

Healthy Families & Workplaces Act



COLORADO
Department of
Labor and Employment

What You Need to Know about Colorado's Paid Sick Leave Law

December 15, 2021

*Presented by **Eric Yohe***

Colorado Division of Labor Standards and Statistics

Call Center: 303-318-8441



Healthy Families & Workplaces Act

Overview:

What We Will Discuss Today

The “*Division*”

The Healthy Families and Workplaces Act (*HFWA*)

Two Types of Leave: “Accrued” Paid Sick Leave & Public Health Emergency Leave

Pay Rate for Paid Sick Leave

When Employees Can Use Paid Sick Leave

Typical Claims

Documentation, Recordkeeping, and Notification Requirements

Retaliation

Q&A

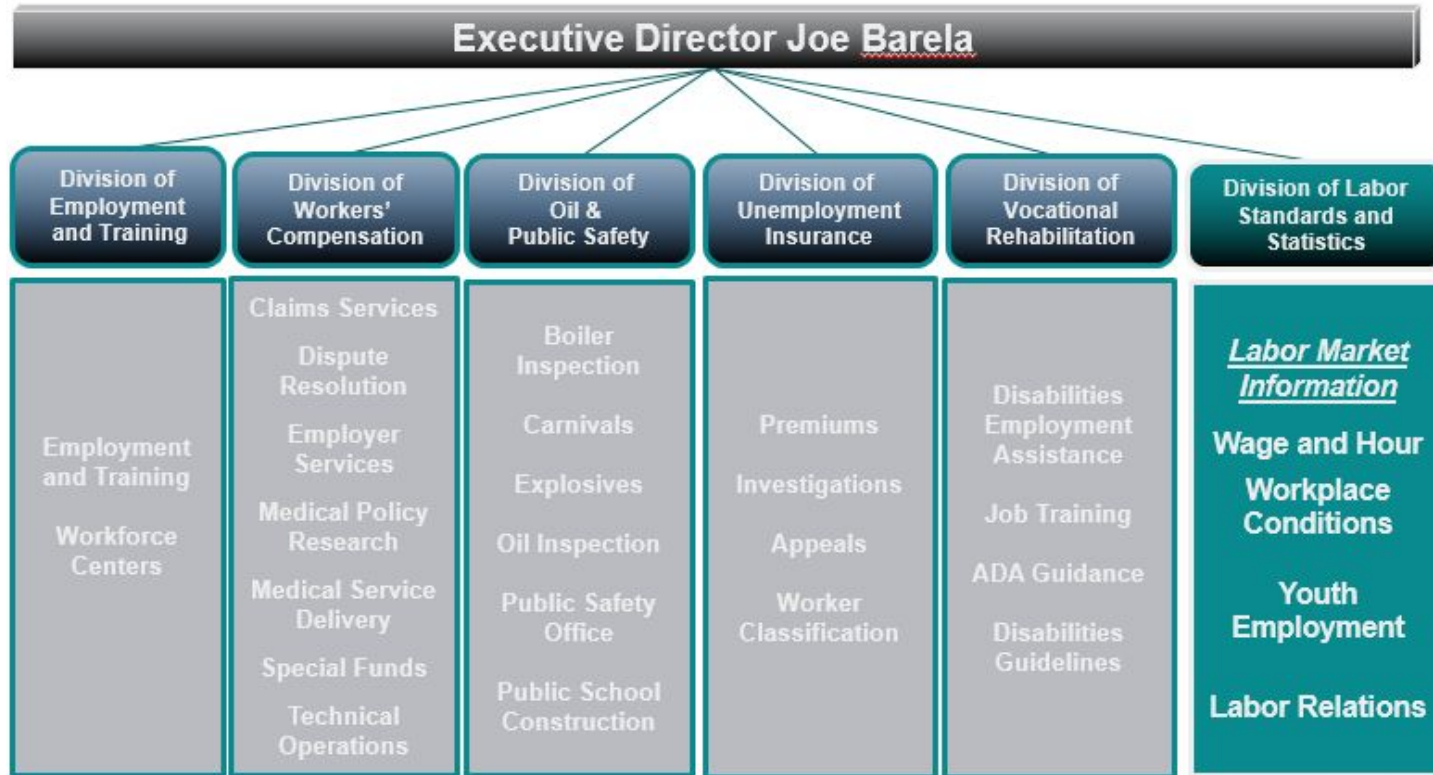
Resources

**CO Division of Labor
Standards & Statistics**



***The
Division***

CDLE Divisions



CO Division of Labor Standards & Statistics

Division of Labor Standards and Statistics

Labor Standards

- **Healthy Families and Workplaces Act (Paid Sick Leave)**
- **CO Wage Act and COMPs**
 - **Unpaid Wages, Impermissible Deductions, Time Worked, OT, Etc.**
- **Other laws related to the employer/worker relationship**
 - **Criminal History in Applications (Chance to Compete Act)**
 - **Equal Pay Transparency Requirements**
 - **Colorado WARNING Rules**

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Labor Market Information (LMI)

Colorado Labor and Employment related

statistics LMI Gateway: www.colmigateway.com

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Colorado Healthy Families and Workplaces Act (HFWA)

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Colorado Healthy Families and Workplaces Act (HFWA)

Senate Bill 20-205 | Effective July 15, 2020

- **C.R.S. § 8-13.3-401 et. seq**
 - **Applies to all “employers” and “employees” in Colorado**
 - **Same as CO Wage Act Definitions (C.R.S. § 8-4-101(5-6)),**
- PLUS**
- **Employees of State and Local Government Agencies**

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Colorado Healthy Families and Workplaces Act (HFWA)

Three types of HFWA leave

- **Accrued (“Section 403”) leave**
- **Public Health Emergency (PHE) leave (“Section 405”)**
- ***From July 15 to December 31, 2020 Only:* HFWA Required Compliance w/Emergency Paid Sick Leave Act (EPSLA) PSL (C.R.S § 8-13.3-406); all employees, all employers regardless of size.**

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Colorado Healthy Families and Workplaces Act (HFWA)

***Unpaid Paid Sick Leave is
“wages” under Colorado law.***

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Accrued HFWA Leave (Section 403)

Effective January 1, 2021 - Employees “**accrue**” (earn) **1 hour of paid leave per 30 hours worked**, up to 48 hours per year, paid at the same hourly rate or salary and with the same benefits.

- Starts **first day of employment**
- Accrual based on “time worked”
- Overtime-exempt employees accrue based on their normal hours worked up to a maximum of 40 per week
- Employers **may choose** faster accrual and/or more leave
- Employers may use a more general leave plan (e.g. PTO) to comply with HFWA, but must provide same amount or more of HFWA leave for all HFWA reasons (**see CO Wage Protection Rule 3.5.4, 7 CCR 1103-7**)

**Employers with 15 or fewer employees are subject to accrued leave requirements as of January 1, 2022.*

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Qualifying Reasons for Accrued Leave (Section 404)

- 1| A **mental or physical** illness, injury, or health condition that prevents work;
- 2| **Obtaining preventive medical care**, or a medical diagnosis, care, or treatment, of any mental or physical illness, injury, or health condition;
- 3| Being a victim of domestic abuse, **sexual assault, or criminal harassment** who needs leave for medical attention, mental health care or other counseling, victim services (including legal), or relocation; or
- 4| **Care for a family member** who has a mental or physical illness, injury, or health condition, or who needs the sort of care listed in category (2) or (3);
- 5| Due to a public health emergency, a public official closed the employee's (A) place of business, or (B) child's school or place of care, requiring the employee to care for the child

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Public Health Emergency (Section 405) Leave

Applies to ALL employers regardless of size, was effective Jan. 1, 2021 for Covid-19 Public Health Emergency (PHE), and **is still in effect.**

For employees hired after Jan. 1, 2021, **PHE leave coverage is immediate.**

“On the date a Public Health Emergency is declared”, all employers must **supplement** whatever amount of paid leave the employee has accrued to ensure the employee can take up to **80 hours** of leave in order to:

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Public Health Emergency (Section 405) Leave

1. **Self-isolate and care** for oneself because the employee is **experiencing symptoms** of or is **diagnosed** with a communicable illness that is the cause of a public health emergency;
2. **Seek or obtain** medical diagnosis, care, or treatment if **experiencing symptoms** of a communicable illness that is the cause of a public health emergency;
3. **Seek preventive care** concerning a communicable illness that is the cause of a public health emergency;
4. Care for a family member who is experiencing 1-3 above.

An Employee may use PHE leave until 4 weeks after Termination of PHE

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Public Health Emergency (Section 405) Leave

PHE Leave Reasons also include:

- **Getting a COVID-19 test**
- **Getting vaccinated**
- **Recovering from any vaccine side effects**
- **Following a mandatory quarantine,**
- **Caring for a family member with any of those needs.**

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Public Health Emergency (Section 405) Leave

“Pursuant to C.R.S. § 8-13.3-402(9), “Public health emergency” means:

(a) An act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious agent, for which:

- (I) An emergency is declared by a **federal, state**, or local public health agency; or
- (II) **A disaster emergency is declared by the governor**; or

(b) A highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the governor.

Both a federal Dept. of HHS PHE declaration and the Governor’s COVID disaster declaration are still in effect. The federal declaration has been extended to **Jan. 16, 2022**. PHE leave is in effect until **Feb. 13, 2022** at the earliest.

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Amount of PHE Supplement

Instant supplement to allow up to 80 hours for a PHE related reason (currently Covid):

- For employees normally working 40 or more hours in a week, 80 hours of total leave (accrued plus PHE supplement)
- 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 the declaration of the public health emergency.
- Accrued leave may count “against” PHE supplement
- Separate from any Covid related leave required/provided in 2020

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Pay Rate for Accrued and PHE Leave

Accrued leave and PHE leave are paid at the employee's "regular rate":

- Leave must be paid at **the same rate and with the same benefits**, including health benefits, as the employee normally earns during hours worked, not including overtime, bonuses, or holiday pay. Leave must be paid on the same schedule as regular wages.
- See Wage Protection Rule 3.5.2 (will be updated on 1/1/2022) for more detail including when EEs have variable hourly rates or paid by another method
- More info on regular rate in INFO #6B and the COMPS Order #37/38

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When Can Employees Use PSL?

Accrued leave and PHE leave are paid at the employee's "regular rate":

- **As it is earned**
 - Employer may require use in hourly increments,
 - Or may require or allow smaller minimum increment
 - Employer can loan leave in advance
- **Unused § 403 leave rolls over from year-to-year but an employee can only "use and accrue" 48 hours of paid leave per year.**

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Most Common Paid Sick Leave Complaints/Reasons for Not Paying Leave

- **Employer denied PHE leave based on belief that COVID-19 PHE has ended/didn't know PHE is still in effect (it is until at least Feb. 13, 2022 at the earliest).**
- **Employer denied PHE leave based on perceived employer exemption:**
 - Employer size (there is no "small employer" delay for PHE leave)
 - Claim of industry exemption (e.g., Healthcare)
- **Employer denied PHE leave based on perceived employee exception/requirement**
 - Hasn't met "length of employment" requirement (there isn't one)
 - Part-time employees are not eligible for PHE leave (they are, just not 80 hours)

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Documentation & Recordkeeping

- **Employers can require “reasonable” documentation of the need for accrued 403 leave, but only for “four or more consecutive work days”**
 - Submitted by any “reasonable” method (can include an employee’s “own writing”)
 - Insufficient documentation requires notice to employee and opportunity to cure
 - See Wage Protection Rule 3.5.6 for more information
- **An employer may not require an employee to provide documentation that leave is for a qualifying reason “related to [a] public health emergency” (Section 405 leave)**

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Documentation & Recordkeeping

Employer Recordkeeping Requirements (CRS § 8-13.3-409):

(1) An employer shall retain records for each employee for **a two-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used**. Upon appropriate notice and at a mutually agreeable time, the employer shall allow the division access to the records for purposes of monitoring compliance with [HFWA]

(2) If an issue arises as to an employee's right to paid sick leave and **the employer has not maintained or retained adequate records** for that employee or does not allow the division reasonable access to the records, **the employer shall be presumed to have violated [HFWA]** unless the employer demonstrates compliance by a preponderance of the evidence.

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Notification and Posting



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Colorado Workplace Public Health Rights Poster: PAID LEAVE, WHISTLEBLOWING, & PROTECTIVE EQUIPMENT Division of Labor Standards & Statistics

Effective January 1, 2021
*Must be updated annually; new poster
available 1st week of each December*

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

Coverage: Employers with at least 16 employees are required to provide paid leave under the HFWA

- Employees earn 1 hour of paid leave per 30 hours worked ("accrued leave"), up to 48 hours a year.
- Up to 80 hours of supplemental leave applies in a public health emergency (PHE), until 4 weeks after the PHE ends.
- Regular hours and pay set the rate of accrual and compensation for leave, during which benefits continue.
- Up to 48 hours of unused accrued leave carries over for use the next year.
- For details on specific situations (irregular hours, non-hourly pay, etc.), see Wage Protection Rule 3.5, 7 CCR 1403-7-1403.7

- **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 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.
- **Paid leave cannot be counted as a leave taken for any other kind of adverse action.**

HFWA requires employers to:

1 | Notify employees in writing of the right to take paid leave, in the amounts and for the purposes in HFWA, without retaliation.

2 | Display an informational Complaint Rights poster.

From a provider of legal or shelter services) or (2) above, or a legal document (e.g., a restraining order or police order).
• **Documentation 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 that has been reviewed and approved by the**
obtained in reasonable time and without added expense; **otherwise (2) the employee's own writing**
employee within seven days of either receiving the documentation of the employee's return to work or separation
• **Completion of that act, and the employee or family member's request for leave, and related to domestic**
abilities, sexual assault, or criminal justice involvement in public health emergencies. **HR 20-1415 (vet)**
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

worker for that reason, as long as the concern was reasonable and in good faith.
COMPLAINT RIGHTS (under both HFWA & PHEW)
• **Workers' Right to Use Their Own Personal Protective Equipment (PPE)** or may be filed as in court after
must **have the right to 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
ing and personal protective equipment). It does not cover other health or safety laws, rules, and orders, including
federal, state, or local, and (3) does not leave the worker unable to do the job.

This poster must be displayed where it is easily accessible to workers, shared with remote workers, provided in languages other than English as needed, and replaced annually.
For full versions of these laws, more detailed fact sheets, or questions, information, or complaints as to these or other labor laws, contact: Division of Labor Standards and Statistics, coloradolaborlaw.gov, colorado_labor_standards@state.co.us, 303-318-8441 / 888-390-7936.

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Retaliation & Interference

CRS 8-13.3-402 (10):“Retaliatory personnel action” means:

- (a) The denial of any right guaranteed under this part 4; or
- (b) Any adverse action against an employee for exercising any right guaranteed in this part 4, including:
 - (I) 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 the employee to a federal, state, or local agency; or
 - (II) Any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this part 4; or
 - (III) Interference with or punishment for participating in or assisting, in any manner, an investigation, proceeding, or hearing under this part 4.

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Q&A



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Resources

DLSS Website

[Coloradolaborlaw.gov](https://coloradolaborlaw.gov)

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leg.colorado.gov/sites/default/files/2020a_205_signed.pdf

DLSS INFOs (Fact Sheets) #6B and #6C

cdle.colorado.gov/interpretive-notice-formal-opinions-infos-other-published-guidance

Colorado Wage Protection Rules

cdle.colorado.gov/laws-regulations-guidance

Required Paid Sick Leave and Wage Law Posters

<https://cdle.colorado.gov/posters-0>

Adopted CO Wage Protection Rules

<https://cdle.colorado.gov/laborrules>

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Thanks!

Please call 303-318-8441 with additional questions