

Alert | Labor & Employment



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Colorado Law Bans Age-Related Questions on Applications and Adds New Reasons to Use Paid Sick Leave

Governor Polis recently signed two laws affecting Colorado employers and employees. First, the **Job Application Fairness Act** (JAFA) prohibits all Colorado employers from requesting certain information related to prospective employees' age, as well as education attendance and graduation, on an initial employment application, beginning July 1, 2024. Second, Colorado's paid sick leave law, the Healthy Families and Workplaces Act (HFWA), was **amended** to entitle Colorado employees to use paid sick leave for additional reasons related to bereavement, family care in the event of school or daycare closures, and the need for an employee to evacuate their residence, effective Aug. 7, 2023.

Prohibition on Requesting Age-Related Information on Job Application

The JAFA prohibits employers from requesting or requiring information about an individual's age, date of birth, or dates of attendance at or date of graduation from an educational institution on an initial employment application, on or after July 1, 2024.

Employers are, however, permitted to request that an individual verify compliance with age requirements imposed pursuant to or required by: (1) a bona fide occupational qualification pertaining to public or occupational safety; (2) a federal law or regulation; or (3) a state or local law or regulation based on a bona fide occupational qualification, provided such requests otherwise comply with the law. An employer may also request or require an individual to provide additional application materials, such as transcripts or certifications, if the employer notifies the individual that they may redact information that identifies

the individual's age, date of birth, or dates of attendance at or date of graduation from an educational institution. Employers that violate the Jafa are subject to statutory penalties, but no private cause of action by affected individuals is authorized.

Additional Reasons to Use Paid Sick Leave

Since Jan. 1, 2021 (or Jan. 1, 2022, for small employers of 15 or fewer employees), the HFWA has required employers to provide Colorado employees up to 48 hours of paid sick leave each year ("HFWA Leave"). Colorado employees are entitled to use available HFWA Leave for delineated reasons (and under the terms and conditions set forth) in the HFWA related to illness, injury, and preventative care of the employee and their family members.

Effective Aug. 7, 2023, Colorado employees will be entitled to use available HFWA Leave for additional reasons, subject to the terms and conditions set forth in the HFWA. Specifically, Colorado employees will be able to use available HFWA Leave for the need to be absent from work for the following purposes, in addition to the reasons already articulated in the HFWA:

- The need to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member;
- The need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; or
- The need to evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee's residence.

This amendment to the HFWA does not change the amount of HFWA Leave required to be provided to Colorado employees. Further the HFWA amendment does not alter the fact that, as of June 9, 2023 (four weeks after May 11, 2023, the date the federal government's disaster declaration ended¹), Colorado employees are not entitled to use or be awarded more supplemental HFWA Leave related to the COVID-19 emergency pursuant to the HFWA's "supplemental public health emergency" provisions.

Conclusion

Colorado employers should update their job applications and paid leave policies to comply with the Jafa before July 1, 2024, and with the HFWA amendments by Aug. 7, 2023.

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¹ Colorado's ended several days earlier on May 4, 2023.

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