

ASAP WEBINAR

**HEALTHY FAMILIES
& WORKPLACES ACT**

**NAVIGATING CO HFWA
& FFCRA PAID LEAVE**

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businessASAP.com

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Meet Kara & Carla

ASAP's HR Experts



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The Fine Print . .

Disclaimer: This information is provided as a self-help tool and does not constitute legal or financial advice. Laws, regulations and lending products are changing daily and decisions as to whether or how to use this information and/or what actions to take in response to the COVID19 Pandemic are solely those of the employer. The providers of this information disclaim any and all responsibility and liability for its accuracy, completeness or fitness for your particular business purposes.

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FFCRA vs CO HFWA

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FFCRA is broken into two types of paid leave:

1. Paid Sick Leave

Two weeks (up to 80 hours) of paid leave

- Applies to all employees
- A full-time employee is eligible for up to 80 hours of leave
- A part-time employee is eligible for the number of hours of leave that they work on average over a two-week period

2. Expanded Family and Medical Leave (EFMLA)

Up to an additional 10 weeks of paid leave

- Applies to workers who have been employed at the organization for at least 30 days
- A full-time employee is eligible for leave at 40 hours/week
- A part-time employee is eligible for leave equal to the number of hours that they are normally scheduled to work over that period

CO HFWA paid leave:

1. Paid Sick Leave

Up to two weeks (up to 80 hours) of paid leave

- Applies to all employees

This is the minimum requirement; employers can offer a more generous policy.

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Exemptions

FFCRA

- ❖ Federal government employees
- ❖ Employers of health care providers or emergency responders may elect to exclude such employees from eligibility for the leave provided under the Act
- ❖ The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees
- ❖ Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern

CO HFWA

- ❖ Federal government employees (other government employers are not exempt)
 - ❖ Workers covered by the Federal Railroad Unemployment Insurance Act
 - ❖ An employer that, under a collective bargaining agreement ("CBA"), already provides "equivalent or more" paid leave as long as the variance from HFWA would not diminish employee rights to "equivalent" paid leave
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Qualifying Reasons

BOTH FFCRA & HFWA have the same qualifying reasons and pay requirements for paid leave

An employee qualifies for paid sick time if they are unable to work (**or telework**) due to a need for leave for **any one** of the following reasons:

1. Federal, State, or local quarantine or isolation order related to COVID-19; *OR*
 2. Advised by a health care provider to self-quarantine related to COVID-19; *OR*
 3. Experiencing COVID-19 symptoms and is seeking a medical diagnosis; *OR*
 4. Caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
 5. Caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; *OR*
 6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury
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Pay

Regular Rate of Pay: Up to \$511 per day and \$5,110 in the aggregate (over a 2-week period) for the following qualified reasons:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; *OR*
2. has been advised by a health care provider to self-quarantine related to COVID-19; *OR*
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; *OR*
4. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

2/3 Rate of Pay: Up to \$200 per day and \$2,000 in the aggregate (over a 2-week period) for the following qualified reasons:

1. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2) above; *OR*
2. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19

Under EFMLA - 2/3 Rate of Pay: Up to \$200 per day and \$10,000 in the aggregate (over a 12-week period — two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave)

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Pay FAQs

❖ How does “up to 80 hours” of paid leave apply to part-time employees?

Example: An employee who regularly works 25 hours a week can take 50 hours of paid leave because that equals 2 weeks of pay. An employee regularly working 40 hours a week or more can take 80 hours of leave. An employer cannot deem regular hours “cut” to a lower number due to an employee taking leave.

❖ What happens if an employee is out more than once for COVID-related reasons?

If an employee already received paid leave in 2020 for any of the qualifying COVID-related reasons, the employer can count that leave as part of the 2 weeks that FFCRA and HFWA requires in 2020. If the prior leave was less than 2 weeks, then the employee could qualify for additional pay to meet the requirements.

❖ Do Colorado employers have to provide paid leave under FFCRA and/or HFWA?

Yes. Most Colorado employers are required to provide pay for the qualifying COVID-related discussed previously. Employers can log pay under FFCRA, HFWA, or employer’s own Paid Time-Off Policy, but a clear record of the paid time off must be kept.

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Pay Continued

Leave must be paid at “the same hourly rate or salary and with the same benefits ... that the employee normally earns during hours worked,” or 2/3 of that rate for leave due to caring for a child or other individual.

The rate must be at least the applicable minimum wage, but need not include overtime, bonuses, or holiday pay.

Employees paid commissions or other sales-based pay must receive whichever is greater: (A) their hourly or salaried rate; or (B) minimum wage.

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Child Care – School Closures

[DOL FAQs](#)

98. My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances?

Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively "closed" to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child's remote-learning days.

99. My child's school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances?

No, you are not eligible to take paid leave under the FFCRA because your child's school is not "closed" due to COVID-19 related reasons; it is open for your child to attend. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her.

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Child Care – School Closures

[DOL FAQs](#)

100. My child's school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May I take paid leave under the FFCRA in these circumstances?

Yes, you are eligible to take paid leave under the FFCRA while your child's school remains closed. If your child's school reopens, the availability of paid leave under the FFCRA will depend on the particulars of the school's operations.

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Child Care Continued

- ❖ Can employees who are able to work remotely but can't work full-time due to increased childcare responsibilities receive FFCRA?

Yes, if the hours unable to work are directly related to school closure or one of the other qualifying reasons.

It's encouraged to work with employees who have chosen to keep kids home (as in Question 99), working out a flexible or reduced schedule as needed. Given the cost of replacing an employee (generally 20-200% of their yearly salary), working out a flexible or reduced schedule with employees in this situation is likely the best choice for the company's bottom line, as well as its reputation.

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FFCRA Tax Credit

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FFCRA Paid Leave Tax Credit

- ✓ Employers covered by FFCRA qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.
- ✓ Employer claiming the tax credits must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits.

If you are an ASAP payroll client, please notify your account manager if you have paid FFCRA wages and are taking the tax credit.

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Documentation

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Reasonable Documentation Allowable Under HFWA

INFO # 6A - Following is the documentation that federal law allows for paid leave

If an employee is requesting paid leave (seeking a diagnosis due to COVID-19 symptoms, or being instructed to quarantine or isolate), the documentation provided to the employer must include a signed statement with the employee's name and the following information:

- (a) the date(s) for which leave is requested;
- (b) the qualifying reason for leave;
- (c) a statement that the employee is unable to work or telework because of the qualifying reason; and
- (d) the name of the health care provider who advised the employee (or family member) to quarantine or self-isolate, or the name of the government entity issuing the quarantine or isolation order.

If an employee is requesting paid leave (to care for a child due to a COVID-related closure), the documentation provided to the employer must include a signed statement with the employee's name and the following information:

- (a) the date(s) for which leave is requested;
- (b) the name of the child requiring care;
- (c) the name of the school, place of care, or childcare provider that is closed or unavailable; and
- (d) a statement that no other suitable person is available to care for the child during the leave period.

Any HFWA-related health information that employers receive must be kept confidential in a separate file.

Documentation is not required to take paid sick leave, but it can be required as soon as the employee reasonably can provide it. However, which documents may be required, and under what circumstances, **change significantly under HFWA in 2021.**

Notice "as soon as practicable."

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Other Important Points

- ❖ These are the minimum requirements; employers can offer a more generous policy.
- ❖ Furloughed Employees: 8/3/20 New York Federal District Court argued DOL guidelines: Employee is entitled to paid leave even if the employee is furloughed or there is a lack of work. *Pending more clarification.*
- ❖ Paid leave cannot be counted as an absence.
- ❖ 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. Paid sick time provided under this Act does not carry over, FFCRA and HFWA ends on Dec. 31, 2020. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.
- ❖ If a Public Health Emergency is declared, the employee is entitled to an additional 2 weeks (up to 80 hours), where sick leave has been exhausted. Any balance of sick leave under the Public Health Emergency is valid for 4 weeks.

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Labor Law Poster

COLORADO
Department of
Labor and Employment

**Colorado Workplace Public Health Rights Poster:
Paid Leave, Whistleblowing, & Personal Protective Equipment**
Division of Labor Standards & Statistics *Poster effective July 15 - Dec. 31*

**HEALTHY FAMILIES & WORKPLACES ACT ("HFWA"):
Employee Rights to Paid Leave**

Employers in Colorado Must Provide Paid Leave for COVID-19 Needs Through Dec. 31, 2020

- Employers in Colorado must provide paid leave in 2020 to an employee who:
 - (1) has **COVID-19 symptoms** and is seeking a medical diagnosis;
 - (2) is **instructed by a government agent or a health provider to quarantine or isolate** due to COVID-19 risk; or
 - (3) is **taking care of 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.
- Starting in 2021, HFWA requires less paid leave (1 hour per 30 hours worked, with a maximum of 48 hours' paid leave a year) but covers a wider range of conditions, and adds 32 more hours' paid leave (80 total) in public health emergencies.

How Much Paid Leave: Up to Two Weeks (80 hours)

- Employees can take up to 2 weeks of paid leave: up to 80 hours, depending on their weekly hours.
- Paid leave is at the employee's regular pay rate, or can be at ½ pay for category #3 (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.

Retaliation or Interference with HFWA Rights

- An employer cannot fire, threaten, or otherwise **retaliate against or interfere with**, an employee who (A) requests or takes HFWA leave; (B) informs another person about HFWA rights, or supports that person's exercise of HFWA rights; (C) files a HFWA complaint; or (D) cooperates/assists in an investigation about a potential HFWA violation.
- If an employee's HFWA complaint, request, or other activity is **incorrect**, an employer need not agree or grant it – but still cannot fire or take other action against the employee for that reason, as long as the employee's belief was reasonable and in good-faith. Employees can face consequences for missing paid leave or other misconduct.

Coverage: All Employers and Employees, with Limited Exceptions

- All employers in Colorado, regardless of size, must provide HFWA paid leave, except the federal government (other government employees are not exempt) and those covered by the federal Railroad Unemployment Insurance Act.
- Employers with **under 16 employees are covered in 2020, but exempt in 2021 (then all employers covered in 2022)**.
- Employers providing "equivalent or more" paid leave by collective bargaining agreement are exempt from certain HFWA requirements, as long as they don't diminish rights, such as anti-retaliation or the right to file a complaint.
- Employee agreements or employer policies **cannot waive HFWA rights**, and are void and unenforceable.

**PUBLIC HEALTH EMERGENCY WHISTLEBLOWER LAW ("PHEW")
Worker Rights to Express Workplace Health Concerns & Use Protective Equipment**

Worker Rights to Oppose Workplace Health/Safety Violations During Public Health Emer

- It is unlawful to retaliate against, or interfere with, the following acts during, and related to, a public health emergency:
 - (1) **raising reasonable concerns**, whether a formal complaint or informally to any person, about workplace of government health or safety rules, or about a significant workplace threat to health or safety;
 - (2) **opposing a violation** (of the type in category 1); or
 - (3) **testifying, assisting, or participating** in a proceeding about a violation (of the type in category 1).
- If a worker's PHEW complaint, request, or other activity is **incorrect**, an employer or other business need not grant it – but still cannot fire or take other action against the worker for that reason, as long as the worker's belief is reasonable and in good-faith. Workers can face consequences for missing PHEW rights or other misconduct.

Workers Rights to Use Their Own Personal Protective Equipment ("PPE")

- A worker must be allowed to **voluntarily wear their own PPE**, such as a mask, faceguard, or gloves, if that PPE:
 - (1) provides **more protection** than equipment provided at the workplace;
 - (2) is **recommended** by a government health agency (federal, state, or local); and
 - (3) does not make the worker **unable to do the job**.

Coverage: All Employers and Employees, Plus Certain Independent Contractors

- PHEW uses the terms "principal" and "worker" (not employer/employee) because it covers independent contractors:
 - (1) Any employer in Colorado, and any business in Colorado with 5 or more independent contractors, is a "principal" that must comply with PHEW. The federal government is exempt from this law.
 - (2) An employee or an independent contractor at a "principal" is a "worker" covered by PHEW.

COMPLAINT RIGHTS (under both HFWA & PHEW)

- Potential violations can be submitted for investigation to the Division (contact information below).
- Failure to provide paid leave** under HFWA is an "unpaid wage" claim that the Division must investigate as
- Retaliation or interference** with PHEW or HFWA rights is a claim that the Division by law must investigate. Division will review all such claims, and if the Division is not to investigate, the Division will inform the claimant.
- Potential violations can instead be filed as lawsuits in court, but only after exhausting these pre-lawsuit remedies.
- HFWA**: a court lawsuit (A) cannot be filed until the employer is given a written demand and 14 days to respond; (B) cannot be filed if the Division investigates and decides the claim (which parties can appeal).
- PHEW**: a court lawsuit cannot be filed without first filing with the Division, then (A) can be filed if the Division does not investigate, and (B) cannot be filed if the Division investigates and decides the claim (which parties can appeal).

This poster summarizes two Colorado workplace public health laws, SB 20-205 (paid leave) and HB 20-1415 (whistleblowing and personal protective equipment). It does not cover other health or safety laws, rules, and orders, including federal Occupational Safety and Health Act (OSHA), from the Colorado Department of Public Health and Environment (CDPHE), or from local public health agencies. Contact those agencies for more such health and safety information.

This poster must be displayed where it is accessible to workers, shared with remote workers electronically or on paper, and replaced with the 2021 poster by January 1, 2021.

For more information, or if translations into other languages are needed, contact: Division of Labor Standards & Statistics, coloradolaborlaw.gov, cdle_labor_standards@state.co.us, 303-318-8441/888-39

Posting
Requirement
can be found at
www.colorado.gov

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Coming in 2021

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2021 HFWA Paid Leave Requirements

Effective January 1, 2021: HFWA will require employers with 16 or more employees in Colorado to provide paid sick leave to their employees (1 hour of accrued time for every 30 hours worked, up to 48 hours of time accrued).

HFWA will encompass Mental Health, Domestic Abuse, Criminal Harassment, and Sexual Assault as paid sick leave for any employees affected (i.e., either employee or immediate family member).

Effective January 1, 2022: Employers with 15 or fewer employees will fall under this Act.

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Stay tuned!

- ✓ Stay tuned for a webinar in October to discuss HFWA requirements for 2021
- ✓ Visit ASAP's Help Center for COVID Resources – support.businessasap.com

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