

# COLORADO LAWS & REGULATIONS THAT IMPACT YOUR BUSINESS

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Partner with Local Experts That  
Know Colorado's Laws



# COMPLIANCE REQUIRES EXPERTISE

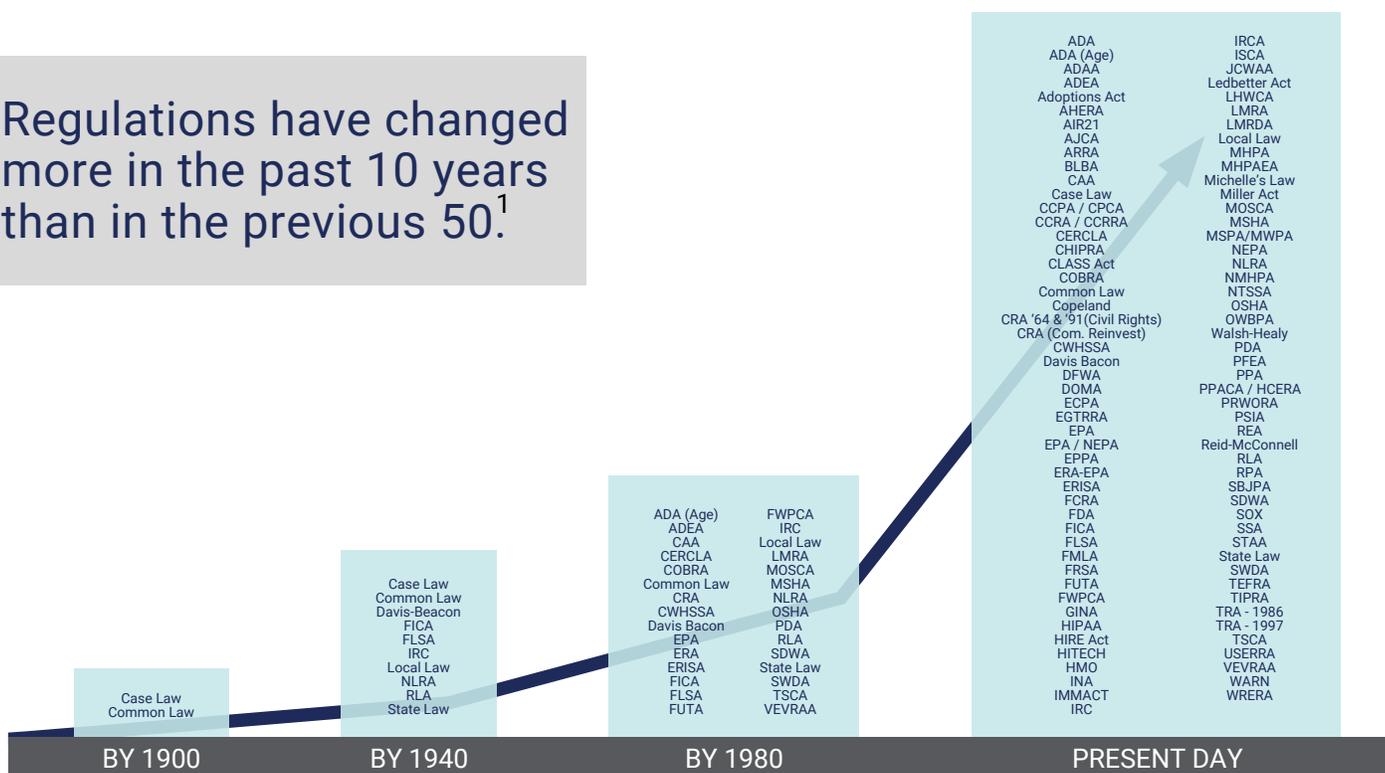
With Colorado's employment laws and regulations constantly changing, there's no time to waste in understanding what the new laws mean for your business and how to implement them correctly. Any mistakes or oversights can have severe financial penalties and other consequences, so making sure you have a thorough and accurate grasp of the laws is priority number one.

But if you have a small to mid-sized business and are already limited in time and resources, this can feel like an uphill battle. How can you make sure you're in compliance if you or your in-house HR team lack the bandwidth and legal expertise necessary to fully understand and keep up with changing laws?

## GET HELP FROM LOCAL HR EXPERTS TO ENSURE YOU'RE IN COMPLIANCE

A local HR partner with experts who understand Colorado's laws and regulations can give you the information and support you need. It's their job to understand the details and complexities of each law and help businesses like yours follow best practices for implementing the laws and managing risk. When this burden is removed from your shoulders or your team's, then you can focus more time and energy on the activities that nurture and develop your workforce, generate more revenue, and drive business growth.

Regulations have changed more in the past 10 years than in the previous 50.<sup>1</sup>



Here's a closer look at the laws and regulations you need to know about throughout 2021, possible changes, and how an HR partner with local expertise can help you navigate all of them.



## Refresh for 2021 EQUAL PAY FOR EQUAL WORK ACT

Passed in 2019, but in effect as of January 1, 2021, the Equal Pay Act affects all employers in Colorado and strengthens pay equity requirements.

### How the Law Impacts Your Business:

The law requires equal pay, including benefits, for “substantially similar work,” regardless of job title, and prohibits pay disparity on the basis of sex or any other protected status.

#### Pay disparity is allowed if it's based on:

- Seniority/tenure
- A merit-based system
- Quality- or quantity-based system
- Geographic location
- Job-related education and training
- Required travel

**Employers must include the offered pay or pay range in all job postings, as well as a general description of any other compensation, such as bonuses and commissions.**

Promotional opportunities must also be announced to all employees on the same business day. Under the law, employees have the right to pursue administrative or civil proceedings for two years and receive two times the damages for up to three years of pay.

#### The law also:

- Requires job descriptions and wage-related documents be kept for two years after the employee leaves the organization
- Prohibits employers from asking about an applicant's wage history and using any self-disclosed information to determine the pay rate offered to the applicant
- Prohibits prevention of, or retaliation against, an employee who discloses their pay rate to another employee or to others outside the organization

Read more about the law [here](#).

To learn more about how this law could impact your business,

▶ WATCH THE WEBINAR

## HOW AN HR PARTNER CAN HELP – PAY AUDIT

Doing a thorough pay audit to identify and eliminate any existing pay disparities can help organizations make sure they are in compliance with the new law. An HR partner with local experts on hand can help you with the audit process, including:

- Conducting a detailed review of job postings and descriptions
- Closely evaluating your current pay practices and procedures
- Identifying jobs that perform “substantially similar work”
- Determining if existing pay differences are allowable under the law
- Developing a remediation plan to correct any disparities that aren’t allowable

**Your HR partner can also help you come up with an implementation plan for the Equal Pay Act, such as:**

- Communicating the law’s requirements to managers and training them as needed
- Installing appropriate record-keeping systems
- Updating or improving internal promotion and compensation programs
- Conducting ongoing pay audits on an annual basis or other regular frequency

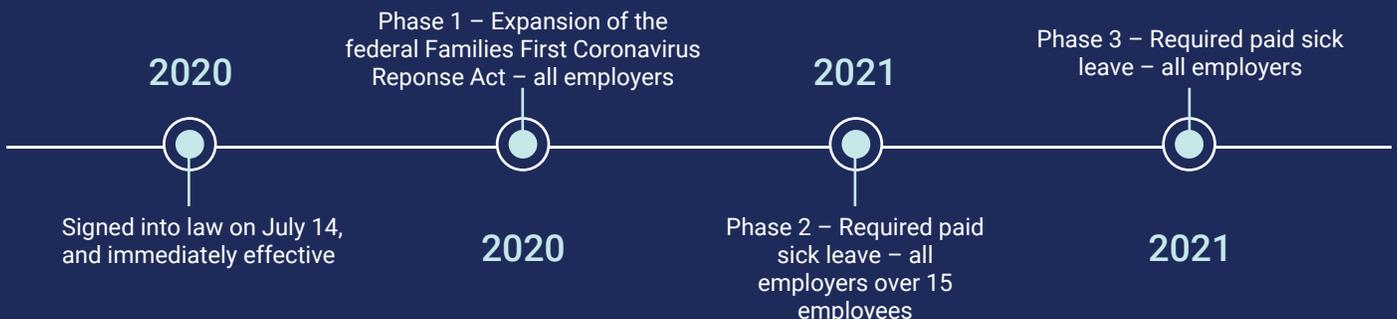


### Refresh for 2021

## HEALTHY FAMILIES & WORKPLACES ACT (HFWA)

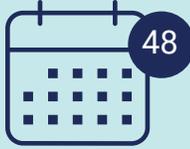
Signed into law and immediately effective on July 14, 2020, the HFWA requires paid sick leave for all Colorado employers by 2022 and is being rolled out in three phases. On January 1, 2021, phase two of the law went into effect for all employers with 16 or more employees. Phase three will roll out January 1, 2022.

### HFWA: Timeline & Overview



## How phase two of the law impacts your business:

The law requires employers to offer a maximum of 48 hours (or six days) of sick leave to all employees per year. There are two allowed accrual methods:



- Grants all hours up front
- Hours pro-rated for part-time employees



- Accrue 1 hour per 30 hours worked
- Can exclude overtime, sick hours from accrual

Unused sick leave can roll over into future years, but employers can choose to cap this at 48 hours. Unused sick leave also doesn't have to be paid out when an employee is terminated, but it does have to be reinstated if the employee is rehired.

### The law also:

- Ensures a provision of two weeks paid sick leave in the event of a public health emergency
- Requires documentation only for leave longer than four consecutive days
- Mandates that sick leave records be kept for two years after an employee leaves the organization, including hours accrued and hours used

Read more about the law [here](#).

To learn more about how HWFA could impact your business,

▶ WATCH THE WEBINAR

## HOW AN HR PARTNER CAN HELP – DOCUMENTATION

The HFWA lists a variety of “allowed reasons” for paid sick leave. An HR partner can help you adequately document employee leave and ensure you’re in compliance with all allowed reasons, which include:

- ✓ Mental or physical illness, medical care, and diagnosis that impacts either the employee or their family member
- ✓ Domestic abuse, sexual assault, or criminal harassment that necessitates:
  - Counseling, medical care, or victim services
  - Relocation
  - Legal services or participation in legal proceedings
- ✓ Public health emergencies when closure of the workplace, schools, and/or childcare are involved

**Your HR partner can also help you come up with an implementation plan for phase two of the HFWA, such as:**

- ✓ Reviewing current sick leave policies, or creating them, before the end of the year
- ✓ Determining best practices around various sick leave accrual methods (e.g., grant all hours upfront, prorate for part-time employees, exclude overtime from accrual, etc.)
- ✓ Communicating the law’s requirements to managers
- ✓ Setting up separate HR systems to track sick leave and store related documentation
- ✓ Posting HFWA notices in the workplace



## MINIMUM WAGE & SALARY INCREASES

On January 1, 2021, the minimum wage in the city and county of Denver increased from \$12.85 an hour to \$14.77 an hour.

A minimum wage increase for the entire state of Colorado has passed increasing rates from \$12 to \$12.32. The increase also went into effect on January 1, 2021<sup>2</sup>. The minimum salary for exempt employees in Colorado (employees exempted from overtime pay) will increase from \$35,568 to \$40,500.

Read more about Denver's minimum wage [here](#) and Colorado's minimum salary [here](#).

### HOW AN HR PARTNER CAN HELP

An HR partner can help you prepare for and implement applicable wage and salary changes for your employees. They can also alert you to any future proposed changes to minimum wages and salaries so you can plan in advance.

<sup>2</sup> Pulfrey, Christine. "Colorado Proposes Raising Minimum Wage to \$12.32 in 2021." Bloomberg. Sept. 14, 2020.



## PUBLIC HEALTH EMERGENCY WHISTLEBLOWER

### PHEW IN 2021

#### PUBLIC HEALTH EMERGENCY WHISTLEBLOWER ACT IS STILL RELEVANT

Signed into law and immediately effective on July 11, 2020, the PHEW Act protects employees and contractors who file complaints about public health violations during a public health emergency. The law applies to employers of all sizes and those that employ five or more independent contractors.

**Though the law is already in effect, it will have continued significance in 2021 as the COVID health crisis continues.**

## HOW PHEW IMPACTS YOUR BUSINESS

The law allows employees and contractors to voice good-faith concerns about workplace safety rules and health and safety risks related to a public health emergency. Employees can also oppose practices they believe to be unlawful as well as participate in making a charge of, or testifying about, an unlawful practice – without retaliation by the employer. The law also allows employees and contractors to wear their own personal protective equipment (PPE) if it's recommended by a federal, state, or local health agency, or even if it exceeds workplace requirements, as long as it doesn't prevent the worker from doing their job.

### The law also:

- Guarantees these rights, which cannot be waived or contracted away
- Requires employers to make workers aware of their rights under the law
- Allows complaints to be filed with the Colorado Department of Labor and Employment (CDLE). If the CDLE chooses not to investigate, a civil suit can be filed against the business to seek damages for both the worker and the state.

Read more about the law [here](#).



To learn more about  
how PHEW could  
impact your business,

▶ WATCH THE WEBINAR



## HOW AN HR PARTNER CAN HELP

Public health emergencies can develop quickly, leaving little time to deliberate over a plan for keeping your workplace and employees safe without unduly disrupting operations. An HR partner can **help you make sure your workforce can do their jobs safely and effectively in the event of a public health emergency, and that your business is in compliance with this law and any other federal, state, or local health-related mandates.** As the current health crisis evolves, an HR partner can also help you stay on top of new legislation that may specifically affect the provisions of PHEW or how it's applied.

Your HR partner can help you come up with an implementation plan for PHEW (if you haven't already implemented it) as well as account for any changes to come, such as:

- Communicating the law's requirements to managers
- Making sure all employees and contractors are aware of their rights
- Posting PHEW notices in the workplace
- Tracking legislative changes or updates that may affect the law and/or how they apply to your business



**New for 2021**

## **No More “Use-It-Or-Lose-It” Vacation Policies**

The Colorado Supreme Court ruled on a case under the Colorado Wage Claim Act (CWCA) that clarifies Colorado businesses will have to pay out vacation pay when an employee leaves. The case, *Neito vs. Clarks Market* was ruled on by the Colorado Supreme Court in June 2021.

### **What to Know:**

The Colorado Wage Claim Act states that employees are entitled to “earned, vested, determinable, and unpaid [compensation] at the time of discharge.” Unpaid compensation under the CWCA includes vacation pay. Under federal and state law you are not required to provide paid vacation as a business owner – it is a voluntary benefit. But if you do, this creates an obligation you’ll want to prepare for.

Vacation pay, like other wages, cannot be forfeited once earned.

**In other words, vacation pay policies that take a “use-it-or-lose-it” approach aren’t an option. If your current employment agreement or vacation policy states something like this, it’s now void.**

Vacation pay that’s offered as an employee benefit only applies to full or part-time employees – not independent contractors. Under the Colorado Wage Claim Act, when an employee is terminated, compensation for vacation pay is due with their final paycheck. When an employee ends the relationship, compensation is due and payable upon the next regular payday. If more time is required, give written notice. Payment can be made at a worksite, employer’s local office, or employee’s last known mailing address.

**If timely payment isn’t provided, employees can pursue legal action and employers will be liable for the unpaid compensation plus a penalty.**

Though the recent ruling dealt with vacation pay, the CWCA requires compensation for any labor, services, bonuses, or commissions to be paid out similarly. For the employee to receive their unpaid compensation they must have fulfilled all their requirements for the job or service.

You can learn more about the law [here](#).



## 3 STEPS TO UPDATE YOUR VACATION POLICY

- 1 Review your current vacation pay benefits and policy.**

Evaluate whether vacation pay is a benefit you want to continue to provide. If you're an employer who currently has a "use-it-or-lose-it" approach, you'll need to create a new vacation policy. If you don't currently offer vacation pay there are no additional steps you'll need to take.
- 2 Consider setting a vacation "cap" or using an unlimited PTO plan.**

If you choose to provide vacation pay, setting a limit to the amount of vacation pay accrued limits your payout liability when an employee leaves or is terminated. Determine what cap in accrual makes the most sense based on the size of your business and employee turnover. Or consider an unlimited PTO plan as they never "accrue" an amount and are not impacted by this ruling.
- 3 Update your employment agreement and employee handbook.**

Be clear in your language regarding vacation pay and make sure your employees have access to your vacation policy.

## HOW AN HR PARTNER CAN HELP

The conversation around vacation pay and the Colorado Wage Claim Act will continue to develop. Likely there will be updates around the terminology of "vacation pay" and how it is "earned." An HR partner can keep you informed as Colorado business laws evolve. But if you offer your employees unique vacation benefits, such as unlimited vacation, a partner can also offer support in crafting your policy.

# LOOKING TOWARDS 2022



## COLORADO SECURE SAVINGS PROGRAM

**In July of 2020, the Colorado Secure Savings Program was signed, mandating businesses with at least five employees must offer access to individual retirement accounts.**

This ruling isn't a requirement for employers just yet. But it's worth a reminder of what this program entails as you prepare your business for it. The Colorado Secure Savings Act is state-mandated legislation. The purpose of the act is to increase access to retirement savings for workers in Colorado. Some workers, as it stands, don't have the ease of saving for retirement through their job. This program would mandate that qualifying employers provide an employer-sponsored retirement plan funded through automatic payroll deductions to solve that need.

**The deadline for compliance for the Colorado Secure Savings Program is still to be determined.**

Employers aren't currently responsible or being held accountable for anything just yet. Employer registration for this act will likely be at the end of this year or early 2022. Enforcement won't begin until at least one year after the program is established – or one year after an employer is scheduled to enter the program based on the number of employees or years in business.

### HOW THE LAW IMPACTS YOUR BUSINESS:

As an employer, you will be required to implement this program if:

- You have five or more employees
- Have been in business for two or more years
- Don't have an existing qualifying retirement plan

Employees can voluntarily participate in the retirement plan if they are 18 years of age or older, employed by a Colorado employer for at least 180 days, and earn taxable wages.

Employers do NOT have to provide contributions to the retirement accounts – that is a voluntary option. Employers also don't have to be the fiduciaries of the program.

## HOW AN HR PARTNER CAN HELP

Having a retirement plan option and even financial education tools is a great benefit to attract and retain employees. An HR partner can help you take the following steps to get the most out of complying with this program:

- Evaluate what retirement plan is best for your employees. Not all retirement plans are the same. Consider what your employees will value most. And note, if you already have a retirement plan option such as a 401(k) or other qualified plans you're already in compliance.
- Prepare your payroll – automatic deductions for employees are part of the program. Review your current right payroll processing to make sure this runs smoothly.
- Compile information to share with your existing employees and new hires on the program. Employees will look to you to gather the facts so they can make the best decision for themselves and their families. And though this program is an additional responsibility for employers, it can be advertised to prospective employees.



# PARTNER WITH LOCAL EXPERTS THAT KNOW COLORADO'S LAWS

Staying on top of changing laws and regulations is a full-time job for anyone. When you or your HR team are already strapped for time and resources, this can be especially challenging, not to mention put your business at increased risk if anything is missed.



**“While you may think a rule or regulation change is straightforward, it never is. It is extremely important to get legal support.”<sup>3</sup>**

<sup>3</sup>Forbes Human Resources Council. “How to Ensure Compliance with New Regulations: Nine Key Actions.” Forbes. March 6, 2020.

One of the biggest benefits of working with a local HR partner with a team of legal experts on staff is that they understand Colorado’s employment laws inside and out and can help your business achieve and maintain compliance.

## **They can:**

- ✓ Answer questions
- ✓ Advise on best practices
- ✓ Stay alert to regulatory changes
- ✓ Help you strategize and plan
- ✓ Conduct regular reviews and audits of your policies and procedures, or help you create them from the ground up

With experts at the helm, you can free up more time for you and your team to focus on the strategic activities that will meet business goals.

Make sure you’re aware of the new employment laws and regulations that went into effect this year and other recent changes. Then consider how an HR partner’s legal experts can help ensure your business is prepared and compliant and give you greater confidence in the work you’re doing.

Ready to outsource your HR to a trusted, local partner? Schedule time with an expert today.

[\*\*Learn More\*\*](#)



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