



DEPARTMENT OF LABOR AND EMPLOYMENT
Division of Labor Standards & Statistics
633 17TH STREET DENVER, CO 80202
Telephone: (303) 318-8133 FAX: (303) 318-8139

2024 FALL RULEMAKING PUBLIC HEARING

Date of Hearing: October 2, 2024

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

Christina Rosette, Managing Policy Advisor

Amanda Klitzke, Policy Advisor

Joann Long, Labor Relations Program Manager

Miki Gann, Division Rulemaking Program
Assistant

Recorded digitally and transcribed by
Ditto Transcripts

1 P R O C E E D I N G S

2 DR. SCOTT MOSS: All right. Good afternoon,
3 everyone. Thank you all for joining us. The time is 2:01
4 p.m. on Wednesday, October 2nd, 2024. CDLE Division of
5 Labor Standards and Statistics is now beginning a pre-
6 rulemaking stakeholder meeting by remote means, open to
7 anyone to listen and speak by internet or phone. I'm Scott
8 Moss, Director of the Division of Labor Standards and
9 Statistics. With me here today are several Division and
10 department officials, including Christina Rosette, Managing
11 Policy Advisor of the Division, Joann Long, Labor Relations
12 Program Manager, Amanda Klitzke, Policy Advisor, and Miki
13 Gann (ph), Rulemaking Program Assistant.

14 Last month, the Division extended invitations by
15 email to thousands of stakeholders who had previously
16 expressed interest in such matters at the Division. By
17 Colorado law, rulemaking starts with publication of
18 proposed rules, a comment period for the public, and then a
19 formal public hearing like this, all before adoption of
20 final rules.

21 So on August 30th, 2024, the Division proposed
22 amendments to the Protection for Public Workers Act Rules,
23 or the PROPWA Rules, the citation to which is 7 C.C.R.
24 1103-17, and the Division also solicited stakeholder input.
25 We solicited input in two ways, in writing, mainly through

26 a comment form on our rules page, and verbally by
27 announcing this public hearing.

28 Our rules page with the proposed rules, our
29 comment form, and more information is
30 cdle.colorado.gov/laborrules. And Miki, if you could
31 navigate us to the rules page. So from our homepage here,
32 coloradolaborlaw.gov, you can click on the blue labor rules
33 box. And then from that, if you click on rulemaking
34 comments and hearings, you'll see the current rulemaking
35 listed, and right there is the PROPWA comment form. Above
36 that, by the way, you'll see the comment form for other
37 proposed rules we just published, and we will have other
38 rulemaking hearing procedures coming up for those.

39 So if you remember nothing else, there's
40 cdle.colorado.gov/laborrules gets you right to this page
41 where you can submit comments and see the rules also, or
42 you can get to that same page via coloradolaborlaw.gov, and
43 then click on the blue labor rules box like Miki just did.
44 Thanks, Miki.

45 So these amended rules that are being proposed
46 implement Colorado Senate Bill 24-232, or SB 232, which was
47 enacted in May 2024. SB 232 changed certain limitations on
48 PROPWA coverage as to certain confidential, managerial and
49 nonpartisan employees, and certain aspects of the
50 definitions in PROPWA, such as to disruptive activity or

51 what is concerted activity. After this hearing, we will
52 continue accepting written comments until 5:00 p.m. this
53 Friday, October 4th. We then anticipate adopting final
54 rules by mid-October, in time for them to take effect by
55 December 1st, 2024, when they will replace the current
56 version of the PROPWA rules, which are the temporary or
57 emergency rules that took effect on August 7th, 2024.
58 We'll shortly move on to stakeholder input and exchanges at
59 this meeting, which will be the bulk of the meeting.

60 Now in discussions of new laws and rules, there's
61 often a murkiness about which suggestions or which opinions
62 would or wouldn't be implemented by rules like these. So
63 if there's anything the legislature specifically mandated,
64 the Division can't change those mandates by rule. What the
65 Division can do is implement what the legislature passes.
66 That includes where legislation empowers the Division to do
67 so that we can clarify ambiguous points in legislation or
68 we can flesh out specifics the legislature designed to the
69 Division to address.

70 Other suggestions or opinions, though, can
71 sometimes be considered without enacting rules. For
72 example, in recent years, some rights or responsibilities
73 varied based on whether there wasn't or was a qualifying
74 public health emergency. Division found itself being told
75 that more clarity was needed on what is or isn't a public

76 health emergency. But that didn't require rules, so the
77 Division simply issued published guidance on the status of
78 whether Colorado was still in a public health emergency or
79 not.

80 And similarly, as to PROPWA, the Division has
81 published extensive guidance on various interpretations of
82 PROPWA and what various provisions mean and various
83 deadlines and procedures. And those are available at
84 cdle.colorado.gov/infos, I-N-F-O-S, or go to
85 coloradolaborlaw.gov, our homepage, and click on the box
86 that says published guidance including infos.

87 For purposes of this meeting, though, you don't
88 need to worry about whether any suggestion or opinion you
89 have can be accomplished by a rule or can't be accomplished
90 by a rule. You're, of course, free to say whether you
91 think any suggestion or opinion you have is best done by
92 rule or guidance. But if you're not sure, if you just have
93 a suggestion or an opinion and you aren't sure about rules
94 versus guidance, feel free to just offer the suggestion or
95 opinion. Part of our job as the Division is to review all
96 suggestions or opinions and see what, if any, form of
97 implementation might work.

98 With that, I'll turn over the floor to rulemaking
99 coordinator, Miki Gann, to give some instructions for the
100 logistics of participating today. Miki?

101 MS. MIKI GANN: Thank you, Dr. Moss. Before we
102 get started please make sure that you have your line muted.
103 Speak when you are called on. Please unmute by clicking
104 control+D on your computer or *6 if you're on your phone.

105 This is a public hearing to discuss upcoming
106 rulemaking before the rules are adopted. If you have any
107 questions not on rules being discussed today, but instead
108 on your particular situation as an employer or employee,
109 email cdle_laborstandardsrules@state.co.us so we can route
110 your inquiry correctly. Other Division rulemaking
111 unrelated to the above laws has been or will be covered in
112 separate public hearings.

113 This meeting is being held by Google Meet, with
114 an option to join by phone as well. If you want to see
115 these instructions throughout the meeting, click the pin
116 button on the presenter's icon. If you need help
117 participating or with any logistics, use the chat window to
118 ask me, Miki Gann, who is monitoring all chats.

119 If you wish to speak, please indicate so in the
120 Google Meet chat window. After comments are said by those
121 joining through a computer, we will solicit comments from
122 phone participants. You can start your comments by stating
123 your name, job, role, organization, if any, and the topics
124 you will cover. If you wish to remain anonymous, to
125 exercise your confidentiality right under Wage Protection

126 Rule 4.7, state just a first name or pseudonym and as much
127 of your job or role as you can and turn your video off.

128 Please speak in a clear, slow voice. We may
129 interrupt to ask you to repeat anything that we think may
130 not have been audible enough for all to hear. Please keep
131 comments to five minutes. We welcome more elaborate input
132 as written comments. You can use the chat window for brief
133 follow-up, or if you wish to elaborate more or to comment
134 later, please submit written comments through the link that
135 is posted on our rulemaking page, which also will have all
136 proposed rules posted.

137 The record will include all verbal and written
138 comments, all of which are personally viewed by the
139 Division director and multiple other officials.
140 Accordingly, while you can comment by whatever means you
141 prefer, there is no need to repeat points in multiple
142 forms, verbal and written. When you finish, please mute
143 yourself unless the Division asks for any follow-up
144 questions, which you are free to answer now, later or not
145 at all. For those who wish to respond or add to comments
146 made, we will leave time at the end for you to respond or
147 elaborate on your points.

148 Thank you for taking the time to attend this
149 meeting and offer input. We will start with those joining
150 by computer and then those by phone.

151 DR. MOSS: Thanks very much, Miki. So as Miki
152 said, just plop your name into the chat window if you wish
153 to speak. And we'll give a minute or so for anyone to list
154 their name, and then we'll call on folks in order they
155 enter their name in the chat window. And then if you're
156 here by phone and can't therefore access the chat window,
157 don't worry, we'll call on folks by phone right after.
158 We'll give it a minute.

159 (Pause)

160 DR. MOSS: While we're waiting, we like to be
161 informative at this Division, so I will fill everybody in
162 on the Major League Baseball playoff scores of today.
163 There are four games going on today. The Astros are losing
164 to the Tigers 1-0, happily, in the top of the sixth. The
165 Royals-Orioles game is about to start at 2:38 p.m. The
166 Royals are up 1-0 in the series, as are the Tigers, up 1-0
167 over the Astros, based on yesterday's win.

168 The Rockies are not in the playoffs, having lost
169 101 games, which that was an improvement over last year
170 when they lost 102. So I'm an optimist, and at this pace
171 my calculations show if they continue to win one more game
172 a year, like when they went from 102 losses to 101, then I
173 may still be alert enough to attend the game by the time
174 they make the playoffs in several decades from now. Or I
175 may not be, and you can just tell me they're in or not. I

176 will maybe know.

177 Later today are the Mets versus the Brewers, a
178 topic of great interest to Amanda and me. Amanda is a
179 former Wisconsinite, me as a former New Yorker. We'll be
180 butting heads over that one. And then the Braves are
181 playing the Padres later as well.

182 With that filibuster, I'll ask again if anybody
183 wishes to speak. We have a taker. Thank you. It's Sara
184 Fitouri from CEA, the Colorado Education Association. Sara
185 please correct me if I didn't say your name correctly and
186 go on ahead.

187 MS. SARA FITOURI: You said it perfectly, and I
188 always appreciate the Rockies' updates because you and I
189 support two of the worst losing franchises as a Rapids fan.
190 So always fun to see your passion.

191 I really appreciate this opportunity to have this
192 conversation. And as an organization, we have been already
193 filing unfair labor practices under this new law, so we're
194 really excited to see these protections. One thing we've
195 been discussing internally, and I would love to hear your
196 thoughts on it, is we're a little concerned by the
197 continued lack of timelines in the rules.

198 As we've often said, justice delayed is justice
199 denied. And not only are we a little concerned about the
200 lack of timelines generally, but just absence of timelines

201 overall make it really hard to plan, to be able to give any
202 guidance to workers who are looking for some sort of
203 solution through this process. And so I'm curious if,
204 through this rulemaking process or ongoing rulemaking in
205 general, if you all have considered adding timelines and
206 what that might look like.

207 DR. MOSS: Thank you, Sara. I'll respond to this
208 one. Normally we just listen, but I'm happy to respond or
209 ask follow-up questions where appropriate, especially since
210 as far as I can tell, I'm not holding up a line of
211 impatient questioners or commenters.

212 So we tend not to give timelines in our rules.
213 That said, you should feel free to offer any suggested
214 timelines in written comments if you wish or verbally now.
215 What I'll say is this, which is that this Division's
216 largest volume is unpaid wage claims in the private sector.
217 And for those, our experience is that it's been very hard
218 to give timelines, even though those are not as time-
219 consuming and complex as your average PROPWA claim.

220 When we have no backlog, wage claims can take two
221 to four months from receipt to final decision, especially
222 complicated ones, a misclassification claim or a claim of
223 three years of unpaid wages where each week is different
224 and we have to learn calculus to do the math. Those can
225 take six months to longer, a year or so. There are times

226 we have a bit of a backlog and more claims are in the six-
227 month to a year timeframe. We try to aspire to avoid that,
228 but claims come in waves and we can't anticipate them, so
229 we always see.

230 Now on the PROPWA, these claims are a lot like
231 our retaliation claims that we handle under other statutes.
232 Claims that I was fired for some impermissible reason,
233 sometimes whistleblowing-related, expression-related or
234 some protected activity. Our experience that those vary
235 really widely in time.

236 There could be a complaint that is along these
237 lines. My employer has a policy in this page in the
238 handbook that I think is exactly contrary to PROPWA because
239 it says we can't say X, and I think we could say X. I, the
240 employee, am not even arguing any facts. I'm just saying
241 this page is illegal. Could you please fix this page and
242 see if you agree? That might be on the quicker end because
243 we don't have to talk to witnesses or review performance
244 evaluations, etcetera.

245 In contrast, if the complaint is I was fired for
246 this impermissible reason and/or I was fired after being
247 passed up for promotion last year and also denied certain
248 benefits or suspended and I was fired and then the
249 employer's response is actually here are the performance
250 evaluations and here's the discipline that shows that we

251 think there are performance problems and then we have to
252 talk to witnesses, review the records, that looks more like
253 the equivalent of a full-on federal litigation of a First
254 Amendment claim, which in court that takes a year at best,
255 more likely a year and a half to two often, and we're
256 aspiring to go nowhere near that long.

257 But when we have to have back and forth with the
258 employer and potentially talk to witnesses, review
259 extensive documents about performance and the like, not a
260 great way to do those as fast as the simpler of our wage
261 claims, which is to say that the reason we don't include
262 timelines in the rules is that it's hard to write a rule
263 that applies to all kinds of claims because the rule that
264 gives a timeframe long enough for the really complex claims
265 states essentially too long a timeframe for the simpler
266 claim and the timeframe that works for Joe Average or a
267 simpler claim isn't going to work for the really long one.

268 That said, if you think there could be timeframes
269 or any guidance given, it could be that what we do is say
270 what we can as a heads up without it being a rule or
271 perhaps there's something in the rule if you want to think
272 creatively about what could be said. And for example, it
273 would be informative to us if there's some other agency or
274 jurisdiction that manages to give us timeframes for
275 similarly complex matters, we're more than happy to hear

276 it.

277 So that's just our background and our thinking,
278 but we hear what you're saying that when situations happen,
279 both sides want clarity because on the employee's side, if
280 someone's fired, it's tricky for them to remain at work
281 while something's being litigated or adjudicated. On the
282 other side of the fence, if the employer faces a challenge
283 to whether their handbook is illegal or not, they want to
284 know if they can enforce their handbook. It's just that
285 it's hard to short-circuit these given that PROPWA is a
286 pretty tricky set of law.

287 It's one premise of enacting PROPWA, and there
288 are folks on this call who commented on this in the
289 legislature, is that it's in part, for example, duplicating
290 or elaborating upon or expanding upon First Amendment
291 rights. And I know from having done First Amendment cases
292 that where there's a complex area of law, not a good way to
293 analyze and decide those quickly sometimes. So we're
294 trying to get out decisions as quickly as we can, but at
295 the same time, doing the job right in a complicated field
296 where it may involve some really tricky factual back and
297 forth, but may not if it's a simpler case.

298 So long answer to a short, but good question.
299 That's our thinking and how it goes. But again, any input
300 or suggestions you have are welcome. And any follow-up

301 now.

302 MS. FITOURI: I appreciate that response. May I
303 ask one more follow-up question?

304 DR. MOSS: Go ahead.

305 MS. FITOURI: And I think that your response will
306 really help us craft our comments, so I appreciate you
307 taking the time to respond. Can you speak a little bit to
308 timelines on at least initial responses or the instigation
309 of an investigation once a claim is filed on whether it's
310 this or the whistleblower? I know I'm kind of new to
311 PROPWA timelines generally.

312 DR. MOSS: That's a good question. I don't have
313 it at my fingertips, so what I'll say is this. I don't
314 have at my fingertips what is in our info and our rules and
315 our webpage, but if you think that more specificity could
316 be given to that end, feel free to opine. So that could be
317 an example of something where you can give the suggestions,
318 our job to figure out what's doable or not.

319 So feel free to give a range of suggestions, and
320 we'll look into what's doable toward the goal of giving as
321 much information as we can without tying things down to a
322 timeline that's either unrealistically identical per claim
323 or would be if we give a timeframe that's long enough for
324 the complicated ones, it would be too long for the simple
325 ones, but interim things, like you said are reasonable to

326 ask for.

327 So yeah, look over the timeframes, give
328 suggestions. We're more than happy to hear it.

329 MS. FITOURI: Thank you.

330 DR. MOSS: Other comments, questions,
331 suggestions? We'll give it a minute, see if anyone else
332 has any thoughts.

333 (Pause)

334 DR. MOSS: The suspense is building not only here
335 as to future comments, but also in the Tigers-Astros game
336 where the Tigers have runners on first and second with two
337 out. So they may be about to build on that 1-0 lead. But
338 if nobody else wishes to speak, you may need to get your
339 further baseball updates from elsewhere than me.

340 (Pause)

341 DR. MOSS: Okay. We will give it another minute.
342 While we're at it, just to put some things in the chat
343 window while we wait. I'm putting the relevant URLs in the
344 window in case it's easier for you to copy them there than
345 from a screen that isn't character searchable. I put in
346 the window cdle.colorado.gov/laborrules. That is our rules
347 page that has the proposed rules themselves, the prior
348 versions of the PROPWA rules as well as our comment form.
349 And I'm also putting in the chat window
350 cdle.colorado.gov/infos, which is our page with fact sheets

351 and published guidance.

352 And while we're waiting, Miki, if you want to
353 navigate to the infos page, go to our homepage first. So
354 that's from coloradolaborlaw.gov. When you scroll down,
355 the rules page is in blue, and above that is the infos
356 page. And if you scroll down or do a control+F for PROPWA,
357 it is, I believe, 15C. Is that right? Let's see if I'm
358 right about that one. 15C is PROPWA, and that's our info,
359 interpretive notice, and formal opinion, if you want to
360 click on that, Miki, to show folks what it is.

361 This is one of our longer infos because one thing
362 we heard in the rulemaking process last year when we did
363 the really substantive rules, not just these modest
364 amendments to conform to a statute, we heard that there was
365 a lot of desire to find out whether this or that situation
366 is legal, illegal, how this or that's interpreted. So this
367 is 12 pages. It has almost 50 examples split almost evenly
368 between, yes, it's a violation, no, it's not.

369 So if you have any questions, I highly encourage
370 you to read this for questions, hypotheticals or if you
371 have insomnia or if your kid needs a bedtime story, it's
372 great reading. There are a lot of gripping tales of woe
373 throughout these examples. So I encourage reading this.
374 I'm not going to do a dramatic reading right now, however.

375 With that, I'll put out a last call for any

376 further comments or questions. And if we go back to the
377 instructions page, Miki, thanks for the navigation on the
378 fly. And again, the comment deadline through the comment
379 form on the labor rules page is 5:00 p.m. this Friday,
380 October 4th, as I said. So we put the comment deadline
381 typically two days or so after the public hearing so that
382 if anybody wants to respond to or follow up on any verbal
383 comments, they can.

384 So if all of you want to file written comments
385 descending upon Sara's point about deadlines and
386 timetables, then feel free to do so, but your comments can
387 be on anything else. You also can submit more than one
388 comment, I want to stress. So if you commented verbally or
389 if you already submitted a written comment, you can submit
390 another one.

391 Comments are posted publicly as close to real
392 time as we can, certainly within 24 hours. So they will be
393 posted on the labor rules page in the same place as the
394 comment form. There's a link to a folder that contains all
395 submitted comments. We do not have any written comments as
396 of now, so it will be anticlimactic if you go there. But
397 if we receive any written comments, we will post them as
398 soon as we can, certainly within 24 hours, and you can see
399 if any other comments are there that you wish to respond
400 to.

401 Again, we received many, many comments when the
402 original PROPWA rules were proposed, over 100 I believe.
403 And they were all posted, and they formed a lot of the
404 basis of the info when we took it on ourselves to say there
405 are a lot of these situations and questions people are
406 asking about that it's hard to write a rule about specific
407 situations, but we can best answer through examples. So
408 again, feel free to give any comments about anything.

409 With that, we're not hearing any further takers
410 for questions or comments, so last call, give another 10,
411 20 seconds for anyone to say they wish to say anything now.

412 (Pause)

413 DR. MOSS: Good news for Astros fans, they got
414 out of the sixth inning with Detroit scoring only that one
415 run despite leaving runners on first and second with two
416 outs. So the score remains 1-0 in the bottom of the sixth
417 with Detroit at bat, and Alex Bregman is up with the man on
418 first. And we'll have to leave you in suspense because you
419 will not have the benefit of my sportscasting skills for
420 any longer because there appear to be no further takers for
421 comments, so I'm done with my need to filibuster to give
422 you all time to see if you want to comment.

423 So with that, the time is 2:25, and I'll say
424 going once, twice and third for comments, going once,
425 twice, three.

426 With that, thank you all for attending to listen
427 and participate. The hearing is closed. We look forward
428 to hearing any further comments from you in writing, and if
429 not, you can expect the rules to be adopted in final form
430 sometime later this month because the goal is to have them
431 in effect by December 1st. And roughly speaking, the
432 timeframe, the deadline for us to adopt in order to have
433 them in effect December 1st is roughly somewhere around the
434 middle of the month. I just don't have the date handy.

435 So we adopt, then there's a period of review in
436 the bureaucracy where they make sure we dotted the T's
437 (sic) and crossed the I's (sic) and cited the right things.
438 After that ministerial review, the rules can be publicly
439 posted, typically about 20 days after we adopt it, so
440 you'll probably see final rules posted on our webpage
441 sometime a week or two into November. That's very rough.
442 With that, thank you all for coming. The hearing is
443 closed. The time is 2:26 p.m. Thank you all very much.

444

445

446

447

448

449

450

451 STATE OF COLORADO)

452 CITY AND COUNTY OF DENVER)

453 I hereby certify that the above and foregoing
454 constitutes a transcript of all the audible testimony taken
455 at a hearing in Denver, Colorado, on October 2, 2024, in
456 the matter of 2024 FALL RULEMAKING PUBLIC HEARING, which
457 hearing was digitally recorded by the State of Colorado and
458 transcribed by me to the best of my ability.

459 Dated at Hernando, Mississippi, this 30th of October,
460 2024.

461

462

463



464

Michelle Eaves

465

Transcriptionist

466

Ditto Transcripts

467

468

469

470

471

472

473

474

475