

NOTICE OF PUBLIC HEARING CONCERNING PROPOSED RULES:

Notice is hereby given of a public hearing to afford all interested persons an opportunity to be heard prior to adoption of the below **three sets of proposed rules**, under authority granted to the Division of Labor Standards and Statistics by the Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of C.R.S. Title 8, Articles 1, 2, 4, 6, 12, 13.3, and 13.5, including but not limited to the statutory sections cited in Rule 1 of COMPS Order #38 (7 CCR 1103-1), Rule 1 of Wage Protection Rules (7 CCR 1103-7), and Rule 2 of the 2022 PAY CALC Order (7 CCR 1103-14), all of which proposed rules accompany and are incorporated into this notice.

(1) 2022 Publication And Yearly Calculation of Adjusted Labor Compensation Order (“2022 PAY CALC Order,” or “PAY CALC”), 7 CCR 1103-14 (effective January 1, 2022). This new set of rules serves to calculate and publish pay and income figures — *e.g.*, Colorado minimum wages, and minimum earnings levels for various full or partial labor law exemptions — that adjust annually or other periodic bases under the Colorado Overtime and Minimum Pay Standards Order (“COMPS Order,” or “COMPS”), 7 CCR 1103-1, or other laws. The pay and income figures in PAY CALC previously were (or, for figures new in 2022, would have been) published in various provisions throughout the COMPS Order. PAY CALC consolidates and facilitates access to such figures by consolidating all of them into an annually published one-page rule, with PAY CALC and COMPS each referencing and incorporating the other.

(2) Colorado Overtime and Minimum Pay Standards Order (“COMPS Order,” or “COMPS”) #38, 7 CCR 1103-1 (effective January 1, 2022). These rules amend the prior version of COMPS (Order #37, 2021), Colorado’s broad set of wage and hour rules, as follows (in addition to certain non-substantive edits):

- (A) removing annually or otherwise periodically adjusted pay and income figures — *e.g.*, Colorado minimum wages, and minimum earnings levels for various full or partial labor law exemptions — from the various COMPS provisions where each has appeared, and replacing them with references to the PAY CALC Order (described above), which now consolidates all such figures;
- (B) adding an exemption for “highly compensated employees” not covered by other existing exemptions, substantially similar to the exemption under the federal Fair Labor Standards Act;
- (C) adding rules on minimum wages, overtime and maximum hours protections, and meal and rest periods for agricultural employees, pursuant to the Colorado Senate Bill 21-87 requirements that agricultural employees be provided such rights, and that the Division promulgate rules accordingly; and
- (D) Rules further detailing how to calculate the “regular rate of pay” of an employee with more than one hourly rate, and expanding this definition to other uses of “regular rate of pay” in the COMPS Order other than calculation of the overtime rate, are added.

(3) Wage Protection Rules, 7 CCR 1103-7 (effective January 1, 2022). These rules amend the Wage Protection Act Rules, 7 CCR 1103-7, which implement the Colorado Wage Act (“CWA,” as amended by the Wage Protection Act (“WPA”), C.R.S. § 8-4-101 et seq.), Healthy Families and Workplaces Act (“HFWA,” C.R.S. § 8-13.3-401 et seq.), and Agricultural Labor Rights and Responsibilities Act (codified in relevant part at C.R.S. §§ 8-6-101.5, 8-6-120, 8-13.5-201 et seq.), as follows (in addition to certain non-substantive edits):

- (A) defining “vacation pay,” following a court ruling that vacation pay is non-forfeitable;
- (B) clarifying the pay rates and hours for HFWA leave for employees with certain irregular pay or hours;
- (C) confirming the acceptability of electronic signatures at the Division;
- (D) clarifying employers’ HFWA record-keeping requirements; and
- (E) clarifying the HFWA exemption for when a CBA provides equivalent or more generous leave.

Public Hearing Information:

Date and Time of Hearing: **Monday, November 1, 2021, from 3:00 pm until at least 6:00 pm.** Division leadership will stay until at least 6:00 pm, or longer if by that time anyone still wishes to speak, to assure opportunity for anyone who may wish to attend in the early evening. You need not arrive by a particular time or stay the entire meeting.

Written Comment Deadline: **Wednesday, November 3, 2021, at 5:00 pm**

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, **participation will be primarily by remote means**, with limited in-person participation at the Division by RSVP only and subject to (A) space limitations and (B) the possibility of a decision, which would be announced on the [rulemaking page](#) no later than 24 hours before the meeting, as to whether the public health situation permits in-person attendance or requires an exclusively remote hearing. While not required, we request and highly recommend that **anyone interested in oral testimony use this [rulemaking comment form](#) to RSVP**, because at the hearing, after those in person speak, we will first call on those who RSVP'd to speak, followed by testimony from others by remote means. A recording of the hearing will be publicly posted after the hearing on our [rulemaking page](#).

Written comments may be submitted through our online [rulemaking comment form](#), mailed to the below address, faxed to 303-318-8400, or emailed to michael.primo@state.co.us. Because **written comments become part of the same record as oral testimony**, and are reviewed by the same officials, you **may submit written comments in lieu of oral testimony**, but are free to participate by both means.

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. (*You do not need to have a Google account to access any of the below means.*)

- (A) **To Participate by Internet, Including Testifying:**
visit this "Meet" webpage: meet.google.com/umv-nkzq-mou
- (B) **To Participate by Phone, Whether Just to Listen or to Testify:**
call (US) +1 631-743-5204, and then enter this pin: 421 042 922#
- (C) **To Participate in Person** (633 17th Street, Denver, CO, 80202, Room 12A on the 12th floor)
RSVP via our [rulemaking comment form](#) to attend in person.

Please contact michael.primo@state.co.us with any questions about how to access either the hearing or its recording, or **if you need accommodations or translation services** to attend or participate. This hearing is 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 (2021), to receive any testimony, written, views, or arguments that interested parties wish to submit regarding the proposed rules.

For resources in Spanish: visit LeyesLaboralesDeColorado.gov; submit comments on our [Spanish comment form](#); RSVP (optionally) to attend or speak on our [Spanish RSVP form](#); or call 303-318-8441 and ask for an employee who speaks Spanish.

***Para recursos en español:** visite LeyesLaboralesDeColorado.gov; envíe comentarios por nuestro [formulario en español para comentarios](#); Para asistir o hablar, confirme su asistencia (opcionalmente) en nuestro [formulario RSVP](#) en español ; o llame al 303-318-8441 y pida un empleado que hable español.*

Copies of proposed rules, including redlined copies showing changes from prior versions, and statements of basis and purpose further detailing the proposed rules, are available at www.coloradolaborlaw.gov or by request to: **Division of Labor Standards and Statistics, 633 17th Street, Denver, Colorado 80202.**



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

2022 Publication And Yearly Calculation of Adjusted Labor Compensation (“2022 PAY CALC”) Order, 7 CCR 1103-14 (2022), as proposed September 29, 2021; 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.

II. SPECIFIC STATUTORY AUTHORITY: These Rules are issued under the authority, and as enforcement, of Section 15 of Article XVIII of the Colorado Constitution and Articles 1, 2, 4, 6, and 12 of C.R.S. Title 8 (2022), and are intended to be consistent with the State Administrative Procedures Act, C.R.S. § 24-4-101, et seq.

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 the 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. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows. This 2022 Publication And Yearly Calculation of Adjusted Labor Compensation Order (“PAY CALC Order,” or “PAY CALC”), 7 CCR 1103-14, a new set of rules with an effective date of January 1, 2022, serves to publish pay and income levels — most notably, the Colorado minimum wage and the minimum pay for various labor law exemptions — that adjust periodically under the Colorado Overtime and Minimum Pay Standards Order (“COMPS Order,” or “COMPS”), 7 CCR 1103-1, or other laws. PAY CALC incorporates COMPS and other relevant labor laws by reference.

Publishing pay and income levels in PAY CALC, rather than within COMPS, serves two key purposes. First, it alleviates the *annual* need to revise the COMPS Order, a wide-ranging set of labor rules of which pay and income levels are only a small part, in years when the sole purpose of a revision would be to update certain pay and income levels. Second, it improves accessibility of key information, such as the upcoming year’s minimum wage and exemption salaries, to publish it in PAY CALC, an annual issuance that **(A)** is short (unlike COMPS, a necessarily lengthy set of labor rules), and **(B)** has all relevant pay and income levels in a straightforward table on page one (unlike COMPS, which necessarily is organized by rule topic, leaving pay and income levels scattered throughout its various rules), which explains the nature of future increases, and refers the reader to the underlying rule text for additional detail on each published value.

PAY CALC and COMPS calculations are executed based on Section 15 of Colorado Constitution Article XVIII (“Colorado’s minimum wage is ... adjusted annually for cost of living increases, as measured by the Consumer Price Index (“CPI”) used for Colorado”); C.R.S. Title 6, Article 8; and the COMPS Order. Inflation-adjusted values applicable to PAY CALC and COMPS are based on the CPI used for Colorado, the Denver-Aurora-Lakewood CPI published by the federal Bureau of Labor Statistics. Each year’s pay levels are published in that year’s Minimum Wage Order (through 2020), COMPS Order (in 2020 and 2021), and/or PAY CALC Order (as of 2022). Subsequent years’ minimum and exempt wage calculations will be published in each subsequent year’s annual PAY CALC Order. Prior years’ requirements are detailed in prior PAY CALC, COMPS, and/or Minimum Wage Orders in effect when the wages were owed.

To effectuate the mandate of Section 15 of Article XVIII of the Colorado Constitution, C.R.S. § 8-6-101(3)(a)(II), and COMPS Rule 3.1 that employees must be paid not less than the prior year’s minimum wage adjusted for inflation, Division rules must round up, to the nearest cent, any fractional cents yielded by that inflation adjustment. For 2022, an inflation adjustment to the 2022 minimum wage (\$12.32) of +1.9%, the mid-2020 to mid-2021 increase in the relevant CPI, yields \$12.55408. To guarantee that employees receive not less than \$12.55408 per hour, that figure must be rounded up, yielding the 2022 minimum wage of \$12.56 per hour. Other than in annually calculating the minimum wage, Division rules calculate pay levels by rounding fractional cents up for values of at least 0.5, and down for values under 0.5.

V. EFFECTIVE DATE. These rules take effect January 1, 2022, or as soon thereafter as rulemaking is completed.

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

September 29, 2021
Date