

COLORADO DIVISION OF LABOR
STANDARDS AND STATISTICS PUBLIC MEETING

February 19, 2021

MIKE PRIMO, Director of Operations and Rules Coordinator

ELIZABETH FUNK, Director of Labor Standards

ERIC YOHE, Labor and Standards Outreach Manager

1 P R O C E E D I N G S

2 MR. PRIMO: Thank you. And good afternoon
3 everybody. My name is Michael Primo. I'm the Director of
4 Operations for the Division of Labor Standards and
5 Statistics. This public hearing is to discuss the
6 Division's recently proposed wage protection rules. This
7 meeting and comments made in the chat window of this Google
8 Meeting are being recorded for administrative record and so
9 Division staff may review them as needed.

10 If you plan to speak, indicate that in the chat
11 window. If you are participating by Internet, we will call
12 on speakers in the order we receive the requests. After
13 speakers participating by Internet, we will solicit
14 testimony from those participating by phone. Written
15 comments can be submitted via the chat window by the RSVP
16 form on our website or by e-mailing myself,
17 michael.primo@state.co.us. Comments are due by 12:00 p.m.,
18 Monday, February 22nd, 2021.

19 For those of you joining via Google Meet, please
20 pin the presenter screen by clicking the pin button on the
21 presenter's icon. Please hold your verbal comments until
22 you are prompted. If you need help during the public
23 meeting, please use the Google Meet Chat feature to contact
24 myself as I will be monitoring all incoming chats.

25 Once we call your name, please unmute yourself

1 before speaking. To unmute yourself, please click Ctrl D if
2 you are using a computer, or *6 if you are using your phone.
3 Please state your full name, the rule--please state your
4 full name, the rule of which you're discussing, and describe
5 as much as you can, your job, and your role. If applicable,
6 please also state the organization you are representing.
7 Please limit your verbal comments to five minutes. After
8 you are done speaking, the Division may ask you questions
9 related to your verbal comments. Afterwards, please mute
10 yourself so that others may speak.

11 This forum is only for comments related to the
12 proposed rule. For any direct questions you may have
13 regarding these rules or guidance, please e-mail them to
14 myself, michael.primo@state.co.us, and we will answer these
15 questions about the proposed rule outside of this meeting
16 and as promptly as we can so that we can confer to make sure
17 the answers are as accurate as we can provide.

18 If you need to remain anonymous to exercise your
19 right to confidentiality under 7 CCR 1103-7, Wage Protection
20 Act Rule 4.7, please give your--just your first name or a
21 pseudonym and describe as much of your job and role as you
22 can. You can also choose to turn your video off so that the
23 Division cannot physically see you but can still hear you.
24 If you would like to provide your name and information for
25 record regardless if you speak, please e-mail that

1 information to myself, michael.primo@state.co.us, after this
2 meeting, and I will add your contact information to our
3 rule-making contact list.

4 I will now hand this over to Elizabeth Funk to
5 begin the public hearing.

6 MS. FUNK: Thanks, Mike.

7 Hi everyone, good afternoon. I'm Liz Funk, the
8 Labor and Standards Director for the Division of Labor,
9 Standards and Statistics. The time is now 1:03 p.m. on
10 Friday, February 19th, 2021. This is a virtual public
11 hearing that we're holding today held by our Division with
12 participants listening and speaking by Internet and phone.
13 A recording of this hearing will be added to on our
14 rule-making administrative record.

15 Thank you, Mike, today for reading the
16 instructions, and thank you for joining us, everyone. With
17 me in attendance are Eric Yohe, our Labor and Standards
18 Outreach Manager, and Mike Primo who read the instructions,
19 our Director of Operations and Rule Coordinator.

20 Today we'll be accepting testimony for the
21 following proposed rule, Wage Protect Rule 7 CCR 1103-7.
22 Today's notice of public hearing and associated rule-making
23 documents were filed with the Secretary of State on
24 January 15th, 2021. After the notice was filed, we posted
25 all rule-making documents on our website and circulated the

1 documents by e-mail to our rule-making contact list of over
2 400 stakeholders. It's a mix of individuals and
3 organizations that have expressed interest in or were known
4 to the Division to be interested in our rules.

5 These rules make permanent the latest version of
6 our Wage Protection Rules which is the temporary or
7 emergency rules adopted on December 23rd, 2020, and
8 effective on January 1st, 2021. These amended rules are
9 proposed to clarify ambiguity in existing statutory and rule
10 text as to whether paid leave for needs related to the
11 COVID-19 public health emergency which is required under the
12 Colorado Healthy Families and Workplaces Act, also known as
13 HFWA, has been required as of January 1st, 2021.
14 Specifically, Rules 2.11 and 3.5.1(c) are amended to clarify
15 that a public health emergency that triggers COVID-related
16 paid leave in 2001 may be an emergency declared at any time
17 on or after the HFWA statutory effective date of July 14th,
18 2020, and that a qualifying emergency already has triggered
19 80-hour COVID related paid leave as of January 1st, 2021.
20 The Division plans on adopting these rules next Tuesday,
21 February 23rd, 2001, with an effective date of April 14th,
22 2021.

23 Before we begin, a few more rules and guidelines
24 for the record. In this hearing today the Division is
25 accepting oral testimony as well as written comments through

1 the chat window, as Mike mentioned, available to anyone
2 joining by Internet. The same administrative record will
3 also include any oral testimony from today, all comments in
4 the chat window, and all written comments we've received so
5 far and will continue to receive until the deadline of noon
6 next Monday. All testimony and comments are reviewed by the
7 same Division officials. Accordingly, while you are free to
8 comment or testify by whatever means you prefer, there is no
9 need to repeat points in multiple forms of testimony and
10 comment submission.

11 Written comments may be submitted in various ways.
12 You can e-mail them to Mike Primo. You can submit them
13 through the form on our website. Or if they are short, you
14 can simply type them into the chat window in this Google
15 Meet. The comment deadline, just to repeat it one more
16 time, is 12:00 p.m. this Monday, February 22nd, 2021.

17 This forum is for comments related to the proposed
18 rules. If instead you've a question that you would like to
19 get answers to, we'd be happy to respond to them outside
20 this hearing. If that's the case, please e-mail questions
21 to Mike Primo, you see his e-mail address on the
22 instructions there, and we can provide you with an
23 individualized answer.

24 We anticipate that the time today available for
25 today's hearing will be enough to hear all testimony on the

1 proposed rules. The hearing will be ongoing as long as
2 needed for everyone who wants to testify. We will end the
3 hearing once nobody else wishes to testify. If more time is
4 needed or if we're having technical difficulties, we'll
5 continue this hearing at another date which we will announce
6 at end of today's hearing and post on our website.

7 If you are attending this hearing by Internet and
8 would like to testify, please say so in the chat feature of
9 this Google Meet, and Mike will call on you. And we will
10 call on you in the order in which we receive the chats. If
11 you are attending this hearing by phone, we will provide you
12 an opportunity to testify by asking if any phone
13 participants wish to testify after we hear testimony from
14 those participating by Internet.

15 Please keep your computer or phone on mute. If
16 you are testifying, still keep your phone on mute until we
17 call your name.

18 As you begin your testimony, please do the
19 following three things. First, please unmute yourself. The
20 instructions are right there on how to unmute yourself.
21 Second, please state your full name, job, and role, and
22 indicate whether you are speaking for any organization as
23 well. If you wish to remain anonymous, then just say your
24 first name or pseudonym and describe as much of your job and
25 role as your uncomfortable doing. Third, please indicate

1 the rule or rules you'd like to discuss.

2 Your testimony today is limited to five minutes.
3 Try to speak in a clear, slow voice. We may interrupt you
4 to ask you to repeat anything that we think may not have
5 been heard or we think may not be audible on the recording.

6 After you've finished speaking, we may ask
7 follow-up questions. But when you are finished with your
8 testimony, please mute yourself again so that others may
9 testify.

10 If you'd like to provide your name and information
11 for the record, whether you testify or not, please e-mail
12 Mike after this hearing or fill out our Division's RSVP form
13 which is on our website on the proposed rules web page. The
14 e-mail address and web link are also on the instruction
15 sheets visible to those who are joining by Internet today.
16 We will note your attendance in the record.

17 Thank you again for coming to your public hearing
18 today and for participating in our rule-making process. We
19 will now proceed with any oral testimony. We will first
20 start with those who have signed up in advance and then
21 proceed to those who want to testify and are participating
22 by Internet. And then we'll solicit testimony from those by
23 phone.

24 So Mike, I'll hand it back to you.

25 MR. PRIMO: Thank you, Liz.

1 First person that I had signed up was David
2 Gartenberg. David, if you are available, would you please
3 unmute yourself?

4 MR. FREEMAN: Hi there. This is Matt Freeman.
5 I'm a colleague of David's. We're both attorneys at Littler
6 Mendelson here in Denver. Unfortunately, David had
7 something come up, so he can't be on the call. But we both
8 worked together to draft the comment that we've submitted.
9 So if it's okay with you, I'd be happy to address our
10 comment in detail.

11 MR. PRIMO: Yes. That would be fine. And could
12 you repeat your name again, Matthew?

13 MR. FREEMAN: Certainly. This is Matt Freeman,
14 and I am an attorney at Littler Mendelson P.C. On behalf of
15 the Workplace Policy Institute, we've submitted a comment.
16 And I know it's not quite the deadline for those yet. And
17 I'd encourage anyone to review our comment in more detail
18 because it will certainly be more substantive than what
19 we'll walk through here on the phone.

20 But, you know, there's two areas that I think this
21 rule could be clarified. And I'm speaking about 7 CCR
22 1103-7. In our opinion and in conversations that we've had
23 with a number of our clients, there are some ambiguities
24 regarding how much leave employers must provide,
25 particularly for part-time employees, and also how much

1 leave these employers must provide to employees who have
2 accrued paid sick and safe time and then would also like to
3 use public health emergency leave time.

4 So to start with the first category, the rules go
5 on to provide that employees who normally work under 40
6 hours in a week, so these are part-time employees, they must
7 have access to PHEL, paid leave hours, that are at least the
8 greater of the number of hours the employee (a) is scheduled
9 to work for in the upcoming 14-day period, or (b) actually
10 works on average in the 14-day period prior to the
11 declaration of the public health emergency or January 1st,
12 2021, whichever is later. Again, that's Rule 3.5.1(b)(2).

13 Our concern and our comment is that both of those
14 formulations can be susceptible to multiple interpretations
15 and are a little ambiguous. So first, the upcoming 14-day
16 period language, it seems ambiguous because it's a little
17 unclear on what is the actual upcoming 14-day period to
18 which that rule refers. The Division could mean the 14-day
19 period after January 1st, 2021, which we think would be
20 consistent with the rules contemplating that employers
21 provide a one-time supplement of that PHEL on the day that
22 an actual public health emergency is declared.

23 However, that clause could also be interpreted to
24 mean that that 14-day period is from the date that employee
25 requests to take PHEL leave. So we would encourage the

1 Division to adopt the first interpretation which would be
2 part-time employees would be entitled to PHEL for the
3 COVID-19 public health emergency in the amount of hours that
4 employees are scheduled to work in the 14-day period
5 following January 1st, 2021. Otherwise, we think it would
6 be really difficult for employers to calculate PHEL for
7 their employees because it would be a moving target.

8 And for the second clause of that Rule
9 3.5.1(c)(2), that provides if the amount is greater than the
10 upcoming 14-day period, employers must provide PHEL in the
11 amount of hours the employee actually worked on average in
12 the 14-day period prior to January 1st, 2021. And again, we
13 think this may be a little bit ambiguous. We encourage the
14 Division, frankly, to strike that language and to instead
15 simply require that employers provide PHEL in the amount
16 employees actually worked in the 14-day period prior to
17 January 1st, 2021. We think both of these would simplify
18 the rule and allow some reliability for a lot of clients who
19 are wondering how to provide this PHEL leave to their
20 part-time and seasonal employees.

21 And the second big caveat, and I'm almost done
22 here, but our second big comment is what remains unclear
23 also is what amount of PHEL an employer must provide if an
24 employee has used some or all of their accrued PSSL leave,
25 so the paid sick and safe time leave, before requesting to

1 take PHEL. So by way of just an example, an employee who
2 has no need to use public safe and sick time leave or PHEL
3 before March 1st, if that employee needs to take a day off
4 for a PSSL reason, let's say that employee uses 8 of their
5 10 accrued PSSL hours, if that same employee then needs to
6 take leave for a covered PHEL reason, it's unclear if that
7 accrued 10 hours of PSSL in the year would be redacted or
8 subtracted out from the 80 hours of PHEL or if only 2 of the
9 hours. So basically, they've used 8 of their 10 accrued
10 PSSL hours, are only 2 of those hours then subtracted from
11 the total 80 hours of accrued and usable PHEL?

12 Again, this is somewhat ambiguous, and we would at
13 Littler encourage and urge the Division to adopt an
14 interpretation such that an employee would have access to 70
15 hours of PHEL if they have accrued 10 hours of PSSL just
16 because it's simpler for record keeping for our employers,
17 and they don't need to track how much has been accrued, how
18 much has been used, and how much that would impact PHEL
19 leave for every particular employee.

20 So again, I would encourage Division to review our
21 submitted comments in length because it's certainly more
22 clear, I think, to read these than to discuss them with all
23 the acronyms. But those would be the two areas that the
24 Workplace Policy Institute would encourage the Division to
25 take a closer look and maybe address those two positions.

1 So with that I'll end my comments. Thank you very
2 much.

3 MR. PRIMO: Thank you, Matthew. And you had
4 stated that you had submitted a comment. I have not
5 received written comments yet from Littler. So is this from
6 a past rule making? Or is this a current comment that you
7 guys had submitted?

8 MR. FREEMAN: You know, it's a current comment,
9 and it may actually still be in our editing phase before
10 it's submitted by a paralegal. So that may be the hang up.
11 It's dated today, so I'm sorry if you haven't got it. It's
12 my mistake and you should be getting it before close of
13 business today.

14 MR. PRIMO: Oh, no worries. I just wanted to make
15 sure that we weren't missing any comments from you. So
16 that's great. Yeah. Thank you.

17 And at this time we don't have anybody in the chat
18 window that has requested to provide any testimony. Is
19 there anybody that would like to unmute themselves right
20 now? If you are on the phone, again, you would hit *6. If
21 you are on the computer, you can hit Ctrl D.

22 (Pause.)

23 Okay. I'll give about 30 more seconds for anybody
24 out there that would like to provide any comments or
25 testimony regarding these rules. Again, if you don't want

1 to speak, you can always submit those via e-mail to myself,
2 michael.primo@state.co.us.

3 (Pause.)

4 Okay. At this time it doesn't appear as though
5 there is any more public comment or testimony for this rule.
6 I will then send it back to Elizabeth Funk to close out the
7 public hearing.

8 MS. FUNK: Thanks Mike.

9 Thank you again everyone for attending today. As
10 Mike noted, our comment deadline is Monday at noon which is
11 February 22nd. So you still have some time if you'd like to
12 submit a written comment for us to consider. We are
13 adopting the following day on February 23rd. If you have
14 any questions, please contact Mike. We are monitoring our
15 e-mail very closely since we are very close to our adoption
16 date, and we'll try to be as responsive as we can.

17 So again, thank you for coming to the hearing
18 today. This concludes our public hearing on Wage Protection
19 Rule 7 CCR 1103-7.

20 (Whereupon, the meeting was concluded.)

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIBER'S CERTIFICATE

I hereby certify that the foregoing has been transcribed by me to the best of my ability, and constitutes a true and accurate transcript of the mechanically recorded proceedings in the above matter.

Dated at Aurora, Colorado, this 23rd day of February, 2021.

/S/Patti Petersen
Patti Petersen
Federal Reporting Service, Inc.
17454 East Asbury Place
Aurora, Colorado 80013
(303) 751-2777