ADVISORY BULLETINS AND RESOURCE GUIDE

Colorado Division of Labor

January, 2008

Bill Ritter, Jr., Governor, State of Colorado

Donald J. Mares, Executive Director

Gary J. Estenson, Deputy Executive Director

Michael J. McArdle, Director, Colorado Division of Labor

Peter H. Wingate, Ph.D., Colorado Division of Labor

FOREWORD

The Colorado Division of Labor has assembled this publication to aid in discharging its statutory duty of educating and assisting Colorado employees, employers, and the general public on Colorado labor and employment laws and related workplace topics. Readers must take note of the following important information:

Effective January 28, 2008, content pages of this publication will contain a date stamp on the bottom right of each page. The date will represent the most recent date of revision and publication for the substantive content on each page.

The Advisory Bulletins and materials contained herein are provided for general advisory, clarification, and explanatory purposes only. The Bulletins and associated materials are not intended to expand, narrow, or contradict current law. The current version of this publication is available at: http://www.coworkforce.com/lab/AB.pdf

The Colorado Division of Labor does not provide legal advice. Persons inquiring must contact an attorney for legal advice.

Every attempt has been made to ensure the accuracy and utility of the information contained in this publication. The Colorado Division of Labor is not responsible for errors or omissions; please contact the Division if you have any questions, comments, or feedback.

This publication references and contains links to a variety of organizations, businesses, external agencies, websites, laws, and regulations. Such links do not represent formal endorsement or approval by the Colorado Division of Labor.

All documents contained in this publication are for informational purposes only, and should not be relied upon as an official record of action or law. For official, complete, or annotated versions of Colorado Revised Statutes, contact the Colorado Committee on Legal Services of the Colorado General Assembly.

ACKNOWLEDGEMENTS

This publication was created and written by Peter Wingate, Ph.D., Colorado Division of Labor.

Contributors to this publication include Piera Bocciarelli, Amanda Neal, Maria Mendez, Kruz Watkins, Greg Hays, and additional Colorado Division of Labor staff who assisted in researching, editing, and writing the Bulletins and Resource Guide.

The Division of Labor appreciates the extensive input and feedback we have received from Colorado employees, employers, attorneys, law firms, and organizations regarding the content of this publication.

KEYWORD INDEX

E

F

G

H

I

J

L

M

N

O

P

Q

R

S

T

U

V

W

Y

Table of Contents

SECTION I: COLORADO WAGE LAW AND COLORADO MINIMUM WAGE ORDER NUMBER 24

Keyword Index

METHODS OF PAYMENT AND ELECTRONIC DEBIT CARDS, 1(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado employers may pay their employees with checks (or other instruments payable upon demand), cash, or by direct deposit into the employee's account at a financial institution.

Direct deposits can only be made if the employee has voluntarily authorized the deposit and has chosen the financial institution into which the deposit is made. Whatever method of payment is chosen it must be a payment that is cash, redeemable in cash, or convertible to cash at the employee's demand without cost to the employee.

The above rules apply to all required wage payments including those when an employee terminates employment voluntarily (resigns).

Electronic payroll card systems must comply with the following requirements in accordance with Colorado law:

- All wages due an employee must be negotiable and payable upon demand without discount in cash. Therefore, payroll card systems must allow access to the entire amount of pay without charge.

- Participation in a direct deposit electronic payroll card system must be voluntarily authorized by the employee.

- If the electronic payroll card system is providing the option for employees to write their own payroll checks, the checks must be received or accessible by the employee within ten days from the end of the pay period. The only exception would be if the employee and employer have mutually agreed on an alternative pay period.

REFERENCES

Colorado Revised Statutes 8-4-102 (Proper Payment)
Colorado Revised Statutes 8-4-103 (Payment of Wages)
Colorado Revised Statutes 8-4-109 (Termination of Employment)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

PAY PERIODS AND PAYDAY NOTICE, 2(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

PAY PERIODS

The employer and employee may, by mutual agreement, determine the period of wage and salary payments. In the absence of such agreement, Colorado wage law provides: All wages or compensation shall be due and payable for regular pay periods of no greater duration than one calendar month or thirty days, whichever is longer. Regular paydays must be no later than ten days following the close of each pay period. The pay periods described above do not apply to compensation payments due an employee under a profit-sharing plan, a pension plan, or other similar deferred compensation programs.

It is the policy of the Division of Labor that any changes to either the pay period schedule or to the date of the payday must adhere to the time frames specified above (or such changes must be mutually agreed-upon by both employer and employee). Employers may not make changes that violate the calendar month or thirty-day pay period requirement for regular pay periods, nor may they make changes that violate the ten-day payday requirement, unless the employer and the employee mutually agree on any other alternative period of wage or salary payments.

PAYDAY NOTICE

Every employer must post a notice specifying regular paydays and the time and place of payment. The employer must also include any changes in paydays or time and place of payment as they may occur from time to time.

PAY STATEMENTS

Colorado law requires employers to furnish to the employee an itemized pay statement. The pay statement must be made available to the employee once a month or at the time of payment of wages or compensation. The pay statement must contain the following:

- Gross wages earned
- (It is the policy of the Division of Labor that gross wages refers to the gross wages for the specific pay statement, not gross wages for the year-to-date)
- All withholdings and deductions
- Net wages earned
- The inclusive dates of the pay period
- The name of the employee or the employee’s social security number
- The name and address of the employer

REFERENCES

Colorado Revised Statutes 8-4-103 (Payment of Wages)
Colorado Revised Statutes 8-4-103(4) (Itemized Pay Statement)
Colorado Revised Statutes 8-4-107 (Post Notice of Paydays)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

PAYMENT OF WAGES UPON TERMINATION OF EMPLOYMENT, 3(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

TERMINATION OF EMPLOYMENT BY THE EMPLOYER

When an interruption in the employer-employee relationship by volition of the employer occurs, the wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of such discharge are due and payable immediately, EXCEPT:

- When the employer's accounting unit, responsible for the drawing of payroll checks, is not regularly scheduled to be operational, then the wages due the separated employee shall be made available to the employee no later than six hours after the start of such employer's accounting unit's next regular workday.

- If the accounting unit is located off the work site, the employer shall deliver the check for wages due the separated employee no later than twenty-four hours after the start of such employer's accounting unit's next regular workday to one of the following locations **selected by the employer**: a) the work site, b) the employer's local office, c) the employee's last-known mailing address.

Note: It is the policy of the Division of Labor that mailing of wages due to a separated employee is acceptable when the postmark is dated within the specified time periods as described above. For example, an employer with an off-site accounting unit may mail wages due to the separated employee via regular mail as long as the mailing is postmarked no later than twenty-four hours after the start of the accounting unit's next regular workday.

PERMISSIBLE DEDUCTIONS UPON TERMINATION

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. In this instance the employer shall have 10 calendar days after the termination of employment to audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid in accordance with CRS 8-4-109.

TERMINATION OF EMPLOYMENT BY THE EMPLOYEE

When an employee voluntarily quits or resigns, they are to receive their wages and compensation, due and payable, upon the next regular payday. They may be paid by check, cash, or by direct deposit as on any other payday.

For the purpose of timely payment of wages, it is the policy of the Division of Labor that an employee has quit or resigned in the instance where he or she has not shown up for work as scheduled. Note: this policy solely applies to the Division of Labor and this section of the law; other agencies may differ in their assessment of employment separation.

REFERENCES

Colorado Revised Statutes 8-4-109 (Termination of Employment)
Colorado Revised Statutes 8-4-105 (Deductions Permitted)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

DEDUCTIONS FROM WAGES, 4(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado wage law permits employers to make specific wage deductions in the following areas.

PERMISSIBLE DEDUCTIONS:

Deductions required by local, state, or federal law. Examples include, but are not limited to, deductions for taxes, social security, FICA requirements, Medicare, garnishments, or any other court-ordered deductions.

Deductions by written agreement between the employer and employee. The agreement may be for loans, pay advances, goods or services, and equipment or property. The agreement must be in writing, enforceable, and not in violation of law.

Deductions necessary to cover the replacement cost of a shortage due to theft by an employee. Colorado law provides the following criteria for deductions related to theft:

- A report must be filed with the proper law enforcement agency.
- If criminal charges are not filed against the accused employee within 90 days after the filing of the report, or the accused employee is found not guilty in a court action, or the charges are dismissed, the accused employee shall be entitled to recover any amount wrongfully withheld plus interest.
- If an employer acts without good faith in making such charges, in addition to the amount wrongfully withheld, the employer could be held liable for three times the amount wrongfully withheld plus attorney's fees, court costs, and other costs the court finds reasonable.

Deductions that are authorized by the employee and that can be revoked. Examples include, but are not limited to, deductions for insurance benefits, savings plans, stock purchases, voluntary pension plans, charities, and deposits to financial institutions.

Deductions for union dues. Must be in writing between the employer and employee.

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. In this instance the employer shall have 10 calendar days after the termination of employment to audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid in accordance with CRS 8-4-109.

EXAMPLES OF IMPERMISSIBLE DEDUCTIONS:

PROPERTY DAMAGE

In general, absent a written agreement to the contrary, employers may not deduct from an employee's wages or compensation for the cost of damage or depreciation to the employer's property. For example, an employer may not typically deduct the cost of damage to a company car from an employee's wages, unless an enforceable written agreement existed between the employer and employee that is not in violation of the law.

FINES FOR EMPLOYEE BEHAVIOR OR ACTIONS

In general, employers may not apply fines to an employee's earned wages or compensation based upon employee behavior or performance. For example, an employer may not typically deduct from the wages of a restaurant waitperson for the cost of a meal in the event that the customer does not pay the bill.

REFERENCES

Colorado Revised Statutes 8-4-105 (Payroll Deductions Permitted)
Colorado Revised Statutes 8-3-108(1)(i) (Union Dues Deductions)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

VACATION PAY, 5(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

VACATION NOT REQUIRED

Colorado wage law does not require that vacation time be given. Colorado wage law does not require paid vacation and does not require that an employer establish a vacation policy.

VACATION POLICY

An employer may establish a vacation policy in writing or by custom and practice. Employees must be made aware of the employer's policy. Employers and employees must follow established policy unless and until that policy is changed. We recommend that employers develop their vacation policy in consultation with legal counsel.

VACATION AS WAGES OR COMPENSATION

Colorado wage law provides that vacation pay, earned in accordance with the terms of any agreement, is classified as wages or compensation. If an employer provides paid vacation for an employee, the employer shall pay upon separation from employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee.

GRANTING OF VACATION LEAVE

In general, the granting of vacation leave by an employer for a current employee is made pursuant to the employer's policy. The Division of Labor does not intervene in disputes involving the scheduling of vacation leave or the denial of use of vacation leave for current employees.

REFERENCES

Colorado Revised Statutes 8-4-101(8)(a)(III) (Vacation Pay)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

INDEPENDENT CONTRACTORS, 6(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado wage law defines an employee as any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. An individual primarily free from control and direction in the performance of contracted labor or services, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an employee.

Independent contractors are not employees as defined in Colorado wage law.

To determine whether a worker is an independent contractor or employee, the relationship between the worker and the business must be examined. The courts, the U.S. Department of Labor, the Internal Revenue Service, the Colorado Division of Employment and Training Unemployment Insurance, and the Colorado Division of Labor may consider many different facts in making this determination, and such facts typically fall into three main categories: behavioral control, financial control, and type of relationship.

As different agencies use different criteria in their determinations, persons inquiring must contact the appropriate agency for their situation, and determinations made by one agency for one specific purpose may not necessarily apply to other agencies and purposes. For example, a determination of employee or independent contractor status for the purpose of unemployment benefits in Colorado is subject to Colorado Revised Statutes 8-70-115, and such a determination is made by the Colorado Division of Employment and Training. Determination of employment status for the purpose of workers' compensation is described in Colorado Revised Statutes 8-40-202.

The Colorado Division of Labor will evaluate employment status on a case-by-case basis, and the determination will examine facts which may include:

BEHAVIORAL CONTROL

Facts that show whether the business has a right to direct and control how the work is performed, through instructions, training, or other means.

Employees are generally told:

- when, where, and how to work
- what tools or equipment to use
- what workers to hire or assist with their work
- where to purchase supplies and services
- what work must be performed by a specific individual
- what order or sequence to follow in performing tasks

FINANCIAL CONTROL

Facts that show whether the business has a right to control the business aspects of the worker's job.

Financial aspects that may be examined include:

- the extent to which the worker has un-reimbursed expenses
- the extent of the worker's investment
- the extent to which the worker makes services available to the relevant market
- how the business pays the worker
- the extent to which the worker can realize a profit or loss

TYPE OF RELATIONSHIP

Facts that show the nature of the relationship between the two parties.

Relevant information on the nature of the relationship includes:

- written contracts describing the relationship the parties intended
- whether the worker is provided with employee-type benefits
- the permanency of the relationship
- how integral the services are to the principal activity

SUMMARY

In general, to classify someone as an independent contractor, the employer typically has control over the result of the work performed, whereas the independent contractor exerts control over the means and methods of accomplishing the result.

REFERENCES

Colorado Revised Statutes 8-4-101(4) (Employee Definition)
Colorado Revised Statutes 8-40-202(2)(a) (Workers' Compensation Employee Definition)
Colorado Revised Statutes 8-70-115(1)(b) (Employment Security / UI Definitions)
Colorado Wage Order Number 24

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/esa/regs/compliance/whd/whdfs13.htm (Fact Sheet #13: Employment Relationship under the Fair Labor Standards Act)

IRS LINKS

www.irs.gov/pub/irs-pdf/p1779.pdf
www.irs.gov/taxtopics/tc762.html
www.irs.gov/businesses/small/article/0,,id=99921,00.html
www.irs.gov/pub/irs-pdf/p15a.pdf
www.irs.gov/pub/irs-pdf/fss8.pdf
www.irs.gov/pub/irs-utl/emporind.pdf

Keyword Index

HOLIDAY PAY, SEVERANCE PAY, SICK PAY, SICK LEAVE, AND COMPENSATORY TIME, 7(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

HOLIDAY PAY

Colorado wage law does not require nor prohibit any paid holidays, and does not require nor prohibit any extra pay for working on holidays. When an employee is paid for a non-work holiday, the holiday hours do not count towards overtime unless actual work was performed on the holiday.

SEVERANCE PAY

Colorado wage law does not require nor prohibit severance pay. Severance pay is a benefit offered by employers at their own discretion. Severance pay is not wages or compensation for the purposes of the Colorado Wage Act.

SICK PAY AND SICK LEAVE

Colorado wage law does not require nor prohibit sick pay or sick leave, or bereavement pay or bereavement leave. Colorado wage law does not require employers to provide time off due to illness or injury. Persons inquiring about family, medical, or sick leave should contact the U.S. Department of Labor as federal law may apply, or contact Colorado Workers' Compensation or an attorney for additional guidance.

COMPENSATORY TIME

The use of compensatory time for non-exempt employees is not allowed for employers covered under Colorado Minimum Wage Order Number 24. Compensatory time is defined as paid time off the job which has been earned and accrued by an employee in lieu of the appropriate wage payments for a specified pay period.

Non-exempt employees covered under Colorado Wage Order Number 24 must be paid time and one-half of 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). See Advisory Bulletin # 2 (I) for information on pay periods and paydays.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 4, Overtime Hours)
Colorado Revised Statutes 8-4-101(8) (b) (Severance Pay)
29 Code of Federal Regulations 553.22-553.23 (FLSA Compensatory Time)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

TIME CLOCKS, TIMEKEEPING, AND PAY STATEMENTS, 8(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

TIME CLOCKS

Many different timekeeping methods are acceptable for tracking employee work. Employers have discretion in choosing their own method of timekeeping as long as it is complete and accurate. The use of time clocks in the workplace is not required. Employees must be compensated for all time worked, regardless of whether time clocks are used in the workplace.

ROUNDING OF HOURS WORKED

Rounding of hours worked is acceptable, provided that any such arrangement averages out so that the employee is fully compensated for all hours worked. For example, rounding an employee's starting and ending time to the nearest 5 minutes or the nearest one-tenth of an hour is allowed if the end result is compensation for all hours worked. The rounding must be done in a manner so that the employee does not lose hours worked over a period of time, and the employee benefits from the rounding as often as not. For example, when the employee is 5 minutes early it would be rounded forward to the start time, and when the employee is 5 minutes late it would be rounded back to the start time.

PAY STATEMENTS

Colorado wage law requires employers to furnish to the employee an itemized pay statement. The pay statement must be made available to the employee once a month or at the time of payment of wages or compensation. The pay statement must contain the following:

- Gross wages earned
- (It is the policy of the Division of Labor that gross wages refers to the gross wages for the specific pay statement, not gross wages for the year-to-date)
- All withholdings and deductions
- Net wages earned
- The inclusive dates of the pay period
- The name of the employee or the employee's social security number
- The name and address of the employer

REFERENCES

Colorado Revised Statutes 8-4-103(4) (Itemized Pay Statement)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200729
(See 29 CFR 785.48, “Use of Time Clocks”)

Keyword Index

EXEMPT EMPLOYEES UNDER COLORADO MINIMUM WAGE ORDER NUMBER 24, 9(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The Division of Labor refers to the Colorado Minimum Wage Order Number 24 (hereafter referred to as the Wage Order) to answer questions about exempt and non-exempt employees. The Administrative, Executive or Supervisor, Professional, and Outside Salesperson exemption definitions in Section 5 of the Wage Order pertain only to the industries covered by the Wage Order. Employees and employers not covered by the Wage Order as well as those covered by the Wage Order should be aware that they may also be covered by the Fair Labor Standards Act and should contact the United States Department of Labor for additional information.

Exemptions described in this Bulletin are:

- Exemptions from the Wage Order, and
- Exemptions from overtime.

EXEMPTIONS FROM THE WAGE ORDER

Section 5 of the Wage Order sets forth, by name, categories of employment by profession or occupation. The following employees or occupations are exempt from all provisions of the Wage Order: administrative, executive/supervisor, professional, outside sales employees, and elected officials and members of their staff. Other exemptions are: companions, casual babysitters, and domestic employees employed by households or family members to perform duties in private residences, property managers, interstate drivers, driver helpers, loaders or mechanics of motor carriers, taxi cab drivers, and bona fide volunteers. Also exempt are: students employed by sororities, fraternities, college clubs, or dormitories, and students employed in a work experience study program and employees working in laundries of charitable institutions which pay no wages to workers and inmates, or patient workers who work in institutional laundries.

Exemption Definitions:

ADMINISTRATIVE EMPLOYEE:

A salaried individual who directly serves the executive, regularly performs duties important to the decision-making process of the executive, and is earning in excess of the equivalent of the minimum wage for all hours worked in a workweek. Said employee regularly exercises independent judgment and discretion in matters of significance and their primary duty is non-manual in nature and directly related to management policies or general business operations.

EXECUTIVE OR SUPERVISOR:

A salaried employee earning in excess of the equivalent of the minimum wage for all hours worked in a workweek. Said employee must supervise the work of at least two full-time

employees and have the authority to hire and fire, or to effectively recommend such action. The executive or supervisor must spend a minimum of 50% of the workweek in duties directly related to supervision.

PROFESSIONAL:

A salaried individual, earning in excess of the minimum wage for all hours worked in a workweek, employed in a field of endeavor who has knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. The professional employee must be employed in the field in which they are trained to be considered a professional employee.

OUTSIDE SALESPERSON:

Any person employed primarily away from the employer's place of business or enterprise for the purpose of making sales or obtaining orders or contracts for any commodities, articles, goods, real estate, wares, merchandise or services. Such outside sales employee must spend a minimum of 80% of the workweek in activities directly related to their own outside sales.

The usual rule is that an employee must be salaried to be exempt. However, doctors, lawyers, teachers, and employees in highly technical computer occupations earning at least $27.63/hour do not have to be paid on a salary basis in order to qualify for exemption as a professional under the Wage Order.

Note, however, that not all salaried employees are exempt. To be exempt under the Wage Order, the employee must meet the criteria for the relevant exemption. If the employee doesn't meet the criteria, the employee is non-exempt and must be paid for overtime.

EXEMPTIONS FROM OVERTIME

Exemptions from all or part of the overtime requirement may be allowed under the Wage Order for commission sales, the ski industry, and medical transportation. These along with salespersons, parts-persons, and mechanics, who are employed by an automobile dealer are exempt as explained in Section 6 of the Wage Order.

The Following Employees Are Exempt From The Overtime Provisions of The Wage Order:

- **Salespersons, parts-persons, and mechanics employed by automobile, truck, or farm implement (retail) dealers:** salespersons employed by trailer, aircraft and boat (retail) dealers.
- **Commission Sales Exemption:** sales employees of retail or service industries paid on a commission basis, provided that 50% of their 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. This exemption is only applicable for employees of retail or service employers who receive in excess of 75% of their annual dollar volume from retail or service sales.
- **Ski Industry Exemption:** employees of the ski industry performing duties directly related to ski area operations for downhill skiing or snow boarding, and those employees engaged in providing food and beverage services at on-mountain locations, are exempt from the forty

(40) hour overtime requirement of the Wage Order. The daily overtime requirement of one and one-half the regular rate of pay for all hours worked in excess of twelve (12) in a workday shall apply. This partial overtime exemption does not apply to ski area employees performing duties related to lodging.

- **Medical Transportation Exemption:** employees of the medical transportation industry who are scheduled to work twenty-four (24) hour shifts, are exempt from the twelve (12) hour overtime requirement provided they receive overtime wages for hours worked in excess of forty (40) hours per workweek.

See Advisory Bulletin # 30 (I) for more information on exemptions.

REFERENCES

Colorado Minimum Wage Order Number 24 (Sections 5 and 6)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov (U.S. Department of Labor)
www.dol.gov/esa/whd/ (U.S. Department of Labor Wage and Hour Division)

Keyword Index

OVERTIME PAY, 10(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Employees who are covered by Colorado Minimum Wage Order Number 24 may, in certain circumstances, qualify for overtime pay. Advisory Bulletin # 9 (I) describes employees that are exempt from overtime. The information contained in this Bulletin only applies to non-exempt employees covered by the Wage Order.

The minimum wage for every hour worked must be paid in accordance with the Wage Order and federal law. Currently, the minimum wage in Colorado is $7.02 per hour.

OVERTIME HOURS

Employees shall be paid time and one-half of the regular rate of pay for any work in excess of: (1) forty hours per workweek; (2) twelve hours per workday, or (3) twelve consecutive hours without regard to the starting and ending time of the workday (excluding duty free meal periods), whichever calculation results in the greater payment of wages.

WORKWEEK DEFINITION AND OVERTIME

A workweek is defined as any consecutive seven-day period starting with the same calendar day and hour each week. A workweek is a fixed and recurring period of 168 hours, seven consecutive twenty-four hour periods, and is typically established by the employer. Hours worked in two or more workweeks shall not be averaged for computation of overtime.

REGULAR RATE OF PAY

The regular rate of pay for an employee is used to calculate overtime pay. The regular rate of pay is expressed as a rate per hour, and it is determined by dividing the total remuneration provided to an employee in any workweek by the total numbers of hours actually worked in that workweek.

The regular rate of pay includes all compensation paid to employees including the set hourly rate, shift differential, non-discretionary bonuses, production bonuses, and commissions.

The following are excludable from the regular rate of pay: business expenses, bona fide gifts, discretionary bonuses, employer investment contributions, vacation pay, holiday pay, sick leave, or jury duty.

Important note: The following calculation examples are intended to serve as a general guideline for commonly encountered overtime pay situations. The calculation of regular rate and overtime

pay should be conducted very carefully, and other methods of calculation not described in this Bulletin may be appropriate depending upon the particular circumstances.

SALARIED EMPLOYEE OVERTIME CALCULATION EXAMPLES

Salary Paid Weekly for a Fluctuating Workweek Example

A non-exempt employee receives a $500.00 weekly salary. The employee works 50 hours in one specific week (the hours worked may vary weekly). The overtime computation is:

- Determine the regular rate of pay by dividing the salary ($500.00) by all hours worked in the workweek (50). $500.00 divided by 50 = $10.00/hour. $10.00/hour is the regular rate for that workweek.
- Regular rate wages (straight time) are: 50 hours x $10.00 = $500.00.
- The premium overtime rate equals one-half the regular rate times the number of hours over 40 in a workweek: $10.00 x .5 x 10 hours = $50.00
- Total wages owed = $500.00 + $50.00 = $550.00

Salary Paid Weekly For a Fixed Workweek Example

A non-exempt employee receives a $500.00 weekly salary for an agreed, fixed workweek of 40 hours. The employee works 43 hours in one week. The overtime calculation is:

- Determine the regular rate of pay by dividing the weekly salary ($500.00) by 40 (the agreed, fixed hours) = $12.50/hour. $12.50/hour is the regular rate.
- Regular rate wages (straight time) for the week are the agreed amount of $500.00 PLUS the three additional hours at $12.50/hour = $537.50.
- The premium overtime rate equals one-half the regular rate times the number of hours over 40 in a workweek: $12.50 x 3 x .5 = $18.75.
- Total wages owed = $537.50 + $18.75 = $556.25

Salary Paid Monthly Example

A non-exempt employee receives a salary of $4335.00 per month. The employee works 50 hours in one week. The overtime computation is:

- Determine the weekly amount earned. Multiply the monthly salary of $4335.00 by 12 (months in a year). $4335.00 x 12 = $52,020.00/year. Divide this result by 52 (weeks in a year) to determine the weekly amount. $52,020.00/52 = $1000.38/week.
- Divide the weekly amount by hours worked to determine the regular rate. $1000.38/50 = $20.00/hour. This is the regular rate (carry out your math to two decimal places).
- Regular rate wages (straight time) are $1000.38.
- The premium overtime rate equals one-half the regular rate times the number of hours over 40 in a workweek: $20.00 x 10 hours x .5 = $100.00
- Total wages owed for the week are $1000.38 + $100.00 = $1100.38.

PIECE RATE OVERTIME CALCULATION EXAMPLE

When an employee is paid on a piece rate basis (for example, a certain amount is paid for every piece, dozen pieces, or for each service completed), the regular rate of pay is computed by first adding together the total earnings for the workweek from all piece rate work plus any other amount from that week for hours worked, waiting time, etc. This sum is then divided by the total number of hours worked in that week. For example, an employee works 50 hours in a week,

earns a total of $500.00 for all piece work completed, and also receives a $100.00 nondiscretionary bonus that week.

- The regular rate of pay for the workweek is all of the earnings divided by the hours worked. $500.00 + $100.00 = $600.00. $600.00/50 = $12.00
- The regular rate wages (straight time) for the workweek are $600.00
- The premium overtime rate equals one-half the regular rate times the number of hours over 40 in a workweek: $12.00 x 10 hours x .5 = $60.00
- Total wages owed for the week are $600.00 + $60.00 = $660.00.

See Advisory Bulletin 18 (I) for further details on piece rate workers.

TIPPED EMPLOYEE OVERTIME CALCULATION EXAMPLES

(Three Equivalent Methods)

Calculation Assumptions

1. Minimum wage is $7.02, and the tipped minimum wage is $7.02 - $3.02 = $4.00
2. The employee's tips make up the difference between the tipped minimum wage of $4.00 and the full minimum wage of $7.02; the employer can take the maximum tip credit of $3.02.
3. No other payments occurred during the pay period that would have to be included in the regular rate (e.g., non-discretionary bonuses, commissions, etc.). Note that tips are not included in the regular rate for overtime calculation purposes.
4. The employee works 50-hours in the workweek, with 10 hours of overtime owed under the 40-hour overtime criterion; no work in excess of 12-hours per day occurred.
5. The rate for overtime hours is based upon the full minimum wage of $7.02, not $4.00.

Example 1: Straight time earnings for all hours worked; half-time OT

- $7.02 x 50 = $351 (straight-time earnings for all hours).
- $7.02 x .5 x 10 (OT half-time premium multiplied by number of OT hours) = $35.10
- $351 + $35.10 = $386.10 (total owed before applying any tip credit)
- $3.02 (Colorado State tip credit) x 50 = $151 tip credit which the employer may apply
- Total owed by the employer to the employee = $386.10 - $151 = $235.10

Example 2: Straight time earning for regular hours worked, 1 ½ OT

- $7.02 x 40 = $280.80 (straight-time earnings for regular hours).
- $7.02 x 1.5 x 10 (one and one-half OT premium multiplied by number of OT hours) = $105.30
- $280.80 + $105.30 = $386.10 (total owed before applying any tip credit)
- $3.02 (Colorado State tip credit) x 50 = $151 tip credit which the employer may apply

- Total owed by the employer to the employee = $386.10 - $151 = $235.10

Example 3: Tip credit applied before calculations

- $4.00 x 40 = $160 (tip credit subtracted from $7.02 first, multiplied by regular hours).
- $7.02 x 1.5 = $10.53 (one and one-half OT premium based upon full minimum wage)
- $10.53 - $3.02 = $7.51 (OT premium rate – Colorado State tip credit)
- $7.51 x 10 = $75.10 (OT premium rate multiplied by OT hours)
- Total owed by the employer to the employee = $160 + $75.1 = $235.10

See Advisory Bulletin # 14 (I) for more information on tipped employees.

NON-EXEMPT EMPLOYEE WORKING TWO JOBS

An employee working two non-exempt jobs at different hourly pay rates for the same employer within a specific workweek may be paid overtime using either of the following methods, provided that the employee is notified in advance which method will be used:

- Overtime is paid at time and one-half the regular rate of pay for the job during which the actual overtime occurs.

OR

- Overtime is paid at time and one-half the regular rate, which is computed as a weighted average based upon the rates for each position. In other words, the employee's regular rate for the workweek is determined by adding together all the wages and compensation for the workweek from both jobs, and then dividing this amount by the total amount of hours worked from both jobs.

For example, in one workweek, a non-exempt employee works 40 hours per week at $15 per hour, and then performs 10 hours of different duties at different times during the workweek at a rate of $10 per hour. The weighted average regular rate of pay for this employee would equal [(40 X $15) + (10 X $10)] / 50 = $14 per hour regular rate. Thus, using this calculation method, the employee would be owed overtime at a rate of $14 X 1.5 = $21 per hour for overtime work.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 4)
29 Code of Federal Regulations 548
29 Code of Federal Regulations 778.111 (Pieceworker)
29 Code of Federal Regulations 778.113 (Salaried Employees General Information)
29 Code of Federal Regulations 778.114 (Salary for Fluctuating Hours)
29 Code of Federal Regulations 778.418 (Pieceworkers)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/ (U.S. Department of Labor)
www.dol.gov/esa/regs/compliance/whd/whdfs23.htm (FLSA Overtime Fact Sheet)
www.gpoaccess.gov/cfr/index.html (Code of Federal Regulations Online Access)
www.dol.gov/dol/allcfr/ESA/Title_29/Chapter_V.htm (Wage and Hour CFR)
www.dol.gov/elaws/otcalculator.htm (FLSA Overtime Calculator)

Keyword Index

ON CALL AND WAITING TIME, 11(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

COLORADO MINIMUM WAGE ORDER NUMBER 24 DEFINITION OF TIME WORKED:

The time during which an employee is subject to the control of the employer, including all the time the employee is suffered or permitted to work whether or not required to do so. Requiring or permitting employees to remain at the place of employment awaiting a decision on a job assignment or when to begin work or to perform clean up or other duties 'off the clock' shall be considered time worked and said time must be compensated.

"ENGAGED TO WAIT" OR "WAITING TO BE ENGAGED"

In Skidmore v. Swift & Co. (1944), the United States Supreme Court classified an employee as either "engaged to wait" or "waiting to be engaged". An employee who is required to stay very close to the workplace in time and distance, and has very little freedom to use the time as their own is "engaged to wait" and the time is classified as work time for compensation purposes. If the employee has only minimal restrictions on the use of their time while on call, and has a fair amount of time to respond to the call, they are "waiting to be engaged" and the on call time is not hours worked for compensation purposes.

There is no one universally accepted test for determining whether on call time should be considered as hours worked. The following factors may be considered in making the determination whether on call time is compensable. **All of these factors should be considered in conjunction with other relevant information in making the decision.**

- THE GEOGRAPHIC OR RESPONSE TIME LIMITATIONS PLACED ON THE EMPLOYEE. A narrow geographic restriction, or strict time limitations, may be indicative of an employee engaged to wait. For example, requiring an employee to remain close to the workplace, or requiring the employee to respond in 5 minutes, are indications that the employee may have been engaged to wait.

- THE FREQUENCY WITH WHICH THE EMPLOYEE MUST RESPOND TO CALLS WHILE ON CALL. If an employee is required to respond to a call every time he or she is on duty, then the on call duty is more disruptive to nonworking time and is more indicative of an employee engaged to wait.

- THE USE OF A PAGER OR CELL PHONE. The widespread availability of cell phones and pagers has made it less likely that on call time will be considered working time, as the employee is not required to wait near a home phone or other specific location. Merely requiring an employee to carry a cell phone or wear a pager does not, in itself, make the time compensable.

- THE CONSEQUENCES OF FAILING TO RESPOND. Greater flexibility in response to a call increases the likelihood that the on call time is not compensable. For example, if an employee does not have to respond to a call, or only has to respond to a certain percentage of calls, then the time spent on call is less likely to be compensable.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 2)
29 Code of Federal Regulations 785.14 - 785.17
Skidmore v. Swift & Co., 323 U.S. 134 (1944)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

TRAVEL TIME, 12(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

For employees and employers covered under Colorado Minimum Wage Order Number 24 the following applies:

All travel time spent at the control or direction of an employer, excluding normal home to work travel, shall be considered as time worked.

Note: compensability of travel time may also be governed by federal laws and regulations; contact the U.S. Department of Labor (720-264-3250 or www.dol.gov) for more information.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 2)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/esa/regs/compliance/whd/whdfs22.htm (Fact Sheet #22: Hours worked under the Fair Labor Standards Act)

UNIFORMS, 13(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

For employees and employers covered under Colorado Minimum Wage Order Number 24 the following applies:

- Where the wearing of a particular uniform or special apparel is a condition of employment, the employer shall pay the cost of purchases, maintenance, and cleaning of the uniforms or special apparel.

- If the uniform furnished by the employer is plain and washable and does not need or require special care such as ironing, dry cleaning, pressing, etc., the employer need not maintain or pay for cleaning.

- An employer may require a reasonable deposit (up to one-half of actual cost) as security for the return of each uniform furnished to employees upon issuance of a receipt to the employee for such deposit. The entire deposit shall be returned to the employee when the uniform is returned. The cost of ordinary wear and tear of a uniform or special apparel shall not be deducted from the employee's wages or deposit.

- Clothing accepted as ordinary street wear and the ordinary white or any light colored plain and washable uniform need not be furnished by the employer. If a special color, make, pattern, logo or material is required, the employer must furnish the uniform.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 11)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

TIPS, 14(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

TIPPED EMPLOYEE DEFINITION (WAGE ORDER 24)

Any employee engaged in an occupation in which he or she customarily and regularly receives more than $30.00 a month in tips. Tips include amounts designated by credit card customers on their charge slips.

TIP CREDITS AND MINIMUM WAGE (WAGE ORDER 24)

Employers of tipped employees must pay a cash wage of at least $4.00 per hour if they claim a tip credit against their minimum hourly wage obligation.

If an employee's tips combined with the employer's cash wage of at least $4.00 per hour do not equal the minimum hourly wage, the employer must make up the difference in cash wages. It is the policy of the Division of Labor that this rule applies on a weekly basis. The employee's tips combined with the employer's $4.00 cash wage must equal the minimum hourly wage when computed over a seven-day workweek in order for the employer to avoid making up any difference.

TIP POOLING AMONG EMPLOYEES

According to Colorado wage law, employers may require employees to share or allocate tips and gratuities on a pre-established basis with other employees.

Under Wage Order 24, if the employer requires tipped employees to share their tips with other employees who do not customarily and regularly receive tips (such as management or food preparers), the tip credit towards minimum wage is nullified.

TIP CREDIT CARD PROCESSING FEES

Under Wage Order 24, employer-required deduction of credit card processing fees from tipped employees nullifies the allowable tip credits towards the minimum wage.

EMPLOYER OWNERSHIP OF TIPS

Colorado wage law allows for an employer to assert claim to, right of ownership in, or control over tips only if: the employer posts a printed card at least 12 inches by 15 inches in size with letters one-half inch high in a conspicuous location at the place of business. The card must contain a notice to the general public that all tips or gratuities given by the patron are not the property of the employee, but instead belong to the employer.

If the employer does not post a printed card detailing tip ownership as described above, the employer may not exert any control over cash tips designated for an employee.

CREDIT CARD TIP PAYOUT

It is the policy of the Division of Labor that an employer may not withhold the payment of earned credit card tips or tips designated on a check beyond the regular payday while the employer is waiting for reimbursement from the credit card company or bank.

See Advisory Bulletin # 10 (I) for information on the calculation of overtime pay for tipped employees.

REFERENCES

Colorado Minimum Wage Order Number 24 (Sections 2 and 3)
Colorado Revised Statutes 8-4-103(6) (Ownership and Sharing of Tips)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

MEAL PERIODS AND REST PERIODS, 15(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

For individuals covered under Colorado Minimum Wage Order Number 24, the following rules apply:

MEAL PERIODS

Employees shall be entitled to an uninterrupted and 'duty free' meal period of at least a thirty-minute duration when the scheduled work shift exceeds five consecutive hours of work. The employee must be completely relieved of all duties and permitted to pursue personal activities to qualify as a non-work, uncompensated period of time. 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. Employees shall be permitted to fully consume a meal of choice "on the job" and be fully compensated for the "on-duty" meal period without any loss of time or compensation.

DEDUCTIONS FOR MEALS

The reasonable cost or fair market value of meals provided to the employee may be used as part of the minimum hourly wage. No profits to the employer may be included in the reasonable cost or fair market value of such meals furnished. The meal must be consumed before deductions are permitted.

REST PERIODS

Every employer shall authorize and permit rest periods, which, insofar as practicable, shall be in the middle of each four-hour work period. A compensated ten-minute rest period for each four hours or major fractions thereof shall be permitted for all employees. Such rest periods shall not be deducted from the employee's wages. It is not necessary that the employee leave the premises for said rest period.

REFERENCES

Colorado Minimum Wage Order Number 24 (Sections 7 and 8)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

TRAINING AND EDUCATION COSTS, 16(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

TIME WORKED

Colorado Minimum Wage Order Number 24 defines time worked as the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work whether or not required to do so.

Attendance at Training, Lectures, Meetings, Seminars, and Educational Programs
All such employee activities are generally treated as compensable unless all of the following four conditions are met:

- Attendance is outside of the employee's regular working hours.
- Attendance is in fact voluntary.
- The course, lecture, meeting, or activity is not directly related to the employee's job.
- The employee does not perform any productive work during such attendance.

REFERENCES

Colorado Minimum Wage Order Number 24

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200729 (29 Code of Federal Regulations; See Sections 785.27-785.32)

FULL-TIME AND PART-TIME CLASSIFICATION, 17(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

FULL-TIME VS. PART TIME STATUS

Employers are generally given discretion in how many hours an employee is required or allowed to work in a workweek. Colorado wage law does not require employers to designate an employee as full-time or part-time, nor does Colorado wage law require an employer to provide fringe benefits based upon hours worked.

Whether an employee is considered to be full-time or part-time by the employer does not affect the application of Colorado wage law to the employee.

EXCEPTION
In order to qualify for the executive or supervisor exemption from Colorado Minimum Wage Order Number 24, the executive or supervisor must supervise the work of at least two full-time employees. In this instance (and only for this purpose), the Wage Order defines a full-time employee as an employee who performs work for the benefit of an employer for a minimum of 32 hours per workweek. See Advisory Bulletin # 9 (I) for more information on the executive or supervisor exemption.

REFERENCES

Colorado Minimum Wage Order Number 24 (Sections 2 and 5b)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

PIECE RATE OR PIECE WORK PAY, 18(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado Revised Statute 8-4-101(8)(a) defines wages or compensation as "all amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task, *piece*, commission basis, or other method…" (Italics added)

Colorado Minimum Wage Order Number 24 provides the following: "All adult employees and emancipated minors, employed in any of the industries covered herein, whether employed on an hourly, *piecework*, commission, time, task, or other basis, shall be paid not less than $7.02 per hour…" (Italics added).

PIECE RATE DEFINITION

Piece rate work (also referred to as piece work) may be viewed as work paid for according to the number of units or products completed or produced. Piece rate plans may be determined by one individual's work, or can also include a group of employees who share compensation based upon group completion of required tasks or products.

Piece rate pay can apply to many situations, and common examples of piece rate pay include:

- A technician paid by the number of telephone lines installed
- A mechanic paid per tune-up completed
- A factory worker paid for each widget assembled

For employees covered under Colorado Minimum Wage Order Number 24, piece rate pay methods are allowed if the following conditions are met:

- The employee's total weekly compensation must meet or exceed the minimum wage for all hours during which the employee was subject to the control of the employer, including all the time the employee was suffered or permitted to work, whether or not required to do so, for the entire workweek.
- Overtime pay may be calculated using one of the following two methods:
    - The regular rate of pay is determined on a weekly basis by the amount of pieces completed. As piece rate production may vary per week, the overtime pay rate will vary accordingly. For overtime, in addition to the total weekly earnings, piece workers are entitled to a sum equivalent to one-half the regular rate of pay multiplied by the number of overtime hours worked. Only this additional halftime

pay is required, as the employee has already received straight time compensation at piece rates for all hours worked.

- Overtime pay is computed at piece rates not less than one and one-half times the piece rates applicable to the same work when performed during non-overtime hours.

See Advisory Bulletin # 10 (I) for more information on piece rate overtime calculations.

REFERENCES

Colorado Revised Statutes 8-4-101(8)(a) (Definitions)
Colorado Minimum Wage Order Number 24
29 Code of Federal Regulations 778.111 (Pieceworker)
29 Code of Federal Regulations 778.418 (Pieceworkers)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

LODGING, 19(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

LODGING CREDIT TOWARDS MINIMUM WAGE

Colorado Minimum Wage Order Number 24 allows employers to take a lodging credit towards the minimum wage obligation as follows: "The reasonable cost or fair market value for lodging (*not to exceed $25.00 per week*) furnished by the employer and used by the employee may be considered part of the minimum wage when furnished" (italics added).

LODGING DEDUCTIONS FROM PAYCHECK

Colorado wage law allows paycheck deductions for lodging pursuant to a written agreement between the employer and employee, as long as the agreement is enforceable and not in violation of the law.

TERMINATION OF OCCUPANCY PURSUANT TO A CONTRACT OF EMPLOYMENT

Employees who live on their employer's premises may not necessarily have the traditional rights of a tenant regarding occupancy status. Once the employment relationship ends, the employee's license to occupy the premises may be terminated. See Colorado Revised Statute 8-4-123 for more information on this issue.

REFERENCES

Colorado Minimum Wage Order Number 24
Colorado Revised Statutes 8-4-105 (Payroll Deductions Permitted)
Colorado Revised Statutes 8-4-123 (Termination of Occupancy)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

SLEEP TIME, 20(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

For individuals covered under Colorado Minimum Wage Order Number 24, the following sleep time policies apply:

Where an employee's tour of duty is 24 hours or longer, up to 8 hours of sleeping time can be excluded from overtime compensation if the following conditions are met:

- An express agreement excluding sleeping time exists
- Adequate sleeping facilities for an uninterrupted night's sleep are provided
- At least five hours of sleep are possible during the scheduled sleeping periods
- Interruptions to perform duties are considered time worked.

When said employee's tour of duty is less than 24 hours, periods during which the employee is permitted to sleep are compensable work time, as long as the employee is on duty and must work when required.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 2)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

COMMISSIONS, 21(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

COMMISSIONS AS WAGES

Colorado Revised Statute 8-4-101 and Colorado Minimum Wage Order Number 24 define wages or compensation as "all amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task, piece, *commission basis*, or other method…No amount is considered to be wages or compensation until such amount is earned, vested, and determinable…" (Italics added).

C.R.S. 8-4-101 additionally defines commissions as wages or compensation when earned for labor or services performed in accordance with the terms of any agreement between an employer and employee.

PAYMENT OF COMMISSIONS UPON SEPARATION FROM EMPLOYMENT

C.R.S. 8-4-109 (1) and C.R.S. 8-4-109 (2) provide the following guidance on payments upon separation from employment:

When an interruption in the employer-employee relationship by volition of the employer occurs, the wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of such discharge is due and payable immediately…Nothing in the section above requires the payment at the time employment is severed of compensation not yet fully earned under the compensation agreement between the employee and employer, whether written or oral.

GENERAL GUIDANCE FROM CASE LAW

(MAY OR MAY NOT APPLY)

Commissions are due at the time they are fully earned. At the time the employment relationship is severed, an employer need not pay, immediately, compensation not yet fully earned under a compensation agreement. But the implication is clear that such wages become immediately due at the time they are fully earned. (Hofer v. Polly Little Realtors, 1975).

If a sale closes after an employee's termination, a prima facie case for entitlement to commissions is made where the employee has established that he would have been entitled to the commissions had he not been terminated (Schaefer v. Horton-Cavey, 1984).

DRAWS

Employees working on a commission basis are often provided with a "draw". A draw may be defined as a fixed payment that is provided to an employee on a regular basis which is intended to be recoverable from future commissions.

Pursuant to an employment agreement, the employer typically may recover the total amount of the draw or portions thereof from future commissions. In the absence of an employment agreement to the contrary, the employer may not recover excess draws or advances on commissions in the instance where the future commissions do not equal the total amount of the draw. For example, if an employee is provided a monthly draw of $2000, and earns $1500 that month in commissions, the employer may not seek to recover the $500 in excess draw payment for that month until total earned commissions meet or exceed total draw payments.

SUMMARY
Commissions, earned in accordance with the terms of any agreement, are viewed as wages or compensation. Upon separation from employment, commissions must be paid at the time they are earned, vested and determinable.

Commission Sales Exemption from Overtime
Colorado Wage Order Number 24 exempts sales employees of retail or service industries paid on a commission basis from its overtime provisions, provided that 50% of their 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. This exemption is only applicable for employees of retail or service employers who receive in excess of 75% of their annual dollar volume from retail or service sales.

REFERENCES

Colorado Minimum Wage Order Number 24
Colorado Revised Statutes 8-4-101
Hofer v. Polly Little Realtors, 543 P.2d 114 (Colo. App. 1975)
Schaefer v. Horton-Cavey, 692 P.2d 1132 (Colo. App. 1984)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

INTERSTATE AND INTRASTATE DRIVERS, 22(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

INTERSTATE DRIVERS

Interstate drivers (drivers whose work takes them across state lines) are exempt from all of the provisions of Colorado Minimum Wage Order Number 24. Also exempt from the Wage Order are driver helpers, loaders or mechanics of motor carriers, and taxi cab drivers. Persons inquiring should contact the U.S. Department of Labor, as the Fair Labor Standards Act (FLSA) may apply to employees involved in interstate commerce.

INTRASTATE DRIVERS

Drivers whose work travel is entirely within the State of Colorado are not specifically exempted from the provisions of Colorado Minimum Wage Order Number 24. Coverage and exemption determinations are made on a case-by-case basis in accordance with the provisions of the Wage Order.

For an intrastate driver to be covered by the Wage Order, the driver's work must be performed for an employer categorized in one the four covered industries as specified by the Wage Order. See Advisory Bulletins # 9 (I) and # 30 (I) for more information on exemptions from the Wage Order.

DRIVERS AND COLORADO WAGE LAW

Interstate and intrastate drivers may be covered by Colorado wage law; such determinations are to be made in accordance with the provisions of C.R.S. 8-4-101 et seq.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 5)
Colorado Revised Statutes 8-4-101

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

DISABLED MINIMUM WAGE OFFSET, 23(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Under Colorado wage law and Colorado Minimum Wage Order Number 24 an employee whose physical disability 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, for all hours worked. The employee must therefore presently earn at least $5.97 per hour, less any applicable lawful credits.

Persons inquiring should consult with the U.S. Department of Labor, as federal law may apply.

REFERENCES

Colorado Minimum Wage Order Number 24
Colorado Revised Statutes 8-6-108.5

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/esa/whd/FOH/ch64/index.htm (U.S. Department of Labor Guidelines on Employment of Workers with Disabilities at Special Wages)

HOSPITALS AND HEALTH AND MEDICAL CARE, 24(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Depending upon the specific circumstances, hospitals and hospital employees in Colorado may or may not be covered by the provisions of Colorado wage law and Colorado Minimum Wage Order Number 24. For a hospital to be covered, the hospital must meet the formal definition of an employer; for a worker to be covered, the worker must meet the formal definition of an employee.

DEFINITION OF AN EMPLOYER

Colorado wage law defines an employer as every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above mentioned classes, employing any person in Colorado.

EXCLUDED FROM THE DEFINITION OF AN EMPLOYER

Colorado wage law excludes the following from its definition of an employer: The state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

DETERMINATION OF HOSPITAL COVERAGE UNDER COLORADO WAGE LAW

Hospitals and hospital employees in Colorado are evaluated on a case-by-case basis to determine if they are covered by Colorado wage law. In general, private for-profit hospitals are covered by Colorado wage law and Colorado Minimum Wage Order Number 24, whereas state and government-operated hospitals are not covered by Colorado wage law and the Wage Order.

HEALTH AND MEDICAL INDUSTRY: COVERAGE UNDER MINIMUM WAGE ORDER NUMBER 24

Colorado Minimum Wage Order Number 24 includes the health and medical industry as one of the four industries covered by its provisions. The health and medical industry is defined as: Any business or enterprise engaged in providing medical, dental, surgical, or other health services including but not limited to medical and dental offices, hospitals, home health care, hospice care, nursing homes, and mental health centers, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 2)
Colorado Revised Statutes 8-4-101 (Employer Definition)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

EMPLOYEE WORKING TWO JOBS FOR THE SAME EMPLOYER, 25(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

EXEMPT EMPLOYEES WORKING MULTIPLE JOBS

If an employee is exempt from overtime under Colorado Minimum Wage Order Number 24, then the employer typically has discretion in the amount and type of work they assign the employee.

For example, a salaried executive or supervisor may be required by their employer to occasionally perform duties and tasks that are completely unrelated to their primary role as an executive or supervisor. In such circumstances it is understood that all of the employee's work hours are covered by their salary, as long as the salary is in excess of minimum wage for all of the hours worked in a workweek.

However, if an exempt employee is regularly assigned work that is completely different in nature from their primary duties, or the work is performed in a different location than the primary salaried work, and such work is categorized as a distinct and different job, it may be incumbent upon the employer to pay the employee an hourly wage for the second job which is unrelated to their salary for the primary job. Such a determination for the purposes of wages, compensation, and overtime will be made on a case-by-case basis by the Division of Labor in accordance with all relevant facts and applicable state laws and regulations.

NON-EXEMPT EMPLOYEES WORKING MULTIPLE JOBS

An employee working two non-exempt jobs at different hourly pay rates for the same employer within a specific workweek may be paid overtime using either of the following methods, provided that the employee is notified in advance which method will be used:

- Overtime is paid at time and one-half the regular rate of pay for the job during which the actual overtime occurs.

OR

- Overtime is paid at time and one-half the regular rate, which is computed as a weighted average based upon the rates for each position. In other words, the employee's regular rate for the workweek is determined by adding together all the wages and compensation for the workweek from both jobs, and then dividing this amount by the total amount of hours worked from both jobs.

For example, in one workweek, a non-exempt employee works 40 hours per week at $15 per hour, and then performs 10 hours of different duties at different times during the workweek at a rate of $10 per hour. The weighted average regular rate of pay for this employee would equal [(40 X $15) + (10 X $10)] / 50 = $14 per hour regular rate. Thus, using this calculation method, the employee would be owed overtime at a rate of $14 X 1.5 = $21 per hour for overtime work.

See Advisory Bulletin # 10 (I) for more information on overtime pay.
See Advisory Bulletin # 9 (I) for more information on exempt employee status.

REFERENCES

29 Code of Federal Regulations 778.115 (Employees Working at Two or More Rates)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/elaws/otcalculator.htm (FLSA Overtime Calculator)

Keyword Index

EMPLOYER RETALIATION, 26(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

COLORADO WAGE LAW PROTECTIONS

Colorado Revised Statute 8-4-120 provides the following: No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any employee who has filed any complaint or instituted or caused to be instituted any proceeding under this article or related law or who has testified or may testify in any proceeding on behalf of himself, herself, or another regarding afforded protections under this article. Any employer who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

COLORADO MINIMUM WAGE ORDER NUMBER 24

Employers shall not threaten, coerce, or discharge any employee because of participation in any investigation or hearing related to the minimum wage act. Violators may be subject to a fine of not less than two hundred dollars, up to one thousand dollars, for each violation, pursuant to Colorado Revised Statutes.

See Advisory Bulletin # 27 (I) for more information on Division of Labor enforcement authority and penalties.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 19)
Colorado Revised Statutes 8-4-120 (Discrimination Prohibited – Employee Protections)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

DIVISION OF LABOR ENFORCEMENT AUTHORITY AND ASSESSMENT OF PENALTIES, 27(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

COLORADO INDUSTRIAL RELATIONS ACT

(CRS 8-1-101 et seq.)

JURISDICTION

The director is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state…CRS 8-1-111

EMPLOYERS AND EMPLOYEES TO FURNISH INFORMATION

Any employer or employee who fails or refuses to furnish such information as may be required by the division under authority of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars if an employer and twenty-five dollars if an employee. CRS 8-1-114 (2)

ACCESS TO PREMISES

Any person who hinders or obstructs the director or any such person authorized by the director in the exercise of any power conferred by this article, or any employer who in bad faith refuses reasonable access to his premises, or any person who gives advance notice of any inspection to be conducted under this article without authority from the director or his designee is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. CRS 8-1-116 (2)

ACCESS TO BOOKS AND PAYROLL RECORDS

Any employer who refuses to exhibit and furnish said director or any agents of the division an inspection of any books, records, and payrolls of such employer, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts, and statistics appertaining to the purposes of this article or who refuses to admit such director or any agent of the division to any place of employment shall pay a penalty of not less than fifty dollars for each day that such failure, neglect, or refusal continues. CRS 8-1-117 (2)

VIOLATIONS OF INDUSTRIAL RELATIONS ACT

If an employer, employee, or any other person violates any provision of this article, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined for which no penalty has been specifically provided, such employer, employee, or any other person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not longer than sixty days, or by both such fine and imprisonment for each such offense. CRS 8-1-140 (1)

REFUSAL TO PERFORM DUTY LAWFULLY ENJOINED

If any employer, employee, or any other person fails, refuses, or neglects to perform any duty lawfully enjoined within the time prescribed by the director or fails, neglects, or refuses to obey any lawful order made by the director or any judgment or decree made by any court as provided in this article, for each such violation, such employer, employee, or any other person shall pay a penalty of not less than one hundred dollars for each day such violation, failure, neglect, or refusal continues. CRS 8-1-140 (2)

FALSE STATEMENTS

If, for the purpose of obtaining any order, benefit, or award under the provisions of this article, either for himself or herself or for any other person, anyone willfully makes a false statement or representation, he or she commits a class 5 felony. CRS 8-1-144

WAGE CLAIM ACT

(CRS 8-4-101 et seq.)

ENFORCEMENT BY THE DIRECTOR

It is the duty of the director to inquire diligently for any violation of this article, and to institute the actions for penalties provided for in this article in such cases as he or she may deem proper, and to enforce generally the provisions of this article. CRS 8-4-111 (1)

FAILURE TO PAY WAGES

CRS 8-4-113 provides the following: If a case against an employer is enforced pursuant to section 8-4-111, any employer who without good faith legal justification fails to pay the wages of each of his or her employees shall forfeit to the people of the state of Colorado an amount determined by the director but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable, to be recovered by order of the director in a hearing pursuant to section 24-4-105 C.R.S.

PENALTIES REGARDING OWNERSHIP OR CONTROL OVER TIPS

Any employer who violates the provisions of section 8-4-103 (6) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. CRS 8-1-114 (1) See Advisory Bulletin # 14 (I) for more information on tips.

PENALTIES FOR VIOLATING THE WAGE CLAIM ACT

In addition to any other penalty imposed by this article, any employer or agent of an employer who, being able to pay wages or compensation and being under a duty to pay, willfully refuses to pay as provided in this article, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, delay, or defraud the person to whom such indebtedness is due, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. CRS 8-4-114 (2)

PENALTIES FOR RETALIATION AND DISCRIMINATION

No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any employee who has filed any complaint or instituted or caused to be instituted any proceeding under this article or related law or who has testified or may testify in any proceeding on behalf of himself, herself, or another regarding afforded protections under this article. Any employer who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. CRS 8-4-120 See Advisory Bulletin # 26 (I) for more information on employer retaliation.

MINIMUM WAGE ACT

(CRS 8-6-101 et seq.)

PENALTIES FOR VIOLATING THE MINIMUM WAGE

The minimum wages fixed by the director, as provided in this article, shall be the minimum wages paid to the employees, and the payment to such employees of a wage less than the minimum so fixed is unlawful, and every employer or other person who, individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than the minimum is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. CRS 8-6-116

PENALTIES FOR RETALIATION AND DISCRIMINATION

Any employer who discharges or threatens to discharge, or in any other way discriminates against an employee because such employee serves upon a wage board, or is active in its formation, or has testified is about to testify, or because the employer believes that the employee may testify in any investigation or proceeding relative to enforcement of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars for each violation. CRS 8-6-115

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

EMPLOYEE DEATH, 28(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado wage law provides the following: "If, at the time of the death of any employee, an employer is indebted to the employee for wages or compensation, and no personal representative of the employee's estate has been appointed, such employer shall pay the amount earned, vested, and determinable to the deceased employee's surviving spouse. If there is no surviving spouse, the employer shall pay the amount due to the deceased employee's next legal heir upon the request of such heir…"

REFERENCES

Colorado Revised Statutes 8-4-109 (4) (Payments to Surviving Spouse or Heir)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

FEDERAL LAW VS. COLORADO LAW, 29(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Employers and employees in Colorado may be covered by either federal wage law, state wage law, both state and federal law, or neither, depending upon the particular circumstances. Whenever employers are subject to both federal and Colorado law, the law providing greater protection for the employee or setting the higher standard shall apply.

FEDERAL WAGE LAW COVERAGE

The Fair Labor Standards Act of 1938 (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

The FLSA applies to employees of covered enterprises as defined by the law, as well as employees individually engaged in interstate commerce or in the production of goods for interstate commerce. Coverage may apply in other circumstances as well.

All questions regarding federal law and the FLSA should be directed to the U.S. Department of Labor at (866) 487-9243.

COLORADO WAGE LAW COVERAGE

In order for individuals in Colorado to be covered by Colorado wage law, the following two conditions must be met:

- The worker must be formally classified as an "employee." An "employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. An individual primarily free from control and direction in the performance of contracted labor or services, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an employee.

- The employer must meet the formal definition of an "employer" according to statute. "Employer" means every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above mentioned classes, employing any person in Colorado. The following are not classified as employers under Colorado wage law: the state, its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 22)
Colorado Revised Statutes 8-4-101 (Employee and Employer Definitions)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/esa/whd/ (U.S. Department of Labor Wage and Hour Division)
www.dol.gov/esa/regs/compliance/whd/whdfs14.htm (Fact Sheet #14: Coverage under the Fair Labor Standards Act)

EXEMPTIONS AND JURISDICTIONAL ISSUES, 30(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

AGRICULTURAL INDUSTRY

Wage Order 24 does not apply to the agricultural industry.

AIRLINE INDUSTRY

The Division of Labor does not have any authority over wage claims involving air carriers. Wage disputes involving airlines are typically resolved by either the U.S. Department of Labor or the National Mediation Board. See Advisory Bulletin # 32 (I) for more information.

BAKERIES

A bakery that operates on a retail or wholesale basis and prepares and offers food for sale or consumption on or off its premises is covered by the Wage Order. See Wage Order 24, Section 2, Food and Beverage.

CASUAL BABYSITTERS

Casual babysitters are exempt from all provisions of Wage Order 24 pursuant to Section 5. Babysitting on a casual basis is generally defined as work performed on an irregular or intermittent basis and not performed by an individual whose full time work is babysitting. Individuals who perform day-care on a full time basis must be paid proper minimum wage and overtime premiums.

COMMISSION SALES

Sales employees of retail or service industries paid on a commission basis, provided that 50% of their 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. This exemption is only applicable for employees of retail or service employers who receive in excess of 75% of their annual dollar volume from retail or service sales. See Colorado Minimum Wage Order Number 24, Section 6b.

COMPANION SERVICES

Companions are exempt from all provisions of Wage Order 24 pursuant to Section 5. Companionship services may be generally defined in the following manner: services which provide fellowship, care and protection for a person, who due to advanced age or physical or mental conditions cannot care for his or her own needs. Such services may include meal

preparation, bed changing, washing of clothes, and other similar services. The companion performs the service for the aged or infirm person and not generally to other persons.

CONSTRUCTION INDUSTRY

Wage Order 24 does not apply to the construction industry.

DEVELOPMENTAL DISABILITY COMMUNITY CENTERED BOARDS AND SERVICE AGENCIES

Community Centered Boards and service agencies that are planned, designed, organized, operated, and maintained to provide services to and for individuals with developmental disabilities as defined in CRS 27-10.5-202 are exempt from all provisions of the Wage Order.

INMATES IN CORRECTIONAL INSTITUTIONS

Inmates in correctional institutions are exempt from all provisions of Wage Order 24. See Advisory Bulletin # 34 (I) for more information.

INSURANCE INDUSTRY

Wage Order 24 does not apply to the insurance industry.

MANUFACTURING INDUSTRY

Wage Order 24 does not apply to the manufacturing industry.

MEDICAL TRANSPORTATION INDUSTRY

Employees of the medical transportation industry who are scheduled to work 24 hour shifts are exempt from the 12-hour overtime requirement provided they receive overtime wages for hours worked in excess of 40 hours per week. See Colorado Minimum Wage Order Number 24, Section 6d.

NON-PROFIT ORGANIZATIONS

Non-profit organizations are not specifically exempted from Wage Order 24; exemption status is determined in accordance with the provisions of the Wage Order and Colorado wage law.

RELIGIOUS AND CHARITABLE ORGANIZATIONS

Religious and charitable organizations are not specifically exempted from Wage Order 24; exemption status is determined in accordance with the provisions of the Wage Order and Colorado wage law.

RESIDENTIAL CAMPS

Adult seasonal staff (not year-round employees) of residential camps in Colorado licensed by the Colorado Department of Human Services pursuant to CRS 26-6-101.4 et seq. are exempt from the overtime provisions of Wage Order 24. This overtime exemption only applies to a 16-week season beginning no earlier than May 15th and ending no later than September 15th each year. This exemption is granted subject to the following conditions:

- All allowable credits or other deductions from wages must be identified to the adult seasonal employee in writing.
- Year round employees, full time kitchen staff, or other employees not directly engaged in the supervision of the camp attendees are not exempted from the provisions of Wage Order 24.
- The camps are permitted a credit for the reasonable cost or fair market value for lodging not to exceed $15.00 per day.

Camps in Colorado that do not meet all of the criteria specified in the exemption as described above are evaluated on a case-by-case basis in accordance with all relevant facts and applicable Colorado Laws and Regulations.

RESPITE CARE WORKERS

Respite care workers who provide companion-type services to individuals (not to the general public or not to a facility open to the general public) are exempt from the Wage Order. See also the companions exemption under Wage Order 24.

SKI INDUSTRY

Employees of the ski industry performing duties directly related to ski area operations for downhill skiing or snowboarding, and those employees engaged in providing food and beverage services at on-mountain locations are exempt from the 40-hour overtime requirement under Wage Order 24. The 12-hour overtime requirement remains in effect for such workers. The partial ski industry exemption described above does not apply to ski area employees performing duties related to lodging. See Colorado Minimum Wage Order Number 24, Section 6c.

VETERINARY MEDICINE

Veterinary medicine is not included under the health and medical industry. Veterinary medicine is not classified within the health and medical industry for the purposes of Wage Order 24. The intent of the Wage Order is to cover the health and medical industry as it applies to humans.

Veterinary workers are exempt from Wage Order 24 when classified as agricultural workers. Veterinarians who spend the majority of their time employed on a farm or other agricultural facility are considered agricultural workers and not covered by Wage Order 24.

Veterinary workers are covered by Wage Order 24 when classified under the retail and service category. Veterinarians who provide care for domestic animals or household pets in a clinic or hospital are classified as service workers, and are covered by Wage Order 24.

WESTERN STOCK SHOW ASSOCIATION

The Western Stock Show, presented and operated by the Western Stock Show Association, is exempt from the overtime requirements of Wage Order 24. This conclusion is based upon the fact that the stock show is predominantly a livestock exhibition conducted for educational purposes. The exemption is limited to the several hundred temporary employees of the Western Stock Show Association hired for the annual livestock exhibition, and does not apply to vendors, concessionaires, or contractors who conduct their operations at the Stock Show.

THE FOLLOWING ARE EXEMPT FROM ALL PROVISIONS OF WAGE ORDER 24:

Administrative Employees
Executives or Supervisors
Professionals
Outside Salespersons
Elected Officials and Members of Their Staff
Domestic Employees
Property Managers
Interstate Drivers
Driver Helpers, Loaders, or Mechanics of Motor Carriers
Taxi Cab Drivers
Bona Fide Volunteers
Students Employed by Sororities or Fraternities
Students Employed by College Clubs or Dormitories
Students Employed in a Work Experience Study Program
Employees Working in Laundries of Charitable Institutions
Patient Workers in Institutional Laundries

See Advisory Bulletin # 9 (I) for more information on exemptions under Colorado Minimum Wage Order Number 24.

REFERENCES

Colorado Minimum Wage Order Number 24

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

FLEXTIME SCHEDULING AND TELECOMUTING, 31(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

FLEXTIME SCHEDULING

Flextime scheduling may be defined as non-traditional work scheduling that may contain irregular hours of work. Flextime scheduling is permissible under Colorado labor law provided that employees are always compensated appropriately for their regular and overtime hours as required.

One type of unique flextime scheduling involves schedules where an employee has an extra day off every other week. In this instance it is crucial to determine when the workweek actually begins and ends. For example, an extra-day-off schedule may have the employee work nine hours per day Monday through Thursday and four hours Friday Morning. If the employee starts work on Friday morning at 8:00, then at 12:00 noon on Friday the first workweek ends. The second workweek then begins at noon on Friday, with the employee working four more hours on Friday and then nine hours per day on the following Monday through Thursday. This schedule ensures that the employee works only forty hours per week and gets the second Friday off.

See Advisory Bulletin # 10 (I) for more information on overtime pay.

TELECOMMUTING

Telecommuting, or telework, is a work arrangement by which an employee performs job duties from an alternate location that is outside the traditional workplace. Telecommuters are still subject to the control and direction of their employer, and are classified as employees; the fact that a telecommuter does not report to an office is not sufficient to allow the employer to categorize the telecommuter as an independent contractor.

As with more traditional employees, telecommuters must be paid for all of the work they perform. Allowing non-exempt employees to telecommute may raise special issues for the employer. The employer should devise, install, or utilize some method to track employee work in an accurate and timely fashion. If the employer does not use a formal tracking system for time worked (for example, login time on a computer), then the employer may be obligated to pay for all time worked as recorded and submitted by the employee.

See Advisory Bulletin # 6 (I) for more information on independent contractors.
See Advisory Bulletin # 8 (I) for more information on timekeeping.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

AIRLINE AND RAILROAD INDUSTRIES, 32(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado wage law and Colorado Minimum Wage Order Number 24 do not apply to the airline and railroad industries. The Fair Labor Standards Act or the Railway Labor Act typically govern wage disputes involving airline and railroad employees.

Persons inquiring about airline and railroad wage and labor disputes are referred to either the U.S. Department of Labor (866-487-9243) or the National Mediation Board (NMB), an independent agency assigned with the role of facilitating harmonious labor-management relations within the airline and railroad industries. The National Mediation Board may be reached at (800) 488-0019 or (202) 692-5050.

REFERENCES

Railway Labor Act, 45 Unites States Code 151 et seq.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.nmb.gov/ (National Mediation Board)
www.nmb.gov/documents/rla.html (Railway Labor Act)

STATUTE OF LIMITATIONS, 33(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

COLORADO WAGE LAW

Colorado Revised Statute 8-4-122 provides the following: All actions brought pursuant to this article shall be commenced within two years after the cause of action accrues and not after that time: except that all actions brought for a willful violation of this article shall be commenced within three years after the cause of action accrues and not after that time.

COLORADO MINIMUM WAGE ORDER NUMBER 24

The Colorado Minimum Wage Order Number 24 provides the following: Any person may register with the division a written complaint that alleges a violation of the Minimum Wage Order within two years of said violation(s).

Persons inquiring about the statute of limitations for the purpose of legal action should consult with an attorney for advice.

REFERENCES

Colorado Revised Statutes 8-4-122 (Limitation of Actions)
Colorado Minimum Wage Order Number 24 (Section 15)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

INMATES, PAROLEES, PRISONERS, AND PROBATIONERS, 34(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Inmates and prisoners are exempt from all provisions of Colorado Minimum Wage Order Number 24. Inmates confined to a city or county jail or any department of corrections facility as an inmate and who, as a part of such confinement, is working, performing services, or participating in a training or work release program are not employees according to Colorado law.

The employment status of parolees and probationers is determined on a case-by-case basis in accordance with all relevant facts and Colorado laws and regulations.

REFERENCES

Colorado Revised Statutes 8-40-301 (Scope of the Term Employee)
Colorado Minimum Wage Order Number 24 (Section 5)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

CORPORATE OFFICER LIABILITY, 35(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

In Leonard v. McMorris (Colo. 2003) the Colorado Supreme Court clarified that Colorado wage law does not impose civil liability on officers and agents of a corporation to pay wages and compensation that the corporation owes under its employment contract with an employee but has failed to pay. The Colorado Supreme Court concluded that the Colorado legislature did not intend to impose personal liability on officers and agents that is equal to the corporation's liability.

Persons inquiring about personal and corporate liability for wages or compensation should consult with an attorney for advice.

REFERENCES

Leonard v. McMorris, 63 P.3d 323 (Colo. 2003)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

SHOW-UP TIME, 36(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado wage law does not require that an employer pay an employee for what is commonly referred to as "show-up time" or "reporting time pay". Employers are only required to pay employees for actual time worked, services rendered, or the time during which the employee was suffered or permitted to work, whether or not required to do so.

For example, if an hourly employee arrives at work as directed by the employer, and the employer then immediately sends the employee home without the employee performing any work or waiting to perform work, the employer does not have to provide any compensation to the employee. Moreover, employers are not required by Colorado wage law to provide a certain amount of hours of work. For example, if an hourly employee shows up as scheduled for an 8-hour shift, only works for one hour and is then immediately sent home as directed by the employer, the employee is only owed for the one hour of actual work.

However, informal, contractual, or other agreements between the employer and employee may require show-up payment to the employee; persons inquiring should consult with an attorney if such an agreement is believed to exist.

See Advisory Bulletin # 11 (I) for more information regarding on call and waiting time.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/elaws/esa/flsa/hoursworked/screenEE31.asp (FLSA elaws Advisor on Show-Up Time)

Keyword Index

AMUSEMENT, SEASONAL, RECREATIONAL, AND CAMP ESTABLISHMENTS AND WORKERS, 37(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

AMUSEMENT ESTABLISHMENTS AND AMUSEMENT WORKERS

As a general category, amusement establishments and workers are not specifically exempted from Colorado wage law or the Colorado Minimum Wage Order Number 24. Determinations are made on a case-by-case basis in accordance with all relevant facts and applicable Colorado laws and regulations.

CAMPS

Adult seasonal staff (not year-round employees) of residential camps in Colorado licensed by the Colorado Department of Human Services pursuant to 26-6-101.4 et seq. are exempt from the overtime provisions of Wage Order 24. This overtime exemption only applies to a 16-week season beginning no earlier than May 15th and ending no later than September 15th each year. This exemption is granted subject to the following conditions:

- All allowable credits or other deductions from wages must be identified to the adult seasonal employee in writing.
- Year round employees, full time kitchen staff, or other employees not directly engaged in the supervision of the camp attendees are not exempted from the provisions of Wage Order 24.
- The camps are permitted a credit for the reasonable cost or fair market value for lodging not to exceed $15.00 per day.

Camps in Colorado that do not meet all of the criteria specified in the exemption as described above are evaluated on a case-by-case basis in accordance with all relevant facts and applicable Colorado Laws and Regulations.

RECREATIONAL ESTABLISHMENTS AND RECREATIONAL WORKERS

As a general category, recreational establishments and workers are not specifically exempted from Colorado wage law or the Colorado Minimum Wage Order Number 24. Determinations are made on a case-by-case basis in accordance with all relevant facts and applicable Colorado Laws and Regulations.

SEASONAL ESTABLISHMENTS AND SEASONAL WORKERS

As a general category, seasonal establishments and workers are not specifically exempted from Colorado wage law or the Colorado Minimum Wage Order Number 24. Determinations are made on a case-by-case basis in accordance with all relevant facts and applicable Colorado Laws and Regulations.

However, an exemption exists for the ski industry:

Ski Industry Exemption: employees of the ski industry performing duties directly related to ski area operations for downhill skiing or snow boarding, and those employees engaged in providing food and beverage services at on-mountain locations, are exempt from the forty (40) hour overtime requirement of the Wage Order. The daily overtime requirement of one and one-half the regular rate of pay for all hours worked in excess of twelve (12) in a workday shall apply. This partial overtime exemption does not apply to ski area employees performing duties related to lodging.

REFERENCES

Colorado Revised Statutes 26-6-101.4 (Human Services Child Care Licensing)
Colorado Minimum Wage Order Number 24 (Section 6c)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

VOLUNTEER FIREFIGHTERS, 38(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado Law provides certain employment protections regarding volunteer firefighters:

TERMINATION OF EMPLOYMENT

An employer shall not terminate an employee who is a volunteer firefighter and who fails to report to work because the employee has responded to an emergency summons if the employee provides the employer with a written statement from the chief of the fire department that the employee's absence was due to the response.

DEDUCTIONS FROM WAGES

An employer may deduct time lost from employment caused by a response to an emergency summons from the wages of an employee who is a volunteer firefighter.

Persons inquiring should consult with an attorney for guidance.

REFERENCES

Colorado Revised Statutes 31-30-1131 (Volunteer Firefighter)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

FLUCTUATING WORKWEEK METHOD OF SALARY PAYMENT, 39(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

BACKGROUND

The Division of Labor permits the use of the fluctuating workweek method of salary payment as generally described in the federal Fair Labor Standards Act regulations. Although the Colorado Wage Act and Colorado Minimum Wage Order Number 24 do not explicitly address the use of the fluctuating workweek method, it is the enforcement position of the Division that employees in Colorado may be compensated in such a manner under state law, provided that all relevant requirements described below are met.

FLUCTUATING WORKWEEK OVERVIEW

Non-exempt salaried employees in Colorado who are covered by Colorado Minimum Wage Order Number 24 may be paid a fixed salary for a fluctuating workweek provided that their overtime hours are additionally compensated at a rate which is at least half of their regular rate of pay. This method applies to situations where the employee works hours that fluctuate from week to week, and is paid a fixed salary that is intended to cover all hours worked during the workweek. The employee's regular rate of pay may vary each workweek, and is calculated by dividing the salary (plus any other applicable remuneration) by the actual amount of hours worked during the week. As the salary covers all "straight-time" pay, overtime hours must be paid at only one-half the regular rate.

FLUCTUATING WORKWEEK METHOD REQUIREMENTS (MUST MEET ALL 5)

1. The employee and employer must have a clear mutual understanding that the salary is intended to cover all hours worked (apart from overtime).
2. The employee must receive the entire salary as straight-time pay, regardless of how many hours are worked during the workweek, whether few or many.
3. The amount of the salary must meet or exceed minimum wage for all hours worked.
4. Compensation for all overtime hours worked must be at a rate not less than one-half the employee's regular rate of pay. Employers may, of course, pay more than the one-half overtime premium requirement for the overtime hours.
5. In accordance with Section 4 of Minimum Wage Order 24, the half-time overtime premium must be paid for any work in excess of (1) forty hours per workweek, (2) twelve hours per workday, or (3) twelve consecutive hours without regard to the starting and ending time of the workday, **whichever calculation results in the greater payment of wages**.

FLUCTUATING WORKWEEK CALCULATION EXAMPLES

Note: These examples are intended to highlight common issues with the fluctuating workweek method in Colorado; calculations will vary depending upon case-specific factors and other circumstances. All examples assume that the requirements in Section III above are met.

Over 40 hours worked in the workweek

- The employee is promised a weekly salary of $500 for all hours worked.
- The employee works 42 hours in the workweek.
- To determine the employee's regular rate, divide the salary by the hours worked ($500 / 42 = $11.90). The employee's regular rate is $11.90 per hour.
- The half-time overtime pay rate is equal to one-half of the regular rate of $11.90 ($11.90 / 2 = $5.95).
- The employee is entitled to the half-time pay multiplied by overtime hours worked ($5.95 X 2 overtime hours worked over 40 = $11.90).
- The employee is owed the salary of $500 plus the overtime premium for the 2 overtime hours ($500 + $11.90 = $511.90).

Over 12 hours worked in a workday

- The employee is promised a weekly salary of $500 for all hours worked.
- The employee works 15 hours on Monday, 10 hours on Tuesday, and 10 hours on Wednesday, for a total of 35 hours during the workweek.
- To determine the employee's regular rate, divide the salary by the hours worked ($500 / 35 = $14.29). The employee's regular rate is $14.29 per hour.
- The half-time overtime pay rate is equal to one-half of the regular rate of $14.29 ($14.29 / 2 = $7.15).
- The employee is entitled to the half-time pay multiplied by overtime hours worked ($7.15 X 3 hours of overtime for the 3 hours worked over 12 on Monday = $21.45).
- The employee is owed the salary of $500 plus the overtime premium for the 3 overtime hours ($500 + $21.45 = $521.45).

Over 40 hours in the workweek and over 12 hours on workdays

- The employee is promised a weekly salary of $500 for all hours worked.
- The employee works 15 hours on Monday, 10 hours on Tuesday, and 18 hours on Wednesday, for a total of 43 hours during the workweek.
- To determine the employee's regular rate, divide the salary by the hours worked ($500 / 43 = $11.63). The employee's regular rate is $11.63 per hour.
- The half-time overtime pay rate is equal to one-half of the regular rate of $11.63 ($11.63 / 2 = $5.82).
- The employee is entitled to the half-time pay multiplied by overtime hours worked ($5.82 X 9 hours of overtime = $52.38). The 9 hours of overtime is determined by adding the 3 hours over 12 on Monday plus the 6 hours over 12 on Wednesday. Since the employee will receive more overtime using the 12-hour requirement (9 hours) as compared to the 40-hour requirement (only worked 3 hours over 40), the employer must pay for 9 hours total of overtime.

- The employee is owed the salary of $500 plus the overtime premium for the 9 overtime hours ($500 + $52.38 = $552.38).

The following section reproduces the text of federal regulations on the fluctuating workweek method. For official text of federal law, and guidance in the application of federal law, you must contact the United States Department of Labor (720-264-3250 or www.dol.gov).

FLSA REGULATION 29 C.F.R. §778.114: FIXED SALARY FOR FLUCTUATING HOURS

(a) An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate, under the salary arrangement.

(b) The application of the principles above stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $250 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50, and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $6.25, $5.68, $5, and $5.21, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $250; for the second week $261.36 ($250 plus 4 hours at $2.84, or 40 hours at $5.68 plus 4 hours at $8.52); for the third week $275 ($250 plus 10 hours at $2.50, or 40 hours at $5 plus 10 hours at $7.50); for the fourth week approximately $270.88 ($250 plus 8 hours at $2.61 or 40 hours at $5.21 plus 8 hours at $7.82).

(c) The “fluctuating workweek” method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the

Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the workweek is one in which a full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the "fluctuating workweek" method of overtime payment are present, the Act, in requiring that "not less than" the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his overtime hours at a rate no greater than that which he receives for non-overtime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime formula.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 4)
29 Code of Federal Regulations 778.114 (Fixed Salary for Fluctuating Hours)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/ (U.S. Department of Labor)

Keyword Index

DUTIES DIRECTLY RELATED TO SUPERVISION, 40(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

BACKGROUND

Section 5 of Colorado Minimum Wage Order Number 24 ("Wage Order 24") defines several exemptions, including the Executive or Supervisor Exemption. Among other tests set forth in section 5(b) of Wage Order 24 is the requirement that the "executive or supervisor must spend a minimum of 50% of the workweek in duties directly related to supervision." The Division of Labor, which is charged with interpreting and enforcing Wage Order 24, has received several inquiries concerning the meaning of the phrase "duties directly related to supervision." Accordingly, the Division issues the following advisory bulletin setting forth the Division of Labor's interpretation of that phrase.

DEFINITION OF "DUTIES DIRECTLY RELATED TO SUPERVISION"

MANAGEMENT TIME

An employee is engaged in duties directly related to supervision any time the employee is performing a management function or otherwise engaged in the primary duty of managing the employee's store, facility, restaurant or office. Examples of management functions include, but are not limited to, interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; leading by example; maintaining production or sales records; appraising employees' productivity or efficiency (whether formally or informally); handling employee complaints and grievances; disciplining employees; planning work; determining the techniques to be used; apportioning work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

PRIMARY DUTY

Any time for which the employee's primary duty is the management of their store, facility, restaurant or office is counted as time performing duties directly related to supervision. This includes but is not limited to time spent as manager on duty.

CONCURRENT DUTIES

Time spent performing concurrent duties (some of which are typically considered exempt time and some of which are typically considered non-exempt time) usually counts as time spent engaged in duties directly related to supervision if the decision regarding when to perform the otherwise non-exempt tasks rests with the employee. Generally, exempt executives make the

decision regarding when to perform non-exempt duties and remain responsible for the success or failure of business operations under their management while performing the non-exempt work. In contrast, the non-exempt employee generally is directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods.

For example, an assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves and cleaning the establishment, but performance of such non-exempt work is considered time spent performing duties directly related to supervision if the assistant manager's primary duty is management. An assistant manager can supervise employees and serve customers at the same time without losing the exemption. An exempt employee can also simultaneously direct the work of other employees and stock shelves.

TACKING OF EXEMPTIONS

Employees who perform a combination of exempt duties for executive, administrative, professional, and outside sales may qualify for exemption. Time spent in any exempt duty may be considered time spent engaged in duties directly related to supervision. For example, time spent performing administrative functions such as collecting or analyzing information, exercising discretion, performing audits, and formulating or implementing policies may count as time spent engaged in duties directly related to supervision.

CASE BY CASE ANALYSIS

The determination of whether an employee spends 50% or more of the employee's workweek engaged in duties directly related to supervision is an individualized inquiry that must be analyzed on a case by case basis. The key inquiry is how each individual employee spends his or her actual work time, and whether 50% or more of their time is or is not spent engaged in duties directly related to supervision. Job descriptions and company policies will rarely materially aid this inquiry, because job descriptions and policies are often imperfect predictors of how employees spend their actual work time.

REFERENCES

Colorado Minimum Wage Order Number 24 (Section 5(b))

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

COLORADO STATE AND FEDERAL MINIMUM WAGE, 41(I)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

STATE MINIMUM WAGE

Background

Article XVIII, Section 15, of the Colorado Constitution requires the Colorado minimum wage to be adjusted annually for inflation.

Colorado State Minimum Wage

- January 1, 2009, and in subsequent years, is adjusted annually according to the inflation adjustment process described below.
- January 1, 2008, increased to $**7.02** per hour.
- January 1, 2007, increased to **$6.85** per hour.

Tipped Employees Minimum Wage (employees who regularly receive tips)

- January 1, 2009, and subsequent years, is computed by subtracting $3.02 from the adjusted minimum wage.
- January 1, 2008, increased to $**4.00** per hour ($7.02-$3.02).
- January 1, 2007, increased to **$3.83** per hour ($6.85-$3.02).

No more than $3.02 per hour in tip income may be used to offset the minimum wage of tipped employees.

Inflation Adjustment Process

In accordance with the Colorado Constitution, the Colorado minimum wage is adjusted annually for inflation as measured by the Consumer Price Index used for Colorado. The inflation adjustment is based on the Consumer Price Index for All Urban Consumers (CPI-U), All Items, for the Denver-Boulder-Greeley combined metropolitan statistical area as published by the United States Bureau of Labor Statistics (BLS).

The CPI-U increased 2.5 percent from the first half of 2006 to the first half of 2007, which results in the new minimum wage of $7.02 per hour effective January 1, 2008. An August 15, 2007, BLS press release (see link below) provides additional details on the Consumer Price Index data used in the minimum wage adjustment.

Subsequent annual minimum wage calculations will be identical and will compare changes in the CPI-U from the first half of the preceding year with the first half of the current year to calculate a new minimum wage for the next year.

For example, changes observed in the CPI-U from the first half of 2007 to the first half of 2008 will be used to calculate the minimum wage effective January 1, 2009. It is anticipated that data for future minimum wage adjustments, as provided by the BLS, will be available to the public in mid-August preceding each January adjustment.

Who Must Receive Minimum Wage

The minimum wage shall be paid to employees who receive the state or federal minimum wage. Article XVIII, Section 15, of the Colorado Constitution has not altered the coverage of employers, or the exemption of certain employees, from state or federal wage and hour laws.

Text of Colorado Constitution, Article XVIII, Section 15

Effective January 1, 2007, Colorado's minimum wage shall be increased to $6.85 per hour and shall be adjusted annually for inflation, as measured by the Consumer Price Index used for Colorado. This minimum wage shall be paid to employees who receive the state or federal minimum wage. No more than $3.02 per hour in tip income may be used to offset the minimum wage of employees who regularly receive tips.

STATE MINIMUM WAGE COVERAGE

If either of the following two situations applies to an employee, then the employee is entitled to the $7.02 state minimum wage:

- The employee is covered by the minimum wage provisions of Colorado Minimum Wage Order Number 24.
- The employee is covered by the minimum wage provisions of the Fair Labor Standards Act.

Note: Some restrictions and exemptions may apply; contact the Colorado Division of Labor for additional information. The Colorado Division of Labor accepts complaints for minimum wage violations involving employees who receive the state or federal minimum wage.

FEDERAL MINIMUM WAGE

On May 25, 2007, President Bush signed a spending bill that, among other things, amended the Fair Labor Standards Act (FLSA) to increase the federal minimum wage in three steps:

- $5.85 per hour effective July 24, 2007;
- $6.55 per hour effective July 24, 2008;
- $7.25 per hour effective July 24, 2009.

Contact the U.S. Department of Labor for information on federal workplace laws. Visit www.dol.gov or call 720-264-3250 for more information.

REFERENCES

Colorado Minimum Wage Order Number 24
www.dol.gov/esa/whd/flsa (Fair Labor Standards Act)
United States Bureau of Labor Statistics (BLS)
BLS Press Release of August 15, 2007

WEBSITE LINKS

www.coworkforce.com (Colorado Department of Labor and Employment)

www.coworkforce.com/LAB/MinimumWageFactSheet.pdf
www.dol.gov/esa/minwage/q-a.htm
www.dol.gov/esa/regs/compliance/posters/flsa.htm
www.dol.gov/esa/whd/flsa
www.wagehour.dol.gov

SECTION II: MISCELLANEOUS EMPLOYMENT TOPICS

Keyword Index

DIVISION OF LABOR RESPONSIBILITIES AND TOPICS NOT COVERED, 1(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

DIVISION OF LABOR RESPONSIBILITIES

The Division of Labor administers Colorado Labor Laws pertaining to wages paid, hours worked, minimum wage, labor standards, child labor, employment-related immigration laws, and certain working conditions. The Division of Labor also conducts all-union agreement elections, elections to certify or decertify collective bargaining agreements, certifications of all-union provisions in the building and construction trade industries, and investigates and mediates allegations of unfair labor practices.

One of the primary responsibilities of the Division of Labor is to assist in the recovery of earned and unpaid wages and compensation. Individuals who seek such assistance with the Division of Labor must complete a request for mediation form. Individuals who are not covered by Colorado wage law or individuals with disputes regarding unrelated employment issues should not complete a request for mediation form; such individuals must contact the appropriate agency, file a claim in small claims court, or confer with an attorney as necessary.

TOPICS COVERED BY THE DIVISION OF LABOR:

- Delayed or missing paydays
- Employment-related immigration laws
- Minimum wage disputes
- Non-payment of wages for work performed
- Overtime disputes
- Paycheck deduction disputes
- Timekeeping disputes
- Tip disputes
- Uniform disputes
- Vacation pay disputes

- Youth employment

TOPICS BEYOND THE AUTHORITY AND SCOPE OF THE DIVISION OF LABOR:

- **Discrimination**

Persons inquiring about discrimination should contact the Colorado Civil Rights Division (303-894-2997) or the U.S. Equal Employment Opportunity Commission (800-669-4000) for information and guidance. See Advisory Bulletin # 14 (II) for more information.

- **Employer bankruptcy**

If an employer has filed for bankruptcy, employees need to contact the appropriate bankruptcy court to enter a claim. The bankruptcy court for Colorado may be contacted at:

U.S. Bankruptcy Court for the District of Colorado
U.S. Custom House, 721 19th Street
Denver, CO 80202-2508
720-904-7300
See Advisory Bulletin # 3 (II) for more information.

- **Governmental or school district employees**

Colorado wage law does not cover the following: the state, its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

- **Harassment or abusive treatment**

The Colorado Division of Labor does not assist individuals solely alleging workplace harassment or abusive treatment. Such individuals may wish to contact the Colorado Civil Rights Division (303.894.2997) or consult with an attorney. See Advisory Bulletin # 14 (II) for more information.

- **Holiday, severance, or sick pay**

Colorado wage law does not require nor prohibit holiday, severance, or sick pay. See Advisory Bulletin # 7 (I) for more information.

- **Independent contractors**

Colorado wage law does not cover independent contractors; independent contractors are not formally classified as employees in Colorado. See Advisory Bulletin # 6 (I) for more information.

- **Selection, termination, layoff, promotion, or disciplinary action disputes**

Persons inquiring should consult with an attorney for guidance, or contact the Colorado Civil Rights Division (303.894.2997) if discrimination is alleged to have occurred.

- **Tax disputes**

Persons inquiring about tax disputes should contact either the Internal Revenue Service (800-829-1040), the Colorado Department of Revenue (303-866-3711), or Colorado Unemployment Insurance Tax information (303-318-9100).

- **Work entirely performed outside the State of Colorado**

Persons inquiring about work performed in another State should contact the Department of Labor in the State where the work was performed, (State DOL contact information may be obtained at http://www.ilsa.net/), call the U.S. Department of Labor (866-487-9243), or consult with an attorney for guidance.

- **Federal Law**

Questions regarding federal issues should be directed to the U.S. Department of Labor (866-487-9243). The U.S. Department of Labor enforces a variety of federal labor laws, including:

Davis-Bacon and Related Acts
Fair Labor Standards Act (FLSA)
Family and Medical Leave Act (FMLA)
The Service Contract Act
Walsh-Healey Public Contracts Act

- **Occupational Safety and Health**

Persons inquiring about workplace safety and health issues should contact the Occupational Safety and Health Administration (OSHA) at (800) 321-6742. OSHA is a federal agency created to ensure safe and healthful workplace environments.

See Advisory Bulletin # 19 (II) for more information.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

COST OF MEDICAL EXAMINATIONS AND BACKGROUND CHECKS, 2(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Employers cannot typically require job applicants or employees to pay for medical examinations (e.g., drug tests) or the cost of furnishing any records (e.g., cost of background checks or fingerprinting) required by the employer as a condition of employment.

Exception: the cost of furnishing those records necessary to support the applicant's statements in the application for employment.

REFERENCES

Colorado Revised Statutes 8-2-118 (Cost of Medical Examination)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

EMPLOYER BANKRUPTCY, 3(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

When an employer files for bankruptcy all of its assets are frozen and no money can be paid out to creditors, including employees. Employees typically have a higher priority in bankruptcy than many other creditors.

If your employer has filed for bankruptcy you will need to contact the appropriate bankruptcy court to enter a claim. The bankruptcy court for Colorado may be contacted at:

U.S. Bankruptcy Court for the District of Colorado
U.S. Custom House, 721 19th Street
Denver, CO 80202-2508
(720) 904-7300

See Advisory Bulletin # 11 (II) for information on preferred claims and employer insolvency.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.cob.uscourts.gov/bindex.htm (U.S. Bankruptcy Court District of Colorado Homepage)

Keyword Index

NOTICE OF TERMINATION AND EMPLOYMENT-AT-WILL, 4(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

DEFINITION OF EMPLOYMENT-AT-WILL

Colorado follows the legal doctrine of "employment-at-will" which provides that in the absence of a contract to the contrary, neither an employer nor an employee is required to give notice or advance notice of termination or resignation. Additionally, neither an employer nor an employee is required to give a reason for the separation from employment. In Continental Airlines Inc. v. Keenan (1987), the Colorado Supreme Court recognized at-will employment in Colorado, and noted that there may be certain exceptions to the presumption of at-will employment.

BASIS OF EMPLOYMENT-AT-WILL

The general principle behind the concept of employment-at-will is that the doctrine promotes efficiency and flexibility in the employment context. Employment-at-will allows employees to seek out the position best suited for their talents and allows employers to seek out the best employees for their needs.

POTENTIAL EXCEPTIONS TO EMPLOYMENT-AT-WILL

There are many exceptions to employment-at-will, including various exceptions created by the legislature and the courts. While not all-inclusive, listed below are common exceptions to employment-at-will. Persons inquiring should consult with an attorney for guidance.

DISCRIMINATION

An employer may not discriminate in terminating an employee. It is discriminatory to discharge an employee based upon disability, race, creed, color, sex, age, religion, sexual orientation, national origin, and ancestry. Inquiries regarding discrimination should be made to the Colorado Civil Rights Commission (303-894-2997) or the Equal Employment Opportunity Commission (303-866-1300).

VIOLATION OF PUBLIC POLICY

An employee cannot be terminated for reasons violating public policy. Examples include discharging an employee for: filing a worker's compensation claim; bringing or threatening a lawsuit; serving on a jury; engaging in lawful off-duty activities; refusing to commit perjury; whistleblower situations, etc.

CONTRACT LAW

If an employer has an established policy for termination, in a manner that constitutes a contract, whether expressed or implied, the policy must be followed in the same way for each employee covered. Since a company policy can be viewed as creating a contract, an employee seeking to enforce the policy should consult an attorney for advice.

Union contracts typically contain provisions that govern the termination process. Employees covered by such a contract should consult their union representative.

Independent contractors are governed by the terms of their contract. If they are terminated prior to the contract end date, it may be considered a breach of contract and they should consult an attorney.

REFERENCES

Colorado Revised Statutes 24-34-402 (Discriminatory or Unfair Employment Practices)
Colorado Revised Statutes 24-34-402.5 (Off Duty Legal Activities)
Colorado Revised Statutes 24-50.5-103 (Retaliation Prohibited)
Colorado Revised Statutes 13-71-134 (Jury Service)
Continental Airlines Inc., v. Keenan, 731 P.2d 708, 711 (Colo. 1987)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dora.state.co.us/civil-rights/ (Colorado Civil Rights Division)
www.eeoc.gov/ (U.S. Equal Employment Opportunity Commission)

Keyword Index

RIGHT TO WORK, 5(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The phrase “right to work” is often confused with the doctrine of “employment-at-will”. See Advisory Bulletin # 4 (II) for information on employment-at-will.

DEFINITION OF RIGHT TO WORK

The phrase “right to work” is applied to certain state laws which prohibit collective bargaining contracts containing an all-union agreement. Such agreements may also be known as union shop, agency shop, or union security clauses. In most states, collective bargaining agreements may contain a term or clause requiring all members of the bargaining unit to join, or pay agency fees to, the union which represents the bargaining unit. Failure to do so may result in termination. Such a term or clause in a collective bargaining agreement creates the all-union agreement.

In states with a right to work law, such all-union agreements are illegal. Members of the bargaining unit still have the right to join a labor union; however those employees who choose not to join may not be terminated for exercising that choice.

COLORADO HAS A MODIFIED RIGHT TO WORK LAW

Colorado law is unique and provides a specific procedure for the conduct of elections when an all-union agreement is sought. If employees seek to be represented by a union under the National Labor Relations Act, and they wish to bargain for an all-union agreement, at least 75% of employees voting in election must agree to an all-union agreement, or a majority of all the employees eligible to vote must agree to an all-union agreement, whichever is greater. If the vote in favor of the all-union agreement is less than 75%, there can be no all-union agreement in the collective bargaining agreement, just as there would be none in a right to work state. Even if the vote supports the right to bargain for an all-union agreement, Colorado is what is considered an “agency shop” state. Employees operating under an “all-union” agreement must pay union fees, but are not required to be members of the union in order to work for the employer.

The Colorado Department of Labor and Employment conducts the elections required by the statute.

REFERENCES

Colorado Revised Statutes 8-3-101 (Labor Peace Act)
Colorado Revised Statutes 8-3-104 (Definitions)
Colorado Revised Statutes 8-3-108 (Unfair Labor Practices)
Colorado Attorney General Opinion on Right to Work Status, 12/16/88

WEBSITE LINKS

http://www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

JURY DUTY, 6(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

COMPENSATION AND JURY DUTY

All regularly employed trial or grand jurors shall be paid regular wages, but not to exceed fifty dollars per day unless by mutual agreement between the employee and employer, by their employers for the first three days of juror service or any part thereof. Regular employment shall include part-time, temporary, and casual employment if the employment hours may be determined by a schedule, custom, or practice established during the three-month period preceding the juror's term of service.

JOB PROTECTION AND JURY DUTY

State law protects a juror's job; an employer shall not threaten, coerce, or discharge an employee for reporting for juror service as summoned. An employer shall make no demands upon any employed juror which will substantially interfere with the effective performance of jury service.

EMPLOYEE PARTICIPATION IN OTHER LEGAL ACTIONS

Employees are not entitled to compensation by their employers for their participation in other unrelated areas of the legal system. For example, an employer does not have to compensate an employee for time spent: serving as a witness in a case, responding to a subpoena, or acting as a plaintiff or defendant in the courts.

Persons inquiring about jury service may contact the jury commissioner for their county, or contact:

Office of the State Court Administrator
JBIDS (Judicial Business Integrated with Technology Services)
1301 Pennsylvania St., Suite 300
Denver, CO 80203
(720) 921-7820

REFERENCES

Colorado Revised Statutes 13-71-126 (Juror Compensation)
Colorado Revised Statutes 13-71-134 (Penalties for Juror Harassment)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.courts.state.co.us (Colorado Judicial Branch)
www.courts.state.co.us/chs/court/jury/jury.htm (Colorado Juror Information Center)
www.courts.state.co.us/exec/pubed/brochures/jurysystem.pdf (Colorado Jury System Information)

VOTING, 7(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Eligible electors that are employees in Colorado are permitted to exercise their voting rights under Colorado law in the following manner:

EMPLOYEE ENTITLEMENT TO VOTE DURING WORK HOURS

Eligible electors entitled to vote at an election shall be entitled to absent themselves for the purpose of voting from any service or employment in which they are engaged or employed on the day of the election for a period of two hours during the time the polls are open (see the exception listed below). Any such absence shall not be sufficient reason for the discharge of any person from service or employment.

Eligible electors, who so absent themselves shall not be liable for any penalty, nor shall any deduction be made from their usual salary or wages, on account of their absence. Eligible electors who are employed and paid by the hour shall receive their regular hourly wage for the period of their absence, not to exceed two hours. Application shall be made for the leave of absence prior to the day of the election. The employer may specify the hours during which the employee may be absent, but the hours shall be at the beginning or end of the work shift, if the employee so requests.

EXCEPTION TO EMPLOYEE ENTITLEMENT TO VOTE DURING WORK HOURS

The above sections do not apply to any person whose hours of employment on the day of the election are such that there are three or more hours between the time of opening and the time of closing of the polls during which the elector is not required to be on the job.

REFERENCES

Colorado Revised Statutes 1-7-102 (Employees Entitled to Vote)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

NON-COMPETE AND NONSOLICITATION AGREEMENTS, 8(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

NON-COMPETE AGREEMENTS

Colorado recognizes a strong public policy protecting the right of its citizens to earn a living. Colorado law forbids the use of non-compete covenants that restrict the right of any person to receive compensation for performance of skilled or unskilled labor for any employer.

It is very important to seek legal counsel on this topic, but generally speaking, there are four specific exceptions where the use of non-compete agreements may be permitted. Non-compete agreements in the following four categories may be enforceable if the agreements are reasonable in purpose, duration, and geographic scope:

- A contract for the purchase or sale of a business.
- A contract to protect trade secrets.
- A contract allowing an employer to recover the expense of educating and training an employee who has served for a period of less than two years.
- A contract that applies to executive and management personnel and officers and employees who constitute professional staff to executive and management personnel.

In Phoenix Capital, Inc. v. Dowell (2007) the Colorado Court of Appeals found that the phrase "professional staff to executive and management personnel" is limited to those persons who, while qualifying as "professionals" and reporting to managers or executives, primarily serve as key members of the manager's or executive staff in the implementation of management or executive functions. Contact an attorney for more information on this topic.

NONSOLICITATION AGREEMENTS

Nonsolicitation agreements are often used to limit the ability of current and former employees to contact clients for the purpose of soliciting business, or to contact coworkers for the purpose of enticing them to leave their jobs.

All persons inquiring should refer to legal counsel for advice, but generally speaking, nonsolicitation agreements may be easier to enforce than non-compete agreements because they do not substantially limit the employee's ability to earn a living. However, overly broad nonsolicitation agreements may risk violating Colorado's non-compete statute.

REFERENCES

Colorado Revised Statutes 8-2-113 (Non-Compete Statute)
Phoenix Capital, Inc. v. Dowell, 2007 WL 2128330 (Colo. App. July 26, 2007)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

GARNISHMENTS AND INCOME ASSIGNMENTS, 9(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Employers are required by law to process many different types of wage withholding orders. Two common wage withholding orders are garnishments and income assignments.

GARNISHMENTS

A garnishment is one method for creditors to collect monies owed from a judgment. More specifically, garnishment is a process that allows for the withholding of the earnings of an employee for payment of a judgment regarding an overdue debt (for example, past due child support).

INCOME ASSIGNMENTS

Income assignments are current and ongoing support obligations for dependents. Deductions from income are used to pay current child support, medical support, past due child support, or spousal maintenance.

It is illegal to refuse to hire, discipline, or discharge an employee because of an income assignment for child support or insurance premiums.

DEDUCTIONS FOR THE COST OF WITHHOLDING EARNINGS

Colorado law allows an employer to extract a processing fee of up to $5.00 per month from the remainder of the employee's earnings after child support has been already withheld. There is no processing fee permitted for health insurance premium (HIP) withholding.

Persons inquiring about garnishments and income assignments should contact the court or agency that is handling the order.

REFERENCES

Colorado Revised Statutes 14-14-111.5 (Income Assignments for Child Support)
Colorado Rules of Civil Procedure Chapter 13, Rule 103 (Garnishment)

WEBSITE LINKS

http://www.coworkforce.com/ (Colorado Department of Labor and Employment)
http://www.childsupport.state.co.us/ (Colorado Employer's Guide to Child Support)
http://www.acf.dhhs.gov/programs/cse/index.html (Federal Guide to Child Support Enforcement)
http://www.courts.state.co.us/chs/court/forms/garnishmentforms/garnishments.htm (Colorado Judicial Branch Garnishment Information)

Keyword Index

ACCESS TO PERSONNEL FILES, DIVISION OF LABOR RECORDS, AND CLAIM INFORMATION, 10(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

PERSONNEL FILES

Colorado law does not require access to employee personnel files in the private sector. Personnel records are the property of the employer, and employee access to their own personnel records is typically at the employer's discretion.

Governmental employees may have rights in certain circumstances to access their personnel files in accordance with federal law. Persons inquiring should consult with the U.S. Department of Labor (866-487-9243) or an attorney for guidance.

ACCESS TO DIVISION OF LABOR RECORDS

The investigative reports, labor claims, and case records of the Colorado Division of Labor are not available for public review. Absent a directive from the Director, the Division of Labor will not provide information to the public on specific employers, employees, or employment-related disputes.

The Division of Labor may gather and distribute general statistical information and data for use by other state departments and the public.

RETENTION OF DIVISION OF LABOR RECORDS

The Division of State Archives and the Department of Labor and Employment have prepared the following general retention and disposition schedules for the Division of Labor that provide the legal authorization to retain and dispose of common records.

Labor Standards Investigative Files
Original investigative files must be retained for 3 years plus current. No active files may be destroyed. Duplicate copies shall be retained until no longer active.

Labor Standards Labor Claims
Original labor claims must be retained for 3 years plus current. Duplicate copies shall be retained until no longer needed.

ACCESS TO CLAIM INFORMATION

Access to specific claim information is granted solely to the claimant, employer, and designated representatives (e.g., attorneys) involved in the dispute. Other interested parties (e.g., spouse, relatives, friends) must obtain written consent from the claimant or employer in order to obtain access to claim information.

It is the policy of the Division of Labor that Compliance Officer notes (for example, notes in the Division's *eCOMP* database system) are protected work product information. Absent an order from the courts or a directive from the Director, we will not provide such notes to employers, employees, the public, or other interested parties.

REFERENCES

Colorado Revised Statutes 8-1-115 (Division of Labor Information Not Public)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

PREFERRED CLAIMS AND EMPLOYER INSOLVENCY, 11(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

WAGES AS A PREFERRED CLAIM

When the business of any person, corporation, company, or firm is suspended by the action of creditors or put into the hands of a receiver or trustee, the debts owing to laborers, servants, or employees, which have occurred by reason of their labor or employment shall be considered and treated as preferred claims. Such laborers or employees shall be preferred creditors and shall first be paid in full. If there are not sufficient funds to pay them in full, they shall be paid from the proceeds of the sale of the property seized.

STATEMENT OF PREFERRED CLAIM

Any laborer, servant, or employee desiring to enforce his claim for wages under this article shall present a statement under oath showing the amount due, the kind of work for which the wages are due, and when performed to the officer, person, or court charged with the property within twenty days after the seizure thereof on any execution or writ of attachment or within sixty days after same has been placed in the hands of any receiver or trustee, and thereupon it is the duty of the person or court having or receiving such statement to pay the amount of the claim to the person entitled thereto.

See Advisory Bulletin # 3 (II) for information on employer bankruptcy.

REFERENCES

Colorado Revised Statutes 8-10-101 (Wages a Preferred Claim)
Colorado Revised Statutes 8-10-102 (Statement of Claim)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

BOUNCED CHECKS AND NOTICE OF DISHONORED INSTRUMENT, 12(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The Colorado Division of Labor will investigate disputes where an employee has not been fully compensated in a timely manner for all work performed.

The Colorado Division of Labor does not have the authority to recover expenses (for example, bounced check fees) that are incurred as a result of checks, drafts, or orders that are not paid upon presentment to a bank or other financial institution.

Employees may complete a formal notice of dishonored instrument, which serves to notify the employer that the individual is demanding full payment of the amount of the invalid check. Once the formal notice of dishonored instrument has been delivered, the employer may be liable for three times the amount of the check plus court costs and attorney fees if the employee has not been fully compensated within 15 days of the notice.

See Advisory Bulletins # 1 (I) (methods of payment) and # 2 (I) (pay periods) for additional information.

REFERENCES

Colorado Revised Statutes 13-21-109 (Recovery of Damages for Checks Not Paid)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.coworkforce.com/lab/dishonoredinstrument.pdf (Notice of Dishonored Instrument Form)

Keyword Index

MEDICAL LEAVE, PREGNANCY LEAVE, AND DISABILITY, 13(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

MEDICAL LEAVE AND PREGNANCY LEAVE

Colorado has not enacted a medical leave or pregnancy leave law that applies to employees in the private sector. Persons inquiring about medical or pregnancy leave should contact the U.S. Department of Labor (866-487-9243), as the Family and Medical Leave Act of 1993 (FMLA) or other federal laws may apply. Questions regarding workers' compensation should be directed to the Colorado Division of Workers' Compensation (303-318-8700).

DISABILITY

Colorado does not require paid leave for workers with disabilities. Individuals with questions regarding disability and employment discrimination issues may contact the Colorado Civil Rights Division (303-894-2997), the U.S. Equal Employment Opportunity Commission (800-669-4000), or an attorney for information and guidance. See Advisory Bulletin # 14 (II) for more information on employment discrimination.

DOMESTIC ABUSE LEAVE LAW

Colorado Revised Statute 24-34-402.7 permits an employee to request or take up to three working days of leave from work in any twelve-month period, with or without pay, if the employee is the victim of domestic abuse, stalking, sexual assault, or any other crime related to domestic abuse. See Advisory Bulletin # 20 (II) for more information on domestic abuse leave.

REFERENCES

Colorado Revised Statutes 24-34-402.7 (Domestic Abuse Leave)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.coworkforce.com/DWC/ (Colorado Division of Workers' Compensation)
www.dora.state.co.us/civil-rights/ (Colorado Civil Rights Division)
www.dol.gov/esa/whd/fmla/ (U.S. Department of Labor FMLA Guidance)
www.eeoc.gov/ (U.S. Equal Employment Opportunity Commission)

Keyword Index

EMPLOYEE MISTREATMENT AND DISCRIMINATION, 14(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

In general, employers in Colorado have significant latitude in how they treat their employees, as long as such treatment is not specifically prohibited by law or a contractual agreement. If an employee believes their employer's actions may have been illegal or discriminatory, the employee should contact the appropriate agency or seek legal counsel.

Employers are not allowed to discriminate in employment based upon any of the following factors:

- Race
- Color
- National Origin
- Ancestry
- Creed
- Religion
- Sex
- Age
- Physical Disability
- Mental Disability
- Marriage to a Co-Worker (subject to specific circumstances)
- Sexual Orientation

Persons inquiring about discrimination should contact the Colorado Civil Rights Division (303-894-2997) or the U.S. Equal Employment Opportunity Commission (800-669-4000) for information and guidance.

REFERENCES

Colorado Revised Statutes 24-34-402 (Discriminatory or Unfair Employment Practices)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dora.state.co.us/civil-rights/ (Colorado Division of Civil Rights)
www.eeoc.gov/ (U.S. Equal Employment Opportunity Commission)

Keyword Index

SMALL CLAIMS COURT, 15(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Small claims courts in Colorado are a division of the county court system designed to provide a quick and inexpensive resolution to minor claims. Small claims courts are courts of limited jurisdiction; the court cannot award more than $7500 in monetary awards. Persons inquiring who wish to use small claims court must file the claim in the county where the defendant lives or maintains business operations. For claims up to $500, the court filing fee is $20. For claims over $500, the court filing fee is $44.

Questions about the use and operation of small claims court should be directed to the clerk of the county court of the county in which the case is filed, or to the Office of the State Court Administrator in Denver at (303) 861-1111.

County Court Telephone Contact Information
(Call 303-837-3624 for Counties not listed):

Adams County:	(303) 659-1161
Arapahoe County:	(303) 730-0358
Arapahoe County (Aurora):	(303) 363-8004
Boulder County:	(303) 441-4749
Denver County:	(303) 640-5161
Douglas County:	(303) 663-7200
Jefferson County:	(303) 271-6215

REFERENCES

Colorado Rules of Civil Procedure 501-521 (Colorado Rules of Procedure for Small Claims Courts)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.courts.state.co.us/ (Colorado Judicial Branch)

www.courts.state.co.us/exec/pubed/brochures/smallclaimsweb.pdf (Colorado Small Claims Handbook)
www.courts.state.co.us/chs/court/fees/fees.pdf (Colorado Court Fees)

Keyword Index

MECHANICS' LIENS, 16(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The mechanics' lien law is intended to benefit and protect those who supply labor, materials, or services which enhance the value or condition of another's property.

Mechanics' liens are used to obtain unpaid wages from land and property owners who have failed to properly pay for work performed.

Individuals who have performed labor for the construction, alteration, improvement, addition to, or repair of a structure may file a mechanics' lien. Individuals who have added value to a structure by furnishing laborers, machinery, tools, or equipment may also file a mechanics' lien.

The Division of Labor does not provide assistance in mechanics' lien disputes. All persons inquiring should consult with an attorney for guidance.

REFERENCES

Colorado Revised Statutes 38-22-101 to 38-22-133 (Mechanics' Liens)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

UNCLAIMED PROPERTY AND UNCASHED CHECKS, 17(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Property (for example, uncashed payroll checks) held for the owner by the Colorado Division of Labor which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

Such property that is presumed to be abandoned after one year shall be disposed of pursuant to Colorado Revised Statutes 38-13-101 et seq. In accordance with C.R.S. 38-13-110, a report must be filed with the State Treasurer which details the following:

The apparent owner of the unclaimed property.
The last known address of the owner of the property.
The nature of the property and an appropriate description of the property.
The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.
Any other relevant information on the apparent owner and the property.

Persons inquiring about unclaimed property or uncashed checks should contact the Colorado State Treasurer at (303) 866-2441 for further assistance.

REFERENCES

Colorado Revised Statutes 38-13-108.2 (Property Held by Courts and Public Agencies)
Colorado Revised Statutes 38-13-110 (Report and Payment or Delivery of Abandoned Property)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.colorado.gov/treasury/ (Colorado State Treasurer)
www.colorado.gov/apps/treasury/ucp/claims/ (Colorado Unclaimed Property)

Keyword Index

DISCIPLINARY POLICIES, 18(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Employers in Colorado are not generally required to establish specific disciplinary policies, nor are they typically required to provide employees with "write-ups" or advance notice prior to termination. Persons inquiring about the legality of employer disciplinary policies and actions should consult with an attorney for advice. See Advisory Bulletin # 4 (II) for more information on notice of termination and employment-at-will.

Individuals who believe they have been subjected to discriminatory or unfair treatment may contact the Colorado Civil Rights Division at (303) 894-2997. See Advisory Bulletin # 14 (II) for more information on employee mistreatment and discrimination.

Employers may not deduct from an employee's earned wages or compensation as a form of discipline. See Advisory Bulletin # 4 (I) for more information on permissible paycheck deductions.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

OCCUPATIONAL SAFETY AND HEALTH, 19(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Persons inquiring about workplace safety and health issues should contact the Occupational Safety and Health Administration (OSHA), a federal agency created to ensure safe and healthful workplace environments. To report accidents, unsafe working conditions, or safety and health violations, individuals may call OSHA at (800) 321-6742.

Questions may also be sent to OSHA at:

U.S. Department of Labor
Occupational Safety & Health Administration
200 Constitution Avenue
Washington, D.C. 20210

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.osha.gov/ (Occupational Safety & Health Administration)
http://www.cdphe.state.co.us/ (Colorado Department of Public Health and Environment)

Keyword Index

EMPLOYEE DOMESTIC ABUSE LEAVE LAW, 20(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado Revised Statute 24-34-402.7 permits an employee to request or take up to three working days of leave from work in any twelve-month period, with or without pay, if the employee is the victim of domestic abuse, stalking, sexual assault, or other crimes related to domestic abuse. The leave law applies only to employers who employ 50 or more employees and to employees who have been employed with the employer for 12 months or more.

The leave is permitted under the law if the employee is using the leave to protect himself or herself by:

Seeking a civil protection order.
Obtaining medical care or mental health counseling.
Making the home secure from the perpetrator.
Seeking legal assistance to address related issues.

Persons inquiring about domestic abuse leave should seek legal counsel for advice.

REFERENCES

Colorado Revised Statutes 24-34-402.7 (Domestic Abuse Leave Law)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

OFF DUTY LEGAL ACTIVITIES, 21(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado Revised Statute 24-34-402.5, commonly referred to as the "smokers' rights" statute, makes it a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours, unless such a restriction:

Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer.

Or:

Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest.

Individuals claiming to be aggrieved by a discriminatory or unfair employment practice as defined by this statute may bring a civil suit for damages in any district court of competent jurisdiction.

Persons inquiring should consult with legal counsel for advice.

REFERENCES

Colorado Revised Statutes 24-34-402.5 (Off Duty Legal Activities)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

EMPLOYMENT REFERENCES, 22(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

COLORADO REFERENCE IMMUNITY LAW

Colorado law states that any employer who provides information about a current or former employee's job history or job performance to a prospective employer of the current or former employee upon request of the prospective employer or the current or former employee is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure.

This immunity shall not apply when such employee shows by a preponderance of the evidence both of the following:

The information disclosed by the current or former employer was false.

AND

The employer providing the information knew or reasonably should have known that the information was false.

COLORADO STATE AGENCY EMPLOYMENT REFERENCE CHECKS

Interested parties may verify the employment history and income of Colorado State Government employees by calling "The Work Number" at (900) 555-9675. State employees may call (800) 367-2884 to access their employment and income verification account. Related questions about The Work Number service may be directed to (800) 996-7566.

Persons inquiring about employment references should consult with an attorney for guidance.

REFERENCES

Colorado Revised Statutes 8-2-114 (Reference Immunity Statute)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

Keyword Index

POLYGRAPH AND LIE DETECTOR TESTS, 23(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Colorado does not have a specific law regarding the use of lie detector tests and polygraphs in the employment context. A federal law known as the Employee Polygraph Protection Act (EPPA) generally prohibits employers and businesses from using lie detector tests for pre-employment screening or during any other stage of employment.

There are certain exceptions to this prohibition on the use of polygraph tests. The primary exceptions may include:

- Federal, state, and local governmental employees.
- Various private sector security and drug companies.
- Private businesses that are investigating an economic loss.

Persons inquiring about polygraph tests and lie detector tests should consult with the U.S. Department of Labor at (866) 487-9243 or an attorney for guidance.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/ (U.S. Department of Labor)
www.dol.gov/esa/regs/compliance/whd/whdfs36.htm (U.S. DOL EPPA Fact Sheet)

EMPLOYEE IDENTIFICATION AND SOCIAL SECURITY NUMBERS, 24(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Employees who do not furnish their employer with a social security number or who do not properly complete relevant tax forms must be paid their earned wages and compensation in accordance with all applicable provisions of Colorado wage law and Colorado Minimum Wage Order Number 24. It is not permissible for an employer to delay or withhold payment of earned wages and compensation solely because an employee is unwilling or unable to supply a social security number or a properly completed tax form.

However, for tax and recordkeeping purposes, an employer may be able to treat an employee who has failed to properly complete a W-4 form as a single person claiming no withholding allowances.

Persons inquiring about employee identification and social security numbers for tax purposes must contact the Internal Revenue Service (800-829-1040) or the Colorado Department of Revenue (303-238-7378).

WEBSITE LINKS

Colorado Revised Statutes 8-2-122 (Employment Verification Requirements Website)
www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.revenue.state.co.us/main/home.asp (Colorado Department of Revenue)
www.irs.gov/ (Internal Revenue Service)
www.irs.gov/pub/irs-pdf/p505.pdf (IRS Tax Withholding and Estimated Tax Publication 505)

COLORADO COLLECTION LAWS AND PRACTICES, 25(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The Colorado Fair Debt Collection Practices Act (CFDCPA) protects consumers from unfair and abusive debt collection practices. It applies to debt collectors, collection agencies, and companies that buy and collect debts in default. The CFDCPA does not apply to creditors who collect their own debts.

Complaints about debt collectors and collection agencies may be directed to the Colorado Collection Agency Board at:

Colorado Attorney General
Attn: Colorado Collection Agency Board
1525 Sherman Street, 7th Floor
Denver, CO 80203
(303) 866-5304

REFERENCES

Colorado Revised Statutes 12-14-101 to 12-14-137 (Colorado Fair Debt Collection Practices Act and Related Laws)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.ago.state.co.us/cadc/cadcmain.cfm (Colorado Department of Law / Collection Agency Board)
www.ago.state.co.us/CADC/BrochureEnglish.cfm (Consumer Rights Collection Pamphlet)

Keyword Index

IDENTITY THEFT, 26(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Identity theft is an increasingly common occurrence, and such theft may be generally defined as someone using your identity without your permission. Persons inquiring about identity theft may wish to take some or all of the following steps as necessary:

Victims of identity theft may wish to file a police report detailing what has been taken, stolen, or used without permission.

Victims of identity theft may wish to contact the three major credit bureaus in order to inspect and make adjustments to their credit reports. The three major national credit bureaus may be contacted as follows:

- Equifax Credit Information Services
  Consumer Fraud Division
  (800) 525-6285 (Fraud) (800) 685-1111 (Free Copy of Credit Report)

- Experian
  National Consumer Assistance
  (888) 397-3742 (Fraud and Free Copy of Credit Report)

- TransUnion
  Fraud Victim Assistance Department
  (800) 680-7289 (Fraud) (800) 916-8800 (Free Copy of Credit Report)

The Federal Trade Commission provides additional information on identity theft and maintains a centralized database for identity theft complaints. For more information contact the Federal Trade Commission Identity Theft Clearinghouse at 877-IDTHEFT, or www.consumer.gov/idtheft.

Victims of identity theft who are having a dispute with collection agencies regarding illegal charges and debt may contact the Colorado Collection Agency Board at (303) 866-5304.

Persons inquiring may wish to consult with an attorney for guidance.

See Advisory Bulletin # 25 (II) for more information on collection laws and practices.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.ago.state.co.us/FAQ/id_theft_faq.cfm (Identity Theft Frequently Asked Questions)
www.ago.state.co.us/consumer_protection.cfm?MenuPage=True (Colorado Attorney General Consumer Protection)
www.consumer.gov/idtheft/ (Federal Trade Commission ID Theft)

DAVIS-BACON WAGES, 27(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The Davis-Bacon Act as amended, requires that each contract over $2000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract.

Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine local prevailing wage rates.

Davis-Bacon wage determinations issued by the U.S. Department of Labor may be viewed at: www.access.gpo.gov/davisbacon/. Questions regarding Davis-Bacon and Related Acts may be e-mailed to: dbra-faqs@fenix2.dol-esa.gov.

Persons inquiring about Davis-Bacon Wages should contact the U.S. Department of Labor at (866) 487-9243 for more information.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.access.gpo.gov/davisbacon/ (Davis-Bacon Wage Determinations)
www.dol.gov/esa/programs/dbra/whatdbra.htm (U.S. Department of Labor Davis-Bacon Information)
www.dol.gov/esa/programs/dbra/faqs.htm (Davis-Bacon Frequently Asked Questions)
http://lmigateway.coworkforce.com/lmigateway/ (Colorado Labor Market Information, Occupational Statistics for the State)

Keyword Index

MILITARY AND UNIFORMED SERVICES EMPLOYMENT RIGHTS, 28(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

A federal law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), protects civilian job rights and benefits based upon past, present, or future membership in a uniformed service, and prohibits discrimination in employment or reemployment based upon uniformed service.

USERRA applies to virtually all employers, including the federal government. Individuals potentially covered by provisions of USERRA include persons who have performed voluntary or involuntary service in such uniformed services as: Army, Navy, Marine Corps, Air Force, Coast Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Commissioned Corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

Persons inquiring about USERRA rights and employer obligations should contact the Colorado Office of the United States Department of Labor Veterans Employment and Training:

Director
Milton Gonzales
Gonzales-Milton@dol.gov
633 17th Street, Suite 700
Denver, Colorado 80202
(303) 844-2151

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/elaws/vets/userra/userra.asp (U.S. DOL USERRA Advisor)
www.dol.gov/vets/whatsnew/userraguide0903.rtf (USERRA Resource Guide)
www.dol.gov/vets/ (Veterans' Employment and Training Service)
www.coworkforce.com/vet/vrr.asp (Colorado Veterans Reemployment Rights)

Keyword Index

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA) AND COLORADO HEALTH INSURANCE, 29(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

COBRA

A federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides workers and their families who lose their health benefits the right to temporary continuation of health coverage at group rates. This coverage is only available when coverage is lost due to certain specific events and only in particular circumstances.

Persons inquiring about COBRA should contact the Employee Benefits Security Administration (EBSA) at (866) 275-7922 for more information.

COLORADO HEALTH INSURANCE

In the event of termination of employment, Colorado law allows former employees and dependents to continue health care insurance with their former employer for up to 18 months in certain circumstances. However, if the employer is subject to the provisions of COBRA, the state continuation coverage requirements may be superseded.

Persons inquiring about health care coverage under Colorado law should contact the Colorado Division of Insurance at (303) 894-7490 or (800) 930-3745 for more information.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/dol/topic/health-plans/cobra.htm (U.S. DOL COBRA Information)
www.dol.gov/ebsa/faqs/faq_consumer_cobra.html (U.S. DOL COBRA FAQs)
www.chcpf.state.co.us/default.asp (Colorado Department of Health Care Policy and Financing)

Keyword Index

AMERICAN HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT "HIPAA", 30(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

AMERICAN HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

The following information is reproduced from the United States Department of Health and Human Services, Office for Civil Right's website located at:
www.hhs.gov/ocr/hipaa/bkgrnd.html:

> The privacy provisions of the federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), apply to health information created or maintained by health care providers who engage in certain electronic transactions, health plans, and health care clearinghouses. The Department of Health and Human Services (HHS) has issued the regulation, "Standards for Privacy of Individually Identifiable Health Information," applicable to entities covered by HIPAA. The Office for Civil Rights (OCR) is the Departmental component responsible for implementing and enforcing the privacy regulation.

Persons inquiring about HIPPA should contact the U. S. Department of Health and Human Services, Office for Civil rights at 1-866-627-7748 for more information.

REFERENCES

www.hhs.gov/ocr/hipaa/bkgrnd.html

WEBSITE LINKS

www.coworkforce.com/lab (Colorado Department of Labor and Employment)
www.hhs.gov/news/facts/privacy.html (Protecting Privacy)
www.hhs.gov/ocr/hipaa/
www.hhs.gov/ocr/hipaa/consumer_summary.pdf (Privacy and Your Health Information)
www.hhs.gov/ocr/hipaa/guidelines/overview.pdf (General Overview of Standards for Privacy of Individually Identifiable Health Information)
www.hhs.gov/ocr/privacy/enforcement/ (Compliance and Enforcement)

PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY ACT OF 2002 [SARBANES-OXLEY ACT OF 2002 (SOX)], 31(II)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The following information is reproduced from the U.S Securities and Exchange Commission's Website located at: www.sec.gov/about/laws.shtml#sox2002:

> On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002, The Act mandates a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and created the "Public Company Accounting Oversight Board," also known as the PCAOB, to oversee the activities of the auditing profession. The full text of the Act is available at: http://www.sec.gov/about/laws/soa2002.pdf. You can find links to all Commission rulemaking and reports issued under the Sarbanes-Oxley Act at: http://www.sec.gov/spotlight/sarbanes-oxley.htm.

Persons inquiring about the act should contact the Securities and Exchange Commission at 1-800-SEC-0330 for more information.

REFERENCES

www.sec.gov/about/laws.shtml#sox2002

WEBSITE LINKS

www.coworkforce.com (Colorado Department of Labor and Employment)
www.sec.gov/ (Securities and Exchange Commission)
www.sec.gov/about/laws.shtml
www.sec.gov/about/laws/soa2002.pdf (Full Text of the Act)
www.sec.gov/spotlight/sarbanes-oxley.htm (SEC Rulemaking and Reports)
www.sec.gov/cgi-bin/txt-srch-sec?section=Entire+Website&text=PCAOB&sort=rank#section0 (Public Accounting Oversight Board Regulatory Actions)

SECTION III: COLORADO YOUTH EMPLOYMENT

Keyword Index

YOUTH EMPLOYMENT
DEFINITION OF A MINOR AND COLORADO YOUTH EMPLOYMENT OPPORTUNITY ACT EXEMPTIONS, 1(III)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

Note that the Fair Labor Standards Act (FLSA) and its regulations do not permit the employment of minors in a variety of circumstances. In addition to reviewing the restrictions under the Colorado Youth Employment Opportunity Act (CYEOA), the restrictions under the FLSA should be reviewed. When both federal and state laws apply, the more stringent standard must be observed. Persons inquiring about federal law and the FLSA should contact the U.S. Department of Labor at (866) 487-9243.

DEFINITION OF A MINOR UNDER THE COLORADO YOUTH EMPLOYMENT OPPORTUNITY ACT (CYEOA):

A minor is any person under the age of eighteen, except a person who has received a high school diploma or a passing score on the general educational development examination.

EXEMPTIONS FROM THE CYEOA (These exemptions do not pertain to hazardous occupations; see Advisory Bulletin # 4 III). The Provisions of the CYEOA do not apply to the following:

- Schoolwork and supervised educational activities.
- Home chores.
- Work done for a parent or guardian, except where the parent or guardian receives any payment therefore.
- Newsboys and newspaper carriers.
- Actors, models, and performers are exempt from the age-related restrictions for minors under age fourteen.

See Advisory Bulletins # 2 (III), # 3 (III), and # 4 (III) for more information.

REFERENCES

Colorado Youth Employment Opportunity Act of 1971

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/dol/topic/youthlabor/index.htm (U.S. Department of Labor Youth and Labor Information)

Keyword Index

YOUTH EMPLOYMENT
PERMISSIBLE OCCUPATIONS, 2(III)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The following occupations are permissible for minors under the Colorado Youth Employment Opportunity Act (CYEOA). See the related Youth Employment Advisory Bulletins in this section for additional information.

Note that the Fair Labor Standards Act (FLSA) and its regulations do not permit the employment of minors in a variety of circumstances. In addition to reviewing the restrictions under the CYEOA, the restrictions under the FLSA should be reviewed. When both federal and state laws apply, the more stringent standard must be observed. Persons inquiring about federal law and the FLSA should contact the U.S. Department of Labor at (866) 487-9243.

PERMISSIBLE EMPLOYMENT BY AGE:

NO MINOR UNDER THE AGE OF NINE YEARS MAY BE EMPLOYED.

PERMISSIBLE OCCUPATIONS AT AGE NINE OR OLDER:

- Delivery of handbills, advertising, and advertising samples.
- Shoeshining.
- Gardening and care of lawns involving no power-driven lawn equipment.
- Cleaning of walks involving no power-driven snow-removal equipment.
- Casual work usual to the home of the employer and not specifically prohibited.
- Caddying on golf courses.
- Any occupation similar to those enumerated above and not specifically prohibited.

PERMISSIBLE OCCUPATIONS AT AGE TWELVE OR OLDER:

- Occupations listed above.
- Sale and delivery of periodicals.
- Door-to-door selling and delivery of merchandise.
- Baby-sitting.
- Gardening and care of lawns, including the operation of power-driven lawn equipment if such type of equipment is approved by the division or if the minor has received training conducted or approved by the division in the operation of the equipment.
- Cleaning of walks, including the operation of power-driven snow-removal equipment.
- Agricultural work, except for any such work considered hazardous under federal laws such as the Fair Labor Standards Act.

- Any occupation similar to those enumerated above and not specifically prohibited.

PERMISSIBLE OCCUPATIONS AT AGE FOURTEEN OR OLDER:

- Occupations listed above.
- Non-hazardous occupations in manufacturing. See Advisory Bulletin # 4 (III) for hazardous occupations for minors.
- Public messenger service and errands by foot, bicycle, and public transportation.
- Operation of automatic enclosed freight and passenger elevators.
- Janitorial and custodial service, including the operation of vacuum cleaners and floor waxers.
- Office work and clerical work, including the operation of office equipment.
- Warehousing and storage, including unloading and loading of vehicles.
- Non-hazardous construction and non-hazardous repair work. See Advisory Bulletin # 4 (III) for hazardous occupations for minors.
- Occupations in retail food service.
- Occupations in gasoline service establishments including (but not limited to):
- Dispensing gasoline, oil, and other consumer items.
- Courtesy service.
- Car cleaning, washing, and polishing.
- The use of hoists (where supervised).
- Changing tires. Note: No minor may inflate or change any tire mounted on a rim equipped with a removable retaining ring.
- 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.
- Bagging and carrying out customers' orders.
- Occupations in restaurants, hotels, motels, or other public accommodations. Note: minors may not operate power food slicers and grinders.
- Occupations related to parks or recreation including, but not limited to, recreation aides and conservation projects.
- Any other occupation which is similar to those enumerated above.

PERMISSIBLE OCCUPATIONS AT AGE SIXTEEN OR OLDER:

- The occupations listed above and the operation of a motor vehicle if the minor is licensed to operate the motor vehicle pursuant to Colorado Revised Statutes Article 2, Title 42.

YOUTH EXEMPTIONS

The Director may grant exemptions from some provisions of the CYEOA. Any employer, minor, minor's parents or guardian, school official, or youth employment specialist may request an exemption. Exemptions are evaluated on a case-by-case basis, and are granted or denied in accordance with the best interests of the minor. Exemption determinations involve the scrutiny of such factors as the minor's previous training and safety concerns. Note that exemptions provided by the Director of the Colorado Division of Labor do not apply to federal youth laws.

REFERENCES

Colorado Youth Employment Opportunity Act of 1971
Colorado Revised Statutes Article 2, Title 42

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/dol/topic/youthlabor/index.htm (U.S. Department of Labor Youth and Labor Information)

YOUTH EMPLOYMENT
AGE CERTIFICATES AND SCHOOL RELEASE PERMITS, 3(III)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The following information is contained in the Colorado Youth Employment Opportunity Act (CYEOA). See the related Youth Employment Advisory Bulletins in this section for additional information.

Note that the Fair Labor Standards Act (FLSA) and its regulations do not permit the employment of minors in a variety of circumstances. In addition to reviewing the restrictions under the CYEOA, the restrictions under the FLSA should be reviewed. When both federal and state laws apply, the more stringent standard must be observed. Persons inquiring about federal law and the FLSA should contact the U.S. Department of Labor at (866) 487-9243.

AGE CERTIFICATES

Any employer desiring proof of the age of any minor employee or prospective employee may require the minor to submit an age certificate. Upon request of a minor, an age certificate shall be issued by or under the authority of the school superintendent of the district or county in which the applicant resides. The Division of Labor does not provide age certificates.

SCHOOL RELEASE PERMITS

Any minor fourteen or fifteen years of age who wishes to work on school days during school hours shall first secure a school release permit. The permit shall be issued only by the school district superintendent, his agent, or some other person designated by the board of education. See the CYEOA for information on school release permits. The Division of Labor does not provide school release permits.

YOUTH EXEMPTIONS

The Director may grant exemptions from some provisions of the CYEOA. Any employer, minor, minor's parents or guardian, school official, or youth employment specialist may request an exemption. Exemptions are evaluated on a case-by-case basis, and are granted or denied in accordance with the best interests of the minor. Exemption determinations involve the scrutiny of such factors as the minor's previous training and safety concerns.

REFERENCES

Colorado Youth Employment Opportunity Act of 1971

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/dol/topic/youthlabor/index.htm (U.S. Department of Labor Youth and Labor Information)

YOUTH EMPLOYMENT
HAZARDOUS OCCUPATIONS FOR MINORS, 4(III)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The hazardous occupations listed below are prohibited for minors under the Colorado Youth Employment Opportunity Act of 1971. Note that the Fair Labor Standards Act (FLSA) and its regulations do not permit the employment of minors in a variety of circumstances. In addition to reviewing the restrictions under the CYEOA, the restrictions under the FLSA should be reviewed. When both federal and state laws apply, the more stringent standard must be observed. Persons inquiring about federal law and the FLSA should contact the U.S. Department of Labor at (866) 487-9243.

Colorado law also provides for certain exceptions to this list when the minor is fourteen years of age or older and is working pursuant to an approved educational, training, or apprenticeship program. See Colorado Revised Statutes 8-12-110 for more information.

See the related Youth Employment Advisory Bulletins in this section for additional information.

HAZARDOUS OCCUPATIONS PROHIBITED FOR MINORS

(NOTE THAT THIS LIST IS NOT ALL-INCLUSIVE; CONTACT THE DIVISION FOR MORE INFORMATION):

- Operation of any high pressure steam boiler or high temperature water boiler.
- Work which primarily involves the risk of falling from any elevated place located ten feet or more above the ground except that work defined as agricultural involving elevations of twenty feet or less above ground.
- Manufacturing, transporting, or storing of explosives.
- Mining, logging, oil drilling, or quarrying.
- Any occupation involving exposure to radioactive substances or ionizing radiation.
- Operation of the following power-driven machinery:
    - Woodworking machines
    - Metal-forming machines
    - Punching or shearing machines
    - Bakery machines
    - Paper products machines

  - Shears
  - Automatic pin-setting machines
  - Power food slicers and grinders
  - Any other power-driven machinery deemed hazardous by the Director

- Slaughter of livestock and rendering and packaging of meat.

- Occupations directly involved in the manufacture of:
  - Brick or other clay construction products
  - Silica refractory products

- Wrecking or demolition, but not including manual auto wrecking.

- Roofing.

- Occupations in excavation operations.

REFERENCES

Colorado Youth Employment Opportunity Act of 1971
Colorado Revised Statutes 8-12-110 (Hazardous Occupations for Minors)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/dol/topic/youthlabor/index.htm (U.S. Department of Labor Youth and Labor Information)
www.dol.gov/dol/topic/youthlabor/hazardousjobs.htm (U.S. Department of Labor Hazardous Jobs for Minors)

YOUTH EMPLOYMENT
COMPARISON OF COLORADO AND FEDERAL LAWS, 5(III)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

When both federal and state laws apply, the more stringent standard must be observed. Persons inquiring about federal law and the FLSA should contact the U.S. Department of Labor at (866) 487-9243. This comparison chart is a brief summary of relevant laws and is not intended to provide a comprehensive description of state and federal youth employment laws.

COVERAGE OF THE LAW

Colorado Law	Federal Law
The Colorado Youth Employment Opportunity Act applies to all employment of minors in Colorado, where employment means any occupation engaged in compensation in money or other valuable consideration, whether paid to the minor or some other person, including, but not limited to, occupation as a servant, agent, or independent contractor. Definition of a Minor A minor means any person under the age of eighteen, except an individual who has received a high school diploma or a passing score on the general educational development examination.	The Fair Labor Standards Act applies to employees of covered enterprises as defined by the law, as well as employees individually engaged in interstate commerce or in the production of goods for interstate commerce. Definition of a Minor Federal child labor rules only apply to individuals under the age of eighteen.

EXEMPTIONS

Colorado Law	Federal Law
Certain exemptions from the law exist for: Newspaper carriers Actors, models, and performers School work and supervised educational activities Home chores Work done for a parent or guardian (unless the parent or guardian receives payment for the work)	Certain exemptions from the law exist for: Newspaper carriers Actors and performers Youths engaged in making wreaths Youths younger than 16 working in a business solely owned or operated by their parents Agricultural employment Apprentices and student-learners

MINIMUM AGE REQUIREMENTS & PERMISSIBLE OCCUPATIONS

Colorado Law	Federal Law
9 year-olds are permitted employment involving: Delivery of handbills, advertising, and advertising samples. Shoeshining. Gardening and care of lawns involving no power-driven lawn equipment. Cleaning of walks involving no power-driven snow-removal equipment. Casual work usual to the home of the employer and not specifically prohibited. Caddying on golf courses. Any other occupation similar to those listed above and not specifically prohibited.	14 is the minimum age for working, unless one of the FLSA exemptions applies.

Colorado Law	Federal Law
12 year-olds are permitted employment involving: Occupations listed above. Sale and delivery of periodicals. Door-to-door selling and delivery of merchandise. Baby-sitting. Gardening and care of lawns, including the operation of power-driven lawn equipment if such type of equipment is approved by the division or if the minor has received training conducted or approved by the division in the operation of the equipment. Cleaning of walks, including the operation of power-driven snow-removal equipment. Agricultural work, except for any such work considered hazardous under federal laws such as the Fair Labor Standards Act. Any occupation similar to those enumerated above and not specifically prohibited.	14 is the minimum age for working, unless one of the FLSA exemptions applies.

Colorado Law	Federal Law
14 year-olds are permitted employment involving: Occupations listed above. Non-hazardous occupations in manufacturing. Public messenger service and errands by foot, bicycle, and public transportation. Operation of automatic enclosed freight and passenger elevators. Janitorial and custodial service, including the operation of vacuum cleaners and floor waxers. Office work and clerical work, including the operation of office equipment. Warehousing and storage, including unloading and loading of vehicles. Non-hazardous construction and non-hazardous repair work. See Advisory Bulletin # 4 (III) for hazardous occupations for minors. Occupations in retail food service. Occupations in gasoline service establishments including (but not limited to): Dispensing gasoline, oil, and other consumer items. Courtesy service. Car cleaning, washing, and polishing. The use of hoists (where supervised). Changing tires. Note: No minor may inflate or change any tire mounted on a rim equipped with a removable retaining ring. 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. Bagging and carrying out customers' orders. Occupations in restaurants, hotels, motels, or other public accommodations. Note: minors may not operate power food slicers and	14 and 15 year-olds may work in: Retail stores. Food service establishments. Gasoline service stations. The jobs 14 and 15 year-olds may perform include: Bagging and carrying out customer orders. Cashiering, selling, modeling, artwork, advertising, window trimming, or comparative shopping. Cleaning fruits and vegetables. Clean-up work and grounds maintenance, including vacuums and floor waxers, but not power-driven mowers, cutters, and trimmers. Delivery work by foot, bicycle, or public transportation Kitchen work in preparing and serving food and drinks, but not cooking or baking. Office and clerical work. Pricing and tagging goods, assembling orders, packing, or shelving. Pumping gas, cleaning and polishing cars and trucks (but not including car repair, using garage lifting racks, or working in pits). Wrapping, weighing, pricing, or stocking any goods as long as they don't work where meat is being prepared and don't work in freezers or coolers.

Colorado Law	Federal Law
grinders. Occupations related to parks or recreation including, but not limited to, recreation aides and conservation projects. Any other occupation which is similar to those enumerated above.	

Colorado Law	Federal Law
16 year-olds and older are permitted employment involving: Any occupation listed above Any occupation which involves the use of a motor vehicle if the minor is licensed to operate the motor vehicle pursuant to Colorado Revised Statutes.	16 year-olds and older are permitted employment in any non-hazardous occupation.
18 year-olds are not minors and are not subject to Colorado youth laws.	18 year-olds are not subject to Federal child labor laws.

WORK HOURS

Colorado Law	Federal Law
On school days, during school hours, no minor under the age of 16 is permitted employment except as granted by a school release permit. On school days, after school hours, no minor under the age of 16 is permitted to work in excess of 6 hours unless the next day is not a school day. Except for babysitters, no minor under the age of 16 is permitted employment between the hours of 9:30 p.m. and 5:00 a.m. unless the next day is not a school day. Minors may not work more than 40 hours per week or 8 hours in any 24-hour period unless there is a business emergency.	14 and 15 year-olds can only work: Before and after school hours. After 7:00 a.m. or before 7:00 p.m., except from June 1 through Labor Day when they can work until 9:00 p.m. 14 and 15 year-olds cannot work: More than 3 hours a day on school days. More than 18 hours per week in school weeks. More than 8 hours a day on non-school days. More than 40 hours per week when school is not in session. 16 year-olds and older may work for any number of hours at any time of the day.

PROOF OF AGE

Colorado Law	Federal Law
Colorado law does not require the use of work permits. Any employer desiring proof of the age of any minor employee or prospective employee may require the minor to submit an age certificate. Upon request of a minor, an age certificate shall be issued by or under the authority of the school superintendent of the district or county in which the applicant resides.	Federal child labor laws do not require work permits.

YOUTH EMPLOYMENT
SALE AND SERVING OF ALCOHOLIC BEVERAGES, 6(III)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

See the related Youth Employment Advisory Bulletins in this section for additional information on youth employment.

Age requirements for the sale and serving of alcoholic beverages in the State of Colorado are as follows:

3.2% BEER LICENSES

A person who is 18 years of age, and is employed by a 3.2% beer licensed establishment, is allowed to handle, stock, sell, serve, or dispense 3.2% beer in that establishment. A person under 18 years of age is permitted to "handle" or "stock" 3.2% beer if employed by a 3.2% beer licensee and under the on-premises supervision of a person who is at least 18 years of age. A person must be 21 years of age to possess, purchase or consume 3.2% beer.

ON-PREMISES LIQUOR LICENSES

Malt, vinous and spirituous liquor may be handled, dispensed, or sold (this includes wait staff and bartenders) by anyone who is at least 18 years of age and under the on-premises supervision of a person who is at least 21 years of age. EXCEPTIONS: in Retail Liquor Stores and Taverns which do not regularly serve meals, malt, vinous and spirituous liquor may only be sold by persons who are at least 21 years of age. A person of any age (in compliance with the CYEOA) may bus tables or handle empty alcohol beverage containers. A person must be 21 years of age to possess, purchase or consume beer, wine or spirits.

OFF-PREMISES LIQUOR LICENSES

Employees of retail liquor stores and liquor licensed drug stores must be at least 21 years of age to sell or distribute beer, wine or spirits.

Persons inquiring about age requirements for the sale and serving of alcoholic beverages should contact the Colorado Department of Revenue, Liquor/Tobacco Enforcement Division at 303.205.2306 for more information.

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.revenue.state.co.us/liquor_dir/home.asp (Colorado Liquor/Tobacco Enforcement Division)
www.revenue.state.co.us/liquor_dir/wrap.asp?incl=publications/infopam1 (Colorado Liquor Enforcement Age Requirements)

www.revenue.state.co.us/liquor_dir/LAW1CCR.htm (Colorado Code of Regulations, Liquor and Tobacco Enforcement)
http://www.revenue.state.co.us/liquor_dir/pdfs/04licenseehandbook.pdf (Colorado Liquor and Beer Licensee Handbook)

YOUTH EMPLOYMENT
WORK HOURS, 7(III)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

The following information is contained in the Colorado Youth Employment Opportunity Act (CYEOA). See the related Youth Employment Advisory Bulletins in this section for additional information.

Note that the Fair Labor Standards Act (FLSA) and its regulations do not permit the employment of minors in a variety of circumstances. In addition to reviewing the restrictions under the CYEOA, the restrictions under the FLSA should be reviewed. When both federal and state laws apply, the more stringent standard must be observed. Persons inquiring about federal law and the FLSA should contact the U.S. Department of Labor at (866) 487-9243.

SCHOOL DAY WORK HOURS

On school days, during school hours, no minor under the age of sixteen shall be permitted employment except as provided by a school release permit pursuant to 8-12-113.
After school hours no minor under the age of sixteen shall be permitted to work in excess of six hours unless the next day is not a school day.

NIGHTTIME WORK HOUR RESTRICTIONS

Except for babysitters, no minor under the age of sixteen shall be permitted to work between the hours of nine-thirty p.m. and five a.m., unless the next day is not a school day. An exception to this rule is a minor employed as an actor, model, or performer as authorized by section 8-12-104 (2).

No employer shall be permitted to work a minor more than forty hours in a week or more than eight hours in any twenty-four-hour period. In case of emergencies which may arise in the conduct of an industry or occupation (not subject to a wage order promulgated under article 6 of this title) the director may authorize an employer to allow a minor to work more than eight hours in a twenty-four hour period. In such emergencies an employee shall be paid at a rate of one and one-half times his time rate as determined in accordance with the provisions of section 8-6-106 for each hour worked in excess of forty hours in a week.

SEASONAL EMPLOYMENT EXCEPTION

In seasonal employment for the culture, harvest, or care of perishable products where wages are paid on a piece basis, as determined in accordance with the provisions of 8-6-106, a minor fourteen years of age or older may be permitted to work hours in excess of the nighttime

limitations described above; but in no case is he permitted to work more than twelve hours in any twenty-four hour period nor more than thirty hours in any seventy-two-hour period; except that a minor fourteen or fifteen years of age may work more than eight hours per day on only ten days in any thirty-day period. Overtime wage provision of the above nighttime section shall not apply to this exception.

REFERENCES

Colorado Youth Employment Opportunity Act of 1971
Colorado Revised Statutes 8-12-105 (Hours of Work)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)
www.dol.gov/dol/topic/youthlabor/index.htm (U.S. Department of Labor Youth and Labor Information)

Keyword Index

YOUTH EMPLOYMENT
MOTOR VEHICLE OPERATION, 8(III)

THE COLORADO DIVISION OF LABOR DOES NOT GIVE LEGAL ADVICE.
CONTACT AN ATTORNEY FOR LEGAL ADVICE.

See the related Youth Employment Advisory Bulletins in this section for additional information.

Note that the Fair Labor Standards Act (FLSA) and its regulations do not permit the employment of minors in a variety of circumstances. In addition to reviewing the restrictions under the CYEOA, the restrictions under the FLSA should be reviewed. When both federal and state laws apply, the more stringent standard must be observed. Persons inquiring about federal law and the FLSA should contact the U.S. Department of Labor at (866) 487-9243.

Motor Vehicle Operation
The Colorado Youth Employment Opportunity Act provides that any minor sixteen years of age or older shall be permitted employment in any occupation which involves the use of a motor vehicle if the minor is licensed to operate the motor vehicle for such purpose pursuant to Colorado Revised Statutes, Title 42, Article 2. However, such motor vehicle use is subject to the work hour and hazardous occupation limitations as described in the CYEOA and Advisory Bulletins 7 (III) and 4 (III). In addition, Colorado law provides the following restrictions on minor drivers (See Colorado Revised Statutes 42-2-101 et seq.):

No person under the age of eighteen years shall drive any motor vehicle used to transport explosives or inflammable material or any motor vehicle used as a school bus for the transportation of pupils to or from school. No person under the age of eighteen years shall drive a motor vehicle used as a commercial, private, or common carrier of persons or property unless such person has experience in operating motor vehicles and has been examined on such person's qualifications in operating such vehicles. The examination shall include safety regulations of commodity hauling, and the driver shall be licensed as a driver or a minor driver who is eighteen years of age or older.

No person under seventeen years of age shall drive any motor vehicle between the hours of 12 midnight and 5 a.m. unless accompanied by a parent, guardian, or other responsible adult as referenced in 42-2-108 or unless driving to the person's place of employment or from the person's place of employment to his or her residence. A person who is under seventeen years of age and who is driving to the person's place of employment or from the person's place of employment to his or her residence between the hours of 12 midnight and 5 a.m. shall have in his or her possession, in addition to a valid minor driver's license, a statement signed by his or her employer or parent, guardian, or other responsible adult stating the time that such person arrives at and leaves his or her place of employment. This curfew is not applicable in a city, county, or city and county that has enacted its own curfew.

All persons inquiring about motor vehicle operation and minors must contact the U.S. Department of Labor at (866) 487-9243 for information on federal law and additional restrictions that may apply.

REFERENCES

Colorado Youth Employment Opportunity Act of 1971
Colorado Revised Statutes 8-12-109 (Permissible Occupations at Age Sixteen)
Colorado Revised Statutes 42-2-105 (Special Restrictions on Certain Drivers)
Colorado Revised Statutes 42-2-105.5 (Restrictions on Minor Drivers under 17)

WEBSITE LINKS

www.coworkforce.com/ (Colorado Department of Labor and Employment)

SECTION IV: STATE OF COLORADO AGENCY AND DEPARTMENT REFERRAL INFORMATION

Keyword Index

COLORADO ATTORNEY GENERAL

FACT SHEET

The Colorado Attorney General is one of four independently elected statewide offices in Colorado and was established by the state constitution upon statehood in 1876.

The Attorney General and the Department of Law, which Attorney General John W. Suthers oversees (collectively referred to as the Colorado Attorney General's Office), represents and defends the legal interests of the people of the State of Colorado and its sovereignty. The Attorney General exercises the responsibilities given to his office by the Colorado Constitution, statutes enacted by the Colorado General Assembly and the people of the state of Colorado, and the common law.

The Attorney General has primary authority for enforcement of consumer protection and antitrust laws, prosecution of criminal appeals and some complex white-collar crimes, the Statewide Grand Jury, training and certification of peace officers, and certain natural resource and environmental matters.

The Attorney General's Office also works concurrently with Colorado's 22 district attorneys and other local, state, and federal law enforcement authorities to carry out the criminal justice responsibilities and activities of the office.

The Attorney General is also the chief legal counsel and advisor to the executive branch of state government including the governor, except as otherwise provided by statute, all of the departments of state government, and to the many state agencies, boards, and commissions.

The following is a summary description of the office and responsibilities of the Colorado Attorney General.

OFFICE OF THE ATTORNEY GENERAL – Manages the department, sets policy, oversees civil and criminal appellate work, and directs major litigation. The office includes the Attorney General, Chief Deputy Attorney General, the Solicitor General, the Assistant Solicitor General/Criminal Appeals, the Deputy Attorney General for Legal Policy and Governmental Affairs and the Communications Director.

CONSUMER PROTECTION SECTION – Protects consumers and legitimate businesses against fraud and maintains a competitive business environment by (1) enforcing state and federal consumer protection and antitrust laws, including Colorado's telemarketing no-call, and charitable solicitation laws; (2) enforcing Colorado's laws on consumer lending, debt collection, rent-to-own, and credit repair; (3) educating consumers and businesses through outreach and educational programs; (4) advocating on behalf of the Office of Consumer Counsel for residential, small business and agricultural public utility ratepayers; and (5) implementing and enforcing Colorado's rights and obligations under the national tobacco settlement agreements and related tobacco laws and tobacco education efforts.

NATURAL RESOURCES AND ENVIRONMENT SECTION – Protects and defends the interests of the State and its citizens in matters concerning water rights, federal and interstate water issues, oil and gas, mining and minerals, wildlife, state parks and state trust lands, radiation control, storage and disposal of solid and hazardous wastes, and cleanup, improvement and protection of our land, water, and air resources. The Section represents and advises the Department of Natural Resources and the Department of Public Health and Environment and their boards and commissions on issues regarding the regulation, use, conservation, and enhancement of Colorado's natural resources and environment.

APPELLATE SECTION – Protects the citizens of Colorado through prosecution of criminal appeals in Colorado and federal courts.

CRIMINAL JUSTICE SECTION – Assists local prosecutors and law enforcement agencies throughout the state on matters that occur in more than one local jurisdiction, including presenting cases to the statewide grand jury, and serving as special district attorneys as requested. Provides special assistance to district attorneys in death penalty and gang activity cases. Administers the Peace Officers Standards and Training Board, which oversees the training and certification of peace officers throughout the state, and provides services to the victims of criminal cases on appeal and of crimes being prosecuted by the Attorney General's office. Coordinates the prosecution of foreign fugitives. Represents the Department of Public Safety including the State Patrol, Colorado Bureau of Investigation, and the Division of Criminal Justice. Prosecutes specific criminal white collar crimes and multi-jurisdictional matters, including Medicaid, workers' compensation, insurance, tax, election, securities fraud, and environmental crimes.

CIVIL LITIGATION & EMPLOYMENT LAW SECTION – Defends the State of Colorado and its taxpayers against claims in personal injury, property damage, and civil rights cases filed against State agencies or State employees. Represents the State in procurement and construction litigation and provides legal advice on construction disputes. Represents and advises the Departments of Transportation and Corrections, including condemnation and eminent domain proceedings and inmate litigation, the Colorado Transportation Commission, and the Colorado State Board of Parole. The Employment Law division helps state government manage its workforce of over 30,000 employees through legal counsel and employee training to state agencies and employees on personnel and employment law matters, including issues involving workplace violence, Title VII, Americans with Disabilities Act, Age Discrimination in Employment Act, Fair Labor Standards Act, Family Medical Leave Act, alcohol and drug testing, retaliation, whistleblowing and breach of employment contracts. Defends the state and its agencies in lawsuits involving personnel and employment issues brought before state and federal courts and the State Personnel Board. Represents and advises the Colorado Civil Rights Division in the investigation of civil rights claims and prosecutes claims on behalf of the Civil Rights Commission.

STATE SERVICES SECTION – Represents and advises the governor and other elected state officials, the administrative parts of the Judicial Branch, the State Board of Education, over 20 Colorado-supported universities, colleges and community colleges. Represents the Departments of Education, Higher Education, Human Services, Health Care Policy and Financing, Labor and

Employment, Personnel and Administration (e.g., state procurement and contracting, civil service), the health and administrative divisions of Public Health & Environment, the Board of Assessment Appeals, and the Public Utilities Commission.

BUSINESS AND LICENSING SECTION – Protects Colorado citizens by providing legal counsel in the regulation of professions, including doctors, dentists, nurses, realtors, and hearing aid dealers. The Section represents and advises the 28 state professional licensing and occupational regulatory boards on rulemaking, licensing, adjudicating and disciplinary action and prosecutes licensing violations and disciplinary actions as directed by the boards. The Section also enforces regulations regarding pesticide applicators, pet animal care facilities, agricultural market orders, livestock fraud and health laws. Represents and advises the Department of Regulatory Agencies and its Divisions of Insurance, Banking and Financial Services, and the Securities Commission, the Department of Agriculture, the State Fair, the Department of Revenue, the Civil Rights Commission, the State Personnel Board, and the staff of the Public Utilities Commission regarding electricity, gas, telecommunications, water and public transportation utilities.

Keyword Index

COLORADO ATTORNEY GENERAL CONTACT INFORMATION

Colorado Attorney General
1525 Sherman St.
7th floor
Denver, CO 80203
(303) 866-4500
FAX: (303) 866-5691

- Consumer Complaint Line - in Denver and Out of State (303) 866-5189
- Consumer Complaint Line - Outside of Denver but in Colorado (800) 222-4444

- Collection Agency Consumer Complaints & Information (303) 866-5304
- Collection Agency Licensing (303) 866-5706

- Supervised Lending Consumer Complaints & General Information (303) 866-4494
- Supervised Lender Licensing (303) 866-4527

Website
www.ago.state.co.us/index.cfm

E-mail Addresses
Attorney General - attorney.general@state.co.us
Uniform Consumer Credit Code - uccc@state.co.us
Collection Agency Board - cab@state.co.us
Consumer Protection - stop.fraud@state.co.us
Medicaid Fraud - mfcu.investigations@state.co.us
Peace Officers Standards and Training - post@state.co.us

Keyword Index

COLORADO CIVIL RIGHTS DIVISION

FACT SHEET

The Colorado Civil Rights Division, together with the Colorado Civil Rights Commission, is the state agency established in 1957 to administer and enforce Colorado's antidiscrimination laws in employment, housing and public accommodations. The agency's mission is:

To assure that all Coloradoans are afforded the equal protection of the law.

The Commission and Division each play their respective roles, conducting enforcement activities and engaging in prevention efforts to raise awareness of discriminatory practices and Colorado's antidiscrimination statutes.

The Division staff serves Colorado citizens, public and private employers of all sizes, housing providers, and communities across the state by:

- Investigating complaints of discrimination;
- Performing intake and conducting appropriate dispute resolution, including mediation and settlement negotiations;
- Issuing determinations as to whether there is probable cause to believe that illegal discrimination has occurred;
- Conducting outreach and education on laws and issues regarding civil rights to ensure compliance.

The Division works in close cooperation with federal and local agencies and community-based groups whose missions parallel its own. The Division maintains formal work-sharing agreements with the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD) to avoid duplication of efforts on those cases wherein joint jurisdiction (state and federal) exists.

Colorado law prohibits discrimination in employment, housing, public accommodations, and advertising based on:

Race
Color
National Origin
Ancestry
Sex
Creed
Religion
Disability (Mental and Physical)
Familial Status (Housing Only)
Marital Status (Housing and Public Accommodations Only)
Marriage to a co-worker (Employment Only)
Age (Employment Only)
Sexual Orientation (Employment Only)

Keyword Index

COLORADO CIVIL RIGHTS DIVISION CONTACT INFORMATION

1560 Broadway, Suite 1050
Denver, CO 80202
(303) 894-2997 - Phone
(303) 894-7830 - Fax
(800) 262-4845 - Toll-Free English/Spanish

Website
www.dora.state.co.us/civil-rights/

E-mail Address
ccrd@dora.state.co.us

Keyword Index

COLORADO LABOR MARKET INFORMATION

FACT SHEET

Labor market information and statistics are available through the Colorado Department of Labor and Employment. Such information may be of particular interest to job seekers, persons changing careers, employers, journalists, economists, and researchers. Labor market information (LMI) customer service specialists can provide information on the following topics (also available on the LMI website):

Wages in Colorado
- By industry
- By occupation

Cost of Living
- Denver Metro region
- United States

Unemployment
- Colorado by county
- Historical
- Monthly press releases

Data Archives
- Labor force employment and unemployment 1998-2001
- Wage and salary data, 2000-2001

Employment & Payroll Jobs
- Job vacancy surveys
- Employed persons by county
- Industries by county
- Industries Statewide and Metro regions
- Occupational projections in Colorado
- Occupational projections in Denver Metro
- Occupational projections in Colorado Springs

Statistics for Affirmative Action

Keyword Index

COLORADO LABOR MARKET INFORMATION CONTACT INFORMATION

Address, Phone, & Fax
Labor Market Information
633 17th Street, Suite 600
Denver, CO 80202-3660

Administration	(303) 318-8850
Area labor information	(303) 318-8850
CES survey	(303) 318-8854
ES-202	(303) 318-8852
Toll-free (ES-202/CES)	(800) 447-1276
Occupational planning information	(303) 318-8890
Price index (consumer)	(303) 318-8850
WRA (Toll-free)	(877) 224-6081

Website
http://lmigateway.coworkforce.com/lmigateway/

E-mail Address
lmi@state.co.us

Keyword Index

COLORADO DIVISION OF OIL AND PUBLIC SAFETY

FACT SHEET

The Division of Oil and Public Safety consists of the Field Inspection Section, the Remediation Section, the State Fund Section, and Boiler Inspection and Public Safety (Explosives, Carnivals, and Public School Construction). These programs ensure the implementation of statutory mandates, requirements, codes, and standards needed to maintain a safe work, educational, and living environment.

- The Field Inspection Section enforces standards governing the registration, installation, operations and closure of underground and aboveground storage tanks containing petroleum and other regulated materials.

- The Remediation Section designs and enforces cleanup standards governing the remediation of petroleum contamination.

- The State Fund Section administers the Petroleum Storage Tank Fund.

- The Boiler Inspection Section enforces standards governing the installation, operation, and closure of boilers and pressure vessels.

- The Public Safety Section enforces standards for the manufacture, storage, sale, and transportation of explosives; public school building construction; and the operation of carnivals and amusement parks.

Keyword Index

COLORADO DIVISION OF OIL AND PUBLIC SAFETY
CONTACT INFORMATION

Address, Phone, & Fax
Division of Oil and Public Safety
Colorado Department of Labor and Employment
633 17th Street, Suite 500
Denver, CO 80202-3660

Main number: (303) 318-8500

Reporting a suspected or confirmed release - Petroleum Storage Tanks

Weekday business hours:	(303) 318-8547
After hours leak report:	(877) 518-5608

General technical questions (technical assistance line):	(303) 318-8547
General reimbursement fund questions:	(303) 318-8513
Schedule public file review:	(303) 318-8525
Questions about petroleum storage tank registration	(303) 318-8507
Questions on liquid propane gas	(303) 318-8481
Requests for petroleum storage tank inspections	(303) 318-8507
Complaints about Service Stations	(303) 318-8507
Permit applications for Installation or upgrades of Tank Systems	(303) 318-8505

Reporting an emergency situation: (fire, explosion or accident)

Petroleum Storage Tanks (weekday business hours)	(303) 318-8547
(evenings & weekends)	(877) 518-5608
Boiler or Pressure Vessels (including LPG tanks)	(303) 318-8484
OR	(303) 318-8481

Website
http://oil.cdle.state.co.us/

E-mail Addresses
oil.publicsafety@state.co.us

Keyword Index

COLORADO DIVISION OF WORKERS' COMPENSATION

FACT SHEET

MISSION STATEMENT

The Division of Workers' Compensation provides state of the art information to enable injured workers, employers, insurance carriers and self-insured employers to comply with the statutory requirements of the Workers' Compensation Act and to encourage safety on the job and containment of costs, and when injuries occur, understandable, fair, useful and efficient processes of resolution at a reasonable cost.

OVERVIEW

The Division of Workers' Compensation is a Colorado state agency that administers the mandatory workers' compensation insurance program. The Division provides information to the public to help them understand the workers' compensation system, provides dispute resolution services, and enforces compliance with the laws and rules of workers' compensation. Customer Service is always available for general questions about the workers' compensation system such as:

- How to file a claim.
- Injured workers' rights and obligations and follow-up of their claim.
- Employers' obligations under the law regarding insurance, where to purchase insurance, filing claims for injured employees and responsibilities as employers.
- Procedure for insurance companies on handling claims.
- Responsibilities of medical professionals, medical fee schedules and billing requirements.
- Information for employers seeking to self insure or implement safety and loss control programs that lead to a certification for reduced premiums.

The Division provides a variety of services including Dispute Resolution, Claims Management, Premium Cost Containment Certification, Research and Statistics, Self-Insurance, Medical Cost Containment, Medical Services Delivery and Coverage Enforcement.

Keyword Index

COLORADO DIVISION OF WORKERS' COMPENSATION
CONTACT INFORMATION

Address, Phone, & Fax
Division of Workers' Compensation
633 17th Street, Suite 400
Denver, CO 80202-3660

(303) 318-8700 (Customer Service)
(888) 390-7936 (Toll-Free In-State)
(800) 685-0891 (Spanish)
(303) 318-8710 (Fax)

Website
www.coworkforce.com/DWC/

Keyword Index

COLORADO UNEMPLOYMENT INSURANCE

FACT SHEET

The Colorado Unemployment Insurance (UI) Program provides temporary and partial wage replacement to workers who have become unemployed through no fault of their own. The program is funded by employer paid taxes and provides benefits to those who meet the eligibility requirements of the Colorado Employment Security Act. The intent of the program is to aid in maintaining the economic stability within a community by safeguarding the income and purchasing power of the unemployed worker. The program is administered by the Division of Employment and Training of the Department of Labor and Employment.

Unemployment insurance benefits questions and claims may be processed over the phone or online.

Keyword Index

COLORADO UNEMPLOYMENT INSURANCE CONTACT INFORMATION

Address, Phone, & Fax
251 E. 12th Ave.
Denver, CO 80203-2272

U.I. Benefits	(303) 318-9000
Toll-free	(800) 388-5515
U.I. Appeals	(303) 318-9299
Toll-free	(800) 405-2338
CUBline	(303) 813-2800
Toll-free	(888) 550-2800
TDD (for the hearing impaired)	(303) 318-9016
Toll-free	(800) 894-7730
U.I. Tax	(303) 318-9100
Toll-free	(800) 480-8299

Website
www.coworkforce.com/UIB/

Keyword Index

COLORADO DEPARTMENT OF REVENUE

FACT SHEET

The Department of Revenue processes state sales, fuel, motor vehicle, gaming, liquor and income taxes. It also runs the State Lottery and oversees licensing and enforcement of horse and greyhound racing, sales of liquor and tobacco, and limited gaming. The Department consists of five business groups:

- The *Office of the Executive Director* provides program analysis, financial and personnel services, and internal auditing for the Department.

- The *Information Technology Division* provides computer support for the Department, in addition to providing support for and coordinating the management of, a statewide vehicle title and registration computer system for approximately 115 county offices.

- The *Taxation Business Group* provides a variety of services including, but not limited to, the administration of sales taxes, withholding taxes, income taxes, property tax/rent and heat/fuel grant programs, and the severance tax program.

- The *Motor Vehicle Business Group* provides a variety of services including driver's licensing, emissions compliance, vehicle title and registration, and fuel tax collections.

- The *Enforcement Business Group* provides a variety of services including the administration of the State Lottery; racing licensing, enforcement, and regulatory oversight; liquor and tobacco licensing and enforcement; and limited gaming licensing and enforcement.

Keyword Index

COLORADO DEPARTMENT OF REVENUE CONTACT INFORMATION

Colorado Taxes

Telephone Numbers:
Customer Service Representatives are available Monday through Friday, 8 a.m. to 4:30 p.m. Mountain Time unless otherwise noted, except state holidays.

Call Center for Colorado Taxes:	(303) 238-SERV (7378)
TeleFile (Individual Income Tax):	(303) 238-FAST (3278)
Income Tax Forms (current year):	(303) 238-FAST (3278)
Income Tax Account and Refund Information:	(303) 238-FAST (3278)
Sales Tax/Exemption Certificate Verification:	(303) 238-FAST (3278)
Sales Tax Rates by Account Number:	(303) 238-FAST (3278)
Sales Tax Rates by City or County:	(303) 238-FAST (3278)
EFT/Electronic Payment Helpline:	(303) 205-8333
Fuel Tax/IFTA Helpline:	(303) 205-8205

Tax Auditing and Compliance (for enforcement activities, business seizures and tax delinquencies)
Monday through Friday, 8 a.m. to 5 p.m. (303) 866-3711

Office Collections (for collections)
Monday through Friday, 8 a.m. to 5 p.m. (303) 866-4440

Fair Share
Monday through Friday, 7:30 a.m. to 4:45 p.m. (303) 866-5535

Service Centers
Taxpayer Service Division (for general information, business tax account registration and tax assistance)
Tax Auditing and Compliance Division (for enforcement activities, business seizures and tax delinquencies)
Mailing Address

Colorado Division of Gaming

Website: www.revenue.state.co.us/Gaming/home.asp

Lakewood
1881 Pierce St., Suite 112
Lakewood, CO 80214-1496
(303) 205-1355
(303) 205-1342 (fax)

Central City/Blackhawk
142 Lawrence St.
P.O. Box 721
Central City, CO 80427
(303) 582-0529
(303) 582-0535 (fax)

Cripple Creek
433 E. Carr Ave.
P.O. Box 1209
Cripple Creek, CO 80813
(719) 689-3362
(719) 689-3366 (fax)

Liquor/Tobacco Enforcement

Lakewood
1881 Pierce Street, Suite 108A
Lakewood, CO 80214
Phone: (303) 205-2300
Fax: (303) 205-2341

Colorado Springs
4420 Austin Bluffs Parkway
Colorado Springs, CO 80918
Phone: (719) 594-8702
Fax: (719) 594-8713

Greeley
800 8th Avenue, Suite 325
Greeley, CO 80631
Phone: (970) 356-3992
Fax: (970) 378-8896

Grand Junction
222 S 6th Street, Suite 425
Grand Junction, CO 81501
Phone: (970) 248-7133
Fax: (970) 248-7139

Auto Industry (Dealers)

Dealer Board	(303) 205-5696
Dealer / Salesperson Licensing	(303) 205-5604
Dealer Compliance	(303) 205-5746
Dealer Investigation	(303) 205-5746
Fax	(303) 205-5977
Colorado Springs Dealer Compliance	(719) 594-8704
Colorado Springs Dealer Investigation	(719) 594-8711
Ft Collins Dealer Investigation	(970) 494-9807
Grand Junction Dealer Investigation	(970) 248-7011

E-Mail: Dealers@spike.dor.state.co.us

Auto Industry Division Public Relations
Mailing Address:
Auto Industry Division
Public Information Officer
1881 Pierce St #142
Lakewood, CO 80214
Phone**:** (303) 205-5784
Fax**:** (303) 205-5977

Executive Director's Office

E-mail: edo@spike.dor.state.co.us
Telephone: (303) 866-3091
Mailing Address:
Colorado Department of Revenue
Executive Director's Office
1375 Sherman St., Room 409
Denver, CO 80261

Racing Events

Telephone: (303) 205-2990
racing@spike.dor.state.co.us

Colorado Lottery

Headquarters
Wells Fargo Building
201 W. 8th St., Suite 600
Pueblo, CO 81003
Telephone: (719) 546-2400
Fax: (719) 546-5208
Hours of Operation for ticket sales and claims: 8:00 a.m. to 5:00 p.m.

Fort Collins Office
1121 West Prospect Road, Building D
Fort Collins, CO 80526-5664
Telephone: (970) 416-5993
Hours of Operation for ticket sales and claims: 8:00 a.m. to 12:00 p.m. and
1:00 p.m. to 4:00 p.m.

Denver Office
720 S. Colorado Blvd.
The Galleria, Suite 110

Denver, CO 80246
Telephone: (303) 759-3552
Fax: (303) 759-6847
Hours of Operation for claims: 8:00 a.m. to 5:00 p.m.

Grand Junction Office
State Office Building
222 S. 6th St., Room 112
Grand Junction, CO 81501
Telephone: (970) 248-7053
Hours of Operation: 9:00 a.m. to 1:00 p.m.

Motor Carrier Services

SUBJECT	AGENCY	TELEPHONE
Accidents Reporting	Colorado State Patrol	(303) 239-4500
Operating Authority	Public Utilities Commission	(303) 894-2000
	MCS One Stop Shopping	(303) 205-5691
Carrier Safety Ratings	Colorado State Patrol	(303) 239-4500
Clean Air Act	MV Emissions Section	(303) 205-5603
Commercial Drivers License	MV CDL Section	(303) 205-5638
	MCS One Stop Shopping	(303) 205-5691
Driver Qualifications	Colorado State Patrol	(303) 232-5602
	MCS Port of Entry Section	(303) 205-5691
Drug Testing	Colorado State Patrol	(303) 239-4500
Hazardous Materials Transp.	Colorado State Patrol	(303) 239-4500
	MCS Port of Entry Section	(303) 205-5691
Hazardous Waste Transp.	Colorado State Patrol	(303) 239-4500
Hours of Service	Colorado State Patrol	(303) 239-4500
	MCS Port of Entry Section	(303) 205-5691
Intelligent Transp. Systems	CDOT	(303) 757-9801
Intermodal Surface Transp. Efficiency Act (*ISTEA)	CDOT	(303) 757-9801
Interstate Registration	MCS IRP Section	(303) 205-5968
	MCS One Stop Shopping	(303) 205-5691
Intrastate Registration	MV Registration Section	(303) 205-5607
	County Registration Offices	Various
Longer Combination Vehicles	CDOT Extra Legal Permitting	(303) 757-9539
	MCS One Stop Shopping	(303) 205-5691
	MCS Port of Entry Section	(303) 205-5691
Motor Carrier Safety Assistance Program	Colorado State Patrol	(303) 239-4500
	MCS Port of Entry Section	(303) 205-5691

Nuclear Materials Transp.	Colorado State Patrol	(303) 239-4500
Safety Compliance Reviews	Colorado State Patrol	(303) 239-4500
Safety Regulations	Colorado State Patrol	(303) 239-4500
	MCS Port of Entry Section	(303) 205-5691
Single State Registration Program	Public Utilities Commission	(303) 894-2000
Size and Weight Requirements	MCS Port of Entry Section	(303) 205-5691
	MCS One Stop Shopping	(303) 205-5691
Special Fuel Requirements	MCS Fuel Section	(303) 205-5968
Speed Limits	Colorado State Patrol	(303) 239-4500

Motor Vehicle Business Group

The main office location of the **Colorado Motor Vehicle Business Group** is
1881 Pierce St.
Lakewood, CO 80214
Telephone: (303) 205-5600
Hours of Operation: M-F, 8:00 a.m. - 5:00 p.m.

Titles and Registrations

1881 Pierce Street
Lakewood, Colorado
Telephone: (303) 205-5607
Fax: (303) 205-5978
Hours of Operation: 8:00 a.m. to 5:00 p.m.
Mail Correspondence to:
Motor Vehicle Business Group
Department of Revenue
Registration Section
Denver, Colorado 80261-0016

Keyword Index

COLORADO SECRETARY OF STATE FACT SHEET

The mission of the Department of State is to serve the public by performing constitutional and statutory duties of collecting, securing, and communicating information, ensuring the integrity of elections, and enhancing commerce. Information and services at the Secretary of State may be categorized into 4 areas: the elections center, business center, information center, and licensing center.

Keyword Index

COLORADO SECRETARY OF STATE CONTACT INFORMATION

Administration Division: Provides management and central support services for the Department of State such as budgeting, accounting, and human resources; monitors the use of the State Seal; certifies the interest rate on appealed money judgments; files Acts passed by the Legislature; and conveys information within our office to the public; plans and monitors legislation that affects the Department of State; and responds to inquires from the press and public.

Address:
Colorado Department of State
1700 Broadway, Suite 250
Denver CO 80290

Telephone:	(303) 894-2200
Fax:	(303) 869-4860
TDD:	(303) 869-4867
Email:	administration@sos.state.co.us
Hours of Operation:	Monday - Friday, 7:30 a.m. - 5:00 p.m.

Business Division: Files documents relating to various business organizations and business names; files trade names for certain business entities; registers trade marks; files financing statements, notices of security interests in agricultural products; federal tax liens; and other miscellaneous statutory liens; performs searches of those records; provides copies of filed documents; issues related certificates; and provides pertinent educational services.

Address:
Colorado Department of State
1700 Broadway, Suite 200
Denver CO 80290

Telephone:	(303) 894-2200 & press 2
Fax:	(303) 869-4864
Email:	business@sos.state.co.us
Hours of Operation:	Monday - Friday, 7:30 a.m. - 5:00 p.m.

Elections Division: Supervises elections, maintains statewide voter registration file, verifies initiative petition signatures, and administers the Campaign Finance Laws; serves as the filing office for unincorporated municipalities and for conflict of interest disclosure statements; and registers lobbyists.

Address:
Colorado Department of State
1700 Broadway, Suite 270
Denver CO 80290

Telephone:	(303) 894-2200
Fax:	(303) 869-4861
Email:	elections@sos.state.co.us
Hours of Operation:	Monday - Friday, 7:30 a.m. - 5:00 p.m.

Licensing Division: Issues Bingo/Raffles licenses and inspects facilities and operations of these games to ensure compliance with Bingo/Raffle laws, commissions notaries public and administers the Notary law, collects and disseminates information filed by charitable organizations that solicit contributions in Colorado and their professional fundraisers, manages the Colorado Administrative Rules Code, and provides rulemaking and guidance for state agencies under the Uniform Electronic Transactions Act (UETA) Program.

Address:
Colorado Department of State
1700 Broadway, Suite 300
Denver CO 80290

Telephone:	(303) 894-2200
Fax:	(303) 869-4871
Emails:	licensing@sos.state.co.us charitable@sos.state.co.us rules@sos.state.co.us
Hours of Operation:	Monday - Friday, 7:30 a.m. - 5:00 p.m.

Information Technology Division: Supports the information systems needs of the entire Secretary of State's office. Maintains the Departmental infrastructure consisting of multiple servers, personal computers, networking equipment, firewall, telephony, peripherals, and other information technology equipment to support the data and imaging needs of the Department. Also supports the web presence of the Secretary of State.

Address:
Colorado Department of State
1700 Broadway, Suite 350
Denver CO 80290

Telephone:	(303) 894-2200
Fax:	(303) 869-4878
Email:	operations@sos.state.co.us
Hours of Operation:	Monday - Friday, 7:30 a.m. - 5:00 p.m.

SECTION V: PHONE AND WEBSITE CONTACT LISTS

COLORADO STATE AGENCIES, DIVISIONS, AND RESOURCES

(www.colorado.gov)

Colorado Agency	Phone Number	Website
Attorney General	(303) 866-4500	http://www.ago.state.co.us
Business Resource Guide	(303) 592-5920	http://www.state.co.us/oed/guide/
Civil Rights Division	(303) 894-2997 (800) 262-4845	www.dora.state.co.us/civil-rights/
Colorado Revised Statutes (All Colorado Law)	N/A	http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0
Consumer Health Protection (Restaurant Inspection)	(303) 692-3620	http://www.cdphe.state.co.us/cp/index.html
Directory Assistance (Colorado Government)	(303) 866-5000	www.colorado.gov
Division of Insurance	(303) 894-7490	http://www.dora.state.co.us/insurance/
Division of Labor (Labor Standards Office) Colorado Springs	(303) 318-8441 (888) 390-7936 (719) 576-0447	www.coworkforce.com/LAB/
Employment Services (General)	(303) 318-8800	www.coworkforce.com/EMP/
Foreign Labor Certification	(303) 318-8831	www.coworkforce.com/EMP/foreign_Labor_Cert.asp
Judicial Branch	(303) 861-1111	http://www.courts.state.co.us/
Labor Market Information	(303) 318-8850	www.coworkforce.com/LMI/
Small Business Information	(303) 592-5920	http://www.state.co.us/oed/guide/
Small Claims Court (State Court Administrator) Small Claims Forms and Information	(303) 861-1111	http://www.courts.state.co.us/district/counties.htm http://www.courts.state.co.us/chs/court/forms/smallclaims/smallclaims.html http://www.courts.state.co.us/exec/pubed/brochures/smallclaimsweb.pdf
State Employee Phone Directory	N/A	http://www.state.co.us/test9/telemp/telemp_search.cfm
State Patrol	(303) 239-4500	http://www.csp.state.co.us/
Unemployment Insurance Claim Filing Cubline Employer Inquiries Appeals UI Tax	 (303) 318-9000 (800) 388-5515 (303) 813-2800 (888) 550-2800 (303) 318-9055 (303) 318-9299 (800) 405-2338 (303) 318-9100	www.coworkforce.com/UIB/ http://www.coworkforce.com/uiic/ Claimant Handbook: http://www.coworkforce.com/UIB/Claimant%20Handbook/Claimant_Handbook.asp http://www.coworkforce.com/UIB/Appeals/appeals_process.htm
Workers' Compensation	(303) 318-8700	www.coworkforce.com/DWC/
Workforce Center Locations	(303) 318-8800	www.coworkforce.com/EMP/WFCs.asp

COLORADO STATE GOVERNMENT DEPARTMENTAL LISTINGS

Colorado Department	Phone Number	Website
Agriculture	(303) 239-4100	www.ag.state.co.us/
Corrections	(719) 579-9580	www.doc.state.co.us/index.html
Education	(303) 866-6600	www.cde.state.co.us/index_home.htm
Health Care Policy and Financing	See website	www.chcpf.state.co.us
Higher Education	(303) 866-2723	www.state.co.us/dhe/index.html
Human Services	(303) 866-5700	www.cdhs.state.co.us
Labor & Employment	(303) 318-8000	www.coworkforce.com
Law (Attorney General)	(303) 866-4500	www.ago.state.co.us
Local Affairs	(303) 866-2156	www.dola.state.co.us
Military and Veterans Services	See website	www.dmva.state.co.us/
Natural Resources	(303) 866-3311	www.dnr.state.co.us/index.asp
Personnel and Administration	(303) 866-3300	www.colorado.gov/dpa
Public Health & Environment	(303) 692-2000	www.cdphe.state.co.us
Public Safety	(303) 239-4400	http://cdpsweb.state.co.us
Regulatory Agencies	(303) 894-7855	www.dora.state.co.us
Revenue Tax Audit & Compliance Criminal Tax Investigation Liquor Enforcement	(303) 238-7378 (303) 866-3711 (303) 866-5631 (303) 205-2300	www.revenue.state.co.us http://www.revenue.state.co.us/TAC_dir/wrap.asp?incl=TACpage http://www.revenue.state.co.us/liquor_dir/home.asp
Secretary of State	(303) 894-2200	www.sos.state.co.us
Transportation	See website	http://www.dot.state.co.us/
Treasury	(303) 866-2441	http://www.treasurer.state.co.us/

LABOR AND EMPLOYMENT CONTACTS

(Not affiliated with, or specifically endorsed by, the Colorado Division Labor)

Agency / Organization	Phone Number	Website
American Bar Association	(312) 988-5522	http://www.abanet.org/home.cfm
American Bar Association Labor and Employment Law Section	See website	http://www.abanet.org/labor/home.html
AFL-CIO	(202) 637-5000	http://www.aflcio.org/
Better Business Bureau (National)	(703) 276-0100	http://www.bbb.org/
Better Business Bureau (Denver & Boulder)	(303) 758-2100	http://www.denver.bbb.org/
Colorado Bar Association	(303) 860-1115	http://www.cobar.org/
Colorado Council of Mediators	(303) 322-9275	http://www.coloradomediation.org/
Colorado Plaintiff Employment Lawyers Association	See website	http://www.colopela.org/
Colorado Revised Statutes (All Colorado Law)	N/A	http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0
City and County of Denver	See website	http://www.denvergov.org/
Denver Bar Association	See website	http://www.denbar.org/
Denver Chamber of Commerce	(303) 534-8500	http://www.denverchamber.org/
Denver District Attorney	(720) 913-9000	http://www.denverda.org/
FindLaw Legal Resources	See website	http://www.findlaw.com/
Metropolitan Lawyer Referral Service	(303) 831-8000	http://www.mlrsonline.org/index.html
Metro Volunteer Lawyers	(303) 837-1313	http://www.metrovolunteerlawyers.org/
Mountain States Employers Council	(303) 839-5177	http://www.msec.org/
North American Industry Classification System (NAICS)	See website	http://www.census.gov/epcd/www/naics.html
National Association of Government Labor Officials (NAGLO)	(202) 624-5460	http://www.naglo.org/
National Center for State Courts	(800) 616-6164	http://www.ncsconline.org/index.html
Occupational Information Network (O*NET)	See website	http://online.onetcenter.org/
Society for Human Resource Management (SHRM)	(800) 283-SHRM	http://www.shrm.org/

U.S. Government Listings and Federal Topics

U.S. Government Agency	Phone Number	Website
Bankruptcy Court for the District of Colorado	(720) 904-7300	http://www.cob.uscourts.gov/bindex.htm
Census Bureau	See website	http://www.census.gov/
Citizenship and Immigration Services (Formerly INS, now USCIS)	(800) 375-5283	http://www.ice.gov/index.htm Denver:https://egov.immigration.gov/crisgwi/go?action=offices.detail&office=DEN&OfficeLocator.office_type=LO&OfficeLocator.statecode=CO
COBRA (Contact EBSA)	N/A	http://www.dol.gov/ebsa/
Code of Federal Regulations (CFR)	See website	http://www.gpoaccess.gov/cfr/index.html
Court of Appeals for the Tenth Circuit	(303) 844-3157	http://www.ca10.uscourts.gov/index.php
Davis-Bacon Wages	(866) 487-9243 (720) 264-3250	http://www.dol.gov/esa/whd/
Department of Homeland Security	(202) 282-8000	http://www.dhs.gov/index.shtm
Department of Justice	(202) 514-2000	http://www.usdoj.gov/index.html
Department of Labor	866-4-USA-DOL (720) 264-3250	http://www.dol.gov/
Bureau of Labor Statistics (BLS)	(202) 691-5200	http://www.bls.gov/
Employee Benefits Security Administration (EBSA)	(866) 444-3272	http://www.dol.gov/ebsa/
Employment and Training Administration (ETA)	877-US-2JOBS (720) 264-3250	http://www.doleta.gov/
Employment Standards Administration (ESA)	866-4-USWAGE	http://www.dol.gov/esa/
Fairpay Rules (New FLSA Regulations)	866-4-USWAGE (720) 264-3250	http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm
International Labor Affairs (ILAB)	(202) 693-4770	http://www.dol.gov/ilab/
Mine Safety and Health Administration (MSHA)	(202) 693-9400	http://www.msha.gov/
Occupational Safety and Health Administration (OSHA)	(303) 844-5285 (303) 843-4500	http://www.osha.gov/
Office of Disability Employment Policy (ODEP)	(866) 633-7365	http://www.dol.gov/odep/
Federal Contract Compliance (OFCCP)	866-4-USA-DOL (720) 264-3200	http://www.dol.gov/esa/ofccp/

U.S. Government Listings and Federal Topics (Continued)

U.S. Government Agency	Phone Number	Website
Veterans' Employment and Training Service (VETS)	866-4-USA-DOL (720) 264-3250	http://www.dol.gov/vets/
Wage and Hour Division (WHD)	866-4-USWAGE (720) 264-3250	http://www.dol.gov/esa/whd/
Women's Bureau (WB)	(800) 827-5335 (720) 264-3250	http://www.dol.gov/wb/
District Court for the District of Colorado	(303) 844-3433	http://www.co.uscourts.gov/dindex.htm
Equal Employment Opportunity Commission (EEOC)	(800) 669-4000 (303) 866-1300	http://www.eeoc.gov/ Denver: http://www.eeoc.gov/denver/index.html
ERISA (Contact EBSA)	(866) 444-3272	http://www.dol.gov/ebsa/
Federal Judiciary	(202) 502-2600	http://www.uscourts.gov/
Federal Register	See website	http://www.archives.gov/federal_register/index.html
FirstGov (U.S. Government web portal to many services)	800-FED-INFO	http://www.usagov.gov
US House of Representatives	(202) 224-3121	http://www.house.gov/
INS (now called Citizenship and Immigration Services USCIS)	(800) 375-5283	http://uscis.gov/graphics/index.htm Denver: https://egov.immigration.gov/crisgwi/go?action=offices.detail&office=DEN&OfficeLocator.office_type=LO&OfficeLocator.statecode=CO
IRS	(800) TAX-1040	http://www.irs.gov/
Library of Congress	(202) 707-5000	http://lcweb.loc.gov/
National Labor Relations Board (NLRB)	(303) 844-3551 (866) 667-NLRB	http://www.nlrb.gov
National Mediation Board (Airlines & Railroads)	(800) 488-0019	http://www.nmb.gov/
Postal Service	(800) ASK-USPS	http://www.usps.com/
Social Security Administration	(800) 772-1213	http://www.ssa.gov/
Supreme Court	See website	http://www.supremecourtus.gov/

POLITICAL RESOURCES

(Inclusion or exclusion from this list does not represent Division of Labor endorsement)

Topic	Phone Number	Website
Democratic Party	(303) 623-4762	http://www.coloradodems.org/
Elections Center	(303) 894-2200 ext. 6307	http://www.elections.colorado.gov/DDefault.aspx
General Assembly	See website	http://www.leg.state.co.us/
Green Party	(303) 575-1631	http://www.coloradogreens.org/
Legislative Legal Services	(303) 866-3521	http://www.state.co.us/gov_dir/leg_dir/lcsstaff/
Libertarian Party	(303) 837-9393	http://www.lpcolorado.org/
Reform Party	See website	http://www.reformparty.org/
Republican Party	(303) 758-3333	http://www.cologop.org/core/default.cfm
U.S. Congress	See website	http://www.congress.org/congressorg/home/
U.S. Senate	See website	http://www.senate.gov/
U.S. Senator Ken Salazar	See website	http://www.salazar.senate.gov/
U.S. Senator Wayne Allard	See website	http://www.allard.senate.gov/
White House	See website	http://www.whitehouse.gov/

SECTION VI: LAWS AND REGULATIONS

Keyword Index

COLORADO MINIMUM WAGE ORDER NUMBER 24

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor

7 CCR 1103-1

COLORADO MINIMUM WAGE ORDER NUMBER 24

Authority:

This Colorado Minimum Wage Order Number 24 is promulgated under the authority vested by Title 8, Articles 1,4,6, and 12, C.R.S. (2007). This Wage Order shall supersede all previous Wage Orders.

Important Information on Minimum Wage:

Pursuant to the inflation adjusted requirement of Section 15, Article XVIII of the Colorado Constitution, if either of the following two situations applies to an employee, then the employee is entitled to the $7.02 minimum wage effective January 1, 2008:

1. The employee is covered by the minimum wage provisions of Colorado Minimum Wage Order Number 24.

2. The employee is covered by the minimum wage provisions of the Fair Labor Standards Act.

Some restrictions and exemptions may apply; contact the Colorado Division of Labor for additional information. The Colorado Division of Labor accepts complaints for minimum wage violations involving employees who receive the state or federal minimum wage.

Table of Contents:

Section

1. Coverage:

This Colorado Minimum Wage Order Number 24 regulates wages, hours, working conditions and procedures for certain employers and employees for work performed within the boundaries of the state of Colorado in the following industries:

(A) Retail and Service (C) Food and Beverage

(B) Commercial Support Service (D) Health and Medical

2. Definitions:

(A) **Retail and Service:** any business or enterprise that sells or offers for sale, any service, commodity, article, good, real estate, wares, or merchandise to the consuming public, and that generates 50% or more of its annual dollar volume of business from such sales. The retail and service industry offers goods or services that will not be made available for resale. It also includes amusement and recreation, public accommodations, banks, credit unions, savings and loans, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

(B) **Commercial Support Service:** any business or enterprise engaged directly or indirectly in providing services to other commercial firms through the use of service employees who perform duties such as: clerical, keypunching, janitorial, laundry or dry cleaning, security, building or plant maintenance, parking attendants, equipment operations, landscaping and grounds maintenance. Commercial support service also includes temporary help firms which provide employees to any business or enterprise covered by this wage order. Any employee, including office personnel, engaged in the performance of work connected with or incidental to such business or enterprise, is covered by the provisions of this wage order.

(C) **Food and Beverage:** any business or enterprise that prepares and offers for sale, food or beverages for consumption either on or off the premises. Such business or enterprise includes but is not limited to: 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, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

(D) **Health and Medical:** any business or enterprise engaged in providing medical, dental, surgical or other health services including but not limited to medical and dental offices, hospitals, home health care, hospice care, nursing homes, and mental health centers, and includes any employee who is engaged in the performance of work connected with or incidental to such business or enterprise, including office personnel.

Director: the director of the division of labor.

Division: the division of labor in the Colorado Department of Labor and Employment.

Emancipated Minor: any individual less than eighteen years of age who:

a) has the sole or primary responsibility for his or her own support.

b) is married and living away from parents or guardian.

c) is able to show that his or her well-being is substantially dependent upon being gainfully employed.

Emergency: an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action with regard to the employment of minors in overtime situations.

Employee: any person performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. For the purpose of this order, an individual primarily free from control and direction in the performance of contracted labor or services, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an employee.

Employer: every person, firm, partnership, association, corporation, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above-mentioned classes, employing any person in Colorado, except that the provisions of this order shall not apply to state, federal and municipal governments or political sub-divisions thereof, including; cities, counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or special districts organized and existing under the laws of Colorado.

Full Time Employee: for the purpose of the exemption described in section 5(b) of this wage order, a full time employee is one who performs work for the benefit of an employer for a minimum of 32 hours per work week.

Regular Rate of Pay: the regular rate of pay actually paid to employees for a standard, non-overtime workweek. The regular rate of pay shall include all compensation paid to employees including the set hourly rate, shift differential, minimum wage tip credit, non-discretionary bonuses, production bonuses, and commissions used for the purpose of calculating the overtime hourly rate for non-exempt employees. Business expenses, bonafide gifts, discretionary bonuses, employer investment contributions, vacation pay, holiday pay, sick leave, jury duty, or other pay for non-work hours may be excluded from the regular rate of pay.

Time Worked: the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work whether or not required to do so. Requiring or permitting employees to remain at the place of employment awaiting a decision on job assignment or when to begin work or to perform clean up or other duties “off the clock” shall be considered time worked and said time must be compensated.

a) **Travel Time:** all travel time spent at the control or direction of an employer, excluding normal home to work travel, shall be considered as time worked.

b) **Sleep Time:** where an employee's tour of duty is 24 hours or longer, up to 8 hours of sleeping time can be excluded from overtime compensation, if: (1) an express agreement excluding sleeping time exists; and (2) adequate sleeping facilities for an uninterrupted night's sleep are provided; and (3) at least five hours of sleep are possible during the scheduled sleeping periods; and (4) interruptions to perform duties are considered time worked. When said employee's tour of duty is less than 24 hours, periods during which the employee is permitted to sleep are compensable work time, as long as the employee is on duty and must work when required. Only actual sleep time may be excluded up to a maximum of eight (8) hours per work day. When work related interruptions prevent five (5) hours of sleep, the employee shall be compensated for the entire work day.

Tipped Employee: any employee engaged in an occupation in which he or she customarily and regularly receives more than $30.00 a month in tips. Tips include amounts designated as a "tip" by credit card customers on their charge slips. Nothing herein contained shall prevent an employer covered hereby from requiring employees to share or allocate such tips or gratuities on a pre-established basis among other employees of said business who customarily and regularly receive tips. Employer-required sharing of tips with employees who do not customarily and regularly receive tips, such as management or food preparers, or deduction of credit card processing fees from tipped employees, shall nullify allowable tip credits towards the minimum wage authorized in section 3(c).

Wages or Compensation: all amounts due employees for labor or service; 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, provided that the labor or service is performed personally by the person demanding payment.

Workday: any consecutive twenty-four (24) hour period starting with the same hour each day and the same hour as the beginning of the workweek. The workday is set by the employer and may accommodate flexible work shift scheduling.

Work Shift: the hours an employee is normally scheduled to work within a work day.

Workweek: any consecutive seven (7) day period starting with the same calendar day and hour each week. A workweek is a fixed and recurring period of 168 hours, seven (7) consecutive twenty-four (24) hour periods.

3. Minimum Wage and Allowable Credits:

Minimum Wage: all adult employees and emancipated minors, employed in any of the industries covered herein, whether employed on an hourly, piecework, commission, time, task, or other basis, shall be paid not less than $7.02 effective January 1, 2008, less any applicable lawful credits for all hours worked.

Allowable Credits: the only allowable credits that may be taken by an employer toward the minimum wage are as follows:

a) **Lodging:** the reasonable cost or fair market value for lodging (not to exceed $25.00 per week) furnished by the employer and used by the employee may be considered part of the minimum wage when furnished.

b) **Meals:** the reasonable cost or fair market value of meals provided to the employee may be used as part of the minimum hourly wage. No profits to the employer may be included in

the reasonable cost or fair market value of such meals furnished. The meal must be consumed before deductions are permitted.

c) **Tips:** employers of "tipped employees" must pay a cash wage of at least $4.00 per hour if they claim a tip credit against their minimum hourly wage obligation. If an employee's tips combined with the employer's cash wage of at least $4.00 per hour do not equal the minimum hourly wage, the employer must make up the difference in cash wages.

Exception: employees whose physical disability has been certified by the director to significantly impair such disabled employee's ability to perform the duties involved in the employment, and unemancipated minors under 18 years of age, may be paid 15% below the current minimum wage less any applicable lawful credits, for all hours worked.

4. Overtime Hours:

Overtime Rate: employees shall be paid time and one-half of the regular rate of pay for any work in excess of: (1) forty (40) hours per workweek; (2) twelve (12) hours per workday, or (3) twelve (12) consecutive hours without regard to the starting and ending time of the workday (excluding duty free meal periods), whichever calculation results in the greater payment of wages. Hours worked in two or more workweeks shall not be averaged for computation of overtime. Performance of work in two or more positions 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.

Note: the requirement to pay overtime for work in excess of twelve (12) consecutive hours will not alter the employee's established workday or workweek, as previously defined.

Exception: in the event of a bonafide emergency situation, an employer may require minors, subject to the Colorado youth employment opportunity act, to work in excess of eight (8) hours in a twenty-four (24) hour period or in excess of forty (40) hours per week. Said minors shall be compensated at time and one-half the regular rate of pay for all hours worked in excess of eight (8) hours in any twenty-four (24) hour period, or for all work in excess of forty (40) hours per week, whichever calculation results in the greater payment of wages. The employer shall keep specific records to substantiate the existence of a bonafide emergency.

Note: a person under eighteen (18) years of age who has received a high school diploma or a passing grade on a General Education Development (GED) examination, is not considered a minor.

5. Exemptions from the Wage Order:

The following employees or occupations, as defined below, are exempt from all provisions of Minimum Wage Order No. 24: administrative, executive/supervisor, professional, outside sales employees, and elected officials and members of their staff. Other exemptions are: companions, casual babysitters, and domestic employees employed by households or family members to perform duties in private residences, property managers, interstate drivers, driver helpers, loaders or mechanics of motor carriers, taxi cab drivers, and bona fide volunteers. Also exempt are: students employed by sororities, fraternities, college clubs, or dormitories, and students employed in a work experience study program and employees working in laundries of charitable institutions which pay no wages to workers and inmates, or patient workers who work in institutional laundries.

Exemption Definitions:

a) **Administrative Employee:** a salaried individual who directly serves the executive, and regularly performs duties important to the decision-making process of the executive. Said employee

regularly exercises independent judgment and discretion in matters of significance and their primary duty is non-manual in nature and directly related to management policies or general business operations.

b) **Executive or Supervisor:** a salaried employee earning in excess of the equivalent of the minimum wage for all hours worked in a workweek. Said employee must supervise the work of at least two full-time employees and have the authority to hire and fire, or to effectively recommend such action. The executive or supervisor must spend a minimum of 50% percent of the workweek in duties directly related to supervision.

c) **Professional:** a salaried individual employed in a field of endeavor who has knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. The professional employee must be employed in the field in which they are trained to be considered a professional employee.

Note: the requirement that a professional employee must be paid on a salary basis does not apply to doctors, lawyers, teachers, and employees in highly technical computer occupations earning at least $27.63 per hour.

d) **Outside Salesperson:** any person employed primarily away from the employer's place of business or enterprise for the purpose of making sales or obtaining orders or contracts for any commodities, articles, goods, real estate, wares, merchandise or services. Such outside sales employee must spend a minimum of 80% of the workweek in activities directly related to their own outside sales.

6. Exemptions from Overtime:

The following employees are exempt from the overtime provisions of Minimum Wage Order No. 24:

a) Salespersons, parts-persons, and mechanics employed by automobile, truck, or farm implement (retail) dealers; salespersons employed by trailer, aircraft and boat (retail) dealers.

b) **Commission Sales Exemption:** sales employees of retail or service industries paid on a commission basis, provided that 50% of their 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. This exemption is only applicable for employees of retail or service employers who receive in excess of 75% of their annual dollar volume from retail or service sales.

c) **Ski Industry Exemption:** employees of the ski industry performing duties directly related to ski area operations for downhill skiing or snow boarding, and those employees engaged in providing food and beverage services at on-mountain locations, are exempt from the forty (40) hour overtime requirement of this wage order. The daily overtime requirement of one and one-half the regular rate of pay for all hours worked in excess of twelve (12) in a workday shall apply. This partial overtime exemption does not apply to ski area employees performing duties related to lodging.

d) **Medical Transportation Exemption:** employees of the medical transportation industry who are scheduled to work twenty-four (24) hour shifts, are exempt from the twelve (12) hour overtime requirement **provided** they receive overtime wages for hours worked in excess of forty (40) hours per work week.

Note: a hospital or nursing home may seek an agreement with individual employees to pay overtime pursuant to the provisions of the Federal Fair Labor Standards Act **"8 and 80 rule",** whereby employees are paid time and one-half their regular rate of pay for any

work performed in excess of eighty (80) hours in a fourteen (14) consecutive day period and for any work in excess of eight (8) hours per day.

7. Meal Periods:

Employees shall be entitled to an uninterrupted and "duty free" meal period of at least a thirty minute duration when the scheduled work shift exceeds five consecutive hours of work. The employees must be completely relieved of all duties and permitted to pursue personal activities to qualify as a non-work, uncompensated period of time. 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. Employees shall be permitted to fully consume a meal of choice "on the job" and be fully compensated for the "on-duty" meal period without any loss of time or compensation.

8. Rest Periods:

Every employer shall authorize and permit rest periods, which, insofar as practicable, shall be in the middle of each four (4) hour work period. A compensated ten (10) minute rest period for each four (4) hours or major fractions thereof shall be permitted for all employees. Such rest periods shall not be deducted from the employee's wages. It is not necessary that the employee leave the premises for said rest period.

9. Legal Deductions:

No employer shall make a deduction from the wages or compensation of an employee in violation of the Colorado Wage Act, § 8-4-105, C.R.S. (2007).

10. Presents, Tips, or Gratuities:

It shall be unlawful to deny presents, tips, or gratuities intended for employees in violation of the Colorado Wage Act, § 8-4-103(6), C.R.S. (2007).

11. Wearing of Uniforms:

Where the wearing of a particular uniform or special apparel is a condition of employment, the employer shall pay the cost of purchases, maintenance, and cleaning of the uniforms or special apparel. If the uniform furnished by the employer is plain and washable and does not need or require special care such as ironing, dry cleaning, pressing, etc., the employer need not maintain or pay for cleaning. An employer may require a reasonable deposit (up to one-half of actual cost) as security for the return of each uniform furnished to employees upon issuance of a receipt to the employee for such deposit. The entire deposit shall be returned to the employee when the uniform is returned. The cost of ordinary wear and tear of a uniform or special apparel shall not be deducted from the employee's wages or deposit.

Exception: clothing accepted as ordinary street wear and the ordinary white or any light colored plain and washable uniform need not be furnished by the employer unless a special color, make, pattern, logo or material is required.

12. Record Keeping:

Every employer shall keep at the place of employment or at the employer's principal place of business in Colorado, a true and accurate record for each employee which contains the following information:

a) name, address, social security number, occupation and date of hire of said employee.

b) date of birth, if the employee is under eighteen (18) years of age.

c) daily record of all hours worked.

d) record of allowable credits and declared tips.

e) regular rates of pay, gross wages earned, withholdings made and net amounts paid each pay period. An itemized earnings statement of this information shall be provided to each employee each pay period. Such records shall be kept on file at least two years from date of entry.

13. Administration and Interpretation:

The division of labor shall have jurisdiction over all questions of fact arising with respect to the administration and interpretation of this order.

14. Separability Clause:

If any section, sentence, clause or phrase of this order is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of the order.

15. Filing of Complaints:

Any person may register with the division, a written complaint that alleges a violation of the Minimum Wage Order within two (2) years of said violation(s).

16. Investigations:

The director or designated agent shall investigate and take all proceedings necessary to enforce the payment of the minimum wage rate and other alleged violations of this wage order, pursuant to this article and the Colorado Wage Act § 8-4-101 C.R.S. et seq.

17. Enforcement:

The director has the power, in person or through any authorized representative, to 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 to require from any such employer full and true statement of the wages paid.

18. Recovery of Wages:

An employee paid less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with costs of the suit, pursuant to § 8-6-118 C.R.S.

19. Reprisals:

Employers shall not threaten, coerce, or discharge any employee because of participation in any investigation or hearing relating to the minimum wage act. Violators may be subject to a fine of not less than two hundred dollars ($200.00), up to one thousand dollars ($1,000.00) for each violation, pursuant to § 8-6-115 C.R.S.

20. Violations:

Any employer or other person who individually or as an officer, agent or employee of a corporation or other person, pays or causes to be paid an employee covered by this wage order less than the minimum wage, is guilty of a misdemeanor. Conviction thereof will subject the offender to a fine of not less than one

hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days, nor more than one (1) year, or both such fine and imprisonment, pursuant to § 8-6-116 C.R.S.

21. Posting Requirements:

Every employer subject to this wage order must display a wage order poster in an area frequented by employees where it may be easily read during the work day. If the work site or other conditions make this unpractical, the employer shall keep a copy of this wage order and make it available to employees upon request.

22. Dual Jurisdiction:

Whenever employers are subjected to both federal and Colorado law, the law providing greater protection or setting the higher standard shall apply. For information on the federal law contact the nearest office of the U.S. Department of Labor, Wage and Hour Division.

Keyword Index

COLORADO WAGE ACT

(CRS 8-4-101 et seq.)

COLORADO WAGE ACT SECTIONS

8-4-101. DEFINITIONS.

As used in this article, unless the context otherwise requires:

(1) "Credit" means an arrangement or understanding with the bank or other drawee for the payment of an order, check, draft, note, memorandum, or other acknowledgment of indebtedness.

(2) "Director" means the director of the division of labor or his or her designee.

(3) "Division" means the division of labor in the department of labor and employment.

(4) "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. For the purpose of this article, an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an "employee".

(5) "Employer" means every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above mentioned classes, employing any person in Colorado; except that the provisions of this article shall not apply to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

(6) "Field labor contractor" means anyone who contracts with an employer to recruit, solicit, hire, or furnish migratory labor for agricultural purposes to do any one or more of the following activities in this state: Hoeing, thinning, topping, sacking, hauling, harvesting, cleaning, cutting, sorting, and other direct manual labor affecting beets, onions, lettuce, potatoes, tomatoes, and other products, fruits, or crops in which labor is seasonal in this state. Such term shall not include a farmer or grower, packinghouse operator, ginner, or warehouseman or any full-time regular and year-round employee of the farmer or grower, packinghouse operator, ginner, or warehouseman who engages in such activities, nor shall it include any migratory laborer who engages in such activities with regard to such migratory laborer's own children, spouse, parents, siblings, or grandparents.

(7) "Migratory laborer" means any person from within or without the limits of the state of Colorado who offers his or her services to a field labor contractor, whether from within or from without the limits of the state of Colorado, so that said field labor contractor may enter into a contract with any employer to furnish the services of said migratory laborers in seasonal employment.

(8) (a) "Wages" or "compensation" means:

(I) All amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service if the

labor or service to be paid for is performed personally by the person demanding payment. No amount is considered to be wages or compensation until such amount is earned, vested, and determinable, at which time such amount shall be payable to the employee pursuant to this article.

(II) Bonuses or commissions earned for labor or services performed in accordance with the terms of any agreement between an employer and employee;

(III) Vacation pay earned in accordance with the terms of any agreement. If an employer provides paid vacation for an employee, the employer shall pay upon separation from employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee.

(b) "Wages" or "compensation" does not include severance pay.

8-4-102. PROPER PAYMENT - RECORD OF WAGES.

(1) **Negotiable instrument required.** No employer or agent or officer thereof shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness unless the same is negotiable and payable upon demand without discount in cash at a bank organized and existing under the general banking laws of the state of Colorado or the United States or at some established place of business in the state. The name and address of the drawee shall appear upon the face of the order, check, draft, note, memorandum, or other acknowledgment of indebtedness; except that such provisions shall not apply to a public utility engaged in interstate commerce and otherwise subject to the power of the public utilities commission. At the time of the issuance of same, the maker or drawer shall have sufficient funds in or credit with the bank or other drawee for the payment of same. Where such order, check, draft, note, memorandum, or other acknowledgment of indebtedness is protested or dishonored on the ground of insufficiency of funds or credit, the notice of memorandum of protest or dishonor thereof shall be admissible as proof of presentation, nonpayment, and protest.

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

(3) **Scrip prohibited.** No employer or agent or officer thereof shall issue in payment of wages due, or wages to become due an employee, or as an advance on wages to be earned by an employee any scrip, coupons, cards, or other things redeemable in merchandise unless such scrip, coupons, cards, or other things may be redeemed in cash when due, but nothing contained in this section shall be construed to prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessities of life or for the tools and implements used by such employee in the performance of his or her duties.

8-4-103. PAYMENT OF WAGES - PAY STATEMENT - RECORD RETENTION - TIP NOTIFICATION.

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

(2)(a) In agricultural, horticultural, and floricultural pursuits and in stock or poultry raising, when the employee in such employments is boarded and lodged by the employer, all wages or compensation earned by any employee in such employment shall be due and payable for regular periods of no greater duration than one month and on paydays no later than ten days following the close of each pay period.

(b) Nothing in paragraph (a) of this subsection (2), as amended by House Bill 05-1180, [FN1] as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a floricultural operation.

(3) Nothing in this article shall apply to compensation payments due an employee under a profit-sharing plan, a pension plan, or other similar deferred compensation programs.

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

(a) Gross wages earned;

(b) All withholdings and deductions;

(c) Net wages earned;

(d) The inclusive dates of the pay period;

(e) The name of the employee or the employee's social security number; and

(f) The name and address of the employer.

(5) Each field labor contractor shall keep, for a period of three years on each migratory laborer, records of wage rates offered, wages earned, number of hours worked, or, in the case of contractual or piecework where a field labor contractor pays the employee, the aggregate amount earned and all withholdings from wages on a form furnished by and in the manner prescribed by the division. In addition, in each pay period, each field labor contractor shall provide to each migratory laborer engaged in agricultural employment a statement of the gross earnings of the laborer for the period and all deductions and withholdings therefrom. The director may prescribe appropriate forms for use pursuant to this subsection (5). All such payroll records shall be filed with the division quarterly or at any time said labor contractor leaves this state or terminates his or her contract. The director is charged with the responsibility of making periodic reports to the governor's committee on migrant labor.

(6) It is unlawful for any employer engaged in any business where the custom prevails of the giving of presents, tips, or gratuities by patrons thereof to an employee of said business to assert any claim to, or right of ownership in, or control over such presents, tips, or gratuities; and such

presents, tips, or gratuities shall be the sole property of the employee of said business unless the employer posts in his or her place of business in a conspicuous place a printed card, at least twelve inches by fifteen inches in size, containing a notice to the general public in letters at least one-half inch high that all presents, tips, or gratuities given by any patron of said business to an employee thereof are not the property of said employee but belong to the employer. Nothing in this section shall prevent an employer covered hereby from requiring employees to share or allocate such presents, tips, or gratuities on a preestablished basis among the employees of such business.

8-4-104. FUNDS AVAILABLE TO PAY WAGES - MINING INDUSTRY.

Every person, firm, association, corporation, or agent, manager, superintendent, or officer thereof engaged in the business of extracting or of extracting and refining or reducing metals or minerals other than petroleum, or other than parties having a free unencumbered title to the fee simple of the property being worked, and also other than mining partnerships in respect to the members of the partnerships, shall, before commencing work in any period for which a single payment of wages is to be made, have on hand, either physically or by deposit with a bank or trust company in the county where such property is located or, if there is no bank or trust company in the county, in the bank or trust company nearest the property, cash or readily salable securities of a market value equivalent to such cash, or accounts receivable payable in the normal course of business prior to the next payday, in a sufficient amount to make the payment of wages without discount or loss to any person employed on the mining property for such period.

8-4-105. PAYROLL DEDUCTIONS PERMITTED.

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

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

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

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

(d) Any deduction, not listed in paragraph (a), (b), or (c) of this subsection (1), which is authorized by an employee if such authorization is revocable including, but not limited to, deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, voluntary pension plans, charities, and deposits to financial institutions;

(e) A deduction for the amount of money or the value of property that the employee failed to properly pay or return to the employer in the case where a terminated employee was entrusted during his or her employment with the collection, disbursement, or handling of such money or property. The employer shall have ten calendar days after the termination of employment to audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid as provided in section 8-4-109. This is an exception to the pay requirements in section 8-4-109. The penalty provided in section 8-4-109 shall apply only from the date of demand made after the expiration of the ten-day period allowed for payment of the employee's wages or compensation. If, upon such audit and adjustment of the accounts and property value of any items entrusted to the employee, it is found that any money or property entrusted to the employee by the employer has not been properly paid or returned the employer as provided by the terms of any agreement between the employer and the employee, the employee shall not be entitled to the benefit of payment pursuant to section 8-4-109, but the claim for unpaid wages or compensation of such employee shall be disposed of as provided for by this article.

(2) Nothing in this section authorizes a deduction below the minimum wage applicable under the "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq.

8-4-106. EARLY PAYMENT OF WAGES PERMITTED.

Nothing contained in this article shall in any way limit or prohibit the payment of wages or compensation at earlier dates, or at more frequent intervals, or in greater amounts, or in full when or before due.

8-4-107. POST NOTICE OF PAYDAYS.

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

8-4-108. PAYMENT IN THE EVENT OF A STRIKE.

(1) In the event of a strike, every employee who is discharged shall be paid at the place of discharge, and every employee who quits or resigns shall be paid at the office or agency of the employer in the county or city and county where such employee has been performing the labor or service for the employer. All payments of money or compensation shall be made in the manner provided by law.

(2) In the event of any strike, the unpaid wages or compensation earned by such striking employee shall become due and payable on the employer's next regular payday, and the payment

or settlement shall include all amounts due such striking employee without abatement or reduction. The employer shall return to each striking employee, upon request, any deposit or money or other guaranty required by the employer from the employee for the faithful performance of the duties of his or her employment.

8-4-109. TERMINATION OF EMPLOYMENT - PAYMENTS REQUIRED - CIVIL PENALTIES - PAYMENTS TO SURVIVING SPOUSE OR HEIR.

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

(I) The work site;

(II) The employer's local office; or

(III) The employee's last-known mailing address.

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

(I) The work site;

(II) The employer's local office; or

(III) The employee's last-known mailing address.

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

(3)(a) If an employer refuses to pay wages or compensation in accordance with subsection (1) of this section, the employee or his or her designated agent shall make a written demand for the payment within sixty days after the date of separation and shall state in the demand where such payment can be received.

(a.5) If the employer disputes the amount of wages or compensation claimed by an employee under this article and if, within fourteen days after the employee's demand, the employer makes a legal tender of the amount that the employer in good faith believes is due, the employer shall not

be liable for any penalty unless, in a legal action, the employee recovers a greater sum than the amount so tendered.

(b) If an employee's earned, vested, and determinable wages or compensation are not mailed to the place of receipt specified in a demand for payment and postmarked within fourteen days after the receipt of such demand, the employer shall be liable to the employee for the wages or compensation, and a penalty of the sum of the following amounts of wages or compensation due or, if greater, the employee's average daily earnings for each day, not to exceed ten days, until such payment or other settlement satisfactory to the employee is made:

(I) One hundred twenty-five percent of that amount of such wages or compensation up to and including seven thousand five hundred dollars; and

(II) Fifty percent of that amount of such wages or compensation that exceed seven thousand five hundred dollars.

(c) If the employee can show that the employer's failure to pay is willful, the penalty required under paragraph (b) of this subsection (3) shall increase by fifty percent. Evidence that a judgment has, within the previous five years, been entered against the employer for failure to pay wages or compensation shall be admissible as evidence of willful conduct.

(d) The daily earnings penalty shall not begin to accrue until the employer receives the written demand set forth in paragraph (a) of this subsection (3). The employee or his or her designated agent may commence a civil action to recover the penalty set forth in this subsection (3). Any employee or his or her designated agent 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 under this subsection (3). A payment under this subsection (3) shall be made in the form of a check draft or voucher in the name of the employee.

(4) If, at the time of the death of any employee, an employer is indebted to the employee for wages or compensation, and no personal representative of the employee's estate has been appointed, such employer shall pay the amount earned, vested, and determinable to the deceased employee's surviving spouse. If there is no surviving spouse, the employer shall pay the amount due to the deceased employee's next legal heir upon the request of such heir. If a personal representative for the employee has been appointed and is known to the employer prior to payment of the amount due to the spouse or other legal heir, the employer shall pay the amount due to such personal representative upon the request of such representative. The employer shall require proof of a claimant's relationship to the deceased employee by affidavit and require such claimant to acknowledge the receipt of any payment in writing. Any payments made by the employer pursuant to the provisions of this section shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable to the deceased employee's estate or to the deceased employee's personal representative. Any amounts received by a surviving spouse or legal heir shall be considered in diminution of the allowance to the spouse or legal heir pursuant to the "Colorado Probate Code", articles 10 to 17 of title 15, C.R.S. Nothing in this section shall create a substantive right that does not exist in any agreement between the employer and the employee.

8-4-110. Disputes-fees (1) If, in any action, the employee fails to recover a greater sum than the amount tendered by the employer, the court may award the employer reasonable costs and attorney fees incurred in such action when, in any pleading or other court filing, the employee claims wages or compensation that exceed the greater of seven thousand five hundred dollars in wages or compensation or the jurisdictional limit for the small claims court, whether or not the case was filed in small claims court or whether or not the total amount sought in the action was within small claims court jurisdictional limits. If, in any such action in which the employee seeks to recover any amount of wages or compensation, the employee recovers a sum greater than the amount tendered by the employer, the court may award the employee reasonable costs and attorney fees incurred in such action. If an employer fails or refuses to make a tender within fourteen days after the demand, then such failure or refusal shall be treated as a tender of no money for any purpose under this article.

(1.5) This section shall not apply to a claimant who is found to be an independent contractor and not an employee.

(2) Any person claiming to be aggrieved by violation of any provisions of this article or regulations prescribed pursuant to this article may file suit in any court having jurisdiction over the parties without regard to exhaustion of any administrative remedies.

8-4-111. ENFORCEMENT - DUTY OF DIRECTOR - DUTIES OF DISTRICT OR CITY ATTORNEYS.

(1) It is the duty of the director to inquire diligently for any violation of this article, and to institute the actions for penalties provided for in this article in such cases as he or she may deem proper, and to enforce generally the provisions of this article.

(2) Nothing in this article shall be construed to limit the authority of the district attorney of any county or city and county or the city attorney of any city to prosecute actions for such violations of this article as may come to his or her knowledge, or to enforce the provisions of this article independently and without specific direction of the director, or to limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him or her under the provisions of this article.

8-4-112. ENFORCEMENT OF DIRECTOR SUBPOENAS.

All courts shall take judicial notice of the seal of the director. Obedience to subpoenas issued by the director or his or her duly authorized representative shall be enforced by the courts in any county or city and county, as provided in section 24-4-105 (5), C.R.S., if said subpoenas do not call for any appearance at a distance greater than one hundred miles.

8-4-113. PENALTIES PURSUANT TO ENFORCEMENT.

(1) If a case against an employer is enforced pursuant to section 8-4-111, any employer who without good faith legal justification fails to pay the wages of each of his or her employees shall forfeit to the people of the state of Colorado an amount determined by the director but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable, to be recovered by order of the

director in a hearing held pursuant to section 24-4-105, C.R.S. For the convenience and necessity of the parties or their representatives, the division is authorized to conduct such hearing by telephone if the employer would otherwise be required to travel to locations of the division of labor from outside the general vicinity of such locations.

(2) A certified copy of any final order of the director, imposing a fine or penalty pursuant to this article, may be filed with the clerk of the district court having jurisdiction over the parties at any time after the entry of the order. The certified copy shall be recorded by the clerk of the district court in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. All fines and penalties collected shall be paid to the division and transmitted to the state treasurer for credit to the general fund.

8-4-114. CRIMINAL PENALTIES.

(1) Any employer who violates the provisions of section 8-4-103 (6) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

(2) In addition to any other penalty imposed by this article, any employer or agent of an employer who, being able to pay wages or compensation and being under a duty to pay, willfully refuses to pay as provided in this article, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, delay, or defraud the person to whom such indebtedness is due, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. For purposes of this section, "being able to pay wages or compensation" does not include an employer who is unable to pay wages or compensation by reason of a chapter 7 bankruptcy action or other court action that results in the employer having limited control over his or her assets.

8-4-115. CERTIFICATE OF REGISTRATION REQUIRED.

No person shall engage in activities as a field labor contractor unless the person first obtains a certificate of registration from the division and unless such certificate is in full force and effect and in such person's immediate possession.

8-4-116. ISSUANCE OF CERTIFICATE OF REGISTRATION.

(1) The director, after appropriate investigation, shall issue a certificate of registration to any person who:

(a) Has executed and filed with the director a written application subscribed and sworn to by the applicant containing such information concerning his or her conduct and method of operation as a field labor contractor as the director may require in order to effectively carry out the provisions of this article;

(b) Has consented to designation of the director as the agent available to accept service of process for any action against such field labor contractor at any and all times when such field labor contractor has departed from the jurisdiction of this state or has become unavailable to accept service;

(c) Has demonstrated evidence to the director that he or she has satisfied the insurance requirements of articles 40 to 47 of this title.

(2) Upon notice and hearing in accordance with rules prescribed by the director, the director may refuse to issue and may suspend, revoke, or refuse to renew a certificate of registration of any field labor contractor if the director finds that such field labor contractor:

(a) Knowingly has made any misrepresentation or false statement in his or her application for a certificate of registration or any renewal thereof;

(b) Knowingly has given false or misleading information to any migratory laborer concerning the terms, conditions, or existence of agricultural employment;

(c) Has failed, without justification, to perform agreements entered into or to comply with arrangements made with farm operators;

(d) Has failed, without justification, to comply with the terms of any working arrangements he or she has made with migratory laborers;

(e) Has permitted his or her insurance maintained pursuant to the requirements of paragraph (c) of subsection (1) of this section to terminate, lapse, or otherwise become inoperative;

(f) Is not in fact the real party in interest in any such application or certificate of registration and that the real party in interest is a person, firm, partnership, association, or corporation which previously has been denied a certificate of registration; has had a certificate of registration suspended or revoked; or which does not presently qualify for a certificate of registration.

8-4-117. ADDITIONAL OBLIGATIONS.

(1) Every field labor contractor shall:

(a) Carry a certificate of registration at all times while engaging in activities as a field labor contractor and exhibit the same to all persons with whom he or she intends to deal in the capacity of a field labor contractor;

(b) Ascertain and disclose in writing to each migratory laborer, in a language in which the migratory laborer is fluent at the time the migratory laborer is recruited, the following information:

(I) The area of employment;

(II) The crops and operations on which the migratory laborer may be employed;

(III) Transportation, housing, and insurance to be provided to the migratory laborer;

(IV) The wage rate to be paid;

(V) The charges by the field labor contractor for his or her services; and

(VI) The existence of any strikes at the place of contracted employment;

(c) Promptly pay or deliver, when due to the migratory laborer entitled thereto, all moneys or other things of value entrusted to the field labor contractor by or on behalf of such migratory laborer.

8-4-118. AUTHORITY TO OBTAIN INFORMATION.

The director or the director's designated representative may investigate and gather data pertinent to matters that may aid in carrying out the provisions of this article. In any case where a complaint has been filed with the director or the director's designated representative regarding a violation of this article, or where the director has reasonable grounds to believe that a field labor contractor has violated provisions of this article, the director or the director's designated representative may investigate and issue subpoenas as provided by section 8-4-112 requiring the attendance and testimony of any witness or the production of any evidence in connection with such investigation.

8-4-119. PENALTY PROVISIONS.

(1) Any field labor contractor who commits a violation of any provision of this article or implementing regulation shall be subject to a civil penalty of not more than two hundred fifty dollars for each violation. The penalty shall be assessed by the director pursuant to a published schedule of penalties and after written notice and after an opportunity for hearing under procedures established by the director. This provision as to civil penalties shall not exclude the possibility of criminal penalties as set forth in this article.

(2) The director, in the director's discretion, may grant a reasonable period of time, but in no event longer than ten days after the day of notification, for correction of the violation. In the event the violation is corrected within that period, no penalty shall be imposed.

8-4-120. DISCRIMINATION PROHIBITED - EMPLOYEE PROTECTIONS.

No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any employee who has filed any complaint or instituted or caused to be instituted any proceeding under this article or related law or who has testified or may testify in any proceeding on behalf of himself, herself, or another regarding afforded protections under this article. Any employer who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

8-4-121. NONWAIVER OF EMPLOYEE RIGHTS.

Any agreement, written or oral, by any employee purporting to waive or to modify such employee's rights in violation of this article shall be void.

8-4-122. LIMITATION OF ACTIONS.

All actions brought pursuant to this article shall be commenced within two years after the cause of action accrues and not after that time; except that all actions brought for a willful violation of this article shall be commenced within three years after the cause of action accrues and not after that time.

8-4-123. TERMINATION OF OCCUPANCY PURSUANT TO A CONTRACT OF EMPLOYMENT - LEGISLATIVE DECLARATION.

(1) The general assembly hereby finds, determines, and declares that many businesses, such as nursing homes or building management companies, either desire or are required by law to have staff on premises at all times. As part of the compensation for such employees, many employers offer housing to employees. However, once that employment relationship ceases, it may become undesirable for such employees to occupy the premises for many reasons, including the safety of the employer's patients, clients, customers, or tenants. Under traditional landlord and tenant law, such employees may have established the technical or legal right to occupy the premises for a fixed term that continues far beyond the cessation of the employment relationship. However, in employment situations, such occupancy is not a tenancy, but a license to occupy the premises pursuant to an employment relationship. The occupancy of the premises by the employee is not entered into by the employer for the purpose of providing housing, but merely as a means to provide services to the employer's patients, clients, customers, or tenants. In certain cases, it may be necessary to curtail the occupancy of former employees in order to protect the rights or safety of an employer's tenants or patients.

(2) (a) Pursuant to a written agreement meeting the requirements of paragraph (b) of this subsection (2), a license to occupy the premises entered into as part of an employee's compensation may be terminated at any time after the employment relationship ceases between an employer and employee. A termination of a license to occupy the premises shall be effective three days after the service of written notice of termination of a license to occupy the premises.

(b) An agreement made pursuant to this section shall be in writing and shall include the following:

(I) The names of the employer and employee;

(II) A statement that the license to occupy the premises is provided to the employee as part of the employee's compensation and is subject to termination at any time after the employment relationship ceases;

(III) The address of the premises; and

(IV) The signature of both the employer and the employee.

(c) The notice of termination of a license to occupy the premises shall describe the premises and shall set forth the time when the license to occupy the premises will terminate. The notice shall be signed by the employer or the employer's agent or attorney.

(3) If an employee fails to vacate the premises within three days after the receipt of the notice of termination of the license to occupy the premises, the employer may contact the county sheriff to have the employee removed from the premises. The county sheriff shall remove the employee and any personal property of the employee from the premises upon the showing to the county

sheriff of the notice of termination of the license to occupy the premises and agreement pursuant to which the license to occupy the premises was granted.

Keyword Index

COLORADO YOUTH EMPLOYMENT OPPORTUNITY ACT

(CRS 8-12-101 et seq.)

COLORADO YOUTH EMPLOYMENT OPPORTUNITY ACT SECTIONS

8-12-101. SHORT TITLE.

This article shall be known and may be cited as the "Colorado Youth Employment Opportunity Act of 1971".

8-12-102. LEGISLATIVE DECLARATION.

(1) It is the policy of this state to foster the economic, social, and educational development of young people through employment. Work is an integral factor in providing a sense of purpose, direction, and self-esteem necessary to the overall physical and mental health of an individual. In the first part of this century, state and federal laws and regulations were needed to prevent the exploitation of child labor. Unfortunately, such legislation also has tended, on occasion, to limit and curtail opportunities for minors to participate in reasonable work experiences. Young people, especially those who have completed high school or occupational training and no longer are in school, should not be denied employment opportunities because of arbitrary minimum age limits. Work, however, should be coordinated with schooling wherever appropriate. Work and study combined must be developed in the interest of the youth to be trained.

(2) (a) The general assembly hereby finds and determines that certain issues related to youth employment in Colorado have important statewide ramifications for the labor force in this state. In particular, the general assembly declares that the issue of minimum wages, as it relates to youth employment in this state, is a matter of statewide concern.

(b) No unit of local government, whether by acting through its governing body or an initiative, a referendum, or any other process, shall enact any jurisdiction-wide law or ordinance with respect to the minimum wages earned by young people unless otherwise specifically authorized to do so by this article; except that a unit of local government may enact such provisions with respect to its own employees.

8-12-103. DEFINITIONS.

As used in this article, unless the context otherwise requires:

(1) Repealed.

(2) "Director" means the director of the division of labor.

(3) "Division" means the division of labor in the department of labor and employment.

(4) "Employment" means any occupation engaged in for compensation in money or other valuable consideration, whether paid to the minor or to some other person, including, but not limited to, occupation as a servant, agent, subagent, or independent contractor.

(5) "Minor" means any person under the age of eighteen, except a person who has received a high school diploma or a passing score on the general educational development examination. The state board of education may administer the general educational development examination to any minor seventeen years of age or older who wishes to be considered an adult for the purpose of this article if such person is qualified to take the examination under the standards established by the state board of education.

(6) "School day" means any day when normal classes are in session during the regular school year in the school district.

(7) "School hours" means that period during which the student is expected to be in school in the school district.

8-12-104. EXEMPTIONS.

(1) The provisions of this article, except section 8-12-110, shall not apply to the following:

(a) School work and supervised educational activities;

(b) Home chores;

(c) Work done for a parent or guardian, except where the parent or guardian receives any payment therefore;

(d) Newsboys and newspaper carriers.

(2) Any minor employed as an actor, model, or performer shall be exempt from the provisions of subsection (1) of section 8-12-105.

(3) The director may grant exemptions from any provision of this article, except for sections 8-12-113 and 8-12-114, for an individual minor if he finds that such an exemption would be in the best interests of the minor involved. In granting exemptions, the director shall consider, among other things, the previous training which the minor has received in his proposed occupation and his knowledge of the proper safety measures to be taken in connection with such occupation. The director may require any applicant for an exemption from section 8-12-110 to submit to a test of his ability to perform the skills required for the proposed occupation. Such tests may be administered by a community and technical college, a private occupational school, or any other institution which offers courses in the skills required, which courses are approved by either the state board for community colleges and occupational education or the private occupational school division.

(4) Any employer, minor, minor's parent or guardian, school official, or youth employment specialist may request an exemption, as provided in subsection (3) of this section, from a provision of this article.

8-12-105. MINIMUM AGE REQUIREMENTS - MAXIMUM HOURS OF WORK.

(1) No minor under the age of fourteen shall be permitted employment in this state except as authorized by sections 8-12-104, 8-12-106, and 8-12-107.

(2) On school days, during school hours, no minor under the age of sixteen shall be permitted employment except as provided in section 8-12-113; and, after school hours, no minor under the age of sixteen shall be permitted to work in excess of six hours unless the next day is not a school day.

(3) Except for baby-sitters, no minor under the age of sixteen shall be permitted to work between the hours of nine-thirty p.m. and five a.m., except as authorized by section 8-12-104 (2), unless the next day is not a school day.

(4) Except for the provisions of subsection (5) of this section, no employer shall be permitted to work a minor more than forty hours in a week or more than eight hours in any twenty-four-hour period. In case of emergencies which may arise in the conduct of an industry or occupation (not subject to a wage order promulgated under article 6 of this title) the director may authorize an employer to allow a minor to work more than eight hours in a twenty-four-hour period. In such emergencies an employee shall be paid at a rate of one and one-half times his time rate as determined in accordance with the provisions of section 8-6-106 for each hour worked in excess of forty hours in a week.

(5) In seasonal employment for the culture, harvest, or care of perishable products where wages are paid on a piece basis, as determined in accordance with the provisions of section 8-6-106, a minor fourteen years of age or older may be permitted to work hours in excess of the limitations of subsection (4) of this section; but in no case is he permitted to work more than twelve hours in any twenty-four-hour period nor more than thirty hours in any seventy-two-hour period; except that a minor fourteen or fifteen years of age may work more than eight hours per day on only ten days in any thirty-day period. Overtime wage provisions of subsection (4) shall not apply to this subsection (5).

8-12-106. PERMISSIBLE OCCUPATIONS AT AGE NINE OR OLDER.

(1) Subject to the limitations of sections 8-12-105 and 8-12-110, any minor at age nine or older shall be permitted employment in any of the following nonhazardous occupations:

(a) Delivery of handbills, advertising, and advertising samples;

(b) Shoeshining;

(c) Gardening and care of lawns involving no power-driven lawn equipment;

(d) Cleaning of walks involving no power-driven snow-removal equipment;

(e) Casual work usual to the home of the employer and not specifically prohibited in this article;

(f) Caddying on golf courses;

(g) Any other occupation which is similar to those enumerated in this subsection (1) and is not specifically prohibited by this article.

8-12-107. PERMISSIBLE OCCUPATIONS AT AGE TWELVE OR OLDER.

(1) Subject to the limitations of sections 8-12-105 and 8-12-110, any minor at age twelve or older shall be permitted employment in any of the following nonhazardous occupations:

(a) Sale and delivery of periodicals and door-to-door selling of merchandise and the delivery thereof;

(b) Baby-sitting;

(c) Gardening and care of lawns, including the operation of power-driven lawn equipment if such type of equipment is approved by the division or if the minor has received training conducted or approved by the division in the operation of the equipment;

(d) Cleaning of walks, including the operation of power-driven snow-removal equipment;

(e) Agricultural work, except for that declared to be hazardous under the "Fair Labor Standards Act of 1938", as amended. However, it is the intent of the general assembly that migrant children eligible for attendance at migrant schools be encouraged to attend such schools.

(f) Any other occupation which is similar to those enumerated in this subsection (1) and is not specifically prohibited by this article.

8-12-108. PERMISSIBLE OCCUPATIONS AT AGE FOURTEEN.

(1) In addition to the occupations permitted by sections 8-12-106 and 8-12-107, and subject to the limitations of sections 8-12-105 and 8-12-110, any minor fourteen years of age or older shall be permitted employment in any of the following occupations:

(a) Nonhazardous occupations in manufacturing;

(b) Public messenger service and errands by foot, bicycle, and public transportation;

(c) Operation of automatic enclosed freight and passenger elevators;

(d) Janitorial and custodial service, including the operation of vacuum cleaners and floor waxers;

(e) Office work and clerical work, including the operation of office equipment;

(f) Warehousing and storage, including unloading and loading of vehicles;

(g) Nonhazardous construction and nonhazardous repair work. The operation of motor vehicles shall be subject to article 2 of title 42, C.R.S.

(h) Occupations in retail food service;

(i) Occupations in gasoline service establishments, including but not limited to dispensing gasoline, oil, and other consumer items, courtesy service, car cleaning, washing, and polishing, the use of hoists where supervised, and changing tires; except that no minor may inflate or change any tire mounted on a rim equipped with a removable retaining ring. The operation of motor vehicles shall be subject to article 2 of title 42, C.R.S.

(j) 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, or bagging and carrying out customers' orders;

(k) Occupations in restaurants, hotels, motels, or other public accommodations, except the operation of power food slicers and grinders;

(l) Occupations related to parks or recreation, including but not limited to recreation aides and conservation projects;

(m) Any other occupation which is similar to those enumerated in this subsection (l) and not specifically prohibited by this article.

8-12-109. PERMISSIBLE OCCUPATIONS AT AGE SIXTEEN.

In addition to the occupations permitted by sections 8-12-106 to 8-12-108 and subject to the limitations of sections 8-12-105 and 8-12-110, any minor sixteen years of age or older shall be permitted employment in any occupation which involves the use of a motor vehicle if the minor is licensed to operate the motor vehicle for such purpose pursuant to article 2 of title 42, C.R.S.

8-12-110. HAZARDOUS OCCUPATIONS PROHIBITED FOR MINORS.

(1) No minor shall be permitted employment in any occupation declared to be hazardous in subsection (2) of this section unless such minor is fourteen years of age or older and he is employed:

(a) Incidental to or upon completion of a program of apprentice training;

(b) Incidental to or upon completion of a student-learner program of occupational education under the auspices of a public school, junior college, community and technical college, federally funded work-training program, or private occupational school approved by the private occupational school division;

(c) Upon completion of any other program of training approved by the state board for community colleges and occupational education; or

(d) Upon completion of a program of occupational education conducted outside this state which the director determines offers instructional quality and content comparable to that offered in programs certified by the state board for community colleges and occupational education.

(2) The following occupations are declared to be hazardous:

(a) Operation of any high pressure steam boiler or high temperature water boiler;

(b) Work which primarily involves the risk of falling from any elevated place located ten feet or more above the ground except that work defined as agricultural involving elevations of twenty feet or less above ground;

(c) Manufacturing, transporting, or storing of explosives;

(d) Mining, logging, oil drilling, or quarrying;

(e) Any occupation involving exposure to radioactive substances or ionizing radiation;

(f) Operation of the following power-driven machinery: Woodworking machines, metal-forming machines, punching or shearing machines, bakery machines, paper products machines, shears, and automatic pin-setting machines and any other power-driven machinery which the director determines to be hazardous;

(g) Slaughter of livestock and rendering and packaging of meat;

(h) Occupations directly involved in the manufacture of brick or other clay construction products or of silica refractory products;

(i) Wrecking or demolition, but not including manual auto wrecking;

(j) Roofing;

(k) Occupations in excavation operations.

(3) The director shall promulgate regulations, in accordance with section 24-4-103, C.R.S., to define the occupations prohibited under this section and to prescribe what types of equipment shall be required to make an occupation nonhazardous for minors.

8-12-111. AGE CERTIFICATES.

(1) Any employer desiring proof of the age of any minor employee or prospective employee may require the minor to submit an age certificate. Upon request of a minor, an age certificate shall be issued by or under the authority of the school superintendent of the district or county in which the applicant resides. The superintendents, principals, or headmasters of independent or parochial schools shall issue age certificates to minors who attend such schools.

(2) The age certificate shall show the age of the minor, the date of his birth, the date of issuance of the certificate, the name and position of the issuing officer, the name, address, and description of the minor, and what evidence was accepted as proof of age. The age certificate shall also show the school hours applicable and shall state that a separate school release permit is required for minors under sixteen to work on regular school days during such school hours. It shall be signed by the issuing officer and by the minor in his presence.

(3) An age certificate shall not be issued unless the minor's birth certificate or a photocopy or extract thereof is exhibited to the issuing officer, or unless such evidence was previously examined by the school authorities and the information is shown on the school records. If a birth certificate is not available, other documentary evidence such as a baptismal certificate or a passport may be accepted. If such evidence is not available, the parent or guardian shall appear with the minor and shall make an oath before the judge or other officer of the juvenile or county court as to the age of the minor.

(4) The employer shall keep an age certificate received by him for the duration of the minor's employment and shall keep on file all age certificates where they may be readily examined by an agent of the division. Upon termination of employment and upon request, the certificate shall be returned to the minor.

8-12-112. PROOF OF A HIGH SCHOOL DIPLOMA, A PASSING SCORE ON THE GENERAL EDUCATIONAL DEVELOPMENT EXAMINATION, OR COMPLETION OF A VOCATIONAL EDUCATION PROGRAM.

Any employer may require proof of a high school diploma, a passing score on the general educational development examination, or completion of a vocational education program. The employer shall be required to maintain a record of such high school diploma, proof of a passing score on the general educational development examination, or completion of a vocational education program.

8-12-113. SCHOOL RELEASE PERMIT.

(1) Any minor fourteen or fifteen years of age who wishes to work on school days during school hours shall first secure a school release permit. The permit shall be issued only by the school district superintendent, his agent, or some other person designated by the board of education. The school release permit shall be issued only for a specific position with a designated employer. The permit shall be for a specific length of time not to exceed thirty days. The permit shall be cancelled upon the termination of such employment and shall be issued only in the following circumstances:

(a) If the minor is to be employed in an occupation not prohibited by section 8-12-110 and as evidence thereof presents a signed statement from his prospective employer; and

(b) If the parent or guardian of the minor consents to the employment; and

(c) If the issuing officer believes the best interests of the minor will be served by permitting him to work.

(2) The school release permit shall 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 and shall also require the signature of the parent and the minor in the presence of the issuing officer.

(3) Inasmuch as it is desirable and practical to encourage school attendance by minors at least part time, no school release permit shall be issued under this section unless limited to require class attendance by the minor for at least three class hours each regular school day; except that, in cases of extreme hardship, class attendance may be waived if the issuing officer determines that such action would be in the best interest of the minor.

(4) If the issuing officer is in doubt about whether the proposed employment is in accordance with this article, he shall consult with the division before issuing the permit.

(5) Upon termination for any reason of the employment authorized, the employer shall return the school release permit directly to the issuing officer with a notation showing the date of termination.

(6) The issuing officer is authorized to cancel a school release permit if the issuing officer determines that the action would be in the best interest of the minor. If a school release permit is cancelled, for reasons other than the termination of employment for which the permit was granted, the minor shall be entitled to a review of the cancellation by the court having jurisdiction of juvenile matters in the county in which the minor resides, in accordance with the procedures established by section 8-12-114.

8-12-114. APPEAL FROM THE DENIAL OR CANCELLATION OF A SCHOOL RELEASE PERMIT - PROCEDURE.

(1) If a minor is refused a school release permit or has had a school release permit cancelled for reasons other than the termination of employment for which the permit was granted, he shall be entitled to review by the court having jurisdiction of juvenile matters in the county in which the minor resides, in accordance with the procedures described in this section.

(2) The official who refused to issue or cancelled the school release permit shall, upon demand made within five days after the refusal or cancellation, promptly furnish the minor and his parent or guardian with a written statement of the reasons for such refusal or cancellation.

(3) Within five days after the receipt of such statement, the minor and his parent or guardian may petition the court for an order directing the issuance or reissuance of a school release permit. The petition shall state the reasons why the court should issue such an order, and the petitioner shall attach to such petition the statement of the issuing officer obtained as provided in subsection (2) of this section.

(4) The court shall hold a hearing and receive such further testimony and evidence as it deems necessary. If the court finds that the issuance or reissuance of a permit is in the best interest of the minor, it shall grant the petition.

(5) No fee shall be charged by the court in such proceedings.

8-12-115. DIRECTOR OF THE DIVISION OF LABOR - POWERS AND DUTIES - RULES AND REGULATIONS.

(1) The director shall enforce the provisions of this article.

(2) The director shall take the necessary steps to inform employers, school authorities, and the general public regarding the provisions of this article, and he shall work with other public and private agencies to minimize the obstacles to legitimate employment of minors.

(3) The director shall receive and investigate complaints and may from time to time visit employers at reasonable times and inspect pertinent records to determine compliance with this article.

(4) (a) If investigation of any place of employment or complaint discloses a violation of this article, except section 8-12-105 (3), the director shall give the employer written notice describing the violation and specifying the provisions of this article that such employer is allegedly violating. Within ten days of receipt of such notice of violation, the employer may file a written request for a hearing on the issue of whether the violation exists, which hearing shall be conducted in accordance with section 24-4-105, C.R.S. After a hearing concerning a violation of this article, or after the expiration of twenty days after the issuance of a notice of violation during which the employer has neither requested a hearing nor ceased the conduct that constitutes the alleged violation, the director may issue a final order requiring the employer to cease and desist the conduct found to be in violation. At any time thereafter, the director may order the violating employer to pay a penalty of twenty dollars for each offense. Each day that the conduct constituting the violation is continued after the order is made final, and each minor employed in violation of this article, constitutes a separate offense. The order imposing the penalty shall become final upon issuance, and the penalty shall be due and payable thirty days after the order assessing the penalty is entered, unless prior to that time the order has been modified or a hearing on the penalty has been requested as provided by section 24-4-105, C.R.S. All penalties imposed by this section shall be collected as provided in section 8-1-142.

(b) (I) If investigation of any place of employment or complaint discloses a violation of section 8-12-105 (3), the director shall give the employer written notice describing the violation

and specifying the provisions of this article that such employer is allegedly violating. Within ten days after receipt of such notice of violation, the employer may file a written request for a hearing on the issue of whether the violation exists, which hearing shall be conducted in accordance with section 24-4-105, C.R.S. After a hearing concerning a violation of section 8-12-105 (3), or after the expiration of twenty days after the issuance of a notice of violation during which the employer has neither requested a hearing nor ceased the conduct which constitutes the alleged violation, the director may issue a final order requiring the employer to cease and desist the conduct found to be in violation. At any time thereafter, the director may order the violating employer to pay a penalty pursuant to subparagraph (II) of this paragraph (b). The order imposing the penalty shall become final upon issuance, and the penalty shall be due and payable thirty days after the order assessing the penalty is entered, unless prior to that time the order has been modified or a hearing on the penalty has been requested as provided by section 24-4-105, C.R.S. All penalties imposed by this section shall be collected as provided in section 8-1-142.

(II) Failure to comply with the provisions of this paragraph (b) shall make the offender liable for administrative fines pursuant to the following penalty schedule:

(A) For a first offense, by a fine of not less than two hundred dollars nor more than five hundred dollars;

(B) For a second offense within six months after the first offense, by a fine of not less than five hundred dollars nor more than one thousand dollars;

(C) For a third or subsequent offense within six months after the first offense, by a fine of not less than one thousand dollars nor more than ten thousand dollars.

(5) The findings, orders, and penalties made by the director shall be subject to judicial review pursuant to section 24-4-106, C.R.S.

(6) The director may apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article.

(7) The director, in accordance with section 24-4-103, C.R.S., shall promulgate rules and regulations more specifically defining the occupations and types of equipment permitted or prohibited by this article.

8-12-116. PENALTY FOR VIOLATIONS.

(1) Any person, having legal responsibility for a minor under the age of eighteen years, who knowingly permits such minor to be employed in violation of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars for each offense.

(2) Any person, firm, or corporation, or any agent, manager, superintendent, or foreman of any firm or corporation, who, by himself or through an agent, subagent, foreman, superintendent, or manager, knowingly violates or knowingly fails to comply with any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars for each offense. Upon conviction of a second or subsequent offense, such person shall be punished by a fine of not less than one

hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not longer than ninety days, or by both such fine and imprisonment.

8-12-117. MINORS COVERED BY WORKERS' COMPENSATION.

All minors, whether lawfully or unlawfully employed, shall be subject to the rights and remedies of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, if the employer is included within the meaning of section 8-40-203.

Keyword Index

COLORADO LABOR PEACE ACT

(CRS 8-3-101 et seq.)

COLORADO LABOR PEACE ACT SECTIONS

8-3-101. SHORT TITLE.

This article shall be known and may be cited as the "Labor Peace Act".

8-3-102. LEGISLATIVE DECLARATION - MATTER OF STATEWIDE CONCERN - PROHIBITION ON LOCAL ENACTMENTS.

(1) The public policy of the state as to employment relations and collective bargaining, in the furtherance of which this article is enacted, is declared to be as follows:

(a) It recognizes that there are three major interests involved, namely: That of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(b) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever legitimate controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted in the conduct of their controversy to intrude directly or indirectly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, intimidation, restraint, or coercion.

(c) Negotiations of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation, an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own free choosing without intimidation or coercion from any source.

(d) All rights of persons to join labor organizations or unions and their rights and privileges as members thereof should be recognized, safeguarded, and protected. No person shall be denied membership in a labor organization or union on account of race, color, religion, sex, or by any unfair or unjust discrimination. Arbitrary or excessive initiation fees and dues shall not be required, nor shall excessive, unwarranted, arbitrary, or oppressive fines, penalties, or forfeitures be imposed. The members are entitled to full and detailed reports from their officers, agents, or representatives of all financial transactions and shall have the right to elect officers by secret ballot and to determine and vote upon the question of striking, not striking, and other questions of policy affecting the entire membership.

(e) In order to preserve and promote the interests of the public, the employee, and the employer alike, the state shall establish standards of fair conduct in employment relations and provide a convenient, expeditious, and impartial tribunal by which these interests may have their respective rights and obligations adjudicated, without limiting the jurisdiction of the courts to protect property, and to prevent and punish the commission of unlawful acts. While limiting

individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

(f) It is declared to be the common law of the state that no act which if done by one person would constitute a crime under the common law or statutes of this state is any less a crime if committed by two or more persons or corporations acting in concert, and no act which under the common law or statutes of this state is a wrongful act for which any person has a remedy against the wrongdoer if done by one person is any less a remedial wrong if done by two or more persons or corporations in concert, nor shall the injured person be denied relief in the courts of this state in law or equity except as such relief may be expressly limited by statute.

(g) (I) The general assembly hereby finds and determines that the matters contained in this article have important statewide ramifications for the labor force in this state. The general assembly, therefore, declares that the matters contained in this article are of statewide concern.

(II) No unit of local government, whether by acting through its governing body or an initiative, a referendum, or any other process, shall enact any jurisdiction-wide law or ordinance with respect to minimum wages unless specifically authorized to do so by this article; except that a unit of local government may set minimum wages paid to its own employees.

(II.5) Notwithstanding the provisions of subparagraph (II) of this paragraph (g), any local government regulation or law pertaining to minimum wages in effect as of January 1, 1999, shall remain in full force and effect until such law is repealed by the local government entity that enacted the law.

(III) If it is determined by the officer or agency responsible for distributing federal moneys to a local government that compliance with this paragraph (g) may cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

8-3-103. CONSTRUCTION.

Except as specifically provided in this article, nothing in this article shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work, nor shall anything in this article be so construed as unlawfully to invade the right to freedom of speech. Nothing in this article shall be so construed or applied as to deprive any employee of any unemployment benefit which he might otherwise be entitled to receive under any other laws of the state of Colorado. The fact that any provisions of this article have been adopted from other states, or the language of the statutes of other states has been used in the preparation of this article shall not be taken to adopt as the construction of such provisions the decisions of other states construing such statutes of other states. It is not the intention of the legislature in adopting this article necessarily to adopt the construction that may have been placed upon similar provisions by the courts of other states.

8-3-104. DEFINITIONS.

As used in this article, unless the context otherwise requires:

(1) "All-union agreement" means a contractual provision between an employer or group of employers and a collective bargaining unit representing some or all of the employees of the employer or group of employers providing for any type of union security and compelling an employee's financial support or allegiance to a labor organization. "All-union agreement" includes, but is not limited to, contractual provision for a union shop, a modified union shop, an agency shop (meaning a contractual provision which provides for periodic payment of a sum in lieu of union dues but does not require union membership), a modified agency shop, a prehire agreement, maintenance of dues, or maintenance of membership.

(2) "Authority" means the state of Colorado; any board, commission, agency, or instrumentality thereof; or any district, municipality, city and county, county, or combination thereof, which acquires or operates a mass transportation system.

(3) "Collective bargaining" means negotiation by an employer and the representative of a majority of his employees who are in a collective bargaining unit or their representatives concerning representation or terms and conditions of employment of such employees in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

(4) "Collective bargaining unit" means an organization selected by secret ballot, as provided in section 8-3-107, by a majority vote of the employees of one employer employed within the state who vote at an election for the selection of such unit; except that, where a majority of such employees engaged in a single craft, division, department, or plant have voted by secret ballot that the employees of such single craft, division, department, or plant shall constitute their collective bargaining unit, it shall be so considered. Two or more collective bargaining units may bargain collectively through the same representative or where a majority of the employees in each separate unit have voted to do so by secret ballot, as provided in section 8-3-107.

(5) and (6) Repealed.

(7) "Company union" means an organization of employees, the members of which are the employees of only one employer.

(8) "Director" means the director of the division of labor.

(9) "Division" means the division of labor in the department of labor and employment.

(10) "Election" means a proceeding in which the employees authorized by this article cast a secret ballot to select a collective bargaining unit or for any other purpose specified in this article, including elections conducted by the division of labor or by any tribunal having competent jurisdiction or whose jurisdiction has been accepted by the parties.

(11) (a) "Employee" includes any person, other than an independent contractor, domestic servants employed in and about private homes, and farm and ranch labor, working for another for hire in the state of Colorado in a nonexecutive or nonsupervisory capacity, and shall not be limited to the employees of a particular employer and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer; and

(b) Who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employee or his representative;

(c) Who has not been found to have committed or to have been a party to any unfair labor practice under this article;

(d) Who has not obtained regular and substantially equivalent employment elsewhere; or

(e) Who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased, except by an employer's unlawful refusal to bargain, and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employee who is subject to the federal "Railway Labor Act".

(f) For purposes of this subsection (11), "farm" means stock, dairy, poultry, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, and other structures used for the raising of agricultural or horticultural commodities, provided such structures are utilized for at least fifty percent of the total output produced.

(12) "Employer" means a person who regularly engages the services of eight or more employees, other than persons within the classes expressly exempted under the terms of subsection (11) of this section, and includes any person acting on behalf of any such employer within the scope of his authority, express or implied. The term does not include the state or any political subdivision thereof, except where the state or any political subdivision thereof acquires or operates a mass transportation system, or any carrier by railroad, express company, or sleeping car company subject to the federal "Railway Labor Act", Title 45, U.S.C.A., or any labor organization or anyone acting in behalf of such organization other than when he is acting as an employer-in-fact.

(13) (a) "Labor dispute" means any controversy between an employer and such of his employees as are organized in a collective bargaining unit concerning the rights or process or details of collective bargaining. The entering into of a contract for an all-union agreement or the refusal of an employer to enter into an all-union agreement shall not constitute a labor dispute. It shall not be a labor dispute where the disputants do not stand in the proximate relation of employer and employee. No jurisdictional dispute or controversy between two or more unions as to which of them has or shall have jurisdiction over certain kinds of work; or as to which of two or more bargaining units constitutes the collective bargaining unit as to which the employer stands impartial or ready to negotiate or bargain with whichever is legally determined to be such bargaining unit, shall constitute a labor dispute.

(b) The general right of an employer to select his own employees is recognized and shall be fully protected. It shall not constitute a labor dispute if an employer discharges or refuses to employ an employee on account of incompetence, neglect of work, unsatisfactory service, or dishonesty; but the discharge of an employee or the refusal to employ an employee shall constitute a labor dispute only when such discharge or refusal to employ is founded upon

membership in a union or labor organization or activity therein or when such discharge or failure to employ is in violation of a contract.

(c) No controversy between an employer and his employee shall constitute a labor dispute until after a bargaining unit in accordance with this article is created and a dispute arises between the bargaining unit and the employer.

(d) No labor dispute shall arise from the refusal of an employer to join a union or to cease work in his own business.

(14) "Local union" means an organization of employees employed in this state, the membership of which includes employees of one or more employers, whether or not they are affiliated with an organization of employees employed in one or more other states.

(15) "Mass transportation system" means any system which transports the general public by bus, rail, or any other means of conveyance moving along prescribed routes, except any railroad subject to the federal "Railway Labor Act", Title 45, U.S.C.A.

(16) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, or receivers.

(17) "Representative" includes any person who is the duly authorized agent of a collective bargaining unit.

(18) "Secondary boycott" includes causing or threatening to cause, and combining or conspiring to cause or threaten to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated or continued, whether by:

(a) Withholding patronage, labor, or other beneficial business intercourse;

(b) Picketing;

(c) Refusing to handle, install, use, or work on particular materials, equipment, or supplies; or

(d) Any other unlawful means in order to bring him against his will into a concerted plan to coerce or inflict damage upon another or to compel the party with whom the labor dispute exists to comply with any particular demands.

8-3-105. DIRECTOR TO ADMINISTER AND MAKE RULES AND REGULATIONS THEREFORE.

The director shall enforce and administer the provisions of this article and may adopt reasonable rules and regulations relative to its administration and to the conduct of all elections and hearings pertaining to mass transportation as defined in section 8-3-104 (15). Such rules and regulations shall not be effective until ten days after the date thereof.

8-3-106. RIGHTS OF EMPLOYEES.

In accordance with the provisions of this article, employees have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities

for the purpose of collective bargaining or other mutual aid or protection. Each employee also has the right to refrain from any of such activities. The rights of each employee are essential rights, and nothing contained in this article shall be so construed as to infringe upon or have any operation against or in conflict with such rights.

8-3-107. REPRESENTATIVES AND ELECTIONS.

(1) A unit chosen for the purpose of collective bargaining shall be the exclusive representative of all of the employees in such unit, if the majority of the employees of one employer, or the majority of the employees of one employer in a craft, vote at an election. But employees individually have the right at any time to present grievances to their employer in person or through representatives of their own free choosing, and the employer shall confer with them in relation thereto.

(2) When a question arises concerning the selection of a collective bargaining unit, it shall be determined by secret ballot, and the director, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department, or plant as to the selection of the collective bargaining unit.

(3) When a question arises concerning the selection of a collective bargaining unit, the director shall determine the question thereof by taking a secret ballot of employees and certifying in writing the results thereof to the bargaining units involved and to their employer. There shall be included on any ballot for the selection of a bargaining unit the names or suitable description of each bargaining unit submitted to the director and claimed to be the appropriate unit by an employee or group of employees participating in the election; except that the director, in his discretion, may exclude from the ballot any bargaining unit which, at the time of the election, stands deprived of its rights under this article by reason of a prior adjudication of its having engaged in an unfair labor practice. The ballot shall be so prepared as to permit a vote against representation by any unit named on the ballot. The director's certification of the results of any election shall be conclusive as to the findings included therein, unless reviewed in the manner provided by section 8-3-110 (8), for review of orders of the director.

(4) Questions concerning the selection of collective bargaining units may be raised by petition of any employee or his employer or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the director shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the director that sufficient reason therefore exists.

(5) The director shall investigate and determine which persons shall be qualified and entitled to vote at any election held by him and shall prepare and certify a poll list of such qualified voters and shall file the same in the office of the director not later than twenty-four nor earlier than forty-eight hours preceding the time of such balloting. The list shall be available to the collective bargaining units whose interests are involved in the election. On request of any employee, the list shall be prepared so as to show separately which employees are entitled to vote for general representation of the employees and which employees are entitled to vote separately for craft representation or representation of any one of several plants of a common

employer. No person whose name is not so certified shall be entitled to vote at such election. The director shall protect the secrecy of the ballot and shall take all proper measures for the accurate counting thereof and shall certify the result thereof and immediately file such certificate in the records of the division and make the same available for the inspection of any person interested. The bargaining units so elected and certified shall be the respective representatives of the employees so electing them and recognized as such under this article. The names of all persons voting at the election for the selection of a bargaining unit shall be certified to the division and filed in its records and shall constitute the voting roll for said bargaining unit for all purposes under this article. The name of any person leaving such employment shall be removed from the roll; except that any employee whose name appears on said voting roll may have his name withdrawn from said roll by notice in writing to the division.

8-3-108. WHAT ARE UNFAIR LABOR PRACTICES.

(1) It is an unfair labor practice for an employer, individually or in concert with others, to:

(a) Interfere with, restrain, or coerce his employees in the exercise of the rights guaranteed in section 8-3-106;

(b) Initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it; except that an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with him, nor from cooperating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where such activities or use create no additional expense to the employer;

(c) (I) Encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in regard to hiring, tenure, or other terms or conditions of employment; except that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit if such all-union agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, by secret ballot in favor of such all-union agreement in an election provided for in this paragraph (c) conducted under the supervision of the director. Where the collective bargaining unit involved is currently recognized under sections 8 or 9 of the "National Labor Relations Act", as amended, (49 Stat. 449; 61 Stat. 136), or where the collective bargaining unit involved is currently recognized by reason of certification by the director or the national labor relations board, or where such units were so recognized at the time of an election provided for in this paragraph (c), there is and shall be deemed to have been no need for a certification election as a precedent to an election provided for in this paragraph (c) in such collective bargaining unit on the issue of an all-union agreement. The employees in such a recognized or certified unit within this state shall be the only employees eligible to vote in an election provided for in this paragraph (c) held in such unit.

(II) (A) Any agreement as defined in section 8-3-104 (1) between an employer and a labor organization in existence on June 29, 1977, which has not been voted upon by the employees covered by it may, by written mutual agreement of such employer and labor organization, be

ratified and upon such ratification shall be filed with the director. Any agreement as defined in section 8-3-104 (1) between an employer and a labor organization in existence on June 29, 1977, which has not been ratified and filed, as provided in this subparagraph (II), shall not be legal, valid, or enforceable during the remaining term of that labor contract unless and until either the employer, the labor organization, or at least twenty percent of the employees covered by such agreement file a petition upon forms provided by the division, demanding an election submitting the question of the all-union agreement to the employees covered by such agreement and said agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, by secret ballot in favor of such all-union agreement in an election provided for in this paragraph (c) conducted under the supervision of the director.

(B) Upon filing of such instrument of ratification with the director, the director shall certify that such agreement complies with the provisions of section 8-3-104 (1) notwithstanding the absence of any other election requirements of this article, and by virtue of such ratification and certification, such agreement shall be deemed legal, valid, and enforceable to the extent permitted under the provisions of this article, subject to the provisions of sub-subparagraph (D) of this subparagraph (II).

(C) Within two weeks after the certification by the director provided for in sub-subparagraph (B) of this subparagraph (II), the employer which is a party to such agreement shall post or give written notice to all employees covered by such agreement on the date of ratification of the fact that the agreement has been ratified and certified pursuant to the provisions of this subparagraph (II) and of the right of such employees to file a petition demanding an election as provided in sub-subparagraph (D) of this subparagraph (II). Proof of giving of notice shall be filed with the director within twenty days after the certification by the director provided for in sub-subparagraph (B) of this subparagraph (II).

(D) Within forty-five days after the certification by the director provided for in sub-subparagraph (B) of this subparagraph (II) twenty percent of the employees covered by such agreement may file a petition, upon forms provided by the division, demanding an election submitting the question of ratification of such agreement to the employees covered by such agreement. If ratification of the agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, in said election, the agreement shall be conclusively deemed ratified. Such election shall be held as promptly as possible following the filing of the petition. In the event that a certified contract expires or is terminated prior to the conducting of such an election, such certification shall be applicable to any subsequent agreement between the same parties until such election may be held.

(III) The director shall declare any such all-union agreement terminated whenever:

(A) He finds that the labor organization involved unreasonably has refused to receive as a member any employee of such employer, and any person interested may come before the director, as provided in section 8-3-110, and ask the performance of this duty; or

(B) The employer or twenty percent of the employees covered by such agreement file a petition with the director on forms provided by the division seeking to revoke such all-union agreement and, in an election conducted under the supervision of the director, there is not an

affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, in such election by secret ballot in favor of such all-union agreement. Such petition may only be filed within a time period between one hundred twenty and one hundred five days prior to the end of the collective bargaining agreement or prior to a triennial anniversary of the date of such agreement, and the division must complete said election within sixty days prior to the termination or triennial anniversary of said collective bargaining agreement. The director may conduct an election within a collective bargaining unit no more often than once during the term of any collective bargaining agreement or once every three years in the case of agreements for a period longer than three years.

(IV) The director shall provide a means by which employees may submit confidential petitions for an election under this paragraph (c), a means for verifying the employment, status, and eligibility of petitioners, and a means for determining the sufficiency of such petitions with respect to the twenty percent signature requirement, all of which shall be accomplished without disclosing the identification of such petitioners, except as allowed under subparagraph (V) of this paragraph (c). This duty shall apply to petitions filed pursuant to subparagraph (II) (A), (II) (D), or (III) (B) of this paragraph (c).

(V) No officer or employee of the division shall disclose the names of any signers to a petition or disclose how any person voted in an election to any person outside the division except pursuant to a court order or subpoena issued by a governmental authority or a court, and any such officer or employee who violates such nondisclosure provisions or who refuses to call an election pursuant to this paragraph (c) or prevents or conspires to prevent such call of an election commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(d) Refuse to bargain collectively with the representatives of his employees in any collective bargaining unit; except that where an employer with reasonable cause files with the division a petition requesting a determination as to bargaining unit representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to him by the director;

(e) Enter into an all-union agreement except in the manner provided in paragraph (c) of this subsection (1);

(f) Violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award;

(g) Refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer has accepted;

(h) Discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony in good faith under the provisions of this article;

(i) Deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefore, signed by the employee personally and terminable at any time by the employee's giving at least thirty days' written notice of such termination;

(j) Employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this article;

(k) Make, circulate, or cause to be circulated a blacklist as described in section 8-2-110;

(l) Commit any crime or misdemeanor in connection with any controversy as to employment relations;

(m) Require a potential employee to furnish preemployment application information regarding said applicant's record of civil or military disobedience, unless any such matters resulted in a plea of guilty or a conviction by a court of competent jurisdiction.

(2) It is an unfair labor practice for an employee, individually or in concert with others, to:

(a) Coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 8-3-106, or to intimidate his family or any member thereof, picket his domicile, or injure the person or property of such employee or his family or of any member thereof;

(b) Coerce, intimidate, or induce any employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in section 8-3-106, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative;

(c) Violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award;

(d) Refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employees or their representatives accepted;

(e) Cooperate in engaging in, promoting, or inducing picketing, boycotting, or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike;

(f) Hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment; or to obstruct or interfere with entrance to or egress from any place of employment; or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance;

(g) Engage in a secondary boycott, or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, equipment, or services, or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use, or disposition of materials, equipment, or services;

(h) Take, retain, or remain in unauthorized possession of property or any part thereof of the employer, or to engage in any concerted effort to interfere with production, except by leaving the premises in an orderly manner for the purpose of going on strike;

(i) Engage in a sit-down strike on the premises or property of the employer;

(j) Fail to give the notice of intention to strike provided in section 8-3-113;

(k) Commit any crime or misdemeanor in connection with any controversy as to employment relations;

(l) Demand or require any stand-in employee to be hired or employed by an employer, or to demand or require that the employer employ or pay for an employee to stand by or stand in for work being done by other employees, or to require the employer to employ or pay for any employee not required by the employer or necessary for the work of the employer;

(m) Do or cause to be done, on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1) and (2) of this section.

(3) It is an unfair labor practice for an employee, individually or in concert with others, or for a labor organization or any of its agents to:

(a) Induce or encourage the employees of an employer to engage in a strike or concerted refusal in the course of their employment, or by any means to force or require an employer or any one or more employees to refrain from or prevent the use of any material, device, tool, or equipment intended or calculated to reduce the cost of the work;

(b) Require or force an employer to use any materials or do any work or render any service in connection with any task, job, work, or service as a condition of using any labor-saving device, equipment, tool, or instrument in the performance of such task, job, work, or service;

(c) Impose on any employee any fine, penalty, or forfeiture because such employee has used, is using, or has attempted to use a labor-saving device;

(d) (I) Engage in or induce or encourage employees of any employer to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service where an object thereof is forcing or requiring any employer to assign particular work to employees in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order of the director or certification determining the bargaining representative for employees performing such work; but nothing contained in this subsection (3) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer). Whenever a complaint is filed charging that any person or labor organization is engaged in the unfair labor practice defined in this paragraph (d), the director shall hear and determine the dispute concerning the assignment of work out of which such complaint arises, unless within ten days the parties to the dispute provide evidence to the director that the dispute is properly adjusted, in which case the complaint shall be dismissed by the director.

(II) Upon the filing of a complaint under this paragraph (d), the director shall make a preliminary investigation, and, if he finds that there is reasonable cause that the complaint is true, he may issue an order directing that the employees or labor organization cease and desist from

striking, picketing, or refusing to handle or work on goods pending a resolution by the director of the dispute out of which the complaint arises.

(III) Upon the failure or refusal of any person or labor organization against whom such order is issued to comply with this order or direction, the district court of the district wherein the strike, picketing, or refusal to handle or work on goods takes place may, upon application of the director, issue injunctive relief in the manner provided in the Colorado rules of civil procedure for courts of record in Colorado.

(e) With regard to the entirety of this subsection (3), the following shall apply: Such material, device, tool, or equipment is germane to the employees' craft and not injurious to the employees' health and safety or the public generally, and nothing in this subsection (3) shall negate the rights of an employer and a labor organization to bargain collectively pursuant to subsection (1) (d) of this section.

(4) It is an unfair labor practice to do or cause to be done, on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1), (2), and (3) of this section.

8-3-109. WHAT ARE NOT UNFAIR LABOR PRACTICES.

(1) It is not an unfair labor practice for any employer to refuse to grant a closed shop or all-union agreement or to accede to any proposal therefore as provided in this article.

(2) The right of both employer and employee freely to express, declare, and publish their respective views and proposals concerning any labor relationship shall not be abrogated or limited by this article, nor shall the exercise of such right constitute an unfair labor practice. No strike shall be lawful unless it is authorized by a majority vote of the employees in the union involved taken by secret ballot such as is provided in this article.

(3) It shall not be an unfair labor practice for an employer engaged primarily in the building and construction industry to enter into an all-union agreement, except an agreement providing for an agency shop or modified agency shop, with a labor organization, which agreement is limited in its coverage to employees who, upon their employment, will be engaged in the building and construction industry, if a copy of such agreement is filed with the director and certified by him as provided in section 8-3-108 (1) (c) (II) (B). Such agreement may be ratified as provided in section 8-3-108 (1) (c) (II) (C) or terminated by the director as provided in section 8-3-108 (1) (c) (III).

8-3-110. PREVENTION OF UNFAIR LABOR PRACTICES.

(1) Any controversy concerning unfair labor practices may be submitted to the division in the manner and with the effect provided in this article; but nothing in this article shall prevent the pursuit of equitable or legal relief in courts of competent jurisdiction, nor shall it be any ground for refusal of such relief that all of the administrative remedies provided in this article before the division have not been exhausted.

(2) Upon the filing with the division by any party in interest of a complaint in writing on a form provided by the division charging any person with having engaged in any specific unfair labor practice, the division shall mail a copy of such complaint to all persons so charged. Any

other person claiming interest in the dispute or controversy, as an employer, an employee, or representative thereof, shall be made a party upon application. The director may bring in additional parties by service of a copy of the complaint. Only one such complaint shall issue against a person with respect to a single controversy, but any such complaint may be amended in the discretion of the director at any time prior to the issuance of a final order based thereon. The persons so complained of have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the notice of hearing. The director shall fix a time for the hearing on such complaint, which shall not be less than ten nor more than forty days after the filing of such complaint. Notice shall be given to the complainant and to each party named in the pleadings by service on him personally or by mailing a copy thereof to him at his last known post office address at least ten days before such hearing. In case a party in interest is located without the state and has no known post office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last known post office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon the party located within this state. Such hearing may be adjourned from time to time in the discretion of the director and hearings may be held at such places as the director designates. The director may initiate and file any such complaint of his own motion or at the request of any interested person. Should the director file such a complaint on request, he shall not disclose the name or interest of the person upon whose request the complaint is filed, if in his judgment such disclosure would tend to prejudice the interest of any person who may be affected by any order that the director may enter upon such complaint.

(3) The director has the power to issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by the Colorado rules of civil procedure, and all such depositions shall be taken upon commissions issued by the director. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the director on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture under the laws of the state of Colorado. No individual shall be prosecuted or subjected to any penalty or forfeiture for any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him. An individual so testifying shall not be exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

(4) Any person who willfully and unlawfully fails or neglects to appear or testify or to produce books, papers, and records as required, upon application to a district court, shall be ordered to appear before the director to testify or produce evidence if so ordered, and failure to obey such order of the court may be punished by the court as a contempt thereof.

(5) Each witness who appears before the director by his order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon presentation of properly verified vouchers approved by the director and charged to the proper appropriation for the division.

(6) A complete record shall be kept of all proceedings had before the director, and all testimony and proceedings shall be taken down by the reporter appointed by the director. Such

proceedings shall not be governed by the technical rules of evidence, but by such rules as are prescribed by the director for administrative hearings.

(7) After the final hearing the director shall promptly make and file his findings of fact upon all of the issues involved in the controversy and his order which shall state his determination as to the rights of the parties. Pending the final determination of any controversy before him, the director, after hearing, may make interlocutory findings and orders, which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed; suspend his rights, immunities, privileges, or remedies granted or afforded by this article as the director may specify, but not more than one year; and require an employer to take such affirmative action, including reinstatement of employees with or without pay, as the director may deem proper. Any order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

(8) The director may authorize a deputy, referee, or administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director. Any party in interest who is dissatisfied with the findings or order of the director may seek judicial review pursuant to section 24-4-106, C.R.S.

(9) The director, on his own motion, may set aside, modify, or change any of his findings or orders at any time within twenty days from the date thereof if he discovers any mistake therein or upon the ground of newly discovered evidence.

(10) If any party fails or neglects to obey an order of the director while the same is in effect, the director may file a complaint in the district court of the county wherein such person resides or usually transacts business for the enforcement of such order for appropriate temporary relief or restraining order, and shall certify and file in the court the record in the proceedings, including all documents and papers on file in the matter, and pleadings and testimony upon which such order was entered, and the findings and order of the director. Upon the filing the director shall cause notice thereof to be served upon such party by mailing a copy to his last known post office address, and thereupon the court has jurisdiction of the proceedings and of the question determined therein. Said action may thereupon be brought on for hearing upon such order by the director serving ten days' written notice upon the respondent, subject, however, to the Colorado rules of civil procedure for a change of the place of trial or the calling in of another judge. Upon such hearing the court may confirm, modify, or set aside the order of the director and enter an appropriate decree. No objection that was not urged before the director shall be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances. The findings of fact made by the director, if supported by credible and competent evidence in the record, shall be conclusive. The court in its discretion may grant leave to adduce additional evidence before the court where such evidence appears to be material and reasonable cause is shown for failure to have adduced such evidence in the hearing before the director. The director may modify his findings as to facts, or make new findings by reason of such additional evidence, and he shall file such modified or new findings with the same effect as his original findings and shall file his recommendations, if any, for the modification or setting aside of his original order. The court's judgment and decree shall be final; except that the same shall be subject to appellate review as provided by law.

(11) to (14) Repealed.

(15) Substantial compliance with the procedures of this article is sufficient to give effect to the orders of the director, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

(16) The right of any person to proceed under this section and section 8-3-121 shall not extend beyond six months from the date of the specific act or unfair labor practice alleged.

(17) The director also has the power by himself and on his own motion to initiate proceedings in the manner provided in this section. It is likewise the duty of the director to so initiate a proceeding in his own name whenever complaint is made to him by any party in interest if it appears to the director that the disclosure of the name of the complainant, either as an employee or group of employees or as an employer or agent or representative of the employer, would jeopardize the rights or interests or standing of any party in interest. The proceedings so initiated by the director shall be conducted in the same manner and have the same effect as provided for in this section.

(18) (a) The director has the power and it is his duty in carrying out the public policy of the state, either upon his own initiative or upon the complaint of any party in interest or any organization or persons representing any public interests, if there is picketing which in the opinion of the director might tend to lead to riots, disturbances, or assaults or disturb public peace or injure the property or persons of individuals, to limit the number of pickets that may be permitted; and to prescribe the distance from any plant, entrance, or exit where such picketing may be permitted; and to otherwise prescribe limits to such picketing, including not only the number of persons picketing but also the manner or method thereof; and to prevent the use of weapons of any kind or threats or intimidation.

(b) Upon the failure or refusal of any person against whom any such order or direction is issued to comply with such order or direction, the district court of the district wherein the picketing takes place or the violation occurs, upon application of the director, may issue injunctive relief in the manner provided in the Colorado rules of civil procedure for courts of record in Colorado.

8-3-111. PROTECTION OF EMPLOYEES WHEN AUTHORITY ACQUIRES CERTAIN OPERATIONS.

(1) Before any authority may acquire and operate any property of a privately or publicly owned mass transportation system, fair and equitable protective arrangements, as determined by the director, shall be made to insure certain rights of employees. Such protective arrangements shall include, without being limited to, such provisions as may be necessary to accomplish the following objectives:

(a) The preservation of existing rights, privileges, and benefits of employees under existing collective bargaining agreements between the mass transportation system and the employees thereof, including the continuation of all pension rights and benefits of the employees and their beneficiaries;

(b) The continuation of all collective bargaining in any situation existing at the time of such acquisition and the assurance of employment of all the employees of such mass transportation system so acquired;

(c) The protection of all individual employees with respect to their employment, including priorities, seniorities, and right of advancement when in agreement with any existing collective bargaining agreement;

(d) Training and retraining programs of employees and managing personnel.

(2) The contract whereby an authority acquires any property of a privately or publicly owned mass transportation system shall specify with particularity, the terms and conditions of all the protective arrangements set forth in this section, including all other protective arrangements which may be added through collective bargaining or by direction of the director.

(3) The determination of the sufficiency of protective arrangements shall be made by the director in accordance with such rules and regulations as the commission may from time to time establish.

8-3-112. ARBITRATION.

(1) Parties to a labor dispute may agree in writing to have the director act as arbitrator or to name arbitrators to arbitrate all or any part of such dispute, and thereupon the director shall have the power so to act. The director shall appoint as arbitrators only competent, impartial, and disinterested persons. Proceedings in any such arbitration shall be as provided by the rules of arbitration under the Colorado rules of civil procedure.

(2) All parties to any labor dispute when the employer is an authority shall submit to arbitration upon written order of the director when such written order is the result of the procedure set forth in section 8-3-113 (3). Any order so given shall be subject to appeal within five days of the receipt of such order by either the employee's representative or the authority, who are parties in interest. Appeal of the order shall be made to the district court in the judicial district where the most substantial number of the employees concerned are employed. Such court shall either confirm, deny, amend, or continue the order within sixty days following the application for appeal. The results of any arbitration conducted in accordance with the procedure set forth in this article shall be binding upon all parties in interest with the right of appeal to any court of competent jurisdiction on the grounds that the director or arbitration board has been unfair, capricious, or unjust in its conduct, determinations, or award.

8-3-113. MEDIATION.

(1) The director has power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon his own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the director has any power of compulsion in mediation proceedings. The director shall provide necessary expenses and order reasonable compensation for such mediators as he may appoint.

(2) Where, as provided by this article, the exercise of the right to strike by the employees of any employer engaged in the state of Colorado in the production, harvesting, or initial processing, the latter after leaving the farm, of any farm or dairy product produced in this state would tend to cause the destruction or serious deterioration of such product, the employees shall give to the division at least thirty days' notice of their intention to strike, and, in the case of employees in all other industries or occupations, at least twenty days' notice of their intention to strike. The division shall immediately notify the employer of the receipt of such notice. Upon receipt of such notice, the director shall take immediate steps to effect mediation, if possible. In the event of the failure of the efforts to mediate, the director shall endeavor to induce the parties to arbitrate the controversy. Any strike called or made effective before the expiration of twenty days from the date of such notice shall constitute an unfair labor practice.

(3) Where the exercise of the right to strike is desired by the employees of any authority, the employees or their representatives shall file with the division written notice of intent to strike not less than forty calendar days prior to the date contemplated for such strike. Within twenty days of the filing of the notice, the director shall enter an order allowing or denying the strike based on the grounds of whether or not such strike would interfere with the preservation of the public peace, health, and safety in accordance with rules and regulations of the division. Any order denying a strike under this section shall include an order to arbitrate in accordance with section 8-3-112. Such arbitration shall be entered into not later than one hundred days from the filing of the notice of intent to strike. Immediately upon receipt of a notice of intent to strike, the director shall take steps to effect mediation, if possible. In the event of failure to mediate, the director shall endeavor to induce the parties to arbitrate the controversy. Any strike before the expiration of forty days from the giving of notice of intent to strike or in violation of an order of the director, unless such order is changed on appeal or otherwise, shall constitute an unfair labor practice.

(4) The division shall prescribe reasonable rules of procedure for mediation under this section.

8-3-114. DUTIES OF THE ATTORNEY GENERAL AND DISTRICT ATTORNEYS.

Upon the request of the director, the attorney general or the district attorney of the county in which a proceeding is brought before the district court for the purpose of enforcing or reviewing an order of the director shall appear and act as counsel for the director in such proceeding and in any proceeding to review the action of the district court affirming, modifying, or reversing such order.

8-3-115. EMPLOYER AND EMPLOYEE COMMITTEES.

The director, from time to time, may appoint joint, standing, or special committees composed in equal numbers of representatives of employees and employers. The director may refer to any such committee for its study and advice any matters concerning the relations of employers and employees or the operation of this article.

8-3-116. INTERFERENCE WITH DIRECTOR - OFFICER OF DIVISION.

Any person who willfully assaults, resists, prevents, impedes, or interferes with the director or any officer, deputy, agent, or employee of the division or any of its agencies in the

performance of duties pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

8-3-117. EXISTING CONTRACTS UNAFFECTED.

Nothing in this article shall operate to abrogate, annul, or modify any valid agreement respecting employment relations existing on or before April 1, 1943.

8-3-118. JURISDICTION TO ISSUE RESTRAINING ORDERS OR INJUNCTIONS.

(1) Except as otherwise provided in this article, no court has jurisdiction to issue in any case involving or growing out of a labor dispute any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment, regardless of any promise, undertaking, contract, or agreement to do such work or to remain in such employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any undertaking or promise as is described in section 8-3-119;

(c) Paying or giving to or withholding from any person any strike or unemployment benefits or insurance or other moneys or things of value;

(d) Aiding, by all lawful means, any person who is being proceeded against in, or is prosecuting any action or suit in, any court of this state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of or the facts involved in any dispute, whether by advertising, speaking, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing as an organization to patronize any person with whom the organization has a labor dispute or requiring it to employ any person;

(g) Assembling peaceably to do or to organize to do any of the acts specified in this section or to promote lawful interests;

(h) Advising or notifying any person of an intention to do any of the acts specified in this section;

(i) Agreeing with other persons to do or not to do any of the acts specified in this section;

(j) Advising, urging, or inducing, without fraud, violence, or threat thereof, others to do the acts specified in this section, regardless of any such undertaking or promise as is described in section 8-3-119;

(k) Doing in concert any acts specified in this section on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.

8-3-119. RELATIONS CONTRARY TO PUBLIC POLICY.

(1) The following is declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise or against any other persons who may advise, urge, or induce, without fraud, violence, or threat thereof, either party thereto to act in disregard of the undertaking or promise: Every undertaking or promise made on or after April 1, 1943, whether written or oral, express or implied, between any employee or prospective employee and his employer, prospective employer, or any other individual, firm, company, association, or corporation, whereby:

(a) Either party thereto undertakes or promises to join or to remain a member of some specific labor organization or to join or remain a member of some specific employer organization or any employer organization; or

(b) Either party thereto undertakes or promises not to join or not to remain a member of some specific labor organization or of some specific employer organization or any employer organizations; or

(c) Either party thereto undertakes or promises that he will withdraw from an employment relation in the event that he joins or remains a member of some specific labor organization or any labor organization or of some specific employer organization or any employer organization.

8-3-120. CONFLICT OF PROVISIONS.

Wherever the application of the provisions of other statutes or laws conflict with the application of the provisions of this article, this article shall prevail; except that, in any situation where the provisions of this article cannot be validly enforced, the provisions of such other statutes or laws shall apply.

8-3-121. CIVIL LIABILITY FOR DAMAGES.

(1) Any person who suffers injury because of an unfair labor practice has a right of action, jointly and severally, against all persons participating in said practice for damages caused to the injured person thereby.

(2) If, in accordance with this article or otherwise, persons otherwise unwilling to do so are induced to violate contracts of employment or for services or materials, any person injured thereby shall be entitled to recover and have judgment therefore at law against the persons, jointly and severally, so inducing the violation of such obligations.

8-3-122. PENALTY FOR VIOLATION.

Any person, firm, or corporation who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined for the first offense not less than fifty dollars nor more than one hundred dollars and for the second and subsequent offenses not less than one hundred dollars nor more than five hundred dollars, together with costs.

8-3-123. NONAPPLICABILITY OF OTHER STATUTES.

The provisions of sections 8-1-108, 8-1-120, and 8-1-123 shall not apply to this article, but this article and the administration thereof are governed and controlled as to all matters contained in sections 8-1-108, 8-1-120, and 8-1-123 by the special provisions of this article.

Keyword Index

COLORADO INDUSTRIAL RELATIONS ACT

(CRS 8-1-101 et seq.)

COLORADO INDUSTRIAL RELATIONS ACT SECTIONS

8-1-101. DEFINITIONS.

As used in this article, unless the context otherwise requires:

(1) "Commission" means the industrial commission of Colorado, as said commission existed prior to July 1, 1986.

(2) "Commissioner" means one of the members of the commission.

(2.5) "Department" means the department of labor and employment.

(3) "Deputy" means any person employed by the division designated as such deputy by the director, and who may be engaged in the performance of duties under the direction of the director.

(4) "Director" means the director of the division of labor.

(5) "Division" means the division of labor in the department of labor and employment.

(6) "Employee" means every person in the service of an employer, under any contract of hire, express or implied, not including an elective official of the state, or of any county, city, town, irrigation, drainage, or school district thereof, and not including any officers or enlisted men of the national guard of the state of Colorado.

(7) (a) "Employer" means:

(I) The state, and each county, city, town, irrigation, and school district therein, and all public institutions and administrative boards thereof having four or more employees;

(II) Every person, association of persons, firm, and private corporation, including any public service corporation, manager, personal representative, assignee, trustee, and receiver, who has four or more persons regularly engaged in the same business or employment, except as otherwise expressly provided in this article, in service under any contract of hire, expressed or implied;

(b) This article is not intended to apply to employers of private domestic servants or farm and ranch labor; nor to employers who employ less than four employees regularly in the same business, or in or about the same place of employment.

(8) "Employment" means any trade, occupation, job, position, or process of manufacture or any method of carrying on any such trade, occupation, job, position, or process of manufacture in which any person is engaged, except as otherwise expressly provided in this article.

(8.5) "Executive director" means the executive director of the department of labor and employment.

(9) "General order" means an order of the director applying generally throughout the state to all persons, employments, or places of employment under the jurisdiction of the division. All other orders of the director shall be considered special orders.

(10) "Local order" means any ordinance, order, rule, or determination of any common council, board of aldermen, board of supervisors, board of trustees, or board of commissioners of any county, town, city, or city and county operating under any general or special law of this state

or of the board of health of the state or any municipality therein or any order or direction of any official of the state or municipality therein.

(11) "Order" means any decision, rule, regulation, requirement, or standard promulgated by the director.

(12) "Place of employment" means every place, whether indoors or outdoors or underground, and the premises, work places, works, and plants appertaining thereto or used in connection therewith where either temporarily or permanently any industry, trade, or business is carried on, or where any process or operation directly or indirectly relating to any industry, trade, or business is carried on, or where any person is directly or indirectly employed by another for direct or indirect gain or profit, except as otherwise expressly provided in this article.

(13) "Safe" or "safety", as applied to an employment or place of employment, means such freedom from danger to the life, health, and safety of employees and such reasonable means of notification, egress, and escape in case of catastrophe as the nature of the employment reasonably permits.

8-1-102. INDUSTRIAL CLAIM APPEALS OFFICE - CREATION - POWERS AND DUTIES.

(1) There is hereby created in the office of the executive director of the department of labor and employment the industrial claim appeals office, which may consist of five industrial claim appeals examiners, who shall be appointed to serve on the industrial claim appeals panel by the executive director pursuant to section 13 of article XII of the state constitution and the laws and rules governing the state personnel system. Each industrial claim appeals examiner shall exercise such examiner's powers and perform such examiner's duties and functions in the industrial claim appeals office within the office of the executive director of the department as if transferred thereto by a **type 2** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. Decisions and orders of the industrial claim appeals panel may be made by two appeals examiners. In the event of a disagreement between such two appeals examiners, a third appeals examiner shall review the case, and the decision and final order of the appeals panel shall reflect the collective decision of all three appeals examiners.

(2) The industrial claim appeals panel has the duty and the power to conduct administrative appellate review of any order entered pursuant to articles 43 and 74 of this title and to make a decision on said appeal.

8-1-103. DIVISION OF LABOR - DIRECTOR - EMPLOYEES - QUALIFICATIONS - COMPENSATION - EXPENSES.

(1) There is hereby created a division of labor in the department of labor and employment. Pursuant to section 13 of article XII of the state constitution, the executive director of the department of labor and employment shall appoint the director of the division of labor, and the director shall appoint such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as are necessary to carry out the provisions of law and to perform the duties and exercise the powers conferred by law upon the division and the director. The director shall be the chief administrative officer of the division with such powers, duties, and functions as prescribed by law.

(2) All employees, except experts, shall have been for one year prior to such employment or appointment bona fide residents of this state and, while in the employ of the division, shall receive such compensation as is fixed by the state personnel system laws of this state, such compensation to be paid monthly from funds appropriated for the use of the division. All expenses incurred by the division and its employees pursuant to the provisions of law shall be paid from funds appropriated for its use upon the approval of the director. The traveling expenses of the director or of any employee of the division incurred while on business of the division outside this state shall be paid in the manner prescribed in this subsection (2), but only when such expenses are authorized in advance.

(3) The powers, duties, and functions of the director prescribed under this article, including rule-making, regulation, licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications, shall be performed under the direction and supervision of the executive director of the department of labor and employment, as prescribed by section 24-1-105 (4), C.R.S.

8-1-104. DIRECTOR - SEAL.

(1) Repealed.

(2) The director shall have a seal upon which shall be inscribed the words "Director - Division of Labor - Department of Labor and Employment - Colorado - Seal". His seal shall be affixed to all orders, awards, and copies thereof of the division and to such other instruments as the director shall direct.

(3) All courts of the state shall take judicial notice of said seal. Any copy of an order, award, or record of the director under his seal shall be received in all courts as evidence as if such copy were the original thereof.

8-1-105. OFFICES AND SUPPLIES.

The division shall have offices in the city and county of Denver and at such other places in the state as the executive director of the department may direct. The division shall be provided with suitable office space by the office of state planning and budgeting. The division is authorized to procure all necessary office furniture, stationery, books, periodicals, maps, instruments, apparatus, appliances, and other supplies and incur such other expenses as necessary, and the same shall be paid for in the same manner as other expenses authorized by law. The director or any deputy or referee of the division may hold sessions at any place other than the city and county of Denver when the convenience of the director, deputy, referee, or parties interested requires.

8-1-106. RECORDS - SESSIONS.

(1) Repealed.

(2) The division shall keep a full and accurate record of all proceedings of the division and issue all necessary processes, writs, warrants, orders, awards, and notices as the director or any deputy or referee may require. The director shall supervise the collection of data and information

concerning matters within the jurisdiction of the division and shall make such reports thereon as the executive director of the department of labor and employment may require.

(3) The sessions of the director or any deputy or referee of the division shall be open to the public and shall stand and be adjourned without further notice thereof on the record. All proceedings of the division shall be shown on its records, which shall be public records.

8-1-107. POWERS AND DUTIES OF DIRECTOR.

(1) Repealed.

(2) In addition to any other duties prescribed by law, the director has the duty and the power to:

(a) Appoint advisors who, without compensation, shall advise the director relative to the duties imposed upon the director by articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S.;

(b) Inquire into and supervise the enforcement, with respect to relations between employer and employee, of the laws relating to child labor, laundries, stores, factory inspection, employment offices and bureaus, and fire escapes and means of egress from places of employment and all other laws protecting the life, health, and safety of employees in employments and places of employment;

(c) to (h) Repealed.

(i) Accept, use, disburse, and administer all federal aid or other property, services, and moneys allotted to the division as part of any grant-in-aid safety program authorized by an act of congress and to make such agreements, not inconsistent with any act of congress and the laws of this state, as may be required as a condition precedent to receiving such funds or other assistance. Such acceptance, conditions, and agreement shall not be effective unless and until the director has recommended to and received the written approval of the governor and the executive director of the department. The state treasurer is designated custodian of all funds received pursuant to this paragraph (i) from the federal government, and he shall hold such funds separate and distinct from state funds and is authorized to make disbursements from such funds for the designated purpose or administrative costs which may be provided in such grants-in-aid, upon warrants issued by the controller and upon the voucher of the director.

(j) Repealed.

(k) Collect and collate statistical and other information relating to the work under his jurisdiction. All materials of the division circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S. The director shall cause to be printed and, upon application, furnished free of charge to any employer or employee such blank forms as he shall deem required for the proper and efficient administration of articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S., all such records to be kept in the offices of the division. Copies of orders, regulations, and rules of procedure shall be made for distribution in a manner to constitute sufficient publication as required by law.

(l) to (o) Repealed.

(p) Adopt reasonable and proper rules and regulations relative to the exercise of his powers and proper rules and regulations to govern the proceedings of the division and to regulate the manner of investigations and hearings and to amend said rules and regulations from time to time in his discretion. Such rules and regulations, and amendments thereto, shall be made in accordance with section 24-4-103, C.R.S.

(q) Repealed.

(r) Promulgate rules to implement the provisions of section 26-2-716 (3) (b), C.R.S.

8-1-108. ORDERS EFFECTIVE, WHEN - VALIDITY PRESUMED.

(1) All general orders shall be effective ten days after they are adopted by the director and posted upon the bulletin board of the division in its offices in the city and county of Denver. Special orders shall take effect as therein directed.

(2) The director, upon application of any person, may grant such time as may be reasonably necessary for compliance with any order. Any person may petition the director for an extension of time, which the director shall grant if he finds such an extension of time necessary.

(3) All orders of the division shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this article, or until altered or revoked by the director.

(4) Substantial compliance with the requirements of this article shall be sufficient to give effect to the orders or awards of the director, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature with respect thereto.

8-1-109. EMPLOYER TO FURNISH SAFE PLACE TO WORK. (REPEALED)

8-1-110. UNSAFE PLACES - INVESTIGATION - REPORT - ORDER. (REPEALED)

8-1-111. JURISDICTION OVER EMPLOYER AND EMPLOYEE RELATION.

The director is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state as may be necessary adequately to ascertain and determine the conditions under which the employees labor, and the manner and extent of the obedience by the employer to all laws and all lawful orders requiring such employment and places of employment to be safe, and requiring the protection of the life, health, and safety of every employee in such employment or place of employment, and to enforce all provisions of law relating thereto. The director is also vested with power and jurisdiction to administer all provisions of this article with respect to the relations between employer and employee and to do all other acts and things convenient and necessary to accomplish the purposes of this article including entering into reciprocal agreements with other states and governmental entities.

8-1-112. OFFICERS TO ASSIST IN ENFORCING ORDERS.

It is the duty of all officers and employees of the state, counties, and municipalities, upon request of the director, to enforce in their respective departments all lawful orders of the director, insofar as the same may be applicable and consistent with the general duties of such officers and

employees. It is also their duty to make such reports as the director may require concerning matters within their knowledge pertaining to the purposes of this article and to furnish to the division such facts, data, statistics, and information as may from time to time come to them pertaining to the purposes of this article and the duties of the division thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of this article as regards the health, protection, and safety of employees and the conditions under which they labor. It is the duty of the division to collect and compile such data, facts, and information as shall come to it concerning the relations between employer and employee and relating in any way to the provisions of this article.

8-1-113. AGENTS OF DIVISION AND DIRECTOR - POWERS.

(1) For the purpose of making any investigation with regard to any employment or place of employment or other matter contemplated by the provisions of this article, the director, with the approval of the executive director of the department of labor and employment, has the power to appoint temporarily, by an order in writing, any deputy or any other competent person as an agent, whose duties shall be prescribed in such order.

(2) In the discharge of his duties such agent has every power whatsoever for obtaining information granted in this article to the director and the division, and all powers granted by law to officers authorized to take depositions are granted to such agent.

(3) The director may conduct any number of investigations contemporaneously through different agents and may delegate to such agents the taking of all testimony bearing upon any investigation or hearing. The decision of the director shall be based upon his examination of all testimony and records. The recommendations made by such agent shall be advisory only and shall not preclude any further investigation or the taking of further testimony if the director so orders.

8-1-114. EMPLOYERS AND EMPLOYEES TO FURNISH INFORMATION - PENALTY.

(1) Upon request, every employer and employee shall furnish the division all information required by it to accomplish the purposes of this article, which information shall be furnished on blanks to be prepared by the division. It is the duty of the division to furnish such blanks to the employer free of charge upon request therefore. Every employer receiving from the division any blanks, with directions to fill out same, shall answer fully and correctly all questions therein propounded and give all the information therein sought, or, if unable to do so, he shall give in writing good and sufficient reasons for the failure. The director may require that the information required to be furnished be verified under oath and returned to the division within the period fixed by him or by law. The director, or any person employed by the division for that purpose, has the right to examine, under oath, any employee or employer, or the officer, agent, or employee thereof, for the purpose of ascertaining any information which such employer or employee is required by this article to furnish to the division.

(2) Any employer or employee who fails or refuses to furnish such information as may be required by the division under authority of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars if an employer and twenty-five dollars if an employee.

8-1-115. INFORMATION NOT PUBLIC - PENALTY FOR DIVULGING.

(1) The information contained in the reports lawfully required to be furnished by the employer in section 8-1-114, such other information as may be furnished to the division by employers and employees in pursuance of the provisions of this article, and such information obtained through inspections or other proceedings of this article which might reveal a trade secret shall be for the exclusive use and information of said division in the discharge of its official duties. The director may treat and file the information or any part thereof as confidential, and, when so treated or filed by the director, the same shall be considered to be confidential information for the sole use of the division and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the division is a party to such action or proceeding. The court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. The information contained in this report may be tabulated and published by the division in statistical form for the use and information of other state departments and the public.

(2) Any person in the employ of the division who divulges any confidential information to any person other than the director shall be punished by a fine of not more than one thousand dollars and shall thereafter be disqualified from holding any appointment or employment with any department under the state.

(3) Pursuant to this section, the director shall provide a physical environment and establish policies and procedures to ensure confidentiality for all information regarding any employer, employee, or person pertaining to any action pursuant to articles 1 to 13 of this title; except that such information may be released if there exists an overriding need for access to such information arising pursuant to articles 1 to 13 of this title in connection with:

(a) A dispute resolution, a mediation, or an administrative or judicial proceeding; or

(b) A cooperative effort with another subdivision of government.

8-1-116. INVESTIGATORS TO HAVE ACCESS TO PREMISES.

(1) The director and any other person authorized in writing by the director at any reasonable time may enter any building, surface construction and demolition, factory, workshop, place, or premises of any kind wherein, or in respect of which, any industry except mining is carried on, any work is being or has been done or commenced, or any matter or thing is taking place which has been made the subject of any investigation, hearing, or arbitration by the division; inspect any work, material, machinery, appliance, or article therein; and interrogate any persons in or upon any such building, factory, workshop, place, or premises, except mines, mine workings, and ore milling operations, with respect to any matter or thing mentioned in this article.

(2) Any person who hinders or obstructs the director or any such person authorized by the director in the exercise of any power conferred by this article, or any employer who in bad faith refuses reasonable access to his premises, or any person who gives advance notice of any inspection to be conducted under this article without authority from the director or his designee is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

8-1-117. DIRECTOR TO HAVE ACCESS TO BOOKS - PENALTY.

(1) All books, records, and payrolls of employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts, and statistics appertaining to the purposes of this article shall always be open for inspection by the director or any of his deputies or agents for the purpose of ascertaining the conditions of employment and such other information as may be necessary for the uses and purposes of the director in his administration of the law.

(2) Any employer who refuses to exhibit and furnish said director or any agents of the division an inspection of any books, records, and payrolls of such employer, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts, and statistics appertaining to the purposes of this article or who refuses to admit such director or any agent of the division to any place of employment shall pay a penalty of not less than fifty dollars for each day that such failure, neglect, or refusal continues.

8-1-118. RULES OF EVIDENCE - PROCEDURE.

The director, or persons designated by him, shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as provided in this article or by the rules of the division, but he may make such investigations in such manner as in his judgment are best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this article.

8-1-119. RECORD OF PROCEEDINGS.

(1) A full and complete record shall be kept of all proceedings had before or under the order of the director on any investigation, and all testimony shall be taken down by a shorthand reporter appointed by the director.

(2) A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation or hearing taken by a shorthand reporter appointed by the director, being certified by such shorthand reporter to be a true and correct transcript of the testimony, or a specific part thereof, on the investigation or hearing of a particular witness, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation or hearing so purporting to be taken and subscribed, may be received as evidence by the director or any agent of the division and by any court with the same effect as if such shorthand reporter were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of fifty cents per folio.

8-1-120. DEPOSITIONS.

In any investigation, the director or any other party may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in district courts. All such depositions shall be taken upon commission issued by the director and shall be taken in accordance with the laws and rules of court covering depositions in civil cases in the district courts of this state.

8-1-121. CONTEMPT - PUNISHMENT - FEES.

(1) In case of failure or refusal of any person to comply with an order of the director or subpoena issued by him or his agents, or refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refusal to permit an inspection as provided in this article, the judge of the district court for the county in which the person resides or of the county in which said person has been ordered to appear and testify before said director, on application of the director or any person appointed by him, shall compel obedience by attachment proceedings as in the case of disobedience of the requirements of a subpoena issued from such district court or on a refusal to testify therein.

(2) Any person serving a subpoena or order shall receive the same fees as a sheriff for like service. Such subpoena or order may be served by any officer duly authorized to subpoena witnesses, or by any person designated by the director for such purpose, and proof of the serving of such subpoena or order shall be by the return of such person or officer endorsed thereon or attached thereto. Each witness who appears in answer to a subpoena before the director or his agent, if so ordered by the director, shall receive for his attendance the fees and mileage provided for in civil cases in the district court in the county where such witness attends which shall be paid in the same manner as other expenses of the division are paid.

(3) No witness subpoenaed at the instance of a party other than the director or his agent shall be entitled to compensation unless the director in his discretion shall so order.

8-1-122. INQUIRIES - SCOPE - REPORT.

(1) The director shall inquire into the general condition of labor in the principal industries in the state of Colorado and especially in those which are carried on in corporate forms; into existing relations between employers and employees; into the effect of industrial conditions on public welfare and into the rights and powers of the community to deal therewith; into the conditions of sanitation and safety of employees and the provisions for protecting the life, limb, and health of the employees; into relations existing between lessees of state lands and the state as to production and royalties or rentals paid and the relations between said lessees and their employees with respect to wages paid and conditions of labor; into the growth of associations of employers and wage earners and the effect of such associations upon the relations between employers and employees; into the extent and results of methods of collective bargaining; into any methods which have been tried in any state or in foreign countries for maintaining mutually satisfactory relations between employees and employers; into methods of avoiding or adjusting labor disputes through peaceable and conciliatory mediation and negotiations; and into the scope, methods, and resources of existing bureaus of labor and possible ways of increasing their efficiency and usefulness.

(2) The director shall seek to discover the underlying causes of dissatisfaction in the industrial situation, take all necessary means and methods within the powers of such director as provided by law, to alleviate the same, and report such remedial legislation as in the judgment of the director may be advisable, with his recommendations thereon. Such report shall accompany the annual report required in section 8-1-107 (2) (j).

8-1-123. ARBITRATION.

The director shall do all in his power to promote the voluntary arbitration, mediation, and conciliation of disputes arising under an existing written agreement between employers and

employees and to avoid the necessity of resorting to strikes, lockouts, boycotts, blacklists, discriminations, and legal proceedings in matters of employment. Arbitration undertaken pursuant to this section shall employ the procedures provided in part 2 of article 22 of title 13, C.R.S.

8-1-124. WITNESSES - RULES OF EVIDENCE. (REPEALED)

8-1-125. DISPUTES - JURISDICTION - REQUEST FOR INTERVENTION - PENALTY.

(1) The director may exercise jurisdiction over any dispute between employer and employee affecting conditions of employment, or with respect to wages or hours, only when the employer and the employee request such intervention or when the dispute, as determined by the executive director, affects the public interest, and such jurisdiction shall continue until after the final hearing of such dispute and the entry of the final award therein or until said director shall enter an order disposing of or terminating such jurisdiction. The relation of the employer and employee shall continue uninterrupted by the dispute or anything arising out of the dispute until the final determination thereof by said director; and neither the employer nor any employee affected by any such dispute shall alter the conditions of employment with respect to wages or hours or any other condition of said employment; neither shall they, on account of such dispute, do or be concerned in doing directly or indirectly anything in the nature of a lockout or strike or suspension or discontinuance of work or employment.

(2) A request for intervention shall be submitted to the director by both the employer and the employee and shall set forth the facts, issues, or demands involved in the controversy or dispute, and each party to such dispute shall furnish the director such information within the time and as may be requested by the director.

(3) If either party uses this or any other provision of articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S., for the purpose of unjustly maintaining a given condition of affairs through delay, such party is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(4) The director shall proceed with reasonable diligence in hearing all disputes and shall render a final award or decision therein without unnecessary delay.

8-1-126. LOCKOUTS AND STRIKES UNLAWFUL, WHEN.

It is unlawful for any employer to declare or cause a lockout, or for any employee to go on strike, on account of any dispute prior to or during an investigation, hearing, or arbitration of such dispute by the director, or the board, under the provisions of this article. Nothing in this article shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lockout or strike, or to prohibit the suspension or discontinuance of any industry or of the working of any person therein, which industry is not affected with a public interest. Nothing in this article shall be held to restrain any employer from declaring a lockout, or any employee from going on strike in respect to any dispute after the same has been duly investigated, heard, or arbitrated, under the provisions of this article.

8-1-127. WHEN FINDINGS OR AWARDS ARE BINDING. (REPEALED)

8-1-128. PETITION - WRIT - DISSOLUTION.

The director of the division of labor, as petitioner, may file in the district court of the city and county of Denver, or of any county in which the place of employment or any part thereof is situated, a verified petition against any employers, or employees, or both, as respondents, and setting forth any violation or threatened or attempted violation of any provisions of section 8-1-125 or 8-1-126, and, thereupon, without bond and without notice, such district court shall issue its mandatory writ enjoining the alleged violations, or attempted or threatened violations of this article, and ordering and requiring such respondents to maintain all the conditions of employment in status quo and without change until after the dispute or controversy between said employers and employees has been investigated and heard by said director and the final findings, decision, order, or award of said director made and entered therein. Any respondent may move such court to dissolve such mandatory writ as to such respondent, and, upon at least five days' previous notice to the director, such motion shall be set down for hearing, but such mandatory writ shall not be dissolved without proof of full compliance by such respondent with all the provisions of this article and orders of the director and that the continuance in effect of such mandatory writ is causing or will cause such respondent great and irreparable injury. The court may require such security of said respondent as the court determines adequate to enforce obedience to the provisions of this article on the part of such respondent before such mandatory writ shall be dissolved.

8-1-129. STRIKES AND LOCKOUTS - PENALTIES.

(1) Any employer declaring or causing a lockout contrary to the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment. Each day or part of a day that such lockout exists shall constitute a separate offense under this section.

(2) Any employee who goes on strike contrary to the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment. Each day or part of a day that the employee is on strike shall constitute a separate offense under this section.

(3) Any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike contrary to the provisions of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment.

8-1-130. JUDICIAL REVIEW.

The director has full power to hear and determine all questions within his jurisdiction, and his findings, award, and order issued thereon shall be final agency action. Any person affected by any finding, order, or award of the director may seek judicial review as provided in section 24-4-106, C.R.S.

8-1-131. REVIEW - NOTICE - EVIDENCE - ORDER. (REPEALED)

8-1-132. Final findings and awards - interlocutory orders - modification. (Repealed)

8-1-132.5. Fact-finding by commission - workmen's compensation. (Repealed)

8-1-133. Court to modify or vacate - venue. (Repealed)

8-1-134. Review - complaint - answer - hearing. (Repealed)

8-1-135. Cause referred back to director and commission - procedure. (Repealed)

8-1-136. Setting aside order of director or commission. (Repealed)

8-1-137. Appellate review. (Repealed)

8-1-138. Fees - costs - counsel for director or commission. (Repealed)

8-1-139. Failure of witness to appear or testify - penalty.

(1) Any person who fails, refuses, or neglects to appear and testify, or to produce books, papers, and records as required by the subpoena duly served upon him, or as ordered by the director, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days for each day or part of day that the person is in default.

(2) The district court of the county wherein such person resides or of the city and county of Denver, or of the county wherein said person has been ordered to appear and testify or to produce such books, papers, and records, upon application of the director or his agent, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers, and records before such director or his agent.

8-1-140. Violation - penalty.

(1) If an employer, employee, or any other person violates any provision of this article, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined for which no penalty has been specifically provided, such employer, employee, or any other person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not longer than sixty days, or by both such fine and imprisonment for each such offense.

(2) If any employer, employee, or any other person fails, refuses, or neglects to perform any duty lawfully enjoined within the time prescribed by the director or fails, neglects, or refuses to obey any lawful order made by the director or any judgment or decree made by any court as provided in this article, for each such violation, such employer, employee, or any other person shall pay a penalty of not less than one hundred dollars for each day such violation, failure, neglect, or refusal continues.

(3) In the case of a corporation, the violation of any of the provisions of this article, including any violation fixed as a misdemeanor or other crime, is considered a violation of the provisions of this article by all officers, agents, and representatives of said corporation aiding, abetting, advising, encouraging, participating, inciting, or acquiescing in such violation, and they are individually guilty of such violation and subject to the fines, penalties, and punishments provided in this article.

8-1-141. EACH DAY SEPARATE OFFENSE.

Every day during which any employer or officer or agent thereof or any employee fails to comply with any lawful order of the director or to perform any duty imposed by this article constitutes a separate and distinct violation thereof.

8-1-142. COLLECTION OF PENALTIES.

All penalties provided for in this article shall be collected in a civil action brought against the employer or employee in the name of the director. Any fine provided in this article is considered a penalty and recoverable in a civil action as provided in this section unless the violation of this article, for the punishment of which said fine is provided, is designated as a misdemeanor or other crime.

8-1-143. COSTS - COUNSEL FOR DIRECTOR - ATTORNEY GENERAL AND DISTRICT ATTORNEY TO ENFORCE.

(1) In proceedings to review any finding, order, or award, costs as between the parties shall be allowed in the discretion of the court, but no costs may be taxed against the director or the division.

(2) In any action for the review of any finding, order, or award and upon appellate review thereof, it is the duty of the district attorney of the county wherein said action is pending, or the attorney general if requested by the director, to appear on behalf of the division, whether any other party defendants should have appeared or been represented in the action or not. Upon request of the director, the attorney general or the district attorney of any district or county shall institute and prosecute the necessary proceedings for the enforcement of any of the provisions of this article, or for the recovery of any money due the division, or any penalty provided for in this article, and shall defend in like manner all suits, actions, or proceedings brought against the director. No district attorney or any assistant or deputy district attorney, nor the attorney general or deputy or assistant attorney general within this state, shall appear in any proceedings, hearing, investigation, arbitration, award, or compensation matter, except as attorney for and on behalf of said director and employees of the division.

8-1-144. PENALTY FOR FALSE STATEMENTS.

If, for the purpose of obtaining any order, benefit, or award under the provisions of this article, either for himself or herself or for any other person, anyone willfully makes a false statement or representation, he or she commits a class 5 felony, as defined in section 18-1.3-401, C.R.S.

8-1-145. AUTHORITY OF DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT NOT AFFECTED.

Nothing in this article shall be construed to affect the authority of the department of public health and environment relative to the public health.

8-1-146. EFFECT OF TRANSFER OF POWERS, DUTIES, AND FUNCTIONS.

(1) Repealed.

(2) The division of labor, the division of employment and training, the state board of pharmacy, and the industrial claim appeals panel in the industrial claim appeals office which perform any of the powers, duties, and functions performed by the industrial commission prior to its abolishment on July 1, 1986, shall be the successors in every way with respect to such powers, duties, and functions, except as otherwise provided in this article or by law. Every act performed in the exercise of such powers, duties, and functions shall be deemed to have the same force and effect as if performed by the commission prior to July 1, 1986. Whenever the commission is referred to or designated by any law, contract, insurance policy, bond, or other document, such reference or designation shall be deemed to apply to the division of labor, the division of employment and training, the state board of pharmacy, or the industrial claim appeals panel in the industrial claim appeals office, as the case may be.

8-1-147. ACTIONS, SUITS, OR PROCEEDINGS NOT TO ABATE BY REORGANIZATION - MAINTENANCE BY OR AGAINST SUCCESSORS.

(1) No suit, action, or other proceeding, judicial or administrative, lawfully commenced by or against the commission or by or against any officer or member of the commission in his or her official capacity or in relation to the discharge of his or her official duties shall abate by this article. The court may allow the suit, action, or other proceeding to be maintained by or against the division of labor or any officer affected.

(2) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this article.

(3) No suit, action, or other proceeding, judicial or administrative, lawfully commenced by or against the commission or by or against any officer or member of the commission in his official capacity or in relation to the discharge of his official duties prior to July 1, 1986, shall abate because of the abolishment of the commission effective July 1, 1986. The court may allow the suit, action, or other proceeding to be maintained by or against the division of labor, the division of employment and training, the industrial claim appeals office, or the state board of pharmacy, as the case may be, or any officer affected.

(4) No criminal action commenced or which would have been commenced by the state shall abate because of the abolishment of the commission effective July 1, 1986.

8-1-148. RULES, REGULATIONS, RATES, AND ORDERS ADOPTED PRIOR TO ARTICLE - ABOLISHMENT OF COMMISSION - CONTINUED.

(1) All rules, regulations, rates, orders, and awards of the commission lawfully adopted prior to July 1, 1969, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(2) All rules, regulations, rates, orders, and awards of the commission lawfully adopted prior to July 1, 1986, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

8-1-149. TRANSFER OF OFFICERS, EMPLOYEES, AND PROPERTY.

(1) On July 1, 1969, such officers and employees who were engaged prior to said date in the performance of powers, duties, and functions of the commission and who, in the opinion of the executive director of the department of labor and employment and the governor, shall be necessary to perform the powers, duties, and functions of the division of labor shall become officers and employees of the division of labor and shall retain all rights to the state personnel system and retirement benefits under the laws of the state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions of personnel in the state personnel system shall be made and processed in accordance with state personnel system laws and rules and regulations.

(2) On July 1, 1986, all employees of the commission whose principal duties are concerned with the duties and functions transferred to the department of labor and employment whose employment in the department is deemed necessary by the executive director to carry out the purposes of this article shall be transferred to the department and shall become employees thereof. Such employees shall retain all rights to state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules and regulations.

(3) On July 1, 1986, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the commission pertaining to the duties and functions transferred to the department of labor and employment, division of labor, division of employment and training, and the state board of pharmacy, pursuant to section 24-1-121 (2), C.R.S., are transferred to those divisions and that board, respectively, and become the property thereof.

8-1-150. LICENSING FUNCTIONS SUBJECT TO PERIODIC REVIEW. (REPEALED)

8-1-151. PUBLIC SAFETY INSPECTION FUND CREATED.

There is hereby created in the state treasury a fund to be known as the public safety inspection fund, which shall consist of moneys credited thereto pursuant to section 8-20-101 (3) and sections 9-7-108.5 and 22-32-124 (2), C.R.S. All moneys in the public safety inspection fund shall be subject to annual appropriation by the general assembly for the public safety inspection activities of the division of oil and public safety. The moneys in the public safety inspection fund shall not be credited or transferred to the general fund or any other fund of the state.

8-1-152. APPLICATIONS FOR LICENSES - AUTHORITY TO SUSPEND LICENSES - RULES.

(1) Every application by an individual for a license issued by the department or any authorized agent of the department shall require the applicant's name, address, and social security number.

(2) The department or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department or any authorized agent of the department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

Keyword Index

COLORADO MINIMUM WAGE ACT

(CRS 8-6-101 et seq.)

COLORADO MINIMUM WAGE ACT SECTIONS

8-6-101. LEGISLATIVE DECLARATION - MINIMUM WAGE OF WORKERS - MATTER OF STATEWIDE CONCERN - PROHIBITION ON LOCAL MINIMUM WAGE ENACTMENTS.

(1) The welfare of the state of Colorado demands that workers be protected from conditions of labor that have a pernicious effect on their health and morals, and it is therefore declared, in the exercise of the police and sovereign power of the state of Colorado, that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

(2) The general assembly hereby finds and determines that issues related to the wages of workers in Colorado have important statewide ramifications for the labor force in this state. The general assembly, therefore, declares that the minimum wages of workers in this state are a matter of statewide concern.

(3) (a) No unit of local government, whether by acting through its governing body or an initiative, a referendum, or any other process, shall enact any jurisdiction-wide laws with respect to minimum wages; except that a unit of local government may set minimum wages paid to its own employees.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), any local government regulation or law pertaining to minimum wages in effect as of January 1, 1999, shall remain in full force and effect until such law is repealed by the local government entity that enacted the law.

(c) If it is determined by the officer or agency responsible for distributing federal moneys to a local government that compliance with this subsection (3) may cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

8-6-102. CONSTRUCTION.

Whenever this article or any part thereof is interpreted by any court, it shall be liberally construed by such court.

8-6-103. DEFINITIONS.

As used in this article, unless the context otherwise requires:

(1) and (2) Repealed.

(3) "Director" means the director of the division of labor.

(4) "Division" means the division of labor in the department of labor and employment.

(5) "Minor" means any person of either sex under the age of eighteen years.

(6) "Occupation" means every vocation, trade, pursuit, and industry.

(7) Repealed.

8-6-104. WAGES SHALL BE ADEQUATE - CONDITIONS HEALTHFUL AND MORAL.

It is unlawful to employ workers in any occupation within the state of Colorado for wages which are inadequate to supply the necessary cost of living and to maintain the health of the workers so employed. It is unlawful to employ workers in any occupation within this state under conditions of labor detrimental to their health or morals.

8-6-105. DIRECTOR TO INVESTIGATE.

It is the duty of the director to inquire into the wages paid to employees and into the conditions of labor surrounding said employees in any occupation in this state if the director has reason to believe that said conditions of labor are detrimental to the health or morals of said employees or that the wages paid to a substantial number of employees are inadequate to supply the necessary cost of living and to maintain such employees in health. At the request of not less than twenty-five persons engaged in any occupation, the director shall forthwith make such investigation as is provided in this article. Such investigation may be made at any time, upon the initiative of the director.

8-6-106. DETERMINATION OF MINIMUM WAGE AND CONDITIONS

The director shall determine the minimum wages sufficient for living wages for persons of ordinary ability, including minimum wages sufficient for living wages, whether paid according to time rate or piece rate; 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 what are unreasonably long hours. In all such determinations, the director shall be bound by the provisions of this article and of section 15 of article XVIII of the state constitution; except that, if a higher minimum wage rate is established by applicable federal law or rules, the director shall be bound by such federal law or rules

8-6-107. POWERS OF DIRECTOR - DUTY OF EMPLOYER.

(1) The director, for the purposes of this article, has power to investigate and ascertain the conditions of labor and the wages in the different occupations, whether paid by time rate or piece rate, in the state of Colorado. The director has power, in person or through any authorized representative, 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 to require from any such employer full and true statements of the wages paid.

(2) Every employer shall keep a register of the names, ages, dates of employment, and residence addresses of all employees. It is the duty of every such employer, whether a person, firm, or corporation, to furnish to the director, upon request, any reports or information which the director may require to carry out the purposes of this article, such reports and information to be verified by the oath of the person, or a member of the firm or the president, secretary, or manager of the corporation, furnishing the same if and when so requested by the director; and the director or any authorized representative shall be allowed free access to the place of business of such employer for the purpose of making any investigation authorized by this article.

8-6-108. PUBLIC HEARINGS - WITNESS FEES - CONTEMPT - DIRECTOR TO MAKE RULES.

(1) The director may hold public hearings at such times and places as he deems proper for the purpose of investigating any of the matters he is authorized to investigate by this article at which hearings employers, employees, or other interested persons may appear and give testimony as to the matter under consideration. The director has the power to subpoena and compel the attendance of any witness and to administer oaths, also, by subpoena, to compel the production of any books, papers, or other evidence at any public hearing of the director or at any session of any wage board. All witnesses subpoenaed by said director shall be paid the same mileage and per diem as are allowed by law to witnesses in civil cases before the district court of the state of Colorado. If any person fails to attend as a witness or to bring with him any books, papers, or other evidence when subpoenaed by the director or refuses to testify when ordered so to do, the director may apply to any district court in this state to compel obedience on the part of such person. The district court shall thereupon compel obedience by proceedings for contempt as in cases of disobedience of any order of said court in a proceeding pending before said court. The director shall not be bound by the technical rules of evidence. Said director may hold meetings for the transaction of any of his business at such times and places as he prescribes.

(2) The director has power to make reasonable and proper rules and procedure and to enforce said rules and procedure.

8-6-108.5. MINIMUM WAGE.

(1) Effective July 1, 1977, the minimum wage for minors may be fifteen percent below the minimum wage for other workers; except that the full minimum wage shall be paid to any emancipated minor. An emancipated minor shall mean any individual less than eighteen years of age who:

(a) Has the sole or primary responsibility for his own support;

(b) Is married and living away from parents or guardian;

(c) Is able to show that his well-being is substantially dependent upon being gainfully employed.

(2) An employer may pay a rate of fifteen percent lower than the minimum wage to persons certified by the director to be less efficient due to a physical disability.

(3) The director may issue only such rules as are necessary to carry out the provisions of this article and as are consistent with the purposes and intent of section 8-6-101 and section 15 of article XVIII of the state constitution; except that, if a higher minimum wage rate is established by applicable federal law or rules, the director's rules shall be consistent with such federal law or rules.

8-6-109. METHODS OF ESTABLISHING MINIMUM WAGES - WAGE BOARD.

(1) If after investigation the director is of the opinion that the conditions of employment surrounding said employees are detrimental to the health or morals or that a substantial number of workers in any occupation are receiving wages, whether by time rate or piece rate, inadequate to supply the necessary costs of living and to maintain the workers in health, the director shall proceed to establish minimum wage rates either directly or by the indirect method described in

subsection (2) of this section. If he selects the direct method, the director shall establish the minimum wage rates.

(2) If he adopts the indirect method, the director shall establish a wage board consisting of not more than three representatives of employers in the occupation in question, and of an equal number of persons to represent the employees in said occupation, and of an equal number of disinterested persons to represent the public, and someone representing the director if it is desired. The director shall name and appoint all members of the wage board and designate the chairman thereof. The selection of members representing employers and employees shall be, so far as practicable, through election by employers and employees respectively, subject to approval and selection by the director. The members of the wage board shall be compensated at the same rate and fees for service as jurors in courts of record, and they shall be allowed their necessary traveling and clerical expenses incurred in the actual performance of their duties, to be paid from the appropriations for the expenses of the division.

(3) The proceedings and deliberations of such wage board shall be made a matter of record for the use of the director and shall be admissible as evidence in any proceedings before the director. Each wage board has the same power as the director to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Witnesses subpoenaed by a wage board shall be allowed the same compensation as when subpoenaed by the director.

8-6-110. WAGE BOARD - DUTIES - REPORT - QUORUM.

The director may transmit to each wage board all pertinent information in his possession relative to the wages paid or material to the subject of inquiry of the occupation in question. Each wage board shall endeavor to determine, if requested so to do by the director, the standard conditions of employment; the minimum wage, whether by time rate or piece rate, adequate to maintain in health and to supply with the necessary cost of living an employee of ordinary ability in the occupation in question, or in any branches thereof; and suitable minimum wages, graded, so far as practicable, on a rising scale toward the minimum allowed experienced workers, for learners and apprentices. When a majority of the members of a wage board agree upon standard conditions of employment or minimum wage board determinations, they shall report such determinations to the director, together with the reasons therefore and the facts relating thereto. A majority of the members of any such wage board shall constitute a quorum.

8-6-111. DIRECTOR TO REVIEW REPORT.

(1) Upon the receipt of a report from a wage board, the director shall review the same and may approve or disapprove any determination or recommit the subject to the same or a new wage board. If the director approves any of the determinations of the wage board, said director shall publish notice not less than once a week for two successive weeks in a newspaper of general circulation published in the county in which any business directly affected thereby is located, that he will, on a date and at a place named in said notice, hold a public meeting, at which all persons in favor of or opposed to said recommendations will be given a hearing.

(2) After publication of notice and the meeting, the director, if so desired, may make and render such an order as may be proper or necessary to adopt the recommendations and carry the same into effect and require all employees in the occupation directly affected thereby to preserve and comply with such recommendations and order. Such order is effective thirty days after it is made

and rendered and shall be in full force and effect on and after that day. After the order is effective, it is unlawful for any employer to violate or disregard any of the terms of the order or to employ any worker in any occupation covered by the order at lower wages or under other conditions than authorized or permitted by the order. The director shall, as far as is practicable, mail a copy of any such order to every employer affected thereby; and every employer affected by the order shall keep a copy thereof posted in a conspicuous place in such employer's establishment. Such order shall include a notice of the contents of sections 8-12-105 (3), 8-12-115 (4) (b) (II), and 8-12-116 (2).

(3) In case of an emergency the director may authorize or permit the employment of any person for more hours per day or per week than the maximum now fixed by law.

(4) Overtime, at a rate of one and one-half times the regular rate of pay, may be permitted by the director under conditions and rules and for increased minimum wages which the director, after investigation, determines and prescribes by order and which shall apply equally to all employers in such industry or occupation.

8-6-112. New determination of wages and conditions.

Whenever a minimum wage rate or a new standard of conditions of employment has been established in any occupation, the director, if he deems proper or necessary so to do, upon petition of either employers or employees, may reconvene the wage board or establish a new wage board, and any recommendation made by such board shall be dealt with in the same manner as the original recommendation of a wage board. Pending any new determination, any minimum wage rate and any new standard of conditions of employment theretofore established shall be and continue in force and effect. It is the duty of the director to survey and review for adequacy established wage orders made pursuant to the provisions of section 8-6-111 at least every four years, whether or not the director is petitioned to do so by either employers or employees.

8-6-113. Employment at less than minimum wage - license. (Repealed)

8-6-114. Wages and working conditions for minors. (Repealed)

8-6-115. Discrimination by employer - penalty - prosecutions.

Any employer who discharges or threatens to discharge, or in any other way discriminates against an employee because such employee serves upon a wage board, or is active in its formation, or has testified or is about to testify, or because the employer believes that the employee may testify in any investigation or proceeding relative to enforcement of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars for each violation. The director shall investigate and report to the proper prosecuting officials whether employers in each occupation investigated are obeying his decrees, and the director or employees of the division may cause informations to be filed with and prosecutions to be instituted by the proper prosecuting officials for any violation of the provisions of this article.

8-6-116. Violation - penalty.

The minimum wages fixed by the director, as provided in this article, shall be the minimum wages paid to the employees, and the payment to such employees of a wage less than the minimum so fixed is unlawful, and every employer or other person who, individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than the minimum is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

8-6-117. MINIMUM WAGE PRESUMED REASONABLE - CONCLUSIVENESS.

In every prosecution for the violation of any provision of this article, the minimum wage established by the director shall be prima facie presumed to be reasonable and lawful and the wage required to be paid. The findings of fact made by the director acting within prescribed powers, in the absence of fraud, shall be conclusive.

8-6-118. RECOVERY OF BALANCE OF MINIMUM WAGE.

An employee receiving less than the legal minimum wage applicable to such employee is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with costs of suit, notwithstanding any agreement to work for a lesser wage.

8-6-119. INVESTIGATION OF COMPLAINTS.

Any person may register with the division a complaint that the wages paid to an employee for whom a rate has been established are less than that rate, and the director shall investigate the matter and take all proceedings necessary to enforce the payment of the minimum wage rate.

Keyword Index

SELECT PORTIONS OF COLORADO LABOR AND EMPLOYMENT LAW

(Cited in Bulletins)

SELECT PORTIONS OF COLORADO LABOR AND EMPLOYMENT LAW SECTIONS

(CITED IN BULLETINS)

Independent Contractors: Bulletin 6 (I)
Colorado Revised Statutes 8-40-202(2)(a) (Workers' Compensation Employee Definition)
Colorado Revised Statutes 8-70-115(1)(b) (Employment Security / UI Definitions)

Inmates, Parolees, Prisoners, And Probationers: Bulletin 34 (I)
Colorado Revised Statutes 8-40-301 (Scope of the Term Employee)

Amusement, Seasonal, Recreational, and Camp Establishments and Workers: Bulletin 37 (I)
Colorado Revised Statutes 26-6-101.4 (Human Services Child Care Licensing)

Volunteer Firefighters: Bulletin 38 (I)
Colorado Revised Statutes 31-30-1131 (Volunteer Firefighter)

Cost of Medical Examinations and Background Checks: Bulletin 2 (II)
Colorado Revised Statutes 8-2-118 (Cost of Medical Examination)

Notice of Termination and Employment-At-Will: Bulletin 4 (II)
Colorado Revised Statutes 24-34-402 (Discriminatory or Unfair Employment Practices)
Colorado Revised Statutes 24-34-402.5 (Off Duty Legal Activities)
Colorado Revised Statutes 24-50.5-103 (Retaliation Prohibited)

Jury Duty: Bulletin 6 (II)
Colorado Revised Statutes 13-71-126 (Juror Compensation)
Colorado Revised Statutes 13-71-134 (Penalties for Juror Harassment)

Voting: Bulletin 7 (II)
Colorado Revised Statutes 1-7-102 (Employees Entitled to Vote)

Non-compete and Nonsolicitation Agreements: Bulletin 8 (II)
Colorado Revised Statutes 8-2-113 (Non-Compete Statute)

Garnishments and Income Assignments: Bulletin 9 (II)
Colorado Revised Statutes 14-14-111.5 (Income Assignments for Child Support)

Preferred Claims and Employer Insolvency: Bulletin 11 (II)
Colorado Revised Statutes 8-10-101 (Wages a Preferred Claim)
Colorado Revised Statutes 8-10-102 (Statement of Claim)

Bad Checks and Notice of Dishonored Instrument: Bulletin 12 (II)
Colorado Revised Statutes 13-21-109 (Recovery of Damages for Checks Not Paid)

Medical Leave, Pregnancy Leave, and Disability: Bulletin 13 (II)
Colorado Revised Statutes 24-34-402.7 (Domestic Abuse Leave)

Employee Mistreatment and Discrimination: Bulletin 14 (II)
Colorado Revised Statutes 24-34-402 (Discriminatory or Unfair Employment Practices)

Small Claims Court: Bulletin 15 (II)
Colorado Rules of Civil Procedure 501-521 (Colorado Rules of Procedure for Small Claims Courts)

Mechanics' Liens: Bulletin 16 (II)
Colorado Revised Statutes 38-22-101 to 38-22-133 (Mechanics' Liens)

Unclaimed Property and Uncashed Checks: Bulletin 17 (II)
Colorado Revised Statutes 38-13-108.2 (Property Held by Courts and Public Agencies)
Colorado Revised Statutes 38-13-110 (Report and Payment or Delivery of Abandoned Property)

Employee Domestic Abuse Leave Law: Bulletin 20 (II)
Colorado Revised Statutes 24-34-402.7 (Domestic Abuse Leave Law)

Off Duty Legal Activities: Bulletin 21 (II)
Colorado Revised Statutes 24-34-402.5 (Off Duty Legal Activities)

Employment References: Bulletin 22 (II)
Colorado Revised Statutes 8-2-114 (Reference Immunity Statute)

Colorado Collection Laws and Practices: Bulletin 25 (II)
Colorado Revised Statutes 12-14-101 to 12-14-137 (Colorado Fair Debt Collection Practices Act and Related Laws)

Youth Employment: Motor Vehicle Operation: Bulletin 8 (III)
Colorado Revised Statutes 42-2-105 (Special Restrictions on Certain Drivers)
Colorado Revised Statutes 42-2-105.5 (Restrictions on Minor Drivers Under 17)

8-40-202. EMPLOYEE. CITED IN BULLETIN 6 (I).

(1) "Employee" means:

(a) (I) (A) Every person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied; and every elective official of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof; and every member of the military forces of the state of Colorado while engaged in active service on behalf of the state under orders from competent authority. Police officers and firefighters who are regularly employed shall be deemed employees within the meaning of this paragraph (a), as shall also sheriffs and deputy sheriffs, regularly employed, and all persons called to serve upon any posse in pursuance of the provisions of section 30-10-516, C.R.S., during the period of their service upon such posse, and all members of volunteer fire departments, including any person receiving a retirement pension under section 31-30-1122, C.R.S., who serves as an active volunteer firefighter of a fire department subsequent to retirement pursuant to section 31-30-1132, C.R.S., or any person ordered by the chief or a designee of the chief's at the scene of an emergency or during the period of an emergency to become a member of that department for the duration of an emergency, and to perform the duties of a firefighter, and only if the person who is so ordered reports any claim within ten days of the cessation of the emergency, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams in any county, city, town, municipality, or legally organized fire protection district or ambulance district in the state of Colorado, and all members of the civil air patrol, Colorado wing, while said persons are actually performing duties as volunteer firefighters or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and while engaged in organized drills, practice, or training necessary or proper for the performance of such duties. Members of volunteer police departments, volunteer police reserves, and volunteer police teams or groups in any county, city, town, or municipality, while actually performing duties as volunteer police officers, may be deemed employees within the meaning of this paragraph (a) at the option of the governing body of such county or municipality.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), any elected or appointed official of any county, city, town, or irrigation, drainage, or school district or taxing district who receives no compensation for service rendered as such an official, other than reimbursement of actual expenses, may be deemed not to be an employee within the meaning of this paragraph (a) at the option of the governing body of such county, city, town, or district. The option to exclude such officials as employees within the meaning of this paragraph (a) may be exercised as to any category of officials or as to any combination of categories of officials. Any such option may be exercised for any policy year by the filing of a statement with the division not less than forty-five days before the start of the policy year for which the option is to be exercised. If such a statement is in effect as to any category of such uncompensated officials, no official in said category shall be deemed an employee within the meaning of this

paragraph (a). The governing body shall notify each official of such action promptly at the time such election to exclude is exercised.

(II) The rate of compensation of such persons accidentally injured, or, if killed, the rate of compensation for their dependents, while serving upon such posse or as volunteer firefighters or as members of such volunteer police departments, volunteer police reserves, or volunteer police teams or groups or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and of every nonsalaried person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied, including nonsalaried elective officials of the state, and of all members of the military forces of the state of Colorado shall be at the maximum rate provided by articles 40 to 47 of this title; except that this subparagraph (II) shall apply to an official described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a) only if no statement exercising the option to exclude such official as an employee within the meaning of this paragraph (a) is in effect.

(III) Any person who, as part of a rehabilitation program of the social services department of any county or city and county, is placed with a private employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of such private employer. Any person who receives a work experience assignment to a position in any department or agency of any county or municipality, in any school district, in the office of any state agency or political subdivision thereof, or in any private for profit or any nonprofit agency pursuant to the provisions of part 7 of article 2 of title 26, C.R.S., shall be deemed while so assigned to be an employee of the respective department, agency, office, political subdivision, private for profit or nonprofit agency, or school district to which said person is assigned or, if so negotiated between the county and the entity to which the person is assigned, of the county arranging the work experience assignment. Any person who receives a work experience assignment to a position in any federal office or agency pursuant to part 7 of article 2 of title 26, C.R.S., shall be deemed while so assigned to be an employee of the county arranging the work experience assignment. The rate of compensation for such persons if accidentally injured or, if killed, for their dependents shall be based upon the wages normally paid in the community in which they reside for the type of work in which they are engaged at the time of such injury or death; except that, if any such person is a minor, compensation to such minor for permanent disability, if any, or death benefits to such minor's dependents shall be paid at the maximum rate of compensation payable under articles 40 to 47 of this title at the time of the determination of such disability or of such death.

(IV) Except as provided in section 8-40-301 (3) and section 8-40-302 (7) (a), any person who may at any time be receiving training under any work or job training or rehabilitation program sponsored by any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college and who, as part of any such work or job training or rehabilitation program of any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college, is placed with any employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of the respective department, board, commission, or institution of the state of Colorado or of the county, city and county, city, town, school district, or private or parochial

school or college sponsoring such training or rehabilitation program unless the following conditions are met, in which case the placed person shall be deemed an employee of the employer with whom he or she is placed:

(A) The sponsoring entity and the employer agree that the employer shall cover the placed person under the employer's workers' compensation insurance;

(B) The employer does in fact insure and keep insured its liability for workers' compensation as provided in articles 40 to 47 of this title and does in fact cover the placed person under such insurance; and

(C) With respect to agreements between sponsoring entities and employers entered into after April 1, 1991, the employer has been provided with notice of the provisions of this subparagraph (IV) and of subparagraphs (V) and (VI) of this paragraph (a).

(V) In the event a person placed with an employer is deemed an employee of the employer pursuant to subparagraph (IV) of this paragraph (a), the sponsoring entity shall not be subject to any liability for or on account of the death of or personal injury to the person so placed. In the event such person is deemed an employee of the sponsoring entity pursuant to the said subparagraph (IV), the employer shall not be subject to any liability for or on account of the death of or personal injury to the person and shall not be required to carry workers' compensation insurance or to pay premiums for workers' compensation insurance with respect to the person.

(VI) The rate of compensation for a person placed pursuant to subparagraph (IV) of this paragraph (a) if accidentally injured or, if killed, for dependents of such person shall be based upon the wages normally paid in the community in which such person resides or in the community where said work or job training or rehabilitation program is being conducted for the type of work in which the person is engaged at the time of such injury or death, as determined by the director; except that, if any such person is a minor, compensation for such minor for permanent disability, if any, or death benefits to such minor's dependents shall be paid at the maximum rate of compensation payable under articles 40 to 47 of this title at the time of the determination of such disability or death.

(b) Every person in the service of any person, association of persons, firm, or private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, under any contract of hire, express or implied, including aliens and also including minors, whether lawfully or unlawfully employed, who for the purpose of articles 40 to 47 of this title are considered the same and have the same power of contracting with respect to their employment as adult employees, but not including any persons who are expressly excluded from articles 40 to 47 of this title or whose employment is but casual and not in the usual course of the trade, business, profession, or occupation of the employer. The following persons shall also be deemed employees and entitled to benefits at the maximum rate provided by said articles, and, in the event of injury or death, their dependents shall likewise be entitled to such maximum benefits, if and when the association, team, group, or organization to which they belong has elected to become subject to articles 40 to 47 of this title and has insured its liability under said articles: All members of privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations while performing their respective duties as members of such privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams,

volunteer ambulance teams or groups, and volunteer search teams and organizations and while engaged in organized drills, practice, or training necessary or proper for the performance of their respective duties.

(2) (a) Notwithstanding any other provision of this section, any individual who performs services for pay for another shall be deemed to be an employee, irrespective of whether the common-law relationship of master and servant exists, unless such individual is free from control and direction in the performance of the service, both under the contract for performance of service and in fact and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service shall not be considered if such control is exercised pursuant to the requirements of any state or federal statute or regulation.

(b) (I) To prove that an individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may show by a preponderance of the evidence that the conditions set forth in paragraph (a) of this subsection (2) have been satisfied. The parties may also prove independence through a written document.

(II) To prove independence it must be shown that the person for whom services are performed does not:

(A) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for such person for a finite period of time specified in the document;

(B) Establish a quality standard for the individual; except that the person may provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(C) Pay a salary or at an hourly rate instead of at a fixed or contract rate;

(D) Terminate the work of the service provider during the contract period unless such service provider violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(E) Provide more than minimal training for the individual;

(F) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(G) Dictate the time of performance; except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established;

(H) Pay the service provider personally instead of making checks payable to the trade or business name of such service provider; and

(I) Combine the business operations of the person for whom service is provided in any way with the business operations of the service provider instead of maintaining all such operations separately and distinctly.

(III) A document may satisfy the requirements of this paragraph (b) if such document demonstrates by a preponderance of the evidence the existence of the factors listed in subparagraph (II) of this paragraph (b) as are appropriate to the parties' situation. The existence of any one of these factors is not conclusive evidence that the individual is an employee.

(IV) If the parties use a written document pursuant to this paragraph (b), such document must be signed by both parties and may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to workers' compensation benefits and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship. All signatures on any such document must be duly notarized.

(V) If the parties use a written document pursuant to this paragraph (b) and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

(c) Nothing in this section shall be construed to conflict with section 8-40-301 or to relieve any obligations imposed pursuant thereto.

(d) Nothing in this section shall be construed to remove the claimant's burden of proving the existence of an employer-employee relationship for purposes of receiving benefits pursuant to articles 40 to 47 of this title.

8-70-115. EMPLOYMENT - "FEDERAL UNEMPLOYMENT TAX ACT". CITED IN BULLETIN 6 (I).

(1) (a) "Employment", subject to other provisions of this subsection (1), includes any service performed prior to January 1, 1972, which was employment as defined in this subsection (1) prior to such date and service performed after December 31, 1971, by an employee as defined in section 3306 (i) of the "Federal Unemployment Tax Act" and any service performed after December 31, 1977, by an employee, as defined in subsection (o) of section 3306 of the "Federal Unemployment Tax Act", including service in interstate commerce.

(b) Notwithstanding any other provision of this subsection (1) and notwithstanding the provisions of section 8-80-101, service performed by an individual for another shall be deemed to be employment, irrespective of whether the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the division that such individual is free from control and direction in the performance of the service, both under his contract for the performance of service and in fact; and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service, if exercised pursuant to the requirements of any state or federal statute or regulation, shall not be considered.

(c) To evidence that such individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may either show by a preponderance of the evidence that the conditions set forth in paragraph (b) of this subsection (1) have been satisfied, or they may demonstrate in a written document, signed by both parties, that the person for whom services are performed does not:

(I) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for the said person for a finite period of time specified in the document;

(II) Establish a quality standard for the individual; except that such person can provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(III) Pay a salary or hourly rate but rather a fixed or contract rate;

(IV) Terminate the work during the contract period unless the individual violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(V) Provide more than minimal training for the individual;

(VI) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(VII) Dictate the time of performance; except that a completion schedule and a range of mutually agreeable work hours may be established;

(VIII) Pay the individual personally but rather makes checks payable to the trade or business name of the individual; and

(IX) Combine his business operations in any way with the individual's business, but instead maintains such operations as separate and distinct.

(d) A document may satisfy the requirements of paragraph (c) of this subsection (1) if such document demonstrates, by a preponderance of the evidence, the existence of such factors listed in subparagraphs (I) to (IX) of paragraph (c) of this subsection (1) as are appropriate to the parties' situation.

(2) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, such document may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties, where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity, and that the independent contractor is obligated to pay federal and state income tax on any moneys paid pursuant to the contract relationship.

(3) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project, such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

8-40-301. SCOPE OF TERM "EMPLOYEE". CITED IN BULLETIN 34 (I).

(1) "Employee" excludes any person employed by a passenger tramway area operator, as defined in section 25-5-702 (1), C.R.S., or other employer, while participating in recreational activity, who at such time is relieved of and is not performing any duties of employment, regardless of whether such person is utilizing, by discount or otherwise, a pass, ticket, license, permit, or other device as an emolument of employment.

(2) "Employee" excludes any person who is a licensed real estate sales agent or a licensed real estate broker associated with another real estate broker if:

(a) Substantially all of the sales agent's or associated broker's remuneration from real estate brokerage is derived from real estate commissions; and

(b) The services of the sales agent or associated broker are performed under a written contract specifying that the sales agent or associated broker is an independent contractor; and

(c) Such contract provides that the sales agent or associated broker shall not be treated as an employee for federal income tax purposes.

(3) (a) Notwithstanding the provisions of section 8-40-202 (1) (a) (IV), "employee" excludes any person who is confined to a city or county jail or any department of corrections facility as an inmate and who, as a part of such confinement, is working, performing services, or participating in a training or rehabilitation or work release program.

(b) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate who is working for a private employer under a contract of hire wherein the private employer is required to maintain workers' compensation insurance for its employees pursuant to articles 40 to 47 of this title. Such inmate shall be an employee of such private employer for purposes of articles 40 to 47 of this title.

(c) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate working for a joint venture established pursuant to the provisions of section 17-24-119 or 17-24-121, C.R.S. Such inmate shall be an employee of such joint venture for purposes of articles 40 to 47 of this title.

(d) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate working for a private person or entity pursuant to the provisions of section 17-24-122, C.R.S. Such inmate shall be an employee of such private person or entity for purposes of articles 40 to 47 of this title.

(4) "Employee" excludes any person who volunteers time or services for a ski area operator, as defined in section 33-44-103 (7), C.R.S., or for a ski area sponsored program or activity, notwithstanding the fact that such person may receive noncash remuneration for such person or such person's designee in conjunction with such person's status as a volunteer. No contract of hire, express or implied, is created between any volunteer pursuant to this section and a ski area operator. Notice shall be given to such volunteer in writing that the volunteering of time or

services under this subsection (4) does not constitute employment for purposes of the "Workers' Compensation Act of Colorado" and that such person is not entitled to benefits pursuant to said act.

(5) "Employee" excludes any person who is working as a driver under a lease agreement pursuant to section 40-11.5-102, C.R.S., with a common carrier or contract carrier.

(6) Any person working as a driver with a common carrier or contract carrier as described in this section shall be eligible for and shall be offered workers' compensation insurance coverage by Pinnacol Assurance or similar coverage consistent with the requirements set forth in section 40-11.5-102 (5), C.R.S.

(7) Persons who provide host home services as part of residential services and supports, as described in section 27-10.5-104 (1) (f), C.R.S., for an eligible person, as defined in section 25.5-6-403 (2) (a), C.R.S., pursuant to the "Home- and Community-based Services for Persons with Developmental Disabilities Act", part 4 of article 6 of title 25.5, C.R.S., and pursuant to a contract with a community centered board designated pursuant to section 27-10.5-105, C.R.S., or a contract with a service agency as defined in section 27-10.5-102 (28), C.R.S., shall not be considered employees of the community centered board or the service agency.

(8) For the purposes of articles 40 to 47 of this title, "employee" excludes any person who performs services for more than one employer at a race meet as defined by section 12-60-102 (22), C.R.S., or at a horse track as defined by section 12-60-102 (11), C.R.S.

26-6-101.4. LEGISLATIVE DECLARATION CONCERNING THE PROTECTIONS AFFORDED BY REGULATION. CITED IN BULLETIN 37 (I).

(1) The general assembly finds and declares that increasing numbers of children in Colorado are spending a significant portion of their day in care settings outside their own homes. In addition, some children are placed in facilities for residential care for their protection and well-being. The general assembly finds that regulation and licensing of child care facilities contribute to a safe and healthy environment for children. The provision of such environment affords benefits to children, their families, their communities, and the larger society. The general assembly acknowledges that there is a need to balance accessibility and quality of care when regulating child care facilities. It is the intent of the general assembly that those who regulate and those who are regulated work together to meet the needs of the children, their families, and the child care industry.

(2) In balancing the needs of children and their families with the needs of the child care industry, the general assembly also recognizes the financial demands with which the department of human services is faced in its attempt to ensure a safe and sanitary environment for those children of the state of Colorado who are in child care facilities. In an effort to reduce the risk to children outside their homes while recognizing the financial constraints placed upon the department, it is the intent of the general assembly that the limited resources available be focused primarily on those child care facilities that have demonstrated that children in their care may be at higher risk pursuant to section 26-6-107.

31-30-1131. VOLUNTEER FIREFIGHTER - EMPLOYMENT TERMINATION RESTRICTED. CITED IN BULLETIN 38 (I).

(1) An employer shall not terminate an employee who is a volunteer firefighter and who fails to report to work because the employee has responded to an emergency summons if the employee provides the employer with a written statement from the chief of the fire department that the employee's absence was due to the response.

(2) An employer may deduct time lost from employment caused by a response to an emergency summons from the wages of an employee who is a volunteer firefighter.

8-2-118. COST OF MEDICAL EXAMINATION - EMPLOYER AND EMPLOYEE DEFINED. CITED IN BULLETIN 2 (II).

(1) It is unlawful for any employer, as defined in subsection (2) of this section, to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment, except those records necessary to support the applicant's statements in the application for employment.

(2) "Employer", as used in this section, means an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) "Employee", as used in this section, means every person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit, to engage in any employment.

(4) Any employer who violates the provisions of this section is liable to a penalty of not more than one hundred dollars for each violation. It is the duty of the director of the division of labor to enforce this section.

(5) (a) The director of the division of labor shall enforce this section as it applies to an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, or trustee in bankruptcy doing business in or operating within the state.

(b) The public utilities commission shall enforce this section as it applies to any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(c) Nothing in this subsection (5) shall be construed as applying to irrigation ditch and water companies.

24-34-402. DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES. CITED IN BULLETIN 4 AND 14 (II).

(1) It shall be a discriminatory or unfair employment practice:

(a) For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation against any person otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job. For purposes of this paragraph (a), "harass" means to create a hostile work environment based upon an individual's race, national origin, sex, sexual orientation, disability, age, or religion. Notwithstanding the provisions of this paragraph (a), harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate.

(b) For an employment agency to refuse to list and properly classify for employment or to refer an individual for employment in a known available job for which such individual is otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or for an employment agency to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the applicant from the job, and the disability has a significant impact on the job;

(c) For a labor organization to exclude any individual otherwise qualified from full membership rights in such labor organization, or to expel any such individual from membership in such labor organization, or to otherwise discriminate against any of its members in the full enjoyment of work opportunity because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry;

(d) For any employer, employment agency, or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or intent to make any such limitation,

specification, or discrimination, unless based upon a bona fide occupational qualification or required by and given to an agency of government for security reasons;

(e) For any person, whether or not an employer, an employment agency, a labor organization, or the employees or members thereof:

(I) To aid, abet, incite, compel, or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice;

(II) To obstruct or prevent any person from complying with the provisions of this part 4 or any order issued with respect thereto;

(III) To attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice;

(IV) To discriminate against any person because such person has opposed any practice made a discriminatory or an unfair employment practice by this part 4, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 4 of this article;

(f) For any employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling apprenticeship programs or providing, coordinating, or controlling on-the-job training programs or other instruction, training, or retraining programs:

(I) To deny to or withhold from any qualified person because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry the right to be admitted to or participate in an apprenticeship training program, an on-the-job training program, or any other occupational instruction, training, or retraining program; but, with regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program, and the disability has a significant impact on participation in the program;

(II) To discriminate against any qualified person in pursuit of such programs or to discriminate against such a person in the terms, conditions, or privileges of such programs because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry;

(III) To print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for such programs, or to make any inquiry in connection with such programs that expresses, directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or any intent to make any such limitation, specification, or discrimination, unless based on a bona fide occupational qualification;

(g) For any private employer to refuse to hire, or to discriminate against, any person, whether directly or indirectly, who is otherwise qualified for employment solely because the person did not apply for employment through a private employment agency; but an employer shall not be deemed to have violated the provisions of this section if such employer retains one or more employment agencies as exclusive suppliers of personnel and no employment fees are charged to an employee who is hired as a result of having to utilize the services of any such employment agency;

(h) (I) For any employer to discharge an employee or to refuse to hire a person solely on the basis that such employee or person is married to or plans to marry another employee of the employer; but this subparagraph (I) shall not apply to employers with twenty-five or fewer employees.

(II) It shall not be unfair or discriminatory for an employer to discharge an employee or to refuse to hire a person for the reasons stated in subparagraph (I) of this paragraph (h) under circumstances where:

(A) One spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse;

(B) One spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or

(C) One spouse has access to the employer's confidential information, including payroll and personnel records.

(2) Notwithstanding any provisions of this section to the contrary, it is not a discriminatory or an unfair employment practice for the division of employment and training of the department of labor and employment to ascertain and record the disability, sex, age, race, creed, color, or national origin of any individual for the purpose of making such reports as may be required by law to agencies of the federal or state government only. Said records may be made and kept in the manner required by the federal or state law, but no such information shall be divulged by said division or department to prospective employers as a basis for employment, except as provided in this subsection (2).

(3) Nothing in this section shall prohibit any employer from making individualized agreements with respect to compensation or the terms, conditions, or privileges of employment for persons suffering a disability if such individualized agreement is part of a therapeutic or job-training program of no more than twenty hours per week and lasting no more than eighteen months.

(4) Notwithstanding any other provision of this section to the contrary, it shall not be a discriminatory or an unfair employment practice with respect to age:

(a) To take any action otherwise prohibited by this section if age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular employer or where the differentiation is based on reasonable factors other than age; or

(b) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section; except that, unless authorized in paragraph (a) of this subsection (4), no such employee benefit plan shall require or permit the involuntary retirement of any individual because of the age of such individual; or

(c) To compel the retirement of any employee who is sixty-five years of age or older and under seventy years of age and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee and if such plan equals, in the aggregate, at least forty-four thousand dollars; or

(d) To discharge or otherwise discipline an individual for reasons other than age.

(5) Nothing in this section shall preclude an employer from requiring compliance with a reasonable dress code as long as the dress code is applied consistently.

(6) Notwithstanding any other provision of law, this section shall not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(7) For purposes of this section, "employer" shall not include any religious organization or association, except for any religious organization or association that is supported in whole or in part by money raised by taxation or public borrowing.

24-34-402.5. UNLAWFUL PROHIBITION OF LEGAL ACTIVITIES AS A CONDITION OF EMPLOYMENT. CITED IN BULLETIN 4 AND 21 (II).

(1) It shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours unless such a restriction:

(a) Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or

(b) Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest.

(2) (a) Notwithstanding any other provisions of this article, the sole remedy for any person claiming to be aggrieved by a discriminatory or unfair employment practice as defined in this section shall be as follows: He or she may bring a civil action for damages in any district court of competent jurisdiction and may sue for all wages and benefits that would have been due him or her up to and including the date of the judgment had the discriminatory or unfair employment practice not occurred; except that nothing in this section shall be construed to relieve the person from the obligation to mitigate his or her damages.

(b) (I) If the prevailing party in the civil action is the plaintiff, the court shall award the plaintiff court costs and a reasonable attorney fee.

(II) This paragraph (b) shall not apply to an employee of a business that has or had fifteen or fewer employees during each of twenty or more calendar work weeks in the current or preceding calendar year.

24-50.5-103. RETALIATION PROHIBITED. CITED IN BULLETIN 4 (II).

(1) Except as provided in subsection (2) of this section, no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This section shall not apply to:

(a) An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;

(b) An employee who discloses information from public records which are closed to public inspection pursuant to section 24-72-204;

(c) An employee who discloses information which is confidential under any other provision of law.

(2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good faith effort to provide to his supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure.

13-71-126. Compensation of employed jurors during first three days of service. Cited in Bulletin 6 (II).

All regularly employed trial or grand jurors shall be paid regular wages, but not to exceed fifty dollars per day unless by mutual agreement between the employee and employer, by their employers for the first three days of juror service or any part thereof. Regular employment shall include part-time, temporary, and casual employment if the employment hours may be determined by a schedule, custom, or practice established during the three-month period preceding the juror's term of service.

13-71-134. Penalties and enforcement remedies for harassment by employer. Cited in Bulletin 6 (II).

(1) An employer shall not deprive an employed juror of employment or any incidents or benefits thereof, nor shall an employer harass, threaten, or coerce an employee because the employee receives a juror summons, responds thereto, performs any obligation or election of juror service as a trial or grand juror, or exercises any right under any section of this article. An employer shall make no demands upon any employed juror which will substantially interfere with the effective performance of juror service. The employed juror may commence a civil action for such damages or injunctive relief or both, as may be appropriate, for a violation of this section. The court may award treble damages and reasonable attorney fees to the juror upon a finding of willful misconduct by the employer. Any trial of such an action shall be to the court without a jury.

(2) Any employer who willfully violates this section commits willful harassment of a juror by an employer, as defined in section 18-8-614, C.R.S., which is a class 2 misdemeanor punishable as provided in section 18-1.3-501, C.R.S.

1-7-102. EMPLOYEES ENTITLED TO VOTE. CITED IN BULLETIN 7 (II).

(1) Eligible electors entitled to vote at an election shall be entitled to absent themselves for the purpose of voting from any service or employment in which they are then engaged or employed on the day of the election for a period of two hours during the time the polls are open. Any such absence shall not be sufficient reason for the discharge of any person from service or employment. Eligible electors, who so absent themselves shall not be liable for any penalty, nor shall any deduction be made from their usual salary or wages, on account of their absence. Eligible electors who are employed and paid by the hour shall receive their regular hourly wage for the period of their absence, not to exceed two hours. Application shall be made for the leave of absence prior to the day of election. The employer may specify the hours during which the employee may be absent, but the hours shall be at the beginning or end of the work shift, if the employee so requests.

(2) This section shall not apply to any person whose hours of employment on the day of the election are such that there are three or more hours between the time of opening and the time of closing of the polls during which the elector is not required to be on the job.

8-2-113. UNLAWFUL TO INTIMIDATE WORKER - AGREEMENT NOT TO COMPETE. CITED IN BULLETIN 8 (II).

(1) It shall be unlawful to use force, threats, or other means of intimidation to prevent any person from engaging in any lawful occupation at any place he sees fit.

(2) Any covenant not to compete which restricts the right of any person to receive compensation for performance of skilled or unskilled labor for any employer shall be void, but this subsection (2) shall not apply to:

(a) Any contract for the purchase and sale of a business or the assets of a business;

(b) Any contract for the protection of trade secrets;

(c) Any contractual provision providing for recovery of the expense of educating and training an employee who has served an employer for a period of less than two years;

(d) Executive and management personnel and officers and employees who constitute professional staff to executive and management personnel.

(3) Any covenant not to compete provision of an employment, partnership, or corporate agreement between physicians which restricts the right of a physician to practice medicine, as defined in section 12-36-106, C.R.S., upon termination of such agreement, shall be void; except that all other provisions of such an agreement enforceable at law, including provisions which require the payment of damages in an amount that is reasonably related to the injury suffered by reason of termination of the agreement, shall be enforceable. Provisions which require the payment of damages upon termination of the agreement may include, but not be limited to, damages related to competition.

14-14-111.5. INCOME ASSIGNMENTS FOR CHILD SUPPORT OR MAINTENANCE. CITED IN BULLETIN 9 (II).

(1) **Legislative declaration.** The general assembly hereby finds and declares that, for the good of the children of Colorado and to promote family self-sufficiency, there is a need to strengthen Colorado's child support enforcement laws and to simplify, streamline, and clarify the existing laws relating to wage assignments previously provided for in section 14-14-107 and immediate deductions for family support obligations previously provided for in section 14-14-111. In support of this effort, the general assembly hereby adopts the term "income assignment" to be used to provide consistency and standardization of the process for collecting child support and maintenance.

(2) **Notice requirements for income assignments.** Notice of income assignments shall be given in accordance with the following provisions based upon the date on which the order sought to be enforced was entered:

(a) **Orders entered before July 10, 1987.** (I) For orders entered before July 10, 1987, that do not include an order for income assignment as described in paragraph (a) of subsection (3) of this section or an order for immediate deductions for family support obligations as described in former section 14-14-111, as it existed prior to July 1, 1996, a notice of pending income assignment shall be sent by certified mail to the last-known address of the obligor, or such notice shall be personally served upon the obligor prior to the activation of an income assignment; except that such notice shall not be required if the obligor was given such notice prior to July 10, 1987, and such notice was in substantial compliance with the requirements of this section. The notice shall be given by the obligee, the obligee's representative, or the delegate child support enforcement unit.

(II) The notice of pending income assignment shall include the following information:

(A) That an income assignment may be activated immediately or at any other time at the request of the obligor, by agreement of the parties, or at the request of an obligee who is receiving support enforcement services from a delegate child support enforcement unit pursuant to section 26-13-106, C.R.S., in accordance with state procedures. Such state procedures require that the obligee request an income assignment in writing and that, after the delegate child support enforcement unit receives the request, it shall review the case to determine if it meets the criteria for requiring income assignment, which criteria are that the obligor is not meeting the terms of a written agreement for an alternative arrangement, or that the reason for the original good cause determination no longer exists, or that the obligor is currently paying child support but has threatened to stop and the obligee documents and substantiates that there has been a change in the obligor's circumstances that will lead the obligor to stop paying child support. If none of the circumstances set forth in this sub-subparagraph (A) exists, then the income assignment shall remain pending unless the obligor fails to comply with the support order by not making a full payment on its due date.

(B) That the activation of an income assignment is the notification to the obligor's employer or employers, trustee, or other payor of funds to withhold income for payment of the support obligation and arrears, if any;

(C) That, if any arrears accrue or already have accrued, an additional payment on the arrears shall be added to the income assignment pursuant to subparagraph (V) of paragraph (b) of subsection (3) of this section;

(D) That the obligor has a right to object to the activation of the income assignment raising the defenses that are available pursuant to sub-subparagraph (B) of subparagraph (VII) of paragraph (b) of subsection (3) of this section;

(E) That the obligor shall notify the family support registry, if payments are required to be made through the registry, in writing, of any change of address or employment within ten days after the change.

(b) **Orders entered on or after July 10, 1987, and before January 1, 1990.** For orders entered on or after July 10, 1987, and before January 1, 1990, no notice of pending income assignment as described in paragraph (a) of this subsection (2) shall be required.

(c) **Orders entered in Title IV-D cases on or after January 1, 1990, and before January 1, 1994.** For orders entered on or after January 1, 1990, and before January 1, 1994, in cases in which the custodian of the child is receiving support enforcement services from a delegate child support enforcement unit pursuant to section 26-13-106, C.R.S., no notice of pending income assignment as described in paragraph (a) of this subsection (2) shall be required.

(d) **Orders entered in non-Title IV-D cases on or after July 10, 1987, and before January 1, 1994.** For orders entered on or after July 10, 1987, and before January 1, 1994, in cases in which the custodian of the child is not receiving support enforcement services from a delegate child support enforcement unit pursuant to section 26-13-106, C.R.S., no notice of pending income assignment as described in paragraph (a) of this subsection (2) shall be required.

(e) **Orders entered on or after January 1, 1994, and before July 1, 1996.** For orders entered on or after January 1, 1994, and before July 1, 1996, no notice of pending income assignment as described in paragraph (a) of this subsection (2) shall be required.

(f) **Orders entered on or after July 1, 1996.** (I) Whenever an obligation for child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt is initially determined, whether temporary or permanent or whether modified, the amount of child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt shall be ordered by the court or delegate child support enforcement unit to be activated immediately as an income assignment subject to section 13-54-104 (3), C.R.S., from the income, as defined in section 14-10-115 (3), that is due or is to become due in the future from the obligor's employer, employers, or successor employers or other payor of funds, regardless of the source, of the person obligated to pay the child support, maintenance, child support when

combined with maintenance, retroactive support, medical support, child support arrears, or child support debt.

(II) Any order for support shall include the following, if available:

(A) The name, date of birth, and sex of each child for whom the support is ordered;

(B) The obligee's name, social security number, residential and mailing addresses, and date of birth;

(C) The total amount of current support to be paid monthly in each category of support;

(D) The date of commencement of the order and the date or dates of the month that the payments are due;

(E) The total amount of arrears that is due, if any, in each category of support as of the date of the order; and

(F) The obligor's name, social security number, residential and mailing addresses, and date of birth.

(G) (Deleted by amendment, L. 99, p. 1085, § 3, effective July 1, 1999.)

(3) **Activation of income assignment.** Income assignments shall be activated in accordance with the following provisions:

(a) **Immediate activation of income assignments.** (I) Upon entry of an order for child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt during the time periods described in paragraph (c), (e), or (f) of subsection (2) of this section, the obligee, the obligee's representative, or the delegate child support enforcement unit shall cause a notice of income assignment to be served immediately as described in subsection (4) of this section.

(II) **Exceptions to immediate activation of income assignments.** Income shall not be subject to immediate activation of an income assignment under this paragraph (a) in any case in which:

(A) One of the parties demonstrates, and the court or the delegate child support enforcement unit finds in writing, that there is good cause not to require immediate activation of an income assignment. For the purposes of this sub-subparagraph (A), "good cause" means the following: There is a written determination and explanation by the court or delegate child support enforcement unit stating why implementing immediate activation of an income assignment would not be in the best interests of the child; and the obligor has signed a written agreement to keep the delegate child support enforcement unit, the obligee, or the obligee's representative informed of the obligor's current employer and information on any health insurance coverage to

which the obligor has access; and proof is provided that the obligor made timely payments without the necessity of income assignment in previously ordered child support obligations.

(B) A written agreement is reached between both parties that provides for an alternative arrangement. For purposes of this sub-subparagraph (B), the delegate child support enforcement unit shall be considered a party in all cases in which the custodian of a child is receiving support enforcement services from a delegate child support enforcement unit pursuant to section 26-13-106 (1), C.R.S., and as such is required to consent to the alternative written agreement. In all cases in which the custodian of a child is receiving support enforcement services from a delegate child support enforcement unit pursuant to section 26-13-106 (2), C.R.S., the obligee or the obligee's representative shall provide the delegate child support enforcement unit with notice of any agreement reached between the parties pursuant to this sub-subparagraph (B).

(b) (I) **Activation of an income assignment following notice.** An income assignment based on an order entered during the time periods described in paragraph (a), (b), or (d) of subsection (2) of this section shall not be activated unless:

(A) The obligor requests that the income assignment be activated; or

(B) The parties agree at the time of the entry or modification of a support order, or at any other time, that the income assignment is to be activated; or

(C) The obligee files an advance notice of activation with any court having jurisdiction to enforce the support order because a payment was due under a support order and the obligor has failed to make a payment in full as ordered.

(II) **Notice of activation.** When an income assignment is activated pursuant to sub-subparagraph (C) of subparagraph (I) of this paragraph (b), a copy of the advance notice of activation and a form for the obligor to object to the activation listing the available defenses shall be mailed by the obligee or the obligee's representative to the obligor's last-known address. The notice of activation shall contain the following information:

(A) The court that issued the support order;

(B) The case number;

(C) The date of the support order;

(D) The facts establishing that a full support payment was not made on or before it became due;

(E) The amount of overdue support owed;

(F) The amount of income to be withheld for current support and the amount to be withheld for arrears per month;

(G) A statement that, if section 13-54-104 (3), C.R.S., applies, the employer may not withhold more than the limitations set by said section;

(H) The name and address of the obligor's most recently known employer and a statement that the obligor is required to inform the court or the family support registry, if payments are to be made through the registry, of any new employment;

(I) A statement of the obligor's right to object to the activation of the income assignment within ten days after the date the advance notice of activation is sent to the obligor and the procedures available for such objection;

(J) The available defenses to the activation;

(K) A statement that failure to object to the activation of an income assignment within ten days after the date the advance notice of activation was sent to the obligor will result in the activation of the income assignment pursuant to subsection (4) of this section;

(L) A statement of the procedures the court will follow when an objection is filed by the obligor;

(M) A statement that, if the court denies the objection of the obligor, the income assignment shall be activated pursuant to subsection (4) of this section;

(N) A statement that the income assignment is a continuing assignment; and

(O) A statement that, if arrears have accrued, an additional monthly payment shall be set pursuant to subparagraph (V) of this paragraph (b) and that this payment may be modified if additional arrears accrue.

(III) **Affidavit requirements.** The party activating an income assignment based on an order entered during the time periods described in paragraph (a), (b), or (d) of subsection (2) of this section shall prepare an affidavit of arrears, which shall state the type and amount of support ordered per month and the date upon which the payment was due and, if the payments were to be made into the court registry or the family support registry, state that the full payment was not received by the registry on or before the due date or, if the payments were to be made to the obligee directly, state that the obligee did not receive the full payment on or before the due date, the date and amount of any modifications of the order, the period or periods of time the arrears accrued, the total amount of support that should have been paid, the total amount actually paid, and the total arrears, plus interest, due. If the income assignment is being activated pursuant to sub-subparagraph (A) or (B) of subparagraph (I) of this paragraph (b), the affidavit shall be filed with the court at the time of activation. If payments were ordered to be made through the family support registry, a copy of the payment record maintained by the family support registry shall be sufficient proof of payments made, and no affidavit shall be required. If the income assignment is being activated pursuant to sub-subparagraph (C) of subparagraph (I) of this paragraph (b), the affidavit shall be filed with the advance notice of activation.

(IV) **Agreement to activate.** When an income assignment is activated pursuant to sub-subparagraph (A) or (B) of subparagraph (I) of this paragraph (b) and arrears are owed, as verified by the affidavit of arrears, the parties may agree to an amount of payment on the arrears, or the court may determine an appropriate amount for payment.

(V) **Arrears.** When an income assignment is activated pursuant to sub-subparagraph (C) of subparagraph (I) of this paragraph (b) and arrears are owed, as verified by the affidavit of arrears, the income assignment shall include a payment on the arrears in the amount of one-twenty-fourth of the total amount due up to the date of the activation of the income assignment. The payment on the arrears shall remain the same until the arrears, plus interest, are paid unless the parties subsequently agree to a larger or smaller arrears payment amount or further arrears accrue. The total arrears due, plus interest, may be updated periodically, and the amount of payment may be revised periodically, as appropriate.

(VI) A payment on arrears, plus interest, for support, if any, shall be included in an activated income assignment; however, the combined payment on current support and arrears is subject to section 13-54-104 (3), C.R.S.

(VII) **Objections to income assignment.** (A) The obligor may file with the court a written objection to the activation of an income assignment pursuant to sub-subparagraph (C) of subparagraph (I) of this paragraph (b) within ten days after the advance notice of activation is sent to the obligor pursuant to subparagraph (II) of this paragraph (b) unless the obligor alleges that the notice was not received, in which case an objection may be filed no later than ten days after actual notice. The obligor shall mail a copy of the written objection to the obligee or the obligee's representative.

(B) The objection shall be limited to the defense that there is a mistake of fact such as an error in the identity of the obligor or in the amount of the support.

(C) If an objection is filed by the obligor, a hearing shall be set and held by the court within forty-five days after the date the advance notice of activation was sent to the obligor pursuant to subparagraph (II) of this paragraph (b). The court shall deny the objection without hearing if a defense in sub-subparagraph (B) of this subparagraph (VII) is not alleged.

(D) At a hearing on an objection, the sole issue before the court is whether there was a mistake of fact as specified in sub-subparagraph (B) of this subparagraph (VII).

(E) At a hearing on an objection, reasonable attorney fees and costs may be awarded to the prevailing party.

(F) If an objection is based on the amount of arrears, the income assignment may be activated and enforced as to current support obligations, and the activation of the income assignment as to arrears shall be stayed pending the outcome of a hearing on such objection.

(4) **Notice to withhold income for support.** Ten days after the date the advance notice of activation is mailed to the obligor for income assignments on orders entered during the time

periods described in paragraphs (a), (b), and (d) of subsection (2) of this section or immediately for income assignments on orders entered during the time periods described in paragraphs (c), (e), and (f) of subsection (2) of this section, an income assignment may be activated by the obligee, the obligee's representative, or the delegate child support enforcement unit by causing a notice to withhold income for support to be served upon the employer, trustee, or other payor of funds, by first-class mail or by electronic service, if such employer, trustee, or other payor of funds mutually agrees with the state child support enforcement agency to receive such income assignments electronically. Receipt of notice by the employer, trustee, or other payor of funds confers jurisdiction of the court over the employer, trustee, or other payor of funds. In circumstances in which the source of income to the obligor is unemployment compensation benefits and the custodian of the child is receiving support enforcement services pursuant to section 26-13-106, C.R.S., no notice to withhold income for support shall be required. In such cases, the state child support enforcement agency shall electronically intercept the unemployment compensation benefits through an automated interface with the department of labor and employment. In all other cases, the notice to withhold income for support shall contain the following information and, except in cases in which the obligee is receiving child support enforcement services pursuant to section 26-13-106, C.R.S., shall have a certified copy of the support order attached thereto:

(a) The name and social security number of the obligor;

(b) A statement that withholding must begin no later than the first pay period that begins at least fourteen working days after the date on the notice to withhold income for support;

(c) Instructions concerning withholding the deductions, including:

(I) The amount to be withheld for current support and current maintenance when included in the child support order, the amount to be withheld for past due support, the amount to be withheld for past due maintenance when included in the child support order, the amount to be withheld for child support debt, the amount to be withheld for medical support, the amount to be withheld for current maintenance, the amount to be withheld for past due maintenance per month, and the amount to be withheld for processing fees, if any. In the event that the pay periods of the employer are more frequent, the employer shall withhold per pay period an appropriate percentage of the monthly amount due so that the total withheld during the month will total the monthly amount due.

(II) A statement that the employer, trustee, or other payor of funds may deduct a fee to defray the cost of withholding and that such employer, trustee, or other payor of funds shall refer to the laws governing the work state of the employee for the allowable amount of such fee;

(III) That, if section 13-54-104 (3), C.R.S., applies, the employer, trustee, or other payor of funds may not withhold more than the limitations set by said section;

(d) Instructions about disbursing the withheld amounts, including the requirements that each disbursement:

(I) Shall be forwarded within seven working days after the date of each deduction and withholding would have been paid or credited to the employee;

(II) Shall be forwarded to the address indicated on the notice;

(III) Shall be identified by the case number, the name and social security number of each obligor, the date the deduction was made, the amount of the payment, and the family support registry account number for cases ordered to be paid through the family support registry; and

(IV) May be combined with other disbursements in a single payment to the family support registry, if required to be sent to the registry, if the individual amount of each disbursement is identified as required by subparagraph (III) of this paragraph (d);

(e) A statement specifying whether or not the obligor is required to provide health insurance for the children who are the subject of the order;

(f) and (g) (Deleted by amendment, L. 2000, p. 1704, § 2, effective July 1, 2000.)

(h) A statement that, if the employer, trustee, or other payor of funds fails to withhold income as the notice to withhold income for support directs, the employer, trustee, or other payor of funds shall be liable for both the accumulated amount that should have been withheld from the obligor's income and any other penalties set by state law;

(i) A statement that the employer, trustee, or other payor of funds shall be subject to a fine determined under state law for discharging an obligor from employment, refusing to employ, or taking disciplinary action against an obligor because of a notice to withhold income for support;

(j) A statement that the employer shall notify the family support registry, in writing, if payments are required to be made through the registry promptly after the obligor terminates employment and shall provide the family support registry, in writing, with the obligor's name, date of separation, case identifier which shall be the family support registry account number, last-known home address, and the name and address of the obligor's new employer, if known;

(j.5) A statement that withholding under the notice to withhold income for support has priority over any other legal process under state law against the same income, that federal tax levies in effect before receipt of this notice to withhold income for support have priority, and that the requesting agency should be contacted if there are federal tax levies in effect;

(k) A statement that as long as the obligor is employed by the employer, the income assignment shall not be terminated or modified, except upon written notice by the obligee, the obligee's representative, the delegate child support enforcement unit, or the court;

(k.5) A statement that the employer, trustee, or other payor of funds may be required to report and withhold amounts from lump sum payments such as bonuses, commissions, or severance pay;

(l) (Deleted by amendment, L. 2000, p. 1704, § 2, effective July 1, 2000.)

(l.5) A statement that Colorado employers, trustees, or other payors of funds must comply with this section;

(m) A statement that, if the designated field on the notice to withhold income for support is checked, the employer, trustee, or other payor of funds is required to provide a copy of the notice to withhold income for support to the obligor;

(n) A statement that a fraudulent submission of a notice to withhold income for support shall subject the person submitting the notice to an employer, trustee, or other payor of funds to a fine of not less than one thousand dollars and court costs and attorney fees.

(4.5) When a Colorado employer receives an income assignment, or its equivalent, issued by another state, the employer shall apply the income assignment law of the obligor's principal state of employment. The obligor's principal state of employment shall be presumed to be Colorado unless there is a specific employment contract to the contrary.

(5) When activated, an income assignment shall be a continuing income assignment and shall remain in effect and shall be binding upon any employer, trustee, or other payor of funds upon whom it is served until further notice from the obligee, the obligee's representative, the delegate child support enforcement unit, or the court.

(6) **Priority.** (a) A notice of income assignment for support shall have priority over any garnishment, attachment, or lien.

(b) If there is more than one income assignment for support for the same obligor, the total amount withheld, which is subject to the limits specified in section 13-54-104 (3), C.R.S., shall be distributed in accordance with the priorities set forth in this paragraph (b):

(I) (A) First priority shall be given to income assignments for orders for current monthly child support obligations and maintenance when included in the child support order.

(B) If the amount withheld is sufficient to pay the current monthly support and maintenance for all orders, the employer or other payor of funds shall distribute the amount to all orders and proceed to the second priority to distribute any remaining withholding. If the amount withheld is not sufficient to pay the current monthly support and maintenance in all orders, the employer shall add the current monthly support and maintenance in all orders for a total and then divide the amount of current monthly support and maintenance in each order by the total to determine the percent of the total for each order. The percent for each order derived from such calculation shall be multiplied by the total amount withheld to determine what proportionate share of the amount withheld shall be paid for each order.

(II) (A) Second priority shall be given to income assignments for all orders for medical support when there is a specific amount ordered for medical support.

(B) If the amount withheld is sufficient to pay the medical support for all orders, the employer shall distribute the amount to all orders and proceed to the third priority to distribute any remaining withholding. If the amount withheld is not sufficient to pay the medical support in all orders, the employer shall add the medical support in all orders for a total and then divide the amount of medical support in each order by the total to determine the percent of the total for each order. The percent for each order derived from such calculation shall be multiplied by the total amount withheld to determine what proportionate share of the amount withheld shall be paid for each order.

(III) (A) Third priority shall be given to income assignments for child support debt and support arrears, including medical support arrears.

(B) If the amount withheld is sufficient to pay the child support debt and support arrears for all orders, the employer shall distribute the amount to all orders and proceed to the fourth priority to distribute any remaining withholding. If the amount withheld is not sufficient to pay the child support debt and support arrears in all orders, the employer shall add the child support debt and support arrears in all orders for a total and then divide the amount of child support debt and support arrears in each order by the total to determine the percent of the total for each order. The percent for each order derived from such calculation shall be multiplied by the total amount withheld to determine what proportionate share of the amount withheld shall be paid for each order.

(IV) (A) Fourth priority shall be given to income assignments for orders for maintenance only.

(B) If the amount withheld is sufficient to pay the maintenance only for all orders, the employer shall distribute the amount to all orders. If the amount withheld is not sufficient to pay the maintenance only in all orders, the employer shall add the maintenance only in all orders for a total and then divide the amount of maintenance only in each order by the total to determine the percent of the total for each order. The percent for each order derived from such calculation shall be multiplied by the total amount withheld to determine what proportionate share of the amount withheld shall be paid for each order.

(7) No employer, trustee, or other payor of funds who complies with a notice of income assignment issued pursuant to this section and as provided in subsection (8) of this section shall be liable to the obligor for wrongful withholding.

(8) An employer, trustee, or other payor of funds subject to this section who:

(a) Fails to abide by the terms enumerated in the notice of income assignment may be held in contempt of court;

(b) Wrongfully fails to withhold income in accordance with the provisions of this section shall be liable for both the accumulated amount the employer, trustee, or other payor of funds should have withheld from the obligor's income and any other penalties set by state law;

(c) Discharges, refuses to hire, or takes disciplinary action against an employee because of the entry or service of an income assignment pursuant to this section may be held in contempt of court or be subject to a fine.

(9) If an employer discharges an employee in violation of the provisions of this section, 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 the reinstatement of the employee. Damages recoverable shall be lost wages not to exceed six weeks, costs, and reasonable attorney fees.

(10) (a) The obligee, the obligee's representative, the delegate child support enforcement unit, or the court shall promptly notify the employer, trustee, or other payor of funds, in writing, when an income assignment is modified or terminated.

(b) An income assignment shall be modified when:

(I) The support order is modified by the court;

(II) The arrears payment is modified by agreement between the parties pursuant to subparagraph (V) of paragraph (b) of subsection (3) of this section; or

(III) The arrears payment is modified when updated periodically pursuant to subparagraph (V) of paragraph (b) of subsection (3) of this section.

(c) An income assignment shall be terminated when all current maintenance when included in the child support order, past due support, past due maintenance when included in the child support order, child support debt, medical support, current monthly child support, current maintenance, past due maintenance, and processing fees, if any, owed under the support order are paid in full.

(11) Disbursements received from the employer, trustee, or other payor of funds by a delegate child support enforcement unit shall be promptly distributed.

(12) The clerk of the court shall provide, upon request, any information required by the parties about any support order or any order affecting an order for support, including judgments and registered orders.

(13) The department of human services is hereby designated as the income withholding agency as required by the federal "Social Security Act", as amended.

(14) This section applies to any action brought under this article or article 5, 6, or 10 of this title or under article 4 or 6 of title 19, C.R.S., or under article 13.5 of title 26, C.R.S.

(15) Nothing in this section shall affect the availability of any other method for collecting child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt.

(16) Income assignments under this section shall be issued by a delegate child support enforcement unit under the provisions of the "Colorado Administrative Procedure Act for the Establishment and Enforcement of Child Support", created in article 13.5 of title 26, C.R.S.

(16.3) The employer, trustee, or other payor of funds shall include with the first disbursement an indication of whether dependent health insurance coverage is available to the obligor and whether the obligor has elected to enroll the dependents who are the subject of the order in such coverage and that such information shall be included in a disbursement at least annually thereafter or at the next disbursement in the event of any change in the status of health insurance availability or coverage.

(16.5) The employer shall not be required to collect, possess, or control the obligor's tips, and any such tips shall not be owed by an employer to an obligor.

(16.7) The employer, trustee, or other payor of funds may extract a processing fee of up to five dollars per month from the remainder of the obligor's income after the deduction and withholding.

(17) For purposes of this section, unless the context otherwise requires, "income" means wages as defined in section 14-14-102 (9).

(18) (Deleted by amendment, L. 2000, p. 1704, § 2, effective July 1, 2000.)

(19) A person submitting a fraudulent notice to withhold income for support to an employer, trustee, or other payor of funds shall be subject to a fine of not less than one thousand dollars and court costs and attorney fees.

8-10-101. WAGES A PREFERRED CLAIM. CITED IN BULLETIN 11 (II).

When the business of any person, corporation, company, or firm is suspended by the action of creditors or put into the hands of a receiver or trustee, the debts owing to laborers, servants, or employees, which have occurred by reason of their labor or employment shall be considered and treated as preferred claims. Such laborers or employees shall be preferred creditors and shall first be paid in full. If there are not sufficient funds to pay them in full, they shall be paid from the proceeds of the sale of the property seized. Any person interested may contest any such claim, or part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property, and thereupon the claimant shall be required to reduce his claim to judgment before a court having jurisdiction thereof before any part thereof is paid.

8-10-102. STATEMENT OF CLAIM PRESENTED. CITED IN BULLETIN 11 (II).

Any laborer, servant, or employee desiring to enforce his claim for wages under this article shall present a statement under oath showing the amount due, the kind of work for which the wages are due, and when performed to the officer, person, or court charged with the property within twenty days after the seizure thereof on any execution or writ of attachment or within sixty days after same has been placed in the hands of any receiver or trustee, and thereupon it is the duty of the person or court having or receiving such statement to pay the amount of the claim to the person entitled thereto.

13-21-109. Recovery of damages for checks, drafts, or orders not paid upon presentment. Cited in Bulletin 12 (II).

(1) Any person who obtains money, merchandise, property, or other thing of value, or who makes any payment of any obligation other than an obligation on a consumer credit transaction as defined in section 5-1-301, C.R.S., by means of making any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation which is not paid upon its presentment is liable to the holder of such check, draft, or order or any assignee for collection for one of the following amounts, at the option of the holder or such assignee:

(a) The face amount of the check, draft, or order plus actual damages determined in accordance with the provisions of the "Uniform Commercial Code", title 4, C.R.S.; or

(b) An amount equal to the face amount of the check, draft, or order and:

(I) The amount of any reasonable posted or contractual charge not exceeding twenty dollars; and

(II) If the check, draft, or order has been assigned for collection to a person licensed as a collection agency pursuant to article 14 of title 12, C.R.S., as costs of collection, twenty percent of the face amount of the check, draft, or order but not less than twenty dollars; or

(c) An amount as provided in subsection (2) of this section.

(2) (a) If notice of nonpayment on presentment of the check, draft, or order has been given in accordance with the provisions of subsections (3) and (4) of this section and the total amount due as set forth in the notice has not been paid within fifteen days after such notice is given, instead of the amounts set forth in paragraph (a) or (b) of subsection (1) of this section, the person shall be liable to the holder or any assignee for collection for three times the face amount of the check but not less than one hundred dollars.

(b) The person, also referred to in this section as the "maker", shall not be liable in accordance with the provisions of paragraph (a) of this subsection (2) if he establishes any one of the following:

(I) That the account contained sufficient funds or credit to cover the check, draft, or order at the time the check, draft, or order was made, plus all other checks, drafts, and orders on the account then outstanding and unpaid;

(II) That the check, draft, or order was not paid because a paycheck, deposited in the account in an amount sufficient to cover the check, draft, or order, was not paid upon presentment;

(III) That funds sufficient to cover the check, draft, or order were garnished, attached, or set off and the maker had no notice of such garnishment, attachment, or setoff at the time the check, draft, or order was made;

(IV) That the maker of the check, draft, or order was not competent or of full age to enter into a legal contractual obligation at the time the check, draft, or order was made;

(V) That the making of the check, draft, or order was induced by fraud or duress;

(VI) That the transaction which gave rise to the obligation for which the check, draft, or order was given lacked consideration or was illegal.

(3) Notice that a check, draft, or order has not been paid upon presentment shall be in writing and given in person and receipted for, or by personal service, or by depositing the notice by certified mail, return receipt requested and postage prepaid, or by regular mail supported by an affidavit of mailing sworn and retained by the sender, in the United States mail and addressed to the recipient's most recent address known to the sender. If the notice is mailed and not returned as undeliverable by the United States postal service, notice shall be conclusively presumed to have been given on the date of mailing. For the purpose of this subsection (3), "undeliverable" does not include unclaimed or refused.

(4) The notice given pursuant to subsection (3) of this section shall include the following information regarding the unpaid check, draft, or order:

(a) The date the check, draft, or order was issued;

(b) The name of the bank, depository, person, firm, or corporation on which it was drawn;

(c) The name of the payee;

(d) The face amount;

(e) A statement of the total amount due, which shall be itemized and shall not exceed the amount permitted under paragraph (a) or (b) of subsection (1) of this section;

(f) A statement that the maker has fifteen days from the date notice was given to make payment in full of the total amount due; and

(g) A statement that, if the total amount due is not paid within fifteen days after the date notice was given, the maker may be liable in a civil action for three times the face amount of the check but not less than one hundred dollars and that, in such civil action, the court may award court costs and reasonable attorney fees to the prevailing party.

(5) No holder or assignee for collection shall assert that any maker has liability for any amount set forth under subsection (2) of this section unless such liability has been determined by entry of a final judgment by a court of competent jurisdiction.

(6) In any civil action brought under this section, the prevailing party may recover court costs and reasonable attorney fees. In addition, in an action brought under paragraph (b) of subsection (1) of this section, if the holder or assignee for collection prevails, actual costs of collection may

be recovered by the holder or assignee for collection if such actual costs of collection are greater than the costs of collection provided under such paragraph (b).

(7) Nothing in this section shall be deemed to apply to any check, draft, or order on which payment has been stopped by the maker by reason of a dispute relating to the money, merchandise, property, or other thing of value obtained by the maker.

(8) Nothing in this section applies to any criminal case or affects eligibility or terms of probation.

(9) Any limitation on a cause of action under this section, except a cause of action under subsection (2) of this section, shall be governed by the provisions of section 13-80-103.5. Any limitation on a cause of action under subsection (2) of this section shall be governed by the provisions of section 13-80-102.

24-34-402.7. UNLAWFUL ACTION AGAINST EMPLOYEES SEEKING PROTECTION. CITED IN BULLETIN 13 AND 20 (II).

(1) (a) Employers shall permit an employee to request or take up to three working days of leave from work in any twelve-month period, with or without pay, if the employee is the victim of domestic abuse, as that term is defined in section 13-14-101 (2), C.R.S., the victim of stalking, as that crime is defined in section 18-9-111 (4), C.R.S., the victim of sexual assault, as that crime is defined in section 18-3-402, C.R.S., or the victim of any other crime, the underlying factual basis of which has been found by a court on the record to include an act of domestic violence, as that term is defined in section 18-6-800.3 (1), C.R.S. This section shall only apply if such employee is using the leave from work to protect himself or herself by:

(I) Seeking a civil protection order to prevent domestic abuse pursuant to section 13-14-102, C.R.S.;

(II) Obtaining medical care or mental health counseling or both for himself or herself or for his or her children to address physical or psychological injuries resulting from the act of domestic abuse, stalking, or sexual assault or other crime involving domestic violence;

(III) Making his or her home secure from the perpetrator of the act of domestic abuse, stalking, or sexual assault or other crime involving domestic violence or seeking new housing to escape said perpetrator;

(IV) Seeking legal assistance to address issues arising from the act of domestic abuse, stalking, or sexual assault or other crime involving domestic violence and attending and preparing for court-related proceedings arising from said act or crime.

(b) The provisions of paragraph (a) of this subsection (1) shall only apply to employers who employ fifty or more employees and to employees who have been employed with the employer for twelve months or more.

(2) (a) Except in cases of imminent danger to the health or safety of the employee, an employee seeking leave from work pursuant to this section shall provide his or her employer with the appropriate advance notice of such leave as may be required by the employer's policy and such documentation as may be required by the employer.

(b) An employee seeking leave pursuant to this section, prior to receiving such leave, shall exhaust any and all annual or vacation leave, personal leave, and sick leave, if applicable, that may be available to the employee, unless the employer waives this requirement.

(c) All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(3) (a) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or any attempt to exercise any rights provided under this section.

(b) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for exercising his or her rights under this section.

(c) An employee shall have no greater rights to continued employment or to other benefits and conditions of employment than if the employee was not entitled to leave under this section. Nothing in this section shall be construed to limit the employer's right to discipline or terminate any employee for any reason, including but not limited to reductions in work force or termination for cause or for no reason at all, other than exercising his or her rights under this section.

(4) Notwithstanding any other provisions of this article to the contrary, the sole remedy for any person claiming to be aggrieved by a violation of this section shall be to bring a civil suit for damages or equitable relief or both in any district court of competent jurisdiction. Such person may claim as damages all wages and benefits that would have been due the person up to and including the date of the judgment had the act violating this section not occurred; except that nothing in this section shall be construed to relieve such person from the obligation to mitigate his or her damages.

RULE 501. SCOPE AND PURPOSE. CITED IN BULLETIN 15 (II).

(a) How Known and Cited. These rules for the small claims division for the county court are additions to C.R.C.P. and shall be known and cited as the Colorado Rules of Civil Procedure, or C.R.C.P. These rules are promulgated pursuant to section 13-6-413, C.R.S.

(b) Procedure Governed. These rules govern the procedure in all small claims courts. They shall be liberally construed to secure the just, speedy, informal, and inexpensive determination of every small claims action.

(c) Purpose. Each small claims court shall provide for the expeditious resolution of all cases before it. Where practicable, at least one weekend session and at least one evening session shall be scheduled or available to be scheduled for trial in each small claims court each month.

(d) Record of Proceedings. A record shall be made of all small claims court proceedings.

Rule 502. Commencement of Action

(a) How Commenced. A small claims action is commenced by filing with the court a short statement of the plaintiff's claim setting forth the facts giving rise to the action in the manner and form provided in C.R.C.P. 506 and by paying the appropriate docket fee.

(b) Jurisdiction. The court shall have jurisdiction from the time the claim is filed.

(c) Setting of the Trial Date. At the time the small claims action is filed, the clerk shall set the trial on a date, time and place certain. The first scheduled trial date shall not be less than thirty days from the date of issuance of the notice of claim by the clerk.

Rule 503. Place of Action

(a) Where Brought, Generally. All actions in the small claims court shall be brought in the county in which at the time of filing of the claim any of the defendants resides, or is regularly employed, or has an office for the transaction of business, or is a student at an institution of higher education. In an action to enforce restrictive covenants or arising from a landlord/tenant relationship, the action may be brought in the county in which the subject real property is located.

(b) Consent to venue. If a defendant appears and defends a small claims action on the merits at trial, the defendant agrees to the place of trial.

Rule 504. Service of the Notice, Claim and Summons to Appear for Trial

(a) Time for Serving the Notice, Claim and Summons to Appear for Trial. A copy of the notice, claim and summons to appear for trial shall be served at least fifteen days prior to the trial date.

(b) Personal Service of the Notice, Claim and Summons to Appear for Trial. Personal service of the notice, claim and summons to appear for trial shall be in accordance with C.R.C.P. 304(c), (d) and (e), with proof of service filed in accordance with C.R.C.P. 304(g), and refusal of service dealt with as described in C.R.C.P. 304(j).

(c) Clerk's Service of the Notice, Claim and Summons to Appear for Trial by Certified Mail.

(1) Within three days after the action is filed, the clerk shall send a signed and sealed notice, pursuant to Forms appended to these rules, to the defendant(s), by certified mail, return receipt requested to be signed by addressee only, at the address supplied or designated by the plaintiff. If the notice is delivered, the clerk shall note on the register of actions the mailing date and address, the date of delivery shown on the receipt, and the name of the person who signed the receipt. If the notice was refused, the clerk shall note the date of refusal.

(2) When Service is Complete. Notice shall be sufficient even if refused by the defendant and returned. Service shall be complete upon the date of delivery or refusal.

(3) Notification by Clerk and Fees and Expenses for Service. If the notice is returned for any reason other than refusal to accept it, or if the receipt is signed by any person other than the addressee, the clerk shall so notify the plaintiff. The clerk may then issue additional notices, at the request of the plaintiff. All fees and expenses for the certified mailing by the clerk shall be paid by the plaintiff and treated as costs of the action. Issuance of each notice shall be noted upon the register of actions or in the file.

Rule 505. Pleadings and Motions

(a) Pleadings. There shall be a claim and a response which may or may not include a counterclaim. No other pleadings shall be allowed.

(b) No Motions. There shall be no motions allowed except as contemplated by these rules.

Rule 506. General Rules of Pleading

(a) Claims for Relief and Responses. Except as provided in subsection (b), claims and responses, with or without a counterclaim, in the small claims court shall be filed in the manner and form prescribed by Forms appended to these rules, and shall be signed by the party under penalty of perjury. Claims and responses, with or without a counterclaim, for an action to enforce restrictive covenants on residential property shall be filed pursuant to Forms appended to these rules, and shall be signed by the party under penalty of perjury.

(b) Availability of Forms; Assistance by Court Personnel. The clerk of the court shall provide such assistance as may be requested by a plaintiff or defendant regarding the forms, operations, procedures, jurisdictional limits, and functions of the small claims court; however, court personnel shall not engage in the practice of law. The clerk shall also advise parties of the availability of subpoenas to obtain witnesses and documents. All necessary and appropriate forms shall be available in the office of the clerk.

Rule 507. Responses and Defenses

Each defendant shall file a written and signed response on or before the trial date. At the time of filing the response or appearing, whichever occurs first, each defendant shall pay the docket fee prescribed by law.

Rule 508. Counterclaim

(a) When Counterclaim to be Filed; Effect on Hearing Date. If at the time of the trial date it appears that a defendant has a counterclaim within the jurisdiction of the small claims court, the court may either proceed to hear the entire case or may continue the hearing for a reasonable time, at which continued hearing the entire case shall be heard.

(b) Counterclaim Within the Jurisdiction of the Small Claims Court. If at the time the action is commenced a defendant possesses a claim against the plaintiff that: (1) is within the jurisdiction of the small claims court, exclusive of interest and costs; (2) arises out of the same transaction or event that is the subject matter of the plaintiff's claim; (3) does not require for its adjudication the joinder of third parties; and (4) is not the subject of another pending action, the defendant shall file such claim as a counterclaim in
the answer or thereafter be barred from suit on the counterclaim. The defendant may also elect to file a counterclaim against the plaintiff that does not arise out of the transaction or occurrence.

(c) Counterclaim Exceeding the Jurisdiction of the Small Claims Court. If at the time the action is commenced the defendant possesses a counterclaim against the plaintiff that is not within the jurisdictional limit of the small claims court, exclusive of interest and costs, and the defendant wishes to assert the counterclaim, the defendant may:

(1) file the counterclaim in the pending small claims court action, but unless the defendant follows the procedure set forth in subsection (2) below, any judgment in the defendant's favor shall be limited to the jurisdictional limit of the small claims court, exclusive of interest and costs, and suit for the excess due the defendant over that sum will be barred thereafter; or

(2) file the counterclaim together with the answer in the pending small claims court action at least seven days before the first scheduled trial date and request in the answer that the action be removed to county court or district court, whichever has appropriate jurisdiction, as selected by the defendant, to be tried pursuant to the rules of civil procedure applicable to the court to which the case has been removed. Upon filing the answer and counterclaim, the defendant shall tender the filing fee for a complaint in the court to which the case has been removed. Upon compliance by the defendant with the requirements of this subsection (2), all small claims court proceedings shall be discontinued and the clerk of the small claims court shall deliver the case and fee to the appropriate court.

(d) Defendant Notified if Counterclaim Exceeds Court's Jurisdiction. All counterclaims asserted over the jurisdictional limit of the small claims court shall be subject to the provisions of Section 13-6-408, C.R.S., and all defendants shall be advised of those provisions on Forms appended to these rules.

Rule 509. Parties, Representation and Intervention

(a) Parties. Any natural person, corporation, partnership, association, or other organization may commence or defend an action in the small claims court, but no assignee or other person not a real party to the transaction which is the subject of the action may commence an action therein, except as a court appointed personal representative, conservator, or guardian of the real party in interest.

(b) Representation.

(1) **Partnerships and Associations.** Notwithstanding the provisions of article 5 of title 12, C.R.S., in the small claims court, an individual shall represent himself or herself; a partnership shall be represented by an active general partner or an authorized full-time employee; a union shall be represented by an authorized active union member or full-time employee; a for-profit corporation shall be represented by one of its full-time officers or full-time employees; an association shall be represented by one of its active
members or by a full-time employee of the association; and any other kind of organization or entity shall be represented by one of its active members or full-time employees or, in the case of a nonprofit corporation, a duly elected nonattorney officer or an employee.

(2) **Attorney Representatives of Entities.** No attorney, except pro se or as an authorized full-time employee or active general partner of a partnership, an authorized active member or full-time employee of a union, a full-time officer or full-time employee of a for-profit corporation, or a full-time employee or active member of an association, which partnership, union, corporation, or association is a party, shall appear or take any part in the filing or prosecution or defense of any matter in the small claims court, except as permitted by rule 520(b).

(3) **Property Managers.** In actions arising from a landlord-tenant relationship, a property manager who has received security deposits, rents, or both, or who has signed a lease agreement on behalf of the owner of the real property that is the subject of the small claims action, shall be permitted to represent the owner of the property in such action.

(4) **Defendants in the Military.** In any action to which the federal "Soldiers' and Sailors' Civil Relief Act of 1940", 50 U.S.C. App. §§ 501 et seq., is applicable, the court may enter a default against a defendant who is in the military without entering judgment, and the court shall appoint an attorney to represent the interests of the defendant prior to the entry of judgment against the defendant.

(c) Intervention. There shall be no intervention, addition, or substitution of parties, unless otherwise ordered by the court in the interest of justice.

Rule 510. Discovery and Subpoenas

(a) Depositions, discovery, disclosure statements, and pre-trial conferences shall not be permitted in small claims court proceedings.

(b) Subpoenas for the attendance of witnesses or the production of evidence at trial shall be issued and served pursuant to C.R.C.P. 345.

Rule 511. Magistrates - No Jury Trial

(a) No Jury Trial. There is no right to a trial by jury in small claims court proceedings.

(b) Magistrates. Magistrates may hear and decide claims and shall have the same powers as a judge, except as provided by C.R.M. 5. A party objecting to a magistrate pursuant to Section 13-6-405 (4), C.R.S., shall file the objection seven days prior to the first scheduled trial date. Cases in which an objection to a magistrate has been timely filed shall be heard and decided by a judge pursuant to the rules and procedures of the small claims court.

Rule 512. Trial

(a) Date of Trial. The trial shall be held on the date set forth in the notice, claim, and summons to appear for trial unless the court grants a continuance for good cause shown. Good cause for a continuance may include a defense made in good faith raising jurisdictional grounds or defects in service of process. A plaintiff may request one continuance if a defendant files a counterclaim.

(b) Settlement Discussions. On the trial date, but before trial, the court may require settlement discussions between the parties, but the court shall not participate in such discussions. If a settlement is achieved, the terms of such settlement shall be presented to the court for approval. If an approved settlement is not achieved, the trial shall be held pursuant to subsection (a) of this rule.

Rule 513. Evidence

The hearing of all cases shall be informal, the object being to dispense justice promptly and economically between the parties. Rules of evidence shall not be strictly applied; however, all constitutional and statutory privileges shall be recognized. The parties may testify and offer evidence and testimony of witnesses at the hearing.

Rule 514. Judgment

At the end of the trial, the court shall immediately state its findings and decision and direct the entry of judgment. Judgment shall be entered immediately pursuant to the provisions of C.R.C.P. 358. No written findings shall be required.

Rule 515. Default and Judgment

(a) Entry at the Time of Trial. Upon the date and at the time set for trial, if the defendant has filed no response or fails to appear and if the plaintiff proves by appropriate return that proper service was made upon the defendant as provided herein at least fifteen days prior to the trial date, the court may enter judgment for the plaintiff for the amount due, as stated in the complaint, but in no event more than the amount requested in the plaintiff's claim, plus interest,

costs, and other items provided by statute or agreement. However, before any judgment is entered pursuant to this rule, the court shall be satisfied that venue of the action is proper pursuant to C.R.C.P. 503 and may require the plaintiff to present sufficient evidence to support the plaintiff's claim.

(b) Entry at the Time of Continued Trial. Failure to appear at any other date set for trial shall be grounds for entering a default and judgment against the non-appearing party, whether on a plaintiff's claim or a defendant's counterclaim.

(c) Default and Judgment - Soldiers' and Sailors' Civil Relief. If a defendant is a member on active duty in the United States military services, and if the defendant fails to appear on the trial date without having requested a stay of proceedings, the court shall enter the defendant's default and it shall appoint an attorney to represent the defendant's interests in accordance with the Soldiers' and Sailors' Civil Relief Act
of 1940, 50 U.S.C. App. §§ 501, et seq. Judgment shall enter three business days after the appointment of the attorney unless the attorney shall have filed a written objection to the entry of judgment, stating the legal and factual bases for such objection. The fees of the attorney shall be paid by the plaintiff and shall be assessed as costs in accordance with C.R.C.P. 516.

(d) Setting Aside a Default. For good cause shown, within a reasonable period and in any event not more than thirty days after the entry of judgment, the court may set aside an entry of default and the judgment entered thereon.

Rule 516. Costs

The prevailing party in the action in a small claims court is entitled to costs of the action and also the costs to enforce the judgment as provided by law.

Rule 517. Stay of Proceedings to Enforce Judgment

(a) No Automatic Stay. If upon rendition of a judgment payment is not made forthwith, an execution may issue immediately and proceedings may be taken for its enforcement unless the party against whom the judgment was entered requests a stay of execution and the court grants such request. Proceedings to enforce execution and other process after judgment and any fees shall be as provided by law or the Colorado Rules of Civil Procedure applicable in county court.

(b) Stay on Motion for Relief From Judgment or Appeal. In its discretion the court may stay the commencement of any proceeding to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to C.R.C.P. 515(d), or pending the filing and determination of an appeal.

Rule 518. Execution and Proceedings Subsequent to Judgment

(a) Judgment Debtor to File List of Assets and Property. Immediately following the entry of judgment, the party against whom the judgment was entered, if present in court, shall complete and file the information of judgment debtor's assets and property, pursuant to forms appended to

these rules, where appropriate and as ordered by the court, unless the judgment debtor tenders immediate payment of the judgment or the court orders otherwise.

(b) Enforcement Procedures. (1) Execution and the proceedings subsequent to judgment shall be the same as in a civil action in the county court. (2) In addition, at any time when execution may issue on a small claims court judgment, the judgment creditor shall be entitled to an order requiring the judgment debtor to appear before the court at a specified time and place to answer concerning assets and property.

(c) Enforcement of Nonmonetary Judgments. The judgment may compel delivery, compliance, or performance or the value thereof, and damages or other remedies for the failure to comply with the judgment, including contempt of court.

Rule 519. Post Trial Relief and Appeals

No motion for new trial shall be filed in the small claims court, whether or not an appeal is taken. Appeal procedures shall be as provided by Section 13-6-410, C.R.S., and C.R.C.P. 411.

Rule 520. Attorneys

(a) No Attorneys. Except as authorized by Section 13-6-407, C.R.S., rule 509(b)(2) and this rule, no attorney shall appear on behalf of any party in the small claims court.

(b) When Attorneys are Permitted in Small Claims Court. On the written notice of the defendant that the defendant will be represented by an attorney, pursuant to forms appended to these rules filed not less than seven days before the first scheduled trial date, the defendant may be represented by an attorney. The Notice of Representation shall advise the plaintiff of the plaintiff's right to counsel. Thereupon, plaintiff may also be represented by an attorney. If the notice is not filed at least seven days before the date set for the first scheduled trial date in the small claims court, no attorney shall appear for either party.

(c) Cases Heard by County Court Judge. Cases in which attorneys will appear may be heard by a county court judge pursuant to a standing order of the chief judge of any judicial district or of the presiding judge of the Denver county court.

(d) Sanctions. If the defendant appears at the trial without an attorney or fails to appear at the trial, and the court finds that the defendant's notice of representation by an attorney was made in bad faith, the court may award the plaintiff any costs, including reasonable attorney fees, occasioned thereby.

(e) Small Claims Court Rules to Apply. Any small claims court action in which an attorney appears shall be processed and tried pursuant to the statutes and court rules governing small claims court actions.

Rule 521. Special Procedures to Enforce Restrictive Covenants on Residential Property

(a) The small claims division shall dismiss without prejudice any claim to enforce a restrictive covenant if it affects the title to the real property.

(b) The owners of the residential property, subject of the action, shall be joined as codefendants to the action.

(c) Upon the filing of a claim under oath (see Forms appended to these rules) alleging that the defendant has violated any restrictive covenant regarding residential property, where the cost to comply with such restrictive covenant is not more than $7,500.00, the clerk shall issue the notice and summons to appear. The notice shall be served pursuant to C.R.C.P. 504.

(d) The general procedures applicable to the small claims court, C.R.C.P. 501 through 520, shall apply to actions to enforce a restrictive covenant on residential property, except as they are modified by this Rule.

(e) On the date set for appearance and trial pursuant to C.R.C.P. 512, the court shall proceed to determine the issues and render judgment and enter appropriate orders according to the law and the facts operative in the case.

(f) If the defendant fails to appear at the trial, the court may proceed pursuant to C.R.C.P. 514 and the provisions of this Rule, except that the court shall require the plaintiff to present sufficient evidence to support the plaintiff's claim.

(g) An order enforcing a restrictive covenant on residential property shall be reduced to writing by the magistrate and shall be personally served upon every party subject to the order (see Forms appended to these rules). If any party subject to the order is present in the courtroom at the time the order is made, the magistrate or judge shall at that time serve a copy of the order on such party and shall note such service on the order or file. Any party subject to the order who is not present shall be served as provided by C.R.C.P. 345, except that no fees or mileage need be tendered.

(h) If the plaintiff requests a temporary order directing the defendant to immediately comply with the restrictive covenant before the defendant has had an opportunity to be heard, the plaintiff shall attach to plaintiff's complaint a certified copy of the current deed showing ownership of the residential property, and a certified copy of the restrictive covenant. The request for temporary order shall be heard by the court, ex parte, at the earliest time the court is available. If the court is satisfied from the claim filed and the
testimony of the plaintiff, that there is a substantial likelihood that the plaintiff will prevail at a trial on the merits of the claim and that irreparable damage will accrue to the plaintiff unless a temporary order is issued without notice, the court may issue a temporary order and citation to the defendant to appear and show cause, at a date and time certain, why the temporary order should not be made permanent, see Forms appended to these rules.

38-22-101. LIENS IN FAVOR OF WHOM - WHEN FILED - DEFINITION OF PERSON. CITED IN BULLETIN 16 (II).

(1) Every person who furnishes or supplies laborers, machinery, tools, or equipment in the prosecution of the work, and mechanics, materialmen, contractors, subcontractors, builders, and all persons of every class performing labor upon or furnishing directly to the owner or persons furnishing labor, laborers, or materials to be used in construction, alteration, improvement, addition to, or repair, either in whole or in part, of any building, mill, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon road, tramway, or any other structure or improvement upon land, including adjacent curb, gutter, and sidewalk, and also architects, engineers, draftsmen, and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of cost, surveys, or superintendence, or who have rendered other professional or skilled service, or bestowed labor in whole or in part, describing or illustrating, or superintending such structure, or work done or to be done, or any part connected therewith, shall have a lien upon the property upon which they have furnished laborers or supplied machinery, tools, or equipment or rendered service or bestowed labor or for which they have furnished materials or mining or milling machinery or other fixtures, for the value of such laborers, machinery, tools, or equipment supplied, or services rendered or labor done or laborers or materials furnished, whether at the instance of the owner, or of any other person acting by the owner's authority or under the owner, as agent, contractor, or otherwise for the laborers, machinery, tools, or equipment supplied, or work or labor done or services rendered or laborers or materials furnished by each, respectively, whether supplied or done or furnished or rendered at the instance of the owner of the building or other improvement, or the owner's agent; and every contractor, architect, engineer, subcontractor, builder, agent, or other person having charge of the construction, alteration, addition to, or repair, either in whole or in part, of said building or other improvement shall be held to be the agent of the owner for the purposes of this article.

(2) In case of a contract for the work, between the reputed owner and a contractor, the lien shall extend to the entire contract price, and such contract shall operate as a lien in favor of all persons performing labor or services or furnishing laborers or materials under contract, express or implied, with said contractor, to the extent of the whole contract price; and after all such liens are satisfied, then as a lien for any balance of such contract price in favor of the contractor.

(3) All such contracts shall be in writing when the amount to be paid thereunder exceeds five hundred dollars, and shall be subscribed by the parties thereto. The contract, or a memorandum thereof, setting forth the names of all the parties to the contract, a description of the property to be affected thereby, together with a statement of the general character of the work to be done, the estimated total amount to be paid thereunder, together with the times or stages of the work for making payments, shall be filed by the owner or reputed owner, in the office of the county clerk and recorder of the county where the property, or the principal portion thereof, is situated before the work is commenced under and in accordance with the terms of the contract. In case such contract, or a memorandum thereof, is not so filed, the labor done and materials furnished by all persons shall be deemed to have been done and furnished at the personal instance of the owner, and such persons shall have a lien for the value thereof.

(4) For the purposes of this article, the value of labor done shall include, but not be limited to, the payments required under any labor contract to any trust established for the provision of

any pension, profit-sharing, vacation, health and welfare, prepaid legal services, or apprentice training benefits for the use of the employees of any contractors, and the trustee of any such trust shall have a lien therefor.

(5) All claimants who establish the right to a lien or claim under any of the provisions of this article shall be entitled to receive interest on any such lien or claim at the rate provided for under the terms of any contract or agreement under which the laborers were furnished or the labor or material was supplied or, in the absence of an agreed rate, at the rate of twelve percent per annum.

(6) For purposes of this article, "person" means a natural person, firm, association, corporation, or other legal entity; except that it shall not include a labor organization as defined in section 24-34-401 (6), C.R.S.

38-22-102. PAYMENTS - EFFECT.

(1) No part of the contract price, by the terms of any such contract, shall be made payable, nor shall the same, or any part thereof, be paid in advance of the commencement of the work, but the contract price, by the terms of the contract, shall be made payable in installments, or upon estimates, at specified times after the commencement of the work, or on the completion of the whole work; but at least the following percentages of the total contract price shall be made payable at least thirty-five days after the final completion of the contract:

(a) Fifteen percent of the first two hundred fifty thousand dollars of the contract price;

(b) Ten percent of the contract price in excess of two hundred fifty thousand dollars up to and including five hundred thousand dollars;

(c) Five percent of the contract price in excess of five hundred thousand dollars up to and including seven hundred fifty thousand dollars;

(d) Two percent of the contract price in excess of seven hundred fifty thousand dollars.

(2) No payment made prior to the time when the same is due, under the terms and conditions of the contract, shall be valid for the purpose of defeating, diminishing, or discharging any lien in favor of any person, except the contractor or other person to or for whom the payment is made, but as to such liens, such payment shall be deemed as if not made and shall be applicable to such liens, notwithstanding that the contractor or other person to or for whom it was paid may thereafter abandon his contract, or be or become indebted to the reputed owner in any amount for damages or otherwise or for nonperformance of his contract or otherwise.

(3) As to all liens, except those of principal contractors, the whole contract price shall be payable in money, and shall not be diminished by any prior or subsequent indebtedness, offset, or counterclaim in favor of the reputed owner and against the principal contractor, and no alteration of such contract shall affect any lien acquired under the provisions of this article. In case such contracts and alterations thereof do not conform substantially to the provisions of this section, the labor done and laborers or materials furnished by all persons other than the principal

contractor shall be deemed to have been done and furnished at the personal instance and request of the person who contracted with the principal contractor, they shall have a lien for the value thereof.

(3.5) Any provisions of this section to the contrary notwithstanding, it shall be an affirmative defense in any action to enforce a lien pursuant to this article that the owner or some person acting on the owner's behalf has paid an amount sufficient to satisfy the contractual and legal obligations of the owner, including the initial purchase price or contract amount plus any additions or change orders, to the principal contractor or any subcontractor for the purpose of payment to the subcontractors or suppliers of laborers, materials, or services to the job, when:

(a) The property is an existing single-family dwelling unit;

(b) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as the owner's primary residence; or

(c) The property is a single-family, owner-occupied dwelling unit, including a residence constructed and sold for occupancy as a primary residence. This paragraph (c) shall not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

(4) Any of the persons mentioned in section 38-22-101, except a principal contractor, at any time may give to the owner, or reputed owner, or to the superintendent of construction, agent, architect, or to the financing institution or other person disbursing construction funds, a written notice that they have performed labor or furnished laborers or materials to or for a principal contractor, or any person acting by authority of the owner or reputed owner, or that they have agreed to and will do so, stating in general terms the kind of labor, laborers, or materials and the name of the person to or for whom the same was or is to be done, or performed, or both, and the estimated or agreed amount in value, as near as may be, of that already done or furnished, or both, and also of the whole agreed to be done or furnished, or both.

(5) Such notice may be given by delivering the same to the owner or reputed owner personally, or by leaving it at his residence or place of business with some person in charge; or by delivering it either to his superintendent of construction, agent, architect, or to the financing institution or other person disbursing construction funds, or by leaving it either at their residence or place of business with some person in charge. No such notice shall be invalid or insufficient by reason of any defect of form, provided it is sufficient to inform the owner or reputed owner of the substantial matters provided for in this section, or to put him upon inquiry as to such matters.

(6) Upon such notice being given, it is the duty of the person who contracted with the principal contractor to withhold from such principal contractor, or from any other person acting under such owner or reputed owner, and to whom, by said notice, the said labor, laborers, or materials, have been furnished or agreed to be furnished, sufficient money due or that may become due to said principal contractor, or other persons, to satisfy such claim and any lien that may be filed therefor for record under this article, including reasonable costs provided for in this article.

(7) The payment of any such lien, which has been acknowledged by such principal contractor, or other person acting under such owner or reputed owner in writing to be correct, or which has been established by judicial determination, shall be taken and allowed as an offset against any moneys which may be due from the owner, or reputed owner to such principal contractor, or the person for whom such work and labor was performed or furnished.

38-22-103. ATTACHING OF LIEN - ENFORCEMENT.

(1) The liens granted by this article shall extend to and cover so much of the lands whereon such building, structure, or improvement is made as may be necessary for the convenient use and occupation of such building, structure, or improvement, and the same shall be subject to such liens. In case any such building occupies two or more lots or other subdivisions of land, such several lots or other subdivisions shall be deemed one lot for the purposes of this article, and the same rule shall hold in cases of any other such improvements that are practically indivisible, and shall attach to all machinery and other fixtures used in connection with any such lands, buildings, mills, structures, or improvements.

(2) When the lien is for work done or labor or material furnished for any entire structure, erection, or improvement, such lien shall attach to such building, erection, or improvement for or upon which the work was done, or laborers or materials furnished in preference to any prior lien or encumbrance, or mortgage upon the land upon which the same is erected or put, and any person enforcing such lien may have such building, erection, or improvement sold under execution and the purchaser at any such sale may remove the same within thirty days after such sale.

(3) Any lien provided for by this article shall extend to and embrace any additional or greater interest in any of such property acquired by such owner at any time subsequent to the making of the contract or the commencement of the work upon such structure and before the establishment of such lien by process of law, and shall extend to any assignable, transferable, or conveyable interest of such owner or reputed owner in the land upon which such building, structure, or other improvement is erected or placed.

(4) Whenever any person furnishes any laborers or materials or performs any labor, for the erection, construction, addition to, alteration, or repair of two or more buildings, structures, or other improvements, when they are built and constructed by the same person and under the same contract, it is lawful for the person so furnishing such laborers or materials or performing such labor to divide and apportion the same among the buildings, structures, or other improvements in proportion to the value of the laborers or materials furnished for and the labor performed upon or for each of said buildings, structures, or other improvements and to file with his or her lien claim therefor a statement of the amount so apportioned to each building, structure, or other improvement. This lien claim when so filed may be enforced under the provisions of this article in the same manner as if said laborers or materials had been furnished and labor performed for each of said buildings, structures, or other improvements separately; but if the cost or value of such labor, laborers, or materials cannot be readily and definitely divided and apportioned among the several buildings, structures, or other improvements, then one lien claim may be made, established, and enforced against all such buildings, structures, or other improvements, together with the ground upon which the same may be situated, and in such case for the purposes of this

article, all such buildings, structures, and improvements shall be deemed one building, structure, or improvement, and the land on which the same are situated as one tract of land.

38-22-104. LIEN ON MINING PROPERTY.

The provisions of this article shall apply to all persons who do work or furnish laborers or materials, or mining, milling, or other machinery or other fixtures, as provided in section 38-22-101, for the working, preservation, prospecting, or development of any mine, lode, or mining claim or deposit yielding metals or minerals of any kind, or for the working, preservation, or development of any such mine, lode, or deposit, in search of any such metals or minerals; and to all persons who do work upon or furnish laborers or materials, mining, milling, and other machinery or other fixtures, as provided in section 38-22-101, upon, in, or for any shaft, tunnel, mill, or tunnel site, incline, adit, drift, or any draining or other improvement of or upon any such mine, lode, deposit, or tunnel site; and to every miner or other person who does work upon or furnishes any laborers, coal, power, provisions, timber, powder, rope, nails, candles, fuse, caps, rails, spikes, or iron, or other materials whatever, as provided in section 38-22-101, upon any mine, lode, deposit, mill, or tunnel site. But when two or more lodes, mines, or deposits owned or claimed by the same person are worked through a common shaft, tunnel, incline, adit, drift, or other excavation, then all the mines, mining claims, lodes, deposits, and tunnel and mill sites so owned and worked or developed, for the purpose of this article shall be deemed one mine. This section is not applicable to the owner of any mine, lode, mining claim, deposit, mill, or tunnel where the work or labor has been performed for or the laborers or materials furnished to a lessee.

38-22-105. PROPERTY SUBJECT TO LIEN - NOTICE.

(1) Any building, mill, manufactory, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon road, tramway, and every structure or other improvement mentioned in this article, constructed, altered, added to, removed to, or repaired, either in whole or in part, upon or in any land with the knowledge of the owner or reputed owner of such land, or of any person having or claiming an interest therein, otherwise than under a bona fide prior recorded mortgage, deed of trust, or other encumbrance, or prior lien shall be held to have been erected, constructed, altered, removed, repaired, or done at the instance and request of such owner or person, including landlord or vendor, who by lease or contract has authorized such improvements, but so far only as to subject his interest to a lien therefor as provided in this section.

(2) Such interest so owned or claimed shall be subject to any lien given by the provisions of this article, unless such owner or person within five days after obtaining notice of the erection, construction, alteration, removal, addition, repair, or other improvement, gives notice that his or her interests shall not be subject to any lien for the same by serving a written or printed notice to that effect, personally, upon all persons performing labor or furnishing laborers, materials, machinery, or other fixtures therefor, or within five days after such owner or person has obtained notice of the erection, construction, alteration, removal, addition, repair, or other improvement, or notice of the intended erection, construction, alteration, removal, addition, repair, or other improvement gives such notice by posting and keeping posted a written or printed notice in some conspicuous place upon said land or upon the building or other improvements situate thereon.

(3) This section shall not apply to coowners of unincorporated canals, ditches, flumes, aqueducts, and reservoirs nor to the enforcement of article 23 of this title. The provisions of this section shall not be construed to apply to any owner or person claiming any interest in such property, the interest of whom is subject to a lien pursuant to the provisions of section 38-22-101.

38-22-105.5. NOTICE OF LIEN LAW.

(1) Upon issuing a building permit for the improvement, restoration, remodeling, or repair of or the construction of improvements or additions to residential property, the agency or other authority issuing the permit shall send a written notice, as set forth in subsection (2) of this section, by first-class mail addressed to the property for which the permit was issued.

(2) The notice shall be in at least ten-point bold-faced type, if printed, or in capital letters, if typewritten, shall identify the contractor by name and address, and shall state substantially as follows:

"**IMPORTANT NOTICE TO OWNERS:** UNDER COLORADO LAW, SUPPLIERS, SUBCONTRACTORS, OR OTHER PERSONS FURNISHING LABORERS OR PROVIDING LABOR OR MATERIALS FOR WORK ON YOUR RESIDENTIAL PROPERTY MAY HAVE A RIGHT TO COLLECT THEIR MONEY FROM YOU BY FILING A LIEN AGAINST YOUR PROPERTY. A LIEN CAN BE FILED AGAINST YOUR RESIDENCE WHEN A SUPPLIER, SUBCONTRACTOR, OR OTHER PERSON IS NOT PAID BY YOUR CONTRACTOR FOR SUCH LABORERS, LABOR, OR MATERIALS. HOWEVER, IN ACCORDANCE WITH THE COLORADO GENERAL MECHANICS' LIEN LAW, SECTIONS 38-22-102 (3.5) AND 38-22-113 (4), COLORADO REVISED STATUTES, YOU HAVE AN AFFIRMATIVE DEFENSE IN ANY ACTION TO ENFORCE A LIEN IF YOU OR SOME PERSON ACTING ON YOUR BEHALF HAS PAID YOUR CONTRACTOR AND SATISFIED YOUR LEGAL OBLIGATIONS. YOU MAY ALSO WANT TO DISCUSS WITH YOUR CONTRACTOR, YOUR ATTORNEY, OR YOUR LENDER POSSIBLE PRECAUTIONS, INCLUDING THE USE OF LIEN WAIVERS OR REQUIRING THAT EVERY CHECK ISSUED BY YOU OR ON YOUR BEHALF IS MADE PAYABLE TO THE CONTRACTOR, THE SUBCONTRACTOR, AND THE SUPPLIER FOR AVOIDING DOUBLE PAYMENTS IF YOUR PROPERTY DOES NOT SATISFY THE REQUIREMENTS OF SECTIONS 38-22-102 (3.5) AND 38-22-113 (4), COLORADO REVISED STATUTES. YOU SHOULD TAKE WHATEVER STEPS NECESSARY TO PROTECT YOUR PROPERTY."

(3) The notice prescribed by this section shall not be required when a building permit is issued for new residential construction or for residential property containing more than four living units.

(4) As used in this section:

(a) "New residential construction" means the construction or addition of living units on real property that was previously unimproved or was used for nonresidential purposes.

(b) "Residential property" means any real property, including improvements, containing living units used for human habitation.

(5) To offset the cost of issuing the notice required by this section, the appropriate authority may raise the fee for a building permit by one dollar.

(6) The failure of the agency or other authority which issues building permits to provide the notice required by this section shall not be an affirmative defense to any lien claimed pursuant to

the provisions of this article; nor shall the agency or any employee of the agency incur liability as a result of such failure.

(7) The agency or other authority which issues building permits may deliver the notice required by this section personally to the owner of the property, in lieu of mailing the notice as provided by subsection (1) of this section.

38-22-106. PRIORITY OF LIEN - ATTACHMENTS.

(1) All liens established by virtue of this article shall relate back to the time of the commencement of work under the contract between the owner and the first contractor, or, if said contract is not in writing, then such liens shall relate back to and take effect as of the time of the commencement of the work upon the structure or improvement, and shall have priority over any lien or encumbrance subsequently intervening, or which may have been created prior thereto but which was not then recorded and of which the lienor, under this article, did not have actual notice. Nothing contained in this section, however, shall be construed as impairing any valid encumbrance upon any such land duly made and recorded prior to the signing of such contract or the commencement of work upon such improvements or structure.

(2) No attachment, garnishment, or levy under an execution upon any money due or to become due to a contractor from the owner or reputed owner of any such property subject to any such lien shall be valid as against such lien of a subcontractor or materialmen, and no such attachment, garnishment, or levy upon any money due to a subcontractor or materialmen of the second class, as provided in section 38-22-108 (1) (b), from the contractor shall be valid as against any lien of a laborer employed by the day or piece, who does not furnish any material as classified in this article.

38-22-107. LIEN ATTACHES TO WATER RIGHTS AND FRANCHISES.

Such liens likewise shall attach to rights of water and rights-of-way that may pertain in any manner to any kind of property specified in this article and to which such liens attach. In the case of corporations such liens shall attach to all the franchises and charter privileges that may pertain in any manner to said specified property.

38-22-108. RANK OF LIENS.

(1) Every person given a lien by this article whose contract, either express or implied, is with the owner or reputed owner or owner's agent or other representative, is a principal contractor and all others are subcontractors; and in every case in which different liens are claimed against the same property, the rank of each lien, or class of liens, as between the different lien claimants, shall be declared and ordered to be satisfied in the decree or judgment in the following order named:

(a) The liens of all those who were laborers or mechanics working by the day or piece, but without furnishing material therefor, either as principal or subcontractors;

(b) The liens of all other subcontractors and of all materialmen whose claims are either entirely or principally for laborers, materials, machinery, or other fixtures, furnished either as principal contractors or subcontractors;

(c) The liens of all other principal contractors and all moneys realized in any actions for the satisfaction of liens against the same improvements or structures shall be paid out in the order above designated.

38-22-109. LIEN STATEMENT.

(1) Any person wishing to use the provisions of this article shall file for record, in the office of the county clerk and recorder of the county wherein the property, or the principal part thereof, to be affected by the lien is situated, a statement containing:

(a) The name of the owner or reputed owner of such property, or in case such name is not known to him, a statement to that effect;

(b) The name of the person claiming the lien, the name of the person who furnished the laborers or materials or performed the labor for which the lien is claimed, and the name of the contractor when the lien is claimed by a subcontractor or by the assignee of a subcontractor, or, in case the name of such contractor is not known to a lien claimant, a statement to that effect;

(c) A description of the property to be charged with the lien, sufficient to identify the same; and

(d) A statement of the amount due or owing such claimant.

(2) Such statement shall be signed and sworn to by the party, or by one of the parties, claiming such lien, or by some other person in his or their behalf, to the best knowledge, information, and belief of the affiant; and the signature of any such affiant to any such verification shall be a sufficient signing of the statement.

(3) In order to preserve any lien for work performed or laborers or materials furnished, there must be a notice of intent to file a lien statement served upon the owner or reputed owner of the property or the owner's agent and the principal or prime contractor or his or her agent at least ten days before the time of filing the lien statement with the county clerk and recorder. Such notice of intent shall be served by personal service or by registered or certified mail, return receipt requested, addressed to the last known address of such persons, and an affidavit of such service or mailing at least ten days before filing of the lien statement with the county clerk and recorder shall be filed for record with said statement and shall constitute proof of such service.

(4) All such lien statements claimed for labor and work by the day or piece, but without furnishing laborers or materials therefor, must be filed for record after the last labor for which the lien claimed has been performed and at any time before the expiration of two months next after the completion of the building, structure, or other improvement.

(5) Except as provided in subsections (10) and (11) of this section, the lien statements of all other lien claimants must be filed for record at any time before the expiration of four months after the day on which the last labor is performed or the last laborers or materials are furnished by such lien claimant.

(6) New or amended statements may be filed within the periods provided in this section for the purpose of curing any mistake or for the purpose of more fully complying with the provisions of this article.

(7) No trivial imperfection in or omission from the said work or in the construction of any building, improvement, or structure, or of the alteration, addition to, or repair thereof, shall be deemed a lack of completion, nor shall such imperfection or omission prevent the filing of any lien statement or filing of or giving notice, nor postpone the running of any time limit within which any lien statement shall be filed for record or served upon the owner or reputed owner of the property or such owner's agent and the principal or prime contractor or his or her agent, or within which any notice shall be given. For the purposes of this section, abandonment of all labor, work, services, and furnishing of laborers or materials under any unfinished contract or upon any unfinished building, improvement, or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof. For the purposes of this section, "abandonment" means discontinuance of all labor, work, services, and furnishing of laborers or materials for a three-month period.

(8) Subject to the prior termination of the lien under the provisions of section 38-22-110, no lien claimed by virtue of this article shall hold the property, or remain effective longer than one year from the filing of such lien, unless within thirty days after each annual anniversary of the filing of said lien statement there is filed in the office of the county clerk and recorder of the county wherein the property is located an affidavit by the person or one of the persons claiming the lien, or by some person in his behalf, stating that the improvements on said property have not been completed.

(9) Upon the filing of the notice required and the commencement of an action, within the time and in the manner required by said section 38-22-110, no annual affidavit need be filed thereafter.

(10) Within the applicable time period provided in subsections (4) and (5) of this section and subject to the provisions of section 38-22-125, any lien claimant granted a lien pursuant to section 38-22-101 may file with the county clerk and recorder of the county in which the real property is situated a notice stating the legal description or address or such other description as will identify the real property; the name of the person with whom he has contracted; and the claimant's name, address, and telephone number. One such notice may be filed upon more than one property, and, in the case of a subdivision, one notice may describe only the part thereof upon which the claimant has or will obtain a lien pursuant to section 38-22-101. The filing of said notice shall serve as notice that said person may thereafter file a lien statement and shall extend the time for filing of the mechanic's lien statement to four months after completion of the structure or other improvement or six months after the date of filing of said notice, whichever occurs first. Unless sooner terminated as provided in subsection (11) of this section, the notice

provided for in this subsection (10) shall automatically terminate six months after the date said notice is filed. In the event that said structure or other improvements have not been completed prior to the termination of said notice, a claimant, prior to said termination date, may file a new or amended notice which shall remain effective for an additional period of six months after the date of filing or four months after the date of completion of said structure or other improvements, whichever occurs first.

(11) Upon termination of agreement to provide labor, laborers, or materials, the owner, or someone in such owner's behalf, may demand from the person filing said notice a termination of said notice, which termination shall identify the properties upon which labor has not been performed or to which laborers or materials have not been furnished and as to which said notice is terminated. Upon the filing of said termination in the office of the county clerk and recorder in the county wherein said property is situated, such notice no longer constitutes notice as provided in subsection (10) of this section as to the property described in said termination.

(12) The notices provided for in subsections (10) and (11) of this section shall be recorded in the office of the county clerk and recorder of the county wherein the real property is located.

38-22-110. Action commenced within six months.

No lien claimed by virtue of this article, as against the owner of the property or as against one primarily liable for the debt upon which the lien is based or as against anyone who is neither the owner of the property nor one primarily liable for such debt, shall hold the property longer than six months after the last work or labor is performed, or laborers or materials are furnished, or after the completion of the building, structure, or other improvement, or the completion of the alteration, addition to, or repair thereof, as prescribed in section 38-22-109, unless an action has been commenced within that time to enforce the same, and unless also a notice stating that such action has been commenced is filed for record within that time in the office of the county clerk and recorder of the county in which said property is situate. Where two or more liens are claimed of record against the same property, the commencement of any action and the filing of the notice of the commencement of such action within that time by any one or more of such lien claimants in which action all the lien claimants as appear of record are made parties, either plaintiff or defendant shall be sufficient.

38-22-111. Joinder of parties - consolidation of actions.

(1) Any number of persons claiming liens against the same property and not contesting the claims of each other may join as plaintiffs in the same action, and when separate actions are commenced, the court may consolidate them upon motion of any party in interest or upon its own motion.

(2) Upon such procedure for consolidation, one case shall be selected with which the other cases shall be incorporated, and all the parties to such other cases shall be made parties plaintiff or defendant as the court may designate in said case so selected. All persons having claims for liens, the statements of which have been filed as provided in this article, shall be made parties to the action.

(3) Those claiming liens who fail or refuse to become parties plaintiff, or for any reason have not been made such parties, shall be made parties defendant. Any party claiming a lien, not made a party to such action, at any time within the period provided in section 38-22-109, may be allowed to intervene by motion, upon cause shown, and may be made a party defendant on the order of the court, which shall fix by such order the time for such intervenor to plead or otherwise proceed. The pleadings and other proceedings of such intervenor thus made a party shall be the same as though he had been an original party. Any defendant who claims a lien, in answering, shall set forth by cross complaint his claim and lien. Likewise such defendant may set forth in said answer defensive matter to any claim or lien of any plaintiff or codefendant or otherwise deny such claim or lien. The owner of the property to which such lien has attached, and all other parties claiming of record any right, title, interest, or equity therein, whose title or interests are to be charged with or affected by such lien, shall be made parties to the action.

38-22-112. ALLEGATIONS OF COMPLAINT.

It is sufficient to allege in the complaint in relation to any party claiming a lien whom it is desired to make a defendant, that such party claims a lien under this article upon the property described; and in case of the intervention of parties, or of the making of new parties, or of the consolidation of actions, so that the issues are in any manner changed or increased, any party to the action shall be allowed to amend his pleadings, or file new pleadings, as the nature of the case may require.

38-22-113. HEARING - JUDGMENT - SUMMONS - DEFENSE.

(1) The court, whenever the issues in such case are made up, shall advance such cause to the head of the docket for trial and may proceed to hear and determine said liens and claims or may refer the same to a magistrate to ascertain and report upon said liens and claims and the amounts justly due thereon.

(2) Judgments shall be rendered according to the rights of the parties. The various rights of all the lien claimants and other parties to any such action shall be determined and incorporated in one judgment or decree. Each party who establishes his claim under this article shall have judgment against the party personally liable to him for the full amount of his claim so established, and shall have a lien established and determined in said decree upon the property to which his lien has attached to the extent stated in this section.

(3) Proceedings to foreclose and enforce mechanics' liens under this article are actions in rem, and service by publication may be obtained against any defendant therein in a manner as provided by law, and personal judgment against the principal contractor or other person personally liable for the debt for which the lien is claimed shall not be requisite to a decree of foreclosure in favor of a subcontractor or materialman.

(4) In such proceedings, it shall be an affirmative defense that the owner or some person acting on the owner's behalf has paid an amount sufficient to satisfy the contractual and legal obligations of the owner, including the initial purchase price or contract amount plus any additions or change orders, to the principal contractor or any subcontractor for the purpose of payment to the subcontractors or suppliers of laborers or materials or services to the job, when:

(a) The property is an existing single-family dwelling unit;

(b) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as his primary residence; or

(c) The property is a single-family, owner-occupied dwelling unit, including a residence constructed and sold for occupancy as a primary residence. This paragraph (c) shall not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

38-22-114. Disposition of proceeds - execution.

(1) The court shall cause said property to be sold in satisfaction of said liens and costs of suit as in case of foreclosure of mortgages; and any party in whose favor a judgment for a lien is rendered, may cause the property to be sold within the time and in the manner provided for sales of real estate on executions issued out of any court of record, and there shall be the same rights of redemption as are provided for in the case of sales of real estate on executions. And if the proceeds of such sale, after the payment of costs, are not sufficient to satisfy the whole amount of such liens included in the decree of sale, then such proceeds shall be apportioned according to the rights of the several parties. In case the proceeds of sale amount to more than the sum of said liens and all costs, then the remainder shall be paid over to the owner of said property; and each party whose claim is not fully satisfied in the manner provided in this section shall have execution for the balance unsatisfied against the party personally liable, as in other cases.

(2) In the first instance without a previous sale of said property to which such liens have attached, an execution may issue in behalf of any such lien claimant for the full amount of his claim against the party personally liable, and he may thereafter enforce such lien for any balance of such judgment remaining unsatisfied. A transcript of the docket of said judgment and decree may be filed with the county clerk and recorder of the county where such property is situated or in any other county, and thereupon said judgment and decree shall become a lien upon the real property in such county of each party so personally liable in favor of any such lien claimant holding any such judgment against any such party so personally liable, as in other cases of recording transcripts of judgment.

38-22-115. Parties to action.

Principal contractors and all other persons personally liable for the debt for which the lien is claimed shall be made parties to actions to enforce liens under this article, and service of summons shall be made either personally or by publication in the same manner and with like effect as is provided by law in cases of attachment and other proceedings in rem.

38-22-116. Costs.

The court shall divide the costs between the parties liable therefor, according to the justice of the case.

38-22-117. Assignment of lien - failure to support lien.

Any party claiming a lien may assign in writing his claim and lien to any other claimant or other person who shall thereupon have all the rights and remedies of the assignor for the purpose of filing and for the enforcement of any such lien by action under this article, and the assignment shall be a sufficient consideration as to all other parties for the purpose of such action. Such assignment may be made before or after the filing of the statement of lien. Any such claimant, whether as assignee or otherwise, may include all the liens he may possess against the same property in any such statement, and when more than one such claim is included in one such statement, one verification thereto shall be sufficient. Any person may file separate statements of two or more claims. If, on the trial of a cause under the provisions of this article, the proceedings will not support a lien, the plaintiff and all lien claimants entitled thereto may proceed to judgment as in an action on contract, and executions may issue as provided in such cases, and said judgment shall have all the rights of a judgment in a personal action.

38-22-118. SATISFACTION OF LIEN - FAILURE TO RELEASE.

The claimant of any such lien, the statement of which has been filed, on the payment of the amount thereof, together with the costs of filing and recording such lien, and the acknowledgment of satisfaction, and accrued costs of suit in case a suit has been brought thereon, at the request of any person interested in the property charged therewith, shall enter or cause to be entered an acknowledgment of satisfaction of the same of record, and if he neglects or refuses to do so within ten days after the written request of any person so interested, he shall forfeit and pay to such person the sum of ten dollars per day for every day of such neglect or refusal, to be recovered in the same manner as other debts. A valid tender of payment, refused by any such claimant, shall be equivalent to a payment for the purpose of this section. Any such statement may be satisfied of record in the same manner as mortgages.

38-22-119. AGREEMENT TO WAIVE - EFFECT.

No agreement to waive, abandon, or refrain from enforcing any lien provided for by this article shall be binding except as between the parties to such contract. The provisions of this article shall receive a liberal construction in all cases.

38-22-120. RULES OF CIVIL PROCEDURE APPLY.

The provisions of the Colorado rules of civil procedure, insofar as the same are applicable and not in conflict with the provisions of this article, shall be observed in proceedings to establish and enforce mechanics' liens.

38-22-121. LIENS OF SURVEYORS AND ENGINEERS.

The provisions of this article shall apply to surveyors, civil and mining engineers doing any work of surveying or plotting of any mines, mining claims, lodes, or mineral deposits, and they shall have like lien and claim as other persons under the provisions of this article.

38-22-122. LIEN UNDER TWO CONTRACTS - EFFECT.

In case the act of doing such work or of furnishing such laborers or materials is continuous, said lien shall attach as in other cases, even though such work is done or laborers or materials have been furnished under two or more contracts between the same parties.

38-22-123. PAYMENT TO AVOID INVALID.

No payment made by any owner to any contractor for the purpose of avoiding any anticipated lien of any subcontractor shall be valid; and if any person files either of said statements for a lien for a larger sum than is due or to become due, in fact, or in probability, as the case may be, with intent to cheat or defraud any other person, and that fact appears in any proceeding under this article, such person shall forfeit all rights to such lien under this article.

38-22-124. OTHER REMEDIES NOT BARRED.

No remedy given in this article shall be construed as preventing any person from enforcing any other remedy which he otherwise would have had, except as otherwise provided in this article. In case of two or more owners, contractors, or subcontractors interested in the same contract, the rule of procedure shall be the same as in the case of one such.

38-22-125. BONA FIDE PURCHASER.

No lien, excepting those claimed by laborers or mechanics as defined in section 38-22-108 (1) (a), filed for record more than two months after completion of the building, improvement, or structure shall encumber the interest of any bona fide purchaser for value of real property, the principal improvement upon which is a single- or double-family dwelling, unless said purchaser at the time of conveyance has actual knowledge that the amounts due and secured by such lien have not been paid, or unless such lien statement has been recorded prior to conveyance, or unless a notice as provided in section 38-22-109 (10) has been filed within one month subsequent to completion or prior to conveyance, whichever is later; except that nothing in this section shall extend the time for recording lien statements as provided in section 38-22-109 (4), (5), and (10). For the purposes of this section, the dwelling shall be deemed complete upon conveyance and occupancy if not completed before. The lien for items of labor, work, or material which shall thereafter be furnished shall be effective and may be claimed within the time thereafter as provided in section 38-22-109 (4), (5), and (10), and their priority shall not be affected by this section.

38-22-126. DISBURSER - NOTICE - DUTY OF OWNER AND DISBURSER.

(1) For the purposes of this section, the word "disburser" means any lender who has agreed to make any loan to the owner or contractor, the proceeds of which are to be disbursed from time to time as work upon a structure or other improvement progresses, or any part of which is to be withheld until all or any part of such work is completed; or, any person who receives funds from any lender, contractor, or owner to be disbursed from time to time as work upon a structure or other improvement progresses, or any part of which is to be withheld until all or any part of such work is completed; or, any owner who has agreed to pay any sum to any contractor from time to time as work upon a structure or other improvement progresses, or any part of which is to be withheld until all or any part of such work is completed.

(2) It is the duty of the disburser, prior to the first disbursement, to see that there has been recorded in the office of the county clerk and recorder of the county where the land to be improved is situated, a notice stating the name and address of the owner, the names, addresses, and telephone numbers of the principal contractor, if any, and the disburser, and the legal description of the land and its address, if any. One notice may include as many parcels as desired, providing that all the information is stated as to each parcel. Such notice shall be indexed by the county clerk and recorder under the name of the owner and each principal contractor as grantors and according to address.

(3) It is the duty of any person upon ordering or contracting for any labor, services, machinery, tools, equipment, laborers, or materials to be used as provided in section 38-22-101, upon demand of the person from whom he or she is so ordering or with whom he or she is so contracting, to furnish to such person a statement of the names, addresses, and telephone numbers of the owner or reputed owner of the land to be improved, the principal contractor, if any, and the disburser, if any, as defined in subsection (1) of this section, together with a legal description or the address, if any, of the land to be improved.

(4) Any lien claimant who is entitled to a lien under this article may give notice to the disburser stating the property by address or legal description, or by such other description as will identify the real property; the claimant's name, address, and telephone number; the person with whom he has contracted; and a general statement of his contract.

(5) Such notice shall be in writing and shall be served upon the disburser by certified mail or by delivering the same personally to such disburser, or by leaving a copy at his residence or at his place of business with some person in charge.

(6) Upon such notice being received by the disburser, it is the duty of the disburser, before disbursing any funds to the person designated in said notice with whom said claimant has contracted, to ascertain the amount due to the claimant on any disbursement date, and to pay such amount directly to the claimant out of any undisbursed funds available for and due to said person designated in said notice on such date; except that any amounts actually paid by the disburser to others for labor, services, machinery, tools, equipment, and laborers or materials performed, supplied, or furnished for such structure or improvement that are chargeable to said person designated in said notice shall not be deemed available for said person designated in said notice; and further except that if the amount claimed by said claimant is disputed by said person designated in said notice, the disburser may impound such amount until the amount due is settled by agreement or final judicial determination.

(7) If the disburser fails to comply with subsection (6) of this section and the said claimant suffers loss by reason of said failure the disburser shall be liable to said claimant for the amount which the disburser should have paid claimant to the extent of claimant's loss.

38-22-127. MONEYS FOR LIEN CLAIMS MADE TRUST FUNDS - DISBURSEMENTS - PENALTY.

(1) All funds disbursed to any contractor or subcontractor under any building, construction, or remodeling contract or on any construction project shall be held in trust for the payment of the

subcontractors, laborer or material suppliers, or laborers who have furnished laborers, materials, services, or labor, who have a lien, or may have a lien, against the property, or who claim, or may claim, against a principal and surety under the provisions of this article and for which such disbursement was made.

(2) This section shall not be construed so as to require any such contractor or subcontractor to hold in trust any funds which have been disbursed to him or her for any subcontractor, laborer or material supplier, or laborer who claims a lien against the property or claims against a principal and surety who has furnished a bond under the provisions of this article if such contractor or subcontractor has a good faith belief that such lien or claim is not valid or if such contractor or subcontractor, in good faith, claims a setoff, to the extent of such setoff.

(3) If the contractor or subcontractor has furnished a performance or payment bond or if the owner of the property has executed a written release to the contractor or subcontractor, he need not furnish any such bond or hold such payments or disbursements as trust funds, and the provisions of this section shall not apply.

(4) Every contractor or subcontractor shall maintain separate records of account for each project or contract, but nothing contained in this section shall be construed as requiring a contractor or subcontractor to deposit trust funds from a single project in a separate bank account solely for that project so long as trust funds are not expended in a manner prohibited by this section.

(5) Any person who violates the provisions of subsections (1) and (2) of this section commits theft, as defined in section 18-4-401, C.R.S.

38-22-128. EXCESSIVE AMOUNTS CLAIMED.

Any person who files a lien under this article for an amount greater than is due without a reasonable possibility that said amount claimed is due and with the knowledge that said amount claimed is greater than that amount then due, and that fact is shown in any proceeding under this article, shall forfeit all rights to such lien plus such person shall be liable to the person against whom the lien was filed in an amount equal to the costs and all attorney's fees.

38-22-129. PRINCIPAL CONTRACTOR MAY PROVIDE BOND PRIOR TO COMMENCEMENT OF WORK.

(1) Except as provided in subsection (4) of this section, the provisions of section 38-22-101 (1) shall not apply if, at the commencement of any work upon any construction project for the improvement of real property as described in section 38-22-101 (1), a performance bond and a labor and materials payment bond, each in an amount equal to one hundred fifty percent of the contract price, are executed by the principal contractor and one or more corporate sureties authorized and qualified to do business in this state, for the protection of all contractors, subcontractors, materialmen, and laborers supplying labor, laborers, or material in the prosecution of the work on such construction project for the use of each contractor, subcontractor, materialman, or laborer.

(2) All subcontractors, materialmen, mechanics, and others who would otherwise be entitled to a lien under the provisions of section 38-22-101 (1) shall have a right of action directly against the principal contractor and his surety for the full amount due. Such action shall be brought within six months after completion of the last work on such project.

(3) In order to be effective, a notice of such bond shall be filed with the county clerk and recorder of the county wherein such project is situate prior to the commencement of any work on the project and shall be indexed according to both the street address and the legal description of the property to be improved. The principal contractor shall post a notice on the property that notice of such bond has been filed with the county clerk and recorder and shall make available copies of the bond to every contractor, subcontractor, materialman, mechanic, or laborer upon request.

(4) If any claimant files for record a lien statement or other notice, pursuant to section 38-22-109, such lien shall be deemed released upon the filing for record of a notice executed by both the principal and all sureties acknowledging the existence of the bond furnished for such project and that said lien claimant is entitled to claim the benefits of said bond. Such acknowledgment shall be executed by the principal and sureties upon demand of the owners or any person filing a lien statement. Said notice may be delivered personally to the surety or its agent and the principal or his agent or may be mailed by certified or registered mail. If the principal and all sureties on any such bonds fail or refuse to execute and record such acknowledgment within thirty days after written demand is made upon them, all lien claimants shall be entitled to enforce their lien claims in the same manner as if no bond had been filed as provided in subsection (1) of this section.

(5) In the event that any corporate surety on any bond filed pursuant to the provisions of subsection (1) of this section becomes subject to an order for relief under the federal bankruptcy code of 1978, Title 11 of the United States Code, is the subject of any state or federal corporate reorganization proceedings, makes any assignment for the benefit of creditors, or otherwise is unable to meet its financial obligations as they become due, the provisions of this section shall not apply, and any lien claimant shall be entitled to enforce such lien claim in the same manner as if no bond had been filed as provided in subsection (1) of this section.

38-22-130. PAYMENT OF CLAIMS BY SURETY.

(1) Subcontractors, materialmen, mechanics, and others who have claims aggregating two thousand dollars or less each on construction projects for the improvement of real property as described in section 38-22-101 (1) for which a bond was executed pursuant to section 38-22-129 shall serve upon the principal contractor and his surety an affidavit, supported by all reasonably available documentary evidence, that a claimant has furnished labor or materials used or performed in the prosecution of the work on such project, that he has been unpaid therefor, and the amount of such claim. If after forty-five days such affidavit remains uncontroverted, such surety shall pay to such claimant forthwith the full value of his claim.

(2) Service of such affidavit may be accomplished by certified or registered mail, by personal delivery to such person, or by leaving a copy at his residence or at his place of business with some person in charge.

38-22-131. SUBSTITUTION OF BOND ALLOWED.

(1) Whenever a mechanic's lien has been filed in accordance with this article, the owner, whether legal or beneficial, of any interest in the property subject to the lien may, at any time, file with the clerk of the district court of the county wherein the property is situated a corporate surety bond or any other undertaking which has been approved by a judge of said district court.

(2) Such bond or undertaking plus costs allowed to date shall be in an amount equal to one and one-half times the amount of the lien plus costs allowed to date and shall be approved by a judge of the district court with which such bond or undertaking is filed.

(3) The bond or undertaking shall be conditioned that, if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, and other sums which such claimant would be entitled to recover upon the foreclosure of the lien.

38-22-132. LIEN TO BE DISCHARGED.

Notwithstanding the provisions of section 38-22-119, upon the filing of a bond or undertaking as provided in section 38-22-131, the lien against the property shall be forthwith discharged and released in full, and the real property described in such bond or undertaking shall be released from the lien and from any action brought to foreclose such lien, and the bond or undertaking shall be substituted. The clerk of the district court with which such bond or undertaking has been filed shall issue a certificate of release which shall be recorded in the office of the clerk and recorder of the county wherein the original mechanic's lien was filed, and the certificate of release shall show that the property has been released from the lien and from any action brought to foreclose such lien.

38-22-133. ACTION TO BE BROUGHT ON BOND OR UNDERTAKING.

When a bond or undertaking is filed as provided in section 38-22-131, the person filing the original mechanic's lien may bring an action upon the said bond or undertaking. Such action shall be commenced within the time allowed for the commencement of an action upon foreclosure of the lien, and the statute of limitations applicable to a lien foreclosure shall apply to the action upon the bond or undertaking as it would had no bond or undertaking been filed.

38-13-108.2. PROPERTY HELD BY COURTS AND PUBLIC AGENCIES. CITED IN BULLETIN 17 (II).

Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

38-13-110. REPORT AND PAYMENT OR DELIVERY OF ABANDONED PROPERTY. CITED IN BULLETIN 17 (II).

(1) (a) A person holding property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this article shall report to the administrator concerning the property as provided in this section.

(b) If a person is not subject to the requirements of this subsection (1) because the person does not hold any property, tangible or intangible, presumed abandoned under this article or the person meets the criteria established in paragraph (e) of subsection (4) of this section, the person shall not be required to notify the administrator of the person's exemption from this subsection (1).

(2) The report must include:

(a) Except with respect to money orders, the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of property presumed abandoned under this article;

(a.5) In the case of unclaimed funds of twenty-five dollars or more held or owing under any life or endowment insurance policy or annuity contract, the name, if known, and the last-known address, if any, of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(b) In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

(c) The nature and identifying number, if any, or a description of the property and the amount appearing from the records to be due, but items of value under twenty-five dollars each may be reported in the aggregate;

(d) The date the property became payable, demandable, or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(e) Other information the administrator prescribes by rule as necessary for the administration of this article.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner

or the holder has changed his name while holding the property, he shall file with his report any such prior name and all known names and addresses of each previous holder of the property.

(4) (a) The report required by subsection (1) of this section shall be filed and, pursuant to section 38-13-112, payment or delivery of abandoned property shall be made before November 1 of each year as of June 30 next preceding, with the initial report to be filed before November 1, 1987, except as provided in paragraphs (b), (c), (d), and (e) of this subsection (4).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (4), the report of any life insurance company must be filed and, pursuant to section 38-13-109.5, payment or delivery of funds held or owing and presumed abandoned shall be made before May 1 of each year as of December 31 next preceding, with the initial report to be filed before May 1, 1991.

(c) On written request by any person required to file a report and, pursuant to section 38-13-112, pay or deliver abandoned property, the administrator may postpone the reporting date. However, the reporting date for the initial report filed by insurance companies, other than life insurance companies pursuant to paragraph (a) of this subsection (4), under this article as required by section 38-13-130 (2) shall in no case be postponed beyond December 30, 1990.

(d) Notwithstanding the provisions of paragraph (a) of this subsection (4), the public employees' retirement association shall file an initial report on or before June 1, 1992. The public employees' retirement association shall file subsequent reports in conformance with the requirements of paragraph (a) of this subsection (4) on or before November 1, 1993, and on or before November 1 of each year thereafter.

(e) (I) Any business association with annual gross receipts of less than five hundred thousand dollars that holds property, tangible or intangible, acquired during the immediately preceding five-year period of an aggregate value under three thousand five hundred dollars shall not be subject to the requirements of paragraph (a) of this subsection (4) and section 38-13-112 until such time as the aggregate value of such property acquired during the immediately preceding five-year period exceeds three thousand five hundred dollars; except that, if any such business association holds an item of property of any one apparent owner acquired during such period of an aggregate value over two hundred fifty dollars, such business association shall report and pay or deliver such property to the administrator in accordance with paragraph (a) of this subsection (4) and section 38-13-112.

(II) Any organization exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", 26 U.S.C. 501 (c) (3), or its successor statute, that receives contributions totaling one million dollars or more annually and that holds property, tangible or intangible, acquired during the immediately preceding five-year period of an aggregate value under three thousand five hundred dollars shall not be subject to the requirements of paragraph (a) of this subsection (4) and section 38-13-112 until such time as the aggregate value of such property acquired during the immediately preceding five-year period exceeds three thousand five hundred dollars; except that, if any such organization holds an item of property of any one apparent owner acquired during such period of an aggregate value over two hundred fifty dollars,

such organization shall report and pay or deliver such property to the administrator in accordance with paragraph (a) of this subsection (4) and section 38-13-112.

(III) Any organization exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", 26 U.S.C. 501 (c) (3), or its successor statute, that receives contributions totaling less than one million dollars annually shall not be subject to the requirements of paragraph (a) of this subsection (4) and section 38-13-112.

(5) Except as provided in subsection (6) of this section, not more than one hundred twenty days before filing the report and, pursuant to section 38-13-112, paying or delivering the abandoned property required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this article shall send written notice to the apparent owner's last-known address, informing such owner that the holder is in possession of property subject to this article if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of fifty dollars or more.

(6) (a) (Deleted by amendment, L. 95, p. 523, § 3, effective May 16, 1995.)

(b) The public employees' retirement association shall comply with the requirements of subsection (5) of this section with regard to reports filed by the public employees' retirement association on or before November 1, 1993, and on or before November 1 of each year thereafter.

8-2-114. IMMUNITY FROM CIVIL LIABILITY FOR EMPLOYER DISCLOSING INFORMATION - EMPLOYER SHALL NOT MAINTAIN BLACKLIST - CREDIT LISTS EXCEPTED. CITED IN BULLETIN 22 (II).

(1) For purposes of this section, "job performance" means:

(a) The suitability of the employee for reemployment;

(b) The employee's work-related skills, abilities, and habits as they may relate to suitability for future employment; and

(c) In the case of a former employee, the reason for the employee's separation.

(2) It is unlawful for any employer to maintain a blacklist, or to notify any other employer that any current or former employee has been blacklisted by such employer, for the purpose of preventing such employee from receiving employment. Sections 8-2-112 to 8-2-115 shall not be construed to prevent any merchant or professional person, or any association thereof, from maintaining or publishing a list concerning the credit or financial responsibility of any person dealing with them on credit.

(3) Any employer who provides information about a current or former employee's job history or job performance to a prospective employer of the current or former employee upon request of the prospective employer or the current or former employee is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure. This immunity shall not apply when such employee shows by a preponderance of the evidence both of the following:

(a) The information disclosed by the current or former employer was false; and

(b) The employer providing the information knew or reasonably should have known that the information was false.

(4) This section applies to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this section.

(5) Any employer that provides written information to a prospective employer about a current or a former employee shall send, upon the request of such current or former employee, a copy of the information provided to the last-known address of the person who is the subject of the reference. Any person who is the subject of such a reference may obtain a copy of the reference information by appearing at the employer's or former employer's place of business during normal business hours. The employer or former employer may charge a fair and reasonable amount for reproduction costs if multiple copies are requested.

(6) Nothing in this section shall be construed to abrogate or contradict the provisions of part 4 of article 34 of title 24, C.R.S.

12-14-101. SHORT TITLE. CITED IN BULLETIN 25 (II).

This article shall be known and may be cited as the "Colorado Fair Debt Collection Practices Act".

12-14-102. SCOPE OF ARTICLE.

(1) This article shall apply to any collection agency, solicitor, or debt collector that has a place of business located:

(a) Within this state;

(b) Outside this state and collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located within this state;

(c) Outside this state and regularly collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located outside this state; or

(d) Outside this state and solicits or attempts to solicit debts for collection from a creditor with a place of business located within this state.

(2) (Deleted by amendment, L. 95, p. 1224, § 1, effective July 1, 1995.)

12-14-103. DEFINITIONS.

As used in this article, unless the context otherwise requires:

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., whose office is created in the department of law in section 5-6-103, C.R.S.

(1.5) "Board" means the collection agency board created in section 12-14-116.

(2) (a) "Collection agency" means any:

(I) Person who engages in a business the principal purpose of which is the collection of debts; or

(II) Person who:

(A) Regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another;

(B) Takes assignment of debts for collection purposes;

(C) Directly or indirectly solicits for collection debts owed or due or asserted to be owed or due another;

(D) Collects debt for the department of personnel, but only for the purposes specified in paragraph (d) of this subsection (2);

(b) "Collection agency" does not include:

(I) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(II) Any person while acting as a collection agency for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a collection agency does so only for creditors to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(III) Any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of such officer's or employee's official duties, except as otherwise provided in subsection (7) of this section;

(IV) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(V) Any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(VI) Repealed.

(VII) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that:

(A) Such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) Such activity concerns a debt which was extended by such person;

(C) Such activity concerns a debt which was not in default at the time it was obtained by such person; or

(D) Such activity concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor;

(VIII) Any person whose principal business is the making of loans or the servicing of debt not in default and who acts as a loan correspondent, or seller and servicer for the owner, or holder of a debt which is secured by a deed of trust on real property whether or not such debt is also secured by an interest in personal property;

(IX) A limited gaming or racing licensee acting pursuant to part 6 of article 35 of title 24, C.R.S.

Editor's note: This subparagraph (IX) is effective January 1, 2008.

(c) Notwithstanding the provisions of subparagraph (VII) of paragraph (b) of this subsection (2), "collection agency" includes any person who, in the process of collecting his or her own debts, uses another name which would indicate that a third person is collecting or attempting to collect such debts.

(d) For the purposes of section 12-14-108 (1) (f), "collection agency" includes any person engaged in any business the principal purpose of which is the enforcement of security interests. For purposes of sections 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, and 12-14-109 only, "collection agency" includes a debt collector for the department of personnel.

(e) Notwithstanding paragraph (b) of this subsection (2), "collection agency" includes any person who engages in any of the following activities; except that such person shall be exempt from provisions of this article that concern licensing and licensees:

(I) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1, 2000.)

(II) Is an attorney-at-law and regularly engages in the collection or attempted collection of debts in this state;

(III) Is a person located outside this state whose collection activities are limited to collecting debts not incurred in this state from consumers located in this state and whose collection activities are conducted by means of interstate communications, including telephone, mail, or facsimile transmission, and who is located in another state that regulates and licenses collection agencies but does not require Colorado collection agencies to obtain a license to collect debts in their state if such agencies' collection activities are limited in the same manner.

(3) "Communication" means conveying information regarding a debt in written or oral form, directly or indirectly, to any person through any medium.

(4) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4.5) (a) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(b) "Consumer reporting agency" shall not include any business entity that provides check verification or check guarantee services only.

(c) "Consumer reporting agency" shall include any persons defined in 15 U.S.C. sec. 1681a (f) or section 12-14.3-102 (4).

(5) "Creditor" means any person who offers or extends credit creating a debt or to which a debt is owed, but such term does not include any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(6) (a) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.

(b) "Debt" does not include a debt for business, investment, commercial, or agricultural purposes or a debt incurred by a business.

(7) "Debt collector" means any person employed or engaged by a collection agency to perform the collection of debts owed or due or asserted to be owed or due to another, and includes any person employed by the department of personnel, or any division of said department, when collecting debts due to the state on behalf of another state agency.

(8) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1, 2000.)

(9) "Location information" means a consumer's place of abode and his telephone number at such place or his place of employment.

(9.3) "Person" means a natural person, firm, corporation, limited liability company, or partnership.

(9.5) "Principal" means any individual having a position of responsibility in a collection agency, including but not limited to any manager, director, officer, partner, owner, or shareholder owning ten percent or more of the stock.

(10) "Solicitor" means any person employed or engaged by a collection agency who solicits or attempts to solicit debts for collection by such person or any other person.

(11) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of them.

12-14-104. LOCATION INFORMATION - ACQUISITION.

(1) Any debt collector or collection agency communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(a) Identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(b) Not state that such consumer owes any debt;

(c) Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector or collection agency reasonably believes that the earlier

response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(d) Not communicate by postcard;

(e) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debtor collector or collection agency is in the debt collection business or that the communication relates to the collection of a debt; and

(f) After the debt collector or collection agency knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time, not less than thirty days, to communication from the debt collector or collection agency.

12-14-105. COMMUNICATION IN CONNECTION WITH DEBT COLLECTION.

(1) Without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction, a debt collector or collection agency shall not communicate with a consumer in connection with the collection of any debt:

(a) At any unusual time, place, or manner known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector or collection agency shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location.

(b) If the debt collector or collection agency knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the consumer; or

(c) At the consumer's place of employment if the debt collector or collection agency knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(2) Except as provided in section 12-14-104, without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector or collection agency shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection agency.

(3) (a) If a consumer notifies a debt collector or collection agency in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector or collection agency to cease further communication with the consumer, the debt collector or collection agency shall not communicate further with the consumer with respect to such debt, except to:

(I) Advise the consumer that the debt collector's or collection agency's further efforts are being terminated;

(II) Notify the consumer that the collection agency or creditor may invoke specified remedies that are ordinarily invoked by such collection agency or creditor; or

(III) Notify the consumer that the collection agency or creditor intends to invoke a specified remedy.

(b) If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(c) In its initial written communication to a consumer, a collection agency shall include the following statement: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM. If such notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(d) (Deleted by amendment, L. 2003, p. 1865, § 2, effective May 21, 2003.)

(4) For the purpose of this section, "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(5) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

12-14-106. HARASSMENT OR ABUSE.

(1) A debt collector or collection agency shall not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the following conduct:

(a) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(b) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(c) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. sec. 1681b (a) (3) and section 12-14.3-103 (1) (c);

(d) The advertisement for sale of any debt to coerce payment of the debt or agreeing to do so for the purpose of solicitation of claims;

(e) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(f) Except as provided in section 12-14-104, the placement of telephone calls without meaningful disclosure of the caller's identity within the first sixty seconds after the other party to the call is identified as the debtor.

12-14-107. FALSE OR MISLEADING REPRESENTATIONS.

(1) A debt collector or collection agency shall not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, the following conduct:

(a) The false representation or implication that the debt collector or collection agency is vouched for, bonded by, or affiliated with the United States government or any state government, including the use of any misleading name, badge, uniform, or facsimile thereof;

(b) The false representation of:

(I) The character, amount, or legal status of any debt; or

(II) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

(c) The false representation or implication that any individual is an attorney or that any communication is from an attorney;

(d) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or in the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector, collection agency, or creditor intends to take such action;

(e) The threat to take any action that cannot legally be taken or that is not intended to be taken;

(f) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(I) Lose any claim or defense to payment of the debt; or

(II) Become subject to any practice prohibited by this article;

(g) The false representation or implication that the consumer committed any crime;

(h) The false representation or implication that the consumer has engaged in any disgraceful conduct;

(i) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;

(j) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state or which creates a false or misleading impression as to its source, authorization, or approval;

(k) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(l) Except as otherwise provided for communications to acquire location information under section 12-14-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain information about a consumer and also, if the initial communication with the consumer is oral, in the initial oral communication, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and, in subsequent communications, that the communication is from a debt collector or collection agency; except that this paragraph (l) shall not apply to a formal pleading made in connection with a legal action;

(m) The false representation or implication that accounts have been turned over to innocent purchasers for value;

(n) The false representation or implication that documents are legal process;

(o) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization;

(p) The false representation or implication that documents are not legal process forms or do not require action by the consumer;

(q) The false representation or implication that a debt collector or collection agency operates or is employed by a consumer reporting agency.

12-14-108. UNFAIR PRACTICES.

(1) A debt collector or collection agency shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the following conduct:

(a) The collection of any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(b) The acceptance by a debt collector or collection agency from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's or collection agency's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit;

(c) The solicitation by a debt collector or collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(d) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument;

(e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(f) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(I) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(II) There is no present intention to take possession of the property; or

(III) The property is exempt by law from such dispossession or disablement;

(g) Communicating with a consumer regarding a debt by postcard;

(h) Using any language or symbol, other than the debt collector's or collection agency's address, on any envelope when communicating with a consumer by use of the mails or by telegram; except that a debt collector or collection agency may use his business name if such name does not indicate that he is in the debt collection business;

(i) Failing to comply with the provisions of section 13-21-109, C.R.S., regarding the collection of checks, drafts, or orders not paid upon presentment;

(j) Communicating credit information to a consumer reporting agency earlier than thirty days after the initial notice to the consumer has been mailed, unless the consumer's last-known address is known to be invalid. This paragraph (j) shall not apply to checks, negotiable instruments, or credit card drafts.

12-14-109. VALIDATION OF DEBTS.

(1) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector or collection agency shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice with the disclosures specified in paragraphs (a) to (e) of this subsection (1). If such disclosures are placed on the back of the notice, the front of the notice shall contain a statement notifying consumers of that fact. Such disclosures shall state:

(a) The amount of the debt;

(b) The name of the creditor to whom the debt is owed;

(c) That, unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency;

(d) That, if the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector or collection agency;

(e) That upon the consumer's written request within the thirty-day period, the debt collector or collection agency will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(f) and (g) (Deleted by amendment, L. 2003, p. 1866, § 4, effective May 21, 2003.)

(2) If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in paragraph (c) of subsection (1) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of such verification or judgment or name and address of the original creditor to the consumer.

(3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed by any court as an admission of liability by the consumer.

(4) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

12-14-110. MULTIPLE DEBTS.

If any consumer owes multiple debts and makes any single payment to any collection agency with respect to such debts, such collection agency shall not apply such payment to any debt

which is disputed by the consumer and when so informed shall apply such payment in accordance with the consumer's directions.

12-14-111. LEGAL ACTIONS BY COLLECTION AGENCIES.

(1) Any debt collector or collection agency who brings any legal action on a debt against any consumer shall:

(a) In the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(b) In the case of an action not described in paragraph (a) of this subsection (1), bring such action only in the judicial district or similar legal entity in which:

(I) Such consumer signed the contract sued upon;

(II) Such consumer resides at the commencement of the action; or

(III) Such action may be brought pursuant to article 13 or 13.5 of title 26, C.R.S., section 14-14-104, C.R.S., or article 4 or 6 of title 19, C.R.S., if the action is by a private collection agency acting on behalf of a delegate child support enforcement unit.

12-14-112. DECEPTIVE FORMS.

(1) It is unlawful for any person to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection or in the attempted collection of a debt that such consumer allegedly owes such creditor when in fact such person is not so participating.

(2) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector or collection agency under section 12-14-113 for failure to comply with this article.

(3) This section shall apply if the person supplying or using the forms or the consumer receiving the forms is located within this state.

12-14-113. CIVIL LIABILITY.

(1) In addition to administrative enforcement pursuant to section 12-14-114 and subject to section 12-14-134 and the limitations provided by subsection (9) of this section, and except as otherwise provided by this section, any debt collector or collection agency who fails to comply with any provision of this article or private child support collector, as defined in section 12-14.1-102 (9), who fails to comply with any provision of this article or article 14.1 of this title, with respect to a consumer is liable to such consumer in an amount equal to the sum of:

(a) Any actual damage sustained by such consumer as a result of such failure;

(b) (I) In the case of any action by an individual, such additional damages as the court may allow, but not to exceed one thousand dollars;

(II) In the case of a class action, such amount for each named plaintiff as could be recovered under subparagraph (I) of this paragraph (b) and such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed five hundred thousand dollars or one percent of the net worth of the debt collector or collection agency, whichever is the lesser; and

(c) In the case of any successful action to enforce such liability, the costs of the action, together with such reasonable attorney fees as may be determined by the court.

(1.5) In the case of any unsuccessful action brought under this section, the plaintiff shall be liable to each defendant in an amount equal to that defendant's cost incurred in defending the action, together with such reasonable attorney fees as may be determined by the court.

(2) In determining the amount of liability in any action under subsection (1) of this section, the court shall consider, among other relevant factors:

(a) In any individual action under subparagraph (I) of paragraph (b) of subsection (1) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of such noncompliance, and the extent to which such noncompliance was intentional;

(b) In any class action under subparagraph (II) of paragraph (b) of subsection (1) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of such noncompliance, the resources of the debt collector or collection agency, the number of persons adversely affected, and the extent to which the debt collector's or collection agency's noncompliance was intentional.

(3) A debt collector, private child support collector, as defined in section 12-14.1-102 (9), or collection agency may not be held liable in any action brought pursuant to the provisions of this article if the debt collector or collection agency shows by a preponderance of evidence that the violation was not intentional or grossly negligent and which violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(4) An action to enforce any liability created by the provisions of this article may be brought in any court of competent jurisdiction within one year from the date on which the violation occurs.

(5) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the board, notwithstanding that, after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(6) The policy of this state is not to award double damages under this article and the federal "Fair Debt Collection Practices Act", 15 U.S.C. sec. 1692 et seq. No damages under this section shall be recovered if damages are recovered for a like provision of said federal act.

(7) Notwithstanding subsection (1) of this section, harassment of the employer or the family of a consumer shall be considered an invasion of privacy and a civil action may be brought which is not subject to the damage limitations of said subsection (1).

(8) It shall be an affirmative defense to any action based upon failure of a debt collector, private child support collector, as defined in section 12-14.1-102 (9), or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

(9) There shall be no private cause of action under this section for any alleged violation of section 12-14-128 (4) (a). Violations of section 12-14-128 (4) (a) may be prosecuted only through administrative enforcement pursuant to section 12-14-114.

(10) (a) No provision of this section imposing any liability shall apply to any efforts by a state agency or state employee to recover moneys owed to the state as provided in section 24-30-202.4, C.R.S.

(b) If the state controller, or such designee as he or she designates to recover moneys owed to the state, fails to comply with any provision of this article, the controller, or such designee, shall be subject to disciplinary action as specified in the rules promulgated by the executive director of the department of personnel pursuant to article 4 of title 24, C.R.S.

12-14-114. ADMINISTRATIVE ENFORCEMENT.

Compliance with this article shall be enforced by the board. The board has power to make reasonable rules and regulations for the administration and enforcement of this article, including standards of conduct for licensees and registrants and collection notices and forms.

12-14-115. LICENSE - REGISTRATION - UNLAWFUL ACTS.

(1) It is unlawful for any person to:

(a) Conduct the business of a collection agency or advertise or solicit, either in print, by letter, in person, or otherwise, the right to make collection or obtain payment of any debt on behalf of another without having obtained a license under this article; or

(b) Conduct the business of a collection agency under any name other than that under which licensed.

(2) and (3) Repealed.

(3.5) It is unlawful for a person to act as a collections manager without having complied with sections 12-14-119 and 12-14-122.

(4) It is unlawful for any person to employ any person as a solicitor, collections manager, or debt collector under this article without complying with this section.

12-14-116. COLLECTION AGENCY BOARD - CREATED.

(1) For the purpose of carrying out the provisions of this article, the governor shall appoint five members to the collection agency board, which board is hereby created. The members of the board serving on July 1, 2003, shall continue to serve their appointed terms, and their successors shall be appointed for three-year terms. Upon the death, resignation, or removal of any member of the board, the governor shall appoint a member to fill the unexpired term. Any member of the board may be removed by the governor for misconduct, neglect of duty, or incompetence. No member may serve more than two consecutive terms without first a lapse of at least one term before being appointed to any additional terms.

(2) No person shall be appointed as a member of such board unless such person is a bona fide resident of the state of Colorado. Effective July 1, 2000, board appointments shall ensure that three members of the board have been engaged in the collection business within the state of Colorado, either as a collections manager, owner, or part owner of a licensed collection agency. Two members of the board shall be representatives of the general public and not engaged in the collection business.

(3) Each member of the board shall be allowed a per diem compensation of fifty dollars and actual expenses for each day of active service, payable from the moneys appropriated to the board.

(4) The board shall meet annually for the purpose of organization by electing a chairman, a vice-chairman, and a secretary of the board for the ensuing year.

(5) The board shall meet regularly at such times and places as the business of the board may necessitate upon full and timely notice to each of the members of the board of the time and place of such meeting. A majority of said board shall constitute a quorum of said board.

12-14-117. POWERS AND DUTIES OF THE ADMINISTRATOR.

(1) Any provision of this article to the contrary notwithstanding, the board, created by section 12-14-116, is under the supervision and control of the administrator, who may exercise any of the powers granted to the board.

(2) The administrator is authorized to develop any examination required for the administration of this article and to determine the amount of any examination fee. The administrator shall offer each such examination at least twice a year, or more frequently if demand warrants, and shall establish a passing score for each examination that reflects a minimum level of competency.

(3) The administrator is authorized to approve or deny any application submitted pursuant to this article and to issue any license authorized by this article.

(4) Any complaint received by the administrator regarding violations of this article by an attorney shall be forwarded to the supreme court's attorney regulation counsel.

(5) The administrator shall enforce the provisions of article 14.1 of this title pursuant to section 12-14.1-111.

12-14-118. COLLECTION AGENCY LICENSE - REQUIRED.

Any person acting as a collection agency must possess a valid license issued by the administrator in accordance with this article and any rules and regulations adopted pursuant thereto.

12-14-119. COLLECTION AGENCY LICENSE - REQUIREMENTS - APPLICATION - FEE - EXPIRATION.

(1) As requisites for licensure, the applicant for a collection agency license shall:

(a) (I) Be owned by, or employ as collections manager or an executive officer of the agency, at least one individual who has been engaged in a responsible position in an established collection agency for a period of at least two years.

(II) Notwithstanding the requirements of subparagraph (I) of this paragraph (a), the board may substitute other business experience for such requirements where such business experience has provided comparable experience in collections.

(b) (I) Employ a collections manager who shall:

(A) If hired on or after July 1, 1990, pass a written examination administered by the administrator, unless such person was approved by the collection agency board as collections manager before July 1, 1990, and has since been continuously employed by a licensed collection agency in this state.

(B) Be responsible for the actions of the debt collectors in that office.

(II) The collections manager may be the same individual specified in paragraph (a) of this subsection (1) if the collections manager also meets the qualifications of said paragraph (a).

(c) File a bond in the amount and manner specified in section 12-14-124;

(d) If a foreign corporation, comply fully with the laws of this state so as to entitle it to do business within the state.

(2) Each applicant for a collection agency license shall submit an application providing all information in the form and manner the administrator shall designate, including, but not limited to:

(a) The location, ownership, and, if applicable, the previous history of the business and the name, address, age, and relevant debt-collection experience of each of the principals of the business;

(b) A duly verified financial statement for the previous year;

(c) If a corporation, the name of the shareholder and the number of shares held by any shareholder owning ten percent or more of the stock; and

(d) For the principals and the collections manager of the applicant:

(I) The conviction of any felony or the acceptance by a court of competent jurisdiction of a plea of guilty or nolo contendere to any felony;

(II) The denial, revocation, or suspension of any license issued to any collection agency which employed or was owned by such persons, in whole or in part, directly or indirectly, and a statement of their position and authority at such collection agency:

(A) For any license issued pursuant to this article; or

(B) For any comparable license issued by any other jurisdiction;

(III) The taking of any other disciplinary or adverse action or the existence of any outstanding complaints against any collection agency which employed or was owned in whole or in part, directly or indirectly, by such persons, and a statement of their position and authority at such collection agency:

(A) For any license issued pursuant to this article; or

(B) When such action was taken by any other jurisdiction or such complaint exists in any other jurisdiction, whether or not a license was issued by that jurisdiction;

(IV) The suspension or termination of approval of any collections manager under this article, or any other disciplinary or adverse action taken against the applicant, principal, or collections manager by the board or any other jurisdiction.

(3) At the time the application is submitted, the applicant shall pay a nonrefundable investigation fee in an amount to be determined by the board.

(4) When the administrator approves the application, the applicant shall pay a nonrefundable license fee in an amount to be determined by the administrator in consultation with the board.

(5) The administrator shall establish procedures for the maintenance of license lists and the establishment of initial and renewal license fees and schedules. The administrator may change the renewal date of any license issued pursuant to this article to the end that approximately the same number of licenses are scheduled for renewal in each month of the year. Where any

renewal date is so changed, the fee for the license shall be proportionately increased or decreased, as the case may be. Every licensee shall pay the administrator a license fee to be determined and collected pursuant to section 12-14-121 and subsection (4) of this section, and shall obtain a license certificate for the current license period. Notwithstanding any other provision of this section, a licensee, at any time, may voluntarily surrender the license to the administrator to be cancelled, but such surrender shall not affect the licensee's liability for violations of this article that occurred prior to the date of surrender.

(6) (Deleted by amendment, L. 2003, p. 1868, § 8, effective May 21, 2003.)

(7) A collection agency must obtain a license for its principal place of business, but its branch offices, if any, need not obtain separate licenses. A collection agency with branch offices must notify the administrator in writing of the location of each branch office within thirty days after the branch office commences business.

12-14-120. LICENSE - ISSUANCE - GROUNDS FOR DENIAL - APPEAL - CONTENTS.

(1) Upon the approval of the license application by the administrator and the satisfaction of all application requirements, the administrator shall issue the applicant a license to operate as a collection agency.

(2) The administrator may deny any application for a license or its renewal if any grounds exist that would justify disciplinary action under section 12-14-130, for failure to meet the requirements of section 12-14-119, or if the applicant, the applicant's principles, or the applicant's collections manager have fraudulently obtained or attempted to obtain a license.

(3) If any application for a license or its renewal is denied, the applicant may appeal the decision pursuant to section 24-4-104, C.R.S.

(4) The license shall state the name of the licensee, location by street and number or office building and room number, city, county, and state where the licensee has his principal place of business, together with the number and date of such license and the date of expiration of the license, and shall further state that it is issued pursuant to this article and that the licensee is duly authorized under this article.

(5) Repealed.

(6) The administrator may deny any application for a license or its renewal if the collection agency has failed to perform the duties enumerated in section 12-14-123.

(7) The administrator may deny any application for a license or its renewal if the collection agency does not have a positive net worth.

12-14-121. COLLECTION AGENCY LICENSE - RENEWALS.

Each licensee shall make an application to renew its license in the form and manner prescribed by the administrator. The application shall be accompanied by a nonrefundable renewal fee in an amount determined by the administrator in consultation with the board.

12-14-122. COLLECTION AGENCY LICENSE - NOTIFICATION OF CHANGE AND REAPPLICATION REQUIREMENTS.

(1) (a) Upon any of the following changes, the licensee shall notify the administrator in writing of such change within thirty days after its occurrence:

(I) Change of business name or address;

(II) If a corporation, change in ownership of ten or more percent but less than fifty percent of the corporate stock.

(b) If the licensee fails to provide such written notification, the license shall automatically expire on the thirtieth day following such change.

(2) (a) Upon any of the changes specified in paragraph (c) of this subsection (2), the licensee shall apply for a new license within thirty days of said change. The administrator shall have twenty-five days to review the application and issue or deny the new license. If the administrator denies the license, the administrator shall provide to the licensee a written statement stating why the application for the license was denied, and the licensee shall have fifteen days to cure any defects in said application. The administrator shall approve or deny the resubmitted application within fifteen days.

(b) If the licensee fails to file an application for a new license, the license shall expire on the thirtieth day following the change which necessitated the new license application. If the application is denied and the licensee fails to resubmit the application within fifteen days of said denial, the license shall expire on the fifteenth day following the denial.

(c) The changes which require a new license application are:

(I) In a sole proprietorship or partnership, any change in the persons owning the collection agency;

(II) In a corporation, any change of ownership of fifty percent or more of the stock in any one transaction or a cumulative change of ownership of fifty percent or more from the date of the issuance of the license or from the date of the latest renewal of the license;

(III) Any change of ownership structure, including but not limited to a change to or from a sole proprietorship, partnership, or corporation. No investigation fee shall be required in the event of such a change and the application required may be more abbreviated than that required for an initial license, as determined by the administrator.

(3) (a) Upon a change of collections manager, the licensee shall notify the administrator in the form and manner designated by the administrator. The licensee shall appoint a new collections manager within thirty days of such change.

(b) The administrator, within fifteen days, shall approve or disapprove the qualifications of the new collections manager, or shall direct the new collections manager to take the examination authorized pursuant to section 12-14-119 (1) (b).

(c) The licensee may continue to operate as a collection agency unless and until the administrator disapproves the qualifications of the new collections manager.

(4) Any licensee which has submitted an application for a new license may continue to operate as a collection agency until the final decision of the administrator.

(5) The licensee may appeal the final decision of the administrator pursuant to section 24-4-104, C.R.S.

12-14-123. DUTIES OF COLLECTION AGENCIES.

(1) A licensee shall:

(a) Maintain, at all times, liquid assets in the form of deposit accounts in the total sum of not less than two thousand five hundred dollars more than all sums due and owing to all of its clients;

(b) Maintain, at all times, an office within this state which is open to the public during normal business hours and which is staffed by at least one full-time employee, said office to keep a record of all moneys collected and remitted by such agency for residents of Colorado;

(c) Maintain, at all times, a trust account for the benefit of its clients which shall contain, at all times, sufficient funds to pay all sums due or owing to all of its clients. The trust account shall be maintained in a commercial bank, industrial bank, or savings and loan association account in this state or accessible in a branch in this state until disbursed to the creditor. Such account shall be clearly designated as a trust account and shall be used only for such purposes and not as an operating account. A deposit of all funds received to a trust account followed by a transfer of the agency share of the collection to an operating account is not a violation of this section.

(d) Within thirty days after the last day of the month in which any collections are made for a client, account to the client for all collections made during that month and remit to the client all moneys owed to the client pursuant to the agreement between the client and the collection agency;

(e) Upon written demand of the board, within five days of receipt of such demand, produce a complete set of all form notices or form letters used by the licensee in the collection of accounts;

(f) Be responsible, pursuant to this article, for violations of this article that are caused by its collections manager, debt collectors, or solicitors.

(2) (a) No collection agency shall employ any collections manager, debt collector, or solicitor who has been convicted of or who has entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4 or in part 1, 2, 3, 5, or 7 of article 5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state.

(b) No collection agency shall be owned or operated by the following persons who have been convicted of or who have entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4 or in part 1, 2, 3, 5, or 7 of article 5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state:

(I) The owner of a sole proprietorship;

(II) A partner of a partnership;

(III) A member of a limited liability company; or

(IV) An officer or director of a corporation.

(3) Paragraphs (a), (c), and (d) of subsection (1) of this section do not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect such debt.

12-14-124. BOND.

(1) Each licensee shall maintain at all times and each applicant shall file, prior to the issuance of any license to such applicant, a bond in the sum of twelve thousand dollars plus an additional two thousand dollars for each ten thousand dollars or part thereof by which the average monthly sums remitted or owed to all of its clients during the previous year exceed fifteen thousand dollars; or, in the alternative, an applicant or licensee shall present evidence of a savings account, deposit, or certificate of deposit of the same sum and meeting the requirements of section 11-35-101, C.R.S. The total amount of the bond shall not exceed twenty thousand dollars and shall be in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the collection agency board. Such bond shall be executed by the applicant or licensee as principal and by a corporation which is licensed by the commissioner of insurance to transact the business of fidelity and surety insurance as surety. If any such surety, during the life of the bond, cancels the bond or reduces the penal sum of the bond, it immediately shall notify the board in writing. The board shall give notice to the licensee that the bond has been cancelled or reduced and that the licensee's license shall automatically expire unless a new or increased bond with proper sureties is filed within thirty days after the date the board received the notice, or on such later date as is stated in the surety's notice.

(2) The bond shall include a condition that the licensee shall, upon demand in writing made by the board, pay over to said board for the use of any client from whom any debt is taken or received for collection by said licensee, the proceeds of such collection, less the charges for collection in accordance with the terms of the agreement made between said licensee and the client.

(3) A client may file with the board a duly verified claim as to money due such client for money collected by a licensee. If the board makes a preliminary determination that a claim meets the requirements of this section it shall make a demand for the amount claimed. Such demand may be made on the licensee, the surety, or both.

(4) If a receiver has been appointed by any court of competent jurisdiction in the state of Colorado to take charge of the assets of any licensee, such receiver, upon the written consent of the board, first had and obtained, may make demand for and receive payment on said bond from the surety on such bond of said licensee and, upon order of court first had and obtained, may bring suit upon said bond in the name of such receiver, without joining the board as a party to said action.

(5) If a client has filed a duly verified claim with the board, which has refused to make demand upon the licensee or surety, the client may bring suit against the licensee or surety on the bond for the recovery of money due from such licensee without assignment of such bond to the client. Nothing in this section shall preclude a client from making a demand on both the licensee and the surety.

(6) (a) Said bond shall include a condition that the licensee shall, upon written demand, turn over to the client any and all notes, valuable papers, or evidence of indebtedness which may have been deposited with said licensee by the client, but such licensee shall not be required to return any such papers, notes, or evidence of indebtedness on debts in process of collection, unless reimbursed by the client for the services performed on the debt so evidenced.

(b) "Debts in process of collection" means any debts which have been in said licensee's hands for less than nine months, debts on which payments are being made, or on which payments have been promised, debts on which suit has been brought, and claims which have been forwarded to any other collection agency or attorney.

(7) Such bond shall cover all matters placed with said licensee during the term of the license granted and any renewal, except as provided in this section. Such bond may be enforced in the manner described in this section, by a receiver appointed to take charge of the assets of any licensee, or by any client if the board refuses to act. The aggregate liability of the surety, for any and all claims which may arise under such bond, shall not exceed the penalty of such bond.

(8) Any licensee, at any time, may file a new bond with the board. Any surety may file with the board notice of withdrawal as surety on the bond of any licensee. Upon filing of such new bond or on expiration of thirty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate, except as provided in subsection (9) of this section. The board shall cancel the bond given by any surety company upon being advised its license to transact the business of fidelity and surety insurance has been revoked by the commissioner of insurance and shall notify the licensee.

(9) No action shall be brought upon any bond required to be given and filed, after the expiration of two years from the surrender, revocation, or expiration of the license issued thereunder. After the expiration of said period of two years, all liability of the surety upon the

said bond shall cease if no action has been commenced upon said bond before the expiration of the period.

(10) In lieu of an individual surety bond, the administrator may authorize a blanket bond covering qualifying licensees in the sum of two million dollars in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the collection agency board. Each new and renewal applicant shall pay a fee in an amount determined by the administrator to offset the applicant's share of the blanket bond. Conditions and procedures regarding the bond shall be as set forth in this section for individual bonds.

(11) This section does not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect such debt.

12-14-125. DEBT COLLECTORS - REGISTRATION REQUIRED.

(1) Repealed.

(2) (Deleted by amendment, L. 95, p. 1237, § 19, effective July 1, 1995.)

12-14-126. SOLICITOR - REGISTRATION REQUIRED. (REPEALED)

12-14-127. DEBT COLLECTORS AND SOLICITORS - CERTIFICATES OF REGISTRATION - APPLICATION - EXPIRATION - NOTIFICATION OF CHANGE REQUIRED. (REPEALED)

12-14-128. UNLAWFUL ACTS.

(1) In addition to the unlawful acts specified in sections 12-14-112 and 12-14-115, it is unlawful and a violation of this article for any person:

(a) To refuse or fail to comply with section 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, 12-14-109, 12-14-110, 12-14-118, 12-14-119 (1), or 12-14-123 (1) (b) to (1) (e) or (2);

(b) To aid or abet any person operating or attempting to operate in violation of this article, including but not limited to section 12-14-115; except that nothing in this article shall prevent any licensed collection agency from accepting, as forwardee, claims for collection from any collection agency or attorney whose place of business is outside this state;

(c) To recover or attempt to recover treble damages for any check, draft, or order not paid on presentment without complying with the provisions of section 13-21-109, C.R.S.

(2) It is unlawful and a violation of this article for any licensee or any attorney representing a licensee to invoke a cognovit clause in any note so as to confess judgment.

(3) It is unlawful and a violation of this article for any licensee to render or to advertise that it will render legal services; except that a licensee may solicit claims for collection and take assignments and pursue the collection thereof subject to the provisions of law concerning the unauthorized practice of law.

(4) It is unlawful and a violation of this article for any licensee, collections manager, debt collector, or solicitor:

(a) To refuse or fail to comply with any rule and regulation adopted pursuant to this article or any lawful order of the board or administrator; or

(b) To aid or abet any person in such refusal or failure.

(5) It is unlawful and a violation of this article for any person to falsify any information or make any misleading statements in any application authorized under this article.

(6) Any officer or agent of a corporation who personally participates in any violation of this article shall be subject to the penalties prescribed in section 12-14-129 for individuals.

12-14-129. CRIMINAL PENALTIES.

Any person who violates any provision of section 12-14-128 (1), (2), (3), or (4) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

12-14-130. COMPLAINT - INVESTIGATIONS - POWERS OF THE BOARD - SANCTIONS.

(1) Upon the filing with the board by any interested person of a written complaint charging any person with a violation of this article, any rule adopted pursuant to this article, or any lawful order of the board, the board shall conduct an investigation thereof.

(2) For reasonable cause, the board may, on its own motion, conduct an investigation of the conduct of any person concerning compliance with this article.

(3) If any licensee or one of its principals or collections managers is convicted of or enters a plea of guilty or nolo contendere to any crime specified in part 4 of article 4 or in part 1, 2, 3, 5, or 7 of article 5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state, said conviction or plea shall constitute grounds for disciplinary action under this section.

(4) In any proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary or adverse action any disciplinary or adverse action taken against a licensee, the licensee's principles, debt collector, solicitor, or collections manager by another jurisdiction that issues professional, occupational, or business licenses, if the conduct which prompted the disciplinary or adverse action by that jurisdiction would be grounds for disciplinary action under this section.

(5) For reasonable cause, the board, or someone designated by it for such purpose, has the right, during normal business hours without resort to subpoena, to examine the books, records, and files of any licensee. If the books, records, and files are located outside Colorado, the licensee shall bear all expenses in making them available to the board or its designee.

(6) (a) For reasonable cause, the board may require the making and filing, by any licensee, at any time, of a written, verified statement of the licensee's assets and liabilities, including, if requested, a detailed statement of amounts due claimants. The board may also require an audited statement when cause has been shown that an audited statement is needed.

(b) Any financial statement of any applicant or licensee required to be filed with the board shall not be a public record but may be introduced in evidence in any court action or in any administrative action involving the applicant or licensee.

(7) For the purpose of any proceeding under this article, the board may subpoena witnesses and compel them to give testimony under oath. If any witness subpoenaed by the board or an administrative law judge fails or refuses to appear or testify, the subpoenaing authority may petition the district court, and, upon proper showing, the court may order such witness to appear and testify. Disobedience of the order of court may be punished as a contempt of court.

(8) The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any proceedings authorized under this article.

(9) If the board finds cause to believe a licensee or collections manager has violated this article, any rules adopted pursuant to this article, or any lawful order of the board, the board shall so notify the licensee or collections manager and hold a hearing. Any proceedings conducted pursuant to this section shall be in accordance with article 4 of title 24, C.R.S.

(10) (a) If the board or the administrative law judge finds that the licensee or collections manager has violated this article, the rules adopted pursuant to this article, or any lawful order of the board, or if the licensee fraudulently obtained a license, the board may issue letters of admonition, deny, revoke, or suspend the license of such licensee or approval of the collections manager, place such licensee or collections manager on probation, or impose administrative fines in an amount up to one thousand dollars per violation on the licensee or collections manager.

(b) The board or administrator may issue letters of admonition pursuant to paragraph (a) of this subsection (10) without a hearing; except that the licensee or collections manager receiving the letter of admonition may request a hearing before the board to appeal the issuance of the letter.

(c) A letter of admonition may be issued to a licensee or collections manager whether or not a license or approval has been surrendered prior to said issuance.

(d) No person whose license has been revoked shall be licensed again under the terms of this article for five years. No person hired as a collections manager whose approval has been terminated by the administrator for a violation of this article shall be hired again as a collections manager for five years.

(11) The court of appeals shall have jurisdiction to review all final actions and orders that are subject to judicial review of the collection agency board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(12) Members of the collection agency board, expert witnesses, and consultants shall be immune from civil suit when they perform any duties in connection with any proceedings authorized under this section in good faith. Any person who files a complaint in good faith under this section shall be immune from civil suit.

12-14-130.1. DEBT COLLECTORS FOR THE DEPARTMENT OF PERSONNEL - COMPLAINT - DISCIPLINARY PROCEDURES.

(1) Any interested person may file a written complaint with the executive director of the department of personnel charging a debt collector in the employ of the department of personnel with a violation of:

(a) This article or a rule promulgated pursuant thereto;

(b) A lawful order of the state board of ethics; or

(c) The standards of conduct set forth in the code of conduct developed by the department of personnel for such debt collectors.

(2) Each complaint filed pursuant to this section shall be referred to the executive director of the department of personnel who shall conduct an investigation to determine if a violation of subsection (1) of this section occurred. If the executive director makes a determination that a violation did occur, the debt collector who is the subject of the complaint shall be subject to the disciplinary procedures set forth in rules adopted by the state personnel board. If a determination made pursuant to this subsection (2) is unsatisfactory to any party, an appeal may be made to the board of ethics for the executive branch of state government in the office of the governor.

(3) If the executive director of the department of personnel, or the board of ethics in the case of an appeal, makes a determination that a debt collector in the employ of the department of personnel has acted in violation of this article or a rule promulgated pursuant thereto, a lawful order of the state board of ethics, or the code of conduct described in paragraph (c) of subsection (1) of this section, such determination shall be made a part of the personnel file of the debt collector against whom the complaint was filed.

12-14-131. RECORDS.

The administrator shall keep a suitable record of all license applications and bonds required to be filed. Such record shall state whether a license has been issued under such application and bond and, if revoked, the date of the filing of the order of revocation. The administrator shall keep a list of each person who has had a license revoked or has been terminated as a collections manager for a violation of this article. In such record, all licenses issued shall be indicated by their serial numbers and the names and addresses of the licensees. This section shall apply to renewal applications and renewal licenses. Such record shall be open for inspection as a public record in the office of the administrator.

12-14-132. JURISDICTION OF COURTS.

County courts shall have concurrent jurisdiction with the district courts of this state in all criminal prosecutions for violations of this article.

12-14-133. DUTY OF DISTRICT ATTORNEY.

It is the duty of the district attorney to prosecute all violations of the provisions of this article occurring within his district.

12-14-134. REMEDIES.

The remedies provided in this article are in addition to and not exclusive of any other remedies provided by law.

12-14-135. INJUNCTION - RECEIVER.

The district court in and for the city and county of Denver, upon application of the board, may issue an injunction or other appropriate order restraining any person from any violation of this article and may appoint a receiver or award any other relief to effectuate the provisions of this article. This provision shall be in addition to any other remedy and shall not prohibit the enforcement of any other law. The board shall not be required to show irreparable injury or to post a bond.

12-14-136. DISPOSITION OF FEES AND FINES.

(1) (a) All revenue, except fines, collected pursuant to this article shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the collection agency cash fund, which fund is hereby created. The general assembly shall make annual appropriations from such fund for the uses and purposes of this article. All revenue credited to such fund, including earned interest, shall be used for the administration and enforcement of this article.

(b) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 27, 2002, the state treasurer shall deduct four hundred sixty-two thousand dollars from the collection agency cash fund and transfer such sum to the general fund.

(c) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 5, 2003, the state treasurer shall deduct one hundred twenty thousand dollars from the collection agency cash fund and transfer such sum to the general fund.

(2) All fines collected pursuant to this article, including but not limited to fines collected pursuant to section 12-14-130, shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the general fund.

12-14-137. TERMINATION OF BOARD.

The collection agency board shall be terminated July 1, 2008. Prior to such termination, the board shall be reviewed as provided in section 24-34-104, C.R.S.

42-2-105. SPECIAL RESTRICTIONS ON CERTAIN DRIVERS. CITED IN BULLETIN 8 (III).

(1) No person under the age of eighteen years shall drive any motor vehicle used to transport explosives or inflammable material or any motor vehicle used as a school bus for the transportation of pupils to or from school. No person under the age of eighteen years shall drive a motor vehicle used as a commercial, private, or common carrier of persons or property unless such person has experience in operating motor vehicles and has been examined on such person's qualifications in operating such vehicles. The examination shall include safety regulations of commodity hauling, and the driver shall be licensed as a driver or a minor driver who is eighteen years of age or older.

(2) Notwithstanding the provisions of subsection (1) of this section, no person under the age of twenty-one years shall drive a commercial motor vehicle as defined in section 42-2-402 (4) except as provided in section 42-2-404 (4).

(3) Any person who violates any provision of this section commits a class A traffic infraction.

42-2-105.5. RESTRICTIONS ON MINOR DRIVERS UNDER EIGHTEEN YEARS OF AGE - PENALTIES - LEGISLATIVE DECLARATION. CITED IN BULLETIN 8 (III).

(1) The general assembly finds, determines, and declares that:

(a) Teenage drivers, in order to become safe and responsible drivers, need behind-the-wheel driving experience before they can begin to drive without restrictions;

(b) Providing additional behind-the-wheel training with a parent, guardian, or other responsible adult before obtaining a minor driver's license is the beginning of the young driver's accumulation of experience;

(c) Once a teenage driver begins to drive without a parent, guardian, or other responsible adult in the vehicle, it is necessary to place restrictions on a teenage driver who holds a minor driver's license until such driver turns eighteen years of age in order to give that driver time to exercise good judgment in the operation of a vehicle while keeping that driver, his or her passengers, and the public safe;

(d) Penalties for the violation of these restrictions on minor drivers under eighteen years of age, including the assessment of points where they may not otherwise be assessed, should be sufficient to ensure that chronic violations would result in swift and severe repercussions to reinforce the importance of obeying the driving laws in order to keep the minor driver, his or her passengers, and the public safe.

(2) Repealed.

(3) Occupants in motor vehicles driven by persons under eighteen years of age shall be properly restrained or wear seat belts as required in sections 42-4-236 and 42-4-237.

(4) No more than one passenger shall occupy the front seat of the motor vehicle driven by a person under eighteen years of age, and the number of passengers in the back seat of such vehicle shall not exceed the number of seat belts.

(5) (a) Except as otherwise provided in paragraph (b) of this subsection (5), any person who violates this section commits a class A traffic infraction.

(b) A violation of subsection (3) of this section is a traffic infraction, and, notwithstanding the provisions of section 42-4-1701 (4) (a) (I) (D), a person convicted of violating subsection (3) of this section shall be punished as follows:

(I) By the imposition of not less than eight hours nor more than twenty-four hours of community service for a first offense and not less than sixteen hours nor more than forty hours of community service for a subsequent offense;

(II) By the levying of a fine of not more than fifty dollars for a first offense, a fine of not more than one hundred dollars for a second offense, and a fine of one hundred fifty dollars for a subsequent offense; and

(III) By an assessment of two license suspension points pursuant to section 42-2-127 (5) (hh).