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Department of Labor and Employment

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STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

Protections for Public Workers Act ("PROPWA") Rules, 7 CCR 1103-17 (2024), as adopted February 2, 2024

I. BASIS: The Director ("Director") of the Division of Labor Standards and Statistics ("Division") has the authority to adopt rules and regulations under the authority listed in Part II, which is incorporated into Part I as well.

II. SPECIFIC STATUTORY AUTHORITY: These Rules are issued under the authority and as implementation and enforcement of Colorado Revised Statutes ("C.R.S.") Title 29, Article 33 (2023), the "Protections for Public Workers Act," as well as the general labor law implementation and enforcement authority of C.R.S. Title 8, Articles 1 and 3 (2023), and are intended to be consistent with the rulemaking requirements of the State Administrative Procedures Act, § 24-4-103. These Rules are promulgated pursuant to express authority including, but not limited to, C.R.S. §§ 8-1-118 and 29-33-105.

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is 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; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

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

A. Broad Purpose of Rules.

The Protections for Public Workers Act ("PROPWA," or "the Act"), S.B. 23-111 (Ch. 393, Sec. 2349, § 29-33-101 et seq., 2023 Colo. Sess. Laws 2349-2354), was enacted June 6, 2023, with its substantive provisions effective July 1, 2024. These "Protections for Public Workers Act (PROPWA) Rules" ("PROPWA Rules") are a new rule set implementing the PROPWA requirement of Division rulemaking to create a regulatory framework for enforcement and implementation of PROPWA, consistent with PROPWA and its legislative declaration recognizing public employee rights:

(a) "to speak out on issues of public concern and fully engage in the political process outside of work in the same manner as other citizens of Colorado";

(b) "to speak out about concerns with the terms and conditions of their employment";

(c) "to engage in protected concerted activity for the purpose of mutual aid or protection";

(d) "to organize, form, join, or assist an employee organization or to refrain from doing so"; and

(e) "to pursue an employee organization with their coworkers without interference."

Accordingly, these Rules serve several purposes, including but not limited to the following. First, they establish administrative procedures for filing, investigating, and determining complaints of unfair labor practices under PROPWA, C.R.S. § 29-33-105. Second, they clarify the scope and limits under PROPWA of public employer authority to, among other matters: manage, engage, and discipline employees; deliver public services and promote their public mission; and express views about the benefits and drawbacks of unionization. Third, they clarify the scope and limits of the new public employee rights that PROPWA recognizes, including but not limited to: when expressive or concerted activity is, and is not, too disruptive, or too contrary to employees' official duties, to retain protection; what employer policies impacting such activity are and are not permissible, including but not limited to policies on the time, place, or manner of such activity. Where appropriate, and for consistency and transparency, these Rules aim to follow procedures and definitions of other federal and state law on similar matters, such as the First Amendment (on expressive activity), the National Labor Relations Act ("NLRA") (on concerted activity), and Colorado labor-management law on enforcement and implementation procedures (under the Industrial Relations Act, Labor Peace Act, and Labor Peace and Industrial Relations ("LPIR") Rules).

B. Rule 2. Definitions and Clarifications.

1. Rule 2.1: "Authorized representative" is a clarifying definition recognizing any party's right to operate through authorized representatives, as PROPWA contemplates, and consistent with other long-standing Division rules on who is an authorized representative for purposes of Division filings or proceedings.[1]

2. Rule 2.2: "Director" references the Division Director, consistent with the PROPWA statutory scheme and other recent labor-management statutes (*e.g.*, the Collective Bargaining by County Employees Act ("COBCA"), C.R.S. § 8-3.3-102(10)), and notes that, under long-existing statutory authority, the Director may select designees or agents to perform any functions assigned to the Director that are not prohibited from being delegated.[2]

3. Rule 2.4: "Employee organization" is as defined in PROPWA, with a clarification, based on stakeholder input, in the adopted rule. PROPWA uses this term to define unions (or similar organizations) that employers should not dominate or control. PROPWA is not concerned with employers creating or controlling the sorts of internal employee advisory councils or committees that can increase, not decrease, employee engagement and influence. Rule 2.4 thus clarifies that the ban on employers controlling "employee organizations" does not extend to an entity in the nature of a committee or advisory council that includes employees, but is created by, and not independent of, the employer.

3. Rule 2.5: "Order" is a term defined by the Industrial Relations Act, C.R.S. § 8-1-101(11), which is a source of key Division powers, and vests the Director with supervisory power and jurisdiction over every employment and place of employment in the state, including in public employment under C.R.S. § 8-1-111.

4. Rule 2.7: "Public employee" is a term defined by PROPWA in C.R.S. § 29-33-103(5); that definition is included in these Rules for convenience of reference. Based on stakeholder input, the adopted rule modifies each of the three categories of public employees listed in Proposed Rule 2.7.

a. Rule 2.7.1: "Confidential employee" is defined to note certain employees whose labor-management relations duties can imply limits on certain kinds of expressive and/or concerted activity contrary to those duties. The adopted rule makes two changes to this definition.

First, the traditional NLRA definition extends its exemption to only those privy to "confidential" records or data. Public employer stakeholders expressed concern that Colorado open records laws make it hard to show their records or data are "confidential." To assure that public employers still can designate key labor-management staff as "confidential employees," the adopted rule clarifies that the term includes those who do *confidential strategizing or planning*, even as to data or documents (budgets, bargaining agreements or other contracts, etc,) that are non-confidential public records.

Second, the adopted rule clarifies, with modest edits to the proposed rule version, how a substantive labor-management relations role is required for "confidential" duties to imply additional limits on protected activity. Under the NLRA, bargaining units exclude "confidential employees," defined as those who "(1) share a confidential relationship with managers who 'formulate, determine, and effectuate management policies in the field of labor relations;' and (2) assist and act in a confidential capacity to such managers."[3] However, under the NLRA, "a confidential employee excludable from a bargaining unit" is still protected from discharge "for engaging in protected concerted activity,"[4] which is the right PROPWA provides. Whether or not an employee has enough of a labor-management role to qualify as a "confidential employee," however, *any employee* may still lose PROPWA protection — for expressive *or* concerted activity — if they fail to maintain required confidentiality, under Rules 4.2.1(A) (expressive activity) and 4.3.2(A) (concerted activity).

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[1] C.R.S. § 29-33-103(3) ("'Employee organization' includes any agents or representatives of the employee organization designated by the employee organization"); *e.g.,* Wage Protection Rules, 7 CCR 1103-7, Rule 2.2 (defining "authorized representative").

[2] C.R.S. §§ 8-1-103(1) ("the director shall appoint such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as are necessary to carry out the ... law and to perform the duties and exercise the powers conferred ... upon the division and the director"); 8-1-113(1) (for "purpose of ... any investigation with regard to any employment or place of employment or other matter contemplated by ... this article, the director ... has the power to appoint temporarily ... any deputy or ... other ... person as an agent").

[3] *E.C. Waste*, 339 NLRB 262, 262 (2003) (citing *NLRB v. Hendricks Cty. Rural Elec. Mbrshp. Corp.*, 454 U.S. 170 (1981); other citation omitted).

[4] *NLRB v. Hendricks Cty. Rural Elec. Mbrshp. Corp.*, 454 U.S. 170, 173 n.2 (1981) ("although the Board excluded confidential employees with a labor nexus from bargaining units, it afforded them the other protections of the NLRA," including concerted activity rights).

6. Rule 2.7.2: "Policy-level employee" is defined, replacing the definitions of "executive employee" and "managerial employee" in the proposed rules, as those whose higher-level duties can imply limits on certain kinds of expressive and/or concerted activity contrary to those duties. Stakeholder input noted that, as proposed, Rules 2.7.2–2.7.3 excluded any "executive" or "managerial" employee, which could have encompassed lower-level staff such as line supervisors. The NLRA's broader exclusion encompasses many line supervisors, because of the broader focus of the NLRA — *i.e.*, who has the right to union elections and membership. A supervisor lacking significant input into employer policies, however, can still retain the narrowed rights PROPWA grants — to expressive and concerted activity. Whether or not an employee's duties qualify them as a "policy-level employee," however, any employee may still lose PROPWA protection — for expressive or concerted activity — if they fail to maintain their performance of their duties, their delivery of public services, etc, under Rules 4.2.1(A) (expressive activity) and 4.3.2(A) (concerted activity).

8. Rule 2.8: "Public employer" is a term that is defined by PROPWA in C.R.S. § 29-33-103(6); that definition is included in these Rules for convenience of reference.

C. Rule 3. Filing, Service, and Deadlines.

1. Rule 3.1: Filing.

Rule 3.1 follows the filing and service provisions in other Division rules, and facilitates the ongoing shifts to electronic filing by the Division, courts, and other similar entities. Recognizing that not everyone has electronic access, the rule provides that "if a party cannot readily use" electronic filing means, or if the Division does not provide access to a relevant electronic form, then any other means of filing that ensures the Division receives a filing are acceptable.

2. Rule 3.2: Signatures on submissions.

Rule 3.2 permits electronic signatures on submissions filed with the Division, consistent with other established Division rules and the Uniform Electronic Transactions Act, Article 71.3, Title 24.[5]

3. Rule 3.3: Serving another party.

Because the Division will often require parties to unfair labor practice proceedings or other administrative processes to deliver copies of filings or other documents to other interested parties, this rule clarifies appropriate methods for serving other parties, and that the Division does not require certain service formalities that some court rules may.

4. Rule 3.4: Computation of time.

Rule 3.4 clarifies that in calculating deadlines, the Division will apply C.R.S. § 2-4-108, which states that if a scheduled deadline falls on a weekend or holiday, then the deadline shall be the next business day.

5. Rule 3.5: Considerations for scheduling deadlines.

Rule 3.5 outlines the considerations by the Division when scheduling deadlines under PROPWA which include, but are not limited to, three broad goals recognized by Colorado labor-management statutes and rules: effective enforcement of PROPWA rights and responsibilities; providing all parties notice and opportunity to be heard; and timely protection of public employees from retaliation for engaging in protected concerted activity.

6. Rule 3.6: Deadline extensions.

Rule 3.6 clarifies the "good cause" considerations for granting a deadline extension, and requires the request to be submitted to the Division at least three days prior to the stated deadline, absent emergencies or exigent circumstances.

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[5] *E.g.,* Wage Protection Rules, 7 CCR 1103-7, Rule 2.20 ("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," any of which establishes that "the document is signed by" a party; COBCA, C.R.S. §§ 8-3.3-102(22) (showing of interest in employee representation may use electronic signatures), 8-3.3-104(5)(a)) (same, employee payroll deduction authorization).

D. Rule 4. Scope of Rights and Responsibilities under PROPWA.

PROPWA defines the rights it protects in succinct, general terms — without defining their scope and limits. The most longstanding laws establishing similar rights also use succinct, general terms, without defining their scope and limits — most notably, expressive activity under the First Amendment, and concerted activity under the NLRA as interpreted in rulings by the National Labor Relations Board ("NLRB").

But no such rights are unlimited. No law protects activity that crosses into significant subversion of the employer, criminality, etc. So authorities enforcing and interpreting those rights are forced to clarify their scope and limits — in different ways. Sometimes, a government entity is charged with issuing rules and guidance — as the NLRB does for NLRA concerted activity. But sometimes there is no such entity, as with First Amendment expressive activity — leaving courts no choice but to issue interpretations, in case-by-case rulings on whether particular expression was protected. Either way, when a law declares a right in broad, succinct terms, *some* entity is compelled to clarify its scope and limits.

Yet clarification through only case-by-case rulings (as with the First Amendment) can leave both employers and employees uncertain whether they acted legally — until one side loses a case, in a ruling telling them only *after the fact* that they acted illegally. Everyone can benefit when a law (like PROPWA) charges an entity (like this Division) with issuing rules and guidance — to let employers and employees know *before* they act, not just afterward in case rulings, what that law says they can and can't do. Rule 4 executes the Division's charge to provide guidance on the scope and limits of employee and employer rights under PROPWA — to avoid leaving employers and employees unaware of how the Division would rule on the lawfulness of their actions until after-the-fact, case-by-case rulings from the Division.

1. Rule 4.1: Protected activity under PROPWA.

Rule 4.1.1 summarizes activities PROPWA protects at C.R.S. §§ 29-33-104(1)(a)–(d) and -104(3) ("Section 104 activity"), and notes that they fall into two categories, "PROPWA expressive activity" and "PROPWA concerted activity." Rules 4.1.2–4.1.3 address how multiple rule sections or other laws also may apply to situations PROPWA covers.

2. Rule 4.2: PROPWA expressive activity: scope and limits.

Rule 4.2 clarifies the scope and limits of "expressive activity" protected by PROPWA, each of which is consistent with how federal First Amendment law defines the scope and limits of similar rights.

Rule 4.2.1 codifies that expressive activity cannot be too *disruptive*, based on factors well-established in First Amendment cases since *Pickering v. Bd. of Education*, 391 U.S. 563 (1968). Based on stakeholder feedback, the adopted version is modified for clarity on this point: speech, even if on protected matters that create a presumption of protection, can lose protection if it is shown to be too disruptive for reasons other than disagreement with the content or viewpoint.

Rule 4.2.2 codifies that expressive activity cannot be too *contrary to certain official duties* the employee is paid by their employer to perform — *e.g.*, those employed to explain or advocate a policy cannot subvert it; those employed to engage in certain speech cannot refuse to — based on First Amendment cases of the past two decades.[6]

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[6] *Garcetti v. Ceballos*, 547 U.S. 410, 421-422 (2006) ("[W]hen public employees make statements pursuant to their official duties, the[y] ... are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from ... discipline…. When he went to work and performed the tasks he was paid to perform, Ceballos acted as a government employee."); *Lane v. Franks*, 573 U.S. 228, 238-241 (2014) ("[The] critical question under *Garcetti* is whether the speech at issue is itself ordinarily *within the scope of* an employee's duties, not whether it *merely concerns* those duties…. Truthful testimony ... outside the scope of his ordinary job duties is speech as a citizen for First Amendment purposes ... even when the testimony *relates to* his public employment or concerns information learned during that employment.") (emphases added); *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2424 (2022) ("that ... speech *touched on matters related to* public employment was not enough to render it government speech…. It is an inquiry ... [that] should be undertaken 'practical[ly],' rather than with a blinkered focus on the terms of some formal and capacious written job description. To proceed otherwise would be to allow public employers to use 'excessively broad job descriptions' to subvert the Constitution[]…. [H]is speech was *private speech, not government speech*. When Mr. Kennedy uttered ... prayers that resulted in his suspension, he was not engaged in speech 'ordinarily within the scope' of his duties as a coach. He did not speak pursuant to government policy. He was not seeking to convey a government-created message. He was not instructing players, discussing strategy, encouraging better on-field performance, or engaged in any other speech the District *paid him to produce* as a coach. Simply put: Mr. Kennedy's prayers did not *'ow[e their] existence' to* Mr. Kennedy's responsibilities as a public employee.") (emphases added).

Rule 4.2.3 codifies that expressive activity cannot violate reasonable *restrictions on the time, place, or manner* of speech, subject to protections established in First Amendment law: such restrictions must be neutral (*e.g.*, not discriminatory against certain views), reasonable in how much they restrict, and (for a place that is a "public forum" for speech, like many outdoor spaces, or meetings open to a range of public comments) narrow enough to leave ample alternative channels for expressive activity.[7]

Rule 4.2.4 codifies that certain expressive activity of a political nature cannot be contrary to the duties of an employee who makes or supports *policy or political work*, based on First Amendment precedents applicable to a relatively narrow range of such types of employees.[8] As the proposed version of this Statement of Basis expressly stated (in the sentence above), this provision always was for "a relatively narrow range" of employees, and it is modified in adopted Rule 4.2.4 to match the "policy-level employee" definition in Rule 2.7.2 for the reasons noted above as to that rule.

3. Rule 4.3: PROPWA concerted activity: scope and limits.

Rule 4.3 codifies the definition, scope, and limits of "concerted activity" for "mutual aid or protection." PROPWA uses those terms without providing definitions (C.R.S. § 29-33-104(1)(b)), indicating legislative intent to apply existing, known definitions, which are in the analogous federal law: the NLRA, as applied by federal courts and the NLRB.

Rule 4.3.1 codifies the basic definition, scope, and limit of "concerted activity." Based on stakeholder input noting that the proposed definition was incomplete (because it was from caselaw focused on only certain types of concerted activity), the adopted version is modified to a more accurate definition reflecting that the intent always was to match the understanding of "concerted activity" under the NLRA, as well as potentially under similar laws in other states.

Rule 4.3.2 codifies more specific limits on concerted activity that is too disruptive or too contrary to employee responsibilities, by paralleling standards the NLRB first set forth in *Atlantic Steel*, 245 NLRB 814 (1979), and recently reaffirmed in *Lion Elastomers*, 372 NLRB No. 83 (2023): a look to factors such as the place, nature, and subject matter of the activity, to determine whether an employee's conduct during concerted activity loses the protection of the NLRA. Based on stakeholder feedback, two subparts of Rule 4.3.2 are modified in the adopted version.

First, the adopted version of Rule 4.3.2(A) (4.3.2 as proposed) is modified (in the same manner as Rule 4.2.1, the similar rule for expressive activity) for clarity as to the core point that speech, even when on protected matters that create a presumption of protection, can lose that protection if it is shown to be too disruptive for reasons other than disagreement with the content of the activity, or viewpoint of the employee.

Second, adopted Rule 4.3.2(C) (which was 4.3.3 as proposed) is modified to avoid any misperception as to the restrictions employers can impose on at-work concerted activity. As the proposed version of this Statement of Basis noted, the rule was "based on established federal precedents on that issue,"[9] under which employers: *can't* categorically ban *all* concerted activity of *any* kind, especially since much concerted activity is necessarily at work (*e.g.*, meetings on work conditions); but *can* put reasonable, non-discriminatory restrictions on non-work-related solicitations or distribution of materials. Based on concerns that the proposed rule could be read as the former, the rule is modified to clarify the latter.

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[7] *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *Clark v. Community for Creative Non-Violence*, 468 U. S. 288 (1984).

[8] *E.g., DiRuzza v. Tehama*, 206 F.3d 1304 (9th Cir. 2000); *Branti v. Finkel*, 445 U.S. 507 (1980); *Elrod v. Burns*, 427 U.S. 347 (1976); *Barker v. Del City*, 215 F.3d 1134, 1139 (10th Cir. 2000) (quoting *Bonds v. Milwaukee*, 207 F.3d 969, 979 (7th Cir. 2000)).

[9] *E.g., Republic Aviation*, 324 U.S. 793, 805 (1945) (rule against employee union solicitation on employer premises "outside working hours" presumed invalid); *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 621 (1962) (ban on solicitation not limited to working time, or on distributing literature not limited to working time and working areas, presumed invalid); *Jensen Enters.*, 339 NLRB 877, 878 (2003) ("... an employer may forbid employees from talking about a union during periods when the employees are supposed to be actively working, if that prohibition also extends to other subjects not associated or connected with the employees' work tasks. However, an employer violates the Act when employees are forbidden to discuss unionization, but are free to discuss other subjects unrelated to work.").

4. Rule 4.4: Management rights: scope and limits.

Rule 4.4 codifies the scope and limits of broader "management rights" — *i.e.*, beyond employers' more specific rights in Rule 4.2 (limits on expressive activity by employees) and Rule 4.3 (limits on concerted activity by employees).

Rule 4.4.1 codifies a key limit on the impact of PROPWA on public employer operations, authority, and discretion. Specifically: the mere fact that an employee engaged in protected activity does not bar employer action against them for legitimate reasons; rather, PROPWA bars only action imposed (or disproportionately imposed), in whole or in part, to discriminate against, interfere with, or otherwise deter protected activity. More broadly, this rule aims to codify and recognize that, unless a public employer commits interference or retaliation prohibited by PROPWA, public employers retain all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, special act, or other provisions of law or organic organizing documents of the public body, including but not limited to the right to: direct the work of employees; hire, promote, demote, fire, assign, transfer, and otherwise direct employees; suspend for purposes of investigation or discipline, and discipline or discharge employees as otherwise permitted by law; maintain and promote governmental efficiency; lay off employees for lack of work or performance; pursue the lawful mission of the public entity and provide high levels of service; determine and implement budgets; conserve public resources; and otherwise exercise powers and duties granted or necessarily implied by law.

Rule 4.4.2 also parallels federal precedents on when an employer policy could be overbroad, or discriminatorily applied, in a way that restricts concerted activity, under First Amendment caselaw and NLRA precedents, including with standards first established by the Supreme Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969), and recently reaffirmed by the NLRB in *Stericycle*, 372 NLRB No. 113 (2023). Based on stakeholder feedback, the adopted version is modified to emphasize that an employer policy should not be deemed unlawful if it would be too restrictive of employee rights only under an unreasonable or strained interpretation. The proposed rule already required that an employee claiming an employer policy is too restrictive must be offering a "reasonable" interpretation of the policy, and must be doing so in "good faith." To further clarify that point, the rule adds that the reasonableness of an employee's claimed interpretation should be assessed "in light of factors such as past practice, the context of the workplace, and the field of work."

Rule 4.4.3 codifies the scope and limits of employer rights to express views of unionization and its effects. It incorporates another established standard by the Supreme Court decision in *Gissel Packing*, which asks if an employer forecast of consequences of unionization is "a prediction as to the precise effects [the employer] believes unionization will have on [the] company" that is based on "objective fact to convey [its] belief as to demonstrably probable consequences beyond [its] control."[10] Alternatively, if the forecast includes an "implication that [the] employer may or may not take action solely on [its] own initiative for reasons unrelated to economic necessities," then "the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion."[11]

E. Rule 5. Unfair Labor Practice Filings and Proceedings.

Rule 5.1, particularly Rule 5.1.1(A)–(E), details how and when an unfair labor practice complaint may be filed, and by whom. Rule 5.1.1(F) clarifies that the Division may initiate complaints and conduct investigations of alleged unfair labor practices based on tips or leads. Rules 5.1.2 and 5.1.3 explain how the Division will evaluate sufficiency of the unfair labor practice complaint, determine whether to investigate, and the process for curing any deficiencies. Based on stakeholder feedback, the adopted version of Rule 5.1.2 offers an additional detail on how the Division will determine whether to investigate: if the parties have a collective bargaining agreement providing arbitration for disputes of that kind, the Division may decline to investigate, to defer to that other available dispute resolution process. Rule 5.1.4 clarifies that a charging party may withdraw an unfair labor practice complaint prior to the Division's issuance of a determination. These procedures follow the LPIR Rules, 7 CCR 1101-1.

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[10] *Gissel Packing*, 395 U.S. at 580.

[11] *Gissel Packing*, 395 U.S. at 581.

Rule 5.2 outlines the administrative process for notifying those against whom a complaint is filed, establishes a 21-day deadline for responding to the complaint allegations, and details the procedures for requesting an extension for "good cause" and for joining additional parties. Again, these procedures follow the LPIR Rules.

Rules 5.3.1–5.3.7 describe investigation and determination processes for adjudicating unfair labor practice complaints, including investigatory methods; the burden of proof on the charging party; protection for confidential sources; preservation of relevant documents; and Division discretion to terminate, sequence, or divide investigations. Rule 5.3.2 is modified to add specificity to the proposed rule as to when the Division can and cannot protect confidentiality, in order to parallel a proposed amendment to the Wage Protection Rules, 7 CCR 1103-7, for the same reasons.[12]

Rules 5.3.8 and 5.3.9 provide that to appeal, a party must request a hearing within 35 days of issuance of a determination (written findings and orders), and absent such a request, the determination will be the final agency action subject to judicial review pursuant to C.R.S. §§ 24-4-106 and 29-33-105(4),(5). If a hearing is conducted, any decision issued thereafter will constitute the final agency action unless timely modified by the Director. These Rules follow the process in LPIR Rule 6.3 using administrative procedures in the first instance to resolve unfair labor practice complaints, and then the hearing procedures in LPIR Rule 6.4 (incorporated here by reference) for review of the determination.

Rule 5.4 details unfair labor practice remedies the Division may order pursuant to its enforcement authority under PROPWA and other applicable statutes, with awareness that under PROPWA it should "consider the unique circumstances of rural counties as defined by C.R.S. § 29-33-103(1)(b) in assigning remedies" (C.R.S. § 29-33-105(2)).

PROPWA draws upon and cites the Labor Peace Act (C.R.S. Title 8, Article 3) as to Division authority over unfair labor practice complaints (C.R.S. § 29-33-105(3), though PROPWA also grants the Division broad rulemaking authority and discretion as to investigation and determination of such complaints, including the role and time of hearings (C.R.S. § 29-33-105(2)). Accordingly, the Division largely follows the LPIR Rules in these PROPWA Rules.

F. The adopted rules also include various other technical or otherwise non-substantive changes where stakeholders suggested, and/or Division review found a need for, clarifications or corrections, such as for technical conformity with other Division rules.

V. EFFECTIVE DATE. These rules take effect July 1, 2024.

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

February 2, 2024
Date

[12] *See* Statement of Basis, Purpose, Specific Statutory Authority, and Findings, Wage Protection Rules, 7 CCR 1103-7 (2024), as proposed December 29, 2023.