



Colorado Employers Will Soon Face New Wage And Hour Laws

Insights

3.03.20

The Colorado Department of Labor and Employment recently adopted the Colorado Overtime and Minimum Pay Standards Order #36 (COMPS Order), meaning employers need to brace for new wage and hour laws related to employee coverage, the minimum salary threshold, and expanded break rights. The new laws, which replace the Colorado Minimum Wage Order #35, will go into effect on March 16, 2020. What are the more significant changes Colorado employers need to be prepare for?

Employee Coverage

Colorado's previous wage and hour laws only applied to employees working in a few specific industries: (1) retail and service; (2) food and beverage; (3) commercial support service; and (4) health and medical industries. Once the changes go into effect on March 16, the COMPS Order will apply to almost *all* Colorado workers, in almost *all* industries.

There will, however, continue to be worker and industry-specific exemptions. They include, for example, certain administrative employees, professional employees, salespersons, and workers in the agricultural industry. A full list of exemptions can be found under COMPS Order Rule 2.2 through Rule 2.4.

Exempt Employees Minimum Salary Threshold

The new minimum salary threshold requirement for exempt employees is particularly important to employers preparing for the new COMPS Order to become effective. The Colorado Department of Labor and Employment (CDLE) was contemplating raising the threshold to \$42,500 on July 1, 2020, increasing every year thereafter on the first of the calendar year. However, after consideration, the CDLE adopted rules that raise the threshold for exempt employees to \$35,568 starting on July 1, 2020, which mirrors the current exempt salary threshold under federal law.

This new threshold will remain in effect through December 2020. It will increase again January 1, 2021 – to \$40,500 – and will continue to increase through to January 1, 2024, up to \$55,000. Thereafter, the threshold will adjust annually for inflation.

There are only two exceptions for the 2020 salary threshold: (1) non-profit employers with annual total gross revenue of under \$50 million; and (2) for-profit employers with annual total gross revenue of under \$1 million.

To avoid the need to pay overtime and maintain employees' exempt classification under the new Colorado law, it is important to note the new thresholds will exceed the current federal threshold. Colorado employers must pay the *higher* of the state or federal thresholds in order to retain their employees' overtime exemptions (*i.e.*, you may need to pay the Colorado minimum after January 1, 2021, because it will exceed the federal threshold after January 1, 2021).

Expanded Break Rights

During the CDLE's contemplation of the proposed rules, the agency discussed the need to protect Colorado workers from hazards in the workplace. After extensive testimony and research, the CDLE found that employees can be subjected to harmful health effects after long hours of work, including heart disease, injuries, and mental health challenges. Further, the CDLE found tired workers are less able to protect co-worker and public safety at construction sites, factories, and elsewhere.

To combat these growing concerns, the CDLE implemented new rest period requirements in the COMPS Order. In addition to the existing requirements and expressly stating how and when employers can divide up 10-minute rest periods, the COMPS Order clarifies that the following schedule applies for granting rest periods:

Work Hours	Rest Periods Required
2 or Fewer	0
Over 2 and up to 6	1
Over 6 and up to 10	2
Over 10 and up to 14	3
Over 14 and up to 18	4
Over 18 and up to 22	5
Over 22	6

Clarification Of "Ambiguous" Language

Below is a quick summary of some of the substantive changes to the former wage rules that the CDLE hopes will clarify some ambiguities that, in the past, generated litigation and confusion for both employers and employees. The new COMPS Order:

- Adds language to clarify that "time worked" includes pre- and post-work time when employees are changing into required uniforms, going through security screenings, clocking in and out, and engaging in other "on premise" activities;
- Adds language to clarify what counts as compensable "travel time;"
- Updates the definition for "employees in highly technical computer-related occupations;"
- Clarifies that that employers disallowing tips do not violate rules against taking worker tips; and
- Clarifies the interpretation and construction of these regulations.

Conclusion

Although it is uncertain how these new laws will affect the litigious landscape for Colorado employees and employers, the CDLE is hopeful that the new COMPS Order will benefit both employees and employers alike moving forward.

Fisher Phillips will monitor how these new laws will be interpreted by the Colorado courts after implementation and update you on the progress of these changes. To get the most up-to-date information, ensure you are subscribed to [Fisher Phillips' Alert System](#). If you have questions, please contact your Fisher Phillips attorney or any attorney in [our Denver office](#).

This Legal Alert provides an overview of a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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