

# THE EMPLOYER'S ADVISORY

A PERIODICAL HIGHLIGHTING  
CURRENT EMPLOYMENT-LAW ISSUES

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## **DECLARED PUBLIC HEALTH EMERGENCY ENDS MAY 11, 2023. WHAT DOES THAT MEAN FOR COLORADO EMPLOYERS?**

On January 30, 2023, President Biden announced that the public health emergency related to COVID-19 will expire on May 11, 2023. For Colorado employers, has broader implications above an official statement that Covid-19 is being phased out of the emergency that has inundated our lives over the last few years.

For Colorado employers this modification means that the Public Health Emergency Leave (PHEL) should come to an end. As you know, in 2020, Colorado passed the Healthy Families and Workplaces Act ("HFWA"). HFWA requires employers to provide paid sick leave to employees. Included in this law was a separate requirement for employers to provide up to 80 hours of paid leave to employees when a public health emergency is declared. This requirement to provide PHEL leave applied when either the state or the federal government had declared a public health emergency.

Since HFWA became a law, there has been a constant declaration of a public health emergency. At one point, Governor Polis ended the public health emergency in Colorado, but the Biden administration continued the federal declaration of a public health emergency. Due to this ongoing federal declaration, Colorado employers have been continuously subjected to the requirements of PHEL. Governor Polis reinstated the Colorado declaration of a public health emergency at the end of 2022, adding RSV and the

Flu to the illnesses covered under the declaration. That declaration, though, ended in mid-January. Accordingly, with this announcement on January 30, 2023, the ongoing PHEL requirement has a potential end date...namely June 8, 2023, because Colorado permits employees to use PHEL until four weeks after the official termination of the public health emergency.

Assuming that no future issues occur between now and May 11, 2023, the requirement to provide up to 80 hours of paid sick leave to employees under PHEL will come to an end on June 8, 2023. And Colorado employers still have to provide paid sick leave pursuant to the remaining requirements of HFWA.

Speaking of HFWA, the Colorado Senate just proposed an expansion of HFWA. That is, SB23-017 would expand HFWA to include "(1) care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; and (2) grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member." So, keep an eye on that bill. And

If you need assistance with understanding your HFWA obligations, please contact our office.

## **DON'T FORGET TO REGISTER FOR THE COLORADO SECURED SAVINGS PROGRAM.**

The Department of the Treasury has sent out an email and/or mail notices to all employers affected by the new Colorado Secured Savings Program. Under this law, employers will be required to register for this program or in the alternative register and register that you have an exception to the program by indicating that you have a current retirement savings program. The deadlines for registration start in March 2023 but employers are encouraged to register as soon as they receive the notice from the Department of the Treasury. Essentially, employers do not have to wait for the deadline to register. For more information on this program and to register go to: <https://coloradosecuresavings.com/employers/program-details>.

## **THE RISE OF THE NATIONAL LABOR RELATIONS BOARD AND WHAT TO KNOW ABOUT THE NATIONAL LABOR RELATIONS ACT.**

The prevalence of articles in the news related to unions, unionizing, or claims filed by the National Labor Relations Board (NLRB) is ever increasing these days. These actions are all governed by the National Labor Relations Act of 1935 (NLRA). The NLRA was passed to encourage collective bargaining and freedom of association in the workplace. The NLRB was created within the Act to enforce the provisions of the NLRA.

The NLRB is similar to the EEOC and CDLE in that it is an administrative agency that can investigate violations of the NLRA. The NLRB can also assess damages and fine employers for violations of the NLRA. Given the rise of interest in unionizing and the formation of employee associations, it is best for employers to acquaint themselves with the

requirements of the NLRA to avoid the dreaded investigation from the NLRB.

Under the NLRA employees have the right to “self-organization, to form, join, or assist labor organizations, to bargain collectively through representative of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Through the passage of regulations and decisions of the NLRB, this section has limited how employers can reprimand employees for activities related to the NLRA. As such, even if an employer’s employees are not actively engaged in unionization activities, the employer’s policies and procedures may still be in violation of the NLRA as long as the employee’s actions are undertaken in an effort to “improve work conditions.”

In short, any policy or procedure that allows for the reprimand of employees for engaging in activities protected by the NLRA can result in an investigation and enforcement action by the NLRB. Activities protected by the NLRA include:

- *Employees discussing working conditions with each other.* “Working conditions” is broadly defined and can include access to protective equipment, cleanliness of the workplace, perceptions of the company as a whole, and the behaviors of a supervisor. As such, employers should make sure that they do not have a policy that reprimands employees for talking negatively about their work, work environment, the company, or their supervisor, including on social media platforms. Employers should also be very careful to reprimand employees (even if they do not have a policy) when the issue is that the employee stated something negative about their work, work environment, the company, or their supervisor.
- *Employees discussing pay or wages with each other.* Many employers have policies that discourage employees from discussing

pay. Unfortunately, this is an activity that is protected under the NLRA and may violate Colorado's Equal Pay Act. As such, employers are encouraged to review these policies and are discouraged from reprimanding employees for this behavior.

Technically, any time employees get together to discuss their employer or any part of their employment, even on social media, these activities could be considered protected by the NLRA. To avoid an NLRB investigation, it is advisable for Colorado employers to review their policies and procedures and make sure that these policies allow employees more freedom to discuss their workplace conditions and/or concerns about their employment with their co-workers. Supervisors should also be trained to refrain from reprimanding employees for such activities. If you have questions on the NLRA, and your company's compliance with this law, please contact our office.

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