



# Colorado enacts paid sick leave law, emergency leave requirements

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A new Colorado law ([2020 Ch. 294, SB 20-205](#)), effective immediately, replaces the state's [Health Emergency Leave with Pay \(HELP\)](#) rules requiring pandemic-related paid leave for employees in specified business segments. Through 2020, the Healthy Families and Workplaces Act (HFWA) requires all employers in the state, regardless of size, to provide emergency paid sick leave meeting the [Families First Coronavirus Response Act \(FFCRA, Pub. L. No. 116-127\)](#) provision to each employee not covered by the federal law. Beginning in 2021, employers — including Colorado public employers — will have to provide one hour of paid sick leave for every 30 hours worked and additional leave for future public health emergencies. Colorado joins 14 other states and Washington, DC, in enacting an accrued paid leave mandate for employers.

## 2020 emergency leave

Since March 11, Colorado employers in specified industries have been required to provide emergency paid sick leave under HELP rules. Effective July 15, the new law requires all employers in Colorado — regardless of industry or size — to provide emergency paid sick leave to any employee not already covered under the emergency paid sick leave provision of the federal FFCRA. Employers must provide paid sick leave in the same amount and for the same purposes as provided in the federal law. This HFWA provision is effective until Dec. 31, 2020.

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Interpretive guidance ([INFO No. 6A](#)) from the Department of Labor and Employment provides additional information, including the following:

- Paid leave must be available to employees with COVID-19 symptoms seeking a medical diagnosis; ordered by a federal, state or local government agent or advised by a health provider to quarantine or isolate due to a risk of COVID-19; or caring for someone ordered to quarantine or isolate or a child whose school or place of care is closed or unavailable due to COVID- 19.
- Up to two weeks (80 hours) of paid leave must be provided at the employee’s regular rate, except paid leave to care for someone other than the employee is only two-thirds of the regular rate.
- Paid leave already provided in 2020 for specified COVID-related reasons — whether provided pursuant to federal or state law or the employer’s policy — can offset HFWA-required leave.
- Paid leave policies adopted on or after April 1, 2020, that meet or exceed HFWA requirements can satisfy the law, as long as employees can take leave for COVID-19 reasons even if they have already used leave under the policy for other reasons. Paid leave taken under policies in place before April 1, 2020, cannot offset emergency paid leave, and employees cannot be required to use paid leave under the existing policy before taking emergency paid leave.
- Paid leave is not available to laid-off or furloughed employees or during a permanent or temporary business closure for reasons other than a government quarantine or isolation order. Paid leave is required if a workplace is temporarily closed due to a government quarantine or isolation order.
- Employers must notify employees about their emergency leave rights under HFWA (supplying copies INFO No. 6A can satisfy this requirement). Employers must also display in the workplace and share electronically with remote workers an informational [poster](#) provided by the Division of Labor Standards (DOLS). Employers must provide the notice and poster in any primary language spoken by at least 5% of their workforce.

### New paid sick leave accruals

Beginning Jan. 1, 2021, Colorado employees accrue one hour of paid sick leave for every 30 hours worked. Certain caps, usage, notice and carryover provisions apply.

### Covered employers and employees

The new law applies to employers and employees subject to the state’s wage law (Colo. Rev. Stat. [§ 8-4-101\(5\) and \(6\)](#)), but also extends to state and local government employers and employees. Employers with 15 or fewer employees nationwide don’t have to comply until 2022. The law does not cover employees covered by the federal Railroad Unemployment Insurance Act.

## Accruals

Employees accrue one hour of paid sick leave for every 30 hours worked in Colorado, but employers may cap annual accruals at 48 hours. Employers can avoid accruals by front-loading hours at the start of the year. Unused accruals must carry over from year to year but do not have to be paid at termination. Regulations may clarify whether employers that front-load must carry over unused hours. If a terminated employee is reinstated within six months, unused accruals prior to termination must be reinstated.

## Usage

Employees may use paid sick leave as it accrues in one-hour increments for the following reasons:

- The employee's own or family members health needs, including preventive care
- The closure of a business, school or care facility due to a public health emergency
- The employee's or a family member's issues related to domestic violence, sexual assault or harassment

Employers may limit annual usage to 48 hours, including any hours carried over from a prior year.

## Family member

The law defines family members to include any individual related by blood, marriage, civil union or adoption. The definition also includes someone for whom the employee stands or stood *in loco parentis* or who stood *in loco parentis* for the employee as a child, and anyone for whom the employee is responsible for providing or arranging health- and safety-related care.

## Rate of pay

Employees taking paid sick leave must receive compensation at their regular rate of pay, including health and other benefits. The regular rate does not include overtime, bonuses or holiday pay. Employees receiving commissions must be paid at the higher of their equivalent wage or the state's minimum wage. Future rules will define compensation (and accruals) for employees paid on a fee-for-service basis.

## Notice and documentation

Employers must supply each employee in Colorado a notice about the paid sick leave benefits and conspicuously display a poster that state regulators will create. Employers will have to replace the COVID-19 emergency paid leave poster with the HFWA poster describing accrued paid leave rights by Jan. 1, 2021. For telecommuters or employees with no physical workplace, employers may provide the poster and notice electronically or on a web-based platform.

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The statute doesn't specify timing for supplying the required employee notice, but providing the latest version of [INFO No. 6B](#) or the poster (when published) satisfies the notice obligation. Employers must supply the notice and poster any primary language spoken by at least 5% of the workforce. Each willful violation of the notice or poster requirement can subject an employer to a \$100 fine.

**Employee notice to employer.** Employers may establish written reasonable notice procedures for employees to request paid sick leave when the need is foreseeable. But an employer cannot deny leave if an employee fails to comply with the procedures. Employees must make reasonable efforts to schedule foreseeable leave so it does not unduly disrupt the employer's operations.

**Documentation.** Employers may require reasonable documentation showing the leave is for a HFWA purpose after an employee has missed four or more consecutive workdays. However, employers may not require disclosure of details relating to domestic violence, sexual assault or health.

### Recordkeeping and confidentiality

Employers must retain for two years records documenting each employee's hours worked and paid sick leave accrued and used. State regulators must be allowed access to the records on request for compliance purposes.

Employers must treat any health and safety information about employees or their family members as confidential medical records, maintained apart from other personnel information and disclosed only with the employee's express permission.

### Retaliation

Employees' use of paid sick leave under the state law can't result in disciplinary action or any form of retaliation.

## Emergency paid leave after 2020

Beginning in 2021, employers must provide up to 80 hours (or an amount equivalent to two weeks of an employee's regular hours) of supplemental paid sick leave during a public health emergency. The paid leave must be available for an employee to use for any of the following reasons:

- Self-isolate due to a diagnosis or symptoms of a communicable illness related to the public health emergency
- Seek a diagnosis, treatment or care (including preventive care) for the illness
- Miss work when a government health official or the employer determines the employee's presence would jeopardize others' health

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- Care for family member who must remain home for one of the above reasons
- Care for a child or other family member whose place of care or school is unavailable or closed due to the public health emergency (including when a school or place of care is physically closed but providing instruction remotely)
- Avoid work due to a health condition that may increase susceptibility to or risk of the illness

An employer may offset the supplemental paid leave with any unused accrued sick leave. Employees can take public health emergency paid leave only once per emergency, and the availability of this leave expires four weeks after the emergency is lifted. Employers cannot require any documentation for emergency leave. All other HFWA provisions apply to supplemental paid leave.

### Coordination with other leave policies and laws

An employer with an existing paid leave program that meets or exceeds the hours and usage provisions of the law's accrued paid sick and supplemental emergency leave entitlements doesn't have to provide additional leave. Nothing in the law prohibits an employer from providing more generous paid leave benefits.

### No preemption

The law doesn't preempt any other law, leave mandate or collective bargaining agreement (CBA) that provides greater paid leave than the Colorado law.

### Federal contractors

Any paid leave that federal contractors provide pursuant to [Executive Order 13706](#) counts as paid sick leave under the HFWA. Future guidance is needed to clarify whether this means federal contractors are exempt from HFWA or the federally mandated leave simply offsets the HFWA requirements.

### CBAs

Employers subject to a multiemployer collective bargaining agreement can comply with the HFWA by contributing to a paid sick leave fund, plan or program at an accrual rate of one hour for every 30 hours worked for each employee covered by the agreement. The multiemployer plan, fund or program must allow employees to collect paid sick leave for HFWA purposes based on the hours they have worked under the CBA.

An employer with employees covered by a bona fide CBA in place before the HFWA's effective date is exempt from the law if the CBA provides paid sick leave at least as generous as the law requires. Bona fide

CBAs negotiated after the HFWA's effective date that provide equivalent or more generous paid sick leave can expressly waive the law's requirements.

## **Enforcement and penalties**

The DOLS has enforcement authority and will investigate claims that an employer has illegally denied paid sick leave or retaliated against employees. Violations may entitle employees to reinstatement and back pay. Penalties of up to \$100 per violation also apply for notice and posting failures. DOLS may impose additional unspecified fines and penalties. After exhausting administrative remedies, employees may pursue a private action within two years after the alleged violation.

## **Related resources**

### **Non-Mercer resources**

- [INFO No. 6A in English](#) (Colorado Department of Labor and Employment, August 2020)
- [INFO No. 6B in English](#) and [Spanish](#) (Colorado Department of Labor and Employment, July 2020)
- [2020 Ch. 294, SB 20-205](#) (Colorado Legislature, July 14, 2020),
- [HELP rules](#) (Colorado Department of Labor and Employment, April 27, 2020)
- [FFCRA: Employer paid leave requirements](#) (US Department of Labor)
- [Pub. L. No. 116-127](#), the FFCRA (Congress, March 18, 2020)

### **Mercer Law & Policy resources**

- [States, cities tackle COVID-19 paid leave](#) (July 24, 2020)
- [DOL and IRS issue COVID-19 guidance on emergency paid leave](#) (April 29, 2020)
- [ME, NV paid accrued leave mandates expand state paid sick leave law totals](#) (July 1, 2019)

### **Other Mercer resources**

- [Stay informed on the coronavirus](#) (regularly updated)
- [Designing a COVID-19 emergency leave policy: Four key considerations](#) (March 17, 2020)
- [Update: Rapid action plan on paid leave during the pandemic](#) (March 12, 2020)

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