

# COLORADO WAGE AND HOUR LAWS

SECOND EDITION (2008)

BY JUDE BIGGS AND CHRISTINA GOMEZ

## INCLUDES INFORMATION ON

- Wage Order No. 24 (January 2008)
- Colorado Advisory Bulletins (January 2008)
- Payments at termination
- Proper deductions
- Minimum wage and overtime requirements
- Child labor laws
- Garnishments



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Second Edition (2008)

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Christina Gomez  
Holland & Hart LLP

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## Second Edition

By **Jude Biggs, Holland & Hart** LLP

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## 1. BRIEF HISTORY & STRUCTURE OF COLORADO'S WAGE AND HOUR LAWS

Three prominent statutes currently regulate the wages and hours of employees in Colorado: the Colorado Wage Claim Act,<sup>1</sup> the Minimum Wage Act,<sup>2</sup> and the Colorado Youth Employment Opportunity Act.<sup>3</sup>

Colorado's modern Wage Claim Act has its roots in legislation that was passed a century ago.<sup>4</sup> In 1901, the Colorado General Assembly passed legislation to regulate the payment of wages to employees of most private corporations, with certain exceptions for the railroad industry and ditch, canal and reservoir operations.<sup>5</sup> The Act was passed in response to the General Assembly's determination that an "emergency exist[ed]," and accordingly, the legislation took effect immediately upon passage.<sup>6</sup> Like its successor, the original act entailed provisions concerning the payment of employees upon termination, the availability of civil actions to employees aggrieved under the act, and the invalidity of contracts waiving employees' rights in violation of the act.<sup>7</sup> In 1959, the Colorado legislature passed additional legislation that expanded upon the original act, much of which now shapes the current Wage Claim Act.<sup>8</sup> In May 2003, the legislature passed House Bill 03-1206, which amended the Wage Claim Act, in large part to clarify when certain payments are considered earned, to provide a mechanism for employers to retain final paychecks while awaiting the return of company property, and to make other employer-friendly changes.<sup>9</sup> A few additional changes were made in House Bill 07-1247, enacted in May 2007.<sup>10</sup>

One of the most prominent features of the landscape of Colorado employment is the state's long history of mining. As early as 1908, mine, mill, and smelter workers began striking for higher wages and better working conditions,<sup>11</sup> and the first laws limiting the hours of labor were enacted to address the specific dangers of the mining industry. An act from 1913 declared several mining jobs dangerous and limited workers in those jobs to eight hours per day, except in cases of emergency.<sup>12</sup> A similar provision currently mandates eight-hour days for workers in dangerous industries.<sup>13</sup>

The first minimum wage law in Colorado, passed in 1917, applied to women and minors only.<sup>14</sup> It required that women receive wages adequate to support the cost of living and maintain their health, and that minors receive wages that were “not unreasonably low.”<sup>15</sup> Neither women nor minors could be employed under conditions detrimental to their health or morals.<sup>16</sup> The Industrial Commission of Colorado (the predecessor of the modern Division of Labor) was authorized, with the help of a wage board if needed, to investigate wages and conditions of labor, as well as to set the minimum wage through a minimum wage order.<sup>17</sup> The details of enforcing this statute are very similar to the current rules under the current Minimum Wage Act, which applies to both men and women.<sup>18</sup>

## 2. THE COLORADO WAGE CLAIM ACT

The Colorado Wage Claim Act (“Wage Act”), which forms the foundation of Colorado wage law, is codified at Title 8, Article 4 of the Colorado Code.<sup>19</sup> The Wage Act provides a comprehensive statutory scheme designed to require employers to timely pay wages earned by their employees.<sup>20</sup> In accordance with the legislative purpose of the Wage Act, the “Act should be liberally construed to carry out its beneficent purpose of assuring timely payment of wages and providing adequate judicial relief when wages are not paid.”<sup>21</sup>

### 2.1 Coverage

The term “employer” is broadly defined in the Wage Act to include “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 . . . employing any person in Colorado.”<sup>22</sup> The Wage Act does not, however, apply to public-sector employers, including the state or its agencies or entities; counties; cities and counties; municipal corporations; quasi-municipal corporations; school districts; or irrigation, reservoir, or drainage conservation companies or districts organized under Colorado law.<sup>23</sup>

In 2003, the Colorado Supreme Court clarified that, although the definition of “employer” includes “agents and officers” of private companies, individual officers are not personally liable for unpaid wages, penalties and attorney fees,

even if the corporation is in bankruptcy. In so ruling, the Court reasoned that the corporation had created the employment relationship and had the duty to meet payroll. In addition, the officers had acted within the scope of their authority when they filed the bankruptcy petition.<sup>24</sup> However, a federal court in Colorado has since then held that the individual partners of a limited partnership might have liability under the Wage Act.<sup>25</sup>

The term “employee” includes any person, including a migratory laborer, who performs labor or services for the benefit of an employer who can command when, where, and how much labor or services shall be performed.<sup>26</sup> Persons who are primarily free from “control and direction in the performance of the service” and who are “customarily engaged in an independent trade, occupation, profession, or business related to the service performed” are not employees under the Wage Act.<sup>27</sup>

## 2.2 Definition of Wages

One major change made in 2003 to the Wage Claim Act is to the definition of “Wages” or “Compensation” employers must pay. “Wages” or “Compensation” are still defined by the Act as “[a]ll 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.”<sup>28</sup> However, the revised definition includes four significant additions.

First, the statute now makes clear what previously was only explained in court cases. “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 this article.”<sup>29</sup> In the past, one of the most litigated issues had been whether certain compensation -- such as bonuses, commissions and the like -- was owed at the time of the employee’s termination/resignation. Employers often argued that bonuses and commissions were not owed at termination, because they were not yet “earned” by virtue of not being vested or determinable at the time of termination/resignation.

Disputes arose over sales commissions based on unfilled orders or a bonus based on year-end performance if termination/resignation occurred prior to year-end. Now employees can no longer base a claim on unearned compensation. Nonetheless, employers are still wise to define clearly and in writing when compensation becomes earned, vested and is determinable.

Second, “[b]onuses or commissions earned for labor or services performed in accordance with the terms of any agreement between an employer and employee” is now included within the definition of “wages.”<sup>30</sup> This new language should preclude employees from claiming bonuses or commissions unless they can prove there was a clear agreement for such pay. A vague understanding they were to receive a bonus or commission will not suffice for a claim, although such a claim might still be maintained under other legal theories, such as breach of contract. And of course, a good way to avoid litigation is to have a clearly worded, written agreement.

Third, “[v]acation pay earned in accordance with the terms of any agreement” is now expressly included in the definition of wages or compensation.<sup>31</sup> The Act provides, “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 employee.”

Prior to the amendment of the Act, vacation pay was not expressly included in the definition of “wages.” However, Colorado courts had held that under certain circumstances, vacation pay was “wages” protected by the Act.<sup>32</sup> What wasn’t clear was whether and how an employer could require forfeiture of unused vacation, or preclude carry over from year to year. The 2003 language of the Act makes clear that it will enforce “the terms of any agreement between the employer and employee.” Thus, employers’ policies should clearly state what happens to vacation pay, how it is determined, whether it is considered “earned wages,” whether it can be carried over from year to year, and whether it is paid at termination.<sup>33</sup>

Fourth, the 2003 amendments finally make clear that severance pay is not “wages” or “compensation.”<sup>34</sup> In the past,

many terminated employees tried to sue for severance pay under the Wage Act, relying on a court decision holding that severance pay is considered “wages” for purposes of determining unemployment benefits. Now, however, such claims are clearly precluded. Indeed, even if there is no dispute that an employee has earned severance, he or she may not use the Wage Act to recover such pay. This is important, as the Act allows for the recovery of attorneys fees. If severance cannot be received under the Act, an employee may sue for breach of contract only, which usually does not allow for recovery of attorneys fees.

Finally, in a case arising under the prior version of the Wage Act, stock options were held to be compensation for purposes of the Act, at least under the following circumstances: (1) a president’s employment agreement stated that he was entitled to compensation for services and to participate in stock option and stock purchase plans in amounts to be determined under a compensation committee’s discretion; (2) the employment agreement listed the employer’s duty to recommend that stock options be granted; (3) the number and value of the stock options were undisputed; (4) the value of the options was large compared with the president’s base salary; (5) the options would be taxable income to the president; and (6) vacation pay was also described as a benefit for the president’s services.<sup>35</sup>

### **2.3 Pay Periods, Paydays, and Direct Deposit**

In general, pay periods may not exceed the longer of thirty days or one calendar month.<sup>36</sup> Paydays must be regular and must occur within ten days following the close of each pay period, unless the employer and employee mutually agree on an alternative period of wage or salary payments.<sup>37</sup> The Colorado Supreme Court held, under a predecessor of the current Wage Act, that a contract to pay wages “when convenient” must be construed as imposing an obligation to pay at some time.<sup>38</sup> In the case of agricultural and horticultural businesses or stock or poultry raising in which the employer boards and lodges the employee, pay periods may not exceed one month and paydays must fall no later than ten days after the close of each pay period.<sup>39</sup>

Employers are required to post an up-to-date notice of regular paydays and the time and place of payment.<sup>40</sup>

Once a month or concurrent with each payday, every employer must furnish to each employee a written, itemized pay statement identifying the gross wages earned, all withholdings and deductions, the net wages earned, the inclusive dates of the pay period, the name of the employee or the employee's social security number, and the employer's name and address.<sup>41</sup>

Payment of wages by direct deposit can only be done when voluntarily authorized by the employee. Such direct deposits must be in the financial institution chose by the employee.<sup>42</sup>

The requirements for regular pay periods and paydays and those pertaining to severed employees (discussed below) are mutually exclusive and distinguishable.<sup>43</sup>

#### **2.4 Presents, Tips or Gratuities**

In general, in businesses in which patrons customarily give presents, tips or gratuities to employees, such presents, tips or gratuities are the sole property of the employee, to which the employer has no right of ownership.<sup>44</sup> However, an employer may claim ownership to presents, tips or gratuities if the employer posts a printed card in a conspicuous location, giving notice to the general public that all presents, tips or gratuities belong to the employer.<sup>45</sup> An employer may also require employees to share or allocate presents, tips or gratuities with their coworkers on a pre-established basis.<sup>46</sup>

#### **2.5 Field Labor Contractors**

A field labor contractor is "anyone who contracts with an employer to recruit, solicit, hire, or furnish migratory labor for agricultural purposes" associated with products, fruits or crops involving seasonal labor in Colorado.<sup>47</sup> "Agricultural purposes" includes hoeing, thinning, topping, sacking, hauling, harvesting, cleaning, cutting, sorting and other direct manual labor.<sup>48</sup> The term "field labor contractor" does not apply to farmers, growers, packinghouse operators, ginners, warehousemen, or any full-time regular and year-round employees of such persons who engage in such activities.<sup>49</sup> "Field labor contractor" also excludes migratory laborers who engage in the recruiting, soliciting, hiring

or furnishing of migratory laborers when such persons are their own children, spouses, parents, siblings or grandparents.<sup>50</sup>

“Migratory laborer” refers to any person who offers services to a field labor contractor, permitting the contractor to enter into a contract with an employer to furnish the services of the migratory laborer in seasonal employment.<sup>51</sup> Neither the location of the laborer’s residence nor the location from which services are offered is relevant to this definition.<sup>52</sup>

Every field labor contractor is required to have a valid certificate of registration from the Division of Labor in his or her immediate possession.<sup>53</sup> The Director will issue a certificate of registration to anyone who has completed and filed a written application, has consented to the Director accepting service of process for any action against a field laborer when the laborer has left state jurisdiction or is unable to accept service, and has demonstrated that he or she has met the insurance requirements of the Workers’ Compensation Act of Colorado.<sup>54</sup> Upon notice and hearing, the Director may refuse to issue, or may suspend, revoke, or refuse to renew a certificate of registration, if a field labor contractor:

- knowingly makes any misrepresentation or false statement in an application for a certificate of registration or a renewal thereof;
- knowingly gives false or misleading information to any migratory laborer regarding the terms, conditions, or existence of agricultural employment;
- unjustifiably fails to perform agreements or comply with arrangements made with farm operators;
- unjustifiably fails to comply with the terms of any working arrangements made with migratory laborers;
- permits his or her insurance under the Workers’ Compensation Act to terminate, lapse or otherwise become inoperative; or
- is not the real party in interest in an application or certificate of registration and the real party in interest is a person or entity that was previously denied a certificate, has had a certificate suspended or revoked, or does not qualify for a certificate.<sup>55</sup>

Every field labor contractor is required to carry a certificate of registration at all times when engaging in field labor contracting activities and must exhibit the certificate to all persons with whom he or she intends to deal as a field labor contractor.<sup>56</sup> Each field labor contractor must also disclose in writing to each migratory laborer, in the language in which the laborer is fluent at the time of recruitment, the area of employment; the crops and operations on which the laborer may be employed; the transportation, housing and insurance to be provided to the laborer; the wage rate to be paid; the charges by the field labor contractor for his or her services; and the existence of any strikes at the place of employment.<sup>57</sup> Field labor contractors are required to promptly pay or deliver, when due, all moneys or other things of value entrusted to the contractor by or on behalf of migratory laborers.<sup>58</sup>

## 2.6 Termination of Employment

If an employer terminates an employee, all earned, vested, determinable, unpaid wages or compensation, less appropriate deductions, are due and payable immediately upon discharge.<sup>59</sup> However, if the discharge occurs at a time when the employer's payroll unit is not scheduled to be operational, the employer is afforded additional time to pay the wages or compensation.<sup>60</sup> Specifically, if the employer's payroll unit is onsite, the employer must make the payment within six hours after the start of the employer's next regular workday.<sup>61</sup> If the payroll unit is offsite, the employer must make payment at the work site, the employer's local office, or the employee's last known mailing address within 24 hours of the start of the accounting unit's next regular workday.<sup>62</sup> The Division of Labor has taken the position that the mailing of wages to a separated employee is sufficient, so long as it is postmarked by the time specified.<sup>63</sup>

If an employee quits or resigns, unpaid earned wages or compensation must be made available on the next regular payday at the work site, the employer's local office, or the employee's last-known mailing address.<sup>64</sup>

In the event of a strike, the unpaid wages of striking employees are due and payable on the next regular payday without abatement or reduction of the amount due.<sup>65</sup> The

employer must also return to each striking employee who requests it any deposit, money, or other guaranty required by the employer for the faithful performance of the duties of employment.<sup>66</sup>

## 2.7 Payroll Deductions

So long as deductions do not take the employee's paycheck below minimum wage,<sup>67</sup> employers may make the following payroll deductions:

- deductions mandated by local, state, or federal law, including but not limited to deductions for taxes, FICA requirements, garnishments, or other court-ordered deductions;
- deductions for loans, advances, goods or services, and equipment or property provided by the employer to the employee under a legally enforceable written agreement;
- deductions authorized by the employee, such as for hospital and medical insurance, other insurance, savings plans, stock purchases, voluntary pension plans, charities, and deposits to financial institutions, provided that the authorization is revocable; and
- deductions 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 pending final adjudication by a court of competent jurisdiction.<sup>68</sup>

As to deductions for theft, the employee is entitled to recover any amount wrongfully withheld, plus interest, if the employee is found not guilty in a court action or criminal charges are not filed within ninety days of the filing of the report or the charges are dismissed.<sup>69</sup> If the employer acts without good faith, the employee may be awarded three times the amount wrongfully withheld.<sup>70</sup> In such an action, the prevailing party is entitled to reasonable costs, including attorney fees and court costs (discussed below).<sup>71</sup>

The 2003 amendments created a new offset that employers may take from a terminated employee's paycheck. Employers may make 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.”<sup>72</sup> Thus, without filing a police report, an employer can now withhold amounts for money or property not returned upon termination/resignation as provided by the terms of any agreement between the employer and employee.<sup>73</sup>

An employer has ten days after an employee is terminated or resigns to determine whether the employee has returned all property. If not, the employer may deduct that amount from the employee’s final paycheck, so long it does not reduce the employee’s pay to below minimum wage.<sup>74</sup>

The Act does not allow an employer to deduct wages from an employee’s final paycheck for the employee’s breach of fiduciary duty, even if the employer may later recover wages for the period when the employee was breaching his or her duties to the employer. Although the case on this issue was decided under the prior Act and arguments to the contrary may be made under the current Act, employers should be very wary of availing themselves of such self-help.<sup>75</sup> The Division of Labor has also indicated that fines for improper behavior or performance are unlawful; thus, for example, an employer cannot deduct from a waitperson’s paycheck the cost of a meal in the event that a customer does not pay the bill.<sup>76</sup>

## **2.8 Wage Disputes, Enforcement, Civil Actions and Penalties**

Pursuant to the primary purpose of the Wage Act to ensure the timely payment of wages, the Act attempts to assure that adequate relief is provided to employees in the event that an employer violates the Act.<sup>77</sup>

### **2.8.1 Wage Disputes**

In the event of a dispute over wages, the employer must unconditionally and timely pay all wages that the employer concedes are due.<sup>78</sup> No agreement by any employee purporting to waive or modify the employee’s rights in violation of the Wage Act will be validated.<sup>79</sup>

### 2.8.2 Enforcement and Investigation by the Division of Labor

It is the duty of the Director of the Division of Labor of the Department of Labor and Employment to make a diligent inquiry regarding any violation of the Wage Act, to institute penalties, and to generally enforce the provisions of the Wage Act.<sup>80</sup> District and city attorneys also have the power to enforce the provisions of the Wage Act, prosecute actions for violations of the Wage Act, and limit the rights of wage claimants to sue for wages or penalties.<sup>81</sup>

The Director may conduct investigations and gather data to aid in carrying out the provisions of the Wage Act.<sup>82</sup> When a complaint has been filed regarding a violation of the Act or when the Director has reasonable grounds to believe that a field labor contractor has violated the Act's provisions (discussed below), the Director (or a designated representative) may investigate and issue subpoenas requiring the testimony of any witness or the production of any evidence related to the investigation.<sup>83</sup>

### 2.8.3 Penalties for Violations of Regular Payday Provisions

In addition to civil liability for unpaid wages, any employer who fails to pay the wages of an employee without a good faith justification may be required to forfeit to the Colorado general fund an amount set by the Director, not to exceed \$50 per day per employee from the date that wages first became due and payable.<sup>84</sup>

Penalties are recovered by order of the Director following a hearing held under the State Administrative Procedure Act.<sup>85</sup> A certified copy of any final order of the Director may be filed at any time with the clerk of the district court having jurisdiction over the parties, at which time the order will have the effect of a judgment of the district court and may be executed upon.<sup>86</sup>

#### 2.8.4 Penalties for Violations Concerning Presents, Tips, or Gratuities

An employer who violates the Wage Act's provisions concerning presents, tips or gratuities is guilty of a misdemeanor, punishable by a fine of up to \$300 or imprisonment in county jail for not more than thirty days or both.<sup>87</sup>

#### 2.8.5 Penalties for Field Labor Contractors

Field labor contractors who violate the provisions of the Wage Act or the associated regulations are subject to a civil penalty of up to \$250 per violation.<sup>88</sup> The Director must provide written notice and an opportunity for a hearing before assessing a penalty.<sup>89</sup> When appropriate, criminal penalties may also be imposed.<sup>90</sup> The Director has the discretion to grant a reasonable period of not more than ten days from the date of notification, during which the field labor contractor may correct the violation without penalty.<sup>91</sup>

#### 2.8.6 Penalties for Failure to Pay Upon Termination

A frequently disputed issue under the old version of the Act was whether an employer had withheld wages without a "good faith legal justification." If so, the employer was liable to the employee for a penalty, in addition to the wages owed, of 50% of the amount owed or up to ten days of wages, whichever was greater.<sup>92</sup>

The new Act does away with the ambiguous "good faith" defense. Now, an employer must pay unpaid wages within fourteen (previously ten) days of a written demand by the employee, or an agent of the employee. The demand must be made within sixty days after the date of separation and shall state where such payment can be received.<sup>93</sup>

If an employee's earned, vested and determinable wages or compensation are not mailed to the place of receipt specified in the demand for payment and postmarked within fourteen days after the receipt of such demand, the employer will be liable for a penalty. In the 2007 amendments to the Wage Act, that penalty was increased to the greater of (a) 125% of the first \$7,500 of

wages or compensation due plus 50% of any wages or compensation due in excess of \$7,500, or (b) the employee's wages for each day, up to ten days, "until such payment or other settlement satisfactory to the employee is made."<sup>94</sup> Additionally, under the 2007 amendments, if the failure to pay is found to be willful (and the fact that a judgment has been entered against the employer in the last five years for failure to pay wages or compensation is admissible as evidence of willful conduct), the penalty is increased by 50%.<sup>95</sup> Any employee who has not made a written demand for the payment within sixty days after the date of separation or who has otherwise not been available to receive payment shall not be entitled to any such penalty.<sup>96</sup>

Just because an employer has the right to discharge an employee does not mean that the employer may fail to pay the employee wages owed at the time of discharge.<sup>97</sup> However, the employer is not obligated to pay the remaining salary due under an employment contract for services that were to be performed sometime *after* the date of the employee's termination.<sup>98</sup>

### *Example*

Tobie works for Hazardous Widgets, Inc. (HWI), as a commissioned salesperson. HWI has a written agreement with Tobie that spells out his commission structure and also states that commissions are considered vested when an order is placed and the revenue is received by HWI. The HWI employee handbook requires that all employees return their pagers and company cell phones upon termination of employment, and spells out company requirements for submission of expense reports. It also states that vacation time is not considered "earned" wages and is not paid at termination. Tobie quits HWI to work for a competitor.

When Tobie quits, he does not return his cell phone or pager. HWI takes ten days to look over Tobie's expense reports and ultimately deducts from his final check the value of his cell phone, pager and several questionable "nightclub" visits while on a business trip. Tobie has an attorney send a written demand letter for his full paycheck, asserting that he is owed not only his regular pay, but also \$10,000 in unpaid commissions and the standard vacation reimbursement that Tobie believes HWI allows its employees.

HWI waits eleven days after receiving Tobie's demand letter, and mails his last check minus the offsets for the unreturned property and questionable expenses. HWI does not include \$10,000 in commissions, but tenders \$5,000, the amount HWI thinks it owes Tobie.

Eight months later, a judge dismisses Tobie's claim to the extent it seeks reimbursement for the amounts HWI withheld for the unreturned pager, cell phone and expense reports, finding that such deductions were lawful. Further, because the vacation pay was not part of an actual agreement but rather was based only on Tobie's belief, Tobie cannot maintain his claim for vacation pay. At trial, Tobie is awarded \$5,001 by a jury for commissions. The same judge then adds to that amount \$1.25 (125% penalty on the unpaid \$1, assuming there was no finding of willfulness) plus Tobie's \$10,000 in attorneys fees, on the theory that it was reasonable for Tobie's attorney to invest that much effort in the case.

#### **2.8.7 Penalties for General Refusal to Pay and False Denial of Wages**

In addition to the penalties described above, an employer who willfully refuses to pay or falsely denies the amount or validity of a wage claim with the intent to secure a discount or underpayment or to annoy, harass, oppress, hinder, delay or defraud an employee is guilty of a misdemeanor.<sup>99</sup> The employer will be punished by a fine not to exceed \$300 or imprisonment in county jail not to exceed thirty days or both.<sup>100</sup> This section does not apply to an employer who is unable to pay wages or compensation because of a chapter 7 bankruptcy or other court action that results in the employer having limited control over its assets.<sup>101</sup>

#### **2.8.8 Exhaustion of Administrative Remedies and Civil Relief**

Any person who is aggrieved by a violation of any of the provisions of the Wage Act or the regulations passed pursuant to it may file suit in any court having jurisdiction over the parties without regard to the exhaustion of administrative remedies.<sup>102</sup> Actions brought under the Wage Act must be commenced within two years of accrual, except that actions for willful violation of

the Wage Act must be brought within three years of accrual.<sup>103</sup> Such claims may be arbitrable under an arbitration agreement.<sup>104</sup>

Employers may not intimidate, threaten, coerce, blacklist, discharge or in any manner discriminate against any employee on the basis of having filed a complaint, instituted a proceeding under the Wage Act or related law, or testified (or who may testify) in any proceeding on anyone's behalf regarding protections under the Wage Act.<sup>105</sup> One federal court in Colorado has extended this prohibition to also protect employees who assert their rights through complaints at work -- even if no formal complaint or proceeding is ever commenced.<sup>106</sup> Any employer who intimidates, threatens, coerces, blacklists, discharges or discriminates against any such employees is guilty of a misdemeanor and will be punished by a fine not to exceed \$500 or imprisonment in county jail for not more than sixty days or both.<sup>107</sup>

### 2.8.9 Attorney Fees

Until 2007, an employee who failed to recover a greater sum than the amount tendered had to pay the cost of the action and the employer's reasonable attorney fees incurred in such action. Likewise, if the employee recovered a sum greater than the amount tendered, the employer had to pay the cost of the action and the employee's reasonable attorney fees.<sup>108</sup>

This provision was modified in May 2007, such that in actions where the employee does not recover a sum greater than the amount tendered, a court *may* award the employer its reasonable costs and attorney fees -- but only when the employee claims wages or compensation that exceed the greater of (a) \$7,500 or (b) the jurisdictional limit for the small claims court, regardless of whether the claim was filed in small claims court.<sup>109</sup> If the employee does recover a sum greater than the amount tendered, the court *may* award the employee the reasonable costs and attorneys fees incurred in the action.<sup>110</sup>

The 2007 amendments also make it clear that if an employer fails or refuses to make a tender within fourteen days of the demand, it will be treated as a tender of no money.<sup>111</sup> Finally, the amendments clarify that this particular penalty

provision does not apply to persons who are found to be independent contractors as opposed to employees.<sup>112</sup>

The determination of reasonableness of fees is a question of fact for the trial court and will not be disturbed on review unless clearly erroneous and without evidentiary support.<sup>113</sup> The trial court is required by the statute to award attorney fees before an appeal may proceed,<sup>114</sup> and the recovery of attorney fees extends to the costs of appeal.<sup>115</sup>

## 2.9 On-Premises Employee Housing

Under certain circumstances, housing that is provided to an employee during employment does not constitute a tenancy under traditional landlord and tenant law, but is provided as a license to occupy the premises during the employment relationship.<sup>116</sup> To qualify for treatment as a license, the license must be documented in a written agreement that states that the license is provided as part of the employee's compensation and is subject to termination at any time after the end of the employment relationship.<sup>117</sup> The agreement must also include the names and signatures of both the employer and employee and the address of the premises.<sup>118</sup>

Such a license may be terminated at any time after the employment relationship ceases, and termination becomes effective three days after the service of a written notice of termination of the license.<sup>119</sup> The notice must describe the premises, state the time of termination, and be signed by the employer (or the employer's agent or attorney).<sup>120</sup> If an employee fails to vacate the premises within three days of receiving such a notice, the employer may have the county sheriff remove the employee and the employee's personal property by presenting the agreement creating the license and the notice terminating it.<sup>121</sup>

## 3. MINIMUM WAGE AND OVERTIME LAW

The Minimum Wage Act establishes general guidelines for the minimum wages of workers and labor conditions.<sup>122</sup> Under authority granted by the Minimum Wage Act, the Director of the Division of Labor has issued Wage Order Number 24 (Hereinafter "Order 24"), effective January 1, 2008, which governs minimum

wages and overtime payments for workers in retail and service, commercial support service, food and beverage, and health and medical industries.<sup>123</sup> Additionally, Title 8, Article 13 of the Colorado Code limits hours worked by employees in dangerous occupations.<sup>124</sup>

### **3.1 Minimum Wage Act**

The Minimum Wage Act, codified in Title 8, Article 6, establishes general principles for labor conditions and wage payments and establishes a mechanism for creating specific guidelines for employers.<sup>125</sup> Any court interpreting the Minimum Wage Act must liberally construe it.<sup>126</sup>

#### **3.1.1 Wages and Conditions of Labor**

The Colorado legislature has found that inadequate wages and unsanitary conditions of labor exert “a pernicious effect” on the health and morals of workers and have important statewide ramifications.<sup>127</sup> Therefore, no local government may enact jurisdiction-wide minimum wage laws, except laws which govern employees of the governmental body only.<sup>128</sup>

No employer may employ workers in any occupation for wages that are inadequate to supply the necessary cost of living and to maintain the health of workers or employ workers under conditions detrimental to their health or morals.<sup>129</sup> This provision is a broad, general statement of policy and not an exception to the rule that an indefinite general hiring is terminable at will by either party to the employment.<sup>130</sup>

#### **3.1.2 Duties of Director of the Division of Labor**

The Director of the Department of Labor has a duty to investigate the conditions of labor in any industry if he has a reason to believe that the conditions are detrimental to the health and morals of employees.<sup>131</sup> Also, the Director has a duty to investigate wages if he has a reason to believe that a substantial number of employees receive wages inadequate to support the necessary cost of living and to maintain employee health.<sup>132</sup> The Director may begin an investigation at any time,

but must begin an investigation if twenty-five or more workers in an occupation request an investigation.<sup>133</sup>

Additionally, the Director has a duty to determine the “minimum wages sufficient for living wages for persons of ordinary ability . . . ; the minimum wages sufficient for living wages for learners and apprentices; standards of conditions of labor and hours of employment not detrimental to health or morals for workers; and . . . unreasonably long hours.”<sup>134</sup> The Director’s authority to investigate working conditions extends to every employment within the state.<sup>135</sup>

When investigating the conditions of employment, the Director, or an authorized representative, has the power to “inspect and examine and make excerpts from any books, reports, contracts, payrolls, documents, papers, and other records of any employer that in any way pertain to the question of wages” and may require that any such employer give a full and true statement of wages paid.<sup>136</sup>

Additionally, the Director may hold public hearings to investigate violations of the Minimum Wage Act, at which employers, employees, or other interested persons may appear and testify.<sup>137</sup> At any public hearing, the Director has the power to “subpoena and compel the attendance of any witness and to administer oaths . . . [and] compel the production of any books, papers, or other evidence.”<sup>138</sup> The Director may request that any Colorado district court conduct a contempt proceeding to compel obedience with an administrative subpoena.<sup>139</sup> During a hearing, the Director is not bound by the rules of evidence; instead, he may make and enforce any reasonable and proper rules and procedures.<sup>140</sup>

If the Director determines that wages or conditions are inadequate, he may establish minimum wages directly or based on the recommendations from a wage board.<sup>141</sup> See section III.A.4. “Duties of the Wage Board.”

### **3.1.3 Duties of Employers - Reports and Access**

Every employer in Colorado must maintain a register of the names, ages, dates of employment, and residence addresses

of all employees.<sup>142</sup> Employers have a duty to furnish this register, along with any other reports or information required to establish adequate wage and labor conditions, to the Director upon request.<sup>143</sup> The employer, or an officer or agent of a corporation, must verify by oath that the reports and information supplied to the Director are accurate.<sup>144</sup> The employer must also allow the Director, or his authorized representative, free access to its place of business for the purpose of making any investigation authorized by the Minimum Wage Act.<sup>145</sup>

#### 3.1.4 Duties of the Wage Board

If the Director decides that conditions or wages are inadequate, he may choose to establish a wage board to help set new standards. The Director shall appoint all members of the wage board and designate a chairman.<sup>146</sup> The board shall consist of no more than three employer representatives and an equal number of employee representatives and disinterested, public representatives.<sup>147</sup> The board may also contain one person representing the Director.<sup>148</sup> Employer and employee representatives are elected by their peers, where practicable, subject to approval by the Director.<sup>149</sup>

The proceedings and deliberations of any wage board will be part of the administrative record.<sup>150</sup> Each wage board has the power to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence.<sup>151</sup>

The wage board will strive to establish standard labor conditions, minimum wages necessary to support the health of the workers and supply the necessary cost of living, and, where practicable, suitable minimum wages graded by experience level for experienced workers, learners and apprentices.<sup>152</sup> When a majority of the board members agree on standard conditions and minimum wages, they shall report their reasoning, factual basis, and findings to the Director.<sup>153</sup> The Director may approve or disapprove the recommendations or seek additional findings from the board.<sup>154</sup> When the Director approves a recommendation, he must hold a public hearing and provide advance notice in a newspaper of general circulation.<sup>155</sup>

### 3.1.5 Issuance of a Wage Order

After any required notices and hearings, the Director may issue an order, effective in thirty days, requiring employers to comply with new wage and labor condition standards.<sup>156</sup> Where possible, the Director will mail a copy of the order to affected employers; and every affected employer must post the copy in a conspicuous place at the worksite.<sup>157</sup> The Director may also issue an order requiring overtime pay, at a rate of one and one-half times the regular rate of pay. In case of an emergency, the Director may always authorize employment beyond statutory maximum hours, with overtime pay as required by the wage order.<sup>158</sup> After adopting a wage order, the Director may establish a wage board to review the impact of the order following petition by an affected employer or employee.<sup>159</sup> The Director must review wage orders at least once every four years.<sup>160</sup>

The Director recently issued Order 24, which contains the current wage and overtime requirements for the State of Colorado. The order was promulgated in response to Amendment 42, which was passed by Colorado voters in November 2006.<sup>161</sup> See section III.B. "Minimum Wage Order Number 24."

### 3.1.6 Enforcement

Any person may register a complaint with the Colorado Division of Labor stating that an employer is paying less than minimum wage, and the Director will investigate and enforce the minimum wage rate.<sup>162</sup> Employers may be prosecuted for a misdemeanor for failing to pay the minimum wage established by the Director.<sup>163</sup> Conviction for paying less than the minimum wage may be punished by a fine of between \$100 and \$500, or by imprisonment in the county jail for between thirty days to one year, or both.<sup>164</sup> During a prosecution for violation of wage or labor condition requirements, the minimum wage established by the Director shall be prima facie presumed to be reasonable and lawful, and his findings of fact shall be conclusive in the absence of fraud.<sup>165</sup>

An employee paid less than the minimum wage may recover the unpaid balance, together with the costs of the suit, in a civil action, notwithstanding an agreement to work less than the minimum wage.<sup>166</sup>

It is a misdemeanor for an employer to threaten or discharge an employee for serving on a wage board, requesting an investigation, or testifying at a hearing.<sup>167</sup> Employers who threaten, coerce, or discharge any employee because of participation in an investigation or hearing related to the Minimum Wage Act may be fined \$200 to \$1,000 per violation.<sup>168</sup>

Additionally, depending on the facts of the case, an employee may be able to sue the employer for wrongful discharge in violation of public policy. The Colorado Supreme Court has stated that “[a]lthough public-policy wrongful discharge is not subject to precise definition, it has been variously described as an action that involves a matter that affects society at large rather than a purely personal or proprietary interest of the plaintiff or employer, . . . leads to an outrageous result clearly inconsistent with a stated public policy, . . . or ‘strike[s] at the heart of a citizen’s social rights, duties and responsibilities.’”<sup>169</sup> The Court of Appeals has allowed an employee to plead wrongful discharge for an alleged discharge in violation of the Wage Claim Act, where the employee claimed that her supervisor directed her and other employees not to exercise their job-related rights to be paid for work-related travel time, and that she was discharged for exercising that right.<sup>170</sup>

### 3.2 Minimum Wage Order Number 24

Minimum Wage Order Number 24 sets the minimum wage and working conditions for workers in specific industries.<sup>171</sup> When employers are subject to both federal and Colorado law, the law “providing greater protection or setting the higher standard” shall apply.<sup>172</sup> The Colorado Division of Labor has jurisdiction over all questions of fact arising under Order 24.<sup>173</sup>

#### 3.2.1 Coverage

Order 24 regulates the wages, hours, and working conditions of employers and employees in four categories:

- RETAIL AND SERVICE - Any business or enterprise that generates 50% or more of its annual dollar volume of business from sales of any service, commodity, article, good, real estate, wares, or merchandise to the consuming

public, and specifically including recreation, public accommodations, and banks;<sup>174</sup>

- **COMMERCIAL SUPPORT SERVICE** - Any business or enterprise that provides services to other commercial firms such as: clerical, keypunching, janitorial, laundry or dry cleaning, security, building or plant maintenance, parking attendant, equipment operation, landscaping and grounds maintenance, and temporary help for businesses covered by Order 24;<sup>175</sup>
- **FOOD AND BEVERAGE** - Any business or enterprise that prepares and sells food or beverages for consumption, including restaurants, snack bars, drinking establishments, catering services, fast-food businesses, country clubs and any other business or establishment required to have a food or liquor license or permit;<sup>176</sup>
- **HEALTH AND MEDICAL** - Any business or enterprise engaged in providing medical, dental, surgical or other health services, including medical and dental offices, hospitals, home health care, hospice care, nursing homes, and mental health centers.<sup>177</sup>

Each category includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.<sup>178</sup>

For the purpose of Order 24, the terms “employer” and “employees” have the same definitions as under the Colorado Wage Act. See section II.A. “Definitions and Coverage.”

### 3.2.2 Exemptions

Several types of employees and occupations are exempt from all provisions of Minimum Wage Order No. 24. The Order does not apply to the following four categories:

- **ADMINISTRATIVE EMPLOYEE** - A salaried individual who directly serves the executive, regularly exercises independent judgment and discretion and performs primarily non-manual duties important to the decision-

making process of the executive or general business operations;<sup>179</sup>

- EXECUTIVE OR SUPERVISOR - A salaried employee earning in excess of the minimum wage per week who spends at least 50% of the workweek supervising at least two full-time employees and has the authority to hire and fire, or to effectively recommend such action;<sup>180</sup>
- PROFESSIONAL - A salaried individual who has advanced knowledge in a field of science or has learning customarily acquired by a prolonged education and is employed in that field OR a non-salaried doctor, lawyer, teacher, or employee in highly technical computer occupation earning at least \$27.63 per hour;<sup>181</sup>
- OUTSIDE SALESPERSON - Any person employed primarily away from the employer's place of business who spends at least 80% of the workweek in activities directly related to making sales or contracts for any commodities, real estate, commodities, or services.<sup>182</sup>

The provisions also do not apply to: elected officials and their staff; companions; casual babysitters; domestic employees who work in private residences; property managers; interstate drivers; driver helpers; loaders or mechanics of motor carriers; taxi cab drivers; bona fide volunteers; students employed by sororities, fraternities, college clubs, or dormitories; students employed in a work experience study program; employees working in laundries of charitable institutions that pay no wages; or patient workers in institutional laundries.<sup>183</sup> Nor do they apply to the insurance industry<sup>184</sup> or to the airline and railroad industries, which are regulated by federal law.<sup>185</sup>

### 3.2.3 Minimum Wage Rate

In general, Order 24 establishes a minimum wage for regulated occupations; however, there are several exceptions.

#### (A) General Minimum Wage Rate

Effective January 1, 2008, the Colorado minimum wage rate for adult employees and emancipated minors in industries

covered by Order 24 was increased to \$7.02 per hour.<sup>186</sup> The Colorado Department of Labor takes the position that the minimum wage increase applies to all employers covered by the minimum wage provisions of the Fair Labor Standards Act -- not just those covered by Order 24.<sup>187</sup> In May 2007, President Bush signed into law a bill that increases the federal minimum wage to \$5.85 beginning July 24, 2007, with annual adjustments that will increase this amount to \$6.55 in July 2008 and to \$7.25 in July 2009.<sup>188</sup> Colorado will meet or exceed future federal minimum wage rates; hence, Colorado Employers should pay \$7.02 per hour until July 2009, when the higher federal rate takes effect.

Wage Order 24 provides that an employer may pay less than the minimum wage amount by taking lawful credits for lodging, meals, or gratuities. See section III.B.3.b. "Lodging and Meals" and section III.B.3.c. "Gratuities." Employers may be exempted from paying the minimum wage to disabled or minor employees. See section III.B.3.d. "Disabled Employees" and section III.B.3.e. "Minor Employees."

#### (B) Lodging and Meals

If an employer furnishes lodging used by an employee, the employer may consider the reasonable cost or fair market value for the lodging as part of the minimum wage.<sup>189</sup> The estimated value of the lodging toward minimum wage may not exceed \$25.00 per week.<sup>190</sup>

Additionally, the reasonable cost or fair market value, including no profits for the employer, of meals provided to the employee may be used as part of the minimum hourly wage.<sup>191</sup> Deductions are not permitted until the meal has been consumed.<sup>192</sup>

#### (C) Gratuities

Under Wage Order 24, employers of "tipped employees" may deduct no more than \$3.02 per hour in tip income to offset the minimum wage of employees who regularly receive tips, but must pay a cash wage of at least \$4.00 per hour.<sup>193</sup>

A "tipped employee" under the Wage Order is any employee engaged in an occupation in which he or she regularly

receives more than \$30.00 a month in tips, including amounts designated as a "tip" on credit charge slips.<sup>194</sup> An employee's tips combined with the employer's cash wage must equal the minimum hourly wage or the employer must make up the difference in cash wages.<sup>195</sup>

An employer may require employees to share gratuities on a pre-established basis among other employees who regularly receive tips.<sup>196</sup> However, if the employer requires an employee to share tips with employees who do not regularly receive tips, such as management or food preparers, or deducts credit card processing fees from tipped employees, these actions shall nullify allowable tip credits towards the minimum wage.<sup>197</sup>

#### (D) Disabled Employees

Employees with a physical disability that has been certified by the Director to "significantly impair such disabled employee's ability to perform the duties involved in the employment" may be paid 15% below the current minimum wage, less any applicable lawful credits.<sup>198</sup>

#### (E) Minor Employees

Unemancipated minors under 18 years of age may be paid 15% below the current minimum wage, less any applicable lawful credits.<sup>199</sup> An "emancipated minor" is defined by Wage Order 24 as any individual less than eighteen years of age who:

- A. "Has the sole or primary responsibility for his or her own support."<sup>200</sup>
- B. "Is married and living away from parents or guardian."<sup>201</sup>
- C. "Is able to show that his or her well-being is substantially dependent upon being gainfully employed."<sup>202</sup>

A person under age eighteen who has received a high school diploma or a passing grade on a General Education Development (GED) examination is also not considered a minor, and so must be paid the full minimum wage.<sup>203</sup>

### 3.2.4 Overtime Hours

#### (A) General Overtime Wage Rate

Employees shall be paid one and one-half times the regular rate of pay for any work in excess of:

- forty hours per workweek;
- twelve hours per workday; or
- twelve consecutive hours without regard to the starting and ending time of the workday (excluding duty free meal periods).<sup>204</sup>

The employer should pay based on whichever above calculation results in the greater payment of wages.<sup>205</sup> The employer shall not average hours worked in two or more workweeks to compute overtime.<sup>206</sup>

Regular rate of pay is defined as the amount "actually paid to employees for a standard, non-overtime workweek."<sup>207</sup> The regular rate includes all compensation, including "the set hourly rate, shift differential, minimum wage tip credit, non-discretionary bonuses, production bonuses, and commissions."<sup>208</sup> It does not include "[b]usiness expenses, bonafide [sic] gifts, discretionary bonuses, employer investment contributions, vacation pay, holiday pay, sick leave, jury duty, or other pay for non-work hours."<sup>209</sup>

Work performed at different pay rates for the same employer shall be computed at the overtime rate based on "the regular rate of pay for the position in which the overtime occurs, or at a weighted average of the rates for each position, as provided in the Fair Labor Standards Act."<sup>210</sup>

#### (B) Hours Included in Overtime Calculations

An employer must pay for all time during which an employee is subject to the control of an employer, including time when the employee is permitted, but not required, to work.<sup>211</sup> Requiring or permitting employees to remain at the place of

employment awaiting a decision on job assignment constitutes time worked.<sup>212</sup> All travel time spent at the direction of an employer, excluding normal home to work travel, is also considered time worked.<sup>213</sup>

When an employee's shift is 24 hours or longer, up to eight hours of sleep time can be excluded from overtime if: "(1) an express agreement excluding sleeping time exists; (2) adequate sleeping facilities for an uninterrupted night's sleep are provided; (3) at least five hours of sleep are possible during the scheduled sleeping periods; and (4) interruptions to perform duties are considered time worked."<sup>214</sup> Only actual sleep time may be excluded, up to eight hours per workday.<sup>215</sup> If work related interruptions prevent five hours of sleep, the employee shall be compensated for the entire workday.<sup>216</sup>

When an employee's shift is less than 24 hours, periods when the employee is permitted to sleep are compensable, as long as the employee is on duty and must work when required.<sup>217</sup>

### (C) Exemptions from Overtime Law

Several types of employees are subject to the minimum wage but exempt from the overtime provisions of Order 24, including:

- SALESPEOPLE, PARTS-PERSONS, AND MECHANICS employed by automobile, truck, or farm implement retail dealers and salespersons employed by trailer, aircraft and boat retail dealers;<sup>218</sup>
- COMMISSION SALESPERSONS - Sales employees of retail or service employers, which receive more than 75% of their annual dollar volume from retail or service sales, provided that 50% of the employees' total earnings in a pay period are derived from commission sales and their regular rate of pay is at least one and one-half times the minimum wage;<sup>219</sup>
- SKI INDUSTRY WORKERS - Employees of the ski industry performing duties directly related to downhill ski or snow board area operations or engaged in providing food and beverage services at on-mountain locations are exempt from the forty hour overtime requirement.

The daily overtime requirement for all hours worked in excess of twelve in a workday shall apply. This partial overtime exemption does not apply to ski area employees performing duties related to lodging;<sup>220</sup>

- **MEDICAL TRANSPORTATION WORKERS** - Employees of the medical transportation industry who are scheduled to work 24 hour shifts are exempt from the twelve-hour overtime requirement, provided that they receive overtime wages for hours worked in excess of forty hours per workweek.<sup>221</sup>

Additionally, hospital or nursing home employers are normally subject to the overtime provisions, but they may agree with individual employees to pay overtime pursuant to the provisions of the Federal Fair Labor Standards Act "8 and 80 rule" instead of the wage order.<sup>222</sup>

#### (D) Minor Employees

In general, the Colorado Youth Employment Act forbids an employer from allowing a minor employee to work for more than forty hours per workweek or eight hours per 24 hour period.<sup>223</sup> See section V.A.1. "Minors." In case of an emergency, the Director of the Division of Labor may authorize an employer to allow a minor to work more than this amount.<sup>224</sup> In such an emergency situation, the minor employees shall be compensated at time and one-half the regular rate of pay for all hours worked in excess of eight hours in any 24 hour period or forty hours per week, whichever calculation results in the greater payment of wages.<sup>225</sup>

#### 3.2.5 Meal Breaks and Rest Breaks

For every work shift of more than five consecutive hours, covered employees shall be entitled to an uninterrupted and "duty free" meal period of at least thirty minutes.<sup>226</sup> During this period, the employee must be permitted to pursue personal activities and need not be compensated.<sup>227</sup> When the "nature of the business activity or other circumstances exist that makes an uninterrupted meal period impractical, the employee shall be permitted to consume an 'on-duty' meal while performing duties."<sup>228</sup> Employees shall be permitted to fully consume a meal

of choice and shall be fully compensated for the “on-duty” meal period without any loss of time or compensation.<sup>229</sup>

Covered employees are also guaranteed a compensated ten-minute rest period for each four-hour work period or major fraction of a four-hour work period, in the middle of the shift when possible.<sup>230</sup> However, the Division of Labor has taken the position that the ten-minute rest periods do not have to consist of ten consecutive minutes.<sup>231</sup> Additionally, the employee may remain on the work premises for the duration of the rest period.<sup>232</sup>

### 3.2.6 Uniforms

An employer must pay the cost of purchasing and maintaining any uniforms or special apparel required for a job, unless the uniform consists of ordinary street wear clothing or an ordinary white or light colored plain and washable uniform.<sup>233</sup> The employer is also responsible for providing any special care for the uniforms beyond regular washing, such as dry cleaning.<sup>234</sup>

An employer may require a reasonable deposit as security for the return of each uniform, up to one-half of actual cost of the uniform.<sup>235</sup> The employer must return the entire deposit to the employee when the uniform is returned and may not deduct the cost of ordinary wear and tear of a uniform from the employee’s wages or deposit.<sup>236</sup>

### 3.2.7 Record Keeping and Posting

Every employer shall maintain at the place of employment or at the employer’s principal place of business in Colorado, an accurate record for each employee containing:

- Name, address, social security number, occupation and date of hire of the employee;
- Date of birth, if the employee is under eighteen years of age;
- Daily record of all hours worked;

- Record of allowable minimum wage credits and declared tips; and
- Regular rates of pay, gross wages, withholdings, and net amounts paid during each pay period.<sup>237</sup>

An employer must keep all records on file for at least two years.<sup>238</sup> For each pay period, the employer shall provide all employees with an itemized earnings statement that contains the employee's regular rates of pay, gross wages, withholdings, and net amounts of pay.<sup>239</sup>

Every employer subject to Order 24 must display a wage order poster, available from the Department of Labor, in an area frequented by employees where they may easily read during the work day.<sup>240</sup> If conditions make this impractical, the employer shall keep a copy of Order 24, which is available to employees upon request.<sup>241</sup>

### 3.2.8 Enforcement

Any employer, or officer or agent of an employer, who pays less than the minimum wage to an employee covered by Order 24, is guilty of a misdemeanor.<sup>242</sup> Upon conviction, the employer may be sentenced to a fine of between \$100 and \$500, or imprisonment in the county jail for between thirty days and one year, or both a fine and imprisonment.<sup>243</sup>

Any person may file a written complaint with the Colorado Department of Labor and Employment, Division of Labor that alleges a violation of the Minimum Wage Order within two years of the alleged violation.<sup>244</sup> After receiving a complaint, the Director or designated agent shall investigate and enforce all provisions of Order 24, pursuant to the Colorado Wage Act.<sup>245</sup>

The Division of Labor does not have legal authority to order the payment of wages but will attempt to resolve disputes through fact-finding and mediation between the employer and the employee.<sup>246</sup> If no resolution is reached, the office will provide the employee with information on other available options, such as liens or actions filed in Small Claims Courts.<sup>247</sup>

The employee must fill out a Request for Mediation Form and include a copy of any supporting documents.<sup>248</sup> Then, the Division will provide the employee with a case number and assign his or her case to a Compliance Officer, who will investigate the wage claim.<sup>249</sup> The mediation is conducted primarily by telephone and written correspondence.<sup>250</sup> There is no specific time frame for mediating a wage dispute.<sup>251</sup>

The Director of the Department of Labor and Employment, or his authorized representative, may “inspect, examine and make excerpts from any book, reports, contracts, payrolls, documents, papers, and other records of any employer that in any way pertain to the question of wages” and may require a full and true statement of the wages paid from any employer.<sup>252</sup>

An employee paid less than the legal minimum wage may recover the unpaid balance of the full minimum wage, together with costs of the suit, in a civil action pursuant to Title 8, Article 6, section 118.<sup>253</sup> An employee may also file a civil suit if he is discharged in retaliation for filing a complaint. See section III.A.5. “Enforcement.”

#### **4. CLASS/COLLECTIVE ACTION LAWSUITS**

Research reveals very few decided class action lawsuits under the Colorado Wage Act or Colorado Minimum Wage Order Number 24 (or its predecessors). Several such suits have settled - some prior to and others following the conditional certification of a class or collective action.<sup>254</sup> Another suit was dismissed prior to certification because the court found that the plaintiffs were not in a covered industry under the Wage Order.<sup>255</sup>

#### **5. LIMITED WORKING HOURS FOR DANGEROUS OCCUPATIONS**

Title 8, section 13 of the Colorado Code limits hours worked by employees in certain dangerous industries.

##### **5.1.1 Mines and Smelters**

For certain industries, the Colorado legislature has determined that the workday should be limited to eight hours.

This is true for certain “dangerous” occupations, such as work in underground mines, underground workings, and smelters.<sup>256</sup> An exception may be made if the operator of the mine, working or smelter devises a work plan with terms and conditions governing any labor over eight hours per day.<sup>257</sup> The operator must give employees reasonable notice of any proposed increase in work schedules, at least a week prior to the increase, and provide an opportunity for employees to comment on the proposed plan. An exception may also be made to allow for a four-day workweek to conserve fuel by minimizing commute hours.<sup>258</sup>

Violations of these standards constitute a misdemeanor punishable by a fine of between \$255 and \$500, imprisonment in the county jail for between ninety days and six months, or both a fine and imprisonment.<sup>259</sup>

### 5.1.2 Firefighters

No municipal fire department may require any employee to work more than an average of twelve-hours per day over the course of a month.<sup>260</sup> This does not apply to the hours of a firefighter in command of the department.<sup>261</sup> Also, exceptions can be made in case of a conflagration or other emergency.<sup>262</sup> Violation of this statute is a misdemeanor.<sup>263</sup>

## 6. CHILD LABOR

Colorado’s provisions concerning child labor are contained in the Colorado Youth Employment Opportunity Act (“Youth Act”) of 1971, as amended, which is codified at Title 8, Article 12 of the Colorado code.<sup>264</sup> The Youth Act applies to all businesses operating in the state.

### 6.1 Minimum Age & Maximum Hours Requirements and Prohibitions

The employment and hours requirements for minors are divided into age-based categories, with divisions at the ages of nine, twelve, fourteen, and sixteen. For minimum wage and overtime requirements applicable to minors in certain industries, see Sections III.B.3.e and III.B.4.e above.

### 6.1.1 Minors

Persons under the age of eighteen are generally considered to be minors to whom Colorado's child labor laws apply.<sup>265</sup> However, persons under eighteen who have received a high school diploma or who are seventeen years of age or older and have passed the general educational development ("GED") examination qualify as adults for purposes of the Youth Act.<sup>266</sup> Any employer may require a minor to submit an age certificate<sup>267</sup> or proof a high school diploma or a passing score on the GED examination.<sup>268</sup>

### 6.1.2 General Employment and Hours Restrictions

As discussed below, the occupations that minors under the age of fourteen may perform in Colorado are restricted to a number of designated categories.<sup>269</sup> Unless exempt, minors who are under the age of sixteen may not work after school hours in excess of six hours on days followed by school days or between the hours of 9:30 p.m. and 5:00 a.m. on days followed by school days.<sup>270</sup> Except in cases of seasonal employment or certain emergencies, no employer may work a minor more than forty hours in a week or eight hours in a 24 hour period.<sup>271</sup>

In the event of an emergency in an industry or occupation not subject to a wage order, the Director of the Division of Labor may authorize an employer to allow a minor to work more than eight hours in a 24 hour period, in which case the minor must be paid one and one-half times his or her normal rate of pay for each hour worked in excess of forty hours per week.<sup>272</sup>

In addition, minors who are fourteen or older may work increased hours in cases of seasonal employment for culturing, harvesting, or caring for perishable products where wages are paid on a piece basis.<sup>273</sup> Specifically, minors fourteen or older may work up to twelve hours in a 24 hour period or thirty hours in a 72 hour period, provided that no minor who is fourteen or fifteen may work in excess of eight hours per day for more than ten days in any 30-day period.<sup>274</sup> Overtime wage provisions do not apply to the seasonal employment of minors.<sup>275</sup>

### 6.1.3 Minors Age Nine or Older

Minors who are age nine or older may be employed in certain non-hazardous occupations, including:

- delivering handbills, advertising, and advertising samples;
- shoe shining;
- performing gardening and lawncare services not involving power-driven equipment;
- cleaning walks not involving power-driven snow-removal equipment;
- performing casual work usual to the home of the employer that is not specifically prohibited;
- caddying on golf courses; and
- performing other similar occupations that are not specifically prohibited.<sup>276</sup>

### 6.1.4 Minors Age Twelve or Older

In addition to those occupations permitted for minors who are age nine or older, minors who have reached the age of twelve may:

- sell and deliver periodicals and other door-to-door merchandise;
- baby-sit;
- garden and care for lawns using power-driven equipment that is approved by the Division of Labor or for which the minor has received approved training;
- clean walks using power-driven snow-removal equipment;
- perform agricultural work not declared hazardous under the FLSA; and
- perform similar non-prohibited occupations.<sup>277</sup>

### 6.1.5 Minors Age Fourteen or Older

Minors who are fourteen years of age or older are permitted to perform the occupations enumerated above for minors who have reached the ages of nine and twelve, respectively, as well as:

- non-hazardous manufacturing occupations;

- public messenger and errand services by foot, bicycle, and public transportation;
- the operation of automatic enclosed freight and passenger elevators;
- janitorial and custodial services, including operating vacuum cleaners and floor waxers;
- office and clerical work, including operating office equipment;
- warehousing and storage work, including loading and unloading vehicles;
- non-hazardous construction and repair work;
- work in retail food services;
- occupations in gasoline service establishments, including dispensing gasoline, oil and other consumer items; performing courtesy services; cleaning, washing, and polishing vehicles; using hoists under supervision; and changing tires (but not inflating or changing tires mounted on rims with removable retaining rings);
- occupations in retail stores, including cashiering, selling, modeling, art work, work in advertising departments, window trimming, price marking by hand or machine, assembling orders, packing and shelving, and bagging or carrying out customers' orders;
- occupations in restaurants, hotels, motels, or other public accommodations (but not the operation of power food slicers and grinders);
- occupations related to parks or recreation, including working as recreation aides and on conservation projects; and
- any other similar occupation not specifically prohibited.<sup>278</sup>

Minors who have reached age fourteen may also perform occupations declared to be hazardous, provided they have met certain training requirements.<sup>279</sup> Specifically, the employment must be incidental to or upon completion of an apprenticeship or student-learner program of occupational education supported by an approved sponsor or on completion of a training program approved by the state board for community colleges and occupational education (or a comparable out-of-state program).<sup>280</sup> Any employer may require proof of completion of such a program.<sup>281</sup>

Provided that these training requirements have been met, minors who are age fourteen or older may work in the following hazardous occupations:

- operating high pressure steam boilers or water boilers;
- performing work that involves the risk of falling from a place ten feet or higher from the ground (although agricultural work involving elevations of twenty feet or less is not considered hazardous);
- manufacturing, transporting, or storing explosives;
- mining, logging, oil drilling, or quarrying;
- performing work involving exposure to radioactive substances or ionizing radiation;
- operating certain power-driven machinery, including woodworking machines, metal-forming machines, punching or shearing machines, bakery machines, paper products machines, shears, automatic pin-setting machines, and any other power-driven machinery that the Director determines to be hazardous;
- slaughtering livestock and rendering and packaging meat;
- performing work that involves the manufacture of brick or other clay construction products or silica refractory products;
- wrecking or demolishing (except for manual auto wrecking);
- roofing; and
- excavating.<sup>282</sup>

The statute provides authority for the Director to promulgate regulations to define hazardous occupations and to prescribe what types of equipment are required to make an occupation non-hazardous for minors.<sup>283</sup>

Minors who are fourteen or fifteen years of age are also eligible to obtain school release permits, as discussed in detail below.

#### 6.1.6 Minors Age Sixteen or Older

In addition to those occupations discussed above, minors who have reached age sixteen and have obtained a license to operate a motor vehicle may carry out any non-prohibited occupation that involves the use of a motor vehicle.<sup>284</sup> The

provisions concerning school release permits (discussed below)<sup>285</sup> and the restrictions on working more than six hours after school hours or between the hours of 9:30 a.m. and 5:00 p.m. on days followed by school days<sup>286</sup> do not apply to minors who have reached the age of sixteen.

## 6.2 School Release Permits

On school days, minors who are fourteen or fifteen years of age may be employed during school hours only if they have obtained a valid school release permit.<sup>287</sup> The permit must be issued by the school district superintendent, the superintendent's agent, or another designee of the board of education and applies only to the specific position, employer, and length of time designated in the permit.<sup>288</sup> Permits cannot exceed thirty days, are cancelled upon termination of employment, and may only be issued in specific circumstances.<sup>289</sup> Namely, the permit must apply to a non-prohibited occupation, the prospective employer must present a signed statement to that effect, the parent or guardian must consent to the employment, and the issuing officer must believe that permitting the minor to work will serve the minor's best interests.<sup>290</sup>

When issued, the permit must show the name, address, and description of the minor, the name and address of the employer, the kind of work to be performed, and the hours of exemption.<sup>291</sup> The parent and the minor must sign the permit in the presence of the issuing officer.<sup>292</sup>

The permit cannot interfere with the minor's ability to attend at least three class hours on each regular school day, except that the issuing officer may waive class attendance in cases of extreme hardship when it is in the best interests of the minor.<sup>293</sup> The issuing officer may also cancel a school release permit when that is consistent with the best interests of a minor.<sup>294</sup>

A minor may appeal an official's initial decision to refuse a permit or the early cancellation of a permit in a court having jurisdiction over juvenile matters in the county in which the minor resides.<sup>295</sup> Within five days of demand, the officer who refused to issue or who cancelled a permit must provide a written statement explaining the reasons for such action.<sup>296</sup>

Within five days of receipt of the statement, the minor and his parent or guardian may petition the court for an order directing the issuance or reissuance of the permit.<sup>297</sup> It is within the court's discretion to hold a hearing on the issue.<sup>298</sup>

### 6.3 Exemptions

With the exception of the hazardous occupations prohibitions, Colorado's child labor laws do not apply to school work and supervised educational activities, home chores, work performed for a parent or guardian (unless the parent or guardian is paid for the work), or children employed as newsboys or newspaper carriers.<sup>299</sup> In addition, minors who are employed as actors, models or performers are specifically exempt from the state's minimum age and maximum hours requirements.<sup>300</sup> Babysitters are exempt from the prohibition that applies to minors under the age of sixteen working between the hours of 9:30 p.m. and 5:00 a.m. on days followed by school days.<sup>301</sup>

The Director may also grant individual exemptions to any of the statutory requirements except for those concerning school release permits if the Director determines that an exemption would be in the best interests of the minor.<sup>302</sup> Any minor, employer, parent or guardian of a minor, school official, or youth employment specialist may request such an exemption.<sup>303</sup>

In determining whether an exemption is warranted, the Director must consider the minor's previous training in the subject occupation and the minor's knowledge of the applicable safety measures.<sup>304</sup> If a requested exemption involves the state's hazardous occupation prohibitions, the Director may require the minor to submit to a test of his or her skills and abilities, which may be conducted by a community and technical college, private occupational school, or any other institution offering applicable courses approved by the state board for community colleges and occupational education or the private occupational school division.<sup>305</sup>

### 6.4 Enforcement and Penalties

The Director has the responsibility to enforce the provisions of the Youth Act, as well as to receive and investigate complaints.<sup>306</sup> The Director also has the authority to promulgate

rules and regulations that more specifically define the occupations and types of equipment permitted or prohibited under the Youth Act.<sup>307</sup> The Director may visit employers at reasonable times to inspect relevant records and determine compliance with the statutory requirements.<sup>308</sup>

If an investigation by the Director reveals a violation of the Youth Act, the Director must give the employer a written description of the violation that provides specific reference to the statute.<sup>309</sup> Within ten days of such notice, the employer may request, in writing, a hearing to challenge the existence of a violation.<sup>310</sup> After a hearing, the Director may issue a final order requiring the employer to cease and desist the identified conduct.<sup>311</sup> If no hearing is requested, but the employer has not ceased the conduct, the Director may issue such an order twenty days after the notice of violation.<sup>312</sup>

After an order has been issued, unless the violation pertains to the prohibition on the employment of minors between 9:30 p.m. and 5:00 a.m. on days followed by a school day, the Director may order the employer to pay a penalty of \$20 for each offense.<sup>313</sup> Each day that the violation continues after a final order and each minor employed in violation of the Youth Act represents a separate offense.<sup>314</sup>

If the violation concerns the ban on employment of minors between 9:30 p.m. and 5:00 a.m. on a day followed by a school day, a graduated schedule of penalties applies.<sup>315</sup> Specifically, for the first such offense, a penalty ranging between \$200 and \$500 will be imposed.<sup>316</sup> For a second offense within six months of the first, the penalty ranges from \$500 to \$1,000, and for a third or subsequent offense within six months of the first offense, the statute provides for a penalty between \$1,000 and \$10,000.<sup>317</sup>

An order imposing a penalty for any violation becomes final when issued, and the penalty must be paid within thirty days after it is entered, unless the order is modified or a hearing is requested in the interim.<sup>318</sup> In addition to monetary penalties, the Director may apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any action prohibited by the Youth Act.<sup>319</sup> The findings, orders and

penalties of the Director are subject to judicial review pursuant to the State Administrative Procedure Act.<sup>320</sup>

In addition to employers, any person having legal responsibility for a minor who knowingly permits that minor to be employed in violation of the Act is guilty of a misdemeanor and will be fined, upon conviction, an amount ranging from \$20 to \$100 for each offense.<sup>321</sup>

Penalties will also be imposed upon persons, firms, corporations, agents, managers, superintendents or foremen who personally or vicariously (through an agent, subagent, foreman, superintendent or manager), knowingly violate or fail to comply with the Youth Act.<sup>322</sup> Such violations are misdemeanors punishable by a fine ranging between \$20 and \$100 for each offense.<sup>323</sup> For subsequent offenses, these violations carry a fine ranging from \$100 to \$500 or up to 90 days imprisonment in county jail or both.<sup>324</sup>

## 7. WAGE GARNISHMENT

Title 13, section 54 of the Colorado Code sets a limit on the amount of an employee's earnings that can be garnished. The limit is designed to protect the employee judgment debtor, and more wages may be garnished in extreme cases, such as when the employee defrauds the creditor.<sup>325</sup> The statute limits amounts garnished only; other debts may be paid from the amount of wages remaining to the employee.<sup>326</sup>

In general, no more than 25% of an employee's disposable earnings or the amount by which the individual's disposable earnings for a week exceed thirty times the federal minimum hourly wage, whichever is less, may be subject to garnishment.<sup>327</sup> However, 35% of an employee's disposable earnings may be garnished to pay debts from fraudulently obtained public assistance.<sup>328</sup> If the garnishment is imposed by a court order, by an administrative agency affording due process and judicial review, or due to failure to pay taxes, up to 50% of an employee's disposable earnings can be garnished if the employee is the head of a family or 60% if the employee is single.<sup>329</sup> If the employee's wages are being garnished to enforce a child or spousal support order more than twelve weeks overdue, an additional 5% of disposable earnings may be

garnished.<sup>330</sup> A debtor who is “totally and permanently disabled” and derives at least 75% of his income from disability income or benefits may object to the amount of his earnings subject to garnishment, and a court may reduce the amount.<sup>331</sup>

“Disposable earnings” are defined as the “part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld and after the deduction of the cost of any health insurance.”<sup>332</sup> “Earnings” are defined to include “[c]ompensation paid or payable for personal services, whether denominated as wages, salary, commission, or bonus” and “funds held in or payable from any health, accident, or disability insurance.”<sup>333</sup>

In the case of a garnishment for failure to pay child support, “earnings” also includes: workers’ compensation benefits; any pension or retirement benefits or payments; payment to an independent contractor; dividends; severance pay; royalties; monetary gifts; monetary prizes, excluding some lottery winnings; taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies; interest, trust income, annuities, capital gains, or rents; any funds held from any health, accident, disability, or casualty insurance that provides income in lieu of wages; and tips declared by the individual for tax purposes or tips imputed under minimum wage law, whichever is greater.<sup>334</sup>

In the case of writs of garnishment issued by the state agency responsible for administering the state medical assistance program for failure to pay medical support for child support or for medical support debt, “earnings” includes payments received from a third party to cover the health care cost of the child which have not been applied to cover health care costs, unemployment insurance benefits, and state tax refunds.<sup>335</sup>

One Colorado court recently held that an employer was not liable for improper garnishment when it garnished an employee’s wages upon receiving what appeared to be a lawful garnishment, although the employee later claimed that the garnishment was in fact unlawful for a number of reasons.<sup>336</sup>

Employers may not discharge, refuse to hire, or take disciplinary action against an employee because of a garnishment

on his or her wages.<sup>337</sup> An employer who does so may be held in contempt of court or be subject to a fine.<sup>338</sup> Additionally, if an employer discharges an employee in violation of this provision, the employee may, within ninety days, bring a civil action for the recovery of wages lost as a result of the violation and for an order requiring his or her reinstatement.<sup>339</sup> Damages recoverable in such an action include lost wages of up to six weeks, costs, and reasonable attorney fees.<sup>340</sup>

## 8. NOTES AND REFERENCES

<sup>1</sup> COLO. REV. STAT. §§8-4-101 to -123 (2007).

<sup>2</sup> COLO. REV. STAT. §§8-6-101 to -119 (2003).

<sup>3</sup> COLO. REV. STAT. §§8-12-101 to -117 (2003).

<sup>4</sup> 1901 COLO. SESS. LAWS 128.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 1959 COLO. SESS. LAWS 537.

<sup>9</sup> House Bill 03-1206, amending COLO. REV. STAT. §§8-4-101 to -127 (2002) and rearranging it at COLO. REV. STAT. §§8-4-101 to -123 (2003).

<sup>10</sup> House Bill 07-1247, amending COLO. REV. STAT. §8-4-109 and §8-4-110 (2007).

<sup>11</sup> Colorado State Archives, [Colorado History Chronology](http://www.colorado.gov/dpa/doit/archives/), available at <http://www.colorado.gov/dpa/doit/archives/> (material excerpted from archival records of the State Planning Commission's Colorado Year Book, 1959-61).

<sup>12</sup> 1913 COLO. SESS. LAWS 305.

<sup>13</sup> COLO. REV. STAT. §§8-13-101 to -111 (2007).

<sup>14</sup> 1917 COLO. SESS. LAWS 380.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> COLO. REV. STAT. §§8-6-101 to -119 (2003).

<sup>19</sup> COLO. REV. STAT. §§8-4-101 to -123 (2007).

<sup>20</sup> *Lambdin v. District Ct. of Arapahoe Cty.*, 903 P.2d 1126, 1129, 2 WH Cases 2d 1647 (Colo. 1995).

<sup>21</sup> *Cusimano v. Metro Auto, Inc.*, 860 P.2d 532, 534, 1 WH Cases 2d 342 (Colo. App. 1992).

<sup>22</sup> COLO. REV. STAT. §8-4-101(5). See also *Paulu v. Lower Ark. Valley Council of Gov'ts*, 655 P.2d 1391, 1392 (Colo. App. 1982) (the Wage Act applies to private corporations, as opposed to municipal and quasi-municipal corporations, which are separately excluded); Colorado Division of Labor Advisory Bulletin #29(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>23</sup> COLO. REV. STAT. §8-4-101(5). See also *Paulu v. Lower Ark. Valley Council of Gov'ts*, 655 P.2d 1391, 1392 (Colo. App. 1982) (an association consisting of counties and municipal corporations is excepted from the Wage Act); Colorado Division of Labor Advisory Bulletin #29(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>24</sup> *Leonard v. McMorris*, 63 P.3d 323, 328-33 (Colo. 2003). See also Colorado Division of Labor Advisory Bulletin #35(l) (summarizing the *Leonard* opinion), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>25</sup> *Catalan v. Vermillion Ranch Ltd. P'Ship*, 2007 WL 38135, at \*9 (D. Colo. Jan. 4, 2007) (J. Daniel).

- <sup>26</sup> COLO. REV. STAT. §8-4-101(4). See also Colorado Division of Labor Advisory Bulletin #29(I), available at <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>27</sup> COLO. REV. STAT. §8-4-101(4). See also *Hyland v. Pikes Peak Capital Corp.*, 714 P.2d 914, 915 (Colo. App. 1985) (real estate salespersons are independent contractors and are thus not covered employees under the Wage Act); Colorado Division of Labor Advisory Bulletin #6(I) (stating that “[i]ndependent contractors are not employees as defined in Colorado wage law” and listing factors used by the Division to determine whether a person is an independent contractor or an employee), #29(I), available at <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>28</sup> COLO. REV. STAT. §8-4-101(8)(a)(I). See also Colorado Division of Labor Advisory Bulletin #18(I) (providing guidance on piece work pay), available at <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>29</sup> COLO. REV. STAT. §8-4-101(8)(a)(I).
- <sup>30</sup> COLO. REV. STAT. §8-4-101(8)(a)(II). See also *McFadden v. Pioneer Natural Res. USA, Inc.*, 2007 WL 160990, at \*6 (D. Colo. Jan. 17, 2007) (J. Miller) (employee bonus constituted wages under the Act despite fact that employee had little control over the conditions precedent to qualifying for the bonus); Colorado Division of Labor Advisory Bulletin #21(I) (providing additional guidance on the payment of commissions as wages), available at <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>31</sup> COLO. REV. STAT. §8-4-104(8)(a)(III).
- <sup>32</sup> See e.g., *Hartman v. Freedman*, 591 P.2d 1318, 1321, 24 WH Cases 198 (Colo. 1979) (wages or compensation includes vacation pay); *Thompson v. Cheyenne Mtn. Sch. Dist.*, 844 P.2d 1235, 1237 (Colo. App. 1992) (absent an express agreement to the contrary, there is an implied right to compensation for unused vacation time upon termination of an employment contract).
- <sup>33</sup> See also Colorado Division of Labor Advisory Bulletin #5(I), available at <http://www.coworkforce.com/lab/AB.pdf>, concerning vacation as wages or compensation.
- <sup>34</sup> COLO. REV. STAT. §8-4-101(8)(b). See also Colorado Division of Labor Advisory Bulletin #7(I), available at <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>35</sup> *Montemayor v. Jacor Commc'ns, Inc.*, 64 P.3d 916, 923-24 (Colo. App. 2002).
- <sup>36</sup> COLO. REV. STAT. §8-4-103(1). See also Colorado Division of Labor Advisory Bulletin #2(I), available at <http://www.coworkforce.com/lab/AB.pdf>, concerning pay period, payday notice, and pay statement requirements.
- <sup>37</sup> COLO. REV. STAT. §8-4-103(1).
- <sup>38</sup> *Royal Tiger Mines Co. v. Ahearn*, 47 P.2d 692, 695 (Colo. 1935).
- <sup>39</sup> COLO. REV. STAT. §8-4-103(2).
- <sup>40</sup> COLO. REV. STAT. §8-4-107.
- <sup>41</sup> COLO. REV. STAT. §8-4-103(4)(a)-(f).
- <sup>42</sup> Colo. Rev. Stat. §8-4-10212. See also Colorado Division of Labor Advisory Bulletin #1 (I), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>43</sup> *Hofer v. Polly Little Realtors, Inc.*, 543 P.2d 114, 116-17, 22 WH Cases 657 (Colo. App. 1975).

<sup>44</sup> COLO. REV. STAT. §8-4-103(6).

<sup>45</sup> The card must be at least twelve inches by fifteen inches and the letters must be at least one-half inch high. *Id.* See also Colorado Division of Labor Advisory Bulletin #14(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>46</sup> COLO. REV. STAT. §8-4-103(6). See also Colorado Division of Labor Advisory Bulletin #14(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>47</sup> COLO. REV. STAT. §8-4-101(6).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> COLO. REV. STAT. §§8-4-101(7).

<sup>52</sup> *Id.*

<sup>53</sup> COLO. REV. STAT. §8-4-115.

<sup>54</sup> COLO. REV. STAT. §8-4-116. For the insurance requirements of the Workers Compensation Act of Colorado, see Article 8, Titles 40 and 47 of the Colorado Code.

<sup>55</sup> COLO. REV. STAT. §8-4-116(2)(a)-(f).

<sup>56</sup> COLO. REV. STAT. §8-4-117(1)(a).

<sup>57</sup> COLO. REV. STAT. §8-4-117(1)(b)(I)-(VI).

<sup>58</sup> COLO. REV. STAT. §8-4-117(c).

<sup>59</sup> COLO. REV. STAT. §8-4-109(1)(a). See also *Hofer v. Polly Little Realtors, Inc.*, 543 P.2d 114, 116 (Colo. App. 1975) (while an employer need not pay compensation not yet fully earned under a compensation agreement when an employment relationship is severed, unpaid wages become immediately due at the time they are fully earned; accordingly, the uncollected real estate commissions of salesmen were earned and due by the broker upon discharge of the salesmen); Colorado Division of Labor Advisory Bulletin #3(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>60</sup> COLO. REV. STAT. §8-4-109(1)(a).

<sup>61</sup> *Id.* See also Colorado Division of Labor Advisory Bulletin #3(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>62</sup> COLO. REV. STAT. §8-4-109(1)(a)(I)-(III). See also Colorado Division of Labor Advisory Bulletin #3(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>63</sup> Colorado Division of Labor Advisory Bulletin #3(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>64</sup> COLO. REV. STAT. §8-4-109(1)(b)(I)-(III). See also Colorado Division of Labor Advisory Bulletin #3(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>65</sup> COLO. REV. STAT. §8-4-108(2).

<sup>66</sup> *Id.*

<sup>67</sup> COLO. REV. STAT. §8-4-105(2).

- <sup>68</sup> COLO. REV. STAT. §8-4-105(1)(a)-(d). *See also* Colorado Division of Labor Advisory Bulletin #3(l), #4(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>69</sup> COLO. REV. STAT. §8-4-105(1)(c). *See also* Colorado Division of Labor Advisory Bulletin #4(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>70</sup> COLO. REV. STAT. §8-4-105(1)(c). *See also* Colorado Division of Labor Advisory Bulletin #4(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>71</sup> COLO. REV. STAT. §8-4-105(1)(c). *See also* Colorado Division of Labor Advisory Bulletin #3(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>72</sup> COLO. REV. STAT. §8-4-105(1)(e). *See also* Colorado Division of Labor Advisory Bulletin #3(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>73</sup> *Id.* *See also* Colorado Division of Labor Advisory Bulletin #3(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>74</sup> COLO. REV. STAT. §8-4-105(1)-(2). *See also* Colorado Division of Labor Advisory Bulletin #3(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>75</sup> *Hartman v. Community Responsibility Center, Inc.*, 87\_P.3d 202, 207, 9 WH Cases 2d 489 (Colo. App. 2003).
- <sup>76</sup> Colorado Division of Labor Advisory Bulletin #3(l), #4(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>77</sup> *Cusimano v. Metro Auto, Inc.*, 860 P.2d 532, 534, 1 WH Cases 2d 342 (1992) (Colo. App. 1992) (*citing Hofer v. Polly Little Realtors, Inc.*, 543 P.2d 114 (Colo. App. 1975)).
- <sup>78</sup> COLO. REV. STAT. §8-4-110(1).
- <sup>79</sup> COLO. REV. STAT. §8-4-121 *see also* *Morris v. Towers Fin. Corp.*, 916 P.2d 678, 679, 3 WH Cases 2d 434 (Colo. App. 1996).
- <sup>80</sup> COLO. REV. STAT. §8-4-111(1).
- <sup>81</sup> COLO. REV. STAT. §8-4-111(2).
- <sup>82</sup> COLO. REV. STAT. §8-4-111 to 113.
- <sup>83</sup> *Id.*
- <sup>84</sup> COLO. REV. STAT. §8-4-113(1).
- <sup>85</sup> *Id.*
- <sup>86</sup> COLO. REV. STAT. §8-4-113(2).
- <sup>87</sup> COLO. REV. STAT. §8-4-114(1).
- <sup>88</sup> COLO. REV. STAT. §8-4-119(1).
- <sup>89</sup> *Id.*
- <sup>90</sup> *Id.*
- <sup>91</sup> COLO. REV. STAT. §8-4-119(2).
- <sup>92</sup> *See* former section COLO. REV. STAT. §8-4-104(3)(2002).
- <sup>93</sup> COLO. REV. STAT. §8-4-109(3).
- <sup>94</sup> *Id.*
- <sup>95</sup> *Id.*
- <sup>96</sup> *Id.*

- <sup>97</sup> *Lee v. Great Empire Broad., Inc.*, 794 P.2d 1032, 1034, 30 WH Cases 22 (Colo. App. 1989).
- <sup>98</sup> *Id.*
- <sup>99</sup> COLO. REV. STAT. §8-4-114(2).
- <sup>100</sup> *Id.*
- <sup>101</sup> *Id.*
- <sup>102</sup> COLO. REV. STAT. §8-4-110(2).
- <sup>103</sup> COLO. REV. STAT. §8-4-122. *See also* Colorado Division of Labor Advisory Bulletin #33(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>104</sup> *Byerly v. Kirkpatrick Pettis Smith Polian, Inc.*, 996 P.2d 771, 774 (Colo. App. 2000) (the Federal Arbitration Act preempts the Colorado Wage Claim Act to the extent that an agreement to arbitrate a dispute concerning employee compensation is valid).
- <sup>105</sup> COLO. REV. STAT. §8-4-120. *See also* Colorado Division of Labor Advisory Bulletin #26(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>106</sup> *Boeser v. Sharp*, 2006 WL 898126, at \*5 (D. Colo. March 31, 2006) (J. Miller).
- <sup>107</sup> COLO. REV. STAT. §8-4-120. *See also* Colorado Division of Labor Advisory Bulletin #26(l), #27(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>108</sup> COLO. REV. STAT. §8-4-110(1).
- <sup>109</sup> *Id.* The current jurisdictional limit for small claims court is also \$7,500. COLO. REV. STAT. §13-6-403(1).
- <sup>110</sup> COLO. REV. STAT. §8-4-110(1).
- <sup>111</sup> *Id.*
- <sup>112</sup> COLO. REV. STAT. §8-4-110(1.5).
- <sup>113</sup> *Hartman v. Freedman*, 591 P.2d 1318, 1322, 24 WH Cases 198 (Colo. 1979); *Porter v. Castle Rock Ford Lincoln*, 895 P.2d 1146, 1150, 2 WH Cases 2d 1139 (Colo. App. 1995).
- <sup>114</sup> *Hartman v. Freedman*, 591 P.2d 1318, 1322, 24 WH Cases 198 (Colo. 1979).
- <sup>115</sup> *Id.*; *Cortez v. Brokaw*, 632 P.2d 635, 637 (Colo. App. 1981).
- <sup>116</sup> COLO. REV. STAT. §8-4-123(1). *See also* Colorado Division of Labor Advisory Bulletin #19(l), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>117</sup> COLO. REV. STAT. §8-4-123(2)(a)-(b).
- <sup>118</sup> COLO. REV. STAT. §8-4-123(2)(b).
- <sup>119</sup> COLO. REV. STAT. §8-4-123(2)(a).
- <sup>120</sup> COLO. REV. STAT. §8-4-123(2)(c).
- <sup>121</sup> COLO. REV. STAT. §8-4-123(3).
- <sup>122</sup> COLO. REV. STAT. §§8-6-101 to -119 (2003).
- <sup>123</sup> 7 COLO. CODE REGS. §1103-1. *See also* Colorado Department of Labor, Minimum Wage Order #24, *available at* <http://www.coworkforce.com/lab/WageOrder24.pdf>.
- <sup>124</sup> COLO. REV. STAT. §§8-13-101 to -111 (2003).
- <sup>125</sup> COLO. REV. STAT. §§8-6-101 to -119 (2003).
- <sup>126</sup> COLO. REV. STAT. §8-6-102.
- <sup>127</sup> COLO. REV. STAT. §8-6-101(1)-(2).

- <sup>128</sup> COLO. REV. STAT. §8-6-101(3)(a).  
<sup>129</sup> COLO. REV. STAT. §8-6-104.  
<sup>130</sup> *Corbin v. Sinclair Marketing, Inc.*, 684 P.2d 265, 266-67 (Colo. App. 1984) (affirming dismissal of case for failure to state a claim when employee sued for wrongful discharge after his employment was terminated for failing to follow an order that was harmful to his health and contrary to the employer's safety manual).  
<sup>131</sup> COLO. REV. STAT. §8-6-105.  
<sup>132</sup> *Id.*  
<sup>133</sup> *Id.*  
<sup>134</sup> COLO. REV. STAT. §8-6-106.  
<sup>135</sup> *Martin v. Montezuma-Cortez Sch. Dist.*, 841 P.2d 237, 248 (Colo. 1992).  
<sup>136</sup> COLO. REV. STAT. §8-6-107(1).  
<sup>137</sup> COLO. REV. STAT. §8-6-108(1).  
<sup>138</sup> *Id.*  
<sup>139</sup> *Id.*  
<sup>140</sup> COLO. REV. STAT. §8-6-108(1)-(2).  
<sup>141</sup> COLO. REV. STAT. §8-6-109(1).  
<sup>142</sup> COLO. REV. STAT. §8-6-107(2).  
<sup>143</sup> *Id.*  
<sup>144</sup> *Id.*  
<sup>145</sup> *Id.*  
<sup>146</sup> COLO. REV. STAT. §8-6-109(1)-(2).  
<sup>147</sup> COLO. REV. STAT. §8-6-109(2).  
<sup>148</sup> *Id.*  
<sup>149</sup> *Id.*  
<sup>150</sup> COLO. REV. STAT. §8-6-109(3).  
<sup>151</sup> *Id.*  
<sup>152</sup> COLO. REV. STAT. §8-6-110.  
<sup>153</sup> *Id.*  
<sup>154</sup> COLO. REV. STAT. §8-6-111(1).  
<sup>155</sup> *Id.*  
<sup>156</sup> COLO. REV. STAT. §8-6-111(2).  
<sup>157</sup> *Id.*  
<sup>158</sup> COLO. REV. STAT. §8-6-111(3), (4).  
<sup>159</sup> COLO. REV. STAT. §8-6-112.  
<sup>160</sup> *Id.*  
<sup>161</sup> 7 COLO. CODE REGS. §1103-1.  
<sup>162</sup> COLO. REV. STAT. §8-6-119.  
<sup>163</sup> COLO. REV. STAT. §8-6-116.  
<sup>164</sup> *Id.*  
<sup>165</sup> COLO. REV. STAT. §8-6-117.  
<sup>166</sup> COLO. REV. STAT. §8-6-118.  
<sup>167</sup> COLO. REV. STAT. §8-6-115.  
<sup>168</sup> *Id.* See also Colorado Division of Labor Advisory Bulletin #26(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>169</sup> *Crawford Rehab. Servs. v. Weissman*, 938 P.2d 540, 552 (Colo. 1997) (dismissing case because public policy was not violated by discharging an employee who complained to the Division of Labor about her employer's failure to grant her breaks).

<sup>170</sup> *Hoyt v. Target Stores*, 981 P.2d 188, 192 (Colo. App. 1998).

<sup>171</sup> 7 COLO. CODE REGS. §1103-1.

<sup>172</sup> 7 COLO. CODE REGS. §1103-1(22).

<sup>173</sup> 7 COLO. CODE REGS. §1103-1(13).

<sup>174</sup> 7 COLO. CODE REGS. §1103-1(2)(A).

<sup>175</sup> 7 COLO. CODE REGS. §1103-1(2)(B).

<sup>176</sup> 7 COLO. CODE REGS. §1103-1(2)(C).

<sup>177</sup> 7 COLO. CODE REGS. §1103-1(2)(D). *See also* Colorado Division of Labor Advisory Bulletin #24(I), #30(I) (indicating that veterinary medicine is not included in this category, although in some instances veterinary workers may fall within other categories), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>178</sup> 7 COLO. CODE REGS. §1103-1(2)(A)-(D).

<sup>179</sup> 7 COLO. CODE REGS. §1103-1(5)(a). *See also Chase v. Farmers Ins. Exch.*, 129 P.3d 1011, 1014-15 (Colo. App. 2004) (concluding that there was a factual issue as to whether plaintiffs fell within the administrative exemption); Colorado Division of Labor Advisory Bulletin #9(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>180</sup> 7 COLO. CODE REGS. §1103-1(5)(b). *See also* Colorado Division of Labor Advisory Bulletin #9(I), #40(I) (setting forth the Division's interpretation of this exemption), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>181</sup> 7 COLO. CODE REGS. §1103-1(5)(c). *See also* Colorado Division of Labor Advisory Bulletin #9(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>182</sup> 7 COLO. CODE REGS. §1103-1(5)(d). *See also* Colorado Division of Labor Advisory Bulletin #9(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>183</sup> 7 COLO. CODE REGS. §1103-1(5). *See also* Colorado Division of Labor Advisory Bulletin #9(I) (additional exemptions generally), #22(I) (interstate and intrastate drivers), #30(I) (companions, casual babysitters, and other miscellaneous exemptions), #37(I) (application of exemptions to amusement, seasonal, recreational, and camp workers), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>184</sup> *Baldozier v. Am. Family Mut. Ins. Co.*, 375 F. Supp.2d 1089, 1090-92 (D. Colo. 2005) (J. Daniel) (the insurance industry is not subject to the overtime requirements of Wage Order 22, which contained the same coverage and exemption provisions as Order 24). *See also* Colorado Division of Labor Advisory Bulletin #30(I), *available at* <http://www.coworkforce.com/lab/AB.pdf> (taking the same position on application of Wage Order 24 to the insurance industry).

<sup>185</sup> Colorado Division of Labor Advisory Bulletin #32(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>186</sup> Colorado Department of Labor, Minimum Wage Order #24, *available at* <http://www.coworkforce.com/lab/WageOrder24.pdf>.

<sup>187</sup> *Id.* 19

<sup>188</sup> Fair Minimum Wage Act of 2007, *available at* <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR2;> passed as part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, *available at* [http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.2206.](http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.2206)

<sup>189</sup> 7 COLO. CODE REGS. §1103-1(3)(a). *See also* Colorado Division of Labor Advisory Bulletin #19(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>190</sup> 7 COLO. CODE REGS. §1103-1(3)(a). *See also* Colorado Division of Labor Advisory Bulletin #19(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>191</sup> 7 COLO. CODE REGS. §1103-1(3)(b). *See also* Colorado Division of Labor Advisory Bulletin #15(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>192</sup> 7 COLO. CODE REGS. §1103-1(3)(b). *See also* Colorado Division of Labor Advisory Bulletin #15(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>193</sup> 7 COLO. CODE REGS. §1103-1(3)(c). *See also* Colorado Division of Labor Advisory Bulletin #14(I), *available at* <http://www.coworkforce.com/lab/AB.pdf> (providing additional information concerning the minimum wage for tipped employees)

<sup>194</sup> 7 COLO. CODE REGS. §1103-1(2). If tips are designated on a credit card or check, the employer may not withhold the payment of such tips beyond the employee's regular payday while the employer waits for reimbursement from the credit card company or bank. Colorado Division of Labor Advisory Bulletin #14(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>195</sup> 7 COLO. CODE REGS. §1103-1(3)(c). *See also* Colorado Division of Labor Advisory Bulletin #14(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>196</sup> 7 COLO. CODE REGS. §1103-1(2). *See also* Colorado Division of Labor Advisory Bulletin #14(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>197</sup> 7 COLO. CODE REGS. §1103-1(2). *See also* Colorado Division of Labor Advisory Bulletin #14(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>198</sup> 7 COLO. CODE REGS. §1103-1(3). *See also* Colorado Division of Labor Advisory Bulletin #23(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>199</sup> 7 COLO. CODE REGS. §1103-1(3).

<sup>200</sup> 7 COLO. CODE REGS. §1103-1(2).

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> 7 COLO. CODE REGS. §1103-1(4).

<sup>204</sup> *Id.* See also Colorado Division of Labor Advisory Bulletin, #10(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>205</sup> 7 COLO. CODE REGS. §1103-1(4).

<sup>206</sup> *Id.*

<sup>207</sup> 7 COLO. CODE REGS. §1103-1(2). See also Colorado Division of Labor Advisory Bulletin #10(l) (defining the regular rate of pay and providing samples of overtime calculations), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>208</sup> 7 COLO. CODE REGS. §1103-1(2). See also Colorado Division of Labor Advisory Bulletin #10(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>209</sup> 7 COLO. CODE REGS. §1103-1(2). See also Colorado Division of Labor Advisory Bulletin #10(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>210</sup> 7 COLO. CODE REGS. §1103-1(4). See Fair Labor Standards Act, 8 U.S.C. §§201-219 (2003).

<sup>211</sup> 7 COLO. CODE REGS. §1103-1(2). See also Colorado Division of Labor Advisory Bulletin #16(l) (setting forth the general rule and providing guidance on the compensability of time spent attending training, meetings, and educational programs), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>212</sup> 7 COLO. CODE REGS. §1103-1(2). See also Colorado Division of Labor Advisory Bulletin #11(l) (expressing the general rule and providing factors used to differentiate “being engaged to wait” and “waiting to be engaged”), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>213</sup> 7 COLO. CODE REGS. §1103-1(2). See also Colorado Division of Labor Advisory Bulletin #12(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>214</sup> 7 COLO. CODE REGS. §1103-1(2). See also Colorado Division of Labor Advisory Bulletin #20(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>215</sup> 7 COLO. CODE REGS. §1103-1(2).

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* See also Colorado Division of Labor Advisory Bulletin #20(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>218</sup> 7 COLO. CODE REGS. §1103-1(6)(a). See also Colorado Division of Labor Advisory Bulletin #9(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>219</sup> 7 COLO. CODE REGS. §1103-1(6)(b). See also Colorado Division of Labor Advisory Bulletin #9(l), #30(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>220</sup> 7 COLO. CODE REGS. §1103-1(6)(c). See also Colorado Division of Labor Advisory Bulletin #9(l), #30(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

<sup>221</sup> 7 COLO. CODE REGS. §1103-1(6)(d). See also Colorado Division of Labor Advisory Bulletin #9(l), #30(l), available at <http://www.coworkforce.com/lab/AB.pdf>.

- <sup>222</sup> 7 COLO. CODE REGS. §1103-1(6).  
<sup>223</sup> COLO. REV. STAT. §8-12-105(4).  
<sup>224</sup> 7 COLO. CODE REGS. §1103-1(4).  
<sup>225</sup> *Id.*  
<sup>226</sup> 7 COLO. CODE REGS. §1103-1(7).  
<sup>227</sup> *Id.*  
<sup>228</sup> *Id.*  
<sup>229</sup> *Id.*  
<sup>230</sup> 7 COLO. CODE REGS. §1103-1(8). *See also* Colorado Division of Labor Advisory Bulletin #15(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.  
<sup>231</sup> Colorado Division of Labor Advisory Bulletin #15(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.  
<sup>232</sup> 7 COLO. CODE REGS. §1103-1(8). *See also* Colorado Division of Labor Advisory Bulletin #15(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.  
<sup>233</sup> 7 COLO. CODE REGS. §1103-1(11). *See also* Colorado Division of Labor Advisory Bulletin #13(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.  
<sup>234</sup> 7 COLO. CODE REGS. §1103-1(11). *See also* Colorado Division of Labor Advisory Bulletin #13(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.  
<sup>235</sup> 7 COLO. CODE REGS. §1103-1(11). *See also* Colorado Division of Labor Advisory Bulletin #13(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.  
<sup>236</sup> 7 COLO. CODE REGS. §1103-1(11). *See also* Colorado Division of Labor Advisory Bulletin #13(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.  
<sup>237</sup> 7 COLO. CODE REGS. §1103-1(12).  
<sup>238</sup> *Id.*  
<sup>239</sup> *Id.*  
<sup>240</sup> 7 COLO. CODE REGS. §1103-1(21). *See also* Colorado Department of Labor Wage and Hour Poster, *available at* <http://www.coworkforce.com/lab/MinimumWageOrder23Poster.pdf>; Colorado Department of Labor Wage and Hour Poster Posting Requirements, *available at* <http://www.coworkforce.com/lab/PostingRequirements.pdf>.  
<sup>241</sup> 7 COLO. CODE REGS. §1103-1(21).  
<sup>242</sup> 7 COLO. CODE REGS. §1103-1(20).  
<sup>243</sup> *Id.*  
<sup>244</sup> 7 COLO. CODE REGS. §1103-1(15). *See also* Colorado Division of Labor Advisory Bulletin #33(I), *available at* <http://www.coworkforce.com/lab/AB.pdf>.  
<sup>245</sup> 7 COLO. CODE REGS. §1103-1(16).  
<sup>246</sup> Colorado Department of Labor and Employment, Division of Labor, Instruction Sheet (2005) *available at* <http://www.coworkforce.com/lab/WelcomeSheet.pdf>.  
<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> 7 COLO. CODE REGS. §1103-1(17).

<sup>253</sup> 7 COLO. CODE REGS. §1103-1(18).

<sup>254</sup> *See, e.g., Woods v. Ampco Sys. Transp., Inc.*, Case No. 05-cv-02040-PSF-MEH (D. Colo.) (J. Figa) (dismissed Nov. 15, 2006 pursuant to settlement reached prior to certification ruling); *Reab v. Electronic Arts Inc.*, Case No. 00-cv-01839-LTB-OES (D. Colo.) (J. Babcock) (class settlement approved Dec. 11, 2003, after conditional certification as collective action); *Pritchett v. Office Depot, Inc.*, Case No. 2003-cv-2314 (Denver Dist. Ct.) (stipulation of class settlement filed March 24, 2005, following class certification); *Chase v. Farmers Ins. Exch.*, Case No. 01-cv-4773 (Denver Dist. Ct.) (dismissed Apr. 4, 2005, pursuant to settlement agreement following the court's conditional certification of a class and the parties' subsequent agreement to dismiss the class allegations and the absent class members from the suit).

<sup>255</sup> *Baldozier v. Am. Family Mut. Ins. Co.*, 375 F. Supp.2d 1089, 1092 (D. Colo. 2005) (J. Daniel).

<sup>256</sup> COLO. REV. STAT. §8-13-101 (2003).

<sup>257</sup> COLO. REV. STAT. §8-13-102(1)(a).

<sup>258</sup> COLO. REV. STAT. §8-13-102(1)(b).

<sup>259</sup> COLO. REV. STAT. §8-13-103.

<sup>260</sup> COLO. REV. STAT. §8-13-107.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> COLO. REV. STAT. §8-13-108.

<sup>264</sup> COLO. REV. STAT. §8-12-101 to -117 (2003). *See also* Colorado Division of Labor Advisory Bulletin #5(III) (comparing the provisions of the Youth Act with federal child labor laws), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>265</sup> COLO. REV. STAT. §8-12-103(5). *See also* Colorado Division of Labor Advisory Bulletin #1(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>266</sup> COLO. REV. STAT. §8-12-103(5). *See also* Colorado Division of Labor Advisory Bulletin #1(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>267</sup> COLO. REV. STAT. §8-12-111. Such certificates are issued by or under the authority of the school district superintendent. Colorado Division of Labor Advisory Bulletin #3(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>268</sup> COLO. REV. STAT. §8-12-112.

<sup>269</sup> COLO. REV. STAT. §8-12-105(1).

<sup>270</sup> COLO. REV. STAT. §8-12-105(2)-(3). *See also* Colorado Division of Labor Advisory Bulletin #7(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

- <sup>271</sup> COLO. REV. STAT. §8-12-105(4). *See also* Colorado Division of Labor Advisory Bulletin #7(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>272</sup> COLO. REV. STAT. §8-12-105(4). *See also* Colorado Division of Labor Advisory Bulletin #7(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>273</sup> COLO. REV. STAT. 8-12-105(5). *See also* Colorado Division of Labor Advisory Bulletin #7(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>274</sup> COLO. REV. STAT. 8-12-105(5). *See also* Colorado Division of Labor Advisory Bulletin #7(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>275</sup> COLO. REV. STAT. 8-12-105(5). *See also* Colorado Division of Labor Advisory Bulletin #7(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>276</sup> COLO. REV. STAT. §8-12-106. *See also* Colorado Division of Labor Advisory Bulletin #2(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>277</sup> COLO. REV. STAT. §8-12-107. *See also* Colorado Division of Labor Advisory Bulletin #2(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>278</sup> COLO. REV. STAT. §8-12-108. *See also* Colorado Division of Labor Advisory Bulletin #2(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>279</sup> COLO. REV. STAT. §8-12-110.
- <sup>280</sup> COLO. REV. STAT. §8-12-110(1)(a)-(d).
- <sup>281</sup> COLO. REV. STAT. §8-12-112.
- <sup>282</sup> COLO. REV. STAT. §8-12-110(2)(a)-(k). *See also* Colorado Division of Labor Advisory Bulletin #4(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>283</sup> COLO. REV. STAT. §8-12-110(3).
- <sup>284</sup> COLO. REV. STAT. §8-12-109. *See also* Colorado Division of Labor Advisory Bulletin #2(III), 8(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>285</sup> COLO. REV. STAT. §8-12-113.
- <sup>286</sup> COLO. REV. STAT. §8-12-105(2)-(3).
- <sup>287</sup> COLO. REV. STAT. §§8-12-105(2), 8-12-113(1). *See also* Colorado Division of Labor Advisory Bulletin #3(III), #7(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>288</sup> COLO. REV. STAT. §8-12-113(1). *See also* Colorado Division of Labor Advisory Bulletin #3(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>289</sup> *Id.*
- <sup>290</sup> COLO. REV. STAT. §8-12-113(1)(a)-(c).
- <sup>291</sup> COLO. REV. STAT. §8-12-113(2).
- <sup>292</sup> *Id.*
- <sup>293</sup> COLO. REV. STAT. §8-12-113(3).
- <sup>294</sup> COLO. REV. STAT. §8-12-113(6).
- <sup>295</sup> COLO. REV. STAT. §8-12-114(1).
- <sup>296</sup> COLO. REV. STAT. §8-12-114(2).
- <sup>297</sup> COLO. REV. STAT. §8-12-114(3).
- <sup>298</sup> COLO. REV. STAT. §8-12-114(4).

- <sup>299</sup> COLO. REV. STAT. §8-12-104(1)(a)-(d). *See also* Colorado Division of Labor Advisory Bulletin #1(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>300</sup> COLO. REV. STAT. §8-12-104(2).
- <sup>301</sup> COLO. REV. STAT. §8-12-105(3).
- <sup>302</sup> COLO. REV. STAT. §8-12-104(3). *See also* Colorado Division of Labor Advisory Bulletin #2(III), #3(III) *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>303</sup> COLO. REV. STAT. §8-12-104(4). *See also* Colorado Division of Labor Advisory Bulletin #2(III), #3(III) *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>304</sup> COLO. REV. STAT. §8-12-104(3). *See also* Colorado Division of Labor Advisory Bulletin #3(III), *available at* <http://www.coworkforce.com/lab/AB.pdf>.
- <sup>305</sup> *Id.*
- <sup>306</sup> COLO. REV. STAT. §8-12-115.
- <sup>307</sup> COLO. REV. STAT. §8-12-115(7).
- <sup>308</sup> COLO. REV. STAT. §8-12-115(3).
- <sup>309</sup> COLO. REV. STAT. §8-12-115(4)(a).
- <sup>310</sup> *Id.*
- <sup>311</sup> *Id.*
- <sup>312</sup> *Id.*
- <sup>313</sup> *Id.*
- <sup>314</sup> *Id.*
- <sup>315</sup> COLO. REV. STAT. §8-12-115(4)(b).
- <sup>316</sup> COLO. REV. STAT. §8-12-115(4)(b)(II)(A).
- <sup>317</sup> COLO. REV. STAT. §8-12-115(4)(b)(II)(B)-(C).
- <sup>318</sup> COLO. REV. STAT. §8-12-115(4)(a)-(b).
- <sup>319</sup> COLO. REV. STAT. §8-12-115(6).
- <sup>320</sup> COLO. REV. STAT. §8-12-115(5).
- <sup>321</sup> COLO. REV. STAT. §8-12-116(1).
- <sup>322</sup> COLO. REV. STAT. §8-12-116(2).
- <sup>323</sup> *Id.*
- <sup>324</sup> *Id.*
- <sup>325</sup> *Hoyman v. Coffin*, 976 P.2d 311, 314 (Colo. App. 1998) (upholding garnishment of 100% of wages after expiration of garnishment period when employee debtor and employer garnishee colluded to defraud creditor).
- <sup>326</sup> *Rios v. Mireles*, 937 P.2d 840, 843 (Colo. App. 1996) (upholding garnishment of 65% of wages for child support even though employee must pay attorney's lien from remaining 35% and owes child support to another former spouse).
- <sup>327</sup> COLO. REV. STAT. §13-54-104(2)(a)(I) (2003).
- <sup>328</sup> COLO. REV. STAT. §13-54-104(2)(a)(II).
- <sup>329</sup> COLO. REV. STAT. §13-54-104(3)(b)(I)(A)-(B). *See also Rios v. Mireles*, 937 P.2d 840, 844 (Colo. App. 1996).
- <sup>330</sup> COLO. REV. STAT. §13-54-104(3)(b)(II). *See also Rios v. Mireles*, 937 P.2d 840, 844 (Colo. App. 1996).

<sup>331</sup> COLO. REV. STAT. §13-54-104(3)(b)(III).

<sup>332</sup> COLO. REV. STAT. §13-54-104(1)(a).

<sup>333</sup> COLO. REV. STAT. §13-54-104(1)(b)(I).

<sup>334</sup> COLO. REV. STAT. §13-54-104(1)(b)(II)(A)-(E).

<sup>335</sup> COLO. REV. STAT. §13-54-104(1)(b)(III)(A)-(B).

<sup>336</sup> *Rollins v. Ingersoll-Rand Co.*, 2006 WL 2990210, at \*2 (D. Colo. Oct. 19, 2006) (J. Blackburn).

<sup>337</sup> COLO. REV. STAT. §§13-54.5-110, 14-14-11.5(8)(c). *See also* Colorado Division of Labor Advisory Bulletin #9(II), *available at* <http://www.coworkforce.com/lab/AB.pdf>.

<sup>338</sup> COLO. REV. STAT. §14-14-11.5(8)(c).

<sup>339</sup> COLO. REV. STAT. §§13-54.5-110, 14-14-11.5(9).

<sup>340</sup> COLO. REV. STAT. §§13-54.5-110, 14-14-11.5(9).

## **Holland & Hart LLP Labor & Employment Practice Overview**

Holland & Hart has the largest and most extensive management-side labor and employment law practice in the Denver area and the Rocky Mountain region. Their attorneys have expertise in virtually every area of labor and employment law. Described below are the various types of work they handle.

### **Personnel Counseling**

Holland & Hart attorneys regularly advise employers with respect to all aspects of the employment relationship. They draft and review employee handbooks and personnel policies and procedures. They consult with employers regarding matters of discipline and, if necessary, discharge. They work with employers to design and implement alternative dispute resolution (“ADR”) mechanisms, such as peer review systems, mediation, and arbitration, as an alternative to litigation. They prepare employment agreements, and where necessary, separation agreements and releases. In all of these matters, it is the firm’s goal to help employers comply with the myriad of laws and regulations governing the employment relationship and avoid costly and expensive litigation.

### **Employment Discrimination**

Holland & Hart attorneys have extensive experience in handling all types of employment discrimination claims, including race, color, religion, sex, sexual harassment, national origin, disability/handicap, marital status, and sexual orientation. They do work in all phases of such matters, including giving advice regarding preventive programs to eliminate or minimize risks to employers, drafting or reviewing affirmative action plans, participating in investigations by governmental agencies (such as the EEOC, the Colorado Civil Rights Commission (or the analogous state agency), and the Office of Federal Contract Compliance Programs), and litigating in federal and state courts.

Holland & Hart’s federal court trial practice is extensive. Holland & Hart labor lawyers have tried and currently are trying employment discrimination cases in federal courts throughout the Rocky Mountain region. Firm lawyers regularly speak at seminars and institutes and have written extensively on fair employment topics.

**Wrongful Discharge**

Holland & Hart attorneys have substantial experience litigating wrongful discharge cases on behalf of management. Firm lawyers have handled many of the precedent-setting decisions in the Rocky Mountain region on issues of implied contract, promissory estoppel, and employment torts, and have been instrumental in defining the parameters and limitations on such claims.

They have litigated such cases in Colorado, Wyoming, Montana, and Utah, in both the state and federal trial and appellate courts, as well as in other jurisdictions. These cases have often involved breach of contract, promissory estoppel, covenant of good faith and fair dealing, public policy discharge, defamation, outrageous conduct, intentional infliction of emotional distress, intentional interference with contract, and related state tort theories.

Holland & Hart attorneys also regularly advise employers as to ways in which they can avoid wrongful discharge claims by their employees, including reviewing employee handbooks, preparing appropriate disclaimers, using employment agreements, and the like.

**Individual Employee Rights**

Holland & Hart attorneys have extensive experience in the full range of issues arising out of the rapidly-growing area of individual employee rights, which include such varied topics as employee privacy, e-mail, voice mail, and telephone monitoring, drug and alcohol testing, AIDS, threats of violence in the workplace, lawful off-duty conduct, and many more. They help employers develop policies and procedures to meet the company's particular needs and litigate about such issues when necessary.

**Wage-Hour Matters**

Holland & Hart attorneys have experience in all aspects of the minimum wage and overtime pay obligations imposed under the federal Fair Labor Standards Act and other federal and state laws. They regularly advise employers with respect to compliance with the FLSA, including determining whether a particular position is exempt or non-exempt. They also assist employers during DOL audits and litigate government and private wage suits on behalf of employers.

**Union Organizational Campaigns**

They work with firm clients to resist union attempts to organize their employees. This may involve setting up sound personnel policies and practices to avoid unionization, conducting or reviewing supervisor training to maintain union-free status, advising employers as to no-solicitation and no-distribution policies, and the like. They have helped a number of companies in the construction, coal mining, and other industries operate in the merit-shop mold by using double-breasting techniques.

Holland & Hart attorneys also have extensive experience in advising employers with respect to representation matters under the National Labor Relations Act, from responding to the filing of a petition or a demand for bargaining from a union, to representing employers at the representation hearing, to assisting employers in designing and implementing election campaign strategy. They also have experience in representing employers in filing objections to NLRB elections, where necessary.

**Collective Bargaining**

Holland & Hart attorneys handle collective bargaining for a number of employers, in a variety of industries. In addition to actually conducting the bargaining, they often advise the company's representatives before and after bargaining sessions with respect to legal questions, strategy, and tactics, drafting and analyzing proposals, and responding to union information requests.

**Union Contract Administration**

Holland & Hart attorneys do work in all aspects of the administration of collective bargaining agreements, such as advising the company regarding the handling of grievances and representing the company at arbitrations.

**Strikes**

They have substantial experience in handling the legal and practical problems confronting employers during strikes or picketing. Firm services include planning and implementing strategies for operating during a strike; preparing strike contingency plans and strike manuals; advising on the use of temporary and permanent replacements; obtaining temporary restraining orders, preliminary and permanent injunctions, and contempt orders; filing and

defending unfair labor practice charges with the NLRB, including filing

Section 8(b)(1)(A) union violence charges and pursuing Section 10(j) injunctive relief; bringing and defending strike-related federal court injunction actions; and the like.

#### **NLRB Practice**

Holland & Hart attorneys represent employers in all phases of NLRB practice, including representation proceedings (including hearings and elections), decertification matters, and the defense of unfair labor practice charges.

#### **Colorado Labor Peace Act**

Holland & Hart attorneys have handled numerous elections under the Colorado Labor Peace Act, involving union security clauses.

#### **Employee Safety and Health**

Holland & Hart attorneys represent numerous types of employers with respect to compliance with and litigation under the federal Occupational Safety and Health Act. Firm clients have ranged from heavy industry (smelters, oil drilling, pulp processing, high rise construction) to retail and service and light manufacturers.

They also have substantial experience with the statutes that govern safety and health in the mining industry, including the Mine Safety and Health Act. Finally, they also have expertise in the defense of "black lung" and other occupational disease claims.

#### **Unemployment Insurance and Workers' Compensation**

Holland & Hart attorneys advise employers in both of these areas, and have the expertise to handle the broad range of legal matters that these areas present.

#### **Government Contractors**

Holland & Hart attorneys have substantial expertise in the peculiar labor problems of government contractors. These employers are subject to a number of federal statutes and regulations governing many of their labor and personnel practices, including overtime, minimum wages, prevailing wages, affirmative action, hiring of handicapped workers, hiring of Vietnam veterans, drug testing, striker replacement, and the like.

**Covenants Not To Compete/Trade Secret Matters**

Together with lawyers in other areas of the firm, Holland & Hart labor attorneys have substantial experience in advising employers and prosecuting and defending covenant not to compete and trade secret actions. Especially given the growth of “high tech” companies in the Rocky Mountain region, this has become a rapidly-expanding area of the firm’s practice.

**Transactional Matters**

Holland & Hart attorneys regularly advise the firm’s corporate attorneys and their clients with respect to the labor and employment aspects of transactions, including issues ranging from successorship to the federal WARN Act to vacation pay matters.

**ERISA and Other Employee Benefits Matters**

Holland & Hart lawyers have litigated a wide variety of ERISA issues based on their own expertise and relying upon the Employee Benefits Group. They also frequently depend upon the Employee Benefits Group to advise employers with respect to pension plans, profit-sharing plans, deferred compensation, and other types of qualified and non-qualified plans. They work closely with the Employee Benefits Group to assure firm clients that their benefits questions are answered fully and completely.

## Holland & Hart LLP

In 1947, Denver attorneys Steve Hart and Joe Holland left established local practices to form a new, distinctly client-focused law firm. Over the years, Holland & Hart has grown to be the largest law firm in the Mountain West Region, with over 400 attorneys in 15 offices including Colorado, Wyoming, Idaho, Montana, Nevada, New Mexico, Utah, and Washington D.C. Holland & Hart provides legal counsel to individuals and companies of all sizes, from emerging businesses to large public corporations located throughout the country and internationally.





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