

COLORADO DIVISION OF LABOR
STANDARDS AND STATISTICS PUBLIC MEETING

November 2, 2020

SCOTT MOSS, DLSS Division Director
MIKE PRIMO, Director of Operations and Rules Coordinator
ELIZABETH FUNK, Director of Labor Standards
SAIDA MONTROYA, Investigations Manager
JESSICA LONG, Direct Investigations Manager
ERIC YOHE, Labor Standards Outreach Manager
DEAN CONDER, Labor Relations Administrator
EVE POGORILER, Senior Hearings Officer
RAJA RAGHUNATH, Administrative Law Judge
ASHLEY BOOTHBY, Senior Policy Advisor
MARY DONACHY, Senior Policy Advisor

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

2 MR. PRIMO: Good morning everyone. We would
3 like to begin this hearing. If everybody could please go
4 ahead and mute themselves.

5 This public hearing is to discuss the Division 6
6 recently proposed set of rules. This meeting and the
7 comments made in a chat window of the Google Meeting are
8 being recorded for administrative record and so the Division
9 staff may review them as needed. If you plan to speak,
10 indicate in the chat window if you are participating by
11 Internet, and we will call on the speakers in the order in
12 which we receive the request.

13 After speakers participating by Internet, we will
14 solicit testimony from those participating by phone.
15 Written comments may also be submitted via the chat window
16 by the RSVP form found on our website or by e-mailing
17 myself, michael.primo@state.co.us. All comments are due
18 5:00 p.m., Thursday, November 5th, 2020.

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

1 Once we call your name, please unmute yourself for
2 speaking. To unmute yourself, please click control D if
3 you're using a computer or star 6 if you're using your
4 phone. Please state your full name, the rule you wish to
5 discuss, and describe as much as you can at your job and
6 your role. If applicable, please also state the
7 organization you are representing. Please limit your verbal
8 comments to five minutes. If you would like discuss
9 multiple rules, you may do so, however, you will only
10 receive a maximum of twelve minutes total.

11 After you are done speaking, the Division may ask
12 questions related to your verbal comments. Afterwards,
13 please mute yourself so that others may speak. This form is
14 only for comments related to the proposed rules. For any
15 direct questions you may have regarding these rules or
16 guidance, please e-mail them to michael.primo@state.co.us.
17 We will answer these questions about the proposed rules
18 outside of this meeting and as promptly as we can so that we
19 can confer to make sure answers are as accurate as we can
20 provide.

21 If you attend--if you need to remain anonymous to
22 exercise your right to confidentiality under 7 CCR 1103-7,
23 Wage Protection Act Rules, Rule 4.7, please give just your
24 first name and--or pseudonym and describe as much of your
25 job and role as you can. You can also choose to turn off

1 your video so that the Division cannot physically see you
2 but can still hear you. If you would like to provide your
3 name and information for the record, regardless if you speak
4 or not, please e-mail me at michael.primo@state.co.us after
5 this meeting, and I will add you to our contact information
6 to our rulemaking contact list.

7 Right now I will turn it over to Scott Moss our
8 Division Director.

9 MR. MOSS: Thank you, Mike.

10 Good morning everyone. I'm Scott Moss, Director
11 of the Division of Labor Standards and Statistics here in
12 the Colorado Department of Labor and Employment. The time
13 is now 9:04 a.m. on Monday, November 2nd, 2020. This is a
14 public rulemaking hearing held at this Division with
15 participants listening and speaking by Internet and phone.
16 A recording of this hearing will be added to the
17 administrative record for these rules as Mike mentioned.

18 Thank you, Mike, for reading today's instructions.
19 I won't repeat them all, but I'll give a couple ground rules
20 and highlights.

21 Thank you all for joining us. With me in
22 attendance today are the following officials from the
23 Division: Liz Funk, Director of Labor Standards; Mike Primo,
24 Director of Operations, and Rules Coordinator; Saida
25 Montoya, Investigations Manager; Jessica Long, Direct

1 Investigations Manager; Eric Yohe, Labor Standards Outreach
2 Manager; Dean Conder, Labor Relations Administrator; Eve
3 Pogoriler, Senior Hearings Officer; Raja Raghunath,
4 Administrative Law Judge; Ashley Boothby, Senior Policy
5 Advisor; and Mary Donachy, Senior Policy Advisor.

6 Today we're accepting testimony for the following
7 six proposed sets of rules in one combined hearing because
8 the rules are on simultaneous schedules. And per Division
9 practice, we hold combined hearings at which people can
10 testify on some or all of the proposed rules we have.

11 First, Colorado Overtime and Minimum Pay
12 Standards Order, the "COMPS" Order, No. 37, 7 CCR 1103-1;
13 Wage Protection Rules, 7 CCR 1103-7; Direct Investigation
14 Rules, 7 CCR 1103-8; Colorado Whistleblower,
15 Anti-Retaliation, Non-Interference, and Notice-Giving or
16 "Colorado Warning" Rules, 7 CCR 1103-11; Colorado State
17 Labor Relations Rules, 7 CCR 1103-12; and Equal Pay
18 Transparency Rules, 7 CCR 1103-13. The latter three are new
19 sets of rules based on recently enacted statutes. The first
20 three are amendments to existing rules but also based on
21 statutory mandates for rulemaking by this Division in those
22 newly enacted statutes and existing statutes.

23 The Notice of Public Hearing and associated
24 rulemaking documents were filed with the Secretary of State
25 September 25th through 30th for all six sets of rules.

1 After that, the Division posted all rulemaking documents on
2 our website and circulated them to our contact list of over
3 400 stakeholders, many of you here, a mix of individuals and
4 organizations that have expressed interest in or are known
5 to the Division to be interested in Division rules. If you
6 are not yet part of our stakeholder list and would like to
7 be, so indicate in the chat, and Mike Primo will add you to
8 our list for future notices.

9 Before we begin, a few rules and guidelines.
10 We're accepting oral testimony in this hearing as well as
11 written comments through the chat window for anyone here by
12 Internet. It's the same administrative record that will
13 include all oral testimony, all comments in the chat window,
14 and all written comments submitted outside this hearing.

15 All testimony and comments are reviewed by the
16 same Division officials. So while you're free to comment or
17 testify by any or all means you prefer, there is no need to
18 repeat points in multiple forms of testimony and comment
19 submission, though you may if you wish. Or if you are
20 submitting written comments and also testifying, you can use
21 your oral comments just to hit highlights or call our
22 attention to key points in your written comments.

23 Written comments can be, as we mentioned, in the
24 chat window or e-mailed to Mike Primo whose e-mail address
25 is posted, or can be submitted through the RSVP form on our

1 website which also functions as a comment submission form.
2 The comment deadline as Mike (inaudible) bears repeating is
3 5:00 p.m. this Thursday, November 5th, 2020, having been
4 open since the last week of September.

5 This forum is for comments related to our proposed
6 rules, the ones I have listed. If instead you have
7 questions you would like answers to, for example, a question
8 about the application of some law or rule to your personal
9 situation or just questions you would like answers to
10 without commenting on the rules, we'd be happy to respond
11 outside this hearing. You can e-mail questions to Mike
12 Primo. Again, the e-mail is posted, but it's
13 michael.primo@state.co.us, and we will provide an individual
14 answer promptly.

15 We anticipate the time available for today's
16 hearing will be enough for all testimony on all rules. The
17 hearing will be ongoing as long as needed for everyone who
18 wants to testify. We will end the hearing once no one else
19 wishes to testify. If more time is needed or if we have
20 technical difficulties, this hearing may be continued to
21 another date which we would announce at the end of today's
22 hearing and also post on our web page.

23 If you're here by Internet and would like to
24 testify, please say so in the chat feature of this Google
25 Meet. We will call on those who wish to speak in the order

1 in which folks have RSVP'd before the hearing and then in
2 the order in which they so indicate in the chat window.

3 If you're here by phone, we will provide an
4 opportunity for folks here by phone to testify after the
5 testimony from those participating by Internet simply
6 because by (inaudible) not as ready a way to list yourself
7 in a particular order. But everyone will have an
8 opportunity to testify.

9 Please keep your computer or phone on mute. If
10 you're testifying, still keep your phone on mute until we
11 call your name.

12 As you begin your testimony, please do the
13 following three things. First, please unmute yourself.
14 Then, when I remind you that you forgot to unmute yourself,
15 please unmute yourself.

16 Second, as Mike noted, please state your full
17 name, job, and role, and whether you're speaking for any
18 organization as well because sometimes it can be unclear if
19 someone is an officer or member of an organization whether
20 they're speaking for the organization or just listing the
21 organization to give background on their affiliation. If,
22 however, as Mike noted, you wish to remain anonymous, that
23 is your right under Wage Protection Act Rule 4.7. Just say
24 your first name or a pseudonym and describe as much of your
25 job or role as you're comfortable doing.

1 Third, please indicate the rule or rules you would
2 like to discuss since we have multiple sets of rules. And
3 even within sets of rules, there are multiple rules that are
4 being proposed, so clarity as to exactly which rules you are
5 covering would be helpful. I would suggest at the start of
6 your testimony you indicate which (inaudible) and rules
7 you're speaking to, and then in your comments make clear
8 when you're speaking on each particular one.

9 Testimony is limited to five minutes per person.
10 If you wish to discuss multiple sets of rules, you may take
11 an additional five minutes per set up to a maximum of twelve
12 minutes total. So if you're speaking on three sets of
13 rules, it could be four each. We won't break it down as
14 simply as must be four or five minutes per each. You can
15 take up to ten for two sets of rules, twelve total. If you
16 have more to say, that is absolutely fine. That's why we
17 are allowing multiple forms of participation in rulemaking,
18 a mix of submitting written comments, putting comments in
19 the chat window, or submitting them via the RSVP form.

20 After you finish speaking, the Division may ask
21 follow-up questions. When you're finished, please mute
22 yourself so others may testify.

23 If you'd like to provide your name and information
24 for the record, whether you testify or not, please e-mail
25 Mike Primo after this hearing, or fill out the RSVP form.

1 The forms and the e-mail addresses, again, are on our
2 "Proposed Rules" link on our website. Our website, again,
3 is coloradolaborlaw.gov. The e-mail address and web link
4 are also on the instruction sheet that should be visible to
5 you.

6 Thank you again for taking the time to attend this
7 public hearing and to participate in the rulemaking process.
8 And thanks to those of you who have submitted written
9 comments in advance. Getting this kind of feedback is
10 extremely helpful because as those of you who are frequent
11 fliers with the Division know we read every single comment
12 by multiple individuals at the Division, discuss them
13 seriously, and we quite often do amend our proposed rules
14 based on good points that individuals make. So we genuinely
15 appreciate the written comments and the participation in the
16 hearing.

17 We'll now proceed with oral testimony. We'll
18 start with those who signed up to testify in advance, then
19 proceed to those who say in the chat window they want to
20 speak, and then we'll call on participation by anyone here
21 by phone.

22 Mike, who's first up?

23 MR. PRIMO: Thank you, Director Moss. Right now
24 we have Dean Harris.

25 Dean, if you're available, would you please unmute

1 yourself and begin speaking?

2 MR. HARRIS: Thank you very much. I'd like to
3 thank the Division for making this opportunity available.
4 I'd also like to thank the Division for their easy
5 accessibility and response to this during some difficult
6 times recently in the labor realm.

7 Again, my name is Dean Harris. I am an attorney
8 and the Western Slope Area Manager for the Employer's
9 Council. Employer's Council is a nonprofit organization
10 that advises, represents, and trains employers in every
11 phase of the unemployment relationship. We have
12 approximately 4,000 members and every size and every
13 industry sector imaginable.

14 I don't speak on behalf of the Employer's Council.
15 I speak as an individual but have collected some of the
16 questions and thoughts that have been shared to me both by
17 other attorneys in our organization and by some of our
18 members on particular rules.

19 In particular, I have just a couple of questions
20 and comments on Equal Pay Transparency, specifically Section
21 4.2, Opportunities for Promotion, and then have one comment
22 under the COMPS Rule, proposed COMPS Rule on Section 2.2.1.
23 Under pay transparency, Rule 4.2 specifically speaks to
24 certain obligations that are triggered by an opportunity for
25 promotion. And I would say that of all the questions that

1 we receive on a daily basis from our members, the most
2 frequent question we are receiving is what is an opportunity
3 for promotion and when are these obligations triggered.

4 The statute does not define a promotion and nor
5 does the proposed rule define an opportunity for promotion.
6 So we are getting questions around types of promotional
7 opportunity such as formal mentoring programs, succession
8 planning, elevate or promotions that, for example, act upon
9 seniority or some other automatic trigger to elevate someone
10 from a junior to a senior status, or it involve a pay raise.

11 The--it appears to make some common sense that an
12 opportunity for a promotion should involve some type of
13 competitive process. That, therefore, the obligation would
14 be triggered upon--on a process that, rather than being
15 automatic, is competitive in nature. And when that
16 triggers, we would love to see clarification. I know our
17 members would love to see clarification on when
18 nontraditional types of promotion are triggered.

19 As well, we've received questions from employer
20 groups, so, for example, an employer who in turn runs
21 professional corporations where each location perhaps has a
22 separate employer information number, or larger
23 organizations that run semiautonomous Divisions or
24 locations. Where these locations have to date acted
25 autonomously, they have not posted jobs for--across the

1 organization for each location. They've posted jobs
2 independently. Employees may not even have access to the
3 intranet to job opportunities at the employer's other
4 locations. And these members are concerned whether they
5 need to change their hiring and their promotional practices
6 to share promotional opportunities to people that, frankly,
7 those have not been open to before, where they've promoted
8 internally within each--in--within each autonomous or
9 independent group.

10 And finally, just have one comment on COMPS and
11 specifically Rule 2.2.1. I've saved this one for last just
12 because I can hear the--I can hear the eyelids flutter and
13 the eyes rolling because I know this is a subject we've
14 covered before. But I see the proposed rule still contains
15 an interesting definition for administrative employees who
16 are exempt from the act.

17 In speaking with staff at the Division, my
18 understanding, if I am stating their advice correctly, is
19 that the rule for administrative employees was intended to
20 track closely with the exemption under the FLSA, the Fair
21 Labor Standards Act. And it was intended to pretty much
22 comply with that body of law as opposed, for example, to
23 2.2.2, the executive exemption where the direction was
24 clearly that the requirements would exceed the minimum
25 requirements of the Fair Labor Standards Act.

1 Unfortunately, the proposed rule retains the language that
2 to be administrative exempt, a person must directly serve an
3 executive. And, of course, this has been raised in other
4 rulemaking hearings, but it still introduces a significant
5 element of uncertainty since this is not a term that's used
6 in the Fair Labor Standards Act or anywhere of which we're
7 aware, that we have no body of law to even interpret this
8 requirement.

9 Of course, the FLSA instead uses the language that
10 a position must directly relate to management or general
11 business operations. And again, we would renew our plea for
12 some sort of clarity or editing of this requirement if the
13 intention is to track with the FLSA, to use language that is
14 already familiar and has been interpreted under the FLSA.

15 As it stands now, for example, it would seem to
16 indicate that an HR director who reports directly, for
17 example, to the CFO, the chief financial officer, would be
18 administratively exempt if not under the executive exemption
19 as well. But, for example, an HR manager who would normally
20 be exempt under the FLSA may not be under this rule because
21 that person doesn't report to an executive while an
22 executive assistant, perhaps a role that normally would even
23 exercise a little less independent judgment and discretion,
24 would be. So we'd prefer--we would request some clarity on
25 that rule.

1 That's all I have, and I appreciate the
2 opportunity. Thank you very much.

3 MR. MOSS: Thank you, Mr. Harris. I actually have
4 a follow-up question. I appreciate your point on the
5 administrative exemption. The intent of this change as
6 we've indicated in statement of basis was to eliminate a
7 possible misunderstanding or an interpretation that has been
8 called to our attention, I think by among others Employer's
9 Council members and related attorneys, that the existing
10 rule said that the exempt administrative employee must serve
11 the executive which created the possibility of an
12 interpretation that it was only people serving as CFO or
13 similar top executive.

14 But am I understanding right that what you're
15 pointing out is that you are seeing as additional issue with
16 that existing phrasing, that not just that the existing rule
17 says any exempt administrative employee must serve the need,
18 perhaps implying of one particular high executive, but also
19 that there's a requirement directly serving that might
20 narrow it more than you think is advisable?

21 MR. HARRIS: That's correct. Thank you.

22 MR. MOSS: Great. Okay. Thanks. I just wanted
23 to make sure I was 100 percent clear on that. Appreciate
24 that.

25 Mike, who is next on deck?

1 MR. PRIMO: Yes. Thank you, Dean, for your
2 comments and testimony.

3 Next up is Jennifer Harpole.

4 If you are available, would you please unmute
5 yourself?

6 (Pause.)

7 Okay. It may be that Jennifer might be
8 experiencing technical difficulties or might not be
9 available right now. I will come back to her.

10 Kelly Brough?

11 MS. HARPOLE: I'm sorry. I'm here. I was working
12 on (inaudible) getting my video going. My apologies.

13 MR. PRIMO: That's okay, Jennifer.

14 MS. HARPOLE: Let's see if I can get my camera on.

15 (Pause.)

16 I'm not sure where to see if my camera is on, but
17 I can go ahead and start talking.

18 Thank you to the Division for the opportunity to
19 speak today. There are two rules that I--proposed rules
20 that I would like to speak on today. The first are the
21 Equal Pay Transparency Rules. For those rules--and I'm from
22 Littler Mendelson, an employment law firm. Littler has
23 submitted on behalf of its workplace policy institute
24 comments on behalf of a coalition of companies who have
25 expressed concerns to us and asked us to advocate on their

1 behalf regarding the proposed Equal Pay Transparency Rules.

2 My colleague, Josh Kirkpatrick, is going to take a
3 portion of our comments as well and talk about policy
4 considerations and burdens on employers regarding these
5 rules, but I would like to take this opportunity to speak on
6 legal implications of the Equal Pay Transparency Rules.

7 We have two--our members have expressed concerns
8 that we are raising regarding the constitutionality of the
9 rules in two different ways. And so, specifically, as many
10 of the commenters, I suspect, will be talking about, we are
11 talking about the requirements that external job postings
12 are required to list a salary range; and the requirement in
13 the proposed rules that this--that that requirement applies
14 not only to positions that are to be filled in Colorado, but
15 positions that are to be filled remotely or that are
16 definitively to be filled outside of Colorado but for which
17 applicants are accepted from as far away as Colorado, that
18 these posting requirements would apply. And so we have
19 identified constitutional concerns under both the Dormant
20 Commerce Clause of the Constitution as well as First
21 Amendment's prohibition on compelled commercial speech.

22 With respect to the Dormant Commerce Clause, that
23 has been read by some Supreme Court decisions into the
24 United States Constitution. And it prohibits the state of
25 Colorado from enacting a rule that unduly burdens interstate

1 commerce. And so--and in particular, if a rule in Colorado
2 has a conflict with rules of other states, then that creates
3 a conflict that can be an undue burden. And so, for
4 example, the state of the California has enacted its own
5 rule which is different from Colorado's rule, right, which
6 says that in California, it's only that pay ranges have to
7 be posted if an employer--if an employee makes a request to
8 the employer. So that's substantially different than what
9 is required in Colorado.

10 And, you know, there's also a lot of rules that
11 prohibit certain employees, HR, supervisors, from disclosing
12 salary information of current employees without prior
13 written consent from those employees. So we see concern
14 with conflict with other state laws in terms of the rule
15 applying to positions that are to be filled outside of the
16 state of Colorado.

17 And there's also a burden analysis. Right? And
18 so the burden of this rule on employers which my colleague,
19 Josh, will talk about in some more detail, vastly exceeds
20 its putative benefits. Right? It is unclear what the
21 benefit is supposed to be for Colorado workers of, you know,
22 a California job having to--employers having to post the pay
23 range. And the burden on employers, especially large
24 employers, of having to do that is significant.

25 There's also relatedly a concern that this rule is

1 unconstitutional under the Dormant Foreign Relations Power.
2 As it's written, it appears that this law would apply to
3 international jobs that employers have available as well as
4 long as they have a Colorado in present--Colorado presence.
5 And so there's case law on that from the U.S. Supreme Court
6 as a law that--that, you know, international relations is
7 the exclusive purview of the federal government. And so,
8 you know, we would urge the Division for any final rule to
9 clarify that this does not apply internationally because we
10 believe that that's unconstitutional as well.

11 And then finally, on the constitutional front is
12 the prohibition on compelled commercial speech. Again,
13 there's strong case law here when states have attempted to
14 require companies to include, for instance, the civic
15 disclaimers in their advertising or on their products that
16 have found that to be an overreach in terms of what is
17 allowed under the First Amendment.

18 And so, you know, here this is the first of its
19 kind, only of its kind, unique requirement that Colorado is
20 attempting to impose on employers by requiring them to
21 include salary range and description of benefits in their
22 job posting. No other state has tried to do that, and so
23 there is not case law addressing this directly. But that's
24 a significant burden and requirements to impose on
25 companies, and so we think that there's going to be a strong

1 basis to challenge it under the First Amendment as
2 unconstitutional.

3 So we want to, you know, hopefully, as a result of
4 these hearings and the comments that are received by the
5 Division, changes will be made to these proposed rules
6 before they go into final effect. But, you know, what I
7 wanted to highlight here may be, you know, different from
8 what some of the other commenters are going to raise is that
9 companies are looking very strongly at a legal challenge, a
10 potential injunction if necessary on these posting
11 requirements if they are not significantly tailored and
12 changed. And we believe that there's a strong legal basis
13 to do so. Those are my comments on the Equal Pay
14 Transparency Rules.

15 I also would like to speak today on the COMPS
16 order. For the COMPS order I've been asked to speak on
17 behalf of the National Armored Car Association, and
18 specifically about the rule about interstate commerce in the
19 proposed--it was really--it was put into COMPS Order 36, and
20 then it is now in proposed COMPS Order 37. It's Section
21 2.2.6(a).

22 So the National Armored Car Association is an
23 association that's a coalition of the major companies of the
24 armored car industry. They're focused on protecting and
25 promoting the common interest of that industry to provide

1 security transportation and cash management services and
2 interstate commerce for the Federal Reserve, national
3 financial institutions, states and local governments, and
4 private individuals. So they're literally transporting cash
5 and coin and other forms of money. So really, the epitome
6 of interstate commerce is what they're doing.

7 And so as you know, under the federal law, the
8 definition, all of those drivers and driver's helpers and
9 loaders and mechanics are exempt under the federal law
10 because they are transporting goods and interstate commerce.
11 And with COMPS Order 36 and proposed COMPS Order No. 37, the
12 Division is upending that long-standing case law in Colorado
13 that interpreted Colorado's law to be consistent with
14 federal law and instead proposing that employees must
15 actually cross state lines in order to be exempt under
16 Colorado law. And so that really, you know, from a policy
17 perspective is upending that industry. Those folks are paid
18 often by the mile or by the loads that they carry. And so
19 that's a vast change for them to have to pay by the hour.

20 It's also arbitrary in terms of that, you know,
21 these drivers, it's very important, they can't each, you
22 know, run the same route week after week. They have to mix
23 up the routes for safety purposes in order to make it less
24 likely that they're going to be the subject of theft and
25 robbery. So they--you know, in Colorado for sure they have

1 some routes that cross state lines, and they go into Wyoming
2 or into Nebraska or into Utah, and some routes that are
3 entirely within the state. And so it's going to be become
4 completely arbitrary in terms of who they have to pay, you
5 know, subject to the overtime requirements and who is not
6 just based on whether or not they get on a route that
7 crosses state lines.

8 So we've--so the National Armored Car Association,
9 you know, we just don't believe that this is good policy for
10 Colorado in terms of making this change and being
11 inconsistent with federal law. Again, you know, there's a
12 potential constitutional challenge here as well that in--you
13 know, if this rule doesn't change, we expect to get a legal
14 challenge here that the Division's rule is preempted by
15 federal law.

16 So the entire reason that the motor carrier
17 exception exists under federal law is because the Department
18 of Transportation already has jurisdiction to ensure the
19 safety of the nation's highways and the workers on those
20 highways. That's an area that they are clearly intending to
21 fill and have their regulations. And the Division with its
22 rule has come in direct conflict with those rules. And we
23 believe that's subject to a constitutional challenge as
24 well.

25 So we would urge the Division to change back that

1 rule to make clear that Colorado follows federal law in
2 terms of the Motor Carrier Act exemption and to clarify that
3 that is retroactive back to the time that COMPS Order 36
4 went into effect in March. Thank you.

5 MR. MOSS: Thank you. I have two quick
6 follow-ups. First is just to clarify, Ms. Harpole, on the
7 first issue on Equal Pay Rules. On that one you mentioned
8 your written comments are on behalf of the Workplace Policy
9 Institute and Coalition. Are your oral comments too on
10 behalf of that Institute and Coalition?

11 MS. HARPOLE: They are.

12 MR. MOSS: Okay. Thanks. And then somewhat more
13 substantively, on the Transport Rule, you mentioned, you
14 know, difference between state and federal law and that
15 there could be value in making clear going back what the
16 interpretation was. The question I have is given the
17 Brenson (phonetic) case in 2018 where the Colorado Court of
18 Appeals said interpreting prior wage orders and the Wage
19 Act, that the Court expressly rejected the view that the
20 federal interstate transportation exemption applies under
21 state law. That is, of course, an interpretation. Is your
22 suggestion, just to be clear, to abrogate Brenson by rule to
23 change that interpretation the Court of Appeals gave to
24 existing rule and statute in 2018?

25 MS. HARPOLE: Yes. So they're--you know, that

1 created a conflict; right? The 10th Circuit had held in
2 Deherrera (phonetic) and another case that the Colorado law
3 was consistent with federal law. So that Colorado Court of
4 Appeals case did create a conflict of law between the 10th
5 Circuit and the Court of Appeals. So we would suggest a
6 clarification that, you know, follows the 10th Circuit law
7 and abrogates that Court of Appeals decision, yes.

8 MR. MOSS: All right. Thank you.

9 MS. HARPOLE: Thank you.

10 MR. MOSS: All right, thank you. And lastly, did
11 you say that Mr. Kirkpatrick would be going next or that he
12 would have written comments? I wasn't sure whether he was
13 present or present in spirit and in writing.

14 MS. HARPOLE: He is present and he is signed up to
15 speak. So I think unless you would like him to go right
16 now, he can either go right now if you would like, or he can
17 go in the order in which, you know, you have him on the
18 list.

19 MR. MOSS: I think let's go out of order to the
20 extent that there may be at least some conceptual overlap
21 and, therefore, it would be good to keep the comments
22 consecutive.

23 So, Josh, if you're ready, you can go on ahead.

24 MR. KIRKPATRICK: I am ready. Thank you so much,
25 Scott.

1 As Jennifer mentioned--oh, let's see. I think I'm
2 unmuted. On Friday we submitted our public comment on
3 behalf of the Workplace Policy Institute. That comment is
4 available for anybody to see on my LinkedIn page as well as
5 Jennifer Harpole's LinkedIn page.

6 Clients of Littler supporting this comment come
7 from a variety of sectors including tech, construction,
8 business process outsourcing, retail, manufacturing,
9 insurance, pharmaceuticals, recruiting, professional
10 services, and computer goods. Jennifer spoke regarding the
11 constitutionality of the proposed EPT rules, but I want to
12 address some of the real negative impacts of this proposed
13 regulation on Colorado businesses. And again, we've laid
14 out quite a few negative impacts in the public comment, but
15 I want to just address a few of them here.

16 First and foremost, confidentiality issues
17 regarding compensation vis-à-vis competitors. As everyone
18 on the line is surely aware information relating to employee
19 compensation is often highly confidential. While sometimes
20 employers will post compensation information for some
21 positions in order to attract talent, right, you've got your
22 fast-food restaurant that says we pay \$15 an hour, in other
23 instances employers make a conscious decision not to
24 disclose employee pay for competitive reasons. If a
25 competitor knows the pay range, bonus structure, commission

1 structure for every job in a company, it could leverage that
2 information to try to pick off talent in the space.

3 That problem, I think, is magnified when Colorado
4 companies are competing with companies out of state who
5 aren't bound by the same posting and disclosure rules.
6 We're effectively tying the hands of Colorado businesses by
7 forcing them to make the disclosures that competitors in
8 other states don't have to make.

9 I wanted to also address the impracticality of
10 posting compensation for remote jobs or jobs to be filled
11 outside of Colorado. The proposed rules make clear that
12 they apply to remote jobs that could be performed anywhere.
13 A number of commentators have suggested that certainly
14 during this COVID pandemic and probably into the future as
15 we reach a new normal status, those types of remote jobs
16 will proliferate as employers learn through the pandemic
17 that they don't need as much office space and they don't
18 need--you know, the technology facilitates more team
19 interactions from remote employees.

20 This comes into a problem with the proposed EPT
21 rules because the lion's share of large employers have
22 different pay rates based on geography. A worker in New
23 York City gets paid more to do a job than a worker in
24 Montana. The authors of the Equal Pay for Equal Work Act
25 understood this and conceded in CRS 8-5-102(1)(a)(IV) the

1 pay differentials are permissible where they're based on the
2 geographic location where the work is performed.

3 But according to the proposed EPT rules, if there
4 were a remote job, an employer would need to post the lowest
5 good faith estimate of what they would pay to the highest
6 good faith estimate. So if you've got a pay range for an
7 accounting manager that's between 40 and \$55,000 if the job
8 is filled in Montana and 75,000 to 100,000 if the job is in
9 New York, the range to be disclosed would have to be 40,000
10 to \$100,000 a year which is very misleading and confusing
11 for employees or perspective employees in Montana or
12 Colorado who think the job could pay them up to \$100,000 a
13 year when, in fact, that's not the case.

14 And perhaps that example is a bit large with
15 respect to Montana versus New York, but the same pay
16 differentials apply within Colorado where pay rates. For
17 instance, in Pueblo and the Western Slope they tend to be
18 lower than those in the Denver Metro area including Boulder.

19 I also wanted to address the very significant
20 impact this would have on the confidential search process if
21 employees have to post a job to everybody on the same
22 job--on the same day, if--you know, particularly with
23 respect to high-level positions. If a large company has a
24 senior leader who's failing and there are no strong internal
25 candidates, they may engage in a confidential search for a

1 replacement before informing the incumbent that he or she is
2 to be separated. Sometimes they do that through their own
3 internal talent acquisition teams. Sometimes they do that
4 by engaging recruiters or head hunters.

5 But, you know, under the language of proposed Rule
6 4.3.1, that employer has a job, but it can't practically
7 post that job internally or externally before giving notice
8 to the incumbent of his or her separation. But they can't
9 do that until they can find a replacement.

10 There are also reasons companies perform
11 confidential searches that are directly related to those
12 companies' confidential and proprietary business strategies.
13 Companies build teams to perform certain functions even
14 before they've entered a given business segment. For
15 instance, a tech company may consider developing a new
16 product or application, so it engages a confidential search
17 to find talent before announcing that it intends to develop
18 that product.

19 Similarly, somebody might be thinking of expanding
20 their operations into Colorado. But if they have to divulge
21 to the marketplace that they're intention is to do so, they
22 may be dissuaded from moving into Colorado. Forcing those
23 companies to post jobs would divulge their confidential
24 product and road map strategies, again, harming Colorado
25 businesses.

1 One business that would be particularly harmed is
2 the recruiting industry. There are hundreds of recruiters
3 and head hunters in Colorado, and the elimination of
4 confidential searches would have a devastating impact on
5 those small businesses.

6 MR. MOSS: Sorry, Mr. Kirkpatrick, you need to
7 finish up your remarks on equal pay.

8 MR. KIRKPATRICK: Very well. We're just proposing
9 then that there be an exception for confidential searches.
10 I had a number of other arguments. I realize I'm out of
11 time. I urge anyone on the line to look at our public
12 comment that fully describe what those practical impacts of
13 these proposed EPT rules, and I thank the Division for the
14 time.

15 MR. MOSS: Thank you. And we would definitely be
16 reading your and Ms. Harpole's comments this week.
17 Appreciate it.

18 Mike, who's on (inaudible)?

19 MR. PRIMO: Yes. Thank you, Josh.

20 Next up is Kelly Brough.

21 Kelly, if you're available, could you unmute
22 yourself?

23 MS. BROUGH: Yeah. You bet. I think I'm with
24 you. Can you hear me?

25 MR. PRIMO: Yes. We can hear you, Kelly.

1 MS. BROUGH: Excellent. My name is Kelly Brough.
2 I'm President and CEO of the Denver Metro Chamber of
3 Commerce. I'm here today on behalf of our 3,000 members and
4 their 400,000 employees to express our concerns with the
5 proposed Equal Pay Transparency Rules.

6 To be clear, our organization and our members
7 support the purpose of this legislation to eliminate pay
8 disparities. However, the proposed rules go well beyond the
9 scope of the authorizing statute. They ignore operational
10 realities that employers face. They impose burdens on all
11 employers in the state. And our real concern is adding red
12 tape without clear, positive impact for employees.

13 Despite the fact this law was passed 17 months ago
14 and employers shared many insights during that legislative
15 process, it's clear that the rules were drafted without that
16 kind of guidance from employers. So we appreciate the
17 chance to share those insights with you today.

18 To begin, the proposed rules require, as you've
19 heard from others, multistate and multinational employers to
20 change postings for jobs in other states or countries. It's
21 well beyond scope of this Act to legislate beyond our
22 Colorado boundaries. And from both a legal perspective as
23 you've heard and an operational one, we're extremely
24 concerned about efforts to do so here. These types of
25 policies impact our ability to attract and retain the best

1 employers and the best talent in Colorado almost providing a
2 disincentive to be here.

3 Further, the proposed rules around promotions are
4 equally if not more uncertain. By ignoring operational
5 realities, these rules may hurt the very employees the law
6 was crafted to help because they require a competitive
7 process for any promotion including apprentices or employees
8 who have been selected with the intent that upon gaining
9 specific skills, they will be promoted.

10 In my experience and many of our members, it's
11 been helpful for both employers and employees to broaden the
12 applicant pool and consider candidates who may not have the
13 full range of skills needed but do have the competencies and
14 capacity to perform the duties with the employer once
15 they're provided the training. And yes, there are times we
16 as employers hire someone with the intention to upskill them
17 and even commit to promoting them as they build that full
18 range of skills. You can imagine this is often someone who
19 might be newer in their career or maybe a more diverse
20 applicant who hasn't had the same opportunities to
21 demonstrate their abilities. Unintentionally, these rules
22 may remove opportunities from these individuals because they
23 would now have to compete for the promotion instead of
24 simply earning it.

25 There are a number of other scenarios in which

1 posting a job may not make sense or may actually reduce
2 opportunity for employees. Another area is confidential
3 executive searches. These searches often need to remain
4 confidential because of the potential impact on employee
5 morale or stock prices.

6 Or consider family-owned businesses and naturally
7 where the CEO is going to come from within the family.
8 That's not considered here. How about contract positions
9 where skills are very specific such as a professional
10 athlete or other positions with very specific skills such as
11 a brain surgeon? The posting of such jobs is misleading to
12 applicants and a misuse of resources.

13 You can start to see how impractical and
14 burdensome some of these rules would be for employers. But
15 we also have concerns from an economic development
16 perspective because onerous requirements with no real
17 benefit to applicants or employees provide an incentive to
18 not have employees in Colorado. And we see more and more
19 remote working options as we've discussed already during
20 this hearing. We have to ensure we're a place of choice for
21 employers and for employees.

22 Again, I want to express our strong support to
23 ensure pay equity and our commitment to increase
24 transparency, but these rules go far beyond what was
25 outlined and authorized by the law. We believe rulemaking

1 should be focused on implementing policy which was created
2 by our legislature. Rules should not make policy and expand
3 on legislation. That process must reside in the open,
4 accountable, and transparent process at the legislature.

5 We do invite the opportunity to work with the
6 Department and craft rules that deliver on the intent of
7 this legislation: to remove pay disparity in Colorado.
8 Toward that end, we're submitting written comments with much
9 more detailed information and examples, most importantly,
10 probably, proposed language for the rules that make sense
11 for employers and employees that can advance us toward the
12 shared goal.

13 I thank you for the chance to testify with you
14 today and share these concerns, but mostly look forward to
15 sharing much more detail with you so we can find rules that
16 can work for all of us. Thank you.

17 MR. MOSS: Thank you, Ms. Brough.

18 Mike, who's next in the queue?

19 MR. PRIMO: Yes, thank you, Kelly.

20 Next up is Stacey Campbell.

21 Stacey, if you're available, would you please
22 unmute yourself?

23 MR. CAMPBELL: I think I'm unmuted; correct?

24 MR. PRIMO: Yes. We can hear you.

25 MR. CAMPBELL: All right. My name is Stacey

1 Campbell, and I provide comments on behalf of the Colorado
2 Chamber of Commerce which represents businesses of all sizes
3 across the state of Colorado including national companies
4 with significant presence in Colorado. Many of them have
5 voiced great concern over the Division's proposed rules.

6 I also speak on behalf of many of my national
7 clients. I own an employment defense law firm known as
8 Campbell Litigation. We represent companies within the
9 state and nationally. I speak on behalf of my wife's
10 Denver-based placement and staffing company called Diverse
11 Talent. It is with these companies and the Colorado Chamber
12 that I express the comments that we have submitted with the
13 Colorado Chamber last week.

14 My concerns are with the Equal Pay Transparency
15 Rules, and I want to talk just a little bit at a high level
16 and then kind of get into the details. The details are also
17 in the Colorado Chamber's submitted proposed comments that
18 anyone could read that we submitted last week.

19 First and foremost, we believe the Division
20 exceeds its authority to regulate companies outside of
21 Colorado by requiring them to provide salary and benefit
22 information to all employees including those outside the
23 state of Colorado. Secondly, at a high level the proposed
24 rules also do not assist in achieving the overall statutory
25 purpose of closing the pay gap between employees with

1 similar job duties regardless of sex or sex plus status.
2 But what it does is set Colorado companies and other
3 employers up for increased administrative on costs trying to
4 comply with rules that are not nearly tailored to meet the
5 statutory intent and create--it creates an administrative
6 nightmare for our Colorado employers.

7 The proposed rules also set companies up for huge
8 litigation costs once employees realize they can impose
9 fines or may recover money for what in most case will be an
10 oversight violation and not true discrimination. The
11 proposed rules expand the statutory language which does not
12 require salary and benefits to be accompanied with
13 promotional opportunities, and requiring this information to
14 all employees even those who would never qualify for the
15 position is inconsistent with the legislative intent and
16 simply makes no sense.

17 Specifically, we want to talk first about Section
18 4.3.3, posting and disclosure requirements for a Colorado
19 employee with a job outside of Colorado. The concerns are
20 many, but the language as drafted imposes regulations on
21 employers that hire outside of Colorado. We believe that
22 this as well as the folks at Littler who talked about the
23 constitutional challenges that will likely come if this
24 regulation is not--or this rule is not changed.

25 It's also an impermissible expansion of the

1 director's jurisdictional authority over a company that has
2 operations in another state. Under Colorado Revised
3 Statute, Section 8-1-111, the director has power and
4 jurisdiction over, quote, every employment and place of
5 employment in the state, end quote, and may only expand that
6 jurisdiction with a reciprocal agreement with another state.
7 The proposed rules do not require any reciprocal agreement
8 with another state in order for the director here in
9 Colorado to regulate employers outside of Colorado.

10 We believe that this rule as written would require
11 all employers with even just one employee working in
12 Colorado who post jobs electronically to also disclose
13 salary range and benefits for that position, not just in
14 Colorado, but nationally and internationally. The concern
15 is that it would also regulate out-of-state employers that
16 allow employees to work remotely in Colorado because the
17 employee chooses to be here, not because the employer
18 requires them to be here. And the rule will have severe
19 impact on employers and qualified applicants. We believe it
20 will delay the critical hiring process which a lot of times
21 is needed to be done quickly or when a potential candidate
22 has another offer.

23 It will also make it unlikely that any national
24 company will post job openings for Colorado employees due to
25 this requirement. And I would tell you that I would

1 encourage all of my national companies to not post in
2 Colorado just because of the way the rule is written.

3 We recommended, and it's in our--in the Colorado
4 Chamber's written comments that the requirement to post
5 positions should be limited to employment positions located
6 in Colorado, not elsewhere. And once a promotion decision
7 is made by the employer, the job posting may be withdrawn.

8 With respect to Section 4.3.1, posting and
9 disclosure requirements for Colorado employers with a
10 Colorado job wherever advertised, this is a similar concern
11 as the previous rule. Impermissibly expanding the
12 jurisdiction of the director, requiring notification and
13 posting of promotional opportunities and compensation and
14 benefit information to any employee outside of Colorado,
15 just it doesn't make a lot of sense. The recommendation
16 would be to ensure that the requirement to post positions be
17 limited to Colorado employees only, and alternatively under
18 Section 4.3.1, it should be revised to permit employers to
19 give notice only to those employees who are eligible for the
20 position per the recommendation that we're going to give in
21 Section 1--or 4.1.

22 Under Section 4.2, opportunities for promotion,
23 our concerns are that it too narrowly defines reasonable
24 efforts to, quote, announce, host, or otherwise make known
25 all opportunities for promotion, end quote. Current

1 requirements that the companies reach out to employees for
2 each position is too administratively burdensome for our
3 employers. It would result in a spanning of employees
4 leading to them ignoring promotional opportunities because
5 they're--in some situations could just be so many postings
6 that they would get.

7 Section 4.2.1, the requirement that promotional
8 opportunities be made in writing owes administrative and
9 logistical burdens for small businesses that lack electronic
10 resources. 4.2.3, the requirement that posting be made on
11 physical bulletin boards disregards the reality of most
12 workplaces nowadays and how employers are announcing
13 promotions, and how employees search or apply for positions.

14 4.2.2, promotional opportunities should be
15 clarified. It should--meaning that the opportunity for a
16 promotion should be given--or to employees. 4.2.4 prohibits
17 employers from giving notice to employees it deems qualified
18 for the position, but it seems to me that is exactly what
19 we're trying to do, is to provide knowledge about a
20 promotion to those who would be qualified.

21 Examples we've given in our written submission is
22 if I post in my law firm an associate attorney position, it
23 makes no sense to me to give it to paralegals who don't have
24 a legal degree because they will never be qualified to be
25 promoted to an attorney. Similar, if you've got a surgeon

1 in a hospital, it makes no sense to give the notice to
2 janitors who don't have a medical degree because they would
3 never be eligible for that promotion. The same thing can be
4 said for a sales manager position where the requirement is
5 that you have to have a sales tech experience. Well, if you
6 don't have the sales tech experience, you're never going to
7 be able to be a sales manager, and it makes absolutely no
8 sense to post to everyone when they don't have those
9 qualifications.

10 Our recommendation is to revise the rule to
11 clarify that positions posted on employer's Internet or
12 career sites is sufficient notice; revise the rule so that
13 postings do not have to be in writing and they can be made
14 orally; clarify the rule that employer--an employer does not
15 have to post a role internally if it has determined no
16 internal candidates have the expertise required for the
17 role; revise the rule to clarify that promotional
18 opportunities excludes positions where an employer has a
19 succession plan in place for certain high-level executive
20 positions or in-line promotions, temporary positions, and
21 union-represented positions.

22 With respect to 4.1, we think it misconstrues the
23 general assembly's legislative intent of the Statute
24 8-5-201(1) and (2). Subsection (1) and (2) should not be
25 read together. Subsection (1) only addresses posting

1 requirements for promotional opportunities and does not
2 mention or include posting of salary or benefits.
3 Subsection (2) only addresses new job openings and
4 opportunities and does not mention promotions.

5 The proposed language requires disclosure of
6 hourly and salary compensation and benefits for all job
7 postings is, therefore, an expansive reading of the statute.
8 Employers should be able to omit the salary and benefit
9 disclosures providing the Job posting includes instructions
10 on how to locate that information. Our recommendation is to
11 clarify the rule so that employers only are required to post
12 a range of salary and general description of benefits for
13 new postings only and not promotions, clarify that
14 promotions do not require disclosure of salary and benefits,
15 revise the rule so that employers may omit disclosures
16 provided posting includes instructions on how to locate the
17 salary and benefit information.

18 Quickly, the rebuttable--

19 MR. MOSS: (Inaudible), you need to finish up
20 (inaudible) minutes.

21 MR. CAMPBELL: All right. So I'd just say the
22 rebuttable presumption, we believe that the recommendation
23 is for us to--for the rule to be supplemented to add factors
24 for judges to consider such as fault of the employer, actual
25 prejudice to the employee, and availability of other

1 employee--other evidence.

2 And lastly, we believe that the rules set out by
3 CATA (phonetic) should be followed as it relates to timing
4 of the regulations here. Thank you for your time. We
5 appreciate it.

6 MR. MOSS: Thank you.

7 Mike.

8 MR. PRIMO: Thank you, Stacey.

9 Next up, we have Jared Make.

10 Jared, if you're available, would you please
11 unmute yourself?

12 MR. MAKE: Yeah, good morning. Are you able to
13 hear me? Terrific.

14 Good morning. I'm Jared Make, Vice President of A
15 Better Balance, and I'm testifying on our organization's
16 behalf. So we're a national legal advocacy nonprofit that
17 provides technical policy support to paid sick time
18 campaigns throughout the country. And I worked closely on
19 SB205 since I'm based here in Colorado. I appreciate all of
20 the work by CDLE on implementation of the Paid Sick Leave
21 Law, and thank you for the opportunity to testify on the
22 proposed Wage Protection Rules and that's 1103-7.

23 So although I'm planning to submit more detailed
24 written comments, I'd like to share a few recommendations
25 from A Better Balance as well as our strong support of

1 several proposed rules. So first, we recommend additional
2 worker protections in proposed Rule 3.53(a). If an employee
3 improperly takes paid sick leave due to no fault of their
4 own but rather an employer's mistake, the rule should ensure
5 that they're held harmless. Retaliation should be
6 prohibited as should recouping sick leave payments.
7 Instead, employers who make the mistake should be limited to
8 adjusting future accrued hours accordingly.

9 Next, we strongly support Rule 3.5.6, unreasonable
10 documentation, but have three suggested clarification. So
11 in Subsection C, regarding safety-related leave, we urge
12 CDLE to clarify that the worker may choose which type of
13 listed documentation to provide ensuring that an employer
14 can't demand particular proof that could jeopardize the
15 survivor's safety.

16 Second, we recommend acting a practicability
17 standard in Subsections D and F when a worker does--excuse
18 me--not return from sick leave and is terminated. Workers
19 who don't return to work after exhausting sick leave often
20 have an ongoing health or safety issue, for example,
21 hospitalization or incapacitation, that could prevent them
22 from providing documentation on the proposed timeline.

23 And then third, we recommend that an employer's
24 notice of deficient documentation and the opportunity to
25 cure in Subsection F be provided to the employee in writing.

1 And then finally, we recommend that Rule 5.1.4
2 explicitly state the full set of reliefs that's specified in
3 Section 4-11 of the Paid Sick Leave Statute. The Paid Sick
4 Leave Law incorporates relief available through a cross site
5 to Section 8-5-104, that's 8-5-104 which is the Equal Pay
6 for Equal Work Act, and includes relief that's not specified
7 in the proposed rule.

8 So beyond these recommendations, there's several
9 areas of the proposed rules that A Better Balance strongly
10 supports and encourages CDLE to adopt. First, we fully
11 support proposed Rule 3.5.1 regarding accrual for adjunct
12 faculty which mirrors the paid sick time precedent in
13 Massachusetts. Although we advocated for a slightly higher
14 standard based on a California example, we believe the
15 proposed approach provides a reasonable standard and will
16 ensure fair access to paid sick leave for adjunct employees.

17 Next, we encourage adoption of proposed Rule 3.5.8
18 regarding collective bargaining agreements which we believe
19 is straightforward and consistent with the statutory text
20 and legislative intent.

21 Third, we strongly support the fact that key
22 details of paid sick time rights and employer determinations
23 be provided in writing which will make it much more likely
24 that workers understand their rights. Therefore, we
25 strongly support requirements of providing written notice in

1 proposed Rule 3.5.1(d) (2) regarding benefit year
2 determinations, and Rule 3.5.4 regarding compliant PTO or
3 paid time off plans.

4 And finally, other than the clarifications
5 requested earlier, we wanted to indicate our strong support
6 regarding the proposed rules on notice and documentation.
7 We believe proposed Rule 3.5.5 on notice is consistent with
8 the statutory text and legislative intent, and we also
9 strongly support proposed Rule 3.5.6(d) which addresses the
10 role of written statements. This is critical since workers
11 will not always need to go to a doctor for covered purposes.
12 In many cases such visits can be costly and time intensive,
13 a burden to medical professionals especially right now
14 during a pandemic, and lead to the unnecessary spread of
15 illnesses.

16 And finally, we were pleased to see proposed Rule
17 3.5.6(d) which mirrors the 2020 help order in preventing
18 notary requirements or unnecessary obstacles with
19 documentation formats.

20 So with that, thank you again for the time today
21 and for all of CDLE's work on these proposed rules.

22 MR. MOSS: Thank you, Mr. Make.

23 MR. PRIMO: Thank you, Jared.

24 Next up is Scott Pechaitis.

25 I apologize if I mispronounced your last name.

1 Could you please unmute yourself?

2 MR. PECHAITIS: Yeah, absolutely. Thank you.

3 It's Scott Pechaitis. Thank you.

4 And thank you to the Division for allowing this
5 open forum, particularly in these difficult times during the
6 pandemic. It's much appreciated.

7 So my name is Scott Pechaitis. I'm an employment
8 law attorney with the law firm Jackson Lewis. My office is
9 here in Denver, but we are a national law firm. And as
10 such, I work with employers around the country. From these
11 companies, I have heard several concerns on the proposed
12 Equal Pay Transparency Rules, and so I wanted to share some
13 of those with you today.

14 I'm going to have two sections of the proposed
15 rules that I would like to address. First, on the posting
16 of promotional opportunities, I would like to reiterate the
17 first speaker's statements. I'm not going to repeat them
18 all, but I want to reiterate the first speaker's statement
19 about the need for clarity around the term "promotional
20 opportunity." Many companies would like to see the Division
21 add a definition for promotional opportunity that
22 distinguishes between competitive and noncompetitive
23 promotions such that in-line progressions are those based on
24 experience thresholds, such as junior to regular to senior,
25 or director to senior director, that those are clearly

1 excluded from the rule. One proposal would be to include a
2 requirement that there be an open position for which
3 multiple candidates are being or could be considered.

4 Second, on the proposed scenarios and proposed
5 Rules 4.3.2 and 4.3.3, the concerns I have heard are that
6 the rules go too far in requiring compensation and benefits
7 information on out-of-state and remote job postings. Some
8 of those concerns include the significant investments and
9 practice changes that may be required, particularly of small
10 and local businesses. Another concern is the potential to
11 have to change those investments and systems and practice
12 changes again down the road once more clarity around these
13 rules is available or once judges start making decisions
14 because the rules are a little bit ambiguous.

15 Many companies are also concerned with the
16 logistical and business challenges around disclosing pay
17 rates. Some companies consider their compensation
18 strategies to be proprietary information which could be very
19 valuable to their competitors. And as we've heard numerous
20 times today, the rules don't appear to be practical when it
21 comes to things like executive compensation or confidential
22 searches many times where either we can't disclose the
23 information for need of not telling an incumbent about a
24 role soon to be open or with executive compensation and
25 search committees where a lot of the time compensation is

1 not even thought about until qualified individuals are
2 identified.

3 In speaking with companies outside of Colorado,
4 some of whom right now have a lot of tolerance for remote
5 work, you know, job that they feel can effectively be worked
6 anywhere in the country, well, some of those companies have
7 told me they're considering adopting a restriction that
8 would say remote jobs can be worked anywhere in the country
9 except Colorado just to avoid these obligations because of
10 those concerns that I just went through. Another company
11 told me that they're--like, right now, they only have some
12 remote employees in Colorado. They have positions that are
13 available so people can work anywhere. And they're thinking
14 of moving those jobs from Colorado to other states to avoid
15 these posting obligations. So to me if the intent of the
16 law is to benefit Colorado residents, in this case it would
17 seem to have backfired and may actually hurt Colorado
18 residents and our economy.

19 And speaking of companies who have a large
20 presence here in Colorado, there is a concern. I think
21 we've heard it a couple of times on the call today. There
22 is a concern that companies who do not have a large presence
23 here in Colorado, well, they might not actually follow the
24 rules, particularly, because of the jurisdictional
25 challenges they would appear to have which an earlier

1 speaker, Ms. Harpole, went through pretty thoroughly. In
2 that regard, this rule, again, seems to hurt Colorado, seems
3 to hurt Colorado companies, and could put them at a
4 competitive disadvantage where their competitors who do not
5 have a big presence here in Colorado are playing by a lower
6 degree of rules.

7 So based on the feedback I've received, I
8 respectfully propose limiting the requirement that
9 compensation and benefit information on job postings and
10 promotional announcements, that that be limited to jobs that
11 will actually be or are intended to be worked here in
12 Colorado. Further, to address the concern around publishing
13 proprietary pay information and notifying employees about
14 confidential searches, well, I respectfully propose,
15 following California's model which I think struck a good
16 balance between the competing concerns here, by requiring
17 companies to disclose the pay information only upon
18 reasonable requests from actual applicants. Thank you.

19 MR. MOSS: Thank you.

20 Mike, who's next up?

21 MR. PRIMO: Yes. So next up is Jennifer Waller.

22 Jennifer, if you're available, would you mind
23 unmuting yourself?

24 (Pause.)

25 Okay. Maybe Jennifer might be having some

1 technical difficulties, or she may have left the meeting.

2 We will circle back at the end. Next up is Ellen.

3 Ellen, are you available?

4 MS. GIANRRATANA: Yes. I'm here.

5 MR. PRIMO: Okay. Thank you.

6 MS. GIANRRATANA: All right. So my name is Ellen
7 Gianrratana, and I'm a civil rights attorney here in Denver
8 with Rathod Mohamedbhai. I'm speaking today on behalf of
9 the Colorado Women's Bar Association which is an
10 organization of women, law students, lawyers, advocates, and
11 judges. Members of the CWBA work closely with the
12 legislature in drafting and passing the Equal Pay for Equal
13 Work Act. With that backdrop, I am here to show the CWBA's
14 support for the Equal Pay Transparency Rules.

15 The CWBA along with the Women's Foundation of
16 Colorado and Colorado 9to5 submitted written comments, so I
17 will just touch on some of the main points of those
18 comments. Most importantly, the CWBA would like to
19 emphasize the Division's ability to engage in rulemaking
20 under Part 1 of the Act which allows the Division to accept
21 and mediate complaints of substantive equal pay violations.

22 Rulemaking under Part 1 is vital to the Act as the
23 legislature was concerned about the ability of low-income
24 workers to obtain counsel, and thus, the need for an
25 alternative vehicle to obtain prompt remedies. And from the

1 employer's perspective, it is important to avoid costly
2 litigation for low-damage cases. As such, the CWBA intends
3 to continue pushing for rules under Part 1 of the Act.

4 Our main concerns with respect to enforcing Part 2
5 of the Act was ease of access for complainants and imposing
6 rules on employers that conform with the spirit of the law.
7 We believe that the proposed rules have sufficiently
8 addressed those concerns, and we support them with minor
9 caveats. Proposed Rule 3 in particular which outlines the
10 process for complaints, investigations, and appeals provides
11 a clear and user-friendly process for complainants to
12 utilize that largely mirrors the process for wage and hour
13 complaints. It also allows for those who have witnessed a
14 violation as well as anonymous complainants to file
15 complaints with the Division. These two provisions improve
16 and promote access to justice for a wider swath of
17 Coloradans.

18 While we have some minor critiques of proposed
19 Rule 4 such as defining compensation and benefits, ensuring
20 that remote workers receive job posting and--job postings
21 and promotional opportunities, and perhaps imposing a burden
22 of proof on employers with respect to showing their salary
23 ranges were posted in good faith, we otherwise support the
24 proposed rule. I want to specifically note the CWBA's
25 support for proposed Rule 4.2.4 which ensures that employers

1 notify all employees of promotional opportunities, not just
2 those that it deems qualified.

3 This proposed rule is extraordinarily important to
4 carry out the purpose of the statute. Given that employers
5 historically promote men out of--at far higher rates than
6 women, intentional or not, implementing a rule allowing
7 employers to self-select which individuals were qualified to
8 receive a promotional opportunity would risk defeating the
9 purpose of the bill. While it may make little sense to
10 share promotional opportunities for lawyers with paralegals,
11 for example, the burden of simply tossing a resume aside
12 that is clearly ineligible for a position is minimal in
13 comparison to the historical cost of underpromoting females.
14 Once more, employers are not precluded from including
15 requirements for such promotions such as having a J.D.,
16 years of experience, and subject matter expertise.

17 For these reasons and others that are within our
18 written comments, the CWBA supports the Division's proposed
19 rules.

20 MR. PRIMO: Thank you, Ellen.

21 MR. MOSS: Thank you.

22 Mike, who's next up?

23 MR. PRIMO: Yes. Dan Block.

24 If you are available, Dan, would you mind unmuting
25 yourself?

1 MR. BLOCK: Yes. This is Dan. Can you hear me?
2 Hello?

3 MR. PRIMO: Yes, we can.

4 MR. BLOCK: Okay. I'm Dan Block. I'm a business
5 and employment attorney at Robinson Waters & O'Dorisio. I'd
6 like to start with a comment on the COMPS order rules, and
7 I'm looking at Rule 2.2.3 and where it says that the
8 requirement is the consistent exercise of discretion or
9 judgment. The problem there is "consistent" to me is a
10 vague term. It almost implies continuous or exercise of
11 discretion in judgment, or that the person could not also be
12 doing the tasks that are not requiring that kind of
13 discretion and judgment. I would prefer, I think it would
14 be better to use a term such as "regular" or "ongoing" that
15 makes it more clear that the person might also do the--some
16 routine work.

17 Next, I'd like to speak on the Wage Protection Act
18 Rules, and in particular I am looking at Section 3.5.1. It
19 says that paid leave begins to accrue at the commencement of
20 employment or on January 1, 2021. That is not correct.
21 It's not consistent with the statute. Paid leave begins on
22 January 1, 2021, only for employers with 16 or more
23 employees. Therefore, that needs to be revised to indicate
24 that, that on January 2021 it is employers with 16 or more
25 employees and for smaller employers it begins on January 1,

1 2022.

2 Next, I'd like to comment on Section 3.5.2 and
3 subpart(b). This is unclear to me what the intent there is.
4 Number one, it seems like the intent is that it's saying
5 that the maximum hours of paid leave an employee can take
6 per day is the number of hours they would have worked during
7 a day. Also it should clarify for exempt employees who
8 don't work a regular schedule, who may work more than 40
9 hours a week, that their paid leave would be considered to
10 be at most, for example, 8 hours per day. So I think we
11 need some clarification there.

12 Finally, speaking on the Equal Pay Transparency
13 Rules, I can see people have commented about the issue of
14 the posting of promotional opportunities, and so I won't go
15 into all my thoughts on that. But simply to me the bottom
16 line is that if no one in the company is qualified for the
17 promotion, it is not a promotional opportunity for those
18 people. And that is why it should not have to be posted to
19 the employees in the company.

20 That's all I have.

21 MR. MOSS: Thank you, Dan.

22 MR. PRIMO: Thank you, Dan.

23 Next up is Patrick Moya.

24 Patrick, if you're available, would you please
25 unmute yourself?

1 (Pause.)

2 Okay. Patrick may be having some technical
3 difficulties or may have left the meeting. We can circle
4 back at the end. Next up is Louise Myrland.

5 Louise, are you available?

6 MS. MYRLAND: Yes, good morning.

7 MR. PRIMO: Good morning.

8 MS. MYRLAND: Hi, there. My name is Louise
9 Myrland. I am the Vice President of Programs for the
10 Women's Foundation of Colorado, a statewide community
11 foundation dedicated to advancing women's economic security
12 and in doing so strengthening our entire state. Thank you
13 for the opportunity to speak today about the proposed rules
14 for the Equal Pay for Equal Work Act.

15 First, I would like to express our support for the
16 proposed rules to promote pay transparency. Improving
17 transparency in pay and opportunities for promotion will
18 help to close the staggering and persistent gaps and really
19 gulfs in compensation experienced by women, particularly
20 women of color. With our partners in advocacy for the
21 passage of the Equal Pay for Equal Work Act, the Colorado
22 Women's Bar Association and 9to5 Colorado, we submitted
23 written comments underscoring our support in providing
24 suggestions for clarity to the proposed rules which you
25 heard about from Ellen a few moments ago.

1 Today I'd like to encourage the Division to
2 promulgate rules under Part 1 of the Equal Pay for Equal
3 Work Act regarding accepting and mediating complaints and
4 providing legal resources so that all Coloradans have
5 accessible avenues to enforce their rights under the law. I
6 also appreciate opportunity to encourage the Division to
7 establish a process to receive wage disparity complaints so
8 that they may be compiled and published. Specifically, I
9 urge the Division to make disaggregated data available so
10 that we may all access information about wage disparity
11 concerns within the state of Colorado as they are reported
12 within certain industries and geographic regions as well as
13 considering individuals intersections of identity including
14 gender and race.

15 While we'll continue to urge the Division to
16 promulgate rules regarding Part 1 of the Equal Pay for Equal
17 Work Act, I thank you for the opportunity to express Women's
18 Foundation Colorado support for the proposed Pay
19 Transparency Rules with the clarifications we noted in our
20 written comments. Thank you.

21 MR. MOSS: Thank you, Ms. Myrland.

22 MR. PRIMO: And thank you as well. It look like
23 Patrick is able to join us again.

24 So Patrick, would you please unmute yourself?

25 MR. MOSS: Oh, and then I'd just clarify the

1 queue. I believe Jennifer Waller also had difficulties. We
2 can loop back.

3 Are you here, Ms. Waller?

4 Okay. Absent that, we'll leave Ms. Waller then on
5 the list in case she appears by the end perhaps after
6 technical difficulties. But we can go to Mr. Moya.

7 MR. MOYA: Can you guys hear me okay?

8 Good morning. Well, thank you so much. My name
9 is Patrick Moya. I own a small search firm and--called
10 Quaero Group where I place and focus--where I focus on
11 placing attorneys in Colorado and across the country. I'm
12 here today representing the staffing and recruiting
13 industry, specifically Rocky Mountain Association of
14 Recruiters. It's also noteworthy that I own a minority--a
15 certified minority-owned business. And so just trying to
16 give you guys a little bit of context of where I sit before
17 I tell you where I stand.

18 And so at the end of the day with respect to what
19 we are looking at as the staffing and recruiting industry,
20 under proposed Rules 4.3.2 and 4.3.3, the permanent
21 placement and temporary staffing industry takes a lot of
22 exemption to this. And we've heard back from our clients
23 and candidates as well that, you know, this is going to
24 be--have a deleterious effect on jobs in Colorado.
25 Specifically, you know, we have no way to measure the

1 impact, but we know it will be severe to say the least. And
2 the most powerful thing we can say as an industry is
3 companies won't want to move their operations to Colorado or
4 continue to operate here because it will force these
5 companies to disclose privileged and confidential
6 information requiring their hiring and firing strategies.

7 It will also force companies who have any
8 employees in Colorado to disclose all this information
9 publicly to all employees and to the public across the
10 company just because they do business here. So this is
11 unprecedented for our state, and we are the only state in
12 the country. Not even California or Massachusetts or New
13 York are this onerous because we are trying to lead the pack
14 again. This is my opinion, of course. So doing this for
15 cannabis is one thing, but this is definitely going to hurt
16 jobs in Colorado.

17 So some of our proposal is--well, actually, so
18 under the current regulation as currently written, if a New
19 York employer as stated by Mr. Kirkpatrick and Ms. Harpole
20 and some others, if a New York employer with one or two or
21 more remote employees in Colorado has a vacancy in New York
22 for let's just say a CFO position, and applicants from
23 Colorado are here including, you know, construction workers
24 who may not be qualified based on educational requirements,
25 that employer is obviously required to post that job and

1 disclose a salary range for that position. That's obviously
2 going to be very, very difficult.

3 Companies come to search firms to help us fill
4 these positions specifically around--allowing us to guide
5 them, to provide them insight, and those type of things.
6 And so with respect to the salary ranges for the position,
7 often times it's not known prior to beginning the search
8 what a salary will--which needs to be paid for a specific
9 position. And so they come to us to help them as
10 consultants to guide them through determining what is a fair
11 and equal compensation for those positions. And so we
12 understand the goal is fair pay for all, and we completely
13 support as an industry equal pay for every employer.
14 However, this provision is too broad and is the wrong
15 solution.

16 So in that case, we recommend amending the
17 position to what's been stated before. And maybe a good
18 half-way point is what Colorado has done when companies and
19 employees specifically request from their employers the
20 compensation range, then that's the time when they can--they
21 can issue and disclose it.

22 And then with regarding 4.2.4, employers must
23 notify all employees of promotional opportunities and may
24 not limit notice to those employees it deems qualified for
25 the position but may state that applications are open only

1 to those with certain qualifications. This would be a
2 significant burden on the companies doing business in having
3 one or more remote workers in Colorado as stated earlier.
4 So again, this is going to affect, personally, our industry
5 significantly, and more importantly, our clients who we--you
6 know, and our very precious jobs that we have here in our
7 state.

8 So any follow-up on that? I think that's it for
9 me.

10 MR. MOSS: Well, thank you, Mr. Moya.

11 MR. PRIMO: Yes. Thank you Patrick.

12 Next up is Lauren Maisis (phonetic) or Masias.

13 Are you available?

14 MS. MASIAS: Hi. Give me just one second to get
15 my camera on.

16 MR. MOSS: Sure.

17 MR. PRIMO: Absolutely. Take your time.

18 (Pause.)

19 MS. MASIAS: Hi there. Good morning. My name is
20 Lauren Masias, and I am the Director of the Colorado
21 Competitive Council, a coalition of employers, associations,
22 and chambers of commerce across the state who advocate to
23 keep Colorado's business climate competitive. Today I am
24 here to testify on behalf of C3 and its members.

25 C3 and its members support equal pay. Closing the

1 wage gap and ensuring gender equity in the workplace is
2 urgent and critical, and Colorado companies are stepping up.
3 Senate Bill 19-085 bolsters this important effort. Our
4 concern is not with the legislation but with aspects of the
5 proposed rules.

6 We wish the Division would have reached out
7 earlier because our concerns stem in large part from
8 operational realities that we believe can be resolved.
9 Although we appreciate that the Division is attempting to
10 strengthen Senate Bill 19-085, proposed Rule 4.1 disregards
11 the legislation expressed wording. Senate Bill 19-085
12 expressly requires a general description of compensation and
13 benefits because the legislature knew and appreciated that
14 asking employers to list every benefit and every aspect of
15 compensation would be impractical and unnecessary to
16 accomplishing the goal of transparency.

17 Similarly, proposed Rule 4.2 disregards Senate
18 Bill 19-085's reasonable efforts standard and instead
19 unreasonably requires employers to post all job
20 opportunities to all employees including to employees who
21 are not and cannot be eligible for such an opportunity. For
22 example, some jobs require state or federal licensure or
23 certain education credentials or prior work experience.
24 Other jobs require a specialized skill including artists,
25 athletes, and actors. Still, other jobs are subject to the

1 terms of a collective bargaining agreement. Requiring these
2 notices to ineligible employees creates false expectations
3 for them and needless additional work for the employer.

4 Proposed Rule 4.3 is likewise unreasonable in its
5 extra jurisdictional reach. Senate Bill 19-085 is clear in
6 its applicability to jobs, employers, and employees within
7 Colorado. Contrary to that legislative intent, proposed
8 Rule 4.3 would apply to jobs, employers, and employees, not
9 just within Colorado, but across the country and even around
10 the world. This goes well beyond Senate Bill 19-085's
11 intended reach, and such a requirement will have the
12 unintended effect of killing business interests and making
13 jobs available in Colorado resulting in fewer job
14 opportunities for Coloradoans.

15 Again, our concerns are not with Senate Bill
16 19-085 but with the proposed rules. We hope to be able to
17 work through these concerns with the Division so that
18 Colorado's new Equal Pay Transparency Law can be
19 successfully implemented. Thanks for your time.

20 MR. PRIMO: Thank you, Lauren.

21 Lydia Waligorski.

22 Are you available Lydia?

23 MS. WALIGORSKI: I am. Thank you. Can you hear
24 me okay?

25 MR. PRIMO: Yes.

1 MS. WALIGORSKI: Wonderful.

2 Good morning, my name is Lydia Waligorski, and I
3 am the Public Policy Director for Violence Free Colorado.
4 We are the state's domestic violence coalition founded in
5 1977. We work with hundreds of organizations and
6 individuals in local communities and across the state to
7 prevent and end relationship violence and to support those
8 affected by relationship abuse.

9 Thank you so much for allowing participation and
10 the ability to provide comment related to proposed Rule
11 1103-11. I will be specifically speaking to Subsection(C).
12 Our reading of Subsection(C) appropriately and graciously
13 reflects the previously submitted comments, testimonies, and
14 concerns related to the reasonable documentation provided to
15 employers by workers who need to use leave for purposes
16 related to domestic violence, sexual assault, and
17 harassment. We believe that (C) establishes that
18 self-attestation by the--by a person experiencing an act of
19 personal violence or crime is sufficient documentation and
20 that this should be the victim's choice whether or not to
21 provide the self-attestation or be required--should not be
22 required to submit official documentation from a service
23 provider, a court, or law enforcement personnel.

24 As we have previously, clearly stressed, these
25 documents may be difficult for some survivors to quickly

1 obtain especially as a global pandemic necessitates ritual
2 services, and people may not have the needed technology in
3 order to obtain releases for information or to obtain court
4 records or documents. We appreciate that the emphasis in
5 the Rule is given and care is given to confidentiality of
6 health concerns including the need for leave for domestic
7 violence, sexual assault, and stalking.

8 Thank you again for the opportunity to speak
9 today, and I'll conclude my comments here. Thank you.

10 MR. MOSS: Thanks, Ms. Waligorski.

11 MR. PRIMO: Thank you, Lydia.

12 Next up is Scott Segerstan (phonetic)--Segerstrom.

13 Scott, are you available?

14 (Pause.)

15 Scott may be having some technical difficulties or
16 may have left the meeting. We will come back to him at the
17 end. Next up is Daniel Combs.

18 Daniel, if you're available, please unmute
19 yourself.

20 MR. COMBS: Good morning. Can you hear me?

21 MR. MOSS: Yes.

22 MR. COMBS: I'm Daniel Combs. I'm an Assistant
23 Attorney General who leads the Colorado Department of Laws
24 management-focused collective bargaining efforts, speaking
25 on today on behalf of the Colorado Department of Personnel

1 and Administration with regard to the State Labor Relations
2 Rules. Thank you to the Division for the opportunity to be
3 heard before adoption of these State Labor Relations Rules.

4 I will be submitting written comments on behalf of
5 Colorado DPA which focus on what we believe are critical,
6 substantive concerns and recommendations as well as comments
7 concerning terminology and recommendations concerning
8 certain procedures that we believe our comments will provide
9 clarity and minimize ambiguities and the possibility of
10 confusion. This morning I'm going to speak to four
11 substantive concerns. And again, we'd refer you and the
12 public to the other comments that we are submitting this
13 week.

14 The first has to do with the lack of any deadlines
15 for unfair labor practice charges, or ULP charges. We
16 believe the inclusion of procedural deadlines should be
17 included in Rule 4.1. The proposed rules do not establish a
18 procedural deadline on when ULP complaints may be filed.
19 Existence of a procedural deadline or statute of limitations
20 is a feature of all of the unfair labor practice dispute
21 resolution frameworks that we are aware of. We believe it's
22 important to encourage prompt resolution of ULP disputes to
23 allow certainty with regard to dormant claims and also to
24 avoid a situation in which a respondent might lose
25 evidentiary evidence necessary to disapprove a claim,

1 particularly where there may be policies in place in which
2 e-mails or other evidence may not be saved for an indefinite
3 period of time.

4 We, therefore, recommend updating the proposed
5 rules and modifying them to state that ULP complaint must be
6 received by the Division no later than four months after the
7 date of the alleged ULP occurred. And our specific language
8 with regard to that issue will be found in the written
9 comments.

10 The second issue has to do with proposed Rule 4.2
11 and, in particular, the standard of review in ULP appeals.
12 Under the proposed rules concerning ULP disputes, the
13 Division investigates complaints and makes determination as
14 to whether a ULP has occurred, and then a party may appeal
15 that. In the appeal the Hearing Officer decides whether the
16 Division's determination was based on clear error of fact or
17 law. We urge the CDLE to modify the standard of review to a
18 de novo review for facts and both for also review of law for
19 two reasons.

20 The first is that the initial determination will
21 be based on a review of evidence that was submitted in a
22 very limit amount of time. Currently, that's a 14-day
23 period, when at times a ULP may allege statewide practices
24 that cover potentially 20 state departments, not to mention
25 an additional number, 29 I believe, of institutions of

1 higher education. Moreover, there is no existing body of
2 law to support a clear error of law standards at this time.
3 Notably, the Colorado Partnership for Quality Jobs and
4 Services Act, it differs in certain respects from both the
5 National Labor Relations and other state public sector
6 collective bargaining acts. And there is no body of clear
7 precedent that applies here.

8 We also envision that initial ULPs may concern
9 disputes about which the state and a Certified Employer
10 Organization, CO-INS (phonetic), fundamentally disagree
11 about what rights and obligations the Act creates or whether
12 it's--the Act adopts concepts found under the National Labor
13 Relations Act when the terms of the Act may differ at times
14 from the NLRA and other state statutes. We, therefore,
15 recommend that appeals concerning findings of fact and
16 conclusions of law on the merits of the ULP be subject to de
17 novo review.

18 Third, we ask the Division to reconsider the
19 identity of respondents in appeals of coverage decisions.
20 This has to do with Rule 5 in which the CDLE is an appealing
21 body for decisions made by the State Personnel Director as
22 to whether employees are covered or not covered under the
23 Act.

24 The State Personnel Director is the initial
25 decision maker under the Act of whether an employee is

1 covered or not covered. In those disputes the two parties
2 will be the Certified Employee Organization, which is
3 CO-INS, and the particular state department, agency, or
4 division that employs the employee at issue. Proposed Rule
5 5 swaps out the particular state employer who is the party
6 in interest in the initial dispute before the State
7 Personnel Director with the State Personnel Director
8 position.

9 We recommend defining the word "appellee" for
10 purposes of Rule 5 appeals to be the particular state
11 department, agency, or division which is challenging or
12 defending a coverage determination, not the State Personnel
13 Director. This recommended change will ensure that the
14 state party with the greatest knowledge about a position and
15 the greatest interest in ensuring the position is properly
16 designated as covered or not covered remain the party that
17 appeals or is defending the State Personnel Director's
18 decision.

19 And to be clear, there may be times when the State
20 Personnel Director's interests with regards to such a
21 determination don't closely align with the underlying state
22 decision. So we ask for you to reconsider this and to
23 modify the framework so that the same party in a coverage
24 dispute is the party before the CDLE.

25 Finally, we want to address the terminology of

1 coverage decisions. Again, we're talking about Rule 5 here.
2 In the proposed rules, the use of the--the proposed rules
3 use the phrase, quote, classification decisions. This may
4 cause confusion with the separate issue of whether employees
5 are properly accepted under the state personnel system.
6 That particular issue, whether employees are accepted under
7 the state personnel (inaudible)--state personnel system,
8 whether they are or are not classified, those decisions are
9 decided by the State Personnel Board, not CDLE. And that's
10 under CRS Section 24-50-1106(4) (phonetic).

11 We, therefore, recommend revising the heading and
12 all language in the proposed rules that currently talk about
13 classification to say appeals of coverage decisions by a
14 State Personnel Director. We further recommend that, again,
15 to avoid confusions, references to classification or
16 classified decisions be changed to refer to both covered and
17 noncovered.

18 Those are our comments we wanted to discuss this
19 morning and again ask you--or point you in the direction of
20 our written comments with regard to these and additional
21 concerns and recommendations. Thank you.

22 MR. MOSS: Thank you, Mr. Combs. A quick follow
23 up on the deadline that you recommend for five--you
24 mentioned four months, the existing Labor Peace Act which is
25 not applicable here but is an existing body, it says six

1 months for an unfair labor practice charge. And the issue
2 that perhaps you've flagged is that the statute, I believe,
3 doesn't expressly list a deadline.

4 So is there a reason four months in particular
5 seemed right to you? Or would six months to parallel the
6 Labor Peace Act to the extent that this statute references
7 the Labor Peace Act in part while not incorporating all of
8 it? Or was four months a particular time that made sense
9 for a specific reason to you?

10 MR. COMBS: I think that six months could be
11 acceptable. So the four-month period is what we think is an
12 appropriate amount of time to try to encourage the parties
13 to raise disputes when they're on their minds. However, a
14 six-month period also aligns with what we've seen. We have
15 seen four-month frameworks. But six month aligns with other
16 state frameworks and also with the National Labor Relations
17 Act. We think it is certainly better than an indefinite
18 period.

19 MR. MOSS: Thank you.

20 MR. COMBS: Thank you.

21 MR. PRIMO: Thank you, Daniel.

22 Next up is Kevin Caudill.

23 Kevin, if you're available, would you please
24 unmute yourself?

25 MR. CAUDILL: Yes, hello. This is Kevin Caudill

1 with the Colorado Hospital Association just confirming you
2 can hear me.

3 MR. PRIMO: I can hear you. Thank you.

4 MR. CAUDILL: And so again, my name is Kevin. I'm
5 a policy analyst with CHA submitting comments today on
6 behalf of more than 100 hospitals and health system members
7 statewide. Thank you to CDLE for this opportunity this
8 morning to express the feedback of those hospitals and
9 health systems.

10 We are submitting comments today that focus on
11 Wage Protection Rules as well as Equal Pay Transparency
12 Rules. The CHA will also submit detailed, written comments
13 on those two rules in addition to the Overtime and Minimum
14 Pay Standards, the Whistleblower Anti-Retaliation and
15 Noninterference, and Notice Giving Rules as well before the
16 written comment deadline.

17 CHA continues to have concerns with prescriptive
18 language in the proposed rules. Employers including
19 hospitals and health systems must be afforded the
20 flexibility to administer these proposed rules in a way that
21 is best for the diverse workplace as we find in hospitals
22 across Colorado. And so, first, I want to specifically talk
23 about some high-level things in the Wage Protection Rule.

24 Timekeeping systems and record keeping especially
25 is applied to the certain classes of employees with the

1 primary concerns identified by hospitals, so specifically,
2 on shift differentials and the inclusion of shift
3 differentials in the payment of leave for HFWA qualifying
4 reasons. The definitions under most paid time off plans to
5 pay a base rate for time off--pay a base rate for time off
6 used, this practice is applied by most Colorado hospitals
7 and health systems and does not include additional premium
8 pay, what we call shift differentials, which is provided to
9 incentivize employees who--to work less desirable shifts.
10 CHA recommends changing the terminology to base rate or
11 requests to remove the reference to the COMPS Rule 37-1.8
12 within the Act. For example, use PTO plans but change how
13 PTO is paid.

14 The other issue I wanted to flag is around
15 overtime and the calculation of the accrual rate. CHA urges
16 CDLE to clarify its regulations to allow PTO accrual to be
17 based on a 40-hour workweek excluding overtime in cases
18 where the employer's PTO policies exceeds the accrual rate
19 covered by the HFWA. So the HFWA allows employers to use
20 PTO policy for absences provided employees accrue sufficient
21 paid time as required under the Act. Member hospitals PTO
22 policy often far exceeds this accrual rate. However, the
23 HFWA and proposed rules provide that the accrual of paid
24 leave must accrue on all hours worked including overtime.
25 And having to include overtime in the accrual of the PTO

1 creates an administrative burden and will increase the
2 employer's costs.

3 And I did want to flag two other sections briefly
4 here. And again, I will make more detailed comments in my
5 written testimony. But on the Section 3.5.3(b), allowing an
6 employer to require use of HSWA leave and hourly increments,
7 but if not, specified employees may use the time in smaller
8 increments going as low as six minutes, and that use of sick
9 time in small increments can be very burdensome to
10 employers.

11 And then another in 3.6.6(e), around the
12 confidentiality provision we do find quite onerous about
13 sharing confidential leave information. And that would not
14 leave room to argue that information may be disclosed on a
15 need-to-know basis.

16 And then last, briefly, on Equal Pay Transparency
17 Rules, the primary concern is that the proposed posting
18 requirement applies to all internal and external job
19 openings. There's no distinction between internal vacancies
20 and normal career progression. CHA specifically for
21 hospitals has concerns with the lack of clarity around the
22 proposed provision that employers are required to make
23 reasonable efforts to inform and announce to their current
24 employees all opportunities for promotion.

25 As written there's no definition for promotion.

1 And so the question to be posed is, is it the intention to
2 allow employers to self-identify what constitutes a
3 promotion within their organization? And we feel employers
4 should be able to exclude from posting those position with
5 dedicated career ladders or when additional responsibility
6 is provided to an incumbent in the same role.

7 Second, the proposed rule applies to all jobs
8 including those that may consider applicants from Colorado
9 and other locations and even in cases in which the job will
10 be filled in other locations. Ignoring the distinction
11 about place of employment may discourage multistate
12 employers from considering Colorado applicants to avoid the
13 posting requirements.

14 And again, we will be sharing more detailed
15 comments on our written testimony on all of the rules, and
16 thank you for the opportunity to share our comments today.

17 MR. MOSS: Thank you, Mr. Caudill.

18 MR. PRIMO: Yes. Thank you.

19 I'll once again call out for Jennifer Waller.

20 Jennifer, if you're in attendance, would you
21 please unmute yourself?

22 (Pause.)

23 MR. MOSS: Let's move on, Mike.

24 MR. PRIMO: Hello?

25 Okay. We'll move on to Scott Segerstrom again.

1 Scott, if you're available, would you unmute
2 yourself?

3 (Pause.)

4 Okay. At this time we will open up any comments
5 by those who may be attending by phone.

6 MR. MOSS: I suggest before we do that, I just
7 want to say two things. One is that if you're here,
8 Jennifer Waller and Scott Segerstrom, and are just having
9 technical difficulties, or if anyone knows if they were
10 intending to be on the call and it didn't work out, you
11 certainly can submit comments in writing in any way that we
12 have offered on our page, whether by e-mail through the RSVP
13 form, or if you log in again through the chat. And if you
14 re-log in before this hearing ends, you can jump in when we
15 call for other comments.

16 Before we move onto phones just to 100 percent
17 sure--Mike's been carefully tracking everyone here by
18 Internet who indicated that they want to speak in the chat
19 window, and also Mike had tracked everybody who RSVP'd
20 before this. But just to make 100 percent sure, is there
21 anyone who RSVP'd to speak and hasn't yet been called on or
22 who indicated they want to speak in the chat window and as
23 not yet been called on?

24 (Pause.)

25 You are free to unmute if you are in those

1 categories. If you are not and you wish to speak, we'll get
2 to you in a second. I just want to make sure we didn't miss
3 anybody.

4 (Pause.)

5 Hearing none, gold star for Mike for fielding the
6 whole list.

7 With that, Mike, go ahead and you can solicit
8 phone participation.

9 MR. PRIMO: Thank you, Scott.

10 Yes, if there's anybody on the phone that would
11 like to speak, please unmute yourself by hitting star 6 on
12 your phone. And please say your name and the rule you would
13 like to discuss.

14 MS. BAILEY: Hi, this is Jamie Bailey. I'd like
15 to discuss CCR 110307 3.5.1(d) (phonetic). I'm a project
16 manager focusing on U.S. paid-time-off design and
17 administration along with compliance with all U.S. leave law
18 including federal, state, and local law. I work for a
19 worldwide employer currently with employees working in every
20 U.S. state. And my comments are my own regarding the Wage
21 Protection Rules.

22 I want to specifically talk about only one rule,
23 and that is the carryover requirement. Most U.S.
24 paid-time-off design has one of two design components: an
25 accrual and a carryover feature, or simply a front load with

1 no carryover feature. Requiring both a front load and a
2 carryover is not common. It does restrict paid-time-off
3 design in a way that impedes benefit design overall. It
4 adds cost to employers without adding benefit to employees
5 given that an employer can set a ceiling of use of 48 hours
6 annually.

7 By requiring that carryover, employees will see
8 that carryover on their pay summary, and they're going to
9 want to take it even as an employer could set the limit at
10 48 hours. Additionally, that 48-hour requirement for an
11 employer that front loads doesn't add anything to the
12 requirement because that employee has the benefit on
13 January 1st of being able to take the entire 48 hours
14 immediately.

15 Most of the other states in the United States for
16 the past paid sick-leave law offer a front load option, and
17 they do not require an employer to carryover the time. So,
18 for example, in Colorado you could permit an employer to
19 carryover the time if they elect to front load the time but
20 not make it a requirement. That would avoid excess payroll
21 coding without helping the employee benefit or the employer,
22 and it would remove excess costs in administering this law.

23 That's all I had. Thanks for the opportunity to
24 share my comments.

25 MR. MOSS: Thank you. And since you're by phone

1 and we don't see the name, could you spell your first and
2 last name, please?

3 MS. BAILEY: Yep. Jamie Bailey, J-A-M-I-E,
4 B-A-I-L-E-Y.

5 MR. MOSS: Ah, we had guessed correctly. Thank
6 you very much, Ms. Bailey.

7 MS. BAILEY: Thanks, bye.

8 MR. MOSS: Anyone else on the phone who wishes to
9 speak?

10 (Pause.)

11 MR. PRIMO: Okay. Again, one last call for
12 anybody on the phone who would like to speak. To unmute
13 yourself, you must hit star 6.

14 (Pause.)

15 At this time there does not appear to be anybody
16 who would like to speak via telephone. I will give this
17 back to Director Moss for closing.

18 MR. MOSS: One last call having solicited
19 participation by phone. Anyone here by Internet wishes to
20 speak who has not had a chance to yet including anyone who
21 might have RSVP'd and then was having technical difficulties
22 or anyone who would just like to respond to anything? Open
23 floor in other words for anyone to jump in either by phone
24 or Internet.

25 MR. PRIMO: I just received a chat from Patrick

1 Moya saying a Michael Mitchel is available and would like to
2 speak.

3 Michael, I'm not sure if you're available by phone
4 or Internet. Would you please unmute yourself?

5 (Pause.)

6 MR. MOSS: Mr. Moya, since you mentioned Mr.
7 Mitchel's interest in speaking, do you know if he's here
8 already or by phone or Internet or some other means?

9 MR. MOYA: Yeah. He's here already. He's--he was
10 having--I can see him online right now. He was having a
11 little bit of trouble with respect--there. And, Michael--

12 MR. MITCHEL: Can you hear me?

13 MR. MOSS: If you could unmute, that would be
14 good, Mr. Mitchel.

15 MR. MOYA: And at the bottom of your screen, Mr.
16 Mitchel, if you--it will pop up. There you go.

17 MR. MITCHEL: There we go. Sorry about that. I
18 was--pardon me. I'm catching up. I was listening earlier.
19 I did not plan on speaking, but I'm more than happy to do
20 so, if that's all right.

21 MR. MOSS: That's great. Thank you very much.

22 MR. MITCHEL: Yeah, so a little bit about me. My
23 name is Michael Mitchel, last name spelling is
24 M-I-T-C-H-E-L. I've owned a search firm for the last 20
25 years. I'm a disabled veteran small business owner. And I

1 read this language, and I found this language concerning on
2 several fronts.

3 I was reading both the proposed Rules 4.3.2 and
4 4.3.3 and 4.2.4. You know, I look at this--I do searches
5 nationally. And part of the value that as a small business
6 owner that we provide to our clients is that we help them
7 find applicants in a timely fashion. We also help relieve
8 the workload for the internal talent acquisition
9 professionals so they can focus on other positions.

10 The way this is currently written, this would
11 double the workload for the internal recruiters. It would
12 also have a chilling effect for businesses to do and hire
13 within the state of Colorado. The scenario that I think of
14 is if you are Time Warner in New York and you need to
15 hire--you need to replace your CFO. And for whatever reason
16 it's a--he's an incumbent--he or she is incumbent, and
17 you're looking for a replacement so you can then let them
18 go.

19 The way this current language reads, if they
20 have--Time Warner has one employee in Colorado, say a help
21 desk support person, they would be able to apply for this
22 job, know that this person's job is in danger, and know what
23 the exact comp is. Now, that's problematic for a lot of
24 reasons, both for the companies, for the incumbent employee,
25 and also it just takes up bandwidth for someone who's not

1 clearly qualified for that type of a role.

2 But also, if you are a company looking to come to
3 Colorado and do business, this would have a chilling effect.
4 I would do a serious pause and say, well, this is going to
5 pull up a whole lot of employment issues for us
6 unnecessarily. I understand what the goal here is, and I
7 just think that this is not the right solution at this
8 particular time.

9 Yeah, that's really my high level. I'm not going
10 to read, you know, point by point my concerns. But I think
11 it puts a lot of risk for confidentiality, hiring practices,
12 time to hire. Companies have a hard enough time finding
13 qualified candidates and getting them on board before
14 another company picks them up. So this would hurt them
15 hiring.

16 MR. MOSS: Thank you, Mr. Mitchel.

17 MR. MITCHEL: Yep. That's it.

18 MR. MOSS: There's a comment in the chat room by
19 Kevin Bommer from the Colorado Municipal League. You
20 mentioned submitting written comments, and you summarized
21 them in the chat window. We're happy to take that as your
22 comments. But would you also like to speak as well? Or
23 were you just flagging that there are written comments
24 coming with the gist that you mentioned in the chat window?

25 MR. BOMMER: Hi. Thank you. I think given the

1 time and the detail that the written comments will go into,
2 I can spare everyone the verbal comments. But there are
3 significant terms and requirements in the Equal Pay Act that
4 municipal employers have been looking to the rulemaking,
5 which we would have hoped would have come several months
6 ago, but as they're scrambling to be ready to start on
7 January 1st that aren't defined or even mentioned in the
8 proposed rules. So we've been collecting those and hope to
9 have--even though it will be late in the year, but the
10 January 1st implementation hope to see them addressed in
11 some way in the final version of the rules.

12 MR. MOSS: Thank you, Mr. Bommer.

13 Anyone else who'd like to speak either who's here
14 by Internet, by phone, by any other means? Speak now or
15 type your name in the chat window. If you're here by phone,
16 just say your name. Open floor.

17 (Pause.)

18 I'll give it 30 seconds in case anyone is
19 forgetting to unmute or having a bout of politeness of
20 waiting to see if others are speaking first.

21 (Pause.)

22 MR. MOYA: Mr. Moss?

23 MR. MOSS: Yes.

24 MR. MOYA: This is Patrick Moya. I wanted to ask
25 what was the--and I apologize. We as an industry didn't

1 really know this, and we were very late to the party, but
2 what was the intent of Section 4.3.2, 4.3.3, and 4.4.4 in
3 terms of how it was written? We understand, obviously, by
4 the title that it's Equal Pay and Transparency Rule, so
5 that's pretty obvious. But with respect to posting those
6 positions and what they're going to be doing, what was the
7 spirit of law to, and then how does--how does the Board feel
8 like this is going to continue to help Colorado jobs and the
9 economic--in our economic situation here?

10 MR. MOSS: Sure. Happy to address. Did you say
11 4.3.--which ones?

12 MR. MOYA: 4.3.2, 4.3.3, and 4.3.4, all based on
13 equal--the equal--or I'm sorry. I'm sorry. I'm sorry. I
14 misspoke. My apologies. 4.2.2, 4.2.3, and 4.2.4.

15 MR. MOSS: Oh, so in general as to both 4.2.3, the
16 goal here, happy to address, was just to flesh out the
17 statute seen to in the Transparency provision, state in
18 fairly categorical terms that all opportunities for
19 promotion must be announced. And in 4.2.3 as to location it
20 says, "All employers, defined as anyone who employs one
21 person in Colorado, must post all promotion opportunities
22 to--must post all to all employees without geographic limit
23 defined," because the statute doesn't define those employees
24 as within Colorado.

25 That said, while that was a wording of the

1 statute, there are other provisions that a number of folks
2 have called attention to that might support what we're
3 hearing from a number of representatives of various
4 employers in business. Could be a narrowing of that scope.
5 Despite referring to all employers or all employees, there
6 may be other bases in the statute for a narrow
7 interpretation.

8 So the goal in the drafting was simply to draft
9 and then put up for comment. And we appreciate everyone's
10 comments that the wording of the Transparency provisions
11 being essentially one sentence about posting all promotion
12 opportunities to all employees and one sentence about how
13 all job postings must have this information seemed
14 categorical. But to the extent that there is room to
15 support some of the policy arguments that we're hearing,
16 we're certainly open to those comments and, therefore,
17 appreciate that a number of commenters have given a focus on
18 what the statutory text seems to allow, what scope and what
19 limits maybe permitted.

20 In addition to the policy arguments we're hearing,
21 use the focus to our view is what the text of the statute
22 permits as far as a scope that on the one hand doesn't go
23 too broad, and on the other hand doesn't import exceptions
24 the statutory text doesn't allow. So that's the question
25 and the feedback has been helpful in that regard.

1 I know that's somewhat general, but the point is
2 that we saw this exercise as defining terms in a way
3 consistent with the wording and scope we saw in the statute.
4 We understand there are different views on some of those
5 wordings that we're hearing today. And (inaudible) of
6 course.

7 MR. MOYA: Thank you very much.

8 (Pause.)

9 MR. MOSS: Any other comments or anything anyone
10 would like to say on the way before we close out?

11 (Pause.)

12 Hearing nothing further and having waited for
13 several rounds of 30 seconds to a minute to see if anyone
14 wanted to jump in and appreciating that several folks have,
15 we are bringing the hearing to a close.

16 Mike, any closing procedural matters that we need
17 to cover before closing out?

18 MR. PRIMO: No. Not at this time. The recording
19 and transcript for this hearing will be posted publicly on
20 our website when it becomes available to us. But other than
21 that, no.

22 MR. MOSS: Great. And I'll add that the
23 transcript will take some time. However, the recording will
24 be posted as soon as is feasible, likely by--the recording
25 will be posted likely by tomorrow. It's a two-hour

1 recording, but as you've seen, comments range from roughly
2 five to twelve minutes. So that should be available to
3 anyone.

4 And comments can be submitted, again, through
5 5:00 p.m., this Thursday the 5th. They can be also
6 elaborations of prior comments you made. They can be
7 responses to comments made during the meeting. And we
8 appreciate everyone's participation.

9 One last final call for anyone who wishes to jump
10 in and say something here.

11 (Pause.)

12 Having maxed out the number of uncomfortable
13 silences we need to do to accommodate everyone who wishes to
14 speak, I'll note the time is 11:06 a.m., and we are closing
15 the hearing. Thank you all for your participation. We
16 appreciate it. Have a good rest of your day.

17 (Whereupon, the meeting was concluded.)

18 (The following is a transcript of simultaneous
19 dialogue from the Google Meet chat window).

20 MR. HARRIS: Dean Harris is registered to speak.

21 MR. MOYA: I plan to speak regarding EPT Rules.

22 MS. BROUGH: This is Kelly Brough, President and
23 CEO of the Denver Metro Chamber of Commerce, and I am
24 attending to speak regarding the Equal Pay Rules.

25 MR. CAMPBELL: This is Stacey Campbell and I plan

1 to speak on the EPEWA. I previously registered.

2 MR. PRIMO: Hi. If you registered with the RSVP
3 form, I have you recorded as speaking. If you have not
4 RSVP'd through our form, please chat me that you would like
5 to speak.

6 MS. WALIGORSKI: Good morning. This is Lydia
7 Waligorski from Violence Free Colorado. I plan to speak to
8 1103-7. Thank you.

9 MR. PRIMO: Thank you. I have you recorded.

10 MS. BOOTHBY: It's on.

11 MS. MASIAS: Good morning. This is Lauren Masias
12 with the Colorado Competitive Council, and I am here to
13 speak in regard to the Equal Pay Transparency rulemaking.

14 MS. WEAVER: Hi there. Where will be able to find
15 speakers' full written comments?

16 MR. PRIMO: We will be posting the recording and
17 transcript on our website later this month.

18 MR. PRIMO: Written comments are not currently
19 being posted publicly.

20 MS. WEAVER: Thank you.

21 MR. BLOCK: Michael, can you let us know the order
22 of the people who have signed up to testify who haven't yet
23 done so, or if the number of people left who have signed up
24 to testify is too long? At least let us know how many
25 people are still waiting to testify among those who signed

1 up to testify.

2 MR. PRIMO: Hi, Dan. The next up are as follows:
3 Scott Pechaitis, Jennifer Waller, Ellen Gianrratana, Dan
4 Block, Patrick Moya, Louise Myrland, Lauren Masias, Lydia
5 Waligorski.

6 MR. BLOCK: Thank you.

7 MR. COMBS: Good morning, Michael. Daniel Combs
8 from Colorado AG's office here. I had RSVP'd to speak on
9 State Labor Relations Rules. Is that not showing on your
10 end?

11 MR. PRIMO: Hi, Daniel. It did not but I will add
12 you to the list right now.

13 MR. COMBS: Thank you, Michael.

14 MR. CAUDILL: Hello, Michael. Kevin Caudill with
15 CHA. I signed up online as well, just confirming I am on
16 the list.

17 MR. PRIMO: Hi, Kevin. Just got your RSVP. You
18 have been added to the list.

19 MR. CAUDILL: Thank you.

20 MR. PRIMO: The new list is as follows: Jennifer
21 Waller, Ellen Gianrratana, Dan Block, Patrick Moya, Louise
22 Myrland, Lauren Masias, Lydia Waligorski, Scott Segerstrom,
23 Daniel Combs, Kevin Caudill.

24 MR. PRIMO: The new list: Lauren Masias, Lydia
25 Waligorski, Scott Segerstrom, Daniel Combs, Kevin Caudill,

1 Jennifer Waller, Patrick Moya.

2 MR. MOYA: I apologize. I was having technical
3 difficulties. I still plan to testify.

4 MR. PRIMO: Okay. We can come back to you now,
5 Patrick.

6 MR. PRIMO: The updated list is as follows: Kevin
7 Caudill, Jennifer Waller, Scott Segerstrom.

8 MR. PRIMO: Are either Jennifer Waller or Scott
9 Segerstrom still in attendance?

10 MR. MOYA: A gentleman named Michael Mitchel would
11 like to speak.

12 MR. BOMMER: The Colorado Municipal League will be
13 submitting written comments on proposed rules implementing
14 the Equal Pay Act, in particular terms and requirements that
15 appear in the statutes that are left out of proposed rules.
16 Failure to define terms and requirements in rules will
17 create significant implementation ambiguity for Colorado
18 municipal employers. Thank you for the opportunity to
19 provide the detailed comments.

20 MR. PRIMO: Would you like to speak, Kevin?

21 MS. SCHMIDT: Nikki Schmidt, Weld Schools. I
22 don't have a mic and can't call in, but would like to
23 comment that the definition of family under the Healthy
24 Families Act needs to be defined better. Related by blood
25 is not clear and would be administratively burdensome and

1 costly to a district/company.

2 MR. MELKEY: Are the written comments posted
3 somewhere for public viewing?

4 MR. PRIMO: Thank you, Nikki. I have documented
5 your comment and will pass it along to our policy team.

6 MR. PRIMO: Written comments are not being
7 publicly posted at this time.

8 (Whereupon, Google Meet chat was concluded.)

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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 10th day of November, 2020.

/S/Patti Petersen

Patti Petersen

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