in the fourteen-day period after the leave request, or **(2)** the number of hours the employee actually worked in the fourteen-day period prior to the declaration of the public health emergency or the leave request, **whichever is greater**.

4. Who is eligible for this leave?

The law applies to full- and part-time workers, but it does not apply to gig workers and other independent contractors. Federal government employers are also not covered. Employees hired during a public health emergency are also entitled to public health emergency leave.

5. What must employers provide leave for?

All employers must provide leave for an employee **(1)** needing to self-isolate due to either being diagnosed with, or having symptoms of, a communicable illness that is the cause of the PHE; **(2)** seeking a diagnosis, treatment, or care of such an illness (including preventive care, such as a vaccination); **(3)** being excluded from work by a government health official, or by an employer, due to the employee having exposure to, or symptoms of, such an illness (whether or not they are actually diagnosed with the illness); **(4)** being unable to work due to a health condition that may increase susceptibility or risk of such an illness; or **(5)** caring for a child or other family member in category **(1)**, **(2)**, or **(3)**, or whose school, child care provider, or other care provider is unavailable, closed, or providing remote instruction due to the emergency.

6. Is paid leave still required if my place of employment is completely closed?

No. Paid leave is not required if an entire business is completely closed, unless a workplace is closed due to a temporary government quarantine or isolation order that triggers paid leave.

7. Can an employer ask their employee to get the vaccine outside of work hours?

No. Employers cannot require employees to obtain vaccination appointments outside work hours.

8. Can an employee waive their rights to paid leave under these requirements?

No. Any agreement to waive the employee's rights under HFWA is void, just as wage law generally voids any agreement to waive or to modify rights to payment of any wages due.

9. What resources are available to employers to pay for this leave?

The American Rescue Plan Act of 2021 (ARP) allows small and midsize employers, and certain governmental employers, to claim refundable tax credits that reimburse them for the cost of providing paid sick and family leave to their employees due to COVID-19, including leave taken by employees to receive or recover from COVID-19 vaccinations. The ARP tax credits are available to eligible employers that pay sick and family leave for leave from April 1, 2021, through September 30, 2021. For more information see the IRS's [fact sheet](#). An eligible employer is any business, including a tax-exempt organization, with fewer than 500 employees. Self-employed individuals are eligible for similar tax credits.

Paid leave rights and responsibilities do not depend on tax credits or subsidies being available. Certain tax credits or subsidies have been available for employers providing paid leave. But all paid leave statutes and rules, federal or state, have required leave even if such credits or subsidies expire or are unavailable.

10. What if my employer provides paid leave but I do not have any leave hours left?

During a public health emergency, all employers, regardless of size, must immediately provide each employee additional paid leave -- supplementing whatever paid leave the employee had before the public health emergency, with enough supplemental leave to assure employees can take leave at the amount described above.

Employees retain their accrued leave rights during a public health emergency and must continue earning accrued leave at their regular rate, up to 48 hours per year. Employees are allowed to use public-health

emergency related supplemental leave for any of the above-listed qualifying conditions before using accrued leave, if the reason for leave would qualify for both.

11. Do I need to use all paid leave hours at one time?

No. Leave can be used all at once or can be divided among multiple qualifying events.

12. Can an employer penalize an employee for exercising their paid leave rights?

No. An employer is prohibited from taking any adverse action against an employee for exercising their paid leave rights. Adverse actions include any threat, discipline, discharge, suspension, demotion, reduction of hours, or reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of an employee to a federal, state or local agency. Paid leave cannot be counted as an "absence" that may lead to firing or other action against the employee.

13. Can an employee cash out their paid leave if they do not use it?

No. An employer is not required to provide financial or other reimbursement of unused paid leave to an employee upon termination, resignation, retirement, or other separation from employment; except that an individual may recover paid leave as a remedy for a retaliatory personnel action that prevented the individual from using paid leave.

14. Can an employer require an employee to find coverage for their work prior to taking leave?

No. An employer shall not require, as a condition of providing paid leave, an employee to search for or find a replacement worker to cover the time during which the employee is absent from work.

15. Does an employee need to provide notice to their employer before taking this paid leave?

No. When leave is foreseeable, employees are required to make a good-faith effort to provide notice of the need for paid leave and must make a reasonable effort to schedule the use of paid leave in a manner that does not unduly disrupt the operations of the employer. But prior notice is not a condition of taking paid leave. An employer "written policy" may adopt "reasonable procedures" on notice for "foreseeable" leave, but "shall not deny paid leave to the employee based on noncompliance with such a policy."

16. Can an employer require documentation for this paid leave?

No. An employer may not require documentation for public health emergency leave.

An employer can require return-to-work documentation, if it has a good-faith basis to believe the employee was exposed to a contagious disease that may persist past the leave. Absent that good-faith basis, disallowing a return without documentation may be an unlawful denial of the right to take leave (which includes a right to return) and/or interference with leave rights. For example, an employer cannot require return-to-work documentation after leave to care for a child due to a school closure that was not based on the child being personally exposed to a disease. Employers may not require that documents have a signature, be notarized, or be in any particular format. Documentation may be submitted by any reasonable method, including electronically. Any personalized health or safety information that employers receive must be treated as confidential medical records, kept in separate

files from other personnel documents, and may not be disclosed to others unless the employee consents in writing in advance.

17. Are employers required to proactively notify employees of these rights?

Yes. Employers are required to both **(1)** notify employees in writing of the right to take paid leave, in the amounts and for the purposes in HFWA, without retaliation, and **(2)** display an [informational Division poster](#). Employers must provide notices and posters in “any language that is the first language spoken by at least five percent” of its workforce.

18. What if my employer violates paid leave requirements?

Paid leave counts as “wages” under Colorado law. An employee denied paid leave can file a complaint with the Division for unpaid wages up to \$7,500. An employee can instead file a lawsuit in court if they prefer, but only after sending the employer a written demand and giving the employer at least 14 days to respond. An employee can also file a complaint for unlawful retaliation or interference with rights, following this same process. For more on the Division wage claim process, see the Colorado Department of Labor Standards and Statistics’ [Interpretive Notice & Formal Opinion](#) on the wage claim investigation process.

19. What if I still have questions about paid leave requirements?

Visit the Division [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

20. What other paid leave policies are important to be aware of?

- Effective January 1, 2021, employers with more than 16 employees must provide, at minimum, 1 hour of paid leave for every 30 hours worked by an employee, up to a minimum of 48 hours. This leave can be used for (1) any mental or physical illness, injury, or health condition that prevents the employee from working; (2) to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; (3) to obtain preventative medical care; (4) to provide care for a family member in those same situations; (5) to address certain needs if the employee or employee’s family member has been the victim of domestic abuse, sexual assault, or harassment; (6) due to a public health emergency the employees place of business or the school or place of care of the employee’s child is ordered closed. An employer may count an employees unused accrued leave toward the supplemental public health emergency leave. Effective January 1, 2022, all employers, regardless of size, must provide this accrued paid leave.
- From March 11 to July 14, 2020 (the day before HFWA fully took effect), the [Colorado Health Emergency Leave with Pay \(“Colorado HELP”\) Rules](#) required paid leave for various COVID-related situations. The Colorado HELP Rules still apply to employment situations that occurred during that roughly four-month period.
- [The Families First Coronavirus Response Act](#) (FFCRA or Act) required certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. These provisions applied through December 31, 2020.
- Longer-duration paid leave under the Paid Family and Medical Leave Insurance Act (PFMLIA) is not in effect yet. The [Paid Family and Medical Leave Insurance Act](#) (“PFMLIA”) became law upon passage of Proposition 118 by statewide vote in 2020. PFMLIA provides for up to 12 weeks of paid leave for a range of family and medical needs. However, PFMLIA mandates a specific planning, funding, and implementation schedule for that paid leave system. Under that schedule, PFMLIA provides paid leave only as of 2024.