



Interpretive Notice & Formal Opinion (“INFO”) #2C: Appealing a Determination after the Investigation

Overview

This INFO covers appeals of Division of Labor Standards and Statistics (DLSS) determinations. After finishing an investigation, a Compliance Investigator (CI) issues a written determination. If any party disagrees with a determination, they can appeal. On appeal, a DLSS Hearing Officer (not the CI) will decide whether the determination was incorrect. This INFO focuses on the most common appeals — wage-and-hour complaints or direct investigations (typically of wage-and-hour violations) — and notes key differences in other appeal types.

How to Appeal: DLSS has forms to appeal wage complaints, direct investigations, or other determinations.

- DLSS’s appeal forms are online at <https://cdle.colorado.gov/decisions-appeals-information>, or you can ask DLSS to give you a form by mail or in person (at the address in the heading of this INFO).
- If you created an account in DLSS’s [online portal](#), or if you received instructions about how to do so, you can appeal by logging into the portal, going to “Available Forms,” and following the instructions.
- If you’re not sure which form to use, ask DLSS’s Appeals Unit (see the contact information below) — or file a signed, written appeal without using a particular form, and DLSS will try to get your filing to the right place. (But don’t appeal Unemployment, Workers’ Compensation, or FAMLI decisions to DLSS; those divisions are a part of CDLE, but DLSS has no authority over those types of claims or appeals.)
- Your appeal request must explain why you think the CI’s determination was wrong (why you are appealing). If your appeal is not valid (has no chance of success or is late), we’ll deny it.
- Send your completed appeal filing to DLSS’s Appeals Unit in any of the following ways:
 - **Email** to: cdle_ls_appeals@state.co.us; or for Direct Investigations, cdle_di_appeals@state.co.us
 - **Fax** to: 303-318-8400
 - **Mail or by hand** to: Colorado Division of Labor Standards & Statistics, 707 17th St., Denver, CO 80202

When to Appeal

- **Meet the deadline set by law.** The law requires appeals to be **received by**, not just mailed to, DLSS **within 35 calendar days** of the date of the determination. DLSS can’t accept late appeals. If you (non-electronically) mail an appeal on day 35, DLSS won’t get it on time, and can’t hear the appeal.
- **Don’t appeal before a CI determination.** To challenge an employer’s decision, like not paying wages, you need to file a complaint first, not just an appeal; see [INFO #2A](#) on the complaint and investigation process. Appeals are of CI determinations, so they are filed only *after* a CI issues a determination.

What an Appeal Means for Deadlines Listed in the Determination

Carefully review the determination to see if it says that any deadlines will be postponed (“stayed”) when a valid appeal is filed. Otherwise, deadlines in determinations are not put on hold by the filing of an appeal.

Compliance Orders and Requests for Stays

- **What a Compliance Order is.** A Compliance Order is an order within the determination that requires an employer to do something *other than* pay money — for example, to change a policy that was found to be illegal. Many determinations order only payment of wages, penalties, and/or fines, with no Compliance Orders.
- **Requesting a hold (a “stay”) of a Compliance Order.** A party can ask to “stay” — put on hold — a Compliance Order until an appeal is decided. Filing an appeal does not stay an order (unless the

determination says otherwise or if a stay of a Compliance Order is granted). **If you want a Compliance Order stayed, you must specifically ask for that by filing a stay request with your appeal.** File the stay request form (available on the appeal webpage) as soon as you can, earlier than the 35-day deadline, so the Hearing Officer has time to consider a stay before any Compliance Order deadlines. There is no guarantee the Hearing Officer will grant a stay request.

The Steps after DLSS Receives an Appeal on Time

- **Notifying the parties of the appeal.** DLSS's Appeals Unit notifies all parties that an appeal is pending after reviewing the appeal request and determining that it is valid (timely and makes an argument that has any chance of changing the determination's outcome).
- **Creating a record.** The CI puts documents from the investigation together into one "record."
- **Sending the record and hearing instructions to the parties.** DLSS's Appeals Unit sends the parties information on when and how to participate in the hearing (the "Notice of Appeal Hearing"), the investigation record, and the appeal filing. (Please note that the hearing may be scheduled for several months after the appeal is filed.)
- **Resolving cases without a hearing.** The Appeals Unit Hearing Officer may notify you that they think the appeal can be resolved without a live hearing. If you disagree, you can explain why you think a hearing is needed.

Preparing for a Hearing

Review everything you receive from DLSS or any party:

- The Notice of Appeal Hearing, which tells you the date and time of the hearing, how to call in for the hearing, and how to file new documents or witness information.
- The investigation record and the appeal filing.
- Anything else you receive from DLSS's Appeals Unit or any party.

Prepare to make your case at the appeal hearing:

- Make your case based on facts and law, not personal opinions or attacks.
- You may want to make an outline or summary of the points you want to make at the hearing.

Send DLSS, and any other parties to the appeal, any new evidence, and a list of any witnesses:

- The Notice of Appeal Hearing sets a deadline for you to send the Appeals Unit, and the other parties, any new evidence and witness lists.
- Don't re-send anything you already sent a CI during the investigation, unless it's missing from the record.
- You aren't required to provide more evidence or to have witnesses testify. If you do have new evidence you want to be considered, or if you do plan to call hearing witnesses, you must do two things:
 - (1) **Send DLSS, and all other appeal parties**, all new documents, and the names and telephone numbers where you, and any witnesses you plan to call, can be reached for the hearing. Do this by the deadline in the Notice of Appeal Hearing, usually two weeks before the hearing.
 - (2) **Be prepared to explain why you're offering new evidence.** You must show **good cause** to offer new documents on appeal that you did not send to a CI during the investigation. Examples of when Hearing Officers have found good cause:
 - (A) an employer wanted to offer a copy of a check showing that it paid the claimant promptly after the CI issued the determination, to show that the employer qualified for the penalty reduction and fine waiver offered in the Notice of Assessment; and
 - (B) an employer shows it did not receive the Notice of Complaint until after the deadline to respond, and offers relevant evidence on appeal that it would have offered in the investigation.

On the other hand, Hearing Officers have not found good cause when, for example:

(C) an employer attached evidence to its appeal filing, but showed neither a good reason for missing the deadline to respond to the Notice of Complaint, nor any other extenuating circumstance (such as the determination raising issues beyond the Notice of Complaint).

If you don't follow these steps, the Hearing Officer may exclude your new evidence — meaning they won't consider it in making a decision. The Hearing Officer decides which evidence to allow on appeal after considering the facts and DLSS rules.

Requests for evidence filing extensions or accommodations:

- If you want an extension of the deadline to file evidence and provide witness information, ask and explain why, in writing, as soon as possible before the deadline. The original deadline remains in effect unless and until the Hearing Officer changes it.
- If you need to ask for the hearing to be rescheduled, ask as soon as possible, in writing. A rescheduling will be granted only if you give a good reason for being unable to call in at the scheduled hearing time.

You can choose to be represented by an attorney or other person, if you want, at your own cost. We don't represent any party or give legal advice. If someone is representing you, file an **Authorized Representative Form** (available online at: <https://cdle.colorado.gov/decisions-appeals-information>).

Changes to contact information: Let DLSS know if your contact information changes. Important communications will be sent to the contact information we have on file for you.

Subpoenas

If you need evidence you can't get on your own, or want to require someone else to testify, **you can ask for a subpoena, which is an order for someone to produce documents or to testify**. The Hearing Officer will review your request and grant it only if you show good cause. If you want a subpoena:

- Review the subpoena request instructions (<https://cdle.colorado.gov/decisions-appeals-information>).
- Send DLSS a completed [Request for Subpoena](#) at least 14 days before the hearing, but sooner if possible, to give everyone enough time — for the Hearing Officer to consider the request, for yourself to serve the subpoena, and for the recipient to comply with it.

Stopping an Appeal

- **Withdrawing an Appeal:** If you filed an appeal, but no longer want a Hearing Officer to make a decision on it, you can ask, in writing, to withdraw your appeal **before an appeal decision is issued**. If you withdraw your appeal, the CI's determination will become final, and you won't be able to re-file the appeal.
- **Settling an Appeal:** If you reach an agreement with the other party to settle the appeal, use the same process as withdrawing the appeal. However, you should review the [Appeal Voluntary Settlement and Withdrawal Form](#) (<https://cdle.colorado.gov/decisions-appeals-information>) for details about how a settlement agreement affects enforcement of a determination.
- **Terminating a Claim:** An employee who filed a wage claim can stop DLSS's process by submitting a written request at any time before a CI's determination is issued or within 35 days after a determination is issued, that the determination will be revoked, so there's nothing to appeal.

Participating in the Hearing

If you filed the appeal, you (or your authorized representative) must participate in the hearing. If you don't, the Hearing Officer may dismiss your appeal. It's the appealing party's burden to convince the Hearing Officer that the determination was wrong. They must show that the determination had a clear error of fact or law that led to an incorrect outcome.

If you didn't file the appeal, you don't need to participate in the hearing, but you probably should if you can. If you don't participate, the hearing will be held, and you won't have a chance to present your side of the story.

DLSS has hearings by recorded phone or video conferences. Join through the dial-in information in the Notice of Appeal Hearing. Tell your witnesses to be available to be called if and when the Hearing Officer decides to hear the witness's testimony. **Don't come in-person** unless DLSS specifically asks you to.

Hearings often take about two hours, but they can be longer or shorter, depending on the number of witnesses, how complex the case is, etc. If it takes longer, the Hearing Officer may schedule the hearing to continue another day. In planning for the hearing, keep in mind that:

- You'll be able to testify, question witnesses, explain why the Hearing Officer should consider any new documents you filed on appeal), and explain what you think the Hearing Officer should decide. Other parties and the Hearing Officer may ask you questions. If you don't understand something, tell the Hearing Officer.
- You should have copies ready of the investigation record, appeal filing, and other relevant documents in front of you and ready to review.

After the Hearing

The Hearing Officer will write a decision and send it to all parties. Writing decisions can take weeks or months, depending on the other work assigned to the Hearing Officer and the complexity of the appeal.

If you wanted to call in for the hearing, but you didn't, and if you had a good reason for that, you can ask in writing for a new hearing as soon as possible, but no later than 35 calendar days after the hearing. You must explain why you had good cause for not participating. The Hearing Officer can schedule another hearing if they decide you had good cause for missing the hearing.

Payment of Amounts Ordered and Proof of Payment

- **If an employer appeals a CI's determination**, it should pay any wages it agrees it owes. Many wage claim determinations offer a deal for reduced penalties and waived fines to encourage prompt payment(if the employer meets certain conditions in the Notice of Assessment, including paying all wages owed within 14 days). If the employer does not meet all the terms for accepting that offer, it expires. If the appeal ends with a decision that the employer owes wages, it'll be too late for the employer to accept the earlier offer of a reduced payment.
- **If an employee accepts payment** of the full wages and penalties ordered in the CI's determination — for example, if they cash a check for both amounts — they can't also appeal the determination.
- **Pay wages or penalties** directly to the employee's most recent address (usually in the determination packet, or page one of any appeal decision), unless DLSS said otherwise. **Income tax** generally may be withheld from **wages** but **not penalties**. Send DLSS **proof of payment** as instructed in the Division's determination.
- **Pay fines** by a check made out to "Colorado Division of Labor Standards and Statistics - Wage Theft Enforcement Fund," sent to the DLSS address above (or follow any more specific directions in the Division's determination). Put the claim number (if any) on the check's memo line.

Disagreement with a Hearing Officer's Decision

If you disagree with the appeal decision, generally, you can ask for judicial review in the appropriate Colorado district court within 35 days of the decision. If you don't, the decision will be final. We can't assist in the court process. If you need help, ask an attorney or visit www.courts.state.co.us.

Different Procedures for Other Types of Appeals

This INFO focuses on appeals of determinations on **wage-and-hour** complaints or direct investigations. Those include claims under a range of wage-and-hour laws, including the Colorado Wage Act, Colorado Overtime and Minimum Pay Standards Order (“COMPS Order”), and Healthy Families and Workplaces Act (“HFWA”).

The appeals process is **similar** for determinations under **the following other labor laws**:

- retaliation or interference with rights under a range of laws — the Protected Health/Safety Expression and Whistleblowing (“PHEW”) law, the Colorado Wage Act, and the Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving (“WARNING”) Rules;
- pay and promotion transparency under the Equal Pay for Equal Work Act;
- labor conditions under the Agricultural Labor Rights and Responsibilities Act and its related rules; and
- the Colorado Chance to Compete Act (concerning criminal history).

The appeal process is **significantly different** for determinations under **the following other labor laws**:

- Appeals of determinations under the **Employment Opportunity Act** (concerning credit history), the **Social Media and the Workplace law**, the **Keep Jobs in Colorado Act**, **Delivery Network Companies and Transportation Network Companies statute**, and **Supplemental Healthcare Staffing Agencies statute** fines are held using the process in the Colorado Administrative Procedure Act (“APA”) (C.R.S. 24-4-105 and -106):
 - Parties must file a written answer within 30 days of the Notice of Appeal Hearing, or the Hearing Officer may enter a “default” finding for the other party. If a party that failed to respond shows good cause for its failure, the default may be set aside within 10 days. (A party doesn’t have to show “good cause” for providing new evidence on appeal for these claims.)
 - Parties can file “exceptions” with the DLSS Director to appeal a Hearing Officer’s decision within 30 days; Hearing Officer fact findings can be set aside only if “contrary to the weight of the evidence.” Then, within 35 days, a party can seek judicial review of the DLSS Director’s decision.
- Appeals under the **Colorado Partnership for Quality Jobs and Services Act**:
 - State Personnel Director (“SPD”) **union coverage decisions** can be appealed by the union or the state within 35 days. The appealing party must give a copy of their appeal to SPD, which has 21 days to respond; then the appealing party has 21 days to reply. The Hearing Officer reviews the SPD’s decision “*de novo*” (as if a decision was not previously made), and they may decide without a hearing.
 - In **unfair labor practice** appeals, review is for clear error in fact findings, *de novo* for legal questions.
- Appeals of **Labor Peace Act and Industrial Relations Act** decisions:
 - **Union Election Certification:** A party can file a written appeal to the DLSS Director within 5 days after the Director certifies union election results, claiming error or fraud in the results. The Director will give parties 7 days to file and serve written responses, and they may investigate or hold a hearing.
 - **Unfair Labor Practices:** The Director can designate a deputy or Hearing Officer to hold a hearing and write a decision and recommendation that becomes final if the Director doesn’t act on it within 20 days. The decision may be appealed to court within 35 days.
 - **Requests for Intervention under Industrial Relations Act:** The Director or their designee may hold a hearing and then issue a written decision.

For More Information: Visit the Division’s website (ColoradoLaborLaw.gov), email cdle_ls_appeals@state.co.us (or cdle_di_appeals@state.co.us if asking about a direct investigation appeal), or call 303-318-8442. Please do not ask questions about appeals to the CI who issued the determination.