



Interpretive Notice & Formal Opinion (“INFO”) # 16:

Deductions From, and Credits Towards, Employee Pay

Overview

The [Colorado Wage Act](#) prohibits employers from deducting earned wages from employees’ paychecks, except in certain cases.¹ Colorado law also limits the credits that employers may claim towards paying the minimum wage.² This INFO covers the subtractions (**deductions**) employers can and can’t make from wages, and when employers can treat certain amounts as counting towards wages paid (**credits**). Both deductions and credits reduce wages paid by employers, but in slightly different ways:

1. An employee earns \$100.00. The employer subtracts \$10.00 for taxes. It “deducted” the \$10.00.
2. An employee earns \$3.02 per hour in tips. The employer takes a “credit” of \$3.02 per hour to offset the wages it has to pay the employee, and it pays just the “tipped minimum wage.” See [INFO #3](#).

Considerations for All Deductions and Credits

The **employer has the burden** of showing that it is permitted to make a deduction or claim a credit.³

Employers must **itemize** the **amount** and **reason** for **all** deductions and credits in employee pay statements.⁴

Example A. An employee earns \$1,000.00. The employer deducts \$200.00: \$100.00 for taxes and \$100.00 for health insurance. The paystub shows that the employee earned just \$800.00. This oversimplification is not acceptable. The paystub must show that the employee earned \$1,000.00, that the employer deducted \$100.00 for taxes and \$100.00 for health insurance, and that the employee’s net wages are \$800.00.

The Colorado Wage Act doesn’t allow **any deduction that would take employee wages below minimum wage**, even an otherwise allowable deduction type. But if an employee was paid at least minimum wage, then:

- withholding taxes (or similar assessments) owed by employees *doesn’t* bring wages below minimum; and
- nor does withholding to repay advances of wages (see the section on advances and Example F below).⁵

Deductions Required By or In Accordance With Laws or Court Orders

An employer may make deductions required or authorized by laws such as those for:

1. Taxes or Federal Insurance Contributions Act (“FICA”) requirements;
2. Garnishments or other court-ordered deductions; and
3. Automatic enrollment in employee retirement plans.⁶

Deductions for Things Provided to an Employee for Their Benefit, With a Written Agreement

An employer may deduct for loans, advances (including accidental overpayment of wages), goods, services, equipment, or property it provided to an employee, under certain conditions:

1. The employer has the employee’s **written agreement** to make the deduction;
2. The written agreement must be **enforceable and lawful**;
3. The deduction may not bring pay **below minimum wage**, as noted above; and
4. The things provided must be **for the employee’s benefit**, not for an employer’s cost of doing business.⁷

¹ [C.R.S. 8-4-105](#).

² Colorado Overtime and Minimum Pay Standards (COMPS) Order #38, 7 CCR 1103-1, Rule 6.2; Colo. Const. art. XVIII, § 15 (2022).

³ 7 Code Colo. Regs. 1103-7 (Wage Protection Rules), Rule 4.2.2.

⁴ C.R.S. 8-4-103(4); [INFO #7: Payment of Wages & Required Record-Keeping](#).

⁵ C.R.S. 8-4-105(2); [Parker Montessori Inc.](#), DLSS Claim #1681-20 (Hearing Officer Decis. #21-031, Mar. 2021) (affirming that the employer owed the employee Colorado’s minimum wage for time worked).

⁶ C.R.S. 8-4-105(1)(a) and (a.5). C.R.S. 8-4-105.5 defines employee retirement plans.

⁷ C.R.S. 8-4-105(1)(b) and 8-4-121.

Example B. An employee uses an employer-provided credit card to pay for a streaming television service and residential energy expenses. The employee emails the employer to say that the employer can deduct those charges from the employee's paycheck. The employer may deduct accordingly. [Care Services Management, LLC](#), DLSS Claim #0040-18 (Hearing Officer Decis. #19-005, Jan. 2019).

Example C. An employer loans money to an employee, who orally agrees that the employer can deduct the loan amount from their next paycheck, although nothing to that effect is put in writing. The employer makes the deduction. The deduction is not permissible, because there was no written agreement. [Rammar LLC dba Napa Nectars](#), DLSS Claim #2756-19 (Hearing Officer Decis. #20-044, July 2020).

Example D. A written agreement says an employee will "repay" a loan, or be "responsible for repaying" the cost of employer-provided services. It says nothing about *how* the employee will make payments. A deduction is not permissible, because no written agreement authorized deductions from paychecks. [R&R Enterprises Inc. d/b/a R&R Coffee Cafe](#), DLSS Claim #5407-19 (Hearing Officer Decis. #21-028, Mar. 2021); [Luxe Deluxe Inc. dba Luxe Salon](#), DLSS Claim #3410-18 (Hearing Officer Decis. #19-030, Mar. 2019).

Example E. The employer (a restaurant) has servers sign agreements that the employer can take the cost of broken dishes out of servers' paychecks. A server drops a tray, breaking \$30.00 worth of dishes. The employer deducts \$30.00 from the server's next paycheck. The deduction is not permissible, because the written agreement was not enforceable. The employer did not provide property to the employee (it always owned the dishes), and didn't provide anything else that qualifies as a benefit to the employee under the statute. [American Automation Inc.](#), DLSS Claim #0731-20 (Hearing Officer Decis. #21-026, Mar. 2021) (disallowing deduction for employee no-show and for business expenses, such as background checks).

Example F: The employer accidentally overpays an employee \$400.00 due to an accounting error. When it identifies the overpayment, it may deduct the overpayment from a later paycheck *if* (1) it notifies the employee *in writing* that it will make the deduction, including the amount and manner of deduction (e.g. whether it will be spread over multiple pay periods); (2) the deduction is from wages earned in a *later* pay period (not for time that has been, or will be, worked in the pay period when the employer provides the written deduction notice); *and* (3) the employee agrees to the deduction, expressly or by continuing to work in the deduction pay period(s). This deduction may appear to bring wages in the pay period(s) below minimum wage, but because additional wages have *already* been paid, the employee's compensation, with the overpayment made in advance of the deduction pay period, isn't below the minimum wage.

Deductions for Employee Theft

An employer may deduct for the amount of a shortage due to an employee's theft, but only **if the employer filed a police report** claiming theft by the employee, and then:

If charges are filed within 90 days of the police report:

- The employer may withhold the amount it reported as stolen **until there is a final outcome in the criminal case** (subject to the requirements on page 1, such as not going below minimum wage).

If criminal charges aren't filed within 90 days, or the employee is found not guilty, or charges are dismissed:

- The employer **owes the employee the amount withheld, plus interest.**

An employer acting **without good faith may owe triple the wages deducted**, attorney fees, and court costs.⁸

Example G. An employer believes an employee stole merchandise. It files a police report, fires the employee, and keeps wages to offset its loss. More than 90 days later, the employee has not been charged with theft. The employer now owes the employee the deducted wages plus interest. [JW Colorado, LLC dba TweedLeaf](#), DLSS Claim #3053-19 (Hearing Officer Decis. #20-074, Oct. 2020).

Example H. Similar to Example G, but the employee is charged within 90 days of the police report. They plead guilty. The employer's deduction for the theft described in its police report was allowed (but it could not deduct for thefts it thinks the employee committed in prior years, but for which it filed no police report). [ADCO Pro Cleaning Supply, Inc.](#), DLSS Claim #0370-18 (Hearing Officer Decis. #19-003, Jan. 2019).

⁸ C.R.S. 8-4-105(1)(c).

Deductions Based on an Employee's Revocable Authorization

If an employee permits a deduction, and if they can revoke (change their mind about) it, then an employer may deduct for things like medical insurance, savings plans, stock purchases, and supplemental retirement plans.⁹ Defined enrollment periods when an employee may revoke a previously authorized deduction are permissible.

Deductions for an Employee's Failure to Return Money or Property at Separation

An employer may deduct to recover the amount of money or the value of property that an employee failed to properly pay or return to the employer when their job ends (their "separation from employment") *if*:

- the employer **entrusted the employee** with collecting, disbursing, or handling the money or property;
- the employer and employee **had agreed that the employee would return** the money or property;
- the employee **failed to return** that money or property as agreed; and
- starting in 2023, the employer **provides advance notice to the employee, within 10 days of their separation, that the employer will make the deduction**, including a **written accounting** specifying —
 - **the amount of money or the specific property** that the employee failed to pay or return,
 - the **replacement value** of the property,
 - **when the money or property was provided** to the employee (to the extent known), and
 - when the employee should have returned the property or paid the money (to the extent known).

An employer has 10 calendar days after an employee's separation to determine that the money or property wasn't returned, and to determine the value of that money or property — an exception to the general requirement to pay terminated employees their final wages immediately.¹⁰ Starting in 2023, the end of that 10-day window also is the employer's deadline to provide notice to the employee. **If the employer doesn't provide this notice when it's required (that is, in 2023 and after), it can't make this kind of deduction.**

If the employee returns the property or repays the money within 14 days of the employer's notice, then, if the employer already has made the deduction, it must pay the employee the amount of money it deducted. The employer must do so within 14 days of when the employee returned the property or paid back the money.

Example I. The employer believes an employee took merchandise off the shelf when nobody was looking. It deducts from the employee's final paycheck for the value of the missing property. This example does not entail a failure to return property with which an employee was entrusted. The real concern here is theft. The employer must meet the conditions of the theft deduction provision (such as by filing a police report). [Luxe Deluxe Inc dba Luxe Salon, DLSS Claim #3410-18](#) (Hearing Officer Decis. #19-030, Mar. 2019).

Example J. The employer gives keys to shift managers. An employee quits and fails to return their key. The employer pays a locksmith to retumble the locks, and buys a set of replacement keys, for \$200.00, and deducts that sum from the employee's final paycheck. This deduction was impermissible. It was for the cost of a service and several keys, not the value of the property lost. As the "Impermissible Deductions" section below notes: when employees impose other costs on employers, such as property damage or replacing an entire lock system, employers may have other remedies — just not payroll deductions. [Baked Brothers, LLC dba The Breakfast Shack, DLSS Claim #1477-20](#) (Hearing Officer Decis. #21-024, Mar. 2021).¹¹

Example K. The same as Example J, but a written agreement authorizes the deduction. The deduction still is not permissible. C.R.S. 8-4-105(1)(e) permits a deduction only for the value of the non-returned property.

⁹ C.R.S. 8-4-105(1)(d).

¹⁰ C.R.S. 8-4-105(1)(e); 7 Code Colo. Regs. 1103-7: Rule 2.13 (rule that applies whether or not separation was voluntary).

¹¹ In a hearing on the bill adding Section 8-4-105(1)(e), a witness explained: "If the employee chooses not to return that company's equipment, then the employer will have the authority or the right to deduct *fair market value for the price of those materials* from the final paycheck." Hearing on H.B. 1206, S. Bus. Comm., 64th Gen. Assemb., 1st Sess. (Apr. 23, 2003) (Heidi Heltzel, Colo. Ass'n of Commerce & Industry) (emphasis added). "Fair market value" is the sale or purchase price. See *Black's Law Dictionary* ("The price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction"); *The Law Dictionary* (sale price "in the market under ordinary conditions"; price at which a "willing seller, who does not have to sell, would sell, and ... willing buyer, who does not have to buy, would buy").

An employee's agreement to an impermissible deduction is void. C.R.S. 8-4-121. A written agreement is a necessary but not sufficient condition to deduct under a different provision (C.R.S. 8-4-105(1)(b)), but deducting for an employer's cost of doing business is not permitted under that provision. [R&R Enterprises Inc. d/b/a R&R Coffee Cafe, DLSS Claim #5407-19](#) (Hearing Officer Decis. #21-028, Mar. 2021).

Example L. The employer provides a cell phone to an employee. It's agreed that the employee has to give the phone back when their job ends. In 2023, the employee quits and doesn't return the cell phone. If the employer doesn't provide the notice described above, then it can't deduct from the employee's final paycheck for this issue. If the employer provides a notice with the required contents, in the required timeframe, then it can deduct the phone's replacement value. (But see "Considerations for All Deductions and Credits," above, for cautions on points such as the need to pay minimum wage.) If the employee returns the phone within 10 days of the employer's notice, then the employer must pay the employee back for the deduction (within 14 days of getting the phone back).

Requiring Employees to Incur Business Expenses

Because "there is no legal difference between deducting a cost directly from the worker's wages and shifting a cost, which they could not deduct, for the employee to bear," employers can't avoid deduction or minimum/overtime wage requirements by making employees pay business expenses, if:

1. The expense is **primarily for the employer's benefit or convenience**;
2. The employer **does not reimburse** the employee; and
3. The lack of reimbursement would drive wages **below the applicable minimum wage or overtime wage**.

Expenses considered to be for an employer's benefit or convenience include tools or other items an employee needs to perform the work, other things the employee is authorized by the employer to purchase for work, property damage, and bills not paid by customers or clients.¹²

Employers can require employees to buy **uniforms** only if they are ordinary, plain, and washable clothing, with no special color, make, pattern, logo, or material. Otherwise, employers must pay for or provide any required uniform or special apparel, can't require deposits from employees, and can't deduct for ordinary wear and tear.¹³

Impermissible Deductions

No deduction is allowed if it's not authorized under any of the categories discussed above. For example, an employer can't deduct from an employee's wages — or withhold a paycheck entirely — because the employee:

1. Cost the employer an important sale or client;
2. Performed their work in a manner unsatisfactory to the employer;
3. Was fired, or failed to give two weeks' notice of quitting; or
4. Used company property for personal use, causing wear and tear, or damage, to the company's property.

If an employer believes an employee owes it money, but no deduction authorization applies, the employer may have other ways to recover that money. Although the employer may not engage in "self help" by making an impermissible wage deduction, it may have other options for seeking recourse against the employee. Employers in this position may want to seek legal counsel.

¹² [29 C.F.R. 531.35](#) (wages must be paid "free and clear"); [29 C.F.R. 531.32\(c\)](#) ("the cost of furnishing "facilities" which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages"; listing several examples of items primarily for employer benefit or convenience); U.S. Dep't of Labor, "[Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the \[FLSA\]](#)" ("Employers may not avoid FLSA minimum wage and overtime requirements by having the employee reimburse the employer in cash" for costs of items primarily for employer benefit or convenience); [Arriaga v. Florida Pacific Farms](#), 305 F.3d 1228, 1236 (11th Cir. 2002) (quote starting "there is no legal difference" above, continuing: "An employer may not deduct from employee wages the cost of facilities which primarily benefit the employer if such deductions drive wages below the minimum wage. This rule cannot be avoided by simply requiring employees to make such purchases on their own, either in advance or during the employment.") (citation omitted); [Koral v. Inflated Dough, Inc.](#), No. 13-CV-02216-WYD-KMT, 2014 WL 4904400, *4 (D. Colo. Sept. 29, 2014) (under-reimbursing work expenses may violate Colorado minimum wage law).

¹³ [COMPS Order #38](#), 7 CCR 1103-1, Rule 6.3.

Credits

There are only three allowable credits an employer may take towards payment of the minimum wage.¹⁴

- **Lodging credits** for employer-provided housing. The credit can't exceed the lower of the following: (1) the employer's reasonable and actual cost of providing the housing; (2) the housing's fair market value; or (3) per week, \$25 for a room (in a shared residence, dormitory, or hotel) or \$100 for a private residence (apartment or house). The housing must be voluntarily accepted by the employee, and primarily for their benefit and convenience. A written agreement must state the existence and amount of the credit.
- **Meal credits** for employer-provided meals. The credit cannot exceed the meals' reasonable cost or fair market value. Employers cannot include profits in calculating this amount. The credit is available only if the employee accepts the meals voluntarily and without coercion.
- **Tip credits of no greater than \$3.02 per hour** may offset wages of "tipped employees" (employees in jobs customarily and regularly receiving over \$30.00 per month in tips). An employer claiming a tip credit must pay at least the full minimum wage minus no more than \$3.02 per hour. If that amount plus tips does not equal the full minimum hourly wage, then the employer must make up the difference.

[INFO #1](#) discusses COMPS, the minimum wage, and credits towards the minimum wage. [INFO #3](#) provides more detail on tips and the tip credit.

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

¹⁴ COMPS Order #38, 7 CCR 1103-1, Rule 6.2.