

# 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**

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*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**

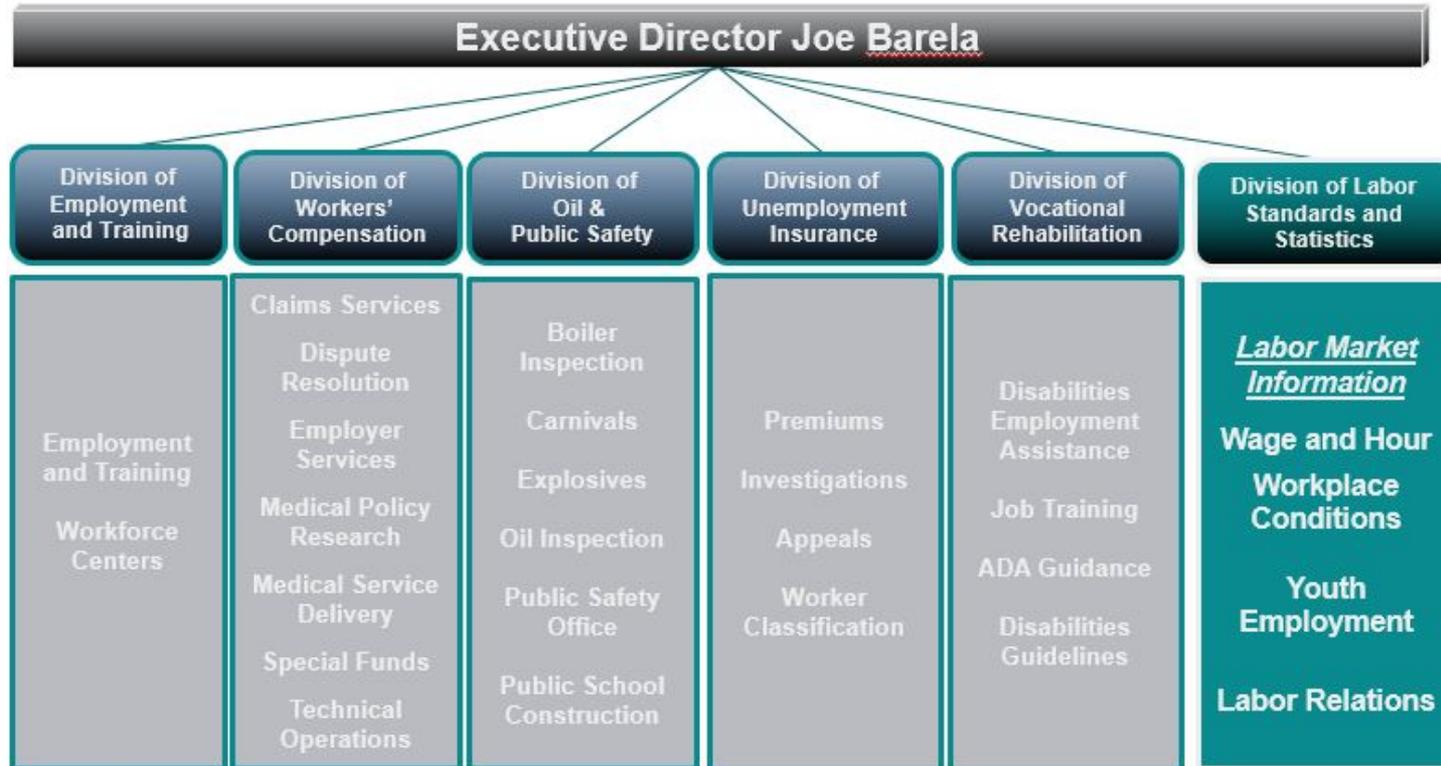
**Resources**

**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**

# CO Division of Labor Standards & Statistics

*Division of Labor Standards and Statistics*

## ***Labor Market Information (LMI)***

**Colorado Labor and Employment related**

**statistics LMI Gateway: [www.colmigateway.com](http://www.colmigateway.com)**

# Healthy Families & Workplaces Act

## *Colorado Healthy Families and Workplaces Act (HFWA)*

# Healthy Families & Workplaces Act

## *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**

# Healthy Families & Workplaces Act

## *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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## *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)

### **Healthy Families and Workplaces Act**

[leg.colorado.gov/sites/default/files/2020a\\_205\\_signed.pdf](https://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](https://cdle.colorado.gov/interpretive-notice-formal-opinions-infos-other-published-guidance)

### **Colorado Wage Protection Rules**

[cdle.colorado.gov/laws-regulations-guidance](https://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*