



## 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 consequences for any non-compliance during an investigation and hearing. The average 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 Act 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 Act 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 will issue a “Citation & Notice of Assessment” and will award wages and/or penalties to the claimant based on the evidence. The Division will also assess 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 its position 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**).

- The employer's response to the Notice of Complaint must include the completed Division's "[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\(3\)\(b\)](#).

**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 \(Hearing Officer Decis. No. 19-003, Jan. 8, 2019\)](#))

### **Penalties**

The Division may order the employer to pay penalties to the claimant when the employer fails to pay the claimant within 14 days of the first valid written demand of payment. [C.R.S. 8-4-109\(3\)\(b\)](#). But if, at the end of the investigation process, the employer pays the claimant the amount owed within 14 days of the Division's determination, the Division may waive up to 50% of the penalties. [C.R.S. 8-4-111\(2\)\(d\)](#).

An employer must pay the claimant whichever penalty amount **is greater**: 125% of the wages due and unpaid by the date of determination **or** the sum of up to 10 days of the claimant's average daily earnings.

The Division may increase the penalty amount by 50% if the employer's failure to pay the wages is determined to be willful. [C.R.S. 8-4-109\(3\)\(c\)](#). For example, if an employer owes \$1,500.00 in penalties and has a history of not paying its employees, the Division may increase the penalty to \$2,250.00 by multiplying \$1,500 by 1.5. ([Advanced Security Consulting, Inc., DLSS Case #3260-18 \(Hearing Officer Decis. No. 19-049, Jun. 17, 2019\)](#).)

### **Fines**

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 of Colorado:

- 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 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\(1\)\(b\)](#).

### **Additional Information**

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