

## DEPARTMENT OF LABOR AND EMPLOYMENT

### Division of Labor Standards and Statistics

## LABOR PEACE AND INDUSTRIAL RELATIONS (LPIR) RULES

### 7 CCR 1101-1

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As proposed March 15, 2023; if adopted, to be effective July 1, 2023.

#### Rule 1. Statement of Purpose and Authority

- 1.1 The general purpose of these Labor Peace and Industrial Relations Rules is to exercise the authority of the Department of Labor and Employment and the Division of Labor Standards and Statistics to administer and enforce the provisions of the Industrial Relations Act (“IRA”), Colorado Revised Statutes (C.R.S.) Title 8, Article 1 (2023), C.R.S. § 8-1-101 et seq., and the Labor Peace Act (“LPA”), C.R.S. Title 8, Article 3 (2023), C.R.S. § 8-3-101 et seq. These rules are intended to be consistent with the rulemaking requirements of the State Administrative Procedure Act, C.R.S. § 24-4-103.
- 1.2 The Director of the Division of Labor Standards and Statistics in the Department of Labor and Employment has authority to enforce, interpret, apply, and administer the provisions of C.R.S. Title 8, Articles 1 and 3 and these rules.
- 1.3 Incorporations by Reference. The Industrial Relations Act, C.R.S. § 8-1-101 et seq., and the Labor Peace Act, C.R.S. § 8-3-101 et seq., are hereby incorporated by reference into these rules. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. Electronic access is available from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division rules are available to the public at [www.coloradolaborlaw.gov](http://www.coloradolaborlaw.gov). Where these rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these rules govern so long as they are consistent with Colorado statutory and constitutional provisions. Where these rules reference another rule, the reference shall be deemed to include all subparts of the referenced rule.
- 1.4 Separability. These rules are intended to remain in effect to the maximum extent possible. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of the rule remains valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

#### Rule 2. Definitions and Clarifications

- 2.1 “All-union agreement” (“AUA”) means a contractual provision between an employer or group of employers, and a collective bargaining unit representing some or all employees, providing for any type of union security and compelling an employee’s financial support or allegiance to a labor organization as described in C.R.S. § 8-3-104(1.5).

- 2.2** “Authorized representative” means a person designated by a party to any labor-management dispute, unfair labor practice complaint, election petition, or other Division administrative proceeding to represent the party. A party may designate an authorized representative by filing the Division-approved form or by a signed written notice to the Division that the authorized representative will represent the party. Authority of the authorized representative may be revoked by the designating party upon written notice to the Division.
- 2.3** “Collective bargaining agreement” (“CBA”) is a contract or agreement between an employer or group of employers and a collective bargaining unit representing some or all employees.
- 2.4** “Collective bargaining unit” (“CBU”) or “bargaining unit” has the meaning as defined in C.R.S. § 8-3-104(4).
- 2.5** “Director” means the Director of the Division of Labor Standards and Statistics, and includes a designee or agent the Director selects to perform any delegable functions of the Director under authority granted by any applicable law, including but not limited to C.R.S. § 8-1-103(1).
- 2.6** “Division” means the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.
- 2.7** “Employee” has the following definitions:
- 2.7.1** Under the Industrial Relations Act, C.R.S. § 8-1-101(6), an “employee” means every person in the service of an employer, under any contract of hire, express or implied, not including an elective official of the state, or of any county, city, town, irrigation, drainage, or school district thereof, and not including any officers or enlisted men of the National Guard of the state of Colorado.
- 2.7.2** Under the Labor Peace Act:
- (A) “Employee” means any person working for another for hire in the state of Colorado in a non-executive or non-supervisory capacity and is not limited to the employees of a particular employer under C.R.S. § 8-3-104(11)(a). The analysis of “non-executive” is guided by the definition of “managerial” under the policies of the National Labor Relations Board (“NLRB”) and the analysis of “non-supervisory” is guided by the definition of “supervisor” under the National Labor Relations Act (“NLRA”), 29 U.S.C. § 152(11).
- (B) “Employee” includes any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and who otherwise meets the conditions of C.R.S. § 8-3-104(11)(a)(II).
- (C) An “employee” does not include an independent contractor (as defined and applied by the Colorado Wage Act, C.R.S. § 8-4-101(5)), an individual employed by the individual’s parent or spouse, or domestic servants employed in and about private homes.
- (D) With respect to agricultural workers, “employee” includes an employee of an agricultural employer under C.R.S. §§ 8-3-104(1)(a) and 104(12)(a)(II)(B), as amended by the Agricultural Labor Rights and Responsibilities Act, Colorado SB 21-087. An employee of a marijuana licensee is an agricultural worker when the employee is a farm laborer at a site (e.g., farm, plantation, ranch, nursery, range, greenhouse, orchard, or other structure) used for the raising of agricultural or horticultural commodities, as long as the structure is utilized for at least 50% of

the total output produced, as defined by the Colorado Marijuana Code, C.R.S. § 44-10-105. "Employee" does not include a parent, spouse, or child of an agricultural employer's immediate family.

**2.8** "Employer" has the following definitions:

**2.8.1** Under the Industrial Relations Act, C.R.S. § 8-1-101(7), an "employer" means:

- (A) the state, and each county, city, town, irrigation, and school district therein, and all public institutions and administrative boards thereof having four or more employees; and
- (B) every person, association of persons, firm, and private corporation, including any public service corporation, manager, personal representative, assignee, trustee, and receiver, who has four or more persons regularly engaged in the same business or employment, except as otherwise expressly provided by the IRA, in service under any contract of hire, expressed or implied.
- (C) The IRA is not intended to apply to employers of private domestic servants or farm and ranch labor; nor to employers who employ less than four employees regularly in the same business, or in or about the same place of employment.

**2.8.2** Under the Labor Peace Act:

- (A) An "employer" means, under C.R.S. § 8-3-104(12), a person who regularly engages the services of eight or more employees, other than persons within the classes expressly exempted in section 104(11), and includes:
  - (i) Any person acting on behalf of an employer within the scope of the employer's authority, express or implied; and
  - (ii) An agricultural employer.
  - (iii) "Employer" does not include any labor organization or anyone acting on behalf of that organization other than when the labor organization is acting as an employer-in-fact.
- (B) An "agricultural employer" means, under C.R.S. § 8-3-104(1)(a), a person that:
  - (i) Regularly engages the services of one or more employees or contracts with any person who recruits, solicits, hires, employs, furnishes, or transports employees; and
  - (ii) Is engaged in any service or activity included in section 203(f) of the federal "Fair Labor Standards Act of 1938," 29 U.S.C. § 201 et seq., as amended, or engaged in "agricultural labor" as defined in section 3121(g) of the federal "Internal Revenue Code of 1986," as amended.

**2.9** "Exclusive representative" means the labor organization certified as the representative of employees in a collective bargaining unit under the Labor Peace Act.

**2.10** "Mail" refers to first-class mail sent through the United States Postal Service, postage prepaid.

**2.11** "Order" means any decision, rule, regulation, requirement, or standard promulgated by the director, as defined by C.R.S. § 8-1-101(11).

- 2.12** “Person” refers to one or more individuals, an employee, a labor organization, partnerships, associations, corporations, legal representatives, trustees, or receivers.

**Rule 3. Notices by Employers**

- 3.1** Whenever notice is required to be given to employees by these rules, notice shall mean the posting and distribution of required information.
- 3.2** Posting means to display in conspicuous places frequented by employees on the employer’s premises, at places customarily used for the posting of employee notices, and where such notice may be easily read during the workday, such as in break rooms, on employee bulletin boards, and/or adjacent to time clocks, department entrances, and/or facility entrances, and on any electronic bulletin boards or other means of electronic notice used by the employer.
- 3.3** Notice must be provided electronically to any employees with whom the employer customarily communicates through electronic means.
- 3.4** In all employment situations where employees are engaged in their duties away from the employer’s principal or permanent place of business, notice shall be given in writing by such methods as shall reasonably be calculated to apprise all affected employees of such notice. This may include posting of the notice at remote sites, such as on construction sites, and distributing individual written or electronic copies of the notice to employees.
- 3.5** If posting and distribution in the manner set forth in Rules 3.2-3.4 cannot reasonably be effectuated to reach all employees, the Director may order any other reasonable means of giving notice, e.g., providing employees with individual written or electronic copies of the notice.

**Rule 4. Filing, Service, and Deadlines**

- 4.1** Documents shall be filed electronically, on a Division-approved form if one is available, pursuant to these rules and any orders, instructions, and deadlines provided or published by the Division. If the Division does not have an applicable form posted or provide one when the party intends to file, or if a party cannot readily use such means for filing, the party may file documents by any other means that provide the filing to the Division, including but not limited to email, other electronic means, or mailing or hand-delivering paper copies. A document is considered “filed” when received by the Division; any document received after 11:59 p.m. Mountain Time is considered “filed” the next business day.
- 4.1.1** Any submission is considered “signed” or to have a “signature” if it has either an ink, scanned, or electronically drawn or generated signature, or a typed name entered by the party or their authorized representative in the signature area. By signing in any such manner, the individual is deemed to have agreed and assented that the document is signed by them.
- 4.1.2** Handwritten signatures verifying identification and voter eligibility are required on envelopes for mail ballot elections. Typed or electronically drawn or generated signatures will not be accepted.
- 4.2** Except as otherwise provided by these rules, or by the Director, whenever service of a document is required, service is made to a person or party by hand-delivery, mail, or transmission by facsimile, or other electronic means. The email address or facsimile number on file with the Division or furnished by the person or party shall be used for service. The current address on file with the Division or the last known address of the person or party shall be used for mailing.

- 4.3** The calculation of any period of time prescribed or allowed by these rules shall be done in accordance with C.R.S. § 2-4-108.
- 4.4** Deadlines may be extended for “good cause” if the request is made three days before the deadline, absent emergencies or exigent circumstances. In considering whether good cause exists under these rules or applicable statutes for extensions of deadlines, the Director will determine whether the reason is substantial and reasonable, based on all the available information and circumstances pertaining to the matter.

## **Rule 5. Elections**

### **5.1** Types of Elections.

**5.1.1** Collective Bargaining Unit Election. A collective bargaining unit or representation election determines whether a labor organization shall be certified (or decertified) as the exclusive representative of all employees in a bargaining unit.

(A) Certification. The labor organization shall be selected as the exclusive representative for the proposed collective bargaining unit if a majority (over 50%) of all eligible employees cast ballots (the majority turnout requirement of C.R.S. § 8-3-107(1)), and a majority of those votes are cast in favor of representation (the majority rules requirement of C.R.S. § 8-3-104(4)). If both majorities are attained, the Division shall certify the labor organization as the exclusive representative.

(B) Decertification. The same procedures for certification apply to decertification of an existing labor organization.

(C) Collective bargaining units selected pursuant to C.R.S. § 8-3-107 and certified by the Director may be clarified or modified, as follows:

(1) Questions of interpretation as to coverage of particular employees or positions in an existing unit may be submitted to the Director. Notice of the clarification request shall be provided to the employer, the exclusive representative of the certified unit with the coverage question, and any employees whose coverage is in question. Any parties notified of the request may respond within 14 days, absent an extension for good cause shown. The Director’s clarification is an administrative determination and final agency action under C.R.S. § 24-4-106.

(2) Requests to modify the scope of a unit (e.g., to add additional employees not already covered, or to subtract already-covered employees) will be determined by secret ballot election following the procedures for representation elections.

**5.1.2** All-Union Agreement Election. An all-union agreement election determines whether an employer and labor organization are authorized to negotiate an all-union agreement, or union security clause, during collective bargaining.

(A) Authorization for an all-union agreement is approved by an affirmative vote of at least a majority of all employees eligible to vote, or three-quarters or more of employees who actually vote, whichever is greater. The election results shall be construed as granting or denying authorization to the employer and labor organization to enter any form of all-union agreement, except as provided in C.R.S. § 8-3-109(3), in initial and subsequent collective bargaining agreements between the same parties.

- (B) Revocation of an All-Union Agreement.
  - (1) Petitions to revoke an all-union agreement may be filed by the employer or 20% of the covered employees. Petitions shall be filed between 105 and 120 days prior to the end or third anniversary of the collective bargaining agreement. The Director shall verify the petition's sufficiency, including petitioners' employment, status, and eligibility without disclosing the identity of the petitioning employees.
  - (2) The Director may conduct an election for revocation of an all-union agreement within a collective bargaining unit only once during the term of a collective bargaining agreement or once every three years in the case of agreements for a term of over three years.
  - (3) Revocation of an all-union agreement is approved by an election following the same procedures as an all-union agreement election, with all employees covered by the all-union agreement eligible to vote. The Division must complete the election within 60 days prior to the end or third anniversary of the collective bargaining agreement.
- (C) Construction Industry. Certification and ratification of all-union agreements in the construction industry.
  - (1) A request for certification of an all-union agreement, entered into by an employer and a labor organization, and limited to employees engaged in the building and construction industry, may be filed by an employer, employee, or labor organization, or their authorized representative, as provided in C.R.S. §§ 8-3-108(1)(c)(II)(B) and 8-3-109(3).
  - (2) A request for certification shall include a copy of the signed all-union agreement or, if a signed copy is unavailable, an unsigned copy with a declaration under penalty of perjury that the parties executed the agreement.
  - (3) In the case of an all-union agreement, including multi-employer groups or associations, the request for certification shall include a list of the members of the group or association that delegated their bargaining rights, and/or the names of employers that, although they have not delegated bargaining rights to a group or association, individually signed such agreements, together with the addresses of such employers.
- (D) If the all-union agreement complies with the provisions of C.R.S. § 8-3-109(3), the Director will certify the agreement and furnish written notice to the requesting party and all other parties of interest. The original certification of the all-union agreement shall be retained by the Division.
- (E) If the Director does not certify the all-union agreement, the Director shall give written notice to the requesting party, signatories to the agreement, and all other parties of interest stating the reasons for not certifying, or set the matter for hearing prior to issuing such determination.
- (F) Within two weeks of the date of certification by the Director, the employer, or in the case of multi-employer associations, each member or signatory employer, shall post and distribute written notice to all employees covered by the certified all-union agreement indicating that the agreement has been ratified and certified

pursuant to the provisions of the Labor Peace Act. Under C.R.S. § 8-3-108(1)(c)(II)(D), the notice shall explicitly state that 20% of the covered employees may demand an all-union agreement election within 45 days of the Director's certification following the same procedures for an all-union agreement election. Proof that notice was given shall be filed with the Director within 20 days.

**5.2 Election Petitions.**

**5.2.1** Election petitions shall be filed with the Division using the approved form(s) and in compliance with any instructions specified by the Division. For an all-union agreement election, certification of the collective bargaining unit by the NLRB or the Division, or other written evidence of voluntary recognition, shall be submitted with the petition.

**5.2.2** Unless otherwise specified, election petitions may be filed by a single employee, a group of employees, an employer, or any person or organization with permission from one or more employees to file a petition on their behalf.

**5.2.3** The Division shall not disclose the names of any employees who sign or file election petitions themselves or through another person or entity.

**5.2.4** The fact that one election has been held shall not prevent the holding of another election of the same type among the same group of employees, if it appears to the Director that sufficient reasons exist (except for an election to revoke an all-union agreement, as provided in Rule 5.1.2(B)). The Director will presume that sufficient reasons exist if all the following apply:

- (A) One year or more has passed since the conclusion of balloting and voting in a prior election of the same type;
- (B) The proposed election is not during the term of a CBA with a term of under three years or within the first three years of a longer CBA; and
- (C) The petitioner is not a party to the CBA currently in effect.

**5.3 Processing Election Petitions and Issuing Notice of Petition for Election.**

**5.3.1** Upon filing of an election petition, the Director will determine whether the Division has authority to conduct the election and evaluate the sufficiency of the petition including any supporting documentation (e.g., NLRB certification). The Director may request additional information or documentation in support of the petition.

**5.3.2** When the election petition is deemed sufficient, the Director shall:

- (A) Issue a notice of petition identifying the bargaining unit and the petitioner, unless confidential; explaining the election process; and advising employees of their rights under the LPA. The employer shall post and distribute such notice in accordance with Rule 3.
- (B) Schedule a pre-election conference with the parties for the purpose of setting the election date(s) and time(s); determining election procedures; and identifying the employees eligible to vote. In the event the parties are unable to agree, the Director shall set the date(s) and time(s) of election and determine the election procedures. Elections may be conducted in-person, by mail, and/or by other means the Director determines to be appropriate.

- (C) Direct the employer to furnish a tentative poll list of the employees eligible to vote in the election to the Division, the labor organization, and any other interested party before the pre-election conference. The employee list shall include full employee names, work locations, shifts, job classifications, home addressees, personal email addresses, home telephone numbers, and personal cell phone numbers (in spreadsheet format) as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Director.

- 5.3.3** In the event the employer or other party fails or refuses to furnish requested information for purposes of determining the employees eligible to vote, or for finalizing a proper poll list, the Director may demand a voter list based on an employer's or other party's obligation to furnish information under the IRA.

**5.4** Challenges to Election, Collective Bargaining Unit, or Qualified Voters.

- 5.4.1** Within one week after posting and distributing the notice of petition, employees shall notify the Division of their desires to be included or excluded from the bargaining unit proposed, or their requests for a separate bargaining unit by craft, division, department, or plant.

- 5.4.2** Any party challenging an election petition, the proposed bargaining unit, or the employees eligible to vote as shown on the tentative poll list shall file a position statement with the Division, and serve a copy to all other parties, at least three business days prior to the pre-election conference. The Director may:

- (A) resolve the challenge and proceed with the pre-election conference; or
- (B) reschedule the pre-election conference if any other party requests to file a written response or if additional information is necessary to resolve the challenge.

**5.5** Notice of Election and Qualified Voters.

- 5.5.1** At least one week before the established election date, the Director shall issue a notice of election with the tentative poll list. The employer shall post and distribute the notice of election with the tentative poll list in accordance with Rule 3.

- 5.5.2** The notice of election shall describe the election to be conducted (i.e., CBU or AUA); identify the petitioner, unless confidential; specify when (i.e., dates and times), where, and how the secret ballot election will be conducted; specify the bargaining unit and the employees eligible to vote; and advise employees of their rights under the LPA and these rules.

- (A) For collective bargaining unit (representation) elections, the notice of election shall include a description of the proposed bargaining unit or units to be formed (e.g., included and excluded unit classifications).
- (B) For an all-union agreement election, all employees in the unit proposed to be covered by an all-union agreement shall be eligible to vote.

- 5.5.3** At least 72 hours before the election, or as ordered by the Director, the employer shall furnish a final poll list of the employees eligible to vote in the election to the Division, the labor organization, and any other interested party.

- 5.5.4** The Director shall certify a final poll list of qualified voters not later than 24 hours nor earlier than 48 hours preceding the time of balloting (or the mailing of ballots). The certified poll list shall be posted with the notice of election and shall be available in the office of the Director and to any interested party.
- 5.5.5** At any time prior to certification of a final poll list, the Director may order any party to provide further information the Director deems relevant to finalizing the poll list.
- 5.6** Conduct of Elections.
- 5.6.1** The Director shall prepare suitable notices and ballots for any election held under these rules.
- (A) For a representation election, the secret ballot shall contain the name of any eligible labor organization(s) seeking to be the exclusive representative, and a choice of “no representation” for employees who do not desire representation.
- (B) Notices and ballots for any election shall be in English and Spanish if any party or eligible voter credibly indicates, at or before the pre-election conference, that any voters need Spanish-language ballots. Any party or eligible voter may request ballots in any other language, and the Director shall endeavor to so provide, if possible, in the time provided.
- 5.6.2** The Director may establish more than one suitable polling place for the same election, and may either provide a separate suitable ballot box and election officials for each place, or establish different times for reception of ballots by the same election officials at different places. In either event, the notice posted at each polling place shall specify the day and hours when ballots may be cast. The Director will establish sufficient safeguards to ensure that multiple ballots will not be cast by the same voter.
- 5.6.3** Each eligible labor organization and each employer may designate one election observer; additional observers may be permitted upon good cause shown to the Director at least three days before the election. The Director, the Director’s designees or agents, and the designated observers shall be the only individuals allowed to observe the check-in of qualified voters as compared to the certified poll list and remain at the polling place during balloting. Supervisors, management, and paid union officials shall not serve as election observers but may be present for counting of ballots.
- 5.6.4** Copies of the certified polling list shall be in the possession of the Director during balloting. Only employees named on the certified poll list and currently employed shall be entitled to vote at the election.
- 5.6.5** If any employee is unable to prepare the ballot due to insufficient literacy or familiarity with the language(s) of the ballots, or for any other reason, the employee may be assisted in preparing the ballot by the Director.
- 5.6.6** Electioneering shall not be permitted within 50 feet of the polling place.
- 5.6.7** For in-person balloting, at the time specified in the election notice for the closing of balloting, the Director shall receive the ballots of those employees present at the polling place, and no others.
- 5.7** Challenges to Ballots.

- 5.7.1** Designated election observers may challenge the right of any person to vote upon the grounds of either: identity (i.e., whether they are or are not a person on the certified poll list); or ineligibility due to separation from employment (other than an unlawful termination). If the validity of a challenge cannot be resolved at the time of balloting, then the challenged ballot may be cast.
- 5.7.2** Any challenged ballot will be retained by the Director in a sealed envelope. After securing all ballots to ensure election integrity and secrecy of the votes, the Director shall receive evidence as to voter eligibility from the parties and attempt to resolve any challenges.
- (A) The Director need not resolve whether the challenged ballots should be counted under this rule if the challenged ballots are insufficient in number to affect the results of the election.
- (B) If insufficient evidence is presented for the Director to determine whether to count the challenged ballots, all ballots cast will be sealed in the ballot box and secured by the Director, and the parties will have one week to submit any additional evidence that may assist the Director in resolving challenged ballots.
- (C) If no decision is reached after consideration of the parties' submissions, the Director shall cause the matter to be heard at a hearing for resolution.
- (D) Challenged ballots determined by the Director to be invalid shall be declared void and disregarded. Challenged ballots determined by the Director to be valid shall be mixed with unchallenged ballots for counting.
- 5.8** Counting of Ballots and Certification of Results.
- 5.8.1** At the pre-election conference or before the conclusion of balloting, the Director shall determine and notify the parties of a time and place at which the ballots will be counted. Each eligible labor organization and each employer may designate one observer for the ballot count; additional observers may be permitted upon good cause shown to the Director at least three days before the ballot counting.
- 5.8.2** The Director shall disregard, and record as a void ballot, any ballot (A) on which the vote(s) cast cannot be reliably determined (e.g., blank ballots, conflicting marks, inconsistent votes, and/or lack of clear indication of voter intent), or (B) that the Director finds to be spurious or otherwise legally invalid.
- 5.8.3** After the counting of ballots, the Director shall prepare election certificates containing a tabulation of the ballots cast and certifying the results of the election, which shall be served on all parties. Ballots will be maintained in a sealed container at the Division until one month after: (A) expiration of the deadline to file and serve any appeal or other legal challenge to the outcome or any aspect of the election; or (B) final judgment has been rendered on the merits in any appeal or other legal challenge to the election and all appeal rights have been exhausted, whichever is later.
- 5.8.4** Within one week after certification of the election results, any party may file an appeal in writing with the Director to review the certification based on error or fraud with regard to the results certified therein. The Director will serve a copy of the appeal on all interested parties, giving the non-filing parties one week to file and serve written responses. The Director may extend these deadlines for good cause shown in accordance with Rule 4.4. The Director may set the matter for hearing, require additional submissions and/or evidence from any party, or issue a decision without a hearing based on the filings.

**Rule 6. Unfair Labor Practices**

- 6.1** Filing an Unfair Labor Practice Complaint. Complaints may be filed in the Division or in court; the Division will not exercise jurisdiction over complaints that were or are being adjudicated in court.
- 6.1.1** Unfair labor practice complaints shall be filed on the designated form provided by the Division, and shall comply with any other Division instructions as to the information and/or documentation required by the Division.
- (A) The aggrieved party filing an unfair labor practice complaint shall be designated the charging party. The party against whom an unfair labor practice complaint is filed shall be designated the respondent(s).
  - (B) Either party may designate an authorized representative to act on their behalf in the Division's complaint and/or appeal process in accordance with Rule 2.2.
  - (C) An unfair labor practice complaint (or charge) must be received by the Division within six months after the date on which the charging party knew or reasonably should have known of the alleged unfair labor practice.
  - (D) The charging party shall set forth a clear and concise statement of the facts constituting the unfair labor practice and the statutes allegedly violated.
  - (E) Failure to respond in a timely manner to requests from the Division for additional supporting information and/or documentation may result in dismissal of the unfair labor practice complaint.
  - (F) The Director may initiate, file, and investigate any such complaint on their own initiative, or at the request of any interested party. The name or interest of any such party shall not be disclosed. Decisions under this rule are within the discretion of the Director's authority to enforce and administer the LPA, these rules, and other applicable statutes and rules.
- 6.1.2** The Division will evaluate unfair labor practice complaints to determine if the Division has jurisdiction over the alleged conduct and if sufficient allegations and evidence has been shown from which an unfair labor practice may be reasonably inferred.
- 6.1.3** If the unfair labor practice complaint provides insufficient evidence, the Division will notify the charging party and may request additional information and/or documentation. The date the charging party provides all the information and/or documentation necessary to support the complaint will be used to calculate the time prescribed in C.R.S. § 8-3-110(2) for the hearing, if any.
- 6.1.4** A charging party may withdraw an unfair labor practice complaint at any time prior to issuance of a determination.
- 6.2** Notice of Unfair Labor Practice Complaint to Respondent(s).
- 6.2.1** After determining that a charging party's unfair labor practice complaint contains sufficient allegations and evidence that, if proven true, would state a claim of an unfair labor practice, the Division shall give notice of the allegations and request an answer be filed by each respondent.
- 6.2.2** The respondent shall file an answer responding to each allegation in the complaint and attach any documentation or evidence the respondent wishes the Division to consider in

reviewing the complaint, within 21 days of the date the Division sends a copy of the complaint to the respondent. The Division may exercise discretion to shorten the response deadline.

**6.2.3** Upon receiving a request in writing stating the reason an extension is required, the Division may, at its discretion, extend the period for the respondent to file an answer to the complaint for good cause in accordance with Rule 4.4.

**6.2.4** Upon written request, at the Division's discretion, other parties or entities may be designated as intervenors or may be joined as charging parties or respondents.

**6.3** Investigation and Initial Determination of Unfair Labor Practice Complaints.

**6.3.1** Upon receipt of the unfair labor practice complaint, the answer, and any supplemental information or documentation, the Director shall determine whether additional investigation is required. In the event further investigation is required, investigatory methods used by the Division may include, but are not limited to:

(A) Interviews of the employer, employee(s), and other parties;

(B) Information gathering, fact-finding, and reviews of written submissions; and

(C) Any other lawful techniques that enable the Division to assess whether an unfair labor practice occurred.

**6.3.2** During the investigation, if information is provided to the Division by a source requesting confidentiality, and that information is used only as a basis for procuring other evidence, but not offered as evidence itself, then the source shall remain confidential.

**6.3.3** The Director may exercise discretion to adjourn the hearing prescribed in C.R.S. § 8-3-110(2) to permit additional time for submissions by the parties; extensions for good cause or by consent; evaluation of the submissions and supporting information and/or documentation; and to issue orders disposing of the complaint without a hearing.

**6.3.4** Where a complaint or investigation for violation of these rules or the statutes they enforce has been filed or commenced, all parties shall preserve all relevant documents until final disposition and until the expiration of the statutory period within which a person aggrieved may bring a civil action.

**6.3.5** The Division may exercise its discretion to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation.

**6.3.6** The burden of proof to establish an unfair labor practice is on the charging party, who must establish by a preponderance of the evidence that an unfair labor practice has been committed.

**6.3.7** The Division shall make a determination as to whether an unfair labor practice has been committed and report its recommended findings and proposed orders to the Director, which shall be sent to all parties.

**6.3.8** Absent a request for a hearing within 35 days of the determination, the recommended findings of fact and conclusions of law, and proposed orders of the Division, shall be deemed those of the Director and shall constitute final agency action. A party may seek judicial review of the final agency decision pursuant to C.R.S. § 24-4-106.

- 6.3.9** Determinations by the Division may include the following proposed remedies, as supported by the recommended findings:
- (A) order(s) to cease the unfair labor practice, effectuate compliance by modifying or rescinding existing policies, practices, or agreements, and/or otherwise redress direct or indirect consequences of unfair labor practices, as authorized by the LPA, the IRA, and/or other statutes on Division investigative and enforcement authority;
  - (B) periodic reports showing compliance with the orders;
  - (C) suspension of rights, immunities, privileges, or remedies granted or afforded by the LPA for one year pursuant to C.R.S. § 8-3-110(7);
  - (D) termination of an AUA agreement pursuant to C.R.S. § 8-3-108(1)(c)(III)(A);
  - (E) reinstatement of employee(s) with or without pay, as deemed appropriate; and
  - (F) any other remedies or relief authorized by law, including but not limited to C.R.S. Title 8, Articles 1, 4, 6, and 13.5.

**6.4** Unfair Labor Practice Hearing.

**6.4.1** Either the charging party or respondent may request a hearing within 35 days after the Division's initial determination of an unfair labor practice complaint. A valid hearing request is a written statement that is timely filed with and received within 35 days by the Division, explains the basis for the request, and has been signed by a party or authorized representative.

**6.4.2** The hearing officer (including an Administrative Law Judge) shall have the power and authority to:

- (A) review the recommendations and proposed orders in the initial determination de novo;
- (B) call, preside at, and conduct hearings, which may be held by phone or other remote means;
- (C) certify to official acts, administer oaths and affirmations, order and take depositions, or otherwise question witnesses;
- (D) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence;
- (E) sequence and/or divide the hearing into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more hearings, decisions, and/or phases of the hearing; and
- (F) issue interim orders requiring the parties to identify or narrow the disputed issues requiring a hearing.

**6.4.3** Upon receipt of the hearing request, the Division will notify the parties of the date of the hearing and any interim deadlines, and send a copy of the request and a copy of the

record of its investigation to the parties by mail or email. All evidence submitted to the Division during the investigation is part of the record and need not be resubmitted.

- 6.4.4** The parties may submit new testimonial evidence, which is defined as any evidence that is elicited through the statements of individual witnesses, to the hearing officer in accordance with deadlines imposed by the Division. New evidence must be provided to all other parties to the unfair labor practice claim. New evidence that is not provided to all other parties may be excluded from the record under consideration at the hearing. The parties may submit new documentary or other non-testimonial evidence in accordance with deadlines imposed by the Division and upon showing “good cause,” which may be assessed based on any relevant factors, including but not limited to:
- (A) That the new evidence was previously not known or obtainable, despite diligent evidence gathering efforts by the party offering the new evidence;
  - (B) That the party failed to receive fair notice of the investigation or of a key filing by another party or by the Division to which the new evidence is responsive;
  - (C) That factors outside the control of the party prevented a timely action or interfered with the opportunity to act, except that the acts and omissions of a party’s authorized representative are considered the acts and omissions of the party and are not considered to be a factor outside the party’s control as intended by this rule;
  - (D) That the initial determination raised a new issue or argument that cannot be responded to adequately without the new evidence;
  - (E) That, at the investigation stage, the party offering new evidence requested more time to submit evidence, yet was denied, and in the hearing officer’s judgment (1) the need for more time was legitimate and did not reflect neglect by the party, (2) the denial of the request for more time was unwarranted, and (3) exclusion of the evidence would cause substantial injustice to the party; and/or
  - (F) That failure to admit the new evidence otherwise would cause substantial injustice and did not arise from neglect by the party.
- 6.4.5** After the hearing, a decision shall be issued, and served to all parties, on each relevant issue raised, including findings of fact, conclusions of law, and orders. Absent timely modification by the Director, the decision shall constitute final agency action, and the final decision of the Director, subject to judicial review pursuant to C.R.S. § 24-4-106.

**Rule 7. Notices of Intent to Strike Required by the Labor Peace Act**

- 7.1** NLRA-Covered Employers. Bargaining units recognized by, and subject to the notification provisions of the National Labor Relations Act shall simultaneously submit to the Division a copy of any form F-7 they submit to the Federal Mediation and Conciliation Service (FMCS).
- 7.2** Coverage and Timeframes for Strike Notices. Under statutory timeframes the Division cannot waive or extend, a Notice of Intent to Strike (a “Strike Notice”) shall be served on the Division and all parties to the dispute before a strike as follows:
- (A) 40 days in advance of a strike against a public “Authority” (as defined by C.R.S. § 8-3-104);

- (B) 30 days in advance of a strike against an agricultural employer (as defined by C.R.S. § 8-3-113(2) — any employer in “production, harvesting, or initial processing (after leaving the farm), of any farm or dairy product,” including marijuana, produced in the state); and
- (C) 20 days in advance of a strike against any other employer that is both (1) covered by the Labor Peace Act and (2) not covered by the National Labor Relations Act.

**7.3** Contents of Strike Notices. A Strike Notice shall be submitted on any form provided by the Division at [www.coloradolaborlaw.gov](http://www.coloradolaborlaw.gov). If a party cannot submit any such form, it may submit a Strike Notice in any other form, on paper or electronic, that will be received by (not sent to) the Division the required number of days before a strike, and that contains the following information (with “none available” entered for any information a party lacks, and “not applicable” entered for any item that is not applicable to the dispute or strike at issue):

- (A) The name, address, telephone number, and email address where each party to the labor dispute may be contacted;
- (B) The date of the expiration of the most recent collective bargaining agreement between the parties; and
- (C) The status of negotiation to resolve the dispute, including the date of the last conference or negotiation between the parties.
- (D) For a strike against a public “Authority” (as defined by C.R.S. § 8-3-104) —
  - (1) “whether or not such strike would interfere with the preservation of the public peace, health, and safety” (C.R.S. § 8-3-113(3));
  - (2) whether a strike or binding arbitration of the labor dispute is preferable; and
  - (3) if a strike is not allowed, what arbitration procedures or processes are preferable.

**7.4** Employer Response to a Strike Notice. An employer shall serve the Division and all other parties a written response within five days of receiving a Strike Notice, detailing any information the employer knows that is missing from the Strike Notice, as well as the extent to which the employer disagrees with any facts, opinions, or other contents in the Strike Notice.

**7.5** Further Submissions and/or Proceedings on a Strike Notice. The Director may request, allow, or order parties to a Strike Notice:

- (A) to submit further information in addition to that in the Strike Notice and initial employer response; and
- (B) to the extent possible to achieve progress from doing so, to meet and discuss effectuating dispute resolution methods to resolve the dispute, including mediation and arbitration.

**7.6** Updates after Mediation or Other Non-Binding Dispute Resolution.

**7.6.1** The parties shall, unless ordered otherwise by the Director, file a written status report every 30 days from the date of consent to mediate, or periodically as the Director may order, until the conclusion of the mediation.

**7.6.2** If the parties reach impasse or otherwise fail to resolve their dispute with mediation or other non-binding dispute resolution, then:

- (A) the Director may request, allow, or order the parties to meet to discuss voluntary arbitration or other dispute resolution; and
- (B) if the parties consent to arbitration, they shall file with the Division a signed written agreement to arbitrate, which may, at their option, include requests or proposals for the Director to conduct the arbitration, appoint one or more arbitrators, or otherwise facilitate arbitration to resolve the dispute.

**7.7** Decisions on a Strike Notice as to a Public Authority.

**7.7.1** Within 20 days of a Notice of Intent to Strike, the Director “shall enter an order allowing or denying the strike based on the grounds of whether or not such strike would interfere with the preservation of the public peace, health, and safety in accordance with rules and regulations of the division” (C.R.S. § 8-3-113(3)) and the legislative declarations as to the purposes and construction of the Labor Peace Act (C.R.S. §§ 8-3-102, 8-3-103).

**7.7.2** If permission to strike is denied, the “order denying a strike ... shall include an order to arbitrate,” providing as follows:

- (A) that “[s]uch arbitration shall be entered into not later than 100 days from the filing of the notice of intent to strike” (C.R.S. § 8-3-113(3));
- (B) that the Director may either serve as the arbitrator or name one or more arbitrators (C.R.S. § 8-3-112(1)); and
- (C) that the Director may request, permit, or order submissions from the parties as to the arbitration schedule, arbitration process, and selection of arbitrators.

**Rule 8. Intervention in Labor Disputes (Industrial Relations Act, C.R.S. § 8-1-125)**

**8.1** Coverage of Intervention Rule. This rule applies to employers that:

- (A) are covered by the Industrial Relations Act (Article 1 of C.R.S. Title 8); and
- (B) are not covered by the NLRA or any other federal or state statute governing strikes, lockouts, or similar labor stoppages as to that employer.

**8.2** Requests for Intervention.

**8.2.1** Grounds for Intervention. Under C.R.S. § 8-1-125, the Director may intervene in a dispute affecting wages, hours, or other conditions of employment if either (A) both parties to a dispute request intervention, or (B) the dispute affects the public interest.

**8.2.2** Requests for Intervention. A party to a labor dispute requesting intervention shall do so by completing, and serving on the Division and all other parties to the dispute (in conformity with Rule 4), a Division-approved form if one is available, or in any other written form if none is available, providing the following information:

- (A) The name, address, telephone number, and email address where each party to the labor dispute may be contacted;
- (B) The date of the expiration of the most recent collective bargaining agreement between the parties;

- (C) The status of negotiation to resolve the dispute, including the date of the last conference or negotiation between the parties;
- (D) Whether, and if so how, the dispute affects the public interest; and
- (E) Whether, and if so what type of, intervention would help resolve the dispute.

**8.2.3** Responses to Requests. Upon request for intervention by only one party to a dispute, any other parties shall respond within 10 days, providing all information required by Rule 8.2.2.

### **8.3** Decisions on Intervention.

**8.3.1** In considering whether to intervene, the Director may:

- (A) meet with the parties to discuss the use of mediation, arbitration, or other dispute resolution; and/or
- (B) investigate to determine the extent to which the dispute affects the public interest and whether the Director should assert jurisdiction.

**8.3.2** Jurisdiction shall not be deemed to have been exercised until and unless a written decision to intervene is issued.

**8.3.3** The parties shall be notified of the decision to either assert or decline jurisdiction in a written decision that shall advise the parties that:

- (A) the relation of the employer and employee shall continue uninterrupted by the dispute or anything arising out of the dispute until the final determination of any aspects of the dispute that the Director may address; and
- (B) neither the employer nor any employee affected by any such dispute shall either:
  - (1) alter wages, hours, or other conditions of employment; or
  - (2) on account of such dispute, directly or indirectly engage in anything in the nature of a lockout, strike, or suspension or discontinuation of work or employment.

**8.3.4** In intervening, the Director may investigate, hold hearings, and issue temporary orders to authorize and encourage mediation, voluntary arbitration, or other similar dispute resolution prior to issuing any final orders.

**8.3.5** The Director shall issue a final order terminating jurisdiction within 180 days after the Director's decision to assert jurisdiction.