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Colorado Department of Labor and Employment Clarifies Ambiguity Under Healthy Families and Workplaces Act

The existing COVID-19 pandemic triggers “public health emergency” leave on its effective date, January 1, 2021, and such leave applies to ALL employers on January 1, 2021.

On July 14, 2020, Colorado enacted the Healthy Families and Workplaces Act (HFWA), which required Colorado employers to provide three distinct types of paid sick leave:

1. Up to 80 hours of COVID-19 emergency paid sick leave (CO-EPSSL) (expiring 12/31/20);
2. Up to 48 hours of paid sick and safe time (PSST) (effective 1/1/2021 for employers with more than 15 employees; and 1/1/2022 for small employers); and
3. Supplemental public health emergency paid sick leave (PHEL) (up to a maximum of 80 hours) (clarified now as applicable to all employers regardless of size, effective 1/1/2021).

The CO-EPSSL applied to Colorado employers who were not covered by the federal Families First Coronavirus Response Act (FFCRA) (employers over 500 employees and others) and the HFWA superseded the Colorado Health Emergency Leave with Pay Rules, 7 CCR 1103-10 (Mar. 11 - July 14, 2020), which expired when the HFWA was enacted.

While larger employers have prepared to implement the new PSST leave required January 1, 2021, yesterday, the Colorado Department of Labor and Employment (CDLE) issued guidance on unanswered questions. **Does the supplemental PHEL apply to the existing COVID-19 crisis or the next declared “public health emergency” (PHE)? Does the PHEL apply to all employers?**

- On December 23, 2020, the CDLE answered both questions “yes.”
- It issued supplemental guidance, [Interpretive Notice & Formal Opinion #6C](#) (INFO 6C) and emergency revisions to the [Wage Protection Rules, 7 CCR 1103-7](#) to clarify that it interprets the HFWA to require employers to provide employees access to up to 80 hours of PHEL as of January

1, 2021 due to the existing COVID-19 public health emergency.

- Importantly, for small employers, the CDLE stated in Opinion #6C that ALL Colorado employers, regardless of size, are required to provide employees access to PHEL on January 1, 2021. So small employers that do not have to provide PSST hours to employees until January 1, 2022 will be required to provide the PHEL.

PHEL requires employers to supplement whatever HFWA leave the employee accrued before the PHEL with enough leave to assure the employee can take leave in the following amounts:

1. For employees normally working 40 or more hours in a week, 80 hours of total leave; and
2. For employees normally working under 40 hours in a week, the greater of the number of hours the employee:
 - is scheduled for work or paid leave in the upcoming fourteen-day period, or
 - actually worked on average in the fourteen-day period prior to the declaration of the public health emergency.

Employees can use this supplemental leave immediately, until four weeks after the end of the PHE, for any of the below purposes (C.R.S. 8-13.3-405(3)):

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 (including preventive care) of such an illness;
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, childcare provider, or other care provider is unavailable, closed, or providing remote instruction due to the emergency.

Although employers need to provide the PHEL supplement only once during a single declared PHE, the guidance clarifies that employers cannot credit any COVID-19 leave provided to employees during 2020 under either the FFCRA or the CO-PSL against the new 80 hours of PHEL required in 2021.

The legislation, CDLE posters that must be posted, Interpretive Notice & Formal Opinions #6B and #6C, Wage Protection Rules, and the Statement of Basis and Purpose for the Rules can be found below.

[Legislation](#)

[Posters Required](#)

[Interpretive Notice & Formal Opinion #6B](#)

[Interpretive Notice & Formal Opinion #6C](#)

[Wage Protection Rules, 7 CCR 1103-7](#)

[Statement of Basis & Purpose for the Rules](#)

Additional Information

If we can provide any additional information, please contact your Kutak Rock attorney or any of the attorneys in the [Employment Law Group](#), and we would be happy to discuss this with you. You may also visit us at www.KutakRock.com.

