

CO Paid Leave and COVID Update for Employers

Where Are We Now?

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January 18, 2022



Current CDC Isolation and Quarantine Guidance

Isolation v. Quarantine as of 1/9/22

Isolation = when employee is sick or has been infected with COVID, even if no symptoms

Quarantine = when employee has been in close contact with someone who has COVID

- Close contact = less than 6 ft. away from an infected person for a cumulative total of 15 minutes or more over a 24-hour period

Up-to-date on vaccination = with booster where recommended

<https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html>

Quarantine Guidelines (Exposed)

If not up-to-date on vaccination:

- Stay home for 5 full days, wear mask, and get tested Day 5 after exposure
- Watch for symptoms until Day 10, wear mask, and isolate immediately if symptoms develop

If up-to-date on vaccination:

- No quarantine, mask, and get tested Day 5 after exposure
- Watch for symptoms until Day 10, wear mask, and isolate immediately if symptoms develop

Day 0 is date of exposure. Day 1 is first full day after last contact with infected person.

Isolation Guidelines (Sick or Infected)

Regardless of vaccination status:

- Stay home for at least 5 full days, wear mask
- See next slide for when to end isolation

Day 0 is first day of symptoms or a positive test. Day 1 is first full day after symptoms developed or test specimen was collected.

Ending Isolation (Sick or Infected)

If symptoms:

- End isolation after 5 days if fever-free for 24 hours (without medication) and symptoms are improving, take precautions until Day 10, and wear mask

If no symptoms:

- End isolation after 5 days, take precautions until Day 10, and wear mask

If seriously ill with COVID:

- Isolate for at least 10 days and consult with doctor before ending isolation

Employers Must Continue To

Take appropriate workplace precautions

- Social distancing
- CDC recommends wearing masks for all employees working indoors (with limited exceptions) in areas of substantial to high transmission
- <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>

Investigate exposure situations and respond appropriately

- Notification to exposed co-workers and public health authorities

Clean and disinfect workspaces

Beyond HFWA Leave

For public employers and private employers with 50 or more employees, Family and Medical Leave may apply to extended COVID absences

For all employers, COVID can be—but is not always—a disability under the Americans with Disabilities Act

- May need engage in interactive process to determine if reasonable accommodation such as an extended leave of is appropriate absent undue hardship

Pay Docking When Sick Leave is Exhausted

Nonexempt employees (overtime eligible)

- Can dock for any amount of time missed due to illness

Exempt employees (not overtime eligible)

- Private employers, can dock for full-day only absences due to illness
- Public sector employers, can dock for partial- and full-day absences due to illness

COVID Paid Leave

**Federal Families First Coronavirus Response
Act has expired!. No further leave or tax
credits are available.**

CO Healthy Families and Workplaces Act (HFWA)

Now fully in effect

Requires employers to provide two types of leave:

1. Public health emergency leave (COVID-specific and time limited)
2. Paid sick leave (not COVID-specific and ongoing)

CO Healthy Families and Workplaces Act (HFWA)

Now fully in effect

All employers required to provide **public health emergency leave** beginning 1/1/21

Employers with 16 or more employees were required to provide **paid sick leave** beginning 1/1/21

Employers with 15 or fewer employees are required to provide **paid sick leave** beginning 1/1/22

Paid Sick Leave

Who gets it?

All employees

- Full-time
- Part-time
- Temporary
- Seasonal

* Same for public health emergency leave

Paid Sick Leave

How much do employees get?

1 hour : 30 hours worked up to a max of 48 hours per year, unless employer offers more

Can be frontloaded at the beginning of the year

Up to 48 hours can be carried over year-to-year*

Carryover may reduce amount accrued in subsequent year

Accrual and use in one year max out at 48 hours, unless employer offers more

*If 48 hours is frontloaded at the beginning of the next year, carryover requirement is met

Paid Sick Leave

What must employees be paid?

Same hourly rate or salary and same benefits employee normally earns for hours worked

Must be at least minimum wage, but need not include overtime, bonuses, or holiday pay

Commissioned employees receive greater of their hourly rate/salary or minimum wage

* Same for public health emergency leave

Paid Sick Leave

How can employees use it?

1. Having a mental or physical illness, injury, or health condition that prevents them from working;
2. Getting preventive medical care, or to get a medical diagnosis, care, or treatment, of any mental or physical illness, injury, or health condition;
3. Caring for a family member who has a mental or physical illness, injury, or health condition, or who needs the sort of care listed in category (2)

Paid Sick Leave

How can employees use it?

4. The employee or family member having been a victim of domestic abuse, sexual assault, or criminal harassment, and needing leave for related medical attention, mental health care or other counseling, victim services (including legal services), or relocation
5. Due to a public health emergency, a public official having closed either:
 - a. the employee's place of business or
 - b. the school or place of care of the employee's child, requiring the employee needing to be absent from work to care for the child.

Paid Sick Leave

Who is a family member?

Related by blood/adoption/marriage/civil union

Child to whom the employee stands *in loco parentis*, a person who stood *in loco parentis* to the employee when the employee was a minor

Anyone the employee is responsible for providing or arranging health- or safety-related care

Paid Sick Leave

What documentation can be required?

Reasonable documentation can be required for leave lasting 4 or more consecutive workdays

Reasonable = no more than is needed to show valid reason for leave – not “details”

Documentation must be kept confidential

Employee who did not receive services from a provider for a health-related absence or who cannot obtain a document from their provider in reasonable time or without added expense can provide **their own writing** indicating that they took leave for a HFWA-qualifying purpose

Paid Sick Leave

What notice must employees provide?

Employees must notify employer of foreseeable leave as soon as practicable

Employer may have reasonable procedures for notice of foreseeable leave, but cannot deny leave for untimely or lack of notice

* Same for public health emergency leave

Public Health Emergency Leave

How much do employees get?

One-time award on the day public health emergency is declared

Full-time employees up to 80 hours

Less than full-time employees get greater of 14-day schedule or 14-day actual hours worked

Public Health Emergency Leave

What can it be used for?

1. To self-isolate due to being diagnosed with or having symptoms of a communicable illness that is the cause of a public health emergency;
2. To seek diagnosis, treatment, or care (including preventive care) of such an illness;
3. For exclusion from work by a government health official, or by an employer, due to the employee having exposure to, or symptoms of, such an illness (whether or not they are actually diagnosed with the illness);

Public Health Emergency Leave

What can it be used for?

4. When unable to work due to a health condition that may increase susceptibility or risk of such an illness; or
5. When caring for a child or other family member who is in category (1), (2), or (3), or whose school, childcare provider, or other care provider is unavailable.

Public Health Emergency Leave

What notice and documentation can be required?

Employees must notify employer of foreseeable leave as soon as practicable

No documentation can be required to take leave

CO HFWA Public Health Emergency Leave

When does it end?

Federal public health emergency in place until 1/19/22

CO public health emergency in place until 1/27/22

Employees may use leave until 4 weeks after end/suspension of public health emergency by a federal, state, or local public health agency

If no further extensions, leave will expire 2/26/22

Watch for further extensions

HFWA Interaction with Existing Leave

Employers are not required to provide additional leave if existing leave meets HFWA requirements

- Same accrual
- Same purposes
- Same conditions

Employers can be more generous

Other Things to Know About HFWA

Leave cannot be counted as an absence for discipline

Employers prohibited from retaliating or interfering with HFWA

Employees cannot waive HFWA rights

Employees can bring wage claims with CO Dept. of Labor and Employment or sue in court

Vaccine Mandates

Presidential Vaccine Mandates

The White House COVID-19 Plan

Federal contractors – Vaccine requirement on hold pending legal challenges

Healthcare employees at hospitals/facilities who participate in Medicare/Medicaid – 1/13/22 Supreme Court allowed enforcement of vaccine mandate to go forward while legal challenges are pending

Private employers with 100 employees – 1/13/22 Supreme Court blocked enforcement of vaccine mandate while legal challenges are pending

Colorado Vaccine Mandates

Employees in healthcare

CDOC, CDPHE and CDHS staff and other state employees that interact with vulnerable populations and populations in congregate living

State contractors and subcontractors entering state facilities (must show proof of vaccination to enter)

State employees must be vaccinated or submit to testing

Can Employers Mandate Vaccination?

Generally, yes

Explore reasonable accommodation for:

- Disability
- Religion

Must show direct threat or undue hardship to deny accommodation

HIPAA does not prohibit employers from asking employees about vaccine status or requiring proof of vaccination status

**36% of employers are mandating
vaccination of their employees.**

Gallup poll mid-December 2021

How to Handle Requests for Religious Exemptions

Generally, do not question sincerity of belief without good reason:

- Employee has behaved in a manner inconsistent with professed belief
- Accommodation a desirable benefit likely to be sought for secular reasons
- The timing of the request renders it suspect
- Employer has reason to believe the accommodation is not sought for religious reasons

How to Handle Requests for Religious Exemptions

Analyze whether you can accommodate absent “undue hardship”

- More than minimal cost
- Compromises workplace safety
- Decreases workplace efficiency
- Infringes on other employees’ rights
- Causes other employees to do more than their share of hazardous/burdensome work
- Violates a union agreement or well-established seniority system

How to Handle Requests for Religious Exemptions

Possible accommodations:

- Masking
- Social distancing
- Modified shifts
- Periodic testing
- Work from home
- Leave of absence
- Reassignment (last resort)
- Termination (very last resort)

Can Employers Require Employees to Return?

Generally, yes

Explore reasonable accommodation for disability

- EEOC brings 1st telework suit

Hear/address employee safety concerns

Anticipate how to handle refusals

Can Employers Require Employees to Test?

Yes, because COVID has been determined to be a direct threat to health and safety

- Before returning to work
- Periodically

Tests must be accurate and reliable

Can ask if employees have been tested elsewhere

Be consistent

Anticipate how refusals will be handled

Who Pays for Employee Testing and Vaccination?

Employers pay for time spent for mandated testing/vaccination

Use available HFVA leave for:

- Testing/vaccination
- Adverse effects of vaccination

CO law requires employers to pay the cost of medical examinations required as a condition of employment

Questions? Thank you!

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