



# Interpretive Notice & Formal Opinion (“INFO”) #6B:

## Paid Sick Leave under the Healthy Families and Workplaces Act

### Overview

This INFO #6B covers paid leave under the [Healthy Families and Workplaces Act](#) (“HFWA,” S.B. 20-205 as amended by S.B. 23-017),<sup>1</sup> which requires all employers to provide all employees (part-time, temporary, etc.):

- **Accrued Leave** — up to 48 hours of paid leave per year, for use for a variety of health and safety purposes, which employees “earn” at a rate of 1 hour of leave for every 30 hours worked; and
- **Public Health Emergency (PHE) Leave** — up to 80 hours of paid leave related to a PHE, including the COVID-19 PHE that ended on May 11, 2023, with employees keeping that PHE leave until June 8, 2023.

Key points on HFWA leave, with more details covered in the rest of this INFO: employers —

- must **pay** for leave at the same pay rate, and with the same benefits, as time worked,
- can’t **impose consequences** for taking leave, or require employees to find replacements,
- can require **documentation** for accrued leave — but with limits, and not for PHE leave,
- must give employees individual **written notices**, and also display **posters**, on HFWA rights, and
- may be **ordered to pay** back wages, penalties, and fines, and to **change their policies**, for violations.

Separately from HFWA, Colorado’s **Family & Medical Leave Insurance (“FAMLI”)** Program provides paid family and medical leave for up to 12 weeks, with an additional 4 weeks for pregnancy complications. For more on FAMLI, visit <https://famli.colorado.gov>. For more on how HFWA relates to FAMLI, see [INFO #6C](#).

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### Who is Covered by HFWA?

- (1) **Employers:** HFWA covers **all employers** of any employees in the state, regardless of industry or size.<sup>2</sup>
- (2) **Employees:** HFWA covers **all employees (part-time, seasonal, temporary, etc.)**, excluding only federal government employees (but other government employees are covered) and some railroad employees.<sup>3</sup>
- (3) **Parties liable:** While **interference** with HFWA rights **by any** person or entity is unlawful, **only the employer** of an employee is responsible for paying wages during HFWA leave, and for the penalties Colorado law imposes (a multiplier of the wages due) for any wages not paid during HFWA leave.

<sup>1</sup> Rules applicable to HFWA include the [Wage Protection \(“WP”\) Rules](#), 7 CCR 1103-7, and [Colorado Whistleblower Anti-Retaliation, Non-Interference, and Notice-Giving \(“Colorado WARNING”\) Rules](#), 7 CCR 1103-11.

<sup>2</sup> Before 2022, employers with 15 or fewer employees were exempt from accrued but not supplemental PHE leave, [C.R.S. 8-13.3-402\(5\)\(b\), -405; Wage Protection Rules](#) (WP Rules), 7 CCR 1103-7, Rule 2.7.4 (how to count employees).

<sup>3</sup> [C.R.S. 8-13.3-402\(4\),\(5\)](#) (defining “employee” and “employer” as under the Colorado Wage Act, C.R.S. 8-4-101(5),(6)). The railroad exemption is for only employees covered by the federal “Railroad Unemployment Insurance Act.”

**When Employers Must Provide Paid Leave, and How Much.** HFWA requires two types of leave: (1) accrued leave, and (2) public health emergency leave.

## (1) Accrued Leave

### (a) Reasons Employees Can Use Accrued Leave:<sup>4</sup>

1. a mental or physical **illness, injury, or health condition that prevents work**;
2. obtaining either **preventive medical care** (including a vaccination), or **medical diagnosis/care/treatment** of any mental or physical illness, injury, or health condition;
3. a victim of **domestic abuse, sexual assault, or criminal harassment** needing leave for medical attention, mental health care or other counseling, legal or other victim services, or relocation;
4. **care 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 (b) or (c);<sup>5</sup>
5. during a public health **emergency**, a public official closed the employee's workplace, or the school or place of care of the employee's **child**;
6. grieving, funeral/memorial attendance, or financial/legal needs after a **death of a family member**; or
7. due to inclement **weather, power/heat/water loss, or other unexpected event**, an employee must
  - a. **evacuate** their residence, or
  - b. care for a family member whose **school or place of care was closed**.

**Example 1:** Cory sees two providers: a nutritionist; and a mental health therapist. Both are covered. A nutritionist may be for (1) an "illness, injury, or health condition that prevents work" (e.g., bad stomach aches or irritable bowel syndrome). But even if not for an "illness, injury, or health condition that prevents work," it still is (2) "preventive medical care." The same two reasons apply to the mental health therapist.

**Example 2:** Yesenia and Norbert temporarily leave their homes after a tornado (a) rips part of the roof off Yesenia's house, and (b) at Norbert's house, breaks a window and makes the neighbor's dog bark loudly for days. Under category (7)(a) above, "evacuation" requires a home to be not just less comfortable or inconvenient, but essentially uninhabitable — though it doesn't have to be completely unsafe. That means:

- Yesenia is entitled to HFWA leave. Lacking a roof made the home, as a whole, uninhabitable — even if one or more rooms may have remained safe and comfortable to be in.
- Norbert isn't entitled to HFWA leave. A broken window and loud dog didn't make the home uninhabitable, so an understandable decision to leave an uncomfortable home wasn't "evacuation" — unless the broken window caused enough damage (like flooding) to make the home uninhabitable.

### (b) How Much Accrued Leave Employers Must Provide:

- (i) **1 hour per 30:** All employees "earn" (accrue) **one hour** of accrued paid leave **for every 30 hours** worked, up to **48 hours** per year, starting their first day of work, unless an employer offers more.<sup>6</sup>
- (ii) **Overtime hours:** Overtime-*exempt* employees accrue leave as if they work 40 hours weekly, even if they work more. *Non-exempt* employees accrue leave for all hours worked, including overtime.
- (iii) **Roll-over: Unused** accrued leave, **up to 48 hours** per benefit year, **carries forward** ("rolls over") to a later year. But employers **need not allow** use of **over 48 hours** in one benefit year.<sup>7</sup>

<sup>4</sup> [C.R.S. 8-13.3-404\(1\)](#).

<sup>5</sup> Qualifying "family" members are (a) immediate family (related by blood, adoption, marriage, or civil union), or (b) anyone else the employee is responsible for providing or arranging health- or safety-related care for. [C.R.S. 8-13.3-402\(6\)](#).

<sup>6</sup> [C.R.S. 8-13.3-403](#). The "year" paid leave accrues is a *calendar* year unless (A) an employer tells employees in writing, in advance, it will use a different annual cycle, and (B) switching to that cycle doesn't diminish HFWA rights.

<sup>7</sup> [C.R.S. 8-13.3-403\(3\)\(b\)](#).

**Example 3:** An employee working 150 hours a month (35 a week) earns just over 1 hour's accrued leave every week they work -- which totals 5 hours a month, reaching the yearly 48-hour maximum after about 9½ months. An employee working 20 hours a week earns 1 hour's leave every 1½ weeks, reaching 32 hours by year's end (based on 48 workweeks, excluding holidays and unpaid time off).

**Example 4:** An employee earns 48 hours of accrued leave in a benefit year, and uses 8 of those hours during the year. This means that (A) 40 hours of unused, accrued leave “carry forward” and the employee can use these 40 hours in the next benefit year, and (B) the employee will continue to earn accrued leave, up to an additional 8 hours (for 48 hours total), during the benefit year.<sup>8</sup> Another employee earns 48 hours of accrued leave in a benefit year, and uses none of those hours; so, 48 hours “roll over” for use in the next benefit year, and the employee doesn't earn any more accrued leave during that year, because they have already been provided with 48 hours for the benefit year.

**(2) Public Health Emergency (PHE) Leave.** During a PHE, employers must **supplement** employees' unused, accrued leave to ensure **80 hours** of total leave (less for part-time employees).<sup>9</sup>

**(a) Reasons Employees Can Use PHE Leave:**<sup>10</sup>

1. needing to **self-isolate** due to either being diagnosed with, or having symptoms of, a communicable illness that is the cause of the PHE;
2. seeking **diagnosis, treatment, or care** of such an illness, including preventive care like vaccination;
3. being **excluded from work** by a government health official, or an employer, due to the employee having exposure to, or symptoms of, such an illness (whether or not they are actually diagnosed);
4. inability to work due to a **health condition** that may **increase susceptibility/risk** of such illness; or
5. **caring** for a child or other **family member** in category (1)-(3), or whose school, child care provider, or other care provider is unavailable, closed, or providing remote instruction due to the emergency.

**(b) Scope:** PHE leave was required until June 8, 2023, for COVID-19 needs.<sup>11</sup> From November 11, 2022, to January 8, 2023, RSV, influenza, and other respiratory illnesses were also covered.<sup>12</sup>

**(c) Relation to Accrued Leave:** In a PHE, employees keep their accrued leave, and keep earning it at their ordinary rate. If they need PHE leave, any unused, accrued leave is a “credit” toward the PHE leave required. They can use supplemental PHE leave *before* accrued leave, if they qualify for both.<sup>13</sup>

**(d) Limitations on PHE Leave:**

- (i)** The supplement is provided once per PHE. If an employer provided all supplemental leave an employee is entitled to, it need not provide *additional* supplemental leave for the rest of the PHE.
- (ii)** Paid leave isn't required if an entire business is completely closed, unless a closure is due to a temporary government quarantine/isolation order triggering paid leave (for PHE or accrued leave).

<sup>8</sup> For fee-for-service employees without tracked hours, use a best estimate of all “time worked” defined by the [Colorado Overtime and Minimum Payment Standards \(COMPS\) Order](#), 7 CCR 1103-1, Rule 1.9. Other Division Rules explain “time worked” for those working on-call or with indeterminate schedules. [WP Rules](#), 7 CCR 1103-7, Rules 3.5.1(B), 3.5.2(C)-(D).

<sup>9</sup> Employees normally working under 40 hours in a week are entitled to not 80 hours, but the greater of the number of hours they (a) are scheduled for work or paid leave in the 14-day period after the leave request, or (b) actually worked in the 14-day period prior to the PHE declaration or the leave request. [WP Rules](#), 7 CCR 1103-7, Rule 3.5.1(C).

<sup>10</sup> [C.R.S. 8-13.3-402\(9\), -405\(3\)](#); see [WP Rules](#), 7 CCR 1103-7, Rules 2.11, 3.5.1(C).

<sup>11</sup> Public health emergency includes a pandemic, infectious disease, or other disaster emergency declared by the Governor or a federal, state, or local health agency. The state and federal COVID-19 emergencies expired on April 27 and May 11, 2023, so PHE leave rights ended June 8, 2023. [C.R.S. 8-13.3-402\(9\)](#); [WP Rules](#), 7 CCR 1103-7, Rules 2.11, 3.5.1(C).

<sup>12</sup> On November 11, 2022, the state expanded the COVID-19 emergency to also cover RSV, influenza, or other respiratory illnesses. On January 8, 2023, the state removed the expanded language, reverting to needs relating to COVID-19.

<sup>13</sup> [C.R.S. 8-13.3-405\(2\)\(a\)](#); [WP Rules](#), 7 CCR 1103-7, Rule 3.5.1(D)(1)-(3).

**Example 5:** In spring 2021, a full-time employee's child was exposed to, and had symptoms of, COVID-19. At that point, the employee had 10 hours of unused, accrued paid leave. Because an employer can use accrued leave as a "credit" against supplemental PHE leave, the employer must provide the employee **70 hours of supplemental paid PHE leave** (the 80 total hours required for a full-time employee, minus 10 accrued hours). If the employee requires 36 total hours of leave to care for the child, they can use 36 hours of PHE leave to cover that absence before using accrued leave.

**Example 6:** The employee in Example 5 is ill with COVID-19 later in the year. Assuming the employee had 25 hours of unused, accrued leave, the employer must provide **19 supplemental PHE leave hours** (80 minus 25 accrued leave hours is 55 hours, minus 36 PHE leave hours the employee already used in Example 5). Because the employee requires two weeks to recover from COVID (80 hours), and the illness also qualifies the employee to use accrued leave, the employee can use both the 19 hours of remaining PHE leave and 25 hours of accrued leave to cover 44 hours of this 80-hour absence.

**Example 7:** The employee in Example 5 needs another 12 hours of leave to recover from COVID-19 vaccination side effects. Because PHE-related leave is provided only once per PHE, and the employee already used all their PHE leave (36 hours in Example 5, 44 in Example 6), the employer need not provide more PHE leave. The employee still can use any unused, accrued sick leave.

**Rate of Pay and Benefits:** HFWA leave must be at "the **same hourly rate or salary** and ... **same benefits** ... the employee normally earns during hours worked," on the **same schedule (payday)** as regular wages.<sup>14</sup>

(1) **Same pay rate:** Whether the employee's regular pay is hourly or not, pay for leave must be "at least the applicable minimum wage," and "shall include any set hourly or salary rates, shift differentials, tip credits, and commissions" — but need *not* include overtime, discretionary bonuses, or holiday pay.<sup>15</sup>

(a) **Tipped employees:** If paid below full minimum wage, tipped employees must receive the full minimum wage for leave, because wages plus tips must total at least full minimum wage.<sup>16</sup>

(b) **Commissioned employees:** If paid both "an hourly, weekly, or monthly wage" and a commission, the employee's rate for leave is the base rate or the applicable minimum wage, whichever is higher.<sup>17</sup>

(c) **Non-hourly pay, or variable hourly rates:** Leave is paid at the employee's regular rate, based on their pay over the 30 calendar days before the leave, excluding bonuses the rate normally includes.<sup>18</sup>

(2) **Same benefits:**

(a) **Benefits access:** Employees must keep access to the same benefits as during time worked, such as health-related benefits as well as benefit funds (health savings accounts, 401(k) investing, etc.).

(b) **Contributions and support:**

(i) Employers **must** keep contributing to and supporting any benefits based on the employee **earning wages**, or just still being "**on the books**" as an employee.

(ii) Employers **need not** make contributions that are based on **only time "worked,"** since HFWA leave is not "worked."

<sup>14</sup> [C.R.S. 8-13.3-402\(8\)\(a\)\(I\)](#); see also [WP Rules](#), 7 CCR 1103-7, Rule 3.5.2.

<sup>15</sup> [C.R.S. 8-13.3-402\(8\)\(a\)\(II\)](#); see also [WP Rules](#), 7 CCR 1103-7, Rule 3.5.2.

<sup>16</sup> [C.R.S. 8-13.3-402\(8\)\(a\)-\(b\)](#); [COMPS Order](#), 7 CCR 1103-1, Rule 6.2.3; [WP Rules](#), 7 CCR 1103-7, Rule 3.5.2(A).

<sup>17</sup> [C.R.S. 8-13.3-402\(8\)\(a\)\(II\)\(C\)](#). If there is no base rate, leave includes "any set hourly or salary rates, shift differentials, tip credits, and commissions," under [WP Rules](#), 7 CCR 1103-7, Rule 3.5.2(A).

<sup>18</sup> [WP Rules](#), 7 CCR 1103-7, Rule 3.5.2(A). An employer may alternately calculate the pay rate over any full pay period, or any consecutive full pay periods or work weeks which total 28 to 31 days prior to taking leave.



**Employer Policies on Paid Leave: Documentation; Employee Duties & Rights; PTO; CBAs**

- (1) **Documentation Policies:** Employers can request “**reasonable documentation**” for accrued leave (but not for the supplemental leave required during a public health emergency<sup>19</sup>) — with the following **key limits**.
- (a) **Documentation can be required only** for absences of **four or more consecutive days** the employee would’ve ordinarily worked (not just four calendar days).
  - (b) **Only “reasonable”** documentation can be required, **not more** than what is **needed to show a valid reason** for leave.
    - (i) For leave for **health-related needs**: If an employee received services (including remotely) from a health provider for a HFWA need, a document from the provider satisfies the employee’s document duties. If the employee didn’t receive provider services, or can’t get a provider document in time or without added cost, they can provide their own writing explaining that leave was for a HFWA need.
    - (ii) For leave for **safety-related needs** (domestic abuse, sexual assault, or criminal harassment): The same rules in (2)(A) above apply, except that also, if applicable, an employee can provide a legal document indicating a safety need for the leave (e.g., a restraining order or police report).
    - (iii) Employers may **not require** that documents be **signed, notarized, or in any particular format**.
    - (iv) Employers must allow submitting documents by **any reasonable** method, including **electronically**.
  - (c) Employers may **not require** disclosing **details about health or safety information**. Any such information they receive must be (i) treated as confidential medical records, (ii) kept in separate files from other personnel documents, and (iii) not disclosed to others without advance written employee consent.
  - (d) Documentation **cannot be required to take leave**, but can be required as soon as the employee can provide it after returning to work, or (if sooner) separating from employment if they do not return.
  - (e) If an employer reasonably **considers employee documentation deficient** (and isn’t requiring more documentation than permitted), it must: (A) notify the employee within seven days of either receiving the documentation or the employee’s return to work (or separation, if the employee does not return), and (B) provide the employee at least seven days to cure the deficiency after being notified.<sup>20</sup>

**Example 8:** To be paid for absences, an employer’s policy (1) requires a “doctor’s note” or another document from a medical provider for any sick leave, (2) sometimes requires documentation for leave of under 4 days, and (3) automatically denies sick leave requests without such documentation. All 3 policies violate HFWA. (1) Employees need not submit “official” documentation from a provider; if they can’t get a provider document in a reasonable time or without added cost, or didn’t receive provider services, they can submit their own writing. (2) Documentation can’t be required if leave is under 4 days, regardless of an employer’s reason. (3) If an employer deems documentation deficient, it must give the employee notice and at least seven days to cure the deficiency *before* denying paid leave.

<sup>19</sup> For PHE leave, an employer can require return-to-work (RTW) documentation if it has a good-faith basis to believe an employee has exposure, that may persist past the leave, to the infectious disease involved in the PHE. Without that basis, disallowing a return without documentation may unlawfully deny or interfere with leave. For example, RTW documentation can’t be required after child care leave due to a school closure not based on exposure. As with accrued leave, for PHE leave an employer: can’t require documents to be signed, notarized, or in a particular format; must let employees submit documents by any reasonable method, including electronically; and must keep personal health or safety information confidential, separate from other personnel documents, and not disclosed to others without advance written consent.

<sup>20</sup> [C.R.S. 8-13.3-404\(6\), -405\(4\)\(b\), -412\(1\),\(2\)](#); [WP Rules](#), 7 CCR 1103-7, Rule 3.5.6.

**(2) Employee Duties & Rights: Notice; Unlawful Absence Policies/Replacement Workers; Use of Leave**

- (a) **Requiring employee notice:** Employees can be required to give notice “**as soon as practicable**” (reasonably possible), but **only** for “**foreseeable**” leave (e.g., advance-scheduled appointments), unless the employer is closed. An employer “written policy” may adopt “reasonable procedures” on notice of “foreseeable” leave, but “shall not deny paid sick leave ... based on noncompliance” with the policy.<sup>21</sup>
- (b) **Requests:** Employees **need not mention HFWA** as long as they request leave that HFWA gives them a right to take.<sup>22</sup>
- (c) **No consequences:** HFWA leave **cannot be counted as an absence** that may lead to firing or other action against the employee. On-leave employees can’t be required to find a “**replacement worker**.”<sup>23</sup>
- (d) **Immediate use:** Employees **may use accrued leave immediately upon accrual** (and PHE leave immediately upon a PHE declaration), so employers can’t have “**probationary periods**” or **other delays** before employees can use HFWA leave.<sup>24</sup>
- (e) **Increments of time:** An employer may require use of HFWA leave in **one-hour increments, or may require or allow smaller** increments. If an employer does not specify a minimum increment in writing, employees may use leave in increments of a tenth of an hour, *i.e.*, six minutes.<sup>25</sup>
- (f) **More generous policies allowed:** Employers can offer more leave, allow it for more needs, or allow taking leave before earning it. Such policies may become binding if offered in a way that makes them contractual commitments.<sup>26</sup>

**(3) General “PTO” Policies.** Policies by **any name can comply**. HFWA doesn’t require an employer to provide *additional* leave if it (1) has a policy providing fully paid time off, often called “PTO,” for both HFWA and non-HFWA purposes (e.g., sick time and vacation), *and* (2) makes clear to employees in writing, before an actual or anticipated leave request:

- (a) that its leave policy provides PTO —
  - (i) in at least an **amount of hours and with pay sufficient** to satisfy the minimum requirements of HFWA and applicable rules (including but not limited to any supplemental PHE leave required),
  - (ii) for all the **same purposes** HFWA and applicable rules cover, **not a narrower set** of purposes, and
  - (iii) under all the **same conditions** as in HFWA and applicable rules, **not stricter or more onerous conditions** (e.g., accrual, use, payment, annual carryover of unused accrued leave, notice and documentation requirements, and anti-retaliation and anti-interference rights); and
- (b) that additional HFWA leave need not be provided if employees use all their PTO for non-HFWA reasons (e.g., vacation), except if a PHE is declared *after* an employee uses all of their PTO for non-HFWA reasons for a benefit year, an employer must still provide supplemental leave.<sup>27</sup>

<sup>21</sup> [C.R.S. 8-13.3-404\(2\), -405\(4\)\(a\)](#).

<sup>22</sup> [C.R.S. 8-13.3-404\(1\), -405\(1\)](#); see [303 BEAUTY BAR d/b/a SALON LOHI v. DLSS, 23CV31836 \(March 5, 2024\)](#) (Finding “[t]he [Employee] missed work for a qualifying reason (getting COVID and needing to quarantine). The [Employer] knew that. Thus, it had to pay sick pay to [Employee] in late 2020.” Further, the plain language of the HFWA, the EPSLA [federal paid leave law], INFO #6A, and INFO #6B support the Decision’s rationale.”).

<sup>23</sup> [C.R.S. 8-13.3-404\(4\), -407\(2\)\(b\)](#).

<sup>24</sup> Employers may correct accrual calculations if, in the good-faith, ordinary course of business, they verify employee hours within a month after the work, and notify employees in writing of any corrections. [WP Rules](#), 7 CCR 1103-7, Rule 3.5.3(A).

<sup>25</sup> [C.R.S. 8-13.3-404\(3\)](#); [WP Rules](#), 7 CCR 1103-7, Rule 3.5.3(B).

<sup>26</sup> [C.R.S. 8-13.3-403\(2\)\(a\), \(b\), -403\(6\), -413](#).

<sup>27</sup> [C.R.S. 8-13.3-403\(4\), -415](#); [WP Rules](#), 7 CCR 1103-7, Rule 3.5.4.

**Example 9:** An employer’s PTO policy provides employees 100 hours of fully paid time off per year, at the start of each year, for all “personal absences,” including vacation and sick time. It provided employees with compliant notice. On April 1, 2022, an employee takes 100 hours of PTO for vacation, becomes ill with COVID-19 upon returning, and is absent for 10 days. Because the policy otherwise complies with Wage Protection Rule 3.5.4, and the employee already used all 100 hours of PTO for vacation, the employer need not pay for the absence. On the other hand, if the employer *failed to provide notice*, or its policy did not provide *truly “equivalent” leave* (for example, if it imposed disciplinary “points” for calling in sick under 24 hours in advance of their shift), depending on the specific facts of the violation, the employer may be required to pay for the employee’s absence or restore the minimum required amount of HFWA leave as PTO, which may include providing up to 80 leave hours for PHE reasons.

#### (4) Collective Bargaining Agreements (“CBAs”)

- (a) An employer that, under a CBA, **already provides “equivalent or more generous” paid leave**, need not provide *additional* paid leave, as long as the ways the CBA differs from HFWA would not diminish employee rights to “equivalent” paid leave.<sup>28</sup>
- (b) CBAs can **decline to address** paid leave, leaving employers to provide paid leave as HFWA requires.

#### Employer Paid Leave Records

- (1) **Employer records of paid leave hours:** An employer must retain records for each employee for a two-year period “documenting hours worked, paid sick leave accrued, and paid sick leave used.”<sup>29</sup>
- (2) **Employee requests for paid leave balances:**
  - (a) Employees may request, and employers must provide in writing or electronically, documents showing the then-current **amount** of paid leave the employee has (a) **available** for use and (b) **already used** during that benefit year (both accrued and supplemental PHE leave).
  - (b) Requests can be once per **month**, but an **additional** request is allowed if a need for HFWA leave arises.
  - (c) Employers may choose a **reasonable system** for such requests.

**No Retaliation or Interference with HFWA Rights.** For more on “retaliation” or “interference” (including on complaints, investigations, remedies, etc.), see the [INFO #5 series](#).

- (1) **Unlawful acts under HFWA** include **denying** paid leave that an employee has a right to take, or any **threat or other adverse action** (which includes firing, demoting, reducing scheduled hours, suspending, disciplining, etc.), that is done to retaliate against, or interfere with, either:
  - (a) requesting or taking paid leave under HFWA, or attempting to exercise other HFWA rights;
  - (b) informing another person about, or supporting their exercise of, their HFWA rights; or
  - (c) filing a HFWA complaint, or cooperating in any investigation or other proceeding about HFWA rights.<sup>30</sup>

<sup>28</sup> [C.R.S. 8-13.3-415\(3\)](#) (HFWA requirements inapplicable, and thus do not require additional leave, if “expressly waived in ... [a] collective bargaining agreement” that already “provides for equivalent or more generous paid sick leave”); [WP Rules](#), 7 CCR 1103-7, Rule 3.5.8.

See Colo. Senate, [floor debate 6/15/20, at 20:16-22:40](#) (in final HFWA debate, when “conference committee” was raised, and a senator asked “what it did,” two sponsors responded to explain the small employer section (Senator Fenberg), then the CBA section (Senator Bridges): “I want to establish one more time the legislative intent on this. It is *not that you can waive out in your collective bargaining agreement any of the protections ... in this bill. It’s that you can only accept more generous terms than are in this bill. ... [F]or instance, the bill requires 1 hour earned for every thirty hours worked, you can waive out of that and instead get one hour earned for every 15 hours. ... [W]e want to make it really clear that, similar to a minimum wage increase, you don’t need to open up your collective bargaining agreement to increase the wages of folks making less than that new wage, this is simply something that goes on top of existing collective bargaining agreements.”).*

<sup>29</sup> [C.R.S. 8-13.3-409\(1\)](#).

<sup>30</sup> [C.R.S. 8-13.3-402\(10\), -407](#).

- (2) **No waiver is allowed in a policy or agreement.** Any agreement to “waive” (give up) employee rights under HFWA is “void” (not enforceable) (C.R.S. 8-13.3-418), just as wage law voids any agreement “to waive or to modify” rights any wages due (C.R.S. 8-4-121). The one exception is the waiver of specific paid leave rules in collective bargaining agreements that don’t diminish the amount or availability of paid leave (above).
- (3) **Paid leave cannot be counted as an “absence”** that may lead to firing or other action against the employee. (C.R.S. 8-13.3-404(4), -407(2)(b).)

**Example 10:** Nancy writes a disciplinary plan for her direct report, Ethan. The plan outlines specific deadlines for his upcoming projects and restricts Ethan from using any sick leave while on it. This violates HFWA because it interferes with an employee’s right to use sick leave they are entitled to. Even if Ethan signs the plan, the agreement is not enforceable.

**Employer Posting and Written Notice Duties.** Employers must both (1) notify employees in writing of the right to take paid leave, in the amounts and for the purposes in HFWA, without retaliation, and (2) display an [informational Division poster](#).<sup>31</sup>

- (1) **Method.** Requirement #1 (notice) can be satisfied by giving employees copies of the latest version of this INFO *or* the poster (on paper or electronically). Requirement #2 (posting) is satisfied by displaying [the Division poster](#) “in a conspicuous and accessible” place in “each establishment” where employees work.
- (2) **Timing.** Employers should provide (A) notice to new employees promptly, no later than other onboarding documents or work policies are provided, and (B) any updated notices and posters for current employees by the end of the calendar year, after the Division’s publishing of any annual updates.
- (3) **Remote employees.** For employees working remotely, and for all employees of employers without a physical workspace, complying with requirement #1 (notice) is enough, and can be done electronically.
- (4) **Translation.** Employers must provide notices and posters in any language that is the **first language spoken by at least 5% of its workforce**. For versions in Spanish or other languages, and **for the latest versions**, see the Division’s [INFO](#) and [poster](#) pages.

### Employee Complaint Rights and Remedies

- (1) Because HFWA paid leave **counts as “wages”** under Colorado law, an employee denied paid leave can [file a complaint with the Division for unpaid wages](#).<sup>32</sup> For more on the wage claim process, see [INFO #2](#).
- (a) Departing employees **need not be paid for unused** paid leave — but **may recover** pay for leave they did **not get to take** due to unlawful retaliation or interference.
- (b) The Division investigates **all unpaid wage** claims, but only **some retaliation** claims. For more on the retaliation claim process, see [INFO #5\(C\)](#).
- (2) Employers that **fail to give HFWA leave**, or **HFWA rights notices**, may face **additional penalties and fines**. For more on penalties and fines, see [INFO #2B](#) and (as to retaliation or interference) [INFO #5\(C\)](#).

**For More Information:** Visit the Division [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).

<sup>31</sup> [C.R.S. 8-13.3-408](#). Both requirements are waived if an employer’s business is closed due to a public health emergency.

<sup>32</sup> [C.R.S. 8-13.3-402\(8\)](#).