



DEPARTMENT OF LABOR AND EMPLOYMENT
Division of Labor Standards & Statistics
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WINTER 2023 RULEMAKING PUBLIC HEARING

Date of Hearing: January 30, 2024

Appearances: Scott Moss, Division of Labor Standards &
Statistics Director

Miki Gann, Division Rulemaking Program
Assistant

Kristina Rosett, Managing Policy Advisor

Recorded digitally and transcribed by
Ditto Transcripts

P R O C E E D I N G S

1
2 DIRECTOR MOSS: All right, good afternoon,
3 everyone. My name is Scott Moss. I'm Director of the
4 Division of Labor Standards & Statistics here at CDLE. The
5 Division of Labor Standards & Statistics is in the
6 Department of Labor and Employment, I should say, not the
7 acronym. The time is 2:04 p.m., on Tuesday, January 30,
8 2024. This is a public rulemaking hearing held by the
9 Division with participants listening and speaking by
10 internet and/or by phone. A recording of the hearing will
11 be added to the administrative record. With me at this
12 hearing are several Division officials, including Miki
13 Gann, the Division's Rulemaking Program Assistant who will
14 be helping emcee today's proceedings, and Kristina Rosett,
15 Managing Policy Advisor, among others. Today, we will be
16 accepting testimony on three sets of rules that were
17 proposed on December 29, 2023. First, the Wage Protection
18 Rule 7 C.C.R. 1103-7. These are rule amendments that amend
19 the existing rules to implement Bill 23-231, which allows
20 the Division to disperse funds to claimants who are not
21 paid after citations for wage violations they suffered,
22 with the funds dispersed from the Division's Wage Theft
23 Enforcement fund. Second, to create and implement the
24 mediation program for pay disparity matters, as authorized
25 by the Colorado Equal Pay for Equal Work Act amendments in

26 Bill 23-105, and for other possible technical amendments.
27 The second set of rules is the Direct Investigation Rules 7
28 C.C.R 1103-8. These are amendments to existing rules to
29 incorporate and ensure consistency with statute and rule
30 changes since the last ruled amendments three years ago,
31 such as Senate Bill 22-161 and changes to other division
32 rules since then. Also to update the rules to reflect the
33 Division's discretionary investigative authority that will
34 include pay disparities now under the Colorado Equal Pay
35 for Equal Work Act amendments, and other possible technical
36 amendments. The third set of rules is to the Senate Labor
37 Relation Rule 7 C.C.R 1103-12. These are amendments to
38 increase conformity with the Colorado Administrative
39 Procedure Act, as to appeal procedure and other possible
40 technical amendments. Anyone may speak on any one or more
41 of these rules in any order. We will not be taking
42 testimony on other labor law or policy topics that are not
43 part of these proposed rules. For all rules from the
44 Division, the notice of public hearing and the associated
45 rulemaking documents were filed with the Secretary of State
46 for publication on their website and in the state register,
47 as provided by the Colorado Administrative Procedure Act.
48 The Division then posted all rulemaking documents on our
49 website and publicized them through our contact of several
50 hundred, but really thousands of stakeholders, because our

51 stakeholder list is a mix of individuals and organizations
52 with memberships that were believed to have interest in our
53 rules. For more information on any proposed rules from the
54 Division, or for the text of these rules, visit our
55 rulemaking page cdle.colorado.gov/laborrules. It's on your
56 screen for those who are here by computer. For those who
57 are here by phone, again it's cdle.colorado.gov/laborrules.

58 Before we begin, a few rules and guidelines for the
59 record. Here we're accepting oral testimony, as well as
60 written comments, through the chat window available to
61 anyone here by computer. The same administrative record
62 will include all verbal testimony, all comments in the chat
63 window, and all written comments submitted outside this
64 hearing. All testimony and comments are reviewed by the
65 same division officials, including me. So, while you're
66 free to comment or testify by any means you prefer, there
67 is no need to repeat points in multiple forms of testimony
68 and comment submission. The written comment deadline is
69 Tuesday, February 6, 2024. That's next Tuesday, at 5 p.m.
70 Written comments can be submitted, again, in the chat
71 window if they're short, or from the comment form on our
72 labor rules pages, or by emailing to
73 cdle_laborstandardsrules@state.co.us. That email address
74 is on your screen too. The hearing is for comments, again,
75 specific to these proposed rules. If instead you have

76 individualized questions you would like the answer to, we
77 would happy to respond outside this hearing. Just email
78 the same address and we will route your question. We do
79 anticipate the time for today's hearing will be enough to
80 hear all testimony. On the off chance we need more time or
81 if we have technical difficulties, we may continue the
82 hearing on another date, which we will announce at the end
83 of the hearing, or in addition, we're gonna post the DTLs
84 on our webpage by 12 p.m. tomorrow if there's a need to
85 continue this hearing. Thank you again for taking the time
86 to attend this public hearing and participate in our
87 rulemaking process. We will now proceed with verbal
88 testimony. We will start with those who signed up to
89 testify in advance, but I don't believe we have any such
90 folks who contacted us in advance, so we will start by just
91 inviting testimony from anyone here.

92 A couple rules and guidelines. First, please keep
93 your computer or phone on mute until or unless you're
94 speaking. When you're speaking, please to the following.
95 These are instructions on your screen, but I want to read
96 them aloud to emphasize for folks here by phone. First,
97 when called upon, please unmute yourself as control+B on
98 your keyboard or *6 on your phone. Please state your full
99 name, as well as whatever you're comfortable stating of
100 your job, your organization, if any, other relevant facts.

101 If you wish to exercise your right to anonymity under Wage
102 Protection Rule 4.7, just give a first name or a fake name,
103 and as much of your job's role or role as you're
104 comfortable offering. Third, start by saying which rule or
105 rules you will discuss. If you just starting speaking, I
106 will interrupt to ask which rules are these about just to
107 help us follow along and help those in attendance
108 understand. Fourth piece, please speak in a slow, clear
109 voice. Of course, I butchered that sentence ironically,
110 and keep your testimony to five minutes. Some folks may
111 have more than five minutes of speaking. If so, that's
112 fine. That's what written comments are for. Just submit
113 written comments of any length you wish. Fifth, we may ask
114 you to repeat anything that may not have been said loudly
115 enough or clearly enough, or if there was a tech glitch
116 that we thought might not be heard, I may ask you follow
117 questions which you're free to answer however you wish or
118 not at all. Now, when you finish, please mute yourself
119 again. Finally, if you would like to give your name and
120 information for the record, whether you testify or not --
121 in particular, if you're not on the Division stakeholder
122 list that has sent notices of these other proposed rules or
123 other Division publications, you can email us. You can say
124 in the comment window what contact information you would
125 like to submit, or use the form on our rules page, which

126 again is cdle.colorado.gov/laborrules. Thank you all for
127 your understanding and your participation in these
128 important matters of Colorado Labor Law and Policy. We'll
129 now invite comments from those in attendance. So, anyone
130 interested in speaking who is here by computer, type your
131 name in the chat window, and we'll give it a minute for
132 folks to state their name, list their name, and then we'll
133 start calling on people in order. If you're here by phone,
134 don't worry, we're not gonna forget about you. We're just
135 calling on those here by computer first, because they can
136 list their names, and then we'll call on anyone here by
137 phone. Miki, I believe there's nobody here by phone I'm
138 seeing, right? It looks like everyone is here by computer?

139 MS. GANN: No, yeah.

140 DIRECTOR MOSS: Okay.

141 MS. GANN: Correct.

142 DIRECTOR MOSS: So, we'll do the phone call, the
143 call -- phone call, the call for phone participants if
144 anyone appears by phone, but otherwise we'll see as we're
145 going by solicitation for speakers based on who is here by
146 computer, so anyone who is here feel free to type in. I
147 will say, if you're having some problem finding or typing
148 in the chat window, you are free to just unmute yourself
149 and start talking. We just encourage folks if you can to
150 put your name in the chat window so that we don't have a

151 bunch of people speaking at once. Although, the way this
152 is going so far, I don't sense that will be a problem. But
153 we'll give a minute or two. Let you think if you have
154 anything to say or ask, feelings to share. I'll also add
155 while we're waiting that on our rules page, again
156 cdle.colroado.gov/laborrules, that's where you can find not
157 only the button to submit comments, but starting as of
158 tomorrow, we'll be posting all written comments received.
159 They aren't updated, only because our first comment
160 received was today. We ran the bell and are starting to
161 get ready to post it. So, we will have a link to the
162 folder with all the written comments received, so that
163 folks can review all comments submitted by others, and you
164 can respond to any of those comments if you wish, get a bit
165 of the dialogue going. And while we're waiting, Miki, are
166 you able to share the labor rules page so we can show folks
167 where they can find all that? Great, thanks. So, you
168 click on the pretty box that says labor rules, then you
169 open the box that says proposed and recently adopted, the
170 second blue bar. If you scroll down, you'll see these
171 rules, and if you scroll down further -- comments and
172 hearings, yep. You'll see if each of our rulemakings, we
173 have several rulemakings, one every several months. Under
174 recent rulemaking, we have three bullet points under each
175 rulemaking. This is the Winter 2023 Rulemaking. We'll

176 soon be listing which rules these are. Again, the wage
177 protection, direct investigation, state labor relations
178 rules. You can see the notice of public hearing. That
179 link will be replaced by the recording of this hearing when we
180 have it, where you can hear me read a lot of instructions
181 and the like apparently. And then, we have the comment
182 form below that. And below that, there's going to be a
183 bullet point that says comments, 2023 Rulemaking. That's
184 gonna be a link to publicly viewable folder that has
185 written comments we've received. So, we will have that up
186 as of tomorrow. We didn't have it up yet because we had no
187 comments until just a couple hours ago. So, we tend to
188 post comments within 24 hours of receiving them, so at any
189 point you can go back to this page and see if anybody has
190 commented, see what you think of their comments, if you
191 want to respond, submit a thumbs up emoticon in response or
192 whatever comment you wish to submit on your own or
193 responding to other comments, you can do that. And we have
194 a speaker, Louise Myrland. Feel free to go ahead.

195 Ms. Myrland: Good afternoon, everyone. Thank
196 you for the opportunity to be here and to ask a question
197 about the Wage Protection Rules. My name is Louise
198 Myrland. I'm part of the staff at the Women's Foundation
199 of Colorado, and part of the Equal Pay Coalition that
200 advocated for the passage of Senate Bill 23-105, Ensure

201 Equal Pay for Equal Work. And as our coalition reviewed
202 the Wage Protection Rules, we were not entirely clear on
203 how claims of wage and equity would function under the
204 proposed changes to the rules for filing a wage complaint.
205 And the comment that we submitted in writing earlier
206 addressed that question. And while we're here and there's
207 not a long list of other speakers, I thought I would ask
208 for -- for you, Scott, and the team from CDLE, to share a
209 little bit more about how you intend for this to work,
210 because we certainly want to be well informed if folks come
211 to members of the Equal Pay Coalition with questions like
212 this. Thanks.

213 DIRECTOR MOSS: Thank you. And I have skimmed
214 the comment. I just skimmed only because it was just a
215 couple hours ago and, you know, was frantically seeing if I
216 could at least get the gist of this call. So, your point
217 is well taken and we're gonna want to be clear about what
218 rules we're using for these claims. Where we are landing,
219 where we're happy to hear other comments and feel free to
220 submit follow ups too, is that the Wage Protection Rules
221 were written in 2014 and have been modified since to cover
222 our roughly 3500 unpaid wage complaints a year. Those are
223 a mandatory jurisdiction where we investigate and review
224 each one. The pay disparity complaints we'll receive, it's
225 discretionary as to which we investigate, we shall

226 investigate, due to our ability and staffing levels, but
227 it's not mandatory for each one. And for that reason, we
228 think the Wage Protection Rules might not be the best home
229 for the procedures for those complaints. The other -- but
230 however, your point is taken that we're gonna need to be
231 clear, and we're hoping to be clear in our guidance, our
232 infos, about what the exact procedures will be. If
233 anything, we've left it a little unclear in the rules I
234 understand, because first, the direct investigation rules,
235 which are the rules that traditionally govern our
236 discretionary jurisdiction investigations. They already
237 referenced the Equal Pay Act, so I generally put that
238 citation in, you know, two years or so ago just in case we
239 got jurisdiction over these complaints, so that we wouldn't
240 necessarily have to make that specific amendment if we had
241 to, at least start taking complaints before we could amend
242 rules 'cause for all we knew a statute might be amended to
243 give us jurisdiction before we could amend rules.
244 Sometimes things take effect right away. So, we do have
245 rules that could cover it. Where we're inclined, and you
246 should feel free to opine in your written complaints or now
247 about this, is that we've, as a division that's a number of
248 new programs and areas of labor law to take complaints
249 about over the last five years, we keep finding that
250 whenever we have new programs we adopt some procedures, we

251 find we have to tweak them, what have you, and especially
252 where a program or a type of complaint doesn't have as many
253 microlevel managed restrictions as unpaid wage complaints.
254 Unpaid wage complaints, the statute lays out a number of
255 days for things. Most statutes haven't been written like
256 mercifully. So, we went a little minimalist in our rules
257 as to the paid disparity complaint simply because we've
258 learned some humility over the past several years and if we
259 adopted very specific rules now, our hunch was that we
260 would have to modify them in short order, and we felt like
261 we do have enough in place in direct investigation of the
262 rules that we can send out binding notices of the complaint
263 that order employers to respond, let us investigate, issue
264 rulings without more directive rules. We may find more
265 directive rules are needed, but we went a little minimalist
266 because we felt like if we tie ourselves down, we would
267 just be assuring that we would need to change things as we
268 find whether 14 days or 21 or 30 days enough. And our
269 investigative authority is broad enough under statute that
270 we can order folks to respond to whatever we ask. So, if
271 we get a complaint, we send the employer a notice
272 complaint, we have ample authority to order them to respond
273 in any number of days we see fit and to issue fines if they
274 don't respond. We do know that, of course, whether we
275 write procedures and info and rules or not, we are going to

276 have in an info more detail on what is expected for
277 complaints. So, as of now, we've received a couple
278 complaints under this law. We are moving ahead in
279 reviewing them. We just have -- we put a complaint form,
280 that was the important thing, so folks could file. Beyond
281 that, we are going to investigate where we think a
282 complaint warrants it by issuing investigative demands to
283 the employer. They are no less binding without very
284 specific rules at this point. And our review candidly is
285 that we're gonna learn what we should say in the
286 investigations. Do employers -- if we start giving -- if
287 we were, for example, to say employers have four days to
288 respond and they respond that that's nuts, we need a lot
289 more than we say, okay, we need to have more days. So, but
290 as we learn what these investigations need, we're gonna
291 see, for example, what number of days. What are standard
292 things we ask and what might be codified in a rule that
293 might not be? We are going to be investigating these in
294 short. We don't have directive rules, but we're gonna
295 clarify as much as we can about the process. In the
296 complaint form we tried to clarify what we need from
297 claimants, and as for what we need from employers, our
298 notice of complaint that we send employers is pretty
299 specific and directive. It's not a set of universal rules,
300 but is a set of binding orders that tell employers what

301 they need to provide and the consequence of not providing
302 it. It reiterates anti-retaliation protections that are
303 already codified. I do want to add, for example, one
304 function of a rule (inaudible - 0:16:59), you know, stress
305 that retaliation is illegal, but that's already illegal. I
306 do want to note that in 8-4-120 of the C.R.S that's part of
307 the Wage Protection Act, but it bans retaliation as of last
308 year as to any proceeding or any law or rule related to
309 wages or hours, which Equal Pay Law certainly qualifies as.
310 So, we believe, in other words, that between our statutory
311 investigative and anti-retaliation authority, and our
312 ability to issue fines for non-compliance, and our
313 authority under the equal pay act to issue citations and
314 orders, we think we have the authority to be rolling the
315 program and we've started it already. That said, if there
316 are things that you think are necessary to be in a rule
317 that aren't there yet, and it's not enough if we're just
318 clearing the complaint form and what we order employers to
319 respond with, we're more than happy to here and we can
320 treat these rules, whatever mix of wage protection rules or
321 the direct investigation. So, that's -- again, a rule
322 hearing more than I normally give, but since we have time
323 today and this is something I would happily tell any
324 stakeholder, it was a good question. Because once we're
325 going, we have more minimalist rules for these

326 investigations, it's fair to ask us how it's going to be
327 investigated when a complaint comes in, but I do want to
328 share that when a complaint comes in, the complainant and
329 the employer will very clear on their obligations under
330 this law, just by the lack of rules specifying numbers of
331 days and the like. So, feel free to follow up if you have
332 anything to add or to think about that and cogitate on it
333 for later. Excellent question. Let me just ask for anyone
334 just listening. "Thank you, and what timeframe should we
335 look for updated info about the complaints investigations?"
336 (inaudible - 0:18:36) at whatever point we feel like we've
337 learned enough to write something useful. So, it might
338 take after one or two or more investigations we learn oh,
339 this is something that we should tell the public ex ante
340 before they complain, so that they'll know this. Or it
341 could be that after a complaint or investigation or two, we
342 don't know much more to say other than what's in the
343 complaint form and the notice we give employers. So, a
344 rule of thumb generally with infos is that (inaudible -
345 0:19:02) statute. We invented the genre just a couple
346 years ago. Our view is put in info when have something
347 useful to say. We are also keeping tracking of substantive
348 useful things about equal pay law, about pay disparities.
349 Our view is we don't want not spend a lot of -- we never
350 spend a lot of times in rules or infos just repeating the

351 statute. That's my least favorite thing for rules or
352 guidance to do. So, we don't tend to do that, so the
353 question is what point will there be enough material for an
354 info that I have to clarify some procedural things and/or
355 clarify some substantive things, gray area. So, we find
356 that that often takes care of itself because the substance
357 of what we need to clarify is often governed by what
358 questions we get. So, when the equal pay transparency law
359 was new on January 1, 2021, we kept a Google sheet of every
360 question we were asked. We eventually came to have over a
361 hundred questions, and when we hit a critical mass, most of
362 what is now Info 9a formally Info 9, about pay
363 transparency. It's basically answering all the questions
364 we got asked. I don't think there were any questions we
365 were ever asked that aren't in that other than maybe some
366 one offs. So, the short answer is when we have enough
367 things to say that we think it could be helpful, yeah, we
368 intend to come out with info at that point, because it
369 helps us as much as everybody else to clarify things that
370 we want people to know before filing a complaint or in
371 setting their pay policies. That said, I will add if
372 you're an important stakeholder like others that is calling
373 elsewhere that if you can think of things that would useful
374 to clarify, feel free to suggest them and we'll put them in
375 the hopper as things that we're looking into saying in an

376 info. And again, it doesn't have to be a suggestion of
377 something really specific to say. It could be as simple as
378 here is what's happening where more clarity could be
379 useful, see if you have anything to say in it, and it's our
380 job to look into whether we can say anything useful.
381 Anyone else interested in speaking? We'll give it another
382 minute or two. While we're waiting, I might as well give
383 some coming attractions, as if you're in the movies, you
384 know, and seeing some previews. So, we do have another
385 rulemaking coming up. This Thursday, we have a stakeholder
386 meeting on that rulemaking. It's rules related to the Job
387 Application Fairness Act. That's the rule set that will
388 govern the new statute, the Job Application Fairness Act
389 that restricts asking inquiries about age and job
390 applications. It'll also be about potentially merging
391 those rules that will be coming with other existing rule
392 sets about job postings and job applications given that we
393 now have several laws in Colorado, mostly of pretty recent
394 vintage governing what job applications or job postings
395 must say, must ask, must not ask, may ask. So, we're
396 looking into merging those to harmonize a bit. Anywhere we
397 can have one rule set rather than four seems like a good
398 thing. So, we're looking into that and happy to have a
399 conversation about that. That's this Thursday at 2 p.m.,
400 there will be a stakeholder meeting. If you don't have the

401 link to that feel free to email the address on the screen.
402 And then, rules will be proposed about that by March
403 likely. Last call for any questions, comments, feelings.
404 I'll give it one more minute. I'll note that while we're
405 all sitting here in front of a computer screen, the high
406 temperature for today and the next two days are gonna be in
407 the mid-60s and that's around this time a day, so if this
408 meeting ends early I hope some of you can maybe enjoy being
409 outside while the good weather is here. Though don't
410 expect it to last because it's still late January/early
411 February. That has been your meteorology report. And with
412 that, a minute has lapsed or two since I last asked, so the
413 time is 2:27 p.m., hearing no further speakers interested
414 over the time since we started the hearing and inviting
415 speakers, we'll call the hearing to a close. Last call
416 going once, twice, three times, no other speakers. All
417 right, thank you all for attending. With that, the time is
418 2:27 p.m., and this hearing is closed. Thank you all for
419 attending.

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426 STATE OF COLORADO)

427 CITY AND COUNTY OF DENVER)

428 I hereby certify that the above and foregoing
429 constitutes a transcript of all the audible testimony taken
430 at a hearing in Denver, Colorado, on January 30, 2024, in
431 the matter of WINTER 2023 RULEMAKING PUBLIC HEARING, which
432 hearing was digitally recorded by the State of Colorado and
433 transcribed by me to the best of my ability.

434 Dated at Drummonds, Tennessee, this 5th of February,
435 2024.

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439

Holly Massanelli

440

Transcriptionist

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Ditto Transcripts

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