

# DRASTIC REVISIONS TO COLORADO'S WAGE AND HOUR LAWS ARE COMING

Insights

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The Colorado Department of Labor and Employment just published proposed regulations that will dramatically overhaul the state's wage and hour laws. This sweeping reform has the potential to impact every employer doing business in Colorado, addressing overtime, salary requirements, rest breaks, and a host of other factors. While the final version of these rules may slightly vary from their current form, and they won't be effective until at least March 2020, you should take steps right now to understand them and plan for the finalization and implementation of these new laws.

## EXECUTIVE SUMMARY

The two most significant changes are:

1. **Employee Coverage**: Previously, Colorado wage and hour law only applied to employees working in several specific industries: retail and service; food and beverage; commercial support service; and health and medical industries. Once the impending changes take effect on March 1, 2020, the law will presumptively apply to all workers in all industries. As before, there will continue to be a series of worker and industry-specific exemptions.
2. **Minimum Salary**: Currently, an employee is only exempt from overtime and meal/rest break requirements if they have an exempt duty (executive/supervisory, professional, or a few others) and are paid a minimum of \$35,568. Starting July 1, 2020, this salary threshold will rise to \$42,500, and will increase every year thereafter.

## Related People



**David C. Roth**

Partner

303.218.3647

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Additionally, the new regulations suggest numerous other changes. Some of the more minor, yet impactful, revisions are to posting requirements, rest period pay, and meal and lodging credits. The final version of these rules is expected to be released by January 10, 2020, and while they might vary slightly from the current proposed form, we expect them to be largely similar to what is described in detail below.

## HISTORY AND CONTEXT

The Colorado Department of Labor and Employment (CDLE) has traditionally compiled the laws addressing overtime, minimum wage, meal and rest breaks, employee credits, and many other financial aspects of the employer-employee relationship into what has been known as the Minimum Wage Order. On November 15, 2019, however, the CDLE notified the public that it plans wide-ranging substantive and stylistic changes to future Minimum Wage Orders.

Beginning in 2020, the CDLE is restyling the Minimum Wage Order into what it is calling the Colorado Overtime & Minimum Pay Standards Order, or COMPS Order for short. The CDLE is instituting this name change to emphasize the broad reach and implication of Colorado's wage and hour laws and to redress alleged confusion generated by a Minimum Wage Order that covered more than just the minimum wage law.

Far more significant than the rebranding, though, is the COMPS Order's numerous legal changes. Two of those changes are of the utmost significance and will likely have a far-reaching impact on the state's employers. Several other changes are significant, too, but will probably have a lesser impact. All, however, may lead to legal liability if you fail to comply with them.

## THE TWO BIG CHANGES

The first major change to Colorado's wage and hour law implicates the types of employees covered by the law. Historically, the Minimum Wage Order only applied to employees working in four industries: retail and service; food and beverage; commercial support service; and health and medical. **The new COMPS Order will now presumptively cover all Colorado employees regardless of their employer's industry.**

The CDLE believes that this expanded coverage will negate employer-based confusion about which industry they are in and provide a uniform set of laws and protections for all workers. As a result, employers who were not in one of the previous four industries will need to familiarize themselves — and comply — with the new COMPS Order. Fortunately, the new COMPS Order will maintain many of the old Minimum Wage Order’s worker and industry-specific exemptions. However, as noted below, the COMPS Order does modify some of the old exemptions by revising definitions and creating new categories of exempt employees.

The second major change is that the COMPS Order creates a new minimum salary threshold for white-collar employee overtime exemptions. Under federal law, executive, supervisory, professional, and a few other types of employees must earn at least \$35,568 to be exempt from overtime requirements. States, if they choose, may set a higher limit.

**With the new COMPS Order, the CDLE has announced that, starting July 1, 2020, the minimum salary these employees must earn to avoid being eligible for overtime is \$42,500. This figure will rise by \$2,500 each year until 2026 when the salary threshold reaches \$57,500. Each year after 2026, the salary limit will be adjusted to track the consumer price index.**

According to the CDLE, this change will ensure that workers deemed exempt from overtime will not be subjected to working long hours at well-below-minimum wages. Notably, doctors, lawyers, and teachers who are exempt from the federal salary requirements will also be exempt under the new COMPS Order.

## **A MULTITUDE OF OTHER UPDATES**

The COMPS Order makes numerous other substantive changes as part of its stated goal of modernizing the law and resolving ambiguities. Although each employer will feel the impact of these changes differently, some of the effects may prove significant. Below is a brief summary of these changes. The COMPS Order:

1. Exempts “Owners” of a business and “Proprietors” of a non-profit, while removing an exemption for

“Companions” and other “Domestic” workers;

2. Modifies exemptions for “interstate drivers, driver helpers, and loaders or mechanics of motor carriers” as well as for taxi drivers, student resident workers, property managers, and patient workers in institutional laundries, and those in highly technical computer occupations;
3. Clarifies that localities may set higher wage and hour law standards than the state or federal government;
4. States that employees who do not receive their regularly scheduled, paid 10-minute rest break must receive an additional 10 minutes’ worth of compensation;
5. Modifies the rules surrounding meal and lodging credits;
6. Prohibits employers from requiring a security deposit from employees for their uniforms;
7. Clarifies how to calculate regular and overtime pay rates for non-exempt workers with non-hourly pay;
8. Defines “Reprisal” in conformance with retaliation and obstruction statutes;
9. States that employee handbooks must include a copy of the COMPS Order or the COMPS Order poster explaining workers’ rights and remedies. Moreover, if employees sign a handbook acknowledgment, they must also sign an acknowledgment stating they received either the COMPS Order or the COMPS Order poster;
10. Employers must provide a copy of the poster to each employee if the employer’s workplace makes physical posting of the information impractical;
11. Instructs employers with Spanish-speaking employees to display a Spanish version of the COMPS Order poster. If an employer has employees who do not speak English or Spanish, then the employer must contact the CDLE and request a copy of the COMPS Order poster in the employees’ spoken language; and
12. Prohibits employers from claiming any employee-specific credits or exemptions if the employer has not displayed or distributed the COMPS Order poster.

## CONCLUSION

As noted above, the CDLE is on track to adopt a final version of these revisions by January 10, 2020. All changes would become effective March 1, 2020, except for the salary thresholds, which would become effective July 1, 2020.

Fisher Phillips will continue to monitor and update you on the progress of these changes, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in [our Denver office](#).

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