



Fact Sheet: Summary of Proposed Colorado Overtime & Minimum Pay Standards Order (COMPS Order) #36, 7 CCR 1103-1 (2020)

Overview

The Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment is replacing [Minimum Wage Order #35](#) with Colorado Overtime and Minimum Pay Standards Order (“COMPS Order) #36, in a statutory rulemaking process that began by publishing a proposed rule on November 15, 2019.

The COMPS Order is the source of critical Colorado wage rights and responsibilities beyond those provided by federal law: eligibility for the Colorado minimum wage; overtime pay for work past 40 hours per week (as federal law provides) and 12 hours per day; meal and rest breaks; and other employee and employer rights and responsibilities, such as what wage deductions are permissible, how hourly rates are calculated from non-hourly pay for overtime, and posting the Order’s provisions to employees for ease of access.

This fact sheet details key new aspects of the proposed rules. The two major changes are (a) expanded coverage and (b) a new salary threshold for exemption. Other changes are clarifications or modest adjustments of narrower wage rules that resolve ambiguities or implement necessary modernizations. This fact sheet aims to summarize all *substantive* changes, but cannot detail all *wording* differences, since a key goal of the COMPS Order is to rewrite archaic rules that have proven to need clarification. Finally, this fact sheet is not a summary of a *final* rule, which will come only after the statutory notice and comment process detailed below.

Pre-rulemaking comment period:	Wednesday, March 6, 2019
Pre-rulemaking public testimony:	Wednesday, August 28, 2019
Proposed rule:	Friday, November 15, 2019
Public hearing:	Monday, December 16, 2019
Comment deadline:	Tuesday, December 31, 2019
Adoption of final rule:	Friday, January 10, 2020
Effective date of rule:	Sunday, March 1, 2020, except July 1, 2020 for new exempt salaries

Employers or employees can ask the Division questions about the COMPS Order at 303-318-8441 or cdle_labor_standards@state.co.us. For press inquiries, contact Cher Haavind at cher.haavind@state.co.us.

COMPS Order Coverage

Previous wage orders covered only four broadly defined industries: Retail and Service; Food and Beverage; Commercial Support Service; and Health and Medical. The COMPS Order instead presumptively covers all employees, unless specifically excluded. Before, whether an employee received wage order protections depended not just on his or her duties, but on what the employer’s line of business was: a janitor at a retail store was covered, but not a janitor doing the same work at a construction firm; a construction worker could be covered if the employer was hired for certain commercial work, but not for a residential site. Employers and employees alike reported that the four coverage categories were confusing, making wage disputes more likely, more time-consuming, and more costly. The move to presumptive coverage eliminates that confusion and assures that any exemptions are based on an identified need specific to the employer or employee.

Rule 2 lists numerous exemptions, some spanning all employers of certain types, others for specific jobs. For example, as to agricultural jobs: those fully exempt from federal wage law are fully exempt from the COMPS Order; all other agricultural jobs are exempt from three of the four core overtime/break rules (weekly overtime, daily overtime, and meal breaks), and have modified, more flexible rest break rules.

Salary Thresholds for Exemption

For an employee to be exempt from overtime and break rights, s/he must have exempt duties (executive/supervisory, professional, or a few others) and be paid a sufficient salary. Federal law sets a minimum exempt salary of \$35,568, but leaves states free to adopt higher standards. COMPS Rule 2.5 adopts the following minimum salary for exemption: Starting at \$42,500, then after 2021, rising \$3,000 per year, until

reaching \$57,500 in 2026, and then adjusting annually by the same Consumer Price Index (“CPI”) that adjusts the Colorado minimum wage annually. This salary level, as of 2025 (\$54,500) and 2026 (\$57,500), will parallel the levels that the U.S. Department of Labor adopted in 2016 (which started at \$47,476, adjusted by CPI before being changed to \$35,568 in 2019) — but with a six-year phase-in, to let employers adjust gradually.

The rule does not *require anyone* to be paid these salaries. The salaries apply only to employees with exempt duties (executive/supervisory, professional, etc.); the COMPS Rule parallels federal wage law in requiring no minimum salary for doctors, lawyers, and teachers; and employers have options as to how to comply. Options include (a) paying the exemption salary, or (b) instead paying hourly with overtime at any rate at or above the Colorado minimum wage, or (c) shifting hours among employees to minimize overtime hours.

Adding Owner & Non-Profit Proprietor Exemptions, Removing Domestic & Companion Exemptions

Rule 2.2.5 adds a new “Owners” exemption previously present in only federal law. Those who help manage a business and have 20% ownership of the company need not receive any salary to be exempt, which will accommodate Colorado’s thriving community of technology and other startup businesses.

Rule 2.2.5 also adds an additional exemption not present in federal law or prior wage orders: The highest-ranked and highest-paid employee of a non-profit employer is now exempt as a “Proprietor,” as long as s/he is paid at least the minimum salary in Rule 2.5. This accommodates non-profit organizations whose top employees may not qualify for the Rule 2.2.2 “executives or supervisors” exemption, whether because they supervise mainly non-employee volunteers or for other reasons specific to their duties running non-profits.

Rule 2.2.7 removes an exemption for “companions” and other “domestic” workers that had covered only those employed directly “by households or family members to perform duties in private residences.” This exemption inconsistently covered work provided by a business (not directly for customers), disadvantaging the businesses and depriving some low-wage workers of protections others receive. Those needing exemption are mainly any who may qualify as “independent contractors,” who already are exempted by the Order’s “employee” definition.

Clarifying Various Job-Specific Exemptions

Other exemptions are not added or removed from prior wage orders, but are clarified or modestly modified — because prior orders had ambiguous language that yielded more wage disputes and litigation, even in small cases. The “interstate drivers, driver helpers, loaders or mechanics of motor carriers” exemption left unclear what “interstate” meant and applied to; Rule 2.2.6 clarifies that the jobs, which parallel a list in a federal interstate transport statute, must be on interstate transport. Rule 2.2.6 also had a previously undefined “taxi drivers” exemption; it now clarifies that it is for taxi service providers licensed by a state or local government. Rule 2.2.7 clarifies that another exemption list — student residence workers, property managers, and patient workers in institutional laundries — covers in-residence work requiring exemption from hours rules. The Rule 2.2.8 student worker exemption clarifies that it covers students enrolled for credit, not all workers who happen to be students. Rule 2.52(B) adds that after 2020, the \$27.63 hourly rate for the “highly technical computer occupations” exemption will inflation-adjust by the same consumer price index as the state minimum wage.

Clarifying How Federal, State, and Local Wage Laws All Apply

Just as federal wage law lets states set higher standards, Colorado law as of 2019 lets localities set higher standards. Because this is a common point of confusion for employers and employees, Rule 3.2 clarifies that what applies is the *greater* of whatever federal, state, or local wage rules apply. Because state law requires the Division to accept “unpaid wage” complaints for *any* “amounts for labor or service performed by employees” that are “earned, vested, and determinable,” Rule 3.2 clarifies that the Division will accept complaints for unpaid minimum or overtime wages required by local law, state law, or federal law — in conformity with court holdings that unpaid wages required by federal law are a violation of Colorado’s wage payment law.

Rest Periods

Rule 5.2 resolves two common points of confusion about the paid “rest periods” that prior wage orders already required. First, Rule 5.2 clarifies that, “to the extent practical,” rest periods shall be provided in the middle of

each 4-hour work period, because a rest period at the start or end of a shift fails to serve its purpose: “rest.” Second, it clarifies that if an employee is *not* allowed a 10-minute paid rest period, s/he is owed 10 minutes’ pay, because — as multiple courts have held — when an employer must provide 10 minutes’ paid rest, but instead receives 10 minutes’ work, the employee has worked 10 extra minutes without 10 extra minutes’ pay.

Deductions, Credits, and Charges

Rule 6.2 continues to let employers reduce wages by taking a “credit” for providing meals or lodging, but it clarifies and modifies the rules for such credits. First, for meal credits, Rule 6.2 eliminates the existing requirement that a meal “must be consumed before deductions are permitted,” which made an employer’s right to a credit depend on whether an employee actually ate the meal, after the employer already paid for and provided it. Rule 6.2 now requires only that accepting a meal must be voluntary for the employee. Rule 6.2 keeps the existing requirement that meals must be provided at cost or value, without added profits.

Second, for lodging credits, Rule 6.2 raises the dollar limit and adds elements, similar to those in federal wage law, of voluntariness and employee benefit. It allows credit for lodging that is voluntary for the employee, not primarily for the employer’s own convenience, appropriately documented, and no greater than the smaller of (1) the employer’s cost, (2) the fair market value, or (3) per week, \$25 for a room (in a shared residence, dorm, or hotel) or \$100 for a private apartment or house. The \$100 limit is higher than the \$25 in prior wage orders.

Rule 6.3 no longer allows employers to require a “deposit” as “security” for a required uniform. This change better conforms to the Colorado statute that limits the circumstances when deductions from pay are allowed, because that statute does not allow deductions in advance of any actual damage.

Clarifying Overtime Pay Calculation When Pay is Not Hourly

Rule 1.7 clarifies how to calculate regular and overtime pay rates for non-exempt workers with non-hourly pay. Some states ban the “fluctuating workweek” calculation that lets the “hourly rate” vary each week (by dividing the weekly salary by however many hours the employee worked that week), because that method makes the hourly rate decline with each hour worked. Rule 1.7 allows that fluctuating workweek calculation, as long as the employee actually is paid the required overtime on top of the weekly salary. For non-exempt employees denied overtime, Rule 1.7 sets the hourly rate equal to the weekly salary divided by 40, because that is the number of hours that actually were compensated if the employee was not paid any of the required overtime pay.

Clarifying the Ban on Reprisals

Finally, prior orders left ambiguous exactly what was protected by the “reprisal” rule. Rule 8.5 clarifies, in conformity with court decisions and Colorado retaliation and obstruction statutes, that it covers any form of reprisal against actual or anticipated participation in any wage investigation, hearing, complaint, or procedure.

More Transparency, and Language Inclusiveness, in Wage Poster Rules

Prior wage orders already required employers to display a wage order poster — a requirement the COMPS Order modernizes and strengthens in three ways. First, a *poster* may not reach many workers, given Colorado’s increasingly mobile and online workforce, and in workplaces lacking traditional “break rooms.” Rule 7.4 thus provides that (a) if an employer distributes a handbook or policies to employees, it should include a copy of the COMPS Order or poster, and (b) “[i]f the work site or other conditions make a physical posting impractical,” the employer can instead “provide a copy of the COMPS Order or poster to each employee.”

Second, to accommodate Colorado’s increasingly diverse workforce, under Rule 7.4, employers with employees with limited English skills should post a Spanish poster the Division will provide — or the employer can ask the Division for a translation in any other language, which the Division will provide if feasible.

Finally, Rule 7.4 provides that an employer that fails to post as required is ineligible for any employee-specific credits or exemptions, because if employees aren’t told of rules, those rules shouldn’t be used against them.