

# COLORADO'S NEW PAID SICK LEAVE LAW: A RESPONSE TO COVID-19

On July 14, 2020, Colorado Gov. Jared Polis signed into law the Healthy Families and Workplace Act (the Act). The Act expands the federal Emergency Paid Sick Leave Act (EPSLA) to apply to all Colorado employers, regardless of size. The Act also requires Colorado employers to provide paid sick leave benefits to employees, accrued at one hour of paid leave for every 30 hours worked, up to a cap of 48 hours. Finally, the Act creates an additional “Public Health Emergency Paid Sick Leave” entitlement. The Act supersedes the temporary Colorado Health Emergency Leave with Pay Act.

## Leave Requirements

### 1. Colorado EPSLA Leave

Effective immediately and through Dec. 31, 2020, the Act expands the provisions of the federal EPSLA to apply to all Colorado employers, regardless of size. (The federal EPSLA applies only to employers with fewer than 500 employees.) The Act now requires all Colorado employers to offer up to 80 hours paid leave for any of the COVID-19-related reasons set out in the federal EPSLA.

### 2. Paid Sick Leave

Beginning Jan. 1, 2021, an employer with 16 or more employees must permit its employees to accrue one hour of paid sick leave for every 30 hours worked (for exempt employees, “hours worked” will be determined by normal scheduled work hours). This accrual entitlement takes effect immediately upon hire for covered employees. Up to 48 hours of paid sick leave can be accrued per year and carried over into the following year. On Jan. 1, 2022, the Act will require all Colorado employers, regardless of size, to provide this paid sick leave benefit.

Employees may use accrued paid sick leave, upon proper request, for any of the following reasons:

- Because the employee is unable to work due to:
  - a mental or physical illness, injury or health condition; or
  - a declared public health emergency by a public official who has ordered school or business closures.

## PEOPLE

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- For the employee to:
  - seek medical diagnosis, care or treatment;
  - obtain preventative medical care; or
  - seek medical attention, victim services, mental health services or legal services in a civil or criminal matter, as a result of domestic abuse, sexual harassment or criminal harassment.
- To provide care for a family member who:
  - suffers from and/or needs to seek medical diagnosis, care or treatment for mental or physical illness, injury or health condition; or
  - is seeking services as a result of domestic abuse, sexual harassment or harassment.

### *3. Public Health Emergency Leave*

In the event a future Public Health Emergency (PHE) is declared, the Act requires employers to provide employees with leave needed to self-isolate, seek medical attention and to care for a family member due to a diagnosis, symptoms or exposure to the cause of the PHE. The leave will be available during, and for a period of up to four weeks after the suspension of, the PHE.

Full-time employees will receive 80 hours of paid sick leave, and employees working less than 40 hours per week will receive an amount of leave that is equivalent to the employee's scheduled hours or actual hours worked over a 14-day period, whichever is greater. If, however, accrued leave is available, employers need only supplement leave to ensure the employee receives the requisite amount of leave during the PHE. The Act does not specify the date the PHE leave provisions take effect.

#### **Employer Rights and Responsibilities**

Employers have some options as to how and when to provide leave and/or payments. For example, employers can make all leave to which an employee would be entitled immediately accessible. Importantly, employees are not entitled to compensation for unused leave required by the Act in the event of termination of employment. However, if the employee is rehired within six months, employers will be required to reinstate the unused leave.

Additionally, the Act imposes strict notice and recordkeeping requirements on employers.

Employers must notify employees of their rights under the Act by:

- supplying each employee with a written notice indicating (i) the amount of leave available under the Act; (ii) the terms of using that leave; and (iii) that the employer will not retaliate against an individual for using leave in accordance with the Act; and

- displaying a poster, with all information contained in the written notice, in a conspicuous location in the workplace.

Employers must also maintain sick leave records for a period of no less than two years showing each employee's hours worked, leave accrued, and all leave used under the Act. Such records could be critical to an employer's ability to defend against alleged violations of the Act.

#### **Legal Ramifications**

Because the newly required paid sick leave also constitutes "wages" under Colorado's Wage Act, violations can subject employers to punitive fines, as well as civil and criminal penalties under the Wage Act.

Employees seeking to file a civil action will need to do so within the Act's two-year statute of limitations, but will first be required to file a charge with the Colorado Department of Labor and Employment, or send a complaint to the employer giving the employer 14 days to respond.

#### **Next Steps for Employers**

Although the provisions of the Act become effective on different dates depending on the number of employees an employer has (Jan. 1, 2021, for employers with 16 or more employees, Jan. 1, 2022 for employers with fewer than 16 employees), the Act will eventually apply to all Colorado employers. Therefore, all employers should consider the following steps to prepare for the Act.

- Establish a recordkeeping system that accurately tracks employee hours worked, leave accrued, and all leave used under the Act.
- Revise handbooks, policies and procedures regarding employee leave and recordkeeping.
- Work with payroll vendors or internal payroll departments to ensure employee pay statements will accurately reflect all accrued leave as required under Colorado's Wage Act.
- Prepare communications to advise employees of their rights under the Act, and address any questions the employees may have with respect to their rights.