



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 **four 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, provisions of C.R.S. Title 24, Article 92, and C.R.S. Title 8, Articles 1-4, 6, 12, 13.3, 13.5, 14.4, and 17; and § 15 of Art. XVIII of the Colorado Constitution.

The proposed changes to Colorado labor rules include:

1. Implementing and enforcing three laws recently enacted:
 - (a) Senate Bill 22-161, which amends wage-and-hour responsibilities, mostly with additional responsibilities to pay wages due, including: new procedures for certain kinds of deductions; protection against retaliation related to wage rights; worker misclassification reporting; and various aspects of wage rights enforcement, including new statutory provisions as to fines and penalties, attorney fees for retaliation or higher-value wage claims, collections where ordered payments are not made, and collaboration between DLSS and other branches of state government;
 - (b) Senate Bill 22-097, which amends whistleblower retaliation rights and responsibilities to cover a range of health and safety matters, not just those related to a public health emergency;
 - (c) Senate Bill 19-196, which requires paying prevailing wages to construction laborers on state public projects.
2. Implementing the annual adjustment of the minimum wage, as mandated by the Colorado Constitution, and other related minimum wage and salary figures adjusted annually; and
3. Other non-substantive or procedural changes to labor rules suggested or proposed, based on stakeholder input or other developments that warrant rule changes.

For the details of each proposed rule, see the text of the accompanying proposed draft rules, as well as the proposed statement of basis and purpose that accompanies each set of rules.

(1) Wage Protection Rules, 7 CCR 1103-7. These rules amend the prior version of the Wage Protection Rules, which implement labor laws within the jurisdiction of the Division, including but not limited to the Colorado Wage Act (CWA) as amended by (among other laws) the Wage Protection Act of 2014 (WPA) and Colorado Senate Bill 22-161, C.R.S. § 8-4-101 et seq.; the Healthy Families and Workplaces Act (HFWA) of 2020, C.R.S. § 8-13.3-401 et seq.; and the Agricultural Labor Rights and Responsibilities Act, as codified in relevant part at C.R.S. §§ 8-6-101.5, 8-6-120, and 8-13.5-201 et seq.

(2) Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules (“Colorado WARNING Rules”), 7 CCR 1103-11. These rules amend the prior version of the Colorado WARNING Rules, the Division’s existing rules governing retaliation, interference, and notice of rights under several Division-enforced statutes.

(3) 2023 Publication And Yearly Calculation of Adjusted Labor Compensation (“2023 PAY CALC”) Order, 7 CCR 1103-14 (2023). The PAY CALC Order publishes inflation-adjusted and other annually updating values applied in the Colorado Overtime and Minimum Pay Standards (“COMPS”) Order, 7 CCR 1103-1.

(4) Prevailing Wage and Residency (PWR) Rules, 7 CCR 1103-6. The “Prevailing Wage and Residency Rules” is a revised rule set combining the Division’s existing rule set regarding the Keep Jobs in Colorado Act (KJICA), C.R.S. § 8-17-101 et seq. (previously titled the “Keep Jobs in Colorado Act Rules”), with a new set of requirements from the Colorado Quality Apprenticeship Training Act of 2019 (Prevailing Wage Act or PWA), C.R.S. § 24-92-201 et seq.

Public Hearing Information:

Date and Time of Hearing: **Tuesday, November 1, 2022, from 3:00 pm until at least 6:00 pm.** Division 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 for the above rules: **Thursday, November 3, 2022, 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 then call on those who RSVP'd to speak, followed by testimony from others by remote means. A recording of the public hearing will be publicly posted afterwards on our [rulemaking page](#).

Written comments may be submitted by: 1) our online [rulemaking comment form](#); 2) mail to the below address; 3) fax to 303-318-8400; or 4) email 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/hcx-tpbo-mtr
- (B) **To Participate by Phone, Whether to Listen or to Testify:**
call (US) +1 929-276-0796, and then enter this pin: 807 708 207#
- (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 public hearing or its recording, or **if you need accommodations or translation services** to attend or participate. This public 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 (2022), to receive any testimony, written, views, or arguments that interested parties wish to submit regarding the proposed rules.

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

Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("Colorado WARNING Rules"), 7 CCR 1103-11 (2023), as proposed September 29, 2022; to be followed and replaced by a final Statement at the conclusion of the rulemaking process.

I. BASIS: These amendments to the Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("Colorado WARNING Rules") serve important public needs that the Director of the Division of Labor Standards and Statistics (hereinafter, "Director" and "Division") finds best served by these rule updates, amendments, and supplements, including but not limited to implementing, and clarifying enforcement of, recent changes to Colorado labor law in the Agricultural Labor Rights and Responsibilities Act, Colorado Senate Bill 21-087 ("ALRRA") as amended by Colorado House Bill 22-1313, the Protected Health/Safety Expression and Whistleblowing Act ("PHEW"), C.R.S. § 8-14.4-101, et. seq., as amended by Colorado Senate Bill 22-097; the Colorado Wage Act, C.R.S. Title 8, Article 4, as amended by Colorado Senate Bill 22-161, as well as in other recently effective laws, including but not limited to: the Public Health Emergency Whistleblower Act of 2020, C.R.S. § 8-14.4-101, et seq.; the Healthy Families and Workplaces Act ("HFWA"), C.R.S. § 8-13.3-401, et seq.; the Equal Pay for Equal Work Act ("EPEWA"), C.R.S. §§ 8-5-101 et seq.; the Chance to Compete Act, C.R.S. § 8-2-130; the Wage Protection Rules, 7 CCR 1103-7; and the Colorado Overtime and Minimum Pay Standards ("COMPS") Order, 7 CCR 1103-1.

II. SPECIFIC STATUTORY AUTHORITY: The Director is authorized to adopt regulations and rules to enforce, execute, implement, apply, and interpret Articles 1–6, 12, 13.3, 13.5, and 14.4 of C.R.S. Title 8, and all rules, regulations, investigations, and proceedings thereunder, by the Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of the above-listed Articles, including but not limited to: C.R.S. §§ 8-1-101, -103, -107, -108, -111, -116, -117, -130; 8-2-130, -206; 8-4-110, -111, -113, -120; 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; 8-13.5-204; and 8-14.4-103, -105, and -108.

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.

A. Rule 2.18: Definitions under C.R.S. § 8-4-120

Rule 2.18 defines both "filed any complaint," and "proceeding," under C.R.S. § 8-4-120(a)-(b) which already existed in the Colorado Wage Act, but to clarify the scope of the protected activity the Division now has authority to investigate and order remedies for, under Colorado Senate Bill 22-161 ("SB161").

B. Rule 2.19: Definition of "public health agency" as used in C.R.S. § 8-14.4-102(3)(b)

Rule 2.19 defines "public health agency" under C.R.S. § 8-14.4-102(3)(b) for the purposes of clarifying which agencies' recommendations concerning personal protective equipment fall within the scope of protected activity related to the wearing of personal protective equipment under C.R.S. § 8-14.4-102(3) and WARNING Rule 5.2.

C. Rule 3.5.3(A)(1): Remedies and Orders in Determinations by the Division

Rule 3.5.3(A)(1) is revised to conform with SB161, which amended the Division's authority to investigate retaliation claims under the Colorado Wage Act, C.R.S. § 8-4-120, and addresses the authority of the Division to order relief in cases where a violation is found to include the legal and equitable remedies listed in C.R.S. § 8-4-120(3)(a). Rule 3.5.3(A)(1) addresses this new authority to order wages, fines, penalties, and other remedies as listed in the statute.

D. Rule 3.9: Attorney Fees and Costs & Rule 3.10: Administrative Liens and Levies

Rule 3.9 adds, by incorporating proposed Rule 7 of the Wage Protection Rules, 7 CCR 1103-7, procedures for parties to apply for attorney fees and costs, to dispute another parties' application for attorney fees or costs, and to appeal any award. This authority already existed under certain laws implemented by the Colorado WARNING Rules (e.g.,

PHEW at C.R.S. § 8-14.4-105(3)(a), and the ALRRA at C.R.S. § 8-2-206(3)(c) and 8-13.5-204(1)(b), (2)(a)(III)). However, because SB161 expanded the Division's authority to order attorney fees and costs in wage claims to the extent that it necessitated a rule change, the Division proposes the same procedure here.

Similarly, SB161 gave the Division authority to issue notices of administrative liens and levies against the assets of employers or other persons or entities who fail to pay wages, penalties, or fines due. Rule 3.10 incorporates the procedures detailed in Wage Protection Rule 8 to the extent applicable here.

E. Rules 4.1.1(B) Poster Requirements; and Rule 5.1 Protected Activity under PHEW

Rules 4.1.1(b) and 5.1 are revised to conform with Colorado Senate Bill 22-097, which amended the PHEW requirement that "raising any reasonable concern about workplace violations of government health or safety rules, or about an otherwise significant workplace threat to health or safety," be "related to a public health emergency."

F. Rule 4.2.2 Employer Compliance with Public Health Emergency Requirements under ALRRA

Rule 4.2.2 is revised to conform with Colorado House Bill 22-1313, which amended the ALRRA's requirements for employer-provided housing during a public health emergency in C.R.S. § 8-14.4-109. Among these amendments, C.R.S. § 8-14.4-109(2) added a definition of "public health emergency" specific to rights in agricultural employment, which is incorporated here. Additionally, the rule is revised to reflect updated guidance from the Colorado Department of Public Health and Environment and the Occupational Safety and Health Administration, and with clarifying edits.

V. EFFECTIVE DATE. If adopted, these rules take effect January 1, 2023, or as soon after as rulemaking completes.



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

September 29, 2022

Date