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## **Colorado Healthy Families and Workplaces Act.**

### **§ 8-13.3-401 et seq., C.R.S.**

**8-13.3-401. Short title.** The short title of this part 4 is the "Healthy Families and Workplaces Act".

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#### **8-13.3-402. Definitions.**

As used in this Part 4, unless the context otherwise requires:

- (1) "Director" means the Director of the division.
- (2) "Division" means the Division of Labor Standards and Statistics in the Department of Labor And Employment created in section 8-1-103.
- (3) "Domestic abuse" has the meaning set forth in section 13-14-101 (2).
- (4) "Employee" has the meaning set forth in section 8-4-101(5). "Employee" does not include an "employee" as defined in 45 U.S.C. sec. 351(d) who is subject to the federal "Railroad Unemployment Insurance Act", 45 U.S.C. sec. 351 et seq.
- (5)
  - (a) "Employer" has the meaning set forth in section 8-4-101(6); except that the term includes the state and its agencies or entities, counties, cities and counties, municipalities, school districts, and any political subdivisions of the state.
  - (b) "Employer" does not include the federal government.
- (6) "Family member" means:
  - (a) an employee's immediate family member, as defined in section 2-4-401 (3.7);
  - (b) a child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor; or
  - (c) a person for whom the employee is responsible for providing or arranging health- or safety-related care.
- (7) "Harassment" has the meaning set forth in section 18-9-111.
- (8)
  - (a)
    - (I) "Paid sick leave" means time off from work that is:
      - (A) compensated at the same hourly rate or salary and with the same benefits, including health care benefits, as the employee normally earns during hours worked; and

(B) provided by an employer to an employee for one or more of the purposes described in sections 8-13.3-404 to 8-13.3-406.

(II) as used in subsection (8)(a)(I)(A) of this section:

(A) "same hourly rate or salary" under this part 4 does not include overtime, bonuses, or holiday pay.

(B) for employees paid on a commission basis only, "same hourly rate or salary" means a rate of no less than the applicable minimum wage.

(C) for employees paid an hourly, weekly, or monthly wage and also paid on a commission basis, "same hourly rate or salary" means the rate of pay equivalent to the employee's hourly, weekly, or monthly wage or the applicable minimum wage, whichever is greater.

(b) "Paid sick leave" is "wages" as defined in section 8-4-101 (14).

(9) "Public health emergency" means:

(a) an act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious agent, for which:

(I) an emergency is declared by a federal, state, or local public health agency; or

(II) a disaster emergency is declared by the governor; or

(b) a highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the governor.

(10) "Retaliatory personnel action" means:

(a) the denial of any right guaranteed under this part 4; or

(b) any adverse action against an employee for exercising any right guaranteed in this part 4, including:

(I) any threat, discipline, discharge, suspension, demotion, reduction of hours, or reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency; or

(II) any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this part 4; or

(III) interference with or punishment for participating in or assisting, in any manner, an investigation, proceeding, or hearing under this part 4.

(11) "Sexual assault" has the meaning set forth in section 18-3-402.

(12) "Successor employer" means an employing unit, whether or not an employing unit at the time of acquisition, that becomes an employer subject to this part 4 because it acquires all of an organization, a trade, or a business or substantially all of the assets of one or more employers subject to this part 4.

(13) "Year" means a regular and consecutive twelve-month period as determined by an employer; except that, for the purposes of section 8-13.3-411, "year" means a calendar year.

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**8-13.3-403. Paid sick leave - accrual - carry forward to subsequent year - comparable leave provided by employer - no payment for unused leave - rules - repeal.**

(1)

(a) All employees working in Colorado have the right to paid sick leave as specified in this part 4.

(b) Effective January 1, 2021, each employer with sixteen or more employees shall provide each employee paid sick leave as provided in this section. This subsection (1)(b) is repealed, effective January 1, 2022.

(c) Effective January 1, 2022, each employer shall provide each employee paid sick leave as provided in this section.

(2)

(a) Each employee earns at least one hour of paid sick leave for every thirty hours worked by the employee; except that an employee is not entitled under this section to earn or use more than forty-eight hours of paid sick leave each year, unless the employer selects a higher limit. An employer may satisfy the accrual requirements of this section by providing the employee with an amount of paid sick leave that meets or exceeds the requirements of this section at the beginning of the year. Nothing in this section discourages or prohibits an employer from providing paid sick leave that accrues at a faster or more generous rate than required by this section. This subsection (2)(a) does not limit the ability of an employee to use paid sick leave as provided in section 8-13.3-405.

(b) Nothing in this part 4 precludes an employer from providing employees more paid sick leave than the amounts specified in this subsection (2).

(c) An employee who is exempt from overtime required in section 8-6-111(4) accrues paid sick leave based on the assumption that the employee works forty hours per week. If the employee's normal workweek consists of fewer than forty hours, the employee accrues paid sick leave based upon the number of hours that comprise the employee's normal workweek.

(3)

(a) An employee begins to accrue paid sick leave when employment with the employer begins and may use accrued paid sick leave as it is accrued.

(b) Up to forty-eight hours of paid sick leave that an employee accrues in a year but does not use carries forward to, and may be used in, a subsequent year; except that an employer is not required to allow the employee to use more than forty-eight hours of paid sick leave in a year.

(4) An employer that has a paid leave policy for its employees may satisfy the requirements of this section and section 8-13.3-405 and is not required to provide additional paid sick leave to its employees if the employer:

(a) makes available to its employees, through its paid leave policy, an amount of paid leave sufficient to satisfy section 8-13.3-405 and meet the accrual requirements of subsection (2)(a) of this section; and

(b) allows its employees to use the paid leave for the same purposes and under the same conditions as those applicable to paid sick leave under this part 4.

(5)

(a) Except as specified in subsection (5)(b) of this section, and notwithstanding section 8-4-101(14)(a)(iv), nothing in this section requires an employer to provide financial or other reimbursement of unused paid sick leave to an employee upon termination, resignation, retirement, or other separation from employment; except that an individual may recover paid sick leave as a remedy for a retaliatory personnel action that prevented the individual from using paid sick leave.

(b) If an employee separates from employment and is rehired by the same employer within six months after the separation, the employer shall reinstate any paid sick leave that the employee had accrued but not used during the employee's previous employment with the employer and that had not been converted to monetary compensation to the employee at the time of separation from employment.

(6) An employer may loan paid sick leave to an employee in advance of accrual of paid sick leave by the employee.

(7) If an employee is transferred to a separate division, entity, or location but remains employed by the same employer, the employee is entitled to all paid sick leave accrued at the prior division, entity, or location and is entitled to use all paid sick leave as provided in this section.

(8) If a successor employer succeeds an original employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick leave that the employees accrued when employed by the original employer and are entitled to use previously accrued paid sick leave as specified in section 8-13.3-404.

(9) The division shall promulgate rules regarding compensation and accrual of paid sick leave for employees employed and compensated on a fee-for-service basis.

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**8-13.3-404. Use of paid sick leave - purposes - time increments.**

(1) An employer shall allow an employee to use the employee's accrued paid sick leave to be absent from work when:

(a) The employee:

(I) has a mental or physical illness, injury, or health condition that prevents the employee from working;

(II) needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition;

(III) needs to obtain preventive medical care; or

(IV) needs to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member.

(b) The employee needs to care for a family member who:

(I) has a mental or physical illness, injury, or health condition;

(II) needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or

(III) needs to obtain preventive medical care;

(c) The employee or the employee's family member has been the victim of domestic abuse, sexual assault, or harassment and the use of leave is to:

(I) seek medical attention for the employee or the employee's family member to recover from a mental or physical illness, injury, or health condition caused by the domestic abuse, sexual assault, or harassment;

(II) obtain services from a victim services organization;

(III) obtain mental health or other counseling;

(IV) seek relocation due to the domestic abuse, sexual assault, or harassment; or

(V) seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment;

(d) due to a public health emergency, a public official has ordered closure of:

(I) the employee's place of business; or

(II) the school or place of care of the employee's child and the employee needs to be absent from work to care for the employee's child.

(e) The employee needs to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; or

(f) The employee needs to evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee's residence.

(2) An employer shall allow an employee to use paid sick leave upon the request of an employee. The request may be made orally, in writing, electronically, or by any other means acceptable to the employer. When possible, the employee shall include the expected duration of the absence. An employer may provide a written policy that contains reasonable procedures for the employee to provide notice when the use of paid sick leave taken under this section is foreseeable. An employer shall not deny paid sick leave to the employee based on noncompliance with such a policy.

(3) An employee must use paid sick leave in hourly increments unless the employee's employer allows paid sick leave to be taken in smaller increments of time.

(4) An employer shall not require, as a condition of providing paid sick leave under this part 4, an employee who uses paid sick leave to search for or find a replacement worker to cover the time during which the employee is absent from work.

(5) When the use of paid sick leave taken under this section is foreseeable, the employee shall make a good-faith effort to provide notice of the need for paid sick leave to the employee's employer in advance of the use of the paid sick leave and shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt the operations of the employer.

(6) Notwithstanding section 8-13.3-405(4)(b), for paid sick leave of four or more consecutive work days, an employer may require reasonable documentation that the paid sick leave is for a purpose authorized by this part 4.

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**8-13.3-405. Additional paid sick leave during a public health emergency.**

(1) In addition to paid sick leave accrued under section 8-13.3-403, on the date a public health emergency is declared, each employer in the state shall supplement each employee's accrued paid sick leave as necessary to ensure that an employee may take the following amounts of paid sick leave for the purposes specified in subsection (3) of this section:

(a) for employees who normally work forty or more hours in a week, at least eighty hours;

(b) for employees who normally work fewer than forty hours in a week, at least the greater of either the amount of time the employee is scheduled to work in a fourteen-day period or the amount of time the employee actually works on average in a fourteen-day period.

(2)

(a) An employer may count an employee's unused accrued paid sick leave under section 8-13.3-403 toward the supplemental paid sick leave required in subsection (1) of this section.

(b) An employee may use paid sick leave under this section until four weeks after the official termination or suspension of the public health emergency.

(3) An employer shall provide its employees the paid sick leave required in subsection (1) of this section for the following absences related to a public health emergency:

(a) An employee's need to:

(I) self-isolate and care for oneself because the employee is diagnosed with a communicable illness that is the cause of a public health emergency;

(II) self-isolate and care for oneself because the employee is experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(III) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(IV) seek preventive care concerning a communicable illness that is the cause of a public health emergency; or

(V) care for a family member who:

(A) is self-isolating after being diagnosed with a communicable illness that is the cause of a public health emergency;

(B) is self-isolating due to experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(C) needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a public health emergency; or

(D) is seeking preventive care concerning a communicable illness that is the cause of a public health emergency;

(b) With respect to a communicable illness that is the cause of a public health emergency:

(I) A local, state, or federal public official or health authority having jurisdiction over the location in which the employee's place of employment is located or the employee's employer determines that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to the communicable illness or because the employee is exhibiting symptoms of the communicable illness, regardless of whether the employee has been diagnosed with the communicable illness; or

(II) care of a family member after a local, state, or federal public official or health authority having jurisdiction over the location in which the family member's place of employment is located or the family member's employer determines that the family member's presence on the job or in the community would jeopardize the health of others because of the family member's exposure to the communicable illness or because the family member is exhibiting symptoms of the communicable illness, regardless of whether the family member has been diagnosed with the communicable illness;

(c) care of a child or other family member when the individual's child care provider is unavailable due to a public health emergency, or if the child's or family member's school or place of care has been closed by a local, state, or federal public official or at the discretion of the school or place of care due to a public health emergency, including if a school or place of care is physically closed but providing instruction remotely;

(d) an employee's inability to work because the employee has a health condition that may increase susceptibility to or risk of a communicable illness that is the cause of the public health emergency.

(4) Notwithstanding any other provision in this part 4:

(a) An employee shall notify the employee's employer of the need for paid sick leave under this section as soon as practicable when the need for paid sick leave is foreseeable and the employer's place of business has not been closed;

(b) Documentation is not required to take paid sick leave under this section; and

(c) Employees are only eligible for paid sick leave in the amount described in subsection (1) of this section once during the entirety of a public health emergency even if such public health emergency is amended, extended, restated, or prolonged.

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#### **8-13.3-406. Paid sick leave related to COVID-19.**

(1) Employers in the state shall comply with the federal "Emergency Paid Sick Leave Act" In The "Families First Coronavirus Response Act", PUB. L. 116-127.

(2) On and after the effective date of this section through December 31, 2020, each employer in the state, regardless of size, shall provide paid sick leave in the amount and for the purposes provided in the federal "emergency Paid Sick Leave Act" in the "Families First Coronavirus Response Act", PUB. L. 116-127, to each employee who is not covered under the "Emergency Paid Sick Leave Act".

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#### **8-13.3-407. Employee rights protected - retaliation prohibited.**

(1) An employee is entitled to:

(a) use paid sick leave consistent with this part 4;

- (b) file a complaint or inform any person about an employer's alleged violation of this part 4;
- (c) cooperate with the division in its investigation of an alleged violation of this part 4; and
- (d) inform any person of the person's potential rights under this part 4.

(2)

(a) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised, attempted to exercise, or supported the exercise of rights protected under this part 4, including the right to request or use paid sick leave pursuant to this part 4; the right to file a complaint with the division or court or inform any person about any employer's alleged violation of this part 4; the right to participate in an investigation, hearing, or proceeding or cooperate with or assist the division in its investigations of alleged violations of this part 4; and the right to inform any person of the person's potential rights under this part 4.

(b) It is unlawful for an employer to count paid sick leave taken by an employee pursuant to this part 4 as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other retaliatory personnel action against the employee.

(3) The protections of this section apply to any person acting in good faith who alleges a violation of this part 4, even if the allegation is determined to be mistaken.

(4) The division shall investigate each claim of denial of paid sick leave in violation of this part 4. The division may investigate claims of retaliation in violation of this part 4.

(5) If an investigation of employer retaliation or interference with employee rights yields a determination that:

(a) rights of multiple employees have been violated, the violation as to each employee is a separate violation for purposes of fines, penalties, or other remedies;

(b) a violation cost an employee the employee's job or pay, the determination may include an order to reinstate the employee, to pay the employee's lost pay until reinstatement or for a reasonable period if reinstatement is determined not to be feasible, or both.

(6) Determinations made by the division under this section are appealable pursuant to section 8-4-111.5 and rules promulgated by the department regarding appeals and strategic enforcement.

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### **8-13.3-408. Notice to employees - penalty - rules.**

(1) Each employer shall notify its employees that they are entitled to paid sick leave, pursuant to rules promulgated by the division. The rules must require the notice to:

(a) specify the amount of paid sick leave to which employees are entitled and the terms of its use under this part 4; and

(b) notify employees that employers cannot retaliate against an employee for requesting or using paid sick leave and that an employee has the right to file a complaint or bring a civil action if paid sick leave is denied by the employer or the employer retaliates against the employee for exercising the employee's rights under this part 4.

(2) An employer complies with the notice requirements of this section by:



(a) supplying each employee with a written notice containing the information specified in subsection (1) of this section that is in english and in any language that is the first language spoken by at least five percent of the employer's workforce; and

(b) displaying a poster created pursuant to subsection (3) of this section in a conspicuous and accessible location in each establishment where the employer's employees work that contains the information required by subsection (1) of this section in english and in any language that is the first language spoken by at least five percent of the employer's workforce.

(3) The division shall create and make available to employers posters and notices that contain the information required by subsection (1) of this section, and employers may use the posters and notices to comply with the requirements of this section.

(4)

(a) An employer who willfully violates subsection (2)(a) or (6) of this section is subject to a civil fine not to exceed one hundred dollars for each separate violation.

(b) An employer who willfully violates subsection (2)(b) of this section is subject to a civil fine not to exceed one hundred dollars.

(c) The fines collected under this subsection (4) shall be transmitted to the state treasurer, who shall deposit the fines in the general fund.

(5) If an employer's business is closed due to a public health emergency or a disaster emergency due to a public health concern, the notice and posting requirements of this section are waived for the period during which the place of business is closed.

(6) If an employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, the employer shall provide the notice required in this section through electronic communication or a conspicuous posting in the web-based platform.

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#### **8-13.3-409. Employer records.**

(1) An employer shall retain records for each employee for a two-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used. Upon appropriate notice and at a mutually agreeable time, the employer shall allow the division access to the records for purposes of monitoring compliance with this part 4.

(2) If an issue arises as to an employee's right to paid sick leave and the employer has not maintained or retained adequate records for that employee or does not allow the division reasonable access to the records, the employer shall be presumed to have violated this part 4 unless the employer demonstrates compliance by a preponderance of the evidence.

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**8-13.3-410. Authority of director - rules.** The director may coordinate implementation and enforcement of this part 4 and adopt rules as necessary for such purposes.

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#### **8-13.3-411. Enforcement - judicial review of director's actions - repeal.**

(1) The director and the division have jurisdiction over the enforcement of this part 4 and may exercise all powers granted under article 1 of this title 8 to enforce this part 4.

(2) The division may enforce the requirements of this part 4.

(3) Pursuant to section 8-1-130, any findings, awards, or orders issued by the director with respect to enforcement of this part 4 constitute final agency action, and any person affected by such final agency action may seek judicial review as provided in section 24-4-106.

(4)

(a) A person aggrieved by a violation of this part 4 may commence a civil action in district court no later than two years after the violation occurs. A violation of this part 4 occurs on each occasion that a person is affected by a failure to provide paid sick leave or retaliation related to paid sick leave.

(b)

(I) Beginning January 1, 2021, an employer with sixteen or more employees who violates this part 4 is liable for back pay and any other relief as provided by section 8-5-104 (2)(a) and (2)(b). This subsection (4)(b)(I) is repealed, effective January 1, 2022.

(II) Beginning January 1, 2022, an employer who violates this part 4 is liable for back pay and any other relief as provided by section 8-5-104 (2)(a) and (2)(b).

(c) If a civil action is commenced under this section, any party to the civil action may demand a trial by jury.

(d) Before commencing any civil action under this section, an aggrieved person must, in accordance with article 4 of this title 8, submit a complaint to the division or make a written demand for compensation or other relief to the employer. An employer has fourteen days to respond after receiving either a notice from the division that a complaint has been filed with the division or a written demand from the aggrieved person for compensation or other relief under this part 4.

(e) If a person aggrieved by a violation of this part 4 files a civil action to enforce a judgment made under this section, the court shall waive any filing fee required under article 32 of title 13.

(f) Nothing in this section prevents an aggrieved person from filing a charge with the division pursuant to this section.

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**8-13.3-412. Confidentiality of employee information - definition.**

(1) An employer shall not require disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's or an employee's family member's health information as a condition of providing paid sick leave under this part 4.

(2) Any health or safety information possessed by an employer regarding an employee or employee's family member must:

(a) be maintained on a separate form and in a separate file from other personnel information;

(b) be treated as confidential medical records; and

(c) not be disclosed except to the affected employee or with the express permission of the affected employee.

(3) as used in this section, "affected employee" means the employee:

(a) about whom the health information pertains or who is the victim of the domestic

abuse, sexual assault, or harassment; or

(b) whose family member is the subject of the health information or is the victim of the domestic abuse, sexual assault, or harassment.

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**8-13.3-413. Employers encouraged to provide more generous paid sick leave.**

(1) Nothing in this part 4 discourages or prohibits an employer from adopting or continuing a paid sick leave policy that is more generous than the paid sick leave policy required by this part 4.

(2) Nothing in this part 4 diminishes:

(a) the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing employees with a more generous paid sick leave policy than the paid sick leave policy required by this part 4; or

(b) the rights, privileges, or remedies of an employee under a collective bargaining or partnership agreement, employer policy, or employment contract.

(3) Nothing in this part 4 diminishes the rights of public employees regarding paid sick leave or the use of paid sick leave as provided in section 24-50-104(7).

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**8-13.3-414. Other legal requirements applicable.**

(1) This part 4 provides minimum requirements pertaining to paid sick leave and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick leave or that extends other protections to employees.

(2) To the extent allowable and not in conflict with federal law, any paid sick leave provided to an employee of a federal contractor as required by federal executive order 13706, "Establishing Paid Sick Leave For Federal Contractors", as published in 81 fed. reg. 67598 (2016), is considered paid sick leave provided under this part 4.

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**8-13.3-415. Collective bargaining agreements.**

(1)

(a) With agreement of the fund trustees, an employer signatory to a multiemployer collective bargaining agreement may fulfill its obligations under this part 4 by making contributions to a multiemployer paid sick leave fund, plan, or program based on the hours each of its employees accrues pursuant to this part 4 while working under the multiemployer collective bargaining agreement, if the fund, plan, or program enables employees to collect paid sick leave from the fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the purposes specified under this part 4.

(b) Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (1)(a) of this section may collect from the paid sick leave fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the purposes specified under this part 4.

(2) This part 4 does not apply to employees covered by a bona fide collective bargaining agreement in effect on the effective date of this part 4 if the collective bargaining agreement provides for equivalent or more generous paid sick leave for the employees covered by the collective bargaining agreement.

(3) For employees covered by a bona fide collective bargaining agreement that is initially negotiated or negotiated for the next collective bargaining agreement after the effective date of this part 4, this part 4 does not apply to such employees if the requirements of this part 4 are expressly waived in the collective bargaining agreement and the collective bargaining agreement provides for equivalent or more generous paid sick leave for the employees covered by the collective bargaining agreement.

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**8-13.3-416. Employer policies.** An employer policy adopted or retained must not diminish an employee's right to paid sick leave under this part 4. Any agreement by an employee to waive the employee's rights under this part 4 is void as against public policy.

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**8-13.3-417. Severability.** If any provision of this part 4 or application thereof to any person or circumstance is judged invalid, the invalidity does not affect other provisions or applications of this part 4 that can be given effect without the invalid provision or application, and to this end the provisions of this part 4 are declared severable.

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**8-13.3-418. Employer authorized to take disciplinary action.** Nothing in this part 4 prohibits an employer from taking disciplinary action against an employee who uses paid sick leave provided under this part 4 for purposes other than those described in this part 4.