



Interpretive Notice & Formal Opinion (“INFO”) #2A: The Wage Claim Investigation Process

Overview

This INFO covers the Division **wage claim investigation process**, including each party’s responsibilities to provide information on their claims and defenses.

- Investigation **duration** varies, depending on how complex the claim is, how responsive the parties are, how clear the evidence is, and how many and how complex the other claims the Division is investigating are.
- The law on the investigation process and parties’ responsibilities that this INFO summarizes are in the [Wage Protection Rules](#), 7 CCR 1103-7 and the [Colorado Wage Act](#), C.R.S. § 8-4-101, et seq.
- Other INFOs in this series detail what follows investigations: #2B, **remedies** ordered by determinations of violations; #2C, **appeals** of determinations; #2D, **enforcement** of orders in determinations of violations.

Who Can File a Wage Complaint?

- **Any employees** claiming wage and hour violations may file complaints. Common questions on who can file:
 - True “**independent contractors**” can’t claim that amounts they’re owed for work count as “wages” the Division can investigate and order additional remedies for (penalties, etc.) — **but**:
 - A true independent contractor still may be able to file a **breach of contract** complaint in court.
 - **If a worker claims they were misclassified** as an independent contractor — *e.g.*, because their work was for an employer’s benefit and subject to their control, rather than genuinely independent work — then they **can file “wage” claims as “employees,”** at the Division or in court.¹
 - Anyone owed wages can file a complaint, in the Division or a court, **regardless of immigration status**. The Division won’t ask for or consider immigration status, nor (if it learns anyone’s status) provide that information to any person or entity. Attempting to use immigration status to interfere with wage and hour rights or investigations is unlawful retaliation that may result in fines, backpay, and other remedies.²

Wage Claim Investigation Steps — note that throughout all stages of any investigation, parties **must promptly notify** the Division of any change in contact information, including mail, email, or phone number.

Step 1: A claimant [files a wage complaint](#) with the Division.

- The Division must investigate any wage complaint it receives for up to **\$7,500** in unpaid wages or compensation. A claimant can file a complaint alleging more than \$7,500 owed, but must acknowledge, at the time of filing the complaint, that \$7,500 may be the limit of what the Division awards in wages.

Example 1: A claimant files a wage complaint that their employer refused to pay a \$10,000 commission they earned on a large sale. The wage complaint explains the commission agreement and calculates the \$10,000 owed, but agrees the Division Notice of Complaint may be for only \$7,500 in owed wages.

¹ *E.g.*, [Super Mario Construction, LLC](#), DLSS Case # 20-0026 (Nov. 23, 2021) (ordering corporate employer plus two individual owners, jointly liable as “employers,” to pay almost \$900,000 to 22 construction workers they misclassified as “independent contractors,” for violations of rights of “employees”: not paying all wages due (minimum, overtime, and agreed-upon); and not providing paid rest periods, pay statements, or required notices of rights); [The Sound Hound LLC d/b/a The Sound Hound Pet Spa](#), DLSS Case #3806-21 (Hearing Officer Decis. #22-036, at 6 (July 25, 2022)) (dog grooming business owed unpaid commissions, plus penalties because the commissions counted as “wages” of an “employee,” to a dog groomer it misclassified as an independent contractor; evidence showed “1) a sufficient degree of control of the employers over the claimant’s work, 2) that the claimant’s grooming work was the core business of the employers; and 3) the absence of an independent business for which the claimant was also performing this type of work”).

² [Wage Protection Rules](#), 7 CCR 1103-7, Rule 4.8.2.

- Generally, the Division may order wages that were due within **two years** before the complaint filing, except:
 - **three years** if investigation shows a violation was **willful** (see INFO #2B on what is or isn't willful); and
 - the two- or three-year limit may be extended if an employer responsible for a violation also **prevented the employee from knowing** their rights, such as by failing to post required notices of rights.³
- **Claimants' responsibilities:**
 - A claimant must provide an explanation that is clear, is specific, and shows they are entitled to wages.
 - Documents from the claimant should show: (a) that a violation of Colorado wage and hour law may have occurred, and (b) a reasonable estimate of wages due.⁴
 - Commonly, the Division will send the claimant a "Request for Information" (RFI) letter requesting additional information or documents.
- Investigations of possible violations as to **multiple employees** at the same employer:
 - Complaints for others "**similarly situated**": Wage complaints may be filed on behalf of others at the same employer with similar violations.⁵ While the Division must investigate all claims filed by *individual* claimants, it isn't required to extend investigations to others "similarly situated" to the claimant. Based on limited resources, the Division generally declines to investigate for others similarly situated, but:
 - The Division will still investigate for each individual filing a complaint.
 - Claimants or others can inform the Division of others' situations at their workplace, and the Division may, in its discretion, initiate a **group or employer-wide investigation**.
 - Even in an investigation limited to the individual who filed the complaint, the claimant can have co-workers or others be **witnesses** for their complaint.
 - Complaints **filed by multiple employees**: For efficiency, the Division may send an employer an NOC listing all individual complaints and alleged violations filed against that employer.
- The Division may **stage investigations in two or more phases** (most commonly, in investigations spanning multiple employees), *e.g.*: a first phase on whether violations occurred; then (if a violation is found in the first phase) a second phase on amounts owed to each individual.⁶

Step 2: The Division sends the employer a "Notice of Complaint" (NOC), which serves as a "written demand" for wages under [C.R.S. § 8-4-101\(15\)](#).

- The NOC includes all amounts and types of wages the employer may owe at the time it is sent. This may include wages the claimant earned between the time of the complaint and the time of the NOC, as well as any additional amounts the Division calculates may be owed.

³ "An employer may not be heard to plead this statute of limitations unless it has complied with its duty under the regulation to provide employees with notice of their statutory rights. ... The employer did not provide ... the required poster or any other notice of his rights ... To hold otherwise would defeat the remedial purposes ... by beginning a limitations period running against a claimant before he had a reasonable opportunity to become aware of his civil rights, so that it may be said he knew or reasonably should have known of those rights." [Quicker v. Colorado Civil Rights Commission](#), 747 P.2d 682 (Colo. 1987) ("equitable tolling" allows complaint filing and monetary recovery for pre-statute of limitations violations, if an employer violates rules (such as those in various labor laws) requiring (1) "that all employers post and maintain a notice furnished" by the relevant state agency (there, the Colorado Civil Rights Commission) "which informs employees" of their rights (of labor practices state law prohibits, the statute of limitations, and the agency that can be contacted as to those rights), and (2) "these notices to be "posted conspicuously in easily accessible and well-lighted places customarily frequented by employees ... and at or near each location where employees' services are performed").

⁴ [Wage Protection Rules](#), 7 CCR 1103-7, Rule 4.2.

⁵ [C.R.S. § 8-4-111\(2\)\(a\)\(I\)](#); [Wage Protection Rules](#), 7 CCR 1103-7, Rule 4.2.2.

⁶ [Wage Protection Rules](#), 7 CCR 1103-7, Rule 3.4; *e.g.*, [Cervantes v. Wendy's of Colo. Springs](#), No. 22CA0795, at ¶¶ 31, 34 (Colo. App. Dec. 29, 2022) (unpublished) (approving such bifurcation).

Example 2: In January, a claimant files a complaint for \$5,000 in unpaid overtime, but they work two months more, quitting in March. By the later date the NOC is sent, the claimant is owed \$1,000 more in overtime, plus \$2,000 in vacation the employer didn't pay out. The NOC explains that \$8,000 is allegedly owed (\$6,000 overtime, \$2,000 vacation), but the Division will award at most \$7,500 in wages.

Step 3: The employer has an opportunity to respond to the NOC within 14 calendar days. At this point, the burden shifts to the employer to prove the claimant more likely than not isn't entitled to the claimed wages.

- The employer response must include a completed "[Employer Response Form](#)," plus any information or documents the Division requested (pay statements, etc.). An insufficient response may be deemed failure to respond under [C.R.S. § 8-4-113\(1\)\(b\)](#), resulting in a determination of a violation and fines.
- The employer has a responsibility to provide **all relevant evidence** showing it is more likely than not that claimed wages aren't owed, which may include: pay statements; records of hours worked; employment agreements; and/or communications between the parties (email, text, etc.). The employer must also keep, and not delete, all relevant evidence as soon as an investigation begins, and until a final decision that allows no further appeal or lawsuit.⁷ For more detail, see the "**Evidence in Investigations**" section below.
- The employer must ensure that the Division **receives** its written response by the date listed in the NOC (**14 calendar days** from date the Notice was **sent**), by any method (mail, email, fax, electronic portal, or in person). The employer may request an extension by showing good cause, but that won't extend the 14-day deadline to pay wages owed in order to avoid penalties owed to the claimant under [C.R.S. § 8-4-109\(3\)\(b\)](#).
- **Failure to provide** relevant records that the law requires to be kept (pay statements, etc.), or that the employer was required to provide the Division, may be considered evidence against the employer,⁸ and may be excluded from a later appeal unless there was good cause for not submitting it in the investigation.⁹

Example 3: An employer responds by mail, and a postage meter is applied to the response 4 days before the deadline. But the response is not postmarked until the deadline, and the Division does not receive it until 2 days after the deadline. The employer failed in its duty to timely respond.¹⁰

Step 4: If the employer pays part or all of what is claimed after the NOC, but before a determination:

- An employer may agree it owes all or some of the wages claimed in the NOC, and pay the claimant the amount it believes is owed. But unless the claimant withdraws the claim, the Division investigation will continue, and the employer must continue participating, and complying with Division orders.
 - Even if the employer pays all wages claimed, the Division may issue a determination that the employer violated the law by failing to pay wages when they were owed, and may order penalties and/or fines; see INFO #2B for more details on possible "penalties-only" claims.
- If an employer pays part, but not all, of the sum the Notice of Complaint, the part paid will generally be applied to the amount owing in the investigation — except the Division may still order up to \$7,500 when (a) more than \$7,500 in wages were owed and the employer's payment didn't bring the amount owed under \$7,500, or (b) the payment was for something other than wages, like a severance payment.¹¹

⁷ [Wage Protection Rules](#), 7 CCR 1103-7, Rule 4.4.5.

⁸ See [Pacheco v. SOMIP, Inc.](#), No. 22CA0985, 2022 Colo. App. LEXIS 1941, at *1 (Colo. App. Dec. 29, 2022) (unpublished) (employer claim that its own time cards may be unreliable can't overcome employees' substantial evidence to support inference of classwide rest break violations) (citing [Garcia v. Tyson Foods, Inc.](#), 770 F.3d 1300, 1307 (10th Cir. 2014); [Anderson v. Mt. Clemens Pottery Co.](#), 328 U.S. 680, 687-88 (1946) (where employee proves failure to pay wages, and employer fails to present evidence of the precise time worked, the court may award damages for the unpaid wages).

⁹ [Wage Protection Rules](#), 7 CCR 1103-7, Rule 6.3.

¹⁰ [ADCO Pro Cleaning Supply, Inc.](#), DLSS Case #0370-18 (Hearing Officer Decis. No. 19-003, Jan. 8, 2019).

¹¹ See [C.R.S. § 8-4-101\(14\)\(b\)](#) (severance pay not included in wages).

Example 4: A claimant files a wage complaint that their employer failed to pay \$15,000 in owed wages: \$10,000 for their last three paychecks, and \$5,000 in unpaid vacation. The Notice of Complaint alleges these different amounts owed, but explains that the maximum amount it may order is \$7,500. The employer voluntarily agrees to pay the unpaid vacation (\$5,000), but no other part of the claim. The Division determination then finds that the employee was owed wages for final pay and vacation, and awards \$7,500 in wages. Even though the employer paid part of what it owed, the remaining amount owed (\$10,000) was over the \$7,500 limit, so the Division may order the maximum amount.

Note: Different rules apply to payments made while an appeal is pending. At that stage, payments made after the determination may offset the amount the Hearing Officer orders in the appeal decision.

Example 5: A Division determination finds that \$10,000 in unpaid wages were actually owed, but orders an employer to pay the maximum claim amount, \$7,500. The employer appeals, but agrees that \$5,000 of the wages are owed, and pays the employee that amount before the hearing. The Hearing Officer decision affirms the Division determination that \$10,000 was owed. However, the most it can order is \$2,500: the \$7,500 ordered by the Division determination, less the employer's \$5,000 payment.

Step 5: The Division issues a determination after reviewing all evidence from the investigation. If the employer fails to meet its burden, or fails to respond, the Division issues a "Citation & Notice of Assessment" ordering the employer to pay the claimant wages and/or penalties, plus fines provided by law (see [INFO #2B](#)).

Step 6: Either party may appeal the Division determination. An appealing party must submit a signed appeal request (see the Division's [appeal form](#)) that explains a clear error in the determination, and must ensure the Division receives the appeal within **35 calendar days** of the date the determination was sent. For more on appeals, see [INFO #2C](#).

Evidence in Investigations

- Claimants and employers may submit any type of relevant evidence. Note that evidence submitted is not confidential, and is subject to being shared with the opposing party.
- If claimant and employer evidence conflict, the Division will weigh the evidence — for example, a minor inaccuracy or speculation about what happened, or merely that an employer has a policy that appears to comply with the law, will not outweigh strong, substantial evidence from the other party.¹²
- The Division may consider the credibility of evidence submitted, including any potential bias of a witness who shares information supporting either a claimant or an employer.¹³
- The Division can consider circumstantial evidence, and possible inferences from evidence, such as if an employer changed a workplace practice after it received a Notice of Complaint.¹⁴

For More Information: Visit the Division [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

¹² See [Hicks v. Colo. Hamburger Co.](#), 2022 COA 149, at ¶¶ 37, 42 (Colo. App. 2022) (limited evidence that certain evidence of violations may be unreliable doesn't fatally undercut the showing of a violation); [Cervantes](#), at ¶ 28 (employer policy that complied with law not sufficient to overcome employees' substantial evidence of non-compliance); [Pacheco](#), at ¶ 30 (Colo. App. Dec. 29, 2022) ("speculative assertions" with little evidentiary support not enough to overcome well-supported inference, including through circumstantial evidence, of violation).

¹³ See [Cervantes](#), at ¶ 36–37 ("risky" to rely on affidavits of current employees since employer "potentially had significant influence over" those workers; citing cases expressing skepticism of employer-supplied "happy camper" affidavits of current employees) (citing [Scardina v. Wiegand II](#), No. 2014CV31681, 2017 WL 3449238, at *17, 2017 Colo. Dist. LEXIS 210 at *56 (Denv. Dist. Ct. June 15, 2017) (similar skepticism of current employee testimony); [In re Wells Fargo Home Mortg. Overtime Pay Litig.](#), 527 F. Supp. 2d 1053, 1060-61 (N.D. Cal. 2007) (credibility of current employee declarations impacted by "possible pressure ... from ongoing employment").

¹⁴ See [Hicks](#), at ¶ 38 (evidence of rest period violations included that number of missed rest periods "plummeted" after lawsuit filed, that the worksite was understaffed, and that a "rational" worker in the industry would not choose to work rather than take a break for the same amount of pay); [Cervantes](#), at ¶ 28 (employer practice change in requiring mandated rest and meal periods after lawsuit was filed substantiates other evidence of violation).