



## Interpretive Notice & Formal Opinion (“INFO”) #15C: The Protections for Public Workers Act (“PROPWA,” S.B. 23-111)

**Overview:** As of July 1, 2024, PROPWA creates rights and responsibilities for government employees and employers — mainly as to employee expression or advocacy, on either workplace or public issues.

**Coverage:** PROPWA covers almost all employment in any **state or local government** — with a few key limits, including the following:

- It covers only certain **State of Colorado** employees who are outside the state **personnel system**.
- It doesn’t cover employees of **counties** covered by the Collective Bargaining by County Employees Act (“COBCA”), but does cover employees of counties exempted by COBCA (see [INFO #15B](#)).
- It doesn’t cover employees of **mass transportation systems** (e.g., **RTD**) covered by the Labor Peace Act (see [INFO #15A](#)).

**Employee Rights** under PROPWA (*the listed items are subparts (a)-(d) of C.R.S. 29-33-104(1)*):

- (a) **work-related expression** — on **workplace** issues, public employee **representation**, or **PROPWA** rights;
- (b) **concerted activity** — for employees’ mutual aid or protection, whether or not union-related;<sup>1</sup>
- (c) **public participation** — political activity (off-duty, out of uniform), or speaking with members of the public employer’s governing body (on employment terms and conditions, or matters of public concern); and
- (d) **employee organization** activity — organize, form, join, or assist an organization (or **refrain** from doing so).<sup>2</sup>

**Employer Responsibilities** under PROPWA -- employers must::

- (a) not **act against an employee** for exercising rights that PROPWA protects — i.e., discriminate or retaliate against the employee, or interfere with exercising rights (including any coercion, intimidation, or threats);
  - (b) not **dominate or interfere** in the administration of an **employee organization**; and
  - (c) not **discharge, or discriminate** in any way against, an employee for **protected activity** —
    - **employee organization activity** — forming, joining, assisting, or choosing to be represented, and
    - **providing information** under PROPWA — in testimony, informally, or in filings (complaint, petition, etc.).<sup>3</sup>
- **Employers may, however** —
    - limit the **political activities** listed in 104(1)(c), to the extent the employer’s **nonpartisan** role requires,
    - limit **expression that unduly disrupts** employer delivery of public services (C.R.S. 29-33-104(2)), and
    - decline to recognize **employee organizations**, or to negotiate **collective bargaining agreements** (C.R.S. 29-33-103(7)).

<sup>1</sup> Strikes (or work stoppages, slowdowns, or group sickouts by any name) are prohibited for county employees covered by COBCA (C.R.S. 8-3.3-115(6)(a); see [INFO #15A](#)), and for state employees covered by the Colorado Partnership for Quality Jobs and Services Act (C.R.S. 24-50-1109(3)(a); see [INFO #15B](#)).

<sup>2</sup> Items (a)-(d) are subparts (a)-(d) of C.R.S. 29-33-104(1).

<sup>3</sup> Items (a)-(c) are subparts (a)-(c) of C.R.S. 29-33-104(3).

**Unfair Labor Practices (“ULPs”):** ULP complaints can be filed at the Division, by six months after the employee knew or reasonably should have known of the violation (C.R.S. 29-33-105(1),(2)).

- Only violations of **specific rights protected by PROPWA** qualify as ULPs — not all “unfair” acts.
- The Division determines which complaints, in its discretion, warrant investigation.
- When the Division accepts a ULP complaint, it may investigate, conduct a hearing, and issue final orders, with remedies such as ordering a party:
  - to stop engaging in the ULP, and show continued compliance;
  - to post a ULP Notice in the workplace and/or otherwise notify employees;
  - to pay fines;<sup>4</sup> and/or
  - to otherwise make the employee whole — for example, reinstating a terminated employee with pay.
- ULP determinations may be **appealed** to a hearing officer for a **hearing**, with findings of *law* reviewed “de novo” (as if a decision was not previously made) and findings of *fact* reviewed for “clear error.”

### **Rulemaking to Provide Further Details:**

- In fall 2023, **proposed rules will be published** on how key parts of PROPWA will be **implemented** (e.g., complaint and investigation process) and **interpreted**. Expected topics include, but may not be limited to:<sup>5</sup>
  - **ensuring public services**, i.e., that PROPWA protections don’t impair the public services, obligations, or job duties of public employers and employees;
  - **reasonable time, place, and manner** limits on protected activity that preserve employee rights;<sup>6</sup> and
  - **protecting employer prerogatives**, by recognizing —
    - permissible bases for **discipline or adverse action** for activities that are not protected by PROPWA and that run afoul of employer policies;
    - that governing bodies (boards, commissions, etc.) must be able to **maintain a relationship of trust** with their highest level and confidential employees; and
    - that public employees can be expected to **maintain professional relationships** with all, including but not limited to co-workers, customers or others served, and public stakeholders.
- **Input from Coloradans** will be invited on the proposed rules — in both **public meetings** and **written comments** that will be fully reviewed — before **final rules** are adopted.
- **Information** on the rulemaking — on all proposed and final rules, on public meetings, and on how to submit comments — all will be on the Division **rules page**: [cdle.colorado.gov/LaborRules](https://cdle.colorado.gov/LaborRules).

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

<sup>4</sup> 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 to (a) 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 a first offense, and a \$100-\$500 fine for a second or later offense).

<sup>5</sup> These topics and other points were detailed in the [signing statement](#) issued by Governor Jared Polis on S.B. 23-111.

<sup>6</sup> A restriction on the “time, place, and manner” of protected speech is permissible if it (1) is “narrowly tailored” to serve “substantial ... governmental interests,” (2) is “content-neutral,” and (3) “leaves open ample channels of communication” for the speech. [Ward v. Rock Against Racism](#), 491 U.S. 781, 803 (1989).