COLORADO AGRICULTURE LABOR & EMPLOYMENT COMPLIANCE GUIDE

JULY 1, 2025

TABLE OF CONTENTS

TABLE OF CONTENTS 2
WAGE & HOUR RECORDKEEPING REQUIREMENTS 4
COLORADO MINIMUM WAGE 6
COLORADO AGRICULTURAL OVERTIME 8
MANDATORY MEAL BREAKS 11
PAID SICK LEAVE 15
VACATION & PTO 18
FEDERAL AND COLORADO FAMILY & MEDICAL LEAVE 19
PAID FAMILY & MEDICAL LEAVE INSURANCE (FAMLI) 21
WORKPLACE INJURY OR ILLNESS 23
HEAT INJURY & ILLNESS PROTECTION 24
WEEDING INJURY PROTECTION 27
KEY SERVICE PROVIDER ACCESS 28
HARASSMENT AND DISCRIMINATION 29
DISABILITY ACCOMMODATIONS 31
PREGNANT WORKER AND NURSING MOTHER PROTECTIONS 32

Content included in this guide was commissioned by Range Law, Denver, CO.

This guide was compiled by the Colorado Livestock Association for Colorado livestock producers.

All content herein was provided by Range Law, 600 Grant Street #650, Denver, CO 80203

PUBLISHED: JULY 1, 2025

To request a copy, please contact Colorado Livestock Association.

Colorado Livestock Association
3131 South Vaughn Way, Suite 130
Aurora, CO 80015
www.coloradolivestock.org
info@coloradolivestock.org
(970) 378-0500

WAGE & HOUR RECORDKEEPING REQUIREMENTS

Background: Both the federal and state governments require that Agricultural Employers maintain specific payroll-related records for each employee.

What are we required to do?

- You must keep either paper or digital records for each employee that include:

  Name; Address; Job Title & Date of Hire;

  Birth date is required if the employee is less than 18 years old.

- You must keep ***daily*** records of ***all hours***, and portions of hours, ***each*** employee works.

  This requirement applies whether the employee is paid by the hour, paid by the shift, or paid a salary. You don't have to use a traditional time clock.

  You can use any method that allows you to keep ***accurate*** time records. You may want to investigate timekeeping apps that allow employees to clock in and out using their cell phones.

  Employees should review and approve their time records for each work week.

  NOTE! You ***must*** keep daily hours-worked records for ***Range Workers***, including the specific days they were on call 24/7 while working on the range, and any and all hours they worked at or near ranch headquarters, regardless of whether they are participants in the H-2A Temporary Agriculture Program. Beyond being required by Colorado rules, these records are critical in defending against a claim that Range Workers have not been primarily engaged in tending livestock on the open range and are, therefore, entitled to Colorado Minimum Wage and to Overtime Premium Pay under Colorado's Agricultural Overtime Rule.

- You must keep a record of each employee's rate of pay – either an hourly rate or a weekly salary; the amounts deducted for payroll taxes, insurance, savings, or for any other reason; and gross and net earnings for ***each pay period***.

- You must ***provide each employee*** the same information regarding hours of work and pay described above for ***each pay period***, either in a written earnings statement you include with each paycheck – usually called a "paycheck stub" -- or through an electronic portal employees can access themselves.

- Records of sick time accrued and used must also be documents and vacation time accrued and used should similarly be on the earnings statement or portal.

  NOTE! These requirements are ***extremely*** important to pay attention to, as your payroll-related records may be the only tool you have to defend your farm or ranch against a claim that you are not paying employees properly.

What is considered compensable time?

Any time that is spent doing labor for the employer's benefit.

Any time that the employee is required to be at the worksite.

Time spent before or after shifts putting on or taking off safety gear, sanitary equipment or uniforms that are not worn outside of work are considered time worked in Colorado. Similarly, time spent before or after a shift cleaning up the work area or sharing information with the employees starting the next shift is time worked. Colorado has not adopted the federal law in this area.

Breaks from job duties that are less than 20 minutes long are part of the continuous workday and must be compensated.

Can I round the time worked?

Traditionally, employers would often round employees' punch-in time and punch-out time to the nearest 15-minute mark (e.g., 12:00; 12:15, 12:30, 12:45). For 1-7 minutes past, the time was rounded down and for 8-14 minutes past, it was rounded up. This is known as the "7 Minute Rule." It is permissible under the federal Fair Labor Standards Act. However, the Colorado Department of Labor and Employment has issued guidance that appears to disapprove of this practice in light of the capabilities of modern technology.

In Colorado, rounding employees' punch-in time and punch-out time to the nearest 5 or 10-minute mark is al-lowed ***provided*** it does not tend to result in consistently ***reducing*** employees' reported time worked.

Do I need any other payroll related records?

- You must itemize the amount and reason for all deductions from in the earnings statement or electronic portal. Deductions made for the benefit of the employee must be documented in a written agreement. Deductions which take the employee beneath minimum wage are not permitted even if there is a written agreement.
- You must itemize the amount and reason for all credits against wages. No housing credit may be taken unless there is a written agreement that meets the requirements of Section 6.2.1 of the Department of La-bor & Employment's Colorado Overtime & Minimum Pay Standards Order (the "COMPS Order"), which is available here: *https://cdle.colorado.gov/sites/cdle/files/Adopted%20COMPS%20Order%20%2339%207%20CCR%201103-1%20%5Baccessible%5D.pdf*.
- You should maintain a current and accurate job description for all employees. This record will help you establish that an employee performs duties exempt from overtime requirements and defend against claims of corresponding employment with H-2A workers.
- Complete and retain Forms I-9 for all employees hired on or after November 6, 1986. Keep these doc-uments for the ***later*** of 3 years after hire or 1 year after termination.

COLORADO MINIMUM WAGE

Background: Colorado has adopted its own Minimum Wage, which is subject to different rules than those that apply to the federal minimum wage. While small farms and ranches can be exempt from federal minimum wage requirements, they are not exempt from paying the Colorado Minimum Wage, which applies to all Colorado agricultural employers.

What are we required to do?

- For **Calendar Year 2025**, you must pay each employee at least $14.81 per hour. This amount increases each calendar year.
- You may pay employees a per shift amount or a salary, however the amount each employee receives each work week must total not less than $14.81 for each hour the employee works, prorated for partial hours worked.
- There is an exception to this rule for Range Workers who are principally engaged in tending to livestock on the open range and who are provided food, lodging, transportation, and equipment as required by the federal H-2A Temporary Agriculture Program regulations, even if they are not actually H-2A visa holders. You may pay Range Workers a salary of not less than $606.56 per week during 2025 instead of paying them $14.81 per hour. This amount increases each calendar year.

NOTE!

- The Range Worker exception to the Colorado Minimum Wage rule *does not apply* to work weeks during which a Range Worker is not primarily engaged in range work, but is performing other work at or near ranch headquarters – for example, operating equipment in support of farming operations.
- During those work weeks, a Range Worker ***must be paid on an hourly basis*** at not less than the Colorado Minimum Wage rate.

The CDLE requires the current year's COMPS Order poster to be displayed in one or more conspicuous places where your employees are likely to pass by on a regular basis.

It can be found in English here:

https://cdle.colorado.gov/sites/cdle/files/2025_comps_order_poster_%5Baccessible%5D.pdf

And in Spanish here:

https://cdle.colorado.gov/sites/cdle/files/2025_spanish_comps_poster_accessible.pdf

What about local minimum wage ordinances?

Colorado cities and counties may have higher minimum wages than the state minimum wage. If you employ workers in one of these locations, you must pay the higher wage. Currently, the City and County of Denver, the City of Boulder, the County of Boulder and the City of Edgewater have separate, local minimum wages.

Are there other exceptions?

If you employ H-2A workers, be cautious of creating "corresponding employment" with non-H-2A workers. Corresponding employment occurs when a job duty in the job order or work actually performed by the H-2A worker is the same or substantially the same as a non-H-2A worker. If there is corresponding employment, the non-H-2A employee must be paid the greater of the Adverse Effect Wage Rate ("AEWR") or the Colorado minimum wage during the period of the job order. As of December 16, 2024, the current AEWR in Colorado for non-range workers is $17.84.

COLORADO AGRICULTURAL OVERTIME

Background: As a Colorado Agricultural Employer, your farm or ranch ***must comply*** with the Colorado Agricultural Overtime Rules, which became effective on November 1, 2022. The fact that your agricultural business is exempt from ***federal*** overtime pay requirements doesn't change your ***Colorado*** overtime pay obligations. Colorado Agricultural Overtime was being phased in over during 2023, 2024, and 2025. It's important to understand what rules apply in each of those years.

What are we required to do?

As an Agricultural Employer, you are required to pay your employees ***Overtime Premium Pay***, or to grant your employees ***Agricultural Overtime Benefits***, for those ***Agricultural Overtime Hours*** they work ***each day*** *or* ***each work week***.

What are Agricultural Overtime Hours?

The answer depends on the year and on the number of employees a farm or ranch typically hires. There will also be a special rule for "Highly Seasonal Employers," which likely will not apply to livestock operations.

For Calendar Year 2025, the number of hours an employee may work that an Agricultural Employee works before becoming eligible for Agricultural Overtime Hours are ***down*** from 2024 levels.

(1) ***Small Agricultural Employers are now subject to the same requirements as other Agricultural Employers.***

(2) ***Agricultural Employers*** will begin counting Agricultural Overtime Hours at ***48 Hours*** in a work week, or ***12 Hours*** in a single day or shift. Once an Agricultural Employee works any portion of an hour beyond these limits, the employee must be paid Overtime Premium Pay for the Agricultural Overtime Hours.

(3) There is an exception for ***Highly Seasonal Agricultural Employers*** that hire twice as many employees during a multi-week peak season or period than they do during most of the year. This exception only applies to a limited number of weeks per year and requires adherence to special rules that are explained in the Colorado Department of Labor & Employment's Order, which is available here, https://cdle.colorado.gov/sites/cdle/files/Adopted%20COMPS%20Order%20%2339%207%20CCR%201103-1%20%5Baccessible%5D.pdf, in Section 2.3.2 (C).

NOTE!

You may have employees who are not Agricultural Employees—employees not engaged in farming or practices performed by a farmer or on a farm incident to or in conjunction with such farming operations. These employees (e.g., bookkeepers, human resources) are eligible for overtime after 40 hours in a workweek or 12 hours in day or shift unless they fall within one of the exemptions under Colorado law. The exemptions for non-agricultural employees can be found in the COMPS Order at Section 2.2.

NOTE!

Agricultural Overtime Hours are measured on the basis of a ***7-day work week***, regardless of whether your payroll period is every two weeks or any other period. You ***must*** calculate Overtime Premium Pay eligibility ***every work week***.

What is Overtime Premium Pay?

Overtime Premium Pay is usually referred to as "time-and-a-half." It should be calculated using an employee's ***Regular Rate of Pay*** as follows:

(1) If the employee is paid an ***Hourly Wage***, that wage is the employee's Regular Rate of Pay. Overtime Premium Pay is then 150% of -- or 1.5 times – the employee's Regular Rate.

For example, an employee who regularly receives $20.00 per hour would receive $30 per hour ($20.00 x 1.5) for Overtime Hours the employee works.

(2) If the employee is paid a ***Salary*** or a ***Per-Shift Amount***, Overtime Premium Pay is calculated using the Overtime Hours threshold described above.

For example, if an employee receives a salary of $1000 each work week, you calculate their Regular Rate by dividing $1000 by the number of hours the employee worked up to the Overtime Hours threshold, which is 54 hours in a workweek during 2024 for most Agricultural Employers. This results in a Regular Rate of $18.52 per hour ($1000 ÷ 54 = $18.52). For time beyond 54 hours, the employee would be entitled to 1.5 times $18.52 – or $27.78 per hour – as Overtime Premium Pay.

What are Agricultural Overtime Benefits?

The Department of Labor & Employment has created a special rule that you can comply with when an employee works more than 12 hours in a single day or during a single shift:

(1) If the employee works more than 12 hours but less than 15 hours, in place of Overtime Premium Pay, you may provide the employee Agricultural Overtime Benefits in the form of a ***paid 30-minute break*** instead of the third 10-minute break they would otherwise be entitled to; and

(2) If the employee works more than 15 hours, you may also provide them ***one hour of pay*** calculated at the ***Colorado Minimum Wage Rate***. If you didn't know ahead of time that you would need an employee to work more than 12 hours, then you can permit them to take an additional, paid 30-minute break during their next workday. If you do not provide Agricultural Overtime Benefits as described above, then you must provide an employee who works more than 12 hours in a day or a shift Overtime Premium Pay.

Are There Any Exemptions from the Colorado Agricultural Overtime Rule?

The Department of Labor & Employment has adopted the following exemptions from its Colorado Agricultural Overtime Rule:

(1) ***Range Workers*** are exempt from the payment of overtime ***if*** they receive not less than the Range Worker weekly salary defined in the Department's Publication & Yearly Calculation of Adjusted Labor Compensation Order (the "PAY CALC" Order), but ***only*** while they are primarily engaged in Range Work.

(2) ***Decision-Making Managers at Livestock Employers*** are exempt from overtime if they satisfy ***all*** the following tests:

1. They must be paid at least the minimum salary that applies to all other overtime-exempt employees under the Department's COMPS and PAY CALC Orders; for Calendar Year ***2025***, that minimum salary is ***$1,086.25 per week***, which rounds to $56,485 for the year.

2. They must hold that position ***full-time*** and not on a temporary or seasonal basis.

3. Their primary duties must involve exercising independent ***judgment and discretion*** in matters of significance.

4. They must ***either supervise two or more*** full-time employees; ***or report directly*** to an owner of the farm or ranch, or to an executive-level employee who reports directly to an owner, such as the owner's "second in command," or the manager of the site where the employee is assigned.

5. They must work for a ***Livestock Employer*** that is primarily involved in raising and caring for livestock, such as a dairy farm, sheep or cattle ranch, or feedlot.

(3) A ***child, sibling, spouse, parent, aunt, uncle, nephew, niece, first cousin, grandchild, or grandparent of a Family Owner*** of a farm or ranch is exempt from Colorado Overtime.

A "Family Owner" is a person who holds a majority interest in an agricultural employer, or whose ownership interest combines with other family members' ownership interests to create a majority interest.

The family relationships identified above can come through blood, adoption, or marriage.

NOTE! If you fail to provide Overtime Premium Pay, or Agricultural Overtime Benefits, to employees who are eligible for one or both, you risk being assessed ***back-overtime-pay*** calculated using the ***40-hour*** Overtime Premium Pay threshold should an employee make a complaint to the Department.

MANDATORY MEAL BREAKS, REST BREAKS, EXTENDED MEAL BREAKS & ADDITIONAL PAID BREAKS

Background: Senate Bill 21-087, together with the Colorado Overtime & Minimum Pay Standards Order, referred to as the "COMPS Order," requires that Agricultural Employers provide unpaid, or in some circumstances paid, Meal Breaks, along with paid Rest Breaks, during each shift an employee works. In addition, Agricultural Employers are required to provide Extended Meal Breaks and Additional Paid Breaks, at an employee's advance request, depending upon the number of hours an employee works in a given work week.

What are we required to do?

Meal Breaks:

(1) Every overtime-eligible employee who works a shift of more than 5 consecutive hours is entitled to a ***duty-free, 30-minute break***, at roughly the mid-point of their shift, during which to eat a meal or engage in other personal activities. ***This break can be unpaid*** if it is at least 30 minutes long and actually duty free, such that the employee can leave the farm or ranch, if need be, so long as they can return to work on time.

(2) If an actual ***duty-free break is impractical***, an employer can permit an employee to eat a meal while working and ***pay the employee for the time***.

NOTE!

‼ Be careful when declaring that duty-free Meal Breaks are impractical; the Department of Labor & Employment takes the position that an employer may ***not*** declare that ***all*** duty-free Meal Breaks are impractical except in exceptional circumstances that will rarely apply on a farm or ranch.

‼ Make sure employees know ***they must clock out*** during unpaid, duty-free Meal Breaks. Without doing so, a disgruntled employee will be able to claim they worked through every Meal Break and are entitled to additional pay as a consequence, and you may have no means of proving that they didn't. Do not unilaterally adjust tim records after the fact to account for Meal Breaks.

‼ Do ***not*** permit employees to work without a Meal Break because they want to do so. ***You***, as the employer, must be the one to determine that a particular duty-free Meal Break is impractical, and be able to prove that was the case in response to a complaint.

‼ It is ***not*** permissible for employees to skip Meal Breaks so they can leave work 30 minutes early.

‼ It ***is*** permissible to allow employees longer than 30 minutes for Meal Breaks.

Rest Breaks:

(1) Every overtime-eligible employee is entitled to ***paid, 10-minute Rest Breaks*** as follows:

Work Hours	Rest Breaks Required
2 or fewer	0
Over 2 and up to 6	1
Over 6 and up to 10	2
Over 10 and up to 14	3
Over 14 and up to 18	4
Over 18 and up to 22	5
Over 22	6

(2) Required Rest Breaks are ***always paid*** and should be close to the middle of each four hours an employee works.

(3) Required Rest Breaks must be duty-free, but employees are not entitled to leave the farm or ranch during their Break, ***EXCEPT*** where the employee needs to leave their worksite in order to meet a Service Provider.

(4) Employees may ***voluntarily*** choose to skip Rest Breaks. They may also agree, ***voluntarily and in writing***, to limit their Rest Breaks to 5 minutes if they can reasonably make a trip to a restroom in that amount of time.

(5) Unlike Meal Breaks, employers cannot deem Rest Breaks to be "impractical" and refuse to permit, and pay for, them. Each Rest Break is ***mandatory***, unless an employee voluntarily declines to take it.

(6) Denying employees paid Rest Breaks is equivalent to forcing them to work without compensation, which can put your farm or ranch at risk of demands for unpaid wages, including Overtime Premium Pay, and related penalties and attorneys' fees.

NOTE!

- ***Be very careful*** about allowing employees to skip Rest Breaks, as it is difficult to prove they did so voluntarily when they later claim otherwise.
- It is ***not permissible*** to pay employees extra to skip their required Rest Breaks.
- It is also ***not permissible*** to have a policy that permits employees to take a rest break whenever they need one. Instead, you ***must*** have a written policy declaring that all overtime-eligible employees are entitled to paid, 10-minute, duty-free Rest Breaks at the intervals required by the COMPS Order. You ***may*** include ***additional*** breaks whenever employees need them.
- ***Do not*** combine an employee's mandatory Rest Breaks at the end of their shift and permit the employee to leave work early. Skipping a mandatory Rest Break must be the ***employee's*** voluntary choice, and doing so cannot be tied to a benefit you provide, such as a shortened shift or extra pay.

Extended Meal Breaks:

(1) In addition to Meal Breaks and Rest Breaks, every overtime-eligible employee is entitled to extend ***one Meal Break*** from 30 minutes to up to ***60 minutes*** in any work week during which the employee works ***more than 40 hours***.

(2) The purpose of this Extended Meal Break is supposed to be for the employee to communicate with a Service Provider during that Service Provider's hours of operation.

(3) The employee must provide at least ***24 hours' notice*** in advance of the time they wish to take an Extended Meal Break. If they fail to do so, you must permit them to take an Extended Meal Break later in the same week, or during the immediately following week.

(4) ***Range Workers*** may be required to provide ***72 hours' notice*** of their intention to take an Extended Meal Break. If they fail to do so, you must permit them to take an Extended Meal Break later in the same week, or during the immediately following week.

(5) So long as the entire Extended Meal Break of up to one hour is duty-free for the employee, you can require that the employee clock out and the Break will be unpaid. The Break will then not be used in determining Time Worked or an employee's Regular Rate of Pay for purposes of Overtime Hours or Overtime Premium Pay.

NOTE!

- ***Do not*** reduce a Range Worker's weekly salary by any amount owing to an Extended Meal Break.
- ***You should avoid*** inquiring as to the Service Provider the employee intends to meet with, or requiring any evidence that the employee used an Extended Meal Period for that purpose, as doing so could result in an allegation that you "interfered" with the employee's mandatory access to the Service Provider.

Additional Paid Breaks:

In addition to Meal Breaks, Rest Breaks, and Extended Meal Breaks, every overtime-eligible employee, ***except a Range Worker***, is entitled to ***Additional Paid Breaks*** in the following circumstances:

(1) An employee who works more than ***60 hours*** in a work week is entitled to ***one 60-minute Additional Paid Break***.

(2) An employee who works more than ***70 hours*** in a work week is entitled to ***two 60-minute Additional Paid Breaks***.

(3) Additional Paid Breaks must be provided ***in the same week*** that an employee works more than 60, or more than 70, hours unless you had no reason to believe there would be a need for the employee to do so. In that case, you must provide the employee one or both Additional Paid Breaks in the immediately following week.

(4) Additional Paid Breaks are "on the clock" and, therefore, must be included in determining Time Worked or an employee's Regular Rate of Pay for purposes of Overtime Hours or Overtime Premium Pay.

NOTE!

- Employees are ***entitled to*** Additional Paid Breaks when they work more than 60, or more than 70, hours in a work week. They do ***not*** have to request an Additional Paid Break.
- You ***must*** schedule an employee's Additional Paid Break when they have worked the required number of hours; an employee ***cannot decline*** to take an Additional Paid Break.
- You may schedule an Additional Paid Break at the beginning, or at the end, of an employee's shift.
- You should, if possible, allow an employee who is entitled to two Additional Paid Breaks to take them together on the same day if the employee requests to do so.
- Although the rules governing Additional Paid Breaks relate to Service Provider Access, employees may use Additional Paid Breaks for any purpose, including for activities off the farm or ranch, and you should ***not*** request any explanation or evidence as to how an employee used their Additional Paid Break time.

PAID SICK LEAVE

Background: The Colorado Healthy Families & Workplaces Act ("HFWA") requires all Colorado employers, including Agricultural Employers, to provide each of their employees access to at least 1 hour of Paid Sick Leave for every 30 hours the employee works, to a maximum of 48 hours per year.

What are we required to do?

You ***must*** permit your full-time employees to accrue and use up to ***48 hours*** of Paid Sick Leave each calendar year. Part-time and temporary employees accrue less than 48 hours of Paid Sick Leave based upon the hours they work during the year. This Fact Sheet assumes that all of your employees work full-time.

(1) Employees accrue ***1 hour*** of Paid Sick Leave for every ***30 hours*** they work to a maximum of ***48 hours*** each year.

(2) Employees who are paid a weekly salary and are ***exempt from overtime*** – such as Livestock Managers -- are assumed to work ***40 hours*** per week, even though they work more than that. These employees therefore accrue 1.33 hours of Paid Sick Leave each work week.

> **NOTE!** ***All*** employees begin accruing Paid Sick Leave on their ***first day of work***. There is no such thing as a "probationary period" or a "waiting period" with respect to Paid Sick Leave.

(3) Employees may carry over ***up to 48 hours*** of accrued, but unused Paid Sick Leave from one year to the next. They can, however, accrue ***no more than 48 hours*** of Paid Sick Leave for any calendar year.

> For example, a full-time employee uses 10 hours of Paid Sick Leave this year. The employee can carry over their remaining 38 hours of Paid Sick Leave into next year. They can then accrue, and use, only 10 more hours of Paid Sick Leave, for a total of 48 hours, next year.

(4) Paid Sick Leave is paid to employees at their ***Regular Rate of Pay***. Paid Sick Leave hours are ***not*** included in Time Worked for purposes of determining when Overtime Premium Pay is due.

(5) Unused Paid Sick Leave is ***not paid out*** when an employee separates from employment.

(6) Paid Sick Leave ***can*** be part of a PTO program, so long as PTO accrues at not less than 1 hour of Paid Sick Leave for every 30 hours worked and provides employees not less than 48 hours of leave each year.

(7) If part of PTO, Paid Sick Leave must be tracked separately so that employees can know how much Paid Sick Leave, apart from PTO, they have available.

For example, if all your employees accrue 2 hours of PTO for every 40 hours they work, to a maximum of 80 hours per year, you can devote 48 of those hours to Paid Sick Leave because employees are earning PTO at a rate more favorable than 1 hour for every 30 hours worked, and the maximum amount of PTO employees can accrue is greater than 48 hours.

In a combined PTO/Paid Sick Leave program, employees are required to manage their use of PTO so that Paid Sick Leave remains available if they need it. For example, an employee who used all of their PTO by the end of November would not have Paid Sick Leave available if they became ill in December.

NOTE! Managing a combined PTO/Paid Sick Leave program can get a little tricky. You may want to obtain some help if you want to implement one.

What can Paid Sick Leave be used for?

Employees may use Paid Sick Leave for the following reasons:

(1) To address their own physical or mental illness, injury, or health condition that interferes with working;

(2) To obtain preventive care or treatment of any physical or mental illness, injury, or condition;

(3) To care for a Family Member who has a physical or mental illness, injury, or condition, or who needs to obtain preventive care or treatment;

(4) To obtain, or to assist a Family Member in obtaining, physical or mental care or treatment, crime victim services, or relocation owing to domestic abuse, sexual assault, or criminal harassment;

(5) Because public health officials closed your farm or ranch due to a public health emergency; or

(6) Because the employee must care for a child whose childcare facility or school has been closed due to a public health emergency;

(7) Due to grieving, funeral/memorial attendance, or financial/legal needs after a death of a family member; or

(8) Due to inclement weather, power/heat/water loss, or other unexpected event, the employee must (a) evacuate their residence, or (b) care for a family member whose school or place of care was closed.

For purposes of Paid Sick Leave, a "***Family Member***" means a spouse, child, sibling, parent, or grandparent, or ***anyone else*** an employee is responsible for providing care to or assisting with health and safety issues.

NOTE!

Under HFWA, you may not request that an employee provide a health care provider's note, or some other documentation, to support their use of Paid Sick Leave unless the employee is absent for four or more consecutive days on which they would have otherwise been scheduled to work. For example, you should not request documentation from an employee who is not scheduled to work on Sundays, and who uses Paid Sick Leave on Friday and Saturday, and again on Monday and Tuesday.

Do we need to have a written Paid Sick Leave policy?

You are ***required*** to do two things: ***post*** the CDLE HFWA ***informational poster***, and provide each employee ***written notice*** of their right to accrue and use Paid Sick Leave.

(1) The required CDLE ***poster*** is available on the Department's website:

In English, here:

https://cdle.colorado.gov/sites/cdle/files/Poster%2C%20Paid%20Leave%20%26%20Whistleblower.pdf

And in Spanish, here:

https://cdle.colorado.gov/sites/cdle/files/Public%20Health%20Rights%20Poster%20-%20Spanish.pdf

The poster needs to be displayed in one or more conspicuous places where your employees are likely to pass by on a regular basis.

(2) You ***can*** satisfy the written notice requirement by just giving employees a copy of the CDLE poster. However, the poster is poorly written, difficult to understand, and not at all "user friendly." Thus, you may want to consider providing your employees your own clear explanation of how they will accrue Paid Sick Leave and when they can use it, along with a clear statement that they won't get in trouble for doing so, in addition to providing a copy of the CDLE poster.

Can we just pay our employees when they need time off because they're sick or need to care for a sick child or other family member without having a formal Paid Sick Leave policy?

No. While many Colorado farms and ranches have long maintained a practice of paying employees as usual ***whenever*** they needed to be absent due to illness or injury because it was the right thing to do, that practice does ***not*** comply with HFWA and can result in administrative complaints, lawsuits, and the imposition of monetary penalties and attorneys' fees. Instead, you ***must*** implement a Paid Sick Leave program that complies with HFWA requirements.

VACATION & PTO

Background:

Neither federal, nor Colorado, law requires that your farm or ranch provide Vacation Pay or Paid Time Off ("PTO"). It is important to understand the Colorado rules you must comply with if you want to do so.

What are we required to do?

While it's not required, you should have a written policy that explains your vacation or PTO program, and you should provide each employee a copy of that policy that they acknowledge with their signature. Vacation or PTO accrued and used should be tracked either on an earnings statement or internal portal.

What's the difference between Vacation Pay, PTO, and Paid Sick Leave?

Vacation Pay & PTO are not required, but do constitute compensation that cannot be forfeited once awarded. Paid Sick Leave is required, but can be forfeited if not used.

(1) Vacation Pay & PTO are the same – they both describe paid leave an employee can use for any reason they want or need to. Because they are considered part of an employee's pay, Vacation Pay or PTO cannot be forfeited. This means you cannot implement a "use-it-or-lose-it" PTO program, where employees forfeit PTO if they don't use it before the end of the year. It also means that you must pay an employee the value of their unused PTO when they leave your employment.

- Colorado law does permit employers to "cap" the amount of PTO an employee can accrue, and carry over from year to year, at any one time. For example, it is permissible to have a PTO program in which employees are awarded up to 10 days of PTO, at which point they cannot earn or carry over any more PTO until they use some of what they have accrued.
- It is also permissible for an employer to pay out all unused PTO at the end of the year, and then start over with a new award of PTO for the following year.

(2) In contrast, Paid Sick Leave is required by the Colorado Healthy Families and Workplaces Act ("HFWA" for short). Paid Sick Leave is what it sounds like – paid leave specifically for use when an employee is injured, ill, or needs to obtain preventive medical care; or when an employee needs to care for a family member. All employees are entitled to accrue 1 hour of Paid Sick Leave for every 30 hours they work, up to 48 hours per year. Unlike PTO, employees are not entitled to be paid out for unused Paid Sick Leave when they terminate, or are terminated from, their employment.

- A separate section of this Guide addresses Paid Sick Leave, as well as federal and Colorado Family and Medical Leave.

FEDERAL & COLORADO FAMILY & MEDICAL LEAVE

Background:

If you have at least 50 employees for 20 or more work weeks in the current or prior calendar year, your eligible employees may take up to 12 weeks of job-protected, unpaid leave for a qualifying reason.

- To be eligible, the employee must:
  - Have worked for you for at least 12 months prior to starting their leave;
  - Have worked at least 1250 hours for you during the 12 months immediately before starting their leave; and
  - Work at a location where you have at least 50 employees within 75 miles of the worksite.
- Qualifying reasons for FMLA leave include:
  - The birth of a child or placement of a child with the employee for adoption or foster care;
  - A serious health condition that causes the employee to be unable to perform their job functions;
  - Caring for the employee's family member who has a serious health condition; or
  - A qualifying exigency due to the employee's family member's military service.
  - Additionally, leave is available for an employee to act as a caregiver for a service member with a serious injury or illness.
- Employees may be required to use paid leave concurrently.

What are we required to do?

You must post required notice of FMLA leave and also provide written notice to all FMLA-eligible employees.

Once you have enough information to determine if the leave qualifies, you must notify the employee that their leave is designated FMLA leave **within five business days**.

NOTE!

You must continue to pay the employer portion of the employee's regular health insurance during the leave.

NOTE!

You must restore employee to their prior job or an equivalent job when they return from leave.

More information is available here:

https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf

PAID FAMILY & MEDICAL LEAVE INSURANCE (FAMLI)

Background:

As of January 1, 2024, eligible employees may apply to the state FAMLI program (or private insurer, if you have elected to use a private insurer for the program) for paid leave if the employee has one of these qualifying conditions:

- The employee must care for their own serious health condition;
- The employee is caring for a family member with a serious health condition;
- The employee is caring for a new child during the first year following birth, adoption or foster placement;
- The employee is taking leave related to a family member's active-duty status or impending deployment, rest and recuperation leave from deployment or return from deployment or death;
- The employee is taking leave to obtain a civil protection order, care, legal assistance, or safe housing because the employee or the employee's family member is the victim of domestic violence, stalking, sexual assault or sexual abuse.

Beginning January 1, 2026, employees with a child receiving inpatient care in a Neonatal Intensive Care Unit ("NICU") may take up to 12 weeks (in addition to leave to bond with a new child) while the child remains in the NICU.

To be eligible to apply, an employee must have earned at least $2,500 over the previous year for work performed in Colorado, but need not have worked for you for a particular amount of time.

NOTE!

While the employee is on FAMLI leave, **you will not be responsible for the employee's wages**. You must, however, **continue paying any portion of the employee's health insurance that is normally covered by the employer**. You may choose to require the employee to continue to pay their share of their contribution to these benefits while they are on leave.

Generally, up to 12 weeks of paid FAMLI leave may be taken in a year. If an employee has a serious health condition related to pregnancy or childbirth, the employee may take up to 16 weeks of paid FAMLI leave for the health condition and birth of a child. Leave may be taken continuously, intermittently, or as a reduced schedule.

You must participate in either the state program or an approved private plan.

Leave will be paid by the FAMLI program at a rate of up to 90% of the employee's average weekly wage, based on a sliding scale. If you both agree in writing in advance, the employee may supplement the FAMLI payment with accrued paid leave as long as the total does not exceed the employee's average weekly wage.

What are we required to do?

The majority of the process is between the employee and the FAMLI program or the private plan. However, there are some things that all employers must do.

- You must register with "My FAMLI+ Employer."
- You must pay premiums and/or deduct premiums to the State as follows:
  - 9 or fewer employees: Employee portion of premium only
  - 10 or more employees: Employer and employee portions of premium
  - Private plan: No premium paid to the State.
- You must submit an annual employee count and quarterly wage reports.
- You must post the required notice: *https://famli.colorado.gov/resources/famli-toolkit*.

For more information about your obligations, visit: *https://famli.colorado.gov/employers*.

WORKPLACE INJURY OR ILLNESS

Background:

Colorado law requires that you carry workers' compensation insurance.

What are we required to do?

Any work-related illness or injury must be reported to your workers' compensation carrier immediately. Any injury or illness that results in an employee's death or affects three or more employees in one incident must be reported within 24 hours. Non-emergency injuries or illnesses must be reported within 10 days.

Employers must provide injured or ill employees with a designated provider list for treatment. If it is an emergency, the employee should obtain emergency treatment. The designated provider list can be provided once emergency treatment is no longer necessary.

Do we need to have a policy or post any particular documents?

Employers must post this Notice in a prominent place:

(*https://codwc.box.com/s/v0mr2xp8jvxkbfjbgb23vk1if18pi0xz*.) You should fill in the information about the workers' compensation insurance carrier.

Employees are required to provide written notice of injury to their employer within 10 days of the incident unless the employer knows of the injury or the employee is physically or mentally unable to make the report, in which case the duty falls on the employee's supervisor or anyone else in charge who knows of the injury.

NOTE!

Following receipt of written notice, the employer shall write the date and time of receipt on the notice and make a copy available to the injured employee within seven days.

HEAT INJURY & ILLNESS PROTECTION

Background:

As of May 2022, you must provide additional heat protections for agricultural workers.

What are we required to do?

You must inform employees of the right to these additional heat protections before their shifts start or as soon as possible once the employer learns of any increased risk conditions.

🚩 When the forecasted outdoor temperature or the measured indoor temperature is at least 80 degrees Fahrenheit, you must provide:

Potable Water to Drink	Shade for Breaks
✓ at least 32 ounces per employee per hour; ✓ at 60 degrees or cooler; ✓ in a sanitary container/from a sanitary source; ✓ located no further than 0.25 miles from the worksite; and ✓ with time to drink the water and use the restroom.	✓ a large enough area to sit normally and be fully shaded without touching; ✓ ventilated or open to air with no additional heat (e.g., no exhaust, not sitting inside an unairconditioned car, no machinery running, etc.); ✓ located no further than 0.25 miles from the worksite; and ✓ not unsanitary, unsafe or otherwise discouraging use.
Accessible Communication	**Monitoring & Responding to Heat Illness**
✓ You must provide effective means for employees to contact a supervisor or emergency medical services when necessary. ✓ You must designate a worksite person to contact EMS and assist with sharing information and accessing the employee.	✓ You must monitor/receive reports of symptoms of heat illness or injury. ✓ You must promptly and appropriately respond: o Relieve from duty; o Monitor; o Offer first aid/EMS
Preventative Measures	**Provide Heat Training**
✓ You must allow and facilitate preventative measures for overheating, including cool down rest breaks	✓ At hire and annually by April 20, train employees on environmental and personal risk factors for heat illness, symptoms of heat illness and the progression of symptoms, basic first aid, the importance of acclimatization when starting work, and heat illness and injury protection measures.

🚩 You must provide training materials in the employee's primary language if they are not fluent in English.

During increased risk conditions, you must make sure that affected employees perform **no more than two hours of work before getting at least 10 minutes of rest.** Also, if you provide housing and the temperature is expected to be at least 95 degrees, you must provide fans or air conditioning that circulates air in the sleeping quarters.

Increased risk conditions:

1. The forecasted outdoor high temperature or the measured indoor temperature is at least 95 degrees Fahrenheit; or
2. The forecasted outdoor high temperature or the measured indoor temperature is at least 80 degrees Fahrenheit and
   a. It is a Colorado Department of Public Health and Environment (CDPHE) Air Quality Advisory (AQA) or Action Day; or
   b. The employee is working over 12 hours; or
   c. Vapor barrier clothes/personal protective equipment that add an additional layer over regular clothes or cover all or almost all of the head and face are required; or
   d. The employee is in their first four workdays in more than a month for the employer.

NOTE!

These rules do not apply if: the employee is working 15 minutes or less per hour in these conditions or the employee is only working during times when the temperature is forecasted to be and is lower than the triggering temperature.

Special rules apply to range workers:

- When it is not possible to know what the temperature is where the range workers are located or to inform the range worker because of a lack of cell phone reception, you must use the prior year's monthly average temperature for the nearest area with a forecast.

- When it is not possible to provide 60 degree drinking water to a ranch or range worker due to their location or movement, you must provide potable water whenever the employee is re-supplied or the employer visits a location near the worker and providing resources/equipment to allow the employee to carry potable water or obtain potable water from other sources (i.e. water purification equipment).

- Range workers must be allowed to take actions to limit heat and sun exposure, including finding and using shade during breaks.

- When you cannot regularly communicate with range workers, you must provide and train employees on a method for you to make contact with the employees to monitor their well-being and for employees to get emergency medical care.

For example: providing satellite or cell phones, wireless devices, or radio transmitters; arranging for employees to be located, on a regular basis, in a geographic area where electronic communication devices operate effectively; or arranging for regular, pre-scheduled, in-person employer-employee visits.

For more information look at CDLE INFO Sheet 12C: *https://cdle.colorado.gov/sites/cdle/files/info_%2312c_heat_protection%3B_short-handled_tool_%26_hand-weeding_thinning_limits%3B_public_health_emergency_protections_5.20.2024_accessible.pdf*

WEEDING INJURY PROTECTION

Background:

In 2022, new restrictions went into place for hand weeding/thinning and short handled tool work.

What are the limits on weeding work?

Using a short-handled hoe is prohibited in agricultural employment for weeding and thinning in a stooped, kneeling, or squatting position. Any other weeding by hand or other short-handled tool while stooped, kneeling, or squatting is strongly disfavored if there is an alternative means.

What do I have to do?

If hand-weeding, hand-thinning, or hand-hot-capping work is done, employees must be given, at no cost to the employee, protective gloves and knee pads.

🚩 Any employee engaged in this work must be given longer paid rest breaks—15 minutes instead of 10 minutes.

What if hand weeding is essential to my farm or ranch?

You must apply for and receive a variance certificate from CDLE at least 10 business days before any agricultural worker, including workers working through a contract service, hand weed agricultural or horticultural products greater than 20 percent of the worker's weekly work time on agricultural property you own or lease.

A variance may also be needed when transitioning to certified organic agriculture in order to hand weed or hand thin more than the 20 percent threshold.

More information: *https://ag.colorado.gov/ics/hand-weeding-variance-program*

KEY SERVICE PROVIDER ACCESS

Background:

Colorado law protects agricultural worker access to health-care providers; community health workers, including promotores; education providers; attorneys; legal advocates; government officials, including consular representatives; members of the clergy; and any other service providers to which an agricultural worker may need access primarily for health and safety reasons. These are "Key Service Providers."

🚩 Worksite safety rules can be applied to Key Service Providers like any other person entering the worksite.

What do I have to do?

You must permit employees to access to health care providers at all locations other than the employer's property during non-work time (e.g. paid or unpaid breaks, time before or after shifts). However, you cannot interfere with employee acess to health are providers via telehealth even if done on your property.

You must allow employees to communicate with off-site Key Service Providers. Employees must have quiet, private spaces to use during breaks with phone and Internet access.

- Employees can use their own transportation to travel to sites with access.
- Employees living in employer housing must be transported to site with access.
- If you cannot provide this communication access, you must allow additional on-site access to services.
- You must give employees their letters, voicemails, or other communications as soon as possible.

There are special requirements for work weeks over 40 hours:

Up to once a week, your employees may request additional time to meet with Key Service Providers during the provider's hours of operation. This time may be unpaid.

Non-Range Agricultural Employees	Range Workers
24 hours' advance notice (except for health emergencies)	72 hours' advance notice (except for health emergencies)
Up to 30 minutes added to an existing 30-minute meal or other break	Up to 60 minutes

If you deny a request that was made after the required notice period, you must allow the employee to extend a different break during that workweek or any break during the next workweek. This does not impact the other breaks to which the employee may be entitled.

HARASSMENT AND DISCRIMINATION

Background:

Under Colorado law, it is illegal for an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against any individual otherwise qualified because of disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, marital status, religion, age, national origin, or ancestry.

Harassment is **unwelcome conduct or communication** that is subjectively offensive to the individual alleging harassment **and** objectively offensive to a reasonable individual who is a member of the same protected class. It is **not required to be severe or pervasive.**

🚩 It is illegal harassment if:

✓ Submitting to the conduct/communication is a term or condition of employment (explicitly or implicitly);

✓ Submitting to, objecting to or rejecting the conduct/communication is the basis for an employment decision; or

✓ The conduct/communication has the purpose or the effect of unreasonably interfering the person's work performance or creates an intimidating, hostile or offensive work environment.

What do I have to do?

✓ You must have an anti-harassment, discrimination and retaliation program.

✓ You must communicate this program to all employees through a policy and annual training on the policy.

✓ You must have a process for reporting and promptly investigating and addressing complaints.

✓ You must take prompt and reasonable action in response to complaints.

Are there recordkeeping requirements?

You must keep some employee records:

- ✓ Accommodation requests;
- ✓ Discrimination, harassment, unfair employment practice complaints;
- ✓ Employment applications;
- ✓ Hiring and transfer records;
- ✓ Promotion and demotion records;
- ✓ Layoff and termination records;
- ✓ Rates of pay and other compensation records; and
- ✓ Training records.

NOTE!

🚩 You must keep these records for **at least five years** after the later of: 1) the date record was made or received; 2) the date of the personnel action was taken; or 3) the date of the final disposition of a charge of discrimination or lawsuit.

🚩 You must also keep records of all complaints (verbal and written) of harassment, discrimination and unfair employment practices. The records must include:

- ✓ Date of the complaint;
- ✓ Identity of the person making the complaint (if known);
- ✓ Identity of the person about whom the complaint was made; and
- ✓ The substance of the complaint.

🚩 This can be done electronically or in paper. A well-maintained spreadsheet is sufficient.

What about accommodations?

Accommodations for disabilities and pregnant workers are explained in their own sections.

Colorado and federal law also require employers to provide reasonable accommodations to a qualified applicant or employee who has a sincerely held religious belief, practice, or observance that conflicts with a work requirement, unless it would impose an undue hardship, such as creating a hostile work environment or a substantial health, safety or security risk, for the employer. These types of accommodations often involve changing employee schedules or permitting exceptions to dress code standards.

Are there posters that I have to put up?

Mandatory Posters in English and Spanish can be found here:

https://ccrd.colorado.gov/anti-discrimination-notices.

DISABILITY ACCOMMODATIONS

Background:

Colorado and federal law require employers to provide reasonable accommodations to a qualified applicant or employee with a known disability, if it would allow the individual to perform the essential functions of the position and would not impose an "undue hardship."

What do I have to do?

When an accommodation is requested, you must promptly engage in an interactive discussion of accommodations needed.

You can require a doctor's note or other documentation explaining the need for accommodation and how the accommodation will allow the employee to perform the essential functions of the job. Any medical information must be kept confidential and only shared with supervisors or others that need to know.

NOTE!

You do not have to provide the preferred accommodation requested if there is another effective accommodation that will also allow the employee to perform the essential function of the job at a lower cost to you.

What qualifies as undue hardship?

The accommodation must require a significant expense or difficulty to you considering:

✓ The nature and cost of the accommodation;

✓ Your overall financial resources;

✓ How many employees you have and how big your business is;

✓ How the accommodation will impact your expenses/resource and how it impacts your business operations.

🚩 Providing the accommodation to one employee/applicant creates a rebuttable presumption that it is not an undue hardship for another.

PREGNANT WORKER AND NURSING MOTHER PROTECTIONS

Background:

Colorado and federal law create additional protections for pregnant workers and for nursing mothers.

What do I have to do?

You must post: *https://ccrd.colorado.gov/anti-discrimination-notices*.

You must engage in an interactive process to discuss and provide reasonable accommodations to a pregnant employee or applicant for health conditions related to pregnancy or physical recovery from childbirth or a related condition, unless it would result in an undue hardship for your farm or ranch. You may request a note from a health care provider as part of the process.

What is a reasonable accommodation?

These are presumptively reasonable accommodations:

✓ more frequent or longer break periods;

✓ more frequent restroom, food, and water breaks;

✓ acquisition or modification of equipment or seating;

✓ limitations on lifting;

✓ temporary transfer to less strenuous/hazardous job, if available;

✓ job restructuring;

✓ light duty, if available;

✓ assistance with manual labor; or

✓ modified work schedule.

These accommodation requests are likely not reasonable:

- hire a new employee or fire another employee;
- transfer a more senior employee;
- promote an unqualified employee;
- create a new position for the employee/applicant; or
- paid leave that is not available for similar need but not due to pregnancy.

What qualifies as undue hardship?

See the Disability Accommodation section.

NOTE!

🚩 Do not require an employee or applicant to take an accommodation that they did not request one or do not need one to do the essential functions.

🚩 Do not require an employee to take leave if there is another reasonable accommodation.

🚩 Do not reject an applicant because of the need for a reasonable accommodation.

Nursing Mothers:

✓ You must provide reasonable, unpaid break time to allow an employee to express breast milk for a nursing child or allow the employee to us paid break time to do so for up to two years post birth.

✓ You must also make reasonable efforts to provide a location near the work area (other than a toilet stall) where an employee can express breast milk privately, unless it would cause you an undue hardship.

✓ The employee must also be able to safely store the expressed milk at work in a personal cooler or an employer's refrigerator.