

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

WAGE PROTECTION ACT RULES

7 CCR 1103-7

Rule 1. Statement of Purpose and Authority

- 1.1 The general purpose of these Wage Protection Act Rules, effective January 1, 2017, is to implement the Wage Protection Act of 2014. These rules are adopted pursuant to the division's authority in C.R.S. § 8-1-103(3), § 8-1-107(2)(p), § 8-1-111, and § 8-4-101, et seq.
- 1.2 Title 8, Article 4 of the Colorado Revised Statutes (2016) is hereby incorporated by reference into this rule. Such incorporation excludes later amendments to or editions of the statutes. These statutes are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Suite 600, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. These statutes can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes.
- 1.3 These rules are severable. If any section, sentence, clause, or phrase of these rules, or any application thereof, is for any reason held to be invalid or unenforceable, that holding shall not affect the validity of the remaining rules.
- 1.4 The Director of the Division of Labor Standards and Statistics in the Department of Labor and Employment has the authority to enforce the Wage Protection Act and these rules.

Rule 2. Definitions and Clarifications

- 2.1 "Administrative procedure" means the process used by the division to investigate wage complaints in accordance with § 8-4-111.
- 2.2 "Authorized representative" means a person designated by a party to a wage complaint to represent the party during the division's administrative procedure. To designate an authorized representative, the party must comply with the requirements of rule 4.3.
- 2.3 "Average daily earnings," as used in § 8-4-109(3)(b), will be calculated as follows, unless the division identifies a legitimate reason to use a different method of calculation:
 - 2.3.1 The most recent typical workweek or pay period will generally be used to calculate the average daily earnings. The total gross amount of wages and compensation will be divided by the number of days worked.
 - 2.3.2 If an employee is entitled to and has been paid less than the Colorado minimum wage, and has not earned more than the Colorado minimum wage, then the Colorado minimum wage will be used to calculate average daily earnings.

- 2.3.3** All compensation paid to employees including the hourly rate, shift differential, minimum wage tip credit, regularly occurring non-discretionary bonuses, commissions, and overtime may be included in the average daily earnings calculation.
- 2.4** “Certified copy,” as used in § 8-4-113, means a copy of a final division decision (issued by a compliance investigator or hearing officer) signed by the director of the division, or his or her designee, certifying that the document is a true and accurate copy of the original determination. A certified copy must be requested using a division-approved form and will not be issued until administrative appeal rights have been exhausted.
- 2.5** “Determination” means a decision issued by a compliance investigator upon the conclusion of a wage complaint investigation. “Determination” includes: Citation & Notice of Assessment, Determination of Compliance, and Notice of Dismissal.
- 2.6** The “employer’s correct address,” as used in § 8-4-101(15), can include, but is not limited to, the employer’s email address, the employer’s address on file with the Colorado Secretary of State, and the address of the employer’s registered agent on file with the Colorado Secretary of State.
- 2.7** A wage complaint or an appeal is considered “filed” with the division when it is received by the division via mail, fax, email, online submission, or personal delivery. Any wage complaint, appeal, or termination received after 11:59pm Mountain Time is considered filed the next business day.
- 2.8** When considering whether there is “good cause” for an extension of time, as used in § 8-4-113(1)(b), the division will determine whether the employer’s reason is substantial and reasonable and must take into account all available information and circumstances pertaining to the specific complaint.
- 2.9** “Post,” as used in § 8-4-107, may include electronic posting in a place readily accessible to all employees.
- 2.10** “Records reflecting the information contained in an employee’s itemized pay statement,” as used in § 8-4-103(4.5), may be kept electronically. The records of the pay statements are not required to be copies but must reflect all information contained in the pay statements.
- 2.11** “Terminated employee,” as used in § 8-4-105(1)(e), includes any employee separated from employment, whether the separation occurs by volition of the employer or the employee.
- 2.12** The division may enforce the tip provisions described in § 8-4-103(6) through the administrative procedure described in § 8-4-111.
- 2.13** § 8-4-103(1)(b) describes circumstances under which employers are “subject to the penalties specified in section 8-4-113(1).” Despite use of the word “penalty” in this section, this language does refer to the fine described in § 8-4-113(1) and is payable to the division.
- 2.14** A “written demand,” as used in § 8-4-101(15), can be sent to the employer by electronic means, including but not limited to email and text message. Wages must be owed at the time of sending for the written demand to be considered valid.

Rule 3. Filing A Wage Complaint

- 3.1** An employee who wishes to file a wage complaint with the division shall use the division-approved form.
- 3.1.1** A wage complaint may only be filed by the employee who did not receive his or her wages or compensation.

- 3.1.2** A wage complaint shall include the employee's signature, employee's contact information, the employer's contact information, and basis for the wage complaint. Failure to include this information on the wage complaint form may result in dismissal of the wage complaint.
- 3.1.3** The failure of an employee to respond in a timely manner to informational or investigatory requests by the division may result in dismissal of the wage complaint.
- 3.1.4** If a wage complaint is dismissed before a Notice of Complaint is sent to the employer because the employee failed to respond to a division request for information, the complaint may be reopened if the employee provides the requested information or documentation to the division within 35 days of the division's request. Employees may be required to file a new complaint if the employee's response is received more than 35 days after the division's request.
- 3.1.5** The division shall not accept wage complaints for amounts exceeding \$7,500.
- 3.1.6** An anonymous complaint is not a wage complaint within the meaning of the Wage Protection Act and will not be investigated using the division's administrative procedure. The division may choose to address an anonymous complaint outside of the administrative procedure.
- 3.2** An employee may pursue a wage complaint through either the court system or the division's administrative procedure.
 - 3.2.1** Employees are not required to use the division's administrative procedure in order to pursue a wage complaint in court.
 - 3.2.2** The division does not have jurisdiction over any complaint that has been adjudicated or is currently being adjudicated by a court of competent jurisdiction.
- 3.3** The employee may withdraw the complaint at any time prior to issuance of a determination by notifying the division.

Rule 4. Investigation

- 4.1** Wage complaints shall be assigned to division compliance investigators. Investigatory methods used by the division may include:
 - A. Interviews of the employer, employee, and other parties;
 - B. Information gathering, fact-finding, and reviews of written submissions; and
 - C. Any other lawful techniques that enable the division to assess the employer's compliance.
- 4.2** The division will evaluate wage complaints under the following burden of proof structure:
 - 4.2.1** To initiate a wage complaint, an employee must provide an explanation of the basis for the complaint that is clear, specific, and shows the employee is entitled to relief. The employee must provide sufficient evidence from which both a violation of Colorado wage and hour laws and an estimate of wages due may be reasonably inferred.
 - 4.2.2** The burden then shifts to the employer to prove, by a preponderance of the evidence, that the employee is not entitled to the claimed relief. If the employer fails to meet its burden, the division may award wages and/or penalties to the employee based on the employee's evidence.

- 4.6.1 All parties must promptly notify the division of any change in contact information, including mailing address, email address, and phone number.
- 4.6.2 Parties should not rely on the U.S. Postal Service to forward mail. Failure to respond to a notice because mail was not forwarded to a new address will not be excused.

Rule 5. Determination

- 5.1 Upon conclusion of the investigation of a wage complaint, the division will issue a determination.
 - 5.1.1 The division shall send the determination to all parties via U.S. postal mail, electronic means, or personal delivery on the date the determination is issued by the division's compliance investigator.
 - 5.1.2 The date of "issuance" of the division's determination, as used in § 8-4-109(3), is the date the division's determination is "sent," as used in § 8-4-111.5(1). Both the termination and appeal deadlines are calculated from the date the division's determination is originally issued and sent to the parties.
 - 5.1.3 If any copies of the decision are sent to the parties after the date the division's determination is originally issued and sent to the parties, those copies are provided only as a courtesy and do not change the thirty-five day appeal and termination deadlines.

Rule 6. Appeal

- 6.1 Any party may appeal the division's determination.
 - 6.1.1 Parties are encouraged, though not required, to use the division's appeal form. A valid appeal is a written statement that is timely filed with the division, explains the clear error in the determination that is the basis for the appeal, and has been signed by the party or the party's authorized representative.
 - 6.1.2 No appeal will be heard and no hearing will be held unless the appeal is received by the division within thirty-five calendar days of the date the determination is sent. It is the responsibility of the party filing the appeal to ensure the appeal is received by the division within the thirty-five day filing deadline.
 - 6.1.3 Upon receipt of the appeal, the division will notify the parties of the date of the hearing and any interim deadlines via U.S. postal mail, electronic means, or personal delivery.
 - 6.1.4 Upon receipt of the appeal, the division will send a copy of the appeal and a copy of the record of its investigation to the parties via U.S. postal mail, electronic means, or personal delivery. Everything submitted to the division as part of the investigation is part of the record on appeal and need not be resubmitted.
- 6.2 Parties who timely appeal the division's determination will be afforded an administrative appeals hearing before a division hearing officer. Parties may appear by telephone.
 - 6.2.1 The parties may submit new evidence to the hearing officer in accordance with deadlines imposed by the division.
 - 6.2.2 New evidence must be sent to all other parties to the appeal. Failure to send all new evidence to all other parties to the appeal may result in the evidence being excluded from the record.

- 6.2.3** If the party who filed the appeal does not participate in the hearing, the appeal may be dismissed.
 - 6.2.4** All testimony at a hearing must be recorded by the division but need not be transcribed unless the hearing officer's decision is appealed.
 - 6.2.5** The hearing officer may, upon the application of any party or on his or her own motion, convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters that may simplify further proceedings.
 - 6.2.6** The hearing officer will decide whether the division's determination is based on a clear error of fact or law. The appellant has the burden to prove a clear error by a preponderance of the evidence.
 - 6.2.7** The hearing officer shall not engage in ex parte communication with any party to an appeal.
- 6.3** The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. The division shall promptly provide all parties with a copy of the hearing officer's decision via U.S. postal mail, electronic means, or personal delivery.

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

WAGE PROTECTION ACT RULES

7 CCR 1103-7

Rule 1. Statement of Purpose and Authority

The general purpose of the Wage Protection Act Rules, effective January 1, 2015, is to implement the Wage Protection Act of 2014. These rules are adopted pursuant to the Division of Labor's authority in § 8-1-103(3), C.R.S., § 8-1-107(2)(p), C.R.S., § 8-1-111, C.R.S., and § 8-4-101, et. seq., C.R.S.

Formatted: Font: Bold

1.1 The general purpose of these Wage Protection Act Rules, effective January 1, 2017, is to implement the Wage Protection Act of 2014. These rules are adopted pursuant to the division's authority in C.R.S. § 8-1-103(3), § 8-1-107(2)(p), § 8-1-111, and § 8-4-101, et seq.

1.2 Title 8, Article 4 of the Colorado Revised Statutes (2016) is hereby incorporated by reference into this rule. Such incorporation excludes later amendments to or editions of the statutes. These statutes are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Suite 600, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. These statutes can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes.

Formatted: Font: Bold

1.3 These rules are severable. If any section, sentence, clause, or phrase of these rules, or any application thereof, is for any reason held to be invalid or unenforceable, that holding shall not affect the validity of the remaining rules.

Formatted: Font: Bold

1.4 The Director of the Division of Labor Standards and Statistics in the Department of Labor and Employment has the authority to enforce the Wage Protection Act and these rules.

Formatted: Font: Bold

Rule 2. Definitions and Clarifications

2.1 "Administrative procedure" means the process used by the division to investigate wage complaints in accordance with § 8-4-111.

Formatted: Font: Bold

2.2 "Authorized representative" means a person designated by a party to a wage complaint to represent the party during the division's administrative procedure. To designate an authorized representative, the party must comply with the requirements of rule 4.3.

Formatted: Font: Bold

2.3 "Average daily earnings," as used in § 8-4-109(3)(b), will be calculated as follows, unless the division identifies a legitimate reason to use a different method of calculation:

Formatted: Font: Bold

2.3.1 The most recent typical workweek or pay period will generally be used to calculate the average daily earnings. The total gross amount of wages and compensation will be divided by the number of days worked.

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

2.3.2 If an employee is entitled to and has been paid less than the Colorado minimum wage, and has not earned more than the Colorado minimum wage, then the Colorado minimum wage will be used to calculate average daily earnings.

Formatted: Font: Bold

2.3.3 All compensation paid to employees including the hourly rate, shift differential, minimum wage tip credit, regularly occurring non-discretionary bonuses, commissions, and overtime may be included in the average daily earnings calculation.

Formatted: Font: Bold

2.4 "Certified copy," as used in § 8-4-113, means a copy of a final division decision (issued by a compliance investigator or hearing officer) signed by the director of the division, or his or her designee, certifying that the document is a true and accurate copy of the original determination. A certified copy must be requested using a division-approved form and will not be issued until administrative appeal rights have been exhausted.

Formatted: Font: Bold

2.5 "Determination" means a decision issued by a compliance investigator upon the conclusion of a wage complaint investigation. "Determination" includes: Citation & Notice of Assessment, Determination of Compliance, and Notice of Dismissal.

Formatted: Font: Bold

2.6 The "employer's correct address," as used in § 8-4-101(15), can include, but is not limited to, the employer's email address, the employer's address on file with the Colorado Secretary of State, and the address of the employer's registered agent on file with the Colorado Secretary of State.

Formatted: Font: Bold

2.7 A wage complaint or an appeal is considered "filed" with the division when it is received by the division via mail, fax, email, online submission, or personal delivery. Any wage complaint, appeal, or termination received after 11:59pm Mountain Time is considered filed the next business day.

Formatted: Font: Bold

2.8 When considering whether there is "good cause" for an extension of time, as used in § 8-4-113(1)(b), the division will determine whether the employer's reason is substantial and reasonable and must take into account all available information and circumstances pertaining to the specific complaint.

Formatted: Font: Bold

2.9 "Post," as used in § 8-4-107, may include electronic posting in a place readily accessible to all employees.

Formatted: Font: Bold

2.10 "Records reflecting the information contained in an employee's itemized pay statement," as used in § 8-4-103(4.5), may be kept electronically. The records of the pay statements are not required to be copies but must reflect all information contained in the pay statements.

Formatted: Font: Bold

2.11 "Terminated employee," as used in § 8-4-105(1)(e), includes any employee separated from employment, whether the separation occurs by volition of the employer or the employee.

Formatted: Font: Bold

2.12 The division may enforce the tip provisions described in § 8-4-103(6) through the administrative procedure described in § 8-4-111.

Formatted: Font: Bold

2.13 § 8-4-103(1)(b) describes circumstances under which employers are "subject to the penalties specified in section 8-4-113(1)." Despite use of the word "penalty" in this section, this language does refer to the fine described in § 8-4-113(1) and is payable to the division.

Formatted: Font: Bold

2.14 A "written demand," as used in § 8-4-101(15), can be sent to the employer by electronic means, including but not limited to email and text message. Wages must be owed at the time of sending for the written demand to be considered valid.

Formatted: Font: Bold

Formatted: Font: Not Bold

2.1 "Citation" means a written determination by the division that a wage payment requirement has been violated.

- 2.2** —“Credit” means an arrangement or understanding with the bank or other drawee for the payment of an order, check, draft, note, memorandum, or other acknowledgment of indebtedness.
- 2.3** —“Director” means the director of the division of labor or his or her designee.
- 2.4** —“Division” means the division of labor in the department of labor and employment.
- 2.5** —“Employee” means any person, including a migratory laborer, 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 article 4, title 8, C.R.S., an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an “employee”.
- 2.6** —“Employer” means every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, 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 article 4, title 8, C.R.S., shall not apply to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.
- 2.7** —“Fine” means any monetary amount assessed against an employer and payable to the division.
- 2.8** —“Notice of assessment” means a written notice by the division, based on a citation, that the employer shall pay the amount of wages, penalties, or fines assessed.
- 2.9** —“Notice of complaint” means the letter sent by the division to the employer as described in § 8-4-111(2)(a), C.R.S.
- 2.10** —“Penalty” means any monetary amount assessed against an employer and payable to an employee.
- 2.11** —“Wage complaint” means a complaint filed with the division from an employee for unpaid wages alleging that an employer has violated section 15 of article XVIII of the Colorado Constitution, article 4 or article 6 of title 8, C.R.S., or any rule adopted by the director pursuant to article 4 or article 6 of title 8, C.R.S.
- 2.12** —“Wages” or “compensation” means:
- A. —All amounts for labor or service performed by employees, 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 for the performance of labor or service if the labor or service to be paid for is performed personally by the person demanding payment. No amount is considered to be wages or compensation until such amount is earned, vested, and determinable, at which time such amount shall be payable to the employee pursuant to article 4, title 8, C.R.S.
 - B. —Bonuses or commissions earned for labor or services performed in accordance with the terms of any agreement between an employer and employee;
 - C. —Vacation pay earned in accordance with the terms of any agreement. If an employer provides paid vacation for an employee, the employer shall pay upon separation from

~~employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee.~~

~~2.12.1 "Wages" or "compensation" does not include severance pay.~~

~~2.13 "Written demand" means any written demand for wages or compensation from or on behalf of an employee, including a notice of complaint, mailed or delivered to the employer's correct address.~~

Rule 3. Proper Payment – Methods of Payment – Direct Deposit and Paycards Filing A Wage Complaint

3.1 An employee who wishes to file a wage complaint with the division shall use the division-approved form.

Formatted: Font: Bold

3.1.1 A wage complaint may only be filed by the employee who did not receive his or her wages or compensation.

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

3.1.2 A wage complaint shall include the employee's signature, employee's contact information, the employer's contact information, and basis for the wage complaint. Failure to include this information on the wage complaint form may result in dismissal of the wage complaint.

Formatted: Font: Bold

3.1.3 The failure of an employee to respond in a timely manner to informational or investigatory requests by the division may result in dismissal of the wage complaint.

Formatted: Font: Bold

3.1.4 If a wage complaint is dismissed before a Notice of Complaint is sent to the employer because the employee failed to respond to a division request for information, the complaint may be reopened if the employee provides the requested information or documentation to the division within 35 days of the division's request. Employees may be required to file a new complaint if the employee's response is received more than 35 days after the division's request.

Formatted: Font: Bold

3.1.5 The division shall not accept wage complaints for amounts exceeding \$7,500.

Formatted: Font: Bold

3.1.6 An anonymous complaint is not a wage complaint within the meaning of the Wage Protection Act and will not be investigated using the division's administrative procedure. The division may choose to address an anonymous complaint outside of the administrative procedure.

Formatted: Font: Bold

3.2 An employee may pursue a wage complaint through either the court system or the division's administrative procedure.

Formatted: Font: Bold

3.2.1 Employees are not required to use the division's administrative procedure in order to pursue a wage complaint in court.

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

3.2.2 The division does not have jurisdiction over any complaint that has been adjudicated or is currently being adjudicated by a court of competent jurisdiction.

Formatted: Font: Bold

3.3 The employee may withdraw the complaint at any time prior to issuance of a determination by notifying the division.

Formatted: Font: Bold

Formatted: Font: Not Bold

~~3.1 No employer or agent or officer thereof shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness unless the same is negotiable and payable upon demand~~

without discount in cash at a bank organized and existing under the general banking laws of the state of Colorado or the United States or at some established place of business in the state.

3.1.1—The name and address of the drawee shall appear upon the face of the order, check, draft, note, memorandum, or other acknowledgment of indebtedness; except that such provisions shall not apply to a public utility engaged in interstate commerce and otherwise subject to the power of the public utilities commission.

3.1.2—At the time of the issuance of same, the maker or drawer shall have sufficient funds in or credit with the bank or other drawee for the payment of same. Where such order, check, draft, note, memorandum, or other acknowledgment of indebtedness is protested or dishonored on the ground of insufficiency of funds or credit, the notice of memorandum of protest or dishonor thereof shall be admissible as proof of presentation, nonpayment, and protest.

3.2—Nothing in these rules shall prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, credit union, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States if the employee has voluntarily authorized such deposit in the financial institution of the employee's choice.

3.3—Nothing in these rules shall prohibit an employer from depositing an employee's wages on a paycard, so long as the employee:

A.——Is provided free means of access to the entire amount of net pay at least once per pay period; or

B.——May choose to use other means for payment of wages as authorized in rule 3.1 and 3.2.

3.3.1—As used in this rule, "paycard" means an access device that an employee uses to receive his or her payroll funds from his or her employer.

Rule 4. Payment of Wages — Paydays — Itemized Pay Statements and Tips Notification Investigation

4.1—All wages or compensation, other than those mentioned in § 8-4-109, C.R.S., earned by any employee in any employment, other than those specified in § 8-4-103(3), C.R.S., shall be due and payable for regular pay periods of no greater duration than one calendar month or thirty days, whichever is longer, and on regular paydays no later than ten days following the close of each pay period unless the employer and the employee shall mutually agree on any other alternative period of wage or salary payments.

4.1.1—**An employer is subject to the fine specified in § 8-4-113(1), C.R.S., if, two or more times within any twenty-four-month period, the employer causes an employee's check, draft, or order to not be paid because the employer's bank does not honor an employee's paycheck upon presentment. The director may investigate complaints regarding alleged violations of this rule.**

4.2—Nothing in these rules shall apply to compensation payments due an employee under a profit-sharing plan, a pension plan, or other similar deferred compensation programs.

4.3—Every employer shall at least monthly, or at the time of each payment of wages or compensation, furnish to each employee an itemized pay statement in writing showing the following:

Formatted: Title1, Indent: Left: 0", First line: 0", Space Before: 0 pt

- A. ~~Gross wages earned;~~
- B. ~~All withholdings and deductions;~~
- C. ~~Net wages earned;~~
- D. ~~The inclusive dates of the pay period;~~
- E. ~~The name of the employee or the employee's social security number; and~~
- F. ~~The name and address of the employer.~~

Formatted: Title1, Space Before: 0 pt, No bullets or numbering

~~4.4 An employer shall retain records reflecting the information contained in an employee's itemized pay statement as described in § 8-4-103(4), C.R.S., for a period of at least three years after the wages or compensation were due.~~

Formatted: Title1, Indent: Left: 0", First line: 0", Space Before: 0 pt

~~4.4.1 The records shall be available for inspection by the division, and the employer shall provide copies of the records upon request by the division or the employee.~~

Formatted: Title1, Indent: Left: 0", First line: 0", Space Before: 0 pt, After: 12 pt

~~4.4.2 The director may impose a fine of up to two hundred fifty dollars per employee per month on an employer who violates § 8-4-103(4.5), C.R.S., up to a maximum fine of seven thousand five hundred dollars.~~

~~4.5 It is unlawful for any employer engaged in any business where the custom prevails of the giving of presents, tips, or gratuities by patrons thereof to an employee of said business to assert any claim to, or right of ownership in, or control over such presents, tips, or gratuities; and such presents, tips, or gratuities shall be the sole property of the employee of said business unless the employer posts in his or her place of business in a conspicuous place a printed card, at least twelve inches by fifteen inches in size, containing a notice to the general public in letters at least one-half inch high that all presents, tips, or gratuities given by any patron of said business to an employee thereof are not the property of said employee but belong to the employer.~~

Formatted: Title1, Indent: Left: 0", First line: 0", Space Before: 0 pt

~~4.5.1 Nothing in rule 4.5 shall prevent an employer covered hereby from requiring employees to share or allocate such presents, tips, or gratuities on a preestablished basis among the employees of such business. Wage complaints shall be assigned to division compliance investigators. Investigatory methods used by the division may include:~~

Formatted: Font: Not Bold

~~A. Interviews of the employer, employee, and other parties;~~

~~B. Information gathering, fact-finding, and reviews of written submissions; and~~

~~C. Any other lawful techniques that enable the division to assess the employer's compliance.~~

Formatted: Space Before: 0 pt, After: 0 pt

Formatted: Font: Not Bold

Formatted: Font: Not Bold

~~4.2 The division will evaluate wage complaints under the following burden of proof structure:~~

Formatted: Indent: Left: 0.5", Space Before: 0 pt, After: 0 pt

~~4.2.1 To initiate a wage complaint, an employee must provide an explanation of the basis for the complaint that is clear, specific, and shows the employee is entitled to relief. The employee must provide sufficient evidence from which both a violation of Colorado wage and hour laws and an estimate of wages due may be reasonably inferred.~~

Formatted: Space Before: 0 pt, After: 0 pt

Formatted: Font: Not Bold

Formatted: Font: Not Bold

~~4.2.2 The burden then shifts to the employer to prove, by a preponderance of the evidence, that the employee is not entitled to the claimed relief. If the employer fails to meet its burden, the division may award wages and/or penalties to the employee based on the employee's evidence.~~

Formatted: Indent: Left: 0.5"

Formatted: Font: Not Bold

Formatted: Font: Not Bold

4.2.3 If the division concludes that wages are owed to the employee, but cannot calculate the precise amount of wages due, then the division may award a reasonable estimate of wages due.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

4.3 Any party to a wage complaint may designate an authorized representative to represent the party during the division's administrative procedure.

Formatted: Font: Not Bold

4.3.1 The party may designate an authorized representative by filing the division-approved form with the division.

Formatted: Indent: Left: 0.5"

Formatted: Font: Not Bold

4.3.2 If not using the division-approved form, and the authorized representative is a licensed attorney or accountant, the party or the authorized representative must provide written notice to the division that the authorized representative will represent the party during the division's administrative procedure.

Formatted: Font: Not Bold

4.3.3 If not using the division-approved form, and the authorized representative is not a licensed attorney or accountant, the party must provide a signed written notice to the division that the authorized representative will represent the party during the division's administrative procedure.

Formatted: Font: Not Bold

4.3.4 The party may revoke the authorized representative's authority by contacting the division in writing.

Formatted: Font: Not Bold

4.4 After receipt of a wage complaint that states a claim for relief, the division will initiate the administrative procedure by sending a Notice of Complaint to the employer, along with any relevant supporting documentation submitted by the employee, via U.S. postal mail, electronic means, or personal delivery.

Formatted: Font: Not Bold

4.4.1 If the Notice of Complaint cannot be delivered, the administrative procedure has not been initiated. If a proper address is located or provided, the division will resend the Notice of Complaint, and the employer's deadline to respond will be calculated from the date the second notice is sent.

Formatted: Indent: Left: 0.5"

Formatted: Font: Not Bold

4.4.2 If the division cannot determine the employer's correct address, it may contact the employee to request the employer's address. The division may dismiss the complaint if neither the employee nor the division can determine the employer's correct address.

Formatted: Font: Not Bold

4.4.3 The employer's response to the Notice of Complaint must include the completed division Employer Response Form, as well as any additional information or documentation requested by the division. An insufficient response from the employer may be considered a failure to respond under § 8-4-113(1)(b).

Formatted: Font: Not Bold

4.4.4 If an employer obtains a good cause extension to respond under § 8-4-113(1)(b), the extension does not waive or reduce penalties owed to the employee pursuant to § 8-4-109(3)(b) if the employer fails to pay the employee's wages within fourteen days after the Notice of Complaint is sent.

Formatted: Font: Not Bold

4.5 After receipt and review of the employer's response, the division may contact the employee for additional documentation or information. If the employee does not respond to the request for additional documentation or information by the deadline given, the division will make a determination based on the information in the record.

Formatted: Font: Bold

4.6 All parties to a wage complaint are responsible for ensuring the division has current contact information.

Formatted: Font: Not Bold

4.6.1. All parties must promptly notify the division of any change in contact information, including mailing address, email address, and phone number.

4.6.2. Parties should not rely on the U.S. Postal Service to forward mail. Failure to respond to a notice because mail was not forwarded to a new address will not be excused.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Indent: Left: 0.5"

Formatted: Title1, Indent: First line: 0", Space Before: 0 pt

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Rule 5. Payroll Deductions Determination

5.1 No employer shall make a deduction from the wages or compensation of an employee except as follows:

A. Deductions mandated by or in accordance with local, state, or federal law including, but not limited to, deductions for taxes, "Federal Insurance Contributions Act" ("FICA") requirements, garnishments, or any other court-ordered deduction;

Formatted: Normal, Indent: Left: 0", Hanging: 0.5", No bullets or numbering

1. Deductions for contributions attributable to automatic enrollment in an employee retirement plan, as defined in § 8-4-105.5, C.R.S., regardless of whether the plan is subject to the federal "Employee Retirement Income Security Act of 1974", as amended;

B. Deductions for loans, advances, goods or services, and equipment or property provided by an employer to an employee pursuant to a written agreement between such employer and employee, so long as it is enforceable and not in violation of law;

C. Any deduction necessary to cover the replacement cost of a shortage due to theft by an employee if a report has been filed with the proper law enforcement agency in connection with such theft pending a final adjudication by a court of competent jurisdiction; except that, if the accused employee is found not guilty in a court action or if criminal charges related to such theft are not filed against the accused employee within ninety days after the filing of the report with the proper law enforcement agency, or such charges are dismissed, the accused employee shall be entitled to recover any amount wrongfully withheld plus interest. In the event an employer acts without good faith, in addition to the amount wrongfully withheld and legally proven to be due, the accused employee may be awarded an amount not to exceed treble the amount wrongfully withheld. In any such action the prevailing party shall be entitled to reasonable costs related to the recovery of such amount including attorney fees and court costs;

D. Any deduction, not listed in (A), (B), or (C) of rule 5.1, that is authorized by an employee if the authorization is revocable, including deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, supplemental retirement plans, charities, and deposits to financial institutions;

E. A deduction for the amount of money or the value of property that the employee failed to properly pay or return to the employer in the case where a terminated employee was entrusted during his or her employment with the collection, disbursement, or handling of such money or property.

1. The employer shall have ten calendar days after the termination of employment to audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid as provided in § 8-4-109, C.R.S. This is an exception to the pay requirements in § 8-4-109, C.R.S. The penalty provided in § 8-4-109, C.R.S., shall apply only from the date of demand made after the expiration of the ten-day period allowed for payment of the employee's wages or compensation.

2. If, upon such audit and adjustment of the accounts and property value of any items entrusted to the employee, it is found that any money or property entrusted to the employee by the employer has not been properly paid or returned to the employer as provided by the terms of any agreement between the employer and the employee, the employee shall not be entitled to the benefit of

payment pursuant to § 8-4-109, C.R.S., but the claim for unpaid wages or compensation of such employee shall be disposed of as provided for by article 4, title 8, C.R.S.

5.2 Nothing in this section authorizes a deduction below the minimum wage applicable under the "Fair Labor Standards Act of 1938", 29 U.S.C. § 201 et seq. Upon conclusion of the investigation of a wage complaint, the division will issue a determination.

5.1.1 The division shall send the determination to all parties via U.S. postal mail, electronic means, or personal delivery on the date the determination is issued by the division's compliance investigator.

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

5.1.2 The date of "issuance" of the division's determination, as used in § 8-4-109(3), is the date the division's determination is "sent," as used in § 8-4-111.5(1). Both the termination and appeal deadlines are calculated from the date the division's determination is originally issued and sent to the parties.

Formatted: Font: Bold

5.1.3 If any copies of the decision are sent to the parties after the date the division's determination is originally issued and sent to the parties, those copies are provided only as a courtesy and do not change the thirty-five day appeal and termination deadlines.

Formatted: Font: Bold

Rule 6. Early Payment of Wages Permitted Appeal

6.1 Nothing contained in article 4, title 8, C.R.S., shall in any way limit or prohibit the payment of wages or compensation at earlier dates, or at more frequent intervals, or in greater amounts, or in full when or before due. Any party may appeal the division's determination.

6.1.1 Parties are encouraged, though not required, to use the division's appeal form. A valid appeal is a written statement that is timely filed with the division, explains the clear error in the determination that is the basis for the appeal, and has been signed by the party or the party's authorized representative.

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

6.1.2 No appeal will be heard and no hearing will be held unless the appeal is received by the division within thirty-five calendar days of the date the determination is sent. It is the responsibility of the party filing the appeal to ensure the appeal is received by the division within the thirty-five day filing deadline.

Formatted: Font: Bold

6.1.3 Upon receipt of the appeal, the division will notify the parties of the date of the hearing and any interim deadlines via U.S. postal mail, electronic means, or personal delivery.

Formatted: Font: Bold

6.1.4 Upon receipt of the appeal, the division will send a copy of the appeal and a copy of the record of its investigation to the parties via U.S. postal mail, electronic means, or personal delivery. Everything submitted to the division as part of the investigation is part of the record on appeal and need not be resubmitted.

Formatted: Font: Bold

6.2 Parties who timely appeal the division's determination will be afforded an administrative appeals hearing before a division hearing officer. Parties may appear by telephone.

Formatted: Font: Bold

6.2.1 The parties may submit new evidence to the hearing officer in accordance with deadlines imposed by the division.

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

6.2.2 New evidence must be sent to all other parties to the appeal. Failure to send all new evidence to all other parties to the appeal may result in the evidence being excluded from the record.

Formatted: Font: Bold

6.2.3 If the party who filed the appeal does not participate in the hearing, the appeal may be dismissed.

Formatted: Font: Bold

6.2.4 All testimony at a hearing must be recorded by the division but need not be transcribed unless the hearing officer's decision is appealed.

Formatted: Font: Bold

6.2.5 The hearing officer may, upon the application of any party or on his or her own motion, convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters that may simplify further proceedings.

Formatted: Font: Bold

6.2.6 The hearing officer will decide whether the division's determination is based on a clear error of fact or law. The appellant has the burden to prove a clear error by a preponderance of the evidence.

Formatted: Font: Bold

6.2.7 The hearing officer shall not engage in ex parte communication with any party to an appeal.

Formatted: Font: Bold

6.3 The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. The division shall promptly provide all parties with a copy of the hearing officer's decision via U.S. postal mail, electronic means, or personal delivery.

Formatted: Font: Bold

Rule 7. Post Notice of Paydays

7.1 Every employer shall post and keep posted conspicuously at the place of work if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer a notice specifying the regular paydays and the time and place of payment, in accordance with the provisions of § 8-4-103, C.R.S., and also any changes concerning them that may occur from time to time.

Rule 8. Termination of Employment — Payments Required — Penalties

8.1 When an interruption in the employer-employee relationship by volition of the employer occurs, the wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of such discharge is due and payable immediately. If at such time the employer's accounting unit, responsible for the drawing of payroll checks, is not regularly scheduled to be operational, then the wages due the separated employee shall be made available to the employee no later than six hours after the start of such employer's accounting unit's next regular workday; except that, if the accounting unit is located off the work site, the employer shall deliver the check for wages due the separated employee no later than twenty-four hours after the start of such employer's accounting unit's next regular workday to one of the following locations selected by the employer:

A. The work site;

B. The employer's local office; or

C. The employee's last-known mailing address.

8.2 When an employee quits or resigns such employee's employment, the wages or compensation shall become due and payable upon the next regular payday. When a separation of employment occurs, the employer shall make the separated employee's check for wages due available at one of the following locations selected by the employer:

A. The work site;

B. ~~_____~~ The employer's local office; or

C. ~~_____~~ The employee's last-known mailing address.

~~8.3~~ If an employer has made the employee's wages or compensation available at the work site or at the employer's local office under § 8-4-109(1)(a)-(b), C.R.S., and the employee has not received the wages or compensation within sixty days after the wages or compensation were due, the employer shall mail the employee's check for wages or compensation due to the employee's last-known mailing address.

~~8.4~~ Nothing in § 8-4-109(1), C.R.S., shall limit the right of an employer to set off any deductions pursuant to § 8-4-105, C.R.S., owing by the employee to the employer or require the payment at the time employment is severed of compensation not yet fully earned under the compensation agreement between the employee and employer, whether written or oral.

~~8.5~~ If an employer refuses to pay wages or compensation in accordance with § 8-4-109(1), C.R.S., the employee, his or her designated agent, or the division may send a written demand for the payment.

~~8.5.1~~ If the employer disputes the amount of wages or compensation claimed by an employee under article 4, title 8, C.R.S., and if, within fourteen days after the written demand is sent, the employer makes a legal tender of the amount that the employer in good faith believes is due, the employer shall not be liable for any penalty unless, in a legal proceeding, including a civil action or an administrative procedure under § 8-4-111, C.R.S., and § 8-4-111.5, C.R.S., the employee recovers a greater sum than the amount so tendered.

~~8.6~~ If an employee's earned, vested, and determinable wages or compensation is not paid within fourteen days after the written demand is sent in the manner set forth in § 8-4-109(3)(d), C.R.S., the employer shall be liable to the employee for the wages or compensation, and a penalty of the sum of the amount of wages or compensation due or, if greater, the employee's average daily earnings for each day, not to exceed ten days, until such payment or other settlement satisfactory to the employee is made:

A. ~~_____~~ One hundred twenty-five percent of that amount of such wages or compensation up to and including seven thousand five hundred dollars.

~~8.7~~ If the employee can show that the employer's failure to pay is willful, the penalty required under § 8-4-109(3)(b), C.R.S., shall increase by fifty percent. Evidence that a judgment has, within the previous five years, been entered against the employer for failure to pay wages or compensation is admissible as evidence of willful conduct.

~~8.8~~ Penalties established by § 8-4-109(3), C.R.S., apply to actions instituted by the director under article 4, title 8, C.R.S., when no interruption of the employer-employee relationship has occurred.

~~8.9~~ The employer shall send or deliver payment, by check, draft or voucher in the employee's name, to the employee at the address contained in the written demand; or make the payment by direct deposit authorized under § 8-4-102(2), C.R.S., if the employer has not revoked the authorization.

~~8.9.1~~ The employer may, but is not required to, make the payment by direct deposit to an account specified by the employee in the demand, even if the employee has not previously authorized direct deposit of the employee's compensation, or make the payment by another method requested by the employee in the demand, if applicable.

~~8.9.2 — If the employee has not previously authorized direct deposit of compensation and the demand does not state an address to which the payment should be mailed, the employer shall make the payment as follows:~~

~~A. — To the employee's last-known address according to the records of the employer;
or~~

~~B. — If applicable and if the employer so elects, as otherwise requested by the employee in the demand.~~

~~8.10 — The employee or his or her designated agent may commence a civil action to recover the penalty set forth in § 8-4-109(3), C.R.S. For an action filed in a small claims court, established pursuant to part 4 of article 6 of title 13, C.R.S., if the employer has not received a written demand at least fourteen days before the employer is served with the complaint or other document commencing the action, service of the complaint or other document serves as the written demand under § 8-4-109(3), C.R.S. If an employer makes a legal tender of the full amount claimed in the action within fourteen days after service of the complaint or other document commencing the action, the employee shall dismiss the action.~~

Rule 9. Wage Complaint Adjudication — Administrative Procedure

~~9.1 — An employee may pursue a wage complaint through either the court system or the division's administrative procedure. Employees may elect either option, and are not required to utilize the division's administrative procedure in order to pursue a wage complaint in court. However, § 8-4-111(2)(e), C.R.S., provides that: upon payment by an employer, and acceptance by an employee, of all wages, compensation, and penalties assessed by the division in a citation and notice of assessment issued to the employer, the payment shall constitute a full and complete satisfaction by the employer and bar the employee from initiating or pursuing any civil action or other administrative proceeding based on the wage complaint addressed by the citation and notice of assessment.~~

~~9.1.1 — The administrative procedure applies to wages and compensation earned on and after January 1, 2015.~~

~~9.1.2 — The administrative procedure is subject to a dollar limit for nonpayment of wages or compensation of seven thousand five hundred dollars or less, exclusive of penalties and fines.~~

~~9.1.3 — Wage complaints of employees where no interruption of the employer-employee relationship has occurred are subject to the administrative procedure.~~

~~9.2 — An employee who wishes to file a wage complaint with the division shall utilize the division-approved form. An employee may designate an authorized representative.~~

~~9.2.1 — A wage complaint may only be filed by the employee who has been directly affected by the employer's alleged violations. The complainant shall be the specific employee who has not received his or her wages or compensation, or who has been affected by other non-monetary violations under the division's authority.~~

~~9.2.2 — A wage complaint shall include the complainant's signature, complainant's contact information, the employer's contact information, and basis for the wage complaint. Failure to include this information on the wage complaint form may result in administrative dismissal of the wage complaint.~~

~~9.2.3 — The failure of a complainant to respond to informational or investigatory requests by the division may result in administrative dismissal of the wage complaint.~~

Rule 10. Notice of Complaint

10.1 — The division shall initiate the administrative procedure by sending a notice of complaint to the employer by mail or electronic means. An employer who is subject to a wage complaint shall be notified in writing of the wage complaint by the division via U.S. postal mail, electronic means, or personal delivery. In the event that the employer cannot be contacted via U.S. postal mail, electronic means, or personal delivery, or other circumstances exist which the division deems to warrant the use of other contact methods, the division shall utilize other methods to contact the employer.

10.1.2 — The notice of complaint provided by the division to the employer shall include:

- A. — The name of the complainant;
- B. — The nature of the wage complaint; and
- C. — The amount for which the employer may be liable, including any potential fines or penalties.

10.2 — An employer shall respond to the division within fourteen days after the notice of complaint is sent.

10.3 — The division's notice of complaint filed pursuant to § 8-4-111(2), C.R.S., satisfies the requirement of a written demand as described in § 8-4-109(3)(a), C.R.S.

Rule 11. Investigations

11.1 — Wage complaints shall be assigned to division investigators. Investigatory methods utilized by the division may include, but are not limited to:

- A. — Interviews of the employer, employee, and other parties;
- B. — Information gathering, fact-finding, and reviews of written submissions;
- C. — Any other techniques which enable the division to assess the employer's compliance.

Rule 12. Citation and Notice of Assessment

12.1 — The division shall issue a determination within ninety days after the notice of complaint is sent unless the division extends the time period by providing advance written notice to the employee and employer stating good cause for the extension of time.

12.2 — If the division does not find a violation based on the wage complaint and any response, including the failure by the employee to pursue the wage complaint, the division shall issue a notice of dismissal of the wage complaint and send the notice of dismissal to all interested parties. The notice will set forth the employee's rights to any other relief available under § 8-4-111(2)(b), C.R.S., or § 8-4-111.5, C.R.S.

12.3 — If the division determines that an employer has violated article 4, title 8, C.R.S., for nonpayment of wages or compensation, the division shall issue a citation and notice of assessment for the amount determined that is owed, which amount will include all wages and compensation owed, penalties pursuant to § 8-4-109, C.R.S., and any fines pursuant to § 8-4-113, C.R.S.

12.4 — To encourage compliance by the employer, if the employer pays the employee all wages and compensation owed within fourteen days after the citation and notice of assessment is sent to the

employer, the division may waive or reduce any fines imposed pursuant to § 8-4-113(1), C.R.S., and reduce by up to fifty percent penalties imposed pursuant to § 8-4-109, C.R.S.

12.5 — Upon payment by an employer, and acceptance by an employee, of all wages, compensation, and penalties assessed by the division in a citation and notice of assessment issued to the employer, the payment shall constitute a full and complete satisfaction by the employer and bar the employee from initiating or pursuing any civil action or other administrative proceeding based on the wage complaint addressed by the citation and notice of assessment.

Rule 13. Fines Pursuant to Enforcement

13.1 — If a case against an employer is enforced pursuant to § 8-4-111, C.R.S., any employer who without good faith legal justification fails to pay the wages of each of his or her employees shall forfeit to the people of the state of Colorado a fine in an amount determined by the director or hearing officer but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable.

13.1.1 — The division may collect the fine through its citation and notice of assessment issued pursuant to § 8-4-111(2), C.R.S., or after a hearing conducted pursuant to § 8-4-111.5, C.R.S.

13.2 — The director or hearing officer shall impose a fine of two hundred fifty dollars on an employer who fails to respond to a notice of complaint or to any other notice from the division to which a response is required.

13.2.1 — The director or hearing officer may waive or reduce the fine only if he or she finds good cause for an extension of the time for the employer to file the response.

13.3 — A certified copy of any citation, notice of assessment, or order imposing wages due, fines or penalties pursuant to article 4, title 8, C.R.S., may be filed with the clerk of any court having jurisdiction over the parties at any time after the entry of the order. The certified copy shall be recorded by the clerk of the district court in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases.

13.4 — The division shall transmit all fines collected pursuant to § 8-4-113, C.R.S., to the state treasurer, who shall credit the same to the wage theft enforcement fund. The moneys in the fund are subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing article 4, title 8, C.R.S.

Rule 14. Termination of Division's Administrative Procedure

14.1 — An employee who has filed a wage complaint with the division pursuant to § 8-4-111(2), C.R.S., may elect to terminate the division's administrative procedure within thirty-five days after the issuance of the determination of compliance or citation and notice of assessment by providing a written notice to the division.

14.2 — An employee who terminates the division's administrative procedure preserves any private right of action the employee may have.

14.3 — Upon receipt of the written notice of termination, the division shall immediately discontinue its action against the employer and revoke any citation and notice of assessment sent. The division will notify the employer in writing that the action has been discontinued and any citation and notice of assessment sent has been revoked.

Rule 15. Appeals and Hearings

- 15.1** — Any interested party who is dissatisfied with the division's compliance determination on a wage complaint filed pursuant to § 8-4-111(2), C.R.S., may file a request for an administrative appeals hearing within thirty-five days after the division's compliance determination is sent.
- 15.1.1** — If no request is filed within the thirty-five day period, the division's compliance determination is considered the division's final agency decision.
- 15.1.2** — The division's compliance determination shall contain information on appeal rights and appeal procedures.
- 15.2** — Parties who wish to appeal the division's compliance determination are afforded an administrative appeals hearing and a final agency decision in conformity with § 8-4-111.5, C.R.S.
- 15.2.1** — A division hearing officer shall preside over the administrative appeals hearing.
- 15.3** — The hearing officer's decision constitutes a final agency action pursuant to § 24-4-106, C.R.S.
- 15.4** — Any party to the division's administrative appeals hearing may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five days after the date of mailing of the decision by the division.
- 15.4.1** — Judicial review is limited to appeal briefs and the record designated on appeal.

Rule 16. Limitation of Actions

- 16.1** — All actions brought pursuant to article 4, title 8, C.R.S., shall be commenced within two years after the cause of action accrues and not after that time; except that all actions brought for a willful violation of article 4, title 8, C.R.S., shall be commenced within three years after the cause of action accrues and not after that time.
- 16.2** — Nothing in these rules shall be construed to limit the right of the division to pursue any action available with respect to an employee that is identified as a result of a wage complaint or with respect to an employer in the absence of a wage complaint.
- 16.3** — Any person claiming to be aggrieved by violation of any provisions of article 4, title 8, C.R.S. or regulations prescribed pursuant to article 4, title 8, C.R.S. may file suit in any court having jurisdiction over the parties without regard to exhaustion of any administrative remedies.

Rule 17. Claims Other Than Those Considered by the Division

- 17.1** — Nothing in these rules shall be construed to limit the right of the employee to pursue any civil action or administrative proceeding for any claims other than those considered by the division in the employee's wage complaint. The claims considered by the division in the employee's wage complaint are subject to the limitations set forth in § 8-4-111(2)(e), C.R.S., and § 8-4-111(3), C.R.S.

Rule 18. Nonwaiver of Employee Rights

- 18.1** — Any agreement, written or oral, by any employee purporting to waive or to modify such employee's rights in violation of article 4, title 8, C.R.S., shall be void.

Rule 19. Enforcement

19.1 The director of the division of labor in the department of labor and employment shall enforce the Wage Protection Act and these rules.

Rule 20. Severability

20.1 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.

Formatted: Tab stops: 0.5", Left + 1", Left + 1.5", Left