

LEGAL UPDATES

PUBLISHED: JULY 20, 2020

Services

Labor & Employment
Workplace Safety &
Health

Professional

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Colorado Passes Whistleblower Protections Relating to Workplace Safety

The Healthy Families and Workplaces Act, signed into law on July 14, 2020, not only requires additional paid sick leave for virtually all Colorado employees during the current COVID-19 pandemic for up to 80 hours, but then goes further to require Colorado employers, starting January 1, 2021, to provide up to 48 hours of paid sick leave for employees' healthcare needs or to allow them to care for family members with healthcare needs. See our other update on this subject.

The General Assembly also added a "Worker Rights Related to a Public Health Emergency" article to Title 8 (Labor and Industry) codifying whistleblower protections for workers who raise concerns about workplace safety related to a public health emergency. This law's robust private right of action has the potential to spawn a wave of future lawsuits. Governor Polis signed this into law on July 11, 2020.

"Whistleblower" protections for workers who complain about workplace conditions during a public health crisis (HB20-1415)

The new "Worker Rights Related to a Public Health Emergency" provisions prohibit discriminating, retaliating or taking any adverse action against a worker who raises reasonable concerns about workplace safety related to a public health emergency.

Legitimate concerns can be about workplace violations of government health or safety rules, or about a significant threat to workplace health or safety. The concern may be raised to the employer or its agent, to other workers, a government agency or the public.

The new provisions also prohibit discrimination, retaliation or adverse action against workers who desire to wear their own personal protective equipment (PPE) as long as:

Their PPE provides more protection than PPE provided by the employer;

Their PPE is recommended by a federal, state or local public health agency; and

Their PPE will not disable the worker from performing his or her job.

Further, the law makes any agreement between an employer and a worker requiring confidentiality concerning such workplace violations or significant threats to health or safety illegal and void.

After exhausting administrative remedies with the Colorado Department of Labor and Employment, an aggrieved worker can file a lawsuit, with potential damages including front and back pay, fines, attorney's fees and punitive damages. Moreover, "whistleblowers" (workers with knowledge of an alleged violation) may likewise, after exhausting administrative remedies, file qui tam action (action on behalf of the state).

What this means for employers

Implement policies encouraging workers to raise concerns internally, to minimize employer's burden to ascertain whether complaints are being aired in public or on workers' social media sites.

Update policies and guidance regarding PPE in the workplace.

Train front-line managers on the new law so they know how to respond appropriately.

Contact us

If you have further questions or require more information regarding this update, please contact Stacey Bowman, Barb Grandjean, Chris Ottele or your Husch Blackwell attorney.

Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.