



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

### Employer/Employee Rights and Obligations 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. The COVID-related PHE ended May 11, 2023, but employees could use PHE leave until June 8, 2023 (p.3).

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.

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### Who is Covered by HFWA?

- **Since January 1, 2022, all employers in the state, regardless of size or industry, are fully covered by HFWA.** (Before 2022, certain small employers were partially exempt).<sup>2</sup>
- **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>
- 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 For What Conditions and Needs

There are two types of leave required under HFWA: (A) accrued leave, and (B) public health emergency leave.

**(A) Accrued Leave:** An employer must provide **1 hour of accrued, paid leave per 30 hours worked, up to 48 hours per year** for various **health- and safety-related needs** (C.R.S. 8-13.3-404(1)) -- but the last two needs (#6 and #7 below) are required only as of August 7, 2023:

- (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) being a victim of **domestic abuse, sexual assault, or criminal harassment** who needs 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 (2) or (3);<sup>4</sup>
- (5) in a **PHE**, a public official closed the employee's workplace, or the school or place of care of the employee's **child**;<sup>5</sup>
- (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**, the 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.

### How Much Accrued Leave Employers Must Provide:

- **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>
- 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.

<sup>4</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>5</sup> In 2020, only COVID-related needs were covered; the broader set of needs took effect January 1, 2021. See [INFO #6C](#).

<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.

- **Unused** accrued leave, **up to 48 hours** per benefit year, **carries forward** (“rolls over”) into a later year. But employers **need not allow** use of **over 48 hours** in one benefit year. (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>7</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.

**(B) Public Health Emergency (PHE) Leave: During a PHE, employees are entitled to receive**

**additional paid leave** -- supplementing the employee’s unused, accrued leave at the time of the request with enough PHE leave to ensure the employee can take leave in the following amounts:

- (1) for employees normally working 40 or more hours in a week, 80 hours of total leave; and
- (2) for employees normally working under 40 hours in a week, the greater of the number of hours the employee (a) is scheduled for work or paid leave in the fourteen-day period after the leave request, or (b) actually worked in the fourteen-day period prior to the declaration of the PHE or the leave request.<sup>8</sup>

- **From January 1, 2021 through June 8, 2023, all employers in the state were required to provide this PHE leave** for a range of needs related to COVID-19.<sup>9</sup> From November 11, 2022 to January 8, 2023, reasons to take PHE leave also included RSV, influenza, and other respiratory illnesses.<sup>10</sup>
- The supplement is provided only once per PHE. If an employer already provided all supplemental leave an employee is entitled to, it need not provide *additional* supplemental leave for the rest of the PHE. Until June 8, 2023, employees retained access to any unused PHE leave provided on or after January 1, 2021.
- Employees have had **supplemental PHE leave** since January 1, 2021, or as of their hire date (whichever is later), **until four weeks after the PHE ends**,<sup>11</sup> for any of these purposes:<sup>12</sup>
  - (1) **needing to self-isolate** due to a 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, e.g., vaccination;
  - (3) being **excluded from work by a government health official, or an employer**, due to the employee

<sup>7</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>8</sup> [WP Rules](#), 7 CCR 1103-7, Rule 3.5.1(C).

<sup>9</sup> WP Rules, 7 CCR 1103-7, Rules 2.11, 3.5.1(C). This PHE leave is distinct from what employers had to provide in 2020.

<sup>10</sup> On November 11, 2022, the state expanded the reasons to take leave to include not only COVID-19, but also RSV, influenza, and other respiratory illnesses. On January 8, 2023, the state removed the expanded language, and reverted the PHE declaration to again covering only reasons related to COVID.

<sup>11</sup> Public health emergency” includes varied pandemic, infectious disease, or other disaster emergencies declared by the Governor or a federal, state, or local health agency. [C.R.S. 8-13.3-402\(9\)](#). The federal COVID-19 PHE declaration ended May 11, 2023, so the right to PHE leave lasted until June 8, 2023. For federal emergency orders, visit the Department of Health and Human Services (<https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>). The state “disaster emergency” related to COVID-19, declared on March 11, 2020 (Exec. Order [D 2020 003](#), Mar. 11, 2020), expired on April 27, 2023. For state PHE Orders, see <https://covid19.colorado.gov/public-health-orders-and-executive-orders>.

<sup>12</sup> C.R.S. 8-13.3-402(9), -405(3); see also WP Rules, 7 CCR 1103-7, Rules 2.11, 3.5.1(C).

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.
- **Employees retain their accrued leave rights during a PHE** and continue accruing leave at their ordinary rate, up to 48 hours per year. If they have unused, accrued leave when a need for PHE-related leave occurs, an employer can count the accrued leave as a “credit” toward the amount of PHE-related leave it must provide. But employees are **allowed to use PHE-related supplemental leave for any of the above PHE conditions, before using accrued leave**, if they qualify for both kinds of leave.<sup>13</sup>
  - **No paid leave is required if an entire business is completely closed**, unless a workplace is closed due to a temporary government quarantine or isolation order that triggers paid leave.

**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 3 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 3). 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 3 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 3, 44 in Example 4), the employer need not provide more PHE leave. The employee still can use any unused, accrued sick leave.

## Pay and Benefits During HFWA Leave

Leave must be paid at “**the same hourly rate or salary and with the same benefits** ... the employee normally earns during hours worked,” and paid on the same schedule (payday) as regular wages.<sup>14</sup>

- **Pay rate for leave:** whether the employee’s regular pay is hourly or not, pay for leave must be “at least the applicable minimum wage,” but need *not* include overtime, discretionary bonuses, or holiday pay.<sup>15</sup>
  - **Tipped employees, if their tips let employers pay them a rate below** full minimum wage, must receive full minimum wage for leave, because wages plus tips must total at least full minimum wage.<sup>16</sup>
  - **Employees with non-hourly pay, or variable hourly rates:** leave is paid at their regular rate based on their pay over the 30 calendar days before leave, excluding bonuses their rate normally includes.<sup>17</sup>
- **Same benefits:**
  - **Employees must keep access** to the same benefits as during time worked, such as health-related

<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).

<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> [INFO #3](#); 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> WP Rules, 7 CCR 1103-7, Rule 3.5.2(A).



benefits and any access to benefit funds (health savings accounts, 401(k) investing, etc.)

- **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. But employers *don’t* have to make contributions that are based on only time “worked,” since HFWA leave is not “worked.”

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

### (A) Documentation Policies

Employers can request “reasonable documentation” for **accrued leave under HFWA Section 403, but not for public health emergency (PHE) leave under HFWA Section 405**. For Section 403 accrued leave:

- (1) **Documentation can be required only** if the employee is absent for **four or more consecutive days** during which the employee would’ve ordinarily worked (not just four calendar days).
- (2) Only “reasonable documentation” can be required, not more than needed to show a valid reason for leave.
  - (A) 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.
  - (B) For leave for **safety-related needs** (domestic abuse, sexual assault, or criminal harassment): The same rules explained 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).
  - (C) Employers may not require that documents have a signature, be notarized, or be in any particular format. Documentation may be submitted by any reasonable method, including electronically.
- (3) Employers may not require disclosing **details about health or safety information**. Any such information that employers receive must be treated as confidential medical records, kept in separate files from other personnel documents, and not be disclosed to others unless the employee consents in writing in advance.
- (4) **Documentation cannot be required to take leave**, but can be required as soon as the employee can provide it after returning to work, or separating from employment if they do not return, whichever is sooner.
- (5) **If an employer reasonably considers employee documentation deficient**, without requiring more documentation than is permitted, the employer 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>18</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, and (2) automatically denies sick leave requests without such documentation. Both provisions violate HFWA. First, employees need not submit “official” documentation from a provider; if they can’t obtain a document from a provider in a reasonable time or without added cost, or if they didn’t receive provider services, they can submit their own writing. Second, if an employer considers an employee’s documentation deficient, it must give the employee notice and at least seven days to cure the deficiency **before** denying paid leave.

**For § 405 PHE leave, an employer can require return-to-work (RTW) documentation, if it has a good-faith basis to believe an employee was exposed** to a contagious disease that may persist past leave.

- Without that good-faith basis, disallowing a return without documentation may be unlawful denial of, or interference with, leave which includes a right to return. Example: RTW documentation can’t be required after leave to care for a child due to a school closure not based on the child’s exposure to

<sup>18</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.

disease.

- Employers may not require that RTW documents have a signature, be notarized, or be in any particular format. Documentation may be submitted by any reasonable method, including electronically.
- Personal health or safety information in RTW documents must be kept confidential, separate from other personnel documents, and not disclosed to others without employee advance written consent.

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

**Employees can be required to give notice “as soon as practicable”** (reasonably possible), **but only for “foreseeable”** (e.g., appointments scheduled in advance), unless the employer is closed. (C.R.S. 8-13.3-405(4)(a).) An employer “written policy” may adopt “reasonable procedures” on notice of “foreseeable” leave, but “shall not deny paid sick leave ... based on noncompliance” with that policy. (C.R.S. 8-13.3-404(2).)

**HFWA leave cannot be counted as an absence** that may lead to firing or other action against the employee, and an on-leave employee can’t be required to find a “replacement worker.” (C.R.S. 8-13.3-404(4), -407(2)(b).)

**All employees may use accrued leave immediately upon accrual, and PHE leave immediately upon the declaration of a PHE;** therefore, “probationary periods” before the use of leave are unlawful.<sup>19</sup>

**Use of leave in hourly (or smaller) increments.** An employer may require use of HFWA leave in 1-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>20</sup>

**Policies can be more generous** or allow taking leave before earning it; such policies may become binding if offered in a way that makes them contractual commitments. (C.R.S. 8-13.3-403(2)(a),(b), -403(6), -413.)

### **(C) 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 --

- (1) in at least an **amount of hours and with pay sufficient** to satisfy the minimum requirements of HFWA and the applicable rules (including but not limited to any supplemental PHE leave required),
- (2) for all the **same purposes** HFWA and applicable rules cover, **not a narrower set of purposes**, and
- (3) 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>21</sup>

**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 as described above. 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 (100 work hours). Because the employer 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.

<sup>19</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>20</sup> [C.R.S. 8-13.3-404\(3\)](#); WP Rules, 7 CCR 1103-7, Rule 3.5.3(B).

<sup>21</sup> C.R.S. 8-13.3-403(4), -415; WP Rules, 7 CCR 1103-7, Rule 3.5.4.

On the other hand, if the employer had failed to provide notice, or its policy did not provide truly “equivalent” leave (for example, if it imposed disciplinary “points” if employees called in sick less than 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.

### **(D) Collective Bargaining Agreements (“CBAs”)**

- 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>22</sup> [Wage Protection \(WP\) Rules](#), 7 CCR 1103-7, Rule 3.5.8.<sup>23</sup>
- CBAs can **decline to address** paid leave, leaving employers to provide paid leave as HFWA requires.

## **Employer Paid Leave Records**

**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” (C.R.S. 8-13.3-409(1).)

**Employee requests for paid leave balances.** Employees may request, and employers must provide in writing or electronically, documents showing the then-current amount of paid leave the employee has (1) available for use and (2) already used during that benefit year (both accrued and supplemental PHE leave). Employees may request these documents no more than once per month, except they may make an additional request when a need for HFWA leave arises. Employers may choose a reasonable system for such requests.

## **No Retaliation or Interference with HFWA Rights**

Unlawful acts under HFWA include: denying paid leave that an employee has a right to take, or any threat or adverse action (which includes firing, demoting, reducing scheduled hours, suspending, disciplining, etc.), that is done to retaliate against, or interfere with, either (C.R.S. 8-13.3-402(10), -407):

- requesting or taking paid leave under HFWA, or attempting to exercise other HFWA rights;
- informing another person about, or supporting their exercise of, their HFWA rights; or
- filing a HFWA complaint, or cooperating in any investigation or other proceeding about HFWA rights.

**No waiver allowed in a policy or agreement.** Any agreement to “waive” (give up) an employee’s 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 do not diminish the amount or availability of paid leave, as noted above.

**Paid leave also 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).)

HFWA prohibits acting against employees for *incorrect* complaints or information, as long as the employee’s belief was reasonable and in good faith. (C.R.S. 8-13.3-407(3).) Employers *can* impose consequences (firing or otherwise) for misusing paid leave, dishonesty, or other leave-related misconduct. (C.R.S. 8-13.3-408.)<sup>24</sup>

<sup>22</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”).

<sup>23</sup> 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>24</sup> See the [Colorado WARNING Rules](#), 7 CCR 1103-11, for more on retaliation and interference protections.

**Example 10:** An employer denies an employee paid leave for a “life coach” appointment. The employee files a complaint at the Division, and tells coworkers the employer is wrongly denying paid leave. The Division rules that this appointment was *not* HFWA-covered. That means the employer did nothing wrong by denying leave. But without evidence the employee’s belief that HFWA covered the appointment was unreasonable or in bad faith, the employer *can’t* take action against the employee for requesting leave, filing a complaint, or telling co-workers she believed the employer violated HFWA.<sup>25</sup>

**Example 11:** An employer grants an employee request for paid leave for a blood test and physical exam. The employer then learns the employee went bowling and never really had that appointment, so it (A) denies the paid leave request and (B) fires the employee for dishonestly misusing leave. The employee files a complaint claiming (A) denial of paid leave and (B) retaliation for using HFWA rights. The employer did nothing wrong: (A) leave was not for an HFWA purpose, and (B) the firing was not retaliation because by taking leave with no HFWA purpose, the employee did not act reasonably or in good faith.

## **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](#). (C.R.S. 8-13.3-408.)

- 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.
- 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.
- Both requirements are waived during any time an employer’s business is closed due to a public health-related emergency. 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.
- 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**

HFWA paid leave counts as “wages” under Colorado law. (C.R.S. 8-13.3-402(8).)<sup>26</sup> An employee denied paid leave can [file a complaint with the Division for unpaid wages up to \\$7,500](#). **Employers who fail to give HFWA leave, or HFWA rights notices, can be ordered to pay additional penalties and/or fines.**<sup>27</sup>

**An employee can also file a complaint for unlawful retaliation or interference with rights**, either with the Division or (after sending the employer a written demand and giving at least 14 days to respond) in court. If retaliation or interference is proven, the employer may be ordered to: pay damages authorized by statute including but not limited to lost pay for the leave and/or for a firing or other action that cost the employee any pay, and attorney’s fees; reinstate the employee (if the violation cost the employee a job, assignment, etc.); and/or pay fines or penalties under Colorado statutes for non-compliance. (C.R.S. 8-13.3-407, -411.) While the Division investigates *all* claims of *unpaid wages*, it investigates only *some* retaliation claims -- but will inform any employees whose claim it doesn’t investigate. (C.R.S. 8-13.3-407(4).)

**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>25</sup> The Division is not now deciding whether the “mental ... condition” or “preventive care” categories *could* cover certain life coaching. The example just shows a category that, without more explanation, *may not* qualify.

<sup>26</sup> Employers need not provide pay or reimbursement for unused paid leave to departing employees, except individuals may recover pay for leave they did not get to take due to unlawful retaliation or interference.

<sup>27</sup> For more on the Division wage claim process, see [INFO #2](#).