



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

Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("Colorado WARNING Rules"), 7 CCR 1103-11 (2023), as adopted November 10, 2022.

I. BASIS: These amendments to the Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("Colorado WARNING Rules") serve important public needs that the Director of the Division of Labor Standards and Statistics (hereinafter, "Director" and "Division") finds best served by these rule updates, amendments, and supplements, including but not limited to implementing, and clarifying enforcement of, recent changes to Colorado labor law in the Agricultural Labor Rights and Responsibilities Act, Colorado Senate Bill 21-087 ("ALRRA") as amended by Colorado House Bill 22-1313, the Protected Health/Safety Expression and Whistleblowing Act ("PHEW"), C.R.S. § 8-14.4-101, et. seq., as amended by Colorado Senate Bill 22-097; the Colorado Wage Act, C.R.S. Title 8, Article 4, as amended by Colorado Senate Bill 22-161, as well as in other recently effective laws, including but not limited to: the Public Health Emergency Whistleblower Act of 2020, C.R.S. § 8-14.4-101, et seq.; the Healthy Families and Workplaces Act ("HFWA"), C.R.S. § 8-13.3-401, et seq.; the Equal Pay for Equal Work Act ("EPEWA"), C.R.S. §§ 8-5-101 et seq.; the Chance to Compete Act, C.R.S. § 8-2-130; the Wage Protection Rules, 7 CCR 1103-7; and the Colorado Overtime and Minimum Pay Standards ("COMPS") Order, 7 CCR 1103-1.

II. SPECIFIC STATUTORY AUTHORITY: The Director is authorized to adopt regulations and rules to enforce, execute, implement, apply, and interpret Articles 1–6, 12, 13.3, 13.5, and 14.4 of C.R.S. Title 8, and all rules, regulations, investigations, and proceedings thereunder, by the Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of the above-listed Articles, including but not limited to: C.R.S. §§ 8-1-101, -103, -107, -108, -111, -116, -117, -130; 8-2-130, -206; 8-4-110, -111, -113, -120; 8-5-203; 8-6-102, -104, -105, -106, -108, -109, -111, -116, -117; 8-12-115; 8-13.3-403, -407, -408, -409, -410; 8-13.5-204; and 8-14.4-103, -105, and -108.

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. Rule 2.4: Certified Copies

The adopted version of Rule 2.4, the "certified copies" rule within these WARNING Rules, is changed for consistency with parallel rule changes in Rule 2.4 Wage Protection Rules, the primary and original rules that define, and detail the procedures for and the effect of, a "certified copy" of a Division decision. SB161 amended the "certified copy" statute, yielding changes to Wage Protection Rule 2.4 to conform to those statutory amendments. WARNING Rule 2.4 was modeled on, and intended to parallel, Wage Protection Rule 2.4; accordingly it is streamlined to expressly reference and incorporate by reference, the updated version of Wage Protection Rule 2.4.

B. Rule 2.18: Definitions under C.R.S. § 8-4-120

Rule 2.18 defines both "filed any complaint," and "proceeding," under C.R.S. § 8-4-120(a)-(b) which already existed in the Colorado Wage Act, but to clarify the scope of the protected activity the Division now has authority to investigate and order remedies for, under Colorado Senate Bill 22-161 ("SB161").

C. Rule 2.19: Definition of "public health agency" as used in C.R.S. § 8-14.4-102(3)(b)

Rule 2.19 defines "public health agency" under C.R.S. § 8-14.4-102(3)(b) for the purposes of clarifying which agencies' recommendations concerning personal protective equipment fall within the scope of protected activity related to the wearing of personal protective equipment under C.R.S. § 8-14.4-102(3) and WARNING Rule 5.2.

D. Rule 3.5.3(A)(1): Remedies and Orders in Determinations by the Division

Rule 3.5.3(A)(I) is revised to conform with SB161, which amended the Division's authority to investigate retaliation claims under the Colorado Wage Act, C.R.S. § 8-4-120, and addresses the authority of the Division to order

relief in cases where a violation is found to include the legal and equitable remedies listed in C.R.S. § 8-4-120(3)(a). Rule 3.5.3(A)(I) addresses this new authority to order wages, fines, penalties, and other remedies as listed in the statute.

E. Rule 3.9: Attorney Fees and Costs & Rule 3.10: Administrative Liens and Levies

Rule 3.9 adds, by incorporating proposed Rule 7 of the Wage Protection Rules, 7 CCR 1103-7, procedures for parties to apply for attorney fees and costs, to dispute another parties' application for attorney fees or costs, and to appeal any award. This authority already existed under certain laws implemented by the Colorado WARNING Rules (e.g., PHEW at C.R.S. § 8-14.4-105(3)(a), and the ALRRA at C.R.S. § 8-2-206(3)(c) and 8-13.5-204(1)(b), (2)(a)(III)). However, because SB161 expanded the Division's authority to order attorney fees and costs in wage claims to the extent that it necessitated a rule change, the Division proposes the same procedure here.

Similarly, SB161 gave the Division authority to issue notices of administrative liens and levies against the assets of employers or other persons or entities who fail to pay wages, penalties, or fines due. Rule 3.10 incorporates the procedures detailed in Wage Protection Rule 8 to the extent applicable here.

F. Rules 4.1.1(B) Poster Requirements; and Rule 5.1 Protected Activity under PHEW

Rules 4.1.1(b) and 5.1 are revised to conform with Colorado Senate Bill 22-097, which amended the PHEW requirement that "raising any reasonable concern about workplace violations of government health or safety rules, or about an otherwise significant workplace threat to health or safety," be "related to a public health emergency."

G. Rule 4.2.2 Employer Compliance with Public Health Emergency Requirements under ALRRA

Rule 4.2.2 is revised to conform with Colorado House Bill 22-1313, which amended the ALRRA's requirements for employer-provided housing during a public health emergency in C.R.S. § 8-14.4-109. Among these amendments, C.R.S. § 8-14.4-109(2) added a definition of "public health emergency" specific to rights in agricultural employment, which is incorporated here. Additionally, the rule is revised to reflect updated guidance from the Colorado Department of Public Health and Environment and the Occupational Safety and Health Administration, and with clarifying edits.

V. EFFECTIVE DATE. These rules take effect January 1, 2023.



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

November 10, 2022

Date