



## Interpretive Notice & Formal Opinion (“INFO”) #20B:

### What’s Owed for “Time Worked” for Different Types of Pay, Hourly and Non-Hourly

#### Overview

This INFO #20B explains how the pay owed for time worked can vary for hourly, salary, commission, and piece rate pay. INFO #20A covers what counts as time worked requiring pay under [Colorado Overtime and Minimum Pay Standards Order \(“COMPS”\) Order](#) Rule 1.9. INFO #20C covers travel and sleep time ([Rules 1.9.2-1.9.3](#)).

#### **Pay of at Least Minimum Wage is Required for All Time Worked, Not Just on Average by Week**

- All time worked must be tracked and compensated, regardless of the type of pay rate — hourly rates, salaries, piece rates, commissions, etc. — unless the worker is exempt from those wage and hour laws.
- Colorado law requires paying employees’ **agreed pay rates** for time worked, but pay also must be at least:
  - **Minimum wage** for all time worked, not just on **average** by week or pay period.<sup>1</sup> Language requiring minimum wage “**per hour**” and “**for all hours worked**” (as in Colorado law<sup>2</sup>), courts explain, “prohibits **borrowing** compensation ... owed for **one** set of hours ... to rectify compensation below the minimum ... for a **second** set ... , **regardless** of whether the **average** of paid and unpaid ... time exceeds the minimum.”<sup>3</sup>
  - **Overtime** pay of **1.5 times** an employee’s regular rate for overtime hours (see INFO #1 on overtime rules).

<sup>1</sup> E.g., [Sobolewski v. Boselli & Sons, LLC](#), 342 F. Supp. 3d 1178, 1184 (D. Colo. 2018) (Colorado minimum wage violated by paying above minimum wage for most hours, but paying nothing for some compensable time: “even though ... compensation is more than the minimum” on average, pay was “less than the legal minimum wage ... *for all hours worked*”) (emphasis added); [Pilmstein v. Devereux Cleo Wallace](#), 2021 COA 59, ¶ 35, 492 P.3d 1059, 1066 (Colo. App. Oct. 18, 2021) (rejecting defense that employee’s total pay was at least minimum wage for all hours worked; “if an employee works but is not paid for her time, she has received less than the legal minimum wage for the hours worked”).

<sup>2</sup> Colo. Const., Art. XVIII § 15 (minimum wage required “per hour”); [COMPS Rule 3.1](#) (“Under the minimum wage requirements ... of the Colorado Constitution,” employees, “whether employed on an hourly, piecework, commission, time, task, or other basis, shall be paid not less than the Colorado minimum ... *for all hours worked*”) (emphasis added).

<sup>3</sup> [Oman v. Delta Air Lines](#), 466 P.3d 325, 336 (Cal. 2020). The federal Fair Labor Standards Act (FLSA) requires only (1) *minimum wage*, not higher agreed-to *regular* rates (as in Colorado law), and (2) in some courts’ view, *minimum wage on average by week* ([U.S. v. Klinghoffer Brothers Realty Corp.](#), 285 F.2d 487 (2d Cir. 1960)), not for *all time* worked, as in states like Colorado with law requiring the minimum “per hour” and “for all hours worked” rather than by “week” like the FLSA:

- [Oman](#), 466 P.3d at 336 (state law “prohibits borrowing compensation contractually owed for one set of hours or tasks to rectify compensation below the minimum ... for a second set ... , regardless of whether the average of paid and unpaid ... time exceeds ... minimum wage. Even if that ... might be thought ... to pay ... minimum wage for each hour ... , it does so only [by] renegeing on ... contractual commitments” to agreed rates) (citing [Armenta v. Osmose](#), 35 Cal. App. 4th 314 (2005) (FLSA requires minimum only on average by “work week,” but (a) “the averaging method ... effectively reduces [a] contractual hourly rate,” which “contravenes” state law requiring, without withholding from, “agreed rates,” and (b) state law requires “minimum wage “for all hours worked in the payroll period .... This language expresses the intent to ensure ... minimum wage for each hour worked. The averaging method ... [of] federal minimum wage law does not apply.”));
- [Abarca v. Werner Enterprises, Inc.](#), No. 8:14cv319 (D. Neb. July 27, 2022) (following [Oman](#), Nebraska minimum wage is “on an hour-by-hour basis”: “Although there is no specific statutory analog to California’s piece rate statute in Nebraska, two statutes taken together achieve the same effect”: one requiring “minimum wage for all hours worked, calculated on an hour-by-hour basis,” one protecting wages “promised ... under a contract”) (citations omitted);
- [Busk v. Integrity Staffing Solutions](#), 905 F.3d 387, 406 (6th Cir. 2018) (“... no basis for the conclusion that Nevada has adopted” the federal “workweek” averaging approach; state law “provides that an employee must be paid ‘wages of each hour the employee works,’” allowing workweek averaging for only certain non-hourly employees).

Even if the text of Colorado law left any ambiguity, the FLSA interpretation (minimum wage only as a weekly average, allowing unpaid time) is narrower than Colorado law, and must be rejected under Colorado’s express mandates (which FLSA lacks) to “liberally construe[]” wage rights. C.R.S. § 8-6-102 (minimum wage “shall be liberally construed”); [COMPS Rule 8.7\(A\)](#) (same; rules “shall be liberally construed, with exceptions and exemptions accordingly narrowly construed”).

**Example 1:** Each week, an employer pays a cashier \$20 per hour for four nine-hour shifts (36 paid hours), but doesn't pay for two hours of pre-/post-shift cleanup daily (eight unpaid hours).

- The first four of the eight unpaid hours are hours 37-40, and must be paid the \$20 regular rate. The remaining four unpaid hours are hours 41-44, requiring \$30 per hour overtime (1.5 times the regular rate). So the employer owes \$200 per week: \$20 per hour for the first four of the eight unpaid hours; and \$30 per hour for the remaining four of the eight unpaid hours.

## Hourly Pay

- ✓ Time worked must be paid at **whatever rate the parties agreed to** — so pay can be at **different rates** for different kinds of time worked (Examples 4 & 5 below).
- ✗ **But** an agreement can't eliminate the **duty to pay for all time worked** — so pay can't be **zero or below minimum wage** for any time worked (Examples 2, 3, 5 below).

**Example 2:** Weekly, an employer pays for 35 hours at \$18.50 per hour, but not for 2½ hours of donning and doffing uniforms wearable only at work. Average weekly pay is above minimum wage.

- "Putting on or removing required work clothes or gear" is time worked. The \$647.50 weekly pay (\$18.50 x 35 hours) provides \$17.27 per hour: the average of \$18.50 for the 35 paid hours, and \$0 for the 2½ unpaid hours. Paying \$0 for any time worked is unlawful; employers must pay at least minimum wage not just on average by week, but for all time worked. Since \$18.50 is the sole rate agreed to, the employer owes that rate for the 2½ unpaid hours.<sup>4</sup>

**Example 3:** A gymnastics school pays \$18.00 per hour. It pays for all time with students, but not for some required meetings and trainings. Average weekly pay remains above minimum wage.

- The employer must pay for the unpaid time worked — and not at minimum wage, but at the \$18.00 regular rate, since that was the only rate agreed to.<sup>5</sup>

**Example 4:** Same as Example 3, but the pay is \$20.00 for time with children, minimum wage otherwise.

- This is lawful; all time worked is paid at a lawful rate.

**Example 5:** Same as Example 3, but pay is \$20.00 for class time and \$10.00 for other time worked.

- The \$10.00 rate is unlawfully below minimum wage. But it's lawful to have a lower rate for one kind of time worked than for another; the error was just setting the lower rate below minimum wage. So the employer must raise the pay for non-class time to minimum wage.<sup>6</sup>

## Non-Hourly Pay: (1) Salaries; (2) Commissions; (3) Piece Rates

Most non-hourly pay — salaries, commissions, or piece rates — doesn't depend on how much time is worked. The time worked rule **still applies to non-hourly pay**, but **doesn't require pay to be hourly** or time-based.

- ✓ **Generally: Non-hourly pay can serve as the pay for all time worked.** The duty is just to pay for time worked at **whatever rate, hourly or non-hourly, is agreed to** be the employee's pay for their time worked.
- ✗ **Except: Non-hourly pay doesn't cover all time worked**, so extra pay is required, if the non-hourly pay is —
  - (A) **Below Minimum Wage** (only some non-hourly employees are exempt — see [INFOs #1 and #1A](#)),
  - (B) **Limited to Certain Time Worked** (relevant more often to piece rates than to salaries), or
  - (C) **Actually an Hourly Rate** (relevant more often to salaries).

The sections below, on key types of non-hourly pay — salaries, commissions, and piece rates — explain:

- △ How to **spot these three situations**, for each type of non-hourly pay; and
- ✓ How non-hourly pay situations can be **fixed**, to assure lawful pay for all time worked.

<sup>4</sup> *Universal Protection Service*, DLSS Claim #1839-20 ([Hearing Decis. #21-073, July 2, 2021](#)) & #4570-20 ([Hearing Decis. #22-004, Jan. 18, 2022](#)) (numbers simplified here).

<sup>5</sup> *FRW, LLC, d/b/a Momentum Athletic Center*, DLSS Claim #5559-18 (Hearing Decis. #20-004, Jan. 24, 2020).

<sup>6</sup> *Skintastique, Inc.*, DLSS Claim #5555-18 & #0078-19 (Hearing Decis. #20-048, July 23, 2020), pp. 21-23.

**(1) Salaries**

Salaries — defined as “predetermined” pay “on a weekly or less frequent” basis, “not subject to reduction” if “quantity ... of work” changes<sup>7</sup> — **can pay for all time worked**, except in **three situations**:

**(A) If the Pay Is Below Minimum Wage.** A salary can't be less than **minimum wage multiplied by hours worked**.<sup>8</sup> This means that pay — **whether a salary or not** — must be **at least** these example amounts:

Weekly Time Worked	The 2023 Minimum Wage <sup>9</sup> for:	Minimum Weekly Pay, Hourly or Non-Hourly
40 hours	• the first 40 hours weekly — \$13.65; • overtime hours past 40 weekly — \$20.48 (if no higher local minimum wage applies)	40 x \$13.65 = <b>\$546.00</b>
45 hours		40 x \$13.65 + 5 x \$20.48 = <b>\$648.40</b>
50 hours		40 x \$13.65 + 10 x \$20.48 = <b>\$750.80</b>
55 hours		40 x \$13.65 + 15 x \$20.48 = <b>\$853.20</b>

**(B) If the Pay Is Limited to Certain Time Worked.** If a salary pays for **only certain time worked** — by agreement or by the nature of what it compensates — then it doesn't cover **other** time worked.

**Example 6:** A store pays a \$720 weekly salary to cashiers. Its handbook says the salary pays for cashier shifts of 36 hours per week. One cashier is then assigned four extra hours, per week, of errands to pick up and drop off supplies for the store.

→ Because the store had agreed that the \$720 salary is for the 36 cashier hours, it hasn't paid for the four extra hours for errands. So the employer owes \$20 per hour (the only agreed pay rate, \$720 for 36 hours) for the four extra hours, or \$80 per week. **Note** — this is the same outcome as Examples 1-2: if an employer pays an agreed rate for only on-shift time, then it owes extra pay at that rate for any extra time worked.

**Example 7:** Same as Example 6, but the store pays an extra \$60 for the errands.

→ The \$720 paid for the 36 cashier hours (\$20 per hour), and the \$60 paid for the four errand hours (\$15 per hour), both are above 2023 minimum wage, so this is lawful. **Note** — this is the same outcome as Example 4: agreements to different rates for different kinds of time worked are lawful, as long as each rate is at least minimum wage.

**Example 8:** Same as Example 6, but the handbook doesn't say the salary is for only cashier shifts.

→ The \$720 per week can be the agreed pay for all time worked, whether cashier shifts or errands. It's high enough that the employee with four extra hours of errands is still paid at least minimum wage: \$720 for 40 hours is \$18 per hour.

**(C) If the Pay is Actually an Hourly Rate.** If pay is called a “salary” but changes if hours worked change, then it's **really hourly pay, not a salary** (see the definition above), so extra time worked requires extra pay.

**Example 9:** A store pays a \$720 weekly salary to cashiers working 36 hours per week — but it lowers, or “docks,” that pay when cashiers work fewer hours for any reason. Since \$720 for 36 hours is equal to \$20 per hour, the store lowers pay by \$20 for each hour as follows:

Time Off	Time Worked	Pay Decrease	Wages: Weekly	Wages: Hourly
None	36 Hours	None	\$720	\$20
1 Hour	35 Hours	\$20	\$700	\$20
2 Hours	34 Hours	\$40	\$680	\$20

This store is actually paying hourly wages, not salaries. Weekly pay isn't fixed; it rises or falls when hours rise or fall, which is how an hourly wage, not a salary, works (as noted above). That's lawful, but the store must pay an extra \$20 per hour if cashiers work *over* 36 hours.

<sup>7</sup> Colorado and federal law define salary versus hourly pay identically, including that a salary may be reduced “when an exempt employee is absent from work for one or more *full days* .... Dock[ing] the pay ... for *partial-day* personal absences, ... would lose the exemption.” [29 C.F.R. §§ 541.602-603](#) (emphasis added); [COMPS Rule 2.5](#) (adopting federal rules).

<sup>8</sup> Various exemptions have other requirements, including of salaries *well above* minimum wage; see [INFOs #1 and 1A](#).

<sup>9</sup> The Colorado minimum wage is inflation-adjusted annually; see [INFO #1](#) for each year's updates to minimum wage.

## (2) Commissions

Commissions — defined as “compensation paid upon results achieved,” including pay that depends on sales or other revenue, rather than on time<sup>10</sup> — can pay for all time worked, **except**:

**(A) If the Pay Is Below Minimum Wage.** Colorado minimum wage exempts *some* “outside salespersons.”<sup>11</sup> Others with “commission sales” aren’t exempt, or are exempt from only overtime, not minimum wage.<sup>12</sup> If commission employees aren’t exempt, **each pay period must average at least minimum wage**.

**Example 10:** A salesperson in a retail appliance store is paid 10% of their sales that the employer was paid for that month. In June 2023, they worked 160 hours, and earned \$2,000 in commissions from \$20,000 in sales.

→ For 160 hours, \$2,000 is \$12.50 per hour — below minimum wage. For example, the 2023 Colorado minimum wage was \$13.65, and minimum wage for 160 hours was \$2,184, so the employer would owe \$184.

**Tip: To avoid minimum wage violations**, options for employers paying **commissions or piece rates** include adopting policies such as one of the following:

- **raise the rate** of the commissions or piece rates high enough to assure each week’s pay averages at least minimum wage — though that may not fully protect against violations if any weeks generate *no* (or very low) commission sales or piece rate production; or
- **add extra pay** if commissions or piece rates fall below minimum wage, which requires tracking time worked to know when pay is below the minimum wage multiplied by hours worked.

**(B) If the Pay Is Limited to Certain Time Worked.** A commission can serve as the pay for **all time worked that produces the commission-generating sale**, not just for time on the specific task of making the sale. But other time worked that doesn’t generate a sale, even if necessary for the job, requires extra pay.

**Example 11:** An HVAC maintenance employee visits homes for service appointments: seasonal servicing (cleaning, replacing filters, etc.); repairs; and sales and installation of upgraded equipment. Customers are charged per service or sale, regardless of how long any work takes. Employee pay is 25% of all charges (other than the cost of parts) from their visits. They also spend time: (A) driving to each appointment; (B) communicating with customers (phone, text, etc.) before visits; and (C) in weekly staff meetings the employer requires.

- All of (A), (B), and (C) are time worked that must be compensated.
- (A) and (B) are activities necessary to produce commission-generating sales. Commissions serve as the pay for all work to produce a sale, so they **can** serve as the pay for this time.
- (C) is activity for the employer’s benefit that, even if necessary to work as a commission-paid service employee, doesn’t go toward producing any commissions. So the commissions **can’t** serve as pay for this time, and the employer must pay extra for that time — at whatever regular hourly rate the commissions come to, or at any other agreed hourly rate.<sup>13</sup>

**Tip: To avoid unpaid time violations**, one option for employers paying **commissions or piece rates** is to **specify an hourly rate** (anything minimum wage or higher) it will pay for any time worked the commissions or piece rates don’t cover.

<sup>10</sup> [Div. of Employment & Training v. Moen](#), 767 P.2d 1230, 1233 (Colo. App. 1988).

<sup>11</sup> [COMPS Rule 2.2.4](#) (exemption if salesperson spends 80% of time directly related to outside sales away from worksite).

<sup>12</sup> [COMPS Rule 2.4.2](#) (overtime-only exemption: limited to “sales” employees, and only those (A) whose pay is at least 50% commissions *and* 1.5 times minimum wage, (B) at employers with revenue over 75% from retail or service sales).

<sup>13</sup> [COMPS Rule 1.8](#) explains how to determine an hourly “regular rate of pay” for non-hourly-paid employees.



**(3) Piece Rate, or Piece Work, Pay**

Piece rates — defined as pay **per item or task finished** (e.g., per sheet of drywall hung, or per call taken), **regardless of the time worked**<sup>14</sup> — **can pay for all time worked, except:**

**(A) If the Pay Is *Below Minimum Wage*.** Unless an employee is exempt,<sup>15</sup> employers must track employee hours to assure their pay is at least minimum wage for all time worked — for example, making sure the piece rate is high enough, or adding pay if the piece rates total less than minimum wage.

**Example 12:** In 2023, a chicken slaughterhouse employee works 40 hours of time worked each week, for a \$4.00 per chicken piece rate. In one week in 2023, they finish 120 chickens, for pay of \$480.00 (\$4.00 x 120); the next week, 150 chickens, for pay of \$600.00 (\$4.00 x 150).

- The employee's regular hourly pay rate — pay divided by time worked — is \$12.00 the first week, and \$15.00 the second week. The first week's pay is unlawfully below the 2023 Colorado minimum wage (\$13.65). The second week's pay is above minimum wage.
- For the first week, in 2023, the employer owes an extra \$66.00, to raise the pay from \$12.00 per hour (\$480.00 for a 40-hour week) to the 2023 Colorado minimum wage of \$13.65 (\$546.00 for a 40-hour week). Or the employer can raise the piece rate high enough to assure that pay is at least minimum wage on average for the workweek. See the "Tip" options in Part (2)(B) above.

**(B) If the Pay Is *Limited to Certain Time Worked*.** If a piece rate pays for **only certain time worked** — by agreement and by the nature of what it compensates — then it doesn't cover **other** time worked.

- This situation (B) — pay limited to certain time worked — may **apply more often to piece rates** than non-task-specific pay (salary, hourly rate, etc.), because of the "piece rate" definition: Pay for **producing defined pieces** of work, but **not other** time insufficiently related to piece production.<sup>16</sup>
- For this reason, **piece rates** typically are offered as, and serve as, the pay for:
  - ✓ work that **produces the pieces**; *and*
  - ✓ work **directly related** to piece production — see the table and explanations on the next page — **if the parties agreed and understood** that the piece rate serves as the pay for that work; *but*
  - ✗ **not other, more general time worked** (for example, bathroom cleaning time for tailors paid a piece rate per shirt, which would require extra pay) — **regardless** of what was **agreed and understood**, because a pay rate "per piece" can't serve as the pay for time that doesn't produce pieces.

**Example 13:** IntervU4U, a startup business, sells mock job interview sessions online: a 40-minute mock interview by, then 20 minutes of feedback from, an IntervU4U employee. IntervU4U explains in writing to employees that pay is "\$25 for each one-hour session." But IntervU4U employees also need to spend 5-10 minutes of prep time, before each session, to review the personal information the customer had submitted in advance of the interview.

- The piece rate *can't* serve as the pay for prep time: the parties agreed that the \$25.00 piece rate is for only the hour of in-session time: "\$25 for each *one-hour session*." So the employer owes extra pay for the prep time — at \$25 per hour, the only pay rate the parties agreed to.

<sup>14</sup> See, e.g., [Monroe v. FTS](#), 860 F.3d 389, 415 (6th Cir. 2017) ("the amount ... paid in a piece rate system *remains the same regardless of the number of hours* required to complete" pieces); [Amponsah v. DIRECTV, LLC](#), 278 F. Supp. 3d 1352, 1365 (N.D. Ga. 2017) (describing pay as "piece-rate basis—that is, a *fixed amount ... for the action performed regardless of the amount of time*"); [Roeder v. DIRECTV, Inc.](#), No. C14-4091, 2017 WL 151401, at \*19 (N.D. Ia. Jan. 13, 2017) (describing pay as "piece-rate, meaning ... a *specified amount for a job regardless of how long it took*"); [29 C.F.R. § 541.605](#) (noting "fee basis" and "piecework" both are "an agreed sum for a single job *regardless of the time* required for its completion"); IRS Letter Ruling PLR 5411123110A, 1954 WL 10083 (Nov. 12, 1954) (pay "on a job basis, *i.e.*, certain work to be completed at a *definite charge, regardless of time taken*, is no different from a regular *piece-rate* job basis") (Emphases added in all.)

<sup>15</sup> E.g., see the "Commissions" section: the "outside salesperson" exemption *could* apply if pay is a fixed sum per sale.

<sup>16</sup> See the above note on how a piece rate is a fixed amount for an "action performed" or "certain work" (*i.e.*, each "piece").

**Example 14:** A slaughterhouse pays employees a \$5.00 per chicken piece rate. The pay always averages more than minimum wage. Employees must spend time on a wide range of activities other than actually producing processed chicken: clean and maintain equipment; put on and take off work gear; check in and out; wait for orders or repairs; meetings; and taking turns cleaning restrooms.

- All of these activities **count as “time worked”**; the question is **whether the piece rate can serve as the pay** for not only actual chicken production, but all other kinds of time worked.
- Since the piece rate is for producing each piece, it **can serve as the pay** for activity **directly related to producing each piece**, such as (*listing items by their letters in the table below*):

- (A) cleaning your own work gear (e.g., your knife) or work area during each shift; or
- (C) donning and doffing gear necessary to the chicken work.

But the piece rate **can’t serve as the pay** for activity that, although it benefits the employer (which is why it’s time worked), is **not directly related to producing each piece** — such as:

- (B) periodic equipment maintenance (knife-sharpening, machine-cleaning, etc.);
- (D) checking or clocking in or out (if it becomes time worked by taking over a minute);
- (G) meetings or trainings the employer requires; or
- (H) other work not directly related to the piece work (cleaning bathrooms, etc.).

- Piece rate pay always depends on how rapidly the business provides pieces to produce (rate of assembly line, of customer orders, etc.) — so it also **can serve as the pay** for time on:

- (E) routine waits for work or orders (e.g., for calls placing orders, or cars arriving at a mechanic’s work station), or getting to the work station where the piece work is done.

But that assumes, during the waiting time, piece work can start when orders arrive. If, due to broken equipment, lack of supplies, etc., it’s temporarily impossible for piece work to start when orders arrive, then the employee must be present with no possibility of pay-generating piece work for that time. So the piece rate **can’t serve as the pay** for time:

- (F) during equipment or supply delays that temporarily prevent performing piece work.

- Overall, piece rate employees are **not owed extra pay** for (A), (C), or (E), but **are owed extra pay** for (B), (D), (F), (G), or (H) — at whatever **regular hourly rate** their **piece rate pay equals**.<sup>17</sup>

- This table summarizes **whether piece rates can serve as the pay** for **various activities that count as time worked** (the specific activities are based on this food manufacturing example):

Activities of Piece Rate Employees: <i>Examples</i> □	Cleaning/Maintenance:		Shift Start/End Tasks:		Waiting for Work:		Other Work:	
	[A] Ongoing cleaning of work area or gear <i>(wipe gear, conveyor, etc.)</i>	[B] Periodic maintenance <i>(maintaining tools, deep cleaning, etc.)</i>	[C] Put on / take off (“don/doff”) needed gear <i>(bib, goggles, gloves, etc.)</i>	[D] Check or clock in / out <i>(time clock, security/safety screen, etc.)</i>	[E] For orders or time to get to a work station	[F] For repair or supply needed for piece work to be done	[G] Meeting / training <i>(instruction, assignment, safety, etc.)</i>	[H] Not directly related to piece production <i>(clean rest room, etc.)</i>
Typical Frequency of the Activity:	Each shift (once or more)	Periodic (whether daily or less often)	At the start or end of each shift (or each meal break)		Any (frequency is not relevant)		Any (frequency is not relevant)	
Can Piece Rates Serve as the Pay for the Activity?	Yes	No	Yes	No	Yes	No	No	

<sup>17</sup> [COMPS Rule 1.8](#) explains how to determine an hourly “regular rate” for non-hourly-paid employees.

**Tip:** To avoid unpaid time violations, **options** for employers include:

- (a) **Make clear that the piece rate includes time directly related** to piece production

**Example 15:** Same as Example 13 (IntervU4U pre-session prep time), except IntervU4U's handbook changes the description of the piece rate pay from "for each one-hour session" to, instead, "for all work for the client who purchased the session."

- The new wording makes clear that the piece rate serves as the pay for not just the one hour of in-session time, but also the 5-10 minutes of pre-session prep time. Since the prep time is directly related to producing the session, the piece rate can serve as the pay for that time, so the employer now owes nothing extra.

**Example 16:** Same as Example 14 (slaughterhouse employees with varied tasks), except the employer handbook states that the \$5.00 per chicken piece rate serves as employees' sole pay for *all* time worked, including *weekly meetings* and one shift per week each employee spends *cleaning bathrooms*.

- Even if the parties "agreed to" and "understood" that statement: **Agreement and understanding is necessary, but not sufficient, for piece rates to serve as the pay for non-piece-producing time worked;**<sup>18</sup> the time worked *also* must be directly related to piece production. A piece rate for each chicken produced can't serve as the pay for time not directly related to producing chickens, so the employer owes additional pay for non-directly-related time worked.

- (b) **Specify an hourly rate** — anything minimum wage or higher — it will pay for any time worked that the piece rates don't cover (as noted in Part (2)(B) of the Commissions section above).

- (c) **Add a fixed payment** of enough wages to compensate, at least at minimum wage, any regular non-piece-generating tasks.

**Example 17:** Same as Example 14 (slaughterhouse employees with varied tasks), except that after a detailed study, the employer determines that each day, employees spend *at most* 10 minutes going through safety screening and clocking in and out, and *at most* two hours per week on periodic equipment maintenance.

- If, under an agreement with employees, the employer adds to each paycheck 10 minutes per day and two hours per week, at the applicable minimum wage or higher, employees are paid enough for that time worked. If any employee ever spends *more* time on these tasks, though — for example, four hours per week on equipment maintenance — then more pay is owed for that extra time.

**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).

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<sup>18</sup> In this way, Colorado law differs somewhat from the federal rule allowing some agreements for piece rates to cover "nonproductive" work ([29 C.F.R. § 778.318\(c\)](#)), because: (1) that federal rule is premised at least in part on the workweek-averaging interpretation of the minimum wage that Colorado law does not apply (*id.*); (2) Colorado law limits permission for agreements to limit the right to pay for any activities that qualify as time worked, e.g., [C.R.S. § 8-4-121](#) ("Nonwaiver of employee rights. Any agreement, written or oral, by any employee purporting to waive or to modify such employee's rights in violation of this article shall be void."); and (3) Colorado law requires liberal construction of the right to be guaranteed pay of at least minimum wage for all activities that qualify as time worked, e.g., C.R.S. § 8-6-102 (minimum wage "shall be liberally construed"); [COMPS Rule 8.7\(A\)](#) (same; rules "shall be liberally construed, with exceptions and exemptions accordingly narrowly construed").