

# CDLE Employer Webinar Series



COLORADO  
Department of  
Labor and Employment

## *What You Need to Know About Paid Leave Law*

**February 25, 2021**

Presented by *Eric Yohe,*  
*Outreach Manager, Colorado Division  
of Labor Standards and Statistics*



# CDLE Employer Webinar Series

What You Need to Know About Paid Leave Law

# *Hello!*

***Eric Yohe, Outreach Manager***  
**Colorado Division of  
Labor Standards and Statistics**

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What You Need to Know About Paid Leave Law

## **Overview:** ***What We Will Discuss Today***

**The “Division”**

**The Healthy Families and  
Workplaces Act (*HFWA*)**

**“Accrued” Paid Sick Leave**

**Public Health Emergency Leave**

**Pay Rate for Paid Sick Leave**

**When Employees Can Use Paid Sick Leave**

**Documentation, Recordkeeping, and Notification Requirements**

**Q&A**

**Resources**

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# *The Division*

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## *Division of Labor Standards and Statistics*

# *Labor Standards*

## Wage and Hour

- Healthy Families and Workplaces Act (Paid Sick Leave)
- Wage Claims and Investigations - Unpaid Wages, Minimum Wage, Overtime
- Other laws related to the employer/worker relationship
  - Criminal History in Applications (Chance to Compete Act)
  - Equal Pay Transparency Requirements
  - Colorado WARNING Rules

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## *Division of Labor Standards and Statistics*

### ***Labor Market Information (LMI)***

Colorado Labor and Employment related statistics

LMI Gateway: [www.colmigateway.com](http://www.colmigateway.com)

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## ***Colorado Healthy Families and Workplaces Act (HFWA)***

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## ***Colorado Healthy Families and Workplaces Act (HFWA)***

### ***Senate Bill 20-205 | Effective July 15, 2020***

- Applies to all “employers” and “employees” in Colorado
  - Same definition as in Colorado Wage Act (private sector employers)
  - Also includes state and local government agencies



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## ***Colorado Healthy Families and Workplaces Act (HFWA)***

### ***Three types of HFWA leave***

- Accrued (“Section 403”) leave
- Public Health Emergency (PHE) leave
- Colorado required Federal Families First Coronavirus Response Act (FFCRA) PSL

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## *Colorado Healthy Families and Workplaces Act (HFWA)*

***Unpaid Paid Sick Leave is  
“wages” under Colorado law.***

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## ***Accrued HFWA Leave (Section 403)***

**Beginning January 1, 2021 - Employees “accrue” (earn) 1 hour of paid leave per 30 hours worked, up to 48 hours per year, paid at the same hourly rate or salary and with the same benefits.**

- Starts first day of employment
- Accrual based on “time worked”
- Overtime-exempt employees accrue based on their normal hours worked up to a maximum of 40 per week
- Employers may choose faster accrual and/or more leave
- Employers may use a more general leave plan (e.g. PTO) to comply with HFWA, but must provide same amount or more of HFWA leave for all HFWA reasons (see Wage Protection Rule 3.5.4)

**Employers with 15 or fewer employees are not subject to accrued leave requirements until January 1, 2022. Use FMLA formula to determine number of employees. (See Colorado Wage Protection Rule 2.7.4)**

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## ***Qualifying Reasons for Accrued (Section 403) Leave***

- 1| A mental or physical illness, injury, or health condition that prevents work;**
- 2| Obtaining preventive medical care, or a medical diagnosis, care, or treatment, of any mental or physical illness, injury, or health condition;**
- 3| Being a victim of domestic abuse, sexual assault, or criminal harassment who needs leave for medical attention, mental health care or other counseling, victim services (including legal), or relocation; or**
- 4| Care for a family member who has a mental or physical illness, injury, or health condition, or who needs the sort of care listed in category (2) or (3);**
- 5| Due to a public health emergency, a public official closed the employee's (A) place of business, or (B) child's school or place of care, requiring the employee to care for the child**

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## ***Public Health Emergency (Section 405) Leave***

**Applies to ALL employers regardless of size and Effective Jan. 1, 2021 for Covid-19 Public Health Emergency (PHE)**

***“On the date a Public Health Emergency is declared”***, all employers must **supplement** whatever amount of paid leave the EE has accrued to ensure the EE can take up to **80 hours** of leave in order to:

1. self-isolate and care for oneself because the employee is experiencing symptoms of or is diagnosed with a communicable illness that is the cause of a public health emergency;
2. seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a public health emergency;
3. seek preventive care concerning a communicable illness that is the cause of a public health emergency;
4. Care for a family member who is experiencing 1-3 above.

For employees hired after Jan. 1, 2021, PHE leave coverage is immediate.

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## ***Amount of PHE Supplement***

Instant supplement to allow up to 80 hours for a PHE (currently Covid) related reason (currently Covid)

- For employees normally working 40 or more hours in a week, 80 hours of total leave (accrued plus PHE supplement)
- For employees normally working under 40 hours in a week, the greater of the number of hours the employee (a) is scheduled for work or paid leave in the upcoming fourteen-day period, or (b) actually worked on average in the fourteen-day period prior to the declaration of the public health emergency.
- Accrued leave may count “against” PHE supplement
- Separate from any Covid related leave required/provided in 2020

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## ***Pay Rate for Accrued and PHE Leave***

Accrued leave and PHE leave are paid at the employee's "regular rate":

- Compensated at the same hourly rate or salary and with the same benefits, including health care benefits, as the employee normally earns during hours worked.
- Employees with non-hourly pay
  - Paid at the employee's "regular rate" (over the 14 days the employee worked prior to qualifying for leave)
  - Must be at least the highest applicable minimum wage
- More info on regular rate in INFO # 6B and the COMPS Order #37

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## ***When Can Employees Use PSL?***

Accrued leave and PHE leave are paid at the employee's "regular rate":

- As it is earned
  - Employer may require use in hourly increments,
  - or may require or allow smaller minimum increment
  - Employer can loan leave in advance
- Unused leave rolls over from year-to-year but an employee can only "use and accrue" 48 hours of paid leave per year.



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## *When Can Employees Use PSL?*

### **PHE (Section 405):**

- **Right away, supplemented as a lump amount**
- **Until 4 weeks after the declared end of the PHE**
- **Sequencing: If reason for leave is a PHE reason, must use supplemental before dipping into any accrued leave (Wage Protection Rule 3.5.1(D)(3))**

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## *Documentation & Recordkeeping*

- Employers can require “reasonable” documentation of the need for accrued 403 leave, but only for “four or more consecutive work days”
  - Submitted by any “reasonable” method (can include an employee’s “own writing”)
  - Insufficient documentation requires notice to employee and opportunity to cure
  - See Wage Protection Rule 3.5.6 for more information

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## *Documentation & Recordkeeping*

- An employer **may not** require an employee to provide documentation that leave is for a qualifying reason “related to [a] public health emergency” (Section 405 leave)

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## *Documentation & Recordkeeping*

- **Employer Recordkeeping Requirements**
  - **Two-year period**
  - **“Hours worked, paid sick leave accrued, and paid sick leave used”**

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## Notification and Posting



### Colorado Workplace Public Health Rights Poster: PAID LEAVE, WHISTLEBLOWING, & PROTECTIVE EQUIPMENT Division of Labor Standards & Statistics

Effective January 1, 2021  
*Must be updated annually; new poster available 1st week of each December*

#### THE HEALTHY FAMILIES & WORKPLACES ACT (“HFWA”): Paid Leave Rights

##### Coverage: Employers with at least 16 employees are required to provide paid leave under the HFWA

- Employees earn 1 hour of paid leave per 30 hours worked (“accrued leave”), up to 48 hours a year.
- Up to 80 hours of supplemental leave applies in a public health emergency (PHE), until 4 weeks after the PHE ends.
- Regular hours and pay set the rate of accrual and compensation for leave, during which benefits continue.
- Up to 48 hours of unused accrued leave carries over for use the next year.
- For details on specific situations (irregular hours, non-hourly pay, etc.), see Wage Protection Rule 3.5, 7 CCR 1103-7.

##### Employees can use accrued leave for the following safety or health needs:

- (1) a mental or physical illness, injury, or health condition that prevents work, including diagnosis or preventive care;
- (2) domestic abuse, sexual assault, or criminal harassment leading to health, relocation, legal, or other services needs;
- (3) has a family member experiencing a condition described in category (1) or (2); *or*
- (4) in a PHE, a public official closed the workplace, or the school or place of care of the employee’s child.

##### In a public health emergency (PHE), employees can use supplemental PHE leave for the following needs:

- (1) self-isolating or work exclusion due to exposure, symptoms, or diagnosis of the communicable illness in the PHE;
- (2) seeking a diagnosis, treatment, or care (including preventive care) of such an illness;
- (3) being unable to work due to a health condition that may increase susceptibility to or risk of such an illness; *or*
- (4) caring for a child or other family in category (1)-(3), or whose school or child care is unavailable due to the PHE.

During a PHE, employees still earn up to 48 hours of accrued leave and may use supplemental leave before accrued leave.

##### Employer Policies (Notice; Documentation; Incremental Use; Privacy; and Paid Leave Records)

- **Written notice and posters.** Employers must (1) provide notice to new employees no later than other onboarding documents/policies; and (2) display updated posters, and provide updated notices to current employees, by end of year.
- **Notice for “foreseeable” leave.** Employers may adopt “reasonable procedures” in writing as to how employees should provide notice if they require “foreseeable” leave, but cannot deny paid leave for noncompliance with such a policy.
- **An employer can require documentation to show that leave was for a qualifying reason only if leave was taken for four or more consecutive work days** (*i.e.* days on which an employee would have worked, not calendar days).
- **Documentation is not required to take paid leave**, but can be required as soon as an employee can provide it after returning to work or separating from work (whichever is sooner). **No documentation can be required for PHE leave.**
- **To document leave for an employee’s (or an employee’s family member’s) health-related need**, an employee may provide: (1) a document from a health or social services provider *if* services were received and document can be obtained in reasonable time and without added expense; *otherwise* (2) the employee’s own writing.
- **To document that an employee (or an employee’s family member) required leave for a need related to domestic abuse, sexual assault, or criminal harassment**, an employee may provide: a document or writing under (1) above (*e.g.* from a provider of legal or shelter services) or (2) above, or a legal document (*e.g.*, a restraining order or police report).
- **If an employer reasonably deems an employee’s documentation deficient**, the employer must: (A) notify the employee within seven days of either receiving the documentation or the employee’s return to work or separation (whichever is sooner), and (B) give the employee at least seven days to cure the deficiency.

- **Incremental use.** Depending on employer policy, employees can use leave in either hourly or six-minute increments.
- **Employee Privacy.** Employers cannot require employees to disclose “details” about an employee’s (or their family’s) HFWA-related health or safety information; such information must be treated as a confidential medical record.
- **Records must be provided upon request.** Employers must provide documentation of the current amount of paid leave employees have (1) available for use, and (2) already used during the current benefit year, including any supplemental PHE leave. Information may be requested once per month or when the need for HFWA leave arises.

##### Retaliation or Interference with HFWA Rights

- **Paid leave cannot be counted as an “absence”** that may result in firing or another kind of adverse action.
- **An employee can’t be required to find a “replacement worker” or job coverage when taking paid leave.**
- **An employer cannot fire, threaten, or otherwise retaliate against, or interfere with use of leave by**, an employee who: (1) requests or takes HFWA leave; (2) informs or assists another person in exercising HFWA rights; (3) files a HFWA complaint; or (4) cooperates/assists in investigation of a HFWA violation.
- **If an employee’s reasonable, good-faith HFWA complaint, request, or other activity is incorrect**, an employer need not agree or grant it, but cannot *act against* the employee for it. Employees *can* face consequences for misusing leave.

#### THE PUBLIC HEALTH EMERGENCY WHISTLEBLOWER LAW (“PHEW”): Worker Rights to Express Workplace Health Concerns & Use Protective Equipment

##### Coverage: All Employers and Employees, Plus Certain Independent Contractors

- PHEW covers not just “employers” and “employees,” but all “principals” (an employer or a business with at least 5 independent contractors) and “workers” (employees or independent contractors at a “principal”).

##### Worker Rights to Oppose Workplace Health/Safety Violations During Public Health Emergencies:

- It is unlawful to retaliate against, or interfere with, the following acts during, and related to, a public health emergency:
  - (1) **raising reasonable concerns**, including informally, to the principal, other workers, the government, or the public, about workplace violations of government health or safety rules, or a significant workplace health or safety threat;
  - (2) **opposing or testifying, assisting, or participating** in an investigation or proceeding about retaliation for, or interference with, the above-listed conduct.
- A principal need not address a worker’s PHEW-related concern, but it still cannot fire or take other *action against* the worker for that reason, as long as the concern was reasonable and in good-faith.

##### Workers’ Rights to Use Their Own Personal Protective Equipment (“PPE”):

- A worker must be allowed to **voluntarily wear their own PPE** (mask, faceguard, gloves, etc.) if the PPE (1) provides **more protection** than equipment provided at the workplace, (2) is **recommended** by a government health agency (federal, state, or local), and (3) does not make the worker **unable to do the job**.

##### COMPLAINT RIGHTS (under both HFWA & PHEW)

- Violations may be reported to the Division as complaints or anonymous tips, or may be filed as in court after exhausting pre-lawsuit remedies.

This Poster summarizes two Colorado workplace public health laws, SB 20-205 (paid leave) and HB 20-1415 (whistleblowing and personal protective equipment). It does not cover other health or safety laws, rules, and orders, including under the federal Occupational Safety and Health Act (OSHA), from the Colorado Department of Public Health and Environment (CDPHE), or from local public health agencies. Contact those agencies for such health and safety information.

**This poster must be displayed where it is easily accessible to workers, shared with remote workers, provided in languages other than English as needed, and replaced annually.**

For full versions of these laws, more detailed fact sheets, or questions, information, or complaints as to these or other labor laws, contact:  
Division of Labor Standards and Statistics, [coloradolaborlaw.gov](http://coloradolaborlaw.gov), [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us), 303-318-8441 / 888-390-7936.

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## Notification and Posting

	<b>COLORADO</b> Department of Labor and Employment	<b>Colorado Workplace Public Health Rights Poster:</b> <b>PAID LEAVE, WHISTLEBLOWING, &amp; PROTECTIVE EQUIPMENT</b> Division of Labor Standards & Statistics	<b>Effective January 1, 2021</b> <i>Must be updated annually; new poster available 1st week of each December</i>
<b>THE HEALTHY FAMILIES &amp; WORKPLACES ACT (“HFWA”): Paid Leave Rights</b> <u>Coverage: Employers with at least 16 employees are required to provide paid leave under the HFWA</u> <ul style="list-style-type: none"><li>• Employees earn 1 hour of paid leave per 30 hours worked (“accrued leave”), up to 48 hours a year.</li><li>• Up to 80 hours of supplemental leave applies in a public health emergency (PHE), until 4 weeks after the PHE ends.</li><li>• Regular hours and pay set the rate of accrual and compensation for leave, during which benefits continue.</li><li>• Up to 48 hours of unused accrued leave carries over for use the next year.</li><li>• For details on specific situations (irregular hours, non-hourly pay, etc.), see Wage Protection Rule 3.5, 7 CCR 1103-7.</li></ul> <p><u>Employees can use accrued leave for the following safety or health needs:</u></p>		<ul style="list-style-type: none"><li>• <b>Incremental use.</b> Depending on employer policy, employees can use leave in either hourly or six-minute increments.</li><li>• <b>Employee Privacy.</b> Employers cannot require employees to disclose “details” about an employee’s (or their family’s) HFWA-related health or safety information; such information must be treated as a confidential medical record.</li><li>• <b>Records must be provided upon request.</b> Employers must provide documentation of the current amount of paid leave employees have (1) available for use, and (2) already used during the current benefit year, including any supplemental PHE leave. Information may be requested once per month or when the need for HFWA leave arises.</li></ul> <p><b>Retaliation or Interference with HFWA Rights</b></p> <ul style="list-style-type: none"><li>• <b>Paid leave cannot be counted as an “absence”</b> that may result in firing or another kind of adverse action.</li></ul>	
<h3>HFWA requires employers to:</h3>			
<p>1  Notify employees in writing of the right to take paid leave, in the amounts and for the purposes in HFVA, without retaliation, and</p>	<p>2  Display an informational Division poster.</p>		
<p>from a provider of legal or shelter services) or (2) above, or a legal document (e.g., a restraining order or police report).</p> <ul style="list-style-type: none"><li>• <b>If an employer reasonably deems an employee’s documentation deficient</b>, the employer must: (A) notify the employee within seven days of either receiving the documentation or the employee’s return to work or separation (whichever is sooner), and (B) give the employee at least seven days to cure the deficiency.</li></ul>		<p><b>COMPLAINT RIGHTS (under both HFVA &amp; PHEW)</b></p> <ul style="list-style-type: none"><li>• Violations may be reported to the Division as complaints or anonymous tips, or may be filed as in court after exhausting pre-lawsuit remedies.</li></ul>	
<p>This Poster summarizes two Colorado workplace public health laws, SB 20-205 (paid leave) and HB 20-1415 (whistleblowing and personal protective equipment). It does not cover other health or safety laws, rules, and orders, including under the federal Occupational Safety and Health Act (OSHA), from the Colorado Department of Public Health and Environment (CDPHE), or from local public health agencies. Contact those agencies for such health and safety information.</p> <p><b>This poster must be displayed where it is easily accessible to workers, shared with remote workers, provided in languages other than English as needed, and replaced annually.</b></p> <p>For full versions of these laws, more detailed fact sheets, or questions, information, or complaints as to these or other labor laws, contact: Division of Labor Standards and Statistics, <a href="http://coloradolaborlaw.gov">coloradolaborlaw.gov</a>, <a href="mailto:cdle_labor_standards@state.co.us">cdle_labor_standards@state.co.us</a>, 303-318-8441 / 888-390-7936.</p>			

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# Q&A



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## *Division of Labor Standards and Statistics*

# Resources

### **DLSS Website**

[Coloradolaborlaw.gov](http://coloradolaborlaw.gov)

### **Healthy Families and Workplaces Act**

[leg.colorado.gov/sites/default/files/2020a\\_205\\_signed.pdf](http://leg.colorado.gov/sites/default/files/2020a_205_signed.pdf)

### **DLSS INFOs (Fact Sheets) #6B and #6C**

[cdle.colorado.gov/interpretive-notice-formal-opinions-infos-other-published-guidance](http://cdle.colorado.gov/interpretive-notice-formal-opinions-infos-other-published-guidance)



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# Resources

### **Colorado Wage Protection Rules**

[cdle.colorado.gov/laws-regulations-guidance](https://cdle.colorado.gov/laws-regulations-guidance)

### **COMPS Order #37**

[cdle.colorado.gov/colorado-overtime-minimum-pay-standards-comps-order](https://cdle.colorado.gov/colorado-overtime-minimum-pay-standards-comps-order)

### **Required Paid Sick Leave and Wage Law Posters**

<https://cdle.colorado.gov/posters-0>

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# *Thanks!*