



## **Protected Health/Safety Expression and Whistleblowing (“PHEW”) Law § 8-14.4-101 et seq., C.R.S.**

### **8-14.4-101. Definitions.**

As used in this article 14.4, unless the context otherwise requires:

- (1) "Department" means the Department of Labor and Employment.
- (2) "Division" means the Division of Labor Standards and Statistics in the Department.
- (3) "Principal" means:
  - (a) an "employer" as set forth in the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 203(d);
  - (b) a foreign labor contractor and a migratory field labor contractor or crew leader;
  - (c) the state of Colorado, local governments, and political subdivisions of the state as defined in section 1-7.5-103(6); and
  - (d) an entity that contracts with five or more independent contractors in the state each year.
- (4) "Public health emergency" means:
  - (a) a public health order issued by a state or local public health agency; or
  - (b) a disaster emergency declared by the governor based on a public health concern.
- (5) "Worker" means:
  - (a) an employee as defined in section 8-4-101 (5); or
  - (b) a person who works for an entity that contracts with five or more independent contractors in the state each year.

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### **8-14.4-102. Prohibition against discrimination based on claims related to a public health emergency.**

- (1) A principal shall not discriminate, take adverse action, or retaliate against any worker based on the worker, in good faith, raising any reasonable concern about workplace violations of government health or safety rules, or about an otherwise significant workplace threat to health or safety, to the principal, the principal's agent, other workers, a government agency, or the public if the principal controls the workplace conditions giving rise to the threat or violation.
- (2)
  - (a) A principal shall not require or attempt to require a worker to sign a contract or other agreement that would limit or prevent the worker from disclosing information about workplace health and safety practices or hazards or to otherwise abide by a workplace policy that would limit or prevent such disclosures.
  - (b) A contract or agreement that violates subsection (2)(a) of this section is void and unenforceable as contrary to the public policy of this state. A principal's attempt to impose such a contract or agreement is an adverse action in violation of this article 14.4.

(3) A principal shall not discriminate, take adverse action, or retaliate against a worker based on the worker voluntarily wearing at the worker's workplace the worker's own personal protective equipment, such as a mask, faceguard, or gloves, if the personal protective equipment:

- (a) provides a higher level of protection than the equipment provided by the principal;
- (b) is recommended by a federal, state, or local public health agency with jurisdiction over the worker's workplace; and
- (c) does not render the worker incapable of performing the worker's job or prevent a worker from fulfilling the duties of the worker's position.

(4) A principal shall not discriminate, take adverse action, or retaliate against a worker based on the worker opposing any practice the worker reasonably believes is unlawful under this article 14.4 or for making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing as to any matter the worker reasonably believes to be unlawful under this article 14.4.

(5) This section does not apply to a worker who discloses information:

- (a) that the worker knows to be false; or
- (b) with reckless disregard for the truth or falsity of the information.

(6) Nothing in this section authorizes a worker to share individual health information that is otherwise prohibited from disclosure under state or federal law.

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**8-14.4-103. Principal post notice of rights - rules.**

(1) A principal shall post notice of a worker's rights under this article 14.4 in a conspicuous location on the principal's premises.

(2) The division shall promulgate rules to establish the form of the notice required in subsection (1) of this section.

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**8-14.4-104. Relief for aggrieved person.**

(1) A person may seek relief for a violation of this article 14.4 by:

- (a) filing a complaint with the division pursuant to section 8-14.4-105; or
- (b) bringing an action in district court pursuant to section 8-14.4-106.

(2) A person shall exhaust administrative remedies pursuant to section 8-14.4-105 prior to bringing an action in court.

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**8-14.4-105. Enforcement by the division - rules.**

(1)

(a) Within two years after an alleged violation of this article 14.4, an aggrieved individual or whistleblower may file a complaint against a principal with the division as specified in this subsection (1).

(b) Until the date the division makes a complaint form publicly available:

(i) an aggrieved individual or whistleblower may file a complaint of a violation of this article 14.4 with the division in any form, by mail or electronic mail;

(ii) the division may later require the aggrieved individual or whistleblower to complete the division's complaint form; and

(iii) the filing date is the date of the claimant's original filing, even if the division later requests additional information or completion of the division's complaint form.

(c) After the division makes a complaint form publicly available, an aggrieved individual or whistleblower may file a complaint only by completing the required form.

(2) The division shall either:

(a) investigate alleged principal violations of, or interference with rights or responsibilities under, this article 14.4 and complaints filed with the division by aggrieved individuals and whistleblowers; or

(b) authorize an aggrieved individual or whistleblower to proceed with an action in district court as provided in sections 8-14.4-106 and 8-14.4-107. A person who receives authorization pursuant to this subsection (2)(b) is considered to have exhausted administrative remedies.

(3) In an investigation of alleged principal retaliation or interference with worker rights, if an investigation yields a determination that:

(a) a violation has occurred, the division may award reasonable attorney fees and impose fines pursuant to section 8-1-140 (2);

(b) rights of multiple workers have been violated, the violation as to each worker is a separate violation for purposes of fines, penalties, or other remedies; and

(c) a worker was fired, voluntarily left employment, or experienced a reduction in pay due to a principal's violation, the determination may include an order to:

(i) reinstate or rehire the worker and pay the worker's back pay until reinstatement or rehiring; or

(ii) pay the worker front pay for a reasonable period after the order, if reinstatement or rehiring is determined not to be feasible.

(4) Determinations made by the division under this section are appealable pursuant to section 8-4-111.5 and rules promulgated by the department regarding appeals and strategic enforcement.

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#### **8-14.4-106. Relief authorized.**

(1) An aggrieved individual may, within ninety days after exhausting administrative remedies pursuant to section 8-14.4-105, commence an action in district court against a principal for a violation of this article 14.4.

(2) A court may order affirmative relief that the court determines to be appropriate, including the following relief, against a respondent who is found to have engaged in a discriminatory, adverse, or retaliatory employment practice prohibited by this article 14.4:

(a) reinstatement or rehiring of a worker, with or without back pay;

(b) the greater of either:

(i) ten thousand dollars; or

(ii) any lost pay resulting from the violation, including back pay for a reinstated or rehired worker and front pay for a worker who is not reinstated or rehired; and

(c) any other equitable relief the court deems appropriate.

(3)

(a) In addition to the relief available pursuant to subsection (2) of this section, in a civil action brought by a plaintiff under this article 14.4 against a defendant who is found to have engaged in an intentional discriminatory, adverse, or retaliatory employment practice, the plaintiff may recover compensatory and punitive damages as specified in this subsection (3).

(b) A plaintiff may recover punitive damages against a defendant if the plaintiff demonstrates by clear and convincing evidence that the defendant engaged in a discriminatory, adverse, or retaliatory employment practice with malice or reckless indifference to the rights of the plaintiff. However, if the defendant demonstrates good-faith efforts to comply with this article 14.4 and to prevent discriminatory, adverse, and retaliatory employment practices in the workplace, the court shall not award punitive damages against the defendant.

(c) A plaintiff may recover compensatory damages against a defendant for other pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

(d) In determining the appropriate level of damages to award a plaintiff who has been the victim of an intentional discriminatory, adverse, or retaliatory employment practice, the court shall consider the size and assets of the defendant and the egregiousness of the discriminatory, adverse, or retaliatory employment practice.

(e) Compensatory or punitive damages awarded pursuant to this subsection (3) are in addition to, and do not include, front pay, back pay, interest on back pay, or any other type of relief awarded pursuant to subsection (2) of this section

(4) If a plaintiff in a civil action filed under this article 14.4 seeks compensatory or punitive damages pursuant to subsection (3) of this section, any party to the civil action may demand a trial by jury.

(5) The court shall award reasonable attorney fees to a plaintiff who prevails in an action brought pursuant to this section.

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**8-14.4-107. Whistleblower enforcement - qui tam - definition.**

(1) As used in this section, "whistleblower" means a worker with knowledge of an alleged violation of this article 14.4, or the worker's representative.

(2)

(a) A whistleblower who has exhausted the administrative remedies pursuant to section 8-14.4-105 may bring a civil action against a principal for a violation of this article 14.4 on behalf of the state in district court pursuant to this section. the state may intervene in the action to prosecute in its own name.

(b) At the time that the action is filed, the whistleblower shall give written notice to the division of the specific provisions of this article 14.4 alleged to have been violated.

(c) If the court finds that a violation has occurred, the court may enter a judgment against the principal of not less than one hundred dollars and not more than one thousand dollars for each violation, and for appropriate injunctive

and equitable relief. The court shall award the whistleblower reasonable attorney fees. The attorney fees are not subject to the distribution specified in subsection (3) of this section.

(3) The proceeds of any judgment entered pursuant to this section shall be distributed as follows:

(a) seventy-five percent to the division for enforcement of this article 14.4; and

(b) twenty-five percent to the first whistleblower who filed the action.

(4) The right to bring an action under this section shall not be impaired by any private contract. An action under this section shall be tried promptly, without regard to concurrent adjudication of private claims.

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**8-14.4-108. Rulemaking.**

The division may promulgate rules necessary to implement this article 14.4. section 2.