



## COVID-19 FREQUENTLY ASKED QUESTIONS

### Employment

#### **Can an employer force employees to take paid or unpaid vacation time during COVID-19?**

Neither Colorado law nor the federal Fair Labor Standards Act requires that employers offer vacation leave. Therefore, employers probably may force employees to take vacation leave. One caveat is that an employer likely cannot require an exempt employee to take unpaid vacation time. If the exempt employee is ready and willing to work and employer requests they not work, they should be entitled to their full salary for the week. Violations may expose the employer to loss of the exemption for that employee.

Please also note that most terms of employment are determined by the employment contract as well as workplace policies, so both parties should check the contract and policies to see if they provide guidance for this situation.

Both parties should be aware that Colorado law treats vacation leave as wages, which must be paid if the employee resigns or is terminated.<sup>1</sup> If you believe that your employer has violated this provision or a written contract or employment policy, you may wish to consult with an employment attorney to explore your legal rights and options further.

#### **Can an employer force employees to use vacation time instead of paying salaries right now?**

As discussed above, the legal basis for vacation pay is limited. The only requirement imposed on employers as to vacation pay is that an employer “pay upon separation from employment all vacation pay earned and determinable,”<sup>2</sup> which would include not allowing forfeiture of accrued leave. However, the employment agreement will guide the determination of: 1) whether vacation pay is provided at all; 2) the amount of vacation pay; 3) the method of accrual; and 4) whether there is a cap on vacation pay.<sup>3</sup> Therefore, given that state law gives such leeway to employers, they are likely free to dictate when and how the benefits should be used.

However, Congress has passed some legislation to protect employees. This legislation includes the Families First Coronavirus Response Act (“FFCRA”), which provides for paid sick leave and

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<sup>1</sup> Colorado Revised Statutes § 8-4-101(14)(a)(III).

<sup>2</sup> Colorado Revised Statutes § 8-4-101(14)(a)(III).

<sup>3</sup> Wage Protection Act Rules, 7 Colorado Code of Regulations 1103-7, Rule 2.17.

expanded family and medical leave for some employees (including those who are quarantined and those who are experiencing COVID-19 symptoms). Further, it does prevent employers from requiring employees to use other paid leave before using leave under the FFCRA. However, this Act does not protect employees who do not meet the requirements for sick leave or expanded family and medical leave (i.e. if they are not working because of a closure or slowdown). Please see the U.S. Department of Labor [webpage](#) for more information about the FFCRA. The [Questions and Answers page](#) is particularly helpful in providing guidance on employee rights under the FFCRA.

Colorado's Department of Labor has also instated the Colorado Health Emergency Leave with Pay Rules, which further require that employers provide up to four days of paid sick leave (at regular pay) for employees suffering symptoms or being tested for COVID-19 in certain industries: leisure and hospitality, food services, child care, education, some home health services, and nursing homes and community living facilities.<sup>4</sup> These rules do not require employers to offer additional leave if it covers at least four days, but does require that the employer allow four additional days even for an employee who has exhausted all of her sick days.<sup>5</sup> Please see the Colorado.gov [webpage of FAQs](#) dedicated to this Act for more information about how it may affect you.

### **Can an employer force an employee to use vacation time before going on short term disability due to coronavirus?**

As discussed above, the terms of an employee's use of vacation pay is generally guided by the employment contract and not by restrictions under the law. Therefore, Colorado employers can likely force employees to use vacation time before dipping into short-term disability funds.

However, see above for a discussion of paid sick leave under the Families First Coronavirus Response Act and the Colorado Health Emergency Leave with Pay Rules.

### **Can an employer place employees on unpaid leave due to COVID 19?**

Yes. Neither federal nor Colorado law prevents employers from placing employees on unpaid leave, including by furloughing them without pay.

Congress has, however, passed some laws to provide relief to employees. One of these, under the CARES Act, will provide one-time payments (called economic stimulus payments) to U.S. citizens and legal permanent residents based on income levels. The Families First Coronavirus Response Act also provides paid sick leave and expanded family and medical leave for certain

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<sup>4</sup> 7 Colorado Code of Regulations 1103-10, Rule 3.1.

<sup>5</sup> 7 Colorado Code of Regulations 1103-10, Rule 3.2.

employees who are ill or self-quarantining due to the virus or taking care of children because a school or daycare is closed.

If you are an employee who has been put on unpaid leave, you may also consider filing a claim for unemployment benefits.

**What should I do if I suspect my employer is discriminating during this crisis based on race, national origin, gender, or other reason?**

Discrimination based on any of the following protected classes is unlawful: race, color, religion, creed, national origin, ancestry, sex, pregnancy, age, sexual orientation (including transgender status), physical or mental disability, marriage to a coworker, retaliation for engaging in protected activity.

If you believe that you or others have been discriminated against, you should consider consulting an attorney who specializes in employment discrimination. You should also consider following any complaint reporting procedures provided in an employment handbook, and perhaps reporting the discrimination to the [Equal Employment Opportunity Commission](#) or the [Colorado Civil Rights Division](#).

**Are there resources available for employees who were laid off?**

Employees who have been laid off should consider filing for unemployment compensation. You can find more information and apply on the Colorado Department of Labor and Employment [website](#).

If you are struggling to pay rent, utilities, or to purchase food, please consult the list of local emergency assistance resources on the Alpine Legal Services [website](#), under the Covid-19 section. Please also consult our FAQ information on housing issues.

**What are the requirements to file for unemployment compensation?**

Some of the requirements to be qualified to receive unemployment compensation have changed in light of COVID-19. You can find the most updated information on requirements and apply on the Colorado Department of Labor and Employment [website](#).

**Can I file for unemployment compensation if I am undocumented or using a social security number which does not belong to me?**

No, generally speaking, people who are undocumented cannot file for unemployment compensation. Please consult an employment or immigration attorney if you are unsure whether you can or should file for unemployment compensation.

**Can I file for unemployment compensation if I am categorized as an independent contractor?**

At this time, the CARES Act has expanded eligibility for independent contractors to receive unemployment compensation. You can find the most updated information on requirements and apply on the Colorado Department of Labor and Employment [website](#).

Although unemployment compensation differs for employees and independent contractors, it may be worth filing regardless of your formal classification. Employers sometimes misclassify employees as independent contractors.

**Are there resources available for business owners who can't pay employees?**

There are state and federal relief options through the CARES Act and others. The United States Senate Committee on Small Business and Entrepreneurship has published a Guide to the CARES Act for small business owners, which may be found [here](#).

Alpine Legal Services' [website](#) also includes a number of resources available to small business owners under the Covid-19 tab.

**DISCLAIMER:** Alpine Legal Services has compiled these FAQ pages for residents in our service area (Aspen to Parachute, Colorado) in order to provide the public with general legal information. This information is not intended as legal advice specific to your situation. While Alpine Legal Services strives to provide correct, updated information, the legal landscape is developing on a daily basis and we cannot guarantee the accuracy of all information provided here. **Please contact an attorney for legal advice.**