

## **The New Colorado Paid Sick Leave Law: A Summary And Its Implications For Employers**

In late June, the Colorado Legislature passed SB20-205, and it was signed into law by Governor Jared Polis on Tuesday July 14, 2020. Upon signing, many of the new law's requirements went into effect immediately, so it is vitally important to have an understanding of what is required of employers under the Healthy Families and Workplace Act ("HFWA") administered by the Colorado Department of Labor and Employment ("CDLE").

The new law focuses on ensuring that Colorado workers have expanded protection to take sick leave or family leave when necessary. The law provides three different, but overlapping, types of paid leave for workers: 1) COVID-19 emergency paid sick leave ("CO-ESPL"); 2) Paid sick and safe time ("PSST"); and 3) Public health emergency sick time ("PHEST"). Each of these programs apply to any employer who has employees located in Colorado, however it does not apply to independent contractors or employees subject to Railroad unemployment protection. The HFWA also has implications for employers who are parties to multi-employer or individual collective bargaining agreements ("CBA"). For instance, if employees are subject to an individual CBA, the agreement must provide sick leave at least as generous as the requirements in HFWA requirement to avoid the applicability of the HFWA. It is currently unclear if the CBA sick leave must meet the PSST requirements or all required leave time under the HFWA.

### **COVID-19 Emergency Paid Sick Leave ("CO-ESPL")**

In April, the federal government enacted the Emergency Paid Sick Leave Act ("EPSLA"), as part of the Families First Coronavirus Response Act ("FFCRA"). The EPSLA and the FFCRA require employers to provide up to 80 hours of FFCRA paid sick leave to employees who are unable to work or work remotely because they meet one of these criteria:

1. Worker is subject to a government quarantine or isolation order due to concerns around COVID-19 or is caring for a person under such an order. (at full pay)
2. Worker has been advised by a healthcare provider to self-quarantine due to COVID-19 concerns or is caring for a person under self-quarantine advisory. (at full pay)
3. Worker is experiencing COVID-19 symptoms and seeking a medical diagnosis. (at full pay)
4. Worker is caring for a child whose school or daycare is closed or whose childcare provider is unavailable due to COVID-19. (at 2/3 pay)
5. Experiencing any other "substantially similar condition" as yet undefined by the Secretary of Health and Human Services.

Colorado's HFWA would expand these requirements to all employers with workers in Colorado, whereas the federal law only applied to companies with fewer than 500 workers. Some employers may have expanded their leave in response to the Colorado's Health Emergency Leave with Pay Rules ("HELP"). It is unclear if actions taken under HELP will count towards the new HFWA requirements.

### **Paid Sick and Safe Time (PSST)**

The new PSST requirements do not take effect upon signature by the Governor. The PSST requirements in the bill will go into effect for all businesses with more than 16 or more employees on January 1, 2021, and then apply to all other employers on January 1, 2022. Upon employment, employees must accrue

one hour of PSST for every 30 hours worked (40 or regular week's hours for overtime-exempt employees). PSST accrual is limited to 48 hours per year. Alternatively, employers can provide employees with an amount of PSST at the beginning of the year that meets or exceeds the requirement. The legislation is silent on carry-over obligations. The legislation allows that employers do not have to provide additional paid sick time if their policies already provide enough paid leave to meet the PSST and the PHEL requirement *AND* allow employees to use that paid leave for the same purposes under the same conditions as articulated in the legislation. Employees may use accrued PSST time in hourly increments for the following purposes:

- Mental or physical illness, injury, or health condition of the employee or family member.
- Medical diagnosis, care, or treatment related to an employee's or family member's illness, injury, or condition.
- Preventive medical care.

Additionally, if an employee or family member is the victim of domestic abuse, sexual assault, or harassment, employees can use leave for the following safe time purposes:

- Seeking medical attention to recover from a mental or physical illness, injury, or health condition caused by the domestic abuse, sexual assault, or harassment.
- Obtaining services from a victims' service organization.
- Obtaining mental health or other counseling.
- Seeking relocation due to the domestic abuse, sexual assault, or harassment.
- Seeking legal services, including preparing for or participating in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment.

Employees also may use PSST-accrued time to cover many of the same public health emergency needs as CO-ESPL, including the order of businesses to close, closure of schools or daycare resulting in an employee needing to care for a child. "Family member" is also broadly defined to include immediate family by blood, adoption or marriage/civil union, as well as a child for whom the employee stands *in loco parentis* or a person who stood *in loco parentis* for the employee when the employee was a minor, or anyone the employee is responsible for in providing or arranging health or safety related care. Employers must allow employees to use leave upon request, but employees must make reasonable efforts to avoid operational disruptions and employers may implement reasonable procedures for providing notice. However, employers cannot deny leave if procedures are not followed but may require reasonable documentation of a covered purpose for leave if the employee takes four or more consecutive workdays of leave. PSST does not need to be paid out when employment ends unless retaliatory action prevented the employee from using the leave.

## **Public Health Emergency Leave ("PHEL")**

In the event of a public health emergency, employees are entitled to more leave in addition to PSST. Employees normally working 40 hours or more per week are entitled to at least 80 hours of PHEL. Employees who work less than 40 hours are entitled to leave at the number of hours an employee is scheduled to work or actually works in a 14-day period, whichever is greater. PHEL may only be used once during a public health emergency ("PHE"). HFWA defines PHE as: bioterrorism, pandemic, or

epidemic for which a disaster emergency is declared by the Governor or a federal state or local public health agency.

Employees can use PHEL for the following reasons:

- To self-isolate because the employee is experiencing symptoms or is diagnosed with the disease causing the PHE.
- To seek medical diagnosis, treatment, or other care for symptoms consistent with the disease causing the PHE.
- To seek preventative care relating to the disease causing the PHE.
- To care for a family member who needs the kind of care described above.
- If the employee is determined to be a hazard to the health of the community based on symptoms as determined by local officials.
- If the employee has an increased susceptibility to the PHE illness based on other health issues.
- To care for a child if the school or childcare is closed, unavailable, or only conducting instruction remotely.

### **Requirements, Prohibitions, and Enforcement.**

Employers are required to provide written notice to employees of the amount of HFWA time granted and the terms of use under the HFWA. Employees must also be aware that they are protected from retaliation or interference for seeking and/or using these benefits. The legislation provides for filing a complaint with the Colorado Division of Labor Standards and Statistics within the CDLE or a civil suit in state district court to protect that leave. Employers must display CDLE posters with this information in English and any other first language spoken by 5% or more of the employees. Employers must maintain a record of hours worked, paid leave accrued and used under HFWA for a period of two years.

Employers cannot contract with employees to waive sick leave or require the employee to find coverage as a condition of using leave. Employers may not count sick leave as an absence resulting in discipline or otherwise retaliate against employees for using leave.

Employees may file a CDLE complaint if they believe their rights under HFWA have been infringed. Employees may also file a civil suit after filing a CDLE complaint or making a written demand to the employer. An employer has 14 days to respond to a demand or CDLE complaint notice.

### **What Now?**

The CO-ESPL conditions of the legislation became effective immediately upon the Governor's signature, so working to comply with those requirements must be the focus of business in the short term. The other provisions will have a few months of roll out, allowing businesses to prepare. This new legislation is extensive and Jackson Kelly PLLC's local and national team of commercial and employment attorneys is ready to help answer questions and aid in compliance moving forward.