

Labor & Employment Alert: Colorado

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UPDATE: Colorado Health Emergency Leave with Pay (“Colorado HELP”) Rules

On April 27, 2020, the Colorado Department of Labor and Employment updated its rules that mandate employers in certain industries to provide paid leave for employees who have COVID-19 (coronavirus) symptoms. The Colorado HELP Rules became effective March 11, 2020 by executive order of Governor Jared Polis and remain in effect through May 27, 2020, or the duration of the State of Disaster Emergency declared by the Governor, up to July 11, 2020.

The Law:

Colorado employers of all sizes in the following fields are required to pay any employee up to two weeks of paid leave at two-thirds the employee’s rate of pay if the employee has coronavirus related symptoms and is being tested for the coronavirus or has been ordered to self-quarantine:

- leisure and hospitality,
- food services,
- retail establishments,
- real estate sales and leasing,
- offices and office work,
- elective health services (including medical, dental, or other health services),
- personal care services (defined as hair, beauty, spas, massage, tattoos, pet care, or substantially similar services),
- food and beverage manufacturing,
- child care,
- education at all levels (including related services, including but not limited to cafeterias and transportation to, from, and on campuses),
- home health care (working with elderly, disabled, ill, or otherwise high-risk individuals),
- operating a nursing home, or
- operating a community living facility.

The rules require covered employers to provide up to two weeks (maximum of 80 hours) of paid sick leave to an employee with flu-like or respiratory illness symptoms who is (1) being tested for COVID-19 or who is (2) under instructions from a health care provider or authorized government official to quarantine or isolate due to a risk of having COVID-19. Under the rules, the paid sick leave ends “if an employee receives a negative COVID-19 test result once the employee has been fever-free for 72 hours, with other symptoms resolving as well – but not earlier than after seven calendar days off from work (or ten calendar days for health care workers covered by these rules), and in no event with more than fourteen paid sick days.” The maximum paid leave is 80 hours or fourteen paid sick days. Note, there is ambiguity in the drafting of the rules regarding the duration of paid leave. If you have issues with the duration of an employee’s leave, we recommend contacting an attorney.

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Paid leave must be provided at two-thirds of the employee’s regular rate of pay for regular work hours. Tipped employees must be paid two-thirds of the applicable minimum wage. If an employee’s rate of pay or hours worked had varied before the absence for illness, pay shall be in the amount of the employee’s average daily pay for their last month of work (whether or not continuous).

The rule does not replace paid time off or other paid sick leave policies. Accordingly, time can be deducted from an employee’s PTO accrual bank if the employee needs to be away from work while experiencing COVID-19 symptoms. If the employee is not eligible for PTO or sick leave, or has used it all, the employer must provide additional paid leave described above for this specific purpose.

A copy of the Colorado HELP Rules are available [here](#).

Notably, if an employee is eligible for leave under the Colorado HELP Rules as well as recently passed federal laws, the more restrictive rule applies. For review of paid leave available under federal law, see our alert on the Families First Coronavirus Response Act (FFCRA). The Colorado HELP Rules are applicable to employers with less than 50 employees or over 500 employees where FFCRA does not apply.

Please do not hesitate to contact Messner Reeves attorneys John Shunk or LaRona Kitzinger if you have further questions or would like assistance complying with this law.