COLORADO
Department of Labor and Employment

Division of Labor Standards and Statistics
707 17th Street, Denver, CO 80202 | 303-318-8441
www.ColoradoLaborLaw.gov | www.LeyesLaboralesDeColorado.gov

Interpretive Notice & Formal Opinion ("INFO") #16:

Deductions from, and Credits towards, Employee Pay

Overview

- Employer deductions from employee wages are **lawful only in the five categories** in subsections (a)-(e) of C.R.S. § 8-4-105(1) — with requirements and conditions detailed in the sections below.
  - **A.** Deductions **authorized or required by law** (tax withholding, etc.) (subsection (a) and (a.5))
  - **B.** Items primarily for **employee benefit** (like tuition for college courses an employee chooses), not **employer benefit** (like employer-required training), by written agreement (subsection (b))
  - **C.** **Theft reported** to law enforcement (subsection (c))
  - **D.** Voluntary employee **purchases or transfers** to third parties, like for health care (subsection (d))
  - **E.** **Failure to return property or money** when employment ends (subsection (e))
- **Other deductions are unlawful** even if agreed to,[1] like reducing pay because an employee:
  - **Cost** the employer **sales** or clients, or did **unsatisfactory work**;
  - **Resigned** or was **fired**, including for failing to **give notice** or to stay for a **certain duration**; or
  - **Used company property** for personal use, damaging it or causing wear and tear.[2]
- Even lawful deductions **can't lower pay below minimum wage** — but if pay is at least minimum wage, then **withholding tax** or similar assessments owed by employees **doesn't** bring wages below minimum, and neither does withholding to repay **advances** of wages (detailed below).
  - But see the "**Credits Toward Minimum Wages**" section below on how meals, lodging, or tips employees receive can, in **limited situations and amounts**, reduce what employers must pay.
- Employers have the **burden of showing** they are allowed to make a deduction or claim a credit.[3]
- Employers must **itemize the amount and reason** for each **deductions or credits** — not just provide paychecks or pay statements showing the net pay after deductions and credits.[4]

Lawful Deductions: The Five Categories in Subsections (a)-(e) of C.R.S. § 8-4-105(1)

A. Deductions Required or Specifically Authorized by Law (§ 105(1)(a), (a.5))

- Taxes or Federal Insurance Contributions Act ("FICA") requirements.
- Garnishments or other court-ordered deductions.
- Automatic enrollment in employee retirement plans.

[1] These deductions are impermissible whether they are taken from an employee's paycheck or if the employer requires the employee to pay the expense directly.

[2] Employers owed money when no deduction is allowed may seek legal advice on any other possible remedies.

[3] 7 CCR 1103-7 (Wage Protection Rules), Rule 4.2.2.

[4] C.R.S. § 8-4-103(4); INFO #3A: Timing of Wage Payment & Required Record-Keeping.

B. Deductions for Items Primarily for Employee (Not Employer) Benefit, by Written Agreement (§ 105(1)(b)

- An employer may deduct for **goods**, **services**, **equipment**, **property**, **loans**, or **advances** (including accidental overpayment of wages) it provided an employee, under all **four conditions** below:[5]

1. The employer must have the employee's **written agreement** to make the deduction.

Example 1: An employer loans money to an employee, who orally agrees that the employer can deduct the loan amount from their next paycheck. The employer makes the deduction. The deduction is not permissible, because there was no written agreement. *Rammar LLC dba Napa Nectars*, DLSS Claim #2756-19 (Hearing Officer Decis. #20-044, July 2020).

Example 2: A written agreement says employees will "repay" loans, or be "responsible for repaying" for employer-provided services, but says nothing about *how* they pay. Deductions are not permissible, as the agreement does not authorize them. *R&R Enterprises d/b/a R&R Coffee Cafe*, DLSS Claim #5407-19 (Hearing Officer Decis. #21-028, Mar. 2021); *Luxe Deluxe Inc. d/b/a Luxe Salon*, DLSS Claim #3410-18 (Hearing Officer Decis. #19-030, Mar. 2019).

2. The written agreement must be **enforceable** (including that the parties must agree to material terms such as the deduction amount, frequency, and duration), and **lawful** (it must not violate federal, state, or local statutes or rules, like the **training repayment agreement** restrictions discussed below).

3. The deduction **may not bring pay below minimum wage**, though in certain conditions, employer recoveries of wage overpayments don't reduce pay below minimum wage.

Example 3: An employer accidentally overpays an employee $400. It may deduct the overpayment from a later paycheck *if* (1) it notifies the employee *in writing* it will make the deduction, including the amount and manner (*e.g.*, whether it will be spread over multiple pay periods); (2) the deduction is from wages earned in a *later* pay period (not for time that was or will be worked in the pay period when the employer gives notice); *and* (3) after the notice, the employee *agrees* to the deduction, expressly or by continuing to work in the deduction period. Because the deduction just avoids paying twice, it doesn't drop pay below minimum wage.

4. What the employer provides must be **primarily for employee benefit**, not items primarily for **employer benefit** — like the following items that are considered **business expenses** of the employer:

- tools, supplies, or other items **required to perform the work**;[6]
- recovery of **business losses** like property damage, or unpaid customer bills; and
- in general, items the **employer requires** — even if the employee gets some benefit, like employer-provided housing — because the employee is not free to decide whether to pay the cost, or whether the employer-required option best suits their needs.

Example 4: A salon and its employees sign an agreement letting the salon deduct from wages the cost of hair care products the employees use to serve customers. The deduction is unlawful: "a contract that reduces ... wages by shifting the employer's costs of doing business to the employee would 'contravene the legislature's ... intent to prevent contractual waiver or

[5] C.R.S. § 8-4-105(1)(b).

[6] Such items include those necessary to perform the work *safely*, whether "required by law, the rules of the employer, or the nature of the work." 29 C.F.R. § 790.8(c) n.65. *See e.g.*, *Reich v. IBP, Inc.*, 38 F.3d 1123, 1125-26 (10th Cir. 1994); *Perez v. Mountaire Farms*, 650 F.3d 350, 366 (4th Cir. 2011); *Alvarez v. IBP, Inc.*, 339 F.3d 894, 902-03 (9th Cir. 2003).

modification of an employer's mandatory obligations'" — specifically, the Wage Act requirement "that employees must be paid their wages." *303 Beauty Bar LLC d/b/a 303 Salon Lohi v. Division of Labor Standards and Statistics*, 2025 COA 20, ¶¶ 15, 19 (rejecting arguments to let an employer "deduct from an employee's wages any costs that are inherent in the job — for example, the cost of drafting paper for an architect or polish for a dental hygienist — simply because the employee may receive an incidental benefit from the mere fact of being employed. We cannot conclude that the legislature intended such a result.").

Example 5: A resort offers employees housing at market rates, and deducts from wages under a written rental agreement with each employee who accepts housing. This is allowed, with two limits:

- the housing is primarily for employee benefit only if employees may freely choose whether to accept it, and acceptance is not a condition of employment or **necessary to do the job** (for example, if the job is at a location the employee could not realistically commute to, like a resort that is not commuting distance from non-employer housing, or a distant customer worksite where the employer assigns the employee to work); and

- the wages paid after deduction must be at least **minimum wage**, unless the employer meets the conditions to claim a limited "lodging credit" toward minimum wages (below).

Example 6: An employee uses an employer-provided credit card to pay for a streaming television service and residential energy expenses. The employee emails the employer that the charges can be deducted from their pay. The deduction is allowed because the charges primarily benefitted the employee *and* the employee agreed to them in writing — but may not bring pay below the minimum wage. *Care Services Management, LLC*, DLSS Claim #0040-18 (Hearing Officer Decis. #19-005, Jan. 2019).

Example 7: An employee's contract allows wage deductions for supplies the employee breaks and for safety-related expenses like background checks and insurance. This is unlawful, and the written agreement is unenforceable: the employer gave the employee no property (it owned the supplies) or benefit; and the expenses (supply and safety expenses) are for employer benefit, because they are costs of operating their business. *American Automation Inc.*, DLSS Claim #0731-20 (Hearing Officer Decis. #21-026, Mar. 2021) (disallowing deductions for employee no-show and business expenses like background checks).

- **Employees can't be required to pay, without reimbursement**, for items primarily for employer benefit or convenience,[7] because "there is no legal difference between deducting a cost directly from … wages and shifting a cost, which they could not deduct, for the employee to bear."[8]

---

[7] *303 Beauty Bar LLC d/b/a 303 Salon Lohi v. Division of Labor Standards and Statistics*, 2025 COA 20, ¶¶ 15, 19 (footnotes omitted) (affirming Division wage and penalty award where employer deducted salon supply costs):

> The [Colorado] Wage Act provides that employees must be paid their wages. *See* § 8-4-103, C.R.S. 2024. Therefore, a contract that reduces those wages by shifting the employer's costs of doing business to the employee would "contravene the legislature's manifest intent to prevent contractual waiver or modification of an employer's mandatory obligations" under the Wage Act. *Nieto[v. Clark's Market*, 2021 CO 48], ¶32. . . . [Employer]'s reasoning would allow an employer to deduct from an employee's wages any costs that are inherent in the job — for example, the cost of drafting paper for an architect or polish for a dental hygienist — simply because the employee may receive an incidental benefit from the mere fact of being employed. We cannot conclude that the legislature intended such a result.

See also *Koral v. Inflated Dough*, No. 13-CV-02216, 2014 WL 4904400, *4 (D. Colo. Sept. 29, 2014) (under-reimbursing expenses may violate Colorado minimum wage).

[8] *Arriaga v. Fla. Pac. Farms*, 305 F.3d 1228, 1236 (11th Cir. 2002) ("An employer may not deduct from employee wages the cost of facilities which primarily benefit the employer if such deductions drive wages below the minimum wage. This

- Items for **employer benefit** or convenience that employees **can't be required to pay** include items employers **authorize employees to buy** for work use, whether or not they promise reimbursement.
- For items primarily for **employee** benefit but **also** used for work, **added cost from work use** — such as wear-and-tear, damage, or maintenance from using a **personal car for work deliveries** — may be accounted for either (a) by apportioning actual costs between work and personal miles, or (b) by a reasonable mileage rate that estimates depreciation, maintenance, etc.[9]
- Costs for **employee benefit** or convenience that employees **can** be required to pay include:
  - items primarily **benefitting the employee**, except to the extent work use increases costs;
  - items **not necessary** to perform the work; or
  - items an employee purchases **before the employer had a chance to provide** them, or that the employee rejected because they prefer their own version.

Example 8: An employee used to cut their own hair, but starts paying for haircuts to look "clean-cut" as the employer's handbook requires. Assuming the employer doesn't require special styling (*e.g.*, dying their hair red), the expense is primarily for employee benefit, even if it also meets basic appearance expectations of the employer — so the deduction limits don't apply.

Example 9: A grocery store cashier buys groceries after their shift and pays in cash. That is not a deduction. That is buying goods as a customer, so deduction limits do not apply. But if you pay for groceries via a pay deduction, deductions limits do apply, including minimum wage.

Example 10: An employer requires an employee to use a cell phone for work. The employer need not reimburse phone or cell service cost, as long as the employee would have the cell phone and contract anyway, can use it for personal reasons, and doesn't face added cost from work use. But if the employee must pay for a more expensive phone or plan, special phone or plan, then the company must pay for that added cost.

Example 11: A restaurant provides kitchen staff knives that are safe, well-maintained, and effective for their jobs. Some kitchen staff prefer other knives of exceptional quality, so they buy and maintain them on their own. The restaurant allows use of, but neither encourages nor authorizes the purchase of, those personal knives. The cost of the knives need not be reimbursed, because they are not expected by the employer or necessary to do the job.

Example 12: A construction company fails to provide hard hats compliant with safety regulations, for weeks after inspectors notify the employer that its hard hats were noncompliant. The employer must reimburse employees who buy compliant hard hats, because they are necessary for the work and the company failed to provide them despite opportunity to do so.

---

rule cannot be avoided by simply requiring employees to make such purchases . . . ." (citation omitted); *see also* 29 C.F.R. § 531.35 (wages must be paid "free and clear"); U.S. Dep't of Labor, "Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under [FLSA]" ("Employers may not avoid FLSA minimum wage and overtime requirements by having the employee reimburse the employer" for items primarily for employer benefit or convenience).

[9] *E.g.*, *Koral*, 2014 WL 4904400 at *4 (for pizza delivery driver, "under-reimbursement, of an amount between $0.395 and $0.448 per mile driven, supports the existence of a federal and Colorado minimum wage violation."); *Smith v. Pizza Hut*, No. 09-CV-01632, 2011 WL 2791331, *4 (D. Colo. July 14, 2011) (allowing minimum wage claim that "[a]fter deducting Plaintiff's vehicle-related expenses from his wage, including the delivery reimbursement, Plaintiff ... earned only $5.60 per hour ($9.80–$4.20)" due to "under-reimbursement of Plaintiff's vehicle-related expenses"); 29 C.F.R. § 531.32(c) ("cost of furnishing 'facilities' ... primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not … be included in computing wages"; listing examples of items for employer benefit or convenience).

- **Specific cases**: Following is how this category (deductions for items primarily for employee benefit) apply to (i) **uniforms**, (ii) **foreign worker** costs, and (iii) **training repayment** agreements:

  i. Uniforms: Employers **can** deduct for (or require employees to buy) clothing only under these **conditions**, which are based on **how specific to employer requirements** the clothes must be.

  - The clothes must be **ordinary, plain**, and **washable**, without employer emblems or branding.[10]
  - Employers may specify **colors** if they allow a **wide range** of shades **readily available** in stores.
  - Employers may specify **basic styles** or cuts **readily available** in stores.

  Otherwise, employers **must provide or pay** for any required uniform or special apparel, which means they can't require **deposits** from employees, or deduct for ordinary **wear and tear**.[11] Employers must also pay for maintenance and cleaning unless "the uniform … is plain and washable, and does not need or require special care such as ironing, dry cleaning, pressing, etc."[12]

Example 13: An employer requires employees to wear, at their own expense, a "light blue button-down shirt with a collar." This is permissible because the employer does **not specify** any of the following (if it did, it must pay for or provide the shirt):

- a specific **shade** or type of the color (*e.g.*, "only sky blue" "only pastel blue");
- a specific **logo, brand** or **style** (*e.g.*, "only oxford collar" "only band collar");
- a specific **material** *(e.g.*, "only cotton").

ii. Foreign Worker Costs: Costs required for non-U.S. workers to be available for employment — including visa fees, sponsor or recruiter costs, attorney fees, and travel expenses — must be paid by employers if they are "**business expenses**" as such costs **primarily benefit the employer**.

- Costs are **business expenses** that **primarily benefit an employer** if they are "necessary to the employment" and "an incident of" the employment (*i.e.*, costs caused by the employment that wouldn't otherwise arise as ordinary employee living expenses).[13]
- Situations where costs are primarily for the **benefit of the employee** include visas for **non-employee activity** (*e.g.*, enrolled students receiving credit for lawfully unpaid internships), as well as when **federal law** expressly assigns specific costs to employees.[14]

---

[10] COMPS Order #39, 7 CCR 1103-1, Rule 6.3.1(A).

[11] COMPS Order #39, 7 CCR 1103-1, Rule 6.3.

[12] COMPS Order #39, 7 CCR 1103-1, Rule 6.3.1(A).

[13] *See* 29 C.F.R. § 531.32(a) & (c) (identifying which "facilities" primarily benefit employees under FLSA); 20 C.F.R. § 655.731 (defining "business expense(s) of the employer" for H-1B visa purposes as "including attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by the employer, *e.g.*, preparation and filing of LCA and H-1B petition"); *Arriaga v. Fla. Pac. Farms*, 305 F.3d 1228, 1244 (11th Cir. 2002) (H2A visa fees "[u]nlike food, boarding, or commuter expenses … are not costs that would arise as an ordinary living expense. When an employer decides to utilize the H-2A program these costs are certain to arise, and it is therefore incumbent upon the employer to pay them."); *Chaturong Jatupornchaisri v. Wyndham Vacation Ownership*, No. 6:12-cv-59-Orl-31GJK, 2012 U.S. Dist. LEXIS 63633, at *4-6 (M.D. Fla. May 7, 2012) (denying dismissal of claim that employer "violated the FLSA by failing to reimburse Plaintiffs for the expenses incurred in obtaining their J-1 visas, for travel expenses, and for improperly deducting rent from wages" because "[o]n its face, the FLSA applies to the Plaintiff[]" J-1 visa workers).

[14] *See* 29 C.F.R. § 531.26 (FLSA regulations and interpretations "should not be taken to override or nullify" other "Federal, State, and local legislation" with other wage payment requirements that "prevent[] or restrict[] payment of wages in

Example 14: An employee obtains a J-1 summer work travel visa through a sponsor organization to travel to a Colorado resort town. After obtaining the visa, the employee gets a job at a local restaurant. The terms of the employee's visa allow them to change jobs, and require their sponsor to help them find alternate employment if they wish. The worker's visa, travel, sponsor fees, and related costs are primarily for the employee's benefit by allowing the employee to travel to Colorado, and they do not benefit any specific employer.

Example 15: An employee gets a J-1 trainee visa to work as a sous chef for a renowned Colorado restaurant. The employee will learn on the job while working, doing the same tasks as other kitchen staff. Under the terms of the visa and sponsor agreement, changing employers would require special permission that is difficult to get and not guaranteed, and there are few Colorado restaurants that can provide comparable training. The worker's visa, travel, and sponsor fees primarily benefit the restaurant by making the worker available to work for the specific employer, even if the employee also benefits from the on-the-job training.

iii. **Agreements for employees to repay employers for training** are allowed **only under four conditions**, under Colorado law on agreements limiting freedom to leave jobs or accept new jobs:[15]

1. "[T]he training is **distinct from normal, on-the-job** training," like a class offering a **transferrable skill or credential**, not just **employer-required** training — consistent with the broader rule that such deduction items must be primarily for **employee, not employer, benefit**;
2. Employer recovery "is limited to the **reasonable costs** of the training" — not, for example, an amount above actual cost, or that just reimburses the employer for the time of on-the-job staff;
3. The debt proportionally "**decreases over** ... **two years**" after the training — for example, if the employer paid a $240 registration fee for a course, it can require paying back at most
   - $230 if the employee leaves the job after one month of work for the employer,
   - $220 if they leave after two months,
   - $10 if they leave after 23 months, or
   - $0 if they leave after 24 months or longer; **and**
4. Employer recovery can't take employee pay **below the applicable minimum wage**.

- A training repayment agreement that **meets all four conditions** listed is **lawful**.
- A training repayment agreement that **fails any of the four conditions** fails the requirement that deductions "for loans, advances, goods or services" be "enforceable and not in violation of law."[16]
  - Employer **recovery** (deducting, withholding, or collecting) under an unlawful training

services or facilities … [and] outlaw[] 'kickbacks'"); *Beltran v. InterExchange, Inc.*, 176 F. Supp. 3d 1066, 1084 (D. Colo. 2016) (rejecting argument that "claims under state wage laws are … preempted by some kind of amorphous 'federal framework'" for J-1 *au pair* visa workers, as "state wage laws are not preempted": federal (USIA) regulations "expressly provided that the *au pair* program must conform with the FLSA, without exception; the FLSA, in turn, explicitly provides that, if a state sets a higher minimum wage," employees are "are entitled to receive that higher wage"); *Caprin v. Office of Att'y Gen of Mass.*, 944 F.3d 9, 33 (1st Cir. 2019) (finding that DOS' *au pair* Exchange Visitor Program "regulations … reflect the fact that the DOS contemplated that state employment laws would protect exchange visitor program participants from their employers," and therefore state wage and hour laws were not preempted by federal law).

[15] C.R.S. § 8-2-113(3)(a) (2024) (the quotes in the numbered items are from this statute).

[16] C.R.S. § 8-4-105(1)(b).

repayment agreement:

- is a Wage Act violation, as an **impermissible deduction**, and also contrary to the requirement that "'wages' cannot be considered to have been paid by the employer and received ... unless they are paid **finally and unconditionally** or '**free and clear**,'"[17]
- which subjects the employer to a claim for the **amount unlawfully recovered plus penalties** (two to three times the recovered amount) for failure to pay wages earned.

○ An employer **reserving a right to recover** in an unlawful training repayment agreement:

- is a Wage Act violation, **whether it recovers or not**, because an employer reserving a recovery right is effectively making a loan, not paying wages — or, at best, **paying wages with a condition** (not separating soon), contrary to the "free and clear" rule,[18]
- which subjects the employer to a claim for **penalties** for failure to pay "wages" (two to three times the amount), because "wages" must be paid finally and unconditionally, not subject to recovery (see above).

C. Deductions for Theft Reported to Law Enforcement (§ 105(1)(c))

- An employer may deduct for the amount of a shortage due to an employee's theft, but only if the employer filed a police report claiming theft by the employee, and then:

If charges are filed within 90 days of the police report:

→ The employer may withhold the amount it reported as stolen until a final outcome in the criminal case (subject to the requirements below, such as not going below minimum wage).

If criminal charges aren't filed in 90 days, the employee is found not guilty, or charges are dismissed:

→ The employer owes the employee the amount withheld, plus interest.[19]

Example 16: An employer believes an employee stole goods. It files a police report, fires the employee, and keeps wages to offset its loss. Over 90 days later, the employee hasn't been criminally charged. The employer owes the employee the deducted wages plus interest. *JW Colorado, LLC dba TweedLeaf*, DLSS Claim #3053-19 (Hearing Officer Decis. #20-074, Oct. 2020).

Example 17: Similar to Example 16, but the employee is charged within 90 days of the police report, and pleads guilty. The deduction for the theft was allowed, but it could not deduct for prior thefts it thinks the employee committed yet never mentioned in any police report. *ADCO Pro Cleaning Supply, Inc.*, DLSS Claim #0370-18 (Hearing Officer Decis. #19-003, Jan. 2019).

D. Deductions for Other Voluntary Employee Purchases, or Transfers to Third Parties (§ 105(1)(d))

- If an employee **voluntarily permits** the deduction, an employer may deduct for things like:
  - health care or other benefits (*e.g.*, supplemental retirement plans);
  - investments (*e.g.*, stock purchases, savings plans) or other deposits to financial institutions; or

[17] 29 C.F.R. § 531.35.

[18] 29 C.F.R. § 531.35.

[19] C.R.S. § 8-4-105(1)(c).

- employee charitable contributions.[20]

- The employee must be **able to stop (revoke)** the deduction at any time[21] — though that right may be limited by defined enrollment periods to change employee benefits.

E. Deductions for Failure to Return Property or Money When Employment Ends (§ 105(1)(e))

- An employer may deduct to recover amounts of money, or the value of property, an employee failed to return to the employer when their job ends (their "separation from employment") *if:*
  - the employer **entrusted** the employee to collect, disburse, or handle the money or property;
  - the employer and employee **had agreed that the employee would return** the money or property;
  - the employee **failed to return** that money or property as agreed; and
  - by 10 days after separation, the employer gives advance **written notice** of the deduction, specifying
    - the **amount** of money or the specific property that the employee failed to pay or return,
    - the **replacement value** of the property,
    - **when** the money or property was **provided** to the employee (to the extent known), and
    - **when** the employee should have **returned** the property or money (to the extent known).

- An employer has 10 calendar days after separation to determine the value of money or property that wasn't returned — an exception to the general requirement to pay terminated employees' final wages immediately.[22] The end of that 10 days is the employer's deadline to provide notice to the employee; **if the employer doesn't provide this notice, it can't make the deduction.**

- **If the employee returns** the property or money within 14 days of the employer's notice and the employer already made the deduction, it must pay the employee the amount it deducted. The employer must do so within 14 days of when the employee returned the property or money.

Example 18: An employer believes an employee took merchandise off the shelf when nobody was looking. It deducts from the employee's final paycheck for the value of the missing property. This example does not entail a failure to return property with which an employee was entrusted. The real concern here is theft. The employer must meet the conditions of the theft deduction provision (such as by filing a police report). *Luxe Deluxe Inc dba Luxe Salon*, DLSS Claim #3410-18 (Hearing Officer Decis. #19-030, Mar. 2019).

Example 19: An employer deducts $200 from the pay of a departing manager who fails to return their key: the cost of a locksmith to retumble the locks, plus a set of replacement keys for all managers. The deduction was impermissible. It is the cost of a service and several keys, not the value of the property lost. Employers may have other remedies for employees imposing other costs like property damage or replacing an entire lock system — just not pay deductions. *Baked Brothers, LLC dba The Breakfast Shack*, DLSS Claim #1477-20 (Hearing Officer Decis. #21-024, Mar. 2021).[23]

---

[20] C.R.S. § 8-4-105(1)(d).

[21] *See In re Marriage of Smith*, 2024 COA 95, ¶27 (quoting Black's Law Dictionary 1579 (11th ed. 2019)) (defining "revocable" as "'[c]apable of being canceled or withdrawn.'").

[22] C.R.S. § 8-4-105(1)(e); Wage Protection Rules, 7 CCR 1103-7, Rule 2.13.

[23] In a Colorado legislature hearing on the law adding a key "deductions" section of the Colorado Wage Act (C.R.S. § 8-4-105(1)(e)), a witness explained: "If the employee chooses not to return that company's equipment, then the employer will have the authority or the right to deduct *fair market value for the price of those materials* from the final paycheck."

Example 20: The same as Example 19, but a written agreement authorizes the deduction. Deductions still are limited to the value of the non-returned property (C.R.S. § 8-4-105(1)(e)), and an agreement to an impermissible deduction still is void. C.R.S. § 8-4-121. A written agreement is necessary but not sufficient to deduct under a different provision (C.R.S. § 8-4-105(1)(b)), but deducting for an employer's cost of doing business is not permitted. *R&R Enterprises Inc. d/b/a R&R Coffee Cafe*, DLSS Claim #5407-19 (Hearing Officer Decis. #21-028, Mar. 2021).

Example 21: A departing employee doesn't return a cell phone the employer had provided for use on the job. They can't deduct for this if it doesn't provide the notice described above. If the employer does provide a notice with the required contents, in the required timeframe, then it can deduct the phone's replacement value (but it must still pay minimum wage). If the employee returns the phone within 10 days of the employer's notice, then the employer must pay the employee back the deduction within 14 days of getting the phone back.

Credits Toward Minimum Wages (Rule 6.2 of the COMPS Order, 7 CCR 1103-1).

- Only **three types** of value an employee receives can let an employer pay **less than minimum wage**: lodging; meals; and tips. See INFO #3C for more on these and other conditions (tip pool limits, etc.).
- Employers **can't** claim minimum wage credits for **other items** for employee benefit (phone, car, etc.).
- Employers can claim lodging, meal, or tip credits toward minimum wages only under these conditions:

Type of Credit	Maximum Amounts	Conditions
Lodging	Whichever of these is lower: 1) the reasonable and actual cost to the employer of the housing; 2) fair market value of the housing; or 3) per week, either — a) $25 for a room (in a shared residence, dorm, or hotel), or b) $100 for a private residence (apartment or house)	1) Only if housing is both: a) voluntarily accepted by the employee; and b) primarily for the employee's (rather than the employer's) benefit and convenience 2) Only if a written agreement states the existence and amount of the credit
Meals	Reasonable cost or fair market value of the meals, with no employer profit	Only meals accepted voluntarily, without coercion
Tips	Whichever of these is lower: 1) $3.02 per hour[24]; or 2) tips actually received	1) Only if tips aren't unlawfully diverted to non-tipped employees 2) Only employees tipped at least $1.64 hourly

For More Information: Visit the Division website, call 303-318-8441, or email cdle_labor_standards@state.co.us.

Hearing on H.B. 1206, S. Bus. Comm., 64th Gen. Assemb., 1st Sess. (Apr. 23, 2003) (Heidi Heltzel, Colo. Ass'n of Commerce & Industry) (emphasis added). "Fair market value" is the sale or purchase price. *See Black's Law Dictionary* ("The price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction"); *The Law Dictionary* (sale price "in the market under ordinary conditions"; price at which a "willing seller, who does not have to sell, would sell, and ... willing buyer, who does not have to buy, would buy").

[24] After 2025, local governments may choose to allow tip credits above $3.02 against local minimum wages that are higher than the state minimum wage, as INFO #19 details.