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## Compliance Connection

August 17, 2020

### Federal Compliance Update

Let's face it, with all of the new paid leave regulations and acronyms thrown at us since March, some of us are confused as to what is still in effect and how they all work together.

The following serves as a guideline to both federal and Colorado regulations still in effect that employers must continue to follow. Lest we forget, we have one coming January 1, 2021.

#### Federal

#### Families First Coronavirus Response Act (FFCRA)

- **Emergency Family Medical Leave Expansion (EFMLE) effective April 2, 2020 through December 31, 2020**
  - **Who must comply:** Employers with less than 500 employees.
  - **Who is covered:** Employees employed more than 30 calendar days. Health care providers or emergency responders ***may*** be excluded.
  - **Purpose:** Care for an employee's child under 18 if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency, defined as an emergency with respect to the coronavirus declared by a federal, state, or local authority.
  - **Duration:** Up to 12 weeks of job-protected leave.
    - Must be returned to the same job or to an "equivalent job". An equivalent job means a job that offers the same terms of pay, benefits, and other employment terms and conditions (including shift and location).
    - **Employers with less than 25 employees may be exempt from this if certain conditions are met.**
  - **Compensation:**
    - No pay for first 10 days of leave (employee can, but is not required, to use any other leave available to them, including the emergency sick leave discussed below). Employers may not require employees to use paid leave during this period.
    - After 10 days, employers must pay two thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.
  - **Posting requirements:** Employers must post a model notice, which will be provided by the federal government.

- **Emergency Paid Sick Leave (EPSL) effective April 2, 2020 through December 31, 2020**
  - **Who must comply:** Employers with less than 500 employees.
  - **Who is covered:** All employees employed. Health care providers or emergency responders ***may*** be excluded.
  - **Purpose and compensation:** To assist employees with a paid sick leave if they experience any of the following:
    - Quarantine or isolate due to a federal, state, or local quarantine/isolation order (full regular rate of pay).
    - Self-quarantine due to concerns related to COVID-19 as advised by a health care provider (full regular rate of pay).
    - Experience COVID-19 symptoms and seeking medical diagnosis (full regular rate of pay).
    - Care for an individual experience the first two (2) reasons described above (2/3 regular rate of pay).
    - Care for a child whose school or place of care is closed due to COVID-19 (2/3 regular rate of pay).
    - Experience any other substantially similar condition (2/3 pay).
    - Pay is capped at \$511/day and \$5,110 total for the first three (3) reasons described above.
    - Pay is capped at \$200/day and \$2,000 total for the last three (3) reasons described above.
  - **Duration:** Up to 80 hours of paid sick leave.
    - Full time employees are entitled to 80 hours of paid sick leave.
    - Part time employees are entitled to sick leave equal to the amount of hours worked on average over a typical two-week period.
  - **Implementation:** Employers may not require employees to use any other leave first.
  - **Posting requirements:** Employers must post a model notice, which will be provided by the federal government.

## **State**

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

#### **Phase I – effective July 15, 2020 through December 31, 2020**

- **Who must comply:** All employers in Colorado with the exception of the federal government or those covered by the federal Railroad Unemployment Insurance Act.
- **Who is covered:** Employees who:
  - Experience COVID-19 symptoms and are seeking medical diagnosis.
  - Instructed by a government agent or a health provider to quarantine or isolate due to COVID-19 risk.
  - Care for someone else due to COVID-19 precautions -- either someone ordered to quarantine or isolate, or a child whose school, place of care, or childcare is closed or unavailable.

- **Duration:** Employees can take up to two (2) weeks of paid leave: up to 80 hours, depending on their weekly hours.
- **Compensation:**
  - Paid leave is at their regular pay rate if time off is for themselves.
  - Paid at 2/3 of their regular pay to care for someone else
  - The pay rate does not include overtime or bonuses.
  - If pay is all or partly sales-based, paid leave must be either at the employee's hourly or salaried rate, or at the applicable minimum wage (whichever is higher).
  - If an employee already received paid leave in 2020 for COVID-19-related needs, that counts as part of the 2 weeks that HFWA requires, but leave provided for non-COVID conditions does not count toward what HFWA requires.
- **Posting:** Click [here](#) for the Colorado poster from the Colorado Department of Labor and Employment (CDLE).

### Phase II – Earned sick pay

- **Compliance and effective dates:**
  - Employers with 16 or more employees must comply January 1, 2021.
  - All employers must comply January 1, 2022.
- **Who is covered:** All employees employed.
- **Accrual:**
  - Employees earn one hour of paid sick leave (at their regular rate of pay) for every 30 hours worked, capped at 48 hours per year (in both accrual and usage).
  - Begins upon hire, and employers may loan or frontload paid sick leave in advance of accrual.
  - Employers can continue to use their pre-existing paid sick leave policies if they meet the act's requirements.
- **Purpose:** Employees may use paid sick leave for themselves or a family member to:
  - Treat an injury or health condition that prevents them from working.
  - Receive diagnosis or treatment of an illness or injury.
  - Obtain medical care.
  - Abuse victim care or related legal services.
  - Accommodate for a workplace (or school or place-of-care) closure due to a public emergency.
- **Reinstatement:** If an employer rehires an employee within six months of separation, then their accrued, unused paid sick leave must be reinstated (unless the employee received a payout at separation).

### Phase III – Additional Leave During Public Health Emergency and COVID-19 Related Leave

- **Compliance and effective dates:**
  - Employers with 16 or more employees must comply January 1, 2021.
  - All employers must comply January 1, 2022.
- **Who is covered:** All employees employed.
- **Accruals and purpose:** If a public health emergency is declared, employers must

supplement each employee's accrued paid sick leave as follows:

- Employees who normally work 40 or more hours per week receive 80 hours of additional paid sick leave.
- Employees who normally work fewer than 40 hours per week receive as additional leave the number of hours they are scheduled to work in a 14-day period, or the average time they work in a 14-day period — whichever is greater.
- **Other provisions:**
  - Employers may count any unused accrued paid sick leave toward the required supplemental paid sick leave.
  - An employee may use paid sick leave up to four (4) weeks after the public health emergency officially ends.
  - Documentation is not required to take this additional leave.

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