COLORADO
Department of Labor and Employment

Division of Labor Standards and Statistics
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Interpretive Notice & Formal Opinion ("INFO") #2B:

Orders of Wages, Penalties, Fines, and Consequences for Non-Compliance

Overview: This INFO explains consequences of wage non-payment, or non-compliance with Division orders.

Wages Ordered: If the Division finds that an employer owes wages or other compensation, it orders them to pay the claimant that amount, in a citation and notice of assessment explaining why.

- The general limit on what wage claims can seek, and what the Division orders on claims, is $7,500, except:
  (1) at the **Division**, the $7,500 limit is for **only unpaid wages**, not penalties, fines, or other remedies (*e.g.*, for retaliation), and the Division can **initiate or expand** investigations into higher amounts; and
  (2) in a **court** (rather than Division) complaint, a claimant can seek over $7,500 in wages.
- To encourage payment, the Division **may waive penalties or fines**, but **not wages** or compensation due.

Penalties Ordered: If an employer **doesn't pay**, **within 14 days of a written demand**,[1] all wages (or other compensation) owed, the Division (or Court) **must order penalties**. If the 14-day payment deadline was:

- **Before 2023**, penalties are the greater of 125% of wages owed, or up to 10 days of claimant's earnings — but the penalties increase 50% for willful violations, and decrease 50% for paying by 14 days of the order.
- **In or after 2023**, the penalties depend on two considerations.
  (1) Whether the violation is "willful" (defined on p.2):
  (a) for **non-willful** violations, the penalty is double the wages owed or $1,000 (whichever is greater)
  → **total** due (wages *plus* penalties) = **three times the wages** owed, or **$1,000 plus the wages**.
  (b) for **willful** violations, the penalty is three times the wages owed or $3,000 (whichever is greater)
  → **total** due (wages *plus* penalties) = **four times the wages** owed, or **$3,000 plus the wages**.[2]
  (2) When the employer pays after a Division order — if it:
  (a) **pays in 14 days** → the Division **may reduce** penalties **50%**.
  (b) **doesn't pay by 60 days** → the Division **must increase** penalties by **50%** or (if greater) **$3,000**.[3]

Summary: as of 2023, **What Employers Are Ordered to Pay Employees for Wage Non-Payment**

Was the Violation **Willful**?	**Wage Amount** Unpaid?	(A) In a **Citation Ordering Payment** of **Wages & Penalties**:	(B) *If* the Division Offers **50% Reduced Penalties** for **Paying in 14 Days**:	(C) With 50% **Increased Penalties** for **Not Paying** in **60 Days**:
No:	≤ $500:	wages owed **+ $1000**	wages owed **+ $500**	wages owed **+ $4000**
	$500-$3000:	**3x** wages owed	**2x** wages owed	**3x** wages owed **+ $3000**
	≥ $3000:			**4x** wages owed
Yes:	≤ $1000:	wages owed **+ $3000**	wages owed **+ $1500**	wages owed **+ $6000**
	$1000-$2000:	**4x** wages owed	**2.5x** wages owed	**4x** wages owed **+ $3000**
	≥ $2000:			**5½x** wages owed

[1] A written demand can be informal, or a complaint the employee files, or a Notice of Complaint ("NOC") from the Division.
[2] C.R.S. § 8-4-109(3)(b). Scenarios with multiple payment deadlines, before and after January 1, 2023:
- if a claimant sends a demand over 14 days *before* 2023 (yielding a pre-2023 payment deadline), *then* sends another demand *later* (yielding a deadline on or after January 1, 2023) → apply pre-2023 penalties; or
- if a demand has a 14-day deadline in 2022, *then* a Division NOC has a 2023 deadline → apply pre-2023 penalties only if the employer pays within 14 days of the NOC. Wage Protection Rules, 7 CCR 1103-7, Rule 2.16.

[3] C.R.S. § 8-4-111(2)(d) (50% reduction for paying in 14 days); (2)(f)(III) (50% increase for non-payment in 60 days).

- Notes on penalties versus wages:
  - **Penalties-only orders** may be issued if an employer pays all wages owed, but only after its failure to pay the wages generates liability for penalties — such as either of these situations:
    (1) Not paying wages over 14 days after a demand, and only after a complaint is filed.
    (2) Not paying specific wages owed, while paying another equal sum. Example: if an employer unlawfully denied paid sick leave, requiring work for the pay, it owes no *wages* — but it still owes *penalties*, for failing to pay the specific wages the employee was owed. Though it paid *regular* wages (pay for time worked — the wage type that *does* require work), it failed to pay the *paid sick leave* wages (pay for time off — the wage type that *doesn't* require work) the employee requested, and was entitled to.[4]
  - **Taxes** on wages and penalties may differ. Consult tax resources, officials, or advisors — but generally,
    - *unpaid wages* are taxed like any wage income, and
    - *penalties* are taxed as non-wage income, without withholdings limited to wages (social security, etc.).

"Willful" Violations that Increase an Employer's Penalties and Lengthen Its Period of Liability

- **What's *Different* for Willful Violations?**

  (1) **Penalties**: If a violation is willful, the penalties increase — page 1 gives the amounts — *and*

  (2) **The period of liability** ("limitations period") is longer — unpaid wages can be awarded for **two years** before a complaint, but **three years** for a willful violation.[5]

- **What *Is or Isn't* a Willful Violation?**
  - "Not only **knowing** violations ... , but **reckless** ones as well,"[6] are willful — because the "focus[is] on the employer's **diligence** in the face of a statutory obligation, not ... [its] mere knowledge of relevant law."[7]
  - An employer lacking knowledge of the law it violated didn't act willfully if it was "**merely careless**" or "**negligent**"[8]: lack of "diligence" must be egregious enough to be "**reckless** disregard," which includes "'action entailing an unjustifiably high risk of harm ... **so obvious that it should be known**.'"[9]
  - **Four types** of common **willful** violations — with examples of **non-willful** violations as well:

(1) Repeat violations. An employer's **second (or later) similar violation** in five years is **automatically** willful.[10] Non-"similar" past violations don't automatically make a second violation willful, but can be **evidence** the second violation was a knowing or reckless violation.

> **Example 1A: past violation was similar**: In 2021, the Division issued an employer a citation for not paying overtime to a non-exempt *hourly* employee. In 2022, the Division issued the same employer a citation for not paying overtime to a non-exempt *salaried* employee. As the employer's second similar violation in five years, it was automatically willful, regardless of employer diligence.

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[4] Absent other factors, the penalty is at least the minimum $1,000, or $3,000 if willful, for wage violation as of 2023. That sum also, in appropriate cases, may also serve as concurrent punitive damages for "denial of any right guaranteed under" paid sick leave law. C.R.S. § 8-13.3-402(10) (any such denial is "retaliatory personnel action," with remedies including "pay and any other relief…[under] 8-5-104(2)" (§ 8-13.3-411(4)(b)(II)), which provides "legal and equitable relief" without limitation).

Note that if a complaint or investigation is of retaliatory action, not just wage violation, other statutory remedies may be available. *E.g.*, § 8-13.3-411(4)(b)(II) (above, incorporating § 8-5-104(2)); § 8-13.3-403(5)(a) ("an individual may recover paid sick leave as a remedy for a retaliatory personnel action that prevented the individual from using paid sick leave").

[5] See INFO #2A for more on the wage claim limitations period and its exceptions.

[6] *Safeco Ins. Co. v. Burr*, 551 U.S. 47, 57 (2007).

[7] *Mumby v. Pure Energy Services*, 636 F.3d 1266, 1270 (10th Cir. 2011) (emphasis added).

[8] *Safeco Ins. Co.,* 551 U.S. at 70.

[9] *Mumby*, 636 F.3d at 1270 (quoting *Safeco Ins. Co.,* 551 U.S. at 68).

[10] C.R.S. § 8-4-109(3)(c). Similarity can be either the type of *violation* (*e.g.*, two wage deductions the Wage Act prohibits), or type of *wages* (*e.g.*, two times not paying commissions in violation of the Wage Act, even if for different reasons).

Example 1B: past violation not similar, but still evidence employer had notice of the law: In 2021, the Division issued an employer a citation for 30 hours of unpaid time worked. In 2022, Division issued the employer a citation for not letting employees accrue paid sick leave under the the Healthy Families and Workplaces Act (HFWA). The 2021 violation wasn't similar enough to make the 2022 violation *automatically* willful. But it still is *evidence* the 2022 violation was willful: the 2021 investigation and citation notified the employer of its duties to pay wages due (including HFWA leave), such as by citing resources explaining employer wage duties (including as to HFWA leave).

Example 1C: prior violation was not similar, and *is not* evidence the employer had notice of the law: In 2019, the Division issued an employer a citation for an unlawful wage deduction under the Colorado Wage Act. In 2021, the Division issued the same employer a citation for denying accrued paid leave under HFWA. The 2019 violation is not similar enough to automatically make the 2021 violation willful. Nor is the 2019 violation evidence the employer was on notice of the responsibilities it violated in 2021, because HFWA had not yet been enacted in 2019.

(2) Awareness of *actual* violations, even if unaware of the *details*. If an employer "was aware of" both (a) the labor requirements violated, and (b) the work that wasn't treated as required by wage and hour law: then the violation is willful, even if the employer didn't know all details or amounts of the violation.

Example 2: Evidence showed the employer knew the law required time-and-a-half overtime pay for weeks of over 40 hours; knew its employee regularly worked over 40 hours weekly; but lacked hours records, so it didn't know the amount of overtime worked or pay owed. The violation still was willful; the employer knew all it needed in order to be aware its conduct was unlawful.[11]

(3) Awareness of *possible* violations, without meaningful inquiry or redress. "Willful" means "greater culpability than mere negligence or inattentiveness" — but "courts have found that a violation was willful when defendants claimed partial but imperfect knowledge ... and did not pursue the matter with due diligence,"[12] or despite enough notice of possible violations that not inquiring further was reckless.

Example 3A: In a series of discussions with a professional employee organization, an employer first received "advice ... that its employees were improperly classified," but also differing advice that the "classification was uncertain, and that they were not unambiguously violating" the law. Ultimately, the employees proved misclassification. Whether it was "willful" depends on which interpretation the evidence shows: was this employer, after receiving advice indicating likely illegality:

(A) exercising "diligence and good faith" in its "extensive consultations ... as to its employees' proper classification" with a professional employee organization? *or*

(B) "not particularly interested in a definitive resolution and avoid[ing] seeking a more authoritative resolution from counsel ... or the [Labor] Department"?[13]

Example 3B: An employer asked if its "day rate" pay was lawful; its lawyer said yes "so long as ... [it] itemized regular and overtime rates," "did not have ... employees work more than twelve hours per day," and paid overtime for "weekly hours over forty ... regardless of the day rate."[14] But it "continued to underpay," including no overtime pay in days over 12 hours. The violation is willful: "Although consultation with an attorney may help prove ... [it] lacked willfulness, such a consultation is, by itself, insufficient" — including when the employer "did not rely in good faith on its counsel's advice": it "made no real changes to its compensation policy, nor did it investigate whether" days were "longer than twelve hours. Indeed, without tracking ... hours ..., it was virtually impossible ... to determine whether it was complying with [the attorney] advice, let alone the [overtime] requirements."[15]

[11] *Ramos v. Al-Bataineh*, 599 F. App'x 548, 551 (5th Cir. 2015) (affirming verdict finding a violation was willful).

[12] *Coldwell v. RITECorp Env'tl Property Sol'ns*, No. 16-cv-1998, 2018 WL 5043904, at *4 (D. Colo. Oct. 17, 2018).

[13] *Coldwell*, 2018 WL 5043904, *2, 10. Also distinguishing *non-willful negligence* and *willful recklessness* is *Davis v. Reading*, No. 13-2499, 2014 WL 4261281, *3 (D. Kan. Aug. 28, 2014) (employer "knew or had reason to know of" complaints, and "kn[e]w[] ... [of] timecard and overtime issues," yet took "little, if any, investigatory or remedial action," showing it "recklessly disregarded its obligations": "Fail[ing] to act may be ... mere negligence, individually, but in the aggregate, each instance of negligence moves ... away from mere negligence and towards willful ignorance, or indifference.")

[14] *Escamilla v. Nuyen*, 227 F. Supp. 3d 37, 53-55 (D.D.C. 2017) (finding violation willful).

[15] *Mumby v. Pure Energy Services*, 636 F.3d 1266, 1269-71 (10th Cir. 2011).

(4) Not just negligence, but continuing clear illegality, while never looking into its lawfulness, despite ample opportunity. Typical willfulness evidence is employer *knowledge* of at least *possible* violations and the *general* legal requirements violated. But knowledge is *evidence*, not a *requirement*, of willfulness, which "focuses on the employer's *diligence* in the face of a statutory *obligation*, not ... [its] mere *knowledge* of ... law." That definition of willfulness can be met by never looking into the lawfulness of (A) a clearly illegal practice, (B) despite *ample opportunity* to do so: a lack of "diligence in the face of a statutory obligation" can be egregious enough to meet the "reckless disregard" definition of "'action entailing an unjustifiably high risk of harm that is either known or *so obvious that it should be known*.'"[16]

Example 4A: In its first year of operation, an employer makes a deduction from wages that violates the deductions statute of the Colorado Wage Act, C.R.S. § 8-4-105. The owner credibly asserts that they had no knowledge of the deductions statute, had no education or training in the legal requirements to operate their business, and had no prior experience as an employer before this first year of operations. The violation is not willful: even if it was careless for the employer not to learn how to run its business lawfully, that carelessness was closer to negligence than to recklessness.

Example 4B: A restaurant owner with years of experience committed significant, ongoing violations: paying below minimum wage; paying no weekly or daily overtime; taking 12-25% of employee tips; and making employees pay for equipment and repairs. No evidence disproved the owner's claim that he was wholly ignorant of wage and hour law and "made no effort to learn." The violations still were "clearly" willful: "Given their many years in the restaurant industry, their ignorance amounts to reckless disregard of the applicable law and is sufficient to establish a willful violation."[17]

Example 4C: A maintenance worker received no overtime pay in long workweeks. The owner didn't consult professionals or review any law to "determin[e] what [the laborer] was entitled to ... [and] instead relied on their own opinion" to tell the worker he was an "independent contractor" not entitled to overtime — which was *clearly* false under all employee/contractor factors: strong employer control of work and of profit/loss opportunity; length of work relationship, and its integralness to employer operations; and limited skill or initiative required. "Hav[ing] ignored the appropriate laws" egregiously enough to be reckless disregard "makes for a willful violation" by an employer with years of both industry experience and ownership of the properties requiring the ongoing maintenance work.[18]

Example 4D: Several mitigating reasons made an employer's unlawful failure to pay for on-call time non-willful: (1) it was "not fully aware of" a key fact making the time compensable ("the extent of the burden" on on-call workers), with no indication of neglect; (2) "it took corrective action" once "fully aware of the extent of the burden on" on-call workers; and (3) for on-call overtime it knew it had to pay, it paid more than required (double, not just time-and-a-half; plus letting employees "report an hour every time they responded to an alarm, even if they actually spent as little as five minutes).[19]

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[16] *Mumby*, 636 F.3d at 1270 (quoting *Safeco Ins. Co.*, 551 U.S. at 68 (2007)) (emphasis added).

[17] *Cao v. Wu Liang Ye Lexington Rest.*, No. 08 CV 3725DC, 2010 WL 4159391, at *2, *6 (S.D.N.Y. Sept. 30, 2010); *Ayres v. 127 Restaurant Corp.*, 12 F. Supp. 2d 305, 309 (S.D.N.Y. 1998) (unlawful tip pool was recklessly "willful"; employer believed it was legal but "offer[ed] no evidence ... it made reasonable inquiries into the relevant law, or that it actually reviewed its own tip pool practices, or that it relied on the advice of counsel as to the lawfulness"); *Difilippo v. Barclays Capital*, 552 F.Supp.2d 417, 425 (S.D.N.Y. 2008) (under FLSA, "employers may be found to have acted recklessly ... if they made neither a diligent review nor consulted with counsel regarding their overtime practices and classifications of employees.").

[18] *Escamilla*, 227 F.Supp.3d at 53-55; *Sellers v. Keller Unlim.*, 388 F.Supp.3d 646, 651-52 (D.S.C. 2019) ("Keller did not *consult* ... a lawyer on labor law compliance ... [or] his practice of bar shortage deductions; did not *himself research* labor laws; and did not take any *steps to verify* that the payroll company was ensuring employees were properly paid. Each of these choices in a vacuum may not individually rise above the level of merely negligent.... [R]eliance on [a] third-party payroll processor to advise of noncompliance ... may be negligent, but not itself ... willful.... But taken in their totality, these decisions illuminate *a pattern of conduct in reckless disregard* for the legal constraints that the law imposes.") (emphasis added).

[19] *Pabst v. Okla. Gas & Elec. Co.*, 228 F.3d 1128, 1136-37 (10th Cir. 2000).

Fines Ordered (payable to the State)

- Non-compliance with **duties under the Colorado Wage Act** (C.R.S. Title 8, Article 4):[20]
  - **For non-payment of wages**, up to $50 per day, starting when the wages were due — with the total fine potentially varying, partly based on the **amount** of wages owed,[21] but also based on whether the violation reflected **good faith or bad faith** by the employer.
    - Fines will be **waived** if an employer proves "**good faith legal justification**" for the violation (8-4-113(1)(a)) — the same affirmative defense under federal law for avoiding double damages: that the employer not only **genuinely**, but **objectively reasonably**, **believed** it acted lawfully.[22]

      Example 5A: An employer paid no overtime to banquet servers whom it deemed overtime-exempt "commission salespeople," as they received the majority of a percentage service charge that the employer saw as a commission. Investigation showed the servers didn't directly make sales, so the *Colorado* exemption didn't apply — but *federal* law on an analogous exemption, in a factually similar case, had held banquet servers to be overtime-exempt commissioned employees.[23] This employer had a good-faith legal justification for its belief that banquet servers were overtime-exempt, so while it did owe overtime wages and penalties for wage non-payment, it ultimately wasn't fined.[24]
    - Fines will be **higher** (*e.g.*, several thousand dollars per violation) if the evidence proves **bad faith** employer conduct. That will often be similar to evidence of **willfulness**, but "bad faith" means more than just illegality despite knowledge or reckless disregard of the law (the willfulness standard) — for example, a **long pattern** of illegality, or **malicious** behavior, or other **exacerbating factors**.

      Example 5B: The Division issued a citation for failure to pay agreed-upon wages. Based on the amount due to the employee ($4,007.82 or $5,392.07, depending on whether the violation was willful), the Division would typically issue a wage non-payment fine of under $2,000, well below the maximum of $50 per day that wages went unpaid (which in this case would exceed $20,000), and reduce or waive it for paying promptly after the citation. However, this employer had over two dozen relatively recent citations for wage violations, each providing notice of Colorado wage law, and of the need to reform its unlawful practices. The Division therefore, in addition to finding the violation willful, making the total to the employee $5,392.07 (wages plus penalties), ordered $6,000 in fines.[25]
  - For **failure to respond** to any Division notice requiring a response — $250 (8-4-113(1)(b)).
  - For **pay statements** an employer fails to produce — up to $250 per employee per month (8-4-103(4.5)).
- Non-compliance with Division **orders or investigations** under the Industrial Relations Act (Title 8, Article 1):
  - $50 or more per day that either —
    - an employer **fails to provide information** to the Division (8-1-114(1)),
    - an employer **refuses to furnish records**, including books or payrolls, to the Division (8-1-117(2)), or
    - any person **hinders an investigation** or inspection by the Division (8-1-116(2)).
  - $100 or more per day that an employer, employee, or other person **fails to obey any order or perform any duty** required by the Division or a similar court order (8-1-140(2)).

[20] The first two of the below three fines may be waived or reduced if an employer pays within 14 days after a Division order (C.R.S. § 8-4-111(2)(d)), or shows good cause to extend its deadline (C.R.S. § 8-4-113(1)(b)), respectively.

[21] Note that, mathematically, when the wages owed are low, even a modest fine tends to be a higher multiple of the wages.

[22] *Mumby*, 636 F.3d at 1272 (facts summarized in Example 3B above; "Whether or not ... [the employer] acted in good faith, ... [t]he same facts that support the ... conclusion that [the employer's] failure to fully compensate ... overtime was willful also support the ... conclusion that [the employer's] belief that it was complying with the FLSA was unreasonable."); *The Window Store, LLC*, 2266-21 (22-040, Aug, 22, 2022) at 4 (affirming $350 fine for failure to pay $572.35 in wages, where employer "did not pay the claimant's wages ... [nor] show a good faith legal justification for its failure to timely pay," and also "did not provide any evidence that it acted diligently to ensure its compliance with its payment obligations").

[23] *Mechmet v. Four Seasons Hotels, Ltd.*, 825 F.2d 1173, 1177 (7th Cir. 1987) (banquet servers were exempt as commission-paid employees, as "employees of a big-ticket department" paid mostly from hotel banquet service charges).

[24] *Brennan v. Broadmoor Hotel Inc.*, 2023 COA 53, __ P.3d __ (Colo. App. 2023).

[25] *United Parcel Service, Inc.*, DLSS Case 2085-22, at 1, 3, 5 (April 26, 2023), *appeal dismissed* (June 13, 2023).

Compliance Orders

- In a determination of a violation, **orders** to the employer may include not only **to pay money** (wages, penalties, and/or fines), but also **to assure compliance** with the law, especially if a determination finds that an employer policy or practice is (a) **unlawful** and (b) **continuing** to violate the claimant's or others' rights.

  Example 6: An employee claimed unlawful denial of paid sick leave. Investigation found that the denial was unlawful *and* arose from an employer policy of not providing required paid sick leave. The Division issued a citation not only to pay (wages, penalties, and fines), but also with a typical compliance order:

  III. Compliance Order

  To redress the ongoing violations of labor statutes and rules detailed above ... , to effectuate compliance within seven (7) weeks of this determination, ... the employer is ordered as follows:

  1. *Cease and refrain from all practices and policies that have been found to be a violation ....*
  2. *Rescind all policies and practices contrary to [the determination] ... , and modify or replace them with policies and practices compliant ....*
  3. *Notify all employees in writing (whether on paper or electronically), of all rescissions of, and all modified or replacement versions of, policies[] and practices ....*

  IV. Information and Document Demands

  The employer is demanded and ordered to confirm their effectuation of the above Compliance Order, within 14 days of the seven-week deadline to execute the Compliance Order, by providing the Division the following documentation and information as to its compliance:

  1. *All the documents constituting or confirming all rescissions of, replacements, or modifications to policies and practices pursuant to the Compliance Order.*
  2. *All ... notifications to employees pursuant to the Compliance Order.*
  3. *All communications to or from employees as to: [a] any rescissions, replacements, or modifications of policies and practices ... ; and [b] any of the notifications to employees ....*
  4. *A detailed explanation of how each measure in the Compliance Order has been effectuated, signed and verified under oath per C.R.S. § 8-1-114, by ... (i) the chief executive officer, (ii) an owner of 50% or more ... , or (iii) another ... official with authority ... on behalf of the employer.*[26]

- A determination with a compliance order commonly will require the employer to **produce information** to let the Division confirm that the employer brought itself into compliance.

- Violation of a compliance order may subject an employer to various **fines**, several of which are detailed in the **"**Fines" section above.

  Example 7: An employer was issued a citation for not listing the pay in job postings as required by law, with a compliance order requiring "redressing prior violation(s)[,] ... , effectuating compliance within (7) seven weeks[,] ... [and] confirming effectuation of the Compliance Order by providing the Division with documentation ... within 14 days of that [compliance order] deadline." The employer responded, but Division investigation then confirmed the employer continued not listing the pay in numerous job postings. The Division issued another citation fining the employer $1,000 per ongoing violation ($8,000 fine as of the citation), cautioning that the Division "will continue to .. review" the employer's postings, and "[f]fines on future violations will incrementally increase each time a violation is discovered."[27] The employer then paid the fine and remedied its job posting practices.

[26] *Total Welding Inc.*, DLSS Claim #0925-21 (Dec. 23, 2021) (citation with compliance order, which employer then executed).

[27] *Monigle*, DLSS Claim #0902-21 (Dec. 2, 2021).

Awards of Attorney Fees and Costs

Attorney fees: If the Division orders payment of **more than $5,000** in **wages or other compensation** (not fines or penalties), a claimant with an attorney may request an order that the employer pay them attorney fees.[28]

- The claimant has an opportunity to **apply** for attorney fees, under procedures and deadlines provided by the Division. If an appeal is filed, the fee application deadline may be rescheduled for the end of the appeal, when (if the order entitling the claimant to fees is affirmed) it may include fees from the appeal.
- The employer has an opportunity to **dispute** the reasonableness of any fee request.
- A fee or cost award is **appealable** to a hearing officer, or for judicial review after a hearing officer decision;[29] the Division may stay (postpone) a fee application if the order entitling the claimant to fees is appealed.

Costs: After any order finding a wage and hour violation, a claimant may request an order that the employer pay certain of their **costs of pursuing the claim**.[30]

- The claimant has an opportunity to **apply** for costs, under procedures and deadlines provided by the Division. If an appeal is filed, the cost application deadline may be rescheduled for the end of the appeal, when (if the order entitling the claimant to costs is affirmed) it may include costs from the appeal.
- The employer has an opportunity to **dispute** the reasonableness of any request for costs.
- Based on Division discretion over cost requests, costs will typically will be awarded only if (a) **at least $100**, (b) **documented** by a claimant,[31] and (c) of **types traditionally reimbursed** in legal disputes. Examples:
  - ✓ Covered: Mailing, printing, photocopying, scanning, or faxing the complaint or related materials (sending the employer a demand, providing information requested by the Division, etc.)
  - ✗ Not covered: The claimant's time, or mileage, spent pursuing the claim

Consequences of Non-Payment/Compliance: Court Judgments; Further Penalties/Fines; Asset Seizure

- Employers who **don't pay** wages or penalties, or **comply with orders** in a citation**,** may face the following:

  (1) The Division citation and payment order will become a *court* order and judgment— allowing collection of employer assets by the Division *or* the claimant. See INFO #2D on certified copies.

  (2) After 60 days of non-payment, the employer will **owe additional amounts**:

  (a) **penalties** already assessed and due to a claimant **increase 50% or $3,000**, whichever is greater (examples: an $8,000 penalty rises 50% to $12,000; a $1,000 penalty rises $3,000 to $4,000);

  (b) certain **fines**[32] already assessed and due to the State will **increase by 50%**; and

  (c) **attorney fees** in court proceedings to enforce as to the non-compliant party.

  (3) Additional fines for each day of non-compliance with orders to pay, to change unlawful practices, to report information to the Division (on payment or other matters), etc.

  (4) Collection efforts, including freezing and seizing employer assets (which may include debts owed to the employer). See INFO #2D on liens and levies.

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

[28] C.R.S. § 8-4-110(1)(b)(II) (for Division claims filed as of January 1, 2023; or any date for claims filed in court). No fees are awarded for fully performed *settlements*; the Division has no orders like court consent judgments that generate fees.

[29] C.R.S. § 8-4-111.5; Wage Protection Rules, Rule 6.11.

[30] C.R.S. § 8-4-110(1)(b); Wage Protection Rules, 7 CCR 1103-7, Rule 7.4 (applicable to claims filed with the Division on or after January 1, 2023; claims filed in court can recover costs regardless of the date filed).

[31] C.R.S. § 8-4-110(1)(b)(II).

[32] Non-payment for 60 days raises penalties and certain already-ordered fines by 50% (fines for non-payment or investigation non-response; not for pay statement or Industrial Relations Act (Article 1) fines). C.R.S. § 8-4-111(2)(f)(II).