



Affiliated with the National Education Association

October 4, 2024

Scott Moss, Director, Division of Labor Standards and Statistics
Colorado Department of Labor and Employment
633 17th St.
Denver, CO 80202

VIA EMAIL TO: CDLE_LaborStandardsRules@state.co.us

Re: Written Comments on PROPWA Rulemaking

Dear Director Moss,

On behalf of the Colorado Education Association (CEA), I am writing to provide feedback regarding the proposed update to the rules for the Protection for Public Workers Act (PROPWA). CEA represents over 39,000 educators and education professionals across Colorado, and we are deeply committed to protecting the rights and welfare of our members who are integral to the success of our public schools and communities.

As the state's largest labor union for educators, CEA advocates for policies that protect public employees' rights, and we value the intent behind PROPWA. However, we have significant concerns with the current and proposed rulemaking, particularly regarding the absence of clear timelines for complaint adjudication. As we know, "Justice Delayed is Justice Denied," and without defined timelines, the effectiveness of these protections is greatly diminished and undermines the power and authority of the CDLE to resolve these matters fairly and efficiently.

Our primary concern is the need for predictability and clarity in the adjudication process as well as a timely resolution to any complaints raised. Workers who have experienced harm deserve a clear understanding of what they can expect in terms of the timeframe for their case resolution. Open-ended timelines can create additional emotional and financial strain for individuals, further compounding the harm they have already endured. Moreover, prolonged adjudication may deter workers from exercising their rights, undermining the very purpose of PROPWA.

Given the varied complexity of cases, availability of witnesses and evidence, and unpredictable volume of complaints made, we understand the potential challenge of proscribing a universally appropriate timeframe for investigation and resolution. However, providing a structured timeframe for the processing of complaints instills confidence in the administration of these systems.

Further, Rule 5.1.2, Rule 5.3.5 and Rule 5.3.8 would benefit from deadlines that provide a flexible structure and set of expectations for all parties involved. Suggested additions to these Rules follow:

- 5.1.2 The Division will evaluate complaints WITHIN THIRTY (30) DAYS to determine if the Division has jurisdiction over the alleged conduct, if sufficient allegations and evidence have been shown from which an unfair labor practice may be reasonably inferred, and if, in the Director's good faith discretion and judgment, the complaint warrants investigation. (A) In exercising its discretion, the Division may decline to investigate, or may defer action on, a complaint if evidence shows the dispute is within the scope of a dispute resolution process, established by a collective bargaining agreement applicable to both parties, with a neutral third-party arbiter authorized to issue a binding decision.
- 5.3.5 The Division may exercise its discretion to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation. THE INVESTIGATION SHOULD BE COMPLETED WITHIN SIXTY (60) DAYS OF RECEIVING THE RESPONSE FROM THE EMPLOYER. THE DIRECTOR HAS THE DISCRETION TO EXTEND THE INVESTIGATION BEYOND SIXTY (60) DAYS IF THE COMPLAINT IS COMPLEX, CONTAINS NUMEROUS WITNESSES OR FOR OTHER GOOD CAUSE BUT SHALL NOT BE EXTENDED BEYOND ONE-HUNDRED TWENTY (120) DAYS FOR THE INVESTIGATION TO BE CONCLUDED.
- 5.3.8 The Division shall ISSUE ITS ~~make a~~ determination as to whether an unfair labor practice occurred, and issue written findings and orders to all parties. Absent a timely request for a hearing pursuant to Rule 5.3.9, the determination shall constitute final agency action, and the final decision of the Director, subject to judicial review pursuant to C.R.S. §§ 24-4-106 and 29-33-105(4), (5). THE DIVISION'S DETERMINATION SHALL BE CONCLUDED WITHIN ONE-HUNDRED AND EIGHTY (180) DAYS OF RECEIPT OF THE COMPLAINT.

We respectfully urge the Department of Labor to incorporate timelines for case adjudication in the final rulemaking. Doing so will strengthen the protection PROPWA offers and provide workers with the assurances they need during an often stressful and uncertain process. We look forward to continued collaboration and are eager to support the Department in ensuring these protections are fully realized for all public workers in Colorado. Thank you for considering our concerns.

On Behalf of the Colorado Education Association



Kevin Vick, President