

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

KEEP JOBS IN COLORADO ACT RULES PREVAILING WAGE AND RESIDENCY (PWR) RULES

7 CCR 1103-6

Adopted November 10, 2022, effective January 1, 2023.

Rule 1. Statement of Purpose; Dual Jurisdiction; Separability

- 1.1** The general purpose of the Keep Jobs in Colorado Act Rules is to implement the provisions of C.R.S. § 8-17-101 et seq. These rules are adopted pursuant to the Division of Labor Standards and Statistics' authority in C.R.S. § 8-1-107(2)(p), § 8-1-103(3), § 8-1-111, and § 8-17-101, et seq. The general purpose of these Prevailing Wage and Residency (PWR) Rules, 7 CCR 1103-6, is to exercise the authority of this Division to administer and enforce the Keep Jobs in Colorado Act (KJICA), C.R.S. Title 8, Article 17, C.R.S. § 8-17-101 et seq., and the Colorado Quality Apprenticeship Training Act of 2019, C.R.S. Title 24, Article 92, Part 2, C.R.S. § 24-92-201 et seq. (Prevailing Wage Act). These rules are issued under the authority and as enforcement of Articles 1, 4, 6, 17, and 24 of C.R.S. Title 8 (2023); C.R.S. § 24-92-209(7); and C.R.S. §§ 8-17-104 and -106; and are intended to be consistent with the State Administrative Procedures Act, C.R.S. § 24-4-101, et seq.
- 1.2** Incorporations by Reference. Hereby incorporated by reference into these PWR Rules are Title 8, Articles 1, 4, 6, and 17 of the Colorado Revised Statutes (C.R.S.) (2023); Title 24, Article 92, of the C.R.S.; the Wage Protection Rules, 7 CCR 1103-7 (2023); the Colorado WARNING Rules, 7 CCR 1103-11 (2023); and the Davis Bacon Act and its implementing regulations, 40 U.S.C. § 3141 et seq. Earlier versions of such laws and rules may apply to events that occurred in prior years. Incorporation excludes later amendments to or editions of the constitution, statutes, and rules; all cited laws are incorporated in the forms that are in effect as of the effective date of these Rules. Where these Rules reference another rule, the reference shall be deemed to include all subparts of the referenced rule. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern, so long as they are consistent with Colorado statutory and constitutional provisions. Except where any of these Rules, or any other Colorado rules or statutes, provide otherwise, these Rules, as well as the Acts that these rules implement and enforce (KJICA and Prevailing Wage Act), should be interpreted consistently with the federal Davis-Bacon Act and its implementing regulations, 40 U.S.C. § 3141 et seq. 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, Denver CO 80202. Copies may be obtained from the Division at a reasonable charge or can be accessed 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 provide the requestor information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing them. All Division rules are publicly available at www.coloradolaborlaw.gov.
- 1.3** Administration and Dual Jurisdiction. The Division shall have jurisdiction over all questions arising with respect to the administration and interpretation of these Rules. Pursuant to C.R.S. § 24-92-202(3), the Department of Personnel and Administration (DPA) may promulgate additional rules applicable to rights under C.R.S. Title 24, Article 92, Part 2. Given the remedial purposes of the Prevailing Wage Act, in the event of any conflict between the DPA's rules and these Rules, the

rule(s) providing greater protection for the rights of employees shall govern. Whenever employers are subject to both Colorado and federal and/or local law, the law providing the 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.

- 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 Rules remain 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 Any reference made to “the law” means the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, et seq. “Agency of government” as used in the Prevailing Wage Act, C.R.S. § 24-92-201(1) means any agency, department, division, board, bureau, commission, institution, or section of the state, which is a budgetary unit exercising construction contracting authority or discretion. “Agency of government” does not include any county, city and county, city, municipality, town, school district, special district, or any other political subdivision of the state.

2.1.1 “Contracting Agency” is the specific agency of government with which a Contractor or Subcontractor has a contract for a public project.

- 2.2 “Authorized representative” means a person who is designated by a party to a complaint to represent the party during the Division’s complaint and/or appeal process.

- 2.32 “Colorado labor” as used in KJICA, § 8-17-101(2)(a), means labor that is performed on a public project by any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion, except when sex or age is a bona fide occupational qualification.

2.32.1 A resident of the state of Colorado is a person who can provide a valid Colorado driver’s license, a valid Colorado state-issued photo identification, or other documentation showing that the person he or she has resided in Colorado for the last thirty days. and includes any persons who establish residency during the course of the project.

- 2.43 “Contractor” as used in the Prevailing Wage Act, C.R.S. § 24-92-201(2), means any employer, person, entity, individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons that has a contract for a public project with a Contracting Agency.

- 2.53 “Davis Bacon Act” refers to the Davis-Bacon and Related Acts (DBRA), 40 U.S.C. § 3141 et seq. 29 C.F.R. §§ 1, 3, 5, 6, 7, and any related regulat

- 2.64 “Director” means the Director of the Colorado Division of Labor Standards and Statistics, or his or her designee.

- 2.75 “Division” means the Division of Labor Standards and Statistics within the Colorado Department of Labor and Employment.

- 2.86 “Employees” and/or “workers” under KJICA and Prevailing Wage Act.

2.8.12.9 Under KJICA, § 8-17-101(2)(a), a “worker” is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.2. Workers are those whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as

distinguished from mental or managerial. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.

2.8.2 Under the Prevailing Wage Act, C.R.S. § 24-92-201(4), “employees” are workers who are employees pursuant to the Colorado Wage Act, C.R.S. § 8-4-101(5), and who are engaged by contractors or subcontractors to perform jobs on various types of public projects, including as mechanics, laborers, or other construction workers.

2.96 “Fringe benefit”, as used in KJICA, C.R.S. § 8-17-105, is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.23. Fringe benefit includes the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits.

2.107 “Public works project” or “public project” have the following definitions: shall have the same meaning as “public project” as defined in C.R.S. § 8-19-102(2).

2.10.1 ~~In accordance with Under KJICA, C.R.S. § 8-17-101(2)(b), C.R.S. § 24-103-908(1), and C.R.S. § 24-92-102(8), “public works project”~~ has the same meaning as “public project”, and is defined as:

- (A)** any public project as defined in C.R.S. § 24-92-102(8), including any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any maintenance programs for the upkeep of such projects, including any such project awarded by any county, including any home rule county, municipality, as defined in C.R.S. § 31-1-101(6), school district, special district, or other political subdivision of the state. It does not include any project:
 - i. ~~Public works project under rule 2.7(i)(a) does not include any project~~ for which appropriation or expenditure of moneys may be reasonably expected not to exceed five hundred thousand dollars in the aggregate for any fiscal year.
 - ii. ~~Public works project under rule 2.7(i)(a) does not include any project~~ under the supervision of the department of transportation for which appropriation or expenditure of funds may be reasonably expected not to exceed ~~two~~ hundred fifty thousand dollars in the aggregate of any fiscal year.
 - ~~iii.~~ that is financed with any amount of federal money.
- (B)** any publicly funded contract for construction entered into by a governmental body of the executive branch of ~~the~~ the state of Colorado which is subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S.; and
- (C)** any highway or bridge construction, whether undertaken by the department of transportation or by any political subdivision of ~~the~~ the state of Colorado, in which the expenditure of funds may be reasonably expected to exceed fifty thousand dollars.

2.10.2 Under the Prevailing Wage Act, C.R.S. § 24-92-201, “public project” means any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of public health, welfare, or safety and any operation or maintenance programs for the operation and upkeep of such projects. “Public project” includes any work, construction, or repair performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more agencies of government, and may include projects undertaken pursuant to contracts awarded under Title 24, Article 92, Part 1, C.R.S., or under Title 24, Article 93, C.R.S. Public projects that receive federal funding and public projects whose contracting agency is the Department of Transportation are not subject to the requirements of Title 24, Article 92, Part 2, C.R.S. or these Rules.

2.118 “Site of the project” as used in KJICA, C.R.S. § 8-17-105, is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.2. Site of the project is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.

2.11.18 Not included in the site of the project are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular public works contract or project.

2.12 A “wage determination” as defined by the Prevailing Wage Act, C.R.S. § 24-92-205(1), is the determination made by the Colorado Department of Personnel and Administration establishing prevailing wage rates for the applicable trade or occupation and the particular geographical locality of the public project. A “wage determination” includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision.

2.13 “Wages,” “scale of wages,” “wage rates,” “minimum wages,” and “prevailing wages” as defined by the Prevailing Wage Act, C.R.S. § 24-92-201(6), means:

(A) The employee’s basic hourly rate of pay;

(B) Any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and

(C) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers, mechanics, and other construction workers pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the workers affected in advance.

Unless otherwise noted, when used herein, the term “wages” includes fringe benefits, except where it is used to refer to wages as defined in the Colorado Wage Act, C.R.S. § 8-4-101(14).

2.14 A “willful violation,” as defined by the Prevailing Wage Act, C.R.S. § 24-92-209(2)(b), includes an intentional violation and a violation made with reckless disregard or deliberate ignorance of the law. A contractor or subcontractor acts with “reckless disregard” of the requirements of the law if, for example, it should have inquired further into whether its conduct was in compliance with the law and failed to make adequate further inquiry. Whether employees accepted or agreed to accept less than the required rate of wages or voluntarily made refunds is not a defense to willfulness.

~~2.8~~ "Site of the project" is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.2. Site of the project is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.

~~2.8.1~~ Not included in the site of the project are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular public works contract or project.

~~2.9~~ "Worker" is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.2. Workers are those whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.

Rule 3. Eighty Percent KJICA: The "Colorado Labor" Requirement and Contractor Obligations

3.1 Under C.R.S. § 8-17-101(1), workers meeting the Rule 2.3 definition of "Colorado labor" are required. Whenever any public works project financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado are undertaken in this state, Colorado labor shall be employed to perform at least eighty percent of the work on public projects undertaken in the state of Colorado and financed in whole or in part by funds of the state of Colorado or its counties, school districts, or municipalities, unless the requirement is waived by governmental body financing the public works project.

3.2 Compliance with Rule 3.1 is measured over the entirety of the completed project, and is determined using the total taxable wages ~~plus and~~ fringe benefits paid to workers meeting the Rule 2.8.1 definition of "Colorado labor," minus any per diem payments made to such workers.

3.3 In order to meet the Rule 2.3 definition of "Colorado labor," workers must provide contractors with adequate proof of residency.

~~3.3.1-3.3~~ Each contractor shall retain the documentation required under the law for at least ninety days after the completion of the project.

~~3.3.2-2.4~~ Workers who establish residency during the course of the project also qualify as "Colorado labor" under Rule 2.3.

~~3.3.3-7.2~~ The eDivision assesses the acceptability and validity of residency documentation on a case-by-case basis. The eDivision examines the totality of the circumstances and the evidence provided for each covered worker in the reviewing of residency documentation. Examples of potentially acceptable residency documentation may include, but not limited to:

- (A) valid Colorado's driver's license or ~~valid Colorado~~ state-issued photo identification;
- (B) Colorado voter registration;
- (C) utility or water bill;
- (D) rental lease;
- (E) state income tax returns; and/or

(F) documentation reflecting ownership of residential real property in Colorado.

~~3.3.43.2.1~~ The following documentation must be provided by the contractor to the ~~d~~Division in the event of an investigation:

(A) documentation reflecting the taxable wages and fringe benefits for each covered worker on the public works project; and

(B) the required residency documentation for each covered worker on the public works project.

~~3.44.1~~ The governmental body financing a public works project shall waive the eighty percent requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance with the law would create an undue burden that would substantially prevent a project from proceeding to completion.

~~3.4.14.1.1~~ A governmental body that allows a waiver shall post notice of the waiver and a justification for the waiver on its website.

~~3.4.24.1.2~~ A governmental body shall not impose contractual damages on a contractor for a delay in work due to the waiver process.

~~3.55.1~~ All contracts let for public works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado shall contain provisions for the preference in employment of Colorado labor.

Rule 4. Waivers of the Eighty Percent Colorado Labor Requirement

~~4.1~~ ~~The governmental body financing a public works project shall waive the eighty percent requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance with the law would create an undue burden that would substantially prevent a project from proceeding to completion.~~

~~4.1.1~~ ~~A governmental body that allows a waiver shall post notice of the waiver and a justification for the waiver on its website.~~

~~4.1.2~~ ~~A governmental body shall not impose contractual damages on a contractor for a delay in work due to the waiver process.~~

Rule 4. Prevailing Wage Act: Contractor Payment Obligations

~~4.1~~ A contractor or subcontractor is required to pay all laborers, mechanics, and other construction workers all wages owed under the Prevailing Wage Act, C.R.S. § 24-92-202(6), no less frequently than once every seven calendar days (not workdays), regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such employees.

~~4.2~~ A contractor or subcontractor may discharge its minimum obligation for the payment of wages as contained in a wage determination by paying all employees the full amount unconditionally and at least once per week, the prevailing wage as defined in Rule 2.13.

~~4.3~~ An employee performing multiple positions with differing prevailing wage rates or classifications must be paid the appropriate wages on the wage determination for the classification(s) of work actually performed, without regard to skill.

Rule 5. Filing and Investigation of Complaints

5.1 KJICA Complaints

~~5.1.18.1~~ A person who alleges a potential violation of KJICA may file a complaint with the ~~D~~Division within ninety days after the date the public project was has been completed (not the date that the work was performed).

~~(A)8.1.1~~ Anonymous complaints are not accepted by the ~~D~~Division.

~~(B)8.1.2~~ Complaints shall be filed using the ~~D~~Division-approved form, and ~~t~~The complaint shall include the complainant's signature, contact information, and the basis for the complaint. Failure to include this information on the complaint form may result in administrative dismissal of the complaint.

~~8.1.3~~ ~~The complaint shall include the complainant's signature, contact information, and the basis for the complaint. Failure to include this information on the complaint form may result in administrative dismissal of the complaint.~~

~~5.1.28.2~~ Upon the receipt of a KJICA complaint, the ~~D~~Division shall notify the contractor of the complaint in writing via U.S. mail. In the event that the contractor cannot be contacted via U.S. mail, or other circumstances exist which warrant the use of other contact methods, the division shall utilize other methods to contact the contractor.

~~5.1.3~~ 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.

~~5.1.48.3~~ The ~~D~~Division ~~shall~~ commences the investigation only after ~~at the~~ completion of the project.

~~5.1.5~~ The Division investigates KJICA complaints pursuant to the Wage Protection Rules, 7 CCR 1103-7, to the extent not inconsistent with those Rules.

5.2 Prevailing Wage Act Complaints

~~5.2.1~~ An employee, former employee, or contracting agency ("complainant") may file a complaint with the contracting agency for a public project regarding any perceived violation of the prevailing wage requirements of Title 24, Article 92, Part 2 or Rule 4 of these Rules.

~~(A)~~ A complainant may, but is not required to, use the Division's public project prevailing wage complaint form to file a complaint with the contracting agency.

~~(B)~~ Upon receipt of a complaint, the contracting agency shall report the perceived violation to the contractor of the project, and, if applicable, the subcontractor which is the subject of the complaint within 48 hours of being made aware of the alleged violation.

~~(C)~~ If, within fifteen days of being notified of the alleged violation, the contractor or subcontractor (1) demonstrates to the contracting agency that no violation occurred or that any violation was the result of legitimate administrative error and (2) remedies any violation, the complaint shall be dismissed.

~~(D)~~ If the contracting agency determines that a "willful violation" occurred or the contractor or subcontractor fails to remedy any alleged violation within fifteen days of being notified, the contracting agency shall report the violation to the

Division. Upon receiving a report of an alleged violation from a contracting agency, the Division will treat the report as a complaint and investigate it pursuant to the Wage Protection Rules, 7 CCR 1103-7, to the extent not inconsistent with those Rules, to determine if the perceived violation was conducted in a willful manner, as defined in Rule 2.14 of these Rules.

5.2.2 If a complaint is not resolved by either the contracting agency, or the Division, the complaining employee or former employee may file a civil action in court within 120 days from the later of: (1) the employee's complaint to the contracting agency, if it is not resolved under Rule 5.2.1(C) or reported to the Division under Rule 5.2.1(D) of these Rules in that time; or (2) the Division's determination pursuant to Rule 5 of the Wage Protection Rules, 7 CCR 1103-7.

(A) Such civil action may be brought in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom in the civil complaint is filed resides or has their principal place of business, and must be brought within three years after the occurrence of the alleged violation.

(B) Such civil action may be brought for appropriate injunctive relief, actual damages, or both, and may be brought by one or more employees or former employees on behalf of him or herself or themselves and other employees similarly situated.

Rule 6. Compliance Standard

~~6.1 — Compliance with the requirements of the law shall be calculated on the total taxable wages and fringe benefits, minus any per diem payments, paid to workers employed directly on the site of the project and who satisfy the definition of Colorado labor.~~

~~6.2 — In order for a contractor to be found in compliance, eighty percent of total taxable wages plus fringe benefits must be paid to workers who satisfy the definition of Colorado labor and are employed directly on the site of the public works project.~~

Rule 6. Remedies and Fines

6.1 KJICA Remedies and Fines

6.1.1 If the Division determines that a contractor has knowingly violated Rule 3, it shall **subject the contractor to the following fines:**

- (A) ~~10.2(i)~~ for the first violation, either five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less;
- (B) ~~10.2(ii)~~ for the second violation, either ten thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less; or
- (C) ~~10.2(iii)~~ for the third violation and any subsequent violation thereafter, either twenty-five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less.

~~10.3 If the Division has imposed three or more **KJICA** fines on a contractor pursuant to the law within the past five years and finds the violations to be egregious, the **D**ivision may initiate the process to debar the contractor pursuant to C.R.S. § 24-109-105.~~

6.2 Prevailing Wage Act Remedies and Fines

6.2.1 If the Division reaches a determination pursuant to Rule 5 of the Wage Protection Rules, 7 CCR 1103-7, that a willful violation of Rule 4 of these Rules occurred, the Division may order any remedies permitted by law, including but not limited to that the Division:

(A) shall order restitution of applicable back pay for the impacted employees, including damages in an amount equal to the amount of unpaid wages or benefits owed, and any penalties that may be awarded under the Colorado Wage Act (unpaid fringe benefit contributions owed shall be paid to the appropriate benefit fund, except that in the absence of an appropriate fund the benefit shall be paid directly to the individuals), and

(B) shall subject the contractor to the following fines:

(1) for the first violation, five thousand dollars;

(2) for the second violation, ten thousand dollars; and

(3) for the third violation and all subsequent violations thereafter, twenty-five thousand dollars.

Rule 7. Residency Documentation

~~7.1~~ In order for a worker to satisfy the residency requirement, the worker must provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days prior to his or her first date of work on the public works project.

~~7.1.1~~ Workers who establish residency during the course of the project may also qualify pursuant to the director's determination.

~~7.2~~ The division assesses the acceptability and validity of residency documentation on a case by case basis. The division examines the totality of the circumstances and the evidence provided for each covered worker in the review of residency documentation.

~~7.2.1~~ Examples of acceptable residency documentation include:

~~a valid Colorado driver's license, or~~

~~a valid Colorado state-issued photo identification.~~

~~7.2.2~~ Examples of potentially acceptable residency documentation may include, but are not limited to:

~~Colorado voter registration;~~

~~utility bill;~~

~~rental lease;~~

~~state income tax returns;~~

~~ownership of residential real property in Colorado; and/or~~

~~additional documentation which establishes proof of residency in the State of Colorado.~~

Rule 7. Retaliation Prohibited

7.1 It is unlawful to retaliate for filing any complaint, or instituting or causing to be instituted any proceeding, under any law or rule related to wages or hours, including but not limited to these

Rules and the statutes they implement, under C.R.S. §§ 8-4-120, 8-6-115, Rules 4.7 – 4.8 of the Wage Protection Rules, 7 CCR 1103-7, and the Colorado WARNING Rules, 7 CCR 1103-11.

Rule 8. Complaints

~~8.1 — A person who alleges a potential violation of the law may file a complaint with the division.~~

~~8.1.1 — Anonymous complaints are not accepted by the division.~~

~~8.1.2 — Complaints shall be filed using the division-approved form.~~

~~8.1.3 — The complaint shall include the complainant's signature, contact information, and basis for the complaint. Failure to include this information on the complaint form may result in administrative dismissal of the complaint.~~

~~8.2 — Upon the receipt of a complaint, the division shall notify the contractor of the complaint in writing via U.S. mail. In the event that the contractor cannot be contacted via U.S. mail, or other circumstances exist which warrant the use of other contact methods, the division shall utilize other methods to contact the contractor.~~

~~8.3 — The division shall commence the investigation only at the completion of the project.~~

~~8.4 — The division shall complete any investigation in response to a complaint within ninety days of the date that the division began the investigation.~~

~~8.5 — Compliance shall be measured over the entirety of the completed project.~~

~~8.6 — The division shall not investigate or take any other action regarding a complaint filed more than ninety days after the project has been completed.~~

Rule 8. Appeals

~~8.1 — A complainant or respondent may appeal a Division determination pursuant to Rule 6 of the Wage Protection Rules, 7 CCR 1103-7. A Division determination is appealable to a hearing officer pursuant to Wage Protection Rule 6, and for judicial review of a hearing officer decision pursuant to C.R.S. § 8-4-111.5 and Wage Protection Rule 6.11. The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106.~~

Rule 9. Investigation Process

~~9.1 — Complaints shall be assigned to division investigators. Investigatory methods utilized by the division may include, but are not limited to:~~

- ~~i. interviews of the contractor, subcontractor, complainant, workers, and any other relevant parties;~~
- ~~ii. information gathering, fact-finding, and reviews of written submissions; and~~
- ~~iii. any other techniques which enable the division to assess the contractor's compliance with the law.~~

Rule 10. Compliance Determination and Penalties

~~10.1 — After investigating the complaint and assessing the contractor's compliance, the division investigator will issue a determination in writing.~~

~~10.1.1 — The determination will be provided to the contractor in writing.~~

~~10.1.2~~ The determination will contain information on the extent of the contractor's compliance with the law, and will describe what provisions of the law were adhered to and/or violated.

~~10.1.3~~ The determination will contain information on appeal rights and appeal procedures.

~~10.2~~ — After conducting an investigation of a complaint alleging a violation of the law, if the division determines that a contractor has knowingly violated the requirements by importing labor in excess of that permitted pursuant to the law, the division shall impose a fine on such contractor as follows:

- ~~i.~~ for the first violation, five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less;
- ~~ii.~~ for the second violation, ten thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less; or
- ~~iii.~~ for the third violation and any violation thereafter, twenty-five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less.

~~10.3~~ — If the division has imposed three fines on a contractor pursuant to the law within five years and finds the violations to be egregious, the division may initiate the process to debar the contractor pursuant to C.R.S. § 24-109-105.

~~10.4~~ — The division may dismiss a complaint in its discretion if, after conducting an investigation, the division determines that the circumstances that led to the complaint were the result of a minor paperwork violation.

Rule 11. Appeals and Hearings

~~11.1~~ — The determination issued by the investigator may be appealed to the division.

~~11.2~~ — A party to the claim who appeals the determination is entitled to an appeal hearing and final agency decision in conformity with the Colorado Administrative Procedure Act, C.R.S. § 24-4-105.

~~11.3~~ — A division hearing officer will preside over the hearing.

~~11.4~~ — The decision issued by the hearing officer is considered the initial decision.

~~11.5~~ — Any party to the claim may appeal the hearing officer's initial decision by filing written exceptions with the director of the division within thirty calendar days of the initial decision in accordance with C.R.S. § 24-4-105(14)(a)(II).

~~11.5.1~~ — A party may file written exceptions with the director of the division via email (cdle_LS_appeals@state.co.us), fax (303-318-8400), or mail/delivery (633-17th Street, Suite 600, Denver, CO 80202).

~~11.5.2~~ — If no party files written exceptions with the director of the division within thirty calendar days of the initial decision, the initial decision shall become the final agency decision.

~~11.6~~ — The record on appeal to the director is the division's record of its investigation unless the appealing party files a designation of the record with the division within twenty calendar days of the initial decision in accordance with C.R.S. § 24-4-105(15)(a).

~~11.7~~ — The director's decision upon review of any exceptions is the final agency decision. Any party to the claim may seek judicial review of this decision in accordance with C.R.S. § 24-4-106.

~~11.8~~ — Failure to file exceptions in accordance with rule 11.5 shall result in a waiver of the right to judicial review of the final agency decision in accordance with C.R.S. § 24-4-105(14)(c).

Rule 12. Enforcement

~~12.1~~ — The division shall enforce the requirements of the law in the event of a complaint alleging a potential violation of the requirements of the law.

~~12.2~~ — The requirements of the law may not be enforced through a private right of action.

Rule 13. Revenue Collected From Fines

~~13.1~~ — The revenue collected from the fines imposed pursuant to C.R.S. § 8-17-104(2) shall be transmitted to the state treasurer, who shall credit the same to the Colorado labor enforcement cash fund, which is hereby created. The general assembly shall make appropriations from the fund as necessary to cover the direct and indirect costs of the division in connection with the requirements of this law. All moneys not expended or encumbered and all interest earned on the investment or deposit of moneys in the fund remains in the fund and does not revert to the general fund or any other fund at the end of any fiscal year.

Rule 14. Severability

~~14.1~~ — If any provision of these rules or their application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of the rules shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of these rules are severable.

Rule 15. Federal and State Law

~~15.1~~ — Nothing in the law applies to any project that receives federal moneys. If the public works project is financed with any amount of federal money, the public works project is not covered by the provisions of the law.

~~15.2~~ — Nothing in the law contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this article to the extent of that accordance.

~~15.2.1~~ — The requirements of this law are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.