

# MEMO

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**TO:** Parishes and Other Employers that process payroll through the Archdiocese of Denver's Paycom payroll software (the **Employers**)

**FROM:** Keegan O'Rourke, *Director of Human Resources Operations*

**DATE:** June 10, 2022

**SUBJECT:** **NOTICE – Colorado Healthy Families and Workplaces Act (CO HFWA)**  
Employer Requirements with Q & A

*– this Notice updates and supersedes information originally issued on January 27, 2022 –*

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## **NOTICE CONTENT**

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**This Notice is being issued to assist Employers with understanding and complying with the CO HFWA.**

**PART 1**  
**NOTICE TAKEWAYS**

- **EMPLOYERS TO UNDERSTAND** the following:
  - **COVID related PUBLIC HEALTH EMERGENCY (PHE)** paid leave REMAINS available under Colorado law, which is currently tied to the federal government's state of emergency declarations.
    - Up to 80 hours of leave available for full time employees (prorated for part-time employees).
    - No documentation from employee required.
    - Use Paycom code "EME" (do not confuse coding with paid sick leave coding).
  - **ACCRUED PAID SICK LEAVE** is now earned by ALL Colorado W-2 employees:
    - 1 hour earned per 30 hours worked (*note: per all existing Employer leave policies applicable to all full-time employees, Employers already provide sufficient leave to meet CO HFWA accrued paid sick leave requirements, but adjustments are now needed for all other W-2 employees*).
    - Up to 48 hours may be earned, to carry over from year-to-year.
    - Minimum amount that may be taken at any given time is to be set by the Employer and MUST be communicated by the Employer to its employees (HR recommended minimum: 4 hours; *note: 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 (6) minutes*).
    - Paid sick leave is available for a wide range of health and safety needs.
    - Employees MUST track their time in Paycom, including part-time teachers.
    - Paycom Eligibility Profile: "**CO HFWA Part Time At-Will**" (also use this profile for part-time exempt personnel, like teachers) (do not confuse Paycom coding with PHE paid leave).
    - For sick time earned prior to January 31, 2022 (January 30, 2022 or earlier), business managers may need to implement a 'manual' fix to Paycom entries to ensure hours worked and sick time earned accurately track.
    - Documentation may be asked for only after 4 consecutive days of leave.
- **EMPLOYERS TO ALERT EMPLOYEES** as follows:
  - **PROVIDE** employees written notice of their right to take paid leave; the CO state poster meets this requirement (see link below)
  - **POST** the CO state informational poster at the workplace (see link below).

**COLORADO STATE POSTER LINK:**

<https://cdle.colorado.gov/sites/cdle/files/%5BCLEAN%20June%201%2C%202022%5D%20Poster%2C%20Paid%20Leave%20%26%20Whistleblower.pdf>

## **PART 2**

### **NOTICE PURPOSE; POSTING NOTICE TO EMPLOYEES; AND LEGISLATION SUMMARY**

#### **NOTICE PURPOSE**

In response to COVID, both the US Congress and the Colorado legislature enacted laws requiring various forms of employer provided paid leave. As of the date of this NOTICE, there is now no employer required paid leave at the federal level.<sup>1</sup> Instead, prior to the planned December 31, 2020, termination of that federal legislation known as the Families First Coronavirus Response Act, Colorado enacted into law the **Colorado Healthy Families and Workplaces Act (CO HFWA)**.<sup>2</sup>

Effective January 1, 2021, the CO HFWA picks up where the federal (FFCRA) COVID PHE related paid leave legislation lapses, with the CO HFWA to be effective for as long as a ‘*public health emergency*’ (i.e., COVID) is in place. Equally important, the CO HFWA also requires Employer provided paid sick leave, if not already provided.

#### **EMPLOYER POSTING OF NOTICE TO EMPLOYEES**

At the outset, know that Employers MUST do both of the following: (1) notify employees in writing of the right to take paid leave, without retaliation; (2) display an informational poster (prepared by the state of Colorado).<sup>3</sup> See the preceding footnote for the link to the current poster.

1. **Requirement #1 (notice)** can be satisfied by giving employees the latest updated version of INFO #6B (see footnote #3 of this memo) OR the poster itself (on paper or electronically).
2. **Requirement #2 (posting of poster)** is satisfied by displaying the applicable poster “in a conspicuous and accessible” place at “each establishment” where employees work. Employers should provide both of the following: (a) notice to new employees promptly, no later than when other new employee onboarding documents and or work policies are provided, and (b) any **updated** notices and posters for current employees by the end of the calendar year, after the [state’s] publishing of any annual updates.

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<sup>1</sup> On March 18, 2020, Congress passed the Families First Coronavirus Response Act (FFCRA). Passed in part to provide paid COVID related sick leave and tax benefits, paid leave under FFCRA commenced April 1, 2020, and ended December 31, 2020.

<sup>2</sup> For additional information and guidance, see also the Colorado Department of Labor and Employment’s (CDLE) interpretive **Notice & Formal Opinion (“INFO”) # 6B**: <https://cdle.colorado.gov/sites/cdle/files/INFO%20%236B%20-%20January%202022.pdf>.

<sup>3</sup> <https://cdle.colorado.gov/sites/cdle/files/%5BCLEAN%20June%201%2C%202022%5D%20Poster%2C%20Paid%20Leave%20%26%20Whistleblower.pdf>

## **SUMMARY OF CO HFWA**

Passed in July of 2020, and **effective January 1, 2021**, the **CO HFWA** requires Colorado employers to provide two types of paid leave to their employees: (1) public health emergency (PHE) / COVID PHE related paid leave; and (2) accrued paid sick leave. Both parts of the CO HFWA apply to ALL employees, regardless of classification, including part-time (school and non-school), temporary, seasonal and substitute teacher employees (list includes musicians).<sup>4</sup>

1. **Public Health Emergency (PHE) / COVID PHE related paid leave.**<sup>5</sup> Effective January 1, 2021, and still in effect, CO HFWA generally requires / provides for the following:
  - During a public health emergency (PHE), all Employers must immediately provide each employee additional paid leave to supplement whatever CO HFWA leave the employee accrued before the PHE, with enough supplemental leave to ensure the employee can take leave in the following amounts:
    - for employees normally working 40 or more hours in a week, 80 hours of total leave; and
    - 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 for actual hours worked in the fourteen-day period prior to/after the leave request; or (b) actually worked in the fourteen-day period prior to the declaration of the PHE or the leave request.
  - This category of paid leave will remain in effect for as long as a federal or a state “emergency” remains.<sup>6</sup> Currently, the federal government has determined that the nation is experiencing a COVID PHE.
  - Leave must be paid at the same rate of pay the employee normally earns, and for regularly scheduled hours.
  - Leave cannot be counted as absences that may lead to firing/other negative action.
  - An employee may still have COVID PHE hours available to use if he/she did not use such hours in 2021. HOWEVER, unless an employee is a newly hired full-time employee, the employee does not receive an additional 80 hours each time he/she has a COVID PHE related need, nor does he/she receive another 80.0 hours COVID PHE leave in 2022.
  - No “waiver” is allowed; Employers and employees cannot choose, for example, to have higher pay for time worked instead of the paid sick leave that HFWA requires.

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<sup>4</sup> The CO HFWA’s application to ALL employees, including its application to those where the very category of employee (e.g., substitute teachers) exists only to cover for other employees who themselves are out sick, has been questioned. Without further elaboration, the Act is clear that it applies to any and all types of employees.

<sup>5</sup> See Part 2 of this NOTICE for detail regarding calendar year 2021 accruals.

<sup>6</sup> The Colorado Department of Labor and Employment (**CDLE**) will alert Employers when the current COVID PHE ends, and when the four-week end period (that must be tracked) begins. The Office of Human Resources will track CLDE postings and share them accordingly. At the federal level, a COVID PHE was declared in January 2020. For rolling notices of federal PHEs see the following link: <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>

- Employees may use PHE leave up until four (4) weeks after a PHE ends.<sup>7</sup>
  - PHE leave is usable for COVID itself, and for a range of COVID-related needs, including:
    - Illness with COVID symptoms
    - Quarantining or self-isolating due to COVID exposure
    - COVID testing
    - Vaccination and side effects
    - Inability to work due to health conditions that may increase susceptibility or risk of COVID
    - COVID-related needs of family (illness, school closure, etc.)
  - Employers cannot request/ require documentation to show that leave is for COVID-related needs.
2. **CO HFWA Accrued Paid Sick Leave.**<sup>8</sup> As of January 1, 2021,<sup>9</sup> CO HFWA requires an Employer to provide one (1) hour of paid sick leave per 30 hours worked, up to 48 hours per year. This leave is not tied to the Public Health Emergency (PHE) / COVID PHE paid leave.
- Leave must be paid at the same rate of pay, and for regularly scheduled hours normally worked.
  - Leave cannot be counted as absences that may lead to firing / other negative action.
  - Accrued paid leave is usable for a wide range of health and safety needs, including:
    - Any mental or physical illness, injury, or health condition that prevents work
    - Diagnosis, care, or treatment of such conditions
    - Preventive care (including vaccination)
    - Needs due to suffering domestic violence, sexual abuse, or criminal harassment, or for caring for family with such conditions or needs
  - Unlike COVID PHE paid leave, Employers **CAN** require documentation for accrued paid sick leave, but only for absences of four (4) or more consecutive days. Employees provide documentation after leave ends.

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<sup>7</sup> Visit <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>.

<sup>8</sup> See Part 3 of this NOTICE for detail regarding calendar year 2021 accruals and Paycom coding.

<sup>9</sup> Starting January 1, 2022, small and large Employers alike have the same accrued leave responsibilities. In 2021, Employers with 15 or fewer employees had to provide emergency leave but were exempt from accrued leave until the end of 2021.

**PART 3**  
**CO HFWA Q & A and Action Steps**  
**PUBLIC HEALTH EMERGENCY (PHE) / COVID PHE RELATED PAID LEAVE**

- Q: Is an Employer still required to pay the COVID PHE 80 hours?**  
**A:** Yes, the COVID PHE is still in effect. The 'up to the 80 hours of emergency pay' (regularly scheduled hours, 80 hours max) is the maximum amount for a full-time employee, with prorating to occur for part time employees, until the COVID PHE is lifted.
- Q: What code should be used in Paycom for the COVID PHE pay?**  
**A:** Use earning code 'EME'. Note: the EME code does NOT impact the Colorado paid sick leave accrual balance; tracking is separate.
- Q: How many times must an Employer award the 80 hours of COVID PHE pay (80 being maximum total for full-time employees)?**  
**A:** Colorado law only requires a maximum total of 80 hours of COVID PHE leave, regardless of the number of incidents or the calendar year.<sup>10</sup>
- Q: How long will the COVID PHE pay requirement remain in effect under the CO HFWA?**  
**A:** The Emergency COVID pay requirement will remain in effect until such time as the federal Department of Health and Human Services designates the Public Health Emergency over.
- Q: Does COVID PHE hours/ pay reset when an employee transfers to another Parish?**  
**A:** Yes.
- Q: For what reasons can an employee use the COVID PHE pay?**  
**A:** For: (1) self-isolating or work exclusion due to exposure, symptoms, or diagnosis of the communicable illness in the PHE; (2) seeking a diagnosis, treatment, or care (including preventive care) of such an illness; (3) being unable to work due to a health condition that may increase susceptibility to or risk of such an illness; or (4) caring for a child or other family in category (1)-(3), or whose school or child care is unavailable due to the PHE.
- Q: What must an employee do to take COVID PHE leave?**  
**A:** An employee must only inform their Employer of their reason for needing to take COVID PHE pay under the CO HFWA. Documentation is not required.
- Q: May an employee use their existing accruals for COVID PHE paid leave?**  
**A:** Yes, ONCE their 80.0 COVID PHE maximum allowance is taken/used up.

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<sup>10</sup> Note: To take advantage of tax credits, some Employers voluntarily paid COVID leave under the federal law (FFCRA) during January 1-September 30, 2021. If an Employer did this, that Employer is still required to pay an additional maximum total of 80 hours of COVID PHE leave under Colorado state law. If an employee has used 80 hours of the Colorado COVID PHE leave pay since September 30, 2021, then no more leave time is required to be offered.

**PART 4**  
**CO HFWA Q & A and Action Steps**  
**ACCruED PAID SICK LEAVE**

**Recall the base requirement for this portion of the CO HFWA:** As of January 1, 2021, CO HFWA requires an Employer to provide one (1) hour of paid sick leave per 30 hours worked, **up to 48 hours per year** (and recall that this category of leave is NOT tied to COVID PHE pay).

**Q: If an Employer currently awards its employees paid leave that is paid-time-off (PTO) or vacation, does that count toward the new paid sick leave requirement under CO state law?**

**A:** Yes. If an Employer already awards an employee PTO/vacation/personal leave, those awards count toward the CO HFWA paid sick leave requirement SO LONG AS: (i) the employee can use the paid leave for the same reasons the law lists, and (ii) the annual total is equal to, or more than, the required accrual rate of one (1) hour per every 30 hours worked.

**NOTE:** Per all existing Employer leave policies applicable to ALL full-time employees, all Employers already provide sufficient leave to meet CO HFWA accrued paid sick leave requirements. This Part 4 is therefore intended to inform on and assist with meeting accrued paid sick leave requirements applicable to all other employees: part-time (school and non-school), temporary, seasonal and substitute teacher employees (list includes musicians).

**Q: Will the CO HFWA sick leave balances carry over year-to year, up to a maximum of 48 hours?**

**A:** Yes. To ensure compliance, accruals have been programmed in the system by Paycom to automatically carry over the correct amount, up to 48 hours.

**Q: What is the lowest increment that accrued sick leave must be available to an employee for use? (e.g., if a part-time employee has accrued .5 hours of paid sick leave, may he/she take it?).**

**A:** This is not technically set by the CO HFWA; rather, the lowest increment of sick leave that an employee may take is up to the Employer. However, 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 (6) minute increments.

**\*\*The Office of Human Resources recommends that the lowest increment that is available for an employee to use be no fewer than four (4) hours. Whatever increment an Employer decides upon, however, MUST be clearly communicated to employees. \*\***

**Q: If a teacher calls in sick, and the Employer contacts a substitute teacher and the substitute is unavailable because he/she is also sick, must the Employer allow the substitute to use his/her CO HFWA sick leave?**

**A:** No, although the Office of Human Resources suggests that there be an exception if the substitute had been scheduled in advance.

**Q: Under the CO HFWA, what should an Employer be mindful of upon an employee's termination?**

**A:** The Act does NOT create an obligation for Employers to pay out unused, accrued paid sick leave at separation, regardless of the reason for separation. However, note the following: (i) an individual may recover paid sick leave as a remedy for a retaliatory personnel action that prevented the individual from using paid sick leave; and (ii) if an Employer rehires a separated employee within six (6) months of that employee's separation, the Employer MUST reinstate any unused, accrued paid sick leave the employee had at the time of separation.

**Q: What has Human Resources (HR) done to build Paycom fields responsive to CO HFWA and to otherwise assist with tracking employee accruals?**

**A:** Below is a summary of what Human Resources has done to build and load the accrual regime in Paycom, including accruals earned from January 1, 2021 through January 30, 2022. This work was completed as of January 31, 2022.

1. **HR isolated** by employee type (per chart below), the employees for whom sick time was NOT previously awarded but should now accrue. Again, the employees for whom sick time was not previously awarded are as follows: (part-time (school and non-school), temporary, seasonal and substitute teacher employees (list to include musicians).
2. **HR built** a new Accrual Profile titled “**CO HFWA Part Time At-Will**”, and then assigned this Accrual Profile to the following employee types: part-time (school and non-school), temporary, seasonal and substitute teacher employees (list to include musicians).
3. **HR calculated** the hours that accrued in 2021; **HR assigned** balances retroactively based on a ‘range’ of hours worked up through January 30, 2022; and then **HR updated** accrual balances in Paycom.
  - Note: Balances assigned retroactively were not based on actual hours worked but per a range. This was due to the challenges associated with back-loading past hours actually worked for every employee for which CO HFWA accruals had to be calculated. To get the *most accurate* balance for retroactive import, this was the suggested methodology in working with Paycom and other consultants. *BUT, if an Employer wishes to manually correct accruals individually to reflect actual hours worked between January 1, 2021 and January 30, 2022, it may do so. Instructions are available at [denverparish.org](http://denverparish.org).*
  - As of January 31, 2022, employee balances are calculated off the **F(ull) T(ime) E(quivalent) (FTE) Factor** on Paycom Form 1. (see the final Q&A in this Part 4)

Employee Type	Prior Accrual Eligibility	New CO HFWA Accrued Paid Sick Leave	Paycom Accrual Eligibility Profile
Religious	Not eligible	Not eligible	NA
Clergy	Not eligible	Not eligible	NA
Seminarians	Not eligible	Not eligible	NA
Temporary/Seasonal/Substitute <sup>11</sup>	Not eligible	Yes, eligible	CO HFWA Part Time At-Will
Part-time (non-school)	Not eligible	Yes, eligible	CO HFWA Part Time At-Will
Part-time (school)	Not eligible	Yes, eligible	CO HFWA Part Time At-Will <sup>12</sup>
Full-time (non-school)	Eligible	Eligible	Continue to assign as normal
Full-time (school)	Eligible	Eligible	Continue to assign as normal

<sup>11</sup> These are all employees; CO HFWA does apply.

<sup>12</sup> It is acknowledged that part-time teachers are not “at will” employees, but rather are exempt and under a teacher contract. To keep it simple, however, Paycom’s Accrual Eligibility Profile entitled “Part Time At-Will” also applies to part-time teachers and any other exempt position that may be structure to be part-time.



Q: **What should the Employer do next?**

A: See Sections 1-6, below.

1. Generally:

- It is strongly suggested that Employers verify for their part-time (school and non-school), temporary, seasonal and substitute teacher employees (list includes musicians) that accruals have been adjusted correctly within Paycom from January 1, 2021, through January 30, 2022. This is accomplished through checking the FTE Factor (see final Q&A of this Part 4 for discussion and examples).
- Employers are asked to verify that, as of January 31, 2022, part-time (school and non-school), temporary, seasonal and substitute teacher employees (list include musicians) have been assigned the correct eligible eligibility accrual profile of **HFWA Part Time At-Will**. (with particular attention paid to Part-Time (school) eligibility profiles being correctly assigned; see below for additional discussion).

2. For Religious/Clergy/Seminarian – These classifications do not traditionally receive paid time off per existing policies. If the Employer has historically assigned religious/clergy a profile, Employer may continue to do so if that is appropriate for the location and position being filled, but the Employer should also reach out Human Resources to discuss why the Employer feels this is appropriate.

3. For Part-Time (non-school) – All the Paycom updates to assign the accrual profile of **CO HFWA Part Time At-Will** should have been completed in January of 2022. Going forward, the Employer, for all part-time new hires, should assign the **CO HFWA Part Time At-Will** profile to part-time (school and non-school), temporary, seasonal and substitute teacher employees (list includes musicians). If the Employer already awards an accrual that is equal to, or more generous than, the **CO HFWA Part Time At-Will**, the Employer should continue to assign that profile.

4. For Part-Time (school) – Part-time **teacher** contract language has been updated for school year 22/23 to accommodate the CO HFWA accrual requirements. Though part-time teachers are technically not “at-will” employees, the Employer should nonetheless default to categorizing them under the current **CO HFWA Part Time At-Will** profile to ensure accrual is occurring properly (the accrual calculation is the same regardless of whether the individual is an at-will employee or exempt per a part-time teacher contract).

5. For Full-time (non-school) – Per existing policies, this category already accrues adequate PTO/vacation/sick leave paid time off that is equal to or more generous than the new paid sick leave accrual requirement of 1 hour for every 30 hours of work. Employers are to keep assigning as they normally would.

To verify, however, that the Employer’s accrual structure is sufficient, calculate as follows: 80.0 hours \* 26 pay periods = 2080 annual hours / 30 (1.0 hour accrued for every 30 hours worked) = 69.33 hours. This is obviously based on a full time employee of 80.0 hours per pay period. However, the accruals can be checked by simply changing the 80.0 hours out to the actual number.

6. For Full-time (school) – As school teacher contracts already award an accrual that is equal to, or more generous than, the CO HFWA Part Time At-Will, Employers should continue to assign that profile (10 sick, 2 personal). Otherwise, default to the **CO HFWA Part Time At-Will** profile. Employers **SHOULD NOT** be tracking accruals on a separate spreadsheet, or in any other manner, outside of Paycom.

Q: **What is the role of the FTE Factor in Accruing CO HFWA Paid Sick Leave Calculations?**

A: The FTE Factor drives the rate of accrual for CO HFWA paid sick leave each pay period (see next question). So, as an Employer is keying New Hire Personnel Action Forms (PAFs) or changes via the PAFs, they are asked to be mindful of the FTE Factor and ensure that it is correctly calculated.

Q: **How does an Employer calculate the FTE Factor?**

A: The way the FTE Factor works in Paycom drives accrual rates and is based on the number of hours an employee is scheduled to work. **To get to the correct FTE Factor, divide the scheduled pay-period hours by 80, which is the standard of one Full-Time Equivalent. The resulting decimal will be the FTE Factor.** This process is most critical with part-time employees, as all of them will be less than a 1.0 FTE.

**FTE Factor calculation examples for part-time employees:**

a. 25 hours scheduled per pay period / 80 = 0.3125 FTE Factor

Also note: 25.0 hours worked per pay period \* 26 pay periods = 650.0 hours annually / 30 (1.0 hour accrued for every 30 hours worked) = 21.67 hours of accrued CO HFWA sick leave awarded (accrued) annually in a calendar year

b. 22.0 hours scheduled per pay period / 80 = 0.275 FTE Factor

Also note: 22.0 hours worked per pay period \* 26 pay periods = 572.0 hours annually / 30 (1.0 hour accrued for every 30 hours worked) = 19.07 hours of accrued CO HFWA sick leave awarded (accrued) annually in a calendar year

Q: **How does the Employer track employee time?**

A: Ensure that employees are tracking time/ time off requests by REQUIRING as follows:

- Requiring that employees track their time ONLY in Paycom, per the approved Employer recording method (note: this must occur in Paycom to prevent year-end adjustments). Without documented records for hourly workers or part-time exempt workers, it is difficult to impossible to measure and prove (should records be called into review), that the employee was working their scheduled pay period hours as referenced above. So, for example, though part-time teachers are exempt and under a teacher contract, part-time teachers MUST record their hours worked for the CO HFWA tracking (and should be tracking for healthcare reform tracking anyway).
- Requiring that employees input time-off requests through their timecards in Paycom. This ensures that the Employer is adhering to best practices and will also ensure that the 'CO HFWA Part Time At-Will' code is accruing and being awarded accurately.