

FOR THE NEW YEAR, COLORADO MAKES COVID-19 THE GIFT THAT KEEPS GIVING (PAID TIME OFF)

Jan 15, 2021

On the night before Christmas Eve, the Colorado Department of Labor and Employment (CDLE) issued a surprise opinion that Colorado employers are required to provide still more paid sick leave for COVID-19 in 2021. In its Interpretive Notice & Formal Opinion #6C (INFO #6C), CDLE opined that all Colorado employers would be required, as of January 1, 2021, to grant employees up to 80 more hours of paid sick leave for COVID-related absences pursuant to the Healthy Families and Workplaces Act (HFWA). INFO #6C can be found [here](#).

Background:

- In response to COVID-19, Section 406 of the HFWA required all Colorado employers, in 2020, to provide the Emergency Paid Sick Leave described in the federal Families First Coronavirus Response Act (FFCRA), without regard to the coverage provisions of the FFCRA. As a result, in 2020, Colorado employers of all sizes were required to provide up to 80 hours of paid sick leave for certain COVID-related absences described in the FFCRA. That requirement under Section 406 expired with 2020.
- To address possible future pandemics, the Colorado General Assembly also included Section 405 in the HFWA. Under Section 405, “on the date a public health emergency is declared, each employer in the state shall supplement each employee’s accrued paid sick leave as necessary to ensure that an employee may take” up to 80 additional hours of paid sick leave for an expanded list of authorized absences. That requirement was commonly understood to apply if a new public health emergency were to be declared in the future (such as “COVID-21” or “Swine Flu 2023”).
- However, in its Christmas gift to Colorado employees (and corresponding lump of coal for Colorado employers), CDLE concluded that, because COVID-19 will still be with us in 2021, employers are required to provide up to 80 hours of additional paid sick leave in 2021 under Section 405, regardless of any leave an employee may have taken in 2020 under Section 406. Specifically, CDLE concluded that the governor’s extension of the state of emergency that

existed in 2020 qualified as a new declaration of a public health emergency, triggering Section 405.

Accordingly, all employers with at least one employee in Colorado are now required to supplement their Colorado employees' balances of paid sick leave sufficiently to ensure that each full-time employee may take up to 80 hours of paid leave for specified COVID-related reasons. (Part-time employees may take paid leave equal to the greater of the number of hours they are scheduled to work in a 14-day period or the number of hours they actually work on average in a 14-day period.)

Employees may use the paid sick leave for any of the following reasons:

1. the employee needs self-isolation or self-care due to being diagnosed with or having symptoms of COVID-19;
2. the employee needs to seek medical diagnosis or care due to symptoms of COVID-19;
3. the employee needs to seek preventive care related to COVID-19;
4. the employee must care for a family member who has a need described in (1)-(3);
5. the employee's employer, or a public official or health authority with jurisdiction over the workplace, determines that the employee's presence in the workplace or the community would jeopardize the health of others due to the employee being exposed to or having symptoms of COVID-19;
6. the employee must care for a family member after the family member's employer, or a public official or health authority with jurisdiction over the family member's workplace, determines that the family member's presence in the workplace or the community would jeopardize the health of others due to the family member being exposed to or having symptoms of COVID-19
7. the employee must care for a child or other family member because the child care provider is unavailable, or the school or place of care has been closed to in-person attendance, due to COVID-19; or
8. the employee is unable to work due to a health condition that may increase susceptibility to or risk of COVID-19.

The fine print:

- Employers may not require documentation of the need for this leave.
- Leave taken for COVID-related reasons in 2020 does not count toward the leave that must be granted in 2021.

- Employees may use the paid sick leave until four weeks after the official termination or suspension of the public health emergency.

Happy New Year from the Colorado Department of Labor and Employment.

BCLP has assembled a COVID-19 HR and Labor & Employment taskforce to assist clients with labor and employment issues across various jurisdictions. You can contact the taskforce at: COVID-19HRLabour&EmploymentIssues@bclplaw.com. You can also view other thought leadership, guidance, and helpful information on our dedicated COVID-19 / Coronavirus resources page at <https://www.bclplaw.com/en-GB/topics/covid-19/coronavirus-covid-19-resources.html>

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