



Interpretive Notice & Formal Opinion (“INFO”) #15A

Labor Relations Rules and Procedures Under Colorado State Law

Overview

This INFO covers labor-management relations under two state laws: (1) for the private sector, the [Colorado Labor Peace Act \(“LPA”\)](#) (discussed on pages 1-4); and (2) for the state of Colorado as an employer, the [Colorado Partnership for Quality Jobs and Services Act \(the “Partnership Act”\)](#) (discussed on pages 4-5).¹

The Colorado Labor Peace Act (LPA)

The LPA **protects labor-relations rights** for certain, covered employees,² and bars adverse actions (discipline, termination, etc.) against those employees for exercising their rights.³ These rights include engaging in, or refraining from:

- Organizing, forming, joining, or assisting a union to negotiate with an employer about wages, hours, and other terms and conditions of employment;
- Collective bargaining with their employer, through representatives of their own free choosing, for a contract setting wages, benefits, hours, and other working conditions;
- Acting together with other employees for the purpose of collective bargaining or “other mutual aid or protection” (this is called “concerted activity”), even if those activities are not directly union-related.⁴ Some examples of protected concerted activity:
 - Talking with one or more co-workers about wages, benefits, or other working conditions (worksite safety, work hours/schedules, production quotas/requirements, etc.);
 - Circulating a petition among coworkers about working conditions; and
 - Participating in a group refusal to work in unsafe conditions, or one or more employees talking to the employer, a government agency, or the media about those conditions.⁵

Example 1: On their break, Sarah, Sam, and Sally start discussing their concerns about whether their employer is following required safety protocols. They have no union. After getting her coworkers’ permission, Sally raises their mutual safety concerns with her supervisor. Even though the topic isn’t related to a union, Sally’s discussions are “protected” activity, because she was raising a work-related concern with her coworkers or supervisor, and even though Sally spoke to her supervisor alone, it was “concerted” activity, because she did so with the permission of at least one of her coworkers.

¹ The LPA is in the Colorado statutes at C.R.S. 8-3-106 et seq.; the Partnership Act, C.R.S. 24-50-1101 et seq. Two sets of Division rules also apply: for the LPA, the [Rules of Procedure to the Colorado Labor Peace Act and Industrial Relations Act \(LPA Rules\)](#), 7 CCR 1101-1; for the Partnership Act, the [State Labor Relations \(SLR\) Rules](#), 7 CCR 1103-12.

² The LPA covers (1) non-National Labor Relations Act-covered private sector employees, such as in agriculture; and (2) employees of a mass transportation authority (e.g., RTD). It also has provisions that apply to NLRA-covered employees, relating to “All-Union Agreement” elections, discussed below. Most private sector employees and employers are covered by the federal NLRA, not the LPA, so their labor-management relations (union elections, unfair labor practice charges, etc.) are handled by the National Labor Relations Board (NLRB), not the Division, as the [NLRB website](#) explains.

³ C.R.S. 8-3-108(1)(a) (it is a prohibited unfair labor practice (ULP) to “interfere with, restrain, or coerce” employees in exercising LPA rights under C.R.S. 8-3-106); -108(1)(c) (it is a prohibited ULP to “[e]ncourage or discourage membership in” a union “by discrimination in ... hiring, tenure, or other terms or conditions of employment”).

⁴ C.R.S. 8-3-106.

⁵ These examples of concerted activity are from the website of the National Labor Relations Board (NLRB) (“The Rights We Protect”) (at <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/employees/concerted-activity>).

Example 2: Sarah, Sam, and Sally (from Example 1) decide that, instead of approaching their manager regarding their concerns, they should illegally block traffic in front of their employer's offices and hold signs to protest their employer's wage and safety practices. Although the employees' protest relates to workplace concerns and involved a concerted activity, because their method of expressing their concerns was unlawful, it would not qualify as "protected activity" under the LPA.

LPA: The Division's Role

Under the LPA, the Division of Labor Standards and Statistics (the "Division"):

- investigates and resolves **unfair labor practice charges** by employees, employers, or unions;⁶ and
- **holds elections** for employees to decide whether they want:
 - to be represented by a union — or, for those employees who are already in a union, to end this representation or change the bargaining unit; and
 - to authorize an "all-union agreement" (AUA) — commonly, an agreement requiring employees to be union members, or pay a portion of union dues without membership.

LPA: Election Types

The LPA requires the Division to hold several types of **secret-ballot, confidential elections**:

- **Representation Elections:** Covered employees who wish to be represented by a union can file a Petition with the Division, either directly or through a representative (any person or entity with permission from the covered employee(s), whether an attorney, a union representative, or anyone else). If a majority (over 50%) of all eligible employees cast ballots,⁷ a majority of which vote in favor of representation,⁸ the Division will certify the union as the employees' bargaining representative. Elections to decertify an existing union, or to change an existing bargaining unit ("unit clarification"), follow the same procedures.
- **All-Union Agreement (AUA) Elections:** Unlike states that bar AUAs, and states that allow AUAs without an additional vote, the LPA has a unique procedure that allows AUAs if they are authorized in an election by a majority (over 50%) of all employees who are eligible to vote, or at least three-quarters (75%) of employees who actually vote, whichever is larger.
- **Elections to Revoke an AUA:** If an employer files a Petition, or an employee files a Petition showing that at least 20% of the covered employees wish to revoke the AUA, the Division will hold an election. It will revoke the AUA if at least a majority (over 50%) of all employees who are eligible to vote, or at least three-quarters (75%) of employees who actually vote, whichever is larger, vote in favor of revocation. These elections can occur only if a Petition is filed with the Division between 120 and 105 days before the expiration, or the triennial anniversary date, of the Collective Bargaining Agreement.

The LPA Election Process

The Division notifies an employer that it received a Petition for an election and requires the employer to provide the Division a list of employee names, contact information, and other information, in order to identify eligible voters. The Division may require information from the employer to assess inclusion of particular workers in the collective bargaining unit. Division elections are conducted by **secret ballot**, and the **names of employees who cast particular votes are confidential**, neither of which are disclosed to the employer or the union.

Before an election is held, the Division requires employers to **post and/or distribute one or more notices explaining the election process**. The notices must be posted:

⁶ See note 3.

⁷ LPA § 107(1) is the **majority turnout** requirement: a representation vote can pass only "if the majority of the employees ... vote at the election." C.R.S. 8-3-107(1) ("A unit chosen for ... collective bargaining shall be the exclusive representative of ... employees ... *if the majority of the employees ... vote at*" the election) (emphases added).

⁸ LPA § 104(4) is the **majority rules** requirement: a "majority of the employees ... who vote" must vote yes on representation. C.R.S. 8-3-104(4) ("Collective bargaining unit" means an organization selected by secret ballot, as provided in section 8-3-107, *by a majority vote of the employees ... who vote* at an election for the selection of such unit") (emphases added).

- (1) in all places where employee rights and safety notices are usually posted (e.g., break rooms, bulletin boards, next to time clocks, or near entrances);
- (2) in obvious locations where they can be easily read during the workday; and
- (3) in any relevant languages spoken by employees.

The LPA leaves to **Division discretion how to conduct all union-related elections**. The Division typically will solicit input from relevant parties to assess appropriate methods, based on the facts of the particular situation, to allow full and fair employee participation, such as:

- providing ballots in person, by mail, or by electronic methods;
- providing replacement ballots, when possible, if any ballots were sent to wrong addresses; and
- when the Division has authority to hold both representation and AUA elections (such as in agriculture), whether to hold all stages of the two elections (A) sequentially (i.e., distributing, receiving, and counting representation ballots first, before distributing AUA ballots), or (B) with simultaneous balloting, leading to separate, sequential election days to count ballots (i.e., mailing both representation and AUA ballots together, then first holding an election day to count representation ballots, followed by a second election day to count AUA ballots only if the representation vote passes).

LPA: Notices of Intent to Strike

The LPA requires some employees to **file written notice at the Division** of their **intent to strike**, within LPA timeframes the Division cannot waive or extend. It is an unfair labor practice to strike without that notice.⁹

Employees of:	Required Notice Before a Strike:
a mass transportation “authority,” e.g., RTD (as defined by C.R.S. 8-3-104(2), -104(11), and -104(12))	filed at least 40 days before the first day of the strike
an employer (1) engaged in production, harvesting, or initial processing (after leaving the farm) of farm or dairy products , (2) for which striking would cause “destruction or serious deterioration” of those products	filed at least 30 days before the first day of the strike
other private sector employers not covered by the NLRA (e.g., other agricultural or non-interstate-commerce employers)	filed at least 20 days before the first day of the strike

With the Notice of Intent to Strike, or within five days after, employees or their representative must file a **notice describing the status of the dispute**, including existing and future plans for negotiation, and whether the parties have reached impasse. If the Notice of Intent to Strike involves employees of a mass transportation authority, it must also describe their position on whether (1) a strike is in the public interest; (2) a strike or arbitration would be preferable, and (3) if a strike is not allowed, any preferences as to arbitration processes.

LPA: Unfair Labor Practice (ULP) Complaints

Complaints of ULPs by an employer or a certified union can be filed directly in court or with the Division, using the [Division’s ULP Complaint form](#),¹⁰ within six months of the alleged ULP.¹¹ Only certain acts related to labor-management relations are defined as “unfair labor practices” under the LPA. Other employment-related

⁹ C.R.S. 8-3-113(2), (3) (20-, 30-, and 40-day time limits for notices of intent to strike); 8-3-108(2)(j) (defining failure to provide written notice of an intent to strike under C.R.S. 8-3-113 as a prohibited unfair labor practice).

¹⁰ C.R.S. 8-3-110(1)-(2); [LPA Rules](#), 7 CCR 1101-1, Rule 7.1.1.

¹¹ C.R.S. 8-3-110(16) sets a six-month statute of limitations for ULP charges, subject to ordinary equitable principles and federal statutes. *R.G. Burns Elec., Inc.*, 326 NLRB 440, 446-47 (1998) (“While ... the [NLRA] limitations period can begin only when the unfair labor practice occurs, ... [it] is tolled until there is either actual or constructive notice of the alleged unfair labor practice,” and it is “firmly established that the ... period commences only when a party has clear and unequivocal notice of the violation”) (citing 29 U.S.C. 160 (NLRA §10(b)), which has same six-month ULP limitations period); *John Morrell & Co.*, 304 NLRB 896, 899 (1991) (“When a party deliberately misrepresents or conceals ... facts concerning its actions so that the other party is unable, even through the exercise of due diligence, to discover those facts, the [limitations] period does not begin to run until the deceived party obtains the relevant facts.”); 50 U.S.C. 3936(a) (Servicemembers Civil Relief Act) (excluding the “period of a servicemember’s military service” from limitations periods).

acts, whether or not viewed as unfair, are not the sort covered under the LPA.¹²

The Division will investigate the ULP Complaint, may conduct a hearing, and will issue a final order. The final order may include remedies, including ordering a party to (1) pay fines, (2) stop engaging in the ULP, (3) post a ULP Notice in the workplace and/or otherwise notify employees, and (4) show continued compliance.

If the ULP resulted in an employee being terminated, or some other negative impact on an employee, an employer may be ordered to take affirmative steps to make that employee whole, including reinstating the employee with or without pay. The Division may also enforce its orders in district court.¹³

LPA: Retaliation Unlawful

It is an unfair labor practice, and may also violate Division rules or other orders, to “interfere with, restrain, or coerce” employees as to LPA rights, or to “discharge or discriminate” against employees for filing charges, or participating in LPA investigations or proceedings.¹⁴ The Division may investigate alleged retaliation, and those who violate Division rules or other orders may be subject to fines and other remedies available by law.¹⁵

The Colorado Partnership for Quality Jobs and Services Act (Partnership Act)

The Partnership Act creates a collective bargaining relationship between the state of Colorado and “covered employees,” including most “classified” employees in the state personnel system.¹⁶ The Partnership Act outlines:

- rights and duties of covered employees and certified employee organizations (unions);
- executive and management rights; and
- duties of the State.

Like the LPA, the Partnership Act **protects labor-relations rights**, including to engage in or refrain from:

- Organizing, forming, joining, or assisting a union to negotiate with the state about wages, hours, and other terms and conditions of employment;
- Collective bargaining with their employer, through representatives of their own free choosing, for a contract (“Partnership Agreement”) setting wages, benefits, hours, and other working conditions;
- Acting together with other employees for the purpose of collective bargaining or “other mutual aid or protection” (called “concerted activity”), even if those activities are not directly union-related;¹⁷ and
- Communicating with one another and with union representatives.¹⁸

There is one partnership unit of employees in the state, consisting of all covered employees. This unit is currently represented by Colorado Workers for Innovative and New Solutions (Colorado WINS).

¹² See C.R.S. 8-3-108 (“What are unfair labor practices”); C.R.S. 8-3-109 (“What are not unfair labor practices”).

¹³ See, e.g., C.R.S. 8-1-140(2) (minimum \$100 daily fines if a party “fails, refuses, or neglects to perform any duty lawfully enjoined within the time prescribed by the director or fails, neglects, or refuses to obey any lawful order made by the director”); C.R.S. 8-3-110(7) (Division authority to order parties (a) to cease and desist from engaging in ULPs, (b) reinstate employees with or without backpay, and (c) show continuing compliance); C.R.S. 8-3-110(8) (providing Division authority to enforce its orders in District Court); C.R.S. 8-3-116 (“Any person who willfully assaults, resists, prevents, impedes, or interferes with the director or any officer, deputy, agent, or employee of the division or any of its agencies in the performance of duties pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment ... for not more than one year, or by both....”); C.R.S. 8-3-121 (right of action for “damages caused” from a ULP); C.R.S. 8-3-122 (defining LPA violation as a “misdemeanor” subject to a \$50-\$100 fine for the first offense, and a \$100-\$500 fine for the second and subsequent offenses).

¹⁴ C.R.S. 8-3-108(1)(a),(h).

¹⁵ E.g., C.R.S. 8-1-140(2) (fines for violating Division rules or other orders).

¹⁶ Certain state employees are not “covered employees” due to the nature and/or duties of their jobs. The State Personnel Director decides whether certain employees are classified as “covered employees” under the Partnership Act.

¹⁷ See page 1 for examples of lawful concerted protected activities.

¹⁸ C.R.S. 24-50-1107(1)-(2).

Partnership Act: Elections

Under the Partnership Act, the Division can hold two types of **confidential, secret-ballot elections** for covered state employees: representation elections (to decide whether a union will represent employees), and decertification elections (to remove a previously-certified union as the employees' representative).

- Representation and decertification elections begin by submitting a Petition to the Division, and require support of 30% of covered employees by signatures on petitions, or union membership cards or forms.
- Certifying or decertifying a union requires a majority vote (over 50%) of all employees eligible to vote.
- Representation elections cannot be held before July 25, 2022, and no new representation elections can be held for 12 months after a prior election.

Partnership Act: Unfair Labor Practices (ULP) Charges

Complaints alleging ULPs by the state or a certified union can be filed directly in court or filed with the Division, using the [Division's ULP Complaint form](#), within six months of the alleged ULP.¹⁹ Only certain acts related to labor-management relations are defined as "unfair labor practices" under the Partnership Act. Other employment-related acts, whether or not viewed as unfair, are not the sort covered under the Partnership Act.²⁰

The Division will investigate the Complaint, may conduct a hearing, and will issue a final order. The final order may include remedies, for example, ordering a party to: (1) pay fines, (2) stop engaging in the ULP, (3) post a ULP Notice in the workplace and/or otherwise notify employees, and (4) show its continued compliance.

If the ULP resulted in negative consequences to an employee's job or separation from employment (e.g., if an employee is terminated), an employer may be ordered to take affirmative steps to make the employee whole, including reinstating the employee with or without pay.²¹

Partnership Act: Retaliation Unlawful

It is an unfair labor practice, and may also violate Division rules or other orders, to "interfere with, restrain, or coerce" covered employees from exercising the rights provided/protected by the Partnership Act, or to "discharge or discriminate against any covered employee" because they participated in an investigation or "formed, joined, or chose to be represented by any employee organization, or refrained from any such activities."²²

The Division may investigate alleged retaliation, and those who violate Division rules or other orders may be subject to fines and other remedies available by law.²³

Partnership Act: Appeals of the State Personnel Director's "Covered Employee" Determinations

The State Personnel Director (SPD) decides whether certain state employees are "covered employees" under the Partnership Act; the Division hears appeals of those SPD decisions at the request of either the SPD or a certified employee organization. See the [SPD's website](#) for more information about classification appeals.

The State Personnel Board has exclusive jurisdiction to hear challenges about membership in the state personnel system under Colorado Constitution Article XII, Section 13.

For More Information: Visit the Division [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

¹⁹ C.R.S. 24-50-1113(3); [SLR Rules](#), 7 CCR 1103-12, Rule 4.1.2. The six-month deadline is subject to ordinary equitable tolling principles and federal statutes, as note 11 details.

²⁰ "Unfair labor practices" are defined in C.R.S. 24-50-1107, -1108, -1109, -1111, and -1112, but do not include disputes over the interpretation, application, and enforcement of the partnership agreement. SLR Rules, 7 CCR 1103-12, Rule 2.8.

²¹ See C.R.S. 24-50-1109(3)(b) (providing remedies for ULPs by employee organizations); C.R.S. 24-50-1103(b)(2) (providing the Division with authority to "adjudicate unfair labor practice charges and issue decisions pursuant to Article 3 of Title 8 [the LPA]"); note 13 (describing ULP remedies under the LPA and Division authority under C.R.S. 8-1-140).

²² C.R.S. 24-50-1111(7)(c),(d).

²³ E.g., C.R.S. 8-1-140(2) (fines for violating Division rules or other orders).