



vida HR

Compliance & Trending Topics



Webinar

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Agenda



Quick Updates for 2022 : Whitney Louderback



Healthy Families and Workplaces Act (HFWA) : Regina Dyerly



Colorado Equal Pay for Equal Work Act (EPEWA) : Paige Aube



Executive Order 14042 : Paige Aube



OSHA ETS: Debra Fowler



Great Reprioritization : Laura Lacey & Regina Dyerly



Breaking News: Colorado Withholding DR 0004 / DR 1098 : Debra Fowler

Reminder: Colorado Chance to Compete Act (Ban the Box) prohibits employers with 11+ employees from:

- Stating on a job posting or application that a person with a criminal history may not apply
- Inquiring into an applicant's criminal history or requiring the disclosure of an applicant's criminal history on an initial application of employment

Quick Updates for 2022



COLORADO MINIMUM WAGE

Beginning January 1:

2022 Minimum Wage

\$12.56

2022 Exempt Salary Threshold

\$45,000

2022 Tipped Minimum Wage

\$9.54

Note: Different municipalities might have different minimum wages. Minimum wage in Denver is increasing from \$14.77 per hour to \$15.87 per hour on January 1, 2022.



Quick Updates for 2022: FSA

Health Flexible Spending Account (FSA) Contribution Changes for 2022:

- Maximum salary deferral increasing to \$2,850
 - *Up \$100 from \$2,750*
- Maximum carryover amount increasing to \$570
 - *Up \$20 from \$550*
 - *Covid-19 relief gives employers the option to allow employees to carry over unspent 2021 balance into 2022*
- Dependent Care FSA Contribution for 2022
- Maximum salary deferral staying the same
 - *\$5,000 for single taxpayers and married couples filing jointly*
 - *\$2,500 for married couples filing separately*

Quick Updates for 2022: HSA

Health Savings Account (HSA) Contribution Changes for 2022

- HSA contribution limit (employer + employee)
 - *Self: \$3,650 (increasing by \$50)*
 - *Family: \$7,300 (increasing by \$100)*



Quick Updates for 2022: 401k



401(k) Contribution Limit Changes for 2022

- Maximum employee elective deferral (age <50) increasing to \$20,500
 - *Up \$1,000 from \$19,500*
- Employee catch-up contribution (age 50+) staying the same at \$6,500
- Defined contribution maximum employee + employer (<50) increasing to \$61,000
 - *Up \$3,000 from \$58,000*
- Defined contribution maximum employee + employer (age 50+) increasing to \$67,500
 - *Up \$3,000 from \$64,500*
- Increases in employee compensation limit (\$305,000), key employees' compensation threshold for top-heavy plan testing (\$200,000) and highly compensated employees' threshold for nondiscrimination testing (\$135,000)

Preparing for 2022

If you are an HR client your HR Business Partner can help you with:

Labor Law Posters

Annual Training for Employees:

- *Harassment*
- *Cybersecurity*
- *OHSA requirements*
- *Contract requirements*

Updating Your Employee Handbook

- *Including new HFWA rules coming into effect on January 1, 2022*



Healthy Families and Workplaces Act (HFWA)-Paid Sick Leave (PSL)

This went into effect for employers with 16 or more employees on January 1, 2021

For employers with less than 16 employees effective January 1, 2022

Requires 1 hour paid sick leave accrued for every 30 hours worked

Existing PTO or sick plans may meet these requirements

Requires maximum accrual of 48 hours per year, more generous accruals optional

Accrual begins at start of employment and must be available to use as it accrues.

Employers must allow carryover of up to 48 hours of accrued unused sick leave to the next year, but do not have to allow employee to take more than 48 hours in the year.



Healthy Families and Workplaces Act-PSL



Cannot discipline an employee for taking accrued Paid Sick Leave and cannot count as absence as an attendance policy violation or toward progressive disciplinary action.



PSL can be used in one (1) hour increments unless employer expressly allows differently (smaller increments)



Not payable upon termination (if a separate sick plan)



Healthy Families and Workplaces Act-PSL

Documentation can only be requested when leave is 4 or more *consecutive* days:

- These would not be calendar days, only normal scheduled days
- This can not be required for public health emergency leave

Notice is required but only when leave is foreseeable

Employer cannot require that employee find a replacement worker

Employers shall retain records for a two-year period which included hours worked, paid sick leave accrued and paid sick leave used.



Eligible Reasons To Take Paid Sick Leave (PSL)

EMPLOYEE:

- Mental or physical illness, injury, or health condition that prevents employee from working;
- To obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
- To obtain preventative medical care

EMPLOYEE'S FAMILY MEMBER:

- Has a mental or physical illness, injury, or health condition;
- Needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
- Needs to obtain preventative medical care

EMPLOYEE OR FAMILY MEMBER IS VICTIM OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR HARASSMENT:

- Seek medical attention for employee or family member to recover from a mental or physical illness, injury, or health condition caused by domestic abuse, sexual assault, or harassment;
- Obtain services from a victim services organization;
- Obtain mental health or other counseling;
- Seek relocation due to domestic abuse, sexual assault, or harassment; or
- Seek legal services including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment;

HFWA-Public Health Emergency

While Governor Polis declared an end to the PHE in July 2021 for Colorado, the federal PHE declaration is still effective and was extended on October 18, 2021, through the end of the year.

- PHE leave balances may depend on previous use of leave for COVID specific reasons in 2021.

The tax credit eligibility through the FFCRA expired, but not employers' obligation to supply employees with supplemental paid sick leave for public health purposes.

- Full-time employees who normally work 40 hours or more per week should receive up to 80 hours of supplemental paid sick leave.
- For employees who work fewer than 40 hours in a week, they should be receiving either:
 - a) *the number of scheduled hours over a 14-day period after the start of the PHE, or*
 - b) *the number of hours worked by the employee worked in the 14-day period preceding the PHE declaration, whichever amount is greater.*



HFWA: Qualifying Reasons for ☀️ Supplemented ☀️ Leave During Public Health Emergency

Self-isolate because they or a family member was diagnosed with a communicable illness, or were experiencing symptoms of a communicable illness, that caused a public health emergency.

Seek or obtain medical diagnosis, care, or treatment if they or a family member were experiencing symptoms of a communicable illness that caused a public health emergency; or

Seek preventive care, for themselves or a family member, for a communicable illness that caused a public health emergency.

Because a public health official determined that the employee's, or family member's, presence at work or in the community jeopardizes the health of others or they are exhibiting symptoms of the illness, regardless of a positive diagnosis.

To care for a child, or other family member, when their school or place-of-care is closed due to a public health emergency, including if the school or place-of-care is physically closed but providing remote instruction.

Because they are unable to work because of their health condition that may increase susceptibility to or risk of a communicable illness that caused the public health emergency.

To be vaccinated for COVID-19 or if they experience vaccine side effects that prevent them from working.

Colorado Equal Pay For Equal Work Act (EPEWA)


- Covers all Colorado Private & Public Sector Employees
- Started on January 1, 2021

Colorado Equal Pay for Equal Work Act (EPEWA) FAQs

What is EPEWA?

- Prohibits employers from paying different wages to employees who perform substantially similar work on the basis of sex or sex plus another protected class
- Requires employers to keep records of Job Descriptions and Wage Rate history for each employee (while employed) for the duration of their employment, plus two years after termination for any reason





EPEWA- FAQs



What does substantially similar work mean?

- Substantially similar work is to be determined without regard to job title and based on composite of skill, effort, and responsibility.



Best Practice:

- Create job groups for substantially similar positions, where applicable. This makes analyzing rate discrepancies much easier.

EPEWA- FAQs Employer Practices; Equal Pay



Employers may pay different wages to employees performing substantially similar work if the disparity is entirely justified by one or more of the following factors:

- Seniority System; Merit System; Measurement by Quality or Quantity of production; Education/Training(Skill)/Experience level; or geographical location.



Best Practices:

- Have written/documented pay practices showing the process your organization uses when making pay related decisions such as promotions, new hire offer rates, and pay increases such as pay differentials based on shifts or certifications eligible for rate increases.

EPEWA-FAQs

Employer Practices; Salary History

Applicants:

- Employers cannot request salary history of applicants, discriminate against an applicant for not disclosing salary information, or rely on salary history to determine offer rate.
- Employers can request what the applicant's desired salary is for the position they are applying.



Employees:

- Employers cannot discharge, discipline, discriminate against, coerce, or interfere with employees or others for inquiring about, disclosing, comparing, or otherwise discussing the employee's wage rate; or require employees sign a waiver that prohibits the previous conduct.



EPEWA-FAQs

Employer Practices; Posting Requirements

When is Compensation Required in Postings?



	Employer With Staff In Colorado at Time of Posting	Employer With No Colorado Staff at Time of Posting
Job Tied to Location in Colorado	Must Post Compensation	No need to post Compensation
Remote Job, Even if 'Anywhere But Colorado'	Must Post Compensation	No need to post Compensation
Tied to Location Out of Colorado	No need to post Compensation	No need to post Compensation

EPEWA- FAQs

Employer Practices; Posting Requirements

Promotion or Advancement Transparency



- An employer must make reasonable efforts to announce, post, or otherwise make known ALL opportunities for promotion to all current employees on the same calendar day and prior to making a promotion decision.

Opportunities for Promotion



- A promotion opportunity exists when an employer has or anticipates a vacancy in an existing or new positions that could be considered a promotion for one or more employee(s) in terms of compensation, benefits, status, duties, or access to further advancement.

EPEWA- FAQs

Employer Practices; Posting Requirements

When is promotion notice required?



	Employer with Staff in Colorado	Employer with No Colorado Staff
Job Tied to Location in Colorado	Notice with compensation required	Notice not required
Remote Job	Notice with compensation required	Notice not required
Tied to Location Out of Colorado	Notice required Compensation not required	Notice not required

EPEWA – Penalties for Non-Compliance



The Colorado Department of Labor and Employment will enforce the law, investigate complaints and establish a voluntary mediation service. Employees can also pursue private civil actions and recover up to three years of back pay and double damages.



Employees who believe their employer has violated the Equal Pay for Equal Work Act may file a complaint with the Colorado Department of Labor and Employment's Division of Labor Standards and Statistics, which will warrant an investigation. Companies must turn over any documents and information the Division feels is relevant to the complaint.



If a violation is determined to have occurred, the Division may order the employer to take action in order to bring itself into compliance, and/or fine the employer \$500 to \$10,000 for each violation.

EXECUTIVE ORDER 14042

- Regulated by The Federal Safer Workforce Taskforce
- Applies to Federal and Sub Contractors

Executive Order 14042- Federal Contractors



Order Overview:

Requires Federal Contractor and Sub-Contractor employees (AKA covered contractors) to be fully vaccinated by January 18, 2022 (last dose on or before January 4, 2022).

- *Nothing in the order shall excuse non-compliance with any applicable state law or municipal ordinance which establishes more safety protocols.*



Purpose:

To promote economy and efficiency with Safety Protocols for Federal Contractors and Sub-Contractors.

Executive Order 14042- Federal Contractors

How is this different from the OSHA mandates?

- *The EO 14042 is specific to Federal Contractors and Sub Contractors.*
- *Although some Federal Contractors/Subs may meet the eligibility to be covered under the OSHA mandates, the EO 14042 compliance is what should be followed.*



Executive Order 14042- Federal Contractors

Best Practices:

Collaborate and keep an open dialogue with your military installation or client liaison so they can guide you on what they are expecting for compliance, and any local/state compliance that may supersede the EO 14042 minimum standards.

Follow the Safer Workforce Taskforce guidance

OSHA Emergency Temporary Standard (ETS) – Scope



Applicable for all private employers with 100 or more employees.

- *If employers fall below the 100 or more employees, they are still obligated to mandate vaccination or weekly testing.*



Which Employees count towards 100?

- *Include all employees across all locations, no matter their status: part-time, PRN, temporary, etc.*
- *Independent Contractors do not count towards this total.*



Does not apply to:

- *Employers covered by Safer Federal Workforce Task Force rules (federal contractors)*
- *Facilities covered by Centers for Medicare and Medicaid Services ETS (no weekly testing option)*
- *Employers covered by the Healthcare ETS.*

OSHA ETS –

Policy Considerations

Employers have a choice between two policy options: **Vaccination or Test**



Option 1: Everyone must be vaccinated. If a religious or medical exemption has been approved, required weekly testing.

- *Must create a written policy.*
- *Fully remote workers do not need to comply.*
- *Unvaccinated workers must wear face covering*



Option 2: Everyone must be vaccinated. Unvaccinated workers for any reason are required to submit to weekly testing.

- *Fully remote workers do not need to comply.*
- *Testing may not be self-administered AND self-read unless witnessed by a authorized employer representative or medical provider.*
- *Written policy must still be implemented.*
- *Unvaccinated workers must wear face covering.*

Preempts state laws banning vaccination mandates.



OSHA ETS – Testing Requirement

Testing Frequency:



- Test at least once every 7 days
- Retest within 7 days of last test
- If out of work or not in the worksite, test with 7 days of return to the workplace

Acceptable Tests:



- Any test cleared, approved, or authorized by the FDA.
- If employee is using self-administered or self-read test, must be observed by employer or telehealth proctor.

Payment for Tests:



- Employer can require employee to pay for testing if there is not a state law or union contract requiring employer payment of tests.
- No paid time off required for testing under the ETS but may be under State/Local law.

Facial Coverings:



- Properly fitting face coverings may be manufactured or homemade.



OSHA ETS –

Employer Recordkeeping Requirements

- Must require proof of vaccination status.
 - May accept attestation of vaccination status
- Employer must keep a “roster” of vaccinated/unvaccinated workers and protect the information as it qualifies as confidential medical info.
- Report all work-related COVID fatalities with 8 hours of occurrence, and hospitalizations with 24 hours of occurrence.
- Keep records of all work-related illnesses.
- By the end of the next business day, following an employee request or request of an employee representative, employers should provide the total number of fully vaccinated employees and the total number of employees at the workplace.



OSHA ETS Enforcement

- OSHA may ask for employee rosters
- OSHA may conduct inspections and may require information from employers in advance of inspection.
- OSHA may separately cite employers for each instance of the employer's failure to protect employees for each affected employee, where appropriate.

OSHA ETS - Penalties

Table 1: Maximum and Minimum Amounts for Civil Penalties

Type of Violation	Penalty Minimum	Penalty Maximum
Serious	[\$975] per violation	\$13,653 per violation
Other-Than-Serious	\$0 per violation	\$13,653 per violation
Willful or Repeated	[\$9,753*] per violation	\$136,532 per violation
Posting Requirements	\$0 per violation	\$13,653 per violation
Failure to Abate	N/A	\$13,653 per day unabated beyond the abatement date [generally limited to 30 days maximum]



Medical and Religious Exemptions

Whether Medical or Religious Exemption, the ADA interactive process should be followed if an exemption/accommodation requested by an employee.



Medical:

- Employees requesting a medical exemption may be asked for supporting documentation verifying their contraindication for COVID-19 vaccination.

[Click Here for More Information](#)



Religious:

- Employee has a sincerely held religious belief (aka bona fide) which conflicts with the job requirement.
- Employee beliefs do not have to be rational or common/widely held.
- Employers bear the burden of proof for undue hardship.

[Click Here for More Information](#)



OSHA ETS FAQs

Are employers required to pay for testing?

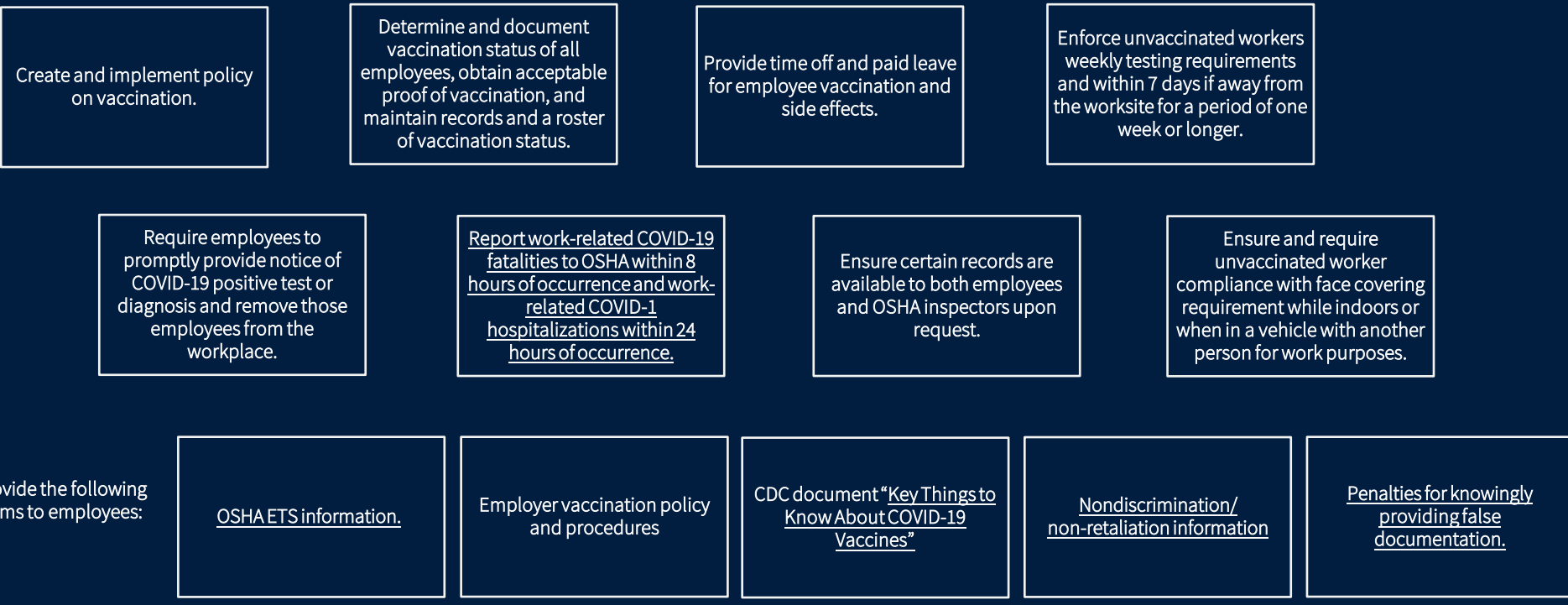
Not under the ETS, but yes if required under state or local law or union agreement. In Colorado there are many free testing sites available: <https://covid19.colorado.gov/testing>

Must employers provide paid time off for vaccination?

Yes, up to four hours per dose and reasonable paid sick leave to recover from side effects. In Colorado, employers are already required to provide paid leave for vaccination and time off for vaccination reactions under HFWA-PHE Paid Sick Leave.

Is vaccination or testing required for employees who have already been ill with COVID-19?

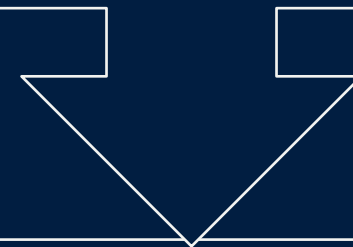
Yes, OSHA is requiring employees who have been diagnosed with COVID-19 to comply with the vaccination or testing requirement.



[Click for Example 1](#)
[Click for Example 2](#)

OSHA ETS – Action Items

The **Great Resignation** is an informal name for the widespread trend of a significant number of workers leaving their jobs during the COVID-19 pandemic.



Why are employees quitting or thinking about leaving?

Burnout

Financial needs

Company changes

Lack of flexibility

Not feeling valued

Insufficient benefits

Great

Reprioritization

NOT Resignation

Great
Reprioritization
NOT Resignation

Retaining Talent:

- ☀️ *Ask?*
- ☀️ *Incentivize current employees*
- ☀️ *Be transparent*
- ☀️ *Flexibility*
- ☀️ *Encourage time off*
- ☀️ *Add extra mental health days*



Great

Reprioritization –

Attracting Talent

How does your culture look from the outside?

- Look at your compensation structure
- Offer a Signing Bonus
- Refresh your career page on your website
- Review your recruiting processes

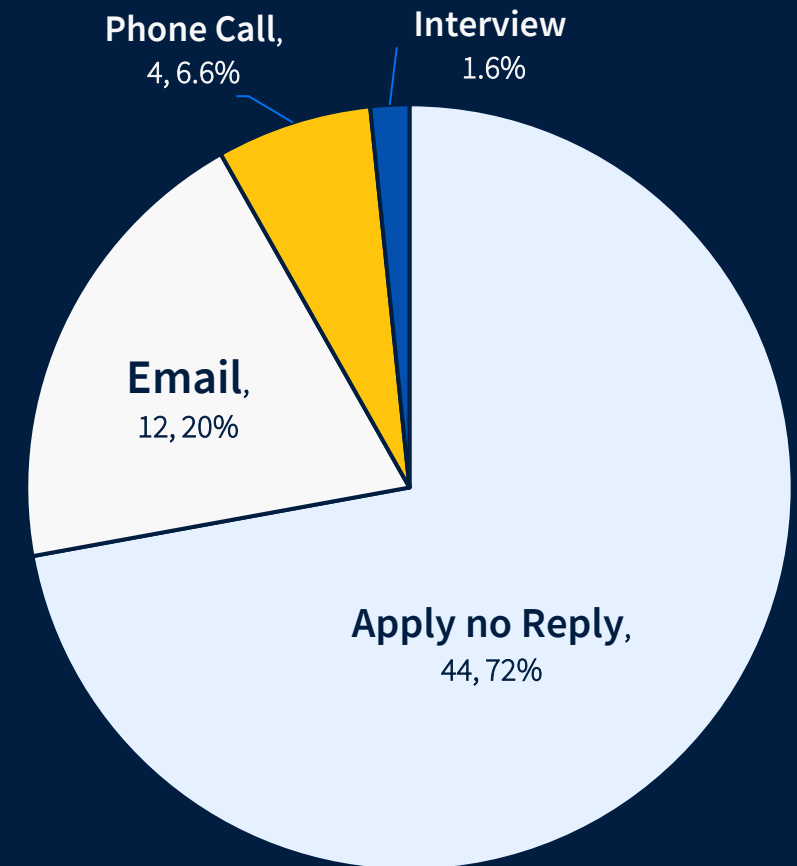
Great Reprioritization – Employment Experiment

Joey Holz ran an experiment where he applied for 2 jobs per day for 30 days:

- Jobs were between minimum wage and \$12 per hour
- Of the 60 jobs he received 16 emails which resulted in 4 phone calls and 1 job interview and 0 offers

September Applications by Result

2 per day for 30 days





Breaking News:

Colorado Withholding DR

0004 / DR 1098



Beginning 01/01/2022, any employee wanting to make an adjustment to their withholdings specifically for Colorado, will have to complete the DR 0004. *This does NOT replace the Federal W-4.**

- Will no longer be using withholding tables and should not use old withholding tables.
- Employers are required to calculate wage withholding according to the Colorado Withholding Worksheet for Employers (DR 1098), beginning in 2021.



The form is optional for employees but will be the only way to make changes to withholding in Colorado.



New employees will still be required to complete the Federal W-4 which can be used for both federal and Colorado withholdings, unless the DR 0004 is also completed.

Breaking News:

Colorado Withholding

DR 0004 / DR 1098



On or after 01/01/2022, if an employee requests to adjust their withholding, the employer is required to provide form DR 0004 to the employee.

- If the employee returns the DR 0004, the employer must use the values entered on the DR 0004 in conjunction with the DR 1098 to calculate the employee's Colorado withholding.



Anytime an employee completes a DR 0004 it will replace the previous certificate/withholding information for Colorado only.



W-4 forms completed after 01/01/2022 will override any previous withholding requests, including a DR 0004.

- If an employee requests additional withholding on the form W-4, it will apply to federal withholding only. If the employee wants the additional withholdings in Colorado, they will need to complete form DR 0004.



Employees who want to claim tax exempt status should complete the federal Form W-4. There is not an option for tax exemption on the DR 0004.

<https://www.osha.gov/coronavirus/ets2>

<https://cdle.colorado.gov/colorado-overtime-minimum-pay-standards-comps-order>

<https://cdle.colorado.gov/equalpaytransparency>

<https://cdle.colorado.gov/infos>

<https://cdle.colorado.gov/posters-0>

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html#print>

Resources