

HEALTHY FAMILIES & WORKPLACES ACT

EQUAL PAY ACT

How to Implement Two Important Colorado Laws

Two major employment laws went into effect this year in Colorado. Use these best practices and FAQs to help you implement the laws correctly and ensure your business is in compliance:

HEALTHY FAMILIES & WORKPLACES ACT (HFWA) – PHASE 2

Quick summary:

- Went into effect on Jan. 1, 2021, for all Colorado businesses with more than 15 employees
- Requires 6 days (or 48 hours) of paid sick leave for all employees
- Requires 80 hours of paid leave for all employees during public health emergencies
- Overlaps with the federal Families First Coronavirus Response Act (**FFCRA**) – see chart below
- Get detailed information about HFWA [here](#)

	FFCRA	HFWA
Paid COVID Related Leave	✓	✓
Expiration Date	March 31 st unless renewed by the federal government	4 Weeks After Public Health Emergency Ends
Employer Reimbursement	✓	
Required Time-off	2 Weeks (prorated for PT) Up to 12 Weeks Extended Leave	2 Weeks (prorated for PT)
Eligibility	Employer Opt-in for 2021 Under 500 Employees	All Colorado Employers Regardless of Size



BEST PRACTICES FOR IMPLEMENTING HFWA

- Develop an explicit sick leave plan that meets or exceeds HFWA requirements.
 - Clearly lay out policies for accrual and tracking of HFWA leave.
 - Consider splitting out paid sick leave from your existing PTO plan for easier rollover and to protect from your PTO payout requirement.
- Educate managers about HFWA leave and your specific company policies and procedures around the leave.
 - Pay special attention to when documentation is allowed to be requested from the employee and when it isn't.
- Notify all employees of the leave they have available to them and post for easy access.
- Develop clear procedures around paid sick leave and public health emergency leave.

HFWA FAQS

How can I be sure my PTO policy meets the new sick leave requirements?

First, employees must be granted (or start accruing) PTO immediately upon their date of hire and be eligible to use PTO right away; in other words, there should be no waiting period before they can use it. Second, employees must be allowed to carry over unused PTO from one year to the next, to the extent required to fulfill the sick leave rollover provisions in the law.

Does the 6 days of paid sick leave apply to seasonal, temporary, part-time, and/or hourly employees?

Yes, any of these employees can accrue 1 hour for every 30 hours worked. If they leave for the season and you rehire them later, you would need to reinstate any balance of sick leave they had when they left.

How is this handled if an employer offers unlimited vacation/wellness/sick days?

As long as employees are allowed to utilize their sick days immediately upon their date of hire, this policy meets requirements for paid sick leave.

Can there be a cap on the sick leave rollover, say 80 hours, but no cap on what employees can take?

If an employer allows an employee to take more than the paid sick leave hours available, it would be up to the employer to determine if the overage would be covered by some other time off or leave, or if it would be unpaid.

Can I use both allowed accrual methods—prorating and frontloading—based on my workforce?

As long as the method you choose is based on non-discriminatory practices, i.e., part-time employees earn 1 hour for every 30 hours worked, full-time employees earn hours loaded upfront. Even those who accrue hours payroll by payroll must be allowed to utilize the total number of annual hours if the need arises, regardless of whether they've accrued sufficiently at that time.

Is the 80 hours of public health emergency leave in addition to the 48 hours under the HFWA?

Any paid sick leave the employee has accrued or that was frontloaded for the employee can count towards the 80 hours of public health emergency (PHE) leave.

Are these PHE hours reimbursed through the FFCRA tax credit?

The FFCRA expired on December 31, 2020, but the latest stimulus package has extended the payroll tax credit through March 31, 2021, which can be applied to PHE hours. If employers allow employees to take COVID-related leave between January 1 and March 31, 2021, they may still claim the payroll tax credit. After March 31, 2021, there's no reimbursement.



EQUAL PAY FOR EQUAL WORK ACT (EQUAL PAY ACT)

Quick summary:

- Went into effect on Jan. 1, 2021, and impacts all Colorado businesses, regardless of size
- Requires equal pay (including benefits) for substantially similar work
- Requires enhancements to job descriptions, job postings, and promotion opportunities
- Employees have several options for seeking financial relief for violations
- Get detailed information about the Equal Pay Act [here](#)



BEST PRACTICES FOR IMPLEMENTING EQUAL PAY ACT

- ✓ Develop a written compensation strategy that accounts for allowed variations in pay under the law.
- ✓ Update incentive programs to be written as fairly and equitably as possible.
- ✓ Write clear and objective job descriptions that also include the wage or salary range.
 - ⚠ When sharing with employees, ask them to acknowledge their receipt and understanding.
- ✓ Implement new job application processes.
 - ⚠ Remember that it's no longer legal to ask what a job applicant is currently making during the application process.
- ✓ Use your HR management system to record employee education, skills, and other information relevant to pay.
- ✓ Conduct periodic reviews, such as annually, to determine which employees require a pay adjustment.
- ✓ Do regular pay audits with the help of an outside party, such as an HR provider or PEO.
 - ⚠ Use a data-driven approach and consistent methodology, if possible.

EQUAL PAY FAQS

I have a manager that just hired a male employee and is paying him a few thousand dollars less than a new-hire female in the same position. The male employee does not yet have his MSN, so that is why the manager is paying him less. Is that OK?

Yes. This is permissible under the education section of the Equal Pay Act. Pay should be examined and possibly adjusted if the male employee gets his MSN.

If I only give raises for merit or for promotions, do I have to give a raise every time someone gets a new certification or degree?

It's recommended you review your raise policy annually with an equal pay audit and benchmarked compensation data to identify inadvertent disparities and address them accordingly. These additional qualifications can be accounted for then.

When I'm "transferring" or "shuffling" employees, do I need to post the job if there's no title or pay change but just a different area in the business to run? The employee may gain additional exposure but it's not necessarily a requirement for a promotion.

In this case, since you may have qualified employees that would like to be considered for the transfer or shuffle, yes, you should post the job internally (before posting externally) or at least post it simultaneously.

Do I have to send out a notice of an open position every time? And what about for international promotion opportunities?

It's best practice to send out a notice of each open position and also place it wherever jobs are typically posted prior to beginning the interview process. It's OK to indicate on a job posting (domestic or international) that the successful candidate is expected to be available for work at the designated location and is wholly responsible for his/her related fees and costs, including any expenses necessary to obtain authorization to work, to seek legal or other professional advice, travel, relocation, lodging/housing, and other living expenses.

What other states have this law? I have employees in other states. Do you recommend we do this across all states?

Laws vary by state. Employers may choose to comply on a state-by-state basis, or to adopt an overall equal pay policy that effectively complies with all state's laws.

Can job applications still ask for the candidate's current wage?

No, you may not ask for the current wage during the application process. But you can ask what an applicant's compensation expectations are for the role they're applying for.

It still seems there are a lot of job postings with no salary ranges listed. Is there any action job seekers can take?

To be clear, any internal or external job posting must include compensation estimations or ranges that are as accurate as possible (listing a range of \$0-\$100,000 isn't recommended). If a pay range isn't listed, job seekers can file a formal complaint with the Colorado Department of Labor & Employment (CDLE).

To learn more about the laws, regulations, and changes impacting Colorado businesses this year, download the eGuide, **HOW COLORADO'S NEW LAW & REGULATIONS WILL IMPACT YOUR BUSINESS IN 2021** today!



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