



## Interpretive Notice & Formal Opinion (“INFO”) #18:

### Appeals of Determinations that Compliance Investigators Issue after Finishing Investigations

#### Overview

This INFO covers appeals of determinations that Compliance Investigators (“CIs”) at the Division of Labor Standards and Statistics (“DLSS”) issue after finishing investigations. If any party to a claim disagrees with a CI determination, they can appeal, and a DLSS Hearing Officer will decide whether the determination was incorrect. This INFO focuses on the most common appeals — wage-and-hour complaints or direct investigations (typically of wage-and-hour violations) — and also notes key differences in other appeal types.

#### How to Appeal

DLSS has forms to appeal wage complaints, direct investigations, or other DLSS determinations:

- DLSS’s appeal forms are online at <https://cdle.colorado.gov/decisions-appeals-information>, or you can ask DLSS to give you a form by mail or in person (at the 2nd floor of the above address).
- If you created an account in DLSS’ [online portal](#), or if you received instructions about how to do so, you can appeal by logging into the portal, going to “Available Forms,” and following the instructions.
- If you’re not sure which form to use, ask DLSS — or file an appeal without using any particular form, in a signed writing, and DLSS will try to get your filing to the right place. (But don’t appeal Unemployment or Workers’ Compensation decisions to DLSS; though those divisions are a part of CDLE, DLSS has no authority over those types of claims or appeals.)
- Your appeal request must explain why you think the CI’s determination was wrong (why you are appealing). If your appeal is frivolous (has no chance of success), we’ll deny it.

Send your completed appeal filing to DLSS in any of the following ways:

- **Email:** [cdle\\_LS\\_appeals@state.co.us](mailto:cdle_LS_appeals@state.co.us); or for Direct Investigations, [cdle\\_di\\_appeals@state.co.us](mailto:cdle_di_appeals@state.co.us)
- **Fax:** 303-318-8400
- **Mail or by hand to:** Colorado Division of Labor Standards & Statistics, 633 17th St., Denver, CO 80202

#### When to Appeal

- **Meet the *deadline set by law*.** The law requires appeals to be **received by**, not just mailed to, DLSS **within 35 calendar days** of the date of the determination. DLSS can’t accept late appeals. If you (non-electronically) mail an appeal on day 35, DLSS won’t get it on time, and can’t hear the appeal.
- **Don’t appeal *before* a CI determination.** To challenge an employer decision, like not paying wages, you need to file a complaint, not just an appeal; see [INFO #2](#) on the complaint and investigation process. Appeals are of CI determinations, so they are filed only *after* CIs investigate and issue determinations.

#### Compliance Orders and Requests for Stays

- **What a Compliance Order is.** A Compliance Order is an order requiring an employer to do something other than pay wages, penalties, or fines — for example, to change a policy that was found to be illegal. Many determinations order only payment of wages, penalties, and/or fines, with no Compliance Orders.
- **Requesting a hold (a “stay”) of a Compliance Order.** A party can ask to “stay” — put on hold — a Compliance Order until an appeal is decided. But an appeal being filed or scheduled doesn’t by itself stay any order. **If you want a Compliance Order stayed, you must specifically ask for that in your appeal request.** Filing the stay request as soon as you can, earlier than the 35-day deadline, gives the Hearing Officer as much time as possible to consider a stay before any Compliance Order deadlines.
- **Filing an appeal does not pause any deadlines** set out in, or triggered by, the determination (except if the determination says otherwise or if a stay of a Compliance Order is granted).

## **The Steps after DLSS Receives an Appeal on Time**

- **Notifying the parties of the appeal.** DLSS notifies all parties that it received an appeal request.
- **Creating a record.** The CI puts documents from the investigation together into one “record.”
- **Sending the record and hearing instructions to the parties.** DLSS sends the parties information on when and how to participate in the hearing, the investigation record DLSS compiled, and the appeal filing.
- **Resolving cases without a hearing.** The Hearing Officer might think that they can resolve the appeal without a live hearing, in which case, you’ll get a notice about that. If you disagree, follow the instructions in the notice to explain why you think a hearing is needed.

## **Preparing for a Hearing**

### **Review everything you receive from DLSS or any party.**

- The Notice of Appeal Hearing, which tells you the date and time of the hearing, and how to call in for it.
- The investigation record and the appeal filing.
- Anything else you receive from DLSS or any party.

### **Prepare to make your case at the appeal hearing.**

- Make your case based on facts and law, not personal opinions or attacks.
- You may want to make an outline, or summary, of points you want to make at the hearing.

### **Send DLSS, and any other parties to the appeal, any new evidence, and a list of any witnesses.**

- The Notice of Appeal Hearing sets a deadline for you to send DLSS, and any other parties, materials that must be exchanged before the hearing, including any new evidence and a witness list.
- You don’t need to re-send anything you already sent to a CI during the investigation, unless you notice that it’s missing from the record.
- You aren’t required to provide more evidence, or to have witnesses testify. If you do have new evidence you want to be considered, or if you do plan to call hearing witnesses, you must do two things:
  - (1) **Send DLSS, and all other appeal parties,** all new documents, and the names and telephone numbers where the party, and any witnesses they plan to call, can be reached for the hearing. Do this by the deadline in the Notice of Appeal Hearing, usually two weeks before the hearing.
  - (2) **Be prepared to explain why you’re offering new evidence.** You must show **good cause** to offer new evidence on appeal, without having sent it to a CI during the investigation. The Hearing Officer decides what evidence to allow in on appeal, after considering factors in DLSS rules and the facts of the case. They are unlikely to find good cause if the party with new evidence didn’t respond at all during the investigation or didn’t offer the evidence when asked for it during the investigation.

If you don’t follow these steps, the Hearing Officer can exclude your new evidence — meaning they won’t consider it in making a decision — and can exclude your witnesses from the hearing.

### **Requests for deadline extensions or accommodations.**

- If you want an extension of the deadline to file evidence and provide witness information, ask, and explain why, in writing, as soon as possible before the deadline. The original deadline remains in effect unless and until the Hearing Officer changes it.
- If you need to ask for the hearing to be rescheduled, ask as soon as possible, in writing. A rescheduling will be granted only if you give a good reason for being unable to call in at the scheduled hearing time.

**You don’t need to have an attorney.** You can choose to be represented by an attorney or another person, if you want, at your own cost. We don’t represent either party or give legal advice. If someone is going to represent you, let us know by filing an **Authorized Representative Form** (available online at:

[cdle.colorado.gov/decisions-appeals-resources-faqs](https://cdle.colorado.gov/decisions-appeals-resources-faqs)).

**Changes to Contact Information.** Let DLSS know if your contact information changes, because important communications will be sent to the contact information we have on file for you.

### **Subpoenas**

If you need evidence you can't get on your own, or want to require someone else to testify, **you can ask for a subpoena, which is an order for someone to produce documents and/or to testify.** The Hearing Officer will review your request and grant it only if you show good cause. If you want a subpoena:

- Review the subpoena request instructions (<https://cdle.colorado.gov/decisions-appeals-information>).
- Send DLSS a completed [Request for Subpoena](#) at least 14 days before the hearing, but sooner if possible, to give everyone enough time — for the Hearing Officer to consider the request, for yourself to serve the subpoena, and for the recipient to comply with it.

### **Stopping an Appeal**

There are generally two ways that an appeal can be canceled.

- **Withdrawing an Appeal:** If you filed an appeal, but no longer want a Hearing Officer to make a decision on it, you can ask, in writing, to withdraw your appeal **before an appeal decision is issued.** If you withdraw your appeal, the CI's determination will become final. You won't be able to re-file an appeal.
- **Terminating a Claim:** The employee can stop DLSS's process by asking, in writing, at any time before a CI's determination is issued or up to 35 days afterwards. If a claim is terminated within 35 days after a determination is issued, that determination will be revoked, so there's nothing to appeal.

### **Participating in the Hearing**

**If you filed the appeal,** you (or your authorized representative) must participate in the hearing. If you don't, the Hearing Officer may dismiss your appeal. It's the appealing party's burden to convince the Hearing Officer that the determination was wrong. Usually, they have to show that the determination had a clear error of fact or law.

**If you didn't file the appeal,** you don't need to participate in the hearing, but you probably should if you can. If you don't participate, the hearing will be held, and you won't have a chance to present your side of the story.

**DLSS has hearings by recorded phone or video conferences.** Join through the dial-in information in the Notice of Appeal Hearing. Tell your witnesses to be available to be called if and when the Hearing Officer decides to hear the witness' testimony. **Don't come in-person** unless DLSS specifically asks you to.

**Hearings often take about two hours, but they can be longer or shorter,** depending on the number of witnesses, how complex the case is, etc. If it takes longer, the Hearing Officer may schedule the hearing to continue another day. In planning for the hearing, keep in mind that:

- You'll be able to testify, question witnesses, offer evidence (and if it's new evidence, explain why it should be considered), and explain what you think the Hearing Officer should decide. Other parties and the Hearing Officer may ask you questions. If you don't understand something, tell the Hearing Officer.
- You should have copies ready of the investigation record, appeal filing, and other relevant documents.

### **After the Hearing**

The Hearing Officer will write a decision and send it to all parties. If you wanted to call in for the hearing, but you didn't, and if you had a good reason for that, you can ask in writing for a new hearing as soon as possible, but no later than 35 calendar days after the decision. You must explain why you had good cause for not participating. The Hearing Officer can schedule another hearing if they decide you had good cause.

### **Payment of Amounts Ordered and Proof of Payment**

- **If an employer appeals,** it needs to pay any wages it agrees it owes. Many determinations offer a deal to encourage paying promptly: If the employer pays all wages ordered within 14 days, penalties are reduced, and some fines waived. If the employer rejects that offer, it expires, and if the appeal ends with a decision that the employer owes wages, it'll be too late to accept the earlier offer of a reduced payment.

- **If an employee accepts payment** of the full wages and penalties ordered in the determination — for example, if they cash a check — they can't also appeal the determination.
- **Pay wages or penalties** directly to the employee's most recent address (usually in the determination packet, or page one of any appeal decision), unless DLSS said otherwise. **Income tax** generally may be withheld from **wages** but **not penalties**. Send DLSS **proof of payment** showing:
  - the gross and net payment amounts;
  - the payment method used — check, direct deposit, etc.;
  - the date of the payment;
  - the check number(s) or the bank of deposit; and
  - the address payment was sent to (if mailed), and, if it cleared a bank account, proof of that as well
- **Pay fines** by a check made out to “*Colorado Division of Labor Standards and Statistics - Wage Theft Enforcement Fund*,” sent to the DLSS address above. Put the claim number on the check's memo line.

### **Disagreement with a Hearing Officer's Decision**

If you disagree with the appeal decision, generally you can ask for judicial review in the appropriate Colorado district court within 35 days of the decision. If you don't, the decision will be final. We can't assist in the court process. If you need help, ask an attorney or visit [www.courts.state.co.us](http://www.courts.state.co.us).

### **Different Procedures for Other Types of Appeals**

This INFO focuses on appeals of determinations on **wage-and-hour** complaints or direct investigations. Those include claims under a range of wage-and-hour laws, including the Colorado Wage Act, Colorado Overtime and Minimum Pay Standards Order (“COMPS Order”), and Healthy Families and Workplaces Act (“HFWA”).

The appeals process is **similar** for determinations under the following other labor laws:

- retaliation or interference with rights under a range of laws — the Protected Health/Safety Expression and Whistleblowing (“PHEW”) law, the Colorado Wage Act, and the Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving (“WARNING”) Rules;
- pay and promotion transparency under the Equal Pay for Equal Work Act;
- labor conditions under the Agricultural Labor Rights and Responsibilities Act and its related rules; and
- the Colorado Chance to Compete Act (concerning criminal history).

But the appeal process is **significantly different** for determinations under the following other labor laws:

- Appeals of determinations under the **Employment Opportunity Act** (concerning credit history), the **Social Media and the Workplace law**, or the **Keep Jobs in Colorado Act** are held using the process in the Colorado Administrative Procedure Act (“APA”) (C.R.S. 24-4-105 and -106):
  - Parties must file a written answer within 30 days of the Notice of Appeal Hearing, or the Hearing Officer may enter a “default” finding for the other party. If a party that failed to respond shows good cause for its failure, the default may be set aside within 10 days. (A party doesn't have to show “good cause” for providing new evidence on appeal for these claims.)
  - Parties can file “exceptions” with the DLSS Director to appeal a Hearing Officer's decision within 30 days; Hearing Officer fact findings can be set aside only if “contrary to the weight of the evidence.” Then, within 35 days, a party can seek judicial review of the DLSS Director's decision.
- Appeals under the **Colorado Partnership for Quality Jobs and Services Act**:
  - State Personnel Director (“SPD”) **union coverage decisions** can be appealed by the union or the state within 35 days. The appealing party must give a copy of their appeal to SPD, which has 21 days to respond; then the appealing party has 21 days to reply. The Hearing Officer reviews the SPD's decision “*de novo*” (as if a decision was not previously made), and they may decide without a hearing.
  - In **unfair labor practice** appeals, review is for clear error in fact findings, *de novo* for legal questions.

- Appeals of **Labor Peace Act and Industrial Relations Act** decisions:
  - **Union Election Certification:** A party can file a written appeal to the DLSS Director within 5 days after the Director certifies union election results, claiming error or fraud in the results. The Director will give parties 7 days to file and serve written responses, and they may investigate or hold a hearing.
  - **Unfair Labor Practices:** The Director can designate a deputy or Hearing Officer to hold a hearing and write a decision and recommendation that becomes final if the Director doesn't act on it within 20 days. The decision may be appealed to court within 35 days.
  - **Requests for Intervention under Industrial Relations Act:** The Director or their designee may hold a hearing and then issue a written decision.

**For More Information:** Visit the Division website ([coloradolaborlaw.gov](http://coloradolaborlaw.gov)), call 303-318-8441, or email [cdle\\_ls\\_appeals@state.co.us](mailto:cdle_ls_appeals@state.co.us) (or [cdle\\_di\\_appeals@state.co.us](mailto:cdle_di_appeals@state.co.us) if asking about a direct investigation appeal). Please do not ask questions about appeals to the Compliance Investigator who issued the determination.