



Interpretive Notice & Formal Opinion (“INFO”) # 11A: Individual Liability under the Colorado Wage Act and Healthy Families and Workplaces Act

Overview

- Employees can bring claims for unpaid wages under the Colorado Wage Act (“CWA”) and the Healthy Families and Workplaces Act (“HFWA”)¹ not only against an employer’s **business**, but also against certain **individuals** who also qualify as “employers.”²
- Any **individual** who meets the definition of an “**employer**” under the CWA or HFWA can be liable for employee wages. This is called “individual liability.” Individuals can be liable as an employer if they have (1) enough **operational control** over or (2) **ownership interest** in the employer’s business.
- Individual employers are **jointly and severally liable** for wages along with employer businesses.
- If wages, penalties, or fines are not paid, an individual employer’s personal assets can be seized.³

Legal Standard

There are two ways for an individual to be an “employer” liable for unpaid wages:

- An individual with sufficient **operational control** over an employing business, including its employment policies or upper management; or
- For violations on or after August 6, 2025, by having a sufficient **ownership interest (25% or more)** in an employing business.

1. Operational Control Individual Liability - To determine if an individual is an employer, the Division looks to **the facts** of an individual’s involvement in the business on a **case-by-case basis**. To determine whether an individual has sufficient **operational control** to be an employer, the Division considers the totality of the circumstances, with a focus on four factors:

- the individual’s power to hire and fire employees;
- the extent to which the individual supervises or controls employee work schedules or conditions of employment;
- whether the individual determines the rate and method of employee payment; and
- whether an individual maintains employee records.⁴

Example 1: John Miller is the President of Miller Manufacturing Ltd. He has final say over every decision the business makes, and often plays an important role in hiring and firing employees, setting payment rates, and reviewing employee records. He’s an employer because he has enough operational control.

¹ The HFWA definition of “employer” incorporates the CWA definition; thus, an individual may also be jointly and severally liable for violations of HFWA. [C.R.S. § 8-13.3-402\(4\)](#). This INFO is focused on individual liability under the CWA and HFWA’s ‘employer’ definition. There may be other forms of individual liability under Colorado law applicable to your claim.

² [C.R.S. § 8-4-101\(6\)](#). The CWA defines “employer” in relevant part as: “‘Employer’ has the same meaning as set forth in the federal ‘Fair Labor Standards Act’ [FLSA], 29 U.S.C. sec. 203(d), and includes...each individual who owns or controls at least twenty-five percent of the ownership interests in an employer...” C.R.S. § 8-4-101(6). Under the FLSA, an “employer” includes “any person acting directly or indirectly in the interest of an employer in relation to an employee,” and the FLSA also defines a “person” as “an *individual*, partnership, association, corporation, business trust, legal representative, or any organized group of persons.” 29 U.S.C. 203(a), (d) (emphasis added).

³ A liable individual’s assets – their personal bank accounts, personal or real property, etc. – can be seized or garnished to satisfy the liability, and any unpaid amount can be reported and negatively affect an individual’s credit rating.

⁴ [Inniss v. Rocky Mountain Inventory, Inc.](#), 385 F. Supp. 3d 1165, 1167 (D. Colo. 2019).

However, since “[n]o one factor is dispositive,” the Division must also “consider the economic realities and the circumstances of the whole activity” without being limited to just the listed factors.⁵

- An individual need not have **exclusive** control of any of the four factors and can exercise control indirectly — for example, by managing other supervisors or managers.⁶
- **Other factors** the Division may consider include an individual’s:
 - job title and work tasks;
 - involvement in reviewing or approving potentially unlawful policies or practices;
 - awareness of (and response to) potential wage-and-hour (or HFWA) violations; and
 - scope of decision-making authority, including to make financial decisions for the employer, such as borrowing money for the business or continuing operations in the face of financial hardship.⁷

Example 2: Jane Jones is the CEO of Colorado Widgets LLC. Jones doesn’t regularly participate in day-to-day decisions involving the business’s employees but she has the authority to do so. She learns that Colorado Widgets is running out of money and may not be able to pay its employees. Nevertheless, she makes the decision to continue operating the business and permits employees to continue working despite the risk that they will not be paid for their labor. Jones can be liable as an employer based on her authority to make that important financial decision for the business.⁸

2. Presumptive Ownership Liability - As of August 6, 2025, individuals are presumed to be employers based **solely on their ownership** of an employer business.⁹ No showing of operational control is required to find an individual liable as an employer if they own **25% or more** of the business. Additionally, an individual who does not directly own a business can still be an employer if they **control** an ownership interest — for example by owning an entity that itself owns an employer business.

Example 3: Bob Smith owns 100% of Bob Smith Holdings LLC, which in turn owns 100% of Smith’s Autobody LLC. Although Bob Smith does not personally own Smith’s Autobody, he controls 100% of its ownership interest via his ownership of Bob Smith Holdings. Bob Smith is therefore an employer alongside Smith’s Autobody.

Example 4: Same as example 3, but Bob Smith Holdings LLC only owns 50% of Smith’s Autobody LLC. Bob Smith is still an employer because he controls a 50% ownership interest (100% x 50%).

Example 5: Same as example 4, but Bob Smith owns only 50% of Bob Smith Holdings LLC. Bob Smith therefore controls a 25% ownership interest in Smith’s Autobody LLC (50% x 50%). Bob Smith is an employer, unless he demonstrates that he has fully delegated all authority over day-to-day operations of Smith’s Autobody.

Example 6: Bob Smith takes a hands-off approach to Smith’s Autobody and hires Sam Williams to run the business for him. Bob Smith has 100% ownership interest in the business, so he is an employer regardless of how much operational control he possesses or exercises. Sam Williams has the authority to make day-to-day

⁵ *Inniss*, 385 F. Supp. 3d at 1168; see also [Goldberg v. Whitaker House Coop., Inc.](#), 366 U.S. 28, 33 (1961) (“economic reality,” not “technical concepts,” governs the evaluation of employment relationships under the FLSA).

⁶ *Inniss*, at 1168; C.R.S. § 8-4-101(6) (defining “employer” by reference to the FLSA, which states that an employer includes those acting “indirectly” in the interest of the employer in relation to the employee).

⁷ *Inniss* at 1168.; see also [Lopez v. Next Generation Constr. & Envtl., LLC](#), No. 16-cv-00076-CMA-KLM, 2016 U.S. Dist. LEXIS 154769, at *9 (internal quotation marks and citation omitted) (“Courts have also looked at the level of operational control the individual has over the company, including whether the individual is involved in the day-to-day operation.”); Ellen C. Kearns *et al.*, *The Fair Labor Standards Act*, at 3-86 - 3-87 (3d ed. 2015) (“The key consideration in determining individual liability is whether the individual has exerted sufficient operational control over significant aspects of the employer’s employment policies. This is a factual matter to be determined on a case-by-case basis.”).

⁸ Jones’s liability, and the wages owed to their employees, do not change based on whether Jones warned them of the risk of non-payment if they continued working because employees cannot waive their right to payment. C.R.S. § 8-4-121.

⁹ C.R.S. § 8-4-101(6), amended by [Colorado House Bill 25-1001](#) (effective Aug. 6, 2025).

decisions regarding hiring and firing of employees, schedules, payment, and he maintains employment-related records. Sam Williams is also an employer because he has sufficient operational control.

However, a minority owner (less than 50%) who “demonstrates full delegation of [their] authority to control day-to-day operations of the employer” **is not** an individually liable employer.¹⁰

Example 7: Bill Johnson has a 30% ownership interest in Jim’s Sandwich Shop, a restaurant that employs Elsa Long as a shift manager. Although Johnson owns more than 25% of the business, he is a completely hands-off minority owner and has fully delegated all authority over day-to-day decisions to Jim Clark, who owns the other 70%. Johnson is therefore not an employer (but Jim Clark is). As a shift manager, Elsa Long has limited control over employee schedules, but no control over hiring and firing, payments, or employee records. She does not have sufficient operational control to be an employer.

Ownership Percentage	Employer Status
50% or more	Always considered an employer regardless of operational control
25 - 49.9%	Considered an employer unless they fully delegate all authority to control day-to-day operations
0 - 25%	Considered an employer only if they have sufficient operational control

Other Considerations: Joint and Several Liability, Bankruptcy, Dissolution, and Veil Piercing

- Individual Liability serves the **remedial purpose** of wage and hour laws¹¹ — holding individuals responsible for employee wages prevents employers from avoiding paying wages by:
 - filing for bankruptcy on behalf of the employer business;¹²
 - dissolving or abandoning the employer business;¹³ or
 - hiding behind the “corporate veil” because individual liability under the CWA and HFWA is not governed by corporate “veil piercing” principles.¹⁴
- If one jointly and severally liable party does not or cannot pay the full amount of wages owed, such as if an employer goes bankrupt but the individual does not, then the individual must still pay the full amount owed. The law does not assign a proportional amount to each jointly and severally liable party — however, a party can consider payments made by the other parties in determining its own obligations.

For More Information: Visit the Division’s [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

¹⁰ [C.R.S. § 8-4-101\(6\)](#), as amended (“except that [the CWA] does not apply to a minority owner of an employer that demonstrates full delegation of its authority to control day-to-day operations of the employer[.]”) To demonstrate that they have “full delegation of its authority to control day-to-day operations”, a minority owner must show that they are unable to make or influence decisions involving day-to-day operations. Rarely, or even never, making such decisions is irrelevant if the evidence does not show that the owner actually *lacks the authority* to do so.

¹¹ [Colorado House Bill 19-1267](#) (amending the CWA, allowing individual liability in order to “close loopholes” in wage law and “provide sufficient protections for workers and their families”).

¹² See e.g., [Boucher v. Shaw](#), 572 F.3d 1087, 1093-94 (9th Cir. 2009).

¹³ See e.g., [Vericred Solutions LLC et al.](#), DLSS Claim #2088-22 (Hearing Officer Decis. #24-055, Oct. 2024), p.6-7.

¹⁴ Prior to the 2019 amendment to the employer definition, courts found that individuals couldn’t be jointly and severally liable under the CWA without piercing the corporate veil. See [Leonard v. McMorris](#), 63 P.3d 323 (Colo. 2003); [Paradine v. Goej](#), 2018 COA 55, 463 P.3d 868. However, courts have consistently determined the new employer definition does not require veil piercing. See [Vassel v. Littleton Auto Repair LLC](#), Civil Action No. 22-cv-1229-RMR, 2024 U.S. Dist. LEXIS 29749 (D. Colo. Feb. 21, 2024) (citing a prior version of this INFO #11A); [Inniss](#), 385 F. Supp. 3d at 1167-69.