

# COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

## Division of Labor Standards and Statistics

### Colorado Health Emergency Leave with Pay (“Colorado HELP”) Rules

#### 7 CCR 1103-10 (2020)

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Adopted and effective as temporary or emergency rules on July 14, 2020 ~~April 27, 2020~~ (previously adopted and effective on March 11, 2020, then adopted and effective as amended temporary or emergency rules on March 26, ~~and~~ April 3, 2020, and April 27, 2020).

#### Rule 1. Definitions.

- 1.1 “COMPS Order” means Colorado Overtime and Minimum Pay Standards Order #36, 7 CCR 1103-1 (2020).
- 1.2 “C.R.S.” means the Colorado Revised Statutes (2020).
- 1.3 “Director” means the Director of the Division of Labor Standards and Statistics.
- 1.4 “Division” means the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.
- 1.5 “Employee” includes all who meet the definition of “employee” under either C.R.S. § 8-1-101(6) or C.R.S. § 8-4-101(5), and “employer” includes all who meet the definition of “employer” under either C.R.S. § 8-1-101(7) or C.R.S. § 8-4-101(6). Both terms include private sector, local government, school district, and public authority employers and employees.
- 1.6 “MWO” means Colorado Minimum Wage Order #35, 7 CCR 1103-1 (2020).
- 1.7 “WPA Rules” means the Colorado Wage Protection Act Rules, 7 CCR 1103-7 (2020).

#### Rule 2. Authority and Incorporation by Reference.

- 2.1 State of Disaster Emergency. On March 10, 2020, Colorado Governor Jared Polis declared a State of Disaster Emergency as the number of identified coronavirus COVID-19 cases in Colorado and in the United States increased, and announced numerous emergency measures to protect public health and safety, including directing that immediate rulemaking be initiated to provide employees in certain industries with paid sick leave for possible coronavirus cases and testing.
- 2.2 Authority. These rules are issued under authority of, and as enforcement of, Articles 1, 4, and 6 of C.R.S. Title 8, and are intended to be consistent with the State Administrative Procedures Act, C.R.S. § 24-4-101, et seq. Specific authority includes but is not limited to C.R.S. § 8-1-111 (“The director is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state as may be necessary adequately to ascertain and determine ... the obedience by the employer to all laws and all lawful orders requiring ... places of employment to be safe, and requiring the protection of the life, health, and safety of every employee ... , and to enforce all provisions of law relating thereto.”), C.R.S. § 8-6-101(1) (“The welfare of the state of Colorado demands that workers be protected from conditions of labor that have a pernicious effect on their health and morals, and it is therefore declared ... that inadequate

wages and unsanitary conditions of labor exert such pernicious effect.”), C.R.S. § 8-6-102 (“Whenever this article or any part thereof is interpreted by any court, it shall be liberally construed by such court.”), C.R.S. § 8-6-104 (“It is unlawful to employ workers in any occupation within this state under conditions of labor detrimental to their health or morals.”), C.R.S. § 8-6-106 (“The director shall determine the minimum wages sufficient for living wages ... [and] standards of conditions of labor and hours of employment not detrimental to health or morals for workers....”), C.R.S. § 8-6-109(1) (“If after investigation the director is of the opinion that the conditions of employment ... are detrimental to the health or morals or that a substantial number of workers in any occupation are receiving wages, whether by time rate or piece rate, inadequate to supply the necessary costs of living and to maintain the workers in health, the director shall proceed to establish minimum wage rates.”); C.R.S. § 24-4-103(6) (Administrative Procedure Act temporary or emergency rules).

Additional authority derives from the State of Disaster Emergency declared on March 10, 2020, by Colorado Governor Jared Polis, as the number of identified coronavirus COVID-19 cases in Colorado and in the United States increased -- which declaration (A) announced numerous measures to protect public health and safety, including directing rulemaking to provide paid sick leave for employees in certain industries, and (B) supported such action pursuant to executive authority statutes, including but not limited to: C.R.S. 24-33.5-704(2) (“Under this part 7, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.”); C.R.S. 24-33.5-704.5(1)(e) (“In the event of an emergency epidemic that has been declared a disaster emergency, the [expert emergency epidemic response] committee shall convene as rapidly and as often as necessary to advise the governor, who shall act by executive order, regarding reasonable and appropriate measures to reduce or prevent spread of the disease, agent, or toxin and to protect the public health.”); C.R.S. 24-33.5-711.5(2) (“The conduct and management of the affairs and property of each hospital, physician, health insurer or managed health care organization, health care provider, public health worker, or emergency medical service provider shall be such that they will reasonably assist and not unreasonably detract from the ability of the state and the public to successfully control emergency epidemics that are declared a disaster emergency. Such persons and entities that in good faith comply completely with board of health rules regarding the emergency epidemic and with executive orders regarding the disaster emergency shall be immune from civil or criminal liability for any action taken to comply with the executive order or rule.”).

- 2.3 Incorporation by Reference. These rules incorporate by reference the following statutes and rules: Articles 1, 4, and 6 of C.R.S. Title 8 (2020); the MWO, until March 15, 2020; the COMPS Order, on and after March 16, 2020; and the WPA Rules, 7 CCR 1103-7 (2020). Such incorporation excludes later amendments or editions; all cited laws are incorporated in the forms that are in effect as of the effective date of these rules.
- 2.4 Availability of cited and incorporated laws. All sources cited or incorporated by reference are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Suite 600, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. They can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of them at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing them.

### **Rule 3. Paid Sick Leave for Certain Employees.**

- 3.1 Any employer engaged in, or employing workers in, the field of leisure and hospitality, food services, retail establishments, real estate sales and leasing, offices and office work, elective health services (including medical, dental, or other health services), personal care services (defined as hair, beauty, spas, massage, tattoos, pet care, or substantially similar services), food

and beverage manufacturing, child care, education at all levels (including related services, including but not limited to cafeterias and transportation to, from, and on campuses), home health care (working with elderly, disabled, ill, or otherwise high-risk individuals), operating a nursing home, or operating a community living facility shall provide up to two weeks (up to a maximum of 80 hours) of paid sick leave at two-thirds of the employee's regular rate of pay for an employee (A) with flu-like or respiratory illness symptoms and (B) who is (1) being tested for COVID-19 or (2) under instructions from a health care provider or authorized government official to quarantine or isolate due to a risk of having COVID-19. The paid sick leave ends if an employee receives a negative COVID-19 test result once the employee has been fever-free for 72 hours, with other symptoms resolving as well – but not earlier than after seven calendar days off from work (or ten calendar days for health care workers covered by these rules), and in no event with more than fourteen paid sick days.

- 3.2 These rules do not require an employer to offer additional days of paid sick leave if it already offers all employees an amount of paid leave sufficient to comply with Rules 3.1, and an employer may choose to provide more paid sick leave than these rules require. However, an employee who already exhausted his or her paid leave allotted by the employer, but then qualifies for paid sick leave under Rule 3.1, is entitled to the additional paid sick days provided by Rule 3.1.
- 3.3 During paid sick leave covered by these rules, pay shall be provided (A) at the employee's regular rate of pay (the COMPS Order Rule 1.8 definition of "regular rate of pay" is incorporated into this rule), including all forms of wages and compensation (but increased to the applicable minimum wage for an employee paid below the minimum wage due to a tip credit), and (B) for the employee's regularly worked hours for the employer. To the extent that the employee's rate of pay or hours worked had varied before the absence for illness, pay shall be in the amount of the employee's average daily pay for their last month (whether or not continuous) of work, to replicate what they would have earned if they were not on leave.
- 3.4 To the extent feasible, employees and employers should comply with the procedures of the federal Family Medical Leave Act ("FMLA") to pursue and provide paid sick leave under these rules, except that (A) no employer may terminate an employee for inability to provide documentation during an illness covered by these rules, and (B) FMLA provisions do not narrow the rights and responsibilities provided by these rules.
  - 3.4.1 An employer may ask for the below documentation (A) to the extent consistent with what the FMLA permits, and (B) with the additional limitations that the employee may be required to provide the documentation (1) only upon returning from leave (*i.e.*, not as a pre-condition of taking or remaining on leave), and (2) in the form of their own written statement (which need not be notarized or in any particular form) instead of documentation directly from a health care provider:
    - (a) From the health care provider who prescribed a COVID-19 test or instructed an employee to quarantine or isolate: (i) any document(s) sufficient to show the name, contact information, and type of health care provider (family doctor, medical clinic, hospital, etc.), the provider's prescription for a COVID-19 test, and the date of that prescription, or their instruction to quarantine or isolate, and the date of those instructions; (ii) or, if documents showing all of the above are not available to the employee, whatever documents are available plus a written statement from the employee providing the information for whichever of the above items are not available in documents.
    - (b) From the provider of the COVID-19 test: (i) any document(s) sufficient to show the name, contact information, and type of provider (lab, medical clinic, hospital, etc.), that a COVID-19 test was performed, and the date of that test; (ii) or, if documents showing all of the above are not available to the employee, whatever

documents are available plus a written statement from the employee providing the information for whichever of the above items are not available in documents.

- 3.4.2 Unless they are too ill to communicate, employees must (A) give notice of their absence as soon as possible, (B) give notice of getting a COVID-19 test, or receiving instructions to quarantine or isolate, within 24 hours of being prescribed the test or instructions, and (C) provide any required documentation (consistent with the above-detailed guidelines as to what documentation can and cannot be required) that the employer requests by the sooner of (1) the end of their illness or (2) their return to work.
- 3.5 Whenever employers are subject to Colorado law as well as federal and/or local law, the law providing greater protection or setting the higher standard shall apply. For information on federal law, contact the U.S. Department of Labor, Wage and Hour Division.

#### **Rule 4. Enforcement.**

- 4.1 Failure to provide paid sick leave required by these rules is a failure to provide wages under Articles 1, 4, and 6 of C.R.S. Title 8, under the MWO (until March 15, 2020), and under the COMPS Order (on and after March 16, 2020). The Director or a designated agent shall investigate and take all proceedings necessary to enforce these rules, pursuant to the provisions of these rules, of Articles 1, 4, and 6 of C.R.S. Title 8, of the MWO (until March 15, 2020), and of the COMPS Order (on and after March 16, 2020). Violations may be subject to the procedures and remedies of these rules, of Articles 1, 4, and 6 of C.R.S. Title 8, of the MWO (until March 15, 2020), and of the COMPS Order (on and after March 16, 2020). The COMPS Order Rule 8.5 prohibition against reprisals applies to rights provided by these rules: Employers shall not threaten, coerce, or discriminate against any person for the purpose of reprisal, interference, or obstruction as to any actual or anticipated investigation, hearing, complaint, or other process or proceeding relating to a wage claim, right, or rule. Violators may be subject to penalties under C.R.S. §§ 8-1-116, 8-1-140, 8-4-120, and/or 8-6-115.

#### **Rule 5. Interpretation.**

- 5.1 Construction. Under the C.R.S. § 8-6-102 "Construction" provision ("Whenever this article or any part thereof is interpreted by any court, it shall be liberally construed by such court."), the provisions of these rules shall be liberally construed, with exceptions and exemptions accordingly narrowly construed.
- 5.2 Division and Dual Jurisdiction. The Division shall have jurisdiction over all questions arising with respect to the administration and interpretation of these rules. Whenever employers are subjected to Colorado law as well as federal and/or local law, the law providing greater protection or setting the higher standard shall apply.
- 5.3 Separability. These rules are intended to remain in effect to the maximum extent possible. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of each rule remains valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

#### **Rule 6. Effective Date and Duration.**

- 6.1 These temporary/emergency rules take effect March 11, 2020, with the amendments adopted and effective March 26, 2020 (adding "retail establishments that sell groceries" and those "under instructions from a health care provider to quarantine or isolate due to a risk of having COVID-19"), April 3, 2020 (adding "food and beverage manufacturing"), ~~and~~ April 27, 2020 (all other amendments that bring these rules, other than this Rule 6.1, into their current form), and July 14, 2020 (adding a July 14th end date to the substantive requirements of these rules, to coincide with

the effective date of SB 20-205). These Rules and remain in effect only through and including July 14, 2020, with alleged violations permitted and/or investigated thereafter, under the procedures, and within all applicable deadlines and limitation periods, for wage claims and/or investigations in Title 8, Articles 1, 4, and 6, C.R.S., and all rules promulgated thereunder by this Division. -for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.