

LABOR & EMPLOYMENT ADVISORY

Emergency Rules Require Public Health Emergency Leave for ALL Employees on January



December 23, 2020

On December 23, 2020, the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment (CDLE) adopted temporary or emergency rules concerning the Healthy Families and Workplaces Act (HFWA) as it applies beginning on January 1, 2021. Specifically, the rules interpret the HFWA's requirement that employers provide employees with supplemental paid sick leave of up to 80 hours for a public health emergency to be applicable to **all** employers, regardless of size and industry, and **immediately** upon January 1, 2021 because of the COVID-19 pandemic.

Under the HFWA, employers must provide Colorado employees with supplemental paid sick leave "on the date a public health emergency is declared." In the Emergency Rules, the CDLE takes the position that the amendments and extension of COVID-related emergency orders triggers the requirement that employers provide supplemental public health emergency leave. Further, in its new Interpretive Notice & Formal Opinion #6C, the CDLE has also taken the position that *all* employers, not just employers with 16 or more employees, must provide supplemental paid sick leave beginning on January 1, 2021.

Based on the new rules, employers in Colorado should take the following steps:

1. For all employers regardless of size, ensure that Colorado employees are provided with paid sick leave for public health emergency related absences (as defined in HFWA) as follows, effective January 1, 2021:
 - for employees normally working 40 or more hours in a week, 80 hours of total leave;



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- for employees normally working under 40 hours in a week, the greater of the number of hours the employee (a) is scheduled for work or paid leave in the upcoming fourteen-day period, or (b) actually worked on average in the fourteen-day period prior to January 1, 2021.
2. For employers with 16 or more employees, ensure that employees begin to accrue at least 1 hour of regular paid sick leave for every 30 hours worked on January 1, 2021.
 3. Ensure that employees are given proper notice of the HFWA, which can be accomplished by posting and distributing the CDLE's HFWA/PHEW poster.
 4. Ensure that your policies and practices comply with this new CDLE guidance, including specifically that your documentation requirements concerning verification of employees' use of paid sick leave comply with the limitations of Colorado law (as opposed to federal law).

Employers should also be mindful of the fact that the CDLE specified that supplemental paid sick leave is distinct from, *and in addition to*, any leave employers may have already provided to employees under federal law or the HFWA's 2020 requirements. Also keep in mind that the supplemental leave must be made available for use for the foreseeable future, as the COVID state of emergency continues to be amended, extended, or prolonged. Finally, although the CDLE's new interpretation will likely face legal challenges, it is important to comply with the rules until overturned by judicial or legislative action.

Look for additional information on this rapidly developing topic in coming weeks.

QUESTIONS

If you have any questions, please contact a member of our [Labor & Employment Group](#)