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DEPARTMENT OF LABOR AND EMPLOYMENT
OFFICE OF THE EXECUTIVE DIRECTOR

633 17th Street, Suite 1200
Denver, Colorado 80202-3629

November 1, 2013

Ms. Amy Zook
Deputy Director
Legislative Council Staff
Colorado General Assembly
200 E. Colfax Ave.
Denver, CO 80203

Dear Ms. Zook:

Pursuant to H.B. 12-1008, section 2-7-203, I am pleased to submit the attached departmental regulatory agenda ("1008 Report") on behalf of the Colorado Department of Labor and Employment. It is my understanding that you will distribute this report to our House and Senate Committees of Reference, and that we will include discussion of it in our annual SMART Act presentation to those committees. That meeting is currently scheduled for the afternoon of Friday, November 22, 2013.

Additionally, I am listing below in this transmittal letter several new fines/penalties which were adopted by the General Assembly in 2013 which will impact CDLE's Division of Labor. Our attached 1008 Report doesn't include these new fines/penalties because they are the result of legislation rather than rulemaking. Nonetheless, in order to comply with legislative requirements, the proposed and anticipated rules under all three of these laws will mirror the penalties and fines contained in the respective laws; the penalties and fines in the rules will not exceed the values listed. The list includes provisions from three separate bills which became law last year:

SB 13-018: Employment Opportunity Act (Credit History Law) Civil Penalties, effective July 1, 2013

§ 8-2-126(5), C.R.S.

A person who is injured by a violation of this section may file a complaint with the division of labor, upon which the division of labor shall promptly investigate and issue findings within thirty days after a hearing and may award civil penalties not to exceed two thousand five hundred dollars to a prevailing party in an action brought under this subsection (5).

HB 13-1292: Keep Jobs in Colorado Act Fines, effective January 1, 2014

§ 8-17-104(2), C.R.S.

(2)(a) After conducting an investigation of a complaint alleging a violation of the provisions of this article, if the department of labor and employment determines that a contractor has knowingly violated the requirements of this article by importing labor in excess of that permitted pursuant to section 8-17-101 (1), the executive director of the department of labor and employment or the executive director's designee 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.

HB 13-1046: Social Media Law (Facebook Law) Penalties/Fines, effective May 11, 2013

§ 8-2-127(5), C.R.S.

A person who is injured by a violation of this section may file a complaint with the department of labor and employment. The department shall investigate the complaint and issue findings thirty days after a hearing. The department may promulgate rules regarding penalties that include a fine of up to one thousand dollars for the first offense and a fine not to exceed five thousand dollars for each subsequent offense.

Thanks for your assistance in distributing this report to the public. Please don't hesitate to contact me, or our Director of Policy and Legislation, Patrick Teegarden, with any questions or suggestions concerning the contents of this report.

Sincerely,



Ellen Golombek
Executive Director

Attachment

Colorado Department of Labor and Employment

(DRAFT) November 1, 2013 Regulatory Agenda; pursuant to HB 12-1008 (DRAFT)

Estimated Date for action	Division	Rule	Purpose of proposed change	Statutory basis for Rule	Identification of Stakeholders (and planned stakeholder outreach)	(and planned)	Fine or Fee Increase?	Notice to General Assembly
Hearing to be held 11-01-13 with implementation planned for 1-01-14	Division of Labor	Minimum Wage Order	The new state minimum wage is required by Article XVIII, Section 15 of the Colorado Constitution, which provides: Effective January 1, 2007, Colorado's minimum wage shall be increased to \$6.85 per hour and shall be adjusted annually for inflation, as measured by the Consumer Price Index used for Colorado. This minimum wage shall be paid to employees who receive the state or federal minimum wage.	8-1-103 C.R.S.	The annual adjustment of the state minimum wage is required by the State Constitution and is based on the Consumer Price Index released by the Bureau of Labor Statistics. A Representative Group of 15 Associations is notified of the annual adjustment and an additional 150 individuals who have requested Division notices and information are also informed.		No	not required
Hearing to be held 11-01-13 with implementation planned for 1-01-14	Division of Labor	Employment Opportunity Act Rules	The purpose of the Employment Opportunity Act Rules, effective January 1, 2014, is to implement the provisions of § 8-2-126, C.R.S. The Colorado Employment Opportunity Act restricts the use of consumer credit information by employers in Colorado.	§ 8-2-126, C.R.S.	Colorado Association of Commerce and Industry, Colorado AFL-CIO, National Federation of Independent Business, Associated General Contractors of Colorado, Colorado Retail Council, Colorado Mortgage Lending Association, Bell Policy Center, Colorado Municipal League, Colorado Restaurant Association, 9 to 5 National Association of Working Women, Colorado Ski Country, Colorado Hotel and Lodging Association, Mountain State Employers Council, Colorado Bankers Association. An additional 150+ businesses and associations have signed up for general Division notices and they will be notified as well.		No. Fine set by statute.	not required
Hearing to be held 11-01-13 with implementation planned for 1-01-14	Division of Labor	Social Media and the Workplace Law rules	The purpose of the Social Media and the Workplace Law rules, effective January 1, 2014, is to implement the provisions of § 8-2-127, C.R.S. An employer may not access an employee's or applicant's personal social media accounts.	§ 8-2-127, C.R.S.	Colorado Association of Commerce and Industry, Colorado AFL-CIO, National Federation of Independent Business, Associated General Contractors of Colorado, Colorado Retail Council, Bell Policy Center, Colorado Municipal League, Colorado Restaurant Association, 9 to 5 National Association of Working Women, Colorado Ski Country, Colorado Hotel and Lodging Association, Mountain State Employers Council, Colorado Bankers Association. An additional 150+ businesses and associations have signed up for general Division notifications and they will be notified as well.		No. Fine set by statute.	not required

Colorado Department of Labor and Employment

(DRAFT) November 1, 2013 Regulatory Agenda; pursuant to HB 12-1008 (DRAFT)

Estimated Date for action	Division	Rule	Purpose of proposed change	Statutory basis for Rule	Identification of Stakeholders (and planned stakeholder outreach)	Fine or Fee Increase?	Notice to General Assembly
Hearing to be held late Fall 2013 with implementation planned for Spring 2014	Division of Labor	Keep Jobs In Colorado Act Rules	The purpose of the Keep Jobs In Colorado Act rules is to implement the provisions of § 8-17-101, C.R.S. The Keep Jobs In Colorado Act of 2013 seeks to ensure that whenever any public works project financed in whole or in part by public funds are undertaken, Colorado labor shall be employed to perform at least eighty percent of the work.	§ 8-17-101, C. R.S.	Colorado Association of Commerce and Industry, Colorado AFL-CIO, National Federation of Independent Business, Associated General Contractors of Colorado, Bell Policy Center, Colorado Municipal League, Mountain State Employers Council, Pipefitters local 208, Colorado Building and Trades Council, Colorado Counties Inc., Associated Builders and Contractors, American Sub-contractors Association, American Concrete Pavement Association, Colorado Association of Mechanical and Plumbing Contractors, Independent Electrical Contractors Association, Colorado Competitive Council, Special District Association of Colorado. An additional 150+ businesses and associations have signed up for general Division notifications and they will be notified as well.	No. Fine set by statute.	not required
No current plans for rulemaking	Division of Unemployment Insurance (UI)		The UI Division currently has no plans to promulgate new rules (or amendments to existing rules) over the next 12 months.	8-70-101 through 8-82-103 C.R.S.	Complete lists of Colorado Employers and UI Claimants are maintained on an ongoing basis. Additionally, CDLE regularly convenes a UI Stakeholder task force, made up of broad-based representation from employers and business generally, as well as organized labor and other worker advocates. Further information and contact information is available upon request from CDLE.		
Public Notice planned for April 2014, with anticipated hearing in May or June.	Division of Oil and Public Safety	Conveyance (elevators, escalators) Regulations (7 CCR 1101-8)	General cleanup and clarification of language for easier interpretation by stakeholders; addition of components from guidance documents.	9-5.5-116 C. R.S.	List of owners/operators, contractors, inspectors, and local jurisdiction contacts as maintained by CDLE.	No	Not required
Public Notice sent on 10-8-13, with hearing planned for 3-11-14.	Division of Oil and Public Safety	Explosives (7 CCR 1101-9)	Clarification of language and policy goals for easier interpretation by stakeholders, and review for consistency with federal requirements (ATF).	9-7-105 C.R. S.	Stakeholders List maintained by CDLE includes manufacturers, contractors, permit holders, Federal ATF representatives, and municipalities. Stakeholder meeting is scheduled for 11/16/13.	No	Not Required
Public Notice and emergency rule planned for 11-19-13 with hearing planned for 3-14-14.	Division of Oil and Public Safety	Amusement Rides and Devices (7 CCR 1101-12)	Definition of Injury Reporting needs to be clarified and made consistent with language in statute per legislative legal services. Some other minor changes are expected to be proposed. Language that gives OPS authority over third party inspectors is recommended.	8-20-1002 C. R.S.	Stakeholders List maintained by CDLE includes manufacturers, device owners, contractors, inspectors, and municipalities. Stakeholder meetings planned for Nov and Dec 2013.	No	Not required
Public Notice planned for 12-15-13, with anticipated hearing date on or after 1-14-14.	Division of Oil and Public Safety	Boiler Inspection Program (7 CCR 1101-5)	General cleanup and clarification of language. Adopt current code editions.	9-4-106 C.R. S.	Stakeholder list maintained by CDLE including boiler owners and industry contractors. Outreach meeting is planned for 12-11-13.	No	Not required

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Estimated Date for action	Division	Rule	Purpose of proposed change	Statutory basis for Rule	Identification of Stakeholders (and planned stakeholder outreach)	(and planned	Fine or Fee Increase?	Notice to General Assembly
Public Notice planned for 10-31-13, with anticipated hearing date for 12-3-13.	Division of Oil and Public Safety	Retail Natural Gas (CNG/LNG) Regulations - These are new regulations to be developed.	Regulations will be developed to fully implement HB 13-1110 which requires requirements for the inspection, permitting, record keeping, labeling of containers, use of measuring devices (weights and measures), and minimum standards for the design, construction, location, installation and operation of retail natural gas systems.	8-20-102 and 39-27-123 C. R.S.	Stakeholder lists maintained by CDLE includes Petroleum Marketers Association, system owner/operators, and contractors. First draft was submitted to stakeholders on 10/2/13, first meeting held on 10/10/13, and draft rules submitted back to stakeholders on 10/16/13.		No	Not Required
Public Notice planned for April 2014, with anticipated hearing in May or June.	Division of Oil and Public Safety	Included in Article 5 of the Petroleum Storage Tank Regulations (7 CCR 1101-14).	The petroleum program proposes to incorporate more site specific information into site assessments to allow for potential additional categories of risk-based site closures while maintaining the current level of receptor protection.	8-20.5-202 C. R.S.	Stakeholder lists maintained by CDLE will include Petroleum Marketers Association, system owner/operators, environmental contractors, and CDPHE. Stakeholder meetings will be held in March and, if necessary, in May.		No	Not Required
Notice was issued October 15, 2013, and hearing is scheduled for November 19, 2013	Division of Workers' Compensation	Rule 17 (Medical Treatment Guidelines for Low Back Pain, Cervical Spine)	Rule 17 is updated annually, per statutory requirements (Updates are prepared in consultation with Colorado Medical Society and Medical Advisory Panel, as well as other stakeholders)	8-40-101 through 8-47-209 C.R.S. (specifically, 80-47-107 C. R.S.)	Notice is provided to Workers' Compensation stakeholder list (more than 200 names), including physicians, insurers, claimant and employer reps. Some of these records include confidential information, so specific contact information will be made available as appropriate, upon specific request		No	Not Required