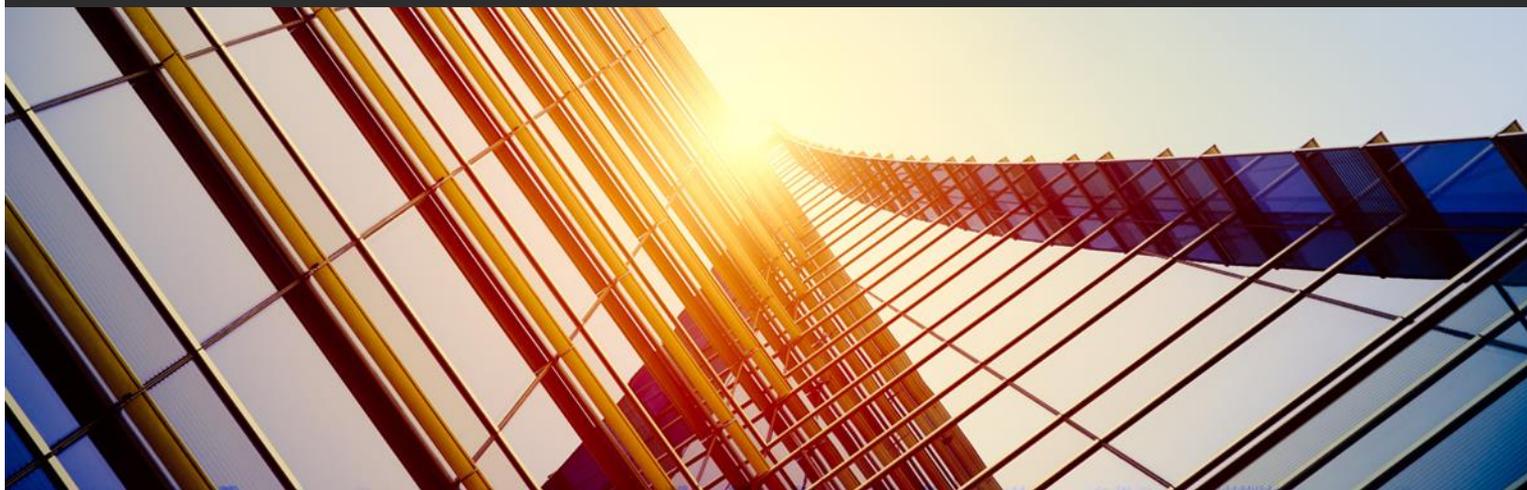


**Alert | Health Emergency Preparedness Task Force:
Business Continuity Amid COVID-19**



July 2020

Colorado Passes the Healthy Families and Workplaces Act

On July 14, 2020, Colorado Gov. Jared Polis signed [SB20-205](#), known as the “Healthy Families and Workplaces Act” (the Act), into law. The law is an overhaul of Colorado’s paid sick leave statutes. It requires employers to provide paid sick leave to employees under various circumstances. In addition to addressing general paid sick leave, the Act also expands Coronavirus Disease 2019 (COVID-19)-specific paid sick leave. In looking at the various changes, it will be important for employers (and employees) to view the changes not only as COVID-19 related, but also as long-term changes that may have an impact on their sick leave policy.

COVID-19 Paid Sick Leave Requirements

The Act’s sections related to COVID-19 are twofold. First, employers within the state of Colorado must comply with the Emergency Paid Sick Leave Act (EPSLA) in the Families First Coronavirus Response Act. See EPSLA guidance in GT Alert, [Employment Law Provisions of the Families First Coronavirus Response Act](#). The Act generally provides that two weeks of paid sick leave at various rates will be paid to employees based on their reason for the sick leave, as discussed below. Importantly, EPSLA applies only to private employers with less than 500 employees. These federal rights are effective through Dec. 31, 2020.

The Act’s second COVID-19-related section takes the requirements of *EPSLA and broadens them to include any employer of any size*. Additionally, the Act requires that the paid leave under EPSLA be granted to employees not currently covered by EPSLA. The definition of employee is the same under the

Act as it is under the Colorado Wage Act. Thus, large and small Colorado employers must be aware of the paid leave requirements instituted by EPSLA. Furthermore, employers must be aware that the rights granted under EPSLA have been extended to a greater extent by the state of Colorado. Specifically, employers should be careful to properly determine the employee's qualifying reason for leave, which shall be one of the following:

1. Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine related to COVID-19;
3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. Employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Employers should take care to know the underlying reason for the paid sick leave or paid expanded family and medical leave, because the rate and duration of those types of leaves differ from circumstance to circumstance. Based on the reason for leave, an employee can be entitled either to their regular rate or two-thirds their regular rate for the duration of the paid sick leave. Paying an employee their regular rate of pay for a paid sick leave only applies when the employee is unable to work because the employee is quarantined (pursuant to federal, state, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis. All other forms of leave under EPSLA are at two-thirds the employee's regular rate of pay. While sick leave, either for oneself or for a family member, will expire after using it for the full two weeks (80 hours), paid expanded family medical leave can continue for up to an additional 10 weeks. Thus, if an employee is taking care of a child, they could potentially take up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave [assuming a 40-hour work week]).

These COVID-19-specific requirements and rights within the Act expire on Dec. 31, 2020.

New Paid Sick Leave Requirements

In addition to the COVID-19-related paid leave sections, the Act also requires all employers to provide paid sick leave to their employees. The legislation is somewhat unclear as to which employers are required to provide this paid sick leave. In 2020, all employers are required to do so. In 2021, only employers with sixteen (16) or more employees are required to do so. Finally, in 2022, all employers are required to do so, regardless of the number of employees.

The accrual of the paid sick leave is based one hour of paid sick leave for every 30 hours worked. Employees can earn up to 48 hours of paid sick leave a year. The paid sick leave does not terminate if not used within the year accrued, but rather rolls over to the subsequent year. While paid sick leave may rollover, the Act makes it clear that no monetary or financial payout for unused paid sick leave is required. Thus, if an employee leaves with unused paid sick leave, it is simply lost, except in certain instances of relatively quick re-hiring.

If a Colorado employer already has paid sick leave, or some variation of a paid leave policy, that adheres to the requirements under the Act, no additional paid sick leave is required. Employers are encouraged to review their policies with their employment law counsel to determine if they already have a paid leave policy to satisfy the Act.

Under the Act, the request may be made orally, written, or in any other manner acceptable to the employer. Employers should endeavor to create a request system that works for their organization and is easy to document, as it may help with the administration of the Act's new records requirement. Similarly, the standard increment for measuring the paid sick leave is typically by hours, but the employer may also agree to alternatives. In keeping a standard policy easy to administer, employers may also wish to make clear what time increments are to be used.

The permissible reasons for taking paid sick are listed within the Act. Thus, employees must take their paid sick leave for specific reasons, such as the inability to work due to illness. However, the Act includes various reasons that may not immediately bring to mind sick leave. For instance, the paid sick leave can be used to engage with legal counsel in relation to "participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment" of the employee or employee's family. To determine whether the employee's use of sick leave is proper, employers should consult with their employment counsel or human resource specialist. For paid sick leave of four days or more, employers may require verification through reasonable documentation.

Employees are protected by the Act when using their paid sick leave. This protection extends to protection from retaliation for using the paid sick leave as allowed under the Act.

In cases of a public health emergency, the paid sick leave for employees converts to the rates and standards like those found within EPSLA and COVID-19 paid sick leave, such as 80 hours of unpaid leave for employees. Thus, in times of public health emergencies, the Act will extend paid sick leave and related paid leave to levels similar to the current COVID-19 paid sick leave relief instituted by the Act.

As noted above, the new paid sick leave requirements that are unrelated to COVID-19 are effective as of now for all employers, but then fluctuate until 2022, when all employers are again required to provide the paid sick leave.

Records and Notice Requirements

The Act requires that an employer retain paid sick leave records for each employee for a two-year period, "documenting hours worked, paid sick leave accrued, and paid sick leave used." The employer may be required to provide those records, upon proper notice, to the Division of Labor Standards and Statistics.

Additionally, employers should prepare to inform their employees that they are entitled to paid sick leave, pursuant to rules promulgated by the division. Such notice's requirements are listed within the Act, include the specific amount of paid sick leave entitled to the employees, and state that the employer cannot retaliate against employees for requesting or using paid sick leave, among other reasons. The [poster](#) created by the Division of Labor Standards and Statistics should be posted in a conspicuous and accessible location.

The penalty for not providing the notice is a civil fine not to exceed \$100 per each violation. The penalty is the same as that for not providing the poster. For example, providing neither a notice nor a poster would potentially have an employer facing \$200 in fines.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

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