



**EMERGENCY AUTHORIZATION, PURSUANT TO C.R.S. 8-12-105(4), FOR
INCREASED WORK HOURS FOR LIFEGUARDS OF AGES 16-17
AT PUBLIC FACILITIES THROUGH SEPTEMBER 5, 2022**

The Colorado Youth Employment Opportunity Act (C.R.S. 8-12-101 et seq., the “YEO Act”), and the federal Fair Labor Standards Act (29 U.S.C. 201 et seq., the “FLSA”), regulate the employment of minors in Colorado. The FLSA rules forbid minors under age 16 from working more than 40 hours in a week, or 8 in a day.¹ The YEO Act forbids the same for any minors under 18, but authorizes the Director of the Division of Labor Standards and Statistics of the Colorado Department of Labor and Employment (“DLSS”) to grant either (A) an *individual exemption*, based on an application for a *specific employee* to work longer hours, or (B) a *blanket exemption*, based on a finding of an emergency need in a particular *industry or occupation*:

... no employer shall be permitted to work a minor more than forty hours in a week or more than eight hours in any twenty-four-hour period. In case of emergencies which may arise in the conduct of an industry or occupation (not subject to a wage order promulgated under article 6 of this title) the director may authorize an employer to allow a minor to work more than eight hours in a twenty-four hour period. In such emergencies an employee shall be paid at a rate of one and one-half times his time rate as determined in accordance with the provisions of section 8-6-106 for each hour worked in excess of forty hours in a week.²

In turn, “the provisions of section 8-6-106” that the YEO Act requires compliance with are as follows:

The director shall determine the minimum wages sufficient for living wages for persons of ordinary ability, including minimum wages sufficient for living wages, whether paid according to time rate or piece rate; the minimum wages sufficient for living wages for learners and apprentices; standards of conditions of labor and hours of employment not detrimental to health or morals for workers; and what are unreasonably long hours. ...³

Based on these federal and state laws on work by minors, the criteria for a blanket exemption are as follows:

- (1) that the Director finds an “emergenc[y] in a qualifying “industry or occupation” that warrants authorizing longer hours for minors, under 8-12-105(4) of the YEO Act;
- (2) that only minors age 16 or older be authorized longer work hours than 40 a week or 8 a day, under the federal FLSA rules that Colorado cannot provide any exemption from; and
- (3) that any minors authorized to work over 40 hours a week receive time-and-a-half overtime premium pay and other work conditions that accord with the 8-6-106 requirements to assure “wages sufficient ... [and] standards of conditions of labor and hours of employment not detrimental ... for workers,” under the 8-6-106 requirement that 8-12-105(4) of the YEO Act also reiterates.

I now find that the above criteria for a blanket exemption are met with the narrow scope and conditions, and based on the circumstances, detailed below.

¹ 29 C.F.R. 570.35.

² C.R.S. 8-12-105(4) (also exempting piece-rate seasonal agricultural work with perishable products). The referenced Director is the Director of DLSS.

³ C.R.S. 8-6-106 (also noting that the Director cannot authorize a minimum wage below any set by other laws).



(1) A qualifying emergency need exists to authorize more than 40 hours a week, or 8 a day, of work by minors age 16 or older employed as lifeguards by a public employer at pools or other aquatic facilities in Colorado through September 5, 2022. Numerous reports indicate that public pool and aquatic facilities lack sufficient lifeguard staffing for the summer of 2022. Regardless of cause, the lack of sufficient lifeguard staffing poses risks to public health and safety from either, or both, of the following:

- (A) the prospect of operating public pools or aquatic facilities without lifeguards, or with reduced lifeguard presence; and/or
- (B) closing or reducing the hours of public pools or aquatic facilities that provide minors with free opportunities for exercise and safe recreation during a still-ongoing pandemic when many have had reduced physical education and other school-based recreation opportunities for various periods of time since the spring of 2020.

I find that the above-detailed public health and safety risk constitutes an emergency need to authorize increased work hours for minors, to help redress insufficient lifeguard staffing in the summer of 2022.⁴ Labor Day (September 5, 2022) is a traditional end, or wind-down, of summer pool or aquatic facility operations; though some facilities (indoor pools, for example) remain fully operational year-round, the above-detailed emergency need is to assure coverage during the summer break when schools are not in session — a period that varies by school, but ends typically in mid-late August, and no later than Labor Day.

Only “an industry or occupation []*not subject to a wage order promulgated under article 6 of this title*”⁵ qualifies for a finding of an emergency need to authorize increased work hours for minors. Most industries and occupations are not eligible, because they *are “subject to a wage order,”*⁶ but most *public (governmental) employers* are not. The relevant applicable current wage order provisions fully exempt the following public employers: “the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, [or] school districts.” Thus, this emergency authorization for increased hours for minors employed as lifeguards can, and hereby does, apply to public pool and/or aquatic facilities of any of the above-listed categories of public employers, which include city, county, and other local governments, as well as special districts such as parks and recreation districts.⁷

(2) This authorization for increased work hours applies to only minors age 16 or older, to comply with federal law barring those under 16 from working over 40 hours in a week, or 8 in a day.⁸

⁴ Such risk is at least on par with others found to meet the analogous standard for a “temporary or emergency” rule. *E.g.*, *Elizondo v. Motor Vehicle Div.*, 570 P.2d 518, 523 (Colo. 1977) (holding sufficient a goal of helping applicants get probationary driver’s licenses more quickly than regular rulemaking); *Colo. Health Care Ass’n v. Dep’t of Soc. Servs.*, 598 F. Supp. 1400 (D. Colo. 1984) (holding sufficient a “budgetary emergency,” even if the budget problem was known “long before,” without strict need for “specific, objective data,” as long as “the reasoning process that leads to the rule’s adoption [was] defensible”), *aff’d*, 842 F.2d 1158 (10th Cir. 1988).

⁵ C.R.S. 8-12-105(4) (emphasis added).

⁶ C.R.S. 8-12-105(4) (emphasis added). The relevant “wage order promulgated under article 6” is the Colorado Overtime and Minimum Pay Standards Order (“COMPS Order”), promulgated under authority including Article 6 of C.R.S. Title 8. COMPS Order, 7 CCR 1103-1 (2022), Rule 1 & Appendix A (detailing promulgation authority).

⁷ Special districts such as parks and recreation special districts qualify as “quasi-municipal corporations” under the Colorado Special District Act, C.R.S. 32-1-101 et seq.

⁸ 29 C.F.R. 570.35.



(3) Employees working over 40 hours per week, or 8 per day, under this authorization must — for all time worked, including time not performing lifeguard duties:

- (A) receive overtime premium pay of one and one-half times their regular rate of pay for work beyond 40 hours per week;**
- (B) receive a regular pay rate of at least the full amount of the applicable minimum wage, not a reduced minimum wage, and otherwise be employed in compliance with other applicable wage and hour requirements; and**
- (C) work no more than 10 hours per day, and no more than 54 hours per week.**

The YEO permission for emergency authorization of increased work hours for minors requires that “[i]n such emergencies an employee shall be paid at a rate of one and one-half times his time rate as determined in accordance with the provisions of section 8-6-106 for each hour worked in excess of forty hours in a week.”⁹ The other statute the YEO references and adopts, 8-6-106, requires the following:

Determination of minimum wage and conditions. The director shall determine the minimum wages sufficient for living wages for persons of ordinary ability, including minimum wages sufficient for living wages, whether paid according to time rate or piece rate; the minimum wages sufficient for living wages for learners and apprentices; standards of conditions of labor and hours of employment not detrimental to health or morals for workers; and what are unreasonably long hours. ...¹⁰

I find that, to be in accordance with the 8-12-105(4) requirement of overtime premium pay, and the 8-6-106 requirement of sufficient “minimum wages [and] ... standards of conditions of labor and hours of employment not detrimental,” the following conditions shall be required for the employment of minors as lifeguards for over 40 hours per week, or 8 a day.

(A) Overtime premium pay, at one and one-half times the employee’s regular pay rate, must be paid for all hours above 40 per week — as expressly required by the YEO. That means that for hours worked beyond 40 in a week, an employee must be paid at a 50% higher rate than whatever their regular hourly rate is — as illustrated by the following examples of employees whose regular hourly pay rates are the 2022 Colorado minimum wage (\$12.56), the 2022 Denver minimum wage (\$15.87), or (since most lifeguards are not paid minimum wage) various higher rates:

| | | | | | |
|---|---------|---------|---------|---------|---------|
| If the employee’s <i>regular pay rate</i> (for up to 40 hours in a week) per hour is: | \$12.56 | \$15.87 | \$18.00 | \$20.00 | \$24.00 |
| Then their <i>overtime pay rate</i> (for hours beyond 40 per week) per hour must be: | \$18.84 | \$23.81 | \$27.00 | \$30.00 | \$36.00 |

Employers should note these key principles of overtime law, all detailed further in the labor rules¹¹ and

⁹ C.R.S. 8-12-105(4).

¹⁰ C.R.S. 8-6-106 (also noting that the Director cannot authorize a minimum wage below any set by other laws) (emphasis in original).

¹¹ Visit the Division’s “Labor Rules” page by selecting “Labor Rules” at www.ColoradoLaborLaw.gov, or at this direct link: cdle.colorado.gov/LaborRules.



guidance¹² published by the Division:

- The 50% higher overtime pay rate is required even if the employee’s regular rate is already 50% above minimum wage, because the purpose of overtime isn’t raising pay, it’s ensuring that long workweeks are more costly than workweeks of 40 hours or fewer.
- An employer who pays a salary or piece rate still must track work hours to calculate what the employee’s regular hourly rate is — by dividing total weekly pay by total weekly hours — and then add the required extra 50% for overtime hours.
- Supervisors may be overtime-exempt, but only if they (1) have mostly supervisory duties (example: a head lifeguard who mostly just lifeguards, with most actual supervision done by a higher supervisor or manager, would typically not be exempt), (2) supervise two or more others, and (3) receive a weekly salary of (in 2022) at least \$865.38.

(B) Minors working more than 40 hours per week, or 8 per day, under this authorization must be paid a regular rate of at least the full Colorado minimum wage, not the 15% reduced minimum wage available for non-overtime work by minors, and must be employed in compliance with other requirements of wage and hour law. Colorado law sets the state’s general minimum wage each year, by requiring a specific method of inflation adjustment, but also provides that a 15% lower minimum wage may be authorized for unemancipated minors,¹³ and the Division always has authorized that 15% reduction.¹⁴ That 15% reduction is in the same title of the Colorado statutes (C.R.S. Title 8: Labor) that requires the 40- and 8-hour limits on work hours for minors. Thus, the statute permitting a 15% lower minimum wage for minors co-exists with, and thus is premised on, a default assumption that minors work no overtime hours. The Division can, and here does, authorize exemptions from the law against minors working overtime. But the statute granting the Division such authority (C.R.S. 8-4-105(4) also requires that pay for minors working overtime be “in accordance with the provisions of section 8-6-106,” which in turn requires that [t]he director shall determine the minimum wages sufficient ... [and] standards of conditions of labor and hours of employment not detrimental ... for workers.” If employers assigning increased hours could pay minors a lower minimum overtime rate (50% above the 15% reduced minimum wage), then that could skew the labor market, by incentivizing them to divert overtime hours away from adult employees.

Accordingly, I find that the minimum that accords with the wage, hours, and labor conditions requirements of C.R.S. 8-6-106 is that if minors work more hours than the 40 per week, or 8 per day, that Colorado law sets as their ordinary maximum, then their regular pay rate must be at least the full minimum wage, and they must be employed in compliance with other applicable wage and hour requirements. Among those requirements: To assure the breaks that preserve lifeguards’ energy and attention levels to serve their critical public health and safety role, employers should note their requirements to provide rest and meal

¹² Visit the Division’s “Interpretive Notice & Formal Opinions (INFOs)” page by selecting “INFOs” at www.ColoradoLaborLaw.gov, or at this direct link: <https://cdle.colorado.gov/INFOs>. Of particular relevance here are:

- INFO #1 (Colorado Overtime & Minimum Pay Standards Order (COMPS Order) #38); and
- INFO #1A (The Executive, Administrative, and Professional Exemptions from the Colorado Overtime and Minimum Pay Standards Order).

After reviewing those materials, any employer or employee can ask the Division any questions at the phone number or email address published in each INFO, and atop this document.

¹³ C.R.S. 8-6-108.5(1). the minimum wage for minors may be fifteen percent below the minimum wage for other workers; except that the full minimum wage shall be paid to any emancipated minor.

¹⁴ COMPS Order, 7 CCR 1103-1 (2022), Rule 3.3.



periods — to minor and adult employees alike, and whether or not overtime hours are worked.¹⁵

(C) Minors will be authorized to work at most 54 hours per week, and 10 hours per day, under this authorization. Because a key premise of this emergency authorization for longer work hours is that lifeguards are critical protectors of public health and safety, their work hours need limits, in light of studies finding that especially long hours tend to increase employee errors and reduce safety. In granting *individual* exemptions for longer work hours for minors, the Division commonly authorizes at most 10 hours per day, and 50 per week. I find that a 54-hour weekly limit is appropriate here, given that many public facilities need to operate 6-7 days per week, and that a simultaneous 10-hour daily limit guards against the risks of longer hours to not only the lifeguards, but also the public whom they serve to protect.

Accordingly, based on the legal authority, findings, and reasoning detailed above, I hereby find as follows, and issue the following **emergency authorization for certain minors to work more than 40 hours per week, or 8 per day, with the scope and conditions specified below.**

- (1) A qualifying emergency need exists to authorize work hours in excess of 40 per week, or 8 per day, by minors employed by a public employer as lifeguards at pools or other aquatic facilities in Colorado, from the date of this authorization through Labor Day, September 5, 2022.**
- (2) This emergency authorization is limited to minors age 16 or over.**
- (3) Employees working over 40 hours per week, or 8 per day, under this authorization must — for all time worked, including time not performing lifeguard duties:**
 - (A) receive overtime premium pay of one and one-half times their regular rate of pay for work beyond 40 hours per week;**
 - (B) receive a regular pay rate of at least the full amount of the applicable minimum wage, not a reduced minimum wage, and otherwise be employed in compliance with other applicable wage and hour requirements; and**
 - (C) work no more than 10 hours per day, and no more than 54 hours per week.**

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

June 21, 2022

Date

¹⁵ Visit the Division’s “Labor Rules” page by selecting “Labor Rules” at www.ColoradoLaborLaw.gov, or at this direct link: cdle.colorado.gov/LaborRules.

Visit the Division’s “Interpretive Notice & Formal Opinions (INFOs)” page by selecting “INFOs” at www.ColoradoLaborLaw.gov, or at this direct link: <https://cdle.colorado.gov/INFOs>. Of particular relevance here is INFO #4 (Meal and Rest Periods).

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