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Colorado Labor Department Releases Emergency Rules on Paid Sick Leave for COVID-19

The Colorado Department of Labor (the “Department”) has issued an emergency rule, the Colorado Health Emergency Leave with Pay (“Colorado HELP”), which temporarily requires certain employers to provide paid sick leave to employees who may be impacted by COVID-19. The Department released this emergency rule after Governor Polis declared a State of Disaster Emergency on March 10, 2020. At that time Governor Polis directed the Department to initiate immediate rulemaking to provide some employees with paid sick leave and to identify additional supports and wage replacement, such as access to unemployment insurance.

Colorado HELP requires some employers to provide up to four (4) days of *paid* sick leave for an employee with flu-like symptoms and who is being tested for COVID-19. The paid leave ends if an employee receives a negative COVID-19 test result. The rule applies to employers in these fields:

Leisure and hospitality

Food services

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

Operating a community living facility

The rule does not define these fields, but employers who arguably fall into these categories should take note and recognize the need for compliance. The rule only applies to employees who have exhausted their paid leave allotted by the employer, so this rule will have a more limited impact on employers that already provide for PTO or paid sick leave. The rule does not require employers to provide additional days of paid sick leave if it already offers all employees an amount of paid leave sufficient to comply with the rule.

The law applies to employees regardless of the method of pay, whether hourly, salaried or otherwise. The required daily pay during leave is either the employee's established daily rate or, if their pay fluctuates, their average daily pay for the past month.

The rule does not provide for wage replacement should an employee test positive and require quarantine or medical treatment leading to lost work time and wages.

Violating Colorado HELP constitutes a failure to provide wages to employees under the Colorado Minimum Wage Order #35 and the Colorado Overtime and Minimum Pay Standards Order #36.

Colorado HELP took effect on March 11, 2020 and remains in effect for the longer of (a) 30 days after adoption, or (b) the duration of the State of Disaster Emergency, no more than 120 days after March 11, 2020.

Contact us

If you have questions about the new overtime and minimum pay standards, contact Sonia Anderson, Barbara Grandjean, Chris Ottele, or your Husch Blackwell attorney.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others.