

**Colorado Passes Broad Paid Sick Leave Law**

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On July 14, 2020, Colorado's Governor signed [SB 20-205](#), the "Healthy Families and Workplaces Act" (the "Act"), requiring employers in the state to provide paid sick leave entitlements to employees under various circumstances and supplemental paid sick leave in cases of public health emergencies. The Act provides employees with three new sick leave entitlements: (i) Paid Sick Leave related to COVID-19 ("COVID-19 Leave"), (ii) a state-wide Paid Sick Leave ("PSL"), and (iii) Supplemental Public Health Emergency Paid Sick Leave ("PHE-PSL"). The COVID-19 leave expands the scope of paid leave during the current pandemic, which, as previously [reported](#), has already been required in some form by an executive order for Colorado employers in certain industries.

**COVID-19 Leave**

Effective immediately through December 31, 2020, all employers in Colorado who were not subject to the federal Emergency Paid Sick Leave Act in the Families First Coronavirus Response Act (the "FFCRA") will be required to provide each of their employees paid sick leave related to the COVID-19 pandemic in the same amount and for the same six purposes specified in the FFCRA. Those employers in the state who were already subject to the FFCRA must continue to comply with its requirements. The FFCRA requires covered employers to provide up to 80 hours of paid sick leave to employees who are unable to work for reasons related to COVID-19 at maximum daily caps of \$511/day for an employee's own needs, and 2/3 of pay (up to \$200/day) for the care of another.<sup>1</sup> This leave is in addition to leave otherwise provided by an employer.

**Paid Sick Leave***Covered Employers*

The Act will phase in for small employers. Effective January 1, 2021, the Act requires that all employers with 16 or more employees grant PSL to employees. Effective January 1, 2022, all employers, regardless of size, must provide their employees with

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<sup>1</sup> For a more detailed overview/refresher on the FFCRA's specific paid sick leave mandates, please see Epstein, Becker & Green's recent [Act Now Advisory](#).

PSL. The Act does not specify whether the 16 employees are based only on Colorado-based employees or employees anywhere in the United States.

### *Accrual/Carryover of Paid Sick Leave*

Employees will accrue one hour of PSL for every 30 hours worked, and are entitled to accrue up to a maximum of 48 hours of leave, unless the employer sets a higher limit. While up to 48 hours of leave can be carried forward to the following year, an employer is not required to allow an employee to use more than 48 hours of PSL in a given year. Employers may satisfy the PSL mandates by granting the full 48 hours of PSL at the beginning of each year; however, the carryover requirements are still applicable.

An employee begins to accrue PSL when employment with the employer begins and may use the PSL as it is accrued. There is no waiting period to use PSL. PSL may be taken in one hour increments, unless the employer allows PSL to be taken in smaller increments of time.

For employees classified as exempt from overtime, accrual is based on a 40-hour workweek. Employees who work fewer than 40 hours weekly accrue PSL according to the number of hours worked in their normal workweek.

In general, employers are not required to pay out accrued, unused PSL upon termination of employment, except an employee may recover PSL as a remedy for a retaliatory personnel action that prevented the individual from using their PSL. If an employee is re-hired within six months of separating from the employer, the employer must reinstate any accrued, unused PSL, provided it had not been paid out upon termination of employment.

### *Permissible Uses*

An employee may use accrued PSL for the following reasons:

- The employee (i) has a mental or physical illness, injury, or health condition that prevents the employee from working; (ii) needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or (iii) needs to obtain preventive medical care.
- The employee needs to care for a family member<sup>2</sup> for the same reasons as above.
- The employee or the employee's family member has been the victim of domestic abuse, sexual assault, or harassment and PSL is used to:

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<sup>2</sup> "Family member" is defined broadly as an immediate family member (a person related by blood, marriage, civil union, or adoption), a child to whom the employee stands *in loco parentis*, a person who stood *in loco parentis* to the employee when the employee was a minor, and a person for whom the employee is responsible for providing or arranging health- or safety-related care.

- Seek medical attention for the employee or the employee's family member to recover from a mental or physical illness, injury, or health condition caused by the domestic abuse, sexual assault, or harassment;
  - Obtain services from a victim services organization;
  - Obtain mental health or other counseling;
  - Seek relocation due to the domestic abuse, sexual assault, or harassment; or
  - Seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment.
- Due to a public health emergency, a public official has ordered closure of the employee's place of business, or the school or place of care of the employee's child and the employee needs to be absent from work to care for the employee's child.

### *Confidentiality and Record Retention*

Employers may not require disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's (or an employee's family member's) health information as a condition of providing PSL.

The Act requires that employers maintain records for each employee for a two-year period, documenting hours worked and the PSL they have used and accrued. Employers are also required to keep any health or safety records confidential and separate from other employee information. Disclosure can only be made to the employee or with the employee's express permission.

### *Retaliation*

The Act prohibits employers from retaliating or discriminating against an employee who has used PSL or otherwise attempted to exercise their rights under the Act. Additionally, employers cannot discipline, discharge, demote, suspend, or otherwise retaliate because of an employee's use of PSL.

### *Notice*

Employers are required to notify employees, in writing and by displaying a poster, of their rights under the Act. Employees can request PSL orally, in writing, electronically, or in any other method acceptable to the employer. Employees are encouraged to schedule PSL so that it does not unduly disrupt the operations of the employer.

## *Interaction with Employer Paid-Time-Off Policies and Collective Bargaining Agreements*

The Act does not require an employer to provide additional sick leave if the employer's existing sick leave or time-off policy provides employees with an amount of leave and compensation that meets or exceeds the statutory minimums, and satisfies the statutory requirements (including the PHE-PSL discussed below) with respect to accrual, carryover, and uses.

Collective bargaining agreements ("CBAs") that already provide for "equivalent or more generous paid sick leave" for covered employees are compliant with the Act. CBAs negotiated on or after the effective date of the Act must provide paid sick leave benefits that are at least "equivalent" to those required under the Act.

Employers that are signatories to a multiemployer collective bargaining agreement comply with the requirements of the Act by making contributions to a multiemployer paid sick leave fund, plan, or program based on the hours each of its employees accrues.

### **Public Health Emergency Paid Sick Leave**

In addition to PSL, on the date a public health emergency<sup>3</sup> is declared, a Colorado employer must supplement each employee's paid sick leave entitlement with PHE-PSL to ensure that any employee is able to take the following amount of paid sick leave for public health purposes (as described below):

- *For employees who normally work 40 hours or more per week:* At least 80 hours.
- *For employees who normally work fewer than 40 hours in a week:* At least the greater of either (i) the amount of time the employee is scheduled to work in a 14-day period, or (ii) the amount of time the employee actually works during an average 14-day period.

Accrued, unused PSL may be counted toward satisfying these supplemental requirements. Employees may use PHE-PSL during the public health emergency and for four weeks after the official termination or suspension of the public health emergency. The amount of paid sick leave for PHE-PSL does not need to be supplemented further by the employer in cases where the public health emergency is amended, extended, restated, or prolonged.

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<sup>3</sup> A "public health emergency" under the Act is defined as: (a) an act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious act, 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.

## *Permissible Uses*

Employees may use PHE-PSL for the following reasons:

- To self-isolate and care for oneself due to a diagnosis of a communicable illness that is the cause of a public health emergency or when experiencing symptoms of a communicable illness that is the cause of a public health emergency.
- To seek or obtain a medical diagnosis, treatment, or preventative care for symptoms of a communicable illness that is the cause of a public health emergency.
- To care for a family member (using the same definition as noted above) diagnosed with a communicable illness that is the cause of a public health emergency.
- To care for a family member who is self-isolating, seeking medical or preventative treatment, or experiencing symptoms due to a communicable illness that is the cause of a public health emergency.
- To care for oneself after local, state, or federal public health officials or a health authority having jurisdiction over the location in which the place of employment is located determine that the employee's presence on the jobsite or in the community would jeopardize the health of others due to exposure to the communicable illness or because the employee is exhibiting symptoms of the communicable illness.
- To care for a family member after local, state, or federal public health officials or a health authority having jurisdiction over the location in which the place of employment is located determine that the family member's presence on the jobsite or in the community would jeopardize the health of others due to exposure to the communicable illness or because the family member is exhibiting symptoms of the communicable illness.
- To care for a child or family member when places of care or schools are unavailable due to a public health emergency, or if the child's or family member's school or place of care has been closed by a local, state or federal public official or at the discretion of the school or place of care due to a public health emergency, including if a school or place of care is physically closed but providing instruction remotely.
- An employee's inability to work because the employee has a health condition that may increase susceptibility to or risk of a communicable illness that is the cause of the public health emergency.

Furthermore, the Act specifies that documentation is not required for an employee to take PHE-PSL leave and merely requires that an employee notify the employer “as soon as practicable” when the need for PHE-PSL is foreseeable.

### **What Colorado Employers Should Do Now**

- Employers that have not been subject to the FFCRA should familiarize themselves with its paid sick leave requirements to ensure compliance with the Act.
- Employers should review their current sick leave or paid time off policies to confirm whether they meet or exceed the Act’s requirements.
- Employers that do not currently have a paid sick leave policy or have one that falls short of the Act’s requirements should begin developing a policy that is compliant with the Act.
- Employers who have employees subject to a CBA should review the applicable CBA and keep the Act’s mandates in mind for future bargaining.
- Employers should regularly monitor the Colorado Division of Labor website for implementing regulations and sample notice materials.

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