



Division of Labor Standards & Statistics
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Brian Parsons
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SENT VIA EMAIL TO: dontbeeaprick@gmail.com



Claim Number: 0302-24

Filed Against:

Colorado Springs Community Cultural Collective d/b/a Opus Creative Industries
And

Linda Weise, an individual

Claimant: Brian Parsons

Claim Key Number: CK43971

NOTICE OF DETERMINATION AND ENCLOSED CITATION AND NOTICE OF ASSESSMENT

The Colorado Division of Labor Standards and Statistics (“Division”) has reached a determination regarding this claim. After reviewing all documentation and evidence, the Division determines that wages, penalties, and/or fines are owed pursuant to Colorado wage and hour laws. Enclosed are the Citation and Notice of Assessment, which indicate the statutes and/or regulations that were violated and explain possible reductions of the penalties and fines if payment is made on time. Both parties are required to notify the Division if payment is made.

If you disagree with this determination, you may appeal it. The Division must receive your appeal request within 35 days from the date the determination was sent. To get a copy of the appeal form and related instructions: go online ([Appeal Form](#)); file a mobile-friendly version of the form ([Mobile Friendly Appeal Form](#)); ask us to send you a copy (email cdle_ls_appeals@state.co.us or call 303-318-8442); or pick up a copy in-person (633 17th Street in Denver, 2nd floor). You may also be able to file an appeal through our online portal. You will need to enter a Claim Key in the online portal, which is shown above. Whichever method you choose, it is your responsibility to meet the deadline. This determination will become final if we do not receive a valid appeal request by the deadline. For more information on appeals, consult the appeals INFO available at the [Interpretive Notice & Formal Opinions \(INFOs\) Webpage](#).

On or after January 1, 2023, at the request of a claimant, the Division may file a certified copy of the Citation and Notice of Assessment with the clerk at a court with jurisdiction. The claimant, on their own volition, may use the court’s collection process to pursue the amounts owed, including against the individual assets of an individually liable party. The Division may attach and collect assets from an employer that fails to pay wages, penalties or fines. Within 60 days after receiving a written employee request, or upon its own initiative, the Division may issue a Notice of Administrative Lien and Levy to the employer or any person that has possession, custody, or control of the employer’s assets in satisfaction of all past-due wage, fine and penalty obligations ordered.

The claimant has the right to terminate the Division's administrative procedure pursuant to C.R.S. § 8-4-111(3). Any termination request by the claimant must be in writing and must be received by the Division within 35 calendar days of the determination date. If the claimant chooses to terminate, the Division will revoke the Citation and Notice of Assessment and will notify the employer in writing. The Division's involvement in this claim would end at that time, and the claimant would retain any right to file a legal action in court.

NOTE: The date this determination was originally issued and sent to the parties is the date used for purposes of calculating the 35 day appeal filing deadline per C.R.S. § 8-4-111.5(1) and the 35 day termination deadline per C.R.S. § 8-4-111(3). Any copies of this determination sent to the parties after that date do not change the aforementioned deadlines.



CITATION

I. Introduction

On January 19, 2024, the Colorado Division of Labor Standards and Statistics (“Division”) received wage complaint #0302-24 from the claimant named therein, filed against Colorado Springs Community Cultural Collective d/b/a Opus Creative Industries (“employer”) and Linda Weise (“IL party”), an individual. The employer’s address is 127 1/2 E Bijou St, Colorado Springs, CO 80903-1276. The IL party’s address is 1 S. Nevada Avenue, Suite 110, Colorado Springs, CO 80903-1276.

Pursuant to C.R.S. § 8-4-101, et seq. (the “Colorado Wage Act”), the Division is required to investigate all wage complaints received. The Division conducted an investigation of the complaint, and upon review and consideration of all available documentation and evidence, this Citation is issued pursuant to Colorado wage and hour statutes and regulations.

The claimant alleged they were owed \$182.50 for overtime that was not paid at 1.5 times their normal rate as required under Colorado law. Additionally, a worker classification issue was raised in this claim based on an allegation that the claimant worked for the employer as an independent contractor and not as an employee. Based on the available evidence, the Division first concludes that the claimant was an employee—not an independent contractor. The Division concludes that the employer owes the claimant wages in the amount of \$182.50 and penalties in the amount of \$3,000.00. Because the Division determines that the employer recklessly disregarded its legal obligations in failing or refusing to pay the wages owed, the penalty is for the enhanced amount of the higher of three times the wages or \$3,000.00 pursuant to C.R.S. § 8-4-109(3)(b)(II). The Division also concludes that the employer owes fines to the Division in the amount of \$1,500.00. Additionally, the Division concludes that Linda Weise, President and CEO of Colorado Springs Community Cultural Collective d/b/a Opus Creative Industries, is individually and jointly and severally liable for all of these same amounts.¹

¹ Here, “joint and several liability” means that the individual party is equally liable, along with the employer, for the entire amount of the wage claim and any associated fines and/or penalties, but that any amount that is paid by the employer may not also be recovered against the individual. The Division may present a Certified Copy before a clerk at a court with jurisdiction and may collect the amount owed to the Division through attachment, garnishment, or seizure against the individual party, including against the individual’s real or personal property (*e.g.*, bank accounts).

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II. Analysis

1. Facts and Reasoning

A. Worker Classification

The Division concludes that the claimant met the definition of “employee” pursuant to the Colorado Wage Act (“CWA”); therefore, they did not perform work as an independent contractor for the employer. Accordingly, the Division finds that the claimant was misclassified by the employer.

An individual who brings a wage complaint before the Division must provide sufficient evidence to create a reasonable inference that they are or were an “employee” and are owed wages.² The employer must then show that it is more likely than not that the worker is not an “employee” under the CWA, and thus not owed wages.³

In general, Colorado wage and hour laws apply to employees, not to independent contractors or other non-employees; thus, the Division only has jurisdiction over wage complaints filed by employees. Under the CWA, “employee” means a person “performing labor or services for the benefit of an employer.”⁴⁻⁵ Relevant factors to consider include: the degree of “control the employer may or does exercise over the person” and the degree the person “performs the primary work of the employer.” However, a person is not an employee if the person is both “primarily free from control and direction”

² See 7 CCR 1103-7, Rule 4.2.1.

³ See 7 CCR 1103-7, Rule 4.2.3. Such burden of proof on the employer is also consistent with the application of related federal and state laws and regulations.

⁴ Pursuant to the CWA, “[e]mployee means any person . . . performing labor or services for the benefit of an employer. . . . [r]elevant factors in determining whether a person is an employee include the degree of control the employer may or does exercise over the person and the degree to which the person performs work that is the primary work of the employer; except that 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.” C.R.S. § 8-4-101(5).

⁵ While not bound by the definition of “covered employment” in the Colorado Employment Security Act (“CESA”) or the definition of “employee” in the Colorado Workers’ Compensation Act (“WCA”), the Division references cases determining employee/independent contractor status under these two statutes because the “employee” definition under the Colorado Wage Act (“CWA”) is similar to the CESA “covered employment” definition and the WCA “employee” definition. See *Bermel v. BlueRadios, Inc.*, 442 P.3d 923, 927 n.2 (Colo App. 2017) (in determining “employee” status under the CWA, noting that the CESA “contains a similar definition” to the CWA, and a multi-factor, totality-of-the-circumstances framework applies); see also *Pella Windows v. Indus. Claim Appeals Office of Colo.*, 458 P.3d 128, 136 (Colo. App. 2020) (holding that the CESA framework applies to determination of “employee” versus independent contractor status under the Workers’ Compensation Act (“WCA”), despite language differences between the Acts); *Metro. Life Ins. v. Taylor*, 481 U.S. 58, 60 (1987) (noting the “presumption that similar language in two labor law statutes has a similar meaning”).

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and “engaged in an independent . . . business related to the service performed” for the employer.⁶ To determine whether a person is an employee, the totality of circumstances must be considered, and no one factor is dispositive.⁷

Whether an individual is a CWA-covered employee relies on the actual nature of the relationship between the individual and the employer on the ground—not the way the parties label themselves in a contract or otherwise.⁸ “Any agreement, written or oral, by any employee purporting to waive or to modify such employee’s rights in violation of [the CWA] shall be void.”⁹ Furthermore, wage and hour statutes and rules, including the CWA definition of “employee,” are to be “liberally construed” when interpreted.¹⁰

Based on the evidence submitted by the parties, the Division determines the claimant met the broad definition of “employee” under the CWA, thereby giving the Division jurisdiction over this wage complaint.

First, the evidence shows the claimant performed “**labor or services for the benefit of the employer**” and that the work performed was the “**primary work**” of the employer. Regarding primary work in particular, courts have examined whether the work is an “integral part” of the employer’s business;¹¹ whether the individual performed work that is “outside the usual course” of the employer’s

⁶ For additional information about worker misclassification, see [Interpretive Notice & Formal Opinion \(“INFO”\) #10: Worker Classification: Who Is and Isn’t an “Employee” Protected by Labor Standards Laws](#), which is published by the Division on its website.

⁷ See *Indus. Claim Appeals Off. v. Softrock Geological Servs.*, 325 P.3d 560, 565 (Colo. 2014).

⁸ See *Colo. Custom Maid, LLC v. Indus. Claim Appeals Off.*, 441 P.3d 1005, 1007 (Colo. 2019) (determining “covered employment” status under CESA is based on “the realities of [the maid service’s] relationship with its cleaners,” not the formal characterization of the cleaners in an agreement as independent contractors); *Dana’s Housekeeping v. Butterfield*, 807 P.2d 1218, 1221 (Colo. App. 1990) (applying CESA) (“[The employer] argues that we should give determinative weight to the parties’ . . . agreement that [the] claimant was an independent contractor. However, the way parties refer to themselves does not determine whether a claimant is an independent contractor or an employee.”); *Jackson Cartage, Inc. v. Van Noy*, 738 P.2d 47, 48 (Colo. App. 1987) (applying CESA) (disregarding agreement stating “that the parties intend to create an independent contractor - employer relationship,” because “we are primarily concerned with what is *done* under the contract and not with what the contract says” (emphasis in original)).

⁹ C.R.S. § 8-4-121.

¹⁰ C.R.S. § 8-6-102; 7 C.C.R. 1103-1, Rule 8.7(A).

¹¹ *Baker v. Flint Eng’g & Constr. Co.*, 137 F.3d 1436, 1440 (10th Cir. 1998).

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business;¹² the type of work the business performs, including how it defines itself and holds itself out to the public; whether the work performed by an individual is necessary to or in furtherance of the overall operation of the business; whether the work occurs regularly or only on isolated occasions; and whether the work was a source of a business's revenues.¹³ Additionally, consideration of the employer's total business operation is also instructive, "including the elements of routineness, regularity, and the importance of the contracted service to the regular business of the employer."¹⁴ Such importance is substantiated by showing that without an independent contractor's labor or services, the employer would utilize by necessity its own employees to perform such labor or services rather than forgoing them altogether.¹⁵

Here, the employer was a non-profit created to advance community cultural initiatives in Colorado Springs and holds itself out to the public as such. The claimant worked for the employer as a volunteer coordinator and facility manager for over two months at approximately 40 hours a week. In this capacity, the claimant routinely and with regularity provided the labor and/or services necessary for the employer's business, performing work such as coordinating volunteers for events, booking talent for events, and facility maintenance. Such work is integral to the nonprofit's mission because its operations relied on the work performed by the claimant and the nonprofit secured funding and grants based on the claimant's work.

Next, the evidence shows that the employer exercised or had the authority to exercise a meaningful **"degree of control"** over the claimant such that the claimant was not **"primarily free from control and direction"** in the performance of work for the employer. In determining the degree to which an employer has control over a worker, "control over the details of [the worker's] performance" is not necessary, as the focus of such inquiry should be concerned instead with the employer's "general

¹² *Vazquez v. Jan-Pro Franchising Int'l, Inc.*, 986 F.3d 1106, 1122 (9th Cir. 2019) (citing *Dynamex Operations W., Inc. v. Superior Court*, 416 P.3d 1, 8 (Cal. 2018)); see also *Vazquez*, 986 F.3d at 1125 (internal citations omitted) (in examining whether work was performed in "the usual course" of an employer's business, courts "have considered whether the work of the employee is necessary to or merely incidental to that of the hiring entity, whether the work of the employee is continuously performed for the hiring entity, and what business the hiring entity proclaims to be in. . . . In some cases, this inquiry can be conducted through a common-sense observation of the nature of the businesses. . . . In other cases, courts view [the] distinction in more economic terms.").

¹³ See *Vazquez*, 986 F.3d at 1125–26.

¹⁴ *Finlay v. Storage Tech. Corp.*, 764 P.2d 62, 66–67 (Colo. 1988) (holding that cleaning services provided by a janitorial contractor for a computer manufacturer were in the "regular business" of the manufacturer for purposes of the workers' compensation statute, because the manufacturer "depended on the regular and thorough performance of . . . [the] janitorial services").

¹⁵ *Finlay*, 986 F.3d at 67 (internal citations omitted).

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control” over the worker.¹⁶ While employer control over “the details of the manner and method of job performance” shows an employer’s authority to exercise control over a worker, “control over the details of performance is not required” to conclude that the employer had a meaningful degree of control over the worker.¹⁷

The employer exhibited extensive control over the claimant’s work methods through detailed supervision and direction, contrary to the employer’s assertions. While the employer alleges they provided no supervision or direction and only gave the claimant requirements and specifications for events, the evidence demonstrates otherwise. The claimant alleges they felt micromanaged by the employer, specifically the CEO, who would send emails and texts, and provide verbal directions on how to perform specific tasks. The claimant was required to obtain prior approval from the CEO before performing tasks and was publicly reprimanded if they failed to follow instructions adequately. On multiple occasions, the claimant was directed to return to the event space or report at specific times for events where the employer would provide direct instruction on how to perform tasks. The claimant was provided digital materials to assist them in their work, but the employer claims that the claimant was not required to follow them. This level of detailed supervision and control over work methods is characteristic of an employment relationship rather than independent contractor status.

The employer maintained complete control over the claimant’s compensation structure and rate. The employer unilaterally set the hourly rate paid to the claimant using funds distributed to the non-profit organization. The claimant was unable to renegotiate their wages as the employer claimed independent contractors could not receive over \$20 per hour in compensation. The claimant was paid hourly and was required to keep track of their hours worked, which were submitted through invoices to the employer. The employer’s control over compensation rates and payment structure demonstrates the type of financial control typically exercised over employees rather than independent contractors who generally negotiate their own rates.

The employer exercised significant control over when and where the claimant worked, characteristics consistent with an employment relationship. The claimant was required to work either onsite or remotely, with remote work requiring prior approval from the employer. While the parties dispute whether the employer set the claimant’s general schedule, it is undisputed that the claimant was required to be onsite to manage volunteers during employer events. The claimant alleges that

¹⁶ *Allen Co. v. Indus. Comm’n of State of Colo.*, 762 P.2d 677, 680 (Colo. 1988) (internal citations omitted) (applying the CESA) (“We are not here concerned with details but with general control.”).

¹⁷ *Colo. Custom Maid, LLC*, 441 P.3d at 1005, 1010-11 (affirming that a cleaning service exercised sufficient “control and direction” over its staff under the CESA; although the cleaning service did not actively supervise “the details of the cleaning[,]” it “exercised...quality control” over the work, including resolving customer complaints)

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although they felt they could decline to attend certain events, they believed they would face termination for doing so, as the CEO would call “incessantly” if they missed meetings or events the CEO wanted them to attend. The claimant was also required to work overtime during events but was denied overtime compensation. This level of control over work scheduling and location demonstrates the employer’s control over the conditions of the claimant’s work.

The employer possessed the unilateral right to terminate the working relationship, demonstrating an at-will employment relationship rather than a contractual independent contractor relationship.¹⁸ The employer faced no legal or financial repercussions from terminating the claimant, which they ultimately did for stated financial reasons. This termination authority reflects the type of control employers maintain over employees and distinguishes the relationship from typical independent contractor arrangements that involve specific contractual obligations.

Finally, the claimant was not **“customarily engaged in an independent trade, occupation, profession, or business related to the labor performed”** by the claimant for the employer. Whether an individual is customarily engaged in an independent trade or business is “based on a totality of the circumstances test that evaluates the dynamics of the relationship between the [individual] and the employer[.]”¹⁹ Moreover, another important consideration is whether the individual “engaged in a trade, occupation, profession, or business that existed separate and apart from any relationship with a particular employer and that would survive the termination of that relationship.”²⁰

The employer cites financial reasons for not classifying the claimant as an employee, and not because the claimant was operating their own independent services. The claimant did not operate an independent business separate from the employer, despite the employer’s claims about the claimant’s specialized experience in the artist community and volunteer network creation. While the employer argued that the claimant’s background and ties to Colorado Springs’ artist community indicated independent contractor status, the evidence demonstrates otherwise. The claimant did not own or operate a separate office or shop, had no front-facing marketing efforts such as business cards or a website, and worked exclusively for the employer during their relationship. Although the claimant

¹⁸ See *Colo. Custom Maid, LLC v. Indus. Claim Appeals Office*, 441 P.3d 1005, 1008-1009, 1010 (Colo. 2019) (“[S]imply the right to terminate a service contract without liability is an important factor in determining whether the individual is free of control and direction” of an alleged employer because the right to discharge “immediately involves the right of control”); *Indus. Comm’n of Colo. v. Bonfils*, 241 P. 735, 736 (Colo. 1925) (applying the CESA (“By virtue of its power to discharge, the company could, at any moment, direct the minutest detail and method of the work”).

¹⁹ *Softrock*, 325 P.3d at 562; see also *Colo. Custom Maid*, 441 P.3d at 1009–10 (explaining that, “[s]tripped of legal jargon,” the second condition of the exception “asks whether the worker is an independent contractor with his or her own business that provides the particular services”).

²⁰ *Long View Sys. Corp. USA v. Indus. Claim Appeals Off. of Colo.*, 197 P.3d 295, 300 (Colo. App. 2008).

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was permitted to work for others, including competitors, the claimant worked approximately 40 hours per week for the employer, leaving little time to pursue independent business endeavors.

The employer's payment structure and treatment of compensation further support employee classification. The claimant was paid hourly and required to submit monthly invoices to the employer for compensation, which was paid directly to the claimant's personal account rather than a business account. Significantly, the employer advised the claimant that once the nonprofit secured additional funding, the claimant would receive payment for previously worked overtime hours. This promise of retroactive overtime compensation is characteristic of an employment relationship, as independent contractors typically negotiate fixed fees or rates without expectation of overtime pay. Following their termination, the claimant requested these missing wages, but the employer denied the request, citing the claimant's independent contractor classification as the basis for denial.

The claimant made no significant personal investment in establishing an independent business operation separate from the employer. The claimant used personal equipment only for basic work functions, including a personal laptop for online work and personal musical equipment when performing music for the employer. However, the employer provided all other required materials, including lighting and audio equipment for events. When the claimant needed to purchase work-related materials, the employer maintained control through a reimbursement system that required prior approval from the CEO and Board of Directors. This arrangement demonstrates that the employer, not the claimant, bore the financial burden associated with the work, which is characteristic of an employment relationship rather than independent contractor arrangements where the contractor typically provides their own tools and equipment.²¹

Therefore, based on the totality of the circumstances, the Division determines that the claimant was an "employee" as defined by the CWA and is thus entitled to its protections.

B. Wages Owed

The Division concludes that the employer violated the Colorado Wage Act at C.R.S. § 8-4-101(14) and the Colorado Overtime and Minimum Pay Standards Order at 7 C.C.R. 1103-1 Rule 4 by failing to pay wages as required.

The claimant alleged they worked as a Volunteer Coordinator/Facility Manager from July 31, 2023, to November 1, 2023, at the agreed-upon rate of \$20.00 per hour. The claimant alleged they were owed

²¹ *Colo. Custom Maid, LLC v. Indus. Claim Appeals Office*, 441 P.3d 1005, 1009-10 (Colo. 2019) (one of the factors in determining whether a worker is an independent contractor is whether they provide their own equipment, as an independent contractor is more likely to do so and employees are not).

\$182.50 in overtime wages for 18.25 hours of work over 40 in a week, 12 in a day, or 12 consecutively, that was paid at their regular rate of pay rather than 1.5 times their regular rate as required by law.

The claimant submitted the following evidence in support of their wage complaint:

- A copy of the Division’s Labor Standards Complaint form, completed by the claimant, in which they alleged they were owed wages;
- A copy of the Division’s Individual Liability Questionnaire, completed by the claimant, in which they alleged that the IL Party was individually liable for the wages they alleged they were owed;
- A copy of the Division’s Worker Classification Questionnaire, completed by the claimant, in which they alleged that the employer misclassified them as an independent contractor;
- Screenshots of email exchanges between the claimant and the employer showing that the claimant discussed the wages they alleged they were owed with the employer;
- A copy of a written demand for wages that the claimant sent the employer on January 3, 2024; and
- A document titled “Mutual Rescission and Release Agreement” signed by the claimant and the employer.

The claimant provided sufficient evidence to infer that the employer failed to pay all earned wages. The Division sent a Notice of Complaint (“NOC”) to the employer on August 16, 2024, which included a blank Employer Response Form (“ERF”), a blank copy of the Division’s Individual Liability Questionnaire to be completed by the IL party, a blank copy of the Division’s Worker Classification Questionnaire to be completed by the employer, a copy of the written wage complaint and all supporting documents provided from the claimant. The employer was required to respond by August 30, 2024.

The Division received the employer’s response on August 30, 2024. The employer marked Option 3 on the ERF, denying it owed wages to the claimant. The employer submitted a copy of the Division’s ERF, completed by the employer, in which it denied that wages were owed; a copy of the Division’s Worker Classification Questionnaire, completed by the employer, in which it asserted that the claimant was an independent contractor; a copy of the Division’s Individual Liability Questionnaire, completed by the IL Party; a log of the hours that the claimant worked on the employer’s behalf in August 2023 and October 2023; and records of all payments made to the claimant.

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The Division applies a shifting burden of proof structure with respect to the claimant and the employer. After a claimant meets their initial burden of establishing a basis for the wage claim, by creating a reasonable inference of a violation of Colorado wage and hour laws, the burden then shifts to the employer to disprove any violation of Colorado wage and hour laws. 7 C.C.R. § 1103-7:4.2.

In response to the claimant's demand for wages, the employer justified its non-payment of wages in part because the claimant signed a document titled "Mutual Rescission and Release Agreement," which the employer asserted precluded the claimant's claim. The employer also provided a copy of this document in its response. This document states, in relevant part, that "neither party shall hold the other liable for any claims that have arisen or may arise from the terms or conditions of the [Independent Contractor Agreement signed by the claimant]." This document does not prohibit the Division from investigating the claimant's allegations, nor does it prohibit the Division from ordering the employer to pay wages to the claimant, because these claims arise out of the Colorado Wage Act and COMPS Order, and not the Independent Contractor Agreement signed by the claimant. Furthermore, Colorado Wage Act § 8-4-121 states that "[a]ny agreement. . . by any employee purporting to waive or to modify such employee's rights in violation of this article shall be void." Thus, if any portion of the Release Agreement purported to bar the Division from investigating or awarding wages, that clause would be void and unenforceable.

The claimant alleged that the employer did not properly pay them for overtime they worked. Under COMPS Order Rule 4, an employer must pay an employee 1.5 times their regular rate of pay for all hours worked over 40 in a week, 12 in a day, or 12 consecutively, unless the employee falls into an exemption enumerated in COMPS Rule 2. Colorado Wage Act § 8-4-101(14) requires employers to pay employees all wages that the claimant earned pursuant to an agreement or state or Federal law. In its response, the employer did not deny that the claimant worked overtime, but rather asserted that the claimant was an independent contractor, and therefore not entitled to the protections of the COMPS Order or the Colorado Wage Act. As discussed in section **A. Worker Classification**, the claimant was an employee under Colorado law. The employer neither asserted nor provided evidence to show that the claimant fell into one of the exemptions to the COMPS Order enumerated in Rule 2. Thus, the Division finds that the claimant was entitled to overtime.

The claimant alleged they were owed \$182.50 in wages for 18.25 hours of overtime that was paid at their regular rate of \$20.00 per hour rather than their overtime rate of \$30.00 per hour.²² In its response, the employer provided a record of the hours that the claimant worked in August and October 2023. Upon review of these records, the Division determined that the claimant worked 18.25

²² \$20.00 per hour times 1.5 equals \$30.00 per hour.

hours of overtime: 1 hour of daily overtime on August 12, 2023, 1.5 hours of daily overtime on August 18, 2023, 13.75 hours of weekly overtime between August 21, 2023, and August 27, 2023, and 2 hours of weekly overtime between October 23, 2023, and October 28, 2023. The record suggests that the claimant was paid their regular rate of \$20.00 per hour for these hours rather than 1.5 times their regular rate, or \$30.00 per hour, as required under Colorado law. Thus, the claimant is owed \$10.00 per hour of overtime they worked.

Based on the submitted documentation, the Division determines that the employer owes the claimant \$182.50 in unpaid wages.

C. Individual Liability

The Division additionally concludes that Linda Weise, President and CEO of Colorado Springs Community Cultural Collective d/b/a Opus Creative Industries, is individually liable for any wages, penalties, or fines owed.

Under Section 8-4-101(6) of the Colorado Wage Act, “[e]mployer’ has the same meaning as set forth in the federal ‘Fair Labor Standards Act,’ [FLSA] 29 U.S.C. sec. 203(d).” 29 U.S.C. § 203(d) provides that an “[e]mployer’ includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.” Additionally, 29 U.S.C. § 203(a) defines a “person” for the purposes of 29 U.S.C. § 203(d) as follows: “an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.” Thus, “an individual corporate officer, owner, participating shareholder, manager, or supervisor, may be subject to individual liability for FLSA violations.”²³

To determine whether an individual is liable as an “employer” under the Colorado Wage Act, C.R.S. § 8-4-101(6), the Division applies the four-factor economic realities test most commonly used by Colorado federal courts addressing the same issue in FLSA cases. The test examines whether an individual had “operational control” over the terms and conditions of employment, including: **(1) the**

²³ Ellen Kearns et al., *The Fair Labor Standards Act*, at 3-86 (Bloomberg BNA & Am. Bar Ass’n, 3d ed. 2015). See, e.g., *Mitchell v. Hertzke*, 234 F.2d 183, 184 (10th Cir. 1956) (holding owners and farm’s “crew chief or labor boss who supervised and paid the migrant workers” were individually liable under the FLSA); *Hodgson v. Okada*, 472 F.2d 965, 968-69 (10th Cir. 1973) (in addition to the incorporated business employing the workers, “the Okadas [the owners] and Ramon Medelez, the crew leader, were joint employers” individually liable under FLSA); *Lopez v. Next Generation Construction & Environmental*, No. 16-CV-00076-CMA, 2016 WL 6600243, at *3 (D. Colo. Nov. 8, 2016) (noting that “personal liability has often been imposed” on individuals for FLSA claims, “on the ground that the particular individual falls within the FLSA’s definition of ‘employer’ and thus shares statutory obligations with the corporation.”).

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hiring and firing of employees; (2) the employee’s work schedule or conditions of employment; (3) the rate and method of payment; and (4) employment records.²⁴ In determining whether an individual is liable as an “employer” for wage-and-hour violations, “[n]o one factor is dispositive”; instead, the fact-finder “must consider the economic realities and the circumstances of the whole activity.”²⁵ If a party is individually (*i.e.*, personally) liable, the party is also jointly and severally liable for wage-and-hour violations.²⁶

Based on the totality of the evidence submitted by the parties, the Division determines that Linda Weise (“IL party”) had sufficient operational control over the business and its working conditions to be deemed individually liable for the employer’s violations of Colorado wage and hour law. Specifically, the Division concludes the following:

1. The IL party had operational control over the hiring and firing of employees, as evidenced by the IL party’s admission that they were involved in hiring and firing employees and contracting with independent contractors.
2. The IL party had operational control over the employee’s work schedule or conditions of employment, as evidenced by the IL party’s detailed supervision and direction of the claimant’s work. The IL party directed the claimant’s work verbally and through text message and email. On at least one occasion, the IL party publicly reprimanded the claimant for failing to adequately follow instructions.
3. The IL party had operational control over the rate and method of payment of employees, as evidenced by the IL party’s admission that they had a role in negotiating rates of pay for contractors and employees. Additionally, the IL party set the claimant’s rate of pay. Furthermore, the IL party signed the claimant’s Independent Contractor Agreement and Mutual Recission and Release Agreement on the employer’s behalf.
4. The IL party did not have operational control over employment records, as evidenced by the IL party’s assertion that these were handled by the Operations Director and Accounting Services.

²⁴ *Innis v. Rocky Mountain Inventory*, 385 F. Supp. 3d 1165, 1168 (D. Colo. 2019); *see also Bass v. PJCOMN Acquisition Corp.*, 2011 U.S. Dist. LEXIS 40470 at *13-14 (D. Colo. Apr. 5, 2011) (applying the four-factor economic realities test in a FLSA case to determine whether an individual was a liable employer, and noting that corporate ownership is not essential for FLSA individual liability).

²⁵ *Innis*, 385 F. Supp. 3d at 1168.

²⁶ *Powers v. Emcon Assocs.*, No. 14-cv-03006-KMT, 2016 U.S. Dist. LEXIS 36874, *17 (D. Colo. 2016) (an individual deemed an “employer” within the meaning of the FLSA is “jointly and severally liable along with the corporation.”).

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Based on the above, and considering the entire record and the totality of the circumstances, the Division finds that the IL party had sufficient operational control over the business and the terms and conditions of the employment relationship with the claimant to be considered individually liable as an employer under the Colorado Wage Act, and is therefore responsible for the payment of all wages, penalties, and fines assessed herein.

D. Penalty for Willful Failure to Pay

The employer failed to pay within 14 days of the written demand or Notice of Complaint. In these circumstances, C.R.S. 8-4-109(3) requires the Division to impose penalties. These penalties may be enhanced if the Division finds the violation or a subsequent failure or refusal to pay was willful.²⁷ For the reasons explained below, the Division also concludes that the employer acted willfully in failing or refusing to pay the wages owed and, as a result, imposes the enhanced penalty.

“A violation is willful if ‘the employer either knew or showed reckless disregard for ... whether its conduct violated’” the law, which looks to “the employer’s diligence”: a mistake or omission isn’t “willful” if it didn’t arise from inadequate employer diligence; but it is willful “reckless disregard” when an employer’s conduct has “an unjustifiably high risk of harm that is either known or so obvious that it should be known.”²⁸ Willfulness includes when an employer had enough notice of a potential violation that its failure to “diligently” look into the matter showed reckless disregard for its labor obligations.²⁹ For example, a violation is willful if an employer committed or continued it, without adequately reviewing or investigating their compliance: after an employee “brought the issue ... to [the] attention” of an employer that had enough information to confirm a violation;³⁰ or “after having been put on notice of the applicable law by [a] complaint”;³¹ or after otherwise being “aware of the [law] and its ... requirements” that the employer violated.³² In such situations, “courts have found that

²⁷ C.R.S. § 8-4-109(3).

²⁸ *Mumby v. Pure Energy Servs.*, 636 F.3d 1266, 1270 (10th Cir. 2011) (citations omitted). Colorado and federal law use the same “willful” definition. Colorado Wage Act, C.R.S. § 8-4-109(3)(b),(c), 122 (increased damages and limitations period for “willful” violations); Wage Protection Rules, 7 CCR 1103-7, R. 2.18 (“‘Willful,’ in Articles within C.R.S., Title 8, that this Division enforces or administers, has the same meaning as under 29 U.S.C § 255(a) and 29 C.F.R. § 578.3(c),” the analogous federal “willful” provisions).

²⁹ *Mumby v. Pure Energy Servs.*, 636 F.3d 1266, 1270 (10th Cir. 2011).

³⁰ *Smith v. Pizza Hut, Inc.*, No. 09-cv-01632-CMA-BNB, 2011 WL 2791331, at *6 (D. Colo. July 14, 2011) (where employee “brought the issue of under-reimbursement to Defendant’s attention, but Defendant did nothing to remedy the problem,” and “Defendant knew the reimbursement rate for each employee and had access to the number of deliveries and the approximate distances driven by each employee per delivery ... , Defendant possessed the resources to evaluate whether the employees’ claims were true, but did not do so, showing reckless disregard for whether their conduct was prohibited”).

³¹ *Sellers v. Keller Unlimited LLC*, 388 F. Supp. 3d 646, 651-52 (D.S.C. 2019).

³² *Ramos v. Al-Bataineh*, 599 F. App’x 548, 551 (5th Cir. 2015).

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a violation was willful when defendants claimed partial but imperfect knowledge of their obligations and did not pursue the matter with due diligence.”³³

A penalty increase occurs for a willful “failure or refusal to pay” wages pursuant to C.R.S. § 8-4-109(3)(b), and therefore a willful failure to pay may be shown by conduct *prior to* the demand. One form of pre-demand willfulness is an employer’s reckless disregard of the law or knowing violation of the law at the time of the employer’s initial violation. Another form of pre-demand evidence is a judgment for failure to pay wages within the previous five years, which is statutorily recognized as “evidence of” a willful failure to pay. C.R.S. § 8-4-109(3)(c).

The Division finds that the employer’s failure to pay within 14 days of a valid demand was willful for the following reasons.

Here, on January 3, 2024, the claimant sent the employer a written demand for wages. The written demand put the employer on notice of a potential violation of wage law: “loss of overtime premiums (\$30hrly [sic] - \$20hrly [sic] [already satisfied] = \$10 per hour).” The employer responded to the claimant on January 15, 2024, denying that it owed wages claimed because the claimant was an independent contractor and therefore not entitled to overtime, and had signed a release form which voided their claims. The employer’s response was not only incorrect (as noted in the above findings of a violation), but was contradicted by the evidence, rendering it implausible. Rejecting a wage demand for a reason lacking plausibility or legal justification shows that an employer has failed to make a reasonably diligent inquiry into whether its conduct violated the law. That failure establishes reckless disregard, if not a knowing violation, of the employer’s obligations under Colorado wage and hour law.

The Division finds that this aggregate conduct evinces a willful failure to pay in response to the claimant’s demand for wages and the Division’s Notice of Complaint. As a result, the Division is required by law to increase penalties by the greater of three times the amount of the unpaid wages or compensation, or \$3,000.00 pursuant to C.R.S. § 8-4-109(3)(b)(II).

³³ *Coldwell v. RITECorp Environmental Property Solutions*, No. 16-cv-01998-NYW, 2018 WL 5043904, at *4, 2018 U.S. Dist. LEXIS 178504, at *12-13 (D. Colo. Oct. 17, 2018) (employer continuing violations after receiving mixed professional advice on the legality of its conduct — advice “that its employees were improperly classified,” but also conflicting advice that the “classification was uncertain, and that they were not unambiguously violating” the law — is “willful” if the employer “avoided seeking a more authoritative resolution,” but is not willful if the employer exercised “diligence and good faith” with “extensive consultations” before incorrectly coming to the belief that its conduct was lawful).

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2. Calculation of Amounts Owed

A. Wages

The Division determines that the employer and/or the IL party owe the claimant \$182.50 in total unpaid wages.³⁴

B. Penalties

The claimant sent a written demand to the employer and IL party on January 3, 2024. The employer and/or the IL party failed to pay all earned wages within 14 days after the written demand was sent. The employer and the IL party are jointly and severally liable for penalties on all unpaid wages not paid within 14 days after a written demand or Notice of Complaint was sent, in accordance with C.R.S. § 8-4-109(3)(b).

Because the Division finds that the employer's failure to pay within 14 days of the demand was willful, it imposes upon the employer enhanced penalties in the amount of \$3,000.00, determined by selecting the greater of the values below:

1. $\$182.50 \times 3 = \547.50 .

OR

2. \$3,000.00.

C. Fines

The Division determines that the employer and the IL party are jointly and severally liable for the following fine(s) to the State of Colorado for a total of \$1,500.00. The Division orders the employer and/or the IL party to pay \$500.00 for failure to pay wages, in accordance with C.R.S. § 8-4-113(1)(a); and \$1,000.00 for failure to provide itemized pay statements for 4 months, in accordance with C.R.S. § 8-4-103(4.5).

III. Trade Secrets

The Division may release this final decision online, or may release the decision or other records in this investigation to the public if it receives an open records request under the Colorado Open Records Act, Part 2 of Article 72 of C.R.S. Title 24, and C.R.S. § 8-1-115(1)(b), with redactions of personal claimant information and other information protected against disclosure. The Division is now

³⁴ 18.25 hours of overtime paid at the claimant's regular rate, \$20.00 per hour, rather than 1.5 times the claimant's regular rate, \$30.00 per hour. \$30.00 per hour minus \$20.00 per hour equals \$10.00 per hour. 18.25 hours times \$10.00 per hour equals \$182.50.

notifying you before any such possible release, pursuant to C.R.S. § 8-1-115(1)(b), and providing you an opportunity to demonstrate that any such information is a trade secret, or protected as other “privileged information, [or] confidential commercial, financial, geological, or geophysical data.” C.R.S. § 24-72-204(3).³⁵ If you wish to so demonstrate, you have 20 calendar days from the date of this decision to do so by providing a detailed written explanation, along with any further supporting documentation. If the Division does not receive a timely response, it will treat this final decision and/or related investigation records as public records that may be released in response to open records requests and/or published online. If you choose to respond, the Division will review your response and alert you of a final decision.

IV. Conclusion

For the foregoing reasons, the Division concludes that the employer violated wage and hour laws. The employer and/or IL party must immediately pay whatever portion of these wages and/or penalties remain unpaid to the claimant. The employer and/or IL party must also pay fines to the Division, as set forth in the attached Notice of Assessment.

The Division advises the employer and/or IL party to review the COMPS Order poster and the Colorado Workplace Public Health Rights poster, which explain key labor rights and responsibilities, and which employers in Colorado must display to employees and include in any employee handbook, manual, or other such written policies they provide employees. The Division also advises the employer and/or IL party to review the Division’s published guidance, in particular the INFOs (Interpretive Notices and Formal Opinions) that explain labor rights and responsibilities in detail, in a wide range of areas, including minimum and overtime wages, various forms of compensation (tips, etc.), employees versus contractors, what “time worked” must be paid, breaks and paid leave, pay deductions, job postings, and more. For all these resources, visit coloradolaborlaw.gov.

³⁵ C.R.S. § 7-74-102(4) defines a trade secret as:

the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, address, or telephone numbers, or other information relating to any business or profession which is secret and of value. To be a trade secret; the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The Division applies the following factors to determine if the information is a trade secret:

(1) the extent to which the information is known outside the business; (2) the extent to which the information is known to those inside the business; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the saving effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

Harvey Barnett, Inc. v. Shidler, 143 F. Supp. 2d 1247, 1251-52 (D. Colo. 2001). If you have questions about what constitutes a trade secret or other information protected against disclosure, you may contact a private attorney.

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Unless this Citation is appealed by any party or terminated by the claimant within 35 calendar days of the date of this Notice, this is the final decision of the Colorado Department of Labor.

Dated this 17th day of September, 2025,

Division of Labor Standards and Statistics

Colorado Department of Labor and Employment

Emailed and mailed to the parties named herein on September 17, 2025.

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NOTICE OF ASSESSMENT

As set forth in the Division’s Citation issued on **September 17, 2025**, **Colorado Springs Community Cultural Collective d/b/a Opus Creative Industries (“employer”)** and **Linda Weise** are hereby found in violation of Colorado law and **ORDERED** to pay wages, penalties, and fines. Read carefully, select from the options, and indicate the amount you commit to pay and by when. It is your obligation to pay by the deadlines set forth in this Notice of Assessment (“NOA”) and report all payments made by returning the included Payment Reporting Voucher (“PRV”) to the Division by mail at **633 17th Street, Denver, CO 80202-2107**, by email at cdle_labor_standards@state.co.us, or by accessing the Division’s online payment reporting portal at <https://co.govfa.net/432>.

Option 1: Reduction in Penalties and Elimination of All Fines for Prompt Payment³⁶

I accept the offer to pay all wages ordered **no later than 14 calendar days** from the date of the Citation and NOA or by **October 1, 2025**. By paying all wages owed within 14 days, I avail of the offer to pay reduced penalties no later than 60 calendar days from the date of the Citation and NOA or by **November 17, 2025**. I acknowledge and commit to submit proof of payment to the Division no later than 63 days or by **November 19, 2025**, for the following amounts:

- a) **Total Amounts Due (to the claimant): \$1,682.50**
 - i. Wages Due (to the claimant): \$182.50
 - ii. Reduced Penalties Due (to the claimant, 50% reduction for prompt payment): \$1,500.00³⁷
- b) **Total Fines Due (to the Division): \$0.00***

*The Division exercises its discretion under C.R.S. § 8-4-111(2)(d) to **waive** all applicable fines that may be assessed against the employer if all wages are paid within 14 days, and reduced penalties are paid and reported timely.

Option 2: Wages Owed and Full Penalties and Fines

I refused the reduction offer or failed to pay all wages owed within the 14 calendar days prescribed in Option 1. I am liable to pay **all wages owed and full penalties** to the claimant. To avoid further liabilities for enhanced penalties and fines, I commit **to pay all amounts owed no later than 60 days**

³⁶ To assure finality in exchange for decreasing the amounts due, **no appeal shall be filed of any orders or findings that any party owes the wages and penalties here listed**, except any Compliance Orders to change employer practices may still be appealed, but any such appeal would not affect the amounts due. A Compliance Order appeal would be limited to whether any Compliance Orders to change employer practices should be affirmed, and any reversal or modification of such compliance orders would not affect the obligations to pay wages or penalties.

³⁷ This number reflects that the Colorado Wage Act allows the Division to reduce penalties due to the claimant by up to 50% if the employer pays the employee all wages and compensation owed within 14 days after the Citation and Notice of Assessment is sent to the employer. C.R.S. § 8-4-111(2)(d).

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from the date of this NOA or by **November 17, 2025**. I acknowledge and commit to submit proof of payment to the Division no later than 63 days or by **November 19, 2025**, for the following amounts:

- a) **Total Amounts Due (to the claimant): \$3,182.50**
 - i. Wages Due (to the claimant): \$182.50
 - ii. Full Penalties Due (to the claimant): \$3,000.00
- b) **Total Fines Due (to the Division): \$1,500.00**

Option 3: Wages Owed and Increased Penalties and Fines³⁸

I take responsibility for owing **all wages, enhanced penalties, and fines** after failing to pay within 60 days of this NOA. The consequence of my failure to pay is that I owe all wages and enhanced penalties and fines. To avoid further enforcement efforts, such as the Division filing a certified copy of the NOA to allow court-issued collection and judgment for these amounts and/or issuing and executing administrative liens and levies to enforce payment orders and collect assets,³⁹ I commit to pay all amounts owed and promise to submit proof of payment to the Division **immediately**, for the following amounts:

- a) **Total Amounts Due (to the claimant): \$6,182.50**
 - i. Wages Due (to the claimant): \$182.50
 - ii. Increased Penalties Due (to the claimant for non-payment within 60 days): \$6,000.00⁴⁰
- a) **Total Fines Due (to the Division): \$1,750.00**⁴¹

³⁸ If a valid administrative appeal is filed, then this increase is postponed until 60 days after the appeal decision.

³⁹ See [INFO #2D](#).

⁴⁰ This number reflects that the Colorado Wage Act requires adding, in addition to the “penalties due to the claimant” listed in Section I(a)(ii), an extra penalty of — \$3,000 or (if greater) 50% of the Section I penalties — if the employer fails to pay within 60 days after the Division’s determination or hearing officer decision. C.R.S. § 8-4-111(2)(f)(III).

⁴¹ This number reflects that the Colorado Wage Act requires adding, in addition to the fines “due to the Division” listed in Section I(b), an extra fine — equal to 50% of the Section I fines issued under C.R.S. § 8-4-113 — if the employer fails to pay within 60 days after the Division’s determination or hearing officer decision. C.R.S. § 8-4-111(2)(f)(II).

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Claim Number: 0302-24

Filed Against:

Colorado Springs Community Cultural Collective d/b/a Opus Creative Industries

And

Linda Weise, an individual

Claimant: Brian Parsons

Claim Key Number: CK43971

Employer ID Number: 24085698

PAYMENT REPORTING VOUCHER

Instructions: This Payment Reporting Voucher (“PRV”) must be returned to the Division by mail or email with proof of payment, proof of mailing and/or tracking information. It is the employer’s responsibility to ensure that payment is received. A payment attempt without proof of receipt does not fully resolve the claim, and the Division may pursue collection of any owed amounts of which the employer has failed to report as required in the Citation and NOA.

I. For payment of wages and penalties to the claimant. Mail a check made out to the claimant and send it to their address:

Brian Parsons
6007 Jorie Road
Colorado Springs, CO 80927

II. For reporting of payment to the Division. Mark your selection below and include proof of payment, proof of mailing, and/or tracking information.

Option 1: I paid wages of _____; reduced penalties of _____; and fines of _____.

Proof of payment (including copies of check, direct deposit information, pay statement, etc.) is attached.

Proof of mailing that shows that the payment was sent to the claimant on _____ is attached.

Option 2: I paid wages of _____; full penalties of _____; and fines of _____.

Proof of payment (including copies of check, direct deposit information, pay statement, etc.) is attached.

Proof of mailing that shows that the payment was sent to the claimant on _____ is attached.

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Option 3: I paid wages of _____; enhanced penalties of _____; and enhanced fines of _____.

Proof of payment (including copies of check, direct deposit information, pay statement, etc.) is attached.

Proof of mailing that shows that the payment was sent to the claimant on _____ is attached.

For payments made after a certified copy and judgment were filed: I certify that all owed amounts have now been paid in full. Please withdraw and cancel the judgment issued against me for these amounts assessed to have been owed, which I have proven to have now paid.

III. Return this PRV to the Division as soon as payment is made by identifying your Claim # and sending it via mail and/or email to the following address:

Mail to: Division of Labor Standards and Statistics **Email to:** cdle_labor_standards@state.co.us
633 17th St.
Denver, CO 80202

IV. Online electronic payment reporting may be done through the Colorado Division of Labor Standards and Statistics Online Claim Portal at <https://co.govfa.net/432>. When reporting online, please reference the Employer Community ID Number (“EID”) and the Claim Key supplied above. Include proof of payment and mailing when reporting payment online.

Payment and Reporting Instructions

Last updated 12/24/2024

For payment of wages and penalties to the claimant, mail payment made out to the claimant, to their address:

Brian Parsons
6007 Jorie Road
Colorado Springs, CO 80927

Indicate the claim number on the check or (if possible) other payment instrument. Note that although wages may be taxable, penalties are not considered wages for federal or state tax withholding. The Division does not have the authority to investigate or determine tax issues. Concerns arising out of payroll, federal, or state tax matters should be directed to the appropriate tax authority.

For payment of fines, mail a check made out to the “Colorado Division of Labor Standards and Statistics-Wage Theft Enforcement Fund” to the Division address listed at 633 17th Street, Denver, CO 80202.

Prompt reporting is required of all payments to the claimant. This proof is required pursuant to C.R.S. §§ 8-1-114, 8-1-117, which each impose penalties of “not less than fifty dollars for each day” of non-compliance. Any party making any of the required payment(s) to the claimant must provide the Division written proof of payment, e.g. copy of check or money order, including all of the following information: (1) claim number; (2) pay statement providing accounting of gross wages owed, net wages paid, and any deductions made from gross wages owed; (3) payment of penalties owed, and (4) address payment was sent to (if mailed).

If any of the above information is missing or incomplete, the Division may not consider the party to have submitted the required proof of payment and the Division may not eliminate the balance owed, subjecting the party to the Division’s right to collect upon the outstanding balance owed through either judicial procedures or the use of administrative liens and levies as authorized by C.R.S. § 8-4-113. If proof of payment is insufficient, the Division will notify the party so that the party can promptly submit sufficient proof of payment.

Send the Division proof of payment to Colorado Department of Labor, Division of Labor Standards, 633 17th St., Denver, CO 80202 or email the proof of payment to cdle_labor_standards@state.co.us. Online electronic payment reporting may be done through the Colorado Division of Labor Standards and Statistics Online Claim Portal at <https://co.govfa.net/432>.

The Division may freeze and seize assets of any liable party, through Division orders and notices to the party, to other persons or entities with the party's assets (e.g., banks), and to anyone who owes the party money or other assets (e.g., customers, suppliers, business partners). Non-compliance may also yield additional fines on the party, and additional information demands to the party or others (e.g., individuals or businesses with knowledge of the party's assets). Enforcement efforts may ensue during any appeals, absent an order limiting such efforts.



Post-Determination FAQ

Last updated 5/9/2024

Q1: The division has issued a determination for my wage claim. What will happen next?

A1: The determination packet you received contains 3 distinct parts: a cover sheet that explains appeals and other post-determination rights; the determination packet, which explains the legal and factual findings in support of the division's conclusion; and a Notice of Assessment and Requirement to Report Payments Made ("NOA") that outlines timelines for payment and consequences of nonpayment. **Please read thoroughly the determination in full** as it contains all the information needed for the parties to understand the Division's reasoning behind its decision and its expectations upon an employer to pay or comply with its findings and order. If, upon your review of the determination, you have further questions, please email them to cdle_pdcomm@state.co.us.

Q2: I am an employer that wishes to pay the wages ordered. What should I do?

A2: The determination packet you received includes a Notice of Assessment and Requirement to Report Payments Made ("NOA"), which outlines the timeline to pay, for which amounts, by when, and how to report payments made to the employee. **Please read the NOA thoroughly, send payment to the employee using the address indicated in the NOA, and provide proof of payment via email to cdle_labor_standards@state.co.us**. Your proof of payment must contain a copy of the check sent to the employee; a pay statement detailing the payment and deductions made to the wages issued; and proof of sending (postmarking or tracking information). If, after reviewing the Citation and NOA in full, you have further questions, please email cdle_pdcomm@state.co.us.

Q3: Now that a determination has been issued with a finding that the employer owes me wages and penalties, how would I receive payment of these amounts?

A3: Included in the Determination packet you received is a Notice of Assessment and Requirement to Report Payments ("NOA") that outlines the amounts due, and when they must be paid by the employer. The employer is directed in the NOA to send payment directly to you by mailing a check to the address provided to the Division. If you have changed your address and have not updated your information prior to our issuance of the Determination, please email cdle_pdcomm@state.co.us immediately. If the employer issues payment and does so using the address you have provided the Division, you will have to coordinate payment with the employer directly and request that they send payment to your updated and most current address.

Q4: Can I request the employer to send payment via direct deposit, or through other means than by sending a check payment to my address?

A4: The Division may accommodate special requests concerning payment if it is communicated to their Compliance Investigator ("CI") *before* a determination is issued. In some cases, the instruction may be included in the determination as a reminder for the employer to follow when sending payment to the claimant. However, if the claimant wishes to avail of a means of payment not communicated prior to the issuance of a determination, or such payment option is elected by the

claimant after the determination is issued, then the responsibility is on the claimant to contact the employer to coordinate payment through their elected means of receipt of that payment.

Q5: I am homeless and have no address that can be used to receive the employer's payment. How do I receive my payment?

A5: If you are unable to provide an address with which payment may be received, the Division advises that you provide an address for a family member or an authorized representative. Please let your Compliance Investigator know if neither option is available.

Q6: My former employer has reached out and requested to pay in installments, is this allowed?

A6: The parties may agree to a payment arrangement provided it complies with the timelines indicated in the NOA included with the determination. The employer must pay all wages determined to have been owed in the Citation and NOA within 14 days from the date of the Citation to avail of the offer of reduction for penalties and fines. Penalties owed to the claimant may be paid incrementally by the employer, provided such payment is made in full within 60 days from the date of the Citation. Fines owed to the Division may be subject to a payment plan that the employer may set up with the Division.

Q7: I received payment from the employer, what should I do?

A7: If you received payment from your employer, please send a copy of the payment to the Division's general email address at cdle_labor_standards@state.co.us. You may send a copy of the check, the pay statement (if one was supplied with the payment you received), and a copy of the envelope reflecting the postmark date of when the payment was sent.

Q8: I received payment, but it appears to be for an incorrect amount. What should I do?

A8: If the employee receives payment, they should report the payment by emailing cdle_labor_standards@state.co.us. They should provide details about when they received payment and the amount received and provide copies of the check and envelope containing the check payment. If they believe the amounts paid are incorrect, they must detail why they think it is incorrect. The Division will ascertain if further amounts are owed, and if all amounts are not paid after 60 days from the date of the Citation, the Division may issue a certified copy for the amounts determined to be outstanding.

Q9: I received the determination, and I disagree with the Division's findings. I would like to file an appeal. What should I do?

A9: If you disagree with the determination, you may appeal it. The Division must receive your appeal request within 35 days from the date the determination was sent. To get a copy of the appeal form and related instructions, you must go online to: [Decisions and Appeals Information](#).

A mobile-friendly version of the form is found at: [Mobile Friendly Appeals and Decisions Information](#). Alternatively, you may ask us to send you a printed copy by contacting us directly by email at cdle_ls_appeals@state.co.us or call 303-318-8442. You may also pick up a copy in person at 633 17th

Street in Denver, 2nd floor. You may also be able to file an appeal through our online portal. You will need to enter a Claim Key, which is shown at the top left of the cover page included with the determination. Whichever method you choose, it is your responsibility to meet the deadline. For more information on appeals, please consult the appeals INFO available at [Interpretive Notice & Formal Opinions \(INFOS\) Webpage](#).

Q10: What if the employer files an appeal?

A10: Once a timely appeal request is received, the Division will notify the parties of the appeal. A hearing will be scheduled and take place. After the hearing, the Hearing Officer will issue a decision either affirming the CI's determination in full, modifying the determination in part, or reversing the CI's findings as a whole. If the employer appeals a CI's determination, it effectively rejects any offer of reduction granted to the employer in the original determination and it is not entitled to any reduction if the Hearing Officer finds that it owes wages to the claimant following the conclusion of the appeal hearing. Filing an appeal does not generally pause any deadlines set out in, or triggered by the determination. While an employer may not likely pay while it pursues an appeal, it may be beneficial to pay wages ordered in the Citation and NOA if the employer wishes to take advantage of the Division's offer of reduction.

Q11: It is past the deadlines outlined in the NOA for the employer to pay. I have not received any payment, what do I do next?

A11: If the employer fails to pay any wages or penalties ordered in the Citation and Notice of Assessment after 60 days from the date of the determination, the Division may file a Certified Copy of an NOA, or order imposing wages due, fines, penalties with the clerk of any court having jurisdiction over the parties. The clerk of the court shall record the NOA in the judgment book of the court and make an entry in the judgment docket. Upon recording, the NOA will have the effect of and may be executed as a judgment of the court.

Q12: I received a Notice of Filing of Judgment Pursuant to §8-4-113(2) from the court, what do I do next?

A12: Once a certified copy is filed with the courts as a judgment, the Division's involvement with the wage claim has officially ended because the investigation process is concluded. The Division *does not* assist with the collection of filed judgments. The claimant may pursue several collection methods through the court which may include garnishing employer assets, placing a lien against the employer or even directly requesting the employer to pay what was ordered. The Court's Self Help Webpage: [Collecting a Judgment](#) has specific information for parties seeking to collect money that they are owed via an active judgment.

Q13: I have not been paid by my employer and 60 days have passed since the determination was issued. Aside from the filing of a certified copy, is there another action against the employer I can pursue?

A13: The Division **may** issue a notice of administrative lien and levy if an employer or other Division debtor fails to pay wages or penalties determined to be due upon an employee's written request. A

request may be sent with the subject line “Liens and Levies Request” to the Division’s general email at cdle_labor_standards@state.co.us. Upon receipt of the employee’s written request, and subject to the Division’s discretion to issue such notices on its own initiative at any later time, the Division will inform the employee within 60 calendar days whether it will issue a Notice of Administrative Lien and Levy against the employer, debtor or known co-owner, or persons in control or custody of assets for the employer. For information please refer to [INFO 2D](#).

Q14: The employer has reached out to me to offer a settlement after the determination has been issued. What should I do?

A14: Parties to a wage claim investigation may enter into an agreement to settle the claim at any stage of the investigation, including after a determination has been issued but before the determination becomes final. A determination becomes final if no appeal is filed after 35 days from the date of the determination. If the parties agree upon a settlement, the claimant may elect to terminate the claim by requesting for a termination in writing within 35 days from the date of the determination. A request to terminate may be sent to the division’s inbox at cdle_labor_standards@state.co.us. Please reference your wage claim number in the subject line and indicate that you are requesting a termination of the claim.

Q15: My employer or a named individually liable party (“IL Party”) to the claim has filed for bankruptcy. What happens next?

A15: The bankruptcy court will automatically stay all proceedings to attempt to collect money from a debtor filing for bankruptcy. If the employer or the IL party files for bankruptcy before or during a wage claim investigation, the Division may not proceed with an investigation to recover monies from the employer or IL party. The employee’s recourse is to recover through the bankruptcy proceeding as a creditor of the employer or IL party. The claimant is advised to contact the trustee for the bankruptcy proceeding or the bankruptcy court handling the bankruptcy case so they may be added as a creditor. Please note that a bankruptcy filing for the employer entity does not automatically discharge the IL party from the wage claim investigation even if they are identified as the owner of the entity. The IL party must have, on their own, filed for bankruptcy to be discharged (while the bankruptcy stay is in place) from the Division’s wage claim investigation.

Q16: What does “joint and several liability” mean?

Q16: To be jointly liable means that an employer and ILP are both responsible for all wages and penalties owed to the claimant. To be severally liable means that the employer and the ILP are individually responsible for all wages and penalties owed to the claimant. This does **not** mean that the claimant can collect the full wages and penalties owed from **both** the employer and the ILP. The claimant can collect the full wages and penalties owed **once** but may collect them from any or all parties.

Q17: My employer has been intimidating and harassing me. What do I do??

A17: If your employer shows you any behavior that may be construed as harassing or threatening, **please contact your local law enforcement authority immediately.** Employers engaging in harassing behavior are warned that, pursuant to the Colorado Wage Act, C.R.S. § 8-4-120, employers "shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate or retaliate against any employee who has: (a) Filed any complaint or instituted or caused to be instituted any proceeding under this article 4 or any other law or rule related to wages or hours; or (b) Testified or provided other evidence, or may testify or provide other evidence, in any proceeding on behalf of the employee or other Person afforded protections under this article 4 or under any other law or rule related to wages or hours." Further, C.R.S. § 8-4-120(2) and (3) provide that, **an employer who is found to have violated this above noted section commits a class 2 misdemeanor.** An employee who alleges a retaliation violation against an employer may file a civil action in court against the employer to seek legal and equitable relief to remedy the violation, including: back pay; reinstatement or front pay; payment of unlawfully withheld wages; interest on unpaid wages; penalties of \$50.00 per day; liquidated damages; injunctive relief; and attorneys fees. The Division may investigate and enforce discrimination or retaliation prohibited by the Wage Act, and after investigation, may order the relief specified under C.R.S. § 8-4-120(3)(a).