



May 19, 2020

Via email to Scott Moss, Patrick Teegarden and Michael Primo

ATTN: Michael Primo  
Scott Moss  
Colorado Department of Labor and Employment  
Division of Labor Standards & Statistics  
633 17th St., Suite 201  
Denver, CO 80202

Today, we write on behalf of the Denver Metro Chamber of Commerce (Chamber) to express our concerns with the additional proposed changes by the Colorado Department of Labor and Employment (CDLE) to the Colorado Overtime and Minimum Pay Standards rules (COMPS). We represent thousands of employers that employ more than 400,000 Coloradans. Our 3000 members deliver great jobs for Coloradans and we support them through our work in advocacy, education, leadership training, small business resources and economic development.

We appreciate the opportunity to weigh in on potential changes to the wage order.

Our comments focus on the addition of rule 1.6.1, which seeks to redefine joint employment. While the stated intent is to clarify current policy, the new definition does just the opposite because it contains vague and confusing language that gives businesses little predictability. Predictability and clarity increase compliance, allow for long term planning and protect workers and employers. Further, rather than aligning with the definition by the Department of Labor (DOL), you are creating a new standard that will lead to confusion and disrupt economic activity and our recovery in Colorado. Additionally, the definition expands liability to businesses that have little to no control over an employee. Further, we believe the lack of stakeholder engagement is the fundamental flaw that didn't allow for these issues to be addressed.

The previous definition adopted by DOL on March 16, 2020, which previously guided CDLE, has four easy-to-comprehend parts that offer clear guidance to employers and employees. They are specific and concrete and allow an employer and the employee to understand and plan for an employment relationship in advance – something that is important for businesses at any time, but absolutely imperative right now considering the impact the Coronavirus pandemic has had on the economy, jobs and employees.

The proposed new definition has seven factors that are “non-exclusive” and is littered with language that can be interpreted broadly. Terms like “reasonable,” “general” and “included but not limited to” all add to the confusion of the definition. It states that relevant factors may be direct or indirect, expressed or implied and may be based on exercised or reserved authority. These can also be interpreted broadly. The definition includes “integral” work as a factor,



which is a vague term and requires interpretation. Most contract relationships involve the performance of integral or essential or important work, but they do not define a joint employer relationship. Integral business isn't included in the DOL or National Labor Relations Board tests for these contractual relationships. Finally, the definition states that these factors should be considered as a totality of circumstances, not solely based on the factors listed, which only creates further unpredictability.

Additionally, the lack of stakeholder engagement and timing in the midst of a pandemic for such an impactful change must be addressed. There should always be a thoughtful and inclusive process to adequately consider perspectives and unintended consequences, challenges of proposed changes to policy and we would argue even more important now as over 450,000 Coloradans have filed for unemployment in the last eight weeks and so many employers are struggling to make payroll. The CDLE should consider delaying additionally changes to COMPS to allow stakeholders to fully engage and voice their concerns and navigate this challenging time.

Our priority at the Chamber amid the pandemic has been to keep employers viable and employees on payroll – we would ask that CDLE consider a similar guiding priority to prevent more job loss in our state. The more successful we are at keeping employers and their organizations in business, the fewer additional economic consequences there will be for families and our communities.

Employment laws must be clear as we rebuild our economy and work to put Coloradans back to work. Additionally, many employers have been forced to make hard decisions as they struggle to meet their financial obligations. We should be planning for the longer term in everything we do, and these proposed changes only add to uncertainty and potential litigation.

The proposed changes will create a huge legal challenge for companies seeking part-time or temporary help, hiring independent contractors or outsourcing work to subcontractors, making our focus on supporting employers and employees in this economy much harder, not easier.

We hope you will consider striking the new definition of joint employer in COMPS or narrowing the definition to provide businesses with predictability as our business community grapples with existing changes and an unpredictable future. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Kelly G. Brough". The signature is written in a cursive, flowing style.

Kelly Brough  
President and CEO  
Denver Metro Chamber of Commerce