



**COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF LABOR STANDARDS AND STATISTICS**

NOTICE OF PUBLIC HEARING CONCERNING PROPOSED RULES:

- (1) COLORADO OVERTIME AND MINIMUM PAY STANDARDS (“COMPS”) ORDER #37, 7 CCR 1103-1;**
- (2) WAGE PROTECTION RULES, 7 CCR 1103-7;**
- (3) DIRECT INVESTIGATIONS RULES, 7 CCR 1103-8;**
- (4) COLORADO WHISTLEBLOWER, ANTI-RETALIATION, NON-INTERFERENCE, AND NOTICE-GIVING (“COLORADO WARNING”) RULES, 7 CCR 1103-11;**
- (5) COLORADO STATE LABOR RELATIONS RULES, 7 CCR 1103-12; and**
- (6) EQUAL PAY TRANSPARENCY RULES, 7 CCR 1103-13.**

Notice is hereby given of a public hearing to afford all interested persons an opportunity to be heard prior to the adoption of the above-listed rules, under the authority granted to the Division of Labor Standards and Statistics by the Administrative Procedure Act, C.R.S. § 24-4-103, and the provisions of C.R.S. Title 24, Article 50, and Title 8, Articles 1, 2, 3, 4, 6, 12, 13.3, 14.4, including C.R.S. §§ 8-1-101, -103, -107, -108, -111, -116, -117, -130; 8-2-130; 8-3-105; 8-4-111; 8-5-203; 8-6-102, -104, -105, -106, -108, -109, -111, -116, -117; 8-12-115; 8-13.3-403, -407, -408, -409, -410; 8-14.4-103, -105, -108; 8-14.4-103, -105, and -108; and 24-50-1103, -1106(4).

Date and Time of Hearing: **Monday, November 2, 2020, at 9:00 am**

Written Comment Deadline: **5:00 p.m. on Thursday, November 5, 2020**

The Division is administering this public hearing, and all interested persons are free to offer oral testimony and to listen to part or all of the hearing. However, due to the current public health crisis, **all participation will be by remote means**, not in-person at the Division’s office. Interested persons may listen and/or testify either by phone or by computer or other internet-enabled device, as detailed below. **A recording of the hearing will be publicly posted after the hearing** on our [rulemaking page](#).

Comments may be submitted through our online [form](#), delivered by mail, faxed to 303-318-8400, or emailed to michael.primo@state.co.us. **Written comments become part of the same record as oral testimony**, and are reviewed by the same officials. Accordingly, interested persons **may submit written comments in lieu of oral testimony**, but certainly are free to participate by both means.

While not required, we request and highly recommend that **anyone interested in submitting written comments or oral testimony use this [form](#)**, either to submit a written comment, to RSVP to testify orally, or both. At the hearing, the first oral testimony will be by those who RSVP’d to testify. After all those who RSVP’d have testified, we will entertain any further oral testimony from others.

Instructions for Hearing Participation: Either of the below options will work to participate, but for orderly administration of participation, and to avoid possible audio feedback, please do not use both simultaneously.

- (A) To Participate by Internet, Including Testifying:**
visit this “Meet” webpage: meet.google.com/zsy-dowb-suo
- (B) To Participate by Phone, Whether Just to Listen or to Testify:**

call (US) +1 601-861-4481, and then enter this pin: 779 255 774#

You do not need to have any Google or other account to access any of the above means. This hearing is being held in accordance with the Colorado Administrative Procedure Act, C.R.S. § 24-4-101 et seq., and Colorado Open Meetings Law, C.R.S. § 24-6-401 (2020), to receive any testimony, written data, views, or arguments that interested parties may wish to submit regarding the proposed rules. There is no requirement to arrive by a particular time or stay the entire meeting.

Please contact us at michael.primo@state.co.us with any questions about how to access either the hearing or (after the hearing) its recording, or if you need accommodations or translation services to attend or participate.

Following is a summary of each set of proposed rules. Copies of the proposed sets of rules, including redlined copies showing all changes (except for new sets of rules), and a statement of basis and purpose further detailing each set of proposed rules, are available at www.coloradolaborlaw.gov or, by request at: **Colorado Division of Labor Standards and Statistics, 633 17th St., Denver, Colorado 80202.**

- (1) **Colorado Overtime and Minimum Pay Standards (“COMPS”) Order #37, 7 CCR 1103-1:** These amended rules are proposed to execute the annual inflation adjustment to minimum wages; to conform to amendments to legislative amendments to certain basic definitions (e.g., “wages,” “employee,” and “employer”) in the Healthy Families and Workplaces Act of 2020; to add a new sub-category to the professional exemption for creative employees; and to add other clarifying amendments to these rules.
- (2) **Wage Protection Rules, 7 CCR 1103-7:** These amended rules are proposed to implement and enforce the Healthy Families and Workplaces Act, C.R.S. § 8-13.3-401 et seq., defining statutory paid sick leave as wages under C.R.S. § 8-4-101(14)(a)(I) to be investigated, implemented, and enforced by the Division; and to add other clarifying amendments to these rules.
- (3) **Direct Investigation Rules, 7 CCR 1103-8:** These amended rules are proposed to conform to the broader scope of labor standards law that now provides a basis for Division investigations, determinations, and orders, and to respond to other recent developments; and to add other clarifying amendments to these rules.
- (4) **Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving (“Colorado WARNING”) Rules, 7 CCR 1103-11:** These new rules are proposed to implement and enforce multiple recent additions and changes to labor standards law in C.R.S. Title 8 (including but not limited to the Public Health Emergency Whistleblower Act, C.R.S. § 8-14.4-101 et seq., the Healthy Families and Workplaces Act, C.R.S. § 8-13.3-401 et seq., the Equal Pay for Equal Work Act, C.R.S. §§ 8-5-101 et seq., and the Chance to Compete Act, C.R.S. § 8-2-130), as to anti-retaliation and non-interference with protected activity (including but not limited to public health concerns and use of personal protective equipment), and as to requirements for workplace postings, job announcements, and other notices to employees.
- (5) **State Labor Relations Rules, 7 CCR 1103-12:** These new rules are proposed to implement and enforce the Colorado Partnership for Quality Jobs and Services Act, C.R.S. § 24-50-1101 et seq., governing certain labor-management relations in state employment.
- (6) **Equal Pay Transparency Rules, 7 CCR 1103-13:** These new rules are proposed to implement and enforce Part 2 of the Equal Pay for Equal Work Act, C.R.S. §§ 8-5-201 to -203, as to transparency in job postings and opportunities for promotion or advancement, and related record-keeping duties.



STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

Wage Protection Rules, 7 CCR 1103-7 (2021), as proposed September 30, 2020; to be followed and replaced by a final Statement at the conclusion of the rulemaking process.

I. BASIS: The Director (“Director”) of the Division of Labor Standards and Statistics (“Division”) has authority to adopt rules and regulations on wage-and-hour and workplace conditions, under the authority listed in Part II, which is incorporated into Part I as well. These rules update the existing Wage Protection Act Rules, 7 CCR 1103-7, to include the Division’s additional authority to investigate employee claims alleging denial of paid leave, and retaliation or interference with such rights, under the Healthy Families and Workplaces Act (HFWA), C.R.S. § 8-13.3-401 et seq.

II. SPECIFIC STATUTORY AUTHORITY: The Director is authorized to adopt and amend rules and regulations to enforce, execute, apply, and interpret Articles 1, 4, 6, and 13.3 of Title 8, C.R.S. (2021), and all rules, regulations, investigations, and other proceedings of any kind thereunder, by the Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of Articles 1, 4, 6, and 13.3, including §§ 8-1-101, -103, -107, -108, -111, -130; § 8-4-111; §§ 8-6-102, -104, -105, -106, -108, -109, -111, -116, -117; § 8-12-115; and §§ 8-13.3-401, -403 to -405, -407 to -411, and -416.

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for these rules, as detailed in the list of statutory authority in Part II, which is incorporated into this finding as well; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

IV. SPECIFIC FINDINGS FOR ADOPTION.

(A) Broad Purpose of Various Amendments

Until recently, the overwhelming majority of Division investigations were under the Wage Protection Act as to unpaid wages, requiring only a monetary award to the claimant, plus possible penalties and fines. However, the Division now investigates a much broader range of labor standards laws, and more often investigates systemic issues, due mainly to a half-dozen legislative enactments since mid-2019, including three with effective dates from July 11, 2020, to January 1, 2021.¹ Many provisions of such new laws task the Division with labor standards enforcement that is not limited to ordering payment of traditional wages, *e.g.*: investigating and issuing orders on paid sick leave that now qualifies as “wages,”² but the denial of which may not deprive employees of wages and thus would require different remedies (*e.g.*, a violation of compelling an employee to work rather than take leave);³ issuing compliance orders to modify workplace policies that unlawfully restrict, or to adopt policies comporting with, statutory rights;⁴ investigating circumstances of and

¹ Healthy Families and Workplaces Act (HFWA), S.B. 20-205, C.R.S. §§ 8-13.3-401 et seq. (enacted and effective July 14, 2020) (requiring employers to provide paid sick days; prohibiting interference with or retaliation for exercising HFWA rights; and requiring employers to provide written notice of HFWA rights); Public Health Emergency Whistleblowing Act (“PHEW”), H.B. 20-1415, C.R.S. §§ 8-14.4-101 et seq. (enacted and effective July 11, 2020) (requiring employers to allow employee use of personal protective equipment in certain circumstances; prohibiting retaliation for such PPE use or for certain whistleblowing related to a public health emergency; and requiring employers to provide written notice of PHEW rights); Equal Pay for Equal Work Act, S.B. 19-085, C.R.S. §§ 8-5-101 et seq. (enacted May 22, 2019, effective January 1, 2021) (requiring certain content for job postings, notification to employees of job openings, and record-keeping related to compensation); Chance to Compete Act, H.B. 19-1025, C.R.S. § 8-2-130 (enacted May 28, 2019, and effective August 2, 2019) (barring certain inquiries into the criminal histories of job applicants).

² HFWA C.R.S. §§ 8-13.3-402(8)(b) (“‘Paid sick leave’ is ‘wages’ as defined in section 8-4-101(14).”).

³ *E.g.*, HFWA C.R.S. §§ 8-13.3-402(10) (disallowing “the denial of any right guaranteed under” HFWA); -407(4) (“the division shall investigate each claim of denial of paid sick leave in violation of” HFWA).

⁴ *E.g.*, HFWA, C.R.S. § 8-13.3-403 to -409 (mandating certain contents for paid leave policies; disallowing policies that diminish, interfere with, or retaliate based on the exercise of HFWA rights; and requiring notice to employees and certain record-keeping).

motivations for employee terminations, to determine whether they constituted unlawful retaliation or interference with rights, and then order reinstatement and lost pay if such workers were found to have been unlawfully terminated;⁵ and mandating posters and written notice to employees and workers of these and other rights.⁶ Various new statutes grant authority to issue such orders,⁷ and such authority pre-existed in the C.R.S. Title 8, Article 1, provisions granting investigation and enforcement powers to the Division.⁸ But because the narrower prior scope of Division work rarely implicated such powers, prior versions of these and other Division rules did not detail procedures, rights, and responsibilities as to such powers.

Because these rules are now required to address not only Division investigations, determinations, and orders as to alleged violations of the Colorado Wage Act (CWA) and Wage Protection Act (WPA), but also the statutory authority newly provided to the Division to investigate, make determinations about, and issue orders regarding alleged HFWA violations, the word “Act” was deleted from the title of these rules, which are now the “Wage Protection Rules,” not “Wage Protection Act Rules.” Many of the below-detailed amendments conform these rules to the broader scope of statutory authority under HFWA that now provides a basis for Division investigations, determinations, and orders.

(B) Non-Substantive Rule Changes

Throughout these rules, the Division has capitalized the words “division,” “rule,” “rules,” and “determination,” as well as added “C.R.S.” before relevant statutory cites, and made other similar non-substantive changes.

(C) Rule 1: Statement of Purpose and Authority

Rules 1.1-1.2 are amended to list and incorporate HFWA provisions in Article 13.3 of Title 8, and to note expressly that the Division is now enforcing multiple wage statutes under these rules. Rule 1.2 also now clarifies that while 2021 statutes are generally relied upon in these rules that take effect in 2021, a claim based on events in 2020 or earlier would apply whatever prior year’s version of statutes or rules applied during those events. To avoid any

⁵ *E.g.*, HFWA, C.R.S. § 8-13.3-407; PHEW, C.R.S. § 8-14.4-105.

⁶ *E.g.*, HFWA, C.R.S. § 8-13.3-408 (requiring both posters and written notice to employees of HFWA rights; authorizing fines for violations); PHEW, C.R.S. § 8-14.4-103 (requiring posting of PHEW rights; authorizing fines for violations).

⁷ *E.g.*, HFWA, C.R.S. §§ 8-13.3-410, -411 (410, Division “may coordinate implementation and enforcement of this part 4 and adopt rules as necessary for such purposes”; 411, “(1) The director and the division have jurisdiction over the enforcement of this part 4 and may exercise all powers granted under article 1 of this title 8 to enforce this part 4. (2) The division may enforce the requirements of this part 4. (3) Pursuant to section 8-1-130, any findings, awards, or orders issued by the director with respect to enforcement of this part 4 constitute final agency action.”); PHEW, 8-14.4-105, -108 (105, “Enforcement by the division”; 108, “The division may promulgate rules necessary to implement this article 14.4”).

⁸ *E.g.*, C.R.S. §§ 8-1-107(2) (Division “duty and the power to ... (b) Inquire into and supervise the enforcement, with respect to relations between employer and employee, of ... all other laws protecting the life, health, and safety of employees in employments and places of employment; ... [and] (p) Adopt reasonable and proper rules and regulations relative to the exercise of [these] powers and ... to govern the proceedings of the division and to regulate the manner of investigations and hearings”); 8-1-108(3) (“All orders of the division shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this article....”); 8-1-111 (Division “vested with the power and jurisdiction to have such supervision of every employment and place of employment ... as may be necessary adequately to ascertain and determine the conditions under which the employees labor, and the manner and extent of the obedience by the employer to all laws and all lawful orders requiring such employment and places of employment to be safe, and requiring the protection of the life, health, and safety of every employee ... , and to enforce all provisions of law relating thereto,” and “vested with power and jurisdiction to administer all provisions of this article with respect to the relations between employer and employee and to do all other acts and things convenient and necessary to accomplish the purposes of this article”); 8-4-111(1),(6) (“[Division] duty ... to inquire diligently for any violation of this article, and to institute the actions for penalties or fines provided for in this article ... [it] may deem proper, and to enforce generally the provisions of this article”; and “right of the division to pursue any action available with respect to an employee ... identified as a result of a wage complaint or ... an employer in the absence of a wage complaint”); 8-6-104 to -106 (104, “It is unlawful to employ workers in any occupation ... under conditions of labor detrimental to their health or morals”; 105, “[Division] duty ... to inquire ... into the conditions of labor surrounding ... employees in any occupation ... if the [Division] ... has reason to believe that said conditions of labor are detrimental to the health or morals of said employees”; 106, “[Division] shall determine ... standards of conditions of labor ... not detrimental to health or morals for workers”).

interpretation of a conflict due to incorporations or cited sources, Rule 1.2 also adds that if any such sources differ from these rules, then provisions of these rules govern. These amendments are necessary to ensure that the rules reflect the full authority and statutory mandate of the Division to investigate alleged violations of, enforce, and otherwise implement HFWA, CWA, and WPA. Rule 1.3, has been amended for clarity and to conform the rule to Rule 8.8 of the COMPS Order, 7 CCR 1103-1, regarding the same subject matter. Rule 1.4 has added relevant Article 13.3 (HFWA) authority.

(D) Rule 2: Definitions

Rule 2.1 is amended to incorporate necessary HFWA statutory references. Rule 2.6 and 2.7 are amended to include two sub-rules each: an additional sub-rule that incorporates the definitions of “employee” and “employer” under HFWA, C.R.S. § 8-13.3-402(4)-(5), which the Division will apply in HFWA investigations, determinations, and orders, and which vary slightly from definitions applied under the Colorado Wage Act (CWA), *see* C.R.S. § 8-4-101(5)-(6), and separate sub-rules that incorporate the definitions of “employee” and “employer” from the Colorado Wage Act (CWA), C.R.S. § 8-4-101(5)-(6). Rules 2.6-2.7 are also edited to remove obsolete footnotes and reference to the COMPS Order.

Rule 2.7.3 is added to provide the statutory definition of a “successor employer,” C.R.S. § 8-13.3-402(12), and to clarify that an employer acquires “substantially all of the assets” of another employer for the purposes of C.R.S. § 8-13.3-402(12) if it fulfills the standard applied by the Internal Revenue Service (IRS) in determining whether a corporate acquisition constitutes a tax-free reorganization, *i.e.*, the acquiring corporation must acquire “substantially all of the properties of” the target corporation, which the IRS has defined as a sale in which the assets sold represent at least 90% of the fair market value of the net assets, or at least 70% of the fair market value of the gross assets, held by the target corporation immediately prior to the sale. *See* 26 U.S.C. § 368(a)(1)(C); Rev. Proc. 77-37, § 3.01. The Division finds that, to give independent meaning to the term “*substantially all of the assets*” in the HFWA provision defining a successor employer — *i.e.*, an employer “becomes an employer subject to” HFWA both when it “acquires *all of an organization*, a trade, or a business,” but also when it “acquires...*substantially all of the assets of one or more employers* subject to this part 4,” C.R.S. § 8-13.3-402(12) (emphasis added) — the legislature indicated no intent to depart from existing understandings of what defines a “successor employer,” and that the already-known IRS definition is apt.⁹

The Colorado Employment Security Act (CESA) has identical language defining when a “successor employer” will have the same “experience rating” for purposes of determining its unemployment insurance taxation rate as the definition of “successor employer” under HFWA, providing that an employing unit “that becomes an employer because *it acquires all of the organization, trade, or business or substantially all of the assets of one or more employers*” subject to the CESA “shall succeed to the entire experience rating record of the predecessor employer” for the purpose of determining the successor’s unemployment compensation tax rate. C.R.S. § 8-76-104(1)(a) (emphasis added). In *Dos Almas LLC v. Indus. Claim Appeals Office of Colo.*, 2018 COA 145, ¶ 1, 434 P.3d 777, 778 (Colo. Ct. App. 2018), the Colorado Court of Appeals affirmed the Industrial Claim Appeals Office’s determination that an employing unit became a “successor employer” for purposes of unemployment compensation tax rate liability under C.R.S. § 8-76-104(1)(a), when that employer purchased approximately 90% of the other employer’s assets, but retained none of the prior company’s employees. *Id.* Because the second employer was determined to be a “successor employer” under the criteria in C.R.S. § 8-76-104(1)(a), concerning acquisition of “substantially all of the assets” of a predecessor employer, “employee retention, or lack of employee retention, is irrelevant to the successor issues because a predecessor employees are simply not ‘assets’ under the plain meaning of that statutory term,” and

[e]mployee retention is a factor under other statutory provisions in CESA that govern alternative ways in

⁹ *See Colo. Med. Bd. v. Office of Admin. Courts*, 333 P.3d 70, 74 (Colo. 2014) (“In interpreting the words [of a statute], we presume that the legislature did not use language idly.... Rather, the use of different terms signals the General Assembly’s intent to afford those terms different meanings. If the General Assembly did not intend for ‘subpoena’ to have a meaning distinct from its use in discovery, its use here would be mere surplusage”) (citing *Bennett Bear Creek Farm Water & Sanitation Dist. v. City & Cnty. of Denver*, 928 P.2d 1254, 1262-64 (Colo. 1996) (“We must give effect to the meaning, as well as every word of a statute if possible”); *Teller Cnty. v. Woodland Park*, 2014 CO 35, ¶ 10 (same)); *Lombard v. Colo. Outdoor Educ. Ctr., Inc.*, 187 P.3d 565, 571 (Colo. 2008) (internal citation omitted) (“[W]hen examining a statute’s language, we give effect to every word and render none superfluous because we ‘do not presume that the legislature used language idly and with no intent that meaning should be given to its language.’ Thus, we cannot conclude that ‘should have known’ is merely redundant of the phrase ‘actually knew’”).

which an entity can become a successor employer for unemployment compensation tax rate liability purposes. In particular, an entity can also become a successor employer under separate criteria in section 8-76-104(1)(a) by acquiring “all of the organization, trade, or business” of a predecessor employer, and section 8-76-104(11)(c) defines “trade” or “business” as including “an employer’s workforce.” Employee retention can also provide an alternative way in which an entity can become a successor employer under the provisions of section 8-76-104(9).

Id. Given the identical statutory language between the HFWA’s definition of a successor employer, and the definitions relating to successor employers under the CESA, *see e.g.*, C.R.S. §§ 8-76-104(1)(a); -104(9), Rule 2.7.3 also defines “a trade” or “a business” under C.R.S. § 8-13.3-402(12) as including “an employer’s workforce,” in line with identical language defining a “trade” or “business” in the CESA, C.R.S. § 8-76-104(1)(11)(c). *See Pella Windows v. Ind. Claims Appeals Office*, 2020 COA 9, ¶ 38, 458 P.3d 128 (holding that the same framework derived from CESA cases also applied to determinations of whether a worker is an independent contractor or employee under the Workers’ Compensation Act (WCA), even though the statutory language from the CESA and the WCA was similar, but not identical).

After clarifying the definition, Rule 2.7.3 details that when an employer is considered a “successor employer” under C.R.S. § 8-13.3-402(12), employees’ paid leave entitlements remain as they were under the prior employer; the successor employer is responsible for an acquired employer’s HFWA obligations, including but not limited to accrued, requested, or in-progress leave. *See* 29 C.F.R. § 825.107 (FMLA “successor employer” regulations).¹⁰ These amendments are necessary to fully clarify and effectuate the statutory language of C.R.S. § 8-13.3-402(12).¹¹

Newly added Rule 2.7.4 also explains the method for determining whether an employer meets the 16-employee threshold for HFWA coverage in 2021 pursuant to C.R.S. § 8-13.3-402(5)(b). In drafting Rule 2.7.4, the Division examined other state rules and regulations relating to employer size determinations and paid sick leave requirements, including regulations implementing the Massachusetts Earned Sick Time Law, [940 CMR § 33.04](#), and the Minneapolis Sick and Safe Time Ordinance, [Minneapolis Mun. Code, 40-3-40.200](#); federal regulations promulgated under the Family and Medical Leave Act (FMLA), which has a 50-employee threshold for employer coverage, *see* 29 C.F.R. § 825.104; and the Families First Coronavirus Response Act’s Emergency Paid Sick Leave Act (EPSLA), which also determines coverage based on employer size, exempting employers with more than 500 employees, *see* 29 C.F.R. § 826.40.

After careful study, the Division determined that because the FMLA applies a well-known method, used by employers for decades, it would be least burdensome to adopt a Rule applying that same method to determining employer size under HFWA. Accordingly, Rule 2.7.4 provides that for the 16-employee HFWA threshold, an employer, as under the FMLA, must count all full-time and part-time employees who are or were employed by any establishment or division of the employer in the United States for each working day during each of 20 or more calendar workweeks (not necessarily consecutive workweeks), in either the current or preceding calendar year. *See* 29 C.F.R. §§ 825.104-105.

Rule 2.9 was renumbered to Rule 2.20, and Rule 2.15 was renumbered to 2.19, both without substantive change,

¹⁰ 29 C.F.R. § 825.107(c) (emphasis added):

When an employer is a successor in interest, *employees’ entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer....* [T]he successor, whether or not it meets FMLA coverage criteria, must grant leave for eligible employees who had provided appropriate notice to the predecessor, or continue leave begun while employed by the predecessor, including maintenance of group health benefits during the leave and job restoration.... A successor which meets FMLA’s coverage criteria must count periods of employment and hours of service with the predecessor for purposes of ... eligibility for FMLA leave.

¹¹ Although the FMLA is a more analogous statute to the HFWA than the Internal Revenue Code by way of subject matter, the FMLA’s successor-in-interest regulations are not consistent with the statutory definition of a “successor” employer contained in C.R.S. § 8-13.3-402(12). *See* 29 C.F.R. § 825.107(a) (emphasis added) (“[I]n determining whether an employer is covered because it is a “successor in interest” to a covered employer, *the factors used under Title VII of the Civil Rights Act and the Vietnam Era Veterans’ Adjustment Act will be considered.* ... The factors to be considered include: (1) Substantial continuity of the same business operations; (2) Use of the same plant; (3) Continuity of the work force; (4) Similarity of jobs and working conditions; (5) Similarity of supervisory personnel; (6) Similarity in machinery, equipment, and production methods; (7) Similarity of products or services; and (8) The ability of the predecessor to provide relief.”).

to avoid more renumbering than necessary as HFWA-specific definitions were added.

Rule 2.15 provides not only that “[w]ages” or “compensation” has the same meaning as in C.R.S. § 8-4-101(14),” but also that under C.R.S. § 8-13.3-402(8), HFWA “paid sick leave” constitutes C.R.S. § 8-4-101(14) “wages” and thus is covered by the Article 4 of Title 8, and these rules. Rule 2.18 is added to clarify that “willful,” a term in both the CWA and HFWA,¹² has the same meaning as in current federal Fair Labor Standards Act statutory¹³ and regulatory¹⁴ provisions.

(E) Rule 3: Filing a Wage Complaint Under HFWA; Permissible Employer Policies Under HFWA

Rules 3.1.6, 3.3, and 3.4 adds various non-substantive changes and citations to HFWA. Rule 3.1.6 clarifies that an anonymous complaint is not a “wage complaint” of the sort that HFWA and pre-existing wage law require the Division to investigate, while preserving current Rule’s language that the Division “may choose to address an anonymous complaint outside of the administrative procedure.” Rule 3.3 is amended to require an employee’s withdrawal of a wage complaint to be “in writing,” to assure written confirmation of such actions. Rule 3.4 is amended to state expressly an aspect of the Division’s procedural discretion: an investigation may be sequenced (*e.g.*, bifurcated) into stages, to yield one or more phases and/or decisions. These are matters as to which the Division already had discretion, since no statute or rule disallows terminating an investigation, or disallows sequencing proceedings as appropriate. The Division believes that such aspects of its discretion now have increased relevance due to the newly broadened range of Division investigations: not just ordering wages, but also, where appropriate, issuing compliance orders to change policies, ordering reinstatement of employees or workers, and other forms of relief (detailed in Part (IV)(A) above). The more complex or multi-faceted an investigation is, the more value there is in (A) terminating it part-way through if it becomes clear that there is no violation, or a readily correctable one, and (B) sequencing it to allow certain threshold matters to be examined first.

Rule 3.5 contains numerous HFWA-specific rules. Rule 3.5.1 covers accrual of paid leave under C.R.S. §§ 8-13.3-403(2) and -405, and, in accord with the effective dates of C.R.S. §§ 8-13.3-403 and -405, provides that paid leave begins to accrue at the commencement of employment or on January 1, 2021, whichever is later. HFWA leave accrual is based on “hours worked” under C.R.S. § 8-13.3-403(2) (“one hour of paid sick leave for every thirty hours worked”), but to avoid needing a HFWA-specific rule as to what counts as “hours worked,” Rule 3.5.1(A) references and adopts the existing “time worked” definition of COMPS Order Rule 1.9, 7 CCR 1103-1.

Rule 3.5.1(B) provides hours accrual rules for fee-for-service employees, including the special case of higher education adjunct faculty. C.R.S. § 8-13.3-403(9). After careful study, the Division finds that even if there may be variance among faculty and courses, a total of three hours worked per classroom hour is a reasonable and accepted estimate, in paid leave accrual rules in other jurisdictions¹⁵ and in statements in the industry outside the context of paid leave,¹⁶ and that the alternative, mandating hours-tracking for higher education adjunct teaching, is not a superior option.

¹² C.R.S. §§ 8-4-109(3)(c), 8-4-122, 8-13.3-408(4)(a), 8-13.3-408(4)(b).

¹³ 29 U.S.C § 255(a) (unpaid wage claims “may be commenced within two years ... except that a cause of action arising out of a willful violation may be commenced within three years....”).

¹⁴ 29 C.F.R. § 578.3(c) (“[A] violation ... shall be deemed to be ‘willful’ ... where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account.... [C]onduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful.... [C]onduct shall be deemed to be in reckless disregard ... , among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.”).

¹⁵ *E.g.*, [940 CMR § 33.03\(7\)](#) (Massachusetts paid sick leave rules: “Adjunct faculty compensated on a fee-for-service or ‘per-course’ basis shall be deemed to work 3 hours for each ‘classroom hour’ worked”); [Vermont Earned Sick Time Rules, § 6\(f\)](#) (same).

¹⁶ *E.g.*, Cecile Neidig, “[Adjuncts Demand Better Working Conditions](#),” *The Fordham Observer*, Sept. 29, 2016 (adjunct faculty for Fordham University courses meeting three hours weekly are considered to spend “three hours teaching, four hours preparing and grading, and two hours holding office hours”); Huntington University, [Handbook for Adjunct Faculty](#), 2010 (“Salaries for part-time instructors are based nominally on the base for salaries for full-time instructors, reflecting the expectation that class preparation and grading require approximately three hours for each hour of lecture”).

Rule 3.5.1(C) explains that during a public health emergency and upon the triggering of a condition in C.R.S. § 8-13.3-405(3), employees immediately accrue supplemental paid leave under C.R.S. § 8-13.3-405(1), with elaboration of how many supplemental hours are needed for employees whose weekly hours are (1) forty or more, or (2) under forty.

Rule 3.5.1(D) explains carryover of paid leave from one benefit year to the next under C.R.S. § 18-13.3-403(3)(B), and provides that, for purposes of carryover of unused paid leave from year-to-year, a “year” is defined as a “a regular and consecutive twelve-month period as determined by an employer,” C.R.S. § 18-13.3-402(13), and that unless an employer establishes otherwise in a written policy, a “year” will be defined as the calendar year. Rule 3.5.1(D) also states that an employer is not required to, but may, permit an employee to carry forward more than forty-eight (48) hours of unused paid leave from one benefit year to the next. C.R.S. §§ 18-13.3-403(3)(B), -413. The rule also clarifies that if an employer transitions from one type of “benefit year” to another (for example, from a calendar year to a fiscal year), the employer must ensure that the transition maintains all HFWA rights, and must notify employees in writing of any such changes to the applicable year.

Rule 3.5.2 clarifies the applicable pay rate for HFWA leave, and when leave is available. Rule 3.5.2(A) provides that for leave to be paid “at the same rate and with the same benefits, including health benefits, as the employee normally earns during hours worked, not including overtime, bonuses, or holiday pay” under C.R.S. § 8-13.3-402(8)(a)(1), such leave must be paid on the same schedule as regular wages. The rule also provides that the pay rate for leave must be at least the applicable minimum wage, C.R.S. § 8-13.3-402(8), and for employees with non-hourly pay, the pay rate for sick leave must be the “regular rate” as defined by COMPS Order Rule 1.9, 7 CCR 1101-1, and consistent with Rule 3.5.1(B) for employees covered by that rule. Rule 3.5.2(B) provides that employees may take paid leave for the number of hours it is reasonably anticipated they would have worked during the leave period, based on: (1) their regular schedule of hours actually worked; (2) or, if leave is during a period the employee was anticipated to depart from a regular schedule, then the number of hours anticipated for that period; (3) or, if the number of hours the employee would have worked for during the period cannot be reasonably anticipated, then their average hours worked during their most recent month of work.

Rule 3.5.3(A) provides that employees may use HFWA leave immediately upon accrual, but an employer may, in the ordinary course of business and in good faith, verify employee hours within a month after work is performed and adjust accrued leave to correct any inaccuracy, provided the employee is notified in writing. The Division finds that this adjustment mechanism accommodates how some employers verify hours on a regular basis and, after doing so, may adjust accrued leave hours if the employer finds that an employee worked fewer — or more — hours than initially scheduled.

Rule 3.5.3(B) provides that employees may use HFWA leave in a minimum of hourly increments, that an employer may require or allow smaller increments, and that if an employer does not specify the minimum leave increment in writing, employees may use leave in increments of, but for administrability reasons no smaller than, a tenth of an hour (*i.e.*, six-minute increments). Rule 3.5.3(C) provides that pursuant to C.R.S. § 8-13.3-407(2)(b), an employer cannot apply an absence or attendance policy to an employee’s HFWA-qualifying leave use if doing so could result in adverse action against the employee, including discipline, as defined in C.R.S. § 8-13.3-407(2)(b). However, after an employee exhausts all HFWA leave, an employer can apply an absence or attendance policy to any absences taken thereafter.

Rule 3.5.4 provides that pursuant to C.R.S. § 8-13.3-403(4), an employer may have a general “paid time off” (PTO) policy providing fully paid leave for both HFWA- and non-HFWA purposes (*e.g.*, both sick leave and vacation), as long as the employer notifies employees, in a writing distributed in advance of an actual or anticipated leave request, that the policy will not provide additional HFWA leave when an employee uses all of their PTO for non-HFWA-qualifying reasons (*e.g.*, a vacation), and the policy provides PTO:

- (1) in at least an amount sufficient to satisfy HFWA and applicable rules;
- (2) for all the same purposes covered by HFWA and applicable rules, not a narrower set of purposes, and
- (3) under all the same conditions as under HFWA and applicable rules, not stricter or more onerous conditions (including but not limited to matters such as accrual, use, payment, annual carryover, notice, documentation, and anti-retaliation and anti-interference rights).

Rule 3.5.5 covers permissible policies by which employers may require employees to give notice of a need to take

HFWA leave under C.R.S. § 8-13.3-404(2). Rule 3.5.5(A) provides that, pursuant to C.R.S. § 8-13.3-404(2) (“an employer may provide a written policy that contains reasonable procedures for the employee to provide notice when the use of paid sick leave taken under this section is foreseeable”), an employee may request leave in advance or notify an employer of a need to take such leave orally (for example, by phone), in writing, or electronically (for example, by email or text message). Rule 3.5.5(A) also provides that although an employer may choose acceptable, additional methods of receiving paid leave requests and notifications, it shall not restrict any method that notifies the employer effectively.

Rule 3.5.5(B) provides that as to “foreseeable” HFWA leave for any health or safety-qualifying reason within C.R.S. § 8-13.3-404, an employee shall make a good-faith effort to provide advance notice and a reasonable effort to schedule leave in a manner that does not unduly disrupt employer operations. The rule also clarifies that an employer may by written policy require reasonable procedures to provide notice of foreseeable leave, but shall not deny leave based on noncompliance with such a policy, under C.R.S. §§ 8-13.3-404(2),(5). Rule 3.5.5(C) provides that if leave is “related to [a] public health emergency,” an employee shall notify their employer of a need for leave as soon as practicable if (1) the need for leave is foreseeable and (2) the employer’s place of business is not closed. C.R.S. §§ 8-13.3-405(3),(4).

Rule 3.5.6 clarifies what documentation employers can require from employees for HFWA leave. Rule 3.5.6(A) explains the circumstances under which employers may permissibly request documentation from employees to substantiate their need to take paid leave for a HFWA-qualifying reason, as well as the forms of documentation that are sufficient under the statutory provision requiring such documentation, C.R.S. § 8-13.3-404(6). Rule 3.5.6(A) provides that pursuant to C.R.S. § 8-13.3-404(6), an employer may require “reasonable documentation” that leave is for a HFWA-qualifying purpose, but only for leave of “four or more consecutive work days”; because the statute says “consecutive *work* days” rather than “consecutive days,” the rule defines that term as “four or more consecutive days on which the employee would have worked, not four or more consecutive calendar days.” The rule also notes that an employer may not require *any* documentation from employees to substantiate leave “related to [a] public health emergency” under C.R.S. §§ 8-13.3-405(3)-(4). Rule 3.5.6(A) also defines “reasonable documentation” as documentation that is “not more than is needed to show a HFWA-qualifying reason for leave, as described” in the documentation requirements, and notes that, pursuant to C.R.S. § 8-13.3-412(1), an employer shall not require disclosure of “details” regarding the employee’s or the employee’s family member’s “health...information” or the safety-related information pertaining to the domestic violence, sexual assault, or criminal stalking that is the basis for HFWA leave.

Rule 3.5.6(B) explains that, for purposes of C.R.S. § 8-13.3-404(6), in order for employees to provide sufficient documentation to show that they took HFWA-qualifying leave for a health-related need under C.R.S. § 8-13.3-404(1)(a)-(b), they can provide a document from a health or social services provider from whom the employee received any services for a qualifying health condition. Alternatively, if the employee did not receive services from a health or social services provider for a HFWA-qualifying condition or need, or if the employee cannot obtain a document from such a provider without added expense, the employee can provide a writing self-attesting to a HFWA-qualifying purpose for the leave. The Division considered the that in light of health care costs, employees who lack access to health care that avoids significant out-of-pocket costs risk cutting into the amount of pay they receive for HFWA leave, and the amount of time they can actually use as “leave,” if to obtain documentation to qualify for leave, they must pay extra money, wait longer than is viable to receive such documentation, or engage in a visit to a provider that is not otherwise necessary (for example, if the employee has a flu or another relatively short-term illness requiring time off, but not a visit to a health care provider). In addition to placing unnecessary burdens on Colorado’s health care system, for this same reason, requiring such documentation from a medical provider could also deter lower-wage employees from using paid sick leave, defeating a central intent underlying the Act — to encourage ill employees who could not otherwise afford to do so to stay home from work and recover from their illness. In addition to considering the statutory text and legislative intent, and the impact of the cost of seeing a health care provider on low- to mid-income employees’ ability to actually access leave, the Division reviewed rules implementing the Massachusetts Earned Sick Time Law, which provide that:

[E]mployees who do not have health care coverage through a private insurer, the Massachusetts Healthcare Connector and related insurers, or an employer that provides health insurance to employees may provide a signed, written statement evidencing the need for the use of the earned sick time, without

being required to explain the nature of the illness, in lieu of documentation by a health care provider.

[940 CMR § 33.06\(6\)](#). After careful study of all of the above, the Division finds that permitting an employee to submit documentation either from a medical or social services provider if the employee saw such a provider for treatment, or to self-attest to a medical condition in the event that obtaining documentation from a provider would be costly, could not be completed timely, or require an unnecessary provider visit, strikes the right balance, by allowing employers to require documentation if feasible when a provider was seen, and to require a record created by the employee in other situations.

Rule 3.5.6(C) similarly provides that, to substantiate under C.R.S. § 8-13.3-404(6) that leave was for a covered safety-related need (*i.e.*, domestic abuse, sexual assault, or criminal harassment, C.R.S. § 8-13.3-404(1)(c)), an employee can provide (1) a document from a health provider or a non-health provider of legal services, shelter services, social work, or similar services; (2) a legal document indicating a safety-related need that was the reason for the leave (*e.g.*, a restraining order, other court order, or police report); or (3) their own writing attesting to their need for safety-related leave.

Rule 3.5.6(D) also clarifies HFWA's "reasonable documentation" requirement under C.R.S. § 8-13.3-404(6) by providing that employee submission of any required documentation to an employer may be provided (1) by any reasonable method, including but not limited to electronic transmission, (2) at any time until whichever is sooner of employee's return from leave (or termination of employment, if the employee does not return), and, (3) with or without the employee's signature, notarization, and any other particular document format.

Rule 3.5.6(E) provides that pursuant to C.R.S. § 8-13.3-412(2), any information an employer possesses regarding the health of an employee or the employee's family member, or regarding domestic abuse, sexual assault, or criminal harassment affecting an employee or employee's family member, shall be treated as confidential and employers are not permitted to disclose such information to any other individual, except if the affected employee provides written permission prior to disclosure. C.R.S. § 8-13.3-412(2)(c). The rule also provides that if the information is in writing, whether on hard copy (paper) or in electronic form, it shall be maintained on a separate form and in a separate file from other personnel information, and shall be treated as a confidential medical record. C.R.S. § 8-13.3-412(2)(a)-(b).

Rule 3.5.6(F) provides that, pursuant to C.R.S. § 8-13.3-404(6), if an employer reasonably deems an employee's documentation deficient, without imposing a requirement of more documentation than HFWA or applicable rules permit, then the employer must, before denying leave, (1) notify the employee within seven days of either receiving the documentation or the employee's return to work (or termination of employment, if the employee does not return), and (2) provide the employee an opportunity to cure the deficiency within seven days of being notified that the employer deems the existing documentation inadequate. The Rule is needed to clarify an employer's obligations in the case of deficient documentation, due to the fact that employers must pay HFWA-qualifying leave in certain circumstances, subject to anti-retaliation provisions, but also may discipline employees for improper use of sick pay leave, *see* C.R.S. § 8-13.3-418, and are not required to grant sick pay leave for non-qualifying conditions.

Rule 3.5.7 pertains to employer recordkeeping of paid leave pursuant to C.R.S. § 8-13.3-409(1). Rule 3.5.7 was derived in part from a similar sick leave ordinance adopted in Minneapolis, as adapted to be applied to HFWA.¹⁷ Rule 3.5.7 provides that, pursuant to C.R.S. § 8-13.3-409(1), an employer "shall retain records for each employee for a two-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used" (C.R.S. § 8-13.3-409(1)), except that two-year limit does not diminish the obligation to retain pay statement records for three years (C.R.S. § 8-4-103(4.5)). To ensure employees have the ability to meaningfully use and access HFWA leave, the rule also provides that, upon an employee's request, an employer must provide, in writing or electronically, documents sufficient to show, or a dated statement containing, the employee's then-current amount of (1) accrued paid leave available, and (2) used paid leave. The rule limits such requests to no more than once per month, except employees may make an additional request when any need for HFWA leave arises. Additionally, the rule provides that employers may choose a reasonable system for fulfilling such requests, including but not limited to listing such information on each pay stub, using an electronic system where employees can access their own information, or providing the necessary information in a letter or an e-mail.

¹⁷ [Minneapolis Mun. Code, 40-3-40.270](#).

Rule 3.5.8 details rules as to the HFWA provisions for collective bargaining agreements (“CBA”) that already provide equivalent or more generous paid sick leave, C.R.S. §§ 8-13.3-415(2),(3). The Division initially heard plausible views that Section 415 renders *all* of HFWA inapplicable to those with CBAs, based on its language that HFWA “does not apply” if a CBA provides “equivalent or more generous paid sick leave,” and that Section 415 applies to both CBAs pre-dating HFWA and those after HFWA “if the requirements of [HFWA] are expressly waived” in the CBA. After careful study of the text and the legislative history, the Division finds that Section 415 actually has a more limited impact.

Because Section 415 was a late addition to the legislation, no committee hearings addressed it, but there is informative legislative history: Senate floor remarks by Senator Jeff Bridges, one of two Senate sponsors of HFWA, expressly explaining Section 415, and doing so in the presence of nearly the entire Senate, without rebuttal.

Senator Bridges: “Thank you Mr. President. And just, actually, since it came up here, *I want to establish one more time the legislative intent* on this. It is *not that you can waive out in your collective bargaining agreement any of the protections* that are in this bill. It’s that you can only accept more generous terms than are in this bill. So only if — *so for instance, the bill requires 1 hour earned for every thirty hours worked, you can waive out of that and instead get one hour earned for every 15 hours worked.* I believe there was already language in the bill that made this acceptable, but we want to make it really clear that, similar to a minimum wage increase, *you don’t need to open up your collective bargaining agreement to increase the wages of folks making less than that new wage, this is simply something that goes on top of existing collective bargaining agreements.*”

[The Senate President then noted that there was “no further discussion,” and then held the vote on the motion “for the re-passage of Senate Bill 205,” which then passed.]¹⁸

This intent clarifies, and comports with, what the Division finds to be a sound reading of the text of Section 415, for several reasons. First, Section 415 contains separate subparts (2) and (3) to impose a requirement of “express waiver” on post-HFWA CBAs, while not so requiring for pre-HFWA CBAs — corroborating that a key purpose of Section 415 is, as Senator Bridges explained, to make “clear that ... you don’t need to open up your [existing] collective bargaining agreement” because what HFWA requires “simply ... goes on top of existing collective bargaining agreements.”

Second, Section 415 does not use the term “exempt” or “exemption,” because it is not a true “exemption.” Rather, it requires that CBAs provide “equivalent or more generous” leave than what HFWA requires. Because a CBA cannot satisfy Section 415 without actually providing what the statute requires, Section 415 is not an exemption from the statute.

Third, the Section 415 requirement of “equivalent or more generous paid sick leave” cannot be read in isolation, because the text of the statute does far more than require a number of leave hours; instead, it robustly protects and effectuates employee rights to actually benefit from those leave hours — with, for example: restrictions on what documentation and notice employees can be required to provide; protection of unused accrued leave via carryover year to year; rights to use smaller increments of leave than an entire workday when an employee needs only one or a few hours of leave; rights to notice in multiple languages and through multiple means (*i.e.*, a poster and individual written notice); and broad definitions of, and broad remedies for, unlawful retaliation based on, or interference with, exercising HFWA rights.

Fourth, the text of Section 415 notably does not say a compliant CBA renders HFWA inapplicable to *employers*, only that such a CBA makes HFWA “not apply to *employees*” (emphasis added). Given the above-detailed extensive employee protections in HFWA, the best reading of the provision that HFWA “does not apply to [CBA-covered] employees” is not that it allows lesser employee rights, protections, or enforcement. Rather, Section 415 assures that HFWA does not require *additional* paid leave to those already receiving enough — *i.e.*, the HFWA requirement that an employee receive 48 hours of paid leave does not apply to an employee *already* receiving 48 hours of paid leave via CBA. That is the Sponsor’s reading that Senator Bridges elaborated: that the effect of Section 415 is “not that you can waive out in your collective bargaining agreement any of the protections that are in this bill. It’s that you can only accept more generous terms than are in this bill. So only if — so for instance, the bill requires 1 hour earned for every thirty hours worked, you can waive out of that and instead get one hour earned for every 15 hours worked.”

¹⁸ [Audio, Colorado Senate, June 15, 2020](#) (at 21:10-22:40; tally at end showed 31 of 35 Senators present and voting; emphases added).

(F) Rule 4: Investigations

Rules 4.7(D) and 4.8.2(D) were added to Rule 4.8, to incorporate HFVA retaliation and interference provisions.

(G) Rule 5: Determinations

Rule 5.1 reiterates and codifies the applicability to claims under these rules of other statutes and rules. Rule 5.1.4, which other Division rules are being amended to mirror, aims to clarify remedies the Division may order. Until recently, the overwhelming majority of Division investigations were individual unpaid wage claims requiring only a monetary award to a claimant, plus possible penalties and fines, but the Division now investigates a much broader range of labor standards issues, requiring a much broader range of remedies, as Part IV(A) above details. Various new statutory provisions provide authority to issue applicable orders,¹⁹ but such authority long has existed in the Article 1 of Title 8 provisions establishing Division investigation and enforcement powers.²⁰ Rule 5.1.4 thus aims to detail, and catalogue in one place, the applicable range of remedies authorized by a number of different statutes.

(H) Rule 6: Appeals

Rule 6.10 is amended, like Rule 3.4, to state expressly an aspect of the Division's procedural discretion, that an appeal may be sequenced (*e.g.*, bifurcated) into stages, to yield two or more phases and/or decisions. These are matters on which the Division already had discretion, since no statute or rule disallows sequencing proceedings as appropriate. The Division believes that such aspects of its discretion now have increased relevance due to the newly broadened range of Division appeals: not just ordering wages, but also, where appropriate, compliance orders to change policies, ordering reinstatement of employees or workers, and other forms of relief (detailed in Part (IV)(A) above). The more complex or multi-faceted an appeal is, the more value there is in sequencing it to allow certain threshold matters to be examined first.

V. EFFECTIVE DATE. These rules take effect January 1, 2021, or as soon after as rulemaking is completed.



Scott Moss
Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

September 30, 2020

Date

¹⁹ *E.g.*, C.R.S. §§ 8-13.3-410 (“coordinate implementation and enforcement of this part 4 and adopt rules as necessary for such purposes”), 411 (“(1) The director and the division have jurisdiction over the enforcement of this part 4 and may exercise all powers granted under article 1 ... to enforce this part 4. (2) The division may enforce the requirements of this part 4. (3) Pursuant to section 8-1-130, any findings, awards, or orders issued by the director with respect to enforcement of this part 4 constitute final agency action.”).

²⁰ *E.g.*, C.R.S. §§ 8-1-107(2) (Division has “duty and the power to ... (b) Inquire into and supervise the enforcement, with respect to relations between employer and employee, of ... all other laws protecting the life, health, and safety of employees in employments and places of employment; ... [and] (p) Adopt reasonable and proper rules and regulations relative to the exercise of [these] powers and ... to govern the proceedings of the division and to regulate the manner of investigations and hearings”); 8-1-108(3) (“All orders of the division shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this article....”); 8-1-111 (Division “vested with the power and jurisdiction to have such supervision of every employment and place of employment ... as may be necessary adequately to ascertain and determine the conditions under which the employees labor, and the manner and extent of the obedience by the employer to all laws and all lawful orders requiring such employment and places of employment to be safe, and requiring the protection of the life, health, and safety of every employee in such employment or place of employment, and to enforce all provisions of law relating thereto”; “vested with power and jurisdiction to administer all provisions of this article with respect to the relations between employer and employee and to do all other acts and things convenient and necessary to accomplish the purposes of this article”); 8-4-111(1),(6) (“[Division] duty ... to inquire diligently for any violation of this article, and to institute the actions for penalties or fines ... in this article in such cases as ... [it] deem[s] proper, and to enforce generally the provisions of this article”; and “right of the division to pursue any action available with respect to an employee ... identified as a result of a wage complaint or ... an employer in the absence of a wage complaint”); 8-6-104 to -106 (104, “It is unlawful to employ workers in any occupation ... under conditions of labor detrimental to their health or morals”; -105, “[Division] duty ... to inquire ... into the conditions of labor surrounding ... employees in any occupation ... if the [Division] ... has reason to believe that said conditions of labor are detrimental to the health or morals of said employees”; -106, “[Division] shall determine ... standards of conditions of labor ... not detrimental to health or morals for workers”).