

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

State Labor Relations Rules

7 CCR 1103-12

As proposed on September 25, 2020; if adopted, to be effective Jan. 1, 2021.

Rule 1. Authority.

- 1.1 These Rules are issued under the authority of, and as enforcement of, Colorado Revised Statutes (“C.R.S.”) Title 24, Article 50 (2020) (the “Colorado Partnership for Quality Jobs and Services Act,” C.R.S. § 24-50-1101 et seq.), as well as the general labor law implementation and enforcement authority of C.R.S. Title 8, Articles 1 and 3 (2020), and are intended to be consistent with the rulemaking requirements of the Administrative Procedures Act, C.R.S. § 24-4-103. These Rules are promulgated pursuant to the Division’s authority in C.R.S. §§ 24-50-1103, -1106(4), and C.R.S. § 8-3-105.
- 1.2 The Director of the Division of Labor Standards and Statistics in the Department of Labor and Employment has the authority to enforce C.R.S. § 24-50-1101 et seq. and these Rules.
- 1.3 Incorporations by Reference. C.R.S. § 24-50-1101 et seq. is hereby incorporated by reference into these Rules. Copies are available for public inspection and a reasonable charge at the Colorado Department of Labor and Employment, Division of Labor Standards and Statistics, 633 17th Street, Denver CO 80202. Electronic access is available 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. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern.
- 1.4 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 the 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 2. Definitions.

- 2.1 “Authorized representative” means a person designated by a party to an unfair labor practice complaint to represent the party during the Division’s complaint and/or appeal process. To designate an authorized representative, the party must comply with the requirements of Rule 4.1.1.
- 2.2 A “covered employee” is defined as “an employee who is employed in the personnel system of the state established in Section 13 of Article XII of the State Constitution,” unless the individual is exempt for one of the reasons provided in C.R.S. § 24-50-1102(3)(a)-(h).
- 2.3 “Director” refers to the Director of the Division of Labor Standards and Statistics and his or her designee, unless otherwise specified in these Rules.
- 2.4 An “employee organization” has the same meaning as in C.R.S. § 24-50-1102(7), and a “certified employee organization” has the same meaning as in C.R.S. § 24-50-1102(1).
- 2.5 “Division” refers to the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.

- 2.6 “Electronic mail” (“email”) refers to the electronic transmission of messages, including documents, via the Internet.
- 2.7 “Mail” refers to first-class mail, sent through the United States Postal Service, postage prepaid.
- 2.8 “Unfair labor practice” is defined as in C.R.S. §§ 24-50-1107, -1108, -1109, -1111, and -1112.

Rule 3. Filing.

- 3.1 Documents may be filed with the Division by electronic mail, facsimile, or other electronic means when possible; U.S. mail is also an acceptable filing method. A document is considered “filed” with the Division when it is received by the Division; any document received after 11:59pm Mountain Time is considered “filed” the next business day.

Rule 4. Unfair Labor Practices.

4.1 Unfair Labor Practice Complaints

- 4.1.1 The party filing an unfair labor practice complaint shall be designated the charging party. The party against whom a complaint is filed shall be designated the respondent. Either party may designate an authorized representative to act on its behalf in filing a complaint with the Division. The party may designate an authorized representative by filing the Division-approved form with the Division. The party may revoke the authorized representative’s authority by contacting the Division in writing.
- 4.1.2 Unfair labor practice complaints shall be filed on the designated form provided by the Division. The charging party shall set forth a clear and concise statement of the facts constituting the unfair labor practice.
- 4.1.3 The Division will evaluate unfair labor practice complaints to determine if the Division has jurisdiction over the alleged conduct and if sufficient evidence has been shown from which an unfair labor practice may be reasonably inferred.
- 4.1.4 If the unfair labor practice complaint provides insufficient evidence, the Division will notify the charging party and may request additional information.
- 4.1.5 Failure to respond in a timely manner to requests from the Division for additional supporting information and/or documentation may result in dismissal of the unfair labor practice complaint.
- 4.1.6 After determining that a charging party’s unfair labor practice complaint contains sufficient allegations and evidence that, if proven true, would state a claim of an unfair labor practice, the Division shall mail a copy of the complaint with any relevant supporting documentation to the respondent.
- 4.1.7 The respondent shall file an answer responding to each allegation in the complaint, and attach any documentation or evidence the respondent wishes the Division to consider in reviewing the complaint, within fourteen (14) days of the date the Division sends a copy of the complaint to the respondent.
- 4.1.8 Upon receiving a request in writing to the Division stating the reason required for an extension, the Director may, in his/her discretion, extend the fourteen (14) day period for the respondent to file an answer to the complaint for good cause.
- 4.1.9 Upon written request, other parties or entities may be designated as intervenors or may be joined as charging parties or respondents, at the Division’s discretion.
- 4.1.10 Upon receipt of the complaint, answer, and any supplemental documents, the Division shall make a determination as to whether an unfair labor practice has been committed and issue findings and orders.

- 4.1.11 The burden of proof for establishing an unfair labor practice is on the charging party.
- 4.1.12 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.
- 4.1.13 A charging party may withdraw an unfair labor practice complaint at any time prior to issuance of a determination.

4.2 Unfair Labor Practice Appeals

- 4.2.1 An appellant, either the charging party or respondent, may file an appeal within thirty-five (35) calendar days from the date of the Division's determination. A valid appeal is a written statement that is timely filed with the Division, explains the clear error in the determination that is the basis for the appeal, and has been signed by the appellant or the appellant's authorized representative.
- 4.2.2 Upon receipt of the appeal, the Division will notify the parties of the date of the hearing and any interim deadlines, and send a copy of the appeal and a copy of the record of its investigation to the parties via U.S. mail or email. All evidence submitted to the Division as part of the investigation is part of the record on appeal and need not be resubmitted.
- 4.2.3 The hearing officer shall have the power and authority to call, preside at, and conduct hearings on the appeal, including the power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed determination. The hearing officer shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The hearing officer will decide whether the Division's determination is based on a clear error of fact or law.
- 4.2.4 Parties who timely file a valid appeal of the Division's determination will be afforded an administrative appeal hearing before a Division hearing officer. Parties may be required to appear by telephone.
- 4.2.5 The parties may submit new testimonial evidence to the hearing officer in accordance with deadlines imposed by the Division. New evidence must be sent to all other parties to the appeal. Failure to send all new evidence to all other parties to the appeal may result in the evidence being excluded from the record. The parties may submit new documentary or other non-testimonial evidence in accordance with deadlines imposed by the Division and upon showing "good cause," which may be assessed based on any relevant factors, including but not limited to:
 - (A) That the new evidence was previously not known or obtainable, despite diligent evidence gathering efforts by the party offering the new evidence;
 - (B) That the party failed to receive fair notice of the investigation or of a key filing by another party or by the Division to which the new evidence is responsive;
 - (C) That factors outside the control of the party prevented a timely action or interfered with the opportunity to act, except that the acts and omissions of a party's authorized representative are considered the acts and omissions of the party and are not considered to be a factor outside the party's control as intended by this rule;
 - (D) That a determination raised a new issue or argument that cannot be responded to adequately without the new evidence;

- (E) That, at the investigation stage, the party offering new evidence requested more time to submit evidence, yet was denied, and in the hearing officer's judgment (1) the need for more time was legitimate and did not reflect neglect by the party, (2) the denial of the request for more time was unwarranted, and (3) exclusion of the evidence would cause substantial injustice to the party; and/or
 - (F) That failure to admit the evidence otherwise would cause substantial injustice and did not arise from neglect by the party.
- 4.2.6 An appeal may, in the discretion of the hearing officer, be sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more decisions and/or phases of the appeal.
- 4.2.7 The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. The Division shall promptly provide all parties with a copy of the hearing officer's decision via U.S. mail or email. A party may seek judicial review of the decision pursuant to C.R.S. § 24-50-1115(1).

Rule 5. Appeals of Classification Decisions by the State Personnel Director.

- 5.1 Appeals of a decision by the State Personnel Director regarding whether an employee or group of employees are appropriately classified as "covered employees" may be filed with the Division on the Notice of Appeal form provided by the Division. The hearing officer will review the State Personnel Director decision de novo.
- 5.2 A certified employee organization or the State may file a Notice of Appeal with the Division within thirty-five (35) calendar days from the date of the decision of the State Personnel Director. A valid appeal is a written statement that is timely filed with the Division, explains the basis for the appeal, and has been signed by the appellant or the appellant's authorized representative.
- 5.3 The appellant shall provide the State Personnel Director with a copy of the Notice of Appeal at the time of filing with the Division. The State Personnel Director shall have twenty (20) days to file a Response, after which the appellant shall have twenty (20) days to file a Reply.
- 5.4 Upon receipt of the Notice of Appeal, the Response, and the Reply, the Division shall assign a hearing officer, who may set the matter for hearing or make a decision on the existing record. The hearing officer shall have the power and authority to call, preside at, and conduct hearings on the appeal, including the power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed ruling of the State Personnel Director.
- 5.5 The hearing officer shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order sustaining, overruling or modifying the ruling of the State Personnel Director. Testimony and further evidence may be allowed at the hearing, at the discretion of the hearing officer. Parties may be required to appear by telephone.
- 5.6 The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. The Division shall promptly provide all parties with a copy of the hearing officer's decision via U.S. mail or email. A party may seek judicial review of the decision pursuant to C.R.S. § 24-50-1115(1).



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

State Labor Relations (“SLR”) Rules, 7 CCR 1103-12 (2021), as proposed September 25, 2020; to be followed and replaced by a final Statement at the conclusion of the rulemaking process.

I. BASIS. The Director (“Director”) of the Division of Labor Standards and Statistics (“Division”) has authority to adopt rules and regulations under the authority listed in Part II, which is incorporated into Part I as well.

II. SPECIFIC STATUTORY AUTHORITY. These rules are issued under the authority of, and as implementation and enforcement of, Colorado Revised Statutes (“C.R.S.”) Title 24, Article 50 (2020) (the “Colorado Partnership for Quality Jobs and Services Act,” C.R.S. § 24-50-1101 et seq.), as well as the general labor law implementation and enforcement authority of C.R.S. Title 8, Articles 1 and 3 (2020), and are intended to be consistent with the rulemaking requirements of the Administrative Procedures Act, C.R.S. § 24-4-103. These rules are promulgated pursuant to express authority including but not limited to in C.R.S. §§ 24-50-1103, -1106(4), and C.R.S. § 8-3-105.

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. The Colorado Partnership for Quality Jobs and Services Act (C.R.S. § 24-50-1101 et seq.) requires the Division to promulgate rules and conduct rule-making hearings as may be necessary for implementation and enforcement of the Act and its provisions.

These Rules detail procedures, rights, and responsibilities for two key aspects of the Act. First, for the new unfair labor practice charges that the Act permits employees, labor organizations, or the state to file, these Rules detail how the Division will receive, investigate, issue determinations on, and hold appeals of, unfair labor practice charges. Second, these Rules offered similar details as to the new appeals of union coverage determinations by the Colorado Department of Personnel Administration that the Act permits covered employees to file.

These Rules do not cover union elections, for three reasons. First, while the Division needs to adopt election-related rules, under the Act, no such elections can occur until 2022, so the need is not imminent. Second, the ongoing public health emergency complicates many in-person activities, and while the Division is not anticipating the continuation of such complications into 2022, the Division believes it is difficult to adopt rules now setting procedures (*e.g.*, setting in-person voting procedures) that would be impermissible now. Third, as remote communication technology and individuals’ comfort level using it evolves, and has done so at an accelerated pace during the public health pandemic, it would be premature to decide now to what extent any election procedures might be viable to conduct remotely in 2022 or later.

V. EFFECTIVE DATE. These rules take effect on January 1, 2021, or as soon thereafter as the rule-making process is completed.

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

September 25, 2020

Date