

**Denver  
Labor**



DENVER AUDITOR TIMOTHY M. O'BRIEN, CPA

**City and County of Denver**

**Civil  
Wage  
Theft  
Rules  
2023**

## CONTENTS

<b>1. GENERAL PROVISION.....</b>	<b>5</b>
1.1 Statement of authority.....	5
1.2 Purpose.....	5
1.3 Definitions .....	5
<b>2. CITYWIDE CIVIL WAGE THEFT ORDINANCE INTERPRETATION.....</b>	<b>7</b>
2.1 Authority and enforcement.....	7
2.2 Other and alternate legal obligations.....	7
2.3 Concurrent legal action.....	7
2.4 Severability.....	7
2.5 Liberal construction of rights, narrow construction of exemptions.....	7
<b>3. STATUTE OF LIMITATIONS, SCOPE, AND JURISDICTION .....</b>	<b>8</b>
3.1 Statute of limitations.....	8
3.2 Minimum wage.....	8
3.3 Civil wage theft.....	8
<b>4. COMPLIANCE REQUIREMENTS.....</b>	<b>9</b>
4.1 Employer duties .....	9
4.2 Payment of lawful wages.....	9
4.3 Wage notice .....	9
4.4 Record keeping .....	10
<b>5. CITYWIDE WAGE AND HOUR CALCULATIONS.....</b>	<b>10</b>
5.1 Time worked.....	10
5.2 Minimum wage.....	11
5.3 Hourly rate.....	11
5.4 Hourly rate for non-hourly workers.....	12
5.5 Rate for paid time off.....	12
5.6 Overtime.....	12
5.7 Overtime for workers with multiple hourly rates .....	13
5.8 Deductions.....	13
<b>6. INVESTIGATIONS .....</b>	<b>13</b>
6.1 Statement of purpose and responsibility.....	13
6.2 Complaint-based investigations.....	14
6.3 Strategic investigations .....	16

6.4 *Immigration status irrelevant* ..... 16

6.5 *Employer records* ..... 17

**7. EXCEPTIONS TO DENVER MINIMUM WAGE** ..... **17**

7.1 *General* ..... 18

7.2 *Tip Credit* ..... 18

7.3 *Certified Youth Employment Program* ..... 19

7.4 *Volunteers* ..... 19

7.5 *Independent contractors*..... 20

7.6 *Exceptions not adopted* ..... 20

**8. COMMUNICATIONS**..... **20**

8.1 *Complainants* ..... 20

8.2 *Non-complainants* ..... 21

8.3 *Employers and upstream parties* ..... 21

8.4 *Written communications*..... 22

8.5 *Outside communication* ..... 22

**9. DETERMINATIONS**..... **22**

9.1 *Pre-determination payment* ..... 22

9.2 *Finality*..... 22

9.3 *Calculation of underpayment* ..... 23

9.4 *Established pay period*..... 23

9.5 *Tip credit calculation* ..... 23

9.6 *Minimum wage compliance for non-hourly workers* ..... 23

9.7 *Overtime calculations*..... 24

9.8 *Rest periods*..... 24

9.9 *Vacation pay*..... 24

9.10 *Sick leave*..... 24

9.11 *Holiday pay* ..... 24

9.12 *Continuing violations*..... 24

**10. PENALTIES** ..... **24**

10.1 *Non-discretionary penalties* ..... 24

10.2 *Hybrid and discretionary penalties*..... 25

10.3. *Prior determinations*..... 26

10.4 *Late fees and interest*..... 26

10.5 *General Fund*..... 26

**11. DAMAGES..... 27**  
    11.1 *Mandatory interest* ..... 27  
    11.2 *Treble damages*..... 27

**12. COLLECTION ..... 27**  
    12.1 *Wages and/or damages*..... 27  
    12.2 *Outside counsel*..... 28  
    12.3 *Joint and several liability*..... 28

**13. APPEALS ..... 29**

**14. RESOLUTION..... 29**  
    14.1 *Closed cases* ..... 30  
    14.2 *Settlement* ..... 30

**15. RETALIATION..... 30**  
    15.1 *Retaliation prohibited* ..... 30  
    15.2 *Presumption of retaliation; rebuttal*..... 30  
    15.3 *Separate claims for retaliation* ..... 31

**16. DATA ..... 31**

**17. OUTREACH ..... 31**

## 1. GENERAL PROVISION

### 1.1 Statement of authority

In May 2019, the Colorado General Assembly passed House Bill 19-1210, which amended Colorado Revised Statute § 29-1-1401 authorizing local governments to enact laws establishing a local minimum wage within their geographic jurisdictions. In November 2019, the Denver City Council enacted Denver Revised Municipal Code, or D.R.M.C., § 58-16 through 58-18, which established a local minimum wage for the City and County of Denver, as well as compliance requirements and means of enforcement.

The Citywide Minimum Wage Ordinance became effective Jan. 1, 2020.

On Jan. 9, 2023, the Denver City Council passed the Civil Wage Theft Ordinance (or “the Ordinance”), which both revised and added to D.R.M.C. §§ 58-1 through 58-26, and also amended § 38-51.9. It created new procedures and penalties regarding civil wage theft and vested responsibility for implementation and enforcement with the Denver Auditor’s Office.

These Denver Labor “City and County of Denver Wage Theft Rules,” or Rules, are enacted pursuant to the Denver Auditor’s Office’s rulemaking authority prescribed in D.R.M.C. Chapter 58. These Rules shall be adopted, published, and updated pursuant to D.R.M.C. § 2-91 through 2-100.

### 1.2 Purpose

These Rules are enacted to provide notice of the presumptions, procedures, and requirements employed by the city when enforcing the Ordinance. These Rules are meant to ensure consistent compliance and provide guidance to parties impacted by the Ordinance.

### 1.3 Definitions

These Rules incorporate all definitions codified in the Ordinance. In addition, these Rules shall use the following defined terms:

- **Civil wage theft** – Use of the term “civil wage theft” refers to any instance where a worker does not receive the wages to which they are legally entitled, as promised and required by law, including applicable local, state, and federal law, under contract, or based on any other enforceable standard.
- **Correspondence** – Written communication from Denver Labor that informs a party of a complaint, investigation, or other information.
- **Damages** – Monetary sanctions for violations of the Ordinance, other than unpaid wages, that are owed to injured workers.
- **Denver** – Refers to the City and County of Denver collectively and all property located in Denver County.

- **Denver Labor** – An office within the Denver Auditor’s Office that enforces wage and hour laws for work performed in Denver, and that office’s associated staff and operational functions.
- **Denver labor law** – Includes this Ordinance and any other ordinance, City Charter provision, or other legislative or ballot enactment, as well as relevant court decisions, these Rules, and any other promulgated, in-effect rules applicable to work in Denver.
- **Direct employer** – Refers to those employers for whom workers primarily perform work on behalf of or for the benefit of. In a given situation, there may be more than one direct employer.
- **Employee** – Shall have the same meaning as defined by C.R.S Title 8, Articles 4 and the Colorado Overtime and Minimum Pay Standards Order, 7 CCR 1103-1.
- **Established workweek** – Any consecutive set period of 168 hours (7 days) starting with the same calendar day and hour each week.
- **Fringe benefit** – The nonmonetary portion of an employee’s compensation for work.
- **May** – Use of the term “may” in the Ordinance and these Rules indicates an optional choice.
- **Minimum wage** – The current Denver minimum wage as established by the Ordinance.
- **Must, shall, and will** – Use of the terms “must,” “shall,” and “will” in the Ordinance and these Rules indicates a mandatory requirement.
- **The Ordinance** – Denver’s Civil Wage Theft Ordinance, contained in D.R.M.C. §§ 58-1 through 58-26, and § 38-51.9.
- **Penalty** – Monetary sanctions for violations of the Ordinance that are owed to Denver.
- **Regular rate** – Use of the term “regular rate” shall have the meaning given in Rule 5.3.
- **Should** – Use of the term “should” in the Ordinance and these Rules indicates a preferred, albeit optional, action.
- **Upstream parties** – Refers to persons, other than direct employers, who are regularly engaged in business or commercial activity and benefit from a worker’s labor and, under D.R.M.C. § 58-24, may be liable for unpaid wages, interest, and/or damages.
- **Vacation** – Shall have the same meaning as under the Colorado Wage Act, Colo. Rev. Stat. § 8-4-101 et seq.
- **Worker** – A natural person performing work. “Worker” includes, but is not limited to, full-time employees, part-time employees, temporary workers, agents, and any other persons performing work on behalf of or for the

benefit of an employer or other person.

## **2. CITYWIDE CIVIL WAGE THEFT ORDINANCE INTERPRETATION**

### **2.1 Authority and enforcement**

The Auditor's Office — and Denver Labor as part of the Auditor's Office — is Denver's only authority that enforces Denver's Civil Wage Theft Ordinance. Denver Labor shall employ Denver labor law when enforcing the Ordinance.

### **2.2 Other and alternate legal obligations**

Neither the Ordinance nor these Rules shall reduce any party's contractual obligations. In addition, no preexisting or future contractual obligation shall reduce wage requirements. A party may not limit an employer's mandatory wage and hour obligations by contract or any other instrument.

Neither the Ordinance nor these Rules modify or relieve any party's duties and obligations under any other municipal, state, or federal law. These Rules may address issues depicted in other portions of the Denver Municipal Code; however, unless expressly adopted by those other rules, these Rules have no effect on any other city ordinance.

Where more than one wage requirement is applicable, the greatest compensation requirement will be enforced. However, this rule does not preclude Denver Labor from enforcing multiple wage requirement violations experienced by a single worker against an employer.

Enforcement of the Ordinance does not create a relationship, contract, or other duty or liability between Denver, any worker, or any other party.

### **2.3 Concurrent legal action**

Nothing in the Ordinance or these Rules limits or prevents any party from filing a separate private civil action, initiating criminal charges or administrative investigations, or filing concurrent wage violation claims with a state or federal agency.

### **2.4 Severability**

These Rules are independent and severable. If any part of these Rules is found to violate any law or found to be invalid or in conflict with the Ordinance, such finding shall be limited as narrowly as possible, and all other parts of these Rules shall be considered valid and in effect.

### **2.5 Liberal construction of rights, narrow construction of exemptions**

Under D.R.M.C. § 58-22, the purpose of the Ordinance "is to ensure the payment of earned wages to as many workers as possible, and to limit and redress wage theft involving workers." Accordingly, these Rules shall be liberally construed,

with any exceptions or exemptions narrowly construed.

### 3. STATUTE OF LIMITATIONS, SCOPE, AND JURISDICTION

#### 3.1 Statute of limitations

Denver Labor will enforce the Ordinance for all subject worked based on the Ordinance's three-year statute of limitations. This limitations period will be tolled pursuant to Rule 6.2A.

#### 3.2 Minimum wage

Unless expressly excluded in the Ordinance or these Rules, the Denver minimum wage applies to all work performed within Denver's geographic boundaries, including work performed remotely or virtually for an employer located outside of Denver.

Applicability is based on the location where work is performed. Employers with offices or principal places of business in Denver that employ workers performing work exclusively outside Denver are not required to comply with minimum wage requirements for work performed outside Denver. Conversely, employers with offices or principal places of business outside Denver that employ workers performing work in Denver are subject to minimum wage requirements for work performed in Denver.

Denver Labor shall enforce Denver's minimum wage for all subject work performed beginning Jan. 1, 2020. The minimum wage does not apply to work performed before that date. Denver Labor will not investigate, request records, or enforce citywide minimum wage requirements for work performed before Jan. 1, 2020.

#### 3.3 Civil wage theft

Unless expressly excluded in the Ordinance or these Rules, the Civil Wage Theft Ordinance and the wage-based protections it encompasses other than the minimum wage, applies to all persons who work in Denver.

An individual "works in Denver" for purposes of the Ordinance if either:

- In an established pay period as defined in Rule 9.4, they spend a substantial amount (approximately 20% or more) of their work time in Denver; or
- They customarily spend at least 50% of their work time in Denver.

If an individual works in Denver pursuant to one of the above standards, Denver Labor will investigate all allegations of wage theft within a qualifying established pay period.

In addition, the Ordinance applies to all hours a worker performs work within Denver's geographic limits, regardless of an employer's location.

The Ordinance does not apply to a worker traveling from their home to a business or worksite or a worker traveling through Denver with no commercial stops, except for refueling, meals, or personal tasks unrelated to work.

Employers with offices or principal places of business in Denver that employ workers performing work exclusively outside Denver are not required to comply with the Ordinance. Employers should comply with other wage and labor requirements for where such work is performed. Conversely, employers with offices or principal places of business outside Denver that employ workers performing work in Denver (including remote work) are subject to wage requirements for work performed in Denver.

## 4. COMPLIANCE REQUIREMENTS

### 4.1 Employer duties

To comply with the Ordinance, employers have a duty to:

- Pay workers all lawful wages in accordance with city, state, and federal law;
- Post or distribute an Auditor-approved wage notice as detailed in Rule 4.3; and
- Maintain payroll records, as detailed in Rule 4.4.

### 4.2 Payment of lawful wages

Employers and upstream parties who benefit from a worker's labor are required to ensure all workers performing work within Denver are paid all earned wages, as promised and required by law. Where multiple wage requirements could apply (e.g., both the Denver prevailing wage and the Denver minimum wage), employers must pay the highest applicable rate.

Nothing in the Ordinance or these Rules impairs an employer or upstream party from paying any worker any unpaid wages at any time.

### 4.3 Wage notice

#### A. Required contents

Employers must provide all workers covered by the Denver Minimum Wage Ordinance or Civil Wage Theft Ordinance with an Auditor-approved wage notice detailing the Denver minimum wage, that wage theft is a crime, that workers are entitled to civil recovery of unpaid wages, and that complaints alleging wage theft may be submitted to the Auditor's Office.

#### B. Providing the wage notice

- Employers must post a wage notice in an area easily accessible to their workers, or otherwise share it in any manner reasonably calculated to provide the notice. Employers may satisfy this posting requirement by any method that will provide workers with ready access to the wage notice. This could include, but is not limited to, posting the notice in a physically-convenient location; providing it directly to each worker; or sharing it electronically. Employers must ensure that each worker receives such a notice individually in a language the worker may understand within the

first month of employment or the effective date of these Rules.<sup>1</sup>

- All employers subject to the requirements of the Ordinance, including those operating outside of Denver, must provide all covered workers with the wage notice.

#### **C. Noncompliance with wage notice requirement**

- Employers will be deemed noncompliant if they fail to provide the wage notice at all, do not provide it in accordance with Rule 4.3B, or if they attempt to minimize the effect of wage notice, such as by communicating positions contrary to, or by discouraging the exercise of rights covered in, the required notice.
- An employer that does not comply with the wage notice requirements shall be ineligible for any worker-specific credits, deductions, exemptions, or good faith defenses, but shall remain eligible for employer- or industry-wide exemptions.

#### **D. Inspections**

Denver Labor may inspect the posted notice or require production of records demonstrating an employer's distribution of individual notifications.

### **4.4 Record keeping**

Employers are required to maintain payroll or other pay records, required by local, state, or federal law, for all workers performing work for a minimum of three years.<sup>2</sup> The Ordinance requires, at a minimum, that pay records include the days and hours worked for each worker, the wages paid for work performed, any deductions made and taxes withheld, and the net pay received.<sup>3</sup> Employers should also retain records establishing where workers perform labor.

Employers falling under the jurisdiction of Denver Labor are also required to comply with CDLE Rules 7.1 through 7.3, 7 CCR 1103-1.

## **5. CITYWIDE WAGE AND HOUR CALCULATIONS**

### **5.1 Time worked**

Wage and hour requirements apply to all time worked, as defined by state statutes and rules, C.R.S Title 8, Articles 4 and 6, and the Colorado Overtime and Minimum Pay Standards, 7 CCR 1103-1.

#### **A. Travel time**

---

<sup>1</sup> Note also that employers have separate notice posting obligations under various laws enforced by the Colorado Department of Labor and Employment (CDLE).

<sup>2</sup> D.R.M.C. § 58-2(c)(1).

<sup>3</sup> D.R.M.C. § 58-1(7).

Denver labor law applies to travel time from a business location to a worksite or between worksites where the destination worksite is in Denver. The Ordinance does not apply to time spent on a worker's normal commute to work, unless such time would be compensable under state or federal law.

### **B. Paid time off**

Denver Labor Law applies to all paid breaks, vacation time, sick leave, statutorily-required employer pay for jury service, and other forms of paid leave that qualify as "wages" under city, state, or federal law.<sup>4</sup>

### **C. On-call, standby, and sleep time**

Denver labor law applies when a worker is required to be present at a business or worksite in Denver. The Ordinance does not apply to workers required to be on-call or on standby off-site, or allowed to sleep on-site, unless such on-call, standby time, or sleep would be compensable under state or federal law.

## **5.2 Minimum wage**

Denver has prescribed the following citywide minimum wage schedule:

- \$12.85 from Jan. 1, 2020 – Dec. 31, 2020.
- \$14.77 from Jan. 1, 2021 – Dec. 31, 2021.
- \$15.87 from Jan. 1, 2022 – Dec. 31, 2022.
- \$17.29 from Jan. 1, 2023 – Dec. 31, 2023.
- On January 1 in subsequent years, the minimum wage will increase by the prior year's increase in the regional consumer price index, if any.<sup>5</sup>

Denver Labor shall enforce the highest of the applicable minimum wage requirements, including Denver minimum wage, contractor minimum wage, prevailing wage, living wage, state or federal minimum wage, or federal Davis-Bacon Act wages.<sup>6</sup> The rates of these wages change on different schedules. As a result, the applicable rate may change during the term of a contract, a calendar year, or an investigation. A change in rate or applicable wage requirements is not a defense for noncompliance with any wage or labor requirement.

If an applicable minimum wage is superseded by a or other regular rate of pay, Denver Labor will enforce the higher rate.

## **5.3 Hourly rate**

Denver labor law requires all workers be paid all earned wages for all

---

<sup>4</sup> C.R.S. § 13-71-126.

<sup>5</sup> D.R.M.C. § 58-15(c)(5).

<sup>6</sup> D.R.M.C. §§ 58-15(b), 58-22.

compensable time. When evaluating wage compliance, Denver Labor will base its calculations on a worker's regular rate for the work performed.

The regular rate means the hourly rate actually paid to workers for a standard, non-overtime workweek. It includes all compensation paid to workers, including agreed-upon hourly rates, shift differentials, tip credits, non-discretionary bonuses, production bonuses, and commissions.

Business expenses, bona fide gifts, discretionary bonuses, employer investment contributions, paid time off, jury duty, and other pay for non-work hours will be excluded.

In determining the regular rate, Denver Labor will adhere to binding legal authority and refer to persuasive legal authority, including administrative decisions and guidance. Binding legal authority may include relevant and authoritative Colorado Supreme Court, state appellate court, and federal court decisions.

#### **5.4 Hourly rate for non-hourly workers**

##### **A. Workers paid weekly**

For workers paid a weekly salary or on another non-hourly basis, the regular rate for the workweek will be the total amount earned divided by hours worked, if the parties have a clear mutual understanding that their weekly pay is:

- Compensation for all hours each workweek;
- At least the applicable minimum wage for all hours in workweeks with the greatest hours;
- Supplemented by extra pay for all overtime hours, at a rate no less than 1.5x the regular rate;
- Paid for whatever hours the worker works in a workweek.

Where any of these requirements are not met, a worker's regular rate will be determined by dividing their applicable weekly pay by either hours worked or forty, whichever results in the higher rate.

#### **5.5 Rate for paid time off**

Pay during a vacation or for a paid time off benefit for a covered worker shall not be less than the greater of a worker's hourly wage or applicable minimum wage at the time of payment.

#### **5.6 Overtime**

Employers are required to pay workers a premium rate for all time worked greater than 40 hours during a seven-day period ("overtime") and/or 12 hours during a work shift/day, excluding duty-free meal periods. This premium rate shall be not less than 1.5x the applicable regular rate. For purposes of calculating overtime, paid time off that would otherwise constitute more than 40 hours worked in a week shall not

count as time worked.

### **5.7 Overtime for workers with multiple hourly rates**

Where an individual works multiple jobs for a single employer with different hourly rates in a workweek, their regular rate will be determined in one of two ways:

#### **A. Blended rate**

The worker's regular rate for that workweek will be determined by adding together all the wages earned performing each job, divided by the number of non-overtime hours worked.<sup>7</sup>

#### **B. Actual job rate**

If there is a written agreement, including a collective bargaining agreement, then a worker's regular rate for purposes of calculating overtime may be the rate for the job actually performed.

However, under no circumstances may a worker in Denver be paid less than 1.5x the applicable minimum wage for the work performed.

### **5.8 Deductions**

Deductions from wages must comport with all requirements under Colorado and federal law. Employers and/or upstream parties bear the burden of demonstrating that each deduction was permitted by law. No deduction, other than those for taxes or similar assessments or withholding to repay advances on wages, may bring workers below Denver minimum wage.

During an investigation, Denver Labor may request documentation of actual payments made to a third party to support any claimed deductions.

An employer may not deduct from a worker's pay amounts related to a prior overpayment, incorrect payment, broken or damaged property, or other amounts in connection with a civil disagreement. Nor may an employer make false deductions for benefits workers do not actually receive.

## **6. INVESTIGATIONS**

### **6.1 Statement of purpose and responsibility**

The Ordinance reflects Denver's desire to have a city free of civil wage theft.

Denver Labor will continue to adopt a flexible, multi-faceted approach to investigating, remediating, and deterring civil wage theft.

Denver Labor does not advocate for any party or any outcome in any investigation.

---

<sup>7</sup> If some roles paid less than applicable minimum wage, then Denver Labor will substitute the required wage in calculating the blended rate.

During an investigation, Denver Labor accepts and requests information related to an alleged violation of Denver law. Denver Labor applies that information and those allegations to the law to make a determination based on the available facts. The provisions in D.R.M.C. §§ 58-3 through 58-5 will apply to complaints and investigations made to and conducted by Denver Labor.

## **6.2 Complaint-based investigations**

### **A. Statute of limitations**

Complaints must be submitted within three years of the alleged civil wage theft. The statute of limitations shall be tolled during the time a worker is exhausting remedies available under an applicable collective bargaining agreement pursuant to D.R.M.C. § 58-25.

### **B. Complaints**

Individuals may report allegations of civil wage theft to Denver Labor in a variety of ways, including by:

- Completing the division’s online complaint form;
- Speaking to a representative of the division, including by calling the Auditor’s Office at 720-913-5039;
- E-mailing [wagecomplaints@denvergov.org](mailto:wagecomplaints@denvergov.org); and
- Mailing or delivering a paper copy of a complaint to the Denver Auditor’s Office.

Any person or entity may file a complaint, including workers, a city agency, community groups, labor organizations, or agents or attorneys of any of these people or entities. Complaints may be made anonymously.<sup>8</sup> Anonymous complaints will be given the same initial review as other complaints; however, anonymous complaints limit communication with the complainant and may result in limited investigations.

### **C. Complaint requirements**

Complaints must be in writing but may consist of electronic submissions. Denver Labor may assist the person or entity making a complaint. Denver Labor will provide translation services to empower workers to make a complaint in their native language.

If possible, complainants should provide the information they rely upon in asserting their allegation. This could include pay records, agreements, records of hours worked, text messages, e-mails, or other evidence of work performed, payment received, and the allegation. The complaint must include sufficient information to determine credibility and initiate an investigation.

---

<sup>8</sup> D.R.M.C. 58-3(a)(1).

#### **D. Credibility of complaints**

Before initiating an investigation, Denver Labor will determine whether a complaint is credible. A complaint will be deemed credible where it provides sufficient information to initiate a complaint, including the employer's name; what wages were promised and paid; how the wages were promised; and also plausibly alleges that:

- One or more individuals worked in Denver;
- One or more individuals were paid less than they were entitled to; and
- The alleged violation occurred within the prior three years.

The complainant bears the initial burden of demonstrating a credible complaint.<sup>9</sup> If an initial complaint is deemed not credible, Denver Labor will request additional information. In addition, Denver Labor may request additional information during an investigation. During the initial complaint review, all asserted facts will be presumed to be accurate and truthful.

#### **E. Burden of proof**

Pursuant to the Ordinance, complainants bear the burden of establishing that a violation has occurred based on a preponderance of the evidence.

Denver Labor Law requires employers to maintain records reflecting work performed. However, whenever possible, workers should keep copies of paychecks, benefits contracts, insurance cards, and timecards, and be able to identify their employers, work locations, coworkers, and agreed-to deductions, and provide Denver Labor with these documents.

Initiating investigations; scope

Denver Labor may initiate an investigation by notifying an employer and/or upstream party that it has either assessed a complaint as credible or initiated a strategic investigation.<sup>10</sup> This notice shall constitute a "notice of violation" pursuant to D.R.M.C. § 58-24(a).

When Denver Labor initiates an investigation, that investigation will not necessarily be limited to the complainant or the scope of the complaint. During an investigation, Denver Labor may investigate an employer's wage compliance for all of the employer's workers, including at multiple job sites, as long as those workers work in Denver.

There is no limit to the number of investigations involving an employer, upstream party, or worker. For the purpose of efficacy, Denver Labor may consolidate multiple investigations.

Denver Labor will keep the identities of complainants, if any, confidential until disclosure is necessary for the adjudication of a claim.

---

<sup>9</sup> D.R.M.C. 58-3(a)(3).

<sup>10</sup> See Rule 6.3.

## **F. Priority of investigations**

Denver Labor has discretion when investigating a complaint. When electing to investigate a complaint, and when prioritizing investigations, Denver Labor may consider all context, including but not limited to:

- The factual allegations;
- The timing of a complaint;
- The availability of the complainant;
- An alleged employer's egregious, willful, fraudulent, or criminal misconduct;
- An employer's remedying of any failure to comply;
- Acts of retaliation;
- The magnitude of the alleged violation;
- The number of workers potentially affected by the alleged allegation;
- Any contractual limitations that prevent or inhibit a worker's private right of action or access to the court; and
- The availability of City, Auditor's Office, and Denver Labor resources.

In general, Denver Labor will prioritize investigations involving one or more of the following:

- Multiple affected workers;
- Alleged retaliation;
- Mandatory arbitration agreements and/or class/consolidated action waivers.

### **6.3 Strategic investigations**

Denver Labor will review data relevant to implementing, administering, and enforcing the Ordinance. Such data will not necessarily be limited to information gathered or created by Denver Labor but may also include empirical research or information from other government agencies. Where Denver Labor has a reasonable basis to believe a violation has occurred, it will conduct proactive and strategic investigations to enforce city wage requirements as prescribed in D.R.M.C. §§ 58-3.

Denver Labor may initiate and prioritize investigations consistent with Rules 6.2F and 6.2G.

### **6.4 Immigration status irrelevant**

Neither Denver Labor, nor any Denver agency or Denver employee, will request information regarding any party's immigration status in response to a complaint or during an investigation. Denver Labor will not share any information it learns regarding an individual's immigration status unless specifically required to do so under applicable state and federal law. In every case, this will require a valid and

enforceable subpoena.

## **6.5 Employer records**

### **A. Access to records**

Following notification of a credible complaint, or at Denver Labor’s request, employers are required to produce certified payroll records.<sup>11</sup>

Disorganized, illegible, or incomplete records will not be accepted. The employer shall identify the records that are being produced and the reason the employer wants Denver Labor to consider the records.

Employers may provide certified payroll records electronically through the city’s electronic payroll system, LCPTracker, or any successor system.

Alternatively, employers may submit true and accurate payroll records with a notarized affidavit. The required affidavit form is available from Denver Labor upon request.

### **B. Failure to maintain or provide access to records**

There is a presumed wage violation when an employer fails to maintain or produce records within 30 days of a request for production. Such a presumption may be rebutted by production of the requested documents or other clear and convincing evidence sufficient to document compliance.

Regardless of subsequent compliance, failure to respond to requests for production may cause an employer to incur a penalty under D.R.M.C. § 58-4(c)(1).

Producing false documentation or payroll records that do not identically match supporting documentation is a violation of the Ordinance and may be subject to a penalty. Unless specifically requested by Denver Labor, employers may not create new documentation in response to a notice of investigation or a request for payroll records.

### **C. Rebuttal evidence**

Following notification of the investigation of a credible complaint, an employer or upstream party should demonstrate compliance with all applicable wage requirements.

When rebuttal evidence — including statements and affidavits — is produced, Denver Labor will determine the evidence’s authenticity and credibility. Cash payments to workers is highly discouraged and may violate requirements under applicable tax law. An unsupported statement alleging an undocumented cash payment alone is insufficient to rebut a complaint of a wage violation.

## **7. EXCEPTIONS TO DENVER MINIMUM WAGE**

---

<sup>11</sup> D.R.M.C. 58-2(c)(2)(a).

An employer or upstream party bears the burden of establishing the facts necessary to support the application of an exception to a wage obligation. An independent admission by a worker that the conditions necessary to satisfy an exception exists is sufficient evidence to support an exception.

## **7.1 General**

The Denver minimum wage does not apply to workers: 1) working outside Denver, 2) working less than four hours in Denver in a week, or 3) only traveling through Denver as part of their work.<sup>12</sup>

## **7.2 Tip Credit**

### **A. Amount**

Pursuant to the Ordinance, employers of food and beverage workers may reduce the employers' minimum wage obligation by as much as \$3.02 per hour worked for actual tips received by a worker ("Tip Credit").<sup>13</sup>

### **B. Availability**

The Tip Credit is available only as an offset for tipped food and beverage workers who regularly receive tips. No offset is granted for tips received by non-food and beverage workers. The Tip Credit must be supported by records demonstrating the actual receipt of tips equal to or greater than the Tip Credit amount. Tips must be a gratuity—a gift given by a customer for services provided. A tip cannot be a portion of a cost is retained by an employer. The Ordinance and these Rules are not meant to permit the reduction of tips or the retention of tips by an employer.

### **C. Service charges**

"Service charges" are fees imposed on customers by businesses, including restaurants, bars, and other establishments serving food and beverages, that are used to pay for services related to the primary product or service being purchased. Because service charges are not gratuities, they may not be used to reduce an employer's minimum wage obligation.

### **D. Calculation**

Compliance with the tip credit shall be calculated based on a worker's established work week. If a worker's total earnings divided by total hours worked does not equal at least the minimum wage, employers must make up the difference.

### **E. Tip sharing**

---

<sup>12</sup> D.R.M.C. § 58-15(b).

<sup>13</sup> D.R.M.C. § 58-15(c)(3).

Employers may require workers to share or allocate tips on a pre-established basis among other workers who customarily receive tips; however, employer- required sharing of tips with workers who do not customarily receive tips, such as managers or food preparers, will nullify the allowable tip credit.<sup>14</sup>

### **7.3 Certified Youth Employment Program**

Employers of unemancipated minors performing work pursuant to a city-certified youth employment program may pay such workers no less than 15% less than the required Minimum Wage, and at least:<sup>15</sup>

- \$10.93 from Jan. 1, 2020 – Dec. 31, 2020;
- \$12.56 from Jan. 1, 2021 – Dec. 31, 2021;
- \$13.49 from Jan. 1, 2022 – Dec. 31, 2022;
- \$14.70 from Jan. 1, 2023 – Dec. 31, 2023; and
- On January 1st in subsequent years, 85% of the minimum wage, which will increase annually by the prior year's increase in the regional consumer price index, if any.

The Certified Youth Employment Program exception applies only to workers who are:

- Less than 18 years old;
- Unmarried;
- Living at home with their parent or guardian; and
- Able to demonstrate they are not their sole primary provider dependent upon their own employment.

The Denver Economic Development & Opportunity agency (DEDO) will certify youth employment programs for this exception. DEDO may also enact rules and set standards for complying with certification requirements.

A youth employment program must be certified by DEDO and remain compliant with DEDO rules and standards for this exception to apply.

Both the Tip Credit and Certified Youth Employment Program exceptions may be applied together to reduce an employer's minimum wage obligation.<sup>16</sup>

The Certified Youth Employment Program exception has no effect on any other city, state, or federal wage or labor requirements.

### **7.4 Volunteers**

The Ordinance does not apply to parties performing work as bona fide

<sup>14</sup> CDLE Rule 1.10, 7 CCR 1103-1.

<sup>15</sup> D.R.M.C. § 58-15(c)(4).

<sup>16</sup> D.R.M.C. § 58-16(c)(3)-(4).

volunteers for non-profit organizations or public agencies. A worker must admit to this exception, or an employer must produce evidence of the worker's consent to perform work as a volunteer.

This exception may apply to students enrolled in an academic program who volunteer or intern as part of that program.

### **7.5 Independent contractors**

Under Division 2 of the Ordinance, independent contractors need not be paid the Denver minimum wage.

However, Division 3 applies to workers classified as independent contractors.

Individuals who qualify under the Ordinance as workers may file civil wage theft complaints with Denver Labor, even if an employer labels them as an independent contractor. Workers may recover unpaid wages under the Ordinance even if the application of another test of employment status would exclude them from recovery under a state or federal law. Bona fide independent contractors may not recover unpaid wages pursuant to statutes that do not apply to them, such as the Fair Labor Standards Act, Colorado Wage Act, and Colorado Healthy Families and Workplaces Act.

### **7.6 Exceptions not adopted**

Denver has adopted only those exceptions expressly stated in the Ordinance.

Only exceptions adopted in the Ordinance will be enforced. If changes in state or federal law create or permit additional exceptions, then Denver must adopt those exceptions before they are enforced.

## **8. COMMUNICATIONS**

During an investigation, Denver Labor will communicate with complainants, workers, employers, and upstream parties to the extent their contact information is reasonably available.

Correspondence from Denver Labor shall constitute notice of the information contained in the correspondence.

### **8.1 Complainants**

When contact information has been provided, Denver Labor will communicate the following to identified complainants and their representatives or advocates, if any:

- When a complaint is received;
- What additional information is needed to determine whether a complaint is credible or to complete an investigation;
- The determination of whether a complaint is credible and the information, if any, that is missing from the complaint to facilitate an investigation;

- Any determination made regarding a complaint;
- Any final determination following a complete review of the evidence;
- That, in a case where unpaid wages, damages, or penalties are owed, a judgment or complaint has been forwarded to a third-party for collections;
- That a determination has been appealed; and
- When a case is closed.

Anonymous complaints or complainants who fail to provide contact information will not be contacted. Denver Labor will attempt to communicate in a worker's preferred language.

## **8.2 Non-complainants**

Denver Labor will make best efforts to communicate the following to workers when a worker is not the complainant, and their contact information is reasonably available:

- That an underpayment has been determined and their employer and/or one or more upstream parties are required to pay them restitution.
- That a determination affecting them is being appealed.
- That, in a case where unpaid wages, damages, or penalties are owed, a judgment or complaint has been forwarded to a third-party for collections.

An employer is a worker's employer if, during the relevant period of time, the worker performed work on behalf of that employer.

## **8.3 Employers and upstream parties**

Denver Labor will make best efforts to communicate the following to employers and upstream parties when their contact information is reasonably available:

- Any determination that a complaint is credible or that an investigation has been initiated. Employers and upstream parties will not be contacted regarding complaints not determined credible.
- Requests for records.
- Any final determination following a complete review of the evidence.
- Any determination of underpayment or the imposition of fines and damages.
- When an investigation is closed or resolved as to an employer or upstream party.

A single correspondence may be sent to communicate for multiple purposes and to communicate multiple types of information. Denver Labor will include all known possible employers/upstream parties at the time of the correspondence. When

additional employers and/or upstream parties are identified, separate and additional correspondence will be sent.

#### **8.4 Written communications**

Denver Labor will attempt to provide all individuals or entities affected by a wage investigation with a written determination of the outcome of the investigation, including any unpaid wages and interest owed, damages assessed, and penalties imposed. This will include, but may not be limited to, complainants, direct employers, upstream parties, and any non-complainants who are entitled to money. This communication may be completed through a party's identified representative or attorney.

#### **8.5 Outside communication**

Denver Labor may refer complaints, including party statements and evidence, to state or federal wage and labor enforcement agencies, including the Denver City

Attorney and the Colorado Attorney General. Denver Labor may collaborate in investigations with state or federal wage and labor enforcement agencies. Denver Labor may voluntarily or by court order provide testimony regarding an investigation. Denver Labor may share information with state or federal wage and labor enforcement agencies.

Denver Labor will not attempt to gather any information about any individual's immigration status. If Denver Labor obtains information about an individual's immigration status, it will not share that information unless specifically required to do so as described in Rule 6.4.

## **9. DETERMINATIONS**

### **9.1 Pre-determination payment**

Before a determination is made, an employer or upstream party may voluntarily pay any wages owed to any underpaid workers. Depending on the circumstances, this may result in Denver Labor waiving discretionary statutory penalties.

### **9.2 Finality**

All determinations by Denver Labor are final. The communication of a determination does not need to expressly state "final determination" to be considered a final determination. If a determination is not properly appealed within the 30-day timeframe required by Rule 13, it shall constitute final agency action.

<b>Underpayment calculations</b>	
<b>Hourly wages and overtime</b>	
First 40 hours worked in seven-day period x [promised wage or minimum applicable wage, whichever is greater]	<b>Based on complaint</b>
+ Hours worked > [40 in a seven-day period and/or 12 in a single day] x 1.5 times the regular rate	
<b>Minimum amount owed for work performed</b>	
- The amount paid as substantiated by all parties' evidence	<b>Based on all parties' evidence</b>
- The amount of any applicable exception that lowers the employer's wage obligation	
=	<b>Underpayment amount</b>

### 9.3 Calculation of underpayment

After reviewing all available evidence, Denver Labor will determine whether an employer has violated the Ordinance and the amount of underpayment owed.

If the underpayment amount is less than or equal to \$0, then no violation occurred.

When an employer has failed to respond to requests for payroll records, Denver Labor will base its underpayment determination on available evidence.

Wages paid are calculated at the established pay period.

### 9.4 Established pay period

A pay period may start on any day of the calendar week. An established pay period is a start date and duration typically and historically used by an employer. Although an employer may use more than one pay period within a business, worker-specific pay periods may not be used to reduce minimum wage obligations or to avoid overtime. Overtime is calculated on a seven-day workweek regardless of the pay period. For the purpose of citywide wage enforcement, no employer may use a pay period greater than 30 days.

### 9.5 Tip credit calculation

The Tip Credit shall be calculated in the aggregate of hours worked and tips received for an established period of pay.

$$\begin{array}{r}
 \text{Total tips received during a workweek} \\
 \div \text{Total hours during a workweek} \\
 = \text{Hourly Tip Credit (not to exceed \$3.02)}
 \end{array}$$

### 9.6 Minimum wage compliance for non-hourly workers

Minimum wage compliance is determined based on pay received for hours worked. When a worker is not paid on an hourly basis, the same underpayment calculation will be used to determine minimum wage compliance.

## 9.7 Overtime calculations

Workers must be paid a premium rate for all time worked beyond a) 12 hours in a shift, and b) 40 hours in a week. This rate must be 1.5 times the worker's regular rate (or applicable minimum wage, whichever is higher) for the work performed.

## 9.8 Rest periods

Denver Labor will enforce rest periods in accordance with CDLE Rule 5.2, 7 CCR 1103-1, unless Denver law supersedes.

## 9.9 Vacation pay

Colo. Rev. Stat 8-4-101(14)(a)(III) defines wages, in part, to include “[v]acation pay earned in accordance with the terms of any agreement.”

For purposes of the Ordinance, “vacation pay” is paid time off, regardless of its label, that is usable at the employee’s discretion, subject only to reasonable procedural requirements such as notice and approval of particular dates. This includes employer-provided paid leave that satisfies the employer’s obligations under C.R.S. § 8-13.3-401 *et seq.*

## 9.10 Sick leave

Paid sick leave constitutes wages for purposes of the Ordinance.

## 9.11 Holiday pay

Paid time off for holidays, floating holidays, birthdays, and similar occasions constitutes wages, regardless of label.

## 9.12 Continuing violations

An underpayment determination will identify unpaid wages at the time of the determination. However, if an underpayment issue is ongoing, the underpayment will continue to increase and accrue until the case is closed or the employer ends the underlying underpayment practice.

## 10. PENALTIES

Denver Labor will impose penalties for violations of the Ordinance.

### 10.1 Non-discretionary penalties

As required by the Ordinance, Denver Labor will impose non-waivable penalties in the following circumstances and amounts:

- A. Failing to furnish certified payroll records under D.R.M.C. § 58-2(c)(2) – \$1,000.
- B. Certified payroll records contain materially false information – \$1,000 per

incident.

False reporting occurs when: 1) certified payrolls do not provide identical information as supporting documentation; 2) an employer admits to providing false, incomplete, or inaccurate information; or 3) payroll documentation is altered in any way or incomplete to depict or suggest compliance with minimum wage requirements when requirements were not met.

- C. Retaliation – \$5,000 per incident.
- D. Failure to make a good faith effort to locate and pay workers unpaid wages, including interest and damages, following a final determination – \$5,000 per worker owed more than \$50 for employer’s failure to either comply with determination and pay underpaid worker within 30 days or provide checks to Denver Labor within 45 days for unlocated employees after demonstrating a good faith effort to locate all such underpaid workers.

## 10.2 Hybrid and discretionary penalties

Pursuant to D.R.M.C. §§ 58-4(c), 58-16(d), and 58-26(e), Denver Labor has discretion to impose, and waive, other penalties for violations of the Ordinance in the following circumstances and amounts:

### A. Failure to pay minimum wage

- **First offense within a three-year period** – \$50 per affected worker, per day.
- **Second and third offenses within a three-year period** – A mandatory penalty between \$1,000 and \$2,500, plus a discretionary penalty between \$10 and \$75 per affected worker, per day.
- **Fourth and subsequent offenses within a three-year period** – A mandatory penalty between \$2,500 and \$5,000, plus a discretionary penalty between \$50 and \$100 per affected worker, per day.

Denver Labor will waive the penalty for a first offense if the employer establishes that it made a good faith mistake; the employer has not previously paid less than Denver minimum wage; and the employer corrects the error within 30 days of receiving notice. Denver Labor will also waive penalties if circumstances

- B. **Civil wage theft** – For each incident of civil wage theft, Denver Labor may apply a penalty of up to \$25,000.

“Incidents” shall be measured by established pay period and number of workers. For example:

- If an employer promises to pay a worker all earned wages as promised after one week of work, and they do not pay all earned wages, that constitutes one incident of civil wage theft.

- If an employer promises to pay a worker on a weekly basis, and does not pay them for three weeks, that constitutes three incidents of civil wage theft.

If an employer promises to pay two workers every other week and fails to pay them all earned wages as promised for four weeks, that constitutes four incidents of civil wage theft (two workers times two pay periods).

In exercising its discretion to issue civil wage theft penalties, Denver Labor will consider all relevant aggravating and mitigating factors, including but not limited to:

- Whether the employer made a good faith mistake that was corrected within 30 days of notice;
- Whether this is a first offense;
- Whether the violation reflects a pattern or practice by the employer;
- The frequency of the employer's wage theft, calculated during a 36-month period; and
- Other circumstances weighing on the employer's culpability and harm to the worker.

- C. All other violations** – Up to a \$1,000 fine for failure to comply with any other provision of the Ordinance.

### 10.3. Prior determinations

For purposes of determining appropriate penalties and damages, Denver Labor will consider prior final determinations finding that a defendant previously committed wage theft or previously contracted with an employer who committed wage theft. Such determinations may come from any authoritative decisionmaker, including a court, an administrative agency, or an arbitrator.

Denver Labor will accept such prior determinations as accurate unless an employer or upstream party establishes, by clear and convincing evidence, that:

- The prior determination is not a final determination;
- The employer was not a defendant, nor in privity with any defendant; or
- The employer did not have a full and fair opportunity to litigate the issue.

### 10.4 Late fees and interest

For penalties not paid within 30 days of assessment, Denver Labor will impose a late fee of \$25 and interest of 10% per annum.<sup>17</sup>

### 10.5 General Fund

---

<sup>17</sup> D.R.M.C. § 58-4(d).

Penalties collected are remitted to the city's General Fund. Neither the Auditor's Office, nor Denver Labor, receives any funds directly from fines collected. The number of fines collected does not financially benefit the Auditor's Office.

## 11. DAMAGES

Denver Labor will impose damages for unpaid wages. Unlike penalties, which are paid to the City's General Fund, damages will be paid to injured workers.<sup>18</sup> The primary purpose of the damages available under the Ordinance is to make workers whole for the harms of civil wage theft.

### 11.1 Mandatory interest

In every case, Denver Labor will impose interest on unpaid wages at a rate of 12% per annum.

### 11.2 Treble damages

Denver Labor will normally impose damages of up to three times unpaid wages. These damages will not be cumulative of damages available under the Fair Labor Standards Act<sup>19</sup> or Colorado Wage Act.<sup>20</sup> In no case will Denver Labor impose damages less than those that would otherwise be available under the Colorado Wage Act.

Treble damages will not be imposed if the liable party establishes, by any competent evidence, that there is no credible allegation of retaliation and either:

- There was a good faith justification for the non-payment or underpayment of wages, and full payment of unpaid wages and 150% damages is made to the worker prior to a final determination; or
- Any other circumstances exist justifying a reduction from the imposition of treble damages.

## 12. COLLECTION

### 12.1 Wages and/or damages

Employers and/or upstream parties may make payments for unpaid wages and/or damages either to workers directly or through Denver Labor. Payments for unpaid wages and damages shall be prioritized over payments for penalties.

#### A. Payment to workers

Employers and/or upstream parties must make a good faith effort to locate and pay workers all unpaid wages, and any assessed interest and damages, within 30 days of a final determination. Employers and/or upstream parties

---

<sup>18</sup> D.R.M.C. § 58-26(c).

<sup>19</sup> 29 U.S.C. § 216(b).

<sup>20</sup> Colo. Rev. Stat. § 8-4-109(3)(b).

must provide proof of payment to Denver Labor in the form of paystubs, payroll records, or canceled checks. Simply informing Denver Labor of payment will not satisfy this burden.

### **B. Payment through Denver Labor**

If an employer and/or upstream party cannot in good faith locate and pay a worker, they must make payment through Denver Labor within 45 days of a final determination. They may only do this after providing competent evidence of their good faith attempt to make direct payment.

Payment submitted to Denver Labor must be in the form of a check, payable to “[Worker’s name] or City and County of Denver.” Failure to follow this format will constitute a failure to make payment.

## **12.2 Outside counsel**

The City may employ outside counsel or a third party to collect unpaid wages, damages, and/or penalties from employers and upstream parties who fail to make restitution to workers or payments to Denver in accordance with a determination by Denver Labor. Outside counsel or third parties retained by Denver Labor for these purposes may seek and recover all additional costs and fees permitted by law.

The City may employ outside counsel when an employer who fails to make restitution or pay city fines files for bankruptcy protection.

Outside counsel and third parties employed by the City seeking enforcement of the Ordinance and collection of unpaid wage or fines may seek and recover all additional costs and fees permitted by law.

## **12.3 Joint and several liability**

The Ordinance establishes joint and several liability among a worker’s direct employer, and any other persons regularly engaged in business or commercial activity who benefited from the labor in question (“upstream parties”).

### **A. Notice**

Upon deeming a wage complaint credible, Denver Labor will make a good faith effort to identify and provide notice, via certified mail. Notice shall be deemed complete upon receipt, or 7 calendar days after mailing.

No liability to upstream parties will attach until 14 days after providing notice. Notice shall be in writing, and may be sent by the Auditor, an aggrieved party, or a person or entity authorized by agreement or law to pursue redress for an aggrieved party. Actions that would satisfy the “written demand” requirement in C.R.S. § 8-4-101(15), including as described in 7 CCR 1103-7, shall be deemed to provide notice.

### **B. Liability for upstream parties**

Under the Ordinance, upstream parties are potentially liable for unpaid wages, applicable interest, and damages. Denver Labor will apply damages to upstream

parties where doing so would serve the interests of fairness and justice.

If wages are paid within 14 days of an upstream party receiving notice, then that party will not have liability for the portion of claimed wages paid, nor applicable interest or damages. Liability for any amount of assessed unpaid wages may still travel upstream. In every instance, Denver Labor will make a reasonable, good faith effort to identify all potentially liable parties and provide notice to each of them so that they may take action to avoid liability.

For example: If a worker claims they are owed wages, and they are paid \$400 within 14 days of an upstream party being provided notice, that upstream party may not be liable for any interest or damages that might attach to that

\$400. If, however, Denver Labor assesses that the worker was owed \$500, liability as to \$100 may still attach upstream.

### **C. Collections order**

In every case, Denver Labor will first attempt to collect unpaid wages, interest, damages, and penalties from direct employers. Only after attempting to collect unpaid wages and damages will Denver Labor make efforts to collect up the chain of contracting, moving sequentially.

Example: A is a general contractor; B is a first-tier subcontractor; C is a second-tier subcontractor and the direct employer of an aggrieved worker. If Denver Labor finds that the worker has suffered wage theft, it will first attempt to collect from C, then from B, and finally from A.

## **13. APPEALS**

Any employer, upstream party, or aggrieved worker may appeal a determination by Denver Labor that affects them. A party must submit a petition for appeal to the Auditor's Office within 30 days of notice of the determination being appealed.<sup>21</sup> This petition must provide a short and plain statement for the basis of the appeal. This administrative procedure is a jurisdictional prerequisite for any additional appeal or review of any determination.<sup>22</sup>

Denver Labor may consolidate multiple appeals.

An appeal will review a determination by Denver Labor. A hearing officer shall be designated for appeal purposes and rendering a written final determination. The procedural rules for the appeal will be those adopted by Denver Labor; if none have been adopted, they will be those prescribed by the Denver Revised Municipal Code.

Following an administrative determination, a party to the matter has no more than 15 days to file for reconsideration. Absent any further appeals, the final determination on appeal shall constitute final agency action.

## **14. RESOLUTION**

---

<sup>21</sup> D.R.M.C. § 58-5(a).

<sup>22</sup> D.R.M.C. § 58-5(a).

### **14.1 Closed cases**

Denver Labor may end an investigation when:

- The case is closed following a written determination as to liability, unpaid wages, interest, damages, and/or penalties;
- The employer or an upstream party provides proof of complete restitution to all underpaid workers;
- The employer or an upstream party provides the Auditor's Office with checks for underpaid workers equal to the amount owed to all workers;
- The employer or an upstream party appeals a determination;
- A complainant fails to cooperate with or provide information to Denver Labor;
- A complainant reaches a mutually fair and satisfactory settlement and withdraws their complaint; or
- The employer or an upstream party fails to respond for 30 days to correspondence from Denver Labor or provide evidence of full restitution to affected workers.

Collection efforts may proceed even after a case is closed.

### **14.2 Settlement**

A complainant may settle a claim independent of the city and withdraw a complaint; however, withdrawal of a complaint does not relieve an employer of any mandatory fine imposed in accordance with the Ordinance.

## **15. RETALIATION**

### **15.1 Retaliation prohibited**

No person shall take any adverse action or assist any other person in taking any adverse action against any individual because that person has exercised in good faith any right protected by the Ordinance. Unlawful retaliation occurs when protected activity was a motivating factor for adverse action.

Denver Labor will vigorously investigate all credible allegations of retaliation, regardless of any individual's immigration status. Denver Labor will attempt to enforce the Ordinance's anti-retaliation protections in a manner that will make workers whole for the harm suffered.

### **15.2 Presumption of retaliation; rebuttal**

Adverse action against a party within 90 days of that party exercising a right granted or protected by the Ordinance is presumed retaliation. Such conduct shall be considered retaliation and subject to mandatory enforcement action. Presumed retaliation is only rebuttable by clear and convincing evidence the adverse action was

taken for a lawful purpose.<sup>23</sup>

### **15.3 Separate claims for retaliation**

Denver Labor shall consider retaliation complaints as separate and distinct from any potentially related complaint for the purpose of determining frequency of violations, fines, or other remediation. A wage violation is not required for a valid retaliation claim.

## **16. DATA**

Denver Labor may maintain data regarding complaints and investigations, including evidence provided or obtained during an investigation for use by the Auditor's Office.

Regarding any data collected, Denver Labor shall comply with the Colorado Open Records Act. Any waiver of any protection afforded by the Colorado Open Records Act by the Auditor's Office is expressly limited to the party and purpose for which the data is provided and, is not a waiver of any protection available for any data for any future purpose, party, or time.

Denver Labor may share with the public data collected and the results of investigations.

## **17. OUTREACH**

To create public awareness and assist in employer compliance, Denver Labor will produce educational materials and provide educational presentations.

Compliance is based on the Ordinance and these Rules. No other materials produced by the Auditor's Office, or the city, shall relieve any employer from its wage obligations. The Auditor's Office is not bound by any other materials or statements, including educational materials and statements made during community events, other than the Ordinance, any rules promulgated by DEDO pursuant to the Ordinance, and these Rules.

Denver Labor may provide or direct parties to city resources, including economic aid, human services, and community legal services. Direction to city resources is a community service provided by Denver Labor; it does not denote an interest in the outcome of an investigation or affect any determination made pursuant to the Ordinance.

---

<sup>23</sup> D.R.M.C. § 58-2(b)(3).

**Adopted and Promulgated:**



Timothy M. O'Brien, CPA

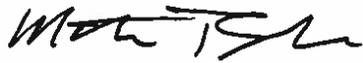
Denver Auditor

Date: March 13, 2023

**Approved as to form:**

Kerry Tipper

City Attorney for the City and County of Denver



By: Mitch Behr, Assistant City Attorney

Date: March 13, 2023

Effective Date: March 13, 2023