

## **“Are we there yet?”**

### **Gov. Polis’s July 8<sup>th</sup> Declaration and the Status of Public Health Emergency Leave Under the Healthy Families and Workplaces Act**

Yesterday, Colorado passed a historic milestone when Governor Jared Polis declared an end to the health emergency declaration that has been in place since the COVID-19 pandemic began in early 2020. If you are an owner or manager of a Colorado business, your first question is probably: “Does this mean that the Public Health Emergency Sick Leave (“PHEL”) mandate is over?” The answer is: maybe, but not right away. Let’s break it down.

Under the Colorado Healthy Families and Workplaces Act, on the date a public health emergency is declared, all employers must make 80 hours of paid sick leave available to employees for purposes related to the public health emergency. This mandate extends through the duration of the public health emergency declaration, plus an additional four weeks after the public health emergency has been suspended or ended.

You might think, “Wonderful! Four weeks from today, I no longer have to provide PHE Leave,” but before getting too excited, well, there’s a slight hiccup. That is, the statute defines “Public Health Emergency” as a declaration by a “state, federal, or local health agency.” So, while it

is true that Governor Polis, as of July 8<sup>th</sup>, 2021, ended the health emergency declaration, the federal Department of Health and Human Services (“DHHS”) has an existing “Determination That a Public Health Emergency Exists” that will remain in effect until at least July 19<sup>th</sup>. If the DHHS declines to extend that Determination, then within four weeks from July 19<sup>th</sup>, employers may be relieved of the emergency sick leave requirement. However, if the DHHS extends their Determination, employers may be obligated to continue providing leave under PHEL for some time.

In short, keep your eyes peeled for Public Health Emergency declarations from the President or the DHHS in the coming weeks, because unfortunately, Governor Polis’ declaration is only one part of a larger picture when we are talking about PHEL. Further, local authorities may also extend employer’s obligations under PHEL, so stay tuned to your local news outlets and watch for any relevant activity. And don’t forget, employers are obligated to continue to provide PHEL for four weeks *after* the expiration of the last federal, state, or local state of emergency.