



Wage Protection Act of 2014 Frequently Asked Questions

The answers to the following questions are intended to provide general information on the Wage Protection Act (WPA) of 2014, but should not be construed or relied upon as legal advice. If you or someone you know needs legal advice about your rights under the WPA, please consult with an attorney. If you need help finding an attorney, contact your local bar association.

Overview of the Wage Protection Act of 2014

In May of 2014, Governor John Hickenlooper signed the Wage Protection Act of 2014, SB 14-005 (“Act”) into law. The Act amended the existing Colorado Wage Act, § 8-4-101 et seq., C.R.S., to provide new protections and enhanced enforcement processes for Colorado private sector employees who are owed wages for work performed in Colorado.

When does the Wage Protection Act take effect?

The core provisions of the Act go into effect for Colorado employers and employees on January 1, 2015. The new enforcement processes at the Colorado Division of Labor Standards and Statistics (“Division”) apply to wages earned on and after January 1, 2015.

Have administrative rules been issued for the Act?

Yes. The Division issued Wage Protection Act Rules 7 CCR § 1103-7. The rules implement provisions of the Act and provide clarification on Division authority and enforcement processes.

Who enforces Colorado wage and hour laws under the Act?

Current or former private sector employees in Colorado may pursue wage complaints for unpaid wages through either:

(1) The judicial/court system

OR

(2) The Division wage complaint process.

The Division process is not required, and is not a prerequisite for independent legal action; you may pursue the matter in court without contacting the Division. However, if you have already pursued the wage complaint in court, you may not subsequently use the Division process to address the same wage complaint that you previously pursued in court.

Employees may also be able to file wage complaints under separate federal wage and hour laws; contact the [U.S. Department of Labor](http://www.dol.gov) at 720-264-3250 for more information.

How has the wage complaint process at the Division changed?

The Act has significantly altered the manner in which the Division investigates and adjudicates wage complaints.

For wages earned on and after January 1, 2015, the Division may:

1. Formally order the payment of unpaid wages up to \$7,500 for current and former employees;
2. Impose penalties on unpaid wages for current and former employees;

3. Issue fines on employers for various violations of the Act;
4. Conduct hearings of appeals of investigatory decisions made by the Division.

How does the January 1, 2015 date affect my wage complaint filed with the Division?

1. If the unpaid wages were earned **solely before** January 1, 2015
The Division will investigate the wage complaint and notify the employer of any violations, but the Division does not have the legal authority to order the payment of wages and penalties for wages earned before January 1, 2015.
2. If the unpaid wages were earned **solely on or after** January 1, 2015
The wages are subject to the Division's full enforcement authority, and the Division may legally order the payment of wages up to \$7,500, and penalties as appropriate.
3. If the unpaid wages were earned **both before and after** January 1, 2015
The Division can only legally order the payment of wages and penalties for the portion of wages which were earned on or after January 1, 2015, up to \$7,500.

Is there a minimum or maximum dollar limit on wage complaints filed with the Division?

There is no minimum dollar requirement for wage complaints filed with the Division. However, there is a maximum limitation on wages that the Division can order an employer to pay. The Act limits the Division's full enforcement authority to situations where the wages owed were earned on or after January 1, 2015, and are less than \$7,500 in total.

If the Division determines that you are owed wages in excess of \$7,500, the Division cannot legally order the payment of the wages in excess of \$7,500. If you have reason to believe that you are owed more than \$7,500 in wages, you may wish to contact an attorney for legal advice, or pursue your dispute in the appropriate court.

Who may file a wage complaint with the Division?

The wage complaint process provided by the Division is a free service, and is available to current and former Colorado private sector employees regardless of immigration status. The unpaid wages described in the Wage Complaint Form must have been earned for work performed in Colorado as an employee; independent contractors are not entitled to use the Division process.

When may an employee file a wage complaint with the Division?

Colorado wage and hour laws provide that the unpaid work must have occurred within 2 years of the date of filing the wage complaint with the Division, or 3 years if the Division determines that the non-payment was willful.

May I designate someone to assist or represent me in the wage complaint process?

Yes. You may designate an authorized representative to assist you and act on your behalf in the wage complaint process at the Division. You must complete and sign the Authorized Representative Form and submit it to the Division in order to designate a representative.

What types of complaints are covered by the Act and the Division wage complaint process?

The following represent common complaints which may be submitted on the Wage Complaint Form and are typically subject to the Division process:

- Non-payment of wages for work performed in Colorado in the last 2 years (or 3 years if willful)
- Minimum wage violations
- Unauthorized deductions from wages
- Non-payment of overtime in [certain industries](#)
- Non-payment of unused vacation pay earned in accordance with an employer's policy
- Dishonored (bounced) paychecks
- Tip or gratuity disputes
- Meal or rest period disputes in [certain industries](#)
- Unpaid commissions or bonuses

What types of complaints are NOT covered by the Act and are NOT entitled to the Division wage complaint process? (See the appropriate agency or an attorney for assistance in these areas).

- Non-payment of wages for work not performed in Colorado
- Independent contractor pay disputes
- Wrongful termination
- Discrimination
- Harassment or abusive treatment
- Expense reimbursements
- Employment references; slander or libel
- Access to personnel or medical records
- Government or school district employee disputes
- Severance pay
- Sick pay
- Pay disputes where an employer has filed for bankruptcy or has been seized by a creditor
- Health or life insurance coverage
- 401K, pension, or savings accounts
- Taxes

Do I have to send a written demand to my employer for unpaid wages?

No, although sending a written demand to your employer may assist you in recovering the wages, and may also increase the chance of obtaining monetary penalties from your employer if you subsequently pursue the matter in court or with the Division.

The Act amended Colorado wage and hour law regarding the use of written demands by an employee for payment of wages. Under previous Colorado law, employees were required to send a written demand for payment to the employer within 60 days of separation from employment in order to potentially recover penalties. The Act eliminated the 60-day written demand requirement, and the Act also permits current employees to obtain penalties (not just employees who were separated from employment).

Written demands operate as follows under the Act:

1. The employee is not required to send a written demand to the employer in order to recover wages or penalties.

2. If the employee wishes to send the employer a written demand, he or she may use the Demand for Payment of Wages, provided by the Division as a courtesy.
3. If the employee sends the Demand for Payment of Wages to the employer, the employee may wish to send the demand via certified mail (or via other tracking methods), so that the mailing and receipt of the demand is tracked. The employee may also wish to keep any related records that prove when, and to whom, the demand was sent. Proof of sending the demand, and retaining a copy of the demand, may assist the employee in obtaining wages and penalties from the employer.
4. Sending a demand for payment of wages to the employer does not constitute filing a complaint with the Division. The employee must still complete and submit the separate Wage Complaint Form in order for the Division to investigate the complaint.
5. If the employee does not send a written demand to the employer, the Division's Notice of Complaint (sent to the employer by the Division to initiate the wage complaint investigation) constitutes a written demand for legal purposes.
6. If the employee has sent a written demand to the employer, or the Division has sent a Notice of Complaint to the employer, the employer generally has 14 days to pay all earned and unpaid wages to the employee.
 - a. If the employer does not pay all earned and unpaid wages within 14 days after the written demand or Notice of Complaint is sent, the employer may be liable for penalties (in addition to the owed wages).

Can the Division impose penalties on employers who fail to pay wages?

Yes. If an employer fails to pay an employee in accordance with Colorado wage and hour law and the 14-day period described above, the Division may impose a penalty of 125% of the wages owed, or up to 10 days of the employee's average daily earnings, whichever is greater. The penalty would be payable to the employee, in addition to the owed wages. Penalties may subsequently be increased or decreased depending upon the specific circumstances, as described in the Act.

Does the Division issue fines against employers who violate wage and hour laws?

Yes. The Act provides three categories of possible fines on employers. Fines are payable to the State of Colorado, not to the employee.

1. A fine of up to \$250 per employee, per month, for failures to retain or provide proper pay statements to the Division or to employee(s), with a maximum of \$7,500.
2. A fine of up to \$50 per day, per employee, for each failure to pay an employee, commencing from the date that the wages were due and payable to the employee(s).
3. A fine of \$250 for each failure to respond to a notice from the Division that required a response.

Can employers in Colorado have "use it or lose it" provisions in vacation agreements?

Yes. "Use-it-or-lose-it" policies are permissible under the Colorado Wage Protection Act, provided that any such policy is included in the terms of an agreement between the employer and employee. A "use-it-or-lose-it" policy may not operate to deprive an employee of earned vacation time and/or the wages associated with that time. Any vacation pay that is "earned and determinable" must be paid upon

separation of employment. The terms of an agreement between the employer and employee will dictate when vacation pay is “earned.”

What factors are used to determine if a specific “use it or lose it” provision is permissible?

If a party challenges the validity of a “use-it-or-lose-it” policy, the Division will initiate a wage complaint investigation. The Division will review the policy in conjunction with the remaining terms of the agreement between the employer and employee. In the event that an agreement is silent or ambiguous as to when vacation becomes “earned,” the Division may consider the following factors in determining whether a “use-it-or-lose-it” provision is permissible under the Colorado Wage Act.

The employer’s historical practices

- Industry norms and standards
- The subjective understandings of the employer and employee.
- And any other factual considerations which may shed light on when vacation time becomes “earned” under the agreement in question.

These factors are not exhaustive and may vary from case to case.

Does the Division award attorney fees in wage complaint processes?

No. The Act does not permit the Division to award attorney fees. Attorney fees can only be awarded in certain circumstances by a court.

What can I do if I disagree with the Division’s determination at the conclusion of a wage complaint investigation?

After the Division has investigated a wage complaint and issued a written determination, both the employee and the employer have the right to appeal the Division’s determination. The appeal must be filed with the Division within 35 days of the issuance of the determination. If the appeal is properly filed, a Hearing Officer at the Division will conduct an appeal to review the Division’s determination. Contact the Division for more information on the appeal and hearing process.

In addition, employees have the right to terminate the Division’s determination and preserve their right to private action (e.g., pursue the matter on their own in court). Termination of the Division’s determination must occur within 35 days after the issuance of the determination. Contact the Division for more information on terminating the Division’s determination.

If neither party appeals the Division’s determination within 35 days, and the employee does not terminate the Division’s determination within 35 days, the Division’s determination is final.

Can I appeal the decision of a Division Hearing Officer?

Yes. The employee or employer may appeal the Hearing Officer’s decision by commencing action in district court within 35 days of the mailing of the decision by the Division. Contact an attorney or the court system for more information.

May an employer retaliate or discriminate against me for filing a wage complaint?

No. Employers may be subject to civil or criminal penalties if they intimidate, threaten, restrain, coerce, blacklist, discharge, retaliate, or discriminate against you for filing a wage complaint with the Division.

An employer who is found guilty of retaliation via applicable state and/or federal laws may be subject to both fines and imprisonment. See an attorney for legal advice on this topic.

What is the Division's contact information if I have additional questions?

You may contact the Division via phone at 303-318-8441, email: cdle_labor_standards@state.co.us or visit the Division website at www.colorado.gov/cdle/labor.