Colorado Mandates 4 Days of Paid Leave for COVID-19 Testing

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On March 10, 2020, Colorado Governor Jared Polis issued an executive order directing the Colorado Department of Labor and Employment ("DLE") to create emergency rules to "ensure workers in food handling, hospitality, child care, health care, and education can get paid sick leave to miss work if they exhibit flu-like symptoms and have to miss work awaiting testing results for COVID-19."

The DLE issued the Colorado Health Emergency Leave with Pay ("HELP") Rules, which mandates four days of paid sick leave for employees in certain industries who have flu-like symptoms to receive COVID-19 testing. Effective March 11, 2020, the HELP Rules apply to any covered employer engaged in the field of:

- 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.

A covered employer is one that meets one of the two definitions of an employer under the Colorado wage laws – either a Colorado employer with four or more employees, or an employer as defined under the Fair labor Standards Act (an employer with any size workforce engaging in interstate commerce, or one with two or more employees engaging in at least $500,000 of annual business).

The paid sick leave ends if an employee receives a negative COVID-19 test result. If an employer already provides sufficient paid sick leave to meet these requirements, no additional sick leave is required, unless the employee has already exhausted paid leave and qualifies for leave under the HELP Rules. The law does not address repeat testing.

The paid sick leave is provided at the employee’s regular rate of pay. For employees paid with a tip credit, the rate of pay is minimum wage. If an employee worked a variable rate of pay or hours, the rate of pay is the average rate of pay for the preceding month.

The DLE encourages employers to use FMLA-style procedures for employees to apply for and receive this paid leave, and further states that employees may not be terminated for inability to provide documentation during an illness covered by the HELP Rules. The HELP Rules will be enforced using the same procedures as under the Colorado Minimum Wage Act. The HELP Rules will remain in effect for the longer of 30 days or the duration of the state of emergency, up to 120 days after the adoption of the rules.

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