

## **DEPARTMENT OF LABOR AND EMPLOYMENT**

### **Division of Labor Standards and Statistics**

## **COLORADO CHANCE TO COMPETE ACT RULES**

### **7 CCR 1103-9**

(August 2019)

#### **Rule 1. Statement of Purpose and Authority**

- 1.1 The general purpose of these Colorado Chance to Compete Act rules is to implement the provisions of C.R.S. § 8-2-130. These rules are adopted pursuant to the Department of Labor and Employment's authority in C.R.S. §§ 8-1-107(2) and 8-2-130(5)(e).
- 1.2 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.
- 1.3 C.R.S. §§ 8-2-130, 24-4-105, and 24-4-106 (2019) are hereby incorporated by reference into this rule. Such incorporation excludes later amendments to or editions of these statutes. They are available for public inspection at the Colorado Department of Labor and Employment, 633 17th Street, Suite 600, Denver CO 80202. Copies may be obtained from the Department of Labor and Employment 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 2. Definitions and Clarifications**

- 2.1 "Aggrieved by" means a perceived violation witnessed by, suffered by, or injured by.
- 2.2 "Division" means the Division of Labor Standards and Statistics within the Colorado Department of Labor and Employment.
- 2.3 "An employer with eleven or more employees" in C.R.S. § 8-2-130 includes any employer of the requisite size, regardless of particular employees' worksites.

#### **Rule 3. Employer Record-Keeping**

- 3.1 If any written application, electronic application, or advertisement for an employment position includes any question, inquiry, or request as to any aspect of a "criminal history" as defined by C.R.S. § 8-2-130, then the employer shall maintain copies of any and all such documents for a period of eighteen months after such an application or advertisement was made available, or throughout an investigation under these rules, whichever is longer.

#### **Rule 4. Complaints**

- 4.1 A person who is aggrieved by violation of the C.R.S. § 8-2-130 may file a complaint with the division.
- 4.2 The Division will not accept complaints of violations that occurred before September 1, 2019, or more than twelve months prior to the date of the complaint.
- 4.3 Complaints shall be filed using the division-approved form. If a complaint is filed without using the division-approved form, the date the complaint is received will be the date of the complaint, then the complainant will have fourteen days to submit a division-approved form to avoid dismissal of the complaint without prejudice. The fourteen days runs from the date the division requests completion of the division-approved form, unless the deadline is extended by the division.

- 4.4 The complaint shall include a short and plain statement of its grounds. A complaint should also include or attach whichever the complainant is able to provide among the following: a link to, copy of, screen capture of, or other image of the application.
- 4.5 Anonymous complaints are accepted. If the complainant wants to remain available for participation in the investigation, be notified of the outcome of the investigation, or preserve any right to appeal the division's determination, the complaint must include the complainant's name, contact information, and signature.

#### **Rule 5. Investigations**

- 5.1 The division will investigate complaints that create a reasonable inference of a violation of C.R.S. § 8-2-130 on or after September 1, 2019.
- 5.2 Immigration status is not relevant to an investigation under these rules. The division will not ask about or disclose any record of an individual's immigration status.
- 5.3 After receipt of a qualifying complaint under Rule 5.1, the division will initiate the investigation by notifying the employer via U.S. postal mail, electronic means, or personal delivery.
- 5.4 Complaints shall be assigned to division investigators. Investigatory methods utilized by the division may include, but are not limited to:
  - 5.4.1 Interviews of the employer, employee, and other parties;
  - 5.4.2 Information-gathering, fact-finding, and reviews of written submissions; and
  - 5.4.3 Any other techniques that enable the division to assess the employer's compliance with the law.

#### **Rule 6. Determination**

- 6.1 Upon completion of the investigation, the division will issue a determination in writing to both the employer and the complainant. The determination will detail:
  - 6.1.1 The employer's compliance with and/or violation of C.R.S. § 8-2-130;
  - 6.1.2 If a violation of C.R.S. § 8-2-130 has occurred, the steps the employer must take to cure the violation;
  - 6.1.3 Any civil penalties ordered pursuant to C.R.S. § 8-2-130; and
  - 6.1.4 Appeal rights and procedures.
- 6.2 Civil penalties ordered pursuant to C.R.S. § 8-2-130 will be deposited into the General Fund of the State of Colorado.

#### **Rule 7. Appeals and Hearings**

- 7.1 Either the employer or the complainant may appeal the agency's determination.
  - 7.1.1 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 appealing party or the appealing party's authorized representative. The appealing party is encouraged to use the division's appeal form.
  - 7.1.2 No appeal will be heard and no hearing will be held unless the appeal is received by the division within thirty-five calendar days of the date the determination is sent. It is the responsibility of the appealing party to ensure the appeal is received by the division within the thirty-five day filing deadline.
  - 7.1.3 Upon receipt of the appeal, the division will send a copy of the record of its investigation to the parties via U.S. postal mail, electronic means, or personal delivery. All evidence submitted to the

division as part of the investigation is part of the record on appeal and need not be resubmitted.

- 7.2 A party that timely files a valid appeal of the division's determination will be afforded an administrative appeal hearing before a division hearing officer. Parties may appear by telephone.
- 7.3 The hearing officer shall have the power and authority to call, preside at, and conduct hearings. The hearing officer has 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.
- 7.4 The parties may submit new evidence to the hearing officer in accordance with deadlines imposed by the division.
- 7.4.1 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.
- 7.5 Evidence and requirements of proof in a hearing conducted pursuant to this section must conform, to the extent practicable, with those in civil nonjury cases in the district courts of this state. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person conducting the hearing may receive and consider evidence not admissible under such rules if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and must be noted in the record. The hearing officer shall give effect to the rules of privilege recognized by law. He or she shall exclude incompetent and unduly repetitious evidence. The hearing officer may accept documentary evidence in the form of a copy or excerpt if the original is not readily available; except that, upon request, the party shall be given an opportunity to compare the copy with the original. The division may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.
- 7.6 When the same or substantially similar evidence is relevant and material to the matters at issue in complaints by more than one complainant or in complaints by a single complainant with respect to two or more claimed violations, if, in the judgment of the hearing officer, consolidation of one or more proceedings would not prejudice any interested party, the hearing officer may:
- 7.6.1 Conduct hearings at the same time and place;
- 7.6.2 Conduct joint hearings;
- 7.6.3 Make a single record of the proceedings; and
- 7.6.4 Consider evidence introduced with respect to one proceeding as if introduced in the others.
- 7.7 If the party that filed the appeal does not participate in the hearing, the appeal may be dismissed.
- 7.8 The division shall keep a full and complete record of all proceedings in connection with the investigation. All testimony at a hearing must be recorded by the division but need not be transcribed unless the hearing officer's decision is appealed..
- 7.9 The hearing officer may, upon the application of any party or on his or her own motion, convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters that may simplify further proceedings.
- 7.10 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.
- 7.11 The hearing officer shall not engage in ex parte communication with any party to an appeal.
- 7.12 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. postal mail, electronic means, or personal delivery.

- 7.13 Any party to the administrative proceeding may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five days after the date of mailing of the decision by the division. The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. Judicial review is limited to appeal briefs and the record designated on appeal.