



~~COSHRM Day at the Capitol~~ Legislative Update

By

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COSHRM Overview

- **Colorado SHRM State Council (COSHRM):** a collaborative effort of the Colorado SHRM Chapters and national SHRM “at-large” members located in Colorado
 - Represents over 1,700 human resource professionals
 - Vision: Elevate the workplace in Colorado by driving HR excellence.
- **COSHRM:**
 - Champions professional development and HR certification efforts
 - Lends HR expertise to the business community
 - Drives legislative advocacy on employment-related matters
 - Supports the SHRM Foundation through local fundraising events

SHRM-Affiliated Chapters

There are six SHRM-affiliated chapters geographically dispersed throughout the state, each providing programming and networking opportunities in their local area

Boulder Area Human Resource Association

<https://www.bahra.org/>

Northern Colorado Human Resources Association

<https://nchra.shrm.org/>

Mile High SHRM

<https://www.milehighshrm.org/>

Colorado Springs SHRM

<https://cs.shrm.org/>

Western Colorado Human Resource Association

<http://wchra.org/>

High Country Human Resource Association

<https://hchra.shrm.org/>



Governor Polis' Executive Order

- Reduce by 50% non-critical in-person workforce.
- Exceptions for certain industries.
- Exception for employers who can certify that their employees are more than 6 feet apart.



Federal Coronavirus Law

- “Families First Coronavirus Response Act” (FFCRA)
- Takes effect on April 1, 2020
- Ends December 31, 2020



Federal Coronavirus Law

- DOL Released Guidance yesterday:
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (FAQ)
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave> (Guidance for Employers)
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> (Guidance for Employees)



Federal Coronavirus Law

- Paid Sick Leave
 - Employers with fewer than 500 employees
 - For full-time, up to 80 hours of paid leave
 - for part-time, commensurate amount based on hours worked over two-week period
 - If the part-time employee's schedule or rate of pay varies, use a six-month average



Federal Coronavirus Law

- Paid Sick Leave (employee cannot work or telework)
 - Employee subject to a quarantine order;
 - Healthcare provider advised employee to quarantine;
 - Employee has symptoms and is seeking medical care;
 - Caring for an individual who has been quarantined;
 - Caring for a child whose school or child care is closed;



Federal Coronavirus Law

- Paid Sick Leave
 - If leave is for the employee's own health condition, the employee must be compensated at the employee's regular rate of pay.
 - If leave is to care for a sick individual, a child whose school has been closed, or a substantially similar condition, employees must be compensated at two-thirds of their regular rate.



Federal Coronavirus Law

- Paid Sick Leave
 - Not to exceed \$511 per day (\$5,110 aggregate) when sick leave is used for government or medical quarantine or seeking medical care for symptoms
 - \$200 per day (\$2,000 in the aggregate) when used for care of an individual, child care, or a substantially similar condition
 - Limited refundable employment tax credit tax credit for payments



Federal Coronavirus Law

- Paid Sick Leave
 - Employer may not require employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick leave



Federal Coronavirus Law

- Expanded FMLA Leave
 - For employees who cannot work or telework because they need to care for a child whose school has been closed or whose childcare provider is unavailable.
 - Employees eligible if employed for at least 30 days.
 - Employers with fewer than 500 employees (even if fewer than 50 employees).
 - Businesses with fewer than 50 employees may qualify for exemption if requirements would jeopardize its viability.



Federal Coronavirus Law

- Expanded FMLA Leave
 - For the first 10 days, leave may be unpaid.
 - Thereafter, two-thirds of pay for up to 10 weeks.
 - Not to exceed \$200 per day and \$10,000 in aggregate.
 - Limited refundable employment tax credit tax credit for payments.



Federal Coronavirus Law

- Expanded FMLA Leave
 - Employers with 25 or more employees required to reinstate.
 - Employees with fewer than 25 employees do not have to reinstate returning employees if:
 - position no longer exists and
 - employer makes reasonable efforts to place the employee in an equivalent position.



Federal Coronavirus Law

- Other Provisions
 - Anti-retaliation
 - Free Coronavirus Testing
 - Expanded Unemployment Benefits and Funding
 - Expanded Food Programs



Colorado Paid Leave for Testing

- Four days of paid leave for Coronavirus testing for certain industries.
- Ends upon a negative test.
- Not in addition to paid leave already provided by employer.



Colorado Paid Leave for Testing

The covered industries are:

- Leisure and Hospitality
- Food Services
- Child care
- Education
- Home health if working with high-risk individuals
- Nursing homes
- Community living facilities



Potential Coronavirus Liability

- OSHA
- Workers Comp
- Whistleblower laws
- Negligence: Third Parties



Colorado Legislative Session

- Legislative session suspended because of Coronavirus
- May reconvene in the summer
- But, potential constitutional problem



FAMLI

- Sponsors withdrew support
- New Bill Drafted

FAMLI: Latest Draft

- Not government administered
- Administrative Process for determinations of eligibility
- Staged phase-in based on number of employees
- Opt-out by providing equivalent benefits
- Private option (insurance)
- Inconsistencies with FMLA



FAMLI: Ballot Initiatives

- Proponents have indicated that if a paid family/medical leave bill is not passed, they will pursue ballot initiatives.
- Legal challenges

Private Alternative to Paid Leave

- Insurance
- Requirements set by statute
- Insurance product would fulfill requirements
- Competitive market for insurance products
- Employers could self-insure



COMPS Order

- Replaces old Minimum Wage Orders
- Minimum wage and working conditions
- Applies to all industries, with some exceptions
- Salary threshold for exemptions



COMPS Order

- Exemptions by industry and position (examples):
 - Agriculture
 - Interstate drivers
 - Ski industry



COMPS Order

- Salary threshold for exemptions
 - July 1, 2020: \$35,568 (federal threshold)
 - January 1, 2021: \$40,500
 - Increases by \$3,000 per year until reaching \$55,000 in 2026.
 - Thereafter, it would be adjusted annually by the Consumer Price Index (“CPI”).



Arbitration Fairness – SB-093

- Restricts arbitration agreements for consumers and employees
- Limits who can be an arbitrator
- Prohibits requiring arbitration more than 100 miles from employee's home
- Prohibits waiving certain damages
- Does not prohibit class action waiver



Staffing Agencies– SB-192

- Requires notice to employees re duration, pay, transportation...
- Prohibits charging employees certain costs
- Prohibits false information
- Requires registration and fees



Domestic Violence Leave– SB-170

- Current law allows employee who separates from employment due to domestic violence to obtain unemployment benefits
- This bill would eliminate requirement of providing documentation



Off-Duty Marijuana – HB-1089

- Failed
- Would have prohibited terminating an employee for failing marijuana test
- Could it come back?



Court of Appeals re Vacation

- Whether an employer can require an employee to forfeit vacation if two weeks' notice not given or terminated
- New CDLE regulations
- Will Supreme Court grant cert?



COSHRM Legislative Update



Please contact Colin A. Walker (303)894- 4450 of Fairfield and Woods, P.C. if you have any questions. The application of any matter discussed in this seminar to anyone's particular situation requires knowledge and analysis of the specific facts involved. *This is provided for general information, not to provide specific legal advice.* Additional articles prepared by our lawyers can be found by clicking on "News-Articles" on our website at www.fwlaw.com.

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