



Interpretive Notice & Formal Opinion (“INFO”) #3B: Permissible and Impermissible Methods of Payment

Overview

This INFO explains what types of pay (e.g., non-monetary items of value), and what methods of paying employees (e.g., different methods of directly depositing pay), can be used for payment of earned, vested, and determinable “wages or compensation” under the [Colorado Wage Act](#) and other applicable law.

General Rule

Wage payments must be negotiable and **payable upon demand without discount in cash at a bank** organized under federal or Colorado banking law, or another established place of business in the state.¹

- “**Negotiable**” means an unconditional promise or order to pay a fixed sum of money that is payable at the time given and does not state any other actions or instructions beyond the payment of money.²
- “**Payable on demand**” means a bank can pay it the same day the bank is presented the instrument.³
- “**Without discount**” means that no fine, fee, or other monetary penalty or expense can be charged for the exchange of the check or other payment instrument for cash.⁴

In other words, employees must have **free** and **on-demand** access to the **entire** amount of pay **in cash**. The only exception to these requirements is where employees voluntarily agree to be paid by a paycard.

What Can Be Used to Pay Wages

- **Cash** can be used to pay wages, but see below as to record-keeping and pay statement requirements.⁵
- **Checks** are acceptable, **if** the employer’s account has **enough funds** to allow the employee to cash it (in other words, if it doesn’t bounce) and if the employee **isn’t charged a fee** for cashing the check.⁶
- **Direct deposit** is allowed **if** it is **voluntarily** authorized and to a **bank or other financial institution** with federal insurance (e.g., FDIC) of the **employee’s choice**.⁷
- **Lodging, meals, and tips** may be used as a credit towards the minimum wage — but only in limited amounts, and with various conditions.⁸ See [INFOs](#) #1 (lodging/meals), 3C (tips), and 16 (deductions).

¹ [C.R.S. § 8-4-102\(1\)](#).

² C.R.S. § 4-3-104(a) (generally defining “negotiable instrument” as “an unconditional promise or order to pay a fixed amount of money,” if it is payable to bearer or to order; is payable on demand or at a definite time; and doesn’t state any other instruction by the person ordering payment, with certain exceptions).

³ C.R.S. §§ 4-3-108(a) (“A promise or order is ‘payable on demand’ if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.”), 4-3-502(a)(1) (“If the note is payable on demand, the note is dishonored if ... not paid on the day of presentment.”).

⁴ See [29 C.F.R. § 531.35](#) (wages “cannot be considered to have been paid...unless...paid finally and unconditionally”).

⁵ See [29 C.F.R. § 531.27\(a\)](#) (wages generally must be paid “in cash or negotiable instrument payable at par”); U.S. DOL, [Field Operations Handbook](#), Ch. 30, 30c00(a) (“Wages may take the form of cash....”).

⁶ [C.R.S. § 8-4-102\(1\)](#); see also U.S. Department of Labor, [Field Operations Handbook](#), Ch. 30, 30c00(b) (“[T]he employer may make arrangements for employees to cash a check drawn against the employer’s payroll deposit account, if it is at a place convenient to their employment *and without charge to them.*”) (emphasis added).

Note other possible consequences (from a law the Division doesn’t enforce): If an employer doesn’t provide an employee pay by 15 days after notice of a bounced check (employees can send employers a “[dishonored instrument form](#)”), it may be liable for three times the amount due, plus damages, costs, and attorney fees. C.R.S. § 13-21-109(4).

⁷ [C.R.S. §§ 8-4-102\(2\)](#) (allowing direct deposit “voluntarily authorized” in the “employee’s choice” of “financial institution”: a “bank, savings and loan association, credit union, or other financial institution”), 11-101-401 (“financial institution” means a “bank, bank holding company, savings and loan association, federal savings bank, or thrift holding company”). As to insurance, see [12 C.F.R. § 5.3](#) (FDIC insurance required for authorization to receive deposits); C.R.S. § 11-30-117.5 (similarly requiring federal insurance, FDIC or National Credit Union Administration, for savings and loans, or credit unions).

⁸ See [Colorado Overtime & Minimum Pay Standards Order](#) (“COMPS Order”), 7 CCR 1103-1, Rule 3.1 (requiring minimum wage listed in PAY CALC Order), Rules 6.2.1-6.2.2 (allowing only lodging, meal, and tip credits toward minimum wage);

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- **Paycards** — access devices an employee can use to receive payroll funds from an employer — can be used to pay wages **if** the employee: (1) has **free means of access** to the entire amount of net pay at least once per pay period; and (2) is **free to choose another form** of payment (check, direct deposit, etc.).⁹
- **Payment applications (“apps”)** can be used to pay wages **if** compliant with all legal requirements for pay — and apps can **vary significantly** in how they work, and **change over time**. Key questions:
 - (1) Is pay through a payment app going to a qualifying **“bank” or “other financial institution”**? Payment apps can be compliant means of **direct deposit**, **if** they send funds directly to **qualifying financial institution accounts**, not just to apps that may not qualify — see “direct deposit,” above.
 - (2) Is its use **voluntary**? As noted above, direct deposit **can’t be required**, including by payment app.
 - (3) Can an employer using the app still comply with all **record-keeping** requirements (see below)?

Example 1: App directly deposits pay in bank accounts: An employer offers to pay employees with iPayU, a payment app that immediately, at no cost to the recipient, sends funds to FDIC-insured bank accounts. An employee accepts, and creates an iPayU account linked to their bank account. This is lawful direct deposit: (A) iPayU deposits funds directly into qualifying bank accounts, (B) at no cost to the employee, and (C) its use was voluntary, including in the employee’s choice of bank to receive the funds.

Example 2: App accepts pay in its own non-bank account, not in a true direct deposit: An employer offers to pay employees using the app Funds4u. Funds4u lets a user arrange for funds to be deposited into their Funds4u account, where Funds4u holds the funds, without giving an option to immediately, automatically transfer the funds without cost into a bank account. Even if the employee agrees, this arrangement is impermissible: § 102(2) requires that if pay is directly deposited (rather than in cash or a check), it must be to a bank or other financial institution with FDIC insurance, which Funds4u is not.

Record Creation and Retention

- The Colorado Wage Act requires employers to create and retain certain payroll records (see [INFO #3A](#)) — and also, after a complaint is filed, the employer may have a burden of showing (if it does not dispute that pay was owed) that it actually paid the claimed wages (see [INFO #2A](#)).
- An employer shouldn’t assume using a lawful *payment form* (cash, direct deposit, etc.) means it met its *record-keeping obligations* (itemized pay statements, etc.). For example, it may need to keep more data than its bank or payment app tracks, and may wish to ask employees to sign receipts for cash payments.

U.S. Dollars Required

- Several requirements in Colorado wage and hour law, including those regarding the minimum wage and the minimum salaries required for certain exemptions, are specified in U.S. dollars (“\$13.65 per hour,” “\$961.54 per week,” etc.). Those amounts **must be paid in U.S. dollars**. The annual [Publication And Yearly Calculation Of Adjusted Labor Compensation \(“PAY CALC”\) Order](#) specifies the year’s minimum wage and related amounts; see above as to credits toward minimum wages.
- Employers **can’t pay wages with “scrip”** — including coupons, cards, or similar things redeemable in merchandise — unless such scrip, coupons, etc. may be redeemed in cash when due.¹⁰
- What about giving employees **things of value other than U.S. currency** — stocks, goods, etc.? While the Colorado Wage Act requires “wages” to be in U.S. currency (in § 102),¹¹ it requires *payment* of not only wages but other “compensation” for labor (in § 101)¹² that may or may not be in currency. That means:

[2023 PAY CALC Order](#), 7 CCR 1103-1, Rule 1.2 (minimum wage in U.S. dollars); [29 C.F.R. § 531.27](#) (federal minimum or overtime wages must be cash, negotiable instruments payable at par, or in some conditions with board, lodging, or benefits as “facilities”); [29 C.F.R. § 531.28](#) (federal law does not “prohibit payment of wages in facilities” as “additions to a stipulated wage[,] ... only the use of such a medium of payment to avoid” paying minimum and overtime wages).

⁹ [C.R.S. § 8-4-102\(2.5\)](#).

¹⁰ [C.R.S. § 8-4-102\(3\)](#); see also [29 C.F.R. § 531.34](#).

¹¹ *E.g., Lang v. Colo. Mental Health Inst.*, 44 P.3d 262, 264 (Colo. App. 2001) (since originally enacted in 1901, Wage Act has required wages to be “in lawful money of the United States”) (quoting *In re Senate Bill No. 27*, 65 P. 50, 50 (1901)).

¹² [C.R.S. §§ 8-4-101\(14\)\(a\)](#) (“Wages’ or ‘compensation’,” including “[a]ll amounts for labor or service[,] ... shall be

- it's **lawful** to give things of value (stock, goods, etc.) as “compensation,” **in addition to the “wages”** that must be lawful in *amount* (at least minimum wage) and *form* (in U.S. currency, under § 102); and
- a Colorado Wage Act claim can include failure to pay things of value (stocks, goods, etc.) *if* they meet the definition that wages “or compensation” must be:
 - ✓ “**determinable**” — not just what things were offered, but their value in U.S. currency;
 - ✓ “**earned**” and “**vested**” — by doing the work required by the terms of the offer;¹³ and
 - ✓ “**for labor or service**” — which excludes, for example, expense reimbursements.

*Note any statutory exclusions from “wages or compensation,” such as severance and some benefits.¹⁴

Example 3: Merchandise given as pay. A department store agrees to pay \$1,000 per week. After working one week, the employee is paid only what the employer calls \$1,000 of store merchandise. Even if the value actually is \$1,000: (A) the employer paid in a form that's not lawful under Wage Act § 102; and (B) employers can credit toward wages only certain kinds of goods (lodging, meals, etc.), only in limited amounts and certain conditions.¹⁵ The Division would order the employer to pay the employee \$1,000.¹⁶

Example 4: Wages plus store credit as pay. Same as Example 1, but the employer agrees to pay \$1,000 per week plus \$100 in store credit. For working one week, the employee is paid \$1,000, but no store credit. Though not “wages,” the store credit counts as “compensation” owed: it is for labor or services, determinable (the promised \$100 in weekly value), and earned and vested (by working one week). Having not given the promised \$100 in store credit, the employer would be ordered to pay the employee \$100.

Example 5: Stock offered as pay, then not given. The employer offers to pay the employee \$1,000 worth of stock at the end of each week. The employee works for two weeks. The employer doesn't give the employee anything. The employer has committed two violations: (1) offering pay in a form that's not lawful under §102; (2) then not paying the agreed-upon \$1,000 per week (violating both the minimum wage, and the wage act obligation to pay agreed-upon wages). Though the offer wasn't in U.S. dollars, an amount of owed wages or compensation is: determinable (the promised \$1,000 in value per week); earned and vested (by working each of two weeks); and for labor or services (as compensation promised to an employee).¹⁷ The Division would order the employer to pay the employee \$2,000.

Example 6: Goods of indeterminate value as pay. A collectibles dealer offers to pay an employee one rare figurine per month. After working two months, the employee isn't paid anything.

- (A) No determinable amount was offered: no one figurine was specified, and even if it was, the rare figurines likely lack a reliable enough value to find a “determinable” amount of U.S. currency owed.¹⁸
- (B) But the employee did perform work, so the Division would order the employer to pay the highest applicable minimum wage (with overtime wages for any overtime work, etc.) for all time worked.

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payable...”) (emphases added); [8-4-103\(a\)](#) (“All wages or compensation ... shall be due and payable for regular pay periods”); [8-4-111\(1\)\(b\)](#) (allowing employees to seek “wages and compensation in court without ... the administrative remedy”); [8-4-111\(2\)\(a\)\(I\)](#) (“wage complaint” defined to cover as “unpaid wages or compensation” within certain limits).

¹³ For examples of pay that is and isn't “earned” or “vested,” see [INFO #3D](#) (commissions and bonuses).

¹⁴ [C.R.S. § 8-4-101\(14\)\(b\)](#) (severance); e.g., Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (benefits).

¹⁵ [COMPS Order](#), 7 CCR 1103-1, Rule 6.2.

¹⁶ [Skintastique, Inc.](#), DLSS Cases #5555-18 & 0078-19 (Hearing Officer Decis. No. 20-048, July 23, 2020) (“The value of the trainings, treatments, and products received by claimants does not change the amounts owed to them” as wages: claimants never agreed to receive them in lieu of pay, but even if they “had verbally agreed to accept treatment or products in lieu of pay, which I do not find, they could not waive their right to earned wages. See ... § 8-4-121.”).

¹⁷ Pay in stock or stock options can qualify as Wage Act-covered “wages or compensation.” [Montemayor v. Jacor Communs., Inc.](#), 64 P.3d 916, 922-24 (Colo. App. 2002) (incentive stock options); [Balducci v. Congo Ltd.](#), 2019 U.S. Dist. LEXIS 127745, *6 (D. Colo. 2019) (stock shares). Stock can be excluded if in severance pay, as noted above.

¹⁸ The Division takes no position on whether, in a contract breach or other claim in court, the employee would or wouldn't be entitled to remedies like orders to provide the figurines, to pay the best available estimate of the figurines' value, etc.