DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor

COLORADO MINIMUM WAGE ORDER NUMBER 29

7 CCR 1103-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Authority:

This Colorado Minimum Wage Order Number 29 is promulgated under the authority vested by Title 8, Articles 1, 4, 6, and 12, C.R.S. (2012). This Wage Order shall supersede all previous Wage Orders.

Important Information on Minimum Wage:

Colorado Minimum Wage Order Number 29 establishes a Colorado state minimum wage pursuant to the requirements of Article XVIII, Section 15, of the Colorado Constitution.

In addition to state minimum wage requirements, there are also federal minimum wage requirements. If an employee is covered by both state and federal minimum wage laws, the law which provides a higher minimum wage or sets a higher standard shall apply. For information on federal minimum wage law, contact the U.S. Department of Labor.

2013 Colorado State Minimum Wage:

Pursuant to the inflation adjustment requirement of Article XVIII, Section 15, of the Colorado Constitution, if either of the following two situations applies to an employee, then the employee is entitled to the $7.78 state minimum wage or the $4.76 state tipped employee minimum wage, effective January 1, 2013:

1. The employee is covered by the minimum wage provisions of Colorado Minimum Wage Order Number 29.

2. The employee is covered by the minimum wage provisions of the Fair Labor Standards Act.

Some restrictions and exemptions may apply; contact the Colorado Division of Labor for additional information. The Colorado Division of Labor accepts complaints for minimum wage violations involving employees who receive the state or federal minimum wage.

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1. Coverage:

This Colorado Minimum Wage Order Number 29 regulates wages, hours, working conditions and procedures for certain employers and employees for work performed within the boundaries of the state of Colorado in the following industries:

(A) Retail and Service
(B) Commercial Support Service
(C) Food and Beverage
(D) Health and Medical

2. Definitions:

(A) **Retail and Service:** any business or enterprise that sells or offers for sale, any service, commodity, article, good, real estate, wares, or merchandise to the consuming public, and that generates 50% or more of its annual dollar volume of business from such sales. The retail and service industry offers goods or services that will not be made available for resale. It also includes amusement and recreation, public accommodations, banks, credit unions, savings and loans, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

(B) **Commercial Support Service:** any business or enterprise engaged directly or indirectly in providing services to other commercial firms through the use of service employees who perform duties such as: clerical, keypunching, janitorial, laundry or dry cleaning, security, building or plant maintenance, parking attendants, equipment operations, landscaping and grounds maintenance. Commercial support service also includes temporary help firms which provide employees to any business or enterprise covered by this wage order. Any employee, including office personnel, engaged in the performance of work connected with or incidental to such business or enterprise, is covered by the provisions of this wage order.

(C) **Food and Beverage:** any business or enterprise that prepares and offers for sale, food or beverages for consumption either on or off the premises. Such business or enterprise includes but is not limited to: restaurants, snack bars, drinking establishments, catering services, fast-food businesses, country clubs and any other business or establishment required to have a food or liquor license or permit, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

(D) **Health and Medical:** any business or enterprise engaged in providing medical, dental, surgical or other health services including but not limited to medical and dental offices, hospitals, home health care, hospice care, nursing homes, and mental health centers, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

Director: the director of the division of labor.

Division: the division of labor in the Colorado Department of Labor and Employment.

Emancipated Minor: any individual less than eighteen years of age who:

a) has the sole or primary responsibility for his or her own support.

b) is married and living away from parents or guardian.

c) is able to show that his or her well-being is substantially dependent upon being gainfully employed.

Emergency: an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action with regard to the employment of minors in overtime situations.

Employee: any person performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. For the purpose of this order, an individual primarily free from control and direction in the performance of contracted labor or services, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an employee.

Employer: every person, firm, partnership, association, corporation, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above-mentioned classes, employing any person in Colorado, except that the provisions of this order shall not apply to state, federal and municipal governments or political sub-divisions thereof, including; cities, counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or special districts organized and existing under the laws of Colorado.

Full Time Employee: for the purpose of the exemption described in section 5(b) of this wage order, a full time employee is one who performs work for the benefit of an employer for a minimum of 32 hours per work week.

Regular Rate of Pay: the regular rate of pay actually paid to employees for a standard, non-overtime workweek. The regular rate of pay shall include all compensation paid to employees including the set hourly rate, shift differential, minimum wage tip credit, non-discretionary bonuses, production bonuses, and commissions used for the purpose of calculating the overtime hourly rate for non-exempt employees. Business expenses, bonafide gifts, discretionary bonuses, employer investment contributions, vacation pay, holiday pay, sick leave, jury duty, or other pay for non-work hours may be excluded from the regular rate of pay.

Time Worked: the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work whether or not required to do so. Requiring or permitting employees to remain at the place of employment awaiting a decision on job assignment or when to begin work or to perform clean up or other duties "off the clock" shall be considered time worked and said time must be compensated.

a) **Travel Time:** all travel time spent at the control or direction of an employer, excluding normal home to work travel, shall be considered as time worked.

b) **Sleep Time:** where an employee's tour of duty is 24 hours or longer, up to 8 hours of sleeping time can be excluded from overtime compensation, if: (1) an express agreement excluding sleeping time exists; and (2) adequate sleeping facilities for an uninterrupted night's sleep are provided; and (3) at least five hours of sleep are possible during the scheduled sleeping periods; and (4) interruptions to perform duties are considered time worked. When said employee's tour of duty is less than 24 hours, periods during which the employee is permitted to sleep are compensable work time, as long as the employee is on duty and must work when required. Only actual sleep time may be excluded up to a maximum of eight (8) hours per work day. When work related interruptions prevent five (5) hours of sleep, the employee shall be compensated for the entire work day.

Tipped Employee: any employee engaged in an occupation in which he or she customarily and regularly receives more than $30.00 a month in tips. Tips include amounts designated as a "tip" by credit card customers on their charge slips. Nothing herein contained shall prevent an employer covered hereby from requiring employees to share or allocate such tips or gratuities on a pre-established basis among other employees of said business who customarily and regularly receive tips. Employer-required sharing of tips with employees who do not customarily and regularly receive tips, such as management or food preparers, or deduction of credit card processing fees from tipped employees, shall nullify allowable tip credits towards the minimum wage authorized in section 3(c).

Wages or Compensation: all amounts due employees for labor or service; whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same, or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement, provided that the labor or service is performed personally by the person demanding payment.

Workday: any consecutive twenty-four (24) hour period starting with the same hour each day and the same hour as the beginning of the workweek. The workday is set by the employer and may accommodate flexible work shift scheduling.

Work Shift: the hours an employee is normally scheduled to work within a work day.

Workweek: any consecutive seven (7) day period starting with the same calendar day and hour each week. A workweek is a fixed and recurring period of 168 hours, seven (7) consecutive twenty-four (24) hour periods.

3. Minimum Wage and Allowable Credits:

Minimum Wage: all adult employees and emancipated minors, employed in any of the industries covered herein, whether employed on an hourly, piecework, commission, time, task, or other basis, shall be paid not less than $7.78 effective January 1, 2013, less any applicable lawful credits for all hours worked.

Allowable Credits: the only allowable credits that may be taken by an employer toward the minimum wage are as follows:

a) **Lodging:** the reasonable cost or fair market value for lodging (not to exceed $25.00 per week) furnished by the employer and used by the employee may be considered part of the minimum wage when furnished.

b) **Meals:** the reasonable cost or fair market value of meals provided to the employee may be used as part of the minimum hourly wage. No profits to the employer may be included in the reasonable cost or fair market value of such meals furnished. The meal must be consumed before deductions are permitted.

c) **Tips:** employers of "tipped employees" must pay a cash wage of at least $4.76 per hour if they claim a tip credit against their minimum hourly wage obligation. If an employee's tips combined with the employer's cash wage of at least $4.76 per hour do not equal the minimum hourly wage, the employer must make up the difference in cash wages.

Exception: employees whose physical disability has been certified by the director to significantly impair such disabled employee's ability to perform the duties involved in the employment, and unemancipated minors under 18 years of age, may be paid 15% below the current minimum wage less any applicable lawful credits, for all hours worked.

4. Overtime Hours:

Overtime Rate: employees shall be paid time and one-half of the regular rate of pay for any work in excess of: (1) forty (40) hours per workweek; (2) twelve (12) hours per workday, or (3) twelve (12) consecutive hours without regard to the starting and ending time of the workday (excluding duty free meal periods), whichever calculation results in the greater payment of wages. Hours worked in two or more workweeks shall not be averaged for computation of overtime. Performance of work in two or more positions at different pay rates for the same employer shall be computed at the overtime rate based on the regular rate of pay for the position in which the overtime occurs, or at a weighted average of the rates for each position, as provided in the Fair Labor Standards Act.

Note: the requirement to pay overtime for work in excess of twelve (12) consecutive hours will not alter the employee's established workday or workweek, as previously defined.

Exception: in the event of a bonafide emergency situation, an employer may require minors, subject to the Colorado youth employment opportunity act, to work in excess of eight (8) hours in a twenty-four (24) hour period or in excess of forty (40) hours per week. Said minors shall be compensated at time and one-half the regular rate of pay for all hours worked in excess of eight (8) hours in any twenty-four (24) hour period, or for all work in excess of forty (40) hours per week, whichever calculation results in the greater payment of wages. The employer shall keep specific records to substantiate the existence of a bonafide emergency.

Note: a person under eighteen (18) years of age who has received a high school diploma or a passing grade on a General Education Development (GED) examination, is not considered a minor.

5. Exemptions from the Wage Order:

The following employees or occupations, as defined below, are exempt from all provisions of Minimum Wage Order No. 29: administrative, executive/supervisor, professional, outside sales employees, and elected officials and members of their staff. Other exemptions are: companions, casual babysitters, and domestic employees employed by households or family members to perform duties in private residences, property managers, interstate drivers, driver helpers, loaders or mechanics of motor carriers, taxi cab drivers, and bona fide volunteers. Also exempt are: students employed by sororities, fraternities, college clubs, or dormitories, and students employed in a work experience study program and employees working in laundries of charitable institutions which pay no wages to workers and inmates, or patient workers who work in institutional laundries.

Exemption Definitions:

a) **Administrative Employee:** a salaried individual who directly serves the executive, and regularly performs duties important to the decision-making process of the executive. Said employee regularly exercises independent judgment and discretion in matters of significance and their primary duty is non-manual in nature and directly related to management policies or general business operations.

b) **Executive or Supervisor:** a salaried employee earning in excess of the equivalent of the minimum wage for all hours worked in a workweek. Said employee must supervise the work of at least two full-time employees and have the authority to hire and fire, or to effectively recommend such action. The executive or supervisor must spend a minimum of 50% percent of the workweek in duties directly related to supervision.

c) **Professional:** a salaried individual employed in a field of endeavor who has knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. The professional employee must be employed in the field in which they are trained to be considered a professional employee.

Note: the requirement that a professional employee must be paid on a salary basis does not apply to doctors, lawyers, teachers, and employees in highly technical computer occupations earning at least $27.63 per hour.

d) **Outside Salesperson:** any person employed primarily away from the employer's place of business or enterprise for the purpose of making sales or obtaining orders or contracts for any commodities, articles, goods, real estate, wares, merchandise or services. Such outside sales employee must spend a minimum of 80% of the workweek in activities directly related to their own outside sales.

6. Exemptions from Overtime:

The following employees are exempt from the overtime provisions of Minimum Wage Order No. 29:

a) Salespersons, parts-persons, and mechanics employed by automobile, truck, or farm implement (retail) dealers; salespersons employed by trailer, aircraft and boat (retail) dealers.

b) **Commission Sales Exemption:** sales employees of retail or service industries paid on a commission basis, provided that 50% of their total earnings in a pay period are derived from commission sales, and their regular rate of pay is at least one and one-half times the minimum wage. This exemption is only applicable for employees of retail or service employers who receive in excess of 75% of their annual dollar volume from retail or service sales.

c) **Ski Industry Exemption:** employees of the ski industry performing duties directly related to ski area operations for downhill skiing or snow boarding, and those employees engaged in providing food and beverage services at on-mountain locations, are exempt from the forty (40) hour overtime requirement of this wage order. The daily overtime requirement of one and one-half the regular rate of pay for all hours worked in excess of twelve (12) in a workday shall apply. This partial overtime exemption does not apply to ski area employees performing duties related to lodging.

d) **Medical Transportation Exemption:** employees of the medical transportation industry who are scheduled to work twenty-four (24) hour shifts, are exempt from the twelve (12) hour overtime requirement **provided** they receive overtime wages for hours worked in excess of forty (40) hours per work week.

Note: a hospital or nursing home may seek an agreement with individual employees to pay overtime pursuant to the provisions of the Federal Fair Labor Standards Act **"8 and 80 rule",** whereby employees are paid time and one-half their regular rate of pay for any work performed in excess of eighty (80) hours in a fourteen (14) consecutive day period and for any work in excess of eight (8) hours per day.

7. Meal Periods:

Employees shall be entitled to an uninterrupted and "duty free" meal period of at least a thirty minute duration when the scheduled work shift exceeds five consecutive hours of work. The employees must be completely relieved of all duties and permitted to pursue personal activities to qualify as a non-work, uncompensated period of time. When the nature of the business activity or other circumstances exist that makes an uninterrupted meal period impractical, the employee shall be permitted to consume an "on-duty" meal while performing duties. Employees shall be permitted to fully consume a meal of choice "on the job" and be fully compensated for the "on-duty" meal period without any loss of time or compensation.

8. Rest Periods:

Every employer shall authorize and permit rest periods, which, insofar as practicable, shall be in the middle of each four (4) hour work period. A compensated ten (10) minute rest period for each four (4) hours or major fractions thereof shall be permitted for all employees. Such rest periods shall not be deducted from the employee's wages. It is not necessary that the employee leave the premises for said rest period.

9. Legal Deductions:

No employer shall make a deduction from the wages or compensation of an employee in violation of the Colorado Wage Act, § 8-4-105, C.R.S. (2012).

10. Presents, Tips, or Gratuities:

It shall be unlawful to deny presents, tips, or gratuities intended for employees in violation of the Colorado Wage Act, § 8-4-103(6), C.R.S. (2012).

11. Wearing of Uniforms:

Where the wearing of a particular uniform or special apparel is a condition of employment, the employer shall pay the cost of purchases, maintenance, and cleaning of the uniforms or special apparel. If the uniform furnished by the employer is plain and washable and does not need or require special care such as ironing, dry cleaning, pressing, etc., the employer need not maintain or pay for cleaning. An employer may require a reasonable deposit (up to one-half of actual cost) as security for the return of each uniform furnished to employees upon issuance of a receipt to the employee for such deposit. The entire deposit

shall be returned to the employee when the uniform is returned. The cost of ordinary wear and tear of a uniform or special apparel shall not be deducted from the employee's wages or deposit.

Exception: clothing accepted as ordinary street wear and the ordinary white or any light colored plain and washable uniform need not be furnished by the employer unless a special color, make, pattern, logo or material is required.

12. Record Keeping:

Every employer shall keep at the place of employment or at the employer's principal place of business in Colorado, a true and accurate record for each employee which contains the following information:

a) name, address, social security number, occupation and date of hire of said employee.

b) date of birth, if the employee is under eighteen (18) years of age.

c) daily record of all hours worked.

d) record of allowable credits and declared tips.

e) regular rates of pay, gross wages earned, withholdings made and net amounts paid each pay period. An itemized earnings statement of this information shall be provided to each employee each pay period. Such records shall be kept on file at least two years from date of entry.

13. Administration and Interpretation:

The division of labor shall have jurisdiction over all questions of fact arising with respect to the administration and interpretation of this order.

14. Separability Clause:

If any section, sentence, clause or phrase of this order is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of the order.

15. Filing of Complaints:

Any person may register with the division, a written complaint that alleges a violation of the Minimum Wage Order within two (2) years of said violation(s).

16. Investigations:

The director or designated agent shall investigate and take all proceedings necessary to enforce the payment of the minimum wage rate and other alleged violations of this wage order, pursuant to this article and the Colorado Wage Act § 8-4-101 C.R.S. et seq.

17. Enforcement:

The director has the power, in person or through any authorized representative, to inspect, examine and make excerpts from any book, reports, contracts, payrolls, documents, papers, and other records of any employer that in any way pertain to the question of wages, and to require from any such employer full and true statement of the wages paid.

18. Recovery of Wages:

An employee paid less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with costs of the suit, pursuant to § 8-6-118 C.R.S.

19. Reprisals:

Employers shall not threaten, coerce, or discharge any employee because of participation in any investigation or hearing relating to the minimum wage act. Violators may be subject to a fine of not less than two hundred dollars ($200.00), up to one thousand dollars ($1,000.00) for each violation, pursuant to § 8-6-115 C.R.S.

20. Violations:

Any employer or other person who individually or as an officer, agent or employee of a corporation or other person, pays or causes to be paid an employee covered by this wage order less than the minimum wage, is guilty of a misdemeanor. Conviction thereof will subject the offender to a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days, nor more than one (1) year, or both such fine and imprisonment, pursuant to § 8-6-116 C.R.S.

21. Posting Requirements:

Every employer subject to this wage order must display a wage order poster in an area frequented by employees where it may be easily read during the work day. If the work site or other conditions make this unpractical, the employer shall keep a copy of this wage order and make it available to employees upon request.

22. Dual Jurisdiction:

Whenever employers are subjected to both federal and Colorado law, the law providing greater protection or setting the higher standard shall apply. For information on the federal law contact the nearest office of the U.S. Department of Labor, Wage and Hour Division.

Editor's Notes

History

Entire rule eff. 01/01/2008.

Entire rule eff. 01/01/2009.

Entire rule eff. 01/01/2010.

Entire rule eff. 01/01/2011.

Entire rule eff. 01/01/2012.

Annotations

Wrongful discharge in violation of public policy was based upon not receiving rest and lunch breaks in violation of Wage Order No. 22, sections 7 and 8, promulgated by the Colorado Department of Labor and Employment. *Bonidy v. Vail Valley Ctr. for Aesthetic Dentistry, P.C., and James J. Harding, DDS., Colo. App. 06CA1849*