

COLORADO PAID SICK LEAVE (PSL) AND SUPPLEMENTAL PAID SICK LEAVE DURING A PUBLIC HEALTH EMERGENCY

Healthy Families & Workplaces Act (HFWA) – SB20-205

Based on Employer Size

For employers with 16 more employees (all employers on January 1, 2022) in any calendar year, **each employee can accrue up to 48 hours of paid sick leave each calendar year** (January 1 to December 31).

Paid Sick Leave Accrual

Employees may **accrue sick leave at a rate of** not less than **one hour for every 30 hours worked up to a maximum of 48 hours per calendar year**, beginning at the commencement of their employment or the effective date of the law (January 1, 2021).

Carryover for Paid Sick Leave

An employee's accrued but unused sick leave shall be carried over to the following calendar year up to **48 hours per calendar year**.

Additional Paid Sick Leave During a Public Health Emergency (ended 5/11/2023)



EFFECTIVE:

1/1/2021

Amendment: 1/1/2023

Amendments 8/7/2023

Paid Sick Leave Accrual, Usage, and Carry Forward

- Each employee earns at least one hour of paid sick leave for every 30 hours worked by the employee except that an employee is not entitled under this section to earn or use more than 48-hours of paid sick leave each year.
- An employee who is exempt from overtime accrues paid sick leave based on the assumption that the employee works 40 hours per week. If the employee's normal workweek consists of fewer than 40 hours, the employee accrues paid sick leave based upon the number of hours that comprise the employee's normal workweek.
- Employers must pay leave at the same hourly rate or salary and with the same benefits—including health care benefits—as the employee normally earns during hours worked, but the "same hourly rate or salary" does not include overtime, bonuses, or holiday pay. Leave must be paid on the same schedule as regular wages.
- **1/1/2023 Amendment:** The pay rate for leave must be at least the minimum wage. The HFWA pay rate shall be calculated based upon the employee's pay over the 30 calendar days prior to taking leave; shall **include** any set hourly or salary rates, shift differentials, tip credits, and **commissions**; and shall not include overtime, bonuses, or holiday pay. If an employee has not worked 30 calendar days, the longest available period shall be used. The

Leave can be used in increments of one hour.

<p>HFWA pay rate for fee-for-service basis employees shall be calculated in accordance with this Rule.</p> <ul style="list-style-type: none"> • 1/1/2023 Amendment: For employees based on commission basis only, “same hourly rate or salary” means a rate no less than the applicable minimum wage. • 1/1/2023 Amendment: For employees paid an hourly, weekly, or monthly wage and also paid a commission basis, “same hourly rate or salary” means the rate of pay equivalent to the employee’s hourly, weekly, or monthly wage or the applicable minimum wage, whichever is greater. • An employee begins to accrue paid sick leave when employment with the employer begins and may use accrued paid sick leave as it is accrued. • Up to 48 hours of paid sick leave that an employee accrues in a calendar year but does not use carries forward to, and may be used in, a subsequent year; except that an employee cannot use more than 48-hours of paid sick leave in a calendar year. 	
Purposes of Paid Sick Leave	
<p>Employees can use paid sick leave for the following purposes:</p> <ul style="list-style-type: none"> • Inability to work due to a mental or physical illness, injury, or health condition. • Obtaining preventive medical care (including vaccination), or medical diagnosis/care/treatment • Needs due to domestic abuse, sexual assault, or criminal harassment including medical attention, mental health care or other counseling, legal or other victim services, or relocation. • Care for a family member who needs the sort of care listed above. • During a Public Health Emergency, a public official closed the employee’s workplace, or the school or place of care of the employee’s child • Effective 8/7/2023: Bereavement, or financial/legal needs after a death of a family member; or • Effective 8/7/2023: Due to increment weather, power/heat/water loss, or other unexpected event, the employee must <ul style="list-style-type: none"> a. Evacuate their residence, or b. Care for a family member whose school or place of care was closed. 	<p>Family Members: The law recognizes the following as family members:</p> <ul style="list-style-type: none"> • "Immediate family member" means a person who is related by blood, marriage, civil union, or adoption. • Child to whom the employee stands in loco parentis to the employee when the employee was a minor; or • A person for whom the employee is responsible for providing or arranging health- or safety-related care.

Employee Notice Requirements

Employees may request to use paid sick leave orally, in writing, or electronically:

- When the need for paid sick leave is known to the employee in advance, such as for a scheduled appointment with a health care provider, the employee shall provide notice of the need for such leave and the expected duration of the absence to your branch representative (and the customer) in advance of the use of the sick time and shall make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the operations of the customer.
- For all other absences, the employee shall notify your branch representative (and the customer) before the start of the employee's scheduled work hours (at least one hour prior to the start of their shift), or as soon as practicable if the need arises immediately before or after the employee has reported for work.
- If both the employer and employee agree the employee may work additional hours or shifts instead of using earned sick time. If, by taking on additional hours, the employee works more than 40 hours in a week, then he or she must be paid at the overtime rate (if applicable). **The employee will not be paid any accrued earned sick time, if the time is made up.**
- Employees must claim used, earned paid earned sick time when used, and must be paid sick time on the same schedule as regular wages are paid. Employers may not delay compensating employees for earned paid sick time, therefore, **employees must claim earned sick time no later than the week after it is used.**

An employer shall not require, as a condition of providing paid sick leave, an employee who uses paid sick leave to search for or find a replacement worker to cover the time during which the employee is absent from work.

Note: For paid sick leave of four (4) or more consecutive workdays, an employer may require reasonable documentation that the paid sick leave is for a purpose authorized by this ordinance.

No Pay Out Upon Termination

There will be no pay out of accrued but unused sick leave upon termination, resignation, retirement, or other separation from employment.

Transferred to a Separate Division, Entity, or Location But Remains Employed by the Same Employer

The employee is entitled to all paid sick leave accrued at the prior division, entity, or location and is entitled to use all paid sick leave as indicated in this ordinance.

Successor Employer

If a successor employer succeeds an original employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick leave that the employees accrued when employed by the original employer and are entitled to use previously accrued paid sick leave as specified above.

Rehire Rules

If an employee separates from employment and is rehired by the same employer within 6 months after the separation, the employer shall reinstate any paid sick leave that the employee had accrued but not used during the employee's previous employment with the employer.

Colorado – In SmartSearch, if the employee is working in Colorado, mark Personnel subarea as "Colorado."

Colorado Workplace Public Health Rights Poster:

PAID LEAVE, WHISTLEBLOWING, & PROTECTIVE EQUIPMENT

Updated July 14, 2023

may be updated periodically

THE HEALTHY FAMILIES & WORKPLACES ACT (“HFWA”): Paid Leave Rights

Coverage: All Colorado employers, of any size, must provide paid leave

- All employees earn 1 hour of paid leave per 30 hours worked (“accrued leave”), up to 48 hours a year.
- Employees are required to be paid their regular pay rate during leave, and the employer must continue their benefits.
- Up to 48 hours of unused accrued leave carries over for use during the next year.
- For details on specific situations (irregular hours, non-hourly pay, etc.), see Wage Protection Rule 3.5, 7 CCR 1103-7.
- Up to 80 hours of supplemental leave applies in a public health emergency (PHE), until 4 weeks after the PHE ends.*

Employees can use accrued leave for the following safety or health needs:

- (1) a mental or physical illness, injury, or health condition that prevents work, including diagnosis or preventive care;
- (2) domestic abuse, sexual assault, or criminal harassment leading to health, relocation, legal, or other services needs;
- (3) caring for a family member experiencing a condition described in category (1) or (2);
- (4) grieving, funeral/memorial attendance, or financial/legal needs after a death of a family member;
- (5) due to inclement weather, power/heat/water loss, or other unexpected occurrence, the employee needs to either
(a) evacuate their residence, or (b) care for a family member whose school or place of care was closed; *or*
- (6) in a PHE, a public official closed the workplace, or the school or place of care of the employee’s child.

Employer Policies (Notice; Documentation; Incremental Use; Privacy; and Paid Leave Records)

- **Written notice and posters.** Employers must (1) provide notice to new employees no later than other onboarding documents/policies; and (2) display updated posters, and provide updated notices to current employees, by end of year.
- **Notice for “foreseeable” leave.** Employers may adopt “reasonable procedures” in writing as to how employees should provide notice if they require “foreseeable” leave, but **cannot deny paid leave** for noncompliance with such a policy.
- **An employer can require documentation to show that accrued leave was for a qualifying reason only if leave was for four or more consecutive work days** (*i.e.* days when an employee would have worked, not calendar days).
- **Documentation is not required to *take* accrued leave**, but can be required as soon as an employee returns to work or separates from work (whichever is sooner). **No documentation can be required for PHE leave.**
- **To document leave for an employee’s (or an employee’s family member’s) health-related need**, an employee may provide: **(1)** a document from a health or social services provider *if* services were received and a document can be obtained in reasonable time and without added expense; ***otherwise (2)*** the employee’s own writing.
- **Documentation as to domestic abuse, sexual assault, or criminal harassment** can be a document or writing under (1) above (*e.g.* legal or shelter services provider) or (2) above, or legal document (restraining order, police report, etc.).
- **If an employer reasonably deems an employee’s documentation deficient**, the employer must: (A) notify the employee within seven days of either receiving the documentation or the employee’s return to work or separation (whichever is sooner), and (B) give the employee at least seven days to cure the deficiency.
- **Incremental Use.** Depending on employer policy, employees can use leave in either hourly or six-minute increments.

- **Employee Privacy.** Employers cannot require employees to disclose “details” about an employee’s (or their family’s) HFWA-related health or safety information; such information must be treated as a confidential medical record.
- **Records must be retained and provided upon request.** Employers must provide documentation of the current amount of paid leave employees have (1) available for use, and (2) already used during the current benefit year, including any supplemental PHE leave. Information may be requested once per month or when the need for HFWA leave arises.

Retaliation or Interference with HFWA Rights

- **Paid leave cannot be counted as an “absence”** that may result in firing or another kind of adverse action.
- **An employee can’t be required to find a “replacement worker” or job coverage when taking paid leave.**
- **An employer cannot fire, threaten, or otherwise retaliate against, or interfere with use of leave by**, an employee who: (1) requests or takes HFWA leave; (2) informs or assists another person in exercising HFWA rights; (3) files a HFWA complaint; or (4) cooperates/assists in investigation of a HFWA violation.
- **If an employee’s reasonable, good-faith HFWA complaint, request, or other activity is *incorrect***, an employer need not agree or grant it, but cannot *act against* the employee for it. Employees *can* face consequences for misusing leave.

PROTECTED HEALTH/SAFETY EXPRESSION & WHISTLEBLOWING (“PHEW”): Worker Rights to Express Workplace Health/Safety Concerns & Use Protective Equipment

Coverage: All Employers and Employees, Plus Certain Independent Contractors

- PHEW covers not just “employers” and “employees,” but all “**principals**” (an employer **or** a business with at least 5 independent contractors) and “**workers**” (employees **or** independent contractors working for a “principal”).

Worker Rights to Oppose Workplace Health/Safety Violations:

- It is unlawful to **retaliate against, or interfere with**, the following acts:
 - (1) **raising reasonable concerns**, including informally, to the principal, other workers, the government, or the public, about workplace violations of government health or safety rules, or a significant workplace health or safety threat;
 - (2) **opposing or testifying, assisting, or participating** in an investigation or proceeding about retaliation for, or interference with, the above-listed conduct.
- A principal need not address a worker’s PHEW-related concern, but it still cannot fire or take other *action against* the worker for raising such a concern, as long as the concern was reasonable and in good-faith.

Workers’ Rights to Use Their Own Personal Protective Equipment (“PPE”):

- A worker must be allowed to **voluntarily wear their own PPE** (mask, faceguard, gloves, etc.) if the PPE (1) provides **more protection** than equipment provided at the workplace, (2) is **recommended** by a government health agency (federal, state, or local), and (3) does not make the worker **unable to do the job**.

COMPLAINT RIGHTS (under both HFWA & PHEW)

- Report violations to the Division as complaints or anonymous tips, or file in court after exhausting pre-lawsuit remedies.

This Poster summarizes two Colorado workplace public health laws: C.R.S. § 8-13.3-401 et seq., (paid leave), and C.R.S. § 8-14.4-101 et seq. (healthy and safety whistleblowing) including amendments current as of the date of this poster. It does not cover other health or safety laws, rules, and orders, including under the federal Occupational Safety and Health Act (OSHA), from the Colorado Department of Public Health and Environment (CDPHE), or from local public health agencies. Contact those agencies for such health and safety information.

*In a PHE, employees gain additional hours of leave for inability to work, testing, quarantining, caring for family in such situations, and related needs. No PHE is now in effect; this poster will be updated if one is declared.

This poster must be displayed where easily accessible to workers, shared with remote workers, provided in other languages as needed, and replaced with any annually updated versions.

This Poster is a summary and cannot be relied on as complete labor law information. For all rules, fact sheets, translations, questions, or complaints, contact:

DIVISION OF LABOR STANDARDS & STATISTICS, ColoradoLaborLaw.gov, cdle_labor_standards@state.co.us, 303-318-8441 / 888-390-7936.