



Interpretive Notice & Formal Opinion (“INFO”) #2:

DLSS Wage Claim Investigation Process

Overview

This INFO addresses the Division's wage claim investigation process, including each party's burdens of proof, responsibilities of the parties in the process, and possible consequences for non-compliance during an investigation or appeal or with Division orders following these processes. The duration of the Division's investigation process (from the filing of a complaint to determination) varies from claim to claim. Each claim's timeline depends on the complexity of the claim, the responsiveness of the parties, the availability and clarity of the evidence, and the volume and complexity of other claims already being processed. The investigation process and accompanying responsibilities can be found in the [Wage Protection Rules, 7 CCR 1103-7](#) and the [Colorado Wage Act, C.R.S. 8-4-101, et seq.](#)

Wage Claim Investigation Steps

The Division's wage claim investigation process typically follows these steps.

- (1) A claimant [files a wage complaint](#) with the Division for any amount of wages owed, up to \$7,500. The claimant must provide an explanation that is clear, is specific, and shows s/he is entitled to wages. The documentation provided by the claimant should show: (a) that a violation of Colorado wage and hour law may have occurred, and (b) a reasonable estimate of wages due, which the Division will use to calculate potential penalties and fines. [Wage Protection Rules, Rule 4.2](#). If more information is needed, the Division will send a “Request for Information” letter to the claimant, which will list the information needed.
- (2) The Division starts the administrative procedure by sending a “Notice of Complaint” to the employer. The Notice of Complaint acts as a “written demand” for wages as defined in [C.R.S. 8-4-101\(14\)](#). At this point, the burden shifts to the employer to prove, by a preponderance of the evidence (meaning “more likely than not”), that the claimant is not entitled to the claimed wages.
- (3) After reviewing all the evidence provided during the investigation, the Division issues a determination. If the employer fails to meet its burden, or fails to respond, the Division issues a “Citation & Notice of Assessment” and awards wages and/or penalties to the claimant based on the evidence. The Division also assesses fines against the employer as required by law. See the “Penalties” and “Fines” sections below.
- (4) [Either party may appeal](#) the Division's determination. An appealing party must submit a signed “Appeal Request Form” that explains a clear error in the determination. The appealing party must ensure that the Division receives the appeal within **35 calendar days** of the date the determination was **sent**.

Important: Throughout the investigation, all parties **must promptly notify** the Division of any change in contact information, including mailing address, email address, and phone number.

Employer's Responsibility During a Wage Claim Investigation

- It is ultimately the employer's responsibility to provide any and all relevant evidence necessary to prove that the claimed wages are not owed. An employer may provide pay statements; daily records of hours worked; copies of relevant employment agreements; copies of relevant emails, texts, and/or other communications between the parties; and/or any other relevant documentation to prove its position.
- The employer must ensure that the Division **receives** its written response to the Notice of Complaint by the date the Division specified on the Notice (**14 calendar days** from date the Notice of Complaint was **sent**).

Example: If an employer responds by mail and a postage meter is applied to the response 4 days prior to the deadline, but the response is not postmarked until the deadline, and the Division does not receive the response until 2 days after the deadline, the employer has failed to meet its duty to timely respond. The Division provides employers with a variety of methods to respond (mail, email, fax, and electronic portal), and it is the employer's duty to contact the Division and ensure receipt. ([ADCO Pro Cleaning Supply, Inc., DLSS Case #0370-18 \(Hearing Officer Decis. No. 19-003, Jan. 8, 2019\).](#))

- The employer's response to the Notice of Complaint must include the completed "[Employer Response Form](#)," copies of requested pay statements, and any additional information or documentation requested by the Division. An insufficient response from the employer may be considered a failure to respond under [C.R.S. 8-4-113\(1\)\(b\)](#), which may result in a fine and a possible violation determination.
- The employer may request an extension to respond to the Notice of Complaint, if the employer can demonstrate good cause. An extension to respond to the Notice of Complaint does not extend the requirement to pay all wages owed within 14 days of a written demand to avoid penalties under [C.R.S. 8-4-109\(3\)\(b\)](#).

Penalties (paid to the employee)

The Division must order the employer to pay penalties to the claimant on wages owed if the employer fails to pay the claimant within 14 days of the first valid written demand for payment (including a Division Notice of Complaint). [C.R.S. 8-4-109\(3\)\(b\)](#). The amount of penalties that the Division will order depends on several factors:

- **When the written demand was sent, and whether the violation was willful.**
 1. If the 14-day deadline to pay following a written demand passes **before January 1, 2023**:
 - for **non-willful** violations, the penalty is the greater of --
 - (a) **125%** of the wages due, or
 - (b) up to **10 days** of the claimant's average daily earnings;
 - for **willful** violations, the penalty above increases by 50%.¹
 2. If the 14-day deadline to pay following a written demand passes **on or after January 1, 2023**:
 - for **non-willful** violations, the penalty is the greater of --
 - (a) **200%** the amount of wages due, or
 - (b) **\$1,000.00**;
 - for **willful** violations, the penalty is the greater of --
 - (a) **300%** the amount of wages due, or
 - (b) **\$3,000.00**.²
 3. If **multiple demands** are sent -- one more than 14 days before January 1, 2023, and one later -- the statutory penalties set forth in #1 above generally apply. If the Division sends a Notice of Complaint with the 14-day deadline falling on or after January 1, 2023, however, the statutory penalties set forth in #2 will apply. 7 C.C.R. 1103-7: Rule 2.16.
- **Whether the employer paid all wages due within 14 days of an order to do so.** If so, the Division may reduce the penalties by up to 50%. [C.R.S. 8-4-111\(2\)\(d\)](#).

¹ C.R.S. 8-4-109(3)(b)-(c) (2022).

² C.R.S. 8-4-109(3)(b) (effective Jan 1., 2023).

Summary: Under the newer penalty framework discussed above, following are the possible penalties:

Willful Violation?	Amount of Wages Owed >14 Days After Written Demand	Penalties	
		Amount Due	Amount Due if Employer Pays All Wages ≤ 14 Days of Order (if Division Offers 50% Reduction)
No	≤ \$500.00	\$1,000.00	\$500.00
	≥ \$500.00	2x amount of wages owed	1x amount of wages ordered
Yes	≤ \$1,000.00	\$3,000.00	\$1,500.00
	≥ \$1,000.00	3x amount of wages owed	1.5x amount of wages ordered

Fines (paid to the Division)

The Division may also assess fines payable to the State of Colorado when the employer fails to comply with its obligations under the [Colorado Wage Act, C.R.S. 8-4-101, et seq.](#) An employer must pay the State:

- (1) up to \$50 for each day the employer fails to pay the claimant, starting on the first day the wages were due. [C.R.S. 8-4-113\(1\)\(a\)](#);
- (2) \$250 for each failure to respond to a Notice of Complaint, or any other notice from the Division that requires a response. [C.R.S. 8-4-113\(1\)\(b\)](#); and
- (3) up to \$250 per employee for each month of records the employer fails to provide the Division. [C.R.S. 8-4-103\(4.5\)](#).

The Division **may waive or reduce** fines #1 and #3 “if the employer pays the employee all wages and compensation owed within 14 days after the citation and notice of assessment is sent to the employer.” [C.R.S. 8-4-111\(2\)\(d\)](#). The Division **may waive or reduce** fine #2 if the employer provides good cause as to why they need an extension to respond to the Division’s notice. [C.R.S. 8-4-113\(1\)\(b\)](#).

The Division may assess other fines for non-cooperation with its investigations or orders. E.g., C.R.S. 8-1-114, -116, -117, and -142.

Consequences for Non-Payment: Additional Penalties and Fines, and Asset Seizure

If an employer does not pay by 35 days after an order to do so, then as of January 1, 2023, **an employee may ask the Division to file a “certified copy”** of the order in court — which makes the order an official court judgment that allows all collection efforts for not paying after a court order and judgment.

Note the following possible **consequences for the employer if payment is not made within 60 days** and reported to the Division:

- (1) **An automatic 50% increase in penalties** due to the employee, and **fines** due to the State, on top of the wages due (e.g., \$1,000 in penalties becomes \$1,500, and the same for fines).
- (2) **Additional fines for each day of non-compliance** with duties to pay and to report to the Division the status of the employer’s payments due or other information requested by the Division.
- (3) **Freezing and seizing assets the employer owns or is owed**, through Division orders and notices to the employer, to any other persons or entities with assets of the employer (e.g., banks), and to anyone who owes the employer money or other assets (e.g., customers, suppliers, other business partners).

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