



STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("Colorado WARNING Rules"), 7 CCR 1103-11, as adopted January 11, 2022.

I. BASIS: These amendments to the Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("Colorado WARNING Rules") serve important public needs that the Director of the Division of Labor Standards and Statistics (hereinafter, "Director" and "Division") finds best served by these rule updates, amendments, and supplements, including but not limited to implementing, and clarifying enforcement of, recent changes to Colorado labor law in the Agricultural Labor Rights and Responsibilities Act, SB21-87 ("ALRRA"), as well as in other recently effective laws, including but not limited to: the Public Health Emergency Whistleblower Act ("PHEW"), C.R.S. § 8-14.4-101, et seq. (July 11, 2020); the Healthy Families and Workplaces Act ("HFWA"), C.R.S. § 8-13.3-401, et seq. (July 14, 2020); the Equal Pay for Equal Work Act ("EPEWA"), C.R.S. §§ 8-5-101 et seq. (Jan. 1, 2021); the Chance to Compete Act, C.R.S. §§ 8-2-130 (Aug. 2, 2019); the Colorado Wage Act, C.R.S. Title 8, Article 4 (last amended effective Jan. 1, 2020); and the Colorado Overtime and Minimum Pay Standards ("COMPS") Order, 7 CCR 1103-1.

II. SPECIFIC STATUTORY AUTHORITY: The Director is authorized to adopt regulations and rules to enforce, execute, implement, apply, and interpret Articles 1–6, 12, 13.3, 13.5, and 14.4 of C.R.S. Title 8, and all rules, regulations, investigations, and proceedings thereunder, by the Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of the above-listed Articles, including but not limited to: C.R.S. §§ 8-1-101, -103, -107, -108, -111, -116, -117, -130; 8-2-130, -206; 8-4-111; 8-5-203; 8-6-102, -104, -105, -106, -108, -109, -111, -116, -117; 8-12-115; 8-13.3-403, -407, -408, -409, -410; 8-13.5-204; and 8-14.4-103, -105, and -108.

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is incorporated into this finding as well; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

IV. SPECIFIC FINDINGS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows. The majority of the changes to the WARNING Rules are to implement the Agricultural Labor Rights and Responsibilities Act, SB21-87 ("ALRRA"), enacted and effective June 25, 2021. In addition to extending minimum wage and overtime protections to agricultural workers, the bill prohibits retaliation and interference with employees' exercise of ALRRA rights, and requires employers to post and share information with employees as to their rights. There are also various expansions on definitions in the rules, and non-substantive clarification edits, as explained below.

A. Rule 1.1: Purpose. 1.2: Incorporations by Reference.

The rules add citations to ALRRA to Rule 1.1, and incorporate it by reference by adding citations to Articles 2, 3, and 13.5 of C.R.S. Title 8 (2021) to Rule 1.2.¹

B. Rule 2.3: Complaint or Claim. 2.8: Employee and Employer. 2.9: Notice of Right to Sue.

Rule 2.3 is revised to add reference to those who may bring complaints for violations of ALRRA, including "other protected parties," a term (defined in subsequent rules) for those individuals who are authorized to bring retaliation complaints.² Rule 2.8 is revised to specify that the terms "employee" and "employer" as used in these Rules include agricultural employees and workers and agricultural employers, respectively, as defined in ALRRA and Rules 2.17.1 and 2.17.2.

Rule 2.9 expands the definition of "Notice of Right to Sue" to include notices that the Division has terminated its handling of a claim under any law governed by these Rules, including laws that do not require administrative exhaustion

¹ Article 2 contains the anti-retaliation provision; Article 3 broadens the Labor Peace Act to cover agricultural employment; and Article 13.5, Part 2, contains various other agricultural labor conditions requirements, described further below.

² See C.R.S. § 8-2-206(3)(c) (authorizing retaliation claims by agricultural employees, those with familial or workplace relationships with these employees, or those with whom employees exchange care or support).

(HFWA, ALRRA), and not only under laws that *do* require administrative exhaustion (PHEW).³ Regardless of whether a particular statute enforced by these Rules requires administrative exhaustion, the Division’s involvement in a claim concludes when it declines to investigate and authorizes the worker (PHEW claims) and/or notifies the worker of their right (PHEW, HFWA, and ALRRA claims) to bring the claim in court.⁴ Therefore, the Division will apply the same procedures and rules in issuing notices under HFWA and ALRRA as with PHEW notices.⁵

C. Rule 2.11: Definitions Applicable to Retaliation and Interference Claims.

Rule 2.11.1 defines “protected activity” for all laws (whether statutes or rules) to which the WARNING Rules apply, in addition to the Rule 5 PHEW-specific definitions. The activity identified in Subpart (A), “asserting, seeking, or exercising any rights,” tracks statutory language on retaliation protections.⁶ Subparts (B) and (C) mirror the categories of protected activity under the anti-retaliation provision of Title VII of the Civil Rights Act of 1964 (“Title VII”): opposition (to actual, perceived, or possible violations), and participation (in formal or informal investigative or adjudicative proceedings as to actual, perceived, or possible violations).⁷ Subpart (D) protects other conduct authorized or protected by HFWA, PHEW, ALRRA, and other applicable laws, ensuring that (A)-(C) are not read as limiting employees’ rights.

Rule 2.11.2 defines “retaliation” with more detail, incorporating discussion from the Statement of Basis, Purpose, Statutory Authority, and Findings issued when the WARNING Rules were adopted.⁸ To prevent possible confusion, the rules now make express the key distinction between retaliation and interference: retaliation requires intent; interference does not.⁹ Retaliation is defined as acts or omissions “intended to, and [that] could, deter a reasonable person from engaging in, or impose consequences for, protected activity.” This standard follows the Supreme Court’s interpretation of Title VII’s anti-retaliation provision, in not limiting actionable retaliation to only conduct rising to the level of an adverse employment action (i.e., a materially adverse change to employment terms or conditions).¹⁰ Nothing in the anti-retaliation provisions implemented by the WARNING Rules requires a showing of an adverse employment action. Instead, key anti-retaliation laws indicate the opposite: ALRRA uses the term “adverse action” only in defining what creates a *presumption* of retaliation for actions occurring within 90 days of protected activity, but does not use that same term in its definition of “retaliation” or elsewhere.¹¹ In HFWA, the term “adverse action” is used as one of a longer list of potential forms of interference or retaliation, some of which are not employment-related at all (e.g., reporting immigration or citizenship status).¹² Further, ALRRA requires no changes to the “motivating factor” causation standard set forth in these

³ Compare C.R.S. §§ 8-14.4-105(1)(a), (2), -106(1) (PHEW) with C.R.S. §§ 8-13.3-411(4)(d) (HFWA) and 8-2-206(3)(c)(II), 8-13.5-204(1)(b) (ALRRA).

⁴ While PHEW requires that workers file complaints first with the Division, and exhaust administrative remedies before proceeding to court (C.R.S. §§ 8-14.4-104, 105), HFWA lets employees either file with the Division or send a written demand to the employer to initiate a complaint (C.R.S. § 8-13.3-411(4)(d)). ALRRA lets employees file directly in court or with the Division; if the latter, the Division may, within 90 days, decline to investigate and authorize filing in court. (C.R.S. §§ 8-2-206(3)(b)(II), 8-13.5-204(1).)

⁵ Likewise, Rules 3.3.3 and 3.3.6 are revised to clarify the language as to the various laws’ notices.

⁶ See C.R.S. §§ 8-2-206(3)(b) (ALRRA, “asserting or seeking”); 8-13.3-407(2)(a) (HFWA, “exercising”).

⁷ See 42 U.S. Code § 2000e-3(a) (prohibiting retaliation against any employee or employment applicant because they have “opposed any practice made an unlawful employment practice by [...Title VII], or [...have] made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [...Title VII]).

⁸ [Statement of Basis, Purpose, Statutory Authority, & Findings](#), (November 9, 2020) (findings as to Colorado WARNING Rules, adopted November 9, 2020) (“2020 WARNING Rules SBP”).

⁹ 2020 WARNING Rules SBP at pp.4–5, 5 nn.20–26.

¹⁰ See *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 62–64 (2006) (observing that Title VII’s anti-retaliation provision contains no requirement of an adverse employment action, in contrast with its substantive anti-discrimination provision, which does; additionally, that the distinction serves the differing purposes of each provision — prohibiting discriminatory employment decisions, and prohibiting employer’s interference with employees’ enforcement of their substantive rights, which may take many many forms). See also 2020 WARNING Rules SBP at pp.10–11 (discussing that neither PHEW nor HFWA’s anti-retaliation provisions require an adverse employment action occur to be actionable).

¹¹ “Adverse action” is defined at C.R.S. § 8-2-203(1)(a), and used only at 8-2-203(3)(b) in establishing a “rebuttable presumption” of retaliatory motive when “an agricultural employer ... takes an adverse action against an agricultural employee within ninety days after” protected activity. The term is *not* incorporated in the retaliation prohibition, C.R.S. § 8-2-203(3)(a).

¹² C.R.S. § 8-13.3-402(10) (emphasis added) (“‘Retaliatory personnel action’ means: (a) the denial of any [HFWA] right ... ; or (b) any adverse action against an employee for exercising any [HFWA] right ... , including: (i) any threat, discipline, discharge,

Rules. Like HFWA, PHEW, the Colorado Wage Act (CWA), and the Colorado Overtime and Minimum Pay Standards (COMPS) Order,¹³ ALRRA's retaliation provision lacks the limiting "because of" language that traditionally can imply "but-for" causation.¹⁴ Instead, it merely prohibits retaliation "against any person, including an agricultural employee, asserting or seeking rights." With the background of the Division's existing motivating factor standard — which was in effect when ALRRA was enacted — and ALRRA's generally expansive protections against retaliation, the Division finds that ALRRA requires the same "motivating factor" causation standard. Finally, Rule 2.11.2 includes examples of retaliatory conduct that confirm that (1) using protected activity as a "negative factor" in employment decisions constitutes retaliation¹⁵ and (2) retaliatory acts need not be employment-related for claims under these Rules.¹⁶

The definition of interference is moved from Rule 3.4.2 to 2.11.3, and expanded. While the prior definition cited the federal Family and Medical Leave Act ("FMLA") statutory and rule definitions at 29 U.S.C. § 2615(a)(1) and 29 C.F.R. § 825.220(b)–(d), the Rule now incorporates the relevant portions of the FMLA rule into the definitions of interference and retaliation, providing more definitional clarity, and preventing any confusion that may result from changes to federal provisions.¹⁷ The revised rule also provides further examples of interference by discouraging or deterring employees' exercise of rights beyond those listed in FMLA rules, and identifies other forms of interference provided by law (i.e., ALRRA access interference, interference with notice requirements, and counting HFWA absences negatively in attendance requirements).

D. Rule 2.12: Wage Protection Rules. 2.16: Whistleblower. 2.17: Definitions Applicable to ALRRA

Rule 2.12 reflects a global change from use of the phrase "Wage Protection Act Rules" to "Wage Protection Rules" to refer to the rule set at 7 CCR 1103-7, as the recently amended title of these Rules.¹⁸ Rule 2.16 is added to provide a definition for "whistleblower," a type of party with complaint rights under both PHEW and ALRRA. The rule clarifies that there is no requirement that a whistleblower has themselves experienced the alleged violation, nor that an actual violation occurred — only that a whistleblower had knowledge of an "alleged violation."¹⁹

Finally, Rule 2.17 adds definitions specific to ALRRA. This includes the definitions of "agricultural employee" and "agricultural worker" from the ALRRA retaliation provisions.²⁰ This Rule also incorporates the "agricultural

suspension, demotion, reduction of hours, or reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency; or (ii) any sanctions against an employee who is the recipient of public benefits for [HFWA] rights ...; or (iii) interference with or punishment for participating in or assisting, in any manner, an investigation, proceeding, or hearing..."

¹³ As adopted November 10, 2021, COMPS Order #38 incorporates the WARNING Rules by reference, as these are the procedural rules to be used for investigations of claims of retaliation in contravention of the COMPS Order. *See Statement of Basis, Purpose, Statutory Authority, & Findings*, p. 2 (November 10, 2021) (findings as to COMPS Order #38, adopted November 10, 2021) (at Section (IV)(B)(1)). COMPS similarly has no language requiring any higher intent standard than "motivating factor," and instead, simply states that "[e]mployers 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." COMPS Order, 7 CCR 1103-1, Rule 8.5.

¹⁴ *See* 2020 WARNING Rules SPB at 4-5.

¹⁵ *See* C.R.S. § 8-13.3-407(2)(b) (prohibiting employers from counting HFWA leave as an absence that may lead to adverse employment outcomes); 29 C.F.R. § 825.220(c) (prohibited retaliation under the Family Medical Leave Act includes using an employee's leave as a negative factor in an employment decision).

¹⁶ *See, e.g.*, C.R.S. § 8-13.3-402 (defining retaliatory personnel actions under HFWA as including threatening to report suspected immigration or citizenship status to government authorities, and certain public-benefits-related sanctions).

¹⁷ Subsections (b) and (d) of 29 C.F.R. § 825.220 describes forms of interference, and are incorporated into Rule 2.11.3. Subsection (c) describes retaliation, and is incorporated into Rule 2.11.2.

¹⁸ The Wage Protection Rules, 7 CCR 1103-7, were previously titled "Wage Protection Act Rules"; this title was changed to reflect the rules' applications to various other laws other than the Wage Protection Act and the Colorado Wage Act that the Division now enforces, such as PHEW and HFWA. *See Statement of Basis, Purpose, Statutory Authority, & Findings*, p. 2 (November 10, 2020) (findings as to Colorado Wage Protection Rules, adopted November 10, 2020).

¹⁹ *See* C.R.S. §§ 8-13.5-201(10); 8-14.4-107(1).

²⁰ ALRRA defines "agricultural employee," "as used in this [anti-retaliation] section, [...as] a person employed by an agricultural employer." C.R.S. § 8-2-206(1). It defines "agricultural worker" elsewhere as a worker performing any work or services included in the federal Fair Labor Standards Act's or Internal Revenue Code's definitions of agricultural work, not

employer” definition in ALRRA, along with the bill’s liberal construction principle.²¹ Because the bill authorizes individuals other than employees and workers to file retaliation complaints, a definition for “other protected parties” is added to provide a shorter umbrella term for the multiple non-worker individuals protected by ALRRA.

ALRRA’s retaliation provision broadly provides that agricultural employers shall not retaliate against “any person” for “asserting or seeking” rights under Articles 3, 6, 13.5 (Part 2), or 14.4 of Title 8, C.R.S.; defines agricultural employee as any person “employed by an agricultural employer”; sets forth a rebuttable presumption based on an adverse employment action (which includes any “decision for employment purposes that adversely affects an agricultural employee”) within 90 days of protected activity; and tolls the statute of limitations for retaliation claims while the Division determines whether it will investigate the claim or not.²² This is consistent with the bill’s remedial purpose of extending employment-related rights and remedies to farmworkers who previously lacked such rights.²³

In the same vein, it broadly describes the categories of individuals who may bring an ALRRA retaliation claim at the Division or in court, including “a person who has a familial [...] relationship with the agricultural employee,” a more wide-reaching definition than just “family.”²⁴ Where “familial relationship” is used in other Colorado statutes, it is not defined,²⁵ but in reviewing other family-related definitions, the Division finds that the definitions in C.R.S. § 26-6-102(3) (Child Care Licensing Act) and C.R.S. § 8-13.3-503 (Family and Medical Leave Insurance Act) capture the broader scope of “familial relationship,” including the latter Act’s definition of “family member” as one with whom an employee “has a significant personal bond . . . regardless of biological or legal relationship.”²⁶

The ALRRA-protected “person who has a [...] workplace relationship with” an agricultural employee is similarly not repeated elsewhere in Colorado law. However, the use of “workplace” rather than “employment” in describing the relationship is notable, in not limiting protected relationships to other employees of the employer (i.e., not just coworkers). It does, however, require a “relationship,” not merely workplace interaction (i.e., answering questions of a one-time vendor). The definition in these Rules thus describes the required relationship as one within the scope of employment, but based on repeated interaction. One’s employer or employment status is not a necessary part of the inquiry, recognizing, for example, a “workplace relationship” of an independent contractor employed by a labor broker and an employee of an agricultural employer who works with that contractor.

Lastly, in defining “a person with whom [...] agricultural employee exchanges care or support[,]” the Division looked to laws and regulations concerning “care” for another. As with family and workplace relationships, this language provides expansive coverage: it applies whether the worker is the one providing, or receiving, the care or support (or both); it does not require any particular form of arrangement or agreement (e.g., no requirement of a writing or that the care or support is provided without compensation); and it identifies “care” or “support” without any qualifications such as “medical” or “economic.” Therefore, while some definitions might do too much to limit the type of “care” covered under ALRRA (e.g., HFWA’s coverage of individuals for whom an employee provides or arranges “health- or safety-related care”), the Division finds more applicable the FMLA rules defining “care” for another:

The [...] provision that an employee is needed to care for a family member [...] encompasses both physical

limiting the definition to any particular section. That the broader definition, based on status as an employee of a qualifying employer, rather than employee duties, applies only to retaliation claims, is consistent with ALRRA’s otherwise expansive retaliation coverage.

²¹ C.R.S. § 8-3-104(1).

²² C.R.S. § 8-2-206(3)(a),(b),(c)(II) (emphasis added).

²³ See C.R.S. § 8-3-104(b) (“The meaning of ‘agricultural employer’ [for all provisions of ALRRA] must be liberally construed for the protection of persons providing services to an employer.”).

²⁴ In contrast, the HFWA definition of “family member” (C.R.S. § 8-13.3-402(6)) includes immediate family as defined by C.R.S. § 2-4-401 (3.7), which in turn is defined as “a person who is related by blood, marriage, civil union, or adoption.”

²⁵ See, e.g., C.R.S. § 14-13.7-102(9) (under the Uniform Deployed Parents Custody and Visitation Act, defining “family member” as including “an individual recognized to be in a familial relationship with a child under law of this state”); C.R.S. § 23-1-101.1(4) (under provisions relating to Colorado Commission on Higher Education, defining “legacy preference” as a preference given to college applicants “on the basis of their familial relationship to alumni of that institution”).

²⁶ The proposed rules directly cited these provisions. While Rule 1.2 provides that incorporation by reference excludes later amendments to or editions of statutes, to prevent any confusion if those cited statutes were to be changed, the citations are removed from the final adopted rule text. Additionally, because of additional changes to the rule language to make familial terms gender neutral (e.g., “child” instead of “son” or “daughter”), the list no longer fully tracks the Child Care Licensing Act.

and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor.²⁷

The definition in this Rule similarly covers care or support as to critical needs (e.g., health, family, transportation) as well as other needs that the individual is unable to meet on their own (e.g., hygiene, financial or similar paperwork, or home tasks — basic cleaning, shopping, cooking, maintenance). Therefore, while a neighbor cooking dinner for an individual on one occasion would not establish a care or support relationship, a neighbor that does so for all meals for an individual unable to cook for themselves due to a medical condition would.

E. Rule 3: Complaint, Investigation, and Appeal Procedures.

Rules 3.1 and 3.2 include various edits to extend Colorado WARNING Rules procedures to agricultural workers and employees, and others covered by provisions of ALRRA. In Rule 3.3, the time period for the Division to determine whether it will investigate a complaint is extended from 30 to 90 days, bringing the time period for claim evaluation under HFWA and PHEW (neither of which specifies a time period) in line with the ALRRA 90-day period for this review.

Rule 3.3 also details when the 90-day period during which the Division must determine whether to investigate a complaint begins. In the Division's experience processing retaliation claims over roughly the past year, complaints often do not include all of the information that the Division needs to decide whether to exercise its discretion to investigate, including incomplete responses to the questions in Division complaint forms. In such cases, the Division may request additional documents or information after the initial complaint filing, and communications to fully gather all information for this assessment can span at least several weeks. This Rule thus clarifies that the 90-day period begins when the Division has received from the complainant all necessary information to complete, process, and evaluate the claim for potential investigation. The edit from the proposed to the adopted version is solely for clarity, not any substantive change.

In Rule 3.4, the statutory retaliation presumption from ALRRA is added to the explanation of burdens of proof, with no change from the statutory language. The interference definition is removed, as it is now covered in Rule 2.11.3. Rule 3.5 contains various changes relating to ALRRA remedies available, including statutory damages, distribution of damages obtained by a whistleblower among affected workers, and citations to authority for non-monetary remedies, which are in addition to the Division's existing compliance enforcement authority.

Rule 3.7.3 is added to detail the requirement that a party filing an appeal must send all submissions as detailed in the determination and any subsequent Division notices or orders, to ensure that the other party and the Division timely receive all appeal filings, which is especially important in retaliation, interference, and other non-wage claims that may involve complex or novel issues, or questions concerning applicable law or rules.

F. Rules 4 and 5: Notice and Posting Rights and Responsibilities; Protected Activity Under PHEW

Applicable statutes have different notice requirements requiring workplace posters (HFWA, PHEW, and ALRRA), providing notice directly to employees (HFWA), and providing non-poster informational resources (ALRRA). Specifically, ALRRA requires employers to provide agricultural workers a notice of rights and guidance related to public health emergencies. To incorporate and more clearly organize the various requirements, Rules 4.1 and 4.2 are re-titled to reflect each rule's subject matter: "Poster Requirements," for Rule 4.1 (for HFWA, PHEW, and ALRRA), and "Notice and Guidance Requirements" for Rule 4.2 (for HFWA notice and ALRRA public health emergency guidance).

Rule 4.1 details the ALRRA requirement that all agricultural employers post a notice of employee rights under Part 2 of Article 13.5 of Title 8, C.R.S.²⁸ It further requires that this notice include information as to the rules promulgated under those statutory provisions (i.e., the detailed rules on heat safety and additional service provider access in the Agricultural Labor Conditions Rules, 7 CCR 1103-15, proposed October 29, 2021).

Unlike PHEW and HFWA, ALRRA does not require the Division to create posters. However, to assist employers in complying with this requirement, and to educate workers as to their rights, the Division intends to publish an Agricultural Labor Conditions Poster that employers may use to satisfy the ALRRA requirements, though (as with PHEW

²⁷ 29 C.F.R. § 825.124.

²⁸ These rights include (1) service provider access rights (C.R.S. § 8-13.5-202); (2) prohibition on short-handled hoes, as well as restrictions on (and additional break time for) hand-weeding and hand-thinning work (§ 8-13.5-203); (3) protections from heat-related stress illnesses and injuries (§ 8-13.5-203); and (4) mechanisms for rights enforcement (§ 8-13.5-204).

and HFWA) employers may instead elect to use their own poster with all key content, rather than one from the Division.

Additionally, while HFWA and PHEW only expressly require posting in a “conspicuous” location, or by electronic means if physical posting is impracticable,²⁹ ALRRA requires that posters be displayed:

- (a) in a conspicuous location on the agricultural employer’s premises, including in the agricultural worker’s employer-provided housing; and
- (b) in all places where notices to employees, including agricultural workers, are customarily posted; and
- (c) electronically, including by e-mail and on an intranet or internet site, if the agricultural employer customarily communicates with agricultural workers by these means.³⁰

The Division finds that ALRRA’s provision as to placing notices in all places where they are “customarily posted” is appropriately extended to HFWA and PHEW posters, to provide as much consistency as possible in poster requirements under these Rules. However, ALRRA’s enumeration of posting locations — and the fact that it did contains no rulemaking directive permitting the Division to provide alternative means of compliance — means that the alternate posting methods allowed for HFWA and PHEW posters (i.e., those stated in Rule 4.1.3(B)) cannot be extended to ALRRA. Accordingly, employers must post on-premises posters regardless of the circumstances. ALRRA’s requirement of posting in employer-provided housing is also added to the rule, but not extended to PHEW and HFWA. Again, those laws do not so require, and ALRRA otherwise has different provisions applicable to those living in employer-provided housing³¹ (more common in agricultural employment), warranting applying this requirement only to the agricultural labor conditions poster.

Rule 4.2.2 details the ALRRA requirements that, in a public health emergency, agricultural employers provide workers informational materials (including state and federal guidance, and contact information for Colorado Legal Services Migrant Farmworker Division), and training related to the emergency. The Rule identifies suggested resources from the federal Occupational Safety and Health Administration and the Colorado Department of Public Health and Environment to accomplish the public health emergency guidance portion of this requirement; accordingly, to fully satisfy their guidance obligations, employers must also provide contact information for Colorado Legal Services.³² The rule also describes where information must be provided, and how employers must remedy any removal or destruction of materials. Rule 4.3 states the effective date for assessing compliance, and confirms that as with other Division posters, agricultural posters will be available in multiple languages.

Finally, the title of Rule 5 is changed to make it more specific, clarifying that it describes protected activity only under PHEW (to avoid confusion with the general definition of “protected activity” now in Rule 2.11.1).

V. EFFECTIVE DATE. These rules take effect on March 2, 2022.



 Scott Moss
 Director, Division of Labor Standards and Statistics
 Colorado Department of Labor and Employment

January 11, 2022

 Date

²⁹ C.R.S. §§ 8-14.4-103; 8-13.3-408.

³⁰ C.R.S. § 8-13.5-202(3).

³¹ See C.R.S. §§ 8-13.5-202(1)(a),(d) (visitor access rights), (1)(e) (employer-provided transportation to services), (3)(a) (notice posting requirements); 8-14.4-109 (1)(a)–(c),(e) (additional public health emergency rights).

³² To aid in compliance with this aspect of the guidance requirement, the Agricultural Labor Conditions Poster will contain this information.