

NOTICE OF ADOPTION AS TEMPORARY RULES

Amendments to Colorado Minimum Wage Order #35, 7 CCR 1103-1 (November 22, 2019)

I. Adopted Temporary Rules. As authorized by Colorado Labor and Industry Law, C.R.S. Title 8, and the Colorado Administrative Procedure Act, C.R.S. § 24-4-103, notice is hereby given of the adoption on a temporary basis of the following rules, the text of which accompanies this notice:

Amendments to Colorado Minimum Wage Order #35, 7 CCR 1103-1.

II. Basis, Purpose, and Specific Statutory Authority for Adoption of Temporary Rules. A Statement of Basis, Purpose, Specific Statutory Authority, and Findings accompanies this notice and is incorporated by reference.

III. Findings, Justifications, and Reasons for Adoption of Temporary Rules. The Findings, Justifications, and Reasons for Adoption as Temporary Rules, within the incorporated Statement of Basis, Purpose, Specific Statutory Authority, and Findings, are incorporated by reference.

IV. Effective Date of Adopted Temporary Rules. These rules are being adopted as temporary rules on November 22, 2019, effective immediately, pursuant to C.R.S. § 24-4-103(6), and remaining in effect until the earlier of (1) their adoption as permanent rules or (2) 120 days after their adoption. The Division is also proposing as permanent rules Colorado Overtime & Minimum Pay Standards Order (COMPS Order) #36 to take effect on March 1, 2020, or as soon thereafter as the permanent rule-making process is completed, to replace these temporary MWO #35 rules.



Scott Moss
Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

November 22, 2019

Date



**STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY,
AND FINDINGS FOR ADOPTION AS TEMPORARY RULES**

Amendments to Colorado Minimum Wage Order #35, 7 CCR 1103-1 (November 22, 2019)

(1) BASIS AND PURPOSE: Pursuant to Section 15, Article XVIII of the Colorado Constitution, these temporary rules increase the state minimum to \$12.00 per hour, effective January 1, 2020, and conform the Colorado Minimum Wage Order #35 (“MWO #35”) , 7 CCR 1103-1, to statutory changes to C.R.S. Title 8.

(2) SPECIFIC STATUTORY AUTHORITY: The Director of the Division of Labor Standards and Statistics is authorized to adopt and amend rules and regulations to enforce, execute, apply, and interpret Articles 1, 4, and 6 of Title 8, C.R.S. (2019), as well as all rules, regulations, investigations, and other proceedings of any kind pursued thereunder, by the provisions of Articles 1, 4, and 6, including, *inter alia*: § 8-1-103(1),(3), § 8-1-107(2)(p), § 8-1-111; § 8-1-112; § 8-1-122(2); § 8-1-130; § 8-4-111; § 8-4-111.5; § 8-4-118; § 8-4-120; § 8-6-102; § 8-6-105 to -112; § 8-6-115 to -117; § 8-6-119. Authority also derives from the Administrative Procedure Act, C.R.S. § 24-4-103, including the temporary rules provisions of § 24-4-103(6).

(3) FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION AS TEMPORARY RULES. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows:

(A) Demonstrated need exists for the rules. The specific findings in Part (4) below are hereby incorporated into this finding as well.

(B) Proper statutory authority exists for the rules. The specific statutory authority in Part (2) above is hereby incorporated into this finding as well.

(C) To the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply.

(D) The rules do not conflict with other provisions of law.

(E) Any duplicating or overlapping of the regulation is explained by the Division.

(4) SPECIFIC FINDINGS FOR ADOPTION AS TEMPORARY RULES. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows:

(A) The “Authority” provision amends the versions of the Colorado Revised Statutes (“C.R.S.”) that are incorporated by reference into the MWO #35 Rules. The MWO #35 provides notice to stakeholders that the recently enacted laws changing the C.R.S. as of January 1, 2020, will apply.

(B) The “Colorado State Minimum Wage” provision states that effective January 1, 2020, the \$12.00 state minimum wage, and \$8.98 state tipped employee minimum wage, will apply to employees covered by the minimum wage provision of MWO #35, and to employees covered by the minimum wage provisions of the Fair Labor Standards Act.



(C) Rule 2, “Employee” and “Employer,” are being amended to update the definitions of “employee” and “employer” that were replaced by new definitions from 2019 [H.B. 19-1267](#), effective January 1, 2020.

(D) Rule 3, “Minimum Wage” and “Allowable Credits, (c) Tips,” states that effective January 1, 2020, the \$12.00 state minimum wage, and \$8.98 state tipped employee minimum wage will apply to employees covered by the minimum wage provision of MWO #35.

(E) Rule 20, “Violations,” has been amended to reflect the language of 2019 [H.B. 19-1267](#) that amended C.R.S. § 8-4-114 and C.R.S. § 8-6-116.

(F) These amendments must be adopted immediately. Due to the substantial changes and extensive stakeholder engagement that proved necessary for the 2020 version of the annually-issued wage order, Order #36 for 2020 was not filed as a proposed rule until November 15, 2019, and therefore cannot take effect until well into 2020. But the wage order needs to accurately reflect (a) statutory changes that go into effect January 1, 2020, and (b) the new constitutionally mandated \$12.00 Colorado minimum wage and \$8.98 tipped minimum wage that go into effect January 1, 2020. Because Order #36 for 2020 will not be ready to take effect by January 1, 2020, these amendments to Order #35 are necessary and sufficient for Colorado’s wage rules to conform to the above-detailed statutorily mandated changes that take effect on January 1, 2020.

(5) **EFFECTIVE DATE.** These rules are being adopted as temporary rules on November 22, 2019, effective immediately, pursuant to C.R.S. § 24-4-103(6), and remaining in effect until the earlier of (1) the adoption of Colorado Overtime and Minimum Pay Standards Order #36 (“COMPS Order”) as permanent rules or (2) 120 days after their adoption. The Division is also proposing the COMPS Order #36 as permanent rules to take effect on March 1, 2020, or as soon thereafter as the permanent rule-making process is completed, to replace these temporary rules.

Scott Moss
Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

November 22, 2019

Date