

UPDATE: Colorado Issues Clarifying Rules on Public Health Emergency Paid Sick Leave

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As we previously [reported](#), Colorado's latest paid sick leave law, the "[Healthy Families and Workplaces Act](#)" ("Act"), was signed by Governor Jared Polis on July 14, 2020, requiring employers in the state to provide paid sick leave to employees under three entitlements: (i) Paid Sick Leave related to COVID-19, (ii) a statewide Paid Sick Leave ("PSL"), and (iii) Supplemental Public Health Emergency Paid Sick Leave ("PHE-PSL").

On February 23, 2021, the Colorado Department of Labor and Employment ("CDLE") adopted revised Wage Protection Rules ("Rules") under [7 CCR 1103-7](#), providing clarifying guidance with respect to PHE-PSL entitlement for new hires and part-time employees.

Supplemental Public Health Emergency Paid Sick Leave

In addition to the statewide PSL, on the date a public health emergency¹ 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 number of hours the employee is scheduled for work or PSL in the 14-day period **after the request for PHE-PSL**, or (ii) the amount of time the employee actually worked in the 14-day period **prior to the declaration of the public health emergency or the request for PHE-PSL, whichever is later**.

The Rules clarify that an employee's paid sick leave entitlement under PHE-PSL is dependent on both (i) the employee's status as a full-time or part-time employee, and

¹ 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."

(ii) the time at which the employee requests the PHE-PSL. In addition, the Rules also make clear that—because PHE-PSL entitlement is tied to the time at which the employee requests such leave—all employees are eligible for PHE-PSL, irrespective of their date of hire. A plain reading of the original Act had suggested that employees hired on or after January 15, 2021, would be excluded from receiving such relief. The revised language under the Rules indicates that employees who are newly hired during a public health emergency are indeed entitled to PHE-PSL benefits.

As a reminder, accrued and 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. Employees are not entitled to any additional PHE-PSL from their employer in cases where the public health emergency is amended, extended, restated, or prolonged. In other words, employers need only provide PHE-PSL once during the length of a single public health emergency, even if extended into the following year.

Refresher on 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 member² 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 a local, state, or federal public health official or a health authority having jurisdiction over the location in which the place of employment is located or the employee's employer determines 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 a local, state, or federal public health official or a health authority having jurisdiction over the location in which the place of employment is located or the family member's employer determines that the family member's presence on the jobsite or in the community would jeopardize

² "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.

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 and merely requires that an employee notify the employer "as soon as practicable" when the need for PHE-PSL is foreseeable.

Effective Date

Although the Rules take effect on April 14, 2021, the CDLE's [Statement of Basis](#), adopted concurrently with the Rules on February 23, 2021, states that the above changes "clarify, but do not change, substantive rights or responsibilities, as to which 14-day periods to use as the basis for determining" PHE-PSL entitlements. Accordingly, employers may rely on the revised language under the Rules immediately.

What Colorado Employers Should Do Now

- Employers should consult with their legal counsel to ensure that the administration of PHE-PSL and other paid sick leave benefits is consistent and compliant with the Rules and the Act.
- 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 should regularly monitor the CDLE website for implementing regulations and sample notice materials.

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