DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

KEEP JOBS IN COLORADO ACT RULES

7 CCR 1103-6

Rule 1. Statement of Purpose

1.1 The general purpose of the Keep Jobs in Colorado Act Rules, effective January 1, 2017, is to implement the provisions of C.R.S. § 8-17-101, et seq. These rules are adopted pursuant to the Division of Labor Standards and Statistics' authority in C.R.S. § 8-1-107(2)(p), § 8-1-103(3), § 8-1-111, and § 8-17-101, et seq.

Rule 2. Definitions

2.1 Any reference made to "the law" means the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, et seq.

2.2 "Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification.

2.2.1 A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

2.3 "Davis Bacon Act" refers to Davis-Bacon and Related Acts (DBRA), 40 U.S.C. § 3141 et seq., 29 C.F.R. §§ 1, 3, 5, 6, 7, and any related regulations.

2.4 "Director" means the director of the Colorado division of labor standards and statistics, or his or her designee.

2.5 "Division" means the division of labor standards and statistics within the Colorado department of labor and employment.

2.6 "Fringe benefit" is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.23. Fringe benefit includes the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits.

2.7 "Public works project" shall have the same meaning as "public project" as defined in C.R.S. § 8-19-102(2).

i. In accordance with C.R.S. § 8-19-102(2), and C.R.S. § 24-92-102(8), "public works project" is defined as:

a) any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any maintenance programs for the upkeep of such projects, including any such project awarded by any county, including any home rule county, municipality, as defined in C.R.S. § 31-1-101(6), school district, special district, or other political subdivision of the state;

i. Public works project under rule 2.7(i)(a) does not include any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed five hundred thousand dollars in the aggregate for any fiscal year.

ii. Public works project under rule 2.7(i)(a) does not include any project under the supervision of the department of transportation for which appropriation or expenditure of funds may be reasonably expected not to exceed one hundred fifty thousand dollars in the aggregate of any fiscal year.

b) any publicly funded contract for construction entered into by a governmental body of the executive branch of this state which is subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S.; and

c) any highway or bridge construction, whether undertaken by the department of transportation or by any political subdivision of this state, in which the expenditure of funds may be reasonably expected to exceed fifty thousand dollars.

2.8 "Site of the project" is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.2. Site of the project is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.

2.8.1 Not included in the site of the project are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular public works contract or project.

2.9 "Worker" is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.2. Workers are those whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.

Rule 3. Eighty Percent Colorado Labor Requirement and Contractor Obligations

3.1 Whenever any public works project financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado are undertaken in this state, Colorado labor shall be employed to perform at least eighty percent of the work.

3.2 The contractor shall obtain and maintain the records required pursuant to the law.

3.2.1 The following documentation must be provided by the contractor to the division in the event of an investigation:

i. taxable wages and fringe benefits for each covered worker on the public works project;

and

ii. the required residency documentation for each covered worker on the public works project.

3.3 Each contractor shall retain the documentation required under the law for at least ninety days after the completion of the project.

Rule 4. Waivers of the Eighty Percent Colorado Labor Requirement

4.1 The governmental body financing a public works project shall waive the eighty percent requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance with the law would create an undue burden that would substantially prevent a project from proceeding to completion.

4.1.1 A governmental body that allows a waiver shall post notice of the waiver and a justification for the waiver on its website.

4.1.2 A governmental body shall not impose contractual damages on a contractor for a delay in work due to the waiver process.

Rule 5. Contracts to Provide for Preference of Colorado Labor

5.1 All contracts let for public works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado shall contain provisions for the preference in employment of Colorado labor.

Rule 6. Compliance Standard

6.1 Compliance with the requirements of the law shall be calculated on the total taxable wages and fringe benefits, minus any per diem payments, paid to workers employed directly on the site of the project and who satisfy the definition of Colorado labor.

6.2 In order for a contractor to be found in compliance, eighty percent of total taxable wages plus fringe benefits must be paid to workers who satisfy the definition of Colorado labor and are employed directly on the site of the public works project.

Rule 7. Residency Documentation

7.1 In order for a worker to satisfy the residency requirement, the worker must provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days prior to his or her first date of work on the public works project.

7.1.1 Workers who establish residency during the course of the project may also qualify pursuant to the director’s determination.

7.2 The division assesses the acceptability and validity of residency documentation on a case by case basis. The division examines the totality of the circumstances and the evidence provided for each covered worker in the review of residency documentation.

7.2.1 Examples of acceptable residency documentation include:

i. a valid Colorado driver's license, or

ii. a valid Colorado state-issued photo identification.

7.2.2 Examples of potentially acceptable residency documentation may include, but are not limited to:

i. Colorado voter registration;

ii. utility bill;

iii. rental lease;

iv. state income tax returns;

v. ownership of residential real property in Colorado; and/or

vi. additional documentation which establishes proof of residency in the State of Colorado.

Rule 8. Complaints

8.1 A person who alleges a potential violation of the law may file a complaint with the division.

8.1.1 Anonymous complaints are not accepted by the division.

8.1.2 Complaints shall be filed using the division-approved form.

8.1.3 The complaint shall include the complainant's signature, contact information, and basis for the complaint. Failure to include this information on the complaint form may result in administrative dismissal of the complaint.

8.2 Upon the receipt of a complaint, the division shall notify the contractor of the complaint in writing via U.S. mail. In the event that the contractor cannot be contacted via U.S. mail, or other circumstances exist which warrant the use of other contact methods, the division shall utilize other methods to contact the contractor.

8.3 The division shall commence the investigation only at the completion of the project.

8.4 The division shall complete any investigation in response to a complaint within ninety days of the date that the division began the investigation.

8.5 Compliance shall be measured over the entirety of the completed project.

8.6 The division shall not investigate or take any other action regarding a complaint filed more than ninety days after the project has been completed.

Rule 9. Investigation Process

9.1 Complaints shall be assigned to division investigators. Investigatory methods utilized by the division may include, but are not limited to:

i. interviews of the contractor, subcontractor, complainant, workers, and any other relevant parties;

ii. information gathering, fact-finding, and reviews of written submissions; and

iii. any other techniques which enable the division to assess the contractor's compliance with the law.

Rule 10. Compliance Determination and Penalties

10.1 After investigating the complaint and assessing the contractor's compliance, the division investigator will issue a determination in writing.

10.1.1 The determination will be provided to the contractor in writing.

10.1.2 The determination will contain information on the extent of the contractor's compliance with the law, and will describe what provisions of the law were adhered to and/or violated.

10.1.3 The determination will contain information on appeal rights and appeal procedures.

10.2 After conducting an investigation of a complaint alleging a violation of the law, if the division determines that a contractor has knowingly violated the requirements by importing labor in excess of that permitted pursuant to the law, the division shall impose a fine on such contractor as follows:

i. for the first violation, five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less;

ii. for the second violation, ten thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less; or

iii. for the third violation and any violation thereafter, twenty-five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less.

10.3 If the division has imposed three fines on a contractor pursuant to the law within five years and finds the violations to be egregious, the division may initiate the process to debar the contractor pursuant to C.R.S. § 24-109-105.

10.4 The division may dismiss a complaint in its discretion if, after conducting an investigation, the division determines that the circumstances that led to the complaint were the result of a minor paperwork violation.

Rule 11. Appeals and Hearings

11.1 A contractor who is found to be in violation of the law may appeal such findings to the division.

11.2 The division shall hold a hearing to review such notice or order and take final action in accordance with the Colorado Administrative Procedure Act, C.R.S. § 24-4-105.

11.3 A division hearing officer will preside over the hearing.

11.4 The decision issued by the hearing officer is considered the initial decision.

11.5 A party may appeal the hearing officer's initial decision by filing exceptions with the director of the division within thirty calendar days of the initial decision in accordance with C.R.S. § 24-4-105(14)(a)(II).

11.5.1 A party must use a division-approved form to file exceptions with the director of the division.

11.5.2 A party may file exceptions with the director of the division via email (cdle_LS_appeals@state.co.us), fax (303-318-8400), or mail/delivery (633 17th Street, Suite 600, Denver, CO 80202).

11.5.3 If no party files exceptions with the director of the division within thirty calendar days of the initial decision, the initial decision shall become the final agency decision.

11.6 The record on appeal to the director is the division's record of its investigation unless the appealing party files a designation of the record with the division within twenty calendar days of the initial decision in accordance with C.R.S. § 24-4-105(15)(a).

Rule 12. Enforcement

12.1 The division shall enforce the requirements of the law in the event of a complaint alleging a potential violation of the requirements of the law.

12.2 The requirements of the law may not be enforced through a private right of action.

Rule 13. Revenue Collected From Fines

13.1 The revenue collected from the fines imposed pursuant to C.R.S. § 8-17-104(2) shall be transmitted to the state treasurer, who shall credit the same to the Colorado labor enforcement cash fund, which is hereby created. The general assembly shall make appropriations from the fund as necessary to cover the direct and indirect costs of the division in connection with the requirements of this law. All moneys not expended or encumbered and all interest earned on the investment or deposit of moneys in the fund remains in the fund and does not revert to the general fund or any other fund at the end of any fiscal year.

Rule 14. Severability

14.1 If any provision of these rules or their application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of the rules shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of these rules are severable.

Rule 15. Federal and State Law

15.1 Nothing in the law applies to any project that receives federal moneys. If the public works project is financed with any amount of federal money, the public works project is not covered by the provisions of the law.

15.2 Nothing in the law contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this article to the extent of that accordance.

15.2.1 The requirements of this law are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

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Rule 1. Statement of Purpose

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11.3 A division hearing officer will preside over the hearing.

11.4 The decision issued by the hearing officer is considered the ~~final agency action~~initial decision. ~~Final agency action is subject to judicial review pursuant to article 4 of title 24, C.R.S. and may be appealed to district court.~~

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15.2 Nothing in the law contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this article to the extent of that accordance.

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