

TITLE 8

LABOR AND INDUSTRY

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LABOR I - DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics - Industrial Claim Appeals Office

Cross references: For the duty of the department of labor and employment with respect to the Colorado customized training program, see § 23-60-306.

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8-1-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Commission" means the industrial commission of Colorado, as said commission existed prior to July 1, 1986.

(2) "Commissioner" means one of the members of the commission.

(2.5) "Department" means the department of labor and employment.

(3) "Deputy" means any person employed by the division designated as such deputy by the director, and who may be engaged in the performance of duties under the direction of the director.

(4) "Director" means the director of the division of labor standards and statistics.

(5) "Division" means the division of labor standards and statistics in the department of labor and employment.

(6) "Employee" means every person in the service of an employer, under any contract of hire, express or implied, not including an elective official of the state, or of any county, city, town, irrigation, drainage, or school district thereof, and not including any officers or enlisted men of the National Guard of the state of Colorado.

(7) (a) "Employer" means:

(I) The state, and each county, city, town, irrigation, and school district therein, and all public institutions and administrative boards thereof having four or more employees;

(II) Every person, association of persons, firm, and private corporation, including any public service corporation, manager, personal representative, assignee, trustee, and receiver, who has four or more persons regularly engaged in the same business or employment, except as otherwise expressly provided in this article, in service under any contract of hire, expressed or implied.

(b) This article is not intended to apply to employers of private domestic servants or farm and ranch labor; nor to employers who employ less than four employees regularly in the same business, or in or about the same place of employment.

(8) "Employment" means any trade, occupation, job, position, or process of manufacture or any method of carrying on any such trade, occupation, job, position, or process of manufacture in which any person is engaged, except as otherwise expressly provided in this article.

(8.5) "Executive director" means the executive director of the department of labor and employment.

(9) "General order" means an order of the director applying generally throughout the state to all persons, employments, or places of employment under the jurisdiction of the division. All other orders of the director shall be considered special orders.

(10) "Local order" means any ordinance, order, rule, or determination of any common council, board of aldermen, board of supervisors, board of trustees, or board of commissioners of any county, town, city, or city and county operating under any general or special law of this state or of the board of health of the state or any municipality therein or any order or direction of any official of the state or municipality therein.

(11) "Order" means any decision, rule, regulation, requirement, or standard promulgated by the director.

(12) "Place of employment" means every place, whether indoors or outdoors or underground, and the premises, work places, works, and plants appertaining thereto or used in connection therewith where either temporarily or permanently any industry, trade, or business is carried on, or where any process or operation directly or indirectly relating to any industry, trade, or business is carried on, or where any person is directly or indirectly employed by another for direct or indirect gain or profit, except as otherwise expressly provided in this article.

(13) "Safe" or "safety", as applied to an employment or place of employment, means such freedom from danger to the life, health, and safety of employees and such reasonable means of notification, egress, and escape in case of catastrophe as the nature of the employment reasonably permits.

(14) "State personnel system" means the personnel system of the state as described in section 13 of article XII of the state constitution and the state personnel system as described in article 50 of title 24, C.R.S.

Source: L. 15: pp. 562, 563, §§ 1, 2, 4. L. 21: p. 828, § 2. C.L. §§ 4325, 4326, 4328. CSA: C. 97, §§ 1, 2, 4. CRS 53: §§ 80-1-1 to 80-1-3. C.R.S. 1963: §§ 80-1-1 to 80-1-3. L. 69: p. 573, §§ 18-20. L. 72: p. 601, §§ 94-96. L. 86: (1) and (11) amended and (2.5) and (8.5) added, p. 464, § 3, effective July 1. L. 2008: (14) added, p. 292, § 1, effective April 3. L. 2016: (4) and (5) amended, (HB 16-1323), ch. 131, p. 375, § 1, effective August 10.

ANNOTATION

Law reviews. For article, "The Colorado Industrial Commission and Wage Disputes", see 9 Dicta 44 (1931). For article, "Governmental Adjustment of Colorado's Industrial Disputes 1915-1930", see 3 Rocky Mt. L. Rev. 223 (1931). For note, "Use of Evidence in Hearings Before Colorado Administrative Agencies", see 29 Dicta 437 (1952).

The act establishing this article was not irregularly passed because the purpose of the bill was changed during its course through the two houses. *People v. UMW*, Dist. 15, 70 Colo. 269, 201 P. 54 (1921).

One who goes from farm to farm operating a thresher is not a farm laborer within the exception contained in subsection (7)(c) of this section. *Indus. Comm'n v. Shadowen*, 68 Colo. 69, 187 P. 926 (1920).

By its definitions, the Industrial Relations Act grants the right to strike to all employees, private and public, and concurrently places conditions on the exercise of that right. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

Reading the Industrial Relations Act with the express definitions of employer and employee in mind, it can be concluded that public employees have a qualified or conditional right to strike, as do private employees. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

Disputes in the public sector, particularly those leading to strikes, are subject to the authority of the director of

the division of labor. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

Teaching in a public school is certainly an "occupation" or "position" within the meaning of the Industrial Relations Act. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

As school districts are expressly included in the definition of employer, the director has the power to supervise the employment relationship between school districts and their teachers. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

In view of the general assembly's demonstrated ability to be selective by expressly excluding certain employers from the provisions of the Industrial Relations Act, the court cannot exclude public employers from the substantive provisions of the Industrial Relations Act, especially when those public employers are expressly included. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

Arguments advanced by the school district against the right of public employees to strike that invoke concepts of sovereignty and the control of the public purse and that are predicated on the classical distinction between the private and public sectors, are better directed to the general assembly since the plain definitions in the Industrial Relations Act include public employers and their employees. *Martin v.*

Montezuma-Cortez Sch. Dist. RE-1, 841 P.2d 237 (Colo. 1992).

The principle of statutory construction that statutes in derogation of the common law must be narrowly construed is a principle applicable only when an ambiguity in the language of the statute in question permits such narrowing construction and when the intent of the legislature is not to the contrary and cannot be invoked to defeat the plain and manifest language of the Industrial Relations Act. *Martin v. Montezuma-Cortez Sch. Dist. RE-1*, 841 P.2d 237 (Colo. 1992).

The Industrial Relations Act and the Labor Peace Act do not conflict and the court will not infer from the passage of

another act regulating collective bargaining in the private sector that the legislature intended to repeal the express provisions of the Industrial Relations Act and to return public sector labor relations to adjudication by the common law. *Martin Montezuma-Cortez Sch. Dist. RE-1*, 841 P.2d 237 (Colo. 1992).

Because the Industrial Relations Act provides the regulatory framework for the resolution of public sector labor disputes and ample statutory remedies, the common law need not be searched for remedies to resolve those disputes or claims arising from those disputes. *Martin v. Montezuma-Cortez Sch. Dist. RE-1*, 841 P.2d 237 (Colo. 1992).

8-1-102. Industrial claim appeals office - creation - powers and duties.

(1) There is created in the office of the executive director of the department of labor and employment the industrial claim appeals office, which consists of five industrial claim appeals examiners who are appointed to serve on the industrial claim appeals panel by the executive director pursuant to section 13 of article XII of the state constitution and the laws and rules governing the state personnel system. The industrial claim appeals office is a **type 2** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the office of the executive director of the department. Decisions and orders of the industrial claim appeals panel may be made by two appeals examiners. In the event of a disagreement between the two appeals examiners, a third appeals examiner shall review the case, and the decision and final order of the appeals panel shall reflect the collective decision of all three appeals examiners.

(2) The industrial claim appeals panel has the duty and the power to conduct administrative appellate review of any order entered pursuant to articles 43 and 74 of this title and to make a decision on said appeal.

Source: L. 15: p. 564, § 5. **C.L.** § 4329. **CSA:** C. 97, § 5. **CRS 53:** § 80-1-4. **C.R.S. 1963:** § 80-1-4. **L. 69:** p. 574, § 21. **L. 83:** (1) amended, p. 401, § 1, effective July 1. **L. 84:** (1) amended,

p. 298, § 1, effective July 1. **L. 86:** Entire section R&RE, p. 463, § 3, effective July 1. **L. 89:** (1) amended, p. 371, § 1, effective July 1. **L. 91:** (2) amended, p. 1291, § 1, effective July 1. **L. 92:** (1) amended, p. 1811, § 1, effective March 19. **L. 2022:** (1) amended, (SB 22-162), ch. 469, p. 3382, § 83, effective August 10.

Cross references: (1) For the powers, duties, and functions of the industrial claim appeals office, see articles 43 and 74 of this title 8.

(2) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

ANNOTATION

The increase in the number of panel members made by the 1989 amendment was not intended to result in a modification of the procedure for reviewing workers' compensation cases. Orders signed by two members are authorized and valid. *O'Gorman v. Indus. Claim Appeals Office*, 826 P.2d 390 (Colo. App. 1991).

Requiring three members to address each case would frustrate the purposes of the 1989 amendment, which were to address the heavy load of cases and the delay in resolving them. *O'Gorman v. Indus. Claim Appeals Office*, 826 P.2d 390 (Colo. App. 1991).

Industrial Claim Appeals Office is a public body within the meaning of § 2-4-110 and for decisions rendered prior to March 19, 1992, is subject to the limitation of § 2-4-110 to act through a majority of its

members. *O'Gorman v. Indus. Claim Appeals Office*, 839 P.2d 1149 (Colo. 1992).

Where Industrial Claim Appeals Panel rendered decision within statutory time limit and in good faith belief that it had authority to act, but court determines that decision rendered by the panel was ineffective because taken by only two members when a majority was required, proper course is to remand case to the panel for reconsideration. (Decided under § 8-1-102 as it existed prior to 1992 amendment.) *O'Gorman v. Indus. Claim Appeals Office*, 839 P.2d 1149 (Colo. 1992).

This section does not require or authorize the panel to entertain an untimely appeal. The procedure for perfecting an appeal to the panel is set forth exclusively in § 8-43-301 (2). *Brodeur v. Indus. Claim Appeals Office*, 159 P.3d 810 (Colo. App. 2007).

8-1-103. Division of labor standards and statistics - director - employees - qualifications - compensation - expenses.

(1) There is hereby created a division of labor standards and statistics in the department of labor and employment. Pursuant to section 13 of article XII of the state constitution, the executive director of the department of labor and employment shall appoint the director of the division, and the director shall appoint such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as are necessary to carry out the provisions of law and to perform the duties and exercise the powers conferred by law upon the division and the director. The director shall be the chief administrative officer of the division with such powers, duties, and functions as prescribed by law.

(2) All employees, except experts, shall have been for one year prior to such employment or appointment bona fide residents of this state and, while in the employ of the division, shall receive such compensation as is fixed by the state personnel system laws of this state, such compensation to be paid from funds appropriated for the use of the division. All expenses incurred by the division and its employees pursuant to the provisions of law shall be paid from funds appropriated for its use upon the approval of the director. The traveling expenses of the director or of any employee of the division incurred while on business of the division outside this state shall be paid in the manner prescribed in this subsection (2), but only when such expenses are authorized in advance.

(3) The director exercises the director's powers and performs the director's duties and functions as prescribed under this article 1, including rule-making, licensing, promulgation of rules, rates, and standards, and the rendering of findings, orders, and adjudications, under the direction and supervision of the executive director of the department of labor and employment. The director is a **type 2** entity, as defined in section 24-1-105.

(4) The director shall contribute education and workforce data beginning in the 2025-26 state fiscal year, as necessary, to the Colorado statewide longitudinal data system consistent with the governance practices established by the Colorado statewide longitudinal data system governing board pursuant to section 24-37.5-125 (4).

Source: L. 15: p. 566, § 6. **L. 21:** p. 830, § 3. **C.L.** § 4330. **CSA:** C. 97, § 6. **CRS 53:** § 80-1-5. **C.R.S. 1963:** § 80-1-5. **L. 69:** p. 574, § 22. **L. 71:** p. 106, § 18. **L. 83:** (3) added, p. 403, § 1, effective May 25. **L. 2016:** (1) amended, (HB 16-1323), ch. 131, p. 375, § 2, effective August 10. **L. 2022:** (3) amended, (SB 22-162), ch. 469, p. 3383, § 84, effective August 10. **L. 2024:** (4) added, (HB 24-1364), ch. 238, p. 1559, § 4, effective May 23; (2) amended, (HB 24-1467), ch. 430, p. 3015, § 4, effective June 5.

Cross references: (1) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

(2) For the legislative declaration in HB 24-1467, see section 1 of chapter 430, Session Laws of Colorado 2024.

ANNOTATION

The exercise of jurisdiction by the director of the division of labor, or the decision not to exercise jurisdiction, is itself subject to the restraints of the electoral process since the director is subject to the oversight of the executive director of the Department of Labor and

Employment and the executive director is in turn politically accountable, serving at the pleasure of the governor. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

Applied in *Matthews v. Indus. Comm'n*, 44 Colo. App. 159, 609 P.2d 1127 (1980).

8-1-104. Director - seal.

(1) Repealed.

(2) The director shall have a seal upon which shall be inscribed the words "Director - Division of Labor Standards and Statistics - Department of Labor and Employment - Colorado - Seal". The director's seal shall be affixed to all orders, awards, and copies thereof of the division and to such other instruments as the director shall direct.

(3) All courts of the state shall take judicial notice of said seal. Any copy of an order, award, or record of the director under his seal shall be received in all courts as evidence as if such copy were the original thereof.

Source: L. 15: p. 567, § 7. C.L. § 4331. CSA: C. 97, § 7. CRS 53: § 80-1-6. C.R.S. 1963: § 80-1-6. L. 69: p. 575, § 23. L. 86: (1) repealed and (3) amended, pp. 502, 464, §§ 125, 5, effective July 1. L. 2016: (2) amended, (HB 16-1323), ch. 131, p. 376, § 3, effective August 10.

8-1-105. Offices and supplies.

The division shall have offices in the city and county of Denver and at such other places in the state as the executive director of the department may direct. The division shall be provided with

suitable office space by the office of state planning and budgeting. The division is authorized to procure all necessary office furniture, stationery, books, periodicals, maps, instruments, apparatus, appliances, and other supplies and incur such other expenses as necessary, and the same shall be paid for in the same manner as other expenses authorized by law. The director or any deputy or referee of the division may hold sessions at any place other than the city and county of Denver when the convenience of the director, deputy, referee, or parties interested requires.

Source: L. 15: p. 567, § 8. C.L. § 4332. CSA: C. 97, § 8. CRS 53: § 80-1-7. C.R.S. 1963: § 80-1-7. L. 69: p. 575, § 24. L. 75: Entire section amended, p. 818, § 5, effective July 18. L. 86: Entire section amended, p. 464, § 6, effective July 1.

8-1-106. Records - sessions.

(1) Repealed.

(2) The division shall keep a full and accurate record of all proceedings of the division and issue all necessary processes, writs, warrants, orders, awards, and notices as the director or any deputy or referee may require. The director shall supervise the collection of data and information concerning matters within the jurisdiction of the division and shall make such reports thereon as the executive director of the department of labor and employment may require.

(3) The sessions of the director or any deputy or referee of the division shall be open to the public and shall stand and be adjourned without further notice thereof on the record. All proceedings of the division shall be shown on its records, which shall be public records.

Source: L. 15: p. 567, § 9. C.L. § 4333. CSA: C. 97, § 9. CRS 53: § 80-1-8. C.R.S. 1963: § 80-1-8. L. 69: p. 575, § 25. L. 86: (3) amended and (1) repealed, pp. 464, 502, §§ 7, 125, effective July 1.

8-1-107. Powers and duties of director - rules.

(1) Repealed.

(2) In addition to any other duties prescribed by law, the director has the duty and the power to:

(a) Appoint advisors who, without compensation, shall advise the director relative to the duties imposed upon the director by articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S.;

(b) Inquire into and supervise the enforcement, with respect to relations between employer and employee, of the laws relating to child labor, laundries, stores, factory inspection, employment offices and bureaus, and fire escapes and means of egress from places of employment and all other laws protecting the life, health, and safety of employees in employments and places of employment;

(c) to (h) Repealed.

(i) Accept, use, disburse, and administer all federal aid or other property, services, and moneys allotted to the division as part of any grant-in-aid safety program authorized by an act of congress and to make such agreements, not inconsistent with any act of congress and the laws of this state, as may be required as a condition precedent to receiving such funds or other assistance. Such acceptance, conditions, and agreement shall not be effective unless and until the director has recommended to and received the written approval of the governor and the executive director of the department. The state treasurer is designated custodian of all funds received pursuant to this paragraph (i) from the federal government, and he shall hold such funds separate and distinct from state funds and is authorized to make disbursements from such funds for the designated purpose or administrative costs which may be provided in such grants-in-aid, upon warrants issued by the controller and upon the voucher of the director.

(j) Repealed.

(k) Collect and collate statistical and other information relating to the work under his jurisdiction. All materials of the division circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S. The director shall cause to be printed and, upon application, furnished free of charge to any employer or employee such blank forms as he shall deem required for the proper and efficient administration of articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S., all such records to be kept in the offices of the division. Copies of orders, regulations, and rules of procedure shall be made for distribution in a manner to constitute sufficient publication as required by law.

(l) to (o) Repealed.

(p) Adopt reasonable and proper rules and regulations relative to the exercise of his powers and proper rules and regulations to govern the proceedings of the division and to regulate the manner of investigations and hearings and to amend said rules and regulations from time to time in his discretion. Such rules and regulations, and amendments thereto, shall be made in accordance with section 24-4-103, C.R.S.

(q) Repealed.

(r) Promulgate rules to implement the provisions of section 26-2-716 (3)(b), C.R.S.

Source: L. 15: p. 568, § 11. L. 21: p. 831, § 4. C.L. § 4335. CSA: C. 97, § 11. CRS 53: § 80-1-9. L. 56: p. 158, § 1. C.R.S. 1963: § 80-1-9. L. 64: p. 147, § 80. L. 69: p. 576, § 26. L. 73: p. 917, § 2. L. 75: (1)(f), (2)(c), (2)(d), and (2)(l) amended, (1)(g) and (2)(m) added, and (1)(b), (1)(c), and (1)(d) repealed, pp. 274, 286, §§ 1, 2, 22, effective July 25. L. 77: (2)(a) and (2)(k) amended, p. 414, § 1, effective June 1; (2)(n) added, p. 418, § 1, effective June 1; (2)(b) amended, p. 416, § 1, effective June 9; (2)(b) amended, p. 428, § 1, effective July 1. L. 80: (2)(d) amended and (2)(c), (2)(e), (2)(l), and (2)(m) repealed, pp. 449, 451, §§ 1, 6, effective April 13. L. 81: (1)(d) R&RE, p. 457, § 1, effective March 27; (1)(h) added, p. 509, § 1, effective July 1. L. 83: (2)(a) and (2)(k) amended, p. 700, § 2, effective June 10; (2)(j) and (2)(k) amended, p. 825, § 2, effective July 1. L. 84: (2)(f) and (2)(g) repealed, p. 1116, § 2, effective June 7. L. 85: (1)(g) amended, p. 337, § 2, effective July 1. L. 86: (2)(a), (2)(d), (2)(i), and (2)(k) amended and (2)(o) and (2)(p) added, p. 465, § 8, effective July 1; (1) repealed, p. 502, § 125, effective July 1. L. 91: (2)(h) repealed, p. 1291, § 2, effective July 1. L. 95: (2)(q) added, p. 418, § 3, effective July 1. L. 97: (2)(j) repealed, p. 1473, § 5, effective June 3; (2)(r) added, p. 1239, § 34, effective July 1. L. 2001: (2)(d), (2)(n), (2)(o), and (2)(q) repealed, p. 1139, § 67, effective June 5.

ANNOTATION

Law reviews. For comment on the administrative review of workmen's compensation claims, see 45 U. Colo. L. Rev. 195 (1973).

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions under this section to the division of labor.

The industrial commission has no power to appoint to an office that does not exist, nor to draw upon the employment agency fund to pay an appointee thereto. *Stong v. Milliken*, 76 Colo. 515, 233 P. 154 (1925).

There are no provisions under article I of the industrial commission act under which one can obtain damages from an employer. *Indus. Comm'n v. Sheard*, 170 Colo. 76, 459 P.2d 127 (1969).

Commission not stripped of authority to hold hearings and make findings. The general assembly did not intend to strip the commission of its general authority to hold hearings and make findings of fact, although such language was deleted from § 8-53-106 (2) by amendment in 1973. There are numerous other references within the workmen's compensation act to the commission's general authority to hold hearings and make factual findings. *Harrison W. Corp. v. Hicks' Claimants*, 185 Colo. 142, 522 P.2d 722 (1974).

The authority of the director in subsection (2)(d) to "enforce the provisions of §§ 22-32-124 and 23-71-122" relating to building inspections is not exclusive but may also be taken by a fire protection district absent the school district or junior college district's exercise of

authority to contract with a qualified fire inspector. *West Adams County Fire v. Adams County Sch. Dist. 12*, 926 P.2d 172 (Colo. App. 1996).

Applied in *Matthews v. Indus. Comm'n*, 44 Colo. App. 159, 609 P.2d 1127 (1980).

8-1-108. Orders effective - when - validity presumed.

(1) All general orders shall be effective ten days after they are adopted by the director and posted upon the bulletin board of the division in its offices in the city and county of Denver. Special orders shall take effect as therein directed.

(2) The director, upon application of any person, may grant such time as may be reasonably necessary for compliance with any order. Any person may petition the director for an extension of time, which the director shall grant if he finds such an extension of time necessary.

(3) All orders of the division shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this article, or until altered or revoked by the director.

(4) Substantial compliance with the requirements of this article shall be sufficient to give effect to the orders or awards of the director, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature with respect thereto.

Source: L. 15: p. 570, § 12. L. 21: p. 834, § 5. C.L. § 4336. CSA: C. 97, § 12. CRS 53: § 80-1-10. C.R.S. 1963: § 80-1-10. L. 69: p. 577, § 27. L. 72: p. 602, § 97. L. 86: (1) and (3) amended, p. 1223, § 39, effective July 1; (4) amended, p. 466, § 9, effective July 1.

Cross references: For the nonapplicability of this section to the "Labor Peace Act", see § 8-3-123.

8-1-109. Employer to furnish safe place to work. (Repealed)

Source: L. 15: p. 570, § 13. C.L. § 4337. CSA: C. 97, § 13. CRS 53: § 80-1-11. C.R.S. 1963: § 80-1-11. L. 73: p. 919, § 3. L. 75: Entire section repealed, p. 286, § 22, effective July 25.

8-1-110. Unsafe places - investigation - report - order. (Repealed)

Source: L. 15: p. 571, § 14. C.L. § 4338. CSA: C. 97. CRS 53: § 80-1-12. C.R.S. 1963: § 80-1-12. L. 69: p. 578, § 28. L. 72: p. 602, § 98. L. 73: p. 919, § 4. L. 75: Entire section repealed, p. 286, § 22, effective July 25.

8-1-111. Jurisdiction over employer and employee relation.

The director is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state as may be necessary adequately to ascertain and determine the conditions under which the employees labor, and the manner and extent of the obedience by the employer to all laws and all lawful orders requiring such employment and places of employment to be safe, and requiring the protection of the life, health, and safety of every employee in such employment or place of employment, and to enforce all provisions of law relating thereto. The director is also vested with power and jurisdiction to administer all provisions of this article with respect to the relations between employer and employee and to do all other acts and things convenient and necessary to accomplish the purposes of this article including entering into reciprocal agreements with other states and governmental entities.

Source: L. 15: p. 571, § 15. C.L. § 4339. CSA: C. 97, § 17. CRS 53: § 80-1-15. C.R.S. 1963: § 80-1-15. L. 69: p. 578, § 29. L. 72: p. 602, § 99. L. 93: Entire section amended, p. 867, § 1, effective May 6.

ANNOTATION

The Industrial Relations Act unequivocally vests the director with jurisdiction over "every employment".
Martin v. Montezuma-Cortez Sch. Dist. RE-

1, 841 P.2d 237 (Colo. 1992); Weissman v. Crawford Rehab. Servs., 914 P.2d 380 (Colo. App. 1995).

8-1-112. Officers to assist in enforcing orders.

It is the duty of all officers and employees of the state, counties, and municipalities, upon request of the director, to enforce in their respective departments all lawful orders of the director, insofar as the same may be applicable and consistent with the general duties of such officers and

employees. It is also their duty to make such reports as the director may require concerning matters within their knowledge pertaining to the purposes of this article and to furnish to the division such facts, data, statistics, and information as may from time to time come to them pertaining to the purposes of this article and the duties of the division thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of this article as regards the health, protection, and safety of employees and the conditions under which they labor. It is the duty of the division to collect and compile such data, facts, and information as shall come to it concerning the relations between employer and employee and relating in any way to the provisions of this article.

Source: L. 15: p. 571, § 16. C.L. § 4340. CSA: C. 97, § 18. CRS 53: § 80-1-16. C.R.S. 1963: § 80-1-16. L. 69: p. 578, § 30. L. 72: p. 603, § 100.

Cross references: For the duty of governmental officers and employees to enforce orders and furnish information pursuant to the "Workers' Compensation Act of Colorado", see § 8-47-110.

8-1-113. Agents of division and director - powers.

(1) For the purpose of making any investigation with regard to any employment or place of employment or other matter contemplated by the provisions of this article, the director, with the approval of the executive director of the department of labor and employment, has the power to appoint temporarily, by an order in writing, any deputy or any other competent person as an agent, whose duties shall be prescribed in such order.

(2) In the discharge of his duties such agent has every power whatsoever for obtaining information granted in this article to the director and the division, and all powers granted by law to officers authorized to take depositions are granted to such agent.

(3) The director may conduct any number of investigations contemporaneously through different agents and may delegate to such agents the taking of all testimony bearing upon any investigation or hearing. The decision of the director shall be based upon his examination of all testimony and records. The recommendations made by such agent shall be advisory only and shall not preclude any further investigation or the taking of further testimony if the director so orders.

Source: L. 15: p. 572, § 17. C.L. § 4341. CSA: C. 97, § 19. CRS 53: § 80-1-17. C.R.S. 1963: § 80-1-17. L. 69: p. 579, § 31. L. 72: p. 603, § 101.

8-1-114. Employers and employees to furnish information - penalty.

(1) Upon request, every employer and employee shall furnish the division all information required by it to accomplish the purposes of this article, which information shall be furnished on blanks to be prepared by the division. It is the duty of the division to furnish such blanks to the employer free of charge upon request therefor. Every employer receiving from the division any blanks, with directions to fill out same, shall answer fully and correctly all questions therein propounded and give all the information therein sought, or, if unable to do so, he shall give in writing good and sufficient reasons for the failure. The director may require that the information required to be furnished be verified under oath and returned to the division within the period fixed by him or by law. The director, or any person employed by the division for that purpose, has the right to examine, under oath, any employee or employer, or the officer, agent, or employee thereof, for the purpose of ascertaining any information which such employer or employee is required by this article to furnish to the division.

(2) Any employer or employee who fails or refuses to furnish information as may be required by the division under authority of this article 1 shall pay a penalty of not less than fifty dollars for each day that the failure or refusal continues. The division shall transmit any penalty imposed and collected pursuant to this section to the state treasurer, who shall credit the money to the wage theft enforcement fund created in section 8-4-113 (3).

Source: L. 15: p. 572, § 18. C.L. § 4342. CSA: C. 97, § 20. CRS 53: § 80-1-18. C.R.S. 1963: § 80-1-18. L. 69: p. 579, § 32. L. 72: p. 603, § 102. L. 2022: (2) amended, (SB 22-161), ch. 370, p. 2626, § 1, effective August 10.

8-1-115. Information not public - penalty for divulging.

(1) (a) The information contained in the reports lawfully required to be furnished by the employer in section 8-1-114, other information furnished to the division by employers and employees in pursuance of this article 1, and information obtained through inspections or other proceedings under this article 1 that reveals a trade secret is for the exclusive use and information of the division in the discharge of its official duties. An employer may designate information submitted to the division as proprietary, a trade secret, or privileged information in accordance with section 24-72-204 (3), as long as the director is not bound by the employer's designation. The director may treat and file the information or any part of the information as confidential, and, when so treated or filed by the director, the information is confidential, for the sole use of the division, and not open to the public nor to be used in any court in any action or proceeding pending therein unless the division is a party to the action or proceeding. The court shall issue

orders as appropriate to protect the confidentiality of trade secrets. The information contained in a report may be tabulated and published by the division in statistical form for the use and information of other state departments and the public.

(b) Notwithstanding subsection (1)(a) of this section, the division shall treat any notice of citation or notice of assessment issued to an employer for violation of a wage law, including a violation of section 8-4-111 (2)(c), after all remedies have been exhausted pursuant to section 8-4-111.5, as a public record and shall release the information to the public upon request pursuant to the "Colorado Open Records Act", part 2 of article 72 of title 24, unless the director makes a determination that the information is a trade secret. Before releasing any information relating to the violation of a wage law, the director shall notify the employer of the potential release of the information. The employer then has twenty days to provide the director with further documentation demonstrating that the information, or specific matters included in the information, is a trade secret. If the director, in the director's discretion, determines that the information, or any portion of the information, is a trade secret, the director shall treat the information as confidential under this subsection (1). For purposes of this subsection (1)(b), "trade secret" has the same meaning as set forth in section 7-74-102 (4).

(2) Any person in the employ of the division who divulges any confidential information to any person other than the director commits a civil infraction and shall thereafter be disqualified from holding any appointment or employment with any department under the state.

(3) Pursuant to this section, the director shall provide a physical environment and establish policies and procedures to ensure confidentiality for all information regarding any employer, employee, or person pertaining to any action pursuant to articles 1 to 13 of this title; except that such information may be released if there exists an overriding need for access to such information arising pursuant to articles 1 to 13 of this title in connection with:

- (a) A dispute resolution, a mediation, or an administrative or judicial proceeding; or
- (b) A cooperative effort with another subdivision of government.

Source: L. 15: p. 573, § 19. L. 21: p. 835, § 6. C.L. § 4343. CSA: C. 97, § 21. CRS 53: § 80-1-19. C.R.S. 1963: § 80-1-19. L. 69: p. 580, § 33. L. 72: p. 604, § 103. L. 73: p. 919, § 5. L. 75: (1) amended, p. 275, § 3, effective July 25. L. 80: (1) amended, p. 449, § 2, effective April 13. L. 86: (2) amended, p. 466, § 10, effective July 1. L. 93: (3) added, p. 867, § 2, effective May 6. L. 2017: (1) amended, (HB 17-1021), ch. 126, p. 433, § 1, effective April 13. L. 2021: (2) amended, (SB 21-271), ch. 462, p. 3136, § 71, effective March 1, 2022.

Cross references: For the "Uniform Trade Secrets Act", see article 74 of title 7.

8-1-116. Investigators to have access to premises - penalty.

(1) The director and any other person authorized in writing by the director at any reasonable time may enter any building, surface construction and demolition, factory, workshop, place, or premises of any kind wherein, or in respect of which, any industry except mining is carried on, any work is being or has been done or commenced, or any matter or thing is taking place which has been made the subject of any investigation, hearing, or arbitration by the division; inspect any work, material, machinery, appliance, or article therein; and interrogate any persons in or upon any such building, factory, workshop, place, or premises, except mines, mine workings, and ore milling operations, with respect to any matter or thing mentioned in this article.

(2) Any person who hinders or obstructs the director or any person authorized by the director in the exercise of any power conferred by this article 1, or any employer who in bad faith refuses reasonable access to the employer's premises, or any person who gives advance notice of any inspection to be conducted under this article 1 without authority from the director or the director's designee is subject to a penalty of not less than fifty dollars for each day that the conduct continues. The division shall transmit any penalty imposed and collected pursuant to this section to the state treasurer, who shall credit the money to the wage theft enforcement fund created in section 8-4-113 (3).

Source: L. 15: p. 574, § 20. C.L. § 4344. CSA: C. 97, § 22. CRS 53: § 80-1-20. C.R.S. 1963: § 80-1-20. L. 69: p. 580, § 34. L. 73: p. 920, § 6. L. 75: Entire section amended, p. 275, § 4, effective July 25. L. 77: (1) amended, p. 416, § 2, effective June 9. L. 80: Entire section amended, p. 450, § 3, effective April 13. L. 2021: (2) amended, (SB 21-271), ch. 462, p. 3136, § 72, effective March 1, 2022. L. 2022: (2) amended, (SB 22-161), ch. 370, p. 2626, § 2, effective August 10.

8-1-117. Director to have access to books - penalty.

(1) All books, records, and payrolls of employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts, and statistics appertaining to the purposes of this article shall always be open for inspection by the director or any of his deputies or agents for the purpose of ascertaining the conditions of employment and such other information as may be necessary for the uses and purposes of the director in his administration of the law.

(2) Any employer that refuses to exhibit and furnish to the director or any agents of the division an inspection of any books, records, and payrolls of the employer, showing or reflecting

in any way upon the amount of wage expenditure of the employer, and other data, facts, and statistics appertaining to the purposes of this article 1 or that refuses to admit the director or any agent of the division to any place of employment shall pay a penalty of not less than fifty dollars for each day that the failure, neglect, or refusal continues. The division shall transmit any penalty imposed and collected pursuant to this section to the state treasurer, who shall credit the money to the wage theft enforcement fund created in section 8-4-113 (3).

Source: L. 15: p. 574, § 21. L. 21: p. 835, § 7. C.L. § 4345. CSA: C. 97, § 23. CRS 53: § 80-1-21. C.R.S. 1963: § 80-1-21. L. 69: p. 580, § 35. L. 72: p. 604, § 104. L. 2022: (2) amended, (SB 22-161), ch. 370, p. 2627, § 3, effective August 10.

Cross references: For the right of the director to have access to books of employers under the "Workers' Compensation Act of Colorado", see § 8-47-208.

ANNOTATION

Law reviews. For article, "The the Standpoint of the Claimant", see 28 Occupational Disease Disability Act from Dicta 41 (1951).

8-1-118. Rules of evidence - procedure.

The director, or persons designated by him, shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as provided in this article or by the rules of the division, but he may make such investigations in such manner as in his judgment are best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this article.

Source: L. 15: p. 574, § 22. C.L. § 4346. CSA: C. 97, § 24. CRS 53: § 80-1-22. C.R.S. 1963: § 80-1-22. L. 69: p. 581, § 36. L. 72: p. 604, § 105. L. 86: Entire section amended, p. 466, § 11, effective July 1.

ANNOTATION

Law reviews. For note, "Right of Cross- Agencies in Colorado", see 29 Dicta 446 Examination Before Administrative (1952). For note, "The Right to Cross-

Examine Adverse Witnesses as a Part of Due Process in Hearings Before Colorado Agencies", see 31 Dicta 383 (1954). For note, "The Admissibility of Hearsay in Hearings Before Workmen's Compensation Commissions", see 31 Dicta 423 (1954).

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment to this section vesting in the director of the division of labor powers and duties previously exercised by the industrial commission.

This section cannot be so construed as to wipe out basic and fundamental rules governing the competency of evidence required to establish a fact in all judicial or quasi-judicial proceedings and which are essential ingredients of due process of law. A right created by statute cannot be denied where the sole support for that denial is evidence which under the law of the land has been held incompetent by the courts. Neither can a liability created by law attach where the only support therefor is incompetent evidence, to the introduction of which proper objection is made. *Williams v. New Amsterdam Cas. Co.*, 136 Colo. 458, 319 P.2d 1078 (1957).

For this section means that, while the industrial commission's inquiry is not limited by the common law or statutory rules of evidence or by technical or formal rules of procedure and that it may, in its discretion, accept any evidence that is offered, in the end there must be a residuum of legal evidence to support the claim before an award can be made. *Williams v. New*

Amsterdam Cas. Co., 136 Colo. 458, 319 P.2d 1078 (1957).

However, it is not required that the residuum of legal evidence should independently of hearsay evidence establish an accident, as the sufficiency of the residuum of legal evidence cannot be measured by the mechanical formula. *Williams v. New Amsterdam Cas. Co.*, 136 Colo. 458, 319 P.2d 1078 (1957).

Rather, there must be evidence setting forth facts of a probative character outside of hearsay statements to prove the award and show it is fair and just. *Williams v. New Amsterdam Cas. Co.*, 136 Colo. 458, 319 P.2d 1078 (1957).

And reviewing courts may not interfere with the findings of the commission if there is competent probative evidence in support thereof. It is only when the showing made is without probative force and effect, or is of such a character as not to constitute any legitimate evidence, that the award will be disturbed. *Williams v. New Amsterdam Cas. Co.*, 136 Colo. 458, 319 P.2d 1078 (1957).

Industrial commission is not bound to follow rigid rules of evidence in justly administering the workmen's compensation act. *San Isabel Elec. Ass'n v. Bramer*, 182 Colo. 15, 510 P.2d 438 (1973).

Admission of hearsay evidence by claimant was proper where testimony was merely cumulative and augmented competent evidence so as not to vitiate findings. *San Isabel Elec. Ass'n v. Bramer*, 182 Colo. 15, 510 P.2d 438 (1973).

Introduction of evidence and examination of witnesses by employer's representative. Hearings are sufficiently informal so as to permit the employer's representative to question witnesses and introduce evidence when invited to do so by a hearing officer. *Ross v. Indus. Comm'n*, 39 Colo. App. 204, 566 P.2d 367 (1977).

This section does not prescribe procedures for review of decisions made by hearing officers or purport to alter what constitutes final agency action. *Colo. Workers for Innovative v. Gherardini*, 2023 COA 80, 540 P.3d 950.

8-1-119. Record of proceedings.

(1) A full and complete record shall be kept of all proceedings had before or under the order of the director on any investigation, and all testimony shall be taken down by a shorthand reporter appointed by the director.

(2) A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation or hearing taken by a shorthand reporter appointed by the director, being certified by such shorthand reporter to be a true and correct transcript of the testimony, or a specific part thereof, on the investigation or hearing of a particular witness, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation or hearing so purporting to be taken and subscribed, may be received as evidence by the director or any agent of the division and by any court with the same effect as if such shorthand reporter were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of fifty cents per folio.

Source: L. 15: p. 575, § 23. L. 21: p. 836, § 8. C.L. § 4347. CSA: C. 97, § 25. CRS 53: § 80-1-23. C.R.S. 1963: § 80-1-23. L. 69: p. 581, § 37. L. 75: (2) amended, p. 291, § 1, effective July 25. L. 82: Entire section amended, p. 620, § 5, effective April 2. L. 86: (2) amended, p. 466, § 12, effective July 1.

8-1-120. Depositions.

In any investigation, the director or any other party may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in district courts. All such depositions shall be taken upon commission issued by the director and shall be taken in accordance with the laws and rules of court covering depositions in civil cases in the district courts of this state.

Source: L. 15: p. 575, § 24. C.L. § 4348. CSA: C. 97, § 26. CRS 53: § 80-1-24. C.R.S. 1963: § 80-1-24. L. 69: p. 581, § 38.

Cross references: For depositions in general, see C.R.C.P. 26-37; for the nonapplicability of this section to the "Labor Peace Act", see § 8-3-123.

8-1-121. Contempt - punishment - fees.

(1) In case of failure or refusal of any person to comply with an order of the director or subpoena issued by him or his agents, or refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refusal to permit an inspection as provided in this article, the judge of the district court for the county in which the person resides or of the county in which said person has been ordered to appear and testify before said director, on application of the director or any person appointed by him, shall compel obedience by attachment proceedings as in the case of disobedience of the requirements of a subpoena issued from such district court or on a refusal to testify therein.

(2) Any person serving a subpoena or order shall receive the same fees as a sheriff for like service. Such subpoena or order may be served by any officer duly authorized to subpoena witnesses, or by any person designated by the director for such purpose, and proof of the serving of such subpoena or order shall be by the return of such person or officer endorsed thereon or attached thereto. Each witness who appears in answer to a subpoena before the director or his agent, if so ordered by the director, shall receive for his attendance the fees and mileage provided for in civil cases in the district court in the county where such witness attends which shall be paid in the same manner as other expenses of the division are paid.

(3) No witness subpoenaed at the instance of a party other than the director or his agent shall be entitled to compensation unless the director in his discretion shall so order.

Source: L. 15: p. 575, § 25. L. 21: p. 837, § 9. C.L. § 4349. CSA: C. 97, § 27. CRS 53: § 80-1-25. C.R.S. 1963: § 80-1-25. L. 69: p. 581, § 39. L. 72: p. 605, § 106.

Cross references: For contempt proceedings, see C.R.C.P. 107; for sheriff's fees, see § 30-1-104; for witness fees and mileage fees, see §§ 13-33-102 and 13-33-103.

8-1-122. Inquiries - scope - report.

(1) The director shall inquire into the general condition of labor in the principal industries in the state of Colorado and especially in those which are carried on in corporate forms; into existing relations between employers and employees; into the effect of industrial conditions on public welfare and into the rights and powers of the community to deal therewith; into the conditions of sanitation and safety of employees and the provisions for protecting the life, limb, and health of the employees; into relations existing between lessees of state lands and the state as to production and royalties or rentals paid and the relations between said lessees and their employees with respect to wages paid and conditions of labor; into the growth of associations of employers and wage earners and the effect of such associations upon the relations between employers and employees; into the extent and results of methods of collective bargaining; into any methods which have been tried in any state or in foreign countries for maintaining mutually satisfactory relations between employees and employers; into methods of avoiding or adjusting labor disputes through peaceable and conciliatory mediation and negotiations; and into the scope, methods, and resources of existing bureaus of labor and possible ways of increasing their efficiency and usefulness.

(2) The director shall seek to discover the underlying causes of dissatisfaction in the industrial situation, take all necessary means and methods within the powers of such director as provided by law, to alleviate the same, and report such remedial legislation as in the judgment of the director may be advisable, with his recommendations thereon. Such report shall accompany the annual report required in section 8-1-107 (2)(j).

Source: L. 15: p. 576, § 26. C.L. § 4350. CSA: C. 97, § 28. CRS 53: § 80-1-26. C.R.S. 1963: § 80-1-26. L. 64: p. 147, § 81. L. 69: p. 582, § 40.

ANNOTATION

Annotator's note. The case included in the annotations to this section which refers to the industrial commission was decided prior to the 1969 amendment to this section vesting in the director of the division of labor powers and duties previously exercised by the industrial commission.

This section contains broad investiture of power in the industrial commission of its own volition to inquire into the general

conditions of labor in the principal industries of the state. *Indus. Comm'n v. People ex rel. Metz*, 86 Colo. 377, 281 P. 742 (1929).

But powers are limited and decisions may be set aside. While the commission is invested with broad and comprehensive powers in the investigation, adjustment, and settlement of labor disputes, its powers are limited and its decisions may be set aside by the courts where there is a manifest abuse of

discretion, as where the commission has acted in excess of its powers or where its findings are not supported by the evidence. *Indus. Comm'n v. People ex rel. Metz*, 86 Colo. 377, 281 P. 742 (1929).

The director may inquire into the existing relations between school districts

and their teachers, may collect any information regarding such relationship, and may develop policies aimed at avoiding or adjusting disputes arising within that relationship in order to further the purposes of the Industrial Relations Act. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

8-1-123. Arbitration.

The director shall do all in his power to promote the voluntary arbitration, mediation, and conciliation of disputes arising under an existing written agreement between employers and employees and to avoid the necessity of resorting to strikes, lockouts, boycotts, blacklists, discriminations, and legal proceedings in matters of employment. Arbitration undertaken pursuant to this section shall employ the procedures provided in part 2 of article 22 of title 13, C.R.S.

Source: L. 15: p. 577, § 27. C.L. § 4351. CSA: C. 97, § 29. CRS 53: § 80-1-27. C.R.S. 1963: § 80-1-27. L. 69: p. 582, § 41. L. 75: Entire section R&RE, p. 578, § 2, effective July 14.

Cross references: For the illegality of blacklists and boycotts, see §§ 8-2-110 and 8-2-112; for the nonapplicability of this section to the "Labor Peace Act", see § 8-3-123.

ANNOTATION

Annotator's note. The case included in the annotations to this section which refers to the industrial commission was decided prior to the 1969 amendment to this section vesting in the director of the division of labor powers and duties previously exercised by the industrial commission.

This section contains broad investiture of power in the industrial commission to promote voluntary arbitration and conciliation of disputes to avoid the

necessity of resorting to strikes and lockouts. *Indus. Comm'n v. People ex rel. Metz*, 86 Colo. 377, 281 P. 742 (1929).

Undoubtedly the chief purpose of the exercise of the director's jurisdiction under the Industrial Relations Act is to avoid the necessity of resorting to strikes, lockouts, boycotts, blacklists, discriminations, and legal proceedings in matters of employment. *Martin v.*

Montezuma-Cortez Sch. Dist. RE-1, 841 P.2d 237 (Colo. 1992).

Disputes over written contracts, or the lack thereof, between school districts as employers and teachers as employees may

lead to legal proceedings which the director may seek to avoid by voluntary arbitration and mediation or conciliation. Martin v. Montezuma-Cortez Sch. Dist. RE-1, 841 P.2d 237 (Colo. 1992).

8-1-124. Witnesses - rules of evidence. (Repealed)

Source: L. 15: p. 577, § 28. C.L. § 4352. CSA: C. 97, § 30. CRS 53: § 80-1-28. C.R.S. 1963: § 80-1-128. L. 69: p. 583, § 42. L. 75: Entire section repealed, p. 578, § 3, effective July 14.

8-1-125. Disputes - jurisdiction - request for intervention - penalty.

(1) The director may exercise jurisdiction over any dispute between employer and employee affecting conditions of employment, or with respect to wages or hours, only when the employer and the employee request such intervention or when the dispute, as determined by the executive director, affects the public interest, and such jurisdiction shall continue until after the final hearing of such dispute and the entry of the final award therein or until said director shall enter an order disposing of or terminating such jurisdiction. The relation of the employer and employee shall continue uninterrupted by the dispute or anything arising out of the dispute until the final determination thereof by said director; and neither the employer nor any employee affected by any such dispute shall alter the conditions of employment with respect to wages or hours or any other condition of said employment; neither shall they, on account of such dispute, do or be concerned in doing directly or indirectly anything in the nature of a lockout or strike or suspension or discontinuance of work or employment.

(2) A request for intervention shall be submitted to the director by both the employer and the employee and shall set forth the facts, issues, or demands involved in the controversy or dispute, and each party to such dispute shall furnish the director such information within the time and as may be requested by the director.

(3) If either party uses this or any other provision of articles 1 to 18 of this title and part 3 of article 34 of title 24, C.R.S., for the purpose of unjustly maintaining a given condition of affairs through delay, such party is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(4) The director shall proceed with reasonable diligence in hearing all disputes and shall render a final award or decision therein without unnecessary delay.

Source: L. 15: p. 578, § 29. L. 21: p. 838, § 10. C.L. § 4353. CSA: C. 97, § 31. CRS 53: § 80-1-29. C.R.S. 1963: § 80-1-29. L. 69: p. 583, § 43. L. 77: (7) amended, p. 414, § 2, effective June 1. L. 83: (7) amended, p. 700, § 3, effective June 10. L. 86: (7) amended, p. 466, § 13, effective July 1. L. 90: Entire section R&RE, p. 461, § 1, effective May 24.

ANNOTATION

Law reviews. For article, "Some Legal Aspects of the Colorado Coal Strike", see 4 Den. B. Ass'n Rec. 22 (Dec. 1927). For article, "The Regional Transportation District Strike and the Colorado Labor Peace Act: A Study in Public Sector Collective Bargaining", see 54 U. Colo. L. Rev. 203 (1983).

The Industrial Relations Act guarantees that there is no absolute right to strike by public employees in Colorado and that once the director takes jurisdiction of a labor dispute, the status quo shall be maintained since so long as the director has jurisdiction of a labor dispute, several tiers of substantive and procedural conditions on the right to strike, which determine when public employees may exercise their right to strike, preclude the dangers otherwise inherent to an absolute right to strike. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

"Conditions of employment" does not include matters such as union representation and picketing. *People ex rel. Shaffer v. Teamsters Local 961*, 175 Colo. 187, 486 P.2d 10 (1971).

Rather "conditions of employment" refers to conditions existing at "places of

employment" which directly affect the physical safety, health, and welfare of employees. *People ex rel. Shaffer v. Teamsters Local 961*, 175 Colo. 187, 486 P.2d 10 (1971).

Director of division of labor and employment had jurisdiction to continue teachers' employment conditions during labor dispute. The teachers selected their association as their representative and the relationship between the association and the school district is essentially that of employer and employee. *Denver Classroom Teachers Ass'n v. Sch. Dist. No. 1*, 921 P.2d 70 (Colo. App. 1996).

School district's duty to deduct teachers association dues was a "condition of employment" and was within the director's order that the school district and teachers association not alter conditions of employment during labor dispute. *Denver Classroom Teachers Ass'n v. Sch. Dist. No. 1*, 921 P.2d 70 (Colo. App. 1996).

Strike unlawful where workers do not give notice. *Indus. Comm'n v. People ex rel. Metz*, 86 Colo. 377, 281 P. 742 (1929).

8-1-126. Lockouts and strikes unlawful - when.

(1) It is unlawful for any employee in the state personnel system or for any labor organization, through formal action or through its agents, to incite, encourage, aid, or participate in a strike, stoppage of work, slowdown, or interruption of operations by employees in the state personnel system.

(2) It is unlawful for any employer to declare or cause a lockout, or for any employee to go on strike, on account of any dispute prior to or during an investigation, hearing, or arbitration of such dispute by the director, or the board, under the provisions of this article. Nothing in this article shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lockout or strike, or to prohibit the suspension or discontinuance of any industry or of the working of any person therein, which industry is not affected with a public interest. Nothing in this article shall be held to restrain any employer from declaring a lockout, or any employee, except an employee who is in the state personnel system, from going on strike in respect to any dispute after the same has been duly investigated, heard, or arbitrated, under the provisions of this article.

Source: L. 15: p. 578, § 30. L. 21: p. 840, § 11. C.L. § 4354. L. 23: p. 721, § 2. CSA: C. 97, § 32. L. 41: p. 531, § 1. CRS 53: § 80-1-30. C.R.S. 1963: § 80-1-30. L. 69: p. 584, § 44. L. 72: p. 605, § 107. L. 2008: Entire section amended, p. 292, § 2, effective April 3.

ANNOTATION

Law reviews. For article, "Public Employee Strikes in Colorado: The Supreme Court Adopts a New Rule", see 22 Colo. Law. 1 (1993).

This section is constitutional only because it excludes from its operation all business "not affected with a public interest" as that phrase is usually interpreted and applied. People v. UMW, Dist. 15, 70 Colo. 269, 201 P. 54 (1921); People ex rel. Indus. Comm'n v. Aladdin Theater Corp., 96 Colo. 527, 44 P.2d 1022 (1935).

And one reason for holding a business to be affected with a public interest is that it is a practical monopoly. People v. UMW, Dist. 15, 70 Colo. 269, 201 P. 54 (1921).

Coal mining is affected with a public interest. People v. UMW, Dist. 15, 70 Colo. 269, 201 P. 54 (1921), distinguishing In re Morgan, 26 Colo. 415, 58 P. 1071 (1899).

This section provides for the situation where negotiations between school districts and their teachers over salaries and services may reach an impasse and a strike may appear to the teachers as the only

remaining alternative, by forbidding a strike while the director maintains jurisdiction but permitting a strike after that jurisdiction terminates should the employees deem a strike to be in their best interests. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

This section provides that nothing in the Industrial Relations Act shall be construed to restrain any employee from striking in any dispute over which the director's jurisdiction is concluded, and when the director terminated jurisdiction, the teachers were free to exercise their right to strike or not according to their view of their best interests. *Martin v. Montezuma-Cortez Sch. Dist.* RE-1, 841 P.2d 237 (Colo. 1992).

While the theater business is not included in the phrase "affected with a public interest" it is not so easy to say what is included. Many attempts to do so have been made by the courts, but the theater business cannot pass the test of any. Perhaps

the best discussion of the subject is to be found in *Wolff Packing Co. v. Court of Indus. Relations*, 262 U.S. 522 (1923). Such being the correct interpretation of the phrase in question, the entire controversy is disposed of by *Tyson & Bro. v. Banton*, 273 U.S. 418 (1927), holding the theater business not affected with a public interest. *People ex rel. Indus. Comm'n v. Aladdin Theater Corp.*, 96 Colo. 527, 44 P.2d 1022 (1935).

A charge in the language of the statute is sufficient. *People v. Fontuccio*, 73 Colo. 288, 215 P. 145 (1923).

This section was held not pertinent to determining whether employees were qualified for unemployment compensation benefits when their unemployment was due to a labor dispute where the director of labor was enjoined by a federal court from taking any further action in the proceeding. *Kania v. Shaffer*, 31 Colo. App. 538, 506 P.2d 384 (1972).

8-1-127. When findings or awards are binding. (Repealed)

Source: L. 15: p. 579, § 31. L. 21: p. 840, § 12. C.L. § 4355. CSA: C. 97, § 33. CRS 53: § 80-1-31. C.R.S. 1963: § 80-1-31. L. 69: p. 584, § 45. L. 72: p. 605, § 108. L. 75: Entire section repealed, p. 578, § 3, effective July 14.

8-1-128. Petition - writ - dissolution.

The director of the division, as petitioner, may file in the district court of the city and county of Denver, or of any county in which the place of employment or any part thereof is situated, a verified petition against any employers or employees, or both, as respondents, and setting forth any violation or threatened or attempted violation of any provisions of section 8-1-125 or 8-1-

126, and, thereupon, without bond and without notice, the district court shall issue its mandatory writ enjoining the alleged violations, or attempted or threatened violations of this article, and ordering and requiring the respondents to maintain all the conditions of employment in status quo and without change until after the dispute or controversy has been investigated and heard by the director and the final findings, decision, order, or award of the director made and entered. Any respondent may move the court to dissolve the mandatory writ as to that respondent, and, upon at least five days' notice to the director, the motion shall be set down for hearing, but the mandatory writ shall not be dissolved without proof of full compliance by the respondent with all the provisions of this article and orders of the director and that the continuance in effect of the mandatory writ is causing or will cause the respondent great and irreparable injury. The court may require such security of the respondent as the court determines adequate to enforce obedience to the provisions of this article on the part of the respondent before the mandatory writ is dissolved.

Source: L. 15: p. 579, § 32. L. 21: p. 841, § 13. C.L. § 4356. CSA: C. 97, § 34. L. 41: p. 532, § 2. CRS 53: § 80-1-32. C.R.S. 1963: § 80-1-32. L. 69: p. 584, § 46. L. 72: p. 605, § 109. L. 2016: Entire section amended, (HB 16-1323), ch. 131, p. 376, § 4, effective August 10.

ANNOTATION

"Conditions of employment" does not include matters such as union representation and picketing. People ex rel. Shaffer v. Teamsters Local 961, 175 Colo. 187, 486 P.2d 10 (1971).

Rather, "conditions of employment" refers to conditions existing at "places of employment" which directly affect the physical safety, health, and welfare of

employees. People ex rel. Shaffer v. Teamsters Local 961, 175 Colo. 187, 486 P.2d 10 (1971).

The director of the division of labor has no authority to enjoin peaceful picketing under this section while unfair labor practice charges are pending. People ex rel. Shaffer v. Teamsters Local 961, 175 Colo. 187, 486 P.2d 10 (1971).

8-1-129. Strikes and lockouts - penalties.

(1) Any employer declaring or causing a lockout contrary to the provisions of this article 1 commits a class 2 misdemeanor. Each day or part of a day that such lockout exists shall constitute a separate offense under this section.

(2) Any employee who goes on strike contrary to the provisions of this article 1 commits a class 2 misdemeanor. Each day or part of a day that the employee is on strike shall constitute a separate offense under this section.

(3) Any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike contrary to the provisions of this article 1, commits a petty offense.

Source: L. 15: p. 580, § 33. L. 21: p. 842, § 14. C.L. § 4357. CSA: C. 97, § 35. CRS 53: § 80-1-33. C.R.S. 1963: § 80-1-33. L. 72: p. 606, § 110. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3137, § 73, effective March 1, 2022.

Cross references: For the penalty for a class 2 misdemeanor, see § 18-1.3-501; for the penalty for a petty offense, see § 18-1.3-503.

ANNOTATION

This section is not in violation of § 10 of art. II, Colo. Const., concerning freedom of speech. *People v. UMW*, Dist. 15, 70 Colo. 269, 201 P. 54 (1921).

Information charging violation of this section in language of statute held sufficient. *People v. Fontuccio*, 73 Colo. 288, 215 P. 145 (1923).

8-1-130. Judicial review.

The director has full power to hear and determine all questions within his jurisdiction, and his findings, award, and order issued thereon shall be final agency action. Any person affected by any finding, order, or award of the director may seek judicial review as provided in section 24-4-106, C.R.S.

Source: L. 15: p. 580, § 34. C.L. § 4358. CSA: C. 97, § 36. CRS 53: § 80-1-34. C.R.S. 1963: § 80-1-34. L. 69: p. 585, § 47. L. 72: p. 606, § 111. L. 86: Entire section amended, p. 467, § 14, effective July 1.

ANNOTATION

Annotator's note. The case included in the annotations to this section that refers to the industrial commission was decided prior to the enactment of 1986 Senate Bill No. 12 that abolished said commission and transferred some of its powers, duties, and functions under the workmen's compensation act to the division of labor.

Commission not stripped of authority to hold hearings and make findings. The general assembly did not intend to strip the commission of its general authority to hold hearings and make findings of fact, although such language was deleted from § 8-53-106

(2) by amendment in 1973. There are numerous other references within the workmen's compensation act to the commission's general authority to hold hearings and make factual findings. *Harrison W. Corp. v. Hicks' Claimants*, 185 Colo. 142, 522 P.2d 722 (1974).

Nothing in this section addresses the delegation of decision-making authority to a hearing officer or what review procedures apply to decisions issued by hearing officers. *Colo. Workers for Innovative v. Gherardini*, 2023 COA 80, 540 P.3d 950.

8-1-131. Review - notice - evidence - order. (Repealed)

Source: L. 15: p. 580, § 34. C.L. § 4358. CSA: C. 97, § 36. CRS 53: § 80-1-34. C.R.S. 1963: § 80-1-34. L. 69: p. 585, § 47. L. 72: p. 606, § 111. L. 86: Entire section repealed, p. 502, § 125, effective July 1.

8-1-132. Final findings and awards - interlocutory orders - modification. (Repealed)

Source: L. 15: p. 581, § 36. C.L. § 4360. CSA: C. 97, § 37. CRS 53: § 80-1-36. L. 86: Entire section repealed, p. 502, § 125, effective July 1.

8-1-132.5. Fact-finding by commission - workmen's compensation. (Repealed)

Source: L. 81: Entire section added, p. 476, § 1, effective May 26. L. 86: Entire section repealed, p. 1223, § 40, effective July 1.

8-1-133. Court to modify or vacate - venue. (Repealed)

Source: L. 15: p. 581, § 37. C.L. § 4361. CSA: C. 97, § 39. CRS 53: § 80-1-137. C.R.S. 1963: § 80-1-37. L. 86: Entire section repealed, p. 502, § 125, effective July 1.

8-1-134. Review - complaint - answer - hearing. (Repealed)

Source: L. 15: p. 582, § 38. C.L. § 4362. CSA: C. 97, § 40. CRS 53: § 80-1-38. C.R.S. 1963: § 80-1-38. L. 69: p. 586, § 50. L. 86: Entire section repealed, p. 502, § 125, effective July 1.

8-1-135. Cause referred back to director and commission - procedure. (Repealed)

Source: L. 15: p. 582, § 39. C.L. § 4363. CSA: C. 97, § 41. CRS 53: § 80-1-39. C.R.S. 1963: § 80-1-39. L. 69: p. 587, § 51. L. 86: Entire section repealed, p. 502, § 125, effective July 1.

8-1-136. Setting aside order of director or commission. (Repealed)

Source: L. 15: p. 583, § 40. C.L. § 4364. CSA: C. 97, § 42. CRS 53: § 80-1-40. C.R.S. 1963: § 80-1-40. L. 69: p. 587, § 52. L. 86: Entire section repealed, p. 502, § 125, effective July 1.

8-1-137. Appellate review. (Repealed)

Source: L. 15: p. 584, § 41. C.L. § 4365. CSA: C. 97, § 43. CRS 53: § 80-1-41. C.R.S. 1963: § 80-1-41. L. 69: p. 588, § 53. L. 86: Entire section repealed, p. 502, § 125, effective July 1.

8-1-138. Fees - costs - counsel for director or commission. (Repealed)

Source: L. 15: p. 584, § 42. C.L. § 4366. CSA: C. 97, § 44. CRS 53: § 80-1-42. C.R.S. 1963: § 80-1-42. L. 69: p. 588, § 54. L. 72: p. 607, § 113. L. 86: Entire section repealed, p. 502, § 125, effective July 1.

8-1-139. Failure of witness to appear or testify - penalty - repeal. (Repealed)

Source: L. 15: p. 585, § 43. L. 21: p. 843, § 15. C.L. § 4367. CSA: C. 97, § 45. CRS 53: § 80-1-43. C.R.S. 1963: § 80-1-43. L. 69: p. 588, § 55. L. 86: Entire section amended, p. 467, § 15, effective July 1. L. 2021: (3) added by revision, (SB 21-271), ch. 462, pp. 3137, 3331, §§ 74, 803.

Editor's note: Subsection (3) provided for the repeal of this section, effective March 1, 2022. (See L. 2021, pp. 3137, 3331.)

8-1-140. Violation - penalty.

(1) If an employer, employee, or any other person violates any provision of this article 1, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined for which no penalty has been specifically provided, such employer, employee, or any other person commits a petty offense.

(2) If any employer, employee, or any other person fails, refuses, or neglects to perform any duty lawfully enjoined within the time prescribed by the director or fails, neglects, or refuses to obey any lawful order made by the director or any judgment or decree made by any court as provided in this article 1, for each such violation, the employer, employee, or any other person shall pay a penalty of not less than one hundred dollars for each day the violation, failure, neglect, or refusal continues. The division shall transmit any penalty imposed and collected pursuant to this section to the state treasurer, who shall credit the money to the wage theft enforcement fund created in section 8-4-113 (3).

(3) In the case of a corporation, the violation of any of the provisions of this article, including any violation fixed as a misdemeanor or other crime, is considered a violation of the provisions of this article by all officers, agents, and representatives of said corporation aiding, abetting, advising, encouraging, participating, inciting, or acquiescing in such violation, and they are individually guilty of such violation and subject to the fines, penalties, and punishments provided in this article.

Source: L. 15: p. 585, § 44. L. 21: p. 843, § 16. C.L. § 4368. CSA: C. 97, § 46. CRS 53: § 80-1-44. C.R.S. 1963: § 80-1-44. L. 69: p. 589, § 56. L. 72: p. 607, § 114. L. 86: (2) amended, p. 467, § 16, effective July 1. L. 2021: (1) amended, (SB 21-271), ch. 462, p. 3137, § 75, effective March 1, 2022. L. 2022: (2) amended, (SB 22-161), ch. 370, p. 2627, § 4, effective August 10.

8-1-141. Each day separate offense.

Every day during which any employer or officer or agent thereof or any employee fails to comply with any lawful order of the director or to perform any duty imposed by this article constitutes a separate and distinct violation thereof.

Source: L. 15: p. 585, § 45. C.L. § 4369. CSA: C. 97, § 47. CRS 53: § 80-1-45. C.R.S. 1963: § 80-1-45. L. 69: p. 589, § 57. L. 72: p. 608, § 115. L. 86: Entire section amended, p. 467, § 17, effective July 1.

8-1-142. Collection of penalties.

All penalties provided for in this article 1 shall be collected in a civil action brought against the employer or employee in the name of the director, which civil action may be an administrative action or a judicial action authorized by law. Any fine provided in this article 1 is considered a penalty and recoverable in a civil action as provided in this section unless the violation of this article 1, for the punishment of which said fine is provided, is designated as a misdemeanor or other crime.

Source: L. 15: p. 585, § 46. L. 21: p. 844, § 17. C.L. § 4370. CSA: C. 97, § 48. CRS 53: § 80-1-46. C.R.S. 1963: § 80-1-46. L. 69: p. 589, § 58. L. 72: p. 608, § 116. L. 2022: Entire section amended, (SB 22-161), ch. 370, p. 2627, § 5, effective August 10.

8-1-143. Costs - counsel for director - attorney general and district attorney to enforce.

(1) In proceedings to review any finding, order, or award, costs as between the parties shall be allowed in the discretion of the court, but no costs may be taxed against the director or the division.

(2) In any action for the review of any finding, order, or award and upon appellate review thereof, it is the duty of the district attorney of the county wherein said action is pending, or the attorney general if requested by the director, to appear on behalf of the division, whether any other party defendants should have appeared or been represented in the action or not. Upon request of the director, the attorney general or the district attorney of any district or county shall institute and prosecute the necessary proceedings for the enforcement of any of the provisions of this article, or for the recovery of any money due the division, or any penalty provided for in this article, and shall defend in like manner all suits, actions, or proceedings brought against the director. No district attorney or any assistant or deputy district attorney, nor the attorney general or deputy or assistant attorney general within this state, shall appear in any proceedings, hearing, investigation, arbitration, award, or compensation matter, except as attorney for and on behalf of said director and employees of the division.

Source: L. 15: p. 586, § 47. L. 21: p. 845, § 18. C.L. § 4371. CSA: C. 97, § 49. CRS 53: § 80-1-47. C.R.S. 1963: § 80-1-47. L. 69: p. 589, § 59. L. 72: p. 608, § 117. L. 86: Entire section R&RE, p. 467, § 18, effective July 1.

ANNOTATION

Immediate threat of enforcement under this section is not constitutionally required for declaratory judgment.

Resident Participation, Inc. v. Love, 322 F. Supp. 1100 (D. Colo. 1971).

8-1-144. Penalty for false statements.

If, for the purpose of obtaining any order, benefit, or award under the provisions of this article, either for himself or herself or for any other person, anyone willfully makes a false statement or representation, he or she commits a class 5 felony, as defined in section 18-1.3-401, C.R.S.

Source: L. 15: p. 586, § 48. C.L. § 4372. CSA: C. 97, § 50. CRS 53: § 80-1-48. C.R.S. 1963: § 80-1-48. L. 72: pp. 561, 608, §§ 26, 118. L. 89: Entire section amended, p. 821, § 4, effective July 1. L. 2002: Entire section amended, p. 1466, § 16, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

8-1-145. Authority of department of public health and environment not affected.

Nothing in this article shall be construed to affect the authority of the department of public health and environment relative to the public health.

Source: L. 15: p. 586, § 50. C.L. § 4373. CSA: C. 97, § 51. CRS 53: § 80-1-49. C.R.S. 1963: § 80-1-49. L. 69: p. 589, § 60. L. 72: p. 609, § 119. L. 94: Entire section amended, p. 2721, § 311, effective July 1.

8-1-146. Effect of transfer of powers, duties, and functions.

(1) Repealed.

(2) The division of labor standards and statistics, the division of employment and training, the division of unemployment insurance, the state board of pharmacy, and the industrial claim appeals panel in the industrial claim appeals office, which perform any of the powers, duties, and functions performed by the industrial commission prior to its abolishment on July 1, 1986, are the successors in every way with respect to those powers, duties, and functions, except as otherwise provided in this article or by law. Every act performed in the exercise of those powers, duties, and functions has the same force and effect as if performed by the commission prior to July 1, 1986. Whenever the commission is referred to or designated by any law, contract, insurance policy, bond, or other document, the reference or designation applies to the division of labor standards and statistics, the division of employment and training, the division of unemployment insurance, the state board of pharmacy, or the industrial claim appeals panel in the industrial claim appeals office, as the case may be.

Source: L. 69: p. 662, § 252. C.R.S. 1963: § 80-1-50. L. 86: Entire section amended, p. 468, § 19, effective July 1; entire section amended, p. 531, § 26, effective July 1, 1987. L. 91: (1) amended, p. 1907, § 5, effective June 1. L. 2002: (1) repealed, p. 1880, § 22, effective July 1. L. 2012: (2) amended, (HB 12-1120), ch. 27, p. 104, § 9, effective June 1. L. 2016: (2) amended, (HB 16-1323), ch. 131, p. 376, § 5, effective August 10.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012,

by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-1-147. Actions, suits, or proceedings not to abate by reorganization - maintenance by or against successors. (Repealed)

Source: L. 69: p. 662, § 253. C.R.S. 1963: § 80-1-51. L. 86: Entire section amended, p. 469, § 20, effective July 1; entire section amended, p. 531, § 27, effective July 1, 1987. L. 91: (1) amended, p. 1908, § 6, effective June 1. L. 2002: (1) amended, p. 1880, § 23, effective July 1. L. 2012: Entire section repealed, (HB 12-1120), ch. 27, p. 104, § 10, effective June 1.

Editor's note: The effective date for the repeal of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-1-148. Rules, regulations, rates, and orders adopted prior to article - abolishment of commission - continued.

(1) All rules, regulations, rates, orders, and awards of the commission lawfully adopted prior to July 1, 1969, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(2) All rules, regulations, rates, orders, and awards of the commission lawfully adopted prior to July 1, 1986, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: L. 69: p. 662, § 254. C.R.S. 1963: § 80-1-52. L. 86: Entire section amended, p. 469, § 21, effective July 1.

8-1-149. Transfer of officers, employees, and property. (Repealed)

Source: **L. 69:** p. 662, § 255. **C.R.S. 1963:** § 80-1-53. **L. 86:** Entire section amended, p. 469, § 22, effective July 1; entire section amended, p. 531, § 28, effective July 1, 1987. **L. 91:** (1) amended, p. 1908, § 7, effective June 1. **L. 2002:** (1) amended, p. 1880, § 24, effective July 1. **L. 2012:** Entire section repealed, (HB 12-1120), ch. 27, p. 104, § 10, effective June 1.

Editor's note: The effective date for the repeal of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-1-150. Licensing functions subject to periodic review. (Repealed)

Source: **L. 79:** Entire section added, p. 1609, § 1, effective June 7. **L. 83:** Entire section repealed, p. 701, § 5, effective June 10.

8-1-151. Public safety inspection fund created.

There is hereby created in the state treasury a fund, to be known as the public safety inspection fund, which shall consist of moneys credited thereto pursuant to sections 8-20-104, 8-20-1002, and 9-7-108.5, C.R.S. All moneys in the public safety inspection fund shall be subject to annual appropriation by the general assembly for the public safety inspection activities of the division of oil and public safety. The moneys in the public safety inspection fund shall not be credited or transferred to the general fund or any other fund of the state.

Source: **L. 85:** Entire section added, p. 337, § 1, effective July 1. **L. 86:** Entire section amended, p. 470, § 23, effective July 1. **L. 2001:** Entire section amended, p. 1140, § 68, effective June 5. **L. 2008:** Entire section amended, p. 984, § 1, effective May 21; entire section amended, p. 1020, § 1, effective May 21. **L. 2009:** Entire section amended, (HB 09-1151), ch. 230, p. 1060, § 13, effective January 1, 2010.

Editor's note: Amendments to this section by Senate Bill 08-051 and House Bill 08-1103 were harmonized.

8-1-152. Applications for licenses - authority to suspend licenses - rules.

(1) Every application by an individual for a license issued by the department or any authorized agent of the department shall require the applicant's name, address, and social security number.

(2) The department or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department or any authorized agent of the department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

Source: L. 97: Entire section added, p. 1262, § 2, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

8-1-153. Private employers - veterans' preference hiring policy - definitions.

(1) As used in this section:

(a) "Eligible individual" means:

(I) A veteran with a disability who has a one hundred percent permanent and total disability rating if the date of hiring is within ten years after the veteran's date of discharge;

(II) A veteran, a veteran with a less than one hundred percent permanent and total disability rating, a member of the military reserves, or a member of the National Guard who received discharge document DD214 if the date of hiring is within five years after the date of discharge; or

(III) The spouse of a service member killed in the line of duty if the date of hiring is within five years after the date of the death of the service member.

(b) "Private employer" means a private, nonpublic person that employs one or more employees within the state.

(c) "Veteran" has the same meaning as set forth in section 8-14.3-202 (8).

(d) "Veterans' preference hiring policy" means a private employer's preference for hiring an eligible individual if the eligible individual is at least as qualified as the other applicants.

(e) "Veteran with a disability" means a veteran who has a compensable, service-connected disability as adjudicated by the United States department of veterans affairs or the appropriate branch of the armed forces.

(2) A private employer may adopt and apply a veterans' preference hiring policy if:

(a) The private employer applies the veterans' preference hiring policy uniformly to all hiring decisions;

(b) The private employer requires a veteran to provide proof of service by furnishing a copy of the veteran's discharge document DD214;

(c) The private employer requires the spouse of a service member killed in the line of duty to furnish proof of marriage to the service member killed in the line of duty and a copy of the service member's discharge document DD214 and the death certificate; and

(d) The veterans' preference hiring policy is in writing, public, and implemented at least fourteen days before it is applied to any new job posting or new hiring decision.

(3) The adoption and application of a veterans' preference hiring policy by a private employer in accordance with this section creates a rebuttable presumption that such policy is not a discriminatory or unfair employment practice in violation of part 4 of article 34 of title 24.

(4) (a) On or before September 1, 2021, the Colorado office of economic development shall begin the development of production materials to educate and encourage employers to hire veterans.

(b) The general assembly shall appropriate twenty-five thousand dollars from the general fund to the Colorado office of economic development, created in section 24-48.5-101, for allocation to the Colorado office of film, television, and media, created in section 24-48.5-115, for the purposes of this subsection (4).

(5) A private employer may advertise for and actively recruit veterans to apply for employment with the private employer regardless of whether the private employer adopts a veterans' preference hiring policy.

Source: L. 2021: Entire section added, (HB 21-1065), ch. 295, p. 1757, § 1, effective September 7.

Labor Relations

ARTICLE 2

Labor Relations, Generally

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PART 1

GENERAL PROVISIONS

8-2-101. Combination of employees for peaceable objects lawful.

It is not unlawful for any two or more persons to unite, combine, or agree in any manner, to advise or encourage, by peaceable means, any persons to enter into any combination in relation to entering into or remaining in the employment of any person or corporation, or in relation to the amount of wages or compensation to be paid for labor, or for the purpose of regulating the hours of labor, or for the procuring of fair and just treatment from employers, or for the purpose of aiding and protecting their welfare and interests in any other manner not in violation of the

constitution of this state or the laws made in pursuance thereof. This section shall not be so construed as to permit two or more persons, by threats of either bodily or financial injury, or by any display of force, to prevent or intimidate any other person from continuing in such employment as he may see fit, or to boycott or intimidate any employer of labor.

Source: L. 1889: p. 92, § 1. R.S. 08: § 3924. C.L. § 4150. CSA: C. 97, § 64. CRS 53: § 80-4-1. C.R.S. 1963: § 80-11-1.

Cross references: For unfair labor practices, see § 8-3-108.

ANNOTATION

This section limits combinations of employees to lawful purposes, some of which are specifically mentioned, and does not permit an unlawful combination in restraint of trade. *Denver Jobbers' Ass'n v. People ex rel. Dickson*, 21 Colo. App. 326, 122 P. 404 (1912).

In certain circumstances Colorado labor law protections for employees held preempted by federal law. *Thayer v. McDonald*, 781 P.2d 190 (Colo. App. 1989).

8-2-102. Coercion of employees unlawful.

It is unlawful for any individual, company, or corporation or any member of any firm, or an agent, officer, or employee of any company or corporation to prevent employees from forming, joining, or belonging to any lawful labor organization, union, society, or political party, or to coerce or attempt to coerce employees by discharging or threatening to discharge them from their employ or the employ of any firm, company, or corporation because of their connection with such lawful labor organization, union, society, or political party.

Source: L. 1897: p. 156, § 1. R.S. 08: § 3925. C.L. § 4151. CSA: C. 97, § 65. CRS 53: § 80-4-2. C.R.S. 1963: § 80-11-2.

ANNOTATION

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986).

Section is plain as to limit in its application to particular classes of persons. Resident Participation, Inc. v. Love, 322 F. Supp. 1100 (D. Colo. 1971).

Where employment offers were made to commence employment on a certain date and individuals failed to report to work on that date due to union strike, such individuals are not employees protected by this section. DeJean v. United Airlines, Inc., 839 P.2d 1153 (Colo. 1992).

8-2-103. Penalty for coercing employees.

Any person or any member of any firm or an agent, officer, or employee of any such company or corporation, violating the provisions of section 8-2-102 commits a class 2 misdemeanor.

Source: L. 1897: p. 156, § 2. **R.S. 08:** § 3926. **C.L.** § 4152. **CSA:** C. 97, § 66. **CRS 53:** § 80-4-3. **C.R.S. 1963:** § 80-11-3. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3138, § 76, effective March 1, 2022.

Cross references: For the penalty for a class 2 misdemeanor, see § 18-1.3-501.

8-2-104. Obtaining workmen by misrepresentation unlawful.

It is unlawful for any person, company, corporation, society, association, or organization of any kind doing business in this state, by itself or its agents or attorneys, to induce, influence, persuade, or engage workmen to change from one place of employment to another in this state, or to bring workmen of any class or calling into this state to work in any of the departments of labor in this state, through or by means of false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of the employment, or as to the existence or nonexistence of a strike or lockout pending between employer and employees, or failure to state in any advertisement, proposal, or contract for the employment that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such strike, lockout, or other labor trouble then actually exists at such place, and it is deemed false advertisement and misrepresentation for the purposes of sections 8-2-104 to 8-2-107.

Source: L. 11: p. 486, § 1. C.L. § 4156. CSA: C. 97, § 71. CRS 53: § 80-4-4. C.R.S. 1963: § 80-11-4.

ANNOTATION

This section authorizes a claim for statutory fraud. Pittman v. Larson Distrib. Co., 724 P.2d 1379 (Colo. App. 1986).

No cause of action for misrepresentation where employee lived in Colorado before and after employment with defendant. Vaske v. DuCharme, McMillan & Assocs., Inc., 757 F. Supp. 1158 (D. Colo. 1990).

This section contemplates a strike, lockout, or other labor trouble that is in actual existence. The fact that the potential for such a dispute exists because a new collective bargaining agreement was being negotiated, combined with fact that potential employer told potential employees they were to be hired after new labor agreement was negotiated, does not allow individuals to claim that they were hired under false

pretenses concerning employer's relationship with labor union. DeJean v. United Airlines, Inc., 839 P.2d 1153 (Colo. 1992).

Because plaintiff was unemployed at the time defendant offered employment, plaintiff was not a "workman" pursuant to statute. Schur v. Storage Tech. Corp., 878 P.2d 51 (Colo. App. 1994).

The elements of statutory fraud are the same as those for common law fraud, and, when the statements relied upon were mere predictions of future events rather than commitments or facts and were neither false when made nor made with the intent not to perform, there was no cause of action. Nelson v. Gas Research Inst., 121 P.3d 340 (Colo. App. 2005).

Applied in Roberts v. Conoco, Inc., 717 F. Supp. 724 (D. Colo. 1989).

8-2-105. Penalty.

Any person, company, corporation, society, association, or organization of any kind doing business in this state, as well as its agents, attorneys, servants, or associates, found guilty of violating section 8-2-104 or any part thereof commits a class 2 misdemeanor.

Source: L. 11: p. 487, § 2. C.L. § 4157. CSA: C. 97, § 72. CRS 53: § 80-4-5. C.R.S. 1963: § 80-11-5. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3138, § 77, effective March 1, 2022.

8-2-106. Armed guards - when lawful.

Any person who hires, aids, abets, or assists in hiring, through agencies or otherwise, persons to guard with arms or deadly weapons of any kind other persons or property in this state, or any person who enters this state armed with deadly weapons of any kind for any such purpose, without a permit in writing from the governor of this state commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Nothing in sections 8-2-104 to 8-2-107 shall be construed to interfere with the right of any person, company, corporation, society, association, or organization to guard or protect its private property or private interests as is now provided by law. Sections 8-2-104 to 8-2-107 shall be construed only to apply in cases where workmen are brought into this state, or induced to go from one place to another in this state by any false pretenses, false advertising, or deceptive representations, or brought into this state under arms, or removed from one place to another in this state under arms.

Source: L. 11: p. 487, § 3. C.L. § 4158. CSA: C. 97, § 73. CRS 53: § 80-4-6. C.R.S. 1963: § 80-11-6. L. 77: Entire section amended, p. 869, § 19, effective July 1, 1979. L. 89: Entire section amended, p. 821, § 5, effective July 1. L. 2002: Entire section amended, p. 1466, § 17, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

8-2-107. Workman engaged by false representations to recover damages.

Any workman of this state, or any workman of another state who is influenced, induced, or persuaded to engage with any persons mentioned in section 8-2-104, through or by means of any of the things therein prohibited has a right of action for recovery of all damages that each such workman has sustained in consequence of the false or deceptive representations, false advertising, and false pretenses used to induce him to change his place of employment against any person, corporation, company, or association, directly or indirectly, causing such damages. In addition to all actual damages such workmen may have sustained, they shall be entitled to

recover such reasonable attorney fees as the court shall fix, to be taxed as costs in any judgment recovered.

Source: L. 11: p. 487, § 4. C.L. § 4159. CSA: C. 97, § 74. CRS 53: § 80-4-7. C.R.S. 1963: § 80-11-7.

ANNOTATION

No false representation by defendant where, although plaintiff expressed an interest in "permanent" employment at time of interview, defendant never represented employment as "permanent" and handbook provided to plaintiff specifically stated that employment was subject to changing conditions. Further, fact that plaintiff moved to Colorado from

out-of-state for the job and provided services commensurate with position, alone, without plaintiff providing any extra or special consideration for which a jury might find that plaintiff had purchased the job, inadequate for finding of promise of permanent employment. *Schur v. Storage Tech. Corp.*, 878 P.2d 51 (Colo. App. 1994).

8-2-108. Unlawful for employer to prevent employees participating in politics.

(1) It is unlawful for any corporation, company, partnership, association, individual, or any employer of labor, or for any agent thereof to make, adopt, or enforce any rule, regulation, or policy forbidding or preventing any of his or her employees from engaging or participating in politics or from becoming a candidate for public office or being elected to and entering upon the duties of any public office. Any person violating any of the provisions of this section commits a class 2 misdemeanor.

(2) Nothing in this section shall be construed to prevent the injured employee from recovering damages from his employer for injury suffered through a violation of this section.

Source: L. 29: p. 429, §§ 1-3. CSA: C. 97, § 75. L. 37: p. 795, § 1. CRS 53: § 80-4-8. C.R.S. 1963: § 80-11-8. L. 2021: (1) amended, (SB 21-271), ch. 462, p. 3138, § 78, effective March 1, 2022.

Cross references: For the penalty for a class 2 misdemeanor, see § 18-1.3-501.

8-2-109. Rights of person charged with contempt.

(1) In all cases where a person is charged with indirect criminal contempt for violation of a protection order or injunction issued by a court, the accused shall enjoy:

- (a) The right as to admission to bail that is accorded to persons accused of crime;
- (b) The right to be notified of the accusation and a reasonable time to make a defense, if the alleged contempt is not committed in the immediate view or presence of the court;
- (c) Upon demand, the right to a speedy and public trial by an impartial jury of the judicial district wherein the contempt has been committed. This requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, order, or process of the court.
- (d) The right to file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred otherwise than in open court. Upon the filing of any such demand, the judge shall proceed no further, but another judge shall be designated by the presiding judge of said court. The demand shall be filed prior to the hearing in the contempt proceeding.

Source: L. 33: p. 412, § 10. CSA: C. 97, § 85. CRS 53: § 80-4-9. C.R.S. 1963: § 80-11-9. L. 2003: IP(1) amended, p. 1009, § 9, effective July 1.

8-2-110. Unlawful to publish blacklist.

No corporation, company, or individual shall blacklist, or publish, or cause to be blacklisted or published any employee, mechanic, or laborer discharged by such corporation, company, or individual, with the intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual.

Source: L. 1887: p. 58, § 1. R.S. 08: § 396. C.L. § 4160. CSA: C. 97, § 88. CRS 53: § 80-4-10. C.R.S. 1963: § 80-11-10.

Cross references: For arbitration to avoid necessity of blacklist, see § 8-1-123.

ANNOTATION

Section is plain as to limit in its application to particular classes of persons. Resident Participation, Inc. v. Love, 322 F. Supp. 1100 (D. Colo. 1971).

8-2-111. Penalty for blacklisting.

If any officer or agent of any corporation, company, individual, or other person blacklists, publishes, or causes to be blacklisted or published any employee, mechanic, or laborer discharged by such corporation, company, or individual with the intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual, or in any manner conspires or contrives by correspondence, or otherwise, to prevent such discharged employee from securing employment, commits a class 2 misdemeanor.

Source: L. 1887: p. 58, § 2. **R.S. 08:** § 397. **C.L.** § 4161. **CSA:** C. 97, § 89. **CRS 53:** § 80-4-11. **C.R.S. 1963:** § 80-11-11. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3138, § 79, effective March 1, 2022.

8-2-111.5. Certain employment references - exception to blacklisting prohibition.

(1) The general assembly hereby finds, determines, and declares that the intent and purpose of the provisions of sections 8-2-110 and 8-2-111 which prohibit the maintenance or use of blacklists were enacted to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that these prohibitions against blacklisting have in some instances been abused and have been used as a shield for persons responsible for thefts and other misappropriations of funds from financial institutions regulated under title 11, C.R.S., or under federal law in securing employment from other such financial institutions. These abuses of the antiblacklisting provisions have resulted in pattern and serial criminal activities at great expense and harm to such financial institutions and their customers.

(2) In response to a request by another bank, savings and loan association, credit card or travel and entertainment card company, trust company, credit union, or other state or federally chartered lending institution operating in Colorado, it is not unlawful or a violation of the prohibitions against blacklisting specified in sections 8-2-110 and 8-2-111 for a bank, savings and loan association, credit card or travel and entertainment card company, trust company, credit union, or other state or federally chartered lending institution operating in Colorado, when acting

in good faith, to disclose any information about any involvement in a theft, embezzlement, misappropriation, or other defalcation by an employee or former employee.

(3) No bank, savings and loan association, credit card or travel and entertainment card company, trust company, credit union, or other state or federally chartered lending institution operating in Colorado or any officer, director, or employee thereof is civilly liable for providing an employment reference described in subsection (2) of this section upon request if the information is provided in good faith.

(4) The provision of such employment information shall not constitute a violation of the prohibition against blacklisting as provided in sections 8-2-110 and 8-2-111, nor shall it constitute an unfair labor practice in violation of any provision of article 3 of this title.

(5) A bank, savings and loan association, credit card or travel and entertainment card company, trust company, credit union, or other state or federally chartered lending institution operating in Colorado or any officer, director, or employee thereof who discloses information under this section is presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the institution, officer, director, or employee intentionally or recklessly disclosed false information about the employee or former employee.

Source: **L. 89:** Entire section added, p. 373, § 1, effective April 1, 1990. **L. 97:** (2), (3), and (5) amended, p. 352, § 1, effective April 19. **L. 2013:** (2), (3), and (5) amended, (SB13-154), ch. 282, p. 1470, § 26, effective July 1.

8-2-111.6. Health-care employers - immunity from civil liability - requirements - exception to blacklisting prohibition - legislative declaration.

(1) The general assembly hereby finds, determines, and declares that the intent and purpose of sections 8-2-110 and 8-2-111, which prohibit the maintenance or use of blacklists, is to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that, in the area of health care, these prohibitions against blacklisting have in some instances been abused and have been used as a shield by persons responsible for drug violations or for patient endangerment.

(2) In response to a request by a prospective or current employer of a health-care worker, it is neither unlawful nor a violation of the prohibitions against blacklisting specified in sections 8-2-110 and 8-2-111 for an employer, when acting in good faith, to disclose information known about any involvement in drug diversion, drug tampering, patient abuse, violation of drug or alcohol policies of the employer, or crimes of violence as listed in section 18-1.3-406 (2)(a), C.R.S., by the health-care worker who is an employee or a former employee of the responding employer.

(3) (a) (I) An employer who provides information in accordance with subsection (2) of this section is immune from civil liability for providing the information or for any consequences that result from the disclosure of the information unless the health-care worker shows by a preponderance of the evidence that the information is false and the employer providing the information knew or reasonably should have known that the information is false.

(II) The provision of employment information in accordance with subsection (2) of this section does not constitute blacklisting under section 8-2-110 or 8-2-111, nor does it constitute an unfair labor practice in violation of article 3 of this title.

(b) This subsection (3) applies to any employee, agent, or other representative of the responding employer who is authorized to provide and provides information to an employer in accordance with subsection (2) of this section.

(4) An employer or any officer, director, employee, or representative of the employer who discloses information under this section shall be presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the facility, officer, director, employee, or representative of the employer intentionally or recklessly disclosed false information about the employee or former employee.

(5) For the purposes of this section, "health-care worker" means any person registered, certified, or licensed pursuant to articles 200 to 225, 235 to 300, and 310 of title 12 or article 3.5 of title 25, or any person who interacts directly with a patient or assists with the patient care process, who is currently employed by, or is a prospective employee of, the employer making the inquiry.

Source: L. 2011: Entire section added, (HB 11-1148), ch. 36, p. 99, § 1, effective July 1. **L. 2012:** (5) amended, (HB 12-1311), ch. 281, p. 1608, § 6, effective July 1. **L. 2019:** (5) amended, (HB 19-1172), ch. 136, p. 1646, § 17, effective October 1.

8-2-111.7. Employees working with persons with intellectual and developmental disabilities - immunity from civil liability - requirements - exception to blacklisting prohibition - legislative declaration - definitions.

(1) The general assembly hereby finds, determines, and declares that the intent and purpose of sections 8-2-110 and 8-2-111, which prohibit the maintenance or use of blacklists, is to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that these prohibitions against blacklisting have in some instances been abused and have been used as a shield by caregivers responsible for mistreatment, exploitation, neglect, or abuse of persons with developmental disabilities.

(2) In response to a request by a current or prospective employer of a caregiver, it is neither unlawful nor a violation of the prohibitions against blacklisting specified in sections 8-2-110 and 8-2-111 for an employer, when acting in good faith, to disclose information known about any involvement in the mistreatment, exploitation, neglect, or abuse of persons with intellectual and developmental disabilities as prohibited by section 25.5-10-221, C.R.S., by a caregiver.

(3) (a) (I) An employer who provides information in accordance with subsection (2) of this section is immune from civil liability for providing the information or for any consequences that result from the disclosure of the information unless the caregiver shows by a preponderance of the evidence that the information is false and the employer providing the information knew or reasonably should have known that the information is false.

(II) The provision of employment information in accordance with subsection (2) of this section does not constitute blacklisting under section 8-2-110 or 8-2-111, nor does it constitute an unfair labor practice in violation of article 3 of this title.

(b) This subsection (3) applies to any employee, agent, or other representative of the responding employer who is authorized to provide and provides information to a current or prospective employer in accordance with subsection (2) of this section.

(4) An employer or any officer, director, employee, or representative of the employer who discloses information under this section is presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the facility, officer, director, employee, or representative of the employer intentionally or recklessly disclosed false information about the caregiver.

(5) For the purposes of this section:

(a) "Caregiver" means a person currently or formerly employed to work with a person with an intellectual and developmental disability or a person who provides host home services by contract as part of residential services and supports as described in section 25.5-10-206 (1)(e), C.R.S. "Caregiver" does not mean a person who is employed by or who has contracted to work with a school district.

(b) "Person with an intellectual and developmental disability" has the same meaning as defined in section 25.5-10-202, C.R.S.

Source: L. 2011: Entire section added, (SB 11-193), ch. 280, p. 1252, § 1, effective July 1. **L. 2013:** (2), (5)(a), and (5)(b) amended, (HB 13-1314), ch. 323, p. 1800, § 16, effective March 1, 2014.

8-2-112. Unlawful to publish notice of boycott.

It is unlawful to print or circulate any notice of boycott, boycott card, sticker, banner, sign, or dodger publishing or declaring that a boycott or ban exists, or has existed or is contemplated against any person, firm, or corporation doing a lawful business, or publish the name of any judicial officer or other public officer upon any notice of boycott, boycott card, sticker, banner, sign, or other similar list because of any lawful act or decision of such official. A person who violates this section commits a petty offense.

Source: L. 05: p. 160, § 2. R.S. 08: § 399. C.L. § 4163. CSA: C. 97, § 91. CRS 53: § 80-4-12. C.R.S. 1963: § 80-11-12. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3139, § 80, effective March 1, 2022.

Cross references: For arbitration to avoid necessity of boycott, see § 8-1-123.

ANNOTATION

This section applies to everyone and is not confined to labor controversies in general or to employees, employers, and labor organizations subject to title 8 in particular. *Resident Participation, Inc. v. Love*, 322 F. Supp. 1100 (D. Colo. 1971).

8-2-113. Unlawful to intimidate worker - agreement not to compete - prohibition - exceptions - notice - rules - definitions.

(1) **Legislative intent.** The general assembly intends to preserve existing state and federal case law in effect before August 10, 2022, that:

- (a) Defines what counts as a covenant not to compete that is prohibited by this section; and
- (b) Specifies the extent to which a covenant not to compete for the protection of trade secrets must be tailored in scope in order to be enforceable under this section.

(1.5) (a) It is unlawful to use force, threats, or other means of intimidation to prevent any person from engaging in any lawful occupation at any place the person sees fit.

(b) A person who violates this subsection (1.5) commits a class 2 misdemeanor, as defined in section 18-1.3-501.

(2) (a) Except as provided in subsections (2)(b), (2)(d), and (3) of this section, a covenant not to compete that restricts the right of an individual to receive compensation for performance of labor is void.

(b) Except for a covenant not to compete that restricts the practice of medicine, the practice of advanced practice registered nursing, or the practice of dentistry in this state, this subsection (2) does not apply to a covenant not to compete governing an individual who, at the time the covenant not to compete is entered into and at the time it is enforced, earns an amount of annualized cash compensation equivalent to or greater than the threshold amount for highly compensated workers, if the covenant not to compete is for the protection of trade secrets and is no broader than is reasonably necessary to protect the employer's legitimate interest in protecting trade secrets.

(c) As used in this section, unless the context otherwise requires:

(I) "Annualized cash compensation" means:

(A) The amount of the gross salary or wage amount, the fee amount, or the other compensation amount for the full year, if the individual was employed or engaged for a full year; or

(B) The compensation that the individual would have earned, based on the worker's gross salary or wage amount, fee, or other compensation if the worker was not employed or engaged for a full year.

(I.3) "Health-care provider" means an individual licensed to engage in the practice of medicine, registered to engage in the practice of advanced practice registered nursing, licensed to practice as a certified midwife, or licensed to engage in the practice of dentistry.

(I.4) "Practice as a certified midwife" has the meaning set forth in section 12-255-104 (7.5).

(I.5) "Practice of advanced practice registered nursing" has the meaning set forth in section 12-255-104 (8).

(I.6) "Practice of dentistry" has the same meaning as "dentistry" set forth in section 12-220-104 (6).

(I.7) "Practice of medicine" has the meaning set forth in section 12-240-107 (1) and includes practice as a physician assistant pursuant to section 12-240-113.

(II) "Threshold amount for highly compensated workers" means the greater of the threshold amount for highly compensated workers as determined by the division of labor standards and statistics in the department of labor and employment:

(A) As of August 10, 2022; or

(B) At the time the covenant not to compete is executed by the parties.

(III) In determining whether a worker's cash compensation exceeds the threshold amount, where the worker has been employed for less than a calendar year, the worker's cash compensation exceeds the threshold amount if the worker would reasonably expect to earn more than the threshold amount during a calendar year of employment.

(d) Except for a covenant not to compete that restricts the practice of medicine, the practice of advanced practice registered nursing, or the practice of dentistry in this state, this subsection (2) does not apply to a covenant not to solicit customers governing an individual who, at the time the covenant is entered into and at the time it is enforced, earns an amount of annualized cash compensation equivalent to or greater than sixty percent of the threshold amount for highly compensated workers, if the nonsolicitation covenant is no broader than reasonably necessary to protect the employer's legitimate interest in protecting trade secrets.

(3) The following covenants are not prohibited by subsection (2) of this section:

(a) A provision providing for an employer's recovery of the expense of educating and training a worker where the training is distinct from normal, on-the-job training and satisfies any other requirements established by the attorney general, by rule, regarding the transferability of the training or credentialing that is available to the employee as a result of the training. The employer's recovery is limited to the reasonable costs of the training and decreases over the course of the two years subsequent to the training proportionately based on the number of months that have passed since the completion of the training, and the employer recovering for the costs of the training would not violate the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., or article 4 of this title 8; except that a public employer's recovery of the costs of the training may decrease over a period longer than two years.

(b) A reasonable confidentiality provision or trade secret provision relevant to the employer's business that does not prohibit disclosure of information that arises from the worker's general training, knowledge, skill, or experience, whether gained on the job or otherwise, information that is readily ascertainable to the public, or information that a worker otherwise has a right to disclose as legally protected conduct;

(c) A covenant not to compete related to the purchase and sale of a business, a direct or indirect ownership share in a business, or all or substantially all of the assets of a business that restricts competition by an owner of an interest in the business. For an individual who owns a minority ownership share of the business and who received their ownership share in the business as equity compensation or otherwise in connection with services rendered, the duration in years of a covenant not to compete described in this subsection (3)(c) must not exceed a number calculated by the total consideration received by the individual from the sale divided by the average annualized cash compensation received by the individual from the business, including income received on account of their ownership interest during the preceding two years or during

the period of time that the individual was affiliated with the business, whichever period of time is shorter.

(d) A provision requiring the repayment of a scholarship provided to an individual working in an apprenticeship if the individual fails to comply with the conditions of the scholarship agreement.

(4) (a) Any covenant not to compete that is otherwise permissible under subsection (2) or (3) of this section is void unless notice of the covenant not to compete and the terms of the covenant not to compete are provided to:

(I) A prospective worker before the worker accepts the employer's offer of employment; or

(II) A current worker at least fourteen days before the earlier of:

(A) The effective date of the covenant; or

(B) The effective date of any additional compensation or change in the terms or conditions of employment that provides consideration for the covenant.

(b) An employer shall provide the notice required in subsection (4)(a) of this section in a separate document from any other covenants between the worker and employer and in clear and conspicuous terms in the language in which the worker and employer communicate about the worker's performance. The notice must be signed by the worker.

(c) (I) A worker may request an additional copy of the covenant not to compete required by this subsection (4) once each calendar year.

(II) An employer is not required under this subsection (4) to provide the worker with an additional copy of the covenant not to compete more than once during a calendar year.

(d) An employer satisfies the notice requirement of this subsection (4) when the notice:

(I) Is provided with a copy of the agreement containing the covenant not to compete;

(II) Identifies the agreement by name and states that the agreement contains a covenant not to compete that could restrict the workers' options for subsequent employment following their separation from the employer; and

(III) Directs the worker to the specific sections or paragraphs of the agreement that contain the covenant not to compete.

(5) A provision of an employment agreement or any other agreement enforceable at law that does not include an unlawful restrictive covenant remains enforceable and subject to any damages or equitable remedy otherwise available at law.

(5.5) A covenant is deemed a covenant that restricts the practice of medicine, the practice of advanced practice registered nursing, or the practice of dentistry if it prohibits or materially restricts a health-care provider from disclosing to a patient to whom the health-care provider was providing consultation or treatment before the health-care provider's departure from a medical or dental practice the following information:

- (a) The health-care provider's continuing practice of medicine;
- (b) The health-care provider's new professional contact information; or
- (c) The patient's right to choose a health-care provider.

(6) A covenant not to compete that applies to a worker who, at the time of termination of employment, primarily resided or worked in Colorado may not require the worker to adjudicate the enforceability of the covenant outside of Colorado. Notwithstanding any contractual provision to the contrary, Colorado law governs the enforceability of a covenant not to compete for a worker who, at the time of termination of employment, primarily resided and worked in Colorado.

(7) A worker who is a party to a covenant not to compete, or a subsequent employer that has hired or is considering hiring the worker, may seek a declaratory judgment from a court of competent jurisdiction or an arbitrator that the covenant not to compete is unenforceable.

(8) (a) An employer shall not enter into, present to a worker or prospective worker as a term of employment, or attempt to enforce any covenant that is void under this section.

(b) An employer that violates subsection (8)(a) of this section is liable for actual damages and a penalty of five thousand dollars per worker or prospective worker harmed by the conduct. The attorney general and any worker or prospective worker harmed by an employer's conduct may bring an action for injunctive relief and to recover penalties. The attorney general may recover three times the amount of any recovery or attempted recovery by an employer in violation of subsection (3)(a) of this section. In addition to injunctive relief and the penalty allowed in this subsection (8)(b), a worker or prospective worker may recover actual damages, reasonable costs, and attorney fees in any private action brought under this section.

(c) In any action brought under this subsection (8), if the employer shows that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that the employer's act or omission was not a violation of this section, the court may, in its sound discretion, award the worker or workers no penalty or award a penalty of any amount not to exceed the amount specified in subsection (8)(b) of this section.

(d) Where the attorney general has brought an action under subsection (2), (3), (4), (6), or (8)(a) of this section and has recovered actual damages, penalties, or injunctive relief pursuant to subsection (8)(b) of this section, a worker or prospective worker is precluded from recovering

the actual damages, penalties, or injunctive relief that was recovered in the attorney general's action.

(9) (a) The attorney general may enforce subsections (2), (3), (4), (5.5), (6), and (8)(a) of this section.

(b) The attorney general may promulgate rules necessary to implement and enforce subsection (3)(a) of this section.

Source: **L. 05:** p. 161, § 3. **R.S. 08:** § 400. **C.L.** § 4164. **CSA:** C. 97, § 92. **CRS 53:** § 80-4-13. **C.R.S. 1963:** § 80-11-13. **L. 73:** p. 940, § 1. **L. 82:** (3) added, p. 232, § 1, effective April 6. **L. 2018:** (3) amended, (SB 18-082), ch. 87, p. 689, § 1, effective April 2. **L. 2019:** (3)(a) amended, (HB 19-1172), ch. 136, p. 1646, § 18, effective October 1. **L. 2021:** (4) added, (SB 21-271), ch. 462, p. 3139, § 81, effective March 1, 2022. **L. 2022:** Entire section amended, (HB 22-1317), ch. 441, p. 3095, § 1, effective August 10. **L. 2024:** (3)(a), (8)(a), and (8)(b) amended and (8)(d) and (9) added, (HB 24-1324), ch. 316, p. 2120, § 5, effective August 7. **L. 2025:** (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(d), (3)(b), (3)(c), (5), and (9)(a) amended and (2)(c)(I.3), (2)(c)(I.4), (2)(c)(I.5), (2)(c)(I.6), (2)(c)(I.7), and (5.5) added, (SB 25-083), ch. 366, p. 1983, § 1, effective August 6.

Cross references: For the "Uniform Trade Secrets Act", see article 74 of title 7.

ANNOTATION

Law reviews. For article, "Noncompetition Covenants in Colorado: A Statutory Solution?", see 52 Den. L.J. 499 (1975). For article discussing remedies available in an employee's breach of a confidential relationship with an employer regarding trade secrets, see 48 U. Colo. L. Rev. 189 (1977). For article, "Protecting Technical Information: The Role of the General Practitioner", see 12 Colo. Law. 1215 (1983). For article, "Drafting Noncompete Covenants: Statutory and Common Law Constraints", see 13 Colo. Law. 757 (1984). For article, "Drafting a

Noncompetition Clause for the Colorado Contract", see 20 Colo. Law. 703 (1991). For article, "Covenants Not to Compete in the Sale of a Business: Protecting Goodwill", see 26 Colo. Law. 31 (Dec. 1997). For article, "Non-compete by Non-disclosure: The Doctrine of Inevitable Disclosure", see 28 Colo. Law. 73 (Sept. 1999). For article, "The Law of Trade Secrecy and Covenants Not to Compete in Colorado -- Part I", see 30 Colo. Law. 7 (Apr. 2001). For article, "The Law of Trade Secrecy and Covenants Not to Compete in Colorado -- Part II", see 30 Colo. Law. 5

(May 2001). For article, "Antitrust Scrutiny of Employment Restrictive Covenants", see 43 Colo. Law. 33 (Oct. 2014). For article, "Non-Compete Agreements in Colorado: A New Era", see 51 Colo. Law. 30 (Nov. 2022). For article, "Colorado's Non-Compete Statute Q&A: What Employers Need to Know", see 52 Colo. Law. 34 (Mar. 2023).

This section is directed at what may be termed unlawful picketing. People v. Harris, 104 Colo. 386, 91 P.2d 989 (1939).

This section is intended to protect employees from noncompetition clauses except in carefully defined circumstances. Colo. Accounting Machs., Inc. v. Mergenthaler, 44 Colo. App. 155, 609 P.2d 1125 (1980); Nat'l Graphics Co. v. Dilley, 681 P.2d 546 (Colo. App. 1984).

Covenants not to compete are contrary to the public policy of Colorado and are void, except for some narrow exceptions such as a covenant in a contract for the purchase and sale of a business. DBA Enter., Inc. v. Findlay, 923 P.2d 298 (Colo. App. 1996).

A covenant that fails to meet one of the exceptions defined in this section is facially void rather than voidable. Mgmt. Recruiters of Boulder v. Miller, 762 P.2d 763 (Colo. App. 1988); Harvey Barnett, Inc. v. Shidler, 143 F. Supp. 2d 1247 (D. Colo. 2001); Phoenix Capital, Inc. v. Dowell, 176 P.3d 835 (Colo. App. 2007).

Even if a noncompetition agreement is not void under this section, to be enforceable, the clause must satisfy an

established rule of reasonableness as to both duration and geographic scope. Nat'l Graphics Co. v. Dilley, 681 P.2d 546 (Colo. App. 1984); Elec. Distribs., Inc. v. SFR, Inc., 166 F.3d 1074 (10th Cir. 1999).

And this established rule of reasonableness is recognized in the legislative history of this section. Nat'l Graphics Co. v. Dilley, 681 P.2d 546 (Colo. App. 1984).

Broad language of license agreement that would perpetually limit licensee swimming instructors' ability to train other instructors in the widely-known skill of teaching swimming to infants and young children worldwide is an unenforceable covenant not to compete. Harvey Barnett, Inc. v. Shidler, 143 F. Supp. 2d 1247 (D. Colo. 2001).

Noncompetition agreement that is worldwide and perpetual is unduly broad, both as to time and geographic scope, and is thus void. Nutting v. RAM SW, Inc., 106 F. Supp. 2d 1121 (D. Colo. 2000).

Noncompetition covenant in contract between dentist and professional corporation was void as against public policy, where the contract provided for the dentist's use of the corporation's facilities but stated that the dentist was not an agent or employee of the corporation for any purpose. Smith v. Sellers, 747 P.2d 15 (Colo. App. 1987).

Noncompetition covenant not validated by trade secret provision. A trade secret provision in an employment agreement does not validate an unrelated restrictive covenant

whose sole purpose is to prohibit all competition. *Colo. Accounting Machs., Inc. v. Mergenthaler*, 44 Colo. App. 155, 609 P.2d 1125 (1980); *Dresser Indus., Inc. v. Sandvick*, 732 F.2d 783 (10th Cir. 1984).

Employer must establish that a restrictive covenant not to compete is not void under this section before a preliminary injunction will be granted. *Porter Indus., Inc. v. Higgins*, 680 P.2d 1339 (Colo. App. 1984).

The general assembly never intended "void" in subsection (2) to have a strict technical meaning (either "void ab initio" or "voidable"). Rather, it is intended as an emphatic synonym for "unenforceable"; and a noncompete covenant's enforceability must be judged under the circumstances present at the employee's separation, regardless of whether the noncompete covenant would have been enforceable at some earlier time. *DigitalGlobe, Inc. v. Paladino*, 269 F. Supp. 3d 1112 (D. Colo. 2017).

Nothing in the statute itself limits its applicability only to covenants not to compete designed to protect buyers, therefore, given appropriate circumstances, a covenant running in favor of a franchiser is an enforceable covenant under the statute. *Keller Corp. v. Kelley*, 187 P.3d 1133 (Colo. App. 2008).

Injunctive relief is the most common and generally preferred relief for breach of a covenant not to compete; however, the conditional language of a bill of sale and covenant not to compete referenced in the promissory note is the equivalent of a

liquidated damage provision, which amounts to a penalty and is therefore not enforceable. *DBA Enter., Inc. v. Findlay*, 923 P.2d 298 (Colo. App. 1996).

Covenant not to compete extinguished when business ceases to exist. If a covenant not to compete which was binding on the seller of the business were enforced by the buyer after the business had ceased to exist, the covenant would constitute a void and unenforceable restraint of trade. *Gibson v. Eberle*, 762 P.2d 777 (Colo. App. 1988).

The reasonableness of covenants ancillary to the sale of a business depends on whether the restraint on competition provides fair protection to the buyer's purchase of good will, while imposing restrictions no greater than necessary to protect the value of that good will. *Reed Mill & Lumber Co. v. Jensen*, 165 P.3d 733 (Colo. App. 2006).

A covenant not to compete ancillary to the sale of a business is unreasonable if its restrictions are greater than necessary to protect legitimate business interests. *Reed Mill & Lumber Co. v. Jensen*, 165 P.3d 733 (Colo. App. 2006).

Evidence established "sale of business" under subsection (2)(a). *Boulder Med. Ctr. v. Moore*, 651 P.2d 464 (Colo. App. 1982); *King v. PA Consulting Group, Inc.*, 485 F.3d 577 (10th Cir. 2007).

Under "sale of business" exception, where plain language of covenant prohibited "working" for competitors, case was reversed and remanded to determine whether activities beyond merely

loaning money or leasing property to a competitor materially breached the covenant. *Nat'l Propane Corp. v. Miller*, 18 P.3d 782 (Colo. App. 2000).

"Sale of business" and "management personnel" exceptions applied to covenant required as part of property disposition in dissolution of marriage. *In re Fischer*, 834 P.2d 270 (Colo. App. 1992).

Test for determining whether a covenant fits within the "trade secrets" exception: (1) Is the restrictive covenant justified at all in light of the facts; and (2) are the specific terms reasonable? *Mgmt. Recruiters of Boulder v. Miller*, 762 P.2d 763 (Colo. App. 1988).

For a covenant not to compete to fit within the trade secret exception of subsection (2), the purpose of the covenant must be the protection of trade secrets, and the covenant must be reasonably limited in scope to the protection of those trade secrets. *Gold Messenger, Inc. v. McGuay*, 937 P.2d 907 (Colo. App. 1997).

Whether a particular group of employees qualifies under the exception of subsection (2)(d) is an issue of fact. *Occusafe, Inc. v. EG&G Rocky Flats, Inc.*, 54 F.3d 618 (10th Cir. 1995).

The resolution of the issue requires an examination of what the job actually entails, and not just mere job titles. *DoubleClick Inc. v. Paikin*, 402 F. Supp. 2d 1251 (D. Colo. 2005); *Wells Fargo Ins. Servs. USA v. McQuate*, 276 F. Supp. 3d 1089 (D. Colo. 2016).

Whether the exception in subsection (2)(d) applies is to be determined as of the time of the employee's departure. *Wells Fargo Ins. Servs. USA v. McQuate*, 276 F. Supp. 3d 1089 (D. Colo. 2016).

Whether a nonsolicitation clause in a contract fits within the trade secrets exception in subsection (2) is an issue of fact. *Saturn Sys., Inc. v. Militare*, 252 P.3d 516 (Colo. App. 2011).

A person who conducts or supervises a business is "management personnel". A person who supervises 50 employees in a division with a ten million dollar budget is "management personnel" and therefore falls under the management personnel exception, which is broader than covering merely a few key personnel. *DISH Network Corp. v. Altomari*, 224 P.3d 362 (Colo. App. 2009).

Management exception to the statutory limit on noncompetition clauses does not apply when an employee does not manage any other employees and there are three levels of management employees above the employee. *Atmel Corp. v. Vitesse Semiconductor Corp.*, 30 P.3d 789 (Colo. App. 2001).

The "professional staff to executive and management personnel" exception is limited to those persons who, while qualifying as "professionals" and reporting to managers and executives, primarily serve as key members of the manager's or executive's staff in the implementation of management and executive functions. *Phoenix Capital, Inc. v. Dowell*, 176 P.3d 835 (Colo. App. 2007).

Invalidity of noncompetition agreement also renders invalid an agreement not to solicit customers of former employer. Agreement not to solicit customers is form of agreement not to compete that has effect of restricting former employee from working in same business for another employer. *Phoenix Capital, Inc. v. Dowell*, 176 P.3d 835 (Colo. App. 2007).

Colorado has not recognized an employer's right to protect good will created by an employee's relationships with the employer's customers. *Reed Mill & Lumber Co. v. Jensen*, 165 P.3d 733 (Colo. App. 2006).

Whether industrial hygienists constitute "professional staff to executive and management personnel" is an issue of fact. *Occusafe, Inc. v. EG&G Rocky Flats Inc.*, 54 F.3d 618 (10th Cir. 1995).

Section applies to independent contractors as well as employees. *Colo. Supply Co., Inc. v. Stewart*, 797 P.2d 1303 (Colo. App. 1990).

Noncompetition provision specifying the amount of damages and setting a fee

percentage as liquidated damages in a physician's employment contract violated subsection (3). The contract requirement that the plaintiff pay defendant a percentage of his fees for two years provided for damages that were not "reasonably related to the injury suffered" by the defendant by reason of the termination of the contract with plaintiff. Also, the fee percentage set as liquidated damages in the noncompetition provision was disproportionate to any possible loss incurred by the defendant. *Wojtowicz v. Greeley Anesthesia Servs.*, 961 P.2d 520 (Colo. App. 1997).

Any damages awarded pursuant to a noncompete agreement and subsection (3) must be reasonably related to the injury actually suffered by the defendant and not simply related to an injury prospectively estimated at the time of contract formation. *Crocker v. Greater Colo. Anesthesia, P.C.*, 2018 COA 33, 463 P.3d 860.

Applied in *Harrison v. Albright*, 40 Colo. App. 227, 577 P.2d 302 (1977); *PostNet Int'l Franchise Corp. v. Wu*, 521 F. Supp. 3d 1087 (D. Colo. 2021).

8-2-114. Immunity from civil liability for employer disclosing information - employer shall not maintain blacklist - credit lists excepted.

- (1) For purposes of this section, "job performance" means:
 - (a) The suitability of the employee for reemployment;
 - (b) The employee's work-related skills, abilities, and habits as they may relate to suitability for future employment; and
 - (c) In the case of a former employee, the reason for the employee's separation.

(2) It is unlawful for any employer to maintain a blacklist, or to notify any other employer that any current or former employee has been blacklisted by such employer, for the purpose of preventing such employee from receiving employment. Sections 8-2-112 to 8-2-114 shall not be construed to prevent any merchant or professional person, or any association thereof, from maintaining or publishing a list concerning the credit or financial responsibility of any person dealing with them on credit.

(3) Any employer who provides information about a current or former employee's job history or job performance to a prospective employer of the current or former employee upon request of the prospective employer or the current or former employee is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure. This immunity shall not apply when such employee shows by a preponderance of the evidence both of the following:

- (a) The information disclosed by the current or former employer was false; and
- (b) The employer providing the information knew or reasonably should have known that the information was false.

(4) This section applies to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this section.

(5) Any employer that provides written information to a prospective employer about a current or a former employee shall send, upon the request of such current or former employee, a copy of the information provided to the last-known address of the person who is the subject of the reference. Any person who is the subject of such a reference may obtain a copy of the reference information by appearing at the employer's or former employer's place of business during normal business hours. The employer or former employer may charge a fair and reasonable amount for reproduction costs if multiple copies are requested.

(6) Nothing in this section shall be construed to abrogate or contradict the provisions of part 4 of article 34 of title 24, C.R.S.

(7) A person who violates this section commits a class 2 misdemeanor.

Source: L. 05: p. 161, § 4. R.S. 08: § 401. C.L. § 4165. CSA: C. 97, § 93. CRS 53: § 80-4-14. C.R.S. 1963: § 80-11-14. L. 92: Entire section amended, p. 1806, § 1, effective April 29. L. 99: Entire section R&RE, p. 210, § 1, effective March 31. L. 2021: (2) amended and (7) added, (SB 21-271), ch. 462, p. 3139, § 82, effective March 1, 2022.

Cross references: For the penalty for a class 2 misdemeanor, see § 18-1.3-501.

ANNOTATION

Law reviews. For article, "State Laws: A Growing Minefield for Employers", see 23 Colo. Law. 1089 (1994).

Section is plain as to limit in its application to particular classes of persons. Resident Participation, Inc. v. Love, 322 F. Supp. 1100 (D. Colo. 1971).

8-2-115. Violation of sections - misdemeanor - repeal. (Repealed)

Source: L. 05: p. 161, § 5. R.S. 08: § 402. C.L. § 4166. CSA: C. 97, § 94. CRS 53: § 80-4-15. C.R.S. 1963: § 80-11-15. L. 2021: (2) added by revision, (SB 21-271), ch. 462, pp. 3139, 3331, §§ 83, 803.

Editor's note: Subsection (2) provided for the repeal of this section, effective March 1, 2022. (See L. 2021, pp. 3139, 3331.)

8-2-116. Age of employee not ground for discharge. (Repealed)

Source: L. 03: p. 307, § 1. R.S. 08: § 3927. C.L. § 4191. CSA: C. 97, § 112. CRS 53: § 80-4-16. C.R.S. 1963: § 80-11-16. L. 86: Entire section repealed, p. 933, § 5, effective May 8.

Cross references: For present provisions concerning age discrimination in employment, see part 4 of article 34 of title 24.

8-2-117. Penalty for violation. (Repealed)

Source: L. 03: p. 308, § 2. R.S. 08: § 3928. C.L. § 4192. CSA: C. 97, § 123. CRS 53: § 80-4-17. C.R.S. 1963: § 80-11-17. L. 86: Entire section repealed, p. 933, § 5, effective May 8.

8-2-118. Cost of medical examination - employer and employee defined.

(1) It is unlawful for any employer, as defined in subsection (2) of this section, to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment, except those records necessary to support the applicant's statements in the application for employment.

(2) "Employer", as used in this section, means an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) "Employee", as used in this section, means every person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit, to engage in any employment.

(4) Any employer who violates the provisions of this section is liable to a penalty of not more than one hundred dollars for each violation. It is the duty of the director of the division of labor standards and statistics to enforce this section.

(5) (a) The director of the division of labor standards and statistics shall enforce this section as it applies to an individual, a partnership, an association, a corporation, or a legal representative, trustee, receiver, or trustee in bankruptcy doing business in or operating within the state.

(b) The public utilities commission shall enforce this section as it applies to any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(c) Nothing in this subsection (5) shall be construed as applying to irrigation ditch and water companies.

Source: L. 57: p. 491, §§ 1-4. CRS 53: § 80-4-18. L. 59: p. 536, § 1. C.R.S. 1963: § 80-11-18. L. 69: p. 615, § 123. L. 2016: (4) and (5)(a) amended, (HB 16-1323), ch. 131, p. 377, § 6, effective August 10.

8-2-119. Awards of back pay - deduction of unemployment compensation.

(1) In any proceeding in this state in which an award of back pay is made, the employer shall pay any such award in full, subject to the provisions of subsection (3) of this section.

(2) The person ordering an award of back pay shall notify the director of the division of unemployment insurance of the award within five days after the date of the order.

(3) If, during the period for which back pay is awarded, the recipient of the award has been receiving unemployment benefits pursuant to the provisions of articles 70 to 82 of this title, the entity ordering the award shall reduce the amount of the award by the amount of benefits the person received, and the employer shall withhold that amount from the award. The employer shall remit the amount withheld from the back pay award to the division of unemployment insurance, and the division shall credit the amount to the unemployment compensation fund. The employer shall remit the withheld amount within ten days after the award of back pay becomes final.

Source: L. 69: p. 666, § 1. C.R.S. 1963: § 80-11-19. L. 76: (2) amended, p. 335, § 1, effective May 10. L. 2012: (2) and (3) amended, (HB 12-1120), ch. 27, p. 104, § 11, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-2-120. Residency requirements prohibited for public employment - legislative declaration - definitions.

(1) The general assembly hereby finds, determines, and declares that the imposition of residency requirements by public employers works to the detriment of the public health, welfare, and morale as well as to the detriment of the economic well-being of the state. The general assembly further finds, determines, and declares that the right of the individual to work in or for any local government is a matter of statewide concern and accordingly the provisions of this section preempt any provisions of any such local government to the contrary. The general assembly declares that the problem and hardships to the citizens of this state occasioned by the imposition of employee residency requirements far outweigh any gain devolving to the public employer from the imposition of said requirements.

(2) As used in this section, unless the context otherwise requires:

(a) "Employee" means any person who works for a salary or for hourly wages, whether full-time or part-time and whether temporary or permanent. Such term does not include a local government's elected officials or its key appointed officials such as cabinet members, director of public safety, superintendent of schools, fire chief, or police chief and does not include members

of a local government's boards or committees if residency requirements are set forth by any ordinance, charter, resolution, or statute of the local government.

(b) "Local government" means a county, city and county, city, municipality, town, school district, local college district, a local improvement and service district, special district, or any other independent local entity having the authority under the general laws of this state to levy taxes or impose assessments.

(3) On and after July 1, 1988, any employee of any local government may at his sole option reside and dwell anywhere such employee chooses, whether within or without the territorial boundaries of the local government, except as provided in paragraph (b) of subsection (4) of this section.

(4) (a) On and after July 1, 1988, no residency requirement may be imposed on any employee by any local government. To the extent that any local government ordinance, charter, resolution, or statute conflicts with this provision, it is hereby preempted by this provision.

(b) Key employees with duties which clearly and demonstrably require them to be close to their place of employment may be subject to reasonable requirements as to the maximum distance the employee's residence may be from the place of work. Such condition may be imposed, after hearing, by ordinance or resolution.

Source: L. 88: Entire section added, p. 365, § 1, effective April 11.

ANNOTATION

Unconstitutional interference with power of home rule municipalities. The residency of municipal employees is a matter of local concern and is therefore governed by charter provision or ordinance of a home rule city; an inconsistent home rule provision preempts this section. *City and County of Denver v. State*, 788 P.2d 764 (Colo. 1990).

Factors considered in determining whether state statute preempts

inconsistent home rule ordinance: (1) Need for statewide uniformity of regulation; (2) impact of municipal regulation on persons living outside municipal limits; (3) history of legislation of particular matter; and (4) commitment in state constitution of a particular matter to state or local regulation. *City and County of Denver v. State*, 788 P.2d 764 (Colo. 1990).

8-2-121. Document fraud - penalties. (Repealed)

Source: **L. 2006:** Entire section added, p. 1305, § 1, effective May 30. **L. 2008:** (2) amended, p. 2145, § 16, effective June 4. **L. 2011:** Entire section repealed, (SB 11-243), ch. 282, p. 1256, § 1, effective June 2.

8-2-122. Employment verification requirements - audits - fine for fraudulent documents - cash fund created - definitions.

- (1) As used in this section, unless the context otherwise requires:
 - (a) "Director" means the director of the division.
 - (b) (Deleted by amendment, L. 2016.)
 - (c) "Employer" means a person or entity that:
 - (I) Transacts business in Colorado;
 - (II) At any time, employs another person to perform services of any nature; and
 - (III) Has control of the payment of wages for such services or is the officer, agent, or employee of the person or entity having control of the payment of wages.
 - (d) (Deleted by amendment, L. 2016.)
- (2) (Deleted by amendment, L. 2016.)
- (3) Upon the request of the director, an employer shall submit documentation to the director that demonstrates that the employer is in compliance with the employment verification requirements specified in 8 U.S.C. sec. 1324a (b). The director or the director's designee may conduct random audits of employers in Colorado to obtain the documentation. When the director has reason to believe that an employer has not complied with the employment verification and examination requirements, the director shall request the employer to submit the documentation.
- (4) (Deleted by amendment, L. 2016.)
- (5) It is the public policy of Colorado that this section shall be enforced without regard to race, religion, gender, ethnicity, national origin, or disability.
- (6) Repealed.

Source: **L. 2006, 1st Ex. Sess.:** Entire section added, p. 37, § 1, effective July 31. **L. 2016:** (1)(b) amended, (HB 16-1323), ch. 131, p. 377, § 7, effective August 10; entire section amended, (HB 16-1114), ch. 266, p. 1102, § 2, effective August 10. **L. 2020:** (6) added, (HB 20-1381), ch. 171, p. 785, § 1, effective June 29.

Editor's note: Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2020. (See L. 2020, p. 785.)

Cross references: For the legislative declaration in HB 16-1114, see section 1 of chapter 266, Session Laws of Colorado 2016.

ANNOTATION

Law reviews. For article, "2006 Immigration Enforcement Laws on Immigration Legislation in Colorado", see 35 Colo. Law. 79 (Oct. 2006). For article, "Colorado Among Leading States to Enact Immigration Enforcement Laws on Employers", see 38 Colo. Law. 55 (Apr. 2009).

8-2-123. Health-care workers - retaliation prohibited - definitions.

(1) As used in this section:

(a) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below-standard performance evaluation, reduction in force, withholding of work, changes in work hours, negative reference, creating or tolerating a hostile work environment, or the threat of any such discipline or penalty. "Disciplinary action" shall not include action taken that is related to staffing or patient care needs.

(b) "Good faith report or disclosure" means a report regarding patient safety information or quality of patient care that is made without malice or consideration of personal benefit and that the health-care worker making the report has reasonable cause to believe is true. "Good faith report or disclosure" also includes, with respect to patient care, a report regarding any practice, procedure, action, or failure to act with regard to patient safety that concerns information regarding a generally accepted standard of care; a law, rule, regulation, or declaratory ruling adopted pursuant to law; or compliance with a professional licensure requirement, which report

is made without malice or consideration of personal benefit and that the health-care worker making the report has reasonable cause to believe is true.

(c) "Health-care provider" means any health-care facility licensed under section 25-3-101, C.R.S., or any individual who is authorized to practice some component of the healing arts by license, certificate, or registration.

(d) "Health-care worker" means any person certified, registered, or licensed pursuant to article 200, 215, 220, 225, 240, 245, or 255 to 300 of title 12 or certified or licensed pursuant to section 25-3.5-203.

(2) (a) A health-care provider shall not take disciplinary action against a health-care worker in retaliation for making a good faith report or disclosure.

(b) Paragraph (a) of this subsection (2) shall not apply to a health-care worker who discloses information that the worker knows to be false, who discloses information with disregard for the truth or falsity thereof, or who discloses information without fully complying with subsection (3) of this section.

(c) Nothing in this section shall be construed to grant immunity to a health-care worker for his or her own acts of medical negligence, for unprofessional conduct subject to professional review activities authorized by state or federal law, for a breach of a professional licensure requirement, or for a violation of any state or federal law requiring confidentiality of patient information.

(3) When making a good faith report or disclosure regarding patient safety or quality of patient care, a health-care worker shall follow the internal reporting procedures of the health-care provider, to the extent such procedures exist and are provided to the health-care worker in writing, and shall exhaust such procedures prior to pursuing any further reporting or disclosure activity.

(4) Nothing in this section shall prevent a health-care provider from taking disciplinary action against a health-care worker for reasons other than those specified in subsection (2) of this section.

(5) Nothing in this section shall be construed to preempt existing laws, regulations, or rules pertaining to patient care, including professional review proceedings for health professionals or for physicians pursuant to part 2 of article 30 of title 12, or quality and safety standards for a health-care facility licensed pursuant to section 25-3-101.

Source: L. 2007: Entire section added, p. 284, § 2, effective March 29. L. 2019: (1)(d) amended, (SB 19-242), ch. 396, p. 3524, § 4, effective May 31; (1)(d) and (5) amended, (HB 19-1172), ch. 136, p. 1647, § 19, effective October 1.

Editor's note: Amendments to subsection (1)(d) by SB 19-242 and HB 19-1172 were harmonized.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 67, Session Laws of Colorado 2007.

ANNOTATION

A claim asserted under this section is subject to the notice requirement in the Colorado Governmental Immunity Act (CGIA). Any claims that might arise under this section more closely resemble claims under the whistleblower act, §§ 24-50.5-101 to 24-50.5-107, which are subject to the CGIA's notice requirement, than those under

the employment practices provisions of the Colorado anti-discrimination act, §§ 24-34-400.2 to 24-34-408, which are not. Any claim that may be asserted under this section lies or could lie in tort and therefore is subject to the CGIA's notice requirement. *Bakes v. Denver Health & Hosp. Auth.*, 2025 COA 47, 572 P.3d 146.

8-2-124. Electronic verification program - availability - notice to employers - definitions.

(1) As used in this section:

(a) "Department" means the department of labor and employment.

(b) "Electronic verification program" or "e-verify program" means the electronic employment verification program that is authorized in 8 U.S.C. sec. 1324a and jointly administered by the United States department of homeland security and the social security administration, or its successor program.

(c) "Employer" means a person transacting business in Colorado who, at any time, employs another person to perform services of any nature and who has control of the payment of wages for such services or is the officer, agent, or employee of the person having control of the payment of wages.

(d) "Employment eligibility verification form I-9" means the form developed by the United States citizenship and immigration services in the department of homeland security pursuant to 8 U.S.C. sec. 1324a (b).

(e) "Unauthorized alien" has the same meaning as set forth in 8 U.S.C. sec. 1324a (h)(3).

(2) (a) (I) As part of its quarterly electronic publication distributed to employers, the department shall, at a minimum, notify every employer of the federal law against hiring or continuing to employ an unauthorized alien and of the availability of the optional electronic verification program to verify the work eligibility status of new employees.

(II) (A) In notifying employers of the e-verify program pursuant to subparagraph (I) of this paragraph (a), the department shall include language similar to the following:

As with all current employee verification programs, the e-verify program is not one hundred percent accurate, and an employee has recourse available if the employee is legally documented to work in the United States but the employer receives a final notice of nonconfirmation of work eligibility regarding the employee through the e-verify program.

(B) Additionally, the department shall provide employers information about when, during the hiring process, an employer may lawfully use the e-verify program, specifying that the e-verify program can only be used after an employee is hired and cannot be used to verify the work eligibility status of existing employees. The notice shall also restate the requirements of section 24-34-402, C.R.S., which prohibits employers from engaging in discriminatory or unfair employment practices.

(III) Immediately following the notice required by subparagraph (I) of this paragraph (a), the department shall include in the quarterly electronic publication a link to the portion of the department's website where an employer can access additional information about the federal law, the e-verify program and the requirements for participation in the e-verify program, and the following statement, in bold-faced type in a conspicuous location:

It is unlawful for an employer to:

Hire, recruit, or refer for a fee, for employment in the United States, an alien, knowing the alien is an unauthorized alien;

Hire, recruit, or refer for a fee, for employment in the United States, an individual without verifying the employment eligibility status of the individual through completion of the Employment Eligibility Verification Form I-9, or its successor form;

Continue to employ an alien in the United States, knowing that the alien is or has become an unauthorized alien; or

While using the e-verify program, refuse to hire, discharge, promote, or demote a person, harass a person during the course of employment, or discriminate against a person in matters of compensation, on the basis of the person's disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry, pursuant to section 24-34-402, C.R.S.

For more specific information regarding the e-verify program and its requirements and use, employers should consult 8 U.S.C. sec. 1324a.

(IV) The department shall include the notice and website link required by this paragraph (a) in each quarterly electronic publication distributed to employers on and after August 5, 2008.

(b) The department shall permanently post on its website the statement and information described in subparagraph (III) of paragraph (a) of this subsection (2), as well as a link to the e-verify website available through the internet portal for the United States citizenship and immigration services, or its successor agency.

Source: L. 2008: Entire section added, p. 894, § 1, effective August 5.

8-2-124.5. Identification documents - retention by employers prohibited - definition.

(1) (a) Except as otherwise described in this section and section 8-2-125 (1)(c), an employer or an employer's agent shall not demand, confiscate, retain, or otherwise require an individual who is an employee or an applicant for employment or who is performing work or seeking to perform work for the employer in any capacity, including a migrant worker or seasonal employee, to surrender the individual's government-issued identification card.

(b) An employer or employer's agent may:

(I) Request and temporarily retain an individual's government-issued identification card for the purpose of verifying the individual's employment eligibility status through completion of the employment eligibility verification form I-9, or its successor form, for employment in the United States;

(II) Retain an individual's government-issued identification card only for as long as is necessary to verify the individual's employment eligibility and make a copy of the card, and in no case for more than ten hours; and

(III) Retain a copy of an individual's government-issued identification card in the employer's records.

(2) (a) When an employer verifies an individual's employment eligibility, the employer shall notify the individual of the prohibition described in subsection (1) of this section. The notification must be:

(I) In writing;

(II) In English;

(III) In the individual's primary language, if the employer knows the individual's primary language is not English; and

(IV) Acknowledged by the individual.

(b) The employer shall retain a record of the notification and acknowledgment in the employer's employment records.

(3) Nothing in this section prohibits an employer from retaining a government-issued identification document if the retention is:

(a) Required or permitted by state or federal law or regulation, including for the purpose of verifying an individual's employment eligibility; or

(b) Performed pursuant to a signed judicial warrant.

(4) An employer that knowingly violates subsection (1) of this section commits criminal possession of an identification document, as described in section 18-5-903.5.

(5) As used in this section, "government-issued identification card" has the meaning set forth in section 8-2-125 (3)(c).

Source: L. 2026: Entire section added, (HB 26-1283), ch. 363, p. 2179, § 2, effective June 3.

Editor's note: Section 5 of chapter 363 (HB 26-1283), Session Laws of Colorado 2026, provides that the act adding this section applies to conduct occurring on or after June 3, 2026.

Cross references: For the legislative declaration in HB 26-1283, see section 1 of chapter 363, Session Laws of Colorado 2026.

8-2-125. Identification of workers engaged in off-site work - permissible forms of identification - exceptions - definitions.

(1) (a) When an employer dispatches an employee to an off-site premises to perform work on behalf of the employer for a customer located at the off-site premises, the employee may provide an employer-issued identification card to the custodian of the off-site premises in lieu of a government-issued identification card for purposes of verifying the identity of the employee. Except as provided in paragraph (c) of this subsection (1), the custodian of the off-site premises shall not require the employee to surrender his or her government-issued identification card to the custodian or retain the employee's government-issued identification card while the employee is physically present on the off-site premises engaged in the performance of work on behalf of the employer.

(b) If the employee has an employer-issued identification card, the custodian may require the employee to surrender his or her employer-issued identification card for purposes of verifying the employee's identity, and the custodian may hold the employer-issued identification card at all times while the employee is present on the off-site premises.

(c) Notwithstanding the prohibition in paragraph (a) of this subsection (1), if the employee does not surrender an employer-issued identification card, the custodian may require the employee to surrender the employee's government-issued identification card to verify the employee's identity, and the custodian may hold the government-issued identification card at all times while the employee is present on the off-site premises.

(d) If the employee provides his or her employer-issued identification card to the custodian pursuant to paragraph (b) of this subsection (1), the custodian may require the employee to allow the custodian to examine a secondary form of identification containing the employee's photograph, including a government-issued identification card.

(2) This section does not apply to a person who enters into a defense contract with the federal government pursuant to the national industrial security program, or its successor program, under which the person is contractually obligated to verify identification using a government-issued identification card.

(3) As used in this section, unless the context otherwise requires:

(a) "Custodian" means the person who is authorized to provide or restrict access to the off-site premises, including security personnel for a commercial building or multi-residential property.

(b) "Employer-issued identification card" means an identification card issued by an employer to an employee that contains, at a minimum, the name of the employer and the employee's name and photograph.

(c) "Government-issued identification card" means a state-issued driver's license or identification card containing the person's photograph, an identification card or passport issued by the federal government containing the person's photograph, a Native American tribal document identifying the person and containing the person's photograph, or any other form of identification issued by the federal or a state government that contains the person's photograph and identifying information.

(d) "Off-site premises" means a building or property that is not owned, leased, operated, or otherwise under the control of the employer of the employee who is dispatched to the premises, including:

- (I) A commercial building, other than a federal, state, or local government building; or
- (II) A multi-residential property.

Source: L. 2011: Entire section added, (SB 11-179), ch. 185, p. 709, § 1, effective July 1.

8-2-126. Employer use of consumer credit information - violation - short title - definitions.

(1) This section shall be known and may be cited as the "Employment Opportunity Act".

(2) As used in this section:

(a) "Adverse action" means:

- (I) For an applicant for employment, denial of employment; and
- (II) For an employee, demotion, reassignment to a lower-ranked position or to a position with a lower level of compensation, decrease in compensation level, denial of promotion, or termination of employment; or
- (III) Any other decision for employment purposes that adversely affects an employee or applicant.

(b) "Consumer credit information" means a written, oral, or other communication of information bearing on a consumer's creditworthiness, credit standing, credit capacity, or credit history. "Consumer credit information" includes a credit score but does not include the address, name, or date of birth of an employee associated with a social security number.

(c) "Credit score" means an attempted numerical quantification of a person's creditworthiness or credit history.

(d) "Employee" means every person who may be permitted, required, or directed by any employer in consideration of direct or indirect gain or profit to engage in any employment and includes an applicant for employment.

(e) "Employer" has the meaning set forth in section 8-1-101 and includes a prospective employer; except that "employer" does not include any state or local law enforcement agency.

(f) "Employment purposes" means evaluating a person for employment, hiring, promotion, demotion, reassignment, adjustment in compensation level, or retention as an employee.

(g) "Substantially related to the employee's current or potential job" means the information contained in a credit report is related to the position for which the employee who is the subject of the report is being evaluated because the position:

(I) Constitutes executive or management personnel or officers or employees who constitute professional staff to executive and management personnel, and the position involves one or more of the following:

(A) Setting the direction or control of a business, division, unit, or an agency of a business;

(B) A fiduciary responsibility to the employer;

(C) Access to customers', employees', or the employer's personal or financial information other than information customarily provided in a retail transaction; or

(D) The authority to issue payments, collect debts, or enter into contracts;

(II) Involves contracts with defense, intelligence, national security, or space agencies of the federal government; or

(III) Is with a bank or financial institution.

(3) (a) An employer shall not use consumer credit information for employment purposes unless the information is substantially related to the employee's current or potential job. An employer or employer's agent, representative, or designee shall not require an employee to consent to a request for a credit report that contains information about the employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers as a condition of employment unless:

(I) The employer is a bank or financial institution;

(II) The report is required by law; or

(III) The report is substantially related to the employee's current or potential job and the employer has a bona fide purpose for requesting or using information in the credit report that is substantially related to the employee's current or potential job and is disclosed in writing to the employee.

(b) When consumer credit information is substantially related to the employee's current or potential job, an employer may inquire further of the employee to give him or her the opportunity to explain any unusual or mitigating circumstances where the consumer credit information may not reflect money management skills but is rather attributable to some other factor, including a layoff, error in the credit information, act of identity theft, medical expense, military separation, death, divorce, or separation in the employee's family, student debt, or a lack of credit history.

(4) If an employer relies, in whole or in part, on consumer credit information to take adverse action regarding the employee whose information was obtained, the employer shall disclose that fact, and the particular information upon which the employer relies, to the employee. The employer shall make the disclosure required under this subsection (4) to an employee in writing or to an applicant using the same medium in which the application was made.

(5) A person who is injured by a violation of this section may file a complaint with the division of labor standards and statistics, upon which the division of labor standards and statistics shall promptly investigate and issue findings within thirty days after a hearing and may award civil penalties not to exceed two thousand five hundred dollars to a prevailing party in an action brought under this subsection (5).

(6) The director of the division of labor standards and statistics in the department of labor and employment shall enforce this section.

(7) Nothing in this section imposes any liability on a person, including a consumer reporting agency, as that term is defined in section 5-18-103 (4), for providing an employer with consumer credit information.

Source: L. 2013: Entire section added (SB 13-018), ch. 125, p. 420, § 1, effective July 1. **L. 2014:** (2)(g)(I)(D) and (2)(g)(II) amended and (2)(g)(III) added, (SB 14-102), ch. 92, p. 342, § 1, effective March 27. **L. 2016:** (5) and (6) amended, (HB 16-1323), ch. 131, p. 377, § 8, effective August 10. **L. 2017:** (7) amended, (HB 17-1238), ch. 260, p. 1172, § 14, effective August 9.

8-2-127. Prohibitions of employer - requiring access to personal electronic communication devices - definitions - rules.

(1) As used in this section:

(a) "Applicant" means an applicant for employment.

(b) "Electronic communications device" means a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices.

(c) "Employer" means a person engaged in a business, industry, profession, trade, or other enterprise in the state or a unit of state or local government. "Employer" includes an agent, a representative, or a designee of the employer. "Employer" does not include the department of corrections, county corrections departments, or any state or local law enforcement agency.

(2) (a) An employer may not suggest, request, or require that an employee or applicant disclose, or cause an employee or applicant to disclose, any username, password, or other means for accessing the employee's or applicant's personal account or service through the employee's or applicant's personal electronic communications device. An employer shall not compel an employee or applicant to add anyone, including the employer or his or her agent, to the employee's or applicant's list of contacts associated with a social media account or require, request, suggest, or cause an employee or applicant to change privacy settings associated with a social networking account.

(b) Paragraph (a) of this subsection (2) does not prohibit an employer from requiring an employee to disclose any username, password, or other means for accessing nonpersonal accounts or services that provide access to the employer's internal computer or information systems.

(3) An employer shall not:

(a) Discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee for an employee's refusal to disclose any information specified in paragraph (a) of subsection (2) of this section or refusal to add the employer to the list of the employee's contacts or to change the privacy settings associated with a social media account; or

(b) Fail or refuse to hire an applicant because the applicant refuses to disclose any information specified in paragraph (a) of subsection (2) of this section or refuses to add the employer to the applicant's list of contacts or to change the privacy settings associated with a social media account.

(4) This section does not prevent an employer from:

(a) Conducting an investigation to ensure compliance with applicable securities or financial law or regulatory requirements based on the receipt of information about the use of a personal website, internet website, web-based account, or similar account by an employee for business purposes; or

(b) Investigating an employee's electronic communications based on the receipt of information about the unauthorized downloading of an employer's proprietary information or financial data to a personal website, internet website, web-based account, or similar account by an employee.

(5) A person who is injured by a violation of this section may file a complaint with the department of labor and employment. The department shall investigate the complaint and issue findings thirty days after a hearing. The department may promulgate rules regarding penalties that include a fine of up to one thousand dollars for the first offense and a fine not to exceed five thousand dollars for each subsequent offense.

(6) Nothing in this section prohibits an employer from enforcing existing personnel policies that do not conflict with this section.

(7) Nothing in this section permits an employee to disclose information that is confidential under federal or state law or pursuant to a contract agreement between the employer and the employee.

Source: L. 2013: Entire section added, (HB 13-1046), ch. 195, p. 795, § 1, effective May 11.

8-2-128. Prohibitions of employer - requiring social security number - exceptions.

(1) (a) An entity with a board of directors, including any advisory board, shall not require a member of the board of directors who is not paid for serving on the board, except for occasional reimbursement of incidental expenses of serving on the board, to disclose the member's social security number to the entity in order to serve as a member of the board.

(b) Notwithstanding paragraph (a) of this subsection (1), a current or prospective board member may be required to disclose his or her social security number:

(I) To an entity that is required by law, rule, or a government or accreditation organization's recommended program of legal compliance to require a member of its board of directors to provide a social security number to use to check any governmental background check database or to reimburse a member for expenses incurred in the actual performance of his or her duties;

(II) If the board member would directly serve a clientele that includes minors, the elderly, victims of abuse, persons with developmental disabilities, or other vulnerable individuals and that has an established policy of using a professional employment screening service to conduct background checks, utilizing social security numbers, to screen its personnel, board members, or volunteers; or

(III) If the board member would be authorized to sign checks or engage in other transactions involving the entity's assets or accounts and the financial institution holding those assets or accounts requires a social security number to verify the identity of persons so authorized.

(c) An entity that requires an individual to provide his or her social security number for one of the reasons listed in paragraph (b) of this subsection (1) shall state the reason and specify what uses will be made of the individual's social security number.

(2) It is unlawful for the state or any local government to deny an individual any right, benefit, or privilege provided by law that would violate the federal "Privacy Act of 1974", Pub.L. 93-579, sec. 7, because of the individual's refusal to disclose his or her social security number unless federal law, state law or rule, or a rule, order, or directive of a court requires such disclosure. The state or any local government that requests an individual to disclose his or her social security number when the disclosure is not required by federal or state law shall inform the individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the social security number is solicited, and what uses will be made of the individual's social security number.

Source: L. 2014: Entire section added, (HB 14-1141), ch. 127, p. 450, § 1, effective August 6.

8-2-128.5. Prohibitions of non-employer - requiring social security number - exceptions - definitions.

(1) (a) An entity that requires an applicant to provide a social security number for a background check as a condition to participate in or otherwise avail themselves of a non-employment-based educational opportunity shall also accept an individual taxpayer identification number in lieu of a social security number.

(b) Notwithstanding subsection (1)(a) of this section, a licensed or certified hospital or a covered school that requires an applicant to provide a social security number for a background check as a condition to participate in or otherwise avail themselves of a non-employment-based educational opportunity is not required to accept an individual taxpayer identification number, but shall accept a fingerprint-based background check in lieu of a social security number.

(c) Notwithstanding subsection (1)(a) of this section, a state institution of higher education or a local district college that requires an applicant to provide a social security number for a background check as a condition to participate in or otherwise avail themselves of a non-employment-based education opportunity that involves work with a vulnerable population shall accept either an individual taxpayer identification number or a fingerprint-based background

check, as determined by the state institution of higher education or local district college, in lieu of a social security number.

(d) Non-employment-based educational opportunities covered by this section include, but are not limited to, an unpaid volunteer role; unpaid internship; unpaid pre-apprenticeship; and unpaid clinical experience in a hospital or clinic, including non-employment-based educational opportunities required for graduation or licensure in a health-related academic program.

(e) This section does not apply to positions that constitute employment as described in section 8-70-115.

(2) Notwithstanding subsection (1) of this section, an applicant may be required to disclose their social security number:

(a) To an entity required to collect the social security number:

(I) By state or federal law or rule;

(II) By a governmental or accreditation organization's mandatory program of legal compliance to check any governmental background check database;

(III) To comply with requirements for a federal or state grant; or

(IV) To reimburse an applicant for expenses incurred in the actual performance of their duties only if the reimbursement cannot be processed with an individual taxpayer identification number or employer identification number in accordance with applicable federal or state tax law that requires using the social security number; or

(b) If the applicant is applying for a non-employment-based educational opportunity that requires a person to sign checks or engage in other transactions involving the entity's assets or accounts and the financial institution holding those assets or accounts does not accept an individual taxpayer identification number or employer identification number in place of a social security number to verify the identity of authorized persons.

(3) As used in this section, unless the context otherwise requires:

(a) "Covered school" means a school that serves students in any of grades kindergarten through twelve, but only in relation to students it enrolls who seek a non-employment-based opportunity at the school or through a partnership between the school and another entity.

(b) "Entity" means a state institution of higher education; a local district college; a nonprofit organization that is exempt from taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986"; a volunteer organization; a covered school; or the following entities as licensed or certified as described in section 25-1.5-103: A clinic, clinical partnership, urgent care center, retail health clinic, hospital, telemedicine service, or concierge medical provider.

(c) "Licensed or certified hospital" means a hospital licensed or certified as described in section 25-1.5-103, including the university of Colorado Anschutz medical campus.

(d) "Local district college" means a local district college authorized pursuant to article 71 of title 23.

(e) "State institution of higher education" means a state institution of higher education, as defined in section 23-18-102, not including the university of Colorado Anschutz medical campus.

(f) "Vulnerable population" means an individual who is susceptible to abuse or mistreatment because of the individual's:

- (I) Age;
- (II) Disability;
- (III) Frailty;
- (IV) Behavioral or mental health;
- (V) Intellectual or developmental disability; or
- (VI) Ill health.

(4) This section does not prohibit an entity from complying with 8 U.S.C. sec. 1621.

(5) (a) An entity that does not accept an individual taxpayer identification number in violation of subsection (1)(a) of this section or a fingerprint-based background check in violation of subsection (1)(b) or (1)(c) of this section is subject to a civil penalty of two thousand dollars for the first violation and five thousand dollars for each subsequent violation.

(b) The attorney general is authorized to enforce this section.

(c) A civil penalty collected pursuant to this subsection (5) must be transferred to the state treasurer, who shall credit it to the immigration legal defense fund established pursuant to section 8-3.8-101.

(6) An entity that conducts a fingerprint-based background check of an applicant for a non-employment-based educational opportunity shall comply with the requirements for employers described in section 6-1-1314.

(7) (a) (I) An applicant for a non-employment-based educational opportunity with one of the following entities who declines to provide their social security number shall submit to a fingerprint-based criminal history record check:

- (A) A licensed or certified hospital;

- (B) A covered school; or
 - (C) A state institution of higher education or a local district college, for a non-employment-based educational opportunity that involves work with a vulnerable population.
- (II) The entity shall determine whether the applicant or the entity pays the costs associated with the fingerprint-based criminal history record check.
- (b) After submitting an application for a non-employment-based educational opportunity and declining to provide their social security number, the applicant shall have the applicant's fingerprints taken by a local law enforcement agency, or a third party approved by the Colorado bureau of investigation, to obtain a fingerprint-based criminal history record check. The applicant shall authorize the third party taking the applicant's fingerprints to submit, and the third party shall submit, the complete set of the applicant's fingerprints to the Colorado bureau of investigation to conduct a fingerprint-based criminal history record check.
- (c) If an approved third party takes the person's fingerprints, the fingerprints may be electronically captured using livescan equipment approved by the Colorado bureau of investigation. Third-party vendors shall not keep the applicant's information for more than thirty days.
- (d) The Colorado bureau of investigation shall use the applicant's fingerprints to conduct a criminal history record check using the bureau's records. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for conducting a fingerprint-based criminal history record check. The Colorado bureau of investigation, applicant, entity, and third party taking fingerprints shall comply with the federal bureau of investigation's requirements for a criminal history record check.
- (e) The Colorado bureau of investigation shall return the results of its criminal history record check to the entity, and the entity is authorized to receive the results of the federal bureau of investigation's criminal history record check. The entity shall use the information resulting from the criminal history record checks to investigate and determine whether an applicant is qualified for an opportunity pursuant to subsection (2) of this section.
- (f) When the results of a criminal history record check of an applicant performed pursuant to this subsection (7) reveal a record of arrest without a disposition, the entity shall require the applicant to submit to a name-based judicial record check, as defined in section 22-2-119.3 (6)(d).

Source: L. 2026: Entire section added, (HB 26-1143), ch. 351, p. 2123, § 2, effective June 3.

Editor's note: Section 4 of chapter 351 (HB 26-1143), Session Laws of Colorado 2026, provides that the act adding this section applies to contracts entered into and background checks requested on or after June 3, 2026.

Cross references: For the legislative declaration in HB 26-1143, see section 1 of chapter 351, Session Laws of Colorado 2026.

8-2-129. Access to personnel files and records - definitions - exemptions.

(1) Every employer shall, at least annually, upon the request of an employee, permit that employee to inspect and obtain a copy of any part of his or her own personnel file or files at the employer's office and at a time convenient to both the employer and the employee. A former employee may make one inspection of his or her personnel file after termination of employment. An employer may restrict the employee's or former employee's access to his or her files to be only in the presence of a person responsible for managing personnel data on behalf of the employer or another employee designated by the employer. The employer may require the employee or former employee to pay the reasonable cost of duplication of documents.

(2) As used in this section, unless the context otherwise requires:

(a) "Employee" does not include a person employed by an entity subject to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.

(b) "Employer" does not include any entity subject to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.

(c) "Personnel file" means the personnel records of an employee, in the manner maintained by the employer and using reasonable efforts by the employer to collect, that are used or have been used to determine the employee's qualifications for employment, promotion, additional compensation, or employment termination or other disciplinary action. "Personnel file" does not include documents or records required to be placed or maintained in a separate file from the regular personnel file by federal or state law or rule; documents or records pertaining to confidential reports from previous employers of the employee; or an active criminal investigation, an active disciplinary investigation by the employer, or an active investigation by a regulatory agency. "Personnel file" also does not include any information in a document or record that identifies any person who made a confidential accusation, as determined by the employer, against the employee who makes a request under subsection (1) of this section.

(3) Nothing in this section:

(a) Creates or authorizes a private cause of action by a person aggrieved by a violation of this section;

(b) Requires an employer to create, maintain, or retain a personnel file on an employee or former employee; or

(c) Requires an employer to retain any documents that are or were contained in an employee's or former employee's personnel file for any specified period of time.

(4) This section does not apply to a financial institution chartered and supervised under state or federal law, including without limitation:

(a) A bank;

(b) A trust company;

(c) A savings institution; and

(d) A credit union.

Source: L. 2016: Entire section added, (HB 16-1432), ch. 311, p. 1253, § 2, effective January 1, 2017.

Cross references: For the legislative declaration in HB 16-1432, see section 1 of chapter 311, Session Laws of Colorado 2016.

8-2-130. Criminal history - limits on advertisements and applications - exceptions - enforcement - rules - short title - definitions.

(1) **Short title.** The short title of this section is the "Colorado Chance to Compete Act".

(2) **Definitions.** As used in this section:

(a) "Criminal history" means the record of arrests, charges, pleas, or convictions for any misdemeanor or felony at the federal, state, or local level.

(b) "Department" means the department of labor and employment.

(c) (I) "Employer" means a person that regularly engages the services of individuals to perform services of any nature. "Employer" includes:

(A) An agent, representative, or designee of an employer; and

(B) An employment agency, as defined in section 24-34-401 (4).

(II) "Employer" does not include the state, a local government, or a quasi-governmental entity or political subdivision of the state.

(3) Criminal history information - limits on advertisements and applications - permissible uses.

(a) On and after September 1, 2019, an employer with eleven or more employees, and on and after September 1, 2021, all employers, shall not:

(I) State in an advertisement for an employment position that a person with a criminal history may not apply for the position;

(II) State on any form of application, including electronic applications, for an employment position that a person with a criminal history may not apply for the position; or

(III) Inquire into, or require disclosure of, an applicant's criminal history on an initial written or electronic application form.

(b) An employer may obtain the publicly available criminal background report of an applicant at any time.

(4) Exceptions. This section does not apply to a position being offered or advertised if:

(a) Federal, state, or local law or regulation prohibits employing for that position a person with a specific criminal history;

(b) The position is designated by the employer to participate in a federal, state, or local government program to encourage the employment of people with criminal histories; or

(c) The employer is required by federal, state, or local law or regulation to conduct a criminal history record check for that position, regardless of whether the position is for an employee or an independent contractor.

(5) Enforcement - notice and records retention rules.

(a) This section does not create or authorize a private cause of action by a person aggrieved by a violation of this section and does not create a protected class under section 24-34-402. The penalties set forth in this subsection (5) are the sole remedy for a violation of this section. The issuance of a warning, order, or penalty for a violation of this section is not evidence of a violation of part 4 of article 34 of title 24.

(b) A person who is aggrieved by a violation of this section may file a complaint with the department. If the department receives a complaint within twelve months after the act that is alleged to violate this section occurred, the department shall investigate the complaint unless the department determines that the complaint is without merit.

(c) An employer that violates this section is liable for one of the following penalties:

- (I) For the first violation, a warning and an order requiring compliance within thirty days;
 - (II) For the second violation, an order requiring compliance within thirty days and a civil penalty not to exceed one thousand dollars; or
 - (III) For a third or subsequent violation, an order requiring compliance within thirty days and a civil penalty not to exceed two thousand five hundred dollars.
- (d) An employer is not subject to penalties for a second or subsequent violation under subsection (5)(c) of this section unless the employer:
- (I) Failed to comply with an order requiring compliance within thirty days after the date of the order; or
 - (II) Complied with an order requiring compliance within thirty days but then committed a violation of this section more than thirty days after the issuance of the order.
- (e) The department shall adopt rules regarding procedures for handling complaints filed against employers alleging a violation of this section, including:
- (I) Requirements for providing notice to an employer alleged to have violated this section; and
 - (II) Requirements for retaining and maintaining relevant employment records during a pending investigation.

Source: L. 2019: Entire section added, (HB 19-1025), ch. 284, p. 2647, § 2, effective August 2.

Cross references: For the legislative declaration in HB 19-1025, see section 1 of chapter 284, Session Laws of Colorado 2019.

8-2-131. Age of job applicants - limits on applications - exceptions - enforcement - rules - short title - definitions.

- (1) **Short title.** The short title of this section is the "Job Application Fairness Act".
- (2) **Definitions.** As used in this section:
 - (a) "Department" means the department of labor and employment.

(b) "Employer" means a person engaged in a business, industry, profession, trade, or other enterprise in the state or a unit of state or local government. "Employer" includes an agent, a representative, or a designee of the employer.

(3) Job applicant's age - limits on applications.

(a) On and after July 1, 2024, an employer shall not request or require an individual to include the individual's age, date of birth, or dates of attendance at or date of graduation from an educational institution on an initial employment application.

(b) An employer may request or require an individual to provide additional application materials, including copies of certifications, transcripts, and other materials created by third parties, at the time of an initial employment application if the employer notifies the individual that the individual may redact information that identifies the individual's age, date of birth, or dates of attendance at or date of graduation from an educational institution.

(4) Verification permitted.

(a) The employer may request an individual to verify compliance with age requirements imposed pursuant to or required by:

- (I) A bona fide occupational qualification pertaining to public or occupational safety;
- (II) A federal law or regulation; or
- (III) A state or local law or regulation based on a bona fide occupational qualification.

(b) Verification requests made under this subsection (4) must not require disclosure of an individual's specific age, date of birth, or dates of attendance at or date of graduation from an educational institution on an initial employment application.

(5) Enforcement - notice and records retention rules.

(a) This section does not create or authorize a private cause of action by a person aggrieved by a violation of this section. The penalties set forth in this subsection (5) are the sole remedy for a violation of this section. The issuance of a warning, order, or penalty for a violation of this section is not evidence of a violation of part 4 of article 34 of title 24.

(b) A person who is aggrieved by a violation of this section may file a complaint with the department. If the department receives a complaint within twelve months after the act that is alleged to violate this section occurred, the department shall investigate the complaint unless the department determines that the complaint is without merit.

(c) An employer that violates this section is liable for one of the following penalties:

(I) For the first violation, a warning and an order requiring compliance within fifteen business days;

(II) For the second violation, an order requiring compliance within fifteen business days and a civil penalty not to exceed one thousand dollars; or

(III) For a third or subsequent violation, an order requiring compliance within fifteen business days and a civil penalty not to exceed two thousand five hundred dollars.

(d) An employer is not subject to penalties for a second or subsequent violation under subsection (5)(c) of this section unless the employer:

(I) Failed to comply with an order requiring compliance within fifteen business days after the date of the order; or

(II) Complied with an order requiring compliance within fifteen business days but then committed a violation of this section more than fifteen business days after the issuance of the order.

(e) Each distinct job posting violating this section constitutes a separate violation under subsection (5)(c) of this section. Each instance of an individual responding to a job posting does not constitute a violation under subsection (5)(c) of this section.

(f) The department shall adopt rules regarding procedures for handling complaints filed against employers alleging a violation of this section, including:

(I) Requirements for providing notice to an employer alleged to have violated this section; and

(II) Requirements for retaining and maintaining relevant employment records during a pending investigation.

Source: L. 2023: Entire section added, (SB 23-058), ch. 323, p. 1946, § 1, effective August 7.

8-2-132. Prohibition on employers - living organ donation - retaliation - adverse action - civil action - penalty for violation - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Adverse action" means:

(I) Demotion; reassignment to a lower-ranked position or to a position with a lower level of compensation; decrease in compensation level; denial of promotion; reduction in working conditions or perks, privileges, location, or status; or termination of employment; or

(II) Any other decision for employment purposes that adversely affects an employee that does not apply to other similarly situated employees or is applied differently to an employee who is a living organ donor.

(b) "Employee" means every person who may be permitted, required, or directed by any employer in consideration of direct or indirect gain or profit to engage in any employment.

(c) "Employer" means an individual or entity that:

(I) Transacts business in Colorado;

(II) At any time, employs another person to perform services of any nature; and

(III) Has control of the payment of wages or other compensation for such services or is the officer, agent, or employee of the person having control of the payment of wages or other compensation for such services.

(d) "Living organ donor" has the meaning set forth in section 25-59-103 (5).

(e) "Organ donation recovery operation" has the meaning set forth in section 25-59-103 (9).

(f) "Prohibited period" means:

(I) The thirty-day period before an employee's organ donation recovery operation, with respect to employee actions necessary for a successful organ donation recovery operation, as determined by a health-care provider performing or facilitating the organ donation recovery operation; and

(II) The ninety-day period after an employee has an organ donation recovery operation.

(2) An employer shall not intimidate, threaten, coerce, or in any manner discriminate or retaliate against or take any adverse action against an employee who is or becomes a living organ donor.

(3) Nothing in this section requires an employer to allow a living organ donor to take any unpaid leave that the living organ donor has not already accrued under the employer's existing policies applicable to similarly situated employees or that is not required under any other applicable law.

(4) There is a rebuttable presumption that an employer has engaged in an action described in subsection (2) of this section if the action is taken against an employee during the prohibited period. The employer must overcome the presumption by clear and convincing evidence that the prohibited act was taken for a lawful reason.

(5) (a) An employee who alleges a violation of this section may file a civil action in a court of competent jurisdiction against the employer alleged to have violated this section to seek legal and equitable relief as appropriate to remedy the violation, including:

- (I) Back pay;
 - (II) Reinstatement of employment or, if reinstatement is not feasible, front pay;
 - (III) The payment of wages unlawfully withheld, including interest on those wages;
 - (IV) Monetary penalties;
 - (V) Fines;
 - (VI) Injunctive relief; and
 - (VII) Any other appropriate remedy.
- (b) If the employee prevails in a civil action brought pursuant to this section, the court shall award the employee reasonable attorney fees and costs.
- (c) Nothing in this section precludes an employee from asserting any other available statutory or common-law claims.

Source: L. 2024: Entire section added, (HB 24-1132), ch. 331, p. 2244, § 3, effective June 3.

PART 2

EMPLOYER'S LIABILITY

Editor's note: In the original Volume 3, Colorado Revised Statutes 1973, this part 2 was included under article 42 of the "Workmen's Compensation Act of Colorado". It was moved to this article in 1976 for correct location since it was not enacted by the General Assembly as a part of the "Workmen's Compensation Act of Colorado" (see chapter 113, p. 294, Session Laws of Colorado 1911, and chapter 210, p. 700, Session Laws of Colorado 1919, and article 5 of chapter 80 and article 1 of chapter 81, C.R.S. 1963, prior to the recodification of the statutes in 1973).

8-2-201. Damages - fellow servant rule abolished - limitation on admission of criminal history.

(1) Every corporation or individual who employs agents, servants, or employees, such agents, servants, or employees being in the exercise of due care, shall be liable to respond in damages for injuries or death sustained by any such agent, servant, or employee resulting from the carelessness, omission of duty, or negligence of such employer, or which may have resulted from the carelessness, omission of duty, or negligence of any other agent, servant, or employee

of the employer, in the same manner and to the same extent as if the carelessness, omission of duty, or negligence causing the injury or death was that of the employer.

(2) (a) Information regarding the criminal history of an employee or former employee may not be introduced as evidence in a civil action against an employer or its employees or agents that is based on the conduct of the employee or former employee if:

(I) The nature of the criminal history does not bear a direct relationship to the facts underlying the cause of action; or

(II) Before the occurrence of the act giving rise to the civil action, a court order sealed any record of the criminal case or the employee or former employee received a pardon; or

(III) The record is of an arrest or charge that did not result in a criminal conviction; or

(IV) The employee or former employee received a deferred judgment at sentence and the deferred judgment was not revoked.

(b) This subsection (2) does not supersede any statutory requirement to conduct a criminal history background investigation or consider criminal history records in hiring for particular types of employment.

Source: L. 11: p. 294, § 1. C.L. § 4167. CSA: C. 97, § 95. CRS 53: § 80-6-1. C.R.S. 1963: § 80-5-1. L. 2010: Entire section amended, (HB 10-1023), ch. 42, p. 167, § 2, effective August 11.

Cross references: (1) For negligence of a fellow servant being no defense under the "Workers' Compensation Act of Colorado", see § 8-41-101; for damages for wrongful death, see article 21 of title 13.

(2) For the legislative declaration in the 2010 act amending this section, see section 1 of chapter 42, Session Laws of Colorado 2010.

ANNOTATION

I. General Consideration.

II. Negligence, Contributory Negligence, and Assumption of Risk.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Torts", see 35 Dicta 53 (1958).

Annotator's note. Cases decided prior to the earliest source of § 8-2-201 have been included in the annotations to this section.

At common law, a master is not responsible for negligence of fellow servant. Portland Gold Mining Co. v. Duke, 164 F. 180 (8th Cir. 1908).

But under this section the master is liable to a servant for the neglect of a fellow servant, to the same extent as for his own neglects. Portland Gold Mining Co. v. Duke, 191 F. 692 (8th Cir. 1911); Kett v. Colo. & S. Ry., 58 Colo. 392, 146 P. 245 (1915); Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

For this section and §§ 8-2-202 through 8-2-204 give a right of action in derogation of the common law, and supersede it to the extent necessary to give full force and effect thereto. Ferguson v. Ringsby Truck Line, 174 F.2d 744 (10th Cir. 1949); Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

But not available remedy under workmen's compensation. A workmen's compensation claimant cannot rely upon the provisions of §§ 8-2-201 through 8-2-205 as providing an available remedy excepted from abolition by the workmen's compensation act in § 8-42-102, even though those sections were mistakenly placed within the scope of the latter section by the 1973 revisor. Ryan v. Centennial Race Track, Inc., 196 Colo. 30, 580 P.2d 794 (1978).

The purpose and effect of this section is not only to abolish the fellow servant doctrine, but also to create in the employee or his survivors a statutory action for the employer's negligence within the time specified therein. Ferguson v. Ringsby Truck

Line, 174 F.2d 744 (10th Cir. 1949); Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

And this section is constitutional. Vindicator Consol. Gold Mining Co. v. Firstbrook, 36 Colo. 498, 86 P. 313 (1906); Big Kanawha Leasing Co. v. Jones, 45 Colo. 381, 102 P. 171 (1909); Colo. & S. Ry. v. Davis, 23 Colo. App. 41, 127 P. 249 (1912).

Because this section is not contrary to the due process clause of the constitution. Vindicator Consol. Gold Mining Co. v. Firstbrook, 36 Colo. 498, 86 P. 313 (1906); Rio Grande Sampling Co. v. Catlin, 40 Colo. 450, 94 P. 323 (1907); Colo. & S. Ry. v. Davis, 21 Colo. App. 1, 120 P. 1048, rev'd on other grounds, 23 Colo. App. 41, 127 P. 249 (1912).

Even though the servant is not required to give notice of the injury. Lange v. Union P. R. R., 126 F. 338 (8th Cir. 1903); Carlock v. Denver & R. G. R. R., 55 Colo. 146, 133 P. 1103 (1913); Kett v. Colo. & S. Ry., 58 Colo. 392, 146 P. 245 (1915).

Scope of employment may be enlarged by custom known to master. The servant's scope of employment may be enlarged by a practice sufficiently uniform, open, and long-established, to prove a custom, and knowledge of which is brought home to the master. Big Five Tunnel Ore Reduction & Transp. Co. v. Johnson, 44 Colo. 236, 99 P. 63 (1908).

And knowledge of foreman is knowledge of master. Knowledge of the foreman of a mine, as to the usage and practice of those working under him, is the

knowledge of the mine owner. *Big Five Tunnel Ore Reduction & Transp. Co. v. Johnson*, 44 Colo. 236, 99 P. 63 (1908).

Applied in *Nw. Eng'r Co. v. Rooks*, 166 Colo. 297, 443 P.2d 977 (1968).

II. NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, AND ASSUMPTION OF RISK.

The test of whether a master was negligent is whether his conduct was that of an ordinarily prudent man. *Colo. Milling & Elevator Co. v. Bright*, 76 Colo. 338, 231 P. 1111 (1924).

Master liable for defective appliance causing accident where defect was unknown to servant. *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

An employee is generally excusable for obeying orders in and about his employer's business when such orders are given by one in authority over him as a representative of his employer, unless the danger incurred by such obedience is so manifest that a prudent person would not obey even under the penalty of being discharged. *Colo. M. Ry. v. O'Brien*, 16 Colo. 219, 27 P. 701 (1891); *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

And miner is not negligent in failing to anticipate that experienced fellow miner will throw burning fuse toward open can of powder. *Rapson Coal Mining Co. v. Micheli*, 62 Colo. 330, 164 P. 311 (1916).

Thus, the doctrine of assumption of risk as to the negligence of a fellow servant has no place under this section.

Vindicator Consol. Gold Mining Co. v. Firstbrook, 36 Colo. 498, 86 P. 313 (1906); *Kett v. Colo. & S. Ry.*, 58 Colo. 392, 146 P. 245 (1915).

III. ACTIONS.

A. In General.

B. Complaint.

C. Burden of Proof.

D. Reference to Insurance.

E. Questions of Law and Fact.

F. Instructions.

G. Variance.

H. Damages.

A. In General.

Rescission of release given without consideration is not prerequisite to action.

Where, in an action for damages for the death of an employee, defendant pleads a release, and plaintiff pleads that it was given without consideration and the jury so found, defendant cannot object that plaintiff cannot maintain the action without first rescinding the release and tendering a return of the consideration received, as there was neither a contract of release to rescind nor any consideration received by the plaintiff for the alleged release which she could tender back. *Vindicator Consol. Gold Mining Co. v. Firstbrook*, 36 Colo. 498, 86 P. 313 (1906).

B. Complaint.

Election not required between counts alleging failure to furnish safe place to work and negligence of fellow servant.

Cramer v. Oppenstein, 16 Colo. 504, 27 P. 716 (1891); Manders v. Craft, 3 Colo. App. 236, 32 P. 836 (1893); Leonard v. Roberts, 20 Colo. 88, 36 P. 880 (1894); Vindicator Consol. Gold Mining Co. v. Firstbrook, 36 Colo. 498, 86 P. 313 (1906).

Allegations that pit was negligently left uncovered held sufficient. Colo. Milling & Elevator Co. v. Bright, 76 Colo. 338, 231 P. 1111 (1924).

For the sufficiency of allegation of failure to furnish safe appliances, see Denver Consol. Elec. Co. v. Lawrence, 31 Colo. 301, 73 P. 39 (1903); Nat'l Fuel Co. v. Green, 50 Colo. 307, 115 P. 709 (1911).

For the failure to allege name of negligent fellow servant, see Denver & R. G. R. v. Vitello, 21 Colo. App. 51, 121 P. 112 (1912).

C. Burden of Proof.

Defendant alleging contributory negligence has burden of proof. Big Five Tunnel Ore Reduction & Transp. Co. v. Johnson, 44 Colo. 236, 99 P. 63 (1908).

Likewise, master alleging negligent fellow servant was acting outside scope of employment. Where, in an action against the master for the death of a servant attributed to negligence of a fellow servant, there is a plea that the offending servant was acting without the scope of employment, the master has the burden of proof; and if the negligence of two working together occasioned the accident, and one of them was acting outside his employment, the defendant must go further and prove that the other did not materially participate in the

negligent act. Big Five Tunnel Ore Reduction & Transp. Co. v. Johnson, 44 Colo. 236, 99 P. 63 (1908).

D. Reference to Insurance.

Asking jurors whether they are interested in insurance company is not error. Vindicator Consol. Gold Mining Co. v. Firstbrook, 36 Colo. 498, 86 P. 313 (1906).

But statement to juror that suggests insurance company is real party in interest justifies reversal. Parkdale Fuel Co. v. Taylor, 26 Colo. App. 304, 144 P. 1138 (1914).

Unless great weight of evidence favors plaintiff. Tanner v. Harper, 32 Colo. 156, 75 P. 404 (1904); Parkdale Fuel Co. v. Taylor, 26 Colo. App. 304, 144 P. 1138 (1914).

But comment by counsel on custom of companies to carry insurance is error. Coe v. Van Why, 33 Colo. 315, 80 P. 894 (1905); Parkdale Fuel Co. v. Taylor, 26 Colo. App. 304, 144 P. 1138 (1914).

E. Questions of Law and Fact.

Whether a servant is acting within the scope of his authority is generally a question of fact for the jury under proper instructions, and not a question of law for the court. Ward v. Teller Reservoir & Irrigation Co., 60 Colo. 47, 153 P. 219 (1915); Rapson Coal Mining Co. v. Micheli, 62 Colo. 330, 164 P. 311 (1916).

Likewise, question of servant's contributory negligence is for the jury except in the clearest cases, where the facts are undisputed, and where all intelligent

men can draw but one inference, when the question of contributory negligence is for the court, and especially is this true when the measure of duty is ordinary and reasonable care, as in such cases the standard duty is variable. *Vindicator Consol. Gold Mining Co. v. Firstbrook*, 36 Colo. 498, 86 P. 313 (1906); *Phillips v. Denver City Tramway Co.*, 53 Colo. 458, 128 P. 460 (1912); *Kett v. Colo. & S. Ry.*, 58 Colo. 392, 146 P. 245 (1915).

And question of fact for jury as to whose duty it is to keep appliances in repair. *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

But where there is no room for two opinions as to master's negligence, question is a matter of law, and court may direct a verdict. *Colo. Milling & Elevator Co. v. Bright*, 76 Colo. 338, 231 P. 1111 (1924).

F. Instructions.

Instructions must be considered as a whole. And where, in an action by servant against master for negligence in the matter of appliances, the duty of the master is properly and clearly stated in the charge, as that of reasonable care only, objection made to a subsequent passage in which it is declared that the master is liable if the appliances were not of such character as a reasonably prudent person would consider safe, was held to be without merit. *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

Instructions will not be reviewed which trial court was not given opportunity to

correct. Where objection interposed was general, on the subject of damages, it does not avail as against an instruction which contains two or more independent and distinct propositions of law, some of which are right, because it fails to point out that which is incorrect from that which is correct. *Beals v. Cone*, 27 Colo. 473, 62 P. 948 (1900); *City of Pueblo v. Timbers*, 31 Colo. 215, 72 P. 1059 (1903); *Hasse v. Herring*, 36 Colo. 383, 85 P. 629 (1906); *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

G. Variance.

Evidence of master's negligence sufficient under complaint charging negligence of master and fellow servant. *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

Charge of failure to supply safe appliance supported by proof that appliance provided was useless. *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

H. Damages.

Minor may recover for expenses incurred for treatment. A minor suing for a personal injury may recover not only for the mental and bodily suffering occasioned by the injury, but for liabilities incurred by him in being cured or treated for his injury. That he might avoid liability for the expenses so incurred, by reason of his minority, is no bar to the recovery. His minority is a personal privilege of which no third person can have advantage. *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

But contract to furnish hospital care does not entitle servant to recover money expended for specialist. Assurances given to the servant at the time of his employment that in case of sickness or injury he will be received into a hospital maintained by the employer, and receive board, bed, medicines, and medical attendance free, do not entitle the servant to recover the expense of a trip to a distant city, and moneys expended there for the services of a

specialist, although this was upon the advice of the physician in charge of the hospital. The employer is not even bound to provide a specialist at the hospital. *Miller v. Camp Bird, Ltd.*, 46 Colo. 569, 105 P. 1105 (1909).

And error in awarding damages to which one is not entitled may be cured by a remittitur in writing, filed with the clerk of the trial court. *Nat'l Fuel Co. v. Green*, 50 Colo. 307, 115 P. 709 (1911).

8-2-202. Damages in case of death - limit.

If the death of a person is caused by an act of carelessness, omission of duty, or negligence as provided in section 8-2-201, the corporation or individual who would have been liable if the death had not ensued shall be liable to an action for damages regardless of the death of the party injured. In each such case the jury may award such damages as it deems fair and just, with reference to the necessary injury resulting from such death, to the parties who may be entitled to sue under this part 2; except that, if the decedent left neither a widow, widower, or minor children nor a dependent father or mother, the damages recoverable in any such action shall not exceed forty-five thousand dollars.

Source: L. 11: p. 295, § 2. C.L. § 4168. L. 33: p. 475, § 1. CSA: C. 97, § 96. CRS 53: § 80-6-2. L. 61: p. 488, § 1. C.R.S. 1963: § 80-5-2. L. 67: p. 481, § 2. L. 69: p. 329, § 2.

Cross references: For damages in general, see article 21 of title 13.

8-2-203. Who may sue - consolidation of actions.

- (1) Every such action shall in case of death be maintained:
 - (a) By the husband or wife of the deceased;
 - (b) If there is no husband or wife or if he or she fails to sue within one year after such death, by the children of the deceased or their descendants;
 - (c) If such deceased is a minor or unmarried, without issue, by the father or mother or by both jointly; or

(d) If there is no such person entitled to sue, by such other next of kin of the deceased as may be dependent upon the deceased for support.

(2) Every such action, in case of death, may be maintained by any person entitled to sue for the use and benefit of the others so entitled to sue as well as for the plaintiff so suing, and the verdict of the jury and the judgment of the court shall specify the amount of damages awarded to each person, and, if any such actions are separately brought, the same shall be consolidated with the action first commenced in the court which has jurisdiction of said actions when so consolidated.

Source: L. 11: p. 295, § 3. C.L. § 4169. CSA: C. 97, § 97. CRS 53: § 80-6-3. C.R.S. 1963: § 80-5-3.

ANNOTATION

Federal statute regulating liability of interstate carriers precludes death action by widow. The federal statute regulating the liability of interstate carriers to their employees supersedes and displaces the provisions of the state statute within its purview, and since the former statute confers

upon the personal representative of the employee the right of action for the death of such employee, attributable to the negligence of the master, the employee's widow is not permitted to maintain an action in her own name. *Denver & R. G. R. R. v. Wilson*, 62 Colo. 492, 163 P. 857 (1917).

8-2-204. Limitation of actions - limit of damages.

All actions provided for by this part 2 shall be brought within the time period prescribed in section 13-80-102, C.R.S. The amount of damages recoverable under this part 2 in case of personal injury resulting solely from negligence of a coemployee shall not exceed the sum of twenty-five thousand dollars.

Source: L. 11: p. 296, § 4. C.L. § 4170. L. 33: p. 476, § 2. CSA: C. 97, § 98. CRS 53: § 80-6-4. L. 61: p. 488, § 2. C.R.S. 1963: § 80-5-4. L. 86: Entire section amended, p. 702, § 7, effective May 23.

ANNOTATION

Law reviews. For article, "One Year Review of Torts", see 35 Dicta 53 (1958). For article, "In Defense of the Colorado Guest Statute", see 35 Dicta 174 (1958).

This section imposes a two-year statute of limitations on all rights of action created by the act. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

Amended answer pleading statute. After issues are joined and a cause has been set for trial, a court may in the exercise of reasonable discretion and in the interest of justice permit the filing of an amended answer pleading additional defenses, such as the two-year statute of limitations under this section. 37 C.J. 1227; *Walters v. Webster*, 52 Colo. 549, 123 P. 952 (1912); *Maryland Cas. Co. v. City & County of Denver*, 90 Colo. 20, 6 P.2d 6 (1931).

And damages may not exceed \$25,000. Under this section, damages against an employer by an employee for injuries resulting from the negligence of the employer or a fellow employee may not exceed the sum of \$25,000. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957); *Bein Farms, Inc. v. Dale*, 137 Colo. 424, 326 P.2d 72 (1958).

This section applies to an action by an employee to recover for personal injuries sustained while working for his employer, and allegedly caused by its negligence in furnishing an "unsafe, insecure and defective" appliance for the performance of his duties. *Ferguson v. Ringsby Truck Line*, 174 F.2d 744 (10th Cir. 1949).

8-2-205. Assumption of risk abolished.

If any agent, servant, or employee, while in the performance of his duty for his employer, is injured or killed in the employer's service on account of the employer's negligence or any defect or peril connected with ways, works, machinery, or instrumentalities used in the business of the employer which could have been remedied or made safer by the use of ordinary diligence, a recovery for such injury or death may be had. The fact that such employee had knowledge of the defect or peril shall not be a bar to a recovery unless the repairing or remedying of such defect or peril was his principal duty. All stipulations, contracts, or agreements between an employee and his employer or between other persons contrary to the provisions of this section shall be null and void.

Source: L. 15: p. 197, § 1. C.L. § 4171. CSA: C. 97, § 99. CRS 53: § 80-6-5. C.R.S. 1963: § 80-5-5.

Cross references: For assumption of risk under the "Workers' Compensation Act of Colorado", see § 8-41-101.

ANNOTATION

Law reviews. For article, "Derogation of the Common Law Rule of Contributory Negligence", see 7 Rocky Mt. L. Rev. 161 (1935). For article, "Employer's Liability for Occupational Diseases", see 16 Rocky Mt. L. Rev. 60 (1943).

This section, by its terms, is premised upon the negligence of the employer. Nitzel v. Austin Co., 249 F.2d 710 (10th Cir. 1957).

But this section does not purport to create any new right of action. It merely abates a common-law defense to a statutory cause of action. Ferguson v. Ringsby Truck Line, 174 F.2d 744 (10th Cir. 1949).

And this section relieves the employees and workmen from the assumption of risk for injuries or death. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

Prior to the enactment of this section, the servant assumed only such risks as were obvious to a person of ordinary intelligence, ability and experience, and which arose out of the conditions that surrounded him at the time. Miller v. Camp Bird, Ltd., 46 Colo. 569, 105 P. 1105 (1909).

But workman still assumes risks not created by master's negligence. Since the enactment of this section, and the workmen's compensation act, the doctrine of assumption of any risk created by the master's negligence has disappeared, but the question of whether the employer was negligent remains, and the workman still assumes, so far as a suit for damages is concerned, the risks not created by the master's negligence. Colo. Milling & Elevator Co. v. Bright, 76 Colo. 338, 231 P. 1111 (1924).

Instruction held correct. An instruction that if the defendant was negligent, and its negligence was the proximate cause of the injury, there was no assumption of risk was held correct. Colo. Milling & Elevator Co. v. Bright, 76 Colo. 338, 231 P. 1111 (1924).

Evidence of negligence requiring submission of case to jury. In action by a farm hand to recover for injuries sustained when his hand was caught in a corn husker, it was held that there was a sufficient showing of negligence on the part of the employer to require submission of the case to the jury. Huddleston v. Ingersoll Co., 109 Colo. 134, 123 P.2d 1016 (1942).

8-2-206. Agricultural employers - agricultural employees - violations - penalties - definitions.

- (1) As used in this section, unless the context otherwise requires:

(a) "Adverse action" means a demotion, reassignment to a lower-ranked position or to a position with a lower level of compensation, decrease in compensation level, denial of promotion, or termination of employment; or other decision for employment purposes that adversely affects an agricultural employee.

(b) "Agricultural employee" means a person employed by an agricultural employer.

(c) "Agricultural employer" has the same meaning set forth in section 8-3-104 (1).

(d) "Director" means the director of the division.

(e) "Division" means the division of labor standards and statistics in the department of labor and employment.

(2) The rights, remedies, and penalties specified in this section are in addition to any rights, remedies, or penalties available to agricultural employees under article 3 or 6 of this title 8, part 2 of article 13.5 of this title 8, article 14.4 of this title 8, or any other remedies available pursuant to law.

(3) (a) An agricultural employer shall not retaliate against any person, including an agricultural employee, asserting or seeking rights protected under article 3 or 6 of this title 8, part 2 of article 13.5 of this title 8, article 14.4 of this title 8, including complaining publicly or supporting an agricultural employee seeking or asserting rights, remedies, or penalties under those provisions of this title 8, or any other remedies available pursuant to law.

(b) There is a rebuttable presumption that an agricultural employer that takes an adverse action against an agricultural employee within ninety days after the agricultural employee has asserted or sought any protected rights, remedies, or penalties under article 3 or 6 of this title 8, part 2 of article 13.5 of this title 8, article 14.4 of this title 8, or any other remedies available pursuant to law has retaliated against the agricultural employee.

(c) An agricultural employee, a person who has a familial or workplace relationship with the agricultural employee, or a person with whom the agricultural employee exchanges care or support who has been aggrieved by retaliation by a person may assert a claim:

(I) In district court for injunctive and equitable remedies, a penalty in the amount of the greater of the actual damages or ten thousand dollars for each violation, and attorney fees and costs; or

(II) With the division pursuant to rules adopted by the director. The director may investigate and order all remedies available in district court or may decline to investigate and thus authorize the complainant to file suit in district court. A decision by the director to decline to investigate must be made within ninety days after the claim is filed as established by rule of the director. The statute of limitations is tolled for the purpose of filing a claim in district court from the date that the claim is asserted until ninety days after the director declines to investigate the claim.

(4) (a) If a person who has engaged in retaliation has violated this section or has violated article 3 or 6 of this title 8, part 2 of article 13.5 of this title 8, or article 14.4 of this title 8 in a manner that has harmed an agricultural employee, the director may commence an action in district court on behalf of the state of Colorado against the person who retaliated against:

(I) An agricultural employee;

(II) A person who has a familial or workplace relationship with the agricultural employee; or

(III) A person with whom the agricultural employee exchanges care or support.

(b) The director may seek an order imposing restitution, injunctive and equitable remedies, and an appropriate penalty of more than one hundred dollars but not more than one thousand dollars per violation.

Source: L. 2021: Entire section added, (SB 21-087), ch. 337, p. 2172, § 1, effective June 25.

8-2.5 ARTICLE 2.5

Freedom of Legislative and Judicial Access Act

8-2.5-101. Preventing legislative and judicial access to employees - intimidation of legislative witnesses - penalty.

8-2.5-101. Preventing legislative and judicial access to employees - intimidation of legislative witnesses - penalty.

(1) (a) It is unlawful for any person to adopt or enforce any rule, regulation, or policy forbidding or preventing any of its employees, franchisees, or agents or entities under its control or oversight from, or to take any action against its employees, franchisees, or agents or entities under its control or oversight solely for, testifying before a committee of the general assembly or a court of law or speaking to a member of the general assembly at the request of such committee, court, or member regarding any action, policy, rule, regulation, practice, or procedure of any person or regarding any grievance relating thereto. Any person violating any provision of this section commits a class 2 misdemeanor.

(b) The prohibition in paragraph (a) of this subsection (1) shall not apply to testimony before a committee of the general assembly or a court of law that discloses confidential, proprietary, or otherwise privileged information of any person.

(1.5) (a) It is unlawful for any person:

(I) To intimidate a legislative witness, by use of a threat, in order to intentionally influence or induce a legislative witness:

(A) To appear or not appear before a committee of the general assembly;

(B) To give or refrain from giving testimony to a committee of the general assembly;

(C) To testify falsely before a committee of the general assembly; or

(D) To avoid legal process summoning the legislative witness to attend and testify before a committee of the general assembly; or

(II) To take any action against a legislative witness for testifying before a committee of the general assembly.

(b) For the purposes of this subsection (1.5):

(I) "Legislative witness" means any individual that intends to testify or testifies before a committee of the general assembly either voluntarily or pursuant to a subpoena issued by any committee of the general assembly or of either house thereof.

(II) "Threat" means to communicate directly the intent to do any act that is intended to harm the health, safety, property, business, or financial condition of the legislative witness.

(c) Any person violating any provision of this subsection (1.5) commits a class 2 misdemeanor.

(2) (a) An employee, a franchisee, an agent or an entity under the control of any person, or a legislative witness may recover damages, including reasonable attorney fees, from any person for injuries suffered through a violation of this section.

(b) Nothing in this section shall be construed to prohibit an employee, a franchisee, an agent or an entity under the control of any person, or a legislative witness from pursuing any other right of action permitted pursuant to law for injuries suffered through a violation of this section.

(3) Nothing in this section shall obligate any person to compensate an employee or agent for time spent testifying before a committee of the general assembly or a court of law or speaking to a member of the general assembly at the request or invitation of such committee, court, or member regarding any action, policy, rule, regulation, practice, or procedure of any person or regarding any grievance relating thereto.

(4) For purposes of this section, "person" means a corporation, a limited liability company, a partnership, an association, a firm, a state agency as defined in section 24-50.5-102 (4), C.R.S., a county, a city and county, a municipality, a federal agency, an individual, or any officer or agent thereof.

Source: **L. 97:** Entire article added, p. 1611, § 1, effective June 4. **L. 98:** (1.5) added and (2) amended, p. 693, § 1, effective August 5. **L. 2021:** (1)(a) and (1.5)(c) amended, (SB 21-271), ch. 462, p. 3139, § 84, effective March 1, 2022.

Cross references: For interference with the legislative process, see part 4 of article 2 of title 2; for attempt to influence a public servant, see § 18-8-306; for perjury and related offenses pertaining to governmental operations, see part 5 of article 8 of title 18; for attendance of witnesses before the general assembly, see § 2-2-313; for the penalty for a class 2 misdemeanor, see § 18-1.3-501.

ANNOTATION

There is no basis to conclude that this section clearly expresses a public policy that forbids an employer from terminating an employee for filing a motion for a temporary restraining order or a lawsuit against an employer. The section does not clearly mandate a general public policy protecting access to the courts. *Slaughter v. John Elway Dodge S.W./AutoNation*, 107 P.3d 1165 (Colo. App. 2005).

To bring a successful claim under this section, a plaintiff must establish that any

action taken was solely because of plaintiff's testimony. *Emerson v. Wembley USA Inc.*, 433 F. Supp. 2d 1200 (D. Colo. 2006).

This statute protects an employee who testifies as a witness in a court proceeding upon being called by one of the parties or counsel to the proceeding but without an order, subpoena, or other formal court-issued request. *Butler v. Bd. County Comm'rs for San Miguel*, 2021 COA 32, 491 P.3d 506.

ARTICLE 3

Labor Peace Act

8-3-101.	Short title.	8-3-105.	Director to administer - adopt rules and regulations.
8-3-102.	Legislative declaration.	8-3-106.	Rights of employees.
8-3-103.	Construction.	8-3-107.	Representatives and elections.
8-3-104.	Definitions.		

8-3-108.	What are unfair labor practices.	8-3-116.	Interference with director - officer of division.
8-3-109.	What are not unfair labor practices.	8-3-117.	Existing contracts unaffected.
8-3-110.	Prevention of unfair labor practices.	8-3-118.	Jurisdiction to issue restraining orders or injunctions.
8-3-111.	Protection of employees when authority acquires certain operations.	8-3-119.	Relations contrary to public policy.
8-3-112.	Arbitration.	8-3-120.	Conflict of provisions.
8-3-113.	Mediation.	8-3-121.	Civil liability for damages.
8-3-114.	Duties of attorney general and district attorneys.	8-3-122.	Penalty for violation.
8-3-115.	Employer and employee committees.	8-3-123.	Nonapplicability of other statutes.

8-3-101. Short title.

This article shall be known and may be cited as the "Labor Peace Act".

Source: L. 43: p. 417, § 24. CSA: C. 97, § 94(24). CRS 53: § 80-5-21. C.R.S. 1963: § 80-4-21.

ANNOTATION

Law reviews. For article, "Some Legal Aspects of the Colorado Coal Strike", see 4 Den. B. Ass'n Rec. 22 (Dec. 1927). For article, "Governmental Adjustment of Colorado's Industrial Disputes 1915-1930", see 3 Rocky Mt. L. Rev. 223 (1931). For note, "The Constitutionality of the Labor Peace Act", see 18 Rocky Mt. L. Rev. 52 (1945). For article, "An Analysis of the

Colorado Labor Peace Act", see 19 Rocky Mt. L. Rev. 359 (1947). For article, "The Extent to Which Taft-Hartley Act Has Superseded State Labor Laws", see 28 Dicta 47 (1951). For article, "Picketing — Free Speech?", see 28 Dicta 61 (1951). For article, "One Year Review of Cases on Contracts", see 33 Dicta 57 (1956). For case note, "Uncertain Status of Public Sector

Labor Arbitration in Colorado", see 48 U. Colo. L. Rev. 451 (1977). For article, "The Regional Transportation District Strike and the Colorado Labor Peace Act: A Study in Public Sector Collective Bargaining", see 54 U. Colo. L. Rev. 203 (1983).

The labor peace act, enacted in 1943, is a comprehensive statute regulating the conduct of parties to a labor dispute. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

Consequently, a municipal ordinance insofar as it deals with the conduct of parties to a "labor dispute" in an attempt to cover in a different and sometimes conflicting manner the same field as is covered by the labor peace act must be held without force or effect; for municipalities are creatures of either legislative enactment or constitutional provision, having only powers expressly or impliedly granted to them, and no statute or constitutional provision has expressly given cities power to regulate labor disputes, nor can such be said to be an implied power when the proper conduct of labor activities is a matter of statewide concern. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

However, the labor peace act is itself inapplicable where preempted by federal labor legislation. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

Invalidity of such provisions to be determined by federal courts. Questions raised as to the invalidity of such provisions by virtue of the federal constitution and the

jurisdiction of the state courts with the passage of federal labor acts must be determined by the federal courts. Denver Bldg. & Constr. Trades Council v. Shore, 124 Colo. 57, 234 P.2d 620 (1951).

But this article as a whole is not unconstitutional upon the theory that, as to employees engaged in interstate commerce, it infringes upon the field preempted by the national labor relations act and upon the ground that it is in direct conflict with federal legislation. Am. Fed'n of Labor v. Reilly, 113 Colo. 90, 155 P.2d 145 (1944).

Nor is this article unconstitutional on the ground that the definition of a "labor dispute" in subsection (13) of § 8-3-104 is too narrow. Denver Milk Producers v. Int'l Bhd. of Teamsters, 116 Colo. 389, 183 P.2d 529 (1947).

Employer's alleged violation of act did not foreclose his right to independent remedy. Where employer alleged in its affirmative defenses and counterclaim that plaintiffs' activities violated the "Colorado labor peace act", such allegation did not foreclose the employer's right to an independent remedy, and the employer was not obliged to first utilize the administrative provisions of the act in seeking a remedy. Pipeliners Local 798 v. Ellerd, 503 F.2d 1193 (10th Cir. 1974).

The labor peace act is not restricted in its application to industry and trade only. Indus. Comm'n v. Wallace Vill. for Children, 165 Colo. 10, 437 P.2d 62 (1968).

And there is an express recognition of the right of employees to engage in peaceful picketing throughout the provisions of the labor peace act. People ex rel. Shaffer v. Teamster Local 961, 175 Colo. 187, 486 P.2d 10 (1971); Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

If Colorado law is interpreted to allow an action by an employee for violation of a union's duty of fair representation, in order for employee to sustain the action, he must demonstrate that his claim of wrongful discharge has merit, so that it is probable he would have succeeded in any arbitration

proceeding. If the union's invocation of arbitration proceedings would not have provided some relief to the employee, its refusal to take such action did not injure the employee. Hoff v. Amal. Transit Un., Div. 662, 758 P.2d 674 (Colo. App. 1987).

Trial court properly dismissed claim that employee was entitled to protection from retaliation on basis of work-related illness or injury or the filing of a claim for worker's compensation under this act where complaint did not allege any fact relating to efforts to organize under the labor peace act. Ferris v. Local 26, 867 P.2d 38 (Colo. App. 1993).

8-3-102. Legislative declaration.

(1) The public policy of the state as to employment relations and collective bargaining, in the furtherance of which this article 3 is enacted, is declared to be as follows:

(a) It recognizes that there are three major interests involved, namely: That of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(b) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever legitimate controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted in the conduct of their controversy to intrude directly or indirectly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, intimidation, restraint, or coercion.

(c) Negotiations of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation, an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own free choosing without intimidation or coercion from any source.

(d) All rights of persons to join labor organizations or unions and their rights and privileges as members of labor organizations or unions should be recognized, safeguarded, and protected. A person shall not be denied membership in a labor organization or union on account of race, creed, color, religion, sex, sexual orientation, gender identity, gender expression, marital status, disability, national origin, or ancestry or by any unfair or unjust discrimination. A labor organization or union shall neither require arbitrary or excessive initiation fees and dues nor impose excessive, unwarranted, arbitrary, or oppressive fines, penalties, or forfeitures. The members are entitled to full and detailed reports from their officers, agents, or representatives of all financial transactions and have the right to elect officers by secret ballot and to determine and vote upon the question of striking, not striking, and other questions of policy affecting the entire membership.

(e) In order to preserve and promote the interests of the public, the employee, and the employer alike, the state shall establish standards of fair conduct in employment relations and provide a convenient, expeditious, and impartial tribunal by which these interests may have their respective rights and obligations adjudicated, without limiting the jurisdiction of the courts to protect property, and to prevent and punish the commission of unlawful acts. While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

(f) It is declared to be the common law of the state that no act which if done by one person would constitute a crime under the common law or statutes of this state is any less a crime if committed by two or more persons or corporations acting in concert, and no act which under the common law or statutes of this state is a wrongful act for which any person has a remedy against the wrongdoer if done by one person is any less a remedial wrong if done by two or more persons or corporations in concert, nor shall the injured person be denied relief in the courts of this state in law or equity except as such relief may be expressly limited by statute.

(g) (I) The general assembly hereby finds and determines that the matters contained in this article have important statewide ramifications for the labor force in this state. The general assembly, therefore, declares that the matters contained in this article are of statewide concern.

(II) to (III) Repealed.

Source: L. 43: p. 392, § 1. **CSA:** C. 97, § 94(1). **CRS 53:** § 80-5-1. **C.R.S. 1963:** § 80-4-1. **L. 99:** (1)(g) added, p. 288, § 1, effective April 14. **L. 2008:** (1)(d) amended, p. 1598, § 11, effective

May 29. **L. 2019:** IP(1) amended and (1)(g)(II), (1)(g)(II.5), and (1)(g)(III) repealed, (HB 19-1210), ch. 320, p. 2971, § 3, effective January 1, 2020. **L. 2021:** (1)(d) amended, (HB 21-1108), ch. 156, p. 890, § 13, effective September 7.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1)(d), see section 1 of chapter 341, Session Laws of Colorado 2008. For the legislative declaration in HB 19-1210, see section 1 of chapter 320, Session Laws of Colorado 2019. For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of Colorado 2021.

ANNOTATION

Declarations of policy stated in labor legislation such as the labor peace act are persuasive in regard to the intended coverage of the act. *St. Luke's Hosp. v. Indus. Comm'n*, 142 Colo. 28, 349 P.2d 995 (1960).

The public policy established by the general assembly precludes courts from imposing a heightened standard of proof on persons seeking remedies against a labor union for allegedly tortious conduct. *Vikman v. Int'l Broth. of Elec. Workers*, 889 P.2d 646 (Colo. 1995).

And the purpose of the labor peace act is to restrict the business judgment of both operators and employees in the promotion of the welfare of the industry and of the public. *UMW v. Sunlight Coal Co.*, 129 Colo. 374, 270 P.2d 776 (1954).

Employer not required to conform to union rule opposed to policy of this section. A union does not have the right, based on an employer's contract to conform to any and all rules adopted by the union, to withdraw a shop card upon the employer's

refusal to agree to a rule which is opposed to the public policy of the state of Colorado as declared by the general assembly in this section. *Journeyman Barbers Local 205 v. Indus. Comm'n*, 128 Colo. 121, 260 P.2d 941 (1953).

Such as violation of the principle of collective bargaining. To require the owner and operator of a business to become a limited or nonactive member of his employees' union is discriminatory and in violation of the cardinal principle of collective bargaining. *Journeyman Barbers Local 205 v. Indus. Comm'n*, 128 Colo. 121, 260 P.2d 941 (1953).

The isolated use of the term "industrial peace" in the declaration of public policy is not meant to limit the application of the labor peace act only to industry and trade, because the sentence involved goes on to itemize other conditions which the act is designed to promote, including the "uninterrupted production of goods and services". To ascertain the clear meaning of this phrase, it must be viewed in the

disjunctive thereby indicating two separate conditions, to wit: uninterrupted production of goods and uninterrupted services. *Indus. Comm'n v. Wallace Vill. for Children*, 165 Colo. 10, 437 P.2d 62 (1968).

However, a charitable private hospital is not amenable to the collective bargaining provisions of the labor peace act. *Indus. Comm'n v. Wallace Vill. for Children*, 165 Colo. 10, 437 P.2d 62 (1968).

But a nonprofit school which works with handicapped children and hires teacher-therapists and counselors for this purpose, but does not provide surgical or medical services and does not employ or have in attendance doctors or nurses, is subject to the provisions of the labor peace act. *Indus. Comm'n v. Wallace Vill. for Children*, 165 Colo. 10, 437 P.2d 62 (1968).

8-3-103. Construction.

Except as specifically provided in this article, nothing in this article shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work, nor shall anything in this article be so construed as unlawfully to invade the right to freedom of speech. Nothing in this article shall be so construed or applied as to deprive any employee of any unemployment benefit which he might otherwise be entitled to receive under any other laws of the state of Colorado. The fact that any provisions of this article have been adopted from other states, or the language of the statutes of other states has been used in the preparation of this article shall not be taken to adopt as the construction of such provisions the decisions of other states construing such statutes of other states. It is not the intention of the legislature in adopting this article necessarily to adopt the construction that may have been placed upon similar provisions by the courts of other states.

Source: L. 43: p. 417, § 24. **CSA:** C. 97, § 94(24). **CRS 53:** § 80-5-21. **C.R.S. 1963:** § 80-4-21.

ANNOTATION

The words "nor shall anything in this article be so construed as unlawfully to invade the right to freedom of speech", pertinent as they may be to the application of such regulatory provisions of the labor peace act as are not predicated upon the prerequisite of compulsory incorporation of

a labor union, do not salvage those provisions which were enacted upon the assumption of the imposed corporate form on unions found to be unconstitutional. *Am. Fed'n of Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145 (1944).

This section does not confer eligibility for unemployment compensation benefits upon a claimant who is otherwise ineligible.

McClafflin v. Indus. Claim Appeals Office,
126 P.3d 288 (Colo. App. 2005).

8-3-104. Definitions.

As used in this article 3, unless the context otherwise requires:

(1) (a) "Agricultural employer" means a person that:

(I) Regularly engages the services of one or more employees or contracts with any person who recruits, solicits, hires, employs, furnishes, or transports employees; and

(II) Is engaged in any service or activity included in section 203 (f) of the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., as amended, or engaged in "agricultural labor" as defined in section 3121 (g) of the federal "Internal Revenue Code of 1986", as amended.

(b) The meaning of "agricultural employer" must be liberally construed for the protection of persons providing services to an employer.

(1.5) "All-union agreement" means a contractual provision between an employer or group of employers and a collective bargaining unit representing some or all of the employees of the employer or group of employers providing for any type of union security and compelling an employee's financial support or allegiance to a labor organization. "All-union agreement" includes, but is not limited to, a contractual provision for a union shop, a modified union shop, an agency shop (meaning a contractual provision that provides for periodic payment of a sum in lieu of union dues but does not require union membership), a modified agency shop, a prehire agreement, maintenance of dues, or maintenance of membership.

(2) "Authority" means the state of Colorado; any board, commission, agency, or instrumentality thereof; or any district, municipality, city and county, county, or combination thereof, which acquires or operates a mass transportation system.

(3) "Collective bargaining" means negotiation by an employer and the representative of a majority of his employees who are in a collective bargaining unit or their representatives concerning representation or terms and conditions of employment of such employees in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

(4) "Collective bargaining unit" means an organization selected by secret ballot, as provided in section 8-3-107, by a majority vote of the employees of one employer employed within the state who vote at an election for the selection of such unit; except that, where a majority of such employees engaged in a single craft, division, department, or plant have voted by secret ballot that the employees of such single craft, division, department, or plant shall constitute their

collective bargaining unit, it shall be so considered. Two or more collective bargaining units may bargain collectively through the same representative or where a majority of the employees in each separate unit have voted to do so by secret ballot, as provided in section 8-3-107.

(5) and (6) Repealed.

(7) "Company union" means an organization of employees, the members of which are the employees of only one employer.

(8) "Director" means the director of the division of labor standards and statistics.

(9) "Division" means the division of labor standards and statistics in the department of labor and employment.

(10) "Election" means a proceeding in which the employees authorized by this article cast a secret ballot to select a collective bargaining unit or for any other purpose specified in this article, including elections conducted by the division of labor standards and statistics or by any tribunal having competent jurisdiction or whose jurisdiction has been accepted by the parties.

(11) (a) "Employee" includes any person:

(I) Working for another for hire in the state of Colorado in a nonexecutive or nonsupervisory capacity, and is not limited to the employees of a particular employer and includes any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer; and

(II) (A) Who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employee or the employee's representative;

(B) Who has not been found to have committed or to have been a party to any unfair labor practice under this article 3;

(C) Who has not obtained regular and substantially equivalent employment elsewhere; or

(D) Who has not been absent from the person's employment for a substantial period of time during which reasonable expectancy of settlement has ceased, except by an employer's unlawful refusal to bargain, and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout.

(b) "Employee" does not include:

(I) An independent contractor;

(II) Domestic servants employed in and about private homes;

(III) An individual employed by the individual's parent or spouse;

(IV) An employee who is subject to the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq., as amended; or

(V) A parent, spouse, or child of an agricultural employer's immediate family.

(12) (a) (I) "Employer" means a person who regularly engages the services of eight or more employees, other than persons within the classes expressly exempted under the terms of subsection (11) of this section.

(II) "Employer" includes:

(A) Any person acting on behalf of an employer within the scope of the employer's authority, express or implied; and

(B) An agricultural employer.

(b) "Employer" does not include the state or any political subdivision thereof, except where the state or any political subdivision thereof acquires or operates a mass transportation system or any carrier by railroad, express company, or sleeping car company subject to the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq., as amended, or any labor organization or anyone acting in behalf of such organization other than when the employer is acting as an employer-in-fact.

(13) (a) "Labor dispute" means any controversy between an employer and such of his employees as are organized in a collective bargaining unit concerning the rights or process or details of collective bargaining. The entering into of a contract for an all-union agreement or the refusal of an employer to enter into an all-union agreement shall not constitute a labor dispute. It shall not be a labor dispute where the disputants do not stand in the proximate relation of employer and employee. No jurisdictional dispute or controversy between two or more unions as to which of them has or shall have jurisdiction over certain kinds of work; or as to which of two or more bargaining units constitutes the collective bargaining unit as to which the employer stands impartial or ready to negotiate or bargain with whichever is legally determined to be such bargaining unit, shall constitute a labor dispute.

(b) The general right of an employer to select his own employees is recognized and shall be fully protected. It shall not constitute a labor dispute if an employer discharges or refuses to employ an employee on account of incompetence, neglect of work, unsatisfactory service, or dishonesty; but the discharge of an employee or the refusal to employ an employee shall constitute a labor dispute only when such discharge or refusal to employ is founded upon membership in a union or labor organization or activity therein or when such discharge or failure to employ is in violation of a contract.

(c) No controversy between an employer and his employee shall constitute a labor dispute until after a bargaining unit in accordance with this article is created and a dispute arises between the bargaining unit and the employer.

(d) No labor dispute shall arise from the refusal of an employer to join a union or to cease work in his own business.

(14) "Local union" means an organization of employees employed in this state, the membership of which includes employees of one or more employers, whether or not they are affiliated with an organization of employees employed in one or more other states.

(15) "Mass transportation system" means any system which transports the general public by bus, rail, or any other means of conveyance moving along prescribed routes, except any railroad subject to the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq.

(16) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, or receivers.

(17) "Representative" includes any person who is the duly authorized agent of a collective bargaining unit.

(18) "Secondary boycott" includes causing or threatening to cause, and combining or conspiring to cause or threaten to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated or continued, whether by:

- (a) Withholding patronage, labor, or other beneficial business intercourse;
 - (b) Picketing;
 - (c) Refusing to handle, install, use, or work on particular materials, equipment, or supplies;
- or
- (d) Any other unlawful means in order to bring him against his will into a concerted plan to coerce or inflict damage upon another or to compel the party with whom the labor dispute exists to comply with any particular demands.

Source: L. 43: p. 394, § 2. CSA: C. 97, § 94(2). CRS 53: § 80-5-2. C.R.S. 1963: § 80-4-2. L. 65: p. 810, § 1. L. 69: pp. 594, 731, §§ 72, 2. L. 77: (1) R&RE, p. 419, § 1, effective June 29. L. 86: (5) and (6) repealed, p. 502, § 125, effective July 1. L. 96: (11)(f) added, p. 293, § 1, effective April 12. L. 2016: (8), (9), and (10) amended, (HB 16-1323), ch. 131, p. 377, § 9, effective August 10. L. 2021: IP, (1), (11), and (12) amended and (1.5) added, (SB 21-087), ch. 337, p. 2174, § 2, effective June 25.

ANNOTATION

I. General Consideration.

II. All-union Agreement.

III. Collective Bargaining Unit.

IV. Employee and Employer.

V. Labor Dispute.

VI. Person.

VII. Mass Transportation System.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Labor Injunctions Under the Colorado Labor Peace Act", see 26 Dicta 63 (1949). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

Applied in Ruff v. Kezer, 199 Colo. 182, 606 P.2d 441 (1980).

II. ALL-UNION AGREEMENT.

Regulation not limited to closed shop agreements. In view of the emphatic language contained in the legislative declaration of rights of employees in § 8-3-106, regulation of "all-union agreements" is not limited to closed shop agreements. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Any financial obligation imposed upon employees pursuant to a collective bargaining agreement executed and sought to be enforced in Colorado has features of compulsory unionism and as such is to be considered an "all-union agreement" under subsection (1). Commc'ns Workers of Am. v.

W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Compulsory monetary support of a union is the "practical equivalent" of compulsory membership. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Procedures for establishment are incident to state's power. The procedures for establishing a collective bargaining unit under this article are merely an incident of the state's power to prohibit the application of union security agreements under the permissive grant of authority contained in section 14(b) of the federal Taft-Hartley act. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

"Collective bargaining unit" for purposes of § 8-3-108 (1)(c). In Colorado a "collective bargaining unit", for purposes of the union security agreement provision of this article, may be something different than a collective bargaining unit for other purposes of labor-management relations. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Such unit must be established pursuant to requirements of subsection (4). In the context of § 8-3-108 (1)(c), a collective bargaining unit is a unique entity which may only be established pursuant to the requirements of subsection (4). Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Condition precedent to right to enter into all-union agreement with employer. A

collective bargaining unit, as defined by subsection (4), is a condition precedent to any labor organization's right to enter into an all-union agreement with an employer under Colorado law. *Comm'n Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

Application of subsection (4) is severable. The application of subsection (4) to the union security provisions of this article is severable from its application in other contexts of the act. *Comm'n Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

III. COLLECTIVE BARGAINING UNIT.

The words "craft, division, department or plant" of subsection (4) are drawn out of custom and usage of industrial and business organization. *Dry Cleaners & Laundry Workers Local 304 v. Sunnyside Cleaners & Shirt Laundry*, 146 Colo. 31, 360 P.2d 446 (1961).

And determinations of what constitutes a "craft, division, department or plant" is left to the discretion of the fact finder. *Dry Cleaners & Laundry Workers Local 304 v. Sunnyside Cleaners & Shirt Laundry*, 146 Colo. 31, 360 P.2d 446 (1961).

IV. EMPLOYEE AND EMPLOYER.

In defining the terms "employer", and "employee", this section does not exclude an employer such as a nonprofit school for handicapped children nor its employees from the labor peace act. *Indus. Comm'n v. Wallace Vill. for Children*, 165 Colo. 10, 437 P.2d 62 (1968).

Furthermore, none of the phraseology of this section premises an interpretation of exclusion of nonindustrial employers and employees. *Indus. Comm'n v. Wallace Vill. for Children*, 165 Colo. 10, 437 P.2d 62 (1968).

Public employees. There is no state legislation concerning the rights of public employees to engage in collective bargaining. This article, with an exception, excludes the state or any political subdivision thereof. *Greeley Police Union v. City Council*, 191 Colo. 419, 553 P.2d 790 (1976).

Coming within the statutory definition of an "employer" is a necessary basis for jurisdiction under the labor peace act. *UMW v. Sunlight Coal Co.*, 129 Colo. 374, 270 P.2d 776 (1954).

For the labor peace act does not apply where an employer employs less than eight employees. *Associated Master Barbers Local 115 v. Journeymen Barbers Local 205*, 132 Colo. 52, 285 P.2d 599 (1955).

However, it is not necessary that eight employees should be employed during the entire year, but it is sufficient if such employment continues through a reasonably definite period of time and is not casual. *UMW v. Sunlight Coal Co.*, 129 Colo. 374, 270 P.2d 776 (1954).

Since this section does not define an "employer" as one who has an average employment of eight or more employees through the preceding year or as one who has regularly engaged the services of eight or more employees for any specified period

of time, as the term "regularly engages" is not further defined in this section. *UMW v. Sunlight Coal Co.*, 129 Colo. 374, 270 P.2d 776 (1954).

Rather, "regularly", as used in subsection (12), refers to the question whether the occurrence is or is not in an established mode or plan in the operation of the business and has no reference to the constancy of the occurrence. *UMW v. Sunlight Coal Co.*, 129 Colo. 374, 270 P.2d 776 (1954).

As the word "regularly" is not synonymous with constantly or continuously; the work may be intermittent and yet regular, and men may be regularly but not continuously employed. *UMW v. Sunlight Coal Co.*, 129 Colo. 374, 270 P.2d 776 (1954).

Labor Peace Act does not limit or constrain the law on metropolitan sewage disposal districts concerning the determination of prevailing rates of pay. Such a district is not required to negotiate or engage in collective bargaining in fixing employee compensation at prevailing rates for equivalent work. *Local 1 v. Metro Wastewater Reclamation*, 876 P.2d 82 (Colo. App. 1994).

V. LABOR DISPUTE.

The definition of a "labor dispute" in subsection (13) is not invalid on the ground that it is too narrow. *Denver Milk Producers v. Int'l Bhd. of Teamsters*, 116 Colo. 389, 183 P.2d 529 (1947); *Amalgamated Meat Cutters & Butcher Workmen v. Green*, 119 Colo. 92, 200 P.2d 924 (1948).

One need not be in a "labor dispute" as defined by this section to have a right under the fourteenth amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

For the right of free speech does not depend in such a case on whether or not a "labor dispute" as defined in this section is involved. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

And forbidding resort to peaceful persuasion through picketing because there is no immediate employer-employee dispute is such a ban of free communications as to be inconsistent with the guarantee of freedom of speech. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

As union members have a right to picket a nonunion employer in the absence of a "labor dispute" as defined by subsection (13), because a state cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. the interdependence of economic interest of all engaged in the same industry has become a commonplace, and so the right of free communication cannot, therefore, be

mutilated by denying it to workers, in a "dispute" with an employer, even though they are not in his employ. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

Moreover, a labor dispute as defined in this section may exist even though there is no controversy between an employer and his own employees. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

But a bona fide dispute must exist to allow picketing. Where the record shows the absence of any negotiations having taken place, or a dispute having occurred, or a statement of grievances having been submitted by the individuals striking and picketing to the individuals against whom the strike is called and against whom the pickets are picketing, it is against public interest to allow such picketing because a bona fide dispute has not been shown to exist. Int'l Bhd. of Teamsters v. Publix Cab Co., 119 Colo. 208, 202 P.2d 154 (1949).

Subsection (13)(d), which cannot give rise to a legal labor dispute, cannot become the basis of a rupture of harmonious labor relations which admittedly existed prior to it. A labor union, or an employer cannot use such a provision as the basis for disturbing preexisting labor relations. To attempt any other construction would be to abandon all logic and reason, to ignore the plain meaning of words, and to discard all fundamental rules of statutory construction. Journeymen Barbers Local 205 v. Indus. Comm'n, 128 Colo. 121, 260 P.2d 941 (1953).

A suit for an injunction to restrain a union from picketing and engaging in a secondary boycott for the purpose of forcing an employer to sign a union contract does not arise out of a "labor dispute" as defined in subsection (13) of this section. Denver Milk Producers v. Int'l Bhd. of Teamsters, 116 Colo. 389, 183 P.2d 529 (1947); Amalgamated Meat Cutters & Butcher Workmen v. Green, 119 Colo. 92, 200 P.2d 924 (1948).

No "labor dispute" as defined by this section found to exist. Amalgamated Meat Cutters & Butcher Workmen v. Green, 119 Colo. 92, 200 P.2d 924 (1948).

For "labor dispute" under former provision, see Local 13, Teamsters v. Perry Truck Lines, Inc., 106 Colo. 25, 101 P.2d 436 (1940); Local 13, Teamsters v. Buckingham Transp. Co., 108 Colo. 419, 118 P.2d 1088 (1941).

Applied in People ex rel. Shaffer v. Teamsters Local 961, 175 Colo. 187, 486 P.2d 10 (1971).

VI. PERSON.

Definition of "person" does not exclude nonprofit school for handicapped children. Indus. Comm'n v. Wallace Vill. for Children, 165 Colo. 10, 437 P.2d 62 (1968).

VII. MASS TRANSPORTATION SYSTEM.

City-operated bus company is considered a "mass transportation system" operated by a political subdivision of the state for purposes of the "Labor Peace Act". Hoff v. Amal.

Transit Un., Div. 662, 758 P.2d 674 (Colo. App. 1987).

section. Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Regional Transportation District is an "authority" within meaning of this

8-3-105. Director to administer - adopt rules and regulations.

The director shall enforce and administer the provisions of this article and may adopt reasonable rules and regulations relative to its administration and to the conduct of all elections and hearings pertaining to mass transportation as defined in section 8-3-104 (15). Such rules and regulations shall not be effective until ten days after the date thereof.

Source: L. 43: p. 397, § 3. CSA: C. 97, § 94(3). CRS 53: § 80-5-3. C.R.S. 1963: § 80-4-3. L. 64: p. 148, § 82. L. 65: p. 811, § 2. L. 69: p. 594, § 73. L. 86: Entire section R&RE, p. 470, § 24, effective July 1.

Cross references: For rule-making by state agencies in general, see article 4 of title 24.

ANNOTATION

I. Administration.

II. Rules and Regulations.

I. ADMINISTRATION.

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment to this section which placed the duty of enforcing and administering the "Labor Peace Act" on the director of the division of labor instead of the industrial commission.

The labor peace act confers jurisdiction on the industrial commission only in cases where the number of employees is eight or

more. Int'l Bhd. of Teamsters v. Publix Cab Co., 119 Colo. 208, 202 P.2d 154 (1949).

The commission has jurisdiction to enforce the provisions of the labor peace act against a nonprofit school for handicapped children which does not provide medical services of any sort. Indus. Comm'n v. Wallace Vill. for Children, 165 Colo. 10, 437 P.2d 62 (1968).

II. RULES AND REGULATIONS.

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and

transferred rule-making authority under this section to the director of the division of labor.

Rules and regulations adopted by the commission, unless expressly or impliedly authorized by statute, are without force or effect if they add to, change, or modify existing statutes. *Graham Furn. Co. v. Indus. Comm'n*, 138 Colo. 244, 331 P.2d 507 (1958).

For the commission's authority to regulate does not include the authority to legislate, but is strictly limited by the law under which it is pursued. *Graham Furn. Co. v. Indus. Comm'n*, 138 Colo. 244, 331 P.2d 507 (1958).

Hence, when a statute clearly provides a method for accomplishing a desired result, the commission cannot set up a regulation which is contrary thereto, as its regulations must fit within the framework of the statute itself. *Graham Furn. Co. v. Indus. Comm'n*, 138 Colo. 244, 331 P.2d 507 (1958).

Regulations protecting right to petition for election to ratify all-union agreement. The director of the division of labor does not have the authority to adopt rules protecting employees' right to petition for an election to ratify an all-union agreement; the authority to promulgate such regulations is with the industrial commission. *Ruff v. Kezer*, 199 Colo. 182, 606 P.2d 441 (1980).

8-3-106. Rights of employees.

In accordance with the provisions of this article, employees have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Each employee also has the right to refrain from any of such activities. The rights of each employee are essential rights, and nothing contained in this article shall be so construed as to infringe upon or have any operation against or in conflict with such rights.

Source: L. 43: p. 397, § 4. CSA: C. 97, § 94(4). CRS 53: § 80-5-4. C.R.S. 1963: § 80-4-4.

ANNOTATION

Law reviews. For article, "The Regional Transportation District Strike and the Colorado Labor Peace Act: A Study in Public Sector Collective Bargaining", see 54 U. Colo. L. Rev. 203 (1983).

State legislative policy concerning employer-employee relations is declared in this section. *Bldg. Constr. Trades Council v. Am. Bldrs., Inc.*, 139 Colo. 236, 337 P.2d 953 (1959).

Legislative intent. The language of the third sentence of this section evinces an intent on the part of the general assembly to protect the working man's right to freely chart his own course with regard to labor organization activities. *Comm'n Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

Labor Peace Act does not limit or constrain the law on metropolitan sewage disposal districts concerning the determination of prevailing rates of pay. Such a district is not required to negotiate or engage in collective bargaining in fixing employee compensation at prevailing rates for equivalent work. *Local 1 v. Metro Wastewater Reclamation*, 876 P.2d 82 (Colo. App. 1994).

Section held preempted by federal labor legislation since the labor

management relations act contains a provision (29 U.S.C. § 157) which is the equivalent of this section. *Bldg. Constr. Trades Council v. Am. Bldrs., Inc.*, 139 Colo. 236, 337 P.2d 953 (1959).

Regulation of all-union agreements not limited to closed shop agreements. In view of the emphatic language contained in the legislative declaration of rights of employees in this section, regulation of "all-union agreements" is not limited to closed shop agreements. *Comm'n Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

Applied in *City & County of Denver v. Indus. Comm'n*, 195 Colo. 431, 579 P.2d 80 (1978); *Ruff v. Kezer*, 199 Colo. 182, 606 P.2d 441 (1980).

8-3-107. Representatives and elections.

(1) A unit chosen for the purpose of collective bargaining shall be the exclusive representative of all of the employees in such unit, if the majority of the employees of one employer, or the majority of the employees of one employer in a craft, vote at an election. But employees individually have the right at any time to present grievances to their employer in person or through representatives of their own free choosing, and the employer shall confer with them in relation thereto.

(2) When a question arises concerning the selection of a collective bargaining unit, it shall be determined by secret ballot, and the director, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department, or plant as to the selection of the collective bargaining unit.

(3) When a question arises concerning the selection of a collective bargaining unit, the director shall determine the question thereof by taking a secret ballot of employees and certifying in writing the results thereof to the bargaining units involved and to their employer. There shall be included on any ballot for the selection of a bargaining unit the names or suitable description of each bargaining unit submitted to the director and claimed to be the appropriate unit by an

employee or group of employees participating in the election; except that the director, in his discretion, may exclude from the ballot any bargaining unit which, at the time of the election, stands deprived of its rights under this article by reason of a prior adjudication of its having engaged in an unfair labor practice. The ballot shall be so prepared as to permit a vote against representation by any unit named on the ballot. The director's certification of the results of any election shall be conclusive as to the findings included therein, unless reviewed in the manner provided by section 8-3-110 (8), for review of orders of the director.

(4) Questions concerning the selection of collective bargaining units may be raised by petition of any employee or his employer or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the director shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the director that sufficient reason therefor exists.

(5) The director shall investigate and determine which persons shall be qualified and entitled to vote at any election held by him and shall prepare and certify a poll list of such qualified voters and shall file the same in the office of the director not later than twenty-four nor earlier than forty-eight hours preceding the time of such balloting. The list shall be available to the collective bargaining units whose interests are involved in the election. On request of any employee, the list shall be prepared so as to show separately which employees are entitled to vote for general representation of the employees and which employees are entitled to vote separately for craft representation or representation of any one of several plants of a common employer. No person whose name is not so certified shall be entitled to vote at such election. The director shall protect the secrecy of the ballot and shall take all proper measures for the accurate counting thereof and shall certify the result thereof and immediately file such certificate in the records of the division and make the same available for the inspection of any person interested. The bargaining units so elected and certified shall be the respective representatives of the employees so electing them and recognized as such under this article. The names of all persons voting at the election for the selection of a bargaining unit shall be certified to the division and filed in its records and shall constitute the voting roll for said bargaining unit for all purposes under this article. The name of any person leaving such employment shall be removed from the roll; except that any employee whose name appears on said voting roll may have his name withdrawn from said roll by notice in writing to the division.

Source: L. 43: p. 398, § 5. **CSA:** C. 97, § 94(5). **CRS 53:** § 80-5-5. **C.R.S. 1963:** § 80-4-5. **L. 69:** p. 595, § 74. **L. 86:** (3) amended, p. 470, § 25, effective July 1.

ANNOTATION

I. General Consideration.

II. Selection of Collective Bargaining Unit.

III. Determination of Qualified Voters.

I. GENERAL CONSIDERATION.

Law reviews. For notes, "Evolving Standards for Duty of Fair Representation Cases Under Section 301", see 62 Den. U. L. Rev 627 (1985). For comment, "Local No. 82 Furniture Movers v. Crowley: Title I Relief When Title IV Claims Are at Issue Under the LMRDA", see 62 Den. U. L. Rev. 675 (1985).

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment to this section which placed the duty of enforcing and administering the "Labor Peace Act" on the director of the division of labor instead of the industrial commission.

II. SELECTION OF COLLECTIVE BARGAINING UNIT.

There is a strong policy in this section in favor of fractional representation of the employees of one employer. Dry Cleaners & Laundry Workers Local 304 v. Sunnyside Cleaners & Shirt Laundry, 146 Colo. 31, 360 P.2d 446 (1961).

And the determination of the proper group of employees to be represented in a collective bargaining unit is a matter for the industrial commission. Dry Cleaners & Laundry Workers Local 304 v. Sunnyside

Cleaners & Shirt Laundry, 146 Colo. 31, 360 P.2d 446 (1961).

Moreover, absent a showing that such determination is unlawful, a court of review is not justified in voiding his ruling, as determinations of this nature have been left by this section to the informed discretion of the director empowered to administer the law. Dry Cleaners & Laundry Workers Local 304 v. Sunnyside Cleaners & Shirt Laundry, 146 Colo. 31, 360 P.2d 446 (1961).

This section does not specify any particular point in time when a request for a separate election among a certain craft, division, or department must be made. Dry Cleaners & Laundry Workers Local 304 v. Sunnyside Cleaners & Shirt Laundry, 146 Colo. 31, 360 P.2d 446 (1961).

III. DETERMINATION OF QUALIFIED VOTERS.

The procedure for certifying election lists by the industrial commission is specifically set forth in this section. Graham Furn. Co. v. Indus. Comm'n, 138 Colo. 244, 331 P.2d 507 (1958).

And this section is complete as to how one attains the status of an eligible voter. Graham Furn. Co. v. Indus. Comm'n, 138 Colo. 244, 331 P.2d 507 (1958).

Hence, a commission regulation providing for challenges at voting is of no effect. To hold that the clear words of this section can be circumvented by a regulation adopted by the industrial commission

providing for challenges at the time of voting is to ignore their plain meaning and confer legislative powers on the commission, and such a regulation is without legal force or effect. *Graham Furn. Co. v. Indus. Comm'n*, 138 Colo. 244, 331 P.2d 507 (1958).

Nor are regulations of the NLRB. The rules and regulations of the national labor relations board relating to challenges at elections have no application in view of the precise wording of this section, which does not permit challenges at the time of voting. *Graham Furn. Co. v. Indus. Comm'n*, 138 Colo. 244, 331 P.2d 507 (1958).

This section, as thus construed, preserves the secrecy of the ballot to those who vote in an election. *Graham Furn. Co.*

v. Indus. Comm'n, 138 Colo. 244, 331 P.2d 507 (1958).

However, the union, or those employees, who sought the election have the right to make challenges prior to final certification of the polling list, and it is at that time that any evidence which it is contended affects the eligibility of any person on the voting list must be presented. *Graham Furn. Co. v. Indus. Comm'n*, 138 Colo. 244, 331 P.2d 507 (1958).

But challenging change in polling list after its approval cannot be raised for first time on appeal. *Dry Cleaners & Laundry Workers Local 304 v. Sunnyside Cleaners & Shirt Laundry*, 146 Colo. 31, 360 P.2d 446 (1961).

8-3-108. What are unfair labor practices.

(1) It is an unfair labor practice for an employer, individually or in concert with others, to:

(a) Interfere with, restrain, or coerce his employees in the exercise of the rights guaranteed in section 8-3-106;

(b) Initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it; except that an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with him, nor from cooperating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where such activities or use create no additional expense to the employer;

(c) (I) Encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in regard to hiring, tenure, or other terms or conditions of employment; except that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit if such all-union agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who

actually voted, whichever is greater, by secret ballot in favor of such all-union agreement in an election provided for in this paragraph (c) conducted under the supervision of the director. Where the collective bargaining unit involved is currently recognized under sections 8 or 9 of the "National Labor Relations Act", as amended, (49 Stat. 449; 61 Stat. 136), or where the collective bargaining unit involved is currently recognized by reason of certification by the director or the national labor relations board, or where such units were so recognized at the time of an election provided for in this paragraph (c), there is and shall be deemed to have been no need for a certification election as a precedent to an election provided for in this paragraph (c) in such collective bargaining unit on the issue of an all-union agreement. The employees in such a recognized or certified unit within this state shall be the only employees eligible to vote in an election provided for in this paragraph (c) held in such unit.

(II) (A) Any agreement as defined in section 8-3-104 (1.5) between an employer and a labor organization in existence on June 29, 1977, which has not been voted upon by the employees covered by it may, by written mutual agreement of such employer and labor organization, be ratified and upon such ratification shall be filed with the director. Any agreement as defined in section 8-3-104 (1.5) between an employer and a labor organization in existence on June 29, 1977, which has not been ratified and filed, as provided in this subsection (1)(c)(II), shall not be legal, valid, or enforceable during the remaining term of that labor contract unless and until either the employer, the labor organization, or at least twenty percent of the employees covered by such agreement file a petition upon forms provided by the division, demanding an election submitting the question of the all-union agreement to the employees covered by such agreement and said agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, by secret ballot in favor of such all-union agreement in an election provided for in this subsection (1)(c) conducted under the supervision of the director.

(B) Upon filing of such instrument of ratification with the director, the director shall certify that such agreement complies with the provisions of section 8-3-104 (1.5) notwithstanding the absence of any other election requirements of this article 3, and by virtue of such ratification and certification, such agreement shall be deemed legal, valid, and enforceable to the extent permitted under the provisions of this article 3, subject to the provisions of subsection (1)(c)(II)(D) of this section.

(C) Within two weeks after the certification by the director provided for in sub-subparagraph (B) of this subparagraph (II), the employer which is a party to such agreement shall post or give written notice to all employees covered by such agreement on the date of ratification of the fact that the agreement has been ratified and certified pursuant to the provisions of this subparagraph (II) and of the right of such employees to file a petition demanding an election as provided in sub-subparagraph (D) of this subparagraph (II). Proof of giving of notice shall be filed with the

director within twenty days after the certification by the director provided for in subparagraph (B) of this subparagraph (II).

(D) Within forty-five days after the certification by the director provided for in subparagraph (B) of this subparagraph (II) twenty percent of the employees covered by such agreement may file a petition, upon forms provided by the division, demanding an election submitting the question of ratification of such agreement to the employees covered by such agreement. If ratification of the agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, in said election, the agreement shall be conclusively deemed ratified. Such election shall be held as promptly as possible following the filing of the petition. In the event that a certified contract expires or is terminated prior to the conducting of such an election, such certification shall be applicable to any subsequent agreement between the same parties until such election may be held.

(III) The director shall declare any such all-union agreement terminated whenever:

(A) He finds that the labor organization involved unreasonably has refused to receive as a member any employee of such employer, and any person interested may come before the director, as provided in section 8-3-110, and ask the performance of this duty; or

(B) The employer or twenty percent of the employees covered by such agreement file a petition with the director on forms provided by the division seeking to revoke such all-union agreement and, in an election conducted under the supervision of the director, there is not an affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, in such election by secret ballot in favor of such all-union agreement. Such petition may only be filed within a time period between one hundred twenty and one hundred five days prior to the end of the collective bargaining agreement or prior to a triennial anniversary of the date of such agreement, and the division must complete said election within sixty days prior to the termination or triennial anniversary of said collective bargaining agreement. The director may conduct an election within a collective bargaining unit no more often than once during the term of any collective bargaining agreement or once every three years in the case of agreements for a period longer than three years.

(IV) The director shall provide a means by which employees may submit confidential petitions for an election under this paragraph (c), a means for verifying the employment, status, and eligibility of petitioners, and a means for determining the sufficiency of such petitions with respect to the twenty percent signature requirement, all of which shall be accomplished without disclosing the identification of such petitioners, except as allowed under subparagraph (V) of this paragraph (c). This duty shall apply to petitions filed pursuant to subparagraph (II)(A), (II)(D), or (III)(B) of this paragraph (c).

(V) No officer or employee of the division shall disclose the names of any signers to a petition or disclose how any person voted in an election to any person outside the division except pursuant to a court order or subpoena issued by a governmental authority or a court, and any such officer or employee who violates such nondisclosure provisions or who refuses to call an election pursuant to this paragraph (c) or prevents or conspires to prevent such call of an election commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(d) Refuse to bargain collectively with the representatives of his employees in any collective bargaining unit; except that where an employer with reasonable cause files with the division a petition requesting a determination as to bargaining unit representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to him by the director;

(e) Enter into an all-union agreement except in the manner provided in paragraph (c) of this subsection (1);

(f) Violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award;

(g) Refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer has accepted;

(h) Discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony in good faith under the provisions of this article;

(i) Deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally and terminable at any time by the employee's giving at least thirty days' written notice of such termination;

(j) Employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this article;

(k) Make, circulate, or cause to be circulated a blacklist as described in section 8-2-110;

(l) Commit any crime or misdemeanor in connection with any controversy as to employment relations;

(m) Require a potential employee to furnish preemployment application information regarding said applicant's record of civil or military disobedience, unless any such matters resulted in a plea of guilty or a conviction by a court of competent jurisdiction.

(2) It is an unfair labor practice for an employee, individually or in concert with others, to:

- (a) Coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 8-3-106, or to intimidate his family or any member thereof, picket his domicile, or injure the person or property of such employee or his family or of any member thereof;
- (b) Coerce, intimidate, or induce any employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in section 8-3-106, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative;
- (c) Violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award;
- (d) Refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employees or their representatives accepted;
- (e) Cooperate in engaging in, promoting, or inducing picketing, boycotting, or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike;
- (f) Hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment; or to obstruct or interfere with entrance to or egress from any place of employment; or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance;
- (g) Engage in a secondary boycott, or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, equipment, or services, or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use, or disposition of materials, equipment, or services;
- (h) Take, retain, or remain in unauthorized possession of property or any part thereof of the employer, or to engage in any concerted effort to interfere with production, except by leaving the premises in an orderly manner for the purpose of going on strike;
- (i) Engage in a sit-down strike on the premises or property of the employer;
- (j) Fail to give the notice of intention to strike provided in section 8-3-113;
- (k) Commit any crime or misdemeanor in connection with any controversy as to employment relations;

(l) Demand or require any stand-in employee to be hired or employed by an employer, or to demand or require that the employer employ or pay for an employee to stand by or stand in for work being done by other employees, or to require the employer to employ or pay for any employee not required by the employer or necessary for the work of the employer;

(m) Do or cause to be done, on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1) and (2) of this section.

(3) It is an unfair labor practice for an employee, individually or in concert with others, or for a labor organization or any of its agents to:

(a) Induce or encourage the employees of an employer to engage in a strike or concerted refusal in the course of their employment, or by any means to force or require an employer or any one or more employees to refrain from or prevent the use of any material, device, tool, or equipment intended or calculated to reduce the cost of the work;

(b) Require or force an employer to use any materials or do any work or render any service in connection with any task, job, work, or service as a condition of using any labor-saving device, equipment, tool, or instrument in the performance of such task, job, work, or service;

(c) Impose on any employee any fine, penalty, or forfeiture because such employee has used, is using, or has attempted to use a labor-saving device;

(d) (I) Engage in or induce or encourage employees of any employer to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service where an object thereof is forcing or requiring any employer to assign particular work to employees in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order of the director or certification determining the bargaining representative for employees performing such work; but nothing contained in this subsection (3) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer). Whenever a complaint is filed charging that any person or labor organization is engaged in the unfair labor practice defined in this paragraph (d), the director shall hear and determine the dispute concerning the assignment of work out of which such complaint arises, unless within ten days the parties to the dispute provide evidence to the director that the dispute is properly adjusted, in which case the complaint shall be dismissed by the director.

(II) Upon the filing of a complaint under this paragraph (d), the director shall make a preliminary investigation, and, if he finds that there is reasonable cause that the complaint is true, he may issue an order directing that the employees or labor organization cease and desist from

striking, picketing, or refusing to handle or work on goods pending a resolution by the director of the dispute out of which the complaint arises.

(III) Upon the failure or refusal of any person or labor organization against whom such order is issued to comply with this order or direction, the district court of the district wherein the strike, picketing, or refusal to handle or work on goods takes place may, upon application of the director, issue injunctive relief in the manner provided in the Colorado rules of civil procedure for courts of record in Colorado.

(e) With regard to the entirety of this subsection (3), the following shall apply: Such material, device, tool, or equipment is germane to the employees' craft and not injurious to the employees' health and safety or the public generally, and nothing in this subsection (3) shall negate the rights of an employer and a labor organization to bargain collectively pursuant to subsection (1)(d) of this section.

(4) It is an unfair labor practice to do or cause to be done, on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1), (2), and (3) of this section.

Source: L. 43: p. 400, § 6. CSA: C. 97, § 94(6). CRS 53: § 80-5-6. L. 63: p. 619, § 1. C.R.S. 1963: § 80-4-6. L. 69: p. 596, § 75. L. 71: p. 887, § 1. L. 77: (1)(c) amended, p. 419, § 2, effective June 29. L. 2002: (1)(c)(V) amended, p. 1466, § 18, effective October 1. L. 2021: (1)(c)(II)(A) and (1)(c)(II)(B) amended, (SB 21-087), ch. 337, p. 2185, § 9, effective June 25.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(c)(V), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

I. General Consideration.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Extent to Which Taft-Hartley Act Has Superseded State Labor Laws", see 28 Dicta 47 (1951). For article, "The Regional Transportation District Strike and the Colorado Labor Peace Act: A Study in Public Sector Collective

Bargaining", see 54 U. Colo. L. Rev. 203 (1983).

This section lists a number of things denominated "unfair labor practices". Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

These may arise because of conduct on the part of management as well as on the

part of employees of a particular employer, or on the part of third parties. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957); Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

The labor management relations act (29 U.S.C. § 158) has as its facsimile parts of this section. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

Private right of action against criminal labor statute violator. The general assembly's broad definition of unfair labor practices indicates an intent to create a private right of action to anyone who can prove by a preponderance of the evidence that a defendant has violated a criminal labor statute. Rawson v. Sears, Roebuck & Co., 530 F. Supp. 776 (D. Colo. 1982); Bennett v. Furr's Cafeterias, Inc., 549 F. Supp. 887 (D. Colo. 1982).

Not exception to rule of employment at will. Statutory pronouncement which makes it unlawful "to coerce or intimidate an employee in the enjoyment of his legal rights" is a broad, general statement of policy which is inadequate to justify adoption of an exception to the rule that an indefinite general hiring is terminable at will by either party to the employment. Corbin v. Sinclair Mktg., Inc., 684 P.2d 265 (Colo. App. 1984).

II. UNFAIR LABOR PRACTICES FOR EMPLOYERS.

A. Interference with Right of Self-organization.

B. Contribute Financial Support.

C. All-union Agreements.

A. Interference with Right of Self-organization.

Law reviews. For comment on Bennett's Restaurant v. Indus. Comm'n appearing below, see 30 Dicta 307 (1953).

Subsections (1)(a) and (1)(c) do not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. Bennett's Restaurant v. Indus. Comm'n, 127 Colo. 271, 256 P.2d 891 (1953).

But an employer may not, under cover of this right, intimidate or coerce its employees with respect to their self-organization and representation. Bennett's Restaurant v. Indus. Comm'n, 127 Colo. 271, 256 P.2d 891 (1953).

And on the other hand, the labor board is not entitled to make its authority a pretext for interfering with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. Bennett's Restaurant v. Indus. Comm'n, 127 Colo. 271, 256 P.2d 891 (1953).

Evidence held to show that employees were wrongfully discharged for organizational activities. UMW v. Sunlight Coal Co., 129 Colo. 374, 270 P.2d 776 (1954).

B. Contribute Financial Support.

An employer cannot be compelled to join a union if contributions in the form

of dues and initiation fees are required, since the financial support of unions consists chiefly, if not wholly, of the dues paid by its members, and if dues paid by members would constitute financial support for a union, there is no reason why dues paid by employers would not also constitute financial support of a union. *Journeyman Barbers Local 205 v. Indus. Comm'n*, 128 Colo. 121, 260 P.2d 941 (1953).

However, the term "financial support" is much broader than the mere payment of dues and covers and includes financial support of any kind, character, or description, whether large or small in amount. *Journeyman Barbers Local 205 v. Indus. Comm'n*, 128 Colo. 121, 260 P.2d 941 (1953).

C. All-union Agreements.

Colorado does not have a right-to-work law. *Bldg. Constr. Trades Council v. Am. Bldrs., Inc.*, 139 Colo. 236, 337 P.2d 953 (1959).

So an agreement requiring membership in a labor organization as a condition of employment is under certain circumstances permitted by this section. *Bldg. Constr. Trades Council v. Am. Bldrs., Inc.*, 139 Colo. 236, 337 P.2d 953 (1959).

The regulation of union security provisions is not a matter of exclusive federal concern, but states are free to pursue their own more restrictive policies. *Comm'n's Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

The provisions of this section are an important incident of the state's power to

prohibit the application of certain union security provisions, which power has not been supplanted by federal law. *Comm'n's Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

The procedures for establishing a collective bargaining unit under this article are merely an incident of the state's power to prohibit the application of union security agreements under the permissive grant of authority contained in section 14(b) of the federal Taft-Hartley act. *Comm'n's Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

Subsection (1)(c) is a manifestation of the legislative intent to protect the working man's right to freely chart his own course with regard to labor organization activities in that it severely restricts the circumstances in which an employee may be subjected to "all-union agreements". *Comm'n's Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

Application of section. This section applies to union security clauses in collective bargaining agreements negotiated and executed by multi-state employers engaged in interstate commerce and doing business in Colorado. *Comm'n's Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

Regulation of all-union agreements not limited to closed shop agreements. In view of the emphatic language contained in the legislative declaration of rights of employees in § 8-3-106, regulation of "all-union agreements" is not limited to closed shop agreements. *Comm'n's Workers of*

Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

What is considered "all-union agreement". Any financial obligation imposed upon employees pursuant to a collective bargaining agreement executed and sought to be enforced in Colorado has features of compulsory unionism and as such is to be considered an "all-union agreement" under § 8-3-104 (1). Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Compulsory monetary support of a union is the "practical equivalent" of compulsory membership. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

The application of § 8-3-104 (4) to the union security provisions of this article is severable from its application in other contexts of the act. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

"Collective bargaining unit" for purposes of subsection (1)(c). In Colorado a "collective bargaining unit", for purposes of the union security agreement provision of this article, may be something different than a collective bargaining unit for other purposes of labor-management relations. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Such unit is condition precedent to right to enter into all-union agreement. A collective bargaining unit, as defined by § 8-3-104 (4), is a condition precedent to any labor organization's right to enter into an all-

union agreement with an employer under Colorado law. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

And must be established pursuant to § 8-3-104 (4). In the context of subsection (1)(c), a collective bargaining unit is a unique entity which may only be established pursuant to the requirements of § 8-3-104 (4). Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Collective bargaining unit recognized only by secret ballot election. A secret ballot election, as described by § 8-3-104 (4), is the exclusive method by which a collective bargaining unit subject to the "all-union" referendum [now election] provisions of subsection (1)(c) may be recognized. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Where election to be conducted. Subsection (1)(c) plainly directs that the referendum [now election] should be conducted among the employees of a collective bargaining unit. Commc'ns Workers of Am. v. W. Elec. Co., 191 Colo. 128, 551 P.2d 1065 (1976).

Regulations protecting right to petition for ratification election. The director of the division of labor does not have the authority to adopt rules protecting employees' right to petition for a ratification election under subsection (1)(c)(II)(D); the authority to promulgate such regulations is with the industrial commission. Ruff v. Kezer, 199 Colo. 182, 606 P.2d 441 (1980).

Required employer conduct in all-union agreement election. While subsection (1)(c) specifies notice to the employees, a period of time for circulating petitions requiring an election, and the number of signatures which must be obtained before an election concerning ratification of an all-union agreement will be required, it does not require any course of action by the employer, let alone such specific conduct as the provision of bulletin board space or access to lists of employees. *Ruff v. Kezer*, 199 Colo. 182, 606 P.2d 441 (1980).

Withholding of access to employee lists. Where access to company bulletin boards is subject to federal determination because of a collective bargaining agreement and access to lists of employees is restricted by National Labor Relations Board procedures, an employer's withholding of such access from petitioners for a ratification election is not an unfair labor practice under this section. *Ruff v. Kezer*, 199 Colo. 182, 606 P.2d 441 (1980).

Clauses of collective bargaining agreements were invalid where they were not approved through an all-union referendum [now election] by an appropriately designated employee group. *Comme'ns Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976).

III. UNFAIR LABOR PRACTICES FOR EMPLOYEES.

A. In General.

B. Intimidation of Employees.

C. Picketing.

D. Hindering Place of Employment by Mass Picketing, etc.

A. In General.

Provisions restricting mass picketing are contained in subsection (2). *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).

B. Intimidation of Employees.

Harassment incidents insufficient basis to enjoin agreement. Three relatively isolated incidents of harassment during the first 10 days of petitioning activity, none of which was shown to have had a widespread impact on the willingness of employees to sign the petitions, and none of which was physically violent, are not sufficient basis for enjoining operation of an all-union agreement after failure to obtain sufficient petition signatures for a separate ratification election. *Ruff v. Kezer*, 199 Colo. 182, 606 P.2d 441 (1980).

Subsection (2)(a) of this section, when read together with §§ 8-3-118(1) and 8-3-110(1), allows the trial court to enjoin the union and its members from engaging in an unfair labor practice. *CF&I Steel, L.P. v. United Steel Workers of Am.*, 990 P.2d 1124 (Colo. App. 1999), *aff'd*, 23 P.3d 1197 (Colo. 2001).

C. Picketing.

Law reviews. For article, "Mass Picketing and the Constitutional Guarantee of Freedom of Speech", see 22 *Rocky Mt. L. Rev.* 28 (1949). For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 *Dicta* 81 (1960).

Picketing may be lawful or unlawful depending upon the purpose of the picketing and the manner in which it is conducted. *UMW v. Golden Cycle Corp.*, 134 Colo. 140, 300 P.2d 799 (1956).

And subsection (2)(e) declaring that to cooperate in, engaging in, or inducing picketing is an unfair labor practice must be construed in harmony with §§ 8-3-103 and 8-3-109 (2) as to the right of free speech, if possible; and so construed, the work "picketing" as employed in the labor peace act must be held as intended in its coercive and not in its persuasive, sense. Otherwise the limitation on picketing constitutes a limitation on the right to express views concerning labor relationships and invades the right to freedom of speech, contrary to the explicit provisions of these sections. *Denver Milk Producers v. Int'l Bhd. of Teamsters*, 116 Colo. 389, 183 P.2d 529 (1947).

Hence, it is not an unfair labor practice for members of a labor union to peacefully picket an employer of nonunion labor even though there is no immediate employer-employee dispute, inasmuch as § 8-3-109 (2) preserves the right of free speech concerning "any labor relationship" and one need not be in a "labor dispute" as defined by § 8-3-104 (13)(a) to have a right under the fourteenth amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

Injunction against peaceful residential picketing held unconstitutional under federal first amendment and equal protection guarantees. *CF&I Steel, L.P. v. United Steel Workers of Am.*, 990 P.2d 1124 (Colo. App. 1999), *aff'd* on other grounds, 23 P.3d 1197 (Colo. 2001).

But picketing that is not peaceful may be enjoined as a valid exercise of the state's police power. *CF&I Steel, L.P. v. United Steel Workers of Am.*, 23 P.3d 1197 (Colo. 2001).

Blanket prohibition against residential picketing in subsection (2)(a) is unconstitutional under federal first amendment and equal protection guarantees. *CF&I Steel, L.P. v. United Steel Workers of Am.*, 23 P.3d 1197 (Colo. 2001).

"Peaceable picketing" means simply, tranquil conduct, conduct devoid of noise or tumult, the absence of a quarrelsome demeanor, a course of conduct that does not violate or disturb the public peace. *UMW v. Golden Cycle Corp.*, 134 Colo. 140, 300 P.2d 799 (1956).

One cannot be convicted of violating a municipal ordinance regulating picketing, inasmuch as the general assembly has enacted comprehensive legislation regulating picketing in situations where labor disputes are involved and this legislation completely covers the field. *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).

D. Hindering Place of Employment by Mass Picketing, etc.

Subsection (2)(f) makes an unfair labor practice of mass picketing, threats, intimidation, force, or coercion to hinder or prevent any lawful work or employment. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

"Illegal picketing" as by "mass picketing", defined. Boisterous conduct, the use of vile language, bellicose demeanor, threats, violence, coercion, intimidation, shouting and interference with the use of premises or impeding a public highway, as by mass picketing, which is the use of a large number of pickets, is not peaceable picketing, but is illegal picketing. UMW v. Golden Cycle Corp., 134 Colo. 140, 300 P.2d 799 (1956).

8-3-109. What are not unfair labor practices.

(1) It is not an unfair labor practice for any employer to refuse to grant a closed shop or all-union agreement or to accede to any proposal therefor as provided in this article.

(2) The right of both employer and employee freely to express, declare, and publish their respective views and proposals concerning any labor relationship shall not be abrogated or limited by this article, nor shall the exercise of such right constitute an unfair labor practice. No strike shall be lawful unless it is authorized by a majority vote of the employees in the union involved taken by secret ballot such as is provided in this article.

(3) It shall not be an unfair labor practice for an employer engaged primarily in the building and construction industry to enter into an all-union agreement, except an agreement providing for an agency shop or modified agency shop, with a labor organization, which agreement is limited in its coverage to employees who, upon their employment, will be engaged in the building and construction industry, if a copy of such agreement is filed with the director and certified by him as provided in section 8-3-108 (1)(c)(II)(B). Such agreement may be ratified as provided in section 8-3-108 (1)(c)(II)(C) or terminated by the director as provided in section 8-3-108 (1)(c)(III).

Source: L. 43: p. 403, § 7. **CSA:** C. 97, § 94(7). **CRS 53:** § 80-5-7. **C.R.S. 1963:** § 80-4-7. **L. 77:** (3) added, p. 422, § 3, effective June 29.

ANNOTATION

Subsection (2) of this section excludes from the category of "unfair labor practice" the right of both employer and employee freely to express, declare, and

publish their respective views and proposals concerning any labor relationship. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

Subsection (2) is a recognition of the constitutional right of every citizen. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

Peaceful picketing is a form of free speech and as such protected by constitutional guaranty, for to hold otherwise would be to fix a limitation on the right to express views concerning a labor relationship, and invade the right of freedom of speech contrary to the explicit provisions of this section. *People v. Harris*, 104 Colo. 386, 91 P.2d 989 (1939); *Local 13, Teamsters v. Perry Truck Lines, Inc.*, 106 Colo. 25, 101 P.2d 436 (1940); *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

Moreover, this right of free communication cannot be mutilated by denying it to workers in a "dispute" with an employer even though they are not in his employ, inasmuch as a state cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers

so small as to contain only an employer and those directly employed by him, for the interdependence of economic interest of all engaged in the same industry has become a commonplace. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

Therefore, this section does not prohibit picketing by a labor union of an employer of nonunion labor even though there is no immediate employer-employee dispute, as such a ban of free communication is inconsistent with the guarantee of freedom of speech. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

However, picketing must be "peaceful", and "peaceful picketing" means simply, tranquil conduct, conduct devoid of noise or tumult, the absence of a quarrelsome demeanor, a course of conduct that does not violate or disturb the public peace. As a necessary corollary, boisterous conduct, the use of vile language, bellicose demeanor, threats, violence, coercion, intimidation, shouting and interference with the use of premises or impeding a public highway, as by mass picketing, which is the use of a large number of pickets, is not peaceable picketing, but is illegal picketing. *UMW v. Golden Cycle Corp.*, 134 Colo. 140, 300 P.2d 799 (1956).

8-3-110. Prevention of unfair labor practices.

(1) Any controversy concerning unfair labor practices may be submitted to the division in the manner and with the effect provided in this article; but nothing in this article shall prevent the pursuit of equitable or legal relief in courts of competent jurisdiction, nor shall it be any ground

for refusal of such relief that all of the administrative remedies provided in this article before the division have not been exhausted.

(2) Upon the filing with the division by any party in interest of a complaint in writing on a form provided by the division charging any person with having engaged in any specific unfair labor practice, the division shall mail a copy of such complaint to all persons so charged. Any other person claiming interest in the dispute or controversy, as an employer, an employee, or representative thereof, shall be made a party upon application. The director may bring in additional parties by service of a copy of the complaint. Only one such complaint shall issue against a person with respect to a single controversy, but any such complaint may be amended in the discretion of the director at any time prior to the issuance of a final order based thereon. The persons so complained of have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the notice of hearing. The director shall fix a time for the hearing on such complaint, which shall not be less than ten nor more than forty days after the filing of such complaint. Notice shall be given to the complainant and to each party named in the pleadings by service on him personally or by mailing a copy thereof to him at his last-known post office address at least ten days before such hearing. In case a party in interest is located without the state and has no known post office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last-known post office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon the party located within this state. Such hearing may be adjourned from time to time in the discretion of the director and hearings may be held at such places as the director designates. The director may initiate and file any such complaint of his own motion or at the request of any interested person. Should the director file such a complaint on request, he shall not disclose the name or interest of the person upon whose request the complaint is filed, if in his judgment such disclosure would tend to prejudice the interest of any person who may be affected by any order that the director may enter upon such complaint.

(3) The director has the power to issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by the Colorado rules of civil procedure, and all such depositions shall be taken upon commissions issued by the director. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the director on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture under the laws of the state of Colorado. No individual shall be prosecuted or subjected to any penalty or forfeiture for any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him. An individual so testifying shall not be exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

(4) Any person who willfully and unlawfully fails or neglects to appear or testify or to produce books, papers, and records as required, upon application to a district court, shall be ordered to appear before the director to testify or produce evidence if so ordered, and failure to obey such order of the court may be punished by the court as a contempt thereof.

(5) Each witness who appears before the director by his order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon presentation of properly verified vouchers approved by the director and charged to the proper appropriation for the division.

(6) A complete record shall be kept of all proceedings had before the director, and all testimony and proceedings shall be taken down by the reporter appointed by the director. Such proceedings shall not be governed by the technical rules of evidence, but by such rules as are prescribed by the director for administrative hearings.

(7) After the final hearing the director shall promptly make and file his findings of fact upon all of the issues involved in the controversy and his order which shall state his determination as to the rights of the parties. Pending the final determination of any controversy before him, the director, after hearing, may make interlocutory findings and orders, which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed; suspend his rights, immunities, privileges, or remedies granted or afforded by this article as the director may specify, but not more than one year; and require an employer to take such affirmative action, including reinstatement of employees with or without pay, as the director may deem proper. Any order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

(8) The director may authorize a deputy, referee, or administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director. Any party in interest who is dissatisfied with the findings or order of the director may seek judicial review pursuant to section 24-4-106, C.R.S.

(9) The director, on his own motion, may set aside, modify, or change any of his findings or orders at any time within twenty days from the date thereof if he discovers any mistake therein or upon the ground of newly discovered evidence.

(10) If any party fails or neglects to obey an order of the director while the same is in effect, the director may file a complaint in the district court of the county wherein such person resides or usually transacts business for the enforcement of such order for appropriate temporary relief or restraining order, and shall certify and file in the court the record in the proceedings, including all documents and papers on file in the matter, and pleadings and testimony upon which such order was entered, and the findings and order of the director. Upon the filing the director shall

cause notice thereof to be served upon such party by mailing a copy to his last-known post office address, and thereupon the court has jurisdiction of the proceedings and of the question determined therein. Said action may thereupon be brought on for hearing upon such order by the director serving ten days' written notice upon the respondent, subject, however, to the Colorado rules of civil procedure for a change of the place of trial or the calling in of another judge. Upon such hearing the court may confirm, modify, or set aside the order of the director and enter an appropriate decree. No objection that was not urged before the director shall be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances. The findings of fact made by the director, if supported by credible and competent evidence in the record, shall be conclusive. The court in its discretion may grant leave to adduce additional evidence before the court where such evidence appears to be material and reasonable cause is shown for failure to have adduced such evidence in the hearing before the director. The director may modify his findings as to facts, or make new findings by reason of such additional evidence, and he shall file such modified or new findings with the same effect as his original findings and shall file his recommendations, if any, for the modification or setting aside of his original order. The court's judgment and decree shall be final; except that the same shall be subject to appellate review as provided by law.

(11) to (14) Repealed.

(15) Substantial compliance with the procedures of this article is sufficient to give effect to the orders of the director, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

(16) The right of any person to proceed under this section and section 8-3-121 shall not extend beyond six months from the date of the specific act or unfair labor practice alleged.

(17) The director also has the power by himself and on his own motion to initiate proceedings in the manner provided in this section. It is likewise the duty of the director to so initiate a proceeding in his own name whenever complaint is made to him by any party in interest if it appears to the director that the disclosure of the name of the complainant, either as an employee or group of employees or as an employer or agent or representative of the employer, would jeopardize the rights or interests or standing of any party in interest. The proceedings so initiated by the director shall be conducted in the same manner and have the same effect as provided for in this section.

(18) (a) The director has the power and it is his duty in carrying out the public policy of the state, either upon his own initiative or upon the complaint of any party in interest or any organization or persons representing any public interests, if there is picketing which in the opinion of the director might tend to lead to riots, disturbances, or assaults or disturb public peace or injure the property or persons of individuals, to limit the number of pickets that may be permitted; and to prescribe the distance from any plant, entrance, or exit where such picketing

may be permitted; and to otherwise prescribe limits to such picketing, including not only the number of persons picketing but also the manner or method thereof; and to prevent the use of weapons of any kind or threats or intimidation.

(b) Upon the failure or refusal of any person against whom any such order or direction is issued to comply with such order or direction, the district court of the district wherein the picketing takes place or the violation occurs, upon application of the director, may issue injunctive relief in the manner provided in the Colorado rules of civil procedure for courts of record in Colorado.

Source: L. 43: p. 403, § 8. CSA: C. 97, § 94(8). CRS 53: § 80-5-8. C.R.S. 1963: § 80-4-8. L. 69: p. 596, § 76. L. 72: p. 561, § 27. L. 77: (8) amended, p. 305, § 1, effective June 10; (16) amended, p. 423, § 4, effective June 29. L. 86: (6), (8), and (15) amended, p. 471, § 26, effective July 1; (11), (12), (13), and (14) repealed, p. 502, § 125, effective July 1. L. 87: (8) amended, p. 937, § 6, effective March 13.

Cross references: For fees and mileage of witnesses, see §§ 13-33-102 and 13-33-103; for the taking of depositions, see C.R.C.P. 26-37; for punishment of contempt, see C.R.C.P. 107; for issuance of injunctions, see C.R.C.P. 65.

ANNOTATION

I. General Consideration.

II. Federal Preemption.

IV. Post Hearing.

I. GENERAL CONSIDERATION.

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment to this section which placed the duty of enforcing and administering the labor peace act on the director of the division of labor instead of the industrial commission.

Municipalities do not have the power to adopt ordinances regulating activities connected with labor disputes. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

This act does not contain a comprehensive administrative scheme that precludes assertion of claim for wrongful discharge in violation of public policy; accordingly, the filing of a claim under this act does not preclude litigation of other causes of action arising out of the same circumstances. Ferris v. Local 26, 867 P.2d 38 (Colo. App. 1993).

II. FEDERAL PREEMPTION.

Law reviews. For article, "The Extent to Which Taft-Hartley Act Has Superseded State Labor Laws", see 28 Dicta 47 (1951). For article, "Federal Preemption Under the NLRA: A Rule In Search of A Reason", see 62 Den. U. L. Rev. 531 (1985).

Federal authority is solitary and exclusive in situations where both state and federal laws forbid certain labor conduct and provide machinery for enforcement. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

Thus the state cannot supply a congruous yet rival remedy to that furnished by the federal act. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

And there can be no concurrency of remedy, because the federal remedy, when applicable, is preemptive and solitary. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

The labor management relations act in essence establishes exclusion of state power in matters involving an unfair labor practice affecting commerce. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

And exclusive primary jurisdiction to pass on a union's picketing is delegated by the Taft-Hartley Act to the national labor relations board. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

Notwithstanding, power is vested in the national labor relations board to "cede" jurisdiction to a state agency of a case having to do with a labor dispute affecting commerce if the state has a statute applicable to the problem not inconsistent with the federal act. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

But until cession is made, the state is without such power. Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

But there remains in the state power to regulate picketing. Although much of the area of control and regulation of labor disputes has been preempted by federal legislation, there remains in the states, within the confines of constitutional limitations, certain power to regulate picketing and to protect public safety in so doing. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

For Taft-Hartley Act is not exclusive in controlling violence. With the passage of the Taft-Hartley Act in 1947, Congress recognized that labor unions also might commit unfair labor practices to the detriment of employees, and prohibited, among other practices, coercion of employees who wish to refrain from striking; but this amendment did not eliminate a state's power to control picketing activities through state labor statutes, as section 8 (b)(1) of the Taft-Hartley Act is not the exclusive method of controlling violence even against employees, much less violence interfering with others approaching an area

where a strike is in progress. *UMW v. Golden Cycle Corp.*, 134 Colo. 140, 300 P.2d 799 (1956).

Nor should the fact that a union commits a federal unfair labor practice while engaging in violent conduct prevent state from taking steps to stop the violence; for the states are the natural guardians of the public against violence, and it is the local communities that suffer most from the fear and loss occasioned by coercion and destruction. Hence, an act of congress cannot be interpreted to leave them powerless to avert such emergencies without compelling directions to that effect. *UMW v. Golden Cycle Corp.*, 134 Colo. 140, 300 P.2d 799 (1956).

Furthermore, where union activity is not protected by the federal act, it is not immunized from state action. *Denver Bldg. & Constr. Trades Council v. Shore*, 132 Colo. 187, 287 P.2d 267 (1955).

State laws adopted pursuant to 29 U.S.C. § 164(b) represent an area where state laws will control. *Ruff v. Kezer*, 199 Colo. 182, 606 P.2d 441 (1980).

III. COMPLAINTS.

A. Initiation of Complaint.

B. Hearing.

C. Remedies.

A. Initiation of Complaint.

The industrial commission is authorized to investigate every charge which alleges an unfair labor practice.

People ex rel. Shaffer v. Teamsters Local 961, 175 Colo. 187, 486 P.2d 10 (1971).

B. Hearing.

In ascertaining whether an employee was discharged because of union activities the industrial commission may consider circumstantial, as well as direct, evidence, but when circumstantial evidence is relied on there must be evidence of circumstances from which the commission may conclude with reasonable certainty that the employee was discharged because of union activity. *Bennett's Restaurant v. Indus. Comm'n*, 127 Colo. 271, 256 P.2d 891 (1953).

And the fact that some of the evidence relating to a discriminatory discharge is hearsay affords no basis for objecting to the finding. *Bennett's Restaurant v. Indus. Comm'n*, 127 Colo. 271, 256 P.2d 891 (1953).

However, mere suspicion or conjecture alone is not sufficient on which to base a finding of discriminatory discharge. *Bennett's Restaurant v. Indus. Comm'n*, 127 Colo. 271, 256 P.2d 891 (1953).

The division of labor's duty to hold hearings and to make decisions determining the rights of parties necessarily and implicitly includes the authority to interpret statutes pertinent to the dispute. *Denver Local 2-477 v. Metro Wastewater Reclamation Dist.*, 7 P.3d 1042 (Colo. App. 1999).

C. Remedies.

Reinstatement of employees wrongfully discharged will not compel an employer

to operate in a manner that would be contrary to business judgment with a totalitarian result of confiscation where no such result appears from the record, for the business judgment of employers must always be limited by the applicable requirements of statutes and the very purpose of the labor peace act is to restrict the business judgment of both employers and employees in the promotion of the welfare of industry and of the public. *UMW v. Sunlight Coal Co.*, 129 Colo. 374, 270 P.2d 776 (1954).

However, an order for reinstatement of such employees does not necessarily require their continuance for any specified time in future employment. Rather, they are to return to the same status which existed at the time of their discharge, subject to termination of their employment upon valid grounds not contrary to the provisions of the labor peace act at any time thereafter. *UMW v. Sunlight Coal Co.*, 129 Colo. 374, 270 P.2d 776 (1954).

IV. POST HEARING.

A complaint for review has to be filed within 30 days under former provisions of section unless the time was extended by reason of prejudice "because of exceptional delay in the receipt of a copy of order of the commission". *Indus. Comm'n v. Sheard*, 170 Colo. 76, 459 P.2d 127 (1969).

And misadvice of attorney that there is 60 days to seek review was not a ground for extension under this section. *Indus. Comm'n v. Sheard*, 170 Colo. 76, 459 P.2d 127 (1969).

By failing to seek review within 30 days the right of appeal was lost. *Indus. Comm'n v. Sheard*, 170 Colo. 76, 459 P.2d 127 (1969).

On appeal the question to be resolved was whether the findings were supported by any credible and competent evidence in the record. *Bennett's Restaurant v. Indus. Comm'n*, 127 Colo. 271, 256 P.2d 891 (1953).

And court errs in making its own findings. The court erred in making its own findings where the matter was not one in which the testimony was short and undisputed. *Indus. Comm'n v. Sheard*, 170 Colo. 76, 459 P.2d 127 (1969).

V. REGULATION OF PICKETING.

A. In General.

B. Injunctions.

A. In General.

The state, through its general assembly and courts, can reasonably regulate picketing and rights of assembly with proper constitutional safeguards for those affected thereby, for picketing is not an absolute right at all times and places. *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).

And a bona fide dispute must be shown to exist to allow picketing. *Int'l Bhd. of Teamsters v. Publix Cab Co.*, 119 Colo. 208, 202 P.2d 154 (1949).

Declaratory judgment as to validity of subsection (18) refused absent a concrete

situation. Am. Fed'n of Labor v. Reilly, 113 Colo. 90, 115 P.2d 145 (1944).

B. Injunctions.

Law reviews. For article, "Labor Injunctions Under the Colorado Labor Peace Act", see 26 Dicta 63 (1949).

While investigating unfair labor practices, the director has jurisdiction to issue restraining orders or injunctions to enjoin strikes and lockouts, but not peaceful picketing. People ex rel. Shaffer v. Teamsters Local 961, 175 Colo. 187, 486 P.2d 10 (1971).

For this section does not provide for issuance of injunctions to restrain

peaceful picketing. People ex rel. Shaffer v. Teamsters Local 961, 175 Colo. 187, 486 P.2d 10 (1971); CF&I Steel, L.P. v. United Steel Workers of Am., 990 P.2d 1124 (Colo. App. 1999), aff'd, 23 P.3d 1197 (Colo. 2001).

Subsection (1) of this section, when read together with §§ 8-3-108(2)(a) and 8-3-118(1), allows the trial court to enjoin the union and its members from engaging in an unfair labor practice. CF&I Steel, L.P. v. United Steel Workers of Am., 990 P.2d 1124 (Colo. App. 1999), aff'd, 23 P.3d 1197 (Colo. 2001).

8-3-111. Protection of employees when authority acquires certain operations.

(1) Before any authority may acquire and operate any property of a privately or publicly owned mass transportation system, fair and equitable protective arrangements, as determined by the director, shall be made to ensure certain rights of employees. Such protective arrangements shall include, without being limited to, such provisions as may be necessary to accomplish the following objectives:

(a) The preservation of existing rights, privileges, and benefits of employees under existing collective bargaining agreements between the mass transportation system and the employees thereof, including the continuation of all pension rights and benefits of the employees and their beneficiaries;

(b) The continuation of all collective bargaining in any situation existing at the time of such acquisition and the assurance of employment of all the employees of such mass transportation system so acquired;

(c) The protection of all individual employees with respect to their employment, including priorities, seniorities, and right of advancement when in agreement with any existing collective bargaining agreement;

(d) Training and retraining programs of employees and managing personnel.

(2) The contract whereby an authority acquires any property of a privately or publicly owned mass transportation system shall specify with particularity, the terms and conditions of all the protective arrangements set forth in this section, including all other protective arrangements which may be added through collective bargaining or by direction of the director.

(3) The determination of the sufficiency of protective arrangements shall be made by the director in accordance with such rules and regulations as the commission may from time to time establish.

Source: L. 43: p. 409, § 9. CSA: C. 97, § 94 (9). CRS 53: § 80-5-9. L. 65: p. 811, § 3. C.R.S. 1963: § 80-4-9. L. 69: p. 600, § 77.

8-3-112. Arbitration.

(1) Parties to a labor dispute may agree in writing to have the director act as arbitrator or to name arbitrators to arbitrate all or any part of such dispute, and thereupon the director shall have the power so to act. The director shall appoint as arbitrators only competent, impartial, and disinterested persons. Proceedings in any such arbitration shall be as provided by the rules of arbitration under the Colorado rules of civil procedure.

(2) All parties to any labor dispute when the employer is an authority shall submit to arbitration upon written order of the director when such written order is the result of the procedure set forth in section 8-3-113 (3). Any order so given shall be subject to appeal within five days of the receipt of such order by either the employee's representative or the authority, who are parties in interest. Appeal of the order shall be made to the district court in the judicial district where the most substantial number of the employees concerned are employed. Such court shall either confirm, deny, amend, or continue the order within sixty days following the application for appeal. The results of any arbitration conducted in accordance with the procedure set forth in this article shall be binding upon all parties in interest with the right of appeal to any court of competent jurisdiction on the grounds that the director or arbitration board has been unfair, capricious, or unjust in its conduct, determinations, or award.

Source: L. 43: p. 409, § 10. CSA: C. 97, § 94(10). CRS 53: § 80-5-10. C.R.S. 1963: § 80-4-10. L. 65: p. 812, § 4. L. 69: p. 600, § 78.

Cross references: For director's duty in relation to arbitration, see § 8-1-123.

ANNOTATION

Law reviews. For note, "Judicial Intervention in Arbitration Enforcement Cases - The Tenth Circuit Expands Upon the Limited Judicial Review Standard of Enterprise Wheel", see 62 Den. U. L. Rev. 593 (1985).

This section is constitutional. Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Provisions for an arbitrator do not constitute too broad a delegation of legislative authority since arbitrator's discretion to set terms and conditions of employment is limited by sufficient standards of judicial review. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Availability of judicial review of arbitrator's award and of director's decision to order arbitration under this section imposed sufficient standards and safeguards. Therefore, no unlawful delegation of legislative authority occurred. Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

RTD is not a municipality and is not performing a municipal function within the meaning of section 35 of article V and therefore, the nondelegation requirement does not prevent the general assembly from requiring binding interest arbitration pursuant to this section. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

8-3-113. Mediation.

(1) The director has power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon his own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the director has any power of compulsion in mediation proceedings. The director shall provide necessary expenses and order reasonable compensation for such mediators as he may appoint.

(2) Where, as provided by this article, the exercise of the right to strike by the employees of any employer engaged in the state of Colorado in the production, harvesting, or initial processing, the latter after leaving the farm, of any farm or dairy product produced in this state would tend to cause the destruction or serious deterioration of such product, the employees shall give to the division at least thirty days' notice of their intention to strike, and, in the case of employees in all other industries or occupations, at least twenty days' notice of their intention to strike. The division shall immediately notify the employer of the receipt of such notice. Upon receipt of such notice, the director shall take immediate steps to effect mediation, if possible. In the event of the failure of the efforts to mediate, the director shall endeavor to induce the parties

to arbitrate the controversy. Any strike called or made effective before the expiration of twenty days from the date of such notice shall constitute an unfair labor practice.

(3) Where the exercise of the right to strike is desired by the employees of any authority, the employees or their representatives shall file with the division written notice of intent to strike not less than forty calendar days prior to the date contemplated for such strike. Within twenty days of the filing of the notice, the director shall enter an order allowing or denying the strike based on the grounds of whether or not such strike would interfere with the preservation of the public peace, health, and safety in accordance with rules and regulations of the division. Any order denying a strike under this section shall include an order to arbitrate in accordance with section 8-3-112. Such arbitration shall be entered into not later than one hundred days from the filing of the notice of intent to strike. Immediately upon receipt of a notice of intent to strike, the director shall take steps to effect mediation, if possible. In the event of failure to mediate, the director shall endeavor to induce the parties to arbitrate the controversy. Any strike before the expiration of forty days from the giving of notice of intent to strike or in violation of an order of the director, unless such order is changed on appeal or otherwise, shall constitute an unfair labor practice.

(4) The division shall prescribe reasonable rules of procedure for mediation under this section.

Source: L. 43: p. 410, § 11. CSA: C. 97, § 94(11). CRS 53: § 80-5-11. C.R.S. 1963: § 80-4-11. L. 65: p. 813, § 5. L. 69: p. 601, § 79. L. 86: (3) and (4) amended, p. 471, § 27, effective July 1.

ANNOTATION

This section is constitutional. Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

The Labor Peace Act provides that the director may deny the right to strike under circumstances that would interfere with the public peace, health, and safety, but balances the denial with the provision for mandatory arbitration. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

The reference to "employees in all other industries or occupations" in this section is so clear and so unambiguous as to the intention of the general assembly not to restrict the labor peace act to only industry and trade that it is unnecessary to even consider the usual rules of construction where ambiguities and uncertainties are found in statutory provisions. Indus. Comm'n v. Wallace Vill. for Children, 165 Colo. 10, 437 P.2d 62 (1968).

Declaratory judgment as to validity of subsection (2) refused in absence of

concrete situation. Am. Fed'n of Labor v. Reilly, 113 Colo. 90, 155 P.2d 145 (1944).

8-3-114. Duties of attorney general and district attorneys.

Upon the request of the director, the attorney general or the district attorney of the county in which a proceeding is brought before the district court for the purpose of enforcing or reviewing an order of the director shall appear and act as counsel for the director in such proceeding and in any proceeding to review the action of the district court affirming, modifying, or reversing such order.

Source: L. 43: p. 410, § 12. CSA: C. 97, § 94(12). CRS 53: § 80-5-12. C.R.S. 1963: § 80-4-12. L. 69: p. 602, § 80. L. 86: Entire section amended, p. 471, § 28, effective July 1.

8-3-115. Employer and employee committees.

The director, from time to time, may appoint joint, standing, or special committees composed in equal numbers of representatives of employees and employers. The director may refer to any such committee for its study and advice any matters concerning the relations of employers and employees or the operation of this article.

Source: L. 43: p. 410, § 13. CSA: C. 97, § 94(13). CRS 53: § 80-5-13. C.R.S. 1963: § 80-4-13. L. 69: p. 602, § 81.

8-3-116. Interference with director - officer of division.

Any person who willfully assaults, resists, prevents, impedes, or interferes with the director or any officer, deputy, agent, or employee of the division or any of its agencies in the performance of duties pursuant to this article 3 commits a class 2 misdemeanor.

Source: L. 43: p. 411, § 14. CSA: C. 97, § 94(14). CRS 53: § 80-5-14. C.R.S. 1963: § 80-4-14. L. 69: p. 602, § 82. L. 86: Entire section amended, p. 472, § 29, effective July 1. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3140, § 85, effective March 1, 2022.

8-3-117. Existing contracts unaffected.

Nothing in this article shall operate to abrogate, annul, or modify any valid agreement respecting employment relations existing on or before April 1, 1943.

Source: L. 43: p. 411, § 15. **CSA:** C. 97, § 94(15). **CRS 53:** § 80-5-15. **C.R.S. 1963:** § 80-4-15.

8-3-118. Jurisdiction to issue restraining orders or injunctions.

(1) Except as otherwise provided in this article, no court has jurisdiction to issue in any case involving or growing out of a labor dispute any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment, regardless of any promise, undertaking, contract, or agreement to do such work or to remain in such employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any undertaking or promise as is described in section 8-3-119;

(c) Paying or giving to or withholding from any person any strike or unemployment benefits or insurance or other moneys or things of value;

(d) Aiding, by all lawful means, any person who is being proceeded against in, or is prosecuting any action or suit in, any court of this state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of or the facts involved in any dispute, whether by advertising, speaking, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing as an organization to patronize any person with whom the organization has a labor dispute or requiring it to employ any person;

(g) Assembling peaceably to do or to organize to do any of the acts specified in this section or to promote lawful interests;

(h) Advising or notifying any person of an intention to do any of the acts specified in this section;

(i) Agreeing with other persons to do or not to do any of the acts specified in this section;

(j) Advising, urging, or inducing, without fraud, violence, or threat thereof, others to do the acts specified in this section, regardless of any such undertaking or promise as is described in section 8-3-119;

(k) Doing in concert any acts specified in this section on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.

Source: L. 43: p. 411, § 16. **CSA:** C. 97, § 94(16). **CRS 53:** § 80-5-16. **C.R.S. 1963:** § 80-4-16.

ANNOTATION

I. General Consideration.

II. Federal Preemption.

III. Publicizing Labor Disputes.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Labor Injunctions Under the Colorado Labor Peace Act", see 26 Dicta 63 (1949).

Annotator's note. Since § 8-3-118 is similar to repealed CSA, C. 97, §§ 76-84, relevant cases construing those provisions have been included in the annotations to this section.

This section does not take away any rights from employees and unions, but bestows upon them additional rights in "labor disputes" not theretofore possessed, as it creates a defense in labor disputes against actions for restraining orders and injunctions not permitted in other disputes. *Denver Milk Producers, Inc. v. Int'l Bhd. of Teamsters*, 116 Colo. 389, 183 P.2d 529 (1947).

And it is only in cases involving labor disputes that a court does not have jurisdiction to grant such orders. *Denver Milk Producers, Inc. v. Int'l Bhd. of Teamsters*, 116 Colo. 389, 183 P.2d 529 (1947).

For, in the absence of any statute on this subject matter, there is no restriction on the courts in granting restraining orders or injunctions in any case. *Denver Milk Producers, Inc. v. Int'l Bhd. of Teamsters*, 116 Colo. 389, 183 P.2d 529 (1947).

However, where there is no "labor dispute", as defined in § 8-3-104 (13), between employer and his employees, there is no restraint on the court by virtue of this section to issue an injunction restraining a union's picketing and other acts. *Amalgamated Meat Cutters & Butcher Workmen v. Green*, 119 Colo. 92, 200 P.2d 924 (1948).

Earlier provision held constitutional. *Local 13, Teamsters v. Perry Truck Lines, Inc.*, 106 Colo. 25, 101 P.2d 436 (1940).

But other section which made picketing unlawful held unconstitutional. People v. Harris, 104 Colo. 386, 91 P.2d 989 (1939).

However, provisions protecting activities that are normal incidents of picketing are contained in this section. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

II. FEDERAL PREEMPTION.

Law reviews. For article, "The Extent to Which Taft-Hartley Act Has Superseded State Labor Laws", see 28 Dicta 47 (1951).

The state may not enjoin conduct which has been made an unfair labor practice under the federal statutes. UMW v. Golden Cycle Corp., 134 Colo. 140, 300 P.2d 799 (1956); Bldg. Constr. Trades Council v. Am. Bldrs., Inc., 139 Colo. 236, 337 P.2d 953 (1959).

But this rule does not take from the state power to prevent mass picketing, violence, and overt threats of violence, for the dominant interest of the state in preventing violence and property damage cannot be questioned; it is a matter of genuine local concern. UMW v. Golden Cycle Corp., 134 Colo. 140, 300 P.2d 799 (1956).

And such conduct is not subject to the federal board. The state is allowed to enjoin mass picketing, threats of bodily injury and property damage to employees, obstruction of streets and public roads, the blocking of entrance to and egress from a factory, and the picketing of the homes of employees, as such conduct is not subject to the federal board, either by prohibition or

protection. UMW v. Golden Cycle Corp., 134 Colo. 140, 300 P.2d 799 (1956).

Therefore, state courts do have jurisdiction to enjoin threats of personal injury and property damage to employees and management. UMW v. Golden Cycle Corp., 134 Colo. 140, 300 P.2d 799 (1956).

III. PUBLICIZING LABOR DISPUTES.

Law reviews. For note, "Colorado's Anti-Picketing Law is Scrapped", see 11 Rocky Mt. L. Rev. 255 (1939).

Courts are free to decide whether to permit or suppress any particular picket line for any reason other than a blanket policy against all picketing. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

But this section does not provide for issuance of injunctions to restrain peaceful picketing. People ex rel. Shaffer v. Teamsters Local 961, 175 Colo. 187, 486 P.2d 10 (1971).

Freedom of speech in labor disputes is guaranteed by the federal constitution. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic, but not even these essential powers are unfettered by the requirements of the bill of rights; and the scope of the fourteenth amendment is not confined by the notion of the state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. Consequently, members of a union might, without special statutory authorization by the state, make known the facts of a labor

dispute for freedom of speech is guaranteed by the federal constitution. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

Even though the dispute is not an immediate employer-employee one, peaceful picketing in connection with a labor dispute has its basic roots in the constitutional guaranties of liberty and freedom of speech, and a state may not by its common-law or statutory policy prohibit persuasion, through peaceful picketing, notwithstanding the occasioning labor dispute is not an immediate employer-employee one; inasmuch as a state cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him, the interdependence of economic interest of all engaged in the same industry has become a commonplace. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

However, "nonpeaceful" picketing may constitutionally be enjoined. When picketing is not peaceful or where, while peaceful in itself, it is set against a background of acts of violence, injunctive relief may be granted constitutionally. *Local 13, Teamsters v. Buckingham Transp. Co.*, 108 Colo. 419, 118 P.2d 1088 (1941); *CF&I Steel, L.P. v. United Steel Workers of Am.*, 990 P.2d 1124 (Colo. App. 1999), *aff'd*, 23 P.3d 1197 (Colo. 2001).

As such does not infringe the fourteenth amendment. Where a controversy is attended by peaceful picketing and by acts of violence, and the violence is such that continuation of the picketing will operate coercively by exciting fear that violence will be resumed, an injunction by a state court forbidding the picketing as well as the violence does not infringe the fourteenth amendment. *Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co.*, 134 Colo. 469, 307 P.2d 468 (1957).

This section must be considered with § 8-3-109 (2). *Amalgamated Meat Cutters & Butcher Workmen v. Green*, 119 Colo. 92, 200 P.2d 924 (1948).

When so considered and taken together, these sections mean that courts are divested of all jurisdiction to grant restraining orders or injunctions which prohibit any person from doing certain specific things therein mentioned, in any case involving or growing out of a labor dispute. *Amalgamated Meat Cutters & Butcher Workmen v. Green*, 119 Colo. 92, 200 P.2d 924 (1948).

Subsection (1) of this section, when read together with §§ 8-3-108(2)(a) and 8-3-110(1), confers jurisdiction upon the trial court to enjoin the union and its members from engaging in an unfair labor practice. *CF&I Steel, L.P. v. United Steel Workers of Am.*, 990 P.2d 1124 (Colo. App. 1999), *aff'd*, 23 P.3d 1197 (Colo. 2001).

A labor union cannot legally be enjoined from peaceful picketing or restrained in their conduct. *Local 13,*

Teamsters v. Perry Truck Lines, Inc., 106 Colo. 25, 101 P.2d 436 (1940).

In "any dispute". Subsection (1)(e) of this section provides that no court may issue an injunction in any case involving a labor dispute to restrain giving publicity to and obtaining or communicating information

regarding the existence of, or the facts involved in "any dispute", whether by advertising, speaking, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

8-3-119. Relations contrary to public policy.

(1) The following is declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise or against any other persons who may advise, urge, or induce, without fraud, violence, or threat thereof, either party thereto to act in disregard of the undertaking or promise: Every undertaking or promise made on or after April 1, 1943, whether written or oral, express or implied, between any employee or prospective employee and his employer, prospective employer, or any other individual, firm, company, association, or corporation, whereby:

(a) Either party thereto undertakes or promises to join or to remain a member of some specific labor organization or to join or remain a member of some specific employer organization or any employer organization; or

(b) Either party thereto undertakes or promises not to join or not to remain a member of some specific labor organization or of some specific employer organization or any employer organizations; or

(c) Either party thereto undertakes or promises that he will withdraw from an employment relation in the event that he joins or remains a member of some specific labor organization or any labor organization or of some specific employer organization or any employer organization.

Source: L. 43: p. 412, § 17. CSA: C. 97, § 94(17). CRS 53: § 80-5-17. C.R.S. 1963: § 80-4-17.

8-3-120. Conflict of provisions.

Wherever the application of the provisions of other statutes or laws conflict with the application of the provisions of this article, this article shall prevail; except that, in any situation where the provisions of this article cannot be validly enforced, the provisions of such other statutes or laws shall apply.

Source: L. 43: p. 413, § 18. **CSA:** C. 97, § 94(18). **CRS 53:** § 80-5-18. **C.R.S. 1963:** § 80-4-18.

ANNOTATION

Labor Peace Act does not limit or constrain the law on metropolitan sewage disposal districts concerning the determination of prevailing rates of pay.

Such a district is not required to negotiate or engage in collective bargaining in fixing employee compensation at prevailing rates

for equivalent work. *Local 1 v. Metro Wastewater Reclamation*, 876 P.2d 82 (Colo. App. 1994).

Applied in *People ex rel. Shaffer v. Teamsters Local 961*, 175 Colo. 187, 486 P.2d 10 (1971).

8-3-121. Civil liability for damages.

(1) Any person who suffers injury because of an unfair labor practice has a right of action, jointly and severally, against all persons participating in said practice for damages caused to the injured person thereby.

(2) If, in accordance with this article or otherwise, persons otherwise unwilling to do so are induced to violate contracts of employment or for services or materials, any person injured thereby shall be entitled to recover and have judgment therefor at law against the persons, jointly and severally, so inducing the violation of such obligations.

Source: L. 43: p. 416, § 22. **CSA:** C. 97, § 94(22). **CRS 53:** § 80-5-19. **C.R.S. 1963:** § 80-4-19.

ANNOTATION

I. General Consideration.

II. Unfair Labor Practices.

III. Violation of Contract.

IV. Damages.

I. GENERAL CONSIDERATION.

Liability for damages existed prior to legislation. Prior to the enactment of legislation, state and national, designed for the peaceful settlement of labor disputes and controversy, one interfering with a work project of another would be held liable to the

extent of all damages caused by such intrusion, and unless by the enactment of legislation the right to be so protected has been eliminated, modified, or otherwise circumscribed, it still exists. *Denver Bldg. & Constr. Trades Council v. Shore*, 132 Colo. 187, 287 P.2d 267 (1955).

But there is nothing under the labor peace act which allows either interest or attorney fees. *Denver Bldg. & Constr. Trades Council v. Shore*, 132 Colo. 187, 287 P.2d 267 (1955).

Applied in *Bennett v. Furr's Cafeterias, Inc.*, 549 F. Supp. 887 (D. Colo. 1982).

II. UNFAIR LABOR PRACTICES.

Damages for tortious labor conduct are recoverable in any court of competent jurisdiction, whether state or federal. *Denver Bldg. & Constr. Trades Council v. Shore*, 132 Colo. 187, 287 P.2d 267 (1955).

Even where the national labor relations board establishes a violation, recovery of damages for the resulting injury is left to any court of competent jurisdiction. *Denver Bldg. & Constr. Trades Council v. Shore*, 132 Colo. 187, 287 P.2d 267 (1955).

Violation of § 8-2-116 is an unfair labor practice and thus damages are recoverable under this section. *Rawson v. Sears, Roebuck & Co.*, 530 F. Supp. 776 (D. Colo. 1982).

III. VIOLATION OF CONTRACT.

There is nothing inherently illegal in requiring a labor organization to live up to its written contracts. *Denver Bldg. &*

Constr. Trades Council v. Shore, 132 Colo. 187, 287 P.2d 267 (1955).

And so where the members of a union violate their contract and walk off a job, individually refuse to cross a picket line, and, supported by the union, refuse to furnish union members to operate machines, completely immobilize and render entirely useless all of the machinery to the same extent as though it had been retained in their possession and actually impounded, it is simply a method of depriving the employer of the use of his property and is ineffective to relieve them of liability for their breach of contract. *Denver Bldg. & Constr. Trades Council v. Shore*, 132 Colo. 187, 287 P.2d 267 (1955).

IV. DAMAGES.

Damages, as used in this section, includes those damages recoverable in a common law tort action. *Rawson v. Sears, Roebuck & Co.*, 585 F. Supp. 1393 (D. Colo. 1984).

Damages where heavy equipment is kept idle is its fair rental value. It is impossible to allocate to each of several heavy machines on a job the proportion of the overall profit attributable to the agency of each thereof, and so where, through unlawful or wrongful acts, heavy equipment is kept idle and the work expected to be accomplished thereby delayed, the fair rental value of such equipment during the period of prevention of its use is generally adopted as a proper measure for determination of the extent of damage. This loss of use rule is in keeping with the general rule that damages should be calculated in such manner as is

most favorable to the party liable, and it is logical that the rental cost or value of a machine would be less than the amount expected to be derived from its use - if it can be rented for a sum equal to the amount it will return in use, why use it; if one should

rent a machine to do a specific job, would he not expect to make a profit for himself over and above the rental he would have to pay? Denver Bldg. & Constr. Trades Council v. Shore, 132 Colo. 187, 287 P.2d 267 (1955).

8-3-122. Penalty for violation.

Any person, firm, or corporation who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined for the first offense not less than fifty dollars nor more than one hundred dollars and for the second and subsequent offenses not less than one hundred dollars nor more than five hundred dollars, together with costs.

Source: L. 43: p. 417, § 23. CSA: C. 97, § 94(23). CRS 53: § 80-5-20. C.R.S. 1963: § 80-4-20. L. 64: p. 389, § 25.

ANNOTATION

Law reviews. For article, "Labor Injunctions Under the Colorado Labor Peace Act", see 26 Dicta 63 (1949).

8-3-123. Nonapplicability of other statutes.

The provisions of sections 8-1-108, 8-1-120, and 8-1-123 shall not apply to this article, but this article and the administration thereof are governed and controlled as to all matters contained in sections 8-1-108, 8-1-120, and 8-1-123 by the special provisions of this article.

Source: L. 43: p. 417, § 25. CSA: C. 97, § 94(25). CRS 53: § 80-5-22. C.R.S. 1963: § 80-4-22. L. 76: Entire section amended, p. 297, § 12, effective May 20.

8-3.3 ARTICLE 3.3

Collective Bargaining by County Employees

8-3.3-101.	Short title.		- intervening employee organizations - secret ballot elections - rules.
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8-3.3-105.	Counties - rights.	8-3.3-112.	Obligation to negotiate in good faith.
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8-3.3-108.	Certification of the employee organization as the exclusive representative - rules.	8-3.3-115.	Unfair labor practices.
		8-3.3-116.	Existing bargaining relationships.
8-3.3-109.	Process for employee organization certification		

8-3.3-101. Short title.

The short title of this article 3.3 is the "Collective Bargaining by County Employees Act".

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1900, § 2, effective July 1, 2023.

8-3.3-102. Definitions.

As used in this article 3.3, unless the context otherwise requires:

(1) "Bargaining unit" means a group of county employees in a unit deemed appropriate for the purpose of collective bargaining in accordance with section 8-3.3-110; except that a bargaining unit does not include:

(a) A confidential employee;

- (b) A managerial employee;
 - (c) An executive employee; or
 - (d) Temporary, intermittent, or seasonal employees who work less than ninety days in a three-hundred-sixty-five-day period.
- (2) "Collective bargaining" or "collectively bargain" means the performance of the mutual obligation of a county and an exclusive representative to:
- (a) Meet at reasonable times and places and negotiate in good faith with respect to wages, hours, and other terms and conditions of employment;
 - (b) Resolve questions arising under a collective bargaining agreement through a negotiated grievance procedure culminating in final and binding arbitration; and
 - (c) Execute a written contract incorporating any agreements reached.
- (3) "Collective bargaining agreement" means an agreement negotiated between an exclusive representative and a county, including an agreement reached through an impasse resolution process pursuant to section 8-3.3-114.
- (4) "Compensation" means:
- (a) Base wage or salary;
 - (b) Any form of direct monetary payments;
 - (c) Health, accident, life, and disability insurance;
 - (d) Pension programs;
 - (e) Paid time off;
 - (f) Uniform and equipment allowances; and
 - (g) Expense reimbursement.
- (5) "Confidential employee" means a person who is:
- (a) Required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of the management positions; or
 - (b) Employed as an attorney by the county and whose duties are to provide direct legal counsel regarding the application, interpretation, or enforcement of this article 3.3.
- (6) (a) "County" means a county in this state.
- (b) "County" does not include:

- (I) A city and county;
 - (II) A county with a population of less than seven thousand five hundred people pursuant to the official figures of the most recent United States decennial census;
 - (III) The state or any political subdivision of the state where the state or political subdivision of the state acquires or operates a mass transportation system, or any carrier by railroad, express company, or sleeping car company subject to the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq., as amended;
 - (IV) A municipality;
 - (V) A school district, a district charter school authorized pursuant to part 1 of article 30.5 of title 22, or an institute charter school authorized pursuant to part 5 of article 30.5 of title 22;
 - (VI) Any district, business improvement district, special district created pursuant to title 32, authority, or other political subdivision of the state; or
 - (VII) A public hospital established by a county pursuant to part 3 of article 3 of title 25.
- (7) "County employee" means a person employed by a county, including a person whose employment with the county has ceased due to an unfair labor practice or a discharge, if such discharge is subject to appeal under an applicable appeals process.
- (8) "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.
- (9) "Department" means the department of labor and employment.
- (10) "Director" means the director of the division.
- (11) "Division" means the division of labor standards and statistics in the department.
- (12) "Employee organization" means a nonprofit organization that engages with a county concerning wages, hours, and other terms and conditions of employment and that represents or seeks to represent county employees in a bargaining unit.
- (13) "Exclusive representative" means the employee organization certified or recognized as the representative of employees in a bargaining unit pursuant to the terms of this article 3.3.
- (14) "Executive employee" means an employee:
- (a) Whose primary duty is management of the entity in which the employee is employed or of a customarily recognized department or subdivision of the entity;
 - (b) Who customarily and regularly directs the work of two or more other employees; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight.

(15) "Fact finding" means the process whereby the issues not resolved in collective bargaining negotiations between the county and the exclusive representative are presented to a fact finder for resolution pursuant to section 8-3.3-114.

(16) "Final offer" means the written offer made:

(a) Latest in time by an exclusive representative to a county or by a county to an exclusive representative; and

(b) At least seven calendar days before the beginning of an impasse resolution hearing as described in section 8-3.3-114.

(17) "Interest-based bargaining" means a method of collective bargaining that involves mutual collaboration.

(18) "Managerial employee" means any county employee who has significant responsibilities for formulating county policies and programs or administering an agency or department of an agency.

(19) "New employee orientation" means the onboarding process of a newly hired county employee, whether in person, online, or through other means or mediums, in which county employees are advised of their employment status, rights, benefits, duties, and responsibilities or any other employment-related matters.

(20) "Physical force" means the application of physical techniques or tactics, chemical agents, or weapons to another person.

(21) "Serious bodily injury" means bodily injury that, either at the time of the actual injury or at a later time, involves:

(a) A substantial risk of:

(I) Death;

(II) Serious permanent disfigurement; or

(III) Protracted loss or impairment of the function of any part or organ of the body; or

(b) A break, fracture, or burn of the second or third degree.

(22) "Showing of interest" means written or electronic documentation that provides evidence of county employee membership or support for an employee organization for purposes of

exclusive representation. "Showing of interest" includes any electronic signature acceptable under the "Uniform Electronic Transactions Act", article 71.3 of title 24.

(23) "Terms and conditions of employment" means matters affecting the employment and working conditions of county employees, including hours and place of work.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1901, § 2, effective July 1, 2023.

8-3.3-103. County employees - rights - obligations.

(1) County employees have the right to:

- (a) Self-organize;
- (b) Form, join, or assist an employee organization;
- (c) Engage in the collective bargaining process and the formation of a collective bargaining agreement through representatives of their own choosing;
- (d) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and
- (e) Refrain from any or all concerted activities without interference, constraint, or coercion by a county or an employee organization.

(2) County employees have the right to communicate with one another and with employee organization representatives concerning organization, representation, workplace issues, collective bargaining, and the business and programs of an employee organization at county employee work sites and by means of email systems, text messages, or other electronic communications; telephone; paper documents; and other means of communication subject to reasonable restrictions. Upon certification of an exclusive representative, the restrictions must be determined through collective bargaining.

(3) County employees have the right to have their exclusive representative be present at:

- (a) Any formal discussion between one or more representatives of the county and one or more county employees in the bargaining unit or their representatives concerning a grievance, a personnel policy or practice, or any other general condition of employment; or
- (b) Any examination of a county employee in the bargaining unit by a representative of the county in connection with an investigation if:

(I) The county employee reasonably believes that the examination may result in disciplinary action against the county employee; and

(II) The county employee requests representation.

(4) The discussions described in subsection (3)(a) of this section do not include informal discussions or ordinary coaching conversations between county employees and their managers or supervisors.

(5) A county shall annually inform its county employees in a bargaining unit who are represented by an exclusive representative of their rights under subsection (3)(b) of this section.

(6) County employees have the right to fully participate in the political process. County employees, during nonworking hours, may speak with members of the public and the county on any matter of public concern, including the terms and conditions of their employment, and may engage in other political activities in the same manner as other residents of Colorado, without discrimination, intimidation, or retaliation.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1904, § 2, effective July 1, 2023.

8-3.3-104. Exclusive representatives - rights.

(1) A county shall give the exclusive representative reasonable access to county employees at work, through electronic communication and other means. Reasonable access must be determined through collective bargaining.

(2) At the end of each calendar quarter, a county shall provide to the exclusive representative the following information for each county employee in the bargaining unit:

(a) The name, employee identification number, department, job classification, job title, work telephone number, work email address, work address, work location, salary, and date of hire of each county employee as contained in the county's records; and

(b) The home address, home and personal cellular telephone numbers, and personal email address of each county employee, unless directed by the county employee not to provide some or all of the information.

(3) (a) (I) Within thirty days after a county employee is hired, the county shall provide the exclusive representative with an opportunity to meet with that county employee during work time as determined pursuant to subsection (3)(a)(III) of this section.

(II) The county shall provide the exclusive representative notice at least ten days in advance of a new employee orientation; except that a shorter notice may be provided when there is an urgent need, critical to the county's operations, that was not reasonably foreseeable.

(III) The county and the exclusive representative shall determine the structure, time, and manner of the employee organization's access to county employees through collective bargaining. The collective bargaining agreement must provide the exclusive representative access to the county's employee orientation and orientation materials and information.

(b) The county shall pay its county employees for the time employees meet with the exclusive representative pursuant to this subsection (3). The county shall pay each county employee the same rate of pay that the employee is paid during normal work hours.

(4) The county shall make payroll deductions for membership dues and other payments that county employees voluntarily authorize to be made to the exclusive representative and related entities. The exclusive representative and related entities shall be the only organizations for which the county shall make payroll deductions from county employees who are in a bargaining unit represented by the exclusive representative.

(5) (a) The county shall honor the terms of county employees' authorizations for payroll deductions made in any form that satisfies the requirements of the "Uniform Electronic Transactions Act", article 71.3 of title 24, including without limitation electronic authorizations, including voice authorizations, that meet the requirements of an electronic signature as defined in section 24-71.3-102 (8).

(b) At the election of the exclusive representative, a county employee's request to cancel or change authorizations for payroll deductions must be directed to the exclusive representative rather than to the county. In such case, the exclusive representative is responsible for processing the request in accordance with the terms of the authorization. An authorization for a payroll deduction may not be irrevocable for a period of more than one year.

(c) An exclusive representative that certifies that it has and will maintain individual county employee authorizations is not required to provide a copy of an individual authorization to the county unless a dispute arises about the existence or terms of that authorization. The exclusive representative shall indemnify the county for any claims made by the county employee for deductions made in reliance on information maintained by the exclusive representative.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1905, § 2, effective July 1, 2023.

8-3.3-105. Counties - rights.

(1) Unless otherwise agreed to by a county in a collective bargaining agreement, this article 3.3 does not impair the right and responsibility of each county to:

- (a) Determine and carry out any mission, initiative, task force, agenda, policy, or program of any department, division, office, or other subdivision of the county;
- (b) Establish and oversee a budget, finances, and accounting;
- (c) Determine the utilization of technology;
- (d) Negotiate, procure, and administer contracts that the county has lawful authority to enter;
- (e) Make, amend, enforce, or revoke reasonable personal conduct rules subject to its obligation to collectively bargain with an exclusive representative; or
- (f) Take actions as may be necessary to carry out any government function during an emergency declared by a competent authority.

(2) Nothing in this article 3.3 or in a collective bargaining agreement may restrict, duplicate, or usurp any responsibility or authority granted to the county commissioners of any county by the state constitution, a home rule county charter, or any other state law.

(3) Nothing in this article 3.3 prevents a county from convening or engaging in discussions with any county employee or group of county employees to accomplish the rights and responsibilities described in subsection (1) of this section.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1907, § 2, effective July 1, 2023.

8-3.3-106. Director powers and duties - administration - rules - enforcement - hearing officers.

(1) The director shall enforce, interpret, apply, and administer the provisions of this article 3.3 through rule-making, hearings, and appeals, including the establishment of procedures for:

- (a) Designating appropriate bargaining units under section 8-3.3-110;
- (b) Selecting, certifying, and decertifying exclusive representatives as provided in this article 3.3; and
- (c) Filing, hearing, and determining complaints of unfair labor practices pursuant to section 8-3.3-115.

(2) For the purposes of adjudicating disputes and enforcing the provisions of this article 3.3 and rules adopted pursuant to this article 3.3, the director may conduct hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records.

(3) (a) The director may delegate the powers specified in subsection (2) of this section to hearing officers. A hearing officer shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order.

(b) The decision and order of a hearing officer constitutes a final agency action pursuant to section 24-4-106. The director shall promptly provide all parties with a copy of the hearing officer's decision by United States mail or by electronic mail. A party may seek judicial review of the decision pursuant to section 24-4-106.

(4) The director and a hearing officer have the power to enforce provisions of this article 3.3 through the imposition of:

- (a) Appropriate administrative remedies;
- (b) Actual damages related to employee organization dues;
- (c) Back pay, including benefits;
- (d) Reinstatement of the county employee with the same seniority status that the employee would have had but for the violation;
- (e) Other remedies to address any loss suffered by a county employee or group of county employees from unlawful conduct by a county; and
- (f) Declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions.

(5) The director shall maintain on the division's website:

- (a) Current versions of this article 3.3 and the rules adopted pursuant to this article 3.3;
- (b) All hearing officer decisions and orders;
- (c) All final judgments and written decisions of fact finders pursuant to section 8-3.3-114; and
- (d) All administrative determinations of certification and decertification of exclusive representatives.

(6) The director may adopt rules as necessary to implement and administer this article 3.3, including rules:

- (a) To establish procedures as specified in subsection (1) of this section;

- (b) Governing hearings conducted pursuant to this article 3.3;
- (c) Regarding objections to the conduct of an election pursuant to section 8-3.3-109; and
- (d) Regarding fact finding pursuant to section 8-3.3-114.

(7) The division shall partner with the federal mediation and conciliation service to offer training in interest-based bargaining upon the mutual request of an employee organization and a county.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1907, § 2, effective July 1.

8-3.3-107. Judicial enforcement.

The director or any party of interest may request the appropriate district court to enforce orders issued pursuant to this article 3.3, including those for appropriate temporary relief and restraining orders. The court shall consider the request for enforcement based on the record made before the director or hearing officer. The court shall uphold the action of the director or hearing officer and take appropriate action to enforce the action, unless the court concludes that the order is unlawful pursuant to section 24-4-106 (7)(b).

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1909, § 2, effective July 1, 2023.

8-3.3-108. Certification of the employee organization as the exclusive representative - rules.

(1) (a) On and after July 1, 2023, the director shall certify and a county shall recognize an employee organization as the exclusive representative of a bargaining unit upon a secret ballot election in which the employee organization receives more than fifty percent of the valid ballots cast. An election shall take place when, in accordance with rules promulgated by the director, a petition is filed by an employee organization containing a showing of interest of at least thirty percent of the county employees in a bargaining unit.

(b) The sufficiency of the showing of interest in a representation election for exclusive representation is an administrative determination made by the director or the director's designee and is not subject to challenge by any person. The director shall not disclose the identity of any county employee who has participated in the showing of interest to any person.

(2) (a) The director shall deem an employee organization certified as the exclusive representative if, on or before January 1, 2022, a county recognized the employee organization as the exclusive representative of a bargaining unit. The employee organization must be certified as the exclusive representative for the bargaining unit until or unless the employee organization is decertified as the exclusive representative in accordance with this article 3.3.

(b) The director shall deem an employee organization certified as the exclusive representative if a county, after January 1, 2022, and before July 1, 2023, recognized the employee organization as the exclusive representative and the recognition was based on a demonstration of majority support by the employee organization or the employee organization was selected in a secret ballot election by a majority of bargaining unit county employees voting in the election. The employee organization must be certified as the exclusive representative of the bargaining unit until or unless the employee organization is decertified as the exclusive representative in accordance with this article 3.3.

(c) No county employee positions in a deemed certified bargaining unit may be excluded from the bargaining unit, except by agreement of the exclusive representative and the county.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1909, § 2, effective July 1, 2023.

8-3.3-109. Process for employee organization certification - intervening employee organizations - secret ballot elections - rules.

(1) Upon the filing of a petition by an employee organization seeking exclusive recognition, the director shall require the county to distribute notice to all county employees in the applicable bargaining unit that must identify the petitioner, the bargaining unit sought by the petitioner, the election process, and an advisement of county employee rights under section 8-3.3-103 (1), (2), and (3).

(2) Within ten days after the date the notice required in subsection (1) of this section is first distributed, other employee organizations may seek to intervene in the certification process. An intervener organization shall file a petition with the director containing the signatures of not less than thirty percent of the county employees in the bargaining unit claimed to be appropriate by the intervener.

(3) If there is a dispute regarding the positions to be included in the appropriate bargaining unit, the director shall promptly order a hearing conducted in accordance with the rules adopted pursuant to this article 3.3. Upon determination of the composition of the appropriate bargaining unit, whether by consent of the parties or upon a decision by the director or the director's

designee, the director shall determine the sufficiency of the showing of interest of each petitioner. If a petitioner lacks a sufficient showing of interest, the director shall provide that petitioner with a ten-day opportunity to demonstrate a sufficient showing of interest in the bargaining unit that was deemed appropriate.

(4) Within ten days after the director's determination that a sufficient showing of interest has been provided pursuant to subsection (3) of this section, the director shall:

(a) Order the county to provide to the petitioning employee organization or organizations the names, job titles, work locations, home addresses, personal email addresses, and home or cellular telephone numbers of any county employee in the appropriate bargaining unit unless directed by the county employee not to provide some or all of the information;

(b) Establish by consent or order the procedures for a secret ballot election; and

(c) Order the county to distribute a notice prepared by the director that describes the procedures of the secret ballot election to all county employees in the appropriate bargaining unit.

(5) The ballot for the secret ballot election must contain:

(a) The name of any employee organization submitting a petition containing a showing of interest of at least thirty percent of the county employees in the appropriate bargaining unit; and

(b) A choice of "no representation" for county employees to indicate they do not desire to be represented by an employee organization.

(6) (a) If an employee organization receives a majority of ballots cast in a secret ballot election, the director shall certify the employee organization as the exclusive representative of all county employees in the appropriate bargaining unit subject to any valid objections to the conduct of the election filed in accordance with this article 3.3 and the rules of the director.

(b) Within twenty-eight days after a secret ballot election in which no employee organization receives a majority of the ballots cast, the director shall conduct a runoff election between the two employee organizations receiving the largest number of ballots cast. The director shall certify the results of the election, and, if an employee organization receives a majority of the ballots cast, the director shall certify the employee organization as the exclusive representative of all county employees in the appropriate bargaining unit, subject to any valid objections to the conduct of the election filed in accordance with this article 3.3 and the rules of the director.

(7) Within seven days after certification of the results of a secret ballot election, any party may file objections to the conduct of the election or to conduct affecting the results of the election in accordance with rules promulgated by the director. The objections must contain a short statement of the reasons for the objections and be accompanied by a written offer of proof identifying each witness the party would call to testify concerning the issue and a summary of

the witness's testimony. Upon a showing of good cause, the director may extend the time for filing the offer of proof. The party filing the objections shall serve a copy of the objections, but not the written offer of proof, on each of the other parties to the case. If the director or a designated hearing officer finds that misconduct affected the outcome of the election, the director shall invalidate the election and order a subsequent election for the county employees in the appropriate bargaining unit within twenty-eight days after the finding.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1910, § 2, effective July 1, 2023.

8-3.3-110. Determination of appropriate bargaining unit.

(1) The director shall, upon receipt of a petition for a representation election, designate the appropriate bargaining unit for collective bargaining in accordance with this section. The designation must be determined by:

- (a) Consent of the parties; or
- (b) If there is not agreement between the parties, an administrative determination of the director.

(2) In determining the appropriateness of a bargaining unit, the director shall consider:

- (a) The desires of the public employees;
- (b) The similarity of duties, skills, and working conditions of the public employees involved;
- (c) The wages, hours, and other working conditions of the public employees;
- (d) The administrative structure and size of the public employer;
- (e) The history of collective bargaining with that public employer, if any, and with similar public employers; and
- (f) Other factors that are normally or traditionally taken into consideration in determining the appropriateness of bargaining units in the public sector.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1912, § 2, effective July 1, 2023.

8-3.3-111. Decertification of exclusive representative - rules.

(1) A county employee in a bargaining unit or an employee organization may initiate decertification of the employee organization as the exclusive representative upon submission to the director of a showing of interest demonstrating that thirty percent of the county employees in the appropriate bargaining unit request decertification of the existing exclusive representative or a showing of interest demonstrating that thirty percent of the county employees in the bargaining unit authorize an employee organization other than the exclusive representative to represent them for purposes of collective bargaining. Decertification elections must be held in a manner similar to certification elections, as specified in rules promulgated by the director, so long as an incumbent exclusive representative employee organization is not required to file a showing of interest to be placed on the ballot.

(2) If there is a collective bargaining agreement in effect, a petition for a decertification election may be made to the director no earlier than ninety days and no later than sixty days prior to the expiration of the collective bargaining agreement; except that a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement that has a term of more than three years.

(3) If an exclusive representative has been certified but no collective bargaining agreement is in effect, the director shall not act on a request for a decertification election earlier than twelve months after the certification of an employee organization as the exclusive representative.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1912, § 2, effective July 1, 2023.

8-3.3-112. Obligation to negotiate in good faith.

(1) The county and the exclusive representative or its representative have the authority and the obligation to collectively bargain in good faith. The obligation to collectively bargain in good faith does not compel either party to agree to a proposal or make a concession.

(2) The obligation to collectively bargain in good faith:

(a) Requires a county, upon request of the exclusive representative, to provide information that may be relevant to the terms and conditions of employment or the interpretation of the collective bargaining agreement;

(b) Includes a county's duty to furnish data to the exclusive representative that:

(I) Is normally maintained by the county in the regular course of business; and

(II) Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining or subject to a grievance under a collective bargaining agreement; and

(c) Does not include an obligation to furnish information that constitutes guidance, advice, counsel, or training provided for managerial employees or executive employees relating to collective bargaining.

(3) Collective bargaining between a single county and an employee organization serving as the exclusive representative of more than one bargaining unit of county employees must be consolidated upon the request of the county.

(4) An exclusive representative and a county shall make a good faith effort to complete negotiations so that the terms of a collective bargaining agreement may be effectively considered by the board of county commissioners during the adoption of the county budget. The board of county commissioners is not obligated to make an appropriation of funds necessary to fund the terms of a collective bargaining agreement reached after October 15 of the year prior to the budget year if the exclusive representative has not been certified prior to June 1 of the current year unless otherwise agreed upon by both parties.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1913, § 2, effective July 1, 2023.

8-3.3-113. Collective bargaining agreement - arbitration.

(1) An agreement negotiated between an exclusive representative and a county, with the approval of the board of county commissioners of the county, constitutes the collective bargaining agreement between the parties.

(2) A collective bargaining agreement entered into under this article 3.3 must be for a term of at least twelve months and not more than sixty months. A collective bargaining agreement remains in effect until replaced by a subsequent collective bargaining agreement.

(3) If there is an existing law, policy, ordinance, or charter provision that applies to a county that provides procedures for the appeal of county employee discipline, including terminations, a county employee may elect to appeal a disciplinary action either under the applicable appeals procedure established by that law, policy, ordinance, or charter provision or under a grievance procedure established in a collective bargaining agreement applicable to the county, but not both. A county employee's election of a remedy is irrevocable and is made at the time the county employee timely files a written disciplinary appeal under the negotiated grievance procedure or the procedure established by law, policy, ordinance, or charter provision, whichever occurs first.

(4) (a) A collective bargaining agreement shall provide for a grievance procedure culminating in final and binding arbitration, subject to judicial review in accordance with this article 3.3, to resolve disputes over the interpretation, application, and enforcement of any provision of the collective bargaining agreement.

(b) An exclusive representative or the county may seek judicial review or confirmation of an arbitrator's decision as the final step in a collective bargaining agreement grievance procedure in a court of competent jurisdiction. The decision of an arbitrator must be enforced, and the parties shall comply with the decision and award, unless a court concludes that:

- (I) The decision and award was procured by corruption, fraud, or other undue means;
- (II) The arbitrator exceeded the arbitrator's authority;
- (III) The arbitrator's decision and award violated public policy;
- (IV) The arbitrator engaged in manifest disregard of the law; or
- (V) The arbitrator denied the parties a fundamentally fair hearing.

(5) A collective bargaining agreement shall not:

(a) Delay the prompt interviewing of county employees under investigation; except that a county employee must be given sufficient time to have the county employee's exclusive representative present at any examination in connection with an investigation in accordance with section 8-3.3-103 (3);

(b) Permit a county employee to use paid time for any or all of a suspension when the suspension was properly imposed, in accordance with applicable standards or procedures, or where a supervisor, employer, administrative law judge, hearing officer, or a court has found a deprivation of rights under the state or federal constitution;

(c) Permit the expungement of disciplinary records from a county employee's personnel file for substantiated infractions of a county's policies regarding:

- (I) Physical use of force;
- (II) Deadly physical force;
- (III) Actions resulting in death or serious bodily injury; and
- (IV) Actions resulting in a deprivation of rights under the state or federal constitution;

(d) Impose limits on the period of time during which a county employee may be disciplined or an investigation may occur for incidents involving physical force, incidents of deadly physical force, incidents that resulted in death or serious bodily injury, or incidents alleging a deprivation of an individual's rights under the state or federal constitution;

(e) Place limitations on the substance, method for filing, or source of complaints that may prompt an investigation into employee misconduct.

(6) A collective bargaining agreement must be consistent with applicable state and federal laws, including state and federal laws governing the county officials' and county employees' retirement plan or the Colorado employee retirement system described in article 51 of title 24, whichever is applicable. If any clause in a collective bargaining agreement is determined to be invalid or unenforceable, the unenforceability or invalidity of such clause does not affect the enforceability or validity of any other clause of the collective bargaining agreement.

(7) Any term of a collective bargaining agreement requiring the appropriation of funds must be submitted to the board of county commissioners of the county at the meeting following notification by the exclusive representative to the county that the bargaining unit has approved the agreement in accordance with the internal procedures of the exclusive representative.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1914, § 2, effective July 1, 2023.

8-3.3-114. Impasse resolution - fact finding - rules.

(1) If an impasse arises on one or more issues during the negotiation of a collective bargaining agreement, the exclusive representative and the county shall engage in the dispute resolution process established in this section or an alternative procedure established by mutual agreement. The deadlines in this section may be extended by mutual agreement of the parties.

(2) (a) If the exclusive representative and the county cannot reach an agreement on one or more issues subject to collective bargaining within ninety calendar days after commencing meetings to negotiate, or by the one hundred twentieth day prior to the expiration of an existing collective bargaining agreement, whichever is earlier, either party may request the assistance of a mediator. If mediation is requested by either party, bargaining must continue with the aid of a mediator.

(b) If the parties cannot agree on a mediator within seven calendar days after the request for mediation, the parties must request mediation assistance from the federal mediation and conciliation service. The parties shall share equally the cost of mediation services, if any.

(3) Mediation must continue for sixty days, until sixty days prior to the expiration of the existing collective bargaining agreement, or until the mediator determines that mediation services are no longer necessary or effective, whichever occurs first. Mediation may continue thereafter upon mutual agreement of the parties.

(4) (a) If the parties remain at an impasse following mediation, either party may request fact finding in accordance with rules promulgated by the director.

(b) The director shall maintain a roster of qualified fact finders, each of whom must be registered with the federal mediation and conciliation service or the American Arbitration Association, and shall require the parties to select a fact finder from the director's roster or from a roster of labor arbitrators obtained directly from the federal mediation and conciliation service or the American Arbitration Association, or its successor organization. The parties shall select a fact finder from a list of seven names from the roster, as designated by the director and the American Arbitration Association, or its successor organization, or the federal mediation and conciliation service, whichever is applicable.

(c) Unless the parties otherwise agree, the fact finder will make a recommendation to accept the final offer of the exclusive representative or the final offer of the county on each issue in dispute.

(d) In arriving at a recommendation, the fact finder shall consider:

(I) The financial ability of the county to meet the costs of any proposed settlement;

(II) The interests and welfare of the public;

(III) The compensation, hours, and terms and conditions of employment of the county employees involved in the collective bargaining in comparison with the compensation, hours, and terms and conditions of employment of other employees in the public and private sectors in comparable communities;

(IV) The stipulations of the parties;

(V) The lawful authority of the county;

(VI) Changes in the cost of living; and

(VII) Other factors that are normally or traditionally taken into consideration in the determination of compensation, hours, and terms and conditions of employment through voluntary collective bargaining, interest arbitration, or otherwise between parties in public and private employment.

(e) The parties shall share the cost of the fact finder equally.

(5) The exclusive representative shall approve or reject the recommendation of the fact finder in accordance with its internal procedures. If the exclusive representative approves of the recommendation, the board of county commissioners of the county shall vote to accept or reject the recommendation at a regular or special meeting open to the public immediately following notification by the exclusive representative that the bargaining unit has accepted the recommendation.

(6) (a) Except for the parties identified in subsection (6)(b) of this section, if the parties are at an impasse following consideration of the recommendations of the fact finder, each party remains obligated to collectively bargain in good faith to resolve the impasse.

(b) Bargaining units of a local government employer that include firefighters, as defined in section 29-5-301 (3), must comply with post-fact-finding procedures in section 29-5-210 (9), (10), and (13).

(7) Except for the recommendation of a fact finder, all documents, proposals, and draft and tentative agreements drafted or exchanged pursuant to the process established in this section are privileged, are not public records, and are not subject to inspection pursuant to the "Colorado Open Records Act", part 2 of article 72 of title 24.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1915, § 2, effective July 1, 2023. **L. 2024:** (6)(b) amended, (HB 24-1219), ch. 282, p. 1886, § 6, effective May 29.

8-3.3-115. Unfair labor practices.

(1) A county or exclusive representative shall not refuse to negotiate in good faith with respect to wages, hours, and other terms and conditions of employment, including refusing to cooperate in any impasse resolution procedure.

(2) A county, its representatives, its agents, or anyone acting on behalf of the county shall not:

(a) Discriminate against, coerce, intimidate, interfere with, or impose reprisals against, or threaten to discriminate against, coerce, intimidate, interfere with, or impose reprisals against, any county employee for forming or assisting an employee organization or expressing the county employee's views regarding county employee representation or workplace issues or the rights granted to the county employee in this article 3.3;

(b) Deter or discourage county employees or county employee applicants from becoming or remaining members of an employee organization or from authorizing payroll deductions for dues or fees to an employee organization; except that the county may respond to questions from a county employee pertaining to the county employee's employment or any matter described in this article 3.3, as long as the response is neutral toward participation in, selection of, and membership in an employee organization;

(c) Use any public funds or official position to support or oppose an employee organization; except that the provision of routine services and facilities and paid time for exclusive

representatives may be provided by a county pursuant to a collective bargaining agreement between the county and an exclusive representative;

(d) Dominate or interfere in the administration of an employee organization;

(e) Discharge or discriminate against a county employee because the county employee has filed an affidavit, petition, or complaint or given any information or testimony pursuant to this article 3.3 or a collective bargaining agreement or chosen to be represented by an exclusive representative;

(f) Deny the rights accompanying certification as the exclusive representative pursuant to this article 3.3;

(g) Collectively bargain in regard to matters covered by this article 3.3 with a county employee or group of county employees in the bargaining unit or an employee organization purportedly representing the county employees in a bargaining unit other than the exclusive representative;

(h) Disclose to a private entity, other than the exclusive representative, personally identifiable information about county employees within the bargaining unit that is exempt from disclosure pursuant to law; or

(i) Otherwise fail to comply with the requirements of this article 3.3.

(3) (a) An employee organization or exclusive representative shall not:

(I) Interfere with, restrain, or coerce a county employee with respect to the rights granted in this article 3.3 or with respect to selecting an exclusive representative;

(II) Willfully or deliberately fail to fairly represent a county employee who is in a bargaining unit exclusively represented by the employee organization in the negotiation or enforcement of the terms of a collective bargaining agreement; or

(III) Otherwise fail to comply with the requirements of this article 3.3.

(b) This subsection (3) does not prohibit an exclusive representative from providing legal, economic, or job-related services or benefits beyond those established in any applicable collective bargaining agreement exclusively to its members.

(4) An aggrieved party is barred from filing a claim that alleges that either the county or employee organization has violated this section unless the claim is filed within six months after the date on which the aggrieved party knew or reasonably should have known of the alleged violation.

(5) The expression of any personal view, argument, or opinion by an elected official must not be considered a violation of this section unless the expression contains a threat of reprisal or

promise of a benefit or is made under coercive conditions. Representatives of counties may correct the record with respect to any false or misleading statement made by any person, publicize the fact of a representation election, and encourage county employees to exercise their right to vote in the election.

(6) (a) An exclusive representative certified or deemed certified in accordance with this article 3.3 shall not threaten, facilitate, support, or cause a county employee to participate in the following:

- (I) A strike;
- (II) A work stoppage;
- (III) A work slowdown;
- (IV) A group sick out; or
- (V) An action that disrupts, on a widespread basis, the day-to-day functioning of a county.

(b) A controversy concerning an activity prohibited by subsection (6)(a) of this section may be submitted to the division pursuant to section 8-3.3-106. Upon a finding that the exclusive representative has violated subsection (6)(a) of this section, the director shall award any appropriate relief, including sanctions, fines, or decertification. If an exclusive representative is decertified by the director, the employee organization may begin the certification process in section 8-3.3-108 after one year from the date of decertification.

(c) Nothing in this subsection (6) prohibits the exclusive representative from engaging in other concerted activities for the purpose of the collective bargaining process or other mutual aid or protection, without interference, restraint, or coercion by the county.

(d) Nothing in this section affects the rights of any county employee or employee organization not covered by the express terms of this article 3.3.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1917, § 2, effective July 1, 2023.

8-3.3-116. Existing bargaining relationships.

An exclusive representative deemed certified pursuant to this article 3.3 has the right to collectively bargain matters not covered by an existing collective bargaining agreement negotiated prior to July 1, 2023, if the subjects proposed for bargaining were outside of the lawful scope of bargaining prior to July 1, 2023.

Source: L. 2022: Entire article added, (SB 22-230), ch. 260, p. 1920, § 2, effective July 1, 2023.

8-3.5 ARTICLE 3.5

Nonimmigrant Agricultural Seasonal Worker Pilot Program

8-3.5-101 to 8-3.5-114. (Repealed)

Editor's note: (1) This article was added in 2008 and was not amended prior to its repeal in 2014. For the text of this article prior to 2014, consult the 2013 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-3.5-114 provided for the repeal of this article, effective January 1, 2014. (See L. 2008, p. 2304.)

8-3.7 ARTICLE 3.7

Colorado Office of New Americans

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PART 1
GENERAL PROVISIONS

8-3.7-101. Legislative declaration - intent.

(1) The general assembly hereby finds and declares that:

(a) Colorado is home to more than half a million immigrants, including refugees, who make up ten percent of the state's population and play a vital role in our state's cultural fabric and shared prosperity;

(b) Over six hundred thousand individuals, who make up eleven percent of Colorado's population, are native-born Americans with at least one immigrant parent;

(c) Immigrants and refugees are an integral part of Colorado's diverse economy and are a vital part of the state's tax base;

(d) Immigrant-led households in the state paid one and one-half billion dollars in state and local taxes and had a combined spending power, after-tax income, of just over fourteen billion dollars in 2018;

(e) More than thirty-five thousand immigrant and refugee entrepreneurs employ over one hundred thousand individuals;

(f) Immigrants and refugees make up a little over thirteen percent of Colorado's science, technology, engineering, and math (STEM) workforce, twenty-one percent of the construction workforce, seventeen percent of the manufacturing workforce, and nineteen percent of the administrative and support, waste management, and remediation services workforces; and

(g) Between 2017 and 2019, naturalization rates increased by seventy-seven percent in Colorado and an additional one hundred thirteen thousand eight hundred seventy-three Coloradans are eligible to naturalize.

(2) The general assembly further finds and declares that:

(a) Supporting the integration and inclusion of immigrants and refugees in our communities helps the whole state thrive;

(b) Creating and establishing an office of new Americans will help to organize a structure for state agencies and immigrant communities to partner in order to enhance integration across the state and will provide immigrant communities the means to address any concerns and obstacles they encounter when accessing services; and

(c) The office of new Americans is intended to serve as a centralized location where state programs, initiatives, and policies focused on facilitating economic stability and promoting successful integration for immigrants are housed.

(3) It is the general assembly's intent that the office of new Americans:

(a) Will grow over time so that in the future it could provide grants to local immigrant-focused, community-based organizations, depending on available funds; and

(b) Be funded through gifts, grants, and donations through the 2022-23 state fiscal year and that in the second regular session of the seventy-fourth general assembly an appropriation be included in the annual general appropriation act for the office's state funding and associated FTE, subject to available appropriations; but nothing precludes the general assembly from making an appropriation to the office of new Americans prior to the second regular session of the seventy-fourth general assembly.

Source: L. 2021: Entire article added, (HB 21-1150), ch. 350, p. 2272, § 1, effective September 7.

8-3.7-102. Definitions.

As used in this article 3.7, unless the context otherwise requires:

(1) "Career-aligned ESL classes" or "career-aligned English as a second language program" means a curriculum or classes that support specific careers or occupations through the alignment of education, employment, and skills programs that accelerate an individual's ability to communicate on the job or in the pursuit of a job.

(2) "Classes" includes virtual classes with a live teacher, recorded classes, and additional curriculum and other supports associated with learning.

(2.5) "Colorado refugee services program" or "CRSP" means the Colorado refugee services program described in section 8-3.7-108.

(3) "Department" means the department of labor and employment created in section 24-1-121.

(4) "English language learner" or "ELL" means an individual who is linguistically diverse and who has a level of English language proficiency that requires language support.

(4.5) "Federal act" means Title IV of the federal "Immigration and Nationality Act", 8 U.S.C. sec. 1521 et seq., as amended, including any federal rules adopted pursuant to the federal act.

(5) "Immigrant" or "new American" means a Coloradan who has arrived, or an individual who will arrive, to Colorado as an immigrant or refugee and includes the individual's children. "Immigrant" or "new American" includes: Refugees, asylees, special immigrant visa holders, victims of trafficking, recipients of the federal deferred action for childhood arrivals program, individuals granted humanitarian parole, and all other immigrants and aspiring citizens seeking opportunity, safety, or reunification of family.

(6) "Integration" means a dynamic, two-way process in which immigrants and new Americans and the receiving community work together to build secure, vibrant, and cohesive communities without having to forego their own cultural identity.

(7) "ONA" means the Colorado office of new Americans created in section 8-3.7-103.

(7.5) "State plan" means Colorado's refugee services plan described in section 8-3.7-108.

(8) "Task force" means the global talent task force created by ONA in section 8-3.7-107.

(9) "Work-based learning" has the same meaning as set forth in section 8-83-601 (15).

(10) "Workforce partners" includes entities that provide work-based learning opportunities, job training, and other supports that enable individuals to connect with in-demand jobs, industries, and occupations.

Source: **L. 2021:** Entire article added, (HB 21-1150), ch. 350, p. 2273, § 1, effective September 7. **L. 2022:** Entire section R&RE, (SB 22-140), ch. 357, p. 2557, § 3, effective July 1. **L. 2023:** (2.5), (4.5), and (7.5) added with relocations and (5) amended, (HB 23-1283), ch. 293, p. 1763, § 2, effective October 1, 2024.

Editor's note: Subsection (2.5) is similar to former § 26-2-138 (1)(b); subsection (4.5) is similar to former § 26-2-138 (1)(a); and subsection (7.5) is similar to former § 26-2-138 (1)(c), as those sections existed prior to 2023.

Cross references: For the legislative declaration in SB 22-140, see section 1 of chapter 357, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1283, see section 1 of chapter 293, Session Laws of Colorado 2023.

8-3.7-103. Colorado office of new Americans - creation - duties - report.

(1) (a) There is hereby created, initially in the department of labor and employment, the Colorado office of new Americans, the head of which shall be the director of the Colorado office of new Americans, who shall be appointed by the executive director of the department. The Colorado office of new Americans and the director of the office are **type 1** entities, as defined in section 24-1-105, and exercise their powers and perform their duties and functions under the department of labor and employment. The director of the ONA has regular access to the office of the governor and has the power to convene other state agencies.

(b) The director shall staff the ONA in order to effectively meet the goals and intentions set forth in this article 3.7 and to meet future needs of Colorado's new American community. In order to successfully carry out the ONA's purpose, it is the general assembly's intent that an individual's lived experience or work within the immigrant community be considered when hiring decisions are made for ONA staff. The ONA serves as the point of contact for immigrant-serving state agencies, private sector organizations, and the public about immigrant issues in Colorado.

(c) The department shall report on the efficacy of the ONA and the ONA's progress toward meeting the goals set forth in this article 3.7 as part of the department's annual presentation to its legislative committee of reference pursuant to section 2-7-203.

(2) The Colorado office of new Americans shall:

(a) Implement a statewide strategy to facilitate economic stability and promote successful economic, social, linguistic, and cultural integration by investing in the success of immigrants in Colorado;

(b) Identify and address issues related to integration;

(c) Foster enhanced inclusion for immigrants;

(d) Ensure equitable opportunities and access to services for immigrants;

(e) Establish and work with a community advisory committee that can provide input to the state from Colorado's immigrant communities;

(f) Work directly with immigrant populations to hear and address their concerns and obstacles in accessing services;

(g) On and after October 1, 2024, administer the Colorado refugee services program in accordance with the goals of the ONA and manage or direct any other relevant programs that might exist or be created on or after September 7, 2021, including immigrant-focused state programs, initiatives, and policies that might exist or be created in the future, so that the state's services for immigrants and the state's approach to immigrant integration are cohesive, integrated, and elegant;

(h) Coordinate with and make recommendations to the governor, the general assembly, and state agencies on ways to improve policies and programs to support immigrant integration across the state, such as:

(I) Recommending changes in the organization, management, programs, and budget of state agencies in order to promote the integration of immigrants;

(II) Coordinating with state agencies and public-private partnerships;

(III) Serving as a resource for community-based organizations serving immigrants in Colorado;

(IV) Creating a public-private program to build up immigrant-serving nonprofits statewide;

(V) Responding to inquiries and serving as the point of contact for immigrant-serving agencies, state agencies, and the public about immigrant issues in Colorado; and

(VI) Recommending and participating in cultural competency and diversity, equity, and inclusion training for state departments;

(i) Ensure the ONA is utilizing data only as authorized under state and federal law to inform the state's efforts to advance economic stability and integration for immigrants. The ONA shall never use or share data solely for the use of civil immigration enforcement.

(j) As funding allows, undertake studies, symposia, research, and factual reports to gather insight and to formulate and present recommendations to the governor, state agencies, and the general assembly related to issues of concern and importance to immigrants in Colorado. The ONA shall also analyze economic and demographic trends in order to make policy and programmatic recommendations to the governor, state agencies, and the general assembly.

(k) To the extent possible, ensure that all ONA services, systems, vital documents, and other communications and resources, including websites, are accessible to all Coloradans, regardless of English proficiency and disabilities. Where applicable and possible, the ONA shall ensure compliance exceeds the compliance requirements of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, any available English proficiency plans, and the Colorado anti-discrimination act in part 6 of article 34 of title 24.

(1) Contribute education and workforce data beginning in the 2025-26 state fiscal year, as necessary, to the Colorado statewide longitudinal data system consistent with the governance practices established by the Colorado statewide longitudinal data system governing board pursuant to section 24-37.5-125 (4).

(3) As funding allows, the ONA shall promote integration activities among immigrants by using a model similar to the family resource center program set forth in part 1 of article 3 of title 26.5 with the goal of implementing immigrant support through community-based initiatives and nonprofit organizations where immigrants and immigrant families can access formal and informal support to promote their health, economic well-being, and integration. The activities must include, but need not be limited to:

(a) Economic opportunities such as:

(I) Workforce development, skills recognition, and barrier reduction;

(II) Initiatives that increase economic stability;

(III) Entrepreneurship and higher education attainment; and

(IV) Naturalization among eligible individuals;

(b) Increased access, such as:

(I) Connecting immigrants to local, state, and federal resources and to other resources as they are available or relevant to meet the immigrants' needs;

(II) Connecting immigrants and immigrant families with English language learning programs; and

(III) Providing immigrants and immigrant families with referrals to community-based organizations; and

(c) State education and outreach by:

(I) Promoting and celebrating the success and contributions of Colorado's immigrant community; and

(II) Engaging with the receiving community in order to foster inclusivity and integration by building awareness, promoting mutual understanding, and increasing social bridging opportunities.

(4) The ONA shall advise and provide guidance to the governor, state agencies, and the general assembly on any immigrant issue.

(5) (a) On or before November 1, 2022, and, notwithstanding section 24-1-136 (11), on or before November 1 each year thereafter, the director of the office of new Americans, or the

director's designee, shall submit a report to the general assembly. The report shall include a review and summary of the activity, information, and data on all the programs that the office administered during the prior fiscal year.

(b) In order to minimize the costs associated with preparing the report required by subsection (5)(a) of this section, the ONA is authorized to incorporate or append to such report any other reports it is required by law to develop.

Source: **L. 2021:** Entire article added, (HB 21-1150), ch. 350, p. 2274, § 1, effective September 7. **L. 2022:** IP(3) amended, (HB 22-1295), ch. 123, p. 825, § 20, effective July 1; (1)(a) amended, (SB 22-162), ch. 469, p. 3383, § 85, effective August 10. **L. 2023:** (1)(c) and (2)(g) amended, (HB 23-1283), ch. 293, p. 1763, § 3, effective October 1, 2024. **L. 2024:** (2)(l) added, (HB 24-1364), ch. 238, p. 1559, § 5, effective May 23.

Cross references: (1) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

(2) For the legislative declaration in HB 23-1283, see section 1 of chapter 293, Session Laws of Colorado 2023.

8-3.7-104. Colorado office of new Americans - funding.

The general assembly may appropriate money from the general fund or from any other available source for the purposes of the ONA specified in this article 3.7. The ONA may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this article 3.7.

Source: **L. 2021:** Entire article added, (HB 21-1150), ch. 350, p. 2277, § 1, effective September 7.

8-3.7-105. Wage replacement program - executive director - director of the ONA - feasibility study - recommendations.

(1) The executive director of the department, in partnership with the director of the division of unemployment insurance, the director of the ONA, and the office of the governor, shall study

the feasibility of establishing a contract with a nonprofit, third-party entity to administer a wage replacement program for individuals who are unemployed through no fault of their own and who are ineligible for regular unemployment benefits due to their immigration status. The feasibility study must include potential sources of money to fund a wage replacement program, legal compliance with the United States department of labor's regular unemployment insurance programs, data sharing and data privacy, and input from relevant stakeholders.

(2) On or before December 1, 2021, the executive director of the department and the director of the ONA shall submit recommendations to the governor and to the senate business, labor, and technology committee and the house of representatives business affairs and labor committee, or their successor committees.

Source: L. 2021: Entire section added, (SB 21-233), ch. 422, p. 2793, § 2, effective September 7.

8-3.7-106. Virtual, career-aligned English as a second language program - created - report - appropriation.

(1) On or before January 1, 2023, the ONA shall establish a virtual, career-aligned English as a second language program to:

(a) Ensure ELLs have access to work-based learning, job-training, and employment opportunities and the supports they need for success in the career-aligned English as a second language program and employment with workforce partners and employers;

(b) Facilitate work-based learning by providing additional support to help employers and other workforce partners recruit, serve, hire, and promote ELLs;

(c) Provide efficient and effective access to established, career-aligned ESL classes for youth and adults, work-based learning participants, and other job training participants and their employers, program administrators, and teachers;

(d) Streamline access to career-aligned ESL classes through the purchase of licenses to virtual platforms that are then made available to interested workforce partners and employers; and

(e) Accelerate the adoption of career-aligned ESL classes into employer and work-based learning programs and training programs for reskilling, upskilling, and next-skilling, as those terms are defined in section 8-83-601.

(2) The virtual, career-aligned English as a second language program shall address:

(a) The intersection of English language learning with other work-based learning and skill-based hiring efforts;

(b) The challenge of incorporating ELLs into our workforce and workforce programs, including work-based learning opportunities; and

(c) Opportunities for employers to integrate new Americans and ELLs into workforce and talent pipelines, in recognition of the need for equitable opportunities and the importance of harnessing the talents of skilled new Americans and ELLs in this state.

(3) (a) The ONA shall:

(I) Through a process that complies with the "Procurement Code", articles 101 to 112 of title 24, select at least one qualified vendor with an established and existing virtual platform that offers career-aligned ESL classes in in-demand industries and occupations;

(II) Allocate funding to the vendor selected in subsection (3)(a)(I) of this section:

(A) For the purchase of individual licenses that can be distributed to interested and selected employers and work-based learning and workforce partners for individuals to access virtual classes and platforms; and

(B) To create new career-aligned ESL classes, as needed, for Colorado's in-demand occupations;

(III) Determine the most efficient method for distributing licenses for career-aligned ESL classes through a streamlined process to reduce barriers to participation, with a focus on small- to medium-sized employers and work-based learning and workforce partners with existing relationships with the department and on other state agencies and partners, including local workforce centers, schools, institutions of higher education, and nonprofit organizations;

(IV) Communicate the opportunities created through this section holistically and statewide, with a focus on areas of the state with higher proportions of ELLs and new Americans and in areas without existing career-aligned ESL classes or with additional barriers, such as transportation barriers, that currently prevent Coloradans from participating in ESL classes, including in rural areas;

(V) Work collaboratively with other offices and divisions in the department, the department of higher education, the department of human services, and the office of economic development to identify diverse partners and employers and additional supports for participants to ensure their success;

(VI) Share outcomes of the virtual, career-aligned English as a second language program with the employer community; and

(VII) Collect data concerning the program that includes:

(A) The types of entities supported, such as an employer or apprenticeship program, and their location in Colorado;

(B) The number of participating entities;

(C) The number of individuals served at each entity and their demographics;

(D) The careers or occupations supported by the virtual, career-aligned English as a second language program; and

(E) Any outcomes and data to measure the success of the virtual, career-aligned English as a second language program.

(b) In conjunction with the department, the ONA shall include the information in this subsection (3) in the presentations required by section 8-83-602 at the hearings held under the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act", part 2 of article 7 of title 2.

(4) For the 2022-23 state fiscal year the general assembly shall appropriate one million one hundred thousand dollars from the general fund to the department, for use by ONA for the purposes of this section. Any unexpended money remaining at the end of the 2022-23 state fiscal year:

(a) Does not revert to the general fund or any other fund;

(b) May be used by the department in the 2023-24 state fiscal year without further appropriation; and

(c) Shall not be used for any purpose other than the purposes set forth in this section.

Source: L. 2022: Entire section added, (SB 22-140), ch. 357, p. 2558, § 4, effective July 1.

Cross references: For the legislative declaration in SB 22-140, see section 1 of chapter 357, Session Laws of Colorado 2022.

8-3.7-107. Global talent task force - created - repeal. (Repealed)

Source: L. 2022: Entire section added, (SB 22-140), ch. 357, p. 2560, § 4, effective July 1. **L. 2024:** (1)(a) amended, (SB 24-103), ch. 32, p. 100, § 1, effective August 7.

Editor's note: Subsection (5) provided for the repeal of this section, effective December 31, 2024. (See L. 2022, p. 2560.)

Cross references: For the legislative declaration in SB 22-140, see section 1 of chapter 357, Session Laws of Colorado 2022.

8-3.7-108. Refugee services program - transfer to ONA - state plan - rules.

(1) (a) (I) On and after October 1, 2024, the rights, powers, duties, and functions regarding the Colorado refugee services program vested in the department of human services prior to said date are transferred from the department of human services to the ONA, and the ONA shall execute, administer, perform, and enforce the rights, powers, duties, and functions regarding the CRSP on and after said date. By April 1, 2024, the department of labor and employment and the department of human services shall enter into an interagency agreement to facilitate the logistics of contracting and the transfer of the CRSP to the ONA.

(II) (A) As of October 1, 2024, employees of the department of human services prior to said date whose powers, duties, and functions concerned the powers, duties, and functions regarding the Colorado refugee services program that are assumed by the ONA pursuant to subsection (1)(a)(I) of this section and whose employment in the ONA is deemed necessary by the director of the ONA to carry out the purposes of the CRSP are transferred to the ONA and become employees of the ONA.

(B) Any employees transferred to the ONA pursuant to this subsection (1)(a)(II) who are classified employees in the state personnel system retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their service is deemed to have been continuous. Any transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(III) As of October 1, 2024, all items of real and personal property of the department of human services, including office furniture and fixtures, books, documents, and records, pertaining to the duties and functions of the CRSP transferred pursuant to this section are transferred to the ONA and become the property of the ONA.

(IV) As of October 1, 2024, whenever the department of human services or department is referred to or designated by any contract or other document in connection with the duties and functions transferred to the ONA, such reference or designation is deemed to apply to the ONA. All contracts entered into by the department of human services prior to October 1, 2024, in connection with the duties and functions transferred to the ONA are hereby validated, with the

ONA succeeding to all rights and obligations under such contracts. As of October 1, 2024, any cash funds, custodial funds, trusts, grants, and appropriations of funds from prior state fiscal years open to satisfy obligations incurred under such contracts are transferred and appropriated to the department for allocation to the ONA for the payment of such obligations. In the event the federal department of health and human services will not transfer contracts that are open as of October 1, 2024, the department of human services shall continue to administer those contracts through an interagency agreement with the ONA until the contract period is concluded or funds are liquidated, whichever occurs first.

(V) On and after October 1, 2024, unless otherwise specified, whenever any provision of law refers to the department of human services in connection with the duties and functions transferred to the ONA, such law must be construed as referring to the ONA.

(VI) As of October 1, 2024, all rules and orders of the department of human services adopted in connection with the powers, duties, and functions transferred to the ONA continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(b) The ONA shall administer the Colorado refugee services program in accordance with the state plan approved by the federal office of refugee resettlement within the federal department of health and human services pursuant to the federal act.

(2) The ONA is the single state agency responsible for the development, review, and administration of the state plan.

(3) The CRSP must provide the following, in accordance with the federal act and the state plan:

- (a) Refugee cash assistance;
- (b) Refugee medical assistance;
- (c) Refugee social services, which may include employment services, employability assessments, English language instruction, vocational training, skills recertification, and case management services related to employment; and
- (d) Any other services or assistance consistent with the federal act.

(4) The CRSP may provide other services or assistance to support refugee resettlement and integration.

(5) The ONA shall adopt rules, in accordance with article 4 of title 24, to implement this section.

(6) The general assembly may appropriate funds to the ONA for the administration of the CRSP.

Source: L. 2023: Entire section added with relocations, (HB 23-1283), ch. 293, p. 1764, § 4, effective October 1, 2024.

Editor's note: Subsection (1) is similar to former § 26-2-138 (2)(a); subsection (2) is similar to former § 26-2-138 (2)(b); subsection (3) is similar to former § 26-2-138 (3); subsection (4) is similar to former § 26-2-138 (4); subsection (5) is similar to former § 26-2-138 (5); and subsection (6) is similar to former § 26-2-138 (6), as those sections existed prior to 2023.

Cross references: For the legislative declaration in HB 23-1283, see section 1 of chapter 293, Session Laws of Colorado 2023.

PART 2

STATEWIDE WELCOME, RECEPTION, AND INTEGRATION GRANT PROGRAM

8-3.7-201. Definitions.

(1) As used in this part 2, unless the context otherwise requires:

(a) "Administering entity" means the statewide entity selected by the department to administer the statewide welcome, reception, and integration grant program pursuant to section 8-3.7-202.

(b) "Department" means the department of labor and employment created in section 24-1-121.

(c) "Fund" means the statewide welcome, reception, and integration cash fund created in section 8-3.7-205.

(d) "Grant program" means the statewide welcome, reception, and integration grant program created in section 8-3.7-202.

(e) "Grant recipient" means a community-based organization that is selected to receive a grant pursuant to section 8-3.7-202.

(f) "Migrant" means an individual who does not qualify for federal support services or refugee resettlement assistance benefits.

Source: L. 2024: Entire part added, (HB 24-1280), ch. 437, p. 3053, § 1, effective August 7.
L. 2025: (1)(f) amended, (HB 25-1244), ch. 250, p. 1250, § 1, effective May 24.

8-3.7-202. Statewide welcome, reception, and integration grant program - created - rules.

(1) The statewide welcome, reception, and integration grant program is created in the department to provide grants to community-based organizations that provide culturally and linguistically appropriate navigation of services and programs to migrants.

(2) Grant recipients shall prioritize migrants who have arrived in the United States within the past three years and shall use the grant award for one or more of the following services and programs, including, but not limited to:

- (a) Conducting an intake and assessment of needs;
- (b) Providing cultural orientation;
- (c) Providing case management;
- (d) Distributing emergency and transitional supplies, including food and clothing;
- (e) Providing employment services or referrals to employment services, including career coaching, counseling, navigating, training, including training on workers' rights and identifying how to address and avoid exploitation, certification and licensure, and job placement;
- (f) Providing housing, housing-related services, or referrals to housing, including advising about the obligations under a lease, paying security deposits, conducting background checks and home visits for sponsors, and orienting migrants to rent and online payment systems;
- (g) Providing English as a second language classes or a referral to English as a second language classes;
- (h) Providing financial orientation, including understanding credit, loans, and unbanked issues for undocumented individuals;
- (i) Providing or providing referrals to mental health services;
- (j) Providing referrals to physical health services;
- (k) Providing services or referrals to disability services;

(l) Assisting migrant parents to enroll their children in public school or summer programs, including early childhood programs, to enable the parents to find employment and to help the parents navigate school and summer program systems;

(m) Providing interpretation and translation services;

(n) Providing transportation, bus passes, and orientation to the bus and transportation system;

(o) Providing immigration legal assistance or referrals to immigration legal services; and

(p) Other eligible expenses, as determined by the department and the administering entity in consultation with community-based organizations.

(3) (a) The department shall issue a request for proposals for a nonprofit organization that is exempt from taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986" to administer the grant program. The department shall select and contract with a nonprofit organization that has a statewide reach of organizations serving migrants and demonstrated expertise in:

(I) Administering grant money;

(II) Training, monitoring, and evaluating grant recipients to ensure the grant recipients comply with grant requirements;

(III) Providing metrics and submitting required reporting in a timely fashion;

(IV) Working collaboratively with other migrant-serving organizations; and

(V) Working with multilingual migrant communities.

(b) (I) No later than December 31, 2024, the department shall select and enter into a contract with the administering entity, which contract is subject to annual review and renewal.

(II) Notwithstanding subsection (3)(b)(I) of this section, if the department issues a request for proposal but does not identify a nonprofit organization that meets the requirements for selection as the administering entity, the Colorado office of new Americans created in section 8-3.7-103 shall act as the administering entity of the program.

(c) The administering entity shall collaborate with the department to develop the grant application, the application process, and the selection process for grant recipients that are culturally competent and linguistically accessible and comply with the state "Procurement Code", articles 101 to 112 of title 24.

(4) The department and administering entity shall implement the grant program pursuant to this part 2. Grants must be awarded pursuant to this part 2.

(5) Upon receiving notice from the administering entity that a community-based organization is selected to receive a grant, the department shall, as soon as practicable, transfer the amount of the grant award to the administering entity, which must then transmit the grant award to the grant recipient.

(6) The administering entity or selected grant recipients must not be a political organization, as defined in section 1-45-103, and grant awards must not be distributed to a political organization or used for political purposes.

Source: L. 2024: Entire part added, (HB 24-1280), ch. 437, p. 3054, § 1, effective August 7.
L. 2025: IP(2) amended, (HB 25-1244), ch. 250, p. 1250, § 2, effective May 24.

8-3.7-203. Administering entity - duties - funding.

(1) The administering entity shall:

(a) Administer the grant program pursuant to this part 2, including establishing and implementing, in collaboration with the department, the process by which a community-based organization may apply to receive a grant;

(b) Conduct statewide outreach to ensure that all community-based organizations that serve migrants are aware of the opportunity to apply for a grant;

(c) Convene a statewide selection panel with the department that includes representation from impacted communities to select grant recipients based on the following criteria:

(I) Demonstrated historical commitment to working with and in the immigrant and migrant populations providing services;

(II) Demonstrable ability to respond to emerging needs of the migrant population;

(III) Experience in providing any of the services described in section 8-3.7-202 (2); and

(IV) Experience in managing private or public contracts or grants; and

(d) Submit an annual report to the department pursuant to section 8-3.7-204 (1) regarding the number of migrants served, the types of services provided, the number of referrals for services provided by other grant recipients, the migrants' level of satisfaction for the services received, key barriers to receiving services, including, if possible, the number of migrants who requested and were not able to access and receive services and the reasons why.

(2) (a) In selecting grant recipients, priority must be given to grant applicants who provide two or more of the services described in section 8-3.7-202 (2)(c), (2)(e), or (2)(f).

(b) In selecting grant recipients, the administering entity shall give consideration to grant applicants that are based in, or serve populations in, rural and nonmetro areas with limited access to resources.

(3) Of the money transferred to the fund, the department shall not use more than ten percent to compensate the administering entity to offset the costs that the administering entity incurs in administering the grant program and in providing assistance to grant recipients for capacity building to ensure compliance with the grant program and successful execution of the grant program's goals. The department shall not agree to pay any additional amount of remuneration to the administering entity from the state. The department shall compensate the administering entity with funds from the appropriation for purposes of this section.

Source: L. 2024: Entire part added, (HB 24-1280), ch. 437, p. 3056, § 1, effective August 7.

8-3.7-204. Reporting requirements.

(1) (a) One year after the date of the contract entered into pursuant to section 8-3.7-202 (3)(b), the administering entity shall submit a report to the department. At a minimum, the report must include:

- (I) A description of expenses made with the grant money;
- (II) The number of grant applicants;
- (III) The number of community-based organizations that received a grant;
- (IV) The geographic location of each grant recipient; and
- (V) The aggregate number of migrants served by each grant recipient, the services provided, and the migrants' level of satisfaction for each service provided.

(b) Any information included in the report required pursuant to this subsection (1) must not include personal identifying information.

(2) No later than three months after the report is submitted to the department pursuant to subsection (1) of this section, and each year thereafter, the department shall submit the administering entity's report to the house of representatives health and human services committee and the senate health and human services committee, or their successor committees, regarding the grant program.

(3) Notwithstanding section 24-1-136 (11)(a)(I), the reporting requirements set forth in this section continue as long as the grant program is operational.

Source: L. 2024: Entire part added, (HB 24-1280), ch. 437, p. 3057, § 1, effective August 7.

8-3.7-205. Statewide welcome, reception, and integration cash fund - appropriation.

(1) The statewide welcome, reception, and integration cash fund is created in the state treasury. The fund consists of money appropriated or transferred by the general assembly.

(2) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(3) Any unexpended and unencumbered money remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred to the general fund or any other fund.

(4) Subject to annual appropriation by the general assembly, the Colorado office of new Americans may expend money from the fund for the purposes of this part 2.

(5) The ONA may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this part 2. The ONA shall transmit all money received through gifts, grants, or donations to the state treasurer, who shall credit the money to the fund.

(6) Repealed.

Source: L. 2024: Entire part added, (HB 24-1280), ch. 437, p. 3058, § 1, effective August 7.
L. 2026: (1) amended, (SB 26-169), ch. 311, p. 1798, § 5, effective August 12.

Editor's note: Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2025. (See L. 2024, p. 3058.)

8-3.8 ARTICLE 3.8

Immigration Legal Assistance

8-3.8-101. Immigration legal assistance
- fund - report -
definitions.

8-3.8-101. Immigration legal assistance - fund - report - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Administrator" means the state department of labor and employment, created in section 24-1-121.

(b) "Fund" means the immigration legal defense fund established in subsection (2) of this section.

(c) "Indigent" means a person whose household income does not exceed two hundred percent of the family federal poverty guidelines, adjusted for family size, determined annually by the United States department of health and human services.

(d) "Qualifying organization" means an organization that:

(I) Is exempt from taxation pursuant to section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended;

(II) Has a physical place of business in Colorado;

(III) Obtains more than twenty-five percent of its funding from sources other than grants from the fund;

(IV) Can provide services using grant dollars within six months of receiving funding; and

(V) Includes on the staff of the organization an attorney with at least three years' experience and expertise in providing legal representation to indigent clients in civil immigration proceedings before the executive office for immigration review within the United States department of justice; or

(VI) (A) Partners with a nonprofit legal service provider that has at least three years' experience and expertise in providing legal representation to indigent clients in civil immigration proceedings before the executive office for immigration review within the United States department of justice; or

(B) Only if there are no nonprofit legal services providers available to provide legal services, partners with a private immigration attorney who has a physical place of business in or near the geographic area that the qualifying organization serves, and the private immigration attorney has at least three years' experience and expertise in providing legal representation to indigent clients in civil immigration proceedings before the executive office for immigration review within the United States department of justice.

(2) (a) There is established in the state treasury the immigration legal defense fund. The money in the fund is continuously appropriated to the administrator. Pursuant to subsection (5)(b) of this section, the administrator is authorized to make grants from the fund to qualifying

organizations to represent indigent individuals appearing before an immigration court in Colorado who lack private counsel.

(b) The state treasurer shall credit any civil penalty money transferred to the state treasurer pursuant to section 24-74-107, 24-74.1-103, or 25-1.5-101 (1)(i)(I)(D) or (1)(dd) and interest and income derived from the deposit and investment of the civil penalty money in the fund to the fund.

(3) A qualifying organization that receives a grant from the fund shall only use the grant for services that include providing indigent clients with:

(a) Legal representation before an immigration court in Colorado;

(b) Representation before the board of immigration appeals within the United States department of justice, but not before a United States district court, a United States circuit court of appeals, or the United States supreme court on appeal from an immigration order or on any other related matters;

(c) Any other representation before an immigration agency necessary to protect the interests of the indigent client from removal or civil immigration detention, including custody redetermination proceedings, reinstatement of removal proceedings, withholding-only proceedings, request for release from civil immigration detention, or application for ancillary relief from removal;

(d) Any other continued representation after the issuance of a final order by the executive office for immigration review that is necessary to conclude the indigent client's representation, secure the indigent client's immigration benefits, or obtain the indigent client's release from immigration detention; and

(e) Litigation expenses, such as application fees, interpretation and translation costs, medical or psychological evaluations, and expert fees, as well as associated overhead expenses.

(4) (a) A qualifying organization shall provide representation on all legal matters necessary for protection from removal and detention, through appeals to the board of immigration appeals, and shall accept cases without regard to the indigent client's likelihood of success or eligibility for immigration relief.

(b) (I) A qualifying organization shall move to withdraw from representation if:

(A) The venue in the case is transferred to an immigration court outside of Colorado;

(B) The indigent client no longer resides in Colorado; or

(C) Withdrawal is required by the rules of professional conduct.

(II) If the qualifying organization's withdrawal motion is denied, the organization shall provide legal services as required by the executive office for immigration review.

(5) (a) A qualifying organization seeking to receive a grant from the fund shall submit an application each year to the administrator on a form provided by the administrator. The application form must request any information that the administrator needs to determine whether the applying organization meets the qualifications for receipt of a grant, the dollar amount requested, and the intended use of any funding.

(b) (I) The administrator shall evaluate applications of qualifying organizations to determine if the applications satisfy the criteria defined in subsection (1)(d) of this section and shall select grant recipients based on their expertise and qualifications to provide qualified services through a grant from the fund.

(II) On or immediately after July 1, 2023, and on July 1 of each year thereafter, the administrator shall award grants from the fund, subject to available appropriations, to qualifying organizations.

(III) The administrator shall award larger grants to fewer qualifying organizations to achieve a greater, measurable impact. The administrator may determine the amount of each grant award, which may differ from the qualifying organization's requested dollar amount.

(6) The administrator shall award grants so that seventy percent of the money is allocated to qualifying organizations serving indigent clients who are detained in the custody of the United States department of homeland security for deportation proceedings and thirty percent of the money is allocated to qualifying organizations serving indigent clients who are not detained for deportation proceedings; except that this split does not apply if the need for detained indigent client representation can be met with less than seventy percent of the money. Two-thirds of the money for those qualifying organizations serving indigent clients who are not detained must be used for in-person legal services serving indigent clients outside of the Denver metro area, unless there are no qualifying applicants serving nondetained indigent clients outside the Denver metro area.

(7) Each qualifying organization that receives a grant pursuant to this section shall submit an annual report to the administrator that includes the following information, to the extent possible and to the extent that it does not violate the privilege and confidentiality of an attorney-client relationship:

- (a) Number of clients served;
- (b) Case outcomes;
- (c) Type of defense, including detained and nondetained;
- (d) Type of case, including removal, asylum, adjustment of status, and work authorization;

- (e) Location of court and judge for each case;
- (f) Client family data, including number of children and whether the household has mixed immigration status;
- (g) Client country of origin;
- (h) Client ethnicity;
- (i) Client zip code;
- (j) Client's duration in Colorado and the United States;
- (k) Whether bond or release was granted to the client;
- (l) Cost of bond for the client;
- (m) Income range of the client;
- (n) Whether or not the client had previous immigration status in the United States; and
- (o) Number of days the client spent in detention.

(8) (a) In addition to any appropriation from the general fund, the administrator may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this section. The administrator may receive and expend the money received through gifts, grants, and donations.

(b) The administrator may expend no more than the lesser of fifteen thousand dollars or up to five percent per year from the fund for the direct and indirect costs associated with the administration of this section. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(9) Notwithstanding section 24-1-136 (11)(a)(I), the administrator shall submit a consolidated report of the reported information described in subsection (7) of this section to the joint budget committee annually by September 1.

(10) A county may appropriate local or state funds to implement its own immigration legal defense fund, partner with a local immigration legal defense fund, or partner with the administrator to enhance the effectiveness of the immigration legal defense fund.

Source: **L. 2021:** Entire article added, (HB 21-1194), ch. 352, p. 2288, § 2, effective September 7. **L. 2023:** (5)(b)(II) and (9) amended, (HB 23-1283), ch. 293, p. 1766, § 6, effective October 1, 2024. **L. 2024:** (3)(b) amended, (SB 24-103), ch. 32, p. 100, § 2, effective August 7. **L. 2025:** (2) amended, (SB 25-276), ch. 240, p. 1222, § 21, effective May 23. **L. 2026:** (2)(b) amended, (HB 26-1276), ch. 371, p. 2247, § 7, effective June 4.

Cross references: For the legislative declaration in HB 23-1283, see section 1 of chapter 293, Session Laws of Colorado 2023. For the legislative declaration in SB 25-276, see section 1 of chapter 240, Session Laws of Colorado 2025.

Wages

ARTICLE 4

Wages

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8-4-101. Definitions.

As used in this article 4, unless the context otherwise requires:

(1) "Citation" means a written determination by the division that a wage payment requirement has been violated.

(2) "Credit" means an arrangement or understanding with the bank or other drawee for the payment of an order, check, draft, note, memorandum, or other acknowledgment of indebtedness.

(3) "Director" means the director of the division of labor standards and statistics or his or her designee.

(4) "Division" means the division of labor standards and statistics in the department of labor and employment.

(5) "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer. For the purpose of this article 4, relevant 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".

(6) "Employer" has the same meaning as set forth in the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 203 (d), and includes a foreign labor contractor, a migratory field labor contractor or crew leader, and each individual who owns or controls at least twenty-five percent of the ownership interests in an employer; except that this article 4 does not apply to a minority owner of an employer that demonstrates full delegation of its authority to control day-to-day operations of the employer; the state or its agencies or entities; counties; cities and counties; municipal corporations; quasi-municipal corporations; school districts; and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

(7) "Field labor contractor" means anyone who contracts with an employer to recruit, solicit, hire, or furnish migratory labor for agricultural purposes to do any one or more of the following activities in this state: Hoeing, thinning, topping, sacking, hauling, harvesting, cleaning, cutting, sorting, and other direct manual labor affecting beets, onions, lettuce, potatoes, tomatoes, and other products, fruits, or crops in which labor is seasonal in this state. Such term shall not include a farmer or grower, packinghouse operator, ginner, or warehouseman or any full-time regular and year-round employee of the farmer or grower, packinghouse operator, ginner, or warehouseman who engages in such activities, nor shall it include any migratory laborer who engages in such activities with regard to such migratory laborer's own children, spouse, parents, siblings, or grandparents.

(8) "Fine" means any monetary amount assessed against an employer and payable to the division.

(8.5) "Foreign labor contractor" means any person who recruits or solicits for compensation a foreign worker who resides outside of the United States in furtherance of that worker's employment in Colorado; except that "foreign labor contractor" does not include any entity of the federal, state, or local government.

(9) "Migratory laborer" means any person from within or without the limits of the state of Colorado who offers his or her services to a field labor contractor, whether from within or from

without the limits of the state of Colorado, so that said field labor contractor may enter into a contract with any employer to furnish the services of said migratory laborers in seasonal employment.

(10) "Notice of assessment" means a written notice by the division, based on a citation, that the employer must pay the amount of wages, penalties, or fines assessed.

(11) "Notice of complaint" means the letter sent by the division as described in section 8-4-111 (2)(a).

(12) "Penalty" means any monetary amount assessed against an employer and payable to an employee.

(12.5) (a) "Personal protective equipment" means equipment, clothing, respiratory devices, protective shields, and protective barriers provided by an employer to protect its employees against recognized health and safety hazards.

(b) "Personal protective equipment" does not include:

(I) Nonspecialty safety-toe protective footwear, including steel-toe shoes and steel-toe boots, or nonspecialty prescription safety eyewear, when the employer permits such footwear or eyewear to be worn off the job site;

(II) Built-in metatarsal protection provided at an employee's request;

(III) Logging boots;

(IV) Everyday clothing, such as long-sleeved shirts, long pants, street shoes, and normal work boots; and

(V) Ordinary clothing, skin creams, or other items used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(13) "Wage complaint" means a complaint filed with the division from an employee for unpaid wages alleging that an employer has violated section 15 of article XVIII of the Colorado constitution, this article, article 6 of this title, or any rule adopted by the director pursuant to this article or article 6 of this title.

(14) (a) "Wages" or "compensation" means:

(I) All amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service if the labor or service to be paid for is performed personally by the person demanding payment. No

amount is considered to be wages or compensation until such amount is earned, vested, and determinable, at which time such amount shall be payable to the employee pursuant to this article.

(II) Bonuses or commissions earned for labor or services performed in accordance with the terms of any agreement between an employer and employee;

(III) Vacation pay earned in accordance with the terms of any agreement. If an employer provides paid vacation for an employee, the employer shall pay upon separation from employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee.

(IV) "Paid sick leave" as provided in part 4 of article 13.3 of this title 8.

(b) "Wages" or "compensation" does not include severance pay.

(15) "Written demand" means any written demand for wages or compensation from or on behalf of an employee, including a notice of complaint, mailed or delivered to the employer's correct address.

Source: **L. 2003:** Entire article amended with relocations, p. 1850, § 1, effective August 6. **L. 2014:** Entire section amended, (SB 14-005), ch. 276, p. 1110, § 2, effective January 1, 2015. **L. 2016:** (3) and (4) amended, (HB 16-1323), ch. 131, p. 378, § 10, effective August 10. **L. 2019:** IP, (5), and (6) amended and (8.5) added, (HB 19-1267), ch. 182, p. 2058, § 2, effective January 1, 2020. **L. 2020:** (14)(a)(IV) added, (SB 20-205), ch. 294, p. 1457, § 2, effective July 14. **L. 2025:** (6) amended, (HB 25-1001), ch. 228, p. 1040, § 1, effective August 6. **L. 2026:** (12.5) added, (SB 26-160), ch. 339, p. 2058, § 1, effective June 3.

Editor's note: Section 4 of chapter 339 (SB 26-160), Session Laws of Colorado 2026, provides that the act changing this section applies to conduct occurring on or after June 3, 2026.

Cross references: (1) For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

(2) For the legislative declaration in HB 19-1267, see section 1 of chapter 182, Session Laws of Colorado 2019.

ANNOTATION

Law reviews. For article, "Payment of Employee Vacation Time in Colorado", see 51 Colo. Law. 36 (May 2022).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 2003 amendment to article 4, which resulted in the relocation of provisions.

The provisions of the wage claim act should be liberally construed to carry out its purpose of assuring timely payment of wages and providing adequate judicial relief when wages are not paid. *Hofer v. Polly Little Realtors, Inc.*, 543 P.2d 114 (1975); *Cusimano v. Metro Auto, Inc.*, 860 P.2d 532 (Colo. App. 1992).

Therefore, construing the Act to impose personal liability for wages on high ranking corporate officers furthers that legislative purpose. *Cusimano v. Metro Auto, Inc.*, 860 P.2d 532 (Colo. App. 1992).

Wage claim act provides a clear, comprehensive statutory scheme designed to require an employer to pay wages earned by their employees in a timely manner. *Lambdin v. Dist. Ct. of Arapahoe Cty.*, 903 P.2d 1126 (Colo. 1995).

Timely compensation or judicial relief intended. The beneficent purpose of the general assembly in drafting this section was to assure that employees would be timely compensated for labor or services and that when not so compensated they would be entitled to adequate judicial relief. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

A plaintiff may bring claims under both the federal Fair Labor Standards Act and the state wage claim act. *Redmond v. Chains, Inc.*, 996 P.2d 759 (Colo. App. 2000).

Real estate salesman not "employee" within definition of subsection (5). *Hyland v. Pikes Peak Capital Corp.* 714 P.2d 914 (Colo. App. 1985).

The term "interstate drivers" in Wage Order No. 31, 7 Colo. Code Regs. 1103-1, applies to drivers whose work takes them across state lines, regardless of how often. Thus, the state exemption from overtime pay in the work order is triggered the first time a driver crosses state lines during a work trip. *Gomez v. JP Trucking, Inc.*, 2022 CO 21, 509 P.3d 429.

Association of counties and municipal corporations excepted from "employer". Since counties and municipal corporations are excepted from the definition of "employer", an association which consists of counties and municipal corporations is also excepted. *Paulu v. Lower Ark. Valley Council of Gov'ts*, 655 P.2d 1391 (Colo. App. 1982).

Definition of "employer" in subsection (6) does not include individual officers and agents of a corporation. *Leonard v. McMorris*, 63 P.3d 323 (Colo. 2003) (disagreeing with *Cusimano v. Metro Auto, Inc.*, cited below).

Corporate officers not individually liable for wages. The officers and agents of a corporation are not jointly and severally liable for payment of employee wages and

other compensation the corporation owes its employees under the employment contract and the wage claim act. Leonard v. McMorris, 63 P.3d 323 (Colo.) (disagreeing with Cusimano v. Metro Auto., Inc., cited below), 320 F.3d 1116 (10th Cir. 2003).

Definition of "employer" in subsection (6) clearly discloses an intent to impose personal liability for wages on at least high ranking corporate officers based solely on their status as officers, and the definition is not expressly limited to corporate officers with duties in relation to the unpaid employee. Cusimano v. Metro Auto, Inc., 860 P.2d 532 (Colo. App. 1992); Major v. Chons Bros., Inc., 53 P.3d 781 (Colo. App. 2002).

A general manager whose duties included scheduling of overtime work but who had been given no authority or responsibility over wage payment policies was not subject to personal liability under the wage claim act. Major v. Chons Bros., Inc., 53 P.3d 781 (Colo. App. 2002).

Federal bankruptcy code does not preempt claims against corporate officers under the state wage claim act. Claims under the wage claim act would be preempted if brought against the corporation because the corporation filed a bankruptcy petition. The bankruptcy code does not, however, extend its protections to individuals or entities that have not filed a bankruptcy petition. In the absence of such a statutory provision, no direct conflict exists between the bankruptcy code and the wage claim act. Leonard v. McMorris, 106 F. Supp. 2d 1098 (D. Colo. 2000), rev'd on

other grounds, 320 F.3d 1116 (10th Cir. 2003).

The term "corporation" in subsection (6) refers to private corporations, since municipal and quasi-municipal corporations are mentioned separately as exceptions. Paulu v. Lower Ark. Valley Council of Gov'ts, 655 P.2d 1391 (Colo. App. 1982).

The term "employer" in subsection (6) does not include the state of Colorado. The wage claim act does not apply to the state or state agencies. Lang v. Colo. Mental Health Inst. in Pueblo, 44 P.3d 262 (Colo. App. 2001).

To find that short-term disability policy benefits are "wages or compensation", under a plain reading of this section, an employee must show that the benefit amounts must be (1) for labor or service, (2) earned, (3) vested, and (4) determinable. Kouzmanoff v. Unum Life Ins. Co. of Am., 374 F. Supp. 3d 1076 (D. Colo. 2019).

Vacation pay is within the definition of "wages or compensation". Hartman v. Freedman, 197 Colo. 275, 591 P.2d 1318 (1979); Thompson v. Cheyenne Mtn. Sch. Dist., 844 P.2d 1235 (Colo. App. 1992).

Payments under employer's growth bonus program were "wages" where plan replaced existing commission programs, provided for cash payments to supplement employees' regular earnings based on their efforts in areas of sales and company growth, no components of the fund were based on net profit, and only one component was based on "gross profit". Gray v. Empire Gas, Inc., 679 P.2d 610 (Colo. App. 1984).

Bonus is "wages or compensation" where it is both vested and determinable as of the date of termination, where the bonus is disproportionately large in relation to the base salary, and where bonus was owed as compensation for services performed by individual employee rather than pursuant to profit-sharing plan. *Rohr v. Ted Neiters Motor Co.*, 758 P.2d 186 (Colo. 1988).

There is an implied right to compensation for unused vacation time upon termination of contract with school district absent an express agreement to the contrary. *Thompson v. Cheyenne Mtn. Sch. Dist.*, 844 P.2d 1235 (Colo. App. 1992).

Although an employee is not entitled to vacation pay, if an employer chooses to provide vacation pay, it cannot be forfeited once it is earned regardless of an employment agreement to the contrary that states that accrued but unused vacation time is not payable if the employee is fired or fails to give two weeks notice. *Nieto v. Clark's Market, Inc.*, 2021 CO 48, 488 P.3d 1140.

This section was amended to specifically exclude severance pay as wages or compensation, effective August 6, 2003, however the general assembly appears to acknowledge that a severance payment could constitute wages or compensation under the previous version of the statute. *Fang v. Showa Entetsu Co.*, 91 P.3d 419 (Colo. App. 2003).

An employment agreement providing for severance compensation in the event of an employee's termination constituted severance pay under the wage claim act.

Sommers v. MarketPlace Realty, LLC, 2025 COA 97, 585 P.3d 271.

Employee failed to show that short-term disability policy benefits were "wages or compensation". The benefits were not amounts for labor or services performed. Employer only pays monies pursuant to this policy to the extent that an eligible employee is unable to work. The benefits replace a portion of an employee's income in the event of sickness or injury. Employee's claim fails because the disability benefits flow from his declared inability to work, rather than from labor or service pursuant to the employment contract. *Kouzmanoff v. Unum Life Ins. Co. of Am.*, 374 F. Supp. 3d 1076 (D. Colo. 2019).

And even if the short-term disability benefits were for labor or services, under the policy, the employer retained the power to cease the short-term benefits altogether for any reason or no reason at all. The benefits are better viewed as status perks to which employees have no vested wage claim should an employer discontinue them. *Kouzmanoff v. Unum Life Ins. Co. of Am.*, 374 F. Supp. 3d 1076 (D. Colo. 2019).

Liability of corporate officers for wages. Subsection (6) is at least susceptible to the interpretation that corporate officers are personally liable for wages due employees. *Fischer v. District Court*, 561 P.2d 1266 (1977); *Cusimano v. Metro Auto, Inc.*, 860 P.2d 532 (Colo. App. 1992); *Major v. Chons Bros., Inc.*, 53 P.3d 781 (Colo. App. 2002).

Labor Peace Act does not limit or constrain the law on metropolitan sewage

disposal districts concerning the determination of prevailing rates of pay.

Such a district is not required to negotiate or engage in collective bargaining in fixing employee compensation at prevailing rates for equivalent work. *Local 1 v. Metro*

Wastewater Reclamation, 876 P.2d 82 (Colo. App. 1994).

Applied in *Cavic v. Pioneer Astro Indus., Inc.*, 825 F.2d 1421 (10th Cir. 1987); *Olsen v. Bondurant and Co.*, 759 P.2d 861 (Colo. App. 1988).

8-4-102. Proper payment - record of wages.

(1) **Negotiable instrument required.** No employer or agent or officer thereof shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness unless the same is negotiable and payable upon demand without discount in cash at a bank organized and existing under the general banking laws of the state of Colorado or the United States or at some established place of business in the state. The name and address of the drawee shall appear upon the face of the order, check, draft, note, memorandum, or other acknowledgment of indebtedness; except that such provisions shall not apply to a public utility engaged in interstate commerce and otherwise subject to the power of the public utilities commission. At the time of the issuance of same, the maker or drawer shall have sufficient funds in or credit with the bank or other drawee for the payment of same. Where such order, check, draft, note, memorandum, or other acknowledgment of indebtedness is protested or dishonored on the ground of insufficiency of funds or credit, the notice of memorandum of protest or dishonor thereof shall be admissible as proof of presentation, nonpayment, and protest.

(2) **Direct deposit.** Nothing in this article shall prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, credit union, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States if the employee has voluntarily authorized such deposit in the financial institution of the employee's choice.

(2.5) **Paycard.**

(a) Nothing in this article shall prohibit an employer from depositing an employee's wages on a paycard, so long as the employee:

(I) Is provided free means of access to the entire amount of net pay at least once per pay period; or

(II) May choose to use other means for payment of wages as authorized in subsections (1) and (2) of this section.

(b) As used in this section, "paycard" means an access device that an employee uses to receive his or her payroll funds from his or her employer.

(3) **Scrip prohibited.** No employer or agent or officer thereof shall issue in payment of wages due, or wages to become due an employee, or as an advance on wages to be earned by an employee any scrip, coupons, cards, or other things redeemable in merchandise unless such scrip, coupons, cards, or other things may be redeemed in cash when due, but nothing contained in this section shall be construed to prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessities of life or for the tools and implements used by such employee in the performance of his or her duties.

Source: L. 2003: Entire article amended with relocations, p. 1852, § 1, effective August 6. **L. 2008:** (2.5) added, p. 150, § 1, effective August 5.

Cross references: For wage equality, see article 5 of this title 8; for minimum wages of workers, see article 6 of this title 8.

8-4-103. Payment of wages - insufficient funds - pay statement - record retention - gratuity notification - penalties.

(1) (a) All wages or compensation, other than those mentioned in section 8-4-109, earned by any employee in any employment, other than those specified in subsection (3) of this section, shall be due and payable for regular pay periods of no greater duration than one calendar month or thirty days, whichever is longer, and on regular paydays no later than ten days following the close of each pay period unless the employer and the employee shall mutually agree on any other alternative period of wage or salary payments.

(b) An employer is subject to the penalties specified in section 8-4-113 (1) if, two or more times within any twenty-four-month period, the employer causes an employee's check, draft, or order to not be paid because the employer's bank does not honor an employee's paycheck upon presentment. The director may investigate complaints regarding alleged violations of this paragraph (b).

(2) (a) In agricultural, horticultural, and floricultural pursuits and in stock or poultry raising, when the employee in such employments is boarded and lodged by the employer, all wages or compensation earned by any employee in such employment shall be due and payable for regular periods of no greater duration than one month and on paydays no later than ten days following the close of each pay period.

(b) Nothing in paragraph (a) of this subsection (2), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a floricultural operation.

(3) Nothing in this article shall apply to compensation payments due an employee under a profit-sharing plan, a pension plan, or other similar deferred compensation programs.

(4) Every employer shall at least monthly, or at the time of each payment of wages or compensation, furnish to each employee an itemized pay statement in writing showing the following:

- (a) Gross wages earned;
- (b) All withholdings and deductions;
- (c) Net wages earned;
- (d) The inclusive dates of the pay period;
- (e) The name of the employee or the employee's social security number; and
- (f) The name and address of the employer.

(4.5) An employer shall retain records reflecting the information contained in an employee's itemized pay statement as described in subsection (4) of this section for a period of at least three years after the wages or compensation were due. The records shall be available for inspection by the division, and the employer shall provide copies of the records upon request by the division or the employee. The director may impose a fine of up to two hundred fifty dollars per employee per month on an employer who violates this subsection (4.5) up to a maximum fine of seven thousand five hundred dollars.

(5) Each field labor contractor shall keep, for a period of three years on each migratory laborer, records of wage rates offered, wages earned, number of hours worked, or, in the case of contractual or piecework where a field labor contractor pays the employee, the aggregate amount earned and all withholdings from wages on a form furnished by and in the manner prescribed by the division. In addition, in each pay period, each field labor contractor shall provide to each migratory laborer engaged in agricultural employment a statement of the gross earnings of the laborer for the period and all deductions and withholdings therefrom. The director may prescribe appropriate forms for use pursuant to this subsection (5). All such payroll records shall be filed with the division quarterly or at any time said labor contractor leaves this state or terminates his or her contract. The director is charged with the responsibility of making periodic reports to the governor's committee on migrant labor.

(6) It is unlawful for an employer engaged in a business where the custom prevails of the giving of gratuities by patrons to an employee of the business to assert a claim to, or right of

ownership in, or control over gratuities. These gratuities are the sole property of the employee unless the employer notifies each patron in writing, including by a notice on a menu, table tent, or receipt, that gratuities are shared by employees. Nothing in this section prevents an employer from requiring employees to share or allocate gratuities on a preestablished basis among the employees of the business.

Source: **L. 2003:** Entire article amended with relocations, p. 1853, § 1, effective August 6. **L. 2005:** (2) amended, p. 347, § 1, effective August 8. **L. 2009:** (1) amended, (HB 09-1108), ch. 161, p. 696, § 1, effective August 5. **L. 2014:** (4.5) added, (SB 14-005), ch. 276, p. 1112, § 3, effective January 1, 2015. **L. 2019:** (6) amended, (HB 19-1254), ch. 168, p. 1969, § 2, effective August 2.

Editor's note: This section is similar to former §§ 8-4-102 (3), 8-4-105, and 8-4-115, as they existed prior to 2003, and the former § 8-4-103 was relocated to § 8-4-104.

Cross references: (1) For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

(2) For the legislative declaration in HB 19-1254, see section 1 of chapter 168, Session Laws of Colorado 2019.

ANNOTATION

Annotator's note. Since § 8-4-103 is similar to § 8-4-105 as it existed prior to the 2003 amendment to article 4, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

A contract to pay wages "when convenient to pay" must be construed as imposing an obligation to pay at some time. *Royal Tiger Mines Co. v. Ahearn*, 97 Colo. 116, 47 P.2d 692 (1935) (decided under repealed CSA, C. 97, § 200).

Section 8-4-104 and this section are mutually exclusive. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

And distinguishable. Section 8-4-104 creates a right in an employee under one set of circumstances together with a cause of action for a penalty, while this section creates a right in an employee under a different set of circumstances, and does not provide for a penalty. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

Entitlement to attorney fees. If plaintiff were required to bring a claim for both wages and penalties under § 8-4-104 and this section in order to be entitled to attorney fees, the reference to this section in § 8-4-114 would be meaningless, contrary to the other language of the statute, and inconsistent with the rules of statutory construction which require that the "entire statute is intended to be effective", and that every word must be given effect, if possible. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

Section 8-4-114 applies to recovery under either. Even though it is not clear

from the judgment, based on the jury verdict, whether the employee's recovery was under § 8-4-104 or this section, § 8-4-114 applies to either. *Keeton v. Rike*, 38 Colo. App. 505, 559 P.2d 262 (1977).

"Deferred compensation programs" do not encompass vacation pay. *Hartman v. Freedman*, 197 Colo. 275, 591 P.2d 1318 (1979).

Applied in *Lampley v. Celebrity Homes, Inc.*, 42 Colo. App. 359, 594 P.2d 605 (1979); *Mau v. E.P.H. Corp.*, 638 P.2d 777 (Colo. 1981).

8-4-104. Funds available to pay wages - mining industry.

Every person, firm, association, corporation, or agent, manager, superintendent, or officer thereof engaged in the business of extracting or of extracting and refining or reducing metals or minerals other than petroleum, or other than parties having a free unencumbered title to the fee simple of the property being worked, and also other than mining partnerships in respect to the members of the partnerships, shall, before commencing work in any period for which a single payment of wages is to be made, have on hand, either physically or by deposit with a bank or trust company in the county where such property is located or, if there is no bank or trust company in the county, in the bank or trust company nearest the property, cash or readily salable securities of a market value equivalent to such cash, or accounts receivable payable in the normal course of business prior to the next payday, in a sufficient amount to make the payment of wages without discount or loss to any person employed on the mining property for such period.

Source: L. 2003: Entire article amended with relocations, p. 1854, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-103 as it existed prior to 2003, and the former § 8-4-104 was relocated to § 8-4-109.

ANNOTATION

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Applied in *Lampley v. Celebrity Homes, Inc.*, 42 Colo. App. 359, 594 P.2d 605 (1979). (decided under former law).

8-4-105. Payroll deductions permitted - notice required.

(1) An employer shall not make a deduction from the wages or compensation of an employee except as follows:

(a) Deductions mandated by or in accordance with local, state, or federal law including, but not limited to, deductions for taxes, "Federal Insurance Contributions Act" ("FICA") requirements, garnishments, or any other court-ordered deduction;

(a.5) Deductions for contributions attributable to automatic enrollment in an employee retirement plan, as defined in section 8-4-105.5, regardless of whether the plan is subject to the federal "Employee Retirement Income Security Act of 1974", as amended;

(b) Deductions for loans, advances, goods or services, and equipment or property, or any other thing that primarily benefits an employee, which does not include personal protective equipment, provided by an employer to an employee pursuant to a written agreement between such employer and employee, so long as it is enforceable and not in violation of law;

(c) Any deduction necessary to cover the replacement cost of a shortage due to theft by an employee if a report has been filed with the proper law enforcement agency in connection with such theft pending a final adjudication by a court of competent jurisdiction; except that, if the accused employee is found not guilty in a court action or if criminal charges related to such theft are not filed against the accused employee within ninety days after the filing of the report with the proper law enforcement agency, or such charges are dismissed, the accused employee shall be entitled to recover any amount wrongfully withheld plus interest. In the event an employer acts without good faith, in addition to the amount wrongfully withheld and legally proven to be due, the accused employee may be awarded an amount not to exceed treble the amount wrongfully withheld. In any such action the prevailing party shall be entitled to reasonable costs related to the recovery of such amount including attorney fees and court costs.

(d) Any deduction, not listed in paragraph (a), (a.5), (b), or (c) of this subsection (1), that is authorized by an employee if the authorization is revocable, including deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, supplemental retirement plans, charities, and deposits to financial institutions;

(e) (I) A deduction for the amount of money or the value of property that the employee failed to properly pay or return to the employer in the case where a terminated employee was entrusted during the employee's employment with the collection, disbursement, or handling of such money or property, but only after providing notice of the deduction as specified in subsection (1)(e)(II) of this section.

(II) The employer has ten calendar days after the termination of employment to:

(A) Audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid as provided in section 8-4-109. This is an exception to the pay requirements in section 8-4-109. The penalty provided in section 8-4-109 shall apply only from the date of demand made after the expiration of the ten-day period allowed for payment of the employee's wages or compensation.

(B) Provide notice to the employee that the employer is deducting from the employee's wages or compensation the amount of money or the value of property that the employee failed to properly pay or return to the employer, which notice must include a written accounting specifying the amount of money or the specific property that the employee failed to pay or return, the replacement value of the property, and, to the extent known, when the money or property was provided to the employee and when the employer believes the employee should have paid the money or returned the property to the employer.

(III) After an employer provides the notice required by subsection (1)(e)(II)(B) of this section and makes a deduction from the wages or compensation of an employee, if the employee, within fourteen days after the employer provides the notice, pays the money or returns the property that was the basis for the deduction, the employer shall pay the employee the amount of the deduction within fourteen days after the employee pays the money or returns the property to the employer.

(IV) If, after auditing and adjusting the accounts and property value of any items entrusted to the employee pursuant to subsection (1)(e)(II)(A) of this section and providing notice pursuant to subsection (1)(e)(II)(B) of this section, it is found that any money or property entrusted to the employee by the employer has not been properly paid or returned to the employer as provided by the terms of any agreement between the employer and the employee, the employee is not entitled to the benefit of payment pursuant to section 8-4-109, but the employee's claim for unpaid wages or compensation shall be disposed of as provided for by this article 4.

(2) Except for a deduction made in accordance with subsection (1)(a), (1)(a.5), or (1)(d) of this section, nothing in this section authorizes a deduction below the applicable minimum wage.

Source: L. 2003: Entire article amended with relocations, p. 1855, § 1, effective August 6. **L. 2010:** (1)(a.5) added and (1)(d) amended, (SB 10-035), ch. 3, p. 33, § 1, effective January 1, 2011. **L. 2022:** IP(1) and (1)(e) amended, (SB 22-161), ch. 370, p. 2627, § 6, effective January 1, 2023. **L. 2025:** (2) amended, (HB 25-1001), ch. 228, p. 1040, § 2, effective August 6. **L. 2026:** (1)(b) and (2) amended, (SB 26-160), ch. 339, p. 2059, § 2, effective June 3.

Editor's note: (1) This section is similar to former § 8-4-101 (7.5) as it existed prior to 2003, and the former § 8-4-105 was relocated to § 8-4-103.

(2) Section 4 of chapter 339 (SB 26-160), Session Laws of Colorado 2026, provides that the act changing this section applies to conduct occurring on or after June 3, 2026.

Cross references: For the "Federal Insurance Contributions Act", see 26 U.S.C. § 3101 et seq.; for the federal "Employee Retirement Income Security Act of 1974", see 29 U.S.C. § 1001 et seq.

ANNOTATION

An employer may not deduct its own costs of doing business from an employee's wages. A salon's cost of hair care products do not qualify as "goods or services" under subsection (1)(b). Thus, the salon unlawfully shifted its own costs of doing business to its employee by deducting the cost of the hair care products from her wages. 303 Beauty Bar v. Div. of Labor Standards, 2025 COA 20, 568 P.3d 43.

Parties' product fee deduction agreement was therefore unenforceable under subsection (1)(b) and § 8-4-121. A contract that reduces an employee's wages by shifting the employer's costs of doing business to the employee contravenes the legislature's manifest intent to prevent contractual waiver or modification of an employer's mandatory obligations under this act. 303 Beauty Bar v. Div. of Labor Standards, 2025 COA 20, 568 P.3d 43.

8-4-105.5. Automatic enrollment in retirement plans - relief from liability - conditions - definitions.

(1) (a) (I) An employer that provides automatic enrollment in an employee retirement plan is not liable for the investment decisions made by the employer on behalf of any participating employee with respect to the default investment of contributions made for that employee to the plan if:

(A) The plan provides the participating employee at least quarterly opportunities to select investments for the employee's contributions among investment alternatives available under the plan;

(B) The participating employee is given notice of the investment decisions that will be made in the absence of direction from the employee, a description of all the investment alternatives available for employee investment direction under the plan, and a brief description of procedures available for the employee to change investments; and

(C) The employee is given at least annual notice of the actual default investments made of contributions attributable to the employee.

(II) The relief from liability of the employer under this subsection (1) extends to any employee retirement plan official who makes the actual default investment decisions on behalf of participating employees.

(b) Nothing in this subsection (1) modifies any existing responsibility of employers or other plan officials for the selection of investment funds for participating employees.

(2) As used in this section:

(a) "Automatic enrollment" means an employee retirement plan provision under which an employee will have a specified contribution made to the plan, equal to a compensation reduction, that will be made for the employee unless the employee affirmatively elects, in accordance with the federal "Pension Protection Act of 2006", Pub.L. 109-280, either not to have any compensation reduction contributions or a compensation reduction contribution in an alternative amount.

(b) "Employee retirement plan" means a plan described in sections 401(k) or 403(b) of the federal "Internal Revenue Code of 1986", as amended; a governmental deferred compensation plan described in section 457 of the federal "Internal Revenue Code of 1986", as amended; or a payroll deduction individual retirement account plan described in sections 408 or 408A of the federal "Internal Revenue Code of 1986", as amended.

Source: L. 2010: Entire section added, (SB 10-035), ch. 3, p. 33, § 2, effective January 1, 2011.

Cross references: For the federal "Internal Revenue Code of 1986" referenced in subsection (2)(b), see title 26 of the United States Code.

8-4-106. Early payment of wages permitted.

Nothing contained in this article shall in any way limit or prohibit the payment of wages or compensation at earlier dates, or at more frequent intervals, or in greater amounts, or in full when or before due.

Source: L. 2003: Entire article amended with relocations, p. 1856, § 1, effective August 6.

8-4-107. Post notice of paydays.

Every employer shall post and keep posted conspicuously at the place of work if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer a notice specifying the regular paydays and the time and place of payment, in accordance with the provisions of section 8-4-103, and also any changes concerning them that may occur from time to time.

Source: L. 2003: Entire article amended with relocations, p. 1856, § 1, effective August 6.

8-4-108. Payment in the event of strike.

(1) In the event of a strike, every employee who is discharged shall be paid at the place of discharge, and every employee who quits or resigns shall be paid at the office or agency of the employer in the county or city and county where such employee has been performing the labor or service for the employer. All payments of money or compensation shall be made in the manner provided by law.

(2) In the event of any strike, the unpaid wages or compensation earned by such striking employee shall become due and payable on the employer's next regular payday, and the payment or settlement shall include all amounts due such striking employee without abatement or reduction. The employer shall return to each striking employee, upon request, any deposit or money or other guaranty required by the employer from the employee for the faithful performance of the duties of his or her employment.

Source: L. 2003: Entire article amended with relocations, p. 1856, § 1, effective August 6.

8-4-109. Termination of employment - payments required - civil penalties - payments to surviving spouse or heir.

(1) (a) When an interruption in the employer-employee relationship by volition of the employer occurs, the wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of such discharge is due and payable immediately. If at such time the employer's accounting unit, responsible for the drawing of payroll checks, is not regularly scheduled to be operational, then the wages due the separated employee shall be made available to the employee no later than six hours after the start of such employer's accounting unit's next

regular workday; except that, if the accounting unit is located off the work site, the employer shall deliver the check for wages due the separated employee no later than twenty-four hours after the start of such employer's accounting unit's next regular workday to one of the following locations selected by the employer:

- (I) The work site;
- (II) The employer's local office; or
- (III) The employee's last-known mailing address.

(b) When an employee quits or resigns such employee's employment, the wages or compensation shall become due and payable upon the next regular payday. When a separation of employment occurs, the employer shall make the separated employee's check for wages due available at one of the following locations selected by the employer:

- (I) The work site;
- (II) The employer's local office; or
- (III) The employee's last-known mailing address.

(c) If an employer has made the employee's wages or compensation available at the work site or at the employer's local office under paragraph (a) or (b) of this subsection (1), and the employee has not received the wages or compensation within sixty days after the wages or compensation were due, the employer shall mail the employee's check for wages or compensation due to the employee's last-known mailing address.

(2) Nothing in subsection (1) of this section shall limit the right of an employer to set off any deductions pursuant to section 8-4-105 owing by the employee to the employer or require the payment at the time employment is severed of compensation not yet fully earned under the compensation agreement between the employee and employer, whether written or oral.

(3) (a) If an employer refuses to pay wages or compensation in accordance with subsection (1) of this section or section 8-4-103 (1)(a), the employee, the employee's designated agent, or the division may send a written demand for the payment on behalf of the employee or a group of similarly situated employees or may file an administrative claim or civil action for the payment.

(a.5) If the employer disputes the amount of wages or compensation claimed by an employee under this article 4 and if, within fourteen days after the written demand is sent or the administrative claim or civil action is sent to or served on the employer, the employer makes a legal tender of the full amount of all wages that the employee, the employee's designated agent, or the division in good faith demands are owed for any violation of this article 4, the employer shall not be liable for any penalty unless, in a legal proceeding, including a civil action or an

administrative procedure under sections 8-4-111 and 8-4-111.5, the employee recovers a greater sum than the amount the employer tendered.

(b) Except as provided in subsection (3.5) of this section, if an employer fails or refuses to pay, in the manner specified in subsection (3)(d) of this section, all earned, vested, and determinable wages or compensation within fourteen days after a written demand is sent or within fourteen days after a civil action or administrative claim for the wages or compensation is sent to or served on the employer, the employer is liable to the employee or group of similarly situated employees for the amount of the earned, vested, determinable, and unpaid wages or compensation plus an automatic penalty of:

(I) The greater of two times the amount of the unpaid wages or compensation or one thousand dollars; or

(II) If the employee can show that the employer's failure or refusal to pay wages or compensation was willful, the greater of three times the amount of the unpaid wages or compensation or three thousand dollars.

(c) Evidence that a judgment or wage determination of the division has, within the previous five years, been entered against the employer for failure to pay wages or compensation is admissible as evidence of willful conduct. An employer's failure or refusal to pay wages or compensation is per se willful if the employee can show that the claim for which a penalty under subsection (3)(b) of this section is assessed is the employer's second or subsequent failure or refusal to pay to employees wages or compensation of the same or similar type within the five years immediately preceding the claim.

(d) (I) The employer shall send or deliver payment, by check, draft, or voucher in the employee's name, to the employee at the address contained in the written demand or administrative claim or civil action; or make the payment by direct deposit authorized under section 8-4-102 (2) if the employee has not revoked the authorization. The employer may, but is not required to, make the payment by direct deposit to an account specified by the employee in the demand, administrative claim, or court action, even if the employee has not previously authorized direct deposit of the employee's compensation, or make the payment by another method requested by the employee in the demand, administrative claim, or court action, if applicable. If the employee has not previously authorized direct deposit of compensation and the demand, administrative claim, or court action does not state an address to which the payment should be mailed, the employer shall make the payment as follows:

(A) To the employee's last-known address according to the records of the employer; or

(B) If applicable and if the employer so elects, as otherwise requested by the employee in the demand, administrative claim, or court action.

(II) The employee or the employee's designated agent may commence a civil action to recover the penalty set forth in this subsection (3). If, within fourteen days after a written demand is sent to or an administrative claim or a civil action is sent to or served on the employer, the employer makes a full legal tender of all amounts demanded in good faith for all employees, the employee shall dismiss the action.

(3.5) The director may waive the penalty specified in subsection (3)(b) of this section for an employer's failure to pay claimed wages or compensation within fourteen days after a written demand if the employer pays all claimed wages or compensation within fourteen days after an administrative claim for the same wages or compensation is sent to or served on the employer. The director shall not waive the penalty if the alleged violation is a second or subsequent failure or refusal to pay an employee's wages or compensation within five years.

(4) If, at the time of the death of any employee, an employer is indebted to the employee for wages or compensation, and no personal representative of the employee's estate has been appointed, such employer shall pay the amount earned, vested, and determinable to the deceased employee's surviving spouse. If there is no surviving spouse, the employer shall pay the amount due to the deceased employee's next legal heir upon the request of such heir. If a personal representative for the employee has been appointed and is known to the employer prior to payment of the amount due to the spouse or other legal heir, the employer shall pay the amount due to such personal representative upon the request of such representative. The employer shall require proof of a claimant's relationship to the deceased employee by affidavit and require such claimant to acknowledge the receipt of any payment in writing. Any payments made by the employer pursuant to the provisions of this section shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable to the deceased employee's estate or to the deceased employee's personal representative. Any amounts received by a surviving spouse or legal heir shall be considered in diminution of the allowance to the spouse or legal heir pursuant to the "Colorado Probate Code", articles 10 to 17 of title 15, C.R.S. Nothing in this section shall create a substantive right that does not exist in any agreement between the employer and the employee.

Source: L. 2003: Entire article amended with relocations, p. 1856, § 1, effective August 6. L. 2007: (3) amended, p. 1677, § 2, effective May 31. L. 2014: (1)(c) added and (3) amended, (SB 14-005), ch. 276, p. 1112, § 4, effective January 1, 2015. L. 2022: (3) amended, (SB 22-161), ch. 370, p. 2628, § 7, effective January 1, 2023. L. 2025: IP(3)(b) amended and (3.5) added, (HB 25-1001), ch. 228, p. 1041, § 3, effective August 6.

Editor's note: This section is similar to former § 8-4-104 as it existed prior to 2003, and the former § 8-4-109 was relocated to § 8-4-113.

Cross references: (1) For the legislative declaration contained in the 2007 act amending subsection (3), see section 1 of chapter 381, Session Laws of Colorado 2007.

(2) For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

ANNOTATION

Law reviews. For article, "Employee's Right to Compensation Accruing After Termination", see 13 Colo. Law. 1643 (1984). For article, "Rights of Terminated Employees: Expanding Remedies", see 21 Colo. Law. 1639 (1992).

Annotator's note. Since § 8-4-109 is similar to § 8-4-104 as it existed prior to the 2003 amendment to article 4, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

The purpose of the wage claim act is to ensure that wages are paid in a timely manner and to provide adequate judicial relief in the event wages are not paid. An employer is liable under the act if the employer does not pay an employee wages he or she earned at the time of discharge. Fang v. Showa Entetsu Co., 91 P.3d 419 (Colo. App. 2003).

Vacation pay is within the definition of "wages or compensation". Hartman v. Freedman, 197 Colo. 275, 591 P.2d 1318 (1979).

Employee entitled to additional wages based on a company "comp time"

program. Remote Switch Sys. v. Delangis, 126 P.3d 269 (Colo. App. 2005).

Stock options may be within the definition of "wages or compensation". Therefore, district court improperly dismissed claim for stock option. Montemayor v. Jacor Commc'ns, Inc., 64 P.3d 916 (Colo. App. 2002).

Share of a legal fee was not "wages or compensation". Coffee v. Inman, 728 P.2d 376 (Colo. App. 1986).

Uncollected commissions are wages earned and due at discharge. Where salesmen were terminated prior to the closing and the collection of the commissions by the broker, wages were earned or due at the time of their discharge. Hofer v. Polly Little Realtors, Inc., 37 Colo. App. 86, 543 P.2d 114 (1975).

Or at time fully earned. At the time the employment relationship is severed, an employer need not pay, immediately, compensation not yet fully earned under a compensation agreement. But the implication is clear that such wages become immediately due at the time they are fully earned. Hofer v. Polly Little Realtors, Inc., 37 Colo. App. 86, 543 P.2d 114 (1975).

This section fails to offer any relief to employees whose wages are withheld while they are still employed. Consequently, plaintiff had no choice but to wait until he left the company to pursue his claim, because the claim accrued when the employment relationship ended, not when the wages were withheld. *Farris v. ITT Cannon, a Div. of ITT Corp.*, 834 F. Supp. 1260 (D. Colo. 1993).

This section and § 8-4-105 are mutually exclusive. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

And distinguishable. This section creates a right in an employee under one set of circumstances together with a cause of action for a penalty, while § 8-4-105 creates a right in an employee under a different set of circumstances and does not provide for a penalty. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

Salesmen employed on a commission basis cannot be terminated with impunity prior to a closing and thus be deprived of large commissions obtained for their employers as a result of their efforts. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

Determination of good faith under subsection (3) is matter for trial court. *Cortez v. Brokaw*, 632 P.2d 635 (Colo. App. 1981); *Kennedy v. Leo Payne Broad.*, 648 P.2d 673 (Colo. App. 1982); *Jet Courier Serv., Inc. v. Mulei*, 771 P.2d 486 (Colo. 1989); *Porter v. Castle Rock Ford Lincoln*, 895 P.2d 1146 (Colo. App. 1995).

Trial court properly awarded the statutory penalty pursuant to subsection (3). "Without good faith legal justification" means willfully withheld without good cause; however, willful withholding does not require a showing of malice or similar motivation, rather, there need only be a demonstration that compensation is willfully withheld without good cause. *Porter v. Castle Rock Ford Lincoln*, 895 P.2d 1146 (Colo. App. 1995).

Jury must make factual determinations regarding whether to assess penalty under this section but is not responsible for determining amount of penalty. *Graham v. Zurich Am. Ins. Co.*, 2012 COA 188, 296 P.3d 347.

A plaintiff granted a money judgment under this section is a winning party entitled to reasonable attorney fees, and a defendant does not become the "winning party" simply because the plaintiff does not prevail on each of its asserted claims. *Porter v. Castle Rock Ford Lincoln*, 895 P.2d 1146 (Colo. App. 1995).

Entitlement to attorney fees. If plaintiff was required to bring a claim for both wages and penalties under this section and § 8-4-105 in order to be entitled to attorney fees, the reference to § 8-4-105 in § 8-4-114 would be meaningless, contrary to the other language of the statute, and inconsistent with the rules of statutory construction which require that the "entire statute is intended to be effective" and that every word must be given effect, if possible. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

Employee commenced an action within the meaning of the wage claim act seeking additional wages owed to him or her. Because employee prevailed in that action, as the "winning party" under that claim, he or she was entitled to an award of attorney fees relating to the prosecution of that claim. *Remote Switch Sys. v. Delangis*, 126 P.3d 269 (Colo. App. 2005) (decided under former § 8-4-114).

Failure to specify in complaint the precise statute on which claim is based does not prevent plaintiff from seeking attorney fees. *Fang v. Showa Entetsu Co.*, 91 P.3d 419 (Colo. App. 2003) (decided under former § 8-4-114).

Section 8-4-114 applies to recovery under either. Even though it is not clear from the judgment, based on the jury verdict, whether the employee's recovery was under this section or § 8-4-105, § 8-4-114 applies to either. *Keeton v. Rike*, 38 Colo. App. 505, 559 P.2d 262 (1977).

Attorney fees to be taxed as a cost of suit cannot be construed as an additional penalty, i.e., recoverable only if the judgment in favor of the employee contains a penalty. Such a construction would discourage employees from instituting suit, since the judgment intended to make them whole would be substantially reduced by outlays for attorney fees. The consequence of this latter construction would be to defeat the fundamental purpose of the statute. One cannot assume that an unjust or oppressive result was contemplated by the general assembly. *Hofer v. Polly Little Realtors, Inc.*, 37 Colo. App. 86, 543 P.2d 114 (1975).

Penalty assessable under subsection (3) is for wages undisputed but unpaid. *Hartman v. Freedman*, 197 Colo. 275, 591 P.2d 1318 (1979).

An employer who fails to pay an employee the wages earned by the employee at the time of the employee's discharge is liable under section, even if the employer had the absolute right to discharge the employee. *Lee v. Great Empire Broad., Inc.*, 794 P.2d 1032 (Colo. App. 1989).

Conversely, even though an employee's discharge may constitute a violation of contract or other legal wrong by the employer, this section is not applicable to the circumstance if the employer pays all wages earned by the employee at the time of the employee's discharge. *Lee v. Great Empire Broad., Inc.*, 794 P.2d 1032 (Colo. App. 1989).

This section has been held to apply to payments becoming due after the date of the discharge, provided those future payments have been "earned," i.e., they are "vested and determinable," at the time of employee's termination. In such circumstances, the future payment must be made immediately upon becoming due or the employer becomes liable for the statutory penalty under the provisions of subsection (3). *Lee v. Great Empire Broad., Inc.*, 794 P.2d 1032 (Colo. App. 1989).

A terminated employee may seek any wages or compensation that was unpaid at the time of termination. However, the right to seek such wages or compensation is subject to the statute of limitations found in

§ 8-4-122. Hernandez v. Ray Domenico Farms, Inc., 2018 CO 15, 414 P.3d 700.

Liability of corporate officers for wages and attorney fees. Proof of good faith legal justification for refusal to pay wages by an employer is not required for the recovery of wages and attorney fees by an employee. Cusimano v. Metro Auto, Inc., 860 P.2d 532 (Colo. App. 1992).

An employer's claim of breach of fiduciary duty is not a good faith legal justification for not timely paying an employee's final wages pursuant to this article. Hartman v. Cmty. Responsibility Ctr., Inc., 87 P.3d 202 (Colo. App. 2003).

The officers and agents of a corporation are not jointly and severally liable for payment of employee wages and other compensation the corporation owes to its employees under the employment contract and the wage claim act. Leonard v. McMorris, 320 F.3d 1116 (10th Cir. 2003).

A general manager whose duties included scheduling of overtime work but who had been given no authority or responsibility over wage payment policies was not subject to personal liability under the wage claim act. Major v. Chons Bros., Inc., 53 P.3d 781 (Colo. App. 2002).

Federal Bankruptcy Code does not preempt claims against corporate officers under the state wage claim act. Claims under the wage claim act would be

preempted if brought against the corporation because the corporation filed a bankruptcy petition. The Bankruptcy Code does not, however, extend its protections to individuals or entities that have not filed a bankruptcy petition. In the absence of such a statutory provision, no direct conflict exists between the Bankruptcy Code and the wage claim act. Leonard v. McMorris, 106 F. Supp. 2d 1098 (D. Colo. 2000), rev'd on other grounds, 320 F.3d 1116 (10th Cir. 2003).

Evidence held sufficient to support finding that defendant employer owed plaintiff wages and commissions. Brogan v. Bill Eger Motors, Inc., 39 Colo. App. 104, 561 P.2d 377 (1977).

"Without a good-faith legal justification" construed. In order to impose a penalty under this section, a trial court must find from the evidence that the employer willfully withheld compensation due and owing the employee. Beasley v. Mincomp Corp., 683 P.2d 370 (Colo. App. 1984).

Statutory penalty will not be assessed where there was bona fide dispute as to bonus due and payable. Rohr v. Ted Neiters Motor Co., 758 P.2d 186 (Colo. 1988).

Applied in Mau v. E.P.H. Corp., 638 P.2d 777 (Colo. 1981); Paulu v. Lower Ark. Valley Council of Gov'ts, 655 P.2d 1391 (Colo. App. 1982).

8-4-110. Disputes - fees.

(1) (a) The court may award the employer reasonable costs and attorney fees incurred in a civil action brought under this article 4 if, within fourteen days after a written demand letter is sent to or a civil action is served on the employer for unpaid wages or compensation:

(I) The employer makes full legal tender of all amounts demanded in good faith for all employees; and

(II) The court ultimately finds that the employees receiving such tender pursued an action lacking substantial justification.

(b) If, in an administrative claim or civil action in which the employee seeks to recover any amount of wages or compensation, the employee recovers a sum greater than the amount tendered by the employer:

(I) The court, in a civil action, may award the employee reasonable costs and attorney fees incurred in the civil action; and

(II) The division, in an administrative claim, may award the employee reasonable costs incurred in the administrative claim and may also award attorney fees to an employee who recovers more than five thousand dollars in unpaid wages in the administrative claim.

(c) If an employer fails or refuses to make a tender within fourteen days after the demand or administrative claim or civil action, then such failure or refusal must be treated as a tender of no money for any purpose under this article 4.

(1.5) This section shall not apply to a claimant who is found to be an independent contractor and not an employee.

(2) In addition to other relief available to employees under this title 8, a person claiming to be aggrieved by a violation of this article 4 or any other law or rule related to wages or hours may file suit in any court having jurisdiction over the parties to pursue all available equitable relief, including equitable relief to deter future violations and prevent unjust enrichment, without regard to exhaustion of any administrative remedies.

Source: L. 2003: Entire article amended with relocations, p. 1858, § 1, effective August 6. **L. 2007:** (1) amended and (1.5) added, p. 1678, § 3, effective May 31. **L. 2022:** (1) amended, (SB 22-161), ch. 370, p. 2630, § 8, effective January 1, 2023. **L. 2025:** IP(1)(a), (1)(a)(II), and (2) amended, (HB 25-1001), ch. 228, p. 1041, § 4, effective August 6.

Editor's note: Subsection (2) is similar to former § 8-4-123 as it existed prior to 2003.

Cross references: For the legislative declaration contained in the 2007 act amending subsection (1) and enacting subsection (1.5), see section 1 of chapter 381, Session Laws of Colorado 2007.

ANNOTATION

Annotator's note. Since § 8-4-110 is similar to § 8-4-123 as it existed prior to the 2003 amendment to article 4, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

Arbitration provision in an employment contract that denied the employee the right to a timely civil action pursuant to this section in a Colorado court is void. *Lambdin v. Dist. Ct. of Arapahoe Cty.*, 903 P.2d 1126 (Colo. 1995).

This section explicitly creates a civil remedy to enable employees to pursue their claims for past due wages. *Lambdin v. Dist. Ct. of Arapahoe Cty.*, 903 P.2d 1126 (Colo. 1995).

Award of attorney fees is not conditioned on finding that claim was "frivolous". *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199 (Colo. App. 2010).

Guidelines for exercise of court's discretion to award attorney fees under subsection (1) require consideration of all relevant circumstances, including 10 factors specifically listed. *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199 (Colo. App. 2010).

A prevailing employee is presumptively entitled to an award of attorney fees. *Lester v. Career Bldg. Acad.*, 2014 COA 88, 338 P.3d 1054.

Any entity or person who creates and maintains an employment relationship for the payment of wages is subject to the wage claim act; an employer's inability to pay is irrelevant to the determination of attorney fee awards under the act. *Lester v. Career Bldg. Acad.*, 2014 COA 88, 338 P.3d 1054.

"Discretion" does not imply a complete lack of standards. When awarding attorney fees, the court is required to make sufficient findings to permit meaningful appellate review. *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199 (Colo. App. 2010).

Denial of a \$2,000 "per diem courtesy" for a witness, as an item of costs, was within the court's discretion. *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199 (Colo. App. 2010).

Denial of attorney fees incurred on appeal was permissible where defendant did not fully prevail on its challenge to the trial court's award of attorney fees and costs. *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199 (Colo. App. 2010).

Where plaintiff is determined not to have been an "employee" but an independent contractor, award of attorney fees to defendant is proper. Voller v. Gertz, 107 P.3d 1129 (Colo. App. 2004) (decided under former § 8-4-114).

Where defendant prevails solely because the trier of fact determines that plaintiff was not an "employee", but was instead an independent contractor, an award of attorney fees to defendant is improper. Mahan v. Capitol Hill Internal Med. P.C., 151 P.3d 685 (Colo. App. 2006) (following Hyland v. Pikes Peak Capital Corp., 714 P.2d 914 (Colo. App. 1985) and

declining to follow Voller v. Gertz, 107 P.3d 1129 (Colo. App. 2004)) (all decided under former § 8-4-114 prior to its repeal in 2003).

The supremacy clause governs when the Federal Arbitration Act (FAA) applies to an employment contract and requires arbitration even in a state wage claim act claim despite the firm state policy that state act claims should not be subject to arbitration. Where a contract containing an arbitration clause evidences a transaction involving commerce, the FAA applies and the agreement to arbitrate must be enforced. Grohn v. Sisters of Charity Health, 960 P.2d 722 (Colo. App. 1998).

8-4-111. Enforcement - duty of director - duties of district or city attorneys - local government authority to enact and enforce laws - rules.

(1) (a) (I) It is the duty of the director to:

(A) Inquire diligently for any violation of this article 4;

(B) Institute the actions for penalties or fines provided for in this article 4 in such cases as the director deems proper; and

(C) Enforce generally the provisions of this article 4.

(II) The director may establish an administrative procedure to receive complaints and adjudicate claims for nonpayment of wages or compensation of:

(A) Seven thousand five hundred dollars or less for claims filed through June 30, 2026;

(B) Thirteen thousand dollars or less for claims filed from July 1, 2026, through December 31, 2027; and

(C) An amount that the director specifies in rule by January 1, 2028, and by rule for every other year thereafter. Such amount must be equal to the amount in the previous calendar year increased by one thousand dollars or a higher amount if such higher amount is necessary to adjust for inflation. Inflation is measured by the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index, or a successor index, for Denver-Aurora-Lakewood for all items paid for by urban consumers.

(III) The procedures established pursuant to subsection (1)(a)(II) of this section may include claims of employees where no interruption of the employer-employee relationship has occurred.

(IV) The penalties and fines established by section 8-4-109 (3) apply to actions instituted by the director or adjudicated after a complaint was received under this article 4 when no interruption of the employer-employee relationship has occurred.

(a.5) In carrying out the duties specified in subsection (1)(a)(I) of this section, the director:

(I) Shall publish on the division's website, for any violation that is a matter of public record pursuant to section 8-1-115 (1)(b), the citation, determination, or written opinion; whether the violation was willful; and the names of all employers in violation;

(II) Shall report an employer with a willful violation unremedied within sixty days after the division's finding to any government body with authority to deny, withdraw, or otherwise limit or impose remedial conditions on the employer's license, permit, registration, or other credential. The division may post a decision against an employer by a government body on the division's website.

(III) May report an employer found to have violated a law related to wages and hours to a government body with authority to deny, withdraw, or otherwise limit or impose remedial conditions on the employer's license, permit, registration, or other credential. The division may post a decision against an employer by a government body on the division's website.

(b) The director shall promulgate rules providing for notice to employees of an employee's rights under this section and section 8-4-111.5, of the limitations on the amount of wages, compensation, and penalties available under the administrative remedy, and of the employee's option to bring a claim for wages and compensation in court without pursuing the administrative remedy unless the employee has accepted payment pursuant to subsection (2)(e) of this section.

(c) For purposes of investigating wage complaints and facilitating the collection of unpaid wages before or after a determination pursuant to this section, the division may apply the information-gathering provisions of article 1 of this title 8 to any employer, employee, or other person or entity.

(2) (a) (I) The division shall investigate a wage complaint if one or more employees file the wage complaint with the division claiming unpaid wages or compensation, exclusive of penalties and fines, of seven thousand five hundred dollars or less per employee for claims filed through June 30, 2026; thirteen thousand dollars or less for claims filed from July 1, 2026, through December 31, 2027; and an amount that the director specifies in rule by January 1, 2028, and by rule for every other year thereafter. Such amount must be equal to the amount in the previous calendar year increased by one thousand dollars or a higher amount if such higher amount is necessary to adjust for inflation. Inflation is measured by the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index, or a

successor index, for Denver-Aurora-Lakewood for all items paid for by urban consumers. The division may investigate a wage complaint made on behalf of a group of similarly situated employees. If the division declines to investigate a group complaint, similarly situated employees may consent in writing to participate as parties to that complaint, and the division may pursue a direct investigation informed by and concurrent with that complaint. The division shall initiate the administrative procedure by sending a notice of complaint to the employer by mail or electronic means in accordance with rules as the director may promulgate when the complaint states a claim for relief. The notice of the complaint must include:

- (A) The name of the complainant;
- (B) The nature of the complaint; and
- (C) The amount for which the employer may be liable, including any potential fines or penalties.

(II) An employer must respond within fourteen days after the complaint is sent.

(III) Repealed.

(b) If the division does not find a violation based on the wage complaint and any response, including the failure by the employee to pursue the wage complaint, the division shall issue a notice of the dismissal of the complaint and send the notice to all interested parties. The notice must set forth the employee's right to any other relief available under this section or section 8-4-111.5.

(c) (I) If the division determines that an employer has violated this article 4 for nonpayment of wages or compensation, the division shall issue a citation and notice of assessment for the amount determined that is owed, which amount must include all wages and compensation owed, penalties pursuant to section 8-4-109, and any fines pursuant to section 8-4-113.

(II) The division shall notify the worker and employee protection unit in the department of law created in section 24-31-1302, at least once every six months, of any determinations pursuant to this subsection (2)(c) that were based, in whole or in part, on a finding that the employer misclassified one or more employees as independent contractors.

(d) To encourage compliance by the employer, if the employer pays the employee all wages and compensation owed within fourteen days after the citation and notice of assessment is sent to the employer, the division may waive or reduce any fines imposed pursuant to section 8-4-113 (1) and reduce by up to fifty percent penalties imposed pursuant to section 8-4-109.

(e) Upon payment by an employer, and acceptance by an employee, of all wages, compensation, and penalties assessed by the division in a citation and notice of assessment issued to the employer, the payment shall constitute a full and complete satisfaction by the employer and bar the employee from initiating or pursuing any civil action or other

administrative proceeding based on the wage complaint addressed by the citation and notice of assessment.

(f) If an employer fails to pay an employee the amount the division determines, pursuant to subsection (2)(c) of this section, or a hearing officer determines, pursuant to section 8-4-111.5, to be owed within sixty days after the division's determination or the hearing officer's decision, whichever is applicable, the following may be recovered from the employer:

(I) Attorney fees incurred in pursuing a civil action to enforce the division's determination or the hearing officer's decision;

(II) An additional fine equal to fifty percent of the amount determined pursuant to subsection (2)(c) of this section; and

(III) A penalty equal to the greater of fifty percent of the amount determined pursuant to subsection (2)(c) of this section or three thousand dollars.

(3) An employee who has filed a wage complaint with the division pursuant to subsection (2) of this section may elect to terminate the division's administrative procedure within thirty-five days after the issuance of the determination of compliance or citation and notice of assessment by providing a notice to the division. An employee who terminates the division's administrative procedure preserves any private right of action the employee may have. Upon receipt of the notice, the division shall immediately discontinue its action against the employer and revoke any citation and notice of assessment sent.

(4) Except for an appeal pursuant to section 8-4-111.5 (5) or as stated in a citation, notice of assessment, or order filed with the court pursuant to section 8-4-113 (2), any determination made by the division pursuant to this article, or any offer of payment by the employer of the wages made during or in conjunction with a proceeding of the division, is not admissible in any court action.

(5) The division's notice to the employer of a complaint filed pursuant to subsection (2) of this section satisfies the requirement of a written demand as described in section 8-4-109 (3)(a).

(6) Nothing in this section shall be construed to limit the right of the division to pursue any action available with respect to an employee that is identified as a result of a wage complaint or with respect to an employer in the absence of a wage complaint.

(7) Nothing in this section shall be construed to limit the right of the employee to pursue any civil action or administrative proceeding for any claims other than those considered by the division in the employee's wage complaint. The claims considered by the division in the employee's wage complaint are subject to the limitations set forth in paragraph (e) of subsection (2) of this section and subsection (3) of this section.

(8) Nothing in this article 4 limits:

(a) The authority of the district attorney of any county or city and county, or a person delegated authority by a county or city and county to prosecute criminal offenses or enforce laws or ordinances related to the payments of wages, to:

(I) Prosecute actions for violations of this article 4 that may come to the district attorney's or the delegated person's knowledge; or

(II) Enforce this article 4 independently and without specific direction of the director; or

(b) The right of any wage claimant to sue directly or through an assignee for any wages or penalty or other relief available pursuant to this article 4.

(9) A city, county, or city and county may enact and enforce laws related to the payment of wages for work performed within its jurisdiction if the laws do not diminish the protections or benefits to employees provided in this article 4.

Source: **L. 2003:** Entire article amended with relocations, p. 1858, § 1, effective August 6. **L. 2014:** Entire section amended, (SB 14-005), ch. 276, p. 1114, § 5, effective May 29. **L. 2022:** (1), IP(2)(a)(I), and (2)(c) amended and (2)(f) added, (SB 22-161), ch. 370, p. 2631, § 9, effective January 1, 2023. **L. 2025:** (1)(a)(II), IP(2)(a)(I), and (8) amended, (1)(a.5) and (9) added, and (2)(a)(III) repealed, (HB 25-1001), ch. 228, p. 1041, § 5, effective August 6.

Editor's note: Subsection (2) is similar to former § 8-4-112 as it existed prior to 2003.

Cross references: For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

8-4-111.5. Hearing officer review and appeals of administrative actions.

(1) Pursuant to policies established by the director by rule, any interested party who is dissatisfied with the division's decision on a wage complaint filed pursuant to section 8-4-111 (2) may file a request for a hearing within thirty-five days after the division's decision is sent. If no request is filed within the thirty-five-day period, the division's decision is final.

(2) (a) If a request is filed pursuant to subsection (1) of this section, the director shall designate a hearing officer. The hearing officer shall have the power and authority to call, preside at, and conduct hearings. In the discharge of the duties imposed by this article, the hearing officer has the power to administer oaths and affirmations, take depositions, certify to official acts, permit parties to participate by telephone, and issue subpoenas to compel the attendance of

witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim pursuant to this article.

(b) (I) In case of a failure to obey a subpoena issued to any person by the hearing officer, upon application by the division or its duly authorized representative, any court of this state has jurisdiction to issue to the person an order requiring him or her to appear before the hearing officer to produce evidence or give testimony touching the matter under investigation or in question. The court may issue an order of contempt to a person who fails to obey the order.

(II) It is a petty offense for a person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records in obedience to a subpoena of the hearing officer. Each day the failure or refusal continues is a separate offense.

(c) A person may not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before a hearing officer or in obedience to the subpoena of the hearing officer on the ground that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate the person or subject the person to a penalty or forfeiture. But a person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

(3) (a) The hearing officer, after affording all interested parties a reasonable opportunity for a fair hearing pursuant to the provisions of this article and the administrative procedures of the division, shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order.

(b) Evidence and requirements of proof in a hearing conducted pursuant to this section must conform, to the extent practicable, with those in civil nonjury cases in the district courts of this state. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person conducting the hearing may receive and consider evidence not admissible under such rules if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and must be noted in the record. The hearing officer shall give effect to the rules of privilege recognized by law. He or she shall exclude incompetent and unduly repetitious evidence. The hearing officer may accept documentary evidence in the form of a copy or excerpt if the original is not readily available; except that, upon request, the party shall be given an opportunity to compare the copy with the original. The division may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented. The provisions of the "State Administrative Procedure Act", article 4 of title 24,

C.R.S., and particularly section 24-4-105, C.R.S., do not apply to hearings under this article. However, the rule-making provisions of section 24-4-103, C.R.S., shall apply to this article.

(c) When the same or substantially similar evidence is relevant and material to the matters at issue in claims by more than one individual or in claims by a single individual with respect to two or more claimed violations, if, in the judgment of the hearing officer, consolidation of one or more proceedings would not prejudice any interested party, the hearing officer may:

- (I) Conduct hearings at the same time and place;
- (II) Conduct joint hearings;
- (III) Make a single record of the proceedings; and
- (IV) Consider evidence introduced with respect to one proceeding as if introduced in the others.

(d) The division shall keep a full and complete record of all proceedings in connection with the wage complaint. All testimony at any hearing upon a wage complaint must be recorded but need not be transcribed unless the wage complaint is presented for further review. The division shall promptly provide all interested parties with copies of the hearing officer's decision.

(4) For the convenience or necessity of the employee or the employer, the division shall permit parties to participate in hearings by telephone, including in situations in which the parties would otherwise be required to travel to locations of the division from outside the general vicinity of such locations.

(5) Any party to the administrative proceeding may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five days after the date of mailing of the decision by the division. The hearing officer's decision constitutes a final agency action pursuant to section 24-4-106, C.R.S. Judicial review is limited to appeal briefs and the record designated on appeal.

Source: L. 2014: Entire section added, (SB 14-005), ch. 276, p. 1116, § 6, effective May 29.
L. 2021: (2)(b)(II) amended, (SB 21-271), ch. 462, p. 3140, § 86, effective March 1, 2022.

Cross references: For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

ANNOTATION

Subsection (5) limits a district court's jurisdiction over an appeal filed by a party more than 35 days after the division has mailed a decision, but only if the

division informed that party of when the decision was mailed. *Bartenders & More v. Dept. of Labor*, 2023 COA 123, 545 P.3d 975.

8-4-112. Enforcement of director subpoenas.

All courts shall take judicial notice of the seal of the director. Obedience to subpoenas issued by the director or his or her duly authorized representative shall be enforced by the courts in any county or city and county, as provided in section 24-4-105 (5), C.R.S., if said subpoenas do not call for any appearance at a distance greater than one hundred miles.

Source: L. 2003: Entire article amended with relocations, p. 1859, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-113 as it existed prior to 2003, and the former § 8-4-112 was relocated to § 8-4-111 (2).

8-4-113. Fines pursuant to enforcement - wage theft enforcement fund - created - administrative lien and levy of employer assets - wage claim payments from the fund - definition - rules.

(1) (a) (I) (A) Except as provided in subsection (1)(a)(I)(B) of this section, if a case against an employer is enforced pursuant to section 8-4-111, any employer who without good faith legal justification fails to pay the wages of each of the employer's employees shall forfeit to the people of the state of Colorado a fine in an amount determined by the director or hearing officer but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable.

(B) For an agricultural employer, as defined in section 8-3-104 (1), who, without a good faith legal justification, willfully fails to pay the wages of each of the agricultural employer's employees at least three times in a five-year period, the total amount forfeited to the people of the state of Colorado pursuant to subsection (1)(a)(I)(A) of this section may be increased by ten percent.

(I.5) An employer found to have misclassified an employee as a nonemployee in a way that may affect a wage and hour payment or reporting obligation under a state, federal, or local law, rule, or regulation shall pay a fine in the following amounts, increased by the director by rule by January 1, 2028, and by rule by January 1 every other year based on the prior two years' increase,

if any, in the United States department of labor's bureau of labor statistics consumer price index, or a successor index, for Denver-Aurora-Lakewood for urban wage earners and clerical workers, per employee, in addition to any other relief ordered:

- (A) For a willful violation, five thousand dollars;
 - (B) For a violation not remedied within sixty days after the division's finding, ten thousand dollars;
 - (C) For a second or subsequent willful violation within five years, twenty-five thousand dollars; or
 - (D) For a second or subsequent willful violation not remedied within sixty days after the division's finding, fifty thousand dollars;
 - (E) For an agricultural employer, as defined in section 8-3-104 (1), with a third or subsequent willful violation within five years, the fine under subsection (1)(a)(I.5)(C) of this section is increased by twenty thousand dollars; and
 - (F) For an agricultural employer, as defined in section 8-3-104 (1), with a third or subsequent willful violation that is not remedied within sixty days after the division's finding, the fine under subsection (1)(a)(I.5)(D) of this section is increased by forty thousand dollars.
- (II) The division may collect the fine imposed pursuant to this subsection (1)(a) through its citation and notice of assessment issued pursuant to section 8-4-111 (2) or after a hearing conducted pursuant to section 8-4-111.5.
- (b) The director or hearing officer shall impose a fine of two hundred fifty dollars on an employer who fails to respond to a notice of complaint or to any other notice from the division to which a response is required. The director or hearing officer may waive or reduce the fine only if the director or hearing officer finds good cause for an extension of the time for the employer to file the response.
- (2) (a) The division may, and, on or after January 1, 2023, at the request of a worker shall, file a certified copy of any citation, notice of assessment, or order imposing wages due, fines, penalties, or other relief pursuant to this article 4 with the clerk of any court having jurisdiction over the parties at any time after the entry of the citation, notice, or order. The division may file one certified copy of the citation, notice, or order for all amounts owed to, or for other relief for, all employees.
- (b) The clerk of the court shall record the citation, notice, or order in the judgment book of the court and make an entry in the judgment docket. Upon recording, the citation, notice of assessment, or order has the effect of and may be executed as a judgment of the court.

(c) (I) Upon recording pursuant to subsection (2)(b) of this section, the judgment is sufficient to support the issuance of writs of garnishment in the manner provided by law in the case of a judgment that is wholly or partially unsatisfied.

(II) The court shall mail a copy of the judgment to the employer within three days after the division has filed the citation, notice, or order with the clerk of the court.

(3) (a) The division shall transmit all fines collected for the state pursuant to this section or section 8-1-114 (2), 8-1-116 (2), 8-1-117 (2), 8-1-140 (2), 8-12-115 (4)(c), or 8-12-116 (2) or (4) to the state treasurer, who shall credit the money to the wage theft enforcement fund, which fund is created and referred to in this section as the "fund". The money in the fund may be used by the division to make payments to employees for unpaid liabilities for wage law violations pursuant to subsection (5) of this section and for the division's direct and indirect costs associated with implementing this article 4.

(b) The state treasurer may invest any money in the fund not expended for the purpose of this article 4 as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of money in the fund to the fund. Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year remains in the fund and must not be credited or transferred to the general fund or another fund.

(c) The money in the fund is:

(I) Subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing this article 4; and

(II) Continuously appropriated to the division for the purpose of making payments to employees for unpaid liabilities for wage law violations pursuant to subsection (5) of this section.

(d) The limitations specified in section 24-75-402 do not apply to the fund.

(4) (a) On or after January 1, 2023, if an employer fails to pay wages determined to be due to the employer's employees or fines or penalties determined to be due pursuant to this article 4 or article 6 or 12 of this title 8 or other articles authorizing investigation of alleged violations of employee protections, within sixty 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 other person that has possession, custody, or control of the employer's assets. The division may issue the notice of administrative lien and levy when an employer is past due on paying wages determined to be due to its employees and any fines or penalties determined to be due pursuant to this article 4 or article 6 or 12 of this title 8 without an order staying or reversing the applicable deadline for payment. The notice must include the following statements and information:

(I) The name and address of the person that has possession, custody, or control of the employer's assets;

(II) The employer's name, last-known address, and taxpayer identification number, if known;

(III) The total amount owed for past-due wages, fines, and penalties, as identified by the division as provided in this article 4;

(IV) The names of all employees determined to be owed wages or penalties and the amounts due to each named employee;

(V) A statement that:

(A) The notice of administrative lien and levy takes effect and is superior to any other lien on the same assets that is filed later in time;

(B) Unless the division consents to an earlier disposition, the person may not transfer or dispose of the assets in the possession, custody, or control of the person from the date the person received the notice until further order; and

(C) A person that receives notice pursuant to this subsection (4) and that transfers or disposes of the assets after receipt of the notice is liable for the amount of the past-due wages, fines, and penalties owed by the employer, to the extent of the value of the transferred or disposed of assets;

(VI) Instructions on the remittance, transmission, or transfer of the withheld or surrendered amounts or other assets, including the requirement that each check, remittance, transmission, or transfer:

(A) For past-due wages and penalties, be payable to, transmitted to, or transferred to the employee, employees, payee, or transferee designated by the division in the notice and sent to the address indicated in the notice or otherwise transmitted or transferred as specified in the notice;

(B) For fines, be payable to, transmitted to, or transferred to the division or other payee or transferee designated by the division in the notice and sent to the address indicated in the notice or otherwise transmitted or transferred as specified in the notice;

(C) Be surrendered within thirty days after the date of the notice of the lien and levy; and

(D) Include the division case number on the face of the check, remittance, transmission, or transfer;

(VII) A statement that, if insufficient assets are available to cover all amounts determined to be owed by the employer, the person must first pay wages and penalties determined to be due to the employee or employees and thereafter pay fines determined to be owed to the state;

(VIII) A statement that, if no assets are available for surrender, the person must return the remittance notice within thirty days after the date of the notice of the lien and levy; and

(IX) A statement that the administrative lien and levy is automatically inactivated once the person returns the remittance notice or surrenders the assets held by the person.

(b) (I) In order to attach and collect an employer's assets that are in the possession, custody, or control of another person for purposes of collecting past-due wages, fines, and penalties, the division is authorized to serve, by first-class or overnight mail, by personal delivery, or, if mutually agreed upon, through electronic means published by the person, a notice of administrative lien and levy on any person that has possession, custody, or control of the employer's assets. A notice of administrative lien and levy is effective if it is delivered or mailed to the principal office or any branch office of the person that has possession, custody, or control of the employer's assets.

(II) The administrative lien and levy applies against all assets of the employer that are in the possession, custody, or control of the person served with the notice at the time of, and within sixty days after, receipt of the notice.

(III) The division shall provide a copy of the administrative lien and levy to the employer and shall include information on the employer's right to file an applicable exception, exemption, or appeal, as specified by the director by rule, including an exception, exemption, or appeal for custodial accounts pursuant to section 11-50-110, the earnings limitations set forth in section 13-54-104 (3), or the appeal policy for jointly owned or shared accounts.

(IV) Upon satisfaction of the past-due wage, fine, or penalty obligations giving rise to the administrative lien and levy, the employer may request and be provided confirmation that the lien is extinguished.

(c) This subsection (4) applies to all past-due wage, fine, and penalty obligations ordered as part of any proceeding, regardless of when the order was entered, and all employers that owe wages, fines, or penalties are subject to notice of administrative lien and levy as described in this subsection (4).

(d) The director may adopt rules as necessary to implement this subsection (4).

(e) As used in this subsection (4), "asset" means any:

(I) Real, intangible, or personal property of an employer;

(II) An employer's right to real, intangible, or personal property;

(III) Payments due to and accounts receivable of an employer; and

(IV) Credits or debts involving the employer.

(5) (a) On and after April 1, 2024, if an employer fails to pay an employee an amount of wages, compensation, or other monetary relief owed the employee, as determined by the division pursuant to this article 4 or article 6 or 12 of this title 8 or as decided by a hearing officer pursuant to section 8-4-111.5, within one hundred twenty days after the division's determination, the hearing officer's decision, or the expiration of an order from the division, the hearing officer, or a court staying or postponing the employer's payment obligation, whichever is later, the division may disburse the amount of wages, compensation, or other monetary relief determined to be owed the employee, subject to available resources in the fund and the division's prioritization, from the fund to the employee.

(b) If the division disburses payment to an employee from the fund pursuant to this subsection (5):

(I) The employee may not recover that payment amount from the employer;

(II) The division replaces the employee as the creditor of the employer for the amount of the payment, the division may continue to pursue payment from the employer pursuant to section 8-4-111 and this section, and any money recovered from the employer toward the amount disbursed to the employee must be credited to the fund; and

(III) The division shall, to the extent necessary, supplement or amend any documents filed pursuant to an administrative claim or court action regarding the employer's debt to reflect any change in the amount and the creditor of the debt resulting from payment pursuant to this subsection (5).

(c) On or before December 29, 2023, the division shall promulgate rules specifying the procedures and criteria for employees to submit information and request payment pursuant to this subsection (5), specifying the procedures and criteria for the division to review, evaluate, and resolve employee payment requests, and as necessary to implement this subsection (5).

Source: L. 2003: Entire article amended with relocations, p. 1859, § 1, effective August 6. **L. 2014:** Entire section amended, (SB 14-005), ch. 276, p. 1119, § 7, effective January 1, 2015. **L. 2022:** Entire section amended, (SB 22-161), ch. 370, p. 2633, § 10, effective August 10. **L. 2023:** (3)(a) amended and (3)(c), (3)(d), and (5) added, (SB 23-231), ch. 79, p. 283, § 1, effective April 17. **L. 2024:** (3)(a), IP(4)(a), and (5)(a) amended, (HB 24-1095), ch. 378, p. 2566, § 4, effective January 1, 2025. **L. 2025:** (1)(a)(I.5) added and (5)(a) amended, (HB 25-1001), ch. 228, p. 1043, § 6, effective August 6. **L. 2026:** (1)(a)(I) amended and (1)(a)(I.5)(E) and (1)(a)(I.5)(F) added, (SB 26-121), ch. 84, p. 335, § 2, effective May 4.

Editor's note: (1) This section is similar to former § 8-4-109 as it existed prior to 2003, and the former § 8-4-113 was relocated to § 8-4-112.

(2) Section 3 of chapter 84 (SB 26-121), Session Laws of Colorado 2026, provides that the act changing this section applies to time worked and contracts entered into or renewed on or after May 4, 2026.

Cross references: For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

8-4-114. Criminal penalties.

(1) Any employer who violates the provisions of section 8-4-103 (6) commits:

- (a) A petty offense if the amount is less than three hundred dollars;
- (b) A class 2 misdemeanor if the amount is three hundred dollars or more but less than one thousand dollars;
- (c) A class 1 misdemeanor if the amount is one thousand dollars or more but less than two thousand dollars;
- (d) A class 6 felony if the amount is two thousand dollars or more but less than five thousand dollars;
- (e) A class 5 felony if the amount is five thousand dollars or more but less than twenty thousand dollars;
- (f) A class 4 felony if the amount is twenty thousand dollars or more but less than one hundred thousand dollars;
- (g) A class 3 felony if the amount is one hundred thousand dollars or more but less than one million dollars; and
- (h) A class 2 felony if the amount is one million dollars or more.

(2) In addition to any other penalty imposed by this article 4, any employer or agent of an employer who willfully refuses to pay wages or compensation as provided in this article 4, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, coerce, delay, or defraud the person to whom such indebtedness is due, commits theft as defined in section 18-4-401.

Source: L. 2003: Entire article amended with relocations, p. 1859, § 1, effective August 6. **L. 2019:** (2) amended, (HB 19-1267), ch. 182, p. 2059, § 3, effective January 1, 2020. **L. 2021:** (1) amended, (SB 21-271), ch. 462, p. 3140, § 87, effective March 1, 2022.

Editor's note: This section is similar to former §§ 8-4-116 and 8-4-117 as they existed prior to 2003, and the former § 8-4-114 was repealed.

Cross references: (1) For the penalty for a petty offense, see § 18-1.3-503; for the penalty for a class 1 or class 2 misdemeanor, see § 18-1.3-501; and for the penalty for a class 2, class 3, class 4, class 5, or class 6 felony, see § 18-1.3-401.

(2) For the legislative declaration in HB 19-1267, see section 1 of chapter 182, Session Laws of Colorado 2019.

8-4-115. Certificate of registration required.

No person shall engage in activities as a field labor contractor unless the person first obtains a certificate of registration from the division and unless such certificate is in full force and effect and in such person's immediate possession.

Source: L. 2003: Entire article amended with relocations, p. 1860, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-118 as it existed prior to 2003, and the former § 8-4-115 was relocated to § 8-4-103 (6).

8-4-116. Issuance of certificate of registration.

(1) The director, after appropriate investigation, shall issue a certificate of registration to any person who:

(a) Has executed and filed with the director a written application subscribed and sworn to by the applicant containing such information concerning his or her conduct and method of operation as a field labor contractor as the director may require in order to effectively carry out the provisions of this article;

(b) Has consented to designation of the director as the agent available to accept service of process for any action against such field labor contractor at any and all times when such field labor contractor has departed from the jurisdiction of this state or has become unavailable to accept service;

(c) Has demonstrated evidence to the director that he or she has satisfied the insurance requirements of articles 40 to 47 of this title.

(2) Upon notice and hearing in accordance with rules prescribed by the director, the director may refuse to issue and may suspend, revoke, or refuse to renew a certificate of registration of any field labor contractor if the director finds that such field labor contractor:

(a) Knowingly has made any misrepresentation or false statement in his or her application for a certificate of registration or any renewal thereof;

(b) Knowingly has given false or misleading information to any migratory laborer concerning the terms, conditions, or existence of agricultural employment;

(c) Has failed, without justification, to perform agreements entered into or to comply with arrangements made with farm operators;

(d) Has failed, without justification, to comply with the terms of any working arrangements he or she has made with migratory laborers;

(e) Has permitted his or her insurance maintained pursuant to the requirements of paragraph (c) of subsection (1) of this section to terminate, lapse, or otherwise become inoperative;

(f) Is not in fact the real party in interest in any such application or certificate of registration and that the real party in interest is a person, firm, partnership, association, or corporation which previously has been denied a certificate of registration; has had a certificate of registration suspended or revoked; or which does not presently qualify for a certificate of registration.

Source: L. 2003: Entire article amended with relocations, p. 1860, § 1, effective August 6.

Editor's note: (1) This section is similar to former § 8-4-119 as it existed prior to 2003, and the former § 8-4-116 was relocated to § 8-4-114 (1).

(2) Articles 40 to 47 of this title 8, referenced in subsection (1)(c), are the provisions of the "Workers' Compensation Act of Colorado".

8-4-117. Additional obligations.

(1) Every field labor contractor shall:

(a) Carry a certificate of registration at all times while engaging in activities as a field labor contractor and exhibit the same to all persons with whom he or she intends to deal in the capacity of a field labor contractor;

(b) Ascertain and disclose in writing to each migratory laborer, in a language in which the migratory laborer is fluent at the time the migratory laborer is recruited, the following information:

(I) The area of employment;

(II) The crops and operations on which the migratory laborer may be employed;

(III) Transportation, housing, and insurance to be provided to the migratory laborer;

(IV) The wage rate to be paid;

(V) The charges by the field labor contractor for his or her services; and

(VI) The existence of any strikes at the place of contracted employment;

(c) Promptly pay or deliver, when due to the migratory laborer entitled thereto, all moneys or other things of value entrusted to the field labor contractor by or on behalf of such migratory laborer.

Source: L. 2003: Entire article amended with relocations, p. 1861, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-120 as it existed prior to 2003, and the former § 8-4-117 was relocated to § 8-4-114 (2).

8-4-118. Authority to obtain information.

The director or the director's designated representative may investigate and gather data pertinent to matters that may aid in carrying out the provisions of this article. In any case where a complaint has been filed with the director or the director's designated representative regarding a violation of this article, or where the director has reasonable grounds to believe that a field labor contractor has violated provisions of this article, the director or the director's designated representative may investigate and issue subpoenas as provided by section 8-4-112 requiring the

attendance and testimony of any witness or the production of any evidence in connection with such investigation.

Source: L. 2003: Entire article amended with relocations, p. 1861, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-121 as it existed prior to 2003, and the former § 8-4-118 was relocated to § 8-4-115.

8-4-119. Penalty provisions.

(1) Any field labor contractor who commits a violation of any provision of this article or implementing regulation shall be subject to a civil penalty of not more than two hundred fifty dollars for each violation. The penalty shall be assessed by the director pursuant to a published schedule of penalties and after written notice and after an opportunity for hearing under procedures established by the director. This provision as to civil penalties shall not exclude the possibility of criminal penalties as set forth in this article.

(2) The director, in the director's discretion, may grant a reasonable period of time, but in no event longer than ten days after the day of notification, for correction of the violation. In the event the violation is corrected within that period, no penalty shall be imposed.

Source: L. 2003: Entire article amended with relocations, p. 1861, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-122 as it existed prior to 2003, and the former § 8-4-119 was relocated to § 8-4-116.

8-4-120. Discrimination and retaliation prohibited - employee protections - criminal penalties - civil remedies.

(1) An employer, or any other person that is regularly engaged in business or commercial activity that has contracted with an employer or worker, directly or indirectly, for labor from which such person is the beneficiary, shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate or retaliate against an employee or worker who has:

(a) Filed a complaint or instituted or caused to be instituted a proceeding under this article 4 or any other law or rule related to wages, hours, or employment of minors;

(b) Testified or provided other evidence, or may testify or provide other evidence, in a proceeding on behalf of the employee or another person regarding afforded protections under this article 4 or under any other law or rule related to wages, hours, or the employment of minors; or

(c) Raised concerns in good faith about compliance with or otherwise provided information as to legal rights and remedies available under this article 4 or any other law or rule related to wages or hours to any person.

(2) A person that violates this section commits a class 2 misdemeanor.

(3) (a) An employee or worker who alleges a violation of subsection (1) of this section may file a civil action in a court of competent jurisdiction against the employer alleged to have violated this section to seek legal and equitable relief as appropriate to remedy the violation, including:

(I) Back pay;

(II) Reinstatement of employment or, if reinstatement is not feasible, front pay;

(III) The payment of wages unlawfully withheld;

(IV) Interest on unpaid wages at a rate of twelve percent per annum from the date the wages were first due;

(V) The payment of a penalty of fifty dollars per day for each employee whose rights under this section were violated and for each day that the violation occurred or continued;

(VI) Liquidated damages in an amount equal to the greater of two times the amount of the unpaid wages or other lost pay or compensation or two thousand dollars;

(VII) Injunctive relief; and

(VIII) Compensatory damages for other economic or noneconomic loss or injury shown by competent evidence, which, to the extent within the meaning of section 24-34-405 (3)(c) and (3)(e), damages for emotional distress must not exceed the amounts specified in section 24-34-405 (3)(d).

(b) If an aggrieved person prevails in a civil action brought pursuant to this subsection (3), the court shall award the person reasonable attorney fees and costs.

(c) (I) In determining whether there has been retaliation as prohibited in subsection (1) of this section, a fact finder shall consider the time between an individual's exercise of a protected activity and an employer's adverse action. A period of ninety or fewer days between the exercise of a protected activity and the adverse action may, without more, be sufficient to find retaliatory

intent. Adverse action occurring more than ninety days after the exercise of a protected activity may also constitute retaliation.

(II) Any effort to use an individual's immigration status to in any manner discriminate or retaliate against an employee or worker who has engaged in activity described in subsection (1) of this section is a violation of this section.

(4) The division may investigate and enforce discrimination or retaliation prohibited by this article 4 or article 6 of this title 8 and, after investigation, may order the relief specified in subsection (3)(a) of this section and reasonable attorney fees and costs.

Source: L. 2003: Entire article amended with relocations, p. 1862, § 1, effective August 6. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3141, § 88, effective March 1, 2022. **L. 2022:** Entire section amended, (SB 22-161), ch. 370, p. 2636, § 11, effective August 10. **L. 2024:** (1)(a) amended, (HB 24-1095), ch. 378, p. 2567, § 5, effective January 1, 2025. **L. 2025:** Entire section amended, (HB 25-1001), ch. 228, p. 1044, § 7, effective August 6.

Editor's note: This section is similar to former § 8-4-124 as it existed prior to 2003, and the former § 8-4-120 was relocated to § 8-4-117.

Cross references: For the penalty for a class 2 misdemeanor, see § 18-1.3-501.

ANNOTATION

Employee unable to establish prima facie case of retaliation as he is unable to show that employer's counterclaims, which were filed in response to his wage claim

lawsuit and have an arguable basis cognizable in law, constitute an adverse employment action. *Ott v. ChaCha in Art LLC*, 506 F. Supp. 3d 1133 (D. Colo. 2020).

8-4-120.5. Implementation of House Bill 25-1001 - report on enforcement of wage hour laws to joint budget committee - repeal.

(1) Between August 1, 2027, and October 1, 2027, the division shall, using existing resources, report to the joint budget committee:

(a) The extent to which the division has fully implemented the enforcement of wage hour laws as enacted in House Bill 25-1001, enacted in 2025;

(b) The extent of staffing and resources required for the implementation of House Bill 25-1001, enacted in 2025, with a detailed explanation of the reasons for and status of any provision not fully implemented; and

(c) The number of complaints and employee investigations performed by the division following the enactment of House Bill 25-1001, enacted in 2025, compared to the number of complaints and employee investigations projected in the fiscal note prepared for House Bill 25-1001.

(2) This section is repealed, effective September 1, 2028.

Source: L. 2025: Entire section added, (HB 25-1001), ch. 228, p. 1046, § 8, effective August 6.

8-4-121. Nonwaiver of employee rights.

Any agreement, written or oral, by any employee purporting to waive or to modify such employee's rights in violation of this article shall be void.

Source: L. 2003: Entire article amended with relocations, p. 1862, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-125 as it existed prior to 2003, and the former § 8-4-121 was relocated to § 8-4-118.

ANNOTATION

Law reviews. For article, "Payment of Employee Vacation Time in Colorado", see 51 Colo. Law. 36 (May 2022).

Annotator's note. Since § 8-4-121 is similar to § 8-4-125 as it existed prior to the 2003 amendment to article 4, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

This section, by its plain language, voids any agreement, written or oral, that constitutes a waiver or modification of any employee's rights under the wage claim act. *Morris v. Towers Fin. Corp.*, 916 P.2d 678 (Colo. App. 1996).

The plain meaning of this section is that an agreement to arbitrate that conflicts with the rights established by the wage claim act cannot be enforced against the employee.

Lambdin v. Dist. Ct. of Arapahoe Cty., 903 P.2d 1126 (Colo. 1995).

The supremacy clause governs when the Federal Arbitration Act (FAA) applies to an employment contract and requires arbitration even in a wage claim act claim despite the firm state policy that wage claim act claims should not be subject to arbitration. Where a contract containing an arbitration clause evidences a transaction involving commerce, the FAA applies and the agreement to arbitrate must be enforced. Grohn v. Sisters of Charity Health, 960 P.2d 722 (Colo. App. 1998); Byerly v. Kirkpatrick Pettis Smith Polian, Inc., 996 P.2d 771 (Colo. App. 2000).

The FAA preempts this section to the extent that an agreement to arbitrate a dispute relating to employee compensation is not void and that public policy is not thereby offended. Byerly v. Kirkpatrick Pettis Smith Polian, Inc., 996 P.2d 771 (Colo. App. 2000).

Since wage claim act does not create a substantive right to compensation for labor and services performed, employee's right to compensation is governed by the

employment agreement and not by the statute; therefore, employment contract is not void under this section. Barnes v. Van Schaack Mortg., 787 P.2d 207 (Colo. App. 1990).

An agreement between employee and employer to deduct employer's costs of doing business from employee's wages was unenforceable. A salon's cost of hair care products did not qualify as "goods or services" under § 8-4-105 (1)(b). Thus, the salon unlawfully shifted its own costs of doing business to its employee through an agreement that deducted the cost of the hair care products from the employee's wages. Such an agreement contravenes the legislature's manifest intent to prevent contractual waiver or modification of an employer's mandatory obligations under this act. 303 Beauty Bar v. Div. of Labor Standards, 2025 COA 20, 568 P.3d 43.

Arbitration provision in an employment contract that denies the employee the right to a timely civil action in a Colorado court pursuant to § 8-2-123 is void. Lambdin v. Dist. Ct. of Arapahoe Ct., 903 P.2d 1126 (Colo. 1995).

8-4-122. Limitation of actions.

All actions brought pursuant to this article shall be commenced within two years after the cause of action accrues and not after that time; except that all actions brought for a willful violation of this article shall be commenced within three years after the cause of action accrues and not after that time.

Source: L. 2003: Entire article amended with relocations, p. 1862, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-126 as it existed prior to 2003, and the former § 8-4-122 was relocated to § 8-4-119.

ANNOTATION

A terminated employee may seek any wages or compensation that was unpaid at the time of termination pursuant to § 8-4-109. However, the right to seek such

wages or compensation is subject to the statute of limitations found in this section. *Hernandez v. Ray Domenico Farms, Inc.*, 2018 CO 15, 414 P.3d 700.

8-4-123. Termination of occupancy pursuant to contract of employment - legislative declaration.

(1) The general assembly hereby finds, determines, and declares that many businesses, such as nursing homes or building management companies, either desire or are required by law to have staff on premises at all times. As part of the compensation for such employees, many employers offer housing to employees. However, once that employment relationship ceases, it may become undesirable for such employees to occupy the premises for many reasons, including the safety of the employer's patients, clients, customers, or tenants. Under traditional landlord and tenant law, such employees may have established the technical or legal right to occupy the premises for a fixed term that continues far beyond the cessation of the employment relationship. However, in employment situations, such occupancy is not a tenancy, but a license to occupy the premises pursuant to an employment relationship. The occupancy of the premises by the employee is not entered into by the employer for the purpose of providing housing, but merely as a means to provide services to the employer's patients, clients, customers, or tenants. In certain cases, it may be necessary to curtail the occupancy of former employees in order to protect the rights or safety of an employer's tenants or patients.

(2) (a) Pursuant to a written agreement meeting the requirements of paragraph (b) of this subsection (2), a license to occupy the premises entered into as part of an employee's compensation may be terminated at any time after the employment relationship ceases between an employer and employee. A termination of a license to occupy the premises shall be effective three days after the service of written notice of termination of a license to occupy the premises.

(b) An agreement made pursuant to this section shall be in writing and shall include the following:

(I) The names of the employer and employee;

(II) A statement that the license to occupy the premises is provided to the employee as part of the employee's compensation and is subject to termination at any time after the employment relationship ceases;

(III) The address of the premises; and

(IV) The signature of both the employer and the employee.

(c) The notice of termination of a license to occupy the premises shall describe the premises and shall set forth the time when the license to occupy the premises will terminate. The notice shall be signed by the employer or the employer's agent or attorney.

(3) If an employee fails to vacate the premises within three days after the receipt of the notice of termination of the license to occupy the premises, the employer may contact the county sheriff to have the employee removed from the premises. The county sheriff shall remove the employee and any personal property of the employee from the premises upon the showing to the county sheriff of the notice of termination of the license to occupy the premises and agreement pursuant to which the license to occupy the premises was granted.

Source: L. 2003: Entire article amended with relocations, p. 1862, § 1, effective August 6.

Editor's note: This section is similar to former § 8-4-127 as it existed prior to 2003, and the former § 8-4-123 was relocated to § 8-4-110 (2).

8-4-124. Third-party food delivery services - prohibitions - penalties - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Retail food establishment" means a retail food establishment, as defined in section 25-4-1602 (14), that pays an annual license fee as required by section 25-4-1607. "Retail food establishment" does not include grocery stores or convenience stores.

(b) "Third-party delivery service platform" means a third-party food delivery service's online or mobile platform on which a consumer can view and order available products.

(c) "Third-party food delivery service" means any company or website, mobile application, or other internet service that offers or arranges for the sale and same-day delivery or same-day pickup of prepared food or beverages from a retail food establishment.

(2) A third-party food delivery service shall not take and arrange for the delivery or pickup of an order from a retail food establishment without the retail food establishment's consent.

(3) A retail food establishment included on a third-party delivery service platform in violation of subsection (2) of this section may bring an action in a court of competent jurisdiction for damages, a civil penalty not to exceed one thousand dollars per violation, and injunctive relief. The prevailing party in an action brought pursuant to this subsection (3) is entitled to reasonable attorney fees.

Source: L. 2021: Entire section added, (SB 21-035), ch. 208, p. 1083, § 1, effective September 7. **L. 2025:** (1)(a) amended, (SB 25-285), ch. 296, p. 1518, § 6, effective August 6.

8-4-125. Supplemental health-care staffing agencies - annual certification - contract restrictions - penalty - civil action - reporting - definitions.

- (1) As used in this section, unless the context otherwise requires:
- (a) "Department" means the department of labor and employment.
 - (b) "Health-care facility" means a facility licensed by the department of public health and environment pursuant to section 25-1.5-103 (1)(a).
 - (c) "Health-care worker" means a person employed by a supplemental health-care staffing agency for temporary placement in a health-care facility.
 - (d) "Health-care worker platform" or "platform" means any person, firm, corporation, partnership, or association that maintains a system or technology that provides a media or internet platform for a health-care worker to be listed and identified as available for hire by health-care facilities seeking health-care workers. Under a platform, the health-care facility sets the hourly rates and other terms of hire and the health-care worker, as an independent contractor and not as an employee or agent of the entity that maintains the platform, decides whether to agree to the hourly rates and other terms of hire.
 - (e) (I) "Supplemental health-care staffing agency" or "staffing agency" means an individual or type of organization, including any partnership, limited liability partnership, limited liability company, limited liability limited partnership, association, trust, joint stock company, insurance company, or corporation, whether domestic or foreign, engaged in the business of providing health-care workers who are employees of the staffing agency, and, for a fee, assigning them to temporary placements in health-care facilities.
 - (II) "Supplemental health-care staffing agency" does not include:
 - (A) An individual acting as an independent contractor who is only engaged in providing the individual's services on a temporary basis to health-care facilities; or

(B) A health-care worker platform.

(2) (a) It is unlawful for any person to operate a supplemental health-care staffing agency in this state without completing the staffing agency's initial certification and required annual certification with the department pursuant to section 8-70-114.

(b) Any person who violates this section commits a civil infraction and may be subject to fines determined by the department.

(c) On or before September 1, 2022, and September 1 each year thereafter, the department of public health and environment and the department of health care policy and financing shall provide the department with a list of all known names and contact information for supplemental health-care staffing agencies operating in the state.

(2.5) (a) In any contract or agreement between a supplemental health-care staffing agency and a health-care worker or health-care facility concerning the placement of a health-care worker who is a nursing professional licensed or certified pursuant to article 255 of title 12, except for liquidated damages, employment fees, or other compensation attributable to and chargeable for a thirty-calendar-day period commencing when the health-care worker is first placed at a health-care facility, it is unlawful for the supplemental health-care staffing agency to require the payment of liquidated damages, employment fees, or other compensation to the supplemental health-care staffing agency if the health-care facility hires the health-care worker as a permanent employee either prior to or after the termination of the contract or agreement with the supplemental health-care staffing agency.

(b) If a supplemental health-care staffing agency collects or attempts to collect liquidated damages, employment fees, or other compensation from a health-care worker or health-care facility in violation of subsection (2.5)(a) of this section, the health-care worker or health-care facility may bring an action in a court of competent jurisdiction for damages, a civil penalty not to exceed five thousand dollars per violation, and injunctive relief. The prevailing party to an action brought pursuant to this subsection (2.5)(b) is entitled to reasonable attorney fees.

(3) (a) No later than October 1, 2022, each supplemental health-care staffing agency shall maintain detailed data described in subsection (3)(b) of this section. By the deadlines established in this subsection (3)(a), each staffing agency shall provide reports to the department that contain the information and certifications set forth in subsection (3)(b) of this section. Beginning April 30, 2023, and continuing each April 30 thereafter, a staffing agency operating in the state shall provide a report covering the period between October 1 of the previous year and March 31 of the current year. For the reporting period between April 1 and September 30 of the current year, the staffing agency shall file a report annually, beginning October 31, 2023, and continuing each October 31 thereafter.

(b) At a minimum, a staffing agency's biannual reports required pursuant to subsection (3)(a) of this section must include:

- (I) The name of each direct and indirect owner of the staffing agency;
- (II) If the staffing agency's direct owner is a corporation, copies of the articles of incorporation and current bylaws;
- (III) A detailed listing of the average amount charged during each quarter of the reporting period to a health-care facility for each category of health-care worker providing services to the health-care facility;
- (IV) A detailed listing of the average amount paid during each quarter of the reporting period to health-care workers for their services for each category of health-care worker providing services;
- (V) The staffing agency's certification that each health-care worker contracted to a health-care facility during the reporting period had a current, unrestricted license or certification in good standing and met the training and continuing education standards for the position with the health-care facility throughout the entirety of the reporting period;
- (VI) The staffing agency's certification that each health-care worker contracted to a health-care facility had successfully completed all background checks required by federal and state law, rule, and regulation relating to the health-care position and health-care facility in which the health-care worker was placed during the reporting period; and
- (VII) The staffing agency's certification that the staffing agency maintained professional liability insurance throughout the entirety of the reporting period for each health-care worker contracted to a health-care facility during the reporting period.

(c) The department shall establish the manner and form of reporting pursuant to this subsection (3).

(4) (a) (I) The department shall impose a fine in the amount of five hundred dollars for a report required pursuant to subsection (3) of this section that:

- (A) Is not submitted within thirty days after the reporting deadline; or
- (B) The department deems noncompliant with the requirements of subsection (3) of this section.

(II) The department may waive the fine if the staffing agency is able to show good cause for the delay in submitting the report or for submitting a noncompliant report.

(b) The department shall send notice to each staffing agency that:

- (I) Has not submitted the required biannual report on or before the deadline; or

(II) Has not submitted a compliant report.

(c) If the staffing agency does not submit a compliant report within thirty days after the date of the department's notice of noncompliance, the department shall impose a fine of ten thousand dollars, and for a failure in any subsequent reporting period to timely submit a compliant report within thirty days after the department's notice of noncompliance, a fine of twenty thousand dollars. The department may waive or reduce the staffing agency's fine if the staffing agency is able to show good cause for delaying the submission of the report.

(d) The department shall transmit any penalties imposed and collected pursuant to this subsection (4) to the state treasurer, who shall credit the money to the wage theft enforcement fund created in section 8-4-113 (3).

(5) The department shall provide copies of the biannual reports required pursuant to subsection (3) of this section to the department of public health and environment and to the department of health care policy and financing for purposes of analyzing the information provided by the supplemental health-care staffing agencies and determining the need for regulation of staffing agencies.

Source: L. 2022: Entire section added, (SB 22-210), ch. 371, p. 2642, § 1, effective August 10. **L. 2023:** (2.5) added, (HB 23-1030), ch. 143, p. 613, § 1, effective May 1.

8-4-126. Cost and wage transparency from delivery network companies - notice requirements - deactivation requirements - enforcement - driver safety - task acceptance time - penalties - definitions - rules.

(1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Consumer" means an individual who uses a digital platform to order delivery services from a delivery network company.

(b) "Deactivate" or "deactivation" means conduct that a delivery network company engages in to materially restrict a driver's access to the digital platform for more than seventy-two hours, including blocking a driver's access to the digital platform, suspending a driver, or changing a driver's status from eligible to ineligible to provide delivery services through the delivery network company's digital platform.

(c) (I) "Delivery network company" or "DNC" means any person that sells the delivery of goods or services, including delivery provided as part of the sale of goods, in the state and that engages or dispatches delivery drivers through a digital platform.

(II) "Delivery network company" or "DNC" does not include a motor carrier of towed motor vehicles regulated by the public utilities commission pursuant to part 4 of article 10.1 of title 40 or a motor carrier of household goods regulated by the public utilities commission pursuant to part 5 of article 10.1 of title 40.

(d) "Delivery task" or "task" means the time spent, distance traveled, and route followed by a driver to provide delivery services to a consumer through a delivery network company, including traveling to a merchant's business; picking up food, beverages, or other goods for delivery; and taking and depositing the delivery at a different location, as requested. A delivery task may encompass multiple transactions.

(e) "Digital platform" means an online application, internet site, or system that a delivery network company uses to facilitate, manage, or facilitate and manage delivery services.

(f) "Driver" means an individual providing delivery services through a delivery network company's digital platform in a personal vehicle.

(g) "IRS mileage rate" means the federal internal revenue service's standard mileage rate for business use.

(h) "Merchant" means a third party that sells goods or services to consumers through a delivery network company.

(i) "Tip" means a gratuity that a consumer:

(I) Indicates through a digital platform as intended for direct payment to the driver; or

(II) Would reasonably expect to be paid in full to the driver.

(j) "Transaction" means an order that a consumer makes using a delivery network company's digital platform to request that a driver deliver food, beverages, or other goods from a merchant. A driver may pick up goods related to multiple transactions as part of a single delivery task.

(2) Consumer payments.

(a) On the same screen on which a DNC prompts a consumer to leave a tip for a driver, the DNC shall disclose in a manner prominently displayed on the screen the amount of money that the consumer paid or will pay for the transaction.

(b) A DNC shall not decrease the amount the DNC pays a driver for a delivery task based on the amount of a customer's tip for that delivery task.

(c) A DNC shall pay a driver all tips paid by a consumer.

(d) The information disclosed to consumers pursuant to this subsection (2) must be:

(I) Prominently displayed on the screen;

(II) In a font that is at least one and one-half times larger than the font used to present any other information on the screen; and

(III) Presented using design techniques intended to draw the eye to the information.

(3) Wage transparency to driver.

(a) Each time a DNC offers a delivery task to a driver who is compensated on a per-delivery-task or a per-transaction basis, but not to a driver who is compensated for a block of time for multiple deliveries, before the driver accepts the task, the DNC shall disclose to the driver the following information on a smartphone or similar screen in a clearly legible format:

(I) The estimated or actual amount the driver will earn for the delivery task, disaggregated to show the full and accurate amount of any tip or reimbursement;

(II) The number of transactions involved in the delivery task;

(III) The address or addresses where the food, beverages, or other goods must be picked up;

(IV) The cardinal and intercardinal direction from where the driver is required to pick up the food, beverages, or other goods to the locations where the food, beverages, or other goods must be delivered;

(V) The estimated or actual time the driver will spend on the delivery task; and

(VI) The estimated or actual distance the driver will travel for the delivery task.

(b) Within twenty-four hours after a driver completes a delivery task for which the driver was paid on a per-delivery-task or a per-transaction basis, or after such a delivery task is canceled, but not for a driver who is compensated for a block of time for multiple deliveries, a DNC must disclose to the driver by email or other mechanism that remains available to the driver for at least one year in a clearly legible format:

(I) The actual amount the driver was paid for the delivery task, disaggregated to show the amount of any tip or reimbursement;

(II) The full and accurate amount of any tip paid by the consumer;

(III) The actual time the driver spent on the delivery task;

(IV) The actual distance the driver traveled for the delivery task; and

(V) If the delivery task or a transaction was canceled, who initiated the cancellation.

(c) If a DNC compensates a driver for a block of time for multiple deliveries, the DNC shall prominently display on the screen, prior to the driver accepting the block of time, the minimum amount the DNC will pay the driver for completing deliveries during the specified block of time

and the address where the food, beverages, or other goods must be picked up, and prominently display the following information on the screen when the block of time begins:

- (I) The total number of deliveries to be completed during the specified block of time;
- (II) A reasonable estimate of the engaged time required to complete all assigned deliveries;
- (III) The range of time in which the deliveries can be completed;
- (IV) A reasonable estimate of the number of miles required to complete all deliveries;
- (V) The approximate pick-up and drop-off locations for all deliveries; and
- (VI) Clear information on which deliveries need to be completed within specific time windows.

(d) Within twenty-four hours after a driver completes a delivery task for which the driver was compensated for a block of time, or after such a delivery task is canceled, a DNC shall make the following disclosures to the driver by email or other mechanism that remains available to the driver for at least one year:

- (I) The actual amount the driver was paid for the delivery task, disaggregated to show the amount of any tip or reimbursement;
- (II) The full and accurate amount of any tip paid by the consumer;
- (III) The actual time the driver spent on the delivery task;
- (IV) The actual distance the driver traveled for the delivery task; and
- (V) If the delivery task or a transaction was canceled, who initiated the cancellation.

(e) (I) A DNC shall:

(A) Within thirty days after the end of each calendar quarter, provide to each driver, by email or through the digital platform, a disclosure identifying at least the total number of miles traveled to complete each delivery task through the DNC during the calendar quarter and the IRS mileage rate applicable for the calendar quarter; or

(B) Within thirty days after the end of each calendar month, provide to each driver, by email or through the digital platform, a disclosure identifying at least the total number of miles traveled to complete each delivery task through the DNC during the calendar month and the IRS mileage rate applicable for the calendar month.

(II) For each delivery task for which the driver was paid on a per-delivery-task or a per-transaction basis, but not for a driver who is compensated for a block of time for multiple deliveries, the DNC shall calculate the miles traveled to complete a delivery task as all miles

traveled from the location where the driver accepted a delivery task to the location where the driver dropped off the last item to be delivered as part of that delivery task.

(III) (A) For each delivery task that is compensated in a block of time for multiple deliveries, the DNC shall calculate the miles traveled to complete a delivery task from the pick-up location where the driver was directed to begin the delivery task to the location where the driver dropped off the last item to be delivered as part of that delivery task.

(B) For each delivery task that is compensated in a block of time for multiple deliveries, the DNC shall notify the driver that any additional miles the driver incurred traveling to the pick-up location where the driver was directed to begin the delivery task and traveling from the location where the driver was directed to make the last delivery may be eligible for tax mileage deductions under state and federal law.

(C) As part of the disclosures made pursuant to subsection (3)(e)(I) of this section, the DNC shall disclose to the driver that, for each delivery task that is compensated in a block of time for multiple deliveries, the mileage report only includes miles traveled from the location where the driver began the delivery task to the location where the driver dropped off the last item to be delivered as part of that delivery task.

(IV) As part of the disclosures made pursuant to subsection (3)(e)(I) of this section, the DNC may include a notice that this disclosure is not tax advice and that the driver should contact a tax professional.

(f) The information disclosed to a driver pursuant to this subsection (3) must be:

(I) Prominently displayed on the screen or in the email;

(II) In a font that is at least one and one-half times larger than the font used to present any other information on the screen or in the email; and

(III) Presented using design techniques intended to draw the eye to the information.

(4) **Contract transparency.**

(a) A DNC shall offer a driver a contract or changes to a contract on the digital platform and by email.

(b) A DNC shall include in a contract a table of contents describing the terms or sections of the contract on the first page of the contract.

(c) All material terms of a contract the DNC offers to a driver must be disclosed in plain language.

(d) When providing a new driver with a contract, a DNC shall prominently display the contract on the screen and email the contract at the time the driver applies to work for the DNC.

(e) When a DNC changes a contract or issues a new contract, the DNC shall:

(I) Email the contract to all drivers engaged on the digital platform at least fourteen days before the contract becomes enforceable; and

(II) Post the contract online, in the digital platform, or in another location that is available to the public on an ongoing basis for at least fourteen days before the contract becomes enforceable.

(f) A DNC shall provide drivers with contracts in English, Spanish, Arabic, and up to three additional languages commonly spoken by drivers in the state, as determined by the director.

(g) Once a driver agrees to a contract with the DNC, the DNC shall email the contract to the driver and make the signed contract continuously available to the driver on the digital platform.

(5) Account deactivation transparency - deactivation challenge procedure.

(a) A DNC shall develop and maintain an account deactivation policy. The policy must:

(I) Be in writing, which may be in an electronic format;

(II) Define what constitutes a violation that may result in an account deactivation and be specific enough for a driver to reasonably understand what constitutes a violation;

(III) Be provided to the driver prior to the driver providing delivery services through the DNC's digital platform; and

(IV) Be available to the driver in English, Spanish, Arabic, and up to three additional languages commonly spoken by DNC drivers in the state, as determined by the director.

(b) A DNC shall provide the account deactivation policy to the division in English, Spanish, Arabic, and up to three additional languages commonly spoken by drivers in the state, as determined by the director. The division shall post the DNC's account deactivation policy and any revisions to the DNC's account deactivation policy publicly on the division's website for at least thirty days before the deactivation policy becomes enforceable.

(c) A DNC shall not deactivate a driver unless the deactivation is consistent with the DNC's deactivation policy adopted and distributed in accordance with this subsection (5).

(d) A DNC shall provide a driver with written notice of an account deactivation in an electronic format via email, text message, or through the DNC's digital platform upon the effective date of the deactivation. A notice required by this section must include the following information:

(I) Sufficient information for the driver to reasonably understand the reasons for the account deactivation, including the provision of the DNC's account deactivation policy that was violated;

(II) The effective date of the account deactivation;

- (III) A description of the steps, if any, the driver can take to remedy the violation;
 - (IV) Notification of the driver's right to challenge the account deactivation pursuant to subsection (5)(e) of this section; and
 - (V) The DNC's process for challenging an account deactivation or a link to a description of that process.
- (e) (I) A driver has the right to challenge the driver's account deactivation through an internal account deactivation challenge procedure established by the DNC.
- (II) A DNC shall create an internal account deactivation challenge procedure that must be made available to the driver immediately upon notice of the driver's account deactivation and for up to thirty days after the date of the deactivation notice.
- (III) A DNC shall provide the DNC's internal account deactivation challenge procedure to the driver along with the deactivation notice provided pursuant to subsection (5)(d) of this section in a format that is readily accessible to the driver.
- (IV) A DNC shall review and respond to a driver's challenge to an account deactivation within fourteen days after receiving the challenge. A DNC's response to a driver's challenge to an account deactivation must include a written statement, which may be in an electronic format, providing one of the following:
- (A) A determination reaffirming the account deactivation, including a description of the steps, if any, the driver can take to remedy the violation, and a summary of the reasons that the account deactivation is reaffirmed;
 - (B) Any circumstances necessitating a delayed timeline for the DNC's response and an anticipated date for a response either reaffirming the account deactivation or reinstating the driver; or
 - (C) A determination that the driver did not violate the DNC's account deactivation policy and information regarding when the driver's access to the digital platform will be reinstated.
- (V) Following the conclusion of the internal account deactivation challenge procedure, the DNC must reinstate the driver's access to the digital platform if the DNC determines that the driver did not violate the DNC's account deactivation policy or that the driver corrected any violation. The DNC must reinstate the driver's access as soon as possible and no later than seventy-two hours following the DNC providing the written statement pursuant to subsection (5)(e)(IV) of this section.
- (f) This subsection (5) shall not be interpreted to require a DNC to provide a driver with any information that a DNC reasonably believes could compromise the safety or privacy of a consumer.

(6) **Driver safety.** Each time a DNC connects a consumer to a driver, the DNC shall prompt the consumer as a means to encourage the consumer to ensure driver safety upon arrival, including by ensuring a clear, well-lit, safe delivery path and ensuring all pets are properly secured.

(7) **Task acceptance time.**

(a) A DNC shall ensure all drivers have at least sixty seconds after a delivery task offer is displayed on the driver's smartphone or similar screen to decide whether or not to accept the offer.

(b) To ensure all drivers have the full amount of time to decide whether to accept a delivery task offer pursuant to subsection (8)(a) of this section, a DNC shall not penalize or retaliate against a driver for a failure to respond to a delivery task offer in a period of less than sixty seconds after displaying the offer on the driver's smartphone or similar screen, and a DNC shall not require or encourage the driver to respond to a delivery task offer in a period of less than sixty seconds after displaying the offer on the driver's smartphone or similar screen.

(8) **Penalties, fines, and enforcement.**

(a) If a DNC violates this section, the DNC may be subject to:

(I) Statutory damages in the amount of one thousand dollars, as determined by a court, in a civil action brought pursuant to subsection (8)(d) of this section on a per-consumer or a per-driver basis, which amount the DNC shall pay to the consumer or driver affected by the violation;

(II) A fine of one hundred dollars per violation, as determined by the director on a per-consumer or a per-driver basis, which amount the DNC shall pay to the division; and

(III) Injunctive relief pursuant to subsection (8)(d)(II) of this section.

(b) The division may investigate alleged violations in response to complaints filed or at the division's discretion.

(c) The director shall establish procedures for drivers and consumers to submit complaints to the division and for the division's investigations, hearings, and imposition of fines pursuant to this subsection (8).

(d) (I) A person aggrieved by a DNC's violation of this section may file a civil action against the DNC in the district court where:

(A) The person resides;

(B) The violation occurred; or

(C) The DNC has a physical place of business in the state.

- (II) The person filing the civil action may seek:
 - (A) Injunctive relief from the district court to compel a DNC to comply with this section;
 - (B) Statutory damages as specified in subsection (8)(a)(I) of this section; and
 - (C) Any actual damages sustained as a result of the violation.
- (e) The director shall transfer the fines collected pursuant to subsection (8)(a)(II) of this section to the general fund.
- (9) **Exemption.** A DNC need not comply with the provisions of this section with respect to drivers or delivery tasks performed by drivers who annually receive or will receive a federal form W-2 from the DNC reflecting all amounts earned by the driver while performing services dispatched or facilitated through the DNC's digital platform.
- (10) **Rules.** The director shall adopt rules necessary to implement this section.

Source: L. 2024: Entire section added, (HB 24-1129), ch. 383, p. 2606, § 1, effective August 7, 2024 (see editor's note).

Editor's note: Section 3 of chapter 383 (HB 24-1129), Session Laws of Colorado 2024, provides that subsections (2), (3), (4), (5), (6), and (9) take effect January 1, 2025.

8-4-127. Transportation network companies - disclosures to drivers - deactivation and suspension policies - disclosures to division - definitions - enforcement - rules.

- (1) **Definitions.** As used in this section, unless the context otherwise requires:
 - (a) "Available platform time" means the period when a driver is active on a transportation network company's digital platform while awaiting a transportation services request to come through the digital platform.
 - (b) "Commission" means the public utilities commission created in section 40-2-101.
 - (c) "Consumer" means an individual who uses a digital platform to order transportation services from a TNC.
 - (d) (I) "Consumer platform time" means the period of time when a driver is transporting one or more consumers or riders on a ride.

(II) "Consumer platform time", for shared rides, means the period of time commencing when the first consumer or rider enters a driver's vehicle and ending when the last consumer or rider exits the driver's vehicle.

(e) (I) "Deactivate" or "deactivation" means conduct that a TNC engages in to restrict a driver's access to the TNC's digital platform for seventy-two hours or more.

(II) "Deactivate" or "deactivation" includes blocking a driver's access to a digital platform, suspending a driver, or changing a driver's status from eligible to ineligible to provide transportation services for a TNC for seventy-two hours or more.

(f) "Digital platform" means an online application, an internet site, or a system, either of which a TNC uses to facilitate, manage, or facilitate and manage transportation services.

(g) (I) "Dispatch platform time" means the period of time between a driver's receipt of a request for a transportation task through the TNC's digital platform and the time when either the driver picks up a consumer or rider or when a consumer or the driver cancels the ride.

(II) "Dispatch platform time", for shared rides, means the period of time between a driver's receipt of the first request for a transportation task and the first consumer or rider pickup.

(h) "Driver" means a transportation network company driver as defined in section 40-10.1-602 (4).

(i) "Driver pay before expenses" means the total monthly amount that a TNC remits to a driver, disaggregated to show:

- (I) Pay for transportation tasks;
- (II) Pass-throughs;
- (III) Bonus or incentive pay; and
- (IV) Tips.

(j) (I) "Driver support organization" or "organization" means a membership-based and member-led nonprofit or labor organization:

(A) With a principal purpose to support drivers and that has consistently operated in Colorado for at least four years with that purpose;

(B) That is not funded, directly or indirectly, excessively influenced, or controlled by a TNC; and

(C) That is not affiliated with any other entity that is funded, directly or indirectly, excessively influenced, or controlled by a TNC.

(II) As used in this subsection (1)(j):

(A) "Excessive influence" includes receiving the identities or contact information of drivers from a TNC.

(B) "Funded, directly or indirectly" does not include receiving funds pursuant to subsection (6) of this section or a dues deduction as described in subsection (7) of this section.

(k) "Driver tips before expenses" means the total monthly amount of tips that consumers pay a TNC, that are intended as payment to the driver, and that the TNC remits to the driver.

(l) "IRS business mileage deduction rate" means the federal internal revenue service's prevailing mileage cost-deduction rate for business use.

(m) "Pass-through" means a sum that a TNC pays a driver to cover costs, such as tolls, that the driver incurs while performing work through a TNC's digital platform.

(n) "Rider" has the same meaning as "transportation network company rider" as defined in section 40-10.1-602 (5).

(o) (I) "Suspend" or "suspension" means conduct that a TNC engages in to block or restrict a driver's access to the digital platform for a period of less than seventy-two hours.

(II) "Suspend" or "suspension" includes:

(A) Blocking a driver's access to the digital platform;

(B) Suspending a driver; or

(C) Changing a driver's status from eligible to ineligible to provide transportation services for the TNC for less than seventy-two hours.

(p) "Tip" means a gratuity that a consumer:

(I) Indicates through a digital platform as intended for direct payment to a driver; or

(II) Would reasonably expect to be paid in full to a driver.

(q) "Transportation network company" or "TNC" has the meaning set forth in section 40-10.1-602 (3); except that the term does not include a TNC that:

(I) Either serves riders at least seventy-five percent of whom are under the age of eighteen or earns at least ninety percent of the TNC's revenue from contracts with a public or private school, the federal government, the state, or an agency or a political subdivision of the federal government or of the state;

(II) Has at least ninety percent of the TNC's drivers in compliance with the commission's rules promulgated pursuant to section 40-10.1-608 (3)(a);

(III) Attests that the TNC meets the requirements set forth in subsections (1)(q)(I) and (1)(q)(II) of this section and submits an attestation to the commission on or before January 1, 2025, and with each permit renewal application submitted to the commission pursuant to section 40-10.1-606; and

(IV) Discloses to a driver the destination and expected compensation for a ride before the driver accepts the ride for all transportation tasks provided through the TNC's digital platform.

(r) "Transportation services" has the same meaning as "transportation network company services" as defined in section 40-10.1-602 (6).

(s) "Transportation task" means a driver's provision of transportation services to a consumer or to one or more riders for whom a consumer orders transportation services through a TNC's digital platform.

(2) Effective date.

(a) On or before May 1, 2025, a transportation network company shall develop a deactivation and suspension policy in accordance with subsection (3) of this section.

(b) On and after June 1, 2025, a TNC:

(I) Shall comply with the deactivation and suspension requirements set forth in subsection (3) of this section; and

(II) Is subject to enforcement by the director pursuant to this article 4.

(3) Deactivation and suspension policy - disclosure - rules.

(a) On or before May 1, 2025, a transportation network company shall inform each driver of the TNC's deactivation and suspension policy and the types of violations that may warrant deactivation or suspension. The TNC's deactivation and suspension policy must:

(I) State that the deactivation and suspension policy is enforceable as a term of the TNC's contract with a driver;

(II) Clearly list the circumstances that constitute a violation that may warrant deactivation or suspension under the deactivation and suspension policy and indicate the specific consequences for each listed violation, including the consequences resulting in:

(A) Deactivation or suspension and the specific number of days or range of days for a deactivation or suspension; or

(B) Any other sanction;

(III) Describe fair, objective, and reasonable procedures for notifying a driver of a suspension or a deactivation and the reason for the suspension or deactivation. The procedures

need not require that the TNC provide the driver with a reason for the suspension or deactivation if the suspension or deactivation is the result of an allegation of assault or other egregious misconduct, including an allegation of sexual misconduct.

(IV) Consistent with subsection (5) of this section, describe fair, objective, and reasonable procedures for the reconsideration of a deactivation decision consistent with the requirements of subsection (4) of this section and the process by which a driver may request a deactivation reconsideration with the TNC.

(b) In addition to the requirements set forth in subsection (3)(a) of this section, a TNC's deactivation and suspension policy must be:

(I) Specific enough for a driver to understand what constitutes a violation of the policy and how to avoid violating the policy;

(II) Made available to a driver in an electronic format that is readily accessible by:

(A) Prominently displaying the policy and emailing the policy to a new driver at the time that the driver applies to work as a driver for the TNC;

(B) Emailing the policy to all drivers engaged on the digital platform at least fourteen days before the policy becomes enforceable; and

(C) Posting the policy online, in the digital platform, or in another location that is available to the public on an ongoing basis for at least fourteen days before the policy becomes enforceable;

(III) Made available in English, Spanish, Arabic, and up to three additional languages commonly spoken by TNC drivers in the state, as determined by the director by rule;

(IV) Sent to the division in each required language and made publicly available on the internet for at least fourteen days before the policy becomes enforceable. For any amendments made to a TNC's deactivation and suspension policy, the TNC shall comply with the requirements of this subsection (3).

(V) Set up to include a procedure for initiating a review of a driver for deactivation within seven business days after a transportation network company is notified through a complaint filed with the transportation network company or the public utilities commission or through contact by the office of the attorney general, a district attorney's office, or a law enforcement agency regarding an allegation against the driver of:

(A) A felony offense involving fraud, as described in article 5 of title 18;

(B) An offense involving unlawful sexual behavior, as defined in section 16-22-102 (9);

(C) A felony offense against property, as described in article 4 of title 18;

- (D) A felony crime of violence, as defined in section 18-1.3-406 (2);
 - (E) A felony offense involving domestic violence, as defined in section 18-6-800.3 (1);
 - (F) A felony offense involving stalking, as described in section 18-3-602; or
 - (G) A felony offense involving menacing, as described in section 18-3-206; and
- (VI) Set up to include meaningful human review of the permanent deactivation of a driver conducted pursuant to subsection (3)(b)(V) of this section.

(c) A TNC shall not deactivate or suspend a driver unless the deactivation or suspension is consistent with the TNC's deactivation and suspension policy, or amended deactivation and suspension policy, as written and distributed in accordance with this subsection (3).

(4) Deactivation - notice.

(a) Within twenty-four hours after a TNC suspends a driver, the TNC shall provide a written disclosure to the driver in the default language that the driver has selected in the TNC's digital platform. The written disclosure must describe the basis for the suspension and provide:

(I) Sufficient information for the driver to reasonably understand the reasons for the suspension; and

(II) A description of the steps that the driver may take, if any, to remedy the alleged violation of the TNC's deactivation and suspension policy.

(b) Within twenty-four hours after a TNC deactivates a driver, the TNC shall provide a written disclosure to the driver in the default language that the driver has selected in the TNC's digital platform. The written disclosure must describe the basis for the deactivation and provide:

(I) Sufficient information for the driver to reasonably understand the reasons for the deactivation;

(II) A description of the steps that the driver may take, if any, to remedy the alleged violation of the TNC's deactivation and suspension policy;

(III) A statement of the driver's right to challenge the deactivation through the TNC's internal deactivation review process outlined in subsection (5)(a) of this section and a link to a description of that internal process; and

(IV) The availability of driver support services at the driver support organization certified pursuant to subsection (6)(a) of this section, a notice that the certified driver support organization is independent of any TNC, and contact information for the certified driver support organization.

(c) A TNC shall send the disclosures required in accordance with this subsection (4) to a driver through the TNC's digital platform and via email or other mechanism that remains accessible to the driver for at least one year.

(5) Deactivation - internal process - reconsideration - investigations - reports.

(a) A driver who has been deactivated may, within thirty calendar days after receiving a written notice of deactivation pursuant to subsection (4)(b) of this section, challenge the deactivation with the TNC pursuant to the TNC's internal deactivation review process.

(b) A TNC shall conduct an internal deactivation reconsideration of a challenged deactivation within fourteen calendar days after the driver makes the written request for deactivation reconsideration; except that the TNC may notify the driver in writing of a continuance of the deactivation reconsideration if the driver has not provided sufficient evidence or documentation for consideration by the TNC or if circumstances outside of the TNC's control require additional time to reconsider the challenged deactivation.

(c) A TNC's internal deactivation review must:

(I) Require consideration of all relevant, available information;

(II) Be conducted in good faith; and

(III) Apply evenhandedly the TNC's deactivation policy, consistent with the TNC's interest in safe and efficient operations.

(d) The TNC's resolution of a driver's challenge to a deactivation must include a written statement that the TNC sends the driver through the TNC's digital platform and via email or other mechanism that the TNC reasonably expects will remain accessible to the driver for at least one year. The written statement must include:

(I) A determination affirming deactivation and including:

(A) A summary of the reasons for the deactivation;

(B) A description of the steps the driver may take, if any, to remedy the alleged violation; and

(C) Information about the driver's right to seek services from the driver support organization certified pursuant to subsection (6)(a) of this section and specific instructions on how to contact the certified driver support organization, including email and telephone contact information; or

(II) A determination that the driver did not violate the TNC's deactivation and suspension policy or that the driver remedied any violation of the policy, which determination must be accompanied by reactivation of the driver's account within twenty-four hours after the determination is made.

(6) Driver support organization - application - certification - budget - TNC payments - division oversight - rules.

(a) Certification of driver support organizations and quarterly budgets.

(I) Beginning January 1, 2025, until March 31, 2025, the division shall accept applications for certification from eligible driver support organizations and shall certify a single driver support organization for the three-year period beginning October 1, 2025, through September 30, 2028. The division shall certify a single driver support organization for each subsequent three-year period and shall begin accepting applications for the second three-year period in January 2028.

(II) (A) A driver support organization applying for certification from the division shall submit for review by the division a proposed annual budget. The driver support organization certified by the division shall also submit for review by the division a proposed annual budget for each year of the organization's three-year certification cycle.

(B) A driver support organization's proposed annual budget submitted pursuant to subsection (6)(a)(II)(A) of this section may be used only for educating TNC drivers and supporting drivers regarding deactivations in accordance with such organization's authority and responsibilities set forth in subsection (6)(b) of this section.

(C) A driver support organization's proposed total annual budget must not exceed seven cents per transportation task based on the previous year's total transportation tasks for all TNCs operating in the state, as adjusted for inflation by the director.

(III) In considering whether an organization is a driver support organization as defined in subsection (1)(j) of this section, whether the organization qualifies for certification, and whether to approve the organization's proposed annual budget, the division:

(A) Shall consider evidence submitted by the organization and any evidence submitted by the public, including any evidence submitted by other driver support organizations; and

(B) May request from the organization or from any TNC the number of drivers that the organization served in the state in the previous year and whether the driver support organization has, directly or indirectly, received support from a TNC.

(IV) The division may approve, reject, or require revision and resubmission of an application for certification or approval of a proposed annual budget.

(V) The division shall post each driver support organization's certification application and proposed annual budget on the division's website. The division shall not certify an organization or approve a proposed annual budget until at least thirty days after the division has posted the application or proposed budget.

(VI) In considering a driver support organization's proposed budget submitted pursuant to subsection (6)(a)(II)(A) of this section, the division shall consider the organization's record of serving deactivated drivers. Upon approving the certified driver support organization's proposed annual budget, the division shall direct each TNC to remit a quarterly share of the certified driver support organization's approved annual budget to the certified driver support organization within fifteen days after the end of each calendar quarter.

(VII) The certified driver support organization's annual budget may increase during the course of the organization's three-year certification period based on increases in transportation tasks and the extent of services that the driver support organization provided to drivers served by the driver support organization.

(VIII) Each TNC shall provide to the division the total number of annual transportation tasks beginning in the state in the preceding year within ninety days after August 7, 2024, and by January 15 in each following year.

(IX) Every six months during a driver support organization's certification period, the organization shall certify to the division that the organization continues to comply with the requirements of this section. To demonstrate its continued compliance, the organization shall submit to the division documentation and information regarding the number of drivers that the organization serves and the extent of its services. The organization shall not submit to the division a list of members or drivers served.

(X) The division may revoke a driver support organization's certification or alter or revoke the division's approval of the certified organization's budget at any time if clear and convincing evidence demonstrates that the organization:

(A) Is misallocating money it has received from a TNC pursuant to subsection (6)(a)(VI) of this section; or

(B) No longer qualifies as a driver support organization.

(XI) If a TNC elects to describe the per-trip amount allocated to the driver support organization annual budget on a consumer receipt, the TNC may only indicate that the deduction will be used in part to support the state's certified driver support organization.

(XII) Following the completion of each three-year certification period, the division may increase the per-trip amount that a TNC is required to pay pursuant to subsection (6)(a)(II)(C) of this section if the division determines that the increase is necessary to cover the certified driver support organization's costs and the increase does not exceed the rate of inflation during the previous three-year certification period.

(b) Certified driver support organization - TNC notice to drivers - organization responsibilities.

(I) On or before October 30, 2025, each TNC shall provide notice to each driver in the state the name of the driver support organization certified pursuant to subsection (6)(a) of this section. As part of the notice, the TNC shall also inform drivers:

(A) That the organization has been certified as a driver support organization and has met certain criteria as approved by the division;

(B) That the organization is approved by the state to represent drivers in the deactivation process and educate drivers, but that a driver is not required to authorize the organization to represent the driver; and

(C) Of the organization's contact information, including phone number, email address, web address, and physical address.

(II) On and after October 31, 2025, each TNC shall provide the notice described in subsection (6)(b)(I) of this section to:

(A) Each new driver before the driver engages in a transportation task for the TNC; and

(B) Any driver upon being suspended or deactivated.

(III) Pursuant to a written authorization from a driver who has been deactivated, the certified driver support organization may represent or support the driver through the procedures made available to the deactivated driver through the driver's contract with the TNC or otherwise made available under the law. An employee of the organization may provide such representation or support to a driver regardless of whether the employee is authorized to practice law in the state.

(IV) (A) The certified driver support organization is required to provide reasonable and fair representation to drivers based on the organization's approved annual budget and its reasonable assessment of each driver's case.

(B) The organization shall not deny reasonable representation to any driver in any manner that is arbitrary, discriminatory, or in bad faith.

(C) The organization shall not advance filing fees to drivers in any dispute related to a deactivation reconsideration or an appeal or action arising from a deactivation.

(D) In disputes related to a deactivation reconsideration or an appeal or action arising from a deactivation, prevailing drivers are entitled to recover filing fees.

(c) **Division rules.** The division may adopt rules to interpret and implement this subsection (6) and to ensure TNCs' and driver support organizations' compliance with this subsection (6).

(7) (a) **Driver support organization - voluntary dues deduction.** On or before September 1, 2025, a TNC shall provide a driver an opportunity to make a voluntary, per-trip deduction on

the driver's earnings to contribute to the certified driver support organization in an amount between one and one-half percent or three percent per ride if:

- (I) The organization is in good standing;
- (II) One hundred or more drivers on a TNC's digital platform have authorized such deduction and contribution to a specific driver support organization; and
- (III) The driver has expressly authorized the deduction in writing, which written authorization must include, at a minimum, sufficient information to identify the driver and the driver's desired per-trip deduction percentage.

(b) The TNC may require a driver's written authorization provided pursuant to subsection (7)(a)(III) of this section to be submitted by the driver support organization in an electronic format.

(c) A TNC shall make the first authorized deductions from a driver's earnings within thirty days after receiving a driver's written authorization and shall remit the amounts deducted to the driver support organization on a monthly basis and no later than twenty-eight days after the end of the previous month.

(d) A driver's written authorization remains in effect until the driver provides an express revocation to the TNC.

(e) A TNC shall rely on information that the driver support organization provides the TNC regarding a driver's written authorization and express revocation.

(f) Upon request by a TNC, the driver support organization shall reimburse the TNC for the TNC's costs associated with administering the deductions and remittance to the driver support organization.

(g) A driver support organization shall not represent or imply that the earnings deductions authorized in this subsection (7) are mandatory or provide differing levels of support for any deactivation in accordance with subsection (6)(b) of this section based on whether a driver has opted into voluntary deductions pursuant to this subsection (7).

(8) **Dispute resolution - rights.** In addition to any other constraints imposed by law, a TNC shall not include in any contract with a driver in relation to any deactivation reconsideration or appeal or action arising from a deactivation:

(a) A requirement that disputes between the driver and the TNC be adjudicated out of state; except that the TNC may conduct its internal deactivation challenge process established pursuant to subsection (5)(a) of this section through correspondence with out-of-state TNC representatives so long as the driver is not required to travel to complete the process;

(b) A waiver of rights granted through federal, state, or local law, except with respect to a waiver of the right to a jury trial through an arbitration provision;

(c) A requirement that the driver pay any fee exceeding the amount that the driver would have had to pay if bringing the same action in federal district court in the state, including any fee reduction that the driver would have been eligible for in federal district court in the state based on a determination that the driver is indigent;

(d) A requirement that the driver pay the TNC's costs or attorney fees; or

(e) A requirement that the dispute be adjudicated, arbitrated, or resolved by any person or organization that is not a neutral third party.

(9) **Semiannual disclosures to the division.** On August 1, 2026, and on a semiannual basis thereafter, a transportation network company shall make the following disclosures to the division:

(a) The number of driver deactivations during the reporting period;

(b) The number of deactivation reconsiderations:

(I) Requested during the reporting period;

(II) That occurred during the reporting period;

(III) That resulted in driver reactivation; and

(IV) That resulted in confirmation of the deactivation;

(c) For each driver affected by a deactivation event listed in subsection (9)(a) or (9)(b) of this section, the driver's demographic information, when available, including gender and gender identity and the default language the driver has selected in the TNC's digital platform;

(d) (I) For a sample size of one thousandth of the transportation tasks for which a TNC dispatches a driver, or an amount less as authorized by the director by rule, and pursuant to a representative and reproducible sampling methodology determined and designed by the director and in consultation with the TNCs:

(A) The driver's license number or other unique numerical identifier associated with the driver;

(B) Whether the ride was canceled and, if so, by whom;

(C) The total mileage driven during dispatch platform time;

(D) The total mileage driven during consumer platform time;

(E) The starting and ending zip code for the transportation task;

- (F) The total dispatch platform time;
 - (G) Whether the ride contributed to driver completion of a quest or incentive that led to bonus compensation not tied exclusively to the individual transportation task;
 - (H) The time of day or night that the transportation task began;
 - (I) The total consumer platform time;
 - (J) The total amount that the consumer paid for the transportation task, disaggregated to show the amount of any tip; and
 - (K) The total amount that the driver received for the transportation task, disaggregated to show the amount of the tip, if any, and the amount of any pass-throughs for tolls or other items specific to the transportation task.
- (II) To ensure the reliability of a TNC's sampling process used pursuant to this subsection (9)(d) and the TNC's compliance with the sampling process, the director may audit the TNC's sampling process by requiring the TNC to provide the director the total number of dispatched transportation tasks made during the relevant semiannual period.
- (e) For each driver who was activated or logged in to the TNC's digital platform during the reporting period:
- (I) The driver's license number or other unique numerical identifier associated with the driver;
 - (II) The total time the driver spent during the reporting period on:
 - (A) Dispatch platform time; and
 - (B) Consumer platform time;
 - (III) The total miles driven during the reporting period while the driver was on:
 - (A) Available platform time;
 - (B) Dispatch platform time; and
 - (C) Consumer platform time; and
 - (IV) The total amount of money paid to the driver by the TNC during the reporting period, disaggregated to show:
 - (A) The amount of tips;
 - (B) The amount of pass-throughs;
 - (C) The amount of bonus or incentive compensation;

(D) The amount of compensation associated with individual transportation tasks, excluding amounts disclosed in subsections (9)(e)(IV)(A) to (9)(e)(IV)(C) of this section; and

(E) Any other amounts paid to the driver during the reporting period.

(10) **Public availability of TNC semiannual disclosures.** The information that a transportation network company provides through semiannual disclosures in accordance with subsection (9) of this section to the division is a public record, as defined in section 24-72-202 (6). Prior to any disclosure of the information pursuant to the "Colorado Open Records Act", part 2 of article 72 of title 24, the division shall:

(a) Give notice to the TNC that provided the disclosure and afford the TNC an opportunity to object to the disclosure; and

(b) Redact the information to protect drivers' identities and privacy.

(11) **Transparency for drivers and consumers.**

(a) On and after February 1, 2025, at the time of offering a transportation task to a driver for acceptance, a transportation network company shall electronically disclose to the driver:

(I) The distance and cardinal or intercardinal direction from the driver's location to the consumer's or rider's destination. For shared rides, the relevant destination is the destination of the last consumer or rider that the driver drops off, when available.

(II) Before any tip is added, the total amount of money that the TNC will pay the driver for the transportation task, excluding any pass-throughs;

(III) The aggregate estimated mileage that the driver will drive during dispatch platform time and consumer platform time for the transportation task;

(IV) The aggregate estimated time that the driver will spend during dispatch platform time and consumer platform time during the transportation task; and

(V) If the consumer has already indicated a tip amount, the amount of the tip.

(b) When a driver resumes available platform time after completing a transportation task, a TNC shall electronically disclose to the driver on a single screen on the digital platform:

(I) The total amount of money that the consumer paid for the transportation task before any tip was added;

(II) The total amount of money paid to the driver for the transportation task before any tip was added, excluding pass-throughs, if any; and

(III) The amount of the tip, if any.

(c) Within twenty-four hours after disclosing the information required to be disclosed in accordance with subsection (11)(b) of this section, the TNC shall provide a copy of the information to the driver by email or other mechanism that remains accessible to the driver for at least one year.

(d) As soon as the information is available to a TNC, and before the TNC offers a consumer the option to tip the driver, the TNC shall electronically disclose to the consumer on a single screen on the digital platform:

(I) The total amount of money that the consumer paid or will pay for the transportation task, excluding any tip; and

(II) The total amount of money that the driver received or will receive for the transportation task before any tip is added, excluding pass-throughs, if any.

(e) The information disclosed to drivers and consumers pursuant to subsections (11)(b) to (11)(d) of this section must be:

(I) Prominently displayed on the single screen on the digital platform or in the email;

(II) In a font that is larger than the font used to present any other information on the screen or in the email; and

(III) Presented using design techniques intended to draw the eye to the information.

(f) A TNC shall disclose to each driver who activated the TNC's digital platform during the previous month via email or other mechanism that remains accessible to the driver for at least one year the following information regarding the driver for the previous month or previous reporting period if the TNC regularly provides the disclosures required under this subsection (11)(f) more frequently than monthly:

(I) Driver pay before expenses;

(II) Driver tips before expenses;

(III) The total time that the driver spent on:

(A) Available platform time;

(B) Dispatch platform time; and

(C) Consumer platform time;

(IV) The total miles that the driver drove during the driver's:

(A) Available platform time;

(B) Dispatch platform time; and

(C) Consumer platform time; and

(V) The total amount the driver may be entitled to deduct from income calculated using the IRS business mileage deduction rate for all miles known to the TNC to have been driven during the driver's:

(A) Available platform time;

(B) Dispatch platform time; and

(C) Consumer platform time.

(12) **Driver acceptance or rejection of a transportation task.** On and after February 1, 2025, a transportation network company shall not suspend, deactivate, or retaliate against a driver based on the driver's lawful acceptance or rejection of one or more transportation tasks by hampering driver access to:

(a) Driver support;

(b) Ride offers; or

(c) Destination or area preferences.

(13) **Penalties, fines, and enforcement.**

(a) If a transportation network company violates this section, the TNC may be subject to:

(I) Monetary damages in the amount of one thousand dollars, as determined by the director or by a court in a civil action brought pursuant to subsection (13)(d) of this section, on a per-consumer or per-driver basis, which amount the TNC shall pay to the consumer or driver affected by the violation;

(II) A fine of one hundred dollars per violation, as determined by the director on a per-consumer or per-driver basis, which amount the TNC shall pay to the division. The division shall transmit all civil fines collected pursuant to this subsection (13)(a)(II) to the state treasurer, who shall credit the money to the general fund.

(III) Injunctive relief pursuant to subsection (13)(d)(II) of this section.

(b) The division may investigate alleged violations in response to complaints filed or at the division's discretion.

(c) The director shall establish procedures for drivers and consumers to submit complaints to the division and for the division's investigations, hearings, and imposition of fines pursuant to this subsection (13).

(d) (I) A person aggrieved by a TNC's violation of this section may file a civil action against the TNC in the district court where:

- (A) The person resides;
- (B) The violation occurred; or
- (C) The TNC has a physical place of business in the state.

(II) (A) The person filing the civil action may seek injunctive relief from the district court to compel the TNC to comply with this section or may seek monetary damages as specified in subsection (13)(a)(I) of this section and any actual damages sustained.

(B) If a person prevails on any claim raised in a civil action brought against a TNC under this subsection (13)(d), the person is entitled to recover costs and reasonable attorney fees.

(14) **Rules.** The director may adopt rules as necessary to implement this section.

(15) **Public utilities commission's authority over TNCs.** Nothing in this section negates, limits, alters, or displaces the commission's authority to regulate transportation network companies pursuant to part 6 of article 10.1 of title 40 or prevents a driver or consumer from seeking enforcement by the commission against an alleged violator or a remedy for a violation of part 6 of article 10.1 of title 40.

Source: L. 2024: Entire section added, (SB 24-075), ch. 409, p. 2806, § 1, effective August 7.
L. 2026: (3)(b)(III) amended and (3)(b)(V) and (3)(b)(VI) added, (HB 26-1424), ch. 333, p. 1979, § 7, effective August 12.

Editor's note: Section 8(2) of chapter 333 (HB 26-1424), Session Laws of Colorado 2026, provides that the act changing this section applies to offenses committed on or after August 12, 2026.

Cross references: For the legislative declaration in HB 26-1424, see section 1 of chapter 333, Session Laws of Colorado 2026.

ARTICLE 5

Wage Equality

PART 1
WAGE EQUALITY REGARDLESS OF
SEX

duties - cash fund - report
- repeal. (Repealed)

PART 2
TRANSPARENCY IN JOB
OPPORTUNITIES AND COMPENSATION

- 8-5-101. Definitions.
- 8-5-102. Wage discrimination prohibited.
- 8-5-103. Enforcement - rules - complaints.
- 8-5-104. Employer liability - awards.
- 8-5-105. Records open to inspection - repeal. (Repealed)
- 8-5-106. Colorado pay equity commission - creation -

- 8-5-201. Employment opportunities - job opportunities or advancement - pay rates in job listings - rules.
- 8-5-202. Record keeping.
- 8-5-203. Enforcement - rules.

PART 1
WAGE EQUALITY REGARDLESS OF SEX

8-5-101. Definitions.

As used in this article 5, unless the context otherwise requires:

(1) Repealed.

(1.3) "Career development" means a change to an employee's terms of compensation, benefits, full-time or part-time status, duties, or access to further advancement in order to update the employee's job title or compensate the employee to reflect work performed or contributions already made by the employee.

(1.5) "Career progression" means a regular or automatic movement from one position to another based on time in a specific role or other objective metrics.

(2) "Director" means the director of the division of labor standards and statistics.

(3) Repealed.

(4) "Employee" means a person employed by an employer.

(5) "Employer" means the state or any political subdivision, commission, department, institution, or school district thereof, and every other person employing a person in the state.

(5.5) (a) "Job opportunity" means a current or anticipated vacancy for which the employer is considering a candidate or candidates or interviewing a candidate or candidates or that the employer externally posts.

(b) "Job opportunity" does not include career development or career progression.

(6) Repealed.

(7) "Liquidated damages" means damages to compensate an employee for the delay in receiving amounts due as a result of an employer's violation of this article 5. "Liquidated damages" does not constitute a penalty to the employer.

(8) "Sex" means an employee's gender identity.

(8.5) "Vacancy" means an open position, whether as a result of a newly created position or a vacated position.

(9) "Wage rate" means:

(a) For an employee paid on an hourly basis, the hourly compensation paid to the employee plus the value per hour of all other compensation and benefits received by the employee from the employer; and

(b) For an employee paid on a salary basis, the total of all compensation and benefits received by the employee from the employer.

Source: L. 55: p. 503, § 1. CRS 53: § 80-23-1. C.R.S. 1963: § 80-3-1. L. 69: p. 593, § 68. L. 86: (1) repealed, p. 502, § 125, effective July 1. L. 2016: (2) and (3) amended, (HB 16-1323), ch. 131, p. 378, § 11, effective August 10. L. 2019: IP, (4), and (5) amended and (7), (8), and (9) added, (SB 19-085), ch. 247, p. 2412, § 3, effective January 1, 2021; (3)(b) and (6)(b) added by revision, (SB 19-085), ch. 247, pp. 2412, 2417, §§ 3, 9. L. 2023: (1.3), (1.5), (5.5), and (8.5) added, (SB 23-105), ch. 347, p. 2079, § 1, effective January 1, 2024.

Editor's note: Subsections (3)(b) and (6)(b) provided for the repeal of subsections (3) and (6), respectively, effective January 1, 2021. (See L. 2019, pp. 2412, 2417.)

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-102. Wage discrimination prohibited.

(1) An employer shall not discriminate between employees on the basis of sex, or on the basis of sex in combination with another protected status as described in section 24-34-402 (1)(a), by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work, regardless of job title, based on a composite of skill; effort, which may include consideration of shift work; and responsibility, except where the employer demonstrates each of the following:

(a) That the wage rate differential is based on:

(I) A seniority system;

(II) A merit system;

(III) A system that measures earnings by quantity or quality of production;

(IV) The geographic location where the work is performed;

(V) Education, training, or experience to the extent that they are reasonably related to the work in question; or

(VI) Travel, if the travel is a regular and necessary condition of the work performed;

(b) That each factor relied on in subsection (1)(a) of this section is applied reasonably;

(c) That each factor relied on in subsection (1)(a) of this section accounts for the entire wage rate differential; and

(d) That prior wage rate history was not relied on to justify a disparity in current wage rates.

(2) An employer shall not:

(a) Seek the wage rate history of a prospective employee or rely on the wage rate history of a prospective employee to determine a wage rate;

(b) Discriminate or retaliate against a prospective employee for failing to disclose the prospective employee's wage rate history;

(c) Discharge, or in any manner discriminate or retaliate against, an employee for invoking this section on behalf of anyone or assisting in the enforcement of this subsection (2);

(d) Discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with an employee or other person because the employee or person inquired about, disclosed, compared, or otherwise discussed the employee's wage rate;

(e) Prohibit, as a condition of employment, an employee from disclosing the employee's wage rate; or

- (f) Require an employee to sign a waiver or other document that:
- (I) Prohibits the employee from disclosing wage rate information; or
- (II) Purports to deny the employee the right to disclose the employee's wage rate information.

Source: **L. 55:** p. 503, § 2. **CRS 53:** § 80-23-2. **C.R.S. 1963:** § 80-3-2. **L. 2019:** Entire section amended, (SB 19-085), ch. 247, p. 2413, § 4, effective January 1, 2021.

Cross references: (1) For minimum wages for workers, see article 6 of this title 8.

(2) For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-103. Enforcement - rules - complaints.

(1) (a) The director shall:

(I) Create and administer a process to accept complaints and provide legal resources concerning alleged violations of section 8-5-102, and shall promulgate rules as necessary for this purpose;

(II) On or before July 1, 2024, create and administer a process to mediate complaints regarding alleged violations of section 8-5-102 and promulgate rules as necessary for this purpose;

(III) Investigate complaints or other leads concerning employer violations of section 8-5-102, except if the complaint concerns the state of Colorado as the employer, that, in the director's good faith discretion and judgment, warrant investigation;

(IV) Upon finding of a violation of section 8-5-102, order compliance and relief as authorized by this part 1; and

(V) Promulgate rules to enforce this article 5.

(b) For the purpose of investigating a violation of this part 1, the director may apply the information-gathering provisions of article 1 of this title 8 to an employer, employee, or other person.

(c) The process created and administered by the director, including the rules for the investigation of alleged complaints for violations of section 8-5-102 and any fines levied or

corrective action taken by the director, does not affect or prevent the right of an aggrieved person from commencing a civil action pursuant to subsection (2) of this section.

(2) A person aggrieved by a violation of section 8-5-102 may commence a civil action in district court no later than two years after the violation occurs. A violation of section 8-5-102 (1) occurs on each occasion that a person is affected by wage discrimination, including each occasion that a discriminatory wage rate is paid.

(3) A person aggrieved by a violation of section 8-5-102 may obtain relief for back pay for the entire time the violation continues, not to exceed six years.

(4) If a civil action is commenced under this section, any party to the civil action may demand a trial by jury.

(5) Nothing in this section prevents an aggrieved person from filing a charge with the Colorado civil rights division pursuant to section 24-34-306.

Source: L. 55: p. 504, § 3. CRS 53: § 80-23-3. C.R.S. 1963: § 80-3-3. L. 69: p. 593, § 69. L. 86: Entire section amended, p. 472, § 31, effective July 1. L. 2019: Entire section amended, (SB 19-085), ch. 247, p. 2414, § 5, effective January 1, 2021. L. 2023: (1) and (3) amended, (SB 23-105), ch. 347, p. 2080, § 2, effective January 1, 2024.

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-104. Employer liability - awards.

(1) (a) An employer who violates section 8-5-102 (1) is liable for economic damages in an amount equal to the difference between the amount that the employer paid to the complaining employee and the amount that the employee would have received had there been no violation plus liquidated damages in an amount equal to the employee's economic damages, except as provided in subsection (1)(b) of this section.

(b) (I) If the employer demonstrates that the act or omission giving rise to the violation was in good faith and that the employer has reasonable grounds for believing that the employer did not violate section 8-5-102 (1), the court shall not award liquidated damages.

(II) In determining whether the employer's violation was in good faith, the fact finder may consider evidence that within two years prior to the date of the commencement of a civil action

pursuant to section 8-5-103, the employer completed a thorough and comprehensive pay audit of its workforce, with the specific goal of identifying and remedying unlawful pay disparities.

(2) An employer who violates any provision of section 8-5-102 is liable for:

(a) Legal and equitable relief, which may include employment, reinstatement, promotion, pay increase, payment of lost wage rates, and liquidated damages; and

(b) The employee's reasonable costs, including attorney fees.

(3) Nothing in this section precludes an employee from asserting any other available statutory or common-law claims.

Source: L. 55: p. 504, § 4. CRS 53: § 80-23-4. C.R.S. 1963: § 80-3-4. L. 69: p. 594, § 70. L. 2019: Entire section amended, (SB 19-085), ch. 247, p. 2415, § 6, effective January 1, 2021.

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-105. Records open to inspection - repeal. (Repealed)

Source: L. 55: p. 504, § 5. CRS 53: § 80-23-5. C.R.S. 1963: § 80-3-5. L. 69: p. 594, § 71. L. 2019: (2) added by revision, (SB 19-085), ch. 247, pp. 2415, 2417, §§ 7, 9.

Editor's note: Subsection (2) provided for the repeal of this section, effective January 1, 2021. (See L. 2019, pp. 2415, 2417.)

8-5-106. Colorado pay equity commission - creation - duties - cash fund - report - repeal. (Repealed)

Source: L. 2010: Entire section added, (HB 10-1417), ch. 266, p. 1217, § 1, effective May 25.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2015. (See L. 2010, p. 1217.)

PART 2

TRANSPARENCY IN JOB OPPORTUNITIES AND COMPENSATION

Cross references: For the short title ("Equal Pay for Equal Work Act") and the legislative declaration in SB 19-085, see sections 1 and 2 of chapter 247, Session Laws of Colorado 2019.

8-5-201. Employment opportunities - job opportunities or advancement - pay rates in job listings - rules.

(1) An employer shall make reasonable efforts to announce, post, or otherwise make known each job opportunity to all employees on the same calendar day and prior to the date on which the employer makes a selection decision; except that, if an employer is only physically located outside of Colorado and has fewer than fifteen employees working in Colorado, all of whom work only remotely, then, through July 1, 2029, the employer is only required to provide notice of remote job opportunities. The department of labor and employment shall promulgate rules for temporary, interim, or acting job opportunities that necessitate immediate hire.

(2) An employer must in good faith disclose the following in the notification of each job opportunity:

- (a) The hourly or salary compensation or the range of the hourly or salary compensation;
- (b) A general description of the benefits and other compensation applicable to the job opportunity; and
- (c) The date the application window is anticipated to close.

(3) An employer shall make reasonable efforts to announce, post, or otherwise make known, within thirty calendar days after a candidate who is selected to fill a job opportunity begins working in the position, the following information to, at a minimum, the employees with whom the employer intends the selected candidate to work with regularly:

- (a) The name of the candidate selected for the job opportunity;
- (b) The selected candidate's former job title if selected while already employed by the employer;
- (c) The selected candidate's new job title; and

(d) Information on how employees may demonstrate interest in similar job opportunities in the future, including identifying individuals or departments to whom the employees can express interest in similar job opportunities.

(4) For positions with career progression, an employer shall disclose and make available to all eligible employees the requirements for career progression, in addition to each position's terms of compensation, benefits, full-time or part-time status, duties, and access to further advancement.

(5) Nothing in this section requires an employer to identify a selected candidate for a job opportunity in any manner that violates the candidate's privacy rights under applicable local, state, or federal law or in a manner that would place at risk the selected candidate's health or safety.

Source: L. 2019: Entire part added, (SB 19-085), ch. 247, p. 2416, § 8, effective January 1, 2021. **L. 2023:** Entire section amended, (SB 23-105), ch. 347, p. 2080, § 3, effective January 1, 2024.

8-5-202. Record keeping.

An employer shall keep records of job descriptions and wage rate history for each employee for the duration of the employment plus two years after the end of employment in order to determine if there is a pattern of wage discrepancy.

Source: L. 2019: Entire part added, (SB 19-085), ch. 247, p. 2416, § 8, effective January 1, 2021.

8-5-203. Enforcement - rules.

(1) The director has the power to administer, carry out, and enforce all of the provisions of this part 2 and may promulgate rules for that purpose. The director shall provide written copies of rules promulgated pursuant to this section to all employees and employers upon written request.

(2) (a) A person who claims to be aggrieved by a violation of section 8-5-201 or 8-5-202 may file a written complaint with the director within one year after the date that the person learned of the violation. The written complaint must state the name and address of the employer and a detailed account of the alleged violation.

(b) An employer's failure to comply with section 8-5-201 (1) for one promotional opportunity is considered one violation.

(c) An employer's failure to comply with section 8-5-201 (2) for one job opening is considered one violation regardless of the number of postings that list the job opening.

(3) The director shall investigate complaints of violations of this part 2 and shall promulgate rules necessary to govern the investigations.

(4) Upon finding that an employer has violated this part 2, the director may order the employer to pay a fine of no less than five hundred dollars and no more than ten thousand dollars per violation.

(5) If an employee bringing suit for a violation of section 8-5-102 demonstrates a violation of this part 2, and the court finds a violation of this part 2, the court may order appropriate relief, including a rebuttable presumption that records not kept by the employer in violation of section 8-5-202 contained information favorable to the employee's claim and an instruction to the jury that failure to keep records can be considered evidence that the violation was not made in good faith.

Source: L. 2019: Entire part added, (SB 19-085), ch. 247, p. 2416, § 8, effective January 1, 2021.

ARTICLE 6

Minimum Wages of Workers

8-6-101.	Legislative declaration - minimum wage of workers - authority of a local government to enact minimum wage laws - tip offsets - enforcement - report - severability - definitions.	8-6-101.7.	Meat workers - restrooms - definitions - fines.
		8-6-102.	Construction.
		8-6-103.	Definitions.
		8-6-104.	Wages shall be adequate - conditions healthful and moral.
8-6-101.5.	Minimum wage for agricultural workers - rest periods - overwork protections - definition.	8-6-105.	Director to investigate.
		8-6-106.	Determination of minimum wage and conditions.

8-6-107.	Powers of director - duty of employer.	8-6-113.	Employment at less than minimum wage - license. (Repealed)
8-6-108.	Public hearings - witness fees - contempt - director to make rules.	8-6-114.	Wages and working conditions for minors. (Repealed)
8-6-108.5.	Minimum wage - rules.	8-6-115.	Discrimination by employer - penalty - prosecutions.
8-6-108.7.	Elimination of subminimum wage for individuals with disabilities - legislative declaration - definitions.	8-6-116.	Violation - penalty.
8-6-109.	Methods of establishing minimum wages - wage board.	8-6-117.	Minimum wage presumed reasonable - conclusiveness.
8-6-110.	Wage board - duties - report - quorum.	8-6-118.	Recovery of balance of minimum wage.
8-6-111.	Director to review report.	8-6-119.	Investigation of complaints.
8-6-112.	New determination of wages and conditions.	8-6-120.	Overtime wages for agricultural employees - definitions.

8-6-101. Legislative declaration - minimum wage of workers - authority of a local government to enact minimum wage laws - tip offsets - enforcement - report - severability - definitions.

(1) The welfare of the state of Colorado demands that workers be protected from conditions of labor that have a pernicious effect on their health and morals, and it is therefore declared, in the exercise of the police and sovereign power of the state of Colorado, that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

(2) Repealed.

(3) (a) (I) (A) Notwithstanding any other provision of law, a local government may enact through its governing body or, when available, through its initiative or referendum powers, a law establishing minimum wages for individuals performing, or expected to perform, four or more hours of work for an employer in a given week within the geographic boundaries of the local government's jurisdiction. Minimum wages established in accordance with this section may exceed the statewide minimum wage established in accordance with section 15 of article XVIII of the state constitution, any other minimum wage established by state law, or any minimum

wage established by federal law; except that a local government that enacts a minimum wage in accordance with this subsection (3) shall provide a tip offset for employees of a business or enterprise that prepares and offers for sale food or beverages for consumption either on or off the premises. The tip offset applies only to employees who regularly receive tips and only when a tip offset is permitted by state law. A local government shall determine the amount of the tip offset in accordance with subsection (3.5) of this section.

(B) A local government shall not include in its minimum wage law time spent in the local government's jurisdiction by an employee solely for the purpose of traveling through the local government's jurisdiction from a point of origin outside of the local government's boundaries to a destination outside of the local government's boundaries, with no employment-related or commercial stops in the local government's jurisdiction, except for refueling or the employee's personal meals or errands.

(II) All adult employees and emancipated minors, whether employed on an hourly, piecework, commission, time, task, or other basis, shall be paid not less than the minimum wage enacted by the local government through its governing body or through initiative or referendum powers.

(b) A local government that enacts a minimum wage law in accordance with this subsection (3) may adopt provisions for the local enforcement of the law, including:

- (I) A private right of action to enforce the requirement in a court of competent jurisdiction;
- (II) At levels that may exceed those set by state law:
 - (A) Fines and penalties;
 - (B) Payment of unpaid wages or unpaid overtime based on those wages;
 - (C) Liquidated damages;
 - (D) Interest;
 - (E) Costs and attorney fees payable to any affected prevailing employee; and
 - (F) Costs and attorney fees payable to the local government or its designated enforcement departments;
- (III) Procedures for the local government to order any appropriate or equitable relief; and
- (IV) Other provisions necessary for the efficient and cost-effective enforcement of a local minimum wage law.

(c) (I) Except as provided in subsection (3)(c)(II) of this section, a local minimum wage adopted by a county is only enforceable within the unincorporated portion of the county.

(II) One or more contiguous counties and any municipality within each county may enter into intergovernmental agreements to establish a local minimum wage law within the unincorporated portion of each county and within each municipality. An intergovernmental agreement entered into in accordance with this subsection (3)(c) must establish the manner in which a local government minimum wage law will be enforced and administered.

(d) Before enacting a minimum wage law, a local government shall consult with surrounding local governments and engage stakeholders, including chambers of commerce, small and large businesses, businesses that employ tipped workers, workers, labor unions, and community groups.

(3.5) (a) On and after July 1, 2025, except as described in subsection (3.5)(b) of this section, the amount of the tip offset associated with a local minimum wage is three dollars and two cents.

(b) On and after January 1, 2026, a local government that has enacted a code or ordinance that imposes a local minimum wage in an amount that exceeds the amount of the state minimum wage may increase the amount of the tip offset associated with the local minimum wage; except that a local government shall not impose a tip offset in an amount that allows a tipped employee to earn less than the state minimum wage minus three dollars and two cents.

(4) As used in this section, unless the context otherwise requires:

(a) (I) "Employer" means a corporation, a proprietorship, a partnership, a joint venture, a limited liability company, a trust, an association, a political subdivision of the state, an individual, or any other entity that employs an employee.

(II) "Employer" does not include the state of Colorado, in accordance with section 24-50-104 (4)(d)(I), to the extent that a state employer has a collective bargaining agreement as to employee wages.

(b) "Local government" means a:

(I) City;

(II) Home rule city;

(III) Town;

(IV) Territorial charter city;

(V) City and county;

(VI) County; or

(VII) Home rule county.

(c) "Political subdivision of the state" means:

(I) A county, a city and county, a city, a town, a service authority, a special district, and any other municipal or quasi-municipal authority; and

(II) A public corporation, as defined in section 7-49.5-103 (6); except that, for the purposes of this subsection (4)(c), a public corporation does not include the state of Colorado, to the extent that a state employer has a collective bargaining agreement as to employee wages.

(5) If any provision of this section is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this section are valid, unless it appears to the court that the valid provisions of this section are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

(6) A local government that enacts a local minimum wage law pursuant to this section must specify that an increase in the local minimum wage must take effect on the same date as a scheduled increase to the statewide minimum wage required under section 15 of article XVIII of the state constitution.

(7) If a local government enacts a local minimum wage law requiring a minimum wage that exceeds the statewide minimum wage, the local government may only increase the local minimum wage each year by up to one dollar and seventy-five cents or fifteen percent, whichever is higher, until the local minimum wage reaches the amount enacted by the local government.

(8) (a) By July 1, 2021, the executive director of the department of labor and employment shall issue a written report regarding local minimum wage laws in the state. The report must include the location, nature, and scope of enacted local minimum wage laws. To the extent feasible, the executive director shall also include in the report economic data, including jobs, earnings, and sales tax revenue, in the jurisdiction of any local government that has enacted a local minimum wage law pursuant to this section, as well as data for neighboring jurisdictions, relevant regions, and the state. The report may include recommendations for possible improvements to this section.

(b) The executive director shall update the report by July 1 each year thereafter if an additional local government enacts a minimum wage law after July 1 of the year prior.

(c) (I) The executive director shall submit the report required in this subsection (8) to the senate local government committee and the house of representatives transportation and local government committee, or their successor committees.

(II) Notwithstanding section 24-1-136 (11)(a)(I), the report required in this subsection (8) continues indefinitely.

(9) (a) The executive director of the department of labor and employment shall notify the executive director of the department of health care policy and financing if a local government enacts a minimum wage that exceeds the statewide minimum wage.

(b) If the executive director of the department of health care policy and financing receives notice pursuant to subsection (9)(a) of this section, the executive director shall, as soon as practicable, submit a report to the joint budget committee with recommendations about whether provider rates, with the exception of rates for an eligible nursing facility provider as defined in section 25.5-6-201 (15.5), need to be increased to accommodate the local government's minimum wage increase and if establishing a fund to pass through those increases to facilities in the jurisdiction of the local government that has raised the minimum wage is necessary.

(c) Notwithstanding section 24-1-136 (11)(a)(I), the report required in this subsection (9) continues indefinitely.

(10) (a) If at any point ten percent of local governments in the state have enacted a local minimum wage law pursuant to this section, a local government that has not previously enacted a local minimum wage law shall not enact a local minimum wage law pursuant to this section until the general assembly has amended this section to authorize additional local governments to enact local minimum wage laws. A local government that enacted a local minimum wage law prior to the point at which ten percent of local governments have enacted a local minimum wage law may continue to amend that law.

(b) For purposes of determining whether ten percent of local governments in the state have enacted a local minimum wage law pursuant to this section, when a county enacts a local minimum wage law, if a local minimum wage law is enacted by any local government located within that county, only the county's minimum wage law counts toward the calculation of the ten percent. If local governments enter into an intergovernmental agreement on the enforcement or administration of local minimum wage policies, that will only be counted as one local minimum wage for determining the calculation of the ten percent.

Source: L. 17: p. 380, § 1. **C.L.** § 4262. **CSA:** C. 97, § 236. **CRS 53:** § 80-9-1. **C.R.S. 1963:** § 80-7-1. **L. 77:** Entire section amended, p. 428, § 2, effective July 1. **L. 99:** Entire section amended, p. 289, § 2, effective April 14. **L. 2019:** (2) repealed, (3) amended, and (4) to (10) added, (HB 19-1210), ch. 320, p. 2972, § 4, effective January 1, 2020. **L. 2025:** (3)(a)(I) amended and (3.5) added, (HB 25-1208), ch. 397, p. 2236, § 1, effective July 1. **L. 2026:** (4) amended, (SB 26-193), ch. 317, p. 1860, § 2, effective June 2.

Cross references: For the legislative declaration in HB 19-1210, see section 1 of chapter 320, Session Laws of Colorado 2019. For the legislative declaration in SB 26-193, see section 1 of chapter 317, Session Laws of Colorado 2026.

ANNOTATION

Law reviews. For note, "Colorado Wage and Hour Law: Analysis and Some Suggestions", see 36 U. Colo. L. Rev. 223 (1964). For article, "The Migrant Farm Worker in Colorado — The Life and the Law", see 40 U. Colo. L. Rev. 45 (1967).

This article, as a prerequisite to its operation, contemplates the relationship of employer and employee, and where that relationship does not exist, a minimum wage

order is null and void. *Indus. Comm'n v. Am. Beauty Coll., Inc.*, 167 Colo. 269, 447 P.2d 531 (1968).

The wage claim act applies only to workers in the state. Worker who did not work in and is not a resident of the state has no standing to assert a claim under the act. *Abdulina v. Eberl's Temp. Servs.*, 79 F. Supp. 3d 1201 (D. Colo. 2015).

8-6-101.5. Minimum wage for agricultural workers - rest periods - overwork protections - definition.

(1) (a) On and after January 1, 2022, except as provided in subsection (1)(b) of this section, the minimum wage requirements of section 15 of article XVIII of the state constitution, and any minimum wage laws enacted pursuant to this article 6, apply to agricultural employers employing agricultural workers.

(b) The Colorado minimum wage that an agricultural employer must pay to an agricultural worker who is principally engaged in the range production of livestock, as described in 29 CFR 780.323 to 29 CFR 780.329, on the open range is:

(I) Beginning January 1, 2022, and through December 31, 2022, five hundred fifteen dollars per week; and

(II) Beginning January 1, 2023, the minimum wage required in the prior calendar year adjusted annually as measured by the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood or its predecessor or successor index. The director may set a higher minimum wage than is required in this subsection (1)(b)(II) consistent with the director's authority and duties, including under this article 6.

(2) (a) An agricultural worker is entitled to an uninterrupted and duty-free meal period of at least a thirty-minute duration when the agricultural worker's shift exceeds five consecutive hours. The meal periods, to the extent practicable, must be at least one hour after the start, and one hour

before the end, of the shift. An agricultural worker must be relieved of all duties and permitted to pursue personal activities for a period to qualify as nonwork, uncompensated time. If the nature of the business activities or other circumstances makes the uninterrupted meal period impractical, the agricultural employee must be permitted to consume an on-duty meal while performing duties. An agricultural employee must be permitted to fully consume a meal of choice while working and be fully compensated for the on-duty meal period without any loss of time or compensation.

(b) An agricultural worker is entitled to an uninterrupted and duty-free rest period of at least ten minutes within each four hours of work.

(c) This subsection (2) does not apply to a truck driver whose sole and principal duty is to haul livestock or to a combine or harvester operator while harvesting.

(3) As used in this section, "agricultural worker" has the meaning set forth in section 8-13.5-201 (3).

Source: L. 2021: Entire section added, (SB 21-087), ch. 337, p. 2176, § 3, effective June 25.

8-6-101.7. Meat workers - restrooms - definitions - fines.

(1) As used in this section, unless the context otherwise requires:

(a) "Employee" means an employee engaged in the slaughter of livestock or the rendering or packaging of meat.

(b) "Employer" means an employer with five hundred or more employees in the state.

(2) An employer shall not unreasonably deny an employee the use of a restroom during compensable time.

(3) The division may fine an employer one hundred dollars per employee for each violation of subsection (2) of this section. The fine imposed pursuant to this subsection (3) must not exceed two hundred dollars per employee per week.

Source: L. 2026: Entire section added, (SB 26-160), ch. 339, p. 2059, § 3, effective June 3.

Editor's note: Section 4 of chapter 339 (SB 26-160), Session Laws of Colorado 2026, provides that the act adding this section applies to conduct occurring on or after June 3, 2026.

8-6-102. Construction.

Whenever this article or any part thereof is interpreted by any court, it shall be liberally construed by such court.

Source: L. 17: p. 389, § 22. C.L. § 4282. CSA: C. 97, § 256. CRS 53: § 80-9-20. C.R.S. 1963: § 80-7-20.

8-6-103. Definitions.

As used in this article, unless the context otherwise requires:

- (1) and (2) Repealed.
- (3) "Director" means the director of the division of labor standards and statistics.
- (4) "Division" means the division of labor standards and statistics in the department of labor and employment.
- (5) "Minor" means any person of either sex under the age of eighteen years.
- (6) "Occupation" means every vocation, trade, pursuit, and industry.
- (7) Repealed.

Source: L. 17: pp. 380, 382, §§ 2, 5, 7. C.L. §§ 4263, 4266, 4268. CSA: C. 97, §§ 237, 240, 242. CRS 53: §§ 80-9-2, 80-9-4, 80-9-6. C.R.S. 1963: §§ 80-7-2, 80-7-4, 80-7-6. L. 69: pp. 604, 605, §§ 86, 87, 89. L. 77: (7) repealed, p. 432, § 13, effective July 1. L. 86: (1) and (2) repealed, p. 502, § 125, effective July 1. L. 2016: (3) and (4) amended, (HB 16-1323), ch. 131, p. 378, § 12, effective August 10.

Cross references: For the division of labor standards and statistics and the director of the division and their powers and duties, see article 1 of this title.

8-6-104. Wages shall be adequate - conditions healthful and moral.

It is unlawful to employ workers in any occupation within the state of Colorado for wages which are inadequate to supply the necessary cost of living and to maintain the health of the workers so employed. It is unlawful to employ workers in any occupation within this state under conditions of labor detrimental to their health or morals.

Source: L. 17: p. 381, § 4. C.L. § 4265. CSA: C. 97, § 239. CRS 53: § 80-9-3. C.R.S. 1963: § 80-7-3. L. 77: Entire section amended, p. 428, § 3, effective July 1.

Cross references: For the payment of wages generally, see article 4 of this title 8; for wage equality, see article 5 of this title 8; for the "Colorado Youth Employment Opportunity Act of 1971", see article 12 of this title 8; for the eight-hour workday requirement, see article 13 of this title 8; for the general protection of building employees, see article 14 of this title 8.

ANNOTATION

Not exception to rule of employment at will. Statutory pronouncement that makes it unlawful to "employ workers in any occupation within this state under conditions of labor detrimental to their health or morals" is a broad, general statement of

policy that is inadequate to justify adoption of an exception to the rule that an indefinite general hiring is terminable at will by either party to the employment. *Corbin v. Sinclair Marketing, Inc.*, 684 P.2d 265 (Colo. App. 1984).

8-6-105. Director to investigate.

It is the duty of the director to inquire into the wages paid to employees and into the conditions of labor surrounding said employees in any occupation in this state if the director has reason to believe that said conditions of labor are detrimental to the health or morals of said employees or that the wages paid to a substantial number of employees are inadequate to supply the necessary cost of living and to maintain such employees in health. At the request of not less than twenty-five persons engaged in any occupation, the director shall forthwith make such investigation as is provided in this article. Such investigation may be made at any time, upon the initiative of the director.

Source: L. 17: p. 381, § 5. C.L. § 4266. CSA: C. 97, § 240. CRS 53: § 80-9-4. C.R.S. 1963: § 80-7-4. L. 69: p. 604, § 87. L. 77: Entire section amended, p. 429, § 4, effective July 1.

8-6-106. Determination of minimum wage and conditions.

The director shall determine the minimum wages sufficient for living wages for persons of ordinary ability, including minimum wages sufficient for living wages, whether paid according to time rate or piece rate; the minimum wages sufficient for living wages for learners and apprentices; standards of conditions of labor and hours of employment not detrimental to health or morals for workers; and what are unreasonably long hours. In all such determinations, the director shall be bound by the provisions of this article and of section 15 of article XVIII of the state constitution; except that, if a higher minimum wage rate is established by applicable federal law or rules, the director shall be bound by such federal law or rules.

Source: L. 17: p. 382, § 6. C.L. § 4267. CSA: C. 97, § 241. CRS 53: § 80-9-5. C.R.S. 1963: § 80-7-5. L. 69: p. 604, § 88. L. 77: Entire section amended, p. 429, § 5, effective July 1. L. 2007: Entire section amended, p. 46, § 1, effective March 14.

8-6-107. Powers of director - duty of employer.

(1) The director, for the purposes of this article, has power to investigate and ascertain the conditions of labor and the wages in the different occupations, whether paid by time rate or piece rate, in the state of Colorado. The director has power, in person or through any authorized representative, to inspect and examine and make excerpts from any books, reports, contracts, payrolls, documents, papers, and other records of any employer that in any way pertain to the question of wages and to require from any such employer full and true statements of the wages paid.

(2) Every employer shall keep a register of the names, ages, dates of employment, and residence addresses of all employees. It is the duty of every such employer, whether a person, firm, or corporation, to furnish to the director, upon request, any reports or information which the director may require to carry out the purposes of this article, such reports and information to be verified by the oath of the person, or a member of the firm or the president, secretary, or manager of the corporation, furnishing the same if and when so requested by the director; and the director or any authorized representative shall be allowed free access to the place of business of such employer for the purpose of making any investigation authorized by this article.

Source: L. 17: p. 382, § 7. C.L. § 4268. CSA: C. 97, § 242. CRS 53: § 80-9-6. C.R.S. 1963: § 80-7-6. L. 69: p. 605, § 89. L. 77: Entire section amended, p. 429, § 6, effective July 1.

8-6-108. Public hearings - witness fees - contempt - director to make rules.

(1) The director may hold public hearings at such times and places as he deems proper for the purpose of investigating any of the matters he is authorized to investigate by this article at which hearings employers, employees, or other interested persons may appear and give testimony as to the matter under consideration. The director has the power to subpoena and compel the attendance of any witness and to administer oaths, also, by subpoena, to compel the production of any books, papers, or other evidence at any public hearing of the director or at any session of any wage board. All witnesses subpoenaed by said director shall be paid the same mileage and per diem as are allowed by law to witnesses in civil cases before the district court of the state of Colorado. If any person fails to attend as a witness or to bring with him any books, papers, or other evidence when subpoenaed by the director or refuses to testify when ordered so to do, the director may apply to any district court in this state to compel obedience on the part of such person. The district court shall thereupon compel obedience by proceedings for contempt as in cases of disobedience of any order of said court in a proceeding pending before said court. The director shall not be bound by the technical rules of evidence. Said director may hold meetings for the transaction of any of his business at such times and places as he prescribes.

(2) The director has power to make reasonable and proper rules and procedure and to enforce said rules and procedure.

Source: L. 17: p. 383, § 8. C.L. § 4269. CSA: C. 97, § 243. CRS 53: § 80-9-7. C.R.S. 1963: § 80-7-7. L. 64: p. 288, § 218. L. 69: p. 605, § 90. L. 73: p. 1409, § 60. L. 86: (2) amended, p. 472, § 32, effective July 1.

Cross references. For witness and mileage fees, see §§ 13-33-102 and 13-33-103; for proceedings for contempt, see C.R.C.P. 107.

8-6-108.5. Minimum wage - rules.

(1) Effective July 1, 1977, the minimum wage for minors may be fifteen percent below the minimum wage for other workers; except that the full minimum wage shall be paid to any emancipated minor. An emancipated minor shall mean any individual less than eighteen years of age who:

- (a) Has the sole or primary responsibility for his own support;
- (b) Is married and living away from parents or guardian;
- (c) Is able to show that his well-being is substantially dependent upon being gainfully employed.

(2) Repealed.

(3) The director may issue only such rules as are necessary to carry out the provisions of this article and as are consistent with the purposes and intent of section 8-6-101 and section 15 of article XVIII of the state constitution; except that, if a higher minimum wage rate is established by applicable federal law or rules, the director's rules shall be consistent with such federal law or rules.

Source: **L. 77:** Entire section added, p. 430, § 7, effective July 1. **L. 93:** (2) amended, p. 1630, § 3, effective July 1. **L. 2007:** (3) amended, p. 46, § 2, effective March 14. **L. 2021:** (2) repealed, (SB 21-039), ch. 380, p. 2543, § 1, effective July 1.

8-6-108.7. Elimination of subminimum wage for individuals with disabilities - legislative declaration - definitions.

- (1) The general assembly finds and declares that:
 - (a) Colorado is an employment first state committed to the goal of achieving competitive integrated employment for individuals with disabilities;
 - (b) Ensuring that individuals with disabilities have the opportunity to pursue employment paid in an amount equal to minimum wage or higher is a critical element of achieving this goal;
 - (c) Due to systemic barriers, many individuals with disabilities are paid less than the minimum wage applicable to other employees and have limited opportunities to pursue competitive integrated employment;
 - (d) The payment of subminimum wages is an economic justice issue for individuals with disabilities, impacting their ability to earn wages equal to their peers without disabilities and devaluing their contributions based on their disabilities;
 - (e) Service enhancements and public policy changes are needed to address these systemic barriers and assist individuals in subminimum wage jobs to pursue competitive integrated employment; and

(f) The elimination of subminimum wage employment, along with the implementation of critical service enhancements and policy changes, is essential to promoting economic justice for, and the enhanced self-sufficiency of, individuals with disabilities while ensuring that individuals currently working in subminimum wage jobs can successfully transition to competitive integrated employment, supported employment, or integrated community activities related to each individual's employment goals.

(2) Repealed.

(3) On and after July 1, 2025, an employer shall not pay an employee with a disability less than the highest applicable minimum wage regardless of whether the employer was issued a special certificate.

(4) As used in this section:

(a) "Competitive integrated employment" has the same meaning as set forth in section 8-84-301 (3).

(b) "Department" means the department of labor and employment.

(c) "Special certificate" means a special certificate issued by the United States department of labor pursuant to section 214 (c) of the federal "Fair Labor Standards Act of 1938", as amended, 29 U.S.C. sec. 201 et seq., to an employer that authorizes the employer to pay wages that are less than the minimum wage otherwise required by law to employees whose earning or productive capacity is impaired by age, physical or mental disability, or injury.

Source: L. 2021: Entire section added, (SB 21-039), ch. 380, p. 2543, § 2, effective July 1.

Editor's note: Subsection (2)(d) provided for the repeal of subsection (2), effective July 1, 2025. (See L. 2021, p. 2543.)

8-6-109. Methods of establishing minimum wages - wage board.

(1) If after investigation the director is of the opinion that the conditions of employment surrounding said employees are detrimental to the health or morals or that a substantial number of workers in any occupation are receiving wages, whether by time rate or piece rate, inadequate to supply the necessary costs of living and to maintain the workers in health, the director shall proceed to establish minimum wage rates either directly or by the indirect method described in subsection (2) of this section. If he selects the direct method, the director shall establish the minimum wage rates.

(2) If he adopts the indirect method, the director shall establish a wage board consisting of not more than three representatives of employers in the occupation in question, and of an equal number of persons to represent the employees in said occupation, and of an equal number of disinterested persons to represent the public, and someone representing the director if it is desired. The director shall name and appoint all members of the wage board and designate the chairman thereof. The selection of members representing employers and employees shall be, so far as practicable, through election by employers and employees respectively, subject to approval and selection by the director. The members of the wage board shall be compensated at the same rate and fees for service as jurors in courts of record, and they shall be allowed their necessary traveling and clerical expenses incurred in the actual performance of their duties, to be paid from the appropriations for the expenses of the division.

(3) The proceedings and deliberations of such wage board shall be made a matter of record for the use of the director and shall be admissible as evidence in any proceedings before the director. Each wage board has the same power as the director to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Witnesses subpoenaed by a wage board shall be allowed the same compensation as when subpoenaed by the director.

Source: L. 17: p. 384, § 9. C.L. § 4270. CSA: C. 97, § 244. CRS 53: § 80-9-8. C.R.S. 1963: § 80-7-8. L. 69: p. 606, § 91. L. 77: (1) and (2) amended, p. 430, § 8, effective July 1.

Cross references: For juror's fees, see § 13-33-101; for mileage fees of jurors, see § 13-33-103.

ANNOTATION

Pursuant to Colorado's Minimum Wage Act, the director of the Colorado division of labor has been delegated the authority to investigate and determine the wages and employment conditions in certain occupations. If, following such investigation, the director finds that employment conditions in any industry

endanger employees' health or morals, the director may directly or through a "wage board" adopt a wage order to establish minimum wage rates and standard conditions of employment in the affected industry. *Weissman v. Crawford Rehab. Servs.*, 914 P.2d 380 (Colo. App. 1995).

8-6-110. Wage board - duties - report - quorum.

The director may transmit to each wage board all pertinent information in his possession relative to the wages paid or material to the subject of inquiry of the occupation in question. Each wage board shall endeavor to determine, if requested so to do by the director, the standard conditions of employment; the minimum wage, whether by time rate or piece rate, adequate to maintain in health and to supply with the necessary cost of living an employee of ordinary ability in the occupation in question, or in any branches thereof; and suitable minimum wages, graded, so far as practicable, on a rising scale toward the minimum allowed experienced workers, for learners and apprentices. When a majority of the members of a wage board agree upon standard conditions of employment or minimum wage board determinations, they shall report such determinations to the director, together with the reasons therefor and the facts relating thereto. A majority of the members of any such wage board shall constitute a quorum.

Source: L. 17: p. 385, § 10. C.L. § 4271. CSA: C. 97, § 245. CRS 53: § 80-9-9. C.R.S. 1963: § 80-7-9. L. 69: p. 606, § 92. L. 77: Entire section amended, p. 430, § 9, effective July 1.

ANNOTATION

Pursuant to Colorado's Minimum Wage Act, the director of the Colorado division of labor has been delegated the authority to investigate and determine the wages and employment conditions in certain occupations. If, following such investigation, the director finds that employment conditions in any industry

endanger employees' health or morals, the director may directly or through a "wage board" adopt a wage order to establish minimum wage rates and standard conditions of employment in the affected industry. *Weissman v. Crawford Rehab. Servs.*, 914 P.2d 380 (Colo. App. 1995).

8-6-111. Director to review report.

(1) Upon the receipt of a report from a wage board, the director shall review the same and may approve or disapprove any determination or recommit the subject to the same or a new wage board. If the director approves any of the determinations of the wage board, said director shall publish notice not less than once a week for two successive weeks in a newspaper of general circulation published in the county in which any business directly affected thereby is located, that he will, on a date and at a place named in said notice, hold a public meeting, at which all persons in favor of or opposed to said recommendations will be given a hearing.

(2) After publication of notice and the meeting, the director may issue an order to adopt the recommendations and carry them into effect and to require all employees in the occupation directly affected by the recommendations to preserve and comply with the recommendations and order. The order becomes effective thirty days after it is made. After the order is effective, it is unlawful for any employer to violate or disregard any of the terms of the order or to employ any worker in any occupation covered by the order at lower wages or under other conditions than authorized or permitted by the order. The director shall, as far as is practicable, mail a copy of any such order to every employer affected by the order, and every employer affected by the order shall keep a copy of the order posted in a conspicuous place in the employer's establishment. The order must include a notice of the contents of sections 8-12-105 (3), 8-12-116, and 8-12-118.

(3) In case of an emergency the director may authorize or permit the employment of any person for more hours per day or per week than the maximum now fixed by law.

(4) Overtime, at a rate of one and one-half times the regular rate of pay, may be permitted by the director under conditions and rules and for increased minimum wages which the director, after investigation, determines and prescribes by order and which shall apply equally to all employers in such industry or occupation.

Source: L. 17: p. 386, § 11. C.L. § 4272. CSA: C. 97, § 246. CRS 53: § 80-9-10. C.R.S. 1963: § 80-7-10. L. 69: p. 607, § 93. L. 77: (2), (3), and (4) amended, p. 431, § 10, effective July 1. L. 86: (4) amended, p. 472, § 33, effective July 1. L. 2000: (2) amended, p. 1487, § 2, effective July 1. L. 2024: (2) amended, (HB 24-1095), ch. 378, p. 2567, § 6, effective January 1, 2025.

Cross references: For the maximum number of hours minors may be employed, see § 8-12-105; for the general eight-hour day requirement, see article 13 of this title 8.

ANNOTATION

Pursuant to Colorado's Minimum Wage Act, the director of the Colorado division of labor has been delegated the authority to investigate and determine the wages and employment conditions in certain occupations. If, following such investigation, the director finds that employment conditions in any industry

endanger employees' health or morals, the director may directly or through a "wage board" adopt a wage order to establish minimum wage rates and standard conditions of employment in the affected industry. *Weissman v. Crawford Rehab. Servs.*, 914 P.2d 380 (Colo. App. 1995).

Companions employed by third-party employers—as opposed to by households or family members—fall within the companionship exemption of the Colorado minimum wage order, promulgated under subsection (4). As a

result, companions employed by third-party employers are not entitled to overtime wages under Colorado law. *Jordan v. Maxim Healthcare Servs.*, 950 F.3d 724 (10th Cir. 2020).

8-6-112. New determination of wages and conditions.

Whenever a minimum wage rate or a new standard of conditions of employment has been established in any occupation, the director, if he deems proper or necessary so to do, upon petition of either employers or employees, may reconvene the wage board or establish a new wage board, and any recommendation made by such board shall be dealt with in the same manner as the original recommendation of a wage board. Pending any new determination, any minimum wage rate and any new standard of conditions of employment theretofore established shall be and continue in force and effect. It is the duty of the director to survey and review for adequacy established wage orders made pursuant to the provisions of section 8-6-111 at least every four years, whether or not the director is petitioned to do so by either employers or employees.

Source: L. 17: p. 387, § 12. C.L. § 4273. CSA: C. 97, § 247. CRS 53: § 80-9-11. C.R.S. 1963: § 80-7-11. L. 69: pp. 607, 665, §§ 94, 1.

ANNOTATION

Pursuant to Colorado's Minimum Wage Act, the director of the Colorado division of labor has been delegated the authority to investigate and determine the wages and employment conditions in certain occupations. If, following such investigation, the director finds that employment conditions in any industry

endanger employees' health or morals, the director may directly or through a "wage board" adopt a wage order to establish minimum wage rates and standard conditions of employment in the affected industry. *Weissman v. Crawford Rehab. Servs.*, 914 P.2d 380 (Colo. App. 1995).

8-6-113. Employment at less than minimum wage - license. (Repealed)

Source: L. 17: p. 387, § 13. C.L. § 4274. CSA: C. 97, § 248. CRS 53: § 80-9-12. C.R.S. 1963: § 80-7-12. L. 69: p. 608, § 95. L. 77: Entire section repealed, p. 432, § 13, effective July 1.

8-6-114. Wages and working conditions for minors. (Repealed)

Source: L. 17: p. 387, § 14. C.L. § 4275. CSA: C. 97, § 247. CRS 53: § 80-9-13. C.R.S. 1963: § 80-7-13. L. 69: p. 608, § 96. L. 77: Entire section repealed, p. 432, § 13, effective July 1.

8-6-115. Discrimination by employer - penalty - prosecutions.

Any employer who discharges or threatens to discharge, or in any other way discriminates against an employee because such employee serves upon a wage board, or is active in its formation, or has testified or is about to testify, or because the employer believes that the employee may testify in any investigation or proceeding relative to enforcement of this article 6 commits a class 2 misdemeanor. The director shall investigate and report to the proper prosecuting officials whether employers in each occupation investigated are obeying his or her decrees, and the director or employees of the division may cause informations to be filed with and prosecutions to be instituted by the proper prosecuting officials for any violation of the provisions of this article 6.

Source: L. 17: p. 388, § 15. C.L. § 4276. CSA: C. 97, § 250. CRS 53: § 80-9-14. C.R.S. 1963: § 80-7-14. L. 69: p. 608, § 97. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3141, § 89, effective March 1, 2022.

Cross references: For the penalty for a class 2 misdemeanor, see § 18-1.3-501.

ANNOTATION

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986).

8-6-116. Violation - penalty.

(1) The minimum wages fixed by the director, as provided in this article 6, are the minimum wages paid to the employees, and the payment to such employees of a wage less than the minimum so fixed is unlawful, and every employer or other person who intentionally, individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than the minimum commits theft as defined in section 18-4-401.

(2) For the purpose of this section, the amount of the theft is the unpaid balance of the full amount of the minimum wage, as described in section 8-6-118.

Source: L. 17: p. 388, § 16. C.L. § 4277. CSA: C. 97, § 251. CRS 53: § 80-9-15. L. 63: p. 290, § 9. C.R.S. 1963: § 80-7-15. L. 69: p. 608, § 98. L. 73: p. 1409, § 61. L. 77: Entire section amended, p. 431, § 11, effective July 1. L. 2019: Entire section amended, (HB 19-1267), ch. 182, p. 2059, § 4, effective January 1, 2020.

Cross references: For the legislative declaration in HB 19-1267, see section 1 of chapter 182, Session Laws of Colorado 2019.

8-6-117. Minimum wage presumed reasonable - conclusiveness.

In every prosecution for the violation of any provision of this article, the minimum wage established by the director shall be prima facie presumed to be reasonable and lawful and the wage required to be paid. The findings of fact made by the director acting within prescribed powers, in the absence of fraud, shall be conclusive.

Source: L. 17: p. 388, § 17. C.L. § 4278. CSA: C. 97, § 252. CRS 53: § 80-9-16. C.R.S. 1963: § 80-7-16. L. 69: p. 609, § 99. L. 77: Entire section amended, p. 432, § 12, effective July 1.

8-6-118. Recovery of balance of minimum wage.

An employee receiving less than the legal minimum wage applicable to such employee is entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage,

together with reasonable attorney fees and court costs, notwithstanding any agreement to work for a lesser wage.

Source: L. 17: p. 389, § 18. C.L. § 4279. CSA: C. 97, § 253. CRS 53: § 80-9-17. C.R.S. 1963: § 80-7-17. L. 2014: Entire section amended, (SB 14-005), ch. 276, p. 1120, § 8, effective January 1, 2015.

Cross references: For the short title ("Wage Protection Act of 2014") in SB 14-005, see section 1 of chapter 276, Session Laws of Colorado 2014.

ANNOTATION

An employee-plaintiff may bring a private civil action for violations of the Colorado minimum wage order's meal and rest period regulations. Sobolewski v. Boselli & Sons, LLC, 342 F. Supp. 3d 1178 (D. Colo. 2018).

An employee may maintain a private right of action for the unpaid balance of any minimum wage amounts owed to him or her by reason of the employer's alleged meal and rest break violations. Sobolewski v. Boselli & Sons, LLC, 342 F. Supp. 3d 1178 (D. Colo. 2018).

An employee who does not receive compensated and duty-free rest periods

required under the Colorado minimum wage orders is entitled to recover in a civil action the unpaid balance of the full amount of minimum wage for the rest periods. Pilmenstein v. Devereux Cleo Wallace, 2021 COA 59, 492 P.3d 1059.

The relevant statute of limitations for civil actions filed under this section is the two- or three-year limitations period set forth in § 8-4-122, which applies to any claims for unpaid wages and is more specific to unpaid wage claims than the default limitation that applies to debt collection actions in § 13-80-103.5. By the Rockies, LLC v. Perez, 2025 CO 56, 575 P.3d 445.

8-6-119. Investigation of complaints.

Any person may register with the division a complaint that the wages paid to an employee for whom a rate has been established are less than that rate, and the director shall investigate the matter and take all proceedings necessary to enforce the payment of the minimum wage rate.

Source: L. 17: p. 389, § 19. C.L. § 4280. CSA: C. 97, § 254. CRS 53: § 80-9-18. C.R.S. 1963: § 80-7-18. L. 69: p. 609, § 100.

8-6-120. Overtime wages for agricultural employees - definitions.

(1) As used in this section:

(a) "Agricultural employee" has the meaning set forth in section 8-2-206 (1)(b).

(b) "Agricultural employer" has the meaning set forth in section 8-3-104 (1).

(c) "Decision-making manager" means an individual primarily engaged in agricultural work who:

(I) Is paid at least the minimum salary threshold for certain exemptions contained in the provisions concerning agricultural workers in the director's rules related to Colorado overtime and minimum pay standards;

(II) Is not employed on a seasonal or temporary basis; and

(III) Has primary duties that require the routine exercise of independent judgment and discretion in matters of significance and who either:

(A) Supervises two or more full-time employees; or

(B) Reports directly to an owner or to an executive-level employee who reports directly to an owner who routinely exercises independent judgment and discretion in matters of significance in manual or in nonmanual labor.

(d) "Family member" means a child, sibling, spouse, parent, aunt, uncle, nephew, niece, first cousin, grandchild, or grandparent by blood, adoption, or marriage.

(2) Beginning January 1, 2027, an agricultural employer shall pay an agricultural employee at an overtime rate for any time worked in excess of fifty-six hours in a workweek, except for an agricultural employee who is:

(a) Principally engaged in the range production of livestock on the open range, as described in 29 CFR 780.323 to 780.329;

(b) A decision-making manager who is employed by an agricultural employer; or

(c) A family member of a family owner of an agricultural employer.

Source: L. 2021: Entire section added, (SB 21-087), ch. 337, p. 2177, § 4, effective June 25.
L. 2026: Entire section R&RE, (SB 26-121), ch. 84, p. 334, § 1, effective May 4.

Editor's note: Section 3 of chapter 84 (SB 26-121), Session Laws of Colorado 2026, provides that the act changing this section applies to time worked and contracts entered into or renewed on or after May 4, 2026.

ARTICLE 7

Salaries of Employees in Mining

8-7-101 to 8-7-109. (Repealed)

Source: L. 77: Entire article repealed, p. 292, § 2, effective May 26.

Editor's note: This article was numbered as article 12 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

8-7.5 ARTICLE 7.5

Direct Care Workforce Stabilization Board

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Compliance assistance -
violations - enforcement.

8-7.5-101. Short title.

The short title of this article 7.5 is the "Direct Care Workforce Stabilization Board Act".

Source: L. 2023: Entire article added, (SB 23-261), ch. 362, p. 2170, § 1, effective August 7.

8-7.5-102. Definitions.

As used in this article 7.5, unless the context otherwise requires:

- (1) "Board" means the direct care workforce stabilization board created in section 8-7.5-103.
- (2) "Department" means the department of labor and employment created in section 24-1-121.
- (3) "Direct care consumer" means:
 - (a) A home care consumer;
 - (b) An eligible person; or
 - (c) An eligible person with a disability, as defined in section 25.5-6-1302 (2).
- (4) (a) "Direct care employer" means:
 - (I) A home care employer; or
 - (II) A provider agency or organization that provides direct care services.
 - (b) "Direct care employer" does not include an eligible person who participates in the consumer-directed care service model pursuant to part 11 of article 6 of title 25.5; except that the eligible person is a direct care employer for purposes of appointment of direct care employers to the board pursuant to section 8-7.5-103 (2)(a)(I)(B).
- (5) "Direct care industry" means the industry in which direct care workers deliver direct care services to direct care consumers in Colorado.
- (6) "Direct care services" means:
 - (a) Personal care services; or

(b) Any services described in part 3, 4, 6, 7, 9, 11, 12, 13, or 19 of article 6 of title 25.5 that do not require the individual providing the services to be licensed or certified by the state or the federal government in order to perform the services.

(7) "Direct care worker" means:

(a) A home care worker;

(b) An employee or independent contractor of a direct care employer, as defined in subsection (4)(a)(II) of this section, who provides direct care services to direct care consumers, as defined in subsection (3)(b) of this section; or

(c) An individual who provides direct care services to direct care consumers, as defined in subsection (3)(c) of this section.

(7.5) "Eligible person" means a person who is eligible to receive services pursuant to part 3, 4, 6, 7, 9, 11, 12, 13, or 19 of article 6 of title 25.5 or any other home- and community-based service waiver for which the department of health care policy and financing has federal waiver authority.

(8) "Employer organization" means:

(a) An organization exempt from federal income taxation under section 501 (c)(6) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended, that represents direct care employers; or

(b) An entity selected by and representing employers.

(9) "Executive director" means the executive director of the department.

(10) "Home care consumer" means a home care consumer, as defined in section 25-27.5-102 (4), who receives personal care services.

(11) "Home care employer" means a home care agency, as defined in section 25-27.5-102 (3), or other entity that employs home care workers.

(12) "Home care worker" means a worker providing personal care services to a home care consumer.

(13) "Personal care services" has the same meaning as set forth in section 25-27.5-102 (6).

(14) "Worker organization" means an organization that:

(a) Is exempt from federal income taxation under section 501 (c)(3), (c)(4), (c)(5), or (c)(6) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended;

(b) Is not dominated, controlled, or funded by any direct care employer; and

(c) Has at least two years of demonstrated experience engaging and advocating for direct care workers.

Source: L. 2023: Entire article added, (SB 23-261), ch. 362, p. 2170, § 1, effective August 7.
L. 2025: (3)(b), (4)(b), and (6)(b) amended and (7.5) added, (HB 25-1325), ch. 255, p. 1268, § 1, effective August 6.

8-7.5-103. Direct care workforce stabilization board - creation - membership.

(1) **Board creation.** The direct care workforce stabilization board is created in the department as a **type 2** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department and the executive director of the department.

(2) **Board membership.**

(a) The board consists of fifteen members appointed as follows:

(I) The executive director shall appoint the following members to the board:

(A) A representative of the department;

(B) Four members representing direct care employers or employer organizations, including at least one member that serves a rural or frontier area of the state;

(C) Four members representing direct care workers or worker organizations, including at least one member from a rural or frontier area of the state; and

(D) Four members representing direct care consumers who receive direct care services from direct care workers, including one member from an organization representing individuals with disabilities, one member from an organization representing older adults, and at least one member from a rural or frontier area of the state;

(II) The executive director of the department of health care policy and financing shall appoint a representative of the department of health care policy and financing to serve on the board; and

(III) The executive director of the department of public health and environment shall appoint a representative of the department of public health and environment to serve on the board.

(b) The appointing authorities shall make initial appointments to the board by October 1, 2023. To the extent possible, the appointing authorities shall appoint board members who

represent Colorado's diversity with regard to ethnicity, race, gender, sexual orientation, gender identity, gender expression, disability, age, and socioeconomic background.

(3) Terms.

(a) (I) Except as provided in subsection (3)(a)(II) of this section, members of the board serve three-year terms of office and shall not serve more than two consecutive terms of office.

(II) and (III) Repealed.

(b) If a vacancy occurs on the board, the appointing authority for the vacant position shall fill the position on the board for the remainder of the unexpired term with a member qualified for the vacated position.

(4) Board chair. The board shall elect by a majority vote a member of the board to serve as the chair of the board.

(5) Meetings and hearings.

(a) The board shall convene its first meeting no later than November 15, 2023, and shall meet at least quarterly thereafter and at other times as determined by the chair for purposes of developing recommendations for minimum direct care employment standards pursuant to section 8-7.5-104.

(b) In addition to the meetings described in subsection (5)(a) of this section, the board shall host public hearings as described in section 8-7.5-104 (2)(c) to engage with and obtain input from direct care workers, direct care employers, and direct care consumers.

(c) All meetings and hearings of the board must include an option for remote participation by board members and any other participants in the meetings or hearings.

(6) Voting. The board may take action, including action to recommend minimum direct care employment standards under section 8-7.5-104, only upon the affirmative vote of at least eight members of the board.

(7) Staffing. The department shall provide staff support to the board as needed.

(8) No compensation - expense reimbursement. Members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their duties under this article 7.5.

Source: L. 2023: Entire article added, (SB 23-261), ch. 362, p. 2172, § 1, effective August 7.

Editor's note: Subsection (3)(a)(III) provided for the repeal of subsections (3)(a)(II) and (3)(a)(III), effective September 1, 2024. (See L. 2023, p. 2172.)

8-7.5-104. Duties of the board - recommendations for minimum direct care employment standards - analysis of market conditions - public outreach - report.

(1) (a) (I) By September 1, 2024, and every two years thereafter, the board shall develop recommendations for minimum direct care employment standards that are reasonably necessary or appropriate to protect and ensure the health and welfare of direct care workers without impeding the dignity and independence of direct care consumers. The recommendations must include, as appropriate, standards for compensation, working hours, and other working conditions for direct care workers. The board shall also develop recommendations on how the state can better communicate information to direct care workers about their rights and about the obligations of direct care employers.

(II) Notwithstanding section 8-7.5-103 (6) and subsection (1)(c) of this section, the board may extend any recommendations for minimum direct care employment standards developed pursuant to this section to additional types of workers who are determined to provide services that are direct care in nature within Colorado's long-term care delivery system if deemed appropriate by the members of the board appointed pursuant to section 8-7.5-103 (2)(a)(I)(A), (2)(a)(II), and (2)(a)(III).

(b) Any standards recommended by the board pursuant to this article 7.5 must be at least as protective of or beneficial to direct care workers as any other applicable state statute or rule.

(c) As specified in section 8-7.5-103 (6), the board shall not make any recommendation that does not receive the affirmative vote of at least eight voting members of the board. The board shall record the vote on each recommendation on which the board votes.

(2) (a) In developing recommendations for minimum direct care employment standards, the board shall:

(I) Investigate the market conditions of the direct care industry in relation to the Colorado labor market, including existing wages, benefits, working hours, and other working conditions of direct care workers and challenges to direct care employers throughout the state and in specific areas of the state specified by the board;

(II) Investigate other direct care industry models, including direct-care-worker-owned opportunities and the impact of access to worker organizations;

(III) Investigate the impacts of racial and economic injustices on direct care workers and the direct care consumers to whom they provide direct care services;

(IV) Investigate the adequacy of the reimbursement rate available through the medical assistance program established in articles 4, 5, and 6 of title 25.5;

(V) Host public meetings in accordance with subsection (2)(c) of this section for purposes of engaging with and obtaining input from direct care workers, direct care employers, and direct care consumers; and

(VI) Endeavor to develop minimum direct care employment standards that meet or exceed the existing industry conditions that apply to a majority of direct care workers in the state or in specified areas of the state.

(b) The board shall consider the following information in developing recommendations for minimum direct care employment standards:

(I) Data concerning wage rates, benefits, working hours, and other working conditions, which data is collected by or submitted to the board and relates to direct care workers in the state or in the areas specified by the board;

(II) Data concerning the reimbursement rate through the medical assistance program established in articles 4, 5, and 6 of title 25.5;

(III) Statements showing wage rates paid to, benefits provided to, and working hours and other working conditions of direct care workers in the areas specified by the board;

(IV) Signed collective bargaining agreements applicable to direct care workers in the state or in the areas specified by the board;

(V) Testimony and information provided by current and former direct care workers, worker organizations, direct care employers, employer organizations, direct care consumers, and organizations representing direct care consumers;

(VI) Local jurisdiction minimum direct care employment standards;

(VII) Any recommendations and findings from previous and existing working groups that the board considers relevant, including any direct care workforce collaborative stakeholder groups convened by the department of health care policy and financing and the home care advisory committee created in section 25-27.5-104 (3);

(VIII) Information submitted by or obtained from state and local government agencies;

(IX) Data and analysis that the department of health care policy and financing shall provide to the board regarding the direct care workforce that serves recipients of the medical assistance program established pursuant to articles 4, 5, and 6 of title 25.5 and context, expertise, or feedback that the department of health care policy and financing shall provide to the board, when relevant to the recommendations the board is developing, that is specific to the potential impacts

of the recommendations on the medical assistance program established pursuant to articles 4, 5, and 6 of title 25.5; and

(X) Any other information pertinent to the determination of minimum direct care employment standards.

(c) (I) The board shall endeavor to engage as many direct care workers as possible in investigating the direct care industry market conditions and in developing recommendations for minimum direct care employment standards and improved communications. To facilitate outreach to direct care workers and direct care consumers, the board shall develop a public education and communication plan in order to inform direct care workers and direct care consumers of the board, its purpose, its meetings and hearings, and the right of direct care workers and direct care consumers to participate in the board's meetings and hearings, its market conditions investigation, and its development of recommendations for minimum direct care employment standards. The plan must be culturally competent and use targeted methods that will effectively engage direct care workers and direct care consumers, including advertising and other marketing tools, and must include an option for direct care workers and direct care consumers to provide the direct care worker's, direct care employer's, or direct care consumer's name, mailing address, email address, and telephone number for purposes of receiving ongoing communications from the board about opportunities for engagement with the board.

(II) For purposes of facilitating engagement with and input from direct care workers, direct care employers, and direct care consumers, the board shall host at least four public hearings before finalizing its initial recommendations for minimum direct care employment standards. The board shall:

(A) Schedule public hearings at variable times of the day and days of the week throughout the year, including at least one meeting scheduled on a weekend, one meeting scheduled in the evening, and one meeting scheduled in the morning;

(B) Provide notice of each hearing, including the date, time, and location of the hearing and the name and contact information for each member of the board, at least thirty days in advance of the hearing and shall enlist assistance from the department of labor and employment and the department of health care policy and financing, as well as employer organizations, worker organizations, consumer advocacy groups, and other stakeholders in the direct care industry, to provide notice of the hearing to direct care workers, direct care employers, direct care consumers, and other interested parties; and

(C) Include in the notice an option for direct care workers, direct care employers, and direct care consumers to provide the direct care worker's, direct care employer's, or direct care consumer's name, mailing address, email address, and telephone number for purposes of receiving ongoing communications from the board regarding the activities of the board and opportunities for direct care workers, direct care employers, and direct care consumers to

participate in hearings and to provide input to the board. A department or other entity that receives an indication of interest from a direct care worker, a direct care employer, or a direct care consumer shall forward that information to the board.

(3) (a) By September 1, 2024, the board shall report any recommendations for initial standards for direct care worker compensation, working hours, and other working conditions, including recommendations for legislation or administrative rules or orders, that the board approves in accordance with section 8-7.5-103 (6) to the governor and to the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or their successor committees.

(b) No later than two years after the board reports its initial minimum direct care employment standards recommendations pursuant to subsection (3)(a) of this section, and at least once every two years thereafter, the board shall conduct a review of the direct care industry and develop recommendations in accordance with subsections (1) and (2) of this section. The board shall report its recommendations as specified in subsection (3)(a) of this section.

(c) In addition to the board's biennial review of the direct care industry pursuant to subsection (3)(b) of this section, the executive director may convene the board at other times to conduct a review of minimum direct care employment standards if the executive director determines that a review is necessary.

(3.5) The board shall investigate health-care benefits for the direct care workforce, including the overall costs within the industry in comparison to other similar industries, the implications of a family caregiver model for direct care workers on health insurance costs and medicaid rates, innovative solutions for improving quality of care and reducing the cost of care and how to fund the health-care benefits, and whether medicaid reimbursement can contribute to the cost of these health-care benefits.

(4) Nothing in this section:

(a) Limits the rights of parties to a collective bargaining agreement to bargain and agree with respect to direct care employment standards;

(b) Diminishes the obligation of a direct care employer to comply with any contract, collective bargaining agreement, or employment benefit program or plan that meets or exceeds, and does not conflict with, any minimum direct care employment standards enacted into law or adopted by rule; or

(c) Diminishes the rights of an eligible person participating in the consumer-directed care service model pursuant to part 11 of article 6 of title 25.5 to control and manage the eligible person's services, including the right to hire, fire, schedule, and set wages for direct care workers who provide direct care services to the eligible person within parameters set in current state and local law.

Source: **L. 2023:** Entire article added, (SB 23-261), ch. 362, p. 2174, § 1, effective August 7. **L. 2025:** (3.5) added, (HB 25-1328), ch. 263, p. 1347, § 2, effective August 6; (4)(c) amended, (HB 25-1325), ch. 255, p. 1269, § 2, effective August 6.

Cross references: For the legislative declaration in HB 25-1328, see section 1 of chapter 263, Session Laws of Colorado 2025.

8-7.5-105. Notice to direct care workers - duty of direct care employers - posting on state websites - board review and recommendations - rules.

(1) (a) Starting January 1, 2025, each direct care employer shall annually provide a notice to direct care workers employed by the direct care employer informing the direct care workers of the following:

(I) The rights of direct care workers and the obligations of direct care employers provided under this article 7.5, including their rights to participate in public hearings that the board conducts and to provide written or oral testimony to the board;

(II) All current minimum direct care employment standards and any local jurisdiction minimum direct care employment standards; and

(III) The contact information for, and a statement that the direct care worker may contact, the department for assistance and information regarding the rights and obligations under this article 7.5 and any standards described in subsection (1)(a)(II) of this section.

(b) A direct care employer shall provide the notice described in subsection (1)(a) of this section using the same means that the direct care employer uses to provide other work-related notices to direct care workers.

(c) (I) The board shall make available to direct care employers a template or sample notice that satisfies the requirements of this section and rules adopted by the department pursuant to this title 8 regarding other required employer notices pertaining to wages, pay equity, labor conditions, and family and medical leave benefits. Direct care employers shall provide the board with copies of any notices given to direct care workers pursuant to this section.

(II) The board shall provide, in an accessible format, the template or sample notice described in subsection (1)(c)(I) of this section to an eligible person participating in the consumer-directed care service model pursuant to part 11 of article 6 of title 25.5.

(2) The department of labor and employment, the department of health care policy and financing, and the department of public health and environment shall post the notice described in subsection (1) of this section on their respective public-facing websites.

(3) (a) The board shall review the manner in which direct care workers are informed of their rights and the obligations of direct care employers under this article 7.5 and under other applicable state statutes and rules and shall make recommendations to the department of labor and employment, the department of health care policy and financing, and the department of public health and environment on methods to improve the state's ability to communicate with direct care workers regarding the workers' rights and the obligations of direct care employers.

(b) The departments specified in subsection (3)(a) of this section shall review the board recommendations and adopt or amend any rules the departments determine would improve the transmission of information to direct care workers.

Source: L. 2023: Entire article added, (SB 23-261), ch. 362, p. 2178, § 1, effective August 7.
L. 2025: (1)(c)(II) amended, (HB 25-1325), ch. 255, p. 1269, § 3, effective August 6.

8-7.5-106. Retaliation.

(1) A direct care employer shall not retaliate against a direct care worker, including taking retaliatory personnel action, for:

- (a) Exercising any right afforded to the direct care worker under this article 7.5; or
- (b) Participating in any process or proceeding under this article 7.5, including board hearings, investigations, or other proceedings.

(2) A direct care employer shall not retaliate against a direct care consumer for advocating for a direct care worker or assisting a direct care worker in reporting misconduct to the department. Retaliation includes dropping a direct care consumer from services because the direct care consumer advocated for direct care workers.

Source: L. 2023: Entire article added, (SB 23-261), ch. 362, p. 2179, § 1, effective August 7.

8-7.5-107. Repeal of article - subject to review.

This article 7.5 is repealed, effective September 1, 2029. Before the repeal, the board is scheduled for review in accordance with section 24-34-104.

Source: L. 2023: Entire article added, (SB 23-261), ch. 362, p. 2179, § 1, effective August 7.

8-7.5-108. Direct care employers - direct care worker rights training - direct care worker communication platform - direct care worker website.

(1) By January 1, 2026, the department shall collaborate with the board and any other entities deemed relevant by the department to establish a comprehensive "know your rights" training for direct care workers that includes information concerning:

- (a) The direct care worker base wage;
- (b) Wages and hours for overtime work;
- (c) The "Healthy Families and Workplaces Act", part 4 of article 13.3 of this title 8;
- (d) The "Family Care Act", part 2 of article 13.3 of this title 8;
- (e) The federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, as it relates to worker rights;
- (f) Travel time rules, as the rules relate to the employment of direct care workers;
- (g) Civil rights protected by Colorado law that are relevant to the employment of direct care workers;
- (h) Where a direct care worker can learn more about the topics covered in the training;
- (i) Where and how to file a complaint, including rights secured under the "Protecting Opportunities and Workers' Rights Act", Senate Bill 23-172, enacted in 2023; and
- (j) The contents of the website established in section 25.5-1-208, how to use the communication platform established in section 25.5-1-208, the benefits to the direct care worker of participation in the communication platform, how direct care worker contact information will be used, and how to opt in to and opt out of the communication platform.

(2) The department shall:

- (a) Ensure that the comprehensive "know your rights" training required to be established by subsection (1) of this section is available to direct care workers and direct care employers;
- (b) Allow worker organizations to participate in the "know your rights" training;
- (c) Allow representatives of the board to participate in the "know your rights" trainings;

(d) Not charge a fee to direct care employers or direct care workers for the "know your rights" training;

(e) Report periodically to the board concerning direct care worker completion of the "know your rights" training; and

(f) Provide a certification of completion of the "know your rights" training to the direct care worker.

(3) A direct care employer shall:

(a) On or before October 1, 2026, or within ninety days after the direct care worker website and the communication platform are established pursuant to section 25.5-1-208 (2), whichever is earlier, require each direct care worker to provide documentation of a completed "know your rights" training administered by the department;

(b) Distribute a direct care worker-specific notice of rights developed by the department in coordination with the board and the department of health care policy and financing pursuant to section 25.5-1-208 (3)(a) to each direct care worker employed by the employer and to each new direct care worker at the time of hire that includes:

(I) "Know your rights" training information;

(II) The contents of the direct care worker website and communication platform;

(III) How to opt in to the communication platform and the potential benefits of opting in to the communication platform;

(IV) How to use the communication platform;

(V) How and what direct care worker contact information may be shared; and

(VI) How to opt out of the communication platform and communications from the communication platform; and

(c) Inform all employees about the direct care worker website and communication platform established by the department of health care policy and financing pursuant to section 25.5-1-208.

Source: L. 2025: Entire section added, (HB 25-1328), ch. 263, p. 1347, § 3, effective August 6.

Cross references: For the legislative declaration in HB 25-1328, see section 1 of chapter 263, Session Laws of Colorado 2025.

8-7.5-109. Compliance assistance - violations - enforcement.

(1) The director of the division of labor standards and statistics shall provide compliance assistance to direct care employers as warranted and shall investigate leads concerning possible violations of the training and notice requirements set forth in this article 7.5 and other alleged labor violations against direct care workers that, in the director's good faith discretion and judgment, warrant investigation.

(2) The director of the division of labor standards and statistics shall enforce compliance and shall impose a fine on a direct care employer that violates this article 7.5 of one hundred dollars for each direct care worker affected by each violation. A direct care employer that demonstrates a good faith effort to comply with this article 7.5 is not subject to a fine for the employer's first violation for a worker covered by the violation. The director shall double the amount of the fine for each violation after a prior violation of the same or similar type within five years. The division shall transmit the money collected from fines imposed pursuant to this subsection (2) to the state treasurer, who shall credit the money to the wage theft enforcement fund created in section 8-4-113 (3).

Source: Entire section added, (HB 25-1328), ch. 263, p. 1349, § 3, effective August 6.

Cross references: For the legislative declaration in HB 25-1328, see section 1 of chapter 263, Session Laws of Colorado 2025.

ARTICLE 8

Truck System Abolished

8-8-101 to 8-8-109. (Repealed)

Source: L. 95: Entire article repealed, p. 194, § 6, effective April 13.

Editor's note: This article was numbered as article 20 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 9

Assignment of Wages

8-9-101.	Assignment of wages - requirements.	8-9-104.	Joinder of wife or husband in assignment - acknowledgment.
8-9-102.	Copies to be given employer and assignor.	8-9-105.	Burden of proof of validity on assignee.
8-9-103.	When assignment must be recorded.	8-9-106.	Deductions for union dues.
		8-9-107.	Other authorized deductions.

8-9-101. Assignment of wages - requirements.

This article is subject to the provisions of articles 2 and 3 of the "Uniform Consumer Credit Code". No assignment of wages by any employee to any person for the benefit of such employee shall be valid or enforceable. No employer or debtor shall recognize or honor any assignment of wages for any purpose unless it is in writing and for a fixed and definite part of the wages earned or to be earned within thirty days from the date of such assignment. Any assignment which is postdated or dated on any other date than that of its actual execution, shall be void and of no effect for any purpose.

Source: L. 49: p. 231, § 3. CSA: C. 97, § 223(1). CRS 53: § 80-11-1. C.R.S. 1963: § 80-15-1. L. 71: p. 853, § 3.

Cross references: For the "Uniform Consumer Credit Code", see articles 1 to 9 of title 5.

ANNOTATION

Law reviews. For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968).

the meaning of this article. Crepeau v. Renewal Guar. Corp., 29 Colo. App. 23, 478 P.2d 698 (1970).

Assignment of insurance renewal commissions held not to be wages within

8-9-102. Copies to be given employer and assignor.

No assignment of wages shall be valid or enforceable unless a copy of the assignment is given or mailed by registered mail to the employer within five days after its execution and a copy of the assignment given to the wage earner making the assignment.

Source: L. 49: p. 232, § 4. CSA: C. 97, § 227(1). CRS 53: § 80-11-2. C.R.S. 1963: § 80-15-2.

8-9-103. When assignment must be recorded.

No assignment of wages not already earned at the time of the assignment and no assignment of any other sum to become due to the assignor shall be valid as against any creditor of the assignor who has not had actual notice of the assignment at the time the same is made unless the same is recorded with the recorder of the county wherein such wages are to be earned or such sums are to become due within five days from date thereof.

Source: L. 49: p. 231, § 1. CSA: C. 97, § 232(1). CRS 53: § 80-11-3. C.R.S. 1963: § 80-15-3.

8-9-104. Joinder of wife or husband in assignment - acknowledgment.

No assignment of wages, except for child support, not already earned at the time of the assignment or any sum to become due the assignor after the date of such assignment shall be valid unless, if the assignor is married and residing with his spouse, such spouse joins in and signs such assignment and such assignment is duly acknowledged before a notary public or some other officer authorized by the laws of Colorado to take acknowledgments.

Source: L. 49: p. 231, § 2. CSA: C. 97, § 233(1). CRS 53: § 80-11-4. C.R.S. 1963: § 80-15-4. L. 81: Entire section amended, p. 909, § 2, effective June 8.

ANNOTATION

Annotator's note. A case decided prior to the earliest source of § 8-9-104 has been included in the annotations to this section.

This section is designed to secure to the wife her rightful share in the fruits of her husband's labor. State v. Elkins, 84 Colo. 409, 270 P. 875 (1928).

Since this provision is for the protection of the home, it would be incongruous to

permit a creditor to assume the role of the wife for the purpose of seizing her husband's paycheck. State v. Elkins, 84 Colo. 409, 270 P. 875 (1928).

Where wages are in the wife's hands, thus having reached the haven intended by this section, they are not subject to garnishment. State v. Elkins, 84 Colo. 409, 270 P. 875 (1928).

8-9-105. Burden of proof of validity on assignee.

If any assignment of wages or other sums to be earned or to become due after the date of such assignment is contested by any creditor of the assignor, the burden of proof that the assignment was recorded as provided in section 8-9-103 or that the creditor had actual notice of the assignment at the time garnishee summons was issued and that the assignment was made in accordance with the provisions of this article rests upon the assignee under the assignment.

Source: L. 49: p. 232, § 5. CSA: C. 97, § 234(1). CRS 53: § 80-11-5. C.R.S. 1963: § 80-15-5.

8-9-106. Deductions for union dues.

Nothing in this article shall prevent or prohibit the use of the check-off between employers or employees in the custom or practice of the deduction of union dues by an employer for his employees where such an arrangement has been entered into between the parties.

Source: L. 49: p. 232, § 6. CSA: C. 97, § 235(1). CRS 53: § 80-11-6. C.R.S. 1963: § 80-15-6.

8-9-107. Other authorized deductions.

(1) Nothing contained in this article shall be construed to affect deductions authorized by an employee to be made by an employer for hospital, medical, stock purchases, savings, insurance, charities, credit unions, banks, savings and loans, or any other financial institution or other

similar purposes, or for rent, board, and subsistence provided in connection with employment, if the authorization is revocable.

(2) Rent, board, and subsistence deductions as provided in subsection (1) of this section shall not be made a condition of employment.

Source: L. 49: p. 232, § 7. CSA: C. 97, § 235(2). CRS 53: § 80-11-7. C.R.S. 1963: § 80-15-7. L. 71: p. 853, § 3. L. 83: Entire section amended, p. 405, § 1, effective May 23.

ARTICLE 10

Preferred Claims

8-10-101.	Wages a preferred claim.	8-10-103.	Payment - prorating - prior
8-10-102.	Statement of claim presented.		mortgage not impaired.

8-10-101. Wages a preferred claim.

When the business of any person, corporation, company, or firm is suspended by the action of creditors or put into the hands of a receiver or trustee, the debts owing to laborers, servants, or employees, which have occurred by reason of their labor or employment shall be considered and treated as preferred claims. Such laborers or employees shall be preferred creditors and shall first be paid in full. If there are not sufficient funds to pay them in full, they shall be paid from the proceeds of the sale of the property seized. Any person interested may contest any such claim, or part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property, and thereupon the claimant shall be required to reduce his claim to judgment before a court having jurisdiction thereof before any part thereof is paid.

Source: L. 03: p. 143, § 1. R.S. 08: § 6998. C.L. § 4243. CSA: C. 97, § 217. CRS 53: § 80-12-1. C.R.S. 1963: § 80-16-1.

ANNOTATION

Section should be liberally construed.	insolvency of employers, is based upon a
This section intended to secure wage earners	sound public policy and should be liberally
against loss of their earnings from	construed in order to accomplish the purpose

of its enactment. *Central Sav. Bank v. Newton*, 59 Colo. 150, 147 P. 690 (1915).

But this section cannot be invoked for the purpose of supporting a decision not based upon the letter or spirit of its enactment, for the general assembly has not created a lien, but has made debts due for labor preferred claims against the property of the debtor, made claimants for wages preferred creditors, and provided that they shall be first paid, which is quite a different

thing from the creation of a statutory lien. *Central Sav. Bank v. Newton*, 59 Colo. 150, 147 P. 690 (1915).

This section contains no provisions as to the time in which exceptions to claims must be filed. *Central Sav. Bank v. Newton*, 59 Colo. 150, 147 P. 690 (1915).

For an early enactment on the subject of this section, see *Ray v. Hiller*, 11 Colo. 445, 18 P. 622 (1888).

8-10-102. Statement of claim presented.

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

Source: L. 03: p. 143, § 2. R.S. 08: § 6999. C.L. § 4244. CSA: C. 97, § 218. CRS 53: § 80-12-2. C.R.S. 1963: § 80-16-2.

8-10-103. Payment - prorating - prior mortgage not impaired.

No claim under this article shall be paid until after the expiration of the time in which to present such claim. If the funds realized from the sale of the property seized are insufficient to pay the total claims presented, such funds shall be prorated on such claims. The provisions of this article shall not be construed to extend to creditors who held a duly recorded mortgage upon the property attached which was given for a debt actually existing from such mortgage before the labor was performed.

Source: L. 03: p. 144, § 3. R.S. 08: § 7000. C.L. § 4245. CSA: C. 97, § 219. CRS 53: § 80-12-3. C.R.S. 1963: § 80-16-3.

ANNOTATION

This section places the claims of employees for labor in a preferred class to be paid in preference to other simple contract creditors. *Central Sav. Bank v. Newton*, 59 Colo. 150, 147 P. 690 (1915).

But it does not create an express statutory lien superior to all other liens without reference to priority. *Central Sav. Bank v. Newton*, 59 Colo. 150, 147 P. 690 (1915).

And it is not intended to give such claims a preference upon the corpus of mortgaged property. *Central Sav. Bank v. Newton*, 59 Colo. 150, 147 P. 690 (1915); *Helm v. Smith*, 62 Colo. 203, 162 P. 143 (1916).

A recorded mortgage for an existing debt takes precedence over claims for labor subsequently performed. *Central Sav. Bank v. Newton*, 59 Colo. 150, 147 P. 690 (1915).

Claims against a going railroad might be preferred over prior mortgage liens. *First Nat'l Bank v. Wyman*, 16 Colo. App. 468, 66 P. 456 (1901).

But ordinary liabilities of a railway company are preferred to a mortgage debt only when accrued within six months

prior to the appointment of a receiver, and this rule is departed from only in extreme cases and for special reasons. *Helm v. Smith*, 62 Colo. 203, 162 P. 143 (1916).

Moreover, the very existence of such a rule presupposes an affirmative showing of facts sufficient to invoke and warrant its application; and where the record fails to disclose that the railroad involved is a public or quasi-public corporation, or that it had ever been operated as such, and there is no attempt to show that the claims were valid and existing obligations against the company at the time of presentment, much less that they have any of the other attributes or characteristics which would in equity entitle them to preference over a mortgage lien, preference will be denied. *Central Sav. Bank v. Newton*, 59 Colo. 150, 147 P. 690 (1915).

Thus the salary of an attorney which accrued more than 13 months prior to the appointment of a receiver for a railroad, no effort having been made to enforce payment and the attorney having all the time full knowledge of the bonded indebtedness, was not entitled to a preference. *Helm v. Smith*, 62 Colo. 203, 162 P. 143 (1916).

Labor Conditions

ARTICLE 11

Occupational Safety and Health

8-11-100.1 to 8-11-125. (Repealed)

Source: L. 80: Entire article repealed, p. 451, § 6, effective April 13.

Editor's note: This article was numbered as articles 2 and 22 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 12

Colorado Youth Employment Opportunity Act

8-12-101.	Short title.	8-12-110.	Hazardous occupations prohibited for minors.
8-12-102.	Legislative declaration.	8-12-111.	Age certificates.
8-12-103.	Definitions.	8-12-112.	Proof of high school diploma, passing score on general educational development examination, or completion of career and technical education program.
8-12-104.	Exemptions.	8-12-113.	School release permit.
8-12-105.	Minimum age requirements - maximum hours of work.	8-12-114.	Appeal from denial or cancellation of school release permit - procedure.
8-12-106.	Permissible occupations at age nine or older.	8-12-115.	Director of division of labor standards and statistics -
8-12-107.	Permissible occupations at age twelve or older.		
8-12-108.	Permissible occupations at age fourteen or older.		
8-12-109.	Permissible occupations at age sixteen or older.		

	powers and duties - public records - filing final orders - rules - definition.	8-12-117.	Remedies for violations - workers' compensation - remedies at law and in equity.
8-12-116.	Penalty and damages for violations.	8-12-118.	Protection from retaliation - rebuttable presumption of retaliation.

8-12-101. Short title.

This article shall be known and may be cited as the "Colorado Youth Employment Opportunity Act of 1971".

Source: L. 71: R&RE, p. 889, § 1. C.R.S. 1963: § 80-6-13.

ANNOTATION

Law reviews. For article, "One Year Review of Torts", see 36 Dicta 64 (1959).

8-12-102. Legislative declaration.

(1) It is the policy of this state to foster the economic, social, and educational development of young people through employment. Work is an integral factor in providing a sense of purpose, direction, and self-esteem necessary to the overall physical and mental health of an individual. In the first part of this century, state and federal laws and regulations were needed to prevent the exploitation of child labor. Unfortunately, such legislation also has tended, on occasion, to limit and curtail opportunities for minors to participate in reasonable work experiences. Young people, especially those who have completed high school or occupational training and no longer are in school, should not be denied employment opportunities because of arbitrary minimum age limits. Work, however, should be coordinated with schooling wherever appropriate. Work and study combined must be developed in the interest of the youth to be trained.

(2) Repealed.

Source: L. 71: R&RE, p. 889, § 1. **C.R.S. 1963:** § 80-6-2. **L. 99:** Entire section amended, p. 289, § 3, effective April 14. **L. 2019:** (2) repealed, (HB 19-1210), ch. 320, p. 2976, § 5, effective January 1, 2020.

Cross references: For the legislative declaration in HB 19-1210, see section 1 of chapter 320, Session Laws of Colorado 2019.

ANNOTATION

This section does not contemplate nor create a private cause of action for parents against their children's employers. Wrongful death action brought by a minor employee's parents against the minor's employer for the death of the minor

which occurred during the course of the scope of the minor's employment was properly dismissed as being barred by the exclusivity provisions of the Workers' Compensation Act. *Henderson v. Bear*, 968 P.2d 144 (Colo. App. 1998).

8-12-103. Definitions.

As used in this article, unless the context otherwise requires:

- (1) Repealed.
- (2) "Director" means the director of the division of labor standards and statistics.
- (3) "Division" means the division of labor standards and statistics in the department of labor and employment.
- (4) "Employment" means any occupation engaged in for compensation in money or other valuable consideration, whether paid to the minor or to some other person, including, but not limited to, occupation as a servant, agent, subagent, or independent contractor.
- (5) "Minor" means any person under the age of eighteen, except a person who has received a high school diploma or a passing score on the general educational development examination. The state board of education may administer the general educational development examination to any minor seventeen years of age or older who wishes to be considered an adult for the purpose of this article if such person is qualified to take the examination under the standards established by the state board of education.
- (6) "School day" means any day when normal classes are in session during the regular school year in the school district.

(7) "School hours" means that period during which the student is expected to be in school in the school district.

Source: L. 71: R&RE, p. 889, § 1. C.R.S. 1963: § 80-6-3. L. 86: (1) repealed, p. 502, § 125, effective July 1. L. 2016: (2) and (3) amended, (HB 16-1323), ch. 131, p. 378, § 13, effective August 10.

8-12-104. Exemptions.

- (1) The provisions of this article, except section 8-12-110, shall not apply to the following:
 - (a) School work and supervised educational activities;
 - (b) Home chores;
 - (c) Work done for a parent or guardian, except where the parent or guardian receives any payment therefor;
 - (d) Newsboys and newspaper carriers.
- (2) Any minor employed as an actor, model, or performer shall be exempt from the provisions of subsection (1) of section 8-12-105.
- (3) The director may grant exemptions from any provision of this article, except for sections 8-12-113 and 8-12-114, for an individual minor if he finds that such an exemption would be in the best interests of the minor involved. In granting exemptions, the director shall consider, among other things, the previous training which the minor has received in his proposed occupation and his knowledge of the proper safety measures to be taken in connection with such occupation. The director may require any applicant for an exemption from section 8-12-110 to submit to a test of his ability to perform the skills required for the proposed occupation. Such tests may be administered by a community and technical college, a private occupational school, or any other institution which offers courses in the skills required, which courses are approved by either the state board for community colleges and occupational education or the private occupational school division.
- (4) Any employer, minor, minor's parent or guardian, school official, or youth employment specialist may request an exemption, as provided in subsection (3) of this section, from a provision of this article.

Source: L. 71: R&RE, p. 890, § 1. C.R.S. 1963: § 80-6-4. L. 79: (3) amended, p. 1631, § 1, effective July 19. L. 81: (3) amended, p. 850, § 21, effective July 1. L. 90: (3) amended, p. 1160, § 6, effective July 1.

8-12-105. Minimum age requirements - maximum hours of work.

(1) No minor under the age of fourteen shall be permitted employment in this state except as authorized by sections 8-12-104, 8-12-106, and 8-12-107.

(2) On school days, during school hours, no minor under the age of sixteen shall be permitted employment except as provided in section 8-12-113; and, after school hours, no minor under the age of sixteen shall be permitted to work in excess of six hours unless the next day is not a school day.

(3) Except for babysitters, no minor under the age of sixteen shall be permitted to work between the hours of nine-thirty p.m. and five a.m., except as authorized by section 8-12-104 (2), unless the next day is not a school day.

(4) Except for the provisions of subsection (5) of this section, no employer shall be permitted to work a minor more than forty hours in a week or more than eight hours in any twenty-four-hour period. In case of emergencies which may arise in the conduct of an industry or occupation (not subject to a wage order promulgated under article 6 of this title) the director may authorize an employer to allow a minor to work more than eight hours in a twenty-four-hour period. In such emergencies an employee shall be paid at a rate of one and one-half times his time rate as determined in accordance with the provisions of section 8-6-106 for each hour worked in excess of forty hours in a week.

(5) In seasonal employment for the culture, harvest, or care of perishable products where wages are paid on a piece basis, as determined in accordance with the provisions of section 8-6-106, a minor fourteen years of age or older may be permitted to work hours in excess of the limitations of subsection (4) of this section; but in no case is he permitted to work more than twelve hours in any twenty-four-hour period nor more than thirty hours in any seventy-two-hour period; except that a minor fourteen or fifteen years of age may work more than eight hours per day on only ten days in any thirty-day period. Overtime wage provisions of subsection (4) of this section shall not apply to this subsection (5).

Source: L. 71: R&RE, pp. 890, 898, §§ 1, 2. C.R.S. 1963: § 80-6-5. L. 73: p. 938, § 1.

Cross references: For the eight-hour day requirement in general, see article 13 of this title 8.

8-12-106. Permissible occupations at age nine or older.

(1) Subject to the limitations of sections 8-12-105 and 8-12-110, any minor at age nine or older shall be permitted employment in any of the following nonhazardous occupations:

- (a) Delivery of handbills, advertising, and advertising samples;
- (b) Shoeshining;
- (c) Gardening and care of lawns involving no power-driven lawn equipment;
- (d) Cleaning of walks involving no power-driven snow-removal equipment;
- (e) Casual work usual to the home of the employer and not specifically prohibited in this article;
- (f) Caddying on golf courses;
- (g) Any other occupation which is similar to those enumerated in this subsection (1) and is not specifically prohibited by this article.

Source: L. 71: R&RE, p. 891, § 1. C.R.S. 1963: § 80-6-6.

8-12-107. Permissible occupations at age twelve or older.

(1) Subject to the limitations of sections 8-12-105 and 8-12-110, any minor at age twelve or older shall be permitted employment in any of the following nonhazardous occupations:

- (a) Sale and delivery of periodicals and door-to-door selling of merchandise and the delivery thereof;
- (b) Babysitting;
- (c) Gardening and care of lawns, including the operation of power-driven lawn equipment if such type of equipment is approved by the division or if the minor has received training conducted or approved by the division in the operation of the equipment;
- (d) Cleaning of walks, including the operation of power-driven snow-removal equipment;
- (e) Agricultural work, except for that declared to be hazardous under the "Fair Labor Standards Act of 1938", as amended. However, it is the intent of the general assembly that migrant children eligible for attendance at migrant schools be encouraged to attend such schools.

(f) Any other occupation which is similar to those enumerated in this subsection (1) and is not specifically prohibited by this article.

Source: L. 71: R&RE, p. 892, § 1. C.R.S. 1963: § 80-6-7.

Cross references: For the "Fair Labor Standards Act of 1938", see 29 U.S.C. § 201 et seq.

8-12-108. Permissible occupations at age fourteen or older.

(1) In addition to the occupations permitted by sections 8-12-106 and 8-12-107, and subject to the limitations of sections 8-12-105 and 8-12-110, any minor fourteen years of age or older shall be permitted employment in any of the following occupations:

- (a) Nonhazardous occupations in manufacturing;
- (b) Public messenger service and errands by foot, bicycle, and public transportation;
- (c) Operation of automatic enclosed freight and passenger elevators;
- (d) Janitorial and custodial service, including the operation of vacuum cleaners and floor waxers;
- (e) Office work and clerical work, including the operation of office equipment;
- (f) Warehousing and storage, including unloading and loading of vehicles;
- (g) Nonhazardous construction and nonhazardous repair work. The operation of motor vehicles shall be subject to article 2 of title 42, C.R.S.
- (h) Occupations in retail food service;
- (i) Occupations in gasoline service establishments, including but not limited to dispensing gasoline, oil, and other consumer items, courtesy service, car cleaning, washing, and polishing, the use of hoists where supervised, and changing tires; except that no minor may inflate or change any tire mounted on a rim equipped with a removable retaining ring. The operation of motor vehicles shall be subject to article 2 of title 42, C.R.S.
- (j) Occupations in retail stores, including cashiering, selling, modeling, art work, work in advertising departments, window trimming, price marking by hand or machine, assembling orders, packing and shelving, or bagging and carrying out customers' orders;
- (k) Occupations in restaurants, hotels, motels, or other public accommodations, except the operation of power food slicers and grinders;

(l) Occupations related to parks or recreation, including but not limited to recreation aides and conservation projects;

(m) Any other occupation which is similar to those enumerated in this subsection (l) and not specifically prohibited by this article.

Source: L. 71: R&RE, p. 892, § 1. C.R.S. 1963: § 80-6-8.

8-12-109. Permissible occupations at age sixteen or older.

In addition to the occupations permitted by sections 8-12-106 to 8-12-108 and subject to the limitations of sections 8-12-105 and 8-12-110, any minor sixteen years of age or older shall be permitted employment in any occupation which involves the use of a motor vehicle if the minor is licensed to operate the motor vehicle for such purpose pursuant to article 2 of title 42, C.R.S.

Source: L. 71: R&RE, p. 893, § 1. C.R.S. 1963: § 80-6-9.

8-12-110. Hazardous occupations prohibited for minors.

(1) No minor shall be permitted employment in any occupation declared to be hazardous in subsection (2) of this section unless such minor is fourteen years of age or older and he is employed:

(a) Incidental to or upon completion of a program of apprentice training;

(b) Incidental to or upon completion of a student-learner program of occupational education under the auspices of a public school, local district college, community and technical college, federally funded work-training program, or private occupational school approved by the private occupational school division;

(c) Upon completion of any other program of training approved by the state board for community colleges and occupational education; or

(d) Upon completion of a program of occupational education conducted outside this state which the director determines offers instructional quality and content comparable to that offered in programs certified by the state board for community colleges and occupational education.

(2) The following occupations are declared to be hazardous:

(a) Operation of any high pressure steam boiler or high temperature water boiler;

(b) Work which primarily involves the risk of falling from any elevated place located ten feet or more above the ground except that work defined as agricultural involving elevations of twenty feet or less above ground;

(c) Manufacturing, transporting, or storing of explosives;

(d) Mining, logging, oil drilling, or quarrying;

(e) Any occupation involving exposure to radioactive substances or ionizing radiation;

(f) Operation of the following power-driven machinery: Woodworking machines, metal-forming machines, punching or shearing machines, bakery machines, paper products machines, shears, and automatic pin-setting machines and any other power-driven machinery which the director determines to be hazardous;

(g) Slaughter of livestock and rendering and packaging of meat;

(h) Occupations directly involved in the manufacture of brick or other clay construction products or of silica refractory products;

(i) Wrecking or demolition, but not including manual auto wrecking;

(j) Roofing;

(k) Occupations in excavation operations.

(3) The director shall promulgate regulations, in accordance with section 24-4-103, C.R.S., to define the occupations prohibited under this section and to prescribe what types of equipment shall be required to make an occupation nonhazardous for minors.

Source: L. 71: R&RE, p. 893, § 1. **C.R.S. 1963:** § 80-6-10. **L. 79:** (1)(b) amended, p. 1631, § 2, effective July 19. **L. 81:** (1)(b) amended, p. 851, § 22, effective July 1. **L. 86:** (2)(f) and (3) amended, p. 473, § 34, effective July 1. **L. 88:** (1)(a) amended, p. 1429, § 3, effective June 11. **L. 90:** (1)(b) amended, p. 1160, § 7, effective July 1.

8-12-111. Age certificates.

(1) Any employer desiring proof of the age of any minor employee or prospective employee may require the minor to submit an age certificate. Upon request of a minor, an age certificate shall be issued by or under the authority of the school superintendent of the district or county in which the applicant resides. The superintendents, principals, or headmasters of independent or parochial schools shall issue age certificates to minors who attend such schools.

(2) The age certificate shall show the age of the minor, the date of his birth, the date of issuance of the certificate, the name and position of the issuing officer, the name, address, and description of the minor, and what evidence was accepted as proof of age. The age certificate shall also show the school hours applicable and shall state that a separate school release permit is required for minors under sixteen to work on regular school days during such school hours. It shall be signed by the issuing officer and by the minor in his presence.

(3) An age certificate shall not be issued unless the minor's birth certificate or a photocopy or extract thereof is exhibited to the issuing officer, or unless such evidence was previously examined by the school authorities and the information is shown on the school records. If a birth certificate is not available, other documentary evidence such as a baptismal certificate or a passport may be accepted. If such evidence is not available, the parent or guardian shall appear with the minor and shall make an oath before the judge or other officer of the juvenile or county court as to the age of the minor.

(4) The employer shall keep an age certificate received by him for the duration of the minor's employment and shall keep on file all age certificates where they may be readily examined by an agent of the division. Upon termination of employment and upon request, the certificate shall be returned to the minor.

Source: L. 71: R&RE, p. 894, § 1. C.R.S. 1963: § 80-6-11.

8-12-112. Proof of high school diploma, passing score on general educational development examination, or completion of career and technical education program.

Any employer may require proof of a high school diploma, a passing score on the general educational development examination, or completion of a career and technical education program. The employer shall maintain a record of the high school diploma, proof of a passing score on the general educational development examination, or completion of a career and technical education program.

Source: L. 71: R&RE, p. 894, § 1. C.R.S. 1963: § 80-6-12. L. 2017: Entire section amended, (SB 17-294), ch. 264, p. 1384, § 5, effective May 25.

8-12-113. School release permit.

(1) Any minor fourteen or fifteen years of age who wishes to work on school days during school hours shall first secure a school release permit. The permit shall be issued only by the

school district superintendent, his agent, or some other person designated by the board of education. The school release permit shall be issued only for a specific position with a designated employer. The permit shall be for a specific length of time not to exceed thirty days. The permit shall be canceled upon the termination of such employment and shall be issued only in the following circumstances:

(a) If the minor is to be employed in an occupation not prohibited by section 8-12-110 and as evidence thereof presents a signed statement from his prospective employer; and

(b) If the parent or guardian of the minor consents to the employment; and

(c) If the issuing officer believes the best interests of the minor will be served by permitting him to work.

(2) The school release permit shall show the name, address, and description of the minor, the name and address of the employer, the kind of work to be performed, and the hours of exemption and shall also require the signature of the parent and the minor in the presence of the issuing officer.

(3) Inasmuch as it is desirable and practical to encourage school attendance by minors at least part time, no school release permit shall be issued under this section unless limited to require class attendance by the minor for at least three class hours each regular school day; except that, in cases of extreme hardship, class attendance may be waived if the issuing officer determines that such action would be in the best interest of the minor.

(4) If the issuing officer is in doubt about whether the proposed employment is in accordance with this article, he shall consult with the division before issuing the permit.

(5) Upon termination for any reason of the employment authorized, the employer shall return the school release permit directly to the issuing officer with a notation showing the date of termination.

(6) The issuing officer is authorized to cancel a school release permit if the issuing officer determines that the action would be in the best interest of the minor. If a school release permit is canceled, for reasons other than the termination of employment for which the permit was granted, the minor shall be entitled to a review of the cancellation by the court having jurisdiction of juvenile matters in the county in which the minor resides, in accordance with the procedures established by section 8-12-114.

Source: L. 71: R&RE, p. 895, § 1. C.R.S. 1963: § 80-6-13.

8-12-114. Appeal from denial or cancellation of school release permit - procedure.

(1) If a minor is refused a school release permit or has had a school release permit canceled for reasons other than the termination of employment for which the permit was granted, he shall be entitled to review by the court having jurisdiction of juvenile matters in the county in which the minor resides, in accordance with the procedures described in this section.

(2) The official who refused to issue or canceled the school release permit shall, upon demand made within five days after the refusal or cancellation, promptly furnish the minor and his parent or guardian with a written statement of the reasons for such refusal or cancellation.

(3) Within five days after the receipt of such statement, the minor and his parent or guardian may petition the court for an order directing the issuance or reissuance of a school release permit. The petition shall state the reasons why the court should issue such an order, and the petitioner shall attach to such petition the statement of the issuing officer obtained as provided in subsection (2) of this section.

(4) The court shall hold a hearing and receive such further testimony and evidence as it deems necessary. If the court finds that the issuance or reissuance of a permit is in the best interest of the minor, it shall grant the petition.

(5) No fee shall be charged by the court in such proceedings.

Source: L. 71: R&RE, p. 896, § 1. C.R.S. 1963: § 80-6-14.

8-12-115. Director of division of labor standards and statistics - powers and duties - public records - filing final orders - rules - definition.

(1) The director shall enforce the provisions of this article.

(2) The director shall take the necessary steps to inform employers, school authorities, and the general public regarding the provisions of this article, and he shall work with other public and private agencies to minimize the obstacles to legitimate employment of minors.

(3) (a) The director shall receive and investigate complaints and may from time to time visit employers at reasonable times and inspect pertinent records to determine compliance with this article 12.

(b) For the purpose of investigating a violation of this article 12, the director may apply the information-gathering authorizations described in article 1 of this title 8 to an employer, an employee, or other person.

(4) (a) If investigation of any place of employment or complaint discloses a violation of this article 12, the director shall give the employer a written notice of violation describing the violation, ordering monetary or other relief as appropriate, and specifying the provisions of this article 12 that the employer violated. Within thirty-five days after receipt of the notice of violation, the employer may file a written request for an appeal hearing, which shall be conducted in accordance with section 8-4-111.5.

(b) At any time after issuance of a final order, the director may order penalties pursuant to section 8-1-140 (2) for each offense. Each day that the conduct constituting the violation is continued after the order is made final, and each minor employed in violation of this article 12, constitutes a separate offense. The order imposing the penalty is final upon issuance, and the penalty is due and payable thirty-five days after the order assessing the penalty is entered, unless prior to that time the order has been modified or a hearing on the penalty has been requested as provided by section 8-4-111.5.

(c) The division shall collect all penalties imposed by this section as provided in section 8-1-142 and transmit the collected penalties to the state treasurer. The state treasurer shall deposit the money into the wage theft enforcement fund created in section 8-4-113 (3).

(4.5) (a) After twenty days elapse to allow an employer to notify the director of a potential trade secret pursuant to subsection (4.5)(a)(II) of this section, the division shall treat any final order issued for a violation of this article 12 as a public record and shall release the information related to the violation to the public upon request pursuant to the "Colorado Open Records Act", part 2 of article 72 of title 24; except that:

(I) The division shall redact any identifying information pertaining to a minor worker; and

(II) The division shall not release information related to a violation of this article 12 if the director makes a determination that the information is a trade secret. Upon issuing a final order, the director shall notify the employer of the potential release of the information. The employer may, within twenty days after the notification, provide the director with any documentation demonstrating that the information, or specific matters included in the information, is a trade secret. If the director, in the director's discretion, determines that the information, or any portion of the information, is a trade secret, the director shall treat the information as confidential.

(b) As used in this subsection (4.5), "trade secret" has the meaning set forth in section 7-74-102 (4).

(5) The findings, orders, and penalties made by the director shall be subject to judicial review pursuant to section 24-4-106, C.R.S.

(5.5) (a) The director may, or, at the request of any individual aggrieved by a violation of this article 12, shall, file a certified copy of a final order issued pursuant to this article 12 with the clerk of any court having jurisdiction over the parties at any time after the entry of the order. The

director may file one certified copy of the final order for all amounts owed to, or for other relief for, all individuals aggrieved.

(b) The clerk of the court shall record the final order in the judgment book of the court and make an entry in the judgment docket. Upon recording, the final order has the effect of and may be executed as a judgment of the court.

(c) (I) Upon recording pursuant to subsection (5.5)(b) of this section, the judgment is sufficient to support the issuance of writs of garnishment in the manner provided by law in the case of a judgment that is wholly or partially unsatisfied.

(II) The court shall mail a copy of the judgment to all parties to the matter within three days after the director has filed the order with the clerk of the court.

(6) The director may apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article.

(7) The director, in accordance with section 24-4-103, C.R.S., shall promulgate rules and regulations more specifically defining the occupations and types of equipment permitted or prohibited by this article.

(8) The director may adopt rules as necessary to implement and administer this article 12.

Source: L. 71: R&RE, p. 896, § 1. C.R.S. 1963: § 80-6-15. L. 86: (5) and (7) amended, p. 473, § 35, effective July 1. L. 2000: (4) amended, p. 1486, § 1, effective July 1. L. 2024: (3) and (4) amended and (4.5), (5.5), and (8) added, (HB 24-1095), ch. 378, p. 2561, § 1, effective January 1, 2025.

8-12-116. Penalty and damages for violations.

(1) Any person, including any firm or corporation, or any agent, manager, superintendent, or foreperson of any firm or corporation, that, individually or through an agent, subagent, manager, superintendent, or foreperson, violates or fails to comply with this article 12 is subject to the following penalties:

(a) Except as described in subsections (1)(c) and (5) of this section, a person who commits a violation of section 8-12-110 or rules promulgated under that section shall be required to pay a fine of not less than two thousand dollars but not more than four thousand dollars;

(b) Except as described in subsections (1)(d) and (5) of this section, a person who commits a violation of any provision of this article 12 other than section 8-12-110 shall be required to pay a fine of not less than two hundred fifty dollars but not more than one thousand dollars;

(c) A person who commits a willful violation of section 8-12-110 or rules promulgated under that section or a second or subsequent violation of section 8-12-110 or rules promulgated under that section within five years after the person's most recent violation of this article 12 shall be required to pay a fine of not less than five thousand dollars but not more than ten thousand dollars; and

(d) A person who commits a willful violation of any provision of this article 12 other than section 8-12-110 or a second or subsequent violation of any provision of this article 12 other than section 8-12-110 within five years after the person's most recent violation of this article 12 shall be required to pay a fine of not less than five hundred dollars but not more than four thousand dollars.

(2) The division shall collect all penalties imposed by subsection (1) of this section as provided in section 8-1-142 and transmit the collected penalties to the state treasurer. The state treasurer shall deposit the money into the wage theft enforcement fund created in section 8-4-113 (3).

(3) In addition to any penalties to which a person may be subject pursuant to subsection (1) of this section, any person, including any firm or corporation, or any agent, manager, superintendent, or foreperson of any firm or corporation, that, individually or through an agent, subagent, foreperson, superintendent, or manager, violates or fails to comply with this article 12 is liable for damages in the following amounts payable to any individual aggrieved:

(a) Except as described in subsections (3)(c) and (5) of this section, not less than seven thousand dollars but not more than twenty-seven thousand dollars for the first violation of section 8-12-110 or rules promulgated under that section;

(b) Except as described in subsections (3)(d) and (5) of this section, not less than five hundred dollars but not more than two thousand dollars for the first violation of any provision of this article 12 other than section 8-12-110;

(c) Not less than fifteen thousand dollars but not more than sixty-five thousand dollars for a willful violation of section 8-12-110 or rules promulgated under that section or a second or subsequent violation of section 8-12-110 or rules promulgated under that section within five years after the person's most recent violation of this article 12; or

(d) Not less than two thousand dollars but not more than six thousand dollars for a willful violation of any provision of this article 12 other than section 8-12-110 or a second or subsequent violation of any provision of this article 12 other than section 8-12-110 within five years after the person's most recent violation of this article 12.

(4) All damages that a person is ordered to pay pursuant to subsection (3) of this section must be paid to the person aggrieved unless that person, after reasonable and diligent effort by

the director, cannot be found, in which case the damages must be paid to the state treasurer, who shall deposit the money into the wage theft enforcement fund created in section 8-4-113 (3).

(5) (a) The division may reduce or decline to impose penalties or damages pursuant to subsection (1) or (3) of this section if:

(I) The minor worker intentionally misled the employer with regard to the minor's age; and

(II) The employer engaged in outreach to a reliable third party to verify the minor worker's age if any reasonable employer could have believed that the minor worker might be under eighteen years of age at the time of hiring. The receipt of an age certificate, as described in section 8-12-111, constitutes outreach to a reliable third party.

(b) In determining whether to reduce or decline to impose damages as described in subsection (5)(a) of this section, the division shall consider the following factors:

(I) The reasonableness of efforts taken by the employer to verify the age of the minor worker;

(II) The employer's history of compliance or noncompliance with this article 12;

(III) Corrective action taken by the employer; and

(IV) Harm to the minor worker.

(6) In addition to any penalties or damages to which a person may be subject pursuant to subsection (1) or (3) of this section, any person, firm, or corporation, or any agent, manager, superintendent, or foreman of any firm or corporation, who, by oneself or through an agent, subagent, foreman, superintendent, or manager, knowingly violates or knowingly fails to comply with any of the provisions of this article 12 commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars for each offense. Upon conviction of a second or subsequent offense, such person shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars.

(7) On January 1, 2026, and on January 1 of each year thereafter, the division shall increase the penalty and damage amounts described in this section for inflation, if any. The division may round the adjusted amount upward to the nearest dollar. Inflation is measured by the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index, or a successor index, for Denver-Aurora-Lakewood for all items paid by urban consumers. The director shall publish updated penalty and damage amounts annually.

Source: L. 71: R&RE, p. 897, § 1. **C.R.S. 1963:** § 80-6-16. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3141, § 90, effective March 1, 2022. **L. 2024:** Entire section amended, (HB 24-1095), ch. 378, p. 2564, § 2, effective January 1, 2025.

ANNOTATION

A parent whose child was injured indirectly by an employer's violation of the Colorado Youth Employment Opportunity Act as to another child does not have a private cause of action under the act. *Grizzell v. Hartman Enters., Inc.*, 68 P.3d 551 (Colo. App. 2003).

8-12-117. Remedies for violations - workers' compensation - remedies at law and in equity.

(1) All minors, whether lawfully or unlawfully employed, are subject to the rights and remedies of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title 8, if the employer is included within the meaning of section 8-40-203.

(2) Persons aggrieved by violations of this article 12 may pursue remedies at law and in equity, including remedies in tort, and remedies under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title 8, if:

(a) An injury occurs to a minor during a week when the employer intentionally required the minor to work hours in violation of those allowed by this article 12; or

(b) An injury occurs to a minor while the minor was engaging in work prohibited by this article 12.

(3) Economic damages for claims in tort recovered by a party aggrieved by a violation of this article 12 against the employer of a minor pursuant to subsection (2) of this section must be reduced by the amount of compensation and benefits that the minor or the minor's dependents received for the same harm through the employer's workers' compensation insurance policy pursuant to articles 40 to 47 of this title 8.

Source: L. 71: R&RE, p. 897, § 1. **C.R.S. 1963:** § 80-6-17. **L. 90:** Entire section amended, p. 556, § 3, effective July 1. **L. 2023:** Entire section amended, (HB 23-1196), ch. 428, p. 2520, § 1, effective July 1.

8-12-118. Protection from retaliation - rebuttable presumption of retaliation.

(1) The retaliation protections described in section 8-4-120 protect an individual attempting to exercise any right protected under this article 12.

(2) If a person, including any firm or corporation, or any agent, manager, superintendent, or foreperson of any firm or corporation, individually or through an agent, subagent, manager, superintendent, or foreperson, takes a disciplinary or adverse action against an individual aggrieved by a violation of this article 12 within ninety calendar days after the individual aggrieved exercises a right protected under this article 12, there is a rebuttable presumption that the action was retaliatory.

Source: L. 2024: Entire section added, (HB 24-1095), ch. 378, p. 2566, § 3, effective January 1, 2025.

8-12.5 ARTICLE 12.5

Protection for Minors Featured in Digital Content

8-12.5-101. Definitions.

8-12.5-103. Privacy removals - private right of action.

8-12.5-102. Compensation for content creation - minors engaged in content creation - minor's own content creation - required records - trust account.

8-12.5-104. Intentional sexualization of minors featured in content creation - exceptions - private right of action - risk-based strategy.

8-12.5-101. Definitions.

[Editor's note: This section is effective June 1, 2027.] As used in this article 12.5, unless the context otherwise requires:

(1) "Bank" has the meaning set forth in section 11-101-401 (5).

(2) (a) "Content creator" means a parent or legal guardian who creates online content in exchange for compensation, including a parent or legal guardian who is a vlogger, podcaster, online influencer, or streamer.

(b) "Content creator" does not include a minor who produces their own online content.

(3) "Minor" means an individual under eighteen years old.

(4) "News organization" means an entity whose primary purpose is the publication or dissemination of news, sports, or other editorial content selected by the publisher, rather than user-generated content.

(5) "Online content" means content in an audio, image, or video format shared on an online hosting platform in exchange for compensation.

(6) (a) "Online hosting platform" means a public or semipublic internet-based service or application that has account holders in Colorado and that meets the following criteria with respect to account holders:

(I) The service or application connects account holders to allow them to interact with each other within the service or application;

(II) The service or application permits public posting of account holder-generated content without visibility being limited to a particular social graph; and

(III) The service or application permits interaction with other account holders' content outside a limited social graph, including content recommended from persons that the account holder does not follow.

(b) "Online hosting platform" does not include:

(I) An internet-based service or application operated by a news organization in furtherance of the news organization's primary purpose;

(II) A telecommunications service, as defined in 47 U.S.C. sec. 153 (53); or

(III) A broadband internet access service, as defined in 47 CFR 54.400 (l).

(7) "Social graph" means the list of persons that an account holder is connected to using a friending function or similar function on an online hosting platform. Subscribing to content from another account holder does not constitute a friending function.

(8) "Trust company" has the meaning set forth in section 11-109-101 (11).

(9) "Uniquely identifiable" means that an individual, other than the individual submitting a privacy removal request, could identify the individual submitting the request as distinct from other individuals based on personal identifying information, including image, voice, name, or contact information.

Source: L. 2026: Entire article added, (HB 26-1058), ch. 89, p. 349, § 1, effective June 1, 2027.

8-12.5-102. Compensation for content creation - minors engaged in content creation - minor's own content creation - required records - trust account.

[Editor's note: This section is effective June 1, 2027.]

(1) (a) Except as otherwise provided in this section, a minor is considered engaged in the work of content creation when the following criteria are met at any time during the previous twelve-month period:

(I) At least thirty percent of the content creator's online content produced within a thirty-day period includes the likeness, name, or photograph of the minor. Online content percentage is measured by the percentage of time the likeness, name, or photograph of the minor visually appears or is the subject of an oral narrative in online content, as compared to the total length of time of the online content.

(II) The number of views received per segment of online content on an online hosting platform meets the online hosting platform's threshold for the generation of compensation or the content creator receives actual compensation, including compensation from sponsorships, for online content equal to or greater than ten cents per view; and

(III) The content creator receives actual compensation for online content in an amount of at least forty thousand dollars.

(b) A minor who is fourteen years old or older may produce, create, and publish their own online content and is entitled to all compensation for their own content creation.

(2) (a) All content creators whose online content features a minor engaged in the work of content creation as described in subsection (1)(a) of this section shall maintain the following records until the minor turns eighteen years old:

(I) The name and documentary proof of the age at which the minor who is engaged in the work of content creation started online content creating;

(II) The number of posts featuring online content that generated compensation during the reporting period;

(III) The total number of minutes of the posts featuring online content that the content creator received compensation for during the reporting period;

(IV) The total number of minutes the minor was featured in posts featuring online content during the reporting period;

(V) The total compensation generated from posts featuring online content that feature the minor during the reporting period; and

(VI) The amount deposited into the trust account for the benefit of the minor engaged in the work of content creation, as required by subsection (3) of this section.

(b) The records required by this subsection (2) must be readily accessible to the minor for review. The content creator shall provide notice to the minor of the existence of the records.

(c) If a content creator whose posts featuring online content feature a minor engaged in the work of content creation fails to maintain the records as provided in this subsection (2), a civil action in district court may be filed on behalf of the minor to enforce this section. The court may award a minor who prevails in an action brought in accordance with this section the following:

(I) Injunctive relief;

(II) Actual damages;

(III) Punitive damages; and

(IV) The costs of the action, including attorney fees and court costs.

(3) (a) A content creator shall compensate a minor who is engaged in the work of content creation as described in subsection (1)(a) of this section by setting aside gross earnings on online content that includes the likeness, name, or photograph of the minor into a trust account to be preserved for the benefit of the minor upon reaching the age of majority or upon a declaration that the minor is emancipated, except for any money distributed pursuant to subsection (3)(d) of this section. The gross earnings shall be set aside according to the following distribution:

(I) If only one minor meets the online content threshold described in subsection (1)(a) of this section, the percentage of gross earnings on any online content that includes the likeness, name, or photograph of the minor that is equal to or greater than forty percent of the online content that includes the minor, as described in subsection (1)(a) of this section; or

(II) If more than one minor meets the content threshold described in subsection (1)(a) of this section and any segment of online content includes more than one of the minors, the percentage described in subsection (3)(a)(I) of this section for all minors in any segment shall be equally divided between the minors, regardless of differences in percentage of content provided by the individual minors, and paid into a separate trust account for each minor.

(b) A content creator shall ensure that a trust account required under this section meets the following requirements:

(I) The money in the account is made available only to the minor engaged in the work of content creation;

(II) The trust account is held by a bank or trust company;

(III) The money in the trust account will become available to the minor engaged in the work of content creation upon the minor turning eighteen years old or upon a declaration that the minor is emancipated;

(IV) The trust is not revocable by the content creator without the consent of the minor engaged in the work of content creation; and

(V) The account meets the requirements of the "Colorado Uniform Transfers to Minors Act", article 50 of title 11.

(c) If a content creator knowingly or recklessly violates this section, a civil action in district court may be filed on behalf of the minor to enforce this section. The court may award a minor who prevails in an action brought in accordance with this section the following:

(I) Injunctive relief;

(II) Actual damages;

(III) Punitive damages; and

(IV) The costs of the action, including attorney fees and court costs.

(d) If, in the preceding calendar year, a minor is engaged in the work of content creation and meets the criteria described in subsection (1)(a) of this section for the first time, the content creator shall establish the trust required by subsection (3)(a) of this section on or before January 30 of the calendar year.

(e) A court of competent jurisdiction may distribute money from a trust account required by subsection (3)(a) of this section to a content creator prior to the minor who is the beneficiary of the trust account reaching the age of majority or a declaration that the minor is emancipated upon:

(I) Petition of the trustee; and

(II) A subsequent finding by the court that the money will only be used for specific expenses that solely benefit the minor who is the beneficiary of the trust account.

(f) This section does not affect a right or remedy available under any other law of the state.

(g) Nothing in this section shall be construed to affect a party that is neither the content creator nor the minor engaged in the work of content creation.

Source: L. 2026: Entire article added, (HB 26-1058), ch. 89, p. 350, § 1, effective June 1, 2027.

8-12.5-103. Privacy removals - private right of action.

[Editor's note: This section is effective June 1, 2027.]

(1) An adult or an emancipated minor who was featured in a content creator's post featuring online content as a minor on or after the effective date of this section may request that the content creator delete the post from the online hosting platform or edit the post to remove the individual's private information if the individual is uniquely identifiable.

(2) (a) An online hosting platform shall provide an easily accessible mechanism through which an individual can submit a request pursuant to subsection (1) of this section for the content creator to delete a post featuring online content from the online hosting platform or edit the post featuring online content to remove the individual's private information if the individual is uniquely identifiable. The mechanism may include tools that enable an individual to submit a request directly to the content creator.

(b) An individual submitting a removal request pursuant to this section must include all information reasonably requested to identify the minor and the post featuring online content, including information to verify that the individual making the removal request is the individual featured in the online content.

(c) An online hosting platform that does not provide a mechanism to enable individuals to submit a request directly to the content creator shall notify the responsible content creator within a reasonable time period after the submittal of a removal request, as set by the online hosting platform, which time period must not exceed thirty days.

(d) A content creator shall delete a post featuring online content from an online hosting platform or edit the post to remove the individual's uniquely identifiable information within seventy-two hours.

(3) (a) If a content creator fails to comply with subsection (2)(d) of this section within thirty days after receiving the removal request, the individual who submitted the removal request may initiate a civil action against the content creator in district court to enforce this section. An online hosting platform is not liable for a violation of subsection (2)(d) of this section if the online hosting platform complies with subsections (2)(a) and (2)(c) of this section. The court may award an individual who prevails in an action brought in accordance with this section the following:

- (I) Injunctive relief;
- (II) Actual damages;
- (III) Punitive damages; and
- (IV) The costs of the action, including attorney fees and court costs.

(b) (I) If a content creator fails to comply with subsection (2)(d) of this section within thirty days after receiving the removal request, the online hosting platform shall review and take all reasonable steps consistent with the online hosting platform's policies to remove the online content from the online hosting platform unless:

(A) The individual who was featured in the content creator's post as a minor does not submit sufficient, accurate information in the request to remove the content; or

(B) The online hosting platform finds that the post featuring online content is sufficiently newsworthy or of other public interest to outweigh the privacy interests of the individual who was featured in the online content as a minor. For the purposes of this subsection (3)(b)(II), content published by a news organization is presumed to be newsworthy or of other public interest.

(II) An online hosting platform is not liable for a good faith determination made in response to this subsection (3)(b).

(III) An online hosting platform is not liable for actions taken in response to this subsection (3)(b) based on the online hosting platform's good faith reliance on the information submitted and removal of content identified by the requesting individual, regardless of whether the individual made the request in error or bad faith.

(4) (a) This section does not affect a right or remedy available under any other law of the state.

(b) This section shall not be construed to impose liability in a manner that is inconsistent with the federal "Communications Decency Act of 1996", 47 U.S.C. sec. 230.

Source: L. 2026: Entire article added, (HB 26-1058), ch. 89, p. 353, § 1, effective June 1, 2027.

8-12.5-104. Intentional sexualization of minors featured in content creation - exceptions - private right of action - risk-based strategy.

[Editor's note: This section is effective June 1, 2027.]

(1) Except as provided in subsection (2) of this section, a person shall not financially benefit from knowingly producing or distributing publicly, including by computer, online content of a minor with the intent to sexually gratify or elicit a sexual response in the viewer or another person.

(2) (a) This section does not apply to:

(I) Lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a state, or a political subdivision of a state or of an intelligence agency of the United States;

(II) An individual who, acting in good faith:

(A) Reports unlawful activity; or

(B) Acts in pursuance of a legal or professional or other lawful obligation;

(III) A document production or filing associated with a legal proceeding; or

(IV) An online hosting platform with regard to online content provided by content creators unless the online hosting platform intentionally solicits, or knowingly and predominantly distributes, such content.

(b) This section shall not be construed to impose liability in a manner that is inconsistent with the federal "Communications Decency Act of 1996", 47 U.S.C. sec. 230.

(c) This section does not impose liability on an online hosting platform for content created by a third party and does not require proactive monitoring of user-generated content.

(3) (a) If a person violates or attempts or conspires to violate subsection (1) of this section, a civil action in district court may be filed on behalf of the minor aggrieved by the violation to enforce this section. The court may award a minor who prevails in an action brought in accordance with this section the following:

(I) Actual damages;

(II) Punitive damages; and

(III) The costs of the action, including attorney fees and court costs.

(b) This section does not affect a right or remedy available under any other law of the state.

(4) (a) An online hosting platform shall develop and implement a risk-based strategy to help mitigate risks related to monetization of the intentional sexualization of known minors engaged in content creation. An online hosting platform may leverage existing trust and safety systems and policies to satisfy the requirements of this subsection (4)(a).

(b) An online hosting platform shall document and reassess the risk-based strategy developed pursuant to subsection (4)(a) of this section on a reasonable recurring basis and may include at the sole discretion of the online hosting platform commercially reasonable:

(I) Policies that govern content and related monetization;

(II) Restrictions of features on online content featuring minors;

(III) Automated systems to identify and enforce against potentially problematic online content and accounts;

(IV) Guardrails to mitigate against a recommendation system utilized by an online hosting platform recommending online content containing sexualization of known minors; and

(V) Quality assurance processes recurring at reasonable intervals to ensure that the risk-based strategy developed pursuant to subsection (4)(a) of this section is working as intended.

(c) An online hosting platform shall ensure that information about its online content policies, settings, and best practices for online content featuring minors is publicly available, understandable to both adults and minors, and informed by research and outside expertise. The information must inform content creators that they may be subject to various legal requirements and explain risks and steps to protect minors appearing in posts featuring online content from exploitation.

Source: L. 2026: Entire article added, (HB 26-1058), ch. 89, p. 355, § 1, effective June 1, 2027.

ARTICLE 13

Eight-hour Day

8-13-101.	Employment declared dangerous.	8-13-106.	Penalty for violation. (Repealed)
8-13-102.	Eight-hour day - exceptions.	8-13-107.	Firemen - hours of duty.
8-13-102.1.	Period of employment - relation to conservation of fuel.	8-13-108.	Penalty for violation.
8-13-103.	Penalty for violation.	8-13-109.	Employment in cement and plaster factories injurious. (Repealed)
8-13-104.	Eight-hour day for public employees. (Repealed)	8-13-110.	Overtime not mandatory.
8-13-105.	Emergency cases. (Repealed)	8-13-111.	Penalty for violation. (Repealed)

8-13-101. Employment declared dangerous.

Employment in all underground mines, underground workings, and smelters is declared to be injurious to health and dangerous to life and limb.

Source: L. 13: p. 306, § 1. C.L. § 4172. CSA: C. 97, § 100. CRS 53: § 80-7-1. C.R.S. 1963: § 80-14-1. L. 87: Entire section amended, p. 376, § 1, effective June 20.

ANNOTATION

Law reviews. For article, "Sex Discrimination and State Protective Laws", see 44 Den. L. J. 344 (1967).

8-13-102. Eight-hour day - exceptions.

(1) The period of employment of persons working in all underground mines, underground workings, and smelters may exceed eight hours within a twenty-four-hour period upon the following conditions:

(a) The operator of the underground mine, underground workings, or smelter establishes a work plan setting forth the terms and conditions under which the period of employment may exceed eight hours in a twenty-four-hour period; and

(b) The operator provides reasonable notice to its employees, except in cases of emergency or upset conditions, of proposed increases in the regular work schedule which would result in a period of employment in excess of eight hours in a twenty-four-hour period. Reasonable notice shall be construed to be not less than one week, during which time affected employees may comment.

(2) Nothing in this section shall be construed so as to alter the provisions of any collective bargaining agreement.

Source: L. 13: p. 306, § 2. C.L. § 4173. CSA: C. 97, § 101. CRS 53: § 80-7-2. C.R.S. 1963: § 80-14-2. L. 87: Entire section amended, p. 376, § 2, effective June 20. L. 89: Entire section R&RE, p. 375, § 1, effective April 5.

ANNOTATION

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Law reviews. For article, "Sex Discrimination and State Protective Laws", see 44 Den. L. J. 344 (1967).

Annotator's note. Cases decided prior to the earliest source of § 8-13-102 have been included in the annotations to this section.

Earlier law on subject of this section held unconstitutional. In re Morgan, 26 Colo. 415, 58 P. 1071 (1899).

This section, passed with an emergency clause, cannot be suspended by referendum. Van Kleeck v. Ramer, 62 Colo. 4, 156 P. 1108 (1916).

For prior legislation relating to the hours of men employed in mines, see In re Senate Resolution, 54 Colo. 262, 130 P. 333 (1913).

8-13-102.1. Period of employment - relation to conservation of fuel.

(1) The general assembly hereby finds and declares that in order to give full effect to state programs for the conservation of fuel and not to impede or prevent the execution of any fuel conservation powers the governor may impose pursuant to part 3 of article 20 of title 24, C.R.S., it is necessary to enact this section. The general assembly further finds and declares that it is necessary to enact this section in order for certain industries to support and cooperate with such state programs and powers and to assist their employees in the conservation of fuel by providing opportunity for certain employers to establish four-day workweeks thereby omitting one day of travel to and from work for employees.

(2) For purposes of section 8-13-102, "period of employment" means time spent which is directly related to an employee's performance of his primary job duties. "Period of employment" does not include time spent, whether or not compensation is paid, which is not directly related to the employee's performance of his primary job duties, including, but not limited to, meal periods, travel time, rest periods, and waiting time.

Source: L. 79: Entire section added, p. 871, § 2, effective June 22.

Cross references: Part 3 of article 20 of title 24 concerning the fuel conservation powers of the governor, which is referred to in subsection (1), was repealed, effective February 1, 1982.

8-13-103. Penalty for violation.

Any person, body corporate, general manager, or employer who violates or causes to be violated any of the provisions of sections 8-13-101 and 8-13-102 commits a class 2

misdemeanor. Each day in violation of the provisions of sections 8-13-101 and 8-13-102 shall constitute a separate offense.

Source: L. 13: p. 306, § 3. **C.L.** § 4174. **CSA:** C. 97, § 102. **CRS 53:** § 80-7-3. **C.R.S. 1963:** § 80-14-3. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3142, § 91, effective March 1, 2022.

ANNOTATION

Former law held unconstitutional. In re Morgan, 26 Colo. 415, 58 P. 1071 (1899).

8-13-104. Eight-hour day for public employees. (Repealed)

Source: L. 1893: p. 305, § 1. **L. 1894:** p. 85, § 1. **R.S. 08:** § 3921. **C.L.** §4175. **CSA:** C. 97, § 103. **CRS 53:** § 80-7-4. **C.R.S. 1963:** § 80-14-4. **L. 86:** Entire section repealed, p. 508, § 1, effective March 26.

8-13-105. Emergency cases. (Repealed)

Source: L. 1893: p. 305, § 2. **L. 1894:** p. 85, § 2. **R.S. 08:** § 3922. **C.L.** § 4176. **CSA:** C. 97, § 104. **CRS 53:** § 80-7-5. **L. 63:** p. 621, § 1. **C.R.S. 1963:** § 80-14-5. **L. 73:** p. 942, § 1. **L. 75:** Entire section R&RE, p. 290, § 1, effective January 1, 1976. **L. 86:** Entire section repealed, p. 508, § 1, effective March 26.

8-13-106. Penalty for violation. (Repealed)

Source: L. 1893: p. 305, § 2. **L. 1894:** p. 86, § 3. **R.S. 08:** § 3923. **C.L.** § 4177. **CSA:** C. 97, § 104. **CRS 53:** § 80-7-6. **L. 63:** p. 621, § 2. **C.R.S. 1963:** § 80-14-6. **L. 86:** Entire section repealed, p. 508, § 1, effective March 26.

8-13-107. Firemen - hours of duty.

It is unlawful for any municipality, or any officer or employee thereof, to require any person holding any position or employment in the fire department of such municipality, except one who may be at any time in command of the department, to be or remain on duty in such employment during any calendar month for periods of time which in the aggregate during such month amount to more than twelve hours for each day in said month. The requiring of more hours of work in cases of conflagrations or similar emergencies shall not be unlawful. This section shall apply to all municipalities having fire departments, whether such municipalities are created under general laws, or by special charter, or by or under the provisions of article XX of the constitution of the state of Colorado.

Source: L. 21: p. 333, § 1. C.L. § 4178. CSA: C. 97, § 106. CRS 53: § 80-7-7. C.R.S. 1963: § 80-14-7. L. 86: Entire section amended, p. 508, § 2, effective March 26.

8-13-108. Penalty for violation.

Any officer, agent, or employee of any municipality who orders, directs, compels, or requires any employee or other person in any such fire department, except one who may be at any time in command of the fire department, to be or remain on duty in such work or employment in any calendar month for a longer time than that provided for in section 8-13-107 except in cases of emergency commits a class 2 misdemeanor.

Source: L. 21: p. 334, § 2. C.L. § 4179. CSA: C. 97, § 107. CRS 53: § 80-7-8. C.R.S. 1963: § 80-14-8. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3142, § 92, effective March 1, 2022.

8-13-109. Employment in cement and plaster factories injurious. (Repealed)

Source: L. 27: p. 288, § 1. CSA: C. 97, § 114. CRS 53: § 80-7-15. C.R.S. 1963: § 80-14-12. L. 2000: Entire section repealed, p. 161, § 1, effective March 17.

8-13-110. Overtime not mandatory.

Nothing in this article shall be construed to mandate overtime for employees in and about cement manufacturing plants and plaster manufacturing plants unless otherwise negotiated by contract.

Source: L. 27: p. 288, § 2. **CSA:** C. 97, § 115. **CRS 53:** § 80-7-16. **C.R.S. 1963:** § 80-14-13. **L. 2000:** Entire section amended, p. 161, § 2, effective March 17.

8-13-111. Penalty for violation. (Repealed)

Source: L. 27: p. 289, § 3. **CSA:** C. 97, § 116. **CRS 53:** § 80-7-17. **C.R.S. 1963:** § 80-14-14. **L. 2000:** Entire section repealed, p. 161, § 3, effective March 17.

8-13.3 ARTICLE 13.3

Family and Medical Leave

PART 1 PARENTAL INVOLVEMENT		PART 3 FAMILY AND MEDICAL LEAVE IMPLEMENTATION	
8-13.3-101 to		8-13.3-301 to	
8-13.3-104.	(Repealed)	8-13.3-305.	(Repealed)
PART 2 FAMILY AND MEDICAL LEAVE ELIGIBILITY		PART 4 HEALTHY FAMILIES AND WORKPLACES	
8-13.3-201.	Short title.	8-13.3-401.	Short title.
8-13.3-202.	Definitions.	8-13.3-402.	Definitions.
8-13.3-203.	Family and medical leave - state requirements.	8-13.3-403.	Paid sick leave - accrual - carry forward to subsequent year - comparable leave provided by employer -
8-13.3-204.	Enforcement.		
8-13.3-205.	Repeal of part.		

no payment for unused
leave - rules.

PART 5
PAID FAMILY AND MEDICAL LEAVE
INSURANCE

- 8-13.3-404. Use of paid sick leave -
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increments.
- 8-13.3-405. Additional paid sick leave
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- 8-13.3-406. Paid sick leave related to
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PART 1

PARENTAL INVOLVEMENT

8-13.3-101 to 8-13.3-104. (Repealed)

Editor's note: (1) This part 1 was added in 2009 and was not amended prior to its repeal in 2015. For the text of this part 1 prior to 2015, consult the 2014 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-13.3-104 provided for the repeal of this part 1, effective September 1, 2015. (See L. 2009, p. 1791.)

PART 2

FAMILY AND MEDICAL LEAVE ELIGIBILITY

Editor's note: (1) Article 13.3 was enacted in 2009 by HB 09-1057 and included a future repeal for the article in § 8-13.3-104, effective September 1, 2015.

(2) Part 2 of this article was enacted in 2013 by HB 13-1222 and includes a future repeal for this part 2 in § 8-13.3-205, effective when certain conditions specified in this part 2 are met.

8-13.3-201. Short title.

This part 2 shall be known and may be cited as the "Family Care Act".

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 508, §1, effective August 7.

8-13.3-202. Definitions.

As used in this part 2, unless the context otherwise requires:

- (1) "Civil union" has the same meaning as set forth in section 14-15-103 (1), C.R.S.
- (2) "Employee" means a person employed by an employer and who is eligible for FMLA leave.
- (3) "Employer" has the same meaning as set forth in the FMLA.
- (4) "FMLA" means the federal "Family and Medical Leave Act of 1993", Pub.L. 103-3, as amended, 29 U.S.C. sec. 2601 et seq.
- (5) "FMLA leave" means leave from work and all benefits authorized by the FMLA.

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 508, §1, effective August 7.

8-13.3-203. Family and medical leave - state requirements.

(1) In addition to the leave to which an employee is entitled under the FMLA, an employee in this state is entitled to FMLA leave to care for a person who has a serious health condition, as that term is defined in the FMLA, if the person:

- (a) Is the employee's partner in a civil union, as defined in section 14-15-103 (5), C.R.S.; or
- (b) Is the employee's domestic partner and:
 - (I) Has registered the domestic partnership with the municipality in which the person resides or with the state, if applicable; or
 - (II) Is recognized by the employer as the employee's domestic partner.

(2) (a) For purposes of confirming an employee's relationship to a person described in subsection (1) of this section for whom the employee is requesting FMLA leave, the employer may require the employee to provide reasonable documentation or a written statement of family relationship, in accordance with the FMLA.

(b) An employer may require an employee seeking FMLA leave for a person described in subsection (1) of this section to submit the same certification as the employer may require under the FMLA.

(3) FMLA leave taken by an employee pursuant to this section runs concurrently with leave taken under the FMLA, and this section does not:

(a) Increase the total amount of leave to which an employee is entitled during a twelve-month period under the FMLA, this section, or both; and

(b) Preclude an employer from granting an employee an amount of leave that exceeds the total amount of leave to which the employee is entitled during a twelve-month period under the FMLA.

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 509, §1, effective August 7.

8-13.3-204. Enforcement.

If an employer denies an employee in this state FMLA leave to care for a person described in section 8-13.3-203 who is not a person for whom the employee would be entitled to leave under the FMLA, or interferes with an employee's exercise of or attempt to exercise his or her right to FMLA leave for persons described in section 8-13.3-203, the employer is subject to damages and equitable relief as specified in the FMLA. An aggrieved employee may bring an action in state court against the employer to recover damages or equitable relief.

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 509, §1, effective August 7.

8-13.3-205. Repeal of part.

This part 2 is repealed if the United States congress enacts and the president signs federal legislation amending the FMLA to permit employees to use FMLA leave for all persons described in section 8-13.3-203. The executive director of the department of labor and employment shall notify the revisor of statutes, in writing, if the condition specified in this section occurs.

Source: L. 2013: Entire part added, (HB 13-1222), ch. 157, p. 510, §1, effective August 7.

Editor's note: (1) As of publication date, the revisor of statutes has not received the notice referred to in this section.

(2) (a) Effective March 27, 2015, the United States Department of Labor's Wage and Hour Division revised the regulation defining "spouse" under the Family and Medical Leave Act of

1993 (FMLA) in light of the U.S. Supreme Court's decision in *United States v. Windsor*, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013), which held section 3 of the Defense of Marriage Act, 1 U.S.C. section 7, unconstitutional. The applicable regulations, 29 CFR 825.102 and 825.122(b), define spouse to include an individual in a same-sex marriage that was entered into in a state that recognizes such marriages or, if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

(b) On March 26, 2015, the U.S. District Court for the Northern District of Texas, in *Texas v. United States*, granted a request made by the states of Texas, Arkansas, Louisiana, and Nebraska for a preliminary injunction with respect to the department's final rule revising the regulatory definition of spouse under the FMLA. On June 26, 2015, the district court dissolved the preliminary injunction in light of the Supreme Court's decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015). For a discussion of *Obergefell v. Hodges*, see the editor's note for section 31 of article II of the state constitution.

PART 3

FAMILY AND MEDICAL LEAVE IMPLEMENTATION

8-13.3-301 to 8-13.3-305. (Repealed)

Source: L. 2025: Entire part repealed, (SB 25-271), ch. 375, p. 2018, § 1, effective August 6.

Editor's note: This part 3 was added in 2019 and was not amended prior to its repeal in 2025. For the text of this part 3 prior to 2025, consult the 2024 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

PART 4

HEALTHY FAMILIES AND WORKPLACES

Law Reviews: For article, "Paid Sick Leave Requirements under the Healthy Families and Workplaces Act", see 49 Colo. Law. 46 (Dec. 2020).

8-13.3-401. Short title.

The short title of this part 4 is the "Healthy Families and Workplaces Act".

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1443, § 1, effective July 14.

8-13.3-402. Definitions.

As used in this part 4, unless the context otherwise requires:

- (1) "Director" means the director of the division.
- (2) "Division" means the division of labor standards and statistics in the department of labor and employment created in section 8-1-103.
- (3) "Domestic abuse" has the meaning set forth in section 13-14-101 (2).
- (4) "Employee" has the meaning set forth in section 8-4-101 (5). "Employee" does not include an "employee" as defined in 45 U.S.C. sec. 351 (d) who is subject to the federal "Railroad Unemployment Insurance Act", 45 U.S.C. sec. 351 et seq.
- (5) (a) "Employer" has the meaning set forth in section 8-4-101 (6); except that the term includes the state and its agencies or entities, counties, cities and counties, municipalities, school districts, and any political subdivisions of the state.
 - (b) "Employer" does not include the federal government.
- (6) "Family member" means:
 - (a) An employee's immediate family member, as defined in section 2-4-401 (3.7);
 - (b) A child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor; or
 - (c) A person for whom the employee is responsible for providing or arranging health- or safety-related care.
- (7) "Harassment" has the meaning set forth in section 18-9-111.
- (8) (a) (I) "Paid sick leave" means time off from work that is:
 - (A) Compensated at the same hourly rate or salary and with the same benefits, including health care benefits, as the employee normally earns during hours worked; and
 - (B) Provided by an employer to an employee for one or more of the purposes described in sections 8-13.3-404 to 8-13.3-406.
- (II) As used in subsection (8)(a)(I)(A) of this section:

(A) "Same hourly rate or salary" under this part 4 does not include overtime, bonuses, or holiday pay.

(B) For employees paid on a commission basis only, "same hourly rate or salary" means a rate of no less than the applicable minimum wage.

(C) For employees paid an hourly, weekly, or monthly wage and also paid on a commission basis, "same hourly rate or salary" means the rate of pay equivalent to the employee's hourly, weekly, or monthly wage or the applicable minimum wage, whichever is greater.

(b) "Paid sick leave" is "wages" as defined in section 8-4-101 (14).

(9) "Public health emergency" means:

(a) An act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious agent, for which:

(I) An emergency is declared by a federal, state, or local public health agency; or

(II) A disaster emergency is declared by the governor; or

(b) A highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the governor.

(10) "Retaliatory personnel action" means:

(a) The denial of any right guaranteed under this part 4; or

(b) Any adverse action against an employee for exercising any right guaranteed in this part 4, including:

(I) Any threat, discipline, discharge, suspension, demotion, reduction of hours, or reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency; or

(II) Any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this part 4; or

(III) Interference with or punishment for participating in or assisting, in any manner, an investigation, proceeding, or hearing under this part 4.

(11) "Sexual assault" has the meaning set forth in section 18-3-402.

(12) "Successor employer" means an employing unit, whether or not an employing unit at the time of acquisition, that becomes an employer subject to this part 4 because it acquires all of an organization, a trade, or a business or substantially all of the assets of one or more employers subject to this part 4.

(13) "Year" means a regular and consecutive twelve-month period as determined by an employer; except that, for the purposes of section 8-13.3-411, "year" means a calendar year.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1443, § 1, effective July 14.

8-13.3-403. Paid sick leave - accrual - carry forward to subsequent year - comparable leave provided by employer - no payment for unused leave - rules.

(1) (a) All employees working in Colorado have the right to paid sick leave as specified in this part 4.

(b) Repealed.

(c) Effective January 1, 2022, each employer shall provide each employee paid sick leave as provided in this section.

(2) (a) Each employee earns at least one hour of paid sick leave for every thirty hours worked by the employee; except that an employee is not entitled under this section to earn or use more than forty-eight hours of paid sick leave each year, unless the employer selects a higher limit. An employer may satisfy the accrual requirements of this section by providing the employee with an amount of paid sick leave that meets or exceeds the requirements of this section at the beginning of the year. Nothing in this section discourages or prohibits an employer from providing paid sick leave that accrues at a faster or more generous rate than required by this section. This subsection (2)(a) does not limit the ability of an employee to use paid sick leave as provided in section 8-13.3-405.

(b) Nothing in this part 4 precludes an employer from providing employees more paid sick leave than the amounts specified in this subsection (2).

(c) An employee who is exempt from overtime required in section 8-6-111 (4) accrues paid sick leave based on the assumption that the employee works forty hours per week. If the employee's normal workweek consists of fewer than forty hours, the employee accrues paid sick leave based upon the number of hours that comprise the employee's normal workweek.

(3) (a) An employee begins to accrue paid sick leave when employment with the employer begins and may use accrued paid sick leave as it is accrued.

(b) Up to forty-eight hours of paid sick leave that an employee accrues in a year but does not use carries forward to, and may be used in, a subsequent year; except that an employer is not required to allow the employee to use more than forty-eight hours of paid sick leave in a year.

(4) An employer that has a paid leave policy for its employees may satisfy the requirements of this section and section 8-13.3-405 and is not required to provide additional paid sick leave to its employees if the employer:

(a) Makes available to its employees, through its paid leave policy, an amount of paid leave sufficient to satisfy section 8-13.3-405 and meet the accrual requirements of subsection (2)(a) of this section; and

(b) Allows its employees to use the paid leave for the same purposes and under the same conditions as those applicable to paid sick leave under this part 4.

(5) (a) Except as specified in subsection (5)(b) of this section, and notwithstanding section 8-4-101 (14)(a)(IV), nothing in this section requires an employer to provide financial or other reimbursement of unused paid sick leave to an employee upon termination, resignation, retirement, or other separation from employment; except that an individual may recover paid sick leave as a remedy for a retaliatory personnel action that prevented the individual from using paid sick leave.

(b) If an employee separates from employment and is rehired by the same employer within six months after the separation, the employer shall reinstate any paid sick leave that the employee had accrued but not used during the employee's previous employment with the employer and that had not been converted to monetary compensation to the employee at the time of separation from employment.

(6) An employer may loan paid sick leave to an employee in advance of accrual of paid sick leave by the employee.

(7) If an employee is transferred to a separate division, entity, or location but remains employed by the same employer, the employee is entitled to all paid sick leave accrued at the prior division, entity, or location and is entitled to use all paid sick leave as provided in this section.

(8) If a successor employer succeeds an original employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick leave that the employees accrued when employed by the original employer and are entitled to use previously accrued paid sick leave as specified in section 8-13.3-404.

(9) The division shall promulgate rules regarding compensation and accrual of paid sick leave for employees employed and compensated on a fee-for-service basis.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1445, § 1, effective July 14.

Editor's note: Subsection (1)(b) provided for the repeal of subsection (1)(b), effective January 1, 2022. (See L. 2020, p. 1445.)

8-13.3-404. Use of paid sick leave - purposes - time increments.

(1) An employer shall allow an employee to use the employee's accrued paid sick leave to be absent from work when:

(a) The employee:

(I) Has a mental or physical illness, injury, or health condition that prevents the employee from working;

(II) Needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition;

(III) Needs to obtain preventive medical care; or

(IV) Needs to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member;

(b) The employee needs to care for a family member who:

(I) Has a mental or physical illness, injury, or health condition;

(II) Needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or

(III) Needs to obtain preventive medical care;

(c) The employee or the employee's family member has been the victim of domestic abuse, sexual assault, or harassment and the use of leave is to:

(I) Seek medical attention for the employee or the employee's family member to recover from a mental or physical illness, injury, or health condition caused by the domestic abuse, sexual assault, or harassment;

(II) Obtain services from a victim services organization;

(III) Obtain mental health or other counseling;

(IV) Seek relocation due to the domestic abuse, sexual assault, or harassment; or

(V) Seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment;

(d) Due to a public health emergency, a public official has ordered closure of:

- (I) The employee's place of business; or
 - (II) The school or place of care of the employee's child and the employee needs to be absent from work to care for the employee's child;
 - (e) The employee needs to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; or
 - (f) The employee needs to evacuate the employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee's residence.
- (2) An employer shall allow an employee to use paid sick leave upon the request of an employee. The request may be made orally, in writing, electronically, or by any other means acceptable to the employer. When possible, the employee shall include the expected duration of the absence. An employer may provide a written policy that contains reasonable procedures for the employee to provide notice when the use of paid sick leave taken under this section is foreseeable. An employer shall not deny paid sick leave to the employee based on noncompliance with such a policy.
- (3) An employee must use paid sick leave in hourly increments unless the employee's employer allows paid sick leave to be taken in smaller increments of time.
- (4) An employer shall not require, as a condition of providing paid sick leave under this part 4, an employee who uses paid sick leave to search for or find a replacement worker to cover the time during which the employee is absent from work.
- (5) When the use of paid sick leave taken under this section is foreseeable, the employee shall make a good-faith effort to provide notice of the need for paid sick leave to the employee's employer in advance of the use of the paid sick leave and shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt the operations of the employer.
- (6) Notwithstanding section 8-13.3-405 (4)(b), for paid sick leave of four or more consecutive work days, an employer may require reasonable documentation that the paid sick leave is for a purpose authorized by this part 4.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1447, § 1, effective July 14. L. 2023: (1)(a)(II), (1)(a)(III), and (1)(c)(V) amended and (1)(a)(IV), (1)(e), and (1)(f) added, (SB 23-017), ch. 313, p. 1906, § 1, effective August 7.

8-13.3-405. Additional paid sick leave during a public health emergency.

(1) In addition to paid sick leave accrued under section 8-13.3-403, on the date a public health emergency is declared, each employer in the state shall supplement each employee's accrued paid sick leave as necessary to ensure that an employee may take the following amounts of paid sick leave for the purposes specified in subsection (3) of this section:

(a) For employees who normally work forty or more hours in a week, at least eighty hours;

(b) For employees who normally work fewer than forty hours in a week, at least the greater of either the amount of time the employee is scheduled to work in a fourteen-day period or the amount of time the employee actually works on average in a fourteen-day period.

(2) (a) An employer may count an employee's unused accrued paid sick leave under section 8-13.3-403 toward the supplemental paid sick leave required in subsection (1) of this section.

(b) An employee may use paid sick leave under this section until four weeks after the official termination or suspension of the public health emergency.

(3) An employer shall provide its employees the paid sick leave required in subsection (1) of this section for the following absences related to a public health emergency:

(a) An employee's need to:

(I) Self-isolate and care for oneself because the employee is diagnosed with a communicable illness that is the cause of a public health emergency;

(II) Self-isolate and care for oneself because the employee is experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(III) Seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(IV) Seek preventive care concerning a communicable illness that is the cause of a public health emergency; or

(V) Care for a family member who:

(A) Is self-isolating after being diagnosed with a communicable illness that is the cause of a public health emergency;

(B) Is self-isolating due to experiencing symptoms of a communicable illness that is the cause of a public health emergency;

(C) Needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness that is the cause of a public health emergency; or

(D) Is seeking preventive care concerning a communicable illness that is the cause of a public health emergency;

(b) With respect to a communicable illness that is the cause of a public health emergency:

(I) A local, state, or federal public official or health authority having jurisdiction over the location in which the employee's place of employment is located or the employee's employer determines that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to the communicable illness or because the employee is exhibiting symptoms of the communicable illness, regardless of whether the employee has been diagnosed with the communicable illness; or

(II) Care of a family member after a local, state, or federal public official or health authority having jurisdiction over the location in which the family member's place of employment is located or the family member's employer determines that the family member's presence on the job or in the community would jeopardize the health of others because of the family member's exposure to the communicable illness or because the family member is exhibiting symptoms of the communicable illness, regardless of whether the family member has been diagnosed with the communicable illness;

(c) Care of a child or other family member when the individual's child care provider is unavailable due to a public health emergency, or if the child's or family member's school or place of care has been closed by a local, state, or federal public official or at the discretion of the school or place of care due to a public health emergency, including if a school or place of care is physically closed but providing instruction remotely;

(d) An employee's inability to work because the employee has a health condition that may increase susceptibility to or risk of a communicable illness that is the cause of the public health emergency.

(4) Notwithstanding any other provision in this part 4:

(a) An employee shall notify the employee's employer of the need for paid sick leave under this section as soon as practicable when the need for paid sick leave is foreseeable and the employer's place of business has not been closed;

(b) Documentation is not required to take paid sick leave under this section; and

(c) Employees are only eligible for paid sick leave in the amount described in subsection (1) of this section once during the entirety of a public health emergency even if such public health emergency is amended, extended, restated, or prolonged.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1449, § 1, effective July 14.

8-13.3-406. Paid sick leave related to COVID-19.

(1) Employers in the state shall comply with the federal "Emergency Paid Sick Leave Act" in the "Families First Coronavirus Response Act", Pub.L. 116-127.

(2) On and after July 14, 2020, through December 31, 2020, each employer in the state, regardless of size, shall provide paid sick leave in the amount and for the purposes provided in the federal "Emergency Paid Sick Leave Act" in the "Families First Coronavirus Response Act", Pub.L. 116-127, to each employee who is not covered under the "Emergency Paid Sick Leave Act".

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1451, § 1, effective July 14.

8-13.3-407. Employee rights protected - retaliation prohibited.

(1) An employee is entitled to:

- (a) Use paid sick leave consistent with this part 4;
- (b) File a complaint or inform any person about an employer's alleged violation of this part 4;
- (c) Cooperate with the division in its investigation of an alleged violation of this part 4; and
- (d) Inform any person of the person's potential rights under this part 4.

(2) (a) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised, attempted to exercise, or supported the exercise of rights protected under this part 4, including the right to request or use paid sick leave pursuant to this part 4; the right to file a complaint with the division or court or inform any person about any employer's alleged violation of this part 4; the right to participate in an investigation, hearing, or proceeding or cooperate with or assist the division in its investigations of alleged violations of this part 4; and the right to inform any person of the person's potential rights under this part 4.

(b) It is unlawful for an employer to count paid sick leave taken by an employee pursuant to this part 4 as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other retaliatory personnel action against the employee.

(3) The protections of this section apply to any person acting in good faith who alleges a violation of this part 4, even if the allegation is determined to be mistaken.

(4) The division shall investigate each claim of denial of paid sick leave in violation of this part 4. The division may investigate claims of retaliation in violation of this part 4.

(5) If an investigation of employer retaliation or interference with employee rights yields a determination that:

(a) Rights of multiple employees have been violated, the violation as to each employee is a separate violation for purposes of fines, penalties, or other remedies;

(b) A violation cost an employee the employee's job or pay, the determination may include an order to reinstate the employee, to pay the employee's lost pay until reinstatement or for a reasonable period if reinstatement is determined not to be feasible, or both.

(6) Determinations made by the division under this section are appealable pursuant to section 8-4-111.5 and rules promulgated by the department regarding appeals and strategic enforcement.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1451, § 1, effective July 14.

8-13.3-408. Notice to employees - penalty - rules.

(1) Each employer shall notify its employees that they are entitled to paid sick leave, pursuant to rules promulgated by the division. The rules must require the notice to:

(a) Specify the amount of paid sick leave to which employees are entitled and the terms of its use under this part 4; and

(b) Notify employees that employers cannot retaliate against an employee for requesting or using paid sick leave and that an employee has the right to file a complaint or bring a civil action if paid sick leave is denied by the employer or the employer retaliates against the employee for exercising the employee's rights under this part 4.

(2) An employer complies with the notice requirements of this section by:

(a) Supplying each employee with a written notice containing the information specified in subsection (1) of this section that is in English and in any language that is the first language spoken by at least five percent of the employer's workforce; and

(b) Displaying a poster created pursuant to subsection (3) of this section in a conspicuous and accessible location in each establishment where the employer's employees work that contains the information required by subsection (1) of this section in English and in any language that is the first language spoken by at least five percent of the employer's workforce.

(3) The division shall create and make available to employers posters and notices that contain the information required by subsection (1) of this section, and employers may use the posters and notices to comply with the requirements of this section.

(4) (a) An employer who willfully violates subsection (2)(a) or (6) of this section is subject to a civil fine not to exceed one hundred dollars for each separate violation.

(b) An employer who willfully violates subsection (2)(b) of this section is subject to a civil fine not to exceed one hundred dollars.

(c) The fines collected under this subsection (4) shall be transmitted to the state treasurer, who shall deposit the fines in the general fund.

(5) If an employer's business is closed due to a public health emergency or a disaster emergency due to a public health concern, the notice and posting requirements of this section are waived for the period during which the place of business is closed.

(6) If an employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, the employer shall provide the notice required in this section through electronic communication or a conspicuous posting in the web-based platform.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1452, § 1, effective July 14.

8-13.3-409. Employer records.

(1) An employer shall retain records for each employee for a two-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used. Upon appropriate notice and at a mutually agreeable time, the employer shall allow the division access to the records for purposes of monitoring compliance with this part 4.

(2) If an issue arises as to an employee's right to paid sick leave and the employer has not maintained or retained adequate records for that employee or does not allow the division reasonable access to the records, the employer shall be presumed to have violated this part 4 unless the employer demonstrates compliance by a preponderance of the evidence.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1453, § 1, effective July 14.

8-13.3-410. Authority of director - rules.

The director may coordinate implementation and enforcement of this part 4 and adopt rules as necessary for such purposes.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1453, § 1, effective July 14.

8-13.3-411. Enforcement - judicial review of director's actions.

(1) The director and the division have jurisdiction over the enforcement of this part 4 and may exercise all powers granted under article 1 of this title 8 to enforce this part 4.

(2) The division may enforce the requirements of this part 4.

(3) Pursuant to section 8-1-130, any findings, awards, or orders issued by the director with respect to enforcement of this part 4 constitute final agency action, and any person affected by such final agency action may seek judicial review as provided in section 24-4-106.

(4) (a) A person aggrieved by a violation of this part 4 may commence a civil action in district court no later than two years after the violation occurs. A violation of this part 4 occurs on each occasion that a person is affected by a failure to provide paid sick leave or retaliation related to paid sick leave.

(b) (I) Repealed.

(II) Beginning January 1, 2022, an employer who violates this part 4 is liable for back pay and any other relief as provided by section 8-5-104 (2)(a) and (2)(b).

(c) If a civil action is commenced under this section, any party to the civil action may demand a trial by jury.

(d) Before commencing any civil action under this section, an aggrieved person must, in accordance with article 4 of this title 8, submit a complaint to the division or make a written demand for compensation or other relief to the employer. An employer has fourteen days to respond after receiving either a notice from the division that a complaint has been filed with the division or a written demand from the aggrieved person for compensation or other relief under this part 4.

(e) If a person aggrieved by a violation of this part 4 files a civil action to enforce a judgment made under this section, the court shall waive any filing fee required under article 32 of title 13.

(f) Nothing in this section prevents an aggrieved person from filing a charge with the division pursuant to this section.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1454, § 1, effective July 14.

Editor's note: Subsection (4)(b)(I) provided for the repeal of subsection (4)(b)(I), effective January 1, 2022. (See L. 2020, p. 1454.)

8-13.3-412. Confidentiality of employee information - definition.

(1) An employer shall not require disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's or an employee's family member's health information as a condition of providing paid sick leave under this part 4.

(2) Any health or safety information possessed by an employer regarding an employee or employee's family member must:

- (a) Be maintained on a separate form and in a separate file from other personnel information;
- (b) Be treated as confidential medical records; and
- (c) Not be disclosed except to the affected employee or with the express permission of the affected employee.

(3) As used in this section, "affected employee" means the employee:

- (a) About whom the health information pertains or who is the victim of the domestic abuse, sexual assault, or harassment; or
- (b) Whose family member is the subject of the health information or is the victim of the domestic abuse, sexual assault, or harassment.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1454, § 1, effective July 14.

8-13.3-413. Employers encouraged to provide more generous paid sick leave.

(1) Nothing in this part 4 discourages or prohibits an employer from adopting or continuing a paid sick leave policy that is more generous than the paid sick leave policy required by this part 4.

(2) Nothing in this part 4 diminishes:

(a) The obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing employees with a more generous paid sick leave policy than the paid sick leave policy required by this part 4; or

(b) The rights, privileges, or remedies of an employee under a collective bargaining or partnership agreement, employer policy, or employment contract.

(3) Nothing in this part 4 diminishes the rights of public employees regarding paid sick leave or the use of paid sick leave as provided in section 24-50-104 (7).

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1455, § 1, effective July 14.

8-13.3-414. Other legal requirements applicable.

(1) This part 4 provides minimum requirements pertaining to paid sick leave and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick leave or that extends other protections to employees.

(2) To the extent allowable and not in conflict with federal law, any paid sick leave provided to an employee of a federal contractor as required by federal executive order 13706, "Establishing Paid Sick Leave for Federal Contractors", as published in 81 Fed. Reg. 67598 (2016), is considered paid sick leave provided under this part 4.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1455, § 1, effective July 14.

8-13.3-415. Collective bargaining agreements.

(1) (a) With agreement of the fund trustees, an employer signatory to a multiemployer collective bargaining agreement may fulfill its obligations under this part 4 by making contributions to a multiemployer paid sick leave fund, plan, or program based on the hours each of its employees accrues pursuant to this part 4 while working under the multiemployer collective bargaining agreement, if the fund, plan, or program enables employees to collect paid sick leave from the fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the purposes specified under this part 4.

(b) Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (1)(a) of this section may collect

from the paid sick leave fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the purposes specified under this part 4.

(2) This part 4 does not apply to employees covered by a bona fide collective bargaining agreement in effect on July 14, 2020, if the collective bargaining agreement provides for equivalent or more generous paid sick leave for the employees covered by the collective bargaining agreement.

(3) For employees covered by a bona fide collective bargaining agreement that is initially negotiated or negotiated for the next collective bargaining agreement after July 14, 2020, this part 4 does not apply to such employees if the requirements of this part 4 are expressly waived in the collective bargaining agreement and the collective bargaining agreement provides for equivalent or more generous paid sick leave for the employees covered by the collective bargaining agreement.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1456, § 1, effective July 14.

8-13.3-416. Employer policies.

An employer policy adopted or retained must not diminish an employee's right to paid sick leave under this part 4. Any agreement by an employee to waive the employee's rights under this part 4 is void as against public policy.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1456, § 1, effective July 14.

8-13.3-417. Severability.

If any provision of this part 4 or application thereof to any person or circumstance is judged invalid, the invalidity does not affect other provisions or applications of this part 4 that can be given effect without the invalid provision or application, and to this end the provisions of this part 4 are declared severable.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1456, § 1, effective July 14.

8-13.3-418. Employer authorized to take disciplinary action.

Nothing in this part 4 prohibits an employer from taking disciplinary action against an employee who uses paid sick leave provided under this part 4 for purposes other than those described in this part 4.

Source: L. 2020: Entire part added, (SB 20-205), ch. 294, p. 1456, § 1, effective July 14.

PART 5

PAID FAMILY AND MEDICAL LEAVE INSURANCE

Editor's note: This part 5 was added by Proposition 118, effective upon proclamation of the governor, December 31, 2020. The vote count for the measure at the general election held November 3, 2020, was as follows:

FOR: 1,804,546

AGAINST: 1,320,386

8-13.3-501. Short title.

This part 5 shall be known and may be cited as the "Paid Family and Medical Leave Insurance Act".

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4225, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-401 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-502. Purposes and findings.

The people of the state of Colorado hereby find and declare that:

(1) Workers in Colorado experience a variety of personal and family caregiving obligations, but it can be difficult or impossible to adequately respond to those needs without access to paid leave.

(2) Access to paid family and medical leave insurance helps employers in Colorado by reducing turnover, recruiting workers, and promoting a healthy business climate, while also ensuring that smaller employers can compete with larger employers by providing paid leave benefits to their workers through an affordable insurance program.

(3) Paid family and medical leave insurance will also provide a necessary safety net for all Colorado workers when they have personal or family caregiving needs, including low-income workers living paycheck to paycheck who are disproportionately more likely to lack access to paid leave and least able to afford unpaid leave.

(4) Due to the need to provide paid time off to Colorado workers to address family and medical needs, such as the arrival of a new child, military family needs, and a personal or a family member's serious health condition, including the effects of domestic violence and sexual assault, it is necessary to create a statewide paid family and medical leave insurance enterprise and to authorize the enterprise to:

(a) Collect insurance premiums from employers and employees at rates reasonably calculated to defray the costs of providing the program's leave benefits to workers; and

(b) Receive and expend revenues generated by the premiums and other moneys, issue revenue bonds and other obligations, expend revenues generated by the premiums to pay family and medical leave insurance benefits and associated administrative and program costs, and exercise other powers necessary and appropriate to carry out its purposes.

(5) The fiscal approach of this part 5 has been informed by the experience of other state family and medical leave insurance programs, modeling based on the Colorado workforce, and input from a variety of stakeholders in Colorado.

(6) The creation of a statewide paid family and medical leave insurance enterprise is in the public interest and will promote the health, safety, and welfare of all Coloradans, while also encouraging an entrepreneurial atmosphere and economic growth.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4225, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-402 in Proposition 118 but was renumbered on revision for ease of location.

ANNOTATION

Because the Paid Family and Medical Leave Insurance Act is not an income tax law and because the premium collected under this section is a fee to fund a specific service and not a tax or surcharge

collected to defray general government expenses, the collection of the premium does not violate article X, § 20(8)(a) of the state constitution. *Chronos Builders v. Dept. of Labor*, 2022 CO 29, 512 P.3d 101.

8-13.3-503. Definitions.

As used in this part 5, unless the context otherwise requires:

(1) "Application year" means the 12-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave insurance benefits.

(2) "Average weekly wage" means one-thirteenth of the wages paid during the quarter of the covered individual's base period, as defined in section 8-70-103 (2), or alternative base period, as defined in section 8-70-103 (1.5), in which the total wages were highest. For purposes of calculating average weekly wage, wages include, but are not limited to, salary, wages, tips, commissions, and other compensation as determined by the director by rule.

(3) "Covered individual" means any person who:

(a) (I) Earned at least \$2,500 in wages subject to premiums under this part 5 during the person's base period, as defined in section 8-70-103 (2), or alternative base period, as defined in section 8-70-103 (1.5); or

(II) Elects coverage and meets the requirements of section 8-13.3-514;

(b) Meets the administrative requirements outlined in this part 5 and in regulations; and

(c) Submits an application with a claim for benefits pursuant to section 8-13.3-516 (6)(d).

(4) "Director" means the director of the division.

(5) "Division" means the division of family and medical leave insurance created in section 8-13.3-508.

(6) "Domestic violence" means any conduct that constitutes "domestic violence" as set forth in section 18-6-800.3 (1) or 14-10-103 or "domestic abuse" as set forth in section 13-14-101 (2).

(7) "Employee" means any individual, including a migratory laborer, performing labor or services for the benefit of another, irrespective of whether the common-law relationship of master and servant exists. For the purposes of this part 5, an individual primarily free from

control and direction in the performance of the labor or services, both under the individual's contract for the performance of the labor or services and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the labor or services performed is not an "employee." "Employee" does not include an "employee" as defined by 45 U.S.C. section 351 (d) who is subject to the federal "Railroad Unemployment Insurance Act," 45 U.S.C. section 351 et seq.

(8) (a) "Employer" means any person engaged in commerce or an industry or activity affecting commerce that:

(I) Employs at least one person for each working day during each of twenty or more calendar workweeks in the current or immediately preceding calendar year; or

(II) Paid wages of one thousand five hundred dollars or more during any calendar quarter in the preceding calendar year.

(b) "Employer" includes:

(I) A person who acts, directly or indirectly, in the interest of an employer with regard to any of the employees of the employer;

(II) A successor in interest of an employer that acquires all of the organization, trade, or business or substantially all of the assets of one or more employers; and

(III) The state or a political subdivision of the state.

(c) "Employer" does not include the federal government.

(9) "Family and medical leave insurance benefits" or "benefits" means the benefits provided under the terms of this part 5.

(10) "Family and medical leave insurance program" or "program" means the program created in section 8-13.3-516.

(11) "Family member" means:

(a) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor;

(b) A biological, adoptive or foster parent, stepparent or legal guardian of a covered individual or covered individual's spouse or domestic partner or a person who stood in loco parentis when the covered individual or covered individual's spouse or domestic partner was a minor child;

(c) A person to whom the covered individual is legally married under the laws of any state, or a domestic partner of a covered individual as defined in section 24-50-603 (6.5);

(d) A grandparent, grandchild or sibling (whether a biological, foster, adoptive or step relationship) of the covered individual or covered individual's spouse or domestic partner; or

(e) As shown by the covered individual, any other individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

(12) "Fund" means the family and medical leave insurance fund created in section 8-13.3-518.

(13) "Health-care provider" means any person licensed, certified, or registered under federal or Colorado law to provide medical or emergency services, including, but not limited to, physicians, doctors, nurses, emergency room personnel, and midwives.

(14) "Local government" has the same meaning as set forth in section 29-1-304.5 (3)(b).

(15) "Paid family and medical leave" means leave taken from employment in connection with family and medical leave insurance benefits under this part 5.

(16) "Qualifying exigency leave" means leave based on a need arising out of a covered individual's family member's active duty service or notice of an impending call or order to active duty in the armed forces, including, but not limited to, providing for the care or other needs of the military member's child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member.

(17) "Retaliatory personnel action" means denial of any right guaranteed under this part 5, including, but not limited to, any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed in this part 5. "Retaliatory personnel action" also includes interference with or punishment for in any manner participating in or assisting an investigation, proceeding, or hearing under this part 5.

(18) "Safe leave" means any leave because the covered individual or the covered individual's family member is the victim of domestic violence, the victim of stalking, or the victim of sexual assault or abuse. Safe leave under this part 5 applies if the covered individual is using the leave from work to protect the covered individual or the covered individual's family member by:

(a) Seeking a civil protection order to prevent domestic violence pursuant to sections 13-14-104.5, 13-14-106, or 13-14-108;

(b) Obtaining medical care or mental health counseling or both for himself or herself or for his or her children to address physical or psychological injuries resulting from the act of domestic violence, stalking, or sexual assault or abuse;

(c) Making his or her home secure from the perpetrator of the act of domestic violence, stalking, or sexual assault or abuse, or seeking new housing to escape said perpetrator; or

(d) Seeking legal assistance to address issues arising from the act of domestic violence, stalking, or sexual assault or abuse, or attending and preparing for court- related proceedings arising from said act or crime.

(19) "Serious health condition" is an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health-care provider.

(20) "Sexual assault or abuse" means any offense as described in section 16-11.7-102 (3), or sexual assault, as described in section 18-3-402, committed by any person against another person regardless of the relationship between the actor and the victim.

(21) "Stalking" means any act as described in section 18-3-602.

(22) "State average weekly wage" means the state average weekly wage determined in accordance with section 8-47-106.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4226, effective upon proclamation of the Governor, December 31, 2020. **L. 2024:** (6) amended, (HB 24-1350), ch. 344, p. 2346, § 9, effective August 7. **L. 2026:** (6) amended, (HB 26-1309), ch. 163, p. 983, § 7, effective May 27.

Editor's note: This section was originally numbered as 8-13.3-403 in Proposition 118 but was renumbered on revision for ease of location.

Cross references: For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024. For the legislative declaration in HB 26-1309, see section 1 of chapter 163, Session Laws of Colorado 2026.

8-13.3-504. Eligibility.

Beginning January 1, 2024, an individual has the right to take paid family and medical leave, and to receive family and medical leave insurance benefits while taking paid family and medical leave, if the individual:

(1) Meets the definition of "covered individual" under section 8-13.3-503 (3); and

- (2) Meets one of the following requirements:
 - (a) Because of birth, adoption or placement through foster care, is caring for a new child during the first year after the birth, adoption or placement of that child;
 - (b) Is caring for a family member with a serious health condition;
 - (c) Has a serious health condition;
 - (d) Because of any qualifying exigency leave;
 - (e) Has a need for safe leave.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4229, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-404 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-505. Duration.

- (1) The maximum number of weeks for which a covered individual may take paid family and medical leave and for which family and medical leave insurance benefits are payable for any purpose, or purposes in aggregate, under section 8-13.3-504 (2) in an application year is twelve weeks; except that benefits are payable up to:
 - (a) An additional four weeks to a covered individual with a serious health condition related to pregnancy complications or childbirth complications; and
 - (b) For claims arising on or after January 1, 2026, an additional twelve weeks to a covered individual who has a child receiving inpatient care in a neonatal intensive care unit for the duration that the child is receiving care in the neonatal intensive care unit.
- (2) The first payment of benefits shall be made to an individual within two weeks after the claim is filed, and subsequent payments shall be made every two weeks thereafter.
- (3) A covered individual may take intermittent leave in increments of either one hour or shorter periods if consistent with the increments the employer typically uses to measure employee leave, except that benefits are not payable until the covered individual accumulates at least eight hours of family and medical leave insurance benefits.

(4) The covered individual shall make a reasonable effort to schedule paid family and medical leave under this part 5 so as not to unduly disrupt the operations of the employer.

(5) In any case in which the necessity for leave under this part 5 is foreseeable, an employee shall provide notice to the individual's employer with not less than 30 days' notice before the date the leave is to begin of the individual's intention to take leave under this part 5. If the necessity for leave is not foreseeable or providing 30 days' notice is not possible, the individual shall provide the notice as soon as practicable.

(6) Nothing in this section entitles a covered individual to more leave than required under this section.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4230, effective upon proclamation of the Governor, December 31, 2020. **L. 2025:** (1) amended, (SB 25-144), ch. 293, p. 1499, § 1, effective August 6.

Editor's note: This section was originally numbered as 8-13.3-405 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-506. Amount of benefits - portability.

(1) The amount of family and medical leave insurance benefits shall be determined as follows:

(a) The weekly benefit shall be determined as follows:

(I) The portion of the covered individual's average weekly wage that is equal to or less than 50 percent of the state average weekly wage shall be replaced at a rate of 90 percent; and

(II) The portion of the covered individual's average weekly wage that is more than 50 percent of the state average weekly wage shall be replaced at a rate of 50 percent.

(b) The maximum weekly benefit is 90 percent of the state average weekly wage; except that for paid family and medical leave beginning before January 1, 2025, the maximum weekly benefit is 1,100 dollars.

(2) The division shall calculate a covered individual's weekly benefit amount based on the covered individual's average weekly wage, up to the maximum total benefit established in subsection (1)(b) of this section. If a covered individual taking paid family and medical leave from a job continues working at an additional job or jobs during this time, the division shall not consider the covered individual's average weekly wage earned from the additional job or jobs

when calculating the covered individual's weekly benefit amount. A covered individual with multiple jobs may elect whether to take leave from one job or multiple jobs.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4230, effective upon proclamation of the Governor, December 31, 2020. **L. 2023:** (2) amended, (SB 23-046), ch. 40, p. 159, § 2, effective March 23.

Editor's note: This section was originally numbered as 8-13.3-406 in Proposition 118 but was renumbered on revision for ease of location.

Cross references: For the legislative declaration in SB 23-046, see section 1 of chapter 40, Session Laws of Colorado 2023.

8-13.3-507. Premiums - rules.

(1) Payroll premiums shall be authorized in order to finance the payment of family and medical leave insurance benefits under this part 5, and administration of the family and medical leave insurance program.

(2) Notwithstanding the advance payment of premiums set forth in section 8-13.3-518 (4)(a), beginning on January 1, 2023, for each employee, an employer shall remit to the fund established under section 8-13.3-518 premiums in the form and manner determined by the division.

(3) (a) From January 1, 2023, through December 31, 2025, the premium amount is nine-tenths of one percent of wages per employee.

(b) From January 1, 2026, through December 31, 2026, the premium amount is eighty-eight hundredths of one percent of wages per employee.

(c) For the 2027 calendar year and for each calendar year thereafter, on or before September 1 of the preceding year, the director shall adopt by rule the premium rate for the following calendar year. The director shall set the rate in a manner such that:

(I) At the end of the calendar year during which the premium rate is effective, the balance of the fund is an amount not less than six months' worth of projected expenditures from the fund required for the performance of the functions and duties of the director;

(II) The volatility of the premium rate is minimized; and

(III) The premium amount does not exceed one and two tenths of a percent of wages per employee.

(d) The division shall provide public notice in advance of January 1 of any changes to the premium.

(4) (a) A self-employed individual who elects coverage under section 8-13.3-514 shall pay only 50 percent of the premium required for an employee by section 8-13.3-507 (3) on that individual's income from self-employment.

(b) An employee of a local government who elects coverage under section 8-13.3-514 shall pay only 50 percent of the premium required for an employee by section 8-13.3-507 (3) on that employee's income from that local government employment.

(c) An employee of a local government or a self-employed person who elects coverage under section 8-13.3-514 shall remit the premium amount required by this subsection directly to the division, in the form and manner required by the director by rule.

(5) An employer with 10 or more employees may deduct up to 50 percent of the premium required for an employee by section 8-13.3-507 (3) from that employee's wages and shall remit 100 percent of the premium required by section 8-13.3-507 (3) to the fund. An employer with fewer than 10 employees may deduct up to 50 percent of the premium required for an employee by section 8-13.3-507 (3) from that employee's wages and shall remit 50 percent of the premium required by section 8-13.3-507 (3) to the fund.

(6) Premiums shall not be required for employees' wages above the contribution and benefit base limit established annually by the federal social security administration for purposes of the Federal Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 U.S.C. section 430.

(7) The premiums collected under this part 5 are used exclusively for the payment of Family and medical leave insurance benefits and the administration of the program. Premiums established under this section are fees and not taxes.

(8) An employer with an approved private plan under section 8-13.3-521 shall not be required to remit premiums under this section to the fund.

(9) Notwithstanding section 8-13.3-507 (2), if a local government has declined participation in the program in accordance with section 8-13.3-522:

(a) The local government is not required to pay the premiums imposed in this section or collect premiums from employees who have elected coverage pursuant to section 8-13.3-514; and

(b) An employee of the local government is not required to pay the premiums imposed in this section unless the employee has elected coverage pursuant to section 8-13.3-514.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4231, effective upon proclamation of the Governor, December 31, 2020. **L. 2022:** (2) amended, (HB 22-1133), ch. 170, p. 1040, § 2, effective May 17. **L. 2025:** (3) amended, (SB 25-144), ch. 293, p. 1499, § 2, effective August 6.

Editor's note: This section was originally numbered as 8-13.3-407 in Proposition 118 but was renumbered on revision for ease of location.

Cross references: For the legislative declaration in HB 22-1133, see section 1 of chapter 170, Session Laws of Colorado 2022.

8-13.3-508. Division of family and medical leave insurance.

(1) There is hereby created in the department of labor and employment the division of family and medical leave insurance, the head of which is the director of the division.

(2) (a) The division constitutes an enterprise for purposes of section 20 of article X of the Colorado constitution, as long as the division retains authority to issue revenue bonds and the division receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), from all Colorado state and local governments combined. For as long as it constitutes an enterprise pursuant to this section, the division is not subject to section 20 of article X of the Colorado constitution.

(b) The enterprise established pursuant to this section has all the powers and duties authorized by this part 5 pertaining to family and medical leave insurance benefits. The fund constitutes part of the enterprise established pursuant to this section.

(c) Nothing in this section limits or restricts the authority of the division to expend its revenues consistent with this part 5.

(d) The division is hereby authorized to issue revenue bonds for the expenses of the division, which bonds may be secured by any revenues of the division. Revenue from the bonds issued pursuant to this subsection shall be deposited into the fund.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4233, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-408 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-509. Leave and employment protection.

(1) Any covered individual who has been employed with the covered individual's current employer for at least 180 days prior to the commencement of the covered individual's paid family and medical leave who exercises the covered individual's right to family and medical leave insurance benefits shall be entitled, upon return from that leave, to be restored by the employer to the position held by the covered individual when the leave commenced, or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment. Nothing in this section entitles any restored employee to:

- (a) The accrual of any seniority or employment benefits during any period of leave; or
- (b) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave. Nothing in this section relieves an employer of any obligation under a collective bargaining agreement.

(2) During any paid family and medical leave taken pursuant to this part 5, the employer shall maintain any health-care benefits the covered individual had prior to taking such leave for the duration of the leave as if the covered individual had continued in employment continuously from the date the individual commenced the leave until the date the family and medical leave insurance benefits terminate. The covered individual shall continue to pay the covered individual's share of the cost of health benefits as required prior to the commencement of the leave.

(3) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this part 5.

(4) An employer, employment agency, employee organization or other person shall not take retaliatory personnel action or otherwise discriminate against a person because the individual exercised rights protected under this part 5. Such rights include, but are not limited to, the right to: request, file for, apply for or use benefits provided for under this part 5; take paid family and medical leave from work under this part 5; communicate to the employer or any other person or entity an intent to file a claim, a complaint with the division or courts, or an appeal; testify or assist in any investigation, hearing or proceeding under this part 5, at any time, including during the period in which the person receives family and medical leave insurance benefits under this

part 5; inform any person about any employer's alleged violation of this part 5; and inform any person of his or her rights under this part 5.

(5) It is unlawful for an employer to count paid family and medical leave taken under this part 5 as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.

(6) (a) An aggrieved individual under this section may bring a civil action in a court of competent jurisdiction.

(b) An employer who violates this section is subject to the damages and equitable relief available under 29 U.S.C. section 2617 (a)(1).

(c) Except as provided in section 8-13.3-509 (6)(d), a claim brought in accordance with this section must be filed within two years after the date of the last event constituting the alleged violation for which the action is brought.

(d) In the case of such action brought for a willful violation of this section, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(7) The director, by rule, shall establish a fine structure for employers who violate this section, with a maximum fine of \$500 per violation. The director shall transfer any fines collected pursuant to this section to the state treasurer for deposit in the fund. The director, by rule, shall establish a process for the determination, Assessment, and appeal of fines under this subsection.

(8) This section does not apply to an employee of a local government that has elected coverage pursuant to section 8-13.3-514.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4233, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-409 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-510. Coordination of benefits.

(1) (a) Leave taken with wage replacement under this part 5 that also qualifies as leave under the "Family and Medical Leave Act", as amended, Pub.L. 103-3, codified at 29 U.S.C. sec. 2601

et. seq., or part 2 of article 13.3 of title 8 runs concurrently with leave taken under the "Family and Medical Leave Act" or part 2 of article 13.3 of title 8, as applicable.

(b) An employer may require that payment made or paid family and medical leave taken under this part 5 be made or taken concurrently or otherwise coordinated with payment made or leave allowed under the terms of a disability policy, including a disability policy contained within an employment contract, or a separate bank of time off solely for the purpose of paid family and medical leave under this part 5, as applicable. The employer shall give its employees written notice of this requirement.

(c) Notwithstanding section 8-13.3-510 (1)(b), under no circumstances shall an employee be required to use or exhaust any accrued vacation leave, sick leave, or other paid time off prior to or while receiving family and medical leave insurance benefits under this part 5. However, an employee and an employer may mutually agree that the employee may use any accrued vacation leave, sick leave, or other paid time off while receiving family and medical leave insurance benefits under this part 5, unless the aggregate amount a covered individual would receive would exceed the covered individual's average weekly wage. Nothing in this subsection requires an employee to receive or use, or an employer to provide, additional paid time off as described in this subsection.

(2) (a) This part 5 does not diminish:

(I) The rights, privileges, or remedies of an employee under a collective bargaining agreement, employer policy, or employment contract;

(II) An employer's obligation to comply with a collective bargaining agreement, employer policy, or employment contract, as applicable, that provides greater leave than provided under this part 5; or

(III) Any law that provides greater leave than provided under this part 5.

(b) After December 31, 2020, an employer policy adopted or retained shall not diminish an employee's right to benefits under this part 5. Any agreement by an employee to waive the employee's rights under this part 5 is void as against public policy.

(3) The director shall determine by rule the interaction of benefits or coordination of leave when a covered individual is concurrently eligible for paid family and medical leave and benefits under this part 5 with:

(a) Leave pursuant to section 24-34-402.7; or

(b) Workers' compensation benefits under article 42 of title 8.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4235, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-410 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-511. Notice.

The division shall develop a program notice that details the program requirements, benefits, claims process, payroll deduction requirements, the right to job protection and benefits continuation under section 8-13.3-509, protection against retaliatory personnel actions or other discrimination, and other pertinent program information. Each employer shall post the program notice in a prominent location in the workplace and notify its employees of the program, in writing, upon hiring and upon learning of an employee experiencing an event that triggers eligibility pursuant to section 8-13.3-504. The division shall provide the information required by this section in a manner that is culturally competent and linguistically appropriate.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4236, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-411 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-512. Appeals.

(1) The director shall establish a system for administrative review and determination of claims, and appeal of such determinations, including denial of family and medical leave insurance benefits. In establishing such system, the director may utilize any and all procedures and appeals mechanisms established under sections 8-4-111.5 (5), 8-74-102, and 8-74-103.

(2) Judicial review of any decision with respect to family and medical leave insurance benefits under this section is permitted in a court of competent jurisdiction after a covered individual aggrieved thereby has exhausted all administrative remedies established by the director. If a covered individual files a civil action in a court of competent jurisdiction to enforce a judgment made under this section, any filing fee under article 32 of title 13 shall be waived.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4237, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-412 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-513. Erroneous payments and disqualification for benefits.

(1) A covered individual is disqualified from family and medical leave insurance benefits for one year if the individual is determined by the director to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this part 5.

(2) If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected after benefits are paid, the division may seek repayment of benefits from the recipient. The director shall exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4237, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-413 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-514. Elective coverage.

(1) An employee of a local government that has declined participation in the program pursuant to section 8-13.3-522 or a self-employed person, including an independent contractor, sole proprietor, partner or joint venturer, may elect coverage under this part 5 for an initial period of not less than three years. The self-employed person or employee of a local government must file a notice of election in writing with the director, as required by the division. The election becomes effective on the date of filing the notice. As a condition of election, the self-employed

person or employee of a local government must agree to supply any information concerning income that the division deems necessary.

(2) A self-employed person or an employee of a local government who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the director may prescribe by rule, by filing written notice with the director, such withdrawal to take effect not sooner than 30 days after filing the notice.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4237, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-414 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-515. Reimbursement of advance payments.

(1) Except as provided in section 8-13.3-515 (2), if an employer has made advance payments to an employee that are equal to or greater than the amount required under this part 5, during any period of paid family and medical leave for which such employee is entitled to the benefits provided by this part 5, the employer is entitled to be reimbursed by the fund out of any benefits due or to become due for the existing paid family and medical leave, if the claim for reimbursement is filed with the fund prior to the fund's payment of the benefits to the employee.

(2) If an employer that provides family and medical leave insurance benefits through a private plan approved pursuant to section 8-13.3-521 makes advance payments to an employee that are equal to or greater than the amount required under this part 5, during any period of paid family and medical leave for which such employee is entitled to the benefits provided by this part 5, the entity that issued the private plan shall reimburse the employer out of any benefits due or to become due for the existing paid family and medical leave, if the claim for reimbursement is filed with the entity that issued the private plan prior to the private plan's payment of the benefits under the private plan to the employee.

(3) The director, by rule, shall establish a process for reimbursements under this section.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4238, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-415 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-516. Family and medical leave insurance program.

(1) By January 1, 2023, the division shall establish and administer a family and medical leave insurance program and begin collecting premiums as specified in this part 5. By January 1, 2024, the division shall start receiving claims from and paying family and medical leave insurance benefits to covered individuals.

(2) The division shall establish reasonable procedures and forms for filing claims for benefits under this part 5 and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health-care provider for proof of a serious health condition and any documentation required by the division with regards to a claim for safe leave.

(3) The division shall notify the employer within five business days of a claim being filed pursuant to this part 5.

(4) The division shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under state law.

(5) Information contained in the files and records pertaining to an individual under this part 5 are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records upon the presentation of the individual's signed authorization.

(6) The director shall adopt rules as necessary or as specified in this part 5 to implement and administer this part 5. The director shall adopt rules including, but not limited to:

- (a) Confidentiality of information related to claims filed or appeals taken;
- (b) Guidance on the factors used to determine whether an individual is a covered individual's family member;
- (c) The form and manner of filing claims for benefits and providing related documentation pursuant to section 8-13.3-516 (2); and
- (d) The form and manner of submitting an application with a claim for benefits to the division or to the entity that issued a private plan approved pursuant to section 8-13.3-521.

(7) Initial rules and regulations necessary for implementation of this part 5 shall be adopted by the director and promulgated by January 1, 2022.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4238, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-416 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-517. Income tax.

(1) If the internal revenue service determines that family and medical leave insurance benefits under this part 5 are subject to federal income tax, the division or a private plan approved under section 8-13.3-521 shall inform an individual filing a new claim for family and medical leave insurance benefits, at the time of filing such claim, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax; and

(b) Requirements exist pertaining to estimated tax payments.

(2) Benefits received pursuant to this part 5 are not subject to state income tax.

(3) The director, in consultation with the department of revenue, shall issue rules regarding tax treatment and related procedures regarding family and medical leave insurance benefits, as well as the sharing of necessary information between the division and the department of revenue.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4239, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-417 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-518. Family and medical leave insurance fund - establishment and investment.

(1) There is hereby created in the state treasury the family and medical leave insurance fund. The fund consists of premiums paid pursuant to section 8-13.3-507, revenues from revenue bonds issued in accordance with section 8-13.3-508 (2)(d), and money transferred pursuant to subsection (4) of this section. Money in the fund may be used only to pay revenue bonds; to repay the general fund loan provided in subsection (3) of this section; to reimburse employers who pay family and medical leave insurance benefits directly to employees in accordance with section 8-13.3-515 (1); and to pay benefits under, and to administer, the program pursuant to this part 5, including technology costs to administer the program and outreach services developed under section 8-13.3-520. Interest earned on the investment of money in the fund remains in the fund. Any money remaining in the fund at the end of a fiscal year remains in the fund and does not revert to the general fund or any other fund. State money in the fund is continuously appropriated to the division for the purpose of this section. The general assembly shall not appropriate money from the fund for the general expenses of the state.

(2) The division may seek, accept, and expend gifts, grants, and donations, including program-related investments and community reinvestment funds, to finance the costs of establishing and implementing the program.

(3) Repealed.

(4) (a) On May 17, 2022, or as soon as possible thereafter, and notwithstanding section 24-75-227 (3)(c), the state treasurer shall transfer fifty-seven million dollars from the revenue loss restoration cash fund to the fund. The money is an advance payment of premiums for state employee coverage that the state is required to pay under the family and medical leave insurance program established in section 8-13.3-516 and is not a grant for purposes of section 20 (2)(d) of article X of the state constitution or as defined in section 24-77-102 (7). Liabilities that are recorded in the fund but are not required to be paid in the current fiscal year shall not be considered when calculating sufficient statutory fund balance for purposes of section 24-75-109.

(a.5) On June 24, 2024, the state treasurer shall transfer four hundred thousand dollars from the general fund to the fund. The money is an advance payment of premiums for state employee coverage that the state is required to pay under the family and medical leave insurance program established in section 8-13.3-516 and is not a grant for purposes of section 20 (2)(d) of article X of the state constitution or as defined in section 24-77-102 (7).

(b) (I) On or before December 31, 2022, the division shall determine the manner in which the state will receive a credit for the advance payment of premiums it has paid pursuant to subsection (4)(a) of this section for premiums it is required to pay under the family and medical leave insurance program established in section 8-13.3-516. The credit shall be calculated by multiplying the credit balance on the state's employer account or accounts as of June 30, 2022, and as of June 30 of each year thereafter, by a rate equivalent to the rate per annum on the most

recently issued ten-year United States treasury note, rounded to the nearest one-tenth of one percent, as reported by the "Wall Street Journal", as of the date of the transfer required by subsection (4)(a) of this section. The state shall receive credit, calculated in this manner, until the amount of premiums the state is required to pay exceeds fifty-seven million dollars plus the amount of interest accrued as set forth in this subsection (4)(b)(I). On or before December 31, 2022, the division shall submit a report to the executive director of the department of personnel, the director of the office of state planning and budgeting, and the joint budget committee setting forth the manner in which it determines to credit the state pursuant to this subsection (4)(b)(I).

(II) On July 1, 2023, and on July 1 of each year thereafter, the executive director of the department of labor and employment shall submit a report of the amount of remaining credit the state can receive for premiums it is required to pay to the executive director of the department of personnel, the state treasurer, the director of the office of state planning and budgeting, and the joint budget committee.

(c) The advance payment of premiums by the state pursuant to this subsection (4) shall not constitute or become an indebtedness, a debt, or a liability of the state. The state shall not be liable on such advance payment, nor shall the advance payment constitute the giving, pledging, or loaning of the full faith and credit of the state. Advance payments shall be exempt from the state's fiscal rules.

(d) (I) Notwithstanding any provision of this section to the contrary, the division shall cease to credit the money transferred to the fund from the revenue loss restoration cash fund pursuant to subsection (4)(a) of this section as an advance payment of premiums for state employee coverage that the state is required to pay under the family and medical leave insurance program at the end of state fiscal year 2023-24.

(II) Notwithstanding any provision of this section to the contrary, on the date on which the fund balance meets or exceeds one hundred million dollars, or as soon as possible thereafter, the state treasurer shall transfer thirty-five million dollars from the fund back to the revenue loss restoration cash fund created in section 24-75-227 (2)(a) as repayment of the unexpended amount of the advance payment of premiums for state employee coverage made by the state pursuant to subsection (4)(a) of this section.

(III) (A) On June 30, 2024, the state treasurer shall transfer one million one hundred thousand dollars from the fund to the "American Rescue Plan Act of 2021" cash fund created in section 24-75-226. This amount is of the money that originated from the money the state received from the federal coronavirus state fiscal recovery fund that was transferred to the fund from the revenue loss restoration cash fund pursuant to subsection (4)(a) of this section.

(B) Notwithstanding any provision of this section to the contrary, on or as soon as possible after the date the state controller publishes the comprehensive annual financial report of the state for state fiscal year 2023-24, the state treasurer shall transfer any remaining amount of the fifty-

seven million dollars transferred to the fund from the revenue loss restoration cash fund pursuant to subsection (4)(a) of this section, in addition to the thirty-five million dollars to be transferred pursuant to subsection (4)(d)(II) of this section, to the "American Rescue Plan Act of 2021" cash fund created in section 24-75-226 or to the general fund, as required in this subsection (4)(d)(III)(B), as repayment of the unexpended amount of the advance payment of premiums for state employee coverage made by the state pursuant to subsection (4)(a) of this section. The state treasurer shall transfer money pursuant to this subsection (4)(d)(III)(B) as follows: The state treasurer shall transfer money that originated from the money the state received from the federal coronavirus state fiscal recovery fund to the "American Rescue Plan Act of 2021" cash fund created in section 24-75-226 and shall transfer money that originated from the general fund to the general fund.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4240, effective upon proclamation of the Governor, December 31, 2020. **L. 2021:** (1) amended and (3) added, (SB 21-251), ch. 224, p. 1200, § 1, effective June 14. **L. 2022:** (1) amended and (4) added, (HB 22-1133), ch. 170, p. 1040, § 3, effective May 17. **L. 2023:** (4)(d) added, (SB 23-234), ch. 104, p. 377, § 1, effective April 24. **L. 2024:** (4)(a.5) added and (4)(d)(III) amended, (HB 24-1465), ch. 257, p. 1680, § 1, effective May 24.

Editor's note: (1) This section was originally numbered as 8-13.3-418 in Proposition 118 but was renumbered on revision for ease of location.

(2) Subsection (3)(c) provided for the repeal of subsection (3), effective December 1, 2024. (See L. 2021, p. 1200.)

Cross references: For the legislative declaration in HB 22-1133, see section 1 of chapter 170, Session Laws of Colorado 2022.

8-13.3-519. Reports.

Notwithstanding section 24-1-136 (11)(a)(I), beginning January 1, 2025, the division shall submit a report to the legislature by April 1 of each year that includes, but is not limited to, projected and actual program participation by section 8-13.3-504 (2) purpose, gender of beneficiary, average weekly wage of beneficiary, other demographics of beneficiary as determined by the division, premium rates, fund balances, outreach efforts, and, for leaves taken under section 8-13.3-504 (2)(b), family members for whom leave was taken to provide care.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4240, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-419 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-520. Public education.

By July 1, 2022, and for as long as the program continues, the division shall develop and implement outreach services to educate the public about the family and medical leave insurance program and availability of paid family and medical leave and benefits under this part 5 for covered individuals. The division shall provide the information required by this section in a manner that is culturally competent and linguistically appropriate. The division may, on its own or through a contract with an outside vendor, use a portion of the money in the fund to develop, implement, and administer outreach services.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4241, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-420 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-521. Substitution of private plans.

(1) Employers may apply to the division for approval to meet their obligations under this part 5 through a private plan. In order to be approved, a private plan must confer all of the same rights, protections and benefits provided to employees under this part 5, including, but not limited to:

(a) Allowing family and medical leave insurance benefits to be taken for all purposes specified in section 8-13.3-504 (2);

(b) Providing family and medical leave insurance benefits to a covered individual for any of the purposes, including multiple purposes in the aggregate, as set forth in section 8-13.3-504 (2), for the maximum number of weeks required in section 8-13.3-505 (1) in a benefit year;

(c) Allowing family and medical leave insurance benefits under section 8-13.3-504 (2)(b) to be taken to care for any family member;

(d) Allowing family and medical leave insurance benefits under section 8-13.3-504 (2)(c) to be taken by a covered individual with any serious health condition;

(e) Allowing family and medical leave insurance benefits under section 8-13.3-504 (2)(e) to be taken for any safe leave purposes;

(f) Providing a wage replacement rate for all family and medical leave insurance benefits of at least the amount required by section 8-13.3-506 (1)(a);

(g) Providing a maximum weekly benefit for all family and medical leave insurance benefits of at least the amount specified in section 8-13.3-506 (1)(b);

(h) Allowing a covered individual to take intermittent leave as authorized by section 8-13.3-505 (3);

(i) Imposing no additional conditions or restrictions on family and medical leave insurance benefits, or paid family and medical leave taken in connection therewith, beyond those explicitly authorized by this part 5 or regulations issued pursuant to this part 5;

(j) Allowing any employee covered under the private plan who is eligible for family and medical leave insurance benefits under this part 5 to receive benefits and take paid family and medical leave under the private plan; and

(k) Providing that the cost to employees covered by a private plan shall not be greater than the cost charged to employees under the state plan under section 8-13.3-507.

(2) In order to be approved as meeting an employer's obligations under this part 5, a private plan must also comply with the following provisions:

(a) If the private plan is in the form of self-insurance, the employer must furnish a bond to the state, with some surety company authorized to transact business in the state, in the form, amount, and manner required by the division;

(b) The plan must provide for all eligible employees throughout their period of employment; and

(c) If the plan is in the form of a third party that provides for insurance, the forms of the policy must be issued by an insurer approved by the state.

(3) The division shall withdraw approval for a private plan granted under section 8-13.3-521 (1) when terms or conditions of the plan have been violated. Causes for plan termination shall include, but not be limited to, the following:

(a) Failure to pay benefits;

- (b) Failure to pay benefits timely and in a manner consistent with this part 5;
 - (c) Failure to maintain an adequate surety bond under section 8-13.3-521 (2)(a);
 - (d) Misuse of private plan money;
 - (e) Failure to submit reports or comply with other compliance requirements as required by the director by rule; or
 - (f) Failure to comply with this part 5 or the regulations promulgated pursuant to this part 5.
- (4) An employee covered by a private plan approved under this section shall retain all applicable rights under section 8-13.3-509.
- (5) A contested determination or denial of family and medical leave insurance benefits by a private plan is subject to appeal before the division and any court of competent jurisdiction as provided by section 8-13.3-512.
- (6) The director, by rule, shall establish a fine structure for employers and entities offering private plans that violate this section, with a maximum fine of \$500 per violation. The director shall transfer any fines collected pursuant to this subsection to the state treasurer for deposit into the fund. The director, by rule, shall establish a process for the determination, assessment, and appeal of fines under this subsection.
- (7) The director shall annually determine the total amount expended by the division for costs arising out of the administration of private plans. Each entity offering a private plan pursuant to this section shall reimburse the division for the costs arising out of the private plans in the amount, form, and manner determined by the director by rule. The director shall transfer payments received pursuant to this section to the state treasury for deposit in the fund.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4241, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-421 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-522. Local government employers' ability to decline participation in program - rules.

- (1) A local government may decline participation in the family and medical leave insurance program in the form and manner determined by the director by rule.

(2) An employee of a local government that has declined participation in the program in accordance with this section may elect coverage as specified in section 8-13.3-514.

(3) The director shall promulgate reasonable rules for the implementation of this section. At a minimum, the rules must include:

- (a) The process by which a local government may decline participation in the program;
- (b) The process by which a local government that has previously declined participation in the program may subsequently elect coverage in the program; and
- (c) The notice that a local government is required to provide its employees regarding whether the local government is participating in the program, the ability of the employees of a local government that has declined participation to elect coverage pursuant to section 8-13.3-514, and any other necessary requirements.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4243, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-422 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-523. Severability.

If any provision of this part 5 or its application to any person or circumstance is held invalid, the remainder of part 5 or the application of the provision to other persons or circumstances is not affected.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4244, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-423 in Proposition 118 but was renumbered on revision for ease of location.

8-13.3-524. Effective date.

This part 5 takes effect upon official declaration of the governor and is self-executing.

Source: Initiated 2020: Entire part added, Proposition 118, L. 2021, p. 4244, effective upon proclamation of the Governor, December 31, 2020.

Editor's note: This section was originally numbered as 8-13.3-424 in Proposition 118 but was renumbered on revision for ease of location.

8-13.5 ARTICLE 13.5

Workplace Accommodations and Protections

PART 1
WORKPLACE ACCOMMODATIONS
FOR NURSING MOTHERS

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PART 1

WORKPLACE ACCOMMODATIONS FOR NURSING MOTHERS

Law reviews: For article, "Expanded Job Protections for Pregnant and Nursing Workers", see 52 Colo. Law. 44 (Oct. 2023).

8-13.5-101. Short title.

The short title of this part 1 is the "Workplace Accommodations for Nursing Mothers Act".

Source: L. 2008: Entire article added, p. 328, § 1, effective August 5. **L. 2021:** Entire section amended, (SB 21-087), ch. 337, p. 2185, § 10, effective June 25.

8-13.5-102. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares that:

(a) The American academy of pediatrics recommends breastfeeding exclusively for the first six months of an infant's life and has continuously endorsed breastfeeding for at least one year or longer as the optimal form of nutrition for infants and as a foundation for good feeding practices;

(b) Extensive research indicates that there are diverse and compelling advantages to nursing for infants, mothers, families, businesses, and society, including less illness among children who are nursed and lower health-care costs;

(c) Epidemiologic research shows that breastfeeding infants provides benefits to their general health, growth, and development and results in significant decreases in risk for numerous acute illnesses;

(d) Breastfeeding has been shown to have numerous health benefits for mothers, including an earlier return to prepregnant weight, delayed resumption of ovulation with increased child spacing, improved bone remineralization postpartum with reduction in hip fractures in the postmenopausal period, and reduced risk of ovarian cancer and premenopausal breast cancer;

(e) In addition to individual health benefits, providing opportunities for breastfeeding results in substantial benefits to employers, including reduced health-care costs, reduced employee absenteeism for care attributable to infant illness, improved employee productivity, higher morale and greater loyalty, improved ability to attract and retain valuable employees, and a family-friendly image in the community;

(f) Nursing is a basic, normal, and important act of nurturing that should be encouraged in the interests of maternal and infant health.

(2) The general assembly further declares that the purpose of this part 1 is for the state of Colorado to become involved in the national movement to recognize the medical importance of breastfeeding, within the scope of complete pediatric care, and to encourage removal of boundaries placed on nursing mothers in the workplace.

Source: L. 2008: Entire article added, p. 328, § 1, effective August 5. **L. 2021:** (2) amended, (SB 21-087), ch. 337, p. 2186, § 11, effective June 25.

8-13.5-103. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Employer" means a person engaged in business who has one or more employees. "Employer" includes the state and any political subdivision of the state.

(2) "Reasonable efforts" means any effort that would not impose an undue hardship on the operation of the employer's business.

(3) "Undue hardship" means any action that requires significant difficulty or expense when considered in relation to factors such as the size of the business, the financial resources of the business, or the nature and structure of its operation, including consideration of the special circumstances of public safety.

Source: L. 2008: Entire article added, p. 329, § 1, effective August 5. **L. 2021:** IP amended, (SB 21-087), ch. 337, p. 2186, § 12, effective June 25.

8-13.5-104. Right of nursing mothers to express breast milk in workplace - private location - discrimination prohibited.

(1) An employer shall provide reasonable unpaid break time or permit an employee to use paid break time, meal time, or both, each day to allow the employee to express breast milk for her nursing child for up to two years after the child's birth.

(2) The employer shall make reasonable efforts to provide a room or other location in close proximity to the work area, other than a toilet stall, where an employee can express breast milk in privacy.

(3) An employer that makes reasonable efforts to accommodate an employee who chooses to express breast milk in the workplace shall be deemed to be in compliance with the requirements of this section.

(4) The department of labor and employment shall provide, on its website, information and links to other websites where employers can access information regarding methods to accommodate nursing mothers in the workplace. The department shall consult with appropriate organizations or associations to determine the appropriate information and website links to provide on the department's website so as to provide employers with the most accurate and useful information available.

(5) Before an employee may seek litigation for a violation of this section, there shall be nonbinding mediation between the employer and the employee.

Source: L. 2008: Entire article added, p. 329, § 1, effective August 5.

PART 2

LABOR CONDITIONS FOR AGRICULTURAL WORKERS

8-13.5-201. Definitions.

As used in this part 2, unless the context otherwise requires:

- (1) "Agricultural employer" has the same meaning set forth in section 8-3-104 (1).
- (2) "Agricultural employment" means employment in any service or activity included in section 203 (f) of the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., as amended, or section 3121 (g) of the federal "Internal Revenue Code of 1986", as amended.
- (3) "Agricultural worker" or "worker" means a worker engaged in any service or activity included in section 203 (f) of the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., as amended, or section 3121 (g) of the federal "Internal Revenue Code of 1986", as amended.
- (4) "Agricultural worker's representative" means a person or entity designated by an agricultural employee in a confidential, sealed filing with the court.
- (5) "Department" means the department of labor and employment.
- (6) "Division" means the division of labor standards and statistics in the department.

(7) "Key service provider" means a health-care provider; a community health worker, including a promotora; an education provider; an attorney; a legal advocate; a government official, including a consular representative; a member of the clergy; and any other service provider to which an agricultural worker may need access.

(8) "Occasional or intermittent" means twenty percent or less of an agricultural worker's weekly work time.

(9) "Short-handled hoe" means a handheld tool with a flat blade affixed perpendicularly to a handle that is less than eighteen inches long. "Short-handled hoe" includes a long-handled hand tool that has been modified to be used as a short-handled hoe.

(10) "Whistleblower" means an agricultural worker with knowledge of an alleged violation of this part 2 or the agricultural worker's representative.

Source: L. 2021: Entire part added, (SB 21-087), ch. 337, p. 2177, § 5, effective June 25.

8-13.5-202. Agricultural workers - right of access to key service providers - rules - definition.

(1) (a) An employer shall not interfere with an agricultural worker's reasonable access to visitors at the agricultural worker's employer-provided housing during any time when the agricultural worker is present at such housing.

(b) (I) An employer shall not interfere with an agricultural worker's reasonable access to key service providers at any location other than the employer's property during any time in which the agricultural worker is not performing compensable work or during paid or unpaid rest and meal breaks. An employer shall not interfere with an agricultural worker's reasonable access to key service providers through remote channels, including telehealth appointments, on the employer's property.

(II) As used in this section, "employer's property" means property in which the employer holds an ownership or possessory interest or a right to exclude.

(c) (I) To ensure that agricultural workers have meaningful access to services, the director of the division may adopt rules regarding additional times during which an employer may not interfere with an agricultural worker's reasonable access to key service providers at any location other than the employer's property, including periods during which the agricultural worker is performing compensable work, especially during periods when the agricultural worker is required to work in excess of forty hours per week and may have difficulty accessing such services outside of work hours.

(II) The division shall not adopt rules that infringe upon an employer's private property rights by appropriating a right of access to the employer's private property, other than those locations on an employer's property for which access is expressly authorized in this section, to a third party without the employer's permission.

(III) The division shall not adopt rules that conflict with the common law right of an individual to access private property in a time of emergency.

(d) An employer may require visitors accessing a work site to follow protocols designed to manage biohazards and other risks of contamination, to promote food safety, and to reduce the risk of injuries to or from livestock on farms and ranches except on the open range, if the same protocols are generally applied to any other third parties who may have occasion to enter the work site.

(e) An agricultural employer that provides housing and transportation for agricultural workers shall, at least one day per week, provide transportation to the agricultural workers to a location where the workers can access basic necessities, conduct financial transactions, and meet with key service providers; except that transportation must be provided not less than one day every three weeks for range workers who are actively engaged in the production of livestock on the open range. This subsection (1)(e) does not limit or restrict an agricultural worker's ability to travel using the agricultural worker's own means of transportation. Nothing in this subsection (1)(e) requires an employer to violate a state or federal law or regulation.

(f) If an agricultural worker has access to the worker's own vehicle and is permitted to park the vehicle on the employer's property, the employer is not required to provide transportation as set forth in subsection (1)(e) of this section.

(2) No person other than the agricultural worker may prohibit, bar, or interfere with, or attempt to prohibit, bar, or interfere with, the access to or egress from the residence of any agricultural worker by any person, either by the erection or maintenance of any physical barrier, by physical force or violence or by the threat of physical force or violence, or by any order or notice given in any manner.

(3) An agricultural employer shall post notice of an agricultural worker's rights under this part 2:

(a) In a conspicuous location on the agricultural employer's premises, including in the agricultural worker's employer-provided housing; and

(b) In all places where notices to employees, including agricultural workers, are customarily posted; and

(c) Electronically, including by email and on an intranet or internet site, if the agricultural employer customarily communicates with agricultural workers by these means.

Source: L. 2021: Entire part added, (SB 21-087), ch. 337, p. 2178, § 5, effective June 25. **L. 2025:** (1)(b) and (1)(c) amended, (SB 25-128), ch. 280, p. 1453, § 2, effective May 29.

Cross references: For the legislative declaration in SB 25-128, see section 1 of chapter 280, Session Laws of Colorado 2025.

8-13.5-203. Extreme overwork protections - heat stress training - short-handled hoe prohibited - rules.

(1) The director of the division shall promulgate rules that require agricultural employers to protect agricultural workers from heat-related stress illnesses and injuries when the outside temperatures reach eighty degrees or higher, with discretion to adjust requirements based on environmental factors, exposure time, acclimatization, and metabolic demands of the job as set forth in the federal department of health and human services centers for disease control and prevention national institute for occupational safety and health 2016 revised publication: Criteria for a Recommended Standard, Occupational Exposure to Heat and Hot Environments. The rules must be proposed on or before October 31, 2021, and adopted on or before January 31, 2022.

(2) (a) Using a short-handled hoe is prohibited in agricultural employment for weeding and thinning in a stooped, kneeling, or squatting position.

(b) The performance of weeding and thinning by hand or with a short-handled tool, other than a short-handled hoe, in a stooped, kneeling, or squatting position is strongly disfavored unless there is no suitable long-handled tool or other alternative means of performing the work that is suitable and appropriate to both the production of the agricultural or horticultural commodity and the scale of the operation. Nothing in this subsection (2) is construed to allow the use of the short-handled hoe.

(c) Beginning January 1, 2022, this subsection (2) does not prohibit:

(I) Occasional or intermittent hand weeding or hand thinning in a stooped, kneeling, or squatting position that is incidental to a non-hand-weeding operation;

(II) Hand thinning of high density plants spaced less than two inches apart when planted;

(III) Hand weeding or thinning of any agricultural or horticultural commodity grown in fields or greenhouses for which the employer maintains a current certification from the Colorado department of agriculture or an authorized certifying body as meeting the standards of the United States department of agriculture's national organic program;

(IV) Hand weeding, thinning, or tending any agricultural or horticultural commodities when they are seedlings;

(V) Hand weeding, thinning, or tending agricultural or horticultural commodities grown in tubs or planter containers with an opening that does not exceed fifteen inches in width;

(VI) Seeding, planting, transplanting, or harvesting by hand or with a hand tool; or

(VII) Hand weeding, thinning, or tending the soil-exposed area immediately surrounding agricultural or horticultural commodities grown using polyethylene film or plastic mulch. This exemption does not permit the hand weeding of the spaces between rows of plants grown using polyethylene film or plastic mulch.

(d) The commissioner of the department of agriculture shall promulgate rules regarding allowances for and limitations to hand weeding and hand thinning for agricultural employers actively engaged in the transition to certified organic agriculture for a period of no more than three years while ensuring that agricultural workers are not at risk of acute, chronic, or debilitating injuries. The rules must be proposed on or before October 31, 2021, and adopted on or before January 31, 2022.

(e) On or before January 31, 2022, the commissioner of the department of agriculture shall promulgate rules that establish a procedure for agricultural employers to seek a certificate of variance from the Colorado department of agriculture that allows for more than occasional or intermittent hand weeding of agricultural or horticultural products if the agricultural employer establishes that:

(I) The hand weeding does not involve prolonged and unnecessary stooping, kneeling, or squatting, and does not create a risk of acute, chronic, or debilitating injuries for agricultural workers;

(II) There is no suitable long-handled tool or other alternative means of performing the work that is suitable and appropriate to both the production of the agricultural or horticultural commodity and the scale of the operation; and

(III) The hand weeding cannot be performed pursuant to an existing exemption pursuant to this subsection (2).

(3) An agricultural employer shall provide agricultural workers engaged in hand weeding and hand thinning an additional five-minute rest period, which, insofar as is practicable, must be in the middle of each work period. The authorized rest period must be based on the total hours worked daily at the rate of fifteen minutes net rest time per four hours of work, or a major fraction thereof. The agricultural employer shall count the authorized rest period as hours worked and not deduct the rest period from the agricultural worker's wages.

(4) An agricultural employer shall provide gloves and knee pads, as necessary, to each agricultural worker engaging in hand weeding, hand thinning, or hand hot-capping.

(5) If any provision of this section or its application to any person or circumstance is held invalid or unconstitutional, such provision or application does not affect other provisions or applications of this section that can be given effect without the invalid or unconstitutional provision or application, and the provisions of this section are severable.

Source: L. 2021: Entire part added, (SB 21-087), ch. 337, p. 2179, § 5, effective June 25.

8-13.5-204. Enforcement - penalties - relief - rules.

(1) An aggrieved agricultural worker, a whistleblower, or a key service provider who was unable to access an agricultural worker due to a violation of this part 2 may:

(a) Commence an action in district court against an agricultural employer for a violation of this part 2; or

(b) Assert a claim with the division pursuant to rules adopted by the director of the division against an agricultural employer. The director may investigate and order all remedies available in district court or may decline to investigate and thus authorize the complainant to file suit in district court. A decision by the director to decline to investigate must be made within ninety days after the claim is filed as established by rule of the director. The statute of limitations is tolled for the purpose of filing a claim in district court from the date that the claim is asserted until ninety days after the director declines to investigate the claim.

(2) (a) A court may:

(I) Order injunctive relief to enjoin the continuance of the violation of this part 2;

(II) Award the plaintiff actual damages or ten thousand dollars, whichever is greater; and

(III) Award the plaintiff attorney fees.

(b) Any amounts recovered by a whistleblower or key service provider pursuant to this section must be distributed to agricultural workers affected by the violation who can be located, insofar as such disbursement is economically feasible.

(3) An aggrieved agricultural worker or whistleblower is entitled to all rights, remedies, and penalties afforded under section 8-2-206.

Source: L. 2021: Entire part added, (SB 21-087), ch. 337, p. 2181, § 5, effective June 25.

8-13.5-205. Agricultural work advisory committee - creation - report - repeal.

(1) On or before April 1, 2022, the director of the division shall establish the agricultural work advisory committee, referred to in this section as the "advisory committee". The advisory committee consists of nine members as follows:

(a) The director of the division shall appoint:

(I) Two members who have worked as agricultural workers; and

(II) Two members who are advocates of workers' rights;

(b) The commissioner of agriculture shall appoint:

(I) Three members who represent agricultural employers; and

(II) Two representatives from the Migrant Farm Worker Division of Colorado Legal Services, or its successor organization.

(2) (a) The terms of the members are four years.

(b) If a member fails to complete the member's term, the appointing authority shall appoint a new member to complete the remainder of the term.

(c) Members shall serve without compensation for their service; except that members may receive a per diem as established by the executive director of the department and reimbursement for travel and other necessary expenses incurred in the performance of their official duties.

(3) (a) The advisory committee shall gather and analyze data and other information regarding the wages and working conditions of agricultural workers and report its findings and any legislative recommendations to the general assembly.

(b) To the extent possible, the executive director of the department shall ensure that the advisory committee has the opportunity to meet with appropriate representatives from the department of labor and employment, the department of public health and environment, the department of agriculture, and the governor's office for purposes of conducting its work pursuant to subsection (3)(a) of this section.

(c) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 1, 2023, and each January 1 thereafter, the advisory committee shall report its progress, findings, and legislative recommendations to the agriculture, livestock, and water committee and the business affairs and labor committee of the house of representatives, or their successor committees, and the agriculture and natural resources committee and the business, labor, and technology committee of the senate, or their successor committees.

(4) This section is repealed, effective September 1, 2031. Before the repeal, the advisory committee is scheduled for review in accordance with section 2-3-1203.

Source: L. 2021: Entire part added, (SB 21-087), ch. 337, p. 2182, § 5, effective June 25.

ARTICLE 14

Protection of Building Employees

8-14-101.	Protection of building employees.	8-14-103.	Flooring - hoisting of materials - regulations.
8-14-102.	Scaffolding - complaints - duty of building inspector.	8-14-104.	Building inspector to enforce - prosecutions.
		8-14-105.	Penalty for violation.

8-14-101. Protection of building employees.

A person employing or directing another to perform labor of any kind in the erection, repairing, altering, or painting of a house, building, or structure shall not furnish or erect for the performance of such labor scaffolding, hoists, stays, ladders, or other mechanical contrivances which are unsafe, unsuitable, or improper and which are not constructed, placed, and operated to give proper protection to life and limb of a person so employed or engaged. Scaffolding or staging swung or suspended from an overhead support more than twenty feet from the ground or floor shall have a safety rail of wood, properly bolted, secured, and braced, rising at least thirty-four inches above the floor or main portions of the scaffolding or staging and extending along the entire length of the outside and the ends thereof and properly attached thereto, and such scaffolding or staging shall be so fastened to prevent the same from swaying from the building or structure.

Source: L. 13: p. 448, § 1. **C.L.** § 4186. **CSA:** C. 97, § 117. **CRS 53:** § 80-16-1. **C.R.S. 1963:** § 80-13-1.

ANNOTATION

A general contractor owes a duty of ordinary care to provide the employees of a subcontractor a reasonably safe place in

which to work. *J & K Constr. Co. v. Molton*, 154 Colo. 214, 390 P.2d 68 (1964).

8-14-102. Scaffolding - complaints - duty of building inspector.

(1) Whenever complaint is made to the building inspector of any town or city wherein work is being done that the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, or ropes of any swinging or stationary scaffolding used in the construction, alteration, repairing, painting, cleaning, or pointing of buildings within the limits of such city are unsafe or liable to prove dangerous to the life or limb of any person, the building inspector shall immediately cause an inspection to be made of the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons, or other parts connected therewith. If, after examination, the scaffolding or any of the parts are found to be dangerous to life or limb, the building inspector shall prohibit the use thereof and require the same to be altered and reconstructed to avoid such danger. The building inspector making the examination shall attach a certificate to the scaffolding or the slings, hangers, irons, ropes, or other parts thereof examined by him stating that he has made an examination and that he has found it safe or unsafe, as the case may be. If he declares it unsafe, he shall notify the person responsible for its erection of the fact at once, in writing, and warn him against the use thereof. Such notice may be served personally upon the person responsible for its erection or by affixing it conspicuously to the scaffolding or the part thereof declared to be unsafe. After the notice has been so served or affixed, the person responsible therefor shall immediately remove the scaffolding or part thereof or alter or strengthen it in such manner as to render it safe, in the discretion of the officer who has examined it.

(2) The building inspector, whose duty it is to examine or test any scaffolding or part thereof as required by this section, shall have free access at all reasonable hours to any building or premises containing scaffolding or where it is in use. All swinging or stationary scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use, and not more than four men shall be allowed on any swinging scaffolding at one time.

Source: L. 13: p. 448, § 2. **C.L.** § 4187. **CSA:** C. 97, § 118. **CRS 53:** § 80-16-2. **C.R.S. 1963:** § 80-13-2.

8-14-103. Flooring - hoisting of materials - regulations.

(1) All contractors and owners, when constructing buildings in cities where the plans and specifications require the floors to be arched between the beams thereof or where the floors or

filling in between the floors are of fireproof material or brick work, shall complete the flooring or filling in as the building progresses to not less than within three tiers of beams below that on which the iron work is being erected. If the plans and the specifications of the buildings do not require filling in between the beams of floors with brick or fireproof material, all contractors for carpenter work in the course of construction shall lay the underflooring thereof on each story as the building progresses to not less than within two stories below the one to which the building has been erected.

(2) Where double floors are not to be used, the contractor shall keep the floor planked over not less than two stories below the story where the work is being performed. If the floor beams are of iron or steel, the contractor for the iron or steel work of building in course of construction, or the owners of such building, shall thoroughly plank over the entire tier of iron or steel beams on which the structural iron or steel work is being erected except such spaces as may be reasonably required for the proper construction of such iron or steel work and for the raising or lowering of materials to be used in the construction of the building or such spaces as may be designated by the plans and specifications for stairways and elevator shafts. If elevators, elevating machines, or hod-hoisting apparatus are used within a building in the course of construction for the purpose of lifting materials to be used in the construction, the contractors or owners shall cause the shafts or openings in each floor to be enclosed or fenced in on all sides by a barrier at least eight feet in height; except on two sides, which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than three nor more than four feet from the floor and not less than two feet from the edge of the shaft or opening. If a building in course of construction is five stories or more in height, no lumber or timber needed for such construction shall be hoisted or lifted on the outside of the building.

Source: L. 13: p. 449, § 3. **C.L.** § 4188. **CSA:** C. 97, § 119. **CRS 53:** § 80-16-3. **C.R.S. 1963:** § 80-13-3.

8-14-104. Building inspector to enforce - prosecutions.

The building inspector shall enforce all the provisions of this article. He shall investigate complaints made to him of violations of such provisions, and, if he finds that such complaints are well-founded, he shall issue an order directed to the person or corporation complained of requiring such person or corporation to comply with those provisions. If such order is disregarded, the building inspector shall present to the district attorney of the proper county all the facts ascertained by him in regard to the alleged violation and all other papers, documents, or evidence pertaining thereto which he has in his possession. The district attorney to whom such presentation is made shall proceed at once to prosecute the person or corporation for the violations complained of.

Source: L. 13: p. 450, § 4. **C.L.** § 4189. **CSA:** C. 97, § 120. **CRS 53:** § 80-16-4. **C.R.S. 1963:** § 80-13-4.

8-14-105. Penalty for violation.

Any person, corporation, company, or association who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum of not less than fifty dollars nor more than five hundred dollars for each offense.

Source: L. 13: p. 451, § 5. **C.L.** § 4190. **CSA:** C. 97, § 121. **CRS 53:** § 80-16-5. **C.R.S. 1963:** § 80-13-5.

8-14.3 ARTICLE 14.3

Veterans Employment Programs

PART 1 EMPLOYMENT SERVICES FOR VETERANS PILOT PROGRAM 8-14.3-101 to 8-14.3-103. (Repealed)	8-14.3-201.5. Legislative declaration.
	8-14.3-202. Definitions.
	8-14.3-203. Colorado veterans' service- to-career program - report.
	8-14.3-204. Appropriation.
PART 2 COLORADO VETERANS' SERVICE-TO- CAREER PROGRAM 8-14.3-201. Short title.	8-14.3-205. Repeal of part.

PART 1

EMPLOYMENT SERVICES FOR VETERANS PILOT PROGRAM

8-14.3-101 to 8-14.3-103. (Repealed)

Editor's note: (1) This part 1 was added in 2015. For amendments to this part 1 prior to its repeal in 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-14.3-103 provided for the repeal of this part 1, effective January 1, 2018. (See L. 2016, p. 662.)

PART 2

COLORADO VETERANS' SERVICE-TO-CAREER PROGRAM

8-14.3-201. Short title.

The short title of this part 2 is the "Colorado Veterans' Service-to-career Program".

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 659, § 1, effective August 10.
L. 2018: Entire section amended, (HB 18-1343), ch. 242, p. 1502, § 1, effective July 1.

8-14.3-201.5. Legislative declaration.

(1) The general assembly finds, determines, and declares that the pilot program enacted in House Bill 16-1267, which created the Colorado veterans' service-to-career pilot program that authorized nonprofit agencies to partner with work force centers selected by the department to provide veterans and other eligible participants with skills training, internships, work placements, mentorship opportunities, career and professional counseling, and support services, has been successful in increasing the employment rates for veterans, veterans' spouses, and eligible participants.

(2) The general assembly further finds, determines, and declares that the Colorado veterans' service-to-career pilot program should continue as a program whose goal is to assist veterans, spouses, and eligible participants in seeking, obtaining, and retaining employment.

Source: L. 2018: Entire section added, (HB 18-1343), ch. 242, p. 1502, § 2, effective July 1.
L. 2023: (1) amended, (SB 23-302), ch. 411, p. 2440, § 1, effective August 7.

8-14.3-202. Definitions.

As used in this part 2, unless the context otherwise requires:

- (1) "Act" means the federal "Workforce Innovation and Opportunity Act", Pub.L. 113-128.
- (2) "Apprenticeship" means an apprenticeship training program registered with the United States department of labor's office of apprenticeship or a state apprenticeship agency recognized by the United States department of labor.
- (3) "Department" means the department of labor and employment.
- (4) "Eligible participant" means a:
 - (a) Veteran;
 - (b) Veteran's spouse;
 - (c) Veteran's dependent child who is twenty-six years of age or younger and lives in the home of the veteran;
 - (d) Veteran's caregiver who is eighteen years of age or older and has significant responsibility for managing the well-being of an injured veteran; and
 - (e) Person who is actively serving in the United States armed forces and who is within six months of being discharged under conditions other than dishonorable or a member of the National Guard or military reserves who has completed initial entry training.
- (5) "Integrated service and support center" means a nonprofit center that is affiliated with a work force center and veterans service offices in a centralized location where government agencies, nonprofit organizations, and other entities collaborate to provide services to eligible participants. Services offered may include assistance for eligible participants in securing federal benefits, counseling services, employment support, education, life skills, and wellness support.
- (5.5) "Internship" means a training program with a business or nonprofit organization during which the eligible participant receives skills training that could result in future employment in that sector or industry.
- (6) "Program" means the Colorado veterans' service-to-career program created in this part 2.
- (7) "Spouse" means a veteran's current spouse or former spouse who is currently eligible for veterans' benefits.
- (8) "Veteran" means a person who actively served in the United States armed forces and who was discharged or released under conditions other than dishonorable, in accordance with U.S.C. title 38, as amended. "Veteran" includes a person serving or who served in the National Guard or as a reservist.
- (8.5) "Work-based learning" means a continuum of activities that occur, in part or in whole, in the workplace, providing the learner with hands-on, real-world work experience.

(9) (a) "Work force center" means a work force center created by a work force development board pursuant to the "Colorado Career Advancement Act", part 2 of article 83 of this title 8.

(b) For purposes of a grant application under section 8-14.3-203, "work force center" also includes a nonprofit entity that:

- (I) Has a primary focus of serving veterans; and
- (II) Joins with the work force center to submit a joint application.

Source: **L. 2016:** Entire part added, (HB 16-1267), ch. 187, p. 659, § 1, effective August 10. **L. 2018:** (9) amended, (HB 18-1375), ch. 274, p. 1694, § 2, effective May 29; (1), (4), (5), (6), and (9) amended and (5.5) and (8.5) added, (HB 18-1343), ch. 242, p. 1503, § 3, effective July 1. **L. 2020:** (2) amended, (HB 20-1402), ch. 216, p. 1042, § 9, effective June 30. **L. 2021:** (2) amended, (HB 21-1007), ch. 309, p. 1890, § 3, effective July 1. **L. 2023:** (2) amended, (SB 23-051), ch. 37, p. 142, § 11, effective March 23.

Editor's note: Amendments to subsection (9) by HB 18-1343 and HB 18-1375 were harmonized.

8-14.3-203. Colorado veterans' service-to-career program - report.

(1) One or more work force centers selected by the department pursuant to the grant program developed by the department in subsection (4) of this section may contract with a nonprofit agency to administer the program. Work force centers selected by the department and the nonprofit agency shall develop and expand programs to provide work force development-related services specifically tailored to the unique needs and talents of eligible participants. The services may include:

- (a) Skills training;
- (b) Opportunities for apprenticeship or internship placements, including an internship that allows for direct entry of eligible participants;
- (c) Opportunities for internship placements for a specified and limited time period as long as the tasks performed by the intern do not replace the tasks currently performed by a paid contractor or employee;
- (d) Opportunities for work placements with businesses or other organizations; and
- (e) Support services, as needed.

(1.5) The department shall collaborate with stakeholders and, if feasible, develop a grant application form by March 1, 2019, so that a nonprofit agency may submit one application for multiple service centers effective with the fiscal year 2019-20 grant cycle.

(2) (a) If an internship, as allowable, is not fully funded by the employer, the employer and the work force center may share the cost of the hourly wage or stipend for the eligible participant, as determined by the work force center and as permitted under state and federal law.

(b) Repealed.

(3) The work force centers selected by the department and the nonprofit agency are encouraged to additionally provide services that include:

(a) Job fairs;

(b) Mentorship opportunities with professionals;

(c) Professional and industry-specific seminars;

(d) Career and professional counseling; and

(e) Counseling on educational and skills training opportunities available to eligible participants.

(3.5) Work force center staff shall vet potential program participants and leverage additional funding sources, including the act, to deliver comprehensive services.

(4) The department shall develop a grant process so that work force centers may apply for money to administer the program. Each work force center that wishes to administer the program must submit a grant application that:

(a) Describes the current services that the work force center offers and demonstrates that those services:

(I) Do not duplicate services currently provided under the act; and

(II) Will complement other services offered under the program;

(b) States how the grant money would enable the work force center to expand its services for the purposes of the program;

(c) Describes businesses or other organizations it is partnering with to provide the necessary services;

(d) Explains how the services will be tailored or specifically marketed to any subgroup of eligible participants, including:

(I) Eligible participants with significant barriers to employment, including those specified in 38 U.S.C. sec. 4100 et seq., such as veterans with bad conduct discharges;

(II) Veterans experiencing homelessness;

(III) Vietnam-era veterans who served for more than one hundred days between 1965 and 1975;

(IV) Eligible participants experiencing addiction;

(V) National Guard and military reserve veterans; and

(VI) Veterans who are not able to enroll under the act or who are enrolled under the act but could benefit from greater support; and

(e) Addresses any other requirements the department deems necessary.

(5) In selecting work force centers to administer the program, the department shall give preference to a work force center that:

(a) Partners with an agency that is an integrated service and support center for veterans and their families;

(b) Is located in the state of Colorado, in order to serve the highest number of eligible participants;

(c) Has existing programs or partnerships with businesses or organizations in the community to provide services appropriate to the program; and

(d) Has the capacity to provide a wide range of work force development-related services tailored to the unique needs of eligible participants.

(6) (a) Each work force center chosen to receive a grant shall use the money for direct services to eligible participants. Each work force center chosen to receive a grant shall report on the services offered; participation by each subgroup of eligible participants; the program's success measured through gainful employment and participation in skills training or educational programs of eligible participants; and any other requirements that the department deems necessary. Notwithstanding section 24-1-136 (11)(a)(I), the work force center shall submit the report to the department, which shall relay all information from the reports annually to the state, veterans, and military affairs committees of the house of representatives and the senate or to their successor committees.

(b) Repealed.

(c) Unspent money available at the end of each fiscal year rolls over to the next fiscal year to be spent in that year.

(d) Repealed.

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 660, § 1, effective August 10. **L. 2018:** IP(1), (1)(b), (2), (3)(e), (4), (5), and (6) amended and (1.5) added, (HB 18-1343), ch. 242, p. 1504, § 4, effective July 1. **L. 2023:** (2)(b), (6)(b), and (6)(d) repealed, (3.5) added, and (6)(c) amended, (SB 23-302), ch. 411, p. 2440, § 2, effective August 7. **L. 2024:** (4)(a)(I) and (4)(d)(VI) amended, (HB 24-1450), ch. 490, p. 3405, § 10, effective August 7.

8-14.3-204. Appropriation.

The general assembly may annually appropriate money from the general fund created in section 24-75-201 to the department to be used for the program. The department may use up to five percent of any money appropriated by the general assembly for development and administrative costs incurred by the department pursuant to this section; except that this five-percent limitation does not apply to any contract the department enters into in connection with an evaluation of the program pursuant to section 8-14.3-203 (6). Up to eight percent of the money may also be used by the work force center for administrative costs incurred by the work force center and the nonprofit agency to implement and operate the program.

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 662, § 1, effective August 10. **L. 2018:** Entire section amended, (HB 18-1343), ch. 242, p. 1506, § 5, effective July 1. **L. 2024:** Entire section amended, (SB 24-109), ch. 442, p. 3089, § 1, effective June 6.

8-14.3-205. Repeal of part.

This part 2 is repealed, effective September 1, 2027.

Source: L. 2016: Entire part added, (HB 16-1267), ch. 187, p. 662, § 1, effective August 10. **L. 2018:** Entire section amended, (HB 18-1343), ch. 242, p. 1507, § 6, effective July 1. **L. 2023:** Entire section amended, (SB 23-302), ch. 411, p. 2441, § 3, effective August 7. **L. 2024:** Entire section amended, (SB 24-109), ch. 442, p. 3089, § 2, effective June 6.

8-14.4 ARTICLE 14.4

Worker Rights Related to Health and Safety

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8-14.4-101.	Definitions.	8-14.4-104.	Relief for aggrieved person.
8-14.4-101.5.	Worker protection - extreme temperatures - temperature-related injury and illness prevention plan - legislative declaration - rules.	8-14.4-105.	Enforcement by the division - rules.
		8-14.4-106.	Relief authorized.
		8-14.4-107.	Whistleblower enforcement - qui tam - definition.
8-14.4-102.	Prohibition against discrimination based on claims related to health and safety.	8-14.4-108.	Rule-making.
		8-14.4-109.	Agricultural employers - responsibilities during public health emergency - worker safety protections - definition.
8-14.4-103.	Principal post notice of rights - rules.		

8-14.4-101. Definitions.

As used in this article 14.4, unless the context otherwise requires:

(1) "Acclimatized" means the body's adaptation to work in the heat or cold as the body is exposed to heat or cold gradually over time, which reduces the strain caused by heat stress or cold stress and reduces the chance of developing heat-related injury or illness or cold-related injury or illness.

(2) "Agricultural employment" has the meaning set forth in section 8-13.5-201 (2).

(3) "Cold-related injury or illness" means a serious medical condition resulting from the body's inability to cope with cold stress. Signs and symptoms of cold-related injury or illness may include numbness, the feeling of pins and needles, blue and blotchy skin, aches, fatigue, confusion, disorientation, excessive shivering, and loss of coordination.

(4) "Cold-temperature trigger" means a temperature at which an individual, if exposed for a prolonged period, may be at risk of suffering from a cold-related injury or illness or temperature-related emergency.

(5) "Department" means the department of labor and employment.

(6) "Division" means the division of labor standards and statistics in the department.

(7) "Heat-related injury or illness" means a serious medical condition resulting from the body's inability to cope with heat stress. Signs and symptoms of heat-related injury or illness

may include headache, nausea, weakness, dizziness, elevated body temperature, muscle cramps, and muscle pain or spasms.

(8) "Heat-temperature trigger" means a temperature at which an individual, if exposed for a prolonged period, may be at risk of suffering from a heat-related injury or illness or temperature-related emergency.

(9) "Potable drinking water" means water that is safe for human consumption.

(10) "Principal" means:

(a) An "employer" as set forth in the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 203 (d);

(b) A foreign labor contractor or a migratory field labor contractor or crew leader;

(c) The state of Colorado, local governments, and political subdivisions of the state as defined in section 1-7.5-103 (6);

(d) An entity that contracts with five or more independent contractors in the state each year; and

(e) A person or entity engaged in agricultural employment.

(11) "Public health emergency" means:

(a) A public health order issued by a state or local public health agency; or

(b) A disaster emergency declared by the governor based on a public health concern.

(12) "Shade" means the blockage of direct sunlight, such that objects do not cast a shadow in the area of blocked sunlight.

(13) "Signs or symptoms of a cold emergency" means the physiological manifestation of a cold-related injury or illness, including hypothermia, frostbite, drowsiness, loss of consciousness, or trench foot.

(14) "Signs or symptoms of a heat emergency" means the physiological manifestation of a heat-related injury or illness, including heat stroke, heat exhaustion, fainting, or loss of consciousness.

(15) "Temperature-related emergency" means a serious medical emergency in which a worker is exhibiting signs or symptoms of a heat emergency or signs or symptoms of a cold emergency.

(16) "Temperature-related injury or illness" means cold-related injury or illness, heat-related injury or illness, or both.

(17) "TRIIPP" or "temperature-related injury and illness prevention plan" means a worksite temperature-related injury and illness prevention plan.

(18) "Worker" means:

(a) An "employee" as defined in section 8-4-101 (5); or

(b) An individual who works for an entity that contracts with five or more independent contractors in the state each year.

(19) "Worksite" means a physical location where a principal's work or operations are performed.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1351, § 1, effective July 11. L. 2021: (1), (3)(c), and (3)(d) amended and (1.5) and (3)(e) added, (SB 21-087), ch. 337, p. 2183, § 7, effective June 25. L. 2026: Entire section amended, (HB 26-1272), ch. 384, p. 2406, § 1, effective August 12.

8-14.4-101.5. Worker protection - extreme temperatures - temperature-related injury and illness prevention plan - legislative declaration - rules.

(1) **Legislative declaration.** The general assembly finds and declares that:

(a) Climate change is exacerbating the effects of extreme weather events, including extreme heat, extreme cold, drought, and wildfire in Colorado;

(b) Since 2011, Colorado has made it a priority to track temperature-related injury and illness and to ensure Coloradans are aware of the risks of exposure to extreme heat and extreme cold;

(c) In 2024, Colorado's largest workers' compensation insurer has indicated that indoor and outdoor workers in the state are fifty-two percent more likely to experience injury during extreme temperature events;

(d) Since 2021, federal experts at the United States department of labor have recognized that workers working in extreme temperatures need additional protections, and the occupational safety and health administration has asserted that exposure to extreme temperatures in the workplace poses a significant risk of serious injury and illness;

(e) The state's economy depends on the labor of workers across many sectors and industries who are routinely exposed to dangerous working conditions, including extreme heat, extreme cold, and other environmental hazards that may threaten their health, safety, and lives. The risks these workers face increase as outdoor temperatures become more volatile, and workers who are exposed to prolonged heat or cold sometimes suffer preventable injuries, illnesses, and deaths.

(f) The state's current protections are inadequate to protect workers exposed to extreme temperatures at worksites. Existing workplace standards do not require comprehensive prevention plans; do not guarantee access to potable drinking water, shade, or cool-down or warm-up areas; and do not establish procedures for monitoring temperatures, adjusting work practices during extreme heat or extreme cold, or protecting newly hired or returning workers who are not acclimatized. As a result, many workers continue to face unsafe conditions without enforceable safeguards.

(g) The absence of consistent statewide standards creates unequal protections across industries and regions, leaving the most vulnerable workers, including those who work in low-paying positions, at the greatest risk of harm. These workers often face additional barriers, such as fear of retaliation, limited access to complaint systems or reporting, and a lack of accessible information in a language they understand. These barriers contribute to underreporting of dangerous conditions and prevent timely intervention.

(h) Requiring principals to adopt clear, proactive measures, including monitoring and recording temperature conditions, providing potable drinking water and rest breaks, ensuring access to shade or shelter, developing written prevention and response plans, and adequately training workers, is necessary to reduce temperature-related injuries and illnesses in the state. The state should require protections that are practical, evidence-based, and achievable for employers of all sizes.

(i) Protecting workers from extreme temperatures is a matter of public health and safety and economic stability. Ensuring safer working conditions across industries will reduce preventable medical emergencies, support workforce retention and productivity, and promote fairness for principals that already comply with high safety standards.

(j) Establishing statewide enforceable protections for workers exposed to extreme temperatures is necessary to safeguard the state's workforce, strengthen families and communities, and uphold the state's responsibility to ensure that workers can perform their duties without risking their health, their safety, or their lives.

(2) Data collection - model temperature-related injury and illness prevention plan.

(a) On or before January 15, 2027, the division shall:

(I) Develop a platform on the department's website where users can provide information about occurrences of temperature-related injury or illness or temperature-related emergencies at worksites in the state;

(II) Obtain data from the department of public health and environment using the department of public health and environment's current syndromic surveillance program, or a successor program, to track occurrences of heat-related injury or illness or heat-related emergencies at worksites in the state; and

(III) Begin working with:

(A) The division of workers' compensation to periodically, and at least twice annually, collect information concerning claims for workers' compensation that involve temperature-related injury or illness or temperature-related emergencies; and

(B) The Center for Improving Value in Health Care, or a successor organization, to periodically, and at least twice annually, collect information concerning occurrences of temperature-related injury or illness or temperature-related emergencies at worksites in the state.

(b) (I) On or before July 1, 2028, the division shall develop a model TRIIPP that includes written procedures for:

(A) Providing workers access to cool, potable drinking water at no cost;

(B) Providing workers access to cool-down or warm-up rest areas;

(C) Monitoring workplace temperature conditions;

(D) Acclimatizing new or returning workers during their first fourteen days of assignment;

(E) Training workers to recognize signs and symptoms of temperature-related injury and illness;

(F) Responding to temperature-related medical emergencies; and

(G) Other components and exemptions as necessary.

(II) The division may incorporate by reference and adapt established TRIIPP models.

(III) The division may adopt rules necessary to implement this section.

(IV) The division shall ensure the model TRIIPP is available on the department's website in a format that can be viewed or downloaded.

(V) The division shall review and update the model TRIIPP as necessary and not less than every five years.

Source: L. 2026: Entire section added, (HB 26-1272), ch. 384, p. 2408, § 2, effective August 12.

8-14.4-102. Prohibition against discrimination based on claims related to health and safety.

(1) A principal shall not discriminate, take adverse action, or retaliate against any worker based on the worker, in good faith, raising any reasonable concern about workplace violations of government health or safety rules, or about an otherwise significant workplace threat to health or safety, to the principal, the principal's agent, other workers, a government agency, or the public if the principal controls the workplace conditions giving rise to the threat or violation.

(2) (a) A principal shall not require or attempt to require a worker to sign a contract or other agreement that would limit or prevent the worker from disclosing information about workplace health and safety practices or hazards or to otherwise abide by a workplace policy that would limit or prevent such disclosures.

(b) A contract or agreement that violates subsection (2)(a) of this section is void and unenforceable as contrary to the public policy of this state. A principal's attempt to impose such a contract or agreement is an adverse action in violation of this article 14.4.

(3) A principal shall not discriminate, take adverse action, or retaliate against a worker based on the worker voluntarily wearing at the worker's workplace the worker's own personal protective equipment, such as a mask, faceguard, or gloves, if the personal protective equipment:

- (a) Provides a higher level of protection than the equipment provided by the principal;
- (b) Is recommended by a federal, state, or local public health agency with jurisdiction over the worker's workplace; and
- (c) Does not render the worker incapable of performing the worker's job or prevent a worker from fulfilling the duties of the worker's position.

(4) A principal shall not discriminate, take adverse action, or retaliate against a worker based on the worker opposing any practice the worker reasonably believes is unlawful under this article 14.4 or for making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing as to any matter the worker reasonably believes to be unlawful under this article 14.4.

(5) This section does not apply to a worker who discloses information:

- (a) That the worker knows to be false; or
- (b) With reckless disregard for the truth or falsity of the information.

(6) Nothing in this section authorizes a worker to share individual health information that is otherwise prohibited from disclosure under state or federal law.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1352, § 1, effective July 11.
L. 2022: (1) and (2)(a) amended, (SB 22-097), ch. 274, p. 1973, § 1, effective May 31.

ANNOTATION

Law reviews. For article, "COVID-19 Disability for Which Employees Have Legal and the Americans with Disabilities Act: Protections in the Workplace?", see 99 When Might the Disease Be Considered a Denv. L. Rev. 311 (2022).

8-14.4-103. Principal post notice of rights - rules.

(1) A principal shall post notice of a worker's rights under this article 14.4 in a conspicuous location on the principal's premises.

(2) The division shall promulgate rules to establish the form of the notice required in subsection (1) of this section.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1353, § 1, effective July 11.

8-14.4-104. Relief for aggrieved person.

(1) A person may seek relief for a violation of this article 14.4 by:

(a) Filing a complaint with the division pursuant to section 8-14.4-105; or

(b) Bringing an action in district court pursuant to section 8-14.4-106.

(2) A person shall exhaust administrative remedies pursuant to section 8-14.4-105 prior to bringing an action in court.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1353, § 1, effective July 11.

8-14.4-105. Enforcement by the division - rules.

(1) (a) Within two years after an alleged violation of this article 14.4, an aggrieved individual or whistleblower may file a complaint against a principal with the division as specified in this subsection (1).

- (b) Until the date the division makes a complaint form publicly available:
 - (I) An aggrieved individual or whistleblower may file a complaint of a violation of this article 14.4 with the division in any form, by mail or electronic mail;
 - (II) The division may later require the aggrieved individual or whistleblower to complete the division's complaint form; and
 - (III) The filing date is the date of the claimant's original filing, even if the division later requests additional information or completion of the division's complaint form.
- (c) After the division makes a complaint form publicly available, an aggrieved individual or whistleblower may file a complaint only by completing the required form.
 - (2) The division shall either:
 - (a) Investigate alleged principal violations of, or interference with rights or responsibilities under, this article 14.4 and complaints filed with the division by aggrieved individuals and whistleblowers; or
 - (b) Authorize an aggrieved individual or whistleblower to proceed with an action in district court as provided in sections 8-14.4-106 and 8-14.4-107. A person who receives authorization pursuant to this subsection (2)(b) is considered to have exhausted administrative remedies.
 - (3) In an investigation of alleged principal retaliation or interference with worker rights, if an investigation yields a determination that:
 - (a) A violation has occurred, the division may award reasonable attorney fees and impose fines pursuant to section 8-1-140 (2);
 - (b) Rights of multiple workers have been violated, the violation as to each worker is a separate violation for purposes of fines, penalties, or other remedies; and
 - (c) A worker was fired, voluntarily left employment, or experienced a reduction in pay due to a principal's violation, the determination may include an order to:
 - (I) Reinstatement or rehire the worker and pay the worker's back pay until reinstatement or rehiring; or
 - (II) Pay the worker front pay for a reasonable period after the order, if reinstatement or rehiring is determined not to be feasible.
 - (4) Determinations made by the division under this section are appealable pursuant to section 8-4-111.5 and rules promulgated by the department regarding appeals and strategic enforcement.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1353, § 1, effective July 11.

8-14.4-106. Relief authorized.

(1) An aggrieved individual may, within ninety days after exhausting administrative remedies pursuant to section 8-14.4-105, commence an action in district court against a principal for a violation of this article 14.4.

(2) A court may order affirmative relief that the court determines to be appropriate, including the following relief, against a respondent who is found to have engaged in a discriminatory, adverse, or retaliatory employment practice prohibited by this article 14.4:

(a) Reinstatement or rehiring of a worker, with or without back pay;

(b) The greater of either:

(I) Ten thousand dollars; or

(II) Any lost pay resulting from the violation, including back pay for a reinstated or rehired worker and front pay for a worker who is not reinstated or rehired; and

(c) Any other equitable relief the court deems appropriate.

(3) (a) In addition to the relief available pursuant to subsection (2) of this section, in a civil action brought by a plaintiff under this article 14.4 against a defendant who is found to have engaged in an intentional discriminatory, adverse, or retaliatory employment practice, the plaintiff may recover compensatory and punitive damages as specified in this subsection (3).

(b) A plaintiff may recover punitive damages against a defendant if the plaintiff demonstrates by clear and convincing evidence that the defendant engaged in a discriminatory, adverse, or retaliatory employment practice with malice or reckless indifference to the rights of the plaintiff. However, if the defendant demonstrates good-faith efforts to comply with this article 14.4 and to prevent discriminatory, adverse, and retaliatory employment practices in the workplace, the court shall not award punitive damages against the defendant.

(c) A plaintiff may recover compensatory damages against a defendant for other pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

(d) In determining the appropriate level of damages to award a plaintiff who has been the victim of an intentional discriminatory, adverse, or retaliatory employment practice, the court shall consider the size and assets of the defendant and the egregiousness of the discriminatory, adverse, or retaliatory employment practice.

(e) Compensatory or punitive damages awarded pursuant to this subsection (3) are in addition to, and do not include, front pay, back pay, interest on back pay, or any other type of relief awarded pursuant to subsection (2) of this section.

(4) If a plaintiff in a civil action filed under this article 14.4 seeks compensatory or punitive damages pursuant to subsection (3) of this section, any party to the civil action may demand a trial by jury.

(5) The court shall award reasonable attorney fees to a plaintiff who prevails in an action brought pursuant to this section.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1355, § 1, effective July 11.

8-14.4-107. Whistleblower enforcement - qui tam - definition.

(1) As used in this section, "whistleblower" means a worker with knowledge of an alleged violation of this article 14.4, or the worker's representative.

(2) (a) A whistleblower who has exhausted the administrative remedies pursuant to section 8-14.4-105 may bring a civil action against a principal for a violation of this article 14.4 on behalf of the state in district court pursuant to this section. The state may intervene in the action to prosecute in its own name.

(b) At the time that the action is filed, the whistleblower shall give written notice to the division of the specific provisions of this article 14.4 alleged to have been violated.

(c) If the court finds that a violation has occurred, the court may enter a judgment against the principal of not less than one hundred dollars and not more than one thousand dollars for each violation, and for appropriate injunctive and equitable relief. The court shall award the whistleblower reasonable attorney fees. The attorney fees are not subject to the distribution specified in subsection (3) of this section.

(3) The proceeds of any judgment entered pursuant to this section shall be distributed as follows:

(a) Seventy-five percent to the division for enforcement of this article 14.4; and

(b) Twenty-five percent to the first whistleblower who filed the action.

(4) The right to bring an action under this section shall not be impaired by any private contract. An action under this section shall be tried promptly, without regard to concurrent adjudication of private claims.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1356, § 1, effective July 11.

8-14.4-108. Rule-making.

The division may promulgate rules necessary to implement this article 14.4.

Source: L. 2020: Entire article added, (HB 20-1415), ch. 276, p. 1356, § 1, effective July 11.

8-14.4-109. Agricultural employers - responsibilities during public health emergency - worker safety protections - definition.

(1) During a public health emergency, in addition to the other protections and rights afforded to workers, a principal engaged in agricultural employment shall:

(a) (I) Except as provided in subsection (1)(a)(II) of this section, provide each worker living in employer-provided housing with:

(A) In a single-occupancy unit where the worker is housed alone, at least eighty square feet of combined sleeping and living quarters;

(B) In multiple-occupancy housing, at least one hundred square feet of sleeping quarters per worker and one hundred twenty square feet of space per worker in areas used for combined purposes such as meal preparation and eating; and

(C) In all housing, screened windows that open to the outside or living space that has an air filtration system.

(II) A principal engaged in agricultural employment may, as an alternative to complying with subsection (1)(a)(I) of this section, comply with alternative protections applicable to housing identified in a public health order issued by the department.

(b) Provide each worker actively engaged in the open-range production of livestock with:

(I) A single occupancy mobile housing unit, regardless of any variances otherwise available pursuant to 20 CFR 655.235; or

(II) Alternative protections applicable to housing identified in a public health order issued by the department;

(c) Allow the department to consult with the department of public health and environment in enforcing this section;

(d) Provide training to workers concerning safety precautions and protections during a public health emergency; and

(e) Provide informational and educational materials through posters and pamphlets written in English and Spanish and any other relevant languages in employer-provided housing, work sites, and other places where the principal usually posts information for the workers that:

(I) Lists the contact information for the Migrant Farm Worker Division of Colorado Legal Services, or its successor organization, where a worker may receive free and confidential legal services; and

(II) Informs the workers regarding federal and state guidance concerning a public health emergency.

(2) As used in this section, "public health emergency" means a statewide public health emergency declared by executive order regarding COVID-19, the coronavirus disease caused by the severe acute respiratory syndrome coronavirus 2, also known as SARS-CoV-2, or another communicable disease as defined in section 25-1.5-102 (1)(a)(IV) that is transmissible from person to person.

Source: L. 2021: Entire section added, (SB 21-087), ch. 337, p. 2184, § 8, effective June 25.
L. 2022: (1)(a), (1)(b), and (1)(c) amended and (2) added, (HB 22-1313), ch. 373, p. 2654, § 1, effective June 3.

Workers' Compensation Cost Containment

Cross references: For the "Workers' Compensation Act of Colorado", see articles 40 to 47 of this title.

8-14.5 ARTICLE 14.5

Cost Containment

8-14.5-101.	Short title.	8-14.5-105.	Powers and duties of board - rules.
8-14.5-102.	Legislative declaration.	8-14.5-106.	Duties of director.
8-14.5-103.	Definitions.	8-14.5-107.	Cost containment certification.
8-14.5-104.	Creation of board.		

8-14.5-107.5. Workplace safety programs -
study by commissioner.

8-14.5-109. Grants-in-aid - cooperative
agreements.

8-14.5-108. Cost containment fund -
creation.

8-14.5-110. Repeal of article. (Repealed)

8-14.5-101. Short title.

This article shall be known and may be cited as the "Workers' Compensation Cost Containment Act".

Source: **L. 89:** Entire article added, p. 376, § 1, effective July 1. **L. 90:** Entire section amended, p. 556, § 4, effective July 1.

8-14.5-102. Legislative declaration.

The general assembly hereby finds and declares that any adjustments to premiums for workers' compensation insurance be granted on the basis of equity, rate adequacy, fairness, and insurer compliance with Colorado insurance rating laws. The general assembly further finds and declares that notwithstanding the granting of different rates to insureds for their experience modification, participation in return-to-work programs, and premium volume discounts not exceeding fifteen percent, any other premium adjustments should be principally weighted in a manner primarily encouraging the adoption and successful implementation by insureds of effective workplace safety programs mainly encompassing risk management and medical cost containment procedures.

Source: **L. 89:** Entire article added, p. 376, § 1, effective July 1. **L. 90:** Entire section amended, p. 556, § 5, effective July 1. **L. 93:** Entire section amended, p. 2083, § 1, effective July 1.

8-14.5-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Approved program" means a cost containment or risk management program approved by the board.

(2) "Board" means the workers' compensation cost containment board established pursuant to section 8-14.5-104.

(3) "Certified program" means a cost containment or risk management program which has been implemented for a period of at least one year and certified by the board.

(3.5) "Commissioner" means the insurance commissioner, appointed pursuant to section 10-1-104, C.R.S.

(4) "Department" means the department of labor and employment.

(5) "Director" means the director of the division.

(6) "Division" means the division of workers' compensation in the department of labor and employment.

(7) "High risk employer" means any employer classified in the upper ten percent of the insurance rate schedule in the Colorado workers' compensation insurance system.

(8) "Managed care" shall have the meaning set forth in section 8-42-101 (3.6)(p)(I)(B).

(9) "Workplace safety program" means those programs offered by insurance carriers authorized to do business in this state for purposes of workers' compensation insurance policies and implemented by employers to promote cost containment and risk management of workplace safety hazards.

Source: **L. 89:** Entire article added, p. 376, § 1, effective July 1. **L. 90:** (2) amended, p. 1836, § 4, effective May 31; (2) amended, p. 556, § 6, effective July 1. **L. 93:** (3) amended, p. 1723, § 1, effective June 6; (3.5) and (7) to (9) added, p. 2083, § 2, effective July 1.

Editor's note: Amendments to subsection (2) by House Bill 90-1160 and House Bill 90-1316 were harmonized.

8-14.5-104. Creation of board.

(1) (a) There is created in the division the workers' compensation cost containment board, to be composed of seven members as follows:

(I) The commissioner of insurance;

(II) The chief executive officer of Pinnacol Assurance; and

(III) Five members appointed by the governor and confirmed by the senate. The appointed members of the board shall be chosen among the following:

(A) Employers or their designated representatives engaged in businesses having workers' compensation insurance rates in the upper five percent of the rate schedule;

(B) Actuaries or executives with risk management experience in the insurance industry; or

(C) Employers who have demonstrated good risk management experience with respect to their workers' compensation insurance.

(b) (I) The appointed members of the board shall serve for terms of three years and may be reappointed; except that the terms shall be staggered so that no more than three members' terms expire the same year.

(II) The chief executive officer of Pinnacol Assurance and the commissioner of insurance shall serve continuously.

(2) Members of the board serve without compensation but are entitled to reimbursement for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of the board.

(3) The board is a **type 2** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department and the director of the division.

Source: **L. 89:** Entire article added, p. 377, § 1, effective July 1. **L. 90:** (1) amended, p. 557, § 7, effective July 1. **L. 2002:** (1) and (3) amended, p. 1880, § 25, effective July 1. **L. 2022:** Entire section amended, (SB 22-013), ch. 2, p. 4, § 3, effective February 25; (2) amended, (SB 22-162), ch. 469, p. 3383, § 86, effective August 10.

Editor's note: Amendments to this section by SB 22-013 and SB 22-162 were harmonized and relocated to subsection (3).

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

8-14.5-105. Powers and duties of board - rules.

(1) The board shall have the following powers and duties:

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- (a) To establish model cost containment and risk management programs for selected classifications in the upper ten percent of the insurance rate schedule under the Colorado workers' compensation insurance program;
- (b) To adopt standards for the approval of particular cost containment and risk management programs submitted by community, technical, or local district colleges or by employers in those selected high risk classifications;
- (c) To receive, evaluate, and certify cost containment and risk management programs implemented by community, technical, or local district colleges or by employers in those selected high risk classifications for a period of at least one year;
- (d) To promote cost containment and risk management training by community, technical, or local district colleges, employers, groups of employers, or trade associations;
- (e) To review annually the classifications in the upper ten percent of the insurance rate schedule under the Colorado workers' compensation insurance program for inclusion in the cost containment program;
- (f) To set the qualifications for technical personnel to assist community, technical, and local district colleges and employers in establishing risk management and cost containment programs;
- (g) To disseminate information regarding the types of workers' compensation insurance policies available;
- (h) To adopt such rules and regulations as may be necessary to carry out the purposes of this article.

Source: **L. 89:** Entire article added, p. 377, § 1, effective July 1. **L. 90:** (1)(a), (1)(e), and (1)(g) amended, p. 557, § 8, effective July 1. **L. 91:** Entire section amended, p. 1353, § 1, effective April 20.

8-14.5-106. Duties of director.

- (1) The director shall have the following powers and duties:
 - (a) To provide technical advice to the board;
 - (b) To provide technical advice and assistance to community, technical, or local district colleges, employers, groups of employers, or trade associations with respect to the development and implementation of cost containment and risk management programs;

(c) To publish, as may be appropriate, documents relating to the development and implementation of cost containment and risk management programs;

(d) To maintain records of all proceedings of the board, including the evaluation of proposals for cost containment and risk management programs submitted by employers and by community, technical, or local district colleges;

(e) To maintain records of all employers and community, technical, or local district colleges with certified programs.

Source: L. 89: Entire article added, p. 378, § 1, effective July 1. L. 91: Entire section amended, p. 1354, § 2, effective April 20.

8-14.5-107. Cost containment certification.

Any employer complying with an approved program for at least one year may present evidence of such compliance to the board and petition the board to certify its program. The names of such certified employers shall be made available on a periodic basis to bona fide insurance carriers on file with the division.

Source: L. 89: Entire article added, p. 378, § 1, effective July 1.

8-14.5-107.5. Workplace safety programs - study by commissioner.

(1) The commissioner shall undertake a full study of current workplace safety, risk management, and cost containment programs offered by insurers, including Pinnacol Assurance, a review and analysis of the various incentives used by insurers to obtain policyholder participation, including any premium adjustment programs in use, and shall evaluate other possible programs and incentives that could be used by insurers to expand workplace safety programs and reward policyholder participation. The commissioner shall consult with the Colorado department of labor and employment in conducting the study. Such study, review and analysis, and evaluation shall include but not be limited to the following:

(a) Whether or not by a date certain, all insurers including Pinnacol Assurance issuing workers' compensation insurance policies in this state shall offer all insureds in the ten most populous counties a managed care plan featuring a designated medical provider;

(b) Whether or not by a date certain, if it is in the best interest of employers and employees, all insurers including Pinnacol Assurance issuing workers' compensation insurance policies in

this state shall offer to all or some selected classes of insureds some type of basic workplace safety program;

(c) Whether or not the board or the commissioner should continue providing certification of workplace safety programs or whether such certification should be provided by insurers for insureds;

(d) Whether or not by July 1, 1995, the commissioner should promulgate regulations concerning the granting of premium adjustments for an insured's participation and implementation of a basic workplace safety program or managed care program;

(e) The participation by insureds in existing workplace safety programs offered by insurers and the methods by which insurers offer such programs;

(f) Insurer compliance with deductible provisions;

(g) Insurer compliance with the provisions of part 4 of article 4 of title 10, C.R.S., regarding the current design and use of any premium adjustment, rate deviation, premium discount, retro-rate, scheduled adjustment, or other type of financial plan and their effect on the fairness and reasonableness of rates for those insureds not qualifying for experience or schedule rating;

(h) The efficacy of reducing the premium dollar volume needed for an insured to become experience rated;

(i) A cost benefit analysis of implementation of workplace safety programs.

(2) (a) Repealed.

(b) Insurers shall make all necessary information and records pertaining to workplace safety programs of such insurers available to the commissioner in carrying out the study required by subsection (1) of this section. The reasonable costs of such study shall be borne by insurers, including Pinnacol Assurance, as determined by the commissioner based on the total cost of such study.

Source: L. 93: Entire section added, p. 2084, § 3, effective July 1. L. 97: (2)(a) repealed, p. 1474, § 6, effective June 3. L. 2002: IP(1), (1)(a), (1)(b), and (2)(b) amended, p. 1881, § 26, effective July 1.

8-14.5-108. Cost containment fund - creation.

All moneys collected for cost containment pursuant to section 8-14.5-109 or 8-44-112 (1)(b)(III) shall be transmitted to the state treasurer who shall credit the same to the cost containment fund, which fund is hereby created. All moneys credited to said fund and all interest

earned thereon shall be subject to appropriation by the general assembly to pay the direct and indirect costs of the cost containment program, and said moneys shall remain in such fund for such purposes and shall not revert to the general fund or any other fund.

Source: **L. 89:** Entire article added, p. 378, § 1, effective July 1. **L. 90:** Entire section amended, p. 1841, § 24, effective July 1.

8-14.5-109. Grants-in-aid - cooperative agreements.

The division may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any other agency of this state or its political subdivisions, for the purpose of carrying out the provisions of this article.

Source: **L. 89:** Entire article added, p. 378, § 1, effective July 1.

8-14.5-110. Repeal of article. (Repealed)

Source: **L. 89:** Entire article added, p. 378, § 1, effective July 1. **L. 92:** Entire section repealed, p. 1810, § 1, effective March 16.

Apprenticeship and Training

ARTICLE 15

Pre-apprenticeships and Apprenticeships

8-15-101. (Repealed)

Source: **L. 2016:** Entire article RC&RE, (HB 16-1287), ch. 224, p. 857, § 2, effective August 10.

Editor's note: (1) This article was numbered as article 1 of chapter 9, C.R.S. 1963. It was repealed in 1987 and was subsequently recreated and reenacted in 2016, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article prior to 1987, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Subsection (5) provided for the repeal of this section, effective July 1, 2017. (See L. 2016, p. 857.)

8-15.5 ARTICLE 15.5

Displaced Homemakers

8-15.5-101.	Short title.	8-15.5-105.	Evaluation.
8-15.5-102.	Definitions.	8-15.5-106.	Advisory body.
8-15.5-103.	Multipurpose service centers for displaced homemakers.	8-15.5-107.	Rules and regulations.
		8-15.5-108.	Displaced homemakers fund - creation.
8-15.5-104.	Selection and administration of centers.		

8-15.5-101. Short title.

This article shall be known and may be cited as the "Displaced Homemakers Act".

Source: L. 80: Entire article RC&RE, p. 452, § 1, effective July 1.

8-15.5-102. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Department" means the department of labor and employment.
- (2) "Displaced homemaker" means an individual who:
 - (a) Has worked in the home, providing unpaid household services for family members for a substantial number of years;

- (b) Is not gainfully employed;
 - (c) Has had, or would have, difficulty finding employment; and
 - (d) (I) Has depended on the income of a family member and has lost that income; or
(II) Has depended on government assistance as the parent of dependent children, but who is no longer eligible for such assistance, or is supported, as the parent of minor children, by government assistance, but whose children are within two years of reaching the age of eighteen years.
- (3) "Executive director" means the executive director of the department of labor and employment.

Source: L. 80: Entire article RC&RE, p. 452, § 1, effective July 1.

8-15.5-103. Multipurpose service centers for displaced homemakers.

- (1) The executive director may establish multipurpose service centers for displaced homemakers and is authorized to enter into contracts with and make grants to agencies or organizations, public or private, to establish, organize, and administer the various programs enumerated in section 8-15.5-104.
- (2) Each service center shall include the following services:
- (a) Job counseling services which shall:
 - (I) Be specifically designed for displaced homemakers; and
 - (II) Operate to counsel displaced homemakers with respect to appropriate job opportunities;
 - (b) Job training and job placement services which shall:
 - (I) Develop, by working with state and local government agencies and private employers, training and placement programs for jobs in the public and private sectors;
 - (II) Assist displaced homemakers in gaining admission to existing public and private job-training programs and opportunities; and
 - (III) Assist in identifying community needs and creating new jobs in the public and private sectors;
 - (c) Health education and counseling services in cooperation with existing health programs with respect to:

- (I) General principles of preventive health care;
 - (II) Health-care consumer education, particularly in the selection of physicians and health-care services, including, but not limited to, health maintenance organizations and health insurance;
 - (III) Family health care and nutrition;
 - (IV) Substance use disorders; and
 - (V) Other related health-care matters;
- (d) Financial management services which provide information and assistance with respect to insurance, taxes, estate and probate problems, mortgages, loans, and other related financial matters;
- (e) Educational services, including:
- (I) Outreach and information about courses offering credit through secondary or postsecondary education programs, including bilingual programming where appropriate; and
 - (II) Information about such other programs which are determined by the executive director to be of interest and benefit to displaced homemakers;
- (f) Legal counseling and referral services; and
- (g) Outreach and information services with respect to employment, education, health, public assistance, and unemployment assistance programs which the executive director determines would be of interest and benefit to displaced homemakers.
- (3) Supervisory, technical, and administrative positions relating to centers established under this article shall, to the maximum extent feasible, be filled by displaced homemakers.

Source: **L. 80:** Entire article RC&RE, p. 453, § 1, effective July 1. **L. 83:** (1) amended, p. 395, § 2, effective June 3. **L. 2017:** (2)(c)(IV) amended, (SB 17-242), ch. 263, p. 1263, § 33, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

Law reviews. For article, "Employment Issues Facing the Displaced Homemaker", see 16 Colo. Law. 468 (1987).

8-15.5-104. Selection and administration of centers.

(1) In selecting sites for the centers established under section 8-15.5-103, the executive director shall consider:

(a) The location of any existing facilities for displaced homemakers and any existing services similar to those listed in section 8-15.5-103 which might be incorporated into a center;

(b) The needs of each region of the state for a center;

(c) The needs of both urban and rural communities.

(2) The executive director shall select a public or private organization to administer each center. The selection of such an organization shall be made after consultation with local government agencies and shall take into consideration the experience and capability of such organizations in administering the services to be provided by each center.

(3) The executive director shall consult and cooperate with the secretary or director of such agencies in the executive branch of the federal and state governments as the executive director considers appropriate to facilitate the establishment of centers under this article with existing state or federal programs of a similar nature.

Source: L. 80: Entire article RC&RE, p. 454, § 1, effective July 1. **L. 83:** (2) amended, p. 396, § 3, effective June 3.

8-15.5-105. Evaluation.

(1) The executive director, in cooperation with the administrator of each center, and in consultation with appropriate heads of executive agencies, shall prepare and furnish to the general assembly evaluations of the centers established under this article, including:

(a) A thorough assessment of each center;

(b) Recommendations covering the administration and expansion of such centers; and

(c) Data on the numbers of persons referred to and enrolled in the programs enumerated in section 8-15.5-103, and data on job placements and employment of persons enrolled in such programs.

(2) No later than January 1, 1981, the executive director shall submit to the general assembly an evaluation pursuant to this section. Subsequent evaluations shall be made every two years.

(3) The executive director, in consultation with the appropriate heads of executive agencies, shall prepare and furnish to the general assembly a study to determine the feasibility of and appropriate procedure for placing displaced homemakers in:

(a) Programs established under the federal "Workforce Innovation and Opportunity Act", 29 U.S.C. sec. 3101 et seq.;

(b) Work incentive programs established under section 432 (b)(1) of the federal "Social Security Act";

(c) Related federal and state employment, education, and health assistance programs; and

(d) Programs established or benefits provided under federal and state unemployment compensation laws by consideration of full-time homemakers as provided eligible for such benefits or programs.

Source: L. 80: Entire article RC&RE, p. 454, § 1, effective July 1. **L. 2009:** (3)(a) amended, (SB 09-292), ch. 369, p. 1939, § 5, effective August 5. **L. 2016:** (3)(a) amended, (HB 16-1302), ch. 183, p. 626, § 1, effective May 19.

Cross references: For section 432 of the "Social Security Act", see 42 U.S.C. § 629b.

8-15.5-106. Advisory body.

The executive director shall establish an advisory body to the department which shall consist of members who are representative of displaced homemakers, local service deliverers, appropriate state agencies, and the general public. The advisory body shall provide recommendations to the executive director regarding the planning, operation, and evaluation of the activities mandated by this article.

Source: L. 80: Entire article RC&RE, p. 455, § 1, effective July 1.

8-15.5-107. Rules and regulations.

The executive director shall promulgate rules and regulations to govern the eligibility of persons for the job training and other programs of the multipurpose service center, the level of stipends for the job training programs described in section 8-15.5-103 (2)(b), a sliding fee scale for the service programs described in section 8-15.5-103 (2)(c) to (2)(g), and such other matters as the executive director deems necessary.

Source: L. 80: Entire article RC&RE, p. 455, § 1, effective July 1.

8-15.5-108. Displaced homemakers fund - creation.

(1) There is hereby created in the state treasury the displaced homemakers fund. All fees collected pursuant to section 14-10-120.5, C.R.S., shall be deposited in said fund. All moneys in the fund shall be subject to annual appropriation by the general assembly and, commencing July 1, 1980, shall be available for carrying out the purposes of this article; except that, if the amount in said fund from fees collected pursuant to section 14-10-120.5, C.R.S., exceeds one hundred forty-five thousand dollars in any fiscal year, the excess of one hundred forty-five thousand dollars shall revert to the general fund.

(2) The executive director may apply for and accept any funds, grants, gifts, or services made available by any agency or department of the federal government or any private agency or individual, which funds, grants, gifts, or services shall be used to carry out the total program of this article. Funds and grants received pursuant to this subsection (2) shall be placed in the displaced homemakers fund in a separate account and shall not be included in computing the amount that will revert to the general fund pursuant to subsection (1) of this section.

Source: L. 80: Entire article RC&RE, p. 455, § 1, effective July 1. **L. 82:** (1) amended, p. 233, § 1, effective April 23. **L. 93:** (1) amended, p. 1515, § 18, effective June 6.

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Apprenticeships

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PART 1
GENERAL PROVISIONS

8-15.7-101. Definitions.

As used in this article 15.7, unless the context otherwise requires:

(1) "Apprentice" means an individual who is sixteen years of age or older, except when a higher minimum age standard is otherwise fixed by law, and who is employed to learn an apprenticeable occupation under the standards of apprenticeship established by this article 15.7.

(2) "Apprenticeable occupation" means an occupation specified by an industry that involves the progressive attainment of skills, competencies, and knowledge that are:

(a) Clearly identified and commonly recognized throughout the relevant industry or occupation;

(b) Customarily learned or enhanced in a practical way through a structured, systematic program of on-the-job, supervised learning and related instruction to supplement the learning; and

(c) Offered through a time-based, competency-based, or hybrid model that the director has determined meets the requirements of this article 15.7 and conforms with federal regulations.

(3) "Apprenticeship agreement" means a written agreement between an apprentice and a sponsor or an apprenticeship committee acting as agent for the sponsor, in conformity with federal regulations.

(4) "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices that meets the requirements of this article 15.7 and conforms with federal regulations, including the requirement for a written apprenticeship agreement.

(5) "Certificate of completion" means a certificate awarded to an apprentice in recognition of the successful completion of an apprenticeship program.

(6) "Certificate of registration" means documentation that a registration agency has registered an apprenticeship program pursuant to this article 15.7 and in conformity with federal regulations, as evidenced by a certificate of registration or other written documentation.

(6.3) "Committee for apprenticeship in new and emerging industries" or "CANEI" means the committee for apprenticeship in new and emerging industries created in section 8-15.7-104.

(6.5) "Committee for apprenticeship in the building and construction trades" or "CABCT" means the committee for apprenticeship in the building and construction trades created in section 8-15.7-103.

(7) "Department" means the department of labor and employment.

(8) "Director" means the director of the SAA.

(9) "Executive director" means the executive director of the department.

(9.5) "Federal regulations" means the regulations promulgated by the United States secretary of labor under the "National Apprenticeship Act", 29 U.S.C. sec. 50.

(10) Repealed.

(11) "Qualified intermediary" means an entity that demonstrates expertise in connecting employers or apprenticeship program participants to registered apprenticeship programs or in convening stakeholders to develop registered apprenticeship programs and serves employers and apprenticeship program participants by:

(a) Connecting employers to programs under the national apprenticeship system;

(b) Assisting in the design and implementation of apprenticeship programs, including curriculum development and delivery for related instruction;

(c) Supporting entities, sponsors, or apprenticeship program administrators in meeting and reporting the requirements of this article 15.7;

(d) Providing professional development activities, such as training to mentors;

(e) Supporting the recruitment, retention, and apprenticeship program completion of potential apprenticeship program participants, including nontraditional participants and apprenticeship populations and individuals with barriers to employment;

(f) Developing and providing personalized apprenticeship program participant supports, including partnering with organizations to provide access to or referrals for supportive services and financial advising;

(g) Providing services, resources, and supports for the development, delivery, expansion, or improvement of apprenticeship programs under the national apprenticeship system; or

(h) Serving as an apprenticeship program sponsor.

(12) "Quality assurance assessment" means a comprehensive review conducted by the SAA regarding all aspects of an apprenticeship program's performance, including determining whether:

(a) The apprentices are receiving on-the-job training consistent with the schedule outlined in the registered apprenticeship program standards;

(b) Scheduled wage increases are consistent with the registered apprenticeship program standards;

(c) Related instruction through the appropriate curriculum and delivery systems is compliant with federal and state standards; and

(d) The SAA is receiving notification of all new apprentices in a registered apprenticeship program, apprentices who leave a registered apprenticeship program, and apprentices who complete a registered apprenticeship program.

(12.5) "Recognized state apprenticeship agency" means the state apprenticeship agency, if recognized by the United States department of labor, or any other state apprenticeship agency recognized by the United States department of labor as the apprenticeship agency for the state.

(13) "Registered apprenticeship program" means an apprenticeship program that is registered by the SAA pursuant to this article 15.7.

(13.5) "Registration agency" means the United States department of labor's office of apprenticeship or a recognized state apprenticeship agency.

(14) "Registration of apprenticeship programs" means the acceptance and recording of an apprenticeship program by the United States department of labor's office of apprenticeship or registration or approval of an apprenticeship program by a state apprenticeship agency that is recognized by the United States department of labor's office of apprenticeship in conformity with federal regulations. Approval is evidenced by a certificate of registration or other written documentation.

(15) "Sponsor" means:

(a) Any person, association, committee, or organization operating an apprenticeship program and in whose name the program is registered or approved; or

(b) Any person, association, committee, or organization that is operating an apprenticeship program and is applying to have the apprenticeship program registered or approved in its name.

(16) "State apprenticeship agency" or "SAA" means the state apprenticeship agency created in section 8-15.7-102.

(17) "State apprenticeship council" or "SAC" means the state apprenticeship council established pursuant to section 8-15.7-105.

(18) "State-approved program" means a high school career and technical education program established by a state-level advisory board described in section 8-15.7-201 (2).

Source: L. 2021: Entire article added, (HB 21-1007), ch. 309, p. 1879, § 1, effective July 1. **L. 2023:** (2)(c), (3), (4), (6), (14), (15), and (17) amended, (6.3), (6.5), (9.5), (12.5), and (13.5) added, and (10) repealed, (SB 23-051), ch. 37, p. 134, § 3, effective March 23. **L. 2024:** (14) amended, (SB 24-103), ch. 32, p. 101, § 3, effective August 7; (18) added, (SB 24-104), ch. 299, p. 2037, § 2, effective August 7.

Cross references: For the legislative declaration in SB 24-104, see section 1 of chapter 299, Session Laws of Colorado 2024.

8-15.7-102. State apprenticeship agency - created - director - powers and duties - rules - repeal.

(1) There is created in the department the state apprenticeship agency. The executive director shall appoint a director of the SAA. The SAA shall:

(a) Serve as the primary point of contact with the United States department of labor's office of apprenticeship;

(b) Accelerate new apprenticeship program growth on a geographically diverse basis, especially in high-demand occupations, while ensuring quality standards;

(b.5) Establish the state apprenticeship council, which operates under the direction of the SAA, to provide advice and guidance to the SAA;

(c) Provide administrative support to the SAC in carrying out its duties;

(d) Work in partnership with relevant state agencies to reduce duplication of postsecondary program approval;

(e) Seek recognition by the United States department of labor and operate the SAA in conformity with federal regulations;

(f) Coordinate the registered apprenticeship programs with Colorado's economic development strategies and publicly funded workforce investment system; and

(g) to (j) (Deleted by amendment, L. 2023.)

(k) Monitor and evaluate apprenticeship programs' performance and compliance with federal and state standards.

(l) to (r) (Deleted by amendment, L. 2023.)

(s) (I) Review applications for and issue income tax credit certificates as specified in section 39-22-562 and promulgate rules to establish standards for the certificates.

(II) This subsection (1)(s) is repealed, effective December 31, 2037.

(2) The SAA is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department.

(3) The SAA must follow all guidance documents issued by the United States department of labor's office of apprenticeship.

(4) The director may promulgate rules as necessary to implement this article 15.7, which rules must conform with federal regulations.

(5) (a) The director may:

(I) Approve the registration of apprenticeship programs in conformity with federal regulations; and

(II) Approve the deregistration of apprenticeship programs at the request of the sponsor or after a hearing pursuant to section 8-15.7-107.

(b) The determination of the director is a final agency action that is subject to judicial review pursuant to section 24-4-106.

(6) The director shall contribute education and workforce data beginning in the 2025-26 state fiscal year, as necessary, to the Colorado statewide longitudinal data system consistent with the governance practices established by the Colorado statewide longitudinal data system governing board pursuant to section 24-37.5-125 (4).

Source: **L. 2021:** Entire article added, (HB 21-1007), ch. 309, p. 1882, § 1, effective July 1. **L. 2022:** (2) amended, (SB 22-162), ch. 469, p. 3383, § 87, effective August 10. **L. 2023:** (1) and (4) amended and (5) added, (SB 23-051), ch. 37, p. 135, § 4, effective March 23. **L. 2024:** (1)(s) added, (HB 24-1439), ch. 163, p. 775, § 3, effective May 10; (6) added, (HB 24-1364), ch. 238, p. 1559, § 6, effective May 23.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

8-15.7-103. Committee for apprenticeship in the building and construction trades - created - members - powers and duties.

(1) The director shall establish the committee for apprenticeship in the building and construction trades as a subcommittee of the SAC to advise the SAA on registered apprenticeship programs for the building and construction trades in the state.

(2) (a) The CABCT consists of seventeen members appointed as follows:

(I) The director shall appoint ten voting members familiar with apprenticeable occupations as follows:

(A) Four representatives from employer organizations, one of whom represents a statewide employer organization, one of whom represents an employer involved with an apprenticeship program targeting populations with barriers to employment, and one of whom represents a statewide organization of general and specialty commercial construction contractors that is knowledgeable about registered apprenticeship programs;

(B) Four representatives from employee organizations, one of whom represents a statewide employee organization; and

(C) Two representatives of the public; and

(II) The governor shall appoint seven nonvoting, ex officio members to serve on the CABCT, all of whom are concurrently appointed to the CANEI pursuant to section 8-15.7-104 (2)(a)(II), as follows:

(A) One representative from the department;

(B) One representative of career and technical education programs;

(C) One representative with experience in economic development;

(D) One representative of training providers;

(E) One representative of the state work force development council created in section 24-46.3-101;

(F) One member who is interested in promoting equal opportunity in apprenticeship; and

(G) One representative from the department of higher education.

(b) (I) Of the members appointed by the director, the initial term of office of three members from employer organizations, two members from employee organizations, and one representative of the public is three years, and the initial term of office of the remaining four members is four years. Thereafter, the terms of the members appointed by the director are four years.

(II) Of the members appointed by the governor, the initial term of office of the three members appointed pursuant to subsections (2)(a)(II)(A), (2)(a)(II)(B), and (2)(a)(II)(C) of this section is three years and the initial term of office of the three members appointed pursuant to subsections (2)(a)(II)(D), (2)(a)(II)(E), and (2)(a)(II)(F) of this section is four years. Thereafter, the terms of the members appointed by the governor are four years.

(c) The director shall appoint one member of the CABCT to serve as the chair for a term of two years. A chair may be appointed to serve no more than two full terms.

(d) If a member fails to complete the member's term, the appointing authority shall appoint a new member to complete the remainder of the term.

(e) Members shall serve without compensation for their service; except that members may receive a per diem as established by the director and reimbursement for travel and other necessary expenses incurred in the performance of their official duties.

(f) The CABCT:

(I) Shall meet at least quarterly and at the request of the director as needed to accomplish the objectives of the CABCT;

(II) Shall provide timely written notice of all meetings to the department;

(III) May determine its own procedural rules; and

(IV) Is subject to article 6 of title 24.

(g) No member of the CABCT may receive any compensation from an apprenticeship program.

(3) For the building and construction trades, the CABCT shall perform the following duties as a subcommittee of the SAC:

(a) Advise the SAA on the minimum standards for registration of apprenticeship programs;

(b) Advise the SAA on state plans, rules, and administrative procedures pertinent to the operation of apprenticeship programs and equal employment opportunities in apprenticeships;

(c) Support the SAA in communications, technical assistance, and promoting promising practices in registered apprenticeship programs; and

(d) Provide an annual report to the executive director with apprenticeship data disaggregated by age, race, gender, veteran status, disability, and industry.

(e) to (i) (Deleted by amendment, L. 2023.)

Source: L. 2021: Entire article added, (HB 21-1007), ch. 309, p. 1883, § 1, effective July 1. **L. 2023:** (1), IP(2)(a), IP(2)(a)(II), (2)(c), IP(2)(f), (2)(f)(I), (2)(g), and (3) amended, (SB 23-051), ch. 37, p. 137, § 5, effective March 23. **L. 2024:** IP(2)(a) and IP(2)(a)(II) amended, (SB 24-103), ch. 32, p. 101, § 4, effective August 7.

8-15.7-104. Committee for apprenticeship in new and emerging industries - created - members - powers and duties.

(1) The director shall establish the committee for apprenticeship in new and emerging industries as a subcommittee of the SAC to advise the SAA on apprenticeship programs that are not within the jurisdiction of the CABCT.

(2) (a) The CANEI consists of fifteen members appointed as follows:

(I) The director shall appoint eight voting members who represent, and are regularly evaluated to ensure that the representation aligns with, high-demand jobs, as stated in the annual Colorado talent report prepared pursuant to section 24-46.3-103 (3), as follows:

(A) Three representatives of employer organizations that are not within the building and construction trades; at least one of whom represents an employer involved with a program explicitly targeting populations with barriers to employment, including women, people of color, ex-offenders, and persons with disabilities; one of whom represents youth with barriers to employment; and one of whom represents out-of-school youth;

(B) Three representatives from employee organizations that are not within the building and construction trades;

(C) One representative from a qualified intermediary; and

(D) One member of the public.

(II) The governor shall appoint seven nonvoting, ex officio members, all of whom are concurrently appointed to the CABCT pursuant to section 8-15.7-103 (2)(a)(II), to the CANEI.

(b) (I) Of the members appointed by the director, the initial term of office of one employer member, one employee member, and one representative of the public is three years and the initial term of office of the remaining five members is four years. Thereafter, the terms of the members are four years.

(II) The terms of office of the nonvoting, ex officio members appointed pursuant to subsection (2)(a)(II) of this section are the same as the terms of office of those members as specified in section 8-15.7-103 (2)(b)(II).

(III) The director shall appoint one member of the CANEI to serve as the chair for a term of two years. A chair may be appointed to serve no more than two full terms.

(c) If a member fails to complete the member's term, the appointing authority shall appoint a new member to complete the remainder of the term.

(d) Members shall serve without compensation for their service; except that members may receive a per diem as established by the director and reimbursement for travel and other necessary expenses incurred in the performance of their official duties.

(e) The CANEI:

(I) Shall meet at least quarterly and at the request of the director as needed to accomplish the objectives of the CANEI;

(II) Shall provide timely written notice of all meetings to the department;

(III) May determine its own procedural rules; and

(IV) Is subject to article 6 of title 24.

(f) No member of the CANEI may receive any compensation from an apprenticeship program.

(3) For all apprenticeships that are not within the building and construction trades and not under the jurisdiction of the CABCT, the CANEI shall perform the following duties as a subcommittee of the SAC:

(a) Advise the SAA on the minimum standards for registration of apprenticeship programs;

(b) Advise the SAA on state plans, rules, and administrative procedures pertinent to the operation of apprenticeship programs and equal employment opportunities in apprenticeships;

(c) Support the SAA in communications, technical assistance, and promoting promising practices in registered apprenticeship programs; and

(d) Provide an annual report to the executive director with apprenticeship data disaggregated by age, race, gender, veteran status, disability, and industry.

(e) to (i) (Deleted by amendment, L. 2023.)

Source: L. 2021: Entire article added, (HB 21-1007), ch. 309, p. 1886, § 1, effective July 1. **L. 2023:** (1), IP(2)(a), (2)(a)(II), (2)(b)(III), IP(2)(e), (2)(e)(I), (2)(f), and (3) amended, (SB 23-051), ch. 37, p. 139, § 6, effective March 23. **L. 2024:** IP(2)(a) and (2)(a)(II) amended, (SB 24-103), ch. 32, p. 101, § 5, effective August 7.

8-15.7-105. State apprenticeship council - created - members - powers and duties.

(1) (a) The director shall establish the state apprenticeship council to provide advice and guidance to the state apprenticeship agency on the operation of the state's apprenticeship system.

(b) The SAC:

(I) Is composed of persons familiar with apprenticeable occupations;

(II) Includes an equal number of representatives of employer and employee organizations and includes members of the public who must not number more than the number of representatives of either employer or employee organizations;

(III) Includes all the members of the CABCT and CANEI.

(c) The chairs of the CABCT and CANEI shall serve as co-chairs of the SAC.

(1.5) The SAC may convene additional subcommittees as needed to fulfill its duties.

(2) The SAC shall:

(a) Publish a statement defining the CABCT's jurisdiction of the building and construction trades and update the statement periodically as necessary as determined by the SAC; and

(b) Resolve conflicts and complaints that arise between the CABCT and the CANEI as determined by the SAC.

(3) If there is a tie among the SAC members in determining a resolution to a conflict, the director shall break the tie. A decision of the SAC is final.

(4) The CABCT has jurisdiction over apprenticeship programs for occupations in the building and construction trades. For purposes of this section, occupations are in the building and construction trades if either:

(a) Workers in the occupation perform construction, reconstruction, renovation, alteration, demolition, painting, repair, or maintenance work for roads, highways, buildings, structures, industrial facilities, or energy production, energy transmission, or energy distribution, or improvements of any type; or

(b) Apprentices in the apprenticeship program will be employed by licensed contractors.

Source: L. 2021: Entire article added, (HB 21-1007), ch. 309, p. 1888, § 1, effective July 1. **L. 2023:** Entire section amended, (SB 23-051), ch. 37, p. 140, § 7, effective March 23.

8-15.7-106. Application for registration of apprenticeship programs - diversity initiatives - deregistration - rules.

(1) Within thirty days after the United States department of labor recognizes the SAA, the SAA shall accept applications for the registration of apprenticeship programs in conformity with federal regulations.

(2) Each apprenticeship program that registers with the SAA shall adopt a written diversity recruitment plan that ensures equal opportunity in the recruitment, selection, employment, and training of apprentices. The plan must comply with federal regulations concerning equal employment. The SAA shall file a compliant equal employment opportunity in apprenticeship state plan in conformity with federal regulations.

(3) (a) The SAA may deregister an apprenticeship program at the request of the sponsor or, after a hearing in conformity with federal regulations, for noncompliance with this article 15.7 pursuant to conditions and rules established by the SAA.

(b) Any apprenticeship program deregistered for noncompliance with this article 15.7 or any rules promulgated pursuant to this article 15.7 may present evidence to the SAA that the program is compliant. The apprenticeship program's registration may be reinstated:

(I) No earlier than one year after issuance of the deregistration order;

(II) If the SAA determines that the apprenticeship program has an acceptable set of standards and is in compliance with all requirements for registered apprenticeship programs under this article 15.7; and

(III) If the apprenticeship program is prepared to enroll one or more apprentices.

(4) Upon request to the SAA, a sponsor may reverse a voluntary deregistration within six months after its effective date if on that date the SAA had no current grounds to initiate involuntary deregistration proceedings.

Source: L. 2021: Entire article added, (HB 21-1007), ch. 309, p. 1888, § 1, effective July 1. **L. 2023:** (1), (2), (3)(a), and (3)(b)(III) amended, (SB 23-051), ch. 37, p. 141, § 8, effective March 23.

8-15.7-107. Hearings.

(1) The SAA shall conduct hearings for the purpose of resolving compliance issues or deregistration issues with a registered apprenticeship program in conformity with federal regulations.

(2) The determination of the SAA is a final agency action that is subject to judicial review pursuant to section 24-4-106.

(3) Sponsors may appeal to the United States department of labor's office of apprenticeship for a final determination in conformity with federal regulations.

Source: L. 2021: Entire article added, (HB 21-1007), ch. 309, p. 1889, § 1, effective July 1. **L. 2023:** Entire section R&RE, (SB 23-051), ch. 37, p. 142, § 9, effective March 23.

8-15.7-108. Rules.

(1) The director may promulgate rules to implement this article 15.7, which rules must conform with federal regulations. The rules may include, but are not limited to, rules that address:

- (a) The eligibility requirements for apprenticeship programs to be registered by the SAA;
- (b) The requirements for a person or entity to be a sponsor;
- (c) The conditions and proceedings for curing noncompliance with this article 15.7 and for the deregistration of a registered apprenticeship program; and
- (d) Grievance procedures for complaints not under the jurisdiction of the United States equal employment opportunity commission, including complaints concerning apprentices not moving through an apprenticeship program in a timely manner and insufficient on-the-job learning or classroom time.

Source: L. 2021: Entire article added, (HB 21-1007), ch. 309, p. 1890, § 1, effective July 1. **L. 2023:** IP(1) and (1)(d) amended, (SB 23-051), ch. 37, p. 142, § 10, effective March 23.

PART 2

CAREER AND TECHNICAL EDUCATION AND REGISTERED APPRENTICESHIPS

Cross references: For the legislative declaration in SB 24-104, see section 1 of chapter 299, Session Laws of Colorado 2024.

8-15.7-201. State apprenticeship agency - community college system - career and technical education - apprenticeship programs - alignment - repeal.

(1) The state apprenticeship agency, in coordination with the career and technical education division of the Colorado community college system, shall align the high school career and technical education system and the registered apprenticeship system for programs and occupations related to infrastructure, advanced manufacturing, education, or health care. On or before July 1, 2026, the state apprenticeship agency and the career and technical education division must:

(a) Establish at least one state-level advisory board that will create state-approved programs that align with registered apprenticeship programs;

(b) Use each state-level advisory board to align the competencies of high school career and technical education division programs with registered apprenticeship programs; and

(c) Educate registered apprenticeship sponsors on how to include credit for previous experience from career and technical education in program standards.

(2) The state-level advisory boards shall select which high school career and technical education division programs to align with registered apprenticeship programs based on available registered apprenticeship programs in the relevant occupations and other criteria as established by the state apprenticeship agency in collaboration with the career and technical education division.

(3) On and after July 1, 2026, the state apprenticeship agency, in coordination with the career and technical education division of the Colorado community college system, shall expand the number of aligned programs in infrastructure, advanced manufacturing, education, and health care or related occupations identified as top jobs by the annual Colorado talent pipeline report produced pursuant to section 24-46.3-103 (3)(a). The state-approved programs do not invalidate existing or future career and technical education division programs that have demonstrated alignment to high wage, high skills, or in-demand industries.

(4) The office of future of work in the department shall engage in proactive outreach to foster collaboration between registered apprenticeship programs, the Colorado community college system, career and technical education programs, institutions of higher education, and other training providers in the related programs and occupations to facilitate awareness of opportunities for current and prospective participants.

(5) The community college system may receive funding for the services described in this section through a limited purpose fee-for-service contract pursuant to section 23-18-308 (1)(m).

(6) This section is repealed, effective June 30, 2028.

Source: L. 2024: Entire part added, (SB 24-104), ch. 299, p. 2037, § 3, effective August 7. **L. 2026:** (6) added, (HB 26-1371), ch. 281, p. 1564, § 5, effective June 1.

PART 3

SCALE-UP GRANT PROGRAM

8-15.7-301. Definitions.

As used in this part 3:

- (1) "Applicant" means a person that applies to receive a grant from the scale-up grant program.
- (2) "Scale-up grant fund" or "fund" means the scale-up grant fund created in section 8-15.7-305.
- (3) "Scale-up grant program" or "grant program" means the scale-up grant program created in section 8-15.7-302.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 776, § 4, effective May 10.

8-15.7-302. Scale-up grant program - creation - application process - data.

- (1) On or before January 1, 2025, the department shall establish the scale-up grant program to establish new registered apprenticeship programs or expand existing programs in Colorado.
- (2) The department shall:
 - (a) Create an application process through which it selects grant recipients to participate in the grant program, with the goal of accelerating new apprenticeship program growth, diversifying participants in apprenticeship programs, and diversifying the geographic distribution of apprenticeship programs, especially in high-priority, high-demand industries, while ensuring quality standards;
 - (b) Select grant recipients that are employers or sponsors that:
 - (I) Plan to develop and register a new registered apprenticeship program; or
 - (II) Currently offer a registered apprenticeship program and plan to expand it;

(c) Outline performance expectations for grant recipients participating in the grant program, including maintaining accurate and timely data in the federal registered apprenticeship partners information database system, or a successor database; and

(d) Collect data concerning the grant program, including:

(I) The number of employers benefiting from the grant program;

(II) The number of apprentices benefiting from the grant program;

(III) The wages for apprentices benefiting from the grant program;

(IV) The demographics of the apprentices served by the grant recipients; and

(V) Any other information deemed appropriate by the department.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 776, § 4, effective May 10.

8-15.7-303. Applicants.

(1) An applicant shall submit an application to the department in a form and manner established by the department that is designed to maximize participation. In the application, the applicant shall:

(a) Provide a detailed proposal and operations plan for the growth or development of a registered apprenticeship program; and

(b) Submit any other information deemed appropriate by the department.

(2) Applicants must not have received or have been selected to receive funding from the qualified apprenticeship intermediary grant program pursuant to section 8-15.7-402.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 777, § 4, effective May 10.

8-15.7-304. Report.

On or before December 31, 2026, the department shall submit a report compiling the information collected pursuant to section 8-15.7-302 (2)(d) to the house of representatives business affairs and labor committee and the senate business, labor, and technology committee, or their successor committees.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 777, § 4, effective May 10.

8-15.7-305. Scale-up grant fund - creation - gifts, grants, or donations - transfer.

(1) There is created in the state treasury the scale-up grant fund. Money in the fund is annually appropriated to the department to implement the grant program and pay for the department's direct and indirect costs in administering the grant program.

(2) On July 1, 2024, the state treasurer shall transfer two million dollars from the general fund to the scale-up grant fund.

(3) The department may seek, accept, and expend gifts, grants, and donations from private or public sources for the purposes of this part 3.

(3.5) On June 30, 2025, the state treasurer shall transfer five hundred thousand dollars from the scale-up grant fund to the general fund.

(3.7) On June 30, 2026, the state treasurer shall transfer one million fifty-seven thousand one dollars from the fund to the general fund.

(4) The state treasurer shall transfer all unexpended and unencumbered money remaining in the fund at the end of state fiscal year 2026-27 to the general fund.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 777, § 4, effective May 10. **L. 2025:** (3.5) added, (SB 25-264), ch. 129, p. 498, § 2, effective April 25. **L. 2026:** (3.7) added, (HB 26-1405), ch. 396, p. 2479, § 1, effective June 4.

8-15.7-306. Repeal of part.

This part 3 is repealed, effective July 1, 2027.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 778, § 4, effective May 10.

PART 4

QUALIFIED APPRENTICESHIP INTERMEDIARY GRANT PROGRAM

8-15.7-401. Definitions.

As used in this part 4:

- (1) "Applicant" means a person that applies to receive a grant from the qualified apprenticeship intermediary grant program.
- (2) "Qualified apprenticeship intermediary" has the same meaning as "qualified intermediary" as set forth in section 8-15.7-101 (11).
- (3) "Qualified apprenticeship intermediary grant fund" or "fund" means the qualified apprenticeship intermediary grant fund created in section 8-15.7-405.
- (4) "Qualified apprenticeship intermediary grant program" or "grant program" means the qualified apprenticeship intermediary grant program created in section 8-15.7-402.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 778, § 4, effective May 10.

8-15.7-402. Qualified apprenticeship intermediary grant program - creation - application process - data.

- (1) On or before January 1, 2025, the department shall establish the qualified apprenticeship intermediary grant program to support entities that demonstrate expertise in connecting employers or apprenticeship program participants to registered apprenticeship programs or in convening stakeholders to develop registered apprenticeship programs.
- (2) The department shall:
 - (a) Create an application process through which it selects grant recipients to participate in the grant program, with the goal of expanding apprenticeship programs, diversifying participants in apprenticeship programs, and diversifying geographic distribution of apprenticeship programs, especially in high-priority, high-demand industries, while ensuring quality standards;
 - (b) Select and prioritize grant program recipients based on:
 - (I) An applicant's record of success in supporting job seekers, apprentices, employers, and sponsors;
 - (II) The regional diversity of the areas served by an applicant;

- (III) The diversity of populations served by an applicant; and
- (IV) How the registered apprenticeship programs served by the applicant meet talent needs in high-priority, high-demand industries;
- (c) Outline performance expectations for grant recipients participating in the grant program; and
- (d) Collect data concerning the grant program that includes:
 - (I) The number of employers benefiting from the grant program;
 - (II) The number of apprentices benefiting from the grant program;
 - (III) The demographics of the apprentices served by the grant recipients;
 - (IV) A description of the services provided by the grant recipient;
 - (V) The names of the registered apprenticeship programs and occupations impacted by the services provided by the grant recipient; and
 - (VI) Any other information deemed appropriate by the department.
- (3) Grant recipients shall not use money from the grant program for apprentice wages.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 778, § 4, effective May 10.

8-15.7-403. Application.

- (1) An applicant shall submit an application to the department in a form and manner established by the department that is designed to maximize participation. In the application, the applicant shall:
 - (a) Describe how the grant will be used to expand or diversify registered apprenticeship programs in Colorado; and
 - (b) Submit any other information deemed appropriate by the department.
- (2) An applicant must:
 - (a) Be a qualified apprenticeship intermediary; and
 - (b) Applicants must not have received or have been selected to receive funding from the scale-up grant program pursuant to section 8-15.7-302.

(3) The SAA shall post a list of the types of entities eligible to apply to the grant program on the SAA's website, including labor management training partnerships, multiemployer apprenticeship sponsors, economic development organizations, apprenticeship training committees, local workforce boards, local school districts or boards of cooperative services, industry or trade associations, nonprofit organizations, and community colleges.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 779, § 4, effective May 10.

8-15.7-404. Report.

On or before December 31, 2026, the department shall submit a report compiling the information collected pursuant to section 8-15.7-402 (2)(d) to the house of representatives business affairs and labor committee and the senate business, labor, and technology committee, or their successor committees.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 780, § 4, effective May 10.

8-15.7-405. Qualified apprenticeship intermediary grant fund - creation - transfer - gifts, grants, or donations.

(1) There is created in the state treasury the qualified apprenticeship intermediary grant fund. Money in the fund is continuously appropriated to the department to implement the grant program and pay for the department's direct and indirect costs in administering the grant program.

(2) On July 1, 2024, the state treasurer shall transfer two million dollars from the general fund to the fund.

(3) The department may seek, accept, and expend gifts, grants, and donations from private or public sources for the purposes of this part 4.

(3.5) On June 30, 2025, the state treasurer shall transfer five hundred thousand dollars from the qualified apprenticeship intermediary grant fund to the general fund.

(3.7) On June 30, 2026, the state treasurer shall transfer seven hundred ninety-six thousand nine hundred fifty-nine dollars from the fund to the general fund.

(4) The state treasurer shall transfer all unexpended and unencumbered money remaining in the fund at the end of state fiscal year 2026-27 to the general fund.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 780, § 4, effective May 10. **L. 2025:** (3.5) added, (SB 25-264), ch. 129, p. 498, § 3, effective April 25. **L. 2026:** (3.7) added, (HB 26-1405), ch. 396, p. 2479, § 2, effective June 4.

8-15.7-406. Repeal of part.

This part 4 is repealed, effective July 1, 2027.

Source: L. 2024: Entire part added, (HB 24-1439), ch. 163, p. 780, § 4, effective May 10.

8-15.8 ARTICLE 15.8

Office of Future of Work

8-15.8-101.	Legislative declaration - intent.	8-15.8-103.	Office of future of work - creation - powers and duties - report.
8-15.8-102.	Definitions.	8-15.8-104.	Reports - recommendations.
		8-15.8-105.	Funding for the office.

8-15.8-101. Legislative declaration - intent.

(1) The general assembly hereby:

(a) Finds and determines that:

(I) Colorado's policymakers from all backgrounds face significant challenges in responding to the rapidly changing nature of work;

(II) A changing global economy, rapidly emerging technology, demographic changes, new economy demands, shifting skill needs, and the rising cost of education, health care, and housing are just a few factors leading to labor disruptions; and

(III) While these changes have brought immense economic benefit for some, they have also contributed to stagnant wages, declining worker benefits, weakened workplace protections, and, in some cases, permanent job losses; and

(b) Declares that:

(I) Policymakers, government officials, employers, education and training institutions, and other stakeholders must:

(A) Work together to create an economy that helps workers adapt to the new and changing job landscape; and

(B) Use all tools available to ensure that workers and employers withstand future job disruptions caused by changes in technology, trade, and organizational structure; and

(II) Colorado must understand, prepare for, and develop effective strategies to respond to these changes.

(2) It is the general assembly's intent that the office of future of work will:

(a) Serve as the central point of contact for the state's efforts to respond to the rapidly changing nature of work;

(b) Increase awareness of the challenges associated with the future of work and develop priorities to focus state resources on meeting those challenges;

(c) Centralize responsibility and accountability for researching, analyzing, and developing recommendations on this issue; and

(d) Encourage and convene participation from a variety of sectors and stakeholders in Colorado's economy.

Source: L. 2023: Entire article added, (SB 23-051), ch. 37, p. 131, § 1, effective March 23.

8-15.8-102. Definitions.

As used in this article 15.8, unless the context otherwise requires:

(1) "Department" means the department of labor and employment created in section 24-1-121.

(2) "Executive director" means the executive director of the department.

(3) "OFW" means the office of future of work created in section 8-15.8-103.

Source: L. 2023: Entire article added, (SB 23-051), ch. 37, p. 132, § 1, effective March 23. **L. 2024:** (3) amended, (HB 24-1450), ch. 490, p. 3405, § 11, effective August 7.

8-15.8-103. Office of future of work - creation - powers and duties - report.

(1) There is created in the department the office of future of work, the head of which is the director of the office of future of work.

(2) The OFW is a **type 2** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department.

(3) It is the purpose of the OFW to:

(a) Identify opportunities for Colorado's communities to transition effectively to emerging industries and, where appropriate, consult with the just transition office, created in section 8-83-503, and other state agencies to align such efforts;

(b) Ensure the inclusion of key stakeholders from all sectors and engage partnerships across public and private sectors, including industry, academia, employers, employees, nonprofit organizations, and government;

(c) Host, organize, and convene task forces, summits, and other appropriate meetings with diverse stakeholders, designed to improve the state's understanding of the social and economic impacts of the changing nature of work;

(d) Explore ways that the state can prepare for current and future impacts, including through the modernization of worker benefits and protections, the development of a skilled and resilient workforce through coordination of registered apprenticeship programs in Colorado, and the identification of new policy and program solutions; and

(e) As funding allows, undertake studies, research, and factual reports to gather insight and to formulate and present recommendations to the governor, state agencies, and the general assembly related to issues of concern and importance to Colorado's future workforce.

(4) The OFW shall contribute education and workforce data beginning in the 2025-26 state fiscal year, as necessary, to the Colorado statewide longitudinal data system consistent with the governance practices established by the Colorado statewide longitudinal data system governing board pursuant to section 24-37.5-125 (4).

Source: L. 2023: Entire article added, (SB 23-051), ch. 37, p. 132, § 1, effective March 23. **L. 2024:** (4) added, (HB 24-1364), ch. 238, p. 1560, § 7, effective May 23.

8-15.8-104. Reports - recommendations.

(1) The OFW shall periodically make recommendations to the executive director to make adjustments to the scope and expected work product of the OFW, as necessary, to adjust to changing economic conditions.

(2) At least once every calendar year beginning in 2023, the executive director shall submit a report to the governor that includes recommendations for potential policy initiatives.

Source: L. 2023: Entire article added, (SB 23-051), ch. 37, p. 133, § 1, effective March 23.

8-15.8-105. Funding for the office.

The general assembly may appropriate money from the general fund or from any other available source to the department for allocation to the OFW for the purposes specified in this article 15.8. The OFW may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this article 15.8.

Source: L. 2023: Entire article added, (SB 23-051), ch. 37, p. 133, § 1, effective March 23.

Public Works

ARTICLE 16

Rate of Wages on Public Works

8-16-101. (Repealed)

Source: L. 85: Entire article repealed, p. 340, § 1, effective June 13.

Editor's note: This article was numbered as article 17 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 17

Colorado Labor on Public Works

8-17-100.3.	Definitions.	8-17-104.	Enforcement - violation - penalties - Colorado labor enforcement cash fund - creation.
8-17-101.	Colorado labor employed on public works.		
8-17-102.	Contracts to provide for preference of Colorado labor.	8-17-105.	Compliance standard.
		8-17-106.	Rules.
8-17-103.	Penalty for violation. (Repealed)	8-17-107.	Federal and state law.

8-17-100.3. Definitions.

As used in this article 17:

(1) "Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, age, or religion, except when sex, gender, or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that the person has resided in Colorado for the last thirty days.

(2) "Public works project" has the same meaning as "public project" as defined in section 24-103-908 (1).

Source: L. 2025: Entire section added with relocations, (SB 25-275), ch. 377, p. 2033, § 28, effective August 6.

Editor's note: This section is similar to former § 8-17-101 (2) as it existed prior to 2025.

8-17-101. Colorado labor employed on public works.

(1) Whenever any public works project financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado are undertaken in this state,

Colorado labor shall be employed to perform at least eighty percent of the work. The governmental body financing a public works project shall waive the eighty percent requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance with this article would create an undue burden that would substantially prevent a project from proceeding to completion. A governmental body that allows a waiver pursuant to this subsection (1) shall post notice of the waiver and a justification for the waiver on its website. A governmental body shall not impose contractual damages on a contractor for a delay in work due to the waiver process.

(2) Repealed.

Source: L. 33: p. 660, § 1. CSA: C. 138, § 263. L. 39: p. 473, § 1. CRS 53: § 80-21-1. C.R.S. 1963: § 80-18-1. L. 77: Entire section amended, p. 446, § 1, effective May 26. L. 2008: Entire section amended, p. 1599, § 12, effective May 29. L. 2013: Entire section amended, (HB 13-1292), ch. 266, p. 1395, § 2, effective May 24. L. 2015: (2)(b) amended, (SB 15-264), ch. 259, p. 942, § 8, effective August 5. L. 2017: IP(2) and (2)(b) amended, (HB 17-1051), ch. 99, p. 349, § 60, effective August 9. L. 2021: (2)(a) amended, (HB 21-1108), ch. 156, p. 890, § 14, effective September 7. L. 2025: (2) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

Editor's note: Subsection (2) was relocated to § 8-17-100.3 in 2025.

Cross references: (1) For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 341, Session Laws of Colorado 2008.

(2) In 2013, this section was amended by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

(3) For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of Colorado 2021.

8-17-102. Contracts to provide for preference of Colorado labor.

All contracts let for public works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado shall contain provisions for the preference in employment of Colorado labor.

Source: L. 33: p. 660, § 2. CSA: C. 138, § 264. CRS 53: § 80-21-2. C.R.S. 1963: § 80-18-2.

ANNOTATION

Law reviews. For article, "Fair Housing in Colorado", see 42 Den. L. Ctr. J. 1 (1965).

8-17-103. Penalty for violation. (Repealed)

Source: L. 33: p. 660, § 2. CSA: C. 138, § 264. CRS 53: § 80-21-2. C.R.S. 1963: § 80-18-2. L. 2013: Entire section repealed, (HB 13-1292), ch. 266, p. 1396, § 3, effective May 24.

Cross references: In 2013, this section was repealed by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-104. Enforcement - violation - penalties - Colorado labor enforcement cash fund - creation.

(1) The department of labor and employment shall enforce the requirements of this article in the event of a complaint alleging a potential violation of the requirements of this article. In connection with the department's duty to enforce the requirements of this article, the department shall receive complaints about potential violations of such requirements, initiate investigations based on such complaints, and impose penalties for the violation of the requirements of this article pursuant to subsection (2) of this section. The department shall not investigate or take any other action regarding a complaint filed more than ninety days after the project has been finalized.

(2) (a) After conducting an investigation of a complaint alleging a violation of the provisions of this article, if the department of labor and employment determines that a contractor has knowingly violated the requirements of this article by importing labor in excess of that permitted pursuant to section 8-17-101 (1), the executive director of the department of labor and employment or the executive director's designee shall impose a fine on such contractor as follows:

(I) For the first violation, five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less;

(II) For the second violation, ten thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less; or

(III) For the third violation and any violation thereafter, twenty-five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less.

(b) When the department of labor and employment receives a complaint, it shall notify the contractor of the complaint, but shall commence the investigation only at the completion of the project. The department shall complete any investigation in response to a complaint within ninety days of the date that the department began the investigation. Compliance shall be measured over the entirety of the completed project.

(c) If the department of labor and employment has imposed three fines on a contractor pursuant to paragraph (a) of this subsection (2) within five years and finds the violations to be egregious, the executive director of the department of labor and employment or the executive director's designee may initiate the process to debar the contractor pursuant to section 24-109-105, C.R.S.

(d) The executive director of the department of labor and employment may dismiss a complaint in his or her discretion if, after conducting an investigation pursuant to this section, the department determines that the circumstances that led to the complaint were the result of a minor paperwork violation.

(3) A contractor who is found to be in violation of the provisions of this article may appeal such finding to the executive director of the department of labor and employment. The executive director or the executive director's designee shall hold a hearing to review such notice or order and take final action in accordance with article 4 of title 24, C.R.S., and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel. Final agency action is subject to judicial review pursuant to article 4 of title 24, C.R.S.

(4) The revenue collected from the fines imposed pursuant to subsection (2) of this section shall be transmitted to the state treasurer, who shall credit the same to the Colorado labor enforcement cash fund, which is hereby created. The general assembly shall make appropriations from the fund as necessary to cover the direct and indirect costs of the department of labor and employment in connection with the requirements of this article. All moneys not expended or encumbered and all interest earned on the investment or deposit of moneys in the fund remain in the fund and do not revert to the general fund or any other fund at the end of any fiscal year.

(5) The requirements of this article may not be enforced through a private right of action.

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1396, § 4, effective May 24.

Cross references: In 2013, this section was added by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-105. Compliance standard.

Compliance with the requirements of this article shall be calculated on the total taxable wages and fringe benefits, minus any per diem payments, paid to workers employed directly on the site of the project and who satisfy the definition of Colorado labor.

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1398, § 4, effective May 24.

Cross references: In 2013, this section was added by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-106. Rules.

(1) The executive director of the department of labor and employment shall promulgate rules for the implementation of this article. Such rules shall be promulgated in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and must include, but need not be limited to:

(a) A procedure for filing a complaint alleging that a contractor is in violation of the provisions of this article;

(b) A procedure for the uniform investigation of any complaint alleging a violation of the provisions of this article; and

(c) A procedure for filing an appeal pursuant to section 8-17-104 (3).

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1398, § 4, effective May 24.

Cross references: In 2013, this section was added by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17-107. Federal and state law.

Nothing in this article applies to any project that receives federal moneys. In addition, nothing in this article contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this article to the extent of that accordance. The requirements of this article are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1398, § 4, effective May 24.

Cross references: In 2013, this section was added by the "Keep Jobs In Colorado Act of 2013". For the short title, see section 1 of chapter 266, Session Laws of Colorado 2013.

8-17.5 ARTICLE 17.5

Worker Without Authorization - Public Contracts for Services

8-17.5-101 to 8-17.5-103. (Repealed)

Editor's note: (1) This article 17.5 was added in 2006. For amendments to this article 17.5 prior to its repeal in 2022, consult the 2021 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-17.5-103 provided for the repeal of article 17.5, effective July 1, 2022. (See L. 2021, pp. 2284, 2285.)

ARTICLE 18

Preference for State Commodities and Services

8-18-101. Bid preference - state contracts. (Repealed)

Source: **L. 87:** Entire article RC&RE, p. 379, § 1, effective May 13. **L. 95:** (1) amended and (3) added, p. 26, § 1, effective July 1. **L. 2004:** (1)(a) amended, p. 270, § 1, effective August 4. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-906 in 2017.

Cross references: For general provisions concerning state purchasing, see the "Procurement Code", articles 101 to 112 of title 24.

8-18-102. Repeal of article. (Repealed)

Source: **L. 87:** Entire article RC&RE, p. 379, § 1, effective May 13. **L. 89:** Entire section repealed, p. 381, § 1, effective July 1.

8-18-103. Preference for state agricultural products. (Repealed)

Source: **L. 2004:** Entire section added, p. 270, § 2, effective August 4. **L. 2005:** (1) and (2)(d) amended and (4) and (5) added, p. 1485, § 1, effective August 8. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-907 in 2017.

ARTICLE 19

Bid Preference - Public Projects

8-19-101. Bid preference - public projects. (Repealed)

Source: **L. 85:** Entire article added, p. 342, § 1, effective July 1. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-908 (2) in 2017.

8-19-102. Definitions. (Repealed)

Source: **L. 85:** Entire article added, p. 342, § 1, effective July 1. **L. 91:** (1)(c) amended, p. 1056, § 8, effective July 1. **L. 99:** (2)(b) amended, p. 72, § 1, effective March 17. **L. 2013:** Entire section amended, (HB 13-1292), ch. 266, p. 1398, § 5, effective May 24. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-908 (1) in 2017.

8-19-102.5. Resident bidder - reciprocity. (Repealed)

Source: **L. 99:** Entire section added, p. 72, § 2, effective March 17. **L. 2001:** Entire section amended, p. 959, § 1, effective August 8. **L. 2013:** Entire section repealed, (HB 13-1292), ch. 266, p. 1399, § 6, effective May 24.

8-19-103. Repeal of article. (Repealed)

Source: **L. 85:** Entire article added, p. 342, § 1, effective July 1. **L. 88:** Entire section repealed, p. 367, § 1, effective February 26.

8-19-104. Bid preference - survey. (Repealed)

Source: **L. 2013:** Entire section added, (HB 13-1292), ch. 266, p. 1399, § 7, effective May 24. **L. 2016:** (1) amended, (SB 16-189), ch. 210, p. 755, § 9, effective June 6. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-908 (3) in 2017.

8-19-105. Federal and state law. (Repealed)

Source: L. 2013: Entire section added, (HB 13-1292), ch. 266, p. 1400, § 7, effective May 24.
L. 2017: Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-908 (4) in 2017.

8-19.5 ARTICLE 19.5

Bid Preference - Recycled Plastic Products

8-19.5-101. Bid preference - recycled plastic products. (Repealed)

Source: L. 89: Entire article added, p. 1181, § 2, effective July 1. **L. 2017:** Entire section repealed, (HB 17-1051), ch. 99, p. 354, § 76, effective August 9.

Editor's note: This section was relocated to § 24-103-909 in 2017.

Cross references: For provisions concerning the labeling and coding of plastic bottles and rigid plastic containers, see article 17 of title 25.

8-19.7 ARTICLE 19.7

Bid Preference - Recycled Paper Products

8-19.7-101 to 8-19.7-103. (Repealed)

Editor's note: (1) Section 8-19.7-103 (2) provided for the repeal of this article, effective July 1, 1995. (See L. 90, p. 464.)

(2) This article was added in 1990. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Fuel Products

Cross references: For provisions regarding oil wells and boreholes, see article 61 of title 34; for the "Oil and Gas Conservation Act", see article 60 of title 34; for regulations regarding royalties under the federal leasing act, see article 63 of title 34; for provisions regarding underground storage of natural gas, see article 64 of title 34.

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PART 1

DIVISION OF OIL AND PUBLIC SAFETY

8-20-101. Division of oil and public safety - creation - appointment of director - transfer of duties.

(1) There is created in the department of labor and employment the division of oil and public safety, the head of which is the director of the division of oil and public safety. The director of the division of oil and public safety is appointed by the executive director of the department of labor and employment and shall not have an interest in the manufacture, sale, or distribution of oils. The division and the director of the division are **type 2** entities, as defined in section 24-1-105.

(2) The director of the division of oil and public safety, on and after July 1, 2001, shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested prior to July 1, 2001, in the state inspector of oils, the state boiler inspector, and, with respect to articles 6 and 7 of title 9, C.R.S., the director of the division of labor standards and statistics. On July 1, 2001, all employees of the state inspector of oils, the state boiler inspector, and, with respect to duties performed pursuant to articles 6 and 7 of title 9, C.R.S., the director of the division of labor standards and statistics, whose principal duties are concerned with the duties and functions to be performed by the director of the division of oil and public safety and whose employment by the director of the division of oil and public safety is deemed necessary by the director of the division of oil and public safety to carry out the purposes of articles 20 and 20.5 of this title and articles 4, 6, and 7 of title 9, C.R.S., shall be transferred to the director of the division of oil and public safety and shall become employees thereof. These employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed continuous. All transfers and any abolishment of positions in

the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(3) and (4) Repealed.

(5) The director of the division of oil and public safety shall enforce and administer article 5.5 of title 9, C.R.S.

Source: L. 15: pp. 376, 377, §§ 40, 42, 44. L. 19: p. 562, §2. C.L. §§ 3653, 3655, 3657. CSA: C. 118, §§ 54, 56, 58. CRS 53: §§ 100-1-1, 100-1-2. C.R.S. 1963: §§ 100-1-1, 100-1-2. L. 69: p. 661, §§ 248, 249. L. 2001: Entire section R&RE, p. 1114, § 3, effective June 5. L. 2007: (5) added, p. 1423, § 3, effective January 1, 2008. L. 2008: (3) repealed, p. 1020, § 2, effective May 21. L. 2009: (4) repealed, (HB 09-1151), ch. 230, p. 1060, § 14, effective January 1, 2010. L. 2016: (2) amended, (HB 16-1323), ch. 131, p. 379, § 14, effective August 10. L. 2022: (1) amended, (SB 22-162), ch. 469, p. 3384, § 88, effective August 10.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

8-20-102. Duties of director of division of oil and public safety - rules.

(1) The director of the division of oil and public safety shall make, promulgate, and enforce rules setting forth minimum and general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, and utilizing liquid fuel products. Said rules shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the director of the division of oil and public safety in compliance with section 24-4-103, C.R.S.

(2) The director of the division of oil and public safety shall enforce the provisions of section 8-20-213 concerning recycled and used motor oil.

(3) Prior to January 1, 2014, the director of the division of oil and public safety shall promulgate rules for natural gas setting forth standards related to inspections; specifications; shipment notification; record keeping; labeling of containers; use of meters or mechanical devices for measurement; submittal of installation plans; and minimum standards for the design, construction, location, installation, and operation of retail natural gas systems. The division shall

begin enforcing the rules on July 1, 2014. The director may modify or update the rules in his or her discretion. All of the rules required by this subsection (3) must be reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials, and the rules must be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. The director shall adopt the rules in compliance with section 24-4-103, C.R.S.

(4) (a) On or before January 1, 2017, the director of the division of oil and public safety shall promulgate rules concerning retail hydrogen fuel systems for vehicles. The rules must set forth standards relating to:

- (I) Inspections;
- (II) Specifications;
- (III) Shipment notification;
- (IV) Record keeping;
- (V) Labeling of containers;
- (VI) Use of meters or mechanical devices for measurement;
- (VII) Submittal of installation plans; and
- (VIII) Minimum standards for the design, construction, location, installation, and operation of retail hydrogen fuel systems for vehicles.

(b) The director of the division of oil and public safety may collect reasonable fees, which the director shall establish by rule in the amounts necessary to offset the direct and indirect costs, including the costs for salaries and operating expenses, incurred by the division in administering this article.

(c) The division shall begin enforcing the rules required by this subsection (4) on July 1, 2017. The director may modify the rules at his or her discretion.

(d) Each rule required by this subsection (4) must be reasonably necessary for the protection of the health, welfare, and safety of the public and persons using hydrogen fuel, and the rules must substantially conform with the generally accepted standards of safety concerning hydrogen fuel. The director shall adopt the rules in compliance with section 24-4-103, C.R.S.

(5) The director of the division of oil and public safety shall adopt and enforce rules concerning retail electric vehicle charging as outlined in section 8-20-107.

Source: L. 15: p. 377, § 43. C.L. § 3656. CSA: C. 118, § 57. CRS 53: § 100-1-3. C.R.S. 1963: § 100-1-3. L. 69: p. 661, § 250. L. 73: p. 1066, § 1. L. 95: Entire section amended, p. 351, § 2, effective April 27. L. 2001: Entire section amended, p. 1115, § 4, effective June 5. L. 2003: (1) amended, p. 1820, § 2, effective May 21. L. 2013: (3) added, (HB 13-1110), ch. 225, p. 1055, § 2, effective August 15. L. 2016: (4) added, (HB 16-1053), ch. 4, p. 7, § 1, effective March 9. L. 2025: (5) added, (HB 25-1267), ch. 252, p. 1261, § 1, effective August 6.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (3), see section 1 of chapter 225, Session Laws of Colorado 2013.

8-20-103. Inspector's report - publications.

- (1) Repealed.
- (2) Publications of the office circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 15: p. 376, § 39; C.L. § 3652; CSA: C. 118, § 53; CRS 53: § 100-1-4; C.R.S. 1963: § 100-1-4. L. 64: p. 158, § 108. L. 83: Entire section amended, p. 825, § 3, effective July 1. L. 97: (1) repealed, p. 1474, § 7, effective June 3.

8-20-104. Enforcement of law - penalties - notification by division required - definitions.

(1) The director shall enforce this article, articles 4, 5.5, and 7 of title 9, C.R.S., and rules promulgated pursuant to this article and articles 4, 5.5, and 7 of title 9, C.R.S., by appropriate actions in courts of competent jurisdiction.

(2) (a) The director may issue a notice of violation to a person who is believed to have violated this article, article 4, 5.5, or 7 of title 9, C.R.S., or rules promulgated pursuant to this article or article 4, 5.5, or 7 of title 9, C.R.S. The notice shall be delivered to the alleged violator personally, by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(b) The notice of violation shall allege the facts that constitute a violation and the rule or statute violated.

(c) The notice of violation may require the alleged violator to act to correct the alleged violation.

(d) Within ten working days after delivery of the notice of violation, the alleged violator may request in writing an informal conference with the director concerning the notice of violation. If the alleged violator fails to request such conference within ten days, the notice is then final, the notice is not subject to further review, and any statement of facts required to correct the alleged violation pursuant to paragraph (c) of this subsection (2) become a binding enforcement order.

(e) Upon receipt of a request for an informal conference, the director shall set a reasonable time and place for such conference and shall notify the alleged violator of such time and place. At the conference, the alleged violator may present evidence and arguments concerning the allegations in the notice of violation.

(f) Within twenty working days after the informal conference, the director shall uphold, modify, or strike the allegations within the notice of violation and may issue an enforcement order. The decision and, if applicable, enforcement order shall be delivered to the alleged violator personally, by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(3) (a) A person who is the subject of and is adversely affected by a notice of violation or an enforcement order issued pursuant to subsection (2) of this section may appeal such action to the executive director of the department of labor and employment. The executive director shall hold a hearing to review such notice or order and take final action in accordance with article 4 of title 24, C.R.S., and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel.

(b) Final agency action shall be subject to judicial review pursuant to article 4 of title 24, C.R.S.

(c) An alleged violator who is required to correct an action pursuant to paragraph (c) of subsection (2) of this section shall be afforded the procedures set forth in section 24-4-104 (3), C.R.S., to the extent applicable.

(4) (a) An enforcement order issued pursuant to this section may impose a civil penalty, depending on the severity of the alleged violation, not to exceed five hundred dollars per violation for each day of violation; except that the director may impose a civil penalty not to exceed one thousand dollars per violation for each day of violation that results in, or may reasonably be expected to result in, serious bodily injury.

(b) A civil penalty collected for a violation of:

(I) Article 4 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the boiler inspection fund created in section 9-4-109, C.R.S.;

(II) Article 5.5 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the conveyance safety fund created in section 9-5.5-111, C.R.S.;

(III) Article 7 of title 9, C.R.S., or a rule promulgated pursuant to such article, shall be deposited in the public safety inspection fund created in section 8-1-151.

(c) (I) Notwithstanding subsection (4)(a) of this section, when the federal environmental protection agency requires the sale of reformulated gasoline in a nonattainment area in the state, the director of the division of oil and public safety, on and after August 15, 2025, may impose a civil penalty not to exceed five thousand dollars per day for the retail distribution of reformulated gasoline that violates the applicable fuel quality specification. It is an affirmative defense that a retailer or licensed fuel distributor relied on a product transfer document that clearly demonstrates a compliant fuel specification.

(II) On or before August 15, 2025, the division shall notify, through the division's email system, any owner of a gas station that is located in a nonattainment area of the penalty amount established by this subsection (4)(c).

(III) As used in this subsection (4)(c), "nonattainment area" has the meaning set forth in section 24-38.5-116 (2)(h).

(5) The director may file suit in the district court in the judicial district in which a violation is alleged to have occurred to judicially enforce an enforcement order issued pursuant to this section.

(6) For the purposes of this section:

(a) "Director" means the director of the division of oil and public safety.

(b) "Division" means the division of oil and public safety.

(7) In addition to the remedies provided in this section, the director is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction restraining any person from violating any provision of articles 4, 5.5, and 7 of title 9, C.R.S., and rules promulgated pursuant to articles 4, 5.5, and 7 of title 9, C.R.S., regardless of whether there is an adequate remedy at law.

Source: L. 15: p. 377, § 41. C.L. § 3654. CSA: C. 118, § 55. CRS 53: § 100-1-5. C.R.S. 1963: § 100-1-5. L. 2003: Entire section amended, p. 1820, § 3, effective May 21. L. 2006: (1) and (2)(a) amended, p. 1355, § 1, effective July 1. L. 2007: (2)(a) amended, p. 1422, § 2, effective January 1, 2008. L. 2008: (1), (2)(a), and (4) amended and (7) added, p. 984, § 2, effective May 21. L. 2009: (1), (2)(a), (4)(b)(III), and (7) amended, (HB 09-1151), ch. 230, p. 1060, § 15, effective January 1, 2010. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2064, §

10, effective August 11. **L. 2025:** (4)(c) added, (SB 25-286), ch. 426, p. 2417, § 1, effective August 6.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-105. Expenses of administration. (Repealed)

Source: **L. 83:** Entire section added, p. 407, § 1, effective May 3. **L. 2003:** Entire section repealed, p. 1822, § 4, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-106. Confidentiality.

(1) Information concerning liquefied petroleum gas storage tanks obtained under this article shall be available to the public; except that any specific information that is confidential by state or federal law shall remain confidential.

(2) Confidential records may be disclosed to officers, employees, or authorized representatives of this state or of the United States who have been charged with administering this article or subchapter I of the federal "Resource Conservation and Recovery Act of 1976", as amended. Such disclosure shall not constitute a waiver of confidentiality.

Source: **L. 2003:** Entire section added, p. 1822, § 5, effective May 21.

Cross references: (1) For the legislative declaration contained in the 2003 act enacting this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

(2) For the "Resource Conservation and Recovery Act of 1976", as amended, see Pub.L. 94-580, codified at 42 U.S.C. § 6901 et seq.

8-20-107. Retail electric vehicle charging - rules - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Department" means the department of labor and employment.

(b) "Director" means the director of the division.

(c) "Division" means the division of oil and public safety in the department.

(d) "Retail electric vehicle charging" means a publicly accessible electric vehicle charging station where a charge for service is based wholly or partially on the quantity of electricity dispensed in vehicle fuel applications.

(2) (a) (I) On or before July 1, 2026, the director shall adopt rules concerning retail electric vehicle charging. The rules must set forth minimum standards relating to specifications and tolerances for retail electric vehicle charging equipment and methods of retail sale at publicly accessible electric vehicle charging stations to promote consistency in the marketplace.

(II) The director shall consult with the director of the Colorado energy office, created in section 24-38.5-101, before initiating a rule-making proceeding on or modifying rules concerning retail electric vehicle charging.

(b) The division shall begin enforcing the rules required by this subsection (2) on July 1, 2027, for all retail electric vehicle charging stations installed on or after July 1, 2026. Retail electric vehicle charging stations installed before July 1, 2026, must comply with the schedule outlined in the rules. The director may modify the rules at the director's discretion, utilizing a public stakeholder process and providing advance notice for any proposed modifications.

(c) Each rule required by this subsection (2) must be reasonably necessary for the protection of the health, welfare, and safety of the public and persons using retail electric vehicle charging stations, and the rules must substantially conform with the generally accepted standards of safety concerning electric vehicle charging. The director shall adopt the rules in accordance with article 4 of title 24.

(3) This section does not apply to retail electric vehicle charging stations that are owned, maintained, or used by a public utility as described in section 40-1-103.

Source: L. 2025: Entire section added, (HB 25-1267), ch. 252, p. 1261, § 2, effective August 6.

PART 2

FUEL PRODUCTS

8-20-201. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Alternative fuel" means a motor fuel that combines petroleum-based fuel products with renewable fuels.

(1.1) "Antiknock index" or "AKI" means the arithmetic average of the research octane number (RON) and motor octane number (MON): $AKI = (RON + MON) / 2$. This value is called by a variety of names in addition to antiknock index including: Octane rating, posted octane, and (R+M)/2 octane.

(1.2) "ASTM" means ASTM international, formerly known as the American society for testing and materials.

(1.3) "British thermal unit" or "BTU" means a scientific unit of measurement equal to the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit at approximately sixty degrees Fahrenheit.

(1.5) "Department" means the department of labor and employment, division of oil and public safety.

(1.7) "DOT" means the United States department of transportation.

(2) "Fuel products" means all gasoline; aviation gasoline; aviation turbine fuel; diesel; jet fuel; fuel oil; biodiesel; biodiesel blends; kerosene; all alcohol blended fuels; liquefied petroleum gas; gas or gaseous compounds, including hydrogen; natural gas, including compressed natural gas and liquefied natural gas; and all other volatile, flammable, or combustible liquids, that are produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning, or for any other similar usage.

(2.3) (a) "Gallon equivalent" means either a gallon diesel equivalent or a gallon gasoline equivalent.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(2.5) (a) "Gallon diesel equivalent" means an amount of a motor fuel that contains an average lower heating value of one hundred twenty-eight thousand BTUs (British thermal units), but in no case contains a lower heating value of less than one hundred twenty-four thousand BTUs.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(2.7) (a) "Gallon gasoline equivalent" means an amount of a motor fuel that contains an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case contains a lower heating value of less than one hundred ten thousand BTUs.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(3) "Gross gallons" as applied to fuel and petroleum products means units of two hundred thirty-one cubic inches measured at storage or metered temperature.

(3.5) "Hg" means the element mercury.

(4) "Lubricants" means petroleum products used for the purpose of reducing friction between moving surfaces.

(4.5) (a) "Motor fuel" means any liquid or gas used as fuel to generate power in engines or motors.

(b) (Deleted by amendment, L. 97, p. 137, § 1, effective March 28, 1997.)

(5) "Net gallons" as applied to fuel and petroleum products means units of two hundred thirty-one cubic inches measured at standard temperature.

(5.3) "NFPA" means the national fire protection association.

(5.5) "NIST" means the national institute of standards and technology.

(6) "Person" means an individual, trust or estate, partnership, association, joint stock company or corporation, and any receiver appointed by law.

(7) "Proved" as applied to measuring devices means the act of having verified the accuracy of meters used to measure fuel and petroleum products.

(8) "Prover" as applied to determination of meter accuracy means a calibrated volumetric receiver or a mechanical positive displacement device.

(8.5) "Renewable fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

(9) "Standard temperature" as applied to fuel and petroleum products means sixty degrees Fahrenheit.

(10) "Temperature compensation" as applied to liquid measure of fuel and petroleum products means adjustment of gallons measured at storage or metered temperature to the standard temperature.

Source: L. 31: p. 589, §§ 1, 2. CSA: C. 118, § 1. L. 41: p. 581, § 1. CRS 53: § 100-2-1. C.R.S. 1963: § 100-2-1. L. 73: p. 1066, § 2. L. 93: (1) amended and (1.5), (2.3), (2.5), (2.7), and (4.5) added, p. 269, § 2, effective July 1. L. 97: (1), (2.3), (2.5), (2.7), and (4.5) amended, p. 137, § 1, effective March 28. L. 2001: (1.5) amended, p. 1115, § 5, effective June 5. L. 2005: (1), (1.5), and (2) amended and (1.1), (1.2), (1.7), (3.5), (5.3), and (5.5) added, p. 1341, § 1, effective August 8. L. 2007: (1), (1.1), and (1.2) amended and (1.3) and (8.5) added, p. 1759, § 2, effective June 1. L. 2013: (2) amended, (HB 13-1110), ch. 225, p. 1055, § 3, effective January 1, 2014. L. 2016: (2) amended, (HB 16-1053), ch. 4, p. 8, § 2, effective March 9.

Editor's note: The amendment made to subsection (1) by House Bill 93-1114 resulted in adding new language to subsection (1) and numbering what was subsection (1) as subsection (1.5).

Cross references: For the legislative declaration contained in the 1993 act amending subsection (1) and enacting subsections (1.5), (2.3), (2.5), (2.7), and (4.5), see section 1 of chapter 79, Session Laws of Colorado 1993. For the legislative declaration in the 2013 act amending subsection (2), see section 1 of chapter 225, Session Laws of Colorado 2013.

8-20-202. Classification of liquid fuel products.

(1) "Liquid" means any material that has a fluidity greater than that of three hundred penetration asphalt when tested in accordance with ASTM specifications that are found in publication number D 5, "Test for Penetration of Bituminous Materials". Unless otherwise identified, the term "liquid" shall include both flammable and combustible liquids.

(2) "Flammable liquid" or "class I liquid" means a liquid that has a flash point below one hundred degrees Fahrenheit and a vapor pressure not exceeding forty PSIA at one degree Fahrenheit. Class I liquids are subdivided as follows:

(a) Class IA liquids have a flash point below seventy-three degrees Fahrenheit and a boiling point below one hundred degrees Fahrenheit.

(b) Class IB liquids have a flash point below seventy-three degrees Fahrenheit and a boiling point at or above one hundred degrees Fahrenheit.

(c) Class IC liquids have a flash point at or above seventy-three degrees Fahrenheit and below one hundred degrees Fahrenheit.

(3) "Combustible liquid" means a liquid that has a flash point at or above one hundred degrees Fahrenheit. Combustible liquids are subdivided as follows:

(a) Class II liquids have a flash point at or above one hundred degrees Fahrenheit and below one hundred forty degrees Fahrenheit.

(b) Class IIIA liquids have a flash point at or above one hundred forty degrees Fahrenheit and below two hundred degrees Fahrenheit.

(c) Class IIIB liquids have a flash point at or above two hundred degrees Fahrenheit.

Source: L. 31: p. 589, § 3. CSA: C. 118, § 2. L. 41: p. 581, § 2. CRS 53: § 100-2-2. C.R.S. 1963: § 100-2-2. L. 2005: Entire section R&RE, p. 1342, § 2, effective August 8.

8-20-203. Inspection.

(1) All fuel products included within classes I and II shall be inspected and the containers of such products marked by brand or stencil as provided in this part 2, and all fuel products shall comply with the specifications provided for in this part 2.

(2) Fuel products included in class III shall be subject to inspection.

(3) All transports and other tank trucks used to carry fuel products shall prominently display thereon, in letters at least three inches in height, the name and address of the owner or operator thereof. All such transport, tank, and delivery trucks shall also display prominently upon the rear of the tank the appropriate DOT placard for the product contained therein.

(4) At all filling stations, garages, stores, and all other places where fuel products are sold or offered for sale, there shall be displayed in a prominent place where it may be readily seen on each pump, the name, trade name, symbol, sign, or other distinguishing mark or device of such fuel product in type at least two inches in height. If such fuel product has no such name, trade name, symbol, sign, or other distinguishing mark, or device, then there shall be displayed the name and address of the person from whom such fuel product was purchased.

Source: L. 31: p. 590, § 1. CSA: C. 118, § 3. L. 41: p. 582, § 3. L. 43: p. 446, § 1. CRS 53: § 100-2-3. C.R.S. 1963: § 100-2-3. L. 2005: (1), (2), and (3) amended, p. 1343, § 3, effective August 8.

8-20-204. Specifications - classes I, II, and III - rules.

(1) (a) Except as described in subsection (1)(b) of this section, all products in classes I, II, and III must comply with the most current applicable specifications of ASTM, which are found

in section 5 of that organization's publication "Petroleum Products, Lubricants, and Fossil Fuels" and supplements to the publication or revisions of the publication as may be designated by ASTM, except as modified or rejected by this article 20 or any rule adopted pursuant to this article 20. If gasoline is blended with ethanol, the ASTM D 4814 specifications apply to the base gasoline prior to blending. Blends of gasoline and ethanol must not exceed the ASTM D 4814 vapor pressure standard; except that, if the ethanol is blended at nine percent or higher but not exceeding ten percent, the blend may exceed the ASTM D 4814 vapor pressure standard by no more than 1.0 PSI. Class I products shall not be blended at a retail location with products commonly and commercially known as casinghead gasoline, absorption gasoline, condensation gasoline, drip gasoline, or natural gasoline.

(b) In order to ensure access to fuel products for communities in Colorado, the director of the division of oil and public safety may adopt a rule or issue policy guidance that provides exceptions to specific requirements established in an ASTM standard described in subsection (1)(a) of this section to address consumer protection, pricing, supply networks, or other factors not considered by ASTM when formulating the standard.

(2) to (4) Repealed.

(5) To further avoid the perpetration of fraud upon the users and purchasers of motor fuel offered for sale for highway vehicle use, the artificial coloring of such motor fuel is absolutely prohibited, except in motor fuel having a research octane rating of eighty-eight or better after coloring, as determined by the ASTM's research method.

(6) The sale of any product under any grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade shall not be permitted unless the automotive fuel rating or grade indicated in the grade name is consistent with the value and meets the applicable requirements of ASTM. The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

Source: L. 31: p. 590, § 5. CSA: C. 118, § 4. L. 41: p. 582, § 4. L. 43: p. 447, § 2. CRS 53: § 100-2-4. C.R.S. 1963: § 100-2-4. L. 67: p. 211, § 1. L. 86: (1) amended and (2) to (4) repealed, pp. 509, 510, §§ 1, 5, effective July 1. L. 93: (1) amended, p. 511, § 1, effective April 26. L. 2005: (1), (5), and (6) amended, p. 1343, § 4, effective August 8. L. 2007: (1) amended, p. 386, § 1, effective April 3. L. 2026: (1) amended, (SB 26-122), ch. 109, p. 443, § 1, effective August 12.

8-20-204.5. Motor fuel blends containing alcohol - purity.

No motor fuel blend containing alcohol derived from agricultural commodities and forest products shall be sold for retail use unless the alcohol in such blend has a purity of at least ninety-nine percent.

Source: L. 81: Entire section added, p. 459, § 1, effective May 18.

8-20-205. Specifications of kerosene. (Repealed)

Source: L. 31: p. 592, § 6. **CSA:** C. 118, § 5. **L. 41:** p. 583, § 5. **CRS 53:** § 100-2-5. **C.R.S. 1963:** § 100-2-5. **L. 2005:** Entire section repealed, p. 1344, § 5, effective August 8.

8-20-206. Shipper notify director.

(1) Any person who ships fuel products included in classes I and II into the state, or who ships such fuel products from any refinery or pipeline terminal within the state to another point within the state, shall notify the director of the division of oil and public safety of the shipment within twenty-four hours after the shipment has been billed for departure in the case of tank cars, or after the shipment has been loaded for departure in the case of barrels, trucks, or tank wagons. At the same time, such person shall forward to the director of the division of oil and public safety a true sample of the contents of the shipment weighing at least eight ounces, with the specifications thereof and the number and initial of the tank car, or if some other method of transportation is used, an adequate description of the means of conveyance or container, so as to enable identification of the shipment. Any person who diverts a shipment of such fuel products into the state of Colorado from outside the state shall give the same notice and forward the same type of sample to the director of the division of oil and public safety within twenty-four hours after the billing of the shipment is changed to a Colorado destination.

(2) If more than one car of fuel products included in classes I and II is shipped at the same time from the same source and refinery run, the director of the division of oil and public safety may accept one sample for all or any part of such shipment.

Source: L. 31: p. 593, § 7. **CSA:** C. 118, § 6. **L. 41:** p. 584, § 6. **L. 49:** p. 535, § 1. **CRS 53:** § 100-2-6. **C.R.S. 1963:** § 100-2-6. **L. 2001:** Entire section amended, p. 1115, § 6, effective June 5. **L. 2005:** Entire section amended, p. 1344, § 6, effective August 8.

8-20-206.5. Environmental response surcharge - liquefied petroleum gas and natural gas inspection fund - perfluoroalkyl and polyfluoroalkyl substances cash fund - hazardous materials infrastructure cash fund - fuels impact reduction grant program - definitions - repeal.

(1) (a) Every first purchaser of odorized liquefied petroleum gas, every manufacturer of fuel products who manufactures such products for sale within Colorado or who ships such products from any point outside of Colorado to a distributor within Colorado, and every distributor who ships such products from any point outside of Colorado to a point within Colorado shall pay to the executive director of the department of revenue, each calendar month, either twenty-five dollars per tank truckload of fuel products delivered during the previous calendar month for sale or use in Colorado or the fee for odorized liquefied petroleum gas and natural gas as specified in paragraph (d) of this subsection (1), whichever is applicable. Such payment shall be made on forms prescribed and furnished by the executive director. The provisions of this section shall not apply to fuel that is especially prepared and sold for use in aircraft or railroad equipment or locomotives.

(b) In the event the available fund balance in the petroleum storage tank fund is greater than twelve million dollars, no surcharge shall be imposed, but if the available fund balance in the fund is less than or equal to:

(I) Twelve million dollars, the fee imposed by paragraph (a) of this subsection (1) shall be fifty dollars per tank truckload;

(II) Six million dollars, the fee imposed shall be seventy-five dollars per tank truckload;

(III) Three million dollars, the fee imposed shall be one hundred dollars per tank truckload.

(c) Notwithstanding subsection (1)(b) of this section, on and after September 1, 2033, if the available fund balance in the petroleum storage tank fund is greater than eight million dollars, no surcharge shall be imposed, but if the available fund balance in the fund is less than or equal to eight million dollars, the fee imposed by subsection (1)(a) of this section is twenty-five dollars per tank truckload.

(d) Notwithstanding paragraph (b) of this subsection (1), the executive director of the department of revenue shall have the authority to determine and adjust a fee for odorized liquefied petroleum gas and natural gas, not to exceed ten dollars per tank truckload for liquefied petroleum gas and liquefied natural gas and per every eight thousand gallon equivalents for compressed natural gas.

(e) (I) There is hereby created the liquefied petroleum gas and natural gas inspection fund within the state treasury. Neither this section nor section 8-20.5-103 shall be construed to make

the liquefied petroleum gas and natural gas inspection fund an enterprise fund. Such fund shall consist of:

(A) Liquefied petroleum gas and natural gas inspection moneys collected pursuant to this article;

(B) Civil penalties collected as a result of court actions pursuant to section 8-20-104;

(C) Any moneys appropriated to the fund by the general assembly; and

(D) Any moneys granted to the department from a federal agency or trade association for administration of the department's liquefied petroleum gas and natural gas inspection program.

(II) The executive director of the department of revenue shall adjust the fees collected pursuant to this article so that the balance of unexpended and unencumbered moneys in the liquefied petroleum gas and natural gas inspection fund does not exceed the amount necessary to accumulate and maintain in the liquefied petroleum gas and natural gas inspection fund a reserve sufficient to defray administrative expenses of the division of oil and public safety for a period of two months.

(III) The moneys in the fund shall be subject to annual appropriation by the general assembly. Moneys in the fund shall only be used for costs related to:

(A) Initial and subsequent inspections of liquefied petroleum gas and natural gas installations;

(B) Proving, including calibrating and adjusting, liquefied petroleum gas and natural gas meters and dispensers;

(C) Abatement of fire and safety hazards at liquefied petroleum gas and natural gas installations;

(D) Investigation of reported liquefied petroleum gas and natural gas that requires state matching dollars;

(E) Any federal program pertaining to liquefied petroleum gas and natural gas that requires state matching dollars;

(F) Liquefied petroleum gas and natural gas product quality testing;

(G) Administrative costs, including costs for contract services; and

(H) Defraying the salaries and operating expenses incurred by the department of labor and employment in the administration of this article as it pertains to liquefied petroleum gas and natural gas installations, meters, and dispensers. Such moneys shall be appropriated for such purposes by the general assembly.

(IV) The moneys in the liquefied petroleum gas and natural gas inspection fund and all interest earned on the moneys in the fund shall remain in such fund and shall not be credited or transferred to the general fund or any other fund at the end of any fiscal year.

(1.5) Notwithstanding the amount specified for any fee or surcharge in subsection (1) of this section, the executive director by rule or as otherwise provided by law may reduce the amount of one or more of the fees or surcharges if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees or surcharges is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of one or more of the fees or surcharges as provided in section 24-75-402 (4), C.R.S.

(2) The fee or surcharge imposed by subsection (1) of this section shall be collected, administered, and enforced in the same manner as the fuel taxes imposed pursuant to the provisions of article 27 of title 39, C.R.S., and the same penalty and interest provisions shall apply.

(3) (a) Except as set forth in paragraph (b) of this subsection (3), it is the duty of every manufacturer or distributor as described in subsection (1) of this section to compute the amount of the surcharge payable on all tank truckloads sold by the manufacturer or distributor and separately state the surcharge due on statements issued with each purchase of fuel. In the event that the manufacturer or distributor sells such fuel to a retailer or consumer or consumes such fuel, the manufacturer or distributor shall pay to the department of revenue the surcharge imposed in subsection (1) of this section.

(b) For compressed natural gas, the fuel distributor who reports the gallons for purposes of paying the tax set forth in article 27 of title 39, C.R.S., shall pay the surcharge imposed in subsection (1) of this section to the department of revenue.

(4) For the purposes of this section:

(a) "Available fund balance" means the sum of the current year revenues and the previous fund balance minus the sum of the obligations approved by the petroleum storage tank committee pursuant to section 8-20.5-104 and the costs incurred by the division of oil and public safety for purposes of administering articles 20 and 20.5 of this title.

(b) "Fuel product" means gasoline, blended gasoline, gasoline sold for gasohol production, gasohol, diesel, biodiesel blends, natural gas, and special fuels, and special fuel mixes with alcohol.

(c) "Tank truckload" means eight thousand gallons or gallon equivalents.

(5) Repealed.

(6) (a) In addition to the payments collected pursuant to subsections (1)(a) and (8)(a) of this section, the executive director of the department of revenue shall also collect a fee to:

(I) Fund the perfluoroalkyl and polyfluoroalkyl substances cash fund;

(II) Support the department of transportation in functions related to freight movement and infrastructure in the state, including the functions of the office of freight mobility and safety in the transportation development division of the department of transportation created in section 43-1-117 (4), as well as infrastructure projects that enhance the safety of movement of commercial materials;

(III) Support the Colorado state patrol in regulating hazardous materials on highways in the state; and

(IV) Pay the costs to the department of revenue for administering the fee.

(b) On and after September 1, 2020, but before September 1, 2031, every manufacturer of fuel products that manufactures such products for sale within Colorado or that ships such products from any point outside of Colorado to a distributor within Colorado and every distributor that ships such products from any point outside of Colorado to a point within Colorado shall pay to the executive director of the department of revenue, each calendar month, twenty-five dollars per tank truckload of fuel products delivered during the previous calendar month for sale or use in Colorado. This section does not apply to fuel that is used in aviation or to odorized liquefied petroleum gas and natural gas.

(c) and (d) Repealed.

(d.5) Beginning October 1, 2023, and every October 1 thereafter through October 1, 2031, the executive director of the department of revenue shall transmit any fee collected in accordance with this subsection (6) to the state treasurer, who shall credit:

(I) First, the costs to the department of revenue for administering the fee and the costs to the department of revenue for administering the tax credit created in section 39-30-104 (7);

(II) Second, two million dollars to the department of public safety for use by the Colorado state patrol to support the regulation of and response to hazardous materials on highways in the state, to make employer contributions to a multiple employer health trust in order to participate in the voluntary firefighter cancer benefits program pursuant to part 4 of article 5 of title 29, and as well as to enforce commercial and hazardous materials critical corridors designated by the chief of the Colorado state patrol; and

(III) Third, of the amount remaining:

(A) Seventy percent to the perfluoroalkyl and polyfluoroalkyl substances cash fund; and

(B) Thirty percent to the department of transportation to support functions related to the transportation of hazardous materials and the safe and efficient movement of freight, as well as to support infrastructure projects that enhance the safety of the movement of freight and hazardous materials such as the installation of foam suppression systems in the Eisenhower-Johnson tunnels, the mitigation of hazards in Glenwood Canyon, and other uses necessary to secure the safe transport of fuels through the I-70 mountain corridor.

(e) (I) Before October 1, 2023, notwithstanding subsection (6)(b) of this section, if the available fund balance in the perfluoroalkyl and polyfluoroalkyl substances cash fund is greater than eight million dollars, the executive director of the department of revenue shall not collect the fee described in subsection (6)(b) of this section, but if the available balance in the fund is less than eight million dollars within a fiscal year, the executive director of the department of revenue shall impose a fee in accordance with subsection (6)(b) of this section.

(II) On or after October 1, 2023, notwithstanding subsection (6)(b) of this section, if the available fund balance in the perfluoroalkyl and polyfluoroalkyl substances cash fund is greater than nine million dollars, the executive director of the department of revenue shall not collect the fee described in subsection (6)(b) of this section, but if the available balance in the fund is less than nine million dollars within a fiscal year, the executive director of the department of revenue shall impose a fee in accordance with subsection (6)(b) of this section.

(f) As used in this subsection (6) and subsection (8) of this section, "fuel products" means all gasoline; diesel; biodiesel; biodiesel blends; kerosene; and all alcohol blended fuels that are produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning, or for any other similar usage. "Fuel products" does not include fuel that is used in aviation or odorized liquefied petroleum gas and natural gas.

(7) (a) There is hereby created in the state treasury the perfluoroalkyl and polyfluoroalkyl substances cash fund, referred to in this subsection (7) as the "fund". The fund consists of money credited to the fund pursuant to subsection (6) of this section and any other money that the general assembly may appropriate or transfer to the fund.

(b) The money in the fund shall not be deposited in or transferred to the general fund or any other fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. Any unexpended and unencumbered money in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(c) Money in the fund is continuously appropriated for costs related to:

(I) Administering the perfluoroalkyl and polyfluoroalkyl substances grant program and awarding grants in accordance with section 25-5-1310;

(II) Administering the perfluoroalkyl and polyfluoroalkyl substances take-back program and purchasing and disposing of eligible materials under the take-back program in accordance with section 25-5-1311; and

(III) Providing technical assistance in locating and studying perfluoroalkyl and polyfluoroalkyl substances to communities, stakeholders, and regulatory boards or commissions for the following purposes:

(A) Developing guidance and recommendations regarding human health-based standards for perfluoroalkyl and polyfluoroalkyl substances in water or other media; and

(B) Identifying safe disposal methods of materials containing perfluoroalkyl and polyfluoroalkyl substances.

(d) (I) Notwithstanding subsection (7)(c) of this section, the state treasurer shall transfer the following amounts from the fund on the following dates:

(A) On July 1, 2025, three million five hundred eighteen thousand five hundred sixty-four dollars to the clean water cash fund created in section 25-8-210;

(B) On July 1, 2026, three million two thousand four hundred thirty-five dollars to the clean water cash fund created in section 25-8-210; and

(C) On July 1, 2026, five hundred sixteen thousand one hundred twenty-nine dollars to the drinking water cash fund created in section 25-1.5-209 (2).

(II) This subsection (7)(d) is repealed, effective July 1, 2028.

(8) (a) In addition to the payments collected under subsections (1)(a) and (6) of this section, beginning September 1, 2023, the fuels impact enterprise created in section 43-4-1503 shall impose a fuels impact reduction fee, the executive director of the department of revenue shall collect the fee on behalf of the fuels impact enterprise, and the state treasurer shall credit an amount of the fee revenue to the department of revenue to cover the costs of collecting the fee.

(b) (I) On and after September 1, 2023, every manufacturer of fuel products who manufactures such products for sale within Colorado or who ships such products from any point outside of Colorado to a distributor within Colorado and every distributor who ships such products from any point outside of Colorado to a point within Colorado shall pay to the executive director of the department of revenue six thousand one hundred twenty-five millionths of a dollar per gallon of fuel products delivered during the previous calendar month for sale or use in Colorado or a lesser amount determined by the fuels impact enterprise. The distributor shall pay this fee on a per gallon basis and at the same time and on the same form as the fees collected pursuant to subsections (1) and (6) of this section.

(II) As used in this subsection (8)(b), "distributor" means the person that remits the applicable state fee imposed pursuant to subsection (1) or (6) of this section.

(c) On and after September 1, 2023, the executive director of the department of revenue shall transmit any fuels impact reduction fee revenue that it collects on behalf of the fuels impact enterprise pursuant to this subsection (8) to the state treasurer, who shall credit:

(I) The total amount of fuels impact reduction fee revenue collected by the department of revenue, minus the costs to the department of revenue for administering the fee, to the fuels impact enterprise cash fund created in section 43-4-1504; and

(II) The costs to the department of revenue for administering the fee to the department of revenue.

Source: **L. 89:** Entire section added, p. 405, § 4, effective July 1. **L. 92:** (1)(b) and (5) amended, p. 1820, § 2, effective June 3. **L. 95:** (1)(b) amended, p. 419, § 4, effective July 1. **L. 96:** (1)(b) amended and (1)(c) added, p. 709, § 1, effective May 15. **L. 97:** (5) repealed, p. 138, § 2, effective March 28. **L. 98:** (1.5) added, p. 1324, § 22, effective June 1. **L. 2000:** (1)(b)(III) and (1)(c) amended, p. 1384, § 3, effective May 30. **L. 2003:** (1)(a) amended and (1)(d) and (1)(e) added, p. 1822, § 6, effective May 21; (1)(a), IP(1)(b), (1)(c), and (4) amended, p. 2664, § 1, effective June 5. **L. 2005:** (1)(b), (1)(c), and IP(1)(e)(I) amended, p. 1328, § 5, effective July 1; (4)(b) amended, p. 1345, § 7, effective August 8. **L. 2010:** (1)(a), (1)(c), and (2) amended, (HB 10-1185), ch. 82, p. 275, § 1, effective August 11. **L. 2013:** (1)(a), (1)(d), (1)(e), (3), and (4)(b) amended and (4)(c) added, (HB 13-1110), ch. 225, p. 1056, § 4, effective January 1, 2014. **L. 2016:** (1)(c) amended, (HB 16-1044), ch. 1, p. 1, § 1, effective August 10. **L. 2020:** (6) and (7) added, (SB 20-218), ch. 141, p. 612, § 1, effective June 29. **L. 2021:** (6)(a)(II) amended, (SB 21-260), ch. 250, p. 1366, § 2, effective June 17. **L. 2023:** (1)(c), IP(6)(a), (6)(b), IP(6)(d), (6)(e), and (6)(f) amended and (6)(d.5) and (8) added, (SB 23-280), ch. 404, p. 2417, § 3, effective August 7. **L. 2024:** IP(1)(b), (1)(c), (6)(b), IP(6)(d.5), and (8)(b)(II) amended and (6)(c) and (6)(d) repealed, (SB 24-105), ch. 42, p. 150, § 1, effective August 7. **L. 2025:** (7)(d) added, (SB 25-305), ch. 429, p. 2479, § 9, effective June 4. **L. 2026:** (6)(a)(II) amended, (HB 26-1076), ch. 265, p. 1466, § 1, effective August 12.

Editor's note: Amendments to subsection (1)(a) by House Bill 03-1099 and Senate Bill 03-324 were harmonized.

Cross references: (1) For the petroleum storage tank fund, see § 8-20.5-103.

(2) For the legislative declaration contained in the 2003 act amending subsection (1)(a) and enacting subsections (1)(d) and (1)(e), see section 1 of chapter 279, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act amending subsections (1)(a), (1)(d), (1)(e), (3), and (4)(b) and adding subsection (4)(c), see section 1 of chapter 225, Session Laws of Colorado 2013.

(3) For the legislative declaration in SB 21-260, see section 1 of chapter 250, Session Laws of Colorado 2021.

ANNOTATION

Law reviews. For article, "PFAS Regulation in Colorado", see 54 Colo. Law. 30 (Nov. 2025).

8-20-207. Method of tests.

Tests made by the director of the division of oil and public safety shall be made in accordance with the most recent standard methods of tests of ASTM. The director of the division of oil and public safety is not required in every case to make a complete analysis to ascertain every form of impurities, such as sulphur and tar-like matter, but when, in the opinion of the director, a more complete analysis is necessary or advisable, the director may make a detailed chemical analysis to determine exactly the impurities or imperfections. The director in his or her discretion is authorized to make inspections of petroleum products loaded for shipment into this state, at points outside of this state.

Source: L. 31: p. 594, § 9. CSA: C. 118, § 7. L. 41: p. 584, § 7. CRS 53: § 100-2-7. C.R.S. 1963: § 100-2-7. L. 2001: Entire section amended, p. 1116, § 7, effective June 5. L. 2005: Entire section amended, p. 1345, § 8, effective August 8.

8-20-208. Director to keep record.

(1) The director of the division of oil and public safety shall keep a record of all inspections made, showing:

- (a) Time and place of each;
- (b) Number of packages inspected;

- (c) Number of gallons contained therein;
- (d) Record of rejections;
- (e) Record of fuel products destroyed.

(2) If any fuel products included in classes I and II have been rejected, such report shall show the date and place thereof and quantity rejected, together with the name of the person possessing it, together with a record from whom received. All such records shall be open for public inspection.

Source: L. 31: p. 595, § 11. CSA: C. 118, § 8. L. 41: p. 584, § 8. CRS 53: § 100-2-8. C.R.S. 1963: § 100-2-8. L. 2001: IP(1) amended, p. 1116, § 8, effective June 5. L. 2005: (2) amended, p. 1345, § 9, effective August 8.

8-20-209. Access to premises - records.

(1) Any duly authorized agent or employee of the division of oil and public safety shall have authority to enter in or upon the premises of any manufacturer, vendor, or dealer in fuel products during regular business hours and inspect any such product intended for sale or use.

(2) Every distributor shall keep a complete and accurate record of the number of gallons, as covered in classes I and II, sold by such distributor and of the number of gallons of fuel used by such distributor, the date of such sales and of such use, and, except in the case of retail sales through filling stations operated by such distributor, the names and addresses of the purchasers.

Source: L. 31: p. 595, § 12. CSA: C. 118, § 9. L. 41: p. 585, § 9. CRS 53: § 100-2-9. C.R.S. 1963: § 100-2-9. L. 2001: (1) amended, p. 1116, § 9, effective June 5. L. 2005: (2) amended, p. 1345, § 10, effective August 8.

8-20-210. Records of carriers - access.

Every agent or employee of any railroad company or other transportation company, having the custody of books or records showing the shipment or receipt of fuel products, shall permit the director of the division of oil and public safety or the director's agents and employees free access to such books and records to determine the amount of fuel products shipped and received. All clerks, bookkeepers, express agents or officials, railroad agents, employees of common carriers, or other persons shall render to the director of the division of oil and public safety or the

director's employees all the assistance in their power when so requested in tracing, finding, and inspecting such shipments.

Source: L. 31: p. 596, § 13. CSA: C. 118, § 10. L. 41: p. 585, § 10. CRS 53: § 100-2-10. C.R.S. 1963: § 100-2-10. L. 2001: Entire section amended, p. 1116, § 10, effective June 5.

8-20-211. Labeling visible containers.

All visible containers and all devices used for drawing class I product from underground or aboveground containers at filling stations, garages, or other places where such products are sold or offered for sale shall be stamped or labeled in a visible place with the letters and figures:

"State Inspected _____(Date)_____".

Source: L. 31: p. 596, § 14. CSA: C. 118, § 11. L. 41: p. 585, § 11. CRS 53: § 100-2-11. C.R.S. 1963: § 100-2-11. L. 2005: Entire section amended, p. 1345, § 11, effective August 8.

8-20-211.5. Labeling of containers.

Throughout the state of Colorado, all visible containers and all devices for drawing motor fuel blends containing class I fuel products and at least two percent by volume of alcohol from underground containers at filling stations, garages, or other places where such products are sold or offered for sale shall be stamped or labeled in a visible place with information indicating the presence of alcohol in the motor fuel blend. If the volume of ethanol exceeds ten percent, or if the volume of methanol exceeds two percent, the stamp or label shall state the exact percentage. Such information shall appear on the front of the pump in a position clear and conspicuous to the driver's position, in at least one-half inch block letters, with information that identifies the maximum percentage by volume to the nearest whole percent of ethanol or of methanol or methanol with cosolvents.

Source: L. 79: Entire section added, p. 1326, § 1, effective July 1. L. 86: Entire section amended, p. 509, § 2, effective July 1. L. 89: Entire section amended, p. 382, § 1, effective June 10. L. 2000: Entire section amended, p. 763, § 4, effective September 1. L. 2005: Entire section amended, p. 1346, § 12, effective August 8.

8-20-212. Loading lines to be cleaned.

Any loading or unloading line once used for one class of fuel products shall not be used for loading or unloading other classes of fuel products until the lines have been thoroughly cleaned and approved by the director of the division of oil and public safety.

Source: L. 41: p. 585, § 12. CSA: C. 118, § 12. CRS 53: § 100-2-12. C.R.S. 1963: § 100-2-12. L. 2001: Entire section amended, p. 1116, § 11, effective June 5.

8-20-213. Recycled or used motor oil - legislative declaration - definitions - sale.

(1) The general assembly hereby finds and declares that the used oil generated by this state each year is a valuable resource that can be reused as an environmentally acceptable re-refined product. The general assembly further finds that the disposal of automotive engine oil and other lubricants is very costly, creates environmental and health hazards, and depletes the state's and the nation's dwindling supply of petroleum. It is the intent of the general assembly to reduce the amount of used oil that is improperly disposed of and to increase the amount that is reused as a re-refined product.

(2) As used in this section, unless the context otherwise requires:

(a) "API service classification" means one of the two letter classification performance ratings for engine oils, including re-refined oils, as determined by the American petroleum institute.

(b) "Lubricant" means a lubricating oil as defined in paragraph (c) of this subsection (2) or any other substance or mixture of substances used to reduce the friction caused by automotive parts moving against each other.

(c) "Lubricating oil" means oil classified for use in an internal combustion engine, hydraulic system, gear box, differential gear mechanism, or wheel bearing.

(d) "Recycled oil" means oil that is prepared for automotive use by reclaiming and otherwise reprocessing used oil.

(e) "Re-refined oil" means used oil that has been refined using processing technology to remove the physical and chemical contaminants acquired through use and which, by itself or when blended with new lubricating oil or additives, meets applicable API service classifications and SAE viscosity grades.

(f) "SAE viscosity grade" means the measure of an oil's, including a re-refined oil's, resistance to flow at a given temperature, as determined by the society of automotive engineers.

(g) "Used oil" means refined crude or synthetic oil that as a result of use has become unsuitable for its original purpose due to loss of original properties or the presence of impurities and that may be recycled in an economical manner and made suitable for further use as an automotive lubricant.

(3) (a) It is unlawful for a person to package and sell a container of:

(I) Lubricant unless the container prominently displays the applicable API service classification, API certification mark, and SAE viscosity grade of the contents; or

(II) Lubricant made wholly or partly from used or recycled oil unless the container is plainly labeled as containing used or recycled oil.

(b) The label or advertising on a container of used or recycled oil shall accurately reflect the type of oil stored in such container.

(c) A person may represent a product made wholly or partly from re-refined oil to be equal to or better than a similar product made from virgin oil if the product for sale conforms with applicable API service classifications, API certification mark, and SAE viscosity grades.

(d) Notwithstanding section 8-20-104, a person found guilty of violating this subsection (3) shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars for the first offense. A person found guilty of a second or subsequent offense shall be enjoined from selling or distributing used oil for not less than one year and not more than five years.

Source: L. 41: p. 586, § 13. CSA: C. 118, § 13. CRS 53: § 100-2-13. C.R.S. 1963: § 100-2-13. L. 95: Entire section amended, p. 349, § 1, effective April 27. L. 2003: (3)(d) amended, p. 1824, § 7, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (3)(d), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-214. Inspectors - business forbidden.

No person employed by the director of the division of oil and public safety to make inspections under this part 2 shall engage directly or indirectly in the business of dealing in petroleum products.

Source: L. 31: p. 598, § 17. CSA: C. 118, § 14. L. 41: p. 586, § 14. CRS 53: § 100-2-14. C.R.S. 1963: § 100-2-14. L. 2001: Entire section amended, p. 1117, § 12, effective June 5.

8-20-215. Mislabeling.

No person shall mark, stencil, brand, or certify falsely any pump, receptacle, or container of fuel products, or change, alter, or deface the mark, brand, or a certificate on any such pump, receptacle, or container, or falsely represent the quality or grade of any fuel product.

Source: L. 31: p. 598, § 17. CSA: C. 118, § 14. L. 41: p. 586, § 14. CRS 53: § 100-2-15. C.R.S. 1963: § 100-2-15. L. 2005: Entire section amended, p. 1346, § 13, effective August 8.

8-20-216. Unlawful to deceive purchaser.

It is unlawful for any person, firm, or corporation to store, sell, expose for sale, or offer for sale any liquid fuels, lubricating oils, or other similar products, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, price, quality, and identity of the products so sold or offered for sale.

Source: L. 31: p. 598, § 18. CSA: C. 118, § 15. L. 41: p. 586, § 15. CRS 53: § 100-2-16. C.R.S. 1963: § 100-2-16. L. 86: Entire section amended, p. 510, § 3, effective July 1.

8-20-217. Sale of products not indicated.

It is unlawful for any person to store, keep, expose for sale, offer for sale, or sell from any tank or container, or from any pump or other distributing device or equipment, any fuel or other similar products than those indicated by the name, trade name, symbol, sign, or other distinguishing mark or device of such fuel or other products, or by the name and address of the manufacturer of such fuel product appearing upon the tank, container, pump, or other distributing equipment, from which the same are sold, offered for sale, or distributed.

Source: L. 31: p. 599, § 19. CSA: C. 118, § 16. L. 41: p. 586, § 16. L. 43: p. 448, § 3. CRS 53: § 100-2-17. C.R.S. 1963: § 100-2-17.

8-20-218. Calibration of transport, tank truck, or delivery trucks.

(1) The director of the division of oil and public safety shall calibrate transport, trailer, and delivery truck tanks to determine the legal capacity of each compartment, allowing for expansion outage to conform to DOT regulations, except in the case of delivery truck tanks where two percent outage will suffice. Each tank compartment shall have affixed and spot-welded by the owner or operator thereof a capacity marker, which shall be set by measuring with a steel rule from the bottom of a steel bar set across the fill opening to the bottom of the marker (floated). The compartment gallonage shall be marked or stenciled with paint in figures at least one inch in height on each compartment dome collar.

(2) All new or additional vehicular tanks purchased or leased after April 6, 1955, by any person for hauling class I, II, or III petroleum products within or into the state shall be calibrated by the director of the division of oil and public safety and a certificate of calibration shall be issued to the owner or operator thereof before such equipment is put in service. A copy of the certificate of calibration shall accompany the tank at all times.

(3) Whenever a certificate of calibration has been lost or mutilated, the director of the division of oil and public safety shall issue a duplicate of the original which shall serve the purpose of the original. The director of the division of oil and public safety may order, after proper inspection, a calibration or a recalibration of any transport, trailer, or delivery truck tank operating in the state, whether calibrated by the director previously or not, when inspection by the director or the director's deputy reveals that tank compartments or capacity markers have been altered intentionally or accidentally, and the owner or operator shall comply with such order within ten days. If the owner or operator of a delivery truck tank has available calibrating equipment acceptable to the director of the division of oil and public safety, the tanks shall be calibrated in the presence of the director or the director's deputy, at or near the place of business of the owner or operator, and the director shall issue a certificate of calibration for said tank.

Source: L. 31: p. 599, § 19. CSA: C. 118, § 16. L. 41: p. 586, § 16. L. 43: p. 448, § 3. CRS 53: § 100-2-18. L. 55: p. 644, § 1. C.R.S. 1963: § 100-2-18. L. 2001: Entire section amended, p. 1117, § 13, effective June 5. L. 2005: (1) and (2) amended, p. 1346, § 14, effective August 8.

8-20-219. Equipment - disguise unlawful.

It is unlawful for any person, firm, or corporation, to disguise or camouflage his equipment, by imitating the design, symbol, or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils, and similar products are generally marketed.

Source: L. 31: p. 599, § 20. CSA: C. 118, § 17. L. 41: p. 587, § 17. CRS 53: § 100-2-19. C.R.S. 1963: § 100-2-19.

8-20-220. Trade names - unlawful use.

It is unlawful for any person, firm, or corporation, to expose for sale, offer for sale, or sell, under any trademark or trade name in general use, any liquid fuels, lubricating oils, or other like products, except those manufactured or distributed by the manufacturer or distributor marketing liquid fuels, lubricating oils, or other like products, under such trademark or trade names, or to substitute, mix, or adulterate the liquid fuels, lubricating oils, or other similar products sold, offered for sale, or distributed under such trademark or trade name.

Source: L. 31: p. 599, § 21. CSA: C. 118, § 18. L. 41: p. 587, § 18. CRS 53: § 100-2-20. C.R.S. 1963: § 100-2-20.

Cross references: For trademarks and trade names, see articles 70 and 71 of title 7.

ANNOTATION

The intent of this section is to prevent deception of the public by making certain that a retailer of gasoline fuels who offers for sale a trade-named product has not in any manner diluted or adulterated it and that the trade-named article is exactly what it is held out to be, nothing more, nothing less. *Houston v. Symington Wayne Corp.*, 149 Colo. 332, 369 P.2d 424 (1962).

Therefore this section provides that no foreign liquid shall be substituted for, or

mixed with, a trade-named product. *Houston v. Symington Wayne Corp.*, 149 Colo. 332, 369 P.2d 424 (1962).

But this section does not preclude the mixing of trade-named regular and premium gasolines by a special type of fuel pump in accordance with the wishes of the customer. *Houston v. Symington Wayne Corp.*, 149 Colo. 332, 369 P.2d 424 (1962).

8-20-221. Assisting in violations.

It is unlawful for any person to aid or assist any other person in the violation of the provisions of this part 2, by depositing or delivering into any tank, receptacle, or other container, any liquid fuels, lubricating oils, or like products than those intended to be stored therein and distributed

therefrom, as indicated by the name of the manufacturer or distributor or the trade name or trademark of the product displayed on the container itself, or on the pump, or on any other distributing device in connection therewith.

Source: L. 31: p. 599, § 22. CSA: C. 118, § 19. L. 41: p. 587, § 19. CRS 53: § 100-2-21. C.R.S. 1963: § 100-2-21.

8-20-222. Improvers of products.

All materials, fluids, or substances offered for sale or exposed for sale, purporting to be substances for, or improvers of, fuel products to be used for power, heating, lubricating, or illuminating purposes, before being sold, exposed, or offered for sale, shall be submitted to the director of the division of oil and public safety for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the director in writing.

Source: L. 31: p. 600, § 23. CSA: C. 118, § 20. L. 41: p. 587, § 20. CRS 53: § 100-2-22. C.R.S. 1963: § 100-2-22. L. 73: p. 1067, § 3. L. 2001: Entire section amended, p. 1117, § 14, effective June 5. L. 2005: Entire section amended, p. 1346, § 15, effective August 8.

8-20-223. Containers - inspection.

It is the duty of the director of the division of oil and public safety and the director's deputies to inspect all containers or storage tanks from which products of petroleum to be used for illuminating or power purposes are retailed. When such containers or storage tanks are found to be placed in an unsafe position or to contain water or foreign matter, the director shall make a written order to have the same properly cleaned or removed, and upon failure of the owner to comply with said order within ten days after the date thereof, the director shall confiscate and cause the same to be destroyed or removed. All vendors of classes I, II, and III fuel products shall have fire extinguishers in their establishments.

Source: L. 31: p. 600, § 24. CSA: C. 118, § 21. L. 41: p. 587, § 21. CRS 53: § 100-2-23. C.R.S. 1963: § 100-2-23. L. 78: Entire section amended, p. 255, § 12, effective May 23. L. 2001: Entire section amended, p. 1118, § 15, effective June 5. L. 2005: Entire section amended, p. 1347, § 16, effective August 8.

8-20-223.5. Emission inspection.

(1) The director of the division of oil and public safety shall conduct the emission inspection of any underground storage tank which is required to have installed pollution control equipment. Such inspection shall only be conducted in the ozone nonattainment area as defined pursuant to the authority contained in section 25-7-107, C.R.S. Such inspection shall be for the purpose of verifying the installation of such pollution control equipment and for the purpose of assuring its proper use.

(2) The director of the division of oil and public safety shall contract with the department of public health and environment for the purpose of submitting inspection reports, determining the frequency of certain inspections, assisting in the enforcement of the "Colorado Air Quality Control Act" as it pertains to underground storage tank pollution control equipment violations, and transmitting the payment for the costs of administering the program aspects in the department of public health and environment.

(3) The fees paid pursuant to this subsection (3) shall be no more than necessary to offset the direct cost of the inspection conducted pursuant to subsections (1) and (2) of this section, but in no event more than twelve dollars.

Source: **L. 89:** Entire section added, p. 1167, § 3, effective May 26. **L. 94:** (2) amended, p. 2721, § 312, effective July 1. **L. 2001:** (1) and (2) amended, p. 1118, § 16, effective June 5.

Editor's note: The "Colorado Air Quality Control Act" was changed to the "Colorado Air Pollution Prevention and Control Act" and is located in article 7 of title 25. (See L. 92, p. 1165.)

8-20-224. Empty containers - removal.

It is the duty of the director of the division of oil and public safety or the director's deputies to notify the owner or person having in his or her possession empty oil barrels and other containers which are stored or placed in a position dangerous to property to remove the same to a place of safety.

Source: **L. 31:** p. 600, § 25. **CSA:** C. 118, § 22. **L. 41:** p. 588, § 22. **CRS 53:** § 100-2-24. **C.R.S. 1963:** § 100-2-24. **L. 2001:** Entire section amended, p. 1118, § 17, effective June 5.

8-20-225. Measuring device - sealing - approval of prover and procedure.

(1) No person, or agent or employee of any person, shall use any meter or mechanical device for the measurement of oil, gasoline, or liquid fuels unless the same has been proved in a manner acceptable to the director of the division of oil and public safety and sealed as correct by the director or one of the director's deputies. The director and the director's deputies are further authorized, if any such meter or mechanical device fails to comply with any of the provisions of this part 2, to seal the meter or mechanical device in a manner that prohibits its use until such meter or mechanical device complies with all of the provisions of this part 2, at which time the seal shall be removed by the director or the director's deputies.

(2) The specifications, tolerances, and other technical requirements published in the NIST handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", NIST handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality", and supplements thereto or revisions thereof, shall apply to the provisions of this article, except as modified or rejected by this article or any rule promulgated pursuant to this article.

Source: L. 31: p. 601, § 26. CSA: C. 118, § 23. L. 41: p. 588, § 23. CRS 53: § 100-2-25. C.R.S. 1963: § 100-2-25. L. 67: p. 150, § 1. L. 73: p. 1067, § 4. L. 86: Entire section amended, p. 510, § 4, effective July 1. L. 2001: (1) amended, p. 1118, § 18, effective June 5. L. 2003: (1) amended, p. 1824, § 8, effective May 21. L. 2005: (2) amended, p. 1347, § 17, effective August 8.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-226. False labels unlawful.

No label upon, or invoice for, any lubricating oil or grease shall contain any untrue or misleading statement, and any person, agent, or employee of any person who substitutes any oil or grease for any other brand, without notice, shall be subject to the penalties prescribed in section 8-20-104.

Source: L. 31: p. 605, § 36. **CSA:** C. 118, § 24. **L. 41:** p. 588, § 24. **CRS 53:** § 100-2-26. **C.R.S. 1963:** § 100-2-26. **L. 2003:** Entire section amended, p. 1825, § 9, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-227. Tests used.

Where no tests are specified in this part 2, the most recent tests prescribed, accepted, and considered as standards by ASTM or NIST shall be used.

Source: L. 31: p. 605, § 37. **CSA:** C. 118, § 25. **L. 41:** p. 588, § 25. **CRS 53:** § 100-2-27. **C.R.S. 1963:** § 100-2-27. **L. 2005:** Entire section amended, p. 1347, § 18, effective August 8.

8-20-228. Hazardous, dangerous conditions - duty of director.

(1) It is the duty of the director of the division of oil and public safety, whenever the director has reasonable and probable grounds to believe that a hazardous or dangerous condition exists due to deterioration of fuel products storage and piping facilities which are endangering human and environmental life to determine the reason for the condition. The director may order the person responsible for the hazardous or dangerous condition to take corrective measures within a reasonable period of time to alleviate or eliminate the condition, and if the measures are not taken within such time, the director may act to alleviate or eliminate the same.

(2) If any person fails or refuses to comply with any such order of the director of the division of oil and public safety, the director, in the name of the people of the state of Colorado and through the attorney general, may apply to any district court having jurisdiction for a mandatory injunction to compel compliance with such order to alleviate or eliminate such hazardous or dangerous condition.

(3) The provisions of this part 2 shall not extend to nor be applicable to cities which are organized under article XX of the state constitution. If any such city desires to become subject to this part 2, the same may be accomplished by a resolution of the legislative body of such city adopted in the usual manner.

Source: L. 67: p. 144, § 1. C.R.S. 1963: § 100-2-29. L. 73: p. 1067, § 5. L. 2001: (1) and (2) amended, p. 1119, § 19, effective June 5.

8-20-229. Penalty. (Repealed)

Source: L. 31: p. 605, § 38, CSA: C. 118, § 26. L. 41: p. 588, § 26. CRS 53: § 100-2-28. C.R.S. 1963: § 100-2-28. L. 2003: Entire section repealed, p. 1825, § 10, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-230. Submittal of plans.

(1) Plans for all installations utilizing liquid fuel products, except for those liquid fuel products which are defined as regulated substances and regulated pursuant to article 20.5 of this title, in storage containers of an aggregate of over fifteen hundred gallons water capacity, including gasoline stations, garages, stores, and all other places where said products are dispensed, shall be submitted to the director of the division of oil and public safety for approval before construction begins.

(2) Plans for the preceding installations shall include:

(a) Provisions for extended protection against underground leaks due to corrosion, erosion, electrolysis, galvanic action, soil shifting, soil compaction, and high groundwater tables;

(b) Provisions for a containment of liquid fuels in the event of damage to fuel dispensers and attendant piping;

(c) Provisions for safety of human and environmental life.

Source: L. 73: p. 1068, § 6. C.R.S. 1963: § 100-2-30. L. 89: (1) amended, p. 405, § 3, effective July 1. L. 95: (1) amended, p. 419, § 5, effective July 1. L. 2001: (1) amended, p. 1119, § 20, effective June 5.

8-20-231. Minimum standards - publications.

(1) (a) The design, construction, location, installation, and operation of liquid fuel systems, fuel products, and equipment and the handling of liquid fuels and fuel products must conform to the minimum standards as prescribed by the applicable sections of the current edition of the national fire code published by the National Fire Protection Association, as revised by the Association from time to time.

(b) The minimum standards as prescribed must also apply to marine and pipeline terminals, natural gasoline plants, refineries, tank farms, underground storage facilities, aboveground storage facilities, and chemical plants utilizing liquid fuels; except that the gallon limitations in such minimum standards do not apply to:

- (I) Aboveground storage facilities associated with mining;
- (II) Oil and gas production facilities;
- (III) Asphalt or concrete production;
- (IV) Construction projects; or
- (V) Activities related to aboveground storage facilities associated with mining, oil and gas production facilities, asphalt or concrete production, or construction projects.

(2) The director of the division of oil and public safety shall maintain copies of the codes in his or her office at all times for public examination.

Source: L. 73: p. 1068, § 6. C.R.S. 1963: § 100-2-31. L. 90: Entire section amended, p. 467, § 2, effective May 24. L. 2001: Entire section amended, p. 1119, § 21, effective June 5. L. 2005: Entire section amended, p. 1347, § 19, effective August 8. L. 2016: Entire section amended, (HB 16-1053), ch. 4, p. 8, § 3, effective March 9.

8-20-232. Method of sales.

Petroleum products in liquid form shall be sold only by metered liquid measure or by weight.

Source: L. 73: p. 1068, § 6. C.R.S. 1963: § 100-2-32.

8-20-232.5. Method of sales of motor fuels - gallon equivalents - conversion factors.

(1) In addition to any other allowed unit of measurement, motor fuels may be sold by gallon equivalents pursuant to the requirements of this section.

(2) (a) Any dispenser used for the sale of motor fuel in gallon equivalents shall display gallon equivalents as the primary display information provided. Such dispenser shall indicate the number of gallon equivalents and fractions of gallon equivalents sold, the total sales price of the motor fuel dispensed, and the sales price per gallon equivalent of motor fuel sold. Information concerning the sale of motor fuels by gallon equivalents may be provided at the point of sale in literature, signs, or other advertisements. Street sign advertisements regarding the sale of motor fuels by gallon equivalents may abbreviate the term "gallon gasoline equivalent" as "gallon G.E." and the term "gallon diesel equivalent" as "gallon D.E.".

(b) In addition to the information required by paragraph (a) of this subsection (2), the face of a dispenser that is used for the sale of motor fuel in gallon equivalents shall prominently display the conversion factor that is being used by the seller to determine the number of gallon equivalents sold based upon the type and amount of actual measured units of motor fuel that is dispensed. The information displayed on such a dispenser shall include, but is not limited to, the following statements concerning the conversion factor:

(I) "One gallon diesel equivalent of (type of motor fuel) is equivalent to (amount of actual units of measurement) of (type of motor fuel)."

(II) "One gallon diesel equivalent of (type of motor fuel) contains an average lower heating value of 128,000 BTUs of energy, but in no case contains a lower heating value of less than 124,000 BTUs of energy."

(III) "One gallon gasoline equivalent of (type of motor fuel) is equivalent to (amount of actual units of measurement) of (type of motor fuel)."

(IV) "One gallon gasoline equivalent of (type of motor fuel) contains an average lower heating value of 114,000 BTUs of energy, but in no case contains a lower heating value of less than 110,000 BTUs of energy."

(3) Any seller using gallon equivalents for motor fuel sales shall calculate the conversion factor used by the seller to convert the actual units by which a motor fuel is measured at the dispenser to gallon equivalent units based on the inferred energy content of such motor fuel as measured by one of the following methods:

(a) For conversions to gallon diesel equivalents:

(I) If the motor fuel is actually measured at the dispenser as a volume, the gallon diesel equivalent measurement shall be calculated by determining the number of measured volumetric units required to provide an average lower heating value of one hundred twenty-eight thousand

BTUs (British thermal units), but in no case a lower heating value of less than one hundred twenty-four thousand BTUs.

(II) If the motor fuel is actually measured at the dispenser as a mass, the gallon diesel equivalent measurement shall be calculated by determining the number of measured mass units required to provide an average lower heating value of one hundred twenty-eight thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred twenty-four thousand BTUs.

(b) For conversions to gallon gasoline equivalents:

(I) If the motor fuel is actually measured at the dispenser as a volume, the gallon gasoline equivalent measurement shall be calculated by determining the number of measured volumetric units required to provide an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred ten thousand BTUs.

(II) If the motor fuel is actually measured at the dispenser as a mass, the gallon gasoline equivalent measurement shall be calculated by determining the number of measured mass units required to provide an average lower heating value of one hundred fourteen thousand BTUs (British thermal units), but in no case a lower heating value of less than one hundred ten thousand BTUs.

(4) The actual unit of measurement for a motor fuel sold in terms of gallon equivalents shall be calibrated by the seller with appropriate precision to ensure conformance with any required dispensing accuracies.

(5) Repealed.

Source: **L. 93:** Entire section added, p. 270, § 3, effective July 1. **L. 97:** (5) repealed, p. 138, § 3, effective March 28.

Cross references: For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 79, Session Laws of Colorado 1993.

8-20-233. Declaration on invoice.

(1) The sale of petroleum products shall include on the sales statement a definite, plain, and conspicuous declaration of:

(a) The quantity of goods sold;

(b) The weight or basis for measurement of either gross volume or volume adjusted to standard temperature of sixty degrees Fahrenheit.

Source: L. 73: p. 1068, § 6. C.R.S. 1963: § 100-2-33.

8-20-234. Temperature compensator permanent.

Whenever a temperature compensating meter is used to determine the amount of liquid fuels or liquefied petroleum gas offered for sale in the liquid state, such compensating meter shall be installed permanently on all meters within a geographical location owned by a user in Colorado and used exclusively for at least a period of one year and the temperature compensating devices shall not be disconnected, deactivated, or removed at any time except for repairs or for tests by the director of the division of oil and public safety. If a temperature compensating device is disconnected, deactivated, or removed for reasons other than repair, it shall not be reactivated for a period of one year from the date of removal. Notification of such removal or installation shall be in accordance with the provisions of section 8-20-408 (2).

Source: L. 73: p. 1068, § 6. C.R.S. 1963: § 100-2-34. L. 2001: Entire section amended, p. 1120, § 22, effective June 5.

8-20-235. Measuring gasoline and special fuel for sale to distributors.

Notwithstanding any other provision of this part 2, the method of determining gallonage of gasoline or special fuel sold to distributors, as defined in section 39-27-101 (7), C.R.S., shall be on a gross or net gallons basis at the option of the distributor. Such election shall be for a twelve-month period.

Source: L. 81: Entire section added, p. 1892, § 1, effective May 18. L. 98: Entire section amended, p. 1040, § 12, effective July 1. L. 2003: Entire section amended, p. 1818, § 5, effective August 6.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 278, Session Laws of Colorado 2003.

PART 3

CONTAINERS OF GAS OR GASEOUS COMPOUNDS

8-20-301. Unlawful use of container.

No person, firm, or corporation, except the owner thereof or persons authorized in writing by the owner, shall sell or offer for sale, or deliver any gas or gaseous compound used for heating or cooking, which is shipped, consigned, or delivered in steel containers, or containers made of other metal, plastic, or other substance, if such container bears upon the surface thereof, in plainly legible characters the name, initials, or trademark of the owner. The term "gas or gaseous compound" as used in this part 3 includes any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes, normal butane and isobutane, and butylenes.

Source: L. 43: p. 598, § 1. **CSA:** C. 165, § 25. **CRS 53:** § 100-4-1. **C.R.S. 1963:** § 100-4-1.

8-20-302. Refill container unlawful.

No person, firm, or corporation, other than the owner or person authorized by the owner shall refill or use in any manner a container or receptacle which has imprinted thereon the name, initials, or trademark of the owner, for any gas or gaseous compound used for cooking or heating.

Source: L. 43: p. 598, § 2. **CSA:** C. 165, § 26. **CRS 53:** § 100-4-2. **C.R.S. 1963:** § 100-4-2.

8-20-303. Reuse of container unlawful.

No person, firm, or corporation to whom such gas or gaseous compound has been sold or delivered in such containers shall sell, loan, deliver, or permit to be delivered such containers to any person other than such owner, or persons authorized by such owner to receive the delivery of such containers.

Source: L. 43: p. 598, § 3. **CSA:** C. 165, § 27. **CRS 53:** § 100-4-3. **C.R.S. 1963:** § 100-4-3.

8-20-304. Applicable - when.

Sections 8-20-301 to 8-20-303 shall not apply to any gas or gaseous compound referred to in section 8-20-301, contained in such containers, unless the title to the containers is retained by the owner or his representative, and unless the gas or gaseous substance contained in the containers is sold and delivered upon the understanding and agreement that the container in which it was delivered shall be returned to the owner or its representative when the contents have been used up by the purchaser.

Source: L. 43: p. 599, § 4. **CSA:** C. 165, § 28. **CRS 53:** § 100-4-4. **C.R.S. 1963:** § 100-4-4.

8-20-305. Penalty for violation.

Any fuel distributor who fills a fuel tank with liquified petroleum gas without the approval of the owner of the tank shall be liable in a civil action for treble damages in addition to costs and reasonable attorney fees.

Source: L. 43: p. 599, § 5. **CSA:** C. 165, § 29. **CRS 53:** § 100-4-5. **C.R.S. 1963:** § 100-4-5. **L. 2003:** Entire section amended, p. 1825, § 11, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

PART 4

LIQUEFIED PETROLEUM GAS - RULES

8-20-401. Definitions.

As used in this part 4, unless the context otherwise requires:

- (1) Repealed.
- (2) "GPA" means the gas processors association.
- (3) "GPA 2140" means the publication number 2140 produced by the gas processors association.
- (4) and (5) Repealed.

(6) "Liquefied petroleum gas", referred to as LPG, means and includes any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes, normal butane or isobutane, and butylenes.

(7) Repealed.

(8) The definitions as set forth in section 8-20-201, except section 8-20-201 (1), shall also apply to this part 4.

Source: L. 45: p. 496, § 1. CSA: C. 118, § 74. CRS 53: § 100-5-1. C.R.S. 1963: § 100-5-1. L. 73: p. 1069, § 7. L. 91: Entire section amended, p. 1346, § 2, effective April 19. L. 2003: (1), (4), (5), and (7) repealed, p. 1825, § 12, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing subsections (1), (4), (5), and (7), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-402. Rules of director.

The director of the division of oil and public safety shall make, promulgate, and enforce rules setting forth minimum general standards consistent with the provisions of section 8-20-405 covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting, dispensing, and utilizing liquefied petroleum gases, and specifying the odorization of said gases and the degree thereof and the odorizing agent to be used therein. These rules shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using these materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such rules shall be adopted by the director of the division of oil and public safety only after a public hearing thereon.

Source: L. 45: p. 496, § 2. CSA: C. 118, § 75. CRS 53: § 100-5-2. C.R.S. 1963: § 100-5-2. L. 2001: Entire section amended, p. 1120, § 23, effective June 5. L. 2003: Entire section amended, p. 1825, § 13, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-403. Penalty for violation. (Repealed)

Source: L. 45: p. 496, § 3. CSA: C. 118, § 76. CRS 53: § 100-5-3. C.R.S. 1963: § 100-5-3. L. 2001: Entire section amended, p. 1120, § 24, effective June 5. L. 2003: Entire section repealed, p. 1826, § 14, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-404. Conflicting rules forbidden.

No municipality or other political subdivision shall adopt or enforce any ordinance or regulation in conflict with the provisions of this part 4 or with the rules promulgated under section 8-20-402.

Source: L. 45: p. 497, § 4. CSA: C. 118, § 77. CRS 53: § 100-5-4. C.R.S. 1963: § 100-5-4. L. 2011: Entire section amended, (HB 11-1303), ch. 264, p. 1149, § 4, effective August 10.

8-20-405. Minimum standards.

(1) The design, construction, location, installation, and operation of liquefied petroleum gas systems and equipment, and the transportation and handling of liquefied petroleum gas, and the odorization of liquefied petroleum gas, the degree thereof, and the odorizing agent to be used therein, shall conform to the minimum standards therefor as prescribed by the applicable sections of the 2001 edition of the national fire code published by the national fire protection association, as revised by the association from time to time. The minimum standards as prescribed in this section shall also apply to marine and pipeline terminals, natural gasoline plants, refineries, tank farms, underground storage facilities such as salt and coal mines, aboveground storage facilities, and to chemical plants utilizing liquefied petroleum gas in the manufacture of their products. Copies of the pamphlets shall be kept and maintained in the office of the director of the division of oil and public safety at all times for examination by any interested person.

(2) Any changes to any standards promulgated by the national fire protection association after January 1, 2003, shall be reviewed by the director of the division of oil and public safety. After such review, the director may adopt such changes by rule.

Source: L. 63: p. 733, § 1. C.R.S. 1963: § 100-5-5. L. 67: p. 149, § 1. L. 73: p. 1069, § 8. L. 2001: Entire section amended, p. 1121, § 25, effective June 5. L. 2003: Entire section amended, p. 1826, § 15, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

ANNOTATION

This section and § 8-20-411 do not apply to private individuals. Where a home builder installed a 20-pound liquid petroleum tank in a crawl space to prevent water pipes from freezing during the

construction of a home, the court found that statutory provisions for handling liquid petroleum systems and equipment did not apply to the builder. *Trinity Universal Ins. Co. v. Streza*, 8 P.3d 613 (Colo. App. 2000).

8-20-406. Submittal of plans.

(1) Plans for all installations utilizing liquefied petroleum gas storage containers of over two thousand gallons water capacity shall be submitted to the director of the division of oil and public safety for approval before construction of such installations begins.

(2) Plans for any of the following shall be submitted to the director of the division of oil and public safety for approval before installation:

- (a) Service stations supplying liquefied petroleum gas for motor fuel;
- (b) Installations for filling of cylinders (bottles) or other portable containers meeting surface transportation board specifications;
- (c) Industrial bulk storage installations and all other bulk storage installations utilizing storage containers for liquefied petroleum gas of over two thousand gallons aggregate water capacity.

Source: L. 63: p. 733, § 2. C.R.S. 1963: § 100-5-6. L. 2001: (1) and IP(2) amended, p. 1121, § 26, effective June 5; (2)(b) amended, p. 1266, § 3, effective June 5.

8-20-407. Reports of accidents.

(1) Reports of accidents, fires, explosions, injuries, damage to property, or loss of life at installations using liquefied petroleum gas shall be reported to the director of the division of oil and public safety within twenty-four hours after their occurrence.

(2) Subsection (1) of this section includes accidents resulting from the improper use of equipment, appliances, and appurtenances to liquefied petroleum gas systems. The director of the division of oil and public safety may, at his or her discretion, investigate such occurrences and shall maintain a written record of his or her findings, which shall be available to public examination.

Source: L. 63: p. 734, § 3. C.R.S. 1963: § 100-5-7. L. 2001: Entire section amended, p. 1121, § 27, effective June 5.

ANNOTATION

Law reviews. For article, "Regulation of Spill of Hazardous Materials", see 12 Colo. Law. 277 (1983).

8-20-408. Meter inspection.

(1) No person, firm, partnership, or corporation shall use a liquefied petroleum gas liquid metering system for the sale of liquefied petroleum gas unless the system has been inspected, approved, and sealed by the director of the division of oil and public safety. Operation or use of a liquefied petroleum gas liquid metering system that has not been properly inspected and sealed constitutes a violation of sections 8-20-405 to 8-20-411, except under the circumstances outlined in subsection (2) of this section.

(2) The director of the division of oil and public safety shall be notified immediately when a new metering system is placed in service or when the seal on an operating metering system is broken for any purpose. Such systems may be operated on a temporary basis until reinspected and sealed by the director of the division of oil and public safety. Upon such notification, it is the

responsibility of the director of the division of oil and public safety to make a field inspection within a reasonable period of time.

Source: L. 63: p. 734, § 4. C.R.S. 1963: § 100-5-8. L. 2001: Entire section amended, p. 1121, § 28, effective June 5. L. 2003: (1) amended, p. 1826, § 16, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-409. Requirements for appliances.

(1) (Deleted by amendment, L. 2003, p. 1827, § 17, effective May 21, 2003.)

(2) Appliances and components shall not be used or installed unless certified by or listed in standards established by rules promulgated by the director of the division of oil and public safety pursuant to section 8-20-102.

Source: L. 63: p. 734, § 5. C.R.S. 1963: § 100-5-9. L. 2001: (2) amended, p. 1122, § 29, effective June 5. L. 2003: Entire section amended, p. 1827, § 17, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-410. Tank delivery truck, semitrailer, or truck trailer for bulk storage.

No tank delivery truck, semitrailer, or truck trailer shall be used as a bulk storage plant for liquefied petroleum gas unless the same has been inspected and approved by the director of the division of oil and public safety.

Source: L. 63: p. 735, § 6. C.R.S. 1963: § 100-5-10. L. 2001: Entire section amended, p. 1122, § 30, effective June 5.

8-20-411. Location and charging of containers.

(1) Permanently installed American petroleum institute-American society of mechanical engineers or United States department of transportation containers or surface transportation board containers provided with excess flow or back-flow check valves shall be located and filled in accordance with the applicable requirements of basic rules of the national fire code described in section 8-20-405. Private streets, roads, or rights-of-way shall not be classed as public streets or highways for the purpose of sections 8-20-405 to 8-20-411.

(2) DOT containers not provided with excess flow or back-flow check valves shall not be filled within the limits or boundaries of an area in which two or more mobile vehicles are situated. Such containers shall be filled in accordance with the applicable provisions of basic rules and of the national fire code, at a properly equipped container filling plant. Such plant shall be located at least fifty feet from the nearest trailer, important building, or line of property that may be built upon, and at least twenty-five feet from any public road, street, or highway. Such filling plant shall be enclosed by man-proof fencing or otherwise protected from tampering or physical damage. The area shall be kept locked when unattended.

(3) Container charging operations shall be performed only by qualified personnel.

Source: L. 63: p. 735, § 7. C.R.S. 1963: § 100-5-11. L. 2001: (1) and (2) amended, p. 1266, § 4, effective June 5. L. 2003: (1) amended, p. 1827, § 18, effective May 21. L. 2005: (2) amended, p. 1348, § 20, effective August 8.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 279, Session Laws of Colorado 2003.

ANNOTATION

This section and § 8-20-405 do not apply to private individuals. Where a home builder installed a 20-pound liquid petroleum tank in a crawl space to prevent water pipes from freezing during the

construction of a home, the court found that statutory provisions for handling liquid petroleum systems and equipment did not apply to the builder. *Trinity Universal Ins. Co. v. Streza*, 8 P.3d 613 (Colo. App. 2000).

8-20-412. Violations of sections 8-20-405 to 8-20-414. (Repealed)

Source: L. 63: p. 735, § 8. C.R.S. 1963: § 100-5-12. L. 74: Entire section amended, p. 417, § 59, effective April 11. L. 2003: Entire section repealed, p. 1827, § 19, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-413. Specifications of liquefied petroleum gas as defined in GPA 2140.

(1) Liquefied petroleum gas shall comply with the specifications of GPA 2140, "liquefied petroleum gas specification", as revised as of January 1, 2003, including revisions that refer to ASTM international test of specifications.

(2) (Deleted by amendment, L. 2003, p. 1827, § 20, effective May 21, 2003.)

(3) Any changes to any standards promulgated by the GPA after January 1, 2003, shall be reviewed by the director of the division of oil and public safety. After such review, the director may adopt any such changes by rule.

Source: L. 73: p. 1069, § 9. C.R.S. 1963: § 100-5-13. L. 91: Entire section amended, p. 1345, § 1, effective April 19. L. 2003: Entire section amended, p. 1827, § 20, effective May 21.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 279, Session Laws of Colorado 2003.

8-20-414. Restrictions on use of butane and butane-propane mixtures.

Liquefied petroleum gas containing more than five percent liquid volume butane or butylenes shall be designated as butane-propane mixtures and shall be sold for use only in those applications approved by the director of the division of oil and public safety and for which special use permits have been granted.

Source: L. 73: p. 1069, § 9. C.R.S. 1963: § 100-5-14. L. 2001: Entire section amended, p. 1122, § 31, effective June 5.

8-20-415. Liability limited.

(1) No legal action shall be commenced or maintained against any person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas if the alleged injury, damage, or loss was caused by:

(a) The alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance if the alteration, modification, or repair was done without the knowledge and consent of the liquefied petroleum gas seller, supplier, handler, or transporter; or

(b) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance in a manner or for a purpose other than that for which the equipment or appliance was intended and that could not reasonably have been expected.

(2) A person who follows the applicable procedures established by the standards of the national fire code pursuant to section 8-20-405 as adopted by the director of the division of oil and public safety and rules promulgated pursuant to section 8-20-402 shall not be deemed to be grossly negligent or willful and wanton.

Source: L. 2004: Entire section added, p. 616, § 1, effective August 4.

PART 5

UNDERGROUND STORAGE TANKS

8-20-501 to 8-20-513. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 5 was added in 1989. For amendments to this part 5 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning underground storage tanks, see part 2 of article 20.5 of this title 8.

PART 6

UNDERGROUND STORAGE TANK INSTALLERS

8-20-601 to 8-20-608. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 6 was added in 1989. For amendments to this part 6 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 7

ABOVEGROUND STORAGE TANKS

8-20-701 to 8-20-705. (Repealed)

Source: L. 95: Entire part repealed, p. 420, § 12, effective July 1.

Editor's note: This part 7 was added in 1990. For amendments to this part 7 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning aboveground storage tanks, see part 3 of article 20.5 of this title 8.

PART 8

COLORADO ANTIFREEZE LAW

Editor's note: This part 8 was added with relocations in 1994 containing relocated provisions of some sections formerly located in part 1 of article 10 of title 42. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

8-20-801. Short title.

This part 8 shall be known and may be cited as the "Colorado Antifreeze Law".

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-101 as it existed prior to 1994.

8-20-802. Definitions.

As used in this part 8, unless the context otherwise requires:

(1) "Antifreeze" means all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

(2) "Person" means individuals, partnerships, corporations, companies, and associations.

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-102 as it existed prior to 1994.

8-20-803. Annual inspection of sample - permit authorizing sale - reinspection.

(1) Before any antifreeze is sold, exposed for sale, or held with intent to sell within this state, a sample thereof must be inspected annually by the director of the division of oil and public safety at an inspection laboratory designated by the director of the division of oil and public safety. Upon application of the manufacturer, packer, seller, or distributor, and the payment of a

fee not to exceed twenty-five dollars for each sample of antifreeze submitted, the director of the division of oil and public safety shall inspect the antifreeze submitted as set forth in this subsection (1), but in no case shall an approved antifreeze be inspected more than one time for each antifreeze marketing year beginning May 1 and ending April 30, except as set forth in this section.

(2) If the antifreeze is not adulterated or misbranded, meets the standards of the director of the division of oil and public safety, and is not in violation of this part 8, the director of the division of oil and public safety shall give the applicant a written permit authorizing the sale by any person of such antifreeze in this state for the marketing year for which the inspection fee is paid. If the director of the division of oil and public safety at a later date finds that the product to be sold, exposed for sale, or held with intent to sell has been materially altered or adulterated, or that a change has been made in the name, brand, or trademark under which the antifreeze is sold, or that it violates the provisions of this part 8, the director of the division of oil and public safety shall notify the applicant and the permit shall be canceled.

(3) In the event a manufacturer, packer, seller, or distributor changes the composition, content, or formula of any antifreeze which the manufacturer, packer, seller, or distributor is marketing under a permit from the director of the division of oil and public safety, it is the duty of said manufacturer, packer, seller, or distributor to immediately notify the director of the division of oil and public safety and submit a sample for test in compliance with this section.

Source: L. 94: Entire part added with relocations, p. 2536, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1122, § 32, effective June 5.

Editor's note: This section is similar to former § 42-10-103 as it existed prior to 1994.

8-20-804. When deemed adulterated.

(1) An antifreeze shall be deemed to be adulterated:

(a) If it consists in whole or in part of any substances which will render it injurious to the cooling system of an internal combustion engine or will make the operation of any internal combustion engine dangerous to the user; or

(b) If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-104 as it existed prior to 1994.

8-20-805. When deemed misbranded.

(1) Antifreeze shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular; or

(b) If in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller, or distributor, and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-105 as it existed prior to 1994.

8-20-806. Director to enforce.

The director of the division of oil and public safety shall enforce the provisions of this part 8 by inspections, chemical analysis, or any other appropriate methods. All samples for inspection or analysis shall be taken from the stocks in the state or intended for sale in the state, or the director of the division of oil and public safety, through his or her agents, may call upon the manufacturer or distributor applying for an inspection of antifreeze to supply such samples thereof for analysis. The director of the division of oil and public safety, or his or her agents, shall have free access during business hours to all places of business, buildings, vehicles, cars, and vessels used in the manufacture, transportation, sale, or storage of any antifreeze, and may open any box, carton, parcel, or package containing or supposed to contain any antifreeze and may take samples for analysis.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1123, § 33, effective June 5.

Editor's note: This section is similar to former § 42-10-106 as it existed prior to 1994.

8-20-807. Rules.

The director of the division of oil and public safety has authority to promulgate such rules as are necessary to promptly and effectively enforce the provisions of this part 8.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1123, § 34, effective June 5.

Editor's note: This section is similar to former § 42-10-107 as it existed prior to 1994.

8-20-808. List of brands may be furnished.

The director of the division of oil and public safety may furnish, upon request, a list of the brands and trademarks of antifreeze inspected by the director during the marketing year that have been found to be in accord with this part 8.

Source: L. 94: Entire part added with relocations, p. 2537, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1123, § 35, effective June 5.

Editor's note: This section is similar to former § 42-10-108 as it existed prior to 1994.

8-20-809. False advertising prohibited.

No advertising literature relating to any antifreeze in this state shall contain any statement that the antifreeze advertised for sale has been approved by the director of the division of oil and public safety unless the said antifreeze has been inspected by the director of the division of oil and public safety and found to meet the standards of the division of oil and public safety and not to be in violation of this part 8, in which case such statement may be contained in any advertising literature where such brand or trademark of antifreeze is being advertised for sale.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 36, effective June 5.

Editor's note: This section is similar to former § 42-10-109 as it existed prior to 1994.

8-20-810. District attorney to bring actions.

Whenever the director of the division of oil and public safety discovers any antifreeze is being sold or has been sold in violation of this part 8, it is the director's duty to bring this violation to the attention of the district attorney in the director's respective district, or the attorney general in cases where the district attorney refuses to act, to enforce the provisions of this part 8 by appropriate action in courts of competent jurisdiction.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 37, effective June 5.

Editor's note: This section is similar to former § 42-10-110 as it existed prior to 1994.

8-20-811. Disposition of fees.

All fees provided for in this part 8 shall be collected by the department of revenue and remitted to the state treasurer to be credited to the general fund of the state.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-111 as it existed prior to 1994.

8-20-812. Penalty.

If any person violates the provisions of this part 8, or fails to comply with any of the provisions of this part 8, such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars for each offense.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-112 as it existed prior to 1994.

PART 9

BRAKE FLUID

Editor's note: This part 9 was added with relocations in 1994 containing relocated provisions of some sections formerly located in part 2 of article 10 of title 42. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

8-20-901. Sale of approved brake fluid.

It is unlawful for any person, partnership, corporation, or association to sell or offer for sale brake fluid for automotive use which has not been approved by the director of the division of oil and public safety.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 38, effective June 5.

Editor's note: This section is similar to former § 42-10-201 as it existed prior to 1994.

8-20-902. Brake fluid specifications - list of approved brands.

The director of the division of oil and public safety shall establish specifications or requirements for approved-type brake fluid; but the specifications or requirements shall not be lower in standard than the specifications and requirements of the society of automotive engineers, numbered J-70 b, approved May, 1963. The director shall compile and furnish upon request a list of brands and trademarks of brake fluid inspected by the director that have been so approved.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 39, effective June 5.

Editor's note: This section is similar to former § 42-10-202 as it existed prior to 1994.

8-20-903. District attorney to bring actions.

Whenever the director of the division of oil and public safety discovers that any person, partnership, corporation, or association has sold or is offering for sale any brake fluid that does not conform to the minimum specifications established, the director shall notify the seller to immediately discontinue the sale of such nonconforming brake fluid. If such seller continues to offer the same for sale, it is the duty of the director to bring such violation to the attention of the district attorney in such respective district to enforce the provisions of this part 9 by appropriate action or injunctive relief in courts of competent jurisdiction.

Source: L. 94: Entire part added with relocations, p. 2538, § 2, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1124, § 40, effective June 5.

Editor's note: This section is similar to former § 42-10-203 as it existed prior to 1994.

8-20-904. Penalty.

If any person, partnership, corporation, or association violates the provisions of this part 9, or fails to comply with any of the provisions of this part 9, such person, partnership, corporation, or association is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars for each offense.

Source: L. 94: Entire part added with relocations, p. 2539, § 2, effective January 1, 1995.

Editor's note: This section is similar to former § 42-10-204 as it existed prior to 1994.

PART 10

AMUSEMENT RIDES

8-20-1001. Definitions.

As used in this part 10, unless the context otherwise requires:

(1) "Amusement ride" means a ride or device, or a combination of rides or devices, as defined by rule of the division; except that "amusement ride" shall not include inflatable amusement rides.

(2) "Certificate of inspection" means documentation of an amusement ride inspection conducted by an inspector.

(3) "Director" means the director of the division or his or her designee.

(4) "Division" means the division of oil and public safety within the department of labor and employment.

(5) "Injury" means an injury that results in death or requires medical treatment administered by a physician or by registered professional personnel under the standing orders of a physician. For purposes of this subsection (5), "medical treatment" does not include first aid treatment or one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, or other minor injuries that do not ordinarily require medical care even though treatment is provided by a physician or by registered professional personnel.

(6) "Inspection" means a procedure conducted by an inspector to determine whether an amusement ride is being constructed, assembled, maintained, tested, operated, or inspected in accordance with the division's standards, the manufacturer's standards and criteria, or the insurer's standards, whichever is the most stringent, and that determines the current operational safety of the amusement ride.

(7) "Inspector" means a person certified to inspect amusement rides under criteria determined by rule of the division.

(8) "Operator" means an individual, corporation, or company or agent thereof who owns or controls, or has the duty to control, the operation of an amusement ride.

(9) "Registration" means the filing of a properly completed application with the division and approval of the application by the director.

Source: L. 2008: Entire part added, p. 1021, § 3, effective May 21.

8-20-1002. Duties of director - standards - certification of inspectors - fees - rules.

(1) The director shall promulgate rules for the registration, construction, repair, and maintenance of amusement rides and for the financial responsibility of operators. The rules shall require operators to submit a periodic certificate of inspection to the division for each amusement ride. The director shall establish minimum standards for the certification of inspectors and shall require each operator to submit the inspector's qualifications to the division with an annual registration application. The inspector for each amusement ride shall be an independent third-party inspector.

(2) The director shall establish annual registration fees by rule to cover the costs of the division's oversight of amusement rides. All fees collected by the division pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the public safety inspection fund created by section 8-1-151.

(3) The director may prohibit the operation of an amusement ride that does not meet the registration, construction, repair, inspection, and maintenance requirements established by the division pursuant to subsection (1) of this section.

Source: L. 2008: Entire part added, p. 1022, § 3, effective May 21.

8-20-1003. Notification to division.

(1) The operator of an amusement ride shall notify the division, within such times and in such manner as established by rule of the director, regarding:

- (a) Any injury caused by an equipment failure of an amusement ride;
- (b) The installation of any new amusement rides; and
- (c) The schedule for the location of the operation of amusement rides.

Source: L. 2008: Entire part added, p. 1022, § 3, effective May 21.

8-20-1004. Rules.

The director has the authority to promulgate rules as necessary for the implementation of this part 10.

Source: L. 2008: Entire part added, p. 1022, § 3, effective May 21.

8-20.5 ARTICLE 20.5

Petroleum Storage Tanks

PART 1 ADMINISTRATION		8-20.5-203.	Performance of duties by owner or operator.
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8-20.5-102.	Registration - fees.		
8-20.5-103.	Petroleum storage tank fund - petroleum cleanup and redevelopment fund - creation - rules - definition - repeal.	8-20.5-205.	More stringent requirements prohibited.
		8-20.5-206.	Financial responsibility for petroleum underground storage tanks - definition - rules.
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8-20.5-105.	Confidentiality.	8-20.5-207.	Financial responsibility for regulated substances other than petroleum.
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8-20.5-107.	Enforcement orders - civil penalties.	8-20.5-208.	Reporting of releases - investigation.
8-20.5-108.	Petroleum storage tank administration - transfer to department of labor and employment - legislative declaration.	8-20.5-209.	Regulated substances releases - corrective actions.
PART 2 UNDERGROUND STORAGE TANKS		PART 3 ABOVEGROUND STORAGE TANKS	
8-20.5-201.	Legislative declaration.	8-20.5-301.	Legislative declaration.
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		8-20.5-303.	Financial responsibility for aboveground storage tanks - rules.

8-20.5-304. Regulated substances releases
- corrective actions.

8-20.5-407. (Repealed)

PART 4
UNDERGROUND STORAGE TANKS
INSTALLERS

8-20.5-401 to

PART 1
ADMINISTRATION

8-20.5-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Abandoned tank" means an underground or aboveground petroleum storage tank that the current tank owner or operator or current property owner did not install, has never operated or leased to another for operation, and had no reason to know was present on the site at the time of site acquisition.

(2) (a) "Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, constructed of nonearthen materials, including but not limited to concrete, steel, or plastic, which provide structural support, used to contain or dispense fuel products and the volume of which, including the pipes connected thereto, is ninety percent or more above the surface of the ground.

(b) "Aboveground storage tank" does not include:

(I) A wastewater treatment tank system that is part of a wastewater treatment facility;

(II) Equipment or machinery that contains regulated substances for operational purposes;

(III) (A) Farm and residential tanks or tanks used for horticultural or floricultural operations.

(B) Nothing in sub-subparagraph (A) of this subparagraph (III), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(IV) Aboveground storage tanks located at natural gas pipeline facilities that are regulated under state or federal natural gas pipeline acts;

(V) Aboveground storage tanks associated with natural gas liquids separation, gathering, and production;

(VI) Aboveground storage tanks associated with crude oil production, storage, and gathering;

(VII) Aboveground storage tanks at transportation-related facilities regulated by the federal department of transportation;

(VIII) Aboveground storage tanks used to store heating oil for consumptive use on the premises where stored;

(IX) Aboveground storage tanks used to store flammable and combustible liquids at mining facilities and construction and earthmoving projects, including gravel pits, quarries, and borrow pits where, in the opinion of the director of the division of oil and public safety, tight control by the owner or contractor and isolation from other structures make it unnecessary to meet the requirements of this article;

(X) Any other aboveground tank excluded by regulation.

(2.5) "Alternative fuel" means a motor fuel that combines petroleum-based fuel products with renewable fuels.

(3) "Closure" means the abandonment of an underground storage tank in place or the removal and disposal of an underground storage tank.

(4) "Department" means the department of labor and employment, created in section 24-1-121, C.R.S.

(5) "Designee" means a qualified municipality, city, home rule city, city and county, county, fire protection district, or any other political subdivision of the state, including a county or district public health agency created pursuant to section 25-1-506, C.R.S., which county or district public health agency is acting under agreement or contract with the department for the implementation of the provisions of this article.

(5.5) "Fee lands" means land owned in fee simple within the exterior boundaries of the Southern Ute Indian reservations in Colorado. "Fee land" does not mean land owned by an Indian tribe or the federal government or held in trust by the federal government for the use or benefit of an Indian tribe or its members.

(6) "Fuel products" means all gasoline, aviation gasoline, diesel, aviation turbine fuel, jet fuel, fuel oil, biodiesel, biodiesel blends, kerosene, all alcohol blended fuels, gas or gaseous compounds, and other volatile, flammable, or combustible liquids, produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning or for any other similar usage.

(7) "Municipality" means any city or any town operating under general or special laws of the state of Colorado or any home rule city or town, the charter or ordinances of which contain no provisions inconsistent with the provisions of part 3 of this article.

(8) "Operator" means any person in control of, or having responsibility for, the operation of an underground or aboveground storage tank.

(9) "Orphan tank" means an underground storage tank which is:

(a) Owned or operated by an unidentified owner as defined in this article; or

(b) No longer in use and was not closed in accordance with the procedures required by this article and the property has changed ownership prior to December 22, 1988, and such property is no longer used to dispense fuels.

(10) (a) "Owner" means:

(I) In the case of an underground storage tank in use on or after November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;

(II) In the case of an underground storage tank in use before November 8, 1984, but no longer in use on or after November 8, 1984, any person who owned such tank immediately before the discontinuation of its use; or

(III) Any person who owns an aboveground storage tank.

(b) For purposes of corrective action for petroleum releases, the term "owner" does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in or lien on the tank or the property where the tank is located.

(11) "Person" means any individual, trust, firm, joint-stock company, corporation (including a government corporation), partnership, association, commission, municipality, state, county, city and county, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, or the government of the United States.

(12) "Property owner" means a person having a legal or equitable interest in real or personal property that is subject to this article.

(13) "Regulated substance" means:

(a) Any substance defined in section 101 (14) of the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended, but not including any

substance regulated as a hazardous waste under subtitle C of Title II of the federal "Resource Conservation and Recovery Act of 1976", as amended;

(b) Petroleum, including crude oil, and crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);

(c) Alternative fuel; or

(d) Renewable fuel.

(14) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from an underground storage tank into groundwater, surface water, or subsurface soils.

(14.5) "Renewable fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

(15) "Reportable quantities" means quantities of a released regulated substance which equal or exceed the reportable quantity under the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended, and petroleum products in quantities of twenty-five gallons or more.

(16) "Tank" means a stationary device designed to contain an accumulation of a regulated substance, constructed primarily of nonearthen materials which provide structural support including, but not limited to, wood, concrete, steel, or plastic.

(17) (a) "Underground storage tank" means any one or combination of tanks, including underground pipes connected thereto, except those identified in paragraph (b) of this subsection (17), that is used to contain an accumulation of regulated substances and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground.

(b) "Underground storage tank" does not include:

(I) Any farm or residential tank with a capacity of one thousand one hundred gallons or less used for storing motor fuel for noncommercial purposes;

(II) Any tank used for storing heating oil for consumptive use on the premises where stored;

(III) Any septic tank;

(IV) Any pipeline facility, including its gathering lines, regulated under the federal "Natural Gas Pipeline Safety Act of 1968", as amended, or the federal "Hazardous Liquid Pipeline Safety Act of 1979", as amended, or regulated under Colorado law if such facility is an intrastate facility;

- (V) Any surface impoundment, pit, pond, lagoon, or landfill;
 - (VI) Any storm-water or wastewater collection system;
 - (VII) Any flow-through process tank;
 - (VIII) Any liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
 - (IX) Any storage tank situated in an underground area, such as a basement, cellar, mine-working, drift, shaft, or tunnel area, if the tank is situated upon or above the surface of the floor;
 - (X) Any pipes connected to any tank described in subparagraphs (I) to (IX) of this paragraph (b); or
 - (XI) Any other underground tank excluded by regulation.
- (18) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, modification of the system piping, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product.

Source: **L. 95:** Entire article added, p. 389, § 1, effective July 1. **L. 96:** (1) and (2)(b) amended and (17)(b)(XI) added, pp. 710, 711, §§ 2, 3, effective May 15. **L. 2001:** (2)(b)(IX) amended, p. 1125, § 41, effective June 5. **L. 2005:** (5.5) added, p. 418, § 4, effective July 1; (2)(b)(III) amended, p. 347, § 2, effective August 8; (6) amended, p. 1348, § 21, effective August 8. **L. 2007:** (2.5) and (14.5) added and (13) amended, p. 1760, §§ 3, 4, effective June 1. **L. 2008:** (5) amended, p. 2051, § 4, effective July 1. **L. 2009:** (13)(a) amended, (SB 09-292), ch. 369, p. 1939, § 6, effective August 5.

Editor's note: This section is similar to §§ 8-20-501, 8-20-601, 8-20-702, and 25-18-102 as they existed prior to 1995.

Cross references: For the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq. For the federal "Resource Conservation and Recovery Act of 1976", see Pub.L. 94-580, codified at 42 U.S.C. § 6901 et seq. For the federal "Natural Gas Pipeline Safety Act of 1968", see Pub.L. 90-481. For the federal "Hazardous Liquid Pipeline Safety Act of 1979", see Pub.L. 96-129.

8-20.5-102. Registration - fees.

(1) Each owner or operator of an underground or aboveground storage tank shall register such tank with the director of the division of oil and public safety within thirty days after the first day on which the tank is actually used to contain a regulated substance or, in the case of an aboveground storage tank, on or before July 1, 1993, or, thereafter, within thirty days after the first day on which the tank is actually used to contain a regulated substance. Each owner or operator shall renew such registration annually on or before the calendar day and month of initial registration for each year in which the storage tank is in use. An underground storage tank is considered to be in use at all times, except when the tank has been either removed from the ground or permanently closed in accordance with the rules promulgated pursuant to section 8-20.5-202 (1.5) that relate to the closure of such tanks.

(2) To register or renew registration of an underground or aboveground storage tank, the owner or operator of the tank shall submit to the director of the division of oil and public safety a completed registration or renewal form and payment of the fee established in subsection (3) of this section. The director of the division of oil and public safety shall provide registration and renewal forms.

(3) The registration and renewal fee shall be thirty-five dollars for each tank for each year. The fees collected pursuant to this subsection (3) shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety shall collect delinquent registration and renewal fees and assess a penalty of up to twice the amount of such fees and reasonable costs associated with the collection of such fees.

Source: **L. 95:** Entire article added, p. 392, § 1, effective July 1. **L. 2001:** (1), (2), and (4) amended, p. 1125, § 42, effective June 5. **L. 2007:** (4) amended, p. 386, § 2, effective April 3; (1) amended, p. 981, § 3, effective July 1.

Editor's note: This section is similar to former § 8-20-506 as it existed prior to 1995.

8-20.5-103. Petroleum storage tank fund - petroleum cleanup and redevelopment fund - creation - rules - definition - repeal.

(1) There is hereby created in the state treasury the petroleum storage tank fund, which is an enterprise fund. The fund consists of the following:

(a) Registration and annual renewal fees collected from owners or operators of aboveground and underground storage tanks pursuant to section 8-20.5-102 (3);

(b) Repealed.

(c) Fees collected pursuant to section 8-20.5-102 (4);

(d) Surcharge funds collected pursuant to section 8-20-206.5;

(e) Moneys reimbursed to the department in payment for costs incurred in the investigation of a release and performance of corrective action pursuant to section 8-20.5-209;

(f) Any moneys appropriated to the fund by the general assembly;

(g) Any moneys granted to the department from a federal agency for administration of the underground storage tank program; and

(h) Moneys from bonds issued pursuant to subsection (8) of this section.

(2) (a) The moneys in the petroleum storage tank fund and all interest earned on moneys in the fund shall not be credited or transferred to the general fund at the end of the fiscal year.

(b) Repealed.

(3) The money in the petroleum storage tank fund is continuously appropriated to the division of oil and public safety; except that the expenditure of money for the purposes specified in subsections (3)(b), (3)(f), and (3)(g) of this section is subject to annual appropriation by the general assembly. The fund shall be used for:

(a) Petroleum corrective action purposes and third-party liability where the costs exceed the minimum financial responsibility requirements of the owner or operator provided for in section 8-20.5-206; except that moneys from the fund may not be used for initial abatement and corrective action regarding fuels that are especially prepared and sold for use in aircraft or railroad equipment or locomotives;

(b) Administrative costs, limited each year to the amount of the registration fee stated in section 8-20.5-102, including costs for contract services and costs related to the delegation of duties to units of local government which are incurred by the department of labor and employment in carrying out administrative responsibilities pursuant to this article;

(c) Any costs related to the abatement of fire and safety hazards as ordered by the director of the division of oil and public safety pursuant to section 8-20.5-208 (3);

(d) Investigation of releases or suspected releases and performance of corrective action for petroleum releases by the department or its designated agent pursuant to section 8-20.5-209;

(e) Any federal program pertaining to petroleum underground storage tanks, which program requires state-matching dollars;

(f) (I) Costs related to petroleum storage tank facility inspections and meter calibrations.

(II) This subsection (3)(f) is repealed, effective September 1, 2033.

(g) Administrative costs necessary for the implementation of this article and section 8-20-206.5.

(3.5) (a) Moneys in the petroleum storage tank fund may be used as incentives to underground or aboveground storage tank owners and operators for significant operational compliance or to upgrade existing systems. The director of the division of oil and public safety shall promulgate rules to implement this subsection (3.5).

(b) As used in this subsection (3.5), "significant operational compliance" means that an owner or operator of an underground or aboveground storage tank is in full compliance with all of the requirements of this article and, through one or more best management practices that are not otherwise required, has prevented or reduced the threat of a release to the environment.

(3.7) The director of the division of oil and public safety may annually transfer up to five hundred thousand dollars from the petroleum storage tank fund to the petroleum cleanup and redevelopment fund.

(4) Appropriations of moneys out of the fund for the purpose of initial abatement response or for corrective action purposes in the cleanup of releases shall be used only for those stated purposes and shall not be used for any administrative costs incurred by the department. Any amounts used for initial abatement response or for corrective action purposes shall be reported annually to the general assembly and the joint budget committee.

(5) Subject to section 8-20.5-104, the fund shall be available only to those underground and aboveground storage tanks owners or operators who are in compliance with the provisions of section 8-20.5-209 and regulations promulgated pursuant to sections 8-20.5-202 and 8-20.5-302.

(6) Moneys in the petroleum storage tank fund shall not be used:

(a) Repealed.

(b) To fund any programs that are not specifically stated within this section.

(7) (a) Subject to sections 8-20.5-206 (6) and 8-20.5-303 (6), owners and operators of underground and aboveground storage tanks on fee lands shall be eligible for access to the fund if the tank owner or operator:

(I) Has registered such tanks pursuant to section 8-20.5-102 and paid the surcharges imposed by section 8-20-206.5;

(II) Can demonstrate that the owner or operator is in compliance with the rules promulgated pursuant to sections 8-20.5-202 and 8-20.5-302; and

(III) Can demonstrate that the owner or operator has complied with sections 8-20.5-209 and 8-20.5-304 and any other rules, policies, and procedures of the department concerning corrective action.

(b) Underground and aboveground storage tank owners and operators who have been denied access to the fund prior to July 1, 2005, based upon a determination that the tanks are on fee lands, are eligible to reapply for reimbursement from the fund if the application is filed prior to December 31, 2005, and is not barred by settlement or other agreement.

(c) Nothing in this subsection (7) shall be construed to modify the department's authority to regulate operation of or corrective action for underground and aboveground storage tanks on fee lands.

(7.5) Repealed.

(8) The executive director of the department is authorized to issue bonds to reimburse assessment and corrective action costs to remediate petroleum contamination. The petroleum storage tank committee may temporarily raise such bonding limits in the event of extraordinary circumstances or environmental conditions.

(9) (a) There is hereby created in the state treasury the petroleum cleanup and redevelopment fund, which is referred to in this subsection (9) as the "redevelopment fund". The redevelopment fund's sources of revenue are:

(I) Civil penalties collected pursuant to section 8-20.5-107;

(II) Any public or private gifts, grants, or donations to the redevelopment fund received by the department;

(III) Any legislative appropriations made to the redevelopment fund;

(IV) Earned interest, which the state treasurer shall deposit in the redevelopment fund; and

(V) Money transferred from the petroleum storage tank fund pursuant to subsection (3.7) of this section.

(b) (I) The department may use revenues in the redevelopment fund for administration, investigation, abatement action, and preparing and implementing corrective action plans for petroleum releases not covered by the petroleum storage tank fund if, in the opinion of the director of the division of oil and public safety, such actions would enhance environmental protection and beneficial use of the property affected by the releases. The revenues in the redevelopment fund:

(A) Remain in the fund and shall neither be credited nor transferred to the general fund at the end of any fiscal year;

(B) Are exempt from section 24-75-402, C.R.S.; and

(C) Are continuously appropriated to the division of oil and public safety for the purposes stated in this section and are not subject to annual appropriation by the general assembly; except that the uses of the fund for the department's costs in administering this subsection (9) are subject to annual appropriation by the general assembly.

(II) Subject to the availability of money in the redevelopment fund, the maximum amount payable from the redevelopment fund for any single corrective action plan must not exceed fifty percent of the eligible cleanup costs or five hundred thousand dollars, whichever is less.

(c) Repealed.

(d) The division of oil and public safety shall promulgate rules to implement this subsection (9).

(e) and (f) Repealed.

Source: **L. 95:** Entire article added, p. 393, § 1, effective July 1. **L. 2000:** (3)(f) and (6) added, p. 1383, §§ 1, 2, effective May 30. **L. 2001:** (3)(c) amended, p. 1126, § 43, effective June 5. **L. 2002:** (2) amended, p. 150, § 2, effective March 27; (3)(f) amended, p. 950, § 1, effective August 7. **L. 2003:** (3)(g) added and (6)(a) repealed, p. 2665, §§ 3, 2, effective June 5. **L. 2005:** IP(1) amended and (1)(h) and (8) added, p. 1326, §§ 1, 2, effective July 1; (7) added, p. 416, § 1, effective July 1. **L. 2007:** IP(3), (3)(a), and (3)(f)(II) amended, p. 387, § 3, effective April 3; (3.5) added, p. 980, § 1, effective July 1. **L. 2010:** (3)(f)(II) amended, (HB 10-1185), ch. 82, p. 276, § 2, effective August 11. **L. 2013:** IP(1) amended, (1)(b) repealed, and (9) added, (HB 13-1252), ch. 247, p. 1196, § 1, effective May 18. **L. 2014:** (9)(b)(I) amended, (HB 14-1334), ch. 370, p. 1762, § 1, effective June 6. **L. 2015:** (3.5) added, (HB 15-1299), ch. 162, p. 494, § 1, effective August 5. **L. 2016:** (2)(b) repealed, (HB 16-1408), ch. 153, p. 472, § 26, effective July 1; IP(3) and (3)(f)(II) amended, (HB 16-1044), ch. 1, p. 1, § 2, effective August 10. **L. 2020:** (7.5) and (9)(e) added, (HB 20-1406), ch. 178, p. 810, § 1, effective June 29. **L. 2021:** (9)(e) repealed, (SB 21-266), ch. 423, p. 2794, § 2, effective July 2. **L. 2023:** IP(3), (3)(f)(II), (9)(a)(III), and (9)(a)(IV) amended and (3.7) and (9)(a)(V) added, (SB 23-280), ch. 404, p. 2416, § 1, effective August 7. **L. 2025:** (9)(f) added, (SB 25-264), ch. 129, p. 499, § 4, effective April 25; (7.5) repealed, (SB 25-300), ch. 428, p. 2536, § 3, effective August 6.

Editor's note: (1) This section is similar to former § 25-18-109 as it existed prior to 1995.

(2) Subsection (9)(c)(II) provided for the repeal of subsection (9)(c), effective July 1, 2014. (See L. 2013, p. 1196.)

(3) Subsection (9)(f)(II) provided for the repeal of subsection (9)(f), effective July 1, 2026. (See L. 2025, p. 499.)

8-20.5-104. Rules - petroleum storage tank committee.

(1) (a) There is created the petroleum storage tank committee, which consists of seven members who have technical expertise and knowledge in fields related to corrective actions taken to mitigate underground and aboveground storage tank releases.

(b) The committee consists of:

(I) The following permanent members:

(A) The director of the division of oil and public safety or the director's designee;

(B) The executive director of the department or the executive director's designee; and

(C) An owner or operator; and

(II) Four members appointed by the governor who shall be chosen from among the following groups, with no more than one member representing each group:

(A) Fire protection districts;

(B) Elected local governmental officials;

(C) Companies that refine and retail motor fuels in Colorado;

(D) Companies that wholesale motor fuels in Colorado;

(E) Owners and operators of independent retail outlets;

(F) Companies that conduct corrective actions or install and repair underground and aboveground storage tanks; and

(G) Private citizens or interest groups.

(c) The department shall provide staff to support the activities of the committee.

(2) Members of the committee shall serve three-year terms. All vacancies shall be filled by the governor to serve the remainder of the unexpired term.

(3) Members of the committee shall receive no additional salary or per diem reimbursement for their services as members of the committee, but shall be allowed travel and parking costs and

maintenance expenses while on official committee business conducted more than one hundred miles from their respective residences.

(4) The committee shall be required to meet no more than twice in any month. The committee shall recommend all regulatory actions proposed by the committee to the director of the division of oil and public safety for adoption or ratification. The committee shall conduct the following activities in accordance with section 24-4-105, C.R.S., as its routine business:

- (a) Establish procedures, practices, and policies governing the committee's activities;
- (b) Review standards and regulations governing underground and aboveground storage tanks;
- (c) Establish procedures, practices, and policies governing the form and procedures for applications to the petroleum storage tank fund for reimbursement compensation;
- (d) (I) Establish procedures, practices, and policies governing any and all aspects of processing, adjusting, defending, or paying claims against the fund. To encourage tank owners and operators to report and remediate contamination and achieve compliance with rules promulgated by the director of the division of oil and public safety, the committee may approve claims involving tanks not operated in substantial compliance, but may also determine the amount, if any, by which such claims may be reduced for noncompliance. Before imposing any reduction for noncompliance the committee shall determine whether the rules issued by the director of the division of oil and public safety are both substantially and procedurally no more stringent than United States environmental protection agency regulations under 42 U.S.C. sec. 6991 and whether the areas of noncompliance were brought into compliance prior to application to the fund, where possible. The committee shall use the following guidelines when imposing a reduction for noncompliance:
 - (A) Up to a ten percent reduction for failure to register a tank;
 - (B) Up to a twenty-five percent reduction for improper release detection;
 - (C) Up to a ten percent reduction for improper release reporting;
 - (D) Up to a twenty percent reduction for improper out-of-service and closure.
- (II) Nothing in this article shall be construed to require the committee to approve a claim involving substantial noncompliance. The committee shall establish specific criteria to define when denial for substantial noncompliance may be imposed.
- (e) Establish priorities governing the types of corrective actions which shall be reimbursed from the fund;
- (f) Review corrective action plans submitted pursuant to section 8-20.5-209, for which no agreement has been reached through informal conferences between the department and the

owner or operator, and make a recommendation to the department, upon request from the department or the owner or the operator, as to the corrective action that is acceptable;

(g) Issue public notices and hold public hearings to obtain comment on the activities described in this subsection (4);

(h) (I) (A) Pay interest to all persons who file a properly and fully completed claim for reimbursement and are not reimbursed in a timely manner. For purposes of this paragraph (h), interest shall accrue on the amount approved for payment by the committee at the rate determined pursuant to section 39-21-110.5, C.R.S., for each day a properly and fully completed application is not processed in a timely manner.

(B) Notwithstanding this paragraph (h), if a claimant cannot be reimbursed in a timely manner because insufficient moneys in the petroleum storage tank fund prevent the issuance of a reimbursement check within thirty days after approval of the disbursement, interest shall not begin to accrue on the claim until thirty-one days after sufficient moneys are available in said fund.

(II) For purposes of this paragraph (h), "timely manner" means:

(A) That an application filed with the petroleum storage tank fund on or after January 1, 1996, shall be submitted for review by the committee within ninety working days of receipt;

(B) That an application filed with the petroleum storage tank fund on or after July 1, 1995, but before January 1, 1996, shall be submitted for review by the committee within one hundred twenty working days of receipt;

(C) That an application filed with the petroleum storage tank fund before July 1, 1995, shall be submitted for review by the committee no later than December 31, 1995;

(D) That reimbursement checks shall be issued within thirty days after disbursement is approved by the committee.

(5) The committee may, in order to perform any or all of its responsibilities and functions under subsection (4) of this section, contract for the use of outside experts, consultants, or services.

(6) Reductions determined by the committee because of noncompliance shall be cumulative and shall apply to all eligible costs approved by the committee in the initial and all supplemental claims for the occurrence as defined in section 8-20.5-206 (2); except that in no instance shall cumulative reductions for noncompliance apply to claims submitted in accordance with section 8-20.5-206 (3) or 8-20.5-303 (3).

(7) The reductions described in subsections (4)(d) and (6) of this section pertain to this section only and shall not be construed to have any impact on cost-recovery actions taken in

accordance with section 8-20.5-209 or any civil or criminal penalties imposed as part of an enforcement proceeding.

(8) At its first meeting of each fiscal year, on or about July 1, the committee shall establish and set aside for reimbursements to those individuals who are eligible to make application to the fund in accordance with section 8-20.5-206 (3) or 8-20.5-303 (3), an amount equal to twenty percent of the total budget of the department from the petroleum storage tank fund, which amount shall be used for the purpose of conducting remediation activities in accordance with sections 8-20.5-206 (3), 8-20.5-209, and 8-20.5-303 (3) and shall protect the integrity of the fund as a financial assurance mechanism for tank owners and operators. The committee shall reexamine on a quarterly basis the unencumbered balance of this allocation and may set aside lesser or additional amounts for reimbursements to such applicants based on the relative number of requested reimbursements from the owners and operators of active sites, with preference given to the remediation of recently contaminated locations and to active tank sites based on their higher potential for environmental impact.

(9) The petroleum storage tank committee is a **type 1** entity as defined in section 24-1-105, and exercises its powers and performs its duties and functions specified by this section under the department of labor and employment and the executive director.

Source: **L. 95:** Entire article added, p. 394, § 1, effective July 1. **L. 96:** (4)(h)(I) amended, p. 711, § 4, effective May 15. **L. 2001:** (1), IP(4), and IP(4)(d)(I) amended, p. 1126, § 44, effective June 5. **L. 2007:** (8) amended, p. 387, § 4, effective April 3. **L. 2022:** (1) amended, (SB 22-013), ch. 2, p. 5, § 4, effective February 25; (9) amended, (SB 22-162), ch. 469, p. 3384, § 89, effective August 10.

Editor's note: This section is similar to former § 25-18-105 as it existed prior to 1995.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

8-20.5-105. Confidentiality.

(1) Any records, reports, and information obtained from any person under the provisions of this article shall be available to the public; except that any records granted confidentiality by the

director of the division of oil and public safety or a designee, or granted confidentiality under existing Colorado statutes or rules, shall remain confidential.

(2) Any person making such confidential records available to any person or organization without authorization from the affected operator or owner commits a petty offense and shall be punished pursuant to section 18-1.3-503.

(3) Confidential records may be disclosed to officers, employees, or authorized representatives of the state or of the United States who have been charged with administering this article or subtitle I of the federal "Resource Conservation and Recovery Act of 1976", as amended. Such disclosure shall not constitute a waiver of confidentiality.

Source: **L. 95:** Entire article added, p. 397, § 1, effective July 1. **L. 2001:** (1) amended, p. 1126, § 45, effective June 5. **L. 2002:** (2) amended, p. 1467, § 19, effective October 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3142, § 93, effective March 1, 2022. **L. 2022:** (2) amended, (HB 22-1229), ch. 68, p. 349, § 40, effective March 1; (2) amended, (SB 22-212), ch. 421, p. 2966, § 17, effective August 10.

Editor's note: (1) This section is similar to former § 25-18-106 as it existed prior to 1995.

(2) Amendments to subsection (2) by SB 22-212 and HB 22-1229 were harmonized.

(3) Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act changing this section applies to offenses committed on or after March 1, 2022; however, the Governor signed the act April 7, 2022.

Cross references: (1) For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

(2) For the "Resource Conservation and Recovery Act of 1976", as amended, see Pub.L. 94-580, codified at 42 U.S.C. § 6901 et seq.

8-20.5-106. Injunctions.

In addition to the remedies provided in this article, the director of the division of oil and public safety is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction restraining any person from violating any provision of this article, regardless of whether there is an adequate remedy at law.

Source: L. 95: Entire article added, p. 398, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1127, § 46, effective June 5.

Editor's note: This section is similar to former § 8-20-513 as it existed prior to 1995.

8-20.5-107. Enforcement orders - civil penalties.

(1) A notice of violation may be issued by the director of the division of oil and public safety to any person who is believed to have violated any provision of this article, any rule promulgated pursuant thereto, or any warrant issued pursuant to section 8-20.5-208. The notice of violation shall be served personally or by certified mail, return receipt requested, upon the alleged violator.

(2) The notice of violation shall set forth the facts which allegedly constitute the violation and the provisions which have allegedly been violated of either this article or any regulation promulgated pursuant thereto. The notice of violation may require the alleged violator to take any actions necessary to correct the alleged violation.

(3) Within ten working days after service of the notice of violation, the alleged violator may file a written request with the director of the division of oil and public safety for an informal conference regarding the notice of violation. If the alleged violator fails to timely request an informal conference, all provisions of the notice of violation shall become final and not subject to further administrative review. The director of the division of oil and public safety may then seek judicial enforcement of the notice of violation.

(4) Upon receipt of the written request, the director of the division of oil and public safety shall provide the alleged violator with a written notice of the date, time, and place of the informal conference. The director of the division of oil and public safety or a designee shall preside at the informal conference, during which the alleged violator and the entity that issued the notice of violation may present information and arguments regarding the allegations and requirements of the notice of violation.

(5) Within twenty working days after the informal conference, the director of the division of oil and public safety shall uphold, modify, or strike the allegations of the notice of violation and may issue an enforcement order. The decision shall be served upon the alleged violator personally or by certified mail, return receipt requested. Such notice of violation or enforcement order may be appealed within twenty working days to the executive director of the department. The executive director may either conduct the hearing personally or appoint an administrative law judge from the office of administrative courts in the department of personnel to conduct the hearing. The executive director may review such decision in accordance with the provisions of

section 24-4-105, C.R.S., and final agency action shall be determined in accordance with the provisions of said section. Such final agency action shall be subject to judicial review in accordance with section 24-4-106, C.R.S.

(6) The enforcement order may require the alleged violator to pay a civil penalty not to exceed five thousand dollars per tank for each day of violation.

(7) The director of the division of oil and public safety may file suit in the district court for the judicial district in which violations have occurred to obtain judicial enforcement of the provisions of any enforcement order. The petroleum storage tank fund may be subrogated to the rights of an owner or operator with respect to a claimed amount at the time a claim is filed with the fund.

Source: **L. 95:** Entire article added, p. 398, § 1, effective July 1; (5) amended, p. 634, § 12, effective July 1. **L. 2001:** (1), (3), (4), (5), and (7) amended, p. 1127, § 47, effective June 5. **L. 2005:** (5) amended, p. 853, § 8, effective June 1.

Editor's note: This section is similar to former § 8-20-512 as it existed prior to 1995.

8-20.5-108. Petroleum storage tank administration - transfer to department of labor and employment - legislative declaration.

(1) (a) The general assembly hereby finds, determines, and declares that there is a significant backlog in the processing of claims being made against the petroleum storage tank fund. Claims for reimbursement for cleaning up petroleum contamination are not acted upon in a timely manner, which places the storage tank owner in financial jeopardy. Lenders are reluctant to write loans on contaminated property, causing the next phase of remediation to be delayed and allowing contamination to spread, threatening the environment and unnecessarily escalating future cleanup expenses.

(b) The general assembly further finds, determines, and declares that it is in the best interest of this state to transfer petroleum storage tank administrative functions performed by the department of public health and environment to the department of labor and employment, and thereby consolidate the administration and regulation of petroleum storage tanks in this state under one department, which will minimize the cost of such functions and centralize management.

(2) (a) The administrative functions of the petroleum storage tank fund, including claims processing, corrective action plan review and approval, and any other responsibilities for

petroleum storage tank programs performed by the department of public health and environment prior to July 1, 1995, are transferred to the department of labor and employment. All employees of the department of public health and environment, excluding any contract labor, who perform the functions transferred pursuant to this subsection (2) and whose employment in the department of labor and employment is deemed necessary by the executive director of the said department are transferred to the department of labor and employment and shall become employees thereof.

(b) Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(c) On July 1, 1995, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of public health and environment pertaining to the duties and functions transferred to the department of labor and employment pursuant to this subsection (2) are transferred to the department of labor and employment and shall become the property of such department.

(3) Repealed.

Source: L. 95: Entire article added, p. 399, § 1, effective July 1.

Editor's note: Subsection (3)(c) provided for the repeal of subsection (3), effective December 31, 1996. (See L. 95, p. 399.)

PART 2

UNDERGROUND STORAGE TANKS

Law reviews: For article, "Colorado New Underground Storage Tank Law", see 19 Colo. Law. 233 (1990); for article, "Availability of the Colorado UST Fund to Property Owners and Mortgagees", see 23 Colo. Law. 873 (1994).

8-20.5-201. Legislative declaration.

The general assembly hereby finds and declares that the leakage of regulated substances from underground storage tanks constitutes a potential threat to the waters and the environment of the

state of Colorado and presents a potential menace to the public health, safety, and welfare of the people of the state of Colorado and that, to that end, it is the purpose of this part 2 to establish a program for the protection of the environment and of the public health and safety by preventing and mitigating the contamination of the subsurface soil, groundwater, and surface water which may result from leaking underground storage tanks.

Source: L. 95: Entire article added, p. 400, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-501 as it existed prior to 1995.

8-20.5-202. Duties of director of division of oil and public safety - rules.

(1) The director of the division of oil and public safety shall promulgate and enforce rules that are no more stringent than the requirements contained in 42 U.S.C. sec. 6991 et seq., and the regulations promulgated thereunder, except as allowed by federal law, including the federal "Energy Policy Act of 2005", Pub.L. 109-58, as amended, for:

- (a) Notification requirements for owners and operators of underground storage tanks;
- (b) Design, performance, construction, and installation standards for new underground storage tanks;
- (c) Design, performance, construction, and installation standards for the upgrading of existing underground storage tanks;
- (d) General operating requirements;
- (e) Release detection;
- (f) Release reporting, investigation, and confirmation; and
- (g) (Deleted by amendment, L. 2007, p. 980, § 2, effective July 1, 2007.)
- (h) Financial responsibility for underground storage tank systems containing regulated substances.

(1.5) The director of the division of oil and public safety shall promulgate and enforce rules for out-of-service underground storage tank systems and closure of such tanks.

(1.7) Within one hundred twenty days after January 1, 2008, the director of the division of oil and public safety shall promulgate, and the division shall enforce, rules concerning the placement of underground storage tanks that contain renewable fuels. Such rules shall be

promulgated with the purpose of developing a uniform statewide standard of issuing permits for underground storage tanks to promote the use of renewable fuels so that the process of obtaining a permit for an underground storage tank that contains renewable fuels may be more efficient and affordable.

(2) The director of the division of oil and public safety shall ensure that:

(a) All releases from underground storage tank systems are promptly assessed and that further releases are stopped;

(b) Actions are taken to identify, contain, and mitigate any immediate fire and safety hazards that are posed by a release;

(c) All releases from underground storage tank systems are investigated to determine if there are impacts of reportable quantities on subsurface soil, groundwater, and any nearby surface water;

(d) All releases above reportable quantities are reported to the director of the division of oil and public safety.

(3) The director of the division of oil and public safety shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency pursuant to the provisions of this article.

(4) The director of the division of oil and public safety shall establish criteria pursuant to subsection (1) of this section for delegation of authority to local agencies.

(5) Repealed.

Source: **L. 95:** Entire article added, p. 401, § 1, effective July 1. **L. 97:** (5) repealed, p. 1474, § 8, effective June 3. **L. 2001:** IP(1), IP(2), (2)(d), (3), and (4) amended, p. 1128, § 48, effective June 5. **L. 2007:** IP(1) amended, p. 387, § 5, effective April 3; (1.7) added, p. 1760, § 5, effective June 1; IP(1) and (1)(g) amended and (1.5) added, p. 980, § 2, effective July 1.

Editor's note: (1) This section is similar to former § 8-20-503 as it existed prior to 1995.

(2) Amendments to the introductory portion to subsection (1) by Senate Bill 07-031 and Senate Bill 07-247 were harmonized.

8-20.5-203. Performance of duties by owner or operator.

Duties imposed by this part 2 on the owner or the operator may be performed by either the owner or the operator. If neither the owner nor the operator performs the duties imposed by this part 2, both shall be considered in violation of this part 2.

Source: L. 95: Entire article added, p. 402, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-504 as it existed prior to 1995.

8-20.5-204. Installation and upgrading of underground storage tanks.

(1) Plans for any installation of a new underground storage tank and plans for the complete upgrading of an existing underground storage tank shall be submitted by the owner or operator of the proposed or existing underground storage tank to the director of the division of oil and public safety for approval prior to such installation or upgrading.

(2) Plans for the installation of a new underground storage tank or for the complete upgrading of an existing underground storage tank shall be in compliance with the rules promulgated pursuant to section 8-20.5-202 (1). The director of the division of oil and public safety or a designee shall approve or reject proposed plans and amendments thereto within twenty working days after submittal of the plan. If no action is taken by the director of the division of oil and public safety or a designee within twenty working days after submittal, the plans shall be deemed approved.

(3) In an emergency situation the director of the division of oil and public safety shall respond to plans within twenty-four hours.

(4) The director of the division of oil and public safety or a designee shall make an on-site inspection of every new installation and every upgrading of an existing underground storage tank prior to the operational start-up of such tank to ensure that all of the standards established in this part 2 have been met. The director of the division of oil and public safety or a designee shall complete the on-site inspection within ten calendar days prior to the anticipated operational start-up date. For the purposes of this subsection (4), a designee may be an underground storage tank inspector when licensed as such by the director of the division of oil and public safety.

(5) All installations and inspections of underground storage tanks shall be performed in accordance with the rules promulgated by the director of the division of oil and public safety pursuant to section 8-20.5-202 (1).

(6) The director of the division of oil and public safety shall establish a fee to be paid by each person submitting plans pursuant to subsection (1) of this section for on-site inspection. The fees paid pursuant to this subsection (6) shall be:

- (a) Used for the administration of this section; and
- (b) No more than necessary to offset the direct costs of the inspections conducted pursuant to subsections (4) and (5) of this section, but in no event more than one hundred fifty dollars.

Source: **L. 95:** Entire article added, p. 402, § 1, effective July 1. **L. 2001:** (1) to (5) and IP(6) amended, p. 1128, § 49, effective June 5.

Editor's note: This section is similar to former § 8-20-505 as it existed prior to 1995.

8-20.5-205. More stringent requirements prohibited.

(1) No municipality, city, home rule city, city and county, county, or other political subdivision of the state shall adopt or enforce any requirement more stringent than the provisions of this part 2. This section does not apply to requirements established pursuant to the uniform fire code or the national fire protection association codes, nor does it apply to requirements established pursuant to local zoning regulations.

(2) The limitation in subsection (1) of this section shall not apply to any municipality, city, home rule city, city and county, county, or other political subdivision of the state which has received an exemption from the committee created in section 8-20.5-104. The committee may grant a site-specific exemption when the applicant demonstrates that such an exemption would be cost beneficial and serve the health, safety, or economic interest of its citizens based on consideration of local hydrologic, geologic, or other conditions, including location of population concentrations or commercial areas.

Source: **L. 95:** Entire article added, p. 403, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-508 as it existed prior to 1995.

8-20.5-206. Financial responsibility for petroleum underground storage tanks - definition - rules.

(1) (a) Moneys in the petroleum storage tank fund, created pursuant to section 8-20.5-103, and referred to in this section as the "fund", may be used by certain owners and operators of petroleum storage tanks to demonstrate their compliance with the financial responsibility requirements in federal regulations. Owners and operators not eligible for access to the fund shall be solely responsible for securing independent financial assistance, but may use any federally approved financial assurance mechanism identified in 40 CFR 280.94 through 280.103 to help fund the cost of complying with such requirements.

(b) (I) After payment is made from the fund for remediation expenses, the owner or operator on whose behalf the payment was made shall pay to the fund the remediation amount or ten thousand dollars, whichever is less.

(II) The payment required pursuant to subparagraph (I) of this paragraph (b) shall be waived if:

(A) The owner or operator discovers the contamination while upgrading tanks to meet the December 22, 1998, deadline for corrosion protection, spill and overfill prevention, or monthly monitoring;

(B) The upgrade is completed no later than December 22, 1997; and

(C) The annual throughput of petroleum products at the site does not exceed six hundred thousand gallons during the year preceding the discovery of contamination.

(c) After payment is made from the fund for personal injury or property damage settlement expenses, or a combination of both, the owner or operator on whose behalf the payment was made shall pay to the fund the aggregate settlement payment amount or twenty-five thousand dollars, whichever is less.

(d) Moneys in the fund shall not be used for any remediation activity at a location that is within a site identified by the national priorities list, or where a response action by this state has begun pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

(e) If an owner or operator cannot meet the financial requirements of paragraphs (b) and (c) of this subsection (1), another approved financial assurance mechanism must be identified for such owner or operator to remain in compliance with this section and to be allowed to continue operation of an underground petroleum storage tank.

(f) The director of the division of oil and public safety, in consultation with the petroleum storage tank committee established pursuant to section 8-20.5-104, may establish rules that allow

the payment required by subsection (1)(b)(I) of this section to be based on a percentage that is less than one hundred percent of the remediation amount.

(2) (a) The maximum amount of liability of the fund under this section is three million dollars aggregate during a state fiscal year for multiple occurrences involving tanks that are the responsibility of an individual owner or operator, but in no event, except as described in subsection (2)(b) of this section, does the liability of the fund exceed two million dollars per occurrence. As used in this subsection (2), an "occurrence" means the period of time from identification through remediation of a leak, spill, or release of a petroleum product from an underground storage tank. In the event the cost of remediation or third-party claims exceeds the amount available to pay such costs, such costs and claims shall be paid on a pro rata basis as determined by the committee created in section 8-20.5-104. Any balance owed shall be paid as money becomes available in the fund. Any excess costs that are not paid by the fund or by the federal leaking underground storage tank trust fund shall be paid by and are the sole responsibility of the responsible owner or operator.

(b) An owner or operator may exceed the maximum amount of liability described in subsection (2)(a) of this section for an individual occurrence if the owner or operator receives permission to do so from both the director of the division of oil and public safety and the petroleum storage tank committee created in section 8-20.5-104. If the director and the committee grant such permission, the director and the committee shall establish a new maximum amount of liability per occurrence for the owner or operator.

(3) Moneys in the fund shall be available to pay required cleanup costs and third-party liability payments with no deductibles for the following applicants who are deemed to bear no responsibility for the release:

(a) A current or former property owner who has never owned, operated, leased, or managed petroleum underground storage tanks at the property where the release occurred, provided such property was acquired on or before June 3, 1992, and in the case of a preexisting release, the property owner had no reason to know that a release had occurred prior to acquiring the property;

(b) When an orphan or abandoned petroleum underground storage tank is involved and the applicant is a current or former owner, operator, or property owner who has never operated the tank or tanks and had no reason to know that a release had occurred prior to acquiring the property;

(c) A current owner or operator of petroleum underground storage tanks if at the time the owner or operator acquired such tanks such owner or operator had no reason to know that a release had already occurred, if such owner or operator has operated the tanks in accordance with sections 8-20.5-202 and 8-20.5-302, and if the release was detected on or before December 22, 1998;

(d) Any mortgagee or holder of an evidence of debt secured by a deed of trust who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property in lieu of foreclosure, acquires property on which an underground storage tank is located, and such mortgage or deed of trust is dated on or before January 1, 1993;

(e) (I) (A) Any mortgagee or holder of an evidence of debt secured by a deed of trust who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property in lieu of foreclosure, acquires property on which an underground storage tank is located, and such mortgage or deed of trust is dated after January 1, 1993, and the mortgagee or holder of an evidence of debt secured by a deed of trust has obtained a certificate of eligibility regarding the property in accordance with the rules of the director of the division of oil and public safety; or

(B) Any mortgagee or holder of an evidence of debt as described in sub-subparagraph (A) of this subparagraph (I), who sells the property on which an underground storage tank is located in lieu of remediating such property and transfers the certificate of eligibility to the purchaser. Such purchaser may receive fund moneys pursuant to this subsection (3).

(II) The director of the division of oil and public safety shall promulgate rules necessary to implement this program.

(4) In lieu of seeking reimbursement directly from the fund, an owner, operator, or current property owner who bears no responsibility for the release, under the provisions of subsection (3) of this section, may request that the department perform the cleanup using funds from the petroleum storage tank fund without further proving eligibility for such use. In addition to any purpose provided for in section 8-20.5-103, moneys in the petroleum storage tank fund may be appropriated by the general assembly to the department for the purpose of providing for the cleanup authorized in this section.

(5) Whenever appropriate, to pay costs that exceed the maximum allowed to be paid from the fund under this section, the state shall seek funding from the federal leaking underground storage tank trust fund.

(6) Underground storage tanks containing petroleum or other regulated substances that are owned or operated by, or are on property owned or leased by, an Indian tribe or the federal government, or an agency or subcontractor performing services on behalf of the federal government shall be subject to federal financial responsibility regulations. Any financial responsibility requirements for damages caused by such tanks are not the responsibility of the fund unless the tanks are owned or operated by a person, other than the federal government or such agency or subcontractor, and located on property that is leased from or otherwise occupied pursuant to a permit or other agreement with the United States or any agency thereof other than the department of defense or the department of energy.

(7) Nothing in this article shall create any liability for the state of Colorado that exceeds the amount available in the fund.

(8) Subject to subsection (6) of this section, owners and operators of underground storage tanks that are on fee lands may use the fund to demonstrate compliance with the financial responsibility requirements in federal regulations if the owners and operators have registered such tanks pursuant to section 8-20.5-102.

Source: **L. 95:** Entire article added, p. 403, § 1, effective July 1. **L. 96:** (1)(b), (2), and (7) amended, p. 711, § 5, effective May 15. **L. 2001:** (3)(e)(I)(A) and (3)(e)(II) amended, p. 1129, § 50, effective June 5. **L. 2005:** (2), IP(3), (3)(a), and (3)(b) amended, p. 1326, § 3, effective July 1; (6) amended and (8) added, p. 417, § 2, effective July 1. **L. 2023:** (1)(f) added, (SB 23-280), ch. 404, p. 2417, § 2, effective August 7. **L. 2026:** (2) amended, (SB 26-122), ch. 109, p. 444, § 2, effective August 12.

Editor's note: This section is similar to former § 8-20-509 as it existed prior to 1995.

Cross references: For the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq.

ANNOTATION

Annotator's note. Since § 8-20.5-206 is similar to repealed § 8-20-509, a relevant case construing that provision has been included in the annotations to this section.

Promulgation of regulation establishing eligibility cut-off date for reimbursement claims from underground storage tank fund was within department of labor and

employment's statutory authority, because statute required fund claimants to be in compliance with all applicable regulations, and regulatory cut-off date was set at earliest possible date by which claimants could comply with regulations. *Diamond Shamrock Ref. and Mktg. Co. v. Colo. Dept. of Labor and Employment*, 976 P.2d 286 (Colo. App. 1998).

8-20.5-207. Financial responsibility for regulated substances other than petroleum.

Owners and operators of underground storage tanks containing regulated substances other than petroleum may demonstrate financial responsibility for taking corrective action and for

compensating third parties for bodily injury and property damages by using any one or more of the mechanisms allowable under 40 CFR 280.95, 280.96, 280.97, 280.98, 280.99, 280.102, and 280.103. Owners and operators of underground storage tanks containing regulated substances other than petroleum shall not be eligible to participate in the petroleum storage tank fund, but shall be subject to federal financial responsibility regulations.

Source: L. 95: Entire article added, p. 406, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-510 as it existed prior to 1995.

8-20.5-208. Reporting of releases - investigation.

(1) If a release is detected or suspected, the owner or operator shall immediately take all actions necessary to mitigate or stop the release and shall mitigate fire and safety hazards.

(2) Upon detection of any release of reportable quantities of a regulated substance from an underground storage tank, the owner or operator shall report such release to the director of the division of oil and public safety within twenty-four hours of its detection. However, the local fire authority shall be notified immediately if such release exceeds reportable quantities. If the director of the division of oil and public safety determines that the release of such reportable quantity will affect subsurface soils, groundwater, or surface water, the department may require the owner or operator to take corrective action in accordance with section 8-20.5-209.

(3) If the director of the division of oil and public safety or a designee finds that a release has occurred, and the owner or the operator cannot be identified, or is unwilling to mitigate or stop the release or mitigate fire and safety hazards, the director of the division of oil and public safety or a designee may initiate free product removal and whatever other actions are necessary to mitigate fire and safety hazards.

(4) For the purpose of enforcing this section, if a release poses an imminent and substantial threat to human health and the environment, the director of the division of oil and public safety or a designee is authorized to take such action as is necessary under the circumstances, including but not limited to:

- (a) Entering any property, premises, or place where an underground storage tank is located;
- (b) Monitoring or testing or requiring the owner or the operator to monitor or test any underground storage tank or any surrounding soils, groundwater, or surface water. A duplicate sample taken for testing shall be provided to any person, at such person's request, who the director of the division of oil and public safety or a designee reasonably believes may be

responsible for the release. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this paragraph (b) shall be provided as soon as practicable to any person who the director of the division of oil and public safety or a designee reasonably believes may be responsible for the release. When such tests are performed, the director of the division of oil and public safety shall notify, when possible, any person reasonably believed to be an owner or operator.

(c) Entering any site or premises in which records relevant to the operation of an underground storage tank are maintained and to inspect and copy such records.

(5) If such entry or inspection is denied or not consented to, the director of the division of oil and public safety or a designee shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(6) If requested by the director of the division of oil and public safety or a designee, the owner or the operator of an underground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

Source: **L. 95:** Entire article added, p. 406, § 1, effective July 1. **L. 96:** (2) amended, p. 712, § 6, effective May 15. **L. 2001:** (2), (3), IP(4), (4)(b), (5), and (6) amended, p. 1129, § 51, effective June 5.

Editor's note: This section is similar to former § 8-20-507 as it existed prior to 1995.

8-20.5-209. Regulated substances releases - corrective actions.

(1) If a release has occurred at a site where the owner or the operator cannot be identified, after the director of the division of oil and public safety or a designee has mitigated fire and safety hazards in accordance with section 8-20.5-208 and determined that a release exceeds reportable quantities, the director of the division of oil and public safety may initiate corrective action to mitigate any threat to subsurface soil, groundwater, or surface water and develop a plan for cleanup in accordance with subsection (3) of this section and shall recover costs pursuant to section 8-20.5-103.

(2) If the release has occurred at a site where the owner or the operator can be identified, and after fire and safety hazards have been mitigated in accordance with section 8-20.5-208 and the

director of the division of oil and public safety has determined that the release exceeds reportable quantities, then the owner or the operator shall provide the director of the division of oil and public safety with a corrective action plan to clean up subsurface soil, groundwater, and surface water as a result of the release. In addition to the corrective action plan, the owner or operator shall prepare a summary of the costs associated with the preferred corrective action, taking into account economic and technological feasibility, in accordance with the rules promulgated pursuant to section 8-20.5-104 (4)(d) and shall submit the summary to the committee created in said section. The director of the division of oil and public safety shall review and approve or disapprove the plan and, if the plan is disapproved, shall provide the owner or the operator with a statement specifying the deficiencies in the plan. The owner or the operator shall submit a revised plan within twenty working days after receipt of the statement, and the owner or the operator shall be given an opportunity to take necessary and appropriate actions to clean up subsurface soils, groundwater, and surface water. If the owner or the operator is unable or unwilling to take such necessary and appropriate actions, the director of the division of oil and public safety may conduct corrective action to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(3) After the director of the division of oil and public safety mitigates the threat to subsurface soils, groundwater, and surface water as specified in subsections (1) and (2) of this section, and the owner or the operator of the tank from which petroleum has been released is identified, the owner or the operator shall pay the required costs pursuant to the financial responsibility requirements set forth in sections 8-20.5-206, 8-20.5-207, and 8-20.5-303, incurred in the investigation of the release and mitigation of threats to subsurface soils, groundwater, and surface water. The director of the division of oil and public safety may file suit in the district court for the judicial district in which the release occurred to recover such costs. The moneys obtained as a result of any suit brought pursuant to this section shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety may order the owner or the operator of an underground storage tank from which a regulated substance has been released to implement a corrective action plan approved under subsection (2) of this section. Such order shall be served personally or by certified mail, return receipt requested, upon the owner or the operator.

(5) If the director of the division of oil and public safety disapproves or fails to approve the plan within thirty days after the plan's submission, the director shall immediately provide a statement of findings of fact outlining the reasons for such disapproval or failure to approve, including the reasons the proposed plan fails to meet the criteria outlined in this section. The statement shall be provided by formal notice or by certified mail to the owner or the operator within ten days after the director's decision.

(6) The director of the division of oil and public safety may waive the requirement for such a plan if the director determines that reasonable steps have been taken to prevent further releases and that any previously released regulated substance has been cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release at that specific location. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(7) Within ten days after notification of disapproval of the plan, the owner or the operator may file a written request with the director of the division of oil and public safety for an informal conference regarding the disapproval. Upon receipt of such a request, the director shall provide the owner or the operator with a written notice of the date, time, and place of the informal conference. The executive director of the department or a designee shall preside at the informal conference, during which the owner or the operator and the director or the director's designee may present information and arguments regarding the issues raised in the statement of findings of fact.

(8) Within twenty days after the conference, the owner or operator may resubmit a modified plan which addresses the deficiencies identified by the department in the original plan. The department shall review the modifications to the plan and, within twenty days, approve or disapprove the resubmitted plan. If, after the conference, the owner, the operator, or the department determines that the issues identified in the statement of findings of fact cannot be reasonably resolved, the owner, the operator, or the department may request that the committee, created in section 8-20.5-104, schedule and hold a hearing within thirty days to resolve the issues identified in the statement of findings of fact.

(9) At any time after the receipt of the statement of findings of fact, the owner, the operator, or the department may request, in writing, a formal hearing before the committee created in section 8-20.5-104. Upon such request, the committee shall meet and review the initial plan and statement of findings of fact.

(10) The committee shall recommend such plan if any current release has been mitigated and if any regulated substance which has been released has been or will be cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of the release at that specific location. The department shall give serious consideration to the recommendation of the committee. Such action shall be taken after consideration of the risks posed to the public and shall be determined in light of current economic and technological feasibility. If the committee finds that a current release has not been mitigated or that any regulated substance which has been released will not be cleaned up to the extent appropriate, the committee shall issue a statement of findings of fact and recommendations to the department for revisions to the plan. Such revisions, if approved by the department, shall be incorporated into the plan by the department, and the revised plan shall then be approved as provided in subsection (2) of this section.

(11) Within thirty days following mitigation and cleanup, the department shall notify the owner or the operator, in writing, that the owner or the operator has complied with the requirements for mitigation and cleanup as outlined in this section.

(12) For the purpose of implementing the provisions of this section, the department or its designee is authorized for justifiable cause:

(a) To enter the property, premises, or place where a release or suspected release from an underground storage tank is located;

(b) To monitor or test or require the owner or the operator to monitor or test an underground storage tank or any surrounding soils, groundwater, or surface water where a suspected release from an underground storage tank has occurred. A duplicate sample taken for testing shall be provided to any owner or operator who the department reasonably believes may be responsible for the violation upon request of such person. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this paragraph (b) shall be provided as soon as practicable to any person the department or its designee reasonably believes may be responsible for the violation. When such tests are performed, the department shall notify, when possible, any person reasonably believed to be an owner or operator.

(13) If such entry or inspection is denied, the department shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(14) If requested by the department or its designee, the owner or operator of an underground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

(15) The department may consider water quality standards adopted by the water quality control commission as guidelines for cleanup but must assure that cleanup requirements are appropriate, in light of economic and technical feasibility and after consideration of the risks to public health, to protect subsurface soils, groundwater, or surface water as a result of a release at a specific location.

(16) The department shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency pursuant to the provisions of this article.

Source: L. 95: Entire article added, p. 407, § 1, effective July 1. **L. 96:** (4) amended, p. 712, § 7, effective May 15. **L. 2001:** (1) to (7) amended, p. 1130, § 52, effective June 5.

Editor's note: This section is similar to former § 25-18-104 as it existed prior to 1995.

PART 3

ABOVEGROUND STORAGE TANKS

8-20.5-301. Legislative declaration.

The general assembly hereby finds and declares that the rising expense of operating and maintaining aboveground storage tanks, including but not limited to the cost of liability insurance, has resulted in the discontinuance of business by several small gasoline service station operators and imposes an increasing hardship on those service stations still in operation. The general assembly further finds that the viability of aboveground storage tanks is being recognized and that rules and regulations for aboveground storage tanks have been promulgated and endorsed by the western fire chiefs association's uniform fire code committee and the national fire protection association's automotive and service station code committee. The general assembly further finds that aboveground storage tanks for fuel products are feasible and economical and should be permitted under certain narrowly drawn circumstances.

Source: L. 95: Entire article added, p. 411, § 1, effective July 1.

Editor's note: This section is similar to former § 8-20-701 as it existed prior to 1995.

8-20.5-302. Duties of director of division of oil and public safety - rules.

(1) The director of the division of oil and public safety shall make, promulgate, and enforce rules for aboveground storage tanks installed before July 1, 1993, which rules shall be no more stringent than the rules in place on the date of installation, except as mandated by federal spill prevention, control, and countermeasures regulations promulgated by the United States environmental protection agency.

(2) The director of the division of oil and public safety shall make, promulgate, and enforce rules concerning the design, construction, installation, and operation of aboveground storage tanks permitted to be used and installed on or after July 1, 1993, which rules shall be no more stringent, either substantially or procedurally, than the requirements contained in the current edition of the national fire code published by the national fire protection association, as revised

by the association from time to time, and in spill prevention control and countermeasures regulations promulgated by the United States environmental protection agency.

(3) Within one hundred twenty days after January 1, 2008, the director of the division of oil and public safety shall promulgate, and the division shall enforce, rules concerning the placement of aboveground storage tanks that contain renewable fuels. Such rules shall be promulgated with the purpose of developing a uniform statewide standard of issuing permits for aboveground storage tanks to promote the use of renewable fuels so that the process of obtaining a permit for an aboveground storage tank that contains renewable fuels may be more efficient and affordable.

Source: **L. 95:** Entire article added, p. 411, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1132, § 53, effective June 5. **L. 2007:** (3) added, p. 1760, § 6, effective June 1.

Editor's note: This section is similar to former § 8-20-703 as it existed prior to 1995.

8-20.5-303. Financial responsibility for aboveground storage tanks - rules.

(1) (a) Moneys in the petroleum storage tank fund, created pursuant to section 8-20.5-103 and referred to in this section as the "fund", may be used by certain owners and operators of aboveground storage tanks. Any owner or operator of an aboveground storage tank with a capacity of at least six hundred sixty gallons and less than forty thousand gallons shall be eligible to participate in the fund.

(b) After payment is made from the fund for remediation expenses, the owner or operator on whose behalf the payment was made shall pay to the fund the remediation amount or ten thousand dollars, whichever is less.

(c) After payment is made from the fund for personal injury or property damage after a court judgment or a settlement agreed to by the attorney general's office, or a combination of both, the owner or operator on whose behalf the payment was made shall pay to the fund the aggregate settlement payment amount or twenty-five thousand dollars, whichever is less.

(d) Moneys in the fund shall not be used for any remediation activity at a location that is within a site identified by the national priorities list, or where a response action by this state has begun pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

(e) If an owner or operator cannot meet the financial requirements of this subsection (1), another approved financial assurance mechanism shall be identified for such owner or operator

to remain in substantial compliance with this section and to be allowed to continue operation of an aboveground storage tank.

(f) The director of the division of oil and public safety, in consultation with the petroleum storage tank committee established pursuant to section 8-20.5-104, may establish rules that allow the payment of remediation expenses for certain owners and operators of aboveground storage tanks from the petroleum storage tank fund to be based on a percentage that is less than one hundred percent of the remediation amount.

(2) The maximum amount of liability of the fund under this section shall be three million dollars aggregate during a fiscal year for multiple occurrences involving tanks that are the responsibility of an individual owner or operator, but in no event shall the liability of the fund exceed two million dollars per occurrence. For purposes of this section, an "occurrence" means the period of time from identification through remediation of a leak, spill, or release of a petroleum product from an aboveground storage tank. In the event the cost of remediation or third-party claims exceeds the amount available to pay such costs, such costs and claims shall be paid on a pro rata basis as determined by the committee created in section 8-20.5-104. Any balance owed shall be paid as moneys become available in the fund. Any excess costs that are not paid by the fund shall be paid by and are the sole responsibility of the responsible owner or operator.

(3) Moneys in the fund shall be available to pay required cleanup costs and third-party liability payments with no deductibles for the following applicants who are deemed to bear no responsibility for the release:

(a) A current or former property owner who has never owned, operated, leased, or managed aboveground storage tanks at the property where the release occurred, provided such property was acquired on or before June 3, 1992, and in the case of a preexisting release, the property owner had no reason to know that a release had occurred prior to acquiring the property;

(b) When an orphan or abandoned aboveground storage tank is involved and the applicant is a current or former owner, operator, or property owner who has never operated the tank or tanks and had no reason to know that a release had occurred prior to acquiring the property;

(c) A current owner or operator of aboveground storage tanks if, at the time the owner or operator acquired such tanks, such owner or operator had no reason to know that a release had already occurred, if such owner or operator has operated the tanks in accordance with sections 8-20.5-202 and 8-20.5-302;

(d) Any mortgagee or holder of an evidence of debt secured by a deed of trust who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property in lieu of foreclosure, acquires property on which an aboveground storage tank is located, and such mortgage or deed of trust is dated on or before January 1, 1993; or

(e) (I) Any mortgagee or holder of an evidence of debt secured by a deed of trust who, through foreclosure of the mortgage or deed of trust or through receipt of a deed to the property in lieu of foreclosure, acquires property on which an aboveground storage tank is located, and such mortgage or deed of trust is dated after January 1, 1993, and the mortgagee or holder of an evidence of debt secured by a deed of trust has obtained a certificate of eligibility regarding the property in accordance with the rules of the director of the division of oil and public safety. The director of the division of oil and public safety shall promulgate rules necessary to implement this program.

(II) Any mortgagee or holder of an evidence of debt as described in subparagraph (I) of this paragraph (e) who sells the property on which an aboveground storage tank is located in lieu of remediating such property and transfers the certificate of eligibility to the purchaser. Such purchaser may receive funds pursuant to this subsection (3).

(4) In lieu of seeking reimbursement directly from the fund, an owner, operator, or current property owner who bears no responsibility for the release as set forth in subsection (3) of this section may request that the department perform the cleanup using moneys from the petroleum storage tank fund without further proving eligibility for such use. In addition to any purpose provided for in section 8-20.5-103, moneys in the petroleum storage tank fund may be appropriated by the general assembly to the department for the purpose of providing for the cleanup authorized in this section.

(5) An owner or operator of an aboveground storage tank or a person deemed to bear no responsibility for the release pursuant to subsection (3) of this section shall be eligible to participate in the fund if eligibility requirements established by the petroleum storage tank committee, created pursuant to section 8-20.5-104, are met.

(6) Aboveground storage tanks containing petroleum or other regulated substances that are owned or operated by, or are on property owned or leased by, an Indian tribe or the federal government or an agency or subcontractor performing services on behalf of the federal government shall be subject to federal financial responsibility regulations. Any financial responsibility requirements for damages caused by such tanks are not the responsibility of the fund unless such tanks are owned or operated by a person, other than the federal government or such agency or subcontractor, and located on property that is leased from or otherwise occupied pursuant to a permit or other agreement with the United States or any agency thereof other than the department of defense or the department of energy.

(7) Nothing in this article shall create any liability for the state of Colorado that exceeds the amount available in the fund.

(8) Subject to subsection (6) of this section, owners and operators of aboveground storage tanks that are on fee lands may use the fund to demonstrate compliance with the financial

responsibility requirements in federal regulations if the owners and operators have registered such tanks pursuant to section 8-20.5-102.

Source: **L. 95:** Entire article added, p. 411, § 1, effective July 1. **L. 96:** (1)(a), (2), (3)(b), (3)(c), (5), and (7) amended, p. 713, § 8, effective May 15. **L. 2001:** (3)(e)(I) amended, p. 1132, § 54, effective June 5. **L. 2005:** (2), IP(3), (3)(a), and (3)(b) amended, p. 1327, § 4, effective July 1; (6) amended and (8) added, p. 417, § 3, effective July 1. **L. 2023:** (1)(f) added, (SB 23-280), ch. 404, p. 2419, § 4, effective August 7.

Editor's note: This section is similar to former § 8-20-705 as it existed prior to 1995.

Cross references: For the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", see Pub.L. 96-510, codified at 42 U.S.C. § 9601 et seq.

8-20.5-304. Regulated substances releases - corrective actions.

(1) If a release has occurred at a site where the owner or operator cannot be identified, after the director of the division of oil and public safety or a designee has mitigated fire and safety hazards in accordance with section 8-20.5-208 and determined that a release exceeds reportable quantities, the director of the division of oil and public safety may initiate corrective action to mitigate any threat to subsurface soil, groundwater, or surface water and develop a plan for cleanup in accordance with subsection (3) of this section and shall recover costs pursuant to section 8-20.5-103.

(2) If a release has occurred at a site where the owner or operator can be identified, and after fire and safety hazards have been mitigated in accordance with section 8-20.5-208 and the director of the division of oil and public safety has determined that the release exceeds reportable quantities, then the owner or operator shall provide the director of the division of oil and public safety with a corrective action plan to clean up subsurface soil, groundwater, and surface water as a result of the release. In addition to the corrective action plan, the owner or operator shall prepare a summary of the costs associated with the preferred corrective action, taking into account economic and technological feasibility, in accordance with the rules promulgated pursuant to section 8-20.5-104 (4)(d) and shall submit the summary to the committee created in said section. The director of the division of oil and public safety shall review and approve or disapprove the plan and, if the plan is disapproved, the director shall provide the owner or operator with a statement specifying the deficiencies in the plan. Within twenty working days after receiving such statements, the owner or operator shall submit a revised plan and shall be

given an opportunity to take necessary and appropriate actions to clean up subsurface soils, groundwater, and surface water. If the owner or operator is unable or unwilling to take such necessary and appropriate actions, the director of the division of oil and public safety may conduct corrective action to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(3) After the director of the division of oil and public safety mitigates the threat to subsurface soils, groundwater, and surface water as specified in subsections (1) and (2) of this section, and the owner or operator of the tank from which petroleum has been released is identified, the owner or operator shall pay the required costs of investigation and mitigation pursuant to the financial responsibility requirements set forth in sections 8-20.5-206, 8-20.5-207, and 8-20.5-303. The director of the division of oil and public safety may file suit in the district court for the judicial district in which the release occurred to recover such costs. The moneys obtained as a result of any suit brought pursuant to this section shall be credited to the petroleum storage tank fund created in section 8-20.5-103.

(4) The director of the division of oil and public safety may order the owner or operator of an aboveground storage tank from which a regulated substance has been released to implement a corrective action plan approved under subsection (2) of this section. Such order shall be served personally or by certified mail, return receipt requested, upon the owner or operator.

(5) (a) If the director of the division of oil and public safety disapproves or fails to approve the plan within thirty days following its submission, the director shall immediately provide a statement of findings of fact outlining the reasons for such disapproval or failure to approve, including the reasons the proposed plan fails to meet the criteria outlined in this section. The statement shall be provided by formal notice or by certified mail to the owner or operator within ten days after the director's decision.

(b) The director of the division of oil and public safety may waive the requirement for such a plan if the director determines that reasonable steps have been taken to prevent further releases and that any previously released regulated substance has been cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of that release at that specific location. Such action shall be taken after consideration of the risks posed to the public health and shall be determined in light of current economic and technological feasibility.

(6) (a) Within ten days after notification of disapproval of the plan, the owner or operator may file a written request with the director of the division of oil and public safety for an informal conference regarding the disapproval. Upon receipt of such a request, the director shall provide the owner or operator with a written notice of the date, time, and place of the informal conference. The executive director of the department or a designee shall preside at the informal

conference, during which the owner or operator and the director or the director's designee may present information and arguments regarding the issues raised in the statement of findings of fact.

(b) Within twenty days after the conference, the owner or operator may resubmit a modified plan which addresses the deficiencies identified by the department in the original plan. The department shall review the modifications to the plan and, within twenty days, approve or disapprove the resubmitted plan. If, after the conference, the owner or operator or the department determines that the issues identified in the statement of findings of fact cannot be reasonably resolved, the owner or operator or the department may request that the committee, created in section 8-20.5-104, schedule and hold a hearing within thirty days to resolve the issues identified in the statement of findings of fact.

(7) (a) At any time after receiving the statement of findings of fact, the owner or operator or the department may request, in writing, a formal hearing before the committee created in section 8-20.5-104. Upon such request, the committee shall meet and review the initial plan and statement of findings of fact.

(b) The committee shall recommend such plan if any current release has been mitigated and if any regulated substance which has been released has been or will be cleaned up to the extent appropriate to protect subsurface soils, groundwater, or surface water as a result of the release at that specific location. The department shall give serious consideration to the recommendation of the committee. Such action shall be taken after consideration of the risks posed to the public and shall be determined in light of current economic and technological feasibility. If the committee finds that a current release has not been mitigated or that any regulated substance which has been released will not be cleaned up to the extent appropriate, the committee shall issue a statement of findings of fact and recommendations to the department for revisions to the plan. Such revisions, if approved by the department, shall be incorporated into the plan by the department, and the revised plan shall then be approved as provided in subsection (2) of this section.

(8) Within thirty days following mitigation and cleanup, the department shall notify the owner or operator, in writing, that the owner or operator has complied with the requirements for mitigation and cleanup as outlined in this section.

(9) (a) For the purpose of implementing the provisions of this section, the department or its designee is authorized for justifiable cause:

(I) To enter the property, premises, or place where a release or suspected release from an aboveground storage tank is located;

(II) To monitor or test or require the owner or operator to monitor or test an aboveground storage tank or any surrounding soils, groundwater, or surface water where a suspected release from an aboveground storage tank has occurred. A duplicate sample taken for testing shall be

provided to any owner or operator who the department reasonably believes may be responsible for the violation upon request of such person. A duplicate copy of the analytical report pertaining to the samples taken pursuant to this subparagraph (II) shall be provided as soon as practicable to any person the department or its designee reasonably believes may be responsible for the violation. When such tests are performed, the department shall notify, when possible, any person reasonably believed to be an owner or operator.

(b) If such entry or inspection is denied, the department shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of the state of Colorado are authorized to issue such warrants upon proper showing of the need for such entry and inspection.

(c) If requested by the department or its designee, the owner or operator of an aboveground storage tank shall provide any information in such owner's or operator's possession regarding the tank.

(10) (a) The department may consider water quality standards adopted by the water quality control commission as guidelines for cleanup but shall assure that cleanup requirements are appropriate, in light of economic and technical feasibility and after consideration of the risks to public health, to protect subsurface soils, groundwater, or surface water as a result of a release at a specific location.

(b) The department shall, if necessary, negotiate and enter into memoranda of agreement with and apply for and receive grants from the United States environmental protection agency.

Source: L. 96: Entire section added, p. 714, § 9, effective May 15. L. 2001: (1) to (5) and (6)(a) amended, p. 1133, § 55, effective June 5.

PART 4

UNDERGROUND STORAGE TANKS INSTALLERS

8-20.5-401 to 8-20.5-407. (Repealed)

Editor's note: (1) This part 4 was added with relocations in 1995 containing relocated provisions of some sections formerly located in part 6 of article 20 of this title and was not amended prior to its repeal in 1996. For the text of this part 4 prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and

supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 8-20.5-407 provided for the repeal of this part 4, effective July 1, 1996. (See L. 95, p. 418.)

LABOR II - WORKERS' COMPENSATION AND RELATED PROVISIONS

Workers' Compensation

Editor's note: Prior to July 1, 1990, the "Workmen's Compensation Act of Colorado" was located in articles 40 to 54 of this title.

Cross references: For the "Workers' Compensation Cost Containment Act", see article 14.5 of this title.

ARTICLE 40

General Provisions

PART 1		8-40-202.	Employee.
SHORT TITLE - LEGISLATIVE		8-40-203.	Employer.
DECLARATION		PART 3	
8-40-101.	Short title.	SCOPE AND APPLICABILITY	
8-40-102.	Legislative declaration.	8-40-301.	Scope of term "employee" - definition.
PART 2		8-40-302.	Scope of term "employer".
DEFINITIONS			
8-40-201.	Definitions.		

PART 1

SHORT TITLE - LEGISLATIVE DECLARATION

8-40-101. Short title.

Articles 40 to 47 of this title shall be known and may be cited as the "Workers' Compensation Act of Colorado".

Source: L. 90: Entire article R&RE, p. 468, § 1, effective July 1.

Editor's note: This section is similar to former § 8-40-101 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Purposes of the Act.

III. Construction of the Act.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Workmen's Compensation Law", see 1 Den. B. Ass'n Rec. 4 (1924). For article, "Practice and Procedure Under the Workmen's Compensation Act of Colorado", see 6 Dicta 3 (1929). For article, "Current Trends in Basic Principles of Workmen's Compensation", see 20 Rocky Mt. L. Rev. 1 (1947) and 20 Rocky Mt. L. Rev. 117 (1948). For comment on *Continental Oil Co. v. Sirhall* appearing below, see 23 Rocky Mt. L. Rev. 364 (1951). For article, "Damages, Workmen's Compensation and Labor Law", see 31 Dicta 460 (1954). For symposium article on workmen's compensation, see 31 Rocky Mt. L. Rev. 397 (1959). For article, "One Year Review of Corporations, Partnership and Agency", see 37 Dicta 11 (1960). For article, "One Year Review of Torts", see 38 Dicta 93 (1961). For note, "One Year Review of Colorado Law — 1964", see 42 Den. L. Ctr. J. 140 (1965). For article, "Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980). For

article, "Labor Law", see 59 Den. L.J. 319 (1982). For article, "Conflict Between Workers' Compensation Exclusive Remedy and Common Law Actions for Psychic Injuries", see 14 Colo. Law 1992 (1985). For article, "Work-Related Stress Claims", see 18 Colo. Law. 1529 (1989). For article, "Workers' Compensation Fraud: 'Trashing the System'", see 20 Colo. Law. 1119 (1991).

Annotator's note. Since § 8-40-101 is similar to § 8-40-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, relevant cases construing that provision have been included in the annotations to this section.

Act does not violate constitutional guarantees of equal protection. Difference in methods of calculating benefits for partial and total injuries is rationally related to the governmental interest in providing benefits efficiently and fairly, notwithstanding that the classification is not perfect and that inequality may result in individual cases. *Duran v. Indus. Claim Appeals Office*, 883 P.2d 477 (Colo. 1994).

Because the workers' compensation act implicates no fundamental rights, the

rational basis test provides the appropriate gauge in determining whether a statutory classification comports with equal protection. *Young v. Indus. Claim Appeals Office*, 969 P.2d 735 (Colo. App. 1998).

The workmen's compensation act was passed under the police power of the state. *Sch. Dist. No. 1 v. Indus. Comm'n*, 66 Colo. 580, 185 P. 348 (1919).

The workmen's compensation act deals exclusively with matters growing out of the relationship of employer and employee, and is binding only upon such as elect to come within its provisions. All others are strangers to the act and their usual lawful rights and remedies are unaffected by it. *Rocky Mt. Fuel Co. v. Indus. Comm'n*, 105 Colo. 220, 96 P.2d 413 (1939).

Applied in *Riley v. Indus. Comm'n*, 628 P.2d 147 (Colo. App. 1981).

II. PURPOSES OF THE ACT.

The purpose of the act is to protect all workmen, save those specifically excluded, and provide an award of compensation in favor of an injured employee against all persons who may be liable therefor. *Empire Zinc Co. v. Indus. Comm'n*, 102 Colo. 26, 77 P.2d 130 (1938); *Sechler v. Pastore*, 103 Colo. 139, 84 P.2d 61 (1938); *Fast Freight v. Walker*, 103 Colo. 347, 85 P.2d 720 (1938); *Drake v. Hodges*, 114 Colo. 10, 161 P.2d 338 (1945); *Univ. of Denver v. Memeht*, 127 Colo. 385, 257 P.2d 423 (1953); *City of Boulder v. Payne*, 162 Colo. 345, 426 P.2d 194 (1967).

The purpose of the workmen's compensation act is to protect employees who sustain injuries arising out of their employment. *Bellendir v. Kezer*, 648 P.2d 645 (Colo. 1982).

The purpose of the act is to speedily and justly compensate employees for injuries incurred in performing their jobs regardless of the fault of the employee or the employer. *Pub. Serv. Co. v. United Cable Television of Jeffco, Inc.*, 816 P.2d 289 (Colo. App. 1991).

The purpose of the Act is to provide the exclusive remedy to a covered employee for injuries sustained while performing services arising out of and in the course of employment and which are proximately caused by injury or occupational disease arising out of and in the course of employment. *Ferris v. Local 26*, 867 P.2d 38 (Colo. App. 1993).

Purposes of act, as stated in 1991 repeal and reenactment, cited in *Duran v. Indus. Claim Appeals Office*, 883 P.2d 477 (Colo. 1994).

The act provides a remedy in areas where remedies do not exist at common law. *Chartier v. Winslow Crane Serv. Co.*, 142 Colo. 294, 350 P.2d 1044 (1960).

Another purpose of the workmen's compensation act is to provide a method whereby claims arising out of industrial accidents may be speedily resolved. *Stanley Hotel v. Thomas*, 153 Colo. 503, 387 P.2d 27 (1963); *Bellendir v. Kezer*, 648 P.2d 645 (Colo. 1982).

Primary purpose of the workmen's compensation act is to afford workmen

compensation for job-related injuries, regardless of fault. *Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 510 P.2d 891 (1973).

Compensation legislation is a system of benefits one of whose independent social objectives is to prevent destitution among dependents of workmen who lose their lives in industrial activity. In *re Hampton v. State*, 31 Colo. App. 141, 500 P.2d 1186 (1972).

Employee is compensated and employer immunized from common-law claims. The workmen's compensation act grants the employee compensation from the employer, even though the employee may be negligent and even if the employer is not negligent. In return, the employer who is responsible under the workmen's compensation act is granted immunity from common-law claims. *Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 510 P.2d 891 (1973).

But workmen's compensation act is not to shield third-party tortfeasors from liability for damages resulting from their negligence. *Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 510 P.2d 891 (1973).

Consideration of the mental state of a third party is consistent with no-fault character of workers' compensation act, as it is the fault of the claimant and employer that is generally disregarded. *Bralish v. Indus. Claim Appeals Office*, 81 P.3d 1091 (Colo. App. 2003).

Bad-faith handling of a claim by an insurer is similarly not a risk contemplated by the general coverage provisions of the

act. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985); *McKelvy v. Liberty Mut. Ins. Co.*, 983 P.2d 42 (Colo. App. 1998).

Independent insurance adjusting firm, acting on behalf of a self-insured employer, owes a duty of good faith to an injured claimant in investigating and processing a claim despite lack of contractual privity. *Johnson v. Scott Wetzel Servs., Inc.*, 797 P.2d 786 (Colo. App. 1990), *aff'd*, 821 P.2d 804 (Colo. 1991).

Retaliation violates public policy. Since an employee is granted the specific right to apply for and receive compensation under this Act, an employer's retaliation for the exercise of such right violates public policy and provides the basis for a common-law claim by the employee to recover damages sustained by him as a result of that violation. *Lathrop v. Entenmann's, Inc.*, 770 P.2d 1367 (Colo. App. 1989).

III. CONSTRUCTION OF THE ACT.

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the director of the division of labor with the power, previously exercised by the industrial commission, to enforce and administer the workmen's compensation act.

Act to be liberally construed. The workmen's compensation act is highly remedial and beneficent in purpose, and should be liberally construed so as to accomplish its evident intent and purpose. *Indus. Comm'n v. Johnson*, 64 Colo. 461, 172 P. 422 (1918); *Employers' Mut. Ins. Co.*

v. Indus. Comm'n, 65 Colo. 283, 176 P. 314 (1918); Karoly v. Indus. Comm'n, 65 Colo. 239, 176 P. 284 (1918); Central Sur. & Ins. Corp. v. Indus. Comm'n, 84 Colo. 481, 271 P. 617 (1928); Danielson v. Indus. Comm'n, 96 Colo. 522, 44 P.2d 1011 (1935); McBride v. Indus. Comm'n, 97 Colo. 166, 49 P.2d 386 (1935); McNeil Coal Corp. v. Indus. Comm'n, 105 Colo. 263, 96 P.2d 889 (1939); Skjoldahl v. Indus. Comm'n, 108 Colo. 140, 113 P.2d 871 (1941); Pacific Employers Ins. Co. v. Kirkpatrick, 111 Colo. 470, 143 P.2d 267 (1943); Great Am. Indem. Co. v. Indus. Comm'n, 114 Colo. 91, 162 P.2d 413 (1945); Arvas v. McNeil Coal Corp., 119 Colo. 289, 203 P.2d 906 (1949); Nat'l Fuel Co. v. Arnold, 121 Colo. 220, 214 P.2d 784 (1950); Cont'l Oil Co. v. Sirhall, 122 Colo. 332, 222 P.2d 612 (1950); L.B. Cole Produce Co. v. Indus. Comm'n, 123 Colo. 278, 228 P.2d 808 (1951); Indus. Comm'n v. Golden Cycle Corp., 126 Colo. 68, 246 P.2d 902 (1952); Indus. Comm'n v. Corwin Hosp., 126 Colo. 358, 250 P.2d 135 (1952); Univ. of Denver v. Nemeth, 127 Colo. 385, 257 P.2d 423 (1953); Indus. Comm'n v. Havens, 136 Colo. 111, 314 P.2d 698 (1957); Graden Coal Co. v. Yturalde, 137 Colo. 527, 328 P.2d 105 (1958); Univ. of Denver v. Indus. Comm'n, 138 Colo. 505, 335 P.2d 292 (1959); Indus. Comm'n v. Baldwin, 139 Colo. 268, 338 P.2d 103 (1959); Snyder v. Indus. Comm'n, 138 Colo. 523, 335 P.2d 543 (1959); Idarado Mining Co. v. Barnes, 148 Colo. 166, 365 P.2d 36 (1961); Martin Marietta Corp. v. Faulk, 158 Colo. 441, 407 P.2d 348 (1965); In re Hampton v. State, 31 Colo. App. 141, 500 P.2d 1186 (1972); James v. Irrigation Motor & Pump Co., 180 Colo. 195, 503 P.2d 1025 (1972); Conley v. Indus. Comm'n, 43

Colo. App. 10, 601 P.2d 648 (1979); Martinez v. Indus. Comm'n, 709 P.2d 49 (Colo. App. 1985).

The workmen's compensation laws are to be liberally construed to accomplish the beneficent social and protective purposes of such enactments. Puffer Mercantile Co. v. Arellano, 34 Colo. App. 434, 528 P.2d 966 (1974), rev'd on other grounds, 190 Colo. 138, 546 P.2d 481 (1975); Mtn. City Meat Co. v. Oqueda, 919 P.2d 246 (Colo. 1996).

The workmen's compensation act is broadly and liberally construed so as to provide just compensation for workmen and their families for injuries during employment. Finnerman v. McCormick, 499 F.2d 212 (10th Cir. 1974).

The act is remedial and beneficent in purpose, and should be liberally construed to accomplish its humanitarian purpose of assisting injured workers and their families. Colo. Counties, Inc. v. Davis, 801 P.2d 10 (Colo. App. 1990).

The courts will construe the workmen's compensation law and interpret the legislative intent as it may appear from a consideration of the purpose and intent of the entire enactment. Univ. of Denver v. Indus. Comm'n, 138 Colo. 505, 335 P.2d 292 (1959).

The workmen's compensation provisions must not be pushed beyond the limits of their purpose, nor its funds diverted to those not clearly entitled thereto. Indus. Comm'n v. Baldwin, 139 Colo. 268, 338 P.2d 103 (1959).

Nonexistent provision may not be read into the act. The provision that the workmen's compensation act shall be liberally construed cannot be extended to clothe the court with power to read into it a provision which does not exist. *Maley v. Martin*, 111 Colo. 545, 144 P.2d 558 (1943); *Md. Cas. Co. v. Indus. Comm'n*, 116 Colo. 58, 178 P.2d 426 (1947); *Snyder v. Indus. Comm'n*, 138 Colo. 523, 335 P.2d 543 (1959).

The tort of wrongful termination in violation of public policy does not arise under the workers' compensation laws of Colorado. *Rundle v. Frontier-Kemper Constructors, Inc.*, 170 F. Supp. 2d 1075 (D. Colo. 2001).

Where the provisions of the workmen's compensation act do not expressly limit the employee with respect to remedies, a court is not disposed to read or interpret such limitations into this act. *Chartier v. Winslow Crane Serv. Co.*, 142 Colo. 294, 350 P.2d 1044 (1960).

However, consideration of the statute as a whole, together with its clear legislative intent, may persuade a court to impose such a limitation. *Buzard v. Super Walls, Inc.*, 681 P.2d 520 (Colo. 1984).

And hypertechnical refinements in construction should be avoided. In order to carry out the intended purpose of the workmen's compensation act, it is necessary to avoid hypertechnical refinements in the construction of the terms and provisions of the act, especially where there is no prejudice to the employer. *City of Boulder v. Payne*, 162 Colo. 345, 426 P.2d 194 (1967);

Martinez v. Indus. Comm'n, 709 P.2d 49 (Colo. App. 1985).

Mandatory provisions cannot be ignored. The doctrine of liberal construction to be applied to the act does not clothe the industrial commission with power to ignore its mandatory provisions. *Stahura v. Indus. Comm'n*, 103 Colo. 451, 86 P.2d 1080 (1939).

All portions should be construed together. To give full import to the purposes of the workmen's compensation act, all portions thereof should be read together and harmonized if possible. *McBride v. Indus. Comm'n*, 97 Colo. 166, 49 P.2d 386 (1935).

In workers' compensation cases, the substantive rights and liabilities of the parties are determined by the statute in effect at the time of a claimant's injury, while procedural changes in the statute become effective during the pendency of a claim. *Am. Comp. Ins. Co. v. McBride*, 107 P.3d 973 (Colo. App. 2004); *Colo. Comp. Ins. Auth. v. Jones*, 131 P.3d 1074 (Colo. App. 2005); *Brownson-Rausin v. Indus. Claim Appeals Office*, 131 P.3d 1172 (Colo. App. 2005).

Workers' compensation carrier is responsible for pro rata payment of plaintiff's attorney fees and costs in third-party action, where carrier is subrogated against third-party tortfeasor, despite no active contribution by carrier to the prosecution of the claim or its settlement. *Colo. Counties, Inc. v. Davis*, 801 P.2d 10 (Colo. App. 1990).

Both the Colorado Auto Accident Reparations Act and this act apply when a person is injured in an auto accident during

the course and scope of employment. *County Workers Comp. Pool v. Folk*, 895 P.2d 1083 (Colo. App. 1994).

8-40-102. Legislative declaration.

(1) It is the intent of the general assembly that the "Workers' Compensation Act of Colorado" be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation, recognizing that the workers' compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike.

(2) The general assembly hereby finds that the determination of whether an individual is an employee for purposes of the "Workers' Compensation Act of Colorado" is subject to a great deal of speculation and litigation. It is the intent of the general assembly to provide an easily ascertainable standard for determining whether an individual is an employee. In order to further this objective, the test for determining whether an individual is an employee for the purposes of the "Workers' Compensation Act of Colorado" shall be based on the nine criteria found in section 8-40-202 (2)(b)(II) which shall supersede the common law. The fact that an individual performs services exclusively or primarily for another shall not be conclusive evidence that the individual is an employee.

Source: **L. 90:** Entire article R&RE, p. 468, § 1, effective July 1. **L. 91:** Entire section amended, p. 1291, § 3, effective July 1. **L. 93:** Entire section amended, p. 355, § 1, effective April 12. **L. 95:** (2) amended, p. 343, § 1, effective July 1.

Editor's note: This section is similar to former § 8-40-101.5 as it existed prior to 1990.

ANNOTATION

Claimant has burden of establishing rights to workers' compensation benefits. *Younger v. City & County of Denver*, 810 P.2d 647 (Colo. 1991).

Subsection (1) applied in *Weld County Sch. Dist. RE-12 v. Bymer*, 955 P.2d 550 (Colo. 1998).

Subsection (1) does not confer eligibility for unemployment compensation benefits upon a claimant who is otherwise ineligible. *McClafin v. Indus. Claim Appeals Office*, 126 P.3d 288 (Colo. App. 2005).

PART 2

DEFINITIONS

8-40-201. Definitions.

As used in articles 40 to 47 of this title 8, unless the context otherwise requires:

(1) "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; an unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it.

(2) "Accident", "injury", or "injuries" includes disability or death resulting from accident or occupational disease as defined in subsection (14) of this section.

(2.5) Repealed.

(3) "Board" means the board of directors of Pinnacol Assurance.

(3.4) "Chief executive officer" means the chief executive officer of Pinnacol Assurance.

(3.5) Repealed.

(3.6) "Claimant" means a person who either:

(a) Receives benefits under articles 40 to 47 of this title; or

(b) Has or asserts, in any administrative or judicial forum or in any communication with the director, the division, or an employer, insurer, or self-insured employer, a right to receive such benefits.

(4) "Division" means the division of workers' compensation in the department of labor and employment.

(5) "Director" means the director of the division of workers' compensation.

(6) "Employee" has the meaning set forth in section 8-40-202 and the scope of such term is set forth in section 8-40-301.

(7) "Employer" has the meaning set forth in section 8-40-203 and the scope of such term is set forth in section 8-40-302.

(8) "Employment" means any trade, occupation, job, position, or process of manufacture or any method of carrying on any trade, occupation, job, position, or process of manufacture in which any person may be engaged; except that it shall not include participation in a ridesharing arrangement, as defined in section 39-22-509 (1)(a)(II), C.R.S., and participation in such a

ridesharing arrangement shall not affect the wages paid to or hours or conditions of employment of an employee; nor shall it include the employee's participation in a voluntary recreational activity or program, regardless of whether the employer promoted, sponsored, or supported the recreational activity or program.

(9) "Examiner" means one of the industrial claim appeals examiners appointed to the industrial claim appeals panel in the industrial claim appeals office.

(10) "Executive director" means the executive director of the department of labor and employment.

(10.5) "Filing" means service of a document with the division or with a court.

(11) (Deleted by amendment, L. 2002, p. 1882, § 27, effective July 1, 2002.)

(11.3) "Mailed" or "mailing" means service upon a party by any means, whether with a physical copy, through email, or through the division's electronic filing system.

(11.5) "Maximum medical improvement" means a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to improve the condition. The requirement for future medical maintenance which will not significantly improve the condition or the possibility of improvement or deterioration resulting from the passage of time shall not affect a finding of maximum medical improvement. The possibility of improvement or deterioration resulting from the passage of time alone shall not affect a finding of maximum medical improvement.

(12) "Mediation" means a process through which parties involved in a dispute concerning matters arising under articles 40 to 47 of this title meet with a mediator to discuss such matter or matters, defining and articulating the issues and their positions on such issues, with a goal of resolving such dispute or disputes.

(13) "Mediator" means an individual who is trained to assist disputants in reaching a mutually acceptable resolution of their disputes through the identification and evaluation of alternatives.

(13.5) Repealed.

(14) "Occupational disease" means a disease which results directly from the employment or the conditions under which work was performed, which can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as a proximate cause and which does not come from a hazard to which the worker would have been equally exposed outside of the employment.

(15) "Order" means and includes any decision, finding and award, direction, rule, regulation, or other determination arrived at by the director or an administrative law judge.

(15.5) (a) "Overpayment" means money received by a claimant that:

(I) Is the result of fraud;

(II) Is the result of an error due only to miscalculation, omission, or clerical error asserted in a new admission of liability filed within thirty days of the erroneous admission of liability;

(III) Is paid in error or inadvertently in excess of an admission or order that exists at the time that the benefits are paid to a claimant; or

(IV) Results in duplicate benefits because of offsets that reduce disability or death benefits payable under articles 40 to 47 of this title 8. Duplicate benefits include any wages earned by a claimant in the same or other employment while a claimant is also receiving temporary disability benefits.

(b) For an overpayment to result, it is not necessary that the overpayment exist at the time the claimant received disability or death benefits under articles 40 to 47 of this title 8.

(c) Nothing in this subsection (15.5):

(I) Prevents an insurance carrier or an employer from receiving a credit against permanent disability benefits for temporary disability benefits paid beyond the initial date of maximum medical improvement assigned by an authorized treating physician or the final date of maximum medical improvement established by any other means, whichever is later and to the extent that permanent disability benefits remain unpaid at the time of the filing of a final admission of liability; or

(II) Affects the power of the director or administrative law judges to determine overpayments and require repayment of overpayments pursuant to sections 8-42-113.5 and 8-43-207 (1)(q).

(16) "Panel" means the industrial claim appeals panel that conducts administrative appellate review pursuant to articles 40 to 47 of this title.

(16.5) (a) "Permanent total disability" means the employee is unable to earn any wages in the same or other employment. Except as provided in paragraph (b) of this subsection (16.5), the burden of proof shall be on the employee to prove that the employee is unable to earn any wages in the same or other employment.

(b) Total loss of or total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof shall create a rebuttable presumption of permanent total disability. "Total loss of use" shall be a medical determination, based upon objective findings, made by an independent medical examiner who is a level II accredited physician in the appropriate field.

(17) "Place of employment" means every place whether indoors, outdoors, or underground and the premises, workplaces, works, and plants appertaining thereto or used in connection therewith where either temporarily or permanently any industry, trade, or business is carried on;

or where any process or operation directly or indirectly relating to any industry, trade, or business is carried on; or where any person is directly or indirectly employed by another for direct or indirect gain or profit.

(17.5) "Service", "serve", or "served" means providing a copy of a document or filing to all required parties by physical or electronic means and includes a proper filing through the division's electronic system.

(18) "State" includes any state or territory of the United States, the District of Columbia, and any province of Canada.

(18.5) "Temporary help contracting firm" means any person who is in the business of employing individuals and, for compensation from a third party, providing those individuals to perform work for the third party, under the supervision of the third party.

(19) (a) "Wages" shall be construed to mean the money rate at which the services rendered are recompensed under the contract of hire in force at the time of the injury, either express or implied.

(b) The term "wages" includes the amount of the employee's cost of continuing the employer's group health insurance plan and, upon termination of the continuation, the employee's cost of conversion to a similar or lesser insurance plan, and gratuities reported to the federal internal revenue service by or for the worker for purposes of filing federal income tax returns and the reasonable value of board, rent, housing, and lodging received from the employer, the reasonable value of which shall be fixed and determined from the facts by the division in each particular case, but does not include any similar advantage or fringe benefit not specifically enumerated in this subsection (19). If, after the injury, the employer continues to pay any advantage or fringe benefit specifically enumerated in this subsection (19), including the cost of health insurance coverage or the cost of the conversion of health insurance coverage, that advantage or benefit shall not be included in the determination of the employee's wages so long as the employer continues to make payment. Medicaid and other indigent health-care programs are not health insurance plans for the purposes of this section.

(c) No per diem payment shall be considered wages under this subsection (19) unless it is also considered wages for federal income tax purposes.

Source: L. 90: Entire article R&RE, p. 469, § 1, effective July 1; (6) and (7) amended, p. 1843, § 28, effective July 1. **L. 91:** (2.5), (3.5), (11.5), (13.5), and (16.5) added and (4), (5), (8), (12), (15), and (19) amended, p. 1292, § 4, effective July 1. **L. 94:** (19) amended, p. 1285, § 1, effective May 22; (16.5) amended, p. 2000, § 1, effective July 1. **L. 95:** (2.5) and (3.5) amended, p. 12, § 1, effective March 9. **L. 96:** (2.5) amended, p. 151, § 1, effective July 1; (18.5) added, p. 827, § 1, effective July 1. **L. 97:** (3.6) and (15.5) added, p. 112, § 1, effective July 1. **L. 98:**

(13.5) amended, p. 168, § 1, effective April 6. **L. 2002:** (3) and (11) amended and (3.4) added, p. 1882, § 27, effective July 1. **L. 2003:** (2.5) and (13.5) amended, p. 917, § 1, effective July 1. **L. 2004:** (8) amended, p. 904, § 26, effective May 21. **L. 2010:** (19)(b) amended, (SB 10-187), ch. 310, p. 1456, § 1, effective July 1. **L. 2021:** IP and (15.5) amended, (HB 21-1207), ch. 149, p. 869, § 1, effective January 1, 2022. **L. 2026:** (10.5), (11.3), and (17.5) added, (SB 26-186), ch. 315, p. 1845, § 1, effective August 12.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1990. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (3.5)(b)(I) provided for the repeal of subsection (3.5), effective July 1, 1996. (See L. 95, p. 12.)

(3) Subsection (3.4) was originally numbered as (3.5) in House Bill 02-1135 but has been renumbered on revision for ease of location.

(4) Subsections (2.5)(b)(I) and (13.5)(b)(I) provided for the repeal of subsections (2.5) and (13.5), respectively, effective July 1, 2014. (See L. 2003, p. 917.)

ANNOTATION

I. General Consideration.

II. Accident and Injuries.

III. Employment.

IV. Occupational Disease.

V. Order.

VI. Overpayment.

VII. Permanent Total Disability.

VIII. Place of Employment.

IX. State.

Colo. Law. 545 and 1281 (1993). For article, "Anderson v. Brinkoff: Finally, a Meaningful Definition of 'Occupational Disease'", see 23 Colo. Law. 383 (1994). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 83 (Apr. 2004). For article, "Overview of General Liability, Workers' Compensation, and Employment Law Issues in K-12 Educational Institutions", see 44 Colo. Law. 25 (Oct. 2015).

I. GENERAL CONSIDERATION.

Law reviews. For article, "Independent Contractors and the Colorado Workers' Compensation Act — Parts I and II", see 22

Annotator's note. (1) Since § 8-40-201 is similar to §§ 8-41-102, 8-41-103, 8-41-108, and 8-46-201 as they existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado",

articles 40 to 47 of title 8, relevant cases construing those provisions have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred some of its powers, duties, and functions under the act to the industrial claim appeals office.

II. ACCIDENT AND INJURIES.

Law reviews. For article, "A Significant Change in the Colorado Workmen's Compensation Act: 'Accidents', 'Injuries' and Heart Attack", see 41 Den. L. Ctr. J. 189 (1964). For article, "The Enterprise Liability Theory of Torts", see 47 U. Colo. L. Rev. 153 (1976).

The definition of "accident" under this section is an unexpected or unforeseen event happening suddenly and violently, with or without human fault and producing at the time objective symptoms of an injury.

An "accident" under the workmen's compensation act is an occurrence traceable to a definite time, place, and cause. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 154 Colo. 240, 392 P.2d 174 (1964); Miceli v. State Comp. Ins. Fund, 157 Colo. 204, 401 P.2d 835 (1965).

Prior to this section, the workmen's compensation statute did not contain any definition of the word "accident". Indus. Comm'n v. Milka, 159 Colo. 114, 410 P.2d 181 (1966).

But an "accident" under the act had been interpreted to mean any unintended or unexpected loss or hurt apart from its cause. The term "accidental injury" was not then confined to a situation where the means or cause was an accident for it also included any injury which was itself an accident. Martin Marietta Corp. v. Faulk, 158 Colo. 441, 407 P.2d 348 (1965).

And this section is not intended to and does not alter the meaning of "accident" as that term came to be accepted by reason of court decisions. Denver-Golder Corp. v. Minikus, 159 Colo. 188, 410 P.2d 636 (1966); Indus. Comm'n v. Milka, 159 Colo. 114, 410 P.2d 181 (1966).

Thus, by this section, the general assembly has done nothing more than to adopt and to place into the act the court's determination of what is an accident. Indus. Comm'n v. Milka, 159 Colo. 114, 410 P.2d 181 (1966).

Since case law not overruled, demonstrative external violence need not be shown. The general assembly has not overruled the "case law"; therefore, it does not have to be shown that some demonstrative external violence was visited upon the body "causing a wounding, breaking, tearing, puncturing or disruption of the continuity of the body of the injured employee or his bodily tissue". Indus. Comm'n v. Milka, 159 Colo. 114, 410 P.2d 181 (1966).

The former definitions of "accident" and "injury" in this section made them inseparably linked to trauma, but this traumatic connection was entirely eliminated

in the 1965 amendment. For example, in the 1965 definition of "accident" there are the terms, "an unforeseen event, occurring without the will or design of the person whose mere act causes it" and "an unexpected, unusual, or undesigned occurrence". *T & T Loveland Chinchilla Ranch v. Bourn*, 173 Colo. 267, 477 P.2d 457 (1970).

"Personal injury" limited. Because "personal injury" is not defined by the workmen's compensation act, it does not include damages which are based mainly on mental suffering and humiliation, and only peripherally on physical suffering and pain. *Luna v. City & County of Denver*, 537 F. Supp. 798 (D. Colo. 1982).

Courts distinguish between "accident" and "injury". *City of Boulder v. Payne*, 162 Colo. 345, 426 P.2d 194 (1967).

In that accident is the cause and injury is the effect. It does not follow in every instance that the two occur simultaneously. At least, in many instances, the total or ultimate effect is not immediately apparent. *City of Boulder v. Payne*, 162 Colo. 345, 426 P.2d 194 (1967); *Indus. Comm'n v. Bysom*, 166 Colo. 502, 444 P.2d 627 (1968); *Crest Fence Co. v. Cec*, 175 Colo. 21, 485 P.2d 709 (1971).

And an injury takes place when one, as a reasonable man, should recognize the nature, seriousness, and probable compensable character of his injury. *Crest Fence Co. v. Cec*, 175 Colo. 21, 485 P.2d 709 (1971).

Therefore, to interpret the act in such a way that a person who reasonably discovers his injury long after the accident and is entitled to compensation is not entitled to his medical expenses is absurd, and a defeat of the purpose of the act. *Crest Fence Co. v. Cec*, 175 Colo. 21, 485 P.2d 709 (1971).

Series of traumatic events compensable. The fact that an injury results from a series of traumatic events does not prevent that injury from being compensable as proximately caused by accident. *Martinez v. Indus. Comm'n*, 40 Colo. App. 485, 580 P.2d 36 (1978).

The traditional test for distinguishing between accidental and occupational injuries is whether the injury can be traced to a particular time, place, and cause. Because the employee's ulnar nerve entrapment injury resulted from the conditions of her employment, rather than a specific accident or trauma, the injury is an occupational disease within the meaning of subsection (14). *Campbell v. IBM Corp.*, 867 P.2d 77 (Colo. App. 1993).

If one can prove that the injury was a result of work, then the date of injury is irrelevant for purposes of medical compensation. The injured worker is entitled to medical compensation regardless of date of injury if he or she can prove injury as a result of work. *Wal-Mart Stores, Inc. v. Indus. Claim Appeals Office*, 989 P.2d 251 (Colo. App. 1999).

A claimant suffering from an occupational disease is entitled to reasonably necessary medical benefits,

even if the disease has not yet become disabling. *Wal-Mart Stores, Inc. v. Indus. Claim Appeals Office*, 989 P.2d 251 (Colo. App. 1999).

Applied in *Eisnach v. Indus. Comm'n*, 633 P.2d 502 (Colo. App. 1981); *High v. Indus. Comm'n*, 638 P.2d 818 (Colo. App. 1981); *Stephen Equip. Co. v. Baca*, 703 P.2d 1332 (Colo. App. 1985); *City of Aurora v. Indus. Comm'n*, 710 P.2d 1122 (Colo. App. 1985).

III. EMPLOYMENT.

This section is to be construed in relation to § 8-48-101. *Betz v. Indus. Comm'n*, 109 Colo. 385, 125 P.2d 958 (1942).

Determination of employment relationship depends upon facts in each case. *Schultz v. Indus. Comm'n*, 34 Colo. App. 122, 523 P.2d 164 (1974).

And determination must properly be made by commission rather than court, even though the facts are largely undisputed, because this matter is not within the court's scope of review. *Schultz v. Indus. Comm'n*, 34 Colo. App. 122, 523 P.2d 164 (1974).

One may be employee by virtue of the statute and not by common-law definition. An obligation to pay workmen's compensation may, in proper cases, be imposed against an owner where the common-law relationship of employer and employee does not exist, in that one may be an employee by virtue of the statute, for the purpose of workmen's compensation, when in fact he is not an employee by common-

law definition. *Finnerman v. McCormick*, 499 F.2d 212 (10th Cir. 1974).

Doubt resolved in claimant's favor. Any reasonable doubt as to whether a compensable accidental injury or death arose out of and in the course of employment must be resolved in favor of the claimant. *Conley v. Indus. Comm'n*, 43 Colo. App. 10, 601 P.2d 648 (1979).

A company whose business is essentially that of processing, is within the meaning of "process of manufacture or any method of carrying on any such trade or process of manufacture" as used in this section. *Betz v. Indus. Comm'n*, 109 Colo. 385, 125 P.2d 958 (1942).

Harm or injury sustained by an employee while going to or from his work is not compensable, in the absence of special circumstances, and except in certain unusual circumstances. *Berry's Coffee Shop, Inc. v. Palomba*, 161 Colo. 369, 423 P.2d 2 (1967); *J. C. Carlile Corp. v. Antaki*, 162 Colo. 376, 426 P.2d 549 (1967).

But injuries which occur to an employee while going to or from work may be compensable when it appears that at the time of such injuries he is engaged in doing an act, or performing a duty, which he is definitely charged with doing as a part of his contractual service, or under the express or implied direction of his employer. *State Comp. Ins. Fund v. Keane*, 160 Colo. 292, 417 P.2d 8 (1966); *Berry's Coffee Shop, Inc. v. Palomba*, 161 Colo. 369, 423 P.2d 2 (1967); *J. C. Carlile v. Antaki*, 162 Colo. 376, 426 P.2d 549 (1967).

And an injury suffered by an employee while performing an act for the mutual benefit of the employer and the employee is usually compensable, for when some advantage to the employer results from the employee's conduct, his act cannot be regarded as purely personal and wholly unrelated to the employment. Accordingly, an injury resulting from such an act arises out of, and in the course of, the employment; and this rule is applicable, even though the advantage to the employer is slight. *Berry's Coffee Shop, Inc. v. Palomba*, 161 Colo. 369, 423 P.2d 2 (1967).

Thus, the test in brief is this: If the work of the employee creates the necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own. *Berry's Coffee Shop, Inc. v. Palomba*, 161 Colo. 369, 423 P.2d 2 (1967).

The test for whether reimbursed travel is within the course and scope of employment necessitates the following findings of fact: (1) The number of miles traveled; (2) the cost of driving the distance on a daily basis; (3) the extent to which the reimbursement covers actual travel costs; (4) the extent to which other employees travel to reach the job site; and (5) the difficulties of travel that provide a special benefit to the employer or poses an unusual risk to the employee. *Sturgeon Elec. v. Indus. Claim Appeals Office*, 129 P.3d 1057 (Colo. App. 2005).

Decedent's death arises out of his employment if it arises out of the nature, conditions, obligations or incidents of the

employment; in other words, out of the employment looked at in any of its aspects. *Conley v. Indus. Comm'n*, 43 Colo. App. 10, 601 P.2d 648 (1979).

Claim not barred by off-duty status. The fact that decedent police officer was off duty prior to the onset of the emergency does not bar a claim for compensation. *Conley v. Indus. Comm'n*, 43 Colo. App. 10, 601 P.2d 648 (1979).

Voluntary participation in recreational event held during nonwork hours and off of employer's premises, with only benefit to employer being improvement of employee morale, held not to constitute compensable situation if injury to employee occurs. *Wilson v. Sci. Software-Intercomp*, 738 P.2d 400 (Colo. App. 1987).

Even if the employer promoted the event, subsection (8) requires that the claimant's motive for participation be determined and that compensation be denied if participation in the activity was voluntary. *Dover Elevator Co. v. Indus. Claim Appeals Office*, 961 P.2d 1141 (Colo. App. 1998).

An administrative law judge may consider evidence concerning whether an employer promoted, sponsored, or supported an activity because it is within the employer's power to enlarge the scope of employment. *Dover Elevator Co. v. Indus. Claim Appeals Office*, 961 P.2d 1141 (Colo. App. 1998).

Causation may be established in the absence of the time and place factors set forth in City and County of Denver v.

Lee, 168 Colo. 208, 450 P.2d 352 (1969), if there is a strong showing of the other factors. Dover Elevator Co. v. Indus. Claim Appeals Office, 961 P.2d 1141 (Colo. App. 1998).

The fact that there was no evidence that anyone was punished for not having attended a party did not preclude a determination that attendance at the party was voluntary. Dover Elevator Co. v. Indus. Claim Appeals Office, 961 P.2d 1141 (Colo. App. 1998).

The provision of this section providing that employment does not include participation in a ridesharing arrangement precludes a vicarious liability claim against the employer for injuries sustained by an employee in a car pooling arrangement. Smith v. Pinner, 891 F.2d 784 (10th Cir. 1989).

In the context of workers' compensation, the determination whether an accident occurred within the scope of employment depends on an examination of the totality of the circumstances, and if an employee's travel is at the express or implied request of the employer, or if the travel confers a benefit on the employer beyond the sole fact of the employee's arrival at work, then the travel is within the scope of employment. Capra v. Tucker, 857 P.2d 1346 (Colo. App. 1993).

Where the employer agrees to provide its employee with the means of transportation or to pay the employee's cost of commuting to and from work, the scope of employment inferentially enlarges to include the employee's transportation.

Capra v. Tucker, 857 P.2d 1346 (Colo. App. 1993).

Where claimant worked full-time and there was no evidence that he was hired for the completion of single tasks, or on a per task basis, ALJ erred in concluding that he was not an actual employee. The "relative nature of the work" test, if applied, would show that the claimant was an actual employee under this section. Stampados v. Colo. D & S Enters., 833 P.2d 815 (Colo. App. 1992).

The term "employment" is applied in Loffland Brothers Co. v. Indus. Comm'n, 714 P.2d 509 (Colo. App. 1985).

IV. OCCUPATIONAL DISEASE.

Former section provided that an occupational disease would not be compensated as an accident. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 162 Colo. 68, 424 P.2d 382 (1967).

Employment conditions acting on preexisting allergy or weakness in "occupational disease". Where employment conditions act upon a claimant's individual allergy, hypersensitivity, or preexisting weakness so as to disable him, he has a compensable occupational disease, provided other requirements for compensability have been met. Denver v. Hansen, 650 P.2d 1319 (Colo. App. 1982); IML Freight v. Indus. Comm'n, 676 P.2d 1205 (Colo. App. 1983).

As is condition acting on preexisting injury. Where, as a condition of his employment, claimant was required to wear safety shoes, which developed blistering on

a foot on which he had previously suffered severe burns, this injury fits within the definition of occupational disease. *CF & I Steel Corp. v. Indus. Comm'n*, 650 P.2d 1332 (Colo. App. 1982).

Standard for disease. Disability benefits are not given only in those cases in which the disease is so overwhelming that it physically prevents a worker from attempting to perform his duties. *Jefferson County Schs. v. Headrick*, 734 P.2d 659 (Colo. App. 1986).

Under the definition of "occupational disease", the statute does not invite a weighing of hazards to which a worker has been exposed in his lifetime in determining whether a particular disease is occupational, it operates to ensure that a disease results from an occupational hazard. Where there is no evidence that occupational exposure to a hazard is a necessary prerequisite to the development of the disease, a claimant suffers from an occupational disease only to the extent that the occupational exposure contributed to the disability. *Anderson v. Brinkhoff*, 859 P.2d 819 (Colo. 1993) (decided under law in effect prior to 1990 repeal and reenactment).

If any hazard encountered by a worker outside the worker's employment setting was at least an equal contributor to the employee's disease, no compensation can be awarded. *Hall v. Indus. Claim Appeals Office*, 757 P.2d 1132 (Colo. App. 1988); *Cowin & Co. v. Medina*, 860 P.2d 535 (Colo. App. 1992).

Therefore, if two or more causes contribute to a diseased condition, it is

necessary to determine the extent to which the nonindustrial cause contributed to that condition. *Cowin & Co. v. Medina*, 860 P.2d 535 (Colo. App. 1992).

However, similar to the requirement that a tortfeasor assumes the burden of proving the ability to apportion responsibility between two or more causes of a disability, a disabled worker's employer bears the burden of proving the extent to which a nonoccupational hazard has contributed to that worker's disability. The failure to sustain this burden will render inapplicable the statutory exclusion from the general rule of compensation in this section. *Cowin & Co. v. Medina*, 860 P.2d 535 (Colo. App. 1992).

The fact that an occupational disease becomes acutely symptomatic does not ipso facto transform it into an accidental injury. *Campbell v. IBM Corp.*, 867 P.2d 77 (Colo. App. 1993).

Occupational diseases are subject to a more rigorous test than occupational accidents/injuries before they can be found compensable. If the general assembly intended to subject occupational disease only to the "arising out of" test, there would be no need to include the language concerning hazards to which the worker would have been equally exposed outside of employment. *Anderson v. Brinkhoff*, 859 P.2d 819 (Colo. 1993) (decided under law in effect prior to 1990 repeal and reenactment).

The four-part test applied to determine whether an occupational disease is compensable amounts to a legislative declaration that it is necessary to limit the

scope of occupational diseases to those diseases which result from working conditions which are characteristic of the vocation. It is this proof of causation that ensures that the Workers' Compensation Act will not become a general health insurance act. *Anderson v. Brinkhoff*, 859 P.2d 819 (Colo. 1993) (decided under law in effect prior to 1990 repeal and reenactment).

Occupational exposure as a contributory factor in disability. When there is no evidence that occupational exposure was a necessary precondition to development of the disease with which the claimant is afflicted, the claimant has sustained an occupational disease only to the extent that the occupational exposure contributed to his overall disability. *Masdin v. Gardner-Denver-Copper Indus., Inc.*, 689 P.2d 714 (Colo. App. 1984).

COVID-19 can be an occupational disease under the Workers' Compensation Act of Colorado. *Life Care Ctrs. v. Indus. Claim Appeals Office*, 2024 COA 47, 553 P.3d 905.

V. ORDER.

Written authority from the division of labor for the employer to close its file is not equivalent to an order finally adjudicating the claim, especially since there was no request made of claimant to advise whether he agreed that his case was closed. *Granite Constr. Co. v. Leonard*, 40 Colo. App. 20, 568 P.2d 500 (1977).

Letter of director was not an "order" within the meaning of this section but instead gave rise to a "controversy" which

was properly submitted to a hearing officer for resolution. *Romans v. Hewitt Elec. Corp.*, 723 P.2d 161 (Colo. App. 1986).

"Order" includes a procedural rule. *Crowell v. Indus. Claim Appeals Office*, 2012 COA 30, 298 P.3d 1014.

VI. OVERPAYMENT.

The statutory definition of the term "overpayment" is clear and unambiguous. *Simpson v. Indus. Claim Appeals Office*, 219 P.3d 354 (Colo. App. 2009), rev'd on other grounds, 232 P.3d 777 (Colo. 2010).

There are three categories of possible overpayment included in the statutory definition of "overpayment" under subsection (15.5). The first category is for overpayments created when a claimant receives money that exceeds the amount that should have been paid. The second category is for money received that a claimant was not entitled to receive. The third category is for money received that results in duplicate benefits because of offsets that reduce disability or death benefits payable under articles 40 to 47 of this title. *Simpson v. Indus. Claim Appeals Office*, 219 P.3d 354 (Colo. App. 2009), rev'd on other grounds, 232 P.3d 777 (Colo. 2010).

The disjunctive "or" in subsection (15.5) plainly demarcates three different categories of overpayments, only one of which involves statutory setoff. The statutory phrase "because of offsets that reduce disability or death benefits payable under said articles" applies only to the third category of overpayments in subsection

(15.5). *Simpson v. Indus. Claim Appeals Office*, 219 P.3d 354 (Colo. App. 2009), rev'd on other grounds, 232 P.3d 777 (Colo. 2010).

VII. PERMANENT TOTAL DISABILITY.

Classification for purposes of determining eligibility for permanent total disability is constitutional and does not violate equal protection guarantees. *Lobb v. Indus. Claim Appeals Office*, 948 P.2d 115 (Colo. App. 1997).

Position offered to claimant in which she would engage in a variety of activities and be compensated at a rate of \$10 per hour, constituted "employment" within the meaning of subsection (8), making her ineligible for permanent total disability benefits. Administrative law judge's finding that the offer was a bona fide offer of employment rather than a charitable offer from claimant's former employer was supported by the record and is binding on appeal. *Lobb v. Indus. Claim Appeals Office*, 948 P.2d 115 (Colo. App. 1997).

Determination of "permanent total disability" is based on several factors, not just medical impairment. The 1991 amendment limiting determination of permanent partial disability to consideration of medical impairment does not limit determination of permanent total disability in the same manner. Thus, in determining permanent total disability, the ALJ was correct in considering claimant's physical condition, employment history, and educational background. *Best-Way Concrete*

Co. v. Baumgartner, 908 P.2d 1194 (Colo. App. 1995).

In making the determination whether a claimant is permanently and totally disabled, the ALJ may consider human factors such as education, ability, and former employment. *Holly Nursing Care Ctr. v. Indus. Claim Appeals Office*, 992 P.2d 701 (Colo. App. 1999).

The determination of whether a claimant is permanently and totally disabled is a factual determination and thus, an ALJ's resolution that is supported by substantial evidence is binding on review. *Holly Nursing Care Ctr. v. Indus. Claim Appeals Office*, 992 P.2d 701 (Colo. App. 1999).

A claimant who would not be able to access the labor market in the area where the claimant lives, a "reasonable commutable distance from home", is not capable of securing employment, was unable to earn any wages, and therefore was permanently and totally disabled. *Brush Greenhouse Partners v. Godinez*, 942 P.2d 1278 (Colo. App. 1996), aff'd sub nom. *Weld County Sch. Dist. RE-12 v. Bymer*, 955 P.2d 550 (Colo. 1998).

Access to or availability of employment in a claimant's commutable labor market may be considered in determining a claimant's eligibility for permanent total disability benefits. The crux of the inquiry is whether employment exists that is reasonably available to the claimant given his or her circumstances and can only be answered on a case-by-case basis. *Weld*

County Sch. Dist. RE-12 v. Bymer, 955 P.2d 550 (Colo. 1998).

The legislative history of the 1991 amendment to subsection (16.5)(a) indicates that the new definition of permanent total disability was intended to tighten and restrict eligibility for permanent total disability benefits. There is no evidence that the legislature intended to go further by abolishing consideration of a claimant's accessible labor market. Weld County Sch. Dist. RE-12 v. Bymer, 955 P.2d 550 (Colo. 1998).

VIII. PLACE OF EMPLOYMENT.

The place of employment under the workmen's compensation act is not expressly limited to the state. Denver Truck Exch. v. Perryman, 134 Colo. 586, 307 P.2d 805 (1957).

IX. STATE.

Law reviews. For note, "The Conflicts Problem as Applied to Workmen's Compensation in Colorado", see 22 Rocky Mt. L. Rev. 77 (1949).

Extraterritorial provisions reciprocal. The very inclusion of "any province of Canada" within the purview of this subdivision argues convincingly that the basic principle of the subdivision is the mutual recognition of extraterritorial provisions by voluntary reciprocal action of the various governing units contemplated by this subdivision; that the extraterritorial principle becomes applicable only to the extent that one state and then another enacts a similar reciprocal law. The fact that two neighboring states, Utah and Wyoming,

have enacted simultaneously with this state very similar laws would seem to be persuasive in adopting this view. Frankel Carbon & Ribbon Co. v. Aaron, 113 Colo. 429, 158 P.2d 929 (1945).

Applied in State Comp. Ins. Fund v. Howington, 133 Colo. 583, 298 P.2d 963 (1956).

X. WAGES.

A. Generally.

B. Computation of Average Weekly Wage.

C. Computation.

A. Generally.

Question whether subsection (19) is unconstitutional by virtue of preemption by federal legislation was properly a matter within the court of appeals' jurisdiction, and was not a matter subject to review by the administrative law judge. Celebrity Custom Builders v. Indus. Claim Appeals Office, 916 P.2d 539 (Colo. App. 1995).

Exclusion of fringe benefits of employment from definition of "wages" of employees in agricultural industry violates equal protection guarantees. Higgs v. W. Landscaping & Sprinkler Sys., Inc., 804 P.2d 161 (Colo. 1991).

Barring a claimant who is capable of earning wages in "any" amount from receiving permanent total disability benefits does not offend equal protection guarantees. Christie v. Coors Transp. Co., 919 P.2d 857 (Colo. App. 1995), *aff'd*, 933 P.2d 1330 (Colo. 1997).

The exclusion of per diem payments in the calculation of wages does not result in disparate calculation of wages, but rather, serves to differentiate between payments intended to reimburse the employee for expenses incurred as a result of his employment and those meant to provide economic advantage, and is not a violation of equal protection. *Young v. Indus. Claim Appeals Office*, 969 P.2d 735 (Colo. App. 1998).

Inclusion of cost of continuing health insurance in definition of "wages" does not require preemption of subsection (19) under federal Employee Retirement Income Security Act of 1974 (ERISA). *Celebrity Custom Builders v. Indus. Claim Appeals Office*, 916 P.2d 539 (Colo. App. 1995).

Actual purchase of health insurance not required in order for cost of benefits to be included in calculating claimant's average weekly wage. *Avalanche Indus. v. Indus. Claim Appeals Office*, 166 P.3d 147 (Colo. App. 2007), *aff'd*, 198 P.3d 589 (Colo. 2008).

ERISA does not preempt former § 8-47-101 (1) and (2), as effective in May 1989, to the extent those subsections required that the value of ERISA-plan benefits be included in calculating an employee's average weekly wage for workers' compensation purposes. *Hewlett-Packard Co. v. Diringer*, 42 F. Supp. 2d 1038 (D. Colo. 1999).

Purpose of subsection (19) definition of "wages" (now found in subsection (19)(b)) is to calculate the money rate at which

services are paid under the contract of hire in force at the time of injury, and to include any advantage or fringe benefit provided to the employee in lieu of wages. *Celebrity Custom Builders v. Indus. Claim Appeals Office*, 916 P.2d 539 (Colo. App. 1995).

Non-cash benefits can comprise a substantial amount of a worker's wages. *Celebrity Custom Builders v. Indus. Claim Appeals Office*, 916 P.2d 539 (Colo. App. 1995); *Young v. Indus. Claim Appeals Office*, 969 P.2d 735 (Colo. App. 1998); *Iler v. Indus. Claim Appeals Office*, 207 P.3d 945 (Colo. App. 2009).

Subsection (19) contains no requirement that the employer provide any level of coverage for the employee. *Celebrity Custom Builders v. Indus. Claim Appeals Office*, 916 P.2d 539 (Colo. App. 1995).

The term "wages" does not include employer's FICA tax payments for the purpose of calculating a claimant's average weekly wage even though employer's PERA contributions are included as "wages" for the same purpose. Case finds that there are significant differences between such payments which justify such different treatment. *Floyd v. AMF Tuboscope, Inc.*, 817 P.2d 534 (Colo. App. 1990).

The phrase "any wages" in subsection (16.5)(a) cannot encompass the pre-injury wage rate level referred to in subsection (19)(a). *McKinney v. Indus. Claim Appeals Office*, 894 P.2d 42 (Colo. App. 1995).

Subsection (16.5)(a) and § 8-43-303 (3) are distinguishable because they affect

persons who are not similarly situated to each other. The purpose of subsection (16.5)(a) is to define permanent total disability for purposes of initially determining whether a claimant is eligible for permanent total disability benefits. In contrast, the purpose of § 8-43-303 (3) is to set a standard which employers must meet before a case can be reopened to determine whether an employee who has already been awarded permanent total disability benefits should continue to receive such benefits. *Christie v. Coors Transp. Co.*, 933 P.2d 1330 (Colo. 1997).

"Any wages" means that a claimant is disqualified from permanent disability benefits if he or she is capable of earning wages in any amount. *McKinney v. Indus. Claim Appeals Office*, 894 P.2d 42 (Colo. App. 1995); *Christie v. Coors Transp. Co.*, 919 P.2d 857 (Colo. App. 1995), *aff'd*, 933 P.2d 1330 (Colo. 1997).

Employer cannot evade responsibility under Workers' Compensation Act by labeling a portion of compensation as "expense reimbursement" where there is no rational or realistic relationship between the employee's actual expenses and the amount claimed as reimbursement. *Sneath v. Express Messenger*, 881 P.2d 453 (Colo. App. 1994).

In determining the "money rate at which the services are rendered" pursuant to subsection (19), there must be included the value of the rate of accrual of the employee's leave time. *Meeker v. Provenant Health Partners*, 929 P.2d 26 (Colo. App. 1996).

Pension contributions are excluded from the determination of claimant's average weekly wage. *City of Lamar v. Koehn*, 968 P.2d 164 (Colo. App. 1998).

Panel correctly declined to include the value of claimant's vacation and sick leave in determining claimant's average weekly wage since the leave was subject to forfeiture after a specified maximum number of days had accrued and since the value of the claimant's leave time was dependent upon actual usage and would decline if not used. *City of Lamar v. Koehn*, 968 P.2d 164 (Colo. App. 1998).

Income from an investment or from a personally operated business does not necessarily constitute "wages". Because the general assembly did not intend to prohibit disabled persons from securing income other than wage income, claimant was not disqualified from receiving permanent total disability benefits simply because he received unspecified income from his investment in a bingo parlor and his former land scraper business. *Best-Way Concrete Co. v. Baumgartner*, 908 P.2d 1194 (Colo. App. 1995).

B. Computation of Average Weekly Wage.

A claimant's average weekly wage is to be determined according to the contract of hire in force at the time of the injury. *Drywall Prods. v. Constable*, 832 P.2d 957 (Colo. App. 1991).

Expense reimbursement of four cents per mile was not considered wages for federal income tax purposes and therefore could not be considered wages for purposes

of computing a claimant's average weekly wage. *Ernie Baylog, Inc. v. Indus. Claim Appeals Office*, 923 P.2d 361 (Colo. App. 1996).

The cost of medicare insurance benefits is included in an injured claimant's average weekly wage once the continuation of the employers' group health insurance plan is terminated. *Schelly v. Indus. Claim Appeals Office*, 961 P.2d 547 (Colo. App. 1997).

Average weekly wage includes both the employer's and employee's contribution to group health insurance premiums. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001), *aff'd*, 145 P.3d 661 (Colo. 2006).

Claimant is not required to present proof that he or she actually purchased replacement coverage. The statute merely seeks to ensure that the claimant will have funds available to make the purchase. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001); *Ray v. Indus. Claim Appeals Office*, 124 P.3d 891 (Colo. App. 2005).

Average weekly wage includes the cost of health insurance only when a claimant has continued the employer's coverage at his or her own cost pursuant to COBRA or § 10-16-108, and thereafter, when that coverage ends and the claimant has converted to other coverage. An employee's contribution to his or her health care premium during the period of employment does not represent an amount included as

wages for the purpose of calculating average weekly wages. *Midboe v. Indus. Claim Appeals Office*, 88 P.3d 643 (Colo. App. 2003).

An employee who has been terminated from employment, however, following an injury is not required to purchase a continuing policy and convert to an individual plan before that employee becomes entitled to have the cost of continuing the employer's plan included in the average weekly wage. Subsection (19)(b) does not require proof that the claimant has actually purchased coverage. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001); *Ray v. Indus. Claim Appeals Office*, 124 P.3d 891 (Colo. App. 2005).

Subsection (19)(b) states that the cost of converting to a similar or lesser insurance plan is included in the average weekly wage computation. When an employee converts to coverage comparable to or lesser than the employer's plan, the cost to the employee of the converted insurance is added to the employee's average weekly wage. *Sears Roebuck & Co. v. Indus. Claim Appeals Office*, 140 P.3d 336 (Colo. App. 2006).

The absence of comparable market forces does not preclude a claimant from proving a reasonable sum for room and board. *Iler v. Indus. Claim Appeals Office*, 207 P.3d 945 (Colo. App. 2009).

The mandate in subsection (19)(b) to include the cost of room and board does not require direct proof of actual cost or

market value of the room and board, and it does not exclude replacement cost as a viable measure. Hence, claimant's testimony, based on claimant's expenses in Colorado, about the replacement value of food and lodging received while employed in Antarctica established a prima facie case and led to the reasonable inference that the room and board provided by the employer had some value. *Iler v. Indus. Claim Appeals Office*, 207 P.3d 945 (Colo. App. 2009).

C. Computation.

Increase in benefits was correctly applied retroactively. The case of *Henderson v. RSI, Inc.*, 824 P.2d 91 (Colo. App. 1991), did not establish a new rule of law in finding that the benefits for an occupational disease should be based on the claimant's wages at the time the claimant became disabled rather than on wages at the time of the last injurious exposure. *Subsequent Injury Fund v. Indus. Claim Appeals Office*, 899 P.2d 220 (Colo. App. 1994).

8-40-202. Employee.

(1) "Employee" means:

(a) (I) (A) Every person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied; and every elective official of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof; and every member of the military forces of the state of Colorado while engaged in active service on behalf of the state under orders from competent authority. Police officers and firefighters who are regularly employed shall be deemed employees within the meaning of this paragraph (a), as shall also sheriffs and deputy sheriffs, regularly employed, and all persons called to serve upon any posse in pursuance of the provisions of section 30-10-516, C.R.S., during the period of their service upon such posse, and all members of volunteer fire departments, including any person receiving a retirement pension under section 31-30-1122, C.R.S., who serves as an active volunteer firefighter of a fire department subsequent to retirement pursuant to section 31-30-1132, C.R.S., or any person ordered by the chief or a designee of the chief's at the scene of an emergency or during the period of an emergency to become a member of that department for the duration of an emergency, and to perform the duties of a firefighter, and only if the person who is so ordered reports any claim within ten days of the cessation of the emergency, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams in any county, city, town, municipality, or legally organized fire protection district or ambulance district in the state of Colorado, and all members of the civil air patrol, Colorado wing, while said persons are actually performing duties

as volunteer firefighters or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and while engaged in organized drills, practice, or training necessary or proper for the performance of such duties. Members of volunteer police departments, volunteer police reserves, and volunteer police teams or groups in any county, city, town, or municipality, while actually performing duties as volunteer police officers, may be deemed employees within the meaning of this paragraph (a) at the option of the governing body of such county or municipality.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), any elected or appointed official of any county, city, town, or irrigation, drainage, or school district or taxing district who receives no compensation for service rendered as such an official, other than reimbursement of actual expenses, may be deemed not to be an employee within the meaning of this paragraph (a) at the option of the governing body of such county, city, town, or district. The option to exclude such officials as employees within the meaning of this paragraph (a) may be exercised as to any category of officials or as to any combination of categories of officials. Any such option may be exercised for any policy year by the filing of a statement with the division not less than forty-five days before the start of the policy year for which the option is to be exercised. If such a statement is in effect as to any category of such uncompensated officials, no official in said category shall be deemed an employee within the meaning of this paragraph (a). The governing body shall notify each official of such action promptly at the time such election to exclude is exercised.

(II) The rate of compensation of such persons accidentally injured, or, if killed, the rate of compensation for their dependents, while serving upon such posse or as volunteer firefighters or as members of such volunteer police departments, volunteer police reserves, or volunteer police teams or groups or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and of every nonsalaried person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied, including nonsalaried elective officials of the state, and of all members of the military forces of the state of Colorado shall be at the maximum rate provided by articles 40 to 47 of this title; except that this subparagraph (II) shall apply to an official described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a) only if no statement exercising the option to exclude such official as an employee within the meaning of this paragraph (a) is in effect.

(III) Any person who, as part of a rehabilitation program of the department of human or social services of any county or city and county, is placed with a private employer for the purpose of training or learning trades or occupations is deemed while so engaged to be an employee of such private employer. Any person who receives a work experience assignment to a

position in any department or agency of any county or municipality, in any school district, in the office of any state agency or political subdivision thereof, or in any private for-profit or any nonprofit agency pursuant to the provisions of part 7 of article 2 of title 26 is deemed while so assigned to be an employee of the respective department, agency, office, political subdivision, private for-profit or nonprofit agency, or school district to which said person is assigned or, if so negotiated between the county and the entity to which the person is assigned, of the county arranging the work experience assignment. Any person who receives a work experience assignment to a position in any federal office or agency pursuant to part 7 of article 2 of title 26 is deemed while so assigned to be an employee of the county arranging the work experience assignment. The rate of compensation for such persons if accidentally injured or, if killed, for their dependents is based upon the wages normally paid in the community in which they reside for the type of work in which they are engaged at the time of such injury or death; except that, if any such person is a minor, compensation to such minor for permanent disability, if any, or death benefits to such minor's dependents must be paid at the maximum rate of compensation payable under articles 40 to 47 of this title 8 at the time of the determination of such disability or of such death.

(IV) Except as provided in section 8-40-301 (3) and section 8-40-302 (7)(a), any person who may at any time be receiving training under any work or job training or rehabilitation program sponsored by any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college and who, as part of any such work or job training or rehabilitation program of any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college, is placed with any employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of the respective department, board, commission, or institution of the state of Colorado or of the county, city and county, city, town, school district, or private or parochial school or college sponsoring such training or rehabilitation program unless the following conditions are met, in which case the placed person shall be deemed an employee of the employer with whom he or she is placed:

(A) The sponsoring entity and the employer agree that the employer shall cover the placed person under the employer's workers' compensation insurance;

(B) The employer does in fact insure and keep insured its liability for workers' compensation as provided in articles 40 to 47 of this title and does in fact cover the placed person under such insurance; and

(C) With respect to agreements between sponsoring entities and employers entered into after April 1, 1991, the employer has been provided with notice of the provisions of this subparagraph (IV) and of subparagraphs (V) and (VI) of this paragraph (a).

(V) In the event a person placed with an employer is deemed an employee of the employer pursuant to subparagraph (IV) of this paragraph (a), the sponsoring entity shall not be subject to any liability for or on account of the death of or personal injury to the person so placed. In the event such person is deemed an employee of the sponsoring entity pursuant to the said subparagraph (IV), the employer shall not be subject to any liability for or on account of the death of or personal injury to the person and shall not be required to carry workers' compensation insurance or to pay premiums for workers' compensation insurance with respect to the person.

(VI) The rate of compensation for a person placed pursuant to subparagraph (IV) of this paragraph (a) if accidentally injured or, if killed, for dependents of such person shall be based upon the wages normally paid in the community in which such person resides or in the community where said work or job training or rehabilitation program is being conducted for the type of work in which the person is engaged at the time of such injury or death, as determined by the director; except that, if any such person is a minor, compensation for such minor for permanent disability, if any, or death benefits to such minor's dependents shall be paid at the maximum rate of compensation payable under articles 40 to 47 of this title at the time of the determination of such disability or death.

(b) Every person in the service of any person, association of persons, firm, or private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, under any contract of hire, express or implied, including aliens and also including minors, whether lawfully or unlawfully employed, who for the purpose of articles 40 to 47 of this title are considered the same and have the same power of contracting with respect to their employment as adult employees, but not including any persons who are expressly excluded from articles 40 to 47 of this title or whose employment is but casual and not in the usual course of the trade, business, profession, or occupation of the employer. The following persons shall also be deemed employees and entitled to benefits at the maximum rate provided by said articles, and, in the event of injury or death, their dependents shall likewise be entitled to such maximum benefits, if and when the association, team, group, or organization to which they belong has elected to become subject to articles 40 to 47 of this title and has insured its liability under said articles: All members of privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations while performing their respective duties as members of such privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations and while engaged in organized drills, practice, or training necessary or proper for the performance of their respective duties.

(2) (a) Notwithstanding any other provision of this section, any individual who performs services for pay for another shall be deemed to be an employee, irrespective of whether the common-law relationship of master and servant exists, unless such individual is free from control

and direction in the performance of the service, both under the contract for performance of service and in fact and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service shall not be considered if such control is exercised pursuant to the requirements of any state or federal statute or regulation.

(b) (I) To prove that an individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may show by a preponderance of the evidence that the conditions set forth in paragraph (a) of this subsection (2) have been satisfied. The parties may also prove independence through a written document.

(II) To prove independence it must be shown that the person for whom services are performed does not:

(A) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for such person for a finite period of time specified in the document;

(B) Establish a quality standard for the individual; except that the person may provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(C) Pay a salary or at an hourly rate instead of at a fixed or contract rate;

(D) Terminate the work of the service provider during the contract period unless such service provider violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(E) Provide more than minimal training for the individual;

(F) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(G) Dictate the time of performance; except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established;

(H) Pay the service provider personally instead of making checks payable to the trade or business name of such service provider; and

(I) Combine the business operations of the person for whom service is provided in any way with the business operations of the service provider instead of maintaining all such operations separately and distinctly.

(III) A document may satisfy the requirements of this paragraph (b) if such document demonstrates by a preponderance of the evidence the existence of the factors listed in subparagraph (II) of this paragraph (b) as are appropriate to the parties' situation. The existence of any one of these factors is not conclusive evidence that the individual is an employee.

(IV) If the parties use a written document pursuant to this paragraph (b), such document must be signed by both parties and may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to workers' compensation benefits and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship. All signatures on any such document must be duly notarized.

(V) If the parties use a written document pursuant to this paragraph (b) and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

(c) Nothing in this section shall be construed to conflict with section 8-40-301 or to relieve any obligations imposed pursuant thereto.

(d) Nothing in this section shall be construed to remove the claimant's burden of proving the existence of an employer-employee relationship for purposes of receiving benefits pursuant to articles 40 to 47 of this title.

(e) (I) Notwithstanding any other provision of this section, a written agreement between a nonprofit youth sports organization and a coach, specifying that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and otherwise satisfying the requirements of this paragraph (e), shall be conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is an independent contractor relationship rather than an employment relationship and that the nonprofit youth sports organization is not obligated to secure compensation for the coach in accordance with the "Workers' Compensation Act of Colorado".

(II) The written agreement shall contain a disclosure, in bold-faced, underlined, or large type, in a conspicuous location, and acknowledged by the parties by signature, initials, or other means demonstrating that the parties have read and understand the disclosure, indicating that the coach:

(A) Is an independent contractor and not an employee of the nonprofit youth sports organization;

(B) Is not entitled to workers' compensation benefits in connection with his or her contract with the nonprofit youth sports organization; and

(C) Is obligated to pay federal and state income tax on any moneys paid pursuant to the contract for coaching services and that the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach's income tax liability.

(III) A written agreement between a nonprofit youth sports organization and a coach in accordance with this paragraph (e) shall not be conclusive evidence of an independent contractor relationship for purposes of any civil action instituted by a third party.

(IV) As used in this paragraph (e), "nonprofit youth sports organization" means an organization that is exempt from federal taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age.

(3) Notwithstanding any other provision of this section, "employee" includes a person who participates in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

Source: **L. 90:** Entire article R&RE, p. 470, § 1, effective July 1. **L. 91:** (1)(a)(IV) amended, p. 1364, § 1, effective April 20; (1)(a)(III) amended, p. 1870, § 23, effective July 1. **L. 93:** (2) added, p. 356, § 2, effective April 12. **L. 94:** (1)(a)(III) amended, p. 452, § 2, effective March 29. **L. 95:** IP(2)(b)(II), (2)(b)(III), and (2)(b)(IV) amended, pp. 343, 344, § 2, effective July 1. **L. 97:** (1)(a)(I)(A) amended, p. 170, § 3, effective March 28; (1)(a)(III) amended, p. 1239, § 35, effective July 1; (1)(a)(I)(A) and (1)(a)(II) amended, p. 1005, § 2, effective August 6. **L. 2010:** (2)(e) added, (HB 10-1108), ch. 119, p. 400, § 2, effective April 15; (3) added, (HB 10-1076), ch. 162, p. 566, § 1, effective August 11. **L. 2018:** (1)(a)(III) amended, (SB 18-092), ch. 38, p. 396, § 2, effective August 8.

Editor's note: (1) This section is similar to former § 8-41-106 as it existed prior to 1990.

(2) Amendments to subsection (1)(a)(I)(A) by House Bill 97-1220 and Senate Bill 97-166 were harmonized.

Cross references: (1) For the scope of the term "employee", see § 8-40-301.

(2) For the legislative declaration in the 2010 act adding subsection (2)(e), see section 1 of chapter 119, Session Laws of Colorado 2010. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

I. General Consideration.

II. Employee or Independent Contractor.

III. Contract for Hire.

IV. Public Employees.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Independent Contractors and the Colorado Workers' Compensation Act — Parts I and II", see 22 Colo. Law. 545 and 1281 (1993). For article, "Independent Contractors in Colorado", see 34 Colo. Law. 53 (Dec. 2005). For article, "Overview of General Liability, Workers' Compensation, and Employment Law Issues in K-12 Educational Institutions", see 44 Colo. Law. 25 (Oct. 2015). For article, "'Statutory Employment'—What Kind of Work Is That?", see 45 Colo. Law. 53 (June 2016).

Annotator's note. (1) Since § 8-40-202 is similar to § 8-41-106 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section. For additional cases, see the annotations under former § 8-41-106 in the 1986 replacement volume.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred

some of its powers, duties, and functions under the act to the industrial claim appeals office.

A governing body of the county or municipality must provide worker's compensation to a voluntary peace officer.

The statutory language granting a county or municipality the option to not provide such coverage was repealed by implication by § 16-2.5-110, which requires the reserve peace officers to be provided with worker's compensation benefits. *City of Florence v. Pepper*, 145 P.3d 654 (Colo. 2006).

Proper characterization of the employer-employee relationship depends on the facts of each case and is for the commission to determine. *Melnick v. Indus. Comm'n*, 656 P.2d 1318 (Colo. App. 1982).

To reap the benefits under the workmen's compensation act, a person must in fact first be an employee under the statutory definition. *Denver Truck Exch. v. Perryman*, 134 Colo. 586, 307 P.2d 805 (1957).

The definition of employee is broad and obviously was so intended by the general assembly. *Indus. Comm'n v. Valley Chip & Supply Co.*, 133 Colo. 258, 293 P.2d 972 (1956); *Doyle v. Missouri Valley Constructors, Inc.*, 288 F. Supp. 121 (D. Colo. 1968).

The compensation act emphasizes the objective of protection of employees and in carrying out this objective gives a broad

interpretation to the term "employee". *Finnerman v. McCormick*, 499 F.2d 212 (10th Cir. 1974).

And even though the purpose of the workmen's compensation act is to protect all workmen, save those specifically excluded. *Univ. of Denver v. Nemeth*, 127 Colo. 385, 257 P.2d 423 (1953).

The definition of an employee entitled to coverage under this act includes "aliens" without distinguishing between legal and illegal aliens and therefore does not preclude, as a matter of law, an illegal alien from proving an entitlement to benefits. *Champion Auto Body v. Indus. Claim Appeals Office*, 950 P.2d 671 (Colo. App. 1997).

General contractor remains statutory employer of subcontractor's employee and is entitled to a corresponding immunity from suit, despite the fact that the subcontractor is an independent contractor of the general contractor. *Frank M. Hall & Co. v. Newsom*, 125 P.3d 444 (Colo. 2005).

One cannot be his own employee. *Indus. Comm'n v. Bracken*, 83 Colo. 72, 262 P. 521 (1927).

"Employee" does not include one injured during pre-employment testing. Applicant who was not under contract as an employee at the time of the accident is not an employee. *Younger v. City & County of Denver*, 796 P.2d 38 (Colo. App. 1990); *Younger v. City & County of Denver*, 810 P.2d 647 (Colo. 1991).

"Appointment", as used in the definition of employee set forth in

subsection (1)(a) requires that the person making the designation be vested with authority and the designation be for the purpose of discharging the duty of some office or trust. A volunteer pitching coach permitted by a head baseball coach to work with the high school baseball team is not an employee subjecting the school district to workers' compensation liability since school district, and not head coach, is authorized to create additional coaching positions and a volunteer pitching coach position is not an office. *Mesa County Valley Sch. D.* 51 v. *Goletz*, 821 P.2d 785 (Colo. 1991).

Three requirements are set forth, any two of which when met can qualify an employee, as the term is used in the statutes, as coming under the workmen's compensation act. They are: (1) A contract of employment created in the state; (2) employment in the state under a contract created outside the state; and (3) substantial employment in the state. If any two of these conditions are met it makes no difference that the employee is not a resident of the state or is killed outside the state provided other statutory time limits on out-of-state employment are met. *Platt v. Reynolds*, 86 Colo. 397, 282 P. 264 (1929); *Tripp v. Indus. Comm'n*, 89 Colo. 512, 4 P.2d 917 (1931); *Denver Truck Exch. v. Perryman*, 134 Colo. 586, 307 P.2d 805 (1957).

"Employee" entitled to workers' compensation benefits is a worker who performs a substantial portion of his work in this state and who is either injured in an accident in this state or has a contract in this state. *Loffland Bros. Co. v. Indus. Comm'n*, 714 P.2d 509 (Colo. App. 1985).

In determining whether or not a claimant is an employee, the measure of his compensation is not a controlling factor. De Beque Producers' Ass'n v. Indus. Comm'n, 83 Colo. 158, 262 P. 1019 (1928).

For in the statutory definition of employee there is no requirement that a salary be paid for the service rendered. Lyttle v. State Comp. Ins. Fund, 137 Colo. 212, 322 P.2d 1049 (1958).

An unpaid student intern must be deemed a "person placed pursuant to" subparagraph (1)(a)(IV) and is thus entitled to an imputed wage under subparagraph (1)(a)(VI) for purposes of calculating medical impairment benefits, notwithstanding the exception in subparagraph (1)(A)(IV), which exception relates only to who shall be deemed the employer, not whether an employee is entitled to an imputed wage. Kinder v. Indus. Claim Appeals Office, 976 P.2d 295 (Colo. App. 1998).

Whether an injured workman is an employee is a question of fact. N.J. Fid. & Plate Glass Ins. Co. v. Patterson, 86 Colo. 580, 284 P. 334 (1929); Sch. Dist. No. 60 v. Indus. Comm'n, 43 Colo. App. 38, 601 P.2d 651 (1979).

Determination of type of employee deemed question of law. Where the facts are undisputed, the question of whether an individual is an employee as defined by this section, or a constructive employee to whom work has been contracted out as defined by § 8-48-101 (1), is a question of law, not a question of fact. Univ. of Colo. Med. Ctr. v.

Indus. Comm'n, 622 P.2d 596 (Colo. App. 1980).

And the finding on conflicting evidence is conclusive on review. De Beque Producers' Ass'n v. Indus. Comm'n, 83 Colo. 158, 262 P. 1019 (1928); N.J. Fid. & Plate Glass Ins. Co. v. Patterson, 86 Colo. 580, 284 P. 334 (1929).

Moreover, where various findings are made, the last finding is conclusive. In a workmen's compensation case, although the commission and its referee made three different findings of fact, this did not nullify the rule that the last finding is conclusive. Indus. Comm'n v. Aetna Life Ins. Co., 88 Colo. 82, 292 P. 229 (1930).

So also fact findings sufficiently supported by the evidence will not be disturbed on review. State Comp. Ins. Fund v. Indus. Comm'n, 95 Colo. 309, 35 P.2d 849 (1934); London Guarantee & Accident Co. v. Indus. Comm'n, 95 Colo. 306, 35 P.2d 1010 (1934).

And a court exceeds its jurisdiction in a workmen's compensation case if it attempts to pass upon the weight of the evidence introduced before the director. Indus. Comm'n v. Aetna Life Ins. Co., 88 Colo. 82, 292 P. 229 (1930).

One may be employee by virtue of the statute and not by common-law definition. An obligation to pay workmen's compensation may, in proper cases, be imposed against an owner where the common-law relationship of employer and employee does not exist, in that one may be an employee by virtue of the statute, for the

purpose of workmen's compensation, when in fact he is not an employee by common-law definition. *Finnerman v. McCormick*, 499 F.2d 212 (10th Cir. 1974).

Award of benefits of regular employee controlled by section. Where nurse claiming benefits was a regular employee of the University of Colorado Medical Center, subsection (1)(a)(I) controlled the award of benefits as opposed to § 8-48-101 (1). *Univ. of Colo. Med. Ctr. v. Indus. Comm'n*, 622 P.2d 596 (Colo. App. 1980).

Award based upon erroneous interpretation of law sustained if award proper absent misinterpretation. Even though a court may determine that the industrial commission erroneously interpreted the law, if the commission's award would have been correct had the law been properly interpreted, that award will be sustained. *Univ. of Colo. Med. Ctr. v. Indus. Comm'n*, 622 P.2d 596 (Colo. App. 1980).

Applied in *Kalmon v. Indus. Comm'n*, 41 Colo. App. 259, 583 P.2d 946 (1978); *Ellis v. Rocky Mt. Empire Sports, Inc.*, 43 Colo. App. 166, 602 P.2d 895 (1979); *Peterson v. Trailways, Inc.*, 555 F. Supp. 827 (D. Colo. 1983); *AGS Mach. Co. v. Indus. Comm'n*, 670 P.2d 816 (Colo. App. 1983).

II. EMPLOYEE OR INDEPENDENT CONTRACTOR.

Subsection (1)(b) contemplates contractual and quasi-contractual relationships created by estoppel, and should be interpreted broadly to protect workers. *Olsen v. Indus. Claim Appeals Office*, 819 P.2d 544 (Colo. App. 1991).

"Contractor" is not necessarily outside of the category of "employee". The term "employee" has both a narrow, specific, and a wider generic meaning. *Indus. Comm'n v. Cont'l Inv. Co.*, 78 Colo. 399, 242 P. 49 (1925).

But factors to be considered in determining whether one performing labor for another is a servant or a contractor are: Does the workman give all or only a part of his time to the work; does the contract contemplate labor on the job, or completion; has the laborer or the employee control of the details; which may employ, control, and discharge assistants; which furnishes the necessary tools and equipment; may either terminate the employment without liability to the others; is compensation measured by time, by piece, or by lump sum? *Brush Hay & Milling Co. v. Small*, 154 Colo. 11, 388 P.2d 84 (1963).

There are two tests for determining whether a worker is an actual employee or an independent contractor: the "control" test and the "relative nature of the work" test, and if either test is satisfied the worker is an employee. *Stampados v. Colo. D & S Enters.*, 833 P.2d 815 (Colo. App. 1992).

The definition of an "independent contractor" in § 40-11.5-102 was intended to apply to the Workers' Compensation Act. *Frank C. Klein & Co. v. Colo. Comp. Ins. Auth.*, 859 P.2d 323 (Colo. App. 1993).

A servant is one whose employer has the order and control of work done by him and who directs or may direct the means as well as the end. *Arnold v.*

Lawrence, 72 Colo. 528, 213 P. 129 (1923); Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925); Indus. Comm'n v. Valley Chip & Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

And it is the power of control, not the fact of control, that is the principal factor in distinguishing a servant from a contractor. Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925); Indus. Comm'n v. Moynihan, 94 Colo. 438, 32 P.2d 802 (1934); Indus. Comm'n v. Valley Chip & Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Faith Realty & Dev. Co. v. Indus. Comm'n, 170 Colo. 215, 460 P.2d 228 (1969).

The right immediately to discharge involves the right of control. Indus. Comm'n v. Valley Chip & Supply Co., 133 Colo. 258, 293 P.2d 972 (1956).

Thus the most important point in determining the question of contractor or employee is the right to terminate the relation without liability. Indus. Comm'n v. Hammond, 77 Colo. 414, 236 P. 1006 (1925); Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925); Indus. Comm'n v. Valley Chip & Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Brush Hay Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963); Faith Realty & Dev. Co. v. Indus. Comm'n, 170 Colo. 215, 460 P.2d 228 (1969).

For the absolute right to terminate the relationship without liability is inconsistent with the concept of independent contractor. Indus. Comm'n v. Valley Chip & Supply Co., 133 Colo. 258, 293 P.2d 972 (1956).

Where compensation is based upon time or piece the workman is usually a servant and where it is based upon a lump sum for the task he is usually a contractor. Brush Hay & Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963).

A person may be determined to be an independent contractor even if all nine criteria outlined in subsection (2)(b)(II) are not established. Nelson v. Indus. Claim Appeals Office, 981 P.2d 210 (Colo. App. 1998).

The standard developed by the Colorado supreme court in Indus. Claim Appeals Office v. Softrock Geological Servs., Inc., 2014 CO 30, 325 P.3d 560, applies to workers' compensation actions and must be considered when determining if an injured worker is an independent contractor for purposes of this act. Softrock expanded the scope of independent contractor review in the unemployment arena past the nine statutory factors in § 8-70-115 (1)(c) of the Colorado Employment Security Act that are identical to the factors in subsection (2)(b)(II) to allow consideration of both the nine factors as well as any other information relevant to the nature of the work and the relationship between the employer and the individual. Pella Windows & Doors v. Indus. Claim Appeals Office, 2020 COA 9, 458 P.3d 128.

And, once an administrative law judge (ALJ) has weighed the statutory and Softrock factors, if substantial evidence supports the ALJ's factual findings and conclusions of law regarding independent contractor status, the ALJ's findings cannot

be set aside. *Pella Windows & Doors v. Indus. Claim Appeals Office*, 2020 COA 9, 458 P.3d 128.

Presumption of independent contractor status recognized in subsection (5) may be overcome by clear and convincing evidence of control over the means and methods of performance that are wholly unrelated to the achievement of the end contracted for. *Frank C. Klein & Co. v. Colo. Comp. Ins. Auth.*, 859 P.2d 323 (Colo. App. 1993).

Ski patrol worker who negotiated for a ski pass in lieu of salary in exchange for services was not a "volunteer" for purpose of exclusion from coverage under this article. *Aspen Highlands Skiing Corp. v. Apostolou*, 866 P.2d 1384 (Colo. 1994).

If the facts are undisputed as to whether a workman is an employee or a contractor, the question is one of law. *Indus. Comm'n v. Bonfils*, 78 Colo. 306, 241 P. 735 (1925).

And may be reviewed by the supreme court. *Indus. Comm'n v. Bonfils*, 78 Colo. 306, 241 P. 735 (1925); *Brush Hay & Milling Co. v. Small*, 154 Colo. 11, 388 P.2d 84 (1963).

But if the question of whether workman was employee or independent contractor is one of fact, to be determined from conflicting evidence, it is for the commission. *Whitney v. Mtn. States Motors Co.*, 106 Colo. 184, 102 P.2d 743 (1940); *Brush Hay & Milling Co. v. Small*, 154 Colo. 11, 388 P.2d 84 (1963).

Claimant's relationship with newspaper publisher was an employment

relationship where the newspaper exercised control over claimant by directing the time and place of newspaper delivery and delivery of newspapers was not a separate enterprise from the business of the newspaper. Contract which characterized claimant as an independent contractor was not controlling. *Olsen v. Indus. Claim Appeals Office*, 819 P.2d 544 (Colo. App. 1991).

Acceptance of premiums by insurance fund for employee made fund liable for claim. Actions of the state compensation insurance fund, which accepted workmen's compensation premium payments from employer based on employee status of carpenter constructing employer's private residence and which did not give employer notice that premium payment was accepted subject to appeal of determination that carpenter was employer's employee for workmen's compensation purposes, constituted conduct which would convey impression that the fund intended to cover carpenter's workmen's compensation claim; therefore, the fund was liable for workmen's compensation benefits awarded carpenter. *Drake v. Ins. Co. of N. Am.*, 736 P.2d 1244 (Colo. App. 1986).

Instances of employees. *Indus. Comm'n v. Globe Indem. Co.*, 77 Colo. 251, 235 P. 576 (1925); *Indus. Comm'n v. Bonfils*, 78 Colo. 306, 241 P. 735 (1925); *De Beque Producers' Ass'n v. Indus. Comm'n*, 83 Colo. 158, 262 P. 1019 (1928); *State Comp. Ins. Fund v. Indus. Comm'n*, 95 Colo. 309, 35 P.2d 849 (1934); *Indus. Comm'n v. Sontarelli*, 109 Colo. 84, 122 P.2d 239 (1942); *Kampt v. Disney*, 110 Colo. 518,

135 P.2d 1019 (1943); Neely-Towner Motor Co. v. Indus. Comm'n, 123 Colo. 472, 230 P.2d 993 (1951); Indus. Comm'n v. Valley Chip & Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Faith Realty & Dev. Co. v. Indus. Comm'n, 170 Colo. 215, 460 P.2d 228 (1969).

Instances of independent contractor. Indus. Comm'n v. Cont'l Inv. Co., 78 Colo. 399, 242 P. 49 (1925); London Guarantee & Accident Co. v. Indus. Comm'n, 95 Colo. 306, 35 P.2d 1010 (1934); Whitney v. Mtn. States Motors Co., 106 Colo. 184, 102 P.2d 743 (1940); Warner v. Messick, 108 Colo. 342, 117 P.2d 482 (1941); Wilkowski v. Indus. Comm'n, 113 Colo. 46, 154 P.2d 615 (1944); Brush Hay & Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963); Sands v. Indus. Comm'n, 160 Colo. 42, 413 P.2d 702 (1966).

Subsection (2) cited in Frank C. Klein & Co. v. Colo. Comp. Ins. Auth., 859 P.2d 323 (Colo. App. 1993).

III. CONTRACT FOR HIRE.

The requirement of contract of hire was written into the workmen's compensation act for two reasons: First, the necessity for a "contract" was felt to insure that an employee did not give up legal rights against an employer without receiving value in return; and second, the contract had to be one "of hire" because, absent the expectation of remuneration at some rate, there was no way to compute benefits. Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

And § 8-41-105 and this section speak of "any contract of hire, express or implied", indicating that several "contracts of hire" may exist in a given situation and recovery had upon "any". Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

Thus, both an express and implied "contract of hire" could exist between the same parties but covering different employment or covering the same employment but with differing parties. Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

When a claim is filed under the workmen's compensation act, the burden of proof is upon the claimant to prove that he was an employee by showing the existence of a contract of hire. Hall v. State Comp. Ins. Fund, 154 Colo. 47, 387 P.2d 899 (1963).

And where the evidence does not disclose any contractual obligation, then the employer-employee relationship does not exist and there is no contract which would support a claim for compensation under the act. State Comp. Ins. Fund v. Indus. Comm'n, 135 Colo. 570, 314 P.2d 288 (1957); Hall v. State Comp. Ins. Fund, 154 Colo. 47, 387 P.2d 899 (1963).

Claimant who received a ski pass for use by another person was an employee since the pass is a benefit comprising compensation. The lack of any wages as defined in § 8-40-201 (19) does not mean that no "contract of hire" exists under subsection (1)(b). Aspen Highlands Skiing

Corp. v. Apostolou, 854 P.2d 1357 (Colo. App. 1992).

A contract of hire may be formed as long as the fundamental elements of contract formation are present even though not every formality attending commercial contractual arrangements is observed. Aspen Highlands Skiing Corp. v. Apostolou, 866 P.2d 1384 (Colo. 1994).

Contract of hire found to exist where claimant was part-time ski patrol worker who agreed to work only in exchange for the benefit of daily ski pass in lieu of salary and who worked under the direction of the employer. Aspen Highlands Skiing Corp. v. Apostolou, 866 P.2d 1384 (Colo. 1994).

IV. PUBLIC EMPLOYEES.

The statutory definition of "employees" includes employees of the state. Myers v. State, 162 Colo. 435, 428 P.2d 83 (1967).

And if working for a public employer must be a "public employee". Under the statutory classification of employer and employee, before a claimant can fix liability on a public employer, under the workmen's compensation act, for compensation for accidental injuries, he must be within the designation of "public employee". Indus. Comm'n v. State Comp. Ins. Fund, 94 Colo. 194, 29 P.2d 372 (1934).

All workers in service of the state are treated as state "employees", not as employees of separate entities, for purposes of workers' compensation benefits. Rodriguez v. Bd. of Dirs., 917 P.2d 358 (Colo. App. 1996).

Public employees. No intent can be found in the general assembly through the pertinent provisions of the workmen's compensation law to make any distinction in the classification of public employees between those who are engaged in governmental functions and those who are engaged in the proprietary branch of a political subdivision. The basic distinction of the act is between public employees and private employees. State Comp. Ins. Fund v. Alishio, 125 Colo. 242, 250 P.2d 1015 (1952).

A governmental entity cannot be a constructive employer pursuant to § 8-48-101 (1). Antal v. Delta County Mosquito Control Dist. No. 1, 644 P.2d 87 (Colo. App. 1982).

Inmates are not employees of state or county. Orr v. Indus. Comm'n, 691 P.2d 1145 (Colo. App. 1984), aff'd, 716 P.2d 1106 (Colo. 1986).

City as employer. State Comp. Ins. Fund v. Alishio, 125 Colo. 242, 250 P.2d 1015 (1952).

An unsalaried member of a state board or commission is an employee of the state, and within the coverage of the workmen's compensation law, and had the general assembly intended to exclude such persons from coverage, language other than the words actually used would have been employed. Lyttle v. State Comp. Ins. Fund, 137 Colo. 212, 322 P.2d 1049 (1958).

Furthermore, it is evident that the intent of the general assembly was to provide that the employees and appointees

of the county, as specified therein, together with all nonsalaried employees, should be paid at the maximum rate of compensation. *State Comp. Ins. Fund v. Keane*, 160 Colo. 292, 417 P.2d 8 (1966).

The status of a juror is not that of an employee serving under this section, by "appointment or contract of hire, express or implied". The legislative branch of the government has not said that a juror is an employee of the county, and it does not lie with the judicial branch to belittle the functions of his great office by so declaring. *Bd. of Comm'rs v. Evans*, 99 Colo. 83, 60 P.2d 225 (1936).

Employer of student teachers. Section 22-62-105 (2) deems a school district the employer of a student teacher whereas the general provision of subsection (1)(a)(IV) of this section designates the sponsoring institution as the employer of its job trainees. Section 22-62-105 (2) merely shifts workmen's compensation liability for injury to student teachers to a different institution; where applicable, it is a legally enforceable specific exception to the general rule prescribed by subsection (1)(a)(IV). *Sch. Dist. No. 60 v. Indus. Comm'n*, 43 Colo. App. 38, 601 P.2d 651 (1979).

Claimant was participating as a volunteer fireman, and not merely as a patriotic citizen, at the time of his injury, while participating in a public patriotic celebration. *Nw. Conejos Fire Prot. Dist. v. Indus. Comm'n*, 39 Colo. App. 367, 566 P.2d 717 (1977).

The rate of compensation for persons accidentally injured while serving as

volunteer firefighters shall be at the maximum rate provided by the Workers' Compensation Act. Subsection (1)(a)(II) creates an exception to the usual measure of calculating disability benefits. To the extent that subsection (1)(a)(II) gives injured volunteer firefighters a windfall, such a result has been mandated by the general assembly. *Parker Fire Prot. Dist. v. Poage*, 843 P.2d 108 (Colo. App. 1992).

Volunteer member of civil air patrol traveling on duty to attend organized training when injured suffers an injury which arises out of and in the course of his employment. *Colo. Civil Air Patrol v. Hagans*, 662 P.2d 194 (Colo. App. 1983).

Volunteer member of county search and rescue team, who served as president and incident commander, was an "employee" for purposes of compensation for injuries suffered while traveling to a fire chiefs' meeting to discuss planning and coordination of rescue activities. Although the meeting was not mandatory, it was part of his duties pursuant to the custom and practice in which the county acquiesced and from which the county benefitted. *Teller County v. Indus. Claim Appeals Office*, 2015 COA 52, 410 P.3d 561.

National Guard training is not "active service" for purposes of the receipt of workers' compensation benefits. A member of the National Guard may not be considered to be on "active service" and hence qualified for workers' compensation benefits unless he or she has been ordered by the governor to provide full-time service in response to an emergency confronting the

state. *Sullivan v. Indus. Claim Appeals Office*, 22 P.3d 535 (Colo. App. 2000).

V. PRIVATE EMPLOYEES.

A. In General.

B. Casual Employment.

A. In General.

Attorney regularly employed by a corporation is an "employee". An attorney at law who is employed by a corporation regularly, and whose time and services are subject to the call of the employer under the terms of the employment, is an "employee" as that word is used in this section. *Indus. Comm'n v. Moynihan*, 94 Colo. 438, 32 P.2d 802 (1934).

For in none of the provisions of the act is there language which expressly excludes members of the professions, attorney or other, if otherwise within the statute, from the enjoyment of its protecting purpose. *Indus. Comm'n v. Moynihan*, 94 Colo. 438, 32 P.2d 802 (1934).

Workmen's compensation acts are being extended even to employees of charitable institutions. *Univ. of Denver v. Nemeth*, 127 Colo. 385, 257 P.2d 423 (1953).

Student paid by university for particular service is employee subject to act. Where a stipulated monthly amount is paid by a university for a particular service rendered by one who is also a student, it cannot be said that the university is merely "assisting" the student to obtain an education, and that the student, if injured in the course of his employment, cannot have

the benefits of the compensation law. *Univ. of Denver v. Nemeth*, 127 Colo. 385, 257 P.2d 423 (1953).

Student employee status in job training program. To be an "employee" of the school district one must, at the time of injury, be receiving training under a work or job training program sponsored by the school district and one must have been placed by the school district with an employer for the purpose of training or learning trades or occupations. Further, the trainee is deemed an "employee" only "while so engaged" in such programs. *Denver Pub. Sch. v. De Avila*, 190 Colo. 184, 544 P.2d 627 (1976).

A critical requirement of the statute is that in order for the claimant to become an "employee" it was necessary that she be "placed" with the hospital for the purpose of training. The evidence discloses that at the time of her injury the claimant was not so "placed" where it is explicit that at the time of her injury the claimant was attending classes conducted exclusively by instructors employed by the school district. Under such circumstances, claimant does not come within the definition of "employee" and the school district is not liable for the injury sustained as the result of her mishap. *Denver Pub. Sch. v. De Avila*, 190 Colo. 184, 544 P.2d 627 (1976).

Discharged employee is thereafter a mere volunteer not subject to the act. The employee having been discharged, he was a mere volunteer, wrongfully engaged in driving the car of his former employer at the time of the accident; neither the doctrine of

ratification nor estoppel had the slightest application to the case, even though the employer subsequently received the regular fare for the trip from the claimants, and upon no possible theory could the claimants recover compensation at the hands of the employer. *Burke v. Indus. Comm'n*, 70 Colo. 394, 201 P. 891 (1921).

B. Casual Employment.

Law reviews. For comment on *Heckman v. Warren* appearing below, see 24 *Rocky Mt. L. Rev.* 396 (1952).

For subsection (1)(b) exclusion to apply, casualness and course of business must exist. *Brogger v. Kezer*, 626 P.2d 700 (Colo. App. 1980).

Exclusion inapplicable where home deemed necessary facet of business. The maintenance of a home which serves as a company office and is used for entertaining customers is a necessary facet of the employer's business, and, thus, the exclusion of subsection (1)(b) is not applicable. *Brogger v. Kezer*, 626 P.2d 700 (Colo. App. 1980).

Casual is an antonym of regular. *Lackey v. Indus. Comm'n*, 80 Colo. 112, 249 P. 662 (1926); *Heckman v. Warren*, 124 Colo. 497, 238 P.2d 854 (1951).

Casual employment is that which is occasional, incidental, temporary, emergent or haphazard. An employment, therefore, is casual within the meaning and intent of the workmen's compensation act when it is not regular, periodic or certain in nature. *Heckman v. Warren*, 124 Colo. 497, 238 P.2d 854 (1951).

But the fact that the employment is casual is not enough to exclude an employee from the count in determining whether employer had four employees. *Lackey v. Indus. Comm'n*, 80 Colo. 112, 249 P. 662 (1926); *Hoshiko v. Indus. Comm'n*, 83 Colo. 556, 226 P. 1114 (1928); *Comerford v. Carr*, 86 Colo. 590, 284 P. 121 (1930); *Kamp v. Disney*, 110 Colo. 518, 135 P.2d 1019 (1943); *Heckman v. Warren*, 124 Colo. 497, 238 P.2d 854 (1951); *Denver Truck Exch. v. Perryman*, 134 Colo. 586, 307 P.2d 805 (1957).

For the employment must also not be in the usual course of trade, business, or occupation of employer. *Lackey v. Indus. Comm'n*, 80 Colo. 112, 249 P. 662 (1926); *Hoshiko v. Indus. Comm'n*, 83 Colo. 556, 266 P. 1114 (1928); *Comerford v. Carr*, 86 Colo. 590, 284 P. 121 (1930); *Kamp v. Disney*, 110 Colo. 518 135 P.2d 1019 (1943); *Heckman v. Warren*, 124 Colo. 497, 238 P.2d 854 (1951); *Denver Truck Exch. v. Perryman*, 134 Colo. 586, 307 P.2d 805 (1957).

And one is employed in the usual course of trade, business, profession or occupation of his employer when he is engaged in work of the kind required in the business of the employer, and such work is in conformity with the established scheme or system of the business. If it is work of the kind required in the employer's business and in conformity with his established scheme or system of doing business, then it is in the usual course thereof. The term "usual course of business" has reference to the normal operations constituting the regular business

of the employer. *Heckman v. Warren*, 124 Colo. 497, 238 P.2d 854 (1951).

Thus the workmen's compensation act is inapplicable if, at the time of an employee's injuries, his employment was casual "and not in the usual course of trade, business, profession or occupation of his employer". *Heckman v. Warren*, 124 Colo. 497, 238 P.2d 854 (1951).

But the fact that the servant is not employed for any specified time does not render his employment casual. *Indus. Comm'n v. Funk*, 68 Colo. 467, 191 P. 125 (1920).

So that casual employment in usual course of employer's business is sufficient. Even where the employment is casual, if at the time of the accident the employee was engaged in the usual course of the employer's business, he still is an employee within the terms of this title. *Lackey v. Indus. Comm'n*, 80 Colo. 112, 249 P. 662 (1926); *Hoshiko v. Indus. Comm'n*, 83 Colo. 556, 226 P. 1114 (1928); *Royal Indem. Co. v. Indus. Comm'n*, 105 Colo. 25, 94 P.2d 697 (1927).

Employment not casual. Claimant who was employed on an hourly basis to perform part of the work of constructing a small office building on a used car lot was not a casual employee of the operator of the lot, and his employment was in the usual course of the operator's business. *Neely-Towner Motor Co. v. Indus. Comm'n*, 123 Colo. 472, 230 P.2d 993 (1951).

"Usual course of trade or business" does not apply to a single act of building by a farmer in a neighboring town. *Lackey v. Indus. Comm'n*, 80 Colo. 112, 249 P. 662 (1926).

Emergency employee not active in usual course of business. *Heckman v. Warren*, 124 Colo. 497, 238 P.2d 854 (1951).

An attorney at law regularly employed by a corporation is not a casual employee and his employment is in the usual course of a company's business. *Indus. Comm'n v. Moynihan*, 94 Colo. 438, 32 P.2d 802 (1934).

8-40-203. Employer.

(1) "Employer" means:

(a) The state, and every county, city, town, and irrigation, drainage, and school district and all other taxing districts therein, and all public institutions and administrative boards thereof without regard to the number of persons in the service of any such public employer. All such public employers shall be at all times subject to the compensation provisions of articles 40 to 47 of this title.

(b) Every person, association of persons, firm, and private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, who has one or more

persons engaged in the same business or employment, except as otherwise expressly provided in articles 40 to 47 of this title, in service under any contract of hire, express or implied.

(c) Repealed.

Source: **L. 90:** Entire article R&RE, p. 473, § 1, effective July 1. **L. 91:** (1)(c) repealed, p. 1294, § 5, effective July 1.

Editor's note: This section is similar to former § 8-41-105 as it existed prior to 1990.

Cross references: For the scope of the term "employer", see § 8-40-302.

ANNOTATION

I. General Consideration.

II. Public Employers.

III. Private Employers.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Corporations, Partnership and Agency", see 37 Dicta 11 (1960). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L. J. 82 (1970).

Annotator's note. Since § 8-40-203 is similar to § 8-41-105 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

The definition of "employer" in this section should be broadly or liberally construed, in order to effectuate the purpose of the legislation. *Conover v. Indus.*

Comm'n, 125 Colo. 388, 244 P.2d 875 (1952).

Consequently, the workmen's compensation act extends the concept of "employer" far beyond the meaning of that term at common law. *Doyle v. Missouri Valley Constructors, Inc.*, 288 F. Supp. 121 (D. Colo. 1968).

But the rule of liberal construction cannot be extended to a case that is removed by the statute itself. *Smith v. Indus. Comm'n*, 134 Colo. 454, 306 P.2d 254 (1957).

Proper characterization of the employer-employee relationship depends on the facts of each case and is for the commission to determine. *Melnick v. Indus. Comm'n*, 656 P.2d 1318 (Colo. App. 1982).

An employment contract need not provide for the payment of "wages" in order for one employed under such a

contract to qualify as an "employee" under this article. Aspen Highlands Skiing Corp. v. Apostolou, 866 P.2d 1384 (Colo. 1994).

Applied in Hefley v. Morales, 197 Colo. 523, 595 P.2d 233 (1979); Ellis v. Rocky Mt. Empire Sports, Inc., 43 Colo. App. 166, 602 P.2d 895 (1979); Stampados v. Colo. D & S Enters., 833 P.2d 815 (Colo. App. 1992).

II. PUBLIC EMPLOYERS.

All state agencies are considered a single "employer" and all persons in the service of the state are its employees. Rodriguez v. Bd. of Dirs., 917 P.2d 358 (Colo. App. 1996).

A city becomes an employer of those persons defined as employees in § 8-41-106. State Comp. Ins. Fund v. Alishio, 125 Colo. 242, 250 P.2d 1015 (1952).

III. PRIVATE EMPLOYERS.

Where two or more companies form a joint venture, the joint venture itself is an "association of persons" and an "employer" within the meaning of the workmen's compensation act. Being of that status, a joint venture and its insurance carrier could be made to respond to claims asserted under the act. D. E. Jones Constr. Co. v. Heirs of Jones, 29 Colo. App. 482, 487 P.2d 822 (1971).

And the joint venture and each of its participants are jointly and severally liable for claims asserted by or on behalf of an employee engaged in work being prosecuted by the joint venture. As to a claimant for benefits, there is nothing which

makes the liability of any one of such parties primary to, or exclusive of, the liabilities of the others. The insurance coverage of one liable as a participant in the joint venture extends to and follows that participant within the joint venture operations. Consequently, an employee, may assert his claim against the joint venture itself, or any or all members thereof and their respective insurer or insurers must discharge the claim. Indus. Comm'n v. Lopez, 150 Colo. 87, 371 P.2d 269 (1962); D. E. Jones Constr. Co. v. Heirs of Jones, 29 Colo. App. 482, 487 P.2d 822 (1971).

Thus, employer status not divested by engaging in joint venture. Where a joint venture is in furtherance of business in which two cement contractors are engaged, and each is an employer with respect to his own operation, they cannot divest themselves of such status by engaging in a joint venture in the same business in which each is individually engaged, notwithstanding they employ less than four employees on particular job. Indus. Comm'n v. Lopez, 150 Colo. 87, 371 P.2d 269 (1962).

An "association of persons" need not measure up to the requirements of a partnership in order to come within the meaning of "employer" as used in this section. Conover v. Indus. Comm'n, 125 Colo. 388, P.2d 875 (1952).

Employment of employee need not be same as his employer. There is no discernible legislative intent in this section which would require that the employment of the employee be the same as that of the

employer. *Schultz v. Indus. Comm'n*, 34 Colo. App. 122, 523 P.2d 164 (1974).

Parent corporation, sued by employee of its wholly-owned subsidiary, is not an "employer" entitled to immunity from tort liability under the workmen's compensation act. *Peterson v. Trailways, Inc.*, 555 F. Supp. 827 (D. Colo. 1983).

Unincorporated self-employed repairman not "employer". Self-employed sheet metal and heating repairman, using the name "M. Kunz and Sons, Inc.", although he had not completed incorporation, is not an "employer" and not required to carry workmen's compensation insurance for himself. *Canda v. Indus. Comm'n*, 44 Colo. App. 70, 607 P.2d 403 (1980).

The requirement of contract of hire was written into the workmen's compensation act for two reasons: First, the necessity for a "contract" was felt to insure that an employee did not give up legal rights against an employer without receiving value in return; and second, the contract had to be one "of hire" because, absent the expectation of remuneration at some rate, there was no way to compute benefits. *Rocky Mt. Dairy Prods. v. Pease*, 161 Colo. 216, 422 P.2d 630 (1966).

And this section and § 8-41-107 speak of "any contract of hire, express or implied", indicating that several "contracts of hire" may exist in a given situation and recovery had upon "any". *Rocky Mt. Dairy Prods. v. Pease*, 161 Colo. 216, 422 P.2d 630 (1966).

So that both an express and implied "contract of hire" could exist between the same parties but covering different employment or covering the same employment but with differing parties. *Rocky Mt. Dairy Prods. v. Pease*, 161 Colo. 216, 422 P.2d 630 (1966).

Usual master-servant relationship. If the relationship between the parties is that of the usual master-servant variety, then workmen's compensation liability is determined by analyzing the factual situation in terms of the statutory inclusions and exclusions stated in this section. *Schultz v. Indus. Comm'n*, 34 Colo. App. 122, 523 P.2d 164 (1974).

A general servant of one party may be loaned by his master for some special purpose so as to become for that service the servant of the party to whom he is loaned and to impose on him the usual liabilities of a master. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

Thus, there may exist at one time the relationship of general employer and a special employer as to one employee. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

Liability of employer determined by "control" or "whose business" test. The liability of a general or special employer is sometimes determined by ascertaining who has control of the borrowed employee and equipment used in rendering the service, and sometimes it is determined by ascertaining in whose business the special employee was engaged. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

The control test is that the relation of master and servant exists whenever one person stands in such a relation to another that he may control the work of the other and direct the manner in which it shall be performed. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

The whose business test holds the owner of the business liable if a servant or employee at the time of a negligent act resulting in damages to others is actually engaged in performing work or labor for the special, rather than the general, employer. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

But each case must be determined in the light of the existing facts and circumstances, and frequently it is necessary that both the control test and whose business

test be considered in determining upon whom the liability shall rest where there is a general, as well as a special, employer, and damages are claimed because of the negligence of an employee. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

A real estate brokerage concern which manages properties for others as a part of its business, collecting rent and making improvements and repairs, and which employs men to wash the walls of a building it has in charge, is an employer within the definition of this section. *Alson Inv. Co. v. Youngquist*, 107 Colo. 1, 108 P.2d 228 (1940).

But the act does not apply to nonresident employers. *Hall v. Indus. Comm'n*, 77 Colo. 338, 235 P. 1073 (1925).

PART 3

SCOPE AND APPLICABILITY

8-40-301. Scope of term "employee" - definition.

(1) (a) "Employee" excludes any person employed by a passenger tramway area operator, as defined in section 12-150-103 (1), or other employer, while participating in recreational activity, who at such time is relieved of and is not performing any duties of employment, regardless of whether such person is utilizing, by discount or otherwise, a pass, ticket, license, permit, or other device as an emolument of employment.

(b) (I) "Employee" excludes any person employed by an out-of-state employer performing incidental work in Colorado where the employee is covered at the time of injury under the workers' compensation act of another state regardless of where the contract for employment was created.

(II) For purposes of this section, "incidental work" means work that is randomly or fortuitously in Colorado.

(III) This section only applies to a workers' compensation act of another state that includes a reciprocal provision exempting Colorado employers from liability under the other state's act for incidental work.

(2) "Employee" excludes any person who is a licensed real estate sales agent or a licensed real estate broker associated with another real estate broker if:

(a) Substantially all of the sales agent's or associated broker's remuneration from real estate brokerage is derived from real estate commissions; and

(b) The services of the sales agent or associated broker are performed under a written contract specifying that the sales agent or associated broker is an independent contractor; and

(c) Such contract provides that the sales agent or associated broker shall not be treated as an employee for federal income tax purposes.

(3) (a) Notwithstanding the provisions of section 8-40-202 (1)(a)(IV), "employee" excludes any person who is confined to a city or county jail or any department of corrections facility as an inmate and who, as a part of such confinement, is working, performing services, or participating in a training or rehabilitation or work release program; except that "employee" includes an inmate of a department of corrections facility or a city, county, or city and county jail who is working, performing services, or participating in a training, rehabilitation, or work release program that has been certified by the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c). For the purposes of articles 40 to 47 of this title, an inmate participating in a program certified by the federal prison industry enhancement certification program is an employee of that certified program, which certified program shall carry workers' compensation insurance pursuant to articles 40 to 47 of this title. No inmate participating in a certified program shall be deemed to be an employee of the state, city, county, or city and county that owns, operates, or contracts for the operation of the facility or jail in which the inmate is incarcerated.

(b) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate who is working for a private employer under a contract of hire wherein the private employer is required to maintain workers' compensation insurance for its employees pursuant to articles 40 to 47 of this title. Such inmate shall be an employee of such private employer for purposes of articles 40 to 47 of this title.

(c) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate working for a joint venture established pursuant to the provisions of section 17-24-119 or 17-24-121, C.R.S. Such inmate shall be an employee of such joint venture for purposes of articles 40 to 47 of this title.

(d) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate working for a private person or entity pursuant to the provisions of section 17-24-122, C.R.S. Such inmate shall be an employee of such private person or entity for purposes of articles 40 to 47 of this title.

(4) "Employee" excludes any person who volunteers time or services for a ski area operator, as defined in section 33-44-103 (7), C.R.S., or for a ski area sponsored program or activity, notwithstanding the fact that such person may receive noncash remuneration for such person or such person's designee in conjunction with such person's status as a volunteer. No contract of hire, express or implied, is created between any volunteer pursuant to this section and a ski area operator. Notice shall be given to such volunteer in writing that the volunteering of time or services under this subsection (4) does not constitute employment for purposes of the "Workers' Compensation Act of Colorado" and that such person is not entitled to benefits pursuant to said act.

(5) "Employee" excludes any person who is working as a driver under a lease agreement pursuant to section 40-11.5-102, C.R.S., with a common carrier or contract carrier.

(6) Any person working as a driver with a common carrier or contract carrier as described in this section shall be eligible for and shall be offered workers' compensation insurance coverage by Pinnacol Assurance or similar coverage consistent with the requirements set forth in section 40-11.5-102 (5), C.R.S.

(7) Persons who provide host home services as part of residential services and supports, as described in section 25.5-10-206 (1)(e), for an eligible person, as defined in section 25.5-6-403 (2)(a), pursuant to the "Home- and Community-based Services for Persons with Developmental Disabilities Act", part 4 of article 6 of title 25.5, and pursuant to a contract with a service agency as defined in section 25.5-10-202 (34) are not considered employees of the service agency.

(8) For the purposes of articles 40 to 47 of this title 8, "employee" excludes any person who performs services for more than one employer at a race meet as defined in section 44-32-102 (28) or at a horse track as defined by section 44-32-102 (14).

(9) Notwithstanding any other provision of this section, "employee" includes a person who participates in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

Source: L. 90: Entire article R&RE, p. 473, § 1, effective July 1. L. 92: (5) and (6) added, p. 1798, § 1, effective June 6. L. 93: (3) amended, p. 2129, § 3, effective September 1. L. 94: (4) amended, p. 1288, § 1, effective July 1. L. 95: (1) and (3)(c) amended, p. 1091, § 1, effective May 31. L. 97: (3)(c) amended, p. 1031, § 66, effective August 6. L. 2000: (7) added, p. 1497, § 1, effective August 2. L. 2002: (6) amended, p. 1882, § 28, effective July 1. L. 2003: (8) added, p. 728, § 1, effective March 20. L. 2006: (7) amended, p. 1998, § 30, effective July 1. L. 2010:

(3)(a) amended, (HB 10-1109), ch. 171, p. 606, § 1, effective August 11; (9) added, (HB 10-1076), ch. 162, p. 566, § 2, effective August 11. **L. 2013:** (7) amended, (HB 13-1314), ch. 323, p. 1800, § 17, effective March 1, 2014. **L. 2017:** (1) amended, (HB 17-1119), ch. 317, p. 1705, § 2, effective July 1. **L. 2018:** (8) amended, (HB 18-1024), ch. 26, p. 321, § 4, effective October 1. **L. 2019:** (1)(a) amended, (HB 19-1172), ch. 136, p. 1647, § 20, effective October 1. **L. 2021:** (7) amended, (HB 21-1187), ch. 83, p. 324, § 4, effective July 1, 2024. **L. 2026:** (8) amended, (SB 26-163), ch. 218, p. 1288, § 7, effective August 12.

Editor's note: This section is similar to former § 8-41-106 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-40-301 is similar to § 8-41-106 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Inmates are not employees of state or county. *Orr v. Indus. Comm'n*, 691 P.2d 1145 (Colo. App. 1984), *aff'd*, 716 P.2d 1106 (Colo. 1986).

Subsection (5) is not ambiguous and includes a driver who is working for an independent contractor under a conforming lease with a contract carrier. *FFE Trans. Servs. v. Indus. Claim Appeals Office*, 93 P.3d 630 (Colo. App. 2004).

The word "under" in subsection (5) is not ambiguous. *FFE Trans. Servs. v. Indus. Claim Appeals Office*, 93 P.3d 630 (Colo. App. 2004).

The legislative intent appears clear to exclude independent contractors and their drivers from the class of statutory

employees. *FFE Trans. Servs. v. Indus. Claim Appeals Office*, 93 P.3d 630 (Colo. App. 2004).

Had the general assembly intended to exclude only independent contractors from the provisions of this section, it would not have allowed independent contractors to use assistants pursuant to § 40-11.5-102 (1)(f). *FFE Trans. Servs. v. Indus. Claim Appeals Office*, 93 P.3d 630 (Colo. App. 2004).

The traditional test set forth in *City and County of Denver v. Lee*, 450 P.2d 352 (Colo. 1969), for determining when recreational activities fall within the course and scope of employment remain valid under subsection (1) as amended in 1989 in determining whether an employee engaged in a recreational activity is within the coverage of the workers' compensation act. *Karlin v. Conrad*, 876 P.2d 64 (Colo. App. 1993).

Exclusion provided by subsection (5) is conditional not absolute. It takes effect only when the lease agreement required by § 40-11.5-102 includes complying coverage.

USF Distribution Servs., Inc. v. Indus. Claim Appeals Office, 111 P.3d 529 (Colo. App. 2004).

Ski instructor injured while skiing recreationally was not entitled to workers' compensation benefits as injury did not occur in course and scope of employment. Dunavin v. Monarch Recreation Corp., 812 P.2d 719 (Colo. App. 1991).

Evidence that claimant agreed to act as a member of the ski patrol only after negotiating with the supervisor to receive a special benefit is sufficient to support the administrative law judge's finding that, without such consideration, claimant would have refused to render any services as a patrol member and therefore claimant was not a volunteer under the statute. Aspen Highlands Skiing Corp. v. Apostolou, 854 P.2d 1357 (Colo. App. 1992).

Ski patrol worker who negotiated for a ski pass in lieu of salary in exchange for services was not a "volunteer" for purpose of exclusion from coverage under this article. Aspen Highlands Skiing Corp. v. Apostolou, 866 P.2d 1384 (Colo. 1994).

Under this section, any employee who participates in employer-sponsored recreation due to pressure exerted by employer rather than at employee's own initiative is entitled to benefits for injuries sustained during activity. However, any

employee who is injured while voluntarily engaging, upon his own initiative, in recreational activity which does not benefit the employer or fulfill any job duties is not entitled to compensation. Dunavin v. Monarch Recreation Corp., 812 P.2d 719 (Colo. App. 1991).

A leased driver was not limited to workers' compensation benefits for injuries received while performing duties within the lease agreement. The leased driver was not an employee for purposes of workers' compensation because section (5)(b) is an exception to the more general workers' compensation statutes. Scott v. Matlack, Inc., 1 P.3d 185 (Colo. App. 1999), rev'd on other grounds, 39 P.3d 1160 (Colo. 2002).

Leased driver was entitled to benefits at least equivalent to workers' compensation benefits under subsection (6). USF Distribution Servs., Inc. v. Indus. Claim Appeals Office, 111 P.3d 529 (Colo. App. 2004).

The definition of an employee entitled to coverage under this act includes "aliens" without distinguishing between legal and illegal aliens and therefore does not preclude, as a matter of law, an illegal alien from proving an entitlement to benefits. Champion Auto Body v. Indus. Claim Appeals Office, 950 P.2d 671 (Colo. App. 1997).

8-40-302. Scope of term "employer".

(1) Repealed.

(2) Articles 40 to 47 of this title are not intended to apply to employees of eleemosynary, charitable, fraternal, religious, or social employers who are elected or appointed to serve in an advisory capacity and receive an annual salary or an amount not in excess of seven hundred fifty dollars and are not otherwise subject to the "Workers' Compensation Act of Colorado".

(3) Articles 40 to 47 of this title are not intended to apply to employers of casual farm and ranch labor or employers of persons who do casual maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the place of business, trade, or profession of the employer if such employers have no other employees subject to said articles 40 to 47, if such employments are casual and are not within the course of the trade, business, or profession of said employers, if the amounts expended for wages paid by the employers to casual persons employed to do maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the place of business, trade, or profession of the employer do not exceed the sum of two thousand dollars for any calendar year, and if the amounts expended for wages by the employer of casual farm and ranch labor do not exceed the sum of two thousand dollars for any calendar year.

(4) Articles 40 to 47 of this title are not intended to apply to employers of persons who do domestic work or maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the private home of the employer if such employers have no other employees subject to said articles 40 to 47 and if such employments are not within the course of the trade, business, or profession of said employers. This exemption shall not apply to such employers if the persons who perform the work are regularly employed by such employers on a full-time basis. For purposes of this subsection (4), "full-time" means work performed for forty hours or more a week or on five days or more a week.

(5) (a) Any employer excluded under this section may elect to accept the provisions of articles 40 to 47 of this title by purchasing and keeping in force a policy of workers' compensation insurance covering said employees.

(b) Notwithstanding any other provision of articles 40 to 47 of this title, any working general partner or sole proprietor actively engaged in the business may elect to be included by endorsement as an employee of the insured and shall be entitled to elect coverage regardless of whether such working general partner or sole proprietor employs any other person under any contract of hire.

(6) Articles 40 to 47 of this title are intended to apply to officers of agricultural corporations; but effective July 1, 1977, any such agricultural corporation may elect to reject the provisions of articles 40 to 47 of this title for any or all of said officers.

(7) (a) Any employer, as defined in section 8-40-203, who enters into a bona fide cooperative education or student internship program sponsored by an educational institution for the purpose of providing on-the-job training for students shall be deemed an employer of such students for

the purposes of workers' compensation and liability insurance pursuant to articles 40 to 47 of this title.

(b) If the student placed in an on-the-job training program does not receive any pay or remuneration from the employer, the educational institution sponsoring the student in the cooperative education or student internship program shall insure the student through the institution's workers' compensation and liability insurance or enter into negotiations with the employer for the purpose of arriving at a reasonable level of compensation to the employer for the employer's expense of providing workers' compensation and liability insurance while such student is participating in on-the-job training with said employer. This paragraph (b) shall not apply to a student teacher participating in a program authorized pursuant to article 62 of title 22, C.R.S.

(c) As used in this subsection (7), "cooperative education or student internship program" means a program sponsored by an educational institution in which a student is taught through a coordinated combination of specialized in-the-school instruction provided through an educational institution by qualified teachers and on-the-job training provided through a local business, agency, or organization or any governmental agency in cooperation with the educational institution.

Source: L. 90: Entire article R&RE, p. 474, § 1, effective July 1. L. 91: (1) repealed, p. 1294, § 6, effective July 1. L. 93: (5) amended, p. 455, § 1, effective April 19.

Editor's note: This section is similar to former § 8-41-105 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 8-40-302 is similar to § 8-41-105 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

II. EXEMPT EMPLOYERS.

- A. Casual Labor.
- B. Farm and Ranch Labor.
- C. Contracts for Hire.
- D. Domestic Workers.

A. Casual Labor.

**Even if employee was a casual laborer,
the exemption under subsection (4) (now**

subsection (3)) does not apply because the employee's duty of maintaining the racetrack and its equipment were within the course of the employer's business of operating a racetrack. *Butland v. Indus. Claim Appeals Office*, 754 P.2d 422 (Colo. App. 1988).

B. Farm and Ranch Labor.

Exclusion of farm and ranch labor in this section does not constitute a violation of equal protection. *Anaya v. Indus. Comm'n*, 182 Colo. 244, 512 P.2d 625 (1973).

Farm and ranch labor falls within the field of agriculture which in general refers to any activity incident to the cultivation of land for the growing of crops, the harvesting thereof, and the care and feeding of livestock. It includes tillage, seeding, husbandry, and all things incident to farming in the widest sense of that term. *Great W. Mushroom Co. v. Indus. Comm'n*, 103 Colo. 39, 82 P.2d 751 (1938); *Billings Ditch Co. v. Indus. Comm'n*, 127 Colo. 69, 253 P.2d 1058 (1953); *Smith v. Indus. Comm'n*, 134 Colo. 454, 306 P.2d 254 (1957).

The whole character of the employment must be looked to in order to determine whether one is a farm laborer. Neither the pending task nor the place where it is being performed is the test. *Billings Ditch Co. v. Indus. Comm'n*, 127 Colo. 69, 253 P.2d 1058 (1953).

Construction of exemption clause. The workmen's compensation law is to be construed liberally and in every reasonable manner to accomplish the evident intent and purpose of the act; but in applying this rule,

the court must not forget the exemption clause which frees those who employ farm and ranch labor from the provisions of the act, unless they voluntarily elect to come under it. The court must, therefore, be equally cautious to see to it that this exemption be not so restricted, limited and constricted in the interpretation of its terms and provisions as to destroy its effect. *Billings Ditch Co. v. Indus. Comm'n*, 127 Colo. 69, 253 P.2d 1058 (1953).

Not modified by § 8-48-101. The contracting-out provision of § 8-48-101 does not modify the exemption for farm and ranch labor of this section. *Hefley v. Morales*, 197 Colo. 523, 595 P.2d 233 (1979).

While the employer of farm or ranch labor may elect to accept coverage under the workmen's compensation act by filing a written statement to the effect that he accepts the provisions of the act, the filing of an unsigned printed card by someone other than the employer; and without his knowledge or direction, is not sufficient to charge such employer with liability under the act. *Smith v. Indus. Comm'n*, 134 Colo. 454, 306 P.2d 254 (1957).

The burden of proof is on a claimant to establish by competent evidence that the employer himself, or some person by him duly authorized, filed a written statement accepting the provisions of the act. *Smith v. Indus. Comm'n*, 134 Colo. 454, 306 P.2d 254 (1957).

Worker on threshing machine may not be "farm labor". Where a farmer traveled about the country with his machine doing

threshing for others, for compensation, it is held under the facts disclosed, that one who was employed by him in such work was not a farm laborer within the meaning of this section, and was entitled to compensation for an accidental injury. *Hoshiko v. Indus. Comm'n*, 83 Colo. 556, 266 P. 1114 (1928).

Employee sorting potatoes for potato grower engaged in farm labor. Employee, who was injured while sorting potatoes for potato grower in cellars maintained by grower where only his potatoes were sorted and stored, was engaged in farm labor and, thus, not entitled to workmen's compensation. *Anaya v. Indus. Comm'n*, 182 Colo. 244, 512 P.2d 625 (1973).

Employee held to be engaged in farm labor. Where employee left a hoist job at his own request, and a man was employed to succeed him on that job, and employee anticipated early enlistment in the Army, it was held that this was not a case of conflicting evidence, that the employee was engaged in farm labor, and that he had not been just temporarily transferred from his regular employment to work on the farm, so that he was a farm laborer within the meaning of the statute. *Maley v. Martin*, 111 Colo. 545, 144 P.2d 558 (1943).

C. Contracts for Hire.

A contract for hire may be formed as long as the fundamental elements of contract formation are present even though not every formality attending commercial contractual arrangements is observed. *Aspen Highlands Skiing Corp. v. Apostolou*, 866 P.2d 1384 (Colo. 1994).

Contract of hire found to exist where claimant was part-time ski patrol worker who agreed to work only in exchange for the benefit of daily ski pass in lieu of salary and who worked under the direction of the employer. *Aspen Highlands Skiing Corp. v. Apostolou*, 866 P.2d 1384 (Colo. 1994).

D. Domestic Workers.

Subsection (4) is not violative of equal protection. In requiring that employers of domestic workers who work 40 or more hours per week or five or more days per week provide workers' compensation and exempting employers of domestic workers who work fewer than such hours or days, the general assembly had a rational basis for treating employers of casual labor differently than employers who hire regular, full-time employees. *Naiden v. Epps*, 867 P.2d 215 (Colo. App. 1993).

The Workers' Compensation Act was intended to apply to claimant who was hired to perform domestic services on a full-time basis, when employer compensated dual employer for claimant's services, and dual employer maintained workers' compensation coverage on claimant's behalf. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

The exceptions under this section and § 8-41-402 are not intended to abrogate the borrowed servant doctrine in the case of work performed at a private home, except in the limited situations in which the domestic employment is not on a full-time basis. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Domestic work, as used in subsection (4), includes child care. This is consistent with the intent of this section to exempt from the workers' compensation requirements private employers who employ

persons to perform domestic work within their homes because such employers cannot pass the cost of workers' compensation coverage to consumers. *Connor v. Zelaski*, 839 P.2d 501 (Colo. App. 1992).

ARTICLE 41

Coverage and Liability

PART 1 ABROGATION OF DEFENSE			
8-41-101.	Assumption of risk - negligence of employee or fellow servant.	8-41-205.	Waiver of compensation by employee - approval required - exception.
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8-41-204.	Injury outside of state - benefits in accordance with state law.	8-41-212.	Exemptions - laws of other state furnish exclusive remedy - definitions.
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8-41-302.	Scope of terms - "accident" - "injury" - "occupational disease".	PART 5 DEPENDENCY	
8-41-303.	Loaning employer liable for compensation.	8-41-501.	Persons presumed wholly dependent.
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8-41-402.	Repairs to real property - exception for liability of occupant of residential real property.	8-41-505.	Minor children.

PART 1

ABROGATION OF DEFENSE

8-41-101. Assumption of risk - negligence of employee or fellow servant.

(1) In an action to recover damages for a personal injury sustained by an employee while engaged in the line of duty, or for death resulting from personal injuries so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent, or servant of the employer, it shall not be a defense:

(a) That the employee, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence;

(b) That the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant;

(c) That the injury or death was caused, in whole or in part, by the want of ordinary care of the injured employee where such want of care was not willful.

Source: L. 90: Entire article R&RE, p. 476, § 1, effective July 1.

Editor's note: This section is similar to former § 8-42-101 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Derogation of the Common Law Rule of Contributory Negligence", see 7 Rocky Mt. L. Rev. 161 (1935). For article, "The Enterprise Liability Theory of Torts", see 47 U. Colo. L. Rev. 153 (1976). For article, "Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980). For article, "The Positional Risk Doctrine — Compensability of 'Neutral Force' Injuries", see 17 Colo. Law. 2375 (1988).

Annotator's note. Since § 8-41-101 is similar to § 8-42-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Constitutionality. This section's abrogation of a claimant's common-law rights does not violate constitutional protections of due process and equal protection and the right of access to the courts. *Kandt v. Evans*, 645 P.2d 1300 (Colo. 1982).

This section has abolished the defense of contributory negligence where the workman's want of care is not wilful. *Clayton Coal Co. v. DeSantis*, 95 Colo. 332, 35 P.2d 492 (1934).

And although doctrine of assumption of risk has been abolished, the workman still assumes risks. While since the adoption of the workmen's compensation act the doctrine of assumption of risk created by the master's negligence has disappeared, the workman still assumes, so far as a suit for damages is concerned, the risks not created by the master's negligence. *Colo. Milling & Elevator Co. v. Bright*, 76 Colo. 338, 231 P. 1111 (1924).

Claim of intentional tort does not avoid applicability of act. *Eason v. Frontier Air Lines*, 636 F.2d 293 (10th Cir. 1981).

This section is applicable only in action against employer for negligence resulting in personal injury or death and relates to the abrogation of enumerated common law defenses, and none of these circumstances is relevant to case in which claimant is attempting to pierce the corporate veil in a workers' compensation

proceeding. Matter of Death of Smithour, 778 P.2d 302 (Colo. App. 1989).

Proper instruction. In personal injury case, an instruction that, if the defendant

was negligent and its negligence was the proximate cause of the injury, there was no assumption of risk, is proper. Colo. Milling & Elevator Co. v. Bright, 76 Colo. 338, 231 P. 1111 (1924).

8-41-102. Liability of employer complying.

An employer who has complied with the provisions of articles 40 to 47 of this title, including the provisions relating to insurance, shall not be subject to the provisions of section 8-41-101; nor shall such employer or the insurance carrier, if any, insuring the employer's liability under said articles be subject to any other liability for the death of or personal injury to any employee, except as provided in said articles; and all causes of action, actions at law, suits in equity, proceedings, and statutory and common law rights and remedies for and on account of such death of or personal injury to any such employee and accruing to any person are abolished except as provided in said articles.

Source: L. 90: Entire article R&RE, p. 476, § 1, effective July 1.

Editor's note: This section is similar to former § 8-42-102 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Employer's Liability for Occupational Disease ", see 16 Rocky Mt. L. Rev. 60 (1943). For comment on Ward v. Denver & R. G. W R. R. (119 F. Supp. 112 (D. Colo. 1954)), see 27 Rocky Mt. L. Rev. 106 (1954). For comment on Finn v. Indus. Bd. (165 Colo. 106, 437 P.2d 542 (1968)), see 45 Denver. L. J. 780 (1968). For article, "Labor and Employment Law", which discusses Tenth Circuit decisions dealing with exclusive remedy, see 64 Den. U. L. Rev. 271 (1987). For article, "Bad Faith Claims and the PIP Statute: View of Plaintiff's Counsel", see 17 Colo. Law.

2163 (1988). For article, "The Positional Risk Doctrine — Compensability of 'Neutral Force' Injuries", see 17 Colo. Law. 2375 (1988). For article, "Work-Related Stress Claims", see 18 Colo. Law. 1529 (1989).

Annotator's note. Since § 8-41-102 is similar to § 8-42-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section abolishes all common law rights and remedies in an employee action against employer for injury except as provided in the act. *Ward v. Denver & R. G. W. R. R.*, 119 F. Supp. 112 (D. Colo. 1954); *Thomas v. Farnsworth Chambers Co.*, 286 F.2d 270 (10th Cir. 1960), rev'g 183 F. Supp. 764 (D. Colo. 1960); *Finn v. Indus. Comm'n*, 165 Colo. 106 437 P.2d 542 (1968); *Cont'l Sales Corp. v. Stookesbury*, 170 Colo. 16, 459 P.2d 566 (1969); *Rodriguez v. Nurseries, Inc.*, 815 P.2d 1006 (Colo. App. 1991).

When an employer has brought itself within the ambit of the workmen's compensation act, it is not subject to a common law action for damages, and the employee is limited to the remedies specified in the act. *Alexander v. Morrison-Knudsen Co.*, 166 Colo. 118, 444 P.2d 397 (1968); *Hilzer v. MacDonald*, 169 Colo. 230, 454 P.2d 928 (1969).

The common law rule that a worker can simultaneously be the employee of two persons applies to cases arising under the workers' compensation act. The rule allows an employee to be simultaneously in the general employment of one employer and in the special employment of another, provided the employee understands that he or she is submitting to the control of the special employer. In the dual employment situation, the employee's only remedy for an injury sustained while in the course of employment with the borrowing employer is through worker's compensation. A separate tort action against the special employer is barred. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Hence, this section applies only to employers and employees covered by the workmen's compensation act, an employee being any person under any contract of hire, express or implied. *Cont'l Sales Corp. v. Stookesbury*, 170 Colo. 16, 459 P.2d 566 (1969).

The workers' compensation act provides exclusive remedies for compensation of an employee by an employer for work-related injury. *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991); *Bailey v. C.P. Const., Inc.*, 837 P.2d 277 (Colo. App. 1992).

Therefore, an employer who has complied with the insurance provisions of the act is immune from any common law liability for work-related injuries. *Bailey v. C.P. Const., Inc.*, 837 P.2d 277 (Colo. App. 1992).

Officer who rejected workers' compensation coverage may pursue remedies in common law, but recovery is limited to the cap found in § 8-41-401 of the Act. *Kelly v. Mile Hi Single Ply, Inc.*, 890 P.2d 1161 (Colo. 1995).

Comparison to Montana statutes. Sections 92-203 and 92-204, R.C.M. 1947, of the Montana workmen's compensation act are nearly identical in thrust and seemingly as all-encompassing as this section. *Pust v. Union Supply Co.*, 38 Colo. App. 435, 561 P.2d 355 (1976), rev'd sub nom. *Holly Sugar Corp. v. Union Supply Co.*, 194 Colo. 316, 572 P.2d 148 (1977) (third-party indemnification issue), and aff'd, 196 Colo. 162, 583 P.2d 276 (1978).

Intentional wrongs are covered. Intentional wrongs arising out of the course of employment are covered under Colorado's compensation scheme. *Kandt v. Evans*, 645 P.2d 1300 (Colo. 1982).

An employer may be held liable to an employee for common law damage claims for intentional torts committed by the employer or the employer's alter ego if the employer deliberately intended to cause the injury and acted directly rather than constructively through an agent. *Schwindt v. Hershey Food Corp.*, 81 P.3d 1144 (Colo. App. 2003).

Exclusivity provisions of the workers' compensation act bar claim against employer for gross negligence but not intentional torts. *Schwindt v. Hershey Food Corp.*, 81 P.3d 1144 (Colo. App. 2003).

An employee injured during the course of employment cannot claim benefits under his or her employer's uninsured/underinsured motorist policy in addition to workers' compensation. *Markel Ins. Co. v. Hollandsworth*, 400 F. Supp. 3d 1155 (D. Colo. 2019).

Immunity under the workers' compensation act does not bar an injured employee's recovery of uninsured/underinsured motorist (UM/UIM) benefits from his or her personal insurer. *Am. Family Mut. Ins. v. Ashour*, 2017 COA 67, 410 P.3d 753.

Immunity under the workers' compensation act does not bar an injured employee's recovery of UM/UIM benefits from their employer's separate UM/UIM

carrier. *Klabon v. Travelers Prop. Cas. Co.*, 2024 CO 66, 556 P.3d 793.

The phrase "legally entitled to recover damages", as used in § 10-4-609, means that the insured must be able to establish that the fault of the uninsured motorist gave rise to damages and the extent of those damages. *Am. Family Mut. Ins. v. Ashour*, 2017 COA 67, 410 P.3d 753.

The public policy expressed in § 10-4-609 requires that UM/UIM insurance policies must provide coverage for the protection of a motorist injured by the negligence of a driver who is immune from liability. *Am. Family Mut. Ins. v. Ashour*, 2017 COA 67, 410 P.3d 753.

The policies underlying the workers' compensation act's exclusivity provisions and the UM/UIM statute do not conflict and, therefore, an injured employee is entitled to make a claim for UM/UIM benefits against his or her personal auto insurer. *Am. Family Mut. Ins. v. Ashour*, 2017 COA 67, 410 P.3d 753.

Exclusivity provisions of the workers' compensation act and the related co-employee immunity rule bar an employee who was injured in the course and scope of employment by a co-employee's negligence in driving a car from receiving UM/UIM motorist benefits under an insurance policy maintained by another co-employee who owned the car. *Ryser v. Shelter Mut. Ins. Co.*, 2019 COA 88, 486 P.3d 364, *aff'd*, 2021 CO 11, 480 P.3d 1289.

Cause of action based on a contractual right of indemnity is independent of the

exclusive jurisdiction provisions of the act. *Borroel v. Lakeshore, Inc.*, 618 F. Supp. 354 (D. Colo. 1985).

Recovery under the act is meant to be the exclusive remedy for workers covered by its provisions. *Kelly v. Mile Hi Single Ply, Inc.*, 890 P.2d 1161 (Colo. 1995).

Exclusivity provisions of the workers' compensation act do not bar an action for mental suffering resulting from a breach of the employment contract. *Allabashi v. Lincoln Nat'l Sales Corp.*, 824 P.2d 1 (Colo. App. 1991).

Workers' compensation act constitutes the exclusive remedy available to employee if employee asserts claim of intentional tort committed by employer's agent. *Digliani v. City of Ft. Collins*, 873 P.2d 4 (Colo. App. 1993).

Employees may not circumvent exclusive remedy provisions by framing their claims as breach of contract, breach of implied contract, or promissory estoppel. *Digliani v. City of Ft. Collins*, 873 P.2d 4 (Colo. App. 1993); *McKelvy v. Liberty Mut. Ins. Co.*, 983 P.2d 42 (Colo. App. 1998).

"Personal injury" in this section and "personal injuries" in § 8-41-104 refer to the job-related physical or mental injuries of an employee, and, consequently, the workers' compensation act's exclusivity provision bars action for or on account of such injuries of an employee. *Serna v. Kingston Enters.*, 72 P.3d 376 (Colo. App. 2002).

Exclusive remedy provisions of workers' compensation act barred city

employees' common law claims against city for exposure to toxic chemicals at city facility. Employer who complied with the provisions of the act was not subject to liability under common law rights and remedies for death of or personal injury to any employee. *Digliani v. City of Ft. Collins*, 873 P.2d 4 (Colo. App. 1993).

Economic liability does not qualify as a compensable "personal injury" under the workers' compensation act, therefore, indemnity action is not barred under the act's exclusivity provision. *Serna v. Kingston Enters.*, 72 P.3d 376 (Colo. App. 2002).

An employee's wife's rights are strictly derivative under the act and are controlled by the all-inclusive election of the section. *Alexander v. Morrison-Knudsen Co.*, 166 Colo. 118, 444 P.2d 397 (1968).

An employer who is subject to the provisions of the act cannot be made a third-party defendant in an action wherein one of its employees is suing a stranger to the employer-employee relationship for injuries sustained while engaged in the course of his employment. *Ward v. Denver & R. G. W. R. R.*, 119 F. Supp. 112 (D. Colo. 1954); *Hilzer v. MacDonald*, 169 Colo. 230, 454 P.2d 928 (1969); *Pub. Serv. Co. v. District Court*, 638 P.2d 772 (Colo. 1981).

Therefore, this section amounts to a legislative grant of immunity from common law liability in return for vicarious statutory liability and the extent of the legislative intent is of course to be discerned from the particular language used in the enactments. *Thomas v. Farnsworth*

Chambers Co., 286 F.2d 270 (10th Cir.), rev'g 183 F. Supp. 764 (D. Colo. 1960).

Workers' compensation carrier is granted the same immunity from suit by the injured employee as the employer has. Therefore, no third-party action could be brought against a carrier for negligently conducting safety inspections undertaken pursuant to its capacity as carrier. *McHarque v. Stokes Div. of Pennwalt Corp.*, 649 F. Supp. 1388 (D. Colo. 1986).

Employer not liable for contribution. Because the workmen's compensation act immunizes an employer from tort liability to a covered employee, the employer is not "jointly liable in tort" and therefore contribution is barred. *Hammond v. Kolberg Mfg. Corp.*, 542 F. Supp. 662 (D. Colo. 1982).

Section bars only actions founded on compensable injuries. The bar of workmen's compensation extends only to actions founded upon injuries compensable under the act. *Bennett v. Furr's Cafeterias, Inc.*, 549 F. Supp. 887 (D. Colo. 1982).

An employer who is immune from common-law liability for an injury cannot become "jointly or severally liable in tort" so as to trigger a right of contribution under § 13-50.5-102. *Greer v. Intercole Automation, Inc.*, 553 F. Supp. 275 (D. Colo. 1982).

Act does not apply to injuries sustained when claimant has ceased his employment relationship. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

Factual question existed as to whether sexual assault on female employee by employer "arose out of" employment, making injury compensable and employer accordingly immune from suit. *Stamper v. Hiteshew*, 797 P.2d 784 (Colo. App. 1990).

As a matter of policy, sexual harassment is not a risk inherently connected to the employment relationship. Except in the most unusual cases, acts of harassment are highly personal and fall into the category of inherently private assaults that do not arise from employment. Therefore, sexual harassment claims are not barred by the exclusive remedy provisions of the workers' compensation act. *Horodyskyj v. Karanian*, 32 P.3d 470 (Colo. 2001).

For employer to be absolved of liability for third-party indemnification claim, the employee's right to compensation under this act must first exist. *Garrett v. Miller*, 44 Colo. App. 440, 619 P.2d 780 (1980).

Indirect subjection under rules of indemnity. The workers' compensation exclusive remedy provision does not permit an employer to be indirectly subjected under rules of indemnity to liability to which it could not be directly subjected. *Tex-Ark Joist Co. v. Derr & Gruenewald Const.*, 719 P.2d 384 (Colo. App. 1986), *aff'd*, 749 P.2d 431 (Colo. 1988).

The fact that an award may deprive a claimant of a common law action does not make such a statute unconstitutional because a different remedy has been provided the employee by the general assembly which is within its power. *Finn v. Indus. Comm'n*, 165 Colo. 106, 437 P.2d

542 (1968), *O'Quinn v. Walt Disney Prods., Inc.*, 177 Colo. 190, 493 P.2d 344 (1972).

When an employee accepts the terms of the act his common-law action against his employer does not constitute an election of remedies; for his remedy against his employer is under the act, and therefore he cannot make the choice which the doctrine of election of remedies contemplates. *State Comp. Ins. Fund v. Foulds*, 167 Colo. 123, 445 P.2d 716 (1968).

And although a workman will be required to forego a negligence action against a general contractor or real property owner, he will be assured that regardless of fault, the more solvent general contractor or real property owner stands behind and secures the workmen's compensation liability of the workman's immediate employer. *O'Quinn v. Walt Disney Prods., Inc.* 177 Colo. 190, 493 P.2d 344 (1972).

An exculpatory clause like this section shall be construed to destroy the common-law right of action of an injured and compensated employee of a subcontractor against a negligent general contractor. *Thomas v. Farnsworth Chambers Co.*, 286 F.2d 270 (10th Cir.), rev'g 183 F. Supp. 764 (D. Colo. 1960); *Whiting v. Farnsworth Chambers Co.*, 293 F.2d 45 (10th Cir. 1961).

For where the subcontractor has secured compensation for his employees, a general contractor is under no statutory liability, and is subject to common-law liability. *Thomas v. Farnsworth Chambers Co.*, 286 F. 2d 270 (10th Cir.), rev'g 183 F. Supp. 764 (D. Colo. 1960).

A general contractor may be liable as a third party tortfeasor to these injured and compensated employees of a subcontractor. *Thomas v. Farnsworth Chambers Co.*, 286 F.2d 270 (10th Cir.), rev'g 183 F. Supp. 764 (D. Colo. 1960).

Furthermore, under this section and § 8-48-102, a landowner is not immune from common-law liability where an employee of a contractor working on its land is injured by the negligence of a servant of the landowner and where the contractor is himself an employer, as defined in the workmen's compensation act, and carries compensation insurance covering such employee. *Great W. Sugar Co. v. Erbes*, 148 Colo. 566, 367 P.2d 329 (1961).

There are nine criteria relevant to determining whether a special employment relationship exists. They are: (1) Whether the borrowing employer has the right to control the employee's conduct; (2) whether the employee is performing the borrowing employer's work; (3) whether there was an agreement between the original and borrowing employer; (4) whether the employee has acquiesced in the arrangement; (5) whether the borrowing employer had the right to terminate the employee; (6) whether the borrowing employer furnished the tools and place for performance; (7) whether the new employment was to be for a considerable length of time; (8) whether the borrowing employer had the obligation to pay the employee; and (9) whether the original employer terminated its relationship with the employee. *Evans v. Webster*, 832 P.2d 951

(Colo. App. 1991); *Morphew v. Ridge Crane Serv., Inc.*, 902 P.2d 848 (Colo. App. 1995).

Of the nine criteria, three are decisive: Whether the employee has acquiesced in the arrangement; whether the borrowing employer has the right to control the employee's conduct; and whether the borrowing employer had the right to terminate the employee. *Evans v. Webster*, 932 P.2d 951 (Colo. App. 1991).

There are additional criteria in the context of leased heavy equipment: (1) Whether the general employer could properly have substituted another servant at any time; (2) whether the duration of the work was short; (3) whether the machine operator had the skill of a specialist; (4) whether the general employer had rented a valuable machine and the employee to operate it; and (5) whether the general employer furnished fuel and maintenance. *Morphew v. Ridge Crane Serv., Inc.*, 902 P.2d 848 (Colo. App. 1995).

A tort suit against a special employer is barred by the workers' compensation act when an employee consents to work for the special employer pursuant to a contract of hire within the workers' compensation act and the employee is an employee of both the general and special employer. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

A separate tort action against a special employer is barred in dual employment situation and the employee's only remedy for an injury sustained while in the course of employment with the borrowing employer is through workers' compensation. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

"Loaned employee" may maintain negligence action. A "loaned employee" and an "employee" under workmen's compensation are not the same, and no provision prohibits or limits a "loaned employee" from maintaining a negligence action against the borrowing employer. *Cont'l Sales Corp. v. Stookesberry*, 170 Colo. 16, 459 P.2d 566 (1969).

An employer is not liable for his supervisor's act which has no real connection with his employer's business and is purely personal. *Packaging Corp. of Am. v. Roberts*, 169 Colo. 316, 455 P.2d 652 (1969).

Unavailable remedy. An employee cannot rely upon the provisions of §§ 8-2-201 to 8-2-205 as providing an available remedy excepted from abolition by the workmen's compensation act in this section, even though those sections were mistakenly placed within the scope of this section by the 1973 revisor. *Ryan v. Centennial Race Track, Inc.*, 196 Colo. 30, 580 P.2d 794 (1978). (See Editor's note preceding § 8-2-201.)

Parent corporation, sued by employee of its wholly-owned subsidiary, is not an "employer" entitled to immunity from tort liability under the workmen's compensation act. *Peterson v. Trailways, Inc.*, 555 F. Supp. 827 (D. Colo. 1983); *Gaber v. Franchise Servs., Inc.*, 680 P.2d 1345 (Colo. App. 1984).

"Dual capacity" doctrine. Even if doctrine were applied, a city is not liable to its employee under such doctrine where the city, although the partial manufacturer of the

truck that injured the employee, is not principally engaged in the manufacture of such trucks. *Shaw v. City of Colo. Springs*, 683 P.2d 385 (Colo. App. 1984).

Claimant's tort suit against the employer was barred by the workers' compensation act as a matter of law where claimant had consented to work for the employer pursuant to a contract of hire within the meaning of the act and claimant was an employee of both dual employer and employer. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Plaintiffs alleged at most a claim for gross negligence, and the exclusivity provisions of the workers' compensation act, therefore, bar their action. Although plaintiffs alleged that employer acted in willful, wanton, and reckless disregard for the health and safety of employee and others, they did not allege that employer intended to cause the injury. *Schwindt v. Hershey Food Corp.*, 81 P.3d 1144 (Colo. App. 2003).

A claim against an employer's workmen's compensation insurer for tortious conduct in connection with the handling of a claim for compensation is not precluded by the workmen's compensation act, where the conduct complained of occurred after the compensable injury, and the damages claimed were not sustained within the scope of the employment relationship. *Savio v. Travelers Ins. Co.*, 678 P.2d 549 (Colo. App. 1983).

Against a tort claim of bad faith, the standard for measuring the conduct of an

insurer includes two elements: Unreasonable conduct, and knowledge that the conduct is unreasonable, or a reckless disregard for the fact the conduct is unreasonable. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

Tort suit against borrowed employee barred where special employer had the exclusive right to control the work of the borrowed employee operator pursuant to the lease agreement, at the time of the accident the borrowed employee operator was performing work for the special employer, the special employer was controlling the work, and the borrowed employee operator acquiesced to this special employment relationship. *Morphew v. Ridge Crane Serv., Inc.*, 902 P.2d 848 (Colo. App. 1995).

Trial court erred in dismissing plaintiff's summary judgment claims alleging violations of the anti-discrimination act and outrageous conduct on grounds that this act provides exclusive remedy against employer where genuine factual controversy existed regarding job-relatedness of sexual harassment claims. *Ferris v. Local 26*, 867 P.2d 38 (Colo. App. 1993).

Summary judgment was properly entered based on exclusivity provision where state employee who suffered a workplace injury received workers' compensation benefits, and thereafter filed personal injury action against the state agency. *Rodriguez v. Bd. of Dirs.*, 917 P.2d 358 (Colo. App. 1996).

Summary judgment precluded. ALJ erred in granting summary judgment where there existed an unresolved conflict between

the medical report issued by the employer's physician advisor and the IME reports obtained by the injured employee. *Fera v. Indus. Claim Appeals Office*, 169 P.3d 231 (Colo. App. 2007).

Employee suffered workplace injury for which workers' compensation is the exclusive remedy and since employee had received workers' compensation benefits from the state, he was statutorily barred by this section from subjecting the state to further potential liability arising from that injury. *Rodriguez v. Bd. of Dirs.*, 917 P.2d 358 (Colo. App. 1996).

A provision of the High Voltage Power Lines Safety Act (§ 9-2.5-101 et seq.) providing that a person or entity which violates the act "may be liable for all damages" does not permit an employee covered by workers' compensation to seek additional remedies against the covered employer under the act. *Rodriguez v. Nurseries, Inc.*, 815 P.2d 1006 (Colo. App. 1991).

The rights of the spouse of an employee under the workers' compensation act are strictly derivative from those of the employee and thus a wife may not maintain a tort action against her husband's employer for loss of consortium. *Rodriguez v. Nurseries, Inc.*, 815 P.2d 1006 (Colo. App. 1991).

Employee's claim for wrongful death of her child was not derivative of an injury to the employee and could be brought against the employer. Where employee's child was born prematurely and died because the employer coerced the employee

into working too many hours during her pregnancy, the claim was derived from an injury to a third party, the employee's child. *Keefe v. Pizza Hut of Am., Inc.*, 868 P.2d 1092 (Colo. App. 1993), *aff'd*, 900 P.2d 97 (Colo. 1995).

Wrongful death action brought by employee's nondependent parents, based on the death of the employee which occurred in the course of the scope of the employee's employment, is strictly derivative and barred by the exclusivity provisions of this section, even though the parents suffer their own distinct injuries.

Thus, summary judgment was appropriate and parents could not maintain an action under either the federal Fair Labor Standards Act or the Colorado Youth Employment Opportunity Act. *Henderson v. Bear*, 968 P.2d 144 (Colo. App. 1998).

Co-employees are immune from common law actions brought by an officer who has rejected coverage under the Act. *Kelly v. Mile Hi Single Ply, Inc.*, 890 P.2d 1161 (Colo. 1995).

If the employer has entered into an express indemnity agreement with a third party, the employer waives immunity under the workers' compensation act and may be required to indemnify the third party for damages paid to the injured worker by the third party. *Pub. Serv. Co. v. United Cable Television of Jeffco, Inc.*, 816 P.2d 289 (Colo. App. 1991).

Courts will enforce express indemnity agreements against an employer who would otherwise be immune under the workers' compensation act based on the employer's

freedom of contract rights and the employer's right to waive statutory protections. *Pub. Serv. Co. v. United Cable Television of Jeffco, Inc.*, 816 P.2d 289 (Colo. App. 1991).

Claims for medical monitoring fall under the "personal injury" umbrella for purposes of the workers' compensation act. Employee's claims for exposure to unsafe levels of radioactive and other hazardous substances were barred by exclusivity provisions of this Act. *Bldg. and Const. Dept. v. Rockwell Intern.*, 7 F.3d 1487 (10th Cir. 1993).

A motion to dismiss based on the exclusivity provisions of the workers' compensation act does not go to the subject matter jurisdiction of the court, therefore, an evidentiary hearing is neither

required nor appropriate. The trial court did not err in ruling on employer's motion without such a hearing. *Schwindt v. Hershey Food Corp.*, 81 P.3d 1144 (Colo. App. 2003).

Engaging in an act that violates the federal pay statutes does not require the withdrawal of the immunity provided by this section. *Bailey v. C.P. Const., Inc.*, 837 P.2d 277 (Colo. App. 1992).

Applied in *Ogden v. McChesney*, 41 Colo. App. 191, 584 P.2d 636 (1978); *Ellis v. Rocky Mt. Empire Sports, Inc.*, 43 Colo. App. 166, 602 P.2d 895 (1979); *Stewart v. United States*, 716 F.2d 755 (10th Cir. 1982); *Campbell v. Black Mtn. Spruce, Inc.*, 677 P.2d 379 (Colo. App. 1983); *Savio v. Travelers Ins. Co.*, 678 P.2d 549 (Colo. App. 1983); *Williams v. White Mtn. Const. Co.*, 749 P.2d 423 (Colo. 1988).

8-41-103. Availability of common-law defenses.

If an employer has complied with the provisions of articles 40 to 47 of this title, including the provisions thereof relating to insurance, and an action is brought against such employer or such employer's insurance carrier to recover damages for personal injuries or death sustained by an employee who has elected not to come under said articles, such employer and such employer's insurance carrier shall have all the defenses to the action which they would have had if said articles and part 2 of article 2 of this title had not been enacted.

Source: L. 90: Entire article R&RE, p. 476, § 1, effective July 1.

Editor's note: This section is similar to former § 8-42-103 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Derogation of the Common Law Rule of Contributory Negligence", see 7 Rocky Mt. L. Rev. 161 (1935). For article, "One Year Review of Torts", see 35 Dicta 53 (1958).

Annotator's note. Since § 8-41-103 is similar to § 8-42-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Workmen's compensation act does not bar a claimant from bringing a tort action in state court for damages arising from bad faith in the processing of his request for rehabilitation. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985); *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139 (Colo. 2007).

In a case involving a claim by an employee against a compensation insurance carrier for the tort of bad faith, conduct constituting bad faith can occur in the unreasonable refusal to investigate a claim and to gather facts. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

The duty of good faith derives from the relationship, arising from the underlying insurance or compensation obligation between an insured claimant and the provider of benefits, and precedes official intervention and permeates all of the dealings between the parties. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

The duty of an insurer under the act to provide benefits and compensation is

factually and analytically distinct from its duty to deal in good faith with claimants, even though such duties necessarily involve a common underlying physical injury. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

An employee covered by compensation insurance required by the act stands in the same position as an insured in a private insurance contract. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

An order by an official body securing benefits for a claimant does not and cannot remedy separate injuries caused by prior bad faith acts by the provider of benefits resulting in delay or denial of benefits. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

There is no overlap of jurisdiction between rulings of workers compensation agencies on statutory issues committed to them and rulings of courts of law on the tort of bad faith. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

Co-employee cannot be held liable for injury to co-worker who has elected to reject workers' compensation coverage. The availability of common law defenses to employers does not extend to employees and thereby make them subject to suit. *Kelly v. Mile Hi Single Ply, Inc.*, 873 P.2d 13 (Colo. App. 1993).

In reconciling § 8-41-401 (3) and this section, court upheld trial court's reasoning that corporate officer who has elected to reject coverage may bring tort action only against employer. Whether or

not a corporate officer has elected to reject such coverage, employees covered by Workers' Compensation Act are still limited

to their rights and remedies under the Act. Kelly v. Mile Hi Single Ply, Inc., 873 P.2d 13 (Colo. App. 1993).

8-41-104. Acceptance as surrender of other remedies.

An election under the provisions of section 8-40-302 (5) and in compliance with the provisions of articles 40 to 47 of this title, including the provisions for insurance, shall be construed to be a surrender by the employer, such employer's insurance carrier, and the employee of their rights to any method, form, or amount of compensation or determination thereof or to any cause of action, action at law, suit in equity, or statutory or common-law right, remedy, or proceeding for or on account of such personal injuries or death of such employee other than as provided in said articles, and shall be an acceptance of all the provisions of said articles, and shall bind the employee personally, and, for compensation for such employee's death, the employee's personal representatives, surviving spouse, and next of kin, as well as the employer, such employer's insurance carrier, and those conducting their business during bankruptcy or insolvency.

Source: L. 90: Entire article R&RE, p. 476, § 1, effective July 1.

Editor's note: This section is similar to former § 8-43-104 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Employer's Liability for Occupational Diseases", see 16 Rocky Mt. L. Rev. 60 (1943). For article, "One Year Review of Torts", see 38 Dicta 93 (1961). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 34 Colo. Law. 95 (Apr. 2005).

Annotator's note. Since § 8-41-104 is similar to § 8-43-104 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases

construing that provision have been included in the annotations to this section.

This section applies only to remedies against the immediate employer. Chartier v. Winslow Crane Serv. Co., 142 Colo. 294, 350 P.2d 1044 (1960).

So that this section does not operate to relieve a third person. Chartier v. Winslow Crane Serv. Co., 142 Colo. 294, 350 P.2d 1044 (1960).

Under this section a covered employee simply has no option to sue his employer

at common law for damages in the absence of specific acts of noncompliance with the act or misconduct on the part of his employer. *Varsity Amusement Co. v. Butters*, 155 Colo. 330, 394 P.2d 603 (1964).

Thus, a covered employee is not precluded under the theory of election of remedies from pursuing his claim under the act after a pretrial agreement on liability because an election of remedies implies that a party has a choice of remedies at the time he files his suit, a choice which a covered employee does not have. *Varsity Amusement Co. v. Butters*, 155 Colo. 330, 394 P.2d 603 (1964).

However, where employer fails to comply with act, employee may proceed under the act or at law. Where an employer fails to comply with the insurance features of the workmen's compensation act, an injured employee has the right, at his option, to proceed under the provisions of the act or by a common-law action for negligence. *Indus. Comm'n v. Schaefer Realty Co.*, 98 Colo. 445, 56 P.2d 51 (1936); *Sharmar Nursing Home v. Indus. Comm'n*, 160 Colo. 197, 416 P.2d 161 (1966).

But by electing to pursue his remedy at law for damages, an injured employee forfeits his right thereafter to resort to the remedy offered by the workmen's compensation act. *Indus. Comm'n v. Schaefer Realty Co.*, 98 Colo. 445, 56 P.2d 51 (1936).

When an employer-employee relationship exists under the act, the immunity from common-law suits should be broadly construed. *Colo. Comp. Ins.*

Auth. v. Baker, 955 P.2d 86 (Colo. App. 1998).

"Personal injury" limited. Because "personal injury" is not defined by the workmen's compensation act, it does not include damages which are based mainly on mental suffering and humiliation, and only peripherally on physical suffering and pain. *Luna v. City & County of Denver*, 537 F. Supp. 798 (D. Colo. 1982).

"Personal injury" in § 8-41-102 and "personal injuries" in this section refer to the job-related physical or mental injuries of an employee, and, consequently, the Workers' Compensation Act's exclusivity provision bars action for or on account of such injuries of an employee. *Serna v. Kingston Enters.*, 72 P.3d 376 (Colo. App. 2002).

Economic liability does not qualify as a compensable "personal injury" under the Workers' Compensation Act of Colorado, therefore, indemnity action is not barred under the act's exclusivity provision. *Serna v. Kingston Enters.*, 72 P.3d 376 (Colo. App. 2002).

Intentional torts are covered under this act, and compensation awards may be made for injuries suffered from intentional acts of coemployees. *Ellis v. Rocky Mt. Empire Sports, Inc.*, 43 Colo. App. 166, 602 P.2d 895 (1979).

Intentional wrongs arising out of the course of employment are covered under Colorado's compensation scheme. *Kandt v. Evans*, 645 P.2d 1300 (Colo. 1982).

Intentional infliction of emotional distress. A claim for intentional infliction of emotional distress is not barred by the workmen's compensation act. *Luna v. City & County of Denver*, 537 F. Supp. 798 (D. Colo. 1982); *Spulak v. K Mart Corp.*, 664 F. Supp. 1395 (D. Colo. 1985); *Kirk v. Smith*, 674 F. Supp. 803 (D. Colo. 1987).

Where the entire complaint is based on infliction of emotional distress, the plaintiff may be ineligible to receive compensation for the present claim under the workmen's compensation act, and therefore may properly bring an action in tort. *Vigil v. Safeway Stores, Inc.*, 555 F. Supp. 1049 (D. Colo. 1983); *Kirk v. Smith*, 674 F. Supp. 803 (D. Colo. 1987).

If an injury comes within the coverage of the act, an action for damages is barred even though a particular element of damages is not compensated for. *Colo. Comp. Ins. Auth. v. Baker*, 955 P.2d 86 (Colo. App. 1998); *McKelvy v. Liberty Mut. Ins. Co.*, 983 P.2d 42 (Colo. App. 1998).

A subsequent civil action to pursue equitable claims for unjust enrichment, money had and received, restitution, and money paid by mistake, is prohibited where the claims, in effect, reopen an administrative proceeding that has previously been closed and where there was no separate injury or tort for which a civil recovery could be sought. *Colo. Comp. Ins. Auth. v. Baker*, 955 P.2d 86 (Colo. App. 1998).

Exclusive remedy for negligence and intentional torts. An employee's exclusive remedy for his negligence and intentional

tort claims is as provided for under the workmen's compensation act. *Ellis v. Rocky Mt. Empire Sports, Inc.*, 43 Colo. App. 166, 602 P.2d 895 (1979).

Exclusivity provisions of Workers' Compensation Act bar discharged employee's claim against former employer for outrageous conduct in termination process. *Weissman v. Crawford Rehab. Servs.*, 914 P.2d 380 (Colo. App. 1995).

Wrongful death action brought by employee's nondependent parents, based on the death of the employee that occurred in the course of the scope of the employee's employment, is strictly derivative and barred by the exclusivity provisions of this section, even though the parents suffer their own distinct injuries. Thus, summary judgment was appropriate and parents could not maintain an action under either the federal Fair Labor Standards Act or the Colorado Youth Employment Opportunity Act. *Henderson v. Bear*, 968 P.2d 144 (Colo. App. 1998).

Doctor hired by a company to treat its employees is not a co-employee exempted from suit by this section for injuries caused in treatment, but may be sued in a malpractice action under § 8-52-108. *Wright v. District Court*, 661 P.2d 1167 (Colo. 1983).

A plaintiff's co-employee is not immune from a tort claim for damages by virtue of this section if the co-employee's tortious conduct did not arise "out of" and "in the course of" the tortfeasor's employment.

Popovich v. Irlando, 811 P.2d 379 (Colo. 1991).

A co-employee who causes injury to a worker is not immune from a plaintiff's tort

claim for damages when the co-employee's conduct derives from matters personal to the employee or from a neutral source unrelated to the employee's employment. Popovich v. Irlando, 811 P.2d 379 (Colo. 1991).

PART 2

COVERAGE

8-41-201. Not applicable to common carriers.

The provisions of articles 40 to 47 of this title shall not apply to common carriers by railroad but shall apply to all other employers as defined in said articles engaged in intrastate or interstate commerce, or both, except those employers, other than the Colorado division of civil air patrol, for whom a rule of liability is established by the laws of the United States.

Source: L. 90: Entire article R&RE, p. 477, § 1, effective July 1.

Editor's note: This section is similar to former § 8-41-107 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "A Reappraisal of the Employment Status in Social Legislation", see 23 Rocky Mt. L. Rev. 392 (1951).

Annotator's note. Since § 8-41-201 is similar to § 8-41-107 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Article not applicable to common carriers in interstate commerce. Freeman v. Grove, 75 Colo. 566, 227 P. 550 (1924); Denver Union Term. Ry. v. Indus. Comm'n, 97 Colo. 129, 47 P.2d 392 (1935); Zelle v. Indus. Comm'n, 100 Colo. 116, 65 P.2d 1429 (1937); Consol. Fast Freight v. Walker, 103 Colo. 347, 85 P.2d 720 (1938); Cohen v. Schaetzel, 106 Colo. 266, 103 P.2d 1060 (1940).

8-41-202. Rejection of coverage by corporate officers and others.

(1) Notwithstanding any provisions of articles 40 to 47 of this title 8 to the contrary, a corporate officer of a corporation or a member of a limited liability company may elect to reject the provisions of articles 40 to 47 of this title 8. If so elected, the corporate officer or member shall provide written notice on a form approved by the division through a rule adopted by the director of the election to the workers' compensation insurer of the employing corporation or company, if any. If there is no workers' compensation insurance company, the notice shall be provided to the division. The notice becomes effective the day following receipt of the notice by the insurer or the division.

(2) A corporate officer's or member's election to reject the provisions of articles 40 to 47 of this title shall continue in effect so long as the corporation's or company's insurance policy is in effect or until said officer or member, by written notice to the insurer, revokes the election to reject said provisions.

(3) Nothing in this section shall be construed to limit the responsibility of corporations or limited liability companies to provide coverage for their employees as required under articles 40 to 47 of this title. An election to reject coverage pursuant to this section may not be made a condition of employment.

(4) As used in this section:

(a) "Corporate officer" means the chairperson of the board, president, vice-president, secretary, or treasurer who is an owner of at least ten percent of the stock of the corporation and who controls, supervises, or manages the business affairs of the corporation, as attested to by the secretary of the corporation at the time of the election.

(b) "Member" means an owner of at least ten percent of the membership interest of the limited liability company at all times and who controls, supervises, or manages the business affairs of the limited liability company.

Source: **L. 90:** Entire article R&RE, p. 477, § 1, effective July 1. **L. 93:** Entire section amended, p. 386, § 1, effective April 19. **L. 96:** (1) and (4) amended, p. 646, § 1, effective May 1. **L. 2026:** (1) amended, (SB 26-186), ch. 315, p. 1845, § 2, effective August 12.

Editor's note: This section is similar to former § 8-41-106.5 as it existed prior to 1990.

8-41-203. Negligence of stranger - remedies - subrogation - actions - compromise.

(1) (a) If any employee entitled to compensation under articles 40 to 47 of this title is injured or killed by the negligence or wrong of another not in the same employ, such injured employee or, in case of death, such employee's dependents, may take compensation under said articles and may also pursue a remedy against the other person to recover any damages in excess of the compensation available under said articles.

(b) The payment of compensation pursuant to articles 40 to 47 of this title shall operate as and be an assignment of the cause of action against such other person to Pinnacol Assurance, the medical disaster insurance fund, the major medical insurance fund, or the subsequent injury fund, if compensation is payable from said funds, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation. Said insurance carrier shall not be entitled to recover any sum in excess of the amount of compensation for which said carrier is liable under said articles to the injured employee, but to that extent said carrier shall be subrogated to the rights of the injured employee against said third party causing the injury. If the injured employee proceeds against such other person, then Pinnacol Assurance, the medical disaster insurance fund, the major medical insurance fund, the subsequent injury fund, or such other person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected and the compensation provided by said articles in such case.

(c) The right of subrogation provided by this section shall apply to and include all compensation and all medical, hospital, dental, funeral, and other benefits and expenses to which the employee or, if the employee is deceased, the employee's dependents are entitled under the provisions of said articles, including parts 2 and 3 of article 46 of this title, or for which the employee's employer or insurance carrier is liable or has assumed liability.

(d) The assigned and subrogated cause of action provided by this section, together with the right to recover future benefits:

(I) Shall extend to all moneys collected from the third party causing the injury for all:

(A) Economic damages; and

(B) Physical impairment and disfigurement damages; except that, to the extent the trier of fact makes a separate award for disfigurement damages, the right of the beneficiary of the assigned interest to recover from such disfigurement damages shall be limited to the amount the beneficiary of the assigned interest paid, or is obligated to pay, in disfigurement damages pursuant to articles 40 to 47 of this title; and

(II) Shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress, or impairment of quality of life.

(e) (I) Except as otherwise provided in subparagraph (II) of this paragraph (e), the amount of the assigned and subrogated cause of action shall be reduced by an amount equal to the reasonable attorney fees and costs paid by the injured employee or, if the employee is deceased, the employee's dependents, in pursuing the recovery of the assigned and subrogated cause of action and the collection of such recovery.

(II) If the beneficiary of the assigned and subrogated cause of action elects to independently pursue such assigned cause of action, any recovery by such beneficiary shall not be reduced by any attorney fees and costs incurred by the employee. If the beneficiary of the assigned and subrogated cause of action elects to intervene within ninety days after receiving the notice required by paragraph (c) of subsection (4) of this section, any recovery by such beneficiary shall not be reduced by any attorney fees and costs incurred by the employee. If such beneficiary elects to intervene after the expiration of such ninety-day period, the court may reduce the beneficiary's recovery by a reasonable amount for any attorney fees and costs incurred by the employee after the end of such ninety-day period and before receiving notice that the beneficiary intends to intervene.

(f) Nothing in this section shall be construed as limiting in any way the right of the injured employee to take compensation under articles 40 to 47 of this title and also proceed against the third party causing the injury to recover any damages in excess of the subrogation rights described in this section.

(2) Such a cause of action assigned to Pinnacol Assurance may be prosecuted or compromised by it. A compromise of any such cause of action by the employee or, if the employee is deceased, the employee's dependents at an amount less than the compensation provided for by articles 40 to 47 of this title shall be made only with the written approval of the chief executive officer of Pinnacol Assurance, if the deficiency of compensation would be payable from the Pinnacol Assurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. Such written approval shall not be unreasonably withheld. Failure to obtain such written approval shall entitle the party responsible for paying workers' compensation benefits to be reimbursed for all benefits paid from, and offset any future liability under articles 40 to 47 of this title against, the entire proceeds recovered without any credit for reasonable attorney fees and costs as provided in paragraph (e) of subsection (1) of this section. If such approval is not obtained, the employee or, if the employee is deceased, the employee's dependents shall not be liable for any plaintiff's attorney fees for the third-party recovery on that portion of any recovery equal to the assigned and subrogated interest and are not subject to any action for refusal to pay such plaintiff's attorney fees resulting from the third-party case.

(3) If an employee is killed by the negligence or wrong of another not in the same employ and the dependents of such employee who are entitled to compensation under articles 40 to 47 of this title are minors, the decision to pursue or compromise any claim against a third party shall be

made by such minor or shall be made on the minor's behalf by a parent of such minor or by the minor's next friend or duly appointed guardian, as the director of the division of workers' compensation may determine by rule in each case. Once such decision is made, the person who made the decision shall also bear the responsibility to provide all notices required by this section.

(4) (a) (I) If the employee or, if the employee is deceased, the employee's dependents make a demand upon or a request of a person or entity not in the same employ as the employee to seek recovery for damages arising from actions of such other person or entity, the employee or dependents shall also give written notice, within ten days, to the division of workers' compensation and to all parties who may be responsible for paying benefits to the employee or dependents under articles 40 to 47 of this title.

(II) If the party responsible for paying workers' compensation benefits under articles 40 to 47 of this title to the employee or, if the employee is deceased, the employee's dependents, makes a demand upon or a request of a person or entity not in the same employ as the employee to seek recovery for damages arising from actions of the other person or entity, the party responsible for paying the workers' compensation benefits shall also give written notice, within ten days, to the division of workers' compensation and to the employee or, if the employee is deceased, to the employee's dependents.

(III) The notice requirements of this paragraph (a) shall not apply to demands or requests seeking the recovery of medical payments only, and not seeking the recovery of any other type of damage or loss.

(b) The notice required by this subsection (4) shall contain the following:

(I) A description of the claim;

(II) The names and addresses of any and all other persons believed to be negligent;

(III) The name and address of any attorney representing the employee or dependents;

(IV) The name and address of any attorney representing other persons believed to be negligent; and

(V) The name, address, and telephone number of the insurance company or third-party administrator.

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), at least twenty days before commencing a lawsuit or arbitration proceeding to recover damages arising from actions of another person or entity, the party initiating such lawsuit or arbitration shall give written notice to all parties who may be responsible for paying benefits to the employee or dependents under articles 40 to 47 of this title and to the employee or, if the employee is deceased, the employee's dependents. Such notice shall contain all of the information set out in paragraph (b) of this subsection (4) and shall be accompanied by a draft copy of the complaint.

(II) If any applicable statutory limitation period would expire before such twenty days have passed, the party initiating such lawsuit or arbitration may file or serve the complaint, or otherwise act to toll the running of such limitation period, before such twenty days have passed. The party initiating the lawsuit or arbitration shall provide the notice required by subparagraph (I) of this paragraph (c) within twenty days after commencing such action.

(d) If the employee or dependents fail to provide the written notice required pursuant to subparagraph (I) of paragraph (a) of this subsection (4):

(I) The party responsible for paying workers' compensation benefits shall be entitled to reimbursement from all moneys collected from the third party for all economic damages and for all physical impairment and disfigurement damages, without any credit for reasonable attorney fees as provided in paragraph (e) of subsection (1) of this section. If the trier of fact makes a separate award for disfigurement damages, reimbursement from such disfigurement damage award shall be limited to the amount the party paying workers' compensation benefits paid, or is obligated to pay, in disfigurement damages pursuant to articles 40 to 47 of this title. Such rights shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress, or impairment of quality of life.

(II) The employee or dependents shall not be liable for any plaintiff's attorney fees for the third-party recovery on that portion of any recovery equal to the assigned and subrogated interest and are not subject to any action for refusal to pay such plaintiff's attorney fees resulting from the third-party case.

(e) If the party responsible for paying workers' compensation benefits under articles 40 to 47 of this title fails to provide the written notice required pursuant to subparagraph (II) of paragraph (a) of this subsection (4), the amount of the claim shall be reduced by fifty dollars for each day such notice was not given to the employee or, if the employee is deceased, the employee's dependents, in an amount not to exceed twenty percent of the amount of the total assigned interest at the time such notice should have been given. The failure to provide such notice shall be a reassignment of a portion of the claim to the employee or, if the employee is deceased, the employee's dependents, in an amount equal to the penalty.

Source: L. 90: Entire article R&RE, p. 477, § 1, effective July 1; (1) amended, p. 1843, § 29, effective July 1. L. 2002: (1) and (2) amended, p. 1882, § 29, effective July 1. L. 2003: Entire section amended, p. 2613, § 1, effective July 1. L. 2004: (4) amended, p. 77, § 1, effective August 4.

Editor's note: This section is similar to former § 8-52-108 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Election.

III. Assignment and Subrogation.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Colorado Practice in Workmen's Compensation", see 31 Rocky Mt. L. Rev. 500 (1959). For article, "The Enterprise Liability Theory of Torts", see 47 U. Colo. L. Rev. 153 (1976). For article, "A Primer on Workers' Compensation Subrogation", see 21 Colo. Law. 1931 (1992). For article, "Applying Tate and Kester: The Status of Subrogation and Set-Off Rights", see 21 Colo. Law. 2419 (1992). For article, "Judicial Apportionment of Personal Injury Claims", see 29 Colo. Law. 77 (May 2000). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 117 (Nov. 2004). For article, "Workers' Compensation Subrogation Rights Against Worker Recoveries from Third-Party Tortfeasors", see 38 Colo. Law. 41 (Jan. 2009). For article, "The Game of Liens: Untangling the Statutory Lien Scheme in Colorado Workers' Compensation Cases", see 50 Colo. Law. 48 (Apr. 2021).

Annotator's note. Since § 8-41-203 is similar to § 8-52-108 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section recognizes common-law rights against tortfeasors who cause compensable injuries. Indus. Comm'n v. Standard Ins. Co., 149 Colo. 587, 370 P.2d 156 (1962).

If an employee fails to procure the insurer's consent in accordance with subsection (2), the employee forfeits his right to receive future benefits. Matter of Death of Peterkin, 729 P.2d 977 (Colo. 1986); Sullivan v. Indus. Claim Appeals Office, 796 P.2d 31 (Colo. App. 1990); Eckhardt v. Vill. Inn (Vicorp), 826 P.2d 855 (Colo. 1992).

Purpose of notice is to give insurance carrier an opportunity to assess its rights in a case which may result in an improvident settlement by an injured employee. Thus, where no notice is given, there is no duty to act reasonably because the carrier is unaware that it should act at all. Eckhardt v. Vill. Inn (Vicorp), 826 P.2d 855 (Colo. 1992).

An insurance carrier which has been properly notified about a suit brought in good faith by an injured employee has an obligation to act reasonably when the injured employee requests approval of a settlement in such a suit. Eckhardt v. Vill. Inn (Vicorp), 826 P.2d 855 (Colo. 1992).

Obligation to act reasonably requires insurance carrier to make a good faith appraisal of the suit and any proposed settlement and act accordingly. Eckhardt v.

Vill. Inn (Vicorp), 826 P.2d 855 (Colo. 1992).

An insurance carrier must fairly and reasonably evaluate the suit before refusing approval of a settlement. Once it has been apprised that a good-faith suit by an injured employee has deteriorated, the carrier cannot simply seize that opportunity to avoid payment of future compensation by withholding consent to settlement. Eckhardt v. Vill. Inn (Vicorp), 826 P.2d 855 (Colo. 1992).

In determining whether an insurance carrier's refusal is reasonable, the court will look to the insurance carrier's actions taken in light of all circumstances. Eckhardt v. Vill. Inn (Vicorp), 826 P.2d 855 (Colo. 1992).

Workers' compensation carrier is granted the same immunity from suit by the injured employee as the employer has. Therefore, no third-party action could be brought against a carrier for negligently conducting safety inspections undertaken pursuant to its capacity as carrier. McHargue v. Stokes Div. of Pennwalt Corp., 649 F. Supp. 1388 (D. Colo. 1986).

An insurer's general knowledge of, and consent to, third-party negotiations does not constitute participation in, or encouragement of, a specific settlement agreement. Sullivan v. Indus. Claim Appeals Office, 796 P.2d 31 (Colo. App. 1990).

But the workmen's compensation act is a bar to a suit by an employee against a co-employee for injuries sustained when

both are acting within the course of their employment. Nelson v. Harding, 29 Colo. App. 76, 480 P.2d 851 (1970); Sieck v. Trueblood, 29 Colo. App. 432, 485 P.2d 134 (1971).

Co-employee immunity for intentional wrongs is strictly limited to injuries sustained where both the tortfeasor and the victim are acting in the course of their employment. Kandt v. Evans, 645 P.2d 1300 (Colo. 1982).

Section does not abridge remedy against third person. The law does not attempt in any way to abridge the remedies which an employee of one person may have at law against a third person for a tort which such third person commits against him. Kirkham v. Hickerson Bros. Truck Co., 29 Colo. App. 303, 485 P.2d 513 (1971).

And only limitation is that third person shall not be "in the same employ". Under this section, the injured person may elect to proceed against a third person and the only limitation is that the third person shall not be "in the same employ". Chartier v. Winslow Crane Serv. Co., 142 Colo. 294, 350 P.2d 1044 (1960).

Otherwise, remedy is limited to workmen's compensation. Where the employer is the primary, if not sole, beneficiary of the fellow employee's action, the fellow employee is acting within the scope of his employment at the time of the accident, and the provisions of this section, allowing an injured employee to elect whether to pursue a cause of action against a third-party tortfeasor, are not applicable. The employee's remedy is limited to recovery

under the workmen's compensation act. *Sieck v. Trueblood*, 29 Colo. App. 432, 485 P.2d 134 (1971).

Thus, where a fellow employee and an outsider are both at fault in causing injury to a worker who elects the benefits of workmen's compensation, such election in practical effect nullifies the fault as between the fellow employee and the injured worker but does not vitiate the fault as between the outsider and the injured worker. *Hamblen v. Santa Fe Trail Transp. Co.*, 101 F. Supp. 799 (D. Colo. 1951).

Employee cannot join fellow employee in action against third party. An employee has no cause of action against a fellow employee for injuries sustained in the course of employment as the result of the latter's negligence where such employees and their employer are subject to the workmen's compensation act. And a plaintiff is precluded from joining his fellow employee as a defendant, as well as from proceeding against him independently for any damages suffered by plaintiff as a result of an accident arising out of the employment. *Hamblen v. Santa Fe Trail Transp. Co.*, 101 F. Supp. 799 (D. Colo. 1951).

The term "third person" applies to anyone not immune to suit under the compensation act and incurring a common-law liability for injury to a workman. *Indus. Comm'n v. Standard Ins. Co.*, 149 Colo. 587, 370 P.2d 156 (1962); *Cont'l Sales Corp. v. Stookesberry*, 170 Colo. 16, 459 P.2d 566 (1969).

Uninsured motorist carrier's liability to insured contractual. Although it is based

upon the contingency of a third party's tort liability, the uninsured motorist carrier's liability to an insured is contractual, and the state compensation insurance fund does not become a third-party beneficiary under the insurance contract. *State Comp. Ins. Fund v. Gulf Ins. Co.*, 628 P.2d 182 (Colo. App. 1981); *State Comp. Ins. Fund v. Commercial Union Ins. Co.*, 631 P.2d 1168 (Colo. App. 1981).

Uninsured motorist carrier is not third-party tortfeasor within the purview of this section. *State Comp. Ins. Fund v. Commercial Union Ins. Co.*, 631 P.2d 1168 (Colo. App. 1981).

Subcontractor may be sued by an employee of a general contractor. *Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 510 P.2d 891 (1973).

Employee of subcontractor may maintain common-law action against general contractor. An employee of a subcontractor who has elected to receive workmen's compensation benefits from his insured subcontractor may maintain a common-law negligence action against the general contractor for the injuries received in the course of his employment. *Thomas v. Farnsworth Chambers Co.*, 286 F.2d 270 (10th Cir.), rev'g 183 F. Supp. 764 (D. Colo. 1960); *Whiting v. Farnsworth & Chambers Co.*, 293 F.2d 45 (10th Cir. 1961).

Because a general contractor may be liable as a third-party tortfeasor to these injured and compensated employees of a subcontractor. *Thomas v. Farnsworth Chambers Co.*, 286 F.2d 270 (10th Cir.), rev'g 183 F. Supp. 764 (D. Colo. 1960);

Whiting v. Farnsworth & Chambers Co., 293 F.2d 45 (10th Cir. 1961).

And "loaned employee" may maintain negligence action against borrowing employer. A "loaned employee" and an "employee" under workmen's compensation are not the same, and no provision prohibits or limits a "loaned employee" from maintaining a negligence action against the borrowing employer. Cont'l Sales Corp. v. Stookesberry, 170 Colo. 16, 459 P.2d 566 (1969).

For workmen's compensation does not immunize borrowing employer. The defendant, even though it might have had workmen's compensation insurance coverage, is a "third party" and therefore subject to this common law action for negligence. The workmen's compensation act does not immunize the borrowing employer because the loaning employer is solely responsible for workmen's compensation coverage, unless it is shown that the loaning constitutes a new contract of hire between the employee and the borrowing employer. Cont'l Sales Corp. v. Stookesberry, 170 Colo. 16, 459 P.2d 566 (1969).

Also, a physician incurring liability to an employee for negligent treatment of an injury is a "third person" under this section. Indus. Comm'n v. Standard Ins. Co., 149 Colo. 587, 370 P.2d 156 (1962).

So that a disability is compensable which results from the negligent treatment by a physician furnished as required by the employer. Indus. Comm'n v.

Standard Ins. Co., 149 Colo. 587, 370 P.2d 156 (1962).

Doctor hired by a company to treat its employees is not a coemployee exempted from suit by § 8-43-104 for injuries caused in treatment, but may be sued in a malpractice action under this section. Wright v. District Court, 661 P.2d 1167 (Colo. 1983).

Clearly this section is not designed to relieve a third party from the consequences of injuries to another negligently inflicted. Riss & Co. v. Anderson, 108 Colo. 78, 114 P.2d 278 (1941); Kirkham v. Hickerson Bros. Truck Co., 29 Colo. App. 303, 485 P.2d 513 (1971).

Workmen's compensation act is not to shield third-party tortfeasors from liability for damages resulting from their negligence. Frohlick Crane Serv., Inc. v. Mack, 182 Colo. 34, 510 P.2d 891 (1973).

Termination of death benefits held proper. The propriety of termination of death benefits where the dependents of deceased elect to take compensation under articles 40 to 54 but nevertheless pursue their remedy against a third-party tortfeasor is implicit in this section. Berry Constr., Inc. v. Indus. Comm'n, 39 Colo. App. 251, 567 P.2d 806 (1977).

Substantial evidence of causation is not restricted to credible medical testimony. Savio House v. Dennis, 665 P.2d 141 (Colo. App. 1983).

Person responsible for enforcing this section is director of division of labor. General powers given to director of division

of labor place him in a fiduciary role to funds such as the subsequent injury fund which are not legal entities, and therefore the director is the proper party to represent the fund and to protect its interests in workmen's compensation proceedings. *Sears, Roebuck & Co. v. Baca*, 682 P.2d 11 (Colo. 1984).

All workers in service of the state are treated as state "employees", not as employees of separate entities, for purposes of workers' compensation benefits. *Rodriguez v. Bd. of Dirs.*, 917 P.2d 358 (Colo. App. 1996).

The clear and unambiguous language of subsection (1) allows the workers' compensation carrier to seek reimbursement of its partial permanent disability payments from the third party tortfeasor. *Business Ins. Co. v. BFI Waste Sys.*, 23 P.3d 1261 (Colo. App. 2001).

Applied in *Ogden v. McChesney*, 41 Colo. App. 191, 584 P.2d 636 (1978); *State Comp. Ins. Fund v. City of Colo. Springs*, 43 Colo. App. 112, 602 P.2d 881 (1979).

II. ELECTION.

The provision of this section for election in advance of suit is for the benefit of the state in the administration of the state compensation insurance fund, and not for the benefit of the third person. *King v. O.P. Baur Confectionery Co.*, 100 Colo. 528, 68 P.2d 909 (1937).

Signing of wage history does not constitute an election. The signing of a wage history by employee cannot be construed as constituting the filing of a

claim for compensation nor be considered the written election contemplated by this section itself. *King v. O.P. Baur Confectionery Co.*, 100 Colo. 528, 68 P.2d 909 (1937).

Neither does the mere acceptance of medical, surgical, or hospital aid by the employee constitute an election to take compensation. *King v. O.P. Baur Confectionery Co.*, 100 Colo. 528, 68 P.2d 909 (1937).

For right of election contemplates opportunity for deliberation followed by affirmative act. The right of election insured to an injured employee who may have a cause of action in tort against a third party undoubtedly contemplates the opportunity for deliberation followed by some affirmative action on his part before he can be said to have elected to take compensation. *King v. O.P. Baur Confectionery Co.*, 100 Colo. 528, 68 P.2d 909 (1937).

Filing of claim and consequent notice to employer constituted election to seek compensation. *Lantern Inn v. Indus. Comm'n*, 624 P.2d 929 (Colo. App. 1981).

No election of remedies. Although decedent's wife had no legal cause of action against the subcontractor in whose employ the deceased was at the time of injury, the bringing of an action under such circumstances did not constitute an election of remedies, and claimant is not estopped by reason thereof from recovering compensation. *Hartford Accident & Indem. Co. v. Clifton*, 117 Colo. 547, 190 P.2d 909 (1948).

Action by employee against third party is not precluded by receipt of payments.

Where no award of compensation has been made, an action by the injured employee against a third party is not precluded by the receipt of payments from the employer or the insurance carrier. *King v. O.P. Baur Confectionery Co.*, 100 Colo. 528, 68 P.2d 909 (1937); *Riss & Co. v. Anderson*, 108 Colo. 78, 114 P.2d 278 (1941); *Riss & Co. v. Galloway*, 108 Colo. 93, 114 P.2d 550 (1941); *Liberty Mut. Ins. Co. v. Indus. Comm'n*, 145 Colo. 369, 359 P.2d 4 (1961).

Likewise, action against third person does not bar workmen's compensation claim. In accepting compensation from his employer for injuries received in the course of his employment, and thereafter commencing an action against third persons alleged to be responsible for his injuries and settling his claim against such persons without consent of the compensation insurance carrier does not bar a claimant from pursuing his claim for workmen's compensation. *Liberty Mut. Ins. Co. v. Indus. Comm'n*, 145 Colo. 369, 359 P.2d 4 (1961); *State Comp. Ins. Fund v. Foulds*, 167 Colo. 123, 445 P.2d 716 (1968); *Cent. Elec. Supply Co. v. Indus. Comm'n*, 698 P.2d 830 (Colo. App. 1984).

An employee who suffers a compensable injury at the hands of a third party may pursue his remedies against the third person even though the employee has filed a claim under the workers' compensation act. *Matter of Death of Peterkin*, 729 P.2d 977 (Colo. 1986).

If the third-party suit is successful, the employer's insurance carrier may suspend all future benefits to the employee if the amount of the third-party recovery that is actually collected equals or exceeds the compensation award. *Matter of Death of Peterkin*, 729 P.2d 977 (Colo. 1986).

An injured employee does not lose or waive his right of action against a third party by exercising his rights under a workmen's compensation act. *Krueger v. Merriman Elec.*, 29 Colo. App. 492, 488 P.2d 228 (1971).

For this section only limits an employee's right to retain so much of the recovery as may exceed the compensation paid to him or for which his employer or the employer's insurance carrier is liable. Since the statute by its terms limits the carrier's recovery to the amount of compensation for which it is liable, if the carrier sues alone the recoverable damages are limited to that compensation. Thus, if the employee by electing to accept compensation has lost all rights in the cause of action, then the third-party tortfeasor would be relieved of liability beyond the amount of compensation paid; it is clear that this is not the purpose of the statute. *Riss & Co. v. Anderson*, 108 Colo. 78, 114 P.2d 278 (1941); *Wilson v. Smith*, 110 Colo. 68, 130 P.2d 1053 (1942); *Drake v. Hodges*, 114 Colo. 10, 161 P.2d 338 (1945); *Kirkham v. Hickerson Bros. Truck Co.*, 29 Colo. App. 303, 485 P.2d 513 (1971); *Krueger v. Merriman Elec.*, 29 Colo. App. 492, 488 P.2d 228 (1971).

Where the provisions of the workmen's compensation act do not expressly limit

the employee with respect to other remedies, the supreme court is not disposed to read or interpret such limitations into the workmen's compensation statutes. *Cont'l Sales Corp. v. Stookesberry*, 170 Colo. 16, 459 P.2d 566 (1969).

Employee may bring action for property damage, pain and suffering, and lost wages. The compensation provided for by the statute does not include payment for property damage, for pain and suffering, nor for all loss of future wages and the like. The right to bring an action against a third-party tortfeasor who is not a co-employee for these damages remains in the employee. Pursuant to the statute, he must repay the carrier out of his recovery for the compensation paid by it, but all amounts in excess thereof belong to him. *Kirkham v. Hickerson Bros. Truck Co.*, 29 Colo. App. 303, 485 P.2d 513 (1971).

Filing of written election with director held not to bar action against defendant. In an action for damages for personal injuries resulting from a collision of plaintiff's automobile with a railway train owned and operated by defendant company, it was held that where plaintiff filed a written election to avail himself of the benefits of the workmen's compensation act, plaintiff was not "forever barred from asserting his alleged cause of action against this defendant". *Donley v. Denver & Salt Lake R.R.*, 111 Colo. 358, 141 P.2d 899 (1943).

No question of estoppel between employee and third party. Whatever may be the situation as between the employee

and his employer and the insurance carrier, no question of estoppel arises as between the employee and the third party defendant. *King v. O.P. Baur Confectionery Co.*, 100 Colo. 528, 68 P.2d 909 (1937).

Amount received under benefit plan should not be considered in employee's action against third party. The amount received by an employee under a so-called benefit plan, considered as self-insurance under this act, should not be considered in mitigation of damages in an action by employee against third party. *Riss & Co. v. Anderson*, 108 Colo. 78, 114 P.2d 278 (1941).

III. ASSIGNMENT AND SUBROGATION.

Law reviews. For article, "A Primer on Workers' Compensation Subrogation", see 21 Colo. Law. 1931 (1992).

The legislative intent underlying this section is to preclude double recoveries; thus, if the claimant cannot enforce a judgment or settlement agreement in his favor, there is no double recovery in the first instance. *Rocky Mtn. Gen. v. Simon*, 827 P.2d 629 (Colo. App. 1992).

Purpose of this provision is to adjust rights between the insurer and the employee by requiring that the insurer be reimbursed out of the employee's recovery against the third-party tortfeasor for worker's compensation benefits paid by the insurer, leaving the employee with the excess. *Cont'l Cas. Co. v. Gate City Steel*, 650 P.2d 1336 (Colo. App. 1982); *Rocky Mtn. Gen. v. Simon*, 827 P.2d 629 (Colo. App. 1992);

Jordan v. Fonken & Stevens, P.C., 914 P.2d 394 (Colo. App. 1995); Andrews v. Indus. Claim Appeals Office, 952 P.2d 853 (Colo. App. 1997).

The subrogation provisions of this section have the effect of preventing an injured employee from receiving a duplicate recovery since the governmental interest in preventing double recovery is significant and is generally held to override a literal or technical interpretation of statutes or insurance policies. Rocky Mtn. Gen. v. Simon, 827 P.2d 629 (Colo. App. 1992).

Interpreting this section to restrict an employer's or carrier's subrogation interest to proceeds paid to worker individually would create an incentive for employees to circumvent this section by simply agreeing with tortfeasors that settlement proceeds would be paid to an individual or legal entity other than the employee, would defeat the public policy against double recoveries, and would render the subrogation provisions meaningless. Rocky Mtn. Gen. v. Simon, 827 P.2d 629 (Colo. App. 1992).

Being the more specific statute, the plain terms of this section control over § 5-12-102 and, therefore, insurer is limited under subrogation agreement for workers' compensation to recover only the amount which it paid to the injured employee and cannot collect any interest on amount. Husson v. Meeker, 812 P.2d 731 (Colo. App. 1991).

The phrase "actually collected" under this section refers to monetary proceeds actually received, and therefore, insurance

carrier could not claim credit for future annuity payments from third-party tortfeasor not yet paid into claimant's trust. Rocky Mtn. Gen. v. Simon, 827 P.2d 629 (Colo. App. 1992).

"Assignment" of the "cause of action" under subsection (1) is only a partial one. It extends only to that part of the claim for economic damages that the carrier has paid; the carrier has no interest in any part of the claim for non-economic damages, nor in that proportion of the claimant's economic damages that the carrier has not paid. Sneath v. Express Messenger Serv., 931 P.2d 565 (Colo. App. 1996); Chavez v. Kelley Trucking, Inc., 275 P.3d 737 (Colo. App. 2011).

Insurance carrier's subrogation rights are limited to the amount of compensation benefits for which said carrier is liable, rather than to the amount of the entire net recovery an employee collects when the employee elects to pursue a remedy against a third party. Thus, the insurer is only subrogated to the claimant's rights to recover economic damages. Colo. Comp. Ins. Auth. v. Jorgensen, 992 P.2d 1156 (Colo. 2000).

Insurance carrier is not entitled to a credit or offset for interest earned on an annuity or for returns on the investment of lump-sum settlements received by claimant. Hertz Corp. v. Indus. Claim Appeals Office, 2012 COA 155, 296 P.3d 338.

Claimant was not required to obtain workers' compensation insurer's approval before settling his claim against the employer for noneconomic damages.

Chavez v. Kelley Trucking, Inc., 275 P.3d 737 (Colo. App. 2011).

Subrogation would be meaningless if the limit of liability fluctuated with every recovery. Weaver-Beatty Motor Co. v. Billen, 36 Colo. App. 442, 541 P.2d 120 (1975).

Insurer's right to recovery limited to damages obtainable through subrogation. Since insured's recovery was limited by insured's comparative negligence, insurer's recovery should also be limited and insurer is not therefore entitled to offset of its reduction through reimbursement by insured. Martinez v. St. Joseph Hosp. & Nursing Home, 878 P.2d 13 (Colo. App. 1993).

Subrogation has no effect on limits of liability. The right of subrogation granted to the state fund under this section is a separate and distinct right which has no effect on the limits of liability under § 8-49-101 established by the general assembly. Weaver-Beatty Motor Co. v. Billen, 36 Colo. App. 442, 541 P.2d 120 (1975).

This section does not create a new cause of action but merely permits the assignment of claimant's original claim. Such claims are not original claims either for or against the state, but the private claims of individuals assigned to the compensation fund for subrogation purposes. Jackson v. Bates, 133 Colo. 248, 293 P.2d 962 (1956).

Distinction between assignment and subrogation. Assignment and subrogation are not one and the same. Assignment is

distinguished from subrogation in that subrogation is an act of the law predicated on payment of the debt or claim, and operates only to secure contribution and indemnity, whereas assignment is an act of the parties depending generally on intention, and contemplates a continuation of and transfers the whole claim or debt. Kirkham v. Hickerson Bros. Truck Co., 29 Colo. App. 303, 485 P.2d 513 (1971).

In the absence of specific statutory authorization, there is no right to subrogation. Pisicchio v. Dir. of Div. of Labor & Emp., 29 Colo. App. 538, 487 P.2d 382 (1971).

This section creates no immediate and outright assignment of any part of an injured employee's cause of action against a negligent tortfeasor. The statute instead creates several interrelated alternatives from which an injured employee and the employer's workers' compensation insurer may choose. These include the insurer being subrogated to the employee's right to bring suit against the negligent tortfeasor, to the extent of workers' compensation benefits paid. Harms v. Williamson, 956 P. 2d 649 (Colo. App. 1998).

No matter which alternative is chosen, the insurer is not required to file a notice of claim separate from and in addition to a sufficient notice of claim filed by the injured employee. Harms v. Williamson, 956 P. 2d 649 (Colo. App. 1998).

The event which operates as a matter of law to assign the claim against the tortfeasors is the awarding of compensation. Liberty Mut. Ins. Co. v.

Indus. Comm'n, 145 Colo. 369, 359 P.2d 4 (1961); Central Elec. Supply Co. v. Indus. Comm'n, 698 P.2d 830 (Colo. App. 1984).

Act of statistician held not to be an "awarding of compensation". The act of a statistician in approving the admission of liability, which was accompanied by the wage history signed by the plaintiff, held not to amount to an "awarding of compensation" as contemplated by this section. *King v. O.P. Baur Confectionery Co.*, 100 Colo. 528, 68 P.2d 909 (1937).

This section expressly limits the rights of an insurance carrier to those of a subrogee and indemnifies it only to the extent of the compensation for which it is liable as defined in the act. *Kirkham v. Hickerson Bros. Truck Co.*, 29 Colo. App. 303, 485 P.2d 513 (1971).

In order to protect subrogee, employee may not settle claim without consent of carrier. The employee is prohibited by the statute from settling his claim against the third party for less than the compensation due without the consent of the carrier. No other limitations are imposed on the employee by the statute, and this being so, the courts cannot insert them. *Kirkham v. Hickerson Bros. Truck Co.*, 29 Colo. App. 303, 485 P.2d 513 (1971).

But where no award has been made, the "effective force" required to give rise to subrogation rights, and the right of the carrier to give its consent to a settlement, is absent. Under these circumstances the carrier must be content with the provision of the statute which gives him full credit for the amount received by the claimant in the

settlement of the civil action. *Liberty Mut. Ins. Co. v. Indus. Comm'n*, 145 Colo. 369, 359 P.2d 4 (1961).

Carrier, however, may settle without consent of employee. The insurance carrier's rights in the action are limited to its share of the recovery as set forth in the act. If it desires to settle as to its rights it may do so with or without the consent of the employee. *Kirkham v. Hickerson Bros. Truck Co.*, 29 Colo. App. 303, 485 P.2d 513 (1971).

But the insurance carrier may not compel the employee to abandon or compromise his cause of action. *Kirkham v. Hickerson Bros. Truck Co.*, 29 Colo. App. 303, 485 P.2d 513 (1971).

For the only limitations on the employee's right of action are those imposed by the act itself. By forcing him to accept an unsatisfactory settlement, he was subjected to an unwarranted limitation on his right to prosecute his action against the alleged tortfeasor. This would defeat the primary purpose of this section of the act which is to provide the mechanics that will achieve the result of the third party paying what he would normally pay if no compensation question were involved; the employer and carrier "coming out even" by being reimbursed for their compensation expenditure; and the employee getting any excess of the damage recovery over compensation. *Kirkham v. Hickerson Bros. Truck Co.*, 29 Colo. App. 303, 485 P.2d 513 (1971).

Rights acquired by subrogation are assignable. The assignment of subrogation

rights by an insurance company to the injured party is valid and simply avoids circuitous procedure. There is nothing in the statute which prohibits the director from following procedures available to private insurers in this regard. *Krueger v. Merriman Elec., Colo.*, 29 Colo. App. 429, 488 P.2d 228 (1971).

Prior to 1959, insurer's right to subrogation did not extend to benefits such as hospital, medical, and surgical expenses. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957); *Publix Cab Co. v. Colo. Nat'l Bank*, 139 Colo. 205, 338 P.2d 702, 78 A.L.R.2d 198 (1959).

But now the employer and insurer are entitled to be subrogated to the rights of the employee in his malpractice action against the negligent physician. However, the employee can recover from the doctor only such damages as flow from the doctor's negligence. *Indus. Comm'n v. Standard Ins. Co.*, 149 Colo. 587, 370 P.2d 156 (1962).

And accordingly, the insurer is subrogated only to the extent of the compensation he is required to pay for aggravation of an original injury by the doctor. *Indus. Comm'n v. Standard Ins. Co.*, 149 Colo. 587, 370 P.2d 156 (1962).

The general assembly, prior to the amendment of this section in 2003, did not intend to include physical impairment or disfigurement damages recovered by an employee within the general category of economic damages subject to the insurer's right of subrogation. *Colo. Comp. Ins. Auth. v. Jones*, 131 P.3d 1074 (Colo. App. 2005).

When insurer entitled to reimbursement from employee without proof of negligence. Where an employee receives worker's compensation benefits and then recovers from a third-party tortfeasor pursuant to a settlement agreement which resolves all claims between the two parties, the insurer is entitled to its reimbursement from the employee without proof of the third party's negligence. *Cont'l Cas. Co. v. Gate City Steel*, 650 P.2d 1336 (Colo. App. 1982).

And when insurer entitled to reimbursement directly from tortfeasor. Where the third-party tortfeasor pays the employee pursuant to a general settlement of all claims between them, with notice of the insurer's subrogation rights, and agrees to indemnify the employee for any amounts he is required to pay the insurer in satisfaction of the insurer's reimbursement and subrogation rights, the third-party tortfeasor, rather than the employee, may be held directly liable for reimbursement to the insurer without proof of negligence. *Cont'l Cas. Co. v. Gate City Steel*, 650 P.2d 1336 (Colo. App. 1982).

If a claimant recovers from the tortfeasor, the claimant must reimburse the insurer for any benefits paid, and then the insurer may also offset any portion of the recovery not used to reimburse the insurer for past benefit payments against any future benefits the insurer may have to pay. Thus, the claimant receives interim workers' compensation benefits, recovers from the tortfeasor, reimburses the insurer for the interim benefits, credits the insurer for potential future benefits, and keeps the remainder as excess. *Jorgensen v. Colo.*

Comp. Ins. Auth., 967 P.2d 172 (Colo. App. 1998), *aff'd* on other grounds, 992 P.2d 1156 (Colo. 2000).

Limit on reimbursement of employer's insurance carrier after recovery from third party. An injured employee who recovers damages from a third-party tortfeasor must reimburse his employer's workmen's compensation insurance carrier for benefits paid to him, but any damages recovered in excess of the compensation paid by the carrier belong to the employee. *State Comp. Ins. Fund v. Commercial Union Ins. Co.*, 631 P.2d 1168 (Colo. App. 1981).

Amount of subrogation may not be reduced to pay attorney fees. Where there is no written consent from the party liable for compensation payments, the successful claimant in the third-party suit may not reduce the amount of the subrogation required by subsection (1) by unilaterally entering into a compromise agreement the ultimate result of which is to pay a portion of the recovery to counsel as attorney fees incurred in the third-party action. *In re Peterkin*, 698 P.2d 1353 (Colo. App. 1985), *aff'd*, 729 P.2d 977 (Colo. 1986).

Claimant permitted to reduce insurance carrier's subrogation credit by the amount of attorney fees and costs incurred in settling the third-party action where there was no deficiency between the settlement and the amount of compensation for which the insurer was liable. When there is no such deficiency the reduction cannot be disallowed based on insurer's argument that it did not give written approval for the settlement. Further, to disallow the reduction

would result in the insurer's unjust enrichment. *Kennedy v. Indus. Comm'n*, 735 P.2d 891 (Colo. App. 1986).

Workers' compensation insurer was not entitled to take subrogation credit, against additional compensation benefits to be paid claimant for her permanent disability, for amount of gross settlement with tortfeasor which represented claimant's attorney fees and expenses. *Drake v. Ins. Co. of N. Am.*, 736 P.2d 1244 (Colo. App. 1986).

Where an injured employee's tort claim against a third party is settled for an amount greater than the insurer's subrogation claim for workers' compensation benefits, and the insurer has not actively participated in the tort litigation, a court may order the insurer to pay a reasonable share of the attorney fees and court costs incurred by the employee in the tort litigation. *County Workers Comp. Pool v. Davis*, 817 P.2d 521 (Colo. 1991).

Insurer may not be subrogated to liability arising from accident subsequent to industrial accident. There is no authority to award subrogation to an insurance company where tortfeasor liability arises from an accident subsequent to and unconnected with the industrial accident for which workmen's compensation was sought and where the latter, nonindustrial accident aggravated the disability caused by the original industrial accident. *Pisicchio v. Dir. of Div. of Labor & Emp.*, 29 Colo. App. 538, 487 P.2d 382 (1971).

Insurer may not credit claimant's settlement against worker's compensation claim for damages covered by personal injury protection (PIP) benefits. *Tate v.*

Indus. Claim Appeals Office, 815 P.2d 15 (Colo. 1991).

No subrogation rights over a claimant's third-party settlement acquired by a worker's compensation insurer where insurer had paid no benefits to claimant at the time of third-party settlement, and the insurer has no control over claimant's third-party settlement. *Brickell v. Business Machs., Inc.*, 817 P.2d 536 (Colo. App. 1990).

Workers' compensation carrier is barred from asserting subrogation claim against tortfeasor when injured employee is eligible for PIP benefits. *County Workers Comp. Pool v. Folk*, 895 P.2d 1083 (Colo. App. 1994).

Employee may be joined in employer's action against third party. In an action for damages by an employer or insurance carrier against a third party under this section, the employee may be joined as a proper, although not a necessary, party plaintiff. *Wilson v. Smith*, 110 Colo. 68, 130 P.2d 1053 (1942); *Kirkham v. Hickerson Bros. Truck Co.*, 29 Colo. App. 303, 485 P.2d 513 (1971); *Moore v. Fischer*, 31 Colo. App. 425, 505, P.2d 383 (1972).

In the event of a recovery from a third party defendant for a wrong alleged, from the sum awarded the amount of compensation for which the state fund is liable under the act shall be returned to the fund and the balance, if any, goes to a statutory assignee. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

The employer or carrier is entitled to subrogation credit for the amount of the monetary recovery when a third-party action results in a monetary recovery for work-related injuries, irrespective of whether the money is paid to the claimant directly or to an individual or legal entity designated to receive the proceeds. *Rocky Mtn. Gen. v. Simon*, 827 P.2d 629 (Colo. App. 1992).

Insurer can only settle an action against a third party in the amount of compensation already paid to the claimant. Thus, by settling, the insurer does not waive its statutory right to offset claimant's third-party recovery against the insurer's payment of future compensation benefits. *Metcalf v. Bruning Div. of AMI*, 868 P.2d 1145 (Colo. App. 1993); *Jordan v. Fonken & Stevens, P.C.*, 914 P.2d 394 (Colo. App. 1995); *Andrews v. Indus. Claim Appeals Office*, 952 P.2d 853 (Colo. App. 1997).

This section specifically provides that the subsequent injury fund has subrogation rights with respect to third-party settlement proceeds. *Metcalf v. Bruning Div. of AMI*, 868 P.2d 1145 (Colo. App. 1993).

An insurance carrier becomes subrogated to the rights of the injured employee against any third-party tortfeasor to the extent of benefits paid. This right extends to the settlement proceeds of a compromised claim. However, if the settlement is to be paid to the spouse of the injured employee for lack of consortium, such subrogation claim depends on whether

the settlement agreement was fair and entered not in good faith and not designed to defeat such subrogation claim. *Rains v. Kolberg Mfg. Corp.*, 897 P.2d 845 (Colo. App. 1994).

Claimant cannot unilaterally characterize recovery as being only for pain and suffering and thus defeat the insurance carrier's subrogation rights. Regardless of the label applied to the recovery, the carrier is entitled to exercise its subrogation rights against the amount of recovery actually collected. *Kennedy v. Indus. Comm'n*, 735 P.2d 891 (Colo. App. 1986).

Subrogee's statutory subrogation lien applies to and may be satisfied from the total settlement amount recovered, which was undifferentiated between two accidents, even though the assignment agreement made no express reference to the second accident. *United Fire & Cas. Co. v. Armantrout*, 904 P.2d 1375 (Colo. App. 1995).

District court has jurisdiction to apportion a settlement reached in a tort case when a worker's compensation case underlies the tort case, because the court is only determining the portion of the settlement that represents the non-economic losses. While that apportionment will indirectly affect the workers' compensation case by limiting the amount of proceeds subject to the subrogation interest, it is a

proper exercise of the court's authority. *Jorgensen v. Colo. Comp. Ins. Auth.*, 967 P.2d 172 (Colo. App. 1998), *aff'd*, 992 P.2d 1156 (Colo. 2000).

Since the carrier's subrogation right attaches only to the claimant's economic loss, the court shall determine actual amount of claimant's economic and non-economic damages and apportion settlement proceeds accordingly. Failure to apportion settlement proceeds is reversible error even when the settlement is substantially lower than the actual damages. *Reliance Ins. Co. v. Blackford*, 100 P.3d 578 (Colo. App. 2004); *Colo. Comp. Ins. Auth. v. Jones*, 131 P.3d 1074 (Colo. App. 2005).

Uninsured/underinsured motorist (UM/UIM) insurer not a third-party tortfeasor within purview of section and does not step into shoes of tortfeasor; therefore, a worker's compensation insurer does not have subrogation rights against UM/UIM insurance benefits paid to injured worker. *Colo. Ins. Guar. Ass'n v. Menor*, 166 P.3d 205 (Colo. App. 2007).

While Colorado insurance guaranty association (CIGA), acting as worker's compensation insurer, does not have subrogation rights against UM/UIM insurance benefits under this section, CIGA has claim for relief for nonduplication of recovery under its enabling statute. *Colo. Ins. Guar. Ass'n v. Menor*, 166 P.3d 205 (Colo. App. 2007).

8-41-204. Injury outside of state - benefits in accordance with state law.

If an employee who has been hired or is regularly employed in this state receives personal injuries in an accident or an occupational disease arising out of and in the course of such employment outside of this state, the employee, or such employee's dependents in case of death, shall be entitled to compensation according to the law of this state. This provision shall apply only to those injuries received by the employee within six months after leaving this state, unless, prior to the expiration of such six-month period, the employer has filed with the division notice that the employer has elected to extend such coverage for a greater period of time.

Source: L. 90: Entire article R&RE, p. 478, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-204 as it existed prior to 1990.

ANNOTATION

Law reviews. For note, "The Conflicts Problem as Applied to Workmen's Compensation in Colorado", see 22 Rocky Mt. L. Rev. 77 (1949).

Annotator's note. Since § 8-41-204 is similar to § 8-46-204 as it existed prior to the 1990 repeal and reenactment of the "Worker's Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section gives an employee outside of this state the right to remain protected by the Colorado insurance coverage, subject, however, to the second condition in § 8-46-202, and if that condition does not exist, the whole act becomes inoperative. *Frankel Carbon & Ribbon Co. v. Aaron*, 113 Colo. 429, 158 P.2d 929 (1945).

Section extends protection of compensation act. The requirements of § 8-46-202 cannot be fulfilled in a short period of time and afford no protection to an employee who must be sent out of the state on little if any advance notice. This section was intended to bridge the gap between and extend the protection of the compensation act to employees injured while employed out of the state within the six-month period. *State Comp. Ins. Fund v. Howington*, 133 Colo. 583, 298 P.2d 963 (1956).

And the six-month limitation period commences to run from the date of departure following the most recent assignment to the state. *Employers' Liab. Assurance Corp. v. Indus. Comm'n*, 147 Colo. 309, 363 P.2d 646 (1961).

An employee who is hired in Colorado and receives personal injuries outside of the state in an accident arising out of the

employment is entitled to compensation only if the employee received the injuries within six months after leaving the state. Where employee was hired or employed in Colorado but was never physically present in Colorado, the employee is not entitled to compensation. *Hathaway Lighting, Inc. v. Indus. Claim Appeals Office*, 143 P.3d 1187 (Colo. App. 2006).

There are three requirements, any two of which when met can qualify an employee or his dependents for compensation under this section where the injury or death occurs outside of the state. The requirements are: A contract of employment created in the state, employment in the state under a contract created outside the state, and substantial employment in the state. If any two of these conditions are met, it makes no difference that the employee is not a resident of the state or is killed outside the state provided other statutory time limits on out-of-state employment are met. *RCS Lumber Co. v. Worthy*, 149 Colo. 537, 369 P.2d 985 (1962).

And claimants have the burden of proving a Colorado employment contract. *RCS Lumber Co. v. Worthy*, 149 Colo. 537, 369 P.2d 985 (1962).

The place of employment under this section is not expressly limited to the state. *Denver Truck Exch. v. Perryman*, 134 Colo. 586, 307 P.2d 805 (1957).

Panel did not err in concluding that Colorado had jurisdiction over workers' compensation claim where contract for hire took place in Colorado for a job in Wyoming even though the claimant could reject the offer and the employer could reject the claimant when he arrived at the job site. By the time the claimant had agreed to report and departed from his home for the job site, the fundamental elements of the contract were present. *Moorhead Mach. & Boiler v. Del Valle*, 934 P.2d 861 (Colo. App. 1996).

Applied in *Gardner Motor Co. v. Feistel*, 160 Colo. 135, 414 P.2d 915 (1966); *Loffland Bros. v. Baca*, 651 P.2d 431 (Colo. App. 1982).

8-41-205. Waiver of compensation by employee - approval required - exception.

No waiver of compensation or medical benefits by an employee for aggravation of any preexisting condition or disease shall be allowed under articles 40 to 47 of this title. This section, however, shall not invalidate any such waiver so filed and approved prior to March 1, 1977, under the provisions of the "Colorado Occupational Disease Disability Act", which was repealed effective September 1, 1975.

Source: L. 90: Entire article R&RE, p. 479, § 1, effective July 1.

Editor's note: This section is similar to former § 8-51-113 as it existed prior to 1990.

Cross references: For the historical record of the "Colorado Occupational Disease Disability Act", see article 60 of this title 8, as contained in the original Volume 3, Colorado Revised Statutes 1973, as amended through L. 75.

ANNOTATION

Annotator's note. Since § 8-41-205 is similar to § 8-51-113 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

Employer's liability fixed on date of last injurious exposure. When an employee is disabled as a result of an occupational

disease and so advises his employer, but continues in the same employment, the extent of the employer's liability under the workmen's compensation act or the occupational disease disability act (now repealed) is to be determined by reference to the statutory scheme in effect on the date of the last injurious exposure to the hazards of the disease. *Martinez v. Indus. Comm'n*, 40 Colo. App. 485, 580 P.2d 36 (1978).

8-41-206. Disability beginning five years after injury.

Any disability beginning more than five years after the date of injury shall be conclusively presumed not to be due to the injury, except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, or anthracosis.

Source: L. 90: Entire article R&RE, p. 479, § 1, effective July 1.

Editor's note: This section is similar to former § 8-52-106 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-41-206 is similar to § 8-52-106 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado",

articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Compensation under this section predicated on proved accident, as cause, and proved disability, as result, within five years. London Guarantee & Accident Co. v. Sauer, 92 Colo. 565, 22 P.2d 624 (1933).

But once the causal connection is established, a disability may be shown, whether it is actually disclosed early or late. London Guarantee & Accident Co. v. Sauer, 92 Colo. 565, 22 P.2d 624 (1933).

Thus, this section is not one of limitations. It creates an arbitrary rule of evidence, which inhibits a finding of any causal connection between an injury and an accident when the disability has its beginning five years after date of the accident. Indus. Comm'n v. Weaver, 81 Colo. 191, 254 P. 444 (1927); City of Boulder v. Payne, 162 Colo. 345, 426 P.2d 194 (1967).

Which does not bar an action for a recurring disability more than five years after accident. Indus. Comm'n v. Weaver, 81 Colo. 191, 254 P. 444 (1927).

For a recurring disability is a different thing from a "disability beginning more than five years from the date of the accident". Indus. Comm'n v. Weaver, 81 Colo. 191, 254 P. 444 (1927).

Furthermore, the earliest disability for which compensation awarded or paid arrests running of any statute of limitations. London Guarantee & Accident

Co. v. Sauer, 92 Colo. 565, 22 P. 2d 624 (1933).

"Disability" as used in this section means disability to work. United States Fid. & Guar. Co. v. Indus. Comm'n, 97 Colo. 102, 46 P.2d 752 (1935).

And "beginning" signifies commencement; the entrance into existence; the initial state of anything. Indus. Comm'n v. Weaver, 81 Colo. 191, 254 P. 444 (1927).

Disability under this statute does not commence only when the injured worker is unable to work. The commencement of disability may also be established by evidence which demonstrates that a claimant is able to return to work only in a restricted capacity. Ricks v. Indus. Claim Appeals Office, 809 P.2d 1118 (Colo. App. 1991).

Employee failing to make claim within prescribed period is guilty of laches. Where an employee, without reasonable excuse, neglects to make claim for alleged disability resulting from accidental injuries within the time fixed by this section, he is guilty of laches, and judgment awarding his compensation will be reversed. United States Fid. & Guar. Co. v. Indus. Comm'n, 97 Colo. 102, 46 P.2d 752 (1935).

When no onset of disability was established, this section does not apply; thus, findings of maximum medical improvement and lack of permanent impairment were premature, and the claimant was not precluded from seeking medical benefits. Leming v. Indus. Claim Appeals Office, 62 P.3d 1015 (Colo. App. 2002).

8-41-207. Death after two years.

In case death occurs more than two years after the date of receiving any injury, such death shall be prima facie presumed not to be due to such injury; such presumption shall not apply in cases of silicosis, asbestosis, anthracosis, or disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds. In all other cases, such presumption may be rebutted by competent evidence.

Source: L. 90: Entire article R&RE, p. 479, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-110 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-41-207 is similar to § 8-50-110 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Death from an injury must occur within a period of two years from the date of the injury if dependents are to be entitled

to receive benefits. *Moffat Coal Co. v. McFall*, 117 Colo. 191, 186 P.2d 1021 (1947).

Statutory presumption overcome where suicide was found to have been proximately caused by depression and anxiety suffered as a result of work-related injury. *Jakco Painting Contractors v. Indus. Comm'n*, 702 P.2d 755 (Colo. App. 1985).

8-41-208. Coverage for job-related exposure to or contraction of hepatitis C.

(1) The exposure to or contraction of hepatitis C by a firefighter, emergency services provider, or peace officer, as described in section 16-2.5-101, C.R.S., shall be presumed to be within the course and scope of employment if the following conditions are satisfied:

(a) A baseline test shall be provided by the employer, or if insured, by the insurer, to be performed within five days after the employee reports the on-the-job exposure. The employee must report the exposure within two days after the employee knew or reasonably should have known of the exposure;

(b) The baseline test establishes that the employee was not infected with hepatitis C at the time of the on-the-job exposure;

(c) The employee complies with reasonable and necessary medical procedures set forth in section 8-42-101 (1)(c);

(d) The employee is determined to have hepatitis C within twenty-four months after the on-the-job exposure to the known or possible source.

(2) The exposure to or contraction of hepatitis C by a firefighter, emergency services provider, or peace officer, as described in section 16-2.5-101, C.R.S., shall not be deemed to be within the course and scope of employment if an employer or insurer shows by a preponderance of the evidence that such exposure or contraction did not occur on the job.

Source: L. 2002: Entire section added, p. 440, § 1, effective May 16. **L. 2003:** IP(1) and (2) amended, p. 1613, § 3, effective August 6.

8-41-209. Coverage for occupational diseases contracted by firefighters.

(1) Death, disability, or impairment of health of a firefighter of any political subdivision who has completed five or more years of employment as a firefighter, caused by cancer of the brain, skin, digestive system, hematological system, or genitourinary system and resulting from his or her employment as a firefighter, shall be considered an occupational disease.

(2) Any condition or impairment of health described in subsection (1) of this section:

(a) Shall be presumed to result from a firefighter's employment if, at the time of becoming a firefighter or thereafter, the firefighter underwent a physical examination that failed to reveal substantial evidence of such condition or impairment of health that preexisted his or her employment as a firefighter; and

(b) Shall not be deemed to result from the firefighter's employment if the firefighter's employer or insurer shows by a preponderance of the medical evidence that such condition or impairment did not occur on the job.

(3) Repealed.

(4) An employer who participates in the voluntary firefighter cancer benefits program created in part 4 of article 5 of title 29 is not subject to this section unless the employer ends participation in that program.

Source: L. 2007: Entire section added, p. 962, § 1, effective May 17. L. 2017: (4) added, (SB 17-214), ch. 187, p. 684, § 2, effective May 3.

Editor's note: Subsection (3)(b) provided for the repeal of subsection (3), effective March 1, 2009. (See L. 2007, p. 962.)

ANNOTATION

An employer can overcome the presumption of compensability with evidence that a claimant's injury more likely than not arose from a source outside the workplace. An employer need not establish a specific non-work-related cause of claimant's cancer in order to overcome the presumption; rather, an employer may overcome the presumption by establishing that the risk of cancer from other sources outweighs the risk created by firefighting. *Castle Rock v. Indus. Claim Appeals Office*, 2013 COA 109, 373 P.3d 609, *aff'd*, 2016 CO 26, 370 P.3d 151.

The presumption of compensability is not automatically overcome simply by identifying a significant nonoccupational cancer cause. An employer can meet its burden of overcoming the presumption by establishing the prevalence of non-work-related risk factors. But *City of Littleton v. Indus. Claim Appeals Office*, 2016 CO 25, 370 P.3d 157, *Indus. Claim Appeals Office v. Town of Castle Rock*, 2016 CO 26, 370 P.3d 151, and *City of Englewood v. Harrell*, 2016 CO 27, 370 P.3d 149, do not say that an employer will meet its burden by establishing a nonoccupational risk; the opinions do not assure employers that they will overcome the presumption by showing

that nonoccupational risk factors played a prominent role in the cancer's development; and they do not state that, once employers introduce such evidence, they will automatically rebut the presumption as a matter of law. Nor do the opinions require the judge to rank the firefighter's various occupational and nonoccupational cancer risks. *City of Boulder v. Indus. Claim Appeals Office*, 2018 COA 93, 431 P.3d 674.

An employer can meet its burden to show that a firefighter's condition or impairment did not occur on the job by establishing, by a preponderance of the medical evidence, a lack of either general or specific causation, that is, either: (1) that a firefighter's known or typical occupational exposures are not capable of causing the type of cancer at issue; or (2) that the firefighter's employment did not cause the firefighter's particular cancer where, for example, the claimant firefighter was not exposed to the substance or substances that are known to cause the firefighter's condition or impairment, or the medical evidence renders it more probable that the cause of the claimant's condition or impairment was not job related. *City of*

Littleton v. Indus. Claim Appeals Office, 2016 CO 25, 370 P.3d 157.

The administrative law judge is not required to rank risk factors for cancer in order to make a determination pursuant to this section. City of Boulder v. Indus. Claim Appeals Office, 2018 COA 93, 431 P.3d 674.

Claimant's time spent as a volunteer firefighter and training at the fire

academy counted toward the five or more years of firefighting employment required to trigger the statutory presumption that claimant's cancer was a result of his employment as a firefighter, thus entitling claimant to workers' compensation coverage for an occupational disease under the Workers' Compensation Act of Colorado. City & County of Denver v. Indus. Claim Appeals Office, 2014 COA 62, 328 P.3d 313.

8-41-210. Coverage for property tax work-off program participants.

Notwithstanding any provision of law to the contrary, a governmental entity or private nonprofit or for-profit entity that has a contract with a governmental entity that is self-insured under articles 40 to 47 of this title may purchase workers' compensation insurance from any insurer authorized to transact the business of workers' compensation insurance in this state for the express purpose of covering participants in the property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1076), ch. 162, p. 566, § 3, effective August 11.

8-41-211. Transportation network company drivers - rules.

On June 5, 2014, the director, upon consideration of existing Colorado statutory and case law, may by rule determine whether or not transportation network companies have an obligation under existing Colorado law to provide or offer for purchase workers' compensation insurance coverage to transportation network company drivers.

Source: L. 2014: Entire section added, (SB 14-125), ch. 323, p. 1420, § 7, effective June 5.

8-41-212. Exemptions - laws of other state furnish exclusive remedy - definitions.

(1) An employee who was hired or is regularly employed outside of Colorado by an out-of-state employer and the out-of-state employer of the employee are exempt from articles 40 to 47 of this title 8 while the employee is temporarily working for the out-of-state employer within Colorado if:

(a) The out-of-state employer has furnished coverage pursuant to the workers' compensation laws of the state in which the employee was hired or is regularly employed, which coverage applies to the employee while temporarily working in Colorado; and

(b) The state in which the employee is furnished coverage:

(I) Is contiguous to Colorado; and

(II) Recognizes this section and provides the same exemption from the application of its workers' compensation laws for Colorado employers whose employees are temporarily working in the contiguous state.

(2) For an out-of-state employee and out-of-state employer to which this section applies, the benefits provided under the workers' compensation laws of the state in which the employee is furnished coverage are the exclusive remedy against the out-of-state employer for any injury, whether resulting in death or not, that the employee incurs while working for the out-of-state employer in Colorado.

(3) The division may enter into an agreement with any workers' compensation division or similar agency of a contiguous state to promulgate rules consistent with this section to carry out the extraterritorial application of the workers' compensation or similar law of the agreeing state.

(4) Nothing in this section contravenes the legal obligations of Colorado employers to provide workers' compensation to their employees in compliance with articles 40 to 47 of this title 8.

(5) As used in this section:

(a) "Out-of-state employer" means an employer that is domiciled in another state.

(b) "Temporarily" or "temporarily working" means:

(I) A period of sustained work that does not exceed six months; or

(II) Engaging in the interstate movement of goods or commodities.

Source: L. 2018: Entire section added, (HB 18-1308), ch. 182, p. 1235, § 1, effective April 30.

8-41-213. Declaration of workers' compensation required - building permit - construction permit - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Applicant" means a person applying for a permit with the permitting agency of a governmental entity.

(b) "Declaration" means a form designated by the division and available on the division's website that ensures any person, including any subcontractors, working under a permit maintains workers' compensation insurance coverage in compliance with the requirements of articles 40 to 47 of this title 8 for the duration of the work performed under the permit.

(c) (I) "Governmental entity" means the state, a county, a municipality, a city and county, or other political subdivision of the state.

(II) "Governmental entity" does not include a special district.

(d) "Permit" means a building permit or construction permit for a project with a total construction cost of more than one million dollars, except for a permit issued by the division of professions and occupations in the department of regulatory agencies.

(2) Prior to commencing any work under a permit, an applicant shall file a signed declaration under penalty of perjury with the permitting agency ensuring that any person, including any subcontractors, working under the permit maintains workers' compensation insurance coverage in compliance with the requirements of articles 40 to 47 of this title 8 for the duration of the work performed under the permit.

(3) A person may file a complaint with the division alleging a person's workers' compensation insurance coverage is not in compliance with the requirements of articles 40 to 47 of this title 8.

Source: L. 2026: Entire section added, (SB 26-093), ch. 213, p. 1253, § 1, effective May 29.

Editor's note: Section 2 of chapter 213 (SB 26-093), Session Laws of Colorado 2026, provides that the act adding this section applies to conduct occurring on or after May 29, 2026, including determinations of permit or license applications pending on May 29, 2026.

PART 3

LIABILITY

8-41-301. Conditions of recovery - definitions.

(1) The right to the compensation provided for in articles 40 to 47 of this title, in lieu of any other liability to any person for any personal injury or death resulting therefrom, shall obtain in all cases where the following conditions occur:

(a) Where, at the time of the injury, both employer and employee are subject to the provisions of said articles and where the employer has complied with the provisions thereof regarding insurance;

(b) Where, at the time of the injury, the employee is performing service arising out of and in the course of the employee's employment;

(c) Where the injury or death is proximately caused by an injury or occupational disease arising out of and in the course of the employee's employment and is not intentionally self-inflicted.

(2) (a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed psychiatrist or psychologist. A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. The mental impairment that is the basis of the claim must have arisen primarily from the claimant's then occupation and place of employment in order to be compensable.

(a.5) Repealed.

(b) (I) Notwithstanding any other provision of articles 40 to 47 of this title 8, where a claim is by reason of mental impairment, a claimant is limited to thirty-six weeks of medical impairment benefits, which shall be in an amount not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, inclusive of any temporary disability benefits; except that this limitation shall not apply to any victim of a crime of violence, without regard to the intent of the perpetrator of the crime, nor to the victim of a physical injury or occupational disease that causes neurological brain damage.

(II) Nothing in this section limits the determination of the percentage of impairment pursuant to section 8-42-107 (8) for the purposes of establishing the applicable cap on benefits pursuant to section 8-42-107.5.

(c) The claim of mental impairment cannot be based, in whole or in part, upon facts and circumstances that are common to all fields of employment.

(d) The mental impairment which is the basis of the claim must be, in and of itself, either sufficient to render the employee temporarily or permanently disabled from pursuing the occupation from which the claim arose or to require medical or psychological treatment.

(3) As used in this section:

(a) "Mental impairment" means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event. "Mental impairment" also includes a disability arising from an accidental physical injury that leads to a recognized permanent psychological disability.

(b) (I) "Psychologically traumatic event" means an event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances.

(II) "Psychologically traumatic event" also includes an event that is within a worker's usual experience only when the worker is diagnosed with post-traumatic stress disorder by a licensed psychiatrist or psychologist after the worker experienced exposure to one or more of the following events:

(A) The worker is the subject of an attempt by another person to cause the worker serious bodily injury or death through the use of deadly force, and the worker reasonably believes the worker is the subject of the attempt;

(B) The worker visually or audibly, or both visually and audibly, witnesses a death, or the immediate aftermath of the death, of one or more people as the result of a violent event; or

(C) The worker repeatedly and either visually or audibly, or both visually and audibly, witnesses the serious bodily injury, or the immediate aftermath of the serious bodily injury, of one or more people as the result of the intentional act of another person or an accident.

(c) "Serious bodily injury" means bodily injury that, either at the time of the actual injury or a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body.

Source: **L. 90:** Entire article R&RE, p. 479, § 1, effective July 1. **L. 91:** (2) amended, p. 1294, § 7, effective July 1. **L. 99:** (2)(a) and (2)(b) amended and (2)(a.5) added, p. 299, § 2, effective July 1. **L. 2006:** (2)(b) amended, p. 98, § 1, effective July 1. **L. 2009:** (2)(b) amended, (SB 09-243), ch. 269, p. 1222, § 1, effective July 1. **L. 2017:** (2)(a) amended and (3) added, (HB 17-1229), ch. 328, p. 1756, § 1, effective July 1, 2018; (2)(a.5)(II) added by revision, (HB 17-1229), pp. 1756, 1757, §§ 1, 2. **L. 2020:** (3)(b)(II)(B) and (3)(b)(II)(C) amended, (SB 20-026), ch. 142,

p. 619, § 1, effective September 14. **L. 2023:** (2)(b) amended, (HB 23-1076), ch. 370, p. 2222, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 8-52-102 as it existed prior to 1990.

(2) Subsection (2)(a.5)(II) provided for the repeal of subsection (2)(a.5), effective July 1, 2018. (See L. 2017, pp. 1756, 1757.)

ANNOTATION

I. General Consideration.

III. Proximate Cause.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Employer's Liability for Occupational Diseases", see 16 Rocky Mt. L. Rev. 60 (1943). For article, "The Enterprise Liability Theory of Torts", see 47 U. Colo. L. Rev. 153 (1976). For article, "Erosion of the Exclusive Remedy in Workers' Compensation", see 31 Colo. Law. 83 (Dec. 2002). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 32 Colo. Law. 97 (June 2003). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 32 Colo. Law. 113 (Oct. 2003). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 83 (Apr. 2004). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 34 Colo. Law. 95 (Apr. 2005). For article, "A Primer on the Requirements for a Compensable Injury", see 44 Colo. Law. 45 (Mar. 2015). For article, "Three Years after City of Brighton: Its Effect on the Compensability of Workers'

Compensation Claims", see 46 Colo. Law. 47 (May 2017). For article, "Sticking Points — Part 2: A Survey of Remedies for Vaccination Injuries", see 50 Colo. Law. 32 (Nov. 2021).

Annotator's note. (1) Since § 8-41-301 is similar to § 8-52-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the director of the division of labor with the power previously exercised by the industrial commission to enforce the workmen's compensation laws or were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission.

Subsection (2) does not violate equal protection because requiring verification of the mental component of a stress claim by a physician or psychologist is rationally related to the purpose of this section, which

is to establish the proof requirements for compensability of a stress-related claim in order to avoid frivolous and fraudulent claims. *Tomsha v. City of Colo. Springs*, 856 P.2d 13 (Colo. App. 1992).

There is a rational basis for requiring physical injury or occurrence of a crime of violence during the course of employment as an additional proof of work-related causation. *Colo. AFL-CIO v. Donlon*, 914 P.2d 396 (Colo. App. 1995).

Purpose of the workmen's compensation act is to provide monetary relief to employees who, while performing services for the employer, suffer disability or death as a result of an accident or injury arising out of and in the course of their employment. This is a legitimate state purpose. *Claimants in re Kohler v. Indus. Comm'n*, 671 P.2d 1002 (Colo. App. 1983).

The legislative purpose in enacting subsection (2)(a) was to establish the requirements for compensability of a stress-related claim, and it was designed to prevent frivolous claims. *Loveland Police Dept. v. Indus. Claim Appeals Office*, 141 P.3d 943 (Colo. App. 2006).

Any relief for alleged breach of contract for employer's failure to pay disability and medical benefits on a timely basis and to provide adequate medical treatment must be obtained exclusively through the workers' compensation scheme. Employee may not avoid the Workers' Compensation Act's exclusivity provisions merely by framing his claim as one for breach of contract. The damages employee sought are the very benefits

provided by the act. *McKelvy v. Liberty Mut. Ins. Co.*, 983 P.2d 42 (Colo. App. 1998).

If an injury comes within the coverage of the act, a common law action is barred even though a particular element of damages may not be provided as compensation. *McKelvy v. Liberty Mut. Ins. Co.*, 983 P.2d 42 (Colo. App. 1998).

Trial court correctly determined it lacked jurisdiction over breach of contract claim since the act provides a comprehensive and exclusive remedy for that claim. *McKelvy v. Liberty Mut. Ins. Co.*, 983 P.2d 42 (Colo. App. 1998).

Statutes of this character are to be liberally construed to the end that their beneficent purpose may be accomplished. *Indus. Comm'n v. Aetna Life Ins. Co.*, 64 Colo. 480, 174 P. 589 (1918); *Univ. of Denver v. Nemeth*, 127 Colo. 385, 257 P.2d 423 (1953).

The workmen's compensation statute must be liberally construed to effectuate its humanitarian purpose of assisting injured workers. *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976).

The workmen's compensation act is to be broadly and liberally construed to achieve its salutary purposes. *Stewart v. United States*, 716 F.2d 755 (10th Cir. 1982).

However, rule of liberal construction does not lessen degree of proof. A claimant in a worker's compensation case has the burden of proving entitlement to benefits by a preponderance of the evidence and the court of appeals' statement that "any

reasonable doubt as to whether a compensable injury arises out of and in the course of employment must be resolved in favor of a claimant" is an incorrect statement of the burden of proof because it creates a virtual presumption of compensability. *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985).

But the intent is to make the industry responsible for industrial accidents only, and not those resulting from hazards common to all. *Indus. Comm'n v. Anderson*, 69 Colo. 147, 169 P. 135 (1917); *Cason v. Am. Brake Shoe & Foundry Co.*, 32 F. Supp. 680 (D. Colo. 1940).

Meaning of "accidents". In workmen's compensation acts, injuries are designated "accidents" to distinguish them from intentional injuries and injuries caused by disease. To constitute an accidental injury, it is not necessary that there should be anything extraordinary occurring in or about the work itself, such as slipping, or falling, or being hit. *Cent. Sur. & Ins. Corp. v. Indus. Comm'n*, 84 Colo. 481, 271 P. 617 (1928); *Keating v. Indus. Comm'n*, 105 Colo. 155, 95 P.2d 821 (1939); *Gates v. Cent. City Opera House Ass'n*, 107 Colo. 93, 108 P.2d 880 (1940); *Indus. Comm'n v. La Foret Camps*, 125 Colo. 503, 245 P.2d 459 (1952); *Indus. Comm'n v. Corwin Hosp.*, 126 Colo. 358, 250 P.2d 135 (1952); *J. W. Metz Lumber Co. v. Taylor*, 134 Colo. 249, 302 P.2d 521 (1956); *Wesco Elec. Co. v. Shook*, 143 Colo. 382, 353 P.2d 743 (1960).

1975 amendment broadened scope of compensable injuries. The 1975 amendment, replacing the word "accident"

wherever it occurred with "injury" and explicitly including a reference to occupational diseases, had the effect of broadening the scope of compensable injuries under the workmen's compensation act. *Kandt v. Evans*, 645 P.2d 1300 (Colo. App. 1982); *CF & I Steel Corp. v. Indus. Comm'n*, 650 P.2d 1332 (Colo. App. 1982).

Injury compensable whether "accident" or "occupational disease". A claimant is entitled to compensation if he sustains an injury under the conditions set forth in this section, and it is immaterial whether the injury was an accident as defined in § 8-41-108 (1) or an occupational disease as defined in § 8-41-108 (3). *CF & I Steel Corp. v. Indus. Comm'n*, 650 P.2d 1332 (Colo. App. 1982).

An accident found to occur at a "definite time", "unexpected" and "unintended", is an accidental injury under the compensation act. *Indus. Comm'n v. Corwin Hosp.*, 126 Colo. 358, 250 P.2d 135 (1952); *J.W. Metz Lumber Co. v. Taylor*, 134 Colo. 249, 302 P.2d 521 (1956); *Martin Marietta Corp. v. Faulk*, 158 Colo. 441, 407 P.2d 348 (1965).

Under the workmen's compensation law by the term "injury" is meant, not only an injury the means or cause of which is an accident, but also an injury which is itself an accident. *Carroll v. Indus. Comm'n*, 69 Colo. 473, 195 P. 1097 (1921); *Indus. Comm'n v. La Foret Camps*, 125 Colo. 503, 245 P.2d 459 (1952); *J.W. Metz Lumber Co. v. Taylor*, 134 Colo. 249, 302 P.2d 521 (1956); *Wesco Elec. Co. v. Shook*, 143 Colo. 382, 353 P.2d 743 (1960).

Injuries held accidents. Indus. Comm'n v. Swanson, 93 Colo. 354, 26 P.2d 107 (1933); Indus. Comm'n v. Ule, 97 Colo. 253, 48 P.2d 803 (1935); Gates v. Cent. City Opera House Ass'n, 107 Colo. 93, 108 P.2d 880 (1940); Indus. Comm'n v. Hayden Coal Co., 113 Colo. 62, 155 P.2d 158 (1944); Indus. Comm'n v. La Foret Camps, 125 Colo. 503, 245 P.2d 459 (1952); Indus. Comm'n v. Corwin Hosp., 126 Colo. 358, 250 P.2d 135 (1952); J. W. Metz Lumber Co. v. Taylor, 134 Colo. 249, 302 P.2d 521 (1956); City & County of Denver v. Pollard, 160 Colo. 306, 417 P.2d 231 (1966).

But the loss of voice of an employee resulting from emotional stress and strain because of differences with his supervisor is not an accident arising out of and in the course of employment within the meaning of the workmen's compensation act. Classen v. Mtn. States Tel. & Tel. Co., 153 Colo. 570, 387 P.2d 264 (1963).

Subsection (2) applies not only to a single traumatic event, but also to multiple traumatic events. Therefore, it applies to a series of stressful incidents. McCallum v. Dana's Housekeeping, 940 P.2d 1022 (Colo. App. 1996).

Accident must be traceable to a definite time, place, and cause. An accident under the various workmen's compensation acts, must be traceable to a definite time, place, and cause; the occurrence constituting an accident must be unexpected. Prouse v. Indus. Comm'n, 69 Colo. 382, 194 P. 625 (1920); Peer v. Indus. Comm'n, 94 Colo. 227, 29 P.2d 636 (1934); Martin Marietta

Corp. v. Faulk, 158 Colo. 441, 407 P.2d 348 (1965).

Lack of causal connection may be asserted at any time. In a dispute over medical benefits that arises after the filing of a general admission of liability, an employer generally can assert, based on subsequent medical reports, that the claimant did not establish the threshold requirement of a direct causal relationship between the on-the-job injury and the need for medical treatment. Snyder v. Indus. Claim Appeals Office, 942 P.2d 1337 (Colo. App. 1997).

However, the time of the accident is only required to be reasonably definite to support an award. Gates v. Cent. City Opera House Ass'n, 107 Colo. 93, 108 P.2d 880 (1940); Great Am. Indem. Co. v. State Comp. Ins. Fund, 108 Colo. 323, 116 P.2d 919 (1941).

On the other hand, an "occupational disease" is acquired in the usual and ordinary course of employment and is recognized from common experience to be incidental thereto. City & County of Denver v. Moore, 31 Colo. App. 310, 504 P.2d 367 (1972).

Evidence not bringing injury within definition of "occupational disease". Great Am. Indem. Co. v. State Comp. Ins. Fund, 108 Colo. 323, 116 P.2d 919 (1941); City & County of Denver v. Moore, 31 Colo. App. 310, 504 P.2d 367 (1972).

Written testimony from a physician or psychologist is sufficient, subject to the ability of any party on request to cross-examine at a hearing or a deposition the

professional who authored the written material that the claimant presents. Colo. Dept. of Labor & Emp't v. Esser, 30 P.3d 189 (Colo. 2001).

The second clause of the "mental impairment" definition in subsection (2)(a) requires the injury to consist of a "psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances". Expert testimony is necessary to prove that the event was psychologically traumatic. Whether the event was generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances may be proved by lay evidence, expert evidence, or both. Davison v. Indus. Claim Appeals Office, 84 P.3d 1023 (Colo. 2004); Loveland Police Dept. v. Indus. Claim Appeals Office, 141 P.3d 943 (Colo. App. 2006).

Expert is not required to use the term "psychologically traumatic event"; rather there must be a presentation of sufficient facts such that the ALJ can find there existed a psychologically traumatic event or events. Loveland Police Dept. v. Indus. Claim Appeals Office, 141 P.3d 943 (Colo. App. 2006).

Sufficient evidence must show that the "psychologically traumatic event" was unique and outside of a worker's usual experience. Claimants, however, need not show the psychologically traumatic event would cause identical significant symptoms of distress in similarly situated workers.

Loveland Police Dept. v. Indus. Claim Appeals Office, 141 P.3d 943 (Colo. App. 2006).

"Medical impairment benefits" in subsection (2)(b) means awards for medical impairment benefits, which by definition in § 8-42-107 (1)(a) and (8)(a), are payable for permanent disability. City of Thornton v. Replogle, 873 P.2d 30 (Colo. App. 1993).

Subsection (2)(b) was construed to mean that award for medical impairment benefits is limited but that award for temporary disability benefits is not, and judge may reduce potential award of medical impairment benefits by amounts that claimant may have received as temporary disability benefits. City of Thornton v. Replogle, 873 P.2d 30 (Colo. App. 1993).

However, combined amount of temporary disability benefits and permanent partial disability benefits is limited by § 8-42-107.5. City of Thornton v. Replogle, 873 P.2d 30 (Colo. App. 1993).

Twelve-week limitation on receipt of medical impairment workers' compensation benefits for mental impairment claim does not apply to temporary disability benefits. Rendon v. United Airlines, 881 P.2d 482 (Colo. App. 1994).

Twelve-week limitation on medical impairment benefits in subsection (2)(b) does not apply to death benefits. Death benefits are distinct from wage loss and disability benefits, and the limitation on

medical impairment disability benefits applies to those cases in which disability benefits are payable to an eligible claimant, not to cases in which a claimant seeks death benefits. *Loveland Police Dept. v. Indus. Claim Appeals Office*, 141 P.3d 943 (Colo. App. 2006).

Twelve-week limitation on mental impairment benefits is not reduced by TTD benefits for physical injury. Subsection (2)(b), with its offset requirement, is clearly limited in scope to benefits paid as the result of mental impairment only. *Sears Distribution Ctr. v. Indus. Claim Appeals Office*, 104 P.3d 313 (Colo. App. 2004).

A crime of violence did not occur when a police officer was bitten while trying to restrain a man suffering from a seizure disorder, since the seizure prevented the man from acting with conscious awareness of what he was doing. Thus, police officer was barred from receiving medical impairment benefits in excess of the limitation of 12 weeks under the exception for victims of crimes of violence in subsection (2)(c). *Bralish v. Indus. Claim Appeals Office*, 81 P.3d 1091 (Colo. App. 2003).

Compensation can be awarded for personal injuries only. *London Guarantee & Accident Co. v. Indus. Comm'n*, 80 Colo. 162, 249 P. 642 (1926).

A wooden leg is not a part of a man's person. A wooden leg is a man's property, not part of his person, and no compensation can be awarded for its injury. *London Guarantee & Accident Co. v. Indus. Comm'n*, 80 Colo. 162, 249 P. 642 (1926).

There are separate and distinct limitations placed on temporary and permanent disability benefits for mental impairment. Permanent disability benefits are limited to 12 weeks while temporary disability benefits are limited by maximum medical improvement. *City of Thornton v. Replogle*, 888 P.2d 782 (Colo. 1995).

Fear and anxiety not compensable. Fear and anxiety caused by the prospect of an operation to correct a compensable injury are not compensable. *Aetna Cas. & Sur. Co. v. Indus. Comm'n*, 116 Colo. 98, 179 P.2d 973 (1947).

And negligence of employee contributing to the injury does not bar him from relief. *Ocean Accident & Guar. Corp. v. Pallaro*, 66 Colo. 190, 180 P. 95 (1919).

In addition, a preexisting disease will not render noncompensable an injury received under conditions which would otherwise make it compensable. *Allen v. Gettler*, 94 Colo. 528, 30 P.2d 1117 (1934); *Indus. Comm'n v. Pacific Employers Ins. Co.*, 128 Colo. 411, 262 P.2d 926 (1953); *J.W. Metz Lumber Co. v. Taylor*, 134 Colo. 249, 302 P.2d 521 (1956); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Indus. Comm'n v. Colo. Fuel & Iron Corp.*, 135 Colo. 307, 310 P.2d 717 (1957); *Indus. Comm'n v. Newton Lumber & Mfg. Co.*, 135 Colo. 594, 314 P.2d 297 (1957); *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 152 Colo. 25, 380 P.2d 28 (1963); *State v. Richards*, 158 Colo. 155, 405 P.2d 675 (1965); *Martin Marietta Corp. v. Faulk*, 158 Colo. 441, 407 P.2d 348 (1965); *Gen.*

Cable Co. v. Indus. Claim Appeals Office, 878 P.2d 118 (Colo. App. 1994).

For compensation is not dependent on the state of an employee's health or his freedom from constitutional weakness or latent tendency. Peter Kiewit Sons' Co. v. Indus. Comm'n, 124 Colo. 217, 236 P.2d 296 (1951); State v. Richards, 158 Colo. 155, 405 P.2d 675 (1965).

The right to compensation for an injury springs into being where the necessary employer-employee relationship exists, and both the service being performed and the injury sustained arise out of and in the course of employment. Johnson v. Indus. Comm'n, 137 Colo. 591, 328 P.2d 384 (1958).

For the liability of an employer under the workmen's compensation act is predicated on relationship. Froid v. Knowles, 95 Colo. 223, 36 P.2d 156 (1934).

Thus, one not an employer or employee does not share in its burdens or benefits. Froid v. Knowles, 95 Colo. 223, 36 P.2d 156 (1934).

But ignorance of employee as to who was his employer will not of itself prevent compensation. Bukowich v. Ford Motor Co., 99 Colo. 56, 59 P.2d 470 (1936).

But where state compensation insurance fund insurance policy does not afford coverage to law firm for employee performing construction work at the direction of employer, state fund is properly dismissed as a party in the case. State Comp. Ins. Fund v. Dean, 689 P.2d 1146 (Colo. App. 1984).

To justify recovery under the workmen's compensation law the one essential element is that a substantial portion of the work must be done in this state, but with this must be combined either an accident in Colorado or a contract in Colorado. United States Fid. & Guar. Co. v. Indus. Comm'n, 99 Colo. 280, 61 P.2d 1033 (1936).

The clause "inclusive of any temporary disability benefits" in subsection (2)(b) does not limit temporary disability benefits for mental impairment to twelve weeks. City of Thornton v. Replogle, 888 P.2d 782 (Colo. 1995).

The law of the place of contract controls the rights and liabilities both of the employer and employee. Indus. Comm'n v. Aetna Life Ins. Co., 64 Colo. 480, 174 P. 589 (1918).

Thus, when contract is made in this state recovery may be had under this act for accidental death in another state. Indus. Comm'n v. Aetna Life Ins. Co., 64 Colo. 480, 174 P. 589 (1918); Hall v. Indus. Comm'n, 77 Colo. 338, 235 P. 1073 (1925); Home Ins. Co. v. Hepp, 91 Colo. 495, 15 P. 2d 1082 (1932).

For the workmen's compensation act has extraterritorial effect. Hall v. Indus. Comm'n, 77 Colo. 338, 235 P. 1073 (1925).

And there is no reason for distinction as to the place of performance of the principal portion of the services. Home Ins. Co. v. Hepp, 91 Colo. 495, 15 P.2d 1082 (1932).

So that employee who is unsuccessful in claim for compensation in other state may proceed under this act. Where an injured employee claims, and was awarded compensation by the industrial commission and thereafter elected to make claim for compensation for his injuries under the industrial act of another state and asked that payments under the Colorado award be discontinued, which request was granted, the commission did not thereby lose jurisdiction, and the employee, having been unsuccessful in his application for compensation in the other state, may proceed under the Colorado act. *United States Fid. & Guar. Co. v. Indus. Comm'n*, 99 Colo. 280, 61 P.2d 1033 (1936).

Where employee is paid for injury he has no independent action against employer for alleged malpractice of its physician. *Hennig v. Crested Butte Anthracite Mining Co.*, 92 Colo. 459, 21 P.2d 1115 (1933).

Statement of director not a finding of disability caused by accident. *Di Gregorio v. Monroe Coal Co.*, 98 Colo. 267, 55 P.2d 715 (1936).

A sexual assault involving pinching is a physical injury within the meaning of this section, and therefore claim did not fall within the mental impairment provision's requirement of testimony by a licensed physician or psychologist. *Oberle v. Indus. Claim Appeals Office*, 919 P.2d 918 (Colo. App. 1996).

Applied in *Greer v. Intercole Automation, Inc.*, 553 F. Supp. 275 (D. Colo. 1982).

II. COURSE OF EMPLOYMENT.

A. In General.

B. Employee Going to and from Work.

A. In General.

Law reviews. For note, "'Horseplay Cases' Under Workmen's Compensation Acts", see 10 *Rocky Mt. L. Rev.* 272 (1938). For comment on *Indus. Comm'n v. Havens* (136 Colo. 111, 314 P.2d 698 (1957)), see 30 *Rocky Mt. L. Rev.* 239 (1958). For comment on *Divelbiss v. Indus. Comm'n* (140 Colo. 452, 344 P.2d 1084 (1959)), see 32 *Rocky Mt. L. Rev.* 257 (1959). For comment on *Game & Fish Dept. v. Pardoe* (147 Colo. 363, 363 P.2d 1067 (1961)), see 34 *Rocky Mt. L. Rev.* 273 (1962). For article, "A Significant Change in the Colorado Workmen's Compensation Act: 'Accident', 'Injuries', and 'Heart Attack'", see 41 *Den. L. Ctr. J.* 189 (1964). For article, "Compensability of Heart Disease Under the Colorado Workmen's Compensation Act", see 37 *U. Colo. L. Rev.* 205 (1965). For article, "The Positional Risk Doctrine — Compensability of 'Neutral Force' Injuries", see 17 *Colo. Law.* 2375 (1988). For article, "Work-Related Stress Claims", see 18 *Colo. Law.* 1529 (1989). For article, "Sexual Harassment: Issues of Compensability and Exclusivity", see 24 *Colo. Law.* 825 (1995).

The purpose of the workmen's compensation act is to afford protection to employees injured from causes arising out of and during the course of their employment. *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Archer v. Farmer Bros. Co.*, 70 P.3d

495 (Colo. App. 2002), *aff'd* on other grounds, 90 P.3d 228 (Colo. 2004).

And whether employee is acting within scope of employment is determined from surrounding circumstances. Taylor v. Saunders, 71 Colo. 160, 204 P. 608 (1922); N.J. Fid. & Plate Glass Ins. Co. v. Patterson, 86 Colo. 580, 284 P. 334 (1929); Chaney v. Indus. Comm'n, 120 Colo. 111, 207 P.2d 816 (1949); Archer v. Farmer Bros. Co., 70 P.3d 495 (Colo. App. 2002), *aff'd* on other grounds, 90 P.3d 228 (Colo. 2004).

Colorado courts have repeatedly emphasized that the determination of whether the injuries arose out of and in the course of an employment relationship is largely dependent upon the facts surrounding the injury in question. Bennett v. Furr's Cafeterias, Inc., 549 F. Supp. 887 (D. Colo. 1982).

For this section requires an employee to be doing the duty which he is employed to perform. Indus. Comm'n v. Nissen, 84 Colo. 19, 267 P. 791 (1928).

However, activity not required to be strict obligation of employment or confer specific benefit on the employer. An activity arises out of and in the course of employment when it is sufficiently interrelated to the conditions and circumstances under which the employee usually performs his job functions that the activity may reasonably be characterized as an incident of employment. City of Boulder v. Streeb, 706 P.2d 786 (Colo. 1985); Matter of Death of McLaughlin, 728 P.2d 337 (Colo. App. 1986); Banks v. Indus. Claim Appeals Office, 794 P.2d 1062 (Colo. App.

1990); Panera Bread, LLC v. Indus. Claim Appeals Office, 141 P.3d 970 (Colo. App. 2006).

So that the right to compensation for an injury exists when both the service being performed and the injury sustained shall arise out of and in the course of the employment. Indus. Comm'n v. Anderson, 69 Colo. 147, 169 P. 135 (1917); Indus. Comm'n v. Rocky Mt. Fuel Co., 107 Colo. 226, 110 P.2d 654 (1941); Alexander Film Co. v. Indus. Comm'n, 136 Colo. 486, 319 P.2d 1074 (1957); Johnson v. Indus. Comm'n, 137 Colo. 591, 328 P.2d 384 (1958); Divilbiss v. Indus. Comm'n, 140 Colo. 452, 344 P.2d 1084 (1959); State Comp. Ins. Fund v. Walter, 143 Colo. 549, 354 P.2d 591 (1960); Silver Eng'r Works, Inc. v. Simmons, 180 Colo. 309, 505 P.2d 966 (1973).

Totality of the circumstances must be examined in each case to see whether there is a sufficient nexus between the employment and the injury so that it may be said that the accident occurred within the scope of employment. City & County of Denver Sch. Dist. No. 1 v. Indus. Comm'n, 196 Colo. 131, 581 P.2d 1162 (1978); Stewart v. United States, 716 F.2d 755 (10th Cir. 1982); Perry v. Crawford & Co., 677 P.2d 416 (Colo. App. 1983); Triad Painting Co. v. Blair, 812 P.2d 638 (Colo. 1991); Loveland Police Dept. v. Indus. Claim Appeals Office, 141 P.3d 943 (Colo. App. 2006).

Totality of circumstances in each case must be considered in determining whether injury arose out of and in the course of

employment. *Younger v. City & County of Denver*, 810 P.2d 647 (Colo. 1991).

A claim for compensation for mental impairment resulting from harassment by a co-worker may be compensable, even if the dispute does not center upon work-related issues, if the work brought the employees together and created the relation and conditions resulting in the dispute. *Moorhead Mach. & Boiler v. Del Valle*, 934 P.2d 861 (Colo. App. 1996).

In order to be compensable under the Workers' Compensation Act, an injury incurred by an employee must arise out of and in the course of the employee's employment. *Price v. Indus. Claim Appeals Office*, 919 P.2d 207 (Colo. 1996).

In workers' compensation law, the terms "in the course of" and "arising out of" are not synonymous. *Popovich v. Irlando*, 811 P.2d 379 (Colo. 1991); *Panera Bread, LLC v. Indus. Claim Appeals Office*, 141 P.3d 970 (Colo. App. 2006).

An activity arises out of and in the course of employment when it is sufficiently interrelated to the conditions and circumstances under which the employee generally performs his job functions that the activity may reasonably be characterized as an incident of employment, although the activity itself is not a strict employment requirement and does not confer an express benefit on the employer. *Price v. Indus. Claim Appeals Office*, 919 P.2d 207 (Colo. 1996).

Meaning of term "arise out of". To "arise out of" the employment, unmistakably

means that the cause of the accident was at all times "in" the employment. It could not come out of it, unless it was first in it. *Rocky Mt. Fuel Co. v. Kruzic*, 94 Colo. 398, 30 P.2d 868 (1934).

The expression "arising out of" refers to the origin or cause of the injury. *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976); *Kirk v. Smith*, 674 F. Supp. 803 (D. Colo. 1987); *Price v. Indus. Claim Appeals Office*, 908 P.2d 136 (Colo. App. 1995), *aff'd*, 919 P.2d 207 (Colo. 1996); *City of Northglenn v. Eltrich*, 908 P.2d 139 (Colo. App. 1995), *aff'd sub nom. Price v. Indus. Claim Appeals Office*, 919 P.2d 207 (Colo. 1996).

"Positional-risk" or "but for" test applies to determine whether injury "arises out of" employment when injury does not have inherent connection with employment. *Stamper v. Hiteshew*, 797 P.2d 784 (Colo. App. 1990).

When the cause of an employee's fall is truly unknown, it can be compensable as "arising out of" employment under the "but for" test. This test provides that an injury arises out of employment if it would not have occurred but for the conditions and obligations of employment. *City of Brighton v. Rodriguez*, 2014 CO 7, 318 P.3d 496.

City of Brighton v. Rodriguez test properly applied regardless of whether the case is described as one involving an unexplained fall or an unexplained injury. *King Soopers v. Indus. Claim Appeals Office*, 2023 COA 73, 538 P.3d 347.

Factual question existed as to whether sexual assault on female employee by employer "arose out of" employment, making injury compensable and employer accordingly immune from suit. *Stamper v. Hiteshew*, 797 P.2d 784 (Colo. App. 1990).

Except in the most unusual cases, acts of harassment are highly personal and fall into the category of inherently private assaults that do not arise from employment. As a matter of policy, sexual harassment is not a risk inherently connected to the employment relationship. Therefore, sexual harassment claims are not barred by the exclusive remedy provisions of the Workers' Compensation Act. *Horodyskyj v. Karanian*, 32 P.3d 470 (Colo. 2001).

"Arises out of and in the course of an employee's employment" means that there must be a nexus between a claimant's injury and his conditions of employment. There is no requirement that the conditions of employment be the direct cause of the event that caused the injury. *Ramsdell v. Horn*, 781 P.2d 150 (Colo. App. 1989).

An injury may be connected with the employment and therefore may arise out of that employment if the employee's work places him in a position in which he ultimately sustains that injury, even though the direct cause of that injury is not employment-related. To be considered an employment hazard for this purpose, the employment condition must not be a ubiquitous one; it must be a special hazard not generally encountered. There is general agreement that an employee who works at a height above ground is subjected to a special

hazard. *Ramsdell v. Horn*, 781 P.2d 150 (Colo. App. 1989).

Test is whether acts of employee at time of injury were solely for his own benefit, not whether the benefits to the employer are incidental or primary; if the acts were for his sole benefit, then his injury does not arise out of his employment. *Brogger v. Kezer*, 626 P.2d 700 (Colo. App. 1980); *Kater v. Indus. Comm'n*, 728 P.2d 746 (Colo. App. 1986).

Thus, accident "arises out of" employment where there is a causal connection between work conditions and injury. *Gates Rubber Co. v. Indus. Comm'n*, 112 Colo. 480, 150 P.2d 301 (1944); *J. W. Metz Lumber Co. v. Taylor*, 134 Colo. 249, 302 P.2d 521 (1956); *Indus. Comm'n v. London & Lancashire Indem. Co.*, 135 Colo. 372, 311 P.2d 705 (1957); *Indus. Comm'n v. Havens*, 136 Colo. 111, 314 P.2d 698 (1957); *Claimants in re Death of Bennett v. Durango Furn. Mart*, 136 Colo. 529, 319 P.2d 494 (1957); *Miller v. Denver Post, Inc.*, 137 Colo. 61, 322 P.2d 661 (1958); *Indus. Comm'n v. Johnson Pontiac, Inc.*, 140 Colo. 160, 344 P.2d 186 (1959); *Wesco Elec. Co. v. Shook*, 143 Colo. 382, 353 P.2d 743 (1960); *State Comp. Ins. Fund v. Walter*, 143 Colo. 549, 354 P.2d 591 (1960); *Martin Marietta Corp. v. Faulk*, 158 Colo. 441, 407 P.2d 348 (1965); *Younger v. City & County of Denver*, 810 P.2d 647 (Colo. 1991); *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

An injury arises out of employment when it has its origin in an employee's work-related functions and is sufficiently

related thereto as to be considered part of the employee's service to the employer in connection with the contract of employment. *Popovich v. Irlando*, 811 P.2d 379 (Colo. 1991); *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991); *Madden v. Mtn. W. Fabricators*, 977 P.2d 861 (Colo. 1999); *Panera Bread, LLC v. Indus. Claim Appeals Office*, 141 P.3d 970 (Colo. App. 2006).

Incident leading to claimant's injury arose out of claimant's employment as a matter of law where the entire incident occurred on the employer's premises, the parties were brought into contact through their employment, and the only alleged source of the animosity giving rise to the incident was events occurring as a result of the claimant's employment. *Ventura v. Albertson's, Inc.*, 856 P.2d 35 (Colo. App. 1992).

If travel is a substantial part of the employee's service to the employer, then it is sufficient by itself to demonstrate a causal connection between the employee's scope of employment and the injury. *Staff Adm'rs, Inc. v. Reynolds*, 977 P.2d 866 (Colo. 1999).

Driving to work does not generally qualify as service "arising out of and in the course of" employment. Whether travel qualifies as such service depends upon the context of the employment. The court should consider the following variables when determining whether travel qualifies as such service: (1) Whether the travel occurred during working hours; (2) whether the travel occurred on or off the employer's premises; (3) whether the travel was contemplated by the employment contact; and (4) whether the obligations of conditions

of employment created a "zone of special danger" out of which the injury arose. *Madden v. Mtn. W. Fabricators*, 977 P.2d 861 (Colo. 1999).

Injuries sustained in car accident which resulted from claimant's epileptic seizure are compensable because claimant's employment subjected her to the additional risk of vehicular travel and she was driving with the knowledge and permission of both her doctor and employer. *Nat'l Health Labs. v. Indus. Claim Appeals Office*, 844 P.2d 1259 (Colo. App. 1992).

Injuries that result from discharge do not arise until after the employment relationship is terminated. Thus, they do not arise out of or in the course of employment and therefore are not barred by the act. *Smith v. Colo. Interstate Gas Co.*, 777 F. Supp. 854 (D. Colo. 1991); *Golightly-Howell v. OCAW Intern. Union*, 806 F. Supp. 921 (D. Colo. 1992) (decided under former § 8-52-102 prior to the 1990 repeal and reenactment of the Workers' Compensation Act).

On the other hand, the term "in the course of" relates more particularly to the time, place, and circumstances under which the injury occurred. *Indus. Comm'n v. London & Lancashire Indem. Co.*, 135 Colo. 372, 311 P.2d 705 (1957); *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976); *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

The term "in the course of" refers to the time, place, and activity at the time of the injury. *Kirk v. Smith*, 674 F. Supp. 803 (D. Colo. 1987).

For an injury to be found as occurring within the "course of employment", it must be established that the injury occurred both within the time and place limits of the employment relationship and during an activity that had some connection with the employee's job-related functions. *Popovich v. Irlando*, 811 P.2d 379 (Colo. 1991); *Panera Bread, LLC v. Indus. Claim Appeals Office*, 141 P.3d 970 (Colo. App. 2006).

The "course of employment" requirement is satisfied when it is shown that the injury occurred within the time and place limits of the employment relation and during an activity that had some connection with the employee's job-related functions. An injury "arises out of" employment when it has its origin in an employee's work-related functions and is sufficiently related thereto as to be considered part of the employee's service to the employer in connection with the contract of employment. *Popovich v. Irlando*, 811 P.2d 379 (Colo. 1991); *Wild W. Radio, Inc. v. Indus. Claim Appeals Office*, 905 P.2d 6 (Colo. 1995).

The course of employment requirement is satisfied when it is shown that the injury occurred within the time and place limits of the employment relation and during an activity that had some connection with the employee's job-related functions. *Popovich v. Irlando*, 811 P.2d 379 (Colo. 1991); *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

Although employer was aware of employee's propensity to seizures, that does not per se establish that the injuries he

suffered as a result of a seizure occurring at work arose from the employment. *Gates Rubber Co. v. Indus. Comm'n*, 705 P.2d 6 (Colo. App. 1985).

A regulation cannot make that which is clearly not incident to employment fall within the course of employment. *Rogers v. Indus. Comm'n*, 40 Colo. App. 313, 574 P.2d 116 (1978).

Consequently, "arising out of" and "in the course of" are not synonymous, so that a claimant must meet both requirements where, as under the workmen's compensation act, the conditions are conjunctive. *Indus. Comm'n v. London & Lancashire Indem. Co.*, 135 Colo. 372, 311 P.2d 705 (1957); *Younger v. City & County of Denver*, 810 P.2d 647 (Colo. 1991).

The terms "arising out of" and "in the course of" are not interchangeable. An injury "arises out of" employment when it both has its origin in an employee's work-related functions and is sufficiently related to those functions such that it can be said to be part of the employee's service to the employer in connection with the contract of employment. *Popovich v. Irlando*, 811 P.2d 379 (Colo. 1991).

Employer's personal delivery of paycheck and termination notice to employee at home, while employee was on sick leave and not performing services, "arose out of" but was not "in the course of" employment. *Archer v. Farmer Bros. Co.*, 70 P.3d 495 (Colo. App. 2002), *aff'd* on other grounds, 90 P.3d 228 (Colo. 2004).

The term "course of employment" refers to the time, place, and circumstances under which the injury occurred while an injury "arises out of employment" when the injury has its origin in work-related functions. *L.E.L. Const. v. Goode*, 849 P.2d 876 (Colo. App. 1992).

To come within the classification of "course of conduct", it must be shown that such conduct is such a continuous practice as to constitute a regular course of conduct. An occasional instance does not establish such a custom, because the proof of such a custom must be clear and convincing as to duration. *Aetna Cas. & Sur. Co. v. Indus. Comm'n*, 127 Colo. 225, 255 P.2d 961 (1953).

Whether horseplay is a deviation from employment is determined by a four-part test: (1) The extent and seriousness of the deviation; (2) the completeness of the deviation; (3) the extent to which the practice of horseplay had become an accepted part of the employment; and (4) the extent to which the nature of the employment may be expected to include some horseplay. *Lori's Fam. Din., Inc. v. Indus. Claim Appeals Office*, 907 P.2d 715 (Colo. App. 1995).

It is unnecessary to prove all four parts of the test to determine deviation; rather the four-part test serves merely as an objective method of analysis. The third and fourth parts of the test may be viewed merely as specific methods of proving that a claimant's actions became part of the employment. *Panera Bread, LLC v. Indus. Claim Appeals Office*, 141 P.3d 970 (Colo. App. 2006).

Compensability is not precluded for an isolated incident of horseplay if the incident does not constitute a substantial deviation from the general course of employment. *Panera Bread, LLC v. Indus. Claim Appeals Office*, 141 P.3d 970 (Colo. App. 2006).

If at the time of the injury the employee was doing what he expressly or impliedly was directed by his superiors to do, and the latter were vested with the authority to give him directions, then he was acting within the course of his employment. *Walsh v. Indus. Comm'n*, 34 Colo. App. 371, 527 P.2d 1180 (1974).

Application of positional-risk test proper to determine whether employee, in course of employment, was reasonably required to be at a particular place at a particular time and met with a neutral force which is neither personal to the injured employee nor distinctly associated with the employment. *Younger v. City & County of Denver*, 810 P.2d 647 (Colo. 1991).

Employer directions to employees for purposes of determining compensability. Such directions fall into one of two categories: (1) Those which limit the sphere of the employment relationship; or (2) those which simply regulate the employee's conduct while he is engaged in such employment. A general directive disclosing no intent to cause employment cessation for violation of the directive, without any other evidence of the purpose or effect of the direction upon claimant's general employment responsibilities, is insufficient to allow the conclusion that the direction

limited the sphere of claimant's employment. *Ramsdell v. Horn*, 781 P.2d 150 (Colo. App. 1989).

Injury while performing acts for mutual benefit of employer and employee.

An injury suffered by an employee while performing acts for the mutual benefit of the employer and the employee is usually compensable. *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976).

When some advantage to an employer results from the employee's conduct, his act cannot be regarded as purely personal and wholly unrelated to employment. *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976).

Emergency or rescue activity is within course of employment if the employer has an interest in the rescue. *Tri-State Commodities, Inc. v. Stewart*, 689 P.2d 712 (Colo. App. 1984).

But the employee need not necessarily be engaged in the actual performance of work at the moment of injury in order to be entitled to compensation. It is enough if he is upon his employer's premises occupying himself consistently with his contract of hire in some manner pertaining to or incidental to his employment. *Univ. of Denver v. Nemeth*, 127 Colo. 385, 257 P.2d 423 (1953); *Divelbiss v. Indus. Comm'n*, 140 Colo. 452, 344 P.2d 1084 (1959); *Packaging Corp. of Am. v. Roberts*, 169 Colo. 316, 455 P.2d 652 (1969).

The mere fact that the injury befell the claimant at the moment when he was not performing labor for his employer does not

necessarily prove that the accident did not arise out of or in the course of the employment. *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976).

Mutual benefit doctrine may apply to claims involving union activity. Claimant, a union officer, was injured in the employer's parking lot after leaving a union meeting held at the employer's premises. Although union activities are generally not considered acts that mutually benefit the employee and employer, claimant's involvement at the union meeting benefitted herself and the employer because the union meeting involved discussions about a new collective bargaining agreement being negotiated between the union and the employer. Therefore, claimant's injuries were compensable. *Pueblo County v. Indus. Claim Appeals Office*, 2017 COA 74, 413 P.3d 348.

Injuries that occur off the work premises while employee is on a paid break raise the issues whether the employer retained control during the break period and whether the activity giving rise to the injuries constituted a deviation from employment so substantial as to remove it from the employment relationship. *Roache v. Indus. Comm'n*, 729 P.2d 991 (Colo. 1986).

Factors to be considered are duration of break, whether employment contract provides for break, whether break is a paid interval, whether off-premises location is close to employment site, whether employer permits off-premises breaks, and whether there are limitations on where employees go

during break. *Roache v. Indus. Comm'n*, 729 P.2d 991 (Colo. 1986).

Where employee injured at convenience store, one block from work site, during a paid break, injuries arose out of and in the course of employment where employees were expressly permitted to go to such store because there were no vending machines or cafeteria on the employment premises. *Roache v. Indus. Comm'n*, 729 P.2d 991 (Colo. 1986).

Mere presence of company vehicle in driveway of employee's relative's home did not bring injury within the "course of employment" for purposes of this section. *Archer v. Farmer Bros. Co.*, 70 P.3d 495 (Colo. App. 2002), *aff'd* on other grounds, 90 P.3d 228 (Colo. 2004).

In order to determine whether an injury suffered by an employee while engaging in an exercise program is compensable under the Workers' Compensation Act, a court should look at the following factors: (1) Whether the injury occurred during working hours; (2) whether the injury occurred on the employer's premises; (3) whether the employer initiated the employee's exercise program; (4) whether the employer exerted any control or direction over the employee's exercise program; and (5) whether the employer stood to benefit from the employee's exercise program. *Price v. Indus. Claim Appeals Office*, 919 P.2d 207 (Colo. 1996).

A second injury sustained by a claimant during a trip to obtain medical care or rehabilitation for a compensable injury is compensable. Because an

employer is required to provide medical treatment and an injured employee is required to submit to it, a trip to the doctor's office becomes an implied part of the employment contract. *Excel v. Indus. Claim Appeals Office*, 860 P.2d 1393 (Colo. App. 1993); *Turner v. Indus. Claim Appeals Office*, 111 P.3d 534 (Colo. App. 2004).

The "quasi-course of employment doctrine" has been utilized to extend liability to subsequent injuries incurred in certain activities that take place outside the time and space limits of normal employment and would not be considered employment activities for usual purposes. Liability is extended because these activities would not have been undertaken but for the compensable injury and are an implied part of the employment contract. *Schrieber v. Brown & Root, Inc.*, 888 P.2d 274 (Colo. App. 1993).

There was no error in the panel's conclusion that as a matter of law claimant was not entitled to benefits under the "quasi-course of employment doctrine" for injuries sustained during a trip to an unauthorized treatment provider since, although the trip may have been reasonable, it was not an implied condition or expectation of the claimant's employment. *Schrieber v. Brown & Root, Inc.*, 888 P.2d 274 (Colo. App. 1993).

If the injury arises from something incident to the employment. *Univ. of Denver v. Nemeth*, 127 Colo. 385, 257 P.2d 423 (1953); *State Comp. Ins. Fund v. Coleman*, 155 Colo. 82, 392 P.2d 598 (1964).

Thus, injury comes within course of employment where, but for hazard of occupation, injury would not have happened. Indus. Comm'n v. Irvine, 72 Colo. 573, 212 P. 829 (1923); Ellerman v. Indus. Comm'n, 73 Colo. 20, 213 P. 120 (1923); Indus. Comm'n v. Colo. Fuel & Iron Corp., 135 Colo. 307, 310 P.2d 717 (1957); Alexander Film Co. v. Indus. Comm'n, 136 Colo. 486, 319 P.2d 1074 (1957).

Even if risk or hazard is external to the employment. Indus. Comm'n v. London & Lancashire Indem. Co., 135 Colo. 372, 311 P.2d 705 (1957).

But where an employee is injured during a period of departure from his employment activities, he is not within the coverage and protection of the act. Gen. Plant Prot. Corp. v. Indus. Comm'n, 146 Colo. 191, 361 P.2d 138 (1961); Employers' Liab. Assurance Corp. v. Indus. Comm'n, 147 Colo. 309, 363 P.2d 646 (1961).

And where workman disobeys a rule or order limiting the sphere of employment, he cannot recover compensation. Indus. Comm'n v. Funk, 68 Colo. 467, 191 P. 125 (1920); Fouquet v. State Comp. Ins. Fund, 144 Colo. 240, 355 P.2d 943 (1960).

But may recover if the rule deals only with his conduct within the sphere of his employment. Indus. Comm'n v. Funk, 68 Colo. 467, 191 P. 125 (1920); Pac. Employers' Ins. Co. v. Kirkpatrick, 111 Colo. 470, 143 P.2d 267 (1943).

And an employee does not step from the course of his employment when he allows one not an employee to drive a truck

on a mission for the employer but is at the time in the course of his employment. W. Cas. & Sur. Co. v. Swort, 134 Colo. 421, 306 P.2d 661 (1957).

Furthermore, an employee is not entitled to compensation for a later accident due to an efficient intervening cause not arising out of and in course of employment. Post Printing & Publ'g Co. v. Erickson, 94 Colo. 382, 30 P.2d 327 (1934).

But if subsequent accident is attributed to the prior accident, it is compensable. Any subsequent natural development of an industrial injury, uninfluenced by an independent intervening cause, resulting in additional disability of an employee, should be attributed to the original accident and compensation awarded therefor. Post Printing & Publ'g Co. v. Erickson, 94 Colo. 382, 30 P.2d 327 (1934); Standard Metals Corp. v. Ball, 172 Colo. 510, 474 P.2d 622 (1970).

Injuries incurred in act of discharge. The act of discharging an employee is an integral part of the employment relationship, making injuries arising out of discharge casually connected to that employment. Alpine Roofing Co. v. Dalton, 36 Colo. App. 315, 539 P.2d 487 (1975).

Injuries within reasonable time of termination. Injuries incurred by an employee while leaving the premises, collecting pay, or getting his clothes or tools within a reasonable time after termination of the employment are within the course of employment, since they are normal incidents of the employment relation. Alpine Roofing

Co. v. Dalton, 36 Colo. App. 315, 539 P.2d 487 (1975).

Claimant's injuries arose in the course of his employment where he had been discharged several minutes prior to an assault. Alpine Roofing Co. v. Dalton, 36 Colo. App. 315, 539 P.2d 487 (1975).

Acts of self-ministration held within scope of employment. Acts of self ministration, such as eating, obtaining lodging, and going to and from those places have been held incidental to and within the scope of employment of an employee required to be away from home on behalf of his employer. Archer Freight Lines v. Horn Transp., Inc., 32 Colo. App. 412, 514 P.2d 330 (1973).

Acts reasonably necessary for the employee's health are within the course of employment. Acts of ministration by a servant to himself, such as quenching his thirst, relieving his hunger, and protecting himself from excessive cold, performance of which while at work are reasonably necessary to his health and comfort, are incidents to his employment and acts of service therein within the workmen's compensation acts, though they are only indirectly conducive to the purpose of the employment. Consequently, no break in the employment is caused by the mere fact that the workman is ministering to his personal comforts or necessities, as by warming himself, or seeking shelter, or by leaving his work to relieve nature, or to procure a drink, refreshments, food, or fresh air, or to rest in the shade. Ocean Accident & Guar. Corp. v. Pallaro, 66 Colo. 190, 180 P. 95 (1919);

Employers' Mut. Ins. Co. v. Indus. Comm'n, 76 Colo. 84, 230 P. 394 (1924); Pub. Serv. Co. v. Indus. Comm'n, 80 Colo. 206, 249 P. 1094 (1926); Warner Constr. Co. v. Watkins, 107 Colo. 88, 108 P.2d 883 (1940); Indus. Comm'n v. Golden Cycle Corp., 126 Colo. 68, 246 P.2d 902 (1952); Univ. of Denver v. Nemeth, 127 Colo. 385, 257 P.2d 423 (1953); Divelbiss v. Indus. Comm'n, 140 Colo. 452, 344 P.2d 1084 (1959); Game & Fish Dept. v. Pardoe, 147 Colo. 363, 363 P.2d 1067 (1961); Silver Eng'r Works, Inc. v. Simmons, 30 Colo. App. 396, 495 P.2d 246 (1972).

Therefore, an injury while eating lunch on the premises of an employer is compensable. Employers' Mut. Ins. Co. v. Indus. Comm'n, 76 Colo. 84, 230 P. 394 (1924); Warner Constr. Co. v. Watkins, 107 Colo. 88, 108 P.2d 883 (1940); Indus. Comm'n v. Golden Cycle Corp., 126 Colo. 68, 246 P.2d 902 (1952); Divelbiss v. Indus. Comm'n, 140 Colo. 452, 344 P.2d 1084 (1959).

Because courts generally have been liberal in protecting workers during the noon hour if the injury occurs while the worker is doing what a person may reasonably do within a time during which the person is employed and at a place where he may reasonably be at that time. Indus. Comm'n v. Golden Cycle Corp., 126 Colo. 68, 246 P.2d 902 (1952).

Trips to and from a meal. Injuries sustained by teacher who leaves his place of employment to go to a restaurant to eat during his lunch hour are compensable under workmen's compensation act where

the teacher was required to return to school that afternoon and there was no option of eating in the school cafeteria. *City & County of Denver Sch. Dist. No. 1 v. Indus. Comm'n*, 196 Colo. 131, 581 P.2d 1162 (1978).

But there must be a sufficient nexus between employment and injury. Off-premises lunchtime travel generally falls within the to and from work rule and is not compensable. For an injury occurring during such travel to fall within the scope of employment, there must be a sufficient nexus between the employment and the injury. *Perry v. Crawford & Co.*, 677 P.2d 416 (Colo. App. 1983).

Intentional wrongs are covered. Intentional wrongs arising out of the course of employment are covered under Colorado's compensation scheme. *Kandt v. Evans*, 645 P.2d 1300 (Colo. 1982); *Ventura v. Albertson's, Inc.*, 856 P.2d 35 (Colo. App. 1992).

Where employee was at a place where he might reasonably be at a time when he was employed doing what he might reasonably do, employee's injuries held to have occurred in the course of his employment. *Portofino Apts. v. Indus. Claim Appeals Office*, 789 P.2d 1117 (Colo. App. 1990).

If the work of an employee creates the necessity for travel, he is in the course of his employment when on the road, although he may at the same time be serving some purpose of his own, and if he is injured during such a trip he, or his dependents, are entitled to compensation. *O.P. Skaggs Co. v.*

Nixon, 101 Colo. 203, 72 P.2d 1102 (1937); *Aetna Cas. & Sur. Co. v. Indus. Comm'n*, 110 Colo. 422, 135 P.2d 140 (1943); *Alexander Film Co. v. Indus. Comm'n*, 136 Colo. 486, 319 P.2d 1074 (1957); *Lyttle v. State Comp. Ins. Fund*, 137 Colo. 212, 322 P.2d 1049 (1958); *Employers' Liab. Assurance Corp. v. Indus. Comm'n*, 147 Colo. 309, 363 P.2d 646 (1961); *State Comp. Ins. Fund v. Keane*, 160 Colo. 292, 417 P.2d 8 (1966); *Mohawk Rubber Co. v. Claimants in re Death of Cribbs*, 165 Colo. 526, 440 P.2d 785 (1968); *Pat's Power Tongs, Inc. v. Miller*, 172 Colo. 541, 474 P.2d 613 (1970); *Tatum-Reese Dev. Corp. v. Indus. Comm'n*, 30 Colo. App. 149, 490 P.2d 94 (1971); *Silver Eng'r Works, Inc. v. Simmons*, 30 Colo. App. 396, 495 P.2d 246 (1972); *Silver Eng'g Works, Inc. v. Simmons*, 180 Colo. 309, 505 P.2d 966 (1973).

But in determining whether the risks of travel are also risks of the employment the decisive test must be whether it is the employment or something else that has sent the traveler forth upon the journey or brought exposure of its perils. *Employers' Liab. Assurance Corp. v. Indus. Comm'n*, 147 Colo. 309, 363 P.2d 646 (1961); *Martin K. Eby Const. Co. v. Indus. Comm'n*, 151 Colo. 320, 377 P.2d 745 (1963); *Capital Chevrolet Co. v. Indus. Comm'n*, 159 Colo. 156, 410 P.2d 518 (1966).

When accident during employee's travel is within scope of employment. If an employee's travel is at the express or implied request of the employer, or if the travel confers a benefit on the employer beyond the sole fact of the employee's arrival, or if

the employer makes provisions for the employee's transportation, then any disability resulting from an accident during that travel is within the scope of employment. *Loffland Bros. v. Baca*, 651 P.2d 431 (Colo. App. 1982); *Staff Adm'rs, Inc. v. Reynolds*, 977 P.2d 866 (Colo. 1999).

In any event, when an employee is required to travel away from home, the activities covered by workmen's compensation are enlarged as the employee has no choice but to eat, sleep, and conduct all his other activities away from his home. *Silver Eng'r Works, Inc. v. Simmons*, 30 Colo. App. 396, 495 P.2d 246 (1972).

And the employer may not succeed in showing a deviation from the main objective while traveling by merely establishing that decedent's vehicle, at least momentarily, was proceeding in a direction opposite from his objective. *Employers' Liab. Assurance Corp. v. Indus. Comm'n*, 147 Colo. 309, 363 P.2d 646 (1961).

Where an employee, without express authority but with the intent of acting for the benefit of the employer, returned to his place of work after hours and was injured, his injury arose out of and in the course of his employment. *Maint. Mgt., Inc. v. Tinkle*, 40 Colo. App. 80, 570 P.2d 840 (1977).

When an employer does nothing more than fix an employee's general work time and the employer benefits from an employee's reasonable departure from schedule, he cannot argue that injuries sustained in the departure are not within the

course of employment. *Maint. Mgt., Inc. v. Tinkle*, 40 Colo. App. 80, 570 P.2d 840 (1977).

Industrial claim appeals office correctly determined that claimant's injury arose out of and in the course of employment where claimant's injury occurred while claimant, who worked on an "as needed" basis, was voluntarily assisting in a repair of a piece of heavy equipment which furthered the interest of the employer even though the injury occurred two hours after the claimant had been told that he was no longer required to work. *Butland v. Indus. Claim Appeals Office*, 754 P.2d 422 (Colo. App. 1988).

Travel to required meeting after normal working hours. Where claimant was attending an off-premises dinner meeting, after normal working hours, under at least the implied direction of her employer, and travel to and from the meeting was a necessity, these special circumstances justify the determination that claimant's injuries while returning from the meeting were compensable. *Dynalectron Corp. v. Indus. Comm'n*, 660 P.2d 915 (Colo. App. 1982).

Motorman asleep in car barn held to be acting within course of employment. *Taylor v. Saunders*, 71 Colo. 160, 204 P. 608 (1922).

As is a man who visits the home of another upon the instructions of his employer. *London Guarantee & Accident Co. v. McCoy*, 97 Colo. 13, 45 P.2d 900 (1935).

The same being true of a building foreman who starts to another locality to proceed with another building. Indus. Comm'n v. Aetna Life Ins. Co., 64 Colo. 480, 174 P. 589 (1918).

Or an employee who uses his own car to perform services for or at the direction of his employer remains in the course of his employment until he returns home. Indus. Comm'n v. Aetna Life Ins. Co., 88 Colo. 82, 292 P. 229 (1930); Driscoll Constr. Co. v. Indus. Comm'n, 94 Colo. 568, 31 P.2d 491 (1934); Elec. Mut. Liab. Ins. Co. v. Indus. Comm'n, 154 Colo. 491, 391 P.2d 677 (1964).

And police officer's injury arises out of and in course of city employment even though also employed by bank. The city employed an officer to enforce the law and authorized him to make arrests. His place of work was the entire territory within the municipal boundaries of the city. The officer was on duty at all times when he was performing the duties required by his employment. At the time of the accident, he was in his official uniform and was attempting to arrest a suspected bank robber in a public street. The accident in which the officer was injured was therefore one arising out of and in the course of his employment by the city, and he is therefore entitled to compensation as a city employee. The officer's claim to compensation is not defeated because he was also employed by the bank as a guard at the time of the accident. Dore v. City & County of Denver, 28 Colo. App. 324, 474 P.2d 190 (1970).

Injury to newsboy while storing bicycle on publishing company property. Where claimant was obligated to deliver all of his assigned newspapers within the two to three hour time span following his release from school and 6:00 p.m.; a bicycle was a necessary aid in the performance of his job-related activities, and the owner of the publishing company approved claimant's storing his bicycle during school hours on company property after acts of vandalism had occurred on the school grounds, claimant's injury, suffered while storing his bicycle, arose out of and occurred in the course of his employment and was compensable. Deterts v. Times Publ'g Co., 38 Colo. App. 48, 552 P.2d 1033 (1976).

Truck driver replacing old tires with new is within course of employment. Zelle v. Indus. Comm'n, 100 Colo. 116, 65 P.2d 1429 (1937).

As is employee compelled to live in house furnished by employer. State Comp. Ins. Fund v. Indus. Comm'n, 98 Colo. 563, 58 P.2d 759 (1936).

Or university student-employee injured while playing football. Univ. of Denver v. Nemeth, 127 Colo. 385, 257 P.2d 423 (1953).

Or coal miner whose eye was injured by a cinder from employer's locomotive. Hayden Coal Co. v. Cothran, 109 Colo. 203, 123 P.2d 1022 (1942).

And trauma resulting from fall on truck cab compensable. Indus. Comm'n v. Betz, 111 Colo. 401, 142 P.2d 389 (1943).

As is illness from tick bite. S. Colo. Power Co. v. Indus. Comm'n, 118 Colo. 186, 193 P.2d 885 (1948).

Or injuries resulting from vaccination or inoculation. Indus. Comm'n v. Messinger, 116 Colo. 451, 181 P.2d 816 (1947).

Where an employee on duty suffers an injury caused by the playful action of a fellow employee, in which the injured employee is not a participant, such injury arises out of and in the course of employment and is compensable under pertinent provisions of the workmen's compensation act. Gates Rubber Co. v. Indus. Comm'n, 112 Colo. 480, 150 P.2d 301 (1947); Indus. Comm'n v. Employers Cas. Co., 136 Colo. 396, 318 P.2d 216 (1957).

But where an employee while engaged in his usual employment was shot by another without any reason, as appeared by the record, it is held, under the disclosed facts, that the injury did not arise out of and in the course of the employment. Rocky Mt. Fuel Co. v. Kruzic, 94 Colo. 398, 30 P.2d 868 (1934).

There is no recovery where two employees step aside from their employment and indulge in gun play. McKnight v. Houck, 87 Colo. 234, 286 P. 279 (1930).

In addition, assaults by co-employees are not ordinarily considered as incidental to the employment and do not "arise out of employment". Wisdom v. Indus. Comm'n, 133 Colo. 266, 293 P.2d

967 (1956); Kirk v. Smith, 674 F. Supp. 803 (D. Colo. 1987).

However, injuries might be compensable if assault is reasonably anticipated. If an assault might reasonably be anticipated because of the general nature or character of the employment, then in some instances, controlled entirely by the facts presented, injuries received as a result thereof are compensable. Wisdom v. Indus. Comm'n, 133 Colo. 266, 293 P.2d 967 (1956).

But injuries compensable under the act include injuries arising from the intentional acts of a co-employee, as long as the requisite degree of job-relatedness is present. Bennett v. Furr's Cafeterias, Inc., 549 F. Supp. 887 (D. Colo. 1982).

Co-employee immunity for intentional wrongs is strictly limited to injuries sustained where both the tortfeasor and the victim are acting in the course of their employment. Kandt v. Evans, 645 P.2d 1300 (Colo. 1982); Triad Painting Co. v. Blair, 812 P.2d 638 (Colo. 1991).

Dispositive issue was whether employee was acting in course of her employment, and not whether assaulting employees were acting in course of their employment. Stuart v. Frederick R. Ross Inv. Co., 773 P.2d 1107 (Colo. App. 1988).

But where the sexual assault of an employee by a co-employee did not arise from animosity or dispute that is imported into employment from the employee's domestic or private life, the assault arose out of the course of her employment and,

therefore, worker's compensation was the exclusive remedy. In re Quest. Sub. by U.S. Ct. of Appeals, 759 P.2d 17 (Colo. 1988).

Injuries arising from assaults by co-employees have an inherent connection with employment conditions if they grow out of an argument over such conditions. In addition, even though the subject matter of the argument is a personal one, if it was the circumstance of their mutual employment that brought the participating employees together and created the relationship and condition that resulted in the dispute, any injuries are considered to be employment-related. *Banks v. Indus. Claim Appeal Office*, 794 P.2d 1062 (Colo. App. 1990); *Ventura v. Albertson's, Inc.*, 856 P.2d 35 (Colo. App. 1992).

On the other hand, if a dispute between co-employees relates solely to a personal matter between the combatants, not arising from the employment relationship, any injuries resulting from that dispute have no nexus to the combatants' employment, do not arise out of that employment, and are not, therefore, compensable. *Banks v. Indus. Claim Appeals Office*, 794 P.2d 1062 (Colo. App. 1990).

Inherently employment-related torts are those that have an inherent connection with employment and emanate from the duties of the job, while inherently private torts are those that originate in the private affairs of the claimant and tortfeasor and are unrelated to their respective employment functions. *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

For the purpose of the "arising out of employment" requirement of the workers' compensation act, assaults upon employees can be divided into three categories: (1) Those with an "inherent connection" to employment such as a dispute over performance, pay, or termination; (2) those stemming from "inherently private" disputes imported into the employment from the claimant's domestic or private life and not exacerbated by the employment; and (3) those resulting from a "neutral force" such as random assaults. In re Quest. Sub. by U.S. Ct. of Appeals, 759 P.2d 17 (Colo. 1988); *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

When the cause of an employee's fall is truly unknown, it necessarily arises from a "neutral risk". *City of Brighton v. Rodriguez*, 2014 CO 7, 318 P.3d 496.

An assault is compensable if it grew out of an argument over performance of work, possession of work tools or equipment, delivery of a paycheck, quitting or being terminated, or mediating between quarreling co-employees. In re Quest. Sub. by U.S. Ct. of Appeals, 759 P.2d 17 (Colo. 1988); *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

The workers' compensation act does not expressly authorize a defense against an initial aggressor in an altercation leading to an otherwise compensable injury. *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

Assault on employee by co-employee did not arise out of employment and

therefore employee's tort claim against employer for hiring a rapist was not subject to the exclusive remedies of the act. *Tolbert v. Martin Marietta Corp.*, 621 F. Supp. 1099 (D. Colo. 1985).

Where it appears that the plaintiff was specifically chosen as the victim in a sexual assault as a result of circumstances arising outside of the plaintiff's employment, the exclusivity provisions of the Workers' Compensation Act do not apply, and the dismissal of the plaintiff's common law claims is reversed. *Patel v. Thomas*, 793 P.2d 632 (Colo. App. 1990).

If plaintiff proves he was specifically targeted when subjected to racial and ethnic jokes, his tort claim will stand outside of the Workers' Compensation Act. *Mass v. Martin Marietta Corp.*, 805 F. Supp. 1530 (D. Colo. 1992).

Teacher's injuries allegedly sustained from reprimand, harassment, retaliatory demotion, and assault by her superintendent did not arise out of her employment and therefore tort action for recovery of damages was not barred by Colorado Workmen's Compensation Act. *Kirk v. Smith*, 674 F. Supp. 803 (D. Colo. 1987).

Employees' claims of outrageous conduct based on federal pregnancy discrimination and sexual harassment statutes did not arise out of their employment and therefore were not barred by the Colorado Worker's Compensation Act. *Donaldson v. Am. Banco Corp., Inc.*, 945 F. Supp. 1456 (D. Colo. 1996).

Injury not compensable where employee left his work at the request of a nine-year-old son of his employer. *Chaney v. Indus. Comm'n*, 120 Colo. 111, 207 P.2d 816 (1949).

Nor is injury sustained in submitting to blood test required by health regulation. *Indus. Comm'n v. Messinger*, 116 Colo. 451, 181 P.2d 816 (1947).

Injury in auto accident while returning from company baseball game does not arise out of employment. *Indus. Comm'n v. Murphy*, 102 Colo. 59, 76 P.2d 741 (1938).

But claimant is entitled to compensation where the claimant was required to play football in order to hold his job. *Divelbiss v. Indus. Comm'n*, 140 Colo. 452, 344 P.2d 1084 (1959).

Plaintiff's argument that he was reentering store as a customer rather than an employee when the altercation which resulted in plaintiff's injury occurred is unfounded. The fact that the employment premises were public and plaintiff could be an employee one minute and a customer the next was irrelevant because it is not the nature of the employment premises, but the nexus between the employment conditions and the injury, which is determinative. *Ventura v. Albertson's, Inc.*, 856 P.2d 35 (Colo. App. 1992).

The majority rule is that the courts will not look to the relative fault of the combatants to determine eligibility for receipt of benefits. If injuries occur as a result of a physical altercation between co-employees which stems from a dispute

having a substantial connection with their employment, the employees are entitled to compensation for such injuries, regardless of the identity of the party initiating the altercation. *Banks v. Indus. Claim Appeals Office*, 794 P.2d 1062 (Colo. App. 1990).

The injuries of an employee of a subcontractor are not rendered noncompensable for failure to satisfy the "arising out of employment" requirement simply because they were caused by an intentional act of a supervisor employed by the general contractor. *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

The fact that a claimant may overreact to an adverse condition of employment, or that the overreaction may stem from some unusual quality of the claimant's personality, does not alter the fact that the subject of that reaction had an inherent connection with employment. *Triad Painting Co. v. Blair*, 812 P.2d 638 (Colo. 1991).

Several variables determine by their presence or absence whether a particular recreational activity is within the scope of employment: Whether the activity occurred during working hours; whether it was on or off the employer's premises; whether participation was required; whether the employer took the initiative in sponsoring or organizing the team; whether the employer made contributions to the team; and whether the employer derived benefit from the team. *Lindsay v. Pub. Serv. Co.*, 146 Colo. 579, 362 P.2d 407 (1961); *Murphey v. Marquez*, 155 Colo. 89, 393 P.2d 553 (1964); *City & County of Denver v. Lee*, 168 Colo. 208, 450 P.2d 352 (1969).

Question of whether an employee who is injured while engaging in a job-related recreational activity is within the course of his employment determined by: (1) Whether the activity occurred during working hours; (2) whether it was on the employer's premises; (3) whether participation was required; (4) whether the employer took the initiative in sponsoring the recreational activity. *Dorsch v. Indus. Comm'n*, 185 Colo. 219, 523 P.2d 458 (1974).

Where the employer's principal business is recreation, the weight of authority holds that the following test should be applied to determine whether the injured employee was in the course of employment: (1) The extent to which the employer derives substantial benefit from the policy—beyond the intangible value of improvement of employee morale; (2) the extent to which the recreational activity represents compensation for employment; (3) the extent to which the obligations of employment create the special danger which precipitates the injury; (4) whether the use of the recreational activity was an inducement for employment; (5) whether the use of the recreational facility was originally contemplated by the parties at the time of employment. *Dorsch v. Indus. Comm'n*, 185 Colo. 219, 523 P.2d 458 (1974).

Positional risk doctrine met. Where claimant's job placed her at a particular place at a particular time and the injury resulted from a neutral force, i.e., an attack which is neither personal to her nor distinctly associated with her employment, claimant met her burden of establishing that injury arose as a result of her employment.

White Star Linen v. Indus. Claim Appeals Office, 787 P.2d 189 (Colo. App. 1989).

Encounters with an armed assailant do not constitute facts and circumstances common to all fields of employment. White Star Linen v. Indus. Claim Appeals Office, 787 P.2d 189 (Colo. App. 1989).

Plaintiff's claims for damages for emotional distress are based on work-related acts of his program chiefs and his recovery is limited by the provisions of the workmen's compensation act. Calderon v. Martin Marietta Corp., 675 F. Supp. 1279 (D. Colo. 1987).

Workers' compensation act is sole remedy for plaintiff's claim for intentional infliction of emotional distress, where the conduct cited in support of the claim relates to disciplinary measures imposed by her employer to prevent her from tending to personal matters during work. Smith v. Colo. Interstate Gas Co., 794 F. Supp. 1035 (D. Colo. 1992).

The language in subsection (2)(c) requiring that stress-related claims not be based upon facts and circumstances that are common to all fields of employment does not bar as a matter of law all claims arising out of a common work condition; rather compensability depends upon the particular facts and circumstances of each case. Holme, Roberts, & Owen v. Indus. Claim Appeals Office, 800 P.2d 1332 (Colo. App. 1990).

Employee's sudden job demotion was not based upon circumstances which are common to all fields of employment;

therefore, claim arising out of job demotion was not barred. Holme, Roberts, & Owen v. Indus. Claim Appeals Office, 800 P.2d 1332 (Colo. App. 1990).

Mental health impairment caused by multiple employment stressors, some of which were common to all fields of employment, was not compensable. Trujillo v. Indus. Claim Appeals Office, 957 P.2d 1052 (Colo. App. 1998).

Psychological illness arising from work stress associated with harassment by co-workers is eligible for compensation. When mental illness primarily results from harassment at work, benefits will be awarded. Pub. Serv. of Colo. v. Indus. Claim Appeals Office, 68 P.3d 583 (Colo. App. 2003).

Heart attack not compensable where it follows activity not required by position. A fatal heart attack to dean of law school following preparation and delivery of speech at banquet of legal fraternity of which he was province president, which activity was not a requirement of his position as dean of law school, was not compensable as accident arising out of and in the course of his employment. Univ. of Denver v. Johnston, 151 Colo. 465, 378 P.2d 830 (1963).

And heart attack not "arising out of employment" not compensable even if "arising in course of employment". Coors Porcelain Co. v. Grenfell, 109 Colo. 39, 121 P.2d 669 (1942).

No recovery where deputy water commissioner is killed by gun carried for

own sport. State Comp. Ins. Fund v. Russell, 105 Colo. 274, 96 P.2d 846 (1939).

Nor when employee injured by slipping on soap in bath house maintained by employer for employees. Indus. Comm'n v. Rocky Mt. Fuel Co., 107 Colo. 226, 110 P.2d 654 (1941).

Nor when salesman injured while hunting with employees of customer. Aetna Cas. & Sur. Co. v. Indus. Comm'n, 127 Colo. 225, 255 P.2d 961 (1953).

Concrete floor held not to be a special hazard of employment. Gates Rubber Co. v. Indus. Comm'n, 705 P.2d 6 (Colo. App. 1985).

Trial court was not bound by the findings and conclusions of ALJ and Panel where there was no substantial evidence to support that employer's system of rotating credit union employees was a common practice in credit union industry, much less a practice common to all fields of employment. Peterson v. ENT Fed. Credit Union, 827 P.2d 621 (Colo. App. 1992) (decided under law in effect prior to 1991 amendment).

Since the language providing that a mental impairment is not compensable if, inter alia, it results from a job transfer, was absent from subsection (2)(a) prior to the 1991 changes by the general assembly, it is reasonable to conclude that the general assembly did not intend to preclude benefits for all job transfers occurring before the 1991 amendment took effect. Peterson v. ENT Fed. Credit Union, 827 P.2d 621 (Colo.

App. 1992) (decided under law in effect prior to 1991 amendment).

For purposes of subsection (2)(c), it is not necessary to logically tie stress producing incidents to a particular line of work. City Market, Inc. v. Indus. Claim Appeals Office, 800 P.2d 1335 (Colo. App. 1990).

Where claimant's work-related stress occurred as a result of smoking restrictions imposed by the employer, claimant failed to satisfy the requirements of subsection (2) because the evidence was sufficient to show that smoking restrictions are common in today's workplace and that the restriction at issue was not imposed in a manner which was arbitrary, unreasonable, or in bad faith. Riddle v. Ampex Corp., 839 P.2d 489 (Colo. App. 1992).

A suicide attempt that is causally related to an industrial injury is compensable. A self-destructive act is deemed unintentional if the effects of the industrial injury are the cause of a mental condition sufficient in magnitude to impair the ability to resist suicidal impulses or to cause an injured worker to commit self-destructive acts without knowingly intending to end his or her life. Dependable Cleaners v. Vasquez, 883 P.2d 583 (Colo. App. 1994).

The language "intentionally self-inflicted" cannot be read so broadly that it encompasses injuries resulting from grossly negligent or reckless behavior. Triad Painting Co. v. Blair, 812 P.2d 638 (Colo. 1991).

Applied in Pittman Motors, Inc. v. Indus. Comm'n, 156 Colo. 218, 399 P.2d 784 (1964).

B. Employee Going to and from Work.

In the absence of special circumstances there is no recovery for injury while employee is on his way to or from work. Indus. Comm'n v. Anderson, 69 Colo. 147, 169 P. 135 (1917); State Comp. Ins. Fund v. Indus. Comm'n, 89 Colo. 426, 3 P.2d 414 (1931); State Comp. Ins. Fund v. Walter, 143 Colo. 549, 354 P.2d 591 (1960); J. C. Carlile Corp. v. Antaki, 162 Colo. 376, 426 P.2d 549 (1967); Indus. Comm'n v. Lavach, 165 Colo. 433, 439 P.2d 359 (1968); Sieck v. Trueblood, 29 Colo. App. 432, 485 P.2d 134 (1971); Mineral County v. Indus. Comm'n, 649 P.2d 728 (Colo. App. 1982); Staff Adm'rs v. Indus. Claim Appeals Office, 958 P.2d 509 (Colo. App. 1997), aff'd, 977 P.2d 866 (Colo. 1999).

An employee injured while traveling to or from work is generally not entitled to compensation; however, this rule is subject to exception when special circumstances bring the accident within the course of employment. Colo. Civil Air Patrol v. Hagans, 662 P.2d 194 (Colo. App. 1983); Perry v. Crawford & Co., 677 P.2d 416 (Colo. App. 1983); Varsity Contractors & Home Ins. Co. v. Baca, 709 P.2d 55 (Colo. App. 1985).

The mere presence of the injured employee on the employer's premises is, without more, insufficient to invoke the bar of this section. Stewart v. United States, 716 F.2d 755 (10th Cir. 1982).

Off-premises injuries are not compensable if employees have fixed hours of employment and the injury takes place while going "to or from" work. Walsh v. Indus. Comm'n, 34 Colo. App. 371, 527 P.2d 1180 (1974).

As a general rule, injuries received by an employee off the employer's premises are not compensable when such injuries occur after the fixed hours of employment and in the course of going to or coming from work. Woodruff World Travel, Inc. v. Indus. Comm'n, 38 Colo. App. 92, 554 P.2d 705 (1976); Colo. Civil Air Patrol v. Hagans, 662 P.2d 194 (Colo. App. 1983); Varsity Contractors & Home Ins. Co. v. Baca, 709 P.2d 55 (Colo. App. 1985).

Accident while employee was on way to work arose out of and was in course of employment where employer agreed to provide or pay for worker's transportation, and where worker was killed while using vehicle strictly for business purposes in direct route to his job accompanied by evidence that worker's home and vehicle had become part of his workplace. Monolith Portland Cement v. Burak, 772 P.2d (Colo. App. 1989).

If travel is a substantial part of the employee's service to the employer, then it is sufficient by itself to demonstrate a causal connection between the employee's scope of employment and the injury. Staff Adm'rs, Inc. v. Reynolds, 977 P.2d 866 (Colo. 1999).

One of the exceptions to the "coming and going rule" is that where an employee is in a travel status, as distinguished from simply going to and from

work, he is normally within the course of his employment from the time he leaves his home until he returns to it. *Tatum-Reese Dev. Corp. v. Indus. Comm'n*, 30 Colo. App. 149, 490 P.2d 94 (1971).

Accident occurred within the scope of employment when employee was traveling between job assignments for the employer. Because of the nature of the employment of a home health aide, the travel between assignments conferred a benefit on employer beyond the mere fact of the employee's arrival at work, and there is a sufficient nexus between the employee's injury and her employment to determine as a matter of law that the accident occurred within the scope of employment. *Benson v. Colo. Comp. Ins. Auth.*, 870 P.2d 624 (Colo. App. 1994).

Recovery allowed when employee was required to use her automobile to meet with clients during work day. *Whale Commc'ns v. Osborn*, 759 P.2d 848 (Colo. App. 1988).

And employer and employee may agree to continue employment relation while going to and from work. An employer may agree with an employee, either expressly or impliedly, that the relationship of employer and employee shall continue during the period of coming and going to and from his place of employment; in such case the employee is entitled to protection of the compensation act during that period, and such agreement may be inferred from the fact that the employee is compensated for the time consumed in traveling to and from work. *Martin K. Eby Constr. Co. v. Indus. Comm'n*, 151 Colo. 320, 377 P.2d 745

(1963); *Nelson v. Harding*, 29 Colo. App. 76, 480 P.2d 851 (1970); *Sieck v. Trueblood*, 29 Colo. App. 432, 485 P.2d 134 (1971).

An employer may agree, expressly or impliedly, that the employment relation shall continue during the period of coming to and going from work. *Colo. Civil Air Patrol v. Hagans*, 662 P.2d 194 (Colo. App. 1983).

"Special circumstances" may give rise to benefits under the workmen's compensation law even though the workman has "put down his tools" and is in the act of leaving the premises of his employer. *State Comp. Ins. Fund v. Walter*, 143 Colo. 549, 354 P.2d 591 (1960).

If special circumstances surrounding the employee's injury reflect a causal connection between the conditions under which the work is to be performed and the resulting off-premises injury, compensation is proper. *Woodruff World Travel, Inc. v. Indus. Comm'n*, 38 Colo. App. 92, 554 P.2d 705 (1976); *Friedman's Mkt., Inc. v. Welham*, 653 P.2d 760 (Colo. App. 1982); *Perry v. Crawford & Co.*, 677 P.2d 416 (Colo. App. 1983).

An injury arises out of and in the course of employment even though incurred on the way to work if special circumstances create a causal connection between the employee's injury and employment. *Stewart v. United States*, 716 F.2d 755 (10th Cir. 1982); *Staff Adm'rs v. Indus. Claim Appeals Office*, 958 P.2d 509 (Colo. App. 1997), *aff'd*, 977 P.2d 866 (Colo. 1999).

Special hazards on normal route may become hazards of employment. Where an

off-premises injury occurs at a point which lies on the only route, or at least on the normal route, which employees must traverse to reach their employer's premises, special hazards of that route become hazards of the employment. *Friedman's Mkt., Inc. v. Welham*, 653 P.2d 760 (Colo. App. 1982).

Such as railroad crossings. Railroad crossings and rights-of-way are typically recognized as a special hazard. *Friedman's Mkt., Inc. v. Welham*, 653 P.2d 760 (Colo. App. 1982).

But not where access route not used exclusively by employees. But underlying the exception is the requirement that exposure to the route and the hazard is not shared to too great an extent by the general public. *Perry v. Crawford & Co.*, 677 P.2d 416 (Colo. App. 1983).

Claimant exposed to additional hazard in going to work. Where because the employer persisted in directing the employee to come to work, she was exposed to an additional and unusual hazard, namely, the walk from her home over an icy street to her car, employee was injured performing an act necessary to her employment, while under the specific direction of her employer. Her injury, therefore, arose out of and in the course of her employment. *Walsh v. Indus. Comm'n*, 34 Colo. App. 371, 527 P.2d 1180 (1974).

Accidents occurring in or en route to parking lots are compensable. Accidents occurring in or en route to parking lots maintained on its premises or provided by the employer for the benefit of its employees, are compensable as arising out

of and in the course of the employment, even though occurring on the way to or from the place of employment and on a public road or way dividing the place of employment from the parking lot. *State Comp. Ins. Fund v. Walter*, 143 Colo. 549, 354 P.2d 591 (1960).

Injury in adjacent parking lot. Where claimant was injured in the parking lot adjacent to employer's office building, which lot was not owned, maintained, or controlled by the employer, there were special circumstances which reflected a causal connection between claimant's employment and her injury, since space in the parking lot was afforded the employer for the use of its employees, and the employer was aware that its employees used the lot. Parking privileges constituted an obvious fringe benefit to claimant, and claimant was injured while in the act of enjoying that benefit. *Woodruff World Travel, Inc. v. Indus. Comm'n*, 38 Colo. App. 92, 554 P.2d 705 (1976).

A parking lot injury sustained before work hours is causally related to employment as contemplated by the workmen's compensation act where the work supervisor expects employees to be dressed and ready to work at a certain hour and expects that employees will drive or ride to work in private vehicles because there is no other transportation, and where the principal use of the lot is for employee parking, both employee and employer benefitting from the availability of the lot. *Stewart v. United States*, 716 F.2d 755 (10th Cir. 1982).

Fact that employee had permission to park car on employer's premises is irrelevant when injury received on way home. Indus. Comm'n v. Enyeart, 81 Colo. 521, 256 P. 314 (1927).

And no recovery even when injury on employer's premises where employee is riding home with a fellow employee. Indus. Comm'n v. Enyeart, 81 Colo. 521, 256 P. 314 (1927).

However, recovery may be had where employer requests employee to bring his truck to work with him. State Comp. Ins. Fund v. Indus. Comm'n, 89 Colo. 426, 3 P.2d 414 (1931).

As well as when employer agrees to furnish transportation. State Comp. Ins. Fund v. Batis, 117 Colo. 1, 183 P.2d 891 (1947); J. C. Carlile Corp. v. Antaki, 162 Colo. 376, 426 P.2d 549 (1967); Indus. Comm'n v. Lavach, 165 Colo. 433, 439 P.2d 359 (1968); Kitchens v. Dept. of Labor & Emp. Div. of Labor, 29 Colo. App. 374, 486 P.2d 474 (1971).

Or where there is a mutual agreement for transportation and employer consents to employee's riding with another. Wells v. Cutler, 90 Colo. 111, 6 P.2d 459 (1931).

And the same is true of a mailman who furnishes his own truck by contract. Comstock v. Bivens, 78 Colo. 107, 239 P. 869 (1925).

Or where an automobile salesman has been directed to take a car home. Indus. Comm'n v. Irvine, 72 Colo. 573, 212 P. 829 (1923); Indus. Comm'n v. Pueblo Auto Co., 71 Colo. 424, 207 P. 479 (1922).

Or a school superintendent who falls through a trap door while removing school supplies from his car. Ryan v. Indus. Comm'n, 89 Colo. 393, 3 P.2d 300 (1931).

Or an employee making his way home along the line of work it was his duty to patrol. Indus. Comm'n v. Hunter, 73 Colo. 226, 214 P. 393 (1923); Colo. Contracting Co. v. Indus. Comm'n, 74 Colo. 206, 219 P. 1075 (1923).

Bank messenger carrying gun and going into post office is acting within course of employment. Sec. State Bank v. Propst, 99 Colo. 67, 59 P.2d 798 (1936).

Coal miner. When employee had arrived on the premises of his employer, had changed his clothes, and "was hurrying down the pit car track" to the check room to get his mine check and lamp, in direct and immediate response to the employer's warning whistle, he was performing service within the course of his employment. Indus. Comm'n v. Hayden Coal Co., 113 Colo. 62, 155 P.2d 158 (1944).

The requirement that a policeman be "always on duty" is not an exception to the rule that no recovery is allowed for injury while employee is on his way to or from work. Rogers v. Indus. Comm'n, 40 Colo. App. 313, 574 P.2d 116 (1978).

III. PROXIMATE CAUSE.

For meaning of term "arise out of", see Rocky Mt. Fuel Co. v. Kruzic, 94 Colo. 398, 30 P.2d 868 (1934); Deterts v. Times Publ'g Co., 38 Colo. App. 48, 552 P.2d 1033 (1976).

For meaning of term "injury", see *Carroll v. Indus. Comm'n*, 69 Colo. 473, 195 P. 1097 (1921); *Indus. Comm'n v. La Foret Camps*, 125 Colo. 503, 245 P.2d 459 (1952); *Wesco Elec. Co. v. Shook*, 143 Colo. 382, 353 P.2d 743 (1960).

The terms "injury by accident" and "injury caused by accident" can be used interchangeably. *Carroll v. Indus. Comm'n*, 69 Colo. 473, 195 P. 1097 (1921).

Injury "arising out of employment" occurs when an employee suffers an injury attributable to unexplained forces which would have injured any person who happened to be in the employee's position at the time. *Popovich v. Irlando*, 811 P.2d 379 (Colo. 1991).

Stress-related injury was held to arise out of and in the course of employment when claimant's supervisor threatened claimant with the loss of her job and overtime if she ended or revealed their sexual relationship, and claimant's stress resulted from supervisor's authority over her job and his exploitation of that authority. *Gen. Cable Co. v. Indus. Claim Appeals Office*, 878 P.2d 118 (Colo. App. 1994).

And injury "arises out of employment" where causal connection exists between work conditions and injury. *Indus. Comm'n v. Anderson*, 69 Colo. 147, 169 P. 135 (1917); *Indus. Comm'n v. Pueblo Auto Co.*, 71 Colo. 424, 207 P. 479 (1922); *Indus. Comm'n v. Enyeart*, 81 Colo. 521, 256 P. 314 (1927); *Indus. Comm'n v. Nissan*, 84 Colo. 19, 267 P. 791 (1928); *McKnight v. Houck*, 87 Colo. 234, 286 P. 279 (1930); *Indus. Comm'n v. Diveley*, 88 Colo. 190,

294 P. 532 (1930); *Rocky Mt. Fuel Co. v. Kruzic*, 94 Colo. 398, 30 P.2d 868 (1934); *Gates v. Cent. City Opera House Ass'n*, 107 Colo. 93, 108 P.2d 880 (1940); *Chaney v. Indus. Comm'n*, 120 Colo. 111, 207 P.2d 816 (1949); *Indus. Comm'n v. Golden Cycle Corp.*, 126 Colo. 68, 246 P.2d 902 (1952); *Indus. Comm'n v. Corwin Hosp.*, 126 Colo. 358, 250 P.2d 135 (1952); *Univ. of Denver v. Nemeth*, 127 Colo. 385, 257 P.2d 423 (1953); *Divelbiss v. Indus. Comm'n*, 140 Colo. 452, 344 P.2d 1084 (1959); *Game & Fish Dept. v. Pardoe*, 147 Colo. 363, 363 P.2d 1067 (1961).

Therefore, the test is whether or not there is a causal connection between the injury and the employment; that is, are they so connected that the injury naturally results from the employment. *Miller v. Denver Post, Inc.*, 137 Colo. 61, 322 P.2d 661 (1958); *Indus. Comm'n v. Horner*, 137 Colo. 368, 325 P.2d 698 (1958); *Univ. of Denver-Colorado Sem. & Univ. Park Campus v. Johnston*, 151 Colo. 465, 378 P.2d 830 (1963).

The test for determining if the injury arises out of the course of employment is whether there is a causal connection between the duties of the employment and the injuries. *Walsh v. Indus. Comm'n*, 34 Colo. App. 371, 527 P.2d 1180 (1974); *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976); *Irwin v. Indus. Comm'n*, 695 P.2d 763 (Colo. App. 1984).

Causation is a question of fact for resolution by the administrative law judge. *Snyder v. Indus. Claim Appeals Office*, 942 P.2d 1337 (Colo. App. 1997);

Faulkner v. Indus. Claim Appeals Office, 12 P.3d 844 (Colo. App. 2000).

Proof of causation is a threshold requirement which an injured employee must establish by a preponderance of the evidence before any compensation is awarded. Faulkner v. Indus. Claim Appeals Office, 12 P.3d 844 (Colo. App. 2000).

All that is necessary to warrant the finding of causal connection between the accident and the disability is to show facts and circumstances which would indicate with reasonable probability that the injury complained of resulted from, or was precipitated by, the accident. But if the evidence, as a matter of law, is insufficient to remove the question of causation from the realm of conjecture and mere possibilities, the award cannot be upheld. Indus. Comm'n v. Royal Indem. Co., 124 Colo. 210, 236 P.2d 293 (1951); Colo. Fuel & Iron Corp. v. Indus. Comm'n, 129 Colo. 353, 269 P.2d 1070 (1954); Vandium Corp. of & v. Sargent, 134 Colo. 555, 307 P.2d 454 (1957); Indus. Comm'n v. Havens, 136 Colo. 111, 314 P.2d 698 (1957); Indus. Comm'n v. Johnson Pontiac, Inc., 140 Colo. 160, 344 P.2d 186 (1959); Colo. Fuel & Iron Corp. v. Indus. Comm'n, 152 Colo. 25, 380 P.2d 28 (1963); Standard Metals Corp. v. Ball, 172 Colo. 510, 474 P.2d 622 (1970); Krumbach v. Dow Chem. Co., 676 P.2d 1215 (Colo. App. 1983).

Although a condition precedent to recovery is that death or injury be proximately caused by an accident arising out of and in the course of the deceased's

employment. Indus. Comm'n v. Hesler, 149 Colo. 592, 370 P.2d 428 (1962).

It is not necessary that the accident be the immediate cause, but only the proximate cause of the death in order to sustain an award. Prouse v. Indus. Comm'n, 69 Colo. 382, 194 P. 625 (1920); Newkirk v. Golden Cycle Mining & Reduction Co., 79 Colo. 298, 244 P. 1019 (1926); Johnson v. Indus. Comm'n, 148 Colo. 561, 366 P.2d 864 (1961); Standard Metals Corp. v. Ball, 172 Colo. 510, 474 P.2d 622 (1970).

But accident must be traceable to a definite time, place, and cause. Prouse v. Indus. Comm'n, 69 Colo. 382, 194 P. 625 (1920); Peer v. Indus. Comm'n, 94 Colo. 227, 29 P.2d 636 (1934); Martin Marietta Corp. v. Faulk, 158 Colo. 441, 407 P.2d 348 (1965).

Chain-of-causation rule. If a work connected injury causes a deranged mental condition which in turn is a proximate cause of an injured employee's suicide, the deceased employee's dependents are entitled to benefits. Jackco Painting Contractors v. Indus. Comm'n, 702 P.2d 755 (Colo. App. 1985).

Lack of causal connection may be asserted at any time. In a dispute over medical benefits that arises after the filing of a general admission of liability, an employer generally can assert, based on subsequent medical reports, that the claimant did not establish the threshold requirement of a direct causal relationship between the on-the-job injury and the need for medical treatment. Snyder v. Indus. Claim Appeals Office, 942 P.2d 1337 (Colo. App. 1997).

Ordinarily the employer cannot be held liable for compensation for disability from lightning. Hassell Iron Works Co. v. Indus. Comm'n, 70 Colo. 386, 201 P. 894 (1921); Aetna Life Ins. Co. v. Indus. Comm'n, 81 Colo. 233, 254 P. 995 (1927).

But where the nature of the work and the nature of doing it exposes the employee to a greater danger the employer is liable. Hassell Iron Works Co. v. Indus. Comm'n, 70 Colo. 386, 201 P. 894 (1921); Kitchens v. Dept. of Labor & Emp. Div. of Labor, 29 Colo. App. 374, 486 P.2d 474 (1971).

Cold resulting in pneumonia and death not sufficiently connected with accident. See Newkirk v. Golden Cycle Mining & Reduction Co., 79 Colo. 298, 244 P. 1019 (1926).

But this is not true where mechanic is poisoned by fumes and later dies of pneumonia. See Columbine Laundry Co. v. Indus. Comm'n, 73 Colo. 397, 215 P. 870 (1923).

Where cause of accident is brought onto the premises by employee for his own purposes there is no recovery. An accident which is the result of a cause brought onto the employer's premises by the workman himself for his own purposes, is not caused by his employment and does not arise out of it. Indus. Comm'n v. Enyeart, 81 Colo. 521, 256 P. 314 (1927).

Where employee died while attempting to rescue his stepchild, the decision by employee to allow the child to accompany him to work was not the cause of the injury.

The cause of the injury was a hazard of his occupation. Tri-State Commodities, Inc. v. Stewart, 689 P.2d 712 (Colo. App. 1984).

But the fact that the employee performed his duties in a dangerous and unusual manner does not in itself place him outside the provisions of this section. Indus. Comm'n v. H. Koppers Co., 66 Colo. 596, 185 P. 267 (1919).

Heart attack following strenuous labor may be injury proximately caused by accident. Carroll v. Indus. Comm'n, 69 Colo. 473, 195 P. 1097 (1921); Allen v. Gettler, 94 Colo. 528, 30 P.2d 1117 (1934). But see United States Fid. & Guar. Co. v. Indus. Comm'n, 122 Colo. 31, 219 P.2d 315 (1950).

Because if death is due to "overexertion" "arising out of" the employment and would not have occurred save for such employment, then the "overexertion" is "an accident". Indus. Comm'n v. McKenna, 106 Colo. 323, 104 P.2d 458 (1940); Black Forest Fox Ranch v. Garrett, 110 Colo. 323, 134 P.2d 332 (1943); Peter Kieweit Sons' Co. v. Indus. Comm'n, 124 Colo. 217, 236 P.2d 296 (1951); Indus. Comm'n v. Havens, 136 Colo. 111, 314 P.2d 698 (1957).

But overexertion must be established. In cases of heart failure, a claimant must prove more than the mere exertion attendant upon the usual and ordinary course of the employment. Overexertion must be established. Indus. Comm'n v. Int'l Minerals & Chem. Corp., 132 Colo. 256, 287 P.2d 275 (1955); Indus. Comm'n v. Havens, 136 Colo. 111, 314 P.2d 698 (1957); Claimants in re Death of Bennett v. Durango Furn.

Mart., 136 Colo. 529, 319 P.2d 494 (1957); Indus. Comm'n v. Horner, 137 Colo. 368, 325 P.2d 698 (1958); Huff v. Aetna Ins. Co., 146 Colo. 63, 360 P.2d 667 (1961); Indus. Comm'n v. Hesler, 149 Colo. 592, 370 P.2d 428 (1962); Baca County Sch. Dist. No. RE-6 v. Brown, 156 Colo. 562, 400 P.2d 663 (1965); Evans v. City & County of Denver, 165 Colo. 311, 438 P.2d 698 (1968); Blood v. Indus. Comm'n, 165 Colo. 532, 440 P.2d 775 (1968); City & County of Denver v. Phillips, 166 Colo. 312, 443 P.2d 379 (1968); Jasinski v. Ginley-Soper Constr. Co., 170 Colo. 52, 458 P.2d 734 (1969).

So that employer is not liable where his evidence is that the exertion was a normal part of decedent's duties and there was competent medical testimony of a prior heart condition. Huff v. Aetna Ins. Co., 146 Colo. 63, 360 P.2d 667 (1961); Indus. Comm'n v. Hesler, 149 Colo. 592, 370 P.2d 428 (1962); Blood v. Indus. Comm'n, 165 Colo. 532, 440 P.2d 775 (1968).

Overexertion not element of claim where heart condition aggravated by trauma. Where there is a claim of aggravation of a preexisting heart condition by trauma, claimant must show his preexisting heart disease was aggravated by trauma, and, in such a case, overexertion is not an element. Legouffe v. Prestige Homes, Inc., 634 P.2d 1010 (Colo. App. 1981), rev'd on other grounds, 658 P.2d 850 (Colo. 1983).

Absence of proximate causation where employee suffered from prior heart condition. Jones v. Indus. Comm'n, 148 Colo. 253, 365 P.2d 689 (1961); Indus.

Comm'n v. Wolfer, 152 Colo. 205, 381 P.2d 19 (1968).

Death from heart ailments following operation to correct compensable injury.

The death of an employee following an operation to correct a compensable injury was not compensable, where death was not due to the operation, but to heart ailments, and there was no evidence of a causal connection between the injury, the operation and the heart ailments. Aetna Cas. & Sur. Co. v. Indus. Comm'n, 116 Colo. 98, 179 P.2d 973 (1947).

No requirement to establish overexertion in brain aneurysm case. In heart cases, the supreme court generally has required the claimant to prove more than the mere exertion attendant upon the usual and ordinary course of employment, in order to show a causal connection between the employment and death or disability. No such requirement exists in the case of a rupture of a brain aneurysm. Indus. Comm'n v. Riley, 165 Colo. 586, 441 P.2d 3 (1968).

For in brain aneurysm cases the claimant must show either (1) an unexpected incident or event during the course of his work resulting in injury, or (2) injury as the unexpected result of the claimant's normal activities in his employment. In either case, the injury must arise from an occurrence traceable to a definite time, place, and cause. Indus. Comm'n v. Riley, 165 Colo. 586, 441 P.2d 3 (1968).

One claiming compensation as the result of an altercation with a fellow employee has the burden of establishing a

causal connection between the altercation and his employment, which may not be inferred from the circumstances of a willful assault for which no satisfactory explanation is offered and which did not originate in any risk peculiar to the work. *Wisdom v. Indus. Comm'n*, 133 Colo. 266, 293 P.2d 967 (1956).

Disability resulting from exploratory operation. Where claimant slipped and fell, in course of employment, and the accident precipitated symptoms of a kidney disease, which was disclosed during an exploratory operation, resulting in removal of one kidney, regardless of any aggravation of claimant's preexisting condition, he was entitled to recover for the disability resulting from the operation. *Merriman v. Indus. Comm'n*, 120 Colo. 400, 210 P.2d 448 (1949).

Death resulting from operation to correct compensable injury. Where a compensable injury is involved and an operation for the correction thereof follows, resulting in the death of the employee, no contributing cause whatever is necessary or material in the consideration of an award. *Aetna Cas. & Sur. Co. v. Indus. Comm'n*, 116 Colo. 98, 179 P.2d 973 (1947).

Sunstroke does not necessarily constitute death resulting from an accident. A search of the workmen's compensation cases in this state discloses none where claim has been made for compensation based on death or injury from sunstroke. A review of the cases from other jurisdictions indicate that such injury or death is compensable where there is no

question about injury or death being caused by the sunstroke, but where there is evidence of other contributing factors the general rule is as follows: "The mere fact of sunstroke does not constitute a death resulting therefrom an 'accident' within the statute, and harm resulting from a heat stroke is compensable only where the heat stroke is the direct and superinducing cause of the harm". *Wood v. Indus. Comm'n*, 100 Colo. 209, 66 P.2d 806 (1937).

Employer is liable for claimant's injuries even though there was no direct striking of the claimant. Where a sudden opening of a door caused the claimant to rapidly move his arm, and the claimant's arm was broken as the result of the sudden movement, the employer is liable since the injury was proximately caused in the course of the employee's employment. *H & H Warehouse v. Vicory*, 805 P.2d 1167 (Colo. App. 1990).

Applied in *In re Hampton v. Dir. of Div. of Labor*, 31 Colo. App. 141, 500 P.2d 1186 (1972).

IV. EVIDENCE.

- A. In General.
- B. Sufficiency of Evidence.
- C. Admissibility of Evidence.
- D. Presumption against Suicide.

- A. In General.

Law reviews. For comment on *Finn v. Indus. Comm'n* appearing below, see 45 *Den. L.J.* 780 (1968).

To sustain an award of compensation the industrial commission is required to make a finding of all of the essential facts required by this section, i.e.: (1) That both employer and employee are subject to the provisions of the act; (2) that at the time and place of the accident the employee was performing services arising out of and in the course of his employment; and (3) that the injury was caused by an accident arising out of and in the course of the employment. *Metros v. Denver Coney Island*, 110 Colo. 40, 129 P.2d 911 (1942); *United States Fid. & Guar. Co. v. Indus. Comm'n*, 128 Colo. 68, 259 P.2d 869 (1953); *Hamilton v. Indus. Comm'n*, 132 Colo. 408, 289 P.2d 639 (1955); *Miller v. Denver Post, Inc.*, 137 Colo. 61, 322 P.2d 661 (1958).

And in workmen's compensation cases, both the time and place of the accident must be established, or at least one or the other of these factors fixed, so that there is evidence to show that the accident arose out of and in the course of the employment. *Deines Bros. v. Indus. Comm'n*, 125 Colo. 258, 242 P.2d 600 (1952).

Consequently, a denial of compensation should follow a finding of the absence of one or more of the essential facts. *Miller v. Denver Post, Inc.*, 137 Colo. 61, 322 P.2d 661 (1958).

And findings on the remaining requirements of this section, whether pro or con, will not alter the result. *Miller v. Denver Post, Inc.*, 137 Colo. 61, 322 P.2d 661 (1958).

But the fact that the industrial commission assigns the wrong reason for

the right conclusion is not sufficient to justify reversal where it is undisputed that the death of an employee was caused solely by a coronary occlusion. *Skinner v. Indus. Comm'n*, 152 Colo. 97, 381 P.2d 253 (1963).

However, court may review where contention is made that evidence is so weak as to amount to no evidence. *Rosenkranz v. Indus. Comm'n*, 83 Colo. 123, 262 P. 1014 (1927).

Burden of proof is on claimant to show injury was proximate result of accident. *Olson-Hall v. Indus. Comm'n*, 71 Colo. 228, 205 P. 527 (1922); *Peer v. Indus. Comm'n*, 94 Colo. 227, 29 P.2d 636 (1934); *Wood v. Indus. Comm'n*, 100 Colo. 209, 66 P.2d 806 (1937); *Aetna Cas. & Sur. Co. v. Indus. Comm'n*, 127 Colo. 225, 255 P.2d 961 (1953); *Hamilton v. Indus. Comm'n*, 132 Colo. 408, 289 P.2d 639 (1955); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Indus. Comm'n v. London & Lancashire Indem. Co.*, 135 Colo. 372, 311 P.2d 705 (1957); *State Comp. Ins. Fund v. Indus. Comm'n*, 135 Colo. 570, 314 P.2d 288 (1957); *Indus. Comm'n v. Havens*, 136 Colo. 111, 314 P.2d 698 (1957); *Miller v. Denver Post, Inc.*, 137 Colo. 61, 322 P.2d 661 (1958); *Indus. Comm'n v. Peterson*, 151 Colo. 289, 377 P.2d 542 (1962); *Breit v. Indus. Comm'n*, 160 Colo. 205, 415 P.2d 858 (1966); *Finn v. Indus. Comm'n*, 165 Colo. 106, 437 P.2d 542 (1968); *Brown v. Indus. Comm'n*, 167 Colo. 391, 447 P.2d 694 (1968).

In order to be entitled to workmen's compensation death benefits, a claimant must establish that the accident causing

death arose out of and in the course of the decedent's employment. *Harrison W. Corp. v. Hicks' Claimants*, 185 Colo. 142, 522 P.2d 722 (1974).

And claim must be established by a preponderance of the evidence. *Olson v. Erickson*, 105 Colo. 489, 99 P.2d 199 (1940); *Aetna Cas. & Sur. Co. v. Indus. Comm'n*, 127 Colo. 225, 255 P.2d 961 (1953); *Faulkner v. Indus. Claim Appeals Office*, 12 P.3d 844 (Colo. App. 2000).

"Clear and convincing" standard under § 8-42-107 (8)(b)(III) did not apply where the independent medical examiner's opinion was not at issue, and employer had raised the separate issue of causation under this section before the IME was performed. Therefore the ALJ did not err in applying a preponderance standard in determining whether claimant had sustained a compensable injury. *Faulkner v. Indus. Claim Appeals Office*, 12 P.3d 844 (Colo. App. 2000).

A claimant in a workers' compensation case has the initial burden of proving his entitlement to benefits by a preponderance of the evidence. Therefore, the claimant must present a prima facie case sufficient to establish the existence of his disability and to permit a reasonable determination of the extent of such disability. *Valley Tree Serv. v. Jimenez*, 787 P.2d 658 (Colo. App. 1990).

The claimant must also establish the causal relationship of the injury to his work. *Valley Tree Serv. v. Jimenez*, 787 P.2d 658 (Colo. App. 1990).

Whether claimant has sustained burden of proof is question of fact.

Whether the claimant in a workmen's compensation case has sustained the burden of establishing that the disability he alleges was proximately caused by his accident, is a question of fact, the determination of which is solely the province of the director. *Wierman v. Tunnell*, 108 Colo. 544, 120 P.2d 638 (1941).

However, there is no need for finding on burden of proof where evidence makes out prima facie case. *Gates v. Cent. City Opera House Ass'n*, 107 Colo. 93, 108 P.2d 880 (1940).

Burden on employer to show nonemployment causation. Once the claimant has established a prima facie showing of accident arising out of the employment, the respondent must produce competent evidence of nonemployment causation in rebuttal, or the claimant will prevail. *Colo. Contracting Co. v. Indus. Comm'n*, 74 Colo. 206, 219 P. 1075 (1923); *Skinner v. Indus. Comm'n*, 152 Colo. 97, 381 P.2d 253 (1963).

But where the claimant is unable to prove more than that he had something happen to him during his employment, and he does not show how or why his condition arose out of his work, he fails to adduce evidence to the point of making a prima facie case. Thus, urging that some of the employer's evidence was erroneous is immaterial. *Finn v. Indus. Comm'n*, 165 Colo. 106, 437 P.2d 542 (1968).

Reasonable doubt resolved in claimant's favor. Any reasonable doubt as

to whether a compensable accidental injury arose out of and in the course of employment must be resolved in favor of the claimant herein. *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976).

The doctrine of *res ipsa loquitur* does not apply in workmen's compensation cases. *Finn v. Indus. Comm'n*, 165 Colo. 106, 437 P.2d 542 (1968).

Standard of review for claim based upon claimant's heart condition. Where claim for benefits was based upon claimant's heart condition, appropriate standard for industrial commission review was whether claimant's heart condition was the result of an accident, injury, or occupational disease, as defined by § 8-41-108, which meets the conditions of this section. *Eisenberg v. Colo. Indus. Comm'n*, 624 P.2d 361 (Colo. App. 1981).

The existence of a latent tendency was irrelevant, and the ALJ's determination that employee's claim was barred by § 8-52-102 (2)(b) was wholly unsupported by the record where employee had functioned well within the range of normal at home and at her job until she was rotated by employer and suffered job-related stress. *Peterson v. ENT Fed. Credit Union*, 827 P.2d 621 (Colo. App. 1992) (decided under law in effect prior to 1991 amendment).

The language in subsection (2)(c) requiring that stress-related claims not be based upon facts and circumstances that are common to all fields of employment does not bar as a matter of law all claims arising out of a common work condition; rather, compensability depends upon the

particular facts and circumstances of each case. *Holme, Roberts, & Owen v. Indus. Claim Appeals Office*, 800 P.2d 1332 (Colo. App. 1990).

Employee's sudden job demotion was not based upon circumstances which are common to all fields of employment; therefore, claim arising out of job demotion was not barred. *Holme, Roberts, & Owen v. Indus. Claim Appeals Office*, 800 P.2d 1332 (Colo. App. 1990).

For purposes of subsection (2)(c), it is not necessary to logically tie stress-producing incidents to a particular line of work. *City Market, Inc., v. Indus. Claim Appeals Office*, 800 P.2d 1335 (Colo. App. 1990).

A workers' compensation claim resulting from a mental stimulus that results in mental impairment is a "mental-mental" injury which requires proof by testimony of a licensed physician or psychologist. If there is a physical component that contributes to the injury, such restrictions are not implicated. *Oberle v. Indus. Claim Appeals Office*, 919 P.2d 918 (Colo. App. 1996).

For claims of a "mental-mental" injury, the legislature intended claimants seeking these kinds of benefits to meet a higher burden of proof to reduce the incidence of fraudulent claims. While claimant argues that subsection (2)(a) imposes an undue burden on claimants seeking benefits for "mental-mental" injuries, adhering to claimant's suggested interpretation would negate the general assembly's intent by eliminating the

requisite heightened burden for "mental-mental" claimants seeking medical benefits. *Kieckhafer v. Indus. Claim Appeals Office*, 2012 COA 124, 284 P.3d 202.

B. Sufficiency of Evidence.

Evidence warranting compensation. If the evidence, and the logical inferences therefrom, can be said to warrant a conclusion that the accident, within a reasonable probability, resulted in the disability, the claimant is entitled to compensation. *Indus. Comm'n v. Royal Indem. Co.*, 124 Colo. 210, 236 P.2d 293 (1951); *J. W. Metz Lumber Co. v. Taylor*, 134 Colo. 249, 302 P.2d 521 (1956); *Martin Marietta Corp. v. Faulk*, 158 Colo. 441, 407 P.2d 348 (1965).

Although evidence need not establish causal connection by reasonable "medical" probability. Where the sole issue in dispute was whether there was any causal connection between the accident and the loss of vision in claimant's right eye and the employer asserted that the causal connection must be established with reasonable medical probability, it was held that this is the standard upon which a medical expert must base his opinion but it is not the standard on which the director must make his determination. The evidence must establish the causal connection with reasonable probability, but it need not establish it with reasonable "medical" certainty. *Indus. Comm'n v. Havens*, 136 Colo. 111, 314 P.2d 698 (1957); *Ringsby Truck Lines v. Indus. Comm'n*, 30 Colo. App. 224, 491 P.2d 106 (1971); *Legouffe v. Prestige Homes, Inc.*, 634 P.2d 1010 (Colo.

App. 1981), rev'd on other grounds, 658 P.2d 850 (Colo. 1983); *Morrison v. Indus. Claim Appeals Office*, 760 P.2d 654 (Colo. App. 1988).

When doctors are unable to say how much of claimant's disability is due to the accident for which he claimed compensation and how much to an earlier accident, the industrial commission errs in awarding compensation for the whole disability. *Ohio Cas. Ins. Co. v. Indus. Comm'n*, 115 Colo. 355, 173 P.2d 888 (1946).

Evidence which relates solely to possibilities or probabilities is not sufficient to support an award. *Deines Bros. v. Indus. Comm'n*, 125 Colo. 258, 242 P.2d 600 (1952); *Montgomery Ward & Co. v. Indus. Comm'n*, 128 Colo. 465, 263 P.2d 817 (1953); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Maryland Cas. Co. v. Kravig*, 153 Colo. 282, 385 P.2d 669 (1963); *Martin Marietta Corp. v. Faulk*, 158 Colo. 441, 407 P.2d 348 (1965).

On the other hand, awards cannot be denied as the result of speculation or conjecture, nor upon evidence not in the record. *Indus. Comm'n v. Havens*, 136 Colo. 111, 314 P.2d 698 (1957).

And the fact that an accident is not witnessed does not preclude proof by circumstantial evidence. *Employers' Mut. Liab. Ins. Co. v. Indus. Comm'n*, 145 Colo. 91, 357 P.2d 929 (1960).

Where evidence not usable to support referee's findings. Where testimony ignores

or is contrary to principles of physical science, it cannot serve as a basis for a referee's conclusion that there was no causal connection between the accident and the claimant's injury. *Legouffe v. Prestige Homes, Inc.*, 634 P.2d 1010 (Colo. App. 1981), rev'd on other grounds, 658 P.2d 850 (Colo. 1983).

Testimony of a dentist is insufficient under subsection (2)(a) to support a stress claim even though a dentist would be the treating physician for TMJ, the injury specified by the claimant as arising from stress. This section clearly refers only to a physician or psychologist. *Tomsha v. City of Colo. Springs*, 856 P.2d 13 (Colo. App. 1992).

Subsection (2) does not require that a mental impairment claimant produce a live witness in all cases. Such a requirement would serve no legitimate purpose and would result in an equal protection violation when other claimants are allowed to submit expert reports and only provide the expert witness when the opposing party chooses to examine the expert. *Esser v. Indus. Claim Appeals Office*, 8 P.3d 1218 (Colo. App. 2000), aff'd on other grounds, 30 P.3d 189 (Colo. 2001).

For sufficiency of evidence, see *Adams v. Indus. Comm'n*, 106 Colo. 361, 105 P.2d 403 (1940); *Rand v. Indus. Comm'n*, 110 Colo. 240, 132 P.2d 784 (1942); *Warner v. Mullens*, 111 Colo. 60, 137 P.2d 420 (1943); *Pitchforth v. Macomb*, 111 Colo. 135, 137 P.2d 1021 (1943); *Indus. Comm'n v. Menegatti*, 111 Colo. 484, 143 P.2d 274 (1943); *Indus. Comm'n v. Daniels*, 124

Colo. 329, 236 P.2d 291 (1951); *Employers' Mut. Liab. Ins. Co. v. Indus. Comm'n*, 145 Colo. 91, 357 P.2d 929 (1960); *Hood v. Indus. Comm'n*, 153 Colo. 221, 385 P.2d 256 (1963); *Silver Eng'g Works, Inc. v. Simmons*, 180 Colo. 309, 505 P.2d 966 (1973); *Loveland Police Dept. v. Indus. Claim Appeals Office*, 141 P.3d 943 (Colo. App. 2006).

C. Admissibility of Evidence.

Statements of employee to his wife upon returning home held to be inadmissible. Evidence of statements of an employee to his wife upon his return home from work in the evening, as to the happening of an alleged accident, held, under the attending circumstances, to be hearsay, not a part of the *res gestae*, and its admission in evidence error. *H. C. Lallier Constr. & Eng'g Co. v. Indus. Comm'n*, 91 Colo. 593, 17 P.2d 532 (1932).

As are hospital records and proof of death based on hearsay. *H. C. Lallier Constr. & Eng'g Co. v. Indus. Comm'n*, 91 Colo. 593, 17 P.2d 532 (1932).

But conversation of injured employee with others at the time of the accident held to be admissible. In a workmen's compensation case, conversations of the injured employee with others at the time of the accident concerning his injury held admissible as a part of the *res gestae*. *Indus. Comm'n v. Diveley*, 88 Colo. 190, 294 P. 532 (1930).

Medical testimony in proceedings as to prior injury not competent to determine degree of permanent disability. Where for

several months a claimant has continuously performed the same type of work in which he was engaged at the time of his injury, a transcript of proceedings, including medical testimony, relating to a prior injury, where no findings were made, is not competent to determine the degree of permanent disability resulting from accidental injury in Colorado two years afterward in the face of unchallenged medical testimony that claimant has suffered a permanent disability of 25 percent as a working unit, based upon aggravation of a preexisting weakness. Gregory v. Swinerton & Walberg Co., 138 Colo. 22, 328 P.2d 948 (1958).

D. Presumption against Suicide.

The well-known rule is that suicide will not be presumed, and that as between accident and suicide the law supposes accident. Indus. Comm'n v. Peterson, 151 Colo. 289, 377 P.2d 542 (1962).

But once there appears substantial evidence to overcome the presumption against suicide it is for the industrial commission to weigh all the evidence and to draw reasonable inferences therefrom. Logical conclusions based upon adequate support in the record should not be disturbed by the courts. Indus. Comm'n v. Peterson, 151 Colo. 289, 377 P.2d 542 (1962).

There is no authority that makes conclusive evidence the quantum of proof by which a presumption against suicide must be rebutted. The burden of proof remains upon the claimant to establish that the injury or death resulted from an accident arising out of and in the course of the employment and not intentionally self-inflicted. Indus. Comm'n v. London & Lancashire Indem. Co., 135 Colo. 372, 311 P.2d 705 (1957).

8-41-302. Scope of terms - "accident" - "injury" - "occupational disease".

(1) "Accident", "injury", and "occupational disease" shall not be construed to include disability or death caused by or resulting from mental or emotional stress unless it is shown by competent evidence that such mental or emotional stress is proximately caused solely by hazards to which the worker would not have been equally exposed outside the employment.

(2) "Accident", "injury", and "occupational disease" shall not be construed to include disability or death caused by heart attack unless it is shown by competent evidence that such heart attack was proximately caused by an unusual exertion arising out of and within the course of the employment.

Source: L. 90: Entire article R&RE, p. 480, § 1, effective July 1.

Editor's note: This section is similar to former § 8-41-108 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-41-302 is similar to § 8-41-108 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Fact of preexisting hypersensitivity or secondary cause does not defeat a claim for occupational disease unless it can be shown that a nonindustrial cause was an equally exposing stimulus. *Hall v. Indus. Claim Appeals Office*, 757 P.2d 1132 (Colo. App. 1988).

Manifestation of preexisting mental condition resulting from job-related mental or emotional stress is compensable. *Ft. Logan Mental Health Center v. Walker*, 723 P.2d 740 (Colo. App. 1986).

In order for a mental condition to be compensable under the Workers' Compensation Act, the hazards causing the stress must be more attributable to the workplace than to claimant's personal problems. *Young v. Indus. Claim Appeals Office*, 860 P.2d 591 (Colo. App. 1993).

The term "solely" in subsection (1) could be interpreted as meaning "primarily" where the phrase "equally exposed" envisions some exposure to stress outside employment and where compensability arises only on the condition that there not be equal exposure to a stressor both within and outside the workplace.

Young v. Indus. Claim Appeals Office, 860 P.2d 591 (Colo. App. 1993).

Injury caused by emotional or mental stress compensable. Compensation may be awarded when job-related mental or emotional stress proximately causes an injury or occupational disease which results in disability or death. *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985).

Provision is constitutional. Although it requires a different or more severe standard for establishing that a heart attack is a compensable "accident" or "injury" than is required for other types of accidents or injuries, this provision does not deny equal protection of the law and is therefore constitutional. *Claimants In re Kohler v. Indus. Comm'n*, 671 P.2d 1002 (Colo. App. 1983).

"Overexertion" was not a prerequisite to a recovery of workmen's compensation for a heart attack sustained in the course of employment; rather, the legislative intent in the 1965 amendment of this section was to make compensable an injury or death which results from exertion in the performance even of usual duties within an employee's scope of employment; there must, of course, be the chain of causation necessary as in all workmen's compensation cases. *T & T Loveland Chinchilla Ranch v. Bourn*, 173 Colo. 267, 477 P.2d 457 (1970).

For accidents occurring between the effective date of the 1965 amendment to former subsection (2) and July 1, 1971, the

1965 amendment allowing for an award for a heart attack without a showing of overexertion is applicable. Pub. Serv. Co. v. Indus. Comm'n, 189 Colo. 153, 538 P.2d 430 (1975).

Legislative intent relating to unusual exertion requirement. The intent of the general assembly in enacting the unusual exertion requirement was to ensure that only those heart attack-related injuries resulting from more than the normal work activities of the claimant are compensable. Prestige Homes, Inc. v. Legouffe, 658 P.2d 850 (Colo. 1983).

Where worker's heart attack was an aggravation of preexisting heart disease and the heart attack was not caused by an accident, the worker was required to prove unusual exertion in order to be eligible for workers' compensation benefits. Vialpando v. Indus. Claim Appeals Office, 757 P.2d 1152 (Colo. App. 1988).

Intent of the 1971 amendment requiring overexertion for a compensable heart attack was to place the law as it existed before the 1965 amendment which did require overexertion. Pub. Serv. Co. v. Indus. Comm'n, 189 Colo. 153, 538 P.2d 430 (1975).

Overexertion not element of claim where heart condition aggravated by trauma. Where there is a claim of aggravation of a preexisting heart condition by trauma, claimant must show his preexisting heart disease was aggravated by trauma, and, in such a case, overexertion is not an element. Legouffe v. Prestige Homes, Inc., 634 P.2d 1010 (Colo. App. 1981), rev'd

on other grounds, 658 P.2d 850 (Colo. 1983).

Unusual exertion doctrine is to be applied according to employee's work history rather than the work patterns of his profession in general. Beaudoin Constr. Co. v. Indus. Comm'n, 626 P.2d 711 (Colo. App. 1980).

Determination of baseline level of fitness required. If the unusual exertion doctrine is to apply on an individual basis, then a baseline level of fitness of the individual must be determined before a trier of fact can decide what constitutes unusual exertion for that particular individual. This determination must necessarily include consideration of periods of unemployment and consequent deconditioning. Beaudoin Constr. Co. v. Indus. Comm'n, 626 P.2d 711 (Colo. App. 1980).

Application in context of employer-sponsored fitness program. In order to determine whether an injury suffered by an employee while engaging in an exercise program is compensable under the Workers' Compensation Act, a court should look to the following factors: (1) Whether the injury occurred during working hours; (2) whether the injury occurred on the employer's premises; (3) whether the employer initiated the employee's exercise program; (4) whether the employer exerted any control or direction over the employee's exercise program; and (5) whether the employer stood to benefit from the employee's exercise program. Price v. Indus. Claim Appeals Office, 919 P.2d 207 (Colo. 1996);

Wackenhut Corp. v. Indus. Claim Appeals Office, 975 P.2d 1131 (Colo. App. 1997).

Overexertion not required where heart attack related to accident. Where the claimant alleges that his heart attack was causally related to an accident as defined by subsection (1), the claimant is not required to show that the injury was also causally related to overexertion. *Prestige Homes, Inc. v. Legouffe*, 658 P.2d 850 (Colo. 1983); *Vialpando v. Indus. Claim Appeals Office*, 757 P.2d 1152 (Colo. App. 1988).

But is required where no accident occurs. Where no accident occurred, the claimant is required to show that the heart attack was proximately caused by an unusual or extraordinary overexertion arising out of the claimant's employment. *Prestige Homes, Inc. v. Legouffe*, 658 P.2d 850 (Colo. 1983).

Heart attack victim's work activities compared to normal work activity. A claimant's work activities near the time of a heart attack must be compared to his normal work activities to determine if the former were unusual; activities claimant would have participated in had he not been working are irrelevant. *Townley Hdwe. Co. v. Indus. Comm'n*, 636 P.2d 1341 (Colo. App. 1981).

The "unusual overexertion" doctrine must be applied according to the employee's work history. The employee's activities near the time of a heart attack must be compared to his normal work activities in order to determine if the former were unusual. *Claimants In re Kohler v. Indus. Comm'n*, 671 P.2d 1002 (Colo. App. 1983); *Vialpando*

v. Indus. Claim Appeals Office, 757 P.2d 1152 (Colo. App. 1988).

Unusual duties may require more, or less, or the same exertion as do the normal activities of an employee. And, it is incumbent upon the claimant to prove unusual exertion in the performance of his duties. *Claim of Henricks*, 676 P.2d 1220 (Colo. App. 1983).

"Unusual" exertion may be of a kind that recurs. Where decedent was employed as a security guard and suffered a heart attack while preparing for his annual physical fitness test, the exertion was unusual within the meaning of subsection (2). *Wackenhut Corp. v. Indus. Claim Appeals Office*, 975 P.2d 1131 (Colo. App. 1997).

A heart attack resulting from unusual mental stress or tension arising out of and in the course of employment is compensable. *City & County of Denver v. Indus. Comm'n*, 40 Colo. App. 202, 573 P.2d 562 (1977), modified, 195 Colo. 431, 579 P.2d 80 (1978); *Matter of Carr v. Indus. Comm'n*, 709 P.2d 52 (Colo. App. 1985); *Vialpando v. Indus. Claim Appeals Office*, 757 P.2d 1152 (Colo. App. 1988).

Even if events preceding heart attack constituted unusual exertion, a finding that such events did not cause heart attack is fatal to claim for benefits. *Kinninger v. Indus. Claim Appeals Office*, 759 P.2d 766 (Colo. App. 1988).

When unusual or extraordinary stress may occur. For purposes of determining the right to workmen's compensation, "unusual

or extraordinary" stress may occur while the employee is engaged in activities of the same general type as those in which he is regularly employed. *City & County of Denver v. Indus. Comm'n*, 40 Colo. App. 202, 573 P.2d 562 (1977), modified, 195 Colo. 431, 579 P.2d 80 (1978); *Matter of Carr v. Indus. Comm'n*, 709 P.2d 52 (Colo. App. 1985).

Standard of review for claim based upon heart condition. Where a claim for benefits was based upon the claimant's heart condition, the appropriate standard for the industrial commission's review was whether the claimant's heart condition was the result of an accident, injury, or occupational disease which meets the conditions of § 8-52-102. *Eisenberg v. Indus. Comm'n*, 624 P.2d 361 (Colo. App. 1981).

Medical certainty of heart attack cause not necessary. The evidence must establish a causal connection between unusual exertion and a heart attack with reasonable probability, but it need not establish it with reasonable "medical" certainty. *Townley Hdwe. Co. v. Indus. Comm'n*, 636 P.2d 1341 (Colo. App. 1981).

And evidence of emotional or mental tension is not prerequisite to recovery for a heart attack caused by job-related overexertion and stress. *Townley Hdwe. Co. v. Indus. Comm'n*, 636 P.2d 1341 (Colo. App. 1981).

Expert medical testimony not required to prove causal connection between heart attack and employment and circumstantial evidence may be sufficient to prove such causal connection. *In re Talbert*, 694 P.2d 864 (Colo. App. 1984).

8-41-303. Loaning employer liable for compensation.

Where an employer, who has accepted the provisions of articles 40 to 47 of this title and has complied therewith, loans the service of any of the employer's employees who have accepted the provisions of said articles to any third person, the employer shall be liable for any compensation thereafter for any injuries or death of said employee as provided in said articles, unless it appears from the evidence in said case that said loaning constitutes a new contract of hire, express or implied, between the employee whose services were loaned and the person to whom the employee was loaned.

Source: L. 90: Entire article R&RE, p. 480, § 1, effective July 1.

Editor's note: This section is similar to former § 8-52-101 as it existed prior to 1990.

ANNOTATION

The common law rule that a worker can simultaneously be the employee of two persons applies to cases arising under the workers' compensation act. The rule allows an employee to be simultaneously in the general employment of one employer and in the special employment of another, provided the employee understands that he or she is submitting to the control of the special employer. In the dual employment situation, the employee's only remedy for an injury sustained while in the course of employment with the borrowing employer is through worker's compensation. A separate tort action against the special employer is barred. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Unless there is new contract of hire, loaned employee does not become covered employee. Where an employee is loaned to another by his covered employer, he does not become a covered employee of the other, nor does the other become a covered employer unless a new contract of hire is made between the employee and the borrowing employer. *Continental Sales Corp. v. Stookesberry*, 170 Colo. 16, 459 P.2d 566 (1969); *Continental Sales Corp. v. Indus. Comm'n*, 31 Colo. App. 223, 501 P.2d 90 (1972).

Thus, when an employer loans an employee he remains liable for injuries to or death of that loaned employee "... unless it shall appear from the evidence in said case that said loaning constitutes a new contract of hire, express or implied, between the employee whose services were loaned

and the person to whom he was loaned". *Rocky Mt. Dairy Prods. v. Pease*, 161 Colo. 216, 422 P.2d 630 (1966).

"Loaned employee" may maintain negligence action. A "loaned employee" and an "employee" under workmen's compensation are not the same, and no provision prohibits or limits a "loaned employee" from maintaining a negligence action against the borrowing employer. *Continental Sales Corp. v. Stookesberry*, 170 Colo. 16, 459 P.2d 566 (1969).

For no provision of the workmen's compensation act either specifically or impliedly grants immunity from common-law liability for injury to one who borrows the services of an employee from an employer who has a policy of workmen's compensation insurance. The loaning employer is the only employer whose compliance with the workmen's compensation act makes him immune from a common-law action for injury to the loaned employee. *Continental Sales Corp. v. Stookesberry*, 170 Colo. 16, 459 P.2d 566 (1969).

But employee loaned for special purpose is employee of borrowing company. Where an employee of one company is loaned to another for a special purpose and while engaged in such purpose is injured, he is an employee of the borrowing company with the attendant rights and duties incident thereto. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

And the special employee loses the right to sue the special employer at common law for negligence. But the courts have usually been vigilant in insisting upon a showing of a deliberate and informed consent by the employee before employment relation will be held a bar to common law suit. *Continental Sales Corp. v. Stookesberry*, 170 Colo. 16, 459 P.2d 566 (1969).

There are nine criteria relevant to determining whether a special employment relationship exists. They are: (1) Whether the borrowing employer has the right to control the employee's conduct; (2) whether the employee is performing the borrowing employer's work; (3) whether there was an agreement between the original and borrowing employer; (4) whether the employee has acquiesced in the arrangement; (5) whether the borrowing employer had the right to terminate the employee; (6) whether the borrowing employer furnished the tools and place for performance; (7) whether the new employment was to be for a considerable length of time; (8) whether the borrowing employer had the obligation to pay the employee; and (9) whether the original employer terminated its relationship with the

employee. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Of the nine criteria, three are decisive: Whether the employee has acquiesced in the arrangement; whether the borrowing employer has the right to control the employee's conduct; and, whether the borrowing employer had the right to terminate the employee. *Evans v. Webster*, 932 P. 2d 951 (Colo. App. 1991).

A tort suit against a special employer is barred by the workers' compensation act when an employee consents to work for the special employer pursuant to a contract of hire within the workers' compensation act and the employee is an employee of both the general and special employer. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Truck driver special employee of carrier. Truck driver, whose general employer lent him to a carrier pursuant to a lease, became a special employee of the carrier for the purposes of liability for workmen's compensation. *Archer Freight Lines v. Horn Transp., Inc.*, 32 Colo. App. 412, 514 P.2d 330 (1973).

Applied in *Horn Transp., Inc. v. Claimants in re Death of Wards*, 40 Colo. App. 395, 576 P.2d 195 (1978).

8-41-304. Last employer liable - exception.

(1) Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and suffered a substantial permanent aggravation thereof and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier. In the case of

silicosis, asbestosis, or anthracosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO₂) dust, asbestos dust, or coal dust on each of at least sixty days or more and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

(2) In any case where an employee of an employer becomes disabled from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or in the event death results from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, and, if such employee has been injuriously exposed to such diseases while in the employ of another employer during the employee's lifetime, the last employer or that employer's insurance carrier, if any, shall be liable for compensation and medical benefits as provided by articles 40 to 47 of this title, including funeral expenses and death benefits.

Source: **L. 90:** Entire article R&RE, p. 480, § 1, effective July 1. **L. 91:** (1) amended, p. 1295, § 8, effective July 1. **L. 93:** (2) amended, p. 2140, § 1, effective April 1, 1994.

Editor's note: This section is similar to former § 8-51-112 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980). For article, "Occupational Disease Claims Under Senate Bill 218", see 22 Colo. Law. 2421 (1993).

Annotator's note. Since § 8-41-304 is similar to § 8-51-112 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Constitutional guarantees of equal protection not violated by overall statutory scheme for assessing and apportioning liability among different classes of employees because legitimate governmental interest to encourage the employment of partially disabled persons is furthered. *Electron Corp. v. Indus. Claim Appeals Office*, 833 P.2d 821 (Colo. App. 1992).

Liability on last employer not violative of equal protection. The imposition of liability of the last employer, while absolving all previous employers from

liability, does not violate equal protection. *Union Carbide Corp. v. Indus. Comm'n*, 196 Colo. 56, 581 P.2d 734 (1978).

Legislative purpose. The overriding legislative purpose in enacting this section was that losses due to industrial illness be compensated. Claimants in *re Death of Garner v. Vanadium Corp. of Am.*, 194 Colo. 358, 572 P.2d 1205 (1977).

"Employer" means "Colorado employer". It is clear that "employer" as used in subsection (1) of this section cannot subject to liability an out-of-state employer even when it is the last "employer". A reasonable reading of the act leads to the conclusion that "employer" means, *prima facie*, "Colorado employer". Claimants in *re Death of Garner v. Vanadium Corp. of Am.*, 194 Colo. 358, 572 P.2d 1205 (1977).

Section takes precedence over § 8-51-106 (1)(a) (now § 8-46-101). The specific provisions of this section, applicable to occupational disease, take precedence over the general provisions of § 8-51-106 (1)(a) (now § 8-46-101), applicable to "injury", notwithstanding that the statutory definition of injury, § 8-41-108 (2), includes occupational disease. *Denver v. Hansen*, 650 P.2d 1319 (Colo. App. 1982).

The common law rule that a "special employment" relationship exists whenever an employer provisionally assigns to another employer the services of an employee who thereby surrenders to the borrowing employer the right of control over the employee's actions applies to cases arising under the Workers' Compensation Act and allows an employee to be

simultaneously in the general employment of one employer and in the special employment of another, provided the employee understands that he or she is submitting to the control of the special employer. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

A separate tort action against a special employer was barred in dual employment situation and the employee's only remedy for an injury sustained while in the course of employment with the borrowing employer is through workers' compensation. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

The criteria considered by courts to be relevant in the determination of whether a special employment relationship exists are (1) whether the borrowing employer has the right to control the employee's conduct; (2) whether the employee is performing the borrowing employer's work; (3) whether there was an agreement between the original and borrowing employer; (4) whether the employee has acquiesced in the arrangement; (5) whether the borrowing employer had the right to terminate the employee; (6) whether the borrowing employer furnished the tools and place for performance; (7) whether the new employment was to be for a considerable length of time; (8) whether the borrowing employer had the obligation to pay the employee; and (9) whether the original employer terminated its relationship with the employee. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Application of facts to the test of a loaned employee relationship was a

question of law where the facts relating to the nature of claimant's work activities and claimant's consent to work for employer were not in dispute. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Liability fixed as of date of last injurious exposure. This statutory provision and a similar provision, former § 8-60-113 (1), evidences a legislative intent to impose liability for injury resulting from an occupational disease on the basis of the date of the last injurious exposure to the hazards of the disease, rather than the date of the initial onset of the disease. *Martinez v. Indus. Comm'n*, 40 Colo. App. 485, 580 P.2d 36 (1978).

"Injurious exposure" defined. An injurious exposure is a concentration of toxic material which would be sufficient to cause the disease in the event of prolonged exposure to such concentration. *Union Carbide Corp. v. Indus. Comm'n*, 40 Colo. App. 182, 573 P.2d 938 (1977), *aff'd*, 196 Colo. 56, 581 P.2d 734 (1978).

The length of exposure is immaterial. *Union Carbide Corp. v. Indus. Comm'n*, 40 Colo. App. 182, 573 P.2d 938 (1977), *aff'd*, 196 Colo. 56, 581 P.2d 734 (1978).

The employee is not required to ascertain the exact amount that each employer contributed in causing his or her occupational disease, nor is he or she required to pin point exactly which employer most injuriously exposed the claimant. Instead, such an employee is allowed to recover from the last employer in whose employ the last injurious exposure occurred and resulted in an aggravation that

is both permanent and substantial. *Monfort, Inc. v. Rangel*, 867 P.2d 122 (Colo. App. 1993).

Compliance with federal guidelines for safe standards of radiation is immaterial to liability under workmen's compensation statute. *Union Carbide Corp. v. Indus. Comm'n*, 40 Colo. App. 182, 573 P.2d 938 (1977), *aff'd*, 196 Colo. 56, 581 P.2d 734 (1978).

Last injurious exposure need not cause a worsening of condition. *Redfield Scope Co. v. Indus. Comm'n*, 689 P.2d 657 (Colo. App. 1984), *aff'd in part, rev'd in part*, 723 P.2d 731 (Colo. 1986).

Last injurious exposure rule applied only to compensation benefits, including temporary disability benefits. *Royal Globe Ins. Co. v. Collins*, 723 P.2d 731 (Colo. 1986).

Last injurious exposure rule is applicable only to determine apportionment of full liability for occupational diseases among the parties who could potentially be liable. *Robbins Flower Shop v. Cinea*, 894 P.2d 63 (Colo. App. 1995).

This section does not require that the last injurious exposure be the cause in fact of the disease. *Union Carbide Corp. v. Indus. Comm'n*, 40 Colo. App. 182, 573 P.2d 938 (1977), *aff'd*, 196 Colo. 56, 581 P.2d 734 (1978); *Royal Globe Ins. Co. v. Collins*, 723 P.2d 731 (Colo. 1986).

But liability limited. The last employer which injuriously exposes an employee to toxic materials is liable only for the initial

occupational disease benefits and any additional benefits are paid out of the subsequent injury fund to which all employers contribute. *Union Carbide Corp. v. Indus. Comm'n*, 196 Colo. 56, 581 P.2d 734 (1978).

This section establishes the "last injurious exposure" rule for disabilities attributable to occupational diseases and is an exception to the general rule set forth in § 8-51-106(1)(a), (now § 8-46-101) providing that the employer and its insurance carrier in whose employment the employee was "last injuriously exposed to the hazards of such disease" shall have full responsibility for that part of the permanent total disability caused by the occupational disease. *Subsequent Injury Fund v. Grant*, 827 P.2d 574 (Colo. App. 1991).

The phrase, "any type of malignancy caused thereby" must be construed broadly, not narrowly, in order to avoid thwarting policy on which subsequent injury fund provisions are based. The phrase includes cancer caused by exposure to asbestos and not simply "asbestosis" as strictly defined. *Henderson v. RSI, Inc.*, 824 P.2d 91 (Colo. App. 1991).

The phrase, "any type of malignancy caused thereby", refers to all preceding conditions listed in subsection (2), and does not limit the liability of the subsequent injury fund to disability resulting from asbestosis, as opposed to cancer resulting from asbestosis. *Subsequent Injury Fund v. Comp. Ins. Auth.*, 768 P.2d 751 (Colo. App. 1988).

Where employee died of lung cancer incurred as a result of his exposure to radioactive materials during his work as uranium miner for several employers, last employer was liable for benefits even though last exposure of eight days duration was probably not the cause in fact of the disease. *Union Carbide Corp. v. Indus. Comm'n*, 40 Colo. App. 182, 573 P.2d 938 (1977), *aff'd*, 196 Colo. 56, 581 P.2d 734 (1978).

Section not applied when employee's back was reinjured. Reinjury of back did not implicate the "last injurious exposure" rule. *Univ. Park Care Ctr. v. Indus. Claim Appeals Office*, 43 P.3d 637 (Colo. App. 2001).

Where claimant's permanent total disability is solely attributable to the occupational disease of silicosis, employer is correctly assessed full liability for claimant's disability benefits. *Electron Corp. v. Indus. Claim Appeals Office*, 833 P.2d 821 (Colo. App. 1992).

Where a worker's permanent total disability has been caused by the combination of two or more injuries and the subsequent occupational disease of silicosis, liability is apportioned. Liability for that portion of the permanent total disability directly attributable to silicosis is governed by this section. *Climax Molybdenum Co. v. Walter*, 812 P.2d 1168 (Colo. 1991).

Claimant need not be totally disabled solely as a result of asbestosis to qualify for compensation under subsection (2). If asbestosis is the proximate cause of the

claimant's disability, i.e., the necessary precondition for the disability, then, even where the claimant was a heavy cigarette smoker, the disability is caused by asbestos is within the meaning of this section. Subsequent Injury Fund v. Comp. Ins. Auth., 768 P.2d 751 (Colo. App. 1988), *aff'd*, 793 P.2d 580 (Colo. 1990).

Employer properly assessed with full liability for claimant's disability benefits where claimant's permanent total disability is solely attributable to the occupational disease of silicosis. Electron Corp. v. Indus. Claim Appeals Office, 833 P.2d 821 (Colo. App. 1992).

Subsequent injury fund may be held liable for interest on award. Henderson v. RSI, Inc., 824 P.2d 91 (Colo. App. 1991).

The subsequent injury fund was not liable for compensation in excess of ten thousand dollars although the decedent was employed by more than one employer. The decedent's radiation exposure after the date the new employer became the manager of the plant was found to be insufficient to constitute an injurious exposure. Dow Chemical Co. v. Indus. Claim Appeals Office, 843 P.2d 122 (Colo. App. 1992) (decided prior to 1993 amendment to subsection (2)).

An occupational disease or disability "occurs", within the meaning of § 8-46-104, on the onset of disability, rather than upon the date of diagnosis. Union Carbide Corp. v. Indus. Claim Appeals Office, 128 P.3d 319 (Colo. App. 2005).

An employer's total liability, including interest, cannot exceed ten thousand dollars, and any interest payable that exceeds the employer's maximum obligation remains the sole obligation of the fund. Subsequent Injury Fund v. Indus. Claim Appeals Office, 859 P.2d 276 (Colo. App. 1993).

Where diagnosis occurred before April 1, 1994, the subsequent injury fund was liable for benefits claimed under previous version of statute for disability caused by exposure to radioactive materials even though decedent died after such date. Subsequent Injury Fund v. King, 961 P.2d 575 (Colo. App. 1998).

Payment of interest. The interest awarded in excess of the \$7,500 award is payable out of the subsequent injury fund, rather than by employer and insurance company. Union Carbide Corp. v. Indus. Comm'n, 40 Colo. App. 182, 573 P.2d 938 (1977), *aff'd*, 196 Colo. 56, 581 P.2d 734 (1978).

The addition of the phrase "substantial permanent aggravation" to subsection (1) did not eliminate or change the last injurious exposure test for causation. The phrase does not reflect an intent of the general assembly to depart from the principles set forth in Royal Globe Ins. Co. v. Collins, 713 P.2d 731 (Colo. 1986), including rejection of the contribution test for application of a last injurious exposure standard to occupational diseases caused by physical activities. Monfort, Inc. v. Rangel, 867 P.2d 122 (Colo. App. 1993).

Under the present version of subsection (1), the length of employment with a particular employer continues to be immaterial to a finding of liability. Instead, the focus is now on both the harmful nature of the concentration of the exposure and the magnitude of the effect of such exposure. *Monfort, Inc. v. Rangel*, 867 P.2d 122 (Colo. App. 1993).

Claimant's tort suit against the employer was barred by the Workers' Compensation Act as a matter of law where claimant had consented to work for the employer pursuant to a contract of hire within the meaning of the Act and she was an employee of both a dual employer and the employer. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Where the administrative law judge determined, based on the evidence, that claimant's disability arose from an upper extremity injury during claimant's tenure with employer, evidence that claimant sustained an aggravation of his condition upon return to self-employment was not relevant. *Delta Drywall v. Indus. Claim Appeals Office*, 868 P.2d 1155 (Colo. App. 1993).

Applied in *High v. Indus. Comm'n*, 638 P.2d 818 (Colo. App. 1981); *Mendisco & Urralburra Mining Co. v. Johnson*, 687 P.2d 492 (Colo. App. 1984); *Dow Chem. Co. v. Gabel*, 746 P.2d 1357 (Colo. App. 1987).

PART 4

CONTRACTORS AND LESSEES

8-41-401. Lessor contractor-out deemed employer - liability - recovery.

(1) (a) (I) Any person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee, contractor, or subcontractor, irrespective of the number of employees engaged in such work, shall be construed to be an employer as defined in articles 40 to 47 of this title and shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said lessees, sublessees, contractors, and subcontractors and their employees or employees' dependents, except as otherwise provided in subsection (3) of this section.

(II) Notwithstanding subparagraph (I) of this paragraph (a) and any other provision of law to the contrary, it is presumed that a buyer of goods is not liable as a statutory employer when a lessee, sublessee, contractor, or subcontractor, or their employee who is delivering the goods to the buyer injures himself or herself while not on the buyer's premises. The presumption may be overcome by a showing that the lessee, sublessee, contractor, or subcontractor, or their employee was performing a job function that would normally be performed by an employee of the buyer of

the goods being delivered. Nothing in this subparagraph (II) creates a presumption of a statutory employer-employee relationship when an injury occurs on the buyer's premises.

(III) For the purposes of this section, a "statutory employer" is an employer who is responsible to pay workers' compensation benefits pursuant to subparagraph (I) of this paragraph (a).

(a.5) The general assembly hereby finds and determines that the decision of the Colorado court of appeals in the case of *Newsom v. Frank M. Hall & Co.*, No. 02CA1375 (February 26, 2004), in which the court held that an independent contractor may be an entity other than a natural person, did not accurately reflect the intent of the general assembly when it passed Senate Bill 93-132 and Senate Bill 95-072. The general assembly hereby declares that the term "individual", as used in this section and in section 8-40-202, means a natural person.

(b) The employer, before commencing said work, shall insure and keep insured against all liability as provided in said articles, and such lessee, sublessee, contractor, or subcontractor, as well as any employee thereof, shall be deemed employees as defined in said articles. The employer shall be entitled to recover the cost of such insurance from said lessee, sublessee, contractor, or subcontractor and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due said lessee, sublessee, contractor, or subcontractor.

(2) If said lessee, sublessee, contractor, or subcontractor is also an employer in the doing of such work and, before commencing such work, insures and keeps insured its liability for compensation as provided in articles 40 to 47 of this title, neither said lessee, sublessee, contractor, or subcontractor, its employees, or its insurer shall have any right of contribution or action of any kind, including actions under section 8-41-203, against the person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof, or against its employees, servants, or agents.

(3) Notwithstanding any provision of this section or section 8-41-402 to the contrary, any individual who is excluded from the definition of employee pursuant to section 8-40-202 (2), or a working general partner or sole proprietor who is not covered under a policy of workers' compensation insurance, or a corporate officer or member of a limited liability company who executes and files an election to reject coverage under section 8-41-202 (1) shall not have any cause of action of any kind under articles 40 to 47 of this title. Nothing in this section shall be construed to restrict the right of any such individual to elect to proceed against a third party in accordance with the provisions of section 8-41-203. The total amount of damages recoverable pursuant to any cause of action resulting from a work-related injury brought by such individual that would otherwise have been compensable under articles 40 to 47 of this title shall not exceed fifteen thousand dollars, except in any cause of action brought against another not in the same employ.

(4) (a) Notwithstanding any provision of this section to the contrary, any person, company, or corporation who contracts with a landowner or lessee of a farm or ranch to perform a specified farming or ranching operation shall, prior to entering into such contract, provide for and maintain, for the period of such contract, workers' compensation coverage pursuant to articles 40 to 47 of this title covering all the employees and laborers to be utilized under such contract. Proof of such coverage on forms or certificates issued by the insurer shall be provided to the person, company, or corporation contracting for the labor prior to performing such contract.

(b) Any person, company, or corporation contracting with a landowner or lessee of a farm or ranch to provide a specified farming or ranching operation who fails to provide coverage pursuant to subsection (1) of this section or who fails to maintain such coverage for the term of the contract commits a class 2 misdemeanor.

(c) Notwithstanding any provision of this section to the contrary, no person, company, or corporation contracting with a landowner or lessee of a farm or ranch operation to perform a specified farming or ranching operation nor any employee of such person, company, or corporation required to be covered by workers' compensation pursuant to this subsection (4) shall have any right of contribution from, or any action of any kind, including actions under section 8-41-203, against, the person, company, or corporation contracting to have such agricultural labor performed.

(d) (I) If any person, company, or corporation contracting to provide labor to perform specified farming or ranching operations and required to provide workers' compensation coverage pursuant to articles 40 to 47 of this title fails to provide such coverage and the person, company, or corporation for whom the labor is provided incurs any liability thereby, the person, company, or corporation providing the labor shall be subject to a cause of action for said liability and for reasonable attorney fees.

(II) If the person, company, or corporation for whom the labor for the performance of a specified farming or ranching operation is provided is sued by the injured employee, said person, company, or corporation may join the person, company, or corporation providing the labor as a third-party defendant in lieu of filing an independent action.

(5) The provisions of this section shall not apply to licensed real estate brokers and licensed real estate sales agents, as regulated in article 10 of title 12, who are excluded from the definition of employee pursuant to section 8-40-301 (2).

(6) Notwithstanding any provision of this section to the contrary, any person, company, or corporation operating a commercial vehicle as defined in section 42-4-235 (1)(a), C.R.S., who holds oneself or itself out as an independent contractor only to perform for-hire transportation, including loading and unloading, and who contracts to perform a specific transportation job, transportation task, or transportation delivery for another person, company, or corporation is not entering into an employee and employer relationship for purposes of workers' compensation

coverage pursuant to articles 40 to 47 of this title. Nothing in this subsection (6) shall be construed to prohibit a determination that an individual is excluded from the definition of employee pursuant to section 8-40-202 (2) if such individual is operating a commercial vehicle as defined in section 42-4-235 (1)(a), C.R.S.

(7) This section shall not apply to any person excluded from the definition of "employee" pursuant to section 8-40-301 (5) or (7).

Source: **L. 90:** Entire article R&RE, p. 481, § 1, effective July 1. **L. 92:** (7) added, p. 1798, § 2, effective June 6. **L. 93:** (3) amended, p. 357, § 3, effective April 12; (6) amended, p. 1861, § 1, effective June 6. **L. 94:** (6) amended, p. 2544, § 16, effective January 1, 1995. **L. 95:** (1) and (3) amended, p. 344, § 3, effective July 1. **L. 96:** (1) and (3) amended, p. 647, § 2, effective May 1. **L. 2000:** (7) amended, p. 1497, § 2, effective August 2. **L. 2004:** (1)(a) amended and (1)(a.5) added, p. 1078, § 1, effective May 21. **L. 2013:** (1)(a) amended, (SB 13-147), ch. 389, p. 2262, § 1, effective June 5. **L. 2019:** (5) amended, (HB 19-1172), ch. 136, p. 1647, § 21, effective October 1. **L. 2021:** (4)(b) amended, (SB 21-271), ch. 462, p. 3142, § 94, effective March 1, 2022.

Editor's note: This section is similar to former § 8-48-101 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Liability of Lessor or Employer.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Uranium Mining Lease", see 27 Rocky Mt. L. Rev. 425 (1955). For article, "One Year Review of Corporations, Partnership and Agency", see 37 Dicta 11 (1960). For article, "Independent Contractors and the Colorado Workers' Compensation Act — Parts I and II", see 22 Colo. Law. 545 and 1281 (1993). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 117 (Nov. 2004). For

article, "'Statutory Employment'—What Kind of Work Is That?", see 45 Colo. Law. 53 (June 2016).

Annotator's note. (1) Since § 8-41-401 is similar to § 8-48-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred

some of its powers, duties, and functions under the act to the industrial claim appeals office.

This section is constitutional. Indus. Comm'n v. Hammond, 77 Colo. 414, 236 P. 1006 (1925); Md. Cas. Co. v. Indus. Comm'n, 86 Colo. 553, 283 P. 548 (1929).

This section does not deprive one of due process and equal protection. Ellerman v. Amax, Inc., 194 Colo. 392, 572 P.2d 836 (1977).

Furthermore, this section is not class legislation and not unconstitutional on that ground. Neither is this section unconstitutional because inconsistent with § 8-41-105; they may be construed together. Flick v. Indus. Comm'n, 78 Colo. 117, 239 P. 1022 (1925).

Subsection (3), limiting damages available to one who waives workers' compensation insurance, is constitutional. The amount of the cap on damages was arrived at through legislative compromise in an effort to address the competing concerns of providing support for sole proprietors while encouraging participation in the workers' compensation system and protecting the interests of builders and general contractors. It is not special legislation nor does it deprive claimants of property without due process. Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009).

Not modification of § 8-41-105. The contracting-out provision of this section does not modify the exemption for farm and ranch labor of § 8-41-105. Hefley v.

Morales, 197 Colo. 523, 595 P.2d 233 (1979).

Section also held to comport with constitutional provisions on due process, equal protection, and special legislation. O'Quinn v. Walt Disney Prods., Inc., 177 Colo. 190, 493 P.2d 344 (1972).

The creation of the classification of statutory employers and employees under this section is not a denial of equal protection. Edwards v. Price, 191 Colo. 46, 550 P.2d 856 (1976); Buzard v. Super Walls, Inc., 681 P.2d 520 (Colo. 1984).

While this section does not bar negligence actions by employees of one subcontractor against another subcontractor, nor negligence actions by employees of the general contractor against a subcontractor, but employees of a subcontractor are barred from bringing an action against the general contractor, this classification does not deny equal protection of the laws, since the classification is not based upon "a suspect classification", nor does it infringe upon "a fundamental right", and it satisfies the "rational basis" test. Edwards v. Price, 191 Colo. 46, 550 P.2d 856 (1976).

The purpose of this section is to prevent the avoidance of the insurance contract by calling the relation one of principal and independent contractor when such relation does not exist. The statute is intended to cover every business conducted by one through the activities of another under any kind of a contract. Indus. Comm'n v. Bracken, 83 Colo. 72, 262 P. 521 (1927); Rogers v. Solem, 103 Colo. 52, 83 P.2d 154 (1938); Zimmerman v. Indus. Comm'n, 109

Colo. 533, 127 P.2d 878 (1942); Faith Realty & Dev. Co. v. Indus. Comm'n, 170 Colo. 215, 460 P.2d 228 (1969); Morales v. Indus. Comm'n, 41 Colo. App. 180, 584 P.2d 1229 (1978), rev'd on other grounds, 197 Colo. 523, 595 P.2d 233 (1979).

The statutory intent behind this statute is to prevent employers from evading compensation coverage by contracting-out work instead of directly hiring the workmen. San Isabel Elec. Ass'n v. Bramer, 182 Colo. 15, 510 P.2d 438 (1973).

To implement the general purpose of the workmen's compensation laws, this section was enacted to prevent an employer from avoiding responsibility under the workmen's compensation act by contracting-out his work to an uninsured subcontractor. Frohlick Crane Serv., Inc. v. Mack, 182 Colo. 34, 510 P.2d 891 (1973); Hefley v. Morales, 197 Colo. 523, 595 P.2d 233 (1979).

State policy. It is the policy in Colorado to make the more financially solvent general contractor ultimately responsible for workmen's compensation benefits arising out of injuries to employees of all subcontractors. Edwards v. Price, 191 Colo. 46, 550 P.2d 856 (1976).

It is the general contractor to whom the employees of all subcontractors may look for workmen's compensation if their immediate employer is uninsured or financially irresponsible. This distinguishes the general contractor from the subcontractor and is the rationale which sustains the different treatment accorded general contractors by statute. Edwards v. Price, 191 Colo. 46, 550 P.2d 856 (1976).

Basis for policy. The public policy upon which the workmen's compensation act is founded derives from the need to provide monetary relief for workmen injured in the course of their employment, regardless of the negligence of the employer or the lack of negligence on the part of the employee. Edwards v. Price, 191 Colo. 46, 550 P.2d 856 (1976).

Burden of proof in workers' compensation case rests on the employer asserting the affirmative defense that the section bars the independent contractor from bringing such a claim. Stampados v. Colo. D & S Enters., 833 P.2d 815 (Colo. App. 1992).

Section bars only claims by independent contractors who have the option of obtaining workers' compensation insurance under the listed statutes and fail to do so, therefore it can apply only to those independent contractors who are corporate officers, working partners, individual employers, or employers in general who do not obtain insurance coverage. Stampados v. Colo. D & S Enters., 833 P.2d 815 (Colo. App. 1992).

Award based upon erroneous interpretation of law sustained if award proper absent misinterpretation. Even though a court may determine that the industrial commission erroneously interpreted the law, if the commission's award would have been correct had the law been properly interpreted, that award will be sustained. Univ. of Colo. Med. Ctr. v. Indus. Comm'n, 622 P.2d 596 (Colo. App. 1980).

A supplier is not a subcontractor within meaning of this section. While statutory

employer provisions have been liberally construed by the courts, it is not every relationship that constitutes a contract within the purview of the act. Thus, the term "subcontractor" is not intended to include suppliers of goods and materials. This construction rests not only upon the legal distinction between a "subcontractor" and a "supplier", but also upon recognition that if this section were applied to ordinary sales of merchandise, business dealings would be seriously hampered. *Doyle v. Mo. Valley Contractors, Inc.*, 288 F. Supp. 121 (D. Colo. 1968).

Lessor is liable irrespective of the number of men employed. The liability of the lessor of a business, under the workmen's compensation act, is fixed by this section, irrespective of the number of men employed. *Indus. Comm'n v. Hammond*, 77 Colo. 414, 236 P. 1006 (1925).

Likewise, a person operating or engaged in a business, who contracts out a part or all of the work to another contractor or subcontractor, is an employer regardless of the number of employees engaged in the work. *Snyder v. Indus. Comm'n*, 138 Colo. 523, 335 P.2d 543 (1959).

A person need not be engaged in a business in order to be considered an employer under the Workers' Compensation Act. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Without control one is not a statutory employer. An owner who leases equipment to a corporation for use in the corporation's business, and who has no control or interest

in such business or in its operation, is not an employer within the meaning of this section. *Flake Motors v. Huskins*, 128 Colo. 414, 262 P.2d 736 (1953); *Indus. Comm'n v. Vancil*, 133 Colo. 238, 293 P.2d 641 (1956); *White v. Indus. Comm'n*, 140 Colo. 11, 342 P.2d 688 (1959).

But where the claimant and the equipment are admittedly under the exclusive control, and subject at all times to the exclusive direction of a company when claimant begins an interstate journey in consummation of the business objectives of the company, he becomes a special employee of that company so far as liability for payment of workmen's compensation is concerned. *Am. Red Ball Transit Co. v. Indus. Comm'n*, 145 Colo. 509, 359 P.2d 1018 (1961).

Statutory employment relationship is not predicated on a finding of employer control. Rather, the alleged statutory employer's control over the employee is but one method of demonstrating the importance of the contracted services to the alleged employer. *Virginians Heritage Square Co. v. Smith*, 808 P.2d 366 (Colo. App. 1991); *Finlay v. Storage Tech. Corp.*, 733 P.2d 322 (Colo. App. 1986), *aff'd*, 764 P.2d 62 (Colo. 1988).

In contrast to the borrowed employee relationship, the statutory employment relationship does not rest upon a finding of employer control. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

Test for statutory employer. Company is a statutory employer if it engages in contract work when: (1) The work contracted out is a

part of the normal business of the company contracting out such business and (2) the work contracted out is business which the company would ordinarily accomplish with its own employees. *Campbell v. Black Mtn. Spruce, Inc.*, 677 P.2d 379 (Colo. App. 1983).

Court not required to apply regular business test when scope of contracted business is clear and work being done when injury occurred is clearly within that scope. *Monell v. Cherokee River, Inc.*, 2015 COA 21, 347 P.3d 1179.

For purposes of deciding whether company qualifies as "statutory employer" of independent contractor's employees, work that company contracts out may constitute part of its regular business operation, even though it does not contribute directly to particular business in which company is engaged. *Finlay v. Storage Tech. Corp.*, 733 P.2d 322 (Colo. App. 1986), *aff'd*, 764 P.2d 62 (Colo. 1988); *Humphrey v. Whole Foods Mkt. Rocky Mtn.*, 250 P.3d 706 (Colo. App. 2010).

And fact that work is always performed by independent contractor is not material in deciding whether work is part of contracting party's regular business operation under workers' compensation statute. *Finlay v. Storage Tech. Corp.*, 733 P.2d 322 (Colo. App. 1986), *aff'd*, 764 P.2d 62 (Colo. 1988).

One can be a statutory employer and liable for benefits under this section even if the work contracted out is casual and not related to the business or profession of the property owner. *O'Neill v. Indus. Claim*

Appeals Office, 778 P.2d 295 (Colo. App. 1989).

Regular business is defined by its total business operation considering elements of routineness, regularity, and importance of contracted service to the employer. *Finlay v. Storage Tech. Corp.*, 764 P.2d 62 (Colo. 1988); *Porta-Pacific v. Smithers*, 781 P.2d 147 (Colo. App. 1989); *Littlefield v. Mobil Expl. & Producing, North Am., Inc.*, 988 F. Supp. 1403 (D. Utah 1996); *Rowan v. Vail Holdings, Inc.*, 31 F. Supp. 2d 889 (D. Colo. 1998).

Thus, this section by definition extends the concepts of employer and employee far beyond the meanings of these terms at common law. By such extension there have been introduced into the nomenclature of the law on master and servant the terms statutory employer and statutory employee. *Snyder v. Indus. Comm'n*, 138 Colo. 523, 335 P.2d 543 (1959); *Morales v. Indus. Comm'n*, 41 Colo. App. 180, 584 P.2d 1229 (1978), *rev'd on other grounds*, 197 Colo. 523, 595 P.2d 233 (1979).

And to bring this section into application the test is whether the subcontracted work is part of the regular business of the constructive employer as the statute covers all situations in which the subcontracted work is such part of his regular business operation as the statutory employer ordinarily would accomplish with his own employees. *Pioneer Constr. Co. v. Davis*, 152 Colo. 121, 381 P.2d 22 (1963); *Gardner Motor Co. v. Feistel*, 160 Colo. 135, 414 P.2d 915 (1966); *San Isabel Elec. Ass'n v. Bramer*, 31 Colo. App. 134, 500 P.2d 821

(1972); Posey v. Intermountain Rural Elec. Ass'n, 41 Colo. App. 7, 583 P.2d 303 (1978).

Condominium owner was a statutory employer of house cleaner hired by maintenance company where owner, although using condominium unit as a second residence, was also in the regular business of renting it out. Thornbury v. Allen, 39 P.3d 1195 (Colo. App. 2001).

Alleged statutory employer was exempt from operation of this section where its primary business was to lease property for investment purposes. The fact that the lease contained provisions specifically applicable to business of lessee was not sufficient to show that lessor was involved in lessee's business. Virginians Heritage Square Co. v. Smith, 808 P.2d 366 (Colo. App. 1991).

General contractor remains statutory employer of subcontractor's employee and is entitled to a corresponding immunity from suit, despite the fact that the subcontractor is an independent contractor of the general contractor. The exception stated in subsection (1)(a) (now subsection (3)) of this section applies only to individuals working as independent contractors and to individual partners, members, corporate officers, and sole proprietors who have waived coverage under the workers' compensation act. Frank M. Hall & Co. v. Newsom, 125 P.3d 444 (Colo. 2005) (decided prior to the 2004 amendment to subsection (1)(a) and adoption of subsection (1)(a.5)).

Employer's past practices are relevant in determining whether an employer is a statutory or constructive employer. San

Isabel Elec. Ass'n v. Bramer, 182 Colo. 15, 510 P.2d 438 (1973); Campbell v. Black Mtn. Spruce, Inc., 677 P.2d 379 (Colo. App. 1983).

Trucking company by statute construed to be employer. Where the work contracted out by trucking company was part of its regular business operation that ordinarily would have been accomplished by its own employees, under such circumstances, trucking company is by statute construed to be an employer. Archer Freight Lines v. Horn Transp., Inc., 32 Colo. App. 412, 514 P.2d 330 (1973).

Governmental entity cannot be a constructive employer pursuant to subsection (1). Antal v. Delta County Mosquito Control Dist. No. 1, 644 P.2d 87 (Colo. App. 1982).

Parent corporation, sued by employee of its wholly-owned subsidiary, is not an "employer" entitled to immunity from tort liability under the workmen's compensation act. Peterson v. Trailways, Inc., 555 F. Supp. 827 (D. Colo. 1983).

Parent company was a statutory employer where court found an implied contract existed between parent and subsidiary in which there was a mutuality of obligation. Therefore, parent company was immune from suit pursuant to subsection (1)(a). Rowan v. Vail Holdings, Inc., 31 F. Supp. 2d 889 (D. Colo. 1998).

This section is not intended to apply to employers otherwise exempted. Hefley v. Morales, 197 Colo. 523, 595 P.2d 233 (1979).

Whether a person or entity has the status of statutory employer is generally a question of fact. Thornbury v. Allen, 991 P.2d 335 (Colo. App. 1999); Humphrey v. Whole Foods Mkt. Rocky Mtn., 250 P.3d 706 (Colo. App. 2010).

However, where the facts are undisputed, the trial court's determination of statutory employment status drawn from those facts is a **question of law** that is reviewed de novo. Newsom v. Frank M. Hall & Co., 101 P.3d 1107 (Colo. App. 2004), rev'd on other grounds, 125 P.3d 444 (Colo. 2005); Humphrey v. Whole Foods Mkt. Rocky Mtn., 250 P.3d 706 (Colo. App. 2010).

Type of employee deemed question of law. Where the facts are undisputed, the question of whether an individual is an employee, as defined by § 8-41-106, or a constructive employee, to whom work has been contracted out as defined by subsection (1) of this section, is a question of law, not a question of fact. Univ. of Colo. Med. Ctr. v. Indus. Comm'n, 622 P.2d 596 (Colo. App. 1980).

"Cost of such insurance" recoverable by statutory employer is actual cost, where general contractor seeks reimbursement from uninsured subcontractor under subsection (1)(b). This provision should not be construed to encourage subcontractors to ignore their primary responsibility for insuring their own employees, as by allowing the statutory employer to recover only the hypothetical cost of insuring the one employee of the subcontractor that happened to be injured

under a "guaranteed cost" type of policy. Winer's Pumping Units v. Emerald Gas Operating Co., 936 P.2d 627 (Colo. App. 1997).

The Workers' Compensation Act excepts from coverage employers of persons engaged in domestic or other work "about a private home" and excepts from employer status "the owner of a private home who contracts out any work done to or about said home". These exceptions are not intended to abrogate the borrowed servant doctrine in the case of work performed at a private home, except in the limited situations in which the domestic employment is not on a full-time basis. Evans v. Webster, 832 P.2d 951 (Colo. App. 1991).

Dispositive considerations as to whether construction constitutes work "to or about" a home are the location of the improvement and the purpose for which it is to be used. O'Neill v. Indus. Claim Appeals Office, 778 P.2d 295 (Colo. App. 1989).

The Workers' Compensation Act was intended to apply to claimant who was hired to perform domestic services on a full-time basis, when employer compensated dual employer for claimant's services, and dual employer maintained workers' compensation coverage on claimant's behalf. Evans v. Webster, 832 P.2d 951 (Colo. App. 1991).

Proper characterization of employment relationship depends upon facts determined by commission. The determination of the proper characterization of the employment relationship depends

upon the facts in each case. This determination must properly be made by the commission rather than the court, even though the facts are largely undisputed, because this matter is not within the court's scope of review. *Schultz v. Indus. Comm'n*, 34 Colo. App. 122, 523 P.2d 164 (1974).

Examination of nature and needs of employer's business determines nature of work contracted out. The issue of whether work contracted out is part of the regular business of an employer is not affected by the fact that the subcontractor is an independent entity who has a business of his own; rather, the question is to be determined by examining the nature and needs of the employer's business. *Melody Homes, Inc. v. Lay*, 44 Colo. App. 49, 610 P.2d 1081 (1980).

Lessees are liable for accidental injuries to their employees, regardless of the liability of the lessor. *Index Mines Corp. v. Indus. Comm'n*, 82 Colo. 272, 259 P. 1036 (1927).

This section cannot be limited to cases where lessees are themselves employees. *Index Mines Corp. v. Indus. Comm'n*, 82 Colo. 272, 259 P. 1036 (1927).

This section extends common-law immunity from suit by an injured employee to an agent of the claimant's statutory employer. *Posey v. Intermountain Rural Elec. Ass'n*, 41 Colo. App. 7, 583 P.2d 303 (1978).

This section has no force if it applies only to the case of actual employer and employee. Its force lies in the fact that it

says that one shall "be construed to be" an employer who would not otherwise be such. *Index Mines Corp. v. Indus. Comm'n*, 82 Colo. 272, 259 P. 1036 (1927); *Zimmerman v. Indus. Comm'n*, 109 Colo. 533, 127 P.2d 878 (1942).

This section pertains to the potential liability of a general contractor under the Act for injuries to a subcontractor's employee when the general contractor has not borrowed the subcontractor's employee; the focus is whether the work contracted out is part of the employer's regular business operation. *Evans v. Webster*, 832 P.2d 951 (Colo. App. 1991).

One who contracts out his work or any part of it to a subcontractor is himself an employer of the subcontractor and the subcontractor's employees. *Herriott v. Stevenson*, 172 Colo. 379, 473 P.2d 720 (1970).

This statute makes an employer responsible for subcontractors and their employees when the employer has contracted-out part of his regular business. *Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 510 P.2d 891 (1973).

The general assembly, by extending workers' compensation liability to cover the injury or death of "contractors, or subcontractors", intended that workers' compensation be the remedy for all contractors "downstream" from the one contracting work, regardless of how many intermediate contractors there might be. *Buzard v. Super Walls, Inc.*, 681 P.2d 520 (Colo. 1984).

And it provides that a subcontractor and his employees are deemed to be employees of the employer who contracts for others to do his work. *Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 510 P.2d 891 (1973).

The general assembly did not intend that a subcontractor should be free of responsibility for his own negligence or the negligence of his employees. *Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 510 P.2d 891 (1973).

And a subcontractor may be sued by an employee of a general contractor. *Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 510 P.2d 891 (1973).

Subcontractor's violation of contract could not prevent operation of section. If a violation by a subcontractor of the terms of his contract could prevent the operation of the contracting-out statute, the statute's effectiveness in the statutory scheme would be lost. *San Isabel Elec. Ass'n v. Bramer*, 182 Colo. 15, 510 P.2d 438 (1973).

This section is not limited to specific technical relationships. It covers every business conducted by one through the activities of another under any kind of contract. *Rhodes v. Indus. Comm'n*, 99 Colo. 271, 61 P.2d 1035 (1936); *Cont'l Oil Co. v. Sirhall*, 122 Colo. 332, 222 P.2d 612 (1950).

And one may be an employee by virtue of this section, when in fact he is not an employee by common-law definition. *Cont'l Oil Co. v. Sirhall*, 122 Colo. 332, 222 P.2d 612 (1950).

Where claimant worked full-time and there was no evidence that he was hired for the completion of single tasks, or on a per task basis, ALJ erred in concluding that he was not an actual employee. The "relative nature of the work" test, if applied, would show that the claimant was an actual employee and not an independent contractor barred from making a claim by this section. *Stampados v. Colo. D & S Enters.*, 833 P.2d 815 (Colo. App. 1992).

The "business" of a person is that calling which he pursues for livelihood or gain. *Am. Radiator Co. v. Franzen*, 81 Colo. 161, 254 P. 160 (1927).

Owners of leased property become "employers" of lessee within meaning of this section. *Rogers v. Solem*, 103 Colo. 52, 83 P.2d 154 (1938).

Application of subsection (1). Subsection (1) has been construed to apply to businesses conducted through the activities of another under a contractual relationship. *Standard Oil Co. v. Indus. Comm'n*, 38 Colo. App. 39, 552 P.2d 1029 (1976).

A general contractor is only immune from tort liability under subsection (2) if it is a statutory employer under subsection (1)(a). *Cowger v. Henderson Heavy Haul Trucking*, 179 P.3d 116 (Colo. App. 2007).

Provisions apply on federal land. State workmen's compensation provisions apply to land owned by the federal government. Hence, statutory employer immunity bars a suit for damages for personal injuries incurring in an accident at a nuclear

weapons facility in Colorado, owned by the United States and operated by a private company. *Stewart v. United States*, 716 F.2d 755 (10th Cir. 1982).

Employees of lessee. Where an oil company owned a good many filling stations which it leased out for a term of one year and it was shown that all of the lessees sold only the lessor's products, by virtue of this section any employee of the lessee was an employee of the oil company as far as workmen's compensation is concerned. *Cont'l Oil Co. v. Sirhall*, 122 Colo. 332, 222 P.2d 612 (1950).

Oil company was the constructive statutory employer of claimant who worked at a service station leased by the oil company to its dealer. *Standard Oil Co. v. Indus. Comm'n*, 38 Colo. App. 39, 552 P.2d 1029 (1976).

Officer rejecting coverage under the act pursuant to § 8-41-202 is subject to the cap on tort recovery found in this section. *Kelly v. Mile Hi Single Ply, Inc.*, 890 P.2d 1161 (Colo. 1995).

As a sole proprietor and a person excluded from the definition of employee, sole proprietor who chose not to purchase workers' compensation coverage is within the group of individuals generally subject to the statutory limit on damages pursuant to subsection (3). *Pulsifer v. Pueblo Prof'l Contractors, Inc.*, 161 P.3d 656 (Colo. 2007); *Cavaleri v. Anderson*, 2012 COA 122, 298 P.3d 237.

The limitation in subsection (3) applies to both a sole proprietor who contracts

with a general contractor and a sole proprietor who contracts directly with the property owner. *Cavaleri v. Anderson*, 2012 COA 122, 298 P.3d 237.

In reconciling § 8-41-103 and subsection (3), the court upheld trial court's reasoning that corporate officer who has elected to reject workers' compensation coverage may bring tort action only against employer. Whether or not a corporate officer has elected to reject such coverage, employees covered by Workers' Compensation Act are still limited to their rights and remedies under the Act. *Kelly v. Mile Hi Single Ply, Inc.*, 873 P.2d 13 (Colo. App. 1993).

Tort suit against borrowed employee barred where: Special employer had the exclusive right to control the work of the borrowed employee operator pursuant to the lease agreement, at the time of the accident the borrowed employee operator was performing work for the special employer, the special employer was controlling the work, and the borrowed employee operator acquiesced to this special employment relationship. *Morphew v. Ridge Crane Serv., Inc.*, 902 P.2d 848 (Colo. App. 1995).

The focus on "another not in the same employ" is on whether the services are being directly performed for another and not on whether one of the parties meets the statutory definition of employer; therefore, an injured plaintiff is entitled to sue a defendant who is not a direct party to the agreement for services and is not subject to the statutory limitation on damages. If the parties are principal parties to the agreement

for services, the limitation on damages does apply. *Pulsifer v. Pueblo Profit Contractors, Inc.*, 161 P.3d 656 (Colo. 2007); *Cavaleri v. Anderson*, 2012 COA 122, 298 P.3d 237.

Damages cap in subsection (3) applies to a corporate officer of a single-member corporation who rejects workers' compensation insurance coverage only if the rejecting corporate officer is a "principal party" to the agreement for services. Because plaintiff is not a principal party to the agreement, the damages cap does not apply to his claim. *Ramirez v. KLM Constr., Inc.*, 2025 COA 99, 585 P.3d 870.

Independent contractor who elects not to obtain a policy of workers' compensation insurance covering himself is precluded from recovering more than the \$15,000 statutory limit in damages from an uninsured motorist policy of the employer of a tortfeasor who is in the same employ as the independent contractor. *Cont'l Divide Ins. Co. v. Dickinson*, 179 P.3d 202 (Colo. App. 2007).

Independent contractors who work with each other and not for each other and do not have an agreement to do work for each other are not "in the same employ" and therefore not subject to the Workers' Compensation Act and the \$15,000 limitation on damages set forth in subsection (3). Therefore, one such independent contractor who is injured on the job by the negligence of another independent contractor may recover damages in excess of the limitation. *Curry v. Brewer*, 2025 COA 28, 569 P.3d 115.

Applied in *Horn Transp., Inc. v. Claimants in re Death of Wards*, 40 Colo. App. 395, 576 P.2d 195 (1978); *Kalmon v. Indus. Comm'n*, 41 Colo. App. 259, 583 P.2d 946 (1978); *Campbell v. Black Mtn. Spruce, Inc.*, 677 P.2d 379 (Colo. App. 1983); *Buzard v. Super Walls, Inc.*, 681 P.2d 520 (Colo. 1984); *Wagner v. Coors Energy Co.*, 685 P.2d 1380 (Colo. App. 1984); *Black v. Cabot Petroleum Corp.*, 877 F.2d 822 (10th Cir. 1989).

II. LIABILITY OF LESSOR OR EMPLOYER.

Employee of a trust. *Rhodes v. Indus. Comm'n*, 99 Colo. 271, 61 P.2d 1035 (1936), distinguishing *Flick v. Indus. Comm'n*, 78 Colo. 117, 239 P. 1022 (1925).

General contractor liable for benefits to survivors of subcontractor's employee. As a statutory employer, a general contractor is liable for workmen's compensation benefits to survivors of an employee of a subcontractor if the subcontractor fails to obtain workmen's compensation insurance coverage. *Edwards v. Price*, 191 Colo. 46, 550 P.2d 856 (1976).

Security service employee entitled to benefits under section. An employee of a security service, who is injured while patrolling a construction site which the security service has been hired to guard, is a statutory employee of the general contractor and, therefore, he is entitled to benefits under this section. *Melody Homes, Inc. v. Lay*, 44 Colo. App. 49, 610 P.2d 1081 (1980).

Application of subsection (2). Even though subcontractor had workmen's compensation coverage for his employees, the subcontractor himself was not covered by the policy and therefore was covered by the policy of the prime contractor as an employee thereof. *Oliver Const. Co., Inc. v. Indus. Comm'n*, 680 P.2d 1308 (Colo. App. 1983).

This section confers an immunity on a general contractor or a real property owner in exchange for a duty which inheres to the benefit of a workman, so that, while a workman will be required to forego a negligence action against a general contractor or real property owner, he will be assured that regardless of fault, the more solvent general contractor or real property owner stands behind and secures the workmen's compensation liability of the workman's immediate employer. *O'Quinn v. Walt Disney Prods., Inc.*, 177 Colo. 190, 493 P.2d 344 (1972).

Where the survivors of an employee of a subcontractor received their workmen's compensation benefits from the subcontractor, this section provides that the survivors cannot maintain a negligence action against the general contractor or any of its principals. *Edwards v. Price*, 191 Colo. 46, 550 P.2d 856 (1976).

Liability as employer of corporation leasing or contracting out. This section provides that any corporation engaged in any business by leasing, or contracting out any part or all of the work thereof to any contractor or subcontractor, shall be construed to be and be an employer as

defined in articles 42 to 66 of this title, and shall be liable to pay compensation for injury or death resulting therefrom to the contractors and subcontractors and their employees. *Index Mines Corp. v. Indus. Comm'n*, 82 Colo. 272, 259 P. 1036 (1927); *Cont'l Oil Co. v. Sirhall*, 122 Colo. 332, 222 P.2d 612 (1950); *Indus. Comm'n v. Vancil*, 133 Colo. 238, 293 P.2d 641 (1956); *White v. Indus. Comm'n*, 140 Colo. 11, 342 P.2d 668 (1959); *Nicks v. Electron Corp.*, 29 Colo. App. 114, 478 P.2d 683 (1970); *San Isabel Elec. Ass'n v. Bramer*, 31 Colo. App. 134, 500 P.2d 821 (1972).

A lessor is liable as a statutory employer under this section when it is shown that the lessor operates, engages in, or conducts his business by leasing his property. *Standard Oil Co. v. Indus. Comm'n*, 38 Colo. App. 39, 552 P.2d 1029 (1976).

And single act of leasing constitutes "operating" or "conducting" business under this section. *Indus. Comm'n v. Hammond*, 77 Colo. 414, 236 P. 1006 (1925).

Apparent corporate status of contractor not basis for estoppel defense of employer. An employer who fails to obtain workmen's compensation coverage for a contractor who is not himself an "employer" as defined by § 8-41-105 (1)(b) cannot assert a defense of equitable estoppel based upon the contractor's alleged corporate status. *Canda v. Indus. Comm'n*, 44 Colo. App. 70, 607 P.2d 403 (1980).

Company not a statutory employer. Where a contract speaks in terms of an independent contractor and not of an

employee; it has little to do with a company's business; it contemplates a single definite result without the company's having the slightest control as to the method or time of work; and it refers to no semblance of wages, the company is not construed to be a statutory employer. *London Guarantee & Accident Co. v. Indus. Comm'n*, 95 Colo. 306, 35 P.2d 1010 (1934).

The test as to whether a lessor is liable is whether the subcontracted work is part of the regular business of the lessor. *Standard Oil Co. v. Indus. Comm'n*, 38 Colo. App. 39, 552 P.2d 1029 (1976).

Principals engaged in a joint enterprise are jointly responsible under the workmen's compensation act. *Snyder v. Indus. Comm'n*, 138 Colo. 523, 335 P.2d 543 (1959).

A joint venture falls within the meaning of the term "company" in this section. *Edwards v. Price*, 191 Colo. 46, 550 P.2d 856 (1976).

No comparative liability between subcontractor and contractor. Although this section gives the power to impose liability for the payment of compensation upon the original employer, who has become a subcontractor, and upon the contractor in the case of a compensable injury to an employee of the subcontractor, this section gives no authority to determine or fix a comparative degree of liability for the compensation as between the subcontractor employer and the contractor. *Sechler v. Pastore*, 103 Colo. 139, 84 P.2d 61 (1938).

Party who contracts work away is construed to be the employer. If the party

to whom this statutory employer has contracted work out fails to secure workmen's compensation insurance, the statutory employer is liable to respond in damages to the injured employees of the other party. *Stewart v. United States*, 716 F.2d 755 (10th Cir. 1982).

Employment of claimants by an uninsured contractor operated to impose liability for compensation on the person contracting out the work of its business, and contractor was not liable for compensation. *Breckenridge Co. v. Swales Mgt. Corp.*, 33 Colo. App. 51, 517 P.2d 476 (1973), modified, 185 Colo. 160, 522 P.2d 737 (1974).

Automobile manufacturer neither contractor out nor statutory employer of dealer's employee. *Bukowich v. Ford Motor Co.*, 99 Colo. 56, 59 P.2d 470 (1936).

Unincorporated self-employed repairman. Self-employed sheet metal and heating repairman, using the name "M. Kunz and Sons, Inc.", although he had not completed incorporation, is not an "employer" and not required to carry workmen's compensation insurance for himself. *Canda v. Indus. Comm'n*, 44 Colo. App. 70, 607 P.2d 403 (1980).

Lessor is not liable where his lessee is an employer who has insured his liability under the act. *Indus. Comm'n v. Bracken*, 83 Colo. 72, 262 P. 521 (1927).

But lessor liable where lessee's insurance did not cover leased business. A lessee who carried compensation insurance for a business separate and distinct from

operation of a leased mine, which insurance did not cover the mining operations, had not insured and kept insured his liability for compensation as required by this section, the lessor was thus liable. *State Comp. Ins. Fund v. Batis*, 117 Colo. 1, 183 P.2d 891 (1947).

And failure of lessee to carry out agreement to insure does not relieve the lessor from liability. *Index Mines Corp. v. Indus. Comm'n*, 82 Colo. 272, 259 P. 1036 (1927); *Joe Dandy Mining Co. v. Indus. Comm'n*, 112 Colo. 241, 148 P.2d 817 (1944); *Chevron Oil Co. v. Indus. Comm'n*, 169 Colo. 336, 456 P.2d 735 (1969).

Likewise where a subcontractor fails to keep his compensation insurance in force, the contractor was not released from its liability under the act, and said subcontractor and deceased, under this section, are both constructive employees of the contractor and covered by its insurance policy. *Hartford Accident & Indem. Co. v. Clifton*, 117 Colo. 547, 190 P.2d 909 (1948).

Section does not apply to state board of land commissioners unless it elects to come under provisions of act. Where the state board of land commissioners, in exercising its administrative functions, executes a lease of mineral lands under its supervision for mining purposes, it is not conducting a mining business by leasing as contemplated by this section, unless it elects to place itself within the provisions of the act. *Indus. Comm'n v. State Comp. Ins. Fund*, 94 Colo. 194, 29 P.2d 372 (1934).

Lessors of coal mining property, operated by lessee, are employers within the meaning of this section and liable for

compensation to an employee of lessee injured on the property in the course of his employment. *McKune v. Indus. Comm'n*, 94 Colo. 523, 31 P.2d 322 (1934).

Lessee who subleases construed as employer. Where owner of coal lease subleases to a partnership and thereby the partnership conducts mining operations, the owner of the lease is a lessor and employer under this section and liable to the employees of the partnership. *Zimmerman v. Indus. Comm'n*, 109 Colo. 533, 127 P.2d 878 (1942).

Failure of lessee to protect employees held to be a breach of the lease. *Rocky Mt. Fuel Co. v. New Std. Coal Mining Co.*, 89 F.2d 147 (10th Cir. 1937).

Owner of property liable as "employer" unless independent contractor carries insurance covering employee. *Indus. Comm'n v. Int'l Mut. Liab. Ins. Co.*, 103 Colo. 419, 86 P.2d 970 (1939).

Under previous section primary contractor was liable as third-party tortfeasor even though subcontractor had workmen's compensation insurance. *Thomas v. Farnsworth Chambers Co.*, 286 F.2d 270 (10th Cir. 1960), rev'g 183 F. Supp. 764 (D. Colo. 1960).

Common-law action barred now unless subcontractor not an employer or not insured. While the definition of an employer found in § 8-48-101 adds a contractor-out to the definition of an employer in § 8-41-105, the language of the statute is clear to the effect that no common-law action under the act may be brought

against a contractor-out by an injured employee of a subcontractor unless the subcontractor is either not an employer as defined by the act or has not insured his liability for compensation as required by the act. *Herriott v. Stevenson*, 172 Colo. 379, 473 P.2d 720 (1970); *Nicks v. Electron Corp.*, 29 Colo. App. 114, 478 P.2d 683 (1970).

But subcontractor not immune from action in tort for injury to employee of another subcontractor. Inasmuch as the statute does not impose any workmen's compensation liability on a subcontractor for injury to an employee of another subcontractor on the same job, the statute does not grant immunity to such a subcontractor for torts against employees of other subcontractors. *Krueger v. Merriman Elec.*, 29 Colo. App. 492, 488 P.2d 228 (1971).

For right to third-party action denied only as against one contracting out. The right to bring third-party actions, referred to in the statute as "actions under section 8-52-108", is denied only as against the person, engaged in or conducting any business by contracting out any part or all of the work thereof. The person thus protected from third-party liability is the person on whom statutory liability is imposed; i.e., the principal contractor. *Krueger v. Merriman Elec.*, 29 Colo. App. 492, 488 P.2d 228 (1971).

Lessor is not liable for hospital bills contracted with strangers. While under this section a lessor of property upon which business operations are conducted sustains

the relationship of employer to the lessee thereof and his employees, the law does not extend its liability beyond that of paying compensation for accidental injury or death sustained in the course of employment, and the commission is without jurisdiction to order it to discharge medical and hospital bills contracted with strangers to the law, the parties and proceedings, the bills not being authorized by such lessor. *Rocky Mt. Fuel Co. v. Indus. Comm'n*, 105 Colo. 220, 96 P.2d 413 (1939). *Rocky Mt. Fuel Co. v. Indus. Comm'n*, 105 Colo. 226, 96 P.2d 416 (1939).

Where a canning company, in order to obtain products for canning, enters into contracts with growers giving the company an option to assist growers to produce, or to produce for the grower the crews, trucks, and other equipment proper for the expeditious harvesting and delivery of peas, and at company's option to pay for such labor, trucks and services and charge same against grower's account, and the company exercises such option by directing a grower's employee to gather peas for other contracting growers, the gathering of peas becomes "a part of the work thereof" and grower's employee is an employee of the company under this section. *Betz v. Indus. Comm'n*, 109 Colo. 385, 125 P.2d 958 (1942).

Death of independent contractor. A country club, whose organization was merely for the convenience and pleasure of its members, was held not to be liable for benefits payable under workmen's compensation for the death of a contractor who was accidentally electrocuted while

constructing three manholes along the club sewer line, as all of the facts showed that decedent was an independent contractor. *Meyer v. Lakewood Country Club*, 122 Colo. 110, 220 P.2d 371 (1950).

Interstate moving company liable for helper's compensation benefits. Where interstate moving company leased truck from its New York intrastate agent and where truck driver, who was a driver for the agent, was directly supervised and controlled by the interstate company, the driver was an employee of the interstate company at the time of the injury to his helper while working in Colorado and thus, the interstate company was liable for the helper's workmen's compensation benefits. *Market v. Feuer Moving & Storage*, 33 Colo. App. 80, 515 P.2d 126 (1973).

Subsection (6) creates a narrow exception to statutory employment status for independent transportation contractors who contract for a single delivery. The exception does not apply to a transportation contractor who contracts for regular delivery of eight to twelve loads a day for six weeks. *Hurst Constr. Co. v. Ramey*, 821 P.2d 858 (Colo. App. 1991).

Person cleaning windows for heating company held to be employee of window cleaning company. A person accidentally injured while cleaning windows for a company engaged in manufacturing and selling heating plants and which employed a window cleaning company to clean its windows, held to be an employee of the window cleaning company by which he was regularly employed, and not of the heating

company. *Am. Radiator Co. v. Frazen*, 81 Colo. 161, 254 P. 160 (1927).

One engaged by a coal company to haul coal with his own truck at a fixed price per ton, held, under the facts disclosed, to be an employer and not a contractor. *Indus. Comm'n v. Bonfils*, 78 Colo. 306, 241 P. 735 (1925).

The terms farming, ranching, or agricultural labor, using their ordinary meanings, do not include construction of a building. *Sorensen v. Goldman*, 837 P.2d 266 (Colo. App. 1992).

Contracting out for delivery of part of crop was a "farming operation" within meaning of subsection (3). Therefore, the contractor, not the farmer, was primarily responsible for workers' compensation coverage. *State Comp. Ins. Fund v. Indus. Comm'n*, 713 P.2d 405 (Colo. App. 1985).

Owner of land agreeing that another might enter and operate a gravel pit on a royalty basis is not liable as a lessor. Where the owner of land agreed that another might enter thereon and operate a gravel pit on a royalty basis, it is held that the industrial commission was not justified in finding him liable for the payment of compensation as a lessor, under this section. *Flick v. Indus. Comm'n*, 78 Colo. 117, 239 P. 1022 (1925).

Assignees of mining property contracting with original lessee held to be contracting out part of work. Assignees of mining lease with option to purchase, who contracted with the original lessee for mining work on the property, held to have

been engaged in the operation of a mining business by contracting out part of the work, under this section, and liable for compensation for the accidental death of their assignor contractor occurring while he was engaged in such work. *Devereux v. Indus. Comm'n*, 87 Colo. 594, 290 P. 287 (1930).

And fact that assignees with option to purchase did not own property held not to affect their liability. The fact that assignees of a mining lease with option to purchase did not own the property and had not perfected any interest therein when their assignor was killed while doing work for them under contract on the property, held not to affect their liability for his death under the workmen's compensation act. *Devereux v. Indus. Comm'n*, 87 Colo. 594, 290 P. 287 (1930).

Owner of mining property liable for injuries to employee of contractor constructing an upraise on mining property. An owner who contracted with another to construct an upraise on his mining property, held to be an employer engaged in the business of mining and liable for compensation for injuries received by an

employee of the contractor received while engaged in the work, under this section. *Ontario Mining Co. v. Indus. Comm'n*, 86 Colo. 206, 280 P. 483 (1929).

A person employed by an independent contractor to drive a truck in delivering coal, held, under the provisions of this section, to be an employee of the company under which the contractor was doing business. *Indus. Comm'n v. Cont'l Inv. Co.*, 78 Colo. 399, 242 P. 49 (1925).

Claim of regular employee of university's medical center controlled by § 8-41-106 (1)(a)(I). Where nurse claiming benefits was a regular employee of the university of Colorado medical center, § 8-41-106 (1)(a)(I) controlled the award of benefits, not subsection (1) of this section. *Univ. of Colo. Med. Ctr. v. Indus. Comm'n*, 622 P.2d 596 (Colo. App. 1980).

Injury to employee of company contracting with municipality. *State Comp. Ins. Fund v. Alishio*, 125 Colo. 242, 250 P.2d 1015 (1952).

Applied in *Pittman Motors, Inc. v. Indus. Comm'n*, 156 Colo. 218, 399 P.2d 784 (1964).

8-41-402. Repairs to real property - exception for liability of occupant of residential real property.

(1) Every person, company, or corporation owning any real property or improvements thereon and contracting out any work done on and to said property to any contractor, subcontractor, or person who hires or uses employees in the doing of such work shall be deemed to be an employer under the terms of articles 40 to 47 of this title. Every such contractor, subcontractor, or person, as well as such contractor's, subcontractor's, and person's employees, shall be deemed to be an employee, and such employer shall be liable as provided in said articles

to pay compensation for injury or death resulting therefrom to said contractor, subcontractor, or person and said employees or employees' dependents and, before commencing said work, shall insure and keep insured all liability as provided in said articles. Such employer shall be entitled to recover the cost of such insurance from said contractor, subcontractor, or person and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due to said contractor, subcontractor, or person. Articles 40 to 47 of this title shall not apply to the owner or occupant, or both, of residential real property which meets the definition of a "qualified residence" under section 163 (h)(4)(A) of the federal "Internal Revenue Code of 1986", as amended, who contracts out any work done to the property, unless the person performing the work is otherwise an employee of the owner or occupant, or both, of the property.

(2) If said contractor, subcontractor, or person doing or undertaking to do any work for an owner of property, as provided in subsection (1) of this section, is also an employer in the doing of such work and, before commencing such work, insures and keeps insured all liability for compensation as provided in articles 40 to 47 of this title, neither said contractor, subcontractor, or person nor any employees or insurers thereof shall have any right of contribution or action of any kind, including actions under section 8-41-203, against the person, company, or corporation owning real property and improvements thereon which contracts out work done on said property, or against its employees, servants, or agents.

(3) (Deleted by amendment, L. 91, p. 1295, § 9, effective July 1, 1991.)

Source: **L. 90:** Entire article R&RE, p. 483, § 1, effective July 1. **L. 91:** Entire section amended, p. 1295, § 9, effective July 1.

Editor's note: This section is similar to former § 8-48-102 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-41-402 is similar to § 8-48-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

There is no reason that compensation coverage need be linked to common-law

definitions of employment in order to be constitutional. *Lancaster v. C.F. & I. Steel Corp.*, 190 Colo. 463, 548 P.2d 914 (1976).

Section held to comport with constitutional provisions on due process, equal protection, and special legislation. *Flick v. Indus. Comm'n*, 78 Colo. 117, 239 P. 1022 (1925); *O'Quinn v. Walt Disney Prods., Inc.*, 177 Colo. 190, 493 P.2d 344 (1972).

The industrial claim appeals panel's interpretation of subsection (1) does not violate equal protection requirements.

The owners of other real property are not similarly situated with owners or occupants of qualified residential real property. The exemption is compatible with the normal expectations of property owners who contract with craftsmen and artisans for work on residential properties. *Brown v. Muto*, 943 P.2d 38 (Colo. App. 1996).

The 1991 amendment to subsection (1) did not violate equal protection by distinguishing between residential properties with encumbrances and those that are free from any encumbrances; the amendment did not draw such distinction. *Colo. AFL-CIO v. Donlon*, 914 P.2d 396 (Colo. App. 1995).

The intent of the workmen's compensation law was to create special categories of employees and employers to provide protection for employees and to compel employers to maintain insurance coverage. *Lancaster v. C.F. & I. Steel Corp.*, 190 Colo. 463, 548 P.2d 914 (1976).

Lack of ownership would, of course, preclude the applicability of this section. *Lancaster v. C.F. & I. Steel Corp.*, 190 Colo. 463, 548 P.2d 914 (1976).

This section confers an immunity on a real property owner in exchange for a duty which inheres to the benefit of a workman, so that, while a workman will be required to forego a negligence action against a real property owner, he will be assured that regardless of fault, the more solvent real property owner stands behind and secures the workmen's compensation liability of the

workman's immediate employer. *O'Quinn v. Walt Disney Prods., Inc.*, 177 Colo. 190, 493 P.2d 344 (1972).

And this section was intended to cover a case where the landowners owned the real property and the improvements thereon, and contracted out work on and to the property to a contractor who hired at least four employees on this job, where the claimant was a regular employee. *Stewart v. Indus. Comm'n*, 163 Colo. 12, 428 P.2d 367 (1967).

An entity is deemed a statutory employer only if the injured person was doing work while on the real property of the entity and to that real property. *Krol v. CF&I Steel*, 2013 COA 32, 307 P.3d 1116.

Enhancement of real property's capital value is a relevant but not essential factor in determining whether an object is an improvement. The intention of the owner of the object located on the real property or the intention of the real property owner may be considered in determining whether the object constituted an improvement to real property within the meaning of subsection (1). *Barron v. Kerr-McGee Rocky Mtn. Corp.*, 181 P.3d 348 (Colo. App. 2007).

The following three factors made the installation an improvement: (1) The owner intended the object to be an improvement; (2) the object enhanced the utility of the property; and (3) the object was permanently affixed to the property. *Barron v. Kerr-McGee Rocky Mtn. Corp.*, 181 P.3d 348 (Colo. App. 2007).

To establish whether a workers' compensation award was the exclusive

remedy available to a contract house cleaner who was injured while cleaning a leased condominium, case had to be remanded to determine whether the condominium was a "qualified residence", and, if so, whether the house cleaner was "otherwise an employee" of the condominium owner. *Thornbury v. Allen*, 991 P.2d 335 (Colo. App. 1999).

House cleaner was "otherwise an employee" of condominium owner where owner qualified as a statutory employer under § 8-41-401(1)(a). *Thornbury v. Allen*, 39 P.3d 1195 (Colo. App. 2001).

Legislative purpose of the 1963 amendment to this section, which added subsection (2), was to protect all landowners from all common-law liability if the landowner requires his contractor to carry approved workmen's compensation insurance. *City of Colo. Springs v. Ellsworth*, 187 Colo. 193, 529 P.2d 646 (1974).

Government entity cannot be an employer under subsection (1). *Univ. of Colo. v. Graham*, 807 P.2d 1204 (Colo. App. 1990).

General assembly did not exempt municipal corporations from coverage under subsection (2). *City of Colo. Springs v. Ellsworth*, 187 Colo. 193, 529 P.2d 646 (1974).

But cities protected if employee covered in primary employment. Cities that are landowners are among those protected from claims for either compensation or for negligence if the employee is covered by

workmen's compensation in his primary employment. *City of Colo. Springs v. Ellsworth*, 187 Colo. 193, 529 P.2d 646 (1974).

No competency test to be contractor. Subsection (2) requires no minimal competency test for designation as a "contractor, subcontractor, or other person". *Schwartz v. Tom Brown, Inc.*, 649 P.2d 733 (Colo. App. 1982).

Pleadings must allege that company "contracted out". Although alleged to have been a co-owner of the land on which the accident occurred, if it does not appear from the pleadings that the company "contracted out" the work to the employer, it is not possible to bring the company within the terms of this section. *Alexander v. Morrison-Knudsen Co.*, 166 Colo. 118, 444 P.2d 397 (1968).

Where work not "contracted out". Under the latter part of this section if the owner is contracting out a job, he protects himself against liability for anyone injured on the job by seeing that the contractor with whom he is dealing provides or carries a policy on all workmen on the job contracted for, but this part of the section does not apply where the work was not "contracted out" to claimant even though claimant is by business or trade a contractor and when doing contract work had his men insured at the time of the accident involved. *Indus. Comm'n v. State Comp. Ins. Fund*, 122 Colo. 128, 220 P.2d 721 (1950).

Term "private home" in subsection (1) means a structure that is inhabited or capable of being inhabited, not

substantially uncompleted structures. *Betts v. Kempers*, 745 P.2d 283 (Colo. App. 1987).

"Private home" under subsection (1) neither requires that structure be homeowner's primary residence, nor that homeowner be a citizen of or domiciled in locale of property, nor a minimum usage time. Homeowners were exempted from statutory employer status even though homeowners primarily resided in Mexico, were Mexican citizens, and used property less than six months during the year. *English v. Indus. Claim Appeals Office*, 764 P.2d 386 (Colo. App. 1988).

A residence may be a **"qualified residence" entitling the owner or occupant to an exception from statutory employment status under subsection (1)** even if the owner or occupant is not claiming an interest deduction under I.R.C. § 163(h) at the time of the injury or hearing on compensability. *Organ v. Jorgensen*, 888 P.2d 336 (Colo. App. 1994).

Definition of "qualified residence" under I.R.C. § 163(h) includes a second residence used by the taxpayer in accordance with related I.R.C. provisions. *Thornbury v. Allen*, 39 P.3d 1195 (Colo. App. 2001).

Respondent met his burden of proof that the barn on which claimant was injured was a "qualified residence". The administrative law judge's determination is supported by testimony as to the planned use of the barn and the ultimate construction of a primary or secondary residence on the

parcel. *Brown v. Muto*, 943 P.2d 38 (Colo. App. 1996).

The qualified residential property exemption applies to actual as well as statutory employment relationships. The exemption applies to actual as well as statutory employees of the owner or occupant of qualified residential real property unless the person is otherwise an employee of the owner or occupant. *Brown v. Muto*, 943 P.2d 38 (Colo. App. 1996).

The 1991 amendment to subsection (1) replaced the term "private home" with the phrase "owner or occupant, or both of residential real property which meets the definition of a 'qualified residence'" under the Internal Revenue Code. Accordingly, home owners' residence under construction at the time of claimant's injury constituted a "qualified residence" under the Internal Revenue Code and the owners were exempt from statutory liability under the Workers' Compensation Act, regardless of the fact that they did not actually claim any interest on their tax return. *Organ v. Jorgensen*, 888 P.2d 336 (Colo. App. 1994).

Joint venturers may be held liable for claims arising under the workmen's compensation statutes where a joint activity results in injury. *Breckenridge Co. v. Swales Mgt. Corp.*, 185 Colo. 160, 522 P.2d 737 (1974).

Where the record indicates that the parties anticipated only the regular presence of the claimant and one assistant for the duration of the project, and assuming that one could include the respondent and a nine-year-old boy, the fact that on one day

four people actually worked does not bring the employment within this section. *Schultz v. Indus. Comm'n*, 34 Colo. App. 122, 523 P.2d 164 (1974).

Machinery operator rented to contractor is employee of company. Where a company contracts for work to be done on its premises and rents machinery to a contractor together with its operator, the operator is the employee of the company and not of the contractor. *Great W. Sugar Co. v. Erbes*, 148 Colo. 566, 367 P.2d 329 (1961).

But where a hotel company hired a plasterer to do remodeling and there was no specific time mentioned as to how long he would be hired nor any specific amount of plastering that was to be done and the company furnished all the materials to be used on the job, the plasterer was an employee of the hotel company even though he was an insured employer himself. *Indus. Comm'n v. State Comp. Ins. Fund*, 122 Colo. 128, 220 P.2d 721 (1950).

Owner's liability to contractor working on job. The provision of this section that the building owner "shall keep insured his liability" means a liability not only to the employees of a contractor, but also to the contractor himself if working on the job. *Indus. Comm'n v. State Comp. Ins. Fund*, 122 Colo. 128, 220 P.2d 721 (1950).

Owner immune if contractor insured. An owner of real property or improvements thereon who contracts out work to be performed thereon is immune from suit by the injured employees of the contractor, so long as the contractor is properly insured

under this act. *Wagner v. Coors Energy Co.*, 685 P.2d 1380 (Colo. App. 1984).

The landowner may protect himself in such situations by requiring the contractor to secure and maintain proper insurance coverage against such accidents as the one in the case at bar, or secure insurance coverage himself and deduct the premiums from the contract price. *Stewart v. Indus. Comm'n*, 163 Colo. 12, 428 P.2d 367 (1967).

But if the contractor or subcontractor is unable to meet his responsibilities under the act, then those responsibilities devolve upon the owner. *Alexander v. Morrison-Knudsen Co.*, 166 Colo. 118, 444, P.2d 397 (1968); *Nicks v. Electron Corp.*, 29 Colo. 114, 478 P.2d 683 (1970).

However, where employer insures his liability to employees it is held that insurer's liability does not extend to employees of subcontractor. Where an employer of men lets out part of his work to contractors and insured his liability to employees, the insurer's liability extends only to employees of the employer — its policy so providing — and not to those of the contractors. *United States Fid. & Guar. Co. v. Turkey Creek Stone, Clay & Gypsum Co.*, 75 Colo. 611, 227 P. 569 (1924).

Under previous section, landowner was not immune from common-law liability where contractor was insured. *Great W. Sugar Co. v. Erbes*, 148 Colo. 566, 367 P.2d 329 (1961).

But now, under this section, owner is free of tort liability if contractor is insured. If the contractor undertaking to do

such work "shall before commencing such work insure and keep insured his liability for compensation", the owner of the property shall be free of responsibility to the injured workman, including tort liability. *Alexander v. Morrison-Knudsen Co.*, 166 Colo. 118, 444 P.2d 397 (1968); *Nicks v. Electron Corp.*, 29 Colo. App. 114, 478 P.2d 683 (1970); *Varela v. Colo. Milling & Elevator Co.*, 31 Colo. App. 49, 499 P.2d 1206 (1972).

In order to be an employer under this statute, the owner must have contracted with a contractor, subcontractor, or person who, in turn, must hire or use employee in the doing of the contracted work. *Moe v. Indus. Comm'n*, 734 P.2d 661 (Colo. App. 1986); *English v. Indus. Claim Appeals Office*, 764 P.2d 386 (Colo. App. 1988).

Architects were immune under subsection (2) where contract provided that

architects were "representative(s) of the Owner", creating an agency relationship. *Halter v. Waco Scaffolding & Equip. Co.*, 797 P.2d 790 (Colo. App. 1990).

Calculation of \$2,000 threshold limit in subsection (3). The \$2,000 threshold limit of subsection (3) is to be calculated on all property owned by the owner, irrespective of its location, in the pro rata share of ownership interest. *Porta-Pacific v. Smithers*, 781 P.2d 147 (Colo. App. 1989).

Applied in *Lackey v. Indus. Comm'n*, 80 Colo. 112, 249 P. 662 (1926); *Index Mines Corp. v. Indus. Comm'n*, 82 Colo. 272, 259 P. 1036 (1927); *Ontario Mining Co. v. Indus. Comm'n*, 86 Colo. 206, 280 P. 483 (1929); *Alson Inv. Co. v. Youngquist*, 107 Colo. 1, 108 P.2d 228 (1940); *State Comp. Ins. Fund v. Batis*, 117 Colo. 1, 183 P.2d 891 (1947).

8-41-403. Exemption of certain lessors of real property.

(1) The provisions of this part 4 shall not apply to any lessor or sublessor of real property who rents or leases real property to any lessee or sublessee for the purpose of conducting the business of such lessee or sublessee, whether as a franchise holder, independent agent, or consignee or in any other separate capacity and whether or not such person is an employer, as defined in section 8-40-203, but in no event where such lessee or sublessee is an employee, as defined in section 8-40-202.

(2) No such lessee or sublessee, or any employee or insurer thereof, shall have any right of contribution from or action against such lessor or sublessor under articles 40 to 47 of this title.

(3) The provisions of this part 4 shall not apply to any lessor or sublessor of real property who leases or rents real property to any lessee or sublessee for the purpose of conducting any agricultural production business of such lessee or sublessee, and no such lessee or sublessee, or any employee or insurer thereof, shall have any right of contribution from or action against such lessor or sublessor under articles 40 to 47 of this title.

Source: L. 90: Entire article R&RE, p. 483, § 1, effective July 1. L. 93: (1) and (3) amended, p. 1771, § 22, effective June 6.

Editor's note: This section is similar to former § 8-48-103 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-41-403 is similar to § 8-48-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Subsection (1) continues to constitute an exception only to the concept of statutory employment; it is inapplicable in those instances in which the evidence establishes an actual employment relationship between the parties. *Bailey v. C.P. Const., Inc.*, 837 P.2d 277 (Colo. App. 1992).

Application of the statute hinges upon whether the property upon which the injury occurred is under lease to a lessee who conducts its business upon the property. *Bain v. Doyle*, 807 P.2d 1225 (Colo. App. 1990).

What lessors exempt. This section provides that those lessors who rent property which is used for the purpose of conducting the business of the lessee are exempt from the liability imposed by § 8-48-101. *Standard Oil Co. v. Indus. Comm'n*, 38 Colo. App. 39, 552 P.2d 1029 (1976).

The test as to whether a lessor is liable is whether the subcontracted work is part of the regular business of the lessor. *Standard Oil Co. v. Indus. Comm'n*, 38 Colo. App. 39, 552 P.2d 1029 (1976).

Oil company was the constructive statutory employer of claimant who worked at a service station leased by the oil company to its dealer. *Standard Oil Co. v. Indus. Comm'n*, 38 Colo. App. 39, 552 P.2d 1029 (1976).

Applied in *Rian v. Imperial Mun. Serv. Group, Inc.*, 768 P.2d 1260 (Colo. App. 1988); *Virginians Heritage Square Co. v. Smith*, 808 P.2d 366 (Colo. App. 1991).

8-41-404. Construction work - proof of coverage required - violation - penalty - definitions.

(1) (a) Except as otherwise provided in subsection (4) of this section, every person performing construction work on a construction site shall be covered by workers' compensation

insurance, and a person who contracts for the performance of construction work on a construction site shall either provide, pursuant to articles 40 to 47 of this title, workers' compensation coverage for, or require proof of workers' compensation coverage from, every person with whom he or she has a direct contract to perform construction work on the construction site.

(b) A site owner, general contractor, or other person who is not a direct party to a contract for construction work shall not be held liable under subsection (3) of this section solely as a result of the person's ownership interest or general supervisory role in a construction project.

(c) Any person who contracts for the performance of construction work on a construction site and who exercises due diligence by either providing workers' compensation coverage as required by this section or requiring proof of workers' compensation coverage as required by this section from every person with whom he or she has a direct contract to perform construction work on the construction site shall not be liable under subsection (3) of this section.

(2) If the parties to a contract that includes construction work agree that part of the contract price shall be withheld to cover workers' compensation premiums for coverage required under this section, the premiums shall be calculated based only on that portion of the contract price that represents the labor portion of the contract.

(3) A violation of subsection (1) of this section is punishable by an administrative fine imposed pursuant to section 8-43-409 (1)(b). The division shall transmit revenues collected through the imposition of fines pursuant to this section to the state treasurer, who shall credit them to the Colorado uninsured employer fund created in section 8-67-105.

(4) (a) This section shall not apply to:

(I) An owner or occupant, or both, of residential real property that meets the definition of a "qualified residence" under section 163 (h)(4)(A) of the federal "Internal Revenue Code of 1986", as amended, who contracts out any work done to the real property, unless the person performing the work is otherwise an employee of the owner or occupant, or both, of the real property;

(II) An owner or occupant of real property who hires a person or persons specifically to do routine repair and maintenance on the real property of such owner or occupant;

(III) An independent contractor, who is a natural person, who has formed a corporation pursuant to section 7-102-103, C.R.S., or a limited liability company pursuant to section 7-80-203, C.R.S., and who has rejected workers' compensation coverage pursuant to section 8-41-202;

(IV) Corporate officers and members of a limited liability company who have rejected workers' compensation coverage pursuant to section 8-41-202;

(V) A partner in a partnership who has filed a certificate of limited partnership pursuant to section 7-62-201, C.R.S., a partnership registration statement pursuant to section 7-60-144 or 7-64-1002, C.R.S., or a statement of trade name pursuant to section 7-71-103, C.R.S., and has filed with the division a form, approved by the director, rejecting workers' compensation; or

(VI) A sole proprietor who has filed a statement of trade name pursuant to section 7-71-103, C.R.S., and has filed with the division a form, approved by the director, rejecting workers' compensation.

(b) Nothing in this section shall be construed to limit the responsibility of corporations, limited liability companies, partnerships, or sole proprietorships to provide coverage for their employees as required under articles 40 to 47 of this title.

(5) As used in this section:

(a) "Construction site" means a location where a structure that is attached or will be attached to real property is constructed, altered, or remodeled.

(b) "Construction work" includes all or any part of the construction, alteration, or remodeling of a structure. "Construction work" does not include surveying, engineering, examination, or inspection of a construction site or the delivery of materials to a construction site.

(c) "Proof of workers' compensation coverage" includes a certificate or other written confirmation, issued by the insurer or authorized agent of the insurer, of the existence of workers' compensation coverage in force during the period of the performance of construction work on the construction site.

Source: L. 2007: Entire section added, p. 2070, § 1, effective June 1. L. 2017: (3) amended, (HB 17-1119), ch. 317, p. 1705, § 3, effective July 1.

Cross references: For the federal "Internal Revenue Code of 1986", see title 26 of the United States Code.

ANNOTATION

This section does not require an insurer to notify a noninsured holder of a certificate of insurance when the insurance policy evidenced by the certificate is cancelled. Pinnacol Assur. v. Hoff, 2016 CO 53, 375 P.3d 1214.

PART 5

DEPENDENCY

8-41-501. Persons presumed wholly dependent.

(1) For the purposes of articles 40 to 47 of this title, the following described persons shall be presumed to be wholly dependent (however, such presumption may be rebutted by competent evidence):

(a) Widow or widower, unless it is shown that she or he was voluntarily separated and living apart from the spouse at the time of the injury or death or was not dependent in whole or in part on the deceased for support;

(a.5) A person who is designated in a designated beneficiary agreement for purposes of receiving workers' compensation benefits in accordance with the provisions of article 22 of title 15, C.R.S., unless it is shown that the designated beneficiary was voluntarily separated and living apart from the other designated beneficiary at the time of the injury or death or was not dependent in whole or in part on the deceased for support;

(b) Minor children of the deceased under the age of eighteen years, including posthumous or legally adopted children;

(c) Minor children of the deceased who are eighteen years or over and under the age of twenty-one years if it is shown that:

(I) At the time of the decedent's death they were actually dependent upon the deceased for support; and

(II) Either at the time of the decedent's death or at the time they attained the age of eighteen years they were engaged in courses of study as full-time students at any accredited school. The period of presumed dependency of such persons shall continue until they attain the age of twenty-one years or until they cease to be engaged in courses of study as full-time students at an accredited school, whichever occurs first.

Source: **L. 90:** Entire article R&RE, p. 484, § 1, effective July 1. **L. 91:** Entire section amended, p. 1350, § 1, effective May 29. **L. 2009:** (1) amended, (HB 09-1260), ch. 107, p. 439, § 2, effective July 1.

Editor's note: This section is similar to former § 8-50-101 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Widow or Widower as Dependent.

III. Minor Child as Dependent.

I. GENERAL CONSIDERATION.

Law reviews. For comment on *McBride v. Indus. Comm'n* appearing below, see 8 *Rocky Mt. L. Rev.* 292 (1936).

Annotator's note. Since § 8-41-501 is similar to § 8-50-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

The workmen's compensation act is to be liberally construed in order to effectuate its beneficent purposes. *McBride v. Indus. Comm'n*, 97 Colo. 166, 49 P.2d 386 (1935).

No specific provision prescribes an equal apportionment among dependents. It does not follow from the language of former section, "conclusively presumed to be wholly dependent", when read in conjunction with § 8-50-115, that all such dependents must, as a matter of law, be treated on an equal basis. To so conclude would be to ignore the express provisions of § 8-50-115. *Spoo v. Spoo*, 145 Colo. 268, 358 P.2d 870 (1961).

The question of dependency of a widow and minor children is purely a question of law. *United States Nat'l Bank v. Indus. Comm'n*, 128 Colo. 417, 262 P.2d 731 (1953).

Dependency rests upon an obligation of support and not upon the question as to whether that obligation is being discharged. *Latting v. Broadmoor Hotel*, 105 Colo. 386, 98 P.2d 857 (1940).

"Wholly dependent" means dependent on no one else. *London Guarantee & Accident Co. v. Indus. Comm'n*, 78 Colo. 478, 242 P. 680 (1925).

Applied in *Travelers Ins. Co. v. Indus. Comm'n*, 646 P.2d 399 (Colo. App. 1981); *Frontier Airlines v. Indus. Comm'n*, 654 P.2d 1333 (Colo. App. 1982).

II. WIDOW OR WIDOWER AS DEPENDENT.

State law of marriage applied to establish marital relationship. In compensation proceedings where a claimant must establish a marital relationship to the deceased, the domestic relations law of the state where the marriage was contracted is controlling. *Williams v. Fireman's Fund Ins. Co.*, 670 P.2d 453 (Colo. App. 1983).

This section applies where the wife makes a claim for compensation on account of the death of her husband, and not where she makes a claim for compensation on account of the death of a child. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 82 Colo. 281, 260 P. 106 (1927).

The dependency of a wife is determined as a matter of law where there is a showing that she was living with her husband at the time of his death and was dependent on him for support. *McBride v. Indus. Comm'n*, 97

Colo. 166, 49 P.2d 386 (1935), citing London Guarantee & Accident Co. v. Indus. Comm'n, 78 Colo. 478, 242 P. 680 (1925); Vaughn v. Indus. Comm'n, 79 Colo. 257, 245 P. 712 (1926).

Thus, a wife living with her husband as such is conclusively presumed to be wholly dependent upon him for her support. Employer's Mut. Ins. Co. v. Indus. Comm'n, 82 Colo. 281, 260 P. 106 (1927). See McBride v. Indus. Comm'n, 97 Colo. 166, 49 P.2d 386 (1935).

Presumptive dependency overcome by finding of nonsupport by deceased. Widow is "wholly" dependent under this section regardless of whether she receives all or only part of her support from the deceased, and the presumption afforded by the statute is overcome only by a finding that the widow receives no support from the deceased. Diamond Indus. v. Claimants in Death of Crouse, 41 Colo. App. 541, 589 P.2d 1383 (1978); Michalski v. Indus. Claim Appeals Office, 781 P.2d 183 (Colo. App. 1989).

Presumptive dependency overcome only by showing that the surviving spouse was voluntarily separated and living apart from the decedent or was not dependent on the decedent for support at the time of death. Exeter Drilling v. Colo. Indus. Claim, 801 P.2d 20 (Colo. App. 1990).

The party desiring to overcome the presumption has the burden of bringing forward the necessary proof. Colo. Fuel & Iron Co. v. Indus. Comm'n, 93 Colo. 188, 24 P.2d 1117 (1933).

But the presumption is overthrown only by the appearance of three specific elements. A wife is conclusively presumed, under the language of this section, to be wholly dependent, unless it shall be made to appear that she was (1) voluntarily separated and (2) living apart from her husband at the time of his death, and (3) was not dependent in whole or in part on him for support. This section is in the conjunctive, and all three of these elements must be made to appear before the conclusive presumption of dependency of the wife can be overthrown. Vaughn v. Indus. Comm'n, 79 Colo. 257, 245 P. 712 (1926); Latting v. Broadmoor Hotel, 105 Colo. 386, 98 P.2d 857 (1940); Empire Zinc Co. v. Indus. Comm'n, 71 Colo. 251, 206 P. 158 (1922).

Statutory presumption of dependency in subsection (1)(a) can be rebutted only by a showing that all three elements — voluntary separation, living apart, not dependent for support — exist in a particular case. Tilley v. Bill's Sinclair, 34 Colo. App. 141, 524 P.2d 314 (1974).

And mere prolonged separation does not overcome presumption. Although a separation is an unusually protracted one, the question of dependency does not turn on time or distance, but upon the nature and character of the absence and the intention of the parties respecting it. Intent is an important element in determining the nature of the absence. Empire Zinc Co. v. Indus. Comm'n, 71 Colo. 251, 206 P. 158 (1922); Latting v. Broadmoor Hotel, 105 Colo. 386, 98 P.2d 857 (1940).

An act of adultery on the part of the wife constitutes a voluntary separation from the husband. *Indus. Comm'n v. Fanganiello*, 72 Colo. 140, 209 P. 803 (1922).

Voluntary separation a question of fact. Whether a wife is voluntarily separated and living apart from her husband, within the meaning of this section, is a question of fact. *Gold Mines Consol. v. Simmons*, 107 Colo. 359, 112 P.2d 555 (1941).

Voluntary separation established by the fact that the couple was living apart and that the claimant filed a petition for dissolution of marriage prior to his wife's death. *City of Aurora v. Corr*, 689 P.2d 659 (Colo. App. 1984).

Estrangement and divorce of the parties may not be controlling in determining whether there was a voluntary separation under this section, but does have a bearing in construing the evidence. *Gold Mines Consol. v. Simmons*, 107 Colo. 359, 112 P.2d 555 (1941).

Where the parties to a divorce resume living together both before and after the formal entry of a divorce decree and hold themselves out to their family and neighbors as being husband and wife, the wife will be considered a widow under this section. *Employers' Mut. Liab. Ins. Co. v. Indus. Comm'n*, 145 Colo. 91, 357 P.2d 929 (1960).

Wife of employee married after injury held to be a dependent. Where an employee married more than a year after receiving accidental injuries in the course of his employment resulting in his death

subsequently, it is held that the wife was a dependent within the meaning of this section. *McBride v. Indus. Comm'n*, 97 Colo. 166, 49 P.2d 386 (1935); *State Comp. Ins. Fund v. Hartman*, 99 Colo. 324, 64 P.2d 122 (1936).

Decedent's legal obligation to support wife establishes dependency. If a widow of a deceased workman demonstrates a need for support, then, under subsection (1)(a), the decedent's legal obligation to support his wife, whether or not that duty is being discharged, is sufficient to establish dependency. *Tilley v. Bill's Sinclair*, 34 Colo. App. 141, 524 P.2d 314 (1974); *Black Mt. Spruce, Inc. v. Johnson*, 670 P.2d 1241 (Colo. App. 1983).

Innocent claimant held to be spouse. An innocent claimant who would qualify as a spouse but for decedent's failure before his death to reduce an interlocutory decree dissolving a prior marriage to final judgment is entitled to spousal benefits. *Williams v. Fireman's Fund Ins. Co.*, 670 P.2d 453 (Colo. App. 1983).

Common-law marriage entitles wife to benefits of section. *Clayton Coal Co. v. Indus. Comm'n*, 93 Colo. 145, 25 P.2d 170 (1933); *Rocky Mt. Fuel Co. v. Reed*, 110 Colo. 88, 130 P.2d 1049 (1942).

Evidence insufficient to establish common-law marriage. *Zuzich v. Leyden Lignite Co.*, 120 Colo. 21, 206 P.2d 883 (1949); *Employers' Mut. Liab. Ins. Co. v. Indus. Comm'n*, 124 Colo. 68, 234 P.2d 901 (1951).

Finding on dependency will not be disturbed on review if supported by evidence. Indus. Comm'n v. Elkas, 73 Colo. 475, 216 P. 521 (1923); New Jersey Fid. & Plate Glass Ins. Co. v. Richey, 85 Colo. 376, 275 P. 937 (1929); Pub. Serv. Co. v. Indus. Comm'n, 89 Colo. 440, 3 P.2d 799 (1931); Indus. Comm'n v. Coop. Oil Co. 93 Colo. 192, 24 P.2d 753 (1933); Clarke v. Clarke, 95 Colo. 409, 36 P.2d 461 (1934).

III. MINOR CHILD AS DEPENDENT.

Children of deceased worker are entitled to death benefits as full-time students even though they were not 18 at the time of death. Western Gas v. Indus. Claim App. Office, 797 P.2d 823 (Colo. App. 1990).

The statutory presumption that a child is wholly dependent upon parent is based upon the legal obligation of a parent to support a child. Truitt v. Indus. Comm'n, 31 Colo. App. 166, 499 P.2d 621 (1972).

But adoption of decedent's children by decedent's parents terminates a decedent's obligation of support, and the statutory presumption that a child is wholly dependent upon a parent is not applicable. Truitt v. Indus. Comm'n, 31 Colo. App. 166, 499 P.2d 621 (1972).

Furthermore, this section does not hold that minor children must be wholly dependent upon only one of the parents. United States Nat'l Bank v. Indus. Comm'n, 128 Colo. 417, 262 P.2d 731 (1953).

More specifically, this section does not confine the conclusive presumption of dependency wholly on the father. In

determining who is conclusively presumed to be wholly dependent it says, "Minor children of the deceased". United States Nat'l Bank v. Indus. Comm'n, 128 Colo. 417, 262 P.2d 731 (1953).

And where the provision is that the minor children are wholly dependent on the deceased, it means a deceased mother equally as much as a deceased father, and especially where the statute does not specifically provide that the minor children are wholly dependent on the father alone. United States Nat'l Bank v. Indus. Comm'n, 128 Colo. 417, 262 P.2d 731 (1953).

So that under this section, an employer, being within the terms of the statute, is required to insure its employees, including the mother of claimants, and therefore the insurer cannot escape liability to answer to her minor children for her death. United States Nat'l Bank v. Indus. Comm'n, 128 Colo. 417, 262 P.2d 731 (1953).

The insurer's liability is fixed as distinguished from measured liability to be determined upon questions of fact concerning the relationship of dependents. These fixed statutory payments are what may be regarded as the appropriate responsibility of an employer, and not what it actually takes to support a child. An employer cannot successfully argue about the responsibility under this conclusive presumption. The fixed liability and the fixed payments are not a substitute for the actual parents' support of their children. Prior to the enactment of workmen's compensation laws, an employer was

subjected to actions for damages in such cases commensurate with the loss of the parents' support. *United States Nat'l Bank v. Indus. Comm'n*, 128 Colo. 417, 262 P.2d 731 (1953).

Stepchildren not legally adopted are precluded from being dependents for purposes of an award of death benefits. *Tri-*

State Commodities, Inc. v. Stewart, 689 P.2d 712 (Colo. App. 1984).

A minor under 18 years of age cannot conclusively be presumed to be a dependent of a brother under the terms of this section. *Central Sur. & Ins. Corp. v. Indus. Comm'n*, 94 Colo. 341, 30 P.2d 253 (1934).

8-41-502. Other dependents - temporary dependency.

Except as otherwise provided in section 8-41-501 (1)(c), a child eighteen years of age or over and a mother, father, grandmother, grandfather, sister, brother, or grandchild who was wholly or partially supported by the deceased employee at the time of death and for a reasonable period of time immediately prior thereto is considered an actual dependent. To be entitled to compensation, such dependents, except as provided in section 8-41-501 (1)(c), must prove that they were incapable of or actually disabled from earning their own living. If said incapacity or disability is temporary only, compensation shall be paid only during the period of such temporary incapacity or disability.

Source: L. 90: Entire article R&RE, p. 484, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-102 as it existed prior to 1990.

ANNOTATION

Law reviews. For comment on *McBride v. Indus. Comm'n* appearing below, see 8 *Rocky Mt. L. Rev.* 292 (1936).

This section fixes the condition upon which certain persons are to be considered dependent. *McBride v. Indus. Comm'n*, 97 Colo. 166, 49 P.2d 386 (1935).

And each case depends on its facts. Failure of an employee, after contributing to

the support of his sister, to so contribute for a short time prior to his death, caused by accident, would not negative her dependency. Dependency must rest upon the prevailing facts and conditions of each particular case. *Empire Zinc Co. v. Indus. Comm'n*, 102 Colo. 26, 77 P.2d 130 (1938); *Regal Coal Co. v. Jackvich*, 105 Colo. 479, 99 P.2d 196 (1940).

Under this section the question of dependency is to be determined as a matter of fact and cannot be based upon an existing legal duty to provide support. *Tilley v. Bill's Sinclair*, 34 Colo. App. 141, 524 P.2d 314 (1974).

No presumption as to dependency. Claimant in a workmen's compensation case, being a sister of deceased employee, there was no presumption of dependency, and the burden was upon her to establish such dependency as would bring her within the provisions of the workmen's compensation act. *Empire Zinc Co. v. Indus. Comm'n*, 102 Colo. 26, 77 P.2d 130 (1938).

Financial contributions by an employee to the support of a sister is evidence of recognition of her dependency upon him. *Empire Zinc Co. v. Indus. Comm'n*, 102 Colo. 26, 77 P.2d 130 (1938).

But dependency can exist without any actual money payment where that payment might have been prevented by some cause operating against the will of the employee. *Empire Zinc Co. v. Indus. Comm'n*, 102 Colo. 26, 77 P.2d 130 (1938).

Mother not precluded from recovery because living with husband. The fact that a mother, at the time of the death of her employee son, was living with her husband who was able and bound to support her, does not preclude an award to her as a partial dependent of the deceased son and the same rule applies to brothers under 18 years of age and who claim compensation for the death of their brother. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 82 Colo. 281, 260 P.

106 (1927); *Indus. Comm'n v. DiNardi*, 103 Colo. 591, 87 P.2d 494 (1939).

And partially dependent minor not required to show his inability to earn his own living. Under this section a minor, partially dependent upon a brother who has sustained an accident arising out of and in the course of his employment, is not required to establish he was unable to earn his own living during the period involved in order to be entitled to compensation as a dependent. *Indus. Comm'n v. DiNardi*, 103 Colo. 591, 87 P.2d 494 (1939).

Entire or partial support is necessary for recovery as a dependent. The father of an employee to be dependent under this section must have been wholly or partially supported by the son at the time of his death and for a reasonable period of time immediately prior thereto. *Indus. Comm'n v. Ahel*, 80 Colo. 128, 249 P. 866 (1926).

The question of what is "a reasonable period of time" is one of fact which will not ordinarily be disturbed on review. *Indus. Comm'n v. Ahel*, 80 Colo. 128, 249 P. 866 (1926).

Findings on conflicting evidence will not be disturbed on review. *Passini v. Indus. Comm'n*, 64 Colo. 349, 171 P. 369 (1918); *Indus. Comm'n v. Johnson*, 66 Colo. 292, 181 P. 977 (1919); *McPhee & McGinnity Co. v. Indus. Comm'n*, 67 Colo. 86, 185 P. 268 (1919); *Youngquist v. Indus. Comm'n* 67 Colo. 187, 184 P. 381 (1919); *Crawford v. Indus. Comm'n*, 72 Colo. 581, 212 P. 828 (1923).

Thus, no review of finding on evidence that father was not incapable. The ground upon which the claimant was denied the compensation was that the father was not shown to be "incapable of or actually disabled from earning his own living", as provided in this section. The district court had no power and the supreme court has no power to review this finding upon the evidence. *Picardi v. Indus. Comm'n*, 70 Colo. 266, 199 P. 420 (1921).

The word "incapable" as employed in this section has a common and generally accepted meaning. *Colo. Fuel & Iron Corp.*

v. Indus. Comm'n, 152 Colo. 256, 381 P.2d 267 (1963).

And no definition of the word "incapable" would justify the conclusion as a matter of law that a person over the age of 18 years is incapable of earning his living because he has voluntarily removed himself from the labor market and elected to go to college. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 152 Colo. 256, 381 P.2d 267 (1963).

Applied in *Byrd v. Indus. Comm'n*, 658 P.2d 274 (Colo. App. 1982).

8-41-503. Dependency and extent determined - how.

(1) Dependents and the extent of their dependency shall be determined as of the date of the injury to the injured employee, and the right to death benefits shall become fixed as of said date irrespective of any subsequent change in conditions except as provided in section 8-41-501 (1)(c). Death benefits shall be directly payable to the dependents entitled thereto or to such person legally entitled thereto as the director may designate.

(2) In case an employee or claimant entitled to compensation dies leaving dependents, any accrued and unpaid portion of the compensation or benefits up to the time of the death of such employee or claimant shall be paid to such dependents as may be ordered by the director and not to the legal representative as such of said decedent. In case the injured employee or claimant leaves no dependents, the director may order the application of any accrued and unpaid benefits up to the time of the death of such employee or claimant paid upon the expenses of the last sickness or funeral of such decedent, the preference in such payment to be to funeral expenses.

(3) In case an injured employee or dependent of a deceased employee entitled to benefits under articles 40 to 47 of this title is declared incompetent or insane, any benefits accrued or to accrue may be paid to the conservator of the estate, if any, or to any dependents, or to the party or institution having custody of the person of such injured employee or dependent of a deceased employee as may be ordered by the director in the director's discretion.

Source: L. 90: Entire article R&RE, p. 484, § 1, effective July 1. **L. 91:** (1) amended, p. 1351, § 2, effective May 29.

Editor's note: This section is similar to former § 8-50-105 as it existed prior to 1990.

ANNOTATION

Law reviews. For comment on *McBride v. Indus. Comm'n* appearing below, see 8 Rocky Mt. L. Rev. 292 (1936).

Purpose of section. The purpose of the workmen's compensation act is to cast upon the particular industry the burden resulting from accidental injuries sustained by its employees while performing duties arising out of and in the course of their employment. It is not intended to compensate employees for injuries or illness not due to their employment, or to pay benefits to their dependents when death results from such injuries or illness; or to pay the medical, hospital, funeral, or other expenses incurred by reason of such injuries, illness, or death. In such case, however, it is not unreasonable to pay to such dependents, or, where there are no dependents, to pay on account of such expenses, any unpaid installments of compensation that may have become due and payable to the employee during his lifetime, under a disability award made during his lifetime. That is the purpose of this section. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 89 Colo. 475, 3 P.2d 1079 (1931).

The survival statute is applicable to claims filed under the Workers' Compensation Act. The conditions of recovery under the Act were fulfilled on the date that the injury was incurred and are dependent only on whether claimant's claim

is timely filed. Claimant's death by unrelated causes prior to final adjudication has no effect on the claim. *Estate of Huey v. J.C. Trucking*, 837 P.2d 1218 (Colo. 1992).

This section deals with the fact of dependency and not with the amount of compensation to be paid. *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 93 Colo. 188, 24 P.2d 1117 (1933).

Fact of dependency cannot be based on legal duty to support. Under this section and §§ 8-50-102 and 8-50-104 of this article the question of dependency is to be determined as a matter of fact and cannot be based upon an existing legal duty to provide support. *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 90 Colo. 330, 9 P.2d 285 (1932); *Subsequent Injury Fund v. Indus. Claim Appeals Office*, 131 P.3d 1224 (Colo. App. 2006).

Innocent party in prohibited marriage. While it is true that a marriage entered into prior to the dissolution of a previous marriage is prohibited in Colorado, an innocent party to such a marriage is not deprived of the rights conferred upon a legal spouse. As a putative spouse, upon the other person's death, she acquires the legal spouse's right to workmen's compensation. *Williams v. Fireman's Fund Ins. Co.*, 670 P.2d 453 (Colo. App. 1983).

Mother a partial dependent of deceased employee son at time of his death. Indus. Comm'n v. DiNardi, 103 Colo. 591, 87 P.2d 494 (1939).

This section does not fix all dependencies as of the time of the accident. Section 8-50-102 fixes the condition upon which certain persons are to be considered dependent. It determines their dependency as of the time of employee's death, and does so, regardless of the time of the accident. It then follows that § 8-50-102 is in conflict with this section, if this section is to be construed as fixing all dependencies as of the time of the accident. We do not so construe it. Injury and death are not always coincident. This being true, conditions constituting dependency may change during the intervening period, as is often the case, and it must follow, that the extent of the right to death benefits cannot always be fixed as of the date of the accident. McBride v. Indus. Comm'n, 97 Colo. 166, 49 P.2d 386 (1935).

And the wording of this section presupposes a question to be determined. That question is "who" and "the extent". Sections 8-50-101 and 8-50-102 leave no question to be determined. Dependency and extent are fixed as a matter of law. "For all purposes of the act" the general assembly said the wife is conclusively presumed to be wholly dependent on the husband if living with him at the time of his injury or his death. Had the general assembly intended to exclude a post-injury wife, words were just as available then as now, to so specifically state. McBride v. Indus. Comm'n, 97 Colo. 166, 49 P.2d 386 (1935).

Amount of death benefits should be fixed as of the date of death, not the date of injury. Richards v. Richards & Richards, 664 P.2d 254 (Colo. App. 1983).

The final clause in the first sentence of subsection (1) refers not to the amount of death benefits to be paid, rather it refers to a dependent's right to death benefits which is fixed as of the date of the injury regardless of any subsequent change in that dependent's status. Richards v. Richards & Richards, 664 P.2d 254 (Colo. App. 1983).

Payment of balance of partial disability award after death of employee. If, at the time of the employee's death, there was an unpaid balance of the temporary partial disability award made prior thereto, that had become due and payable to the employee in his lifetime, such balance was "accrued and unpaid" within the meaning of this section, and was applicable to payment upon the expenses of the last sickness or funeral. Employers' Mut. Ins. Co. v. Indus. Comm'n, 89 Colo. 475, 3 P.2d 1079 (1931).

Authority to discharge expenses is permissive. This section is merely a grant of authority to discharge expenses of last sickness and funeral from accrued and unpaid benefits instead of paying the total to the personal representative. Moreover, the word is "may" not "shall", hence, that authority is apparently permissive not mandatory. Moffat Coal Co. v. Hilliard, 117 Colo. 556, 190 P.2d 907 (1948).

Employee's estate may collect accrued payments. Were an insurance company had been paying compensation to employee for disability, and said employee returns to his

native country of Greece, residing there until its occupation by an enemy during which time he died, even though payments were authorized to be suspended during occupation, the deceased employee's estate may now collect accrued payments. *Moffat Coal Co. v. Hilliard*, 117 Colo. 556, 190 P.2d 907 (1948).

"Irrespective of any subsequent change in conditions" refers only to dependents. *McBride v. Indus. Comm'n*, 97 Colo. 166, 49 P.2d 386 (1935).

But a child is entitled to compensation even though adopted since father's death. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 70 Colo. 229, 199 P. 483 (1921).

Phrase "irrespective of any subsequent change in conditions" is evidence of the general assembly's intent that death benefit awards, once fixed, should not be reopened because of later changes in a beneficiary's economic condition. *Ward v. Ward*, 928 P.2d 739 (Colo. App. 1996).

The word "accrued" in this section is used in the sense of due and payable. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 89 Colo. 475, 3 P.2d 1079 (1931).

"Accrue" means "to come into existence as an enforceable claim: vest as a right." Permanent partial disability benefits do not come into existence as an enforceable claim

or vest as a right until maximum medical improvement is reached. *Dependents of Nunnally v. Wal-Mart Stores, Inc.*, 943 P.2d 26 (Colo. App. 1996).

The term "accrued" as used in subsection (2) means "to come into existence as an enforceable claim: vest as a right." *Singleton v. Kenya Corp.*, 961 P.2d 571 (Colo. App. 1998).

"Accrued and unpaid", as used in subsection (2), means "due and payable". Therefore, workers' compensation benefits that accrued prior to claimant's death but were not awarded by an administrative law judge until after his death could not be awarded to his estate. *Estate of Huey v. J.C. Trucking Co.*, 824 P.2d 89 (Colo. App. 1991).

And the work "benefits" means compensation. As used in this section the word "benefits" is construed to mean compensation. "Compensation" is awarded to an employee; "benefits" are awarded to his dependents. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 89 Colo. 475, 3 P.2d 1079 (1931).

Applied in *Frontier Airlines v. Indus. Comm'n*, 654 P.2d 1333 (Colo. App. 1982); *Byrd v. Indus. Comm'n*, 658 P.2d 274 (Colo. App. 1982); *Dziewior v. Michigan Gen. Corp.*, 672 P.2d 1026 (Colo. App. 1983).

8-41-504. Action by injured employee - dependents not parties in interest.

No dependent of an injured employee, during the life of the employee, shall be deemed a party in interest to any proceeding by said employee for the enforcement of any claim for compensation nor with respect to any settlement thereof by said employee.

Source: L. 90: Entire article R&RE, p. 485, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-108 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-41-504 is similar to § 8-50-108 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

Dependents are not parties in interest to any action by the injured employee during his lifetime. In re Hampton v. State, 31 Colo. App. 141, 500 P.2d 1186 (1972).

And an employee's dependent's right to death benefits under workmen's compensation are independent and distinct from right of employee. In re Hampton v.

State, 31 Colo. App. 141, 500 P.2d 1186 (1972).

Thus, the statute of limitations applicable to an employee's claim for compensation does not bar dependent's subsequent claim for death benefits. In re Hampton v. State, 31 Colo. App. 141, 500 P.2d 1186 (1972).

Also, as a consequence of the independent nature of dependents' right, an employee's release or waiver of his rights does not bar his dependents' subsequent claim for death benefits. In re Hampton v. State, 31 Colo. App. 141, 500 P.2d 1186 (1972).

8-41-505. Minor children.

A minor child of a deceased putative father is entitled to compensation when it is proved to the satisfaction of the director that the father, during his lifetime, has acknowledged the child as his and has regularly contributed to his or her support and maintenance for a reasonable period of time prior to his death.

Source: L. 90: Entire article R&RE, p. 485, § 1, effective July 1. **L. 2018:** Entire section amended, (SB 18-095), ch. 96, p. 752, § 2, effective August 8.

Editor's note: This section is similar to former § 8-50-109 as it existed prior to 1990.

Cross references: For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

ARTICLE 42

Benefits

8-42-101.	Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians and other medical providers - mental health provider qualifications - mileage reimbursement - rules - definitions - repeal.	8-42-107.	Permanent partial disability benefits - schedule - medical impairment benefits - how determined.
		8-42-107.2.	Selection of independent medical examiner - procedure - time - allocation of costs - disclosures regarding physician relationships with insurers, self-insured employers, or claimants - rules - applicability.
8-42-102.	Basis of compensation - "wages" defined - average weekly wage - "at the time of injury" clarified.	8-42-107.5.	Limits on temporary disability payments and permanent partial disability payments.
8-42-103.	Disability indemnity payable as wages - period of disability.	8-42-107.6.	Premium dividend for employing injured employees.
8-42-104.	Effect of previous injury or compensation.	8-42-108.	Disfigurement - additional compensation.
8-42-105.	Temporary total disability - hearings - rules.	8-42-109.	Added compensation for additional injuries.
8-42-106.	Temporary partial disability.	8-42-110.	Permanent partial disability - how determined. (Repealed)

8-42-111.	Award for permanent total disability.	8-42-119.	Partial dependents - compensation.
8-42-112.	Acts of employees reducing compensation.	8-42-120.	Termination of right to benefits - definition.
8-42-112.5.	Limitation on payments - use of controlled substances.	8-42-121.	Director to determine and apportion benefits.
8-42-113.	Limitations on payments to prisoners - incentives to sheriffs and department of corrections.	8-42-122.	Minor dependents - safeguarding payments.
8-42-113.5.	Recovery of overpayments - notice required.	8-42-123.	Funeral and burial expenses.
8-42-114.	Death benefits.	8-42-124.	Assignability and exemption of claims - payment to employers - when.
8-42-115.	Death from injury - benefits.	8-42-125.	Data gathering on workers' compensation system.
8-42-116.	When death not proximate result - benefits.	8-42-126.	Monetary benefits and penalties - timely payment - determination of date deemed paid.
8-42-117.	Benefits to partial dependents.	8-42-127.	Direct deposit.
8-42-118.	Applicability of repeal of death benefits to nonresident dependents.		

8-42-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians and other medical providers - mental health provider qualifications - mileage reimbursement - rules - definitions - repeal.

(1) (a) (I) Every employer, regardless of the employer's method of insurance, shall furnish medical, surgical, dental, nursing, and hospital treatment; medical, hospital, and surgical supplies; crutches; apparatus; and guardian ad litem or conservator services as may reasonably be needed at the time of the injury or occupational disease and thereafter during the disability to cure and relieve the employee from the effects of the injury.

(II) An employer or an employer's insurer that is required to furnish guardian ad litem or conservator services pursuant to this subsection (1)(a) shall pay an amount set in a fee schedule established by the director by rule. The director shall include in the fee schedule:

(A) Reasonable attorney fees and costs to appoint a guardian ad litem or conservator through the appropriate probate court for an employee who is legally incapacitated as the result of a work-related injury or occupational disease; and

(B) Reasonable fees and costs of a guardian ad litem or conservator appointed for an employee for services that are reasonably necessary as a result of the work-related injury or occupational disease.

(b) In all cases where the injury results in the loss of a member or part of the employee's body, loss of teeth, loss of vision or hearing, or damage to an existing prosthetic device, the employer shall furnish within the limits of the medical benefits provided in subsection (1)(a) of this section artificial members, glasses, hearing aids, braces, and other external prosthetic devices, including dentures, that are reasonably required to replace or improve the function of each member or part of the body or prosthetic device so affected or to improve the employee's vision or hearing. Implants or devices necessary to regulate the operation of, or to replace, with implantable devices, internal organs or structures of the body may be replaced when the authorized treating physician deems it necessary. Every employer subject to the terms and provisions of articles 40 to 47 of this title 8 must insure against liability for the medical, surgical, and hospital expenses provided for in this article 42, unless permission is given by the director to such employer to operate under a medical plan, as set forth in subsection (2) of this section.

(c) In any case in which a firefighter, emergency medical services provider, or peace officer, as described in section 16-2.5-101, C.R.S., is exposed during the course and within the scope of employment to a known or possible source of hepatitis C, the employer, or if insured, the insurer, shall, at their expense, provide for baseline testing within the period of time specified in section 8-41-208 (1)(a) to determine whether the employee was free of hepatitis C at the time of the on-the-job exposure. The employer, or if insured, the insurer, shall pay for all reasonable and necessary medical procedures and treatment for exposure to hepatitis C during the period of time set forth in section 8-41-208 (1)(d).

(2) Every such plan, which is agreed to between the employer and employee, for the furnishing of medical, surgical, and hospital treatment, whether or not the employee is to pay any part of the expense of such treatment, before being put into effect, shall receive the approval of the director. The director has full power to formulate the terms and conditions under which any such plan may operate and the essentials thereof, and at any time the director may order modifications or changes in any such plan or withdraw prior approval thereof. No plan shall be approved by the director which relieves the employer from the burden of assuming and paying for any part of the medical, surgical, and hospital services and supplies required.

(3) (a) (I) ***[Editor's note: This version of subsection (3)(a)(I) is effective until January 1, 2028.]*** The director shall establish a schedule fixing the fees for which all surgical, hospital, dental, nursing, vocational rehabilitation, and medical services, whether related to treatment or not, pertaining to injured employees under this section shall be compensated. It is unlawful, void, and unenforceable as a debt for any physician, chiropractor, hospital, person, expert witness, reviewer, evaluator, or institution to contract with, bill, or charge any party for services, rendered in connection with injuries coming within the purview of this article or an applicable fee schedule, which are or may be in excess of said fee schedule unless such charges are approved by the director. Fee schedules shall be reviewed on or before July 1 of each year by the director, and appropriate health-care practitioners shall be given a reasonable opportunity to be heard as required pursuant to section 24-4-103, C.R.S., prior to fixing the fees, impairment rating guidelines, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991, and medical treatment guidelines and utilization standards. Fee schedules established pursuant to this subparagraph (I) shall take effect on January 1. The director shall promulgate rules concerning reporting requirements, penalties for failure to report correctly or in a timely manner, utilization control requirements for services provided under this section, and the accreditation process in subsection (3.6) of this section. The fee schedule shall apply to all surgical, hospital, dental, nursing, vocational rehabilitation, and medical services and to expert witness, expert reviewer, or expert evaluator services, whether related to treatment or not, provided after any final order, final admission, or full or partial settlement of the claim.

(3) (a) (I) ***[Editor's note: This version of subsection (3)(a)(I) is effective January 1, 2028.]***

(A) The director shall establish a schedule fixing the fees for which all surgical, hospital, dental, nursing, vocational rehabilitation, and medical services, whether related to treatment or not, pertaining to injured employees under this section shall be compensated. It is unlawful, void, and unenforceable as a debt for a physician, chiropractor, hospital, person, expert witness, reviewer, evaluator, or institution to contract with, bill, or charge any party for services, rendered in connection with injuries coming within the purview of this article 42 or an applicable fee schedule, that are or may be in excess of the fee schedule unless such charges are approved by the director. Fee schedules shall be reviewed on or before July 1 of each year by the director, and appropriate health-care practitioners shall be given a reasonable opportunity to be heard as required pursuant to section 24-4-103 prior to fixing the fees; impairment rating guidelines, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991; and medical treatment guidelines and utilization standards. Fee schedules established pursuant to this subsection (3)(a)(I) shall take effect on January 1. The director shall adopt rules concerning reporting requirements, penalties for failure to report correctly or in a timely manner, utilization control requirements for services provided under this section, and the accreditation process described in subsection (3.6) of this section. The fee schedule applies to all surgical, hospital, dental, nursing,

vocational rehabilitation, and medical services and to expert witness, expert reviewer, or expert evaluator services, whether related to treatment or not, provided after any final order, final admission, or full or partial settlement of the claim.

(B) An employer or the employer's insurer shall use the division's utilization standards when responding to a request for authorization from a treating physician. If an employer or the employer's insurer fails to act in accordance with the division's utilization standards when reviewing a request for authorization, the director may deem the services provided by an authorized treating physician as authorized, reasonable, and necessary and require payment for the services by the employer or the employer's insurer.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a) the fees set forth in the schedule established pursuant to subparagraph (I) of this paragraph (a) shall be those fees in effect immediately prior to July 1, 1991, and such fees shall remain in effect until July 1, 1995.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), until the impairment rating guidelines and medical treatment guidelines and utilization standards required by subparagraph (I) of this paragraph (a) and subsection (3.5) of this section are adopted and level I accreditation is received, compensation for fees for chiropractic treatments shall not be made more than ninety days after the first of such treatments nor after the twelfth such treatment, whichever first occurs, unless the chiropractor has received level I accreditation.

(b) Medical treatment guidelines and utilization standards, developed by the director, shall be used by health-care practitioners for compliance with this section.

(c) **[Editor's note: Subsection (3)(c) is effective January 1, 2028.]** The department shall update the general assembly on the changes made to the utilization standards for physician authorization requests as part of the department's presentation to the legislative committees of reference at the committees' hearings held pursuant to the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" pursuant to part 2 of article 7 of title 2.

(3.5) (a) (I) (A) "Physician" means, for the purposes of the level I and level II accreditation programs only, a physician licensed under the "Colorado Medical Practice Act", article 240 of title 12. A physician is not deemed accredited under either level I or level II solely by reason of being licensed.

(B) A physician assistant licensed under the "Colorado Medical Practice Act", article 240 of title 12, may receive level I accreditation. In order for a level I accredited physician assistant to perform medical services requiring level I accreditation, a level I accredited physician must delegate the performance of those medical services to the level I accredited physician assistant.

(C) Repealed.

(D) An advanced practice registered nurse with prescriptive authority pursuant to section 12-255-112 may receive level I accreditation for purposes of receiving one hundred percent reimbursement under the medical fee schedule created in accordance with subsection (3) of this section.

(D.5) A health-care professional regulated pursuant to title 12 and listed in the utilization standards created in accordance with subsection (3.5)(a)(II) of this section may receive level I accreditation.

(E) Nothing in this subsection (3.5)(a) grants any person other than a physician licensed under the "Colorado Medical Practice Act", article 240 of title 12, the authority to determine that no permanent medical impairment has resulted from the injury pursuant to subsection (3.6)(b) of this section or that a claimant has attained maximum medical improvement pursuant to section 8-42-107 (8)(b)(I).

(II) The director shall promulgate rules establishing a system for the determination of medical treatment guidelines and utilization standards and medical impairment rating guidelines for impairment ratings as a percent of the whole person or affected body part based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991.

(b) A medical impairment rating system shall be maintained by the director.

(c) (I) This subsection (3.5) is repealed, effective September 1, 2036.

(II) Prior to such repeal the accreditation process created by this subsection (3.5) and subsection (3.6) of this section shall be reviewed as provided for in section 24-34-104, C.R.S.

(3.6) (a) The two-tier accreditation system shall comprise the following programs:

(I) A program establishing the accreditation requirements for physicians providing primary care to patients who have, as a result of their injury, been unable to return to work for more than three working days, referred to in this section as "time-loss injuries", which program shall be voluntary except in the case of chiropractors, for whom it shall be mandatory, and which shall be known as level I accreditation; and

(II) A program establishing the accreditation requirements for physicians providing impairment evaluation of injured workers, which program shall be known as level II accreditation.

(b) A physician who provides impairment evaluation of injured workers shall complete and must have received accreditation under the level II accreditation program. However, the authorized treating physician providing primary care need not be level II accredited to determine that no permanent medical impairment has resulted from the injury. Specialists who do not

render primary care to injured workers and who do not perform impairment evaluations do not require accreditation. The facility where a physician provides such services cannot be accredited.

(c) Both the level I and level II accreditation programs shall be implemented and available to physicians. All physicians who are required to be accredited shall complete the level II accreditation program or programs.

(d) The level I and level II accreditation programs shall operate in such a manner that the costs of the program are fully met by registration fees paid by the physicians. The registration fee for each program must cover the cost of all accreditation course work and materials.

(e) The accreditation system shall be established so as to provide physicians with an understanding of the administrative, legal, and medical roles and in such a manner that accreditation is accessible to every licensed physician, with consideration of specialty and geographic diversity.

(f) Initial accreditation shall be for a three-year period and may be renewed for successive three-year periods. The director by regulation may determine any additional training program required prior to accreditation renewal.

(g) The director shall, upon good cause shown, revoke the accreditation of any physician who violates the provisions of this subsection (3.6) or any rule promulgated by the director pursuant to this subsection (3.6), following a hearing on the merits before an administrative law judge, subject to review by the industrial claim appeals office and the court of appeals, in accordance with all applicable provisions of article 43 of this title.

(h) If a physician whose accreditation has been revoked submits a claim for payment for services rendered subsequent to such revocation, the physician shall be considered in violation of section 10-1-128, and neither an insurance carrier nor a self-insured employer shall be under any obligation to pay such claim.

(i) A physician who provides treatment for nontime loss injuries need not be accredited to be reimbursed for the costs of such treatment pursuant to the provisions of the "Workers' Compensation Act of Colorado".

(j) (Deleted by amendment, L. 96, p. 151, § 2, effective July 1, 1996.)

(k) The division shall make available to insurers, claimants, and employers a list of all accredited physicians and a list of all physicians whose accreditation has been revoked. Such lists shall be updated on a monthly basis.

(l) The registration fees collected pursuant to paragraph (d) of this subsection (3.6) shall be transmitted to the state treasurer, who shall credit the same to the physicians accreditation program cash fund, which is hereby created in the state treasury. Moneys in the physicians

accreditation program cash fund are hereby continuously appropriated for the payment of the direct costs of providing the level I and level II accreditation courses and materials.

(m) All administrative costs associated with the level I and level II accreditation programs shall be paid out of the workers' compensation cash fund in accordance with appropriations made pursuant to section 8-44-112 (7).

(n) The director shall contract with the medical school of the university of Colorado for the services of a medical director to advise the director on issues of accreditation, impairment rating guidelines, medical treatment guidelines and utilization standards, and case management and to consult with the director on peer review activities as specified in this subsection (3.6) and section 8-43-501. The medical director shall be a medical doctor licensed to practice in this state with experience in occupational medicine. The director may contract with an appropriate private organization that meets the definition of a quality improvement organization as set forth in 42 U.S.C. sec. 1320c-1 to conduct peer review activities under this subsection (3.6) and section 8-43-501 and to recommend whether or not adverse action is warranted.

(o) Except as provided in this subsection (3.6), neither an insurance carrier nor a self-insured employer or injured worker shall be liable for costs incurred for an impairment evaluation rendered by a physician where there is a determination of permanent medical impairment if such physician is not level II accredited pursuant to the provisions of this subsection (3.6).

(p) (I) As used in this paragraph (p):

(A) "Case management" means a system developed by the insurance carrier in which the carrier shall assign a person knowledgeable in workers' compensation health care to communicate with the employer, employee, and treating physician to assure that appropriate and timely medical care is being provided.

(B) "Managed care" means the provision of medical services through a recognized organization authorized under the provisions of parts 1, 3, and 4 of article 16 of title 10, or a network of medical providers accredited to practice workers' compensation under this subsection (3.6).

(II) Every employer or its insurance carrier shall offer at least managed care or medical case management in the counties of Denver, Adams, Jefferson, Arapahoe, Douglas, Boulder, Larimer, Weld, El Paso, Pueblo, and Mesa and shall offer medical case management in all other counties of the state.

(q) The division is authorized to accept moneys from any governmental unit as well as grants, gifts, and donations from individuals, private organizations, and foundations; except that no grant, gift, or donation may be accepted by the division if it is subject to conditions which are inconsistent with this article or any other laws of this state or which require expenditures from the workers' compensation cash fund which have not been approved by the general assembly. All

moneys accepted by the division shall be transmitted to the state treasurer for credit to the workers' compensation cash fund.

(r) (I) This subsection (3.6) is repealed, effective September 1, 2036.

(II) Prior to such repeal the accreditation process created by subsection (3.5) of this section and this subsection (3.6) shall be reviewed as provided for in section 24-34-104.

(3.7) On and after July 1, 1991, all physical impairment ratings used under articles 40 to 47 of this title shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. For purposes of determining levels of medical impairment pursuant to articles 40 to 47 of this title a physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings.

(3.9) A person providing mental health services pursuant to articles 40 to 47 of this title 8, including cognitive behavioral therapy and other treatment modalities under the workers' compensation system, must be formally trained and licensed as a mental health provider.

(4) Once there has been an admission of liability or the entry of a final order finding that an employer or insurance carrier is liable for the payment of an employee's medical costs or fees, a medical provider shall under no circumstances seek to recover such costs or fees from the employee.

(5) ***[Editor's note: This version of subsection (5) is effective until January 1, 2028.]*** If any party files an application for hearing on whether the claimant is entitled to medical maintenance benefits recommended by an authorized treating physician that are unpaid and contested, and any requested medical maintenance benefit is admitted fewer than twenty days before the hearing or ordered after application for hearing is filed, the court shall award the claimant all reasonable costs incurred in pursuing the medical benefit. Such costs do not include attorney fees.

(5) ***[Editor's note: This version of subsection (5) is effective January 1, 2028.]*** If any party files an application for hearing on whether a claimant is entitled to medical benefits recommended by an authorized treating physician that are unpaid and contested, and any requested medical benefit is admitted fewer than twenty days before the hearing or ordered after application for hearing is filed, the court shall award the claimant all reasonable costs incurred in pursuing the medical benefit. Such costs do not include attorney fees.

(6) (a) If an employer receives notice of injury and the employer or, if insured, the employer's insurance carrier, after notice of the injury, fails to furnish reasonable and necessary medical treatment to the injured worker for a claim that is admitted or found to be compensable, the employer or carrier shall reimburse the claimant, or any insurer or governmental program that pays for related medical treatment, for the costs of reasonable and necessary treatment that was provided. An employer, insurer, carrier, or provider may not recover the cost of care from a

claimant where the employer or carrier has furnished medical treatment except in the case of fraud.

(b) If a claimant has paid for medical treatment that is admitted or found to be compensable and that costs more than the amount specified in the workers' compensation fee schedule, the employer or, if insured, the employer's insurance carrier, shall reimburse the claimant for the full amount paid. The employer or carrier is entitled to reimbursement from the medical providers for the amount in excess of the amount specified in the worker's compensation fee schedule.

(7) (a) Except as provided in subsections (7)(b) and (7)(c) of this section, a claimant must submit a request for mileage expense reimbursement for travel reasonably necessary and related to obtaining compensable treatment, supplies, or services specified in subsection (1)(a) of this section to the employer or, if insured, to the employer's insurer no later than one hundred twenty days after the date the expense is incurred, unless good cause for a later submission is shown. Good cause includes a failure by the employer or employer's insurer to provide the notice in the brochure required by section 8-43-203 (3)(c)(IV). Within thirty days after the date the claimant submits the request for mileage expense reimbursement, the employer or employer's insurer shall pay the mileage expenses or, if denying the request, provide written notice to the claimant stating the reason the request was denied.

(b) Within seven days after the date of receipt of a claimant's written request for advance mileage expenses for travel that is reasonably necessary and related to obtaining compensable treatment, supplies, or services specified in subsection (1)(a) of this section and requires round-trip travel greater than one hundred miles, the employer or the employer's insurer shall pay the advance mileage expenses or, if denying the request, provide written notice to the claimant stating the reason the request was denied.

(c) If advance mileage expense payment is made pursuant to this subsection (7), and the specific travel for which payment was provided does not occur, the employer or, if insured, the employer's insurer is entitled to a credit in the amount of the payment to be applied against liability for any future mileage expense reimbursements.

Source: **L. 90:** Entire article R&RE, p. 485, § 1, effective July 1. **L. 91:** (3)(b) repealed, p. 694, § 4, effective April 20; (1)(b) and (3) amended and (3.5), (3.6), and (3.7) added, p. 1296, § 10, effective July 1. **L. 92:** (3.5)(a)(II) amended, p. 2165, § 1, effective June 2; (3.6)(p)(I)(B) amended, p. 1723, § 2, effective July 1. **L. 94:** (1)(b) amended, p. 311, § 1, effective March 22; (3.5)(k) and (3.6)(r) amended, p. 1457, § 7, effective May 25; (3)(a)(II) amended, p. 2001, § 2, effective July 1. **L. 95:** (3.6)(g) amended, p. 234, § 1, effective April 17. **L. 96:** (3.6)(b) and (3.6)(o) amended, p. 268, § 1, effective April 8; (3)(a)(I), (3)(b), (3.5), and (3.6) amended, p. 151, § 2, effective July 1. **L. 2002:** (1)(c) added, p. 441, § 2, effective May 16. **L. 2003:** (3.5)(c)(I) and (3.6)(r)(I) amended, p. 918, § 2, effective July 1; IP(3.6) and (3.6)(h) amended, p. 614, § 4,

effective July 1; (1)(c) amended, p. 1613, § 4, effective August 6. **L. 2004:** (3)(a)(I) amended, p. 396, § 4, effective August 4. **L. 2007:** (3)(a)(I) and (3.6)(k) amended, p. 1471, § 1, effective May 30. **L. 2008:** (1)(b) and (3)(a)(I) amended, p. 1675, § 1, effective July 1. **L. 2009:** (3)(a)(I) amended, (SB 09-243), ch. 269, p. 1222, § 2, effective July 1. **L. 2010:** (5) added, (SB 10-187), ch. 310, p. 1456, § 2, effective July 1. **L. 2013:** (6) added, (SB 13-285), ch. 301, p. 1593, § 1, effective July 1. **L. 2014:** (3.5)(a)(I) amended, (HB 14-1227), ch. 363, p. 1735, § 36, effective July 1; (3.5)(c)(I), (3.6)(d), and (3.6)(r)(I) amended, (HB 14-1278), ch. 293, pp. 1197, 1198, §§ 1, 3, effective July 1. **L. 2015:** (2)(b) added, (SB 15-264), ch. 259, p. 942, § 8, effective August 5. **L. 2016:** (3.5)(a)(I) amended, (SB 16-158), ch. 204, p. 720, § 3, effective August 10. **L. 2019:** (3.5)(a)(I)(D) and (3.5)(a)(I)(E) added, (HB 19-1105), ch. 77, p. 281, § 1, effective August 2; (3.6)(n) amended, (SB 19-241), ch. 390, p. 3463, § 3, effective August 2; (3.5)(a)(I)(A) and (3.5)(a)(I)(B) amended, (HB 19-1172), ch. 136, p. 1647, § 22, effective October 1. **L. 2021:** (1)(a) amended and (7) added, (HB 21-1050), ch. 384, p. 2569, § 1, effective September 7. **L. 2022:** (3.9) added, (HB 22-1354), ch. 476, p. 3470, § 3, effective June 8; (7) amended, (HB 22-1347), ch. 477, p. 3472, § 1, effective August 10. **L. 2023:** (1)(b) amended, (HB 23-1076), ch. 370, p. 2222, § 2, effective August 7. **L. 2025:** (3.5)(a)(I)(A), (3.5)(a)(I)(E), (3.5)(c)(I), and (3.6)(r)(I) amended, (3.5)(a)(I)(C) repealed, and (3.5)(a)(I)(D.5) added, (SB 25-186), ch. 285, p. 1470, § 1, effective August 6; (3.6) amended, (SB 25-300), ch. 428, p. 2436, § 4, effective August 6; (3)(a)(I) and (5) amended and (3)(c) added, (HB 25-1300), ch. 442, p. 2545, § 2, effective January 1, 2028.

Editor's note: (1) This section is similar to former § 8-49-101 as it existed prior to 1990.

(2) Although subsection (3)(b) was repealed by House Bill 91-1100, the repeal was harmonized with the amendments to the entire subsection (3) by Senate Bill 91-218.

(3) Amendments to subsection (3.6) by House Bill 96-1040 and House Bill 96-1126 were harmonized.

(4) Amendments to subsection (3.6)(r)(I) by SB 25-186 and SB 25-300 were harmonized.

(5) Section 4(2) of chapter 442 (HB 25-1300), Session Laws of Colorado 2025, provides that the act changing this section applies to workers' compensation claims filed on or after January 1, 2028.

Cross references: For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016. For the legislative declaration in HB 25-1300, see section 1 of chapter 442, Session Laws of Colorado 2025.

ANNOTATION

Law reviews. For article, "Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980). For article, "A Review of Medical Issues in Worker's Compensation", see 19 Colo. Law. 667 (1990). For article, "The Game of Liens: Untangling the Statutory Lien Scheme in Colorado Workers' Compensation Cases", see 50 Colo. Law. 48 (Apr. 2021).

Annotator's note. (1) Since § 8-42-101 is similar to § 8-49-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Many of the cases annotated below which arose prior to July 1, 1987, were decided under the former provisions of § 8-49-101 which have been substantially amended or which have been repealed.

(3) Cases included in the annotations which refer to the industrial commission were decided prior to the 1969 amendment which removed powers formerly exercised by the industrial commission and vested them in the division of labor and its director.

Property interest created requiring procedural due process. A claimant has a property interest in receiving treatment and supplies that may reasonably be needed at the time of injury or occupational disease and thereafter during the disability to cure and relieve the employee from the effects of

the injury. *Colo. Comp. Ins. Auth. v. Nofio*, 886 P.2d 714 (Colo. 1994).

Litigation expenses not exempt. The director's authority to establish a fee schedule under this section is not limited to fees for treatment but may extend to the amount charged by a physician for review of a deposition in connection with a hearing. *Janssen v. Indus. Claim Appeals Office*, 40 P.3d 1 (Colo. App. 2001), rev'd on other grounds sub nom. *Indus. Claim Appeals Office v. Zarlingo*, 57 P.3d 736 (Colo. 2002).

Failure of the director of the division of workers' compensation to adopt rules for rating psychological impairment pursuant to this section did not deprive employer and the compensation insurance authority of due process where the appropriate report form for impairment ratings was used, the provider that gave the impairment rating was accredited, and an opinion of independent medical examiner was not sought pursuant to § 8-42-107 (8)(b) after the initial medical impairment assessment. *City of Boulder v. Dinsmore*, 902 P.2d 925 (Colo. App. 1995).

This section requires all physical impairment ratings to be based on the AMA Guides. *Gonzales v. Advanced Component Sys.*, 949 P.2d 569 (Colo. 1997).

The AMA Guides do not preclude a physician from concluding that an injury primarily occurred to or affected only one side of the back. *Wackenhut Corp. v. Indus. Claim Appeals Office*, 17 P.3d 202 (Colo. App. 2000).

The date of maximum medical improvement is not relevant in and of itself to applying the AMA guidelines. Therefore, a date of maximum medical improvement does not invalidate a physician's findings that a condition, such as pain, has existed after such date, and applying such findings to the AMA guidelines. *McLane W. Inc. v. Indus. Claim Appeals Office*, 996 P.2d 263 (Colo. App. 1999).

Neither subsection (3.7) of this section nor the AMA Guides can be read as superseding or overriding the express legislative directive in § 8-42-107 (1) regarding how benefits are to be calculated for employees who have sustained only scheduled injuries. *Kolar v. Indus. Claim Appeals Office*, 122 P.3d 1075 (Colo. App. 2005).

Disabling industrial injury suffered prior to July 1, 1987. A worker who has been awarded temporary partial disability benefits and who has been directed to undergo a vocational rehabilitation evaluation is entitled to receive temporary partial disability benefits until the commencement of a vocational rehabilitation program or the entry of an administrative ruling that vocational rehabilitation is not necessary to render the worker fit for a remunerative occupation. *Allee v. Contractors, Inc.*, 783 P.2d 273 (Colo. 1989); *Gerber v. CAN-USA Constr., Inc.*, 783 P.2d 269 (Colo. 1989); *Phillips v. Indus. Claim Appeals Office*, 783 P.2d 271 (Colo. 1989); *Indus. Claim Appeals Office v. Mid-Continent Res., Inc.*, 783 P.2d 290 (Colo. 1989); *Arndt v. Elec. Metal Prods., Inc.*, 783 P.2d 290 (Colo. 1989); *Ne. Junior*

Coll. v. Kenyon, 783 P.2d 853 (Colo. 1989) (decided prior to 1987 repeal of subsections (4) and (5)).

This section imposes upon an employer the duty of furnishing medical, surgical, nursing and hospital treatment and supplies and apparatus for a fixed time and to a fixed minimum regardless of the compensation allowed, and where such bills are not paid but are included in the award they are paid direct to those who have rendered the service or furnished the supplies. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957); *Publix Cab Co. v. Colo. Nat'l Bank*, 139 Colo. 205, 338 P.2d 702 (1959).

The act authorizes an award of medical benefits reasonably necessary to relieve the injured worker from the effects of the industrial injury. Employers have been required to provide services which are either medically necessary for the treatment of a claimant's injuries or incidental to obtaining such treatment. *Atencio v. Quality Care, Inc.*, 791 P.2d 7 (Colo. App. 1990); *Colo. Comp. Ins. Auth. v. Nofio*, 886 P.2d 714 (Colo. 1994).

A prosthetic hip is an internal device that may be replaced when the treating physician deems it necessary; therefore, an employee who suffers a left hip prosthetic shift is entitled to workers' compensation benefits. Because the prosthesis is an internal device, it is not subject to the same limitations as an external device. *Am. Appliances, Inc. v. Indus. Claim Appeals Office*, 166 P.3d 267 (Colo. App. 2007).

Treatments for a condition not caused by employment are not compensated.

Claimant was not entitled to increased costs for cancer treatment even when the increased costs were caused by an employment injury. The condition being treated was not caused by employment; therefore, the treatments will not "relieve the employee of the effects of the injury." *Owens v. Indus. Claim Appeals Office*, 49 P.3d 1187 (Colo. App. 2002).

In certain instances an employer can be held liable for treatment of a nonindustrial condition necessary to prepare a claimant for surgery to treat a compensable industrial injury. *Pub. Serv. Co. v. Indus. Claim Appeals Office*, 979 P.2d 584 (Colo. App. 1999).

Obligation of employer. This section obligates the employer to furnish the necessary medical assistance for treatment of the claimant's injury both at the time of the injury "and thereafter during the disability". *Granite Constr. Co. v. Leonard*, 40 Colo. App. 20, 568 P.2d 500 (1977).

Disability is determined as of the time physicians notify claimant they can do nothing further for him. There is no provision of the workmen's compensation act which specifies the time at which disability is to be determined, and the industrial commission has authority to fix the disability as of the time physicians for the employer and insurance carrier notify claimant they can do nothing further for him. This is true notwithstanding that the employee, by undergoing further surgical treatment at his own expense, is able to decrease the extent of his disability below the percentage fixed by the division. *London*

Guarantee & Accident Co. v. Indus. Comm'n, 72 Colo. 177, 210 P. 70 (1922).

The language of this section is clear and unambiguous in stating that the employer, through his insurance carrier, shall not be required to pay for medical expenses beyond \$7,500 (now \$20,000). *Weaver-Beatty Motor Co. v. Billen*, 36 Colo. App. 442, 541 P.2d 120 (1975).

Income maintenance benefits are not included in listing of benefits to be offset by any disability annuity payments; to extend this section to include such benefits would not only be tantamount to indulging in judicial legislation but would ignore the express statutory language. *State Comp. Ins. Fund v. Velasquez*, 628 P.2d 190 (Colo. App. 1981).

Director may not extend rehabilitation beyond 52 weeks. The director does not have any discretion to extend the period of vocational rehabilitation once the 52-week limitation of subsection (4) is reached. In *re Sterling v. Indus. Comm'n*, 662 P.2d 1096 (Colo. App. 1982).

Claimant's temporary disability benefits should not have been suspended because he withdrew monthly amounts from his company's assets for living expenses, where claimant was not earning any income. *Winters v. Indus. Comm'n*, 736 P.2d 1256 (Colo. App. 1986).

Determination of permanent disability under former subsection (5). Former subsection (5) required that permanent disability be determined as if the employee had successfully completed the

rehabilitation program. From the commission's finding that, since the claimant voluntarily withdrew from the rehabilitation program, the industrial disability equaled physical impairment, it cannot be determined that the physical disability was assessed from subsection (5)'s perspective. Thus, further findings on this issue are needed. *Churchill v. Sears Roebuck & Co.*, 720 P.2d 171 (Colo. App. 1986) (decided prior to 1986 abolishment of the industrial commission).

Assertion of permanent disability claim not necessary for vocational rehabilitation. This section does not impose a burden upon one who seeks vocational rehabilitation to assert first a permanent disability claim. *Timberline Sawmill & Lumber, Inc. v. Indus. Comm'n*, 624 P.2d 367 (Colo. App. 1981).

And ineligibility for vocational rehabilitation benefits not inconsistent with award of disability benefits. A finding that a claimant is not eligible for vocational rehabilitation benefits is not inconsistent with its award of permanent partial disability benefits. *Sw. Inv. Co. v. Indus. Comm'n*, 650 P.2d 1355 (Colo. App. 1982).

Issue of the claimant's entitlement to vocational rehabilitation must be reevaluated where there is further medical treatment for her disability and her subsequent ability to perform work for which she has previous training or experience. This issue is not precluded by an initial determination that the claimant does not meet the statutory standards for vocational rehabilitation. *Dziewior v. Mich.*

Gen. Corp., 672 P.2d 1026 (Colo. App. 1983).

Subrogation has no effect on limits of liability under this section. The right of subrogation granted to the state fund under § 8-52-108 is a separate and distinct right which has no effect on the limits of liability under this section established by the general assembly. *Weaver-Beatty Motor Co. v. Billen*, 36 Colo. App. 442, 541 P.2d 120 (1975).

Because subrogation would be meaningless if the limit of liability fluctuated with every recovery. *Weaver-Beatty Motor Co. v. Billen*, 36 Colo. App. 442, 541 P.2d 120 (1975).

When limit is reached, application under § 8-66-108 is appropriate. The general assembly established the limit of liability under this section, and when this limit has been initially reached, application for major medical benefits under § 8-66-108 is appropriate. A later recovery or lack of recovery will only affect the employer's loss experience and premium charges; it cannot affect the question of whether the statutory limit of liability has been exhausted. *Weaver-Beatty Motor Co. v. Billen*, 36 Colo. App. 442, 541 P.2d 120 (1975).

Initial responsibility for identifying the need for a vocational rehabilitation plan rests with the employer or insurance carrier. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

Rules of procedure relative to vocational rehabilitation allows a claimant the remedy of securing official intervention

when an insurer delays or denies providing rehabilitation services. This remedy does not compensate a claimant for any injury caused by a bad faith delay or denial by the employer or insurance carrier. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

Requisites for major medical insurance fund liability for vocational rehabilitation benefits are that the employee suffer a compensable injury rendering him incapable of employment for which he has training or experience and that total benefits expended by the employer for medical and vocational rehabilitation benefits exceed \$20,000. *White v. State Comp. Ins. Fund*, 700 P.2d 923 (Colo. App. 1985).

Claimant remained eligible to recover vocational rehabilitation benefits from the major medical insurance fund despite his settlement with the state compensation insurance fund which recited that it was not to compromise claims against the major medical fund. *White v. State Comp. Ins. Fund*, 700 P.2d 923 (Colo. App. 1985).

Injured employee must have permanent physical impairment which renders him unable to work in order to receive vocational rehabilitation benefits. However, no determination need be made of the employee's degree of permanent partial disability until after completion of the rehabilitation program. *Freilinger v. Gates Rubber Co.*, 733 P.2d 1214 (Colo. App. 1987).

The authority to determine a claimant's eligibility for vocational rehabilitation is not an unconstitutional delegation of authority because the legislative standards

and procedural safeguards are sufficient to protect against an arbitrary exercise of administrative discretion. *Electron Corp. v. Wuerz*, 820 P.2d 356 (Colo. App. 1991).

Vocational rehabilitation benefits denied. Where the evidence establishes that the injury to claimant's thumb neither permanently precludes him from engaging in his usual and customary occupation, nor has it rendered him unable to perform work for which he has previous training or experience, the commission correctly held that claimant was not entitled to vocational rehabilitation benefits. *Smith v. Indus. Comm'n*, 735 P.2d 921 (Colo. App. 1986).

Injured employee not entitled to vocational rehabilitation benefits where accident which occurred at most recent work place did not result in any permanent disability and was not the cause of the employee's inability to work. *Freilinger v. Gates Rubber Co.*, 733 P.2d 1214 (Colo. App. 1987).

Vocational rehabilitation benefits may be suspended when claimant declines offer of suitable gainful employment. Employability in general labor market may be considered but is not essential to the determination of such employment. *Roe v. Indus. Comm'n*, 734 P.2d 138 (Colo. App. 1986).

Waiver of right to retraining in another field was not waiver of all rights under vocational rehabilitation statute and therefore the commission should adopt claimant's plan so long as it is feasible and could reasonably be expected to accomplish

its goals. *Winters v. Indus. Comm'n*, 736 P.2d 1256 (Colo. App. 1986).

Retraining plan may be approved even if it might not be completed in one year, but income maintenance and other vocational rehabilitation benefits would cease after one year. *Winters v. Indus. Comm'n*, 736 P.2d 1256 (Colo. App. 1986).

A vocational rehabilitation "plan" which attempts to help a claimant start his own business is contrary to the language and intent of this section. *Husson v. Babbit*, 728 P.2d 750 (Colo. App. 1986).

Claimant withdrew from rehabilitation program voluntarily and without good cause. Where claimant testified she thought she had left the rehabilitation program voluntarily because "it wasn't working out", where there was evidence that claimant was informed before termination of the areas and improvement necessary and made little effort to improve, and where the record revealed that for claimant's position no prior experience or training was necessary, there was ample evidence that claimant withdrew from the program voluntarily without good cause. *Churchill v. Sears Roebuck & Co.*, 720 P.2d 171 (Colo. App. 1986).

Child care services were compensable to extent necessary to allow claimant to attend medical appointments and to allow her to rest. *Bellone v. Indus. Claim Appeals Office*, 940 P.2d 1116 (Colo. App. 1997).

Recovery of child care expenses allowed during period of vocational rehabilitation as a necessary service under

former subsection (4). *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988).

Claim is allowed only for injury arising out of and in the course of employment. A claim for medical expenses rendered to an injured employee at the instance of the employer or insurance carrier in cases where the injury is not caused by accident arising out of and in the course of employment may be enforced in an independent action, but cannot be allowed in a proceeding under the workmen's compensation act. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 89 Colo. 475, 3 P.2d 1079 (1931); *Morey Mercantile Co. v. Flynt*, 97 Colo. 163, 47 P.2d 864 (1935).

And an injury takes place when the claimant, as a reasonable man, should recognize the nature, seriousness, and probable compensable character of his injury. *Crest Fence Co. v. Cec*, 175 Colo. 21, 485 P.2d 709 (1971).

The provision of § 8-44-107 that compensation awarded against employer may be increased 50 percent, does not apply to an award for medical, surgical, nursing, and hospital treatment. *Indus. Comm'n v. Hammond*, 77 Colo. 414, 236 P. 1006 (1925).

Medical expense paid for a claimant under the workmen's compensation act is compensation within the meaning of the act. *Morey Mercantile Co. v. Flynt*, 97 Colo. 163, 47 P.2d 864 (1935), citing *Indus. Comm'n v. Globe Indem. Co.*, 74 Colo. 52, 218 P. 910 (1923); *Indus. Comm'n v. Lockard*, 89 Colo. 428, 3 P.2d 416 (1931).

And an employer is required to pay medical expenses only in cases in which he would be charged with the duty of paying other compensation. *Morey Mercantile Co. v. Flynt*, 97 Colo. 163, 47 P.2d 864 (1935), citing *Indus. Comm'n v. Globe Indem. Co.*, 74 Colo. 52, 218 P. 910 (1923).

But if an injury is compensable, the employer has an absolute duty to provide medical and kindred relief at the employer's own expense. It cannot be made to depend upon any requirement of payment of medical assessments by the employee; such a requirement, in case of compensable injury, would be unlawful. *Frank v. Indus. Comm'n*, 96 Colo. 364, 43 P.2d 158 (1935).

Employer's duty to provide future medical treatment. The fact that an employee had reached maximum medical improvement would not prohibit an award requiring an employer to provide future medical treatment reasonably necessary to relieve the claimant from the effects of an industrial injury. *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988); *Milco Const. v. Cowan*, 860 P.2d 539 (Colo. App. 1992).

However, there must be substantial evidence in the record to support a determination that future medical treatment will be reasonably necessary to accomplish the statutory purpose. *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988); *Milco Const. v. Cowan*, 860 P.2d 539 (Colo. App. 1992).

Where the administrative law judge failed to determine whether a physician's report constituted substantial evidence that future knee replacement surgery would be

reasonably necessary, the industrial claim appeals office had no authority to conclude that such report did constitute such evidence. *Milco Const. v. Cowan*, 860 P.2d 539 (Colo. App. 1992).

In the absence of a recommendation for treatment that has a reasonable prospect for improving claimant's condition, the claimant may be found to be at maximum medical improvement. *Gonzales v. Indus. Claim Appeals Office*, 905 P.2d 16 (Colo. App. 1995).

Workers' compensation insurer not liable to reimburse no-fault automobile insurer for any medical expenses covered by director's fee schedule to the extent any fee listed in the schedule is exceeded. Law requires that parties undertake comparison of each expenditure for medical or other services covered by the schedule with the scheduled fee. *Employers Fire Ins. v. Lumbermens Mut.*, 964 P.2d 591 (Colo. App. 1998).

Claimant has no right to receive medical care from a particular medical provider or to receive a particular type of treatment. *Colo. Comp. Ins. Auth. v. Nofio*, 886 P.2d 714 (Colo. 1994).

Treatment contemplated by the act includes all treatment, including legally recognized nonmedical treatment, reasonably necessary to relieve claimant from effects of an industrial injury. *Suetrack v. Indus. Claim Appeals Office*, 902 P.2d 854 (Colo. App. 1995).

Treatment to "relieve the employee from the effects of the injury" under

subsection (1). If the evidence establishes that, but for a particular course of medical treatment, a claimant's condition can reasonably be expected to deteriorate so that the claimant will suffer a greater disability than sustained thus far, such treatment, irrespective of its nature, must be viewed as treatment designed to relieve the effects of the injury or to prevent deterioration of the claimant's present condition. *Milco Const. v. Cowan*, 860 P.2d 539 (Colo. App. 1992).

Employer not liable for costs of conservator or guardianship services for permanently and totally disabled claimant where the services do not cure or relieve the claimant of the effects of the injury. Such services are not "medical treatment" under subsection (1)(a). *Nanez v. Indus. Claim Appeals Office*, 2018 COA 162, 444 P.3d 820.

Transportation expenses incidental to medical treatment. Claimant entitled to transportation expenses incidental to authorized medical treatment. *Sigman Meat v. Indus. Claim Appeals Office*, 761 P.2d 265 (Colo. App. 1988).

Expenses of exploratory operation disclosing disease precipitated by accident. Where claimant slipped and fell in course of employment, and the accident precipitated symptoms of a kidney disease, which was disclosed during an exploratory operation, resulting in removal of one kidney, regardless of any aggravation of claimant's preexisting condition, he was entitled to recover the amounts he expended for surgical and hospital treatment which was deemed by competent physicians

reasonably necessary to relieve him from the effects of the accident. *Merriman v. Indus. Comm'n*, 120 Colo. 400, 210 P.2d 448 (1949).

The mandate of this section is clear that in "all cases" a prosthetic device be furnished as may be reasonably required as a replacement where an employee has suffered a loss of a member or part of his body. *Arkin v. Indus. Comm'n*, 145 Colo. 463, 358 P.2d 879 (1961).

Whether a hot tub was equipment reasonably necessary at the time of injury is applied in *City and County of Denver v. Indus. Comm'n*, 682 P.2d 513 (Colo. App. 1984).

Housekeeping services may be compensable if it can be demonstrated that such services are incident to any medically necessary attendant care services and are central to a claimant's physical injury. *Valdez v. Gas Stop*, 857 P.2d 544 (Colo. App. 1993).

Panel did not err in determining that child care services did not constitute a compensable medical benefit under subsection (1)(a). *Kuziel v. Pet Fair, Inc.*, 931 P.2d 521 (Colo. App. 1996).

Panel did not err in determining that claimant was not entitled to prepayment of hotel and meal expenses incurred while traveling to see his authorized treating physician. *Winter v. Indus. Claim Appeals Office*, 2013 COA 126, 321 P.3d 609.

Medical prescription alone is insufficient to support a claim for compensation for housekeeping services

where claimant testified that she was unable to perform only certain household duties and was able to continue to work and attend a vocational education program. *Valdez v. Gas Stop*, 857 P.2d 544 (Colo. App. 1993).

Housekeeping services provided by attendant compensable. Facts were sufficient to support the ALJ's finding that the attendant care services were necessary assistance, were reasonable, and were compensable under subsection (1)(a). *Atencio v. Quality Care, Inc.*, 791 P.2d 7 (Colo. App. 1990).

Housekeeping services are not compensable under this section unless the services either enable the claimant to obtain medical care or treatment or, alternatively, are relatively minor in comparison to the medical care and treatment. *Country Squire Kennels v. Tarshis*, 899 P.2d 362 (Colo. App. 1995).

This section requires an employer to compensate an employee's spouse who provides home care services to the employee, if such services are more than ordinary household services and the injury is of a nature that requires an attendant to remain nearby or on call. The fact that a spouse performs household tasks when not actually providing specific services to the injured employee does not affect the nature of the home care services provided to the employee by the spouse. *Edward Kraemer & Sons, Inc. v. Downey*, 852 P.2d 1286 (Colo. App. 1992).

Home health care services provided to claimant by claimant's wife were compensable where authorized physician

referred claimant to and for such services, but none were available in claimant's rural locale. *Suetrack v. Indus. Claim Appeals Office*, 902 P.2d 854 (Colo. App. 1995).

Award to claimant for room and board during the time when claimant, although discharged from the hospital, was required to remain in Denver for treatment, and during that period he was paying rent for an apartment at Granby, must be considered correct as being incident to secondary hospital services. *Indus. Comm'n v. Pacific Employers Ins. Co.*, 120 Colo. 373, 209 P.2d 908 (1949).

But where no hospitalization was indicated and claimant was not required to maintain two places of residence, but was living with his wife and going to the physician's office for treatments, an award for room and board was not proper. *Indus. Comm'n v. Pac. Employers Ins. Co.*, 120 Colo. 373, 209 P.2d 908 (1949).

Snowblower is not "apparatus" necessary to relieve the claimant from the effects of his injury. *ABC Disposal Servs. v. Fortier*, 809 P.2d 1071 (Colo. App. 1990).

Stair glider is not "apparatus" necessary for the treatment of the claimant's injury or for therapeutic relief from the effects of the claimant's injury. *Cheyenne County Nursing Home v. Indus. Claim Appeals Office*, 892 P.2d 443 (Colo. App. 1995).

Wheelchair-accessible van is not a medical aid reasonably necessary for treatment of claimant's injury. Van does nothing to care for or remedy injury and

does not provide therapeutic medical relief from effects or symptoms of injury. *Bouge v. SDI Corp., Inc.*, 931 P.2d 477 (Colo. App. 1996).

Employer must make such improvements or modifications to the claimant's residence as may be necessary to allow the claimant access to, and the use of, those portions of the residence that provide for the claimant's health and medical necessities. *Cheyenne County Nursing Home v. Indus. Claim Appeals Office*, 892 P.2d 443 (Colo. App. 1995).

Lawn care services held not medically necessary. Unlike housekeeping services such as cooking, lawn care does not bear a direct relation to a person's physical needs. *Hillen v. Tool King*, 851 P.2d 289 (Colo. App. 1993).

The benefit ceiling on prosthetic devices does not deny claimant equal protection of the law and the statute is not unconstitutional. *Reynolds v. Indus. Claim Appeals Office*, 794 P.2d 1083 (Colo. App. 1990).

Where not necessitated by anatomical change, a finding that no replacement prosthesis would be awarded was correct. *Reynolds v. Indus. Claim Appeals Office*, 794 P.2d 1080 (Colo. App. 1990).

The industrial commission may not disregard the provisions of this section, and impose upon the employer or insurance carrier a burden greater than that fixed by statute. *John Thompson Grocery Stores Co. v. Indus. Comm'n*, 85 Colo. 576, 277 P. 789 (1929).

Thus, industrial commission may not award compensation for permanent disability when there is none. The fact that an injured employee might have suffered a permanent disability equal to the loss of a leg at the knee, had he not had additional medical and surgical treatment after having exhausted the statutory amount furnished by the employer, did not justify the commission in awarding compensation for such a permanent disability when in fact there was no such result from the injury. *John Thompson Grocery Stores Co. v. Indus. Comm'n*, 85 Colo. 576, 277 P. 789 (1929).

Order requiring employer to give bond is not unreasonable. Order of the industrial commission requiring employer to give bond in the sum of \$1,500, to insure the payment of medical expense and awarded compensation, is not unreasonable under this section. *Kamp v. Disney*, 110 Colo. 518, 135 P.2d 1019 (1943).

No "particular" or specific course of treatment is necessary to warrant award for maintenance care. *Stollmeyer v. Indus. Claim Appeals Office*, 916 P.2d 609 (Colo. App. 1995).

But a showing of need for treatment is not met by simply proving that degenerative changes will occur. Where it appears that no treatment could prevent or relieve degeneration, an award of ongoing medical benefits is inappropriate. *Stollmeyer v. Indus. Claim Appeals Office*, 916 P.2d 609 (Colo. App. 1995).

Burden is on claimant to prove entitlement to ongoing medical benefits by a preponderance of the evidence.

Lerner v. Wal-Mart Stores, Inc., 865 P.2d 915 (Colo. App. 1993).

The requirement in subsections (3)(a)(I) and (3.7) that impairment rating guidelines "shall be based on" the revised third edition of the American Medical Association Guides to the Evaluation of Permanent Impairment does not bar a

doctor from using an evaluative process to determine an impairment rating that is not described in the Guides' revised third edition. Fisher v. Indus. Claim Appeals Office, 2021 COA 27, 484 P.3d 816.

Applied in Robbolino v. Fischer-White Contractors, 738 P.2d 70 (Colo. App. 1987).

8-42-102. Basis of compensation - "wages" defined - average weekly wage - "at the time of injury" clarified.

(1) The average weekly wage of an injured employee shall be taken as the basis upon which to compute compensation payments.

(2) Average weekly wages for the purpose of computing benefits provided in articles 40 to 47 of this title, except as provided in this section, shall be calculated upon the monthly, weekly, daily, hourly, or other remuneration which the injured or deceased employee was receiving at the time of the injury, and in the following manner; except that any portion of such remuneration representing a per diem payment shall be excluded from the calculation unless such payment is considered wages for federal income tax purposes:

(a) Where the employee is being paid by the month for services under a contract of hire, the weekly wage shall be determined by multiplying the monthly wage or salary at the time of the accident by twelve and dividing by fifty-two.

(b) Where the employee is being paid by the week for services under a contract of hire, said weekly remuneration at the time of the injury shall be deemed to be the weekly wage for the purposes of articles 40 to 47 of this title.

(c) Where the employee is rendering service on a per diem basis, the weekly wage shall be determined by multiplying the daily wage by the number of days and fractions of days in the week during which the employee under a contract of hire was working at the time of the injury or would have worked if the injury had not intervened.

(d) Where the employee is being paid by the hour, the weekly wage shall be determined by multiplying the hourly rate by the number of hours in a day during which the employee was working at the time of the injury or would have worked if the injury had not intervened, to determine the daily wage; then the weekly wage shall be determined from said daily wage in the manner set forth in paragraph (c) of this subsection (2).

(e) Where the employee is paid on a piecework, tonnage, commission, or basis other than a monthly, weekly, daily, or hourly wage and where the employment is but casual and in the usual course of the trade, business, profession, or occupation of his employer, the total amount earned by the injured or killed employee in the twelve months preceding the injury shall be computed, which sum shall be divided by the number of pay periods the injured person was employed during the twelve months immediately preceding the injury, and the result thus ascertained shall be considered the average wage of said employee per pay period.

(f) Where the employee is being paid by the mile, the weekly wage shall be determined by multiplying the rate per mile by the average number of miles per day the employee drove in the service of the employer in the sixty working days immediately preceding the date of the injury, to arrive at a daily wage; then the weekly wage shall be determined from the said daily wage in the manner set forth in paragraph (c) of this subsection (2). If, on the date of the injury, the employee has worked for the employer less than sixty days, the average daily wage shall be based on the average miles driven per working day during such period.

(3) Where the foregoing methods of computing the average weekly wage of the employee, by reason of the nature of the employment or the fact that the injured employee has not worked a sufficient length of time to enable earnings to be fairly computed thereunder or has been ill or has been self-employed or for any other reason, will not fairly compute the average weekly wage, the division, in each particular case, may compute the average weekly wage of said employee in such other manner and by such other method as will, in the opinion of the director based upon the facts presented, fairly determine such employee's average weekly wage.

(4) Where an employee is a minor and the disability is temporary, the average weekly wage of such minor shall be determined by the division as in cases of disability of adults. Where the disability of such minor is permanent or if benefits under articles 40 to 47 of this title accrue because of the death of such minor, compensation to said minor or death benefits to said minor's dependents shall be paid at the maximum rate of compensation payable under said articles at the time of the determination of such permanency or of such death.

(5) (a) The general assembly hereby finds that the phrase "at the time of injury" in subsection (2) of this section refers to the date of the employee's accident. When subsection (2) of this section is used to determine a worker's average weekly wage, the wage on the date of the accident shall be used.

(b) Nothing in this subsection (5) alters the discretion of the division or the director to fairly determine a worker's average weekly wage in accordance with subsection (3) of this section.

Source: **L. 90:** Entire article R&RE, p. 486, § 1, effective July 1. **L. 91:** IP(2), (2)(c), and (2)(d) amended, p. 1304, § 11, effective July 1. **L. 94:** IP(2) amended and (2)(f) added, p. 1286, § 2, effective May 22. **L. 2010:** (5) added, (SB 10-187), ch. 310, p. 1457, § 3, effective July 1.

Editor's note: This section is similar to former § 8-47-101 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Construction of Term.

III. Statutory Computation of Average Weekly Wage.

IV. Computation.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The November Meeting and Debate", see 6 Dicta 11 (Dec. 1928). For article, "Labor and Employment Law", which discusses Tenth Circuit decisions dealing with stock option plans, see 64 Den. U.L. Rev. 280 (1987). For article, "Time, Equity and the Average Weekly Wage", see 23 Colo. Law. 1831 (1994).

Annotator's note. (1) Since § 8-42-102 is similar to § 8-47-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which specified that the division of labor, instead of the industrial

commission, was responsible for establishing the basis of compensation.

Compensation formula constitutional.

The compensation formula established in this section violates neither due process nor equal protection. *Bellendir v. Kezer*, 648 P.2d 645 (Colo. 1982).

The evident purpose of this section is to give the dependents what they have lost. Roughly and in general that is about one-half the income of their supporter for the last 12 months, yet often that would not be so and for that reason there is the qualification in subsection (4). *Frink Dairy Co. v. Indus. Comm'n*, 78 Colo. 71, 239 P. 727 (1925).

Subsection (4) which provides for compensation at maximum rate for minors who have been permanently disabled applies to cases of either partial or total disability. *Mills v. Guido's*, 800 P.2d 1370 (Colo. App. 1990); *De Giacomo v. Indus. Claim Appeals Office*, 817 P.2d 552 (Colo. App. 1991).

However, where statutory scheme contained no "maximum rate of compensation", minor was entitled to compensation at standardized rate under § 8-2-110 (1)(b). *De Giacomo v. Indus.*

Claim Appeals Office, 817 P.2d 552 (Colo. App. 1991) (decided prior to 1991 repeal of § 8-42-110).

"Maximum rate of compensation payable under these articles", for purposes of computing permanent partial disability award under subsection (4), did not mean the maximum weekly rate prescribed in § 8-42-105 for temporary total disability. *De Giacomo v. Indus. Claim Appeals Office*, 817 P.2d 552 (Colo. App. 1991) (decided prior to 1991 amendment of § 8-42-105).

Maximum benefits to a minor under subsection (4) are not mandated until a "determination of such permanency" is made regardless of whether a party can prove a minor will suffer some degree of permanent damage. *Hussion v. Indus. Claim Appeals Office*, 991 P.2d 346 (Colo. App. 1999).

Time used for computation of benefits under subsection (4) is time of determination of permanency of injury, not time of injury itself. *De Giacomo v. Indus. Claim Appeals Office*, 817 P.2d 552 (Colo. App. 1991).

A minor claimant with a scheduled injury is entitled to the same benefits as an adult with the same scheduled injury and not entitled to benefits based on a whole person impairment. *Torres v. Canam Indus., Inc.*, 942 P.2d 1384 (Colo. App. 1997).

The "time of injury" means the "time of disablement", not the date of the accident. The statutory language in the definitions section, § 8-40-201, maintains a distinction between the terms "accident" and

"injury", with an "accident" occurring at a discrete event and "injury" as the disability resulting from that discrete event. Accordingly, if the average weekly wage is tied to the "time of the injury", and the "injury" includes the "disability resulting from accident", then the "time of injury" necessarily includes the time of disablement, not only the time of the precipitating accident. *Avalanche Indus., Inc. v. Clark*, 198 P.3d 589 (Colo. 2008), overruled in *Benchmark/Elite, Inc. v. Simpson*, 232 P.3d 777 (Colo. 2010).

The "time of injury" does not include the time of disablement. *Benchmark/Elite, Inc. v. Simpson*, 232 P.3d 777 (Colo. 2010) (overruling *Avalanche Indus., Inc. v. Clark*, 198 P.3d 589 (Colo. 2008)).

"Time of the injury" means time employee was disabled, not time of last injurious exposure to disease agent listed in § 8-41-304. Worker who was last exposed to asbestos dust in 1977 and developed cancer in 1983 was entitled to benefits based on his 1983 earnings. *Henderson v. RSI, Inc.*, 824 P.2d 91 (Colo. App. 1991).

In cases of occupational disease, "time of injury" is generally held to be the time of last exposure or onset of disability. *Campbell v. IBM Corp.*, 867 P.2d 77 (Colo. App. 1993).

Under provision that authorized director to establish fee schedule for cost containment purposes, rule that restricted nature of treatment was improper. *Riley Family Trust v. Hood*, 874 P.2d 503 (Colo. App. 1994) (decided under former § 8-49-101 as it existed prior to 1990 repeal).

In determining compensation for permanently disabled minors, the compensation scheme specified in this section takes precedence over the general compensation scheme for adults under § 8-42-107 (8)(d). *Horton v. Golden Animal Hosp.*, 879 P.2d 459 (Colo. App. 1994).

But provisions of 1991 repeal and reenactment of workers' compensation statutes apply only in cases where the injuries occurred on or after July 1, 1991. *Golden Animal Hosp. v. Horton*, 897 P.2d 833 (Colo. 1995).

Applied in *Kalmon v. Indus. Comm'n*, 41 Colo. App. 259, 583 P.2d 946 (1978).

II. CONSTRUCTION OF TERM.

The term "wages" is construed to mean the "money rate" at which the services are recompensed under the contract of hire in force at the time of the accident. *State Comp. Ins. Fund v. Lyttle*, 151 Colo. 590, 380 P.2d 62 (1963).

Tips and gratuities are not proper elements of wages under this section. *Indus. Comm'n v. Lindvay*, 94 Colo. 531, 31 P. 2d 495 (1934).

Tips are to be considered in computing average weekly wages. *In re Petrafeck v. Indus. Comm'n*, 191 Colo. 566, 554 P.2d 1097 (1976).

Compensation for cultivation of vegetables at so much per acre held to be "wages". *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 74 Colo. 201, 219 P. 1078 (1923).

Rate not affected by wages attributable to truck furnished by employee. In

determining an employee's weekly wages, a portion of the hourly rate of compensation previously paid by the employer may not be allocated to "maintenance or overhead" of a truck furnished by the employee, rather than the employer, thus reducing the final award. *Filippone v. Indus. Comm'n*, 41 Colo. App. 322, 590 P.2d 977 (1978).

The value of group health insurance and supplemental life insurance provided by claimant's employer should be included in determining the "wages" of claimant. *Murphy v. Ampex Corp.*, 703 P.2d 632 (Colo. App. 1985).

Wages to be received subsequent to the date of injury may be included in determining wages under this section since there was an implied contract in force at the time of injury authorizing the payment of such wages. *Lenco Leasing Co. v. O'Dell*, 704 P.2d 329 (Colo. App. 1985).

Average weekly wage does not include employer contributions for nonvested retirement benefits. *Russell v. Colo. Div. of Employment*, 786 P.2d 483 (Colo. App. 1989).

Net cost to the employee of replacing health insurance or similar benefits should be added to the average weekly wage for purposes of calculating temporary disability benefits. *State Compensation Insurance Authority v. Smith*, 768 P.2d 1256 (Colo. App. 1988).

The term gratuity does not include a bonus given as compensation for working and which is subject to income taxes and FICA and, therefore, should be included as

wages when computing a claimant's average weekly wage. *Simmonds v. Eastman Kodak Co.*, 781 P.2d 140 (Colo. App. 1989).

Reasonable value of lodging at the time of the injury is a question of fact and will vary depending on the available evidence and the accompanying circumstances. *W. Cultural Res. Mgt. v. Krull*, 782 P.2d 870 (Colo. App. 1989).

Applied in *Casa Bonita Rest. v. Indus. Comm'n*, 677 P.2d 344 (Colo. App. 1983).

III. STATUTORY COMPUTATION OF AVERAGE WEEKLY WAGE.

Law reviews. For article, "Update on Colorado Appellate Decisions in Colorado Workers' Compensation Law", see 30 Colo. Law. 69 (Apr. 2001).

What constitutes a week. While for some, perhaps for most, purposes a week means a calendar week, extending from midnight Saturday until midnight the following Saturday, it does not mean that for all purposes. For example, if a man, hired at so much a week, commences work at the beginning of the working day on Wednesday and continues during all the working days until the end of the working day on Tuesday of the next calendar week, the money he earns would be one week's wage, not two weeks' wages. In *re Tyson*, 13 Colo. 482, 22 P. 810 (1889); *Mora v. People*, 19 Colo. 255, 35 P. 179 (1893); *Danielson v. Indus. Comm'n*, 96 Colo. 522, 44 P.2d 1011 (1935).

The fact that "shall" is used in subsection (3) does not mean that the industrial commission must comply with

subsection (3). *Williams Bros. v. Grimm*, 88 Colo. 416, 297 P. 1003 (1931).

Basis of award of benefits to member of family unit employed to perform services.

Where the family unit, of which workmen's compensation claimant was a member, was employed to perform services and where these services which claimant was performing at the time of her injury were to be recompensated at a particular rate per month, the claimant's award of benefits should be based on that rate of compensation even though all such compensation was paid to the family unit. *Booher v. Las Animas County Sch. Dist.* R-88, 30 Colo. App. 233, 491 P.2d 104 (1971).

Wages may be on the basis of so much per day or week, or on the basis of tonnage, or upon acreage, or sugar content of beets, where the employment is to care for growing crops. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 74 Colo. 201, 219 P. 1078 (1923).

Tips as wages. From the standpoint of both the employer and the employee, tips are an integral part of the contract of hire and comprise a substantial portion of the employee's average weekly wage. In *re Petrafeck v. Indus. Comm'n*, 191 Colo. 566, 554 P.2d 1097 (1976).

Where employment is casual within the meaning and intent of the workmen's compensation act, it is not regular, periodic or certain in nature. *Berkeley Constr. Co. v. Fransua*, 162 Colo. 296, 425 P.2d 801 (1967).

And when the only compensable wage is for casual piecework under the statute which provides the formula to be used in determining the daily wage for compensation in such a case, the claimant is entitled only to minimum benefits. *Pittman Motors, Inc. v. Indus. Comm'n*, 156 Colo. 218, 399 P.2d 784 (1964).

During the portion of the year an employee is attending he is "in business for himself" within the meaning of that phrase as used in subsection (4) of this section. *Lindner Packing & Provision Co. v. Indus. Comm'n*, 99 Colo. 143, 60 P.2d 924 (1936).

Computation where employee works for himself a part of the time. Where an employee works for himself a part of the time, his average weekly wage, under this section, is to be determined by dividing the amount earned by him for the year immediately preceding his accident and while working for his employer, by the number of weeks he was engaged in such employment. *Imperial Coal Co. v. Holland*, 98 Colo. 448, 56 P.2d 30 (1936).

Average weekly wage must be computed based on the employee's compensation rate in force at the time of injury. Where hearing officer had awarded claimant-employee benefits based on hourly rate paid employee-claimant by previous employer, it was not an abuse of discretion to reverse hearing officer's determination and recompute benefits based on hourly wage paid by employer at the time of injury. *Dugan v. Indus. Comm'n*, 690 P.2d 267 (Colo. App. 1984).

Average weekly wage includes both the employer's and employee's contribution to group health insurance premiums. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001).

Claimant is not required to present proof that he or she actually purchased replacement coverage. The statute merely seeks to ensure that the claimant will have funds available to make the purchase. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001).

Actual purchase of health insurance not required in order for cost of benefits to be included in calculating claimant's average weekly wage. *Avalanche Indus. v. Indus. Claim Appeals Office*, 166 P.3d 147 (Colo. App. 2007), *aff'd*, 198 P.3d 589 (Colo. 2008).

Although average weekly wage generally is determined from the employee's wage at the time of injury, if for any reason this general method will not render a fair computation of wages, the administrative tribunal has long been vested with discretionary authority to use an alternative method in determining a fair wage. *Campbell v. IBM Corp.*, 867 P.2d 77 (Colo. App. 1993).

Calculation of the average weekly wage based upon wage earned when maximum medical improvement was reached was not an abuse of discretion when the claimant's average weekly wage at a new job was substantially higher than the wage at the time of injury and the alternate computation

more fairly compensated the claimant for his future loss of earnings. *Pizza Hut v. Indus. Claim Appeals Office*, 18 P.3d 867 (Colo. App. 2001).

The federal Employee Retirement Income Security Act of 1974 (ERISA) does not preempt former § 8-47-101 (1) and (2), as effective in May 1989, to the extent those subsections required that the value of ERISA-plan benefits be included in calculating an employee's average weekly wage for workers' compensation purposes. *Hewlett-Packard Co. v. Diringer*, 42 F. Supp. 2d 1038 (D. Colo. 1999).

Applied in *Danielson v. Indus. Comm'n*, 96 Colo. 522, 44 P.2d 1011 (1935); *United Util. & Specialties Corp. v. Indus. Comm'n*, 160 Colo. 518, 418 P.2d 896 (1966).

IV. COMPUTATION.

Where the adoption of subsection (3) would penalize claimant, the wage should be determined by subsection (4). *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 74 Colo. 201, 219 P. 1078 (1923); *Indus. Comm'n v. Employers' Mut. Ins. Co.*, 76 Colo. 145, 230 P. 114 (1924); *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 85 Colo. 588, 277 P. 777 (1929); *Williams Bros. v. Grimm*, 88 Colo. 416, 297 P. 1003 (1931); *St. Mary's Church v. Indus. Comm'n*, 735 P.2d 902 (Colo. App. 1986).

Part-time work. Since claimant was a part-time employee, the application of subsection (3) would result in his receiving more in benefits than the maximum wages he had been paid prior to his injury. Therefore, the circumstances of the case call for the

application of subsection (4). *W. Sizzlin' Steak House v. Axton*, 701 P.2d 96 (Colo. App. 1984).

For facts which justify an award under subsection (4), see *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 85 Colo. 374, 275 P. 939 (1929); *St. Mary's Church v. Indus. Comm'n*, 735 P.2d 902 (Colo. App. 1986).

For facts which do not justify an award under subsection (4) (now subsection (3)), see *R.J.S. Painting v. Indus. Comm'n*, 732 P.2d 239 (Colo. App. 1986).

If industrial commission does not follow subsection (3), it should state why and find facts which justify its course. *Frink Dairy Co. v. Indus. Comm'n*, 78 Colo. 71, 239 P. 727 (1925).

Where average weekly wage is less than minimum indemnity allowable, the minimum will be awarded. *Roeder v. Indus. Comm'n*, 97 Colo. 133, 46 P.2d 898 (1935).

And if employment is without salary, it has the effect of reducing the amount of compensation which an injured employee is entitled to receive to the minimum benefits provided by the workmen's compensation law. *Lyttle v. State Comp. Ins. Fund*, 137 Colo. 212, 322 P.2d 1049 (1958); *Pittman Motors, Inc. v. Indus. Comm'n*, 156 Colo. 218, 399 P.2d 784 (1964).

A person's earnings from other work, wholly unrelated to his uncompensated service, cannot be used as the basis for computing an award of compensation under the terms of the workmen's compensation

law. *Lyttle v. State Comp. Ins. Fund*, 137 Colo. 212, 322 P.2d 1049 (1958).

Judgment may reduce award where evidence does not justify award under any method of computation. *Indus. Comm'n v. Employers' Mut. Ins. Co.*, 76 Colo. 145, 230 P. 114 (1935).

When an employee is paid on a piecework basis, the average wage is generally determined by computing the average amount earned per pay period over the year preceding the injury. When this method will not render a fair computation of wages, the administrative law judge (ALJ) may use some other method to determine a fair average weekly wage. *Drywall Prods. v. Constuble*, 832 P.2d 957 (Colo. App. 1991).

The average wage is generally determined by computing the average amount earned per pay period over the year preceding the injury when an employee is paid on a piecework basis; except that, when this method will not render a fair computation of wages, the ALJ is empowered to use some other method to determine a fair average weekly wage. *Drywall Prods. v. Constuble*, 832 P.2d 957 (Colo. App. 1991); *Vigil v. Indus. Claim Appeals Office*, 841 P.2d 335 (Colo. App. 1992), *aff'd in part, rev'd in part on other grounds*, 856 P.2d 850 (Colo. 1993).

Administrative law judge's determination to use an alternate method to compute claimant's average weekly wage rather than by the piecework method set forth in subsection (2)(e) was supported by substantial evidence and could not be disturbed on review where claimant's

contract contemplated 10 to 12 hours per day for 5 days per week on a piecework basis and claimant had worked on a piecework basis for a short period of time prior to injury. *Drywall Prods. v. Constuble*, 832 P.2d 957 (Colo. App. 1991).

Administrative law judge did not abuse his broad discretion of authority in determining that claimant's average weekly wage should be calculated based upon her wages nearly five years after her injury because the determination reflected an increase in wages that claimant would have continued to receive if not for the industrial injury she sustained while working for the former employer when the injury was sustained. *Avalanche Indus. v. Indus. Claim Appeals Office*, 166 P.3d 147 (Colo. App. 2007), *aff'd*, 198 P.3d 589 (Colo. 2008).

While calculation of a claimant's average weekly wage is generally tied to the time of injury, the discretionary exception allows an ALJ to base the average weekly wage on a salary that a claimant was actually earning when forced to stop working. *Avalanche Indus. v. Clark*, 198 P.3d 589 (Colo. 2008).

The discretionary exception allows an ALJ to compute an employee's average weekly wage based on compensation received at a subsequent employer, provided the ALJ does not abuse his or her discretion. *Benchmark/Elite, Inc. v. Simpson*, 232 P.3d 777 (Colo. 2010).

Administrative law judge did not abuse his discretion when he determined the claimant's average weekly wage included

the cost of COBRA insurance, even when the claimant did not actually purchase the Consolidated Omnibus Budget Reconciliation Act (COBRA) health insurance after she was unable to work. *Avalanche Indus. v. Clark*, 198 P.3d 589 (Colo. 2008).

For purposes of calculating disability benefits, employment contract covered both hours during which wages and tips were received and hours during which only tips were received but employee remained under direction and control of employer. *Romero v. U-LET-US Skycap Servs. Inc.*, 740 P.2d 1004 (Colo. App. 1987).

Expense reimbursement of four cents per mile was not considered wages for federal income tax purposes and therefore could not be considered wages for purposes of computing a claimant's average weekly wage. *Ernie Baylog, Inc. v. Indus. Claim Appeals Office*, 923 P.2d 361 (Colo. App. 1996).

Reasonable depreciation deducted from a self-employed workers' compensation claimant's gross earnings as reported on his federal income tax return should be included in the calculation of his post-injury average weekly wage for determining the amount of temporary partial disability benefits to which he is entitled. *Elliott v. El Paso County*, 860 P.2d 1365 (Colo. 1993).

Workers' compensation claimant bears the burden of establishing the reasonableness of depreciation deductions included in calculating temporary partial disability benefits because the claimant bears the burden of showing the statutory

entitlement to compensation by a preponderance of the evidence. *Elliott v. El Paso County*, 860 P.2d 1365 (Colo. 1993).

Concurrent employment. Where an injury impairs a claimant's ability to earn from concurrent employments, a "fair" computation of the average weekly wage may warrant inclusion of all such wages. *Jefferson County Pub. Sch. v. Dragoo*, 765 P.2d 636 (Colo. App. 1988); *Broadmoor Ins. Co. v. Indus. Claim Appeals Office*, 939 P.2d 460 (Colo. App. 1996).

The phrase "at the time of the determination of such permanency," as used in subsection (4), refers to the time of the treating physician's determination of maximum medical improvement, not the date of hearing or adjudication on the issue of permanent impairment benefits. The date that the administrative docket can accommodate a hearing bears no relation to the claimant's physical condition. *Golden Animal Hosp. v. Horton*, 897 P.2d 833 (Colo. 1995).

Purpose of the minors' statute now codified in subsection (4) is to eliminate the disparity of benefits between adult workers and minor workers, who frequently work part-time and at substantially lower wages. *Golden Animal Hosp. v. Horton*, 897 P.2d 833 (Colo. 1995).

Conclusion that an injured minor remains entitled to the benefit of the higher end "age factor" listed in § 8-42-107 as well as computation of benefits at the maximum temporary disability rate, is not inconsistent with the legislative intent of this section or § 8-42-107. *Ark. Valley Seeds*,

Inc. v. Indus. Claim Appeals Office, 972 P.2d 695 (Colo. App. 1998).

Minor with scheduled disability is not entitled to aggregate amount of benefits allowed by statute as provided by subsection (4). Since § 8-42-107 (6) provides for a fixed rate of compensation for

all scheduled disabilities, there is no disparity between the benefits paid to minors and to adults. Williams v. Indus. Claim Appeals Office, 932 P.2d 869 (Colo. App. 1997).

Applied in Robbolino v. Fischer-White Contractors, 738 P.2d 70 (Colo. App. 1987).

8-42-103. Disability indemnity payable as wages - period of disability.

(1) If the injury or occupational disease causes disability, a disability indemnity shall be payable as wages pursuant to section 8-42-105 (2)(a) subject to the following limitations:

(a) If the period of disability does not last longer than three days from the day the employee leaves work as a result of the injury, no disability indemnity shall be recoverable except the disbursement provided in articles 40 to 47 of this title for medical, surgical, nursing, and hospital services, apparatus, and supplies, nor in any case unless the division has actual knowledge of the injury or is notified thereof within the period specified in said articles.

(b) If the period of disability lasts longer than two weeks from the day the injured employee leaves work as the result of the injury, disability indemnity shall be recoverable from the day the injured employee leaves work.

(c) (I) In cases where it is determined that periodic disability benefits granted by the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, are payable to an individual and the individual's dependents, the aggregate benefits payable for temporary total disability, temporary partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits; but, if the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, is amended to provide for a reduction of an individual's disability benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to the federal reduction. Upon request of the insurer or employer, the employee shall apply for such federal periodic disability benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section constitutes cause for suspension of benefits.

(II) In cases where it is determined that periodic benefits granted by the federal old-age, survivors, and disability insurance act or employer-paid retirement benefits are payable to an individual and the individual's dependents, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero:

(A) By an amount equal as nearly as practical to one-half such federal benefits; except that this reduction for the periodic benefits granted by the federal old-age, survivors, and disability insurance act shall not exceed the reduction specified in subparagraph (I) of this paragraph (c) for the periodic disability benefits payable to an individual;

(B) By an amount determined as a percentage of the employer-paid retirement benefits, said percentage to be determined by a weighted average of the employer's contributions during the period of covered employment divided by the total contributions during the period of covered employment; except that in permanent total disability cases all contributions made by the employer pursuant to a collective bargaining agreement with the employee's representative shall be considered to have been made by the employee.

(II.5) In cases where an employer does not participate in federal old-age, survivors, and disability insurance, and it is determined that employer-paid retirement benefits are payable to an individual and the individual's dependents, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero by an amount determined as a percentage of the employer-paid retirement benefits, said percentage to be determined by a weighted average of the employer's contributions during the period of covered employment divided by the total contributions during the period of covered employment.

(III) Notwithstanding sub-subparagraph (A) of subparagraph (II) of this paragraph (c), if the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, is amended to provide for a reduction of an individual's periodic benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to the federal reduction.

(IV) The provisions of subparagraphs (II) and (III) of this paragraph (c) shall apply only if the injury on which the award for permanent total disability was based occurred after the claimant reached forty-five years of age.

(V) The reductions or offsets in this subsection (1)(c) apply only if the employee was not receiving the periodic disability benefits or retirement benefits granted by the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, as amended, or employer-paid retirement benefits at the time of the work-related injury.

(d) (I) In cases where it is determined that periodic disability benefits are payable to an employee under a pension or disability plan financed in whole or in part by the employer, hereinafter called "employer pension or disability plan", the aggregate benefits payable for temporary total disability, temporary partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to the employer pension or disability plan benefits, with the following limitations:

(A) Where the employee has contributed to the employer pension or disability plan, benefits shall be reduced under this section only in an amount proportional to the employer's percentage of total contributions to the employer pension or disability plan.

(B) Where the employer pension or disability plan provides by its terms that benefits are precluded thereunder in whole or in part if benefits are awarded under articles 40 to 47 of this title, the reduction provided in this paragraph (d) shall not be applicable to the extent of the amount so precluded.

(II) Upon request of the insurer or employer, the employee shall apply for such periodic disability benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section shall be cause for suspension of benefits.

(III) The provisions of this paragraph (d) shall apply to a disability pension paid pursuant to article 30.5 or 31 of title 31, C.R.S.; except that said reduction shall not reduce the combined weekly disability benefits below a sum equal to one hundred percent of the state average weekly wage as defined in section 8-47-106 and applicable to the year in which the weekly disability benefits are being paid.

(IV) If the disability benefits awarded pursuant to articles 40 to 47 of this title are paid in a lump sum pursuant to section 8-43-406, the weekly benefit attributed to such workers' compensation benefits, for the purpose of calculating the combined weekly disability benefit specified in subparagraph (III) of this paragraph (d), shall be calculated by assuming that the employee is receiving the weekly disability benefits payments such employee would have received had such weekly disability payments not been reduced and paid as a lump sum.

(e) In cases where it is determined that periodic disability benefits are payable to an individual and said individual's dependents pursuant to a workers' compensation act of another state or of the federal government, the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal to the benefits payable pursuant to such other workers' compensation act.

(f) In cases where it is determined that unemployment compensation benefits are payable to an employee, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to such unemployment compensation benefits. In cases where it is determined that unemployment insurance benefits are payable to an employee, compensation for temporary disability shall be reduced, but not below zero, by the amount of unemployment insurance benefits received, unless the unemployment insurance amount has already been reduced by the temporary disability benefit amount and except that temporary total disability shall not be reduced by unemployment insurance benefits received pursuant to section 8-73-112.

(g) In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury.

(h) Unless the offset provisions of section 29-5-403 (10) have already been taken, in cases where it is determined that a firefighter has received an award of benefits for a cancer diagnosis pursuant to section 29-5-403 (3)(b) to (3)(k), the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability shall be reduced, but not below zero, by an amount equal to the total amount of such cancer diagnosis benefits. In cases where it is determined that a covered individual has received cosmetic disfigurement benefits pursuant to section 29-5-403 (4)(b), benefits for disfigurement payable pursuant to section 8-42-108 shall be reduced, but not below zero, by an amount equal to such cosmetic disfigurement benefits.

(2) Within fifteen days after receipt of written notice by the employer or, if insured, the employer's workers' compensation insurance carrier or third-party administrator of the termination of a fringe benefit or advantage enumerated in section 8-40-201 (19)(b), and the effective date of the termination and cost of conversion, the employer or, if insured, the employer's workers' compensation insurance carrier or third-party administrator shall recalculate the applicable average weekly wage and begin payment of benefits in accordance with the recalculation with interest beginning on the date the benefit was terminated.

Source: **L. 90:** Entire article R&RE, p. 487, § 1 effective July 1; (1)(d)(IV) amended, p. 1844, § 30, effective July 1. **L. 92:** IP(1) amended, p. 1824, § 1, effective April 29. **L. 94:** (1)(c)(II) amended and (1)(c)(II.5) added, p. 2001, § 3, effective July 1. **L. 96:** (1)(d)(III) amended, p. 940, § 2, effective May 23. **L. 99:** (1)(g) added, p. 266, § 1, effective July 1. **L. 2000:** IP(1)(c)(II), (1)(c)(II.5), and (1)(c)(III) amended, p. 1762, § 1, effective June 1. **L. 2010:** IP(1), (1)(c)(I), (1)(c)(III), and IP(1)(d)(I) amended, (SB 10-187), ch. 310, p. 1457, § 4, effective July 1. **L. 2013:** (2) added, (SB 13-285), ch. 301, p. 1594, § 2, effective July 1. **L. 2017:** (1)(h) added, (SB 17-214), ch. 187, p. 684, § 3, effective May 3. **L. 2021:** (1)(c)(V) added, (HB 21-1050), ch. 384, p. 2570, § 2, effective September 7.

Editor's note: This section is similar to former § 8-51-101 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Update on Compensation Law", see 32 Colo. Law. 97 Colorado Appellate Decisions in Workers' (June 2003). For article, "Termination of

Undocumented Workers Under the Workers' Compensation Act", see 37 Colo. Law. 59 (Mar. 2008). For article, "The Game of Liens: Untangling the Statutory Lien Scheme in Colorado Workers' Compensation Cases", see 50 Colo. Law. 48 (Apr. 2021).

Annotator's note. Since § 8-42-103 is similar to § 8-51-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Constitutionality of social security benefit offset. Subsection (1)(c), providing for an offset of social security retirement benefits against workers' compensation benefits, does not violate equal protection under the state or federal constitutions. *Culver v. Ace Elec.*, 952 P.2d 1200 (Colo. App. 1997), *aff'd*, 971 P.2d 641 (Colo. 1999); *Stolworthy v. Clark*, 952 P.2d 1198 (Colo. App. 1997), *aff'd sub nom. Culver v. Ace Elec.*, 971 P.2d 641 (Colo. 1999).

Avoiding duplicative benefits serves a legitimate governmental interest, and imposing an offset is rationally related to that interest. *Culver v. Ace Elec.*, 952 P.2d 1200 (Colo. App. 1997), *aff'd*, 971 P.2d 641 (Colo. 1999).

Other sections may limit rights granted by this section. The general statement in subsection (1)(a) that, whenever an "injury or occupational disease causes disability, a disability indemnity shall be payable as wages" does not override the statutory time limits on reopening of claims under § 8-43-

303. *Calvert v. Indus. Claim Appeals Office*, 155 P.3d 474 (Colo. App. 2006).

The various provisions of subsection (1)(c) and (1)(d)(I) do not impinge on any of the rights guaranteed by either the state or federal constitution. *Myers v. State*, 162 Colo. 435, 428 P.2d 83 (1967).

Offset for SSDI benefits set forth in subsection (1)(c)(I) may be taken retroactively against compensation benefits received before the insurer has invoked the claim of an offset. Nothing in the statute indicates that an insurer's right of offset is subject to a time limitation. Imposing such a restriction would undermine the very purpose of the offset, which is to prevent a windfall of duplicative disability benefits regardless of whether such outcome occurs by mistake. *Jiminez v. Indus. Claim Appeals Office*, 51 P.3d 1090 (Colo. App. 2002).

Mere happening of accident not cause for benefits. Even though exposure to disease might be considered an accident under the workmen's compensation act, the mere happening of an accident does not give rise to a right to benefits. *City of Littleton v. Schum*, 38 Colo. App. 122, 553 P.2d 399 (1976).

Benefits flow only to a workman who has suffered a disabling injury as a result of the accident. *City of Littleton v. Schum*, 38 Colo. App. 122, 553 P.2d 399 (1976).

When employer required to pay medical expenses. An employer is required to pay medical expenses only in cases in which he would be charged with the duty of paying other compensation under the act.

City of Littleton v. Schum, 38 Colo. App. 122, 553 P.2d 399 (1976).

Benefits under this section are based on the loss or impairment of the earning power of the workman. They protect against an actual loss of earnings which must be shown to have been occasioned during the period of time for which the claim for benefits is made. An award for disability, either permanent or temporary presupposes the actual inability of the workman to earn as much, because of the injury, as he was able to earn prior thereto. Ice v. Indus. Comm'n, 120 Colo. 144, 207 P.2d 963 (1949).

Benefits are based upon loss or impairment of the earning power of the workman and are designed for protection against actual loss of earnings as a result of the injury. City of Littleton v. Schum, 38 Colo. App. 122, 553 P.2d 399 (1976); Monfort of Colo. v. Husson, 725 P.2d 67 (Colo. App. 1986); Ray v. Indus. Claim Appeals Office, 920 P.2d 868 (Colo. App. 1996).

"Disability" means industrial disability or loss of earning capacity. The term "disability" as used in the workmen's compensation act means industrial disability or loss of earning capacity, and not mere functional disability. World of Sleep, Inc. v. Davis, 34 Colo. App. 279, 527 P.2d 890 (1974), rev'd on other grounds, 188 Colo. 443, 536 P.2d 34 (1975).

Although "disability" incorporates both medical incapacity and loss of wage earnings, a claimant does not need to prove both components to establish entitlement to

disability benefits under the workers' compensation act. Montoya v. Indus. Claim Appeals Office, 2018 COA 19, 488 P.3d 314.

As are medical impairment benefits awarded under § 8-42-107(8). Such benefits are a form of permanent partial disability benefits designed to compensate for loss of earning capacity, and there is no basis for distinguishing between such benefits and the benefits referenced in subsection (1)(c)(I) of this section. Ray v. Indus. Claim Appeals Office, 920 P.2d 868 (Colo. App. 1996).

Admission of liability for "closed" period not permitted. By filing an admission of liability, an insurer has, in effect, admitted that the claimant has sustained the burden of proving entitlement to temporary disability benefits. Thereafter, the insurer is bound by that admission and must pay accordingly. The insurer may not unilaterally terminate benefits without complying with other statutory and regulatory provisions governing the termination of such benefits. Colo. Comp. Ins. Auth. v. Indus. Claim Appeals Office, 18 P.3d 790 (Colo. App. 2000).

Subsection (1)(a) and § 8-42-105(1) require a claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain temporary total disability benefits. Lindner Chevrolet v. Indus. Claim Appeals Office, 914 P.2d 496 (Colo. App. 1995).

To establish eligibility for temporary disability benefits the employee need not prove that the work-related injury was the

sole cause of the wage loss; if the claimant establishes that his or her work-related injury contributed in some degree to a temporary wage loss, the claimant is eligible for temporary disability benefits. *Lindner Chevrolet v. Indus. Claim Appeals Office*, 914 P.2d 496 (Colo. App. 1995).

It is highly unlikely that the general assembly intended to deny completely temporary disability benefits where an employee was terminated for negligently causing a work injury in light of § 8-42-112 (1), which requires a 50% reduction in benefits if an employee is injured because of willfully violating a safety rule. The term "responsible" does not refer to an employee's injury or injury-producing activity, therefore the termination statutes do not apply where an employee is terminated because of the employee's injury or injury-producing activity. *Colo. Springs Disposal v. Indus. Claim Appeals Office*, 58 P.3d 1061 (Colo. App. 2002).

Neither this section nor § 8-42-105 requires claimant to provide a medical opinion restricting her from regular employment as a condition of receiving temporary total disability benefits. The administrative law judge appropriately awarded TTD benefits based on claimant's evidence, including notes of her personal physician, that she had suffered a wage loss as a result of her injury. *Lymburn v. Symbios Logic*, 952 P.2d 831 (Colo. App. 1997).

"Dependents", as used in subsection (1)(c), is governed by state law. *Dietiker v.*

Indus. Claim Appeals Office, 867 P.2d 171 (Colo. App. 1993).

A claimant's first wife is not a dependent for the purposes of subsection (1)(c) where the claimant has no legal obligation to support the wife after their divorce. An insurer is not entitled to an offset against the claimant's workers' compensation benefits for federal SSDI benefits received by the first wife. *Dietiker v. Indus. Claim Appeals Office*, 867 P.2d 171 (Colo. App. 1993).

An insurer is entitled to an offset against a claimant's workers' compensation benefits for federal SSDI benefits received by the claimant's wife from the date of their marriage. The amount of the offset, however, is based on the amount the dependent would have received at the time of the initial SSDI award to the claimant. *Dietiker v. Indus. Claim Appeals Office*, 867 P.2d 171 (Colo. App. 1993).

Legally adopted child under eighteen years of age is a dependent within the meaning of subsection (1)(c). An insurer is entitled to an offset against a claimant's workers' compensation benefits for federal SSDI benefits received by the claimant's legally adopted child from the date of the adoption. The amount of the offset, however, is based on the amount the dependent would have received at the time of the initial SSDI award to the claimant. *Dietiker v. Indus. Claim Appeals Office*, 867 P.2d 171 (Colo. App. 1993).

Use of the word "practical" in subsection (1)(d) reflects that the general assembly recognized that in some instances it would not be feasible to calculate the

employer's exact contribution to the claimant's pension. *Walker v. City & County of Denver*, 870 P.2d 1269 (Colo. App. 1994); *Johnson v. Indus. Claim Appeals Office*, 973 P.2d 624 (Colo. App. 1997).

Disabled employee has duty to apply for social security benefits. Consistent with the proposition that an injured person has a duty to mitigate his damages, a disabled employee when eligible has a duty to apply for social security disability benefits, not only to benefit himself but also to benefit his employer who is bound by law to provide him with workmen's compensation benefits. *Hurtado v. C F & I Steel Corp.*, 168 Colo. 37, 449 P.2d 819 (1969); *Arellano v. Dir., Div. of Labor*, 42 Colo. App. 149, 590 P.2d 987 (1979).

And employer may determine the payability of federal benefits and may reduce workmen's compensation. When an employee who is receiving workmen's compensation disability benefits becomes eligible for further disability benefits under the social security act, and such employee fails to make application for such additional benefits, the employer paying the compensation may initially determine the payability of such federal disability benefits and may reduce the workmen's compensation disability payments in accordance with this section. *Hurtado v. C F & I Steel Corp.*, 168 Colo. 37, 449 P.2d 819 (1969); *Arellano v. Dir., Div. of Labor*, 42 Colo. App. 149, 590 P.2d 987 (1979).

Subsections (1)(c) and (1)(d)(I) apply to the situation where a person, who is receiving benefits under workmen's

compensation, is thereafter granted a disability annuity. *Yeargain v. State*, 162 Colo. 447, 428 P.2d 89 (1967).

For an injured employee should not be permitted to receive so-called "double" disability benefits; i.e., both workmen's compensation benefits and disability annuity at the expense of the employer. *Myers v. State*, 162 Colo. 435, 428 P.2d 83 (1967).

Rationale behind the setoff provisions is to prevent duplication of benefits at the employer's expense. In *re Dailey v. Indus. Comm'n*, 651 P.2d 1223 (Colo. App. 1982), *rev'd on other grounds*, 680 P.2d 231 (Colo. 1984).

Intent of offset provision is to prevent employee from receiving double disability benefits which are both financed by the employer. *Scriven v. Indus. Comm'n*, 736 P.2d 414 (Colo. App. 1987); *Sparling v. Colo. Dept. of Hwys.*, 812 P.2d 686 (Colo. App. 1990); *Walker v. City & County of Denver*, 870 P.2d 1269 (Colo. App. 1994).

Subsection (1)(e) was designed to prevent an injured worker from receiving duplicative benefits for the same injury. *Circle K Corp. v. Indus. Claim Appeals Office*, 809 P.2d 1116 (Colo. App. 1991).

Only pension benefits to which the employer has contributed are available to create an offset. Conversely, benefits attributable to claimant's contributions are not subject to the offset. *Spanish Peaks Mental Health v. Huffaker*, 928 P.2d 741 (Colo. App. 1996) (decided prior to 1990 repeal and reenactment).

Subsection (1)(c)(II.5) does not allow an employer to offset old-age social security benefits against military retirement benefits because that provision permits an offset only of employer-paid retirement benefits. *Zerba v. Dillon Cos., Inc.*, 2012 COA 78, 292 P.3d 1051.

No requirement that social security benefits and workers' compensation benefits both are paid because of a work-related injury. Nor does the plain language of subsection (1)(c)(I) admit of an interpretation that limits its application to cases in which the claimant has a valid reason not to accept SSDI or does not benefit from a determination that SSDI is payable. *Ihnen v. Western Forge*, 936 P.2d 634 (Colo. App. 1997).

Offset for social security retirement benefits can be taken regardless of a claimant's receipt of, or entitlement to, social security disability benefits. The receipt of, or entitlement to, disability benefits affects only the limitation on the amount of the offset for retirement benefits in subsection (1)(c)(II) but not the applicability of the retirement offset itself. *Culver v. Ace Elec.*, 952 P.2d 1200 (Colo. App. 1997), *aff'd*, 971 P.2d 641 (Colo. 1999).

A claimant's failure to qualify for social security disability benefits affects only the provision limiting the amount of the offset in subsection (1)(c)(II) not the applicability of the offset itself. *Stolworthy v. Clark*, 952 P.2d 1198 (Colo. App. 1997), *aff'd sub nom. Culver v. Ace Elec.*, 971 P.2d 641 (Colo. 1999).

The term "payable" in subsection (1)(c)(II) should be construed to mean that a claimant is entitled to benefits, not whether he or she actually applied for and received them. *Culver v. Ace Elec.*, 952 P.2d 1200 (Colo. App. 1997), *aff'd*, 971 P.2d 641 (Colo. 1999).

An employer who offsets old-age social security benefits received by the claimant against the claimant's permanent total disability benefits does not violate the equal protection clause of the fourteenth amendment because the social security offset has a rational basis and therefore meets constitutional scrutiny. *Zerba v. Dillon Cos., Inc.*, 2012 COA 78, 292 P.3d 1051.

Offset for social security disability benefits is taken after, not before, application of maximum benefit provisions of § 8-42-105. To do otherwise would ignore the word "payable" in subsection (1)(c). *Yates v. Sinton Dairy*, 883 P.2d 562 (Colo. App. 1994).

Offset for social security disability benefits is taken from the aggregate total of the workers' compensation benefits payable, not from each benefit separately. Where an employee is receiving PPD benefits for one injury and TTD benefits for another, the offset applies only once. *U.S. West Commc'ns, Inc. v. Indus. Claim Appeals Office*, 978 P.2d 154 (Colo. App. 1999).

Offset for social security disability insurance benefits taken against permanent partial disability benefits is calculated by converting the overall

aggregate amount of permanent partial disability benefits to its weekly equivalent to determine the number of weeks of eligibility. The number of weeks is multiplied by the weekly social security offset to yield the total offset. *Armijo v. Indus. Claim Appeals Office*, 989 P.3d 198 (Colo. App. 1999).

Benefits not offset by social security cost of living increases. State workmen's compensation benefits may not be offset by the amount of federal cost of living increases. *Engelbrecht v. Hartford Acc. & Indem. Co.*, 680 P.2d 231 (Colo. 1984).

Holding that state workers' compensation benefits may not be offset by the amount of federal cost of living increases is to be applied retroactively. *Marinez v. Indus. Comm'n*, 746 P.2d 552 (Colo. 1987); *Ward v. Azotea Contractors*, 748 P.2d 338 (Colo. 1987).

Purpose and effect of not offsetting benefits by social security cost of living increases is furthered by retroactive application since injured workers who had been deprived of one-half the increase provided under federal law would have that inequity redressed. *Marinez v. Indus. Comm'n*, 746 P.2d 552 (Colo. 1987); *Harrison v. Indus. Comm'n*, 750 P.2d 65 (Colo. 1988); *Fraker v. Indus. Comm'n*, 750 P.2d 67 (Colo. 1988).

Even though employer did not pay social security taxes, employer is allowed an offset against workers' compensation benefits for social security benefits paid to a claimant. *Sampson v. Weld County Sch. Dist.*, 786 P.2d 488 (Colo. App. 1989).

Where insurer makes an offset for social security disability benefits pursuant to subsection (1)(c), the insurer is not required to file a petition to modify. *Gregory v. Crown Transp.*, 776 P.2d 1163 (Colo. App. 1989).

The phrase "individual and his dependents" in subsection (1)(e) refers to the deceased workman and his dependents and thus, award of death benefits without an offset for social security benefits received by the deceased's nondependent stepchildren was proper. *Acme Glass v. Indus. Comm'n*, 682 P.2d 521 (Colo. App. 1984).

Offset provision applies to multi-employer plans as well as to single employer plans. *Scriven v. Indus. Comm'n*, 736 P.2d 414 (Colo. App. 1987).

Offset provision applies to both vested and nonvested retirement benefits. *Nye v. Indus. Claim Appeals Office*, 883 P.2d 607 (Colo. App. 1994).

Workers' compensation insurer is entitled to offset against future disability benefits paid to the claimant one-half of the amount of social security disability benefits received by the claimant before right of offset was invoked. This section allows the commission to reduce future benefits to the claimant to offset the social security disability benefits already paid to the claimant. *Johnson v. Indus. Comm'n*, 761 P.2d 1140 (Colo. 1988).

City, a self-insured employer, was entitled to offset claimant's pension benefits under this section, even though

the City made no actual contributions to his pension for period of time, where the evidence was undisputed that the City was required by statute to make, and did make, substantial amortized retroactive contributions to its pension plan since becoming affiliated with the Police and Fire Pension Association in 1981. *Walker v. City & County of Denver*, 870 P.2d 1269 (Colo. App. 1994).

Benefits cannot be offset by amounts withheld from claimant's lump sum disability benefits and paid directly to claimant's attorney as fees earned in appealing the initial denial of the disability benefits. *St. Vincent's Hosp. v. Alires*, 778 P.2d 277 (Colo. App. 1989).

Payments made under a "pension plan" may not be offset against a workers' compensation award since these two payment types are mutually exclusive: The former payment type is provided for payments of injuries not arising out of the course of employment; the latter payment is for injuries arising out of employment. *Halliburton Serv. v. Miller*, 720 P.2d 571 (Colo. 1986).

Fact that pension plan is a negotiated employment benefit does not change its character as being employer financed and, therefore, workers' compensation benefits are subject to offset by amount of disability benefits. *Scriven v. Indus. Comm'n*, 736 P.2d 414 (Colo. App. 1987).

To determine the amount by which a state employee's workers' compensation benefits must be offset by PERA benefits, the portion of the employee's PERA benefits

attributable to employer's contribution to the pension program are subtracted from workers' compensation benefits. *Indus. Comm'n v. Edlund*, 759 P.2d 7 (Colo. 1988).

Purpose of subsection (1)(e) is to prevent double recovery by an employee. If an offset is determined by net PERA benefits, rather than PERA benefits before federal and state taxes are deducted, the employer would in effect be required to pay an employee's taxes. *Colo. Dept. of Hwys. v. Sparling*, 821 P.2d 780 (Colo. 1991).

"Total pension benefits", as used in subsection (1)(e) means gross benefits, before federal and state taxes are withheld from disability pension benefits payable to an employee pursuant to an employer's pension plan. Taxes shall not be deducted before calculating the offset of such periodic disability benefits from the aggregate benefits payable pursuant to such subsection. *Colo. Dept. of Hwys. v. Sparling*, 821 P.2d 780 (Colo. 1991).

Offset calculated pursuant to this section properly included amounts withheld at option of claimant from claimant's PERA disability payments for health and life insurance coverages as such deducted insurance premiums are "payable to" claimant even though not actually received. *Sparling v. Colo. Dept. of Hwys.*, 812 P.2d 686 (Colo. App. 1990).

Calculation of employer's total contributions to PERA includes its contributions to the cost-of-living stabilization fund and contributions for unfunded liabilities. *Johnson v. Indus. Claim*

Appeals Office, 973 P.2d 624 (Colo. App. 1997).

This section does not make a distinction between PERA disability retirement contributions and service retirement contributions. *Johnson v. Indus. Claim Appeals Office*, 973 P.2d 624 (Colo. App. 1997).

Offset properly excluded taxes mandatorily deducted from claimant's PERA disability benefits as such amounts are not "payable to" nor paid to claimant. *Sparling v. Colo. Dept. of Hwys.*, 812 P.2d 686 (Colo. App. 1990).

The offset afforded by this section should continue so long as PERA disability benefits continue, and should not automatically terminate based upon claimant achieving 65 years of age where statutes provide and testimony before ALJ indicated that part of the PERA disability retirement benefit payable to the claimant was directly attributable to the fact that she was permanently disabled and that such disability benefit would, after age 65, be paid for the rest of her life regardless of her recovery or her work status, subject to certain limitations. *State Penitentiary v. Toothaker*, 832 P.2d 1009 (Colo. App. 1991).

The offset under subsection (1)(d) is an offset against pension benefits and, if for some reason, the claimant's pension benefits are reduced or terminated and are no longer "payable" to the claimant, the offset under subsection (1)(d) will become inapplicable and claimant's weekly workers' compensation benefit will be restored to its

pre-offset level. *Walker v. City & County of Denver*, 870 P.2d 1269 (Colo. App. 1994).

Pension payments from the firemen's pension fund were properly offset against the claimant's benefits for permanent partial disability even though the employer's contributions to the plan were in the form of revenues derived from an ad valorem tax. *Keelan v. City & County of Denver*, 868 P.2d 1173 (Colo. App. 1994).

Attorney fees were properly deducted before calculation of the offset, so that the claimant and the Colorado Compensation Insurance Authority each bore one-half of the fees. *Jones v. Indus. Claim Appeals Office*, 892 P.2d 425 (Colo. App. 1994).

Denial of offset for veteran's disability benefits was proper because veteran's disability benefits are not benefits pursuant to a "workers' compensation act" of another state or the federal government. *City & County of Denver v. Indus. Claim Appeals Office*, 892 P.2d 429 (Colo. App. 1994).

Veteran's disability benefits are not included in section that provides for an offset for benefits payable to an employee under the provisions of a pension or disability plan financed in whole or in part by the employer. *City & County of Denver v. Indus. Claim Appeals Office*, 892 P.2d 429 (Colo. App. 1994).

The introductory portion to paragraph (d) of subsection (1) and subparagraph (I) of paragraph (d) must be construed together. *Bailey v. Lakewood Fire Prot. Dist.*, 44 Colo. App. 463, 618 P.2d 716 (1980).

Workmen's compensation benefits are reduced when employer has disability pension plan for employees. A reduction in the workmen's compensation benefits otherwise payable to an injured employee is required where the employer, who has himself already paid the cost of workmen's compensation insurance, has also purchased, in whole or in part, a disability pension or annuity plan for his employee. *Myers v. State*, 162 Colo. 435, 428 P.2d 83 (1967); *Jefferson County Pub. Sch. v. Sago*, 786 P.2d 486 (Colo. App. 1989).

And the phrase "pension plan" is used in the broad, generic sense, and if there are to be exceptions, these have to be provided for in a clear and unmistakable manner. *Myers v. State*, 162 Colo. 435, 428 P.2d 83 (1967).

Sickness and disability insurance plan does not constitute a pension plan under subsection (1)(d). *Miller v. Halliburton Servs.*, 689 P.2d 662 (Colo. App. 1984), *aff'd*, 720 P.2d 571 (Colo. 1986).

Plain meaning of subsection (1) requires only that the deduction in benefits paid the claimant be an amount equal "as near as practical" to the employer's proportional contributions to the pension plan. *Bailey v. Lakewood Fire Prot. Dist.*, 44 Colo. App. 463, 618 P.2d 716 (1980).

Offset inapplicable. If the pension plan provides for a reduction equal to the amount of workmen's compensation benefits, the offset in subsection (1)(d) is inapplicable. *Masdin v. Gardner-Denver-Cooper Indus., Inc.*, 689 P.2d 714 (Colo. App. 1984).

Income maintenance benefits are not included in listing of benefits to be offset by any disability annuity payments; to extend the statute to include such benefits would not only be tantamount to indulging in judicial legislation but would ignore the express statutory language. *State Comp. Ins. Fund v. Velasquez*, 628 P.2d 190 (Colo. App. 1981).

Offset provision in subsection (1)(f) found unconstitutional as applied, because it deprived claimant and others similarly situated of their full entitlement to workers' compensation benefits where their employers choose to contest. Here claimant had applied for unemployment insurance benefits before the conclusion of her temporary total disability benefits and, thus, before reaching maximum medical improvement. *Axelson v. Pace Membership Warehouse*, 923 P.2d 322 (Colo. App. 1996).

Award for medical expenses held erroneous. An award of compensation for medical expenses incurred for inoculations claimant secured after his exposure to infectious hepatitis was erroneous because (1) infectious hepatitis was not an occupational disease as defined in former article 60 of this title, and (2) mere exposure to a disease does not warrant an award of benefits. *City of Littleton v. Schum*, 38 Colo. App. 122, 553 P.2d 399 (1976).

It is error for the appellate court to specify in an order of remand the amount of the average weekly wage derived in accordance with this section before the administrative law judge has been given the opportunity to exercise its discretion under

this section. *Coates, Reid & Waldron v. Vigil*, 856 P.2d 850 (Colo. 1993).

The failure of the administrative law judge to determine the average weekly wage for a second injury in accordance with subsection (4) is an abuse of discretion and is not supported by applicable law. Where a claimant suffers serious disability from an initial injury and must return to work in a much lower-paying job, and subsequently suffers a second injury under the same employer, such that the claimant becomes permanently and totally disabled as a result of the combination of the injuries and substantial compensation in the way of permanent partial disability benefits is precluded from the first injury, the average weekly wage is to be determined in accordance with this section. *Coates, Reid & Waldron v. Vigil*, 856 P.2d 850 (Colo. 1993).

The term "employment" in subsection (1)(g) is not ambiguous and encompasses both modified and regular employment. *Colo. Springs Disposal v. Indus. Claim Appeals Office*, 58 P.3d 1061 (Colo. App. 2002).

Where faultless employee is terminated while still temporarily disabled, the resulting wage loss must be attributable to the injury, and an employer must pay temporary disability benefits for any resulting wage loss. *Monfort of Colo. v. Husson*, 725 P.2d 67 (Colo. App. 1986).

When an employee experiences a worsening of a condition or the development of a disability after

termination of employment that is a result of an on-the-job injury, subsection (1)(g) does not apply to terminate employee disability benefits. *Grisbaum v. Indus. Claim Appeals Office*, 109 P.3d 1054 (Colo. App. 2005).

Section 2-4-108 (1) covers computation of time periods under this section. Thus, the date of the claimant's injury should be excluded from the computation of the three-day waiting period. *Ralston Purina-Keystone v. Lowry*, 821 P.2d 910 (Colo. App. 1991).

Medical impairment benefits are a form of permanent partial disability within the context of subsection (1)(d). *Durocher v. Indus. Claim Appeals Office*, 905 P.2d 4 (Colo. App. 1995), *aff'd* on other grounds *sub nom. Mtn. City Meat Co. v. Oqueda*, 919 P.2d 246 (Colo. 1996).

Previously existing disability incurred during active military service is not a "permanent partial industrial disability" within the meaning of the statute. Therefore there is no liability to the fund for a prior partial military service connected disability. *City & County of Denver v. Indus. Claim Appeals Office*, 892 P.2d 429 (Colo. App. 1994).

Applied in *Consol. Coal & Coke Co. v. Todoroff*, 97 Colo. 125, 47 P.2d 404 (1935); *City of Thornton v. Teeter*, 37 Colo. App. 427, 548 P.2d 133 (1976); *Romero v. Indus. Comm'n*, 632 P.2d 1052 (Colo. App. 1981); *Valdez v. United Parcel Serv.*, 728 P.2d 340 (Colo. App. 1986).

8-42-104. Effect of previous injury or compensation.

(1) The fact that an employee has suffered a previous disability or impairment or received compensation therefor shall not preclude compensation for a later injury or for death, but, in determining compensation benefits payable for the later injury or death, the employee's average weekly earnings at the time of the later injury shall be used in determining the compensation payable to the employee or such employee's dependents. Notwithstanding any other provision of articles 40 to 47 of this title, no claimant may receive concurrent permanent total disability awards from injuries occurring in this state or any other state.

(2) (Deleted by amendment, L. 2008, p. 1676, § 2, effective July 1, 2008.)

(3) An employee's temporary total disability, temporary partial disability, or medical benefits shall not be reduced based on apportionment under any circumstances. This subsection (3) supercedes the Colorado court of appeals' decisions in *Hutchison v. Industrial Claim Appeals Office of Colorado*, 405 P.3d 458 (Colo. App. 2017) and *Duncan v. Industrial Claim Appeals Office of Colorado*, 107 P.3d 999 (Colo. App. 2004).

(4) An employee's recovery of permanent total disability shall not be reduced when the disability is the result of a work-related injury or a work-related injury combined with genetic, congenital, or similar conditions; body habitus; or family history; except that this subsection (4) does not apply to reductions in recovery or apportionments allowed pursuant to the Colorado supreme court's decision in the case denominated *Anderson v. Brinkhoff*, 859 P.2d 819 (Colo. 1993).

(5) In cases of permanent medical impairment, the employee's award or settlement shall not be reduced except:

(a) When an employee has suffered more than one permanent medical impairment to the same body part and has received an award or settlement under the "Workers' Compensation Act of Colorado" or a similar act from another state. The permanent medical impairment rating applicable to the previous injury to the same body part, established by award or settlement, shall be deducted from the permanent medical impairment rating for the subsequent injury to the same body part.

(b) When an employee has a nonwork-related previous permanent medical impairment to the same body part that has been identified, treated, and, at the time of the subsequent compensable injury, is independently disabling. The percentage of the nonwork-related permanent medical impairment existing at the time of the subsequent injury to the same body part shall be deducted from the permanent medical impairment rating for the subsequent compensable injury.

(6) Nothing in this section shall be construed to preclude employers or insurers from seeking contribution or reimbursement, as permitted by law, from other employers or insurers for

benefits paid to or for an injured employee as long as the employee's benefits are not reduced or otherwise affected by such contribution or reimbursement.

(7) For the purposes of subsections (4) and (5) of this section, the employer or, if the employer is insured, the employer's insurer has the burden of proof, by a preponderance of the evidence, at any hearing regarding apportionment that may result in a reduction of benefits to an employee under this section.

Source: **L. 90:** Entire article R&RE, p. 490, § 1, effective July 1. **L. 91:** (1) amended, p. 1304, § 12, effective July 1. **L. 99:** Entire section amended, p. 410, § 1, effective July 1. **L. 2008:** (2) amended and (3) to (6) added, p. 1676, § 2, effective July 1. **L. 2021:** (3), (4), and IP(5) amended and (7) added, (HB 21-1050), ch. 384, p. 2570, § 3, effective September 7.

Editor's note: This section is similar to former § 8-47-102 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980). For article, "A Curious Journey: Apportionment in Workers' Compensation Today", see 38 Colo. Law. 69 (Mar. 2009).

Annotator's note. (1) Since § 8-42-104 is similar to § 8-47-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which empowered the director of the division of labor to enforce and administer the workmen's compensation act.

Section recognizes right to compensation for second injury. This section recognizes that even though an employee has suffered a previous disability and even received compensation therefor, he is nonetheless entitled to also receive compensation for a subsequent or later injury sustained in a second industrial accident. *Empire Oldsmobile, Inc. v. McLain*, 151 Colo. 510, 379 P.2d 402 (1963); *Colo. Fuel & Iron Corp. v. Rhodes*, 166 Colo. 82, 441 P.2d 652 (1968).

An employer takes an employee as he finds him, and if an injury is significant in that there is a direct causal relationship between the precipitating event and the resulting disability, an industrial injury is still compensable if it has caused a dormant pre-existing condition to become disabling. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*,

151 Colo. 18, 379 P.2d 153 (1962); Seifried v. Indus. Comm'n, 736 P.2d 1262 (Colo. App. 1986); Lindner Chevrolet v. Indus. Claim Appeals Office, 914 P.2d 496 (Colo. App. 1995).

This section addresses apportionment when a claimant has suffered multiple industrial disabilities and, contrary to petitioners' assertion, the general assembly has accorded employers the protection of apportionment only for prior industrial disabilities and has not extended the apportionment to prior non-industrial disabilities. Lindner Chevrolet v. Indus. Claim Appeals Office, 914 P.2d 496 (Colo. App. 1995).

This section applies to all previous disabilities except when § 8-46-101 (1), governing the subsequent injury fund's liability for previous industrial disabilities, is applicable. Mtn. Meadows Nursing Ctr. v. Indus. Claim Appeals Office, 990 P.2d 1090 (Colo. App. 1999).

This section provides no statutory direction for the apportionment of liability between an employer and a claimant whose disability resulted from a preexisting medical condition and a subsequent work-related injury. Under the full responsibility rule, an employer is generally liable for the entire disability that results from a compensable accident. Res. One, LLC v. Indus. Claim Appeals Office, 148 P.3d 287 (Colo. App. 2006).

No apportionment where employee has fully recovered from past disability. Apportionment under this section is appropriate only when a prior disability, as

defined in the AMA Guides, is a contributing factor to a subsequent industrial injury. Askew v. Indus. Claim Appeals Office, 927 P.2d 1333 (Colo. 1996); Mtn. Meadows Nursing Ctr. v. Indus. Claim Appeals Office, 990 P.2d 1090 (Colo. App. 1999).

Benefits payable to a disabled employee for a later injury shall be based on the employee's average weekly wage at the time of the later injury. Platte Valley Lumber v. Indus. Claim Appeals Office, 870 P.2d 634 (Colo. App. 1994).

This section spells out just how the percentage of disability for the subsequent injury shall be determined, namely, by computing the percentage of entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury. Colo. Fuel & Iron Corp. v. Rhodes, 166 Colo. 82, 441 P.2d 652 (1968).

Basis for compensation of later injury is earning capacity at time of that injury. Where a claimant has suffered a previous disability, a court in determining average earnings, as a basis for compensation for his later injury, has the right and duty to fix such amount as would reasonably represent his earning capacity at the time of the later injury in the employment in which he was then working. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 151 Colo. 18, 379 P.2d 153 (1962); Colo. Fuel & Iron Corp. v. Rhodes, 166 Colo. 82, 441 P.2d 652 (1968).

Allocation of a percentage of disability to previous injuries cannot be on an arbitrary basis of guesswork or

assumption. *Matthews v. Indus. Comm'n*, 144 Colo. 146, 355 P.2d 300 (1960); *Empire Oldsmobile, Inc. v. McLain*, 151 Colo. 510, 379 P.2d 402 (1963); *Parrish v. Indus. Comm'n*, 151 Colo. 538, 379 P.2d 384 (1963).

Inquiry is limited to the claimant's ability to earn a wage at the same or other employment in inquiry to apportion injuries to employee with permanent total disabilities. *Colo. Mental Health Inst. v. Austill*, 940 P.2d 1125 (Colo. App. 1997).

Apportionment pursuant to this section not limited to apportioning liability between employers without reducing benefits to the claimant. *Colo. Mental Health Inst. v. Austill*, 940 P.2d 1125 (Colo. App. 1997).

Disabilities caused by accident and those caused by occupational disease are treated the same for apportionment purposes under this section. *Colo. Mental Health Inst. v. Austill*, 940 P.2d 1125 (Colo. App. 1997).

The allocation of disability as required by this section must be based on evidence. *City & County of Denver v. Moore*, 31 Colo. App. 310, 504 P.2d 367 (1972).

And where the medical opinion upon which the industrial commission based its award is definite and unequivocal, the allocation of disability between a preexisting condition and an industrial accident is proper if supported by that kind of competent evidence. *Holmstron v. Pub. Serv. Co.*, 169 Colo. 439, 458 P.2d 77 (1969).

Prohibition against apportionment in subsection (3) for a "previous injury" did not apply where knee condition was one ongoing disease with many causes, both work- and non-work-related. It was instead one "injury" with multiple causes and not a "previous injury" because there was no onset of the occupational disease that occurred before in time. *Hutchison v. Indus. Claim Appeals Office*, 2017 COA 79, 405 P.3d 458.

Full benefits even if fully recovered from prior injury. A claimant who has suffered a prior injury for which he had been compensated on a permanent basis and from which he had fully recovered as a working unit at the time of his employment by present employer, is entitled to full benefits provided by articles 42 to 66 of this title. *Empire Oldsmobile, Inc. v. McLain*, 151 Colo. 510, 379 P.2d 402 (1963); *Powers v. William Van Genderen Co.*, 153 Colo. 561, 387 P.2d 285 (1963).

But where claimant had suffered a prior injury and the medical evidence was in agreement as to the percentage of disability to be allocated to recent injury, an award in excess of such percentage was without support in the evidence. *Indus. Comm'n v. Navajo Freight Lines*, 149 Colo. 86, 367 P.2d 894 (1962).

Where an employer hires a workman who by reason of a preexisting condition or a prior injury is to some extent disabled, he takes such employee with such handicap. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962).

This section governs all apportionment of disability awards except when a previous disability impacts upon a present disability, in which case § 8-46-101, the subsequent injury fund statute, applies. *Holly Nursing Care Ctr. v. Indus. Claim Appeals Office*, 992 P.2d 701 (Colo. App. 1999).

Subsection (2)(c) applies only to apportionment of permanent partial and permanent total disability benefits. *Holly Nursing Care Ctr. v. Indus. Claim Appeals Office*, 992 P.2d 701 (Colo. App. 1999).

The effects of a prior industrial injury cannot constitute a "previous disability" unless a claimant has attained maximum medical improvement for the prior injury before the date of the subsequent injury. *Holly Nursing Care Ctr. v. Indus. Claim Appeals Office*, 992 P.2d 701 (Colo. App. 1999).

A partially disabled person who receives an injury which totally disables him is entitled to compensation without apportionment. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962).

For this section does not provide for apportionment between injuries sustained. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962); *United Airlines v. Indus. Claim Appeals Office*, 993 P.2d 1152 (Colo. 2000).

And in the absence of an apportionment statute, the general rule is that the employer becomes liable for the entire disability resulting from a

compensable accident. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962); *United Airlines v. Indus. Claim Appeals Office*, 993 P.2d 1152 (Colo. 2000).

The full responsibility rule does not bar apportionment under this section where there is no SIF liability for non-industrial injuries. *Waddell v. Indus. Claim Appeals Office*, 964 P.2d 552 (Colo. App. 1998).

The difference between a total permanent disability order and an apportionment of compensation between one injury and a prior one is that in the former the payments continue for life, and in the latter the payments would, in all probability, be terminable sometime before his death. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962).

Apportionment may be had for a prior disability, but not for a latent preexisting condition. And an impairment becomes a disability only when the medical condition limits the claimant's capacity to meet the demands of life's activities. *Baldwin Const. v. Indus. Claim Appeals Office*, 937 P.2d 895 (Colo. App. 1997).

Apportionment based on preexisting impairment is not proper unless the impairment was independently disabling at the time of the industrial injury. Thus, if a claimant's condition has improved to the extent that a disability is no longer present when the later injury occurs, that prior disability cannot be considered a contributing factor. *Pub. Serv. Co. of Colo. v. Indus. Claim Appeals Office*, 40 P.3d 68 (Colo. App. 2001).

Apportionment of medical impairment constitutes a pure medical determination and is not based on pre-existing impairment as formerly permitted if the impairment was independently disabling at the time of the injury. *Martinez v. Indus. Claim Appeals Office*, 176 P.3d 826 (Colo. App. 2007).

Under the AMA Guides, a preexisting condition was not a previous disability and therefore not subject to apportionment when prior to injury at work the condition or impairment was asymptomatic and did not hinder claimant's capacity to meet any demands. *Askew v. Indus. Claim Appeals Office*, 927 P.2d 1333 (Colo. 1996); *Lambert & Sons, Inc. v. Indus. Claim Appeals Office*, 984 P.2d 656 (Colo. App. 1998).

"Apportionable" disability does not include congenital conditions that are not affected by circumstances subsequent to birth. Further, the general assembly recognized that individual claimants are born with different physical and mental aptitudes, and therefore, with a baseline access to the labor market, which is limited. An apportionable "disability" arises when the claimant's baseline access to the labor market is reduced by injuries, illness, or the aging process. *Absolute Emp't Servs., Inc. v. Indus. Claim Appeals Office*, 997 P.2d 1229 (Colo. App. 1999).

"Previous injury" means an accident causing injury or an occupational disease that occurred earlier in time to the claimant's claim. *Hutchison v. Indus. Claim Appeals Office*, 2017 COA 79, 405 P.3d 458.

In determining the relationship between subsection (5)(a) of this section and § 8-42-107.5, the statutory disability cap should be determined not by combining but by separately calculating the "impairment ratings" for each injury. *Browne v. Indus. Claim Appeals Office*, 2021 COA 83, 495 P.3d 974.

In case of death of employee intoxicated at time of injury, subsection (1)(c) does not operate to reduce the \$15,000 employer is required to contribute to the subsequent injury fund pursuant to § 8-51-106 (1)(b) (now § 8-46-102) because this amount is a tax imposed upon the employer for the purpose of funding the subsequent injury fund and not a benefit to the claimant or his dependents. *Portofino Apts. v. Indus. Claim Appeals Office*, 789 P.2d 1117 (Colo. App. 1990).

Requirement that average weekly earnings at time of later injury be used to compute compensation payable for a later injury or death are subject to provisions of § 8-42-102 (3) allowing variation from general rule if a fair computation of wages can not be obtained. *Vigil v. Indus. Claim Appeals Office*, 841 P.2d 335 (Colo. App. 1992), *aff'd in part, rev'd in part on other grounds*, 856 P.2d 850 (Colo. 1993).

Even though subsection (2) references "disability", the term is used in the context of a "previous disability", and concerns the effects of an injury as they were termed prior to amendments to the Workers' Compensation Act. Under the amended version of the Act, "medical impairment" simply describes "permanent disability".

8-42-105. Temporary total disability - hearings - rules.

(1) In case of temporary total disability of more than three regular working days' duration, the employee shall receive sixty-six and two-thirds percent of said employee's average weekly wages so long as such disability is total, not to exceed a maximum of ninety-one percent of the state average weekly wage per week. Except where vocational rehabilitation is offered and accepted as provided in section 8-42-111 (3), temporary total disability payments shall cease upon the occurrence of any of the events enumerated in subsection (3) of this section. If vocational rehabilitation is offered and accepted, any party may at any time terminate vocational rehabilitation upon fourteen days' written notice to the other parties and the director. For purposes of this section, termination of vocational rehabilitation shall be the same as if vocational rehabilitation had never been offered and accepted, and the employer or insurance carrier shall not be entitled to recover any temporary total disability benefits paid during the period that vocational rehabilitation was provided.

(2) (a) The first installment of compensation shall be paid no later than the date that liability for the claim is admitted by the insurance carrier or self-insured employer. If the insurance carrier or self-insured employer denies liability for the claim, the claimant may request an expedited hearing on the issue of compensability if the application is filed within forty-five days after the date of service of the notice of contest. The director shall set any expedited matter for hearing within forty days after the date of the application, when the issue is liability for the disease or injury. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If a claimant elects not to request an expedited hearing pursuant to this subsection (2)(a), the time schedule for hearing the matter is as set forth in section 8-43-209. Compensation shall be paid at least once every two weeks, except where the director determines that payment in installments should be made at some other interval. The director may by rule convert monthly benefit schedules to weekly or other periodic schedules.

(b) Temporary disability compensation is not due and payable for any period of time for which the insurer or self-insured employer has requested from the employee's attending physician verification of the employee's inability to work resulting from the claimed injury or disease and the physician cannot verify the employee's inability to work, unless the employee has been unable to receive treatment for reasons beyond the employee's control. Failure of the physician to submit such verification, through no fault of the employee, shall not affect the payment of temporary disability compensation under this section.

(c) If an employee fails to appear at an appointment with the employee's attending physician, the insurer or self-insured employer shall notify the employee by certified mail that temporary disability benefits may be suspended after the employee fails to appear at a rescheduled

appointment. If the employee fails to appear at a rescheduled appointment, the insurer or self-insured employer may, without a prior hearing, suspend payment of temporary disability benefits to the employee until the employee appears at a subsequent rescheduled appointment.

(d) If the insurer or self-insured employer has requested and failed to receive from the employee's attending physician verification of the employee's inability to work resulting from the claimed injury or disease, medical services provided by the attending physician are not compensable until the attending physician submits such verification.

(3) Temporary total disability benefits shall continue until the first occurrence of any one of the following:

- (a) The employee reaches maximum medical improvement;
- (b) The employee returns to regular or modified employment;
- (c) The attending physician gives the employee a written release to return to regular employment; or

(d) (I) The attending physician gives the employee a written release to return to modified employment, such employment is offered to the employee in writing, and the employee fails to begin such employment.

(II) In the case of employment by a temporary help contracting firm, once the employee has received one written offer of modified employment meeting the requirements of subparagraph (III) of this paragraph (d), the employee shall be deemed to be on notice that modified employment is available. Subsequent offers of modified employment need not be in writing so long as the job requirements of such modified employment are within the restrictions given the employee by the employee's attending physician and the employee is allowed a period of at least twenty-four hours, not including any part of a Saturday, Sunday, or legal holiday, within which to respond to any such offer.

(III) A written offer of modified employment under subparagraph (II) of this paragraph (d) shall clearly state:

- (A) That future offers of employment need not be in writing;
- (B) The policy of the temporary help contracting firm regarding how and when employees are expected to learn of such future offers; and
- (C) That benefits under this section will be terminated if an employee fails to respond to an offer of modified employment.

(4) (a) In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury.

(b) The claimant's refusal to accept an offer of modified employment under either of the following conditions does not constitute responsibility for termination:

(I) The offer of modified employment would require the claimant to travel a distance of greater than fifty miles one way more than the claimant's preinjury commute;

(I.5) The offer of modified employment would require the claimant to drive to or from the place of employment and an authorized treating physician has restricted the claimant from driving; or

(II) An administrative law judge determines that the claimant's rejection of the offer of modified employment was reasonable considering the totality of the claimant's circumstances, including accounting for:

(A) The consequences of the industrial injury;

(B) The financial hardship that would be imposed on the claimant in order to accept the offer of modified employment; or

(C) Any other reasons that would, in the opinion of the administrative law judge, make it impracticable for the claimant to accept the offer of modified employment.

(c) The circumstances described in paragraph (b) of this subsection (4) are not exhaustive.

(5) (a) Within forty-five days after an insurer or self-insured employer terminates an employee's temporary total disability benefits pursuant to subsection (3)(c) of this section, the employee may file an application for an expedited hearing on any of the following issues:

(I) Who the attending physician is;

(II) Whether the attending physician gave the employee a written release to return to regular employment; and

(III) Whether there is a difference of opinion between authorized treating medical providers regarding whether the employee is released to return to regular employment.

(b) If an administrative law judge finds there is a difference of opinion as described in subsection (5)(a)(III) of this section, the employee has the burden of proving by a preponderance of the evidence that, as a proximate result of the claimed injury or disease, the employee is unable to return to regular employment. If the employee meets this burden, the administrative law judge shall reinstate the employee's terminated temporary total disability benefits back to the date of termination.

Source: L. 90: Entire article R&RE, p. 490, § 1, effective July 1. L. 91: Entire section amended, p. 1304, § 13, effective July 1. L. 92: (2)(a) amended, p. 1824, § 2, effective April 29.

L. 96: (3) amended, p. 827, § 2, effective July 1. **L. 99:** (4) added, p. 266, § 2, effective July 1. **L. 2009:** (2)(a) amended, (SB 09-070), ch. 49, p. 175, § 1, effective August 5. **L. 2010:** (4) amended, (SB 10-187), ch. 310, p. 1458, § 5, effective July 1. **L. 2023:** (5) added, (HB 23-1076), ch. 370, p. 2223, § 3, effective August 7. **L. 2024:** (4)(b)(I) amended and (4)(b)(I.5) added, (HB 24-1220), ch. 389, p. 2692, § 1, effective August 7. **L. 2026:** (2)(a) amended, (SB 26-186), ch. 315, p. 1846, § 3, effective August 12.

Editor's note: This section is similar to former § 8-51-102 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "One Year Review of Torts", see 40 Den. L. Ctr. J. 160 (1963). For article, "Time, Equity and the Average Weekly Wage", see 23 Colo. Law. 1831 (1994). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 32 Colo. Law. 97 (June 2003). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 83 (Apr. 2004). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 117 (Nov. 2004). For article, "The Road to Longmont Toyota: Starting and Stopping Temporary Disability Benefits", see 34 Colo. Law. 87 (June 2005). For article, "Termination of Undocumented Workers Under the Workers' Compensation Act", see 37 Colo. Law. 59 (Mar. 2008).

Annotator's note. Since § 8-42-105 is similar to § 8-51-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Benefits based on claimant's average weekly wage. State Comp. Ins. Fund v. Lyttle, 151 Colo. 590, 380 P.2d 62 (1963).

An award under this section is mandatory if three conditions are met: (1) The injury or occupational disease causes disability; (2) the injured employee leaves work as a result of the injury; and (3) the temporary disability is total and lasts more than three regular working days' duration. PDM Molding, Inc. v. Stanberg, 898 P.2d 542 (Colo. 1995).

Admission of liability for "closed" period not permitted. By filing an admission of liability, an insurer has, in effect, admitted that the claimant has sustained the burden of proving entitlement to temporary disability benefits. Thereafter, the insurer is bound by that admission and must pay accordingly. The insurer may not unilaterally terminate benefits without complying with this section and with rules governing the termination of such benefits. Colo. Comp. Ins. Auth. v. Indus. Claim Appeals Office, 18 P.3d 790 (Colo. App. 2000).

Subsection (1) and § 8-42-103(1)(a) require a claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain temporary total disability (TTD) benefits. *Lindner Chevrolet v. Indus. Claim Appeals Office*, 914 P.2d 496 (Colo. App. 1995); *City of Colo. Springs v. Indus. Claim Appeals Office*, 954 P.2d 637 (Colo. App. 1997).

A later injury to another part of the body, not resulting in additional wage loss, does not entitle the claimant to a renewed award of benefits under this section. *City of Colo. Springs v. Indus. Claim Appeals Office*, 954 P.2d 637 (Colo. App. 1997).

To establish eligibility for temporary disability benefits the employee need not prove that the work-related injury was the sole cause of the wage loss; if the claimant establishes that his or her work-related injury contributed in some degree to a temporary wage loss, the claimant is eligible for temporary disability benefits. *Lindner Chevrolet v. Indus. Claim Appeals Office*, 914 P.2d 496 (Colo. App. 1995).

Employee does not have to prove that work-related injury was sole cause of wage loss to establish eligibility for benefits. *Horton v. Indus. Claim Appeals Office*, 942 P.2d 1209 (Colo. App. 1996).

Standard of "suitable gainful employment" is inapplicable in determining eligibility for workmen's compensation benefits when the employee is temporarily disabled and vocational rehabilitation

services remain open. *Safeway Stores, Inc. v. Husson*, 732 P.2d 1245 (Colo. App. 1986).

Right to temporary disability benefits is measured by the degree of wage loss attributable to an industrial injury, not by the degree of physical impairment nor willingness to seek employment. *Denny's Restaurant, Inc. v. Husson*, 746 P.2d 63 (Colo. App. 1987); *Black Roofing Inc. v. West*, 967 P.2d 195 (Colo. App. 1998).

Although "disability" incorporates both medical incapacity and loss of wage earnings, a claimant does not need to prove both components to establish entitlement to disability benefits under the workers' compensation act. *Montoya v. Indus. Claim Appeals Office*, 2018 COA 19, 488 P.3d 314.

Neither this section nor § 8-42-103 requires claimant to provide a medical opinion restricting her from regular employment as a condition of receiving TTD benefits. The administrative law judge (ALJ) appropriately awarded TTD benefits based on claimant's evidence, including notes of her personal physician, that she had suffered a wage loss as a result of her injury. *Lymburn v. Symbios Logic*, 952 P.2d 831 (Colo. App. 1997).

Release to work by attending physician precludes an award of TTD benefits. Unless there are conflicting opinions from attending physicians, an ALJ cannot disregard physician's opinion. *Burns v. Robinson Dairy, Inc.*, 911 P.2d 661 (Colo. App. 1995); *Popke v. Indus. Claim Appeals Office*, 944 P.2d 677 (Colo. App. 1997).

But an attending physician's report that has an internal conflict is subject to interpretation by the ALJ. *Imperial Headware, Inc. v. Indus. Claim Appeals Office*, 15 P.3d 295 (Colo. App. 2000).

Subsection (3) limits scope and frequency of disputes concerning duration of TTD benefits by treating the attending physician's opinion as conclusive. *Burns v. Robinson Dairy, Inc.*, 911 P.2d 661 (Colo. App. 1995).

When an offer and acceptance of vocational rehabilitation occur, the provisions of subsection (3) do not apply. As a result, when there is such an offer and acceptance, the attainment of maximum medical improvement is irrelevant to a claimant's right to TTD benefits. *Larimer County v. Sinclair*, 939 P.2d 515 (Colo. App. 1997).

The cap on the receipt of benefits imposed by § 8-42-107.5 does not apply so long as a claimant is entitled to receive TTD benefits under subsection (3) of this section. The receipt of such benefits is not an overpayment, and there is no duty to repay them. *UAL v. Indus. Claim Appeals Office of Colo.*, 2013 COA 48, 312 P.3d 235.

Termination of TTD benefits under any one of the conditions enumerated in this section is mandatory. *Burns v. Robinson Dairy, Inc.*, 911 P.2d 661 (Colo. App. 1995); *Laurel Manor v. Indus. Claim Appeals Office*, 964 P.2d 589 (Colo. App. 1998).

ALJ is required to terminate benefits when attending physician provides claimant with written release to work.

Burns v. Robinson Dairy, Inc., 911 P.2d 661 (Colo. App. 1995).

The term "attending physician" includes only those physicians who are authorized to provide treatment. An attending physician must be one within the chain of authorization. *Popke v. Indus. Claim Appeals Office*, 944 P.2d 677 (Colo. App. 1997).

The author of an effective release for return to employment must be the health care provider identified as the attending physician. While there can be more than one attending physician, the statute does not provide for release by any attending physician. *Popke v. Indus. Claim Appeals Office*, 944 P.2d 677 (Colo. App. 1997).

Court will not impute to the general assembly an intent that the opinion of the first physician treating a claimant concerning the resuming of full-time employment outweighs the opinion of the second physician who began treatment at a later time. *Bestway Concrete v. Indus. Claim Appeals Office*, 984 P.2d 680 (Colo. App. 1999).

A physician's status as the attending physician is a question fact that should be resolved by the ALJ. *Popke v. Indus. Claim Appeals Office*, 944 P.2d 677 (Colo. App. 1997); *Bestway Concrete v. Indus. Claim Appeals Office*, 984 P.2d 680 (Colo. App. 1999).

Claimant was no longer entitled to TTD benefits for injury incurred in course of her employment when claimant was offered and refused suitable gainful employment that

was approved by her physician, was within her physical limitations, and which paid an increased amount of wages since the wage loss suffered was due to rejection of the offered employment. *Safeway Stores, Inc. v. Husson*, 732 P.2d 1245 (Colo. App. 1986).

For an attending physician's written release to be effective for the purpose of terminating TTD benefits, the release must be delivered to the employee. *Popke v. Indus. Claim Appeals Office*, 944 P.2d 677 (Colo. App. 1997).

Industrial claim appeals panel did not terminate TTD benefits prematurely by relying on the physician's release to regular employment as the termination date. *McKinley v. Bronco Billy's*, 903 P.2d 1239 (Colo. App. 1995).

Disabling industrial injury suffered prior to July 1, 1987. A worker who has been awarded temporary partial disability benefits and who has been directed to undergo a vocational rehabilitation evaluation is entitled to receive temporary partial disability benefits until the commencement of a vocational rehabilitation program or the entry of an administrative ruling that vocational rehabilitation is not necessary to render the worker fit for a remunerative occupation. *Allee v. Contractors, Inc.*, 783 P.2d 273 (Colo. 1989); *Gerber v. CAN-USA Construction, Inc.*, 783 P.2d 269 (Colo. 1989); *Phillips v. Indus. Claim Appeals Office*, 783 P.2d 271 (Colo. 1989); *Indus. Claim Appeals Office v. Mid-Continent Res., Inc.*, 783 P.2d 290 (Colo. 1989); *Arndt v. Elec. Metal Prods., Inc.*, 783 P.2d 290

(Colo. 1989); *Northeastern Junior Coll. v. Kenyon*, 783 P.2d 853 (Colo. 1989) (decided prior to 1987 repeal of subsections (4) and (5)).

Temporary disability benefits may be suspended if intervening events other than compensable injury are operative. Claimant need not reach maximum medical improvement. *Roe v. Indus. Comm'n*, 734 P.2d 138 (Colo. App. 1986).

An intervening injury does not suspend temporary disability benefit payments, even if such injury delays the attainment of maximum medical improvement. *Horton v. Indus. Claim Appeals Office*, 942 P.2d 1209 (Colo. App. 1996).

Subsection (1) sets the rate for TTD benefits. *Allison v. Indus. Claim Appeals Office*, 916 P.2d 623 (Colo. App. 1995).

However, this section does not mandate a legal duty upon the employer to pay that rate without regard to any claimed offset prior to the ALJ's determination of benefits. *Allison v. Indus. Claim Appeals Office*, 916 P.2d 623 (Colo. App. 1995).

Timing of TTD payments. The statutory language of subsection (2)(a) requires that TTD payments be paid at least every two weeks from the date compensation first becomes payable. Nothing in this subsection suggests that the date for payment of compensation is to be adjusted based on the date the insurer issued the most recent benefits check. An employer's decision to pay some TTD payments before completion of the two-week intervals does not alter the due dates for subsequent payments or

accelerate the payment schedule. *Jones v. Indus. Claim Appeals Office*, 87 P.3d 259 (Colo. App. 2004).

Subsection (2)(a) does not suggest that the date of the most recent check for payment of TTD imposes a new baseline date for issuance of the next payment. *Jones v. Indus. Claim Appeals Office*, 87 P.3d 259 (Colo. App. 2004).

Subsection (2)(a) should not be interpreted to establish grounds to punish insurers who make payments before the two-week window expires or to accelerate the due date for the next payment if the insurer decides to make an early payment. *Jones v. Indus. Claim Appeals Office*, 87 P.3d 259 (Colo. App. 2004).

Under the plain language of subsection (2)(c), an employer that has admitted liability must automatically reinstate temporary disability benefits that were suspended for an injured employee's failure to appear at a rescheduled medical appointment when it is undisputed that the employer knew that the employee later appeared at a subsequent rescheduled medical appointment. *Rocky Mtn. Cardiology v. Indus. Claim Appeals Office*, 94 P.3d 1182 (Colo. App. 2004).

Term "suspend" as used in subsection (2)(c) means to stop temporarily and not to bar or exclude. Where the employee misses a rescheduled appointment but appears at a subsequent rescheduled appointment, the benefits that were suspended become due and payable. *Sigala v. Atencio's Market*, 184 P.3d 40 (Colo. 2008).

Under the plain meaning of the statute, a medical return to work order that predates the commencement of TTD benefits cannot trigger the benefits cessation provisions of subsection (3) because there are no benefits in place to continue until one of the listed circumstances occurs. *Archuletta v. Indus. Claim Appeals Office*, 2016 COA 66, 381 P.3d 374.

Subsection (3)(c) can only terminate benefits that have already commenced, and consequently can only be applied prospectively. *Archuletta v. Indus. Claim Appeals Office*, 2016 COA 66, 381 P.3d 374.

Grounds for termination of benefits in subsection (3) are exclusive. The insurer may not unilaterally terminate benefits based on the claimant's return to school. Assertion of such a defense creates a factual question that can be resolved only after a hearing. *Colo. Comp. Ins. Auth. v. Indus. Claim Appeals Office*, 18 P.3d 790 (Colo. App. 2000).

The word "wages", as used in the workmen's compensation act, is construed to mean "money rate at which the services are recompensed under the contract of hire in force at the time of the accident". *Roeder v. Indus. Comm'n*, 97 Colo. 133, 46 P.2d 898 (1935); *Lyttle v. State Comp. Ins. Fund*, 137 Colo. 212, 322 P.2d 1049 (1958).

And where employment is without salary, it has the effect of reducing the amount of compensation which an injured employee is entitled to receive to the minimum benefits provided by the

workmen's compensation law. *Lyttle v. State Comp. Ins. Fund*, 137 Colo. 212, 322 P.2d 1049 (1958).

"Wages" includes health insurance and similar advantages received from the employer, for purposes of this section, and the net cost to the employee of replacing the benefit should be added to the average weekly wage. *State Comp. Ins. Auth. v. Smith*, 768 P.2d 1256 (Colo. App. 1988).

Average weekly wage includes both the employer's and employee's contribution to group health insurance premiums. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001).

Claimant is not required to present proof that he or she actually purchased replacement coverage. The statute merely seeks to ensure that the claimant will have funds available to make the purchase. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001).

The term "employment" in subsection (4) is not ambiguous and encompasses both modified and regular employment. *Colo. Springs Disposal v. Indus. Claim Appeals Office*, 58 P.3d 1061 (Colo. App. 2002).

Subsection (4) bars TTD wage loss claims when the voluntary or for-cause termination of the modified employment causes the wage loss but not when the worsening of a prior work-related injury causes the wage loss. *Anderson v.*

Longmont Toyota, 102 P.3d 323 (Colo. 2004).

If an injured employee loses his job because of economic factors, is not at fault for the layoff, and has reasonably sought new employment, the employee is entitled to temporary disability benefits. *Lunsford v. Sawatsky*, 780 P.2d 76, (Colo. App. 1989); *City of Aurora v. Dortch*, 799 P.2d 461 (Colo. App. 1990).

Claimant would be entitled to TTD benefits, despite being terminated the same day as the injury for reasons unrelated to the injury, if the claimant was not at fault for the termination. *PDM Molding, Inc. v. Stanberg*, 885 P.2d 280 (Colo. App. 1994).

If claimant is at fault for termination for reasons unrelated to the injury, ALJ must consider the totality of the circumstances to determine whether the claimant's work-related injury is the cause of the claimant's inability to find work. *PDM Molding, Inc. v. Stanberg*, 885 P.2d 280 (Colo. App. 1994).

Claimant who was not at fault for termination from post-injury employment during the period of temporary disability is entitled to have TTD benefits resumed, as there is a causal link between the industrial injury and the subsequent wage loss. *Schlage Lock v. Lahr*, 870 P.2d 615 (Colo. App. 1993).

Termination for fault not an automatic bar to receipt of benefits. Notwithstanding termination for fault, if the work-related injury in fact contributed in some degree to the employee's wage loss during the period

of disability, the employee is eligible for benefits under this section. *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995); *Bestway Concrete v. Indus. Claim Appeals Office*, 984 P.2d 680 (Colo. App. 1999).

The test for determining eligibility for such post-termination benefits is whether the work-related injury contributed in some degree to the subsequent wage loss. Once the claimant shows that the subsequent wage loss was related to the industrial injury, TTD benefits can be denied or terminated only if one of the four statutory criteria set forth in subsection (3) is satisfied. *Laurel Manor v. Indus. Claim Appeals Office*, 964 P.2d 589 (Colo. App. 1998).

When an employee experiences a worsening of a condition or the development of a disability after termination of employment that is a result of an on-the-job injury, subsection (4) does not apply to terminate employee disability benefits. *Grisbaum v. Indus. Claim Appeals Office*, 109 P.3d 1054 (Colo. App. 2005).

Claimant who did not challenge a determination that she had reached maximum medical improvement of her work-related injury may obtain TTD benefits where she has experienced a worsening of her original injury. *Loofbourrow v. Indus. Claim Appeals Office*, 321 P.3d 548 (Colo. App. 2011), *aff'd*, 2014 CO 5, 320 P.3d 327.

It is highly unlikely that the general assembly intended to deny completely TTD benefits where an employee was terminated for negligently causing a work injury in light of § 8-42-112 (1), which

requires a 50% reduction in benefits if an employee is injured because of willfully violating a safety rule. The term "responsible" does not refer to an employee's injury or injury-producing activity, therefore the termination statutes do not apply where an employee is terminated because of the employee's injury or injury-producing activity. *Colo. Springs Disposal v. Indus. Claim Appeals Office*, 58 P.3d 1061 (Colo. App. 2002).

Seasonal employment does not preclude an award of TTD payments. If the record establishes that claimant's industrial disability contributed directly to her post-injury wage loss, the award of temporary disability benefits was proper. *City of Aurora v. Dortch*, 799 P.2d 461 (Colo. App. 1990).

Evidence that claimant was actively seeking employment during time period for which benefits were sought was insufficient basis upon which to disallow benefits, where claimant's physician testified to claimant's disability. *Denny's Restaurant, Inc. v. Husson*, 746 P.2d 63 (Colo. App. 1987).

Reopening case for new award of TTD. Claimant entitled to reopening of case for a determination of TTD and award of benefits therefor, where claimant underwent additional surgery after an initial award of permanent partial disability and the surgery left him totally incapacitated for a period of time. *Loucks v. Safeway Stores*, 757 P.2d 639 (Colo. App. 1988).

This section does not contemplate unilateral termination of benefits by insurer. *Collins v. Indus. Comm'n*, 676 P.2d

1270 (Colo. App. 1984); Colo. Compensation Ins. Auth. v. Indus. Claim Appeals Office, 18 P.3d 790 (Colo. App. 2000).

Payment of TTD benefits continues until an event enumerated in subsection (3) occurs. Horton v. Indus. Claim Appeals Office, 942 P.2d 1209 (Colo. App. 1996).

Benefits properly continued during employee's employment as a salesman compensated solely by commission when record supported ALJ's findings that employee's injuries prevented him from earning any commissions and that there had been no return to regular employment. Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office, 5 P.3d 385 (Colo. App. 2000).

Claimant erroneously awarded TTD benefits where, by signing document containing written list of duties prepared by facility director, she accepted offer of modified employment, but failed to appear for work after the offer had been extended. Consequently, claimant's failure to commence the work offered occurred prior to her termination. Thus, the termination of TTD benefits was warranted

before claimant sustained the wage loss for which she seeks benefits. Laurel Manor v. Indus. Claim Appeals Office, 964 P.2d 589 (Colo. App. 1998).

A claimant must begin modified employment for eligibility for TTD benefits. Liberty Heights v. Indus. Claim Appeals Office, 30 P.3d 872 (Colo. App. 2001).

Department of labor and employment rules governing the termination of TTD benefits are not inconsistent with this section. Monfort Transp. v. Indus. Claim Appeals Office, 942 P.2d 1358 (Colo. App. 1997).

TTD benefits paid on account of vocational rehabilitation are included in the calculation of the benefit cap pursuant to § 8-42-107.5. Grogan v. Lutheran Med. Center, Inc., 950 P.2d 690 (Colo. App. 1997).

Applied in Booher v. Las Animas County Sch. Dist. R-88, 30 Colo. App. 233, 491 P.2d 104 (1971); Filippone v. Indus. Comm'n, 41 Colo. App. 322, 590 P.2d 977 (1978); Bellendir v. Kezer, 648 P.2d 645 (Colo. 1982).

8-42-106. Temporary partial disability.

(1) In case of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the difference between the employee's average weekly wage at the time of the injury and the employee's average weekly wage during the continuance of the temporary partial disability, not to exceed a maximum of ninety-one percent of the state average weekly wage per week. Temporary partial disability shall be paid at least once every two weeks.

(2) Temporary partial disability payments shall continue until the first occurrence of either one of the following:

(a) The employee reaches maximum medical improvement; or

(b) (I) The attending physician gives the employee a written release to return to modified employment, such employment is offered to the employee in writing, and the employee fails to begin such employment.

(II) In the case of employment by a temporary help contracting firm, once the employee has received one written offer of modified employment meeting the requirements of subparagraph (III) of this paragraph (b), the employee shall be deemed to be on notice that modified employment is available. Subsequent offers of modified employment need not be in writing so long as the job requirements of such modified employment are within the restrictions given the employee by the employee's attending physician and the employee is allowed a period of at least twenty-four hours, not including any part of a Saturday, Sunday, or legal holiday, within which to respond to any such offer.

(III) A written offer of modified employment under subparagraph (II) of this paragraph (b) shall clearly state:

(A) That future offers of employment need not be in writing;

(B) The policy of the temporary help contracting firm regarding how and when employees are expected to learn of such future offers; and

(C) That benefits under this section will be terminated if an employee fails to respond to an offer of modified employment.

Source: **L. 90:** Entire article R&RE, p. 491, § 1, effective July 1. **L. 91:** Entire section amended, p. 1306, § 14, effective July 1. **L. 96:** Entire section amended, p. 828, § 3, effective July 1. **L. 2013:** (1) amended, (SB 13-285), ch. 301, p. 1594, § 3, effective July 1.

Editor's note: This section is similar to former § 8-51-103 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-42-106 is similar to § 8-51-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases

construing that provision have been included in the annotations to this section.

(2) The case included in the annotations to this section which refers to the industrial commission was decided prior to the 1969 amendment which vested the director of the

division of labor with the power previously exercised by the industrial commission to enforce and administer the workmen's compensation act.

"Earning capacity" relates to money rate at which services are recompensed. Although language of this section varies from that of §§ 8-51-102, 8-51-108, and 8-51-109, dealing with general disability, it is apparent that the general assembly intended that the same base be used for determining compensation throughout the act, and the term "earning capacity" as used in this section must be related to the money rate at which the services were recompensed under the contract of hire at the time of the accident. *State Comp. Ins. Fund v. Lyttle*, 151 Colo. 590, 380 P.2d 62 (1963).

Standard of "suitable gainful employment" is inapplicable in determining eligibility for workers' compensation benefits when the employee is temporarily disabled and vocational rehabilitation services remain open. *Safeway Stores, Inc. v. Husson*, 732 P.2d 1245 (Colo. App. 1986).

But where a claimant earned no salary and therefore had a money rate of nothing at time of accident, and since this section does not provide a minimum compensation rate for temporary partial disability, the amount of compensation to which claimant is entitled is, and remains, zero. *State Comp. Ins. Fund v. Lyttle*, 151 Colo. 590, 380 P.2d 62 (1963).

And neither the industrial commission nor the court may supplement this section by adding thereto a minimum rate

provision. *State Comp. Ins. Fund v. Lyttle*, 151 Colo. 590, 380 P.2d 62 (1963).

Compensation benefits for a temporary partial disability are designed to be a partial substitute for lost wages or impaired earning capacity arising from a compensable injury. *Safeway Stores, Inc. v. Husson*, 732 P.2d 1245 (Colo. App. 1986).

"Wages" includes health insurance and similar advantages received from the employer, for purposes of this section, and net cost to the employee of replacing the benefit should be added to the average weekly wage. *State Compensation Insurance Authority v. Smith*, 768 P.2d 1256 (Colo. App. 1988).

Average weekly wage includes both the employer's and employee's contribution to group health insurance premiums. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001).

Claimant is not required to present proof that he or she actually purchased replacement coverage. The statute merely seeks to ensure that the claimant will have funds available to make the purchase. *Humane Soc'y of Pikes Peak Region v. Indus. Claim Appeals Office*, 26 P.3d 546 (Colo. App. 2001).

Reasonable depreciation deducted from a self-employed workers' compensation claimant's gross earnings as reported on his federal income tax return should be included in the calculation of his post-injury average weekly wage for determining the amount of temporary partial disability

benefits to which he is entitled. *Elliott v. El Paso County*, 860 P.2d 1365 (Colo. 1993).

Workers' compensation claimant bears the burden of establishing the reasonableness of depreciation deductions included in calculating temporary partial disability benefits because the claimant bears the burden of showing the statutory entitlement to compensation by a preponderance of the evidence. *Elliott v. El Paso County*, 860 P.2d 1365 (Colo. 1993).

Under this statute, disability is measured in terms of diminished earning capacity and not the ability or inability of claimant to work a given number of hours. *Ski Depot Rentals, Inc. v. Lynch*, 714 P.2d 516 (Colo. App. 1985).

Although "disability" incorporates both medical incapacity and loss of wage earnings, a claimant does not need to prove both components to establish entitlement to disability benefits under the workers' compensation act. *Montoya v. Indus. Claim Appeals Office*, 2018 COA 19, 488 P.3d 314.

The term "earning capacity" means the loss of the ability to earn, not simply lost wages. Accordingly, while in some instances loss of earning capacity can be computed simply by subtracting post-injury earnings from the average weekly wage at the time of the injury, in other instances a comparative wage approach will not accurately reflect the impairment of earning capacity attributable to the injury. *Hendricks v. Indus. Claim Appeals Office*, 809 P.2d 1076 (Colo. App. 1990).

Where the claimant had received a wage increase after the accident, but was unable to work the same number of hours as prior to the accident, the ALJ reasonably calculated claimant's diminished earning capacity by considering the percentage decrease in hours worked. *Univ. Park Holiday Inn v. Brien*, 868 P.2d 1164 (Colo. App. 1994).

If a simple calculation between pre-injury and post-injury wages would distort the loss of earning capacity attributable to the injury, then the claimant's post-injury wages must reflect the wage level in effect at the time of injury. *Hendricks v. Indus. Claim Appeals Office*, 809 P.2d 1076 (Colo. App. 1990).

An injured employee was entitled to receive temporary partial disability benefits after attainment of maximum medical improvement and until the employee either commences a vocational rehabilitation program or an administrative order is entered which provides that vocational rehabilitation is not necessary, if the employee was awarded temporary partial disability and ordered to undergo a vocational rehabilitation evaluation. *Allee v. Contractors, Inc.*, 783 P.2d 273 (Colo. 1989).

The date of maximum medical improvement for purposes of ending a claimant's temporary disability is the date upon which the claimant has attained maximum medical recovery from all of the injuries sustained in a particular accident. Maximum medical improvement is not divisible and cannot be parceled out among various components of a multi-faceted industrial injury. *Paint Connection v. Indus.*

Claim Appeals Office, 240 P.3d 439 (Colo. App. 2010).

Disabling industrial injury suffered prior to July 1, 1987. A worker who has been awarded temporary partial disability benefits and who has been directed to undergo a vocational rehabilitation evaluation is entitled to receive temporary partial disability benefits until the commencement of a vocational rehabilitation program or the entry of an administrative ruling that vocational rehabilitation is not necessary to render the worker fit for a remunerative occupation. *Allee v. Contractors, Inc.*, 783 P.2d 273 (Colo. 1989); *Gerber v. CAN-USA Construction, Inc.*, 783 P.2d 269 (Colo. 1989); *Phillips v. Indus. Claim Appeals Office*, 783 P.2d 271 (Colo. 1989); *Indus. Claim Appeals Office v. Mid-Continent Res., Inc.*, 783 P.2d 290 (Colo. 1989); *Arndt v. Electronic Metal Prods., Inc.*, 783 P.2d 290 (Colo. 1989); *Northeastern Junior Coll. v. Kenyon*, 783 P.2d 853 (Colo. 1989)

(decided prior to 1987 repeal of subsections (4) and (5)).

The term "public", as used in this section, means accessible to or shared by all members of the community. *Twilight Jones Lounge v. Showers*, 732 P.2d 1230 (Colo. App. 1986).

Disfigurement award for scar on abdominal area was proper as the abdominal area is a part of the body normally exposed to public view. *Twilight Jones Lounge v. Showers*, 732 P.2d 1230 (Colo. App. 1986).

Temporary partial disability benefits can be denied only if one of the statutory conditions is satisfied if the injury contributed in part to the wage loss. *Champion Auto Body v. Indus. Claim Appeals Office*, 950 P.2d 671 (Colo. App. 1997).

Applied in *Sterling Colo. Beef v. Baca*, 699 P.2d 1347 (Colo. App. 1985).

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined.

(1) Benefits available.

(a) When an injury results in permanent medical impairment, and the employee has an injury or injuries enumerated in the schedule set forth in subsection (2) of this section, the employee shall be limited to medical impairment benefits as specified in subsection (2) of this section.

(b) When an injury results in permanent medical impairment and the employee has an injury or injuries not listed on the schedule specified in subsection (2) of this section, the employee is limited to medical impairment benefits as specified in subsection (8) of this section, except as provided in subsection (7)(b)(IV) of this section.

(2) **Scheduled injuries.** In case an injury results in a loss set forth in the following schedule, the injured employee, in addition to compensation to be paid for temporary disability, shall receive compensation for the period as specified:

(a) The loss of an arm at the shoulder	208 weeks
(a.5) The loss of an arm above the hand including the wrist	208 weeks
(b) (Deleted by amendment, L. 94, p. 2002, § 4, effective July 1, 1994.)	
(c) The loss of a hand below the wrist	104 weeks
(d) The loss of a thumb and the metacarpal bone thereof	50 weeks
(e) The loss of a thumb at the proximal joint	35 weeks
(f) The loss of a thumb at the second or distal joint	18 weeks
(g) The loss of an index finger and the metacarpal bone thereof	26 weeks
(h) The loss of an index finger at the proximal joint	18 weeks
(i) Loss of an index finger at the second joint	13 weeks
(j) Loss of an index finger at the distal joint	9 weeks
(k) Loss of a second finger and the metacarpal bone thereof	18 weeks
(l) Loss of a middle finger at the proximal joint	13 weeks
(m) Loss of a middle finger at the second joint	9 weeks
(n) Loss of a middle finger at the distal joint	5 weeks
(o) Loss of a third or ring finger and the metacarpal bone thereof	11 weeks
(p) Loss of a ring finger at the proximal joint	7 weeks
(q) Loss of a ring finger at the second joint	7 weeks
(r) Loss of a ring finger at the distal joint	4 weeks
(s) Loss of a little finger and the metacarpal bone thereof	13 weeks
(t) Loss of a little finger at the proximal joint	9 weeks
(u) Loss of a little finger at the second joint	9 weeks
(v) Loss of a little finger at the distal joint	4 weeks
(w) Loss of a leg at the hip joint or so near thereto as to preclude	

the use of an artificial limb	208 weeks
(w.5) The loss of a leg above the foot including the ankle	208 weeks
(x) (Deleted by amendment, L. 94, p. 2002, § 4, effective July 1, 1994.)	
(y) The loss of a foot below the ankle	104 weeks
(z) The loss of a great toe with the metatarsal bone thereof	26 weeks
(aa) The loss of a great toe at the proximal joint	18 weeks
(bb) The loss of a great toe at the second or distal joint	9 weeks
(cc) The loss of any other toe with the metatarsal bone thereof	11 weeks
(dd) The loss of any other toe at the proximal joint	4 weeks
(ee) The loss of any other toe at the second or distal joint	4 weeks
(ff) The loss of a tooth	6 weeks
(gg) Total blindness of one eye	104 weeks
(hh) Total deafness of both ears	139 weeks
(ii) Total deafness of one ear	35 weeks
(jj) Where worker prior to injury has suffered a total loss of hearing in one ear, and as a result of the accident loses total hearing in remaining ear	139 weeks

(3) Temporary disability terminates as to injuries coming under any provision of this section upon the occurrence of any of the events enumerated in section 8-42-105 (3).

(4) For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of accidental injury shall be deemed equivalent to the loss thereof.

(5) If amputation is made between any two joints mentioned in this schedule, except amputation between the knee and the hip joint, the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto. If any portion of the bone of the distal joint of any finger, thumb, or toe is amputated, the amount paid therefor shall be the amount allowed for amputation at said distal joint.

(6) (a) The amounts specified in subsections (1) to (5) of this section shall be at the compensation rate of one hundred seventy-six dollars per week.

(b) On July 1, 2000, and on each succeeding July 1 thereafter, the compensation rate established in this subsection (6) shall be modified for claims arising on and after such date by the same percentage increase or decrease as the state average weekly wage as determined by the director when the director establishes the state average weekly wage pursuant to section 8-47-106.

(7) (a) When an injured employee sustains two or more injuries coming under this schedule, the disabilities specified in subsections (1) to (5) of this section shall be added, and the injured employee shall receive the sum total thereof; except that, where the injury results in the loss or partial loss of use of the index finger and thumb of the same hand or of more than two digits of any one hand or foot, the disability, in the discretion of the director, may be compensated on the basis of the partial loss of use of said hand or foot, measured respectively from the wrist or ankle.

(b) (I) The general assembly finds, determines, and declares that the rating organization that studied the impact of the changes in Senate Bill 91-218, enacted at the first regular session of the fifty-eighth general assembly, assumed that scheduled injuries would remain on the schedule and nonscheduled injuries would be compensated as medical impairment benefits. Therefore, the general assembly finds, determines, and declares that the purpose of changing the provisions of subparagraph (II) of this paragraph (b), as amended by House Bill 99-1157, enacted at the first regular session of the sixty-second general assembly, is to clarify that scheduled injuries shall be compensated as provided on the schedule and nonscheduled injuries shall be compensated as medical impairment benefits, and that, when an injured worker sustains both scheduled and nonscheduled injuries, the losses shall be compensated on the schedule for scheduled injuries and the nonscheduled injuries shall be compensated as medical impairment benefits. The general assembly further determines and declares that mental or emotional stress shall be compensated pursuant to section 8-41-301 (2) and shall not be combined with a scheduled or a nonscheduled injury.

(II) Except as provided in subsection (8) of this section, where an injury causes the loss of, loss of use of, or partial loss of use of any member specified in the foregoing schedule, the amount of permanent partial disability shall be the proportionate share of the amount stated in the above schedule for the total loss of a member, and such amount shall be in addition to compensation for temporary disability. Where an injury causes a loss set forth in the schedule in subsection (2) of this section and a loss set forth for medical impairment benefits in subsection (8) of this section, the loss set forth in the schedule found in said subsection (2) shall be compensated solely on the basis of such schedule and the loss set forth in said subsection (8) shall be compensated solely on the basis for such medical impairment benefits specified in said subsection (8).

(III) Mental or emotional stress shall be compensated pursuant to section 8-41-301 (2) and shall not be combined with a scheduled or a nonscheduled injury, except for the purposes of

calculating a claimant's impairment rating to determine the applicable cap for benefits pursuant to section 8-42-107.5.

(IV) When an employee sustains an injury on the schedule of injuries listed in subsection (2) of this section that may also be compensated as specified in subsection (8) of this section, if the amount of compensation for medical impairment when using the schedule of injuries in subsection (2) of this section would be greater than the nonscheduled impairment benefits in subsection (8) of this section, then the employee is entitled to the compensation specified in subsection (2) of this section.

(8) Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries.

(a) When an injury results in permanent medical impairment not set forth in the schedule in subsection (2) of this section, the employee is limited to medical impairment benefits calculated as provided in this subsection (8), except as provided in subsection (7)(b)(IV) of this section. The procedures for determination of maximum medical improvement set forth in subsection (8)(b) of this section are available in cases of injuries set forth in the schedule in subsection (2) of this section and also in cases of injuries that are not set forth in said schedule.

(b) (I) An authorized treating physician shall make a determination as to when the injured employee reaches maximum medical improvement as defined in section 8-40-201 (11.5).

(II) If either party disputes a determination by an authorized treating physician on the question of whether the injured worker has or has not reached maximum medical improvement, an independent medical examiner may be selected in accordance with section 8-42-107.2; except that, if an authorized treating physician has not determined that the employee has reached maximum medical improvement, the employer or insurer may only request the selection of an independent medical examiner if all of the following conditions are met:

(A) At least twenty-four months have passed since the date of injury;

(B) A party has requested in writing that an authorized treating physician determine whether the employee has reached maximum medical improvement and has provided the authorized treating physician with the written report required by subsection (8)(b)(II)(E) of this section;

(C) The authorized treating physician has not determined that the employee has reached maximum medical improvement;

(D) A physician other than the authorized treating physician has examined the employee at least twenty months after the date of the injury and determined that the employee has reached maximum medical improvement; and

(E) The requesting party has provided the authorized treating physician and all other parties with a written report from the physician who has examined the employee pursuant to subsection

(8)(b)(II)(D) of this section, indicating that the examining physician has determined that the employee has reached maximum medical improvement, and the authorized treating physician has responded in writing to all the parties that the employee has not reached maximum medical improvement or has failed to respond in writing to all parties within fifteen calendar days after the service of the written report.

(III) Notwithstanding paragraph (c) of this subsection (8), if the independent medical examiner selected pursuant to subparagraph (II) of this paragraph (b) finds that the injured worker has reached maximum medical improvement, the independent medical examiner shall also determine the injured worker's permanent medical impairment rating. The finding regarding maximum medical improvement and permanent medical impairment of an independent medical examiner in a dispute arising under subparagraph (II) of this paragraph (b) may be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

(b.5) When an authorized treating physician providing primary care who is not accredited under the level II accreditation program pursuant to section 8-42-101 (3.5) makes a determination that an employee has reached maximum medical improvement, the following procedures shall apply:

(I) (A) If the employee is not a state resident upon reaching maximum medical improvement, such physician shall, within twenty days after the determination of maximum medical improvement, determine whether the employee has sustained any permanent impairment. If the employee has sustained any permanent impairment, such physician shall conduct such tests as are required by the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment" to determine such employee's medical impairment rating and shall transmit to the self-insured employer or insurer all test results and all relevant medical information.

(B) However, if the employee chooses not to have the authorized treating physician perform such tests, or if the information is not transmitted in a timely manner, the self-insured employer or insurer shall arrange and pay for the employee to return to Colorado for examination, testing, and rating, at the expense of the self-insured employer or insurer. If the employee refuses to return to Colorado for examination, no permanent disability benefits shall be awarded.

(C) The self-insured employer or insurer shall, within twenty days after receipt of the medical information described in sub-subparagraph (A) of this subparagraph (I), appoint a level II accredited physician to determine the employee's medical impairment rating. If the employee was treated by an authorized level II accredited physician in Colorado for the same injury for which a medical impairment rating is being sought, the self-insured employer or insurer shall request such physician to determine the claimant's medical impairment rating. At the same time

as such rating is transmitted to the self-insured employer or insurer, the level II physician shall transmit a copy of the same to the authorized treating physician and the employee.

(D) If the employee, insurer, or self-insured employer disputes a medical impairment rating, including a finding that there is no medical impairment, made pursuant to sub-subparagraph (A) of this subparagraph (I), the parties to the dispute may select an independent medical examiner in accordance with section 8-42-107.2 to review the rating. The cost of such independent medical examination shall be borne by the requesting party. The finding of such independent medical examiner shall be overcome only by clear and convincing evidence. Any review by an independent medical examiner shall be based on the employee's written medical records only, without further examination, unless a party to the dispute requests that such review include a physical examination by the independent medical examiner. Except when the provisions of section 8-42-107.2 (5)(b) apply, the party requesting a physical examination shall pay all additional costs, including, if applicable, the reasonable cost of returning the employee to Colorado.

(II) If the employee is a state resident, such physician shall, within twenty days after the determination of maximum medical improvement, determine whether the employee has sustained any permanent impairment. If the employee has sustained any permanent impairment, such physician shall refer such employee to a level II accredited physician for a medical impairment rating, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment". If the referral is not timely made by the authorized treating physician, the insurer or self-insured employer shall refer the employee to a level II accredited physician within forty days after the determination of maximum medical improvement. If the employee, insurer, or self-insured employer disputes the finding regarding permanent medical impairment, including a finding that there is no permanent medical impairment, the parties to the dispute may select an independent medical examiner in accordance with section 8-42-107.2. The finding of any such independent medical examiner shall be overcome only by clear and convincing evidence.

(c) When the injured employee's date of maximum medical improvement has been determined pursuant to subparagraph (I) of paragraph (b) of this subsection (8), and there is a determination that permanent medical impairment has resulted from the injury, the authorized treating physician shall determine a medical impairment rating as a percentage of the whole person based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. Except for a determination by the authorized treating physician providing primary care that no permanent medical impairment has resulted from the injury, any physician who determines a medical impairment rating shall have received accreditation under the level II accreditation program pursuant to section 8-42-101. For purposes of determining levels of medical impairment, the physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation.

Anatomic correlation must be based on objective findings. If either party disputes the authorized treating physician's finding of medical impairment, including a finding that there is no permanent medical impairment, the parties may select an independent medical examiner in accordance with section 8-42-107.2. The finding of the independent medical examiner may be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

(c.5) When an injury results in the total loss or total loss of use of an arm at the shoulder, a forearm at the elbow, a hand at the wrist, a leg at the hip or so near thereto as to preclude the use of an artificial limb, the loss of a leg at or above the knee where the stump remains sufficient to permit the use of an artificial limb, a foot at the ankle, an eye, an ear, or a combination of any such losses, the benefits for such loss shall be determined pursuant to this subsection (8), except as provided in subsection (7)(b)(IV) of this section.

(d) Medical impairment benefits shall be determined by multiplying the medical impairment rating determined pursuant to paragraph (c) of this subsection (8) by the age factor determined pursuant to paragraph (e) of this subsection (8) and by four hundred weeks and shall be calculated at the temporary total disability rate specified in section 8-42-105. Up to ten thousand dollars of the total amount of any such award or scheduled award shall be automatically paid in a lump sum less the discount as calculated in section 8-43-406 upon the injured employee's written request to the employer or, if insured, to the employer's insurance carrier. The remaining periodic payments of any such award, after subtracting the total amount of the lump sum requested by the employee without subtracting the discount calculated in section 8-43-406, shall be paid at the temporary total disability rate but not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, beginning on the date of maximum medical improvement.

(e) The age factor for use in calculating medical impairment benefits pursuant to this subsection (8) is as follows:

AGE	FACTOR
20 or younger	1.80
21	1.78
22	1.76
23	1.74
24	1.72
25	1.70

AGE	FACTOR
26	1.68
27	1.66
28	1.64
29	1.62
30	1.60
31	1.58
32	1.56
33	1.54
34	1.52
35	1.50
36	1.48
37	1.46
38	1.44
39	1.42
40	1.40
41	1.38
42	1.36
43	1.34
44	1.32
45	1.30
46	1.28
47	1.26
48	1.24

AGE	FACTOR
49	1.22
50	1.20
51	1.18
52	1.16
53	1.14
54	1.12
55	1.10
56	1.08
57	1.06
58	1.04
59	1.02
60 or older	1.00

(f) In all claims in which an authorized treating physician recommends medical benefits after maximum medical improvement, and there is no contrary medical opinion in the record, the employer shall, in a final admission of liability, admit liability for related reasonable and necessary medical benefits by an authorized treating physician, which benefits are not limited to any specific medical treatment.

Source: **L. 90:** Entire article R&RE, p. 491, § 1, effective July 1. **L. 91:** Entire section amended, p. 1306, § 15, effective July 1. **L. 92:** (8)(d) amended, p. 1827, § 1, effective April 29; (7)(b) amended and (8)(c.5) added, p. 1833, §§ 1, 2, effective May 26. **L. 93:** (8)(c) amended, p. 365, § 1, effective April 12. **L. 94:** (2)(b), (2)(c), (2)(x), (2)(y), and (7)(b) amended and (2)(a.5) and (2)(w.5) added, p. 2002, § 4, effective July 1. **L. 96:** (8)(b.5) added and (8)(c) amended, p. 269, § 2, effective April 8; (8)(a) and (8)(b) amended, p. 456, § 1, effective July 1. **L. 98:** IP(8)(b)(II), (8)(b)(III), (8)(b.5)(I)(D), (8)(b.5)(II), and (8)(c) amended, p. 1429, § 2, effective August 5. **L. 99:** (6) and (7) amended, p. 298, § 1, effective July 1. **L. 2003:** (8)(b.5)(I)(D), (8)(b.5)(II), and (8)(c) amended, p. 1711, § 1, effective August 6. **L. 2007:** (8)(d) amended, p.

1472, § 2, effective May 30. **L. 2009:** (7)(b)(III) amended, (SB 09-243), ch. 269, p. 1223, § 3, effective July 1. **L. 2010:** (2)(ff) amended, (SB 10-187), ch. 310, p. 1459, § 6, effective July 1. **L. 2011:** (8)(f) added, (SB 11-199), ch. 196, p. 759, § 1, effective May 23. **L. 2013:** (8)(b)(II)(A), (8)(b)(III), and (8)(c) amended, (SB 13-285), ch. 301, p. 1595, § 6, effective July 1. **L. 2021:** (8)(b)(II)(B), (8)(b)(II)(C), and (8)(b)(II)(D) amended and (8)(b)(II)(E) added, (HB 21-1050), ch. 384, p. 2571, § 4, effective September 7. **L. 2022:** (1)(b), (8)(a), and (8)(c.5) amended and (7)(b)(IV) added, (HB 22-1347), ch. 477, p. 3473, § 2, effective August 10. **L. 2023:** (8)(f) amended, (HB 23-1076), ch. 370, p. 2224, § 4, effective August 7. **L. 2024:** (8)(c.5) amended, (HB 24-1220), ch. 389, p. 2692, § 2, effective August 7.

Editor's note: This section is similar to former §§ 8-51-104 and 8-51-108 as they existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Determination of Disability.

III. Loss of Fingers or Limbs.

IV. Loss of Sight.

V. Determination of Compensation.

VI. Maximum Medical Improvement.

VII. Termination of Benefits.

I. GENERAL CONSIDERATION.

Law reviews. For note, "One Year Review of Colorado Law-1964", see 42 Den. L. Ctr. J. 140 (1965). For article, "Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980). For article, "Time, Equity and the Average Weekly Wage", see 23 Colo. Law. 1831 (1994). For article, "Update on Colorado Appellate Decisions in Colorado Workers' Compensation Law", see 30 Colo. Law. 69

(Apr. 2001). For article, "Update on Colorado Appellate Decisions In Workers' Compensation Law", see 32 Colo. Law. 87 (Mar. 2003). For article, "The Road to Longmont Toyota: Starting and Stopping Temporary Disability Benefits", see 34 Colo. Law. 87 (June 2005).

Annotator's note. (1) Since provisions in § 8-42-110 relating to the determination of permanent partial disability were moved to this section in 1991, relevant cases construing § 8-51-108, which included the provisions of § 8-42-110 prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, and relevant cases construing § 8-51-104 have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the director of the

division of labor with the power previously exercised by the industrial commission to determine disability and make awards or were decided prior the enactment of 1986 Senate Bill No. 12 which abolished said commission.

This section does not violate constitutional guarantees of equal protection. Difference in methods of calculating benefits for partial and total injuries is rationally related to the governmental interest in providing benefits efficiently and fairly, notwithstanding that the classification is not perfect and that inequality may result in individual cases. *Duran v. Indus. Claim Appeals Office*, 883 P.2d 477 (Colo. 1994); *Colo. AFL-CIO v. Donlon*, 914 P.2d 396 (Colo. App. 1995).

Application of the schedule of disabilities in this section to minors with scheduled injuries does not deny those minors the equal protection guarantees of the fourteenth amendment and article II, § 25, of the Colorado Constitution. *Torres v. Canam Indus., Inc.*, 942 P.2d 1384 (Colo. App. 1997).

This section not void for vagueness and does not operate as a deprivation of due process. The fact that there may be many examples of "loss of use" of a member does not equate to unconstitutional vagueness. The statute must necessarily be phrased in general terms in order to ensure applicability to varied circumstances. Fundamental fairness does not require a statute to enumerate examples or criteria in every instance. "Loss of use" is sufficiently precise to permit persons of common intelligence to

understand its meaning. *Walker v. Jim Fuoco Motor Co.*, 942 P.2d 1390 (Colo. App. 1997).

This section is clear, definite and mandatory. *Cresson Consol. Gold Mining & Milling Co. v. Indus. Comm'n*, 90 Colo. 353, 9 P.2d 295 (1932); *Hawkeye-Sec. Ins. Co. v. Tupper*, 152 Colo. 12, 380 P.2d 31 (1963).

And a liberal construction does not clothe the industrial commission or a court with power to ignore its mandatory provisions. *Thompson Stores Co. v. Indus. Comm'n*, 85 Colo. 576, 277 P. 789 (1929); *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 88 Colo. 573, 298 P. 955 (1931); *Cresson Consol. Gold Mining & Milling Co. v. Indus. Comm'n*, 90 Colo. 353, 9 P.2d 295 (1932); *Hawkeye-Sec. Ins. Co. v. Tupper*, 152 Colo. 12, 380 P.2d 31 (1963).

This section not retroactive. Provisions of 1991 repeal and reenactment of workers' compensation statutes, including this section, apply only in cases where the injuries occurred on or after July 1, 1991. *Golden Animal Hosp. v. Horton*, 897 P.2d 833 (Colo. 1995).

Claims for injuries sustained prior to July 1, 1991, are subject to the former reemployment statute where applicable. The plain language of former § 8-42-110 required that the benefits of a claimant who is reemployed by an employer be based on the degree of medical impairment rather than an ALJ's determination of the claimant's industrial disability even though a higher award is the result of such calculation. *Turner v. City & County of*

Denver, 867 P.2d 197 (Colo. App. 1993) (decided under former § 8-42-110).

General assembly may deem injury compensable per se. The provisions of the statutory scheme reflect the general assembly's conclusion that the scheduled injuries are of a kind which is so likely to result in loss of earning capacity that proof of such loss is unnecessary. *Matthews v. Indus. Comm'n*, 627 P.2d 1123 (Colo. App. 1980).

When an employee is involved in a work-related accident that results in both a scheduled injury and a nonscheduled injury, the scheduled injury must be converted to a whole person impairment rating and combined with the nonscheduled injury's whole person impairment rating in calculating permanent disability benefits. *Mtn. City Meat Co. v. Oqueda*, 919 P.2d 246 (Colo. 1996); *Human Res. Co. v. Indus. Claim Appeals Office*, 984 P.2d 1194 (Colo. App. 1999).

An injury must be ratable under the AMA Guides before it is compensable under subsection (8). Therefore, a functional impairment that rates at zero percent under the AMA Guides is not a compensable injury. *Morris v. Indus. Claim Appeals Office*, 942 P.2d 1343 (Colo. App. 1997).

When a claimant sustains both a scheduled and a nonscheduled injury from the same industrial accident, and the two are separately ratable impairments, subsection (7)(b)(II) precludes conversion of the scheduled disability rating to a whole person impairment rating. *Warthen v. Indus.*

Claim Appeals Office, 100 P.3d 581 (Colo. App. 2004).

The cumulative trauma disorder rating scheme set forth in department of labor & employment rule XIX(G)(2), 7 Colo. Code Regs. 1101-3, which includes a provision directing the rating physician to convert each upper extremity impairment to a whole person rating when the impairment is bilateral, is applicable only where the claimant has suffered a functional impairment not found on the schedule of disabilities in subsection (2) of this section. To read rule XIX(G)(2) as requiring scheduled injuries related to cumulative trauma disorder to be rated as a whole person impairment in all cases would make it inconsistent with subsection (1)(a), and such inconsistency would render the regulation void. *Kolar v. Indus. Claim Appeals Office*, 122 P.3d 1075 (Colo. App. 2005).

The compensation provided in this section is payable irrespective of one's ability to work and irrespective of his ability to earn. *Great Am. Indem. Co. v. Indus. Comm'n*, 114 Colo. 91, 162 P.2d 413 (1945); *Hawkeye-Sec. Ins. Co. v. Tupper*, 152 Colo. 12, 380 P.2d 31 (1963).

This section contains a schedule of specific injuries to which attach specific awards of compensation, and any award of compensation as to an injury included in the schedule is limited and determined thereby. *Hawkeye-Sec. Ins. Co. v. Tupper*, 152 Colo. 12, 380 P.2d 31 (1963).

And for a specific injury relating solely to the injured member claimant cannot

have compensation for disability, either total or partial. Employers' Mut. Ins. Co. v. Indus. Comm'n, 89 Colo. 475, 3 P.2d 1079 (1931); Hawkeye-Sec. Ins. Co. v. Tupper, 152 Colo. 12, 380 P.2d 31 (1963).

The term "injury" refers to the manifestation in a part or parts of the body which have been impaired or disabled as a result of the industrial accident. Strauch v. PSL Swedish Healthcare Sys., 917 P.2d 366 (Colo. App. 1996).

Whether claimant has suffered a functional impairment that is listed in the schedule of disabilities is a factual question to be resolved by the administrative law judge. Strauch v. PSL Swedish Healthcare Sys., 917 P.2d 366 (Colo. App. 1996); Delaney v. Indus. Claim Appeals Office, 30 P.3d 691 (Colo. App. 2000); Kolar v. Indus. Claim Appeals Office, 122 P.3d 1075 (Colo. App. 2005).

It is the situs of the functional impairment, not the situs of the initial harm, that is the relevant inquiry. Strauch v. PSL Swedish Healthcare Sys., 917 P.2d 366 (Colo. App. 1996); Langton v. Rocky Mtn. Health Care, 937 P.2d 883 (Colo. App. 1996); Kolar v. Indus. Claim Appeals Office, 122 P.3d 1075 (Colo. App. 2005).

Therefore, it was not improper for the panel to base an award that included disability to the shoulder on the proportionate loss to the use of the arm when the functional impairment occurred only in the arm. Strauch v. PSL Swedish Healthcare Sys., 917 P.2d 366 (Colo. App. 1996).

This section grants broad discretion to elect between scheduled or working unit award. Lerner v. Wal-Mart Stores, Inc., 865 P.2d 915 (Colo. App. 1993).

Therefore, the method of determining disability provided by § 8-51-108 cannot be used when the injury is one appearing in the schedule set forth in this section, since by its specific terms such injuries are excluded. Cresson Consol. Gold Mining & Milling Co. v. Indus. Comm'n, 90 Colo. 353, 9 P.2d 295 (1932); Hawkeye-Sec. Ins. Co. v. Tupper, 152 Colo. 12, 380 P.2d 31 (1963).

Thus, to obtain compensation in addition to that scheduled for an injured member, claimant must show that some other part of his body is affected. Hawkeye-Sec. Ins. Co. v. Tupper, 152 Colo. 12, 380 P.2d 31 (1963).

Neither § 8-42-101 (3.7) nor the AMA Guides can be read as superseding or overriding the express legislative directive in subsection (1) regarding how benefits are to be calculated for employees who have sustained only scheduled injuries. Kolar v. Indus. Claim Appeals Office, 122 P.3d 1075 (Colo. App. 2005).

"Disability", as used in this section, means disability to work. Employers' Mut. Ins. Co. v. Indus. Comm'n, 70 Colo. 228, 199 P. 482 (1921).

The term "disability" is broader and more inclusive than the term "medical impairment" as used in subsection (3); a person can have a medical impairment but still not have a disability that adversely affects earning capacity. Boice v. Indus.

Claim Appeals Office, 800 P.2d 1339 (Colo. App. 1990).

Medical impairment benefits are designed to compensate for lost earning capacity. *Salazar v. Hi-Land Potato Co.*, 917 P.2d 326 (Colo. App. 1996).

Construction of this section and § 8-51-108. Where there is no evidence upon which an award for permanent partial disability may be made under § 8-51-108, an award may be properly entered under this section, where it is supported by findings based upon the evidence. *Winteroth v. Indus. Comm'n*, 93 Colo. 38, 22 P.2d 865 (1933).

The commission has discretionary power to compensate an injured employee for his disability under either the scheduled loss provisions of this section or under the permanent partial disability provisions of § 8-51-105, but not both. *World of Sleep, Inc. v. Davis*, 188 Colo. 443, 536 P.2d 34 (1975); *Collins v. Indus. Comm'n*, 676 P.2d 1270 (Colo. App. 1984).

While there is no direct prohibition in subsection (7) not to consider the factors of this section while awarding under § 8-51-108, the use of the disjunctive indicates a choice, not a fusion, of the sections to be applied. *World of Sleep, Inc. v. Davis*, 188 Colo. 443, 536 P.2d 34 (1975).

Subsection (7) is not facially invalid for want of guidelines limiting the director's discretion. *Martinez v. Indus. Comm'n*, 632 P.2d 1044 (Colo. App. 1981).

Subsection (7) is to be limited to cases where the injury results in the loss of use or partial loss of use of another member. *Great*

Am. Indem. Co. v. Indus. Comm'n, 114 Colo. 91, 162 P.2d 413 (1945); *Indus. Comm'n v. Gen. Accident, Fire & Life Assurance Corp.*, 71 Colo. 115, 204 P. 338 (1922).

Subsection (7) gives the industrial commission the discretion to grant a percentage award under the schedule found in this section or to rate the claimant under the working unit disability provisions of § 8-51-108. *Indus. Comm'n v. Seastone*, 167 Colo. 571, 448 P.2d 963 (1969); *Cosmopolitan W. Hotel v. Henry*, 172 Colo. 279, 472 P.2d 134 (1970); *Padillo v. F. H. Linneman Constr. Co.*, 29 Colo. App. 137, 479 P.2d 990 (1971).

But if claimant has completely lost his hand he can be compensated only under the schedule, and no discretion would be vested in the commission under subsections (6) and (7). *Indus. Comm'n v. Seastone*, 167 Colo. 571, 448 P.2d 963 (1969).

Formula to determine amount of compensation under subsection (7). Amount of compensation to be awarded under subsection (7) is found by applying the percentage of loss of use to the amount of compensation which the general assembly has precisely provided in a schedule set out in this section. *World of Sleep, Inc. v. Davis*, 188 Colo. 443, 536 P.2d 34 (1975).

If an employee's disability is the result of an occupational disease, he cannot recover compensation therefor under former provisions of the workmen's compensation act. *Hallenbeck v. Butler*, 101 Colo. 486, 74 P.2d 708 (1937).

Although evidence was conflicting, where expert based finding of permanent partial loss of hearing on valid formula and the process used was not new or novel, such evidence was properly interpreted by the ALJ and award was properly based on the disability award schedule and not on the lower disability ratings proffered by the employer's experts. *City of Aurora v. Vaughn*, 824 P.2d 825 (Colo. App. 1991).

Only medical impairment considered. Where the commission compensates an injured employee under this section, it may consider only medical impairment and is limited to a disability award based entirely on the comparative compensation formula expressed therein. *World of Sleep, Inc. v. Davis*, 188 Colo. 443, 536 P.2d 34 (1975); *Jones v. Adolph Coors Co.*, 689 P.2d 681 (Colo. App. 1984).

Under subsection (3), usual wage adjustments do not include expected union job classification upgrades. Therefore, employee's delay in attaining journeyman mechanic status did not defeat the application of this section. *Fulton v. King Soopers*, 823 P.2d 709 (Colo. 1992).

Subsection (3) applies only to an employer who reemploys an injured employee "at the employee's preinjury rate of pay" and extends "the usual wage adjustments" to the employee, which, read as a whole and giving full meaning to the plain language thereof, are limited to the payment arrangements between the injured employee and the employer who is liable for payment of disability benefits because the

injury-producing work was performed for that employer. *Snyder Oil Co. v. Embree*, 862 P.2d 259 (Colo. 1993).

Where hearing officer strictly followed medical opinion in determining the degree of claimant's industrial disability, it was not harmless error for the hearing officer to have excluded counselor's testimony on the degree of industrial disability merely because it embraced an ultimate issue to be decided by the trier of fact. *Chambers v. CF & I Steel Corp.*, 757 P.2d 1171 (Colo. App. 1988).

Continued medical treatment is not inconsistent with award of permanent partial disability. Though worker may reach maximum medical improvement, continued medical treatment may be necessary to prevent deterioration in worker's physical condition. *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988).

A claimant's voluntary retirement does not necessarily preclude a permanent disability, where claimant retired before discovering his disabling injury and where claimant established that his employability had been reduced by the injury. *State Comp. Ins. Auth. v. Indus. Claim Appeals Office*, 786 P.2d 423 (Colo. App. 1989).

Under subsection (3), reemployment or reinstatement of an employee at his preinjury rate of pay when the usual wage adjustments, such as cost of living adjustments, are extended reduces the benefits that would otherwise be available to a claimant. Therefore, proof of subsection (3) is in the nature of an affirmative defense which limits the employer's liability. *Valley*

Tree Serv. v. Jimenez, 787 P.2d 658 (Colo. App. 1990).

The burden of proof is on the employer to present evidence to satisfy each of the conjunctive requirements of subsection (3). The employer had the burden of presenting evidence to establish the statutory basis of subsection (3) which would limit claimant's award to permanent medical impairment or payment for a scheduled disability since there was no dispute that claimant's injury was work-related and the claimant met his burden of proving that he had suffered a loss in earning capacity by showing that his future efficiency and employability in the competitive labor market was reduced. The fact that proof of claimant's preinjury rate of pay occurred naturally as a result of the evidence presented by claimant to demonstrate the extent of his disability does not serve to shift the burden, which remains on the employer. Valley Tree Serv. v. Jimenez, 787 P.2d 658 (Colo. App. 1990).

Reemployment statute, former § 8-42-110, does not apply if employer does not meet the burden of proving that, after the employee reached MMI and claimed permanent partial disability, the employer actually offered to reemploy employee and offer the usual wage adjustments. Lerner v. Wal-Mart Stores, Inc., 865 P.2d 915 (Colo. App. 1993) (decided under law prior to 1991 repeal).

The provisions of this section concern only permanent partial disability, and are inapplicable in cases within the scope of § 8-51-106 (1)(a) (now § 8-46-101). McGrath v.

Indus. Comm'n, 708 P.2d 1382 (Colo. App. 1985).

Requirement in subsection (8)(b.5) to use AMA Guides in workers' compensation cases does not prohibit the admission of AMA Guides evidence in cases not involving workers' compensation. Herrera v. Lerma, 2018 COA 141, 440 P.3d 1194; Wolven v. Velez, 2024 COA 8, 547 P.3d 423.

Applied in Boulder Valley Coal Co. v. Shipka, 94 Colo. 394, 30 P.2d 852 (1934); Consol. Coal & Coke Co. v. Todoroff, 97 Colo. 125, 47 P.2d 404 (1935); Indus. Comm'n v. Seastone, 167 Colo. 571, 448 P.2d 963 (1969); Cosmopolitan W. Hotel v. Henry, 172 Colo. 279, 472 P.2d 134 (1970); City of Thornton v. Teeter, 37 Colo. App. 427, 548 P.2d 133 (1976); Martinez v. Indus. Comm'n, 632 P.2d 1044 (Colo. App. 1981); Employers Mut. v. Eidson, 646 P.2d 959 (Colo. App. 1982); R & R Well Serv. Co. v. Indus. Comm'n, 658 P.2d 1389 (Colo. App. 1983); People v. Hurd, 682 P.2d 515 (Colo. App. 1984); Kohnen v. Safeway Stores, Inc., 761 P.2d 231 (Colo. App. 1988).

II. DETERMINATION OF DISABILITY.

Meaning of "disability" under this section. The term "disability" is not restricted to such disability as impairs present earning power at a particular occupation, but embraces any loss of physical function which detracts from the former efficiency of the body or its members in the ordinary pursuits of life. London Guarantee & Accident Co. v. Indus. Comm'n, 70 Colo. 256, 199 P. 962 (1921); Wierman v. Tunnell, 108 Colo. 544, 120

P.2d 638 (1941); Simpson & Co. v. Wheeler, 153 Colo. 480, 386 P.2d 976 (1963).

How word "specifically" used. The general assembly used the word "specifically" in this section to limit the exclusion clause to that portion of § 8-51-104 relating to loss of a member, not that portion relating to loss of use. Leyden Lignite Co. v. Buddy, 98 Colo. 452, 56 P.2d 52 (1936).

The extent of a claimant's industrial impairment is not necessarily restricted to medical considerations. Chambers v. CF & I Steel Corp., 757 P.2d 1171 (Colo. App. 1988).

Determination of medical impairment under subsection (1) was not an issue and apportionment based on medical impairment not appropriate. Lindner Chevrolet v. Indus. Claim Appeals Office, 914 P.2d 496 (Colo. App. 1995).

The extent and degree of permanent disability is determined on the basis of various interdependent factors that affect a claimant's capacity to be gainfully employed. An ALJ's consideration of unavailable substantial vocational rehabilitation due to the Colorado compensation insurance authority's refusal to provide vocational rehabilitation to a claimant beyond 52 weeks was proper in determining the claimant's ability to regain efficiency in the general labor market. Pro. Fire Prot. v. Long, 867 P.2d 175 (Colo. App. 1993).

A division-sponsored independent medical evaluation (DIME) physician's

finding concerning a claimant's impairment rating is binding on the parties unless overcome by clear and convincing evidence. Whether the DIME physician's rating has been overcome is a question of fact for determination by the ALJ. Clear and convincing evidence will demonstrate that it is "highly probable" the DIME physician's rating is incorrect, and such evidence must be unmistakable and free from serious or substantial doubt. Am. Comp. Ins. Co. v. McBride, 107 P.3d 973 (Colo. App. 2004).

Physician's "finding" is not limited to the initial report. For purposes of subsection (8)(c), a division-sponsored independent medical evaluation (DIME) physician's "finding" consists not only of the initial report but also any subsequent opinion given by the physician. Andrade v. Indus. Claim Appeals Office, 121 P.3d 328 (Colo. App. 2005).

A physician's written report need not be given more weight than his or her opinion expressed orally under oath. The ALJ properly assigned to claimant the burden to overcome by clear and convincing evidence the physician's opinion stated under oath that some of claimant's medical issues were not caused by his work injury, even if the physician's statements under oath conflicted to some extent with her written report. Meza v. Indus. Claim Appeals Office, 2013 COA 71, 303 P.3d 158.

It is a question of fact for the administrative law judge (ALJ) to determine whether a party has overcome, by clear and convincing evidence, the

opinion of a division-selected independent medical examiner physician as to an impairment rating. The clear and convincing standard in subsection (8)(b) is satisfied by a showing that the truth of a contention is highly probable. The ALJ is the sole arbiter of conflicting medical evidence, and the ALJ's findings are binding on review if supported by substantial evidence and plausible inferences drawn from the record. *Postlewait v. Midwest Barricade*, 905 P.2d 21 (Colo. App. 1995).

"Clear and convincing" standard does not apply to an 18-month DIME physician's determination regarding impairment under subsection (8)(b)(II) because impairment determinations are not authorized under that statutory provision. Therefore, an 18-month DIME physician's opinion is only binding as to an MMI determination, which the 18-month DIME physician is statutorily authorized to make. *Meza v. Indus. Claim Appeals Office*, 2013 COA 71, 303 P.3d 158.

"Clear and convincing" standard did not apply where the independent medical examiner's opinion was not at issue, and employer had raised the separate issue of causation under § 8-41-301 before the IME was performed. Therefore the ALJ did not err in applying a preponderance standard in determining whether claimant had sustained a compensable injury. *Faulkner v. Indus. Claim Appeals Office*, 12 P.3d 844 (Colo. App. 2000).

For where accident aggravated preexisting condition, see *Kamp v. Disney*, 112 Colo. 65, 145 P.2d 877 (1944).

Where medical examinations come so close together as to indicate nothing more than disagreement concerning a present condition, the industrial commission is justified in considering all the reports together, and does not have to consider the testimony given at the latest hearing, "the manifest weight of the evidence", nor is the commission bound to find, as a matter of law, that there was permanent partial disability under this section, since it clearly appeared that the medical testimony was in direct conflict on question of sterility or loss of function of testicle. *Robinson v. Indus. Comm'n*, 112 Colo. 21, 144 P.2d 979 (1944).

Degree of permanent partial disability is determined according to claimant's actual condition and earning capacity regardless of who paid for claimant's vocational treatment. *Martin K. Eby Const. Co. v. Indus. Comm'n*, 710 P.2d 1164 (Colo. App. 1985).

Determination of permanent disability. Permanent disability generally cannot be determined until the authorized physicians treating a claimant for work-related injuries advise that they can do nothing further for the claimant. Evaluation for permanent disability cannot precede the determination that claimant's condition has stabilized. *Dziewior v. Mich. Gen. Corp.*, 672 P.2d 1026 (Colo. App. 1983).

The method of determining disability provided by this section cannot be used when the injury is one appearing in §§ 8-51-104 to 8-51-107 inclusive, because by its specific terms such injuries are excluded. *Arkin v. Indus. Comm'n*, 145 Colo. 463, 358

P.2d 879 (1961); Hawkeye-Sec. Ins. Co. v. Tupper, 152 Colo. 12, 380 P.2d 31 (1963).

Scheduled and nonscheduled impairments are treated differently for purposes of determining permanent disability benefits. Specifically, the procedures of subsection (8)(c), which state that the division-sponsored independent medical examination finding as to permanent impairment can be overcome only by clear and convincing evidence and that such finding is a prerequisite to a hearing on permanent impairment, are applicable only to nonscheduled impairments. Delaney v. Indus. Claim Appeals Office, 30 P.3d 691 (Colo. App. 2000).

Commission's discretion not abused in determining extent of disability. The commission does not abuse its discretion when it determines that the percentage decrease in the claimant's wages is the proper measure of the extent of his disability. Sw. Inv. Co. v. Indus. Comm'n, 650 P.2d 1355 (Colo. App. 1982).

But where there is no evidence relating claimant's circumstances to a reduction in wage level, the commission may reject the referee's rating and reach its own determination of the percentage of disability. Gilliatt v. Indus. Comm'n, 680 P.2d 1310 (Colo. App. 1983).

Impairment of earning capacity. Under this section the extent or degree of disability is not to be determined solely by the claimant's impaired earning capacity as it relates to the kind of labor in which he was employed when injured. It is obvious that

such factor, while pertinent and important, must be considered with all other elements. Byouk v. Indus. Comm'n, 106 Colo. 430, 105 P.2d 1087 (1940).

Impaired earning capacity one of many factors. While impaired earning capacity, as it relates to the kind of work in which a claimant was employed when he became disabled, is a pertinent factor which the commission must consider when evidence relative thereto is submitted, it is but one of many factors to be considered under the mandate of subsection (1)(b). Evans v. Aurora Elevator Co., 631 P.2d 1201 (Colo. App. 1981).

Impaired earning capacity is only one factor to be taken into consideration under subsection (1)(b). Employers Mut. v. Eidson, 646 P.2d 959 (Colo. App. 1982).

Disability, to be compensable, must rest upon the actual impairment of the claimant as a working unit. Indus. Comm'n v. Vigil, 150 Colo. 356, 373 P.2d 308 (1962).

Insurer's refusal to pay claimant's unauthorized medical expenses does not entitle claimant to compensation for higher degree of permanent disability than that which she actually suffered. Pickett v. Colo. State Hosp., 32 Colo. App. 282, 513 P.2d 228 (1973).

Finding sufficient for award. A finding of the industrial commission that claimant's disability amounts to "permanent partial disability equal to ten percent of permanent total disability", is sufficient upon which to base an award. London Guarantee &

Accident Co. v. Indus. Comm'n, 70 Colo. 256, 199 P. 962 (1921).

This section does not require a greater quantum of proof than that required in other matters in issue before the industrial commission. London Guarantee & Accident Co. v. Coffeen, 96 Colo. 375, 42 P.2d 998 (1935).

But sets forth the factors to be considered in translating "partial permanent disability" into terms of "general permanent disability". It is clear that rather than laying down a rule as to the quantum of proof of which the claimant must bear the burden, this section intends to set forth the factors that the commission shall consider in translating what may be an obvious or manifest "partial permanent disability" into terms of "general permanent disability". London Guarantee & Accident Co. v. Coffeen, 96 Colo. 375, 42 P.2d 998 (1935).

And "the manifest weight of evidence" is merely one of the factors to be considered along with the "general physical condition and mental training, ability, former employment and education of the injured employee". London Guarantee & Accident Co. v. Coffeen, 96 Colo. 375, 42 P.2d 998 (1935).

Meaning of "manifest weight of evidence". The actual physical disability or injury that is manifest, apparent, evident to the mind, and clear to the commission after the weighing of the evidence of it, and determining the nature of such actual disability from the preponderance thereof, is the "manifest weight of evidence" to which

reference is made in this section. London Guarantee & Accident Co. v. Coffeen, 96 Colo. 375, 42 P.2d 998 (1935).

And the degree of disability cannot be measured by physical condition alone, but the injured man's age, his industrial history, his mentality, his education, and the availability of that type of work which he can do must be taken into consideration. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 151 Colo. 18, 379 P.2d 153 (1962); Simpson & Co. v. Wheeler, 153 Colo. 480, 386 P.2d 976 (1963); Steel Placers, Inc. v. Reese, 169 Colo. 360, 455 P.2d 874 (1969).

Issue of degree of permanent disability is to be decided according to actual facts and is not to be influenced by who did or who did not pay for claimant's medical treatment. Pickett v. Colo. State Hosp., 32 Colo. App. 282, 513 P.2d 228 (1973).

Estimates relating to anatomical loss of organs may be relevant to the referee's determination of a permanent disability award. In certain circumstances, these estimates may function as guidelines in setting a reasonable percentage figure for permanent disability. Dravo Corp. v. Indus. Comm'n, 40 Colo. App. 57, 569 P.2d 345 (1977).

Determination of life expectancy. After the industrial commission has determined the percentage of general permanent disability in a workmen's compensation case, it is then authorized to determine from a "recognized expectancy table" the life expectancy of the claimant. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 148 Colo. 557, 367 P.2d 597 (1961).

Life expectancy table must be used in form it appears at time of use. And where no other evidence relating to expectancy has been presented and where the general assembly itself has designated the "recognized" table, then that table must be used in the form in which it appears at the time of its use. *Indus. Comm'n v. Big Six Coal Co.*, 72 Colo. 377, 211 P. 361 (1922); *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 148 Colo. 557, 367 P.2d 597 (1961).

And the commission may without formal introduction by either party make use of the expectancy table or of other "recognized expectancy tables" in a workmen's compensation case. *Indus. Comm'n v. Big Six Coal Co.*, 72 Colo. 377, 211 P. 361 (1922); *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 148 Colo. 557, 367 P.2d 597 (1961).

For the presumption exists that in making an award the commission considers and gives due weight to all of the factors therein enumerated. *Byouk v. Indus. Comm'n*, 106 Colo. 430, 105 P.2d 1087 (1940); *Nat'l Fuel Co. v. Arnold*, 121 Colo. 220, 214 P.2d 784 (1950); *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962); *Holmstrom v. Pub. Serv. Co.*, 169 Colo. 439, 458 P.2d 77 (1969).

A presumption exists that the referee considered and gave due weight to all factors enumerated in this section in making an award. *Dravo Corp. v. Indus. Comm'n*, 40 Colo. App. 57, 569 P.2d 345 (1977).

And life expectancy is a proper element for consideration. Inasmuch as this section

provides a maximum amount which a claimant may receive for permanent partial disability, his life expectancy is at least a proper element for consideration to assist in determining whether he is entitled to the full maximum allowance or a lesser sum. *Kamp v. Disney*, 112 Colo. 65, 145 P.2d 877 (1944).

Neurotic mental disability is as real as any other disability and, in the absence of evidence of malingering, is as much a personal injury. *Casa Bonita Rest. v. Indus. Comm'n*, 624 P.2d 1340 (Colo. App. 1981).

Burden of proof is upon claimant to establish his right to benefits. *Matthews v. Indus. Comm'n*, 627 P.2d 1123 (Colo. App. 1980).

Evidence of degree of functional disability is admissible as relating to the "general physical condition" of the injured employee. *Byouk v. Indus. Comm'n*, 106 Colo. 430, 105 P.2d 1087 (1940).

Commission entitled to look to claimant's mental ability. The industrial commission had the right to look beyond claimant's physical impairments to her mental ability, including mental impairment, in determining the issue of permanent total disability. *Casa Bonita Rest. v. Indus. Comm'n*, 624 P.2d 1340 (Colo. App. 1981).

The industrial commission is vested with the widest possible discretion, with the exercise of which the courts will not interfere, in determining the extent or degree of disability. *Byouk v. Indus. Comm'n*, 106 Colo. 430, 105 P.2d 1087 (1940); *Kamp v. Disney*, 112 Colo. 65, 145 P.2d 877 (1944);

Colo. Fuel & Iron Corp. v. Indus. Comm'n, 151 Colo. 18, 379 P.2d 153 (1962); Tillman v. Capitol Hill Transf. & Storage Co., 165 Colo. 514, 440 P.2d 152 (1968); N.J. Zinc Co. v. Indus. Comm'n, 165 Colo. 482, 440 P.2d 284 (1968).

Commission's determination consistent with evidence may not be disturbed on appeal. Where the commission's determination that a claimant has failed to meet his burden is consistent with the evidence of record, that determination may not be disturbed on appeal. Matthews v. Indus. Comm'n, 627 P.2d 1123 (Colo. App. 1980).

Commission is vested with widest possible discretion in determining the extent of an injured worker's disability. Evans v. Aurora Elevator Co., 631 P.2d 1201 (Colo. App. 1981); Gilliatt v. Indus. Comm'n, 680 P.2d 1310 (Colo. App. 1983); City & County of Denver v. Indus. Comm'n, 682 P.2d 513 (Colo. App. 1984).

Evidence not sufficient to sustain determination that claimant sustained a one-percent permanent partial disability. Puffer Mercantile Co. v. Arellano, 190 Colo. 138, 546 P.2d 481 (1975).

Award not inconsistent with ineligibility for vocational rehabilitation benefits. The commission's finding that a claimant is not eligible for vocational rehabilitation benefits is not inconsistent with its award for permanent partial disability benefits. Sw. Inv. Co. v. Indus. Comm'n, 650 P.2d 1355 (Colo. App. 1982).

Hearing on admission of liability is required only when requested by the claimant. Failure to request a hearing to contest an admission is a waiver of the claimant's right to have statutory factors and pre-injury and post-injury factors considered. In re Brunetti v. Indus. Comm'n, 670 P.2d 1246 (Colo. App. 1983).

Timely invocation of former subsection (3)(a). Where an employer continues to employ the injured employee and indicates its intent to elect the five percent rule if unsuccessful in contesting an award, the employer has timely invoked the provisions of subsection (3)(a)(now repealed). Arellano v. Dir., Div. of Labor, 42 Colo. App. 149, 590 P.2d 987 (1979).

III. LOSS OF FINGERS OR LIMBS.

Determination of disability from loss of fingers. Where an employee sustained a loss of his right thumb, index and middle fingers and a partial loss of use of the hand, under subsection (7), the industrial commission has the power to fix the disability on the basis of a partial loss of the use of the hand, under subsection (7), the industrial commission has the power to fix the disability on the basis of a partial loss of the use of the hand, rather than on the loss of the fingers. Indus. Comm'n v. Gen. Accident, Fire & Life Assurance Corp., 71 Colo. 115, 204 P. 338 (1922).

But double compensation is not allowed. The industrial commission may not allow for loss of fingers and add compensation for the loss or partial loss of use of the hand. Indus. Comm'n v. Gen.

Accident, Fire & Life Assurance Corp., 71 Colo. 115, 204 P. 338 (1922).

Compensation for an amputation is limited to the specific amount provided in the statutory schedules for such permanent disability. *Martinez v. Indus. Comm'n*, 32 Colo. App. 270, 511 P.2d 921 (1973).

And employee who suffers amputation cannot receive additional compensation for disability measured as a working unit. *Martinez v. Indus. Comm'n*, 32 Colo. App. 270, 511 P.2d 921 (1973).

Employee not limited to recovery for loss of use of hands. An employee who was afflicted with deep and extensive adhesions due to burns, and whose arms were bound to his sides, is not limited to recovery for loss of the use of his hands under this section. *Rio Grande Motor Way v. De Merschman*, 100 Colo. 421, 68 P.2d 446 (1937).

Section differentiates between loss of leg at hip and loss at or above knee. This section, which prescribes the measure of damages for loss of, or loss of use of, a bodily member, differentiates between the loss of a leg at the hip joint or so near thereto as to preclude the use of a prosthesis and loss of a leg at or above the knee which remains sufficient to permit the use of a prosthesis. *Horizon Land Corp. v. Indus. Comm'n*, 34 Colo. App. 178, 524 P.2d 638 (1974).

Subsection (4) has no reference to the specifications for loss of an arm. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 78 Colo. 501, 242 P. 988 (1926).

Award for loss of leg may be amended where artificial limb is later used. *Lindsay v. Indus. Comm'n*, 77 Colo. 424, 236 P. 1005 (1925).

Claimant award of permanent partial disability benefits based upon a scheduled impairment under this section rather than a whole person impairment was appropriate. The ALJ applied the proper legal standard in determining the claimant's impairment was within the scheduled impairment category for "the loss of an arm at the shoulder". The treating physicians found no impairment beyond the shoulder, and the injury principally affects claimant's arm movements. *Walker v. Jim Fuoco Motor Co.*, 942 P.2d 1390 (Colo. App. 1997).

Applied in *Downing v. Gen. Iron Works Co.*, 120 Colo. 104, 207 P.2d 525 (1949).

IV. LOSS OF SIGHT.

Under subsection (7) the question is one of percent of disability, not of blindness. In case of disability under the schedule in this section, the ratio of the award to the maximum should be the ratio of the proved disability to total disability. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 70 Colo. 228, 199 P. 482 (1921).

Subsection (7) specifically authorizes an award for partial permanent disability caused by permanent impairment of vision and provides an identical method of computing the amount thereof irrespective of whether the employee before the accident had the sight of one or both eyes. For example, if an employee with perfect vision in both eyes loses 50% of the sight of one

and suffers 50% disability as a result thereof, he is entitled to compensation for 50% of 104 or 52 weeks. If he becomes blind in one eye and later suffers 50% partial permanent impairment of vision of the remaining one, he is entitled to the same amount of compensation as in the first instance, namely, 50% of 104 or 52 weeks. *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 88 Colo. 573, 298 P. 955 (1931).

And this section applies if there is anything short of total loss of vision. *Platt-Rogers v. Indus. Comm'n*, 101 Colo. 458, 74 P.2d 673 (1937).

Thus, only when compensation for permanent partial disability is awarded is this section applicable; and only if there is no loss of vision in a remaining eye may this section be applied when compensation is sought for an enucleated eye. *Jewell Collieries Corp. v. Kenda*, 110 Colo. 394, 134 P.2d 206 (1943).

An employee who suffers enucleation of a sightless eye, is entitled to permanent disability compensation only for the facial disfigurement caused thereby. *London Guarantee & Accident Co. v. Indus. Comm'n*, 76 Colo. 155, 230 P. 598 (1924).

Enucleation of eye in which vision was impaired. Where vision in workman's eye was impaired prior to accident necessitating enucleation the industrial commission could not, upon the theory that the enucleated eye was "industrially blind" prior to the accident, deduct 104 weeks allowed for "total blindness of one eye" from the allowance for "the loss of an eye by enucleation" of 139 weeks, and award to

claimant the difference, namely, 35 weeks, "for and on account of the enucleation of the left eye". To translate the phrase "total blindness" into "industrial blindness" would be the usurpation of legislative functions. *Downs v. Indus. Comm'n*, 109 Colo. 12, 121 P.2d 489 (1942).

Award for total blindness is correct where the vision remaining is of no value for working. The industrial commission awarded employee full compensation under this section for total blindness of the right eye. It is agreed that he lost but ninety percent of the eye's sight and retained ten percent. The commission made a finding of "almost complete loss of vision" in the injured eye, and "That the amount of vision now remaining is of no value from a working standpoint". Under such finding the award was right. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 70 Colo. 228, 199 P. 482 (1921); *Indus. Comm'n v. Johnson*, 64 Colo. 461, 172 P. 422 (1918).

Despite small percentage of remaining vision, director may find there is loss of vision. The fact that an employee may have five, eight or even ten percent of vision remaining in an injured eye, does not preclude a finding by the industrial commission of total loss of vision in that eye, the amount of vision remaining being of no value from a working standpoint. *Platt-Rogers v. Indus. Comm'n*, 101 Colo. 458, 74 P.2d 673 (1937).

The effect of glasses in correcting vision should not be considered in connection with the awarding of the statutory allowance for blindness of an eye. *Great Am. Indem.*

Co. v. Indus. Comm'n, 114 Colo. 91, 162 P.2d 413 (1945).

Industrial claim appeals panel did not err in its conclusion that injury be compensated as a scheduled injury under this section by refusing to treat "loss of visual acuity" differently from "blindness" for purposes of a scheduled injury. McKinley v. Bronco Billy's, 903 P.2d 1239 (Colo. App. 1995).

Cosmetic deformity of the face impairs an individual's function and may be calculated as a non-scheduled injury and added to the individual's scheduled whole person impairment rating under this section notwithstanding the additional remedy for cosmetic disfigurement available under § 8-42-108. Accordingly, cosmetic deformity of the eye as it affects the functioning of the face is rated under section 9.2 of the AMA Guides and benefits are calculated for a whole person impairment under this section. Gonzales v. Advanced Component Sys., 949 P.2d 569 (Colo. 1997).

A mental impairment rating due to mental or emotional stress cannot be combined with the physical impairment rating for purposes of exceeding the benefit cap applicable to an impairment rating of 25 percent or less pursuant to § 8-42-107.5. Dillard v. Indus. Claim Appeals Office, 121 P.3d 301 (Colo. App. 2005), aff'd, 134 P.3d 407 (Colo. 2006).

Applied in Rogers, Inc. v. Fishman, 154 Colo. 122, 388 P.2d 755 (1964).

V. DETERMINATION OF COMPENSATION.

This statute provides compensation for the actual degree of permanent partial disability. Pickett v. Colo. State Hosp., 32 Colo. App. 282, 513 P.2d 228 (1973).

Basis of concept of compensable general permanent disability. The concept of a compensable general permanent disability is not based upon one's present functional disability, but rather on the injury's impact upon one's earning capacity, present or future. Dravo Corp. v. Indus. Comm'n, 40 Colo. App. 57, 569 P.2d 345 (1977).

An employee shall be deemed to be permanently partially disabled from the time he is so declared by the industrial commission, and his age at that time is the criterion which furnishes the basis upon which his life expectancy should be computed. Wierman v. Tunnell, 108 Colo. 544, 120 P.2d 638 (1941).

And time at which disability is to be determined is within discretion of industrial commission. Since there is no provision in the workmen's compensation act, which specifies the time at which disability is to be determined; this problem is left to the sound discretion of the commission. Wilson v. Sinclair, 109 Colo. 592, 128 P.2d 996 (1942).

In determining compensation for permanently disabled minors, the compensation scheme specified in § 8-42-102 takes precedence over the general compensation scheme for adults under this

section. *Horton v. Golden Animal Hosp.*, 879 P.2d 459 (Colo. App. 1994).

The maximum rate payable for medical impairment benefits for a permanently disabled minor is the maximum rate of temporary total disability allowed by § 8-42-105. *Ark. Valley Seeds, Inc. v. Indus. Claim Appeals Office*, 972 P.2d 695 (Colo. App. 1998).

Conclusion that an injured minor remains entitled to the benefit of the higher end "age factor" listed in this section as well as computation of benefits at the maximum temporary disability rate, is not inconsistent with the legislative intent of this section or § 8-42-102. *Ark. Valley Seeds, Inc. v. Indus. Claim Appeals Office*, 972 P.2d 695 (Colo. App. 1998).

Minor with scheduled disability is not entitled to aggregate amount of benefits allowed by statute as provided by § 8-42-102 (4). Since subsection (6) provides for a fixed rate of compensation for all scheduled disabilities, there is no disparity between the benefits paid to minors and to adults. *Williams v. Indus. Claim Appeals Office*, 932 P.2d 869 (Colo. App. 1997).

This section establishes a standard rate for computation of benefits, without reference to the average weekly wage and its inherent disparity of treatment between adults and minors. *De Giacomo v. Indus. Claim Appeals Office*, 817 P.2d 552 (Colo. App. 1991).

For purposes of the benefits provided employers by subsection (3), the relevant rate of pay is the amount paid by the

reemploying employer to the injured employee prior to the injury, without regard to income from other self-employment previously enjoyed by the employee prior to the injury. *Snyder Oil Co. v. Embree*, 862 P.2d 259 (Colo. 1993) (decided under law as it existed prior to the 1991 repeal of this section).

Post-injury earnings one factor to consider in determining a percentage disability figure. *Vail Assocs., Inc. v. West*, 661 P.2d 1187 (Colo. App. 1982), *aff'd*, 692 P.2d 1111 (Colo. 1984); *Smith v. Indus. Comm'n*, 735 P.2d 921 (Colo. App. 1986).

It was not error to consider the amount by which claimant's efforts subsequent to termination of employment increased his rental income where claimant spent a substantial amount of time managing and maintaining rental properties in order to maximize his rental income. *Smith v. Indus. Comm'n*, 735 P.2d 921 (Colo. App. 1986).

The term "loss of earning capacity" as contemplated by this section means the loss of the ability to earn, not simply lost wages. A workers' actual earnings following an industrial accident or occupational disease are relevant but not presumptive evidence of the workers' earning capacity. Nor is a claimant's loss of earnings due to injury or occupational disease dispositive of the amount of the claimant's entitlement to permanent partial disability benefits. Instead, such matters are merely individual factors to be considered in determining the existence of impaired earning capacity. *Hobbs v. Indus. Claim Appeals Office*, 804 P.2d 210 (Colo. App. 1990).

Loss of earning capacity is basis for benefits, however denominated. The purpose of the "medical impairment benefits" under subsection (8) is substantially the same as the purpose of the "permanent partial disability benefits" referenced in § 8-42-103 (1)(c)(I), i.e., to compensate for loss of earning capacity. Ray v. Indus. Claim Appeals Office, 920 P.2d 868 (Colo. App. 1996).

Benefits under subsection (8) are subject to offset pursuant to § 8-42-103. Ray v. Indus. Claim Appeals Office, 920 P.2d 868 (Colo. App. 1996).

Subsection (8) requires that payment of medical impairment benefits be based upon the temporary total disability rate that workers compensation claimant would have received if claimant had been temporarily and totally disabled for more than three working days, even if claimant had not lost any wages and had not actually received temporary disability benefits. Broadmoor Ins. Co. v. Indus. Claim Appeals Office, 939 P.2d 460 (Colo. App. 1996).

The express allowance in subsection (8)(b.5)(I) for a permanent impairment rating for an out-of-state claimant to be based solely on the review of a claimant's records does not require an in-person impairment rating for all in-state claimants. A doctor's failure to examine a claimant in person does not render the doctor's report finding of no impairment, or the final admission of liability premised on that report, invalid. Rosten v. Indus. Claim Appeals Office, 2023 COA 62, 536 P.3d 839.

Simply because this section limits the inquiry in determining disability to measurable medical impairment does not mean that awards made thereunder are unrelated to lost earning capacity. Waymire v. Indus. Claim Appeals Office, 924 P.2d 1168 (Colo. App. 1996).

Medical impairment benefits awarded under this section are a form of permanent partial disability benefits designed to compensate for lost earning capacity. Consequently, such benefits compensate for the same loss of future earning capacity as permanent total disability benefits. It is therefore improper to award contemporaneous medical impairment and total disability benefits. Waymire v. Indus. Claim Appeals Office, 924 P.2d 1168 (Colo. App. 1996).

Award for permanent partial disability cannot be made after death of employee. Employers' Mut. Ins. Co. v. Indus. Comm'n, 89 Colo. 475, 3 P.2d 1079 (1931).

Actual post-injury earnings do not always reflect worker's true earning capacity subsequent to his injury. Evans v. Aurora Elevator Co., 631 P.2d 1201 (Colo. App. 1981); Employers Mut. v. Eidson, 646 P.2d 959 (Colo. App. 1982); Ampex Corp. v. Indus. Comm'n, 699 P.2d 980 (Colo. App. 1985).

Award may be appropriate even with greater post-injury earnings. A permanent partial disability award may be appropriate even where post-injury earnings are greater than pre-injury earnings. Employers Mut. v. Eidson, 646 P.2d 959 (Colo. App. 1982);

Ampex Corp. v. Indus. Comm'n, 699 P.2d 980 (Colo. App. 1985).

Where a claimant produces evidence that his disability precludes him from pursuing his chosen occupation and excludes him from potentially available jobs, he is entitled to a disability award, even where he has obtained new employment at a higher salary. Vail Assocs. v. West, 661 P.2d 1187 (Colo. App. 1982), *aff'd*, 692 P.2d 1111 (Colo. 1984).

Although a rule which treats evidence of a post-injury increase in earnings as giving rise to a rebuttable presumption of earning capacity commensurate with actual earnings has been applied in several jurisdictions, the court declines to adopt it and adheres to the existing rule which allows the commission to consider post-injury earnings as one factor among several in ascertaining permanent partial disability. Vail Assocs., Inc. v. West, 692 P.2d 1111 (Colo. 1984).

Application of percentage as a working unit. Percentage as a working unit is not applied to the amount of compensation paid for the loss of the member, but is applied to the total sum which the workman would receive over his expected lifetime if he were permanently disabled. World of Sleep, Inc. v. Davis, 188 Colo. 443, 536 P.2d 34 (1975).

Reopening case for change in extent of disability. Under the proviso of this section at any time during the period for which compensation for permanent partial disability has been awarded, the industrial commission, upon petition of a party in interest, is required to reopen a case upon showing the disability of such injured

employee has undergone a change in extent or degree since the entry of the award. Byouk v. Indus. Comm'n, 106 Colo. 430, 105 P.2d 1087 (1940).

In view of prior cases, the beneficial purposes of the act, and the language of this section and § 8-53-113, the conclusion is inescapable that the general assembly has given the director authority to reopen a case within requisite time limitations regardless of how the case was resolved. Padilla v. Indus. Comm'n, 696 P.2d 273 (Colo. 1985) (decided prior to 1985 amendment to subsection (2)).

Denial of petition to reopen claim for additional award of permanent disability benefits and/or vocational rehabilitation was not abuse of discretion where claimant's condition of being unable to work had not changed since time of original award. Loucks v. Safeway Stores, 757 P.2d 639 (Colo. App. 1988).

Second award for increased disability. This section applies only when there has been a determination of total permanent or permanent partial disability, and when there is a supplemental or second award for increased permanent partial disability, it is to be based upon the employee's age as of the date when the supplemental award is entered. Lefkaras v. Moffat Coal Co., 113 Colo. 416, 158 P.2d 386 (1945).

Normal rate of pay, as used in repealed subsection (3)(a), is determined by the total weekly earnings rather than the hourly rate of pay. Miller v. Halliburton Servs., 689 P.2d 662 (Colo. App. 1984), *aff'd*, 720 P. 2d 571 (Colo. 1986).

VI. MAXIMUM MEDICAL IMPROVEMENT.

Procedures prescribed by subsection (8) do not result in any violation of procedural due process. The general assembly sought to reduce litigation over maximum medical improvement (MMI) and degree of impairment for purposes of workers' compensation claims by providing that, if either party disputes the finding of the treating physician as to MMI or degree of impairment, that party may require an independent medical examination (IME) be performed. If the parties cannot agree as to the physician to perform the IME, the director will select the physician, and that physician's opinion upon the issues involved can then be overcome only by clear and convincing evidence. These provisions are rationally related to the general assembly's goal of decreasing such litigation. Colo. AFL-CIO v. Donlon, 914 P.2d 396 (Colo. App. 1995).

However, due process of law guarantees are violated by subsection (8) when a fee requirement requires an indigent worker to prepay a fee before he can obtain either administrative or judicial review of an adverse decision of the employer-selected treating physician. Whiteside v. Smith, 67 P.3d 1240 (Colo. 2003).

Subsection (8)(b)(II), as amended in 1996, does not constitute retrospective legislation. Subsection (8)(b)(II) establishes procedures for the determination of MMI and the allocation of the burden of proof. Because the statute effects a change that is procedural, it may be applied retroactively.

Brownson-Rausin v. Indus. Claim Appeals Office, 131 P.3d 1172 (Colo. App. 2005).

The term "determination" in subsection (8)(b)(II) refers to a medical determination. Brownson-Rausin v. Indus. Claim Appeals Office, 131 P.3d 1172 (Colo. App. 2005).

An 18-month DIME physician is statutorily authorized to determine only MMI under subsection (8)(b)(II). Therefore, if he or she makes a determination of impairment as well, that determination carries no presumptive weight under the statute. Meza v. Indus. Claim Appeals Office, 2013 COA 71, 303 P.3d 158.

Subsection (8)(c) precludes an administrative law judge from considering causation or altering a treating physician's impairment rating when a statutory IME has not been performed. Egan v. Indus. Claim Appeals Office, 971 P.2d 664 (Colo. App. 1998).

Subsection (8)(b)(III) grants presumptive weight only to a DIME physician's opinion concerning MMI and permanent medical impairment; the provision does not require deference to a DIME physician's opinion as to causation. Yeutter v. Indus. Claim Appeals Office, 2019 COA 53, 487 P.3d 1007.

A claimant's agreement to accept the results of an IME as binding constitutes a waiver of procedural due process rights. Colo. AFL-CIO v. Donlon, 914 P.2d 396 (Colo. App. 1995).

The clear and convincing standard set forth in subsection (8) is satisfied by a showing that the truth of a contention is highly probable. *Askew v. Sears Roebuck & Co.*, 914 P.2d 416 (Colo. App. 1995), rev'd on other grounds, 927 P.2d 1333 (Colo. 1996).

Nothing in this section or in division of labor regulation limits a DIME physician who has provider and advisor contracts with employer's insurance company from performing an independent medical examination absent any direct or substantial relationship with the treating physician. Such a physician may be an "independent" medical examiner within the meaning of subsection (8)(c). *Benuishis v. Indus. Claim Appeals Office*, 195 P.3d 1142 (Colo. App. 2008).

Whether DIME physician has a conflict of interest is a question of fact. ALJ's findings regarding whether a DIME physician was laboring under an actual or apparent conflict of interest when performing claimant's independent medical examination will be upheld on appeal if supported by substantial evidence in the record. *Benuishis v. Indus. Claim Appeals Office*, 195 P.3d 1142 (Colo. App. 2008).

Date of maximum improvement determined compensable actual disability. Where claimant's permanent partial disability was two percent on the date of maximum improvement, this is the actual disability which she suffered and for which she is entitled to compensation. *Pickett v. Colo. State Hosp.*, 32 Colo. App. 282, 513 P.2d 228 (1973).

This section merely codified the already accepted practice of using "maximum medical improvement", or substantially similar expressions of the same concept, to determine when temporary disability ends and permanent disability begins. *Golden Animal Hosp. v. Horton*, 897 P.2d 833 (Colo. 1995).

Both MMI and need for further treatment to improve existing condition cannot exist together; claimant is either in need of further treatment to improve his existing conditions, thus making permanent disability award premature, or his condition has stabilized and issue of permanent disability must be determined. *Grover v. Indus. Comm'n*, 739 P.2d 900 (Colo. App. 1987).

Lump sum payments of PPD benefits less than \$10,000 are authorized by subsection (8)(d) and acceptance of a lump sum does not imply acceptance of employer's final admission of liability and does not constitute a settlement or waiver of the claimant's right to challenge the final admission of liability. *Leprino Foods Co. v. Indus. Claim Appeals Office*, 134 P.3d 475 (Colo. App. 2005).

Panel did not err in concluding that a finding of MMI from the authorized treating physician was a prerequisite to either party seeking another physician's evaluation. *Aren Design, Inc. v. Becerra*, 897 P.2d 902 (Colo. App. 1995).

Denial of and reimbursement for TTD benefits received after a claimant is deemed to have reached MMI is permitted. An independent medical

examiner may be authorized to determine whether an employee has reached MMI. If the examiner finds that an employee has reached MMI, that employee is no longer eligible for TTD benefits, and the cost of any such benefits paid out to the employee after the finding of MMI may then be offset against the employee's permanent partial disability benefits. *Brownson-Rausin v. Indus. Claim Appeals Office*, 131 P.3d 1172 (Colo. App. 2005).

An IME is required prior to any hearing disputing the validity of the authorized physician's finding of MMI. Because no IME was performed, to the extent claimant's request to change physicians was for purposes of obtaining treatment to further cure her injury, or to obtain reinstatement of temporary total disability benefits, the ALJ exceeded her jurisdiction and authority in granting the request. *Story v. Indus. Claim Appeals Office*, 910 P.2d 80 (Colo. App. 1995).

Absent a division-sponsored IME, an ALJ lacks jurisdiction to resolve a dispute concerning the validity of an authorized treating physician's finding of MMI. *Town of Ignacio v. Indus. Claim Appeals Office*, 70 P.3d 513 (Colo. App. 2002).

But when the issue is not the finding of MMI itself, a division-sponsored IME is not a prerequisite. A claimant who requested a change of physician based on alleged professional misconduct before being placed at MMI by that same physician was clearly not attempting to indirectly challenge the finding of MMI itself, therefore would not be required to undergo a

division-sponsored IME. *Ames v. Indus. Claim Appeals Office*, 89 P.3d 477 (Colo. App. 2003).

The general assembly expressly made the procedures used to determine MMI available in cases of scheduled and nonscheduled injuries. *Delaney v. Indus. Claim Appeals Office*, 30 P.3d 691 (Colo. App. 2000).

Whether the division-sponsored IME physician correctly applied the AMA Guides and whether the rating itself has been overcome are questions of fact for determination by the ALJ and not questions of law. *Wilson v. Indus. Claim Appeals Office*, 81 P.3d 1117 (Colo. App. 2003).

Clear and convincing proof that an employee was not at MMI is not required when the record, including the IME physician's report, supports an ALJ's finding that the report concluded that the employee was not at MMI. *Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

Where the authorized treating physician issues conflicting opinions concerning MMI, the ALJ may resolve the conflict without requiring the claimant to obtain an IME. *Blue Mesa Forest v. Lopez*, 928 P.2d 831 (Colo. App. 1996); *Mosley v. Indus. Claim Appeals Office*, 78 P.3d 1150 (Colo. App. 2003).

Once an ALJ concludes that an employer or an employer's insurer has overcome a DIME physician's MMI opinion, the ALJ may determine the claimant's MMI status and permanent

impairment rating as questions of fact.

There need not be a conflict between the authorized treating physician and the DIME physician for the ALJ to determine the claimant's MMI. If an ALJ holds that clear and convincing evidence disproves the division's independent medical opinion about MMI, the ALJ may set the claimant's MMI status and permanent impairment rating because they are questions of fact. *Destination Maternity v. Burren*, 2020 CO 41, 463 P.3d 266.

An IME physician's conclusion that a claimant's medical problems were components of claimant's overall impairment constitutes a part of the diagnostic assessment that comprises the IME process. As such, the conclusion must be given presumptive effect and can be overcome only by clear and convincing evidence. *Qual-Med, Inc. v. Indus. Claim Appeals Office*, 961 P.2d 590 (Colo. App. 1998); *Mosley v. Indus. Claim Appeals Office*, 78 P.3d 1150 (Colo. App. 2003); *Leprino Foods Co. v. Indus. Claim Appeals Office*, 134 P.3d 475 (Colo. App. 2005).

Whether the division-sponsored IME physician's rating has been overcome is a question of fact for determination by the ALJ. *Wackenhut Corp. v. Indus. Claim Appeals Office*, 17 P.3d 202 (Colo. App. 2000); *Mosley v. Indus. Claim Appeals Office*, 78 P.3d 1150 (Colo. App. 2003).

It is not incumbent on the claimant to timely request a follow-up division-sponsored IME to contest the authorized treating physician's second MMI determination if the claimant had previously

requested a division-sponsored IME to contest the authorized treating physician's initial determination of MMI. *Stefanski v. Indus. Claim Appeals Office*, 128 P.3d 282 (Colo. App. 2005), *aff'd* on other grounds, 147 P.3d 5 (Colo. 2006).

Once a claimant has successfully challenged a finding of MMI through the division independent medical examination process, that process remains open, such that when the authorized treating physician makes a second finding of MMI, the employer or insurer may not file a final admission of liability to close the case until they return the claimant to the IME for a follow-up examination and determination of MMI. *Williams v. Kunau*, 147 P.3d 33 (Colo. 2006); *Sanco Indus. v. Stefanski*, 147 P.3d 5 (Colo. 2006).

Employee's death did not trigger the provisions of subsection (8)(b) regarding MMI as a matter of law. The general assembly logically premised enactment of the IME procedure upon an assumption that the employee is alive to participate therein. Because employee was not at MMI when he died, the industrial claim appeals panel did not err in denying his dependents permanent partial disability benefits and penalties. *Dependents of Nunnally v. Wal-Mart Stores, Inc.*, 943 P.2d 26 (Colo. App. 1996).

VII. TERMINATION OF BENEFITS.

An award for initial permanent partial disability should terminate on the commencement date of a permanent total award. *Kehm v. Cont'l Grain*, 756 P.2d 381 (Colo. App. 1987).

Increased earnings. An increase in post-injury earnings is not presumptive evidence that claimant has not suffered a permanent impairment to earning capacity, but burden is on claimant to prove that such increase is

not a true indication of the absence of impaired earning capacity. *Rogers v. Indus. Claim Appeals Office*, 746 P.2d 565 (Colo. App. 1987).

8-42-107.2. Selection of independent medical examiner - procedure - time - allocation of costs - disclosures regarding physician relationships with insurers, self-insured employers, or claimants - rules - applicability.

(1) This section governs the selection of an independent medical examiner, also referred to in this section as an "IME", to resolve disputes arising under section 8-42-107.

(2) (a) (I) Except as otherwise provided in subsection (2)(a)(II) of this section, the time for selection of an IME commences as follows, depending on which party initiates the dispute:

(A) For the claimant, the time for selection of an IME commences with the date of service of a final admission of liability by the insurer or self-insured employer that includes an impairment rating issued in accordance with section 8-42-107.

(B) For the insurer or self-insured employer, the time for selection of an IME commences with the date on which the disputed finding or determination is mailed or physically delivered to the insurer or self-insured employer.

(II) If, as of the date on which the time for selection of an IME would otherwise commence, a medical condition is not yet ratable because of a provision in the medical treatment guidelines or in the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", the time for selection of an IME shall commence on the date on which an impairment rating is mailed or physically delivered.

(b) If any party disputes a finding or determination of the authorized treating physician, the party shall request the selection of an IME. The requesting party shall notify all other parties in writing of the request, on a form prescribed by the division by rule, and shall propose one or more acceptable candidates for the purpose of entering into negotiations for the selection of an IME. The notice and proposal is effective upon service to the division and to each of the other parties. Unless the notice and proposal are given within thirty days after the date of service of the final admission of liability or the date of service of the disputed finding or determination, as applicable pursuant to subsection (2)(a) of this section, the authorized treating physician's findings and determinations are binding on all parties and on the division.

(c) If the insurer or self-insured employer requests an IME and the examination is conducted before the insurer or self-insured employer admits liability pursuant to section 8-43-203 (2)(b),

the claimant may not request a second independent medical examination on that issue but may appeal the IME's decision, as set forth in section 8-43-203 (2)(b)(II).

(3) (a) (I) Upon receiving the requesting party's notice and proposal pursuant to subsection (2) of this section, the other parties have until the end of the thirtieth day after the date of service of the notice and proposal within which to negotiate and select an IME. If the parties agree on an IME on or before the thirtieth day, the requesting party shall promptly notify the IME in writing that the IME has been selected. If, within such time, the parties are unable to agree or the requesting party does not receive a response to the notice and proposal, the insurer or self-insured employer shall give written notice of the fact to the division within thirty days.

(II) The division shall then, within ten days after receiving written notice, select three physicians by a revolving selection process established by the division from the list of physicians maintained by the division. The division shall administer the list in a fashion that ensures that the names of candidates to serve as IME in each pending case remain confidential until the IME is selected. The director shall adopt rules to implement the process of selecting a panel of three physicians from which the parties may select a physician to conduct a division independent medical examination. The selection of a physician panel must be based on various factors, including, but not limited to, the designation by rule of the fields of specialization authorized to perform independent medical examinations for conditions listed under each medical treatment guideline and measures to prevent the over-utilization of physicians or specialists.

(III) The requesting party shall be given the opportunity to strike one of the three physicians from the list, followed by the opposing party who shall then be given the opportunity to strike one physician from the list. The remaining IME physician shall be designated by the division to conduct the IME. If one or neither party strikes a physician from the list, the division shall select the physician to conduct the IME from the remaining physicians on the list.

(b) Upon selection of the IME, the insurance carrier shall provide to the IME and all other parties a copy of all medical records in its possession relevant to the subject injury within fourteen days prior to the independent medical examination. If the insurance carrier or its representative fails to timely submit the medical records, the claimant may request that the division cancel the independent medical examination or the claimant may submit copies of all medical records relevant to the subject injury that the claimant has available within ten days prior to the independent medical examination, or as otherwise arranged by the division with the IME. If the claimant submits medical records, the defaulting party may supplement the records pursuant to rules of the division. This subsection (3)(b) shall not be construed to prohibit an independent medical examination from being rescheduled.

(c) Any supplemental medical records shall be prepared according to the rules of the division and shall be submitted to the IME and all other parties no later than seven days prior to the independent medical examination.

(d) (I) The IME shall neither contact any of the authorized treating physicians or any examining or reviewing physician nor request a claimant to undergo repeat testing when the testing results were valid and the IME has resolved any disparity in testing results.

(II) Subparagraph (I) of this paragraph (d), as enacted by Senate Bill 09-168, enacted in 2009, is declared to be procedural and was intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3.5) (a) Prior to making a determination to strike a physician from the list of IME physicians provided by the division in accordance with paragraph (a) of subsection (3) of this section, a party may request and shall be entitled to obtain and review a summary disclosure pertaining to any business, financial, employment, or advisory relationship between a listed physician, or any entity affiliated with the physician, and the insurer, self-insured employer, or claimant who is a party to the claim. The party shall not be required to make its determination to strike a physician from the list until he or she has received and has had a reasonable opportunity to review the summary disclosure.

(b) The director shall adopt rules as necessary to implement this subsection (3.5). At a minimum, the rules shall:

(I) Require physicians to disclose the requested business, financial, employment, or advisory relationship information in a summarized format;

(II) Detail the form and manner in which the summary disclosure is to be provided;

(III) Set parameters regarding the period within which a requesting party is allowed to review the summary disclosure prior to making a determination to strike a physician from the list; and

(IV) Prohibit a physician who fails to disclose the requested summarized information from conducting an independent medical examination until he or she complies with the request.

(4) (a) Upon receipt of the IME's report, the division has five business days to review the report and either:

(I) Issue a notice to all parties that the division has received the IME's report; or

(II) Notify the IME of any deficiencies in the report by letter and send copies to all parties.

(b) Upon notification of any deficiencies identified in the IME's report, the IME has twenty days to remedy the deficiencies and resubmit the report. After the report has been resubmitted, the division shall comply with paragraph (a) of this subsection (4). If the IME fails to timely respond to the notification of deficiencies, the division shall issue a notice that it has received the IME's report and the insurer or self-insured employer shall comply with paragraph (c) of this subsection (4).

(c) Within twenty days after the date of service of the division's notice that it has received the IME's report, the insurer or self-insured employer shall either file its admission of liability pursuant to section 8-43-203 or request a hearing before the division contesting one or more of the IME's findings or determinations contained in the report.

(5) (a) (I) The director shall promulgate rules consistent with this subsection (5) to determine the amount and allocation of costs to be paid by the parties for the independent medical examination.

(II) Except as provided in subsections (5)(a)(III) and (5)(b) of this section, the requesting party shall pay the cost of an independent medical examination. The requesting party shall advance the full base cost of the independent medical examination to the IME at least ten days before the appointed time of the examination.

(III) If there is a dispute regarding indigency or the amount or allocation of any costs to be paid, including the format, content, volume, relevance, or duplicative medical records submitted to the IME, a party may request a prehearing conference with the division to resolve the dispute. The determination of the cost allocation in excess of the full base cost must include consideration of the volume of medical records, the format and content of the IME packet, and any other considerations necessary to determine the allocation of the IME costs between the parties.

(b) A claimant who has established that he or she is indigent shall receive an independent medical examination without having to advance the cost to the independent medical examiner. The director of the division of workers' compensation shall promulgate rules to establish a procedure to determine indigence.

(6) This section was enacted by House Bill 98-1062, as enacted at the second regular session of the sixty-first general assembly, as a remedial statute and is procedural in nature. The purpose of this section is to improve and simplify remedies already existing for the enforcement of rights and the redress of injuries under the workers' compensation laws of Colorado. This section effected procedures related to the selection of an IME and shall be applicable to all open cases with a date of injury on or after July 1, 1991, for which a division IME has not been requested, pursuant to section 8-42-107.

Source: **L. 98:** Entire section added, p. 1427, § 1, effective August 5. **L. 99:** (3) amended and (6) added, p. 254, § 1, effective September 1. **L. 2003:** (3) and (5) amended, p. 1712, § 2, effective August 6. **L. 2007:** (3)(a) amended, p. 1472, § 3, effective May 30. **L. 2009:** (3)(d) added, (SB 09-168), ch. 184, p. 806, § 1, effective August 5. **L. 2010:** (3)(d) amended, (SB 10-163), ch. 66, p. 231, § 1, effective March 31; (3.5) added, (SB 10-011), ch. 302, p. 1431, § 1, effective July 1. **L. 2013:** (4) amended, (SB 13-249), ch. 267, p. 1408, § 1, effective August 7. **L. 2023:** (3)(b) and (5)(a) amended, (HB 23-1076), ch. 370, p. 2224, § 5, effective August 7. **L.**

2026: IP(2)(a)(I), (2)(a)(I)(A), (2)(b), (3)(a), (3)(b), and (4)(c) amended, (SB 26-186), ch. 315, p. 1846, § 4, effective August 12.

ANNOTATION

Law reviews. For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 32 Colo. Law. 97 (June 2003). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 32 Colo. Law. 113 (Oct. 2003). For article, "Failed Claim Closure: The Effect of Crigger on Workers' Compensation", see 44 Colo. Law. 47 (Jan. 2015).

This section does not limit an examining physician's assessment of MMI based on the number of body parts selected on the DIME form. When assessing whether a claimant is at MMI, a DIME physician may consider all relevant body parts, even if those body parts were not designated on the DIME form. Pietz v. Indus. Claim Appeals Office, 2024 COA 102, 560 P.3d 982.

Once a claimant has successfully challenged a finding of maximum medical improvement (MMI) through the division independent medical examination (DIME) process, that process remains open, such that when the authorized treating physician makes a second finding of MMI, the employer or insurer may not file a final admission of liability to close the case until they return the claimant to the IME for a follow-up examination and determination of MMI. Williams v. Kunau, 147 P.3d 33

(Colo. 2006); Sanco Indus. v. Stefanski, 147 P.3d 5 (Colo. 2006).

An employer is limited to the remedies provided in this section when an injured worker requests an IME pursuant to this section. An employer's contention that its first admission to liability prior to the request for an IME pursuant to this section satisfies the requirement of subsection (4) is in error and does not relieve the employer from responding to the IME report pursuant to subsection (4). City Market, Inc. v. Indus. Claim Appeals Office, 68 P.3d 601 (Colo. App. 2003).

Failure of an employer to respond to an IME report pursuant to subsection (4) subjects an employer to penalties pursuant to § 8-43-304 (1). City Market, Inc. v. Indus. Claim Appeals Office, 68 P.3d 601 (Colo. App. 2003).

An employer is precluded from challenging the IME physician's finding that claimant was not at MMI, including the IME physician's finding regarding the cause of claimant's symptoms because employer failed either to admit or contest liability within 30 days of the IME physician's report. Leprino Foods Co. v. Indus. Claim Appeals Office, 134 P.3d 475 (Colo. App. 2005).

A division-sponsored IME's "findings and determinations", as contemplated by

subsection (4)(c), do not include an IME's recommendation to convert a scheduled impairment to a whole person impairment, and the insurer and employer do not forfeit their right to challenge a claimant's request to convert his or her impairment even if the insurer and employer do not request a hearing on the issue of conversion within 20 days after the IME report. *Morris v. Indus. Claim Appeals Office*, 2020 COA 129, 479 P.3d 49.

Claimant does not waive right to request an IME by accepting a lump sum payment because claimant's note requesting lump sum payment contained no statement indicating that, by accepting the lump sum payment, she intended to surrender her rights to challenge the employer's final admission of liability. *Leprino Foods Co. v. Indus. Claim Appeals Office*, 134 P.3d 475 (Colo. App. 2005).

Further, there was no written agreement establishing a waiver, and the claimant in fact challenged the final admission of liability by filing an objection to it, together with a notice and proposal for the IME on the same date she received the lump sum payment. *Leprino Foods Co. v. Indus. Claim Appeals Office*, 134 P.3d 475 (Colo. App. 2005).

The 30-day period for requesting a DIME does not begin to run for claimants who obtained and objected to a final admission of liability prior to the effective date of subsection (6) until such claimants receive notice of the 1999 amendment from the insurer or employer. *Lobato v.*

Indus. Claim Appeals Office, 105 P.3d 220 (Colo. App. 2005).

Under the plain language of subsection (6), a claimant is not required to file a notice and proposal to select another division-sponsored IME if he or she has previously requested a division-sponsored IME to contest an authorized treating physician's initial determination of maximum medical improvement. *Stefanski v. Indus. Claim Appeals Office*, 128 P.3d 282 (Colo. App. 2005), *aff'd* on other grounds, 147 P.3d 5 (Colo. 2006).

When an employer requests an independent medical examination but then timely cancels the request pursuant to the department's rules after the treating physician reduced the original impairment rating, the employer's final admission of liability based on the amended impairment rating is effective, and the original impairment rating is no longer at issue. *Montoya v. Indus. Claim Appeals Office*, 203 P.3d 620 (Colo. App. 2008).

Employer's failure to initiate the DIME process to challenge the authorized treating physician's findings does not make the physician's opinion that the claimant sustained a work-related injury binding. The statutory scheme grants no authority to the physician to determine causation as it pertains to compensability, therefore, the physician's findings and determinations are inconsequential if causation has not been proved. *Eller v. Indus. Claim Appeals Office*, 224 P.3d 397 (Colo. App. 2009).

This section, when read in conjunction with § 8-42-107 (8), makes it clear that the statutes contemplate a challenge through the DIME process only to determinations made by the authorized treating physician

concerning MMI and impairment, therefore, this section is not unconstitutionally vague. *Eller v. Indus. Claim Appeals Office*, 224 P.3d 397 (Colo. App. 2009).

8-42-107.5. Limits on temporary disability payments and permanent partial disability payments.

(1) A claimant whose impairment rating is nineteen percent or less may not receive more than one hundred eighty-five thousand dollars from combined temporary disability payments and permanent partial disability payments. A claimant whose impairment rating is greater than nineteen percent may not receive more than three hundred thousand dollars from combined temporary disability payments and permanent partial disability payments.

(2) For the purposes of this section, any mental impairment rating shall be combined with the physical impairment rating to establish a claimant's impairment rating for determining the applicable cap. For injuries sustained on and after January 1, 2025, the director shall adjust these limits on the amount of compensation for combined temporary disability payments and permanent partial disability payments on July 1, 2025, and each July 1 thereafter, by the percentage of the adjustment made by the director to the state average weekly wage pursuant to section 8-47-106.

Source: **L. 91:** Entire section added, p. 1311, § 16, effective July 1. **L. 2005:** Entire section amended, p. 1505, § 1, effective January 1, 2006. **L. 2009:** Entire section amended, (SB 09-243), ch. 269, p. 1223, § 4, effective July 1. **L. 2010:** Entire section amended, (SB 10-187), ch. 310, p. 1459, § 7, effective January 1, 2011. **L. 2021:** Entire section amended, (HB 21-1050), ch. 384, p. 2571, § 5, effective September 7. **L. 2024:** Entire section amended, (HB 24-1220), ch. 389, p. 2693, § 3, effective January 1, 2025.

ANNOTATION

Given that the general purpose of temporary and permanent benefits is to compensate for a present or future possible wage loss, there is no improper discrimination that results from the placing of a limit upon the total benefits, both temporary and permanent, to be received.

Colo. AFL-CIO v. Donlon, 914 P.2d 396 (Colo. App. 1995).

Applicability of this section can only be determined if two conditions are met: (1) The claimant reaches maximum medical improvement, and (2) the claimant's medical

impairment rating is established. Donald B. Murphy Contractors v. Indus. Claim Appeals Office, 916 P.2d 611 (Colo. App. 1995).

The cap on the receipt of benefits imposed by this section does not apply so long as a claimant is entitled to receive temporary total disability benefits under § 8-42-105 (3). The receipt of such benefits is not an overpayment, and there is no duty to repay them. UAL v. Indus. Claim Appeals Office of Colo., 2013 COA 48, 312 P.3d 235.

Neither this section nor § 8-43-303 addresses the situation of further temporary total disability benefits being awarded after the limit on combined temporary total and permanent partial benefits has been paid. But in view of underlying policies, in this situation the employer should be entitled to offset any permanent partial disability benefits paid against temporary total disability benefits. Donald B. Murphy Contractors v. Indus. Claim Appeals Office, 916 P.2d 611 (Colo. App. 1995).

General assembly clearly intended to require employers to continue paying benefits without application of the cap until such time as a claimant reaches MMI. Leprino Foods Co. v. Indus. Claim Appeals Office, 134 P.3d 475 (Colo. App. 2005).

Claimant is not entitled to additional temporary total disability benefits for the period between the date of the first determination of maximum medical improvement and the date the claimant returned to work even though a second independent medical examination physician

opined the claimant did not reach maximum medical improvement until a date following the claimant's return to work when both maximum medical improvement ratings were less than 25 percent. The possibility that events may have unfolded differently does not establish a right to an exemption from the \$60,000 cap resulting in an overpayment when the final rating was less than 25 percent. Rogan v. Indus. Claim Appeals Office, 91 P.3d 414 (Colo. App. 2003).

In construing that § 8-41-301 (2)(b) meant that award for medical impairment benefits is limited but that award for temporary disability benefits is not, the court noted that combined amount of temporary disability benefits and permanent partial disability benefits was limited by this section. City of Thornton v. Replogle, 873 P.2d 30 (Colo. App. 1993).

The plain language of this section shows there is no exception, for purposes of calculating the cap, for temporary disability benefits paid on account of vocational rehabilitation. Grogan v. Lutheran Medical Center, Inc., 950 P.2d 690 (Colo. App. 1997).

The mental impairment rating cannot be combined with the physical impairment rating for purposes of exceeding the benefit cap applicable to an impairment rating of 25 percent or less. Dillard v. Indus. Claim Appeals Office, 121 P.3d 301 (Colo. App. 2005), aff'd, 134 P.3d 407 (Colo. 2006).

In determining the relationship between this section and § 8-42-104 (5)(a),

the statutory disability cap should be determined not by combining but by separately calculating the "impairment

ratings" for each injury. Browne v. Indus. Claim Appeals Office, 2021 COA 83, 495 P.3d 974.

8-42-107.6. Premium dividend for employing injured employees.

The commissioner of insurance shall include within the premium dividends specified in rules and regulations promulgated pursuant to section 10-4-408 (5), C.R.S., a premium dividend of up to ten percent if an employer reemploys injured employees at their preinjury wages including any wage increases to which such employees would have been entitled had the employee not been injured. The total amount of the premium dividend shall be determined on a pro rata basis, taking into account the total number of employees injured during the period of time the insurance policy was in effect and the total number of injured employees who have sustained permanent partial disability as a result of their injuries and who have been rehired by such employer.

Source: L. 91: Entire section added, p. 1311, § 17, effective July 1.

8-42-108. Disfigurement - additional compensation.

(1) If an employee is seriously, permanently disfigured about the head, face, or parts of the body normally exposed to public view, in addition to all other compensation benefits provided in this article and except as provided in subsection (2) of this section, the director may allow compensation not to exceed four thousand dollars to the employee who suffers such disfigurement.

(2) If an employee sustains any of the following disfigurements, the director may allow up to eight thousand dollars as compensation to the employee in addition to all other compensation benefits provided in this article other than compensation allowed under subsection (1) of this section:

- (a) Extensive facial scars or facial burn scars;
- (b) Extensive body scars or burn scars; or
- (c) Stumps due to loss or partial loss of limbs.

(3) The director shall adjust the limits on the amount of compensation for disfigurement specified in this section on July 1, 2008, and each July 1 thereafter by the percentage of adjustment made by the director to the state average weekly wage pursuant to section 8-47-106.

Source: L. 90: Entire article R&RE, p. 493, § 1, effective July 1. L. 2007: Entire section amended, p. 640, § 2, effective July 1.

Editor's note: This section is similar to former § 8-51-105 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 174, Session Laws of Colorado 2007.

ANNOTATION

Law reviews. For article, "Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980).

Annotator's note. Since § 8-42-108 is similar to § 8-51-105 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Remedy under this section is not exclusive and an individual who suffers a cosmetic deformity to the face can receive benefits under both this section and § 8-42-107 because such a deformity can be classified as a functional medical impairment and rated accordingly. *Gonzales v. Advanced Component Sys.*, 949 P.2d 569 (Colo. 1997).

The term "public", as used in this section, means accessible to or shared by all members of the community. *Twilight Jones Lounge v. Showers*, 732 P.2d 1230 (Colo. App. 1986).

A disfigurement is an observable impairment of the natural appearance of a person. *Arkin v. Indus. Comm'n*, 145 Colo. 463, 358 P.2d 879 (1961).

And the loss of three upper front teeth is a disfigurement for which the workmen's compensation act provides compensation. *Arkin v. Indus. Comm'n*, 145 Colo. 463, 358 P.2d 879 (1961).

Furthermore, a claimant's resort to an artificial device to mask the blemish does not alter the fact of disfigurement. *Arkin v. Indus. Comm'n*, 145 Colo. 463, 358 P.2d 879 (1961).

Disfigurement award for scar on abdominal area was proper as the abdominal area is a part of the body normally exposed to public view. *Twilight Jones Lounge v. Showers*, 732 P.2d 1230 (Colo. App. 1986).

Fingers are distal extensions of the upper limb; therefore, the stump of a partially amputated finger constitutes a disfigurement under this section. *Leffler v.*

Indus. Claim Appeals Office, 252 P.3d 50 (Colo. App. 2010).

The earning capacity principle is of no great significance where disfigurement results from an injury. The very meagerness of the ultimate award allowable for head or facial disfigurement compels the construction that the right to compensation for serious head or facial disfigurement is not dependent on diminution of earning

capacity. *Arkin v. Indus. Comm'n*, 145 Colo. 463, 358 P.2d 879 (1961).

The method of determining disability provided by § 8-51-108 cannot be used when the injury is one appearing in §§ 8-51-104 to 8-51-107 inclusive, because by its specific terms such injuries are excluded. *Hawkeye-Security Ins. Co. v. Tupper*, 152 Colo. 12, 380 P.2d 31 (1963).

8-42-109. Added compensation for additional injuries.

Where an injured employee sustains an injury covered by sections 8-42-107, 8-42-108, and 8-46-101 but in addition thereto receives other injuries which are sufficient in their nature to alone cause temporary total disability, said employee shall receive, in addition to the amounts specified in said schedule, compensation for temporary total disability as long as said disability is found to exist as a result of said other injuries.

Source: L. 90: Entire article R&RE, p. 493, § 1, effective July 1.

Editor's note: This section is similar to former § 8-51-109 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-42-109 is similar to § 8-51-109 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Applied in *Employers' Mut. Ins. Co v. Indus. Comm'n*, 89 Colo. 475, 3 P.2d 1079 (1935); *Indus. Comm'n v. Saffells*, 150 Colo. 41, 371 P.2d 438 (1962).

8-42-110. Permanent partial disability - how determined. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 493, § 1, effective July 1. **L. 91:** Entire section repealed, p. 1312, § 18, effective July 1.

Editor's note: (1) Before its repeal in 1991, this section was similar to former § 8-51-108 as it existed prior to 1990.

(2) The current provisions pertaining to the determination of permanent partial disability are contained in § 8-42-107.

8-42-111. Award for permanent total disability.

(1) In cases of permanent total disability, the award shall be sixty-six and two-thirds percent of the average weekly wages of the injured employee and shall continue until death of such person so totally disabled but not in excess of the weekly maximum benefits specified in this article for injuries causing temporary total disability.

(2) (Deleted by amendment, L. 91, p. 1313, § 19, effective July 1, 1991.)

(3) A disabled employee capable of rehabilitation which would enable the employee to earn any wages in the same or other employment, who refuses an offer of employment by the same or other employer or an offer of vocational rehabilitation paid for by the employer shall not be awarded permanent total disability.

(4) For injuries occurring on and after July 1, 1991, and before July 1, 1994, the average weekly wage of injured employees used for computing compensation paid for awards pursuant to subsection (1) of this section shall be increased by two percent per year effective July 1 of each year, and such increased compensation shall be payable for the subsequent twelve months.

(5) Repealed.

Source: **L. 90:** Entire article R&RE, p. 494, § 1, effective July 1. **L. 91:** (2) and (3) amended and (4) and (5) added, p. 1313, § 19, effective July 1. **L. 94:** (4) and (5) amended, p. 2002, § 5, effective July 1. **L. 2009:** (5) repealed, (SB 09-070), ch. 49, p. 175, § 2, effective August 5.

Editor's note: This section is similar to former § 8-51-107 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Time, Equity and the Average Weekly Wage", see 23 Colo. Law. 1831 (1994). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Cases," see 25 Colo. Law. 67 (July 1996). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 117 (Nov. 2004).

Annotator's note. (1) Since § 8-42-111 is similar to § 8-51-107 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the director of the division of labor with powers formerly exercised by the industrial commission or were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission.

Subsection (5) is constitutionally arbitrary. Romero v. Indus. Claim Appeals Office, 902 P.2d 896 (Colo. App. 1995), aff'd, 912 P.2d 62 (Colo. 1996).

Rational relationship standard is proper standard to apply in determining whether classifications created by statute based on age and degree of disability are valid under the state constitution. Romero v. Indus. Claim Appeals Office, 902 P.2d 896 (Colo. App. 1995), aff'd, 912 P.2d 62 (Colo. 1996).

COLA provision in subsection (4) may be given effect even though the age cap in subsection (4) was declared invalid. Montezuma Well Serv., Inc. v. Indus. Claim Appeals Office, 928 P.2d 796 (Colo. App. 1996).

Average weekly wage, as computed under subsection (1), shall become the claimant's average weekly wage for purposes of calculating compensation, as well as calculating the two percent COLA increase under subsection (4), in cases where the earned average weekly wage entitles a claimant to the maximum weekly compensation rate computed at the time of the injury. Guido v. Indus. Claim Appeals Office, 100 P.3d 575 (Colo. App. 2004).

COLA adjustment is not subject to the maximum benefit cap; the two provisions being in irreconcilable conflict, the latter-enacted provision must be given full effect. Salazar v. Indus. Claim Appeals Office, 10 P.3d 666 (Colo. App. 2000).

Industrial commission was vested with wide discretion. In determining the extent or degree of disability of an injured workman upon the facts of each case, it is axiomatic that the commission was vested with the widest possible discretion with the exercise of which the courts will not interfere. Nat'l Fuel Co. v. Arnold, 121 Colo. 220, 214 P.2d 784 (1950).

The administrative law judge has broad discretion in determining permanent total disability and may consider the same statutory factors used in determining permanent partial disability, including the manifest weight of the

evidence and the claimant's general physical condition. *Drywall Prod. v. Constuble*, 832 P.2d 957 (Colo. App. 1991).

Legislative intent. Since this section provides that "the loss of both hands or both arms or both feet or both legs or both eyes or of any two thereof, shall prima facie constitute total and permanent disability", it is evident that the general assembly, in using the expression, did not have in mind a condition of helpless paralysis reducing bodily functions to the minimum essential for the maintenance of a mere spark of life. *New York Indem. Co. v. Indus. Comm'n*, 86 Colo. 364, 281 P. 740 (1929).

Losses constituting total permanent disability. Amputation of the right arm near the elbow and a 90 percent loss of the use of the left constitutes total permanent disability as that term is used in this section. *New York Indem. Co. v. Indus. Comm'n*, 86 Colo. 364, 281 P. 740 (1929).

Where a claimant suffers permanent or temporary total disability, compensation is based upon a fixed percentage of his average weekly wage. *State Comp. Ins. Fund v. Lyttle*, 151 Colo. 590, 380 P.2d 62 (1963).

In situations covered by this statute, the subsequent employer is not liable for the degree of permanent partial disability sustained by the subsequent injury; rather, the employer is liable for the portion of the permanent total disability that is attributable to the subsequent injury. *Subsequent Injury Fund v. Gallegos*, 746 P.2d 71 (Colo. App. 1987).

Claimant not entitled to permanent total disability benefits where occupational injuries were not significant cause of disability and claimant remained disabled because of nonoccupational factors. *Seifried v. Indus. Comm'n*, 736 P.2d 1262 (Colo. App. 1986).

Subsection (3) does not become applicable until there is a determination that a totally disabled claimant refused an employer's offer of vocational rehabilitation and unless such an offer is made and the claimant refuses it, the claimant is entitled to full payment. *Drywall Prod. v. Constuble*, 832 P.2d 957 (Colo. App. 1991).

But a claimant has the burden of establishing his right to compensation benefits. *Indus. Comm'n v. Ewing*, 160 Colo. 503, 418 P.2d 296 (1966).

Partial employment secured by employee himself is not within the proviso. *New York Indem. Co. v. Indus. Comm'n*, 86 Colo. 364, 281 P. 740 (1929).

For this promotes justice because if one be totally and permanently disabled he ought not be penalized for obtaining some trivial and unusual employment, or have the door of hope and ambition slammed in his face by being forbidden, on pain of having a portion of his meager sustenance withheld, to make any effort to add thereto. One may be totally disabled for all practical purposes of competing for remunerative employment in any general field of human endeavor and yet be able to obtain occasional employment under rare conditions and at small remuneration. The

claimant's status remains unaffected thereby unless the employment be specifically covered by the exception under this section. *New York Indem. Co. v. Indus. Comm'n*, 86 Colo. 364, 281 P. 740 (1929); *Rio Grande Motor Way v. De Merschman*, 100 Colo. 421, 68 P.2d 446 (1937); *Nat'l Fuel Co. v. Arnold*, 121 Colo. 220, 214 P.2d 784 (1950); *New Jersey Zinc Co. v. Indus. Comm'n*, 165 Colo. 482, 440 P.2d 284 (1968).

But compensation benefits may be reduced where the employer offers his injured employee "suitable employment". *Indus. Comm'n v. Ewing*, 160 Colo. 503, 418 P.2d 296 (1966).

However, the employer has the burden of showing the "suitability" of any employment which he offers or obtains for his permanently and totally disabled employee. *Indus. Comm'n v. Ewing*, 160 Colo. 503, 418 P.2d 296 (1966).

And the fact that a "permanently and totally disabled" person may perform a given task does not necessarily mean that such employment is "suitable". *Indus. Comm'n v. Ewing*, 160 Colo. 503, 418 P.2d 296 (1966).

But where director finds employment "suitable" court may not review. Where the director has found that the employment offered the claimant was suitable, and that it was work which he could perform, a district court may not review the findings made by the director and substitute its conclusions for those of the director. *Indus. Comm'n v. Ewing*, 174 Colo. 133, 482 P.2d 981 (1971).

Functional disability of injured workman, compared with that of a normal man, does not control in fixing compensable status, since the term "disability" means industrial disability of loss of earning capacity and not mere functional disability. *Byouk v. Indus. Comm'n*, 106 Colo. 430, 105 P.2d 1087 (1940).

Classifications created by subsection (5) based on age and degree of disability have no reasonable relationship to the purpose the statute is allegedly aimed at achieving, i.e., to prevent receipt of duplicative benefits and the section, therefore, violates equal protection requirements. *Romero v. Indus. Claim Appeals Office*, 902 P.2d 896 (Colo. App. 1995), *aff'd*, 912 P.2d 62 (Colo. 1996); *Colo. AFL-CIO v. Donlon*, 914 P.2d 396 (Colo. App. 1995).

Unless an employer offers a claimant vocational rehabilitation and the claimant refuses it, the claimant is entitled to full payment of permanent total disability benefits. *Drywall Prod. v. Constuble*, 832 P.2d 957 (Colo. App. 1991).

Neurotic mental disability is as real as any other disability and, in the absence of evidence of malingering, is as much a personal injury. *Casa Bonita Restaurant v. Indus. Comm'n*, 624 P.2d 1340 (Colo. App. 1981).

Commission entitled to look to claimant's mental ability. The industrial commission had the right to look beyond claimant's physical impairments to her mental ability, including mental impairment, in determining the issue of permanent total

disability. *Casa Bonita Restaurant v. Indus. Comm'n*, 624 P.2d 1340 (Colo. App. 1981).

The effect of § 8-51-106 (now §§ 8-46-101 and 8-46-102) is to provide a scheme for apportioning the permanent total disability to which a claimant may be entitled under subsection (1) of this section. *McGrath v. Indus. Comm'n*, 708 P.2d 1382 (Colo. App. 1985); *Subsequent Injury Fund v. Gallegos*, 746 P.2d 71 (Colo. App. 1987).

Percentage of disability from a previous injury need not be reduced from permanent total disability benefits. Where injured worker suffered previous injuries that cumulatively resulted in permanent total disability, the appellate court did not err in not offsetting the percentage of disability attributable to the previous injuries. *United Airlines v. Indus. Claim Appeals Office*, 993 P.2d 1152 (Colo. 2000).

Award for permanent disability held authorized. *Wilson v. Sinclair*, 109 Colo. 592, 128 P.2d 996 (1942).

Record fully supported award of permanent total disability benefits where ALJ determined that claimant was unable to perform any work that he was capable of performing before his injury and the medical providers recommended vocational rehabilitation for claimant, which employer refused. *Drywall Prod. v. Constuble*, 832 P.2d 957 (Colo. App. 1991).

Applied in *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 88 Colo. 573, 298 P. 955 (1931); *Bellendir v. Kezer*, 648 P.2d 645 (Colo. 1982). *McGrath v. Indus. Comm'n*, 708 P.2d 1382 (Colo. App. 1985).

8-42-112. Acts of employees reducing compensation.

(1) The compensation provided for in articles 40 to 47 of this title shall be reduced fifty percent:

(a) Where injury is caused by the willful failure of the employee to use safety devices provided by the employer;

(b) Where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee; or

(c) (Deleted by amendment, L. 99, p. 581, § 2, effective July 1, 1999.)

(d) Where the employee willfully misleads an employer concerning the employee's physical ability to perform the job, and the employee is subsequently injured on the job as a result of the physical ability about which the employee willfully misled the employer. Notwithstanding any other provisions of articles 40 to 47 of this title, the provisions of this paragraph (d) shall apply in addition to any other penalty that may be imposed under section 8-43-402.

(2) In the event the claimant or dependent is receiving periodic disability benefits for which a reduction in Colorado workers' compensation benefits has been made pursuant to section 8-42-103, the fifty percent reduction provided for in subsection (1) of this section shall be computed according to the rate of benefits received by the claimant or dependent after, and not before, such other reduction has been made.

(3) An admission of liability reducing compensation under this section must include a statement by a representative of the employer listing the specific facts on which the reduction is based.

(4) If the insurer or self-insured employer admits liability for the claim, any party may request an expedited hearing on the issue of whether the employer or insurer may reduce compensation under this section if the application for hearing is filed within forty-five days after the date of the admission reducing compensation under this section. The director shall set any expedited matter for hearing within sixty days after the date of the application. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If the party elects not to request an expedited hearing under this subsection (4), the time schedule for hearing the matter is as set forth in section 8-43-209.

(5) Nothing in this section limits the right of a party to submit evidence at a hearing scheduled under this section or section 8-43-209.

(6) Nothing in this section precludes a party from requesting a hearing pursuant to the time schedule set forth in section 8-43-209.

Source: **L. 90:** Entire article R&RE, p. 494, § 1, effective July 1. **L. 91:** (2) added, p. 1351, § 3, effective May 29. **L. 99:** (1) amended, p. 581, § 2, effective July 1; (1)(d) added, p. 406, § 1, effective September 1. **L. 2016:** (3) to (6) added, (SB 16-217), ch. 272, p. 1127, § 2, effective July 1.

Editor's note: This section is similar to former § 8-52-104 as it existed prior to 1990.

Cross references: For the legislative declaration in SB 16-217, see section 1 of chapter 272, Session Laws of Colorado 2016.

ANNOTATION

I. General Consideration.

II. Violation of Safety Rules.

III. Injury Resulting from Intoxication.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Enterprise Liability Theory of Torts", see 47 U. Colo. L. Rev. 153 (1976).

Annotator's note. (1) Since § 8-42-112 is similar to § 8-52-104 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred some of its powers, duties, and functions under this section to the director of the division of labor.

Abolished defenses not affected. This section has nothing to do with, and does not restore, the fellow servant rule, doctrine of assumption of risk or contributory negligence, abolished by other enactments. *Stockdale v. Indus. Comm'n*, 76 Colo. 494, 232 P. 669 (1925).

This section applies to claims based upon injuries, as well as to death claims. *Indus. Comm'n v. Funk*, 68 Colo. 467, 191 P. 125 (1920); *Stockdale v. Indus. Comm'n*, 76 Colo. 494, 232 P. 669 (1925); *Bennett Props. Co. v. Indus. Comm'n*, 165 Colo. 135, 437 P.2d 548 (1968); *Mohawk Rubber Co. v. Claimants in re Death of Cribbs*, 165 Colo. 526, 440 P.2d 785 (1968); *Conn v. Conn*, 167 Colo. 177, 446 P.2d 224 (1968).

However, while workmen's compensation laws are construed liberally in favor of the workmen, they are not to be so narrowly construed as to fasten full liability upon an employer when the worker becomes careless or indifferent in his conduct while acting within his employment. *Indus. Comm'n v. Golden Cycle Corp.*, 126 Colo. 68, 246 P.2d 902 (1952).

Deduction of federal death benefits. Federal death benefits are to be deducted from the aggregate benefits payable for death under § 8-50-103 before the amount of compensation is reduced by 50 percent if the employee engaged in conduct proscribed by this section. *Cline v. Indus. Comm'n*, 43 Colo. App. 123, 599 P.2d 973 (1979).

Applied in *Deterts v. Times Publ'g Co.*, 38 Colo. App. 48, 552 P.2d 1033 (1976).

II. VIOLATION OF SAFETY RULES.

This section applies only where the employer has adopted reasonable safety rules. *Clayton Coal Co. v. De Santis*, 95 Colo. 332, 35 P.2d 492 (1934).

And violation of a safety rule does not bar recovery, but the amount of the recovery is based upon the circumstances under which a safety rule is violated. *Indus. Comm'n v. Golden Cycle Corp.*, 126 Colo. 68, 246 P.2d 902 (1952).

But a wilful violation, while not defeating compensation, does reduce it by 50 percent. *Indus. Comm'n v. Funk*, 68 Colo. 467, 191 P. 125 (1920); *McCulloch v. Indus. Comm'n*, 109 Colo. 123, 123 P.2d 414 (1942); *Indus. Comm'n v. Golden Cycle*

Corp., 126 Colo. 68, 246 P.2d 902 (1952); Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702, (1959).

And where compensation is increased 50 percent for failure of employer to carry insurance, deduction for violation of the safety rule is to be made after the addition of the 50 percent for failure to insure. McKune v. Indus. Comm'n, 94 Colo. 523, 31 P.2d 322 (1934).

The word "wilful" does not connote a bad purpose. Stockdale v. Indus. Comm'n, 76 Colo. 494, 232 P. 669 (1925).

The word "wilful" in this section must be given a reasonable interpretation in accord with the objective to be attained by this section. Johnson v. Denver Tramway Corp., 115 Colo. 214, 171 P.2d 410 (1946).

And the meaning of the word "wilful" is "with deliberate intent". If the employee knows of the rule and yet intentionally does the forbidden thing he has "wilfully failed to obey" the rule. Stockdale v. Indus. Comm'n, 76 Colo. 494, 232 P. 669 (1925); Johnson v. Denver Tramway Corp., 115 Colo. 214, 171 P.2d 410 (1946); Bennett Props. Co. v. Indus. Comm'n, 165 Colo. 135, 437 P.2d 548 (1968).

Where failure to obey orders may have been the result of carelessness, negligence, forgetfulness, remissness, or oversight, such failure would not necessarily be "wilful failure" because any of the causes might occur without a "deliberate intent" on the part of decedent and would not of itself establish a "wilful failure". Johnson v.

Denver Tramway Corp., 115 Colo. 214, 171 P.2d 410 (1946).

But if the employee knows the rule, and yet intentionally does the forbidden thing, he has "wilfully failed to obey" the rule. McCulloch v. Indus. Comm'n, 109 Colo. 123, 123 P.2d 414 (1942); Indus. Comm'n v. Golden Cycle Corp., 126 Colo. 68, 246 P.2d 902 (1952); Bennett Props. Co. v. Indus. Comm'n, 165 Colo. 135, 437 P.2d 548 (1968).

And it is not necessary for the employer to show that the employee, having the rule in mind, determined to break it; it is enough to show that, knowing the rule, he intentionally performed the forbidden act. Stockdale v. Indus. Comm'n, 76 Colo. 494, 232 P. 669 (1925); Bennett Props. Co. v. Indus. Comm'n, 165 Colo. 135, 437 P.2d 548 (1968).

Since employee had a plausible purpose to explain why he violated a safety rule by removing his rubber glove when working on high voltage lines, so that he could operate employer's faulty equipment, his award should not have been reduced by 50%. City of Las Animas v. Maupin, 804 P.2d 285 (Colo. App. 1990).

However, the employer has the burden of establishing that employee's death was result of "wilful failure" to obey a reasonable rule. Johnson v. Denver Tramway Corp., 115 Colo. 214, 171 P.2d 410 (1946).

It is generally held that oral warnings, prohibitions, and directions meet the safety requirement for the protection of

both employer and employee if given by someone generally in authority and known to be heard and understood by the employee. *Indus. Comm'n v. Golden Cycle Corp.*, 126 Colo. 68, 246 P.2d 902 (1952); *Bennett Props. Co. v. Indus. Comm'n*, 165 Colo. 135, 437 P.2d 548 (1968).

For warnings, numerously given, coupled with the presumption of common sense on the part of claimant obviated the necessity of the posting of a safety rule concerning the existing dangerous condition. *McCullough v. Indus. Comm'n*, 109 Colo. 123, 123 Colo. 414 (1942); *Indus. Comm'n v. Golden Cycle Corp.*, 126 Colo. 68, 246 P.2d 902 (1952); *Bennett Props. Co. v. Indus. Comm'n*, 165 Colo. 135, 437 P.2d 548 (1968).

And orally forbidding employees to use a bridge is sufficient to constitute a safety rule under the provisions of this section. *Stockdale v. Indus. Comm'n*, 76 Colo. 494, 232 P. 669 (1925). See *Indus. Comm'n v. Funk*, 68 Colo. 467, 191 P. 125 (1920).

As is oral direction to wear safety goggles. *McCulloch v. Indus. Comm'n*, 109 Colo. 123, 123 P.2d 414 (1942).

So also is an order not to work under certain conditions. *Indus. Comm'n v. Funk*, 68 Colo. 467, 191 P. 125 (1920).

But casual conversation does not amount to adoption of rule. *McNeil Coal Corp. v. Indus. Comm'n*, 105 Colo. 263, 96 P.2d 889 (1939).

When republication of order unnecessary. Where employees were forbidden to cross a bridge with teams,

attempted repairs to the bridge by third party did not necessitate republishing the order. *Stockdale v. Indus. Comm'n*, 76 Colo. 494, 232 P. 669 (1925).

But failure to bring existence of safety rule home to employee. Where the existence of safety rule forbidding employees to jump on moving trucks or to ride on trucks had never been brought home to employee, it was held that where employee was crushed to death beneath moving truck he was attempting to jump on, the director was justified in declining to find that deceased had violated a reasonable safety rule which would have the effect of diminishing the award by one-half. *Pac. Employers Ins. Co. v. Kirkpatrick*, 111 Colo. 470, 143 P.2d 267 (1943).

Violation of state statute is immaterial where employer has adopted no safety rule. *Clayton Coal Co. v. De Santis*, 95 Colo. 332, 35 P.2d 492 (1934).

The statute provides a penalty for misconduct of employees, not a defense for employers, but the penalty does not have to be applied to all aspects of recovery for the injured employee. The intent of the statute is not to apportion negligence but to deter misconduct. *Wild W. Radio v. Indus. Claim Appeals Office*, 886 P.2d 304 (Colo. App. 1994).

The Workers' Compensation Act imposes penalties for misconduct such as intoxication that results in injuries but it does not disqualify the claimant from all benefits. *Wild W. Radio, Inc. v. Indus. Claim Appeals Office*, 905 P.2d 6 (Colo. App. 1995); *Ackerman v. Hilton's*

Mechanical Men, 914 P.2d 524 (Colo. App. 1996).

As long as the ALJ's determination of whether an accident was caused by an employee's intoxication is supported by substantial evidence in the record, it is binding on review. *Ackerman v. Hilton's Mechanical Men*, 914 P.2d 524 (Colo. App. 1996).

III. INJURY RESULTING FROM INTOXICATION.

The intoxication of claimant must be a proximate cause of the injury for reduction in compensation. *Stearns-Roger Mfg. Co. v. Casteel*, 128 Colo. 289, 261 P.2d 228 (1953).

Where there is no evidence in the record to require a finding, as a matter of law, that intoxicants caused or contributed to the accident, no one knows what caused the accident, the question of whether benefits should be reduced was properly for the trier of facts to determine. *J. C. Carlile Corp. v. Antaki*, 162 Colo. 376, 426 P.2d 549 (1967).

The causal connection between the blood alcohol level of the decedent and the accident is a question of fact. The court

of appeals will not disturb the finding that his intoxication was not the proximate cause of the accident where there is no testimony that the decedent's driving ability was impaired. *Elec. Mut. Liab. Ins. Co. v. Indus. Comm'n*, 154 Colo. 491, 391 P.2d 677 (1964); *Tatum-Reese Dev. Corp. v. Indus. Comm'n*, 30 Colo. App. 149, 490 P.2d 94 (1971).

Commission abused discretion in failing to rule intoxication-caused injury.

Where the following testimony was uncontroverted: That an autopsy was performed at which it was determined that the blood alcohol level in the deceased's body shortly after death was .225 percent; that in order to reach a blood alcohol level of .225 percent the deceased would have had to have consumed nine ounces of 100 proof liquor or nine 12-ounce cans of beer or some combination thereof; that such a quantity of alcohol in one's bloodstream would have "drastically impaired" one's motor reflexes involved in operating a vehicle; the commission abused its discretion in failing to rule that the injury resulted from the intoxication of the deceased. *Harrison W. Corp. v. Hicks' Claimants*, 185 Colo. 142, 522 P.2d 722 (1974).

8-42-112.5. Limitation on payments - use of controlled substances.

(1) Nonmedical benefits otherwise payable to an injured worker are reduced fifty percent where the injury results from the presence in the worker's system, during working hours, of controlled substances, as defined in section 18-18-102 (5), C.R.S., that are not medically prescribed or of a blood alcohol level at or above 0.10 percent, or at or above an applicable lower level as set forth by federal statute or regulation, as evidenced by a forensic drug or alcohol test conducted by a medical facility or laboratory licensed or certified to conduct such tests. A

duplicate sample from any test conducted must be preserved and made available to the worker for purposes of a second test to be conducted at the worker's expense. If the test indicates the presence of such substances or of alcohol at such level, it is presumed that the employee was intoxicated and that the injury was due to the intoxication. This presumption may be overcome by clear and convincing evidence.

(2) As used in this section, "nonmedical benefits" means all benefits provided for in articles 40 to 47 of this title other than disbursements for medical, surgical, nursing, and hospital services, apparatus, and supplies.

Source: L. 99: Entire section added, p. 580, § 1, effective July 1. **L. 2012:** (1) amended, (HB 12-1311), ch. 281, p. 1608, § 7, effective July 1.

ANNOTATION

A second sample must be preserved in order to reduce nonmedical benefits by fifty percent. *SkyWest Airlines v. Indus. Claim*

Appeals Office, 2020 COA 131, 487 P.3d 1267.

8-42-113. Limitations on payments to prisoners - incentives to sheriffs and department of corrections.

(1) Notwithstanding any other provision of law to the contrary except as provided in subsection (4) of this section, any individual who is otherwise entitled to benefits under articles 40 to 47 of this title shall neither receive nor be entitled to such benefits for any week following conviction during which such individual is confined in a jail, prison, or any department of corrections facility.

(1.5) (a) In the event the identifying information transmitted to the department of labor and employment pursuant to section 17-26-118.5 (2), C.R.S., results in the termination of workers' compensation benefits pursuant to subsection (1) of this section, the employer or the insurance carrier, if any, shall pay to the sheriff a reward equal to ten percent of one week's benefit to which the ineligible individual would otherwise be eligible to receive.

(b) An individual who is ineligible pursuant to subsection (1) of this section shall repay to the employer or the insurance carrier, if any, any amounts received while not eligible.

(2) After such individual's release from confinement, the individual shall be restored to the same position with respect to entitlement to benefits under articles 40 to 47 of this title as said individual would otherwise have enjoyed at the point in time of such release from confinement.

However, except as provided in subsection (3) of this section, said individual shall not be able to recover, recoup, or otherwise be retroactively entitled to any of the benefits to which the individual would have been entitled without the limitation specified in subsection (1) of this section.

(3) If upon appeal such conviction is overturned, such individual shall be entitled to recover the benefits to which such individual would have been entitled except for the operation of subsection (1) of this section.

(4) This section shall not apply to benefits under articles 40 to 47 of this title to which an inmate of a department of corrections facility or a city, county, or city and county jail is entitled for injury or occupational disease arising out of and in the course of the inmate working, performing services, or participating in a training, rehabilitation, or work release program that has been certified by the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c). The inmate shall be entitled to benefits in accordance with section 8-40-301 (3)(a).

Source: **L. 90:** Entire article R&RE, p. 495, § 1, effective July 1. **L. 99:** (1.5) added, p. 553, § 3, effective August 4. **L. 2010:** (1) amended and (4) added, (HB 10-1109), ch. 171, p. 606, § 2, effective August 11.

Editor's note: This section is similar to former § 8-52-104.5 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 117 (Nov. 2004).

Annotator's note. Since § 8-42-113 is similar to § 8-52-104.5 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

This section does not violate the constitutional prohibition against ex post facto laws because it does not impose criminal penalties. The intent behind this section is to relieve employers and insurance carriers of the obligation to pay benefits as compensation for lost earning capacity to persons who have no earning capacity because they are imprisoned. *Wood v. Beatrice Foods Co.*, 813 P.2d 821 (Colo. App. 1991).

Statute was not applied retroactively where claimant did not receive award of

benefits until after the section was enacted, even though the events supporting the award occurred before the section was enacted. *Wood v. Beatrice Foods Co.*, 813 P.2d 821 (Colo. App. 1991).

The statute does not deny the claimant due process where the claimant did not have a vested entitlement to an award of benefits when the statute was enacted. The existence of workers' compensation benefits is dependent on the workers' compensation statutes, and legislation limiting those benefits does not affect a constitutionally protected property interest. *Wood v. Beatrice Foods Co.*, 813 P.2d 821 (Colo. App. 1991).

The statute does not violate due process or equal protection requirements because the distinction made between prisoners and other persons claiming workers' compensation benefits bears a rational relationship to the purpose of the statute which is to protect employees injured in the course of their work from becoming wards of the state by providing compensation for lost earning capacity. *Wood v. Beatrice Foods Co.*, 813 P.2d 821 (Colo. App. 1991).

Suspension of claimant's medical impairment benefits during incarceration

was required by the clear and unambiguous language of this section. *Salazar v. Hi-Land Potato Co.*, 917 P.2d 326 (Colo. App. 1996).

Under subsection (2), upon release from prison, a claimant may again receive medical, disability, and death benefits under the Workers' Compensation Act. *Landeros v. Indus. Claim Appeals Office*, 214 P.3d 544 (Colo. App. 2008).

Subsection (2) of this section does not toll the statute of limitations while claimant is in prison. And nothing in either this article 42 or article 43 of the Workers' Compensation Act provides authority for tolling the limitation periods provided in § 8-43-303 while a claimant is in prison. *Landeros v. Indus. Claim Appeals Office*, 214 P.3d 544 (Colo. App. 2008).

A community corrections facility is not a "jail, prison, or any department of corrections facility." A community corrections facility is specifically excluded from the definition of a minimum security corrections facility. Therefore, confinement in a community corrections facility does not suspend benefits. *City & County of Denver v. Indus. Claim Appeals Office*, 98 P.3d 969 (Colo. App. 2004).

8-42-113.5. Recovery of overpayments - notice required.

(1) If a claimant has received an award for the payment of disability benefits or a death benefit under articles 40 to 47 of this title and also receives any payment, award, or entitlement to benefits under the federal old-age, survivors, and disability insurance act, an employer-paid retirement benefit plan, or any other plan, program, or source for which the original disability benefits or death benefit is required to be reduced pursuant to said articles, but which were not reflected in the calculation of such disability benefits or death benefit:

(a) Within twenty calendar days after learning of such payment, award, or entitlement, the claimant, or the legal representative of a claimant who is a minor, shall give written notice of the payment, award, or entitlement to the employer or, if the employer is insured, to the employer's insurer. If the claimant or legal representative gives such notice, any overpayment that resulted from the failure to make the appropriate reduction in the original calculation of such disability benefits or death benefit shall be recovered by the employer or insurer in installments at the same rate as, or a lower rate than, the rate at which the overpayments were made. Such recovery shall reduce the disability benefits or death benefit payable after all other applicable reductions have been made.

(b) If the claimant or legal representative of a claimant who is a minor was receiving benefits in excess of the amounts that should have been paid under articles 40 to 47 of this title and failed to give the notice required by paragraph (a) of this subsection (1), the employer or insurer is authorized to cease all disability or death benefit payments immediately until the overpayments have been recovered in full.

(b.5) (I) After the filing of a final admission of liability, except in cases of fraud, any attempt to recover an overpayment shall be asserted within one year after the time the requester knew of the existence of the overpayment.

(II) Subparagraph (I) of this paragraph (b.5), as enacted by Senate Bill 09-168, enacted in 2009, is declared to be procedural and was intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(c) If for any reason recovery of overpayments as contemplated in paragraph (a) or (b) of this subsection (1) is not practicable, the employer or insurer is authorized to seek an order for repayment.

(d) When an overpayment is repaid to the insurer, the insurer shall credit the losses on the claim and report the corrected losses to the insurance rating organization on the next scheduled report for purposes of the employer's experience modification.

Source: **L. 97:** Entire section added, p. 113, § 2, effective July 1. **L. 2009:** (1)(b.5) added, (SB 09-168), ch. 184, p. 806, § 2, effective August 5. **L. 2010:** (1)(b.5) amended, (SB 10-163), ch. 66, p. 231, § 2, effective March 31.

ANNOTATION

Law reviews. For article, "The Game of Liens: Untangling the Statutory Lien Scheme in Colorado Workers' Compensation Cases", see 50 Colo. Law. 48 (Apr. 2021).

Action to recoup overpayment of workers' compensation benefits under subsections (1)(a) and (1)(b) does not violate the discharge injunction of 11 U.S.C. § 524, federal bankruptcy code. City may pursue a determination of whether or not debtor received an overpayment of workers' compensation benefits and recoup any overpayment in accordance with the provisions of subsections (1)(a) and (1)(b). In re Gonzales, 298 B.R. 771 (Bankr. D. Colo. 2003).

City is prohibited under 11 U.S.C. § 524 from collecting any overpayment of

workers' compensation benefits from debtor by way of an order for repayment under subsection (1)(c). In re Gonzales, 298 B.R. 771 (Bankr. D. Colo. 2003).

If an employer cannot offset its overpayment of benefits by deducting from ongoing disability payments, then the employer must seek an order of repayment within one year after learning of the overpayment to recover the overpayment. Peoples v. Indus. Claims Appeals Office, 2019 COA 158, 457 P.3d 143.

8-42-114. Death benefits.

In case of death, the dependents of the deceased entitled thereto shall receive as compensation or death benefits sixty-six and two-thirds percent of the deceased employee's average weekly wages, not to exceed a maximum of ninety-one percent of the state average weekly wage per week for accidents occurring on or after July 1, 1989, and not less than a minimum of twenty-five percent of the applicable maximum per week. In cases where it is determined that periodic death benefits granted by the federal old age, survivors, and disability insurance act or a workers' compensation act of another state or of the federal government are payable to an individual and the individual's dependents, the aggregate benefits payable for death pursuant to this section shall be reduced, but not below zero, by an amount equal to fifty percent of such periodic benefits.

Source: L. 90: Entire article R&RE, p. 495, § 1, effective July 1. **L. 91:** Entire section amended, p. 1351, § 4, effective May 29.

Editor's note: This section is similar to former § 8-50-103 as it existed prior to 1990.

ANNOTATION

Law reviews. For note, "One Year Review of Colorado Law - 1964", see 42 Den. L. Ctr. J. 140 (1965). For article,

"Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980).

Annotator's note. Since § 8-42-114 is similar to § 8-50-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Constitutionality of offset provision. The offset provision of this section is constitutional, and does not violate equal protection. *Meyer v. Indus. Comm'n*, 644 P.2d 46 (Colo. App. 1981).

The prevention of duplication of benefits is a legitimate goal, and a coordination of various state and federal programs into a single system of wage-loss protection is rationally related to the offset scheme. *Meyer v. Indus. Comm'n*, 644 P.2d 46 (Colo. App. 1981).

Even though similar deductions are not made for payment from all possible sources, provision is not violative of equal protection. *Boehm v. Indus. Comm'n*, 738 P.2d 804 (Colo. App. 1987).

This section does not violate the supremacy clause of the U.S. Constitution and is not preempted by the Social Security Act. Therefore, under this section, the state could properly offset social security survivors' benefits against workers' compensation death benefits. *Rosa v. Warner Elec. Contracting*, 870 P.2d 1210 (Colo. 1994).

Only dependents can receive compensation under the workmen's compensation act. *Vaughn v. Indus. Comm'n*, 79 Colo. 257, 245 P. 712 (1926).

And this section sets the legislative maximums and minimums on death benefits and directs what deductions will be made against death benefits. *Schenfeld v. Shaffer*, 29 Colo. App. 425, 487 P.2d 818 (1971).

Amount of death benefits should be fixed as of the date of death, not the date of injury. *Richards v. Richards & Richards*, 664 P.2d 254 (Colo. App. 1983); *State Comp. Ins. Fund v. Indus. Comm'n*, 724 P.2d 679 (Colo. App. 1986).

Interest accrues on all past-due benefits under this section, after applying the offset provision. Payments made in another state are not subsumed by or converted to Colorado benefits for purposes of the interest calculation. *Keel v. Indus. Claim Appeals Office*, 2016 COA 8, 369 P.3d 807.

Benefit payments unlike survival actions. While the legal representative, in an action at law which survives under the statute in question, stands in the place of the decedent, the workmen's compensation law differs and provides specific benefits for and to the widow, children and other dependents. *In re Dick v. Indus. Comm'n*, 197 Colo. 71, 589 P.2d 950 (1979).

Death benefits and disability benefits are independent. Disability benefits awarded to a worker and death benefits awarded to a worker's dependents are entirely independent of one another. This results in two distinct rights — one for the benefit of the workman, the other for the benefit of his dependents. *Richards v. Richards & Richards*, 664 P.2d 254 (Colo. App. 1983).

Under the "rule of independence", disability benefits awarded an employee and death benefits awarded an employee's dependents are independent of one another, that is, there are two distinct rights, one for the benefit of the worker and the other for the benefit of his or her dependents. Therefore, under the rule, both the death benefit amount and the amount of offset should be determined based on the law in effect on the date of the employee's death. *Hoffman v. Hoffman*, 872 P.2d 1367 (Colo. App. 1994).

Workers' compensation death benefits are not excluded from criminal restitution statute as "future earnings", although the amount of benefits is determined with reference to the deceased employee's average weekly wage. Such benefits are fixed and determinable at the time of death as a type of insurance payout. Moreover, under the rule of independence, the rights to these benefits are considered rights of the employee's dependents, not of the employee. *People v. Oliver*, 2016 COA 180M, 405 P.3d 1165.

Death benefits are distinct from wage loss and disability benefits, and the limitation on medical impairment disability benefits applies to those cases in which disability benefits are payable to an eligible claimant, not to cases in which a claimant seeks death benefits. *Loveland Police Dept. v. Indus. Claim Appeals Office*, 141 P.3d 943 (Colo. App. 2006).

Deduction of federal death benefits. Federal death benefits are to be deducted from the aggregate benefits payable for

death under this section before the amount of compensation is reduced by 50 percent if the employee engaged in conduct proscribed by § 8-52-104. *Cline v. Indus. Comm'n*, 43 Colo. App. 123, 599 P.2d 973 (1979).

Federal social security benefits payable to widow, regardless of cause or circumstances of husband's death, are not the type of periodic benefits to serve as basis for offset against workers' compensation benefits awarded to widow. *Larimer Cty. Sch. Dist. v. Indus. Comm'n*, 727 P.2d 401 (Colo. App. 1986).

This section does not violate the "anti-alienation" provision of the Social Security Act since that provision was designed to prevent the use of traditional legal process to allow a third party to receive another individual's social security benefits, the petitioners will receive their social security benefits, and this section does not prohibit a worker from receiving social security benefits. *Rosa v. Warner Elec. Contracting*, 870 P.2d 1210 (Colo. 1994).

The purpose of the social security offset is to preclude an injured worker or his dependents from receiving duplicate benefits. There is no duplication of benefits, however, where it is undisputed that the widow is not receiving any social security benefits nor does she have dependents who receive such benefits. *Hoffman v. Hoffman*, 872 P.2d 1367 (Colo. App. 1994).

The ruling in *Hoffman v. Hoffman*, 872 P.2d 1367 (Colo. App. 1994), that no purpose would be served by offsetting a widow's benefits by the social security benefits received by decedent's children

from a prior marriage is highly persuasive and achieves a better reasoned result than an earlier decision. The court expressly declines to follow the decision in *Knight v. Dept. of Natural Res.s*, 689 P.2d 733 (Colo. App. 1984). *Koch Indus. v. Pena*, 910 P.2d 77 (Colo. App. 1995).

Cost of living increases in social security "periodic death benefits" are not to be offset against workers' compensation death benefits payable because of an industrial accident. However, this ruling only applies to cost of living increases, made after the *Engelbrecht* ruling (680 P.2d 231 (Colo. 1984)). *Wilson v. Jim Snyder Drilling*, 729 P.2d 1022 (Colo. App. 1986), *aff'd in part, rev'd in part on other grounds*, 747 P.2d 647 (Colo. 1987).

The provisions of this section which establish that, when period death benefits under the social security act are payable, the benefits payable pursuant to this section shall be reduced by one hundred percent of such periodic benefits does not exceed the scope of the state offset permitted by the social security act, and there is no violation of the supremacy clause. *Rosa v. Warner Elec. Contracting*, 849 P.2d 845 (Colo. App. 1992), *aff'd*, 870 P.2d 1210 (Colo. 1994) (decided under former § 8-50-103 as it existed prior to the 1990 repeal and reenactment of the Workers' Compensation Act of Colorado, articles 40 to 47 of title 8).

Federal "mother's insurance benefits" are subject to offset under this section. Phrase "federal old age, survivors, and disability insurance act" specifically refers to Subchapter II of the Social Security Act,

and all benefits payable under that act are within the intended scope of this section's offset provisions. *L.E.L. Constr. v. Goode*, 867 P.2d 875 (Colo. 1994) (explicitly disapproving Larimer County case, 727 P.2d 401, to the extent inconsistent with this opinion).

Amendment in 1991, changing social security offset amount to fifty percent, applies only prospectively. The ALJ and the industrial claim appeals panel erred in ordering a claim reopened to reduce the offset from one hundred to fifty percent. *Rosa v. Indus. Claim Appeals Office*, 885 P.2d 331 (Colo. App. 1994).

Wage value where decedent employee's duties of different character. Where a decedent employee's duties were of a different character but did not constitute a new contract of employment, his trips without wage were a service rendered to enhance his value as an employee rather than a new arrangement. Thus, his wage value for the purposes of this section was the same as that paid for his other work. *State Comp. Ins. Fund v. Coleman*, 135 Colo. 82, 392 P.2d 598 (1964).

No additional death benefit. Since amount paid claimant in periodic disability payments during his lifetime plus amount of lump-sum disability award in which he acquired a vested property right during his lifetime total together in excess of the gross maximum permanent disability award allowed under the statute, than upon payment of the lump-sum award, no additional death benefit is payable to

claimant's widow. *Schenfeld v. Shaffer*, 29 Colo. App. 425, 487 P.2d 818 (1971).

Regardless of § 8-50-106, payments cannot exceed statutory maximum. Regardless of the provision in § 8-50-106 which allows the survival of death benefits to remaining dependents when such benefits are terminated as to another dependent, the payments cannot exceed the statutory maximum. *Indus. Comm'n v. Employers Liab. Assurance Corp.*, 169 Colo. 396, 456 P.2d 739 (1969).

Court has no jurisdiction to consider minor child's argument that the industrial claim appeals panel erred in determining that her old age, survivors, and disability insurance benefits were the type of "periodic benefits" to which the offset applies where the child did not file a notice of cross-appeal. *Hoffman v. Hoffman*, 872 P.2d 1367 (Colo. App. 1994).

Applied in *State Comp. Ins. Fund v. City of Colo. Springs*, 43 Colo. App. 112, 602 P.2d 881 (1979); *Knight v. Dept. of Natural Res.*, 689 P.2d 733 (Colo. App. 1984).

8-42-115. Death from injury - benefits.

(1) In case death proximately results from the injury, the benefits shall be in the amount and to the persons following:

(a) If there are no dependents, compensation shall be limited to the expenses provided for medical, hospital, and funeral expense of the deceased, together with such sums as may have accrued or been paid to the deceased during the deceased's lifetime for disability, and any amount or payment which is due under section 8-46-101.

(b) If there are wholly dependent persons at the time of death, the payment shall be in accordance with the provisions of section 8-42-114.

(c) If there are partially dependent persons at the time of death, the payment shall not exceed sixty-six and two-thirds percent of the average weekly wages, subject to the limitations of articles 40 to 47 of this title as to maximum and minimum weekly amounts, to continue for such period after the date of death as is required to pay, at the weekly rate, the total amount awarded by the director to be paid to such partially dependent persons.

Source: L. 90: Entire article R&RE, p. 495, § 1, effective July 1. **L. 2000:** (1)(a) amended, p. 821, § 1, effective May 24.

Editor's note: This section is similar to former § 8-50-111 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-41-115 is similar to § 8-50-111 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Payment of expenses as payment of compensation. In this section the general assembly shows an intent to treat the payment of medical, hospital, and funeral expenses as the payment of compensation. *Royal Indem. Co. v. Indus. Comm'n*, 88 Colo. 113, 293 P. 342 (1930).

Burden on claimant to establish accident and causal connection between accident and death. In order for a claimant to recover workmen's compensation, the burden is upon the one seeking the benefits under the act to establish by competent evidence an accident and the causal connection between the accident and death. *Claimants In re Death of Rumsey v. State Comp. Ins. Fund*, 162 Colo. 545, 427 P.2d 694 (1967).

A computation of death benefits without regard to statutory maximums and credits would result in a larger death benefit award to a disabled employee who dies of causes unrelated to a work-connected injury than the benefit conferred on an employee whose death results from his work-connected, disabling injury. Such results contravene the mandate of statutory construction which we must follow requiring us to read together all portions of the workmen's compensation act and to

harmonize them if possible. *Schenfeld v. Shaffer*, 29 Colo. App. 425, 487 P.2d 818 (1971).

The word "accrued" in this section is used in the sense of due and payable. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 89 Colo. 475, 3 P.2d 1079 (1931).

Since the general assembly can legitimately deny nondependent heirs benefits upon the death of an employee, the fact that payments in cases where there are no statutory dependents may be made to the subsequent injury fund does not wrongfully deprive nondependent heirs of property. *Ryan v. Centennial Race Track, Inc.*, 196 Colo. 30, 580 P.2d 794 (1978).

Survivors are entitled to death benefits if a decedent's death proximately resulted from more than one condition, so long as one condition was the occupational disease. *Subsequent Injury Fund v. Indus. Claim Appeals Office*, 131 P.3d 1224 (Colo. App. 2006).

For a death to proximately result from a compensable injury or occupational disease, there must be a significant, direct, and consequential nexus between the death and the injury or disease. *Subsequent Injury Fund v. Indus. Claim Appeals Office*, 131 P.3d 1224 (Colo. App. 2006).

A compensable injury would necessarily be a significant, direct, and consequential cause of death if the death would not have occurred "but for" the compensable injury; if the injury was "a necessary precondition or

trigger" of the death; or if the injury was the sole cause of the death. Subsequent Injury

Fund v. Indus. Claim Appeals Office, 131 P.3d 1224 (Colo. App. 2006).

8-42-116. When death not proximate result - benefits.

(1) If death occurs to an injured employee, other than as a proximate result of any injury, before disability indemnity ceases and the deceased leaves persons wholly dependent upon the deceased for support, death benefits shall be as follows:

(a) Where the injury proximately caused permanent total disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had the employee lived until receiving compensation at the employee's regular rate for a period of six years.

(b) Where the injury proximately caused permanent partial disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received had he lived.

Source: L. 90: Entire article R&RE, p. 496, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-112 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-42-116 is similar to § 8-50-112 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

A computation of death benefits without regard to statutory maximums and credits would result in a larger death benefit award to a disabled employee who dies of causes unrelated to a work-connected injury than the benefit conferred on an

employee whose death results from his work-connected, disabling injury. Such results contravene the mandate of statutory construction which we must follow requiring us to read together all portions of the workmen's compensation act and to harmonize them if possible. *Schenfeld v. Shaffer*, 29 Colo. App. 425, 487 P.2d 818 (1971).

Thus, a literal application of subsection (1)(b) yields a computed amount which is only a preliminary figure, subject to further modification by virtue of the

statutory maximum limitation and which is reducible by the mandatory credits imposed by § 8-50-103 if all such credits have not been previously deducted. From this amount § 8-50-103 directs that there shall be deducted any sums paid to the employee prior to his death as compensation for his disability under the provisions of the workmen's compensation act. *Schenfeld v. Shaffer*, 29 Colo. App. 425, 487 P.2d 818 (1971).

This section does not prohibit the posthumous proof that an industrial injury caused a deceased employee to suffer a permanent disability when the employee dies of unrelated causes before reaching maximum medical improvement. *Singleton v. Kenya Corp.*, 961 P.2d 571 (Colo. App. 1998).

For purposes of this section, there is no distinction between permanent disability benefits and permanent medical impairment benefits and, therefore, no right of compensation based upon the statute's reference to permanent disability benefits without any accompanying mention of permanent medical impairment benefits. *Cooper v. Indus. Claim Appeals Office*, 109 P.3d 1056 (Colo. App. 2005).

This section does not apply where the widow is a nonresident of the United States. *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 93 Colo. 188, 24 P.2d 1117 (1933).

Where decedent's death was not proximately related to the injury for which decedent was receiving permanent

disability payments, the duration of benefit payments receivable by decedent's dependent is limited to six years from the date decedent began receiving payments. *Winters v. Indus. Claim Appeals Office*, 819 P.2d 542 (Colo. App. 1991).

When an industrial injury is not the proximate cause of the death, an award of death benefits that is based on the amount of unpaid permanent disability benefits can be made only where there are dependents; therefore, the estate of the deceased is not entitled to benefits. *Cooper v. Indus. Claim Appeals Office*, 109 P.3d 1056 (Colo. App. 2005).

The amount of the death benefit payable under this section is not subject to an offset for social security disability insurance payments that terminate upon the disabled worker's death. The applicable "regular rate" is the rate of total permanent disability benefits without regard for the SSDI offset. *Metro Glass & Glazing, Inc. v. Orona*, 868 P.2d 1178 (Colo. App. 1994).

A lump sum permanent disability payment made to an employee prior to the death of the employee that becomes part of the decedent's estate is not an overpayment and does not have to be repaid. *Cooper v. Indus. Claim Appeals Office*, 109 P.3d 1056 (Colo. App. 2005).

Applied in *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 89 Colo. 475, 3 P.2d 1079 (1931).

8-42-117. Benefits to partial dependents.

(1) If death occurs to an injured employee, other than as a proximate result of the injury, before disability indemnity ceases and the deceased leaves persons partially dependent upon the deceased for support, death benefits shall be as follows:

(a) Where the injury proximately caused permanent total disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had the employee lived until said employee had received compensation at the employee's regular rate for a period of six years as the amount devoted by the deceased to the support of such persons for the year immediately prior to the injury bears to the total income of the persons during said year.

(b) Where the injury caused permanent partial disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received if the employee had lived as the amount devoted by the deceased to the support of such persons for the year immediately prior to the injury bears to the total income of the persons during said year.

Source: L. 90: Entire article R&RE, p. 496, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-113 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-42-117 is similar to § 8-50-113 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

The purpose of the workmen's compensation act is to cast upon the particular industry the burden resulting from accidental injuries sustained by its employees while performing duties arising out of and in the course of their

employment. *Borquez v. John Burbank Trucking*, 164 Colo. 217, 433 P.2d 767 (1967).

However, this section was not intended to compensate employees for injuries on illness not due to their employment; or to pay benefits to their dependents when death results from such injuries or illness; or to pay the medical, hospital, funeral, or other expenses incurred by reason of such injuries, illness, or death. *Borquez v. John Burbank Trucking*, 164 Colo. 217, 433 P.2d 767 (1967).

But not unreasonable to pay dependents award made during employee's lifetime. It is not unreasonable to pay dependents, when the employee's death resulted from injuries not due to employment, any unpaid installments or compensation that may become due and payable to the employee during his lifetime, under a disability award made during his lifetime. *Borquez v. John Burbank Trucking*, 164 Colo. 217, 433 P.2d 767 (1967).

And this section has no application were the employee dies before there has been any determination that he is even entitled to any permanent partial disability benefits. *Borquez v. John Burbank Trucking*, 164 Colo. 217, 433 P.2d 767 (1967).

Applied in *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 89 Colo. 475, 3 P.2d 1079 (1931).

8-42-118. Applicability of repeal of death benefits to nonresident dependents.

The repeal of section 8-50-114, as said section existed prior to July 1, 1983, shall not affect the payments of death benefits which are being paid before July 1, 1983.

Source: L. 90: Entire article R&RE, p. 496, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-114.1 as it existed prior to 1990.

8-42-119. Partial dependents - compensation.

Partial dependents shall be entitled to receive only that portion of the benefits provided for those wholly dependent which the average amount of the wages regularly contributed by the deceased to such partial dependents at and for a reasonable time immediately prior to the injury bore to the total income of the dependents during the same time. The director has power and discretion to determine the proper elements to be considered as income of said dependents in each particular case. Where there are persons both wholly dependent and partially dependent, only those wholly dependent shall be entitled to compensation.

Source: L. 90: Entire article R&RE, p. 496, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-104 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-42-119 is similar to § 8-50-104 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Employer and the state compensation insurance fund were without standing to raise the constitutionality of this section as violative of the equal protection clause of the fourteenth amendment, as such challenges may only be leveled by members of the group whose rights are impaired by the contested legislation. *Am. Metal Climax, Inc. v. Claimant of Butler*, 188 Colo. 116, 532 P.2d 951 (1975).

Minor children presumed "wholly" dependent. Under the clear statutory language of this section, minor children are presumed "wholly" dependent, and the presumption may be overcome only by evidence showing that the children received no support from the deceased. *Knight v. Dept. of Natural Res.*, 689 P.2d 733 (Colo. App. 1984).

Partially dependent claimants are not entitled to receive compensation during the time that a wholly dependent claimant is entitled thereto. *Central Sur. & Ins. Corp. v. Indus. Comm'n*, 94 Colo. 341, 30 P.2d 253 (1934).

But where payment of compensation to those wholly dependent upon an employee is discontinued for statutory reasons, partial

dependents are entitled to receive compensation to the extent of the determined percentage of the balance only, due under the original award. *Central Sur. & Ins. Corp. v. Indus. Comm'n*, 94 Colo. 341, 30 P.2d 253 (1934).

Presumed whole dependency has no priority over actual whole dependency. *Central Sur. & Ins. Corp. v. Indus. Comm'n*, 94 Colo. 341, 30 P.2d 253 (1934); *L.B. Cole Produce Co. v. Indus. Comm'n*, 123 Colo. 278, 228 P.2d 808 (1951).

Evidence supporting findings of whole dependency on son. In a proceeding for compensation where claimant alleged that decedent, her son, had never married, finding that claimant was wholly dependent on son and that he was killed in course of employment and not in violation of a safety rule were supported by competent evidence. *L.B. Cole Produce Co. v. Indus. Comm'n*, 123 Colo. 278, 228 P.2d 808 (1951).

Social security payments used in determining amount of benefits due. Where social security payments constitute substantial and regular income to claimants, such payments are properly considered as source of income in determining amount of benefits due claimants under statute. *Truitt v. Indus. Comm'n*, 31 Colo. App. 166, 499 P.2d 621 (1972).

Under this section the question of dependency is to be determined as a matter of fact, and cannot be based on an existing legal duty to provide support. Colo.

Fuel & Iron Co. v. Indus. Comm'n, 90 Colo. 330, 9 P.2d 285 (1932).

But error to dismiss claim despite no detailed findings of fact. If the findings are sufficient to support award on the question of partial dependency, it is error for the trial court to dismiss the claim on the ground that the action was without and in excess of statutory powers, notwithstanding no

detailed findings of fact as to partial dependency were made. Indus. Comm'n v. Calumet Fuel Co., 108 Colo. 133, 114 P.2d 297 (1941).

Applied in Employers' Mut. Ins. Co. v. Indus. Comm'n, 82 Colo. 281, 260 P. 106 (1927); Diamond Indus. v. Claimants in Death of Crouse, 41 Colo. App. 541, 589 P.2d 1383 (1978).

8-42-120. Termination of right to benefits - definition.

(1) (a) Except as otherwise provided in subsection (1)(b) of this section, death benefits shall be paid to a dependent widow or widower for life or until remarriage, and, if there are no dependent children, as defined in section 8-41-501 (1)(b) and (1)(c), at the time of remarriage, a two-year lump-sum benefit without discount, less any lump sums previously paid, shall be paid to such widow or widower.

(b) (I) Death benefits shall be paid to a dependent widow or widower for life if:

(A) The dependent widow or widower receives a death benefit pursuant to subsection (1)(a) of this section; and

(B) The deceased was a state employee who worked in a job with a high-risk classification.

(II) As used in this subsection (1)(b), unless the context otherwise requires, "job with a high-risk classification" means:

(A) An employee of the Colorado state patrol who is vested with the powers of a peace officer as provided in section 24-33.5-212 or is a port of entry officer as described in section 16-2.5-115;

(B) An employee of the Colorado bureau of investigation who is vested with the powers of a peace officer as provided in section 24-33.5-409;

(C) An employee of the department of corrections who is classified in the corrections officer I through corrections officer IV class titles;

(D) An employee of the department of corrections who is a community parole officer as described in section 16-2.5-136;

(E) An employee of the division of fire prevention and control in the department of public safety who is classified as a firefighter, investigator, or fire marshal;

(F) An employee of the division of parks and wildlife in the department of natural resources who is a wildlife officer as defined in section 16-2.5-116 (1) or a parks and recreation officer as defined in section 16-2.5-117 (1);

(G) An employee of the department of transportation who is responsible for highway safety and maintenance;

(H) An employee of the department of revenue who is vested with the powers of a peace officer as provided in sections 16-2.5-121 to 16-2.5-126; or

(I) An employee of a state institution of higher education who is vested with the powers of a peace officer as provided in section 16-2.5-148.

(2) Death benefits shall terminate upon the happening of any of the following contingencies and shall thereupon survive to the remaining dependents, if any: Upon the death of any dependent; when a child or brother or sister of the deceased reaches the age of eighteen years, except as otherwise provided in sections 8-41-501 (1)(b) and (1)(c) and 8-41-502; and upon the expiration of six years from the date of the death of the injured employee in the case of partial dependents.

Source: **L. 90:** Entire article R&RE, p. 497, § 1, effective July 1. **L. 91:** Entire section amended, p. 1352, § 5, effective May 29. **L. 2024:** Entire section amended, (HB 24-1139), ch. 52, p. 181, § 1, effective August 7.

Editor's note: This section is similar to former § 8-50-106 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-42-120 is similar to § 8-50-106 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section is constitutional and does not violate equal protection of the law or due process. *Dow Chemical Co. v. Gabel*, 746 P.2d 1357 (Colo. App. 1987).

This section does not explicitly provide that termination cannot occur for reasons other than those enumerated. *Berry Constr., Inc. v. Indus. Comm'n*, 39 Colo. App. 251, 567 P.2d 806 (1977).

Termination where dependents pursue remedy against third-party tortfeasor. The propriety of termination of death benefits where the dependents of deceased elect to take compensation under articles 40 to 54 but nevertheless pursue their remedy

against a third-party tortfeasor is implicit in section 8-52-108. *Berry Constr., Inc. v. Indus. Comm'n*, 39 Colo. App. 251, 567 P.2d 806 (1977).

The adoption of a minor dependent is not a condition upon which the right to death benefits shall lapse. The arguments that the adopted child has ceased to be dependent and that he could collect two death benefits at the same time if his adopted father should be killed by accident in the course of his employment, would be forceful if addressed to the general assembly but the statute is explicit and it cannot be added to or taken from. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 70 Colo. 229, 199 P. 483 (1921).

Words not applying exclusively to wholly dependents. It is contended that the words "shall thereupon survive to the remaining dependents", in this section were intended to apply only to those who are wholly dependent. But if the general assembly so intended, no doubt the word "wholly" would have been inserted in the appropriated place. Its omission is significant. If the provision were not intended to apply to others than those wholly dependent, it would serve no useful purpose; for if there were two or more persons wholly dependent and one remarried or died, the rights of the other or others to compensation would continue without any such provisions. Indeed, the word "survive" would hardly be selected if the intent were such as counsel contend it was. *Central Sur. & Ins. Corp. v. Indus. Comm'n*, 94 Colo. 341, 30 P.2d 253 (1934).

Benefits survive. The sixty-six and two-thirds percent of the deceased's salary is payable to those wholly dependent upon the deceased regardless of number. Such benefits survive as provided by statute if one dependent becomes ineligible. *Indus. Comm'n v. Employers' Liab. Assurance Corp.*, 169 Colo. 396, 456 P.2d 739 (1969).

But payments cannot exceed statutory maximum. Regardless of the language providing for the share of surviving dependents to other dependents, the payments cannot in any event exceed the statutory maximum. *Indus. Comm'n v. Employers' Liab. Assurance Corp.*, 169 Colo. 396, 456 P.2d 739 (1969).

And the right of a widow to receive compensation under an award for the death of her husband terminates upon her remarriage. *Tavernor v. Royal Indem. Co.*, 84 Colo. 521, 272 P. 3 (1928); *Nat'l Sugar Mfg. Co. v. Bauer*, 148 Colo. 436, 366 P.2d 388 (1961).

If a widow with a right to receive compensation under an award for the death of her husband remarries, and the new marriage ends in divorce, the widow's right to receive from her first husband is not reinstated upon the divorce. *Dow Chemical Co. v. Gabel*, 746 P.2d 1357 (Colo. App. 1987).

Moreover, dependents must prove their dependency on the employee and that such dependency has not been terminated by the dependent's marriage, death, or attainment of age 18. *In re Hampton v. State*, 31 Colo. App. 141, 500 P.2d 1186 (1972).

Children of deceased worker entitled to death benefits as full-time students pursuant to § 8-50-101 (now § 8-41-501) even though they were not 18 at time of death. *Western Gas v. Indus. Claim App. Office*, 797 P.2d 823 (Colo. App. 1990).

Applied in *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 152 Colo. 256, 381 P.2d 267 (1963); *Indus. Comm'n v. Employers' Liab. Assurance Corp.*, 169 Colo. 396, 456 P.2d 739 (1969).

8-42-121. Director to determine and apportion benefits.

Death benefits shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents entitled to such compensation, as may be determined by the director, who may apportion the benefits among such dependents in such manner as the director may deem just and equitable. Payment to a dependent subsequent in right may be made, if the director deems it proper, which payment shall operate to discharge all other claims therefor. The dependents or persons to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support in compliance with the finding and direction of the director.

Source: L. 90: Entire article R&RE, p. 497, § 1, effective July 1.

Editor's note: This section is similar to former § 8-50-115 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-42-121 is similar to § 8-50-115 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the director of the division of labor instead of the industrial

commission with the power to determine and apportion benefits.

No specific provision of this article prescribes an equal apportionment among dependents. It does not follow from the language of former § 8-50-101, "conclusively presumed to be wholly dependent", when read in conjunction with this section, that all such dependents must, as a matter of law, be treated on an equal basis. To so conclude would be to ignore the express provisions of this section. *Spoo v. Spoo*, 145 Colo. 268, 358 P.2d 870 (1961).

For it was the intent of the general assembly to vest the commission with some apportioning power, first among those claiming to be dependents whose status depends upon proof of their dependency, and second, those dependents whose status is fixed by statute. *Spoo v. Spoo*, 145 Colo. 268, 358 P.2d 870 (1961).

However, an inequitable award is not in accord with the requirements of this section which limits the discretion of the commission to that which is just and equitable. *Spoo v. Spoo*, 145 Colo. 268, 358 P.2d 870 (1961).

The apportionment of death benefits among a deceased worker's dependents

under this section determines the dependent's proportionate share of the maximum lump-sum amount allowed by § 8-43-406 (3). When there are multiple dependents and one of them elects to receive a lump-sum payment, the dependent may receive a proportionate share as determined by this section of the maximum lump-sum allowed by § 8-43-406 (3). *Amaya v. Indus. Claim Appeals Office*, 2022 COA 131, 524 P.3d 856.

Applied in *Indus. Comm'n v. Employers' Liab. Assurance Corp.*, 169 Colo. 396, 456 P.2d 739 (1969).

8-42-122. Minor dependents - safeguarding payments.

In all cases of death where the dependents are minor children, it shall be sufficient for the surviving spouse or a friend to make application and claim on behalf of the minor children. The director, for the purpose of protecting the rights and interests of any dependents whom the director deems incapable of fully protecting their own interests, may deposit the payments in any type of account in state or national banks insured by the federal deposit insurance corporation or its successor, savings and loan associations that are insured by the federal deposit insurance corporation or its successor, or credit unions that are insured by the national credit union share insurance fund and may otherwise provide for the manner and method of safeguarding the payments due such dependents in such manner as the director sees fit.

Source: L. 90: Entire article R&RE, p. 497, § 1, effective July 1. L. 2004: Entire section amended, p. 148, § 50, effective July 1.

Editor's note: This section is similar to former § 8-50-116 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-41-205 is similar to § 8-51-113 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the director of the

division of labor instead of the industrial commission with the power to safeguard payments to minor children.

The industrial commission has the power to prevent the diversion of the money awarded to the children by their mother to her personal uses, or to the use of her children by her second marriage. Spoo v. Spoo, 145 Colo. 268, 358 P.2d 870 (1961).

Applied in Truitt v. Indus. Comm'n, 31 Colo. App. 166, 499 P.2d 623 (1972).

8-42-123. Funeral and burial expenses.

(1) When, as a proximate result of an injury, death occurs to an injured employee, there shall be paid in one lump sum within thirty days after death a sum not to exceed twelve thousand five hundred dollars for funeral and burial expenses. Said sum may be paid to the person providing funeral or burial services or any other person who has paid the funeral and burial costs. If the employee leaves no dependents, compensation is limited to said sum and the compensation that may have accrued or been paid to the deceased employee during the deceased employee's lifetime for disability; the medical, surgical, and hospital expenses provided in articles 40 to 47 of this title 8; and any amount or payment due under section 8-46-101. If the deceased employee leaves dependents, said sum shall be paid in addition to all other sums of compensation provided for in this article 42.

(2) On July 1, 2023, and each July 1 thereafter, the director shall adjust the maximum amount payable for funeral and burial expenses provided in subsection (1) of this section by the percentage of the adjustment made by the director to the state average weekly wage pursuant to section 8-47-106.

Source: **L. 90:** Entire article R&RE, p. 497, § 1, effective July 1. **L. 91:** Entire section amended, p. 1313, § 20, effective July 1. **L. 2000:** Entire section amended, p. 431, § 1, effective April 17. **L. 2022:** Entire section amended, (HB 22-1347), ch. 477, p. 3473, § 3, effective August 10.

Editor's note: This section is similar to former § 8-50-107 as it existed prior to 1990.

8-42-124. Assignability and exemption of claims - payment to employers - when.

(1) Except for amounts due under court-ordered support or for a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, excess public assistance paid for which the recipient was ineligible, or overpayment of paid family and medical leave benefits paid pursuant to article 13.3 of this title 8, claims for compensation or benefits due, or any proceeds thereof, under articles 40 to 47 of this title 8 shall not be assigned, released, or commuted except as provided in articles 40 to 47 of this title 8 and are exempt from all claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

(2) The power given in any power of attorney or other authority from any injured employee or the dependents of any killed employee purporting to authorize any other person to receive, be paid, or receipt for any compensation benefits awarded any such claimant shall be wholly void and illegal and of no force and effect; except that:

(a) Any employer who is subject to the provisions of articles 40 to 47 of this title and who, by separate agreement, working agreement, contract of hire, or any other procedure, continues to pay a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title to any employee temporarily disabled as a result of any injury arising out of and in the course of such employee's employment and has not charged the employee with any earned vacation leave, sick leave, or other similar benefits shall be reimbursed if insured by an insurance carrier or shall take credit if self-insured to the extent of all moneys that such employee may be eligible to receive as compensation or benefits for temporary partial or temporary total disability under the provisions of said articles, subject to the approval of the director. If the employee is injured while under a fixed duration contract of employment, all salary and wages paid pursuant to that contract shall be prorated over the duration of the contract in determining whether in any given week the employer paid a sum in excess of the temporary total disability benefit.

(b) This subsection (2) shall not apply to an attorney licensed to practice law in this state and acting in accordance with a power of attorney given by the claimant solely for the purpose of distributing funds pursuant to an admission of liability or an order of the division.

(3) Such payments shall be paid directly to the employer during the period of time that such employer continues to pay a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title and has not charged any earned vacation leave, sick leave, or other similar benefits to any employee so disabled and for so long as such employee is eligible for temporary disability benefits under the provisions of articles 40 to 47 of this title. The payment of such moneys to an employer shall constitute the payment of compensation or benefits to the employee in accordance with the provisions of section 8-42-103.

(4) When the payment by an employer to any such disabled employee is reduced to a sum equal to or less than the temporary total disability benefits prescribed by articles 40 to 47 of this title, or when the employer has charged the employee with any earned vacation leave, sick leave, or other similar benefits for any reason, the rights of the employee to receive direct payment of any award for temporary partial or temporary total disability that said employee may be entitled to on and after the effective date of such reduction shall be reinstated in accordance with the provisions of articles 40 to 47 of this title.

(5) Any employer subject to the provisions of articles 40 to 47 of this title and otherwise qualifying for direct payment of employee benefits as provided in this section shall notify the division and the insurance carrier of such employer's eligibility to receive such moneys. The director shall approve such direct payment after the filing of such information by the employer as the director may require.

(6) Nothing in this section limits the right of any employee to full payment of any award that may be granted to the employee for permanent partial or permanent total disability under the provisions of articles 40 to 47 of this title 8; except that benefits for permanent total disability and permanent partial disability are subject to wage assignment or income assignment as wages pursuant to section 14-14-102 (9), subject to garnishment as earnings pursuant to section 13-54.5-101 (2)(b), and subject to administrative lien and attachment pursuant to section 26-13-122 for purposes of enforcement of court-ordered child support. Benefits for permanent total disability and permanent partial disability are also subject to garnishment as earnings pursuant to sections 13-54-104 (1)(b)(IV) and 13-54.5-101 (2)(d) for purposes of enforcement of a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, excess public assistance paid for which the recipient was ineligible, or overpayment of paid family and medical leave benefits paid pursuant to article 13.3 of this title 8.

(7) Following an injury, any injured employee may authorize in writing the continuation of any payroll deduction which the employee had authorized or could have authorized before the injury, which authorization shall be legal and may be honored by the employer to the extent that proceeds of compensation of claims are available to the employer or are made available to the employer by the employer's insurance carrier for this purpose until the authorization is revoked in writing by the injured employee.

(8) If any employer who pays to an injured employee a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title and who has not charged the employee with any earned vacation leave, sick leave, or other similar benefits seeks to have assigned the compensation benefits otherwise due the injured employee as provided in this section, the employer shall notify the employee of said request at the same time the employer makes the request of the director or insurance carrier or both.

(9) (a) Upon receiving notice of a lien from the family and medical leave insurance program, created pursuant to section 8-13.3-516, due to payment of family and medical leave benefits pursuant to article 13.3 of this title 8, so long as such notice is provided prior to the payment of workers' compensation temporary total disability or temporary partial disability benefits in an admitted claim, an insurer or a self-insured employer shall reimburse the family and medical leave insurance program for concurrently paid or due family and medical leave benefits and admitted compensation by diverting unpaid benefits for temporary total disability or temporary partial disability to the family and medical leave insurance program, in accordance with section 8-13.3-513 (2), not to exceed one hundred percent of ongoing workers' compensation temporary total disability or temporary partial disability benefits.

(b) This subsection (9) applies only if the family and medical leave and workers' compensation benefits are for the same injury or occupational illness nexus.

Source: **L. 90:** Entire article R&RE, p. 498, § 1, effective July 1. **L. 92:** (6) amended, p. 218, § 22, effective August 1. **L. 94:** (6) amended, p. 2048, § 6, effective June 3. **L. 96:** (6) amended, p. 621, § 29, effective July 1. **L. 2000:** (2) amended, p. 224, § 1, effective July 1. **L. 2001:** (6) amended, p. 720, § 1, effective May 31. **L. 2006:** (1) and (6) amended, p. 948, § 6, effective August 7. **L. 2007:** (1) amended, p. 879, § 9, effective May 14. **L. 2024:** (1) and (6) amended and (9) added, (SB 24-155), ch. 59, p. 201, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 8-52-107 as it existed prior to 1990.

(2) Section 9 of chapter 208, Session Laws of Colorado 2006, provides that the act amending subsections (1) and (6) applies to judgments entered prior to, on, or after August 7, 2006.

Cross references: For the legislative intent contained in the 2006 act amending subsections (1) and (6), see section 8(2) of chapter 208, Session Laws of Colorado 2006. For the legislative declaration contained in the 2007 act amending subsection (1), see section 1 of chapter 226, Session Laws of Colorado 2007.

ANNOTATION

Law reviews. For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L. J. 82 (1970). For article, "Update on Colorado Appellate Decisions in Colorado

Workers' Compensation Law", see 30 Colo. Law. 69 (Apr. 2001). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 117

(Nov. 2004). For article, "Settlement Procedure in Workers' Compensation Claims", see 46 Colo. Law. 40 (July 2017). For article, "The Game of Liens: Untangling the Statutory Lien Scheme in Colorado Workers' Compensation Cases", see 50 Colo. Law. 48 (Apr. 2021).

Annotator's note. Since § 8-42-124 is similar to § 8-52-107 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section reflects a legislative intent to ensure that workers' compensation benefits are available as a wage substitute. This policy would be contravened by a judicial holding that such awards are marital property to be divided upon dissolution of the marriage. Unliquidated workers' compensation awards are different from pensions, and whether award is marital property depends on extent to which award compensates for loss of earning capacity and medical expenses incurred during the marriage. If award compensates the spouse for post-dissolution loss of earning capacity, it is not marital property even if the compensable injury occurred during the marriage. If workers' compensation claim is pending on date of dissolution and will likely include indemnification for loss of marital earnings or medical expenses, trial court may reserve jurisdiction to apportion marital interest upon receipt of award. In re Smith, 817 P.2d 641 (Colo. App. 1991).

The general assembly intended that the 2001 amendment to subsection (6) be applied retroactively. Am. Comp. Ins. Co. v. McBride, 107 P.3d 973 (Colo. App. 2004).

Only permanent total disability benefits may be garnished for child support, under the plain meaning of the exception stated in subsection (6). Permanent partial disability benefits may not be so garnished. In re Hamby, 954 P.2d 635 (Colo. App. 1997).

Because the 2001 amendment to subsection (6) did not specify an effective date, the amendment creating an exception that permitted garnishment of temporary total disability benefits for enforcement of child support orders was effective upon its enactment on May 21, 2001, and had to be applied immediately because it was remedial and procedural in nature. Am. Comp. Ins. Co. v. McBride, 107 P.3d 973 (Colo. App. 2004).

Retroactive application of a statute is not necessarily unconstitutional. Where a statute effects a change that is procedural or remedial, it may be applied retroactively. A statute is remedial if it does not create, eliminate, or modify vested rights or liabilities. When retroactive application of a statute is unconstitutional, it is deemed retrospective. Am. Comp. Ins. Co. v. McBride, 107 P.3d 973 (Colo. App. 2004).

Generally, claim that is not assignable does not survive death of claimant. In re Dick v. Indus. Comm'n, 197 Colo. 71, 589 P.2d 950 (1979).

Child Support Enforcement Procedures Act did not create exception to statute specifically prohibiting satisfaction of judgments out of workers' compensation benefits. In re Snyder, 739 P.2d 923 (Colo. App. 1987) (decided prior to 1987 amendment to subsection (1)).

If benefits have been received by claimant and subsequently deposited into a bank account, they are no longer "due" under this statute. Therefore, such benefits are no longer exempt from garnishment when a plaintiff serves a writ of garnishment on defendant's bank. Borrayo v. Lefever, 159 P.3d 657 (Colo. App. 2006).

Vacation and sick benefits paid to claimant are earned benefits and cannot be deducted from or credited against the temporary disability benefits to which claimant is entitled. Pub. Serv. Co. v. Johnson, 789 P.2d 487 (Colo. App. 1990).

But benefits that an employer pays an employee under a wage continuation plan only if the employee suffers a compensable work-related injury can be deducted from or credited against the temporary disability benefits to which the

employee is entitled. Baum v. Indus. Claim Appeals Office, 2019 COA 94, 487 P.3d 1079.

Employer did not charge claimant sick leave within the meaning of subsection (2)(a) when it returned and reinstated the sick leave previously used by claimant after a determination that the claimant suffered a compensable injury. Further, employer continued to pay claimant his full wages in excess of the temporary total disability benefits prescribed under this section throughout the relevant period of time. Therefore, employer is not liable for further temporary disability benefits. City & County of Denver v. Indus. Claim Appeals Office, 107 P.3d 1019 (Colo. App. 2004).

Attorney lien statute does not create implied exception to protections offered to workers' compensation benefits, because the workers' compensation statute unequivocally exempts workers' compensation benefits from any remedy ordinarily available to satisfy a debt, with only one explicit exception. James E. Freemyer, P.C. v. Indus. Claim Appeals Office, 32 P.3d 564 (Colo. App. 2000).

8-42-125. Data gathering on workers' compensation system.

The governor and the leader of the opposing party in the house of representatives and the leader of the opposing party in the senate shall contract with a person or entity for obtaining information on the workers' compensation system. The person or entity gathering the information shall work solely at the unanimous direction of the governor and the opposition leadership. Issues or topics that will be subject to the information gathering process shall be determined by unanimous decision of the governor and the opposition leadership. The contractor for the gathering of the information shall have complete access to all records of and files in the division

of workers' compensation and the office of administrative courts. Such contractor shall guarantee that any information gathered on any individual shall be kept confidential.

Source: L. 94: Entire section added, p. 2003, § 6, effective July 1. **L. 2005:** Entire section amended, p. 853, § 9, effective June 1.

8-42-126. Monetary benefits and penalties - timely payment - determination of date deemed paid.

For the purposes of articles 40 to 47 of this title 8, rules promulgated pursuant to articles 40 to 47 of this title 8, and any orders of the division and office of administrative courts in the department of personnel, monetary benefits or penalties required to be paid to an injured worker are deemed paid on the date the payment is received by or delivered to the intended payee; except that payment delivery attempted through the United States postal service is deemed paid three days after the date of the postmark if the payment is addressed to the payee's last-known address reported to the division and postmarked at least three business days before the date the payment is due.

Source: L. 2021: Entire section added, (HB 21-1050), ch. 384, p. 2572, § 6, effective September 7.

8-42-127. Direct deposit.

If a claimant has voluntarily authorized direct deposit, the insurer or self-insured employer shall deposit all temporary disability benefits and permanent disability benefits due and payable to the claimant under this title 8 in an account designated by the claimant in any bank, savings and loan association, credit union, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States. The claimant or the claimant's attorney can withdraw any direct deposit authorization at any time.

Source: L. 2024: Entire section added, (HB 24-1220), ch. 389, p. 2693, § 4, effective August 7.

ARTICLE 43

Procedure

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PART 1

NOTICES AND REPORTS

8-43-101. Record of injuries - occupational disease - reported to division - rules - definition.

(1) (a) Every employer shall keep a record of: All employee injuries that result in fatality, permanent physical impairment, lost time from work in excess of three shifts or calendar days, or active medical treatment for a period of more than one hundred eighty calendar days after the date the injury was first reported to the employer; and the contraction by an employee of an occupational disease that has been listed by the director by rule. Within ten days after notice or knowledge that an employee has contracted such an occupational disease, an injury that results in permanent physical impairment, a lost-time injury, or an injury that results in active medical treatment for a period of more than one hundred eighty calendar days after the date the injury was first reported to the employer, or immediately in the case of a fatality, the employer shall, upon forms prescribed by the division for that purpose, report to the division said occupational disease, permanently physically impairing injury, lost-time injury, injury requiring active medical treatment for a period of more than one hundred eighty calendar days after the date the injury

was first reported to the employer, or fatality. The report must contain the information required by the director.

(b) As used in this subsection (1), "active medical treatment":

(I) Means treatment that is determined by an authorized treating physician to be reasonably necessary to cure and relieve the injury and that requires ongoing supervision by an authorized treating physician as documented by a written medical report;

(II) Does not include treatment that is not reasonably expected to improve the condition or any treatment that does not require the supervision of a licensed physician, including gym or pool memberships or home exercise programs; and

(III) Terminates when there has been an abandonment of care or discharge from care for noncompliance prior to expiration of the one-hundred-eighty-day period set forth in subsection (1)(a) of this section.

(2) Unless exempted by the director pursuant to rule because of a small number of filings or a showing of financial hardship, beginning July 1, 2006, reports submitted pursuant to this section shall be submitted in an electronic format as determined by the director. Exposure to an injurious substance as defined by the director by rule and injuries to employees that result in no more than three days' or three shifts' loss of time from work, or no permanent physical impairment, or no fatality to the employee shall be reported by the employer only to the insurer of said employer's workers' compensation insurance liability, which injuries and exposure the insurer shall report only by monthly summary form to or as otherwise requested by the division.

Source: L. 90: Entire article R&RE, p. 499, § 1, effective July 1. L. 2005: Entire section amended, p. 200, § 3, effective July 1. L. 2006: (2) amended, p. 1489, § 5, effective June 1. L. 2022: (1) amended, (HB 22-1347), ch. 477, p. 3474, § 4, effective August 10.

Editor's note: This section is similar to former § 8-45-101 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-43-101 is similar to § 8-45-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases

construing that provision have been included in the annotations to this section.

Report made part of judgment roll when filed in clerk's office. The first report, made as directed by this section, is one of

the class of "documents and papers on file in the matter" which by § 8-1-134 is made a part of the judgment roll when filed in the office of the clerk of the district court. *New Jersey Fid. & Plate Glass Ins. Co. v. Patterson*, 86 Colo. 580, 284 P. 334 (1929).

Not necessary that report be formally introduced in evidence. *New Jersey Fid. & Plate Glass Ins. Co. v. Patterson*, 86 Colo. 580, 284 P. 334 (1929).

Report's weight as evidence. Report of an accident by employer may be considered on hearing of the claim of employee for compensation, its weight as evidence being for the division. *New Jersey Fid. & Plate Glass Ins. Co. v. Patterson*, 86 Colo. 580, 284 P. 334 (1929).

Admissibility of admissions against interest contained in report by employer. Admissions against interest contained in a report of accident by employer cannot be

rejected as evidence because contradicted by statements set out in a so-called "notice of contest" filed by the employer. *New Jersey Fid. & Plate Glass Ins. Co. v. Patterson*, 86 Colo. 580, 284 P. 334 (1929).

Employer's failure to make report, or to correct an erroneous report, tolls the limitation period within which claimant must file notice claiming compensation. *City of Englewood v. Indus. Claim Appeals Office*, 954 P.2d 640 (Colo. App. 1998).

Motor vehicle accident reports not part of workmen's compensation act. The provisions which require police reports of all motor vehicle accidents within the state resulting in injury are not a part of the workmen's compensation act. *Stewart v. United States*, 716 F.2d 755 (10th Cir. 1982).

Applied in *Grant v. Indus. Claim Apps. Office*, 740 P.2d 530 (Colo. App. 1987).

8-43-102. Notice to employer of injury - notice to employees - failure to report.

(1) (a) (I) Every employee who sustains an injury resulting from an accident shall notify the employee's employer in writing of the injury within ten days after the occurrence of the injury. If the employee is physically or mentally unable to provide the notice, the employee's foreman, superintendent, or manager or any other person in charge who has notice of the injury shall submit written notice of the injury to the employer. Any other person who has notice of the injury may submit a written notice to the person in charge or to the employer, and in that event the injured employee is relieved of the obligation to give the notice. Otherwise, if the employee fails to report the injury in writing, the employee may lose up to one day's compensation for each day's failure to report. If the employer fails to provide a copy of the employee's written notice pursuant to subsection (1)(a)(II) of this section, or if, at the time of the injury, the employer failed to display the notice specified in subsection (1)(b) of this section, the time period allotted to the employee is tolled for the duration of time that the employer fails to provide the written notice and display the notice. If the employer has actual notice of the injury or good cause is shown for

the failure of the employee to report the injury in writing, there is no loss of compensation pursuant to this subsection (1) for the failure to report the injury.

(II) An employer who receives written notice of an injury pursuant to this subsection (1) shall affix the date and time of the receipt on the notice and shall make a copy of the notice affixed with the date and time of receipt available to the injured employee within seven days after receiving the notice. An employer is not subject to a penalty under articles 40 to 47 of this title 8 for failing to provide the injured employee a copy of the notice required by this subsection (1)(a)(II).

(b) Every employer shall display at all times in a prominent place on the workplace premises a printed card that is at least fourteen inches high and at least eleven inches wide, on which each letter is at least one-half inch in height, and that reads as follows:

NOTICE

IF YOU ARE INJURED ON THE JOB, YOU HAVE RIGHTS UNDER THE COLORADO WORKERS' COMPENSATION ACT. YOUR EMPLOYER IS REQUIRED BY LAW TO HAVE WORKERS' COMPENSATION INSURANCE. THE COST OF THE INSURANCE IS PAID ENTIRELY BY YOUR EMPLOYER. IF YOUR EMPLOYER DOES NOT HAVE WORKERS' COMPENSATION INSURANCE, YOU STILL HAVE RIGHTS UNDER THE LAW.

IT IS AGAINST THE LAW FOR YOUR EMPLOYER TO HAVE A POLICY CONTRARY TO THE REPORTING REQUIREMENTS SET FORTH IN THE COLORADO WORKERS' COMPENSATION ACT. YOUR EMPLOYER IS INSURED THROUGH _____.

IF YOU ARE INJURED ON THE JOB, NOTIFY YOUR EMPLOYER AS SOON AS YOU ARE ABLE, AND REPORT YOUR INJURY TO YOUR EMPLOYER IN WRITING WITHIN 10 DAYS AFTER THE INJURY. IF YOU DO NOT REPORT YOUR INJURY PROMPTLY, YOU MAY STILL PURSUE A CLAIM.

ADVISE YOUR EMPLOYER IF YOU NEED MEDICAL TREATMENT. IF YOU OBTAIN MEDICAL CARE, BE SURE TO REPORT TO YOUR EMPLOYER AND HEALTH-CARE PROVIDER HOW, WHEN, AND WHERE THE INJURY OCCURRED.

YOU MAY FILE A WORKER'S CLAIM FOR COMPENSATION WITH THE DIVISION OF WORKERS' COMPENSATION. TO OBTAIN FORMS OR

**INFORMATION REGARDING THE WORKERS' COMPENSATION SYSTEM,
THE CUSTOMER SERVICE CONTACT INFORMATION FOR THE DIVISION
OF WORKERS' COMPENSATION IS _____.**

(2) (a) (I) Every employee of an employer that has permission to be its own insurance carrier pursuant to section 8-44-201 or of an employer that participates in a public entity self-insurance pool pursuant to section 8-44-204 who sustains an injury resulting from an accident shall notify the employee's employer in writing of the injury within ten working days after the occurrence of the injury, unless the employer, or the employee's foreman, superintendent, or manager, has written notice of the injury. If the employee is physically or mentally unable to provide the notice, the employee's foreman, superintendent, or manager or any other person in charge who has written notice of the injury shall submit the written notice to the employer. If the employee fails to report the injury in writing, the employee may lose up to one day's compensation for each day's failure to report. Any other person who has notice of the injury may submit a written notice to the employer, which shall relieve the injured employee from reporting the accident. If the employer fails to provide a copy of the employee's written notice pursuant to subsection (2)(a)(II) of this section, or if, at the time of the injury, the employer failed to display the notice specified in subsection (2)(b) of this section, the time period allotted to the employee is tolled for the duration of time that the employer fails to provide the written notice and display the notice. If the employer has actual notice of the injury or good cause is shown for the failure of the employee to report the injury in writing, there is no loss of compensation pursuant to this subsection (2) for the failure to report the injury.

(II) An employer who receives written notice of an injury pursuant to this subsection (2) shall affix the date and time of the receipt on the notice and shall make a copy of the notice affixed with the date and time of receipt available to the injured employee within seven days after receiving the notice. An employer is not subject to a penalty under articles 40 to 47 of this title 8 for failing to provide the injured employee a copy of the notice required by this subsection (2)(a)(II).

(b) Every employer that has permission to be its own insurance carrier pursuant to section 8-44-201 or that participates in a public entity self-insurance pool pursuant to section 8-44-204 shall display at all times in a prominent place on the workplace premises a printed card that is at least fourteen inches high and at least eleven inches wide, on which each letter is at least one-half inch in height, and that reads as follows:

NOTICE

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IF YOU ARE INJURED ON THE JOB, YOU HAVE RIGHTS UNDER THE COLORADO WORKERS' COMPENSATION ACT. YOUR EMPLOYER IS REQUIRED BY LAW TO HAVE WORKERS' COMPENSATION INSURANCE. THE COST OF THE INSURANCE IS PAID ENTIRELY BY YOUR EMPLOYER. IF YOUR EMPLOYER DOES NOT HAVE WORKERS' COMPENSATION INSURANCE, YOU STILL HAVE RIGHTS UNDER THE LAW.

IT IS AGAINST THE LAW FOR YOUR EMPLOYER TO HAVE A POLICY CONTRARY TO THE REPORTING REQUIREMENTS SET FORTH IN THE COLORADO WORKERS' COMPENSATION ACT. YOUR EMPLOYER IS INSURED THROUGH _____.

IF YOU ARE INJURED ON THE JOB, NOTIFY YOUR EMPLOYER AS SOON AS YOU ARE ABLE, AND REPORT YOUR INJURY TO YOUR EMPLOYER IN WRITING WITHIN 10 DAYS AFTER THE INJURY. IF YOU DO NOT REPORT YOUR INJURY PROMPTLY, YOU MAY STILL PURSUE A CLAIM.

ADVISE YOUR EMPLOYER IF YOU NEED MEDICAL TREATMENT. IF YOU OBTAIN MEDICAL CARE, BE SURE TO REPORT TO YOUR EMPLOYER AND HEALTH-CARE PROVIDER HOW, WHEN, AND WHERE THE INJURY OCCURRED.

YOU MAY FILE A WORKER'S CLAIM FOR COMPENSATION WITH THE DIVISION OF WORKERS' COMPENSATION. TO OBTAIN FORMS OR INFORMATION REGARDING THE WORKERS' COMPENSATION SYSTEM, THE CUSTOMER SERVICE CONTACT INFORMATION FOR THE DIVISION OF WORKERS' COMPENSATION IS _____.

(3) An employee affected by the contraction of an occupational disease or someone on behalf of the affected employee shall give written notice of the contraction of the occupational disease to the employer within thirty days after the first distinct manifestation of the disease. In the event of death from the occupational disease, written notice of the employee's death shall be given to the employer within thirty days after the death. If the employer of an employee who was last injuriously exposed to an occupational disease has actual knowledge of the contraction of the disease by the employee and of the employee's exposure to the conditions causing it, such actual knowledge is deemed notice of its contraction. If the employer does not have actual knowledge of the contraction of the disease, or if there is not good cause for the employee's failure to provide written notice within the time allotted by this subsection (3), the director may reduce the compensation that would otherwise have been payable in the manner and to the extent as the

director deems just, reasonable, and proper under the existing circumstances, never to exceed one day's compensation for each day's failure to report.

Source: **L. 90:** Entire article R&RE, p. 499, § 1, effective July 1; (1.5) added, p. 577, § 1, effective July 1. **L. 91:** Entire section amended, p. 1314, § 21, effective July 1. **L. 99:** (1)(b) and (1.5)(b) amended, p. 581, § 3, effective July 1. **L. 2022:** Entire section amended, (HB 22-1112), ch. 48, p. 229, § 1, effective August 10.

Editor's note: This section is similar to former § 8-45-102 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-43-102 is similar to § 8-45-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

An injury takes place when the claimant, as a reasonable man, should recognize the nature, seriousness, and probable compensable character of his injury. *Crest Fence Co. v. Cec*, 175 Colo. 21, 485 P.2d 709 (1971).

And to interpret this section so that a person who reasonably discovers his injury long after the accident and is entitled to compensation, is not entitled to his medical expenses is nearly absurd, and a defeat of the purpose of the act. *Crest Fence Co. v. Cec*, 175 Colo. 21, 485 P.2d 709 (1971).

Penalties for failure of an employee to report an accidental injury will be enforced unless the case comes within one

of the exceptions contained in the section. *Jabot v. Indus. Comm'n*, 94 Colo. 424, 30 P.2d 871 (1934).

Verbal notice given to the superintendent of the company immediately after the accident is sufficient. *Frank v. Indus. Comm'n*, 96 Colo. 364, 43 P.2d 158 (1935).

Verbal notice to supervisor and company physician of pain and suffering caused by prolonged standing and lifting was sufficient notification to employer to require compliance with § 8-53-102. *Jones v. Adolph Coors Co.*, 689 P.2d 681 (Colo. App. 1984).

Combined investigatory and adjudicatory functions. Any order purporting to combine investigatory and adjudicatory functions in a single referee would raise serious questions of propriety. *Thompson v. Indus. Comm'n*, 33 Colo. App. 369, 520 P.2d 139 (1974).

Extrajudicial visit to claimant's home improper. Absent any authorization for such an investigation, the referee acted in excess of his powers when he made an extrajudicial visit to claimant's home. *Thompson v. Indus. Comm'n*, 33 Colo. App. 369, 520 P.2d 139 (1974).

Actual notice to contractor sufficient. This section does not require a claimant to give notice to landowners within two days from the time of the accident when the contractor in actual charge of a job on the landowners' property is the employer of the claimant at the time of the accident and remained the employer even though he had no insurance. Actual notice to the contractor is sufficient to comply with this section. *Stewart v. Indus. Comm'n*, 163 Colo. 12, 428 P.2d 367 (1967).

Time begins to run for filing notice claiming compensation when the claimant, as a reasonable man, should recognize the nature, seriousness and probable compensable character of his injury. *Romero v. Indus. Comm'n*, 632 P.2d 1052 (Colo. App. 1981).

And timing of penalty for failure to report injury. Penalties for failure to report an injury to an employer should only be

assessed from the time the employee discovered, or should have discovered, the probable compensable character of the injury; penalties in such cases should not be assessed from the date of the accident. *Romero v. Indus. Comm'n*, 632 P.2d 1052 (Colo. App. 1981).

Since the imposition of penalties reduces the employer's liability for disability benefits, it is in the nature of an affirmative defense. Accordingly, the employer bears the initial burden of proving it did not receive written notice of an injury to an employee. *Postlewait v. Midwest Barricade*, 905 P.2d 21 (Colo. App. 1995).

Once an employer presents prima facie evidence that the claimant did not timely report an injury, the burden shifts to the claimant to rebut the prima facie showing. *Postlewait v. Midwest Barricade*, 905 P.2d 21 (Colo. App. 1995).

Oral notice to an employer of an industrial injury is insufficient and strict compliance with the writing requirement is necessary. *Postlewait v. Midwest Barricade*, 905 P.2d 21 (Colo. App. 1995).

Applied in *Sommers v. Borgmann*, 111 Colo. 552, 144 P.2d 554 (1943).

8-43-103. Notice of injury - time limit.

(1) Notice of an injury, for which compensation and benefits are payable, shall be given by the employer to the division and insurance carrier, unless the employer is self-insured, within ten days after the injury, and, in case of the death of any employee resulting from any such injury or any accident in which three or more employees are injured, the employer shall give immediate notice of death or injury to the director. If notice is not given by the employer, as required by articles 40 to 47 of this title 8, notice may be given by any person. Any notice required to be filed

by an injured employee or, if deceased, by the employee's dependents may be made and filed by anyone on behalf of the claimant and shall be considered as done by the claimant if not specifically disclaimed or objected to by the claimant in writing filed with the division within a reasonable time. The notice must be in writing and upon forms prescribed by the division for that purpose and served upon the division. Upon receipt of the notice from a claimant, the division shall immediately serve a copy to the employer or the employer's agent or insurance carrier.

(2) The director and administrative law judges employed by the office of administrative courts shall have jurisdiction at all times to hear and determine and make findings and awards on all cases of injury for which compensation or benefits are provided by articles 40 to 47 of this title. Except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, and anthracosis, the right to compensation and benefits provided by said articles shall be barred unless, within two years after the injury or after death resulting therefrom, a notice claiming compensation is filed with the division. This limitation shall not apply to any claimant to whom compensation has been paid or if it is established to the satisfaction of the director within three years after the injury or death that a reasonable excuse exists for the failure to file such notice claiming compensation and if the employer's rights have not been prejudiced thereby, and the furnishing of medical, surgical, or hospital treatment by the employer shall not be considered payment of compensation or benefits within the meaning of this section; but, in all cases in which the employer has been given notice of an injury and fails, neglects, or refuses to report said injury to the division as required by the provisions of said articles, this statute of limitations shall not begin to run against the claim of the injured employee or said employee's dependents in the event of death until the required report has been filed with the division.

(3) In cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, or anthracosis, the right to compensation and benefits shall be barred unless, within five years after the commencement of disability or death, a notice claiming compensation is filed with the division.

Source: **L. 90:** Entire article R&RE, p. 500, § 1, effective July 1. **L. 92:** (1) amended, p. 1825, § 3, effective April 29. **L. 94:** (2) amended, p. 1873, § 1, effective June 1. **L. 2005:** (2) amended, p. 854, § 10, effective June 1. **L. 2026:** (1) amended, (SB 26-186), ch. 315, p. 1848, § 5, effective August 12.

Editor's note: This section is similar to former § 8-52-105 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Notice of Injury by Employer.

III. Jurisdiction.

V. Effect of Payment of Compensation.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Occupational Disease Disability Act From the Standpoint of the Claimant", see 28 Dicta 41 (1951). For article, "One Year Review of Torts", see 35 Dicta 53 (1958).

Annotator's note. (1) Since § 8-43-103 is similar to § 8-52-105 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1986 amendment which vested the director of the division of labor with the jurisdiction previously exercised by the industrial commission to hear and determine and make findings and awards on all cases of injury for which compensation or benefits are provided or were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission.

The proceedings hereunder are purely statutory and not equivalent to a suit in equity. The question of permitting the defense of laches or something analogous

thereto in a purely statutory proceeding is one of legislative policy which probably can be answered only by express act of the general assembly. The courts are not allowed to indulge in judicial legislation. *Indus. Comm'n v. Carpenter*, 102 Colo. 22, 24, 76 P.2d 418 (1938).

Compliance with this section is not an admission of liability. The filing of the first report of injury as required in this section is not an admission of liability by an employer. *Stadler v. Indus. Claim Appeals Office*, 811 P.2d 447 (Colo. App. 1991).

Applied in *First Nat'l Bank v. Long*, 44 Colo. App. 317, 616 P.2d 180 (1980).

II. NOTICE OF INJURY BY EMPLOYER.

Employer only required to report accident resulting in injury. Under this section an employer is not required to report all accidents or incidents in connection with his employees, but only those resulting in injury to an employee, the plain legislative intent being that only injuries be reported within the 10-day period prescribed. *Monks Excavating & Redi-Mix Cement v. Kopsa*, 148 Colo. 586, 367 P.2d 321 (1961).

Injury means compensable injury. Since no benefits flow to a workman merely because he has been the victim of an accident and since injuries must be of sufficient magnitude to prevent him from working for more than seven days before they are compensable, it follows that the

term "injury", as it is employed in this section, means compensable injury. The statute so states, in slightly different verbiage. It requires notice to be given of an injury, for which compensation and benefits are payable. *City of Boulder v. Payne*, 162 Colo. 345, 426 P.2d 194 (1967).

For occupational disease, compensable "injury" occurs when the claimant becomes disabled. Before then, although the claimant may suspect that his or her health problems are work-related, no compensable injury has yet occurred. *City of Colo. Springs v. Indus. Claim Appeals Office*, 89 P.3d 504 (Colo. App. 2004).

However, where an employer has no notice of an injury communicated to him by the employee, and where no such injury is apparent, the employer is not required to do anything under this section. *Monks Excavating & Redi-Mix Cement v. Kopsa*, 148 Colo. 586, 367 P.2d 321 (1961).

And when a claimant states to his employer that he is all right and thus continues for many months thereafter with the work and makes no claim of compensation, the employer is not required to give notice of the injury or to file notice of contest for no such claim of compensation had been made. *Monks Excavating & Redi-Mix Cement v. Kopsa*, 148 Colo. 586, 367 P.2d 321 (1961).

This section would be an absurdity if interpreted to require the employer to report something about which he has no knowledge, namely an injury to an employee. By the same token, to interpret the statute so as to require the employer to

report all accidents would be a burden not to be found in the statute. Because of the burden involved in reporting all of these small incidents, it was plain that the general assembly intended that only injuries be reported within the 10-day period prescribed. *Monks Excavating & Redi-Mix Cement v. Kopsa*, 148 Colo. 586, 367 P.2d 321 (1961); *City of Boulder v. Payne*, 162 Colo. 345, 426 P.2d 194 (1967).

Subsection (1) provides that anyone can make a claim for a claimant. *Colo. Auto Body, Inc. v. Newton*, 160 Colo. 113, 414 P.2d 480 (1966).

Litigation of issues with knowledge of oral claim waives requirement of written claim. While it may be true that an objection to the lack of a written claim at the time of a hearing, upon notice, might result in supplying the omission within the two-year period (now five-year period), the voluntary litigation of other issues, with full knowledge of the oral claim could be construed by the director as a voluntary waiver of the technical requirement of a written claim. *Colo. Auto Body, Inc. v. Newton*, 160 Colo. 113, 414 P.2d 480 (1966).

But no waiver where no notice of injury. There is a clear distinction delineated by the authorities between no notice of a claimed injury and mere irregularity in the form thereof. When no notice of a claimed injury occurs, it is jurisdictional, and there can be no waiver. When a deficiency is only as to form of notice of a claimed injury there can be a waiver, and the conduct of the parties after

the notice can form the basis of such a waiver. *Colo. Auto Body, Inc. v. Newton*, 160 Colo. 113, 414 P.2d 480 (1966).

III. JURISDICTION.

The fact-finding function in support of any award of compensation is for the fact-finder and not the reviewing court. *Bohmann v. Indus. Comm'n*, 76 Colo. 588, 233 P. 621 (1925); *Pac. Emp'rs Ins. Co. v. Indus. Comm'n*, 127 Colo. 400, 257 P.2d 404 (1953); *State Comp. Ins. Fund v. Foulds*, 167 Colo. 123, 445 P.2d 716 (1968); *Indus. Comm'n v. Nye*, 171 Colo. 433, 468 P.2d 28 (1970).

Thus, reviewing court will remand as to issues industrial commission has not heard or determined. Where on review of a judgment in a workmen's compensation case it appears that the commission has not theretofore had an ample opportunity to hear and determine any issues raised in the proceeding, or has for any reason not in fact heard and determined the issues raised, this court should remand the case to the lower court with directions to set aside its judgment and transmit to the commission a statement of the issues not fully presented, staying its proceedings until the commission should hear and determine such issues and return its findings to the court. *Black Diamond Fuel Co. v. Frank*, 99 Colo. 528, 64 P.2d 797 (1936).

But industrial commission abuses discretion when evidence insufficient to sustain this ruling. When the evidence is insufficient as a matter of law to sustain the commission's suspension of the six month (now three year) limitation of this section, in

finding otherwise the commission abused its discretion. *Armour & Co. v. Indus. Comm'n*, 149 Colo. 251, 368 P.2d 798 (1962).

And court must set forth facts to determine whether evidence is competent. In order to determine whether there is competent evidence in the record to support the claim or whether there are reasonable inferences to be drawn therefrom to support the findings, it is necessary for the supreme court to set forth the factual situation as presented by the record. *Pac. Emp'rs Ins. Co. v. Indus. Comm'n*, 127 Colo. 400, 257 P.2d 404 (1953).

Court may draw its own conclusions when evidence not conflicting. When the evidence in workmen's compensation cases, as disclosed by the record in the proceeding, is undisputed and without substantial conflict, the court may properly draw its own conclusions therefrom and enter a judgment accordingly, notwithstanding the findings and award of the industrial commission may be to the contrary. *Indus. Comm'n v. Pappas*, 89 Colo. 329, 1 P.2d 919 (1931); *Pac. Emp'rs Ins. Co. v. Indus. Comm'n*, 127 Colo. 400, 257 P.2d 404 (1953).

IV. LIMITATION ON FILING CLAIMS.

A. In General.

B. Commencement and Tolling of Statute of Limitations.

C. Estoppel.

A. In General.

Claim does not exist until filed and established. Until a claim is filed and

established under the procedure set out in this section, neither claim nor dependents exist. *Frontier Airlines v. Indus. Comm'n*, 654 P.2d 1333 (Colo. App. 1982).

Time limitation for filing claims is governed by statute in effect at time of onset of disability or death because the extent of employer's liability cannot be determined until disability or death has occurred. *Hadley v. Indus. Comm'n*, 677 P.2d 443 (Colo. App. 1984).

The time for the filing of a claim under subsection (2) is one year (now three years) from the date of the accident. *Colo. Auto Body, Inc. v. Newton*, 160 Colo. 113, 414 P.2d 480 (1966).

Three-year period not jurisdictional. The terms of this section imply a statute of limitations, for they are more like the terms employed in such statutes than like terms of jurisdictional import. The three-year period is not jurisdictional. *Kersting v. Indus. Comm'n*, 39 Colo. App. 297, 567 P.2d 394 (1977).

General limitation statutes do not govern a proceeding under the workmen's compensation act. *Miller v. Indus. Comm'n*, 106 Colo. 364, 105 P.2d 404 (1940).

For failure of employee to file notice of claim within one year (now three years) bars recovery. An employee who fails to file notice of his claim for compensation within the time period required by this section is barred from recovery. This is conclusive against employee. *Indus. Comm'n v. W.A. Hover & Co.*, 82 Colo. 335, 259 P. 509 (1927); *London Guarantee*

& Accident Co. v. Indus. Comm'n, 83 Colo. 252, 263 P. 405 (1928); *Monks Excavating & Redi-Mix Cement v. Kopsa*, 148 Colo. 586, 367 P.2d 321 (1961).

And fact that employer does not report accident as required does not waive necessity of employee's giving such notice. *Indus. Comm'n v. W.A. Hover & Co.*, 82 Colo. 335, 259 P. 509 (1927); *Monks Excavating & Redi-Mix Cement v. Kopsa*, 148 Colo. 586, 367 P.2d 321 (1961).

Neither a report of injury nor a notice of contest satisfies the statute of limitations. Nothing in this section suggests that an employer's filing of either form absolves a claimant's burden to file a "notice claiming compensation". And the mere assignment of a claim number by the division does not mean the notice was given. *Packard v. Indus. Claim Appeals Office*, 2019 COA 146, 456 P.3d 473.

Although the notice may be waived. *C.W. Kettering Mercantile Co. v. Fox*, 77 Colo. 90, 234 P.464 (1925).

As where employer files petition for rehearing. Objection that no notice of claim was filed is waived by the employer who files a petition for rehearing, participates in the rehearing, and introduces testimony on the merits. *Indus. Comm'n v. Employers' Liab. Assurance Corp.*, 78 Colo. 267, 241 P. 729 (1925); *Ontario Mining Co. v. Indus. Comm'n*, 86 Colo. 206, 280 P. 483 (1929).

Also, an employer waives the limitation for filing claims when the objection is not made until it filed its petition for review after the case had once been decided in its

favor, a further hearing ordered, additional evidence taken, and an award made in favor of claimant. *Indus. Comm'n v. Co-Operative Oil Co.*, 93 Colo. 192, 24 P.2d 753 (1933).

If employer in good faith fails to notify, he does not waive right to assert this section. If an employer does not give notice of an accident in the honest belief that the employee was an independent contractor, and so advised employee's agent at the first opportunity, he does not waive his right to assert the running of this section as a defense. *Weidensaul v. Indus. Comm'n*, 107 Colo. 28, 108 P.2d 234 (1940).

B. Commencement and Tolling of Statute of Limitations.

The time begins to run for filing "a notice claiming compensation" when the claimant, as a reasonable man, should recognize the nature, seriousness and probable compensable character of his injury. *City of Boulder v. Payne*, 162 Colo. 345, 426 P.2d 194 (1967); *Indus. Comm'n v. Workman*, 165 Colo. 61, 437 P.2d 795 (1968); *Peterson v. Wandell-Lowe Transp. & Storage*, 168 Colo. 250, 450 P.2d 660 (1969); *Indus. Comm'n v. Canfield*, 172 Colo. 18, 469 P.2d 737 (1970); *City & County of Denver v. Moore*, 31 Colo. App. 310, 504 P.2d 367 (1972); *Intermountain Rubber Indus. v. Valdez*, 688 P.2d 1133 (Colo. App. 1984); *City of Durango v. Dunagan*, 939 P.2d 496 (Colo. App. 1997).

And the critical date involved in this statute of limitations is not the date of the accident, but the date of the injury. *Indus. Comm'n v. Canfield*, 172 Colo. 18, 469 P.2d 737 (1970); *City & County of Denver v.*

Moore, 31 Colo. App. 310, 504 P.2d 367 (1972).

For occupational disease, "injury" occurs when the claimant becomes disabled, and not before. *City of Colo. Springs v. Indus. Claim Appeals Office*, 89 P.3d 504 (Colo. App. 2004).

Rather, claimant need only file claim after discovery of injury. Although claimant had been experiencing monthly acoustic trauma since 1947, where a marked loss of hearing was not revealed by a doctor's examination until March, 1969, and a claim was filed in December, 1969, the claimant met the time requirements, as he was not required to make a report or file a claim until after the discovery of the injury. *City & County of Denver v. Moore*, 31 Colo. App. 310, 504 P.2d 367 (1972).

Sections 8-43-101 (1) and 8-43-203 (1) do not mandate a conclusion that an employee meeting this three-day or three-shift requirement has, as a matter of law, become aware of the nature or seriousness of his or her injury. *City of Durango v. Dunagan*, 939 P.2d 496 (Colo. App. 1997).

Statute of limitations on worker's claim for compensation never began to run since employer failed to file an injury report even though worker testified he reported injury to employer two days after accident which constituted sufficient notice. *Halliburton Servs. v. Miller*, 720 P.2d 571 (Colo. 1986).

Employer's failure to correct an erroneous report tolls the limitation period set forth in this section. Where initial report indicated that claimant was

able to continue working after the injury, but instead he missed 23 consecutive shifts encompassing 71 calendar days and this lost time was never reported, his claim was not time-barred. *City of Englewood v. Indus. Claim Appeals Office*, 954 P.2d 640 (Colo. App. 1998).

Employer's failure to file injury report tolls limitation periods in both subsection (2) and subsection (3). *Miller v. Indus. Claim Appeals Office*, 985 P.2d 94 (Colo. App. 1999).

Determination of issue of time of injury requires fact-finding by director. Although the claimant, sought medical treatment for his injuries the day following the accident, the fact that his injury was not immediately disabling, and he was able to continue with his employment raises an issue of when the injury occurred and the six-month (now three-year) period commenced. Upon remand, that issue must be determined and a finding of fact made thereon by the director. *Indus. Comm'n v. Canfield*, 172 Colo. 18, 469 P.2d 737 (1970).

Finding as to when claimant should have recognized compensable injury required. Where industrial commission dismissed a compensation claim for failure of claimant to file within the statutory time period provided in this section, the commission was required to make a finding as to when the claimant reasonably should have recognized the compensable character of his injury. *Richmond v. Indus. Comm'n*, 33 Colo. App. 21, 513 P.2d 1088 (1973).

Employer relieved of financial burden when injured claimant files. If claimant

has a compensable injury and files his claim therefor within the time provided by statute, the employer is relieved of all financial burdens respecting his injured employee. It becomes the primary obligation of the insurance carrier to pay any compensation which the director should determine to be due. *Pac. Emp'rs Ins. Co. v. Indus. Comm'n*, 127 Colo. 400, 257 P.2d 404 (1953).

War is sufficient to toll the running of this section. *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 73 Colo. 579, 216 P. 706 (1923); *Indus. Comm'n v. Peppas*, 71 Colo. 25, 203 P. 664 (1922).

The requirement that "the employer's rights have not been prejudiced" in subsection (2) applies only to the third or grace-period year. It does not toll the statute of limitations generally. *Packard v. Indus. Claim Appeals Office*, 2019 COA 146, 456 P.3d 473.

Mistaken allegation of ownership of property where injury occurred will not bar recovery. *Joe Dandy Mining Co. v. Indus. Comm'n*, 112 Colo. 241, 148 P.2d 817 (1944).

And an employee's claim for compensation for a back injury is not barred by the six-month (now three-year) limitation in this section, where his claim for another injury, received in the same accident, has been allowed by the director and later suspended, and his claim for the back injury was made when the cause was reopened on the director's own motion for the purpose of determining whether or not there had been error, mistake, or change in

condition. *Safeway Stores v. Newman*, 123 Colo. 362, 230 P.2d 168 (1951).

But claimant's minority and ignorance of death will not toll the statutory limitation. *Miller v. Indus. Comm'n*, 106 Colo. 364, 105 P.2d 404 (1940).

Nor will physical and mental incapacity. *Weidensaul v. Indus. Comm'n*, 107 Colo. 28, 108 P.2d 234 (1940).

Corporate officer is not precluded from receiving protection of tolling of statute of limitations by virtue of his status alone. The mere fact that such officer had the authority to file a first report of injury on behalf of the corporate employer does not restrict such officer's right to file a claim. There must be a showing of fraud or improper corporate manipulation in order to overcome the statutory protection. *White House Indus., Inc. v. May*, 845 P.2d 544 (Colo. App. 1992) (decided under previous § 8-52-105).

C. Estoppel.

The doctrine of equitable estoppel may in a proper case be invoked to prevent a party from relying upon a statute of limitations. *Kettering Mercantile Co. v. Fox*, 77 Colo. 90, 234 P. 464 (1925); *Greeley Gas & Oil Co. v. Thomas*, 87 Colo. 486, 288 P. 1051 (1930).

Estoppel not shown. Where injured employee's personal friend and physician told him that he would take care of everything and file all necessary papers and reports, but failed to tell employee that employer would resist his claim, and there was no evidence that the doctor was the

employer's agent for any purpose, there was no basis for estoppel against the employer to preclude him from relying on the running of this section. *Weidensaul v. Indus. Comm'n*, 107 Colo. 28, 108 P.2d 234 (1940).

Waiver. Where the state compensation insurance fund awaits the outcome of a hearing on the merits before invoking the three-year statute of limitations, it waives its right to the protection of that provision. *Kersting v. Indus. Comm'n*, 39 Colo. App. 297, 567 P.2d 394 (1977).

Defense of untimely filing not estopped by employer's payments. The previous payment by an employer and his insurer of most of an employee's medical expenses and an offer to pay for surgery do not estop them from asserting as a defense the employee's untimely filing of his claim. *Martin v. Indus. Comm'n*, 43 Colo. App. 521, 608 P.2d 366 (1979).

V. EFFECT OF PAYMENT OF COMPENSATION.

The bar of this section "does not apply to any claimant to whom compensation has been paid". *Indus. Comm'n v. Globe Indem. Co.*, 74 Colo. 52, 218 P. 910 (1923); *C. W. Kettering Mercantile Co. v. Fox*, 77 Colo. 90, 234 P. 464 (1925); *Ontario Mining Co. v. Indus. Comm'n*, 86 Colo. 206, 280 P. 483 (1929); *Frank v. Indus. Comm'n*, 96 Colo. 364, 43 P.2d 158 (1935); *City of Boulder v. Payne*, 162 Colo. 345, 426 P.2d 194 (1967).

But payment of wages to employee injured in employment accident does not of itself establish payment of

compensation. Pac. Emp'rs Ins. Co. v. Indus. Comm'n, 127 Colo. 440, 257 P.2d 404 (1953), rev'g Comerford v. Carr, 86 Colo. 590, 284 P. 121 (1930); Morrow v. Indus. Comm'n, 98 Colo. 348, 56 P.2d 35 (1936); Sommers v. Borgmann, 111 Colo. 552, 144 P.2d 554 (1943); Stauss v. Indus. Comm'n, 144 Colo. 288, 355 P.2d 1076 (1960).

And in order that the payment of wages during the absence of an employee may be held to be the payment of compensation under the workmen's compensation act, it must be established by competent evidence or reasonable inferences to be drawn therefrom that in making these payments the employer was doing so conscious of the fact that he was making the same as compensation, and it must be received by the employee with the knowledge or reasonable grounds for assuming that the payments made to him were being made as compensation for his injuries. Pac. Emp'rs Ins. Co. v. Indus. Comm'n, 127 Colo. 400, 257 P.2d 404 (1953); Stauss v. Indus. Comm'n, 144 Colo. 288, 355 P.2d 1076 (1960).

Furthermore, payment of salary during bona fide illness does not constitute payment of compensation tolling the statutory limitation. Rahder v. Indus. Comm'n, 105 Colo. 594, 100 P.2d 1043 (1940).

Also, donation is not compensation. A donation of a burial lot to widow of deceased in consideration of long and faithful services of the latter to the donor, was held not to be a compensation payment

within the meaning of this section so as to toll the running of the statute. Moreno v. State Indus. Comm'n, 104 Colo. 610, 92 P.2d 739 (1939).

Compensation paid to a claimant under the workmen's compensation laws of a sister state does not constitute "compensation paid" as contemplated by this section so as to permit filing of a claim for compensation in this state after expiration of the statutory period for such filing. Indus. Comm'n v. Percy, 149 Colo. 457, 369 P.2d 560 (1962).

Rather, such payments satisfy all claims for disability. Where employee employed in another state is injured in this state and claims and is paid compensation under that state's law, and lump sum is paid in full and final settlement of all claims for disability resulting from accident, such payment is made and received as satisfaction of all claims for disability and not as compensation as contemplated by this section. Indus. Comm'n v. Percy, 149 Colo. 457, 369 P.2d 560 (1962).

Prior to 1941, employer's furnishing medical treatment was considered "compensation" tolling statutory limitation. Indus. Comm'n v. Globe Indem. Co., 74 Colo. 52, 218 P. 910 (1923); Royal Indem. Co. v. Indus. Comm'n, 88 Colo. 113, 293 P. 342 (1930); Indus. Comm'n v. Lockard, 89 Colo. 428, 3 P.2d 416 (1913); Frank v. Indus. Comm'n, 96 Colo. 364, 43 P.2d 158 (1935); Miller v. Indus. Comm'n, 106 Colo. 364, 105 P.2d 404 (1940); State Hwy. Dept. v. Stunkard, 115 Colo. 358, 174 P.2d 346 (1946); Gregorich v. Indus.

Comm'n, 117 Colo. 423, 188 P.2d 886 (1948); *Gregorich v. Indus. Comm'n*, 121 Colo. 477, 217 P.2d 614 (1950).

But mere medical examination and payment of burial expenses was not such "compensation" prior to the 1941 amendment. *Evanoff v. Indus. Comm'n* 96 Colo. 550, 45 P.2d 688 (1935); *Garden Farm Dairy v. Dorchak*, 102 Colo. 36, 76 P.2d 743 (1938); *Moreno v. State Indus. Comm'n*, 104 Colo. 610, 92 P.2d 739 (1939); *Rahder v. Indus. Comm'n*, 105 Colo. 594, 100 P.2d 1043 (1940).

Time limitation not tolled by payment of medical expenses. Payment of medical expenses, such as those paid for by the insurer on behalf of an employer, are not to be considered compensation so as to toll or modify the time limitation for filing a claim. *Martin v. Indus. Comm'n*, 43 Colo. App. 521, 608 P.2d 366 (1979).

VI. EXCUSE OF FAILURE TO FILE.

A. In General.

B. Reasonable Excuse.

C. Lack of Prejudice to Employer.

A. In General.

Failure of claimant to file within six months (now three years) requires showing of reasonable excuse and no prejudice to employer. Under this section a claim for compensation must be filed within the statutory time period after injury unless it is established by evidence produced by the claimant to the satisfaction of the industrial commission that a reasonable excuse exists for failure to file such claim and that the

employer's rights have not been prejudiced thereby. *Monks Excavating & Redi-Mix Cement v. Kopsa*, 148 Colo. 586, 367 P.2d 321 (1961); *Armour & Co. v. Indus. Comm'n*, 149 Colo. 251, 368 P.2d 798 (1962); *Univ. of Denver-Colorado Sem. & Univ. Park Campus v. Johnston*, 151 Colo. 465, 378 P.2d 830 (1963); *Berry's Coffee Shop, Inc. v. Palomba*, 161 Colo. 369, 423 P.2d 2 (1967); *Bynon v. W.T. Rawleigh Co.*, 164 Colo. 182, 433 P.2d 333 (1967).

The industrial commission is entrusted with the discretionary power to determine the reasonableness of the excuse and the prejudice resulting from the delay. *Indus. Comm'n v. Newton Lumber & Mfg. Co.*, 135 Colo. 594, 314 P.2d 297 (1957); *Armour & Co. v. Indus. Comm'n*, 149 Colo. 251, 368 P.2d 798 (1962); *State Comp. Ins. Fund v. Stampfel*, 153 Colo. 448, 386 P.2d 582 (1963); *State Comp. Ins. Fund v. Foulds*, 167 Colo. 123, 445 P.2d 716 (1968); *Indus. Comm'n v. Canfield*, 172 Colo. 18, 469 P.2d 737 (1970).

And the commission's decision as to excuse and prejudice will only be set aside upon a showing of fraud or abuse of discretion. *Indus. Comm'n v. Newton Lumber & Mfg. Co.*, 135 Colo. 594, 314 P.2d 297 (1957); *State Comp. Ins. Fund v. Stampfel*, 153 Colo. 448, 386 P.2d 582 (1963); *State Comp. Ins. Fund v. Foulds*, 167 Colo. 123, 445 P.2d 716 (1968); *Indus. Comm'n v. Canfield*, 172 Colo. 18, 469 P.2d 737 (1970).

B. Reasonable Excuse.

Not all reasons for delayed applications constitute legally justifiable excuses

within the purview of the statute. *Armour & Co. v. Indus. Comm'n*, 149 Colo. 251, 368 P.2d 798 (1962); *Silsby v. Tops Drive In Restaurant-Dutton Enters., Inc.*, 160 Colo. 549, 418 P.2d 525 (1966); *Indus. Comm'n v. Canfield*, 172 Colo. 18, 469 P.2d 737 (1970).

For a "legally justifiable" excuse is one which the industrial commission, under all attendant circumstances, finds to be reasonably sufficient to excuse the delay. *Silsby v. Tops Drive In Restaurant-Dutton Enters., Inc.*, 160 Colo. 549, 418 P.2d 525 (1966).

Thus, while a claimant may demonstrate his reason for the delayed filing of his claim, the reason may not compel the commission, as a matter of law, to accept it as a legally justifiable excuse. *Indus. Comm'n v. Canfield*, 172 Colo. 18, 469 P.2d 737 (1970).

However, this section makes no requirement that the reasonable excuse be one that is legally watertight. *City & County of Denver v. Phillips*, 166 Colo. 312, 443 P.2d 379 (1968).

As when there is evidence to support the referee's conclusion that the employee presented a reasonable excuse for his late filing, the referee errs in going further and holding that the excuse though reasonable is not legally sufficient. *City & County of Denver v. Phillips*, 166 Colo. 312, 443 P.2d 379 (1968).

Reasonable excuse where claimant does his best under circumstances. An incorrect address was given by the employer for claimant, hence the notice to claimant,

enclosing claim forms did not reach him. The claimant was not made aware of the necessity of filing a claim for compensation until after he had retained counsel who secured the proper forms and promptly prepared and filed the claim for compensation. This claim was actually filed within six months from the date the employer filed its denial of liability. As we read this record it is apparent that this claimant was doing the best he could under the circumstances. *Indus. Comm'n v. Newton Lumber & Mfg. Co.*, 135 Colo. 594, 314 P.2d 297 (1957).

But the fact that claimant did not desire to take the time to have x-rays taken which would have indicated the nature of her ailment, if considered the "reason" for her late filing, was legally insufficient. *Armour & Co. v. Indus. Comm'n*, 149 Colo. 251, 368 P.2d 798 (1962).

C. Lack of Prejudice to Employer.

Finding of excuse will not stand without finding of nonprejudice. A finding of nonexcuse ends the matter, but a finding that the claimant is excused from the delinquency will not stand alone unless there is also a finding of nonprejudice to the employer. *Univ. of Denver-Colorado Sem. & Univ. Park Campus v. Johnston*, 151 Colo. 465, 378 P.2d 830 (1963).

And prejudice to the employer must be actual and must be shown to be so. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 129 Colo. 287, 269 P.2d 696 (1954); *Armour & Co. v. Indus. Comm'n*, 149 Colo. 251, 368 P.2d 798 (1962).

But the burden of proof of lack of prejudice to the employer is not on claimant. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 129 Colo. 287, 269 P.2d 696 (1954); Indus. Comm'n v. Newton Lumber & Mfg., 135 Colo. 594, 314 P.2d 297 (1957).

Finding of reasonable excuse will stand where prejudice is not contended. Where it is not contended that the late filing of a claim resulted in any prejudice to the rights of the employer, and where the industrial commission has wide discretion in determining whether reasonable excuse exists for failure to file the claim within a year, and the court cannot say as matter of law that the commission has abused its discretion in permitting late filing of the claim, the finding that reasonable excuse existed will be sustained. State Comp. Ins. Fund v. Stampfel, 153 Colo. 448, 386 P.2d 582 (1963).

And the employer's rights are not prejudiced by the late filing of the claim where the employer knows of the

accident, when it occurred, who the medical attendants of claimant were, where he was hospitalized, when admitted and when discharged from the hospital, as disclosed by the employer's report. Indus. Comm'n v. Newton Lumber & Mfg. Co., 135 Colo. 594, 314 P.2d 297 (1957).

However, the receipt of initial medical reports does not support a ruling of nonprejudice where the employer admits it had notice of the accident, and that there was some treatment afforded and paid for, for notice of the accident is not equivalent to notice of claim for compensable injury. The initial reports, far from being notice to the employer, indicated that there was no claim for compensation. City & County of Denver v. Bush, 166 Colo. 76, 441 P.2d 666 (1968).

Employer prejudiced by claimant's failure to file within statutory period because not afforded opportunity to examine and treat injuries. Armour & Co. v. Indus. Comm'n, 149 Colo. 251, 368 P.2d 798 (1962); City & County of Denver v. Bush, 166 Colo. 76, 441 P.2d 666 (1968).

8-43-104. Electronic filings - rules.

(1) The rejection for technical errors by the division of any document, form, or notice that is filed electronically does not affect the validity of the notice to the claimant or any other party; except that such rejection may result in a finding that there was not proper service to the division, other parties, or both.

(2) The director may promulgate rules concerning electronic filing of documents, forms, or notices in accordance with article 4 of title 24, C.R.S. Such rules shall be consistent with any policies, standards, and guidelines set forth by the office of information technology, created in section 24-37.5-103, C.R.S.

Source: L. 2003: Entire section added, p. 837, § 1, effective August 6. **L. 2007:** (2) amended, p. 910, § 1, effective May 17. **L. 2026:** (1) amended, (SB 26-186), ch. 315, p. 1848, § 6, effective August 12.

PART 2

SETTLEMENT AND HEARING PROCEDURES

8-43-201. Disputes arising under "Workers' Compensation Act of Colorado".

(1) The director and administrative law judges employed by the office of administrative courts in the department of personnel shall have original jurisdiction to hear and decide all matters arising under articles 40 to 47 of this title; except that the following principles shall apply: A claimant in a workers' compensation claim shall have the burden of proving entitlement to benefits by a preponderance of the evidence; the facts in a workers' compensation case shall not be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer; a workers' compensation case shall be decided on its merits; and a party seeking to modify an issue determined by a general or final admission, a summary order, or a full order shall bear the burden of proof for any such modification.

(2) The amendments made to subsection (1) of this section by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3) It is appropriate for the director or an administrative law judge to consider the medical treatment guidelines adopted under section 8-42-101 (3) in determining whether certain medical treatment is reasonable, necessary, and related to an industrial injury or occupational disease. The director or administrative law judge is not required to utilize the medical treatment guidelines as the sole basis for such determinations.

Source: L. 90: Entire article R&RE, p. 501, § 1, effective July 1. **L. 91:** Entire section amended, p. 1315, § 22, effective July 1. **L. 95:** Entire section amended, p. 635, § 13, effective July 1. **L. 2005:** Entire section amended, p. 854, § 11, effective June 1. **L. 2009:** Entire section amended, (SB 09-168), ch. 184, p. 807, § 3, effective August 5. **L. 2010:** Entire section amended, (SB 10-163), ch. 66, p. 232, § 3, effective March 31. **L. 2014:** (3) added, (SB 14-191), ch. 316, p. 1371, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-101 as it existed prior to 1990.

Cross references: For judicial review of findings by the director, see § 8-1-130.

ANNOTATION

Law reviews. For article on "Colorado Practice in Workmen's Compensation", see 31 Rocky Mt. L. Rev. 500 (1959).

Annotator's note. (1) Since § 8-43-201 is similar to § 8-53-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which required the submission of disputes concerning workmen's compensation to the division of labor instead of the industrial commission.

Constitutionality. The general assembly's grant of limited authority in this section to administrative law judges and the industrial claim appeals office over the area of workers' compensation matters does not create a substantial threat to the separation of powers doctrine under article III of the Colorado Constitution, nor does it violate the requirement that district courts have original jurisdiction in civil cases as mandated in article VI, § 9(1), of the Colorado Constitution. *Dee Enters. v. Indus. Claim Appeals Office*, 89 P.3d 430 (Colo. App. 2003); *Aviado v. Indus. Claim Appeals Office*, 228 P.3d 177 (Colo. App. 2009);

Sanchez v. Indus. Claim Appeals Office, 2017 COA 71, 411 P.3d 245.

The establishment of original jurisdiction with administrative law judges by this section does not violate the constitutional conferment of jurisdiction on district courts, as the parties in workers' compensation proceedings have expressly surrendered common law rights, remedies, and proceedings in exchange for the benefits of the act. *MGM Supply Co. v. Indus. Claim Appeals Office*, 62 P.3d 1001 (Colo. App. 2002); *Aviado v. Indus. Claim Appeals Office*, 228 P.3d 177 (Colo. App. 2009).

Industrial commission shall dispose of issues regarding compensation claims. One of the fundamental aims in adopting the workmen's compensation act was that of substituting for any and all previously existing remedies the special procedure supplied by the act. Anything that tends to complicate the issues arising out of claims for compensation or to take the disposition thereof away from the commission must be firmly discouraged. *Roper v. Indus. Comm'n*, 93 Colo. 250, 25 P.2d 725 (1933).

For the industrial commission is the only body or agency authorized to find the facts determinative of whether both the employer and employee are subject to the act. *Miller v. Denver Post, Inc.* 137 Colo. 61, 322 P.2d 661 (1958).

Hence, a hearing officer has authority to determine whether the conditions of coverage under a policy issued by the fund are met. Once the existence of a valid insurance contract has been established, the burden is upon the insurer to establish that the policy has lapsed. The allocation of the burden of proof is a substantial right of the parties, and it is reversible error if the burden is allocated improperly. *Butkovich v. Indus. Comm'n*, 690 P.2d 257 (Colo. App. 1984).

Since a bad faith tort claim falls outside of those "matters arising under" the act, this provision cannot place jurisdiction over the claim within the division of labor. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

Despite the division's original jurisdiction to determine workers' compensation issues, a trial court with jurisdiction over a personal injury tort claim also has jurisdiction to apportion settlement proceeds between loss of consortium, economic losses, and non-economic losses. *Colo. Comp. Ins. Auth. v. Jorgensen*, 992 P.2d 1156 (Colo. 2000).

The failure of the state compensation insurance fund to specify the time of

effective cancellation of coverage results in the policy coverage being in effect until midnight of the date of cancellation. *State Comp. Ins. Fund v. Bldg. Sys.*, 713 P.2d 940 (Colo. App. 1985).

Under this section, the director has the authority to enter an order regarding a claimant's benefits even though the claimant's case is in the process of being determined by an administrative law judge. *Cornerstone Partners v. Indus. Claim Appeals Office*, 830 P.2d 1148 (Colo. App. 1992).

The director's authority to act under this section is not limited by § 8-43-208. *Cornerstone Partners v. Indus. Claim Appeals Office*, 830 P.2d 1148 (Colo. App. 1992).

A party seeking to modify an issue determined by a general or final admission, a summary order, or a full order has the burden to prove by a preponderance of the evidence that a modification should be made. *City of Brighton v. Rodriguez*, 2014 CO 7, 318 P.3d 496.

Applied in *Cornerstone v. Indus. Claim App. Office*, 830 P.2d 1148 (Colo. App. 1992).

8-43-202. Director may refer taking of evidence in cases to appropriate officials of other states.

The director, after notice to the parties in interest, may refer the taking of any evidence to any commission, court, or board administering in another state the compensation laws thereof, and such commission, court, or board of such other state, after notifying the parties in interest of the time and place of holding such hearing, shall hold hearings and take such evidence in the same

manner and by the officers as authorized by the laws of such state, and all such proceedings shall be certified and return thereof made as prescribed by the director.

Source: **L. 90:** Entire article R&RE, p. 501, § 1, effective July 1. **L. 91:** Entire section amended, p. 1316, § 23, effective July 1. **L. 94:** Entire section amended, p. 1874, § 2, effective June 1.

Editor's note: This section is similar to former § 8-53-104 as it existed prior to 1990.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Original trier of fact. Where no petition for review of a referee's order is filed, the industrial commission (now director) may enter an order that additional evidence be taken upon application of the claimant, and the commission (now director) becomes the

trier of the facts, and may enter an award without the recommendation or findings of a referee. There can be no doubt about the right to dispose of a claim in this manner, for there is nothing in the statute which deprives the commission (now director) of the power to function as an original trier of the facts regarding any claim. *Pittman Motors, Inc. v. Indus. Comm'n*, 156 Colo. 218, 399 P.2d 784 (1964).

8-43-203. Notice concerning liability - notice to claimants - notice of rights and claims process - rules.

(1) (a) The employer or, if insured, the employer's insurance carrier shall notify in writing the division and the injured employee or, if deceased, the decedent's dependents within twenty days after a report is, or should have been, filed with the division pursuant to section 8-43-101, whether liability is admitted or contested; except that, for the purpose of this section, any knowledge on the part of the employer, if insured, is not knowledge on the part of the insurance carrier. The employer or the employer's insurance carrier may notify the division electronically. Unless exempted by the director pursuant to rule because of a small number of filings or a showing of financial hardship, all notices of contest shall be filed electronically. The rejection of an electronically filed notice by the division for a technical error does not affect the validity of the notice to the claimant, but will not be considered proper service to the division. If the insurance carrier or self-insured employer denies liability for the claim, the claimant may request an expedited hearing on the issue of compensability if the application for an expedited hearing is

filed within forty-five days after the date of service of the notice of contest. The director shall set any expedited matter for hearing within sixty days after the date of the application, when the issue is liability for the disease or injury. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If a claimant elects not to request an expedited hearing pursuant to this subsection (1), the time schedule for hearing the matter is as set forth in section 8-43-209.

(b) The written notice given pursuant to this subsection (1) shall include a specific reference to the claimant's obligations under section 8-42-113.5.

(c) The employer or, if insured, the employer's insurance carrier may not withdraw an initial admission of liability on the issue of compensability filed pursuant to this subsection (1) if two years or more have elapsed since the date the initial admission of liability was filed with the division, except in cases of fraud.

(1.5) (Deleted by amendment, L. 92, p. 1825, § 4, effective April 29, 1992.)

(2) (a) If notice is not filed as provided in subsection (1) of this section, the employer or, if insured, the employer's insurance carrier, as the case may be, may become liable to the claimant, if the claimant is successful on the claim for compensation, for up to one day's compensation for each day's failure to so notify; except that the employer or, if insured, the employer's insurance carrier shall not be liable for more than the aggregate amount of three hundred sixty-five days' compensation for failure to timely admit or deny liability. Fifty percent of any penalty paid pursuant to this subsection (2) shall be paid to the Colorado uninsured employer fund, created in section 8-67-105, and fifty percent to the claimant.

(b) (I) If the employer or, if insured, the employer's insurance carrier admits liability, such notice shall specify the amount of compensation to be paid, to whom compensation will be paid, the period for which compensation will be paid, and the disability for which compensation will be paid, and payment thereon shall be made immediately.

(II) (A) An admission of liability for final payment of compensation must include a statement that this is the final admission by the workers' compensation insurance carrier in the case, that the claimant may contest this admission if the claimant feels entitled to more compensation, to whom the claimant should provide written objection, and notice to the claimant that the case will be automatically closed as to the issues admitted in the final admission if the claimant does not, within thirty days after the date of the final admission, contest the final admission in writing and request a hearing on any disputed issues that are ripe for hearing, including the selection of an independent medical examiner pursuant to section 8-42-107.2 if an independent medical examination has not already been conducted. If an independent medical examination is requested pursuant to section 8-42-107.2, the claimant is not required to file a request for hearing on disputed issues that are ripe for hearing until the division's independent medical examination process is terminated for any reason. Any issue for which a hearing or an

application for a hearing is pending at the time that the final admission of liability is filed shall proceed to the hearing without the need for the applicant to refile an application for hearing on the issue. This information must also be included in the admission of liability for final payment of compensation. The respondents have twenty days after the date of service of the notice from the division of the receipt of the IME's report to file an admission or to file an application for hearing. The claimant has thirty days after the date respondents file the admission or application for hearing to file an application for hearing, or a response to the respondents' application for hearing, as applicable, on any disputed issues that are ripe for hearing. The revised final admission, if any, must contain the statement required by this subsection (2)(b)(II), and the provisions relating to contesting the revised final admission apply. When the final admission is predicated upon medical reports, the reports must accompany the final admission.

(B) The amendments made to sub-subparagraph (A) of this subparagraph (II) by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(c) No penalty may be assessed under this subsection (2) for failure to timely admit or deny liability if a request for such penalty is filed more than seven years after the alleged violation. The division shall retain original claim records filed with the division for at least seven years after closure of the case. Seven years after a case is closed, the records may only be used for reopening a settlement on the grounds of fraud or mutual mistake of material fact.

(d) Once a case is closed pursuant to this subsection (2), the issues closed may only be reopened pursuant to section 8-43-303. Upon proper showing in writing made within said times fixed therefor, the director may extend the time for filing such admission of liability or notice of contest, but not exceeding ten days at any one time. Hearings may be set to determine any matter, but, if any liability is admitted, payments shall continue according to admitted liability.

(3) In addition to any other notice required by this section, at the time that the employer or, if insured, the employer's insurance carrier provides the notice required by subsection (1) of this section, the employer or insurance carrier shall provide to the claimant a brochure written in easily understood language, in a form developed by the director after consultation with employers, insurance carriers, and representatives of injured workers, describing the claims process and informing the claimant of the claimant's rights. If the claimant has previously authorized the employer or, if insured, the employer's insurance carrier to communicate with the claimant through electronic transmission, the brochure may be sent to the claimant electronically. The brochure must, at a minimum, contain the following information:

(a) Who the claimant may contact with questions concerning the claim, the claims process, and assistance with the claim, including:

(I) The insurance carrier or employer;

- (II) The division and the website for the division;
 - (III) The office of administrative courts and the website for the office; and
 - (IV) An attorney hired at the expense of the claimant;
- (b) The claimant's right to receive medical care for work-related injuries or occupational diseases paid for by the employer or the employer's insurance carrier including:
- (I) That most claimants have a right to choose from a list of at least two different doctors;
 - (II) That most claimants have a right to change doctors one time within ninety days after the injury and all claimants have the right to request a change of doctor at other times under certain other circumstances;
 - (III) The claimant's doctor's right to refer the claimant to other medical providers and specialists to provide the reasonable and necessary medical care that the claimant's work-related injuries or illness require;
 - (IV) The claimant's right to discuss with his or her doctor who should be present during a claimant's medical appointment, and the right to refuse to have a nurse case manager employed on the claimant's claim present at the claimant's medical appointment;
 - (V) The claimant's right to see and have copies of all of the claimant's medical records related to the medical care the claimant received for his or her work-related injury or illness;
 - (VI) The claimant's right to seek medical care and medical opinions about the claimant's work-related injury at the claimant's own expense;
 - (VII) The claimant's right to a medical examination by a doctor chosen by the claimant or by the division at the claimant's expense;
 - (VIII) The claimant's right to a permanent impairment evaluation after the claimant's treating doctors determine that the claimant has reached maximum medical improvement; and
 - (IX) The claimant's right to be informed whether medical care after maximum medical improvement will be provided and to receive reasonable continued medical care if it is necessary to maintain maximum medical improvement;
- (c) A description of the claimant's right to receive benefit payments, including the claimant's right to receive:
- (I) Wage replacement payments in the form of temporary total disability payments or temporary partial disability payments;
 - (II) Permanent impairment benefits if the claimant is left with a permanent impairment as a result of a work-related injury or disease;

(III) Disfigurement payments for permanent scarring or disfigurement caused by the claimant's work-related injury or surgery required because of the claimant's work-related injury; and

(IV) Mileage expense reimbursement for travel to and from work-related medical care and to and from pharmacies to obtain medical prescriptions for work-related medical care. The description of the right to receive mileage expense reimbursement must include information concerning the claimant's requirement to submit a request for reimbursement to the employer or employer's insurance carrier no later than one hundred twenty days after the expense is incurred pursuant to section 8-42-101 (7) and an example of a mileage reimbursement form.

(d) A description of how the claims process works, including:

(I) The claimant's right to file a claim for workers' compensation with the division within two years after the date of the claimant's injury or occupational disease;

(II) The claimant's right to receive a general admission of liability or notice of contest once the claim has been properly reported to the division;

(III) The claimant's right to verify that the claimant's average weekly wage payments for temporary total disability have been properly calculated by the claimant's employer or the employer's insurance carrier;

(IV) The claimant's right to prehearings and hearings on disputed issues;

(V) The claimant's right to present evidence, testify, introduce medical and other records, present witnesses, and make arguments at any hearing;

(VI) The claimant's right to object to and request a hearing on any final admission of liability within thirty days after the service of the admission in order to retain certain rights;

(VII) The claimant's right to challenge a finding of an impairment rating or maximum medical improvement in a final admission of liability within thirty days after the service of the admission in order to retain certain rights;

(VIII) The claimant's right to pursue penalties for violations of the law including late payment of benefits or improper refusal to pay benefits;

(IX) The claimant's right, subject to certain requirements, to reopen a claim within six years after the date of the injury or illness or within two years after the date of the last receipt of medical or wage benefits; and

(X) A description of other rights conferred upon a claimant pursuant to law or rule.

(4) Within fifteen days after the service of a written submission or request for a copy of the claim file, the employer or, if insured, the employer's insurance carrier or third-party

administrator shall provide to the claimant or the claimant's representative a complete copy of the claim file that includes all medical records, pleadings, correspondence, investigation files, investigation reports, witness statements, information addressing designation of the authorized treating physician, and wage and fringe benefit information for the twelve months leading up to the date of injury and thereafter, regardless of the format. If a privilege or other protection is claimed for any materials, the materials must be detailed in an accompanying privilege log.

Source: **L. 90:** Entire article R&RE, p. 501, § 1, effective July 1. **L. 91:** (1.5) added, p. 1316, § 24, effective July 1. **L. 92:** (1) and (1.5) amended, p. 1825, § 4, effective April 29. **L. 96:** (2) amended, p. 830, § 1, effective July 1. **L. 97:** (1) amended, p. 113, § 3, effective July 1. **L. 98:** (2)(b) amended, p. 1431, § 3, effective August 5. **L. 2001:** (2)(b)(II) amended, p. 49, § 1, effective March 11. **L. 2003:** (2)(b)(II) amended, p. 1956, § 1, effective May 22; (1)(a) amended, p. 837, § 2, effective August 6. **L. 2005:** (1)(a) amended, p. 200, § 4, effective July 1. **L. 2009:** (2)(b)(II) amended, (SB 09-168), ch. 184, p. 807, § 4, effective August 5. **L. 2010:** (2)(b)(II) amended, (SB 10-163), ch. 66, p. 232, § 4, effective March 31; (3) added, (HB 10-1038), ch. 275, p. 1258, § 1, effective May 26. **L. 2013:** (4) added, (SB 13-285), ch. 301, p. 1594, § 4, effective July 1; (2)(b)(II)(A) amended, (SB 13-249), ch. 267, p. 1409, § 2, effective August 7. **L. 2016:** (1)(a) amended, (SB 16-217), ch. 272, p. 1128, § 3, effective July 1. **L. 2021:** (1)(c) added and IP(3) and (3)(c)(IV) amended, (HB 21-1050), ch. 384, p. 2572, § 7, effective September 7. **L. 2026:** (1)(a), (2)(a), (2)(b)(II)(A), IP(3), (3)(d)(VI), (3)(d)(VII), and (4) amended, (SB 26-186), ch. 315, p. 1848, § 7, effective August 12.

Editor's note: This section is similar to former § 8-53-102 as it existed prior to 1990.

Cross references: For the legislative declaration in SB 16-217, see section 1 of chapter 272, Session Laws of Colorado 2016.

ANNOTATION

Law reviews. For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 32 Colo. Law. 113 (Oct. 2003). For article, "Failed Claim Closure: The Effect of Crigger on Workers' Compensation", see 44 Colo. Law. 47 (Jan. 2015).

Annotator's note. Since § 8-43-203 is similar to § 8-53-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Section held to be constitutional. Eachus v. Cooper, 738 P.2d 383 (Colo. App. 1986).

Notice requirement. Notification by claimant that he was asserting his then current disability to be job-related was sufficient to trigger the notice requirement of this section. Gallegos v. Green Const. Co., 754 P.2d 1177 (Colo. App. 1987).

Subsection (2) directs that payments cannot be abrogated unilaterally. Vargo v. Indus. Comm'n, 626 P.2d 1164 (Colo. App. 1981); Snyder v. Indus. Claim Appeals Office, 942 P.2d 1337 (Colo. App. 1997).

Payments begun as result of admitted liability must continue until order is entered pursuant to a hearing. Vargo v. Indus. Comm'n, 626 P.2d 1164 (Colo. App. 1981); Snyder v. Indus. Claim Appeals Office, 942 P.2d 1337 (Colo. App. 1997); Pacesetter Corp. v. Collett, 33 P.3d 1230 (Colo. App. 2001).

Admission of liability for "closed" period not permitted. The insurer may not unilaterally terminate benefits without complying with § 8-42-105 (3) and other applicable statutes and rules governing the termination of benefits. Colo. Comp. Ins. Auth. v. Indus. Claim Appeals Office, 18 P.3d 790 (Colo. App. 2000).

Retroactive withdrawals of admission of liability not permitted. There is no provision in subsection (2), or elsewhere in this section, which permits retroactive withdrawals of an admission of liability. Vargo v. Indus. Comm'n, 626 P.2d 1164 (Colo. App. 1981); Pacesetter Corp. v. Collett, 33 P.3d 1230 (Colo. App. 2001).

Admission based upon material false information declared void ab initio.

Where the evidence supported the referee's finding that the claimant supplied materially false information upon which his employer and its insurer relied in filing an admission of liability, the referee was justified in declaring the admission void ab initio. Vargo v. Indus. Comm'n, 626 P.2d 1164 (Colo. App. 1981); Krause v. Artcraft Sign Co., 710 P.2d 480 (Colo. 1985); Pacesetter Corp. v. Collett, 33 P.3d 1230 (Colo. App. 2001).

Lack of causal connection may be asserted at any time. In a dispute over medical benefits that arises after the filing of a general admission of liability, an employer generally can assert, based on subsequent medical reports, that the claimant did not establish the threshold requirement of a direct causal relationship between the on-the-job injury and the need for medical treatment. Snyder v. Indus. Claim Appeals Office, 942 P.2d 1337 (Colo. App. 1997).

An employer is precluded from challenging the IME physician's finding that claimant was not at MMI, including the IME physician's finding regarding the cause of claimant's symptoms because employer failed either to admit or contest liability within 30 days of the IME physician's report as required by subsection (2)(b)(II). Leprino Foods Co. v. Indus. Claim Appeals Office, 134 P.3d 475 (Colo. App. 2005).

Denial of withdrawal of admission of liability. Where an admission of liability is made by an insurance carrier and compensation paid thereunder for more than two years, there is no abuse of discretion in

denying the withdrawal of such admission, where all the facts pertinent to the case were known to the carrier for more than two years, and there is no suggestion of fraud. *Indus. Comm'n v. Johnson Pontiac, Inc.*, 140 Colo. 160, 344 P.2d 186 (1959) (decided under former § 8-53-103).

Release obtained as a result of a mutual mistake of material fact may be set aside in a workmen's compensation case. *Loper v. Indus. Comm'n*, 648 P.2d 1092 (Colo. App. 1982).

Successful claim requirement for recovery of penalties under subsection (2) is met by establishing the employer's liability, notwithstanding the fact that no additional compensation was payable as a result of that liability. *Smith v. Myron Stratton Home*, 676 P.2d 1196 (Colo. 1984); *McManus v. Indus. Claim Appeals Office*, 81 P.3d 1074 (Colo. App. 2003).

Claimant's receipt of benefits constitutes substantial compliance with the notice requirements of this section. *Pub. Serv. Co. of Colo. v. Boatwright*, 749 P.2d 456 (Colo. App. 1987); *Pacesetter Corp. v. Collett*, 33 P.3d 1230 (Colo. App. 2001).

A final admission must be mailed to the claimant's home address unless he or she has designated another location. *Bowlen v. Munford*, 921 P.2d 59 (Colo. App. 1996).

Claimant's receipt of benefit checks that were not mailed to his home address did not provide him with constructive receipt of the final admissions. *Bowlen v. Munford*, 921 P.2d 59 (Colo. App. 1996).

Contest of admission of liability. If an admission of liability is contested by either party, the determination of the matter placed in issue is subject to determination by the administrative law judge at the adversary hearing. The admission is binding only until the controverted issue is determined after the hearing. *HIJ Mgmt. Group, Inc. v. Kim*, 804 P.2d 250 (Colo. App. 1990).

Authority to modify erroneous admission. The administrative law judge's order providing for retroactive modification of employer's admission held incorrect. Since error in admission was caused by employer's own mistake in calculation of employee's average weekly wage, the order should apply to payments after the date of the order. *HIJ Mgmt. Group, Inc. v. Kim*, 804 P.2d 250 (Colo. App. 1990).

Employer's knowledge of employee's injury should not be imparted to insurer for the purpose of the penalty imposed by this section since it would be impossible for the insurer, without actual notice of the injury, to admit or deny liability within 25 days as required by this section. *State Comp. Ins. Fund v. Wilson*, 736 P.2d 33 (Colo. 1987).

An employer's knowledge of the employee's injury may not be imputed to the insurance carrier. *Campbell v. IBM Corp.*, 867 P.2d 77 (Colo. App. 1993).

When employer admits liability, it is obligated to pay accordingly. *Williams v. Indus. Comm'n*, 723 P.2d 749 (Colo. App. 1986); *Cibola Constr. v. Indus. Claim Appeals Office*, 971 P.2d 666 (Colo. App. 1998).

Employer required to pay claimant the full amount specified in its final admission of liability (FAL) where the employer failed to expressly notify the claimant in the final admission of a credit for benefits previously paid to claimant because an uncontested final admission dispositively settles the amount of an employer's liability. *Cibola Constr. v. Indus. Claim Appeals Office*, 971 P.2d 666 (Colo. App. 1998).

Subsection (2)(b)(II) makes clear that a "case" will automatically close if a FAL is not challenged or remedies have been exhausted. The definition of "case" is generally understood to refer to the entirety of a proceeding. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

Subsection (2)(b)(II) does not carve out an exception for penalties. Subsection (2)(b)(II) closes all portions of a workers' compensation case, including any penalty requests. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.2

Uncontested admission of liability became a "final" award, which could not be reopened except pursuant to statute, despite parties' assertion that fraud rendered award void ab initio. *Lewis v. Sci. Supply Co., Inc.*, 897 P.2d 905 (Colo. App. 1995).

Issue of permanent total disability (PTD), therefore, was closed by FAL based upon division-sponsored independent medical examination that agreed with a prior determination that placed claimant at maximum medical improvement (MMI) and when claimant failed to endorse the issue of PTD benefits within 30 days. *Olivas-Soto v.*

Indus. Claim Appeals Office, 143 P.3d 1178 (Colo. App. 2006).

Although issues raised in an FAL automatically close if not contested within 30 days under subsection (2)(b)(II), where a second FAL is issued before that time expires, the first admission has been superseded in its entirety. Under these circumstances, finality does not attach to the initial admission, and the case remains open during the 60-day period following the second admission. *Leeway v. Indus. Claim Appeals Office*, 178 P.3d 1254 (Colo. App. 2007).

Final admission of liability for permanent partial disability (PPD) benefits implicitly denies admission of liability for PTD benefits. *Olivas-Soto v. Indus. Claim Appeals Office*, 143 P.3d 1178 (Colo. App. 2006).

To contest an aspect of an FAL, a claimant must state in the application for the hearing the benefit to which he or she is entitled. The claimant may not keep his or her case from being closed by filing a general objection to the FAL. *Peregoy v. Indus. Claim Appeals Office*, 87 P.3d 261 (Colo. App. 2004).

Neither subsection (2)(b)(II), nor any other provision in the Workers' Compensation Act, states or implies that a claimant may file an objection to an FAL without identifying a contested issue. Likewise, no provision states or implies that issues admitted in an FAL may remain open indefinitely until the claimant identifies a disputed issue and requests a hearing.

Peregoy v. Indus. Claim Appeals Office, 87 P.3d 261 (Colo. App. 2004).

Neither state nor federal guarantees of equal protection are offended by the fact that a person whose claim has been closed under subsection (2)(b) must follow the reopening provisions of § 8-43-303 to reopen his or her workers' compensation claim. Peregoy v. Indus. Claim Appeals Office, 87 P.3d 261 (Colo. App. 2004).

Reopening of a claim under § 8-43-303 is not required for an employer to challenge future maintenance medical benefits because those benefits are, by their nature, not yet awarded, and therefore remain open despite an otherwise closed FAL. Bolton v. Indus. Claim Appeals Office, 2019 COA 47, 487 P.3d 999.

The language "as to the issues admitted" in subsection (2)(b)(II) does not mean only those "issues" on which an employer agrees to pay benefits. Instead, the phrase should be interpreted as referring to issues on which the employer affirmatively takes a position, either by agreeing to pay benefits or by denying liability to pay benefits. Therefore, because permanent partial disability benefits and permanent total disability benefits both compensate for a claimant's permanent loss of earning capacity, an admission for permanent partial benefits constituted an implicit denial of liability for permanent total disability benefits. Dyrkopp v. Indus. Claim Appeals Office, 30 P.3d 821 (Colo. App. 2001).

An admission or denial of liability, though not in writing, is sufficient to

terminate the running of the penalty period. Harrison v. Indus. Comm'n, 716 P.2d 477 (Colo. App. 1986); Eastman Kodak Co. v. Indus. Comm'n, 725 P.2d 85 (Colo. App. 1986).

An admission of liability filed with the division of labor, with a copy to the claimant, is sufficient to terminate the penalty period; however, the penalty period is not terminated upon commencement of compensation payments absent such a filing because of the prejudice a claimant could suffer as a result of such an omission. Dorris v. Gardner Zemke Co., 765 P.2d 602 (Colo. App. 1988).

Section has been uniformly interpreted as requiring payment of a penalty in addition to payment of compensation. Therefore if an employer has failed timely to admit or deny liability and the claimant is successful in his claim for compensation, this section mandates assessment of a penalty in addition to requiring payment of compensation. Eastman Kodak Co. v. Indus. Comm'n, 725 P.2d 85 (Colo. App. 1986).

Employee is not entitled to penalty for failure of employer to timely admit or deny liability if employee missed no time from work and only medical benefits are awarded. Racon Const. v. Indus. Claim Appeals Office, 775 P.2d 61 (Colo. App. 1989).

No penalty is provided in this section for failure of employer to promptly report an injury to its insurer. Campion v. Barta Builders, 780 P.2d 23 (Colo. App. 1989); Campbell v. IBM Corp., 867 P.2d 77 (Colo. App. 1993).

Because the general assembly has amended this section several times, but has not changed the wording affecting the liability of an insured employer, the holding that an employer is not liable for failing to report an injury to its insurer remains valid. *U.S. Fid. & Guar., Inc. v. Kourlis*, 868 P.2d 1158 (Colo. App. 1994).

For purposes of triggering a penalty assessment, a claim for compensation is successful at the time an employer files an admission of liability; a claimant need not establish an employer's liability through litigation on the merits of the claim. *Dorris v. Gardner Zemke Co.*, 765 P.2d 602 (Colo. App. 1988).

Duty of carrier to admit or deny liability was not triggered by requests from employer for reimbursement of claimant's medical expenses under employer's wage continuation plan. There is no basis for holding that an employer's request for reimbursement is equivalent to actual notification or knowledge of a lost time work injury. *Campbell v. IBM Corp.*, 867 P.2d 77 (Colo. App. 1993).

It is the duty of the trier of fact to resolve conflicting evidence, and court is bound by conclusions on review if such conclusions are supported by evidence. *Eachus v. Cooper*, 738 P.2d 383 (Colo. App. 1986).

Section 2-4-108 (1) covers computation of time periods under this section. Thus, the date of the claimant's injury should be excluded from the computation of the three-day waiting period. *Ralston Purina-*

Keystone v. Lowry, 821 P.2d 910 (Colo. App. 1991).

Ruling of administrative law judge concluding that claimant had failed to establish the statutory requisites under subsection (2) was not contested by claimant and, thus, was binding on appeal. *Rocky Mtn. Gen. v. Simon*, 827 P.2d 629 (Colo. App. 1992).

A case closure dictated by subsection (2) barred an injured worker's untimely penalty claim against not only the parties to the FAL, such as the injured worker's employer, but also the physician who oversaw the workers' compensation examination. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

The issue of a penalty provided by subsection (2) was not an issue admitted in a final admission. Thus, the case was not automatically closed within the meaning of subsection (2). The ALJ retained jurisdiction to impose a penalty, and the claimant was not required to contest an FAL pursuant to § 8-43-303. *Dalco Indus., Inc. v. Garcia*, 867 P.2d 156 (Colo. App. 1993).

The phrase "as the case may be" included in subsection (2) is not ambiguous, but is the same as saying, "depending on the circumstances". *U.S. Fid. & Guar., Inc. v. Kourlis*, 868 P.2d 1158 (Colo. App. 1994).

Employer's FAL for permanent total disability without reservation of the issue of the subsequent injury fund contribution was an admission that employer was solely liable. *Safeway v.*

Indus. Claim Appeals Office, 968 P.2d 162 (Colo. App. 1998).

Once a claimant has successfully challenged a finding of MMI through the division independent medical examination (DIME) process, that process remains open, such that when the authorized treating physician (ATP) makes a second finding of MMI, the employer or insurer may not file an FAL to close the case until they return the claimant to the IME for a follow-up examination and determination of MMI. Williams v. Kunau, 147 P.3d 33 (Colo. 2006); Sanco Indus. v. Stefanski, 147 P.3d 5 (Colo. 2006).

A court's jurisdiction consists of two elements, jurisdiction over the parties and jurisdiction over the subject matter. The employer argued that "jurisdiction was lost"

when claimant failed to respond to the first FAL within 30 days as required by subsection (2)(b)(II). In making this argument, employer conflates the issues of jurisdiction and failure to comply with a statutory provision. The ALJ and the panel had subject matter jurisdiction to consider claimant's MMI and PPD issues regarding compensation, so the subject matter jurisdiction of the ALJ and the panel are not implicated. Leeway v. Indus. Claim Appeals Office, 178 P.3d 1254 (Colo. App. 2007).

Applied in Riley v. Indus. Comm'n, 628 P.2d 147 (Colo. App. 1981); Indus. Comm'n v. Riley, 653 P.2d 723 (Colo. 1982); Melnick v. Indus. Comm'n, 656 P.2d 1318 (Colo. App. 1982); Jones v. Adolph Coors Co., 689 P.2d 681 (Colo. App. 1984); Johnson v. McDonald, 697 P.2d 810 (Colo. App. 1985).

8-43-204. Settlements - rules.

(1) An injured employee may settle all or part of any claim for compensation, benefits, penalties, or interest. If such settlement provides by its terms that the employee's claim or award shall not be reopened, such settlement shall not be subject to being reopened under any provisions of articles 40 to 47 of this title other than on the ground of fraud or mutual mistake of material fact.

(2) Such a settlement shall be in writing and shall be signed by a representative of the employer or insurer and signed and sworn to by the injured employee. For claims that have a settlement amount of seventy-five thousand dollars or more, a written notice of the settlement agreement shall be provided to the employer.

(3) The settlement shall be reviewed in person with the injured employee and approved in writing by an administrative law judge or the director of the division prior to the finalization of such settlement. The settlement shall be filed with the division as a part of the injured employee's permanent record.

(4) If an employee owes child support and a garnishment has been filed pursuant to section 13-54.5-101, C.R.S., or the state child support enforcement agency has filed a notice of

administrative lien and attachment pursuant to section 26-13-122, C.R.S., with the insurer or self-insured employer, all proceeds of any award, lump sum settlement, and the indemnity portion of any structured settlement shall be subject to said garnishment or administrative lien and attachment. Proceeds up to the amount of the garnishment or administrative lien and attachment shall be paid as directed on the notice to the obligee or to the state child support enforcement agency on behalf of the obligee to whom support is owed.

(5) If an employee owes a debt for which a writ is issued as a result of a judgment for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible and a garnishment has been filed pursuant to section 13-54-104 or 13-54.5-101 with the insurer or self-insured employer, all proceeds of any award, lump sum settlement, and the indemnity portion of any structured settlement are subject to the garnishment. Proceeds up to the amount of the garnishment shall be paid as directed by the county department of human or social services responsible for administering the state public assistance programs.

(6) To aid in settlement, the director shall review mortality tables from the United States government and private industry and issue rules establishing a single life expectancy table on July 1 in every even-numbered year, commencing July 1, 2010. The director may adopt current mortality tables used by medicare. Nothing in this subsection (6) shall be construed to limit the use of rated ages.

(7) Any lump sum payable as a full or partial settlement shall be paid to the claimant or the claimant's attorney within fifteen calendar days after the date the executed settlement order is received by the carrier or the noninsured or self-insured employer.

(8) The director shall adopt rules as necessary to implement the procedure to review and approve settlement documents. At a minimum, the rules must:

- (a) Allow a represented claimant to submit settlement documents for approval electronically;
- (b) Provide for the approval of settlement documents if the claimant's signature is not an original but is notarized; and
- (c) Require the division to serve counsel of record, or the insurance carrier or self-insured employer if not represented, with a copy of the division's order approving the settlement agreement of the parties.

(9) In accordance with section 24-30-1510.7 (6), if the state enters into a settlement agreement with a state employee pursuant to subsection (1) of this section, the state shall neither suggest nor require:

- (a) That the state employee resign from state employment;

(b) That the state employee refrain from seeking or obtaining employment with the state in the future; or

(c) That any other restrictions be placed on the state employee's ability to work for the state.

Source: **L. 90:** Entire article R&RE, p. 502, § 1, effective July 1. **L. 98:** Entire section amended, p. 530, § 1, effective April 30. **L. 2001:** Entire section amended, p. 720, § 2, effective May 31. **L. 2006:** (5) added, p. 949, § 7, effective August 7. **L. 2010:** (6) and (7) added, (SB 10-163), ch. 66, p. 233, § 5, effective March 31. **L. 2014:** (8) added, (SB 14-191), ch. 316, p. 1371, § 2, effective July 1. **L. 2018:** (5) amended, (SB 18-092), ch. 38, p. 397, § 3, effective August 8. **L. 2024:** (9) added, (SB 24-149), ch. 482, p. 3380, § 2, effective June 7. **L. 2026:** (8)(a) and (8)(c) amended, (SB 26-186), ch. 315, p. 1850, § 8, effective August 12.

Editor's note: (1) This section is similar to former § 8-53-105 as it existed prior to 1990.

(2) Section 9 of chapter 208, Session Laws of Colorado 2006, provides that the act enacting subsection (5) applies to judgments entered prior to, on, or after August 7, 2006.

Cross references: (1) For the legislative intent contained in the 2006 act enacting subsection (5), see section 8(2) of chapter 208, Session Laws of Colorado 2006.

(2) For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "Settlement Procedure in Workers' Compensation Claims", see 46 Colo. Law. 40 (July 2017).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Interest of state in recovery of just compensation induced provision requiring approval of settlements. It is the fact that the state has an interest in the recovery of just compensation by injured

employees to the end that they do not, because of their injuries, become public charges, which induced the lawmakers to require the approval of settlements as a condition of their becoming binding on the parties to them. *Indus. Comm'n v. London Guarantee & Accident Co.* 66 Colo. 575, 185 P. 344 (1919).

A settlement made on stipulation in court is no more effective without such approval than is any other settlement.

Indus. Comm'n v. London Guarantee & Accident Co., 66 Colo. 575, 185 P. 344 (1919).

Settlement does not discharge claim against physician for malpractice. Settlement under the workmen's compensation act for accidental injuries incurred by an employee does not operate to release or discharge a claim for damages for malpractice which he may have against the physician who treated his injuries. Froid v. Knowles, 95 Colo. 223, 36 P.2d 156 (1934).

A claim may be closed upon payment of a final settlement. In re Brunetti v. Indus. Comm'n, 670 P.2d 1246 (Colo. App. 1983).

The division of labor's approving the employer's admission of liability "subject to any further liability as provided by law" did not constitute a termination of claimant's right to payment for medical treatments by the employer's doctor. To the contrary, specific provision is made in the act for obtaining final approval by the commission of the settlement of a claim. Granite Constr. Co. v. Leonard, 40 Colo. App. 20, 568 P.2d 500 (1977).

Effect of settlements on reopening. In view of prior cases, the beneficial purposes of the act and the language of §§ 8-51-108 and 8-53-113, the conclusion is inescapable that the general assembly has given the director authority to reopen a case within requisite time limitations regardless of whether there was a settlement. Padilla v. Indus. Comm'n, 696 P.2d 273 (Colo. 1985) (decided prior to 1985 amendment).

Worker's compensation claim may be reopened despite claimant's stipulation waiving right to reopen case because the supreme court decision in Padilla v. Indus. Comm'n (696 P.2d 273 (Colo. 1985)) allowing such reopenings should be given retroactive effect. Loffland Bros. v. Indus. Claim Appeals Office, 754 P.2d 768 (Colo. App. 1988), aff'd, 770 P.2d 1221 (Colo. 1989).

Effect of settlement waiving claims for all injuries, both known and unknown. Settlement form adopted by the director of the division of workers' compensation could not override an employee's statutory right under subsection (1) to reopen a claim due to a mutual mistake concerning an existing, material fact. Therefore, to the extent the form purported to waive all claims for "unknown injuries", its operation was limited to those arising in the future, and an existing injury unknown to the parties at the time of the settlement could provide a basis on which to reopen the claim. England v. Amerigas Propane, 2017 CO 55, 395 P.3d 766.

Document signed by claimant at request of claims adjuster in which claimant rejected his right to workers' compensation benefits was ineffective as a waiver where document was in the nature of a settlement and was not approved as required by this section. Oxford Chems., Inc. v. Richardson, 782 P.2d 843 (Colo. App. 1989).

Release signed by injured worker was ineffective in barring her pursuit of workers' compensation claims because it

was not approved by the division. *Cook v. McLister*, 820 P.2d 1167 (Colo. App. 1991).

Administrative law judge (ALJ) properly found settlement was voidable on ground claimant was mentally incompetent at the time he entered into the settlement. Although the settlement of a claim may be reopened only on grounds of fraud or mutual mistake of fact, an ALJ is empowered to determine the competency of a claimant entering into such a settlement agreement, and when no such capacity exists because of mental incompetency, the contract is voidable by the person lacking capacity to contract. *Powderhorn Coal Co. v. Weaver*, 835 P.2d 616 (Colo. App. 1992).

A mutual mistake is one which is reciprocal and common to both parties to an agreement, and both parties must share the same misconception as to the terms and conditions of the agreement. *Cary v. Chevron U.S.A., Inc.*, 867 P.2d 117 (Colo. App. 1993).

A prehearing ALJ has jurisdiction to enter an order approving a settlement agreement in a workers' compensation case. *Indus. Claim Appeals Office v. Orth*, 965 P.2d 1246 (Colo. 1998).

The orders of a prehearing ALJ that relate to prehearing conferences are not final for purposes of appeal. *Indus. Claim Appeals Office v. Orth*, 965 P.2d 1246 (Colo. 1998).

However, the orders of a prehearing ALJ approving a settlement are final for purposes of appeal. *Indus. Claim Appeals Office v. Orth*, 965 P.2d 1246 (Colo. 1998).

Subsection (4) applies to a claimant's settlement for an injury that occurred prior to the enactment of subsection (4), thereby subjecting the settlement to a lien filed by the division of child support enforcement for unpaid child support. While the state constitution prohibits laws that are retrospective in operation, subsection (4) can be applied retroactively because it created a procedural enforcement remedy that does not impair the claimant's substantive rights. *Div. of Child Support Enforcement v. Indus. Claim Appeals Office*, 109 P.3d 1042 (Colo. App. 2004).

The statutory amendment creating subsection (4) merely created a new enforcement remedy by allowing a portion of a claimant's settlement to be sent directly to the child support registry to satisfy a preexisting child support obligation. Claimant's right to the lump-sum settlement vested after subsection (4) was enacted and is, therefore, subject to the lien filed by the division of child support enforcement. *Div. of Child Support Enforcement v. Indus. Claim Appeals Office*, 109 P.3d 1042 (Colo. App. 2004).

8-43-205. Mediation.

(1) Any party involved in a claim arising under articles 40 to 47 of this title may request mediation services by filing a request for mediation services with the division. However,

mediation shall be entirely voluntary and shall not be conducted without the consent of all parties to the claim. If a request for mediation services is made after an application for a hearing has been filed, the administrative law judge hearing the dispute shall approve, on motion of the parties, the submission of the dispute to mediation prior to hearing the matter. An application for mediation services shall be filed on a form prescribed by the director. Upon receiving the application for mediation services, the director shall cause a mediation conference to occur within thirty days thereafter. At a mediation conference, the claimant may be represented by the claimant, counsel, or any other agent of the claimant's choice. Mediators need not be attorneys.

(2) Mediation proceedings conducted pursuant to this section shall be considered to be settlement negotiations and are confidential. No admission, representation, or statement made in the course of such mediation proceedings that is not otherwise subject to discovery or otherwise obtainable under the procedures established in articles 40 to 47 of this title shall be admissible as evidence or subject to discovery under said articles. No mediator who participates in mediation proceedings conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any other proceeding under articles 40 to 47 of this title.

(3) The division shall develop a program to implement the provisions of this section. Such program shall be a simple, nonadversarial method for the mediation of disputes arising under articles 40 to 47 of this title. Such program shall provide for the use of neutral mediators and the conduct of proceedings in an informal setting. The director shall adopt rules and regulations to implement such program.

Source: **L. 90:** Entire article R&RE, p. 502, § 1, effective July 1. **L. 91:** (1) amended, p. 1316, § 25, effective July 1. **L. 94:** (1) amended, p. 1874, § 3, effective June 1.

Editor's note: This section is similar to former § 8-53-105.5 as it existed prior to 1990.

ANNOTATION

In workers' compensation proceedings, "authorization" refers to the treating physician's status as the health care provider legally authorized to treat an injured worker rather than the particular

medical treatment or procedure recommended by the authorized treating physician. *One Hour Cleaners v. Indus. Claim Appeals Office*, 914 P.2d 501 (Colo. App. 1995).

8-43-206. Settlement conference procedures.

(1) Any employee, insurer, or employer, if self-insured, involved in a dispute arising under articles 40 to 47 of this title may request settlement conference services from the director or the office of administrative courts in the department of personnel. However, such settlement procedures are optional and entirely voluntary, and no such procedures shall be conducted without the consent of both parties to the dispute.

(2) Settlement conferences shall be conducted by a settlement conference officer who may be a prehearing administrative law judge or an administrative law judge in the office of administrative courts in the department of personnel appointed pursuant to section 24-30-1003, C.R.S., and assigned to hear disputes arising under articles 40 to 47 of this title. The parties may agree on the selection of a settlement conference officer; except that such officer shall not be the administrative law judge who is regularly assigned to hear the employee's case. If the parties fail to agree on the selection of such officer, they may apply to the director or to the office of administrative courts for the designation of a settlement conference officer who shall not be the administrative law judge who is regularly assigned to hear the employee's case.

(3) Settlement conference proceedings conducted pursuant to this section shall be considered to be settlement negotiations and are confidential. No admission, representation, or statement made in the course of such settlement conference proceedings that is not otherwise subject to discovery or otherwise obtainable under the procedures established in articles 40 to 47 of this title shall be admissible as evidence or subject to discovery under said articles. No settlement conference officer who participates in settlement conference proceedings conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any other proceeding under articles 40 to 47 of this title.

(4) The executive director of the department of personnel shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall be consistent with the provisions of section 8-43-204.

(5) The director of the division of workers' compensation shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall be consistent with the provisions of section 8-43-204.

Source: **L. 90:** Entire article R&RE, p. 503, § 1, effective July 1. **L. 94:** (1) and (2) amended and (5) added, p. 1875, § 4, effective June 1. **L. 95:** (1), (2), and (4) amended, p. 635, § 14, effective July 1. **L. 2005:** (1) and (2) amended, p. 854, § 12, effective June 1.

Editor's note: This section is similar to former § 8-53-105.6 as it existed prior to 1990.

8-43-206.5. Right to binding arbitration for resolution of disputes under articles 40 to 47.

At any time prior to a hearing, the parties may agree to submit any dispute under articles 40 to 47 of this title to binding arbitration. Said arbitration shall be by an administrative law judge of the parties' choice or pursuant to arbitration procedures as provided by the Colorado rules of civil procedure. Any arbitration award pursuant to the provisions of this section shall be binding upon the parties, and no other procedure contained in this article shall be available to the parties for the further review of such award.

Source: **L. 91:** Entire section added, p. 1317, § 26, effective July 1. **L. 94:** Entire section amended, p. 1875, § 5, effective June 1.

8-43-207. Hearings.

(1) Hearings shall be held to determine any controversy concerning any issue arising under articles 40 to 47 of this title 8. In connection with hearings, the director and administrative law judges are empowered to:

(a) In the name of the division, issue subpoenas for witnesses and documentary evidence which shall be served in the same manner as subpoenas in the district court;

(b) Administer oaths;

(c) Make evidentiary rulings;

(d) Limit or exclude cumulative or repetitive proof or examination;

(e) Upon motion and for good cause shown, permit parties to engage in discovery; except that permission need not be sought if each party is represented by an attorney. The director or administrative law judge may rule on discovery matters and impose the sanctions provided in the rules of civil procedure in the district courts for willful failure to comply with permitted discovery.

(f) Upon motion and for good cause shown, conduct prehearing conferences for the settlement or simplification of issues;

(g) Dispose of procedural requests upon written motion or on written briefs or oral arguments as determined appropriate;

(h) Control the course of the hearing and the conduct of persons in the hearing room;

(i) Upon motion and for good cause shown, grant reasonable extensions of time for the taking of any action contained in this article 43;

(j) Upon good cause shown, adjourn any hearing to a later date for the taking of additional evidence;

(k) Issue orders;

(l) Appoint guardians ad litem, as appropriate, in matters involving dependents' claims, and assess the reasonable fees and costs, therefore, from one or more of the parties;

(m) Determine the competency of witnesses who testify in a workers' compensation hearing or proceeding and the competency of parties that have entered into settlement agreements pursuant to section 8-43-204. Such competency determinations shall only be for the purpose of the particular workers' compensation proceeding.

(n) Dismiss all issues in the case except as to resolved issues and except as to benefits already received, upon thirty days notice to all the parties, for failure to prosecute the case unless good cause is shown why such issues should not be dismissed. For purposes of this paragraph (n), it shall be deemed a failure to prosecute if there has been no activity by the parties in the case for a period of at least six months.

(o) Set aside all or any part of any fee for medical services rendered pursuant to articles 40 to 47 of this title if an administrative law judge determines after a hearing that, based upon a review of the medical necessity and appropriateness of care provided pursuant to said articles, any such fee is excessive or that the treatment rendered was not necessary or appropriate under the circumstances. If all or part of any fee for medical services is set aside pursuant to this paragraph (o), the provider of any such services shall not contract with, bill, or charge the claimant for such fees and shall not attempt in any way to collect any such charges from the claimant. No fee for medical services shall be set aside pursuant to this paragraph (o) if the treatment was authorized in writing by the insurer or employer.

(p) Impose the sanctions provided in the Colorado rules of civil procedure, except for civil contempt pursuant to rule 107 thereof, for willful failure to comply with any order of an administrative law judge issued pursuant to articles 40 to 47 of this title;

(q) Require repayment of overpayments.

(2) Notwithstanding any other provision of this article 43, neither the director nor an administrative law judge shall determine the issues of the compensability of a claim or the liability of any party to a claim unless specific benefits or penalties are awarded or denied contemporaneously with the determination.

Source: **L. 90:** Entire article R&RE, p. 504, § 1, effective July 1. **L. 91:** (1)(e) and(1)(n) amended and (1)(o) and (1)(p) added, p. 1317, § 27, effective July 1. **L. 97:** (1)(q) added, p. 114, § 4, effective July 1. **L. 98:** (1)(e) amended, p. 147, § 1, effective April 2. **L. 2011:** (1)(e) amended, (SB 11-199), ch. 196, p. 759, § 2, effective May 23. **L. 2021:** (2) added, (HB 21-1050), ch. 384, p. 2573, § 8, effective September 7. **L. 2026:** IP(1), (1)(e), (1)(f), and (1)(i) amended, (SB 26-186), ch. 315, p. 1851, § 9, effective August 12.

Editor's note: This section is similar to former § 8-53-103 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Powers of the Director and Hearing Officers.

III. Evidence.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Use of Evidence in Hearings Before Colorado Administrative Agencies", see 29 Dicta 437 (1952). For note, "The Right to Cross-Examine Adverse Witnesses as a Part of Due Process in Hearings Before Colorado Agencies", see 31 Dicta 383 (1954). For article, "Medical Utilization Review Under Worker's Compensation", see 17 Colo. Law. 1995 (1988). For article, "An ALJ's View: The New, Unified Hearings in Worker's Compensation Cases", see 18 Colo. Law. 2327 (1989). For article, "Failed Claim Closure: The Effect of Crigger on Workers' Compensation", see 44 Colo. Law. 47 (Jan. 2015).

Annotator's note. Since § 8-43-207 is similar to § 8-53-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado",

articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Jurisdictional challenge to hearing officer. Additional hearing required where claimant alleged that hearing officer lacked jurisdiction to enter an order after the hearing officer had terminated his employment. *Welch v. Indus. Comm'n*, 722 P.2d 439 (Colo. App. 1986).

Retrospective application of section by administrative law judge (ALJ) in order to determine whether claimant was competent at the time he entered into the settlement agreement was proper because it effected a procedural rather than a substantive change. *Powderhorn Coal Co. v. Weaver*, 835 P.2d 616 (Colo. App. 1992).

The administrative and judicial review provisions of the Act are complete, definitive, and organic, without the need of supplementation from other legislative acts or the procedural relief afforded by C.R.C.P. 16. *Gardner v. Friend*, 849 P.2d 817 (Colo. App. 1992).

General extension-of-time provision in subsection (1)(i) does not overcome the jurisdictional time limits set forth elsewhere in the act. *Speier v. Indus. Claim Appeals Office*, 181 P.3d 1173 (Colo. App. 2008).

An aggrieved party to a medical utilization review proceeding may request an evidentiary hearing under former § 8-53-103 if the order of the director of the division of labor terminates a medical benefit or if a party seeks to terminate medical benefits based on the review proceedings. *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992) (decided under former § 8-53-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

If the issue in controversy involves the necessity and appropriateness of medical care, rather than industrial disability, the medical utilization committee reports and the director's order based thereon are admissible in hearings under former § 8-53-103, subject to the hearing officer's evidentiary rulings. *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992) (decided under former § 8-53-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

Party adversely affected by a medical utilization review proceeding can request that the matter be litigated de novo in a hearing under this section. *Donn v. Indus.*

Claim Appeals Office, 865 P.2d 873 (Colo. App. 1993).

Where the director's medical utilization review order issued pursuant to § 8-43-501 terminates the claimant's care by a previously authorized health care provider, the claimant is entitled to have the order adjudicated de novo by an ALJ. *McWhorter v. CNA Ins. Co.*, 868 P.2d 1128 (Colo. App. 1993).

II. POWERS OF THE DIRECTOR AND HEARING OFFICERS.

Broad powers are granted by this section and govern all proceedings on an initial claim or upon reopening. *Colo. Auto Body, Inc. v. Newton*, 160 Colo. 113, 414 P.2d 480 (1966).

Under the broad powers granted by this section, the ALJ committed no abuse of discretion by joining parties when the question of their liability had been raised and the joinder posed no risk of prejudice. *Renaissance Salon v. Indus. Claim Appeals Office*, 994 P.2d 447 (Colo. App. 1999).

Power to give notice, adjourn hearing, and give parties right to be present. When it develops at a hearing that there is a possibility that disabilities in connection with which the claimant is seeking additional compensation might be the result of another accident, under this section — either upon the application of "any party" or upon its own motion — the fact-finder is empowered to send reasonable notice to all interested parties and to adjourn the hearing from time to time and to give all parties the right to be present. *Colo. Auto Body, Inc. v.*

Newton, 160 Colo. 113, 414 P.2d 480 (1966).

Questions of fact can be determined only by the fact-finder. Roper v. Indus. Comm'n, 93 Colo. 250, 25 P.2d 752 (1933); O.P. Skaggs Co. v. Nixon, 97 Colo. 314, 50 P.2d 55 (1935).

Fact-finder determines which of two causes produced injury. Where an existing condition may result from one of two causes shown in the evidence, it is the province of the director fact finder to determine which of these two causes produced the result of which complaint is made. Indus. Comm'n v. Barton, 98 Colo. 51, 52 P.2d 670 (1935).

Hearing officer has discretion to reject consolidation of claims when issues are distinct and claimant will have future opportunity to litigate other claims. Roe v. Indus. Comm'n, 734 P.2d 138 (Colo. App. 1986).

Evidentiary decisions are firmly within an ALJ's discretion and will not be disturbed absent a showing of abuse of that discretion. ALJ's ruling that feeling and examining claimant's shoulder during the hearing was not relevant to the causation issue was not an abuse of discretion. Claimant did not offer proof that an examination in the hearing could show that his left and right shoulder symptomology were related, and claimant's credibility concerning pain was irrelevant to the causation issue. Youngs v. Indus. Claim Appeals Office, 2013 COA 54, 316 P.3d 50.

ALJ vested with wide discretion in conduct of evidentiary proceedings.

Therefore, the ALJ's refusal to impose sanctions would not be set aside absent a showing that the ALJ abused his or her discretion. Kilpatrick v. Indus. Claim Appeals Office, 2015 COA 30, 356 P.3d 1008.

Division has the authority to grant the parties to a medical utilization review proceeding an extension of time for good cause shown. Donn v. Indus. Claim Appeals Office, 865 P.2d 873 (Colo. App. 1993).

The power to grant reasonable extensions of time cannot overcome the jurisdictional time limitation on filing a notice of appeal of a medical utilization review order, pursuant to § 8-43-501. Cramer v. Indus. Claim Appeals Office, 885 P.2d 318 (Colo. App. 1994).

ALJ's imposition of discovery sanctions reasonable upon a finding of a willful discovery violation when ALJ explicitly found that employer had not fully complied with the order compelling discovery. When the order is read in conjunction with: (1) The presumption accorded by department of labor & employment rule VIII(E)(7); (2) employer's failure to timely respond to the original discovery request; (3) its failure to timely comply with both the order compelling discovery and the order for discovery entered at the prehearing conference; and (4) its failure to respond to the motions to compel and for sanctions, the ALJ clearly found the violation was willful. Shafer Commercial Seating, Inc. v. Indus. Claim Appeals Office, 85 P.3d 619 (Colo. App. 2003).

Employer did not substantially comply with the order to compel when it supplied the requested information only two or three days beyond the last imposed deadline without a showing that its belated production of the information was the result of mistake, lack of knowledge, or some other basis that would explain the failure to comply with the prior orders and negate the determination of deliberate intent. *Shafer Commercial Seating, Inc. v. Indus. Claim Appeals Office*, 85 P.3d 619 (Colo. App. 2003).

III. EVIDENCE.

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions to the industrial claim appeals panel.

The rules of evidence are generally the same in workmen's compensation cases as they are in civil suits. *Watson v. Merritt*, 149 Colo. 562, 369 P.2d 989 (1962).

For the general assembly did not authorize the adoption of rules of evidence which courts themselves are without authority to adopt. *Puncec v. City & County of Denver*, 28 Colo. App. 542, 475 P.2d 359 (1970).

Due process and fundamental rights may not be disregarded. Although the rules of evidence may be somewhat more relaxed in an administrative proceeding than in a court of law, they cannot be so relaxed that due process of law and fundamental rights

are disregarded. *Puncec v. City & County of Denver*, 28 Colo. App. 542, 475 P.2d 359 (1970).

Thus, in a compensation hearing cross-examination is a fundamental right, and not a mere privilege. Although its scope may be restricted, within the sound discretion of the court, it cannot be denied. And where the claimant does not request an opportunity to inspect the hospital records before the director or seek to cross-examine on them, the referee's failure to advise claimant of her right of cross-examination is improper, as is his failure to offer her an opportunity to inspect the records before using them against her. *Puncec v. City & County of Denver*, 28 Colo. App. 542, 475 P.2d 359 (1970).

Due process requires that a hearing officer either read or hear the evidence. Therefore a hearing officer may read and rely on the transcript of evidence presented before another hearing officer and need not grant a de novo hearing. *Walton v. Indus. Comm'n*, 738 P.2d 66 (Colo. App. 1987).

Hearing officer did not deprive employer and insurer of due process in denying their request to depose experts in different city even though, as a result, experts did not testify since deposition should have been taken in advance and employer and insurer were advised 60 days in advance of hearing date that all evidence was to be presented at that time. *IPMC Transp. v. Indus. Claim Appeals Office*, 753 P.2d 803 (Colo. App. 1988).

Use of video teleconferencing technology to hear testimony from a remote

location in evidentiary hearing did not violate claimant's due process and equal protection rights. *Kroupa v. Indus. Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002).

Although hearing officer had discretion to grant petitioner's request in conduct of evidentiary proceeding upon a showing of good cause, such cause must be balanced against competing interests of other parties. *IPMC Transp. v. Indus. Claim Appeals Office*, 753 P.2d 803 (Colo. App. 1988).

Rule against hearsay evidence may not properly be disregarded in proceedings under the workmen's compensation act. *Olson-Hall v. Indus. Comm'n*, 71 Colo. 228, 205 P. 527 (1922); *Armour & Co. v. Indus. Comm'n*, 78 Colo. 569, 243 P. 546 (1926); *New Jersey Fid. & Plate Glass Ins. Co. v. Richey*, 85 Colo. 376, 275 P. 937 (1929); *H.C. Lallier Const. & Eng'r Co. v. Indus. Comm'n*, 91 Colo. 593, 17 P.2d 532 (1932).

Parties are expected to introduce all their evidence at the appointed hearing and on that evidence, so introduced, a decision is made. *Frank v. Indus. Comm'n*, 96 Colo. 364, 43 P.2d 158 (1935).

Burden of proof. It is elementary in compensation cases, as in other actions, that the burden of proof is upon the party asserting the claim and it is the duty of the claimant to show that the death or injury of the employee was the proximate result of an accident arising out of and in the course of his employment. *Olson-Hall v. Indus. Comm'n*, 71 Colo. 228, 205 P. 527 (1922).

Where all the evidence supports the claim, because no evidence has been introduced to the contrary and no impeachment has taken place, the conclusion necessarily drawn by the law from the evidence must be enforced. *Frank v. Indus. Comm'n*, 96 Colo. 364, 43 P.2d 158 (1935).

Hearing officer did not err in taking additional evidence which might have affected the outcome of a claim for benefits during an additional hearing conducted upon remand. *Potomac Ins. Co. v. Indus. Comm'n*, 744 P.2d 765 (Colo. App. 1987).

It is always proper for a claimant to testify as to his general health and feeling immediately preceding and succeeding an accident, to the end that comparison may be made and the extent of the injury evaluated. *Montgomery Ward & Co. v. Indus. Comm'n*, 128 Colo. 465, 263 P.2d 817 (1953); *Indus. Comm'n v. Newton Lumber & Mfg. Co.*, 135 Colo. 594, 314 P.2d 297 (1957).

Statements of a deceased employee as to his bodily or mental feelings are admissible in evidence. *Olson-Hall v. Indus. Comm'n*, 71 Colo. 228, 205 P. 527 (1922).

However, statements of a deceased employee as to the cause of his illness are not admissible, if not within the *res gestae* rule. *Olson-Hall v. Indus. Comm'n*, 71 Colo. 228, 205 P. 527 (1922).

Admissions against interest justify the finder of the facts in considering as established the facts admitted. In the absence of opposing evidence their *prima facie* character remains undisturbed and

intact. *Watson v. Merritt*, 149 Colo. 562, 369 P.2d 989 (1962).

Probative value of employer's declaration against interest. The report of an accident by an employer stating that a claimant strained or pulled his heart muscle when attempting to lift a transmission into an automobile is a declaration against the interest of the employer having probative value, the weight of which is for the fact-finder to determine. *Indus. Comm'n v. Johnson Pontiac, Inc.*, 140 Colo. 160, 344 P.2d 186 (1959).

The written report of a doctor acting as a witness for a claimant may be considered when filed and made part of the record. *J.W. Metz Lumber Co. v. Taylor*, 134 Colo. 249, 302 P.2d 521 (1956).

Consideration of testimony of doctor. The doctor who makes out a death certificate certifies as to the correctness of its contents at the time he makes it out, and where the doctor who makes out the certificate in the first instance seeks to explain away the legal effect of what he certifies, the fact-finder is justified in considering that circumstance carefully, *Elleman v. Indus. Comm'n*, 100 Colo. 120, 66 P.2d 323 (1937).

Opinion evidence of physician is competent in workmen's compensation cases. *Card Iron Works Co. v. Radovich*, 94 Colo. 426, 30 P.2d 1108 (1934).

Thus, question based on death certificate held not to be error. It is not prejudicial error to ask a medical expert whether death was the result of an accident

based upon his examination of the death certificate alone. It is reasonable that such an expert can make certain deductions from the contents of a death certificate, and in such a case it is at least corroborative testimony. *Elleman v. Indus. Comm'n*, 100 Colo. 120, 66 P.2d 323 (1937).

Employer's report of accident, its conduct relative thereto, and report of mine inspector are proper evidence in a workmen's compensation case involving a coal mining accident. *Empire Zinc Co. v. Indus. Comm'n*, 94 Colo. 98, 28 P.2d 337 (1933).

Furthermore, hospital records may be received as evidence. The general assembly authorized the director to receive as evidence, and use as proof of any fact in dispute, hospital records of an injured employee. *Puncec v. City & County of Denver*, 28 Colo. App. 542, 475 P.2d 359 (1970).

When claimant refused to sign release of psychiatric records, the ALJ properly imposed sanctions. The judge agreed to review the records in camera to determine which, if any, should be released to respondents, but the claimant argued that the judge should meet in camera with her psychiatrist to identify areas that would not be disclosed. *Sheid v. Hewlett Packard*, 826 P.2d 396 (Colo. App. 1991).

The orders of a prehearing ALJ that relate to prehearing conferences are not final for purposes of appeal. *Indus. Claim Appeals Office v. Orth*, 965 P.2d 1246 (Colo. 1998).

However, the orders of a prehearing ALJ approving a settlement are final for purposes of appeal. *Indus. Claim Appeals Office v. Orth*, 965 P.2d 1246 (Colo. 1998).

Additional hearings. If a party seeks an additional hearing after the apparent completion of the contemplated hearing process, the commission may deny a further hearing unless there is presented a sufficient showing in justification for an additional hearing. *Raffaello v. Indus. Comm'n*, 670 P.2d 805 (Colo. App. 1983).

The industrial commission erred in refusing to set aside an order of a referee denying claimant's request for an additional hearing to present further medical evidence where there was a stipulation for further evaluation of claimant, it was undisputed that the evaluation was completed, and opposing counsel acceded to the desirability of further hearing. *Raffaello v. Indus. Comm'n*, 670 P.2d 805 (Colo. App. 1983).

8-43-207.5. Prehearing conferences - rules - definition.

(1) Notwithstanding any provision of articles 40 to 47 of this title 8 to the contrary, at any time prior to the formal adjudication on the record of any issue before the director or an administrative law judge in the office of administrative courts in the department of personnel, any party to a claim may request a prehearing conference before a prehearing administrative law judge in the division for the speedy resolution of or simplification of any issues and to determine the general readiness of remaining issues for formal adjudication on the record. The issues addressed in the prehearing conference may include any issues properly within the authority of a prehearing administrative law judge pursuant to subsection (2) of this section. The filing of an application for hearing with the office of administrative courts in the department of personnel is not a prerequisite to a request for a prehearing conference under this section. The director and the administrative law judges in the office of administrative courts in the department of personnel may also request a prehearing conference under this section.

(2) (a) "Prehearing administrative law judge" means a qualified person appointed by the director pursuant to section 8-47-101 to preside over prehearing conferences pursuant to this section, to approve settlements pursuant to section 8-43-204, to conduct settlement conferences pursuant to section 8-43-206, and to conduct arbitrations pursuant to section 8-43-206.5.

(b) Prehearing administrative law judges have authority to approve any stipulations of the parties and issue interlocutory orders regarding procedural matters. Procedural matters include:

(I) Issuing subpoenas for witnesses and documentary evidence that must be served in the same manner as subpoenas served in district court;

(II) Resolving prehearing evidentiary disputes;

- (III) Determining if depositions must be taken;
 - (IV) Ruling on the imposition of sanctions for discovery disputes provided in the Colorado rules of civil procedure, except rule 107;
 - (V) Granting or denying requests for extensions of time for taking any action specified in this article 43;
 - (VI) Resolving disputes regarding discovery, including permission to engage in discovery with a self-represented party;
 - (VII) Appointing guardians ad litem and conservators, as appropriate, and assessing the reasonable fees and costs for any appointments from one or more of the parties;
 - (VIII) Determining the ripeness of legal issues for formal adjudication;
 - (IX) Determining the competency of any party to a claim to enter into settlement agreements; and
 - (X) Resolving disputes regarding indigency, the content and format of medical records submitted to an independent medical examiner selected pursuant to section 8-42-107.2, including whether medical records are relevant or duplicative, and the allocation of the cost of the IME to the respective parties in excess of the base cost.
- (3) An order entered by a prehearing administrative law judge shall be an order of the director and binding on the parties. Such an order shall be interlocutory. Prehearing conferences need not be held on the record; however, any party to a claim may request in advance that a record be made of the prehearing conference, either taken verbatim by a court reporter provided and paid for by the requesting party or electronically recorded by the division.
- (4) The director shall adopt rules and regulations as may be necessary to implement the provisions of this section.

Source: **L. 94:** Entire section added, p. 1875, § 6, effective June 1. **L. 2005:** (1) amended, p. 855, § 13, effective June 1. **L. 2021:** (1) and (2) amended, (HB 21-1050), ch. 384, p. 2573, § 9, effective September 7. **L. 2023:** (2)(b)(VIII) and (2)(b)(IX) amended and (2)(b)(X) added, (HB 23-1076), ch. 370, p. 2225, § 6, effective August 7.

ANNOTATION

Law reviews. For article, "Settlement Procedure in Workers' Compensation Claims", see 46 Colo. Law. 40 (July 2017).

A prehearing administrative law judge has jurisdiction to enter an order approving a settlement agreement in a

workers' compensation case. Indus. Claim Appeals Office v. Orth, 965 P.2d 1246 (Colo. 1998).

The orders of a prehearing administrative law judge that relate to prehearing conferences are not final for purposes of appeal. Indus. Claim Appeals Office v. Orth, 965 P.2d 1246 (Colo. 1998).

However, the orders of a prehearing administrative law judge approving a

settlement are final for purposes of appeal. Indus. Claim Appeals Office v. Orth, 965 P.2d 1246 (Colo. 1998).

A party may not elect, without fear of consequences, to ignore a ruling of a prehearing administrative law judge in the hope of obtaining a more favorable ruling before the administrative law judge. Kennedy v. Indus. Claim Appeals Office, 100 P.3d 949 (Colo. App. 2004).

8-43-208. Investigations.

(1) For the purpose of making any investigation with regard to any matter contemplated by the provisions of articles 40 to 47 of this title, the director shall have power to appoint, with the approval of the executive director by an order in writing, any competent person as an agent whose duties shall be prescribed in such order.

(2) (Deleted by amendment, L. 94, p. 1876, § 7, effective June 1, 1994.)

(3) The director may conduct any number of such investigations contemporaneously through different agents.

Source: L. 90: Entire article R&RE, p. 505, § 1, effective July 1. L. 94: Entire section amended, p. 1876, § 7, effective June 1.

Editor's note: This section is similar to former § 8-46-107 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-43-205 is similar to § 8-46-107 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision has been included in the annotations to this section.

(2) The case included in the annotations to this section which refers to the industrial commission was decided prior to the 1969 amendment which vested the director of the division of labor with the power previously exercised by the industrial commission to appoint agents for investigation purposes.

In a hearing before the industrial commission, a referee may not take judicial notice of extraneous, nonevidentiary matters. Indus. Comm'n v. Havens, 136 Colo. 111, 314 P.2d 698 (1957).

And nothing in this section tends to indicate that the commission is bound by the findings of the referee grounded upon conflicting evidence. Warner v. Mullens, 111 Colo. 60, 137 P.2d 420 (1943).

Nor is the commission, on reviewing an order or award of its referee, required to take further testimony, if it does not deem such a course necessary. Warner v. Mullens, 111 Colo. 60, 137 P.2d 420 (1943).

This section does not limit the director's authority to act pursuant to § 8-43-201. Cornerstone Partners v. Indus. Claim Appeals Office, 830 P.2d 1148 (Colo. App. 1992).

Verbal notice to supervisor and company physician of pain and suffering caused by prolonged standing and lifting was sufficient notification to employer to require compliance with § 8-53-102. Jones v. Adolph Coors Col., 689 P.2d 681 (Colo. App. 1984).

Combined investigatory and adjudicatory functions. Any order purporting to combine investigatory and adjudicatory functions in a single referee would raise serious questions of propriety. Thompson v. Indus. Comm'n, 33 Colo. App. 369, 520 P.2d 139 (1974).

Extrajudicial visit to claimant's home improper. Absent any authorization for such an investigation, the referee acted in excess of his powers when he made an extrajudicial visit to claimant's home. Thompson v. Indus. Comm'n, 33 Colo. App. 369, 520 P.2d 139 (1974).

8-43-209. Time schedule for hearings - establishment.

(1) Hearings must commence within one hundred twenty days from the date of the notice of setting by the director pursuant to section 8-43-211 (2)(a) or of the date shown on the certificate of service accompanying the request, notice, or application by a party or the party's attorney pursuant to section 8-43-211 (2)(b) or (2)(c). Upon agreement of the parties, an administrative law judge shall grant one extension of time, not exceeding sixty days, to commence the hearing.

(2) One extension of time to commence the hearing of no more than sixty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown, in the following cases: When pulmonary lung disease, cancer, cardiovascular disease, or stroke is alleged as the cause of the disability; when the subsequent injury fund is a party; when permanent total disability is alleged; upon agreement of the parties; or when compensability of the injury is contested. In all other cases, extensions of time to commence the hearing of no more than twenty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown.

(3) Once the hearing is commenced, the administrative law judge may, for good cause shown, continue the hearing to a date certain to take additional testimony, to file an additional medical report, to file the transcript of a deposition, or to file a position statement. Except upon the agreement of all parties or for good cause shown, a continuance to complete a hearing shall not exceed thirty calendar days.

Source: **L. 90:** Entire article R&RE, p. 505, § 1, effective July 1. **L. 91:** Entire section amended, p. 1318, § 28, effective July 1. **L. 94:** Entire section amended, p. 1877, § 8, effective June 1. **L. 2003:** Entire section amended, p. 1957, § 2, effective May 22. **L. 2005:** (1) amended, p. 855, § 14, effective June 1. **L. 2007:** Entire section amended, p. 1473, § 4, effective May 30. **L. 2014:** (1) amended, (SB 14-191), ch. 316, p. 1372, § 3, effective July 1.

Editor's note: This section is similar to former § 8-53-130 as it existed prior to 1990.

ANNOTATION

Claimant's reliance on this section is misplaced because the statute addresses time limits for setting a hearing, not time limits for issuance of an order and delivery of benefits. *Bodensieck v. Indus. Claim Appeals Office*, 183 P.3d 684 (Colo. App. 2008).

Further, because benefits were denied, any claim of undue delay in delivery of benefits is moot. *Bodensieck v. Indus. Claim Appeals Office*, 183 P.3d 684 (Colo. App. 2008).

8-43-210. Evidence.

Notwithstanding section 24-4-105, C.R.S., the Colorado rules of evidence and requirements of proof for civil nonjury cases in the district courts shall apply in all hearings; except that medical and hospital records, physicians' reports, vocational reports, and records of the employer are admissible as evidence and can be filed in the record as evidence without formal identification if relevant to any issue in the case. Depositions may be substituted for testimony upon good cause shown. Convictions for alcohol-related offenses, pursuant to titles 18 and 42, C.R.S., the transcripts of proceedings leading to such convictions, and the court files relating to such convictions may be admissible in all hearings conducted under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, where such conviction resulted from the same occurrence, accident, or injury occurring on the job that forms the basis for the workers' compensation claim. All relevant medical records, vocational reports, expert witness reports, and

employer records shall be exchanged with all other parties at least twenty days prior to the hearing date.

Source: **L. 90:** Entire article R&RE, p. 505, § 1, effective July 1; entire section amended, p. 578, § 2, effective July 1. **L. 99:** Entire section amended, p. 994, § 1, effective May 29. **L. 2007:** Entire section amended, p. 1473, § 5, effective May 30.

Editor's note: This section is similar to former § 8-53-115 as it existed prior to 1990.

ANNOTATION

A tribunal has broad discretion to determine the admissibility of expert testimony and appellate courts may not overturn a ruling unless it is manifestly erroneous. An ALJ is accorded similar discretion in a workers' compensation proceeding. *One Hour Cleaners v. Indus. Claim Appeals Office*, 914 P.2d 501 (Colo. App. 1995).

Letter properly admitted into evidence. The letter written by claimant's employer was a vocational report and a record of the employer. Therefore, such letter was properly admitted into evidence. *Churchill v. Sears, Roebuck & Co.*, 720 P.2d 171 (Colo. App. 1986) (decided under former § 8-53-115 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

Physician's letter calculating claimant's probable blood alcohol level at the time of the accident, explaining the adverse effects of such ethanol levels on claimant's abilities to function while driving, and concluding

that the adverse effects of the ethanol in claimant's body would have contributed to, if not caused, claimant's accident, are "physicians' reports" within the meaning of the statute and therefore admissible. *Ackerman v. Hilton's Mechanical Men*, 914 P.2d 524 (Colo. App. 1996).

Section 8-41-301 (2) does not require that a mental impairment claimant produce a live witness in all cases. Such a requirement would serve no legitimate purpose and would result in an equal protection violation when other claimants are allowed to submit expert reports and only provide the expert witness when the opposing party chooses to examine the expert. *Esser v. Indus. Claim Appeals Office*, 8 P.3d 1218 (Colo. App. 2000), *aff'd* on other grounds, 30 P.3d 189 (Colo. 2001).

Exceptions to the 20-day rule are clearly contemplated by the allowance of continuances to file additional reports in appropriate circumstances, such as those stated in § 8-43-209 (3). *Ortega v. Indus.*

8-43-211. Notice - request for hearing.

(1) At least thirty days before any hearing, the office of administrative courts in the department of personnel shall send written notice to all parties by regular or electronic mail. The notice must:

- (a) Give the time, date, and place of the hearing;
- (b) Inform the parties that they must be prepared to present their evidence concerning the issues to be heard;
- (c) Inform the parties that they have the right to be represented by an attorney or other person of their choice at the hearing.

(2) Hearings shall be set by the office of administrative courts in the department of personnel within eighty to one hundred twenty days after any of the following occur:

(a) The director sets any issue for hearing. The director may expedite the hearing for good cause shown.

(b) Any party requests a hearing on issues ripe for adjudication by filing a written request with the office of administrative courts in the department of personnel on forms provided by the office. The request shall be mailed to all parties at the time they are filed with the office of administrative courts. After the filing of the requests, the office of administrative courts in the department of personnel shall set the matter for hearing insofar as is practicable in the order in which requests are received by the office of administrative courts.

(c) Any party or the attorney of such party sends notice to set a hearing on issues ripe for adjudication to opposing parties or their attorneys. The director of the office of administrative courts shall determine the place and time or times during which settings can be made. At such setting, the party requesting the setting shall submit a completed request for hearing form. Any notice to set shall be mailed to opposing parties at least ten days prior to the setting date.

(3) If an attorney requests a hearing or files a notice to set a hearing on an issue that is not ripe for adjudication at the time the request or filing is made, the attorney may be assessed the reasonable attorney fees and costs of the opposing party in preparing for the hearing or setting. The requesting party must prove its attempt to have an unripe issue stricken by a prehearing administrative law judge to request fees or costs. Requested fees or costs incurred after a prehearing conference may only be awarded if they are directly caused by the listing of the unripe issue.

(4) Except in claims in which compensability is contested or a hearing is requested in response to a final admission of liability or to overcome a conclusion in a division-sponsored independent medical examination, the party filing an application for a hearing shall certify on the application that the party attempted to resolve with the other parties all issues listed in the application for a hearing.

Source: **L. 90:** Entire article R&RE, p. 505, § 1, effective July 1. **L. 91:** Entire section amended, p. 1319, § 29, effective July 1. **L. 95:** IP(1), IP(2), and (2)(b) amended, p. 636, § 15, effective July 1. **L. 2003:** (2)(e) added, p. 1957, § 3, effective May 22. **L. 2005:** IP(1), IP(2), (2)(b), and (2)(c) amended, p. 855, § 15, effective June 1. **L. 2007:** (2)(e) amended, p. 1474, § 6, effective May 30. **L. 2009:** IP(1) amended, (HB 09-1150), ch. 309, p. 1665, § 1, effective August 5. **L. 2013:** (2)(d) amended, (SB 13-285), ch. 301, p. 1594, § 5, effective July 1. **L. 2014:** Entire section amended, (SB 14-191), ch. 316, p. 1372, § 4, effective July 1. **L. 2026:** IP(1) amended, (SB 26-186), ch. 315, p. 1851, § 10, effective August 12.

Editor's note: This section is similar to former § 8-53-109 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Dispute Resolution in Worker's Compensation", see 18 Colo. Law. 921 (1989). For article, "A Different Kind of Representative: DBA v. PUC Revisited", see 36 Colo. Law. 53 (Dec. 2007).

Annotator's note. Since § 8-43-215 is similar to § 8-53-109 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

Administrative law judge abused his discretion when he deprived petitioner of the right to substantiate its claim that its petition for review was timely filed, by

ruling on pending motions without setting the matter for a full evidentiary hearing and complying with the notice provisions of subsection (1)(c). *Pueblo Sch. Dist. No. 60 v. Clementi*, 776 P.2d 1152 (Colo. App. 1989).

A person who raises an unripe issue must pay attorney fees and costs despite other issues being ripe. If a person requests a hearing on an issue that is not independently ripe for adjudication, the person must be assessed the reasonable attorney fees and costs of the opposing party. *Youngs v. Indus. Claim Appeals Office*, 2012 COA 85M, 297 P.3d 964.

Question of whether an appeal was filed in bad faith could not be decided

until the appeal was adjudicated and appellant was entitled to attorney fees and costs pursuant to subsection (2)(d) from appellee who applied for a hearing requesting penalties against appellant for filing a frivolous appeal before such appeal was adjudicated. *BCW Enters. v. Indus. Claim Appeals Office*, 964 P.2d 533 (Colo. App. 1997).

Selection of an authorized treating physician as ordered by a medical

utilization review committee was ripe for a hearing notwithstanding that the injured employee's appeal of the order was still pending; thus the denial of attorney fees was proper. The statute requires the parties to act quickly to select a new authorized treating physician regardless of whether an appeal has been filed. *Franz v. Indus. Claim Appeals Office*, 250 P.3d 1284 (Colo. App. 2010).

8-43-212. Compulsion of testimony.

When any person upon whom a subpoena issued in the name of the division has been served fails or refuses to appear, the party who requested the subpoena may apply to the district court in the county in which the person served resides for an order compelling attendance before the division of the witness or the production of the documents subpoenaed. Violation of such an order shall be treated as contempt of the court issuing the order.

Source: L. 90: Entire article R&RE, p. 506, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-108 as it existed prior to 1990.

8-43-213. Transcripts.

(1) All testimony and argument of all hearings held pursuant to section 8-43-207 concerning any issue arising under articles 40 to 47 of this title shall either be taken verbatim by a hearing reporter or shall be electronically recorded by the division.

(2) Any party in interest may order a transcript at any time from a hearing reporter, a court reporter provided by any party, or, if the hearing is recorded, from the division. For purposes of a petition to review, a transcript shall be all testimony taken that is relevant to the issue being appealed. In the preparation of transcripts, hearing reporters shall give preference to transcripts as part of the record in a petition to review; except that all transcripts shall be prepared and filed with the office of administrative courts within twenty-five working days after the date they were ordered. Hearing reporters shall be paid for transcripts and copies at the rate set by the supreme

court for reporters in courts of record. If a court reporter is unable to meet the time limit specified in this section, any party, at its own expense, or the administrative law judge may contract with another court reporter to ensure the timely preparation of transcripts.

(3) Upon a satisfactory showing to the director in writing that a party petitioning to review is indigent and unable to pay for the preparation of the transcript, the director may order a transcript to be prepared at the division's expense, and, if the transcript was prepared by a hearing reporter, the division shall pay the hearing reporter the fee therefor.

(4) When a transcript is ordered as part of the record on a petition to review, the original of the transcript shall be filed with the division where it shall be available to all parties in interest.

Source: **L. 90:** Entire article R&RE, p. 506, § 1, effective July 1. **L. 91:** (2) amended, p. 1320, § 30, effective July 1. **L. 2005:** (2) amended, p. 856, § 16, effective June 1.

Editor's note: This section is similar to former § 8-53-106 as it existed prior to 1990.

8-43-214. Transcript certified - evidence.

A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation or hearing which was prepared at the direction of the director shall be certified by the hearing reporter, or the division if the hearing was recorded, to be a true and correct transcript of the testimony on the investigation or hearing of a particular witness, or a specific part thereof, carefully compared to original notes or to the original recording, and to be a correct statement of the evidence and proceedings had on such investigation or hearing. A transcribed copy which is so certified may be received as evidence by the director, the panel, and any court with the same effect as if the person who prepared the transcript were present and testified to the facts so certified.

Source: **L. 90:** Entire article R&RE, p. 506, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-107 as it existed prior to 1990.

8-43-215. Orders.

(1) No more than fifteen working days after the conclusion of a hearing, the administrative law judge or director shall issue a written order allowing or denying the claim. The written order must either be a summary order or a full order. A full order must contain specific findings of fact and conclusions of law. If compensation benefits are granted, the written order must specify the amounts of the compensation benefits, the disability for which compensation benefits are granted, by whom and to whom such benefits are to be paid, and the method and time of the payments. A certificate of service and a copy of the written order shall be served upon each of the parties in interest or their representatives, the original of which is a part of the records in the case. If an administrative law judge has issued a summary order, a party dissatisfied with the order may make a written request for a full order within ten working days after the date of service of the summary order. The request is a prerequisite to review under section 8-43-301. If a request for a full order is made, the administrative law judge has ten working days after receipt of the request to issue the order. A full order shall be entered as the final award of the administrative law judge or director subject to review as provided in this article 43.

(2) Repealed.

Source: **L. 90:** Entire article R&RE, p. 507, § 1, effective July 1. **L. 91:** Entire section amended, p. 1320, § 31, effective July 1. **L. 92:** Entire section amended, p. 1804, § 1, effective April 16. **L. 94:** Entire section amended, p. 1877, § 9, effective June 1. **L. 2000:** Entire section amended, p. 480, § 1, effective April 28. **L. 2007:** (1) amended, p. 1474, § 7, effective May 30. **L. 2008:** (1) amended, p. 1880, § 9, effective August 5. **L. 2014:** (1) amended, (SB 14-191), ch. 316, p. 1373, § 5, effective July 1. **L. 2026:** (1) amended, (SB 26-186), ch. 315, p. 1851, § 11, effective August 12.

Editor's note: (1) This section is similar to former § 8-53-110 as it existed prior to 1990.

(2) Subsection (2)(b) provided for the repeal of subsection (2), effective July 1, 2004. (See L. 2000, p. 480.)

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The only awards which are final and therefore reviewable are those which either allow or deny a claim or in some manner fix the rights or responsibilities of the parties. *Indus. Comm's v. Globe Indem.*

Co., 145 Colo. 453, 358 P.2d 885 (1961); Stanley Hotel v. Thomas, 153 Colo. 503, 387 P.2d 27 (1963); Hayward v. Majestic Wax Co., 170 Colo. 203, 460 P.2d 74 (1969).

And where hearing officer directs party to prepare written form of order, the order is not final until signed by the hearing officer. Neoplan USA Corp. v. Indus. Comm'n, 721 P.2d 157 (Colo. App. 1986).

And the order of the referee (now hearing officer) is the order of the industrial commission (now director) if a petition for review is not filed. Carlson v. Indus. Comm'n, 79 Colo. 124, 244 P. 68 (1926).

But compensation matter pending on petition of review not final award. Where a workmen's compensation matter is still pending on the employer's petition to review a previous award, the referee (now hearing officer) still has statutory authority to modify or amend the award; it is not a final award. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 151 Colo. 18, 379 P.2d 153 (1962).

Order of hearing officer in workers' compensation cases does not enter until it is set forth in writing and copy is mailed to parties in interest. Wait v. Jan's Malt Shoppe, 736 P.2d 1265 (Colo. App. 1987).

"Parties in interest" construed. Where the claimant was represented by an attorney, she was not required to receive her own separate copy of the order. Brodeur v. Indus. Claim Appeals Office, 159 P.3d 810 (Colo. App. 2007).

Effective date of permission for change of treating physician is date of ALJ's oral summary order, not the date of the written order required by this section. Consol. Landscape v. Indus. Claim Appeals Office, 883 P.2d 571 (Colo. App. 1994).

Order which was drafted by retired hearing officer, but was signed by substitute, was invalid, as retired hearing officer had no authority to enter order where he was retired at time order was presented in written form and mailed to the parties. Wait v. Jan's Malt Shoppe, 736 P.2d 1265 (Colo. App. 1987).

Section gives administrative law judge discretion to order that a portion of the benefits payable to claimant be reimbursed to claimant's automobile insurance company pursuant to statute seeking to prevent duplication of benefits. Oxford Chems., Inc. v. Richardson, 782 P.2d 843 (Colo. App. 1989).

Administrative law judge did not lack jurisdiction to enter an order merely because the order was entered after the 15-day time limit found in this section. The section is directory rather than mandatory, as the general assembly did not evidence a contrary intent to the general rule that time limits imposed on public bodies are construed as directory rather than mandatory. Langton v. Rocky Mtn. Health Care, 937 P.2d 883 (Colo. App. 1996).

A party does not have the right to receive specific findings of fact and conclusions of law unless the division of administrative services receives the request within 15 days. Mailing the request

within the 15 days does not suffice. The office must receive the request within 15 days; otherwise, the administrative law judge lacks jurisdiction to issue such

specific findings. Wal-Mart Stores, Inc. v. Indus. Claim Appeals Office, 24 P.3d 1 (Colo. App. 2000).

8-43-216. Frivolous claims for compensation - repeal. (Repealed)

Source: L. 91: Entire section added, p. 1321, § 32, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective March 1, 1996. (See L. 91, p. 1321.)

8-43-217. Claims management - legislative declaration.

The general assembly hereby finds, determines, and declares that active management of workers' compensation claims should be practiced in order to expedite and simplify the processing of claims, reduce litigation, and better serve the public.

Source: L. 91: Entire section added, p. 1321, § 32, effective July 1.

8-43-218. Authority of director.

(1) The director shall have authority to appoint claims managers to review, audit, and close cases, to educate, inform, and assist the public as to the workers' compensation system, to promote speedy and uncomplicated problem resolution of workers' compensation matters, and to otherwise manage claims.

(2) The director may require any party to a workers' compensation claim to attend, cooperate, and comply with the efforts of claims managers in managing claims or complaints received by the division.

(3) Any party willfully refusing to cooperate or comply with claims management efforts of the division shall be subject to the penalty provisions set forth in section 8-43-304 and to the denial or vacation of a hearing date.

(4) Any violation of any provision of this section shall be cause for the rejection of an application for hearing or a response thereto until such time as the violation is cured.

Source: L. 91: Entire section added, p. 1321, § 32, effective July 1.

8-43-219. Not a limitation on rights or privileges.

Nothing in section 8-43-217 or 8-43-218 shall be construed to limit any party's rights or privileges as provided by law.

Source: L. 91: Entire section added, p. 1321, § 32, effective July 1.

8-43-220. Injured worker exit survey.

(1) Upon closure of a claim, each insurer shall survey the claimant or, if deceased, the decedent's dependents regarding the claimant's satisfaction with the insurer for claims that are reported to the division pursuant to section 8-43-101. The survey shall be conducted in a form and manner as prescribed by the director. The director shall develop the form and manner of the survey with input from insurers that provide workers' compensation policies pursuant to articles 40 to 55 of this title, and with the least administrative burden as possible. The survey shall include questions regarding courtesy, promptness of medical care, promptness of handling the claim, promptness of resolving the claim, and overall satisfaction with the experience with the insurer. An employer or an insurer shall not take disciplinary action or otherwise retaliate against a claimant or his or her dependents for completing the survey.

(2) The insurer shall report the survey results annually to the division. The director shall post the results of the surveys on the division's website.

Source: L. 2010: Entire section added, (SB 10-013), ch. 303, p. 1434, § 1, effective July 1.

PART 3

REVIEW PROCEDURES

Law reviews: For article, "Worker's Compensation Appeals", see 19 Colo. Law. 1853 (1990); for article, "Demystifying Colorado's Atypical Civil and Administrative Appeals", see 52 Colo. Law. 24 (Jan.-Feb. 2023).

8-43-301. Petitions to review.

(1) Any order, corrected order, or supplemental order is final unless a petition to review or appeal has been filed in accordance with this article.

(2) (a) (I) If a party is dissatisfied with an order that determines compensability of a claim or liability of any party, that requires any party to pay a penalty or benefits, or that denies a claimant any benefit or penalty, the party may file a petition to review the order. If the order was entered by the director, the party must file the petition with the division. If the order was entered by an administrative law judge, the party must file the petition at the Denver office of the office of administrative courts in the department of personnel. The party must serve the petition to review on all the parties.

(II) The party must file the petition to review within twenty days after the date of the certificate of mailing of the order, and, unless timely filed, the order is final.

(b) A dissatisfied party may file the petition to review, and the petition is deemed filed upon the date of service, as determined by the certificate of service, if the certificate of service indicates that the petition to review was served on the division or the Denver office of the office of administrative courts in the department of personnel, as appropriate. The petition to review must be in writing and must set forth in detail the particular errors and objections of the petitioner. A petitioner must, at the time of filing the petition, order any transcript relied upon for the petition to review, arrange with the hearing reporter to pay for the transcript, and notify opposing parties of the transcript ordered. Opposing parties must order any other transcript not ordered by the petitioner and arrange with the hearing reporter to pay for the other transcript within twenty days after the date of the certificate of service of the petition to review the order.

(3) If transcripts of hearings are ordered as part of the record in a petition to review, the director or administrative law judge cannot rule on the petition until the transcripts are lodged with the division.

(4) When the record upon which a petition to review has been filed is complete, the parties shall be notified in writing. The petitioner shall have twenty days after the date of the certificate of mailing of the notice to file a brief in support of the petition. The opposing parties shall have

twenty days after the date of the certificate of mailing of the petitioner's brief to file briefs in opposition thereto. After the briefs are filed or the time for filing has run, the director or administrative law judge shall have thirty days to enter a supplemental order or transmit the file to the industrial claim appeals office for review.

(5) In ruling on a petition to review, the director or administrative law judge may issue a supplemental order labeled as such limited to the matters raised in the petition to review, and, as to those matters, the director or administrative law judge may amend or alter the original order or set the matter for further hearing. In any event, if it has not already been done, the administrative law judge or director, following a petition to review an order, shall make findings of fact and conclusions of law necessary to support such order.

(6) A party dissatisfied with a supplemental order may file a petition for review by the panel. The petition shall be filed with the division if the supplemental order was issued by the director or at the Denver office of the office of administrative courts in the department of personnel if the supplemental order was issued by an administrative law judge. The petition shall be filed within twenty days after the date of the certificate of service of the supplemental order. The petition must be in writing, set forth in detail the particular errors and objections relied upon, and be accompanied by a brief in support of the petition. The petition and brief shall be served by the petitioner to all other parties at the time the petition is filed. All parties, except the petitioner, shall be deemed opposing parties and shall have twenty days after the date of the certificate of service of the petition and brief to file with the division or the Denver office of the office of administrative courts, as appropriate, briefs in opposition to the petition.

(7) When any petition for review by the panel is filed, the division or the Denver office of the office of administrative courts shall, when all briefs are submitted to the division or the Denver office of the office of administrative courts or within fifteen days after the date briefs were due, certify and transmit the record to the industrial claim appeals office along with the petitions and briefs. The division or the Denver office of the office of administrative courts, as appropriate, shall simultaneously send notice to the parties including the date that the record has been transmitted to the industrial claim appeals office.

(8) The industrial claim appeals office shall have sixty days after receipt of the certified record to enter its order. The panel may issue a summary order affirming the order of the administrative law judge or director. The panel may correct, set aside, or remand any order but only upon the following grounds: That the findings of fact are not sufficient to permit appellate review; that conflicts in the evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the award or denial of benefits is not supported by applicable law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the panel.

(9) The panel shall have the power to issue such procedural orders as may be necessary to carry out its appellate review under subsection (7) of this section, including but not limited to, orders concerning completion of the record and filing of briefs. In those cases where the parties file a stipulated motion requesting that consideration of the appeal be deferred pending ongoing settlement negotiations, the panel may extend the time for entry of its order up to a maximum of thirty days.

(10) The panel's order must be served on all parties of record. Any party dissatisfied with the panel's order has twenty-one days after the date of the certificate of service of the order to commence an action for judicial review in the court of appeals.

(11) If the panel has failed to enter its order within sixty days of the receipt of the certified record, the order of the director or administrative law judge is deemed the order of the panel and final unless, within thirty-five days after the end of the sixty-day period, the petitioner commences an action for judicial review in the court of appeals. If the panel has not acted on the sixtieth day, the industrial claim appeals office shall send a written notice to all parties stating that the parties have thirty-five days after the date of the certificate of mailing of the notice to commence such an action.

(12) If a petition to review is filed, a hearing may be held and orders entered on any other issue in the case during the pendency of the petition to review. If the order which is under petition to review concerns compensability, orders entered on these later issues are final and appealable when entered, but not enforceable until the review of the order on compensability is completed.

(13) If the order which is under petition to review does not concern compensability, but concerns the respective liability of two or more employers or insurance carriers, and the injury or illness was found compensable in a hearing held pursuant to section 8-43-215, the employer or insurance carrier found liable by the director or administrative law judge shall pay benefits in accordance with the order under review until the review process is completed, at which time it shall be reimbursed by the other employer or carrier if reimbursement is necessary to comply with the final order.

(14) The signature of an attorney on a petition to review or brief in support thereof constitutes a certificate by the attorney that such attorney has read the petition or brief; that, to the best of the attorney's knowledge, information, or belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, cause delay, or unnecessarily increase the cost of litigation. If a petition or brief is signed in violation of this subsection (14), the director, the administrative law judge, or the panel shall award reasonable attorney fees and costs to the party incurring the fees and costs as a result of the improper actions.

Source: **L. 90:** Entire article R&RE, p. 507, § 1, effective July 1. **L. 91:** (10) and (11) amended and (14) added, p. 1322, § 33, effective July 1. **L. 92:** (2) amended, p. 1803, § 1, effective April 16. **L. 94:** (14) amended, p. 1878, § 10, effective June 1. **L. 95:** (10) and (11) amended, p. 234, § 2, effective April 17. **L. 2009:** (2), (6), and (7) amended, (SB 09-070), ch. 49, p. 176, § 3, effective August 5. **L. 2010:** (6) and (7) amended, (HB 10-1422), ch. 419, p. 2064, § 11, effective August 11. **L. 2014:** (10) and (11) amended, (HB 14-1347), ch. 208, p. 768, § 1, effective July 1. **L. 2021:** (2) amended, (HB 21-1050), ch. 384, p. 2574, § 10, effective September 7. **L. 2026:** (2)(a)(I), (2)(b), (6), and (10) amended, (SB 26-186), ch. 315, p. 1852, § 12, effective August 12.

Editor's note: This section is similar to former § 8-53-111 as it existed prior to 1990.

ANNOTATION

- I. General Consideration.
- II. Final Orders.
- III. Methods of Review.
- IV. Hearing Officer or Director as Fact Finder.
- V. Review by the Industrial Claim Appeals Panel.
- VI. Procedural Requirements.
- VII. Notice.

I. GENERAL CONSIDERATION.

Law reviews. For article on "Colorado Practice in Workmen's Compensation", see 31 Rocky Mt. L. Rev. 500 (1959). For comment on the administrative review of workmen's compensation claims, see 45 U. Colo. L. Rev. 195 (1973). For article, "Update on Colorado Appellate Decisions In Workers' Compensation Law", see 32 Colo. Law. 87 (Mar. 2003). For article, "Update on

Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 83 (Apr. 2004).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Constitutionality. The general assembly's grant of limited authority in this section to administrative law judges (ALJs) and the industrial claim appeals office over the area of workers' compensation matters does not create a substantial threat to the separation of powers doctrine under article III of the Colorado Constitution, nor does it violate the requirement that district courts have original jurisdiction in civil cases as mandated in article VI, § 9(1), of the Colorado Constitution. *Dee Enters. v. Indus. Claim Appeals Office*, 89 P.3d 430 (Colo. App. 2003).

Requirements of this section are jurisdictional in nature, and if there is a failure to comply with the requirements of this section, there can be no subsequent review or appeal. *Sanchez v. Straight Creek Constructors*, 41 Colo. App. 19, 580 P.2d 827 (1978); *Brodeur v. Indus. Claim Appeals Office*, 159 P.3d 810 (Colo. App. 2007); *Speier v. Indus. Claim Appeals Office*, 181 P.3d 1173 (Colo. App. 2008); *Youngs v. Indus. Claim Appeals Office*, 2013 COA 54, 316 P.3d 50.

Panel may remand only on grounds enumerated in subsection (7) (now subsection (8)). *London v. El Paso County*, 757 P.2d 169 (Colo. App. 1988).

Administrative procedure act inapplicable. The appeal procedures under the workmen's compensation act are complete and definitive and constitute an organic act which is self-operational without the need of supplementation from the administrative procedure act. *Zappas v. Indus. Comm'n*, 36 Colo. App. 319, 543 P.2d 101 (1975); *Maxon v. Indus. Comm'n*, 40 Colo. App. 196, 571 P.2d 319 (1977).

Designation of record. When the brief referred to specific portions of the record which were relied upon, the petition, together with the transcript on file, was sufficient compliance. *Goeglein v. Indus. Comm'n*, 686 P.2d 1377 (Colo. App. 1984).

Neither an employer nor an employer's insurer is a claimant as that term is used in the workers' compensation act, but subsection (2) nonetheless does not deny an employer or its insurer the right to review of an order denying recovery of a penalty.

However, an immediate right of appeal exists for the denial of a penalty only when the denial is no longer an interlocutory order. *BCW Enters. v. Indus. Claim Appeals Office*, 964 P.2d 533 (Colo. App. 1997).

Because the ALJ's order is not a final order, and because the order neither denies nor awards benefits but instead continues benefits previously ordered, the order is interlocutory and not subject to review under subsection (2). *Jefferson County Pub. Sch. v. Indus. Claim Appeals Office*, 181 P.3d 1199 (Colo. App. 2008).

Decision to hold additional hearing or to refer case is at the discretion of the hearing officer or director. *Coven v. Indus. Comm'n*, 694 P.2d 366 (Colo. App. 1984).

Industrial claim appeals office order setting aside award of permanent partial disability benefits is not subject to judicial review. *Natkin & Co. v. Eubanks*, 775 P.2d 88 (Colo. App. 1989).

Subsection (8) does not violate due process in limiting the agency's review to determining whether the ALJ's decision is supported by substantial evidence. So long as judicial review is provided, due process does not require administrative review as well. Also, where administrative review is provided, the extent of the agency's review authority may be statutorily limited without due process implications. *Wecker v. TBL Excavating, Inc.*, 908 P.2d 1186 (Colo. App. 1995).

Applied in *City of Aurora v. Indus. Comm'n*, 44 Colo. App. 132, 609 P.2d 129 (1980); *Cibere v. Indus. Comm'n*, 624 P.2d

920 (Colo. App. 1980); Gates Rubber Co. v. Indus. Comm'n, 647 P.2d 244 (Colo. App. 1982); Indus. Comm'n v. Riley, 653 P.2d 723 (Colo. 1982); Hanson v. Indus. Comm'n, 716 P. 2d 477 (Colo. App. 1986); Potomac Ins. Co. v. Indus. Comm'n, 744 P.2d 765 (Colo. App. 1987); Mosley v. Indus. Claim Appeals Office, 78 P.3d 1150 (Colo. App. 2003).

II. FINAL ORDERS.

Order granting claimant's petition to reopen claim was not final order subject to review, since it neither required nor denied payment of penalty or benefits. Dir., Div. of Labor v. Smith, 725 P.2d 1161 (Colo. App. 1986).

Referee's order requiring an insurer to pay claimant's medical expenses was an order to pay "benefits" under subsection (2) and was thus reviewable. Am. Express v. Indus. Comm'n, 712 P.2d 1132 (Colo. App. 1985); Bestway Concrete and TIG Ins. Co. v. Indus. Claim Appeals Office, 984 P.2d 680 (Colo. App. 1999).

It is not necessary that all aspects of a claim be ruled upon before there is a final order. Bestway Concrete and TIG Ins. Co. v. Indus. Claim Appeals Office, 984 P.2d 680 (Colo. App. 1999).

In the context of subsection (2), the term "penalty" is a "term of art" and applies to statutory sanctions imposed on a party for failing to obey orders or for failing to take required procedural steps. Am. Express v. Indus. Comm'n, 712 P.2d 1132 (Colo. App. 1985).

Order remanding for further proceedings on the merits of the penalty issue was not a final order and was not ripe for appellate review. U.S. Fidelity Guar., Inc. v. Kourlis, 868 P.2d 1158 (Colo. App. 1994).

But an order that denies benefits in addition to remanding on a separate issue is a final, appealable order. Sanchez v. Indus. Claim Appeals Office, 2017 COA 71, 411 P.3d 245.

An order denying sanctions under C.R.C.P. 37 is not a final order; therefore, subsection (2) does not apply. Reed v. Indus. Claim Appeals Office, 13 P.3d 810 (Colo. App. 2000).

An order that neither awards nor denies benefits is an interlocutory order that is not ripe for review under this section but becomes reviewable when appealed incident to or in connection with a final order. Youngs v. Indus. Claim Appeals Office, 2013 COA 54, 316 P.3d 50.

III. METHODS OF REVIEW.

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions under this section to the industrial claim appeals panel.

Petition for review serves same purpose as motion for new trial in court procedure, the petition calling attention to concrete matters so that any errors indicated may be corrected. It thus defines the limits of

inquiry for courts and any errors or objections not specified in the petition will not be considered in subsequent judicial proceedings. *London Guarantee & Accident Co. v. Sauer*, 92 Colo. 565, 22 P.2d 624 (1933).

Under this section, any party dissatisfied with an order entered by the referee or director may petition to review the same. The order may be amended or modified and shall be a final award unless objection be made thereto by further petition for review. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962).

The procedure of reopening a claim, being jurisdictional, requires no findings. Even if it be determined that certain of the findings were not supported by the record, such determination would not justify a reversal of the judgment entered by the trial court. *Zurek v. Gates Rubber Co.*, 163 Colo. 321, 430 P.2d 465 (1967).

Where no appeal is taken from an award, it becomes final. *Colo. Dept. of Agriculture v. Wayne*, 30 Colo. App. 311, 493 P.2d 683 (1971).

Except that this section does not preclude a change or modification of an award under § 8-53-119 (now § 8-53-113), even though no petition for a review has been filed. *State Comp. Ins. Fund v. Indus. Comm'n*, 80 Colo. 130, 249 P. 653 (1926); *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 83 Colo. 315, 265 P. 99 (1928); *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962); *Colo. Dept. of Agriculture v. Wayne*, 30 Colo. App. 311, 493 P.2d 683 (1971).

Thus, there are two methods of reviewing an award: That prescribed by this section and that prescribed by § 8-53-119 (now § 8-53-113). *Tyler v. Hagerman*, 88 Colo. 60, 291 P. 1033 (1930); *Hoover v. Indus. Comm'n*, 156 Colo. 147, 397 P.2d 223 (1964).

Parties must be advised whether proceeding is under this section or § 8-53-119 (now § 8-53-113). Where an award of a referee or the commission is to be reviewed, claimant, insured and insurer must be advised whether the proceeding is to be under this section or § 8-53-119, in order that they may protect themselves accordingly. *Tyler v. Hagerman*, 88 Colo. 60, 291 P. 1033 (1930).

"Final award" means only that the matter has been concluded unless reopened as provided by § 8-53-119 (now § 8-53-113). *Graden Coal Co. v. Yuarralde*, 137 Colo. 527, 328 P.2d 105 (1958).

Remand for failure to make supplemental findings unnecessary. Where no supplemental findings were made by the referee, this failure normally would necessitate a remand of the matter to the commission for further findings, but where the petitioners filed a petition for review requesting that the matter be referred to the commission without further hearing or order by the referee, a procedure which was permitted under this section, such remand is unnecessary. *Keystone Int'l, Inc. v. Gale*, 33 Colo. App. 216, 518 P.2d 296 (1973).

Issuance of supplemental order is discretionary in ruling on a petition for review. It is not an abuse of discretion for

ALJ to decline to issue supplemental order in ruling on a petition for review when party represents that a fact is uncontested, awaits outcome of ALJ's order, and then presents a question for the first time in petition for review. *Broadmoor Ins. Co. v. Indus. Claim Appeals Office*, 939 P.2d 460 (Colo. App. 1996).

Statement of stipulated facts equivalent of transcript. Where the record necessary for judicial review consists of a statement of stipulated facts, that statement should be considered the equivalent of a transcript. *Riley v. Indus. Comm'n*, 628 P.2d 147 (Colo. App. 1981), *aff'd*, 653 P.2d 723 (Colo. 1982).

IV. HEARING OFFICER OR DIRECTOR AS FACT FINDER.

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1973 amendment which transferred fact-finding powers from the industrial commission to the director of the division.

Due process requires second referee to hear or read evidence prior to issuing order, although an employee was not denied due process of law on the basis that the referee who issued the order had not read the transcript of the first hearing where the referee issued a supplemental order after reading the transcript. *Ski Depot Rentals, Inc. v. Lynch*, 714 P.2d 516 (Colo. App. 1985).

In workmen's compensation cases the industrial commission is the fact finder. *Skinner v. Indus. Comm'n*, 152 Colo. 97,

381 P.2d 253 (1963); *State v. Richards*, 158 Colo. 155, 405 P.2d 675 (1965); *Clodfelter v. Indus. Comm'n*, 160 Colo. 39, 413 P.2d 700 (1966); *Breit v. Indus. Comm'n*, 160 Colo. 205, 415 P.2d 858 (1966); *Levy v. Everson Plumbing Co.*, 171 Colo. 468, 468 P.2d 34 (1970); *Sena v. World of Sleep, Inc.*, 173 Colo. 348, 478 P.2d 671 (1970).

The industrial commission is the fact finder upon petition for review commission shall make findings of fact. Upon petition for review the commission may do one of several things, but in any event, if it has not already done so, it shall, following a petition to review the order, make findings of fact which shall include all evidentiary and ultimate facts necessary to support the order. *Alvin H. Watkins, Inc. v. Hamilton*, 159 Colo. 257, 411 P.2d 15 (1966).

Thus, section operates prospectively. The statutory provision that findings of fact shall be made which shall include all evidentiary and ultimate facts necessary to support an order operates prospectively and not retroactively. *Game & Fish Dept. v. Pardoe*, 147 Colo. 363, 363 P.2d 1067 (1961).

It is the duty of the commission to make specific findings of fact from the evidence adduced, and mere recitals of the evidence taken and conclusions of law do not meet that test. *Parrish v. Indus. Comm'n*, 151 Colo. 538, 379 P.2d 384 (1963); *State Comp. Ins. Fund v. Foulds*, 167 Colo. 123, 445 P.2d 716 (1968); *Womack v. Indus. Comm'n*, 168 Colo. 364, 451 P.2d 761 (1969).

The hearing officer must make only findings of fact sufficient to make review possible. *Ferguson v. Rockwell Int'l Corp.*, 734 P.2d 131 (Colo. App. 1986).

However, it is necessary only that evidentiary and ultimate facts be specific. It is not required that the degree of specificity of the findings encompass the specific rejection of evidence which was not persuasive. In order to comply with the requirements of this section, it is necessary only that the evidentiary and ultimate findings be specific as to that evidence which is deemed to be persuasive and determinative of the issues to be resolved. In *re Claim of Crandall v. Watson-Wilson Transp. Sys.*, 171 Colo. 329, 467 P.2d 48 (1970); *Tague v. Coors Porcelain Co.*, 29 Colo. App. 226, 481 P.2d 424 (1971); *Churchill v. Sears, Roebuck & Co.*, 720 P.2d 171 (Colo. 1986).

Evidentiary and ultimate facts. Evidentiary facts are those facts which are necessary for determination of the ultimate facts. Ultimate facts are the substance of the conclusions from the evidence. *Parrish v. Indus. Comm'n*, 151 Colo. 538, 379 P.2d 384 (1963); *Womack v. Indus. Comm'n*, 168 Colo. 364, 451 P.2d 761 (1969); *Tague v. Coors Porcelain Co.*, 29 Colo. App. 226, 481 P.2d 424 (1971); *Apache Corp. v. Indus. Comm'n*, 717 P.2d 1000 (Colo. App. 1986).

Ultimate facts, as opposed to evidentiary facts, involve a conclusion of law or a determination of a mixed question of law and fact, and settle the rights and liabilities of the parties. Therefore, commission may alter findings of ultimate

fact. *Raisch v. Indus. Comm'n*, 721 P.2d 693 (Colo. App. 1986) (decided prior to 1986 abolishment of industrial commission).

Unless the commission first finds the evidentiary and ultimate facts, it is futile for the reviewing court to examine the record, because it cannot sit as a fact-finding body to ascertain facts from the testimony in the first instance, and it cannot on review determine whether the testimony is sufficient to establish facts that have not been found by the commission. *Metros v. Denver Coney Island*, 110 Colo. 40, 129 P.2d 911 (1942); *United States Fid. & Guar. Co. v. Indus. Comm'n*, 128 Colo. 68, 259 P.2d 869 (1952); *Alvin H. Watkins, Inc. v. Hamilton*, 159 Colo. 257, 411 P.2d 15 (1966); *Tague v. Coors Porcelain Co.*, 29 Colo. App. 226, 481 P.2d 424 (1971).

Determination of whether disability has causal connection with original accident is conclusive. In a workmen's compensation case it is for the commission, in the exercise of sound discretion, to determine whether, under the evidence, a permanent disability has a causal connection with the original accident, and its determination of that issue is conclusive on the courts. *London Guarantee & Accident Co. v. Sauer*, 92 Colo. 565, 22 P.2d 624 (1933).

Where the original referee does not enter an order and a second referee who was not at the hearing is called upon to enter the order, the second referee must base his findings and conclusions on an independent examination of the facts contained in the record. *State Compensation Ins. Fund v. Fulkerson*, 680 P.2d 1325 (Colo. App.

1984); *Legouffe v. Prestige Homes, Inc.*, 689 P.2d 697 (Colo. App. 1984); *El Paso County Sch. Dist. No. 11 v. Bunger*, 713 P.2d 935 (Colo. App. 1985).

For discussion of what constitutes an evidentiary fact, see *F.R. Orr Constr. v. Rinta*, 717 P.2d 965 (Colo. App. 1985).

Where hearing officer entered supplemental order only addressing and altering findings unrelated to claim of entitlement to workmen's compensation death benefits made by claimant and where hearing officer elected not to supplement his order concerning claimant's contentions, the hearing officer should have forwarded the file to the panel and the claimant was not required to file a second petition for review of order of hearing officer as first petition for review was still pending. *Michalski v. Indus. Claim Appeals Office*, 757 P.2d 1146 (Colo. App. 1988).

Jurisdictional challenge to hearing officer. Additional hearing required where claimant alleged that hearing officer lacked jurisdiction to enter an order after the hearing officer had terminated his employment. *Welch v. Indus. Comm'n*, 722 P.2d 439 (Colo. App. 1986).

V. REVIEW BY THE INDUSTRIAL CLAIM APPEALS PANEL.

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions under this section to the industrial claim

appeals panel. Cases which refer to referees were decided prior to the 1983 repeal and reenactment which changed the term to hearing officer.

Procedural changes in statute are applicable to all cases pending at the time the new statute became effective unless a contrary legislative intent is expressed and, since the procedural changes were imposed in conjunction with the abolition of the industrial commission and the creation of the industrial claim appeals office, it would be illogical to conclude that the general assembly intended the panel to apply a standard of review other than that set forth in its grant of authority. *Kinninger v. Indus. Claim Appeals Office*, 759 P.2d 766 (Colo. App. 1988).

Further petition for review. In a case first heard by a referee, where a petition for a review had been duly filed after the award, and the entire case is thereafter referred to the commission (now director), this section clearly contemplates a further petition for review. *Carlson v. Indus. Comm'n*, 79 Colo. 124, 244 P. 68 (1926).

Commission may reject claim as untimely. The commission may reject a claim for disfigurement which is asserted for the first time in a petition for review, on the ground that it has not been timely presented. *Dziewior v. Michigan Gen. Corp.*, 672 P.2d 1026 (Colo. App. 1983).

It is commission's responsibility independently to review entire record and either make new findings or adopt the referee's findings of fact. *Thompson v.*

Indus. Comm'n, 33 Colo. App. 369, 520 P.2d 139 (1974).

Meaningful review not possible when referee makes no findings of evidentiary fact. *Beech Aircraft, Inc. v. Reif*, 678 P.2d 1049 (Colo. App. 1983); *Raisch v. Indus. Comm'n*, 721 P.2d 693 (Colo. App. 1986).

Referee's findings part of record which commission considers in reaching decision. The fact that a referee is required by law to make findings of fact sufficient to support his award presupposes that the referee's findings will be a part of the record and that the commission will consider such findings in reaching its independent decision. *Thompson v. Indus. Comm'n*, 33 Colo. App. 369, 520 P.2d 139 (1974).

Commission may adopt referee's findings. The commission is not required to make independent findings of fact, but may adopt the referee's findings when affirming a decision. *Mattison v. Indus. Comm'n*, 33 Colo. App. 203, 516 P.2d 1143 (1973).

Adopted findings should be adequate. While generally the commission's adoption of specific factual findings entered by the referee suffices, this procedure presupposes that the adopted findings are adequate. *Grand Valley Enters., Inc. v. Claimants in re Death of Wonders*, 39 Colo. App. 166, 562 P.2d 1119 (1977).

Commission cannot avoid being influenced by referee's findings and conclusions, when he had the only opportunity to observe the manner and demeanor of the witnesses, including that of

the claimant. *Thompson v. Indus. Comm'n*, 33 Colo. App. 369, 520 P.2d 139 (1974).

Prior to 1973, the commission was not limited merely to review of the director's order, but could on the record make findings of its own and enter an award thereon. *United States Fid. & Guar. Co. v. Indus. Comm'n*, 96 Colo. 571, 45 P.2d 895 (1935); *Colo. Dept. of Agriculture v. Wayne*, 179 Colo. 258, 499 P.2d 1188 (1972).

To hold that the commission had no independent fact-finding authority would in effect emasculate the commission's function to that of a mere rubber stamp approving the referee's findings. *Harrison W. Corp. v. Hicks' Claimants*, 185 Colo. 142, 522 P.2d 722 (1974).

The statutory phrase in former § 8-53-106 "contrary to the weight of the evidence" means unless the findings are not supported by a preponderance of the evidence and the preponderance standard is met when the existence of a contested fact is more probable than not. Therefore, the commission properly exercised its authority when it found that the claimant failed to sustain its burden of showing by a preponderance of the evidence that the cause of his symptoms was a prior injury. *Indus. Comm'n v. Jones*, 688 P.2d 1116 (Colo. 1984).

If the findings of fact by the administrative law judge are supported by substantial evidence they are binding on the panel, leaving only conclusions of law to be fully reviewed. The difference in the language of this section and that of comparable provisions of the State

Administrative Procedure Act exhibits a conscious legislative intent to abolish this section's previous distinction between evidentiary and ultimate findings. *May D & F v. Indus. Claim Appeals Office*, 752 P.2d 589 (Colo. App. 1988) (decided under law in existence prior to 1987 amendment).

Findings of fact by the ALJ are binding upon the panel if supported by substantial evidence. Conversely, if the ALJ's findings of fact are not supported by substantial evidence, or if the ALJ's orders are not supported by the findings of fact or applicable law, then they are not binding upon the panel and may be corrected or set aside. *Matter of Death of Smithour*, 778 P.2d 302 (Colo. App. 1989).

Although the evidence could support the industrial claim appeals office's conclusion, the office exceeded its authority by reweighing the evidence and overlooking other supported findings of the administrative law judge. *Apex Transp., Inc. v. Indus. Claim Appeals Office*, 2014 COA 25, 321 P.3d 630.

Under the substantial evidence standard established in subsection (8), the evidence supporting a finding is not substantial if it is overwhelmed by other evidence or if it constitutes a mere conclusion. *Wecker v. TBL Excavating, Inc.*, 908 P.2d 1186 (Colo. App. 1995).

This section requires the panel to accept the ALJ's findings of ultimate facts as well as evidentiary facts, if supported by substantial evidence in the record; however, both the panel and this court may review a conclusion of law for error. *Schrieber v.*

Brown & Root, Inc., 888 P.2d 274 (Colo. App. 1993).

Commission may rule de novo on weight and sufficiency of evidence. The industrial commission, as the ultimate fact finder, is not bound by the referee's findings but may rule de novo on the weight and sufficiency of the evidence in a workmen's compensation case. *Casa Bonita Restaurant v. Indus. Comm'n*, 624 P.2d 1340 (Colo. App. 1981).

Commission's findings are binding upon appellate review. The industrial commission's findings, where supported by substantial evidence, are binding upon appellate review. *Casa Bonita Restaurant v. Indus. Comm'n*, 624 P.2d 1340 (Colo. App. 1981).

Commission's order reversing the hearing officer's denial of benefits is interlocutory and not reviewable until issues of the extent of disability and duration of benefits are determined. *Indus. Comm'n v. Fort Logan*, 682 P.2d 1185 (Colo. 1984).

Commission determines proper characterization of employment relationship. The determination of the proper characterization of the employment relationship depends upon the facts in each case. This determination must properly be made by the commission rather than the court, even though the facts are largely undisputed, because this matter is not within the court's scope of review. *Schultz v. Indus. Comm'n*, 34 Colo. App. 122, 523 P.2d 164 (1974).

Commission authorized to make its own finding of ultimate conclusions of fact. City & County of Denver v. Indus. Comm'n, 690 P.2d 199 (Colo. 1984); State Comp. Ins. Fund v. Bldg. Sys., 713 P.2d 940 (Colo. App. 1985).

Causation may in certain circumstances be an ultimate fact and in other circumstances be an evidentiary fact. Baca v. Helm, 682 P.2d 474 (Colo. 1984); Raisch v. Indus. Comm'n, 721 P.2d 693 (Colo. App. 1986).

Whether an injury "caused" a disability, i.e., had a role in the chain of events leading to the disability, is a question of evidentiary fact. Baca v. Helm, 682 P.2d 474 (Colo. 1984).

The determination of causation may involve an evidentiary fact or an ultimate fact and an ultimate fact may involve a mixed question of law and fact or solely a question of law. If facts are undisputed and reasonable minds could draw but one inference from them, causation is a question of law for the court. Smith v. State Compensation Ins. Fund, 749 P.2d 462 (Colo. App. 1987); Schrieber v. Brown & Root, Inc., 888 P.2d 274 (Colo. App. 1993).

Whether an evidentiary fact of causation justifies the legal conclusion that a disability was "proximately caused" by a work-related injury is an ultimate fact, i.e., a question of statutory interpretation. Baca v. Helm, 682 P.2d 474 (Colo. 1984).

Credibility of witnesses. Resolution of the credibility of witnesses by the hearing

officer is a question of evidentiary fact which is binding on review. Prestige Homes, Inc. v. Legouffe, 658 P.2d 850 (Colo. 1983); Varsity Contractors & Home Ins. Co. v. Baca, 709 P.2d 55 (Colo. App. 1985).

There is a clear distinction between the terms "no evidence" and "no credible evidence" and, where the record failed to support the finding that there was no evidence of causation regarding worker's claim to total disability benefits for occupational lung disease, the industrial claim appeals panel should have set the order aside and remanded the cause for additional findings. Hall v. Indus. Claim Appeals Office, 757 P.2d 1132 (Colo. App. 1988).

The scope of the "quasi-course of employment doctrine", like the scope of the doctrine of duty, can be a question of law involving public policy considerations and there was no error in Panel's failure to remand to the ALJ for an initial determination of that question of law. Schrieber v. Brown and Root, Inc., 888 P.2d 274 (Colo. App. 1993).

VI. PROCEDURAL REQUIREMENTS.

The filing of the petition as provided by this section is jurisdictional. Indus. Comm'n v. Plains Utils. Co., 127 Colo. 506, 259 P.2d 282 (1953); Brodeur v. Indus. Claim Appeals Office, 159 P.3d 810 (Colo. App. 2007); Youngs v. Indus. Claim Appeals Office, 2013 COA 54, 316 P.3d 50.

Timely filing of a petition for certiorari is a jurisdictional requirement. Accordingly, statutory provisions governing

appellate review must be strictly enforced. *Picken v. Indus. Claim Appeals Office*, 874 P.2d 485 (Colo. App. 1994); *Schneider Nat'l Carriers, Inc. v. Indus. Claim Appeals Office*, 969 P.2d 817 (Colo. App. 1998).

Mailing to attorney triggers 20-day period under subsection (2). The claimant, represented by an attorney, was not required to receive her own separate copy of the order. *Brodeur v. Indus. Claim Appeals Office*, 159 P.3d 810 (Colo. App. 2007).

General rule on time computation does not affect specific provision of subsection (10). A party to a proceeding who received notice of the panel's order by mail was not entitled to the additional three days allowed by C.A.R. 26(c) for service by mail, in view of the fact that mailing time is already accounted for in this section. *Indus. Claim Appeals Office v. Zarlingo*, 57 P.3d 736 (Colo. 2002).

General three-day mailing provision in C.R.C.P. 6(e) does not modify the 20-day time limit set forth in subsection (2). *Speier v. Indus. Claim Appeals Office*, 181 P.3d 1173 (Colo. App. 2008).

Filing deadline may not be extended for excusable neglect. *Speier v. Indus. Claim Appeals Office*, 181 P.3d 1173 (Colo. App. 2008).

Court of appeals lacked authority to extend time for filing of petition for writ of certiorari in workers compensation case. Neither this statute nor C.A.R. 46.1 permit an extension of time within which to file petition. *Picken v. Indus. Claim Appeals Office*, 874 P.2d 485 (Colo. App. 1994).

Failure to specify in detail in a petition the alleged errors committed is not jurisdictional and the industrial claim appeals office has jurisdiction to consider such a petition if it elects to do so. *Oxford Chemicals, Inc. v. Richardson*, 782 P.2d 843 (Colo. App. 1989).

Failure to file a brief or the untimely filing of a brief under subsection (3) is not a jurisdictional defect. *Ortiz v. Indus. Comm'n*, 734 P.2d 642 (Colo. App. 1986).

A second ALJ did not lack jurisdiction under subsection (12) to consider a petition to reopen because the first ALJ's order was on appeal. *Ward v. Ward*, 928 P.2d 739 (Colo. App. 1996).

Procedure for review must be followed. In order to avail oneself of the provisions of the workmen's compensation act the procedure for review of findings or awards must be followed, and, unless followed, the order or award may not be reviewed. *Indus. Comm'n v. Plains Utils. Co.*, 127 Colo. 506, 259 P.2d 282 (1953); *Vigil v. Indus. Comm'n*, 160 Colo. 23, 413 P.2d 904 (1966); *Miller v. Indus. Comm'n*, 28 Colo. App. 462, 474 P.2d 177 (1970).

The words "must" and "shall" as used in this section are not susceptible of any construction except as mandatory. *Indus. Comm'n v. Plains Utils. Co.*, 127 Colo. 506, 259 P.2d 282 (1953); *Logan County Hosp. v. Slocum*, 165 Colo. 232, 438 P.2d 240 (1968).

Thus, award "shall be final" unless challenged in manner prescribed. Under the provisions of the statute, an award "shall

be final" unless challenged in the particular manner and within the time provided by the act. *Stearns-Roger Mfg. Co. v. Casteel*, 128 Colo. 289, 261 P.2d 228 (1953).

The commission's order after consideration of the referee's award is final, except during the pendency before the commission of a petition for review. *Carver v. Indus. Comm'n*, 40 Colo. App. 126, 570 P.2d 256 (1977).

Award will be res judicata. The statute clearly contemplates that all objections to an award shall be raised, if at all, by specified procedures and shall be barred from later relitigation by virtue of the doctrine of res judicata. The whole policy of the law is against the retrial of issues already litigated by the parties. *State Comp. Ins. Fund v. Luna*, 156 Colo. 106, 397 P.2d 231 (1964).

More specifically, a petition for review "shall be in writing and specify in detail the particular errors and objections". *Gadbois v. Allan*, 105 Colo. 19, 94 P.2d 688 (1939); *Stearns-Roger Mfg. Co. v. Casteel*, 128 Colo. 289, 261 P.2d 228 (1953); *Williams v. New Amsterdam Cas. Co.*, 136 Colo. 458, 319 P.2d 1078 (1957); *Youngs v. Indus. Claim Appeals Office*, 2013 COA 54, 316 P.3d 50.

Where claimant timely files petition to review final order but does not list a previous ALJ interlocutory order or identify errors in that order, the petition was inadequate to appeal the interlocutory order, and the industrial claim appeals office loses jurisdiction to review that order. *Youngs v. Indus. Claim Appeals Office*, 2013 COA 54, 316 P.3d 50.

Phrase "any party dissatisfied", as used in subsection (2), includes an independent claims adjustment service acting for a self-insured employer. *Tozer v. Scott Wetzel Servs., Inc.*, 883 P.2d 496 (Colo. App. 1994).

Standing to request review of an ALJ's order arises under this section only when a party is dissatisfied with an order which requires a party to pay a penalty or benefits and, therefore, insurer did not have standing to challenge an ALJ's determination as to the award of attorney fees which award did not impose a penalty upon the insurer, did not assess any additional benefits nor deny any benefit to the claimant, or place additional liability on the insurer. *Bradley v. Indus. Claim Appeals Office*, 841 P.2d 1071 (Colo. App. 1992).

Sufficiency of writing and specificity of objections. This section, providing that a petition for review of an award of the commission shall be in writing and specify in detail the particular errors or objections, is sufficiently complied with where a referee of the commission advises a claimant that a petition, filed by claimant, lacks detail, and extends the time within which to secure a transcript of the testimony and present a petition in compliance with the rules; the fact that the referee order is a more detailed statement and grants time within which to file it, cannot work a default or a forfeiture of a claimant's right to review. *Williams v. New Amsterdam Cas. Co.*, 136 Colo. 458, 319 P.2d 1078 (1957).

Letter as petition for review. A letter sent by counsel for petitioner, marked as being received, and entered as part of the

record, which prompts the referee's order to hold a supplemental hearing, is in sufficient compliance with the requirements set forth by the statute and acts as a valid petition for review when it states specific reasons for necessity of amending the order. *Miller v. Indus. Comm'n*, 28 Colo. App. 462, 474 P.2d 177 (1970).

In addition, a petition for review must be submitted within 15 days (now 20 days) after the referee's order, and unless filed within this allotted period the petition for review must be stricken and the order declared final. *Midget Consol. Gold Mining Co. v. Indus. Comm'n*, 69 Colo. 218, 193 P. 493 (1920); *Indus. Comm'n v. Bracken*, 83 Colo. 72, 262 P. 521 (1927); *Pollard v. Indus. Comm'n*, 95 Colo. 572, 37 P.2d 1093 (1934); *Zimmerman v. Indus. Comm'n*, 108 Colo. 552, 120 P.2d 636 (1941); *Miller v. Indus. Comm'n*, 28 Colo. App. 462, 474 P.2d 177 (1970); *Irrigation Motor & Pump Co. v. Indus. Comm'n*, 30 Colo. App. 289, 494 P.2d 144 (1971).

A petition for review, whether it is denominated an appeal or a cross appeal, must be filed within 20 days after the date of the certificate of mailing of the industrial claim appeals panel's final order and this deadline may not be extended. *Western Empire v. Indus. Claim Appeals Office*, 769 P.2d 1089 (Colo. App. 1989).

Petition for review of interlocutory order submitted prior to issuance of final order was premature. Subsection (2) requires a petition for review to be filed "within 20 days after the date of the certificate of mailing" of the final,

appealable order. Under section's plain meaning, claimant was required to submit petition to review first ALJ's interlocutory order after second ALJ issued a final order. *Youngs v. Indus. Claim Appeals Office*, 2013 COA 54, 316 P.3d 50.

Actions are not commenced in the court of appeals until they are actually received by the court; they are not commenced on the day they are mailed. Therefore, petition was filed late where petitioner mailed it on the 20th day after the industrial claim appeals office entered its order. *Rice v. Indus. Claim Appeals Office*, 937 P.2d 893 (Colo. App. 1997).

Claimant's petition for review of decision was timely filed despite fact that certificate of mailing did not indicate petition was mailed to ALJ where cover letter attached to petition disclosed that petition was mailed within 20 days of order. *Rendon v. United Airlines*, 881 P.2d 482 (Colo. App. 1994).

Twenty-day limit within which to file a petition for writ of certiorari set forth in this section and C.A.R. 46.1 is applicable to injuries occurring on or after July 1, 1991. *Picken v. Indus. Claim Appeals Office*, 874 P.2d 485 (Colo. App. 1994).

Effect of failure to seek timely administrative review. Where a claimant fails to seek, within the statutorily prescribed 15-day (now 20-day) period, administrative review of an order entered pursuant to a hearing, that failure deprives the court of appeals of jurisdiction to consider the merits of claimant's alleged

denial of due process. *Wallace v. Indus. Comm'n*, 629 P.2d 1091 (Colo. App. 1981).

Where further time was granted by the referee within 15 days (now 20 days) after the date when the order was entered, the statute does not require that a subsequent granting of additional time must also be sought and obtained prior to the expiration of the extended time within which to file the petition for review. The supreme court is disinclined to judicially establish such a strict rule of procedure where the request for additional time was filed before the expiration of the extended time theretofore granted by the referee. *City & County of Denver v. Phillips*, 166 Colo. 312, 443 P.2d 379 (1968).

Furthermore, a transcript of the proceedings must be filed within 30 days (now 20 days) after submission of the petition for review. *Logan County Hosp. v. Slocum*, 165 Colo. 232, 438 P.2d 240 (1968); *Vieweg v. B. F. Goodrich Co.*, 170 Colo. 71, 459 P.2d 759 (1969); *Miller v. Indus. Comm'n*, 28 Colo. App. 462, 474 P.2d 177 (1970).

For without submission of the transcript of the first proceedings, the referee is without jurisdiction to hold a second hearing on the matter, and the commission is correct in declaring the order of the second hearing a nullity, and in reinstating the order made after the first hearing. *Miller v. Indus. Comm'n*, 28 Colo. App. 462, 474 P.2d 177 (1970).

Claimant's timely filed petition for review of hearing officer's order was sufficient despite failure simultaneously to

order record and transcript of hearings. *Martinez v. Indus. Comm'n*, 709 P.2d 49 (Colo. App. 1985).

Order filed by administrative law judge more than 30 days after filing of briefs is void. *Hillebrand Const. Co. v. Worf*, 780 P.2d 24 (Colo. App. 1989).

Failure of commission to act within time period does not bar review. Where petitioner timely files a motion for extension of the period for filing the transcript, pursuant to subsection (3), he does not lose his right to review simply because the commission does not rule on the motion until the 30-day period expires. *Hewgley v. Indus. Comm'n*, 657 P.2d 989 (Colo. App. 1982).

Brief not required. There is no requirement under this section that a brief be filed in support of a petition to review a referee's decision or an order of the commission. *Saxton v. Indus. Comm'n*, 41 Colo. App. 309, 584 P.2d 638 (1978).

Withdrawal of attorney and claimant's ignorance of necessity for petition do not excuse noncompliance with this section. *Suver v. Indus. Comm'n*, 80 Colo. 429, 252 P. 361 (1927).

Procedural requirements may not be waived, enlarged, diminished, or destroyed by consent, and cannot be estopped. *Vieweg v. B. F. Goodrich Co.*, 170 Colo. 71, 459 P.2d 759 (1969).

The procedural requirements for review under this act constitute limits on the commission's jurisdiction and cannot be waived or destroyed by consent. *Hasbrouck*

v. Indus. Comm'n, 685 P.2d 780 (Colo. App. 1984).

Failure to effect service upon an opposing party within the time limits of this section and § 8-53-119 is not jurisdictionally fatal. Dept. of Inst. v. Indus. Claim Appeals Office, 780 P.2d 72 (Colo. App. 1989).

Where a claimant fails to deliver a petition for review to the office designated in the order of the administrative law judge, and such failure results in an untimely filing, the petition is jurisdictionally defective and a review of the claim on the merits is barred. Buschmann v. Gallegos Masonry, Inc., 805 P.2d 1193 (Colo. App. 1991).

Court not at liberty to imply a "mailing window" analogous to that provided under C.R.C.P. (6)(e) into the plain language of subsection (2). Digital Equip. Corp. v. Indus. Claim Appeals Office, 894 P.2d 54 (Colo. App. 1995).

Commission has no authority to grant an extension of time for filing a petition with court of appeals and, therefore, failure to timely seek review deprives court of appeals of jurisdiction. Cornstubble v. Indus. Comm'n, 722 P.2d 448 (Colo. App. 1986) (decided prior to 1986 abolishment of industrial commission).

Time at which awards become final where separate hearings had on two claims arising out of same accident. Where claims are filed against the insurance carrier of a lessee and the lessor for compensation growing out of the same

accident, each being heard and determined separately, the award becomes final in each case at the expiration of 15 days, and not at the expiration of 15 days from the time of the last award. Indus. Comm'n v. Bracken, 83 Colo. 72, 262 P. 521 (1927).

Requirements for filing petition with court of appeals. Prior to filing a petition for review with the court of appeals, the claimant must not only petition the referee and the commission to review the referee's order, but he must also petition the commission to review its own action on the referee's decision, so that any error may be corrected without the necessity of judicial review. Maxon v. Indus. Comm'n, 40 Colo. App. 196, 571 P.2d 319 (1977).

Objection for failure to file in time may be waived. An objection to a review under this section, because the petition therefor was not filed within the statutory or extended time, should be sustained, but the objection is waived if the hearing is had and the objecting party participates therein. Tyler v. Hagerman, 88 Colo. 60, 291 P. 1033 (1926).

Parties are estopped to complain of noncompliance by taking part in supplemental proceedings. Parties to a workmen's compensation proceeding by their conduct in applying for, and taking part in, supplemental proceedings before the director, held estopped to complain of noncompliance with this section. Indus. Comm'n v. Employers' Liab. Assurance Corp., 78 Colo. 267, 241 P. 729 (1925).

Parties thereby waive question of authority of director to enter additional

award. After original award by the director, on petition to reopen the case, of which employer and insurance carrier have notice, if they appear and participate in further proceedings without objection, they will be deemed to have waived any question of the authority of the director to enter an additional award. *Indus. Comm'n v. State Ins. Comp. Fund*, 71 Colo. 106, 203 P. 215 (1922).

VII. NOTICE.

Presumably, a person's address is the place of his domicile and residence. *Devore v. Indus. Comm'n*, 129 Colo. 10, 266 P.2d 774 (1954).

Claimant has duty to provide place for delivery of notice. For the purpose of receiving mail or notice, the address of a claimant is the designation of the place where delivery is desired. That place is best known to claimant and it is his duty to provide the place of residence or other designation of place for delivery of notice for inclusion in the files of his claim. *Devore v. Indus. Comm'n*, 129 Colo. 10, 266 P.2d 774 (1954).

Filing period commences to run against party who receives actual notice. An interpretation that until such time as all parties in interest are given due notice of the award, the statutory time within which a petition to review may be filed does not commence to run, even as against the party in interest who has in fact received actual notice, is not supported by the statute. *Davis v. Indus. Comm'n*, 161 Colo. 80, 420 P.2d 147 (1966).

Effect of no notice or insufficient notice. Where no notice or an insufficient notice of an award is given the parties in interest in a workmen's compensation case, the time within which a petition for review must be filed does not run. *Indus. Comm'n v. Martinez*, 102 Colo. 31, 77 P.2d 646 (1938).

Ruling on merits impliedly accepts petitioner's notice allegation. When the industrial commission rules upon a petition for administrative review, having before it the affidavits of petitioner's attorney and his two employees stating that notice of the commission's order had not in fact been received by them, the commission impliedly accepts petitioner's allegation that notice had not been received by her attorney, thereby making the filing of the petition timely. *Cline v. Indus. Comm'n*, 43 Colo. App. 123, 599 P.2d 973 (1979).

Notice misstating date of entry of award insufficient. Notice of an award which misstates the date of entry, resulting in a curtailment of time within which the petition for review may be filed, is insufficient. *Zimmerman v. Indus. Comm'n*, 108 Colo. 552, 120 P.2d 636 (1941).

Supreme court not inclined to favor ruling which forecloses right to review. Where the jurisdiction of the district court in a workmen's compensation case is questioned, unless the provisions of this section concerning notice of an award have been strictly followed, the supreme court, in reviewing the judgment, will not be inclined to favor a ruling which would foreclose the right of a party to a judicial review of the commission's action. *Zimmerman v. Indus.*

Comm'n, 108 Colo. 552, 120 P.2d 636 (1941).

Comm'n v. Nissen, 84 Colo. 19, 267 P. 791 (1928).

Thus, review of an award without notice to the claimant is unlawful. Indus.

8-43-302. Corrected orders.

- (1) The director, an administrative law judge, or the panel may issue a corrected order:
 - (a) At any time within thirty days after the entry of an order, to correct any clerical errors in the order. Clerical errors are grammatical or computational errors.
 - (b) At any time within thirty days of the entry of an order, to correct any errors caused by mistake or inadvertence.
- (2) Any order corrected for clerical error, mistake, or inadvertence shall be labeled "corrected order" and served by the division. Any corrected order may be appealed in the manner provided in this article 43 for any other order.

Source: L. 90: Entire article R&RE, p. 509, § 1, effective July 1. **L. 2026:** (2) amended, (SB 26-186), ch. 315, p. 1853, § 13, effective August 12.

Editor's note: This section is similar to former § 8-53-112 as it existed prior to 1990.

8-43-303. Reopening.

- (1) At any time within six years after the date of injury, the director or an administrative law judge may, after notice to all parties, review and reopen any award on the ground of fraud, an overpayment involving the circumstances described in section 8-42-113.5, an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all rights to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. In cases involving the circumstances described in section 8-42-113.5, recovery of overpayments shall be ordered in accordance with said section. If an award is reopened on grounds of an error, a mistake, or a change in condition, compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. Reopening does not affect the earlier award as to money already paid except in cases of fraud. Any order entered under this subsection (1) is subject to review in the same manner as other orders.

(2) (a) At any time within two years after the date the last temporary or permanent disability benefits or dependent benefits excluding medical benefits become due or payable, the director or an administrative law judge may, after notice to all parties, review and reopen an award on the ground of fraud, an overpayment, an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. Upon a prima facie showing that the claimant received overpayments, the award shall be reopened solely as to overpayments and repayment shall be ordered. In cases involving the circumstances described in section 8-42-113.5, recovery of overpayments shall be ordered in accordance with said section. If an award is reopened under this paragraph (a) on grounds of an error, a mistake, or a change in condition, compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid except in cases of fraud or overpayment. Any order entered under this paragraph (a) shall be subject to review in the same manner as other orders.

(b) At any time within two years after the date the last medical benefits become due and payable, the director or an administrative law judge may, after notice to all parties, review and reopen an award only as to medical benefits on the ground of an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. If an award is reopened under this paragraph (b), medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid. Any order entered under this paragraph (b) shall be subject to review in the same manner as other orders.

(3) (a) When a claimant has been awarded permanent total disability benefits, the award may be reopened at any time to determine if the claimant has returned to employment. If the claimant has returned to employment and has earned in excess of seven thousand five hundred dollars per year or has participated in activities that indicate that the claimant has the ability to return to employment and earn in excess of seven thousand five hundred dollars in a year, the claimant's permanent total disability award shall cease and the claimant is not entitled to further permanent total disability benefits as a result of the injury or occupational disease that led to the original permanent total disability award. Any subsequent permanent partial disability benefits awarded for the same injury or occupational disease shall be decreased by the amount of permanent total disability benefits previously received by the employee.

(b) On July 1, 2022, and each July 1 thereafter, for injuries sustained on or after January 1, 2022, the director shall adjust the amount of earnings required for ceasing permanent total disability by the percentage of the adjustment made by the director to the state average weekly wage pursuant to section 8-47-106.

(4) The party attempting to reopen an issue or claim shall bear the burden of proof as to any issues sought to be reopened.

Source: **L. 90:** Entire article R&RE, p. 509, § 1, effective July 1. **L. 91:** (3) added, p. 1323, § 34, effective July 1. **L. 97:** (1) and (2)(a) amended, p. 114, § 5, effective July 1. **L. 2007:** (4) added, p. 1474, § 8, effective May 30. **L. 2021:** (3) amended, (HB 21-1050), ch. 384, p. 2575, § 11, effective September 7; (1) amended, (HB 21-1207), ch. 149, p. 870, § 2, effective January 1, 2022.

Editor's note: This section is similar to former § 8-53-113 as it existed prior to 1990.

ANNOTATION

III. Change of Award.

I. GENERAL CONSIDERATION.

A. In General.

B. Statute of Limitations.

A. In General.

Law reviews. For article, "One Year Review of Contracts", see 37 Dicta 1 (1960). For article, "One Year Review of Torts", see 37 Dicta 67 (1960). For article, "Primer on Permanent Disability in the Colorado Workmen's Compensation Law", see 57 Den. L.J. 573 (1980). For article, "Brown and Root: When an ALJ's Order is an 'Award'", see 22 Colo. Law. 1927 (1993).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested power in the

director of the division of labor previously exercised by the industrial commission or were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions to the industrial claim appeals panel.

This section does not violate due process or equal protection by placing time limits on a claimant's right to reopen an award, whereas an employer may reopen at any time after an injured worker has resumed employment. Claimants and employers are not similarly situated, and there is a rational basis for the distinction. *Calvert v. Indus. Claim Appeals Office*, 155 P.3d 474 (Colo. App. 2006).

Section 8-40-201 (16.5)(a) and subsection (3) of this section are distinguishable because they affect persons who are not similarly situated to each other. The purpose of § 8-40-201 (16.5)(a) is to define permanent total disability for

purposes of initially determining whether a claimant is eligible for permanent total disability benefits. In contrast, the purpose of subsection (3) of this section is to set a standard which employers must meet before a case can be reopened to determine whether an employee who has already been awarded permanent total disability benefits should continue to receive such benefits. *Christie v. Coors Transp. Co.*, 933 P.2d 1330 (Colo. 1997).

The clear intent and purpose of this section was to give the industrial commission, within six years from the date of the accident, authority to review the proceeding which resulted in the conclusion that compensation had been paid, whether it is designated an "order", "decision", "judgment", or "finding and award". *Brofman v. Indus. Comm'n*, 117 Colo. 248, 186 P.2d 584 (1947).

Furthermore, the purpose of this statute is not to place arbitrary power in the hands of the commission, but to give it power, on request, to make equitable adjustments increasing awards where time has shown a change of condition. *Mascitelli v. Giuliano & Sons Coal Co.*, 157 Colo. 240, 402 P.2d 192 (1965).

Legislative intent. The general assembly, in enacting this section, authorized the director to review awards, sua sponte. *Gates Rubber Co. v. Indus. Comm'n*, 647 P.2d 244 (Colo. App. 1982).

Where a claim has been closed, it is necessary to seek reopening under this section. *Lewis v. Sci. Supply Co., Inc.*, 897 P.2d 905 (Colo. App. 1995).

Uncontested admission of liability became a "final" award, which could not be reopened except pursuant to statute, despite parties' assertion that fraud rendered award void ab initio. *Lewis v. Sci. Supply Co., Inc.*, 897 P.2d 905 (Colo. App. 1995).

But reopening of a claim is not required for an employer to challenge future maintenance medical benefits because employers retain the right to challenge the relatedness of any maintenance medical treatment and because future maintenance medical benefits are, by their nature, not yet awarded, and therefore remain open despite an otherwise closed final admission of liability. *Bolton v. Indus. Claim Appeals Office*, 2019 COA 47, 487 P.3d 999.

Although this section limits the grounds on which an award may be reopened, the statute is broad enough to encompass the claimant's award that was closed automatically for failure to prosecute. Therefore, the director's show cause order may be reopened when the director simply invoked his discretion to amend the order and extend the time within which the claimant could show cause as to why his claim should not be dismissed. *City of Denver v. Indus. Claim Appeals Office*, 2021 COA 146, 506 P.3d 100.

This section provides a procedure, not a benefit. The ability to reopen an award is established under this article of the Workers' Compensation Act, which describes the procedures for notices, reports, settlement, hearings, petitions for review, enforcement, and penalties. It is not a benefit within the meaning of article 42 of the Act. *Landeros v.*

Indus. Claim Appeals Office, 214 P.3d 544 (Colo. App. 2008).

The reopening authority under the provisions of this section is indicative of a strong legislative policy that, in workers' compensation matters, the goal of achieving a fair and just result overrides the interest of litigants in obtaining a final resolution of their dispute. *Renz v. Larimer County Sch. Dist. Poudre R-1*, 924 P.2d 1177 (Colo. App. 1996).

In the context of workers' compensation matters, a "final" award means only that the matter has been concluded subject to later reopening if warranted under the applicable statutory criteria. *Renz v. Larimer County Sch. Dist. Poudre R-1*, 924 P.2d 1177 (Colo. App. 1996).

The division-sponsored independent medical examination (DIME) scheme and the reopening procedures under this section as they concern a determination of maximum medical improvement (MMI) are not inconsistent and irreconcilable. MMI marks the point at which a claimant's condition has stabilized, and no further treatment can be reasonably expected to improve the condition. MMI is also considered a matter of diagnosis. A mistake in diagnosis has previously been held sufficient to justify reopening. *Berg v. Indus. Claim Appeals Office*, 128 P.3d 270 (Colo. App. 2005).

Upon its own motion on the ground of error, mistake or change in condition, the commission may review any award, and if the statutory conditions are present may reopen any award whether interim or final,

and adjust compensation in accordance with the standards of the act. *Graden Coal Co. v. Ytuarralde*, 137 Colo. 527, 328 P.2d 105 (1958); *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962).

Even if a compensation agreement or statement has been entered between the parties and thereafter there is a change in the condition of the employee, on proper application or petition the agreement or settlement may be reviewed, and compensation increased or diminished, or the payment of compensation may be suspended or terminated. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962).

However, the commission is limited in its review to "error, mistake, or a change in conditions." *Coursey v. Indus. Comm'n*, 83 Colo. 490, 267 P. 202 (1928); *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 85 Colo. 237, 275 P. 910 (1929); *Independence Coffee & Spice Co. v. Taylor*, 97 Colo. 242, 48 P.2d 798 (1935).

Collateral estoppel applies to all issues except "error, mistake, or a change in condition." Despite the fact that collateral estoppel does not usually apply to the same case, and the case is considered reopened under this section, the procedural posture should be considered to be analogous to a new proceeding. Therefore, when the elements of collateral estoppel are met, and the issue is not one of those enumerated in this section, collateral estoppel applies to previously decided issues. *Cooper v. Indus. Claim Appeals Office*, 998 P.2d 5 (Colo. App. 1999).

Administrative law judge (ALJ) has no inherent authority to order repayment in cases of fraud, but may terminate future payments. *Lewis v. Sci. Supply Co., Inc.*, 897 P.2d 905 (Colo. App. 1995).

It is immaterial on the question of the validity of a review who moves for the review or whether anyone does. *Indus. Comm'n v. Nissen*, 84 Colo. 19, 267 P. 791 (1928); *Serv. Supply Co. v. Vallejos*, 169 Colo. 14, 452 P.2d 387 (1969).

And there is no restriction in this section as to the number of times a case may be reopened, and when based upon new or different evidence no such limitation may be imposed by the courts, that being a matter for legislative expression. *Graden Coal Co. v. Ytuarralde*, 137 Colo. 527, 328 P.2d 105 (1958).

So that a claimant is not precluded from filing a first and second petition to reopen a compensation case, even though the award first entered has become final, since this section expressly grants the commission power to reopen any case within the time provided therein; there being no restrictions in the statute as to the number of times a case may be reopened based upon new or different evidence, no such limitation may be imposed by the courts. *Graden Coal Co. v. Ytuarralde*, 137 Colo. 527, 328 P.2d 105 (1958).

Petition is merely a means of calling attention to right to reopen. This section grants the exclusive right to reopen to the commission, and a claimant's petition is merely a means of calling attention to the fact such action should be taken. *Univ. of*

Denver v. Indus. Comm'n, 138 Colo. 505, 335 P.2d 292 (1959).

"Change in condition" means a change in the claimant's physical or mental condition and does not include a change in his economic conditions. *Lucero v. Climax Molybdenum Co.*, 710 P.2d 1191 (Colo. App. 1985), *aff'd*, 732 P. 2d 642 (Colo. 1987); *Brasher v. Indus. Comm'n*, 717 P.2d 990 (Colo. App. 1986), *aff'd sub nom. Lucero v. Climax Molybdenum Co.*, 732 P. 2d 642 (Colo. 1987).

The phrase "change in condition" in this section refers to a change in the physical condition of claimant and not to changes in economic circumstances alone. *George v. Indus. Comm'n*, 720 P.2d 624 (Colo. App. 1986).

"Change in condition" exception applies to the physical condition of an injured worker and is inapplicable where the injured worker dies and the disability benefits are replaced by death benefits payable to the decedent's dependents. *Ward v. Ward*, 928 P.2d 739 (Colo. App. 1996).

"Change in condition" refers to the underlying condition, not to a change in the medication used to treat it. *Richards v. Indus. Claim Appeals Office*, 996 P.2d 756 (Colo. App. 2000).

The word "mistake", as used in this section, means any mistake, whether of law or fact. *State Comp. Ins. Fund v. Indus. Comm'n*, 80 Colo. 130, 249 P. 653 (1926); *Gregorich v. Indus. Comm'n*, 117 Colo. 423, 188 P.2d 886 (1948).

A "mistake of law" which justifies reopening of a workers' compensation matter under this section may be established if an original order is inconsistent with a subsequent judicial interpretation of a controlling statutory provision. Further, it is immaterial to the reopening analysis under the foregoing statutory criteria whether the prior order premised on a mistake of law has been upheld by an appellate court. *Renz v. Larimer County Sch. Dist. Poudre R-1*, 924 P.2d 1177 (Colo. App. 1996); *Cesario v. Bldg. Servs. Sys. Inc.*, 962 P.2d 292 (Colo. App. 1997).

Mistake of fact may result when the state of the medical art advances to the point that new evidence becomes available, and such new evidence was not and could not have been previously available to the treating physician. *Standard Metals Corp. v. Gallegos*, 781 P.2d 142 (Colo. App. 1989).

Mistake in diagnosis held sufficient to justify reopening a claim. *Berg v. Indus. Claim Appeals Office*, 128 P.3d 270 (Colo. App. 2005).

Parties' mistaken belief that claimant was ineligible for dependent benefits constituted sufficient basis for reopening the case. *Exeter Drilling v. Indus. Claim Appeals Office*, 801 P.2d 20 (Colo. App. 1990).

"Mistake" includes fraud. *Lewis v. Sci. Supply Co., Inc.*, 897 P.2d 905 (Colo. App. 1995).

But the words "due and payable" present a slight ambiguity as here used,

because the general assembly has not stated whether it applies to commuted payments or to periodic payments or to a combination of such payments. *Univ. of Denver v. Indus. Comm'n*, 138 Colo. 505, 335 P.2d 292 (1959).

In any event, a payment of compensation cannot be "due and payable" when it never has been considered or ordered. *Dr. Pepper Bottling Co. v. Indus. Comm'n*, 134 Colo. 238, 301 P.2d 710 (1956).

Payment in full does not bar the review under this section. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 83 Colo. 315, 265 P. 99 (1928); *Employers' Mut. Ins. Co. v. Jacoe*, 102 Colo. 515, 81 P.2d 389 (1938).

Nor does the failure to award claimant any compensation. The failure of the commission to award claimant any compensation did not operate to prevent that body, by a supplemental or subsequent award, if it had jurisdiction to make a supplemental award, from providing compensation in such sum as it deemed the evidence warranted. This would be proper under this section because an award of a substantial sum would be a larger sum than no award at all. *Indus. Comm'n v. Employers' Liab. Assurance Corp.*, 78 Colo. 267, 241 P. 729 (1925).

A reopening under subsection (1) reopens an award not just specific issues raised by claimant in a petition to reopen. *Avalanche Indus. v. Indus. Claim Appeals Office*, 166 P.3d 147 (Colo. App. 2007), *aff'd on other grounds*, 198 P.3d 589 (Colo. 2008).

Reopening a case is not warranted if, once reopened, no additional benefits may be awarded. *Richards v. Indus. Claim Appeals Office*, 996 P.2d 756 (Colo. App. 2000).

Commission not required to give reason for reopening case. *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 85 Colo. 237, 275 P. 910 (1929).

Likewise, it is not obligated to state the reasons for refusal to reopen a case. *Kokel v. Indus. Comm'n*, 111 Colo. 188, 139 P.2d 259 (1943); *Beckley v. Indus. Comm'n*, 112 Colo. 135, 146 P.2d 990 (1944); *Md. Cas. Co. v. Kravig*, 153 Colo. 282, 385 P.2d 669 (1963); *Hoover v. Indus. Comm'n*, 156 Colo. 147, 397 P.2d 223 (1964); *Serv. Supply Co. v. Vallejos*, 169 Colo. 14, 452 P.2d 387 (1969).

Since the question of the right to reopen a workmen's compensation case is jurisdictional, a denial of the petition to reopen requires no findings. *Md. Cas. Co. v. Kravig*, 153 Colo. 282, 385 P.2d 669 (1963); *Hoover v. Indus. Comm'n*, 156 Colo. 147, 397 P.2d 223 (1964).

To warrant a reopening of a case, it is not necessary to make a showing that a worker's industrial disability has increased because a reopening is also appropriate where additional medical and temporary disability benefits are warranted. *Dorman v. B & W Const. Co.*, 765 P.2d 1033 (Colo. App. 1988).

An authorized treating physician's finding of increased impairment does not require reopening as a matter of law.

Heinicke v. Indus. Claim Appeals Office, 197 P.3d 220 (Colo. App. 2008).

Even if the evidence does not support the denial, no error occurs because in this type of reopening, being jurisdictional, no findings are required. *Hoover v. Indus. Comm'n*, 156 Colo. 147, 397 P.2d 223 (1964).

Only if a petition to reopen is granted are specific findings mandatory as to the particular error, mistake, or change of condition. *Sherratt v. Rocky Mt. Fuel Co.*, 94 Colo. 369, 30 P.2d 270 (1934); *Rocky Mt. Fuel Co. v. Canivez*, 96 Colo. 198, 40 P.2d 618 (1935); *Rocky Mt. Fuel Co. v. Sherratt*, 96 Colo. 463, 45 P.2d 643 (1935); *Mishmish v. Hayden Coal Co.*, 98 Colo. 373, 56 P.2d 21 (1936); *Century Indem. Co. v. Klipfel*, 99 Colo. 213, 61 P.2d 842 (1936); *Nat'l Lumber & Creosoting Co. v. Kelly*, 99 Colo. 442, 63 P.2d 457 (1936); *Allan v. Gadbois*, 100 Colo. 141, 66 P.2d 331 (1937); *Kokel v. Indus. Comm'n*, 111 Colo. 188, 139 P.2d 259 (1943); *Md. Cas. Co. v. Kravig*, 153 Colo. 282, 385 P.2d 669 (1963); *Hoover v. Indus. Comm'n*, 156 Colo. 147, 397 P.2d 223 (1964).

When acting on a petition to reopen, the industrial commission is required to include findings concerning workers' compensation claimant's request for vocational rehabilitation in its order where claimant was potentially entitled to vocational rehabilitation based on industrial disability. *George v. Indus. Comm'n*, 720 P.2d 624 (Colo. App. 1986).

Finding of director on employee's application for admission to major

medical fund was not binding on hearing officer concerning employee's petition to reopen and in determining whether employee was entitled to additional benefits. *Brothers v. Indus. Comm'n*, 733 P.2d 1217 (Colo. App. 1987).

For once having reopened a case the commission is obligated to decide the issues presented in all respects, as upon original hearing. *Cain v. Indus. Comm'n*, 136 Colo. 227, 315 P.2d 823 (1957).

After reopening, an order dismissing application to reopen will not be upheld. Where the commission reopens a case, holds a hearing and takes evidence, an order providing that a claimant's application to reopen the case is dismissed will not be upheld. *Cain v. Indus. Comm'n*, 136 Colo. 227, 315 P.2d 823 (1957).

Furthermore, an order denying a petition to reopen a claim entered without hearing or notice to the claimant is invalid and the director of the division of labor has jurisdiction to correct the error. *James v. Irrigation Motor & Pump Co.*, 180 Colo. 195, 503 P.2d 1025 (1972).

Likewise, once an award is reopened, the commission is required to give notice of a hearing to the parties interested, and to make specific findings of fact as to the error or mistake or change of condition, whether it modifies the original award or affirms it. *Serv. Supply Co. v. Vallejos*, 169 Colo. 14, 452 P.2d 387 (1969).

Director must give notice of claims. The director who reopens the case on his own motion must necessarily give the opposing

parties notice as of the claims they will be required to defend. *Berkley Moving & Storage Co. v. Eubank*, 193 Colo. 334, 566 P.2d 359 (1977).

When the director reopens a case on his own motion, notice must be given to opposing parties of the claims they would be required to defend. *Gates Rubber Co. v. Indus. Comm'n*, 647 P.2d 244 (Colo. App. 1982).

Notice to interested parties. The essential requirement of this section is that the claimant give the commission notice of his intention to reopen the award. *State Comp. Ins. Fund v. Indus. Comm'n*, 697 P.2d 807 (Colo. App. 1985).

After an award becomes final, the only way the case may be reopened is by the commission upon its own motion. *Clayton Coal Co. v. Zak*, 94 Colo. 171, 29 P.2d 374 (1933); *Indus. Comm'n v. Kokel*, 108 Colo. 353, 116 P.2d 915 (1941).

Since the courts have no authority to order a reopening. *Winteroth v. Indus. Comm'n*, 93 Colo. 38, 22 P.2d 865 (1933).

In absence of formal award, the approval of an admission of liability coupled with payments constitutes award. Although no formal award was ever ordered, the commission does not retain continuing jurisdiction, since the action which the commission took when it approved the insurance carrier admission of general liability together with the payment to the claimant of benefits constituted an award for all intents and purposes under the statute. *Harlan v. Indus. Comm'n*, 167 Colo. 413,

447 P.2d 1009 (1968); *Irrigation Motor & Pump Co. v. Indus. Comm'n*, 30 Colo. App. 289, 494 P.2d 144 (1971).

Last payment operates to close matter of award. Under the clear provision of this section it is the last payment of benefits which is significant and which operates to close the matter of an award. *Harlan v. Indus. Comm'n*, 167 Colo. 413, 447 P.2d 1009 (1968).

But order reopening award is not final award. An order reopening an award for purpose of determining whether mistake, error, or change of condition is present is not a final order and is not reviewable by the courts, only awards which are final being reviewable. *Stanley Hotel v. Thomas*, 153 Colo. 503, 387 P.2d 27 (1963).

If an order grants or denies temporary benefits and does not address the issue of permanent benefits, but expressly reserves jurisdiction over the latter subject, no award has been entered, and thus, no petition for reopening is required, until a proper order closing the matter is entered. *Brown & Root v. Indus. Claim Appeals Office*, 833 P.2d 780 (Colo. App. 1991); *El Paso County DSS v. Donn*, 865 P.2d 877 (Colo. App. 1993).

The commission retains jurisdiction to deal with any further disability appearing that can be directly traced to the original injury if such appears for consideration within the six-year period of limitations provided by this section. It makes no difference if the disability manifests itself at first or at a later time. Compensation is to be allowed for such further disability, within

the limitation period, even though it was not contemplated in the first award. *Safeway Stores v. Newman*, 123 Colo. 362, 230 P.2d 168 (1951).

Evidentiary hearing required upon petition to reopen. A petition to reopen, under this section, based on alleged error, mistake or change in condition after a final order of the commission, requires the referee (now hearing officer) to hold a further evidentiary hearing. *Eisnach v. Indus. Comm'n*, 633 P.2d 502 (Colo. App. 1981).

Testimony of medical experts and lay witnesses is competent as to changes in claimant's physical condition and the weight to be given to such testimony is a matter for the commission. *Wierman v. Tunnell*, 108 Colo. 544, 120 P.2d 638 (1941).

Continued medical treatment is not inconsistent with award of permanent partial disability. Though worker may reach MMI, continued medical treatment may be necessary to prevent deterioration in worker's physical condition. *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988).

Use of word "award" by commission to designate the decision not to reopen a case under the provisions of this section is not to be commended, since that word properly designates only a decision upon the merits of a presented claim. *Indus. Comm'n v. Kokel*, 108 Colo. 353, 116 P.2d 915 (1941).

Error by ALJ referring to claimant meeting her "burden of proof in establishing a worsening of condition" was harmless where ALJ focused on

causation between the industrial injury and claimant's back condition. *El Paso County DSS v. Donn*, 865 P.2d 877 (Colo. App. 1993).

ALJ's order that reserved jurisdiction over permanent disability benefits is not an award under this section. Thus, a petition to reopen claim to pursue such benefits is not required until an order is entered that closes the matter. *Brown & Root v. Indus. Claim Appeals Office*, 833 P.2d 780 (Colo. App. 1992).

Determination of whether a prior order constitutes an "award" within the meaning of this section requires an analysis of the prior order itself and cannot be made by application of a "same issue" or "res judicata" analysis. *L.E.L. Const. v. Goode*, 849 P.2d 876 (Colo. App. 1992).

A medical utilization review order under § 8-43-501 is not an award within the scope of this section and the director is not authorized to reopen such an order. *Cramer v. Indus. Claim Appeals Office*, 885 P.2d 318 (Colo. App. 1994).

In considering the propriety of reviewing an award the commission is not required to conduct a hearing to determine the validity of the facts recited in the petition therefor where in its opinion such facts, if accepted as alleged, would present no basis for reopening the final award. *Contes v. Metros*, 113 Colo. 1, 153 P.2d 1000 (1944).

Excusable neglect is not a ground for reopening. *Klosterman v. Indus. Comm'n*, 694 P.2d 873 (Colo. App. 1984).

The word "work" in this section has not been interpreted to mean "all work". Instead, where a claimant possesses residual unimpaired job skills, the critical inquiry is whether these skills are such as to enable the claimant to obtain suitable, remunerative employment. *Osborne v. Indus. Comm'n*, 725 P.2d 63 (Colo. App. 1986).

The same inquiry is appropriate whether or not the claimant has used these residual skills to obtain employment. Otherwise, any claimant who, because of necessity or efforts to make the best of his misfortune, has accepted unsuitable or unremunerative employment would be disqualified from vocational rehabilitation. *Osborne v. Indus. Comm'n*, 725 P.2d 63 (Colo. App. 1986).

Settlement agreement in workers' compensation case may relinquish any no-fault auto benefit claims. Settlement agreement in workers' compensation case which waived future medical and rehabilitation benefits under workers' compensation act resulted in relinquishment of claims for benefits under no-fault act as a result of § 10-4-707 (5). *Comiskey v. Valley Forge Ins. Co.*, 781 P.2d 188 (Colo. App. 1989).

ALJ properly found settlement was voidable on ground claimant was mentally incompetent at time he entered into settlement agreement. *Powderhorn Coal Co. v. Weaver*, 835 P.2d 616 (Colo. App. 1992).

Applied in *Colo. Auto Body, Inc. v. Newton*, 160 Colo. 113, 414 P.2d 480 (1966); *Dziewior v. Mich. Gen. Corp.*, 672 P.2d 1026 (Colo. App. 1983); *Chavez v.*

Indus. Comm'n, 714 P.2d 1328 (Colo. App. 1985); Swerdfeger v. Swerdfeger, 793 P.2d 618 (Colo. App. 1990).

B. Statute of Limitations.

Statutes of limitation are remedial in nature. The application of a remedial statute of limitation to an existing claim for relief does not violate the prohibition against retrospective legislation. *Vetten v. Indus. Claim Appeals Office*, 986 P.2d 983 (Colo. App. 1999).

Time limits on the ability to reopen are necessary to avoid inherent administrative and practical difficulties such as the proof problems associated with old injuries, the need to preserve full case records indefinitely, and the inability of insurance carriers to predict their future liability. *Calvert v. Indus. Claim Appeals Office*, 155 P.3d 474 (Colo. App. 2006).

The time limits set forth in this section operate as a statute of limitations and apply when complications develop directly from the original injury, even if the claimant attempts to classify the condition as a new disability. *Calvert v. Indus. Claim Appeals Office*, 155 P.3d 474 (Colo. App. 2006).

Review barred by lapse of time. Where more than six years have elapsed from the date of an accident before claimant's "petition to reopen" is filed, and more than two years have expired after the approval of the statutory amendment, declining to reopen the case under this section is correct. *Brofman v. Indus. Comm'n*, 117 Colo. 248, 186 P.2d 585 (1947).

The statute of limitations does not begin to run until the award is in fact made. *Dr. Pepper Bottling Co. v. Indus. Comm'n*, 134 Colo. 238, 301 P.2d 710 (1956).

Distinction between triggering events. Aside from the general six-year limitation period in subsection (1), there is a two-year limitation period under subsection (2)(b) that is specifically applicable to medical benefits. *Calvert v. Indus. Claim Appeals Office*, 155 P.3d 474 (Colo. App. 2006).

The six-year period of limitation begins running on the date of injury. The limitation period is not extended when changes of condition manifest themselves after the period has expired. *Thye v. Vermeer Sales & Serv.*, 662 P.2d 188 (Colo. App. 1983).

Statute of limitation for reopening workers' compensation claim begins to run from the date of the onset of disability, and not from the date of the last exposure to the occupational disease. Because claimant's petition to reopen was filed more than six years after the date of the onset of disability, that claim is barred from being reopened under this section. *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595 (Colo. App. 1998).

The "last injurious exposure rule" governs the apportionment of liability for an occupational disease between multiple employers or insurers, but does not determine the date on which a claimant has sustained a compensable occupational disease. *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595 (Colo. App. 1998).

For purposes of this section, the onset of disability occurs when the occupational disease impairs the claimant's ability effectively and properly to perform his or her regular employment, or rendered the claimant incapable of returning to work except in a restricted capacity. *Ricks v. Indus. Claim Appeals Office*, 809 P.2d 1118 (Colo. App. 1991); *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595 (Colo. App. 1998).

Time within which commission can reopen fixed as of date of final award. The time provided by this section within which the commission can reopen a case on any of the statutory grounds becomes fixed as of the date of a final award regardless of whether the sum is paid periodically or later commuted. *Univ. of Denver v. Indus. Comm'n*, 138 Colo. 505, 335 P.2d 292 (1959).

If only one claim for dependency benefits has been filed, the time period for filing a petition to reopen is governed by the payment of compensation to any dependent listed in the initial claim. *Exeter Drilling v. Indus. Claim Appeals Office*, 801 P.2d 20 (Colo. App. 1990).

In case of full payment, statute of limitations based on termination date if paid periodically. Where a claimant under the workmen's compensation statute has been awarded compensation and has received a lump sum in settlement and executed a receipt therefor acknowledging it to be received in full payment of the award for all injuries or disablement, the statutory period of time under this section, relating to

the time within which the commission may reopen the case due to a change in condition begins to run, not from, the date of the payment, but from the date when periodic payments would terminate if such payments were made in monthly installments as originally ordered. *Univ. of Denver v. Indus. Comm'n*, 138 Colo. 505, 335 P.2d 292 (1959).

However, where award operates retroactively, statute runs from date award ordered. Where an award of compensation is made to operate retroactively, the statute of limitations governing such claim under the workmen's compensation act runs from the date on which the commission orders the award to be made, rather than from the date the last payment would have been made had there been continuous monthly payments during the time covered by the final award. *Dr. Pepper Bottling Co. v. Indus. Comm'n*, 134 Colo. 238, 301 P.2d 710 (1956).

Thus, the statute of limitations applies differently where no compensation has been paid than it does where compensation has been paid. *James v. Irrigation Motor & Pump Co.*, 180 Colo. 195, 503 P.2d 1025 (1972).

The time limitation of this section is not a limitation of authority or jurisdiction. *Ball v. Indus. Comm'n*, 30 Colo. App. 583, 503 P.2d 1040 (1972).

Rather, the limitation is a legal defense which may be pled as a bar to a claim. *Ball v. Indus. Comm'n*, 30 Colo. App. 583, 503 P.2d 1040 (1972).

And if it were held that the time limit in this section was jurisdictional, it would be denying assistance to workers who are unable to act within the statutory period for reasons commonly recognized as sufficient to prevent the barring of a cause of action. *Ball v. Indus. Comm'n*, 30 Colo. App. 583, 503 P.2d 1040 (1972).

Petition to reopen received before the time for review expires tolls the statute pending final determination of the petition. *Irrigation Motor & Pump Co. v. Indus. Comm'n*, 30 Colo. App. 289, 494 P.2d 144 (1971); *James v. Irrigation Motor & Pump Co.*, 180 Colo. 195, 503 P.2d 1025 (1972).

Failure to notify claimant's attorney of admission of liability tolls the two-year statute of limitations. *Hall v. Home Furniture Co.*, 724 P.2d 94 (Colo. App. 1986).

Statute of limitations remains tolled until final disposition of appeal and subsequent proceedings directed as a result thereof, where prior action which determines the propriety of a petition to reopen remains unresolved, and where such prior claim was timely and limitation period expired during substantial delay unattributable to claimant. *Valdez v. United Parcel Serv.*, 728 P.2d 340 (Colo. App. 1986).

Voluntary authorization of additional medical treatment by former employer after order closing case was issued effectively extended the time within which the claimant could file a petition to reopen the case for additional medical benefits.

Garrett v. Arrowhead Imp. Ass'n, 815 P.2d 979 (Colo. App. 1991).

Once the statute of limitations is raised as an affirmative defense, the burden shifts to the plaintiff to show that the statute has been tolled. *Garrett v. Arrowhead Imp. Ass'n*, 826 P.2d 850 (Colo. 1992).

Equity will toll a statute of limitations if a party fails to disclose information that the party is legally required to reveal when such failure results in prejudice to the opposing party. *Garrett v. Arrowhead Imp. Ass'n*, 826 P.2d 850 (Colo. 1992).

Determination as to whether two-year statute of limitations on a petition to reopen the issue of permanent disability should have been equitably tolled requires factual finding as to whether claimant was prejudiced by failure of employer to furnish claimant with a copy of a medical report disclosing a worsened medical condition. *Garrett v. Arrowhead Imp. Ass'n*, 826 P.2d 850 (Colo. 1992).

And once a claimant properly files his notice within the statutory period, he is within its protection. *Mascitelli v. Giuliano & Sons Coal Co.*, 157 Colo. 240, 402 P.2d 192 (1965).

Filing a notice to have a claim reopened before the end of the period effectively tolls the running of the statute. Claimant's petition to reopen his claim was not time barred, and the six-year period to reopen a claim is tolled on the date claimant files a petition to reopen. *Fed. Express v. Indus.*

Claim Appeals Office, 51 P.3d 1107 (Colo. App. 2002).

Once the statute of limitations for reopening a claim under this section has expired, a party can no longer pursue penalties in that claim. Reopening must be requested within the later of six years of a claimant's date of injury or two years after the last disability or medical benefit becomes due or payable. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

An injured worker had to reopen his case under this section before initiating a penalty claim under § 8-43-304 (5). The injured worker's penalty claim was not governed solely by the statute of limitations in § 8-43-304 (5), but could be brought only if the injured worker's case was still open or the injured worker first reopened the case under this section. Because the injured worker's case was closed and he failed to reopen his case before the statute of limitations dictated by this section expired, the injured worker's claim for penalties was dismissed as time-barred. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

The requirement for an injured worker to reopen his case within this section's statute of limitations before asserting penalties governed by § 8-43-304 (5) applied to the injured worker's penalty claim against the doctor who oversaw his workers' compensation examination. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

Determination of jurisdiction is only a determination that statute has not run. A determination by the commission that it has jurisdiction to decide whether there was

error, mistake, or a change in a claimant's condition, and to enter an award of further compensation if it finds that such error, mistake, or change of condition is present, is a determination by the commission only that the six-year statute of limitations has not run of the particular case before it. As such it was not a final order of the commission. *Stanley Hotel v. Thomas*, 153 Colo. 503, 387 P.2d 27 (1963).

Effect of disability of claimant on statute of limitations. The time limitation of the statute which allows the director to change previous awards within six years of an accident is tolled by § 13-81-103 which provides that if a person who has a right of action and is under disability is represented by legal representative appointed after the right accrues, the representative has not less than two years from his appointment to bring action for the disabled person even though the two-year period expires after the expiration of the six-year period. *Ball v. Indus. Comm'n*, 30 Colo. App. 583, 503 P.2d 1040 (1972).

If injured employee was under disability at time his right to compensation occurred and continued to be under disability at time he filed petition to reopen, the statute of limitations could not run against employee for whom a legal representative had not been appointed. *James v. Brookhart Lumber Co.*, 727 P.2d 1119 (Colo. App. 1986).

A DIME is not a medical benefit, therefore it does not extend the statute of limitations period to reopen an award set forth in subsection (2)(b). *Jones v. Indus.*

Claim Appeals Office, 216 P.3d 619 (Colo. App. 2009).

The defense of laches is not available where the award is made under this provision. Employers' Mut. Ins. Co. v. Jacoe, 102 Colo. 515, 81 P.2d 389 (1938).

Review of invalid award is without legal effect. Where a review under § 8-53-106 (now § 8-53-111) is void because no petition therefor was filed in apt time, a subsequent review upon the commission's own motion, pursuant to this section, conducted without notice to the employer or insurance carrier, does not validate the award made on the first review, and the entire proceedings are without legal effect. Tyler v. Hagerman, 88 Colo. 60, 291 P. 1033 (1930).

Industrial commission was not proper forum in which to raise or decide the issue of whether workers' compensation claimant was under a disability for purposes of tolling workers' compensation statute of limitations. An interested person must petition the court for a specific finding as to the existence of a legal disability. James v. Brookhart Lumber Co., 727 P.2d 1119 (Colo. App. 1986) (decided prior to 1986 abolishment of industrial commission).

II. DISCRETIONARY POWER OF REVIEW.

A. In General.

B. Abuse of Discretion.

A. In General.

Under this section the commission has power to review any award. Coursey v.

Indus. Comm'n, 83 Colo. 490, 267 P. 202 (1928).

The reopening authority under the provisions of this section is permissive and is in the sound discretion of the ALJ. The appropriate inquiry is whether the claimant has suffered a deterioration in his condition that justifies additional benefits. MMI evidence would be relevant, but the original determination is not questioned. Therefore, the opinion of a DIME examination carries no special weight and need not be overcome by clear and convincing evidence. The opinions of such a physician have only been given presumptive effect when expressly required by the statute. Cordova v. Indus. Claim Appeals Office, 55 P.3d 186 (Colo. App. 2002).

ALJ has broad discretionary authority to determine whether claimant has met his burden of proof justifying reopening a claim. Kilpatrick v. Indus. Claim Appeals Office, 2015 COA 30, 356 P.3d 1008.

Effect of settlements on reopening. In view of prior cases, the beneficial purposes of the act and the language of § 8-51-108 and this section, the conclusion is inescapable that the general assembly has given the director authority to reopen a case within requisite time limitations regardless of whether there was a settlement. Padilla v. Indus. Comm'n, 696 P.2d 273 (Colo. 1985) (decided prior to 1985 amendment).

A judgment of the district court that an award of the commission is in full force and effect gives it no additional virtue; it is still an award subject to modification or vacation by it, under the powers conferred

by this section. *Coursey v. Indus. Comm'n*, 83 Colo. 490, 267 P. 202 (1928).

A bona fide settlement is the equivalent of an award or judgment reached upon evidence. In the absence of proof that fraud was practiced or that a fundamental mistake occurred without the fault of the claimant, it is presumed that the facts upon which a compensation settlement is based were fully presented to each other by the contracting parties. *Independence Coffee & Spice Co. v. Taylor*, 97 Colo. 242, 48 P.2d 798 (1935).

And may be held conclusive. An amicable, bona fide settlement between an employer and an employee of a claim for injuries sustained in the course of employment by the latter, and which is approved by the commission, held conclusive under the circumstances of the case, and the action of the commission in reopening the case on its own motion and making an award of compensation for permanent injuries 10 years after the happening of the accident under investigation, is set aside. *Independence Coffee & Spice Co. v. Taylor*, 97 Colo. 242, 48 P.2d 798 (1935), distinguishing *London Guarantee & Accident Co. v. Sauer*, 92 Colo. 565, 22 P.2d 624 (1933).

However, parties cannot by contract abrogate requirements of conditions affecting public policy. While in the usual contractual sense, the payment of an award in a lump sum leaves nothing further due and payable to a claimant, parties cannot by private contract abrogate statutory requirements of conditions affecting the public policy of the state. *Univ. of Denver v.*

Indus. Comm'n, 138 Colo. 505, 335 P.2d 292 (1959).

The power given to the commission to review an award of its own motion is discretionary. *State Comp. Ins. Fund v. Indus. Comm'n*, 80 Colo. 130, 249 P. 653 (1926); *Mantor v. Indus. Comm'n*, 89 Colo. 90, 299 P. 11 (1931); *Indus. Comm'n v. Lockard*, 90 Colo. 333, 9 P.2d 286 (1932); *Winteroth v. Indus. Comm'n*, 93 Colo. 38, 22 P.2d 865 (1933); *Pollard v. Indus. Comm'n*, 95 Colo. 572, 37 P.2d 1093 (1934).

This section confers ample power upon the commission to reopen a case in its sound discretion for a supplemental hearing whenever any natural development of an industrial injury, uninfluenced by an independent intervening cause, becomes apparent. *Post Printing & Publ'g Co. v. Erickson*, 94 Colo. 382, 30 P.2d 327 (1934); *Emp'rs Mut. Ins. Co. v. Jacoe*, 102 Colo. 515, 81 P.2d 389 (1938).

Discretion of commission is absolute. When a matter is before the commission, on its own motion to reopen on the ground of error, mistake or change of condition after a notice of hearing to the interested parties, the problem of making a prima facie showing and thereby shifting the burden of proof to the defendants does not arise. The discretion of the commission, in the absence of fraud or a clear abuse of discretion, has been held to be absolute. *Hoover v. Indus. Comm'n*, 156 Colo. 147, 397 P.2d 223 (1964).

And this section is a permissive statute. It permits, but does not require, the commission to reopen a case upon certain

grounds. *Mantor v. Indus. Comm'n*, 89 Colo. 90, 299 P. 11 (1931); *Indus. Comm'n v. Cutshall*, 164 Colo. 240, 433 P.2d 765 (1967).

This section is a permissive statute. This section is purely permissive and vests broad discretion to reopen or not to reopen a case in the commission of the division of labor, subject to review by the commission. *Wallace v. Indus. Comm'n*, 629 P.2d 1091 (Colo. App. 1981).

But the commission cannot change its findings and award, once made, through caprice or without stated reasons; but there will be no interference with its discretion to review its findings and change its award — unless there is an abuse of discretion or a showing of fraud — when there is evidence which will reasonably support a change. *Rocky Mt. Fuel Co. v. Canivez*, 96 Colo. 198, 40 P.2d 618 (1935).

Referee's (now hearing officer's) mistake of law provides ample cause for reopening claimant's case. *Travelers Ins. Co. v. Indus. Comm'n*, 646 P.2d 399 (Colo. App. 1981).

B. Abuse of Discretion.

The discretion of the director in reopening claims is absolute unless there is fraud or a clear abuse of discretion. In re *Brunetti v. Indus. Comm'n*, 670 P.2d 1246 (Colo. App. 1983); *Osborne v. Indus. Comm'n*, 725 P.2d 63 (Colo. App. 1986); *Wilson v. Jim Snyder Drilling*, 747 P.2d 647 (Colo. 1987).

The court will not interfere with the commission's (now director's) actions

except in case of fraud or abuse of discretion. *State Comp. Ins. Fund v. Indus. Comm'n*, 80 Colo. 130, 249 P. 653 (1926); *Mantor v. Indus. Comm'n*, 89 Colo. 90, 299 P. 11 (1931); *Indus. Comm'n v. Lockard*, 89 Colo. 428, 3 P.2d 416 (1931); *Lockard v. Indus. Comm'n*, 91 Colo. 212, 13 P.2d 1117 (1932); *Pollard v. Indus. Comm'n*, 95 Colo. 572, 37 P.2d 1093 (1934); *Indus. Comm'n v. Kokel*, 108 Colo. 353, 116 P.2d 915 (1941); *Kokel v. Indus. Comm'n*, 111 Colo. 188, 139 P.2d 259 (1943); *Beckley v. Indus. Comm'n*, 112 Colo. 135, 146 P.2d 990 (1944); *Contes v. Metros*, 113 Colo. 1, 153 P.2d 1000 (1944); *Cain v. Indus. Comm'n*, 136 Colo. 227, 315 P.2d 823 (1957); *Indus. Comm'n v. Vigil*, 150 Colo. 356, 373 P.2d 308 (1962); *Indus. Comm'n v. Cutshall*, 164 Colo. 240, 433 P.2d 765 (1967); *Travelers Ins. Co. v. Indus. Comm'n*, 646 P.2d 399 (Colo. App. 1981); *Osborne v. Indus. Comm'n*, 725 P.2d 63 (Colo. App. 1986).

Evidence failing to show abuse of discretion in refusing to reopen. Where employee failed to mention to the original attending physicians an alleged ankle injury in addition to a knee injury for which he was allowed compensation, upon which his request for a reopening was based, and none of those physicians discovered any simultaneous injury to the ankle on the very leg examined by them shortly after the accident to the knee, the evidence failed to show that the commission abused its discretion in refusing to reopen the case for purpose of showing injury to the ankle. *Indus. Comm'n v. Kokel*, 108 Colo. 353, 116 P.2d 915 (1941); *Kokel v. Indus. Comm'n*, 111 Colo. 188, 139 P.2d 259 (1943).

Where a doctor's report was sufficient to assist the division in determining whether claimant could present a prima facie case of changed condition, the failure of the hearing officer to deny claimant's petition to reopen for failure to comply with a commission rule requiring the doctor's report to contain an estimate of the percentage of impairment and the additional periods of temporary disability, if any, did not constitute an abuse of discretion. *Osborne v. Indus. Comm'n*, 725 P.2d 63 (Colo. App. 1986).

And to justify a court in interfering the showing of fraud or of an abuse of discretion must be very clear indeed. *Pollard v. Indus. Comm'n*, 95 Colo. 572, 37 P.2d 1093 (1934); *Contes v. Metros*, 113 Colo. 1, 153 P.2d 1000 (1944).

But courts may require the commission to exercise its discretion in a proper case. *Lockard v. Indus. Comm'n*, 91 Colo. 212, 13 P.2d 1117 (1932).

And this is true where the refusal is based upon the erroneous view that the commission has no jurisdiction. *Indus. Comm'n v. Lockard*, 89 Colo. 428, 3 P.2d 416 (1931); *Gregorich v. Indus. Comm'n*, 117 Colo. 423, 118 P.2d 886 (1948).

If fraud or abuse of discretion is shown, the case should be remanded to the commission for further proceedings. *Indus. Comm'n v. Lockard*, 90 Colo. 333, 9 P.2d 286 (1932).

But no abuse of discretion when right to review lost by inaction. The fact that the director refused to reopen a case to permit him to substitute action under this section

for the right to review granted him by § 8-53-106 (now § 8-53-111) which he lost by inaction, does not amount to an abuse of discretion. *Indus. Comm'n v. Cutshall*, 164 Colo. 240, 433 P.2d 765 (1967); *Colo. Dept. of Agric. v. Wayne*, 30 Colo. App. 311, 493 P.2d 683 (1971).

And no abuse of discretion where petition to reopen was denied because petition was filed to circumvent higher burden of proof. Denial of petition to reopen was not an abuse of discretion where substantial evidence supported the ALJ's determination that the claimant filed the petition as a strategic move to avoid the higher burden of proof involved in trying to overcome a finding of MMI by a DIME. *Justiniano v. Indus. Claim Appeals Office*, 2016 COA 83, 410 P.3d 659.

And court cannot demand statement of commission's reasons for refusing to review. On review by district court of proceedings before the commission, an order of court calling for a statement of the reasons for the refusal to reopen the case for further proceedings on its own motion is erroneous. *Indus. Comm'n v. Lockard*, 90 Colo. 333, 9 P.2d 286 (1932).

III. CHANGE OF AWARD.

Where commission changes award it is assumed that commission concluded that it had previously erred. Where the commission on its own motion enters a supplemental award of compensation for permanent disability, the original award being for temporary disability only, it will be assumed on review that the commission concluded that it had previously erred, and

an award correcting the error will not be disturbed. *Clayton Coal Co. v. Zak*, 94 Colo. 171, 29 P.2d 374 (1933).

Example of error by commission. If the commission was led or induced to find from the showing on a hearing that a claimant's injury was not suffered in the course of his employment, but was due to diseases from which he suffered long before, and if the evidence then produced before the commission upon which such finding was made was false or perjured testimony, the commission might, according to the plain terms of this section, set aside its award or order and enter a different award if the showing before it was sufficient to prove that the finding was based upon false testimony. It certainly was an error or mistake upon the part of the commission, if it was led by the false testimony of a witness to believe, and so find, that the injury sustained by the claimant was not received in the course of his employment. *Indus. Comm'n v. Employers' Liab. Assurance Corp.*, 78 Colo. 267, 241 P. 729 (1925).

Issues on reopening are whether original award in conformity with law and supported by evidence. Where the commission reopens a case on its own motion, sets a date for a hearing, and holds a hearing pursuant thereto, the issues are then the same as those presented in any other action for a review of a decision of the commission, namely, whether the award was entered in conformity with the law and supported by competent evidence. *Cain v. Indus. Comm'n*, 136 Colo. 227, 315 P.2d 823 (1957).

A subsequent award will affect an earlier award as to moneys already paid only if the claimant is required actually to pay back moneys from the initial award. *Kuziel v. Pet Fair, Inc.*, 948 P.2d 103 (Colo. App. 1997).

Awards which change or modify the effect of the original award must be based upon specific findings supported by competent evidence. *Sherratt v. Rocky Mt. Fuel Co.*, 94 Colo. 269, 30 P.2d 270 (1934).

And if not they cannot be affirmed by the courts. *Sherratt v. Rocky Mt. Fuel Co.*, 94 Colo. 269, 30 P.2d 270 (1934).

For example, a finding that a "mistake in all probability existed in the receipt of testimony at original hearing" does not meet the mandatory requirements of a specific finding of error, mistake, or change of condition justifying the reopening of an award. *Md. Cas. Co. v. Kravig*, 153 Colo. 282, 385 P.2d 669 (1963).

Sufficiency of commission's reason for change. The finding "that on prior reviews, the commission improperly weighed the evidence", would be a sufficient statement of a conclusion upon which to grant a rehearing, and on such rehearing — if the same conclusion persisted — to change the award, there being a sufficient statement of reasons for the change, but to enter an award upon the simple statement that the evidence had been improperly weighed on prior reviews, and to do so without additional hearings, or evidence, and this upon the heels of consistent contrary findings, establishes with crystal clearness that the prohibited "change of mind" without stated

reasons, occurred. *Allan v. Gadbois*, 100 Colo. 141, 66 P.2d 331 (1937).

Sufficient evidence to justify extended award. Where new evidence is to the effect that claimant's injury is more extensive than had appeared from an earlier inquiry, not that his condition had "become worse", as the commission recited, the import of the finding is that from the beginning claimant's condition justified the extended award. The evidence warranted that determination, and the law authorized it. The procedure was apt. *Rocky Mt. Fuel Co. v. Canivez*, 96 Colo. 198, 40 P.2d 618 (1935); *Moffat Coal Co. v. Podbelsk*, 96 Colo. 355, 42 P.2d 1001 (1935); *Century Indem. Co. v. Klipfel*, 99 Colo. 213, 61 P.2d 842 (1936).

Findings by the hearing officer were supported by substantial evidence and therefore not subject to alteration by the commission. *Matter of Death of Corbin*, 724 P.2d 677 (Colo. App. 1986).

Effect of change of award on moneys already paid. Where claimant's final receipt for temporary disability was approved "subject to any future claim for disability as provided by law", and upon further hearing, it was determined that claimant was totally and permanently disabled, that such disability was due to the accident, and accordingly he was awarded compensation for his lifetime, it was held that the "moneys already paid" were for temporary disability only, whereas the moneys ordered paid on the subsequent hearing were for permanent disability only; hence the prohibition of this section did not apply. *Russell Coal Co. v. Zinge*, 112 Colo. 171, 147 P.2d 365 (1944);

Moffat Coal Co. v. Giankos, 112 Colo. 585, 152 P.2d 681 (1944).

Where rehearing of change of award allowed. There being no evidence whatever concerning error in the prior award, or any finding pointing out the possibility of such error, it is apparent that plaintiffs, affected by an increased award, had no way of anticipating it; that they were surprised thereby and were entitled to the rehearing for which they petitioned in due time. *Nat'l Lumber & Creosoting Co. v. Kelly*, 99 Colo. 442, 63 P.2d 457 (1936).

Award on review may be retroactive. This section does not provide that no review shall have a retroactive effect, or that no review shall affect a prior award as to any period for which payment has been made. The only limitation is that no review shall affect "moneys already paid". This limitation precludes the commission from finding that moneys already paid to a claimant under a previous award are not the property of the claimant and must be returned to the insurer. It does not preclude the commission from giving an award on review a retroactive effect so as to require the payment of additional compensation for a period before the previous award was reviewed. *Morrison v. Clayton Coal Co.*, 116 Colo. 501, 181 P.2d 1011 (1947).

To warrant a reopening of a case, it is not necessary to make a showing that a worker's industrial disability has increased because a reopening is also appropriate where additional medical and temporary disability benefits are warranted.

Dorman v. B & W Const. Co., 765 P.2d 1033 (Colo. App. 1988).

Neither this section nor § 8-42-107.5 addresses the situation of further temporary total disability benefits being awarded after the limit on combined temporary total and permanent partial

benefits has been paid. But in view of underlying policies, in this situation the employer should be entitled to offset any permanent partial disability benefits paid against temporary total disability benefits. Donald B. Murphy Contractors v. Indus. Claim Appeals Office, 916 P.2d 611 (Colo. App. 1995).

8-43-304. Violations - penalty - offset for benefits obtained through fraud - rules.

(1) Any employer or insurer, or any officer or agent of either, or any employee, or any other person who violates articles 40 to 47 of this title 8, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel, for which no penalty has been specifically provided, or fails, neglects, or refuses to obey any lawful order made by the director or panel or any judgment or decree made by any court as provided by the articles shall be subject to such order being reduced to judgment by a court of competent jurisdiction and shall also be punished by a fine of not more than one thousand dollars per day for each offense, to be apportioned, in whole or part, at the discretion of the director or administrative law judge, between the aggrieved party and the Colorado uninsured employer fund created in section 8-67-105; except that the amount apportioned to the aggrieved party shall be a minimum of twenty-five percent of any penalty assessed.

(1.5) (a) (I) An insurer who knowingly or repeatedly violates any provision of articles 40 to 47 of this title shall be subject to a fine as determined by the director. If necessary, the director may conduct a hearing or may refer the matter to the office of administrative courts for the entry of findings of fact. The director shall promulgate rules that specify, with respect to an insurer's willful or repeated violations that are subject to this subsection (1.5):

(A) The circumstances pursuant to which the director may issue an order imposing a fine; and

(B) Criteria for determining the amount of the fine.

(II) If the division determines, as part of a compliance audit of an insurer or self-insured pool, that an injury or occupational disease was not reported to the division within the time specified in sections 8-43-101 and 8-43-103 because the insurer or self-insured pool did not have notice or knowledge of the injury, occupational disease, or fatality within a period of time that would allow the information to be reported to the division within the time specified in sections 8-43-101 and 8-43-103, the director shall not impose a fine for late reporting under this subsection (1.5). The director may impose a fine under this subsection (1.5) for late reporting under sections 8-43-101 and 8-43-103 as part of findings from a compliance audit if the director finds that the

late reporting constituted a knowing or repeated pattern of noncompliance with the reporting requirements of sections 8-43-101 and 8-43-103 and was not caused by the insurer or self-insured pool's lack of notice or knowledge of the injury, occupational disease, or fatality within a period of time that would allow the information to be reported to the division within the time specified in sections 8-43-101 and 8-43-103.

(b) Fines imposed pursuant to this subsection (1.5) on or after July 1, 2018, shall be transmitted to the state treasurer, who shall credit the fines to the Colorado uninsured employer fund created in section 8-67-105.

(2) An insurer or self-insured employer may take a credit or offset of previously paid workers' compensation benefits or payments against any further workers' compensation benefits or payments due a worker when the worker admits to having obtained the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction is entered against the worker for having obtained the previously paid benefits through fraud. Benefits or payments obtained through fraud by a worker shall not be included in any data used for rate-making or individual employer rating or dividend calculations by any insurer or by Pinnacol Assurance.

(3) The director and each administrative law judge shall report to the division each time a penalty is imposed pursuant to this section. Each such report shall include the amount of the penalty, the name of the administrative law judge awarding the penalty, if applicable, and the name of the offending party.

(4) In any application for hearing for any penalty pursuant to subsection (1) of this section, the applicant shall state with specificity the grounds on which the penalty is being asserted. After the date of mailing of such an application, an alleged violator shall have twenty days to cure the violation. If the violator cures the violation within such twenty-day period, and the party seeking such penalty fails to prove by clear and convincing evidence that the alleged violator knew or reasonably should have known such person was in violation, no penalty shall be assessed. The curing of the violation within the twenty-day period shall not establish that the violator knew or should have known that such person was in violation.

(5) A request for penalties shall be filed with the director or administrative law judge within one year after the date that the requesting party first knew or reasonably should have known the facts giving rise to a possible penalty.

Source: **L. 90:** Entire article R&RE, p. 510, § 1, effective July 1. **L. 91:** Entire section amended, p. 1323, § 35, effective July 1. **L. 92:** (1) amended, p. 1828, § 1, effective May 19. **L. 94:** (3), (4), and (5) added, p. 1878, § 11, effective June 1. **L. 97:** (3) amended, p. 1474, § 9, effective June 3. **L. 2002:** (2) amended, p. 1883, § 30, effective July 1. **L. 2005:** (1.5) added, p. 199, § 2, effective July 1. **L. 2006:** IP(1.5)(a) amended, p. 1489, § 6, effective June 1. **L. 2010:**

(1) amended, (SB 10-012), ch. 287, p. 1340, § 1, effective August 11. **L. 2012:** (1.5)(a) amended, (HB 12-1033), ch. 43, p. 147, § 1, effective August 8. **L. 2017:** (1) and (1.5)(b) amended, (HB 17-1119), ch. 317, p. 1706, § 4, effective July 1.

Editor's note: This section is similar to former § 8-53-116 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Update on Colorado Appellate Decisions in Colorado Workers' Compensation Law", see 30 Colo. Law. 129 (July 2001). For article, "Update on Colorado Appellate Decisions In Workers' Compensation Law", see 32 Colo. Law. 87 (Mar. 2003). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 83 (Apr. 2004).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (1) does not violate a claimant's constitutional rights. A claimant's share of the penalty imposed on an employer may be reduced without effecting an unconstitutional taking of claimant's property. *Moland v. Indus. Claim Appeals Office*, 111 P.3d 507 (Colo. App. 2004).

The plain language of subsection (1) defines and limits a penalty and a resultant benefit in favor of a claimant, and the general assembly has the power and authority to set and limit benefits. *Moland v. Indus. Claim Appeals Office*, 111 P.3d 507 (Colo. App. 2004).

Subsection (1) applies only in the absence of another, more specific penalty provision. *Sears v. Penrose Hosp.*, 942 P.2d 1345 (Colo. App. 1997), overruled in *Holliday v. Bestop, Inc.*, 23 P.3d 700 (Colo. 2001).

For purposes of the penalty provision in subsection (1), failure to comply with a procedural rule is a failure to obey a lawful order. *Pioneers Hosp. of Rio Blanco County v. Indus. Claim Appeals Office*, 114 P.3d 97 (Colo. App. 2005); *Fera v. Indus. Claim Appeals Office*, 169 P.3d 231 (Colo. App. 2007).

Where an employer does not obey a procedural rule requiring written notice and permission from the administrative law judge (ALJ) prior to taking a witness's deposition, the ALJ may impose a fine of up to \$500 per day upon finding the employer's action to be unreasonable. *Pioneers Hosp. of Rio Blanco County v. Indus. Claim Appeals Office*, 114 P.3d 97 (Colo. App. 2005).

Penalties under subsection (1) for failing, neglecting, or refusing to obey "any lawful order made by the director or panel or any judgment or decree made by any court as provided by [the Workers' Compensation Act]" are available even

though penalties for such conduct are elsewhere specifically provided in the Workers' Compensation Act. Holliday v. Bestop, Inc., 23 P.3d 700 (Colo. 2001) (overruling Sears v. Penrose Hosp., 942 P.2d 1345 (Colo. App. 1997)).

Penalties under subsection (1) do not apply to the Colorado insurance guaranty association (CIGA) by virtue of the immunity provided to CIGA in § 10-4-517, which is both more recent and more specific than this section. Mosley v. Indus. Claim Appeals Office, 119 P.3d 576 (Colo. App. 2005).

Under the rules of statutory construction, the phrase "for which no penalty has been specifically provided" defines "fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel". The use of the disjunctive conjunction "or" demarcates four different acts within this section that give rise to penalties. Holliday v. Bestop, Inc., 23 P.3d 700 (Colo. 2001) (overruling Sears v. Penrose Hosp., 942 P.2d 1345 (Colo. App. 1997)).

The limiting clause "for which no penalty has been specifically provided" also applies to acts and omissions contrary to articles 40 to 47 of this title. Pena v. Indus. Claim Appeals Office, 117 P.3d 84 (Colo. App. 2004).

Subsection (1) was applicable to an insurer that refused to provide medically necessary transportation and, thus, refused medical treatment, although no bill for medical benefits was submitted and the insurer did not delay or stop payment of

such a bill, which would have invoked the specific penalty set forth in § 8-43-401 (2)(a). Pena v. Indus. Claim Appeals Office, 117 P.3d 84 (Colo. App. 2004).

Subsection (1) was applicable to an employer that refused to obtain medical review of the claimant's request for treatment of an injury as required by rules of the department of labor and employment. Crowell v. Indus. Claim Appeals Office, 2012 COA 30, 298 P.3d 1014.

Subsection (1) penalizes only those persons with the authority to bind an insurer with respect to actions required by a lawful order and whose actions violate the order. An attorney who lacked the authority to bind an insurer did not violate subsection (1) by advising an insurer to violate a lawful order. Dworkin, Chambers & Williams, P.C. v. Provo, 81 P.3d 1053 (Colo. 2003).

An ALJ may impose additional penalties pursuant to this section even though a specific penalty is provided by § 8-43-404. Kennedy v. Indus. Claim Appeals Office, 100 P.3d 949 (Colo. App. 2004).

This section does not extend to a claim against an attorney who allegedly acts with fraud or malice in advising an insurer to violate a lawful order. Dworkin, Chambers & Williams, P.C. v. Provo, 81 P.3d 1053 (Colo. 2003).

An order of an ALJ is an order "made by the director or panel"; violation of such order provides an independent basis for the imposition of a penalty for the refusal to perform a duty for which no penalty has been specifically provided, and may be in

addition to a penalty imposed under § 8-43-401. *Giddings v. Indus. Claim Appeals Office*, 39 P.3d 1211 (Colo. App. 2001).

If the general assembly intended to create two penalties for the late payment of medical benefits, § 8-43-401 (2) would have provided that it is in addition to the penalty authorized by subsection (1) of this section. *Holliday v. Indus. Claim Appeals Office*, 997 P.2d 1212 (Colo. App. 1999), vacated and claimant's appeal dismissed, 23 P.3d 700 (Colo. 2001).

ALJ has authority to issue penalty. Penalty for failure to obey a lawful order need not be entered by "court of competent jurisdiction", but may be entered by ALJ. *CCIA v. Indus. Claim Appeals Office*, 907 P.2d 676 (Colo. App. 1995).

Penalty may be imposed based on an objective standard of negligence, which is determined by the reasonableness of the insurer's actions and does not require the insurer's knowledge that its conduct was unreasonable. *Diversified Veterans Corp. Ctr. v. Hewuse*, 942 P.2d 1312 (Colo. App. 1997).

Where an employer disputes that it must respond to an IME pursuant to § 8-42-107.2 (4) and that such dispute is a rational argument based on law or fact, the employer must establish a higher burden greater than proving that the employer neglected to act as a reasonable employer would have acted in response to an IME pursuant to § 8-42-107.2. The court may impose penalties pursuant to subsection (1) of this section when the employer is unable to prove this higher burden. *City Market, Inc. v. Indus.*

Claim Appeals Office, 68 P.3d 601 (Colo. App. 2003).

No penalty for offset preceding ALJ's order. Although § 8-42-105 (1) sets the rate for temporary total disability benefits, that section does not mandate a legal duty upon the employer to pay that rate without regard to any claimed offset prior to the ALJ's determination of benefits. *Allison v. Indus. Claim Appeals Office*, 916 P.2d 623 (Colo. App. 1995).

No penalty during time review of award is sought. This section and § 8-53-127 (now § 8-53-117) should not be construed to impose a penalty during the time that an employer, acting under statutory permission, is seeking in good faith to have a judicial review of an award. *Indus. Comm'n v. Cont'l Inv. Co.*, 85 Colo. 475, 277 P. 303 (1929).

Subsection (5) requires a request for penalties to be filed within one year after the requesting party first becomes aware of the circumstances that constitute a violation and support the imposition of a penalty, even if that violation was ongoing. *Spracklin v. Indus. Claim Appeals Office*, 66 P.3d 176 (Colo. App. 2002).

A party seeking to recover a penalty must assert the penalty claim within one year of discovering another's improper actions in an open or reopened case. This means that the party seeking reopening to pursue a penalty claim must do so before the expiration of the statute of limitations in the reopening statute, § 8-43-303. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

Once the statute of limitations for reopening under § 8-43-303 has expired, a party can no longer pursue penalties in that claim. Reopening must be requested within the later of six years of a claimant's date of injury or two years after the last disability or medical benefit becomes due or payable. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

An injured worker's penalty claim that was governed by subsection (5) was time-barred because he failed to comply with the statute of limitations under § 8-43-303. The injured worker's penalty claim was not governed solely by the statute of limitations in subsection (5), but could be brought only if the injured worker's case was still open or the injured worker first reopened the case under § 8-43-303. Because the injured worker's case was closed and he failed to reopen the case before the statute of limitations dictated by § 8-43-303 expired, the injured worker's claim for penalties was dismissed as time-barred. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

The requirement for an injured worker to reopen his case within the statute of limitations under § 8-43-303 before asserting penalties governed by subsection (5) applied to the injured worker's penalty claim against the doctor who oversaw his workers' compensation examination. *Macaulay v. Villegas*, 2022 COA 40M, 513 P.3d 1117.

Penalties may be assessed under former § 8-53-116 against an insurer neglecting to take action that a reasonable insurer would take to comply with either a lawful order or

a provision of the Workers' Compensation Act. *Pueblo Sch. Dist. No. 70 v. Toth*, 924 P.2d 1094 (Colo. App. 1996) (decided under law in effect prior to 1992 repeal and reenactment).

Where insurance authority failed to abide by rule requiring insurer to send certain information to the provider or injured employee within 45 days after receipt of a bill if payment was not possible within that period, penalties were properly assessed against insurance authority. *Pueblo Sch. Dist. No. 70 v. Toth*, 924 P.2d 1094 (Colo. App. 1996) (decided under law in effect prior to 1992 repeal and reenactment).

Insurance authority lacked standing to assert that former § 8-53-116 violated its procedural due process rights where the authority was an "arm of the state" and its engagement in private corporate functions did not affect its governmental and political character. *Pueblo Sch. Dist. No. 70 v. Toth*, 924 P.2d 1094 (Colo. App. 1996) (decided under law in effect prior to 1992 repeal and reenactment).

Even if insurance authority was entitled to procedural due process protection, adequate procedural protections were afforded to the authority where the rule provided notice of the standard of conduct that was expected of the authority and the authority had opportunity to present evidence concerning the reasonableness of its actions. *Pueblo Sch. Dist. No. 70 v. Toth*, 924 P.2d 1094 (Colo. App. 1996) (decided under law in effect prior to 1992 repeal and reenactment).

Insurance authority lacked standing to assert that fines imposed under former § 8-53-116 violated the excessive fines clause of § 20 of article II of the state constitution where the authority was an "arm of the state" and where, even if the authority had standing, the \$6540 fine imposed for delay in reimbursing workers' compensation claimant for medical bill was not excessive. *Pueblo Sch. Dist. No. 70 v. Toth*, 924 P.2d 1094 (Colo. App. 1996) (decided under law in effect prior to 1992 repeal and reenactment); *Diversified Veterans Corp. Ctr. v. Hewuse*, 942 P.2d 1312 (Colo. App. 1997).

Treating physician's letter was a "medical report" the withholding of which was not predicated on a rational argument in law or fact, hence the imposition of a penalty under subsection (1) was proper. *Diversified Veterans Corp. Ctr. v. Hewuse*, 942 P.2d 1312 (Colo. App. 1997).

Cure provision in subsection (4) is substantive, hence, not applicable in a case in which the injury occurred prior to its effective date. *Diversified Veterans Corp. Ctr. v. Hewuse*, 942 P.2d 1312 (Colo. App. 1997).

The 1991 amendment to subsection (1) that raised the penalty from \$100 to \$500 and awarding the penalty to the injured claimant, did not directly state or imply that this award precludes a claimant's common law bad faith claim against his workers' compensation insurance carrier. *Vaughan v. McMinn*, 945 P.2d 404 (Colo. 1997).

Although subsection (1) was amended in 1991, 1992, 1994, and 1997, the legislature never explicitly abrogated the common law tort of bad faith despite many opportunities to do so. *Vaughan v. McMinn*, 945 P.2d 404 (Colo. 1997).

Applied in *Coursey v. Indus. Comm'n*, 82 Colo. 311, 259 P. 514 (1927).

8-43-304.5. Penalties in rate-making.

For purposes of rate-making under sections 10-4-401, 10-4-402, and 10-4-403, C.R.S., insurers shall not include, nor shall the insurance commissioner consider, any penalties paid under section 8-43-304 or any damages awarded in suits founded upon breach of duty in handling a claim for compensation under section 8-41-102.

Source: L. 91: Entire section added, p. 1324, § 36, effective July 1.

8-43-305. Each day separate offense.

Every day during which any employer or insurer, or officer or agent of either, or any employee, or any other person fails to comply with any lawful order of an administrative law

judge, the director, or the panel or fails to perform any duty imposed by articles 40 to 47 of this title shall constitute a separate and distinct violation thereof. In any action brought to enforce the same or to enforce any penalty provided for in said articles, such violation shall be considered cumulative and may be joined in such action.

Source: **L. 90:** Entire article R&RE, p. 510, § 1, effective July 1. **L. 94:** Entire section amended, p. 1879, § 12, effective June 1.

Editor's note: This section is similar to former § 8-53-117 as it existed prior to 1990.

ANNOTATION

The purpose of this section is to address ongoing conduct. Crowell v. Indus. Claim Appeals Office, 2012 COA 30, 298 P.3d 1014.

The difference between a one-time violation and a continuing violation hinges on whether the violation is subject to being cured by subsequent action. Crowell v. Indus. Claim Appeals Office, 2012 COA 30, 298 P.3d 1014.

Attempting to collect a bill cannot be cured. Once the attempt is made, it cannot be cured. A continuing violation is one that can be cured by subsequent action. Therefore, attempting to collect a bill is not

a continuing violation. Delta Mem'l Hosp. v. Indus. Claim Appeals Office, 2021 COA 84, 495 P.3d 984.

Where there is ongoing conduct, the continuation of the penalty is mandatory, as indicated by use of the word "shall" in the statute. Crowell v. Indus. Claim Appeals Office, 2012 COA 30, 298 P.3d 1014.

Employer's failure to obtain medical review, as required by the applicable procedural rules, was a continuing violation under this section. Crowell v. Indus. Claim Appeals Office, 2012 COA 30, 298 P.3d 1014.

8-43-306. Collection of fines, penalties, and overpayments.

(1) A certified copy of any final order of the director or an administrative law judge ordering the payment of any penalty or repayment of overpayments pursuant to articles 40 to 47 of this title may be filed with the clerk of the district court of any county in this state at any time after the period of time provided by articles 40 to 47 of this title for appeal or seeking review of the order has passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have

been exhausted. The party filing the order shall at the same time file a certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the filing party's certificate in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Any such order may be filed by and in the name of the director or by and in the name of the party in the worker's compensation action who was injured by the violation of any provision of articles 40 to 47 of this title or who was found to be entitled to repayment of overpayments under said articles.

(2) All penalties, when collected, are payable to the division and transmitted through the state treasurer for credit to the Colorado uninsured employer fund created in section 8-67-105.

Source: **L. 90:** Entire article R&RE, p. 510, § 1, effective July 1. **L. 97:** (1) amended, p. 115, § 6, effective July 1. **L. 2017:** (2) amended, (HB 17-1119), ch. 317, p. 1706, § 5, effective July 1.

Editor's note: This section is similar to former § 8-53-118 as it existed prior to 1990.

8-43-307. Appeals to court of appeals.

(1) The final order of the panel constitutes the final order of the division. If a person in interest, including Pinnacol Assurance, is dissatisfied with any final order of the division that determines compensability of a claim or liability of any party, that requires any party to pay a penalty or benefits, or that denies a claimant any benefit or penalty, the person may commence an action in the court of appeals against the industrial claim appeals office as defendant to modify or vacate the order on the grounds set forth in section 8-43-308.

(2) All such actions shall have precedence over any civil cause of a different nature pending in such court, and the court of appeals shall always be deemed open for the trial thereof, and such actions shall be tried and determined by the court of appeals in the manner provided for other civil actions.

(3) (Deleted by amendment, L. 95, p. 235, § 3, effective April 17, 1995.)

(4) In any case before the court of appeals pursuant to this section, the court may apply the sanctions of rule 38 of the Colorado appellate rules if the court finds such application to be appropriate.

Source: **L. 90:** Entire article R&RE, p. 511, § 1, effective July 1. **L. 91:** (1) and (3) amended and (4) added, p. 1324, § 37, effective July 1. **L. 95:** (1) and (3) amended, p. 235, § 3, effective April 17. **L. 2002:** (1) amended, p. 1883, § 31, effective July 1. **L. 2021:** (1) amended, (HB 21-1050), ch. 384, p. 2575, § 12, effective September 7.

Editor's note: This section is similar to former § 8-53-119 as it existed prior to 1990.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Failure to state the commission's name in the caption of a petition for review does not, in itself, violate the terms of this statute. *Newman v. McKinley Oil Field Serv.*, 696 P.2d 238 (Colo. 1984).

Limiting review of workers' compensation case denied by industrial claim appeals office to certiorari is unconstitutional denial of access to the courts. *Allison v. Indus. Claim Appeals Office*, 884 P.2d 1113 (Colo. 1994).

Right of parties to have disputes considered by judges subject to popular vote is protected by authorization of judicial review by direct appeal to the court of appeals. *MGM Supply Co. v. Indus. Claim Appeals Office*, 62 P.3d 1001 (Colo. App. 2002).

Requirement of "final order". Although an order no longer needs to dispose of all issues pending before the agency in order to be received by the court of appeals, there still must be agency action which administratively resolves the issue in dispute

and which may be considered a "final order" for purposes of this statute. *CF&I Steel Corp. v. Indus. Comm'n*, 731 P.2d 144 (Colo. App. 1986).

Final order is lacking and decision by industrial claim appeals office is not yet subject to review where penalty was imposed and matter was remanded to administrative law judge for further determination. *Oxford Chemicals, Inc. v. Richardson*, 782 P.2d 843 (Colo. App. 1989).

Order remanding for further proceedings on the merits of the penalty issue was not a final order and was not ripe for appellate review. *U.S. Fidelity Guar., Inc. v. Kourlis*, 868 P.2d 1158 (Colo. App. 1994).

The amount of the penalty must be determined before the ruling as to the penalties is final for judicial review. *UPS, Inc. v. Indus. Claim Appeals Office*, 988 P.2d 1146 (Colo. App. 1999).

Employer's agreement to pay one of claimant's expenses does not alter the industrial claim appeals office order to remand the matter to the administrative law

judge for determination of the benefits and compensation payable to the claimant and does not constitute an award of benefits by the office or the judge. Therefore, the office's decision is not a final order and is not ripe for review. *Flint Energy Servs., Inc. v. Indus. Claim Appeals Office*, 194 P.3d 448 (Colo. App. 2008).

Colorado appellate rules govern service of petition for review under this section and, accordingly, service upon the industrial commission may be effectuated by serving the attorney general. *Butkovich v. Indus. Comm'n*, 723 P.2d 1306 (Colo. 1985).

Failure to effect service upon an opposing party within the time limits of this section and § 8-53-111 and this section is not jurisdictionally fatal. *Dept. of Inst. v. Indus. Claim Appeals Office*, 780 P.2d 72 (Colo. App. 1989).

Director correctly reopened case on basis of mistake. Where order is ambiguous, the director correctly determined that a "good faith dispute exists between the parties as to the meaning of the order," regarding the proper amount of benefits owed to claimant. *Edlund v. Indus. Comm'n*, 725 P.2d 75 (Colo. App. 1986), rev'd on other grounds, 759 P.2d 7 (Colo. 1988) (decided prior to 1986 amendment).

Petitioner's failure to name employer in petition for review of industrial commission order does not constitute a jurisdictional defect under subsection (1). *Pittsinger v. Indus. Comm'n*, 711 P.2d 707 (Colo. App. 1985) (decided prior to 1986 abolishment of industrial commission).

Court will not address issue raised in answer brief absent respondent's petition for review. *Beatrice Foods Co., Inc. v. Padilla*, 747 P.2d 685 (Colo. App. 1987).

Industrial claim appeals office order setting aside award of permanent partial disability benefits is not subject to judicial review. *Natkin & Co. v. Eubanks*, 775 P.2d 88 (Colo. App. 1989).

Notice of appeal sufficient to satisfy requirements of this section and to invoke the jurisdiction of the Court of Appeals where the document complied with the requirements of C.A.R. 3.1(d) and this section but merely failed to bear the caption "Petition for Review". *Hawkins v. State Comp. Ins. Auth.*, 790 P.2d 893 (Colo. App. 1990).

1991 amendments to the Workers' Compensation Act, which took effect on July 1, 1991, and specifically to this section authorizing the imposition of sanctions under C.A.R. 38 could not be applied retroactively to cases in which a work injury occurred prior to July 1, 1991, since the amendments to the Act apply to cases in which a worker's injury occurred on or after that date. *Martinez v. Reg'l Transp. Dist.*, 832 P.2d 1060 (Colo. App. 1992).

Subsection (4), allowing sanctions under C.A.R. 38, cannot be applied retroactively. Even if it is assumed that the statute is procedural, it does not automatically follow that the statute can be applied retroactively. Although a change in procedural law is generally applicable to existing causes of action, this rule is inapposite when the general assembly has

expressed a contrary intent. *Martinez v. Reg'l Trans. Dist.*, 832 P.2d 1060 (Colo. App. 1992).

The administrative and judicial review provisions of the Act are complete, definitive, and organic, without the need of

supplementation from other legislative acts or the procedural relief afforded by C.R.C.P. 16. *Gardner v. Friend*, 849 P.2d 817 (Colo. App. 1992).

Applied in *F.R. Orr Construction v. Rinta*, 717 P.2d 965 (Colo. App. 1985).

8-43-308. Causes for setting aside award.

Upon hearing the action, the court of appeals may affirm or set aside such order, but only upon the following grounds: That the findings of fact are not sufficient to permit appellate review; that conflicts in the evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the award or denial of benefits is not supported by applicable law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the court of appeals.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-120 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

I. GENERAL CONSIDERATION.

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1973 amendment which vested in the director of the division of labor fact-finding powers previously exercised by the industrial commission or were decided prior to the

enactment of 1986 Senate Bill No. 12 which abolished said commission.

Neither the district court nor the supreme court can usurp the functions of the commission. *Hatterman v. Indus. Comm'n*, 171 Colo. 370, 467 P.2d 820 (1970).

And the commission is vested with the widest possible discretion. In determining the extent or degree of disability of an injured workman upon the facts of each case, it is axiomatic that the commission is

vested with the widest possible discretion with the exercise of which the courts will not interfere. Also the presumption exists that in making an award the commission considered and gave due weight to all of the factors therein enumerated. *N.J. Zinc Co. v. Indus. Comm'n*, 165 Colo. 482, 440 P.2d 284 (1968).

For the commission is the fact finder, and it must be the one to evaluate the evidence and draw conclusions therefrom. *Passini v. Indus. Comm'n*, 64 Colo. 349, 171 P. 369 (1918); *Weaver v. Indus. Comm'n*, 72 Colo. 79, 209 P. 642 (1922); *Rogers v. Indus. Comm'n*, 94 Colo. 56, 28 P.2d 343 (1933); *Empire Zinc Co. v. Indus. Comm'n*, 94 Colo. 98, 28 P.2d 337 (1933); *Poole v. Indus. Comm'n*, 94 Colo. 163, 28 P.2d 809 (1934); *Hayden Bros. Coal Corp. v. Indus. Comm'n*, 94 Colo. 211, 29 P.2d 637 (1934); *Central Sur. & Ins. Corp. v. Indus. Comm'n*, 94 Colo. 341, 30 P.2d 253 (1934); *Boulder Valley Coal Co. v. Shipka*, 94 Colo. 394, 30 P.2d 852 (1934); *Jabot v. Indus. Comm'n*, 94 Colo. 424, 30 P.2d 871 (1934); *C.S. Card Iron Works Co. v. Radovich*, 94 Colo. 426, 30 P.2d 1108 (1934); *Allen v. Gettler*, 94 Colo. 528, 30 P.2d 1117 (1934); *United States Fid. & Guar. Co. v. Indus. Comm'n*, 96 Colo. 571, 45 P.2d 895 (1935); *Adolph Coors Co. v. Hollaus*, 108 Colo. 360, 117 P.2d 822 (1941); *Miller v. Denver Post, Inc.*, 137 Colo. 61, 322 P.2d 661 (1958); *Indus. Comm'n v. Klaczkowski*, 146 Colo. 11, 360 P.2d 104 (1961); *Skinner v. Indus. Comm'n*, 152 Colo. 97, 381 P.2d 253 (1963); *State v. Richards*, 158 Colo. 155, 405 P.2d 675 (1965); *Clodfelter v. Indus. Comm'n*, 160 Colo. 39, 413 P.2d 700 (1966); *Breit v.*

Indus. Comm'n, 160 Colo. 205, 415 P.2d 858 (1966); *Levy v. Everson Plumbing Co.*, 171 Colo. 468, 468 P.2d 34 (1970); *Sena v. World of Sleep, Inc.*, 173 Colo. 348, 478 P.2d 671 (1970); *Indus. Comm'n v. Ewing*, 174 Colo. 133, 482 P.2d 981 (1971).

Legislative intent that commission be fact finder apparent from section. That the general assembly intended the commission should be a fact-finding body whose conclusions on disputed testimony should be binding on the courts of review is apparent from this section, which sets forth the only grounds upon which awards may be set aside by the district court. *United States Fid. & Guar. Co. v. Indus. Comm'n*, 96 Colo. 571, 45 P.2d 895 (1935).

The commission as the fact finder is the sole judge of the credibility of witnesses appearing before it. *Regal Coal Co. v. Jackvich*, 105 Colo. 479, 99 P.2d 196 (1940); *Moffat Coal Co. v. Indus. Comm'n*, 108 Colo. 388, 118 P.2d 769 (1941).

And the weight to be given to medical testimony is a matter exclusively for the commission. *Cordillo v. Indus. Comm'n*, 110 Colo. 581, 136 P.2d 671 (1943).

Also, the weight to be given the opinion of a physician is for the commission to determine. *White v. Dir. of Div. of Labor*, 30 Colo. App. 393, 493 P.2d 676 (1972).

Furthermore, the commission has the duty and sole power to find the facts from conflicting evidence. *Rogers v. Indus. Comm'n*, 94 Colo. 56, 28 P.2d 343 (1933); *Boulder Valley Coal Co. v. Shipka*, 94 Colo. 394, 30 P.2d 852 (1934); *Montgomery Ward*

& Co. v. Indus. Comm'n, 105 Colo. 22, 94 P.2d 689 (1939).

So that the findings of the commission on conflicting testimony are conclusive upon the courts. Olson-Hall v. Indus. Comm'n, 71 Colo. 228, 205 P. 527 (1922); Indus. Comm'n v. Ernest Irvine, Inc., 72 Colo. 573, 212 P. 829 (1923); Bohmann v. Indus. Comm'n, 76 Colo. 588, 233 P. 621 (1925); Indus. Comm'n v. Robinson, 85 Colo. 279, 275 P. 903 (1929); N.J. Fid. & Plate Glass Ins. Co. v. Patterson, 86 Colo. 580, 284 P. 334 (1929); Indus. Comm'n v. Diveley, 88 Colo. 190, 294 P. 532 (1930); Indus. Comm'n v. Coop. Oil Co., 93 Colo. 192, 24 P.2d 753 (1933); Jabot v. Indus. Comm'n, 94 Colo. 424, 30 P.2d 871 (1934); Clarke v. Clarke, 95 Colo. 409, 36 P.2d 461 (1934); Indus. Comm'n v. Dorchak, 97 Colo. 142, 47 P.2d 396 (1935); Skjoldahl v. Indus. Comm'n, 108 Colo. 140, 113 P.2d 871 (1941); Black Forest Fox Ranch, Inc. v. Gerrett, 110 Colo. 323, 134 P.2d 332 (1943); Sommers v. Borgmann, 111 Colo. 552, 144 P.2d 554 (1943); Vanadium Corp. of Am. v. Sargent, 134 Colo. 555, 307 P.2d 454 (1957); Claimants in re Death of Bennett v. Durango Furn. Mart, 136 Colo. 529, 319 P.2d 494 (1957); United Util. & Specialties Corp. v. Indus. Comm'n, 160 Colo. 518, 418 P.2d 896 (1966); N.J. Zinc Co. v. Indus. Comm'n, 165 Colo. 482, 440 P.2d 284 (1968); Indus. Comm'n v. Allen, 28 Colo. App. 546, 478 P.2d 702 (1970).

Findings of fact of the commission based on conflicting evidence are conclusive on review. Archer Freight Lines v. Horn Transp., Inc., 32 Colo. App. 412, 514 P.2d 330 (1973); Safeway Stores v.

Indus. Comm'n, 678 P.2d 1078 (Colo. App. 1984).

When supported by competent evidence. Fact findings by the commission which are supported by competent evidence will not be disturbed on review. Youngquist v. Indus. Comm'n, 67 Colo. 187, 184 P. 381 (1919); C.W. Kettering Mercantile Co. v. Fox, 77 Colo. 90, 234 P. 464 (1925); Indus. Comm'n v. Hammond, 77 Colo. 414, 236 P. 1006 (1925); Vaughan v. Indus. Comm'n, 79 Colo. 257, 245 P. 712 (1926); Newkirk v. Golden Cycle Mining & Reduction Co., 79 Colo. 298, 244 P. 1019 (1926); Employers' Mut. Ins. Co. v. Indus. Comm'n, 83 Colo. 315, 265 P. 99 (1928); Colo. Fuel & Iron Co. v. Indus. Comm'n, 85 Colo. 237, 275 P. 910 (1929); Indus. Comm'n v. Robinson, 85 Colo. 279, 275 P. 903 (1929); N.J. Fid. & Plate Glass Ins. Co. v. Richey, 85 Colo. 376, 275 P. 937 (1929); Beatrice Creamery Co. v. Standley, 86 Colo. 290, 281 P. 110 (1929); Indus. Comm'n v. Diveley, 88 Colo. 190, 294 P. 532 (1930); Hayden Bros. Coal Corp. v. Indus. Comm'n, 94 Colo. 211, 29 P.2d 637 (1934); C.S. Card Iron Works Co. v. Radovich, 94 Colo. 426, 30 P.2d 1108 (1934); Allan v. Gettler, 94 Colo. 528, 30 P.2d 1117 (1934); State Comp. Ins. Fund v. Indus. Comm'n, 95 Colo. 309, 35 P.2d 849 (1934); O.P. Skaggs Co. v. Nixon, 97 Colo. 314, 50 P.2d 55 (1935); Elleman v. Indus. Comm'n, 100 Colo. 120, 66 P.2d 323 (1937); Skjoldahl v. Indus. Comm'n, 108 Colo. 140, 113 P.2d 871 (1941); Great Am. Indem. Co. v. State Comp. Ins. Fund, 108 Colo. 323, 116 P.2d 919 (1941); Metros v. Denver Coney Island, 110 Colo. 40, 129 P.2d 911 (1942); Black Forest Fox Ranch v. Garrett,

110 Colo. 323, 134 P.2d 332 (1943); Warner v. Mullens, 111 Colo. 60, 137 P.2d 420 (1943); Indus. Comm'n v. Menegatti, 111 Colo. 484, 143 P.2d 274 (1943); State Comp. Ins. Fund v. Batis, 117 Colo. 1, 183 P.2d 891 (1947); Indus. Comm'n v. Golden Cycle Corp., 126 Colo. 68, 246 P.2d 902 (1952); Univ. of Denver v. Nemeth, 127 Colo. 385, 257 P.2d 423 (1953); United States Fid. & Guar. Co. v. Indus. Comm'n, 128 Colo. 68, 259 P.2d 869 (1953); Montgomery Ward & Co. v. Indus. Comm'n, 128 Colo. 465, 263 P.2d 817 (1953); Hamilton v. Indus. Comm'n, 132 Colo. 408, 289 P.2d 639 (1955); Indus. Comm'n v. Colo. Fuel & Iron Corp., 135 Colo. 307, 310 P.2d 717 (1957); Miller v. Denver Post, Inc., 137 Colo. 61, 322 P.2d 661 (1958); Lamirato v. O.C. Kinney, Inc., 142 Colo. 48, 349 P.2d 562 (1960); Cole v. Indus. Comm'n, 144 Colo. 183, 355 P.2d 537 (1960); Stauss v. Indus. Comm'n, 144 Colo. 288, 355 P.2d 1076 (1960); Indus. Comm'n v. Klaczkowski, 146 Colo. 11, 360 P.2d 104 (1961); Huff v. Aetna Ins. Co., 146 Colo. 63, 360 P.2d 667 (1961); Idarado Mining Co. v. Barnes, 148 Colo. 166, 365 P.2d 36 (1961); Jones v. Indus. Comm'n, 148 Colo. 253, 365 P.2d 689 (1961); Nat'l Sugar Mfg. Co. v. Bauer, 148 Colo. 436, 366 P.2d 388 (1961); Indus. Comm'n v. Hesler, 149 Colo. 592, 370 P.2d 428 (1962); Univ. of Denver-Colorado Sem. & Univ. Park Campus v. Johnston, 151 Colo. 465, 378 P.2d 830 (1963); Tri-State Ins. Co. v. Indus. Comm'n, 151 Colo. 494, 379 P.2d 388 (1963); Skinner v. Indus. Comm'n, 152 Colo. 97, 381 P.2d 253 (1963); Bowlus v. Indus. Comm'n, 152 Colo. 535, 383 P.2d 789 (1963); Sharmar Nursing Home v. Indus. Comm'n, 160 Colo.

197, 416 P.2d 161 (1966); Breit v. Indus. Comm'n, 160 Colo. 205, 415 P.2d 858 (1966); Indus. Comm'n v. Albo, 167 Colo. 467, 447 P.2d 1006 (1968); Claim of Crandall v. Watson-Wilson Transp. Sys., 171 Colo. 329, 467 P.2d 48 (1970); Standard Metals Corp. v. Ball, 172 Colo. 510, 474 P.2d 622 (1970); Indus. Comm'n v. Allen, 28 Colo. App. 546, 478 P.2d 702 (1970); Indus. Comm'n v. Ewing, 174 Colo. 133, 482 P.2d 981 (1971); Tatum-Reese Dev. Corp. v. Indus. Comm'n, 30 Colo. App. 149, 490 P.2d 94 (1971); Ringsby Truck Lines v. Indus. Comm'n, 30 Colo. App. 224, 491 P.2d 106 (1971); Bodensieck v. Indus. Claim Appeals Office, 183 P.3d 684 (Colo. App. 2008).

Which evidence is respectable. It is the function of the commission to find the facts in workmen's compensation cases, and such findings, having respectable evidentiary support, are controlling. Indus. Comm'n v. White, 97 Colo. 322, 49 P.2d 434 (1935).

An appellate court does not decide the facts and may not substitute its judgment for that of the fact-finder. Martinez v. Reg'l Transp. Dist., 832 P.2d 1060 (Colo. App. 1992); Cary v. Chevron U.S.A., Inc., 867 P.2d 117 (Colo. App. 1993); Metro Moving & Storage Co. v. Gussert, 914 P.2d 411 (Colo. App. 1995); Wilson v. Indus. Claim Appeals Office, 81 P.3d 1117 (Colo. App. 2003).

Ample. Courts are powerless to interfere with findings of the commission, in cases in which the facts are disputed, where such findings are amply supported by the evidence. London Gold Mines Co. v. Custer, 101 Colo. 477, 74 P.2d 679 (1937); Martin v.

Indus. Comm'n, 101 Colo. 540, 74 P.2d 1243 (1937); *Montgomery Ward & Co. v. Indus. Comm'n*, 105 Colo. 22, 94 P. 2d 689 (1939); *Beatrice Foods Co., Inc. v. Padilla*, 747 P.2d 685 (Colo. App. 1987).

Or substantial. Findings of the commission as to facts must be accepted by the courts if there is any substantial evidence to support them. *Platt-Rogers, Inc. v. Indus. Comm'n*, 101 Colo. 458, 74 P.2d 673 (1937); *Consol. Coal & Coke Co. v. Lazaroff*, 109 Colo. 248, 124 P.2d 755 (1942); *Zuzich v. Leyden Lignite Co.*, 120 Colo. 21, 206 P.2d 833 (1949); *Raisch v. Indus. Comm'n*, 721 P.2d 693 (Colo. App. 1986).

Evidentiary and ultimate findings need be specific only as to persuasive and determinative matters. *Roe v. Indus. Comm'n*, 734 P.2d 138 (Colo. App. 1986).

The ALJ's determination must be upheld if supported by substantial evidence. *Christie v. Coors Transp. Co.*, 919 P.2d 857 (Colo. App. 1995), *aff'd*, 933 P.2d 1330 (Colo. 1997); *Joslins Dry Goods Co. v. Indus. Claim Appeals Office*, 21 P.3d 866 (Colo. App. 2001); *Loveland Police Dept. v. Indus. Claim Appeals Office*, 141 P.3d 943 (Colo. App. 2006).

Where substantial evidence supports the findings of the industrial claim appeals office the court is bound by that finding. *Pub. Serv. Co. v. Indus. Claim Appeals Office*, 979 P.2d 584 (Colo. App. 1999).

Substantial evidence is that which is probative, credible, and competent, such that it warrants a reasonable belief in the existence of a particular fact without regard

to contradictory testimony or inference. *Allen Co. v. Indus. Comm'n*, 762 P.2d 677 (Colo. 1988); *Colo. State Bd. of Med. Exam'rs v. Davis*, 893 P.2d 1365 (Colo. App. 1995); *Loveland Police Dept. v. Indus. Claim Appeals Office*, 141 P.3d 943 (Colo. App. 2006).

Even though the commission has never seen the witnesses. From this section, it is apparent that even in a case where the commission has never seen the witnesses, it was the legislative intent that the findings of fact nevertheless should be binding on the district court and the supreme court. *United States Fid. & Guar. Co. v. Indus. Comm'n*, 96 Colo. 571, 45 P.2d 895 (1935); *Zuzich v. Leyden Lignite Co.*, 120 Colo. 21, 206 P.2d 833 (1949).

And although three different findings are made. In a workmen's compensation case, although three different findings of fact are made, this did not nullify the rule that fact findings based on conflicting evidence are binding on the courts, and the last finding is conclusive. *Indus. Comm'n v. Aetna Life Ins. Co.*, 88 Colo. 82, 292 P. 229 (1930).

But findings of fact are not conclusive unless supported by evidence. Determinations of fact are not final and conclusive unless they are substantially supported by the evidence. *Indus. Comm'n v. W. A. Hover & Co.*, 82 Colo. 335, 259 P. 509 (1927); *London Guarantee & Accident Co. v. Indus. Comm'n*, 95 Colo. 306, 35 P.2d 1010 (1934).

Or a reasonable and fair inference therefrom. Findings which are not

supported by the evidence, or a reasonable and fair inference therefrom, form no basis upon which to predicate an award. *Gates v. Cent. City Opera House Ass'n*, 107 Colo. 93, 108 P.2d 880 (1940).

Undisputed evidence may be treated as findings of fact. Where the evidence is short and undisputed, it may be treated on review as the findings of fact and considered accordingly. *Prouse v. Indus. Comm'n*, 69 Colo. 382, 194 P. 625 (1920); *Indus. Comm'n v. Big Six Coal Co.*, 72 Colo. 377, 211 P. 361 (1922); *Frink Dairy Co. v. Indus. Comm'n*, 78 Colo. 71, 239 P. 727 (1925); *Winteroth v. Indus. Comm'n*, 93 Colo. 38, 22 P.2d 865 (1933).

And other undisputed facts may be considered with findings. In an action involving an award, the district court has the right to consider, with the findings, other undisputed facts. *Indus. Comm'n v. Cornelius*, 81 Colo. 111, 253 P. 828 (1927).

Furthermore, where the facts are undisputed, the entire question is one of law and courts are not bound by the commission's conclusions of law. *Indus. Comm'n v. Int'l Minerals & Chem. Corp.*, 132 Colo. 256, 287 P.2d 275 (1955); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Denver Truck Exch. v. Perryman*, 134 Colo. 586, 307 P.2d 805 (1957); *Indus. Comm'n v. London & Lancashire Indem. Co.*, 135 Colo. 372, 311 P.2d 705 (1957); *Indus. Comm'n v. Havens*, 136 Colo. 111, 314 P.2d 698 (1957); *Marotte v. State Comp. Ins. Fund*, 145 Colo. 99, 357 P.2d 915 (1960); *Johnson*

v. Indus. Comm'n, 148 Colo. 561, 366 P.2d 864 (1961).

Order which reached correct result was affirmed even if wrong reasons for result given. *A & R Concrete Const. v. Lightner*, 759 P.2d 831 (Colo. App. 1988).

Commission's jurisdiction limited to determining right to compensation and liability. The jurisdiction of the commission is limited to a determination of the right of an employee to compensation and to a determination of who is liable for the award under the statute, and collateral issues relating to the contractual rights and liabilities between the employers are of no concern to the employee and should be resolved by a court in an independent proceeding in which the employee should not be required to participate. *Archer Freight Lines v. Horn Transp., Inc.*, 32 Colo. App. 412, 514 P.2d 330 (1973).

No jurisdiction to enforce awards where claimant asks only that the court "assist" her in recovering the money she was awarded. Enforcement of awards is to be sought through the district courts pursuant to § 8-44-107 (3) (decided under former law). *Passaretti v. Indus. Comm'n*, 711 P.2d 1285 (Colo. App. 1985).

II. SCOPE OF REVIEW.

A. In General.

B. Acts Not Supported by Law.

C. Findings of Fact.

A. In General.

The orderly functioning of judicial review requires that the grounds upon which an administrative agency acts be clearly disclosed and adequately sustained. *Hall v. Indus. Claim Appeals Office*, 757 P. 2d 1132 (Colo. App. 1988).

The determination of the weight and sufficiency of the evidence is for the commission. *London Guarantee & Accident Co. v. Indus. Comm'n*, 72 Colo. 177, 210 P. 70 (1922); *Indus. Comm'n v. Big Six Coal Co.*, 72 Colo. 377, 211 P. 361 (1922); *Pub. Serv. Co. v. Indus. Comm'n*, 89 Colo. 440, 3 P.2d 799 (1931).

And the court can review questions of law only. *Olson-Hall v. Indus. Comm'n*, 69 Colo. 518, 194 P. 212 (1921).

This section restricts appellate review to a review of legal errors in workers' compensation cases. *Martinez v. Reg'l Transp. Dist.*, 832 P.2d 1060 (Colo. App. 1992).

For courts are without power to determine questions of fact in workmen's compensation cases. *Ellerman v. Indus. Comm'n*, 73 Colo. 20, 213 P. 120 (1923); *Colo. Fuel & Iron Co. v. Indus. Comm'n*, 85 Colo. 237, 275 P. 910 (1929).

On review the court may consider only the legal question of whether there is evidence to support the findings. *McPhee & McGinnity Co. v. Indus. Comm'n*, 67 Colo. 86, 185 P. 268 (1919); *Kokotovich v. Indus. Comm'n*, 69 Colo. 572, 195 P. 646 (1921); *Indus. Comm'n v. Ernest Irvine, Inc.*, 72 Colo. 573, 212 P. 829 (1923); *Nat'l*

Lumber & Creosoting Co. v. Kelly, 99 Colo. 442, 63 P.2d 457 (1936); *Wood v. Indus. Comm'n*, 100 Colo. 209, 66 P.2d 806 (1937); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Indus. Comm'n v. Navajo Freight Lines*, 149 Colo. 86, 367 P.2d 894 (1962); *Univ. of Denver Colo. Sem. & Univ. Park Campus v. Johnston*, 151 Colo. 465, 378 P.2d 830 (1963); *Steel Placers, Inc. v. Reese*, 169 Colo. 360, 455 P.2d 874 (1969).

And the court exceeds its jurisdiction if it attempts to pass upon the weight of the evidence introduced before the commission. *Indus. Comm'n v. Aetna Life Ins. Co.*, 88 Colo. 82, 292 P. 229 (1930).

Appellate court is bound by the administrative law judge's resolution of credibility issues. *Riddle v. Ampex Corp.*, 839 P.2d 489 (Colo. App. 1992).

For under the provisions of the workmen's compensation act, reviewing courts are precluded from passing upon the weight or sufficiency of the evidence, or its probative effect, and if the findings of fact made by the commission are upheld by the evidence, they will be affirmed. *Weaver v. Indus. Comm'n*, 72 Colo. 79, 209 P. 642 (1922).

The weight and sufficiency of the evidence and the inferences drawn therefrom are matters solely within the prerogative of the industrial commission. *Archer Freight Lines v. Horn Transp., Inc.*, 32 Colo. App. 412, 514 P.2d 330 (1973).

Where findings support the award, it is not for the court to say whether the evidence

justifies the commission's findings. *Lindsay v. Indus. Comm'n*, 77 Colo. 424, 236 P. 1005 (1925).

Furthermore, the court cannot review a case on the evidence where any of the facts are in dispute. *Billick v. Indus. Comm'n*, 69 Colo. 471, 195 P. 114 (1921).

Court may not substitute its findings. Where there is sufficient competent evidence to support the findings and award, they are binding on review, and courts are not at liberty, although they may disagree with the conclusions reached by the commission, to substitute therefor findings which to them may seem more compatible with the evidence. *Am. Mining Co. v. Zupet*, 101 Colo. 238, 72 P.2d 281 (1937); *Univ. of Denver-Colorado Sem. & Univ. Park Campus v. Johnston*, 151 Colo. 465, 378 P.2d 830 (1963).

Inferences and conclusions to be drawn from the evidence in workmen's compensation cases, are for the commission and not for the courts. *Indus. Comm'n v. Valdez*, 101 Colo. 482, 74 P.2d 710 (1937); *Consol. Coal & Coke Co. v. Lazaroff*, 109 Colo. 248, 124 P.2d 755 (1942); *Indus. Comm'n v. Menegatti*, 111 Colo. 484, 143 P.2d 274 (1943); *Zuzich v. Leyden Lignite Co.*, 120 Colo. 21, 206 P.2d 833 (1949).

And the court cannot create a presumption, unsupported by the record, which would nullify the commission's findings. *Platt-Rogers v. Indus. Comm'n*, 101 Colo. 458, 74 P.2d 673 (1937).

Thus, judgment arbitrarily rejecting findings will be reversed. A judgment of the court arbitrarily rejecting the findings of the industrial commission, and plainly inconsistent with such findings, was reversed and the cause remanded with directions to approve such findings and enter judgment accordingly. *Indus. Comm'n v. Johnson*, 66 Colo. 292, 181 P. 977 (1919).

But courts may examine record to determine whether there is evidence to support the findings. What constitutes evidence is a question of law, and if there is no evidence to support the findings, it follows that the commission acted in excess of its powers. *Colo. Contracting Co. v. Indus. Comm'n*, 74 Colo. 206, 219 P. 1075 (1923); *United States Fid. & Guar. Co. v. Indus. Comm'n*, 96 Colo. 571, 45 P.2d 895 (1935).

Fact-findings based on conflicting evidence will not be disturbed on review. *Nat'l Lumber & Creosoting Co. v. Kelly*, 101 Colo. 535, 75 P.2d 144 (1937); *State Comp. Ins. Fund v. Russell*, 105 Colo. 274, 96 P.2d 846 (1939); *Olson v. Erickson*, 105 Colo. 489, 99 P.2d 199 (1940); *Barker v. Indus. Comm'n*, 108 Colo. 338, 117 P.2d 319 (1941); *Deline v. Indus. Comm'n*, 108 Colo. 351, 116 P.2d 916 (1941); *Rand v. Indus. Comm'n*, 110 Colo. 240, 132 P.2d 784 (1942); *Cordillo v. Indus. Comm'n*, 110 Colo. 581, 136 P.2d 671 (1943); *Sims v. Indus. Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990).

The court is bound by the administrative law judge's factual determinations, even when the evidence is conflicting and would

have supported a contrary result. *Cary v. Chevron U.S.A., Inc.*, 867 P.2d 117 (Colo. App. 1993).

Although the court may not agree with conclusions of the commission which are based upon conflicting testimony in a workmen's compensation case, notwithstanding, if there is sufficient competent evidence to sustain the findings, they should not be disturbed on judicial review. *Coors Co. v. Hollaus*, 108 Colo. 360, 117 P.2d 822 (1941).

But courts may draw own conclusions where evidence is without substantial conflict. In workmen's compensation cases where the evidence as disclosed by the record is without substantial conflict as to the controlling issues involved, courts may properly draw their own conclusions therefrom and enter judgment accordingly, notwithstanding the determination may be contrary to the findings and award. *Indus. Comm'n v. Betz*, 111 Colo. 401, 142 P.2d 389 (1943); *Arvas v. McNeil Coal Corp.*, 119 Colo. 289, 203 P.2d 906 (1949).

For when commission makes fact-finding contrary to the uncontradicted evidence, it acts in excess of its powers. In such circumstances, a court in reviewing the action of the commission is passing upon a question of law and not making a finding of fact; consequently it is not usurping the fact-finding function. *O. P. Skaggs Co. v. Nixon*, 97 Colo. 314, 50 P.2d 55 (1935).

When court authorized to direct a finding of fact. There must be no competent evidence in the record that claimant's disability was not caused by the accident

and uncontroverted competent evidence that it was so caused before a court is authorized to direct a finding of fact by the commission. *O. P. Skaggs Co. v. Nixon*, 97 Colo. 314, 50 P.2d 55 (1935); *Indus. Comm'n v. Wetz*, 100 Colo. 161, 66 P.2d 812 (1937); *Indus. Comm'n v. Menegatti*, 111 Colo. 484, 143 P.2d 274 (1943).

Courts are forbidden to pass upon the referee's rulings at the hearing, such as objections to the admission of testimony, the weight of evidence, credibility of witnesses and mere irregularities in procedure. *Zook v. Indus. Comm'n*, 75 Colo. 41, 223 P. 751 (1924); *Compstock v. Biven*, 78 Colo. 107, 239 P. 869 (1925).

And an award cannot be reversed because of the admission of hearsay evidence. *Vaughn v. Indus. Comm'n*, 79 Colo. 257, 245 P. 712 (1926).

Court may not set aside or amend a finding of fact and order award amended accordingly. *Indus. Comm'n v. Gen. Accident, Fire & Life Assurance Corp.*, 71 Colo. 115, 204 P. 338 (1922).

And judgment setting aside finding held to be error. The commission in adopting and making his own the findings of the referee, that "claimant's condition is not the result of an accidental injury within the meaning of the workmen's compensation act; that said condition is in the nature of an occupational disease", determined by necessary inference that the condition from which claimant was suffering was not caused by accident, but was caused by the pressure on his knee incident to the character of the work in which he was

engaged. There being evidence to support the finding it was binding upon the court, and it was error for the court to set aside such finding and order an award of compensation. *Indus. Comm'n v. Barton*, 98 Colo. 51, 52 P.2d 670 (1935).

Judgment beyond court's jurisdiction. Where commission awarded monthly payments to claimant in proceeding for compensation, the court was without jurisdiction to enter judgment for the maximum sum which might thereafter accrue under the award. *L. B. Cole Produce Co. v. Indus. Comm'n*, 123 Colo. 278, 228 P.2d 808 (1951).

Correctness of legal conclusions matter for appellate court. Correctness of a legal conclusion drawn by the industrial commission from undisputed facts is properly a matter for the appellate court. *Dorsch v. Indus. Comm'n*, 185 Colo. 219, 523 P.2d 458 (1974); *Gruntmeir v. Tempel & Esgar, Inc.*, 730 P.2d 893 (Colo. App. 1986).

Evidence supported determination by panel that claimant was not an "employee" at time of accident. *Younger v. City & County of Denver*, 796 P.2d 38 (Colo. App. 1990).

ALJ's determination to use an alternate method to compute claimant's average weekly wage rather than by the piecework method set forth in subsection (2)(e) was supported by substantial evidence and could not be disturbed on review where claimant's contract contemplated 10 to 12 hours per day for five days per week on a piecework basis and claimant had worked on a piecework basis for a short period of time

prior to injury. *Drywall Prods. v. Constuble*, 832 P.2d 957 (Colo. App. 1991).

This section establishes the standard of appellate review for grants of summary judgment in workers' compensation claims. *Fera v. Indus. Claim Appeals Office*, 169 P.3d 231 (Colo. App. 2007).

ALJ's summary judgment order may be set aside upon review where the appellate court finds in the record a disputed issue of material fact. *Fera v. Indus. Claim Appeals Office*, 169 P.3d 231 (Colo. App. 2007).

Appellate court must accept ALJ's statements of undisputed facts pertaining to a claimant's request for penalties against an employer if substantial evidence in the record supports that statement of facts, but must set aside the grant of summary judgment in an employer's favor if the court determines that conflicts in the evidence are not resolved in the record or the order is not supported by applicable law. *Fera v. Indus. Claim Appeals Office*, 169 P.3d 231 (Colo. App. 2007).

B. Acts Not Supported by Law.

The findings of the director are binding unless set aside for one or more of the reasons named in this section. *Indus. Comm'n v. London Guarantee & Accident Co.*, 66 Colo. 575, 185 P. 344 (1919).

For instance, that the commission exceeded its lawful power, in other words, acted without, or in excess of, its jurisdiction is one of the grounds upon which the courts are permitted to set aside awards under the workmen's compensation act. *Indus.*

Comm'n v. Employers' Liab. Assurance Corp., 78 Colo. 267, 241 P. 729 (1925).

And where the decision of the commission is based upon improper application of the law, a district court may set aside the award. W. Cas. & Sur. Co. v. Swort, 134 Colo. 421, 306 P.2d 661 (1957); Indus. Comm'n v. Havens, 136 Colo. 111, 314 P.2d 698 (1957); Booher v. Las Animas County Sch. Dist. R-88, 30 Colo. App. 233, 491 P.2d 104 (1971).

As where it makes fact-finding contrary to uncontradicted evidence. O.P. Skaggs Co. v. Nixon, 97 Colo. 314, 50 P.2d 55 (1935).

Or where final award is revoked. Where no contention is made that a lump-sum disability award was not validly entered in the first instance, or that its propriety was contested by the state compensation insurance fund at the time it was made or thereafter, the award becomes, at the time of entry, tantamount to a final judgment and a vested right which survived the employee's death. Revocation of the award was an invalid act on the part of the commission, and its order to such effect is reversed. Schenfeld v. Shaffer, 29 Colo. App. 425, 487 P.2d 818 (1971).

C. Findings of Fact.

To sustain an award of compensation, the director must find all of the essential facts required by § 8-52-102, i.e., that employer and employee are subject to the act; that the employee was performing services in the course of his employment when an accident occurred; that the injury

was caused by an accident arising out of and in the course of the employment. An absence of any one of such essential facts defeats an award. Miller v. Denver Post, Inc., 137 Colo. 61, 322 P.2d 661 (1958).

Award to be set aside when no evidence to support it. The award in a workmen's compensation case is to be treated like the verdict of a jury and set aside by the courts when there is not evidence to support it. Indus. Comm'n v. Elkas, 73 Colo. 475, 216 P. 521 (1923).

And detailed findings of fact should be made so that courts can determine whether award is supported by the facts. Prouse v. Indus. Comm'n, 69 Colo. 382, 194 P. 625 (1920); Billick v. Indus. Comm'n, 69 Colo. 471, 195 P. 114 (1921); N. Park Coal Co. v. Indus. Comm'n, 90 Colo. 500, 10 P.2d 326 (1932); Hayden Bros. Coal Corp. v. Indus. Comm'n, 90 Colo. 503, 10 P.2d 325 (1932); Duras v. Indus. Comm'n, 90 Colo. 565, 11 P.2d 213 (1932).

For otherwise court cannot say finding and awards supported by evidence. If no findings of fact are made, it is absolutely impossible for the court to say whether the award is supported by the findings or whether there is any evidence to support the findings. Hayden Bros. Coal Corp. v. Indus. Comm'n, 90 Colo. 503, 10 P.2d 325 (1932).

And award cannot be based upon speculation or conjecture. There is no explanation as to how the employee met his death. There is not evidence in the record that any of these speculative events actually did occur. Awards in compensation cases cannot be based upon speculation or

conjecture. *Indus. Comm'n v. London & Lancashire Indem. Co.*, 135 Colo. 372, 311 P.2d 705 (1957).

Just as mere inferences will not suffice to uphold an award. *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957).

Thus, imperative for court to have complete statement of facts. This section is not to be treated as without a purpose, and inasmuch as it prohibits the court from disturbing the findings of fact, it is imperative that the court have before it a sufficiently complete statement of the facts by the commission, as will enable it to render an independent conclusion as to the law to be applied. *Weaver v. Indus. Comm'n*, 69 Colo. 507, 194 P. 941 (1921).

For unless the commission first finds the evidentiary and ultimate facts, it is futile for the reviewing court to examine the record, for it cannot sit as a fact-finding body to ascertain facts from the testimony in the first instance, and it cannot on review determine whether the testimony is sufficient to establish facts that have not been found by the commission. *Metros v. Denver Coney Island*, 110 Colo. 40, 129 P.2d 911 (1942); *Womack v. Indus. Comm'n*, 168 Colo. 364, 451 P.2d 761 (1969).

And the sufficiency of the finding must appear upon its face. *Womack v. Indus. Comm'n*, 168 Colo. 364, 451 P.2d 761 (1969).

However, it is not any part of the commission's function to find that the claimant has not sustained the burden of

proof of any or all of the essential elements that he must establish to entitle him to compensation. If the commission is of the opinion, after weighing the evidence, that it does prove any element of claimant's case, he should find that element as a fact, and similarly, if of the opinion that claimant has failed to prove any element of his case he should find that element not to be a fact. *Metros v. Denver Coney Island*, 110 Colo. 40, 129 P.2d 911 (1942).

Change of former award should contain specific findings of changed condition. The award of the commission since it changed and increased the former award, should have contained specific findings, based upon the testimony, as to a changed condition, if such was found, as well as specific findings as to error in the former findings. Because the award does not contain such specific findings, it is attacked for insufficiency, the attack being based upon numerous decisions of this court which have clearly stated that it is the duty of the commission to make sufficiently detailed findings of fact so that the courts may determine whether the order or award is supported by the facts. *Nat'l Lumber & Creosoting Co. v. Kelly*, 99 Colo. 442, 63 P.2d 457 (1936).

If commission fails to find specific facts cause will be remanded. In a proceeding under the workmen's compensation act, it is the duty of the commission to make sufficient specific findings of fact, and where it fails to do so, a cause which has been brought to the supreme court for review will be remanded for further findings. *Olson-Hall v. Indus. Comm'n*, 69

Colo. 518, 194 P. 212 (1921); Crawford v. Indus. Comm'n, 71 Colo. 378, 206 P. 1073 (1922); Berkley v. Consol. Lower Boulder Reservoir & Ditch Co., 73 Colo. 483, 216 P. 548 (1923); Indus. Comm'n v. Carpenter, 102 Colo. 22, 76 P.2d 418 (1938); Metros v. Denver Coney Island, 110 Colo. 40, 129 P.2d 911 (1942).

Unless general finding is right and conclusion is reasonable inference from evidence. An award will not be disturbed on review on the ground of insufficient findings, where the general finding is right and the conclusion is a reasonable inference from the evidence. Picardi v. Indus. Comm'n, 70 Colo. 266, 199 P. 420 (1921); Central Sur. & Ins. Corp. v. Indus. Comm'n, 94 Colo. 341, 30 P.2d 253 (1934), see Globe Indem. Co. v. Indus. Comm'n, 67 Colo. 526, 186 P. 522 (1919); Brock-Haffner Press Co. v. Indus. Comm'n, 68 Colo. 291, 187 P. 44 (1920); Prouse v. Indus. Comm'n, 69 Colo. 382, 194 P. 625 (1920); Hassell Iron Works Co. v. Indus. Comm'n, 70 Colo. 386, 201 P. 894 (1921).

If the evidence is conflicting, the commission's duty is to resolve the conflict, determine what is true and what is false, and announce the fact in accordance with his findings. Metros v. Denver Coney Island, 110 Colo. 40, 129 P.2d 911 (1942); United States Fid. & Guar. Co. v. Indus. Comm'n, 128 Colo. 68, 259 P.2d 869 (1953); Bowlus v. Indus. Comm'n, 152 Colo. 535, 383 P.2d 789 (1963); Alvin H. Watkins, Inc. v. Hamilton, 159 Colo. 257, 411 P.2d 15 (1966); Hirschfield v. Indus. Comm'n, 159 Colo. 350, 411 P.2d 776 (1966); Sena v.

World of Sleep, Inc., 173 Colo. 348, 478 P.2d 671 (1970).

However, where there is no conflict in the testimony and the award is based on unwarranted inferences or improper application of the law, the court is at liberty to set aside the award. Deines Bros. v. Indus. Comm'n, 125 Colo. 258, 242 P.2d 600 (1952).

Findings held to support award. London Guarantee & Accident Co. v. Indus. Comm'n, 70 Colo. 256, 199 P. 962 (1921); Canon Reliance Coal Co. v. Indus. Comm'n, 72 Colo. 477, 211 P. 868 (1922); Columbine Laundry Co. v. Indus. Comm'n, 73 Colo. 397, 215 P. 870 (1923); Ortiz v. Indus. Comm'n, 734 P.2d 642 (Colo. App. 1987); Mtn. Meadows Nursing Ctr. v. Indus. Claim Appeals Office, 990 P.2d 1090 (Colo. App. 1999); Sanchez v. Indus. Claim Appeals Office, 2017 COA 71, 411 P.3d 245.

Findings of fact were held not to support an award denying compensation to employee kicked by horse which he was beating. Indus. Comm'n v. Cornelius, 81 Colo. 111, 253 P. 828 (1927).

Findings not supported by evidence. Gruntmeir v. Tempel & Esgar, Inc., 730 P.2d 893 (Colo. App. 1986); Hobbs v. Indus. Claim Appeals Office, 804 P.2d 210 (Colo. App. 1990).

Insufficient finding. It is not a finding of the required facts for the commission to say "that if the occasion occurred as the claimant has testified, it would not constitute a compensable accident". This is in effect but a demurrer by the commission to claimant's

evidence, and is not authorized by the compensation act. *Metros v. Denver Coney Island*, 110 Colo. 40, 129 P.2d 911 (1942).

Error of the industrial commission in affirming an award based on findings not supported by evidence in the record requires that the award be set aside. *Associated Grocers of Colo., Inc. v. Bendickson*, 36 Colo. App. 239, 538 P.2d 476 (1975).

There is a clear distinction between the terms "no evidence" and "no credible evidence" and the record failed to support the finding that there was no evidence of causation regarding worker's claim to total disability benefits for occupational lung

disease. *Hall v. Indus. Claim Appeals Office*, 757 P.2d 1132 (Colo. App. 1988).

Findings of the ALJ sufficient to permit appellate review. In concluding that claimant failed to prove that a whole person impairment rating was applicable, the ALJ adopted the physicians' opinions that claimant suffered a loss of range of motion in the upper extremity. This finding is sufficient to permit review. *Walker v. Jim Fuoco Motor Co.*, 942 P.2d 1390 (Colo. App. 1997).

Applied in *Martinez v. Indus. Claim Appeals Office*, 176 P.3d 826 (Colo. App. 2007); *Cabela v. Indus. Claim Appeals Office*, 198 P.3d 1277 (Colo. App. 2008).

8-43-309. Actions in court tried within thirty days.

Any such action commenced in the court of appeals to set aside or modify any order shall be heard within thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-121 as it existed prior to 1990.

ANNOTATION

It is the general assembly's intent that this section be directory and not mandatory or jurisdictional. *Aviado v. Indus. Claim*

Appeals Office, 228 P.3d 177 (Colo. App. 2009).

8-43-310. Error disregarded unless prejudicial.

The appeal shall be upon the record returned to the court by the industrial claim appeals office. Upon the hearing of any such action, the court shall disregard any irregularity or error of the director or the panel unless it affirmatively appears that the party complaining was damaged thereby.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-122 as it existed prior to 1990.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

One of the purposes of the compensation act was to avoid the delay attending ordinary litigation. Kosmos v. Indus. Comm'n, 96 Colo. 90, 39 P.2d 780 (1934).

Thus, report of accident by employer need not be formally introduced in evidence at a hearing in order that it may be considered. N.J. Fid. & Plate Glass Ins. Co. v. Patterson, 86 Colo. 580, 284 P. 334 (1929).

And reversal is not required because of untrue but unnecessary recitation in award. Under the provisions of this section, the supreme court is not called upon to reverse the district court, which affirmed the commission's award, simply because of an untrue, although unnecessary, recitation in the award itself, unless it affects the substantial rights of the parties. Colo. Fuel

& Iron Co. v. Indus. Comm'n, 85 Colo. 237, 275 P. 910 (1929).

Rules limiting introduction of evidence. It was not the intention of the general assembly, in directing the courts by this section to disregard certain errors of irregularities of the commission (now the industrial claim appeals panel), to allow the latter to put into effect rules limiting the introduction of evidence, which the courts are without authority to adopt. W. Auto Supply Co. v. Washburn, 112 Colo. 430, 149 P.2d 804 (1944).

The court cannot reverse an award simply because of the erroneous admission of incompetent or improper evidence; an award may be reversed if there be no competent evidence to support it. Game & Fish Dept. v. Pardoe, 147 Colo. 363, 363 P.2d 1067 (1961).

But it is not error to exclude original evidence at the trial in the district court.

Nat'l Fuel Co. v. Arnold, 121 Colo. 220, 214 P.2d 784 (1950).

If the decision turns on a legal question, any error in commission's fact-finding process would not be prejudicial. Featherstone v. Loomix, Inc., 726 P.2d 246 (Colo. App. 1986).

Even if the commission's interpretation of the law is erroneous, its order will be sustained if a proper interpretation would produce the same legal result. Featherstone v. Loomix, Inc., 726 P.2d 246 (Colo. App. 1986).

No procedural irregularity affecting claimant's substantive rights was found where claimant, while not furnished a copy of the vocational evaluation report, was allowed to examine and present his objections to the report prior to entry of the hearing officer's order, where hearing officer elicited pertinent information from a pro se claimant or where claimant's attorney wrote to hearing officer that the parties were ready for an order. Smith v. Indus. Comm'n, 735 P.2d 921 (Colo. App. 1986).

Where hearing officer strictly followed medical opinion in determining the degree of claimant's industrial disability, it was not harmless error for the hearing officer to have excluded counselor's testimony on the degree of industrial disability merely

because it embraced an ultimate issue to be decided by the trier of fact. Chambers v. CF & I Steel Corp., 757 P.2d 1171 (Colo. App. 1988).

Error by administrative law judge referring to claimant meeting her "burden of proof in establishing a worsening of condition" was harmless where ALJ focused on causation between the industrial injury and claimant's back condition. El Paso County DSS v. Donn, 865 P.2d 877 (Colo. App. 1993).

Where record does not indicate claimant's emotional condition was raised as an affirmative defense, record contains some evidence of claimant's mental impairment but such evidence was limited to claimant's medical records, claimant did not object to their admission, and second ALJ did not rely on them in determining whether claimant had sustained an industrial injury, claimant's substantial rights were not affected even if evidence of claimant's mental impairment was improperly allowed. Bodensieck v. Indus. Claim Appeals Office, 183 P.3d 684 (Colo. App. 2008).

Applied in Puffer Mercantile Co. v. Arellano, 34 Colo. App. 434, 528 P.2d 966 (1974); Mtn. Meadows Nursing Ctr. v. Indus. Claim Appeals Office, 990 P.2d 1090 (Colo. App. 1999).

8-43-311. Court record transmitted to industrial claim appeals office - when.

It is the duty of the clerk of the court of appeals, without order of court or application of the panel, to transmit the record in any case to the industrial claim appeals office within twenty-five days after the order or judgment of the court unless in the meantime further appellate review is granted by the supreme court. If the supreme court grants further appellate review, the clerk shall

return the record immediately upon receipt of remittitur from the supreme court, unless the order of the supreme court requires further action by the court of appeals, and then within twenty-five days after such further action.

Source: L. 90: Entire article R&RE, p. 511, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-123 as it existed prior to 1990.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section operates as a short statute of limitations. *Kosmos v. Indus. Comm'n*, 96 Colo. 90, 39 P.2d 780 (1934).

It is an express mandate in form, its purpose is to secure speedy compensation for those in need, and to relieve from the law's delay those unable to bear it. *General Chem. Co. v. Thomas*, 71 Colo. 28, 203 P. 660 (1922).

And appellate review which is not granted within the time provided will be denied on motion. *General Chem. Co. v. Thomas*, 71 Colo. 28, 203 P. 660 (1922); *Kosmos v. Indus. Comm'n*, 96 Colo. 90, 39 P.2d 780 (1934).

Under this section an aggrieved party has only 25 days within which to obtain a grant of appellate review. *Hull v. Denver Tramway Corp.*, 97 Colo. 523, 50 P.2d 791 (1935).

Even where the grant of appellate review is actually issued before the record is transmitted to the commission (now the industrial claim appeals office), the grant of appellate review will be denied for the words "in the meantime" mean within the 25 days, not before the issue of the grant of appellate review, and the delay of the clerk in transmitting the record, being a disobedience of the law, cannot avail. *General Chem. Co. v. Thomas*, 71 Colo. 28, 203 P. 660 (1922).

And inability to secure judge's signature to bill of exceptions is no excuse. The fact that the applicant was unable to secure the signature of the trial judge to the bill of exceptions afforded no legal excuse for delaying the application for the grant of appellate review until after the expiration of the prescribed period. *Hull v. Denver Tramway Corp.*, 97 Colo. 523, 50 P.2d 791 (1935).

8-43-312. Court may remand case or order entry of award.

Upon setting aside of any order, the court may recommit the controversy and remand the record in the case for further hearing or proceedings by the director, administrative law judge, or panel, or it may order entry of a proper award upon the findings as the nature of the case shall demand. In no event shall such order for award be for a greater amount of compensation than allowed by articles 40 to 47 of this title, or in any manner conflict with the provisions thereof.

Source: L. 90: Entire article R&RE, p. 512, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-124 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1973 amendment which vested fact-finding powers in the director of the division of labor which were previously exercised by the industrial commission.

The power of the trial court to remand the cause to the industrial commission is limited by the statute. *Bennett Props. Co. v. Indus. Comm'n*, 165 Colo. 135, 437 P.2d 548 (1968).

And court will not remand if evidence is uncontradicted. If the evidence is short and uncontradicted, the court, upon review, may treat the record itself as the findings of fact and may consider it accordingly. *Bennett Props. Co. v. Indus. Comm'n*, 165 Colo. 135, 437 P.2d 548 (1968); *Tillman v.*

Capitol Hill Transf. & Storage Co., 165 Colo. 514, 440 P.2d 152 (1968).

For the commission does not have jurisdiction to change its previous findings of fact fully and finally made. The matter was not before it for further proceedings or additionally for different determination. The commission has limited power to alter, affirm, modify, amend, or rescind its finding only if there are issues not theretofore heard and considered by it, and then only after rehearing on those issues. *Bennett Props. Co. v. Indus. Comm'n*, 165 Colo. 135, 437 P.2d 548 (1968).

Where the evidence would support either of contrary findings by the commission, the court may not set aside an award and remand it. *Coors Porcelain Co. v. Grenfell*, 109 Colo. 39, 121 P.2d 669 (1942).

But court may remand for additional evidence. Where the court cannot decide a

workmen's compensation case because of the lack of evidence, the commission could not properly have done so, and the entire case should be remanded for the taking of additional evidence. *Home Ins. Co. v. Hepp*, 91 Colo. 495, 15 P.2d 1082 (1932).

And court may order commission to consider evidence he had rejected. Upon setting aside any order or award, the trial court may recommit the controversy and remand the record in the case to the commission for further hearing or proceedings, as the nature of the case shall demand. The trial court may order the commission to consider evidence which it had erroneously rejected or to allow time to secure further reports and enter a new order, assigning reasons for its decisions. *Indus. Comm'n v. McKenna*, 106 Colo. 323, 104 P.2d 458 (1940); *Warrenburg v. Cline*, 108 Colo. 179, 114 P.2d 302 (1941); *Indus. Comm'n v. Fotis*, 112 Colo. 423, 149 P.2d 657 (1944); *Serv. Supply Co. v. Vallejos*, 169 Colo. 14, 452 P.2d 387 (1969).

Furthermore, the court may remand for entry of proper award. The trial court, having found as a matter of law, that there was uncontroverted evidence showing exertion and that exertion, under the circumstances, was an adequate cause of heart dilation which produced death, it was proper for the court to order the commission to enter the proper award. *Indus. Comm'n v. Wetz*, 100 Colo. 161, 66 P.2d 812 (1937).

Although evidence would support finding, if commission has not made finding, it will be given opportunity. The trial court's analysis of the medical evidence

demonstrates that there is ample evidence here to support a finding of causation, if such a finding had been made. It does not appear that this evidence is so overwhelming as to justify a holding that causation was established as a matter of law. The commission, having made no finding as to causation, should be given the opportunity of making this determination of fact. *Indus. Comm'n v. Riley*, 165 Colo. 586, 441 P.2d 3 (1968).

Since not supreme court's function to make findings of fact. Where the referee did not make the evidentiary findings necessary to support his ultimate findings, the court may remand since it is not the court's function to make findings of fact. *Womack v. Indus. Comm'n*, 168 Colo. 364, 451 P.2d 761 (1969).

General recitation will not fulfill commission's duty to make findings of fact. A general recitation that the commission had rated partial permanent disability at 12% after giving "due consideration" to age, education, and experience will not fulfill the duty to make sufficiently detailed findings of fact to enable the courts to determine whether the award was supported by the facts. *Steel Placers, Inc. v. Reese*, 169 Colo. 360, 455 P.2d 874 (1969).

Award by commission on remand is part of original court review. Where a compensation case is remanded by a trial court to the commission for further hearing, with a duty to hear the issues so presented and to return its new or reaffirmed award to the court, such award when final is but a part

of the original court review, and such action is not subject to dismissal by the employer, the jurisdiction of the court being a continuing one for all matters relating to a claimant's injuries. Graden Coal Co. v.

Ytuarralde, 137 Colo. 527, 328 P.2d 105 (1958).

Applied in Casias v. Indus. Comm'n, 38 Colo. App. 261, 554 P.2d 1357 (1976).

8-43-313. Summary review by supreme court.

Any affected party dissatisfied with the decision of the court of appeals may seek review by writ of certiorari in the supreme court. If the supreme court reviews the judgment of the court of appeals, such review shall be limited to a summary review of questions of law. Any such action shall be advanced upon the calendar of the supreme court, and a final decision shall be rendered within sixty days after the date the supreme court grants further appellate review. The director, an administrative law judge, the industrial claim appeals office, or any other aggrieved party shall not be required to file any undertaking or other security upon review by the supreme court.

Source: **L. 90:** Entire article R&RE, p. 512, § 1, effective July 1. **L. 91:** Entire section amended, p. 1325, § 38, effective July 1. **L. 94:** Entire section amended, p. 1879, § 13, effective June 1.

Editor's note: This section is similar to former § 8-53-125 as it existed prior to 1990.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

In a workmen's compensation case, review by the supreme court is limited to a summary review of questions of law. James v. Irrigation Motor & Pump Co., 180 Colo. 195, 503 P.2d 1025 (1972).

For the supreme court is not a fact-finding body and can only affirm or reverse the judgment of a lower court or, if the circumstances require, order a remand for

further findings. Miller v. Denver Post, Inc., 137 Colo. 61, 322 P.2d 661 (1958).

And findings of fact are controlling on the supreme court on review. Indus. Comm'n v. Enyeart, 81 Colo. 521, 256 P. 314 (1927).

Thus, the supreme court will not on review disturb findings based upon conflicting evidence. Vanadium Corp. of Am. v. Sargent, 134 Colo. 555, 307 P.2d 454 (1957).

Especially, where there is sufficient competent evidence in the record to support the award, it is the duty of the lower court to affirm such award; and it is the duty of the supreme court to affirm the judgment of the lower court. *Indus. Comm'n v. Royal Indem. Co.*, 124 Colo. 210, 236 P.2d 293 (1951); *Peter Kiewit Sons' Co. v. Indus. Comm'n*, 124 Colo. 217, 236 P.2d 296 (1951); *Continental Cas. Co. v. Indus. Comm'n*, 124 Colo. 295, 238 P.2d 196 (1951).

Inferences drawn from the facts are not binding on the supreme court. *Deines Bros. v. Indus. Comm'n*, 125 Colo. 258, 242 P.2d 600 (1952).

And court not bound by conclusions of law. Where the facts are undisputed the question is one of law and the supreme court on review of a case is not bound by the conclusions of law. *Indus. Comm'n v. Bonfils*, 78 Colo. 306, 241 P. 735 (1925); *Deines Bros. v. Indus. Comm'n*, 125 Colo. 258, 242 P.2d 600 (1952); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Denver Truck Exch. v. Perryman*, 134 Colo. 586, 307 P.2d 805 (1957).

Question whether evidence supports award is one of law. While the supreme court is only permitted to consider questions of law in workmen's compensation cases, whether an award is supported by evidence, is such a question and may be considered on review. *Indus. Comm'n v. Elkas*, 73 Colo. 475, 216 P. 521 (1923).

However, the supreme court may consider only the legal question of

whether there is evidence to support the findings, and not whether its probative effect has been misconstrued. The award is conclusive upon all matters of fact properly in dispute, where supported by evidence, or reasonable inference to be drawn therefrom. *Passini v. Indus. Comm'n*, 64 Colo. 349, 171 P. 369 (1918); *Indus. Comm'n v. Koppers Co.*, 66 Colo. 596, 185 P. 267 (1919); *Hassell Iron Works Co. v. Indus. Comm'n*, 70 Colo. 386, 201 P. 894 (1921); *Empire Zinc Co. v. Indus. Comm'n*, 71 Colo. 251, 206 P. 158 (1922); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 151 Colo. 18, 379 P.2d 153 (1962); *Capital Chevrolet Co. v. Indus. Comm'n*, 159 Colo. 156, 410 P.2d 518 (1966); *Hatterman v. Indus. Comm'n*, 171 Colo. 370, 467 P.2d 820 (1970).

And it cannot reverse the findings on the weight of evidence. *Employer's Mut. Ins. Co. v. Morgulski*, 69 Colo. 223, 193 P. 725 (1920); *Armour & Co. v. Indus. Comm'n*, 78 Colo. 569, 243 P. 546 (1926). See *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 83 Colo. 315, 265 P. 99 (1928).

Giving erroneous reason for proper award will not prevent affirmance. The reason given for a proper award, if erroneous, will not prevent an affirmance of the award by the supreme court on review. *Indus. Comm'n v. Bonfils*, 78 Colo. 306, 241 P. 735 (1925).

Bill of appeal will lie only to final judgment of lower court. A bill of appeal will lie to a judgment of the lower court entered upon the review of an order or

award; but this means a final judgment, and not a mere interlocutory order. Continental

Cas. Co. v. Connell, 87 Colo. 577, 290 P. 273 (1930).

8-43-314. Fees - costs - duty of district attorneys and attorney general.

No fee shall be charged by the clerk of any court for the performance of any official service required by articles 40 to 47 of this title. On proceedings to review any order or award, costs as between the parties shall be allowed in the discretion of the court, but no costs shall be taxed against said director or industrial claim appeals office. In any action for the review of any order or award and upon any review thereof by the supreme court, it is the duty of the district attorney in the county wherein said action is pending, or of the attorney general if requested by the director or industrial claim appeals office, to appear on behalf of either or both, whether any other party defendant should have appeared or been represented in the action.

Source: L. 90: Entire article R&RE, p. 512, § 1, effective July 1.

Editor's note: This section is similar to former § 8-53-126 as it existed prior to 1990.

ANNOTATION

Annotator's note. The following annotations include a case decided under a former provision similar to this section.

Court of appeals has discretion to award cost. Since the appellate courts are

the only state courts which have jurisdiction over industrial commission matters, the court of appeals has the discretion to award costs between parties. Bourn v. T & T Loveland Chinchilla Ranch, Inc., 32 Colo. App. 315, 514 P.2d 787 (1973).

8-43-315. Witnesses and testimony - mileage - fees - costs.

(1) The director or any agent, deputy, or administrative law judge may issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records and to administer oaths. Any person who serves a subpoena shall receive the same fee as the sheriff. Each witness who is subpoenaed on behalf of the director and who appears in obedience thereto shall receive for attendance the fees and mileage provided for witnesses in civil cases in the district court, which are audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of a proper voucher approved by the director. The director has the discretion to assess the cost of attendance and mileage of witnesses

subpoenaed by either party to any proceeding against another party to the proceeding when, in the director's judgment, the necessity of subpoenaing the witnesses arises out of the raising of any incompetent, irrelevant, or sham issues by the other party.

(2) The director, an agent, deputy, or administrative law judge of the division, or an administrative law judge from the office of administrative courts, may, upon a showing of good cause, order the attendance at a hearing or deposition of any party, or of an officer, director, employee, or agent of any party, who is located in another state. A witness so ordered shall appear as indicated in the order or shall be available by telephone at the time and place set forth in the order.

(3) If a party or an officer, director, employee, or agent of a party fails, in the absence of a reasonable excuse, to obey an order issued pursuant to subsection (2) of this section, the party, officer, director, employee, or agent is liable for penalties as specified in section 8-43-304 (1).

Source: **L. 90:** Entire article R&RE, p. 512, § 1, effective July 1. **L. 91:** Entire section amended, p. 1325, § 39, effective July 1. **L. 2014:** Entire section amended, (SB 14-191), ch. 316, p. 1373, § 6, effective July 1.

Editor's note: This section is similar to former § 8-53-127 as it existed prior to 1990.

Cross references: For sheriff's fees, see § 30-1-104; for witness and mileage fees, see §§ 13-33-102 and 13-33-103.

ANNOTATION

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission.

A compensation claimant is not a "witness" within the meaning of the

provision of this section for assessing the cost of attendance and mileage of a witness against a party to the proceeding when the necessity for subpoenaing the witness arises out of the raising of any incompetent, irrelevant, or sham issues by that party. *Maryland Cas. Co. v. Indus. Comm'n*, 116 Colo. 58, 178 P.2d 426 (1947).

Expert witness fees cannot be assessed as part of award. The workmen's compensation act contains no provision

empowering the assessment of costs against either party in proceeding. Not having such power, expert witness fees cannot be assessed as part of the award. *Arkin v. Indus. Comm'n*, 145 Colo. 463, 358 P.2d 879 (1961).

Witness fees can be assessed only when the witness is subpoenaed to a proceeding.
There is no provision for assessment of

witness fees when a witness appears voluntarily. *Compton v. Indus. Claim Appeals Office*, 13 P.3d 844 (Colo. 2000).

An allowance of costs against the state compensation insurance fund is not against the "commission", which latter term means the industrial commission. *State Comp. Ins. Fund v. Howington*, 133 Colo. 583, 298 P.2d 063 (1956).

8-43-316. Appearance by officer for closely held entity.

An officer of a closely held entity as defined in section 13-1-127 (1)(a) may appear on behalf of any such closely held entity, which has obtained coverage as required by articles 40 to 47 of this title 8 in proceedings authorized under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title 8, where the amount at issue does not exceed ten thousand dollars, except in proceedings before the industrial claim appeals office under this part 3, appeals to the court of appeals under section 8-43-307, and summary reviews by the supreme court under section 8-43-313.

Source: L. 91: Entire section added, p. 1285, § 2, effective April 14. **L. 2017:** Entire section amended, (SB 17-294), ch. 264, p. 1384, § 6, effective May 25.

8-43-317. Service of documents.

All documents that are required to be exchanged under articles 40 to 47 of this title 8 shall be transmitted or served on the same day.

Source: L. 2010: Entire section added, (SB 10-163), ch. 66, p. 233, § 6, effective March 31. **L. 2026:** Entire section amended, (SB 26-186), ch. 315, p. 1853, § 14, effective August 12.

8-43-318. Remand of case or order - time limit for further proceedings consistent with ruling on appeal.

If a case or order is appealed to the panel, the court of appeals, or the supreme court, and the case or order is remanded with directions, the director, administrative law judge, or panel, as the

case may be, shall issue an order consistent with those directions within thirty days from receipt of the remand. The remanding tribunal has continuing jurisdiction to enforce the remand order.

Source: L. 2014: Entire section added, (SB 14-191), ch. 316, p. 1374, § 7, effective July 1.

PART 4

ENFORCEMENT AND PENALTIES

8-43-401. District attorney or attorney of division to act for director or office - penalties for failure of insurer to pay benefits.

(1) Upon the request of the director or the industrial claim appeals office, the district attorney of any district or any attorney-at-law employed by the division shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of articles 40 to 47 of this title, or any award or order of the director, an administrative law judge, or the industrial claim appeals office, or for the recovery of any money due to Pinnacol Assurance, or any penalty provided in said articles, and shall defend in like manner all suits, actions, or proceedings brought against the director, an administrative law judge, or the industrial claim appeals office.

(2) (a) After all appeals have been exhausted or in cases where there have been no appeals, all insurers and self-insured employers shall pay benefits within thirty days after any benefits are due. If any insurer or self-insured employer knowingly delays payment of medical benefits for more than thirty days or knowingly stops payments, such insurer or self-insured employer shall pay a penalty of eight percent of the amount of wrongfully withheld benefits; except that no penalty is due if the insurer or self-insured employer proves that the delay was the result of excusable neglect. If any insurer or self-insured employer willfully withholds permanent partial disability benefits within thirty days of when due, the insurer or self-insured employer shall pay a penalty to the division of ten percent of the amount of such benefits due. The penalties shall be apportioned, in whole or part, at the discretion of the director or administrative law judge, among the aggrieved party, the medical services provider, and the workers' compensation cash fund created in section 8-44-112 (7)(a).

(b) All money collected as penalties by the division pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit it to the Colorado uninsured employer fund created in section 8-67-105.

Source: L. 90: Entire article R&RE, p. 513, § 1, effective July 1. **L. 91:** Entire section amended, p. 1325, § 40, effective July 1. **L. 94:** (1) amended, p. 1879, § 14, effective June 1. **L.**

2002: (1) amended, p. 1883, § 32, effective July 1. **L. 2010:** (2)(a) amended, (SB 10-012), ch. 287, p. 1340, § 2, effective August 11. **L. 2012:** (1) amended, (SB 12-110), ch. 158, p. 560, § 3, effective July 1. **L. 2017:** (2)(b) amended, (HB 17-1119), ch. 317, p. 1706, § 6, effective July 1.

Editor's note: This section is similar to former § 8-53-128 as it existed prior to 1990.

Cross references: For Pinnacol Assurance and for the Pinnacol Assurance fund, see §§ 8-45-101 and 8-45-102.

ANNOTATION

Law reviews. For article, "Recent Colorado Appellate Decisions in Workers' Compensation Cases", see 25 Colo. Law. 57 (Apr. 1996). For article, "Update on Colorado Appellate Decisions in Colorado Workers' Compensation Law", see 30 Colo. Law. 129 (July 2001). For article, "Update on Colorado Appellate Decisions in Colorado Workers' Compensation Law", see 30 Colo. Law. 105 (Aug. 2001). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 31 Colo. Law. 119 (Jan. 2002). For article, "Update on Colorado Appellate Decisions In Workers' Compensation Law", see 32 Colo. Law. 87 (Mar. 2003).

Where specific penalty provision in subsection (2)(a) applies, general penalty provisions in § 8-43-304 (1) do not. *Sears v. Penrose Hosp.*, 942 P.2d 1345 (Colo. App. 1997), overruled in *Holliday v. Bestop, Inc.*, 23 P.3d 700 (Colo. 2001).

Under the rules of statutory construction, the phrase "for which no penalty has been specifically provided"

defines "fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel". The use of the disjunctive conjunction "or" demarcates four different acts within this section that give rise to penalties. *Holliday v. Bestop, Inc.*, 23 P.3d 700 (Colo. 2001) (overruling *Sears v. Penrose Hosp.*, 942 P.2d 1345 (Colo. App. 1997)).

General penalty in § 8-43-304 (1) was applicable to an insurer that refused to provide medically necessary transportation and, thus, refused medical treatment, although no bill for medical benefits was submitted and the insurer did not delay or stop payment of such a bill, which would have invoked the specific penalty set forth in subsection (2)(a). *Pena v. Indus. Claim Appeals Office*, 117 P.3d 84 (Colo. App. 2004).

If the general assembly intended to create two penalties for the late payment of medical benefits, subsection (2) would have provided that it is in addition to the penalty authorized by § 8-43-304 (1).

Holliday v. Indus. Claim Appeals Office, 997 P.2d 1212 (Colo. App. 1999), vacated and claimant's appeal dismissed, 23 P.3d 700 (Colo. 2001).

A penalty imposed for the willful failure to timely pay benefits may be in addition to a penalty for violation of an order made by the director or panel under § 8-43-304. Giddings v. Indus. Claim Appeals Office, 39 P.3d 1211 (Colo. App. 2001).

Deliberate intent is required to trigger penalties under subsection (2)(a). Sears v. Penrose Hosp., 942 P.2d 1345 (Colo. App. 1997).

Term "wrongfully" in subsection (2)(a) implies that the withholding of benefits must be unlawful or unjust before penalties may be assessed. Sears v. Penrose Hosp., 942 P.2d 1345 (Colo. App. 1997); Miller v. Indus. Claim Appeals Office, 49 P.3d 334 (Colo. App. 2001).

A finding that employer acted reasonably under the circumstances precludes a finding of willfulness. Sears v. Penrose Hosp., 942 P.2d 1345 (Colo. App. 1997).

"Wrongful" withholding shown where respondents knew or should have known their conduct was unreasonable, and, as a

result, they violated their obligation to provide necessary medical care. Miller v. Indus. Claim Appeals Office, 49 P.3d 334 (Colo. App. 2001).

Claims asserted against the state attorney general must be dismissed where the ground for the claim is that she is charged under Colorado law with enforcing Colorado's statutory provisions governing the business of insurance, including the enforcement of workers' compensation statutes, when in fact she is not responsible for enforcing either insurance or workers' compensation laws and may become involved in prosecuting related matters only at the request of the commissioner of insurance or the director of workers' compensation. Fuller v. Norton, 881 F. Supp. 468 (D. Colo. 1995).

There is no practical difference between failure to authorize treatment and failure to pay medical benefits. It is not impossible to assess the penalty provided for in subsection (2)(a) when the dispute involves the failure to authorize treatment. Holliday v. Indus. Claim Appeals Office, 997 P.2d 1212 (Colo. App. 1999), vacated and claimant's appeal dismissed, 23 P.3d 700 (Colo. 2001).

8-43-401.5. Financial incentives to deny or delay claim or medical care - prohibition - penalties.

(1) No insurer, employee or contractor of an insurer, self-insured employer, employee or contractor of a self-insured employer, health-care provider, or employee or contractor of a health-care provider treating an injured worker under the provisions of articles 40 to 47 of this title shall pay or receive any form of financial remuneration that is based on any of the following:

(a) The number of days to maximum medical improvement;

- (b) The rate of claims approval or denial;
 - (c) The number of medical procedures, diagnostic procedures, or treatment appointments approved; or
 - (d) Any other criteria designed or intended to encourage a violation of any provision of articles 40 to 47 of this title.
- (2) (a) Payment of remuneration in violation of this section constitutes an unfair act or practice in the business of insurance, and the insurer or self-insured employer who pays or directs the payment of the remuneration shall be subject to penalties in accordance with part 11 of article 3 of title 10, C.R.S.
- (b) In addition to, or as an alternative to, any penalties imposed pursuant to paragraph (a) of this subsection (2), an insurer or self-insured employer who is found to have violated subsection (1) of this section may be subject to fines as determined by the director pursuant to section 8-43-304 (1.5).
- (3) Nothing in this section:
- (a) Restricts or limits the ability of a claims adjuster or employee or contracted claims personnel to investigate, detect, or prevent fraud; or
 - (b) Limits the payment or receipt of financial incentives for any other lawful purpose.

Source: L. 2010: Entire section added, (SB 10-011), ch. 302, p. 1432, § 2, effective May 27.

8-43-402. False statement - felony.

If, for the purpose of obtaining an order, benefit, award, compensation, or payment pursuant to the provisions of articles 40 to 47 of this title 8, either for self-gain or for the benefit of any other person, anyone willfully makes a false statement or representation material to the claim, such person commits a class 6 felony and shall be punished as provided in section 18-1.3-401 and forfeits all right to compensation under said articles upon conviction of the offense.

Source: L. 90: Entire article R&RE, p. 513, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1467, § 20, effective October 1. **L. 2023:** Entire section amended, (HB 23-1293), ch. 298, p. 1782, § 1, effective October 1.

Editor's note: This section is similar to former § 8-53-129 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 32 Colo. Law. 113 (Oct. 2003). For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 33 Colo. Law. 117 (Nov. 2004).

Term "compensation" does not include medical benefits. Accordingly, claimant who was convicted of a felony for making a false statement or representation material to a claim for recovery did not forfeit her right to ongoing medical benefits. *Support, Inc. v. Indus. Claim Appeals Office*, 968 P.2d 174 (Colo. App. 1998).

Benefits unrelated to false statements are not forfeited. A conviction under this section requires forfeiture of only the compensation that was obtained as a result of false statements. *Wolford v. Pinnacol Assurance*, 107 P.3d 947 (Colo. 2005).

There must be a nexus between the false statements and the compensation forfeited. *Wolford v. Pinnacol Assurance*, 107 P.3d 947 (Colo. 2005).

Statutory limitation period does not apply because forfeiture under this section

is a criminal sanction, automatic upon conviction. *Wolford v. Pinnacol Assurance*, 81 P.3d 1079 (Colo. App. 2003), rev'd on other grounds, 107 P.3d 947 (Colo. 2005).

This section does not violate double jeopardy prohibitions. *Wolford v. Pinnacol Assurance*, 81 P.3d 1079 (Colo. App. 2003), rev'd on other grounds, 107 P.3d 947 (Colo. 2005).

Forfeiture under this section does not constitute an excessive fine. *Wolford v. Pinnacol Assurance*, 81 P.3d 1079 (Colo. App. 2003), rev'd on other grounds, 107 P.3d 947 (Colo. 2005).

This section does not require the person accused of false statements or representations to file or cause to be filed a claim. The statute applies to "anyone [who] willfully makes a false statement or representation material to the claim". In using this language, the general assembly chose not to limit the statute to the filing of a claim or to false statements or representations made on a particular claim form. *People v. Witek*, 97 P.3d 240 (Colo. App. 2004).

8-43-403. Attorney fees.

(1) A contingent fee shall not be applied to any medical benefits that have been previously incurred and will be paid to the claimant or directly to the medical care provider, in a permanent disability award, either by admission or settlement. If medical benefits are the only contested issue, the fee agreement shall provide for reasonable fees calculated on a per-hour basis or, subject to approval by the director, may provide for a contingent fee not to exceed the limitations imposed by this section. On unappealed contested cases, a contingent fee exceeding twenty-five percent of the amount of contested benefits is presumed to be unreasonable. At the request of either an employee or the employee's attorney, the director shall determine what portion of the benefits awarded were contested, or the reasonableness of the fee charged by such attorney, or both. At the request of the employer or its insurance carrier or the attorney for either of them, the director shall determine the reasonableness of the fee charged by the attorney for the insurance carrier. The director shall not consider a request for determination of the reasonableness of fees if received later than one hundred eighty days after the issuance of the final order, judgment, or opinion disposing of the last material issue in the case and the expiration of any right to review or appeal the final order, judgment, or opinion. In making this determination, the director shall consider fees normally charged by attorneys for cases requiring the same amount of time and skill and may decrease or increase the fee payable to such attorney. If the director finds that a review by the industrial claim appeals office or an appeal to the court of appeals or to the supreme court was perfected or if the director finds that such attorney reasonably devoted an extraordinary amount of time to the case, the director may award or approve a contingent fee or other fee in a percentage or amount that exceeds twenty-five percent of the amount of contested benefits. In determining the reasonableness of fees charged by an attorney for an employer or employer's insurance carrier, the director shall compare the fees of such attorney with the fees charged by the claimant's attorney in the same case and shall not approve an amount substantially greater than the reasonable amount charged by the said claimant's attorney or, if the claimant did not prevail, the reasonable amount the said claimant's attorney would have charged had the claimant prevailed, unless the director finds, based on a showing by the attorney for the employer or carrier, that higher fees are objectively justifiable. Legal costs not found reasonable shall not be allowed as an expense in fixing premium rates by the commissioner of insurance.

(2) Any attorney who represents any party in a workers' compensation case shall provide the party with a written fee agreement which sets forth, in full, the attorney's specific fee arrangement, including the criteria upon which the attorney bases his hourly or set fee and the circumstances in which any modifications or adjustments to such fee will be made, and specifying whether the client will be charged for the attorney's expenses or advances made by the attorney on behalf of the party, including without limitation costs of copying, research, telephone calls, postage, and any other expenses incident to the litigation which the attorney may be ethically bound to undertake on behalf of the party pursuant to law or pursuant to any court rule including the code of professional responsibility as adopted by the supreme court of Colorado.

Contingent fee agreements shall be in conformity with all applicable provisions of the said code or of rules of the supreme court, and, in addition, such agreements shall set forth the provisions of this section in easy to understand language in at least ten-point bold-faced type. No such fee agreement may be enforced against any party unless it complies with the requirements of this section and is signed by both parties. Any attempt by an attorney who intentionally does not comply with this section and who seeks to enforce a fee agreement which does not comply with the requirements of this section shall be presumed to be a violation of the code of professional responsibility as adopted by the supreme court of Colorado.

(3) Repealed.

Source: **L. 90:** Entire article R&RE, p. 513, § 1, effective July 1. **L. 91:** Entire section amended, p. 1369, § 1, effective May 29. **L. 2023:** (1) amended, (HB 23-1076), ch. 370, p. 2225, § 7, effective August 7.

Editor's note: (1) This section is similar to former § 8-52-115 as it existed prior to 1990.

(2) Subsection (3)(d) provided for the repeal of subsection (3), effective July 1, 1993. (See L. 91, p. 1369.)

ANNOTATION

Supreme court is exclusive tribunal for regulation of the practice of law, including reasonableness of fees, notwithstanding provision of this section allowing the director of the division of workers' compensation to determine reasonableness

of fees in a workers' compensation case. In re Wimmershoff, 3 P.3d 417 (Colo. 2000).

Agreement for excessive fee may be unenforceable under subsection (2). In re Wimmershoff, 3 P.3d 417 (Colo. 2000).

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - injured worker right to select treating physician - injured worker right to third-party communications - rules.

(1) (a) If in case of injury the right to compensation under articles 40 to 47 of this title exists in favor of an employee, upon the written request of the employee's employer or the insurer carrying such risk, the employee shall from time to time submit to examination by a physician or surgeon or to a vocational evaluation, which shall be provided and paid for by the employer or

insurer, and the employee shall likewise submit to examination from time to time by any regular physician selected and paid for by the division.

(b) (I) At least three business days in advance of an examination under paragraph (a) of this subsection (1), if requested by the claimant, the employer or insurer shall pay to the claimant the claimant's estimated expenses of attending the examination, including transportation, mileage, food, and hotel costs. In addition, if the claimant verifies that he or she will incur uncompensated wage losses as a result of attending the examination, the employer or insurer shall reimburse the claimant at the rate of seventy-five dollars per day. Failure to provide payment in accordance with this subparagraph (I) constitutes grounds for the claimant to refuse to attend the examination.

(II) If an employer pays estimated expenses under this paragraph (b) and the claimant does not attend the examination, the employer or insurer may recover the costs paid for the employee's expenses from future indemnity benefits.

(2) (a) The employee shall be entitled to have a physician, provided and paid for by the employee, present at any such examination. If an employee is examined by a chiropractor at the request of the employer, the employee shall be entitled to have a chiropractor provided and paid for by the employee present at any such examination. After any examination conducted under this section, the examiner shall prepare a written report giving a description of the examination performed, the written documents or any other materials reviewed, and all findings or conclusions of the examiner. The employee shall be entitled to receive from the examining physician or chiropractor a copy of any report that the physician or chiropractor makes to the employer, insurer, or division upon the examination, and the copy shall be furnished to the employee at the same time it is furnished to the employer, insurer, or division. The employee shall also be entitled to receive reports from any physician selected by the employer to treat the employee upon the same terms and conditions and at the same time the reports are furnished by the physician to the employer. All such examinations shall be recorded in audio in their entirety and retained by the examining physician until requested by any party. Prior to commencing the audio recording, the examining physician shall disclose to the employee the fact that the exam is being recorded. If requested, an exact copy of the recording shall be provided to the parties. Nothing in this subsection (2) shall be construed to prevent any party to the claim from making an audio recording of the examination. The division shall promulgate rules regarding such recordings that shall include provisions for the protection of the audio recordings and the privacy of information contained in such recordings. The employer shall be entitled to receive reports from any physician or chiropractor selected by the employee to treat or examine the employee in connection with such injury upon the same terms and at the same time the reports are furnished by the physician or chiropractor to the employee.

(b) The amendments made to paragraph (a) of this subsection (2) by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3) So long as the employee, after written request by the employer or insurer, refuses to submit to medical examination or vocational evaluation or in any way obstructs the same, all right to collect, or to begin or maintain any proceeding for the collection of, compensation shall be suspended. If the employee refuses to submit to such examination after direction by the director or any agent, referee, or administrative law judge of the division appointed pursuant to section 8-43-208 (1) or in any way obstructs the same, all right to weekly indemnity which accrues and becomes payable during the period of such refusal or obstruction shall be barred. If any employee persists in any unsanitary or injurious practice which tends to imperil or retard recovery or refuses to submit to such medical or surgical treatment or vocational evaluation as is reasonably essential to promote recovery, the director shall have the discretion to reduce or suspend the compensation of any such injured employee.

(4) Any physician or chiropractor who makes or is present at any such examination may be required to testify as to the results thereof. Any physician or chiropractor having attended an employee in a professional capacity may be required to testify before the division when it so directs. A physician or chiropractor will not be required to disclose confidential communications imparted to said physician or chiropractor for the purpose of treatment and which are unnecessary to a proper understanding of the case.

(5) (a) ***[Editor's note: This version of subsection (5)(a) is effective until January 1, 2028.]***

(I) (A) In all cases of injury, the employer or insurer shall provide a list of at least four physicians or four corporate medical providers or at least two physicians and two corporate medical providers or a combination thereof where available, in the first instance, from which list an injured employee may select the physician who attends the injured employee. At least one of the four designated physicians or corporate medical providers offered must be at a distinct location from the other three designated physicians or corporate medical providers without common ownership. If there are not at least two physicians or corporate medical providers at distinct locations without common ownership within thirty miles of the employer's place of business, then an employer may designate physicians or corporate medical providers at the same location or with shared ownership interests. Upon request by an interested party to the workers' compensation claim, a designated provider on the employer's list shall provide a list of ownership interests and employment relationships, if any, to the requesting party within five days of the receipt of the request. If the services of a physician are not tendered at the time of injury, the employee shall have the right to select a physician or chiropractor. For purposes of this section, "corporate medical provider" means a medical organization in business as a sole proprietorship, professional corporation, or partnership.

(B) If there are fewer than four physicians or corporate medical providers within thirty miles of the employer's place of business who are willing to treat an injured employee, the employer or insurer may instead designate one physician or one corporate medical provider, and subparagraphs (III) and (IV) of this paragraph (a) shall not apply. A physician is presumed willing to treat injured workers unless he or she indicates to the employer or insurer to the contrary.

(C) If there are more than three physicians or corporate medical providers, but fewer than nine physicians or corporate medical providers within thirty miles of the employer's place of business who are willing to treat an injured employee, the employer or insurer may instead designate two physicians or two corporate medical providers or any combination thereof. The two designated providers shall be at two distinct locations without common ownership. If there are not two providers at two distinct locations without common ownership within thirty miles of the employer's place of business, then an employer may designate two providers at the same location or with shared ownership interests. Upon request by an interested party to the workers' compensation claim, a designated provider on the employer's list shall provide a list of ownership interests and employment relationships, if any, to the requesting party within five days of the receipt of the request.

(D) Except as otherwise provided by sub-subparagraph (E) of this subparagraph (I), any party may request an expedited hearing on the issue of whether the employer or insurer provided a list in compliance with this subsection (5) if the application for expedited hearing is filed within forty-five days after the claimant provides notice of the injury to the employer.

(E) If the insurer or self-insured employer admits liability for the claim, any party may request an expedited hearing on the issue of whether the employer or insurer provided a list in compliance with this subsection (5) if the application for expedited hearing is filed within forty-five days after the initial admission of liability for the claim. The director shall set any expedited matter for hearing within sixty days after the date of the application. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If the party elects not to request an expedited hearing under this subsection (5), the time schedule for hearing the matter is as set forth in section 8-43-209.

(II) (A) If the employer is a health-care provider or a governmental entity that currently has its own occupational health-care provider system, the employer may designate health-care providers from within its own system and is not required to provide an alternative physician or corporate medical provider from outside its own system.

(B) If the employer has its own on-site health-care facility, the employer may designate such on-site health-care facility as the authorized treating physician, but the employer shall comply with subparagraph (III) of this paragraph (a). For purposes of this sub-subparagraph (B), "on-site

health-care facility" means an entity that meets all applicable state requirements to provide health-care services on the employer's premises.

(III) An employee may obtain a one-time change in the designated authorized treating physician under this section by providing notice that meets the following requirements:

(A) The notice is provided within ninety days after the date of the injury, but before the injured worker reaches maximum medical improvement;

(B) The notice is in writing and submitted on a form designated by the director. The notice provided in this subparagraph (III) shall also simultaneously serve as a request and authorization to the initially authorized treating physician to release all relevant medical records to the newly authorized treating physician.

(C) The notice is directed to the insurance carrier or to the employer's authorized representative, if self-insured, and to the initially authorized treating physician and is provided to the employer, who shall notify the insurance carrier, if necessary, and the initially authorized treating physician;

(D) The new physician is on the employer's designated list or provides medical services for a designated corporate medical provider on the list;

(E) The transfer of medical care does not pose a threat to the health or safety of the injured employee;

(F) An insurance carrier, or an employer's authorized representative if the employer is self-insured, shall track how often injured employees change their authorized treating physician pursuant to this subparagraph (III) and shall report such information to the division upon request.

(IV) (A) When an injured employee changes his or her designated authorized treating physician, the newly authorized treating physician shall make a reasonable effort to avoid any unnecessary duplication of medical services.

(B) The originally authorized treating physician shall send all medical records in his or her possession pertaining to the injured employee to the newly authorized treating physician within seven calendar days after receiving a request for medical records from the newly authorized treating physician.

(C) The originally authorized treating physician shall continue as the authorized treating physician for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the initially authorized treating physician shall terminate.

(D) The opinion of the originally authorized treating physician regarding work restrictions and return to work shall control unless and until such opinion is expressly modified by the newly authorized treating physician.

(E) The newly authorized treating physician shall be presumed to have consented to treat the injured employee unless the newly authorized treating physician expressly refuses in writing within five days after the date of the notice to change authorized treating physicians. If the newly authorized treating physician refuses to treat the injured employee, the employee may return to the employer to request an alternative authorized treating physician. If the employer does not provide an alternative authorized treating physician within five days after the employee's request, rules established by the division shall control.

(V) If the authorized treating physician moves from one facility to another, or from one corporate medical provider to another, an injured employee may continue care with the authorized treating physician, and the original facility or corporate medical provider shall provide the injured employee's medical records to the authorized treating physician within seven days after receipt of a request for medical records from the authorized treating physician.

(VI) (A) In addition to the one-time change of physician allowed in subparagraph (III) of this paragraph (a), upon written request to the insurance carrier or to the employer's authorized representative if self-insured, an injured employee may procure written permission to have a personal physician or chiropractor treat the employee. The written request must be completed on a form that is prescribed by the director. If permission is neither granted nor refused within twenty days after the date of the certificate of service of the request form, the employer or insurance carrier shall be deemed to have waived any objection to the employee's request. Objection shall be in writing on a form prescribed by the director and shall be served on the employee or, if represented, the employee's authorized representative within twenty days after the date of the certificate of service of the request form. An insurance carrier, or an employer's authorized representative if self-insured, shall track how often an injured employee requests to change his or her physician and how often such change is granted or denied and shall report such information to the division upon request. Upon the proper showing to the division, the employee may procure the division's permission at any time to have a physician of the employee's selection treat the employee, and in any nonsurgical case the employee, with such permission, in lieu of medical aid, may procure any nonmedical treatment recognized by the laws of this state as legal. The practitioner administering the treatment shall receive fees under the medical provisions of articles 40 to 47 of this title as specified by the division.

(B) If an injured employee is permitted to change physicians under sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the previously authorized treating physician providing primary care shall continue as the authorized treating physician providing primary care for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which

time the treatment relationship with the previously authorized treating physician providing primary care is terminated.

(C) Nothing in this subparagraph (VI) precludes any former authorized treating physician from performing an examination under subsection (1) of this section.

(D) If an injured employee is permitted to change physicians pursuant to sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the opinion of the previously authorized treating physician providing primary care regarding work restrictions and return to work controls unless that opinion is expressly modified by the newly authorized treating physician.

(5) (a) ***[Editor's note: This version of subsection (5)(a) is effective January 1, 2028.]***

(I) (A) Immediately upon receipt of notice of an on-the-job injury from an employee who is a resident of Colorado, but not more than seven calendar days after receipt of notice of the on-the-job injury, an employer or insurer shall, in written verified form, notify the injured employee of the injured employee's right to designate a treating physician and notify the injured employee where to access the division's list of level I and level II accredited physicians. The director shall create a form to implement the procedure to designate a physician. The employee may designate only a level I or level II accredited physician licensed under the "Colorado Medical Practice Act", article 240 of title 12, as the employee's authorized treating physician. The authorized treating physician designated by the employee must be within seventy miles of the employee's work or home address, unless there are three or fewer level I or level II accredited physicians within seventy miles of the employee's work or home address who are willing to treat the injured employee. If there are three or fewer level I or level II accredited physicians within seventy miles of the employee's work or home address who are willing to treat the injured employee, then the authorized treating physician designated by the employee must be within one hundred miles of the employee's work or home address; except that an injured employee may, upon good cause shown, designate an authorized treating physician who is not within one hundred miles of the employee's work or home address. Good cause is presumed to exist if there are three or fewer level I or level II accredited physicians within one hundred miles of the employee's work or home address who are willing to treat the injured employee. An accredited physician is presumed willing to treat an injured worker unless the physician indicates the contrary to a party. The employee must designate the treating physician in writing on the form prescribed by the director. The employee may make one treating physician designation on the form prescribed by the director any time after the on-the-job injury but before being placed at maximum medical improvement. If the employee declines to designate a physician within seven calendar days after receipt of notice of the right to designate in written verified form, an employer or insurer may designate only a level I or level II accredited physician licensed under the "Colorado Medical Practice Act", article 240 of title 12, as the employee's authorized treating physician. The employee may subsequently designate a physician consistent with this subsection (5)(a)(I)(A).

The physician designated by the employer or insurer and the physician designated by the employee shall comply with subsection (5)(a)(IV)(A) of this section. For an injured employee who is not a resident of Colorado, as soon as possible, but no later than ten calendar days after the receipt of a notice of an on-the-job injury, an employer or insurer shall designate a treating physician and notify the employee of the designation in writing. The treating physician must be within one hundred miles of the employee's home address. If the employer or insurer declines to designate a physician within the ten-calendar-day time period, the employee may designate a treating physician within one hundred miles of the employee's home address in writing to the employer or through attendance at an appointment with the employee's designated physician.

(B) In an emergency situation, an injured employee shall be taken to any physician or health-care facility that is able to provide the necessary care. When emergency care is no longer required, subsection (5)(a)(I)(A) of this section applies. Immediately upon receipt of notice that emergency care is no longer required, but not more than seven calendar days after receipt of notice that emergency care is no longer required, an employer or insurer shall, in written verified form, notify the injured employee of the injured employee's right to designate a treating physician and notify the injured employee where to access the division's list of level I and level II accredited physicians.

(II) An employee may obtain a one-time change in the designated authorized treating physician under this section by providing notice that meets the following requirements:

(A) The notice is provided within one hundred twenty days after the date of the first physician designation, but before the injured employee reaches maximum medical improvement;

(B) The notice is in writing and submitted on a form designated by the director. The notice provided in this subsection (5)(a)(II) must also simultaneously serve as a request and authorization to the initially authorized treating physician to release all relevant medical records to the newly authorized treating physician.

(C) The notice is directed to the insurer or to the employer's authorized representative, if self-insured, and to the initially authorized treating physician and is deposited in the United States mail or hand-delivered to the employer, who shall notify the insurer, if necessary, and the initially authorized treating physician;

(D) The new physician is a level I or level II accredited physician licensed under the "Colorado Medical Practice Act", article 240 of title 12; and

(E) The transfer of medical care does not pose a threat to the health or safety of the injured employee.

(III) An insurer, or an employer's authorized representative if the employer is self-insured, shall track how often injured employees change their authorized treating physician pursuant to

subsection (5)(a)(II) of this section and shall report such information to the division upon request.

(IV) (A) When an injured employee changes their designated authorized treating physician, the newly authorized treating physician shall make a reasonable effort to avoid any unnecessary duplication of medical services.

(B) The originally authorized treating physician shall send all medical records in their possession pertaining to the injured employee to the newly authorized treating physician within seven calendar days after receiving a request for medical records from the newly authorized treating physician.

(C) The originally authorized treating physician shall continue as the authorized treating physician for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the initially authorized treating physician terminates.

(D) The opinion of the originally authorized treating physician regarding work restrictions and return to work controls unless and until such opinion is expressly modified by the newly authorized treating physician.

(E) The newly authorized treating physician shall be presumed to have consented to treat the injured employee unless the newly authorized treating physician expressly refuses in writing within five days after the date of the notice to change authorized treating physicians. If the newly authorized treating physician refuses to treat the injured employee, the employee may request an alternative authorized treating physician who is a level I or level II accredited physician licensed under the "Colorado Medical Practice Act", article 240 of title 12.

(V) If an authorized treating physician moves from one facility to another, or from one corporate medical provider to another, an injured employee may continue care with the authorized treating physician, and the original facility or corporate medical provider shall provide the injured employee's medical records to the authorized treating physician within seven days after receipt of a request for medical records from the authorized treating physician.

(VI) (A) In addition to the one-time change of physician allowed in subsection (5)(a)(II) of this section, upon written request to the insurer or to the employer's authorized representative if the employer is self-insured, an injured employee may procure written permission to have a personal physician or chiropractor treat the employee. The employee must complete the written request on a form prescribed by the director. If the employer or insurer neither grants nor refuses the permission request within twenty days after the date of the certificate of service of the request form, the employer or insurer is deemed to have waived any objection to the employee's request. If the employer or insurer objects to the request, the employer or insurer shall make the objection in writing on a form prescribed by the director and shall serve the written objection on the

employee or, if represented, the employee's authorized representative within twenty days after the date of the certificate of service of the request form. An insurer, or an employer's authorized representative if the employer is self-insured, shall track how often an injured employee requests to change the employee's physician and how often such change is granted or denied and shall report such information to the division upon request. Upon the proper showing to the division, the employee may procure the division's permission at any time to have a physician of the employee's selection treat the employee, and in any nonsurgical case the employee, with such permission, in lieu of medical aid, may procure any nonmedical treatment recognized by the laws of this state as legal. The practitioner administering the treatment shall receive fees under the medical provisions of articles 40 to 47 of this title 8 as specified by the division.

(B) If an injured employee is permitted to change physicians under subsection (5)(a)(VI)(A) of this section resulting in a new authorized treating physician who will provide primary care for the injury, then the previously authorized treating physician providing primary care shall continue as the authorized treating physician providing primary care for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the previously authorized treating physician providing primary care is terminated.

(C) Nothing in this subsection (5)(a)(VI) precludes any former authorized treating physician from performing an examination under subsection (1) of this section.

(D) If an injured employee is permitted to change physicians pursuant to subsection (5)(a)(VI)(A) of this section resulting in a new authorized treating physician who will provide primary care for the injury, then the opinion of the previously authorized treating physician providing primary care regarding work restrictions and return to work controls unless that opinion is expressly modified by the newly authorized treating physician.

(VII) An attorney representing an injured employee shall not refer the injured employee to an authorized treating physician or physician practice in which the attorney has an ownership interest or other financial interest.

(b) Any private insurer or self-insured employer acting as its own insurance carrier as provided in section 8-44-201 providing workers' compensation coverage shall pay for chiropractic care as provided in paragraph (a) of this subsection (5).

(c) A treating physician shall not communicate with the employer or insurer of an injured worker regarding that injured worker unless:

(I) The injured worker is present for the communication; or

(II) The treating physician makes an accurate written record of the communication, containing all relevant and material information that was communicated, and provides the

injured worker access to the writing in the same manner as medical records disclosures as required by director rules.

(6) Application or prosecution of a claim for benefits shall be a waiver of any privilege concerning communications relating to all medical issues raised by the claim, for the purposes of a utilization review conducted pursuant to section 8-43-501.

(7) An employer or insurer shall not be liable for treatment provided pursuant to article 285 of title 12, unless such treatment has been prescribed by an authorized treating physician.

(8) Upon request by an employee who has not reached maximum medical improvement and whose authorized treating physician is not level II accredited, an insurer or self-insured employer shall select a level II accredited physician as the authorized treating physician.

(9) (a) Health-care services provided shall be deemed authorized if the claim is found to be compensable when:

(I) Compensability of a claim is initially denied;

(II) The services of the physician selected by the employer are not tendered at the time of the injury; and

(III) The injured worker is treated:

(A) At a public health facility in the state;

(B) At a public health facility within one hundred fifty miles of the residence of the injured worker; or

(C) Through a publicly funded program.

(b) A claimant shall not be liable for payment for treatment by the provider under this subsection (9) if the treatment is reasonably needed and related to the injury.

(10) (a) If an authorized physician refuses to provide medical treatment to an injured employee or discharges an injured employee from medical care for nonmedical reasons when the injured employee requires medical treatment to cure or relieve the effects of the work injury, then the physician shall, within three business days from the refusal or discharge, provide written notice of the refusal or discharge by certified mail, return receipt requested, to the injured employee and the insurer or self-insured employer. The notice must explain the reasons for the refusal or discharge and must offer to transfer the injured employee's medical records to any new authorized physician upon receipt of a signed authorization to do so from the injured employee. The director or any administrative law judge of the office of administrative courts has jurisdiction to resolve disputes regarding whether a refusal to provide medical treatment or a discharge from medical care was for medical or nonmedical reasons.

(b) *[Editor's note: This version of subsection (10)(b) is effective until January 1, 2028.]* If the insurer or self-insured employer receives written notice pursuant to paragraph (a) of this subsection (10), or if the insurer or self-insured employer and the authorized treating physician receive written notice by certified mail, return receipt requested, from the injured employee or the injured employee's legal representative that an authorized physician refused to provide medical treatment to the injured employee or discharged the injured employee from medical care for nonmedical reasons when such injured employee requires medical treatment to cure or relieve the effects of the work injury, and there is no other authorized physician willing to provide medical treatment, then the insurer or self-insured employer shall, within fifteen calendar days from receiving the written notice, designate a new authorized physician willing to provide medical treatment. If the insurer or self-insured employer fails to designate a new physician pursuant to this paragraph (b), then the injured employee may select the physician who attends to the injured employee.

(b) *[Editor's note: This version of subsection (10)(b) is effective January 1, 2028.]* If an insurer or self-insured employer receives written notice pursuant to subsection (10)(a) of this section, or if the insurer or self-insured employer and the authorized treating physician receive written notice by certified mail, return receipt requested, from an injured employee or the injured employee's legal representative that an authorized physician refused to provide medical treatment to the injured employee or discharged the injured employee from medical care for nonmedical reasons when the injured employee requires medical treatment to cure or relieve the effects of the work injury, and there is no other authorized physician willing to provide medical treatment, then the insurer or self-insured employer shall, within fifteen calendar days after receiving the written notice, advise the injured employee in writing that the injured employee may designate a new level I or level II accredited physician licensed under the "Colorado Medical Practice Act", article 240 of title 12, as the employee's new authorized treating physician. The employee must designate the new treating physician in writing on the form prescribed by the director.

Source: L. 90: Entire article R&RE, p. 513, § 1, effective July 1; (6) amended, p. 1844, § 31, effective July 1. L. 96: (8) added, p. 271, § 3, effective April 8. L. 2007: (5)(a) amended, p. 763, § 1, effective January 1, 2008. L. 2009: (9) added, (SB 09-243), ch. 269, p. 1223, § 5, effective July 1; (2) amended, (SB 09-168), ch. 184, p. 807, § 5, effective August 5. L. 2010: (2) amended, (SB 10-163), ch. 66, p. 233, § 7, effective March 31; (5)(c) added, (SB 10-011), ch. 302, p. 1433, § 3, effective May 27. L. 2011: (1) amended, (SB 11-199), ch. 196, p. 760, § 3, effective May 23. L. 2014: (1)(b)(I) amended and (10) added, (SB 14-191), ch. 316, p. 1374, § 8, effective July 1; (5)(a)(I)(A) amended and (5)(a)(I)(C) added, ch. 324, p. 1422, § 1, effective April 1, 2015. L. 2016: (5)(a)(I)(D) and (5)(a)(I)(E) added and (5)(a)(VI) amended, (SB 16-217), ch. 272, p. 1128, § 4, effective July 1. L. 2019: (7) amended, (HB 19-1172), ch. 136, p. 1648, § 23, effective October 1. L. 2025: (5)(a) and (10)(b) amended, (HB 25-1300), ch. 442, p. 2546, § 3, effective

January 1, 2028. **L. 2026:** (5)(a)(III)(C) amended, (SB 26-186), ch. 315, p. 1853, § 15, effective August 12.

Editor's note: (1) This section is similar to former § 8-51-110 as it existed prior to 1990.

(2) Section 4(2) of chapter 442 (HB 25-1300), Session Laws of Colorado 2025, provides that the act changing this section applies to workers' compensation claims filed on or after January 1, 2028.

Cross references: For the legislative declaration in SB 16-217, see section 1 of chapter 272, Session Laws of Colorado 2016. For the legislative declaration in HB 25-1300, see section 1 of chapter 442, Session Laws of Colorado 2025.

ANNOTATION

- I. General Consideration.
- II. Employee's Refusal to be Treated.
- III. Employer's Right to Select Physician.
- IV. Employee's Refusal to Submit to Exam or Evaluation.

I. GENERAL CONSIDERATION.

Law reviews. For article, "A Significant Change in the Colorado Workmen's Compensation Act: 'Accidents', 'Injuries', and 'Heart Attack'", see 41 Den. L. Ctr. J. 189 (1964).

Annotator's note. (1) Since § 8-43-404 is similar to § 8-51-110 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the director of the division of labor with the power previously exercised by the industrial commission to enforce the provisions of this section.

The termination provision of subsection (5)(a)(VI)(B) applies only to a request to change a treating physician made after the effective date of that provision. Subsection (5)(a)(IV) applies only to changes of physician obtained under subsection (5)(a)(III). *Berthold v. Indus. Claim Appeals Office*, 2017 COA 145, 410 P.3d 810.

Because claimant's request to change her physician predated subsection (5)(a)(VI)(B), and because the request was not granted under subsection (5)(a)(III), her treatment with her new physician did not automatically terminate her first physician's

status as an authorized treating physician. *Berthold v. Indus. Claim Appeals Office*, 2017 COA 145, 410 P.3d 810.

The 2016 amendment to subsection (5)(a)(VI) is procedural in nature because it does not create, eliminate, or modify vested rights or liabilities. And the legislature clearly intended this procedural amendment to apply to all claims. But the legislature did not clearly express the intent to apply the amendment to completed transactions within those claims. So, the amendment applies only prospectively to transactions taking place after the amendment's effect. *Berthold v. Indus. Claim Appeals Office*, 2017 COA 145, 410 P.3d 810.

Resumption of benefits after suspension. This section permits a resumption of benefits after a period of suspension when the disqualifying condition has been removed. *Dziewior v. Mich. Gen. Corp.*, 672 P.2d 1026 (Colo. App. 1983).

Industrial claim appeals office finding that claimant had failed to remove the disqualifying condition was supported by substantial evidence and justified director's refusal to reinstate benefits. *Bacon v. Indus. Claim Appeals Office*, 746 P.2d 74 (Colo. App. 1987).

Effective date of division's "permission" is date of ALJ's oral summary order. Delaying change of physician until written order is issued would be contrary to statutory goal of assuring quick and efficient delivery of medical benefits. *Consol. Landscape v. Indus. Claim*

Appeals Office, 883 P.2d 571 (Colo. App. 1994).

Administrative law judge properly excluded custody evaluation from custody case as being outside the scope of the worker's compensation case and therefore not of aid to the understanding of the worker's compensation case. *Powderhorn Coal Co. v. Weaver*, 835 P.2d 616 (Colo. App. 1992).

Applied in *Safeway Stores v. Indus. Comm'n*, 678 P.2d 1078 (Colo. App. 1984).

II. EMPLOYEE'S REFUSAL TO BE TREATED.

Where risks do not justify claimant's refusal to submit to operation, no full compensation. While a claimant has the option to refuse corrective surgery, he may not do so and continue to receive full compensation where it appears that the risk involved in the recommended surgery is not such as to justify claimant's refusal thereof. *Hays v. Indus. Comm'n*, 138 Colo. 334, 333 P.2d 617 (1958).

The industrial commission must determine no unusual risks before denying relief. Before the commission would be justified in denying relief to an applicant because of his refusal to submit to treatment or surgery it must appear that the proposed treatment or surgery is such as to be free of unusual risks and calculated to effect a cure. *Cain v. Indus. Comm'n*, 136 Colo. 227, 315 P.2d 823 (1957); *MGM Supply Co. v. Indus. Claim Appeals Office*, 62 P.3d 1001 (Colo. App. 2002).

The reasonableness of claimant's refusal to submit to operative treatment is a question of fact to be determined by the commission. *Overton v. City & County of Denver*, 106 Colo. 114, 102 P.2d 474 (1940); *Cain v. Indus. Comm'n*, 136 Colo. 227, 315 P.2d 823 (1957); *Hays v. Indus. Comm'n*, 138 Colo. 334, 333 P.2d 617 (1958); *MGM Supply Co. v. Indus. Claim Appeals Office*, 62 P.3d 1001 (Colo. App. 2002).

The burden of proof is on the employer to establish that a tendered operation is simple, safe, and reasonably certain to effect a cure. *Cain v. Indus. Comm'n*, 136 Colo. 227, 315 P.2d 823 (1957).

So that evidence will not support the suspension of compensation where there is no showing of a refusal to submit to surgery or that claimant persisted in any unsanitary or injurious practice which tended to imperil or retard his recovery. *Padillo v. F.H. Linneman Constr. Co.*, 29 Colo. App. 137, 479 P.2d 990 (1971).

In any event, this section specifically gives the industrial commission discretion in matters of this kind, and those seeking to attack the result must show that it abused its discretion. *Andrews v. Indus. Comm'n*, 73 Colo. 456, 216 P. 256 (1923); *Nat'l Lumber & Creosoting Co. v. Kelly*, 101 Colo. 535, 75 P.2d 144 (1937).

In the absence of an abuse of discretion, the decision of the industrial commission as to the reasonableness of a claimant's refusal to submit to corrective surgery, is not subject to revision by the courts. *Hays v. Indus. Comm'n*, 138 Colo. 334, 333 P.2d 617 (1958); *MGM Supply Co. v. Indus.*

Claim Appeals Office, 62 P.3d 1001 (Colo. App. 2002).

Claimant not to be penalized for acting on advice of personal physician. *Nat'l Lumber & Creosoting Co. v. Kelly*, 101 Colo. 535, 75 P.2d 144 (1937).

A claimant who refuses corrective surgery because of his religious convictions cannot subject his employer to greater liability than would obtain if claimant's faith permitted him to undergo surgery required. *Indus. Comm'n v. Vigil*, 150 Colo. 356, 373 P.2d 308 (1962).

On the other hand the elements of fear and anxiety may be taken into consideration by the commission as a proper basis for the award of compensation in a workmen's compensation case. *Nat'l Lumber & Creosoting Co. v. Kelly*, 101 Colo. 535, 75 P.2d 144 (1937).

Suspension of benefits not sanction. Decision to suspend worker's compensation benefits was based on inference that worker's attempt to impede testing of his alleged disability was indicative of lack of disability, and was not based on statute allowing hearing officer to impose sanctions for failure to comply with discovery. *Nova v. Indus. Claim Appeals Office*, 754 P.2d 800 (Colo. App. 1988).

Vocational rehabilitation. The right which accrues to a claimant because of the failure of the director to approve a vocational rehabilitation plan is the right not to begin complying with the plan. Once the plan is implemented and claimant voluntarily submits to it, and in the absence

of the director's express disapproval, the lack of approval by the director does not excuse the claimant's failure to cooperate. *Bacon v. Indus. Claim Appeals Office*, 746 P.2d 74 (Colo. App. 1987).

Provisions of this statute applicable to refusal to undergo vocational rehabilitation do not require that claimant be directed to cooperate with vocational rehabilitation prior to the issuance of an order to suspend claimant's receipt of benefits. *Bacon v. Indus. Claim Appeals Office*, 746 P.2d 74 (Colo. App. 1987) (decided under law in effect prior to 1987 amendment).

Applied in *Walton v. Indus. Comm'n*, 738 P.2d 66 (Colo. App. 1987).

III. EMPLOYER'S RIGHT TO SELECT PHYSICIAN.

Law reviews. For article, "A Review of Medical Issues in Worker's Compensation", see 19 Colo. Law. 667 (1990).

A rational basis exists for excluding employees of governmental entities and health care providers from the four-physician referral requirement. The exemption therefore does not violate the equal protection requirement. *Sanchez v. Indus. Claim Appeals Office*, 2017 COA 71, 411 P.3d 245.

The employer or insurer has the right in the first instance to select the physician and services requisite to proper treatment of the employee. *State Comp. Ins. Fund v. Luna*, 156 Colo. 106, 397 P.2d 231 (1964).

This section authorizes the employer to select the treating physician "in the first

instance". *Granite Constr. Co. v. Leonard*, 40 Colo. App. 20, 568 P.2d 500 (1977).

Based on the plain language of subsection (5)(a) and cases interpreting that subsection, an employer's right of first selection of a treating physician precludes an award of medical benefits for treatment received before the decedent's workers' compensation claim was filed. *Bunch v. Indus. Claim Appeals Office*, 148 P.3d 381 (Colo. App. 2006).

Where medical services are tendered to an injured employee in the first instance, the employee's secondary right of selection is lost. *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957).

Furthermore, an employer cannot give an employee carte blanche to select a different doctor, especially when the employee's selection has resulted in surgical expense to not only the employer but also the fund. *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957).

Employer or insurer may designate a medical care facility rather than an individual physician. Although subsection (5)(a) refers to the right of the employer or insurer to select a "physician", the statute's use of the singular does not, without more, establish that only a single individual may be designated. *Andrade v. Indus. Claim Appeals Office*, 121 P.3d 328 (Colo. App. 2005).

Right to select physician is independent of the right to contest liability. The employer or insurer may deny liability and

still retain the right to select a treating physician in the event they later admit liability or are found liable for the injury. *Yeck v. Indus. Claim Appeals Office*, 996 P.2d 228 (Colo. App. 1999).

If a claimant wants to change physicians, he or she has a statutory obligation to request that change in accordance with subsection (5)(a). *Yeck v. Indus. Claim Appeals Office*, 996 P.2d 228 (Colo. App. 1999).

Where employer fails to exercise its right to select treating physician and notifies employee that medical treatment will not be tendered, employee's right to select her own physician becomes vested. *Rogers v. Indus. Claim Appeals Office*, 746 P.2d 565 (Colo. App. 1987); *Brickell v. Bus. Mach., Inc.*, 817 P.2d 536 (Colo. App. 1990).

Claimant's use of another physician requires consent of the industrial commission before employer may be held liable. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 129 Colo. 353, 269 P.2d 1070 (1954); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Wishbone Rest. v. Moya*, 162 Colo. 30, 424 P.2d 119 (1967).

Employee is not required to obtain permission to consult physician chosen by employee, where employer did not offer to provide medical treatment, and where employee initially consulted physician provided by employee's insurance plan who declined to treat employee because employee's injuries were work-related.

Ruybal v. Univ. Health Scis. Ctr., 768 P.2d 1259 (Colo. App. 1988).

Notice and consent necessary to change or add physicians. The workmen's compensation act does not permit an injured employee to change physicians or to employ additional physicians without notice to his employer or its insurer and consent of the division of labor. *Pickett v. Colo. State Hosp.*, 32 Colo. App. 282, 513 P.2d 228 (1973).

A unilateral declaration of intent to change physicians is not a "request" to change physicians. Subsection (5)(a) requires a claimant to request a new physician before switching physicians, but a declaration of intent to change physicians does not meet the requirement that the claimant request a new physician. *Lutz v. Indus. Claim Appeals Office*, 24 P.3d 29 (Colo. App. 2000).

Employer's failure to respond to worker's request for authorization to seek treatment from second physician waived any objection to second physician's treatment. *Denny's Rest., Inc. v. Husson*, 746 P.2d 63 (Colo. App. 1987).

The act of the employee, in engaging his own surgeon, does not relieve the employer from all responsibility for the payment of benefits provided by law for disability incurred by the employee in an industrial accident. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 129 Colo. 353, 269 P.2d 1070 (1954); *Vanadium Corp. of Am. v. Sargent*, 134 Colo. 555, 307 P.2d 454 (1957); *Mennonite Hosp. v. Corley*, 28 Colo. App. 585, 476 P.2d 274 (1970).

Where insurer refuses to pay expenses for operation reducing disability, insurer may not benefit. If there has been a significant reduction in the percentage of permanent disability suffered by the employee due to an operation successfully performed by the employee's own physician, and the insurance carrier refuses to defray this expense, the insurer is not entitled to accept the benefits thereof which take the form of substantially reduced payments of compensation for permanent disability. *State Comp. Ins. Fund v. Luna*, 156 Colo. 106, 397 P.2d 231 (1964); *Wishbone Rest. v. Moya*, 162 Colo. 30, 424 P.2d 119 (1967).

Employer or insurer not liable for unauthorized medical expenses. When an injured employee incurs unauthorized medical expenses, the employer or its insurer is not liable for such expenses. *Pickett v. Colo. State Hosp.*, 32 Colo. App. 282, 513 P.2d 228 (1973).

An employee may engage medical services if the employer has expressly or impliedly conveyed to the employee the impression that the employee has authorization to proceed in this fashion, or, with full knowledge over a sustained period of time, has failed to object to claimant's change of physician. *Greager v. Indus. Comm'n*, 701 P.2d 168 (Colo. 1985).

Also insurer's refusal to pay claimant's unauthorized medical expenses does not entitle claimant to compensation for a higher degree of permanent disability than that which she actually suffered. *Pickett v. Colo. State Hosp.*, 32 Colo. App. 282, 513 P.2d 228 (1973).

Claimant's letter, which did not unambiguously set forth a request to have own physician treat claimant, did not require rejection by insurer as a request to be treated by claimant's own physician. Insurer's action of informing claimant, who was represented by counsel, that insurer could not communicate directly with claimant was appropriate and did not constitute a failure to respond within the meaning of § 8-43-110 (5)(a). *Brown & Root v. Indus. Claim Appeals Office*, 833 P.2d 780 (Colo. App. 1991).

However, employer's or carrier's objection to treatment by a second physician is not waived where claimant, who was represented by counsel, sent an ambiguous letter to the claims service requesting permission to obtain additional information about her condition and other doctors for more opinions, and was sent a response from the claims service informing the claimant that she would have to correspond with the claims service through her attorney. The industrial claims panel erred in setting aside the administrative law judge's finding that treatment of the claimant by an orthopedic surgeon was not authorized by default under this section. *Brown & Root v. Indus. Claim Appeals Office*, 833 P.2d 780 (Colo. App. 1992).

This section requires only that a claimant request permission for alternative care from the employer or the insurer. It does not restrict the request to the insurer if an employer is separately insured. *Denny's Rest., Inc. v. Husson*, 746 P.2d 63 (Colo. App. 1987).

Initial denial by insurer of claimant's request for a change of physician did not negate its obligation to respond to subsequent requests for a change of physician and failure to do so pursuant to subsection (5)(a) within 20 days of request rendered denial waived. *Jacoby v. Metro Taxi, Inc.*, 851 P.2d 245 (Colo. App. 1993).

No authority exists for an employer to appoint an agent, other than an insurer, and unilaterally vest it with the rights and responsibilities assigned either to employers or insurers by the Workmen's Compensation Act. *Denny's Rest., Inc. v. Husson*, 746 P.2d 63 (Colo. App. 1987).

Emergency creates exception to requirements of subsection (5)(a), relieving employee of duty to notify employer or await employer's choice of physician before seeking medical attention. *Sims v. Indus. Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990).

Once emergency has ended, employee must notify employer of need for further treatment and employer may select physician, or services are not compensable. *Sims v. Indus. Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990).

Panel properly construed subsection (5)(a) to require that an insurer respond to an authorization request within 20 days of mailing of the written request. *Gianetto Oil v. Indus. Claim Appeals Office*, 931 P.2d 570 (Colo. App. 1996).

Claimant was entitled to a change in physicians after having reached maximum medical improvement to the

extent that the change was for purposes of obtaining future medical treatment to relieve the effects of her industrial injury or to prevent future deterioration of her work-related condition. *Story v. Indus. Claim Appeals Office*, 910 P.2d 80 (Colo. App. 1995).

A claimant's physician, as an accredited provider, does not possess an express or implied statutory right to treat any claimant for his or her work-related injury or to provide further treatment. *Carlson v. Indus. Claim Appeals Office*, 950 P.2d 663 (Colo. App. 1997).

A governmental employer's on-site health care facility meets applicable state requirements to provide health care services on the employer's premises when: (1) a single doctor is scheduled to be on-site only two days per week but is available at other times; and (2) does not supervise the administration of the clinic but does provide medical supervision over the clinic's operation. *Sanchez v. Indus. Claim Appeals Office*, 2017 COA 71, 411 P.3d 245.

IV. EMPLOYEE'S REFUSAL TO SUBMIT TO EXAM OR EVALUATION.

An administrative law judge may impose additional penalties pursuant to § 8-43-304 even though this section provides a specific penalty. *Kennedy v. Indus. Claim Appeals Office*, 100 P.3d 949 (Colo. App. 2004).

It was proper for benefits to be restored after a suspension when an employee initially refused to submit to an examination but the employee and the employer later

stipulated to an examination and no order was entered requiring the employee to submit to an examination. Magnetic Eng'g,

Inc. v. Indus. Claim Appeals Office, 5 P.3d 385 (Colo. App. 2000).

8-43-405. Payment as discharge of liability - conflicting claims.

Payment of death benefits to one or more dependents shall protect and discharge to that extent all compensation under articles 40 to 47 of this title unless and until any other person claiming to be a dependent has given the division notice of said person's claim and until the division has notified the employer or the employer's insurance carrier of such claim. In such case, the director or an administrative law judge shall determine the respective rights of said rival claimants, and thereafter such death benefits shall be paid to such dependents as the director or the administrative law judge may find so entitled under the provisions of said articles.

Source: **L. 90:** Entire article R&RE, p. 515, § 1, effective July 1. **L. 94:** Entire section amended, p. 1880, § 15, effective June 1.

Editor's note: This section is similar to former § 8-50-117 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-43-405 is similar to § 8-50-117 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

The purpose of this section is, of course, to enable the employer, when an award has been made, to rest upon it and make his payments in safety, secure that other

dependents could not appear and say he had paid the wrong person. Colo. Fuel & Iron Co. v. Indus. Comm'n, 74 Colo. 228, 220 P. 498 (1923).

And the employer is not bound to search out the dependents. The dependents must appear and make their rights known. Colo. Fuel & Iron Co. v. Indus. Comm'n, 74 Colo. 228, 220 P. 498 (1923).

8-43-406. Compensation in lump sum.

(1) At any time after six months have elapsed from the date of injury, the claimant may elect to take all or any part of the compensation awarded in a lump sum by sending written notice of the election and the amount of benefits requested to the carrier or the noninsured or self-insured employer. The carrier or self-insured employer shall file the calculation of the lump sum due and notice that the lump sum has been paid to the claimant within ten days after the election. When the claimant is unrepresented, the director shall calculate amounts to be paid based on the present worth of partial payments, considering interest at four percent per annum, and less a deduction for the contingency of death. The director shall make the method of calculation of lump sums available to all parties at all times, including posting the information on the division's website. Neither the director nor an administrative law judge shall in any way attempt to condition the lump sum payment on the claimant waiving the right to pursue permanent total disability benefits.

(2) If a claimant who has been awarded compensation is the injured worker or the sole dependent of a deceased injured worker, the aggregate of all lump sums granted to the claimant must not exceed eighty thousand eight hundred sixty-eight dollars and ten cents.

(3) If a claimant who has been awarded compensation is one of multiple dependents of a deceased injured worker, the aggregate of all lump sums granted to the claimant must be a proportionate share, as determined by the director or administrative law judge, of an amount not to exceed one hundred sixty-one thousand seven hundred thirty-four dollars and fifteen cents.

(4) For injuries sustained on or after January 1, 2014, the director shall adjust the lump-sum limits set forth in subsections (2) and (3) of this section on July 1, 2014, and each July 1 thereafter, by the percentage of the adjustment made by the director to the state average weekly wage pursuant to section 8-47-106. A claimant who has received compensation under this section is not entitled to any further compensation under this section related to the claim as a result of an adjustment by the director pursuant to this subsection (4).

Source: **L. 90:** Entire article R&RE, p. 515, § 1, effective July 1. **L. 91:** (1) amended, p. 1352, § 6, effective May 29; (2) amended, p. 1326, § 41, effective July 1. **L. 2007:** Entire section amended, p. 1474, § 9, effective May 30. **L. 2010:** (1) amended, (SB 10-187), ch. 310, p. 1459, § 8, effective July 1. **L. 2014:** (2) amended and (3) and (4) added, (SB 14-191), ch. 316, p. 1375, § 9, effective July 1.

Editor's note: This section is similar to former § 8-52-103 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-43-406 is similar to § 8-52-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions under this section to the director of the division of labor.

Subsection (1) is not unconstitutionally vague and does not constitute an unconstitutional delegation of power to an administrative agency. A "best interests" standard has been relied on by the general assembly in other instances to govern the resolution of conflicting interests. *Warren v. S. Colo. Excavators*, 862 P.2d 966 (Colo. App. 1993).

Since the general assembly may place valid limitations upon any remedy, the section does not violate § 6 of article II of the Colorado Constitution. *Warren v. S. Colo. Excavators*, 862 P.2d 966 (Colo. App. 1993).

This section is to be construed liberally for the protection of the employee. *Employers' Mut. Ins. Co. v. Indus. Comm'n*, 65 Colo. 283, 176 P. 314 (1918).

And there is no fixed rule as to the allowance of a lump sum. No fixed rule

can be laid down for determining whether weekly compensation or a lump sum should be allowed a claimant under this section. In most cases the controlling factor must be the character, capacity, and business ability of the claimant. *Kokotovich v. Indus. Comm'n*, 69 Colo. 572, 195 P. 646 (1921); *Rinehart v. Indus. Comm'n*, 719 P.2d 729 (Colo. App. 1986).

For the allowance of a lump sum award is left to the discretion of the commission.

The award may be in part a lump sum, and if the commission thinks it is for the best interest of the parties, the balance due may be ordered to be paid monthly. The matter is left to the discretion of the commission and not subject to review. *Indus. Comm'n v. Big Six Coal Co.*, 72 Colo. 377, 211 P. 361 (1922); *Rinehart v. Indus. Comm'n*, 719 P.2d 729 (Colo. App. 1986).

Where claimant's primary purpose in requesting a partial lump sum settlement was to pay his attorney fees in a single payment, the commission did not act in excess of its statutory authority in considering the reasonableness of the attorney fees in concluding that it should deny a lump sum settlement. *Rinehart v. Indus. Comm'n*, 719 P.2d 729 (Colo. App. 1986) (decided prior to 1986 abolishment of industrial commission).

Also, within commission's discretion to determine amount and manner of payment of lump sum. *Indus. Comm'n v. Big Six Coal Co.*, 72 Colo. 377, 211 P. 361 (1922).

Furthermore, a lump sum award becomes a vested right which survives. *McBride v. Indus. Comm'n*, 97 Colo. 166, 49 P.2d 386 (1935).

Phrase "the aggregate of all lump sums granted" as used in subsection (2) requires that the aggregate of all lump sum payments, whether they be for permanent total disability and/or permanent partial disability, be considered in determining the limitation. *Ritter v. Indus. Comm'n*, 44 Colo. App. 32, 615 P.2d 40 (1980).

To interpret subsection (2) retrospectively could create chaos in the operations of workmen's compensation insurers whose premium rates and loss reserves are computed on their potential liability inherent in the statutory scheme that was in effect upon issuance of the insurance. *Eight Thousand W. Corp. v. Stewart*, 37 Colo. App. 372, 546 P.2d 1281 (1976).

The limit on the aggregate of all lump sums granted to a claimant in subsection (2) of this section, as amended, is procedural and prospective and, thus, applies to transactions that occur after its enactment even though the claimant applied for and was granted a lump-sum payment before subsection (2) was amended in 2007. *Nelson v. Indus. Claim Appeals Office*, 219 P.3d 416 (Colo. App. 2009), *aff'd sub nom. Specialty Rests. Corp. v. Nelson*, 231 P.3d 393 (Colo. 2010).

The apportionment of death benefits under § 8-42-121 necessarily determines and controls a dependent's proportionate share of the maximum lump sum allowed under subsection (3) of this section. *Amaya v. Indus. Claim Appeals Office*, 2022 COA 131, 524 P.3d 856.

Statute as basis for jurisdiction. See *Tavenor v. Royal Indem. Co.*, 84 Colo. 521, 272 P. 3 (1928).

8-43-407. Election to waive vocational rehabilitation benefits and become subject to permanent partial disability provisions.

In all cases arising under articles 40 to 47 of this title prior to July 1, 1987, the employee, the employer, and, if insured, the insurance carrier may elect, upon unanimous agreement, in writing to waive vocational rehabilitation which was awarded pursuant to section 8-49-101 as it existed prior to July 1, 1987, and become subject to the permanent partial disability provisions pursuant to section 8-42-110, as said section existed prior to July 1, 1991. Such election shall be made in a form prescribed by the director and shall not affect payments made prior to the filing of such agreement. Failure to agree to the options available under the provisions of this section shall not be evidence of bad faith in any future litigation by either party.

Source: L. 90: Entire article R&RE, p. 515, § 1, effective July 1. L. 92: Entire section amended, p. 2165, § 2, effective June 2.

Editor's note: This section is similar to former § 8-51-108.5 as it existed prior to 1990.

8-43-408. Default of employer - additional liability.

(1) If an employer is subject to articles 40 to 47 of this title 8 and, at the time of an injury, has not complied with the insurance provisions of those articles or has allowed the required insurance to terminate, or has not effected a renewal thereof, the employee, if injured, or, if killed, the employee's dependents may claim the compensation and benefits provided in those articles.

(2) In all cases where compensation is awarded under the terms of this section, the director or an administrative law judge of the division shall compute and require the employer to pay to a trustee designated by the director or administrative law judge an amount equal to the present value of all unpaid compensation or benefits computed at the rate of four percent per annum; or, in lieu thereof, such employer, within ten days after the date of such order, shall file a bond with the director or administrative law judge signed by two or more responsible sureties to be approved by the director or by some surety company authorized to do business within the state of Colorado. The bond shall be in such form and amount as prescribed and fixed by the director and shall guarantee the payment of the compensation or benefits as awarded. The filing of any appeal, including a petition for review, shall not relieve the employer of the obligation under this subsection (2) to pay the designated sum to a trustee or to file a bond with the director or administrative law judge.

(3) A certified copy of any award of the director, administrative law judge, or panel ordering the payment of compensation entered in such case may be filed with the clerk of the district court of any county in this state at any time after the order of the administrative law judge awarding compensation, and the same shall be recorded by said clerk in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Upon the reversal, setting aside, modification, or vacation of said order or award and upon payment to the trustee or furnishing of bond in accordance with the terms of this section, then, upon certification thereof by the director, administrative law judge, or panel, said record in the judgment book and the entry in the judgment docket shall be vacated, and any execution thereon shall be recalled.

(4) Any employer who fails to comply with a lawful order or judgment issued pursuant to subsection (2) or (3) of this section is liable to the employee, if injured, or, if killed, said employee's dependents, in addition to the amount in the order or judgment, for an amount equal

to fifty percent of such order or judgment or one thousand dollars, whichever is greater, plus reasonable attorney fees incurred after entry of a judgment or order.

(5) In addition to any compensation paid or ordered in accordance with this section or articles 40 to 47 of this title 8, an employer who is not in compliance with the insurance provisions of those articles at the time an employee suffers a compensable injury or occupational disease shall pay an amount equal to twenty-five percent of the compensation or benefits to which the employee is entitled to the Colorado uninsured employer fund created in section 8-67-105.

(6) An employer who fails to comply with a lawful order or judgment issued pursuant to subsection (2) or (3) of this section shall be ordered to pay an amount equal to twenty-five percent of the compensation or benefits to which the employee is entitled to the Colorado uninsured employer fund created in section 8-67-105 in addition to any other amount ordered pursuant to this section or articles 40 to 47 of this title 8.

Source: **L. 90:** Entire article R&RE, p. 516, § 1, effective July 1. **L. 92:** (2) and (3) amended, p. 2166, § 3, effective June 2. **L. 2017:** (1) amended and (5) and (6) added, (HB 17-1119), ch. 317, p. 1706, § 7, effective July 1.

Editor's note: This section is similar to former § 8-44-107 as it existed prior to 1990.

ANNOTATION

I. General Consideration.

II. Fifty Percent Penalty.

III. Requirement of Bond.

IV. Entry of Judgment.

"Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

I. GENERAL CONSIDERATION.

Law reviews. For article, "HB 17-1119 Brings Reform to Workers' Compensation", see 46 Colo. Law. 58 (Nov. 2017).

Annotator's note. Since § 8-43-408 is similar to § 8-44-107 as it existed prior to the 1990 repeal and reenactment of the

The penalty provisions included in this section extend only to the failure to secure insurance and do not apply to the violation of other insurance-related provisions. U.S. Fidelity & Guar., Inc. v. Kourlis, 868 P.2d 1158 (Colo. App. 1994).

The plain language of subsection (1) recognizes that there are statutory limitations on various types of workers'

compensation, however, it is also a provision for additional compensation for the amounts already provided. Merchants Oil, Inc. v. Anderson, 897 P.2d 895 (Colo. App. 1995).

This section is designed to encourage cooperation with the mandatory insurance requirements and to provide for additional compensation when the employer neglects or refuses to purchase insurance. Merchants Oil, Inc. v. Anderson, 897 P.2d 895 (Colo. App. 1995).

Because employer secured compensation for claimant, employer's failure to give the notice described in § 8-44-101 (1)(b) is not grounds for the imposition of penalties under subsection (1) of this section. McManus v. Indus. Claim Appeals Office, 81 P.3d 1074 (Colo. App. 2003).

Applied in Smart v. Radetsky, 86 Colo. 93, 278 P. 609 (1929); Melnick v. Indus. Comm'n, 656 P.2d 1318 (Colo. App. 1982).

II. FIFTY PERCENT PENALTY.

This section provides for 50% increase in compensation in event of employer's failure to comply with insurance provisions of the act. Index Mines Corp. v. Indus. Comm'n, 82 Colo. 272, 259 P. 1036 (1927); DeBeque Producers' Ass'n v. Indus. Comm'n, 83 Colo. 158, 262 P. 1019 (1928); Connell v. Cont'l Cas. Co., 87 Colo. 573, 290 P. 274 (1930); Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702 (1959); Tri-State Ins. Co. v. Indus. Comm'n, 151 Colo. 494, 379 P.2d 388 (1963).

And courts have no discretion in the imposition of the penalty of 50% imposed for failure to carry compensation insurance. Kamp v. Disney, 110 Colo. 518, 135 P.2d 1019 (1943).

The liability imposed by this section is not determined by good faith or willful neglect. The only question is: Has the employer insurance? Where the employer has none, its liability for the additional compensation necessarily follows. McKune v. Indus. Comm'n, 94 Colo. 523, 31 P.2d 322 (1934); Anderson v. Dutch Maid Bakeries, 106 Colo. 201, 102 P.2d 740 (1940).

Where a subcontractor is uninsured, and the primary contractor is insured, the contractor is the only employer contemplated by this section. Herriott v. Stevenson, 172 Colo. 379, 473 P.2d 720 (1970).

And where the primary contractor is insured, the 50% penalty does not apply, regardless of the fact that the subcontractor is uninsured. Herriott v. Stevenson, 172 Colo. 379, 473 P.2d 720 (1970).

Section does not violate Colo. Const., art. II, § 20. This section, providing a 50% increase in awards where no insurance is carried by the employer, is not unconstitutional as violative of Colo. Const., art. II, § 20. The section is not penal in its nature, but simply provides additional compensation in the class of cases mentioned. Flick v. Indus. Comm'n, 78 Colo. 117, 239 P.2d 1022 (1925).

Moreover, it is not "class legislation" and is not unconstitutional on that

ground. Flick v. Indus. Comm'n, 78 Colo. 117, 239 P. 1022 (1925).

But this section does not provide for 50% increase in medical payments. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

And the words "compensation or benefits" in this section cannot be construed as including medical expenses. Indus. Comm'n v. Hammond, 77 Colo. 414, 236 P. 1006 (1925); Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

For § 8-49-101 imposes upon an employer the duty of furnishing medical, surgical, nursing and hospital treatment and supplies and apparatus for a fixed time and to a fixed minimum regardless of the compensation allowed, and where such bills are not paid but are included in the award they are paid direct to those who have rendered the service or furnished the supplies. Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

No election of remedies where claimant has no legal action. Where claimant has no legal cause of action under this section against the subcontractor in whose employ the deceased was at the time of injury, the bringing of an action does not constitute an election of remedies, and the claimant is not estopped by reason thereof from recovering compensation. Hartford Accident & Indem. Co. v. Clifton, 117 Colo. 547, 190 P.2d 909 (1948).

For where an employer has workmen's compensation insurance coverage, an employee has no election to make under

this section. Sharmar Nursing Home v. Indus. Comm'n, 160 Colo. 197, 416 P.2d 161 (1966).

But an employee whose employer's workmen's compensation insurance coverage has lapsed, has alternative remedies due to his employer's noncompliance with the act: He can sue at common law or he can claim workmen's compensation benefits plus a 50% penalty for the noncompliance of his employer. Sharmar Nursing Home v. Indus. Comm'n, 160 Colo. 197, 416 P.2d 161 (1966).

The concept of primary reimbursement does not impliedly grant a cause of action to third parties against an uninsured employer. Absent a specific provision in the act governing no-fault insurance or in the Workers' Compensation Act, the general assembly may not be deemed to have created a private tort remedy favoring no-fault carriers for an employer's failure to obtain workers' compensation coverage. United Sec. Ins. Co. v. Sciarrota, 885 P.2d 273 (Colo. App. 1994).

The term "election" in the present context connotes a conscious choice between one of two or more distinct and separate alternatives. It applies to a situation where different remedies are provided for a given wrong upon one and the same set of facts. Sharmar Nursing Home v. Indus. Comm'n, 160 Colo. 197, 416 P.2d 161 (1966).

Factual question as to election of remedies. Where plaintiff contends that employer coerced plaintiff to believe that defendant was insured at the time of

workmen's compensation filing and acceptance of benefits, and that plaintiff filed a civil action as soon as he became aware that civil relief was available, the plaintiff presented a factual question as to whether he made a valid election to pursue his workmen's compensation remedy. *Baker v. Redystick Prods. Co.*, 674 P.2d 1011 (Colo. App. 1983).

Pursuit of one remedy bars the other. If an employee of a nursing home whose workmen's compensation insurance coverage has lapsed elects to pursue one of the remedies under this section, recovery via the other is barred. *Sharman Nursing Home v. Indus. Comm'n*, 160 Colo. 197, 416 P.2d 161 (1966).

Deduction of compensation for violation of a safety rule made after the addition under this section. Under § 8-52-104 50% of the compensation to which an injured employee is entitled may be deducted for the violation of a reasonable safety rule, and where the compensation is increased 50% for failure of employer to carry insurance, under this section, deduction for violation of the safety rule is to be made after the addition of the 50% for failure to insure. *McKune v. Indus. Comm'n*, 94 Colo. 523, 31 P.2d 322 (1934).

Insurance company's failure to cover liability as promised does not affect employee's right to recover from employer. The fact that an insurance company assured an employer that his workmen's compensation insurance policy would be made to cover injuries to employees engaged in work at a distant

location by notation on its books, which notation was not made, does not affect the rights of an employee to recover from the employer compensation for injuries received, the employer's remedy, if any, being by an action against the insurance company. *Connell v. Cont'l Cas. Co.*, 87 Colo. 573, 290 P. 274 (1930).

Realty company's construction activities not within insurance coverage. A real estate company's home construction operation is an unrelated business activity not included within its insurance policy with the state compensation insurance fund. *Evergreen Inv. & Realty Co. v. Baca*, 666 P.2d 166 (Colo. App. 1983).

Fifty percent increase in benefits pursuant to subsection (1) not penal in nature, but rather simply a provision for additional compensation. *Eachus v. Cooper*, 738 P.2d 383 (Colo. App. 1986).

III. REQUIREMENT OF BOND.

Requirement of bond is for advantage of employer and he is not obliged to give such bond unless he elects to do so. *Indus. Comm'n v. Hammond*, 77 Colo. 414, 236 P. 1006 (1925).

IV. ENTRY OF JUDGMENT.

Claim within section's purview absent determination of claimant's eligibility for compensation. Since a claim arises at the time of the accident for purposes of the workmen's compensation act, it is a claim within the purview of § 15-12-803, notwithstanding the fact that a department of labor referee has not made a determination in a workmen's compensation proceeding

concerning the claimant's eligibility for compensation nor an order entered pursuant to subsection (3) of this section. *First Nat'l Bank v. Long*, 44 Colo. 317, 616 P.2d 180 (1980).

Reduction to judgment of award. The award having become final by reason of respondent's failure to pursue administrative review, it is proper for the claimant to reduce the award to judgment. *Hard v. Indus. Comm'n*, 174 Colo. 51, 482 P.2d 353 (1971).

Entry of judgment by clerk constitutional. Entry of judgment by a clerk

of the district court on an award does not violate § 1 of art. VI, Colo. Const. *Ontario Mining Co. v. Indus. Comm'n*, 86 Colo. 206, 280 P. 483 (1929).

For the act of a clerk in entering judgment on an award is a ministerial act and not the exercise of a judicial function. The judgment so entered is not a judgment rendered, but a judgment of the industrial commission, which thenceforth has the effect of a judgment of the district court. *Ontario Mining Co. v. Indus. Comm'n*, 86 Colo. 206, 280 P. 483 (1929).

8-43-409. Defaulting employers - investigation - penalties - enjoined from continuing business - fines - procedure - definition - repeal.

(1) An employer subject to the terms and provisions of articles 40 to 47 of this title 8 that fails to insure or to keep the insurance required by articles 40 to 47 of this title 8 in force, allows the insurance to lapse, or fails to effect a renewal of the insurance shall not continue business operations while the default in effective insurance continues. Upon receiving information that an employer is in default of its insurance obligations, the director shall investigate. As part of the director's investigation, the director may verify that all employees of that employer are insured through the employer's workers' compensation plan. The director may forward any workers' compensation coverage issue to the employer's workers' compensation carrier for further investigation by the carrier. Thereafter, if necessary, the director may set the issue of the employer's default for hearing in accordance with hearing time schedule and procedures set forth in articles 40 to 47 of this title 8 and rules adopted by the director. Upon a finding that the employer is in default of its insurance obligations, the director shall take either or both of the following actions:

(a) Order the employer in default to cease and desist immediately from continuing its business operations during the period such default continues;

(b) For every day that the employer fails or has failed to insure or to keep the insurance required by articles 40 to 47 of this title in force, allows or has allowed the insurance to lapse, or fails or has failed to effect a renewal of such coverage, impose a fine of:

(I) Not more than two hundred fifty dollars for an initial violation; or

(II) Not less than two hundred fifty dollars or more than five hundred dollars for a second and any subsequent violation. For purposes of this subparagraph (II) only, if an employer has been fined pursuant to subparagraph (I) of this paragraph (b) and the director determines that substantially the same people or entities were involved in forming a subsequent employer, the initial violation referred to in subparagraph (I) of this paragraph (b) shall be deemed to have already occurred with regard to violations committed by the subsequent employer.

(1.5) (a) A violation that occurs more than seven years after the date the preceding violation ended is subject to a fine up to the maximum amount permitted pursuant to subsection (1)(b)(I) of this section.

(b) After any fines have been imposed pursuant to subsection (1)(b)(I) or (1)(b)(II) of this section, the director has the discretion to enter into a settlement agreement and accept as consideration an amount less than the minimum fine allowed by subsection (1)(b)(II) of this section.

(c) Notwithstanding articles 40 to 47 of this title 8, fines pursuant to this section may be imposed only for periods that take place no more than three years prior to the date an employer is notified by the division of a potential violation of the requirements of articles 40 to 47 of this title 8.

(d) This subsection (1.5) is repealed, effective September 1, 2033. Before its repeal, this subsection (1.5) is scheduled for review in accordance with section 24-34-104.

(2) A cease-and-desist order issued or fine imposed by the director under subsection (1) of this section shall include specific findings of fact that reflect:

(a) The employer received notice of a hearing, when applicable;

(b) The employer employs employees for whom it must carry workers' compensation insurance under the provisions of articles 40 to 47 of this title;

(c) The employer does not or did not have a policy of workers' compensation insurance in effect; and

(d) The employer continues or continued to operate its business in the absence of such coverage.

(3) Notwithstanding any other provision of articles 40 to 47 of this title, after the entry of a cease-and-desist order and upon the request of the director, the attorney general shall immediately institute proceedings for injunctive relief against the employer in the district court of any county in this state where such employer does business. In any such district court proceeding, a certified copy of any cease-and-desist order entered by the director in accordance with the provisions of subsection (1) of this section based upon evidence in the record shall be prima facie evidence of the facts found in such record. Such injunctive relief may include the

issuance of a temporary restraining order under rule 65 of the Colorado rules of civil procedure, which order shall enjoin the employer from continuing its business operations until it has procured the required insurance or has posted adequate security with the court pending the procurement of such insurance. The court, in its discretion, shall determine the amount that shall constitute adequate security.

(4) The issuance of an order to cease and desist, the imposition of a fine pursuant to subsection (1) of this section, or the issuance of an order for injunctive relief against an employer for failure to insure or to keep insurance in force as required by articles 40 to 47 of this title shall be the penalty for such failure within the meaning of section 8-43-304 (1) and such penalty shall be in addition to the increase in benefits that section 8-43-408 requires.

(5) The director or administrative law judge shall report to the division each time a fine is imposed pursuant to subsection (1) of this section. Each such report shall include the amount of the fine and the name of the offending party.

(6) A certified copy of any final order of the director ordering the payment of a fine imposed pursuant to subsection (1) of this section may be filed with the clerk of the district court of any county in this state at any time after the period of time provided by articles 40 to 47 of this title for appeal or seeking review of the order has passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have been exhausted. The party filing the order shall at the same time file a certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the filing party's certificate in the judgment book of the court and entry thereof made in the judgment docket, and it shall thereafter have all the effect of and constitute a judgment of the district court, and execution may issue thereon from said court as in other cases. Any such order may be filed by and in the name of the director.

(7) Fines collected pursuant to this section on or after July 1, 2018, shall be transmitted to the state treasurer, who shall credit the total amount of the fine to the Colorado uninsured employer fund, created in section 8-67-105.

(8) As used in this section, "construction site" means a location where a structure that is attached or will be attached to real property is constructed, altered, or remodeled.

Source: L. 90: Entire article R&RE, p. 516, § 1, effective July 1. L. 91: Entire section amended, p. 1326, § 42, effective July 1. L. 93: Entire section amended, p. 1279, § 1, effective June 6. L. 98: (1), (2), and (4) amended and (5) to (7) added, p. 161, § 1, effective April 6. L. 2004: IP(1) amended and (8) added, p. 614, § 1, effective August 4. L. 2005: (1), IP(2), (2)(c),

(2)(d), and (7) amended, p. 198, § 1, effective July 1. **L. 2009:** IP(2) and (2)(a) amended, (SB 09-070), ch. 49, p. 176, § 4, effective August 5. **L. 2017:** (1.5) added and (7) amended, (HB 17-1119), ch. 317, p. 1707, § 8, effective July 1. **L. 2022:** (1.5)(d) amended, (HB 22-1262), ch. 89, p. 424, § 1, effective April 12. **L. 2026:** IP(1) amended, (SB 26-186), ch. 315, p. 1853, § 16, effective August 12.

Editor's note: This section is similar to former § 8-52-110 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "HB 17-1119 Brings Reform to Workers' Compensation", see 46 Colo. Law. 58 (Nov. 2017).

Subsection (1) does not violate an employer's right to due process by requiring that the employer timely request a prehearing conference as a prerequisite to an administrative hearing. The statute, as clarified by the notice to show compliance, provides an employer with the opportunity to respond and present supporting evidence of the employer's compliance or exempt status. Therefore, it affords the necessary procedural protections and does not violate the employer's right to due process. *Kuhndog, Inc. v. Indus. Claim Appeals Office*, 207 P.3d 949 (Colo. App. 2009).

When determining whether a fine imposed for an employer's failure to

maintain workers' compensation insurance is constitutionally excessive under the eighth amendment, the employer's ability to pay should be considered. *Dami Hosp. v. Indus. Claim Appeals Office*, 2017 COA 21, 457 P.3d 621, aff'd in part, rev'd in part on other grounds sub nom. *Colo. Dept. of Labor & Emp't v. Dami Hosp.*, 2019 CO 47M, 442 P.3d 94.

In evaluating whether a fine imposed against an employer for failing to maintain workers' compensation insurance is constitutionally excessive, the relevant inquiry is whether each per diem fine is grossly disproportionate to the violation, and not whether the aggregate amount of fines imposed is excessive. *Colo. Dept. of Labor & Emp't v. Dami Hosp.*, 2019 CO 47M, 442 P.3d 94.

8-43-410. Right to compensation operates as lien - interest on award.

(1) The right of compensation granted by articles 40 to 47 of this title and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer or the employer's insurer or both as may be allowed by law for a claim for unpaid wages for labor.

(2) Every employer or insurance carrier of an employer shall pay interest at the rate of eight percent per annum upon all sums not paid upon the date fixed by the award of the director or administrative law judge for the payment thereof or the date the employer or insurance carrier became aware of an injury, whichever date is later. Upon application and satisfactory showing to the director or administrative law judge of the valid reasons therefor, said director or administrative law judge, upon such terms or conditions as the director or administrative law judge may determine, may relieve such employer or insurer from the payment of interest after the date of the order therefor; and proof that payment of the amount fixed has been offered or tendered to the person designated by the award shall be such sufficient valid reason.

Source: **L. 90:** Entire article R&RE, p. 517, § 1, effective July 1. **L. 94:** (2) amended, p. 1880, § 16, effective June 1.

Editor's note: This section is similar to former § 8-52-109 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

Annotator's note. Since § 8-43-410 is similar to § 8-52-109 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Interest is a matter of statutory right and is not discretionary with the director. *Bourn v. T & T Loveland Chinchilla Ranch, Inc.*, 32 Colo. App. 315, 514 P.2d 787 (1973); *Beatrice Foods Co., Inc. v. Padilla*, 747 P.2d 685 (Colo. App. 1987).

Interest on unpaid sums as well as the basic award is not due and payable until the award is final; however, the amount of interest is calculated from "the date fixed by the award of the director for the payment thereof". *Bourn v. T & T Loveland Chinchilla Ranch, Inc.*, 32 Colo. App. 315, 514 P.2d 787 (1973).

Interest is to be paid on each payment from the date that each payment was due. *Beatrice Foods Co., Inc. v. Padilla*, 747 P.2d 685 (Colo. App. 1987).

Good faith belief that one will prevail in pending litigation is insufficient to warrant waiver of interest. *Beatrice Foods Co., Inc. v. Padilla*, 747 P.2d 685 (Colo. App. 1987).

The subsequent injury fund is an "employer or insurance carrier of an

employer" under the provisions of subsection (2) and is liable for interest on compensation. Providing subsequently injured workers with the full value of their benefits requires payment of interest when payment of benefits is delayed. Subsequent Injury Fund v. Trevethan, 809 P.2d 1098 (Colo. App. 1991).

Relief from interest discretionary. Only portion of this statute which is discretionary is whether, upon application and satisfactory showing, the director sees fit to relieve the employer or the insurer from interest payments. Bourn v. T & T Loveland Chinchilla Ranch, Inc., 32 Colo. App. 315, 514 P.2d 787 (1973).

Upon application and satisfactory showing, the director has discretionary authority to relieve the employer or insurer from interest payments. Harrison W. Corp. v. Hicks' Claimants, 185 Colo. 142, 522 P.2d 722 (1974).

Interest assessed pursuant to this section is not a penalty but is a method to insure that the claimant receives the full value of the compensation to which he or she is entitled. Subsequent Injury Fund v. Indus. Claim Appeals Office, 859 P.2d 276 (Colo. App. 1993); Subsequent Injury Fund v. Indus. Claim Appeals Office, 899 P.2d 220 (Colo. App. 1994).

Applied in In re Brandt v. Indus. Comm'n, 648 P.2d 676 (Colo. App. 1982).

PART 5

UTILIZATION REVIEW PROCESS - INDEPENDENT MEDICAL EXAMINATIONS

8-43-501. Utilization review process - legislative declaration - cash fund - rules.

(1) The general assembly hereby finds and determines that insurers and self-insured employers should be required to pay for all medical services pursuant to this article which may be reasonably needed at the time of an injury or occupational disease to cure and relieve an employee from the effects of an on-the-job injury. However, insurers and self-insured employers should not be liable to pay for care unrelated to a compensable injury or services which are not reasonably necessary or not reasonably appropriate according to accepted professional standards. The general assembly, therefore, hereby declares that the purpose of the utilization review process authorized in this section is to provide a mechanism to review and remedy services rendered pursuant to this article which may not be reasonably necessary or reasonably appropriate according to accepted professional standards.

(2) (a) An insurer, self-insured employer, or claimant may request a review of services rendered pursuant to this article 8 by a health-care provider. Requests for utilization review shall be submitted on forms adopted by the director by rule. At the time of submission of a review

request, the requester shall pay the division a fee prescribed by the director by rule. The fee must cover the division's administrative costs and the costs of compensating utilization review committee members. If a claimant is successful in a utilization review case brought pursuant to this section, the division shall reimburse the fee charged pursuant to this subsection (2)(a) and assess it against the insurer or self-insured employer. The state treasurer shall credit fees collected pursuant to this section to the utilization review cash fund, which fund is created. Money in the utilization review cash fund is continuously appropriated to the division for the purpose of administering the utilization review program and may not revert to the general fund at the end of any fiscal year. The division shall provide to any claimant, insurer, or self-insured employer a notice that a case is to be reviewed and that the claimant may be examined as a result of the review. The claimant, insurer, or self-insured employer has thirty days from the date of service of the notice to examine the medical records submitted by the party who requested the review and may add medical records to the utilization review file that the party believes may be relevant to the utilization review. The division shall maintain a special file for utilization review cases. The file shall be made accessible only to interested parties in a utilization review case and shall not otherwise be open to any person.

(b) Prior to submitting a request for a utilization review pursuant to this section, an insurer, self-insured employer, or claimant shall hire a licensed medical professional to review the services rendered in the case. A report of the review shall be submitted with all necessary medical records, reports, and the request for utilization review.

(c) A claimant may request a utilization review pursuant to this section if the claimant has been refused a request pursuant to section 8-43-404 (5) to have a personal physician or chiropractor attend the claimant. A claimant requesting a utilization review pursuant to this paragraph (c) shall file the request on forms promulgated by the director by rule and shall pay the fee required by paragraph (a) of this subsection (2).

(d) As used in this section only, "medical records" means documents and transcripts of information obtained from a patient or his or her medical professional that are related to the patient's medical diagnosis, treatment, and care.

(e) When an insurer, self-insured employer, or claimant requests utilization review, no other party shall request a hearing pursuant to section 8-43-207 until the utilization review proceedings have become final, if such hearing request concerns issues about a change of physician or whether treatment is medically necessary and appropriate.

(f) Once a utilization review proceeding has become final and no longer subject to appeal, the final disposition of the issues in such proceeding shall be binding on the parties and preclude a contrary ruling on such issues in a subsequent hearing under section 8-43-207 unless a preponderance of evidence is shown.

(3) (a) The director, with input from the medical director serving pursuant to section 8-42-101 (3.6)(n), shall appoint members of utilization review committees for purposes of this section and section 8-42-101 (3.6). The director shall establish committees based on the different areas of health-care practice for which requests for utilization review may be made. The director shall establish the qualifications for members of the different committees and the areas of health-care practice in which each such committee shall conduct requested utilization reviews. Cases of requested utilization review shall be referred to committees appointed pursuant to this subsection (3) by the director based upon the areas of health-care practice for which each committee is appointed.

(b) Each committee established pursuant to paragraph (a) of this subsection (3) shall be composed of three members. Committee members shall be compensated for their time by the division out of moneys in the utilization review cash fund, created in paragraph (a) of subsection (2) of this section. Any member of a committee appointed pursuant to this subsection (3) shall be immune from criminal liability and from suit in any civil action brought by any person based upon an action of such a committee, if such member acts in good faith within the scope of the function of the committee, has made reasonable effort to obtain the facts of the matter as to which action is taken, and acts in the reasonable belief that the action taken is warranted by the facts. The immunity provided by this paragraph (b) shall extend to any person participating in good faith in any investigative proceeding pursuant to this section.

(c) (I) For each case, a committee may recommend by majority vote of such committee that no change be ordered or that a change of provider be ordered.

(II) A committee may also, by unanimous vote, recommend that the director order that payment for fees charged for services in the case be retroactively denied.

(III) A committee may also, by unanimous vote, recommend that the director order that a physician's accreditation status under section 8-42-101 (3.6) be revoked.

(d) In preparing and issuing an order in any case, the director shall review and give great weight to the reports and recommendations of the committee.

(e) In appropriate cases pursuant to this section and section 8-42-101 (3.6), the director may order that an insurer, employer, or self-insured employer be permitted to deny reimbursement to a provider for any medical care or services rendered to a claimant; and such order may be effective for up to three years. Bills for services rendered during the effective period of any such order shall be unenforceable and shall not result in any debt of the claimant. In deciding whether to issue any such order, the director shall give great weight to the fact that:

(I) The provider has, within any two-year period, been the subject of two or more orders removing the provider from the role of authorized treating physician; or

(II) The provider has, within any two-year period, been the subject of two or more orders retroactively denying the payment of the provider's fees; or

(III) The provider has, within any two-year period, been the subject of two or more orders either retroactively denying the payment of the provider's fees or removing the provider from the role of authorized treating physician.

(4) If the director orders pursuant to subsection (3) of this section that a change of provider be made in a case or that the physician's accreditation status be revoked, the claimant, insurer, or self-insured employer shall have seven days from receipt of the director's order in which to agree upon a level I provider. If the claimant, insurer, or self-insured employer cannot reach agreement within the seven-day time period, the director shall select three providers. A new provider shall be chosen from the three providers so selected by the party who was successful in the request for review. If no appeal is filed, the successful party shall notify the division of the name of the new provider within seven days of the selection of the three potential providers. If the new health-care provider is not selected within such seven days, the director shall select the provider.

(5) (a) Any party, including the health-care provider, may appeal to an administrative law judge for review of an order specifying that no change occur or that a change of provider be made with respect to a case. Such review shall be limited to the record on appeal. The findings of a utilization review committee regarding the change of provider in a case shall be afforded great weight by the administrative law judge in any proceeding. A party disputing the finding of such utilization review committee shall have the burden of overcoming the finding by clear and convincing evidence.

(b) If the director has entered an order specifying that the payment of fees in the case be retroactively denied, or permitting an insurer, employer, or self-insured employer to deny payments for medical services or care rendered pursuant to subsection (3)(e) of this section, the health-care provider may request a de novo hearing before an administrative law judge by filing an application for hearing within thirty days from the date of the certificate of mailing of the order. In a hearing held pursuant to this paragraph (b), the record upon which the director based the order shall be admissible in evidence. The findings of the utilization review committee regarding the retroactive denial of payment of fees in a case shall be afforded great weight by the administrative law judge in any proceeding. A party disputing the finding of such utilization review committee shall have the burden of overcoming the finding by clear and convincing evidence.

(c) Any appeal filed pursuant to this subsection (5) must be filed within forty days from the date of the certificate of mailing of the director's order.

(d) Any party dissatisfied with an order entered by an administrative law judge pursuant to paragraph (a) of this subsection (5) may file a petition to review the order pursuant to section 8-43-301.

(e) (Deleted by amendment, L. 91, p. 1326, § 43, effective July 1, 1991.)

Source: **L. 90:** Entire article R&RE, p. 517, § 1, effective July 1. **L. 91:** (2)(a), (2)(b), (3)(c), (5)(a), and (5)(b) amended and (5)(c) to (5)(e) added, p. 1355, § 1, effective May 29; entire section amended, p. 1326, § 43, effective July 1. **L. 92:** (5)(c) amended, p. 1802, § 1, effective April 11. **L. 94:** (2) amended, p. 2818, § 1, effective June 3. **L. 2026:** (2)(a) amended, (SB 26-186), ch. 315, p. 1854, § 17, effective August 12.

Editor's note: This section is similar to former § 8-49-102 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Medical Utilization Review Under Worker's Compensation", see 17 Colo. Law. 1995 (1988).

The medical utilization review process created in this section is a separate and distinct proceeding from the compensation claim process, and records from such process are not admissible in compensation claims hearings. Reg'l Transp. Dist. v. Jackson, 805 P.2d 1190 (Colo. App. 1991).

This section provides a method to review and remedy medical services which may not be reasonably necessary or reasonably appropriate in light of accepted professional standards. Colo. Comp. Ins. Auth. v. Nofio, 886 P.2d 714 (Colo. 1994).

Subsection (2)(b) does not require the review of services to include an independent medical examination, medical opinion concerning services rendered, or a certificate of review addressing the necessity and

appropriateness of provider's services. The medical utilization review (MUR) process contemplates that the substantive analysis of necessity and appropriateness of treatments will be provided by the three-member MUR panel. Rook v. Indus. Claim Appeals Office, 111 P.3d 549 (Colo. App. 2005).

Request for change of physician could proceed despite finding of maximum medical improvement (MMI), where request was based on allegations of professional misconduct and was made prior to the same physician's finding of MMI. Ames v. Indus. Claim Appeals Office, 89 P.3d 477 (Colo. App. 2003).

Although the medical utilization review committee may recommend a change in medical provider or a retroactive denial of fees for the present provider, the committee is not authorized to terminate a claimant's previously authorized medical benefits. Hargett v. Dir., Div. of Labor, 854 P.2d 1316 (Colo. App. 1992)

(decided under former § 8-49-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

The medical evidence, together with the findings of the utilization committee members that the claimant and her treating chiropractor had become business associates in the practice of chiropractic, provided ample support for the director's order, under former § 8-49-102, requiring a change in the claimant's authorized health care provider. *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992) (decided under former § 8-49-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

A party to the utilization review process appealing an order of the director of the division of labor is limited to an appellate standard of review by an administrative law judge in determining whether the director's order was supported by substantial evidence. *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992) (decided under former § 8-49-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

However, if the director's order has terminated a particular type of benefit or if a party seeks to terminate medical benefits based on the review proceedings, the aggrieved party must request an evidentiary hearing under former § 8-53-103 (now § 8-

43-207). *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992) (decided under former § 8-49-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

When a party seeks a de novo hearing following the director's retroactive denial of payment, the insurer has the burden of proof to establish that the care provider's treatment was unreasonable under pertinent professional standards. *Colo. Comp. Ins. Auth. v. Indus. Claim Appeals Office*, 20 P.3d 1209 (Colo. App. 2000).

Mere change in health care provider does not give rise to de novo hearing. In order to be entitled to a de novo hearing under the rationale set forth in *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992), a claimant must show a termination of benefits rather than just a change of benefits. *Colo. Comp. Ins. Auth. v. Nofio*, 886 P.2d 714 (Colo. 1994).

If the issue in controversy involves the necessity and appropriateness of medical care, rather than industrial disability, the medical utilization committee reports and the director's order based thereon are admissible in hearings under former § 8-53-103 (now § 8-43-207), subject to the hearing officer's evidentiary rulings. *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992) (decided under former § 8-49-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

The administrative rules establishing the types of committees for utilization review were neither arbitrary, unreasonable, nor inconsistent with the legislative purposes under former § 8-49-102 where such committee consisted of four general types: Joints/musculoskeletal, internal medicine, dental, and psychiatry. *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992) (decided under former § 8-49-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

It was neither arbitrary nor unreasonable for the division of labor to require committee members to submit individual reports and recommendations where the committee votes needed for the respective committee recommendations were statutorily established. *Hargett v. Dir., Div. of Labor*, 854 P.2d 1316 (Colo. App. 1992) (decided under former § 8-49-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

Collateral estoppel is applicable when an administrative adjudication and utilization review proceed contemporaneously and the same treatment is under consideration in each, so that a validation of the director's utilization review order is precluded. *Williams v. Indus. Claim Appeals Office*, 862 P.2d 1007 (Colo. App. 1993).

A claimant is not precluded from seeking redress after the issuance of a

utilization review ruling and an administrative law judge has the authority to adjudicate a claimant's entitlement to past and ongoing medical benefits. *Mason Jar Restaurant v. Indus. Claim Appeals Office*, 862 P.2d 1026 (Colo. App. 1993).

A medical utilization review proceeding does not result in a binding adjudicatory decision and cannot provide the basis for application of res judicata or collateral estoppel in subsequent proceedings between the parties. *Mason Jar Restaurant v. Indus. Claim Appeals Office*, 862 P.2d 1026 (Colo. App. 1993).

A payment to a preferred provider cannot be retroactively denied as a matter of law because a medical utilization review order has no effect on a provider's status as an authorized treating physician prior to the effective date of the order. *Mason Jar Restaurant v. Indus. Claim Appeals Office*, 862 P.2d 1026 (Colo. App. 1993).

The statute does not authorize a permanent ban on treatment by a reviewed physician, as such ban would nullify a claimant's right to request a change in authorized provider at any time. *Mason Jar Restaurant v. Indus. Claim Appeals Office*, 862 P.2d 1026 (Colo. App. 1993).

Information that a party to a medical utilization review proceeding submits beyond the statutory deadline for submission may not be excluded from review if the party is unable to meet the deadline through no fault of his or her

own. Donn v. Indus. Claim Appeals Office, 865 P.2d 873 (Colo. App. 1993).

Due process considerations apply to a medical utilization review proceeding since it may result in the termination of a previously authorized provider or treatment and recipients of statutorily created benefits have a property interest in the continued receipt of such benefits. Donn v. Indus. Claim Appeals Office, 865 P.2d 873 (Colo. App. 1993).

While an accredited provider is entitled to a hearing under certain circumstances, such entitlement does not create a property interest that independently entitles the provider to a hearing where his or her services have been terminated. Carlson v. Indus. Claim Appeals Office, 950 P.2d 663 (Colo. App. 1997).

Absent circumstances involving retroactive denial of fees or revocation of the provider's accreditation, there is no due process right to a hearing before a change of provider may be ordered. Carlson v. Indus. Claim Appeals Office, 950 P.2d 663 (Colo. App. 1997); Hall v. Indus. Claim Appeals Office, 74 P.3d 459 (Colo. App. 2003); Rook v. Indus. Claim Appeals Office, 111 P.3d 549 (Colo. App. 2005); Franz v. Indus. Claim Appeals Office, 250 P.3d 755 (Colo. App. 2010).

Application of statute governing medical utilization review proceeding, § 8-43-501, does not constitute a retroactive application of law contrary to the Colorado Constitution, art. II, § 11, since claimant's right to treatment was always subject to statutory qualifications. Donn v.

Indus. Claim Appeals Office, 865 P.2d 873 (Colo. App. 1993).

There is no conflict of interest if a member of a medical utilization review committee has a relationship with the insurer or a provider network, because the workers' compensation rule of procedure specifies that a conflict exists only if a committee member has a relationship with the authorized treating physician that involves a direct or substantial financial interest. Franz v. Indus. Claim Appeals Office, 250 P.3d 755 (Colo. App. 2010).

Injured worker has no standing to challenge statute governing medical utilization review proceeding as permitting an unconstitutional confiscation of property and impairment of contract. Donn v. Indus. Claim Appeals Office, 865 P.2d 873 (Colo. App. 1993).

Where the director's order terminates the claimant's care by a previously authorized health care provider, the claimant is entitled to have the matter adjudicated de novo by an administrative law judge under § 8-43-207. McWhorter v. CNA Ins. Co., 868 P.2d 1128 (Colo. App. 1993).

While a provider may become authorized to treat a claimant's industrial injury as a result of a referral from an authorized treating physician where the referral is made in the normal progression of authorized treatment, the authorization to refer the claimant to the other provider ends when the treating physician loses his authorized status. Kilwein v. Indus. Claim

Appeals Office, 198 P.3d 1274 (Colo. App. 2008).

The requirement that an appeal of a medical utilization review appeal be made within 40 days of the director's order is jurisdictional; it cannot be waived or eliminated by consent or avoided by estoppel. *Cramer v. Indus. Claim Appeals Office*, 885 P.2d 318 (Colo. App. 1994).

A medical utilization review order is not an award within the scope of § 8-43-303 and the director is not authorized to reopen such an order. *Cramer v. Indus. Claim Appeals Office*, 885 P.2d 318 (Colo. App. 1994).

Selection of an authorized treating physician as ordered by a medical utilization review committee was ripe for a hearing notwithstanding that the

injured employee's appeal of the order was still pending, because the statute requires the parties to act quickly to select a new authorized treating physician regardless of whether an appeal has been filed. *Franz v. Indus. Claim Appeals Office*, 250 P.3d 1284 (Colo. App. 2010).

Subsection (3)(d) requires the director to give great weight to reports and recommendations of the MUR panel. Unless an assessment is entirely arbitrary or based on factors other than medical considerations, neither the director, the administrative law judge, nor a reviewing court may substitute its judgment for the assessment of provider's care made by a panel of physicians. *Rook v. Indus. Claim Appeals Office*, 111 P.3d 549 (Colo. App. 2005).

8-43-502. Independent medical examinations.

(1) The director shall maintain a list of physicians which shall be known as the medical review panel. The director shall utilize public and private resources as are available and appropriate in determining standards and qualifications for the medical review panel members. It shall be the duty of the medical review panel to perform independent medical examinations at the request of the director or an administrative law judge.

(2) Any party to a workers' compensation proceeding has the right to obtain an independent medical examination with the physician selected by the director from the medical review panel. The requesting party, when submitting a request for the independent medical evaluation, shall specify the professional specialty of the physician to be selected by the director to perform the independent medical examination. The director shall select, through a revolving selection process established by the department, the physician from the medical review panel to perform the examination. The cost of such independent medical examination shall be borne by the requesting party. In no instance shall the independent examining physician become the authorized treating physician.

(3) Whenever the director or an administrative law judge deems it necessary to assist in resolving any issue of medical fact or opinion, the director or administrative law judge shall

cause the employee to be examined by a physician or physicians from the medical review panel. The director or the administrative law judge shall have the authority and discretion to charge the cost of such examination to the employer or, if insured, the employer's insurance carrier. Transportation expenses and all expenses necessary, reasonable, and incidental to such examination shall be included in the cost of such examination.

(4) Nothing in this section shall preclude any party from obtaining an independent medical examination from a physician who is not a member of the medical review panel.

(5) Upon written request of the employer, or if insured, the insurer, the employee shall submit to a reasonable number of independent medical examinations as provided for in this section. The employee shall be entitled to have a physician, provided and paid for by such employee, present at any such independent medical examination. The employee shall be entitled to receive from the independent examining physician a copy of any report which said physician makes to the employer, insurer, or the division. Said copy shall be furnished to the employee at the same time it is furnished to the employer, insurer, or division.

(6) Members of the medical review panel and any person acting as a consultant, witness, or complainant shall be immune from liability in any civil action brought against said person for acts occurring while the person was acting as a panel member, consultant, witness, or complainant, respectively, if such person was acting in good faith within the scope of the respective capacity, made a reasonable effort to obtain the facts of the matter as to which action was taken, and acted in the reasonable belief that the action taken by such person was warranted by the facts.

(7) Any physician determining an impairment rating on an injured worker pursuant to this title shall be immune from civil liability in any action brought by any person based on said impairment rating, absent the showing of malice or bad faith on the part of the rating physician.

Source: L. 90: Entire section added, p. 579, § 1, effective July 1.

8-43-503. Utilization review of health-care providers.

(1) The general assembly hereby finds and determines that health-care providers that provide medical care or health-care services that are not reasonably necessary or not reasonably appropriate according to accepted professional standards should not be allowed to provide such services to workers' compensation claimants. The general assembly, therefore, hereby declares that the purpose of the utilization review process authorized in this section is to provide a mechanism to review medical care or health-care services rendered pursuant to this article that may not be reasonably necessary or reasonably appropriate according to accepted professional

standards and to provide a mechanism to prevent such health-care providers from providing medical care or health-care services.

(2) The provisions relating to the procedures for utilization review found in section 8-43-501 (2), (3), (4), (5)(a), (5)(c), and (5)(d) shall apply to utilization review under this section. A unanimous vote by the committee created in section 8-43-501 (3) shall be required for a recommendation to the director that a health-care provider not be allowed to provide medical care or health-care services to claimants.

(3) Employers, insurers, claimants, or their representatives shall not dictate to any physician the type or duration of treatment or degree of physical impairment. Nothing in this subsection (3) shall be construed to abrogate any managed care or cost containment measures authorized in articles 40 to 47 of this title.

Source: L. 94: Entire section added, p. 2003, § 7, effective July 1.

PART 6

PROVIDER REVIEW AND DISCLOSURE

8-43-601. Short title.

This part 6 shall be known and may be cited as the "Provider Review and Disclosure Act".

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1347, § 1, effective July 1.

8-43-602. Legislative declaration.

The general assembly finds, determines, and declares that insurer performance programs are used in marketing, sales, and other efforts, and, as such, may impact an employer's selection of an authorized health-care provider. To protect patients, employers, and providers, and to avoid improper profiling, all performance programs must be fair, objective, consistently applied, and accord providers due process. Consistent with these goals, performance programs should align incentives not only with efficient operations, but also with cost-effective, high-quality care. Accordingly, the general assembly finds that requiring minimum standards and full disclosure of performance program data and methodologies will help improve the quality and efficiency of health care delivered to Colorado workers.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1347, § 1, effective July 1.

8-43-603. Definitions.

As used in this part 6, unless the context otherwise requires:

(1) "Insurer" means an entity that provides workers' compensation insurance coverage required by article 44 of this title, including any third-party insurer or self-insured employer.

(2) "Methodology" means the method by which an assessment or measurement is determined, including algorithms or studies, evaluation of data, application of guidelines, or performance measures.

(3) "Patient" means a person who qualifies for health-care benefits under articles 40 to 47 of this title.

(4) "Performance program" means any program, system, or process through which an insurer rates or recognizes the cost, efficiency, quality, or other assessment or measurement of a provider's care, whether through awards, payments, assignment, or characterization or representation that is disclosed to patients, other providers, employers, or the public.

(5) "Provider" means a physician licensed under the "Colorado Medical Practice Act", article 240 of title 12, or a clinic that provides health care pursuant to articles 40 to 47 of this title 8.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1348, § 1, effective July 1. **L. 2019:** (5) amended, (HB 19-1172), ch. 136, p. 1648, § 24, effective October 1.

8-43-604. Performance programs.

(1) All performance programs shall include, at a minimum:

(a) A quality of care component that is satisfied by using standard treatment guidelines promulgated by the director pursuant to section 8-42-101 or evidence-based administrative, operational, or clinical performance measures that improve care;

(b) A clear representation of the weight given to the quality of care component in comparison with other factors, which weight shall be equal to or greater than any other factor;

(c) If a performance program includes an employer satisfaction element, a patient satisfaction element, which shall be weighted equal to or greater than the employer satisfaction element;

- (d) Statistical analyses that are objective, accurate, valid, reliable, and verifiable;
 - (e) A period of assessment of data, pertinent to the performance program, which shall be updated at appropriate intervals;
 - (f) If claims data are used, accurate claims data appropriately attributed to the provider. When reasonably available, the insurer shall use aggregated data from other insurers to supplement its own claims data.
 - (g) The provider's responsibility for health-care decisions and the financial consequences of those decisions, which shall be fairly and accurately attributed to the provider.
- (2) Performance program results shall be reported to each provider reviewed in the program and shall include comparison of the provider's results to the results of the provider's peers.
- (3) Any disclosure to patients, other providers, employers, or the public of the results of a performance program shall be accompanied by a conspicuous disclaimer written in bold-faced type stating that the information is intended only as a guide, should not be the sole factor in selecting a provider, has a risk of error, and should be discussed with the provider.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1348, § 1, effective July 1.

8-43-605. Due process.

- (1) At least forty-five days before disclosing the results of a performance program, an insurer shall give a provider written notice of the availability of the provider's individual result, specific instructions on how the provider can access the result, and a description of the implications to the provider. The written notice shall describe the procedures by which the provider may request:
- (a) The information required to be disclosed under subsection (2) of this section; and
 - (b) An appeal of the result pursuant to subsection (3) of this section.
- (2) (a) Within ten business days after receiving a request by or on behalf of a provider, an insurer shall disclose, in a manner that is reasonably understandable and that allows the provider to verify the data against his or her records, the methodology and all data upon which a provider's performance program result was calculated, with sufficient detail to allow the provider to determine the effect of the methodology on the data reviewed.
- (b) An insurer shall not use the "Uniform Trade Secrets Act", article 74 of title 7, C.R.S., to avoid compliance with this section.

(3) Insurers shall establish procedures for providers to appeal the results of a performance program. Such procedures, in addition to the disclosures and the written notice furnished, shall provide:

- (a) A reasonable method by which the provider may submit notice of the desire to appeal;
- (b) The name, title, qualifications, and relationship to the insurer of any person responsible for deciding the appeal, who shall be authorized to uphold, modify, or reject results or require additional action to ensure that results are fair, reasonable, accurate, and comply with the requirements of this part 6;
- (c) An opportunity for a provider to submit or have considered corrected data or other information relevant to the results or the appropriateness of the methodology used. If requested, a provider may appear at a face-to-face meeting with those responsible for the appeal decision at a location reasonably convenient to the provider or by teleconference. The provider shall submit in writing any corrected data or information in advance of the meeting.
- (d) The provider's right to be assisted by a representative, including an attorney;
- (e) A detailed written decision regarding the appeal that states the reasons for upholding, modifying, or rejecting the appeal;
- (f) Resolution of the appeal within forty-five days after the date upon which the data and methodology are disclosed unless otherwise agreed to by the parties to the appeal; and
- (g) A stay on the implementation, use, and disclosure of and action upon the individual results of the performance program until the appeal and any subsequent hearing requested pursuant to section 8-43-207 has become final.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1349, § 1, effective July 1.

8-43-606. Enforcement.

- (1) An insurer shall not limit, by contract or other means, the right of a provider to enforce this part 6.
- (2) This part 6 may be enforced through a hearing pursuant to section 8-43-207 or in a civil action, and any remedies at law and in equity are available.
- (3) A violation of this part 6 constitutes an unfair or deceptive act or practice under part 11 of article 3 of title 10, C.R.S.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1350, § 1, effective July 1.

8-43-607. Filing with director.

At least thirty days before implementing any new or amended performance program, an insurer shall file a detailed description of the performance program with the director.

Source: L. 2010: Entire part added, (SB 10-178), ch. 290, p. 1350, § 1, effective July 1.

ARTICLE 44

Insurance

PART 1 GENERAL PROVISIONS			
		8-44-109.	Notice - change in rate by classification - policyholder's right to appeal classifications - availability of medical case management services.
8-44-101.	Insurance requirements.		
8-44-102.	Contract for insurance subject to workers' compensation act.		
8-44-103.	Insurers to file system of rating - approval.	8-44-109.5.	Experience modification factor - adjustment.
8-44-104.	Cutting rates - rebates - penalty.	8-44-110.	Notice of cancellation.
8-44-105.	Provisions of policies - primary liability - notice of injury.	8-44-111.	Workers' compensation insurance - deductibles - definition.
8-44-106.	Insurer violation - suspension or revocation of license.	8-44-112.	Surcharge on workers' compensation insurance premiums - workers' compensation cash fund.
8-44-107.	Right of insurer to examine books of employer.	8-44-113.	Data from insurance carriers and self-insured employers related to workers' compensation - studies related to workers'
8-44-108.	Repayments for misclassifications.		

	compensation system. (Repealed)	8-44-203.	Department of human services - self-insurance program.
8-44-114.	Determination of premium.		
8-44-115.	Calculation of premium - motor vehicle accidents.	8-44-204.	Public entities - self- insurance authorized for workers' compensation - pooled insurance - definition.
8-44-116.	Reversionary interests in indemnity benefits prohibited.		
	PART 2 SELF-INSUREDS	8-44-205.	Employers - self-insurance pools authorized for workers' compensation - definition.
8-44-201.	Employer as own insurance carrier - revocation of permission.	8-44-206.	Guaranty fund - immediate payment fund - legislative declaration - repeal.
8-44-202.	Workers' compensation self- insurance fund - created.		

PART 1

GENERAL PROVISIONS

8-44-101. Insurance requirements.

(1) Any employer subject to the provisions of articles 40 to 47 of this title shall secure compensation for all employees in one or more of the following ways, which shall be deemed to be compliance with the insurance requirements of said articles:

(a) By insuring and keeping insured the payment of such compensation in the Pinnacol Assurance fund;

(b) By insuring and keeping insured the payment of such compensation with any stock or mutual corporation authorized to transact the business of workers' compensation insurance in this state. If insurance is effected in such stock or mutual corporation, the employer or insurer shall forthwith file with the division, in form prescribed by it, a notice specifying the name of the insured and the insurer, the business and place of business of the insured, the effective and termination dates of the policy, and, when requested, a copy of the contract or policy of insurance.

(c) By procuring a self-insurance permit from the executive director as provided in section 8-44-201, except for public entity pools as described in section 8-44-204 (3), which shall procure self-insurance certificates of authority from the commissioner of insurance as provided in section 8-44-204;

(d) By procuring a self-insurance certificate of authority from the commissioner of insurance as provided in section 8-44-205.

(2) It shall be unlawful, except as provided in sections 8-41-401 and 8-41-402, for any employer, regardless of the method of insurance, to require an employee to pay all or any part of the cost of such insurance.

(3) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), all public entities in the state shall insure and keep insured the payment of compensation by electing one of the methods provided in subsection (1) of this section. A public entity having an insured payroll of less than one million dollars annually shall not be eligible for self-insurance; except that public entities forming a pool pursuant to section 8-44-204 (3) shall be eligible if the total of all the payrolls of the public entities in the pool exceeds the required minimum.

(II) Any public entity in the state that is participating in the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c), shall insure and keep insured the payment of compensation by electing one of the methods provided in subsection (1) of this section; except that the method for insuring the participants of such program need not be the same method selected by the public entity pursuant to subparagraph (I) of this paragraph (a).

(b) For purposes of this subsection (3), the department of human services, by virtue of the self-insurance program established pursuant to section 8-44-203, shall be considered a public entity of the state.

Source: **L. 90:** Entire article R&RE, p. 520, § 1, effective July 1. **L. 94:** (3)(b) amended, p. 2635, § 72, effective July 1. **L. 2002:** (1)(a) amended, p. 1884, § 33, effective July 1. **L. 2010:** (3)(a) amended, (HB 10-1109), ch. 171, p. 607, § 3, effective August 11.

Editor's note: This section is similar to former § 8-44-101 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Brodeur: A Workers' Compensation Cases", see 37 Clarification of Defense Counsel Duties in Colo. Law. 43 (Dec. 2008).

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which required that notice regarding an employer's workmen's compensation insurance be filed with the division of labor instead of the industrial commission.

Colorado law that requires each employer to operate a separately-administered worker's compensation plan is not preempted by the federal Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 et seq. (ERISA), regardless of whether the ERISA benefits are equal or inferior to the state requirements. *Fuller v. Norton*, 881 F. Supp. 468 (D. Colo. 1995).

Colorado's worker's compensation laws are not preempted by ERISA as applied to multiple employer welfare arrangements. *Fuller v. Norton*, 86 F.3d 1016 (10th Cir. 1996).

The notice of issuance of a workmen's compensation policy is required by this section to be filed with the industrial commission. *Chevron Oil Co. v. Indus. Comm'n*, 169 Colo. 336, 456 P.2d 735 (1969).

But notice of cancellation of a workmen's compensation policy is not required by statute to be given to the commission. *Chevron Oil Co. v. Indus. Comm'n*, 169 Colo. 336, 456 P.2d 735 (1969).

This section does not negative the right of an employer to insure with a foreign reciprocal insurance exchange licensed

under §§ 10-13-101 et seq. to write workmen's compensation liability insurance. *Consol. Underwriters v. Indus. Comm'n*, 117 Colo. 239, 185 P.2d 1013 (1947).

A lessee's employee cannot be made to suffer by reason of lessor's failure to comply with this section requiring them to obtain insurance or to procure a self-insurance permit. *McKune v. Indus. Comm'n*, 94 Colo. 523, 31 P.2d 322 (1934).

The duty of good faith derives from the relationship, arising from the underlying insurance or compensation obligation between an insured claimant and the provider of benefits, and precedes official intervention and permeates all of the dealings between the parties. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

The duty of an insurer under the act to provide benefits and compensation is factually and analytically distinct from its duty to deal in good faith with claimants, even though such duties necessarily involve a common underlying physical injury. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

The relationship of the insured to the insurer in a first-party claim context is significantly different from the relationship which characterizes the third-party claim context. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

A case involving a claim by an employee against a compensation insurance carrier for the tort of bad faith is like a first-party, direct coverage case because workers compensation benefits serve a purpose

similar to that served by direct coverage insurance contracts. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

In the first-party context an insurer acts in bad faith in delaying the processing of or denying a valid claim when the insurer's conduct is unreasonable and the insurer knows that the conduct is unreasonable or recklessly disregards the fact that the conduct is unreasonable. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258 (Colo. 1985).

Insured and insurer in a workers' compensation context are not in either a fiduciary or quasi-fiduciary relationship. As in a first-party direct coverage case, a workers' compensation claimant has not ceded any right to represent his interests to the insurer. *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139 (Colo. 2007).

Violation of public policy. Where employee was told to pay over to employer the amount he had received as a result of the settlement of his worker's compensation claim as a condition to continued employment, and because the employee declined to do so, retaliation against the employee violated public policy and

provides the basis of a common law claim against the employer. *Lathrop v. Entenmann's Inc.*, 770 P.2d 1367 (Colo. App. 1989).

In determining whether to impose sanctions for failure to secure insurance, the only issue is whether the employer had insurance in effect to pay the injured employee's benefits. *U.S. Fid. & Guar., Inc. v. Kourlis*, 868 P.2d 1158 (Colo. App. 1994); *McManus v. Indus. Claim Appeals Office*, 81 P.3d 1074 (Colo. App. 2003).

Where the employer had purchased insurance, it was irrelevant that the insurance was not used to pay benefits for the first three years following the injury. *U.S. Fid. & Guar., Inc. v. Kourlis*, 868 P.2d 1158 (Colo. App. 1994).

Because employer secured compensation for claimant, employer's failure to give the notice described in subsection (1)(b) is not grounds for the imposition of penalties under § 8-43-408 (1). *McManus v. Indus. Claim Appeals Office*, 81 P.3d 1074 (Colo. App. 2003).

Applied in *Meyer v. Indus. Comm'n*, 644 P.2d 46 (Colo. App. 1981).

8-44-102. Contract for insurance subject to workers' compensation act.

(1) Every contract for the insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor is subject to articles 40 to 47 of this title, and all provisions in the contract for insurance inconsistent with those articles are void. Any contract of insurance issued under articles 40 to 47 of this title by any insurance carrier, including stock and mutual corporations and Pinnacol Assurance, may include and cover any liability of the employer on account of personal injuries sustained by or death resulting therefrom to any employee.

(2) (a) (I) Except as specified in subparagraph (III) of this paragraph (a), every carrier providing workers' compensation insurance that is authorized to conduct business in Colorado shall submit an annual report to the commissioner of insurance listing any policy forms as may be requested by the commissioner. The listing must be submitted no later than July 1 of each year and must contain a certification by an officer of the carrier that, to the best of the officer's knowledge, each policy form in use complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(II) (A) An advisory organization as defined in section 10-4-402 (1), C.R.S., or a rating organization as defined in section 10-4-402 (3), C.R.S., shall submit an annual report to the commissioner of insurance listing any policy forms as may be requested by the commissioner. The listing must be submitted no later than July 1 of each year and must contain a certification by an officer of the organization that, to the best of the officer's knowledge, each policy form listed complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(B) As used in this section, "form" may include any endorsement, rider, letter, notice, or other document affecting an insurance policy or contract issued or delivered to any policyholder in Colorado.

(III) If a carrier uses, in their entirety and without modification, forms prepared by an advisory organization as defined in section 10-4-402 (1), C.R.S., or a rating organization as defined in section 10-4-402 (3), C.R.S., the carrier shall notify the commissioner of insurance that it adopts the annual report filed by the advisory organization or rating organization under subparagraph (II) of this paragraph (a) and, if it so notifies the commissioner, it need not submit the certification required by subparagraph (I) of this paragraph (a). If a carrier uses forms that deviate from the forms listed by the advisory organization or rating organization, or if it uses forms other than those listed by the advisory organization or rating organization, the carrier shall submit the annual listing of forms and certification as required by subparagraph (I) of this paragraph (a).

(b) In addition to submitting the documentation required under paragraph (a) of this subsection (2) and except as specified in subparagraph (III) of this paragraph (b):

(I) Every carrier providing workers' compensation insurance that is authorized to conduct business in Colorado, every advisory organization as defined in section 10-4-402 (1), C.R.S., and every rating organization as defined in section 10-4-402 (3), C.R.S., shall submit to the commissioner a list of any new or revised policy forms as may be requested by the commissioner at least thirty-one days before a carrier uses the forms. Unless a carrier notifies the division of insurance otherwise, policy forms submitted on behalf of a member of an advisory organization or rating organization are deemed to be automatically adopted by the carrier without modification.

(II) The listing must also contain a certification by an officer of the carrier or an officer of the advisory or rating organization that, to the best of the officer's knowledge, each new or revised policy form, endorsement, rider, letter, notice, or other document proposed to be used complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(III) If an advisory organization or rating organization certifies a form as required by subparagraph (II) of this paragraph (b) and a carrier is a member of that organization and uses the form in its entirety, the carrier need not list that form as required by subparagraph (I) of this paragraph (b) or submit a certification for that form as required by subparagraph (II) of this paragraph (b).

(c) The commissioner may examine and investigate workers' compensation carriers authorized to conduct business in Colorado to determine whether workers' compensation policy forms, as may be requested by the commissioner, comply with the certification of the carrier and statutory mandates.

Source: L. 90: Entire article R&RE, p. 521, § 1, effective July 1. L. 93: Entire section amended, p. 455, § 2, effective April 19. L. 2002: Entire section amended, p. 1884, § 34, effective July 1. L. 2003: Entire section amended, p. 2200, § 1, effective July 1. L. 2014: Entire section amended, (SB 14-137), ch. 78, p. 316, § 1, effective August 6. L. 2016: (2) amended, (SB 16-198), ch. 257, p. 1054, § 1, effective June 8.

Editor's note: (1) This section is similar to former § 8-44-102 as it existed prior to 1990.

(2) The provisions of Pinnacol Assurance are contained in article 45 of this title 8.

ANNOTATION

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the commissioner of insurance with the power previously exercised by the industrial commission to prescribe the form of the workmen's compensation insurance contract.

The common law rule that working partners are ineligible for workers' compensation as employees of the partnership or joint venture has been modified in this section permitting working partners to elect workers' compensation coverage. *Hancock Const. Co. v. Cummins*, 791 P.2d 1208 (Colo. App. 1990).

Provision that industrial commission shall prescribe form of contract is not unconstitutional. That part of this section providing that the industrial commission shall prescribe the form of contract of insurance for use in insuring compensation is administrative only, and not unconstitutional as delegating legislative power. *Travelers Ins. Co. v. Indus. Comm'n*, 71 Colo. 495, 208 P. 465 (1922).

To "prescribe" means to dictate, to positively command. *Travelers Ins. Co. v. Indus. Comm'n*, 71 Colo. 495, 208 P. 465 (1922).

Policy held not to cover death of employer who worked with his men. *Indus. Comm'n v. Bracken*, 83 Colo. 72, 262 P. 521 (1927).

This section does not require that an operating owner endorse himself as an employee in his insurance contract, and no

sanctions attach if the owner does not include himself as an insured. *Oliver Const. Co., Inc. v. Indus. Comm'n*, 680 P.2d 1308 (Colo. App. 1983).

Where two parties were engaged in a joint venture as a subcontractor of the general contractor, a working co-partner was properly exempted from liability and the general contractor held liable under subsection (1), where that working co-partner's insurance policy did not include coverage for the other, decedent, working co-partner as authorized under this section. *Hancock Const. Co. v. Cummins*, 791 P.2d 1208 (Colo. App. 1990).

A leased driver is not an employee for the purposes of workers' compensation because § 8-40-301 (5)(b) is an exception to the more general workers' compensation statutes. *Scott v. Matlack, Inc.*, 1 P.3d 185 (Colo. App. 1999), rev'd on other grounds, 39 P.3d 1160 (Colo. 2002).

8-44-103. Insurers to file system of rating - approval.

Every insurance carrier authorized to transact business in this state that insures employers against liability for compensation under the provisions of articles 40 to 47 of this title shall file with the commissioner of insurance its classification of risks, any premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with all rates and any systems of rating.

Source: L. 90: Entire article R&RE, p. 521, § 1, effective July 1. L. 2000: Entire section amended, p. 470, § 10, effective August 2. L. 2002: Entire section amended, p. 1884, § 35, effective July 1. L. 2003: Entire section amended, p. 2201, § 2, effective July 1.

Editor's note: This section is similar to former § 8-44-103 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2000 act amending this section, see section 1 of chapter 135, Session Laws of Colorado 2000.

ANNOTATION

Law reviews. For article, "The Past, Present, and Future of Residential Construction Defect Action Reform in Colorado", see 54 Colo. Law. 28 (Jan.-Feb. 2025).

8-44-104. Cutting rates - rebates - penalty.

Every insurance carrier that writes compensation insurance shall write insurance at the rates filed with the commissioner of insurance. The cutting of rates, rebating, or any other method whereby, directly or indirectly, any employer is given the benefit of or obtains a rate lower than that approved by the commissioner of insurance is prohibited. The commissioner of insurance may suspend the license of any insurance carrier, agent, or broker who violates any provision of this section. Also, any insurance carrier, any employer, or any officer, agent, or employee thereof who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for each such violation.

Source: **L. 90:** Entire article R&RE, p. 521, § 1, effective July 1. **L. 2000:** Entire section amended, p. 471, § 11, effective August 2. **L. 2002:** Entire section amended, p. 1884, § 36, effective July 1. **L. 2003:** Entire section amended, p. 2201, § 3, effective July 1.

Editor's note: This section is similar to former § 8-44-104 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2000 act amending this section, see section 1 of chapter 135, Session Laws of Colorado 2000.

8-44-105. Provisions of policies - primary liability - notice of injury.

Every contract insuring against liability for compensation or insurance policy evidencing the same shall contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee and, in the event of death, to said employee's dependents to pay

compensation, if any, for which the employer is liable, thereby discharging to the extent of such payment the obligations of the employer to the employee; that, as between the employee and the insurance carrier, notice or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer, for the purpose of articles 40 to 47 of this title, shall be jurisdiction of the insurance carrier; and that the insurance carrier, in all things, shall be bound by and subject to the orders, findings, decisions, or awards rendered against the employer under the provisions of said articles. Such policy shall also provide that the employee shall have a first lien upon any amount which becomes owing to the employer from the insurance carrier, and the insurance carrier shall pay the same directly to the employee or the employee's dependents, thereby discharging to the extent of such payment the obligation of the employer to the employee. The policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes legally incapable or insolvent or is discharged in bankruptcy or otherwise during the period that the policy is in operation or the compensation remains owing.

Source: L. 90: Entire article R&RE, p. 522, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-105 as it existed prior to 1990.

ANNOTATION

The policy of the workmen's compensation act is to hold the employer primarily liable to the employee for disability proximately resulting from accidents arising out of and in the course of the employment. *Century Indem. Co. v. Klipfel*, 99 Colo. 213, 61 P.2d 842 (1936); *Tri-State Ins. Co. v. Indus. Comm'n*, 151 Colo. 494, 379 P.2d 388 (1963).

But this section provides that the insurance carrier is directly and primarily liable to the employee for compensation, if any, for which the employer is liable, thereby discharging to the extent of such payment the obligations

of the employer to the employee. *Century Indem. Co. v. Klipfel*, 99 Colo. 213, 61 P.2d 842 (1936); *Indus. Comm'n, v. Lopez*, 150 Colo. 87, 371 P.2d 269 (1962); *Tri-State Ins. Co. v. Indus. Comm'n*, 151 Colo. 494, 379 P.2d 388 (1963).

And the insurance policy, and not the liability of the insured, measures the liability of the insurer. Where an employer lets out part of his work to contractors and insurers his liability to employees, the insurer's liability extends only to employees of the employer — its policy so providing — and not to those of the contractors. *United States Fid. & Guar. Co. v. Turkey*

Creek Stone, Clay & Gypsum Co., 75 Colo. 611, 227 P. 569 (1924).

Compensation carrier's intentional misconduct in the processing of a claim is neither a "direct" nor a "natural" consequence of an employment injury. Travelers Ins. Co. v. Savio, 706 P.2d 1258 (Colo. 1985).

A case involving a claim by an employee against a compensation insurance carrier for the tort of bad faith is like a first-party, direct coverage case because workers compensation benefits serve a purpose similar to that served by direct coverage insurance contracts. Travelers Ins. Co. v. Savio, 706 P.2d 1258 (Colo. 1985).

Coverage by an insurer is coextensive with the liability of the employer. Indus. Comm'n v. Lopez, 150 Colo. 87, 371 P.2d 269 (1962).

And if an employer extends his operation by engaging in a joint venture, so does the insurance policy extend its coverage. Indus. Comm'n v. Lopez, 150 Colo. 87, 371 P.2d 269 (1962).

The omission by an employer to list or pay a premium upon an employee does not affect the right of the employee to receive compensation from the carrier. Indus. Comm'n v. Lopez, 150 Colo. 87, 371 P.2d 269 (1962).

The duties of an insurer are contractual and may be discharged by making payments pursuant to a final adjudication of liability. Indus. Comm'n v. Spoo, 151 Colo. 581, 380 P.2d 49 (1963).

But an insurer's reliance on an award in process of review is not the measure of its liability, and its good faith cannot serve as a substitute for discharging its legal obligations. Indus. Comm'n v. Spoo, 151 Colo. 581, 380 P.2d 49 (1963).

Employer may insure with two insurance companies against injury to an employee in two successive accidents. Tri-State Ins. Co. v. Indus. Comm'n, 151 Colo. 494, 379 P.2d 388 (1963).

And two insurers are equally liable. Where an employer pays each of two insurance companies to indemnify him against liability for accidental injury to an employee, presumably both insurers are financially responsible, and each contracts to indemnify the employer for a portion of a disability caused by two accidents for which the employer is unquestionably liable. Century Indem. Co. v. Klipfel, 99 Colo. 213, 61 P.2d 842 (1936); Tri-State Ins. Co. v. Indus. Comm'n, 151 Colo. 494, 379 P.2d 388 (1963).

8-44-106. Insurer violation - suspension or revocation of license.

If any insurance carrier intentionally, knowingly, or willfully violates any of the provisions of articles 40 to 47 of this title, the commissioner of insurance, on the request of the director, shall

suspend or revoke the license or authority of such carrier to do a compensation business in this state.

Source: L. 90: Entire article R&RE, p. 522, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-106 as it existed prior to 1990.

8-44-107. Right of insurer to examine books of employer.

Any insurance carrier operating under the workers' compensation act may apply to the commissioner of insurance for permission to examine any of the books, payrolls, or other documents of any employer insured by such carrier or of any contractor, subcontractor, lessee, sublessee, or person covered by the employer's compensation insurance to determine the amount of wage expenditure of such employer or of any contractor, subcontractor, lessee, sublessee, or person during any period that such insureds were insured by the insurance carrier. The commissioner of insurance may grant such carrier authority in writing to make the investigation or may appoint any agents of the division of insurance to conduct the investigation.

Source: L. 90: Entire article R&RE, p. 522, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-108 as it existed prior to 1990.

8-44-108. Repayments for misclassifications.

(1) Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, is authorized to charge and collect any amount of money that should have been included in premiums paid by an insured but were not included in such premiums as a result of job misclassification. Upon written request by the employer, the issue of whether a job misclassification occurred shall be determined in writing by the insurance company. The employer's request shall be made within thirty working days after the anniversary date of the policy or the date of receipt by the employer of notice of a change in job classification. The insurance company's determination shall be made within thirty days after receipt of the employer's written request. An employer may appeal any determination of an insurance company

made pursuant to this subsection (1) to the workers' compensation classification appeals board, pursuant to section 8-55-102. If it is determined that a job misclassification occurred and that such misclassification was caused by the failure of the insured to provide accurate or complete data in order to determine the proper classification as requested by the insurance carrier, the repayment may be collected during the term of the contract for such insurance plus an additional reasonable time not to exceed twelve months.

(2) Any employer who has purchased insurance against liability for compensation under the provisions of articles 40 to 47 of this title is authorized to recover any amount of money which should not have been included in premiums paid by the employer but which were included in such premiums as a result of job misclassification. The repayment may be collected during the term of the contract for such insurance plus an additional reasonable time not to exceed twelve months.

Source: **L. 90:** Entire article R&RE, p. 522, § 1, effective July 1. **L. 96:** (1) amended, p. 1143, § 2, effective October 1. **L. 2002:** (1) amended, p. 1885, § 37, effective July 1.

Editor's note: This section is similar to former § 8-44-113 as it existed prior to 1990.

8-44-109. Notice - change in rate by classification - policyholder's right to appeal classifications - availability of medical case management services.

(1) Any insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall supply information regarding a change in the rate by classification to any insured employer, if such employer has requested that such information be supplied. Such information shall be supplied within thirty days following release of such information to such insurer by the authorized rating organization and following approval of such rate change by the division of insurance. As soon as reasonably possible after the division of insurance's approval of a change in rate by classification, the authorized rating organization shall disseminate notice of such approval and change in rate.

(2) Every insurance carrier authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall clearly and conspicuously inform policyholders of their rights to appeal employee classification designations, the procedures to be used for such an appeal, and the types of medical case management that the carrier has available to employees to promote medical cost containment.

Source: L. 90: Entire article R&RE, p. 523, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1885, § 38, effective July 1.

Editor's note: This section is similar to former § 8-44-115 as it existed prior to 1990.

8-44-109.5. Experience modification factor - adjustment.

[Editor's note: This section is effective January 1, 2027.]

(1) (a) Each insurance carrier authorized to transact business in this state, including Pinnacol Assurance, that insures an employer against liability for compensation under articles 40 to 47 of this title 8 upon notification by an employer or a licensed insurance producer shall notify the employer's authorized rating organization to revise the employer's experience modification factor to reflect the actual dollar amount paid for a closed claim instead of the actual dollar amount paid plus reserves determined prior to the closure of the claim.

(b) The employer or licensed insurance producer must notify the insurance carrier between the time the claim is reported to a rating bureau and thirty-one days after the employer's rating effective date.

(2) An employer or licensed insurance producer may notify an insurance carrier to modify an experience modification factor pursuant to this section only when:

(a) An open claim is reported by the insurance carrier to the rating bureau with a higher open claim amount than the amount after the claim was closed; and

(b) The lower claim amount would reduce an employer's experience modification factor:

(I) At least .05 compared to the previously released experience modification factor; or

(II) From above 1.0 to 1.0 or below.

(3) The authorized rating organization shall adjust the experience modification factor within thirty days after notification from the insurance carrier pursuant to subsection (1) of this section. The insurance carrier shall credit an employer for a premium change calculated as a result of the updated experience modification factor within the employer's policy period.

Source: L. 2026: Entire section added, (SB 26-175), ch. 312, p. 1834, § 1, effective January 1, 2027.

Editor's note: Section 2(2) of chapter 312 (SB 26-175), Session Laws of Colorado 2026, provides that the act adding this section applies to claims closed on or after January 1, 2027.

8-44-110. Notice of cancellation.

Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall notify any employer insured by the carrier or Pinnacol Assurance, and any agent or representative of such employer, if applicable, by certified mail of any cancellation of such employer's insurance coverage. Such notice shall be sent at least thirty days prior to the effective date of the cancellation of the insurance. However, if the cancellation is based on one or more of the following reasons, then such notice may be sent less than thirty days prior to the effective date of the cancellation of the insurance: Fraud, material misrepresentation, nonpayment of premium, or any other reason approved by the commissioner of insurance.

Source: L. 90: Entire article R&RE, p. 523, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1886, § 39, effective July 1. **L. 2003:** Entire section amended, p. 838, § 3, effective August 6.

Editor's note: This section is similar to former § 8-44-114 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Update on Colorado Appellate Decisions in Workers' Compensation Law", see 32 Colo. Law. 113 (Oct. 2003).

Substantial compliance with the mailing requirements of this section is sufficient, when the employer does not dispute actual notice of cancellation was

received by the insurer and the court does not treat the notice as jurisdictional. An employer received notice of cancellation via regular mail prior to a worker being injured. The injured worker's benefits were therefore paid by the employer. EZ Bldg. Components Mfg., LLC v. Indus. Claim Appeals Office, 74 P.3d 516 (Colo. App. 2003).

8-44-111. Workers' compensation insurance - deductibles - definition.

(1) (a) Any employer may agree, as a condition of any contract for the insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor, to pay an amount not to exceed the split point approved by the commissioner of insurance per claim toward the total amount of any claim payable under articles 40 to 47 of this title. The amount of premium to be paid by an employer who agrees to pay such deductible shall be reduced based upon such deductible in an amount determined by the insurance carrier.

(b) As used in this subsection (1), "split point" means the amount of each loss approved by the commissioner of insurance that an insurer may apply as the primary loss in each workers' compensation claim. The full amount of primary losses counts in each employer's experience modification calculation that determines the employer's percentage credit or surcharge on workers' compensation coverage. The loss amount above the split point is excess loss and constitutes part of each employer's experience modification calculation.

(c) Nothing in this section abrogates an employer's responsibility to pay the full amount of any compensation and benefits due under articles 40 to 47 of this title. It is a violation of this title for an employer or, if insured, the insurer to require any employee to pay any part of the compensation and benefits due under articles 40 to 47 of this title.

(d) It is a violation of this title for an employer or, if insured, the insurer to require an employee to use any other type of insurance, regardless of whether it is provided as a benefit of employment, or any other employment benefit, to pay any portion of any compensation and benefits due under articles 40 to 47 of this title.

(e) Nothing in this subsection (1) allows a carrier to stop offering no-deductible policies.

(1.5) Whenever any insurer, including Pinnacol Assurance created in section 8-45-101, issues a workers' compensation policy in this state, and annually thereafter, the insurer must issue a policy including the deductible provision if requested by the insured employer; except that the commissioner shall promulgate rules establishing criteria to allow the insurer to deny a deductible policy to an employer based on financial inability to reimburse the insurer for the deductible plan selected.

(2) The existence of an insurance contract with a deductible or the fact of payment as a result of a deductible shall not affect the requirement of an employer to report an injury or death to the division as required in section 8-43-103 (1).

(3) The deductible amounts paid by any employer under the provisions of this section shall be excluded from consideration by insurance carriers authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, in establishing the modification factors based upon experience used by such insurance carriers to determine premiums. For purposes of experience

modifications, medical only claims shall be calculated in the same manner as claims with indemnity payments.

(4) Every insurance carrier authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall clearly and conspicuously inform policyholders of the availability of the deductible option specified in subsection (1) of this section.

Source: **L. 90:** Entire article R&RE, p. 523, § 1, effective July 1. **L. 91:** (3) added, p. 1331, § 44, effective July 1. **L. 92:** Entire section amended, p. 1816, § 1, effective July 1. **L. 93:** (1.5) added, p. 2085, § 4, effective July 1. **L. 2002:** (1.5), (3), and (4) amended, p. 1886, § 40, effective July 1. **L. 2010:** (3) amended, (SB 10-112), ch. 52, p. 196, § 1, effective January 1, 2011. **L. 2013:** (1) amended, (HB 13-1025), ch. 140, p. 455, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-116 as it existed prior to 1990.

8-44-112. Surcharge on workers' compensation insurance premiums - workers' compensation cash fund.

(1) (a) Notwithstanding the provisions of sections 10-3-209 (1)(c) and 10-6-128 (3), C.R.S., for the purpose of offsetting the direct and indirect costs of the administration of the workers' compensation system, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, every captive insurance company, and every other insurance carrier, including Pinnacol Assurance, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of the "Workers' Compensation Act of Colorado" shall, as provided in this section, pay a surcharge upon the premiums received, whether in cash or not, in this state, or on account of business done in this state, for such insurance in this state, at a rate established by the director by rule, which surcharge shall be reviewed and adjusted annually based upon appropriations made for the direct and indirect costs of the administration of the workers' compensation system, as provided in subsection (7) of this section. Such insurance carriers shall be credited with all canceled or returned premiums actually refunded during the year of such insurance.

(b) (I) For the purpose of funding the direct and indirect costs of the activities of the division related to the "Workers' Compensation Cost Containment Act", article 14.5 of this title, there shall be added to the surcharge imposed pursuant to paragraph (a) of this subsection (1) an increment not to exceed three-hundredths of one percent upon the premiums received, said

surcharge to be reviewed and adjusted annually and paid over to the division in the same manner as specified in this section for the surcharge.

(II) Notwithstanding any other provisions of this section, no employer acting as a self-insurer under the provisions of the "Workers' Compensation Act of Colorado" shall be subject to the increment added to the surcharge pursuant to subparagraph (I) of this paragraph (b).

(III) All moneys collected pursuant to subparagraph (I) of this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the cost containment fund, created in section 8-14.5-108.

(2) Every such insurance carrier shall, on July 1, 1987, and semiannually thereafter, make a return, verified by affidavits of its president and secretary, or other chief officers or agents, to the division of workers' compensation, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby and shall, at the same time, pay to the division of workers' compensation a surcharge ascertained as provided in subsection (1) of this section, less return premiums on canceled policies.

(3) Every employer acting as a self-insurer under the provisions of the "Workers' Compensation Act of Colorado" shall, under oath, report to the division of workers' compensation the business payroll in such form as may be prescribed by the director and at the times in this section provided for premium reports by insurance companies in subsection (2) of this section. The division shall assess against such payroll a surcharge for the purposes of this section ascertained as provided in subsection (2) of this section on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates, including any discount or experience modification allowed, chargeable by the Pinnacol Assurance fund, and, upon receipt of notice from the division of workers' compensation of the surcharge so assessed, every such self-insurer shall, within thirty days after the receipt of such notice, pay to the division of workers' compensation the surcharge so assessed.

(4) If any such insurance carrier or self-insurer fails or refuses to make the return required by this article, the director shall assess the surcharge against such insurance carrier or self-insurer at the rate provided for in this section on such amount of premium as the director may deem just, and the proceedings thereof shall be the same as if the return had been made.

(5) If any such insurance carrier or self-insurer withdraws from business in this state before the surcharge falls due as provided in this section, or fails or neglects to pay such surcharge, the director shall at once proceed to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

(6) The director, in the enforcement of this section, shall have all of the powers granted to said director in the "Workers' Compensation Act of Colorado", and any insurance carrier or self-insurer violating any of the provisions of this section, or failing to pay the surcharge imposed in this section, is guilty of violation of said act and subject to the penalties therein prescribed.

(7) (a) All money collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the workers' compensation cash fund, which fund is created. The money in the workers' compensation cash fund is subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title 8.

(a.5) (I) For state fiscal years commencing on or before July 1, 2024, and on or after July 1, 2026, the state treasurer shall credit all interest and income derived from the deposit and investment of money in the workers' compensation cash fund to the workers' compensation cash fund.

(II) For the state fiscal year commencing on July 1, 2025, in accordance with section 24-36-114 (1), the state treasurer shall credit all interest and income derived from the deposit and investment of money in the workers' compensation cash fund to the general fund.

(III) Repealed.

(b) and (c) Repealed.

(d) The workers' compensation cash fund is exempt from the limitations set forth in section 24-75-402.

(e) Repealed.

Source: **L. 90:** Entire article R&RE, p. 524, § 1, effective July 1. **L. 92:** (7) amended, p. 1828, § 2, effective May 19. **L. 93:** (1)(b) RC&RE, p. 1459, § 1, effective June 6; (1)(b) RC&RE, p. 1723, § 2, effective June 6. **L. 99:** (7) amended, p. 617, §4, effective August 4. **L. 2002:** (1)(a) and (3) amended, p. 1886, § 41, effective July 1. **L. 2003:** (7) amended, p. 454, § 2, effective March 5. **L. 2009:** (7)(c) added, (SB 09-208), ch. 149, p. 618, § 1, effective April 20. **L. 2018:** (7)(d) added, (HB 18-1429), ch. 398, p. 2362, § 1, effective June 6. **L. 2020:** (7)(e) added, (HB 20-1406), ch. 178, p. 811, § 2, effective June 29. **L. 2021:** (7)(b), (7)(c), and (7)(e) repealed, (SB 21-266), ch. 423, p. 2794, § 3, effective July 2. **L. 2025:** (7)(a) amended and (7)(a.5) added, (SB 25-317), ch. 385, p. 2140, § 3, effective June 3.

Editor's note: (1) This section is similar to former § 8-44-111 as it existed prior to 1990.

(2) Subsection (1)(b)(IV) provided for the repeal of subsection (1)(b), effective July 1, 1992. (See L. 90, p. 524.) Subsection (1)(b) has subsequently been reenacted.

(3) Subsection (7)(c) required the state treasurer to transfer \$15,700,000 from the workers' compensation cash fund to the general fund on March 30, 2009; however, Senate Bill 09-208, which enacted the provision, did not take effect until April 20, 2009.

(4) Subsection (7)(a.5)(III)(B) provided for the repeal of subsection (7)(a.5)(III), effective July 1, 2026. (See L. 2025, p. 2140.)

Cross references: For the legislative declaration in SB 25-317, see section 1 of chapter 385, Session Laws of Colorado 2025.

8-44-113. Data from insurance carriers and self-insured employers related to workers' compensation - studies related to workers' compensation system. (Repealed)

Source: **L. 91:** Entire section added, p. 1331, § 45, effective July 1. **L. 93:** (1), (2), (3), and (4) amended, p. 1276, § 1, effective June 6. **L. 97:** (4) RC&RE p. 529, § 1, effective April 24; (1)(b) repealed, p. 1475, § 10, effective June 3. **L. 2002:** (1)(a) amended, p. 1887, § 42, effective July 1; (1)(a) amended, p. 1467, § 21, effective October 1. **L. 2003:** (1)(a), (1)(c), and IP(4)(b) amended, p. 1556, § 1, effective May 1. **L. 2005:** Entire section repealed, p. 1248, § 1, effective July 1.

8-44-114. Determination of premium.

The amount of the premium to be paid by an employer for a contract of insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor shall be on the basis of the annual expenditure of money by said employer for the services of persons engaged in such employer's employment; except that no portion of such expenditure representing a per diem payment shall be considered unless such payment is considered wages for federal income tax purposes.

Source: **L. 94:** Entire section added, p. 1286, § 4, effective May 22.

8-44-115. Calculation of premium - motor vehicle accidents.

(1) The amount by which an employer's experience rating is modified, if at all, as the result of a motor vehicle accident in which an employee is injured or killed shall be reduced in accordance with this section if:

- (a) The employee is entitled to benefits under articles 40 to 47 of this title; and
- (b) The accident was not caused, wholly or in part, by the employee or the employer; and
- (c) The use of a motor vehicle is not an integral part of the employer's business, as determined under rules promulgated by the commissioner of insurance under section 10-4-408 (5)(e), C.R.S.

(2) (a) Any modification of an employer's experience rating resulting from an accident described in subsection (1) of this section shall reflect the deduction of a loss limitation, the amount of which shall be determined by the commissioner of insurance under rules adopted pursuant to section 10-4-408 (5)(e), C.R.S.

(b) All loss experience remaining after deduction of the loss limitation referred to in paragraph (a) of this subsection (2) shall be distributed among all workers' compensation classifications in use in the state as determined by the commissioner of insurance. For purposes of such distribution, classifications of businesses of which use of a motor vehicle is an integral part may be treated differently from classifications of businesses of which use of a motor vehicle is not an integral part.

(3) This section applies to all insurers, including Pinnacol Assurance created in section 8-45-101, offering workers' compensation insurance under articles 40 to 47 of this title. The provisions of this section shall be disclosed to all policyholders annually.

Source: L. 94: Entire section added, p. 1366, § 1, effective October 1. **L. 2002:** (3) amended, p. 1887, § 43, effective July 1.

8-44-116. Reversionary interests in indemnity benefits prohibited.

No provision in a contract for insurance regulated by this article or any contract ancillary to such a contract, including specifically a contract setting up an annuity for indemnity benefits, shall establish a reversionary interest in the insurer for the indemnity benefits. Any such provision is void and unenforceable as against public policy.

Source: L. 2010: Entire section added, (SB 10-011), ch. 302, p. 1433, § 4, effective May 27.

PART 2

SELF-INSUREDS

8-44-201. Employer as own insurance carrier - revocation of permission.

(1) The executive director has the discretion to grant to any employer who has accepted the provisions of articles 40 to 47 of this title permission to be its own insurance carrier for the payment of the compensation and benefits provided by said articles. Such permission may be granted by the executive director after the filing by an employer of such statement and the giving of such information as may be required by the executive director. The executive director has the sole power to prescribe the rules, regulations, orders, terms, and conditions upon which said permit shall be granted or continued. Permission for self-insurance may be revoked at any time by the executive director, and the employer, upon notice of revocation, shall immediately insure otherwise all liability.

(2) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in granting or continuing permission for the self-insurance program of the department of human services established pursuant to section 8-44-203 but shall provide instead for alternatives to such security requirements including trust funds, surety bonds, excess insurance, or other security acceptable to the executive director. The alternative security requirements provided by this subsection (2) shall apply only to claims arising on or after July 1, 1985, and before July 1, 1990. The trust fund in existence on May 24, 1990, pursuant to the trust agreement between the department of human services, a third party administrator, and the state treasurer, dated June 27, 1985, shall remain in existence through June 30, 1990.

(3) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in continuing permission for an employer which is acting as its own insurance carrier on July 1, 1986, which are in excess of those security requirements in effect on July 1, 1986, unless there is a substantial change in the economic condition or potential liability of such employer.

(4) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in granting or continuing permission for a self-insurance program established by the state pursuant to section 24-30-1510.7, C.R.S.

Source: L. 90: Entire article R&RE, p. 525, § 1, effective July 1; (2) amended, p. 1199, § 12, effective July 1. **L. 94:** (2) amended, p. 2635, § 73, effective July 1. **L. 97:** (4) added, p. 51, § 1, effective July 1.

Editor's note: This section is similar to former § 8-44-109 as it existed prior to 1990.

ANNOTATION

Law reviews. For article, "Update on Workers' Compensation Law", see 30 Colo. Colorado Appellate Decisions in Colorado Law. 69 (Apr. 2001).

8-44-202. Workers' compensation self-insurance fund - created.

(1) The executive director shall establish and collect such fees as the executive director determines are necessary to administer this section, which fees shall not supplant funding for any other function of the department of labor and employment. The fees established pursuant to this subsection (1) shall not exceed two thousand dollars for an initial application or for an annual review of any employer acting as a self-insurer under this section.

(2) The executive director shall transmit any moneys received pursuant to subsection (1) of this section to the state treasurer, who shall place such moneys in the workers' compensation self-insurance fund, which fund is hereby created. The general assembly shall make appropriations from such fund for the purposes of administering this section.

Source: L. 90: Entire article R&RE, p. 526, § 1, effective July 1; (1) amended, p. 583, § 2, effective July 1.

Editor's note: This section is similar to former § 8-44-109 as it existed prior to 1990.

8-44-203. Department of human services - self-insurance program.

The general assembly hereby finds and declares that a program shall be established by the department of human services and the department of labor and employment to provide for a self-insurance program for the department of human services, which shall apply only to claims arising on or after July 1, 1985, and before July 1, 1990.

Source: L. 90: Entire article R&RE, p. 526, § 1, effective July 1; entire section amended, p. 1200, § 13, effective July 1. **L. 94:** Entire section amended, p. 2636, § 74, effective July 1.

Editor's note: This section is similar to former § 8-44-109 as it existed prior to 1990.

8-44-204. Public entities - self-insurance authorized for workers' compensation - pooled insurance - definition.

(1) "Public entity", as used in this section, means and includes any county, municipality, school district, and any other type of district or authority organized pursuant to law.

(2) A public entity may, after receiving permission pursuant to section 8-44-101 (1)(c), act as its own insurance carrier for compensation and benefits. Any public entity other than a school district may establish and maintain an insurance reserve fund for self-insurance purposes and may include in the annual tax levy of the public entity such amounts as are determined by its governing body to be necessary for the uses and purposes of the insurance reserve fund, subject to the limitations imposed by section 29-1-301, C.R.S. School districts may establish and maintain an insurance reserve fund in accordance with the provisions of section 22-45-103 (1)(e), C.R.S., using moneys allocated thereto pursuant to the provisions of section 22-54-105 (2), C.R.S. In the event that a public entity has no annual tax levy, it may appropriate from any unexpended balance in the general fund such amounts as the governing body shall deem necessary for the purposes and uses of the insurance reserve fund.

(3) Public entities may cooperate with one another to form a self-insurance pool to provide the insurance coverage required by this article for the cooperating public entities. Any such insurance pool shall be formed pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such self-insurance pool.

(4) Any self-insurance pool authorized by subsection (3) of this section shall not be construed to be an insurance company nor otherwise subject to the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5).

(5) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, plan for reinsurance, and capitalization of the pool. The commissioner shall review the proposal within thirty days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner approves the proposal, the commissioner shall issue a certificate of authority. The costs of such review shall be paid by the public entities desiring to form such a pool.

(6) Each self-insurance pool for public entities created in this state shall file, with the commissioner of insurance on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition.

(7) The commissioner of insurance, or any person authorized by the commissioner of insurance, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(8) (a) The certificate of authority issued to a public entity under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

- (I) Insolvency or impairment;
- (II) Refusal or failure to submit an annual report as required by subsection (6) of this section;
- (III) Failure to comply with the provisions of its own ordinances, resolutions, contracts, or other conditions relating to the self-insurance pool;
- (IV) Failure to submit to examination or any legal obligation relative thereto;
- (V) Refusal to pay the cost of examination as required by subsection (7) of this section;
- (VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;
- (VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating public entity has committed any of the acts specified in paragraph (a) of this subsection (8) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if the commissioner deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of a public entity, the commissioner shall grant the public entity fifteen days in which to show cause why such action should not be taken.

(9) (a) Any self-insurance pool organized pursuant to this section may invest in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may also invest in membership claim deductibles and in any other security or other investment authorized for such pools by the commissioner of insurance.

(b) Any public entity which is a member of a self-insurance pool which is organized pursuant to this section or any instrumentality formed by two or more of such members may invest in subordinated debentures issued by such self-insurance pool.

(10) In addition to workers' compensation coverage pursuant to subsection (3) of this section, a self-insurance pool authorized by subsection (3) of this section may provide property coverage pursuant to section 29-13-102, C.R.S., and liability coverage pursuant to section 24-10-115.5, C.R.S.

Source: **L. 90:** Entire article R&RE, p. 526, § 1, effective July 1. **L. 92:** (4) amended, p. 1500, § 35, effective July 1; (7) amended, p. 1613, § 165, effective July 1. **L. 94:** (2) amended, p. 810, § 17, effective April 27; (7) amended, p. 1626, § 17, effective May 31. **L. 97:** (6) amended, p. 1475, § 11, effective June 3. **L. 2017:** (4) amended, (HB 17-1231), ch. 284, p. 1575, § 12, effective January 1, 2018.

Editor's note: This section is similar to former § 8-44-110 as it existed prior to 1990.

8-44-205. Employers - self-insurance pools authorized for workers' compensation - definition.

(1) "Employers", as used in this section, means a bona fide trade or professional association or two or more employers which are engaged in the same or similar type of business or are members of the same bona fide trade or professional association.

(2) Employers may cooperate with one another to form a self-insurance pool to provide the insurance coverage required by this article for cooperating employers.

(3) Any self-insurance pool authorized by subsection (2) of this section shall not be construed to be an insurance company nor otherwise subject to the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5), and is subject to proceedings authorized by part 5 of article 3 of title 10.

(4) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, plan for reinsurance, capitalization of the pool, and risk management programs. The commissioner shall review the proposal within forty-five days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or

disapprove the proposal. If the commissioner of insurance has not disapproved the proposal within ninety days of receipt of the proposal, such proposal shall be deemed approved. If the commissioner approves the proposal, the commissioner shall issue a certificate of authority. The costs of such review shall be paid by the employers desiring to form such a pool.

(5) Each self-insurance pool for employers created in this state shall file with the commissioner of insurance, on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition.

(6) The commissioner of insurance, or the commissioner's designee, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(7) (a) The certificate of authority issued to an employer self-insurance pool under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

- (I) Insolvency or impairment;
- (II) Refusal or failure to submit an annual report as required by subsection (5) of this section;
- (III) Failure to comply with the provisions of its own rules, resolutions, contracts, or other conditions relating to the self-insurance pool;
- (IV) Failure to submit to examination or any legal obligation relative thereto;
- (V) Refusal to pay the cost of examination as required by subsection (6) of this section;
- (VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;
- (VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating employer self-insurance pool has committed any of the acts specified in paragraph (a) of this subsection (7) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if the commissioner deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of an employer self-insurance pool, the commissioner shall grant the

employer self-insurance pool fifteen days in which to show cause why such action should not be taken.

(8) The commissioner of insurance may supervise or rehabilitate an employer self-insurance pool pursuant to the provisions of parts 4 and 5 of article 3 of title 10, C.R.S., for any of the following reasons:

- (a) Insolvency or impairment;
- (b) Failure to comply with the provisions of its own rules, resolutions, contracts, or other conditions relating to the self-insurance pool;
- (c) Failure to submit to examination or any legal obligation relative thereto;
- (d) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;
- (e) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(9) The commissioner of insurance may promulgate reasonable rules and regulations necessary to effectuate the purposes of this section.

(10) Any self-insurance pool or any trust which provides insurance coverage for purposes of articles 40 to 47 of this title which is in existence and is operating prior to July 10, 1987, is not subject to the requirements of this section and may continue to operate such pool or trust as authorized by law.

(11) Each self-insurance pool created under this section shall establish a trust fund, on an annual basis, to provide payment of the total workers' compensation loss cost incurred by all pool members within each given year. Aggregate excess insurance shall be provided by each self-insurance pool to the statutory limit of coverage, attaching at the maximum amount of each annual trust fund balance, or, in lieu thereof, the commissioner of insurance shall set other security standards which assure payment of workers' compensation in the event that a self-insurance pool disbands or defaults.

Source: L. 90: Entire article R&RE, p. 529, § 1, effective July 1. **L. 92:** (3) amended, p. 1500, § 36, effective July 1; (6) amended, p. 1613, § 166, effective July 1. **L. 94:** (6) amended, p. 1627, § 18, effective May 31. **L. 97:** (5) amended, p. 1475, § 12, effective June 3. **L. 2017:** (3) amended, (HB 17-1231), ch. 284, p. 1575, § 13, effective January 1, 2018.

Editor's note: This section is similar to former § 8-44-112 as it existed prior to 1990.

8-44-206. Guaranty fund - immediate payment fund - legislative declaration - repeal.

(1) The general assembly hereby finds and declares that benefits awarded under articles 40 to 47 of this title to claimants employed by self-insurers may be unreasonably delayed or not paid at all if receipt of the proceeds of the bond required of the self-insurer is delayed or if the self-insurer declares bankruptcy or has insufficient reserves to cover the claim. The general assembly further finds and declares that the creation of an immediate payment fund and a guaranty fund will assure prompt and complete payment of benefits awarded to such claimants.

(2) Repealed.

(3) Immediate payment fund - assessments - creation of fund.

(a) The director shall impose an assessment upon each employer self-insured under section 8-44-201. Assessments under this subsection (3) shall be based upon a ratio equal to the self-insured employer's paid workers' compensation medical and indemnity losses for the most recent self-insurance permit year divided by the aggregate sum of paid medical and indemnity losses by all self-insured employers for that year. Such losses shall be determined on July 1, 1990, for the most recently completed permit year, and on the first day of July for each year thereafter until the minimum fund balance has been reached. Contributions to the fund shall not be assets of the self-insured employer.

(b) (I) All moneys received by the executive director pursuant to this subsection (3) shall be deposited in the state treasury in the immediate payment fund, which fund is hereby created, and all moneys credited to such fund shall be used solely for the administration and payment of benefits to employees pursuant to this section. The general assembly shall make annual appropriations out of such fund for the administration of the fund. The moneys in such fund for the payment of benefits are hereby continuously appropriated to the department for payment of such benefits. Any moneys not utilized in the fund shall not revert to the general fund.

(II) The minimum fund balance shall be three hundred thousand dollars, to be assessed during the first three years at the rate of one hundred thousand dollars annually. Interest shall accrue to the fund to a maximum fund balance of one million dollars. Thereafter, the fund balance shall be maintained at one million dollars by refunding the excess funds to each self-insured employer, on a pro rata basis, based on that employer's contribution.

(III) (A) Notwithstanding any provision of this section to the contrary, on June 30, 2026, the state treasurer shall transfer two hundred thousand dollars from the immediate payment fund to the general fund.

(B) This subsection (3)(b)(III) is repealed, effective July 1, 2027.

(4) Guaranty fund - assessments - creation of fund.

(a) When the director determines that existing security held by an employer self-insured under section 8-44-201 is insufficient to meet its existing liability for workers' compensation benefits, the director shall impose an assessment on each self-insured employer. The assessment shall be based on a ratio which equals each self-insured employer's paid workers' compensation medical and indemnity losses for the most recent self-insurance permit year divided by the aggregate sum of paid medical and indemnity losses by all self-insured employers for that year. If necessary, the executive director may direct the director to make an annual assessment thereafter until such time as the present value of the guaranty fund, created in subsection (4)(b) of this section, equals the total liability for workers' compensation benefits which are in excess of the security held by the defaulting self-insured employers.

(b) (I) All moneys received by the executive director pursuant to this subsection (4) shall be deposited in the state treasury in the guaranty fund, which fund is hereby created. Such moneys credited to the fund shall be used solely for the administration and payment of benefits to employees pursuant to this section. The general assembly shall make annual appropriations out of such fund for the administration of the fund. The moneys in such fund for the payment of benefits are hereby continuously appropriated to the department for payment of such benefits. Any moneys not utilized in the fund shall not revert to the general fund.

(II) All interest shall accrue to the fund. No amounts shall be refunded until all liability in excess of security held by self-insured employers has been discharged and until the dates imposing limitations on actions, as specified in sections 8-43-103 and 8-43-303, have passed. When those conditions have been met, the remaining moneys in the fund shall be refunded to each self-insured employer, on a pro rata basis, based on that employer's contribution.

(c) Public entities self-insuring under section 8-44-201 shall be exempt from and shall not participate in this subsection (4).

(5) The department shall select any claims administrators required under this section based on the qualifications and requirements established by the director. For the purpose of contracting for such services, the department shall not be subject to articles 101 to 114 of title 24.

Source: L. 90: Entire section added, p. 581, § 1, effective July 1. **L. 92:** (3)(b)(I) and (4)(b)(I) amended, p. 1808, § 1, effective March 19. **L. 2022:** (2) amended, (SB 22-013), ch. 2, p. 6, § 5, effective February 25; (2) repealed and (3)(a), (4)(a), and (5) amended, (HB 22-1347), ch. 477, p. 3475, § 5, effective August 10; (2)(a) amended, (SB 22-162), ch. 469, p. 3384, § 90, effective August 10. **L. 2026:** (3)(b)(III) added, (HB 26-1405), ch. 396, p. 2479, § 3, effective June 4.

Editor's note: Subsection (2) was amended in SB 22-013 and SB 22-162. Those amendments were superseded by the repeal of subsection (2) in HB 22-1347, effective August 10, 2022. For the amendments to subsection (2) in SB 22-013 in effect from February 25, 2022, to August 10, 2022, see chapter 2, Session Laws of Colorado 2022. (L. 2022, p. 6.)

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

ARTICLE 45

Pinnacol Assurance

8-45-101.	Pinnacol Assurance - creation - powers and duties.	8-45-109.	Rate schedules posted. (Repealed)
8-45-102.	Pinnacol Assurance fund created - control of fund.	8-45-110.	Board to keep accounts - readjustment by board of rates. (Repealed)
8-45-103.	Board to fix rates - chief executive officer to administer rates - sue and be sued - personal liability limited.	8-45-111.	Portions of premiums paid carried to surplus.
8-45-104.	Blanks furnished by state. (Repealed)	8-45-112.	Amendment of rates - distribution to policyholders.
8-45-105.	Places of employment classified - amount of premiums.	8-45-113.	New policies issued - when.
8-45-106.	Insurance at cost - board may impose surcharges.	8-45-114.	Adjustment of premiums. (Repealed)
8-45-107.	Basis of rates - reserve - surplus.	8-45-115.	Determination of premium - payment in advance - deductibles. (Repealed)
8-45-108.	Intentional misrepresentation by employer. (Repealed)	8-45-116.	Reinsurance. (Repealed)
		8-45-117.	Regulation by commissioner of insurance.
		8-45-118.	Treasurer custodian of fund - disbursements.

8-45-119.	State treasurer to give separate bond as custodian.	8-45-124.	Review of cost-effectiveness of use of national council on compensation insurance by the authority. (Repealed)
8-45-120.	State treasurer to invest funds.		
8-45-121.	Visitation of fund by commissioner of insurance - annual audit - examination.	8-45-125.	Legislative interim committee on operation of Pinnacol Assurance - creation - members - study - report - repeal. (Repealed)
8-45-122.	Annual report.		
8-45-123.	Change of names - direction to revisor. (Repealed)		

8-45-101. Pinnacol Assurance - creation - powers and duties.

(1) There is hereby created Pinnacol Assurance, which shall be a political subdivision of the state and shall operate as a domestic mutual insurance company except as otherwise provided by law. Pinnacol Assurance shall not be an agency of state government, nor shall it be subject to administrative direction by any state agency except as provided in this article, and except for the purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S. Pinnacol Assurance shall not be dissolved except by the general assembly. Section 10-12-411, C.R.S., shall not apply to Pinnacol Assurance.

(2) (a) The powers of Pinnacol Assurance shall be vested in the board of directors of Pinnacol Assurance, which shall have nine members. The members of the board shall be appointed by the governor with the consent of the senate. Of the nine members, four shall be employers whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance with one of such employers to be a farmer or rancher. Three of the nine members shall be employees of employers whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance. One of the nine members shall be experienced in the management and operation of insurance companies as defined in section 10-1-102 (6), C.R.S. Such member shall not concurrently serve as an owner, a shareholder, an officer, an employee, an agent of, or in any other capacity with any business which competes with Pinnacol Assurance. One of the nine members shall be experienced in finance or investments, but shall not be an employer whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance. The term of office for each such member shall be five years. The appointees may serve on a temporary basis if the senate is not in session when they are appointed until the senate is in session and is able to confirm such appointments. Vacancies on the board shall be filled by appointment of the

governor for the remainder of any unexpired terms. The board shall elect a chairman annually from its membership.

(b) The members of the board who were serving as of January 1, 2002, shall continue to serve until the completion of each member's term. New members of the board shall be appointed pursuant to paragraph (a) of this subsection (2).

(c) The board shall have the powers, rights, and duties as set forth in this article and otherwise provided by law.

(3) Members of the board shall be compensated one hundred forty dollars per diem plus their actual and necessary expenses. Per diem compensation, not to exceed thirty days in any calendar year, shall be paid only when the board is transacting official business.

(4) On and after July 1, 2002, the powers, duties, and functions formerly exercised by the Colorado compensation insurance authority may be exercised by Pinnacol Assurance.

(5) The board shall:

(a) (I) Appoint the chief executive officer of Pinnacol Assurance who shall serve under contract and appoint, hire, or delegate the authority to hire such other staff as may be necessary to carry out the duties of Pinnacol Assurance.

(II) If an executive officer of Pinnacol Assurance is appointed pursuant to subparagraph (I) of this paragraph (a) and such executive officer appoints, hires, or delegates duties to any other staff necessary to carry out the duties of Pinnacol Assurance, and the executive officer or other staff receives total compensation, including bonuses or deferred compensation, in an amount equal to or greater than one hundred fifty thousand dollars annually, such compensation information shall be a public record.

(b) Develop and approve an annual budget;

(c) Establish general policies and procedures for the operation and administration of Pinnacol Assurance;

(d) (Deleted by amendment, L. 2002, p. 1865, § 1, effective July 1, 2002.)

(e) Promulgate policies and procedures that establish the basis by which employer premiums payable to Pinnacol Assurance are determined. The board may establish different rates for employers who meet the requirements established by the board for any classification after complying with the requirements of part 4 of article 4 of title 10, C.R.S., so long as those rates are not excessive, inadequate, or unfairly discriminatory.

(f) Offer to provide workers' compensation insurance and employer's liability insurance covering any liability of Colorado employers on account of personal injuries sustained by, or the death of, any employee. Nothing in this article shall be interpreted to permit Pinnacol Assurance

to provide any other type of insurance or to provide insurance to employers that are not Colorado employers. Pinnacol Assurance shall not refuse to insure any Colorado employer or cancel any insurance policy due to the risk of loss or amount of premium, except as otherwise provided in this title.

- (g) Review and streamline administrative procedures;
 - (h) Oversee the operations and make necessary personnel changes;
 - (i) Review the investigative procedures and implement changes to expedite investigations;
 - (j) Review and recommend legislation pertaining to workers' compensation in articles 40 to 47 of this title and to clarify legal concepts related thereto;
 - (k) Review the method of calculation of the experience modification factor with the object of providing maximum incentives for job safety;
 - (l) Establish general policies and procedures by rule and regulation concerning medical care cost containment practices under articles 40 to 47 of this title; and
 - (m) Post the date, time, and location of each board meeting on the Pinnacol Assurance website at least seven calendar days prior to the scheduled meeting.
- (6) Article 4 of title 24, C.R.S., shall not apply to the promulgation of any policies or procedures authorized by subsection (5) of this section.
- (7) Pinnacol Assurance may sell services, including but not limited to medical bill processing, that are developed pursuant to its powers under this article.
- (8) Employees of Pinnacol Assurance shall be exempt from the state personnel system but shall, by acceptance of employment, be subject to the provisions of article 51 of title 24, C.R.S. Pinnacol Assurance shall provide for the deduction of employer and employee contributions from salary and for payment to the association of such deductions and for any other payments that would be due from a state employer.
- (9) Notwithstanding any provision of law to the contrary, the claim files of injured employees, the policy files of employers, and all business records relating to the determination of rates that are not required to be disclosed by any other insurance company shall not be subject to the provisions of part 2 of article 72 of title 24, C.R.S.
- (10) With respect to meetings of Pinnacol Assurance, matters relating to the claim files of injured employees and policy files of employers shall not be subject to the provisions of part 4 of article 6 of title 24, C.R.S.
- (11) Pinnacol Assurance may enter into cooperative arrangements with any public or private entity for the purpose of carrying out its powers, duties, and functions. Nothing in this section

shall require or be interpreted to require an employer to provide health insurance coverage for its employees.

(12) Notwithstanding the provisions of subsection (1) of this section, upon the attainment of a reasonable surplus as set forth in section 8-45-111, the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., shall not apply to Pinnacol Assurance.

(13) Any member of the board who owns at least ten percent of an entity that enters into a contract with Pinnacol Assurance shall disclose the board member's ownership interest in the entity. This disclosure shall be a public record.

Source: **L. 90:** Entire article R&RE, p. 531, § 1, effective July 1. **L. 91:** (8.5), (11), and (12) added, p. 1362, § 1, effective July 1. **L. 95:** (13) added, p. 987, § 1, effective May 25; (7)(b) amended, p. 636, § 16, effective July 1. **L. 96:** (1) amended, p. 1512, § 37, effective June 1. **L. 97:** (5)(e) and (11) amended and (5)(e.5) added, p. 935, § 1, effective May 21. **L. 2000:** (1) amended, p. 284, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1865, § 1, effective July 1. **L. 2003:** (2)(a) amended, p. 614, § 5, effective July 1. **L. 2009:** (2)(c) amended, (SB 09-281), ch. 335, p. 1775, § 1, effective June 1. **L. 2010:** (5)(m) added, (HB 10-1009), ch. 273, p. 1255, § 1, effective July 1.

Editor's note: This section is similar to former § 8-54-102.5 as it existed prior to 1990.

Cross references: For the provisions that designate Pinnacol Assurance as a "special purpose authority" for the purposes of section 20 of article X of the Colorado constitution, see § 24-77-102 (15).

ANNOTATION

Terms in this section such as "body corporate" and "political subdivision of the state" denote entities such as counties and municipalities and not entities that are arms of the state. They suggest that CCIA should not be treated as an arm of the state. *Simon v. State Compensation Ins. Auth.*, 946 P.2d 1298 (Colo. 1997).

CCIA is sufficiently autonomous from the state to be considered a "person" under 42 U.S.C. § 1983: it is clear that the legislature intended to create the equivalent of a private insurance company in creating CCIA. *Simon v. State Compensation Ins. Auth.*, 946 P.2d 1298 (Colo. 1997).

Annotator's note. CCIA is now Pinnacol Assurance (see § 8-45-123).

8-45-102. Pinnacol Assurance fund created - control of fund.

(1) There is hereby created in the state treasury a fund, to be known as the Pinnacol Assurance fund, for the benefit of injured and the dependents of killed employees, which shall be administered in accordance with the provisions of this article by the board. Such administration shall be without liability on the part of the state, beyond the amount of said fund, constituted as provided in this article. The state shall have no liability for the solvency or financial condition of the fund.

(2) The chief executive officer is vested with full power and jurisdiction over the administration of Pinnacol Assurance and may appoint such subordinate officers as may be necessary for the efficient operation of Pinnacol Assurance and may do and perform all things, whether specifically designated in this article or in addition thereto, that are necessary or convenient in the exercise of any power or jurisdiction over Pinnacol Assurance in the administration thereof under the provisions of this article as fully and completely as the head of a private insurance company might or could do, subject, however, to all the provisions of this article and other applicable law.

(3) Control of all moneys in the Pinnacol Assurance fund shall be transferred to the board, which shall administer the fund and use such moneys for the purposes of this article.

(4) The Pinnacol Assurance fund shall be a continuing fund and shall consist of all premiums received and paid into said fund for compensation insurance, all property and securities acquired by and through the use of moneys belonging to said fund, and all interest earned upon moneys belonging to said fund and deposited or invested. Said fund shall be applicable to the payment of the salaries of the employees of the fund and to its other operating expenses and to the payment of losses sustained or liabilities incurred under the contracts or policies of insurance issued by Pinnacol Assurance in accordance with the provisions of articles 40 to 47 of this title. All moneys in the fund previously known as the Colorado compensation insurance authority fund shall be transferred into the Pinnacol Assurance fund on July 1, 2002.

(5) The moneys in the Pinnacol Assurance fund shall be continuously available for the purposes of this article and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year. All revenues, moneys, and assets of Pinnacol Assurance belong solely to Pinnacol Assurance. The state of Colorado has no claim to nor any interest in such revenues, moneys, and assets and shall not borrow, appropriate, or direct payments from such revenues, moneys, and assets for any purpose.

Source: L. 90: Entire article R&RE, p. 533, § 1, effective July 1. L. 2002: Entire section amended, p. 1869, § 2, effective July 1.

Editor's note: This section is similar to former § 8-54-102 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-45-102 is similar to § 8-54-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

The liability of the state compensation insurance fund is limited by statute. Packaging Corp. of Am. v. Indus. Comm'n, 173 Colo. 212, 477 P.2d 367 (1970).

And this liability of the state compensation insurance fund is for the payment of claims for injuries to employees who are covered by the state

workmen's compensation law. Packaging Corp. of Am. v. Indus. Comm'n, 173 Colo. 212, 477 P.2d 367 (1970).

Furthermore, this liability of the state compensation insurance fund presupposes an injury to an employee arising out of his employment. Packaging Corp. of Am. v. Indus. Comm'n, 173 Colo. 212, 477 P.2d 367 (1970).

And this liability is exclusively to be determined in administrative proceedings on a claim filed pursuant to law. Packaging Corp. of Am. v. Indus. Comm'n, 173 Colo. 212, 477 P.2d 367 (1970).

8-45-103. Board to fix rates - chief executive officer to administer rates - sue and be sued - personal liability limited.

(1) The board shall have full power and it is its duty to fix and determine the rates to be charged by Pinnacol Assurance for compensation insurance.

(2) The chief executive officer shall manage and conduct all business and affairs in relation to the rates to be charged by Pinnacol Assurance for compensation insurance which shall be conducted in the name of Pinnacol Assurance, and in that name, without any other name, title, or authority, the chief executive officer may:

(a) (I) Sue and be sued in all the courts of this state, or of any other state, or of the United States, and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with Pinnacol Assurance and the administration, management, or conduct of the business or affairs relating thereto; and the chief executive officer shall be authorized to employ counsel to represent Pinnacol Assurance in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) The chief executive officer shall not, nor shall any officer or employee of Pinnacol Assurance, or entities or parties with whom it contracts for services, be personally liable in a private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration, management, or conduct of Pinnacol Assurance, its business, or other affairs relating thereto.

(c) (Deleted by amendment, L. 2002, p. 1870, § 3, effective July 1, 2002.)

Source: L. 90: Entire article R&RE, p. 534, § 1, effective July 1. L. 2002: Entire section amended, p. 1870, § 3, effective July 1.

Editor's note: This section is similar to former § 8-54-105 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-45-103 is similar to § 8-45-105 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Under this section the manager of the state compensation insurance fund is authorized to enter into contracts of insurance with employers. Indus. Comm'n v. Spoo, 151 Colo. 581, 380 P.2d 49 (1963).

State fund may enter into contracts with employers which contracts may cover a number of details, including that of cancellation, not set forth by statute so long

as they conform with the public policy of this state. Dye Const. Co. v. Indus. Comm'n, 678 P.2d 1066 (Colo. App. 1983).

Contract provisions for cancellation are valid unless in conflict with the terms of an applicable statute. Dye Const. Co. v. Indus. Comm'n, 678 P.2d 1066 (Colo. App. 1983).

An unequivocal agreement contained in a policy, by which either party may cancel the contract, is binding between the parties, because the parties to an insurance contract validly may contract as they please with respect to cancellation. Dye Const. Co. v. Indus. Comm'n, 678 P.2d 1066 (Colo. App. 1983).

No statutory requirement that the fund accept each and every application for insurance. Implicit in the fund's authority to make and enter into contracts of insurance with employers is the power or authority to reject an application if the fund has a legitimate basis for doing so. *Bastian v. Martinez*, 698 P.2d 1373 (Colo. App. 1984).

The failure of the state compensation insurance fund to specify the time of effective cancellation of coverage results in the policy coverage being in effect until midnight of the date of cancellation. *State Comp. Ins. Fund v. Bldg. Sys.*, 713 P.2d 940 (Colo. App. 1985).

8-45-104. Blanks furnished by state. (Repealed)

Source: L. 90: Entire article R&RE, p. 535, § 1, effective July 1. L. 2002: Entire section repealed, p. 1871, § 4, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-126 as it existed prior to 1990.

8-45-105. Places of employment classified - amount of premiums.

(1) The board may classify the places of employment of employers insured by Pinnacol Assurance into classes in accordance with the nature of the business in which they are engaged and the probable hazard or risk of injury to their employees. It shall determine the amount of the premiums that such employers shall pay to Pinnacol Assurance, and may prescribe in what manner such premiums shall be paid, and may change the amount thereof both in respect to any or all of such employers as circumstances may require, and the condition of their respective plants, establishments, or places of work in respect to the safety of their employees may justify. All such premiums shall be levied on a basis that shall be fair, equitable, and just as among such employers.

(2) (Deleted by amendment, L. 2002, p. 1871, § 5, effective July 1, 2002.)

Source: L. 90: Entire article R&RE, p. 535, § 1, effective July 1. L. 2002: Entire section amended, p. 1871, § 5, effective July 1.

Editor's note: This section is similar to former § 8-54-107 as it existed prior to 1990.

8-45-106. Insurance at cost - board may impose surcharges.

(1) It is the duty of the board, in the exercise of the powers and discretion conferred upon it by articles 40 to 47 of this title, ultimately to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent Pinnacol Assurance fund, and the creation and maintenance of a reasonable surplus after the payment of legitimate claims for injury and death, that may be authorized to be paid from the Pinnacol Assurance fund for the benefit of injured and dependents of killed employees.

(2) The board may impose a premium surcharge, not to exceed an additional fifty percent, for up to twelve continuous months, as a condition precedent to insure or reinsure an employer whose policy was canceled or terminated by any insurer for reasons of fraud or intentional misrepresentation of a material fact; except that, if an employer disputes the imposition of such surcharge, the employer may make a complaint to the commissioner of insurance. If the commissioner of insurance determines that the board, in imposing a premium surcharge, has engaged in any conduct in violation of part 11 of article 3 of title 10, C.R.S., the commissioner may take any action the commissioner deems appropriate and authorized by law.

Source: L. 90: Entire article R&RE, p. 536, § 1, effective July 1. L. 97: Entire section amended, p. 936, § 2, effective May 21. L. 2002: (1) amended, p. 1872, § 6, effective July 1.

Editor's note: This section is similar to former § 8-54-109 as it existed prior to 1990.

8-45-107. Basis of rates - reserve - surplus.

(1) The rates shall be the percentage of the payroll of any employer that, on the average, shall produce a sufficient sum to:

(a) Carry all claims to maturity such that the rates shall be based upon the reserve and not upon the assessment plan;

(b) Produce a reasonable surplus as provided in articles 40 to 47 of this title, cover the catastrophe hazard, and ensure the payment to employees and their dependents of the compensation provided in said articles.

(2) In determining the amount of reserve to be laid aside to meet deferred payments according to awards, such reserve may be ascertained by finding the present worth of such deferred medical and indemnity payments calculated at a rate of interest not higher than six

percent per annum, and such calculations of disability indemnity benefits shall be made according to a table of mortality not lower than the American experience table of mortality and, in the discretion of the board, by such other and further methods as will result in the establishment of adequate reserves.

(3) The amounts raised for the Pinnacol Assurance fund shall ultimately become neither more nor less than necessary to make the fund self-supporting, which includes the attainment and maintenance of an adequate surplus as determined in accordance with section 8-45-111, and the premiums or rates levied for such purpose shall be subject to readjustment from time to time by the board as may become necessary.

Source: **L. 90:** Entire article R&RE, p. 536, § 1, effective July 1. **L. 91:** (3) amended, p. 1362, § 2, effective July 1. **L. 2002:** Entire section amended, p. 1872, § 7, effective July 1.

Editor's note: This section is similar to former § 8-54-110 as it existed prior to 1990.

8-45-108. Intentional misrepresentation by employer. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 536, § 1, effective July 1. **L. 94:** Entire section repealed, p. 1719, § 15, effective July 1.

Editor's note: Prior to its repeal in 1994, this section was similar to former § 8-54-125 as it existed prior to 1990.

8-45-109. Rate schedules posted. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 536, § 1, effective July 1. **L. 2002:** Entire section repealed, 1873, § 8, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-127 as it existed prior to 1990.

8-45-110. Board to keep accounts - readjustment by board of rates. (Repealed)

Source: L. 90: Entire article R&RE, p. 537, § 1, effective July 1. L. 2002: Entire section repealed, p. 1873, § 9, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-111 as it existed prior to 1990.

8-45-111. Portions of premiums paid carried to surplus.

The board shall set aside such proportion as it may deem necessary of the earned premiums paid into the Pinnacol Assurance fund, as a contribution to the surplus of the fund.

Source: L. 90: Entire article R&RE, p. 537, § 1, effective July 1. L. 97: Entire section amended, p. 936, § 3, effective May 21. L. 2002: Entire section amended, p. 1873, § 10, effective July 1. L. 2003: Entire section amended, p. 2201, § 4, effective July 1. L. 2010: Entire section amended, (HB 10-1220), ch. 197, p. 854, § 15, effective July 1.

Editor's note: This section is similar to former § 8-54-112 as it existed prior to 1990.

8-45-112. Amendment of rates - distribution to policyholders.

The board may amend at any time the rates for any class. No contract of insurance between Pinnacol Assurance and any employer shall be in effect until a policy or binder has been actually issued by the board and the premium therefor paid as and when required by this article. Not less often than once a year the chief executive officer shall tabulate the earned premiums paid by policyholders of Pinnacol Assurance. Should the experience of the Pinnacol Assurance fund show a credit balance and after payment of all amounts that have fallen due because of operating expenses, injury, or death, and after setting aside proper reserves, the board shall distribute such credit balance to the policyholders who have a balance to their credit in proportion to the premium paid and losses incurred by each such policyholder during the preceding insurance period. In the event any such policyholder fails to renew a policy with Pinnacol Assurance for the period following the period in which said dividends were earned, said policyholder shall be

entitled to said credit dividend if such policy is terminated in good standing. In the event an employer actually discontinues business, said employer's policy shall be canceled, and the dividend, if any, when ascertained, shall be returned to the employer.

Source: **L. 90:** Entire article R&RE, p. 537, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1873, § 11, effective July 1.

Editor's note: This section is similar to former § 8-54-113 as it existed prior to 1990.

8-45-113. New policies issued - when.

Pinnacol Assurance shall not be required to issue a new policy of insurance to an employer until all moneys due Pinnacol Assurance have been paid, all premiums have been paid on all canceled policies, and the employer has complied with all provisions of such canceled policies.

Source: **L. 90:** Entire article R&RE, p. 537, § 1, effective July 1. **L. 93:** Entire section amended, p. 61, § 1, effective March 22. **L. 95:** Entire section amended, p. 63, § 1, effective March 23. **L. 97:** (1)(c) added, p. 936, § 4, effective May 21. **L. 2002:** Entire section R&RE, p. 1874, § 12, effective July 1.

Editor's note: This section is similar to former § 8-54-114 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-45-113 is similar to § 8-45-113 as it existed prior to 2002 repeal and reenactment and to § 8-54-114 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing those provisions have been included in the annotations to this section.

The state fund is authorized to cancel a policy, without notice and as of its effective date, if the employer's payment therefor is in arrears for more than 20 days. *Chevron Oil Co. v. Indus. Comm'n*, 169 Colo. 336, 456 P.2d 735 (1969).

Method of cancellation not exclusive. Although a method of cancellation is provided by statute, unless it is manifestly all-inclusive, the statute, in specifying the

instances under which a party to an insurance contract may cancel, does not make such cancellation the exclusive remedy, and it is not in derogation of other remedial rights which are recognized and implemented by other provisions of law. Dye Const. Co. v. Indus. Comm'n, 678 P.2d 1066 (Colo. App. 1983).

The term "any policy" in subsection (1) includes binders as well as formal policies. Coverage did not lapse because premium was paid within the 30-day grace period. Southeastern Colo. Homeless Center v. West, 843 P.2d 117 (Colo. App. 1992).

8-45-114. Adjustment of premiums. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 538, § 1, effective July 1. **L. 2002:** Entire section repealed, p. 1874, § 13, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-115 as it existed prior to 1990.

8-45-115. Determination of premium - payment in advance - deductibles. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 538, § 1, effective July 1. **L. 94:** (1) amended, p. 1286, § 3, effective May 22. **L. 2002:** Entire section repealed, p. 1874, § 14, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-116 as it existed prior to 1990.

8-45-116. Reinsurance. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 539, § 1, effective July 1. **L. 95:** Entire section amended, p. 987, § 2, effective May 25. **L. 2002:** Entire section repealed, p. 1875, § 15, effective July 1.

Editor's note: Prior to its repeal in 2002, this section was similar to former § 8-54-120 as it existed prior to 1990.

8-45-117. Regulation by commissioner of insurance.

(1) Pinnacol Assurance is subject to regulation by the commissioner of insurance as provided in:

(a) Part 11 of article 3 of title 10, C.R.S., pertaining to unfair competition and deceptive practices;

(b) Part 4 of article 4 of title 10, C.R.S., pertaining to rate regulation; however, if the pure premium rates used by Pinnacol Assurance are the national council on compensation insurance rates previously approved by the commissioner of insurance, Pinnacol Assurance may use different pure premium rates for employers who meet the requirements established by the board of directors after complying with the requirements of part 4 of article 4 of title 10, C.R.S., concerning type II insurers;

(c) Sections 24-31-104.5, C.R.S.; 10-1-108 (7), 10-1-109, and 10-1-102, except subsections (3) and (6), C.R.S.; 10-1-205 (1) to (6) and (8), C.R.S.; 10-3-109, C.R.S., except for the publication requirements; 10-3-128, C.R.S.; 10-3-202, C.R.S.; 10-3-207, C.R.S.; 10-3-208, C.R.S.; 10-3-231, C.R.S.; 10-3-239, C.R.S.; and parts 7 and 8 of article 3 of title 10, C.R.S., except as these sections are inconsistent with this article.

(2) (Deleted by amendment, L. 97, p. 936, § 5, effective May 21, 1997.)

(3) Nothing in this section shall be construed to subject Pinnacol Assurance to any premium tax assessed pursuant to title 10, C.R.S.

(4) The cost of examinations performed in accordance with section 8-45-121 (4) shall be billed by the commissioner to Pinnacol Assurance at prevailing hourly rates based upon time records kept by the commissioner. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(5) At such time as a reasonable surplus of the Pinnacol Assurance fund is reached pursuant to section 8-45-111, Pinnacol Assurance shall be subject to regulation by the commissioner of insurance as provided in section 10-1-205 (7) and part 4 of article 3 of title 10, C.R.S., to the extent consistent with the provisions of this article.

(6) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-118, upon the attainment of a reasonable surplus as set forth in section 8-45-111 and verified by audit and examination performed in accordance with section 8-45-121, all of the moneys in the Pinnacol

Assurance fund shall be transferred out of the state treasury and into the custody of the board of Pinnacol Assurance. The board shall thereafter control the investment of the fund pursuant to the requirements set forth in part 2 of article 3 of title 10, C.R.S.

(7) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-118, upon the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, the board of Pinnacol Assurance shall make all disbursements, and such disbursements shall not be made upon state warrants.

(8) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-119, upon the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, the state treasurer shall not be required to give any bond as custodian of the Pinnacol Assurance fund.

(9) After the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, if the commissioner of insurance places Pinnacol Assurance under direct supervision pursuant to the provisions of section 10-3-405, C.R.S., the moneys in the Pinnacol Assurance fund may be transferred back to the custody of the state treasury pursuant to sections 8-45-102 (1), 8-45-118, and 8-45-119, and the state treasurer shall control the investment of the fund pursuant to section 8-45-120. The transfer of funds shall be under such conditions and within such time period as the state treasurer and the commissioner of insurance deem appropriate.

(10) Pinnacol Assurance shall not acquire or control any other insurer.

Source: **L. 90:** Entire article R&RE, p. 539, § 1, effective July 1. **L. 97:** (1), (2), and (4) amended and (5) added, p. 936, § 5, effective May 21. **L. 2002:** (1)(c) amended, p. 1012, § 4, effective June 1; IP(1), (1)(b), (3), (4), and (5) amended and (6), (7), (8), (9), and (10) added, p. 1875, § 16, effective July 1. **L. 2003:** (1)(c) amended, p. 615, § 6, effective July 1. **L. 2004:** (1)(c) amended, p. 1058, § 1, effective July 1. **L. 2010:** (1)(c) amended, (HB 10-1385), ch. 204, p. 883, § 2, effective May 5; (5) amended, (HB 10-1220), ch. 197, p. 854, § 16, effective July 1. **L. 2012:** (1)(c) amended, (SB 12-110), ch. 158, p. 560, § 4, effective July 1. **L. 2014:** IP(1) and (1)(c) amended, (HB 14-1315), ch. 295, p. 1217, § 4, effective January 1, 2015.

Editor's note: This section is similar to former § 8-54-124.5 as it existed prior to 1990.

8-45-118. Treasurer custodian of fund - disbursements.

(1) The state treasurer shall be the custodian of the Pinnacol Assurance fund, and all disbursements therefrom shall be paid either by the state treasurer upon warrants drawn in accordance with law upon vouchers issued by the board upon order of the chief executive officer, or by or under the direction of the chief executive officer in such other manner as the state treasurer may approve. In every case occurring in which a warrant has been drawn in accordance with law against the state treasurer upon vouchers issued by the board for payment of any sum of money from the Pinnacol Assurance fund, or when another form of payment has been made from such fund by or under the direction of the chief executive officer, and the time within which said warrant or other form of payment shall be presented for payment in order to be valid has not been stamped, printed, or written across the face thereof, or otherwise specified, and a period of six months has elapsed since the issuance of such warrant or other form of payment, during which no person entitled thereto, or the proceeds thereof, has presented the same to the state treasurer for payment, or appeared to claim the funds so authorized to be paid from the hands of the state treasurer or the chief executive officer, such warrant or other form of payment may in the discretion of the chief executive officer be posted for cancellation, and thereafter canceled and set aside.

(2) In every such case in which it is proposed to cancel any such warrant, the chief executive officer shall cause a notice to be drawn in duplicate, with a description of said warrant containing the amount, number, date of issuance, and name of payee, and shall cause one copy of said notice to be posted in a conspicuous place that is open to the public in the office of said board and one copy to be delivered to the state treasurer. If, at the end of one month after the posting of such notice and the delivery of a copy to the state treasurer, such warrant is not presented for payment and no person entitled to the proceeds thereof appears to claim the funds so authorized to be paid in said warrant, said warrant may be canceled as provided in this section.

(3) (a) The state treasurer shall, upon the request of the chief executive officer, transfer any such funds held to the credit of or for the payment of such warrant back to the credit of the Pinnacol Assurance fund. Except as otherwise provided in paragraph (b) of this subsection (3), if at any time thereafter application shall be made for the reissuance of such warrant, the same may be reissued, if the claim that it represents appears to be valid and still outstanding. Such reissued warrant shall be made payable from the moneys on deposit in the Pinnacol Assurance fund and shall be made payable to the person entitled to the proceeds thereof.

(b) For warrants issued on or after August 6, 2003, the funds transferred pursuant to subsection (3)(a) of this section shall be subject to the "Revised Uniform Unclaimed Property Act", article 13 of title 38, and for purposes of this subsection (3)(b), Pinnacol Assurance shall be considered an insurance company as defined in section 38-13-102 (13).

(4) Except as provided in section 8-45-117, the powers and discretion granted in this section to the chief executive officer and the state treasurer shall obtain in all cases relating to the warrants or other forms of payment drawn on the Pinnacol Assurance fund, anything to the contrary in any statute notwithstanding.

Source: **L. 90:** Entire article R&RE, p. 539, § 1, effective July 1. **L. 95:** (1) and (4) amended, p. 987, § 3, effective May 25. **L. 2002:** Entire section amended, p. 1876, § 17, effective July 1. **L. 2003:** (3) amended, p. 721, § 1, effective August 6. **L. 2019:** (3)(b) amended, (SB 19-088), ch. 110, p. 462, § 3, effective July 1, 2020.

Editor's note: This section is similar to former § 8-54-121 as it existed prior to 1990.

8-45-119. State treasurer to give separate bond as custodian.

(1) The state treasurer shall give a separate and additional bond in such amount as may be fixed by the board with sureties to be approved by the governor, conditioned for the faithful performance of the state treasurer's duties as custodian of the Pinnacol Assurance fund, and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to, said Pinnacol Assurance fund, subject to all provisions of law governing bonds of the state treasurer. The premium on said bond shall be paid out of the earnings of the Pinnacol Assurance fund.

(2) The state treasurer shall give a separate and additional bond in such amount as may be fixed by the executive director of the department of labor and employment with sureties to be approved by the governor, conditioned for the faithful performance of the state treasurer's duties as custodian of the funds under the jurisdiction of the director of the division of workers' compensation, and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to, the funds under the jurisdiction of the director of the division of workers' compensation, subject to all provisions of law governing bonds of the state treasurer. The premium on said bond shall be paid out of the earnings of the funds under the jurisdiction of the director of the division of workers' compensation on a pro rata basis.

Source: **L. 90:** Entire article R&RE, p. 540, § 1, effective July 1. **L. 2002:** (1) amended, p. 1877, § 18, effective July 1.

Editor's note: This section is similar to former § 8-54-123 as it existed prior to 1990.

8-45-120. State treasurer to invest funds.

(1) Except as provided in subsection (2) of this section, the state treasurer, after consulting with the board of directors or the board's designated committee as to the overall direction of the portfolio, shall invest any portion of the Pinnacol Assurance fund, including its surplus or reserves, which is not needed for immediate use. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S. Such moneys may also be invested in common and preferred stock in the same manner as a domestic insurance company pursuant to section 10-3-226, C.R.S. The state treasurer shall determine the appropriate percentage of the fund, not to exceed one hundred percent of the surplus, to be invested in common and preferred stock and the appropriate level of risk for such investments. The state treasurer may make such investments in the form of mutual funds and may contract with private professional fund managers and employ portfolio managers.

(2) Subject to approval by the board, the chief executive officer may authorize and direct the state treasurer to invest a portion of the funds in the Pinnacol Assurance fund for the purchase of real property, to house, contain, and maintain the offices and operational facilities of Pinnacol Assurance as may be deemed necessary to accommodate its immediate and reasonably anticipated future needs. The chief executive officer is authorized to purchase such real property, buildings, and improvements thereon. Title to such real property, buildings, and improvements thereon shall vest in Pinnacol Assurance, and such assets shall be a part of the Pinnacol Assurance fund. The chief executive officer may lease or rent space not needed for the immediate requirements of Pinnacol Assurance in such real property to other public agencies or private businesses. Moneys received from such rental or lease of space and moneys appropriated by the general assembly for rental or lease of space in such real property shall be deposited with the state treasurer for credit to the Pinnacol Assurance fund. The chief executive officer shall not sell or otherwise dispose of any property, buildings, or improvements thereon so acquired, without consent of the board, and the moneys received from such sale or disposition shall be credited to the account of the Pinnacol Assurance fund.

(3) Repealed.

Source: L. 90: Entire article R&RE, p. 540, § 1, effective July 1. L. 92: (3) amended, p. 1112, § 1, effective July 1. L. 97: (1) amended, p. 938, § 6, effective May 21; (3) repealed, p. 376, § 7, effective August 6. L. 2002: (1) and (2) amended, p. 1878, § 19, effective July 1.

Editor's note: This section is similar to former § 8-54-122 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-45-120 is similar to § 8-54-122 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions under this article to the board of directors of the state compensation insurance authority.

Treasurer to obey commission and invest as directed by it. Full control of the fund is given to the commission; the

custodian is authorized to do nothing with it except upon their order, and his investment of it is restricted. Nothing is required of the treasurer by this section but to obey the commission and invest as directed at the market price. *Stong v. Indus. Comm'n*, 71 Colo. 133, 204 P. 892 (1922).

Mandamus of state treasurer does not waive commission's right to sue for damages. In an action in mandamus against the state treasurer by the industrial commission to compel the former to invest state insurance funds as directed, the commission by electing to sue in mandamus did not waive its right to sue for damages occasioned by failure of the treasurer to act as directed. *Indus. Comm'n v. Stong*, 77 Colo. 590, 239 P. 12 (1925).

8-45-121. Visitation of fund by commissioner of insurance - annual audit - examination.

(1) Pinnacol Assurance shall be open to visitation by the commissioner of insurance at all reasonable times, and the commissioner of insurance shall require from the chief executive officer reports as to the condition of Pinnacol Assurance, as required by law to be made by other insurance carriers doing business in this state insofar as applicable to Pinnacol Assurance.

(2) The state auditor shall conduct an annual financial audit of Pinnacol Assurance. In conducting such audits, the state auditor may employ a firm of auditors and actuaries, or both, with the necessary specialized knowledge and experience. The cost of the annual audit shall be paid from the operating funds of Pinnacol Assurance. The state auditor shall report his or her findings from such audits, along with any comments and recommendations, to the governor, the general assembly, the executive director of the department of labor and employment, and the commissioner of insurance. The state auditor has continuing authority to conduct performance audits of Pinnacol Assurance as the state auditor deems appropriate. The cost of performance audits shall be paid from the operating funds of Pinnacol Assurance.

(3) (Deleted by amendment, L. 2002, p. 1879, § 20, effective July 1, 2002.)

(4) At least once every three years, the commissioner of insurance shall conduct an examination of the fund, to be conducted in the same manner as an examination of a private insurance carrier. With respect to the examination, section 10-1-204 applies. The commissioner of insurance shall transmit a copy of the commissioner's examination to the state auditor.

Source: **L. 90:** Entire article R&RE, p. 541, § 1, effective July 1. **L. 97:** (2) amended, p. 1475, § 13, effective June 3. **L. 2002:** Entire section amended, p. 1879, § 20, effective July 1. **L. 2009:** (2) amended, (SB 09-281), ch. 335, p. 1775, § 2, effective June 1. **L. 2017:** (2) amended, (SB 17-294), ch. 264, p. 1384, § 7, effective May 25; (4) amended, (SB 17-044), ch. 4, p. 6, § 1, effective August 9.

Editor's note: This section is similar to former § 8-54-124 as it existed prior to 1990.

8-45-122. Annual report.

(1) The chief executive officer of Pinnacol Assurance shall submit an annual report to the governor; the business affairs and labor committee of the house of representatives; the business, labor, and technology committee of the senate; and the health and human services committees of the house of representatives and the senate, or their successor committees, reporting on the business operations, resources, and liabilities of the Pinnacol Assurance fund.

(2) The report required in subsection (1) of this section shall include the following information for the previous calendar year:

- (a) The number of policies held by Pinnacol Assurance;
- (b) The total assets of Pinnacol Assurance;
- (c) The amount of reserves;
- (d) The amount of surplus;
- (e) The number of claims filed;
- (f) The number of claims admitted or contested within the twenty-day period pursuant to section 8-43-203, specifying the number of contested claims that are medical only and those that are indemnity claims;
- (g) The number of medical procedures denied;
- (h) The amount of total compensation each executive officer or staff member receives, including bonuses or deferred compensation;

- (i) The amount spent on commissions;
- (j) The amount paid to trade associations for marketing fees;
- (k) All information relating to bonus programs; and
- (l) Any other information the chief executive officer deems relevant to the report.

Source: **L. 90:** Entire article R&RE, p. 542, § 1, effective July 1. **L. 97:** Entire section repealed, p. 1475, § 14, effective June 3. **L. 2010:** Entire section RC&RE, (SB 10-013), ch. 303, p. 1434, § 2, effective July 1.

Editor's note: This section is similar to former § 8-54-104.5 as it existed prior to 1990.

8-45-123. Change of names - direction to revisor. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 542, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1879, § 21, effective July 1. **L. 2024:** Entire section repealed, (HB 24-1450), ch. 490, p. 3406, § 12, effective August 7.

8-45-124. Review of cost-effectiveness of use of national council on compensation insurance by the authority. (Repealed)

Source: **L. 91:** Entire section added, p. 1363, § 3, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1992. (See L. 91, p. 1363.)

8-45-125. Legislative interim committee on operation of Pinnacol Assurance - creation - members - study - report - repeal. (Repealed)

Source: **L. 2009:** Entire section added, (SB 09-281), ch. 335, p. 1776, § 3, effective June 1.

Editor's note: Subsection (8) provided for the repeal of this section, effective July 1, 2011.
(See L. 2009, p. 1776.)

ARTICLE 46

Specific Insurance Funds

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PART 3
COLORADO MEDICAL DISASTER
INSURANCE FUND

8-46-301.	Short title.	8-46-305.	Receipt and disbursement of moneys.
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PART 1
SUBSEQUENT INJURY FUND

8-46-101. Subsequent injury fund.

(1) (a) In a case where an employee has previously sustained permanent partial industrial disability and in a subsequent injury sustains additional permanent partial industrial disability and it is shown that the combined industrial disabilities render the employee permanently and totally incapable of steady gainful employment and incapable of rehabilitation to steady gainful employment, then the employer in whose employ the employee sustained such subsequent injury shall be liable only for that portion of the employee's industrial disability attributable to said subsequent injury, and the balance of compensation due such employee on account of permanent total disability shall be paid from the subsequent injury fund as is provided in this section.

(b) (I) In addition to such compensation and after the completion of the payments therefor, the employee shall continue to receive compensation at said employee's established compensation rate for permanent total disability until death out of a special fund to be known as the subsequent injury fund, hereby created for such purpose. The subsequent injury fund shall be funded pursuant to the provisions of section 8-46-102.

(II) The unrestricted year-end balance of the subsequent injury fund, created pursuant to subsection (1)(b)(I) of this section, for the 1991-92 fiscal year constitutes a reserve, except as described in subsection (1)(b)(III) of this section, as defined in section 24-77-102 (12), and, for purposes of section 24-77-103:

(A) Any moneys credited to the subsequent injury fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S.; and

(B) Any transfers or expenditures from the subsequent injury fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(III) (A) For state fiscal years commencing on or before July 1, 2024, and on or after July 1, 2026, the state treasurer shall credit all interest and income derived from the deposit and investment of money in the subsequent injury fund to the subsequent injury fund.

(B) Notwithstanding any subsection of this section to the contrary, for the state fiscal year commencing on July 1, 2025, in accordance with section 24-36-114 (1), the state treasurer shall credit all interest and income derived from the deposit and investment of money in the subsequent injury fund to the general fund.

(C) Repealed.

(1.5) Notwithstanding any provision of this section to the contrary, on May 1, 2003, the state treasurer shall deduct twenty million dollars from the subsequent injury fund and transfer such sum to the general fund.

(1.7) Notwithstanding any provision of this section to the contrary, on March 30, 2009, the state treasurer shall deduct twenty-six million five hundred thousand dollars from the subsequent injury fund and transfer such sum to the general fund.

(2) If an employee entitled to additional benefits, as provided in this section, obtains employment while receiving compensation from the subsequent injury fund, such employee shall be compensated out of said fund at the rate of one-half of said employee's average weekly wage loss, subject to the maximum and minimum provisions of the workers' compensation act, during such period of employment.

(3) In case payment is or has been made under the provisions of this section and dependency later is shown or if payment is made by mistake or inadvertence or under such circumstances that justice requires a refund thereof, the division is authorized to refund such payment to the employer or, if insured, the employer's insurance carrier.

(4) (a) The sums provided for the subsequent injury fund created by this section shall be used to pay the costs related to the administration of the fund and to make such compensation payments as may be required by the provisions of articles 40 to 47 of this title.

(b) Moneys in the subsequent injury fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

(5) The director shall administer and conduct all matters involving the subsequent injury fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all the courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the subsequent injury fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the subsequent injury fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the subsequent injury fund, its business, or other affairs relating thereto.

Source: **L. 90:** Entire article R&RE, p. 542, § 1, effective July 1. **L. 93:** (1)(b) amended, p. 1505, § 2, effective June 6. **L. 2003:** (1.5) added, p. 455, § 3, effective March 5. **L. 2007:** (4)(b) amended, p. 608, § 1, effective April 20. **L. 2009:** (1.7) added, (SB 09-208), ch. 149, p. 618, § 2, effective April 20. **L. 2025:** IP(1)(b)(II) amended and (1)(b)(III) added, (SB 25-317), ch. 385, p. 2140, § 4, effective June 3.

Editor's note: (1) This section is similar to former § 8-51-106 as it existed prior to 1990.

(2) Subsection (1)(b)(III)(C) provided for the repeal of subsection (1)(b)(III)(C), effective July 1, 2026. (See L. 2025, p. 2140.)

Cross references: For the legislative declaration in SB 25-317, see section 1 of chapter 385, Session Laws of Colorado 2025.

ANNOTATION

Law reviews. For article, "Primer on Workmen's Compensation Law", see 57 Permanent Disability in the Colorado Den. L.J. 573 (1980).

Annotator's note. Since § 8-46-101 is similar to § 8-51-106 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Constitutional guarantees of equal protection are not violated by overall statutory scheme for assessing and apportioning liability among different classes of employees because legitimate governmental interest to encourage the employment of partially disabled persons is furthered. *Electron Corp. v. Indus. Claim Appeals Office*, 833 P.2d 821 (Colo. App. 1992).

Purpose of this statute is to enhance opportunities for employment for partially disabled persons. *Horizon Land Corp. v. Indus. Comm'n*, 34 Colo. App. 178, 524 P.2d 638 (1974); *Sears, Roebuck & Co. v. Baca*, 682 P.2d 11 (Colo. 1984); *McGrath v. Indus. Comm'n*, 708 P.2d 1382 (Colo. App. 1985).

The legislative policy underlying subsection (1)(a) is to provide an incentive for employers to hire partially disabled persons. This policy is effectuated by relieving employers who hire such persons from full responsibility if the employee suffers a subsequent industrial injury and becomes permanently and totally disabled. In such instances, the total compensation to be paid the employee is divided between the last employer and the subsequent injury fund. *McKinney v. Indus. Claim Appeals Office*, 894 P.2d 42 (Colo. App. 1995).

This section imposes liability on a later employer for that portion of the employee's permanent total disability attributable to the last injury while making the subsequent injury fund responsible for that portion caused by the previous industrial injuries. *Bowland v. Indus. Claim Appeals Office*, 984 P.2d 660 (Colo. App. 1998); *Mtn. Meadows Nursing Ctr. v. Indus. Claim Appeals Office*, 990 P.2d 1090 (Colo. App. 1999).

By relieving employers of greater potential liability. The general assembly intended, by enactment of this statute, to encourage employers to hire partially disabled persons by relieving them of any greater potential liability resulting therefrom. *Horizon Land Corp. v. Indus. Comm'n*, 34 Colo. App. 178, 524 P.2d 638 (1974); *McGrath v. Indus. Comm'n*, 708 P.2d 1382 (Colo. App. 1985).

And under this statute an employer is liable for actual injuries and disability which occur to an employee in his employment. *Horizon Land Corp. v. Indus. Comm'n*, 34 Colo. App. 178, 524 P.2d 638 (1974).

But permanent total disability from additional loss borne by subsequent injury fund. In the case of an employee who has previously lost the use of a bodily member, the permanent total disability resulting from the loss of an additional member or additional members shall, after the employer has compensated the employee for such loss, be borne by the subsequent injury fund. *Horizon Land Corp. v. Indus.*

Comm'n, 34 Colo. App. 178, 524 P.2d 638 (1974).

The effect of this section is to provide a scheme for apportioning the permanent total disability to which a claimant may be entitled under § 8-51-107(1). McGrath v. Indus. Comm'n, 708 P.2d 1382 (Colo. App. 1985); Subsequent Injury Fund v. Gallegos, 746 P.2d 71 (Colo. App. 1987).

Apportionment of liability for permanent total disability pursuant to this section should be a de novo determination of the relative contributions of the partial disabilities to the total disability based on the relevant circumstances existing at the time of that determination. Subsequent Injury Fund v. Gallegos, 746 P.2d 71 (Colo. App. 1987).

Industrial disabilities are those which arise out of an industrial incident. Heggart v. Watts-Hardy Dairy, 685 P.2d 235 (Colo. App. 1984).

And injuries incurred during active military service are not considered industrial injuries within the meaning of this section. Waddell v. Indus. Claim Appeals Office, 964 P.2d 552 (Colo. App. 1998).

Subsection (1) precludes compensation from the subsequent injury fund when nonindustrial factors contribute to the claimant's total disability. City & County of Denver v. Indus. Comm'n, 690 P.2d 199 (Colo. 1984).

If, in the course of his employment, a partially disabled person receives an injury which totally disables him, he is

entitled to compensation without apportionment. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 151 Colo. 18, 379 P.2d 153 (1962).

This state has adopted to a very limited extent a "subsequent injury fund" covering scheduled injuries involving hands, arms, feet, legs, and eyes. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 151 Colo. 18, 379 P.2d 153 (1962).

And in the absence of an apportionment statute, the general rule is that the employer becomes liable for the entire disability resulting from a compensable accident. Colo. Fuel & Iron Corp. v. Indus. Comm'n, 151 Colo. 18, 379 P.2d 153 (1962).

When preexisting condition of an employee was stable but becomes aggravated by an industrial injury, the fund is liable. Subsequent Injury Fund v. Thompson, 793 P.2d 576 (Colo. 1990).

Where no apportionment evidence was presented, and no other evidence was available regarding the relative contributions of the injury to the total disability, the subsequent employer should be held liable for that portion of permanent total disability benefits which exceeds the percentage of the prior permanent partial disability award. State Compensation Ins. Auth. v. Collins, 771 P.2d 9 (Colo. App. 1988).

Where a worker's permanent total disability has been caused by the combination of two or more injuries and the subsequent occupational disease of silicosis, liability is apportioned. Liability

for that portion of the permanent total disability attributable to industrial injuries not involving silicosis is governed by this section. *Climax Molybdenum Co. v. Walter*, 812 P.2d 1168 (Colo. 1991).

This section is applicable only where the entire vision of the remaining eye has been lost and no provision is made authorizing an award thereunder for partial permanent disability. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 88 Colo. 573, 298 P.2d 955 (1931).

Congenital loss of vision existing at birth comes within the meaning of "lost vision" under this section. *Jewell Collieries Corp. v. Kenda*, 110 Colo. 394, 134 P.2d 206 (1943).

And the uncorrected eye deficiency may be relied upon in the determination of the loss of vision in the remaining eye. *Jewell Collieries Corp. v. Kenda*, 110 Colo. 394, 134 P.2d 206 (1943).

Section 8-51-112 takes precedence over subsection (1)(a). The specific provisions of § 8-51-112, applicable to occupational disease, take precedence over the general provisions of subsection (1)(a) of this section, applicable to "injury", notwithstanding that the statutory definition of injury, § 8-41-108 (2), includes occupational disease. *Denver v. Hansen*, 650 P.2d 1319 (Colo. App. 1982).

Where no claim is filed, no dependents exist and subsection (1)(b) is triggered for purposes of payment into the subsequent injury fund. *Frontier Airlines v. Indus. Comm'n*, 654 P.2d 1333 (Colo. App. 1982).

Payment to subsequent injury fund required where survivors fail to file. The employer is required to make the \$15,000 payment to the subsequent injury fund where the survivors of the claimant fail to file for compensation within the three-year statute of limitations. *Frontier Airlines v. Indus. Comm'n*, 654 P.2d 1333 (Colo. App. 1982).

The intent of the statute is to have payments made to the subsequent injury fund in instances where no compensation is paid. *Frontier Airlines v. Indus. Comm'n*, 654 P.2d 1333 (Colo. App. 1982).

Else insurance carrier receives windfall benefit. This legislative purpose is reasonable because, with every compensable injury which occurs without dependents, the insurance carrier receives a windfall benefit. *Frontier Airlines v. Indus. Comm'n*, 654 P.2d 1333 (Colo. App. 1982).

Payment of interest. The interest awarded by the commission in excess of the \$7,500 award was payable out of the subsequent injury fund, rather than by employer and insurance company. *Union Carbide Corp. v. Indus. Comm'n*, 40 Colo. App. 182, 573 P.2d 938 (1977), *aff'd*, 196 Colo. 56, 581 P.2d 734 (1978).

Subsequent injury fund was a legal entity and had standing to appeal an order of the referee. *Indus. Comm'n v. St. Thomas More Hosp.*, 697 P.2d 33 (Colo. 1985)(case arose prior to 1984 enactment of subsection (5)).

Subsequent injury fund is not a legal entity with the capacity to sue and to be

sued. This section does not provide for separate legal status of the subsequent injury fund, nor does the statute supply the necessary characteristics of a legal entity. *Sears, Roebuck & Co. v. Baca*, 682 P.2d 11 (Colo. 1984); *Subsequent Injury Fund v. Black Mt. Spruce*, 682 P.2d 1188 (Colo. 1984).

In situations covered by this statute, the subsequent employer is not liable for the degree of permanent partial disability sustained by the subsequent injury; rather, the employer is liable for the portion of the permanent total disability that is attributable to the subsequent injury. *Subsequent Injury Fund v. Gallegos*, 746 P.2d 71 (Colo. App. 1987).

Where claimant's industrial injuries were the sole cause of her permanent total disability, and not her degenerative disc condition, the fund is responsible for a portion of the payments to which the claimant is entitled. *Injury Fund v. Denver Pub. Schools*, 798 P.2d 900 (Colo. 1990).

Offset for employer financed pension benefits is deducted from total award prior to the apportionment of liability between the employer and the subsequent liability fund. *Jefferson County Pub. Schools v. Sago*, 786 P.2d (Colo. App. 1989), *aff'd*, 793 P.2d 580 (Colo. 1990).

The subsequent injury fund is not available for contribution unless a claimant's permanent total disability results solely from a combination of previous and subsequent permanent partial industrial disabilities. *Gen. Iron Works v. Indus. Comm'n*, 719 P.2d 353 (Colo. App. 1985).

However, one or more of the permanent partial disabilities which contribute to the total disability required for compensation under this section may take into account non-industrial factors or conditions, but the condition which triggers the liability of the subsequent injury fund may not be a non-industrial disabling condition. *Subsequent Injury Fund v. Compensation Ins. Auth.*, 768 P.2d 751 (Colo. App. 1988).

Claimant's approved stipulation and settlement that specifically reserved the right to claim against the subsequent injury fund was not a determination of permanent, total disability barring a claim against the subsequent injury fund. *Subsequent Injury Fund v. Ladow*, 923 P.2d 368 (Colo. App. 1996).

This section requires subsequent injury fund contribution in all cases in which an employee is rendered totally and permanently disabled by the combined effect of two or more permanent partial disabilities and was enacted to provide an incentive for employers to hire partially disabled workers by relieving those employers of full liability for total permanent disability which might result from a subsequent injury. *Subsequent Injury Fund v. Grant*, 827 P.2d 574 (Colo. App. 1991).

This section applies only if two or more industrial disabilities combine to render a claimant permanently and totally incapable of steady gainful employment and incapable of rehabilitation to steady gainful employment. *Holly Nursing Care*

Ctr. v. Indus. Claim Appeals Office, 992 P.2d 701 (Colo. App. 1999).

This section imposes liability on a later employer for the portion of the permanent total disability attributable to the last injury, while making the subsequent injury fund responsible for that portion caused by the previous industrial injuries. Holly Nursing Care Ctr. v. Indus. Claim Appeals Office, 992 P.2d 701 (Colo. App. 1999).

An employer is liable for only that portion of the employee's industrial disability which is attributable to a subsequent injury and the subsequent injury fund is liable, in accordance with this section, for the remaining portion of the employee's permanent total disability resulting from industrial injuries not involving occupational disease. Subsequent Injury Fund v. Grant, 827 P.2d 574 (Colo. App. 1991).

Where there are two separate compensable injuries, one temporary total disability and a subsequent injury rendering claimant permanently and totally disabled, the subsequent injury fund is obligated to pay the balance not attributable to the subsequent injury. Citadel Mall v. Indus. Claim Appeals Office, 892 P.2d 419 (Colo. App. 1994).

In dual or hybrid employment relationship in which claimant was engaged in rehabilitative employment partially funded by employer, liability is apportioned and the fund is available for contribution when the claimant's permanent total disability results from a combination of previous and subsequent industrial

disabilities. Citadel Mall v. Indus. Claim Appeals Office, 892 P.2d 419 (Colo. App. 1994).

An employee's second injury in another state was not a "subsequent injury" for the purposes of the subsequent injury fund after the second injury worsened a condition caused by the first accident that occurred in Colorado. Pacheco v. Roaring Fork Aggregates, 897 P.2d 872 (Colo. App. 1995).

The Colorado subsequent injury fund is not liable for payment of any portion of permanent disability benefits arising from a subsequent injury incurred in the employ of an out-of-state employer not subject to the act. Pacheco v. Roaring Fork Aggregates, 897 P.2d 872 (Colo. App. 1995).

Person responsible for enforcing this section is director of division of labor. General powers given to director of division of labor place him in a fiduciary role to funds such as the subsequent injury fund which are not legal entities, and therefore the director is the proper party to represent the fund and to protect its interests in workmen's compensation proceedings. Sears, Roebuck & Co. v. Baca, 682 P.2d 11 (Colo. 1984); Hatfield v. Dir. of Div. of Labor, 682 P.2d 1190 (Colo. 1984).

Due process requires that rules be enacted governing procedures under the subsequent injury fund in order to inform employers and claimants of the procedures for invoking participation of the subsequent injury fund in workmen's compensation proceedings. Sears, Roebuck & Co. v. Baca, 682 P.2d 11 (Colo. 1984).

For purposes of imposing a percentage of liability on employer for permanent total disability, "subsequent injury" under this section should be determined from the date of the resulting disability. Pikes Peak Cmty. Coll. v. Leonard, 865 P.2d 913 (Colo. App. 1993).

Penalties imposed by the act are not available as compensation to wronged individuals, but rather are credited to the subsequent injury fund. Travelers Ins. Co. v. Savio, 706 P.2d 1258 (Colo. 1985).

8-46-102. Funding for subsequent injury fund, Colorado uninsured employer fund, and major medical insurance fund.

(1) (a) For every compensable injury resulting in death wherein there are no persons either wholly or partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall pay to the division the sum of twenty thousand dollars, not to exceed one hundred percent of the death benefit, to be transmitted to the state treasurer, as custodian, and credited by the state treasurer to the Colorado uninsured employer fund created in section 8-67-105. In the event that there are only partially dependent persons dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall first pay such benefits to such partial dependents and shall transmit the balance of the sum of twenty thousand dollars to the state treasurer, as custodian, who shall credit the same to the Colorado uninsured employer fund.

(b) In the event that the deceased is a minor without any persons either wholly or partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall pay to the parents of the deceased the sum of fifteen thousand dollars, not to exceed one hundred percent of the death benefit. In the event that there are not surviving parents, the employer or the employer's insurance carrier, if any, shall pay the benefits to the division, to be transmitted to the state treasurer, as custodian, and credited by the state treasurer to the Colorado uninsured employer fund created in section 8-67-105. In the event that there are persons only partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall first pay such benefits to the partially dependent persons and shall pay the balance to the surviving parents of the deceased, or in the event that there are not surviving parents, the remaining balance shall be paid to the division, to be transmitted to the state treasurer, as custodian, who shall credit the same to the Colorado uninsured employer fund created in section 8-67-105.

(c) For injuries sustained on or after July 1, 2018, and on each July 1 thereafter, the director shall adjust the amount paid to the Colorado uninsured employer fund in this subsection (1) by the percentage of the adjustment made by the director to the state weekly wage pursuant to section 8-47-106.

(2) (a) (I) Notwithstanding sections 10-3-209 (1)(c) and 10-6-128 (3), C.R.S., for the purpose of funding the financial liabilities of the subsequent injury fund pursuant to this section and of

the major medical insurance fund pursuant to section 8-46-202, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, every captive insurance company, and every other insurance carrier, including Pinnacol Assurance, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of articles 40 to 47 of this title shall, as provided in this subsection (2), be levied a tax upon the premiums received in this state, whether or not in cash, or on account of business done in this state for such insurance in this state at a rate determined by the director to generate sufficient revenue for claim payments and direct and indirect costs of administration that are anticipated to be submitted in the following state fiscal year for which such funds are liable. In determining the rate, the director shall, in addition to revenue for claim payments and direct and indirect costs of administration that are anticipated to be due in the following state fiscal year, maintain a cash balance in both the major medical insurance fund and the subsequent injury fund of an amount of otherwise unrestricted revenues equal to approximately one year's worth of claim payments and direct and indirect administrative costs. Such insurance carriers shall be credited with all canceled or returned premiums actually refunded during the year of such insurance.

(II) Repealed.

(b) Every such insurance carrier shall, on July 1, 1988, and semiannually thereafter, make a return, verified by affidavits of its president and its secretary or by affidavits of its other chief officers or agents, to the division, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby and shall, at the same time, pay to the division a tax ascertained as provided in paragraph (a) of this subsection (2), less return premiums on canceled policies.

(c) Every employer acting as a self-insurer under the provisions of articles 40 to 47 of this title shall, under oath, report to the division the employer's payroll in such form as may be prescribed by the director and at the times specified for premium reports by insurance companies in paragraph (b) of this subsection (2). The division shall assess against such payroll a tax for the purposes of paragraph (b) of this subsection (2) on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates, including any discount or experience modification allowed, chargeable by Pinnacol Assurance, and, upon receipt of notice from the division of the tax so assessed, every such self-insurer shall, within thirty days after the receipt of such notice, pay to the division the tax so assessed.

(d) If any such insurance carrier or self-insurer fails or refuses to make the return or report required by paragraph (b) or (c) of this subsection (2), the director shall assess the tax against such insurance carrier or self-insurer at the rate provided for in this subsection (2) on such amount of premium as the director may deem just, and the proceedings thereof shall be the same as if the return had been made.

(e) If any such insurance carrier or self-insurer withdraws from business in this state before the tax provided for in this subsection (2) falls due as provided in this section, or fails or neglects to pay such tax, the director shall proceed at once to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

(f) The director, in the enforcement of this subsection (2), shall have all of the powers granted in articles 40 to 47 of this title, and any insurance carrier or self-insurer who violates any of the provisions of this subsection (2) or fails to pay the tax thereby imposed is guilty of a violation of said articles and shall be subject to the penalties therein prescribed.

(g) All moneys collected pursuant to this subsection (2) shall be transmitted to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund and to the major medical insurance fund as determined by the director in accordance with subsection (3) of this section.

(3) (a) As determined by the director, a portion of the revenue received each year pursuant to subsection (2) of this section shall be deposited into the subsequent injury fund, established in section 8-46-101 (1)(b), and a portion shall be deposited into the major medical insurance fund, established in section 8-46-202 (1). In addition, the director may move revenue between the funds when the director determines that doing so is necessary. The director shall continue to establish a surcharge rate pursuant to subsection (2) of this section until the balance in both such funds is sufficient to meet the future claim payments plus the amount necessary to pay the direct and indirect costs of administration of the funds, at which time the surcharge rate established in paragraph (a) of subsection (2) of this section shall be reduced to zero.

(b) For the purpose of determining the proper allocation of the surcharge and making the estimates contemplated in paragraph (a) of this subsection (3), the director shall contract for the services of qualified private actuaries.

Source: L. 90: Entire article R&RE, p. 544, § 1, effective July 1. L. 92: (1), (2)(a), and (2)(g) amended, p. 1829, § 3, effective May 19. L. 93: (2)(a)(I) and (2)(g) amended and (3) added, p. 2141, § 2, effective July 1. L. 97: (3)(b) amended, p. 1476, § 15, effective June 3. L. 99: (2)(g) amended, p. 618, § 5, effective August 4. L. 2000: (1) amended, p. 821, § 2, effective May 24. L. 2002: (2)(a) and (2)(c) amended, p. 1888, § 44, effective July 1. L. 2006: (2)(a)(II) repealed, p. 140, § 1, effective August 7. L. 2009: (2)(a)(I) and (3)(a) amended, (SB 09-037), ch. 324, p. 1729, § 1, effective August 5. L. 2017: (1)(a) amended and (1)(c) added, (HB 17-1119), ch. 317, p. 1708, § 9, effective July 1. L. 2025: (2)(g) amended, (SB 25-317), ch. 385, p. 2141, § 5, effective June 3. L. 2026: (1)(b) amended, (SB 26-186), ch. 315, p. 1854, § 18, effective August 12.

Editor's note: (1) This section is similar to former § 8-51-106 as it existed prior to 1990.

(2) The provisions pertaining to Pinnacol Assurance are contained in article 45 of this title 8.

Cross references: For the legislative declaration in SB 25-317, see section 1 of chapter 385, Session Laws of Colorado 2025.

ANNOTATION

Annotator's note. Since § 8-46-102 is similar to § 8-51-106 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

In case of death of employee intoxicated at time of injury, § 8-52-104 (1)(c) (now § 8-42-112 (1)(c)) does not operate to reduce the \$15,000 employer is required to contribute to the subsequent injury fund pursuant to this section, because this amount is a tax imposed upon the employer for the purpose of funding the subsequent injury fund and not a benefit to the claimant or his dependents. *Portofino Apts. v. Indus. Claim Appeals Office*, 789 P.2d 1117 (Colo. App. 1990) (decided under law in effect prior to 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8).

Benefits for injuries occurring prior to July 1, 1993, and that result in permanent

partial disability may come proportionately from the subsequent injury fund and the last employer when the employee suffers from multiple disabilities. *United Airlines v. Indus. Claim Appeals Office*, 993 P.2d 1152 (Colo. 2000).

By closing the subsequent injury fund to cases of permanent total disability involving new injuries, the general assembly intended to place full liability for permanent total disability benefits on the last employer. The general assembly further intended to mitigate the costs to an employer held liable for such benefits by requiring its insurers to consider only the medical impairment rating of the last injury when setting the employer's insurance premiums. Insurers may recoup expenses not covered by an employer's premiums by increasing its insurance rates to similarly situated employers in a risk pool. *United Airlines v. Indus. Claim Appeals Office*, 993 P.2d 1152 (Colo. 2000).

8-46-103. State treasurer to invest funds.

(1) The state treasurer shall invest any portion of the subsequent injury fund, including its surplus and reserves, which the division determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

Source: **L. 90:** Entire article R&RE, p. 545, § 1, effective July 1. **L. 97:** (2) repealed, p. 377, § 8, effective August 6.

Editor's note: This section is similar to former § 8-51-111 as it existed prior to 1990.

8-46-104. Closure of fund.

No cases shall be accepted into the subsequent injury fund for injuries occurring on or after July 1, 1993, or for occupational diseases occurring on or after April 1, 1994. When all payments have been made for all cases accepted into the fund, any remaining balance shall revert to the general fund.

Source: **L. 92:** Entire section added, p. 1830, § 5, effective May 19. **L. 93:** Entire section amended, p. 2142, § 3, effective July 1.

ANNOTATION

The subsequent injury fund is liable for death benefits claimed in accordance with the version of § 8-41-304(2) in effect when the occupational diseases suffered by decedents occurred. Subsequent Injury Fund v. King, 961 P.2d 575 (Colo. App. 1998).

An occupational disease or disability "occurs" on the onset of disability, rather than upon the date of diagnosis. Union Carbide Corp. v. Indus. Claim Appeals Office, 128 P.3d 319 (Colo. App. 2005).

8-46-105. Calculation of premium - permanent total disability - employer may request examination.

(1) Effective July 1, 1993, in any case in which an employee previously has sustained permanent partial disability and, in a subsequent injury, sustains additional permanent partial disability and it is shown that the combined industrial disabilities render the employee permanently and totally disabled, then the premiums of the employer in whose employ the employee sustained such subsequent injury shall be determined only on the basis of the impairment rating for such subsequent injury and not on the basis of the employee's permanent total disability. If such employer disputes the impairment rating for the subsequent injury, the employer shall request an independent medical examination pursuant to the procedures set forth in section 8-42-107.2. The finding of the independent medical examiner regarding the impairment rating may be overcome only by clear and convincing evidence. The total cost of the employee's permanent total disability shall not be considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates.

(2) In any case in which an employee becomes disabled by an occupational disease and the employer is liable for benefits pursuant to section 8-41-304 (2), then the premiums of the employer in whose employ the employee became disabled shall be determined only on the basis of the impairment rating for the portion of the occupational disease attributable to such employer and not on the basis of the combination of such portion and any prior impairment resulting from such occupational disease. For the purposes of premium calculations, if such employer disputes the impairment rating for the occupational disease, the employer shall request an independent medical examination pursuant to the procedures set forth in section 8-42-107.2. The finding of the independent medical examiner regarding the impairment rating may be overcome only by clear and convincing evidence. The total cost of the employee's occupational disease shall not be considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates.

Source: L. 92: Entire section added, p. 1831, § 5, effective May 19. L. 93: Entire section amended, p. 2142, § 4, effective July 1. L. 98: Entire section amended, p. 1431, § 4, effective August 5.

ANNOTATION

By closing the subsequent injury fund to cases of permanent total disability involving new injuries, the general assembly intended to place full liability for

permanent total disability benefits on the last employer. The general assembly further intended to mitigate the costs to an employer held liable for such benefits by requiring its

insurers to consider only the medical impairment rating of the last injury when setting the employer's insurance premiums. Insurers may recoup expenses not covered by an employer's premiums by increasing its

insurance rates to similarly situated employers in a risk pool. *United Airlines v. Indus. Claim Appeals Office*, 993 P.2d 1152 (Colo. 2000).

8-46-106. Abatement of taxes - independent review of fund.

The funding provisions of section 8-46-102, including the provisions relating to the assessment and levying of taxes, shall cease to be effective when an independent actuary, retained by the division for such purpose, determines that the fund has sufficient resources to pay benefits for injuries occurring prior to July 1, 1993, and occupational diseases occurring prior to April 1, 1994.

Source: **L. 92:** Entire section added, p. 1831, § 5, effective May 19. **L. 2000:** Entire section amended, p. 75, § 1, effective August 2.

8-46-107. Report to general assembly and governor. (Repealed)

Source: **L. 92:** Entire section added, p. 1831, § 5, effective May 19. **L. 97:** Entire section repealed, p. 1476, § 16, effective June 3.

8-46-108. Legislative council study of subsequent injury fund. (Repealed)

Source: **L. 92:** Entire section added, p. 1831, § 5, effective May 19. **L. 2006:** Entire section repealed, p. 140, § 2, effective August 7.

8-46-109. Legislative declaration - claims management.

(1) The general assembly finds and declares that the purpose of this section is to provide for prompt, efficient, and fair settlement of all pending claims and the closure of both the subsequent injury fund and the major medical insurance fund as soon as is practicable.

(2) As necessary to augment the division's regular staff, the director shall contract for the services of qualified specialists in the area of settlements, who shall, on the director's behalf, negotiate for and enter into settlements of claims of the subsequent injury fund and the major medical insurance fund for present value whenever possible.

(3) Repealed.

Source: **L. 93:** Entire section added, p. 2143, § 5, effective July 1. **L. 97:** (3) amended, p. 1476, § 17, effective June 3. **L. 2006:** (3) repealed, p. 141, § 3, effective August 7.

PART 2

COLORADO MAJOR MEDICAL INSURANCE FUND ACT

8-46-201. Short title.

This part 2 shall be known and may be cited as the "Colorado Major Medical Insurance Fund Act".

Source: **L. 90:** Entire article R&RE, p. 545, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-101 as it existed prior to 1990.

8-46-202. Major medical insurance fund - tax imposed - returns.

(1) (a) There is hereby established a major medical insurance fund to defray medical, surgical, dental, hospital, nursing, and drug expenses and expenses for medical, hospital, and surgical supplies, crutches, apparatus, and vocational rehabilitation, which shall include tuition, fees, transportation, and weekly maintenance equivalent to that which the employee would receive under section 8-42-105 for the period of time that the employee is attending a vocational rehabilitation course, which expenses are in excess of those provided under the "Workers' Compensation Act of Colorado" for employees who have established their entitlement to disability benefits under said act, whether necessary to promote recovery, alleviate pain, or reduce disability.

(b) The unrestricted year-end balance of the major medical insurance fund, created pursuant to subsection (1)(a) of this section, for the 1991-92 fiscal year constitutes a reserve, except as

described in subsection (1)(b.5) of this section, as defined in section 24-77-102 (12), and, for purposes of section 24-77-103:

(I) Any moneys credited to the major medical insurance fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year; and

(II) Any transfers or expenditures from the major medical insurance fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(b.5) (I) For state fiscal years commencing on or before July 1, 2024, and on or after July 1, 2026, the state treasurer shall credit all interest and income derived from the deposit and investment of money in the major medical insurance fund to the major medical insurance fund.

(II) Notwithstanding any subsection of this section to the contrary, for the state fiscal year commencing on July 1, 2025, in accordance with section 24-36-114 (1), the state treasurer shall credit all interest and income derived from the deposit and investment of money in the major medical insurance fund to the general fund.

(III) Repealed.

(c) Moneys in the major medical insurance fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

(1.5) (a) Notwithstanding any provision of this section to the contrary, on May 1, 2003, the state treasurer shall deduct one hundred fifty million dollars from the major medical insurance fund and transfer such sum to the general fund.

(b) On July 1, 2003, the state controller shall transfer ten million dollars from the general fund to the major medical insurance fund.

(1.6) Notwithstanding any provision of this section to the contrary, on March 30, 2009, the state treasurer shall deduct sixty-nine million five hundred thousand dollars from the major medical insurance fund and transfer such sum to the general fund.

(1.7) Notwithstanding any provision of this section to the contrary, on March 31, 2010, the state treasurer shall deduct twenty-six million five hundred thousand dollars from the major medical insurance fund and transfer such sum to the general fund.

(1.8) Notwithstanding any provision of this section to the contrary, on June 30, 2011, the state treasurer shall deduct ten million dollars from the major medical insurance fund and transfer such sum to the general fund.

(1.9) Notwithstanding any provision of this section to the contrary, on June 30, 2025, the state treasurer shall transfer fifteen million dollars from the major medical insurance fund to the general fund.

(2) The director shall administer the major medical insurance fund and is hereby given jurisdiction to enforce the provisions of this article. The director shall administer and conduct all matters involving the major medical insurance fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all the courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the major medical insurance fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the major medical insurance fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the major medical insurance fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund and, in addition, may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article if said director determines that the contracting of such extra medical, surgical, hospital, and nursing services and supplies will reduce the period of disability for which said fund would be liable for the payment and compensation.

(3) to (5) Repealed.

Source: L. 90: Entire article R&RE, p. 545, § 1, effective July 1; (1) amended, p. 1844, § 32, effective July 1. **L. 93:** (1) amended, p. 1505, § 3, effective June 6; (3) to (5) repealed, p. 2143, § 6, effective July 1. **L. 2003:** (1.5) added, p. 455, § 4, effective March 5. **L. 2007:** (1)(c) added, p. 608, § 2, effective April 20. **L. 2009:** (1.6) added, (SB 09-208), ch. 149, p. 618, § 3, effective

April 20; (1.7) added, (SB 09-279), ch. 367, p. 1925, § 1, effective June 1. **L. 2011:** (1.8) added, (SB 11-164), ch. 33, p. 92, § 1, effective March 18. **L. 2025:** (1.9) added, (SB 25-264), ch. 129, p. 499, § 5, effective April 25; IP(1)(b) amended and (1)(b.5) added, (SB 25-317), ch. 385, p. 2141, § 6, effective June 3.

Editor's note: (1) This section is similar to former § 8-66-102 as it existed prior to 1990.

(2) Subsection (1)(b.5)(III)(B) provided for the repeal of subsection (1)(b.5)(III), effective July 1, 2026. (See L. 2025, p. 2141.)

Cross references: For the legislative declaration in SB 25-317, see section 1 of chapter 385, Session Laws of Colorado 2025.

ANNOTATION

Annotator's note. Since § 8-46-202 is similar to § 8-66-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

This act provides for the creation, administration, and funding of the Colorado major medical insurance fund, which provides benefits for qualified

employees in addition to those available under the Workers' Compensation Act. Jefferson Sch. D. R-1 v. Div. of Labor, 791 P.2d 1217 (Colo. App. 1990).

Fund established by this section is not legal entity which can sue or be sued. McGrath v. Indus. Comm'n, 683 P.2d 810 (Colo. App. 1984).

Applied in In re Sterling v. Indus. Comm'n, 662 P.2d 1096 (Colo. App. 1982).

8-46-203. Failure to make returns. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 547, § 1, effective July 1. **L. 93:** Entire section repealed, p. 2144, § 7, effective July 1.

Editor's note: Prior to its repeal in 1993, this section was similar to former § 8-66-103 as it existed prior to 1990.

8-46-204. Use of funds limited. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 547, § 1, effective July 1. **L. 93:** Entire section repealed, p. 2144, § 8, effective July 1.

Editor's note: Prior to its repeal in 1993, this section was similar to former § 8-66-107 as it existed prior to 1990.

8-46-205. Collection of taxes due.

If any such insurance carrier or self-insurer withdraws from business in this state before the tax falls due as provided in this part 2, or fails or neglects to pay such tax, the director shall at once proceed to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

Source: **L. 90:** Entire article R&RE, p. 547, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-104 as it existed prior to 1990.

8-46-206. Enforcement powers - violations.

The director, in the enforcement of this article, shall have all of the powers granted in the "Workers' Compensation Act of Colorado", and any insurance carrier or self-insurer violating any of the provisions of this article, or failing to pay the tax imposed in this article, is guilty of violation of said act and subject to the penalties therein prescribed.

Source: **L. 90:** Entire article R&RE, p. 548, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-105 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-46-206 is similar to § 8-66-105 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case

construing that provision has been included in the annotations to this section.

Applied in *In re Sterling v. Indus. Comm'n*, 662 P.2d 1096 (Colo. App. 1982).

8-46-207. Receipt and disbursement of moneys. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 548, § 1, effective July 1. **L. 93:** Entire section repealed, p. 2145, § 9, effective July 1.

Editor's note: Prior to its repeal in 1993, this section was similar to former § 8-66-106 as it existed prior to 1990.

8-46-208. Applications - awards.

(1) Payments from the major medical insurance fund shall be awarded by the director only after an application therefor has been filed by a claimant employee, the claimant's employer, or such employer's insurance carrier, or one on their behalf, for admission to the fund, in any case where the limits of liability provided under section 8-42-101 have been exhausted.

(2) Following the filing of an application, the director shall approve or disapprove the expenditure of further sums of money from the major medical insurance fund and in so doing may rely upon medical reports contained in the case file if the director deems them adequate, or the director may rely upon recommendations of the medical director, appointed pursuant to section 8-1-103, or the director may appoint a medical panel of not more than three medical experts to see and examine the applicant, each of whom shall render a report to the director, advising whether or not such expenditure of further sums of money will promote recovery, alleviate pain, or reduce disability, suggesting the form and manner of such treatment or services and suggesting the reasonable cost thereof. The director, in every case in which an award is made from this fund, shall review said case at such time as the total medical expenditures, including those expended under section 8-42-101, shall reach fifteen thousand dollars and at each ten thousand dollars increment thereafter to determine and enter an order regarding continuation or cessation of further payments from said fund.

(3) The director shall award, and the state treasurer shall pay from the major medical insurance fund, the reasonable fees and expenses of the appointed members of the medical panel when such procedure is used by the director.

Source: L. 90: Entire article R&RE, p. 548, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-108 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-46-208 is similar to § 8-66-108 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

Application under this section after limit of § 8-49-101 met. The general assembly established the limit of liability under § 8-49-101, and when this limit has been initially reached, application for major medical benefits under this section is appropriate. A later recovery or lack of recovery will only affect the employer's loss experience and premium charges; it cannot

affect the question of whether the statutory limit of liability has been exhausted. *Weaver-Beatty Motor Co. v. Billen*, 36 Colo. App. 442, 541 P.2d 120 (1975).

Granting application for admission to major medical insurance fund is not necessarily an award of worker's compensation benefits. *Brothers v. Indus. Comm'n*, 733 P.2d 1217 (Colo. App. 1987).

Removing claimant from the major medical insurance fund once admitted was, in effect, a denial of her right to apply for medical benefits. *Major Med. Ins. Fund v. Indus. Claim Appeals Office*, 77 P.3d 867 (Colo. App. 2003).

8-46-209. Credit for reduced disability - when.

In any determination of permanent disability, the employer or the employer's insurance carrier shall receive any credit or benefit for the reduction of disability of any claimant employee under the "Workers' Compensation Act of Colorado" directly attributable to a compensable accident or disease when such reduction of disability is accomplished by expenditures from the major medical insurance fund.

Source: L. 90: Entire article R&RE, p. 548, § 1, effective July 1.

Editor's note: This section is similar to former § 8-66-109 as it existed prior to 1990.

8-46-210. State treasurer to invest funds.

(1) The state treasurer shall invest any portion of the major medical insurance fund, including its surplus and reserves, which the director of the division of workers' compensation determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

Source: L. 90: Entire article R&RE, p. 548, § 1, effective July 1. **L. 92:** (1) amended, p. 1830, § 4, effective May 19. **L. 97:** (2) repealed, p. 377, § 9, effective August 6. **L. 99:** (1) amended, p. 618, § 6, effective August 4.

Editor's note: This section is similar to former § 8-66-110 as it existed prior to 1990.

8-46-211. Abatement of tax - when. (Repealed)

Source: L. 90: Entire article R&RE, p. 549, § 1, effective July 1; entire section repealed, p. 584, § 6, effective July 1.

Editor's note: Prior to its repeal in 1990, this section was similar to former § 8-66-111.

8-46-212. Closure of fund.

Effective July 1, 1981, no further cases shall be accepted into the major medical insurance fund for injuries or occupational diseases occurring after that date, nor shall any cases be transferred from the medical disaster insurance fund to the major medical insurance fund.

Source: **L. 90:** Entire article R&RE, p. 549, § 1, effective July 1. **L. 93:** Entire section amended, p. 2145, § 10, effective July 1.

Editor's note: This section is similar to former § 8-66-112 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-46-212 is similar to § 8-66-112 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

Applied in Claim of Green, 789 P.2d 481 (Colo. App. 1990) (decided under § 8-66-112 as it existed prior to the 1990 repeal of article 66).

PART 3

COLORADO MEDICAL DISASTER INSURANCE FUND

8-46-301. Short title.

This part 3 shall be known and may be cited as the "Colorado Medical Disaster Insurance Fund Act".

Source: **L. 90:** Entire article R&RE, p. 549, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-101 as it existed prior to 1990.

8-46-302. Medical disaster insurance fund - tax imposed - returns.

(1) There is hereby established a medical disaster insurance fund to defray medical, surgical, hospital, nursing, and drug expenses in excess of those provided under the "Workers' Compensation Act of Colorado" for employees who have established their entitlement to

disability benefits under said act, whether necessary to promote recovery, alleviate pain, or reduce disability.

(2) The director shall administer the medical disaster insurance fund and is hereby given jurisdiction to enforce the provisions of this part 3. The director shall approve or disapprove admissions to the Colorado medical disaster insurance fund.

Source: L. 90: Entire article R&RE, p. 549, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-102 as it existed prior to 1990.

8-46-303. Use of funds limited.

(1) All funds received by the division under the provisions of this article shall be used solely to pay the costs related to the administration of the medical disaster insurance fund and to defray the cost of medical, surgical, and hospital expenses necessary to effect the recovery, alleviate pain, or reduce the disability of employees who have established their entitlement to disability benefits under the "Workers' Compensation Act of Colorado" in accordance with and subject to the provisions of such act.

(2) Moneys in the medical disaster insurance fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

Source: L. 90: Entire article R&RE, p. 549, § 1, effective July 1. **L. 2007:** (2) amended, p. 608, § 3, effective April 20.

Editor's note: This section is similar to former § 8-65-105 as it existed prior to 1990.

8-46-304. Enforcement powers - violations.

(1) The director, in the enforcement of this article, shall have all of the powers granted in the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, and any insurance carrier or self-insurer violating any of the provisions of this article is guilty of a violation of said act and shall be subject to the penalties therein prescribed.

(2) The director shall administer and conduct all matters involving the medical disaster insurance fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the medical disaster insurance fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the medical disaster insurance fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the medical disaster insurance fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund and, in addition, may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article if said director determines that the contracting of such extra medical, surgical, hospital, and nursing services and supplies will reduce the period of disability for which said fund would be liable for the payment and compensation.

Source: L. 90: Entire article R&RE, p. 550, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-103 as it existed prior to 1990.

8-46-305. Receipt and disbursement of moneys.

All moneys collected by the division pursuant to the provisions of this part 3 shall be transmitted to the state treasurer who shall deposit the same to the credit of the medical disaster

insurance fund, and all disbursements therefrom shall be paid by the state treasurer in accordance with and subject to final awards of the director, as provided in this article.

Source: L. 90: Entire article R&RE, p. 550, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-104 as it existed prior to 1990.

8-46-306. Applications - medical panel - awards - limitations.

(1) Payments from the medical disaster insurance fund shall be awarded by the director only after an application therefor has been filed by a claimant employee, the claimant's employer, or such employer's insurance carrier, or one on their behalf, and approved by the director for admission to the fund, in any case where the limits of liability provided under section 8-42-101 have been exhausted.

(2) The director shall, in every case where an application for payments from the medical disaster insurance fund is filed, immediately, after receipt of such application, appoint a medical panel of three medical experts to see and examine the applicant, each of whom shall render a report to the director, advising whether or not the expenditure of further sums of money will promote recovery, alleviate pain, or reduce disability, suggesting the form and manner of further treatment or services and suggesting the reasonable cost thereof.

(3) The director, upon receipt of reports from each of the medical experts appointed in accordance with subsection (2) of this section, shall either deny the application or award payments from the medical disaster insurance fund, based upon such reports and as nearly as possible in accordance with the majority opinion and suggestions of the medical panel.

(4) In making payment awards from the medical disaster insurance fund, the director shall be limited in any one case to the sum of fifty-five thousand dollars, less any amounts of money expended by the employer or the employer's insurance carrier for medical, surgical, or hospital services and the costs of any prosthetic devices, or the reasonable value of any such services or devices furnished by the employer or the employer's insurance carrier.

(5) The director shall award, and the state treasurer shall pay from the medical disaster insurance fund, the reasonable fees and expenses of the appointed members of the medical panel.

Source: L. 90: Entire article R&RE, p. 550, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-106 as it existed prior to 1990.

8-46-307. Credit for reduced disability - when.

(1) In any determination of permanent disability, the employer or the employer's insurance carrier shall receive no credit or benefit for the reduction of disability of any claimant employee under the "Workers' Compensation Act of Colorado" directly attributable to a compensable accident or disease when such reduction of disability is accomplished by expenditures from the medical disaster insurance fund, unless it shall have been determined by a preponderance of the evidence:

(a) That the claimant employee had refused hospital, surgical, and medical services under the "Workers' Compensation Act of Colorado" necessary to reduce the employee's disability voluntarily offered by the employer; or

(b) That the claimant employee had reached maximum improvement as determined by the director prior to the filing of the application for payments from the medical disaster insurance fund.

Source: L. 90: Entire article R&RE, p. 551, § 1, effective July 1.

Editor's note: This section is similar to former § 8-65-107 as it existed prior to 1990.

8-46-308. State treasurer to invest funds.

(1) The state treasurer shall invest any portion of the medical disaster insurance fund, including its surplus and reserves, which the director determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

Source: L. 90: Entire article R&RE, p. 551, § 1, effective July 1. **L. 97:** (2) repealed, p. 377, § 10, effective August 6.

Editor's note: This section is similar to former § 8-65-108 as it existed prior to 1990.

8-46-309. Authority to utilize other revenue.

Revenues obtained from the tax imposed pursuant to section 8-46-102 (2)(a) may be used, in the discretion of the director, for the purpose of paying the costs incurred pursuant to this article.

Source: L. 90: Entire section added, p. 583, § 5, effective July 1. **L. 93:** Entire section amended, p. 2145, § 11, effective July 1.

ARTICLE 47

Administration

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PART 1

DIRECTOR'S POWERS AND DUTIES

8-47-101. Division of workers' compensation - creation - powers, duties, and functions - transfer of functions.

(1) There is hereby created the division of workers' compensation in the department of labor and employment. Pursuant to section 13 of article XII of the state constitution, the executive director of the department of labor and employment shall appoint the director of the division of workers' compensation, and the director shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the division of workers' compensation and the director.

(2) The director and the division of workers' compensation shall enforce and administer the provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, as provided in said articles and the provisions of article 14.5 of this title.

(3) (a) The division of workers' compensation shall, on and after July 1, 1991, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the division of labor prior to July 1, 1991, concerning the duties and functions transferred to the division of workers' compensation. On July 1, 1991, all employees of the division of labor whose principal duties are concerned with the duties and functions transferred to the division of workers' compensation and whose employment in the division of workers' compensation is

deemed necessary by the executive director of the department of labor and employment to carry out the purposes of this article 47 shall be transferred to the division of workers' compensation and shall become employees thereof. The employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules. The division of workers' compensation and the division's director are **type 2** entities, as defined in section 24-1-105.

(b) Repealed.

(c) Whenever the division of labor is referred to or designated by any contract or other document in connection with the duties and functions transferred to the division of workers' compensation, such reference or designation is deemed to apply to the division of workers' compensation. All contracts entered into by the division of labor prior to July 1, 1991, in connection with the duties and functions transferred to the division of workers' compensation, are hereby validated, with the division of workers' compensation succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the division of workers' compensation for the payment of such obligations.

(d) (I) Repealed.

(II) At the discretion of the state auditor, the state auditor may conduct or cause to be conducted a performance review of the administrative law judges in the office of administrative courts who hear cases under articles 40 to 47 of this title. The review must include, but is not limited to, the following topics: The time elapsed from the date of hearing until decisions are rendered by the administrative law judges; the time elapsed from the point at which the file is complete and the case is ready for order until the decision is rendered by the administrative law judges; the number of decisions that are reversed upon appeal to the industrial claim appeals panel and to the court of appeals respectively; the workload or number of cases assigned to each administrative law judge; and the public perception of the quality of the performance of the office of administrative courts with respect to matters arising under the "Workers' Compensation Act of Colorado".

(4) Repealed.

(5) On and after July 1, 1991, when any provision of articles 40 to 47 of this title 8 refers to the division of labor, said law shall be construed as referring to the division of workers' compensation.

(6) Repealed.

Source: **L. 90:** Entire article R&RE, p. 552, § 1, effective July 1. **L. 91:** Entire section amended, p. 1333, § 46, effective July 1. **L. 93:** (3)(d)(I) amended, p. 728, § 1, effective May 6. **L. 95:** (3)(d)(I) repealed, p. 458, § 1, effective May 16; (3)(d)(I) amended, p. 636, § 17, effective July 1. **L. 96:** (4) repealed, p. 1228, § 45, effective August 7. **L. 2005:** (3)(d)(II) amended, p. 856, § 17, effective June 1. **L. 2006:** (3)(b) repealed, p. 141, § 4, effective August 7. **L. 2013:** (3)(d)(II) amended, (SB 13-129), ch. 284, p. 1492, § 1, effective May 24. **L. 2016:** (3)(a), (3)(c), (5), and (6) amended, (HB 16-1323), ch. 131, p. 379, § 15, effective August 10. **L. 2017:** (3)(a), (3)(c), and (5) amended, (SB 17-294), ch. 264, p. 1385, § 8, effective May 25. **L. 2022:** (3)(a) amended, (SB 22-162), ch. 469, p. 3384, § 91, effective August 10. **L. 2024:** (6) repealed, (HB 24-1450), ch. 490, p. 3406, § 13, effective August 7.

Editor's note: This section is similar to former § 8-40-102 as it existed prior to 1990.

Cross references: (1) For the legislative declaration contained in the 1996 act repealing subsection (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

(2) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

ANNOTATION

Annotator's note. (1) Since § 8-47-101 is similar to § 8-40-102 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the 1969 amendment which vested the director of the division of labor with enforcement powers previously exercised by the industrial commission.

The industrial commission is an administrative office of the state, created by statute, and its jurisdiction, powers, duties and authority are fixed and limited by the creative statute and amendments thereto. *Maryland Cas. Co. v. Indus. Comm'n*, 116 Colo. 58, 178 P.2d 426 (1947).

Thus discretionary power rests solely with the commission, and a reviewing court may not interfere with the exercise of that discretion unless there is a clear showing of an abuse thereof. *Cosmopolitan W. Hotel v. Henry*, 172 Colo. 279, 472 P.2d 134 (1970).

The commission must positively find those facts which are necessary to be found in order to make applicable the workmen's compensation law. *Resler Truck Line v. Indus. Comm'n*, 113 Colo. 287, 156 P.2d 132 (1945).

Director's statutory obligation under this section is purely ministerial in character. *Matthews v. Indus. Comm'n*, 44 Colo. App. 159, 609 P.2d 1127 (1980).

Claims asserted against the state attorney general must be dismissed where

the ground for the claim is that she is charged under Colorado law with enforcing Colorado's statutory provisions governing the business of insurance, including the enforcement of workers' compensation statutes, when in fact she is not responsible for enforcing either insurance or workers' compensation laws and may become involved in prosecuting related matters only at the request of the commissioner of insurance or the director of workers' compensation. *Fuller v. Norton*, 881 F. Supp. 468 (D. Colo. 1995).

8-47-102. Director to enforce orders.

If any person fails or refuses to comply with an order of the director, or to obey any subpoena issued by the director or agents of the division, or to furnish the statistics, data, and information required to be furnished to the division by the provisions of articles 40 to 47 of this title, or refuses to permit an inspection as provided in said articles, or being in attendance refuses to be sworn or examined, or to answer a question, or to produce a book or paper when ordered to do so by the director or any of the deputies, agents, or referees of the division, the director may apply to the district court, upon proof by affidavit of the facts, for an order, returnable in not less than three days nor more than five days, directing such person to show cause before the district court which made the order why such person should not be committed to jail. Upon the return of such order, the district court shall examine under oath such person and give the person an opportunity to be heard. If the court determines that the person has refused without legal excuse in any one of the foregoing matters, it may commit the offender to jail forthwith by warrant, there to remain until the person submits to do the act which said person was required to do or until said person is discharged according to law.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-103 as it existed prior to 1990.

ANNOTATION

-1215-

Annotator's note. (1) Since § 8-47-102 is similar to § 8-46-103 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) The case included in the annotations to the section which refers to the industrial commission was decided prior to the 1969 amendment which vested the director of the division of labor with the power previously exercised by the industrial commission to enforce orders.

The industrial commission has no discretion to deny enforcement of an award under the workmen's compensation act. *Coursey v. Indus. Comm'n*, 82 Colo. 311, 259 P. 514 (1927).

A claimant is as much entitled to the enforcement of his award as a judgment

creditor is to an execution. *Coursey v. Indus. Comm'n*, 82 Colo. 311, 259 P. 514 (1927).

Facts relieving industrial commission of duty to enforce award should appear in return. In an action in mandamus against the industrial commission to compel enforcement of an award under the workmen's compensation act, if there are facts which relieve the commission of its duty to enforce the award, they should be made to appear in the return. *Coursey v. Indus. Comm'n*, 82 Colo. 311, 259 P. 514 (1927).

Two methods are given to enforce an award: One by application to the district court under this section, another by penalty for delay under § 8-53-126. *Coursey v. Indus. Comm'n*, 82 Colo. 311, 259 P. 514 (1927).

8-47-103. Orders of director or appeals office - validity.

All orders of the director or industrial claim appeals office shall be valid and in force and prima facie reasonable and lawful until found otherwise in an action brought for that purpose, pursuant to the provisions of articles 40 to 47 of this title, or until altered or revoked by the director or industrial claim appeals office, as the case may be.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-105 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-47-103 is similar to § 8-46-105 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

(2) The case included in the annotations to this section which refers to the industrial commission was decided prior to the

enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its power, duties, and functions under this section to the industrial claim appeals office.

Discretionary power rests solely within the commission, and a reviewing court may not interfere with the exercise of that discretion unless there is a clear showing of an abuse thereof. *Cosmopolitan W. Hotel v. Henry*, 172 Colo. 279, 472 P.2d 134 (1970).

8-47-104. Orders and awards - technical objections.

Substantial compliance with the requirements of articles 40 to 47 of this title shall be sufficient to give effect to the orders or awards of the director or industrial claim appeals office, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-106 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-47-104 is similar to § 8-46-106 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred

its powers, duties, and functions under this section to the industrial claim appeals office.

The failure of the commission to assign a claimant a separate filing number on his claim is a technicality which cannot affect the validity of the action of the commission under this section. *Colo. Auto Body, Inc. v. Newton*, 160 Colo. 113, 414 P.2d 480 (1966).

Despite conflict in evidence, director's award proper. Where claimant testified that

he worked for an individual employer, and thereafter on cross-examination stated that he and his fellow employees worked for another employer, there being no explanation of the apparent conflict, the industrial commission is within its rights as

a fact-finder, in holding, under the evidence before it, that claimant was employed by the individual defendant, and its award of compensation is proper. *Indus. Comm'n v. Montgomery*, 95 Colo. 467, 37 P.2d 532 (1934).

8-47-105. Deposit on unpaid compensation or benefits - trust fund - surplus.

(1) The director has the discretion, at any time, any provisions in articles 40 to 47 of this title to the contrary notwithstanding, to compute and require to be paid to the division, to be held by it in trust, an amount equal to the present value of all unpaid compensation or other benefits in any case computed at the rate of four percent per annum. Such action may be taken after a finding by the director as to the insolvency, the threatened insolvency, or any other condition or danger which may cause the loss of, or which has delayed or may impede, hinder, or delay prompt payment of, compensation or benefits by any insurance carrier or employer. The action and finding of the director shall not be subject to review, and the director shall not be required to give any notice of hearing or hold any hearing prior to taking such action or making such finding.

(2) All moneys so paid in shall constitute a separate trust fund in the office of the state treasurer, and, after any such payment is so ordered, the employer or insurance carrier shall thereupon be discharged from any further liability under such award for which payment is made to the extent of the payment made, and the payment of the award shall then be assumed to the extent of payment made by the special trust fund so created. If, for any reason, a beneficiary's right to the compensation awarded and ordered paid into said special trust fund ceases, lapses, or in any manner terminates by virtue of the terms and provisions of articles 40 to 47 of this title so that a surplus not surviving or accruing to any other beneficiary remains in said trust fund of the amount ordered paid into it on behalf of the beneficiary, the insurance carrier or employer who has made said payment shall be entitled to a refund of the present value of said surplus, if any, computed at the rate of four percent per annum. The state treasurer shall invest any portion of the special trust fund, including its surplus and reserves, which the director determines is not needed for immediate use.

Source: L. 90: Entire article R&RE, p. 552, § 1, effective July 1.

Editor's note: This section is similar to former § 8-52-112 as it existed prior to 1990.

8-47-106. State average weekly wage - method of computation.

The state average weekly wage shall be established by the director annually on or before July 1 of each year. The state average weekly wage shall be determined from the average weekly earnings referenced in section 8-73-102 (1), computed by the division in June on the basis of the most recent available figures, and applicable to the ensuing twelve months beginning July 1. Such state average weekly wage shall automatically form the basis for establishing maximum benefits under the "Workers' Compensation Act of Colorado" as of 12:01 a.m., July 1, 1974, and at each succeeding time and date annually thereafter.

Source: L. 90: Entire article R&RE, p. 553, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-113 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-47-106 is similar to § 8-46-113 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

As applied, this section is not unconstitutionally vague. Although the statute does not specify whether it applies to injuries occurring in the ensuing 12 months or to benefits payable in the ensuing 12 months, case law has long established that the parties' rights and liabilities under the Workers' Compensation Act of Colorado, article 40 through 47 of this title, are established at the time of injury. *Simpson v. Indus. Claim Appeals Office*, 219 P.3d 354 (Colo. App. 2009), rev'd on other grounds, 232 P.3d 777 (Colo. 2010).

Nor is the right to equal protection violated by this section. *Simpson v. Indus. Claim Appeals Office*, 219 P.3d 354 (Colo. App. 2009), rev'd on other grounds, 232 P.3d 777 (Colo. 2010).

Under this section, workers' compensation claimants are not entitled to yearly adjustments in benefits based on the change in the state average weekly wage (AWW) each year. The Workers' Compensation Act of Colorado contains no provision mandating such annual recalculations. To construe this section otherwise would effectively thwart the Act's stated goals of providing certainty to claimants, insurers, and employers alike by permitting unpredictable increases or decreases in benefits. *Simpson v. Indus. Claim Appeals Office*, 219 P.3d 354 (Colo. App. 2009) (decided prior to 2010).

amendment of § 8-42-107.5), rev'd on other grounds, 232 P.3d 777 (Colo. 2010).

Applied in *Bellendir v. Kezer*, 648 P.2d 645 (Colo. 1982).

8-47-107. Adoption of rules.

The director has the power to adopt reasonable and proper rules relative to the administration of articles 40 to 47 of this title and proper rules to govern proceedings and hearings of the division, and the director has the discretion to amend the rules from time to time. No such rule shall limit the jurisdiction of an administrative law judge in the office of administrative courts to hear and decide all matters arising under articles 40 to 47 of this title; except that in any matter where the director has issued an order to enforce a provision of the "Workers' Compensation Act of Colorado", an administrative law judge in the office of administrative courts shall not hear and decide the same matter while it is pending before the director. The rules shall be promulgated in accordance with section 24-4-103, C.R.S.

Source: **L. 90:** Entire article R&RE, p. 553, § 1, effective July 1. **L. 94:** Entire section amended, p. 1880, § 17, effective June 1. **L. 2005:** Entire section amended, p. 857, § 18, effective June 1. **L. 2009:** Entire section amended, (SB 09-070), ch. 49, p. 177, § 5, effective August 5.

Editor's note: This section is similar to former § 8-46-108 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-47-107 is similar to § 8-46-108 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred

its powers, duties, and functions under this section to the director of the division of labor.

A rule of the industrial commission, not pleaded, and which does not appear in the record, should not be considered by the court in an action to set aside an award of the commission. *Indus. Comm'n v. Roper*, 91 Colo. 125, 12 P.2d 349 (1932).

Commission has power to enforce its own rules and regulations by the imposition of appropriate sanctions. *Saxton*

v. Indus. Comm'n, 41 Colo. App. 309, 584 P.2d 638 (1978).

The director of the division of labor is granted broad discretionary power to promulgate rules and regulations under the Colorado Workers' Compensation Act. Hargett v. Dir., Div. of Labor, 854 P.2d 1316 (Colo. App. 1992).

Agency's construction of own rule remains undisturbed upon review absent

plain error. An administrative agency's construction of its own rule is generally entitled to great weight; consequently, such construction will not be disturbed upon review unless it is plainly erroneous or inconsistent with such rule or the underlying statute. Timberline Sawmill & Lumber, Inc. v. Indus. Comm'n, 624 P.2d 367 (Colo. App. 1981).

Applied in Martinez v. Indus. Comm'n, 632 P.2d 1044 (Colo. App. 1981).

8-47-108. Workers' compensation study - report to general assembly. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 553, § 1, effective July 1. **L. 91:** Entire section repealed, p. 1336, § 47, effective July 1.

Editor's note: Prior to its repeal in 1991, this section was similar to former § 8-46-114 as it existed prior to 1990.

8-47-109. Report to general assembly. (Repealed)

Source: **L. 90:** Entire article R&RE, p. 553, § 1, effective July 1. **L. 91:** Entire section repealed, p. 1336, § 48, effective July 1.

Editor's note: Prior to its repeal in 1991, this section was similar to former § 8-52-114 as it existed prior to 1990.

8-47-110. Public officers to enforce orders - furnish information.

It is the duty of all officers and employees of the state, counties, and municipalities, upon the request of the director, to enforce in their respective departments all lawful orders of the director insofar as the same may be applicable and consistent with the general duties of such officers and

employees. It is also their duty to make to the director such reports as the director may require concerning matters within their knowledge pertaining to the purposes of articles 40 to 47 of this title and to furnish the director such facts, data, statistics, and information as, from time to time, may come to them pertaining to the purposes of said articles and the duties of the division thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of said articles with regard to the health, protection, and safety of employees and the hazard of risk of such places of employment.

Source: L. 90: Entire article R&RE, p. 554, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-111 as it existed prior to 1990.

ANNOTATION

Annotator's note. Since § 8-47-110 is similar to § 8-46-110 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

Duty of public officers and employees to enforce. This section continues to make a distinction between public employees and

employers on the one hand and private employees and employers on the other, for it makes it the duty of all officers and employees of the state, counties and municipalities, upon the request of the director, to enforce director's orders and from time to time to furnish him various types of information. *State Comp. Ins. Fund v. Alishio*, 125 Colo. 242, 250 P.2d 1015 (1952).

8-47-111. Division efforts to ensure employer compliance with workers' compensation coverage requirements - legislative declaration.

(1) The general assembly finds, determines, and declares that it is in the best interests of the public to assure that all employers who fall under the provisions of articles 40 to 47 of this title have in effect current policies of insurance or self-insurance for workers' compensation liability.

(2) In order to implement the declaration in subsection (1) of this section, the division shall develop a procedure for verifying whether or not all employers doing business in the state of Colorado comply with the requirements of article 44 of this title. This procedure must include cross-referencing employer records of the division of unemployment insurance and the division of workers' compensation. Upon identifying employers that are not in compliance with article 44

of this title, the division, with the assistance and cooperation of the attorney general, shall use all available means under articles 40 to 47 of this title to ensure compliance. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall furnish the division, upon request, all information required by it to accomplish the purposes of this section.

Source: **L. 94:** Entire section added, p. 1147, § 1, effective May 19. **L. 97:** (2) amended, p. 1476, § 18, effective June 3. **L. 2002:** (2) amended, p. 1889, § 45, effective July 1. **L. 2012:** (2) amended, (HB 12-1120), ch. 27, p. 104, § 12, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

Cross references: For Pinnacol Assurance, see article 45 of this title 8.

8-47-112. Division website - procedures to file complaints.

The director shall clearly post on the division's website the procedure for an injured worker to follow to file a complaint with the division regarding any issue over which the director or his or her designee has authority to pursue, settle, or enforce pursuant to articles 40 to 47 of this title.

Source: **L. 2010:** Entire section added, (SB 10-013), ch. 303, p. 1435, § 3, effective July 1.

PART 2

GENERAL POWERS

8-47-201. Information to division - blanks - verification.

Every employer receiving from the division any blanks with directions to fill out the same or requests for information required for the purposes of articles 40 to 47 of this title shall properly fill out the blanks and furnish the information so requested fully and correctly. The director may

require that any information requested by the division be verified under oath and may fix the time within which said information shall be returned.

Source: L. 90: Entire article R&RE, p. 554, § 1, effective July 1.

Editor's note: This section is similar to former § 8-45-104 as it existed prior to 1990.

8-47-202. Information furnished to division - confidential use.

Every employer shall furnish the division, upon request, all information required by it to accomplish the purposes of articles 40 to 47 of this title. The information shall be for the confidential use of the division, unless otherwise ordered by the director, and shall not be open to the public nor used in any court or any action or proceeding pending therein, unless the director is a party to such action or proceeding.

Source: L. 90: Entire article R&RE, p. 554, § 1, effective July 1.

Editor's note: This section is similar to former § 8-45-103 as it existed prior to 1990.

8-47-203. Access to files, records, and orders - definition.

(1) Notwithstanding the provisions of section 8-47-202, the filing of a claim for compensation is deemed to be a limited waiver of the doctor-patient privilege to persons who are necessary to resolve the claim. The release of mental health records pursuant to this section must comply with section 8-47-203.2. Access to claim files maintained by the division are permitted only as follows:

(a) Workers' compensation claim files shall be available for inspection upon request by the parties to the claim, including the claimant, the employer, and the insurer or their attorneys or other designated representatives. The parties to a claim may review other claim files relating to the said claimant.

(b) Persons who are not parties to a claim, or their attorneys or designated representatives, and who wish to inspect or obtain information from claim files may submit a request to inspect a particular file, stating the purpose for such inspection. The director may disallow such requests if

the purpose of the inspection is to further commercial interests, to disseminate information to nonparties, or if the inspection does not comply with section 8-47-203.2. Any such request shall be considered and determined by the division within seventy-two hours.

(c) (I) (A) The director may permit access to other governmental entities only as required for the performance of their official duties and only if those official duties relate to enforcement of articles 40 to 47 of this title 8. As used in this subsection (1)(c)(I), "enforcement" includes duties of governmental entities involved in the administration of articles 40 to 47 of this title 8 or if such duties relate to the enforcement of child support under section 26-13-122. This subsection (1)(c)(I)(A) is not intended to restrict the rights of persons otherwise provided for in articles 40 to 47 of this title 8 to inspect and copy files.

(B) Notwithstanding any other provision of this title 8, the department of revenue may access results of an inquiry made by the division to determine whether an employer has liability pursuant to articles 22 to 29 of title 39.

(C) Notwithstanding any other provision of this title 8, the division of family and medical leave insurance may access records regarding compensability and benefit payments of workers' compensation claims for the purposes of coordinating the benefits of and otherwise enforcing article 13.3 of this title 8.

(II) The general assembly intends that any contract, agreement, or any other means to transfer information between the department of labor and employment and any other governmental entity related to access to claim files in effect prior to May 27, 1997, shall be conformed to the provisions of this paragraph (c), as amended, or terminated as authorized by law.

(III) Notwithstanding articles 40 to 47 of this title 8, the director may provide information to the Colorado uninsured employer board created in section 8-67-106, as necessary, to exercise its powers and duties.

(d) Persons entitled to review claim files may obtain copies upon payment of the fee set by the division. Such persons shall not disseminate information contained in those files except as required to resolve the claim, or as permitted by the director, or as permitted by law.

(e) Claimants may waive the protection of this statute by executing a waiver for the release of information. The waiver must be dated and will be effective for ninety days thereafter.

(2) All orders entered by the director or an administrative law judge pursuant to articles 40 to 47 of this title shall be made available by the division for inspection or copying for a fee reflecting actual costs; except that the name and other identifying information concerning the claimant and employer shall be excised.

Source: **L. 90:** Entire article R&RE, p. 554, § 1, effective July 1. **L. 94:** (2) added, pp. 1822, 1880, §§ 1, 18, effective June 1. **L. 97:** (1)(c) amended, p. 1091, § 1, effective May 27. **L. 2004:** (1)(c)(I) amended, p. 615, § 2, effective August 4. **L. 2017:** (1)(c)(III) added, (HB 17-1119), ch. 317, p. 1708, § 10, effective July 1. **L. 2022:** IP(1) and (1)(b) amended, (HB 22-1354), ch. 476, p. 3470, § 2, effective June 8. **L. 2024:** IP(1) and (1)(c)(I) amended, (SB 24-155), ch. 59, p. 202, § 2, effective August 7.

Editor's note: This section is similar to former § 8-45-105 as it existed prior to 1990.

8-47-203.2. Mental health records - disclosure - rules - definition.

(1) As used in this section, unless the context otherwise requires, "mental health record" means the following records pertaining to the claimant:

- (a) Psychological or psychiatric tests, including neuropsychological testing;
- (b) Other records prepared by or for a mental health provider;
- (c) Independent medical examination records, audio recordings, and reports that address psychological or psychiatric issues;
- (d) Division independent medical evaluation records and reports that address psychological or psychiatric issues; and
- (e) Records relating to the evaluation, diagnosis, or treatment of a substance use or abuse disorder.

(2) A mental health provider shall provide mental health records to:

- (a) The insurer, or if self-insured, the employer, as necessary for payment of services and adjustment and adjudication of claims involving psychological or psychiatric issues;
- (b) The employer, as necessary for the employer to comply with applicable state or federal laws, rules, and regulations; and
- (c) The referring physician and any other relevant treating or evaluating providers, as necessary.

(3) (a) Mental health records provided pursuant to subsection (2) of this section shall not be disclosed to any person who is not reasonably necessary for the medical evaluation, adjustment, or adjudication of claims involving psychological or psychiatric issues unless disclosure is otherwise directed by order of the director or an administrative law judge.

(b) (I) An insurer may release information from a claimant's mental health records concerning any work restrictions placed on the claimant to the claimant's employer, supervisor, or manager, and information as necessary for the adjustment and adjudication of a claim, but shall not disclose the claimant's actual mental health records to any third party who is not directly involved in medically evaluating, adjusting, or adjudicating claims involving psychological or psychiatric issues without the consent of the claimant unless disclosure is otherwise ordered by the director or an administrative law judge.

(II) Notwithstanding subsection (3)(b)(I) of this section, if the claimant's mental health provider or physician objects to the release of mental health records, the insurer shall not disclose the mental health records to a third party unless otherwise ordered by the director or an administrative law judge.

(c) If an employer is self-insured, upon receipt of mental health records, the employer:

(I) Shall maintain mental health records under restricted access, separate from personnel files, and with clear policies and training to ensure the claimant's privacy is protected; and

(II) (A) May disclose information from the claimant's mental health records concerning any work restrictions placed on the claimant to the claimant's supervisor or manager and information as necessary for the adjustment or adjudication of a claim, but shall not disclose the claimant's actual mental health records to any third party who is not directly involved in medically evaluating, adjusting, or adjudicating claims involving psychological or psychiatric issues without the consent of the claimant, unless disclosure is otherwise ordered by the director or an administrative law judge.

(B) Notwithstanding subsection (3)(c)(II)(A) of this section, if the claimant's mental health provider or physician objects to the release of mental health records, the self-insured employer shall not disclose the mental health records to any third party unless otherwise ordered by the director or an administrative law judge.

(d) (I) A third party receiving mental health records pursuant to this subsection (3) shall not disclose the claimant's actual mental health records to any person who is not directly involved in medically evaluating, adjusting, or adjudicating claims involving psychological or psychiatric issues without the consent of the claimant, unless otherwise ordered by the director or an administrative law judge.

(II) Notwithstanding subsection (3)(d)(I) of this section, if the claimant's mental health provider or physician objects to the release of mental health records, the third party shall not disclose the mental health records to any other third party unless otherwise ordered by the director or an administrative law judge.

(4) The director may promulgate rules necessary for the implementation of this section.

Source: L. 2022: Entire section added, (HB 22-1354), ch. 476, p. 3468, § 1, effective June 8.

8-47-203.3. Release of location information concerning individuals with outstanding felony arrest warrants.

(1) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the division shall provide the bureau with information concerning the location of any person whose name appears in the division's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the division. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The division and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the division nor its employees or agents shall be liable in civil action for providing information in accordance with the provisions of this subsection (1).

(2) As used in subsection (1) of this section, "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

Source: L. 95: Entire section added, p. 1122, § 1, effective July 1.

8-47-204. Employees of division - qualifications.

The executive director has the power to employ, pursuant to section 13 of article XII of the state constitution, such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as may be necessary to carry out the provisions of articles 40 to 47 of this title or to perform the duties and exercise the powers conferred by law upon the division.

Source: L. 90: Entire article R&RE, p. 555, § 1, effective July 1. **L. 94:** Entire section amended, p. 103, § 1, effective March 18.

Editor's note: This section is similar to former § 8-46-109 as it existed prior to 1990.

8-47-205. Salaries of employees of division.

All deputies, statisticians, accountants, clerks, experts, and other employees of the division shall receive such compensation as may be fixed by law. The salaries so fixed shall be paid from the fund appropriated for the use of the division after approval by the director.

Source: **L. 90:** Entire article R&RE, p. 555, § 1, effective July 1. **L. 2024:** Entire section amended, (HB 24-1467), ch. 430, p. 3015, § 3, effective June 5.

Editor's note: This section is similar to former § 8-46-110 as it existed prior to 1990.

Cross references: For the legislative declaration in HB 24-1467, see section 1 of chapter 430, Session Laws of Colorado 2024.

8-47-206. Employees of division - bonds.

Such employees of the division as shall be directed by the director shall furnish surety company bonds in such sum as may be fixed by the director, the premiums therefor to be paid as other expenses of the division are paid.

Source: **L. 90:** Entire article R&RE, p. 555, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-112 as it existed prior to 1990.

8-47-207. Collection of statistics.

The director or any agents of the division may enter into any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, protection, and safety of the employees, and bringing to the attention of every employer any rule, order, or requirement of the division, or any law, or any failure on the part of any employer to comply therewith.

Source: L. 90: Entire article R&RE, p. 555, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-101 as it existed prior to 1990.

ANNOTATION

Annotator's note. (1) Since § 8-47-207 is similar to § 8-46-101 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, a relevant case construing that provision has been included in the annotations to this section.

(2) The case included in the annotations to this section which refers to the industrial commission was decided prior to the 1969

amendment which vested the director of the division of labor with the power previously exercised by the industrial commission to make investigations.

It is the function of the industrial commission to find the facts in workmen's compensation cases, and such findings, having respectable evidentiary support, are controlling. *Indus. Comm'n v. White*, 97 Colo. 322, 49 P.2d 434 (1935).

8-47-208. Records of employers open to inspection of division.

All books, records, and payrolls of employers or of any contractor, subcontractor, lessee, sublessee, or person showing or reflecting in any way upon the amount of wage expenditure of such employers, contractor, subcontractor, lessee, sublessee, or person and all other facts, data, and statistics appertaining to the purposes of this article shall always be open for inspection by the director or any agents of the division for the purpose of ascertaining the correctness of the reported wage expenditure, number of persons employed, and such other information as may be necessary for the uses and purposes of the division in the administration of the "Workers' Compensation Act of Colorado".

Source: L. 90: Entire article R&RE, p. 555, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-102 as it existed prior to 1990.

Cross references: The provisions of the "Workers' Compensation Act of Colorado" are contained in articles 40 to 47 of this title 8.

8-47-209. Expenses of division.

All expenses incurred by the division pursuant to the provisions of the "Workers' Compensation Act of Colorado" shall be paid from funds appropriated for the use of the division upon claims therefor which shall be itemized and sworn to by the person who incurred the same. The claims shall be allowed by the director subject to the approval of the controller. The traveling expenses of the director or of any employees of the division, incurred while on business of the division outside of the state of Colorado, shall be paid in the manner aforesaid, but only when such expenses are authorized in advance by the controller to be incurred by the division.

Source: L. 90: Entire article R&RE, p. 556, § 1, effective July 1.

Editor's note: This section is similar to former § 8-46-104 as it existed prior to 1990.

Workmen's Compensation

Editor's note: Articles 48 to 54 were numbered as articles 9 to 15 of chapter 81, C.R.S. 1963. For amendments to these articles prior to their repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Some provisions of these articles were relocated to articles 40 to 47 of this title. For a detailed comparison, see the comparative table located in the back of the index.

ARTICLE 48

Contractors and Lessees

8-48-101 to 8-48-103. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 49

Medical, Surgical, and Hospital

8-49-101 and 8-49-102. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 50

Dependency

8-50-101 to 8-50-117. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 51

Benefits

8-51-101 to 8-51-113. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 52

General Provisions

8-52-101 to 8-52-115. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 53

Hearing and Review Procedure

8-53-101 to 8-53-130. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 54

State Compensation Insurance Authority

8-54-101 to 8-54-127. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

Workers' Compensation - Continued

ARTICLE 55

Workers' Compensation Classification Appeals Board

8-55-101.	Workers' compensation classification appeals board - creation.	8-55-103.	Hearings - conflicts of interest.
		8-55-104.	Review of board decisions.
8-55-102.	Right to appeal - notice of appeal procedures.	8-55-105.	Repeal of article.

8-55-101. Workers' compensation classification appeals board - creation.

(1) There is created, in the division of insurance in the department of regulatory agencies, the workers' compensation classification appeals board. The workers' compensation classification appeals board is a **type 1** entity, as defined in section 24-1-105. The board shall hear grievances brought by employers against insurers and Pinnacol Assurance concerning the calculation of experience modification factors and classification assignment decisions. The board consists of five voting members, each of whom must be knowledgeable about workers' compensation classification and experience modification factors, and one nonvoting member, as follows:

(a) (I) One member must be either:

(A) A salaried employee of an insurance company that issues workers' compensation insurance policies in this state; or

(B) A representative of Pinnacol Assurance.

(II) One member must be:

(A) A salaried employee of an insurance company that issues workers' compensation policies in this state;

(B) A representative of Pinnacol Assurance; or

(C) An insurance agent licensed in this state.

(III) The two members appointed pursuant to subsections (1)(a)(I) and (1)(a)(II) of this section must not both represent Pinnacol Assurance or the same insurance company. In addition, one person must be selected to serve as an alternate member to represent the interests of the insurance industry, Pinnacol Assurance, or insurance agents. The alternate shall represent such interests if the primary member recuses himself or herself.

(b) One member, who shall be a nonvoting member, shall be an employee of a workers' compensation rating organization functioning under the provisions of section 10-4-408, C.R.S. The workers' compensation rating organization shall serve as a technical resource for the board.

(c) Three members shall represent private employers. Each private employer member shall be knowledgeable with respect to workers' compensation insurance, rules, and classifications, and shall be familiar with the business environment and community in this state. No private employer member shall be an employee of an insurance company, insurance broker, insurance agent, law firm, actuary, Pinnacol Assurance, or any association of such entities or persons. All private employer board memberships shall be held in the name of an individual. At least one private employer member shall represent the construction industry.

(2) The commissioner of insurance shall appoint the private employer members and the members representing insurers, insurance agents, and Pinnacol Assurance. The workers' compensation rating organization representative shall be appointed by the chief executive officer of such organization or by another officer designated to make such appointment. The commissioner may solicit a list of nominees from any interested party before making such appointments. The commissioner shall immediately notify the workers' compensation rating organization concerning the identity of any appointees.

(3) Each member shall serve one three-year term, and, in addition:

(a) (Deleted by amendment, L. 2002, p. 1889, § 46, effective July 1, 2002.)

(b) A private employer member or member representing the insurance industry or Pinnacol Assurance may serve a second consecutive three-year term; and

(c) The member representing the workers' compensation rating organization may be reappointed without limitation.

(4) Any vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment. The member appointed to fill such vacancy shall be from the same category described in subsection (1) of this section as the member vacating the position.

(5) Members of the board shall serve without compensation, but their reasonable expenses incurred when performing their duties as board members shall be reimbursed from the workers' compensation cash fund created in section 8-44-112 (7). Such expenses shall be limited to travel, food, and lodging expenses.

(6) Members of the board, in their capacity as members, shall be immune from liability in all claims for injury that lie in tort or could lie in tort, regardless of whether that may be the type of action or the form of relief chosen by the claimant.

Source: **L. 96:** Entire article added, p. 1139, § 1, effective October 1. **L. 2002:** IP(1), (1)(a), (1)(c), (2), and (3) amended, p. 1889, § 46, effective July 1. **L. 2021:** (1)(a) and (2) amended, (SB 21-096), ch. 30, p. 124, § 1, effective April 15. **L. 2022:** IP(1) amended, (SB 22-162), ch. 469, p. 3390, § 100, effective August 10.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

8-55-102. Right to appeal - notice of appeal procedures.

An employer may appeal to the workers' compensation classification appeals board any issue concerning the calculation of experience modification factors and classification assignment decisions under the workers' compensation laws of this state by filing written notice with said board within thirty days after the employer has exhausted all appeal review procedures provided by the insurance company. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, shall provide employers with a written copy or summary of their appeal procedures, together with a written notice of the availability of an appeal under this article, at the beginning of each policy year and when notice is provided to the employer of a change in experience modification factors or job classification.

Source: L. 96: Entire article added, p. 1141, § 1, effective October 1. **L. 2002:** Entire section amended, p. 1890, § 47, effective July 1.

8-55-103. Hearings - conflicts of interest.

(1) The board shall commence each term on January 1 of each year and shall terminate each term on December 31.

(2) At the beginning of each term the board shall either in person or by teleconference:

(a) Elect a chair who shall be responsible for conducting each hearing;

(b) Appoint the member representing the workers' compensation rating organization as secretary; and

(c) Establish such organizational and procedural rules as are deemed necessary.

(3) The board shall meet as needed and in accordance with the following:

(a) The board shall schedule a hearing within thirty days after receipt of an appeal.

(b) The board shall provide written notice of a hearing to the appellant, the insurer, and the workers' compensation rating organization within thirty days after receipt of an appeal, but not less than ten days before the hearing.

(c) A hearing shall be conducted only if a quorum of the board is present, either in person or by teleconference. A quorum shall consist of a simple majority of the voting members, including at least two private sector members.

(d) Any decision of the board shall be by majority vote of the voting members who are present at the hearing.

(e) A member's vote shall be cast only by such member.

(f) If a board member has a conflict of interest with respect to any matter scheduled for hearing before the board, such member shall recuse himself or herself from any discussion and decisions on said matter unless, after full disclosure of the facts giving rise to such conflict, all parties to the appeal agree to waive such conflict. For purposes of this paragraph (f), a member shall be deemed to have a conflict of interest if such member:

(I) Has a conflict that would call into question such member's ability to render an unbiased decision; and

(II) Is associated with either party to the appeal. A member is "associated" with a party to an appeal if:

(A) The member and the party to the appeal are involved in a common business enterprise or are members of a controlled group, as defined in section 1563(a) of the federal "Internal Revenue Code of 1986", as amended; or

(B) The member has a familial relationship with the party to the appeal.

(g) Notwithstanding the provisions of paragraph (f) of this subsection (3), the member representing the workers' compensation rating organization shall not be deemed to have a conflict of interest with respect to any appeal based solely on his or her affiliation with his or her organization.

(4) The secretary of the board shall carry out the administrative functions of the board and shall be responsible for providing notice of, preparing the agenda for, and arranging the facilities for each hearing and meeting. The secretary shall also prepare a memorandum after each hearing that includes the vote of the board. Such memoranda shall be signed by the chair of the board and, each month, the secretary shall deliver copies of that month's memoranda to the workers' compensation rating organization.

Source: L. 96: Entire article added, p. 1141, § 1, effective October 1.

8-55-104. Review of board decisions.

(1) A decision of the board shall be final and not subject to appeal unless the employer, insurance company, or Pinnacol Assurance provides written notice to the office of the commissioner of insurance, who shall determine whether a job misclassification occurred, as required pursuant to section 8-44-108. An employer may hold disputed premium amounts in abeyance from the date an appeal is filed pursuant to section 8-55-102 until the later of:

(a) The date a final decision is made by the board concerning such appeal; or

(b) The date of any written decision of the commissioner of insurance issued pursuant to subsection (3) of this section.

(2) Each employer, insurance company, or Pinnacol Assurance, as the case may be, shall be advised of the right to appeal to the office of the commissioner of insurance.

(3) An employer, insurance company, or Pinnacol Assurance shall provide written notice of an appeal to the commissioner of insurance within thirty days after the date of the board's decision. The commissioner shall review any decision of the board properly appealed pursuant to

this section and shall provide a written decision within thirty days after the request for such review.

(4) Any employer that holds disputed premium amounts in abeyance pursuant to subsection (1) of this section and loses its appeal shall pay the disputed premium amount plus interest at the rate of one percent of such disputed amount per month. Such interest shall accrue from the date of the premium rate increase to the date of payment.

Source: **L. 96:** Entire article added, p. 1143, § 1, effective October 1. **L. 2002:** IP(1), (2), and (3) amended, p. 1890, § 48, effective July 1.

8-55-105. Repeal of article.

(1) This article 55 is repealed, effective September 1, 2032.

(2) Prior to said repeal, the workers' compensation classification appeals board shall be reviewed as provided in section 24-34-104, C.R.S.

Source: **L. 96:** Entire article added, p. 1143, § 1, effective October 1. **L. 2001:** Entire section amended, p. 170, § 1, effective March 28. **L. 2010:** (1) amended, (HB 10-1247), ch. 77, p. 262, § 1, effective April 5. **L. 2021:** (1) amended, (SB 21-096), ch. 30, p. 125, § 2, effective April 15.

Occupational Diseases

ARTICLE 60

Occupational Diseases

8-60-101 to 8-60-131. (Repealed)

Source: **L. 75:** Entire article repealed, p. 311, § 62, effective September 1.

Editor's note: This article was numbered as article 18 of chapter 81, C.R.S. 1963. For amendments to this article prior to its repeal in 1975, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning occupational diseases, see articles 40 to 47 of this title 8.

Medical Insurance Provisions

Editor's note: Articles 65 and 66 were numbered as articles 19 and 20 of chapter 81, C.R.S. 1963. For amendments to these articles prior to their repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Some provisions of these articles were relocated to articles 40 to 47 of this title. For a detailed comparison, see the comparative tables located in the back of the index.

ARTICLE 65

Colorado Medical Disaster Insurance Fund

8-65-101 to 8-65-108. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 66

Colorado Major Medical Insurance Fund Act

8-66-101 to 8-66-112. (Repealed)

Source: L. 90: Entire article repealed, p. 576, § 77, effective July 1.

ARTICLE 67

Colorado Uninsured Employer Act

8-67-101.	Short title.	8-67-103.	Definitions.
8-67-102.	Legislative declaration.	8-67-104.	Exclusions.

8-67-105.	Colorado uninsured employer fund - repeal.	8-67-110.	Collection of benefit reimbursements.
8-67-106.	Creation of board.	8-67-111.	Payment of benefits.
8-67-107.	Powers of the board - rules.	8-67-112.	Medical benefits.
8-67-108.	Plan of operation - rules.	8-67-113.	Procedure.
8-67-109.	Effect of benefits.		

8-67-101. Short title.

The short title of this article 67 is the "Colorado Uninsured Employer Act".

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1697, § 1, effective July 1.

8-67-102. Legislative declaration.

(1) The general assembly hereby finds and declares that the purpose of this article 67 is to provide a mechanism for the payment of covered claims to workers injured while employed by employers who have failed to obtain and maintain the required workers' compensation insurance and to avoid excessive delay in payment and financial loss to injured workers.

(2) Therefore, it is the intent of the general assembly to require employers to maintain workers' compensation insurance and that the requirement be vigorously enforced in order to protect compliant employers from those who would gain a competitive advantage at the expense of the safety and well-being of employees.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1697, § 1, effective July 1.

8-67-103. Definitions.

As used in this article 67, unless the context otherwise requires:

(1) "Board" means the uninsured employer board created in section 8-67-106.

(2) "Covered claim" means a claim for benefits resulting from an injury occurring on or after January 1, 2020, that has been adjudicated to be compensable, for which the employer has been

determined to be uninsured, and for which the employer has failed to pay the full amount of benefits as ordered.

- (3) "Department" means the department of labor and employment.
- (4) "Director" means the director of the division of workers' compensation.
- (5) "Division" means the division of workers' compensation in the department of labor and employment.
- (6) "Fund" means the Colorado uninsured employer fund.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1697, § 1, effective July 1.

8-67-104. Exclusions.

- (1) The following persons may not recover compensation or other benefits from the fund:
 - (a) A partner in a partnership or an owner of a sole proprietorship;
 - (b) A director or officer of a corporation;
 - (c) A member or manager of a limited liability company;
 - (d) An individual who was responsible for obtaining and maintaining the employer's workers' compensation insurance coverage and who failed to do so;
 - (e) An individual who was eligible to be covered under a workers' compensation insurance policy and voluntarily rejected the coverage under section 8-41-202, 8-41-404 (4)(a)(V), or 8-41-404 (4)(a)(VI);
 - (f) An individual who is not an "employee" as defined in sections 8-40-202 and 8-40-301 or who is otherwise ineligible to receive benefits under articles 40 to 47 of this title 8.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1698, § 1, effective July 1.

8-67-105. Colorado uninsured employer fund - repeal.

- (1) The Colorado uninsured employer fund is hereby created in the state treasury. A board of directors established under section 8-67-106 shall administer the fund under a plan of operation established under section 8-67-108.

(2) (a) The money collected for the fund pursuant to articles 40 to 47 of this title 8 shall be transmitted to the state treasurer, who shall credit the money to the fund. The money credited to the fund and all interest earned thereon are hereby continuously appropriated for the payment of the direct costs of administering the program, including benefits paid pursuant to this article 67 and payments to third parties retained pursuant to this article 67.

(b) The internal staffing costs, not including payments to third parties contracted by the board, associated with uninsured employer programs shall be paid out of the workers' compensation cash fund in accordance with appropriations made pursuant to section 8-44-112 (7).

(c) The fund consists of:

(I) Civil penalties, fines, and other revenue collected by the division and specifically allocated to the fund pursuant to articles 40 to 47 of this title 8;

(II) Any public or private gifts, grants, or donations to the fund received by the department;

(III) Any appropriations made to the fund; and

(IV) Earned interest, which the state treasurer shall deposit in the fund.

(d) The department may use revenues in the fund for benefits to be paid out of the fund pursuant to this article 67 as well as administrative costs of the board.

(e) The money in the fund:

(I) Shall remain in the fund and not be credited or transferred to the general fund at the end of any fiscal year;

(II) Is exempt from section 24-75-402; and

(III) Is not subject to annual appropriation by the general assembly.

(3) No later than June 1, 2022, the state auditor shall conduct or cause to be conducted a performance audit of the Colorado uninsured employer fund.

(4) (a) Notwithstanding any provision of subsection (2)(e) of this section to the contrary, on June 30, 2026, the state treasurer shall transfer five hundred thousand dollars from the fund to the general fund.

(b) This subsection (4) is repealed, effective July 1, 2027.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1698, § 1, effective July 1. **L. 2026:** (4) added, (HB 26-1405), ch. 396, p. 2480, § 4, effective June 4.

8-67-106. Creation of board.

(1) There is hereby created in the division the uninsured employer board, consisting of the director of the division or the director's representative and four members appointed by the governor and confirmed by the senate. Appointed members of the board must include at least one individual to represent each of the following:

- (a) Employers;
- (b) Labor organizations;
- (c) Insurers; and
- (d) Attorney representatives of injured workers.

(2) The board shall exercise its powers and perform its functions under the department and the director as if the board were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24.

(3) The appointed members of the board shall serve for terms of three years and may be reappointed; except that, of the members first appointed, one shall serve for an initial term of three years, two shall serve for initial terms of two years, and one shall serve for an initial term of one year. A member may serve no more than three consecutive terms.

(4) Members of the board are not entitled to compensation for their services but shall be reimbursed for actual and necessary traveling and expenses incurred in the performance of their official duties as members of the board.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1699, § 1, effective July 1.

8-67-107. Powers of the board - rules.

(1) The board has the following powers and duties:

- (a) To establish standards and criteria for payment of benefits from the fund;
- (b) To set minimum and maximum benefit rates; except that benefits paid by the fund shall not exceed the maximum allowed under articles 40 to 47 of this title 8 or set forth by order of the director. Minimum benefit rates shall be at the level required by articles 40 to 47 of this title 8 unless the fund lacks sufficient money as determined by the board. If benefits are paid below the amount mandated by articles 40 to 47 of this title 8, benefits shall be prioritized and paid as follows:

- (I) Medical benefits;
- (II) Funeral benefits;
- (III) Temporary disability;
- (IV) Death benefits;
- (V) Permanent total disability;
- (VI) Permanent partial disability;
- (VII) Disfigurement.

(c) To adjust claims, which may be performed by contracting with any appropriate entities designated as third-party administrators. Designation of a third-party administrator is subject to the approval of the director.

(d) To pay the expenses of the board as authorized by this section;

(e) To disseminate information regarding the fund;

(f) To adopt rules as necessary to carry out the purposes of this article 67, including rules regarding admission to the fund and payment of benefits in order to ensure the financial stability of the fund;

(g) To investigate claims brought for benefits and to adjust, compromise, settle, and pay covered claims to the extent permitted by statute and rule; to deny payment of benefits from the fund of all other claims and to review settlements, releases, and final orders to which the uninsured employer and injured worker were parties; and to determine the extent to which such settlements, releases, and orders may effect eligibility for benefits.

(2) The board may:

(a) Employ or retain persons as necessary to handle claims and perform other duties of the board;

(b) Intervene as a party before any court or administrative tribunal in this state that has jurisdiction over an uninsured employer or other party potentially responsible for payment of benefits;

(c) Negotiate and become a party to contracts as necessary to carry out the purposes of this article 67;

(d) Perform other acts necessary or proper to effectuate the purposes of this article 67;

(e) Purchase or otherwise obtain insurance and reinsurance policies to limit the liability of the fund for payment of benefits under this article 67; and

(f) Deny entry to the fund or payment of benefits if the underlying claim appears to be premised on fraudulent activity.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1700, § 1, effective July 1.

8-67-108. Plan of operation - rules.

(1) The board shall, by rule, adopt a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the fund.

(2) If the board fails to adopt a plan of operation on or before September 1, 2018, the director shall, after notice and hearing, adopt and promulgate reasonable rules as necessary or advisable to effectuate this article 67. The rules shall continue in force until modified or superseded by the board.

(3) The plan of operation shall:

(a) Establish the procedures by which all the powers and duties of the board under section 8-67-107 will be performed;

(b) Establish the amount and method of reimbursing members of the board under section 8-67-106 (4);

(c) Establish procedures by which claims may be filed with the board, including establishing acceptable forms of proof of covered claims;

(d) Establish procedures for pursuing actions against uninsured employers pursuant to section 8-67-110;

(e) Establish regular places and times for meetings of the board;

(f) Establish procedures for maintaining records of all financial transactions of the board;

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the board; and

(h) Establish procedures for contracting with third-party administrators to administer claims paid by the fund.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1701, § 1, effective July 1.

8-67-109. Effect of benefits.

(1) Notwithstanding this section or articles 40 to 47 of this title 8, a person seeking benefits under this article 67 from the fund is deemed to have assigned his or her rights under articles 40 to 47 of this title 8 to the board to the extent of the benefits paid by the fund. Every injured worker seeking the protection of this article 67 shall cooperate with the board to the same extent as he or she would have been required to cooperate with the employer.

(2) If an employer has no insurance and fails to pay the full amount of benefits as required by articles 40 to 47 of this title 8, the injured worker may apply to the board for payment of the compensation benefits, including medical benefits, to which the injured worker is entitled, to be paid from the fund. Benefits to which the injured worker is entitled from the fund do not include any penalties assessed against the employer.

(3) The board has the right to appear as a creditor in a bankruptcy proceeding involving an uninsured employer who has been found liable to an injured worker admitted to the fund.

(4) The receiver, liquidator, or statutory successor of an uninsured employer is bound by settlements of covered claims with the board. The court having jurisdiction shall grant such claims priority equal to that which the injured worker would have been entitled in the absence of this article 67 against the assets of the employer. The expenses of the board shall be accorded the same priority as the liquidator's expenses.

(5) Upon the acceptance of a claim into the fund, the board shall record, as provided by subsection (6) of this section, a certificate prepared and furnished by the division showing the date on which the claim was filed, the date of the injury, the name and last-known address of the employer against whom it was filed, the names and last-known addresses of the employer's principals, and the fact that the employer has not secured the payment of compensation as required. Upon recording, the certificate constitutes a valid lien against the assets of the employer and its principals in favor of the fund for the whole amount that may be due as compensation. Any lien secured pursuant to this article 67 has priority in the order filed. The board shall serve a copy of the certificate upon the employer and its principals.

(6) The certificate constituting a lien in favor of the fund must be filed in the following offices:

(a) The offices of the county clerks of the counties in which the principals of the defendant employer reside;

(b) The office of the county clerk of the county in which the defendant employer has its principal place of business; and

(c) The offices of the county clerks in the counties where the employer's property is located.

(7) If an uninsured employer becomes insolvent, the board may convert all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to articles 40 to 47 of this title 8 to a present lump sum. The board shall fix the lump sum of probable future medical expenses and weekly compensation benefits, or other benefits payable pursuant to articles 40 to 47 of this title 8, capitalized at their present value upon the basis of interest at the rate of four percent per annum. The board shall then file with the receiver or liquidator of an insolvent employer the statement of the lump sum, which shall preserve the rights of the board against the assets of the insolvent employer. The employer is discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the injured worker or, subject to approval by the board, to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the injured worker.

(8) Payment from the fund does not relieve the obligation of the employer to pay benefits as required by articles 40 to 47 of this title 8 to the injured worker; except that any benefits due to the injured worker will be reduced by the amount of the benefits paid by the fund to the injured worker. All benefits required pursuant to articles 40 to 47 of this title 8 remain the liability of the employer.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1702, § 1, effective July 1.

8-67-110. Collection of benefit reimbursements.

(1) The board shall institute practices and procedures as it deems necessary to collect any money due the fund in the form of reimbursement for benefits paid from the fund to an injured worker.

(2) Repealed.

(3) If, after due notice, an employer defaults in the repayment of any benefits paid by the fund to an injured worker on that employer's behalf, the board may seek collection from the employer by instituting a civil action, which shall include the right of attachment in the name of the fund. Court costs shall not be charged to the board, but any employer against whom judgment is taken shall be charged with all costs of the action. All costs collected by the fund shall be paid into the registry of the court.

(4) The board may employ counsel and other personnel necessary to collect reimbursements as described in this section.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1703, § 1, effective July 1. **L. 2021:** (2) repealed, (SB 21-055), ch. 12, p. 75, § 5, effective March 21.

8-67-111. Payment of benefits.

(1) Benefits paid under this article 67 are treated as benefits paid by an insurer or self-insured employer under articles 40 to 47 of this title 8.

(2) A person having a single claim against multiple employers is not entitled to receive benefits unless each of the liable employers is uninsured.

(3) When paying benefits, the board is entitled to claim any reduction of benefits, to claim overpayments, or to make any other adjustments allowed under articles 40 to 47 of this title 8.

(4) Benefits awarded under this article 67 must be reduced by any benefits paid by the uninsured employer.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1704, § 1, effective July 1.

8-67-112. Medical benefits.

(1) Medical benefits paid under this article 67 are treated as benefits paid by an insurer or self-insured employer under articles 40 to 47 of this title 8.

(2) Upon acceptance of a claim for benefits from the fund, the board may designate a new authorized treating physician. Application to the fund shall be deemed as acceptance by the injured worker of the new designated physician if the designation is made. The previously authorized treating physician providing primary care shall continue as the authorized treating physician providing primary care for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the previously authorized treating physician providing primary care is terminated.

(3) Notwithstanding articles 40 to 47 of this title 8, the board is permitted to negotiate rates of reimbursement for medical providers.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1704, § 1, effective July 1.

8-67-113. Procedure.

(1) A controversy concerning any issue arising under this section shall be resolved through hearings in accordance with sections 8-43-207 and 8-43-207.5. In any such hearing, a decision of the board to deny benefits may only be set aside upon a showing of abuse of discretion.

(2) The division shall notify the board of any claim determined or suspected to be uninsured, either at the time of filing or otherwise. Upon the notification, the board is permitted to join the claim as a party upon written notice to all other parties.

(3) A hearing must not proceed on the issue of lack of coverage without the board having been notified and provided an opportunity to join the claim as a party.

(4) The board, its agents, or employees have no liability for any action taken against them for the performance of their duties under this article 67.

Source: L. 2017: Entire article added, (HB 17-1119), ch. 317, p. 1705, § 1, effective July 1.

LABOR III - EMPLOYMENT SECURITY

ARTICLE 70

Definitions - General Provisions

8-70-101.	Short title.	8-70-109.	Agricultural labor.
8-70-102.	Legislative declaration.	8-70-110.	Benefits - classifications.
8-70-103.	Definitions.	8-70-111.	Benefit year - definitions.
8-70-104.	Additional definitions. (Repealed)	8-70-112.	Claims - classifications.
8-70-105.	Banks as instrumentalities of United States.	8-70-113.	Employer - definition.
8-70-106.	No vested rights or immunities.	8-70-114.	Employing unit - definitions - rules - employee leasing company certification fund.
8-70-107.	Disposition of funds in event of unconstitutionality.	8-70-115.	Employment - Federal Unemployment Tax Act.
8-70-108.	Conformity with federal statutes.	8-70-116.	Employment - location of services.

8-70-117.	Employment - base of operations.	8-70-130.	Employment does not include - instrumentalities of United States.
8-70-118.	Employment - nonprofit organizations.	8-70-131.	Employment does not include - school - college - university.
8-70-119.	Employment - hospitals - institutions of higher education.	8-70-132.	Employment does not include - educational institution.
8-70-120.	Employment - agricultural labor.	8-70-133.	Employment does not include - hospital.
8-70-121.	Employment - domestic services.	8-70-134.	Employment does not include - unemployment compensation system.
8-70-122.	Employment - American employer.	8-70-135.	Employment does not include - paper routes.
8-70-123.	Employment - vessels - aircraft.	8-70-136.	Employment does not include - brokers.
8-70-124.	Employment - credit - state unemployment fund.	8-70-137.	Employment does not include - organization exempt from income tax.
8-70-125.	Employment - educational institutions.	8-70-138.	Employment does not include - in-home services. (Repealed)
8-70-125.5.	Employment - Indian tribes.	8-70-139.	Employment does not include - insurance agents.
8-70-125.7.	Employment - property tax work-off program participants.	8-70-140.	Employment does not include - nonprofit organizations - governmental entities - Indian tribes.
8-70-126.	Employment does not include - agricultural labor.	8-70-140.1.	Employment does not include - foreign government service.
8-70-127.	Employment does not include - domestic service.		
8-70-128.	Employment does not include - employer's trade or business.		
8-70-129.	Employment does not include - spouse - minor.		

8-70-140.2. Employment does not include - nonresident alien service. 8-70-140.5. Employment does not include - drivers of taxis or limousines. 8-70-140.6. Employment does not include - nonprofit youth sports organization coach - definitions.	8-70-140.7. Employment does not include - land professionals. 8-70-140.8. Employment does not include - owners. 8-70-141. Wages - definition. 8-70-142. Wages - remuneration not included as wages. 8-70-143. Applicability of legislation.

8-70-101. Short title.

Articles 70 to 82 of this title shall be known and may be cited as the "Colorado Employment Security Act".

Source: L. 36, 3rd Ex. Sess.: p. 13, § 1. **CSA:** C. 167A, § 1. **L. 41:** p. 761, § 1. **CRS 53:** § 82-1-1. **C.R.S. 1963:** § 82-1-1.

ANNOTATION

Law reviews. For article, "An Anomalous Tax Situation", see 17 Dicta 278 (1940). For article, "The Conflict Between Collective Bargaining and Unemployment Insurance", see 28 Rocky Mt. L. Rev. 185 (1956). For note, "Supplemental Unemployment Benefits and State Unemployment Compensation", see 29 Rocky Mt. L. Rev. 232 (1957). For note, "The Unemployment Compensation Recipient — Should He Accept a Job?", see 44 Den. L.J. 147 (1967).

The supreme court has upheld the constitutionality of the employment security act from charges of unconstitutionality. *Miller v. Indus. Comm'n*, 173 Colo. 476, 480 P.2d 565 (1971).

Act is not an unconstitutional denial of equal protection. *Claim of Woloson*, 796 P.2d 1 (Colo. App. 1989).

8-70-102. Legislative declaration.

As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the

health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the general assembly to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The general assembly, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

Source: L. 36, 3rd Ex. Sess.: p. 13, § 2. CSA: C. 167A, § 2. L. 41: p. 761, § 2. CRS 53: § 82-1-2. C.R.S. 1963: § 82-1-2.

ANNOTATION

Law reviews. For article, "Unemployment Insurance in Colorado — Eligibility and Disqualification", see 25 Rocky Mt. L. Rev. 180 (1953). For note, "The Unemployment Compensation Recipient — Should He Accept a Job?", see 44 Den. L.J. 147 (1967).

This act was passed to achieve social security for labor. Park Floral Co. v. Indus. Comm'n, 104 Colo. 350, 91 P.2d 492 (1939).

It is clear from the declaration of policy that this act was enacted to avoid economic insecurity resulting from involuntary unemployment. Harding v. Indus. Comm'n, 183 Colo. 52, 515 P.2d 95 (1973).

This section sets forth guidelines for the "interpretation and application" of the employment security act. This statement is a constituent part of the act. Sandoval v.

Indus. Comm'n, 110 Colo. 108, 130 P.2d 930 (1942); Indus. Comm'n v. Lyle Adjustment Co., 160 Colo. 241, 417 P.2d 5 (1966).

And unemployment compensation acts are to be liberally construed to further their remedial and beneficent purposes. Indus. Comm'n v. Sirokman, 134 Colo. 481, 306 P.2d 669 (1957); Tague v. Coors Porcelain Co., 30 Colo. App. 158, 490 P.2d 96 (1971).

The employment security act must be construed liberally in favor of the claimant when possible. Denver Symphony Ass'n v. Indus. Comm'n, 34 Colo. App. 343, 526 P.2d 685 (1974).

This act has its legal basis in the police power of the state. Its purpose is to assure a measure of security against the great hazard of unemployment in our economic life.

Indus. Comm'n v. Nw. Mut. Life Ins. Co., 103 Colo. 550, 88 P.2d 560 (1939).

For unemployment compensation is a matter related to the public welfare so as to authorize the general assembly, in the exercise of the police powers, to enact a law authorizing payment of benefits to unemployed persons and levying a tax on employers to defray the cost thereof. Cottrell Clothing Co. v. Teets, 139 Colo. 558, 342 P.2d 1016 (1959).

And the policy of the employment security act is to provide some protection to those persons unemployed through no fault of their own. Richlow Mfg. Co. v. Nicholas, 38 F. Supp. 864 (D. Colo.), rev'd on other grounds, 126 F.2d 16 (10th Cir. 1941); Sandoval v. Indus. Comm'n, 110 Colo. 108, 130 P.2d 930 (1941); Donnell v. Indus. Comm'n, 149 Colo. 228, 368 P.2d 777 (1962); Montaus v. Indus. Comm'n, 171 Colo. 92, 464 P.2d 518 (1970); Gatewood v. Russell, 29 Colo. App. 11, 478 P.2d 679 (1970); Int'l Typographical Union v. Indus. Comm'n, 44 Colo. App. 29, 609 P.2d 634 (1980); Denver Post Corp. v. Indus. Comm'n, 677 P.2d 436 (Colo. App. 1984).

Thus the act does not confer benefits upon a partner who voluntarily agrees to dissolve a partnership, receive a distribution of assets, and thereupon voluntarily agrees to relinquish his duties at the business. Indus. Comm'n v. Lyle Adjustment Co., 160 Colo. 241, 417 P.2d 5 (1966).

Purpose of employment security act, as stated in this section, is subverted by § 8-73-108(4)(f)(I) which reads "but a job shall not ... control notwithstanding", because this provision makes an invidious distinction between (1) those who obtain a better job which terminates prior to 90 days because of lack of work with no fault of their own and (2) those who obtain a better job which terminates prior to 90 days because of some other factor other than lack of work with no fault of their own, and such a distinction involves an unconstitutional over classification forbidden by the fourteenth amendment of the United States constitution. Spann v. Indus. Comm'n, 181 Colo. 153, 508 P.2d 385 (1973).

Act is independent of federal social security act. This act has an independent basis, and the federal social security act does not place any limitations upon the courts' interpretation or the guide of interpretation contained in the act itself. Indus. Comm'n v. Nw. Mut. Life Ins. Co., 103 Colo. 550, 88 P.2d 560 (1939).

Determinations made under employment security act are not binding on the parties under any other statutory or contractual relationship or on any other agency or court. City of Colo. Springs v. Indus. Comm'n, 720 P.2d 601 (Colo. App. 1985), aff'd, 749 P.2d 412 (Colo. 1988).

Applied in Olsgard v. Indus. Comm'n, 190 Colo. 472, 548 P.2d 910 (1976); Pierce v. Indus. Comm'n, 38 Colo. App. 85, 553 P.2d 402 (1976).

8-70-103. Definitions.

As used in articles 70 to 82 of this title 8, unless the context otherwise requires:

- (1) "Agricultural labor" has the meaning set forth in section 8-70-109.
- (1.5) "Alternative base period" means the last four completed calendar quarters immediately preceding the benefit year.
- (2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.
- (2.7) "Benefit recovery fund" means the benefit recovery fund created in section 8-73-116 (2).
- (3) "Benefits" means the money payments payable to an individual with respect to his unemployment. The different classifications of benefits are set forth in section 8-70-110.
- (4) "Benefit year" has the meaning set forth in section 8-70-111.
- (5) "Calendar day" means a full day beginning and ending at 12 midnight. As used in connection with appeal or protest periods, calendar days begin to be counted on the day after the date appearing on a notice issued by the division and continue consecutively for the number of days in the appeal or protest period. If the last day of any period set forth in articles 70 to 82 of this title is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.
- (6) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.
- (6.3) "Chargeable payroll" means the sum of chargeable wages.
- (6.5) (a) "Chargeable wages" means those wages paid to an individual employee during a calendar year on which the employer of that employee is required to pay premiums as provided by article 76 of this title 8, including all wages subject to a tax under federal law, which imposes a tax against which credit may be taken for premiums required to be paid into the unemployment compensation fund. For each calendar year, chargeable wages is as follows:
 - (I) For the calendar year beginning January 1, 2021, the first thirteen thousand six hundred dollars paid to an individual;
 - (II) For the calendar year beginning January 1, 2022, the first seventeen thousand dollars paid to an individual;
 - (III) For the calendar year beginning January 1, 2023, the first twenty thousand four hundred dollars paid to an individual;

(IV) For the calendar year beginning January 1, 2024, the first twenty-three thousand eight hundred dollars paid to an individual;

(V) For the calendar year beginning January 1, 2025, the first twenty-seven thousand two hundred dollars paid to an individual; and

(VI) For the calendar year beginning January 1, 2026, and each calendar year thereafter, the first thirty thousand six hundred dollars paid to an individual, adjusted by the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars.

(b) As used in articles 70 to 82 of this title 8, chargeable wages paid includes chargeable wages constructively paid as well as chargeable wages actually paid.

(7) "Claims" includes any of the divisions of the classifications set forth in section 8-70-112.

(8) "Division" means the division of unemployment insurance.

(8.5) "Electronic" has the meaning set forth in section 24-71.3-102 (5), C.R.S.; except that "electronic" shall not include use of the telephone to transmit audio or voice communication.

(9) "Employer" has the meaning set forth in section 8-70-113.

(10) "Employing unit" has the meaning set forth in section 8-70-114.

(11) "Employment" has the meaning set forth in sections 8-70-115 to 8-70-125, exclusive of the exceptions set forth in sections 8-70-126 to 8-70-140.7.

(11.5) Repealed.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices.

(12.3) "Employment support fund" means the employment support fund created in section 8-77-109 (1)(b).

(12.5) "Fully employed" means any employee who is employed thirty-two hours or more for any week and is not included in the definition of "partially employed" as set forth in subsection (19) of this section.

(13) "Fund" or "unemployment compensation fund" means the unemployment compensation fund, established in section 8-77-101 (1), to which all premiums required and from which all benefits under articles 70 to 82 of this title 8 and bonds issued under section 8-71-103 (2)(d) are paid, and from which payments may be made to the Colorado housing and finance authority under section 29-4-710.7.

(14) "Hospital" means an institution which has been licensed, certified, or approved by the department of public health and environment as a hospital.

(14.5) "Immediate family" means an individual's spouse, partner in a civil union, parent, or minor child under eighteen years of age; a sibling of the individual who is under eighteen years of age and for whom the individual stands in loco parentis; or a sibling of the individual who is incapable of self-care due to a mental or physical disability or a long-term illness.

(15) (a) "Institution of higher education" means an educational institution which:

(I) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; and

(II) Is legally authorized in this state to provide a program of education beyond high school; and

(III) Provides an educational program for which it awards a bachelor's or higher degree or a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(IV) Is a public or other nonprofit institution.

(b) Notwithstanding any of the provisions of paragraph (a) of this subsection (15), all colleges and universities in this state are institutions of higher education for purposes of this section.

(16) "Insured work" means employment for employers.

(17) (a) "Interested party" to any benefit decision means the individual who is claiming benefits, the division, and any employer who has complied with the reporting requirements of the division with respect to wages or other information regarding such individual.

(b) "Interested party" to a premium liability determination means the division and the employer whose business has been issued a liability determination by the division.

(18) "Inverse chronological order", when applied to the charging of employers' accounts, means that the most recent base period employer is the first employer charged and all other employers shall follow in reverse order of dates of employment.

(18.7) "Nonseasonal period or periods" means the time within a calendar year other than the seasonal period or periods.

(19) "Partially employed" refers to an individual whose wages payable to him by his regular employer for any week of less than full-time work are less than the weekly benefit amount he would be entitled to receive if totally unemployed and eligible or, in any established payroll

period not longer than one month, are less than full-time work in which wages payable to him by his regular employer are less than an amount determined in accordance with the general rule proportionately equivalent for such pay period to the individual's weekly benefit amount. Any employee who is employed thirty-two hours or more for any week is deemed to be employed full time for such week and is not included in the definition of "partially employed" under this subsection (19).

(20) "Payments in lieu of premiums" means the money payments made into the fund by an employer pursuant to the provisions of sections 8-76-108 to 8-76-110.

(21) "Payroll period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him. If the services performed during one-half or more of any payroll period by an employee for the employing unit employing him constitute employment, all the services of the employee for such period shall be deemed to be employment; but, if the services performed during more than one-half of any such payroll period by an employee for the employing unit employing him do not constitute employment, none of the services of the employee for such period shall be deemed to be employment.

(22) "Period of unemployment" commences only after registration by the individual at an employment office, except as the division, by regulation, otherwise may prescribe.

(23) "Political subdivision" means a county, municipality, school district, local college district, special district formed pursuant to title 32, C.R.S., cooperative agency formed pursuant to part 2 of article 1 of title 29, C.R.S., or regional commission formed pursuant to section 30-28-105, C.R.S.

(23.3) "Premiums" means the money payments to the unemployment compensation fund, and the payment amount included in the calculation of an employer's experience rating, required by articles 70 to 82 of this title 8.

(23.5) "Seasonal industry" means an industry or functionally distinct occupation within an industry that, because of climatic conditions or the seasonal nature of the employment, customarily employs workers only during a regularly recurring period or periods of less than twenty-six weeks in a calendar year.

(23.6) "Seasonal worker" means an individual who has been paid seasonal wages by a seasonal employer for seasonal work only during the designated seasonal period.

(23.7) (a) "Severance allowance" means any payment that is:

(I) Designated by an employer as a severance allowance;

(II) Paid to an individual because the individual is separated from employment; and

(III) Paid to compensate the separated individual for a period of time following the separation during which period the individual does not work.

(b) Notwithstanding subsection (23.7)(a) of this section, a payment made by an employer to an individual is not a "severance allowance" if the purpose of the payment is to induce the individual to waive rights or claims against the employer.

(24) "State" includes the states of the United States of America, the District of Columbia, the commonwealth of Puerto Rico, and the Virgin Islands.

(24.5) "Support surcharge rate" means an employer's rate that is used to calculate the money payments owed to the employment support fund, the benefit recovery fund, and the unemployment insurance program support fund, calculated in accordance with section 8-76-102.5 (3)(a)(IV) using the same methodology as is used to calculate an employer's percent of excess in accordance with section 8-76-102.5 (3)(a)(II)(A).

(25) to (27) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p. 1877, § 2, effective July 1, 2009.)

(28) "Totally unemployed" means an individual who performs no services in any week with respect to which no wages are payable to him. Should such week occur within an established payroll period in which the individual is not totally separated from his regular employer, he shall be deemed not totally unemployed but partially employed, as defined in subsection (19) of this section, and subject to the conditions pertaining to partial employment.

(28.5) "Unemployment insurance program support fund" means the unemployment insurance program support fund created in section 8-77-109 (2)(a.9)(II)(A).

(29) "Wages" has the meaning set forth in section 8-70-141.

(30) "Week" means such period of seven consecutive days as the director of the division may prescribe by regulations.

(31) "Weekly benefit amount" means the amount of benefits an individual is entitled to receive for one week of total unemployment.

Source: L. 36, 3rd Ex. Sess.: p. 49, § 19. L. 37: p. 1270, § 12. CSA: C. 167A, § 19. L. 39: pp. 581, 586, §§ 13, 1. L. 41: pp. 802, 814, 818, §§ 19, 1, 1. L. 43: pp. 610, 612, §§ 11, 13. L. 45: p. 715, § 8. L. 47: pp. 888, 891, §§ 4, 1, 2. L. 49: p. 730, § 11. L. 51: pp. 822, 823, §§ 15-18. L. 53: p. 627, § 7. CRS 53: § 82-1-3. L. 55: pp. 528, 529, §§ 1, 1. L. 57: p. 516, § 1. L. 58, 1st Ex. Sess.: p. 24, § 1. L. 59: p. 559, § 1. L. 60: p. 155, § 1. L. 63: p. 664, §§ 1, 2. C.R.S. 1963: § 82-1-3. L. 65: pp. 830, 831, §§ 1, 2. L. 71: pp. 924-931, §§ 1-5. L. 73: p. 957, § 1. L. 75: (10)(f.1) added and IP(10)(g) and (11)(f) amended, p. 321, §§ 1, 2, effective June 20. L. 76:

(10)(f.1) amended and (19.5) added, p. 360, § 1, effective April 20; (22)(b)(II) amended, p. 299, § 19, effective May 20; (3)(a), (7), (8)(a), IP(10)(g), (10)(g)(I), and (11)(f) amended and (10)(a)(II) and (10)(f.1) repealed, pp. 335, 352, §§ 2, 22, effective October 1. **L. 77:** (11)(d) amended, p. 472, § 1, effective July 1; (8)(b), (8)(c), (10)(g), and (11)(a)(I) R&RE, (8)(c.3), (8)(c.7), (10)(f.3), (10)(k), and (22)(c) added, and (10)(a), (10)(f), IP(10)(h)(I), (10)(h)(II), (11)(a)(I)(G), (20), and (22)(a) amended, pp. 457, 458, 460, 461, 462, §§ 1-12, effective July 7; (11)(f) repealed, p. 471, § 27, effective January 1, 1978. **L. 79:** (4) and (10)(k) R&RE, (4.3) added, and (10)(g)(I), IP(10)(g)(III), and (10)(g)(III)(E) amended, pp. 344, 345, §§ 1-3, effective September 30. **L. 80:** (10)(g)(I) and (10)(k) amended, p. 462, § 1, effective July 1. **L. 81:** (4.5) added, p. 482, § 1, effective July 1; (8)(e), (10)(j), (11)(e), (13), and (22)(a) amended, (20.5) added, and (6) repealed, pp. 489, 507, §§ 1, 29, effective July 1; (11)(b) amended, p. 2023, § 4, effective July 14; (11)(o) added, p. 508, § 1, effective July 1, 1983. **L. 82:** (10)(g)(I) amended, p. 234, § 1, effective July 1. **L. 83:** (10)(f.3)(I)(A), (10)(f.3)(I)(B), (11)(h), and (11)(l) amended, p. 434, § 1, effective April 12; (8)(d), (9), IP(10)(a), and (10)(a)(III) amended, (10)(a)(IV) and (18.5) added, and (11)(m) and (11)(o)(I) repealed, pp. 428, 429, 433, §§ 1, 2, 14, effective June 3; (2)(e), (20.3), and (20.4) added and (22)(a) R&RE, pp. 2041, 2042, §§ 1-3, effective October 1. **L. 84:** IP(10)(a), (10)(a)(III), and (18) amended, (22)(a.5) added, (22)(b) R&RE, and (10)(a)(IV) repealed, pp. 313, 314, 320, §§ 1, 2, 3, 14, effective July 1. **L. 85:** (22)(a.5)(II) amended, p. 363, § 1, effective March 1; (3)(b), (10)(f.3)(I)(B), (22)(b)(IV)(C), (22)(b)(IV)(D), (22)(b)(V), and (22)(b)(VIII) amended, (22)(a.5)(I)(D), (22)(a.5)(I.5), (22)(b)(IV)(G), (22)(b)(XV), and (2)(b)(XVI) added, and (22)(b)(II), (22)(b)(VI), (22)(b)(XIII), and (22)(b)(XIV) repealed, pp. 359, 360, 361, §§ 1, 2, 3, 4, 7, effective April 4; (11)(p) added, p. 362, § 1, effective April 5; (1) and (3)(a) amended, p. 365, § 1, effective July 1; (8)(a) and (11)(c) amended, p. 372, § 1, effective July 1. **L. 86:** IP(11)(l) amended and (11)(q) added, p. 541, § 1, effective May 28; (19) and (23) amended and (5) repealed, pp. 487, 502, §§ 81, 125, effective July 1; (20.4) amended, p. 541, § 2, effective July 1. **L. 87:** (10)(f.3)(I) amended, p. 403, § 1, effective April 16; (19.5) amended, p. 405, § 1, effective June 1. **L. 89:** (10)(f.3)(II)(A) and (22)(b)(IV)(G) amended and (22)(b)(IV)(H) added, p. 424, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 585, § 1, effective April 3; (11)(p) repealed, p. 609, § 8, effective April 16; (12.5) added and (17) amended, p. 606, § 1, effective April 16; (20.4) amended, p. 1763, § 2, effective June 8; (22)(b)(I)(A) amended, p. 557, § 9, effective July 1. **L. 94:** (14) amended, p. 2723, § 317, effective July 1. **L. 96:** (11) amended, p. 380, § 1, effective April 17. **L. 97:** (23) amended, p. 119, § 1, effective July 1. **L. 98:** (5) amended, p. 88, § 2, effective March 23. **L. 2002:** (8.5) added, p. 340, § 15, effective April 19. **L. 2003:** (8.5) amended, p. 1982, § 4, effective May 22. **L. 2009:** (1.5) added, (SB 09-247), ch. 405, p. 2228, § 1, effective July 1; (6.3), (6.5), and (23.5) added and (13), (17)(b), (20), and (25) to (27) amended, (HB 09-1363), ch. 363, p. 1877, § 2, effective July 1. **L. 2011:** (6.5) amended, (HB 11-1288), ch. 212, p. 914, § 1, effective July 1. **L. 2012:** (8) amended, (HB 12-1120), ch. 27, p. 77, § 2, effective June 1. **L. 2012, 1st Ex. Sess.:** (6.5) and (13) amended, (HB 12S-1002), ch. 2, p. 2424, § 2, effective June 1. **L. 2015:** (6.5) amended, (SB 15-264), ch. 259, p. 942, § 9, effective August 5. **L. 2020:** IP and

(6.5) amended, (SB 20-207), ch. 296, p. 1469, § 1, effective January 1, 2021; IP amended and (14.5) and (23.7) added, (SB 20-170), ch. 297, p. 1478, § 3, effective January 1, 2021. **L. 2023:** (2.7), (11.5), (12.3), and (24.5) added and (13) and (23.5) amended, (SB 23-232), ch. 141, p. 593, § 1, effective May 1. **L. 2025:** (11.5) repealed, (24.5) amended, and (28.5) added, (SB 25-242), ch. 145, p. 545, § 1, effective April 28; (18.7) and (23.3) added, (23.5) amended, and (23.6) added with relocations, (SB 25-275), ch. 377, p. 2034, § 30, effective August 6.

Editor's note: (1) The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

(2) Subsections (18.7), (23.5), and (23.6) are similar to former § 8-73-106 (1)(a) as it existed prior to 2025.

(3) Subsection (23.3) is similar to subsection (23.5) as it existed prior to 2025.

ANNOTATION

Law reviews. For note, "Rural Property and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970). For article, "The Employer's Fruitless Quest For Independent Contractor Status," see 21 Colo. Law. 459 (1992).

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions under the act to the division of employment and training.

Under this section, the industrial commission determines the coverage under the act. Each case must be decided upon its own facts, and where these are in dispute the finding of the commission is

final. *Equitable Life Ins. Co. v. Indus. Comm'n*, 105 Colo. 144, 95 P.2d 4 (1939).

Interested party. Absent allegation or evidence that department of labor and employment was aggrieved by decision of industrial commission, division of employment and department of labor and employment were not proper parties to bring the appeal from decision of industrial commission denying an award of unemployment compensation. *Division of Emp. ex rel. Sanchez v. Colo. Indus. Comm'n*, 31 Colo. App. 259, 500 P.2d 1192 (1972).

Benefits not indicative of employee's unemployment status. Employee benefits such as medical, life, sickness, and accident insurance and pension contributions provided by the employer are not indicative

of an employee's unemployment status under this section. *Denver Post, Inc. v. Dept. of Labor & Emp.*, 199 Colo. 466, 610 P.2d 1075 (1980).

To determine whether there is single employing unit or a transfer of the claimant's employment, evidence indicating a common ownership must be considered by the commission. *Giacopelli v. Indus. Comm'n*, 622 P.2d 111 (Colo. App. 1980).

No unemployment if working desired hours. Where a claimant testified in substance that he could work as many hours as he desired, he was neither totally nor partially unemployed within the meaning of this section, even though his efforts failed to produce any commissions and he received no salary or wages. *Trujillo v. Indus. Comm'n*, 42 Colo. App. 401, 594 P.2d 1065 (1979).

To qualify as unemployed under the statutory definition of an unemployed person two conditions must co-exist, namely, no service must be performed during the week and no wages are payable to him with respect to services performed in that week. *Indus. Comm'n v. Sirokman*, 134 Colo. 481, 306 P.2d 669 (1957).

Question of whether claimant is unemployed is a purely mathematical inquiry: If he performs no services and receives no compensation, then he is totally unemployed; if he does receive compensation, but in an amount less than the amount of benefits he could recover if totally unemployed, then he is still unemployed, though only partially. *Trujillo*

v. Indus. Comm'n, 42 Colo. App. 401, 594 P.2d 1065 (1979).

Where claimants deemed partially unemployed. Because the claimants for unemployment compensation benefits continued to receive employee benefits during the periods for which they now claim unemployment compensation, the claimants were partially unemployed within the meaning of this section. *Denver Post, Inc. v. Dept. of Labor & Emp.*, 199 Colo. 466, 610 P.2d 1075 (1980).

Person unemployed within meaning of section. A person whose employment is terminated by reason of closing of the department in which she is employed, and who receives a separation allowance pursuant to a union contract based upon the period of service, is an unemployed person within the meaning of this section, since no service was performed during the week for which compensation is claimed and no wages were payable to her for service performed in that week. *Indus. Comm'n v. Sirokman*, 134 Colo. 481, 306 P.2d 669 (1957).

Claimant was not "employed" within the meaning of the unemployment compensation act by virtue of her leave of absence agreement since that agreement created no rights in claimant inasmuch as she was not guaranteed reemployment and the leave could be cancelled at any time for activities the company deemed "prejudicial" to it. *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 38 Colo. App. 298, 559 P.2d 252 (1976).

Out-of-state coordinators are not covered employees for tax purposes under the Colorado Employment Security Act because the coordinators' services would have been covered under the unemployment compensation laws of the state where they worked and resided. *Found. for Human Enrichment v. Indus. Claim Appeals Office*, 2013 COA 175, 339 P.3d 1046.

Subsection (21) requires two-step analysis in determining employment status of claimant: Whether the claimant performed services and received compensation in any particular week; and whether the claimant was "totally separated" from his regular employer during the established payroll period. *Denver Post, Inc. v. Dept. of Labor & Emp.*, 199 Colo. 466, 610 P.2d 1075 (1980).

An individual who is otherwise totally unemployed but is not totally separated from his regular employer shall be deemed "partially unemployed" and subject to regulations governing partial unemployment. *Bartholomay v. Indus. Comm'n*, 642 P.2d 50 (Colo. App. 1982).

Performance of minimal services does not entitle one to benefits as employee. Where a claimant performed at least minimal services designed to benefit a corporation while serving as president of the corporation, he was not entitled to benefits as an employee. *Dailey v. Division of Emp.*, 30 Colo. App. 38, 488 P.2d 243 (1971) (decided under § 82-1-3 (21), C.R.S. 1963, defining "employee" prior to 1971 amendment).

Determination of whether one is acting for the benefit or at the command of another is generally one of fact for the commission. *Weld County Kirby Co. v. Indus. Comm'n*, 676 P.2d 1253 (Colo. App. 1983).

Applied in *Yanish v. Indus. Comm'n*, 38 Colo. App. 492, 558 P.2d 1007 (1976); *Herrera v. Indus. Comm'n*, 197 Colo. 23, 593 P.2d 329 (1979); *Auto Damage Appraisers, Inc. v. Indus. Comm'n*, 666 P.2d 1113 (Colo. App. 1983); *Mountain's Shadow Inn, Inc. v. Colo. Dept. of Labor & Emp.*, 672 P.2d 522 (Colo. 1983); *Diamond Circle Corp. v. Blocher*, 691 P.2d 769 (Colo. App. 1984).

8-70-104. Additional definitions. (Repealed)

Source: L. 39: p. 583, § 14. CSA: C. 167A, § 21. L. 41: p. 809, § 20. L. 43: p. 611, § 12. L. 45: p. 715, § 9. L. 47: p. 889, § 5. L. 49: pp. 730, 731, §§ 12, 13. L. 51: p. 823, § 20. L. 53: p. 632, § 8. CRS 53: § 82-1-4. C.R.S. 1963: § 82-1-4. L. 67: p. 327, § 1. L. 75: Entire section repealed, p. 206, § 6, effective July 16.

8-70-105. Banks as instrumentalities of United States.

(1) For all purposes of articles 70 to 82 of this title and in conformity with federal laws, national banks doing business in Colorado and state bank members of the federal reserve system shall be deemed and held to be instrumentalities of the United States, as referred to in articles 70 to 82 of this title.

(2) Banks doing a commercial banking business in Colorado and maintaining an account with the federal reserve bank or with a member of the federal reserve system, for the purposes of articles 70 to 82 of this title, shall not be deemed to be instrumentalities of the United States.

Source: L. 41: p. 287, §§ 1, 2. **CSA:** C. 167A, § 23. **CRS 53:** § 82-1-5. **C.R.S. 1963:** § 82-1-5.

8-70-106. No vested rights or immunities.

The general assembly reserves the right to extend the time of operation, amend, or repeal all or any part of articles 70 to 74 and 76 to 81 of this title at any time; and there shall be no vested private right of any kind against such extension, amendment, or repeal. All the rights, privileges, or immunities conferred by said articles or by acts done pursuant thereto shall exist subject to the power of the general assembly to amend or repeal said articles at any time.

Source: L. 56: Ex. Sess., p. 26, § 1. **CRS 53:** § 82-1-6. **C.R.S. 1963:** § 82-1-6.

8-70-107. Disposition of funds in event of unconstitutionality.

(1) Articles 70 to 74 and 76 to 81 of this title are enacted for the purpose of participating in the advantages available to the state of Colorado under the federal "Social Security Act", as amended. In the event that Title IX of the federal "Social Security Act" or any amendments to the federal act are amended or repealed by congress or are held unconstitutional by the supreme court of the United States, with the result that no portion of the premiums required under articles 70 to 74 and 76 to 81 of this title may be credited against the tax imposed by Title IX of the federal "Social Security Act", the division shall requisition from the unemployment trust fund all moneys in the trust fund standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be refunded to the contributors proportionate to their unexpended balances in the fund.

(2) In the event that the provisions of articles 70 to 74 and 76 to 81 of this title requiring the payment of premiums and benefits are held invalid under the constitution of this state by the supreme court of this state or the supreme court of the United States or are held invalid under the United States constitution by the supreme court of the United States or the supreme court of this state, the division shall requisition from the unemployment trust fund all moneys in the trust fund standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be held in custody by the state treasurer in the same manner as provided in section 8-77-105 until such time as the general assembly provides for the disposition of the moneys; except that the general assembly shall not dispose of the moneys other than for unemployment compensation purposes or for reimbursements to the contributors under the provisions of articles 70 to 74 and 76 to 81 of this title, proportionate to their unexpended balances in the fund.

Source: L. 56: Ex. Sess., p. 26, § 2. **CRS 53:** § 82-1-7. **C.R.S. 1963:** § 82-1-7. **L. 81:** (3) amended, p. 490, § 2, effective July 1. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1878, § 3, effective July 1.

Cross references: For Title IX of the "Social Security Act", see 42 U.S.C. §§ 1101 to 1111.

ANNOTATION

Applied in Powell v. Denver Pub. Schools, 659 P.2d 61 (Colo. App. 1983).

8-70-108. Conformity with federal statutes.

If any provisions contained in articles 70 to 82 of this title are determined to be in nonconformity with federal statutes, as determined by the United States secretary of labor or an assistant secretary of labor, the division, with the concurrence of the attorney general of the state of Colorado, is authorized to administer said articles so as to conform with the provisions of the federal statutes until such time as the general assembly meets in its next regular session and has an opportunity to amend said articles.

Source: L. 77: Entire section added, p. 463, § 13, effective July 7. **L. 81:** Entire section amended, p. 482, § 2, effective July 1. **L. 94:** Entire section amended, p. 1627, § 19, effective May 31.

ANNOTATION

Applied in *Bd. of County Comm'rs v. Indus. Comm'n*, 650 P.2d 1297 (Colo. App. 1982); *Indus. Comm'n v. Bd. of County Comm'rs*, 690 P.2d 839 (Colo. 1984).

8-70-109. Agricultural labor.

(1) "Agricultural labor" means any remunerated service performed:

(a) On a farm in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by an act of nature, if the major part of the service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the "Agricultural Marketing Act", as amended (46 Stat. 1550, sec. 3; 12 U.S.C. sec. 1141j), or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which the service is performed; except that the provisions of this paragraph (d) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (d) of this subsection (1), but only if such operators produced more than one-half of the commodity with respect to which the service is performed; except that the provisions of this paragraph (e) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(f) On a farm operated for profit if the service is not in the course of the employer's trade.

(2) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

Source: **L. 79:** Entire section added, p. 357, § 1, effective May 18. **L. 90:** Entire section R&RE, p. 588, § 2, effective April 3.

ANNOTATION

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (10)(f.3), relevant cases construing that provision have been included under this section.

Activities not constituting agriculture within meaning of act. The growing of mushrooms in confined areas under cover does not come within the classification of "agriculture" so as to exempt persons engaged in such business and their employees from the operation of the provisions of this and following section, concerning unemployment compensation. *Great W. Mushroom Co. v. Indus. Comm'n*, 103 Colo. 39, 82 P.2d 751 (1938); *Park Floral Co. v. Indus. Comm'n*, 104 Colo. 350, 91 P.2d 492 (1939).

The business of harvesting living native trees on private ranchland or on public land

was not done "on a farm". *McFarland v. Indus. Comm'n*, 723 P.2d 154 (Colo. App. 1986).

The word "exclusively" pertaining to supplying and storing water for farming purposes means without any exception or solely, and therefore, reservoir company which allowed for recreational use of water did not meet requirements for exemption as agricultural labor. *Cache La Poudre Reservoir Co., v. Indus. Claim Appeals Office*, 757 P.2d 173 (Colo. App. 1988).

Phrase "used exclusively", for purposes of agricultural labor exemption, applies to all uses of the water and not just consumptive uses. *Cache La Poudre Reservoir Co., v. Indus. Claim Appeals Office*, 757 P.2d 173 (Colo. App. 1988).

Applied in *Nazzaro v. Indus. Comm'n*, 671 P.2d 983 (Colo. App. 1983).

8-70-110. Benefits - classifications.

(1) Benefits are divided into classifications, as follows:

(a) Regular benefits: Benefits payable to an individual under this article or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to chapter 85 of title 5 of the United States Code, other than extended benefits;

(b) Extended benefits: Benefits payable to an individual under part 1 of article 75 of this title, including benefits payable to federal civilian employees and to former members of the armed forces pursuant to chapter 85 of title 5 of the United States Code, for weeks of unemployment in his or her eligibility period;

(c) Additional benefits: Benefits payable to exhaustees, as defined in section 8-75-101 (2), by reason of conditions of high unemployment or by reason of special factors under the provisions of any state law;

(d) Benefits not effectively charged: Those regular benefits, including the state share of extended benefits, paid but not charged to any active employer account.

Source: L. 90: Entire section added, p. 589, § 3, effective April 3. **L. 2010:** (1)(b) amended, (SB 10-028), ch. 397, p. 1891, § 4, effective June 9.

Cross references: For chapter 85 of title 5 of the United States Code, see 5 U.S.C. § 8501 et seq.

8-70-111. Benefit year - definitions.

(1) "Benefit year" means the period of fifty-two consecutive calendar weeks beginning with the first week of a claims series established by the filing of a valid initial claim; except that the benefit year shall be fifty-three weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim.

(2) As used in this section:

(a) A "valid initial claim" means an application for the determination of benefit rights which includes the claimant's social security number and which establishes that the claimant has met the eligibility condition set forth in section 8-73-107 (1)(e).

(b) A calendar week shall be deemed to be entirely within that calendar quarter which contains the first day of such week.

Source: L. 90: Entire section added, p. 589, § 3, effective April 3.

8-70-112. Claims - classifications.

(1) Claims are divided into classifications, as follows:

(a) Initial claim, which establishes a benefit year and is valid as defined in section 8-70-111 (2)(a); or

(b) Additional claim, which reopens a claim series within an existing benefit year after a second or subsequent period of unemployment; or

(c) Reopened claim, which reopens a claim within an existing benefit year when there has been no intervening employment since the last claim for a week of unemployment.

Source: L. 90: Entire section added, p. 590, § 3, effective April 3.

8-70-113. Employer - definition.

(1) "Employer" means:

(a) (I) Any employing unit that, after December 31, 1985, and prior to January 1, 1999, had in employment at least one individual performing services at any time; except that this paragraph (a) shall not apply to employing units for which service in employment, as defined in sections 8-70-118 to 8-70-121, is performed.

(II) Any employing unit that, after December 31, 1998:

(A) Paid wages of one thousand five hundred dollars or more during any calendar quarter in the calendar year or the preceding calendar year; or

(B) Employed at least one individual in employment for some portion of the day on each of twenty days during the calendar year or during the preceding calendar year, each day being in a different calendar week.

(III) After December 31, 1998, this paragraph (a) shall not apply to employing units for which service in employment, as defined in sections 8-70-118 to 8-70-121, is performed.

(IV) For purposes of this paragraph (a), employment shall include service that would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an arrangement entered into in accordance with section 8-72-110 (3) by the division and an agency charged with the administration of any other state or federal unemployment compensation law.

(V) For the purposes of this paragraph (a), if any calendar week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

(b) Any employing unit for which service in employment as defined in section 8-70-118 is performed after December 31, 1971, except as provided in subsections (2) and (3) of this section. For purposes of this paragraph (b), employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an arrangement entered into in accordance with section 8-72-110 (3) by the division and an agency charged with the administration of any other state or federal unemployment compensation law.

(c) Any employing unit for which service in employment as defined in section 8-70-119 is performed, except as provided in subsections (2) and (3) of this section;

(d) Any employing unit for which agricultural labor as defined in section 8-70-109 is performed and is defined as employment in section 8-70-120;

(e) Any employing unit for which domestic service in employment as defined in section 8-70-121 is performed;

(f) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets of an employer subject to articles 70 to 82 of this title, or which acquired a part of the organization, trade, or business of an employer subject to articles 70 to 82 of this title, if such part would have been an employer under this section had it constituted the entire organization, trade, or business;

(g) Any employing unit that is not defined as an employer under this section but for which, within either the current or the preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for premiums required to be paid into a state unemployment fund;

(h) Any employing unit that, as a condition for approval of articles 70 to 82 of this title for full credit against the tax imposed by the "Federal Unemployment Tax Act" for premiums paid, is required, pursuant to such act, to be an employer under articles 70 to 82 of this title;

(i) Any employing unit which, having become an employer under paragraphs (a) to (h) of this subsection (1), has not under section 8-76-106, ceased to be an employer subject to articles 70 to 82 of this title;

(j) For the effective period of its election pursuant to section 8-76-107, any employing unit which has become subject to articles 70 to 82 of this title; or

(k) Any Indian tribe for which service in employment as defined under section 8-70-125.5 is performed.

(2) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs (b) and (c) of subsection (1) of this section, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined to be an employer of agricultural labor, such employing unit shall be determined to be an employer for the purposes of paragraph (a) of subsection (1) of this section.

(3) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (b), (c), or (d) of subsection (1) of this section, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account.

Source: L. 90: Entire section added, p. 590, § 3, effective April 3. L. 98: (1)(a) amended, p. 82, § 1, effective August 5. L. 2001: (1)(k) added, p. 1547, § 1, effective December 21, 2000. L. 2009: (1)(g) and (1)(h) amended, (HB 09-1363), ch. 363, p. 1878, § 4, effective July 1.

Editor's note: The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act enacting subsection (1)(k) provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

ANNOTATION

Claimant's coworker is not an employer under any of the criteria of this section. The general assembly's use of different terms to refer to an employer and a coworker signals its intent that these terms have different meanings. Yotes v. Indus. Claim Appeals Office, 2013 COA 124, 310 P.3d 288.

The industrial claim appeals office panel's conclusion that the term employer includes coworkers renders the latter term

meaningless and leads to an illogical and absurd result. Yotes v. Indus. Claim Appeals Office, 2013 COA 124, 310 P.3d 288.

"Personal harassment by the employer" does not include the actions of claimant's coworker and is inconsistent with the meaning of employer used throughout § 8-73-108 and the statutory definition in this section. Yotes v. Indus. Claim Appeals Office, 2013 COA 124, 310 P.3d 288.

8-70-114. Employing unit - definitions - rules - employee leasing company certification fund.

(1) (a) "Employing unit" means any individual or type of organization, including any partnership, limited liability partnership, limited liability company, limited liability limited partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of a trustee, or legal representative of a deceased person, that employs one or more individuals performing services within this state. All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are deemed to be employed by a single employing unit for all the purposes of articles 70 to 82 of this title 8. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit are deemed to be employed by the employing unit for all the purposes of articles 70 to 82 of this title 8, whether the individual was hired or paid directly by the employing unit or by the agent or employee if the employing unit had actual or constructive knowledge of the work.

(b) Nothing in this section shall be construed to mean that a common paymaster, as defined by 26 CFR 31.3121(s)-1 (b)(2)(i), may be considered a single employing unit for purposes of considering the services performed by another employing unit subject to a single or common payroll.

(c) Notwithstanding subsections (1)(a) and (1)(b) of this section, an "employing unit" includes an employee leasing company or other employing entity that is owned by one or more persons licensed pursuant to article 10 of title 44 and that own at least fifty percent of an entity that shares the employee leasing company's or other employing entity's services. An employing unit described in this subsection (1)(c) is not a common paymaster for the purposes of articles 70 to 82 of this title 8.

(2) (a) For purposes of this section:

(I) "Coemployer" means either an employee leasing company or a work-site employer.

(II) "Coemployment relationship" means a relationship that is intended to be an ongoing relationship rather than a temporary or project specific one, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between coemployers pursuant to an employee leasing company contract and this section. In a coemployment relationship:

(A) The employee leasing company is entitled to enforce only such employer rights and is subject to only those obligations specifically allocated to the employee leasing company by the employee leasing company contract and this section;

(B) The work-site employer may enforce those rights and shall provide and perform those employer obligations allocated to the work-site employer by the employee leasing company contract and this section; and

(C) The work-site employer may enforce any right and shall perform any obligation of an employer not specifically allocated to the employee leasing company by the employee leasing company contract or this section.

(III) (A) "Covered employee" or "work-site employee" means an individual who is in an employment relationship with both an employee leasing company and a work-site employer and has received written notice of the coemployment with the employee leasing company.

(B) The provisions of sub-subparagraph (A) of this subparagraph (III) relate solely to the employee leasing contract and not to any contract for workers' compensation insurance or entitlement to workers' compensation benefits.

(IV) "Department" means the department of labor and employment.

(V) "Employee leasing company" means any person, business, or other entity that provides services to a work-site employer, as defined in subparagraph (VII) of this paragraph (a), pursuant to an employee leasing company contract, as defined in subparagraph (VI) of this paragraph (a).

(VI) "Employee leasing company contract" means any written staff leasing contract, extended employee staffing or supply contract, or other contract under which an employee leasing company procures or receives from a work-site employer specified coemployer responsibilities for specified employees, designating itself as employer of such employees, and retaining the right of direction and control of such employees with regard to those employer responsibilities, including the rights and responsibilities set forth in paragraph (b) of this subsection (2). An employee leasing company may have other responsibilities pursuant to an employee leasing company contract, including provision of professional guidance with regard to employment matters.

(VII) "Work-site employer" means any person, business, or other entity that procures the services of an employee leasing company under an employee leasing company contract and otherwise retains direction and control of the employees specified in the contract regarding responsibilities not specified in the contract pertaining to the business of the work-site employer.

(b) Notwithstanding subsection (1) of this section, an employee leasing company shall be considered an employing unit or the coemployer of a work-site employer's employees if, pursuant to an employee leasing company contract with the work-site employer, it has the following rights and responsibilities:

(I) The employee leasing company, as the employing unit or the co-employer, assigns employees to the work-site employer's locations;

(II) The employee leasing company, as the employing unit or co-employer, retains the right to set the employees' rate of pay;

(III) The employee leasing company, as the employing unit or co-employer, retains the right to pay the employee from its own account or accounts;

(IV) The employee leasing company, as the employing unit or co-employer, retains the right to direct and control the employees and such rights and responsibilities may be shared as specified in the employee leasing company contract;

(V) The employee leasing company, as the employing unit or co-employer, has the right to discharge, reassign, or hire employees to perform services for the work-site employer and the employee leasing company;

(VI) The employee leasing company, as the employing unit or co-employer, has the responsibility for payment of wages to the workers pursuant to the employee leasing company contract. The employee leasing company, as the employing unit or co-employer, has responsibility for reporting, withholding, and paying any applicable taxes and premiums with respect to the employee's wages or payment of sponsored employee benefit plans pursuant to the employee leasing company contract.

(VII) (A) Each employee leasing company shall pay wages and collect, report, and pay all payroll-related taxes and premiums from its own accounts for all covered employees. Each employee leasing company shall be responsible for the payment of unemployment compensation insurance premiums and provide, maintain, and secure all records and documents required of work-site employers under the unemployment insurance laws of this state for covered employees.

(B) No later than the end of the calendar quarter immediately following August 5, 2009, each employee leasing company shall notify the division of unemployment insurance as to whether the employee leasing company elects to report and pay unemployment insurance premiums as the employing unit under its own unemployment accounts and premium rates or whether it elects to report unemployment premiums attributable to covered employees under the respective unemployment accounts and premium rates for each work-site employer. Under either election, the employee leasing company shall have the responsibility for unemployment compensation insurance as required of an employer pursuant to the "Colorado Employment Security Act", articles 70 to 82 of this title. If the employee leasing company fails to make an election, the employee leasing company shall report unemployment premiums attributable to covered employees under the respective unemployment accounts and premium rates for each work-site employer.

(C) The election made in sub-subparagraph (B) of this subparagraph (VII) shall be binding on all employers and the employing unit's related enterprises, subsidiaries, or other entities that

share common ownership management or control with the employee leasing company. Employee leasing companies electing to report and pay unemployment insurance as the employing unit under its own unemployment accounts and premium rates following August 5, 2009, are permitted to change the election one time after the initial election to report unemployment premiums attributable to covered employees under the respective unemployment accounts of each work-site employer by notifying the division no later than the end of the current calendar quarter. An employee leasing company's election to pay unemployment premiums under the respective unemployment accounts and premium rates of the work-site employer is final and may not be reversed.

(VIII) An employee leasing company, as the employing unit or coemployer, may aggregate all employees for the purpose of sponsoring and administering workers' compensation plans pursuant to article 44 of this title and fully insured health coverage plans, as defined in section 10-16-102 (34), C.R.S., employee pension benefit plans, and provision of benefits pursuant to such plans. As employing units or coemployers, employee leasing companies shall be entitled to sponsor fully insured employer plans and offer employee benefits to the full extent afforded employers by law. A health plan sponsored by an employee leasing company with an aggregate of more than fifty employees shall comply with all the provisions of Colorado law that apply to large employer health plans, including consumer and provider protections, mandated benefits, nondiscrimination and fair marketing rules, preexisting limitations, and other required health plan policy provisions, and the carrier underwriting the plan shall be responsible for assuring compliance with this requirement pursuant to section 10-16-214 (5), C.R.S. Notwithstanding any provision of this section to the contrary, any workers' compensation insurance carrier may issue an insurance policy that insures either the employee leasing company or the work-site employer as the employer pursuant to the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title. Article 41 of this title shall apply to both the employee leasing company and the work-site employer, regardless of whether the policy is issued to the employee leasing company or the work-site employer. Notwithstanding any provision of this section to the contrary, any insurance carrier may issue an insurance policy that insures the employee leasing company as the employer pursuant to article 16 of title 10, C.R.S. An insurance carrier that issues an insurance policy to an employee leasing company shall be entitled to rely upon a copy of the certification filed by the employee leasing company with the department under paragraph (e) of this subsection (2), if such certification is currently valid, for the purpose of determining whether the leasing company is an "employer" under Colorado law.

(IX) The employee leasing company retains the right to provide for the welfare and benefit of the employees through such programs as professional guidance including, but not limited to, employment training, safety, and compliance matters;

(X) The employee leasing company, as the employing unit or co-employer, has the responsibility for addressing employee complaints, claims, or requests related to employment,

except as otherwise provided pursuant to an existing collective bargaining agreement; except that some or all of the rights and responsibilities described in this subparagraph (X) may be shared with the work-site employer;

(XI) The employee leasing company, as the employing unit or co-employer, intends to retain the right to maintain the employment relationship between the employee leasing company and its employees on a long-term, and not temporary, basis;

(XII) The employees of the employee leasing company know of and consent to co-employment by the employee leasing company;

(XIII) The employee leasing company maintains employee records relating to employees of the employee leasing company; and

(XIV) Except as otherwise provided in the employee leasing company contract, the work-site employer has the responsibility for those policies and procedures related to the actual conduct of the work that leads to the work-site employer's conduct of its business and the production of its goods or services.

(c) (Deleted by amendment, L. 97, p. 207, § 2, effective April 8, 1997.)

(d) If an employee leasing company does not meet the requirements of this subsection (2), the work-site employer shall be considered the employing unit.

(e) Each employee leasing company shall maintain and have open for inspection by the department a listing of its work-site employers and their collective employees and shall maintain the records and reports as required by the "Colorado Employment Security Act", as described in articles 70 to 82 of this title. Each employee leasing company shall annually certify with an independent opinion of counsel to the department that it is in compliance with the rights and responsibilities set forth in paragraph (b) of this subsection (2) and that it is offering to all clients in its service agreements those items required in paragraph (b) of this subsection (2). The executive director of the department shall prescribe forms and promulgate rules to promote the efficient administration of this paragraph (e). The department may require employee leasing companies to submit documentation to show compliance with the provisions of paragraph (b) of this subsection (2) and may conduct any necessary review to verify that the employee leasing company is an employing unit or coemployer under this section. Each employee leasing company shall file an annual renewal of its certification on or before June 30 of each year.

(f) Each employee leasing company shall maintain and provide upon request to a carrier, as defined in section 10-16-102 (8), C.R.S., with which the employee leasing company requests a contract, the certification required in paragraph (e) of this subsection (2).

(g) (I) Each employee leasing company operating within this state as of August 5, 2008, shall complete its initial certification not later than sixty days after August 5, 2008. The initial

certification shall be valid until the end of the state's first fiscal year that is more than one year after August 5, 2008.

(II) An employee leasing company not operating within this state as of August 5, 2008, shall complete its initial certification prior to commencement of operations within this state.

(III) Each employee leasing company shall annually certify and provide evidence to the department that it meets one of the following criteria to provide securitization of unemployment premiums:

(A) Repealed.

(A.5) On and after December 31, 2012, execute and file a surety bond or deposit with the division money or a letter of credit equivalent to fifty percent of the average annual amount of unemployment premium assessed within the previous calendar year for all covered employees regardless of the election made pursuant to subparagraph (VII) of paragraph (b) of this subsection (2). For a new employee leasing company, the initial bond amount is the unrated premium rate, as determined pursuant to section 8-76-102.5, multiplied by fifty percent of the estimated projected chargeable payroll for the current calendar year as estimated by the employee leasing company.

(B) Provide the most recent independently audited financial statement prepared by a certified public accountant pursuant to generally accepted accounting principles, which statement may not be older than thirteen months. The audit shall also include items that demonstrate an accounting working capital of not less than one hundred thousand dollars. For the purposes of this sub-subparagraph (B), "working capital" of an employee leasing company means the employee leasing company's current assets minus the employee leasing company's current liabilities as determined by generally accepted accounting principles.

(C) Provide sufficient evidence on an annual basis that it has been accredited by a bonded, independent, and qualified assurance organization approved by the director of the division that provides satisfactory assurance of compliance acceptable to the department.

(IV) The department may, at its discretion, require the employee leasing company to provide evidence of compliance with sub-subparagraph (B) or (C) of subparagraph (III) of this paragraph (g) immediately.

(V) An employee leasing company shall, within fifteen days following any deduction from a money deposit or sale of deposited securities, deposit sufficient additional moneys or securities to make whole the employee leasing company's deposit at the prior level. Any cash remaining from the department's sale of such securities shall be a part of the employee leasing company's escrow account. The department may, at any time, review the adequacy of the deposit made by any employee leasing company. If, as a result of such review, the department determines that an adjustment is necessary, it shall require the employee leasing company to make an additional

deposit within thirty days after receipt of written notice of the department's determination or shall return to the employee leasing company such portion of the deposit as the department no longer considers necessary, whichever action is appropriate.

(VI) Upon filing an annual certification under this section, an employee leasing company shall pay a fee, as determined by rule of the department, not to exceed five hundred dollars. Fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the employee leasing company certification fund, referred to in this section as the "fund", which is hereby created in the state treasury. Moneys in the fund shall be subject to annual appropriation by the general assembly for implementation of this section. The moneys in the fund and interest earned on the moneys in the fund shall not revert to the general fund or be transferred to any other fund. No fee charged pursuant to this section shall exceed the amount reasonably necessary for the administration of this section.

(VII) The department shall maintain a list of employee leasing companies that submit certifications required under paragraph (e) of this subsection (2) that is readily available to the public by electronic or other means.

(VIII) All records, reports, and other information obtained from an employee leasing company under this section, except to the extent necessary for the proper administration of this section by the department, shall be held confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties, pursuant to provisions governing records and reports in this title.

(3) (a) The status of an employee leasing company as the employing unit or a co-employer of a work-site employer's employees shall be revoked by the division if such employee leasing company fails to file the required reports or pay the premiums due under the provisions of articles 70 to 82 of this title. The effective date of a revocation shall be the first day of the quarter for which the reports and premiums are due. In the event of a revocation, the work-site employer shall become liable for the reports and premiums due.

(b) The provisions of paragraph (a) of this subsection (3) shall apply if any portion of an employing unit's business activity can be characterized as an employee leasing company, as defined in subsection (2) of this section.

(c) The provisions of paragraph (a) of this subsection (3) shall not apply if an employee leasing company acts as an agent for a work-site employer pursuant to the provisions of subsection (1) of this section, files the required reports, and pays the premiums due under an account established for the work-site employer.

(d) The provisions of paragraph (a) of this subsection (3) shall not apply to any temporary help contracting firm, as defined in section 8-73-105.5. However, if any portion of such firm's business activity can be characterized as an employee leasing company, as defined in subsection

(2) of this section, that portion of the firm's business shall be subject to the provisions of this subsection (3).

(4) An employee leasing company shall not report wages for any work-site employer that would not otherwise be subject to articles 70 to 82 of this title.

(5) An employee leasing company or business management company shall not report remuneration paid:

(a) For services performed by individuals who are clients and who are sole proprietors or partners in a partnership; or

(b) For any other services which would not otherwise constitute employment pursuant to articles 70 to 82 of this title.

(6) (a) Nothing in this section shall exempt a work-site employer or any employee from any other licensing requirements imposed by local, state, or federal law. An employee who is licensed, registered, or certified by a unit of local, state, or federal government shall, for the purposes of such license, registration, or certification, be considered an employee of the work-site employer. An employee leasing company shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining an employee leasing company contract with a work-site employer or work-site employees who are subject to such requirements or regulation.

(b) **Collective bargaining agreements.** Nothing contained in this subsection (6) or in any employee leasing company contract shall affect, modify, or amend any collective bargaining agreement, or the rights or obligations of any work-site employer, employee leasing company, or work-site employee under the federal "National Labor Relations Act", 29 U.S.C. sec. 151 et seq., or the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq.

(c) **Tax or premium credits and other incentives.** For purposes of determination of employment-based tax or premium credits, such as economic development, enterprise zone, development zone, and other such economic incentives provided by the state or any other governmental entity, work-site employees shall be deemed employees solely of the work-site employer. A work-site employer shall be entitled to the benefit of any tax or premium credit, economic incentive, or other benefit arising as the result of the employment of work-site employees of the work-site employer. If the grant or amount of any credit, benefit, or other incentive is based on number of employees, then each work-site employer shall be treated as employing only those work-site employees coemployed by the work-site employer. Work-site employees working for other work-site employers of the employee leasing company shall not be counted. Upon request by a work-site employer or an agency or department of this state, each employee leasing company shall provide employment information reasonably required by any

agency or department of this state responsible for administration of any tax or premium credit or economic incentive and necessary to support any request, claim, application, or other action by a work-site employer seeking the tax or premium credit or economic incentive.

(d) **Disadvantaged business.** With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a work-site employer's status or certification as a small, minority-owned, disadvantaged, or women-owned business enterprise or as a historically underutilized business is not affected because the work-site employer has entered into an employee leasing company contract or uses the services of an employee leasing company.

(e) **Taxes, premiums, fees, other assessments.**

(I) A tax, premium, fee, surcharge, penalty, or any other assessment on a work-site employer or employee leasing company on the basis of the number of employees shall be assessed:

(A) Against the work-site employer for the work-site employees under the employee leasing company contract with the employee leasing company; and

(B) Against the employee leasing company for the employees of the employee leasing company who are not work-site employees for any work-site employers in the state.

(II) For a tax or premium imposed or calculated upon the basis of total payroll, an employee leasing company may apply any small business allowance or exemption available to the work-site employer for the work-site employees for purposes of computing the tax or premium.

(III) The provisions of this paragraph (e) shall not apply to the reporting, withholding, and paying of taxes or premiums pursuant to subparagraphs (VI) and (VII) of paragraph (b) of subsection (2) of this section.

(7) **Employment arrangements.** Nothing in this section or in any employee leasing company contract shall:

(a) Diminish, abolish, or remove rights of covered employees of a work-site employer or obligations of such work-site employer to a covered employee existing prior to the effective date of the employee leasing company contract;

(b) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any work-site employer in effect at the time an employee leasing company contract becomes effective. Nor shall it prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a work-site employer and a covered employee. An employee leasing company shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the employee leasing company has specifically agreed otherwise in writing.

(c) Create any new or additional enforceable right of a covered employee against an employee leasing company that is not specifically provided by the employee leasing company contract or this section.

(8) Prohibited acts and enforcement.

(a) A person shall not offer or provide employee leasing company services or use the names employee leasing company, professional employer organization, PEO, staff leasing, employee leasing, administrative employer, or other title representing employee leasing services without first obtaining certification from the department under this section.

(b) A person shall not knowingly provide false or fraudulent information to the department in conjunction with any certifications or in any report required under this section.

(c) The executive director of the department may take disciplinary action against an employee leasing company for a violation of paragraph (a) or (b) of this subsection (8), for the conviction in a court of law for a crime arising from the operation of an employee leasing company relating to fraud or deceit or the ability of the employee leasing company to operate as such, for knowingly making a material misrepresentation to the department or other governmental agency, or for a willful violation of this section or any order or rule issued by the department under this section.

(d) Upon finding, after notice and opportunity for hearing, that an employee leasing company has violated one or more provisions of this section, the director of the division may:

(I) Place the certified employee leasing company on probation for a period and subject to conditions that the director of the division specifies;

(II) Impose an administrative penalty in an amount not to exceed one thousand dollars for each material violation; and

(III) Refuse to accept the certification and rescind the employee leasing company's ability to make unemployment insurance contributions for work-site employees under its unemployment insurance account.

Source: **L. 90:** Entire section added, p. 591, § 3, effective April 3. **L. 93:** Entire section amended, p. 705, § 1, effective May 6. **L. 97:** (2) to (4) amended and (6) added, p. 207, § 2, effective April 8. **L. 98:** (1) amended, p. 68, § 1, effective March 23. **L. 99:** (2)(b)(VIII) and (2)(e) amended and (2)(f) added, p. 146, § 1, effective March 25. **L. 2007:** (6) amended, p. 553, § 1, effective August 3. **L. 2008:** (2)(a), (2)(b)(VII), (2)(b)(VIII), and (2)(e) amended and (2)(g), (7), and (8) added, pp. 916, 920, §§ 1, 2, effective August 5. **L. 2009:** (2)(b)(VI), (2)(b)(VII), IP(2)(g)(III), (2)(g)(III)(A), (3)(a), (3)(c), (6)(c), and (6)(e) amended, (HB 09-1363), ch. 363, p. 1879, § 5, effective July 1; IP(2)(b), (2)(b)(VII), and (2)(g)(III)(A) amended, (SB 09-258), ch.

250, p. 1123, § 1, effective August 5. **L. 2010:** (2)(b)(VII)(B) and (2)(b)(VII)(C) amended, (HB 10-1422), ch. 419, p. 2065, § 12, effective August 11. **L. 2011:** (2)(g)(III)(A) amended and (2)(g)(III)(A.5) added, (HB 11-1288), ch. 212, p. 926, § 9, effective July 1. **L. 2012, 1st Ex. Sess.:** (2)(g)(III)(A) amended, (HB 12S-1002), ch. 2, p. 2425, § 3, effective June 1. **L. 2013:** (2)(b)(VIII) amended, (HB 13-1266), ch. 217, p. 985, § 41, effective May 13. **L. 2015:** (2)(g)(VI) amended, (HB 15-1261), ch. 322, p. 1313, § 3, effective June 5; (2)(g)(IV) and (2)(g)(V) amended, (SB 15-264), ch. 259, p. 942, § 10, effective August 5. **L. 2021:** (1) amended, (HB 21-1204), ch. 73, p. 293, § 1, effective April 29.

Editor's note: (1) Amendments to subsections (2)(b)(VII) and (2)(g)(III)(A) by Senate Bill 09-258 and House Bill 09-1363 were harmonized.

(2) Subsection (2)(g)(III)(A) provided for the repeal of subsection (2)(g)(III)(A), effective December 31, 2012. (See L. 2012, p. 2425.)

Cross references: For the legislative declaration contained in the 1997 act amending subsections (2) to (4) and enacting subsection (6), see section 1 of chapter 77, Session Laws of Colorado 1997.

ANNOTATION

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (9), relevant cases construing that provision have been included under this section.

Quadriplegic who entered into employment agreements with his attendants was an "employing unit" liable for unemployment compensation taxes. The fact that an insurance carrier provided the funds to pay the attendants did not change their status as employees of the quadriplegic who was responsible for hiring, firing,

training, and directing the attendants in the performance of their activities and ensuring that they were paid. *Richards v. Division of Employment*, 801 P.2d 22 (Colo. App. 1990).

This section does not give the industrial claim appeals office the authority to treat various separate entities as a single employing unit based on elements of common ownership and control. *Accord v. Indus. Claim Appeals Office*, 275 P.3d 697 (Colo. App. 2010), *aff'd*, 2012 CO 15, 270 P.3d 985.

8-70-115. Employment - Federal Unemployment Tax Act.

(1) (a) "Employment", subject to other provisions of this subsection (1), includes any service performed prior to January 1, 1972, which was employment as defined in this subsection (1) prior to such date and service performed after December 31, 1971, by an employee as defined in section 3306 (i) of the "Federal Unemployment Tax Act" and any service performed after December 31, 1977, by an employee, as defined in subsection (o) of section 3306 of the "Federal Unemployment Tax Act", including service in interstate commerce.

(b) Notwithstanding any other provision of this subsection (1) and notwithstanding the provisions of section 8-80-101, service performed by an individual for another shall be deemed to be employment, irrespective of whether the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the division that such individual is free from control and direction in the performance of the service, both under his contract for the performance of service and in fact; and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service, if exercised pursuant to the requirements of any state or federal statute or regulation, shall not be considered.

(c) To evidence that such individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may either show by a preponderance of the evidence that the conditions set forth in paragraph (b) of this subsection (1) have been satisfied, or they may demonstrate in a written document, signed by both parties, that the person for whom services are performed does not:

(I) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for the said person for a finite period of time specified in the document;

(II) Establish a quality standard for the individual; except that such person can provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(III) Pay a salary or hourly rate but rather a fixed or contract rate;

(IV) Terminate the work during the contract period unless the individual violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(V) Provide more than minimal training for the individual;

(VI) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(VII) Dictate the time of performance; except that a completion schedule and a range of mutually agreeable work hours may be established;

(VIII) Pay the individual personally but rather makes checks payable to the trade or business name of the individual; and

(IX) Combine his business operations in any way with the individual's business, but instead maintains such operations as separate and distinct.

(d) A document may satisfy the requirements of paragraph (c) of this subsection (1) if such document demonstrates, by a preponderance of the evidence, the existence of such factors listed in subparagraphs (I) to (IX) of paragraph (c) of this subsection (1) as are appropriate to the parties' situation.

(2) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, such document may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties, where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity, and that the independent contractor is obligated to pay federal and state income tax on any moneys paid pursuant to the contract relationship.

(3) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project, such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

(4) To improve the process of determining the classification of an individual for purposes of this section, including any audits performed pursuant to section 8-72-107, the department shall:

(a) Develop guidance for employers on the factors specified in paragraph (c) of subsection (1) of this section;

(b) Clarify the process by which an employer or individual may submit further information in response to a determination by the department and prior to an appeal;

(c) Establish an individual to serve as a resource for employers by providing guidance on:

(I) The proper classification of workers;

(II) Audit findings; and

(III) Options for curing or appealing an audit;

- (d) Establish internal methods to improve the consistency among auditors; and
- (e) Establish an independent review of a portion of audit and appeal results at least twice a year to monitor trends and make improvements to the audit process.

Source: **L. 90:** Entire section added, p. 592, § 3, effective April 3; entire section R&RE, p. 1766, § 10, effective June 8. **L. 91:** Entire section amended, p. 1366, § 1, effective May 18; entire section amended, p. 1343, § 1, effective June 5. **L. 2016:** (4) added, (SB 16-179), ch. 275, p. 1138, § 2, effective August 10.

Editor's note: Amendments to this section by House Bill 91-1279 and Senate Bill 91-238 were harmonized.

Cross references: For the legislative declaration in SB 16-179, see section 1 of chapter 275, Session Laws of Colorado 2016.

ANNOTATION

Law reviews. For article, "The Independent Contractor Versus the Employee — Tax Consequences", see 18 Colo. Law. 1091 (1989). For article, "Independent Contractors in Colorado", see 34 Colo. Law. 53 (Dec. 2005).

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (10)(a), relevant cases construing that provision have been included under this section.

This section is not unconstitutional as an impairment of obligation of contracts between operator and drivers of concrete delivery trucks. *Weitzel Redi-Mix, Inc. v. Indus. Comm'n*, 728 P.2d 364 (Colo. App. 1986).

This section is not unconstitutional because real estate salesmen and insurance agents are statutorily exempted. *Nat'l Claims Assoc. v. Div. of Emp.*, 786 P.2d 495 (Colo. App. 1989).

Workers are deemed covered by the Colorado Employment Security Act unless they are free from control and directions in their work and are also engaged in an independent, but related, trade or business. *Metro Denver Maint. v. Dept. of Labor*, 738 P.2d 49 (Colo. App. 1987).

The definition of "employment", appearing in this section, is broad and inclusive, and it cannot be so construed as to limit the meaning to the relationship of master and servant without violating the legislative intent. *Indus. Comm'n v. Nw.*

Mut. Life Ins. Co., 103 Colo. 550, 88 P.2d 560 (1939).

Whether a common-law employer-employee relationship (master-servant) exists is not determinative of whether an employee is covered by this act. Metro Denver Maint. v. Dept. of Labor, 738 P.2d 49 (Colo. App. 1987).

No improper delegation to the division to define what constitutes covered employment. Allstate Prod. v. Dept. of Labor, 782 P.2d 880 (Colo. App. 1989).

As used in this section, "service" means an active participation in, and not a passive connection with, some given operation, so merely owning or residing on a farm upon, or in connection with, which an individual performs no service whatsoever, ipso facto, does not make an employee self-employed as a farmer. Dellacroce v. Indus. Comm'n, 111 Colo. 129, 138 P.2d 280 (1943).

The term "employment" includes a broader concept of employment than the common law doctrine embodied in federal law. Jackson Cartage, Inc. v. Van Noy, 738 P.2d 47 (Colo. App. 1987).

"Is free from control and direction in the performance of the service" language of subsection (10) does not preclude consideration of future control. Weld County Kirby Co. v. Indus. Comm'n, 676 P.2d 1253 (Colo. App. 1983).

Terms "control and direction" mean an overall right to control the actions of an employee. Indus. Comm'n v. Nw. Mut. Life Ins. Co., 103 Colo. 550, 88 P.2d 560 (1939);

Rent-a-Mom v. Indus. Comm'n, 727 P.2d 403 (Colo. App. 1986).

Employer's right to terminate contractual relationship is one factor in determining whether "control" exists and cannot be sole factor in determining if employment relationship exists. Rent-a-Mom v. Indus. Comm'n, 727 P.2d 403 (Colo. App. 1986).

The term "customarily engaged in" is not unconstitutionally vague. Allstate Prod. v. Dept. of Labor, 782 P.2d 880 (Colo. App. 1989).

This section places the burden of proof on the putative employer to demonstrate that both conditions set forth in subsection (1)(b) exist. Under this section, services performed by an individual for another are deemed to be "employment" unless the putative employer can demonstrate that (1) the individual is free from control and direction in the performance of the service, both under the contract and in fact, and (2) the individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. Speedy Messenger & Delivery Serv. v. Indus. Claim Appeals Office, 129 P.3d 1094 (Colo. App. 2005); Long View Sys. Corp. USA v. Indus. Claim Appeals Office, 197 P.3d 295 (Colo. App. 2008).

Determination of whether an employer has met its burden of proving the requirements set forth in this section is a question of fact, and the commission's order may be set aside if there is no substantial evidence to support it. Rent-a-Mom v. Indus. Comm'n, 727 P.2d 403 (Colo. App. 1986);

Jackson Cartage, Inc. v. Van Noy, 738 P.2d 47 (Colo. App. 1987); Long View Sys. Corp. USA v. Indus. Claim Appeals Office, 197 P.3d 295 (Colo. App. 2008).

There are two ways in which a putative employer may satisfy the "control and direction" and "independent trade" conditions of subsection (1)(b). The putative employer may present general evidence demonstrating both conditions. Alternatively, it may produce a written document that satisfies all the applicable factors set forth in subsection (1)(c). Long View Sys. Corp. USA v. Indus. Claim Appeals Office, 197 P.3d 295 (Colo. App. 2008).

In determining whether an employer may classify an individual as an independent contractor rather than an employee for the purposes of unemployment benefits, this section does not require a showing that the services provided by a putative employee are provided for the benefit of the putative employer. The test in subsection (1)(b) requires that the employer show the worker is free from the control and direction in the performance of the service and that the worker is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. CCM v. Indus. Claim Appeals Office, 2019 CO 43, 441 P.3d 1005.

In applying this test, the court determined that the services provided were not that of an independent contractor. CCM v. Indus. Claim Appeals Office, 2019 CO 43, 441 P.3d 1005.

A writing need not necessarily satisfy all nine factors enumerated in subsection (1)(c) to create the rebuttable presumption of an independent contractor relationship. The writing must satisfy those factors that are applicable or potentially applicable. Long View Sys. Corp. USA v. Indus. Claim Appeals Office, 197 P.3d 295 (Colo. App. 2008).

In determining whether one is acting under the control of another for the purposes of this section, the court primarily is concerned with what is done under a contract and not what the contract says. Jackson Cartage, Inc. v. Van Noy, 738 P.2d 47 (Colo. App. 1987).

In the absence of a large or bold-faced type disclosure, pursuant to subsection (2), a contract may still incorporate information that an independent contractor is not entitled to unemployment insurance or other employee benefits. If a contract's only deviation from the statute is that the disclosures are not in large or bold-faced type, but the correct information is emphasized via the totality of the circumstances test, the contract is valid. Varsity Tutors v. Indus. Claim Appeals Office, 2017 COA 104, 488 P.3d 258.

Stockbroker, unable to perform functions without the supervision of a broker-dealer and prohibited by employer from performing similar functions for others, was engaged in covered employment for purposes of this section. Claim of Woloson, 796 P.2d 1 (Colo. App. 1989).

The common law control test used to distinguish servants from independent contractors is the same as that used to distinguish independent contractors from employees under the "Workers' Compensation Act of Colorado", so the cases under article 40 of title 8 are relevant to article 70 of title 8. Carpet Exch. of Denver, Inc. v. Indus. Claim Appeals Office, 859 P.2d 278 (Colo. App. 1993).

Control and direction over a putative employee by a third party. The plain language of subsection (1)(b) does not support a conclusion that control and direction over a putative employee by someone other than the putative employer renders the situation one of employment, unless the person providing control and direction is shown to be an agent of the putative employer. Long View Sys. Corp. USA v. Indus. Claim Appeals Office, 197 P.3d 295 (Colo. App. 2008).

Company was held liable to pay unemployment compensation taxes for claims adjusters, vocational rehabilitation counselors, and medical benefits coordinators because there was insufficient evidence that such persons are engaged in an independent business, and such persons are not statutorily exempted. Nat'l Claims Assoc. v. Div. of Emp., 786 P.2d 495 (Colo. App. 1989).

Whether a worker is in covered employment depends upon the nature of the services performed and some services by a worker may constitute covered employment and other services by the same

worker may not. Black Sheep, Inc. v. Div. of Emp., 804 P.2d 871 (Colo. App. 1990).

Services found to be covered employment. Facts showing that petitioner had the right to terminate workers and that workers were paid by petitioner at a rate established by him to perform specified services on material that was provided by him constituted substantial evidence to support the commission's finding that workers were within the statutory definition of covered employment. Allen Co. v. Indus. Comm'n, 735 P.2d 889 (Colo. App. 1986), aff'd, 762 P.2d 677 (Colo. 1988).

Services provided by claimant as a direct seller of consumer products at a location other than a permanent retail establishment constituted employment for purposes of the Colorado Employment Security Act when contract between employer and claimant did not provide that the employee was not to be treated as an employee for federal payroll withholding tax purposes as required by subsection (11)(l). Autry Bros., Inc. v. Cross, 773 P.2d 248 (Colo. App. 1989).

The following do not demonstrate general control but are designed to ensure that the end result is accomplished: Giving floor plans to workers, retaining the right to inspect all work, and requiring workers to obtain company approval of any additional work requested by customers if they wish to be paid for such work. Carpet Exch. of Denver, Inc. v. Indus. Claim Appeals Office, 859 P.2d 278 (Colo. App. 1993).

A requirement that workers be covered by workers' compensation insurance is

not evidence of an employment relationship because independent contractors may be deemed to be employees under article 41 of title 8 and because such a requirement is common. *Carpet Exch. of Denver, Inc. v. Indus. Claim Appeals Office*, 859 P.2d 278 (Colo. App. 1993).

Setting ethics guidelines and the times at which workers must report to work and call customers to schedule installations does not constitute control over the means and methods of installing floor covering and does not evidence an employment relationship. *Carpet Exch. of Denver, Inc. v. Indus. Claim Appeals Office*, 859 P.2d 278 (Colo. App. 1993).

Artists represented by talent agency do not perform a service for that agency. Artists do not perform acting and modeling services at the command of or for the benefit of a talent agency, so the talent agency is not the employer of the artists it represents. *Div. of Unemployment Ins. v. Indus. Claim Appeals Office*, 2015 COA 149, 361 P.3d 1150.

Whether an individual is customarily engaged in an independent business is a question that can only be resolved by applying a totality of the circumstances test that evaluates the dynamics of the relationship between the putative employee and the employer; there is no dispositive single factor or set of factors in making the determination. *Indus. Claim Appeals Office v. Softrock Geological*, 2014

CO 30, 325 P.3d 560; *W. Logistics v. Indus. Claim Appeals Office*, 2014 CO 31, 325 P.3d 550.

It is reasonable to infer that a worker maintains an independent business if a written agreement demonstrates that an employer doesn't require a worker to work exclusively for such employer. If other evidence demonstrates that such inference isn't accurate, then the worker is entitled to unemployment compensation. *Home Health Care Prof. v. Colo. Dept. of Labor*, 937 P.2d 851 (Colo. App. 1996).

Musicians not independent contractors pursuant to subsection (1)(b). Musicians who were free to play other musical engagements, who worked mainly out of their homes, who did not maintain business addresses or telephone numbers, and who earned 95 to 99% of their income as musicians with the band in question were not customarily engaged in independent trades, occupations, professions, or businesses related to the services they performed with the band, despite a "memorandum of understanding" that satisfied the advisements required by subsection (1)(c). *Barge v. Indus. Claim Appeals Office*, 905 P.2d 25 (Colo. App. 1995).

Applied in *Insul-lite Window & Door Mfg. v. Indus. Comm'n*, 723 P.2d 151 (Colo. App. 1986); *Locke v. Longacre*, 772 P.2d 685 (Colo. App. 1989).

8-70-116. Employment - location of services.

(1) "Employment" means an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:

(a) The service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and

(b) The place from which the service is directed or controlled is in Colorado.

Source: L. 90: Entire section added, p. 592, § 3, effective April 3.

8-70-117. Employment - base of operations.

"Employment" means that the entire service of an individual is performed within this state or both within and without this state if the service is localized in this state; or that the service is not localized in any state but some of the service is performed in this state and that the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or that the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but that the individual's residence is in this state. For purposes of this section, service shall be deemed to be localized within a state if the service is performed entirely within the state or if the service is performed both within and without the state but the service performed without the state is incidental to the individual's service within the state or, for example, is temporary or transitory in nature or consists of isolated transactions.

Source: L. 90: Entire section added, p. 592, § 3, effective April 3.

8-70-118. Employment - nonprofit organizations.

"Employment" means services performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment", as defined in the "Federal Unemployment Tax Act" solely by reason of section 3306 (c)(8) of that act, and which has had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or the preceding calendar year, regardless of whether they were employed at the same moment of time.

Source: L. 90: Entire section added, p. 592, § 3, effective April 3.

Editor's note: See § 8-70-140 for services that are not included in the use of the term "employment" as used in this section.

Cross references: For section 3306 of the "Federal Unemployment Tax Act", see 26 U.S.C. § 3306.

ANNOTATION

Meeting definition of covered statutory "employment". The minimum four-employee requirement for coverage under	the act is not limited to persons working in Colorado. <i>Laub v. Indus. Claim Appeals Office</i> , 983 P.2d 815 (Colo. App. 1999).

8-70-119. Employment - hospitals - institutions of higher education.

"Employment" means services performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state, if the service is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act" solely by reason of section 3306 (c)(7) of that act, and means services performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing, and one or more other states or political subdivisions, if such service is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act" by reason of section 3306 (c)(7) and is not excluded from employment under section 8-70-140.

Source: L. 90: Entire section added, p. 593, § 3, effective April 3.

Editor's note: See § 8-70-140 for additional services that are not included in the use of the term "employment" as used in this section.

Cross references: For section 3306 of the "Federal Unemployment Tax Act", see 26 U.S.C. § 3306.

8-70-120. Employment - agricultural labor.

(1) "Employment" means services performed after December 31, 1977, by an individual in agricultural labor as defined in section 8-70-109 when:

(a) Such service is performed for a person who, during any calendar quarter in either the current or the preceding calendar year, paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, including agricultural labor performed by an alien referred to in paragraph (b) of this subsection (1), or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including agricultural labor performed by an alien referred to in paragraph (b) of this subsection (1), ten or more individuals, regardless of whether they were employed at the same moment of time; and

(b) Such service is not agricultural labor if performed by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a)(15)(H) of the federal "Immigration and Nationality Act".

(2) For the purposes of sections 8-70-115 to 8-70-125, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(a) If such crew leader holds a valid certificate of registration under the federal "Migrant and Seasonal Agricultural Worker Protection Act" or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(b) If such individual is not an employee of such other person within the meaning of section 8-70-115.

(3) For the purposes of this section, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (2) of this section:

(a) Such other person and not the crew leader shall be treated as the employer of such individual; and

(b) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader

(either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(4) For the purposes of this section, a crew leader is an individual who:

(a) Furnishes individuals to perform service in agricultural labor for any other person;

(b) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

Source: L. 90: Entire section added, p. 593, § 3, effective April 3. **L. 94:** (1)(b) amended, p. 637, § 1, effective July 1. **L. 98:** (1)(b) amended, p. 68, § 2, effective March 23.

ANNOTATION

Agricultural exemption clarified. Under subsection (1)(a), agricultural labor is not taxable employment unless the putative employer hires at least 10 persons in each of 20 weeks in a year. Where the employer hired more than 10 persons during the year

and at least one person in each of 20 weeks but only hired 10 or more persons at a time during four of those weeks, the services did not constitute covered employment. *Whitewater Hill v. Indus. Claim Appeals Office*, 2015 COA 5, 345 P.3d 984.

8-70-121. Employment - domestic services.

"Employment" means domestic services performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

Source: L. 90: Entire section added, p. 594, § 3, effective April 3.

8-70-122. Employment - American employer.

(1) "Employment" means services of an individual who is a citizen of the United States performed outside the United States (except in Canada) after December 31, 1971, in the employ of an American employer (other than service which is deemed employment under the provisions of section 8-70-117 or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States but the employer is an individual who is a resident of this state; or the employer is a corporation which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of paragraphs (a) and (b) of this subsection (1) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on the service, under the law of this state.

(2) For purposes of this section:

(a) An "American employer" means an individual person who is a resident of the United States; or a partnership if two-thirds or more of the partners are residents of the United States; or a trust if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state.

(b) "United States" includes the District of Columbia, the commonwealth of Puerto Rico, and the Virgin Islands.

Source: L. 90: Entire section added, p. 594, § 3, effective April 3. **L. 92:** IP(1) amended, p. 1793, § 1, effective April 10.

8-70-123. Employment - vessels - aircraft.

Notwithstanding section 8-70-117, "employment" means services performed after December 31, 1971, by an officer or member of the crew of an American vessel or an American aircraft on or in connection with such vessel or aircraft, if the office from which the operations of such vessel or aircraft operating within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-124. Employment - credit - state unemployment fund.

Notwithstanding any other provisions of sections 8-70-115 to 8-70-125, "employment" means services with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for premiums required to be paid into a state unemployment fund or which, as a condition for full credit against the tax imposed by the "Federal Unemployment Tax Act", is required to be covered under articles 70 to 82 of this title.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1881, § 6, effective July 1.

8-70-125. Employment - educational institutions.

With respect to weeks of unemployment which begin after December 31, 1977, "employment" means services performed in the employ of an educational institution, including an institution of higher education as defined in section 8-70-103 (15), and the payment or denial of benefits based on such employment shall be subject to the conditions set forth in section 8-73-107 (3).

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-125.5. Employment - Indian tribes.

(1) "Employment" means service performed in the employ of an Indian tribe, as defined in section 3306 (u) of the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq. (FUTA), if such service is excluded from "employment", as defined in FUTA solely by reason of section 3306 (c)(7) of FUTA, and is not otherwise excluded from "employment" under the provisions of articles 70 to 82 of this title.

(2) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to the provisions of articles 70 to 82 of this title.

Source: L. 2001: Entire section added, p. 1547, § 2, effective December 21, 2000.

Editor's note: (1) The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act enacting this section provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

(2) See § 8-70-140 for additional services that are not included in the use of the term "employment" as used in this section.

8-70-125.7. Employment - property tax work-off program participants.

"Employment" includes services performed by participants in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1076), ch. 162, p. 567, § 4, effective August 11.

8-70-126. Employment does not include - agricultural labor.

"Employment" does not include services performed by an individual in agricultural labor, as defined in section 8-70-109, except as provided in section 8-70-120.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-127. Employment does not include - domestic service.

Except as provided in section 8-70-121, "employment" does not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-128. Employment does not include - employer's trade or business.

(1) "Employment" does not include casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is fifty dollars or more and unless the service is performed by an individual who is regularly employed by the employer to perform such service. For purposes of this section, an individual is deemed to be regularly employed during a calendar quarter only if:

(a) On at least twenty-four days during such calendar quarter, the individual performs services for the employer which are not in the course of the employer's trade or business; or

(b) On at least twenty-four days during the previous calendar quarter, the individual performed services for the employer which were not in the course of the employer's trade or business.

Source: L. 90: Entire section added, p. 595, § 3, effective April 3.

8-70-129. Employment does not include - spouse - minor.

"Employment" does not include services performed by an individual in the employ of his spouse and service performed by a child under the age of twenty-one in the employ of his father or mother.

Source: L. 90: Entire section added, p. 596, § 3, effective April 3.

8-70-130. Employment does not include - instrumentalities of United States.

"Employment" does not include services performed in the employ of the United States government, a national bank or state bank that is a member of the federal reserve system, or a federal savings and loan association or a state building and loan association that is a member of the federal home loan bank system, which institutions were, prior to January 1, 1972, exempt from articles 70 to 82 of this title, or any other instrumentality of the United States exempt under the constitution of the United States from the premiums imposed by articles 70 to 82 of this title; except that, to the extent that the congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of articles 70 to 82 of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing

units, individuals, and services. If this state is not certified for any year by the United States secretary of labor under section 3304 of the federal "Internal Revenue Code of 1986", as amended, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in section 8-79-108 with respect to premiums erroneously collected.

Source: L. 90: Entire section added, p. 596, § 3, effective April 3. **L. 2000:** Entire section amended, p. 1837, § 2, effective August 2. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1881, § 7, effective July 1.

ANNOTATION

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (11)(e), relevant cases construing that provision have been included under this section.

The American National Red Cross is an instrumentality of the United States, and as such is immune from taxation under the Colorado employment security act, unless that immunity has been waived by the 1960 amendments to the federal unemployment tax act. the U.S. district court concludes that

the 1960 amendments to the federal unemployment tax act do not waive the immunity of the Red Cross from taxation under the Colorado employment security act although that act recognizes the right of the states to provide and administer a fund for the same purpose under state law, and the contributions made by employers to the state fund are by the federal act made a credit against the federal tax. *Am. Nat'l Red Cross v. Dept. of Emp.*, 263 F. Supp. 581 (D. Colo. 1965), *aff'd sub nom. Dept. of Emp. v. United States*, 385 U.S. 355 (1966).

8-70-131. Employment does not include - school - college - university.

(1) "Employment" does not include services performed in the employ of a school, college, or university, if such service is performed:

(a) By a student who is enrolled and is regularly attending classes at such school, college, or university; or

(b) By the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Source: L. 90: Entire section added, p. 596, § 3, effective April 3.

ANNOTATION

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (11)(g), relevant cases construing that provision have been included under this section.

Exemption to unemployment taxation for student employed at a school does not apply to a student employed by a higher education center, as it is not a school at which a student can be enrolled and it is independent of the colleges with which it contracts for authority over the colleges' facilities. *Colo. State v. Korin*, 876 P.2d 103 (Colo. App. 1994).

This section, on its face and as applied, is not violative of equal protection. *Hyde v. Indus. Comm'n*, 195 Colo. 67, 576 P.2d 541 (1978).

The general assembly's intent was not to limit the student employment

disqualification simply to employees who are regularly attending formal, structured classes; rather, its intent was to embrace all persons who are essentially students. *Hyde v. Indus. Comm'n*, 195 Colo. 67, 576 P.2d 541 (1978).

Thesis preparation and preparation for comprehensive exams constituted "regularly attending classes" within the meaning of this section. *Hyde v. Indus. Comm'n*, 195 Colo. 67, 576 P.2d 541 (1978).

"Employment" does not include full-time student employed at school. The term "employment", as used in the unemployment compensation act, shall not include service performed in the employ of a school, college, or university by a full-time college student. *Indus. Comm'n v. Redmond*, 183 Colo. 14, 514 P.2d 623 (1973).

8-70-132. Employment does not include - educational institution.

"Employment" does not include services performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer; except that this section shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

Source: L. 90: Entire section added, p. 596, § 3, effective April 3.

8-70-133. Employment does not include - hospital.

"Employment" does not include services performed in the employ of a hospital, as defined in section 8-70-103 (14), if such service is performed by a patient of the hospital.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3.

8-70-134. Employment does not include - unemployment compensation system.

"Employment" does not include services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress. The division is authorized to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 8-72-102 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under articles 70 to 82 of this title, acquired rights to unemployment compensation under such act of congress or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under articles 70 to 82 of this title.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3.

8-70-135. Employment does not include - paper routes.

"Employment" does not include services performed by an individual under the age of eighteen years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or services performed by an individual in the delivery or distribution of newspapers whose remuneration primarily consists of the difference between the amount he pays or is obligated to pay for the said newspapers and the amount he receives or is entitled to receive on distribution or resale thereof.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3.

8-70-136. Employment does not include - brokers.

(1) "Employment" does not include services performed by an individual as a licensed real estate broker or as a direct seller engaged in the trade or business of selling, or soliciting the sale of, a consumer product in a home or in an establishment other than a permanent retail establishment or as an individual engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business if:

(a) All the remuneration, whether or not paid in cash, for the performance of such services is directly related to sales or other output, including the performance of services, instead of the number of hours worked; and

(b) The services are performed pursuant to a written contract between such person and the person for whom the services are performed and if such contract provides that the person shall not be treated as an employee with respect to such services for federal tax purposes.

Source: **L. 90:** Entire section added, p. 597, § 3, effective April 3. **L. 98:** IP(1) amended, p. 69, § 3, effective March 23. **L. 2008:** IP(1) amended, p. 511, § 30, effective April 17.

ANNOTATION

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (11)(l), relevant cases construing that provision have been included under this section.

Contract language that excluded salesperson as an employee "for any purpose" plainly and unambiguously

includes federal tax purposes and therefore contract meets requirements of this section for exclusion from coverage under the act. *Alsco Aluminum v. Div. of Emp. & Training*, 835 P.2d 540 (Colo. App. 1992).

Applied in *Division of Emp. and Training v. Moen*, 767 P.2d 1230 (Colo. App. 1988).

8-70-137. Employment does not include - organization exempt from income tax.

"Employment" does not include services performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) of the "Internal Revenue Code", other than an organization described in section 401 (a), or under section 521 of said code, if the remuneration for such service is less than fifty dollars.

Source: L. 90: Entire section added, p. 597, § 3, effective April 3.

8-70-138. Employment does not include - in-home services. (Repealed)

Source: L. 90: Entire section added, p. 598, § 3, effective April 3; entire section repealed, p. 1845, § 33, effective May 31.

8-70-139. Employment does not include - insurance agents.

"Employment" does not include services performed by an individual for a person as an insurance agent or an insurance solicitor, if all such services performed by such individual for such person are performed for remuneration solely by way of commission.

Source: L. 90: Entire section added, p. 598, § 3, effective April 3.

ANNOTATION

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (11)(a), relevant cases construing that provision have been included under this section.

the meaning of those words, and contributions by such an association to the unemployment compensation fund should be refunded. *Brannaman v. Int'l Serv. Union Ass'n*, 108 Colo. 409, 118 P.2d 457 (1941).

Solicitors of a mutual benefit association are "insurance agents" within

8-70-140. Employment does not include - nonprofit organizations - governmental entities - Indian tribes.

(1) For the purposes of sections 8-70-118, 8-70-119, and 8-70-125.5, "employment" does not include services performed:

(a) In the employ of a church or a convention or association of churches or in the employ of an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches or in

the employ of an elementary or secondary school that is operated primarily for religious purposes; or

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(c) In the employ of a governmental entity referred to in section 8-70-119 or an Indian tribe referred to in section 8-70-125.5 if such service is performed by an individual in the exercise of such individual's duties:

(I) As an elected official;

(II) As a member of a legislative body or a member of the judiciary of a state or political subdivision thereof, or of an Indian tribe;

(III) As a member of the state National Guard or Air National Guard;

(IV) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(V) In a position that, pursuant to the laws of this state or Indian tribal law, is designated as a major, nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(VI) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars; or

(d) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical disability, or intellectual and developmental disability, or injury or of providing remunerative work for individuals who, because of their impaired abilities, cannot be readily absorbed in the competitive labor market; or

(e) By an individual receiving work relief or work training as part of an unemployment work relief or work training program assisted or financed in whole or in part by public funds or by an Indian tribe; or

(f) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and, after December 31, 1977, by an inmate of a custodial or penal institution.

Source: L. 90: Entire section added, p. 598, § 3, effective April 3. **L. 98:** (1)(a) and IP(1)(c) amended and (1)(c)(VI) added, p. 69, § 4, effective March 23; IP(1)(c) and (1)(c)(V) amended

and (1)(c)(VI) added, p. 583, § 18, effective April 30. **L. 2001:** IP(1), IP(1)(c), (1)(c)(II), (1)(c)(V), and (1)(e) amended, p. 1547, § 3, effective December 21, 2000. **L. 2017:** (1)(d) amended, (HB 17-1046), ch. 50, p. 155, § 1, effective March 16.

Editor's note: The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act amending the introductory portions to subsections (1) and (1)(c) and subsections (1)(c)(II), (1)(c)(V), and (1)(e) provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

ANNOTATION

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (10)(g), relevant cases construing that provision have been included under this section.

What constitutes "church". A religious organization which does not constitute a distinct religious denomination or mode of worship is not a "church" for purposes of subsection (10)(g)(I). *Young Life v. Division of Emp. & Training*, 650 P.2d 515 (Colo. 1982) (decided prior to 1982 amendment of subsection (10)(g)(I)).

Religious purposes exemption. Exemption to the unemployment compensation law for an organization that operates primarily for religious purposes is not construed as narrowly as traditional tax exemption statutes and should not be lightly granted. This exemption does not involve the determination of religious motivations and should be applied only if the religious influence is pervasive in the organization that applies for the exemption, not the organization that founded the organization

applying for the exemption. *Prince-Walker v. Indus. Claim App. Office*, 870 P.2d 588 (Colo. App. 1993), *aff'd sub nom. Samaritan Institute v. Prince-Walker*, 883 P.2d 3 (Colo. 1994).

An employer formerly supported by a church nor dependent on a church or an association of churches for its continued operation is not exempt under the religious purposes exemption in this section. *A Child's Touch v. Indus. Claim Appeals Office*, 2015 COA 182, 411 P.3d 990.

The entity did not engage in religious activity where the entity's primary activity was to provide administrative services for centers that provide counseling. Pastoral counseling provided by centers in another state was not sufficient to support a claim of religious activity. *Samaritan Inst. v. Prince-Walker*, 883 P.2d 3 (Colo. 1994).

Because work and activities of store affiliated with an organization of churches are secular in nature, primary purpose of the activity is not religious and store is not exempt from the definition of

"employment". Harbert v. Indus. Claim Appeals Office, 2012 COA 23, 272 P.3d 1190.

Administrative position within work-relief program disqualified. An employee occupying an administrative position within a work-relief program financed wholly by public funds is disqualified from the receipt of unemployment compensation benefits by

subsection (10)(g)(V). Hernandez v. Indus. Comm'n, 659 P.2d 58 (Colo. App. 1983).

A child care facility that offers day care, preschool, and kindergarten, but does not teach any higher grades, is not an "elementary school" for purposes of the exemption in subsection (1)(a). A Child's Touch v. Indus. Claim Appeals Office, 2015 COA 182, 411 P.3d 990.

8-70-140.1. Employment does not include - foreign government service.

"Employment" does not include service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative.

Source: L. 94: Entire section added, p. 637, § 2, effective July 1.

8-70-140.2. Employment does not include - nonresident alien service.

"Employment" does not include services performed by a nonresident alien individual for the period such individual is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101 of the federal "Immigration and Nationality Act", 8 U.S.C. sec. 1101 (a)(15), as amended, to carry out any purpose specified in subparagraph (F), (J), (M), or (Q) of section 101 of such federal act.

Source: L. 94: Entire section added, p. 637, § 2, effective July 1. **L. 96:** Entire section amended, p. 380, § 2, effective April 17.

8-70-140.5. Employment does not include - drivers of taxis or limousines.

(1) "Employment" does not include services performed by an individual who is working as a driver under a lease or contract with a taxi or limousine motor common carrier that holds a certificate pursuant to article 10.1 of title 40, C.R.S. Any such lease or contract may contain the following provisions:

(a) That the driver may either lease or contract for a motor vehicle owned by such carrier or may own the motor vehicle driven and lease it to the carrier, which may then re-lease such motor vehicle to the driver;

(b) That the driver shall be instructed in the method of the carrier's operation, that the driver is familiar with federal, state, and municipal statutes, ordinances, and regulations, and that the carrier shall enforce compliance by the driver with such federal, state, and municipal statutes, ordinances, and regulations;

(c) That certain enumerated transportation services shall be accomplished personally by the driver;

(d) That certain characteristics on the body of the vehicle being used, including color and requirements for any written displays, are required for the sake of uniformity;

(e) That certain periodic driver safety training is required;

(f) That the common carrier has certain control over any assistant working with the driver for purposes of enforcement of and compliance with federal, state, and municipal statutes, ordinances, and regulations;

(g) That a specific number of hours is allotted in the form of shifts in which the driver shall complete a particular shipment of goods for the purpose of meeting the transportation equipment needs of drivers and the transportation needs of the public;

(h) That certain procedures for radio telecommunication between drivers and the carrier are mandated;

(i) That the driver shall work only for the carrier with whom such driver has contracted while such driver is operating the motor vehicle;

(j) That the driver is prohibited from advertising any services offered while driving for the carrier;

(k) That the carrier shall pay the driver's fees when the carrier accepts charge vouchers from the driver for services rendered to customers by such driver;

(l) That such lease or contract may be terminated by any party to such lease or contract; except that the driver may be required to complete an accepted trip; and

(m) That no length be specified for the term of such lease or contract.

(2) Leases or contracts containing the provisions specified in paragraphs (a), (b), (e), (f), (g), (h), and (i) of subsection (1) of this section shall be prima facie evidence that an independent contractor relationship exists between the parties to such lease or contract. This presumption may be overcome by clear and convincing evidence of an employment relationship between the

parties to such lease or contract considering only factors not in the lease. Leases or contracts containing other optional provisions specified in subsection (1) of this section shall not change the characterization of the relationship between the driver and the carrier pursuant to such lease or contract.

Source: L. 92: Entire section added, p. 1798, § 3, effective June 6. **L. 2011:** IP(1) amended, (HB 11-1198), ch. 127, p. 416, § 5, effective August 10.

8-70-140.6. Employment does not include - nonprofit youth sports organization coach - definitions.

(1) "Employment" does not include services performed by an individual as a coach for a nonprofit youth sports organization if:

(a) There is a written agreement between the nonprofit youth sports organization and the coach that includes the following:

(I) A statement that the coach is an independent contractor and not an employee of the nonprofit youth sports organization;

(II) A statement that the coach is not entitled to unemployment security benefits in connection with his or her contract with the nonprofit youth sports organization; and

(III) A disclosure in bold-faced, underlined, or large type, in a conspicuous location, and acknowledged by the parties that the parties have read and understand the disclosure indicating that the coach is an independent contractor rather than an employee of the nonprofit youth sports organization;

(b) The youth sports organization does not have the right to control the means and methods by which the coach provides coaching services. For the purpose of determining whether the youth sports organization is exercising control, the analysis to determine if the coach is an employee does not include any requirement of a youth sports governing body.

(c) The coach is not economically dependent on income from part-time youth sports coaching or is employed in a full-time covered employment position; and

(d) The services of the coach may not be terminated except for breach of the agreement, failure to meet the requirements of a youth coach governing body, or failure to meet generally accepted standards of conduct within the industry.

(2) If it is demonstrated to the division that the requirements of subsection (1) of this section are met, the coach shall be considered an independent contractor for the purposes of this section

and not in covered employment or entitled to any benefits in accordance with the "Colorado Employment Security Act", articles 70 to 82 of this title 8.

(3) As used in this section, unless the context otherwise requires:

(a) "Coach" means an individual who:

(I) Performs services pursuant to a written and signed contract that complies with the requirements set forth in this section; and

(II) Performs coaching services fifteen hours or less in any consecutive seven-day period.

(b) "Nonprofit youth sports organization" means an organization that is exempt from federal taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age.

(4) This section does not alter or diminish otherwise applicable exemptions from covered employment for the following:

(a) Services performed in the employ of the state of Colorado, a political subdivision, or an Indian tribe, or an instrumentality of the state, a political subdivision, or an Indian tribe if the service is excluded from employment as defined in the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.; or

(b) Services performed in the employ of a religious, charitable, educational, or other organization that is excluded from employment as defined in the "Federal Unemployment Tax Act".

Source: L. 2018: Entire section added, (HB 18-1303), ch. 383, p. 2304, § 1, effective August 8.

8-70-140.7. Employment does not include - land professionals.

(1) "Employment" does not include services performed for a private for-profit person or entity by a land professional, if:

(a) Substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the land professional of the specific tasks contracted for rather than to the number of hours worked by the individual; and

(b) The services performed by the land professional are performed under a contract between the land professional and the person or entity for whom the services are performed that provides

that the land professional is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.

(2) For the purposes of this section, "land professional" means an individual who has been engaged primarily in:

- (a) Negotiating for the acquisition or divestiture of mineral rights;
- (b) Negotiating business agreements that provide for the exploration for or development of minerals;
- (c) Determining ownership of minerals through the research of public and private records; and
- (d) Reviewing the status of title, acting to cure title defects, and otherwise acting to reduce title risk associated with ownership of minerals, managing rights or obligations derived from ownership of interests in minerals, or unitizing or pooling of interest in minerals.

Source: L. 95: Entire section added, p. 177, § 1, effective April 7.

8-70-140.8. Employment does not include - owners.

"Employment" does not include services performed by members of a limited liability company, sole proprietors, or partners in a partnership.

Source: L. 98: Entire section added, p. 69, § 5, effective March 23.

8-70-141. Wages - definition.

(1) "Wages" means:

(a) All remuneration for personal services, including the cash value of all remuneration paid in any medium other than cash, other than remuneration paid in other than cash to an agricultural worker or a domestic worker. When an employing unit during a calendar year acquires the experience of an employer as provided in section 8-76-104 and if, immediately after such acquisition, the successor employer continues to employ an individual who immediately prior to the acquisition was an employee of the predecessor, any remuneration previously paid to the individual by the predecessor shall be considered as having been paid by the successor.

(b) (I) Repealed.

(II) Any amount treated as an employer contribution under 26 U.S.C. sec. 414 (h)(2); and

(III) Any employer contribution under a nonqualified deferred compensation plan. For the purposes of this subparagraph (III), "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in section 8-70-142 (1)(c). Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for the purposes of this paragraph (b) as of the date that the services are performed or the date that there is no substantial risk of forfeiture of the rights to such amount, whichever date is later, and shall not thereafter be treated as "wages" for the purposes of this section.

(IV) Any payment included in the definition of wages in the "Federal Unemployment Tax Act".

(c) Tips which are received while performing services that constitute employment and which are made known to the employer through a written statement furnished to him by the employee; and

(d) (I) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work paid for previously uncovered services. For the purposes of this paragraph (d), "previously uncovered services" means services which were not employment as defined in sections 8-70-126 to 8-70-140.8 and were not services covered pursuant to section 8-76-107 at any time during the one-year period ending December 31, 1975, and:

(A) Which are agricultural labor as defined in section 8-70-103 or domestic service as defined in section 8-70-121; or

(B) Which are services performed by an employee of this state or a political subdivision thereof, as provided for in section 8-70-119, or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided for in section 8-70-103 (15).

(II) "Previously uncovered services" shall not apply to services to the extent that assistance under Title II of the "Emergency Jobs and Unemployment Assistance Act of 1974" was paid on the basis of such services.

Source: L. 90: Entire section added, p. 599, § 3, effective April 3. **L. 96:** IP(1)(d)(I) amended, p. 381, § 3, effective April 17. **L. 2006:** (1)(b)(I) and IP(1)(d)(I) amended, p. 1517, § 87, effective June 1. **L. 2016:** (1)(b)(I) repealed, (SB 16-189), ch. 210, p. 755, § 10, effective June 6.

ANNOTATION

Annotator's note. Since the substantive provisions of this section are identical to former § 8-70-103 (22), relevant cases construing that provision have been included under this section.

Definition of "services". Consulting agreement that required claimant to make himself available if needed was a contract for "services" regardless of whether claimant actually performed any work, hence payments to claimant under the contract were wages as defined in this section. *Magin v. Division of Emp.*, 899 P.2d 369 (Colo. App. 1995).

Conclusion that employer's payments were "for" personal services claimant provided, and therefore constituted "wages", is not erroneous. The undisputed evidence shows that claimant was required to demonstrate that he performed services for the union to receive payment and that all payments the union made to claimant directly corresponded to actual time he worked for the union. *Comm'n's Workers v.*

Indus. Claim Appeals office, 2012 COA 148, 292 P.3d 1127.

A separation allowance comes within the definition of the term "wages" as contained in this section, for the allowance, which is based upon length of service and weekly wage, is an obligation which the employer is legally bound to pay under the terms of the union contract. *Indus. Comm'n v. Sirokman*, 134 Colo. 481, 306 P.2d 669 (1957).

Receipt of employee benefits does not constitute wages for purposes of this section. *Denver Post, Inc. v. Dept. of Labor & Emp.*, 199 Colo. 466, 610 P.2d 1075 (1980).

The term "wages" shall not include the payments made to the claimant after being injured while discharging her duties because payments were not made as remuneration for personal services. *City and County of Denver v. Indus. Comm'n*, 707 P.2d 1008 (Colo. App. 1985).

8-70-142. Wages - remuneration not included as wages.

(1) "Wages" does not include:

(a) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents by an employer under a plan or system established by an employer which makes provision for his employees generally, or for his employees generally and their dependents, or for any class or classes of his employees and their dependents, on account of:

(I) Sickness or accident disability, but, in the case of payments made to an employee or any of his dependents, this paragraph (a) shall exclude from the term "wages" only payments which are received under the workers' compensation law; or

(II) Medical or hospitalization expenses in connection with sickness or accident disability; or

(III) Death;

(b) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to or on behalf of an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(c) Any payment made to or on behalf of an employee or his beneficiary:

(I) From or to a trust described in 26 U.S.C. sec. 401 (a) which is exempt from tax under 26 U.S.C. sec. 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(II) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in 26 U.S.C. sec. 405 (a); or

(III) Under a simplified employee pension if, at the time of payment, it is reasonable to believe that the employee will be entitled to a deduction for such payment under 26 U.S.C. sec. 219 (b)(2); or

(IV) Under or to an annuity contract described in 26 U.S.C. sec. 403 (b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise); or

(V) Under or to an exempt governmental deferred compensation plan, as defined in 26 U.S.C. sec. 3121 (v)(3); or

(VI) To supplement pension benefits under a plan or trust described in any of the provisions of this subsection (1) which are designed to take into account all or some portion of the increase in the cost of living, as determined by the United States secretary of labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3 (2)(B)(ii) of the federal "Employee Retirement Income Security Act of 1974", as amended; or

(VII) Under or to an annuity plan which, at the time of such payment, is a plan described in 26 U.S.C. sec. 403 (a); or

(VIII) Under a cafeteria plan (within the meaning of 26 U.S.C. sec. 125);

(d) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under 26 U.S.C. sec. 3101 or any payment required from any employee under articles 70 to 82 of this title if the remuneration is paid to the employee for domestic service in a private home or for agricultural labor;

(e) Remuneration paid to or on behalf of an employee if and to the extent that, at the time of the payment of such remuneration, it is reasonable to believe that a corresponding deduction is allowable under 26 U.S.C. sec. 217;

(f) Any payment or series of payments, except for any payment or series of payments which would have been paid if the employee's employment relationship had not been terminated, by an employer to an employee or any of his dependents which is paid:

(I) Upon or after the termination of an employee's employment relationship because of death or retirement for disability; and

(II) Under a plan established by the employer which makes provision for his employees generally or any class or classes of employees and their dependents;

(g) Remuneration for agricultural labor paid in any medium other than cash;

(h) Any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents under the provisions of 26 U.S.C. sec. 120 (relating to amounts received under qualified group legal services plans);

(i) Any payment made or benefit furnished to or for the benefit of an employee if, at the time of such payment or such furnishing, it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under 26 U.S.C. sec. 127 or 129;

(j) The value of any meals or lodging furnished by or on behalf of the employer if, at the time of such furnishing, it is reasonable to believe that the employee will be able to exclude such items from income under 26 U.S.C. sec. 119;

(k) Remuneration for service not in the course of the employer's trade or business paid to an employee in any medium other than cash;

(l) Any payment made by an employer to the survivors or the estate of a former employee after the calendar year in which such employee died;

(m) (I) Remuneration for duty in a branch of the United States military reserve or in the National Guard if such duty is served during a period of time that does not exceed seventy-two hours in duration from start of service to end of service during any one-month period;

(II) Remuneration for required annual training as part of duty pursuant to subparagraph (I) of this paragraph (m), for a period of time of approximately two weeks;

(n) Any payment made to or on behalf of an employee or such employee's beneficiary under an arrangement to which section 26 U.S.C. sec. 408 (p) applies, other than any elective contributions under section 26 U.S.C. sec. 408 (p)(2)(A)(I);

(o) Any payment made to or for the benefit of an employee if, at the time of such payment, it is reasonable to believe that the employee will be able to exclude such payment from income pursuant to section 26 U.S.C. sec. 106 (b);

(p) The amount of any payment, including any amount paid by an employer into a fund to provide for any such payment, made to or on behalf of an employee under a plan or system established by an employer that makes provision for his or her employees generally, or for classes of his or her employees, for the purpose of supplementing unemployment benefits; except that this paragraph (p) shall not apply if the employee has the option to receive a lump-sum payment instead of periodically distributed, supplemental unemployment benefits.

Source: **L. 90:** Entire section added, p. 600, § 3, effective April 3. **L. 95:** (1)(m) added, p. 520, § 1, effective May 16. **L. 98:** (1)(n) and (1)(o) added, p. 70, § 6, effective March 23. **L. 2004:** (1)(p) added, p. 175, § 1, effective August 4.

Cross references: (1) For the "Employment Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. § 1001 et seq.

(2) For information on qualified bonds purchased under the provisions of 26 U.S.C. sec. 405 (a), as it existed prior to its repeal on July 18, 1984, see federal Pub.L. 98-369.

ANNOTATION

The division of unemployment insurance erred by requiring a claimant to report gross earnings rather than

wages as defined in subsection (1)(c)(VIII). Meyer v. Indus. Claim Appeals Office, 2016 COA 172, 409 P.3d 624.

8-70-143. Applicability of legislation.

Legislation which amends, repeals, or adds to the provisions of articles 70 to 82 of this title shall become applicable to unemployment compensation claims on the first day (Sunday) of the first calendar week subsequent to the effective date of such legislation unless a different applicability date is specifically provided for by the general assembly.

Source: **L. 90:** Entire section added, p. 602, § 3, effective April 3.

ARTICLE 71

Division of Unemployment Insurance

PART 1		8-71-104.	Head of division. (Repealed)
DIVISION OF UNEMPLOYMENT INSURANCE		8-71-105.	Unemployment compensation commission. (Repealed)
8-71-101.	Division of unemployment insurance created - director.	8-71-106.	State employment service. (Repealed)
8-71-102.	Powers, duties, and functions - acceptance of money.	PART 2 WORK FORCE INVESTMENT ACT	
8-71-103.	Organization of division - authority to issue bonds.	8-71-201 to 8-71-224.	(Repealed)

PART 1

DIVISION OF UNEMPLOYMENT INSURANCE

Cross references: For current provisions relating to the division of employment and training, see part 1 of article 83 of this title 8.

8-71-101. Division of unemployment insurance created - director.

There is hereby created a division of unemployment insurance within the department of labor and employment, the head of which is the director of the division.

Source: L. 36, 3rd Ex. Sess.: p. 34, § 10. CSA: C. 167A, § 10. L. 39: p. 573, § 7. L. 41: p. 784, § 10. CRS 53: § 82-2-1. L. 55: p. 529, § 2. C.R.S. 1963: § 82-2-1. L. 68: p. 117, § 106. L. 76: Entire section amended, p. 336, § 3, effective October 1. L. 2012: Entire section amended, (HB 12-1120), ch. 27, p. 78, § 3, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012,

by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-71-102. Powers, duties, and functions - acceptance of money.

(1) The functions of the division comprise all administrative functions of the state in relation to the administration of articles 70 to 82 of this title 8. The division and the office of director of the division are **type 2** entities, as defined in section 24-1-105, and exercise the powers and perform the duties and functions prescribed under articles 70 to 82 of this title 8 under the direction and supervision of the executive director of the department of labor and employment. Any vacancy in the office of director of the division is filled in the manner provided by law.

(2) The division may accept and expend moneys from gifts, grants, donations, and other nongovernmental contributions for the purposes for which the division is authorized.

(3) The division shall contribute education and workforce data beginning in the 2025-26 state fiscal year, as necessary, to the Colorado statewide longitudinal data system consistent with the governance practices established by the Colorado statewide longitudinal data system governing board pursuant to section 24-37.5-125 (4).

Source: **L. 36, 3rd Ex. Sess.:** p. 34, § 10. **L. 37:** p. 1264, § 8. **CSA:** C. 167A, § 10. **L. 39:** p. 573, § 7. **L. 41:** p. 784, § 10. **CRS 53:** § 82-2-2. **C.R.S. 1963:** § 82-2-2. **L. 83:** Entire section amended, p. 403, § 2, effective May 25. **L. 2008:** Entire section amended, p. 1762, § 1, effective June 2. **L. 2012:** Entire section amended, (HB 12-1120), ch. 27, p. 78, § 4, effective June 1. **L. 2022:** (1) amended, (SB 22-162), ch. 469, p. 3385, § 92, effective August 10. **L. 2024:** (3) added, (HB 24-1364), ch. 238, p. 1560, § 8, effective May 23.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

8-71-103. Organization of division - authority to issue bonds.

(1) (Deleted by amendment, L. 2012.)

(2) (a) The division constitutes an enterprise for purposes of section 20 of article X of the state constitution, as long as the division retains authority to issue revenue bonds and the division receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), C.R.S., from all Colorado state and local governments combined. For as long as it constitutes an enterprise pursuant to this section, the division is not subject to section 20 of article X of the state constitution.

(b) (I) Except as provided in subsection (2)(b)(II) of this section, the enterprise established pursuant to this subsection (2) has all the powers and duties authorized by articles 70 to 82 of this title 8 pertaining to unemployment insurance and unemployment compensation. The unemployment compensation fund, created in section 8-77-101, and the unemployment insurance program support fund, created in section 8-77-109 (2)(a.9)(II)(A), constitute part of the enterprise established pursuant to this subsection (2).

(II) The employment support fund established in section 8-77-109 (1) shall not be included in or administered by the enterprise established pursuant to this subsection (2).

(c) Nothing in this subsection (2) limits or restricts the authority of the division to expend its revenues consistent with the provisions of articles 70 to 82 of this title.

(d) (I) Upon receiving the certifications specified in subsections (2)(d)(III) and (2)(d)(IV) of this section, the division may issue revenue bonds for the same purposes and on the same terms, and levy and apply the proceeds of bond assessments for the same purposes and in the same manner, as the Colorado housing and finance authority may issue bonds and may levy and apply the proceeds of bond assessments under section 29-4-710.7, substituting references to the division for references to the authority under that section. The state treasurer may advise the division in accordance with section 24-36-121. Bond assessments levied by the division may be used to pay revenue bonds issued by the division under this subsection (2)(d) or revenue bonds issued by the Colorado housing and finance authority under section 29-4-710.7.

(II) Any bonds issued pursuant to this subsection (2)(d) must be executed and delivered by the director of the division and may be in the form, may be sold, and may have the same terms as provided in section 43-4-807 (1)(b) and (1)(c); may contain the provisions permitted by section 43-4-807 (1)(d); shall be legal investments for the entities described in, and subject to the terms set forth in, section 43-4-807 (3); and shall be exempt from taxation and assessments in the state as provided in section 43-4-807 (4). The division may invest or deposit any proceeds and interest from the sale of such bonds as provided in section 43-4-807 (2). The division has the power to enter into all other contracts or agreements, which contracts and agreements are not subject to the "Procurement Code", articles 101 to 112 of title 24, that are necessary or incidental to the

exercise of its powers and duties under this subsection (2)(d), including the power to engage the services of consultants, financial advisors, underwriters, bond insurers, letter of credit banks, rating agencies, and agents and other persons whose services may be required or deemed advantageous by the division, and the power to enter into interest rate exchange agreements for bonds that have been issued in accordance with this subsection (2)(d). The amount of outstanding liability for bonds issued pursuant to this subsection (2)(d) or section 29-4-710.7 is not taken into account for purposes of rate setting under article 76 of this title 8. The amount of outstanding liability for bonds issued pursuant to this subsection (2)(d) and financial obligations under section 24-36-121 is not taken into account for purposes of rate setting under article 76 of this title 8.

(III) The division may not issue its bonds pursuant to this paragraph (d) until the monthly balance in the unemployment compensation fund is equal to or less than nine-tenths of one percent of the total wages reported by ratable employers for the calendar year, or for the most recent available four consecutive quarters prior to the last computation date, and the governor, the state treasurer, and the executive director of the department of labor and employment have each certified in writing to the division:

(A) That other funding alternatives to the issuance of bonds by the division under this paragraph (d) have been considered and that the issuance of such bonds is the most cost-effective means for the division to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state pursuant to 42 U.S.C. sec. 1321;

(B) The amount of money required to maintain adequate balances in the unemployment compensation fund or to repay moneys advanced to the state pursuant to 42 U.S.C. sec. 1321, or both; and

(C) The amount of bonds to be issued.

(IV) In addition to the written certifications specified in subparagraph (III) of this paragraph (d), the executive director of the department of labor and employment shall certify in writing that the issuance of bonds as authorized by law would not result in decertification of Colorado's unemployment insurance program, impact any cap application, affect the receipt of emergency unemployment compensation funds, create an ineligibility for receipt of federal funds, or result in other penalties or sanctions under the federal "Social Security Act", as amended, or the "Federal Unemployment Tax Act", as amended, 26 U.S.C. sec. 3301 et seq.

Source: L. 36, 3rd Ex. Sess.: p. 34, § 10. L. 37: p. 1264, § 8. CSA: C. 167A, § 10. L. 39: p. 573, § 7. L. 41: p. 784, § 10. L. 43: p. 607, § 7. CRS 53: § 82-2-3. C.R.S. 1963: § 82-2-3. L. 86: Entire section amended, p. 487, § 82, effective July 1. L. 2009: Entire section amended, (HB 09-1363), ch. 363, p. 1876, § 1, effective July 1. L. 2012: Entire section amended, (HB 12-1120),

ch. 27, p. 78, § 5, effective June 1. **L. 2012, 1st Ex. Sess.:** (2)(b)(I) and (2)(d) amended, (HB 12S-1002), ch. 2, p. 2426, § 4, effective June 1. **L. 2022:** (2)(d)(I) and (2)(d)(II) amended, (SB 22-234), ch. 224, p. 1612, § 1, effective May 25. **L. 2025:** (2)(b)(I) amended, (SB 25-242), ch. 145, p. 545, § 2, effective April 28.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-71-104. Head of division. (Repealed)

Source: **L. 36, 3rd Ex. Sess.:** p. 34, § 10. **L. 37:** p. 1264, § 8. **CSA:** C. 167A, § 10. **L. 39:** p. 573, § 7. **L. 41:** p. 784, § 10. **CRS 53:** § 82-2-4. **C.R.S. 1963:** § 82-2-4. **L. 76:** Entire section amended, p. 336, § 4, effective October 1. **L. 86:** Entire section amended, p. 488, § 83, effective July 1. **L. 2012:** Entire section repealed, (HB 12-1120), ch. 27, p. 104, § 8, effective June 1.

Editor's note: The effective date for the repeal of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-71-105. Unemployment compensation commission. (Repealed)

Source: **L. 36, 3rd Ex. Sess.:** p. 34, § 10. **L. 37:** p. 1264, § 8. **CSA:** C. 167A, § 10. **L. 39:** p. 573, § 7. **L. 41:** p. 784, § 10. **CRS 53:** § 82-2-5. **C.R.S. 1963:** § 82-2-5. **L. 86:** Entire section repealed, p. 502, § 125, effective July 1.

8-71-106. State employment service. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 41, § 12. L. 37: p. 1268, § 10. CSA: C. 167A, § 12. L. 39: p. 576, § 9. L. 41: p. 791, § 12. L. 51: p. 818, § 11. CRS 53: § 82-2-6. C.R.S. 1963: § 82-2-6. L. 91: Entire section amended, p. 1283, § 1, effective June 8. L. 2012: Entire section repealed, (HB 12-1120), ch. 27, p. 103, § 7, effective June 1.

Editor's note: The effective date for the repeal of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

PART 2

WORK FORCE INVESTMENT ACT

8-71-201 to 8-71-224. (Repealed)

Source: L. 2012: Entire part repealed, (HB 12-1120), ch. 27, p. 103, § 7, effective June 1.

Editor's note: (1) The effective date for the repeal of this part 2 by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

(2) This part 2 was added in 2000. For amendments to this part 2 prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This part 2 was relocated to part 1 of article 83 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For current provisions relating to workforce investment, see part 2 of article 83 of this title 8.

ARTICLE 72

Administration of Division

-1319-

8-72-101.	Duties and powers of division.		individuals with outstanding felony arrest warrants.
8-72-102.	Rules.		
8-72-103.	Publications.	8-72-112.	Division - reporting - veterans programs.
8-72-104.	Personnel.	8-72-113.	Annual report - federal stimulus moneys to expand unemployment benefits - repeal. (Repealed)
8-72-105.	Advisory council - sunset review. (Repealed)		
8-72-106.	Employment stabilization.		
8-72-107.	Records and reports - fee - violation - penalty.	8-72-114.	Employee misclassification - investigations - enforcement - advisory opinions - rules - employee misclassification advisory opinion fund - statewide study - report - definitions - legislative declaration.
8-72-108.	Oaths - witnesses - subpoenas.		
8-72-109.	State-federal cooperation.		
8-72-110.	Reciprocal interstate agreements - rules.		
8-72-111.	Release of location information concerning		

8-72-101. Duties and powers of division.

(1) It is the duty of the division to administer articles 70 to 82 of this title; and it has the power to employ such persons, make such expenditures, require such reports, make such investigations, set such reasonably necessary standards, create and require the use of such forms, adopt such administrative methods and procedures, and take such other action as it deems necessary or suitable to that end. The division shall determine its own organization and methods of procedure in accordance with the provisions of articles 70 to 82 of this title.

(2) Repealed.

(3) (a) Whenever any event occurs that may have a material effect on the adequacy of the fund, whether to increase costs or decrease revenues or otherwise, the division shall promptly analyze the potential effect and provide the analysis to the governor and the general assembly. For purposes of this subsection (3), "event" includes proposed federal or state legislation and administrative or judicial adjudications.

(b) Notwithstanding section 24-1-136 (11)(a)(I), the department of labor and employment shall update the general assembly annually on the status of the fund during the hearing conducted pursuant to section 2-7-203. By August 31, 2012, and by each August 31 thereafter, the division shall report to the joint budget committee, the economic and business development committee of the house of representatives, and the business, labor, and technology committee of the senate, or their successor committees, regarding the status of the fund. The report shall include at least the following from the prior calendar year:

- (I) Total fund revenues and expenditures;
- (II) The highest and lowest trust fund balance from the prior calendar year and a comparison of those balances to the following three solvency measures: The reserve ratio, the high-cost multiple, and the average high-cost multiple;
- (III) An analysis of the responsiveness of the funding mechanism to changes in economic conditions, both positive and negative;
- (IV) An analysis of any material concerns identified by the division in fund solvency, revenue, and expenditures;
- (V) An analysis of the impact of total premiums assessed to employers by employer size and employer experience;
- (VI) The total amount of overpayments paid to claimants and the total amount of overpayments recovered; and
- (VII) An analysis of measures taken by the division to reduce the total number and amount of overpayments and fraudulent payments.

(4) Repealed.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. CSA: C. 167A, § 11. L. 41: p. 785, § 11. L. 51: p. 814, § 9. CRS 53: § 82-3-1. C.R.S. 1963: § 82-3-1. L. 64: p. 149, § 86. L. 76: (2) amended, p. 336, § 5, effective October 1. L. 81: (1) amended, p. 509, § 1, effective July 1; (2) amended, p. 491, § 3, effective July 1. L. 83: (2) amended, p. 825, § 4, effective July 1. L. 84: (1) amended, p. 316, § 4, effective July 1. L. 89: (3) added, p. 424, § 2, effective July 1. L. 96: (2) repealed, p. 1228, § 46, effective August 7. L. 2011: (3) amended, (HB 11-1288), ch. 212, p. 915, § 2, effective July 1. L. 2017: IP(3)(b) amended, (HB 17-1272), ch. 181, p. 663, § 1, effective August 9. L. 2021: (4) added, (SB 21-239), ch. 266, p. 1548, § 3, effective June 18.

Editor's note: Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2022. (See L. 2021, p. 1548.)

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

8-72-102. Rules.

(1) The director of the division has the power to adopt, amend, or rescind, in accordance with section 24-4-103, C.R.S., reasonable and necessary rules relating to the administration of the "Colorado Employment Security Act" and governing hearings and proceedings under such act.

(2) The director shall adopt rules establishing a procedure for an individual or employer filing a petition for review pursuant to section 8-74-106 (1)(a) or (1)(b) or an appeal pursuant to section 8-73-107 (1)(c)(I)(A), 8-74-103 (1), 8-74-104 (1), 8-76-113 (1) or (2), or 8-81-101 (4)(c), or an interested party presenting additional information pursuant to section 8-74-102 (1), to contest a determination by the director that the individual, employer, or interested party failed to comply with a deadline set forth in the applicable section by providing proof that the petition for review, appeal, or additional information was timely mailed.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. CSA: C. 167A, § 11. L. 41: p. 785, § 11. CRS 53: § 82-3-2. C.R.S. 1963: § 82-3-2. L. 81: Entire section R&RE, p. 509, § 3, effective July 1. L. 86: Entire section amended, p. 488, § 84, effective July 1. L. 2007: Entire section amended, p. 802, § 1, effective August 3.

Cross references: For the "Colorado Employment Security Act", see articles 70 to 82 of this title 8.

8-72-103. Publications.

The director of the division shall determine what information should be made public in order to carry out the provisions of articles 70 to 82 of this title. Materials of the division circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. CSA: C. 167A, § 11. L. 41: p. 785, § 11. CRS 53: § 82-3-3. C.R.S. 1963: § 82-3-3. L. 64: p. 149, § 87. L. 76: Entire section amended, p. 337, § 6, effective October 1. L. 83: Entire section amended, p. 826, § 5, effective July 1.

8-72-104. Personnel.

Subject to other provisions of articles 70 to 82 of this title and the state personnel system regulations, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The division may delegate to any such person so appointed such power as it deems reasonable and proper for the effective administration of articles 70 to 82 of this title. In its discretion, the division may bond any person handling moneys or signing checks under articles 70 to 82 of this title.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. CSA: C. 167A, § 11. L. 41: p. 785, § 11. CRS 53: § 82-3-4. C.R.S. 1963: § 82-3-4.

8-72-105. Advisory council - sunset review. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. CSA: C. 167A, § 11. L. 41: p. 785, § 11. L. 43: p. 607, § 8. CRS 53: § 82-3-5. C.R.S. 1963: § 82-3-5. L. 77: Entire section amended, p. 473, § 1, effective July 1. L. 86: Entire section amended, p. 409, § 7, effective March 26.

Editor's note: Subsection (2)(a) provided for the repeal of this section, effective July 1, 1990. (See L. 86, p. 409.)

8-72-106. Employment stabilization.

The division, with the advice and aid of such advisory councils as it may appoint and through its appropriate sections, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of

unemployed workers throughout the state in every way that may be feasible; and, to these ends, to carry on investigations and research studies, the results of which, if circulated in quantity outside the division, shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. CSA: C. 167A, § 11. L. 41: p. 785, § 11. CRS 53: § 82-3-6. C.R.S. 1963: § 82-3-6. L. 64: p. 149, § 88. L. 83: Entire section amended, p. 826, § 6, effective July 1.

8-72-107. Records and reports - fee - violation - penalty.

(1) Each employing unit shall keep true and accurate work records, containing such information as the division may prescribe. Such records shall be retained for a period of not less than five years and shall be open to inspection and be subject to being copied by the division or its authorized representatives at any reasonable time and as often as may be necessary. The division or any referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which it or the referee deems necessary for the effective administration of articles 70 to 82 of this title. Information thus obtained, or obtained from any individual pursuant to the administration of articles 70 to 82 of this title, except to the extent necessary for the proper presentation of a claim, or withholding tax or unemployment insurance account numbers if such numbers are obtained from the department of revenue pursuant to section 39-21-113, C.R.S., shall be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties, to an agent of a state or local child support enforcement agency pursuant to section 8-72-109 (9), or to an agent of the division designated as such in writing for the purpose of accomplishing certain of the division's functions) in any manner revealing the individual's or employing unit's identity. Any interested party or such party's authorized representative, in preparation for and prior to any hearing on a claim governed by articles 70 to 82 of this title, shall be entitled to examine and, upon the payment of a reasonable fee to the division, obtain a copy of any materials contained in such records to the extent necessary for proper presentation of the party's position at the hearing. Notwithstanding said provisions of this subsection (1), any applicant for work shall be entitled to examine and copy, or obtain a copy from the division upon payment of the costs of duplication, any letters of reference or other similar documents pertaining to the applicant that are in possession of the division. Any employee or member of the division or any referee who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) The division may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of articles 70 to 82 of this title. In connection with such request, the division may transmit any such report or return to the comptroller of the currency of the United States as provided in section 1606 (c) of the federal internal revenue code.

(3) Repealed.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. L. 37: p. 1265, § 9. CSA: C. 167A, § 11. L. 41: p. 785, § 11. CRS 53: § 82-3-7. C.R.S. 1963: § 82-3-7. L. 69: p. 668, § 2. L. 73: pp. 958, 963, §§ 2, 1. L. 76: (1) and (3) amended, p. 337, § 7, effective October 1. L. 77: (3) amended, p. 475, § 1, effective July 1. L. 81: (1) amended, p. 483, § 3, effective July 1; (2) amended, p. 491, § 4, effective July 1. L. 83: (2) amended, p. 2042, § 4, effective October 1. L. 84: (3) amended, p. 316, § 5, effective July 1. L. 86: (3) amended, p. 702, § 8, effective July 1. L. 91: (3) repealed, p. 1360, § 2, effective September 1. L. 97: (1) amended, p. 559, § 1, effective July 1. L. 2009: (1) amended, (HB 09-1363), ch. 363, p. 1881, § 8, effective July 1.

ANNOTATION

Applied in *Nesbit v. Indus. Comm'n*, 43 Colo. App. 398, 607 P.2d 1024 (1979).

8-72-108. Oaths - witnesses - subpoenas.

(1) In the discharge of the duties imposed by articles 70 to 82 of this title, the division or its duly authorized representative shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of articles 70 to 82 of this title.

(2) In case of contempt or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contempt or refusal to obey is found or resides or transacts business, upon application by the division or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring him or her to appear before the division or its duly authorized representative to produce evidence if so ordered or give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who, without just cause, fails or refuses to attend and

testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records, if it is in his or her power so to do in obedience to a subpoena of the division or its duly authorized representative commits a petty offense. Each day such violation continues shall be deemed a separate offense.

(3) No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the division or its duly authorized representative or in obedience to the subpoena of the division or its duly authorized representative in any cause or proceeding before the division or its duly authorized representative on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that such individual so testifying is not exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. L. 37: p. 1265, § 9. CSA: C. 167A, § 11. L. 41: p. 785, § 11. CRS 53: § 82-3-8. C.R.S. 1963: § 82-3-8. L. 72: p. 562, § 30. L. 76: (2) amended, p. 338, § 8, effective October 1. L. 2021: (2) amended, (SB 21-271), ch. 462, p. 3142, § 95, effective March 1, 2022.

8-72-109. State-federal cooperation.

(1) (a) In the administration of articles 70 to 82 of this title, the division shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of articles 70 to 82 of this title, and shall take such action through the adoption of appropriate rules, regulations, administrative methods, and standards as may be necessary to secure to the state and its citizens all the advantages available under the provisions of the federal "Social Security Act", as amended, section 3302 of the "Federal Unemployment Tax Act", the "Wagner-Peyser Act", as amended, and the "Federal-State Extended Unemployment Compensation Act of 1970".

(b) In the administration of the provisions of article 75 of this title, which are enacted to conform with the requirements of the "Federal-State Extended Unemployment Compensation Act of 1970", the division shall take such action as may be necessary:

(I) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States department of labor; and

(II) To secure to this state the full reimbursement of the federal share of extended benefits paid under articles 70 to 82 of this title that are reimbursable under the federal act.

(2) The division shall comply with the regulations of the secretary of labor or his successor relating to the receipt or expenditure by this state of money granted under any of said acts and shall make such reports, in such form and containing such information as the secretary of labor may from time to time require, and shall comply with such provisions as the secretary of labor, from time to time, may find necessary to assure the correctness and verification of such reports. The division shall afford reasonable cooperation with every agency of the United States charged with the administration of any employment security law.

(3) The division is authorized to make such investigations, obtain and transmit such information, make available such services and facilities, and exercise such of the other powers provided in articles 70 to 82 of this title with respect to the administration of articles 70 to 82 of this title as it deems necessary or appropriate to facilitate the administration of any state or federal unemployment insurance or public employment service law and in like manner to accept and utilize information, services, and facilities made available to the state by the agency charged with the administration of any such other unemployment insurance or public employment service law.

(4) Upon request therefor the division shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's right to further benefits under articles 70 to 82 of this title.

(5) The division may make the state's records relating to the administration of articles 70 to 82 of this title available to the railroad retirement board and may furnish the railroad retirement board, at the expense of such board, such copies thereof as the railroad retirement board deems necessary for its purposes.

(6) (a) The division may afford reasonable cooperation with every agency of the United States charged with the administration of any law providing for payment of benefits arising out of unemployment. In so doing, the division may use its personnel and equipment and accept and use federal funds and make payments therefrom, but in so doing it is not required to neglect or to carry on with less efficiency its own program, and the state of Colorado and its employees shall be free from liability except in case of gross negligence or attempt to defraud the United States.

(b) The director of the division is authorized to enter into agreements with every agency of the United States charged with administration of income or wage verification for the purpose of exchanging information among agencies as a method of controlling the overpayment of unemployment benefits.

(7) The director of the division is authorized to enter into agreements with other departments and divisions of the state for the purpose of obtaining such information as he deems necessary for the proper administration of articles 70 to 82 of this title and providing for payment of the costs thereof.

(8) The director of the division is authorized to enter into agreements with other departments and divisions of the state for the purpose of establishing an income and eligibility system for the exchange of information among agencies administering federally assisted human service programs. Such system shall conform to all requirements and restrictions of section 1137 of the federal "Social Security Act", as amended.

(9) (a) Information obtained by a state or local child support enforcement agency pursuant to subsection (8) of this section may be used only for the purposes authorized by said subsection (8) and may not be disclosed by such agency to any person or entity for the purposes of establishing, modifying, or collecting child support obligations or locating individuals owing such obligations unless safeguards for the confidentiality of such information, consistent with section 303 (e)(1)(B) of the federal "Social Security Act", as amended, are established by agreement. Neither the division nor its employees shall be liable in civil action for providing information in accordance with subsection (8) of this section.

(b) The limitations on disclosure of information obtained pursuant to subsection (8) of this section set forth in paragraph (a) of this subsection (9) shall apply to any agent of a state or local child support enforcement agency specified in section 8-72-107 (1).

(10) On a quarterly basis, the director of the division shall provide wage and claim information contained in division records to the secretary of the federal department of health and human services for purposes of the national directory of new hires pursuant to all requirements and restrictions set forth in section 453 of the federal "Social Security Act", as amended.

Source: L. 36, 3rd Ex. Sess.: p. 35, § 11. CSA: C. 167A, § 11. L. 39: p. 574, § 8. L. 41: p. 785, § 11. L. 45: p. 713, § 5. L. 51: p. 815, § 10. CRS 53: § 82-3-9. C.R.S. 1963: § 82-3-9. L. 71: p. 931, § 6. L. 81: (7) added, p. 483, § 4, effective July 1. L. 85: (8) added, p. 361, § 5, effective April 4. L. 97: (9) added, p. 560, § 2, effective July 1; (10) added, p. 1263, § 3, effective July 1. L. 2011: (6) amended, (HB 11-1288), ch. 212, p. 915, § 3, effective July 1.

Cross references: (1) For the legislative declaration contained in the 1997 act enacting subsection (10), see section 1 of chapter 236, Session Laws of Colorado 1997.

(2) For the "Federal Unemployment Tax Act", see 26 U.S.C. § 3301 et seq.; for the "Wagner-Peyser Act", see 29 U.S.C. § 49 et seq.; for the "Federal-State Extended Unemployment Compensation Act of 1970", see Pub.L. 91-373, codified at 26 U.S.C. § 3304.

(3) For the "Social Security Act" generally, see 42 U.S.C. § 301 et seq.; for section 1137 of the act, see 42 U.S.C. § 1320b-7; for section 303 of the act, see 42 U.S.C. § 503; for section 453 of the act, see 42 U.S.C. § 653.

8-72-110. Reciprocal interstate agreements - rules.

(1) The division is authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states, or of the federal government, or both, whereby potential rights to benefits under articles 70 to 82 of this title may constitute the basis for payment of benefits by another state or by the federal government, and potential rights to benefits accumulated under the law of another state or of the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under such provisions of articles 70 to 82 of this title, or under the provisions of the law of such state or of the federal government, or under such combination of the provisions of both laws as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service, subject to the law of another state or of the federal government, and provisions for reimbursement from the fund for such benefits paid by another state or by the federal government on the basis of wages and service, subject to articles 70 to 82 of this title. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of articles 70 to 82 of this title.

(2) (a) Repealed.

(b) (I) The division may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby wages for insured work paid in another state or by the federal government are deemed to be wages for insured work under articles 70 to 82 of this title; and wages for insured work paid under articles 70 to 82 of this title are deemed to be wages on the basis of which unemployment insurance is payable under a corresponding law of another state or of the federal government. No such arrangement may be entered into unless it contains provision for reimbursement to the fund for the benefits paid under articles 70 to 82 of this title on the basis of the wages and provision for reimbursement from the fund for the benefits paid under such other law on the basis of wages for insured work as the division finds will be fair and reasonable to all affected interests. Reimbursements paid from the fund pursuant to this section are deemed to be benefits for the purposes of articles 70 to 82 of this title; except that no charge may be made to a premium-paying employer's account under sections 8-76-101 to 8-76-104. With the exception of benefit

overpayments, the noncharging shall not apply to reimbursing employer accounts that will be charged in accordance with section 8-76-102.5 in the same amount and to the same extent as if the reimbursement to another state had been benefits based solely on wages paid by an employer covered by articles 70 to 82 of this title.

(II) This paragraph (b) is effective December 31, 2012.

(3) (a) The division is authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for employing units under circumstances not specifically provided for in sections 8-70-126 to 8-70-140.7 or under similar provisions in the unemployment compensation laws of such other states are deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights and benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms that the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund. An individual applying for unemployment insurance benefits through an interstate agreement authorized by this section who is not a Colorado resident and is unable to produce a Colorado driver's license or Colorado identification card shall produce one of the other documents listed in subsection (3)(b) of this section, a valid driver's license or state identification card issued in another state, or, in the case of individuals residing in Canada, a valid Canadian identification card or valid Canadian driver's license, and execute an affidavit stating that the individual is a United States citizen, a legal permanent resident, or otherwise lawfully present in the United States pursuant to federal law.

(b) The following documents shall satisfy the production requirement described in subsection (3)(a) of this section:

- (I) A United States military card or a military dependent's identification card;
- (II) A United States Coast Guard Merchant Mariner card;
- (III) A Native American tribal document; or
- (IV) Any other document verifying the individual's identity, as determined by the division.

(4) The division is further authorized to enter into arrangements with the appropriate agencies of other states or of the federal government for the determination, adjustment, collection, and assessment of premiums by employers with respect to employment within and without this state.

(5) For the purposes of establishing and maintaining free public employment offices, the division is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an employment security law, with

any political subdivision of this state, or with any private, nonprofit organization. As a part of any such agreement, the division may accept moneys, services, or quarters as a contribution to the employment security administration fund.

Source: **L. 37:** p. 1265, § 9. **CSA:** C. 167A, § 11. **L. 39:** p. 574, § 8. **L. 41:** p. 785, § 11. **L. 51:** p. 815, § 10. **CRS 53:** § 82-3-10. **L. 54:** p. 138, § 1. **C.R.S. 1963:** § 82-3-10. **L. 69:** pp. 669, 681, §§ 3, 1. **L. 73:** p. 958, § 3. **L. 79:** (5) amended, p. 345, § 4, effective September 30. **L. 81:** (2) amended, p. 483, § 5, effective July 1; (4) amended, p. 492, § 5, effective July 1. **L. 90:** (3) amended, p. 602, § 4, effective April 3; (2) amended, p. 607, § 3, effective April 16. **L. 96:** (3) amended, p. 381, § 4, effective April 17. **L. 2007:** (3) amended, p. 635, § 1, effective August 3. **L. 2009:** (2) and (4) amended, (HB 09-1363), ch. 363, p. 1882, § 9, effective July 1. **L. 2011:** (2) amended, (HB 11-1288), ch. 212, p. 926, § 10, effective July 1. **L. 2012, 1st Ex. Sess.:** (2)(a)(II) amended, (HB 12S-1002), ch. 2, p. 2427, § 5, effective June 1. **L. 2021:** (3) amended, (SB 21-199), ch. 351, p. 2284, § 9, effective July 1, 2022.

Editor's note: Subsection (2)(a)(II) provided for the repeal of subsection (2)(a), effective December 31, 2012. (See L. 2012, p. 2427.)

8-72-111. Release of location information concerning individuals with outstanding felony arrest warrants.

(1) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the division shall provide the bureau with information concerning the location of any person whose name appears in the division's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the division. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The division and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the division nor its employees or agents shall be liable in civil action for providing information in accordance with the provisions of this subsection (1).

(2) As used in subsection (1) of this section, "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

Source: L. 95: Entire section added, p. 1123, § 2, effective July 1.

8-72-112. Division - reporting - veterans programs.

The division, by September 30, 2002, and on or before September 30 each year thereafter, shall provide sufficient information to enable the Colorado board of veterans affairs to complete the report required by section 28-5-703 (3), C.R.S.

Source: L. 2002: Entire section added, p. 355, § 6, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 121, Session Laws of Colorado 2002.

8-72-113. Annual report - federal stimulus moneys to expand unemployment benefits - repeal. (Repealed)

Source: L. 2009: Entire section added, (SB 09-247), ch. 405, p. 2234, § 7, effective July 1.

Editor's note: Subsection (2)(a) provided for the repeal of this section, effective December 1, 2011. On November 14, 2023, the revisor of statutes received the notice referred to in subsection (2)(b) related to the repeal. For more information about the repeal and notice, see SB 09-247. (L. 2009, p. 2234.)

8-72-114. Employee misclassification - investigations - enforcement - advisory opinions - rules - employee misclassification advisory opinion fund - statewide study - report - definitions - legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) Misclassification of employees as independent contractors in violation of the "Colorado Employment Security Act" and, in particular, the provisions of article 70 of this title defining the employment relationship, may pose a significant problem in this state and leads to underpayment

of employment taxes and premiums that employers are obligated to pay the state for covered employment;

(b) Businesses that misclassify employees gain an unfair competitive advantage over businesses that properly classify employees and pay appropriate taxes and premiums to the state;

(c) When employees are misclassified, the protections available to properly classified employees against economic insecurity are unavailable to those misclassified employees, and the stream of revenue that should be paid to the state to provide protections to misclassified employees is not available.

(2) As used in this section:

(a) "Act" means the "Colorado Employment Security Act".

(b) "Complainant" means the person who files a complaint with the division pursuant to this section.

(c) "Director" means the director of the division.

(d) Repealed.

(e) "Executive director" means the executive director of the department of labor and employment.

(f) "Misclassification of employees" means erroneously classifying a person as an independent contractor, free from control and direction of the employer in the performance of service for the employer, when the employer cannot show an exception, pursuant to section 8-70-103 (11), to the general rule that service being performed for the employer is presumed to be employment for purposes of the act.

(g) "Respondent" means the person against whom a complaint is filed pursuant to this section.

(3) (a) The division shall be responsible for accepting and investigating complaints regarding misclassification of employees and enforcing the requirements of the act regarding classification of employees and payment of premiums.

(b) Any person may file a written complaint with the division alleging that a person engaged in employment is being misclassified by an employer as an independent contractor. The complainant shall specify in the complaint the facts showing that the person classified as an independent contractor is engaged in employment, as defined in article 70 of this title.

(c) The director may investigate a complaint filed pursuant to this subsection (3) and shall focus on the investigation of the most egregious complaints or those complaints alleging

intentional acts of misclassification of employees undertaken in order to gain a competitive advantage or to avoid the payment of premiums.

(d) No later than thirty days after receipt of a complaint, the director shall determine whether or not an investigation is warranted. If the director determines that an investigation is warranted, the director shall notify the complainant and respondent that an investigation will be conducted and shall conduct the investigation in accordance with the act and the rules adopted pursuant to the act. The complainant and respondent shall cooperate and provide information as necessary to facilitate the investigation.

(e) (I) Upon conclusion of an investigation, the director shall issue a written order either dismissing the complaint or finding that the employer has engaged in the misclassification of employees and has failed to pay appropriate premiums for covered employment as defined in article 70 of this title.

(II) If the director finds that an employer has engaged in the misclassification of employees, the director shall order the employer to pay back premiums owed and interest.

(III) Upon a finding that the employer, with willful disregard of the law, misclassified employees, the director may:

(A) Impose a fine of up to five thousand dollars per misclassified employee for the first misclassification with willful disregard, and for a second or subsequent misclassification with willful disregard, a fine of up to twenty-five thousand dollars per misclassified employee; and

(B) Upon a second or subsequent misclassification with willful disregard, issue an order prohibiting the employer from contracting with, or receiving any funds for the performance of contracts from, the state for up to two years after the date of the director's order. Upon the issuance of such order, the director shall notify state departments and agencies as necessary to ensure enforcement of the order.

(IV) Fines received by the division pursuant to subsection (3)(e)(III) of this section or by the department of law pursuant to subsection (9) of this section shall be transferred to the department of labor and employment and credited to the unemployment revenue fund created in section 8-77-106.

(f) The director shall provide a copy of the written order to the respondent. Those portions of the written order that are not confidential under the act shall be a public record.

(g) An employer shall have the right to appeal the director's order in accordance with section 8-76-113.

(4) (a) An employer may request a written advisory opinion from the director concerning whether the employer should classify the individual as an employee for purposes of complying

with the act. The employer shall provide the director with information necessary for the director to issue an advisory opinion.

(b) Upon receipt of a request and pertinent information from an employer, the director shall issue an advisory opinion to the employer, indicating whether the employer should classify the individual as an employee in order to comply with the act. An opinion issued pursuant to this subsection (4) is only advisory, based on the information provided by the employer and the director's understanding of the circumstances at the time issued, and is not binding on the division, the employer, or any other state or local governmental entity.

(c) The director shall promulgate rules in accordance with article 4 of title 24, C.R.S., establishing the process for issuing an advisory opinion and the fees to be charged the requesting employer to cover the director's and division's costs in providing the advisory opinion. Any fees charged pursuant to this subsection (4) for the costs associated with issuing an advisory opinion shall be deposited in the employee misclassification advisory opinion fund, which fund is hereby created. Moneys in the employee misclassification advisory opinion fund shall be subject to annual appropriation by the general assembly for the purposes of this subsection (4). Interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(5) The director, by all means reasonable and within budgetary constraints, shall publicize the complaint process established in this section and its availability to those who have discovered misclassification of employees. The director shall develop and make available free of charge to employers a notice explaining the rights of employees to be properly classified and the availability of a complaint process pursuant to this section. Employers shall post the notice conspicuously in the workplace or otherwise where it can be seen as employees come or go to their places of work.

(6) to (8) Repealed.

(9) (a) Subject to the approval of the executive director, the director may enter into an interagency agreement with the department of law for assistance in enforcing this section. The director is authorized to transfer to the department of law from the unemployment revenue fund created in section 8-77-106 such money as is necessary to pay for reasonable costs associated with enforcement actions by the department of law.

(b) Regardless of whether the director has entered into an interagency agreement with the department of law pursuant to subsection (9)(a) of this section, at least once every twelve months, beginning January 1, 2024, the director shall share with the worker and employee protection unit in the department of law created in section 24-31-1302 any orders issued pursuant to this section finding that any employers have engaged in the misclassification of employees.

Source: L. 2009: Entire section added, (HB 09-1310), ch. 406, p. 2238, § 1, effective June 2. **L. 2010:** (1)(a), (1)(b), (3)(a), (3)(c), (3)(e)(I), (3)(e)(II), and (7)(c) amended, (HB 10-1422), ch. 419, p. 2065, § 13, effective August 11. **L. 2012:** (2)(c) amended and (2)(d) repealed, (HB 12-1120), ch. 27, p. 105, § 13, effective June 1. **L. 2020:** (3)(e)(IV) and (9) added, (SB 20-170), ch. 297, p. 1479, § 4, effective January 1, 2021. **L. 2022:** (9) amended, (SB 22-161), ch. 370, p. 2637, § 12, effective August 10.

Editor's note: (1) Subsection (8) provided for the repeal of subsections (6) to (8), effective July 1, 2012. (See L. 2009, p. 2238.)

(2) The effective date for amendments to subsection (2)(c) and the repeal of subsection (2)(d) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

ARTICLE 73

Benefits - Eligibility - Disqualification

8-73-101.	Payment of benefits.	8-73-108.	Benefit awards - definitions.
8-73-102.	Weekly benefit amount for total unemployment - definitions.	8-73-109.	Strikes or other labor disputes - definitions.
8-73-103.	Benefits for partial unemployment.	8-73-110.	Other remuneration - severance pay - definitions.
8-73-104.	Duration of benefits.	8-73-111.	Compensation from other state.
8-73-105.	Part-time workers.	8-73-112.	Benefits payable after receiving workers' compensation benefits.
8-73-105.3.	Temporary employees.	8-73-113.	Benefits payable during approved training - definition.
8-73-105.5.	Employment by temporary help contracting firm.		
8-73-106.	Seasonal industry.		
8-73-107.	Eligibility conditions - penalty.		

8-73-114. Enhanced unemployment insurance compensation benefits - eligibility - approved training programs - amount of benefits - outreach - repeal. (Repealed) 8-73-115. Dependent allowance - study - repeal. (Repealed)	8-73-116. Benefit recovery fund - recovery benefits - eligible individuals - third-party administrator - definitions - rules - access to personal information or tax data to administer fund - confidentiality requirements.

8-73-101. Payment of benefits.

(1) All benefits provided in this article shall be payable from the fund. All benefits shall be paid through employment offices or such other agencies as the director of the division, by general rule, may designate. Notwithstanding any other provision of the law to the contrary, any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(2) An individual's eligibility and benefit amounts shall be determined weekly. Unemployment insurance benefit checks shall be issued once every two weeks; except that the division, when it determines it to be necessary for proper administration of articles 70 to 82 of this title, including the effecting of administrative economies, may issue benefit checks on a weekly basis. Under no circumstance shall benefit checks be issued less frequently than once every two weeks.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. L. 37: p. 1250, § 1. CSA: C. 167A, § 3. L. 39: p. 568, § 1. L. 41: p. 762, § 3. CRS 53: § 82-4-1. C.R.S. 1963: § 82-4-1. L. 83: Entire section amended, p. 435, § 2, effective October 1. L. 84: Entire section amended, p. 321, § 1, effective March 26. L. 86: (1) amended, p. 488, § 85, effective July 1. L. 93: (2) amended, p. 1771, § 23, effective June 6. L. 2006: (2) amended, p. 141, § 5, effective August 7.

ANNOTATION

Annotator's note. The case included in the annotations to this section which refers to the industrial commission was decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission

and transferred its powers, duties, and functions under this section to the director of the division.

When two sections of this article are pertinent, the commission has wide latitude in determining which section it will apply.

Colo. State Judicial Dept. v. Indus. Comm'n,
630 P.2d 102 (Colo. App. 1981).

8-73-102. Weekly benefit amount for total unemployment - definitions.

(1) (a) Except as otherwise provided in section 8-73-104 or subsection (2) of this section, each eligible individual who is totally unemployed in any week shall be paid, with respect to such week, benefits at the rate of sixty percent of one-twenty-sixth of the wages paid for insured work during the two consecutive quarters of the individual's base period in which such total wages were highest, computed to the next lower multiple of one dollar but not more than one-half of the average weekly earnings in all covered industries in Colorado according to the records of the division, as computed by the division in June for the ensuing twelve months beginning July 1, on the basis of the most recent available figures, and not less than twenty-five dollars.

(b) (I) If an individual does not have sufficient qualifying weeks or wages in the base period to qualify for unemployment insurance benefits, the individual shall have the option of designating that the base period shall be the alternative base period.

(II) If information regarding weeks and wages for the calendar quarter immediately preceding the first day of the benefit year is not available from the regular quarterly reports of wage information, and the division is not able to obtain the information using other means pursuant to state or federal law, the division may base the determination of eligibility for unemployment insurance benefits on the affidavit of the unemployed individual with respect to weeks and wages for that calendar quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. The division shall verify the employee's wage information. A determination of unemployment insurance benefits based on an alternative base period shall be adjusted when the quarterly report of wage information from the employer is received, if that information causes a change in the determination.

(2) An individual who is entitled to the maximum weekly benefit amount as computed in subsection (1) of this section shall receive a weekly benefit amount of fifty percent of one fifty-second of his total wages paid for insured work during his base period, computed to the next lower multiple of one dollar, but not to exceed fifty-five percent of the average weekly earnings in all covered industries in Colorado; except that the maximum weekly benefit amount in effect on July 1, 1985, as computed pursuant to this subsection (2), shall remain in effect until such maximum weekly benefit amount is equal to or less than fifty-five percent of the average weekly earnings in all covered industries in Colorado. In no case shall an individual receive a weekly benefit amount computed in accordance with this subsection (2) unless it is greater than the weekly benefit amount yielded by computation in accordance with subsection (1) of this section.

(3) Benefit amounts determined under the provisions of this section shall apply only to those individuals whose benefit years begin subsequent to the effective date of each newly computed maximum benefit amount. No redetermination of benefit amounts already established shall be required by the computation of new maximum benefit amounts.

(4) (a) There shall be deducted from the weekly benefit amount that part of wages payable to an individual with respect to a week that is in excess of twenty-five percent of the weekly benefit amount, and the weekly benefit amount resulting shall be computed to the next lower multiple of one dollar.

(b) Repealed.

(5) (a) There shall be deducted from the weekly benefit amount child support intercept payments calculated under paragraphs (b) to (h) of this subsection (5).

(b) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations. If any such individual discloses that he owes child support obligations and is determined to be eligible for unemployment compensation, the division shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(c) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

(I) The amount specified by the individual to the division to be deducted and withheld under this subsection (5), if neither subparagraph (II) of this paragraph (c) nor subparagraph (III) of this paragraph (c) is applicable; or

(II) The amount, if any, determined pursuant to an agreement submitted to the division under section 454(20)(B)(i) of the "Social Security Act", as amended, by the state or local child support enforcement agency, unless subparagraph (III) of this paragraph (c) is applicable; or

(III) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the "Social Security Act", as amended, transmitted to the division.

(d) Any amount deducted and withheld under paragraph (c) of this subsection (5) shall be paid by the division to the appropriate state or local child support enforcement agency.

(e) Any amount deducted and withheld under paragraph (c) of this subsection (5) shall be treated as if it were paid to the individual as unemployment compensation and as if it were paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(f) For the purposes of this subsection (5), "unemployment compensation" means any compensation payable under articles 70 to 82 of this title, including amounts payable by the division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(g) This subsection (5) applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the division under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(h) As used in this subsection (5), "child support obligations" includes only those obligations which are being enforced pursuant to a plan described in section 454 of the "Social Security Act", as amended, which has been approved by the secretary of health and human services under part D of Title IV of the "Social Security Act".

(i) As used in this subsection (5), "state or local child support enforcement agency" means any agency of a state or a political subdivision operating pursuant to a plan described in paragraph (h) of this subsection (5).

(6) (a) There shall be deducted from the weekly benefit amount any uncollected overissuance of food stamp coupons calculated under paragraphs (b) to (f) of this subsection (6).

(b) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes an uncollected overissuance of food stamp coupons:

(I) The amount specified by the individual to the division to be deducted and withheld under this subsection (6);

(II) The amount, if any, determined pursuant to an agreement submitted to the division under section 13(c)(3)(A) of the federal "Food Stamp Act", as amended, by the state food stamp agency; or

(III) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to section 13(c)(3)(B) of the federal "Food Stamp Act", as amended.

(c) Any amount deducted and withheld under paragraph (b) of this subsection (6) shall be paid by the division to the appropriate state food stamp agency.

(d) Any amount deducted and withheld under paragraph (b) of this subsection (6) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and then paid by such individual to the state food stamp agency to which the uncollected overissuance of food stamp coupons is owed as repayment for the overissuance.

(e) This subsection (6) applies only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the

division under this section that are attributable to repayment of uncollected overissuances of food stamp coupons owed to the state food stamp agency.

(f) For the purposes of this subsection (6):

(I) "State food stamp agency" means any agency described in section 3(n)(1) of the federal "Food Stamp Act", as amended, that administers the food stamp program established under such federal act within this state.

(II) "Uncollected overissuance" has the meaning provided for the term in section 13(c)(1) of the federal "Food Stamp Act", as amended.

(III) "Unemployment compensation" has the meaning provided for the term in paragraph (f) of subsection (5) of this section.

(7) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(I) Unemployment compensation is subject to federal and state income tax;

(II) Requirements exist pertaining to estimated tax payments;

(III) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the rate specified in the federal internal revenue code;

(IV) The individual may elect to have Colorado state income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of four percent; and

(V) The individual shall be permitted to change a previously elected withholding status no more than one time during each "benefit year" as that term is defined by section 8-70-111 (1).

(b) Amounts deducted and withheld from unemployment compensation for income tax purposes shall remain in the unemployment compensation fund, created pursuant to section 8-77-101, until transferred to the federal or state taxing authority as a payment of income tax.

(c) The director of the division shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld under the provisions of this subsection (7) for income tax purposes only after amounts are deducted and withheld for any overpayments, child support obligations, food stamp overissuances, or any other amounts required to be deducted and withheld under articles 70 to 82 of this title.

(8) As used in this section:

(a) "Election judge" has the same meaning as in section 1-6-100.3 (1).

(b) "Wages" does not include payment made to an election judge for services; except that "wages" includes payment made to an election judge if the payment exceeds the maximum amount permissible pursuant to federal law.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. L. 37: p. 1250, § 1. CSA: C. 167A, § 3. L. 39: p. 568, § 1. L. 41: p. 762, § 3. L. 47: p. 885, § 1. L. 49: p. 720, § 1. L. 53: p. 628, §§ 1, 2. CRS 53: § 82-4-2. L. 57: p. 516, §§ 2, 3. L. 59: pp. 560, 564, §§ 1, 6. L. 63: pp. 666, 683, §§ 1, 11. C.R.S. 1963: § 82-4-2. L. 69: pp. 669, 682, §§ 4, 1. L. 73: p. 958, § 4. L. 79: (1) amended, p. 345, § 5, effective July 1; (2) amended, p. 345, § 5, effective September 30. L. 82: (5) added, p. 235, § 1, effective July 1. L. 83: (4) amended, p. 435, 2042, § 3, effective October 1; (1) and (2) amended, p. 2042, § 5, effective January 1, 1984. L. 85: (5)(c)(III) amended, p. 587, § 1, effective July 1. L. 86: (2) amended, p. 542, § 3, effective July 1. L. 87: (4) amended, p. 409, § 3, effective May 16. L. 94: (6) added, p. 2060, § 1, effective July 1. L. 96: (7) added, p. 381, § 5, effective January 1, 1997. L. 98: (4) amended, p. 88, § 1, effective March 23. L. 2009: (1) amended, (SB 09-247), ch. 405, p. 2228, § 2, effective July 1. L. 2020: (4) amended and (8) added, (SB 20-207), ch. 296, p. 1470, § 2, effective July 14. L. 2025: (8)(a) amended, (SB 25-275), ch. 377, p. 2028, § 6, effective August 6.

Editor's note: (1) Section 462 of the "Social Security Act", referenced in subsection (5)(c)(III), was repealed in 1996. For the current definition of "legal process" in such act, see 42 U.S.C. § 659 (i)(5).

(2) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective September 1, 2022. (See L. 2020, p. 1470.)

Cross references: (1) For section 454 of the "Social Security Act", see 42 U.S.C. § 654; for part D of Title IV of the act, see 42 U.S.C. § 651 et seq.

(2) For section 13 of the "Food Stamp Act", see 7 U.S.C. § 2022; for section 3 of the act, see 7 U.S.C. § 2012.

ANNOTATION

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions

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under this section to the director of the division.

Commission must follow plain wording of subsection (1). Since subsection (1) refers to "wages paid" rather than wages earned, the commission had no choice but to follow the plain wording of the statute. *Grams v. Indus. Comm'n*, 38 Colo. App. 357, 556 P.2d 1234 (1976).

Determinations required prior to computations under § 8-73-107 (1)(e). The dollar rounding provision is in subsection (1) and the weekly benefit must have already been determined before the computations called for in § 8-73-107 (1)(e) are made. *Grams v. Indus. Comm'n*, 38 Colo. App. 357, 556 P.2d 1234 (1976).

Colorado department of social services is the sole vehicle by which deductions may be secured from unemployment

compensation payable to an individual who owes a child support obligation. *Colo. Division of Employment v. Wells*, 693 P.2d 1027 (Colo. App. 1984).

Definition of "wages" to be deducted from benefits. Monthly payments under a "consulting agreement" requiring claimant to make himself available if needed constituted "wages" regardless of whether claimant actually performed any work under the agreement. *Magin v. Division of Emp.*, 899 P.2d 369 (Colo. App. 1995).

"Wages" and "earnings" are synonymous in this context. *Magin v. Division of Emp.*, 899 P.2d 369 (Colo. App. 1995).

Applied in *Denver Post, Inc. v. Dept. of Labor & Emp.*, 41 Colo. App. 275, 586 P.2d 1342 (1978).

8-73-103. Benefits for partial unemployment.

(1) Each eligible individual who is partially unemployed shall be paid a partial benefit. Partial benefits shall be in an amount equal to the eligible individual's weekly benefit amount for total unemployment, minus that part of wages payable to the individual with respect to the week that is in excess of fifty percent of the individual's weekly benefit amount as computed in accordance with section 8-73-102, and the benefit payment resulting shall be computed to the next lower multiple of one dollar.

(2) The director of the division is authorized to prescribe regulations governing benefits for partial unemployment for other pay periods which will result in benefit amounts for such periods proportionate to the amounts prescribed in this article for weekly pay periods.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. L. 37: p. 1250, § 1. CSA: C. 167A, § 3. L. 39: p. 568, § 1. L. 41: p. 762, § 3. CRS 53: § 82-4-3. C.R.S. 1963: § 82-4-3. L. 73: p. 959, § 5. L. 81: (1) amended, p. 484, § 6, effective July 1. L. 83: (1) amended, p. 435, § 4, effective October 1. L. 86: (2) amended, p. 488, § 86, effective July 1. L. 2020: (1) amended, (SB 20-207), ch. 296,

p. 1470, § 3, effective July 14. **L. 2022:** (1) amended, (SB 22-234), ch. 224, p. 1613, § 2, effective May 25.

8-73-104. Duration of benefits.

(1) The division shall compute wage credits for each individual by crediting him with the wages for insured work paid during each quarter of such individual's base period or twenty-six times the current maximum benefit amount, whichever is the lesser. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to twenty-six times his weekly benefit amount or one-third of his wage credits for insured work paid during his base period, whichever is the lesser; except that benefits based on seasonal wages may be paid only for unemployment during the normal seasonal period of the seasonal industry in which such wage credits were earned and only to seasonal workers who are available for work in such seasonal industry, and the total thereof shall not exceed one-third of such individual's wages paid for insured seasonal work during the corresponding normal seasonal period of his base period. For the purposes of this section, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom the wages were paid has satisfied the conditions of section 8-70-113, 8-76-104, or 8-76-107, with respect to becoming an employer.

(2) (a) Repealed.

(b) (I) Notwithstanding any other provision of this section or of section 8-76-102.5 (11)(a), benefits based upon regular part-time employment may not be charged to the experience rating account of the regular part-time employer until the claimant has become separated from the regular part-time employment, and then only for those weeks of unemployment that occur after the separation.

(II) This paragraph (b) is effective December 31, 2012.

Source: **L. 36, 3rd Ex. Sess.:** p. 14, § 3. **L. 37:** p. 1250, § 1. **CSA:** C. 167A, § 3. **L. 39:** p. 568, § 1. **L. 41:** p. 762, § 3. **L. 43:** p. 600, § 1. **L. 47:** p. 885, § 1. **L. 49:** p. 720, § 1. **L. 53:** p. 629, § 3. **CRS 53:** § 82-4-4. **L. 57:** p. 517, § 4. **L. 59:** pp. 561, 564, §§ 2, 6. **L. 63:** p. 667, § 2. **C.R.S. 1963:** § 82-4-4. **L. 65:** pp. 831, 847, §§ 3, 11. **L. 72:** pp. 448, 609, §§ 1, 122. **L. 76:** (1) amended, p. 338, § 9, effective October 1. **L. 77:** (1) amended, p. 482, § 1, effective October 1. **L. 85:** (1) amended, p. 366, § 2, effective July 1. **L. 90:** (1) amended, p. 602, § 5, effective April 3. **L. 2011:** (2) amended, (HB 11-1288), ch. 212, p. 928, § 11, effective July 1. **L. 2012, 1st Ex. Sess.:** (2)(a)(II) amended, (HB 12S-1002), ch. 2, p. 2427, § 6, effective June 1.

Editor's note: Subsection (2)(a)(II) provided for the repeal of subsection (2)(a), effective December 31, 2012. (See L. 2012, p. 2427.)

8-73-105. Part-time workers.

(1) As used in this section, "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(2) The director of the division shall prescribe fair and reasonable general rules applicable to part-time workers for determining their full-time weekly wage and the total wages for employment by employers required to qualify such workers for benefits. The rules, with respect to such part-time workers, shall supersede any inconsistent provisions of articles 70 to 82 of this title but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of articles 70 to 82 of this title.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. L. 37: p. 1250, § 1. CSA: C. 167A, § 3. L. 39: p. 568, § 1. L. 41: p. 762, § 3. CRS 53: § 82-4-5. C.R.S. 1963: § 82-4-5. L. 86: (2) amended, p. 488, § 87, effective July 1.

ANNOTATION

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions under this section to the director of the division.

Statute defines two types of part-time workers. Redmond v. Indus. Comm'n, 32 Colo. App. 134, 509 P.2d 1277, modified, 183 Colo. 14, 514 P.2d 623 (1973).

Because the "or" in subsection (1) is not inclusive, but is in the alternative. Redmond v. Indus. Comm'n, 32 Colo. App. 134, 509 P.2d 1277, modified, 183 Colo. 14, 514 P.2d 623 (1973).

Commission is directed to comply with this statute and prescribe fair and reasonable rules which will afford part-time workers benefits due them. Redmond v. Indus. Comm'n, 32 Colo. App. 134, 509 P.2d 1277, modified, 183 Colo. 14, 514 P.2d 623 (1973).

Essential question in each case with regard to eligibility of a part-time worker for unemployment benefits is whether the particular part-time worker claimant so restricted his availability for suitable work or so restricted his ability to actively seek work, that — in relation to the condition of the surrounding labor market — he cannot be deemed to have met the eligibility requirements. *Indus. Comm'n v. Redmond*, 183 Colo. 14, 514 P.2d 623 (1973).

Part-time worker must comply with § 8-73-107. A part-time worker under this section must comply with other statutory eligibility requirements under § 8-73-107 such as he must be "available for all work deemed suitable", and he must be "actively seeking work". *Indus. Comm'n v. Redmond*, 183 Colo. 14, 514 P.2d 623 (1973).

But part-time workers should be afforded benefits notwithstanding inconsistent provisions. Provisions of § 8-73-107, that a claimant must be able to work and must be available for all work deemed suitable pursuant to § 8-73-108, should not

prevent the intent of the general assembly from being carried out, and that intent, as evidenced by this section, is to the effect that part-time workers should be afforded benefits notwithstanding inconsistent provisions elsewhere in the act. *Redmond v. Indus. Comm'n*, 32 Colo. App. 134, 509 P.2d 1277, modified, 183 Colo. 14, 514 P.2d 623 (1973).

Full-time college student afforded part-time worker benefits. This section clearly expresses a legislative intent to afford benefits to certain part-time workers, and the claimant was such a worker, and had the general assembly intended not to afford part-time worker benefits to full-time college students, it could easily have so stated. *Indus. Comm'n v. Redmond*, 183 Colo. 14, 514 P.2d 623 (1973).

And part-time worker who is full-time college student need not be available for full-time work in order to qualify for unemployment benefits. *Indus. Comm'n v. Redmond*, 183 Colo. 14, 514 P.2d 623 (1973).

8-73-105.3. Temporary employees.

(1) As used in this section, "temporary employee" means an individual who is employed by an employer on an irregular schedule and who has agreed to work for the employer on an as-needed or on-call basis.

(2) At the time of hire as a temporary employee, an employer must give the employee notice that the employee is required to contact or notify the employer upon completion of an assignment and to be available to work, as agreed upon at the time of hire, during a specified period of time, on specified dates, or upon call by the employer on an as-needed basis.

(3) If a temporary employee receives the notice pursuant to subsection (2) of this section and does not contact or notify the employer upon completion of an assignment in compliance with

the notice and is not available to work at the agreed-upon times, the employee is deemed to have voluntarily terminated employment for the purpose of determining benefits pursuant to section 8-73-108 (5)(e).

(4) If a temporary employee who agrees to work on an as-needed basis receives the notice pursuant to subsection (2) of this section and refuses all work within three separate pay periods when contacted by the employer, the temporary employee is deemed to have voluntarily terminated employment for reasons that may or may not allow an award of benefits pursuant to section 8-73-108.

(5) Repealed.

Source: L. 95: Entire section added, p. 776, § 1, effective July 1. **L. 2001:** (5) repealed, p. 43, § 1, effective March 11.

8-73-105.5. Employment by temporary help contracting firm.

(1) (a) For the purposes of this section, "temporary help contracting firm" means any person who is in the business of employing individuals and, for compensation from a third party, providing those individuals to perform work for the third party, under the supervision of the third party.

(b) Repealed.

(2) Employment with a temporary help contracting firm is characterized by a series of limited-term assignments of an employee to a third party, based on an agreement between the temporary help contracting firm and the third party. A separate employment agreement exists between the temporary help contracting firm and each individual it hires as an employee. Completion of an assignment for a third party by an employee employed by a temporary help contracting firm does not, in itself, terminate the employment agreement between the temporary help contracting firm and the employee.

(3) (Deleted by amendment, L. 94, p. 637, § 3, effective July 1, 1994.)

(4) At the time of hire a temporary help contracting firm shall provide written notice to each employee which clearly states that the employee is required to contact the firm upon completion of an assignment.

(5) If an employee of a temporary help contracting firm receives the written notice pursuant to subsection (4) of this section and does not contact the firm upon completion of an assignment in compliance with such written notice, such employee shall be held to have voluntarily

terminated employment for purposes of determining benefits pursuant to section 8-73-108 (5)(e)(XXII).

(6) If an employee of a temporary help contracting firm contacts the firm upon completion of an assignment in compliance with subsection (4) of this section and does not continue employment in a new assignment, such employee shall be considered separated under the provisions of section 8-73-108 (4)(a).

Source: L. 90: Entire section added, p. 606, § 2, effective April 16. L. 94: Entire section amended, p. 637, § 3, effective July 1. L. 95: (1) amended, p. 776, § 2, effective July 1. L. 2001: (1)(b) repealed, p. 43, § 2, effective March 11.

ANNOTATION

Employee-claimant of a temporary help contracting firm is entitled to a determination whether he was "at fault" for his separation even though he was disqualified pursuant to the provisions of this section and not directly under one of the statutory disqualifying provisions of § 8-73-108. *Velo v. Employment Solutions Pers.*, 953 P.2d 1295 (Colo. App. 1998).

No error in determination by hearing officer that disqualifying provisions of subsection (5) of this section and § 8-73-108 (5)(e)(XXII) are applicable to claimant. On the last day of his final assignment, employer temporary help contracting firm notified claimant that his assignment was ending. Subsequently, employer offered claimant additional assignments which claimant did not accept. There is no evidence that claimant informed his employer that he was available for further assignments. Moreover, claimant did not contact employer in accordance with the written contract he had received.

Accordingly, court upheld that portion of hearing officer's order stating that claimant was responsible for his separation and should be disqualified from the receipt of his unemployment benefits pursuant to subsection (5) of this section and § 8-73-108 (5)(e)(XXII). *Velo v. Employment Solutions Pers.*, 988 P.2d 1139 (Colo. App. 1998).

Claimant is entitled to a determination whether he was "at fault" for his separation notwithstanding the applicability of the disqualifying provisions of this section. To determine otherwise would abrogate the overriding legislative policy that unemployment benefits are to be awarded only to those claimants who are unemployed through no fault of their own. There appears no legislative intent to treat unemployment compensation claimants who work for temporary help agencies differently from other unemployment compensation claimants with regard to the issue of fault. Accordingly, matter must be remanded to

panel for it to consider "fault" issue and, based on its resolution of that issue, to enter a new order on whether claimant is entitled

to benefits. *Velo v. Employment Solutions Pers.*, 988 P.2d 1139 (Colo. App. 1998).

8-73-106. Seasonal industry.

(1) (a) Repealed.

(b) During the nonseasonal period or periods, the seasonal employer may employ not more than twenty-five percent of the total number of workers in each functionally distinct occupation that were employed in the previous seasonal period or periods without losing the seasonal designation for that functionally distinct occupation, so long as the seasonal employer does not employ any workers in the designated seasonal occupations during a consecutive forty-five-day period at any time following the seasonal period or periods. A worker who performs services for the same seasonal employer outside the employer's designated seasonal period or periods shall not be considered a seasonal worker for any period, and all wages paid by the seasonal employer to such worker shall be considered nonseasonal wages. If a seasonal worker performs services for the same seasonal employer outside the employer's designated seasonal period or periods thereby resulting in the loss of the worker's seasonal status and if such worker is not thereafter employed by such employer between any two following designated seasonal periods, the worker may thereafter be reemployed by such seasonal employer and regain his status as a seasonal worker.

(2) The director of the division shall prescribe rules and regulations applicable to seasonal industries for determining their normal seasonal period or periods and seasonal workers.

(3) Upon written application filed with the division by an employer, the director of the division shall determine and may thereafter redetermine, from time to time in accordance with the rules and regulations of the division, the normal seasonal period during which workers are ordinarily employed for the purpose of carrying on seasonal operations in the seasonal industry in which such employer is engaged. Such determination shall be made by said director within ninety days after the filing of such application by an employer with the division. Until such determination by the director of the division, no occupation or industry shall be deemed seasonal. Any employing unit affected by such seasonal determination may appeal the determination in accordance with section 8-76-113. For the purpose of determining whether an individual is a seasonal worker and the duration of such individual's benefits, the determination by said director of the normal seasonal period of a seasonal industry shall be applicable to the filing of the quarterly report of wages in the calendar quarter commencing after the date of such determination.

(4) Repealed.

Source: L. 36, 3rd Ex. Sess.: p. 14, § 3. L. 37: p. 1250, § 1. CSA: C. 167A, § 3. L. 39: p. 568, § 1. L. 41: p. 762, § 3. CRS 53: § 82-4-6. L. 59: p. 566, § 1. L. 63: p. 668, § 3. C.R.S. 1963: § 82-4-6. L. 67: p. 282, § 1. L. 69: p. 660, § 247. L. 72: pp. 448, 609, §§ 2, 123. L. 73: p. 959, § 6. L. 76: (3) amended, p. 339, § 10, effective October 1. L. 79: (1) and (3) amended, p. 346, § 6, effective September 30. L. 85: (1) amended, p. 370, § 1, effective March 30. L. 86: (2) and (3) amended, p. 488, § 88, effective July 1. L. 90: (4) added, p. 610, § 1, effective April 3; (3) amended, p. 607, § 4, effective April 16. L. 94: (4) repealed, p. 639, § 4, effective July 1. L. 2025: (1)(a) repealed and (2) amended, (SB 25-275), ch. 377, pp. 2109, 2035, §§ 336, 31, effective August 6.

Editor's note: Subsection (1)(a) was relocated to § 8-70-103 (18.7), (23.5), and (23.6) in 2025.

ANNOTATION

School cook not "seasonal worker".

Where unemployment compensation benefits were sought by a cook at private school for period of unemployment following end of school term, the court of appeals held that the claimant did not come within the statutory definition of "seasonal worker". In re Interrogatories by Indus. Comm'n, 30 Colo. App. 599, 496 P.2d 1064 (1972).

Appeal of denial of classification as

seasonal employer. Before the general assembly enacted a procedure for appeal of a decision denying classification as a seasonal employer in June 1979, the administrative procedure act was applicable, and any such appeal should have been filed in the district court. City of Aurora v. Indus. Comm'n, 44 Colo. App. 132, 609 P.2d 129 (1980).

8-73-107. Eligibility conditions - penalty.

(1) Any unemployed individual shall be eligible to receive benefits with respect to any week only if the division finds that:

(a) (I) He or she has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the director of the division may prescribe; except that the director of the division, by regulation, may waive or alter either or both of the requirements of this subparagraph (I) as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the director of the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the

purposes of articles 70 to 82 of this title, but that no such regulation shall conflict with section 8-73-101.

(II) Without in any way limiting the authority of the director of the division to waive or alter the requirements of subparagraph (I) of this paragraph (a), during the period of the national economic recession that began in 2008, in order to assist unemployed individuals in being available for appropriate jobs and to assist employers in having available trained employees, the director of the division shall waive or alter such requirements so that individuals attached to regular jobs do not have to comply with the requirements of subparagraph (I) of this paragraph (a) for a period of twenty-six weeks.

(b) He has made a claim for benefits in accordance with the provisions of section 8-74-101;

(c) (I) The individual is able to work and is available for all work deemed suitable pursuant to the provisions of section 8-73-108, and, with respect thereto:

(A) Decisions of the division regarding the ability of the claimant to work, the availability of the claimant for work, and the claimant's active search for work may be appealed by the claimant or by any employer whose account may be charged with any benefits paid pursuant to such decision, if the appeal is received within twenty calendar days, as defined in section 8-70-103 (5), after the date on the notice of any such decision;

(B) A potentially chargeable employer may protest on the basis of inability to work, nonavailability for work, or failure to search for work within fifteen calendar days after the date on which he discovers such a condition to exist, within thirty days after the date on which payment was made for the week during which the claimant is alleged to have been unable to work or unavailable for work, or within sixty calendar days after the mailing date of the report of quarterly benefit charges, whichever comes first;

(C) No individual shall be considered available for work during any week in which he has no reasonable expectation of securing employment in his usual occupation or in an occupation for which he is reasonably qualified as a result of his movement to an area;

(D) No individual shall be denied benefits because of nonavailability or failure to make an active search for work solely due to his compliance with a summons to report for jury duty. Remuneration received in connection with such duty shall not be considered wages, as defined in section 8-70-141 (1)(a), and the individual's weekly benefit amount shall not be reduced as prescribed in section 8-73-102 (4).

(E) If an individual left employment because of health-related reasons, the division may require a written medical statement issued by a licensed practicing physician or licensed practicing physician assistant authorized under section 12-240-107 (6) addressing any matters related to health.

(II) Nothing in this paragraph (c) shall prevent the division from reviewing and redetermining any decision at any time if the redetermination is based upon facts not known to the division at the time of its original decision.

(d) Repealed.

(e) The individual has during his or her base period been paid wages for insured work equal to not less than forty times such individual's weekly benefit amount or two thousand five hundred dollars, whichever is greater. For the purposes of this paragraph (e), wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year comes subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of sections 8-70-113, 8-76-104, and 8-76-107 with respect to becoming an employer.

(f) His total wages earned for the week are less than his weekly benefit amount;

(g) (I) He or she is actively seeking work. In determining whether the claimant is actively seeking work, the division, taking notice of the customary methods of obtaining work in the claimant's usual occupation, or any occupation for which he or she is reasonably qualified, and the current condition of the labor market, shall consider, but shall not be limited to a consideration of, whether, during said week, the claimant followed a course of action that was reasonably designed to result in his or her prompt reemployment in suitable work.

(II) This paragraph (g) shall not apply to a person determined eligible to receive benefits pursuant to section 8-73-108 (4)(r)(I) for the first fifteen business days after a claim for benefits is filed if compliance with this paragraph (g) would:

(A) Make it more difficult for the person to escape domestic abuse; or

(B) Unfairly penalize a person who is or has been a victim of domestic abuse or is at further risk of domestic abuse.

(h) The individual has furnished the division with separation and other reports containing the information deemed necessary by the division to determine the individual's eligibility for benefits, but this provision shall not apply if the individual proves to the satisfaction of the division that he or she had good cause for failing to furnish such reports. The eligibility of any individual shall not be affected by the refusal or failure of an employer to furnish reports concerning separation and employment as required by articles 70 to 82 of this title and the rules pursuant thereto, and the division shall determine the eligibility of such individual upon the basis of such information it may obtain; and any employer who fails or refuses to furnish reports concerning separation and employment shall cease to be an interested party to the separation issue directly related to determinations made in accordance with section 8-73-108 (4) and (5)(e). For each instance of failure to furnish the division with such reports, the employer, unless good cause to the contrary is shown to the satisfaction of the division, may be assessed a penalty of

twenty-five dollars, which shall be collected in the same manner as premiums due under articles 70 to 82 of this title.

(i) It is not, in whole or in part, within a period during which the worker is not working due to a disciplinary suspension as provided in the contract of employment;

(j) Such individual is not absent from work due to an authorized and approved voluntary leave of absence.

(2) An individual who has received compensation during the individual's benefit year is required to have worked for an employer as defined in section 8-70-113 since the beginning of such year and to have earned at least two thousand dollars as remuneration for such employment in order to qualify for compensation in the next benefit year.

(3) For the purpose of this subsection (3), "educational institution" includes the Colorado school for the deaf and the blind; except that such term does not include a headstart program that is not a part of a school administered by a board of education because such headstart employees are not subject to the same employment conditions as other employees of the school. Compensation is payable on the basis of services to which sections 8-70-119, 8-70-125, and 8-70-125.5 apply in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other services subject to articles 70 to 82 of this title; except that:

(a) With respect to services in an instructional, research, or principal administrative capacity for an educational institution, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) With respect to services in any other capacity, for an educational institution compensation payable on the basis of such services shall be denied to any individual for any week which commences during a period between two successive academic years or terms or periods described in paragraph (c) of this subsection (3) if such individual performs such services in the first of such academic years, terms, or periods and there is a reasonable assurance that such individual will perform such services in the second of such academic years, terms, or periods; except that, if compensation is denied to any individual for any week under this paragraph (b) and such individual was not offered, an opportunity to perform such services for the educational institution for the second of such academic years, terms, or periods, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual

filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph (b);

(c) With respect to any services described in paragraph (a) or (b) of this subsection (3), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and if there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) With respect to any services described in paragraph (a) or (b) of this subsection (3), compensation payable on the basis of services in any such capacity shall be denied as specified in paragraph (a), (b), or (c) of this subsection (3) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For the purpose of this paragraph (d), the term "educational service agency" means a governmental agency or governmental entity, such as that created by the "Boards of Cooperative Services Act of 1965", article 5 of title 22, C.R.S., which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(e) With respect to any services described in paragraph (a) of this subsection (3), compensation payable on the basis of such services shall be denied to any individual for any week during a period of paid or unpaid sabbatical or other voluntary leave provided for in the individual's contract if such individual performs such services in the academic year or term immediately preceding the beginning of sabbatical or other voluntary leave and if there is a contract or reasonable assurance that such individual will perform such services in the academic year or term following the end of the sabbatical or other voluntary leave;

(f) With respect to services to which section 8-70-140 applies, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in paragraphs (a) to (d) of this subsection (3).

(4) (a) Notwithstanding any other provision in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the division, nor shall such individual be denied benefits by reason of the application of provisions in paragraph (c) of subsection (1) of this section relating to availability for work, the provisions of paragraph (g) of subsection (1) of this section relating to active search for work, or the provisions of section 8-73-108 relating to failure to apply for, or a refusal to accept, suitable work with respect to any week in which he is in training with the approval of the division.

(b) (Deleted by amendment, L. 98, p. 89, § 3, effective March 23, 1998.)

(5) Repealed.

(6) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the latter of such seasons (or similar periods).

(7) (a) Benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, or was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed. For purposes of the "Colorado Employment Security Act":

(I) An alien shall be considered to be "lawfully admitted for permanent residence" only if the alien has been granted status under section 101 of the "Immigration and Nationality Act", 8 U.S.C. sec. 1101 (a)(20);

(II) An alien shall be considered to be "lawfully present for purposes of performing services" only if the alien is an alien who possesses work authorization or has been lawfully admitted to temporary residence under section 245 (a) or section 210 of the "Immigration and Nationality Act", 8 U.S.C. sec. 1255(a) and 8 U.S.C. sec. 1160, respectively;

(III) An alien shall be considered to be "permanently residing in the United States under color of law" only if the alien is:

(A) An alien admitted as a refugee under section 207 of the "Immigration and Nationality Act", 8 U.S.C. sec. 1157, in effect after March 31, 1980;

(B) An alien granted asylum by the attorney general of the United States under section 208 of the "Immigration and Nationality Act", 8 U.S.C. sec. 1158;

(C) An alien granted a parole into the United States for an indefinite period under section 212 (d)(5)(B) of the "Immigration and Nationality Act", 8 U.S.C. sec. 1182 (d)(5)(B);

(D) An alien granted the status as a conditional entrant refugee under section 203 (a)(7) of the "Immigration and Nationality Act", 8 U.S.C. sec. 1153 (a)(7), in effect prior to March 31, 1980; or

(E) An alien who has been formally granted deferred action status by the immigration and naturalization service, or any successor agency.

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

Source: L. 36, 3rd Ex. Sess.: p. 18, § 4. L. 37: p. 1254, § 2. CSA: C. 167A, § 4. L. 39: p. 570, § 2. L. 41: p. 765, § 4. L. 43: p. 601, § 2. L. 45: p. 712, § 1. L. 47: p. 886, § 2. L. 49: p. 722, § 2. L. 51: p. 807, § 2. L. 53: p. 623, §§ 2-4. CRS 53: § 82-4-8. L. 55: p. 533, § 1. C.R.S. 1963: § 82-4-7. L. 65: p. 832, § 4. L. 71: p. 932, § 7. L. 73: p. 959, § 7. L. 75: (3) amended, p. 322, § 3, effective June 20. L. 76: (3) amended, p. 360, § 2, effective April 20; (3) amended, p. 339, § 11, effective October 1. L. 77: (5), (6), and (7) added, p. 463, § 14, effective July 1; (3) repealed, p. 471, § 27, effective January 1, 1978. L. 79: (1)(c) and (7)(a) R&RE, (1)(d)(I) amended, (3) RC&RE, and (5) repealed, pp. 346, 347, 356, §§ 7, 8, 9, 25, effective September 30. L. 81: (1)(h) amended, p. 492, § 6, effective July 1; (3) amended, p. 511, § 1, effective July 1. L. 82: (1)(e) and (2) amended, p. 236, § 3, effective July 1. L. 83: (3)(b) amended, p. 436, § 5, effective April 12. L. 84: (2) R&RE, p. 317, § 6, effective July 1; (3)(e) amended, p. 323, § 1, effective July 1. L. 85: (3)(e) amended, p. 1358, § 4, effective June 28; (1)(h) and (7)(a) amended, p. 366, § 3, effective July 1. L. 86: (1)(a) amended, p. 489, § 89, effective July 1; (3)(f) added and IP(7)(a) amended, p. 542, §§ 4, 5, effective July 1. L. 87: (4) amended, p. 406, § 1, effective May 16. L. 89: (1)(h) and (2) amended, p. 425, § 3, effective July 1. L. 90: (1)(c)(I)(A), (1)(c)(I)(D), (1)(e), (2), IP(3) and (3)(f) amended, p. 603, § 6, effective April 3; (7)(a) amended, p. 609, § 7, effective April 16. L. 92: (1)(c)(I)(B) and (1)(h) amended, p. 1793, § 2, effective April 10. L. 98: IP(1)(d), (2), and (4)(b) amended, p. 89, § 3, effective March 23. L. 99: (1)(e) amended, p. 634, § 1, effective August 4; (1)(c)(I)(E) and (1)(j) added, p. 396, §§ 1, 2, effective August 15. L. 2001: IP(3) amended, p. 1548, § 4, effective December 21, 2000. L. 2005: (1)(g) amended, p. 319, § 1, effective August 8. L. 2007: IP(1)(c)(I) and (1)(c)(I)(A) amended, p. 802, § 2, effective August 3. L. 2009: (1)(a) amended, (SB 09-178), ch. 268, p. 1220, § 1, effective May 18; (1)(h) amended, (HB 09-1363), ch. 363, p. 1883, § 10, effective July 1. L. 2011: (7)(a)(III)(E) amended, (HB 11-1303), ch. 264, p. 1149, § 5, effective August 10. L. 2016: (1)(c)(I)(E) amended, (SB 16-158), ch. 204, p. 720, § 4, effective August 10. L. 2019: (1)(c)(I)(E) amended, (HB 19-1172), ch. 136, p. 1648, § 25, effective October 1. L. 2022: (1)(d) amended, (SB 22-234), ch. 224, p. 1613, § 3, effective May 25.

Editor's note: (1) The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act amending the introductory portion to subsection (3) provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

(2) Subsection (1)(d)(II) provided for the repeal of subsection (1)(d), effective July 7, 2025. On July 7, 2025, the revisor of statutes received the notice referred to in subsection (1)(d)(II) related to the repeal. For more information about the repeal and notice, see SB 22-234. (L. 2022, p. 1613.)

Cross references: For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

ANNOTATION

Law reviews. For note, "The Unemployment Compensation Recipient — Should He Accept a Job?", see 44 Den. L.J. 147 (1967). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970). For article, "Alcoholism and Unemployment Insurance in Colorado", see 18 Colo. Law. 1963 (1989).

Underlying principle. The Colorado program of unemployment insurance is based on the principle that only those persons who are willing and able to work are entitled to unemployment benefits. *Sylvara v. Indus. Comm'n*, 191 Colo. 92, 550 P.2d 868 (1976) (decided under former law).

Preservation of state interest. The state has a legitimate interest in providing unemployment benefits only to conscientious persons. But that interest is preserved by the statutory requirement that in order to receive benefits a claimant must be available for work and actively seeking employment. *Kistler v. Indus. Comm'n*, 192 Colo. 172, 556 P.2d 895 (1976).

Definition of "disciplinary suspension". A disciplinary suspension is a suspension imposed for a defined period for the purpose

of penalizing an employee for a specific act, after which period the employee is scheduled to return to work. *Pueblo Sch. Dist. No. 60 v. Martinez*, 749 P.2d 1005 (Colo. App. 1987).

Sufficient guidelines to determine eligibility. The terms "able to work", "available for all work deemed suitable", and "actively seeking work" constitute sufficient guidelines to enable the commission to properly determine the eligibility of one seeking unemployment compensation. *Denver Post, Inc. v. Dept. of Labor & Emp.*, 199 Colo. 466, 610 P.2d 1075 (1980).

"Availability for work" or "actively seeking work" are two eligibility conditions which could be found to be lacking or restricted by full-time attendance at school, and such a finding would be a lawful basis for disallowing compensation. *Indus. Comm'n v. Bennett*, 166 Colo. 101, 441 P.2d 648 (1968).

But "actively seeking work" as a concept is incapable of precise definition and it is for the appropriate agency to make such a determination after considering all

the facts and circumstances in each particular case. *Bayly Mfg. Co. v. Dept. of Emp.*, 155 Colo. 433, 395 P.2d 216 (1964).

"Actively seeking work" implies seeking work from other potential employers. Limiting the search for work to one's previous employer is a cause for disqualification. *McClaflin v. Indus. Claim Appeals Office*, 126 P.3d 288 (Colo. App. 2005).

A claimant's efforts to create self-employment are not included within the meaning of "actively seeking work", therefore the claimant is ineligible for unemployment compensation benefits for the time period he failed to supply the required list of job contacts even though claimant attempted to establish a law practice during that same time period. *Hoskins v. Indus. Claim Appeals Office*, 2014 COA 47, 327 P.3d 356.

Availability of employment determined from factual situation presented. A determination of the availability for employment is one for which an all-inclusive rule cannot be stated, but rather must be made within the context of the factual situation presented by each case. *Couchman v. Indus. Comm'n*, 33 Colo. App. 116, 515 P.2d 636 (1973); *Medina v. Indus. Comm'n*, 38 Colo. App. 256, 554 P.2d 1360 (1976); *Duenas-Rodriguez v. Indus. Comm'n*, 199 Colo. 95, 606 P.2d 437 (1980).

Whether a claimant is able to work and is available for all work deemed suitable, as provided in subsection (1)(c), and whether the claimant was actively seeking work, as provided in subsection (1)(g), must be

determined within the context of the factual situation presented by each case. *Denver Post, Inc. v. Dept. of Labor & Emp.*, 199 Colo. 466, 610 P.2d 1075 (1980).

Work is not "suitable" if wages offered are substantially less than prevailing wage. *Romero v. Indus. Comm'n*, 616 P.2d 992 (Colo. App. 1980).

The essential question in each case is whether the claimant's availability for suitable work is so restricted — in relation to the condition of the surrounding labor market — that he cannot be deemed to have met the eligibility requirements of ability to, and availability for, work. *Medina v. Indus. Comm'n*, 38 Colo. App. 256, 554 P.2d 1360 (1976).

While claimants in their twenty-eighth or later weeks of pregnancy may have limited employment opportunities, they may still be considered to be "actively seeking work". *Frontier Airlines, Inc. v. Indus. Comm'n*, 734 P.2d 142 (Colo. App. 1986).

Question of whether claimant is unemployed is a purely mathematical inquiry: If he performs no services and receives no compensation, then he is totally unemployed; if he does receive compensation, but in an amount less than the amount of benefits he could recover if totally unemployed, then he is still unemployed, though only partially. It is only when a claimant receives compensation exceeding the amount of weekly total unemployment benefits that he remains "employed" under these sections. *Denver Post, Inc. v. Dept. of Labor & Emp.*, 41 Colo. App. 275, 586 P.2d 1342 (1978),

modified, 199 Colo. 466, 610 P.2d 1075 (1980).

The initial burden is on the claimant to establish a prima facie case of eligibility for benefits. *Medina v. Indus. Comm'n*, 38 Colo. App. 256, 554 P.2d 1360 (1976); *Duenas-Rodriguez v. Indus. Comm'n*, 199 Colo. 95, 606 P.2d 437 (1980).

Illegal alien ineligible for benefits. An illegal alien has no constitutional right to work and, being legally unavailable for work, did not qualify for benefits under subsection (1)(c). *Duenas-Rodriguez v. Indus. Comm'n*, 199 Colo. 95, 606 P.2d 437 (1980).

But applicants for political asylum were permanently residing in the United States under color of law and thus eligible for unemployment benefits. *Div. of Emp. & Training v. Indus. Comm'n*, 705 P.2d 1022 (Colo. App. 1985); *Div. of Emp. & Training v. Turyniski*, 735 P.2d 469 (Colo. 1987).

Since subsection (7) is based on federal law, federal authority in interpreting the federal enactment is highly persuasive in interpreting this state statute. *Arteaga v. Indus. Comm'n*, 703 P.2d 654 (Colo. App. 1985), *aff'd sub nom. Div. of Emp. & Training v. Yiadom*, 735 P.2d 473 (Colo. 1987).

The provisions of subsections (7)(a)(I) to (7)(a)(VI) are merely illustrative of the categories of persons included within the meaning of the phrase "permanently residing in the United States under color of law". An interpretation that said provisions are an exhaustive definition of persons included

within the meaning of said phrase would result in the statute not being in substantial compliance with federal law. *Sandoval v. Colo. Div. of Emp.*, 757 P.2d 1105 (Colo. App. 1988).

For purposes of subsection (7), petitioner was "permanently residing in the United States under 'color of law' ", where he was married to a citizen of the United States, was authorized to work by the Immigration and Naturalization Service (INS), was in the process of applying for permanent residence, and because the INS made no effort to deport him during the application process. *Arteaga v. Indus. Comm'n*, 703 P.2d 654 (Colo. App. 1985), *aff'd sub nom. Div. of Emp. & Training v. Yiadom*, 735 P.2d 473 (Colo. 1987); *Zanjani v. Indus. Comm'n*, 703 P.2d 652 (Colo. App. 1985).

And petitioner became eligible for unemployment benefits when the INS demonstrated its intention to allow petitioner to remain in the country until he obtained permanent resident alien status. *Arteaga v. Indus. Comm'n*, 703 P.2d 654 (Colo. App. 1985); *Zanjani v. Indus. Comm'n*, 703 P.2d 652 (Colo. App. 1985).

Claimant had pending at all times at least one petition which would result in an adjustment of his status to lawful permanent resident which constituted the necessary status to receive unemployment benefits. The fact that claimant did not have a valid INS work authorization during his base period was merely one factor to consider in determining whether he met the requirements of "permanently residing in the

United States under color of law". Sandoval v. Colo. Div. of Emp., 757 P.2d 1105 (Colo. App. 1988).

Eligibility where claimant unable to perform "normal" work for health reasons. Where an unemployment compensation claimant is, for health reasons, unable to perform such claimant's "normal" work for a period of time, the claimant may nevertheless be eligible for benefits if the claimant is able to perform and is available for other suitable work. Bartholomay v. Indus. Comm'n, 642 P.2d 50 (Colo. App. 1982).

Fact that claimant has restricted his employment to particular hours of the day or to a specific shift must be considered within the context of the particular labor market in which he is seeking employment before a valid conclusion can be reached as to whether he has made himself unavailable for employment. Couchman v. Indus. Comm'n, 33 Colo. App. 116, 515 P.2d 636 (1973).

When eligibility provisions of section come into play. While any refusal of suitable work may well be independent grounds for a "no award" decision under the former § 8-73-108 (6), the "eligibility" provisions of this section, including limited availability, only come into play with respect to conditions existing after filing of the claim. Olivas v. Indus. Comm'n, 33 Colo. App. 273, 518 P.2d 304 (1974).

Section would not become pertinent unless claimant applies for benefits after expiration of disqualifications. Where "no award" decision rendered required that

claimant be "disqualified" from receiving benefits for a period of 13 to 25 weeks under the former § 8-73-108 (2)(b)(I), and a 13-week disqualification was imposed, the provisions of this section would not become pertinent unless the claimant should apply for benefits after the period of disqualifications had expired, and the question of claimant's restrictions on availability for work at that time would then ripen. Olivas v. Indus. Comm'n, 33 Colo. App. 273, 518 P.2d 304 (1974).

Where the records contained no indication whatsoever that claimants failed to meet the basic eligibility requirements of subsection (1), claimants were deemed to have met the basic eligibility requirements since the industrial commission is presumed to carry out its official duties in a regular manner. Everitt Lumber Co. v. Indus. Comm'n, 39 Colo. App. 336, 565 P.2d 967 (1977).

Part-time worker must comply with section. A part-time worker under § 8-73-105 must comply with other statutory eligibility requirements under this section such as he must be "available for all work deemed suitable", and he must be "actively seeking work". Indus. Comm'n v. Redmond, 183 Colo. 14, 514 P.2d 623 (1973).

But section applied considering intention to afford part-time workers' benefits. The requirements of this section must be applied with the consideration that the claimant may be a part-time worker and that the general assembly intended to afford benefits to such workers. Indus. Comm'n v.

Redmond, 183 Colo. 14, 514 P.2d 623 (1973).

And such workers afforded benefits notwithstanding inconsistent provisions elsewhere. The provisions of this section, that a claimant must be able to work and must be available for all work deemed suitable pursuant to § 8-73-108, should not prevent the intent of the general assembly from being carried out, and that intent, as evidenced by § 8-73-105, is to the effect that part-time workers should be afforded benefits notwithstanding inconsistent provisions elsewhere in the act. Redmond v. Indus. Comm'n, 32 Colo. App. 134, 509 P.2d 1277, modified, 183 Colo. 14, 514 P.2d 623 (1973).

Claimant's status as student does not in itself make him unavailable for employment within the meaning of this statute. Couchman v. Indus. Comm'n, 33 Colo. App. 116, 515 P.2d 636 (1973).

Intent of subsection (3). The exclusion from coverage stated in subsection (3) is intended to preclude school teaching and nonteaching personnel from receiving unemployment compensation during summer recess if they have the promise of work in the fall. Bd. of County Comm'rs v. Martinez, 43 Colo. App. 322, 602 P.2d 911 (1979), overruled on other grounds sub nom. Indus. Comm'n v. Bd. of County Comm'rs, 690 P.2d 839 (Colo. 1984).

Even though a school engages in academic activity during summer break, such scheduled break is probably not an academic period. Consequently, applicant was not entitled to receive unemployment

benefits under subsection (3)(c) during summer break regardless of the academic activity taking place at the school. Herrera v. Indus. Claim Appeals Office, 18 P.3d 819 (Colo. App. 2000).

Headstart program workers employed by county were eligible to receive benefits during summer recess. Indus. Comm'n v. Bd. of County Comm'rs, 690 P.2d 839 (Colo. 1984).

Distinction relating to headstart program constitutional. Distinguishing between employees of county-administered headstart programs and employees of school-administered programs bears a rational relationship to a legitimate state objective and thus does not violate equal protection. Indus. Comm'n v. Bd. of County Comm'rs, 690 P.2d 839 (Colo. 1984).

Claimant held not able and available. Where claimant had formerly worked at a job requiring her to be on her feet eight hours a day and, after surgery needed because of an injury which was unrelated to her employment, applied for part-time work at her usual occupation with the same employer, where she was advised that they had no part-time work, nor any jobs that would meet her physical limitations, the type and hours of work sought by claimant were so limited that she was not "able and available" for all suitable work within the meaning of this section. Medina v. Indus. Comm'n, 38 Colo. App. 256, 554 P.2d 1360 (1976).

Failure to answer call-in card. Since the referee found that claimant did not realize the call-in card concerned possible

employment and since claimant was not otherwise alerted to such employment, claimant's failure to report within the time limit specified, standing alone, will not support the finding that claimant was unavailable for referral and was not actively seeking work. *Lawlor v. Indus. Comm'n*, 34 Colo. App. 442, 527 P.2d 1186 (1974).

Commission correct in considering claimants' last week as "waiting week". Where the earnings of each claimant for the last week worked were under \$50, and the benefits to which each was entitled ranged from \$82 to \$87, the commission was correct in considering claimants' last week of work to be the "waiting week", and it was proper to pay full benefits beginning the following week. *Denver Symphony Ass'n v. Indus. Comm'n*, 34 Colo. App. 343, 526 P.2d 685 (1974).

Determinations are required prior to computations under subsection (1)(e). The dollar rounding provision is in § 8-73-102 (1) and the weekly benefit must have already been determined before the computations called for in subsection (1)(e) are made. *Grams v. Indus. Comm'n*, 38 Colo. App. 357, 556 P.2d 1234 (1976).

Determination of monetary eligibility for unemployment benefits. Since the payments to the claimant pursuant to the charter provision were made under a plan established by the employer which compensates police officers on account of "accident disability", the amount of these payments cannot be counted as "wages" for determining monetary eligibility for unemployment benefits. *City & County of*

Denver v. Indus. Comm'n, 707 P.2d 1008 (Colo. App. 1985).

Hearsay evidence alone cannot support commission's order. Hearsay evidence, though admissible in administrative hearings, cannot alone support an order of the industrial commission. *Romero v. Indus. Comm'n*, 616 P.2d 992 (Colo. App. 1980).

This section concerns eligibility, not entitlement. Its applicability must be determined in eligibility proceedings that may not be intermingled with entitlement issues. *Denver v. Indus. Claim Appeals Office*, 833 P.2d 881 (Colo. App. 1992).

Under the Colorado Employment Security Act, eligibility for unemployment benefits and entitlement to those benefits are distinct and separate matters that relate to whether a claimant may receive unemployment compensation. *In re Adamic*, 291 B.R. 175 (Bankr. D. Colo. 2003).

"Eligibility" for unemployment compensation relates to the monetary provisions of the statute, while "entitlement" concerns the non-monetary provisions. Each is an equal element of a claim for unemployment compensation benefits. *In re Adamic*, 291 B.R. 175 (Bankr. D. Colo. 2003).

Applied in *Dailey, Goodwin & O'Leary v. Division of Emp.*, *Indus. Comm'n*, 40 Colo. App. 256, 572 P.2d 853 (1977); *Martinez v. Indus. Comm'n*, 618 P.2d 738 (Colo. App. 1980); *Bd. of County Comm'rs v. Indus. Comm'n*, 650 P.2d 1297 (Colo. App. 1982); *Nazzaro v. Indus. Comm'n*, 671 P.2d 983 (Colo. App. 1983); *Bushehri v. Indus. Claim*

Appeals Office, 749 P.2d 439 (Colo. App. 1987); Denver v. Indus. Claim Appeals

Office, 833 P.2d 881 (Colo. App. 1992).

8-73-108. Benefit awards - definitions.

(1) (a) In the granting of benefit awards, it is the intent of the general assembly that the division at all times be guided by the principle that unemployment insurance is for the benefit of persons unemployed through no fault of their own; and that each eligible individual who is unemployed through no fault of his own shall be entitled to receive a full award of benefits; and that every person has the right to leave any job for any reason, but that the circumstances of his separation shall be considered in determining the amount of benefits he may receive, and that certain acts of individuals are the direct and proximate cause of their unemployment, and such acts may result in such individuals receiving a disqualification.

(b) A full award of benefits shall be the total amount of benefits computed under sections 8-73-102 and 8-73-104. Benefits payable under the provisions of this section shall be awarded, subject to other applicable provisions of articles 70 to 82 of this title.

(2) Repealed.

(3) (a) (I) The most recent separation and all separations from base period employers, excluding those defined in subparagraph (II) of paragraph (e) of this subsection (3), shall be considered. In the event a claimant has more than one separation from the same adjudicable employer, the most recent separation shall be controlling as to the determination of eligibility for benefits attributable to that employer.

(II) Benefits remaining from a previous full award shall be reduced if a disqualification is granted on the most recent separation from that employer.

(III) Benefits previously reduced due to a disqualification shall become available if a full award is granted on the most recent separation. If a disqualification was previously imposed, then the employee must work ten consecutive workdays for the same employer before a full award may be granted on the most recent separation.

(b) An additional claim filed during an existing benefit year because of a recurrence of unemployment shall require the claimant to report all job separations subsequent to the effective date of the initial claim which may be considered by the division. Those job separations that are considered shall result in a full award or a disqualification. If a disqualification is imposed on the most recent separation, a ten-week deferral of benefits shall be imposed.

(c) The gross misconduct of an individual causing his discharge from employment shall result in a disqualification of twenty-six weeks. "Gross misconduct" means conduct evincing such willful or wanton disregard of an employer's interests or negligence or harm of such a

degree or recurrence as to manifest culpability or wrongful intent, or assault or threatened assault upon supervisors, coworkers, or others at the work site.

(d) Benefits shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for gross misconduct connected with his work, fraud in connection with a claim for benefits, or receipt of disqualifying income.

(e) (I) Benefit payments will be charged against the experience rating accounts of the base period employers in inverse chronological order.

(II) When the total amount of base period wages, as defined in section 8-70-141 (1)(a), paid by a base period employer is less than one thousand dollars:

(A) Such wages shall be included in the computation of wage credits under the provisions of section 8-73-104; and

(B) Benefits paid with respect to such wages shall not be charged against the experience rating account of an employer but will be charged against the fund; and

(C) Separations from such employers, other than the last employer, shall not be adjudicated.

(III) Repealed.

(f) Benefit payments shall not be charged against the experience rating account of an employer and shall be charged against the fund when:

(I) The benefits are paid for unemployment directly caused by a major natural disaster;

(II) The president has declared the event a disaster pursuant to section 102 (2) of the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", as amended, 42 U.S.C. sec. 5122(2); and

(III) The benefits are paid to an individual who would have otherwise been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment compensation benefits.

(4) **Full award.** An individual separated from a job must be given a full award of benefits if the division determines that any of the following reasons and pertinent related conditions exist. The determination of whether or not the separation from employment must result in a full award of benefits is the responsibility of the division. The following reasons must be considered, along with any other factors that may be pertinent to such determination:

(a) Laid off for lack of work;

(b) (I) The health of the worker is such that the worker is separated from his or her employment and must refrain from working for a period of time that exceeds the greater of the

employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993", if applicable, or the worker's health is such that the worker must seek a new occupation, or the health of the worker or the worker's spouse, partner in a civil union, or dependent child is such that the worker must leave the vicinity of the worker's employment; except that, if the health of the worker or the worker's spouse, partner in a civil union, or dependent child has caused the separation from work, the worker, in order to be entitled to a full award, must have complied with the following requirements: Informed the worker's employer in writing, if the employer has posted or given actual advance notice of this writing requirement, of the condition of the worker's health or the health of the worker's spouse, partner in a civil union, or dependent child prior to separation from employment and allowed the employer the opportunity to make reasonable accommodations for the worker's condition; substantiated the cause by a competent written medical statement issued by a licensed practicing physician or physician assistant authorized under section 12-240-107 (6) prior to the date of separation from employment when so requested by the employer prior to the date of separation from employment or within a reasonable period thereafter; submitted himself or herself or the worker's spouse, partner in a civil union, or dependent child to an examination by a licensed practicing physician or licensed practicing physician assistant authorized under section 12-240-107 (6) selected and paid by the interested employer when so requested by the employer prior to the date of separation from employment or within a reasonable period thereafter; or provided the division, when so requested, with a written medical statement issued by a licensed practicing physician or licensed practicing physician assistant authorized under section 12-240-107 (6). For purposes of providing the medical statement or submitting to an examination for an employer, "a reasonable period thereafter" includes the time before adjudication by either a deputy or referee of the division. An award of benefits pursuant to this subsection (4)(b)(I) includes benefits to a worker who, either voluntarily or involuntarily, is separated from employment because of pregnancy and who otherwise satisfies the requirements of this subsection (4)(b)(I).

(II) In the event of an injury or sudden illness of the worker that would preclude verbal or written notification of the employer prior to such occurrence, the failure of the worker to notify the employer prior to such occurrence will not in itself constitute a reason for the denial of benefits if the worker has notified the employer at the earliest practicable time after such occurrence. Such notice shall be given no later than two working days following such occurrence unless the worker's physician or physician assistant authorized under section 12-240-107 (6) provides a written statement to the employer within one week after the employer's request that the worker's condition made giving such notice impracticable and substantiating the illness or injury.

(III) Any physician or physician assistant authorized under section 12-240-107 (6) who makes or is present at any examination required under these provisions shall testify as to the results of the physician's or physician assistant's examination; except that no such physician or

physician assistant shall be required to disclose any confidential communication imparted to him or her for the purpose of treatment that is not necessary to a proper understanding of the case.

(IV) The off-the-job or on-the-job use of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), may be reason for a determination for a full award pursuant to this subsection (4)(b), but only if:

(A) The worker has declared to the division that he or she has an alcohol or substance use disorder;

(B) The worker has substantiated the alcohol or substance use disorder by a competent written medical statement issued by a physician licensed to practice medicine pursuant to article 240 of title 12, or by a licensed physician assistant authorized under section 12-240-107 (6), or has substantiated the successful completion of, or ongoing participation in, a treatment program as described in subsection (4)(b)(IV)(C) of this section within four weeks after the claimant's admission. The substantiation must be in writing to the division and signed by an authorized representative of the approved treatment program.

(C) A worker who is not affiliated with an approved treatment program must present to the division within four weeks after the date of the medical statement referred to in sub-subparagraph (B) of this subparagraph (IV), substantiation of registration in a program of corrective action that will commence within four weeks after the date of the medical statement and that is provided by an approved private treatment facility or an approved public treatment facility as defined in section 27-81-102 (2) or (3), C.R.S., or by an alcoholics anonymous program. The substantiation shall be in writing to the division and signed by an authorized representative of the approved treatment program.

(D) (Deleted by amendment, L. 2006, p. 653, § 1, effective April 24, 2006.)

(IV.5) Any benefits awarded to the claimant under the provisions of subparagraph (IV) of this paragraph (b) and normally chargeable to the employer will be charged to the fund.

(V) A potentially chargeable employer may notify the division concerning the failure of the worker to participate in or complete an approved program of corrective action to deal with the alcohol or substance use disorder within fifteen calendar days after the date on which he or she discovers the existence of such a disorder. The worker must be given an opportunity to respond to the employer's allegations. The division, upon review of additional information, may modify a prior decision pursuant to subsection (5)(e)(XXIV) of this section.

(c) Unsatisfactory or hazardous working conditions when so determined by the division. In determining whether or not working conditions are unsatisfactory for an individual, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the distance of the work from his residence, and the working conditions of workers engaged in the same or similar work for the same and other employers in

the locality shall be considered. For the purpose of this paragraph (c), "hazardous working conditions" means such conditions, as are determined by the division to exist, that could result in a danger to the physical or mental well-being of the worker. In any such determination the division shall consider, but shall not be limited to a consideration of, the following: The safety measures used or the lack thereof and the condition of equipment or lack of proper equipment. No work shall be considered hazardous if the working conditions surrounding a worker's employment are the same or substantially the same as the working conditions generally prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

(d) A substantial change in the worker's working conditions, said change in working conditions being substantially less favorable to the worker; but requiring a worker to work a different shift shall not be considered a substantial change in working conditions unless such requirement would be a violation of seniority rights which entitle the worker to shift preferential, but in any such case the burden of proving such seniority rights shall rest upon the worker. No change in working conditions shall be considered substantial if it is determined by the division that the conditions prevailing after the change are those generally prevailing for other workers performing the same or similar work.

(e) Unreasonable reduction in the worker's rate of pay as determined by the division. In determining whether or not there has been an unreasonable reduction in the worker's rate of pay, the division shall consider, but shall not be limited to a consideration of, whether or not the reduction in pay was applied by the employer to all workers in the same or similar class or merely to this individual, the general economic conditions prevailing in the state, the financial condition of the employer involved, and whether or not the reduction in wage was agreed to by other workers employed in the same or similar work. The worker's loss of a shift differential or overtime pay shall not be considered an unreasonable reduction in the worker's rate of pay under this paragraph (e), unless such shift differential or overtime pay was guaranteed by the employer.

(f) (I) Due to the particular nature of the building and construction industry, construction workers who quit a construction job to accept a different construction job in any of the following circumstances:

(A) Quitting within thirty days immediately prior to the established termination date of the job quit; and at the time of quitting, the construction worker had been offered and had accepted another construction job and the specific starting date of the new job was within thirty days from the date of quitting the prior job; and the new job offered employment for a longer period of time than remained available on the job quit unless the new job was terminated by a contract cancellation; or

(B) Unsatisfactory working conditions with respect to the distance of his work from his residence when so determined by the division; or

(C) Quitting a construction job that is outside the state of Colorado in order to accept a construction job within the state of Colorado, if such construction worker has maintained a residence in this state; or

(D) Leaving a job to comply with a condition of an apprenticeship assignment of an employer, which condition was imposed to meet the conditions of a joint apprenticeship or other apprenticeship program which is in accordance with requirements for programs registered with the federal government; or

(E) Quitting a job outside the worker's regular apprenticeable trade to return to work in the worker's regular apprenticeable trade. As used in this subsection (4)(f), "regular apprenticeable trade" means a skilled trade or occupation in the construction industry in which, by longstanding and recognized practice of a significant segment of the industry, a worker generally must complete a period of apprenticeship or training pursuant to a joint apprenticeship or other apprenticeship program that is in accordance with requirements for programs registered with the federal government or a state apprenticeship agency recognized by the United States department of labor. A worker may have more than one regular apprenticeable trade.

(II) If the provisions of either sub-subparagraph (A), (B), (C), (D), or (E) of subparagraph (I) of this paragraph (f) are met, any benefits normally chargeable to the employer for whom the employee worked immediately prior to accepting the new job will be charged to the fund. Benefits shall not be awarded pursuant to this paragraph (f) unless the worker has subsequently separated from the new job under conditions which would result in a full award under this subsection (4).

(g) After being given the choice by his employer between being terminated, furloughed, or laid off and replacing another worker, the worker has elected to accept a termination, furlough, or layoff;

(h) Quitting employment because of a violation of the written employment contract by the employer; except that before such quitting the worker must have exhausted all remedies provided in such written contract for the settlement of disputes before quitting his job;

(i) Being discharged from employment without the employer informing either the worker or the division, after a request from the division as to the reason for the discharge;

(j) Being physically or mentally unable to perform the work or unqualified to perform the work as a result of insufficient educational attainment or inadequate occupational or professional skills. In cases where an individual quits because of physical or mental inability to perform the work because of domestic abuse, any award of benefits will be made in accordance with paragraph (r) of this subsection (4).

(k) Refusing with good cause to work overtime without reasonable advance notice. Good cause as used in this paragraph (k) shall be restricted to reasonable, compelling personal reasons as determined by the division affecting either the worker or the worker's immediate family.

(l) Being instructed or requested to perform a service or commit an act which is in violation of an ordinance or statute;

(m) Involuntary retirement in accordance with company policy or at the volition of the employer;

(n) Quitting employment under conditions which would not have resulted in a denial of benefits under the provisions of paragraph (b) of subsection (5) of this section;

(o) Quitting employment because of personal harassment by the employer not related to the performance of the job;

(p) (I) Business closure because the employer is, or was, a member of the military reserves or National Guard and was called to active military duty.

(II) Any benefits awarded to the claimant under the provisions of subparagraph (I) of this paragraph (p) and normally chargeable to the employer will be charged to the fund.

(q) Repealed.

(r) (I) Separating from a job because of domestic violence may be reason for a determination for a full award if the worker reasonably believes that the worker's continued employment would jeopardize the safety of the worker or any member of the worker's immediate family.

(II) If the worker does not meet the provisions of subparagraph (I) of this paragraph (r), the worker shall be held to have voluntarily terminated employment for the purposes of determining benefits pursuant to subparagraph (XXII) of paragraph (e) of subsection (5) of this section.

(III) Any benefits awarded to the claimant under the provisions of this paragraph (r) normally chargeable to the employer shall be charged to the fund.

(IV) The director of the division shall adopt rules as necessary to implement and administer this paragraph (r).

(V) Repealed.

(s) and (t) Repealed.

(u) (I) Separating from a job due to a change in location of the employment of the worker's spouse or partner in a civil union that necessitates a new place of residence for the worker, either within or outside Colorado, from which it is impractical to commute to the worker's place of employment, and upon arrival at the new place of residence, the individual is in all respects

available for suitable work. The director of the division shall adopt rules as necessary to implement and administer this paragraph (u).

(II) Any benefits awarded to the claimant under this paragraph (u) normally chargeable to the employer shall be charged to the fund.

(v) (I) Separating from a job because a member of the worker's immediate family is suffering from an illness that requires the worker to care for the immediate family member for a period that exceeds the greater of the employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993" if the worker meets the following requirements:

(A) The worker informed his or her employer, if the employer has posted or given actual advance notice of the requirement to so inform the employer, of the condition of the worker's immediate family member; and

(B) The worker provides the division, when requested, a competent statement verifying the condition of the worker's immediate family member.

(II) Separating from a job because a member of the worker's immediate family is suffering from a disability that requires the worker to care for the immediate family member for a period that exceeds the greater of the employer's medical leave of absence policy or the provisions of the federal "Family and Medical Leave Act of 1993" if the worker meets the following requirements:

(A) The worker informed his or her employer, if the employer has posted or given actual advance notice of the requirement to so inform the employer, of the condition of the worker's immediate family member; and

(B) The worker provides the division, when requested, a competent statement verifying the condition of the worker's immediate family member.

(III) The director of the division shall adopt rules as necessary to implement and administer this paragraph (v).

(IV) Any benefits awarded to the claimant under this paragraph (v) normally chargeable to the employer shall be charged to the fund, and any such benefits shall not affect an employer's premium.

(V) As used in this subsection (4)(v):

(A) "Disability" means all types of verified disability, including, without limitation, mental and physical disabilities; permanent and temporary disabilities; and partial and total disabilities.

(B) "Illness" means verified poor health or sickness.

(C) Repealed.

(w) Separating from employment because the employer requires the employee to work in an environment that is not in compliance with:

(I) Federal centers for disease control and prevention guidelines applicable to the employer's business and workplace at the time of the determination;

(II) State and federal laws, rules, and regulations concerning disease mitigation and workplace safety;

(III) An executive order issued by the governor requiring the employer to close the business or modify the operation of the business; and

(IV) Any public health order issued by the department of public health and environment or a local government to close the business or modify the operation of the business;

(x) Separating from employment because the employee is the primary caretaker of:

(I) A child enrolled in a school that is closed due to a public health emergency; or

(II) A family member or household member who is quarantined due to an illness during a public health emergency;

(y) Separating from employment because the employee is immunocompromised and more susceptible to illness or disease during a public health emergency as evidenced by the employee's health-care provider.

(5) Disqualification.

(a) An individual who refuses to accept suitable work or refuses a referral to suitable work shall be disqualified from receiving benefits for a period of twenty weeks beginning with the week in which the refusal occurred, and his total benefits shall be reduced by an amount equal to the number of weeks of disqualification multiplied by his weekly benefit amount. The determination of whether or not an individual has refused to accept suitable work or refused to accept a referral to suitable work shall be the responsibility of the division.

(b) The division shall consider the refusal of suitable work or refusal of referral to suitable work at any time after the last separation from employment that occurred prior to the time of filing the initial claim in determining the direct and proximate cause of the separation. In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment and prospects for securing work in the individual's customary occupation, and the distance of the available local work from the individual's residence. Notwithstanding any other provisions of articles 70 to 82 of this title 8, the division shall not deem work to be suitable and

shall not deny benefits under articles 70 to 82 of this title 8 to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (I) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (II) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (III) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
- (IV) The employer requires the individual to work in an environment that is not in compliance with:
 - (A) Federal centers for disease control and prevention guidelines applicable to the employer's business and workplace at the time of the determination;
 - (B) State or federal laws, rules, and regulations concerning disease mitigation and workplace safety;
 - (C) An executive order issued by the governor requiring the employer to close the business or modify the operation of the business; and
 - (D) Any public health order issued by the department of public health and environment or a local government to close the business or modify the operation of the business;
 - (V) The individual is the primary caretaker of:
 - (A) A child enrolled in a school that is closed due to a public health emergency; or
 - (B) A family member or household member who is quarantined due to an illness during a public health emergency; or
 - (VI) The employee is immunocompromised and more susceptible to illness or disease during a public health emergency as evidenced by the employee's health-care provider.
- (c) An award shall not be denied to an individual more than once for failure to apply for or to accept the same or a similar position with the same employer.
- (d) Repealed.
- (e) Subject to the maximum reduction consistent with federal law, and insofar as consistent with interstate agreements, if a separation from employment occurs for any of the following reasons, the employer from whom such separation occurred must not be charged for benefits which are attributable to such employment and, because any payment of benefits which are attributable to such employment out of the fund as defined in section 8-70-103 (13) is deemed to

have an adverse effect on the employer's account in such fund, a payment of such benefits must not be made from such fund:

(I) Quitting employment because of dissatisfaction with prevailing rates of pay in that industry, standard hours of work, standard working conditions, or working conditions which generally prevail for other workers performing the same or similar work, regularly assigned duties, or opportunities for advancement;

(II) Quitting employment because of dissatisfaction with a supervisor with no evidence to indicate that the supervision is other than that reasonably to be expected in the proper performance of work;

(III) Quitting to marry, irrespective of whether or not such marriage occurs subsequent to the separation from employment;

(IV) Quitting to move to another area as a matter of personal preference, unless such move was pursuant to other provisions of subsection (4) of this section;

(V) Quitting to seek other work; or quitting to accept other employment if such employment does not meet the requirements of paragraph (f) of subsection (4) of this section;

(VI) Insubordination such as: Deliberate disobedience of a reasonable instruction of an employer or an employer's duly authorized representative, refusal or failure to obtain, maintain, or renew licenses, certifications, credentials, conditions, or other professional designations which are necessary to permit the claimant to perform a job, failure to keep in good standing with the union because of nonpayment of dues, or repeated acts of agitation against employer working conditions, pay scale, policies, or procedures; except that orderly action on the part of an employee or through union negotiation shall not be so considered if such action does not interfere with work performance;

(VII) Violation of a statute or of a company rule which resulted or could have resulted in serious damage to the employer's property or interests or could have endangered the life of the worker or other persons, such as: Mistreatment of patients in a hospital or nursing home; serving liquor to minors; selling prescription items without prescriptions from licensed doctors; immoral conduct which has an effect on worker's job status; divulging of confidential information which resulted or could have resulted in damage to the employer's interests; failure to observe conspicuously posted safety rules; intentional falsification of expense accounts, inventories, or other records or reports whether or not substantial harm or injury was incurred; or removal or attempted removal of employer's property from the premises of the employer without proper authority;

(VIII) Off-the-job use of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), C.R.S., to a degree resulting in interference with job performance;

(IX) On-the-job use of or distribution of not medically prescribed intoxicating beverages or controlled substances, as defined in section 18-18-102 (5), C.R.S.;

(IX.5) The presence in an individual's system, during working hours, of not medically prescribed controlled substances, as defined in section 18-18-102 (5), C.R.S., or of a blood alcohol level at or above 0.04 percent, or at or above an applicable lower level as set forth by federal statute or regulation, as evidenced by a drug or alcohol test administered pursuant to a statutory or regulatory requirement or a previously established, written drug or alcohol policy of the employer and conducted by a medical facility or laboratory licensed or certified to conduct such tests;

(X) Incarceration after conviction of a violation of any law, or loss of license, certification, credential, condition, or other professional designation that is essential to job performance;

(XI) Theft;

(XII) Assaulting or threatening to assault under circumstances such as to cause a reasonably emotionally stable person to become concerned as to his physical safety;

(XIII) Willful neglect or damage to an employer's property or interests;

(XIV) Rudeness, insolence, or offensive behavior of the worker not reasonably to be countenanced by a customer, supervisor, or fellow worker;

(XV) Careless or shoddy work. In determining whether or not work has been performed in a careless or shoddy manner, the division shall consider the length of time the worker has been performing the work satisfactorily and industry standards for such work. No work shall be considered careless or shoddy that comes within the area of reasonable mistakes and errors normally made by workers engaging in the same or similar work.

(XVI) Failure to properly safeguard, maintain, or account for the employer's property when this obligation is an essential part of the job;

(XVII) Taking unauthorized vacations or failing to return to work as scheduled after an authorized vacation or other leave of absence unless such failure to return to work was caused by circumstances which would result in a full award under the provisions of this section;

(XVIII) Refusal without good cause to work a different shift when no violation of seniority rights, as provided in paragraph (d) of subsection (4) of this section, is involved;

(XIX) Refusal without good cause to accept transfer to another department which does not involve a substantial change in working conditions or a substantial loss in wages;

(XX) For other reasons including, but not limited to, excessive tardiness or absenteeism, sleeping or loafing on the job, or failure to meet established job performance or other defined

standards, unless such failure is attributable to factors listed in paragraph (b) of subsection (4) of this section;

(XXI) Lack of transportation. Transportation shall be the responsibility of the worker; if, however, in the opinion of the division, it would have been unreasonable to require the worker to continue in employment with his same employer at a new jobsite substantially less accessible or substantially more distant from the worker's residence than the site at which he had worked, benefits shall not be denied because of his refusal to continue in employment at the new site.

(XXII) Quitting under conditions involving personal reasons, unless the personal reasons were compelling pursuant to other provisions of subsection (4) of this section;

(XXIII) Voluntary retirement;

(XXIV) Failure to participate in or failure to complete an approved program of corrective action to deal with an alcohol or substance use disorder pursuant to subsection (4)(b)(IV) of this section. The determination of whether or not an individual has failed to participate in or complete an approved program of corrective action to deal with an alcohol or substance use disorder is the responsibility of the division. In making such a decision, the division may consider extenuating circumstances for the individual's failure to participate in or complete the approved program of corrective action which would justify a decision not to disqualify the individual from receiving benefits, but only if the individual presents a program of corrective action in accordance with subsection (4)(b)(IV)(C) of this section. The only extenuating circumstances which may be considered by the division are whether the individual suffered an illness not related to the alcohol or substance use disorder or received incapacitating injuries in an accident or whether the death of an immediate family member of the individual occurred which contributed to the failure of the individual to participate in or complete the program of corrective action. The burden of proof that an extenuating circumstance existed lies with the claimant.

(f) Repealed.

(g) If a separation from employment subject to adjudication under this subsection (5) occurs for any of the reasons enumerated in paragraph (e) of this subsection (5) and such separation is the most recent separation from employment, any benefits to which the claimant is entitled shall be deferred for ten weeks. In the event that the last separation does not include wages in the base period and the job separation results in a disqualification, the receipt of any benefits from qualifying employment in the base period shall be deferred for a period of ten weeks from the effective date of the claim. A subsequent initial claim in which such wages are within the base period shall result in the maximum reduction of benefits attributable to such employment consistent with federal law and interstate agreements. Such deferral shall begin with the effective date of the valid initial or additional claim. As used in this paragraph (g), "most recent separation from employment" means the claimant's last employment prior to filing a valid initial or additional claim.

(h) Repealed.

(6) to (9) Repealed.

Source: **L. 36, 3rd Ex. Sess.:** p. 19, § 5. **CSA:** C. 167A, § 5. **L. 41:** p. 766, § 5. **L. 49:** p. 722, § 3. **L. 53:** p. 624, § 5. **CRS 53:** § 82-4-9. **L. 57:** p. 517, § 5. **L. 59:** pp. 562, 564, §§ 3, 6. **L. 63:** p. 668, § 4. **C.R.S. 1963:** § 82-4-8. **L. 65:** p. 833, § 5. **L. 69:** p. § 5. **L. 71:** pp. 933-935, 946, 947, §§ 8-11, 19, 2. **L. 76:** (2)(b)(I) amended, p. 299, § 20, May 20; entire section R&RE, p. 339, § 12, effective October 1; (6)(a) amended, p. 358, § 2, effective October 1. **L. 77:** (4)(f)(I) amended, p. 292, § 3, effective May 26; (4)(b)(I) amended and (7)(b) repealed, pp. 480, 481, §§ 1, 2, effective July 1; (2)(b)(I), (2)(b)(II), (2)(b)(III), (2)(b)(IV), (2)(c)(I), and (4)(f)(I) amended, (4)(f)(V) and (4)(f)(VI) added, and (7) repealed, pp. 464, 465, 471, §§ 15, 16, 27, effective July 7; (1), (2)(b)(I), (2)(b)(II), (2)(b)(III), (2)(b)(IV), (2)(c)(I), (3), IP(4), and IP(5) amended and (2)(b)(V), (2)(d)(III), (2)(f), (6), and (7) repealed, pp. 483, 485, §§ 2, 5, effective October 1; (2)(f) repealed, p. 471, § 27, effective January 1, 1978. **L. 79:** (2)(b) amended, p. 1665, § 135, effective July 19; (1), (2), and (3) R&RE, (4)(f)(VI), IP(5), and (5)(d) amended, and (4)(o) and (8) added, pp. 348, 350, 351, §§ 10, 11, 12, effective September 30. **L. 81:** (3)(e)(II)(B) amended, p. 510, § 4, effective July 1; (5) R&RE and (9) added, p. 515, 516, §§ 1, 2, effective July 1. **L. 83:** (3)(e)(II)(B) amended, (3)(e)(II)(C) added, and (3)(e)(III) repealed, pp. 429, 433, §§ 3, 14, effective June 3; (4)(f)(VII) added, p. 2043, § 6, effective October 1. **L. 84:** (1)(a), (3)(b), and IP(4) amended, (5) R&RE, and (2), (8), and (9) repealed, pp. 325, 326, 330, §§ 1, 2, 6, effective July 1; (9)(a)(XXI) added, p. 323, § 2, effective July 1. **L. 85:** (3)(d) amended, p. 361, § 6, effective April 4; (3)(a), (3)(b), IP(3)(e)(II), (3)(e)(II)(C), (4)(n), and (5)(g) amended and (5)(f) and (5)(h) repealed, pp. 367, 369, §§ 4, 7, effective July 1. **L. 86:** (4)(h) amended, p. 543, § 6, effective July 1. **L. 88:** (4)(f)(IV) amended, p. 1429, § 4, effective June 11; (4)(b)(IV) and (4)(b)(V) added, p. 393, § 1, effective July 1; IP(4)(f) amended, p. 394, § 2, effective July 1; (5)(e)(XXIV) added, p. 394, § 3, effective July 1. **L. 89:** (3)(a) and (4)(b)(I) amended, p. 425, § 4, effective July 1; (4)(f) R&RE, p. 427, § 1, effective July 1; (5)(d) repealed, p. 426, § 5, effective July 1; (5)(e)(IV) and (5)(e)(V) amended, p. 428, § 2, effective July 1. **L. 90:** IP(3)(e)(II) amended, p. 603, § 7, effective April 3; (3)(a) R&RE, p. 608, § 5, effective April 16. **L. 91:** (4)(f) amended, p. 1287, § 1, effective May 16; (4)(p) added, p. 1289, § 2, effective May 16. **L. 92:** (4)(b)(I) amended, p. 1794, § 3, effective April 10; (4)(q) added, p. 1822, § 1, effective April 10. **L. 94:** (5)(e)(IX.5) added, p. 1998, § 1, effective July 1. **L. 95:** (4)(b)(I), (4)(b)(II), (4)(b)(IV), (4)(e), (4)(k), (5)(e)(VI), (5)(e)(VII), (5)(e)(IX), and (5)(e)(X) amended, p. 273, § 1, effective July 1. **L. 96:** IP(3)(e)(II) and (3)(e)(II)(B) amended and (3)(f) added, p. 382, § 6, effective April 17. **L. 97:** (4)(b)(IV.5) added, p. 479, § 1, effective April 24. **L. 98:** (4)(q) repealed, p. 91, § 4, effective March 23; IP(4) and (4)(b)(IV) amended, p. 375, § 1, effective April 21. **L. 99:** (4)(j) and (5)(e)(XXII) amended and (4)(r) added, p. 397, § 3, effective August 15. **L. 2003:** (4)(r)(I)(A) amended, p. 1009, § 10, effective July 1. **L. 2005:** (4)(s) added, p. 972,

§ 1, effective June 2; (4)(r)(I) amended, p. 320, § 2, effective August 8. **L. 2006:** (4)(b)(IV)(D), IP(4)(r)(I), and (4)(s)(I) amended, p. 653, § 1, effective April 24; (3)(f)(II) amended, p. 1489, § 7, effective June 1. **L. 2008:** (4)(s) amended, p. 1721, § 1, effective June 2. **L. 2009:** (4)(t) added, (HB 09-1054), ch. 65, p. 230, § 1, effective March 25; (4)(r)(I), (5)(e)(IV), and (5)(e)(XXII) amended and (4)(r)(IV), (4)(r)(V), (4)(u), and (4)(v) added, (SB 09-247), ch. 405, pp. 2229, 2231, 2230, §§ 3, 5, 4, effective July 1. **L. 2010:** (4)(b)(IV)(C) amended, (SB 10-175), ch. 188, p. 777, § 5, effective April 29. **L. 2012:** IP(4)(b)(IV), (5)(e)(VIII), (5)(e)(IX), and (5)(e)(IX.5) amended, (HB 12-1311), ch. 281, p. 1609, § 8, effective July 1. **L. 2013:** (4)(b)(I), (4)(r), (4)(s)(I), (4)(t)(I), (4)(u)(I), and (4)(v) amended (SB 13-011), ch. 49, p. 157, § 6, effective May 1. **L. 2016:** (4)(b)(I), (4)(b)(II), (4)(b)(III), and (4)(b)(IV)(B) amended, (SB 16-158), ch. 204, p. 721, § 5, effective August 10. **L. 2018:** IP(4), IP(4)(b)(IV), (4)(b)(IV)(A), (4)(b)(IV)(B), (4)(b)(V), IP(5)(e), and (5)(e)(XXIV) amended, (SB 18-091), ch. 35, p. 379, § 2, effective August 8. **L. 2019:** (4)(b)(I), (4)(b)(II), (4)(b)(III), and (4)(b)(IV)(B) amended, (HB 19-1172), ch. 136, p. 1648, § 26, effective October 1. **L. 2020:** (4)(w), (4)(x), (4)(y), (5)(b)(IV), (5)(b)(V), and (5)(b)(VI) added and IP(5)(b) amended, (SB 20-207), ch. 296, p. 1471, § 4, effective July 14; (4)(r)(I) and IP(4)(v)(V) amended and (4)(r)(V) and (4)(v)(V)(C) repealed, (SB 20-170), ch. 297, p. 1477, § 1, effective January 1, 2021. **L. 2023:** (4)(f)(I)(E) amended, (SB 23-051), ch. 37, p. 142, § 12, effective March 23.

Editor's note: (1) Subsection (4)(s)(IV) provided for the repeal of subsection (4)(s), effective July 1, 2018. (See L. 2008, p. 1721.)

(2) Subsection (4)(t)(V) provided for the repeal of subsection (4)(t), effective July 1, 2019. (See L. 2009, p. 230.)

Cross references: (1) For the federal "Family and Medical Leave Act of 1993", see Pub.L. 103-3, codified at 29 U.S.C. § 2601 et seq.

(2) For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016. For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

ANNOTATION

I. General Consideration.

V. No Award.

II. Disqualification for Benefits.

VI. Evidence.

IV. Reduced Awards.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Unemployment Insurance in Colorado - Eligibility and Disqualification", see 25 Rocky Mt. L. Rev. 180 (1953). For article, "The Conflict Between Collective Bargaining and Unemployment Insurance", see 28 Rocky Mt. L. Rev. 185 (1956). For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For note, "The Unemployment Compensation Recipient - Should He Accept a Job?", see 44 Den. L.J. 147 (1967). For article, "Sex Discrimination and State Protective Laws", see 44 Den. L.J. 147 (1967). For article, "Sex Discrimination and State Protective Laws", see 44 Den. L.J. 344 (1967). For article, "Defending an Unemployment Compensation Claim", see 13 Colo. Law. 69 (1984). For article, "Drug Testing in Colorado: Problems And Advice for Private Employers", see 19 Colo. Law. 413 (1990). For article, "Alcoholism and Unemployment Insurance in Colorado", see 18 Colo. Law. 1963 (1989).

Annotator's note. (1) In light of the repeal and reenactment of this section in 1976, annotations from cases pertaining to this section as it read prior to 1976 have been treated as decided under former law. Moreover, the annotations to this section have been modified and updated to reflect various amendments and repeals, especially the repeal in 1977 of former subsections (7) and (8), relating to optional and special awards; the transfer in 1977 of the provisions of former subsection (6), relating to making of no awards, to subsection (5), relating to reduced awards, and amendment

in 1984 of that subsection (5) to make it pertain to disqualification from benefits; the repeal in 1984 of former subsection (8) (added in 1979), relating to denial of benefits; and the repeal of former subsection (9), relating to employer's release from charge for benefits being paid following certain types of employee separation.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 that abolished said commission and transferred its powers, duties, and functions under this section to the director of the division.

Constitutionally impermissible application. While the employment security act is neutral on its face, application of the act to defendant had the effect of forcing him to choose between fidelity to his religious beliefs and the forfeiture of benefits on the one hand and abandonment of said beliefs to accept suitable work on the other. Therefore, in its application, the act offended the constitutional requirement for governmental neutrality because it unduly burdened defendant's free exercise of religion. *Engraff v. Indus. Comm'n*, 678 P.2d 564 (Colo. App. 1983).

Constitutionality of classifications within this section. In view of the general policy and intent of this section as spelled out by the general assembly, there is no unconstitutional denial of equal protection of the law by reason of the classifications adopted by the general assembly; they are reasonable and based on proper justifiable distinctions. *Cottrell Clothing Co. v. Teets*,

139 Colo. 558, 342 P.2d 1016 (1959); *Miller v. Indus. Comm'n*, 173 Colo. 476, 480 P.2d 565 (1971).

Equal protection challenge to subsection (4)(f) which singles out construction workers for special consideration must fail. As a statutory classification, the provision is valid unless there is no rational basis for the distinction or it is not rationally related to a legitimate state interest. Because the legislature declared that the statute was enacted because construction workers are subjected to working conditions not generally encountered by other employees, the legislature has determined that there is a rational basis for treating construction workers differently for unemployment compensation purposes. The statutory exception is therefore rationally related to the legitimate state interest of addressing the problems associated with the construction industry and does not violate equal protection. *Getts v. Indus. Claim Appeals Office*, 804 P.2d 282 (Colo. App. 1990).

Subsection (4)(f) on its face does not operate to deny equal protection to nonconstruction workers. The difference in treatment of construction and nonconstruction workers is rationally related to differences arising from the nature of the construction industry. *Baldwin v. Indus. Claim Appeals Office*, 813 P.2d 807 (Colo. App. 1991) (distinguishing *Higgs v. W. Landscaping & Sprinkler Sys., Inc.*, 804 P.2d 161 (Colo. 1991)).

Subsection (5)(e)(IV) did not violate claimant's constitutional right to travel

under art. II, § 3, of the state constitution. Subsection (5)(e)(IV) does not prevent a person from moving either interstate or intrastate. Rather, it precludes a claimant from receiving unemployment benefits only when the claimant quits to move to another area as a matter of personal preference. *Nagl v. Indus. Claim Appeals Office*, 2015 COA 51, 351 P.3d 577.

Although subsection (5)(e)(IV) penalizes certain claimants who voluntarily quit to move to another area, the effect on the right to travel is a secondary impact and does not render the statute unconstitutional as applied. *Nagl v. Indus. Claim Appeals Office*, 2015 COA 51, 351 P.3d 577.

Subsection (5)(e)(IV), as applied to a claimant who voluntarily quit to move, does not adversely affect the fundamental right to travel in a constitutionally significant sense. Conditioning governmental payments of monetary benefits upon a showing that a claimant has not caused his or her own unemployment has, at most, only an incidental effect on the claimant's right to travel. *Nagl v. Indus. Claim Appeals Office*, 2015 COA 51, 351 P.3d 577.

Underlying principle. The Colorado program of unemployment insurance is based on the principle that only those persons who are willing and able to work are entitled to unemployment benefits. *Sylvara v. Indus. Comm'n*, 191 Colo. 92, 550 P.2d 868 (1976) (decided under former law).

State interest preserved. The state has a legitimate interest in providing unemployment benefits only to

conscientious persons. But that interest is preserved by the statutory requirement that in order to receive benefits a claimant must be available for work and actively seeking employment. *Kistler v. Indus. Comm'n*, 192 Colo. 172, 556 P.2d 895 (1976) (decided under former law).

Unemployment compensation acts are to be liberally construed to further their remedial and beneficent purposes. *Andersen v. Indus. Comm'n*, 167 Colo. 281, 447 P.2d 221 (1968); *Montano v. Indus. Comm'n*, 171 Colo. 92, 464 P.2d 518 (1970); *Tague v. Coors Porcelain Co.*, 30 Colo. App. 158, 490 P.2d 96 (1971); *Harding v. Indus. Comm'n*, 183 Colo. 52, 515 P.2d 95 (1973); *Anyon v. Indus. Comm'n*, 42 Colo. App. 88, 589 P.2d 1390 (1979); *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

But it is not the function of "liberal" construction to twist the facts in order to reach a result favorable to an employee. *Montano v. Indus. Comm'n*, 171 Colo. 92, 464 P.2d 518 (1970); *Harding v. Indus. Comm'n*, 183 Colo. 52, 515 P.2d 95 (1973); *Pierce v. Indus. Comm'n*, 195 Colo. 10, 576 P.2d 1012 (1978).

Entitlement should not be confused with eligibility. Where claimant did not fulfill eligibility requirements of § 8-73-107, claimant was disqualified from receiving benefits. *McClaflin v. Indus. Claim Appeals Office*, 126 P.3d 288 (Colo. App. 2005).

The intent of the general assembly is to provide unemployment benefits for those who are "unemployed through no fault of their own". *Donnell v. Indus. Comm'n*, 149 Colo. 228, 368 P.2d 777 (1962); *Andersen v.*

Indus. Comm'n, 167 Colo. 281, 447 P.2d 221 (1968); *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 40 Colo. App. 381, 579 P.2d 651 (1978), rev'd on other grounds, 197 Colo. 335, 592 P.2d 808 (1979); *Int'l Typographical Union v. Indus. Comm'n*, 44 Colo. App. 29, 609 P.2d 634 (Colo. App. 1980); *Parker v. Daniels Motors, Inc.*, 738 P.2d 68 (Colo. App. 1987); *Nielson v. AMI Indus., Inc.*, 759 P.2d 834 (Colo. App. 1988); *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

It is the expressed intent of the general assembly that unemployment insurance is for the benefit of persons who become unemployed through no fault of their own. *Harding v. Indus. Comm'n*, 183 Colo. 52, 515 P.2d 95 (1973) (decided under former law).

The intent of the general assembly is that each eligible individual is entitled to a full award of benefits if he is unemployed through no fault of his own. *Zelingers v. Indus. Comm'n*, 679 P.2d 608 (Colo. App. 1984).

However, there is a specific exception to this with regard to pregnancy if the other requirements of subsection (4)(b)(I) of this section are met. *Frontier Airlines, Inc. v. Indus. Comm'n*, 734 P.2d 142 (Colo. App. 1986).

Claimant is entitled to a determination whether he was "at fault" for his separation notwithstanding the applicability of the disqualifying provisions of § 8-73-105.5. To determine otherwise would abrogate the overriding legislative policy that unemployment

benefits are to be awarded only to those claimants who are unemployed through no fault of their own. No legislative intent to treat unemployment compensation claimants who work for temporary help agencies differently from other unemployment compensation claimants with regard to the issue of fault. Accordingly, matter must be remanded to panel for it to consider "fault" issue and, based on its resolution of that issue, to enter a new order on whether claimant is entitled to benefits. *Velo v. Emp't Sols. Pers.*, 988 P.2d 1139 (Colo. App. 1998).

The unemployment law is intended to provide a speedy determination of eligibility through a simplified administrative procedure. *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

Unless reason for discharge comes within one of grounds provided in this section. One who is discharged from his employment is entitled to unemployment compensation unless the reason for his discharge comes within one of the grounds provided for the act. *Sayers v. Am. Janitorial Serv., Inc.*, 162 Colo. 292, 425 P.2d 693 (1967); *Salida Sch. Dist. R-32-J v. Morrison*, 732 P.2d 1160 (Colo. 1987); *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

Matters within discretion of general assembly. The establishment of reasonable classifications of workers, the grounds upon which compensation may be awarded, the standards of eligibility and disqualification, and the formula by which distributions are

to be made are all matters within the sound discretion of the general assembly. *Miller v. Indus. Comm'n*, 173 Colo. 476, 480 P.2d 565 (1971).

Using standards adopted by the general assembly, the office is delegated the responsibility of determining whether, under all circumstances from a case, benefits are to be awarded for a particular separation from employment. *Sch. Dist. No. 1 v. Fredrickson*, 812 P.2d 723 (Colo. App. 1991).

If decision of office as to which section of Employment Security Act applies is supported by substantial evidence and inferences drawn therefrom, decision will not be disturbed on appeal. *Sch. Dist. No. 1 v. Fredrickson*, 812 P.2d 723 (Colo. App. 1991).

Commission has wide latitude to determine which provisions apply. Some unemployment benefit cases fall within two or more provisions of this statute, and in such instances, the commission has wide latitude in determining which section will be applied. *Mattison v. Indus. Comm'n*, 33 Colo. App. 203, 516 P.2d 1143 (1973) (decided under former law); *Mtn. States Tel. & Tel. Co. v. Indus. Comm'n*, 697 P.2d 418 (Colo. App. 1985); *Sw. Forest Indus. v. Indus. Comm'n*, 719 P.2d 1098 (Colo. App. 1986).

And must exercise discretion in executing legislative intent. In order for the commission to carry out the legislative intent as expressed in subsections (1) and (5) it must at times exercise discretion in determining whether to grant a claimant a

reduced award. The intent of the general assembly to confer such discretion on the commission is reflected by the 1979 amendment adding subsection (5)(s) to this section. *Sims v. Indus. Comm'n*, 627 P.2d 1107 (Colo. 1981); *Dunn v. Indus. Comm'n*, 640 P.2d 1146 (Colo. 1982).

Commission is not at liberty to apply the converse of a section of this statute in making a determination of benefits. *Mattison v. Indus. Comm'n*, 33 Colo. App. 203, 516 P.2d 1143 (1973) (decided under former law).

It is the reason for separation that determines which subsection applies. *Kortz v. Indus. Comm'n*, 38 Colo. App. 411, 557 P.2d 842 (1976) (decided under former law).

The reason for separation from employment determines the amount of benefits to which a claimant is entitled. *Stavros v. Indus. Comm'n*, 631 P.2d 1192 (Colo. App. 1981).

If claimant meets initial burden of establishing eligibility by filing a claim reflecting a discharge from covered employment, then employer has burden to rebut claimant's prima facie case by proving disqualification. *Yellow Front Stores v. Indus. Comm'n*, 694 P.2d 882 (Colo. App. 1985).

The claimant has the initial burden of proof to establish a prima facie case of eligibility for benefits. If the initial burden is met, the burden shifts to the employer to establish the statutory disqualification of benefits. *Colo. Div. of Emp. & Train. v.*

Hewlett, 777 P.2d 704 (Colo. 1989); *Ward v. Indus. Claim Appeals Office*, 916 P.2d 605 (Colo. App. 1995).

Procedures for a claimant to establish a prima facie case of eligibility at a hearing vary depending on whether the claimant was awarded or disqualified from receipt of benefits by the deputy. If the deputy found that the claimant's claim documentation established a prima facie case, the claimant may simply rely upon the documentation at the hearing. If not, the claimant must make out a prima facie case at the hearing. *Ward v. Indus. Claim Appeals Office*, 916 P.2d 605 (Colo. App. 1995).

Hearing officer has discretion to determine the order and manner of presentation of witnesses and evidence. *Ward v. Indus. Claim Appeals Office*, 916 P.2d 605 (Colo. App. 1995).

Responsibility for separation from employment is determination of fact. *Sims v. Indus. Comm'n*, 627 P.2d 1107 (Colo. 1981).

The reason for separation from employment is a question of fact, and the commission's determination in this regard may not be altered on review, if it is supported by the evidence. *Mohawk Data Sciences Corp. v. Indus. Comm'n*, 660 P.2d 922 (Colo. App. 1983); *Jones v. Indus. Comm'n*, 705 P.2d 530 (Colo. App. 1985); *Frontier Airlines, Inc. v. Indus. Comm'n*, 719 P.2d 739 (Colo. App. 1986).

The word "fault" is not limited to something worthy of censure but must be construed as meaning failure or volition.

Denver Post Corp. v. Indus. Comm'n, 677 P.2d 436 (Colo. App. 1984).

The qualifying and disqualifying sections are not couched in terms of fault.

Even if one of the disqualifying sections applies, a claimant may still be entitled to benefits if the totality of the circumstances show the claimant was not at fault in his separation. Collins v. Indus. Claim Appeals Office, 813 P.2d 804 (Colo. App. 1991).

"Fault" under the statute is not necessarily related to culpability, but must be construed as requiring a volitional act. Zelingers v. Indus. Comm'n, 679 P.2d 608 (Colo. App. 1984); Pepsi-Cola Bottling v. Colo. Div. of Emp., 754 P.2d 1382 (Colo. App. 1988).

And in the absence of a volitional act, there can be no "fault" on claimant's part within the meaning of the unemployment statute. Frontier Airlines, Inc. v. Indus. Comm'n, 719 P.2d 739 (Colo. App. 1986).

"Fault" means that the claimant, at a minimum, must have performed some volitional act resulting in the discharge from employment. Nielson v. AMI Indus., Inc., 759 P.2d 834 (Colo. App. 1988).

The concept of fault means a volitional act, and is not necessarily related to culpability. Thus, in the absence of a volitional act by the employee, there can be no fault on the employee's part within the meaning of the unemployment statute. Rulon v. Indus. Comm'n, 728 P.2d 739 (Colo. App. 1986).

An employee may not be denied benefits under subsection (1)(a) absent

some "fault" on the employee's behalf, i.e., that it was a "volitional" act on the employee's part that caused the employment termination and the circumstances surrounding the termination must be one of those that is specifically described in the statute as being disqualifying. Goddard v. E G & G Rocky Flats, Inc., 888 P.2d 369 (Colo. App. 1994).

An employee terminated from employment due to nonvolitional drug or alcohol use must comply with subsection (4)(b)(IV) in order to qualify for unemployment compensation benefits. Cath. Health Initiatives v. Indus. Claim Appeals Office, 2021 COA 48, 491 P.3d 571.

A claimant may still be entitled to benefits if the totality of the circumstances establishes that the claimant's separation occurred through "no fault" of his own, even if the findings of the hearing officer support the application of one of the disqualifying sections of the statute. Velo v. Emp't Sols. Pers., 953 P.2d 1295 (Colo. App. 1998).

Claimant is entitled to a determination whether he was "at fault" for his separation even though he was disqualified pursuant to the provisions of § 8-73-105.5 and not directly under one of the statutory disqualifying subsections of this section. Velo v. Emp't Sols. Pers., 953 P.2d 1295 (Colo. App. 1998).

A finding of "willful intent" is not necessary before a claimant may be determined to be "at fault" for his own job termination. "Fault" is not necessarily

related to culpability, but only requires a volitional act. *Richards v. Winter Park Recreational Ass'n*, 919 P.2d 933 (Colo. App. 1996).

The determination of fault in a job separation is a question of fact to be determined by the commission, and it will not be set aside if it is supported by substantial evidence. *Wilson v. Indus. Comm'n*, 730 P.2d 911 (Colo. App. 1986).

The determination as to whether a claimant is at fault for a separation from employment because of a violation of the residency requirement must be determined on a case-by-case basis, with due consideration given to the totality of the circumstances in each particular situation. *Morris v. City & County of Denver*, 843 P.2d 76 (Colo. App. 1992).

The determination as to whether a claimant was responsible or "at fault" for the separation from employment is not a question of evidentiary fact, but rather is an ultimate legal conclusion to be based on the established findings of evidentiary fact. *Bd. of Water Comm'rs v. Indus. Claim Appeals Office*, 881 P.2d 476 (Colo. App. 1994); *Cole v. Indus. Claim Appeals Office*, 964 P.2d 617 (Colo. App. 1998).

Factual defense to application of subsection (5)(e)(XVII) may not be raised if not stated in claimant's notice of appeal. *Sands v. Indus. Claim Appeals Office*, 801 P.2d 12 (Colo. App. 1990).

There must be disclosure prior to the hearing of one party's intent to dispute the other party's specific factual allegations.

Monarrez v. Indus. Claim Appeals Office, 835 P.2d 607 (Colo. App. 1992).

Resolution of conflicting evidence is a matter properly left to the commission in its fact-finding role. *Mohawk Data Sciences Corp. v. Indus. Comm'n*, 660 P.2d 922 (Colo. App. 1983).

The commission is not held to a crystalline standard when it articulates its findings of fact. *Allmendinger v. Indus. Comm'n*, 40 Colo. App. 210, 571 P.2d 741 (1977) (decided under former law); *Muhlenkamp v. Indus. Claim Appeals Office*, 802 P.2d 1127 (Colo. App. 1990).

And lack of clarity in the factual findings of an order does not require a remand. *Jones v. Indus. Comm'n*, 705 P.2d 530 (Colo. App. 1985).

Where the decision is justified, it may not be set aside "on the technicality of unclarity of expression on the part of the commission". *Allmendinger v. Indus. Comm'n*, 40 Colo. App. 210, 571 P.2d 741 (1977) (decided under former law); *Muhlenkamp v. Indus. Claim Appeals Office*, 802 P.2d 1127 (Colo. App. 1990).

Conclusion permitted by substantial evidence not disturbed on review. Where substantial evidence permits the conclusion drawn by the commission, it will not be disturbed on review. *Allmendinger v. Indus. Comm'n*, 40 Colo. App. 210, 571 P.2d 741 (1977) (decided under former law); *Sims v. Indus. Comm'n*, 627 P.2d 1107 (Colo. 1981).

Where evidence is conflicting or susceptible to conflicting inferences, decisions based on a choice between

plausible inferences from such evidence are to be affirmed. *McGinn v. Indus. Comm'n*, 31 Colo. App. 6, 496 P.2d 1080 (1972); *Jones v. Indus. Comm'n*, 705 P.2d 530 (Colo. App. 1985).

Employer's remedies for defalcation by claimant. Where it is admitted that claimant voluntarily left employment with petitioner for a better job and so that award of benefits based on the better job section was appropriate, the employer must rely on other available remedies to obtain redress from any defalcation by claimant. *Kortz v. Indus. Comm'n*, 38 Colo. App. 411, 557 P.2d 842 (1976) (decided under former law).

Claimant's failure to pursue employer's grievance procedures should not be dispositive of her eligibility for benefits. The pursuit of such a course of action is not required by statute as a prerequisite to an award of benefits. *Larsen-Oldaker v. Indus. Comm'n*, 735 P.2d 209 (Colo. App. 1987).

Determination of monetary eligibility is not a final disposition of entitlement. Although a finding that a claimant is not monetarily eligible to receive benefits is a final disposition, a finding of monetary eligibility does not mean that a claimant is eligible to receive benefits. *Arteaga v. Indus. Claim Appeals Office*, 781 P.2d 98 (Colo. App. 1989).

Once claimant's eligibility is decided, a determination that claimant was not entitled to benefits is not barred by the doctrine of res judicata. Res judicata is only applicable when a determination of a course of action in one legal proceeding is being used to foreclose a different

determination of the same cause of action in a second subsequent different legal proceeding. *Arteaga v. Indus. Claim Appeals Office*, 781 P.2d 98 (Colo. App. 1989).

Error not to be inferred from failure to enter written findings on every factor raised in deciding whether claimant had shown good cause for raising new issue at hearing, where findings indicated that the relevant issues had been considered. *Sands v. Indus. Claim Appeals Office*, 801 P.2d 12 (Colo. App. 1990).

Police report that averred that claimant had made nuisance telephone calls to the home of one of the employer's supervisors was valid basis for discharge and disqualification for benefits. *Lucero v. Indus. Claim Appeals Office*, 812 P.2d 1191 (Colo. App. 1991).

For decisions under former subsection (5), relating to 50 percent awards, see *Mattison v. Indus. Comm'n*, 33 Colo. App. 203, 516 P.2d 1143 (1973); *Olivas v. Indus. Comm'n*, 33 Colo. App. 273, 518 P.2d 304 (1974).

For decisions under former subsection (6), relating to no award of benefits, see *Olivas v. Indus. Comm'n*, 33 Colo. App. 273, 518 P.2d 304 (1974); *Allen v. Indus. Comm'n*, 36 Colo. App. 330, 540 P.2d 358 (1975); *Pierce v. Indus. Comm'n*, 38 Colo. App. 85, 553 P.2d 402 (1976); *Everitt Lumber Co. v. Indus. Comm'n*, 39 Colo. App. 336, 565 P.2d 967 (1977); *Ross v. Indus. Comm'n*, 39 Colo. App. 204, 566 P.2d 367 (1977); *Michals v. Indus. Comm'n*, 40 Colo. App. 5, 568 P.2d 108 (1977); *Pierce v.*

Indus. Comm'n, 195 Colo. 10, 576 P.2d 1012 (1978).

For decision under former subsection (7), relating to optional awards, see *Mattison v. Indus. Comm'n*, 33 Colo. App. 203, 516 P.2d 1143 (1973).

For decisions under former subsection (8), relating to special awards, see *Briggs v. Indus. Comm'n*, 36 Colo. App. 292, 539 P.2d 1303 (1975); *Sylvara v. Indus. Comm'n*, 191 Colo. 92, 550 P.2d 868 (1976); *Kistler v. Indus. Comm'n*, 192 Colo. 172, 556 P.2d 895 (1976); *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 38 Colo. App. 298, 559 P.2d 252 (1976).

Applied in *Olsgard v. Indus. Comm'n*, 190 Colo. 472, 548 P.2d 910 (1976) (decided under former law); *Yanish v. Indus. Comm'n*, 38 Colo. App. 492, 558 P.2d 1007 (1976) (decided under former law); *Nesbit v. Indus. Comm'n*, 43 Colo. App. 398, 607 P.2d 1024 (1979); *Armijo v. Indus. Comm'n*, 44 Colo. App. 171, 610 P.2d 107 (1980); *Martinez v. Indus. Comm'n*, 618 P.2d 738 (Colo. App. 1980); *Stern v. Indus. Comm'n*, 653 P.2d 742 (Colo. 1982); *Asche v. Indus. Comm'n*, 654 P.2d 813 (Colo. 1982); *Trujillo v. Indus. Comm'n*, 648 P.2d 1094 (Colo. App. 1982); *Johnson v. Indus. Comm'n*, 652 P.2d 1109 (Colo. App. 1982); *Seethaler v. Indus. Comm'n*, 660 P.2d 11 (Colo. App. 1982); *Stern v. Indus. Comm'n*, 667 P.2d 244 (Colo. App. 1983); *FlaHavhan v. Hewlett Packard Co.*, 675 P.2d 19 (Colo. App. 1983); *City of Arvada v. Indus. Comm'n*, 701 P.2d 623 (Colo. App. 1985); *Colo. Springs v. Indus. Comm'n*, 749 P.2d 412 (Colo. 1988); *Marquez v. Indus. Claim Appeals Office*,

868 P.2d 1175 (Colo. App. 1994); *Boeheim v. Indus. Claim Appeals Office*, 23 P.3d 1247 (Colo. App. 2001).

II. DISQUALIFICATION FOR BENEFITS.

Payment of unemployment compensation subject to disqualification.

This section authorizes payment of unemployment compensation to employee who left employment voluntarily without good cause or extenuating circumstances, subject to disqualification of benefits for not less than 13 nor more than 25 weeks. *Morrison Rd. Bar, Inc. v. Indus. Comm'n*, 138 Colo. 16, 328 P.2d 1076 (1958); *Donnell v. Indus. Comm'n*, 149 Colo. 228, 368 P.2d 777 (1962).

And disqualification does not violate state or federal constitution. This section which purports to give to the commission the power to disqualify "for not less than ten weeks nor more than thirty-two and one-half weeks" is not repugnant to and does not violate art. V, § 1, Colo. Const., and the fourteenth amendment to the constitution of the United States in that the provisions of said statute constitute an unlawful delegation of legislative power and fail to set forth adequate standards. *Donnell v. Indus. Comm'n*, 149 Colo. 228, 368 P.2d 777 (1962).

Limiting period of disqualification does not deprive employer of due process. Limiting the disqualification of benefits of disqualified persons to a maximum of 16 weeks does not deprive an employer of his property without due process of law. *Cottrell*

Clothing Co. v. Teets, 139 Colo. 558, 342 P.2d 1016 (1959).

Commission error. Commission erred in entering order of disqualification for benefits after July 1, 1981, based on repealed subsection (5)(x). Nazzaro v. Indus. Comm'n, 671 P.2d 983 (Colo. App. 1983).

An objective standard must be applied in analyzing a disqualification under subsection (5)(e)(VI) for insubordination. Under that standard, the panel must use its independent judgment to determine whether, under the particular facts and circumstances of each case, the request that claimant refused was one that a reasonable person would have refused. Bell v. Indus. Claim Appeals Office, 93 P.3d 584 (Colo. App. 2004).

An employee who claims a religious exemption from an employer's COVID-19 vaccination policy and who is placed on unpaid leave is barred from receiving unemployment benefits for the deliberate disobedience of a reasonable instruction of the employer under subsection (5)(e)(VI). Simon v. Indus. Claim Appeals Office, 2023 COA 74, 538 P.3d 756.

Subsection (5)(e)(IX.5) does not exclusively govern a disqualification for failure to pass a drug test at work. Other provisions, by their terms, may apply to disqualifications based on drug testing. M & A Acquisition Corp. v. Indus. Claim Appeals Office, 2019 COA 173, 456 P.3d 102.

Presence of medical marijuana in an individual's system during working hours is a ground for disqualification from

unemployment benefits under this section. Medical use of marijuana by an employee holding a registry card under § 14 of article XVIII of the state constitution does not constitute the use of "medically prescribed controlled substances" within the meaning of subsection (5)(e)(IX.5). Beinor v. Indus. Claim Appeals Office, 262 P.3d 970 (Colo. App. 2011).

Although medical certification permitting the possession and use of marijuana may insulate claimant from state criminal prosecution, it does not preclude claimant from being denied unemployment benefits based on a separation from employment for testing positive for marijuana in violation of an employer's express zero-tolerance drug policy. Beinor v. Indus. Claim Appeals Office, 262 P.3d 970 (Colo. App. 2011).

Disqualification pursuant to subsection (5)(e)(XX) is warranted for claimant who was aware of employer's drug testing requirement and who tested positive for use of cocaine. Bd. of Water Comm'rs v. Indus. Claim Appeals Office, 881 P.2d 476 (Colo. App. 1994).

Disqualification was established pursuant to subsection (5)(e)(XX) when an employer established that the claimant did not do the job for which he was hired and which he knew was expected of him. Pabst v. Indus. Claim Appeals Office, 833 P.2d 64 (Colo. App. 1992); Richards v. Winter Park Recreational Ass'n, 919 P.2d 933 (Colo. App. 1996).

Unemployment insurance claimant was properly disqualified from receiving benefits where he was discharged for

unsatisfactory performance and where it was established that he did not do the job for which he was hired and which he knew was expected of him, despite the fact that he was not explicitly warned that his job was in jeopardy. *Pabst v. Indus. Claim Appeals Office*, 833 P.2d 64 (Colo. App. 1992).

Disqualification was established pursuant to subsection (5)(e)(VI) where claimant directly disobeyed an order of his employer, notwithstanding that the employer did not follow all progressive disciplinary procedures before discharging claimant, because claimant received adequate notice that his conduct had placed him at risk of losing his job and he nonetheless persisted. *Keil v. Indus. Claim Appeals Office*, 847 P.2d 235 (Colo. App. 1993).

Claimant was properly disqualified from unemployment benefits under subsection (5)(e)(VII) because her separation from employment was based on her volitional violation of the company rule that required employees to either get a COVID-19 vaccination or request a medical or religious exemption by an identified date. *Bara v. Indus. Claim Appeals Office*, 2023 COA 19, 530 P.3d 416.

"Fellow workers" who fall within the ambit of the statute are not limited to those who are employed by the same employer as the claimant. *Tilley v. Indus. Claim Appeals Office*, 924 P.2d 1173 (Colo. App. 1996).

A finding that a claimant quit because of dissatisfaction with standard working conditions is proper only when there has been no substantial change in claimant's work environment, duties, and conditions.

Wargon v. Indus. Claim Appeals Office, 787 P.2d 668 (Colo. App. 1990).

Employer may not rely on information it received subsequent to termination of employee to justify termination and render the employee ineligible for unemployment compensation benefits. *Pepsi-Cola Bottling v. Colo. Div. of Emp.*, 754 P.2d 1382 (Colo. App. 1988).

Disqualifying provisions are not mandatory if the totality of the circumstances establishes that a claimant was unemployed through no fault of his own. *Zelingers v. Indus. Comm'n*, 679 P.2d 608 (Colo. App. 1984); *Frontier Airlines, Inc. v. Indus. Comm'n*, 719 P.2d 739 (Colo. App. 1986); *Cole v. Indus. Claim Appeals Office*, 964 P.2d 617 (Colo. App. 1998).

When an employee's job performance gives rise to a "last chance" settlement agreement, and the employee refuses to sign the agreement, the employee may be disqualified from receiving unemployment benefits. Such disqualification may be premised on the actions and omissions that gave rise to the employer's original dissatisfaction with the employee's performance not on the refusal to sign the agreement. *Bell v. Indus. Claim Appeals Office*, 93 P.3d 584 (Colo. App. 2004).

Where claimant refused to provide written verification explaining her unexcused absence, her unemployment benefits were properly denied pursuant to subsection (5)(e)(VI). *Stevenson v. Indus. Comm'n*, 705 P.2d 1020 (Colo. App. 1985).

Disqualification under subsection (5)(e)(IX.5) for marijuana use requires employer to show that testing laboratory was licensed or certified. Absent some form of waiver or stipulation by claimant, this requirement may not be deemed inapplicable or satisfied without evidentiary proof. *Sosa v. Indus. Claim Appeals Office*, 259 P.3d 558 (Colo. App. 2011).

Disqualification under subsection (5)(e)(XI) for theft is allowed whether or not the theft occurs in the course of employment. *Jefferson County v. Kiser*, 876 P.2d 122 (Colo. App. 1994).

Absence of specific finding regarding value of item allegedly taken by employee does not preclude disqualification for theft under subsection (5)(e)(XI), however, to disqualify employee for theft, employer must establish by a preponderance of the evidence the mens rea required in theft or larceny cases. *Starr v. Indus. Claim Appeals Office*, 224 P.3d 1056 (Colo. App. 2009).

A claimant is not disqualified for benefits under subsection (5)(e)(XXII) (quitting for personal reasons) if she is otherwise eligible for benefits under one of the other provisions of this section. *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

No error in determination by hearing officer that disqualifying provisions of subsection (5)(e)(XXII) of this section and § 8-73-105.5 (5) are applicable to claimant. On the last day of his final assignment, employer temporary help contracting firm notified claimant that his assignment was ending. Subsequently,

employer offered claimant additional assignments which claimant did not accept. There is no evidence that claimant informed his employer that he was available for further assignments. Moreover, claimant did not contact employer in accordance with the written contract he had received. Accordingly, court upheld that portion of hearing officer's order stating that claimant was responsible for his separation and should be disqualified from the receipt of his unemployment benefits pursuant to subsection (5)(e)(XXII) of this section and § 8-73-105.5 (5). *Velo v. Emp't Sols. Pers.*, 988 P.2d 1139 (Colo. App. 1998).

No evidence of harassment by employer for purposes of subsection (5)(e)(XXII). Claimant's coworker was not an employer under any of the criteria of § 8-70-113. The general assembly's use of different terms to refer to an employer and a coworker signals its intent that these terms have different meanings. *Yotes v. Indus. Claim Appeals Office*, 2013 COA 124, 310 P.3d 288.

The industrial claim appeals office panel's conclusion that the term "employer" includes coworkers renders the latter term meaningless. *Yotes v. Indus. Claim Appeals Office*, 2013 COA 124, 310 P.3d 288.

Because the industrial claim appeals office panel did not find that the employer fostered or condoned the actions of the coworker, the panel erred when it concluded that claimant quit "because of personal harassment by the employer not related to the performance of the job" and was entitled to benefits under subsection (4)(o). *Yotes v.*

Indus. Claim Appeals Office, 2013 COA 124, 310 P.3d 288.

Claimant not entitled to benefits under subsection (4)(c), and thus was disqualified from receiving benefits under subsection (5)(e)(XXII) because employer had indefinitely removed claimant from the adverse working conditions and claimant did not wait to learn whether the adverse conditions would be eliminated before quitting. *Yotes v. Indus. Claim Appeals Office*, 2013 COA 124, 310 P.3d 288.

Referee's conclusion that claimant's termination was "under conditions involving personal reasons," was unsupported by record showing that claimant's employment termination had been determined by the employer to be necessary and imminent, that claimant had been given choice between being involuntarily laid off or accepting a voluntary layoff, and that claimant was told his chances were good that he would receive unemployment compensation. *Goddard v. E G & G Rocky Flats, Inc.*, 888 P.2d 369 (Colo. App. 1994).

As a matter of law, if an employee is given notification of a pending layoff, but is offered severance pay in return for a waiver of reemployment rights, which the employee accepts, the resulting employment termination cannot be considered to be the "fault" of the employee. The employment separation in such case must be viewed as no more the voluntary act of the employee than if the employee had refused the offer and the employer had laid him or her off. *Goddard v. E G & G Rocky Flats, Inc.*, 888 P.2d 369 (Colo. App. 1994).

Claimant who used employer's equipment for private benefit was properly denied full unemployment benefits because his discharge was based on violation of company rule which could have resulted in serious damage to employer's interest, even if exact value of such damage could not be estimated. *Madrid v. Mtn. States Tel. & Tel. Co.*, 728 P.2d 1299 (Colo. App. 1986).

Disqualification from unemployment compensation was proper when evidence showed that the claimant struck a coemployee, the claimant was the aggressor, the attack resulted in a sizeable bruise on the coemployee's arm, and the employer had a policy requiring summary dismissal of an employee for fighting or hitting another employee. *Baca v. Marriott Hotels, Inc.*, 732 P.2d 1252 (Colo. App. 1986).

The term "assaulting", as used in this section to disqualify a person from receiving unemployment compensation for assaulting or threatening to assault, means an actual harmful or offensive contact similar to the common law tort of battery. *Baca v. Marriott Hotels, Inc.*, 732 P.2d 1252 (Colo. App. 1986).

The phrase "threatening to assault", as used in this section to disqualify a person from receiving unemployment compensation for assaulting or threatening to assault, means the apprehension of harmful or offensive contact similar to the common law tort of assault. *Baca v. Marriott Hotels, Inc.*, 732 P.2d 1252 (Colo. App. 1986).

Mental state of coemployee irrelevant in determining whether to deny

unemployment benefits to claimant when claimant was found to have assaulted coemployee. *Baca v. Marriott Hotels, Inc.*, 732 P.2d 1252 (Colo. App. 1986).

Claimant who quit job to accept better position and was subsequently terminated from better job for a disqualifying reason was disqualified from receiving all unemployment benefits. *Carleno v. Littleton Sch. Dist. No. 6*, 750 P.2d 926 (Colo. App. 1988).

Claimant who voluntarily quit his employment and thus was at fault for the separation is disqualified from receiving unemployment benefits from that employer under subsection (5)(e)(IV) regardless of whether the claimant later qualified for benefits through subsequent employment. *Nagl v. Indus. Claim Appeals Office*, 2015 COA 51, 351 P.3d 577.

Employee discharged pursuant to employer-generated disciplinary guidelines not automatically ineligible. While employer's disciplinary policy may form an appropriate basis for discharge, it cannot serve as a rule of law automatically disqualifying the employee from statutory benefits. *Gonzales v. Indus. Comm'n*, 740 P.2d 999 (Colo. 1987); *Sch. Dist. No. 1 v. Fredrickson*, 812 P.2d 723 (Colo. App. 1991).

Employee discharged other than in accordance with employer-generated disciplinary guidelines not automatically eligible. Volitional act of employee may result in disqualification under this section notwithstanding employer's failure to follow progressive disciplinary procedures before

discharging employee. Principles concerning wrongful discharge set forth in *Continental Airlines, Inc. v. Keenan*, 731 P.2d 708 (Colo. 1987), and related cases are not engrafted onto unemployment-compensation statutes. *Keil v. Indus. Claim Appeals Office*, 847 P.2d 235 (Colo. App. 1993).

Claimant who requested transfer from Montana to Colorado was not disqualified under subsection (5)(e)(IV) from benefits relating to employment in Montana. Claimant's interstate transfer within the same company does not constitute a separation from employment, and her tenure with employer is not separate periods of employment with different employers. *Dewhurst v. Indus. Claim Appeals Office*, 148 P.3d 378 (Colo. App. 2006).

Statutory presumptions concerning blood alcohol content in traffic cases not applicable to unemployment cases. Blood alcohol content is only one evidentiary factor to be weighed along with all the other evidence presented at the hearing. *Safeway Stores v. Indus. Claim Appeals Office*, 754 P.2d 773 (Colo. App. 1988).

An objective standard is the proper standard for reviewing the reasonableness of an employer's request pursuant to subsection (5)(e)(VI) and, in assessing the reasonableness of such a request, the industrial claim appeals panel must consider the facts and circumstances of each case, using its independent judgment to determine whether the request the claimant refused was one that a reasonable person would have refused. *Rose Med. Ctr. Hosp. v. Indus.*

Claim Appeals Office, 757 P.2d 1173 (Colo. App. 1988).

An objective standard is the proper standard for determining whether a claimant has engaged in disqualifying behavior under subsection (5)(c). Davis v. Indus. Claim Appeals Office, 903 P.2d 1243 (Colo. App. 1995).

Case remanded where referee's finding of fault was that claimant unreasonably agreed to perform a job duty which he was not required to perform but did not include finding of whether claimant was aware of unwritten policy that he would not be dismissed if he refused to perform job duty. Nielson v. AMI Indus., Inc., 759 P.2d 834 (Colo. App. 1988).

Evidence and findings support conclusion claimant should be disqualified because of incarceration after conviction of violation of law. Smith v. Indus. Claim Appeals Office, 817 P.2d 635 (Colo. App. 1991).

Where company policy provided for immediate termination for possession of drugs and possession was clearly shown, hearing officer erred in addressing the issue of ownership of such drugs and in determining that subsection (5)(e)(VII) was inapplicable. Phelps Tointon v. Div. of Emp. & Train., 824 P.2d 827 (Colo. App. 1991).

City employee who was discharged from employment for violation of residency requirement not disqualified from receipt of unemployment benefits pursuant to subsection (5)(e)(VII) where there was no finding that serious harm to

city's interests would result by virtue of the violation. Morris v. City & County of Denver, 843 P.2d 76 (Colo. App. 1992).

Claimant was at fault for his termination and he should be disqualified from receiving benefits since claimant knew he was required to perform an anti-collision test as part of his job, had forgotten to perform the test, and represented to his supervisor that he had done so. Claimant's supervisor's failure to check claimant's work did not absolve claimant of his own responsibility. Richards v. Winter Park Recreational Ass'n, 919 P.2d 933 (Colo. App. 1996).

Based on established findings of evidentiary fact, panel properly ruled that claimant was responsible or "at fault" for her separation by her volitional choice to quit under the circumstances shown, notwithstanding her health problems. Factual findings and the record support the conclusion that claimant quit this employment for subjective, personal reasons that do not provide an objective basis for an award of benefits. Cole v. Indus. Claim Appeals Office, 964 P.2d 617 (Colo. App. 1998).

Applied in Short v. Steves Holiday Liquors, Inc., 727 P.2d 415 (Colo. App. 1986).

III. FULL AWARD.

A. In General.

B. Unsatisfactory or Hazardous Working Conditions.

C. Substantial Change in Working Conditions.

D. Accepting a Better Job.

E. Employer's Violation of Employment Contract.

F. Unable or Unqualified to Perform Work.

G. Health of Worker.

H. Refusing With Good Cause to Work Overtime.

I. False Reports.

A. In General.

Commission discretion to grant full award. The commission has discretion to grant a full award even though none of the paragraphs of subsection (4) is cited or applicable. Such discretion is necessary to effect the legislative mandate that each individual who is unemployed through no fault of his own shall receive a full award of benefits. *Sante Fe Energy Co. v. Baca*, 673 P.2d 374 (Colo. App. 1983).

In determining direct and proximate cause of claimant's separation and whether that claimant is entitled either to a full or a reduced award of benefits (now disqualification), the division and the commission shall consider the "reasons" specifically enumerated in the statute and "any other factors which may be pertinent to such determination". *Albaitis v. Indus. Comm'n*, 44 Colo. App. 55, 609 P.2d 1118 (1980), *aff'd*, 627 P.2d 1107 (Colo. 1981).

Conditions for full award. Where claimant would not have left her job and job

would not have been filled by another person had she not become pregnant and requested maternity leave, she was not laid off for lack of work, nor for any condition of health, injury or illness, nor for any of the other conditions specified therein for which a full award could be made. *Miller v. Indus. Comm'n*, 173 Colo. 476, 480 P.2d 565 (1971).

When employee is fired in violation of employer's stated policy, claimant is entitled to a full award of benefits because of discharge through no fault of her own even though found to be sleeping on the job. *Hosp. Shared Serv. of Colo. v. Indus. Comm'n*, 677 P.2d 447 (Colo. App. 1984).

Full unemployment compensation benefits were available to flight attendants on mandatory maternity leave commencing in twenty-eighth week of pregnancy. Such claimants were separated from employment even though they were receiving employment benefits and had the right to resume employment. *Frontier Airlines, Inc. v. Indus. Comm'n*, 734 P.2d 142 (Colo. App. 1986).

Subsection (4)(l) is applied in *Eckart v. Indus. Claim Appeals Office*, 775 P.2d 97 (Colo. App. 1989).

Claimant who was unable to work at a particular job due to health reasons was not eligible for unemployment benefits since he was able to perform the same work under different employment conditions and was not, therefore, required to seek a new occupation. *Pub. Serv. Co. of Colo. v. Ingle*, 794 P.2d 1374 (Colo. App. 1990).

Where employer failed to request written substantiation of claimant's health condition, claimant is not precluded from eligibility for unemployment benefits. Pub. Serv. Co. of Colo. v. Ingle, 794 P.2d 1374 (Colo. App. 1990).

Applied in Patterson v. Indus. Comm'n, 39 Colo. App. 255, 567 P.2d 385 (1977).

B. Unsatisfactory or Hazardous Working Conditions.

Evidence of unsatisfactory conditions. The hearing officer must consider evidence presented of the factors listed in subsection (4)(a), but a claimant's failure to submit proof of working conditions of workers engaged in the same or similar work for the same or other employers in the locality does not prevent an award of benefits. Campbell v. Indus. Claim Appeals Office, 97 P.3d 204 (Colo. App. 2003).

The standard for determining whether a claimant is entitled to benefits under the hazardous working conditions provisions of subsection (4)(c) is whether a reasonable person in the claimant's position would have found the actual working conditions, as determined by the hearing officer to have existed, detrimental to that worker's physical or mental well-being so as to warrant resignation from employment. Rodco Sys., Inc. v. Indus. Claim Appeals Office, 981 P.2d 699 (Colo. App. 1999).

A hazardous condition may be created when, by an objective standard, the situation was hazardous to the employee's health or morals and was not normal. Rodco Sys., Inc.

v. Indus. Claim Appeals Office, 981 P.2d 699 (Colo. App. 1999).

When determining whether working conditions are unsatisfactory or hazardous, the division of employment and training must consider the working conditions that existed when the separation from employment occurred and the extent to which the conditions were likely to continue. Yotes v. Indus. Claim Appeals Office, 2013 COA 124, 310 P.3d 288.

Claimant not entitled to benefits under subsection (4)(c), and thus was disqualified from receiving benefits under subsection (5)(e)(XXII) because employer had indefinitely removed claimant from the adverse working conditions and claimant did not wait to learn whether the adverse conditions would be eliminated before quitting. Yotes v. Indus. Claim Appeals Office, 2013 COA 124, 310 P.3d 288.

Evidence insufficient to prove "unsatisfactory or hazardous working conditions". Rotenberg v. Indus. Comm'n, 42 Colo. App. 161, 590 P.2d 521 (1979); Sw. Forest Indus. v. Indus. Comm'n, 719 P.2d 1098 (Colo. App. 1986).

Evidence of significant unilateral increase in working hours sufficient to prove unsatisfactory working conditions. Thus, claimant was entitled to receive a full award of benefits, pursuant to subsection (4)(c). Campbell v. Indus. Claim Appeals Office, 97 P.3d 204 (Colo. App. 2003).

C. Substantial Change in Working Conditions.

Change in working conditions. Where claimant was fully satisfied with her position but was then transferred without notice, and the conditions under which she then worked were not the same conditions prevailing for other workers performing the same or similar work, it was error to deny benefits. *Indus. Comm'n v. McIntyre*, 162 Colo. 277, 425 P.2d 279 (1967).

Division not required to investigate "conditions . . . generally prevailing". In determining eligibility for unemployment benefits, the division is an adjudicatory, not investigatory, body. Therefore, its function and responsibility are to conduct a neutral adjudication of unemployment claims not to investigate the factual basis for such claims. *Chris the Crazy Trader, Inc. v. Indus. Claim Appeals Office*, 81 P.3d 1148 (Colo. App. 2003).

Whether a change in working conditions constitutes a substantial change and, if so, whether the substantial change is substantially less favorable to the worker must be judged by an objective standard rather than by claimant's subjective outlook. Consequently, in assessing the evidence, the issue is whether a reasonable employee in claimant's position would find the change in working conditions to be not only substantial but also substantially less favorable. *Wargon v. Indus. Claim Appeals Office*, 787 P.2d 668 (Colo. App. 1990); *Arias v. Indus. Claim Appeals Office*, 850 P.2d 161 (Colo. App. 1993).

Finding of dissatisfaction with working conditions proper only where no change in conditions. A finding that the petitioner quit his job because he was dissatisfied with standard working conditions or regularly assigned duties is proper only when there has been no change in working conditions or duties. *Martinez v. Indus. Comm'n*, 657 P.2d 457 (Colo. App. 1982).

Where an employee's termination followed a change in his work environment or in his duties, the statutory provision concerning dissatisfaction with standard working conditions (former subsection (9)(a)(I)) was inapplicable. *Martinez v. Indus. Comm'n*, 657 P.2d 457 (Colo. App. 1982); *Musgrave v. Eben Ezer Lutheran Inst.*, 731 P.2d 142 (Colo. App. 1986); *Wargon v. Indus. Claim Appeals Office*, 787 P.2d 668 (Colo. App. 1990).

It is not required that working conditions become impossible, only that there be a substantial change. *Gray Moving & Storage, Inc. v. Indus. Comm'n*, 38 Colo. App. 419, 560 P.2d 482 (1976); *Gray Moving & Storage, Inc. v. Indus. Comm'n*, 38 Colo. App. 422, 560 P.2d 484 (1976).

Denial of benefits for termination due to changes in working conditions affirmed where claimant acquiesced in those changes. *Jennings v. Indus. Comm'n*, 682 P.2d 518 (Colo. App. 1984).

Denial of benefits upheld where evidence showed that the changes in working conditions experienced by claimant were substantially the same as changes experienced by other employees and claimant acquiesced in the changes. *Collins*

v. Indus. Claim Appeals Office, 813 P.2d 804 (Colo. App. 1991).

Acquiescence is matter of intent and does not necessarily depend upon the lapse of time. *Musgrave v. Indus. Claim Appeals Office*, 762 P.2d 686 (Colo. 1988).

Acquiescence to change in conditions not established based on fact that employee continued to work for employer where evidence showed claimant filed a grievance and a civil action protesting the change. *Nimmo v. Town of Monument*, 736 P.2d 435 (Colo. App. 1987).

Change of attitude and treatment by supervisor. Where claimant quit his job because of a change in his working conditions which became intolerable because of a change of attitude and treatment by his supervisor and the assignment of the least desirable jobs when the employer learned that claimant, who is black, was dating a female coemployee who is Caucasian, there was sufficient evidence to support a full award. *Gray Moving & Storage, Inc. v. Indus. Comm'n*, 38 Colo. App. 419, 560 P.2d 482 (1976).

Where claimant, a Caucasian, had had a good personal and working relationship within the company up to the time she began dating a coemployee who was black, and after that personal relationship became known, she was subjected to harassment from fellow employees and supervisors, so that she felt she had to quit as working conditions became impossible, there was sufficient evidence to support the conclusion that "claimant quit her job because of a change in her working conditions which

became intolerable because of the ostracism she was receiving from fellow employees and supervisors of the company" and claimant was entitled to a full award. *Gray Moving & Storage, Inc. v. Indus. Comm'n*, 38 Colo. App. 422, 560 P.2d 484 (1976).

Claimant's working conditions constituted a demotion, despite the fact that her job title and salary were to remain the same, and she was therefore entitled to a full award of unemployment benefits. *Warburton v. Indus. Comm'n*, 678 P.2d 1076 (Colo. App. 1984).

A substantial change occurs if a claimant is relieved of supervisory and administrative responsibilities, even if the claimant's salary remains the same. *Warburton v. Indus. Comm'n*, 678 P.2d 1076 (Colo. App. 1984).

Employee whose salary was cut, job responsibilities divided, and title diminished suffered a substantial change in working conditions. *Musgrave v. Eben Ezer Lutheran Inst.*, 731 P.2d 142 (Colo. App. 1986).

Change in job title and removal of supervisory duties constituted a substantial change in working conditions. *Nimmo v. Town of Monument*, 736 P.2d 435 (Colo. App. 1987).

A change in duties or a demotion may be a change in working conditions that is substantially less favorable, as may be a situation in which a claimant has been relieved of administrative or supervisory responsibilities or received a salary

reduction. *Wargon v. Indus. Claim Appeals Office*, 787 P.2d 668 (Colo. App. 1990).

Demotion with a decrease in pay and job responsibilities constituted a substantial change in working conditions. *Larsen-Oldaker v. Indus. Comm'n*, 735 P.2d 209 (Colo. App. 1987).

As a matter of law, to a reasonable person in claimant's position, the change in compensation method from salary to commission constituted a substantially less favorable change in working conditions, where the claimant left a commissioned job to work for the employer because she wanted the security and stability of a salary due to her dissatisfaction with a commission and the resultant fluctuation and unpredictability of monthly income, increased competition among the sales force, and increased job pressure. *Wargon v. Indus. Claim Appeals Office*, 787 P.2d 668 (Colo. App. 1990).

Statute does not condition the receipt of benefits on disparate treatment by supervisor. Receipt of unemployment compensation by one who has quit because of treatment by supervisor does not require a showing of disparate treatment by supervisor as it does not matter that it was uniformly applied to all employees as long as the supervision was unreasonable. *Heller v. Indus. Comm'n*, 738 P.2d 64 (Colo. App. 1987).

D. Accepting a Better Job.

Subsection (4)(f) not violative of equal protection clause. Provision of subsection (4)(f), that in order to qualify as a better job

the new job must last at least 90 days from the first date of employment, did not violate the equal protection clause of the United States Constitution. *Harding v. Indus. Comm'n*, 183 Colo. 52, 515 P.2d 95 (1973).

However former provision of subsection (4)(f)(I) violated fourteenth amendment. The purpose of the employment security act, as stated in § 8-70-102, is subverted by the former provision of subsection (4)(f)(I) which read "but a job shall not be considered better if it lasts less than 90 days due to lack of work, the absence of said knowledge and control notwithstanding", because this provision made an invidious distinction between (1) those who obtain a better job which terminates prior to 90 days because of lack of work with no fault of their own and (2) those who obtain a better job which terminates prior to 90 days because of some other factor other than lack of work with no fault of their own, and such a distinction involved an unconstitutional overclassification forbidden by the fourteenth amendment of the United States Constitution. *Spann v. Indus. Comm'n*, 181 Colo. 153, 508 P.2d 385 (1973).

"Accepting a better job" and the 90-day period. A claimant does not actually have to have been on the job performing services in the new employment for at least three months before it can be adjudged that he has terminated old employment by "accepting a better job". *Lidke v. Indus. Comm'n*, 159 Colo. 580, 413 P.2d 200 (1966).

Clarification of the 90-day limitation.

This section is only a clarification of the previous statute and only indicates that the completion of the 90-day limitation shall be computed from the date of actual performance of services on the new job and was not meant to preclude claims arising out of events which occurred between the date of accepting the better job and actually commencing work. *Adams v. Indus. Comm'n*, 31 Colo. App. 340, 501 P.2d 1334 (1972).

The fact that claimant agreed and understood that his employment would end at the expiration of a fixed term is not a basis for denying him benefits under the Colorado employment security act. *Intermountain Jewish News, Inc. v. Indus. Comm'n*, 39 Colo. App. 258, 564 P.2d 132 (1977).

A worker who quits his employment to take a better job must work at the new job at least 90 days in order to be eligible for unemployment compensation. If the worker fails to work this minimum period, it is not considered a "better job" and the commission is required to deny all unemployment benefits. *Gatewood v. Russell*, 29 Colo. App. 11, 478 P.2d 679 (1970).

Under the plain language of this statute a job must, in order to qualify as a better job, last at least 90 days from the commencement of work unless the employee is unable to complete the 90 days of employment through no fault of his own. *Harding v. Indus. Comm'n*, 183 Colo. 52, 515 P.2d 95 (1973).

But a worker may cease employment within the 90-day period and still be eligible for benefits, if the reasons for termination of this employment were conditions over which the worker had no knowledge at the time he accepted employment, and over which he had no control after commencing work. Whether or not the worker lacked this knowledge and control is a question of fact to be determined by the commission. *Gatewood v. Russell*, 29 Colo. App. 11, 478 P.2d 679 (1970).

Ninety-day provision applies to occupancy not duration of job. The 90-day provision of subsection (4)(f) is not interpreted as applying to the duration of the job but rather the employee's occupancy of the job. *Harding v. Indus. Comm'n*, 183 Colo. 52, 515 P.2d 95 (1973).

Ninety-day provision designed to prevent job hopping. Concerning the 90-day employment requirement of the better job provision, there is justification for compulsory compliance with this requirement, as it is obviously designed to prevent job hopping and to secure continuity of employment. *Harding v. Indus. Comm'n*, 183 Colo. 52, 515 P.2d 95 (1973).

And prevents depletion of insurance fund account of past employer. The 90-day requirement of the better-job provision, together with other prescribed better-job conditions, prevents the depletion of the insurance fund account of the past employer who in no way contributed to the job separation of the worker who voluntarily separates under conditions of

disqualification. *Harding v. Indus. Comm'n*, 183 Colo. 52, 515 P.2d 95 (1973).

Failure to meet the requirements of making a new job a better job. Petitioner left his job of his own accord to take a different job which he deemed a better job. However, it is not petitioner's qualitative judgment which determines whether the new job was a better job. The statute sets forth various requirements which must be met. Petitioner stated he was hired for a specific period of two months, hence, the one year requirement was not met. Furthermore, the job in fact lasted only two months, therefore, the three months requirement was also not met. The undisputed evidence conclusively established that petitioner was not entitled to unemployment compensation under the statute. *Anderson v. Indus. Comm'n*, 29 Colo. App. 263, 482 P.2d 403 (1971).

Subsection (4)(f)(III) does not mean that because new job did not materialize, an award of compensation is necessarily barred. *Spann v. Indus. Comm'n*, 181 Colo. 153, 508 P.2d 385 (1973).

Evidence failed to sustain denial of unemployment benefits to claimant who alleged he was offered and accepted a better job, but who employer claimed was fired prior to accepting a new job. *Olivas v. Indus. Comm'n*, 33 Colo. App. 78, 515 P.2d 110 (1973).

Award held improper. Where claimant's sole proof as to any other job offer consisted of her recitation of alleged interviews and telephone calls between herself and third persons, and no evidence corroborative of the hearsay was offered, the industrial

commission's award could not stand. *Rocky Mt. Radiologists Prof'l Corp. v. Dept. of Labor & Emp.*, 39 Colo. App. 183, 562 P.2d 1123 (1977).

E. Employer's Violation of Employment Contract.

Violation of contract by changing days of work. Where there is a contract between the parties specifying a five-day work week and where, thereafter, the employer causes the employee to resign by unilaterally changing the number of days in the work week, the employee is entitled to a full award of benefits. *Wade v. Hurley*, 33 Colo. App. 30, 515 P.2d 491 (1973).

Subsection (4)(o) harassment need not be continuous. There is nothing in subsection (4)(o) stating that harassment must be continuous and substantial. *Marlin Oil Co. v. Indus. Comm'n*, 641 P.2d 312 (Colo. App. 1982).

Failure to pay benefits under collective bargaining agreement resulted in full award to claimants who terminated their employment. *Centennial Drywall Co. v. Indus. Comm'n*, 724 P.2d 685 (Colo. App. 1986).

Gender-based harassment is encompassed within the more general term "personal harassment", and a claimant who carries burden of proving that she quit her job because of personal harassment will receive employment benefits. *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

Improper conduct need not take the stereotypical form of sexual conduct to, at

least arguably, contravene public policy. *Hewlett v. Div. of Emp. & Train.*, 753 P.2d 791 (Colo. App. 1987), rev'd on other grounds, 777 P.2d 704 (Colo. 1989).

Where claimant contends that her separation from government employment resulted from assertion of a constitutionally protected right, the three factor test described in *Ward v. Indus. Commission* (699 P.2d 960) is used to determine whether the claimant is entitled to unemployment benefits. *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

Where such a question is presented, plaintiff must prove by a preponderance of the evidence that her conduct which led to her discharge was constitutionally protected and that the conduct was a "substantial" or "motivating" factor in the decision to terminate her employment. If plaintiff carries that burden of proof, the employer must show that it would have reached the same decision in the absence of the protected conduct. *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

Denial of benefits disallowed. Employee who notified employer of his intent to resign as of future date but who was terminated earlier could not be denied unemployment benefits for period between his termination and effective date of his resignation. *Diringer v. Indus. Comm'n*, 712 P.2d 1091 (Colo. App. 1985).

F. Unable or Unqualified to Perform Work.

The mental inability referred to by subsection (4)(j) is not a narrow definition pertaining solely to intellectual or educational attainment. The statute merely provides that if an employee is unable to perform because of mental incapacity, then he is entitled to benefits. It does not state that the mental incapacity or inability must result solely from educational or intellectual deficiencies, rather than illness. *Tague v. Coors Porcelain Co.*, 30 Colo. App. 158, 490 P.2d 96 (1971).

Where the division has determined a claimant was "mentally unable to perform the work" under subsection (4)(j), neither the text of the subsection nor related case law contemplates further inquiry into the cause of the claimant's mental condition. Moreover, such an inquiry is beyond the scope of the simplified administrative proceedings to determine a claimant's eligibility for benefits. *Mesa County Pub. Lib. v. Indus. Claim Appeals Office*, 2017 CO 78, 396 P.3d 1114.

Physical inability to work, as used in subsection (4)(j), has been defined as the inability to perform the labor, or equally remunerative work, that an injured person was engaged in at the time of his injury. *Colo. State Judicial Dept. v. Indus. Comm'n*, 630 P.2d 102 (Colo. App. 1981).

Need not be disabling. The language of subsection (4)(j) is sufficiently broad that illness which is not necessarily disabling can constitute a physical inability to perform the work. *Mtn. States Tel. & Tel. Co. v. Indus. Comm'n*, 637 P.2d 401 (Colo. App. 1981).

Excessive absenteeism due to incidental illness. The general assembly did not intend to deny compensation to an employee who, although excessively absent, is so because of incidental illness. Mtn. States Tel. & Tel. Co. v. Indus. Comm'n, 637 P.2d 401 (Colo. App. 1981).

A full award of benefits is justified under subsection (4)(j) where an employee, discharged for excessive absenteeism, suffered a disabling injury which rendered him unable to get out of bed or unable to remain in a standing or sitting position for sustained periods. Mtn. States Tel. & Tel. Co. v. Indus. Comm'n, 637 P.2d 401 (Colo. App. 1981).

Alcoholism. Whether worker is disqualified from receipt of benefits is based on the volitional or nonvolitional nature of worker's alcoholism and must be determined under particular facts of each case. City & County of Denver v. Indus. Comm'n, 756 P.2d 373 (Colo. 1988) (decided under law in effect prior to 1988 amendment adding subsection (4)(b)(IV) and (V)).

Claimant's consumption of alcohol warranted the denial of unemployment compensation benefits for resulting discharge where consumption of alcohol occurred during a rest break on employer's property and the claimant was paid for the time he was on the break. Longmont Turkey Proc. v. Indus. Claim Appeals Office, 765 P.2d 1073 (Colo. App. 1988).

An individual who is physically or mentally unable to perform work may be awarded unemployment benefits and such inability need not be the result of

insufficient educational or occupational skills. Elec. Fab Tech. Corp. v. Wood, 749 P.2d 470 (Colo. App. 1987).

Nonvolitional conduct does not make employee at fault for termination. Mesa County Pub. Lib. v. Indus. Claim Appeals Office, 2016 COA 96, 399 P.3d 760, aff'd, 2017 CO 78, 396 P.3d 1114.

No implied requirement of notice that employee's "job is in jeopardy". Where hearing officer found that claimant knew what was expected of him and failed to perform satisfactorily, findings were sufficient to support disqualification under subsection (5)(e)(XX). Pabst v. Indus. Claim Appeals Office, 833 P.2d 64 (Colo. App. 1992).

G. Health of Worker.

Medical statement required only when employer makes timely request. There is no requirement in subsection (4)(b)(I) that, before he can be entitled to benefits, the claimant must be advised by a physician to terminate his employment. A medical statement to substantiate the claimant's assertion that he was required to leave his employment because of health reasons is required only if the employer requests it prior to the date of quitting or within a reasonable period thereafter. Andersen v. Indus. Comm'n, 167 Colo. 281, 447 P.2d 221 (1968).

Denial of benefits is error as matter of law. When under the circumstances the statute does not require proof of a doctor's advice to actually quit, the denial of benefits on the ground that the claimant did not have

such specific advice is error as a matter of law. *Andersen v. Indus. Comm'n*, 167 Colo. 281, 447 P.2d 221 (1968).

Prior notification is not required in the case of a sudden injury or illness under subsection (4)(b)(II) as long as the employer is notified "at the earliest practicable time after such occurrence". *Montano v. Indus. Comm'n*, 171 Colo. 92, 464 P.2d 518 (1970).

Sudden illness. Where an employee was discovered lying down before his scheduled break and told his superiors when questioned that he had felt dizzy and had to lie down, and that he suspected that his medication had made him drowsy, the industrial commission was justified in finding that the employee had complied with the statutory notice requirement, and was further justified in awarding him full benefits under subsection (4)(b)(II). *Samsonite Corp. v. Indus. Comm'n*, 665 P.2d 1037 (Colo. App. 1983).

Eligibility where claimant unable to perform "normal" work for health reasons. Where an unemployment compensation claimant is, for health reasons, unable to perform such claimant's "normal" work for a period of time, the claimant may nevertheless be eligible for benefits if the claimant is able to perform and is available for other suitable work. *Bartholomay v. Indus. Comm'n*, 642 P.2d 50 (Colo. App. 1982).

Employee must inform employer he is leaving for health reasons. In order to be entitled to a full award of benefits under subsection (4)(b)(I), an employee must inform his employer upon or prior to leaving

that he is quitting (now separating) because of the condition of his health. *Slazas v. Indus. Comm'n*, 660 P.2d 513 (Colo. App. 1983).

Employee need not specifically inform employer at or prior to termination that employee is leaving because of the condition of the employee's health. *Hodges v. Canon Lodge Med. Inv'rs, Ltd.*, 879 P.2d 476 (Colo. App. 1994) (disagreeing with *Slazas v. Indus. Comm'n*, 660 P.2d 513 (Colo. App. 1983)).

H. Refusing With Good Cause to Work Overtime.

Compelling personal reasons under subsection (4)(k) are circumstances so significant that they would deprive a reasonable person of the ability to make a truly volitional choice about whether to work overtime. *Action Key Punch Serv. v. Indus. Comm'n*, 709 P.2d 970 (Colo. App. 1985).

Desire to give birthday party for husband is not compelling personal reason under subsection (4)(k). *Action Key Punch Serv. v. Indus. Comm'n*, 709 P.2d 970 (Colo. App. 1985).

Objective standard applies. Facts giving rise to a claim of compelling personal reason under subsection (4)(k) are to be judged by an objective standard rather than by the claimant's subjective outlook. *Action Key Punch Serv. v. Indus. Comm'n*, 709 P.2d 970 (Colo. App. 1985).

Violation of company rule and 50 percent award. The commission "cleared" the employee of stealing from his employer;

the discharge was found to have been caused, not by any act of thievery, but only because of a violation of a company rule. He is entitled to a 50 percent award where the violation "did not or could not" result in serious damage to the employer's property or interests. *Ruby v. Yellow Cab, Inc.*, 163 Colo. 297, 430 P.2d 463 (1967).

Discharge for violation of company rule. When an employee is discharged for violating a company rule, benefits may not be reduced unless the violation could have resulted in "serious damage" to the employer's interests or endangered the "life of the worker or other employee". *Damon v. Indus. Comm'n*, 677 P.2d 431 (Colo. App. 1983).

Violation of company rules under subsection (5)(e)(VII). Whether employee's conduct violated company rules is applied in *Richardson v. Indus. Comm'n*, 701 P.2d 164 (Colo. App. 1985).

Quitting for personal reasons known to the division. Court harmonizes subsection (5)(c) and former subsection (8) which prescribe different results for quitting for personal reasons known to the division by holding that when a person quits for personal reasons which are known to the division and which are not covered under other provisions, then subsection (5)(c), which was enacted later in time, prevails. *Ortega v. Indus. Comm'n*, 682 P.2d 511 (Colo. App. 1984) (decided prior to 1984 repeal of subsection (8)).

Eligibility provisions of § 8-73-107 came into play only after claim filed. While any refusal of suitable work may well

be independent grounds for a reduced benefits decision under former subsection (5), the "eligibility" provisions of § 8-73-107 including limited availability only come into play with respect to conditions existing after filing of the claim. *Olivas v. Indus. Comm'n*, 33 Colo. App. 273, 518 P.2d 304 (1974).

Marital obligation not ground for full compensation. Where a wife quits employment in order to move her residence with her husband, a claim for full compensation cannot be supported on a marital obligation ground. *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 197 Colo. 335, 592 P.2d 808 (1979).

Reduced benefits after violation of union contract. The commission may reduce a claimant's benefits where he violated a specific provision of his union contract and the contract gave him notice that, by such violation, he was jeopardizing his employment status. *Anyon v. Indus. Comm'n*, 42 Colo. App. 88, 589 P.2d 1390 (1979).

Where reduced award justified. Where industrial commission, in affirming the referee's determination on the basis of evidence it considered competent, in effect adopted the referee's finding on such "pertinent factors" as the claimant's absenteeism, tardiness, and poor attitude, and the employer's dissatisfaction with her work, a reduced award was justified under former subsection (5)(x) despite the fact that the statutory subsection was not expressly cited. *Kiesling v. Indus. Comm'n*, 616 P.2d 1002 (Colo. App. 1980).

Reason for absenteeism is finding of fact. The determination of whether absence resulting from a minor illness is more for the employee's comfort rather than a physical inability to perform the work, in which case an employee discharged for absenteeism due to illness is entitled only to a reduced award, is a factual question for the commission. *Mtn. States Tel. & Tel. Co. v. Indus. Comm'n*, 637 P.2d 401 (Colo. App. 1981).

For reduced award due to "careless or shoddy work", pursuant to former subsection (9)(a)(XV), see *Anders v. Indus. Comm'n*, 649 P.2d 732 (Colo. App. 1982).

Constitutionally protected activity as basis for reduced award. When the claimant asserts that his exercise of the right to free speech has been used by a state employer to justify a reduction of benefits, the commission's decision must reflect application of the three-part test announced in *Mt. Healthy City Sch. District Bd. of Educ. v. Doyle* (429 U.S. 274 (1977)). Claimant's activities cannot be relied upon to reduce benefits if he can establish that such activities are constitutionally protected and that they were a substantial or motivating factor in the decision to reduce benefits. The employer has the burden of establishing that the same result would have been reduced even in the absence of constitutionally protected conduct. *Ward v. Indus. Comm'n*, 699 P.2d 960 (Colo. 1985).

I. False Reports.

The phrase "other records or reports" only applies to those documents that relate directly to an employer's assets and liabilities. According to the doctrine of

eiusdem generis and the manifest intent of the general assembly, the records and reports in subsection (5)(e)(VII) are concerned with the types of documents that give an employee the ability to misappropriate property. *Mounkes v. Indus. Claim Appeals Office*, 251 P.3d 485 (Colo. App. 2010).

IV. REDUCED AWARDS.

Annotator's note. Subsection (5), which formerly dealt with reduced awards, was amended in 1984 to relate to disqualification from benefits. Annotations appearing under this heading were decided under the former subsection (5), relating to reduced awards.

Grant of reduced award for non-enumerated reason. The commission is empowered to grant a reduced award in a case even though the precise reason for the claimant's termination is not enumerated in former subsections (5)(a) to (5)(w) in effect at that time. *Dunn v. Indus. Comm'n*, 640 P.2d 1146 (Colo. 1982).

Computation of eligibility. Wages earned by a claimant not used in determining monetary eligibility on a combined-wage claim are properly available for transfer to another state to be used in computing monetary eligibility. *Denver v. Indus. Comm'n*, 712 P.2d 1110 (Colo. App. 1985).

For purposes of collateral estoppel, board of education's decision to dismiss the teacher is "final judgment", not the hearing officer's recommendation to retain her. *Moffat County Sch. Dist. RE-No. 1 v. Indus. Comm'n*, 717 P.2d 995 (Colo. App. 1985), *aff'd*, 732 P.2d 616 (Colo. 1987).

Even though a teacher is dismissed because she has inadequate professional skills, she may nonetheless be entitled to unemployment benefits. *Indus. Comm'n v. Moffat County Sch. Dist.* RE-No. 1, 732 P.2d 616 (Colo. 1987).

V. NO AWARD.

Subsection (5)(g) refers to the deferral of any benefits attributable to other employments to which claimant may be entitled, and does not negate the plain disqualification provisions of subsection (5)(e). *Parker v. Daniels Motors, Inc.*, 738 P.2d 68 (Colo. App. 1987).

If the division determines an employee is separated from employment for just reasons, then the employee shall be given no award of benefits. *McGinn v. Indus. Comm'n*, 31 Colo. 6, 496 P.2d 1080 (1972).

The determination of whether an employer's actions constitute "personal harassment" under subsection (4)(o) is governed by an objective standard. The standard is whether a reasonable person in the claimant's position would have found the employer's conduct to be so, troubling, and annoying as to warrant resignation from employment. *Survey Sols., Inc. v. Indus. Claim Appeals Office*, 956 P.2d 1275 (Colo. App. 1998).

An employer's comment relating to claimant's daughter was not conduct that a reasonable person would find to be so vexing, troubling, and annoying as to warrant quitting a job, and thus falls short of the required standard for "personal harassment". *Survey Sols., Inc. v. Indus.*

Claim Appeals Office, 956 P.2d 1275 (Colo. App. 1998).

Where the record shows that employer criticized claimant's husband, but does not indicate what the actual comments were nor that the comments had been directed to the claimant, the record does not support a finding of "personal harassment". *Survey Sols., Inc. v. Indus. Claim Appeals Office*, 956 P.2d 1275 (Colo. App. 1998).

Unemployment found voluntary. Where a claimant voluntarily retires from his full-time position and continues as a union auditor during 12 weeks per year, his unemployment during the remainder of the year is not involuntary and he is not entitled to unemployment compensation. *Int'l Typographical Union v. Indus. Comm'n*, 44 Colo. App. 29, 609 P.2d 634 (Colo. App. 1980).

No award when claimant leaves job only because dissatisfied. It is apparent that the statutory scheme intended by the general assembly was to provide certain benefits during unemployment if a claimant did not quit because of dissatisfaction with standard working conditions, and that former § 82-4-8 (5)(a)(i) therefore applies to a claimant who leaves his job where there has been no change in his working conditions, but where, nevertheless, he is dissatisfied with them. *Indus. Comm'n v. McIntyre*, 162 Colo. 227, 425 P.2d 279 (1967).

No award will be made where an employee voluntarily quits work to get married, and a judgment imposing the maximum disqualification under the

unemployment compensation act is not error. Cottrell Clothing Co. v. Teets, 139 Colo. 567, 342 P.2d 1021 (1959).

An award shall not be granted to an employee who quits to seek other work, not having first accepted an offer of other employment. The testimony of the petitioner establishes that at the time he terminated his employment there had not been a definite offer of employment made to him which he had accepted. The new employer represented to him some possibility and hope of future employment but it had not ripened into a contract of hire. Anderson v. Valspar Corp., 29 Colo. App. 294, 482 P.2d 992 (1971).

Insubordination connotes a willful, deliberate, or purposeful refusal to follow the reasonable directions or instructions of the employer. Beatty v. Automatic Catering, Inc., 165 Colo. 219, 438 P.2d 234 (1968).

What is "willful" depends on facts. It is difficult to mark the precise connotative boundaries of the terms "deliberate" or "willful", as employed by the law, since the word carries various shades of meaning; it takes on the color of its context, and therefore, what is "willful" depends primarily upon a determination of factual matters. Sayers v. Am. Janitorial Serv., Inc., 162 Colo. 292, 425 P.2d 693 (1967).

Willful misconduct does not necessarily require actual intent to wrong the employer. It is enough if there is a conscious indifference to the perpetration of a wrong, or a reckless disregard of the employee's duty to his employer. Sayers v. Am.

Janitorial Serv., Inc., 162 Colo. 292, 425 P.2d 693 (1967).

Violation of a company rule. The employee conceded that he broke a company rule, though he offered several excuses for his conduct. These excuses were in no sense "binding" on the commission. Nor do they in any manner alter the fact that there has been a violation of a company rule. Ruby v. Yellow Cab Inc., 163 Colo. 297, 430 P.2d 463 (1967).

Such as when an employee refused to leave employer's nightclub in violation of policy whereby employer permitted employees to be in nightclub when club was not crowded. Where refusal caused employer to terminate employee's employment, such conduct prevented claimant from receiving unemployment benefits. Radis v. Indus. Comm'n, 31 Colo. App. 389, 502 P.2d 977 (1972).

Deliberate disobedience of reasonable instruction. Claimant, who refused to provide his employer with medical report, report of motor vehicle accident in which claimant was charged with driving while under influence of intoxicating liquor, and current copy of claimant's driving record, deliberately disobeyed reasonable instruction of employer and, thus, was at fault in causing his separation from employment and was ineligible for unemployment benefits. Wilson v. Indus. Comm'n, 730 P.2d 911 (Colo. App. 1986).

No award because of careless work. Where the industrial commission concluded that a claimant's employment had been terminated because his work was

unsatisfactory and not up to the standard required by the company and that he was not entitled to compensation pursuant to subsection (6)(q), which provides for no award of benefits where the employment is terminated due to careless or negligent work, and the division specifically found that, although claimant, who had suffered two nervous breakdowns, might not have been restored to complete mental health, he had been certified as fit to return to work by the treating physician, and, absent other evidence, the division determined that petitioner had failed to prove he was mentally unable to perform his work, which would qualify him for a full award. *Tague v. Coors Porcelain Co.*, 30 Colo. App. 158, 490 P.2d 96 (1971).

"Failure to meet established job performance standards" means that claimant did not do the job for which he was hired and which he knew was expected of him. *Parker v. Daniels Motors, Inc.*, 738 P.2d 68 (Colo. App. 1987).

Thus, where the right to unemployment benefits did not accrue until after the amendment to subsection (4)(f) became effective, denying benefits under the amended terms of the section was not a retroactive application of the section, even though the claimant would have been entitled to benefits under the unamended terms of the section. *Collins v. Indus. Claim Appeals Office*, 813 P.2d 804 (Colo. App. 1991).

Subsection (9)(a)(XX) is not void for vagueness. "Failure to meet established job performance or other defined standards"

means that claimant did not do the job for which she was hired and in which she knew what was expected of her. *Dawson v. Indus. Comm'n*, 660 P.2d 924 (Colo. App. 1983).

Collateral estoppel precludes relitigation of the grounds for terminating a tenured teacher under subsection (9)(a)(XX) in a hearing for unemployment compensation benefits where a board of education votes to terminate a teacher after a full administrative hearing and finding of facts, even though the board's action is still subject to review. *Jefferson County Sch. Dist. v. Indus. Comm'n*, 698 P.2d 1350 (Colo. App. 1984).

"Fault" under the statute is not necessarily related to culpability, but must be construed as requiring a volitional act. *Zelingers v. Indus. Comm'n*, 679 P.2d 608 (Colo. App. 1984).

Voluntary violation of residence requirement. A police officer who married and moved outside the city voluntarily violates a charter requirement and police department regulation that is a condition of employment. This constitutes fault on the part of the police officer, and precludes an award of full unemployment benefits, pursuant to subsection (8). *City & County of Denver v. Indus. Comm'n*, 666 P.2d 160 (Colo. App. 1983).

No award where claimant's misrepresentations about his academic credentials were material. *Denberg v. Loretto Heights Coll.*, 694 P.2d 375 (Colo. App. 1984).

In determining the suitability of the offered employment, this section offers the following considerations: The degree of risk involved to claimant's health, safety, and morals; his physical fitness and prior training, his experience and prior earnings; his length of unemployment and prospects for securing work in his customary occupation; and the distance of the available local work from his residence. *Toston v. Indus. Comm'n*, 160 Colo. 281, 417 P.2d 1 (1966).

Denial of compensation to claimants who were offered similar work 175 miles away on the other side of the continental divide, but who insisted that the work was not suitable and declined to accept, was held improper under this section. *Indus. Comm'n v. Lazar*, 111 Colo. 69, 137 P.2d 405 (1943).

The beneficent purposes of the act do not include a guaranty that a job offer must be for wages equal to that of the old job in order to be deemed as suitable work. *Bayly Mfg. Co. v. Dept. of Emp.*, 155 Colo. 433, 395 P.2d 216 (1964).

A refusal to accept an offer of temporary employment does not, in and of itself, constitute a refusal to accept suitable work. *Toston v. Indus. Comm'n*, 160 Colo. 281, 417 P.2d 1 (1966).

A claimant is entitled to a reasonable time in which to compete in the labor market for available jobs of a permanent nature for which he has the skill, and at a rate of pay commensurate with his prior earnings. *Bayly Mfg. Co. v. Dept. of Emp.*, 155 Colo. 433, 395 P.2d 216 (1964); *Toston*

v. Indus. Comm'n, 160 Colo. 281, 417 P.2d 1 (1966).

Thus, work at a substantially lower wage should not be deemed "suitable" unless a claimant has been given a reasonable period to compete in the labor market for available jobs for which he has the skill at a rate of pay commensurate with his prior earnings. *Bayly Mfg. Co. v. Dept. of Emp.*, 155 Colo. 433, 395 P.2d 216 (1964); *Indus. Comm'n v. Zavatta*, 166 Colo. 365, 443 P.2d 982 (1968).

And a reasonable time is a question of fact. What constitutes a reasonable time in these cases is not a matter to be answered by rigid formulas. Rather, it must initially be determined as a question of fact under the circumstances of each individual case by the appropriate agency. *Bayly Mfg. Co. v. Dept. of Emp.*, 155 Colo. 433, 395 P.2d 216 (1964); *Toston v. Indus. Comm'n*, 160 Colo. 281, 417 P.2d 1 (1966).

Nevertheless, "unsuitable" work may become "suitable". Work which may be deemed "unsuitable" at the inception of the claimant's unemployment, and for a reasonable time thereafter, because it pays less, may thereafter become "suitable" work when consideration is given to the length of unemployment and the prospects for obtaining customary work at his prior earning capacity. *Bayly Mfg. Co. v. Dept. of Emp.*, 155 Colo. 433, 395 P.2d 216 (1964); *Toston v. Indus. Comm'n*, 160 Colo. 281, 417 P.2d 1 (1966).

And a claimant may not justify his refusal of a job offer on sole grounds that it is nonunion; and if in fact the job offered

is not "suitable", then the reason for the claimant's refusal is immaterial. *Indus. Comm'n v. Zavatta*, 166 Colo. 365, 443 P.2d 982 (1968).

If wages offered are substantially less than prevailing wage, work is not "suitable". *Romero v. Indus. Comm'n*, 616 P.2d 992 (Colo. App. 1980).

Claimant entitled to benefits where he defended himself against unprovoked assault. Where the evidence was uncontradicted that claimant acted only to defend himself against an unprovoked assault by a coemployee, he could not be denied unemployment benefits. *Escamilla v. Indus. Comm'n*, 670 P.2d 815 (Colo. App. 1983).

Industrial commission was without authority to award unemployment benefits to hospital employees who accepted and continued to receive employee benefits, i.e. they were nurses who were part of the nursing pool and were employed, albeit intermittently. *St. Anthony Hosp. Sys. v. Indus. Comm'n*, 709 P.2d 967 (Colo. App. 1985).

Denial of compensation improper when employment offered was at substantially less favorable wage. *Indus. Comm'n v. Brady*, 128 Colo. 490, 263 P.2d 578 (1953).

No substantial unfavorable change in working conditions occurred justifying an award of benefits, where claimant's termination was precipitated by a reduction in his income but no change in the method of his compensation. Claimant was hired to serve both as a warehouse worker and a

relief driver under terms by which he was paid more for working as a warehouse worker than he was paid for working as a relief driver. When the claimant's relief driver duties increased, he refused to perform them unless he was paid more and, consequently, was discharged. *Muhlenkamp v. Indus. Claim Appeals Office*, 802 P.2d 1127 (Colo. App. 1990).

In determining a claimant's entitlement to benefits, the law in effect on the date the claimant's right to benefits accrues is the law which governs. *Baldwin v. Indus. Claim Appeals Office*, 813 P.2d 807 (Colo. App. 1991).

When an employee voluntarily resigns and the employer refuses to accept an attempted retraction of the resignation prior to the effective date, the employee's resignation is considered to have been voluntary for the purposes of determining unemployment compensation benefits. *Cunliffe v. Indus. Claim Appeals Office*, 51 P.3d 1088 (Colo. App. 2002).

Applied in *Stensvad v. Indus. Comm'n*, 167 Colo. 140, 445 P.2d 898 (1968); *Debalco v. Indus. Claim Appeals Office*, 32 P.3d 621 (Colo. App. 2001).

VI. EVIDENCE.

Function of hearsay. Though hearsay evidence may be received in an unemployment benefits proceeding, it alone cannot be the basis of the commission's order. *Allen v. Indus. Comm'n*, 36 Colo. App. 330, 540 P.2d 358 (1975) (decided under former law).

Hearsay evidence, though admissible in administrative hearings, cannot alone support an order of the industrial commission. *Romero v. Indus. Comm'n*, 616 P.2d 992 (Colo. App. 1980).

Hearsay may have probative value and should be considered as corroborative evidence. *Yellow Front Stores v. Indus. Comm'n*, 694 P.2d 882 (Colo. App. 1985).

Hearsay evidence alone may be basis of determination in an unemployment compensation proceeding but only if such evidence is reliable and trustworthy and possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. *Flower Stop Mktg. Corp. v. Kilgore*, 762 P.2d 747 (Colo. App. 1988), *aff'd in part, rev'd in part on other grounds*, 782 P.2d 13 (Colo. 1989) (applying *Kirke v. State Dept. of Rev.*, 724 P.2d 77 (Colo. 1986), and overruling the "residuum rule" holding in *Sims v. Indus. Comm'n*, 627 P.2d 1107 (Colo. 1981), and subsequent cases that applied such rule).

Factors useful in determining whether hearsay evidence is reliable, trustworthy, and of some probative value are set forth in *Indus. Claim Appeals Office v. Flower Stop Mktg. Corp.*, 782 P.2d 13 (Colo. 1989).

Evidence of specific illness inadmissible in unemployment compensation hearing where claimant did not provide employer with prior notice that a specific illness was the reason for claimant's failure to report to work. *Sands v. Indus. Claim Appeals Office*, 801 P.2d 12 (Colo. App. 1990).

Resolution of conflicting evidence is a matter properly left to the commission in its fact-finding role. *Mohawk Data Scis. Corp. v. Indus. Comm'n*, 660 P.2d 922 (Colo. App. 1983).

Appeals court would not take judicial notice of facts not in evidence in disqualification case. Where the evidentiary record before the hearing officer contained nothing to indicate the testing laboratory that allegedly found marijuana in claimant's system was licensed or certified as required by statute, a reference to the lab's web site in connection with the appeal was not an acceptable substitute. Similarly, the claimant's admission that he had ingested marijuana two days prior to the test would not permit the inference that he was under the influence of marijuana at the time of the test, absent medical evidence of the length of time marijuana remains detectable in the human system. *Sosa v. Indus. Claim Appeals Office*, 259 P.3d 558 (Colo. App. 2011).

8-73-109. Strikes or other labor disputes - definitions.

(1) (a) For purposes of this section:

(I) "Coordinated bargaining" means two or more employers bargaining with a union where there is communication and accommodation among the employers but where each is free to make independent decisions on some or all of the issues being negotiated with the union, either written notification of the intent to engage in coordinated bargaining has been provided to the

union or the union has rejected an offer to engage in multiemployer bargaining, and one or more representatives of each employer participating in the coordinated bargaining is present at one or more bargaining sessions.

(II) "Defensive lockout" means a lockout:

(A) Reasonably imposed by an employer to protect materials, property, or operations; or

(B) Where a union or two or more employees that are represented by the union take economic action against an employer and that action causes the employer to lock out; or

(C) By any member of a multiemployer bargaining unit or an employer engaged in coordinated bargaining with one or more other employers if such lockout is initiated because of a strike or labor dispute involving any member of such multiemployer bargaining unit or coordinated bargaining group.

(III) "Lockout" means a refusal by an employer engaged in a dispute with a union to permit its employees to perform employment services.

(IV) "Multiemployer bargaining unit" means any group of two or more employers bargaining with a union as a single unit with the consent of each employer and the union.

(V) "Offensive lockout" means any lockout by an employer that does not satisfy the definition of a defensive lockout.

(VI) "Strike or labor dispute" means the withholding of employment services or other economic action by two or more employees that are represented by the union directed at an employer's business.

(b) An individual is ineligible for unemployment compensation benefits for any week with respect to which the division finds that his or her total or partial unemployment is due to a strike or labor dispute in the factory, establishment, or other premises in which he or she was employed and thereafter for such reasonable period of time, if any, as may be necessary for such factory, establishment, or other premises to resume normal operations.

(c) For the purposes of this section, a lockout by any member of a multiemployer bargaining unit or an employer engaged in coordinated bargaining with another employer shall constitute a labor dispute if such lockout was a defensive lockout. In accordance with paragraph (b) of this subsection (1), the employees laid off in such a defensive lockout are ineligible for unemployment compensation benefits.

(d) However, notwithstanding paragraph (b) of this subsection (1), if his or her unemployment is due to an offensive lockout initiated by the employer, the individual will be determined eligible for unemployment compensation benefits.

(2) This section shall not apply if he is not participating in or financing or directly interested in the strike as an individual or as a member of the grade or class of workers conducting the strike. Participating in a strike shall include refusal to cross the picket line.

(3) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department, for the purposes of this section, shall be deemed to be a separate factory, establishment, or other premises.

Source: L. 36, 3rd Ex. Sess.: p. 19, § 5. CSA: C. 167A, § 5. L. 41: p. 766, § 5. L. 49: p. 722, § 3. L. 53: p. 624, § 5. CRS 53: § 82-4-11. L. 63: p. 678, § 5. C.R.S. 1963: § 82-4-9. L. 75: (2) R&RE, p. 323, § 1, effective June 29. L. 99: (1) amended, p. 682, § 1, effective May 19.

ANNOTATION

Law reviews. For article, "The Conflict Between Collective Bargaining and Unemployment Insurance", see 28 Rocky Mt. L. Rev. 185 (1956). For article, "Defending an Unemployment Compensation Claim", see 13 Colo. Law. 69 (1984).

Annotator's note. Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred its powers, duties, and functions under the act to the director of division.

Provisions disqualifying claimants from receiving benefits strictly construed. The provisions of the Colorado employment security act which disqualify claimants from receiving benefits must be strictly construed to accomplish their purpose without excluding legitimate claims for benefits. F.R. Orr Constr. Co. v. Indus. Comm'n, 33

Colo. App. 326, 522 P.2d 117 (1974), aff'd, 188 Colo. 173, 534 P.2d 785 (1975).

This section makes unemployment due to a strike noncompensable. Sandoval v. Indus. Comm'n, 110 Colo. 108, 130 P.2d 930 (1942); Kania v. Schaffer, 31 Colo. App. 538, 506 P.2d 384 (1972).

Coverage excluded. This section excludes coverage for any week of unemployment caused by a strike or labor dispute. Pierce v. Indus. Comm'n, 38 Colo. App. 85, 553 P.2d 402 (1976).

When the employer-employee relationship has been terminated, this section no longer applies. Pierce v. Indus. Comm'n, 38 Colo. App. 85, 553 P.2d 402 (1976); Brannan Sand & Gravel v. Indus. Claim Appeals Off., 762 P.2d 771 (Colo. App. 1988), aff'd sub nom. Federico v. Brannan Sand & Gravel Co., 788 P.2d 1268 (Colo. 1990).

A referee's finding that the labor dispute with respondent employer still existed on the date claimants filed for benefits and claimants' objection to that finding were irrelevant where the claimants had quit their jobs with that employer. *Pierce v. Indus. Comm'n*, 38 Colo. App. 85, 553 P.2d 402 (1976).

A striking employee does not have to unilaterally abandon the strike or dispute and offer to return to work and be refused employment, regardless of whether the employee had been permanently replaced, in order to become eligible for benefits. *Brannan Sand & Gravel v. Indus. Claim Appeals Office*, 762 P.2d 771 (Colo. App. 1988), *aff'd sub nom. Federico v. Brannan Sand & Gravel Co.*, 788 P.2d 1268 (Colo. 1990).

Benefits where employee permanently replaced. A strike or labor dispute suspends the employer-employee relationship, and this section excludes coverage for periods of unemployment attributable to the dispute. However, the relationship may be terminated and the employee may become eligible for benefits if the employer permanently replaces the striking employee. The rationale for this rule is that hiring permanent replacements ends the voluntary nature of the unemployment and breaks the chain of causation between the labor dispute and the unemployment. *In re Krantz v. Kelran Constructors, Inc.*, 669 P.2d 1049 (Colo. App. 1983); *Brannan Sand & Gravel v. Indus. Claim Appeals Office*, 762 P.2d 771 (Colo. App. 1988), *aff'd sub nom. Federico v. Brannan Sand & Gravel Co.*, 788 P.2d 1268 (Colo. 1990).

"Strike" defined. "A strike", in so far as the application of this act is concerned, is a concerted refusal to work for pay and under conditions that are presently available in order to procure more advantageous conditions or greater pay. *Sandoval v. Indus. Comm'n*, 110 Colo. 108, 130 P.2d 930 (1942).

And a labor dispute may exist without a strike, but a labor dispute, accompanied by a concerted refusal to work for the employer until the dispute is resolved in favor of the employees' contentions, furnishes all the elements of a strike. *Sandoval v. Indus. Comm'n*, 110 Colo. 108, 130 P.2d 930 (1942).

Cause of lockout must be determined when resolving eligibility for benefits where lockout resulted from strike against another member of multiemployer bargaining unit. If lockout resulted from employer's efforts to deprive employees of some advantage they already possessed, they are eligible for benefits. *Safeway Stores 44 Inc. v. Indus. Claim Appeals Office*, 973 P.2d 677 (Colo. App. 1998).

The refusal of employees to work after expiration of their working contract unless guaranteed contingent benefit of future action on new contracts, then unascertained and unascertainable, constituted a demand for a modification of working conditions and rates of pay, and their refusal to return to work until there was a compliance with such demand, was in effect a strike, in which situation they were not entitled to unemployment benefits.

Sandoval v. Indus. Comm'n, 110 Colo. 108, 130 P.2d 930 (1942).

Offers or concessions made subsequent to commencement of labor dispute which are not acceptable to other party are merely negotiations and do not terminate dispute. Kania v. Shaffer, 31 Colo. App. 538, 506 P.2d 384 (1972).

And an employee is directly interested in a dispute when his wages, hours, or conditions of work will be affected favorably or adversely by the outcome of a strike. It is of no consequence that such employee is not a member of the union conducting the strike or that he may not be in sympathy with its purposes. Burak v. Am. Smelting & Ref. Co., 134 Colo. 225, 302 P.2d 182 (1956).

The burden rests upon a claimant to prove that he comes within the exceptions of this section which entitle him to unemployment compensation in the event of a strike. Burak v. Am. Smelting & Ref. Co., 134 Colo. 255, 302 P.2d 182 (1956).

Purpose of the "grade or class" provision in this section is to preclude the possibility of unemployment compensation funds being used to finance, at least in part, certain types of labor disputes such as "key man" strikes in which a very small proportion of an employer's labor force can cause a shutdown of an entire operation by withdrawing their services. F.R. Orr Constr. Co. v. Indus. Comm'n, 33 Colo. App. 326, 522 P.2d 117 (1974), aff'd, 188 Colo. 173, 534 P.2d 785 (1975).

There are two essential guidelines for the application of a "grade or class" provision: (1) The degree of integration of the work performed by the various groups of employees, and (2) the presence of a community of interest between the striking and nonstriking employees. However, integration of work, alone, is not sufficient to preclude a claimant from establishing his eligibility. There must also be a "community of interest" between the claimants, as a class, and the striking employees. Such a "community of interest" would be evident if the claimants' wages, working conditions, fringe benefits, etc., would be affected by the outcome of the labor dispute. F.R. Orr Constr. Co. v. Indus. Comm'n, 33 Colo. App. 326, 522 P.2d 117 (1974), aff'd, 188 Colo. 173, 534 P.2d 785 (1975).

Sympathy with strike insufficient to establish community of interest. Where the only relationship between the striking and nonstriking employees revealed by the record is general sympathy with the strike activities of the striking union, such a relationship is inherent in all labor relations and is insufficient to establish the requisite community of interest. F.R. Orr Constr. Co. v. Indus. Comm'n, 33 Colo. App. 326, 522 P.2d 117 (1974), aff'd, 188 Colo. 173, 534 P.2d 785 (1975).

Commission's determination as to crossing picket line is one of fact. The question of whether claimants refused to cross picket lines, or whether no work was available and any attempt to cross picket lines would have been superfluous, is one of fact, and the determination of the commission in this regard may not be

disturbed on review if supported by substantial evidence. *Lamb v. Indus. Comm'n*, 662 P.2d 191 (Colo. App. 1983).

Labor dispute could not be considered direct cause of termination. *Pierce v. Indus. Comm'n*, 38 Colo. App. 85, 553 P.2d 402 (1976).

Employer has no duty to adhere to the terms of an expired labor contract for a reasonable time to avoid creating a "constructive lockout" situation which would permit strikers to receive unemployment compensation under subsection (1). *Abbott v. Indus. Claim Appeals Office*, 796 P.2d 60 (Colo. App. 1990).

8-73-110. Other remuneration - severance pay - definitions.

(1) (a) The benefits for an individual who is separated from employment and receives a severance allowance must be postponed for a number of calendar weeks after separation from employment that is equal to the total amount of the severance allowance, divided by the individual's usual weekly wage. The postponement required by this subsection (1) begins with the calendar week in which the severance allowance was received. If the number of weeks does not equal a whole number, the remainder is disregarded. Notwithstanding section 8-73-107 (1)(f), any wages earned by an individual in a calendar week during postponement are disregarded.

(b) For purposes of this subsection (1), "individual's weekly wage" means an individual's usual or average wage earned in a representative number of calendar weeks.

(1.2) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(1.5) Repealed.

(1.6) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(2) An individual who has an award for any week and for which week he, at a subsequent date, received a pay award by reason of a decision of the national labor relations board or other source, as a result of the action taken by the national labor relations board or other source, shall immediately repay to the division such amounts as will reimburse the division for all benefit payments made for the period during which he drew benefits and for which the national labor relations board or other source has caused a payment to be made in the form of back pay award to the claimant; and the employer's account charged for such benefits shall be credited accordingly.

(3) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), an individual's weekly benefit amount shall be reduced (but not below zero) by:

(A) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

(B) The prorated weekly amount of a pension, retirement or retired pay, or annuity that has been contributed to by a base period employer; or

(C) The prorated weekly amount of any other similar periodic or lump-sum retirement payment from a plan, fund, or trust which has been contributed to by a base period employer.

(II) An individual's weekly benefit amount shall not be reduced when an individual receives a lump-sum retirement payment from a plan, fund, or trust that has been contributed to by a base period employer when all of the following conditions are met:

(A) The individual's separation from the employer awarding the payment is not due to a retirement pursuant to section 8-73-108 (4)(m) or (5)(e)(XXIII);

(B) The individual presents proof to the division within fourteen calendar days from date of claim or sixty calendar days of receipt of such lump-sum payment, whichever is later, that this total payment has been reinvested into an individual retirement account or Keogh plan, as defined in 26 U.S.C. sec. 408 or 26 U.S.C. sec. 401, and such proof establishes that the investment is for a duration of at least one year; except that such lump-sum retirement payment shall not be considered to be received by the individual until the entire balance has been so received. Should a portion of the payment be ineligible for reinvestment and the claimant presents proof that the total eligible portion has been reinvested, only the remaining uninvested portion will be prorated in accordance with subparagraph (III) of this paragraph (a).

(III) When an individual receives a lump-sum retirement payment from a plan, fund, or trust that has been contributed to by a base period employer and the payment does not meet all of the criteria established in subparagraph (II) of this paragraph (a), then the division shall postpone the individual's benefits for a number of calendar weeks equal to the gross amount of the lump-sum payment divided by the individual's full-time weekly wage. However, when an individual receives a lump-sum retirement payment from a plan, fund, or trust as described in this subparagraph (III), but only reinvests a portion of that payment as required in subparagraph (II) of this paragraph (a), or when an individual otherwise withdraws an amount from a plan, fund, or trust that is less than the total lump sum of the account, then the division shall consider only the portion that is received but not reinvested pursuant to subparagraph (II) of this paragraph (a) in determining the number of calendar weeks that the individual's benefits are postponed.

(IV) An individual's weekly benefit amount shall not be reduced by any amount of a primary insurance benefit under Title II of the federal "Social Security Act" that has been contributed to by a base period employer if the employee has made contributions to federal social security.

(b) (I) An individual who has applied for a retirement payment shall be entitled to receive, if otherwise eligible, the weekly benefit amount reduced by the prorated weekly amount of the estimated or reported amount of such retirement payment. When notice of the actual or confirmed amount of the retirement payment is received by the individual, he shall advise the division and the deduction will be adjusted accordingly.

(II) If the estimated amount of the retirement payment exceeds the amount of unemployment compensation to which the individual is entitled, he shall receive one payment equal to the minimum weekly benefit amount, as prescribed by section 8-73-102 (1), other provisions of articles 70 to 82 of this title notwithstanding.

(c) For purposes of this subsection (3), "lump-sum retirement payment" means the entire balance due the individual from the plan, fund, or trust that has been contributed to by a base period employer.

(4) An individual's weekly benefit amount shall not be reduced because of the receipt of military service-connected disability compensation payable under 38 U.S.C., chapter 11, by the federal veterans administration. An individual's weekly benefit amount shall be reduced because of the receipt of a military disability retirement pension based on previous work performed by the individual, the relationship to the level of prior remuneration, or the length of service.

(5) Individuals who receive compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States shall be entitled to receive benefits for a corresponding week, if otherwise eligible, reduced by the amount of the temporary disability compensation unless the temporary disability amount has already been reduced by the unemployment insurance benefit amount.

(6) Individuals who receive sick pay benefits or other similar periodic cash payments paid to the worker by a base period employer or from any trust or fund contributed to by a base period employer shall be entitled to receive benefits for a corresponding week, if otherwise eligible, reduced by the amount of such sick pay benefits or other similar periodic cash payments.

(7) Repealed.

(8) (Deleted by amendment, L. 2009, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2, 2009.)

Source: L. 36, 3rd Ex. Sess.: p. 19, § 5. L. 37: p. 1255, § 3. CSA: C. 167A, § 5. L. 41: p. 766, § 5. L. 49: p. 722, § 3. L. 53: p. 624, § 5. CRS 53: § 82-4-12. L. 55: p. 533, § 2. L. 57: p. 518, § 6. L. 59: p. 564, § 6. L. 63: p. 679, § 6. C.R.S. 1963: § 82-4-10. L. 65: p. 843, § 6. L. 69: p. 671, § 6. L. 72: p. 450, § 1. L. 76: (4) and (5) amended, p. 348, § 13, effective October 1. L. 79: (3)(a)(I) amended, p. 351, § 13, effective September 30. L. 81: (3), (4), and (5) R&RE and

(6) added, pp. 511, 512, §§ 2, 3, effective July 1. **L. 83:** (7) added, p. 430, § 4, effective June 3. **L. 84:** (1)(c) amended, p. 323, § 3, effective July 1. **L. 85:** (3)(a) amended, p. 368, § 5, effective July 1. **L. 86:** (1)(c) repealed, p. 547, § 12, effective May 28; IP(1), (3)(a), and (6) amended and (1.5) and (8) added, p. 543, § 7, effective July 1. **L. 86, 2nd Ex. Sess.:** IP(1) and (1.5) amended, (1)(c) RC&RE, and (1.2) and (1.6) added, p. 55, §§ 2, 1, effective August 15; (1.5) repealed, p. 55, § 2, effective September 1, 1986. **L. 87:** (3)(a) amended, p. 410, § 1, effective April 16. **L. 88:** (5) amended, p. 389, § 2, effective June 11. **L. 90:** (3)(a)(II)(B) amended and (3)(c) added, p. 613, § 1, effective March 16; (5) amended, p. 557, § 10, effective July 1. **L. 92:** (3)(a)(II)(B) and (3)(b)(I) amended, p. 1795, § 4, effective April 10. **L. 96:** (1) and (1.6) amended, p. 27, § 1, effective March 13. **L. 2000:** (3)(a)(I) amended, p. 1393, § 1, effective October 1. **L. 2009:** (1), (1.2), (1.6), (3)(a)(I)(A), and (8) amended and (3)(a)(IV) added, (HB 09-1076), ch. 408, p. 2248, § 1, effective June 2. **L. 2013:** (3)(a)(III) amended, (HB 13-1054), ch. 92, p. 295, § 1, effective April 4. **L. 2020:** (1)(a) amended, (SB 20-170), ch. 297, p. 1478, § 2, effective January 1, 2021.

Editor's note: Subsection (7)(b) provided for the repeal of subsection (7), effective July 1, 1984. (See L. 83, p. 430.)

Cross references: For Title II of the "Social Security Act", see 42 U.S.C. § 401 et seq.

ANNOTATION

Law reviews. For article, "Administrative Law", which discusses Tenth Circuit decisions dealing with the offset of unemployment compensation by social security benefits, see 64 Den. U. L. Rev. 122 (1987).

"Wages in lieu of notice" disqualify employee for benefits. This section disqualifies an employee for benefits for any week with respect to which he is receiving or has received remuneration in the form of wages in lieu of notice. *Indus. Comm'n v. Sirokman*, 134 Colo. 481, 306 P.2d 669 (1957).

But separation allowance for periods of employment prior to separation are not "wages in lieu of notice". Where "wages received as separation allowance" were received with respect to periods of employment which were prior to the separation, and not with respect to periods of time or weeks subsequent thereto, the allowance cannot be considered to be "wages in lieu of notice". *Indus. Comm'n v. Sirokman*, 134 Colo. 481, 306 P.2d 669 (1957).

Payments from the public employees' retirement association fund are payments from a fund contributed to by an employer under subsection (3)(a), which deals with

unemployment benefits. *Johnson v. Div. of Emp.*, 191 Colo. 38, 550 P.2d 334 (1976).

On appeal from a decision denying the application of claimant for unemployment compensation benefits by reason of leaving state employment, supreme court held that the interpretation of payments from the public employees' retirement association fund as payments from a fund contributed to by an employer did not deny equal protection although claimant could have taken a lump sum refund of her public employees' retirement association contributions and thus would not be receiving retirement "pay" or "payments" within the meaning of this section and would have been entitled to unemployment compensation, since neither suspect classifications nor the infringement of fundamental rights were involved and the statutory discrimination had some reasonable basis. *Johnson v. Div. of Emp.*, 191 Colo. 38, 550 P.2d 334 (1976).

Where claimant for unemployment compensation benefits was employed in state service for 28 years, she was compelled to retire at the age of 57 because her husband's health required a move to a warmer climate, she elected to receive retirement benefits on a reduced annuity basis, and the benefits were paid to her in monthly installments of \$460, the claimant's claim was correctly denied on the basis of subsection (3)(a). *Johnson v. Div. of Emp.*, 191 Colo. 38, 550 P.2d 334 (1976).

Legislative intent in enacting subsection (3) was to match Colorado pension-offset provisions exactly to the

federal model. *Edwards v. Valdez*, 602 F. Supp. 361 (D. Colo. 1985); *Redin v. Empire Oldsmobile, Inc.*, 746 P.2d 52 (Colo. App. 1987); *Cercialo v. Indus. Claim Appeals Office*, 114 P.3d 100 (Colo. App. 2005).

Where claimant receives social security disability insurance (SSDI) benefits, subsection (3)(a)(I)(A) requires a claimant's unemployment benefits to be reduced or offset by half the amount of the SSDI benefits. *Cercialo v. Indus. Claim Appeals Office*, 114 P.3d 100 (Colo. App. 2005).

Because subsection (3)(a)(I)(A) applies the offset both to individuals receiving SSDI benefits and to individuals receiving retirement benefits, it does not discriminate on the basis of disability. *Cercialo v. Indus. Claim Appeals Office*, 114 P.3d 100 (Colo. App. 2005).

Offset in subsection (3) should be applied only when a claimant is retired or is retiring at the termination of his employment, and the retirement benefits contributed to by the employer are in fact immediately available for utilization by the employee. *Redin v. Empire Oldsmobile, Inc.*, 746 P.2d 52 (Colo. App. 1987) (decided prior to 1987 amendments).

In subsection (3)(a)(I)(B), benefits are offset by any pension benefits contributed to by a base period employer, regardless of when the contributions were made. There is no implied requirement that the contributions be made during the base period. Therefore, a claimant who was previously employed by the base period employer, but as to whom the base period

employer did not make contributions during the base period to the retirement fund, is subject to the offset. *Indus. Claim Appeals Office v. Colo. Dept. of Labor*, 2013 CO 52, 307 P.3d 1093.

The state of Colorado and the state unemployment commission are not liable if the unemployment insurance fund runs dry. *Edwards v. Valdez*, 602 F. Supp. 361 (D. Colo. 1985).

Policy of this section is to prevent "double dipping" by persons who are retired or are retiring at the termination of their employment. *Redin v. Empire Oldsmobile, Inc.*, 746 P.2d 52 (Colo. App. 1987).

Severance allowance interpreted. Payments received by employee which were based upon length of services and current salary constituted a severance allowance. *Bockmon v. Mtn. States Tel. & Tel.*, 739 P.2d 887 (Colo. App. 1987).

But a lump sum payment made to the employee in consideration of the employee's release of all common law and statutory claims against the employer does not constitute a severance allowance and does not reduce the employee's right to unemployment compensation. *Moore v. Digital Equip. Corp.*, 868 P.2d 1170 (Colo. App. 1994).

A lump-sum payment the primary purpose of which was not to obtain a release of claims but to provide additional compensation after separation constituted a severance allowance. *Pero v. Indus. Claim Appeals Office*, 46 P.3d 484 (Colo. App. 2002).

Applied in *Hartman v. Freedman*, 197 Colo. 275, 591 P.2d 1318 (1979); *Schmidt v. Indus. Comm'n*, 42 Colo. App. 253, 600 P.2d 76 (1979); *Green v. Indus. Claim Appeals Office*, 765 P.2d 1064 (Colo. App. 1988); *Laszar v. Indus. Claim Appeals Office*, 230 P.3d 1263 (Colo. App. 2009).

8-73-111. Compensation from other state.

An individual shall not receive an award for any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state, the federal government, or a foreign country. If the appropriate agency of such other state, the federal government, or a foreign country finally determines that he is not entitled to such unemployment benefits, this lack of award shall not apply. For the purposes of this section, a law of the federal government providing payments of any type and for any amount for periods of unemployment due to lack of work shall be considered an unemployment compensation law of the federal government.

Source: L. 36, 3rd Ex. Sess.: p. 19, § 5. CSA: C. 167A, § 5. L. 39: p. 571, § 3. L. 41: p. 766, § 5. L. 45: p. 712, § 2. L. 49: p. 722, § 3. L. 53: p. 624, § 5. CRS 53: § 82-4-13. L. 63: p. 680, § 7. C.R.S. 1963: § 82-4-11.

8-73-112. Benefits payable after receiving workers' compensation benefits.

Any provision of the law to the contrary notwithstanding, a person who is separated from employment due to an accident or injury resulting in a temporary total disability for which he has been compensated under section 8-42-105, if otherwise eligible, shall be entitled to receive, after the termination of the continuous period of disability, benefits under this article which were available and in effect at the time of separation from employment. Payment of benefits for a week under this section shall be made only if a claim therefor is filed within the four weeks immediately following the termination of the continuous period of total disability and the week for which benefits are claimed occurs within three years after the date of separation from employment. Only one benefit year may be established under the provisions of this section.

Source: L. 69: p. 684, § 1. C.R.S. 1963: § 82-4-12. L. 91: Entire section amended, p. 1908, § 9, effective June 1.

ANNOTATION

Termination of the continuous period of total disability occurs upon administrative order regarding vocational rehabilitation. If an injured employee has been ordered to undergo a vocational rehabilitation evaluation, the period of continuous disability terminates on the date of the administrative determination regarding vocational rehabilitation. *Fluke v. Indus. Claim Appeals Office*, 799 P.2d 468 (Colo. App. 1990).

The three-year requirement of this section is not similar to a statute of limitations. Rather, it is a substantive limitation upon the total amount of unemployment benefits to which an injured

employee who has been receiving temporary workers' compensation is entitled. In no event is such an employee entitled to unemployment benefits for any week commencing at a date more than three years from the date of employment separation, irrespective of the date when the claim is filed. *Lewis v. Colo. Dept. of Labor*, 924 P.2d 1183 (Colo. App. 1996).

The substantive limitation in this section is expressed in temporal terms, thus its effect is similar to a statute of repose, in the sense that because an unemployment claimant can seek benefits only for those weeks after the filing of the claim, an injured employee may never become

entitled to receive unemployment benefits if that employee receives temporary total disability benefits for three years or more. *Lewis v. Colo. Dept. of Labor*, 924 P.2d 1183 (Colo. App. 1996).

The fact that an employee does not discover that a claim for benefits may have arisen before the temporal limitation has completely expired does not result in any due process violations. *Lewis v. Colo. Dept. of Labor*, 924 P.2d 1183 (Colo. App. 1996).

8-73-113. Benefits payable during approved training - definition.

(1) Notwithstanding any other provisions of articles 70 to 82 of this title, the division shall not deny benefits for any week to an otherwise eligible individual because:

(a) The individual is in training approved under section 236 (a)(1) of the federal "Trade Act of 1974", Pub.L. 93-618, codified at 19 U.S.C. sec. 2296 (a)(1), as amended;

(b) The individual left work to enroll in the training, as long as the work left is not suitable employment;

(c) Of the application of provisions of articles 70 to 82 of this title relating to availability for work, active search for work, or refusal to accept work to any week in which the individual is enrolled in the training;

(d) The individual left work that he or she engaged in on a temporary basis during a break in the training or a delay in the commencement of the training; or

(e) The individual left on-the-job training not later than thirty days after commencing the training because the training did not meet the requirements of 19 U.S.C. sec. 2296 (c)(1)(B) of the federal "Trade Act of 1974", as amended.

(2) As used in this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal "Trade Act of 1974", as amended, and wages for such work at not less than eighty percent of the individual's average weekly wage, as determined for the purposes of the federal "Trade Act of 1974", as amended.

Source: L. 82: Entire section added, p. 236, § 2, effective July 1. **L. 2011:** (1) amended, (SB 11-010), ch. 76, p. 208, § 1, effective March 29.

8-73-114. Enhanced unemployment insurance compensation benefits - eligibility - approved training programs - amount of benefits - outreach - repeal. (Repealed)

Source: L. 2009: Entire section added, (SB 09-247), ch. 405, p. 2232, § 6, effective July 1. **L. 2012:** (1), (2), (3)(b), (4)(b), (5), (6), (8), and (9) amended, (HB 12-1272), ch. 265, p. 1380, § 1, effective July 1. **L. 2013:** (8)(a)(II) repealed, (HB 13-1300), ch. 316, p. 1663, § 10, effective August 7. **L. 2014:** (4)(b)(III) repealed, (HB 14-1363), ch. 302, p. 1262, § 4, effective May 31.

Editor's note: Subsection (9) provided for the repeal of this section, effective July 1, 2014. (See L. 2012, p. 1380.)

8-73-115. Dependent allowance - study - repeal. (Repealed)

Source: L. 2022: Entire section added, (SB 22-234), ch. 224, p. 1614, § 4, effective May 25.

Editor's note: Subsection (4) provided for the repeal of this section, effective September 1, 2023. (See L. 2022, p. 1614.)

8-73-116. Benefit recovery fund - recovery benefits - eligible individuals - third-party administrator - definitions - rules - access to personal information or tax data to administer fund - confidentiality requirements.

(1) As used in this section:

(a) "Department" means the department of labor and employment.

(b) "Eligible individual" means an individual who, regardless of immigration status:

(I) Has separated from employment through no fault of the individual due to one or more of the factors outlined in section 8-73-108 (4);

(II) Received income from employment during a qualified base period or alternative base period as defined in section 8-70-103;

(III) Attests that the individual is not currently receiving any state-administered wage replacement assistance;

(IV) Is not eligible for state-administered wage replacement assistance for reasons related to the individual's authorization to work; and

(V) Has a pay stub or form W-2 to verify the individual's employment and wage withholding.

(c) "Fund" means the benefit recovery fund created in subsection (2) of this section.

(d) "Recovery benefits" means benefits calculated pursuant to subsection (5) of this section.

(e) "Third-party administrator" means an entity with which the division contracts to administer payments to eligible individuals from the fund pursuant to subsection (5) of this section.

(2) (a) There is hereby created in the state treasury the benefit recovery fund to provide grants to a third-party administrator to provide payments to eligible individuals.

(b) The fund consists of:

(I) Money transferred to the fund pursuant to section 8-77-109 (2)(a); and

(II) Gifts, grants, and donations received by the department from any other public or private organization or entity or individual and any interest earned on such gifts, grants, and donations.

(c) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(d) Money in the fund is continuously appropriated to the department for the purposes of this section.

(e) (I) At the end of the 2024-25 state fiscal year, and at the end of each state fiscal year thereafter, the state treasurer shall credit any money collected pursuant to this section that would cause the balance in the fund to exceed thirty million dollars, as adjusted annually by an amount equal to the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars and excluding any gifts, grants, or donations, to the unemployment compensation fund created in section 8-77-101 (1).

(II) The department may continue to solicit and accept gifts, grants, and donations regardless of the fund balance.

(3) (a) Each quarter, to the extent allowed by the United States department of labor employment training administration, the department shall allocate the money in the fund to one or more third-party administrators for the purpose of providing recovery benefits to eligible individuals. At a minimum, a third-party administrator must have experience building and operating financial benefit systems that are proven to be accessible and responsive to the target population.

(b) The department shall develop a process for contracting with third-party administrators to provide recovery benefits to eligible individuals, and may develop guidance as necessary, including rules specifying the grant process for third-party administrators. The department shall select a third-party administrator within ninety days after May 25, 2022.

(c) A third-party administrator selected pursuant to subsection (2)(b) of this section shall, within one hundred days after May 25, 2022:

(I) Provide outreach to unemployed individuals who may be eligible for payments through the fund;

(II) Screen each applicant for recovery benefits to determine if the applicant is an eligible individual; and

(III) Pay recovery benefits to eligible individuals.

(4) To receive recovery benefits, an eligible individual must apply to a third-party administrator with which the division has contracted.

(5) (a) A third-party administrator shall pay each eligible individual who is totally unemployed in any week, with respect to that week, recovery benefits at a rate of fifty-five percent of the eligible individual's average weekly wage as determined from earnings data provided to the third-party administrator; except that the maximum weekly payment amount may not exceed the maximum weekly benefit amount for benefits as calculated pursuant to section 8-73-102 (2).

(b) If the recovery benefit amount is not an even dollar amount, the third-party administrator shall round the recovery benefit amount to the next lower full dollar amount.

(c) An eligible individual may receive recovery benefits for a maximum of thirteen weeks during the eligible individual's period of unemployment.

(6) If the fund balance is below five hundred thousand dollars, as adjusted for the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood or its successor index, a third-party administrator shall suspend payments until the balance of the fund is equal to or greater than five hundred thousand dollars.

(7) (a) All personal information and documents collected are confidential, are exempt from disclosure under the "Colorado Open Records Act", part 2 of article 72 of title 24, and may be used or disclosed only for purposes of this section, except where necessary to comply with a court order.

(b) In carrying out the requirements of this section:

(I) The department and any contracted third-party administrator shall establish procedures and safeguards against unauthorized access to and use of personal information collected pursuant to this section by any person, other than for the purpose of this section; and

(II) A third-party administrator shall not disclose that an individual has applied for or is a recipient of recovery benefits to any person that is not administering the program.

(c) Notwithstanding section 39-21-113, the executive director of the department of revenue may provide the Colorado office of new Americans, created in section 8-3.7-103, and any third-party administrator with any information obtained from any investigation conducted by the department of revenue or its agents or disclosed in any document, report, or return filed in connection with any of the taxes covered by article 21 of title 39 if such information is necessary for the administration of the fund. Any information provided to the Colorado office of new Americans or a third-party administrator pursuant to this subsection (7)(c) is confidential, and all employees of either the Colorado office of new Americans or a third-party administrator are subject to the limitations set forth in section 39-21-113 (4) and the penalties specified in section 39-21-113 (6).

Source: L. 2022: Entire section added, (SB 22-234), ch. 224, p. 1615, § 4, effective May 25. **L. 2023:** (7)(c) added, (HB 23-1283), ch. 293, p. 1766, § 7, effective October 1, 2024. **L. 2025:** (2)(e)(I) amended, (SB 25-242), ch. 145, p. 547, § 4, effective April 28.

Cross references: For the legislative declaration in HB 23-1283, see section 1 of chapter 293, Session Laws of Colorado 2023.

ARTICLE 74

Claims for Benefits

8-74-100.3.	Definitions.	8-74-104.	Industrial claim appeals office review.
8-74-101.	Claims for benefits - employer-provided information required.	8-74-105.	Reconsiderations.
8-74-102.	Deputy's decision - rules.	8-74-106.	Appeals - time limits - procedures.
8-74-103.	Hearing officer review - rules.	8-74-107.	Court review.

8-74-108. Conclusiveness of determinations and decisions.

8-74-109. Payment of benefits.

8-74-110. Decisions of industrial claim appeals panel. (Repealed)

8-74-100.3. Definitions.

As used in this article 74, unless the context otherwise requires:

(1) "Deputy" means a person who adjudicates claims for the division when Colorado is the paying state.

Source: L. 2025: Entire section added, (SB 25-275), ch. 377, p. 2035, § 32, effective August 6.

8-74-101. Claims for benefits - employer-provided information required.

(1) Claims for benefits shall be made, processed, and reviewed pursuant to articles 70 to 82 of this title and such regulations as the director of the division may prescribe.

(2) Every employer shall post and maintain notices to inform his employees that he is subject to the "Colorado Employment Security Act" and has been so registered by the division. Such notices shall be conspicuously posted at or near work locations after an employer's account number has been assigned by the division and shall be supplied by the division in reasonable numbers and without cost.

(3) Copies of articles 70 to 82 of this title and rules and regulations shall be supplied without cost by the division to any person who requests a copy.

(4) At the time of separation from an employer, the employer shall provide each employee, in a written format and distribution method, to include electronic or hard copy, that is determined by the division, information regarding the availability of unemployment compensation benefits. The information must include:

- (a) The employer's name and address;
- (b) The employee's name and address;
- (c) The employee's identification number or the last four numbers of the employee's social security number;

(d) The employee's start date, date of last day worked, year-to-date earnings, and wages for the last week the employee worked; and

(e) The reason the employee separated from the employer.

Source: **L. 76:** Entire article R&RE, p. 354, § 1, effective October 1. **L. 81:** Entire section R&RE, p. 484, § 7, effective July 1. **L. 86:** (1) amended, p. 489, § 90, effective July 1. **L. 2022:** (4) added, (SB 22-234), ch. 224, p. 1617, § 5, effective May 25.

Editor's note: This section is similar to former § 8-74-101 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "Defending an Unemployment Compensation Claim", see 13 Colo. Law. 69 (1984).

8-74-102. Deputy's decision - rules.

(1) Upon receipt of a claim, the division shall notify any other interested parties of the claim by mail or electronic means in accordance with such rules as the director of the division may promulgate. The interested parties must be afforded seven calendar days after the date of the notice of the claim to present any information pertinent to the claim by mail, telephone, or electronic means in accordance with such rules as the director of the division may promulgate. The information must be received by the division within seven calendar days after said date. If the seventh calendar day falls on a weekend or a state holiday, the date must be moved to the first working day immediately following such weekend or holiday. The interested party may present information out of time only if good cause is shown. A deputy to be designated by the director of the division shall promptly examine all materials submitted. Whenever information submitted is not clearly adequate to substantiate a decision, the deputy shall promptly seek the necessary information. If it is necessary to obtain information by mail from any source, the information shall be received by the division no later than seven calendar days after the date of the request for information. On the basis of the deputy's review, the deputy shall determine the validity of the claim and, if valid, when payment shall commence, the amount payable, and the duration of payment. The deputy shall issue a decision in all cases, even if the claimant has insufficient qualifying wages, unless the interested employer did not receive notice of the claim, except when the separation from employment is due to a lack of work and no alleged disqualifying

circumstances are indicated, or unless the claimant did not file a continued claim. The deputy's decision shall set forth findings of fact, conclusions of law, and an order. The division shall promptly provide all interested parties with copies of the deputy's decision.

(2) Notwithstanding articles 70 to 82 of this title, an initial determination of arithmetic computations, wage amounts, and dates of wage payments shall not be subject to immediate appeal. Interested parties who disagree with monetary determinations of the division may request reconsideration of determinations as the director of the division, by regulation, may prescribe. A reconsidered determination of the division is subject to the provisions of section 8-74-105.

Source: **L. 76:** Entire article R&RE, p. 354, § 1, effective October 1. **L. 79:** Entire section amended, p. 351, § 14, effective September 30. **L. 81:** (1) amended, p. 510, § 5, effective July 1. **L. 82:** (1) amended, p. 237, § 4, effective July 1. **L. 86:** (2) amended, p. 489, § 91, effective July 1. **L. 2002:** (1) amended, p. 336, § 1, effective April 19. **L. 2007:** (1) amended, p. 803, § 3, effective August 3. **L. 2008:** (1) amended, p. 998, § 1, effective August 5. **L. 2020:** (1) amended, (SB 20-207), ch. 296, p. 1473, § 5, effective July 14.

Editor's note: This section is similar to former § 8-74-102 as it existed prior to 1976.

ANNOTATION

Duties of deputy of division of employment. Where a claim was filed for benefits under the employment security act, it was the administrative duty of the deputy to examine the claim, determine its validity and make an award of appropriate benefits. *Miller v. Indus. Comm'n*, 173 Colo. 476, 480 P.2d 565 (1971) (decided under former § 8-74-102).

Good-faith reliance upon the statements of department of labor employees. Fundamental fairness demands that delay caused by good-faith reliance upon the statements of department of labor

employees shall not bar claimant from filing his claims and shall constitute good cause as a matter of law for late filing. *Tucker v. Indus. Comm'n*, 708 P.2d 484 (Colo. App. 1985).

Private postage meter marks are postmarks within the meaning of this section. Such marks are official postmarks imprinted under license from the postal service and are entitled to all the privileges applying to the various classes of mail. *Gutierrez v. Indus. Claim App. Off.*, 841 P.2d 407 (Colo. App. 1992).

8-74-103. Hearing officer review - rules.

(1) Any interested party who is dissatisfied with a deputy's decision may appeal that decision and obtain a hearing covering any issue relevant to the disputed claim. The issue of a claimant's availability will be relevant to the extent set forth in section 8-73-107 (1)(c)(I)(A). The initial appeal shall be to a hearing officer designated by the director of the division and must be received by the division within twenty calendar days after the date of notification of the decision of the deputy in accordance with such rules as the director of the division may promulgate. Wages paid in Colorado and transferred to another state in which the claimant has filed shall not be subject to adjudication by a deputy of the division or to an appeal directed to this state.

(2) The hearing officer shall have the power and authority to call, preside at, and conduct hearings pursuant to the provisions of section 8-72-108 and such regulations as the director of the division may prescribe.

(3) The hearing officer, after affording all interested parties a reasonable opportunity for a fair hearing in conformity with the provisions of this article and the regulations of the division, shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The division shall promptly provide all interested parties with copies of the hearing officer's decision.

(4) The hearing officer may conduct all appeal hearings at designated locations which are most convenient to the claimant and employer. If the claimant and employer request that such hearing be bifurcated, the division may honor this request.

Source: **L. 76:** Entire article R&RE, p. 355, § 1, effective October 1. **L. 79:** (1) amended and (4) added, p. 352, § 15, effective September 30. **L. 81:** Entire section R&RE, p. 484, § 8, effective July 1. **L. 86:** (2) and (3) amended, p. 489, § 92, effective July 1. **L. 96:** (1) amended, p. 383, § 7, effective April 17. **L. 2002:** (1) amended, p. 337, § 2, effective April 19. **L. 2007:** (1) amended, p. 803, § 4, effective August 3. **L. 2025:** (1) amended, (SB 25-275), ch. 377, p. 2035, § 33, effective August 6.

Editor's note: This section is similar to former §§ 8-74-103 and 8-74-104 as they existed prior to 1976.

ANNOTATION

Inadequate notice. Notice given pursuant thereto, that "All issues and factual matters to this section, and the regulation relating affecting claimant's eligibility and

qualifications for benefits will be heard ..." deprived claimant of a fair hearing within the meaning of the Social Security Act, 42 U.S.C. § 503 (a)(3). *Shaw v. Valdez*, 819 F.2d 965 (10th Cir. 1987).

Redetermination of disqualification period. When a claimant appeals the merits of a deputy's decision finding him eligible for only a reduced award, the period of disqualification from benefits entirely is subject to redetermination by the hearing officer. *Armijo v. Indus. Comm'n*, 44 Colo. App. 171, 610 P.2d 107 (1980).

Hearing officer is required to independently assess evidence presented at hearing and to reach own conclusions regarding the reason for claimant's separation from employment as well as the probative value of evidence, the credibility of witnesses, and the resolution of any

conflicting testimony. *Sch. Dist. No. 1 v. Fredrickson*, 812 P.2d 723 (Colo. App. 1991).

Statute contemplates that the hearing before the hearing officer be conducted on a de novo basis. *Lucero v. Indus. Claim App. Office*, 812 P.2d 1191 (Colo. App. 1991).

The time for filing of appeal can only be waived for good cause shown. There was no good cause shown where the claimant failed to keep the division informed of his mailing address and therefore did not receive the decision in time to file an appeal. *Sproule v. Indus. Claim Appeals Office*, 830 P.2d 1152 (Colo. App. 1992).

Applied in *Andrews v. Dir., Div. of Emp.*, 41 Colo. App. 408, 585 P.2d 933 (1978); *Nguyen v. Indus. Claim Appeals Office*, 174 P.3d 847 (Colo. App. 2007).

8-74-104. Industrial claim appeals office review.

(1) Any interested party who is dissatisfied by a hearing officer's decision may appeal that decision and obtain administrative review by the industrial claim appeals office. Any such appeal must be received by the industrial claim appeals office within twenty calendar days after the date of notification of the decision of the hearing officer. The director of the division may prescribe rules for the conduct of such appeals, including apportionment of transcript costs (not to exceed the actual costs of such materials), filing methods, briefing schedules, and similar matters.

(2) Upon petition to review by an interested party, the industrial claim appeals panel may affirm, modify, reverse, or set aside any decision of a hearing officer on the basis of the evidence in the record previously submitted in the case.

(3) The industrial claim appeals office shall promptly provide all interested parties with copies of the industrial claim appeals panel's written decision and order in each case.

(4) The panel shall have the power to issue such procedural orders as may be necessary to carry out its appellate review under subsection (2) of this section, including, but not limited to,

orders concerning the acceptance of appeals before the panel and orders granting or denying requests for extension of time.

Source: **L. 76:** Entire article R&RE, p. 355, § 1, effective October 1. **L. 79:** (1) amended, p. 352, § 16, effective September 30. **L. 81:** (1) amended, p. 485, § 9, effective July 1. **L. 86:** Entire section R&RE, p. 490, § 93, effective July 1. **L. 92:** Entire section amended, p. 1812, § 2, effective March 19. **L. 96:** (1) amended, p. 383, § 8, effective April 17. **L. 2002:** (1) amended, p. 337, § 3, effective April 19. **L. 2007:** (1) amended, p. 804, § 5, effective August 3.

Editor's note: This section is similar to former § 8-74-105 as it existed prior to 1976.

ANNOTATION

Annotator's note. (1) Since § 8-74-104 is similar to provisions in former §§ 8-74-104 and 8-74-105 as said sections existed prior to the 1976 repeal and reenactment of this article, relevant cases construing those provisions have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12, which abolished said commission and transferred its powers, duties, and functions under this section to the industrial claim appeals office.

Under the provisions providing for a review by the commission, the "appeal" before the commission, while not mandatory, is permissible. Bryant v. Hayden Coat Co., 111 Colo. 93, 137 P.2d 417 (1943).

The commission has the ultimate responsibility for making the final

findings of fact necessary to support its decision. McGinn v. Indus. Comm'n, 31 Colo. 6, 496 P.2d 1080 (1972); Karton v. Indus. Comm'n, 718 P.2d 255 (Colo. App. 1986).

An appeal in an unemployment compensation case removes the claim in its entirety, and the hearing is, in effect, a trial de novo. The administrative appellate tribunal may consider all matters at issue regardless of the ground of basis of the appeal and an appellant cannot limit the scope of the appeal by a provision in his notice of appeal. Anderson v. Indus. Comm'n, 29 Colo. App. 263, 482 P.2d 403 (1971).

Notice of appeal need not enumerate with particularity all possible issues. Where the petitioner is given an opportunity to present his claim de novo at the hearing before the referee, the notice sent to petitioner apprised him of that fact, and its declaration that all relevant issues would be

considered was clear, it cannot be expected that such notice enumerate with particularity all possible relevant issues. *Anderson v. Indus. Comm'n*, 20 Colo. App. 263, 482 P.2d 403 (1971); *Ward v. Indus. Comm'n*, 699 P.2d 960 (Colo. 1985).

Section contains no provision that would authorize an appeal absent a transcript, even for questions of law. *Movitz v. Division of Emp. and Train.*, 820 P.2d 1153 (Colo. App. 1991).

Restricting the scope of cross-examination. Referee has the authority to restrict the scope of cross-examination, and only when the restriction is severe enough to constitute a denial of the right will the limitation of cross-examination in an administrative hearing be overturned as an abuse of discretion. *Ward v. Indus. Comm'n*, 699 P.2d 960 (Colo. 1985).

Scope of review by industrial claim appeals panel. The jurisdiction of the industrial claim appeals panel is limited to acting in an appellate capacity in reviewing the hearing officer's findings and conclusions. *Clark v. Colo. State Univ.*, 762 P.2d 698 (Colo. App. 1988); *Brannan Sand & Gravel v. Indus. Claim Appeals Office*, 761 P.2d 771 (Colo. App. 1988).

The commission is not held to a crystalline standard when it articulates its findings of fact. *Allmendinger v. Indus. Comm'n*, 40 Colo. App. 210, 571 P.2d 741 (1977).

Standard for review by industrial claim appeals panel allows the panel to weigh the evidence and to reject a hearing officer's

findings which, although supported by some evidence, are contrary to the great weight thereof. *Clark v. Colo. State Univ.*, 762 P.2d 698 (Colo. App. 1988).

Allowing the presentation of new evidence not originally presented to the hearing officer whose decision is being appealed is contrary to requirements of subsection (2), though the industrial claim appeals panel has the power to enter procedural orders to remedy an insufficient record. *Alfaro v. Indus. Claim Appeals Office*, 78 P.3d 1147 (Colo. App. 2003).

The industrial claim appeals panel exceeded its authority by substituting its own evidentiary findings for those of the referee that are amply supported by the record. The Panel's order is set aside because its ultimate findings and conclusions are not supported by the referee's factual findings. *Prince-Walker v. Indus. Claim Appeals Office*, 870 P.2d 588 (Colo. App. 1993), *aff'd sub nom. Samaritan Inst. v. Prince-Walker*, 883 P.2d 3 (Colo. 1994).

Under this act, it is the responsibility of the division of employment and training in the first instance, and ultimately the responsibility of the industrial commission, to determine claimant's eligibility for benefits. Thus, an employer's desire to withdraw its objection did not moot the case. *Cordova v. Indus. Comm'n*, 706 P.2d 810 (Colo. App. 1985).

Where the decision is justified, it may not be set aside "on the technicality of unclarity of expression on the part of the commission". *Allmendinger v. Indus. Comm'n*, 40 Colo. App. 210, 571 P.2d 741

(1977); *Allen Co., Inc. v. Indus. Comm'n*, 735 P.2d 889 (Colo. App. 1986), *aff'd*, 762 P.2d 677 (Colo. 1988).

Conclusion permitted by substantial evidence not disturbed on review. Where substantial evidence permits the conclusion drawn by the commission, it will not be disturbed on review. *Allmendinger v. Indus. Comm'n*, 40 Colo. App. 210, 571 P.2d 741 (1977).

No abuse of direction for failure of commission to order new hearing where letter did not reveal new facts but reflected a change in the employer's interpretation of previously submitted evidence. *Cordova v. Indus. Comm'n*, 706 P.2d 810 (Colo. App. 1985).

Industrial claim appeals office abused its discretion in refusing to consider latent ambiguities in its waiver of transcript fees request form and patent evidence which corroborated unemployment compensation claimant's claim of mistake, particularly where claimant never received a meaningful hearing. *Richardson v. Freund and Co.*, 755 P.2d 1 (Colo. App. 1988).

The fact that the industrial commission reversed itself within a short period of time, and did so without fresh evidence, was not the product of arbitrariness.

Allmendinger v. Indus. Comm'n, 40 Colo. App. 210, 571 P.2d 741 (1977).

A failure on the part of the commission to "promptly notify" interested parties of a decision may constitute error of a constitutional dimension. *Patterson v. Indus. Comm'n*, 39 Colo. App. 255, 567 P.2d 385 (1977).

Commission's disregarding hearsay testimony not erroneous. The commission does not err in disregarding the hearsay testimony of the employer's witness based on a business memorandum where the memorandum originated after the claim was filed, was not mentioned during the hearing, and was not submitted until the employer filed a petition to review the referee's decision. *Santa Fe Energy Co. v. Baca*, 673 P.2d 374 (Colo. App. 1983).

The assessment of the credibility of witnesses is within the authority of the commission in reviewing the referee's decision. *Gandy v. Indus. Comm'n*, 680 P.2d 1281 (Colo. App. 1983).

Applied in *Andrews v. Dir., Div. of Emp.*, 41 Colo. App. 408, 585 P.2d 933 (1978); *Matthews v. Indus. Comm'n*, 44 Colo. App. 159, 609 P.2d 1127 (1980); *Scofield v. Indus. Comm'n*, 697 P.2d 815 (Colo. App. 1985).

8-74-105. Reconsiderations.

The deputy, hearing officer, or industrial claim appeals panel may, on his or its own motion, reconsider a decision within a twelve-month period subsequent to the date of decision when it appears that an apparent procedural or substantive error has occurred in connection therewith. Notification of a decision on reconsideration and the reasons therefor shall be promptly given to

all interested parties. In the event that an appeal involving an original decision is pending as of the date on which a decision as a result of reconsideration is issued by the division, such appeal shall be considered void. Any interested party who is dissatisfied by a decision that is issued as a result of reconsideration may appeal that decision in the manner set forth in section 8-74-106.

Source: **L. 76:** Entire article R&RE, p. 355, § 1, effective October 1. **L. 86:** Entire section amended, p. 490, § 94, effective July 1; entire section amended, p. 543, § 8, effective July 1.

Editor's note: This section is similar to former § 8-74-110 as it existed prior to 1976.

ANNOTATION

Affirmation of a decision by the review panel after appeal does not bar sua sponte review under this section. The doctrine of res judicata does not bar review under this section, because the statute expressly authorizes the deputy to reconsider a decision within 12 months. Univ. of Colo. v.

Indus. Claim Appeals Office, 74 P.3d 510 (Colo. App. 2003).

Applied in Yanish v. Indus. Comm'n, 38 Colo. App. 492, 558 P.2d 1007 (1976); City of Aurora v. Indus. Comm'n, 44 Colo. App. 132, 609 P.2d 129 (1980).

8-74-106. Appeals - time limits - procedures.

(1) The following procedures and limitations shall apply to all appeals taken pursuant to this article:

(a) Any party may petition for review of a deputy's decision by filing a petition therefor with the division within twenty calendar days after the date of notification of such decision. Notification of the decision shall be by personal delivery of the decision to an interested party or by mailing a copy of the decision to the last-known address shown in the division records of an interested party and to the interested party's attorney or representative of record, if any, or by electronic means. The date of notification shall be the date of personal delivery, the date of transmission as recorded by the division, if notification is made by electronic means, or the date of mailing of a decision.

(b) Unless, within twenty calendar days after the date of notification of a deputy's decision, an interested party petitions for review of such decision, the decision shall be final. Petitions for review may be accepted out of time only for good cause shown and in accordance with rules adopted by the director of the division.

(c) The division shall give written notice to all interested parties when a petition for review is filed. Such notice shall be pursuant to regulations adopted by the director of the division.

(d) Pursuant to section 8-72-107, each interested party shall be given such reasonable access to division records concerning the claim as is necessary for proper presentation of his position concerning the claim.

(e) Any interested party to an appeal from a deputy's decision shall be entitled to a hearing before a hearing officer. All interested parties shall have the right to be present or to be represented by an attorney or other representative at the hearing, to present such testimony and evidence as may be pertinent to the claim, and to cross-examine witnesses. The division, pursuant to regulations adopted by the director of the division, shall notify all interested parties of the hearing. Such notification shall be made not less than ten calendar days prior to the hearing.

(f) (I) The manner in which disputed claims shall be presented, the reports required from interested parties, and the conduct of hearings shall be in accordance with the provisions of this article and the regulations prescribed by the director of the division, whether or not such regulations conform to common law or statutory or regulatory rules of evidence or other technical rules of procedure.

(II) Evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts of this state. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person conducting the hearing may receive and consider evidence not admissible under such rules, if such evidence possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The person conducting a hearing shall give effect to the rules of privilege recognized by law. He may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given an opportunity to compare the copy with the original. The division may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented. The provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and particularly sections 24-4-105 and 24-4-106, C.R.S., shall not apply to hearings and court review under this article. However, the rule-making provisions of section 24-4-103, C.R.S., shall apply to this article.

(III) When the same or substantially similar evidence is relevant and material to the matters at issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon may be jointly conducted, a single record of the proceedings may be made, and evidence introduced with respect to one proceeding may be considered as

introduced in the others, if, in the judgment of the tribunal having jurisdiction over the proceeding, such consolidation would not be prejudicial to any interested party.

(IV) No person shall participate on behalf of the division in any case in which he has a direct or indirect interest.

(V) A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is presented for further review. If necessary, the industrial claim appeals panel may listen to the recorded testimony of a hearing on a disputed claim prior to rendering a decision. If review is sought pursuant to section 8-74-107, the division shall transcribe the testimony pursuant to such regulations as the director of the division may prescribe.

(g) Repealed.

Source: **L. 76:** Entire article R&RE, p. 356, § 1, effective October 1. **L. 79:** (1)(e) amended and (1)(g) repealed, pp. 352, 356, §§ 17, 25, effective September 30. **L. 81:** (1)(a) and (1)(b) amended, p. 485, § 10, effective July 1. **L. 86:** (1)(a), (1)(b), (1)(c), (1)(e), (1)(f)(I), (1)(f)(II), (1)(f)(IV), and (1)(f)(V) amended, p. 490, § 95, effective July 1. **L. 96:** (1)(a) and (1)(b) amended, p. 383, § 9, effective April 17. **L. 2002:** (1)(a) amended, p. 337, § 4, effective April 19. **L. 2007:** (1)(a) and (1)(b) amended, p. 804, § 6, effective August 3.

Editor's note: This section is similar to former §§ 8-74-102, 8-74-104, 8-74-106, and 8-74-107 as they existed prior to 1976.

ANNOTATION

Annotator's note. (1) Since § 8-74-106 is similar to provisions in former §§ 8-74-102, 8-74-104, 8-74-106, and 8-74-107 as said sections existed prior to the 1976 repeal and reenactment of this article, relevant cases construing those provisions have been included in the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the

enactment of 1986 Senate Bill No. 12, which abolished said commission and transferred its powers, duties, and functions under this section to the industrial claim appeals panel.

This section requires receipt by the division, not depositing in the mail, as the determinative factor as to whether a petition is filed timely under subsection (1). *Andrews v. Dir., Div. of Emp.*, 41 Colo.

App. 408, 585 P.2d 933 (1978); Fink v. Indus. Comm'n, 689 P.2d 708 (Colo. App. 1984).

Notice lacking. Where there is neither evidence nor presumption that would support the finding that the notice was mailed, and since the only evidence in the record indicates that the employer did not receive notice of the claim, the employer was not given notice and was improperly denied its right to a hearing and determination on the merits of the claim. Allred v. Squirrell, 37 Colo. App. 84, 543 P.2d 110 (1975).

Attorney's negligent failure to timely file appeal. The negligence of claimant's attorney in failing to timely file an appeal pursuant to subsection (1)(a) constitutes "good cause" for accepting the untimely appeal. Trujillo v. Indus. Comm'n, 648 P.2d 1094 (Colo. App. 1982).

Attorney's reliance on information from commission. Reliance by attorney on conversation with employee of commission during which he was told that mailing and postmarking constituted filing constitutes "good cause" for accepting the untimely appeal. Fink v. Indus. Comm'n, 689 P.2d 708 (Colo. App. 1984).

It is employer's responsibility to seek extension of time for filing appeal, and it may not rely on the absence of the general counsel as an excuse for failing to do so. Mohawk Data Sciences Corp. v. Indus. Comm'n, 671 P.2d 1335 (Colo. App. 1983).

Claimant's sworn statement that he did not actually receive a copy of the referee's

decision until eight days before filing his appeal was sufficient to establish prima facie "good cause" for filing a late appeal and to require an evidentiary hearing on claimant's credibility. The mere fact that an envelope bears a correct address and sufficient postage is not a guarantee that it was properly and timely delivered. While a presumption of such delivery may arise from those facts, it is a rebuttable one. Trujillo v. Indus. Comm'n, 735 P.2d 211 (Colo. App. 1987).

A hearing officer's initial decision should have been reinstated in an unemployment compensation case where it was not appealed from or reconsidered pursuant to applicable statutory provisions. Landers v. Indus. Comm'n, 721 P.2d 1227 (Colo. App. 1986).

On allegation of improper notice, commission (now hearing officer) must conduct hearing. When claimant alleges in a request for review that the division's decision was not sent to his "last-known address" because the commission was informed that claimant was not located at that address, the commission (now hearing officer) must conduct a hearing to determine if claimant's allegation is true, and if true whether the request for review was made within 15 days after a copy of the decision was actually delivered. Henderson v. Indus. Comm'n, 35 Colo. App. 124, 529 P.2d 651 (1974).

When claimant admitted that she received notice of withdrawal of her appeal for failure to appear before the referee, and such notice gave claimant the opportunity for a

hearing on the issue of good cause for such failure, but she had not appealed it because she had misunderstood the deputy's decision and believed she would receive full benefits, such reason was not good cause for failing to take advantage of the opportunity. *Kreigel v. Indus. Comm'n*, 702 P.2d 290 (Colo. App. 1985).

Notice must be given to parties and attorneys of record. Due-process requirements qualify statutory enactment, which must be interpreted, if possible, so as to conform to constitutional standards. The court interprets the statutory requirements that the parties be given notice of the decision to necessarily require that a like notice be given to their attorneys of record. *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 184 Colo. 334, 520 P.2d 586 (1974).

Employer representative's late arrival for hearing caused by delays not entirely within her control constituted good cause for failure to appear at the scheduled hearing. *Albertsons, Inc. v. Indus. Comm'n*, 735 P.2d 220 (Colo. App. 1987).

This section allows but does not require representation by counsel at hearing and decision to grant continuance based upon request for counsel lies within discretion of hearing officer. *Voisinet v. Indus. Claim Appeals Office*, 757 P.2d 171 (Colo. App. 1988).

Representation by an attorney. Although the unemployment act allows a party to be represented by an attorney at the hearing, it does not require counsel for parties to be present, nor does it

automatically mandate a continuance if a party appears without an attorney and fails to request a continuance in order to have one present. *Larsen-Oldaker v. Indus. Comm'n*, 735 P.2d 209 (Colo. App. 1987).

Representation by non-attorneys allowed. Persons entitled to a hearing regarding the appeal of a deputy's decision may be represented by a non-lawyer, even though such representation constitutes practicing law. *Unauthorized Prac. of Law v. Employers Unity*, 716 P.2d 460 (Colo. 1986).

Interrogatories not permitted. The commission has adopted no regulations permitting the use of interrogatories at hearings, and to extend by judicial fiat the tool of interrogatories to employers in unemployment compensation hearings could well lead to intimidation and harassment of claimants, and a stifling of their pursuit of otherwise valid claims. *Denver Symphony Ass'n v. Indus. Comm'n*, 34 Colo. App. 343, 526 P.2d 685 (1974).

Which is not denial of due process. Not allowing an employer to have answers to written interrogatories served on each of the employees in an unemployment compensation hearing violated no common-law or statutory right, nor was the employer thereby denied due process of law. *Denver Symphony Ass'n v. Indus. Comm'n*, 34 Colo. App. 343, 526 P.2d 685 (1974).

Hearing officer has discretion to determine the order and manner of presentation of witnesses and evidence. *Ward v. Indus. Claim Appeals Office*, 916 P.2d 605 (Colo. App. 1995).

Neither the statutes nor the regulations require parties to exchange documents prior to a hearing that will be conducted in person. QFD v. Indus. Claim Appeals Office, 873 P.2d 32 (Colo. App. 1993).

Cross-examination in unemployment compensation hearings may be restricted, and only where the restriction is severe enough to constitute a denial of the right will limitation of cross-examination be overturned as an abuse of discretion. Denver Symphony Ass'n v. Indus. Comm'n, 34 Colo. App. 343, 526 P.2d 685 (1974).

May not deny benefits where only evidence hearsay. Where the only evidence supporting the commission's decision is an affidavit which is clearly hearsay, this evidence alone cannot serve as the basis for the commission's ruling denying unemployment compensation benefits. Olivas v. Indus. Comm'n, 33 Colo. App. 78, 515 P.2d 110 (1973).

However, the commission erred in failing to consider new evidence in the form of a letter because the letter, combined with claimant's statement, had probative value and should have been considered in determining whether the employer had met his burden. Perez v. Indus. Comm'n, 711 P.2d 1283 (Colo. App. 1985) (decided prior to 1986 abolishment of industrial commission).

It is improper for the industrial commission to arrive at a decision in an unemployment compensation case which may have been based partly on hearsay documents not presented at the hearing conducted by the referee. Wilson v. Colo.

Indus. Comm'n, 30 Colo. App. 154, 490 P.2d 91 (1971).

And claimant's letter rebutting hearsay is not waiver as to its consideration. Although claimant is aware that hearsay documents have been filed with the commission and attempts by letter to rebut their effect, his actions do not constitute a waiver as to the consideration of these documents. Wison v. Colo. Indus. Comm'n, 30 Colo. App. 154, 490 P.2d 91 (1971).

Hearsay testimony found unreliable. Hearsay testimony, pursuant to subsection (1)(f)(II), found not so reliable that "reasonable and prudent men" would necessarily assign it probative value. Sante Fe Energy Co. v. Baca, 673 P.2d 374 (Colo. App. 1983).

Weight of hearsay evidence. Hearsay evidence alone may be basis of determination in an unemployment compensation proceeding but only if such evidence is reliable and trustworthy and possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Flower Stop Mktg. Corp. v. Kilgore, 762 P.2d 747 (Colo. App. 1988), aff'd in part, rev'd in part on other grounds, 782 P.2d 13 (Colo. 1989) (applying Kirke v. State Dept. of Rev., 724 P.2d 77 (Colo. 1986), and overruling the "residuum rule" holding in Sims v. Indus. Comm'n, 627 P.2d 1107 (Colo. 1981), and subsequent cases that applied such rule).

Factors useful in determining whether hearsay evidence is reliable, trustworthy, and of some probative value. Indus. Claim Appeals Office v. Flower Stop Mktg. Corp.,

782 P.2d 13 (Colo. 1989); Tilley v. Indus. Claim Appeals Office, 924 P.2d 1173 (Colo. App. 1996).

The rules of evidence are somewhat relaxed in unemployment compensation hearings. QFD v. Indus. Claim Appeals Office, 873 P.2d 32 (Colo. App. 1993); Tilley v. Indus. Claim Appeals Office, 924 P.2d 1173 (Colo. App. 1996).

Industrial commission files are business records. Industrial commission file used in good cause determination of untimely requests for review of referees decision, pursuant to commission regulations enacted under an express grant of legislative authority, is admissible as a business records exception to the hearsay rule. Kriegel v. Indus. Comm'n, 702 P.2d 290 (Colo. App. 1985).

Hearing officer in unemployment compensation case did not abuse discretion or deny employer fair hearing by admitting into evidence claimant's personal diary containing entries concerning incidents of alleged harassment by employer, despite employer's argument that claimant should have disclosed it prior to hearing. When employer objected to claimant's testimony about contents of the diary, hearing officer provided employer with opportunity to review it, and at no time did employer request a continuance or adjournment of hearing to allow it further time to prepare for cross-examination or rebuttal on the exhibit. QFD v. Indus. Claim Appeals Office, 873 P.2d 32 (Colo. App. 1993).

Action beyond jurisdiction of the commission. In an unemployment compensation hearing, the industrial commission has not competency to set aside solemn pronouncement of district court in divorce proceedings pertaining to a property division agreement in which claimant voluntarily resigned her position as secretary and bookkeeper of corporation of which her husband was president in exchange for cash, property, and stock; this was beyond commission's jurisdiction. Indus. Comm'n v. Lyle Adjustment Co., 160 Colo. 241, 417 P.2d 5 (1966).

Section contains no provision which would authorize an appeal absent a transcript, even for questions of law. Movitz v. Division of Emp. & Training, 820 P.2d 1153 (Colo. App. 1991).

The time for filing of appeal can only be waived for good cause shown. There was no good cause shown where the claimant failed to keep the division informed of his mailing address and therefore did not receive the decision in time to file an appeal. Sproule v. Indus. Claim Appeals Office, 830 P.2d 1152 (Colo. App. 1992).

Applied in Yanish v. Indus. Comm'n, 38 Colo. App. 492, 558 P.2d 1007 (1976); Sanchez v. Straight Creek Constructors, 41 Colo. App. 19, 580 P.2d 827 (1978); Anders v. Indus. Comm'n, 649 P.2d 732 (Colo. App. 1982); FlaHavhan v. Hewlett Packard Co., 675 P.2d 19 (Colo. App. 1983); Sproule v. Indus. Claim Appeals Office, 830 P.2d 1152 (Colo. App. 1992).

8-74-107. Court review.

(1) No action, proceeding, or suit to set aside an industrial claim appeals panel's decision or to enjoin the enforcement thereof shall be brought unless the petitioning party has first complied with the review provisions of sections 8-74-104 and 8-74-106.

(2) Actions, proceedings, or suits to set aside, vacate, or amend any final decision of the industrial claim appeals panel or to enjoin the enforcement thereof may be commenced in the court of appeals by any interested party, including the division. Such actions, proceedings, or suits shall be commenced by filing a notice of appeal in the court of appeals within twenty-one days of the mailing of the industrial claim appeals panel's decision, together with a certificate of service showing service of a copy of said notice of appeal on the division, the industrial claim appeals office, and all other parties who appeared in the administrative proceedings. The industrial claim appeals office, within twenty-one days after the service of the notice, shall make return to said court of all documents and papers on file in the matter, of all testimony taken therein, and of certified copies of all findings, orders, and awards, which return shall be deemed its answer to said petition. Such return of the industrial claim appeals office shall constitute the judgment roll in any such action, proceeding, or suit, and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action, proceeding, or suit.

(3) The industrial claim appeals panel may certify to the court of appeals questions of law involved in any of its decisions.

(4) In judicial proceedings under this article, administrative findings as to the facts, if supported by substantial evidence and in the absence of fraud, shall be conclusive.

(5) Actions, proceedings, and suits to review any final decision of the industrial claim appeals panel or questions certified to the court of appeals by such panel shall be heard in an expedited manner and shall be given precedence over all other civil cases, except cases arising under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title.

(6) The industrial claim appeals panel's decision may be set aside only upon the following grounds:

- (a) That the industrial claim appeals panel acted without or in excess of its powers;
- (b) That the decision was procured by fraud;
- (c) That the findings of fact do not support the decision;
- (d) That the decision is erroneous as a matter of law.

Source: **L. 76:** Entire article R&RE, p. 357, § 1, effective October 1. **L. 84:** (2) amended, p. 318, § 8, effective July 1. **L. 86:** (1) to (5), IP(6), and (6)(a) amended, p. 492, § 96, effective July 1. **L. 90:** (5) amended, p. 557, § 11, effective July 1. **L. 92:** (2) amended, p. 1812, § 3, effective March 19. **L. 2013:** (2) amended, (HB 13-1126), ch. 58, p. 191, § 1, effective July 1.

Editor's note: This section is similar to former §§ 8-74-108 and 8-74-109 as they existed prior to 1976.

ANNOTATION

Annotator's note. (1) Since § 8-74-107 is similar to provisions in former § 8-74-109 as it existed prior to the 1976 repeal and reenactment of this article, relevant cases construing that provisions have been included with the annotations to this section.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12, which abolished said commission and transferred its powers, duties, and functions under this section to the industrial claim appeals panel.

Appellate review not inherent right. Appellate review of an industrial commission order is not an inherent right. Appellate jurisdiction is derived from the statutory and constitutional provisions by which the right of appeal is created and can be acquired and exercised only in the manner prescribed therein. *Colo. Div. of Emp. & Training v. Indus. Comm'n*, 665 P.2d 631 (Colo. App. 1983).

In construing the employment security act, the court should apply a liberal construction favoring claimants. *Adams v.*

Indus. Comm'n, 31 Colo. App. 340, 501 P.2d 1334 (1972); *Allen v. Indus. Comm'n*, 36 Colo. App. 330, 540 P.2d 358 (1975).

But one seeking to exercise a statutory right of review or appeal must follow and comply with the procedure prescribed. *Washburn v. Indus. Comm'n*, 153 Colo. 500, 386 P.2d 975 (1963).

Statute contains no provision that allows a court to engraft the principles or provisions of C.R.C.P. 60(b), either directly or indirectly, into the court's review proceedings. *Huddy v. Indus. Claim Appeals Office*, 894 P.2d 60 (Colo. App. 1995).

Proper parties must be aggrieved by commission's decision. Absent allegation or evidence that department of labor and employment was aggrieved by decision of industrial commission, division of employment and department of labor and employment were not proper parties to bring the appeal from decision of industrial commission denying an award of unemployment compensation. *Div. of Emp. ex rel. Scachez v. Colo. Indus. Comm'n*, 31 Colo. App. 259, 500 P.2d 1192 (1972).

Commission's factual determinations conclusive where supported by substantial evidence. The commission's factual determinations concerning the reasons for an employer's failure timely to file an appeal are conclusive if supported by substantial evidence. *Mohawk Data Sciences Corp. v. Indus. Comm'n*, 671 P.2d 1335 (Colo. App. 1983).

Judicial review by the court of appeals is limited to a review of the commission's findings and decision. *McGinn v. Indus. Comm'n*, 31 Colo. 6, 496 P.2d 1080 (1972).

And if the evidence would support the findings made by the industrial commission, the court of appeals must affirm. *Bryant v. Hayden Coal Co.*, 111 Colo. 93, 137 P.2d 417 (1943); *Indus. Comm'n v. Brady*, 128 Colo. 490, 263 P.2d 578 (1953); *Indus. Comm'n v. Wilbanks*, 130 Colo. 36, 274 P.2d 99 (1954); *Burak v. Am. Smelting & Ref. Co.*, 134 Colo. 255, 302 P.2d 182 (1956); *Morrison Rd. Bar. Inc. v. Indus. Comm'n*, 138 Colo. 16, 328 P.2d 1076 (1958); *Sayers v. Am. Janitorial Serv., Inc.*, 162 Colo. 292, 425 P.2d 693 (1967); *Ruby v. Yellow Cab, Inc.*, 163 Colo. 297, 430 P.2d 463 (1967); *Stensvad v. Indus. Comm'n*, 167 Colo. 140, 445 P.2d 898 (1968); *Gatewood v. Russell*, 29 Colo. App. 11, 478 P.2d 679 (1970); *Tague v. Coors Porcelain Co.*, 30 Colo. App. 158, 490 P.2d 96 (1971); *Radis v. Indus. Comm'n*, 31 Colo. App. 355, 502 P.2d 977 (1972).

Where the resolution of a factual issue was within the province of the commission and where there is substantial evidence to support the finding, an appellate court will

not disturb it on review. *Wade v. Hurley*, 33 Colo. App. 30, 515 P.2d 491 (1973).

If there is substantial evidence in the record to support the factual determinations of the commission, a court should not substitute its judgment for that of the commission. *Denver Symphony Ass'n v. Indus. Comm'n*, 34 Colo. App. 343, 526 P.2d 685 (1974).

On judicial review of unemployment proceedings, the findings of the commission as to the facts, if supported by the evidence, shall be conclusive. *Allen v. Indus. Comm'n*, 36 Colo. App. 330, 540 P.2d 358 (1975).

Resolution of conflicts in the evidence is a matter properly left to the commission. Where there is evidence supporting the commission's conclusion on an issue, the commission's decision may not be disturbed on appeal. *In re Krantz v. Kelran Constructors, Inc.*, 669 P.2d 1049 (Colo. App. 1983).

A decision of the panel may not be set aside where there are findings of fact supported by substantial evidence. *Colo. Div. of Emp. & Train. v. Hewlett*, 777 P.2d 704 (Colo. 1989).

And will not be set aside where based upon conflicting evidence. Findings of fact by the industrial commission should not be set aside by reviewing court where such findings are the result of a resolution on conflicting evidence. *Bryant v. Hayden Coal Co.*, 111 Colo. 93, 137 P.2d 417 (1943); *McGinn v. Indus. Comm'n*, 31 Colo. 6, 496 P.2d 1080 (1972).

Where evidence is conflicting and susceptible to conflicting inferences, the commission's decision will not be disturbed. *Olivas v. Indus. Comm'n*, 33 Colo. App. 273, 518 P.2d 304 (1974).

But court not bound by commission's findings where no conflict in evidence. Where there is not material conflict in the evidence before the industrial commission acting as the unemployment compensation commission, the courts may reach their own conclusions and are not bound by the findings of fact of the commission. *Indus. Comm'n v. Emerson W. Co.*, 149 Colo. 529, 369 P.2d 791 (1962); *Denver Post Corp. v. Indus. Comm'n*, 677 P.2d 436 (Colo. App. 1984).

The commission's order may be set aside if there is not substantial evidence to support it. *Stern v. Indus. Comm'n*, 667 P.2d 244 (Colo. App. 1983).

Commission decisions must be set aside if erroneous. *Ward v. Indus. Comm'n*, 44 Colo. App. 301, 612 P.2d 1164 (1980).

Denial of benefits by referee was ambiguous and reversible error when it did not clearly set out the effect of the disqualification on claimant's future benefits and failed to advise claimant of the amount of benefits the claimant was eligible to receive. *Davis v. Indus. Claim Appeals Office*, 982 P.2d 330 (Colo. App. 1999).

Finding that claimant was unemployed through no fault of his own supported by substantial evidence. See *Sante Fe Energy Co. v. Baca*, 673 P.2d 374 (Colo. App. 1983).

A determination as to whether a claimant is responsible or "at fault" for separation from employment is a legal conclusion based on established findings of evidentiary fact, rather than a question of evidentiary fact. Accordingly, ruling based on lack of fault must be set aside if established findings of evidentiary fact do not support conclusion that claimant was at fault. *Bd. of Water Comm'rs v. Indus. Claim Appeals Office*, 881 P.2d 476 (Colo. App. 1994).

Substantial evidence is evidence which is probative, credible, and competent and which would warrant a reasonable belief in the existence of facts supporting finding. *Kalkbrenner v. Indus. Claim Appeals Office*, 801 P.2d 545 (Colo. App. 1990).

Perfection of appeal includes correct joinder of indispensable parties within the original 20-day period. *Sakal v. Indus. Comm'n*, 620 P.2d 65 (Colo. App. 1980); *E.E.O.C. v. Indus. Comm'n*, 680 P.2d 855 (Colo. App. 1984).

Failure to join a former employer who is considered an indispensable party will deprive the court of jurisdiction. *Johnson v. Indus. Comm'n*, 652 P.2d 1109 (Colo. App. 1982).

But employer who is not indispensable party need not be joined. An employer who has no direct involvement in the issue on appeal is not an indispensable or necessary party, and need not be joined. *Asche v. Indus. Comm'n*, 654 P.2d 813 (Colo. 1982).

Employer's status as indispensable party determined on facts. An employer's status as an indispensable party in unemployment compensation appeals is not automatic but must be determined on the facts of each case. *Asche v. Indus. Comm'n*, 654 P.2d 813 (Colo. 1982).

Former employer deemed indispensable party. In an appeal of an unemployment compensation claim, a former employer has an interest which could be adversely affected by the outcome and is, therefore, an indispensable party. *Sakal v. Indus. Comm'n*, 620 P.2d 65 (Colo. App. 1980).

Filing petition in court of appeals commences appellate process. Filing a petition for review directly in the court of appeals within the statutory 20-day period sufficiently commenced the appellate process for purposes of this section, even though petitioner did not effect service of process on the commission until after the expiration of that period. *Bd. of County Comm'rs v. Indus. Comm'n*, 664 P.2d 256 (Colo. App. 1983) (decided prior to 1984 amendment to subsection (2)).

In an unemployment compensation case, an appeal is perfected by filing a petition for review of a final decision of the industrial commission with the court of appeals within 20 days after notification of the final decision. *In re Lowery v. Indus. Comm'n*, 666 P.2d 562 (Colo. 1983) (decided prior to 1984 amendment to subsection (2)).

Twenty-day period for filing notice of appeal of final orders of commission commences to run when the commission

mails its final order. *Lutheran Hosp. & Homes Soc. v. Indus. Comm'n*, 710 P.2d 496 (Colo. App. 1985).

Notice sufficient where notice to commission was timely mailed to an address other than that specified in the commission's final order and the commission was clearly set up to accept service of some matters at that address. *Haynes v. Interior Invs.*, 725 P.2d 100 (Colo. App. 1986) (decided prior to 1986 abolishment of industrial commission).

Where the notice of final order failed to state the requirements of this section, as changed by the 1984 amendment, the order is misleading and lack of service on the commission will not be fatal to the petition for review. *Scofield v. Indus. Comm'n*, 697 P.2d 815 (Colo. App. 1985).

A final order is one which completely determines the rights of the parties without further action by the tribunal. A finding by the industrial claim appeals office that claimant showed good cause for her late appeal allows further action on the merits of claimant's appeal, and is therefore not a final decision subject to appeal. *Agren, Blando & Assocs., Inc. v. Oleston*, 746 P.2d 68 (Colo. App. 1987).

Petition for review in court of appeals does not need to state grounds. Following the 1976 revision of the Employment Security Act, there is no longer a requirement of a specification of the grounds for appeal in a separate petition for review in the court of appeals. *Stern v. Indus. Comm'n*, 653 P.2d 742 (Colo. 1982).

Inadequacy of findings. Where the only finding made by the industrial commission upon reversal is that claimant became separated from his employment under conditions contemplated in § 8-73-108 (6)(i), the finding of the commission is inadequate. Subsection (6)(i) covers a number of causative factors and from such a finding the court of appeals is unable to determine the evidentiary and ultimate facts upon which the commission based its conclusion. *Wilson v. Indus. Comm'n*, 30 Colo. App. 154, 490 P.2d 91 (1971).

Where there is no substantial supportive evidence of the facts found by the commission, the commission's determination must be set aside. *Allen v. Indus. Comm'n*, 36 Colo. App. 330, 540 P.2d 358 (1975).

But where there are no material factual errors in the findings of the commission, the commission's order will not be set aside. *Gandy v. Indus. Comm'n*, 680 P.2d 1281 (Colo. App. 1983).

Hearing officer has jurisdiction to remand a matter for further proceedings

when it appears the claimant has become separated from employment after the filing of the initial claim, but before the hearing date. *Debalco v. Indus. Claim Appeals Office*, 32 P.3d 621 (Colo. App. 2001).

Test for fraud is the same as that for setting aside a judgment. *Cisneros v. Cisneros*, 163 Colo. 245, 430 P.2d 86 (1967); *Cordova v. Indus. Comm'n*, 706 P.2d 810 (Colo. App. 1985).

Statute as basis for jurisdiction. See *In re Interrogatories by Indus. Comm'n*, 30 Colo. App. 599, 496 P.2d 1064 (1972); *Schenk v. Indus. Comm'n*, 40 Colo. App. 350, 579 P.2d 1171 (1978).

Applied in *Pierce v. Indus. Comm'n*, 195 Colo. 10, 576 P.2d 1012 (1978); *Mtn. States Tel. & Tel. Co. v. Indus. Comm'n*, 637 P.2d 401 (Colo. App. 1981); *Marlin Oil Co. v. Indus. Comm'n*, 641 P.2d 312 (Colo. App. 1982); *Nielson v. AMI Indus., Inc.*, 759 P.2d 834 (Colo. App. 1988); *Cole v. Indus. Claim Appeals Office*, 964 P.2d 617 (Colo. App. 1998).

8-74-108. Conclusiveness of determinations and decisions.

Any right, fact, or matter in issue directly passed upon or necessarily involved in a decision of a deputy, a hearing officer, the industrial claim appeals office, or the court of appeals which has become a final decision under this article, after appeal procedures, if initiated, have been completed or otherwise terminated, shall be conclusive for all the purposes of articles 70 to 82 of this title as between all interested parties. No finding of fact or law, judgment, conclusion, or final order made with respect to a determination made under articles 70 to 82 of this title may be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in another forum, except proceedings under articles 70 to 82 of this title, regardless of whether the prior action was between the same or related parties or involved the same facts. No findings of

fact or law, judgment, conclusion, or final order made by any other agency, administrative body, or forum that are not made pursuant to articles 70 to 82 of this title shall be binding on the division for the purposes of articles 70 to 82 of this title.

Source: **L. 76:** Entire article R&RE, p. 358, § 1, effective October 1. **L. 84:** Entire section amended, p. 318, § 9, effective July 1. **L. 86:** Entire section amended, p. 493, § 97, effective July 1. **L. 87:** Entire section amended, p. 404, § 2, effective April 16. **L. 92:** Entire section amended, p. 1795, § 5, effective April 10.

Editor's note: This section is similar to former § 8-74-111 as it existed prior to 1976.

ANNOTATION

Law reviews. For article, "Claim and Issue Preclusion Arising from Unemployment Compensation Decisions", see 13 Colo. Law. 815 (1984).

Determinations made under employment security act are not binding on the parties under any other statutory or contractual relationship or on any other agency or court. City of Colo. Springs v. Indus. Comm'n, 720 P.2d 601 (Colo. App. 1985), aff'd, 749 P.2d 412 (Colo. 1988).

In conducting unemployment proceeding, hearing officer was not bound by determinations of administrative law judge pursuant to Teacher Employment, Dismissal, and Tenure Act that employment of teacher be terminated because of using physical force in disciplining students and insubordination. Sch. Dist. No. 1 v. Fredrickson, 812 P.2d 723 (Colo. App. 1991).

8-74-109. Payment of benefits.

(1) Notwithstanding any other provisions of this article, if a decision grants benefits to a claimant, such benefits shall be promptly paid in accordance with and upon issuance of the decision. If further benefits are granted by a subsequent decision, all accrued and unpaid benefits shall be promptly paid. If a subsequent decision denies or reduces benefits, subsequent benefits shall be denied or reduced pursuant to and upon issuance of the decision. If the final decision denies benefits, no employer's rating account shall be charged with benefits paid.

(2) If by reason of fraud, mistake, or clerical error a claimant receives moneys in excess of benefits to which he is entitled or if a claimant receives benefits to which he is subsequently determined to be not entitled as a result of a final decision in the appeals process, the division

shall recoup such moneys in accordance with section 8-79-102 and such regulations as may be prescribed by the director of the division.

Source: **L. 76:** Entire article R&RE, p. 358, § 1, effective October 1. **L. 83:** (2) amended, p. 430, § 5, effective June 3. **L. 86:** (2) amended, p. 493, § 98, effective July 1.

ANNOTATION

The essence of the act is its provision for the prompt payment of benefits to those unemployed. Any substantial delay would defeat this purpose and would bring back the evil sought to be avoided. Withholding benefits for long periods through the slow process of appeal to the court is not harmony with the beneficent and remedial purposes of the act. *Bayly Mfg. Co. v. Dept. of Emp.*, 155 Colo. 433, 395 P.2d 216 (1964) (decided under former § 8-74-102).

Knowledge of section presumed of claimant. A claimant who has requested benefits pursuant to the unemployment compensation statutes must be presumed to have knowledge of § 8-81-101 and this section, which specifically provide for recovery of benefits paid in error. *Paul v. Indus. Comm'n*, 632 P.2d 638 (Colo. App. 1981).

8-74-110. Decisions of industrial claim appeals panel. (Repealed)

Source: **L. 89:** Entire section added, p. 371, § 2, effective July 1. **L. 92:** Entire section repealed, p. 1812, § 4, effective March 19.

ARTICLE 75

Extended Benefits Program

PART 1 EXTENDED BENEFITS

8-75-101. Definitions.

8-75-102. Effect of state law provisions relating to regular

benefits on claims for, and payment of, extended benefits.

8-75-103. Eligibility requirements for extended benefits.

8-75-103.5.	Additional extended benefit requirements.	8-75-203.	Work share program - work share plan - eligibility of employer - approval - denial - rules.
8-75-104.	Weekly extended benefit amount.		
8-75-105.	Total extended benefit amount.	8-75-204.	Employee eligibility for unemployment benefits under the work share plan - employee eligibility for job training.
8-75-106.	Beginning and termination of extended benefit period.		
8-75-107.	Amended determination of "on" or "off" indicator. (Repealed)	8-75-205.	Benefits formula - limitation of benefits.
8-75-108.	Total unemployment rate extended benefits.	8-75-206.	Work share plan - effective date - expiration - termination.
PART 2 WORK SHARE PROGRAM		8-75-207.	Work share plan modifications.
8-75-201.	Short title.	8-75-208.	Benefits payments charged to employer.
8-75-202.	Definitions.	8-75-209.	Repeal of article. (Repealed)

PART 1

EXTENDED BENEFITS

8-75-101. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(2) (a) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(I) Has received, prior to such week, all of the regular benefits that were payable to him under articles 70 to 82 of this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) for his benefit year that includes such week;

(II) Has received, prior to such week, all of the regular benefits that were available to him under articles 70 to 82 of this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his benefit year that includes such week, after the cancellation of some or all of his wage credits or the total or partial reduction of his right to regular benefits. For the purposes of this subparagraph (II) and subparagraph (I) of this paragraph (a), an individual shall be deemed to have received in his applicable benefit year all of the regular benefits that were payable to him or available to him, as the case may be, even though:

(A) As a result of a pending appeal with respect to wages or employment, or both, that was not included in the original monetary determination with respect to such benefit year, he may subsequently be determined to be entitled to more regular benefits; or

(B) By reason of the seasonal provisions of another state law, he is not entitled to regular benefits with respect to such week of unemployment (although he may be entitled to regular benefits with respect to future weeks of unemployment in the next season or off-season, as the case may be, in such benefit year), and he is otherwise an exhaustee within the meaning of this subsection (2) with respect to his right to regular benefits under such other state law's seasonal provisions during the season or off-season in which that week of unemployment occurs; or

(C) Having established a benefit year, no regular benefits are payable to him during such year because his wage credits were canceled or his right to regular benefits was totally reduced as a result of the application of a disqualification;

(III) His benefit year having ended prior to such week, has insufficient wages or employment, or both, on the basis of which he could establish in any state a new benefit year that would include such week or, having established a new benefit year that includes such week, he is precluded from receiving regular benefits by reason of the provisions of section 8-73-107 (2) which meet the requirements of section 3304 (a)(7) of the "Federal Unemployment Tax Act" or a similar provision in any other state law;

(IV) Has no right for such week to unemployment benefits or allowances, as the case may be, under the "Railroad Unemployment Insurance Act", the "Trade Expansion Act of 1962", and such other federal laws as are specified in regulations issued by the United States secretary of labor;

(V) Has not received and is not seeking for such week unemployment benefits under an unemployment compensation law of Canada, unless the appropriate agency finally determines that he is not entitled to unemployment benefits under such law for such week; or

(VI) Has received all of the unemployment compensation benefits pursuant to part 2 of this article and regular unemployment compensation benefits available in a benefit year.

(b) "Applicable benefit year", as used in this subsection (2), means, with respect to an individual, his current benefit year if at the time he files a claim for extended benefits he has an unexpired benefit year only in the state in which he files such claim or, in any other case, his most recent benefit year. For the purpose of this paragraph (b), his "most recent benefit year", if he has unexpired benefit years in more than one state when he files a claim for extended benefits, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which his latest continued claim for regular benefits was filed.

(3) (a) "Extended benefit period" means a period which:

(I) Begins with the third week after a week for which there is an "on" indicator; and

(II) Ends with either of the following weeks, whichever occurs later:

(A) The third week after the first week for which there is an "off" indicator; or

(B) The thirteenth consecutive week of such period.

(b) But no extended benefit period may begin by reason of an "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(4) "Extended benefits" means benefits as defined in section 8-70-110 (1)(b).

(4.5) "High unemployment period" means a period in which the seasonally adjusted total unemployment rate, as determined by the United States secretary of labor, for the most recent three months for which data for all states is published, equals or exceeds eight percent.

(5) and (6) Repealed.

(7) "Rate of insured unemployment", for the purposes of subsection (11) of this section, means the percentage derived by dividing: The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent consecutive thirteen-week period as determined by the division on the basis of its reports to the United States secretary of labor, by the average monthly employment covered under articles 70 to 82 of this title for the first four of the six most recently completed calendar quarters ending before the end of such thirteen-week period.

(8) "Regular benefits" means benefits as defined in section 8-70-110 (1)(a).

(9) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the federal "Internal Revenue Code of 1986", as amended.

(9.5) "Total unemployment rate" or "TUR" means the percentage derived by dividing the number of all unemployed persons in the civilian labor force by the number of individuals

comprising the total labor force, including both employed and unemployed individuals, and then multiplying that number by one hundred.

(10) There is an "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either:

(a) Sub-subparagraph (A) or (C) of subparagraph (I) of paragraph (a) of subsection (11) of this section was not satisfied, and subparagraph (II) of paragraph (a) of subsection (11) of this section was not satisfied; or

(b) Sub-subparagraph (B) or (C) of subparagraph (I) of paragraph (a) of subsection (11) of this section was not satisfied, and subparagraph (II) of paragraph (a) of subsection (11) of this section was not satisfied.

(11) (a) There is an "on" indicator for a week if the rate of insured unemployment under articles 70 to 82 of this title for the period consisting of such week and the immediately preceding twelve weeks:

(I) (A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; or

(B) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding three calendar years with respect to weeks beginning on or after December 17, 2010, and ending December 31, 2011, or while Pub.L. 111-312 and any amendments thereto are in effect; and

(C) Equaled or exceeded five percent; or

(II) Equaled or exceeded six percent.

(b) Repealed.

Source: L. 71: R&RE, p. 943, § 18. C.R.S. 1963: § 82-13-1. L. 73: p. 961, § 12. L. 76: (2) R&RE, p. 349, § 15, effective October 1. L. 77: (2)(a)(V) amended and (5), (6), (10), and (11) R&RE, pp. 465, 466, §§ 17, 18, effective July 7. L. 82: (3)(a)(I), (3)(a)(II)(A), (3)(b), (7), (10), and (11)(a) amended and (5), (6), and (11)(b) repealed, pp. 237, 240, §§ 5, 11, effective July 1. L. 83: (10) amended, p. 2047, § 1, effective October 14. L. 90: (4) and (8) amended, p. 604, § 8, effective April 3. L. 92: (2)(a)(V) amended, p. 1796, § 6, effective April 10. L. 2000: (9) amended, p. 1838, § 3, effective August 2. L. 2009: (4.5) and (9.5) added, (SB 09-247), ch. 405, p. 2235, § 8, effective July 1. L. 2010: IP and IP(2)(a) amended and (2)(a)(VI) added, (SB 10-028), ch. 397, p. 1890, § 2, effective June 9. L. 2011: (10) and (11)(a) amended, (SB 11-010), ch. 76, p. 209, § 2, effective March 29.

Cross references: For 5 U.S.C. chapter 85, see 5 U.S.C. § 8501 et seq.; for section 3304 of the "Federal Unemployment Tax Act", see 26 U.S.C. § 3304; for the "Railroad Unemployment Insurance Act", see 45 U.S.C. § 351 et seq.; for the "Trade Expansion Act of 1962", see 19 U.S.C. § 1801 et seq.

8-75-102. Effect of state law provisions relating to regular benefits on claims for, and payment of, extended benefits.

Except when the result would be inconsistent with the other provisions of this section as provided in the regulations of the division, the provisions of articles 70 to 82 of this title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

Source: L. 71: R&RE, p. 945, § 18. **C.R.S. 1963:** § 82-13-2.

8-75-103. Eligibility requirements for extended benefits.

(1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the division finds that with respect to such week:

- (a) He is an exhaustee;
- (b) He has satisfied the requirements of articles 70 to 82 of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and
- (c) He files his interstate claim from a state in which there is an extended benefits state "on" indicator. If he files his interstate claim from a state in which there is an extended benefits state "off" indicator, he shall be paid for not more than the first two weeks in which extended benefits are payable in an interstate claim.

Source: L. 71: R&RE, p. 946, § 18. **C.R.S. 1963:** § 82-13-3. **L. 81:** (1)(a) and (1)(b) amended and (1)(c) added, p. 512, § 4, effective July 1.

8-75-103.5. Additional extended benefit requirements.

(1) An individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the division finds that during such period:

(a) He failed to accept any offer of suitable work as defined under subsection (3) of this section or failed to apply for any suitable work to which he was referred by the division; or

(b) He failed to actively engage in seeking work which is prescribed as suitable work under subsection (5) of this section.

(2) Any individual who has been found ineligible for extended benefits by reason of the provisions of subsection (1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

(3) For the purposes of this section, "suitable work" means, with respect to any individual, any work which is within such individual's capabilities. The gross average weekly remuneration payable for such work shall:

(a) Exceed the sum of the individual's extended weekly benefit amount as determined under sections 8-73-102 and 8-75-104 plus the amount, if any, of supplemental unemployment benefits, as defined in section 501 (c)(17)(D) of the federal "Internal Revenue Code of 1986", as amended, payable to such individual for such week;

(b) Not be less than the higher of the minimum wage provided by section 206 (a)(1) of the "Fair Labor Standards Act of 1938", as amended, without regard to any exemption, or the applicable state or local minimum wage.

(4) No individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability, provided in subsection (3) of this section, if:

(a) The position was not offered to such individual in writing or was not listed with the state employment service;

(b) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 8-73-108 (5)(b) to the extent that the criteria of suitability in that section are not consistent with the provisions of subsection (3) of this section;

(c) The individual furnishes satisfactory evidence to the division that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of

suitable work for regular benefit claimants in section 8-73-108 without regard to the definition specified by subsection (3) of this section.

(5) Notwithstanding the provisions of paragraph (b) of subsection (3) of this section to the contrary, no work shall be deemed suitable work for an individual which does not accord with the labor standards provisions required by section 3304 (a)(5) of the federal "Internal Revenue Code of 1986", as amended, and set forth under section 8-73-108 (5)(b).

(6) For the purposes of paragraph (b) of subsection (1) of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week;

(b) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(7) The state employment service shall refer any claimant entitled to extended benefits under the "Colorado Employment Security Act", articles 70 to 82 of this title, to any suitable work which meets the criteria prescribed in subsection (3) of this section.

(8) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under the "Colorado Employment Security Act", articles 70 to 82 of this title, because he voluntarily left work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under said act, requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(9) Repealed.

Source: **L. 81:** Entire section added, p. 512, § 5, effective July 1. **L. 83:** (4)(a) amended, p. 430, § 6, effective June 3. **L. 84:** (4)(b) and (5) amended, p. 330, § 5, effective July 1. **L. 94:** (9) added, p. 641, § 5, effective April 14. **L. 2000:** (3)(a) and (5) amended, p. 1838, § 4, effective August 2.

Editor's note: Subsection (9)(b) provided for the repeal of subsection (9), effective July 1, 2005. (See L. 94, p. 641.)

Cross references: For section 501 of the federal "Internal Revenue Code of 1986", see 26 U.S.C. § 501; for section 206 of the federal "Fair Labor Standards Act of 1938", see 29 U.S.C. § 206.

8-75-104. Weekly extended benefit amount.

The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year; except that, for any week during a period in which federal payments to states under section 204 of the "Federal-State Extended Unemployment Compensation Act of 1970" and amendments thereto are reduced under section 252 of the "Balanced Budget and Emergency Deficit Control Act of 1985" and amendments thereto, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

Source: L. 71: R&RE, p. 946, § 18. C.R.S. 1963: § 82-13-4. L. 87: Entire section amended, p. 412, § 1, effective April 16.

8-75-105. Total extended benefit amount.

(1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) Fifty percent of the total amount of regular benefits which were payable to him under articles 70 to 82 of this title in his applicable benefit year; or

(b) Thirteen times his weekly benefit amount which was payable to him under articles 70 to 82 of this title for a week of total unemployment in the applicable benefit year.

(2) Notwithstanding any other provisions of this part 1, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this subsection (2), be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by an amount equal to the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits.

(3) Notwithstanding any other provision of this part 1, during any fiscal year in which federal payments to states under section 204 of the "Federal-State Extended Unemployment Compensation Act of 1970" and amendments thereto are reduced under section 252 of the "Balanced Budget and Emergency Deficit Control Act of 1985" and amendments thereto, the total extended benefit amount payable to an individual with respect to his or her applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions in the weekly amounts paid to the individual under section 8-75-104.

Source: L. 71: R&RE, p. 946, § 18. C.R.S. 1963: § 82-13-5. L. 82: (2) added, p. 238, § 6, effective July 1. L. 87: (3) added, p. 412, § 2, effective April 16. L. 2010: (2) and (3) amended, (SB 10-028), ch. 397, p. 1890, § 3, effective June 9.

8-75-106. Beginning and termination of extended benefit period.

(1) Whenever an extended benefit period is to become effective in this state as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the division shall make an appropriate public announcement.

(2) Computations required by the provisions of section 8-75-101 (10) shall be made by the division, in accordance with regulations prescribed by the United States secretary of labor.

Source: L. 71: R&RE, p. 946, § 18. C.R.S. 1963: § 82-13-6. L. 82: (1) amended, p. 238, § 7, effective July 1.

8-75-107. Amended determination of "on" or "off" indicator. (Repealed)

Source: L. 75: Entire section added, p. 325, § 1, effective January 1. L. 79: Entire section repealed, p. 1632, § 3, effective July 19.

8-75-108. Total unemployment rate extended benefits.

(1) For weeks of unemployment beginning on or after November 1, 2020:

(a) There is an "on" indicator for a week of TUR extended benefits, in the amount determined pursuant to sections 8-75-104 and 8-75-105, if subsections (1)(a)(I) and (1)(a)(II) of this section apply:

(I) The seasonally adjusted TUR, as determined by the United States secretary of labor, for the most recent three months for which data for all states is published, equals or exceeds six and one-half percent;

(II) The average TUR in the state equals or exceeds one hundred ten percent of the TUR for either or both of the corresponding three-month periods in the two preceding calendar years.

(III) Repealed.

(b) There is an "off" indicator for weeks of TUR extended benefits if any of the following applies:

(I) The TUR falls below six and one-half percent;

(II) The requirement described in subsection (1)(a)(II) of this section is not satisfied; or

(III) Pursuant to section 4105 of the federal "Families First Coronavirus Response Act", Pub.L. 116-127, as amended, or pursuant to any other federal law, there is not an extension of one hundred percent federal sharing available to cover the cost of extended benefits.

(2) For weeks of unemployment beginning on or after November 1, 2020, the total amount of TUR extended benefits payable in a high unemployment period to an eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Eighty percent of the total amount of regular benefits that were payable to the eligible individual under articles 70 to 82 of this title 8 in the applicable benefit year;

(b) Twenty times the weekly benefit amount that was payable to the eligible individual under articles 70 to 82 of this title 8 for a week of total unemployment in the applicable benefit year; or

(c) Forty-six times the individual's weekly benefit amount, including any applicable dependents' allowances, for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits that were paid or deemed paid to the individual with respect to the applicable benefit year.

Source: L. 2009: Entire section added, (SB 09-247), ch. 405, p. 2235, § 9, effective July 1. **L. 2011:** (1) amended, (SB 11-010), ch. 76, p. 209, § 3, effective March 29. **L. 2020, 1st Ex. Sess.:** IP(1), IP(1)(a), (1)(b), and (2) amended and (1)(a)(III) repealed, (SB 20B-002), ch. 8, p. 43, § 4, effective December 7.

PART 2

WORK SHARE PROGRAM

8-75-201. Short title.

This part 2 shall be known and may be cited as the "Colorado Work Share Program".

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1886, § 1, effective June 9.

8-75-202. Definitions.

As used in this part 2, unless the context otherwise requires:

- (1) "Affected unit" means a specified plant, department, shift, or other definable unit to which a work share plan applies.
- (2) "Director" means the director of the division or his or her designee.
- (3) "Normal weekly work hours" means the number of hours in a week that an employee ordinarily works for a participating employer or forty hours, whichever is less.
- (4) "Work share plan" means a plan for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly work hours.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1886, § 1, effective June 9. **L. 2012:** (2) amended, (HB 12-1120), ch. 27, p. 105, § 14, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-75-203. Work share program - work share plan - eligibility of employer - approval - denial - rules.

- (1) (a) Repealed.

(b) (I) The director shall establish a voluntary work share program for the purpose of allowing the payment of unemployment compensation benefits to employees whose wages and hours have been reduced. In order to participate in the work share program, an employer shall submit a work share plan in writing to the director for approval. If the employer is subject to a collective bargaining agreement, the collective bargaining unit must agree in writing to the work share plan prior to implementation. An employer that is a negative excess employer pursuant to section 8-76-102.5 (3) may be eligible to participate in the work share program in accordance with rules adopted by the director concerning eligibility requirements.

(II) This paragraph (b) is effective December 31, 2012.

(2) An employer must submit a work share plan to the division on forms and following procedures required by the director. The director may approve a work share plan if:

(a) The plan applies to and identifies a specific affected unit;

(b) The plan identifies the employees in the affected unit by name and social security number;

(c) The plan reduces the normal work for an employee in the affected unit by at least ten percent and not more than an amount consistent with rules promulgated by the director and authorized under 26 U.S.C. sec. 3306 (v);

(d) The plan applies to at least two of the employees in the affected unit;

(e) Repealed.

(f) The plan includes a description of how the plan complies with the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.;

(g) The plan includes an explanation of how employees will be notified of the plan in advance, if notification is feasible, or an explanation of why it is not feasible to notify the employees in advance;

(h) The plan includes an estimate of the number of employees who would be laid off if the employer did not participate in the work share program; and

(i) The plan includes certification by the employer that the terms of the written plan and implementation of the plan are consistent with employer obligations pursuant to federal and state law.

(3) The director shall not approve a work share plan unless the employer:

(a) Agrees that for the duration of the employer's participation in the work share program, the employer shall not eliminate or diminish health insurance, retirement benefits received under a pension plan, paid vacation and holidays, sick leave, or any other similar employee benefit

provided by the employer immediately prior to submitting the work share plan to the division, if the employer provides benefits to his or her employees;

(b) Certifies that the collective bargaining agent for the employees, if applicable, has agreed to the work share plan;

(c) Certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of layoffs that would affect at least two of the employees in the affected unit and that would result in an equivalent reduction in work hours;

(d) Certifies that the employer will not employ additional employees in the affected unit while participating in the work share program;

(e) Agrees that no employee participating in the work share program shall receive, in the aggregate, more than twenty-six weeks of benefits; and

(f) Agrees to submit reports concerning the operation of the work share plan to the division upon request of the director.

(4) The director shall approve or deny the work share plan in writing no later than thirty days after the date the division receives the plan. If the director denies the work share plan, he or she shall inform the employer in writing of the reasons for the denial.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1887, § 1, effective June 9. **L. 2011:** (1) amended, (HB 11-1288), ch. 212, p. 928, § 12, effective July 1. **L. 2012, 1st Ex. Sess.:** (1)(a)(II) amended, (HB 12S-1002), ch. 2, p. 2428, § 7, effective June 1. **L. 2013:** IP(2), (2)(d), (3)(c), and (3)(e) amended, (2)(e) repealed, and (2)(f), (2)(g), (2)(h), and (2)(i) added, (SB 13-157), ch. 147, p. 472, § 3, effective July 1. **L. 2020:** (1)(b)(I) and (2)(c) amended, (SB 20-207), ch. 296, p. 1473, § 6, effective July 14.

Editor's note: Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective December 31, 2012. (See L. 2012, p. 2428.)

8-75-204. Employee eligibility for unemployment benefits under the work share plan - employee eligibility for job training.

(1) Notwithstanding any other provision of this title 8, an employee may be eligible for unemployment compensation benefits for a particular week pursuant to this part 2 if:

(a) The employee is employed as a member of an affected unit that is subject to an approved work share plan that is in effect for that week;

(b) The employee's normal remuneration has been reduced by an amount consistent with a reduction in hours rules as established in an approved work share plan pursuant to section 8-75-203 (2)(c); and

(c) The employee is able and available to work additional or full-time hours with his or her employer.

(2) The eligibility requirements for the receipt of unemployment compensation benefits related to the availability for work, actively seeking work, and refusing to apply for or to accept work with an employer other than the employee's current employer, pursuant to sections 8-73-107 and 8-73-108 (5), shall not apply to an employee subject to this part 2.

(3) An eligible employee may participate in training, including employer-sponsored training and training funded through the federal "Workforce Innovation and Opportunity Act", 29 U.S.C. sec. 3101 et seq., to enhance job skills if the training program has been approved by the department of labor and employment.

Source: **L. 2010:** Entire part added, (SB 10-028), ch. 397, p. 1888, § 1, effective June 9. **L. 2013:** (3) added, (SB 13-157), ch. 147, p. 473, § 4, effective July 1. **L. 2016:** (3) amended, (HB 16-1302), ch. 183, p. 626, § 2, effective May 19. **L. 2020:** IP(1) and (1)(b) amended, (SB 20-207), ch. 296, p. 1474, § 7, effective July 14.

8-75-205. Benefits formula - limitation of benefits.

(1) **Formula.** The division shall pay an employee who is eligible for unemployment compensation benefits under a work share plan a weekly benefit that is the product of the employee's regular weekly benefit amount pursuant to article 73 of this title, multiplied by the nearest full percentage of the reduction of the employee's work hours, rounded down to the next full dollar.

(2) **Limitations.**

(a) An individual is not entitled to receive unemployment compensation benefits pursuant to this part 2 and regular unemployment compensation benefits that exceed the maximum allowable total benefits payable to an individual in a benefit year pursuant to articles 70 to 82 of this title.

(b) The division shall not pay unemployment compensation benefits to an employee for a week in which the employee is compensated for work for his or her employer that exceeds the reduced hours established under the work share plan.

(c) An employee receiving weekly unemployment compensation benefits under a work share plan is not entitled to receive benefits for partial employment pursuant to section 8-73-103 for the same week.

(d) The waiting period of one week in section 8-73-107 (1)(d) that applies to the payment of benefits for total or partial unemployment shall apply to the payment of benefits pursuant to this part 2.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1888, § 1, effective June 9.

8-75-206. Work share plan - effective date - expiration - termination.

(1) A work share plan and the payment of unemployment compensation benefits pursuant to the plan shall begin the first week following approval of the plan by the director or the first week specified by the employer, whichever is later.

(2) A work share plan shall expire twelve months after the effective date of the plan.

(3) The director may terminate a work share plan for good cause if the plan is not executed according to the terms and intent of the program. "Good cause" may include failure to comply with section 8-75-203, unreasonable revision of productivity standards for the affected unit, or other conduct by the employer that may compromise the purpose, intent, and effectiveness of a work share plan.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1889, § 1, effective June 9.

8-75-207. Work share plan modifications.

(1) An employer may modify a work share plan to meet changed conditions if the modification conforms to the basic provisions of the plan as originally approved by the director.

(2) Before a proposed change to a work share plan may be implemented:

(a) The collective bargaining agent shall approve the modification to the plan if an employee is covered by a collective bargaining unit;

(b) The employer shall report the change in writing to the division; and

(c) The director shall approve the modified plan.

(3) The director shall approve or deny a modified work share plan using the same standards and requirements that are used for the original work share plan in accordance with section 8-75-203.

(4) Approval of a modified work share plan shall not affect the original expiration date of the work share plan.

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1889, § 1, effective June 9.

8-75-208. Benefits payments charged to employer.

If reimbursement to the state for unemployment compensation is not available pursuant to the federal "Layoff Prevention Act of 2012", Subtitle D of Title II of Pub.L. 112-96, unemployment compensation benefits paid to an employee pursuant to this part 2 shall be charged to the account of the employer participating in the work share plan in the same manner as regular benefits pursuant to section 8-73-108 (3)(e)(I).

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1890, § 1, effective June 9. **L. 2013:** Entire section amended, (SB 13-157), ch. 147, p. 473, § 5, effective July 1.

8-75-209. Repeal of article. (Repealed)

Source: L. 2010: Entire part added, (SB 10-028), ch. 397, p. 1890, § 1, effective June 9. **L. 2013:** Entire section repealed, (SB 13-157), ch. 147, p. 472, § 1, effective July 1.

ARTICLE 76

Premiums - Coverage

8-76-101.	Payment.	rates - solvency surcharge - definitions.
8-76-102.	Rate of premiums - surcharge - repeal. (Repealed)	8-76-103. Future rates based on benefit experience - definitions - repeal. (Repealed)
8-76-102.5.	Rates effective upon fund solvency - repeal of prior	

8-76-103.5.	Transitional provisions - combined premium rate for 2012 - repeal. (Repealed)	8-76-110.	Financing benefits paid to employees of nonprofit organizations.
8-76-104.	Transfer of experience - assignment of rates - definitions.	8-76-111.	Coverage of state employees.
8-76-105.	Period of employer's coverage.	8-76-112.	Political subdivisions - security for collection of premiums or reimbursable payments.
8-76-106.	Termination of employer liability.	8-76-113.	Protest - appeal - filed by an employer.
8-76-107.	Election to become liable.	8-76-114.	Local government advisory council. (Repealed)
8-76-108.	Coverage by political subdivisions.	8-76-115.	Coverage of Indian tribes.
8-76-109.	Payments in lieu of premiums by state hospitals and state institutions of higher education.	8-76-116.	Power to levy bond assessments - definition.

8-76-101. Payment.

(1) Premiums shall accrue and become payable by each employer for each calendar year in which the employer is subject to articles 70 to 82 of this title with respect to wages for employment. The premiums shall become due and be paid by each employer to the division for the fund in accordance with rules prescribed by the director of the division and shall not be deducted, in whole or in part, from the wages of individuals in the employer's employ.

(2) In the payment of any premiums, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) When the quarterly amount of premiums due is less than five dollars, payment of the premiums shall not be required.

Source: L. 36, 3rd Ex. Sess.: p. 26, § 7. **CSA:** C. 167A, § 7. **L. 41:** p. 773, § 7. **CRS 53:** § 82-6-1. **C.R.S. 1963:** § 82-6-1. **L. 81:** Entire section amended, p. 492, § 7, effective July 1. **L. 86:**

(1) amended, p. 493, § 99, effective July 1. **L. 2001:** (3) added, p. 34, § 1, effective March 9. **L. 2009:** Entire section amended, (HB 09-1363), ch. 363, p. 1883, § 11, effective July 1.

ANNOTATION

Law reviews. For note, "The Unemployment Compensation Recipient — Should He Accept a Job?", see 44 Den. L.J. 147 (1967).

Federal instrumentalities like the Red Cross, exempted from federal tax, are likewise exempt from state taxation. Dept. of Emp. v. United States, 385 U.S. 355 (1966).

8-76-102. Rate of premiums - surcharge - repeal. (Repealed)

Source: **L. 36, 3rd Ex. Sess.:** p. 26, § 7. **CSA:** C. 167A, § 7. **L. 41:** p. 773, § 7. **CRS 53:** § 82-6-2. **C.R.S. 1963:** § 82-6-2. **L. 77:** (3) added, p. 466, § 19, effective July 7. **L. 79:** (3)(b)(II)(A) amended and (3)(c) repealed, pp. 353, 356, §§ 18, 25, effective September 30. **L. 81:** (1), (2), (3)(a), and (3)(b) amended, p. 492, § 8, effective July 1; (3)(a) amended, p. 486, § 11, effective July 1. **L. 83:** (4) added, p. 2043, § 7, effective October 1. **L. 84:** (4) amended, p. 329, § 3, effective July 1. **L. 85:** (1), (2), and (4) amended, p. 363, § 2, effective March 1; (4) amended, p. 373, § 2, effective July 1. **L. 86:** (4) amended, p. 544, § 9, effective July 1. **L. 90:** (5) added, p. 1765, § 5, effective June 8; (4) amended, p. 1764, § 3, effective July 1. **L. 91:** (5) amended, p. 1347, § 1, effective July 1. **L. 92:** (4)(b) amended, p. 1822, § 2, effective April 10. **L. 96:** (4)(b) amended and (4)(c) added, p. 384, § 10, effective April 17; (4)(a) and (4)(b) amended, p. 995, § 1, effective May 23. **L. 99:** (4) amended, p. 973, § 1, effective May 28. **L. 2000:** (4)(d) amended, p. 1838, § 5, effective August 2. **L. 2003:** (4)(d) amended, p. 1540, § 1, effective May 1. **L. 2005:** (5)(a) amended, p. 548, § 1, effective May 25. **L. 2009:** Entire section and (4)(d) amended, (HB 09-1363), ch. 363, pp. 1883, 1887, §§ 12, 13, effective July 1; (4)(a), (4)(b), and (4)(d) amended, (SB 09-076), ch. 409, p. 2251, § 1, effective July 1. **L. 2011:** (6) added, (HB 11-1288), ch. 212, p. 916, § 4, effective July 1. **L. 2012, 1st Ex. Sess.:** (6) amended, (HB 12S-1002), ch. 2, p. 2428, § 8, effective June 1.

Editor's note: Subsection (6) provided for the repeal of this section, effective December 31, 2012. (See L. 2012, p. 2428.)

8-76-102.5. Rates effective upon fund solvency - repeal of prior rates - solvency surcharge - definitions.

- (1) Repealed.
- (2) Effective January 1, 2013, each employer shall pay premiums in the manner prescribed by this section.
- (3) (a) (I) Each employer's rate for the twelve months commencing January 1 of any calendar year is determined on the basis of the employer's record prior to the computation date for the year. The computation date for any calendar year is July 1 of the year preceding the calendar year for which the rate is computed.
- (II) As used in the standard premium rate schedule in subsection (3)(a)(III)(B) of this section and the support surcharge rate schedule in subsection (3)(a)(IV) of this section:
- (A) "Percent of excess" means the percentage resulting from dividing the excess of premiums paid over benefits charged by the average chargeable payroll, computed to the nearest one percent.
- (B) "Reserve ratio" means the fund balance on any June 30 as a proportion of total wages reported by experience-rated employers.
- (C) "To" in the column headings, which make reference to fund balances (resources available for benefits), means "not including".
- (III) (A) The total of an employer's premiums paid, designated, and deposited into the unemployment compensation fund on the employer's own behalf on or before thirty-one days immediately after the computation date and the total benefits that were chargeable to the employer's account and were paid before the computation date, with respect to weeks, or any established payroll period of unemployment, beginning before the computation date, is used to compute the employer's premium for the following calendar year.
- (B) The following standard premium rate schedule reflects the rates applicable in computing an employer's premium: 

Standard Premium Rate Schedule

Reserve Ratio	Reserve Ratio	Reserve Ratio	Reserve Ratio	Reserve Ratio	Reserve Ratio	Reserve Ratio
0.014 or Greater	0.011 to 0.014	0.008 to 0.011	0.006 to 0.008	0.004 to 0.006	0.000 to 0.004	0.000 to Deficit

Eligible Employers

Percent of Excess

+20 or more	0.0046	0.0050	0.0052	0.0056	0.0059	0.0064	0.0068
+18 to +19	0.0051	0.0056	0.0058	0.0062	0.0066	0.0070	0.0074
+16 to +17	0.0052	0.0057	0.0059	0.0063	0.0067	0.0071	0.0076
+14 to +15	0.0055	0.0060	0.0062	0.0068	0.0072	0.0077	0.0082
+12 to +13	0.0059	0.0065	0.0068	0.0074	0.0079	0.0086	0.0091
+10 to +11	0.0068	0.0075	0.0078	0.0085	0.0092	0.0099	0.0106
+8 to +9	0.0086	0.0095	0.0099	0.0108	0.0117	0.0126	0.0135
+6 to +7	0.0104	0.0116	0.0122	0.0133	0.0144	0.0156	0.0167
+4 to +5	0.0124	0.0139	0.0145	0.0159	0.0173	0.0186	0.0201
+2 to +3	0.0174	0.0193	0.0203	0.0222	0.0242	0.0262	0.0282
+0 to +1	0.0244	0.0272	0.0285	0.0313	0.0341	0.0369	0.0397
Unrated	0.0153	0.0153	0.0153	0.0153	0.0153	0.0153	0.0153
-0 to -1	0.0311	0.0347	0.0365	0.0402	0.0438	0.0474	0.0511
-2 to -3	0.0331	0.0371	0.0390	0.0428	0.0467	0.0506	0.0545
-4 to -5	0.0352	0.0393	0.0414	0.0455	0.0497	0.0538	0.0580
-6 to -7	0.0373	0.0416	0.0438	0.0482	0.0526	0.0570	0.0614
-8 to -9	0.0392	0.0439	0.0463	0.0509	0.0555	0.0601	0.0648
-10 to -11	0.0413	0.0462	0.0486	0.0536	0.0584	0.0633	0.0682
-12 to -13	0.0433	0.0485	0.0510	0.0562	0.0613	0.0664	0.0716
-14 to -15	0.0454	0.0508	0.0535	0.0589	0.0643	0.0697	0.0751
-16 to -17	0.0474	0.0530	0.0559	0.0615	0.0671	0.0728	0.0785
-18 to -19	0.0494	0.0554	0.0583	0.0642	0.0701	0.0760	0.0819
20 to -21	0.0515	0.0576	0.0607	0.0669	0.0730	0.0791	0.0853

-22 to -23	0.0535	0.0599	0.0631	0.0695	0.0759	0.0823	0.0887
-24 to -25	0.0555	0.0621	0.0654	0.0721	0.0788	0.0854	0.0921
More than -25	0.0565	0.0633	0.0666	0.0734	0.0801	0.0868	0.0935

(IV) The support surcharge rate, which is the rate dedicated to employer support surcharge payments deposited into the employment support fund, the benefit recovery fund, the unemployment insurance program support fund, and the workforce development fund, is calculated using the following support surcharge rate schedule: 

Support Surcharge Rate Schedule							
Eligible Employers Percent of Excess	Reserve Ratio 0.014 or Greater	Reserve Ratio 0.011 to 0.014	Reserve Ratio 0.008 to 0.011	Reserve Ratio 0.006 to 0.008	Reserve Ratio 0.004 to 0.006	Reserve Ratio 0.000 to 0.004	Reserve Ratio 0.000 to Deficit
+20 or more	0.0005	0.0006	0.0006	0.0006	0.0007	0.0007	0.0007
+18 to +19	0.0006	0.0006	0.0006	0.0007	0.0007	0.0008	0.0008
+16 to +17	0.0006	0.0006	0.0006	0.0007	0.0007	0.0008	0.0008
+14 to +15	0.0006	0.0007	0.0007	0.0007	0.0008	0.0009	0.0009
+12 to +13	0.0007	0.0007	0.0007	0.0008	0.0009	0.0009	0.0010
+10 to +11	0.0007	0.0008	0.0009	0.0009	0.0010	0.0011	0.0012
+8 to +9	0.0009	0.0010	0.0011	0.0012	0.0013	0.0014	0.0015
+6 to +7	0.0012	0.0013	0.0013	0.0015	0.0016	0.0017	0.0019
+4 to +5	0.0014	0.0015	0.0016	0.0018	0.0019	0.0021	0.0022
+2 to +3	0.0019	0.0021	0.0022	0.0025	0.0027	0.0029	0.0031
+0 to +1	0.0027	0.0030	0.0032	0.0035	0.0038	0.0041	0.0044
Unrated	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017	0.0017
-0 to -1	0.0035	0.0039	0.0041	0.0045	0.0049	0.0053	0.0057

-2 to -3	0.0037	0.0041	0.0043	0.0048	0.0052	0.0056	0.0061
-4 to -5	0.0039	0.0044	0.0046	0.0051	0.0055	0.0060	0.0064
-6 to -7	0.0041	0.0046	0.0049	0.0053	0.0058	0.0063	0.0068
-8 to -9	0.0044	0.0049	0.0051	0.0056	0.0062	0.0067	0.0072
-10 to -11	0.0046	0.0051	0.0054	0.0059	0.0065	0.0070	0.0076
-12 to -13	0.0048	0.0054	0.0057	0.0062	0.0068	0.0074	0.0080
-14 to -15	0.0050	0.0056	0.0059	0.0065	0.0071	0.0077	0.0083
-16 to -17	0.0053	0.0059	0.0062	0.0068	0.0075	0.0081	0.0087
-18 to -19	0.0055	0.0061	0.0065	0.0071	0.0078	0.0084	0.0091
-20 to -21	0.0057	0.0064	0.0067	0.0074	0.0081	0.0088	0.0095
-22 to -23	0.0059	0.0067	0.0070	0.0077	0.0084	0.0091	0.0099
-24 to -25	0.0062	0.0069	0.0073	0.0080	0.0087	0.0095	0.0102
More than -25	0.0063	0.0070	0.0074	0.0081	0.0089	0.0096	0.0104

(a.5) Notwithstanding subsection (3)(a) of this section, if the reserve ratio is one and four-tenths percent or greater on June 30 of any year, the department shall reduce employer premiums up to fifteen percent for the following calendar year.

(b) Only those wages paid for covered employment that occurred before the computation date and were reported to the division on or before thirty-one days immediately following the computation date will be used to determine the experience rate effective for the next calendar year.

(c) Whenever an employer subject to articles 70 to 82 of this title acquires, before the computation date and pursuant to section 8-76-104, all or a segregable portion of the organization, trade, and business or substantially all of the assets of an employer who was subject to articles 70 to 82 of this title at the time of the acquisition, and the successor submitted in writing that the successor met the conditions set forth in section 8-76-104, a total or partial transfer of the experience rating record of the predecessor employer shall be made as provided in section 8-76-104. No merger of the accounts for experience rating purposes will be made for the

rate effective the next calendar year unless the information is submitted to the division on or before sixty days following the computation date.

(d) Notwithstanding any provision to the contrary, an employer, at any time before March 15 of any year, may pay voluntary premiums in addition to the premiums and surcharges provided under articles 70 to 82 of this title. Voluntary premiums shall allow for a reduction of the employer's experience rate and shall be credited to the employer's account and be used in determining the employer's rate for the current calendar year and subsequent calendar years; except that, if an employer is delinquent in the payment of any premiums or surcharges due, the voluntary premium payments shall be reduced by the total amount of delinquent premiums and surcharges before such computation is made. No voluntary premiums paid pursuant to this paragraph (d) shall be refunded or applied to future premium liability.

(e) As used in sections 8-76-101 to 8-76-104, for the purpose of computing the premium rate of any employer, the term "annual payroll" means the total amount of wages for employment paid by an employer during the twelve-month period ending on June 30. The term "average chargeable payroll" means the average of the chargeable payrolls for the last three fiscal years ending on June 30. For any employer who has not reported payrolls to the division for thirty-six consecutive months ending on June 30, the division shall compute the average chargeable payroll by dividing the total chargeable payrolls of the employer during the three fiscal years ending on June 30 by the total months during which such wages were paid and multiplying the amount so determined by twelve.

(f) An employer shall have sixty calendar days after the mailing date or the transmission date as recorded by the division of a quarterly statement of benefits charged to the employer's account in which to file a written application for a review and determination of benefit charges. The application must specify in detail the grounds upon which the employer relies and may be filed in person, by mail, or by electronic means in accordance with such rules as the director of the division may promulgate. The division shall investigate the matters specified and shall give the employer notice of its redetermination by mail or by electronic means. If the employer fails to act within the prescribed time, benefits charged to the account shall be deemed correct and final. Appeal from the redetermination decision may be made pursuant to section 8-76-113 (2).

(g) By December 1 of each year, or as soon as practicable, the division shall notify each employer of the employer's premium rate as determined for the next calendar year pursuant to sections 8-76-101 to 8-76-104. The notification shall include the amount determined as the employer's average annual payroll, the total of all the employer's premiums paid on his or her own behalf and credited to his or her account for all past years, and the total benefits charged to the employer's account for all such years.

(h) The division shall develop and maintain an online computer application that allows employers to review and manage account information. The online computer application shall include at least the following:

- (I) A method for employers to file wage reports and make premium payments;
- (II) A method for employers to review account balances, charging history, premium rates, and account status;
- (III) A method for employers to change the physical address of an account, reinstate an account, and close an account; and
- (IV) A method for employers to receive and return division forms and correspondence.

(i) Whenever there has been a period of five consecutive calendar years during which there were no chargeable wages paid for services considered employment under articles 70 to 82 of this title, any balance shown in the employer's account will not be transferred nor be used for premium rating purposes if the employer again becomes liable under articles 70 to 82 of this title.

(4) (a) The division shall determine employer premium rates for employers newly subject to articles 70 to 82 of this title each year as of the computation date in accordance with subsection (3) of this section. New employers pay the same premiums as unrated employers as prescribed in subsection (3) of this section or at the computed rate, whichever is higher, unless there have been twelve consecutive calendar months immediately preceding the computation date during which an employer's account has been chargeable with benefit payments.

(b) An employer that elects reimbursement under sections 8-76-108 to 8-76-110 is exempt from this section.

(c) An "employer newly subject", as used in this article, means an employer who has never, at any time, been an employer under any provision of articles 70 to 82 of this title, an employer who has lost his or her prior experience under subsection (3) of this section, or an employer who, under section 8-76-110 (2)(e), terminates his or her election to make payments in lieu of premiums or whose election to make payments in lieu of premiums has been terminated by the division under the authority of section 8-76-110 (4)(e) or (4)(f).

(5) (a) Those employers newly subject to articles 70 to 82 of this title and assigned the three-digit North American industry classification code 236, 237, or 238 for the construction industry must pay the same premiums as unrated employers as prescribed in subsection (3) of this section, at the actual experience rate, at a rate equal to the average actual experience rate, or at a rate equal to the average industry premium rate as determined by the division, whichever is greater, unless there have been thirty-six consecutive calendar months immediately preceding the computation date.

(b) For purposes of this subsection (5), assignment by the division of employment and training of industrial classifications to employers pursuant to this subsection (5) must be in accordance with procedures and guidelines of the bureau of labor statistics of the United States department of labor and be the appropriate three-digit subsector level found in the North American industry classification system manual issued by the office of management and budget.

(c) For purposes of this subsection (5), "average industry premium rate" means the average premium rate of all employers assigned the same three-digit North American industry classification code pursuant to this subsection (5). The rate is computed annually by the division using the latest data as of the computation date.

(6) (a) A political subdivision or its instrumentality that has elected to become a premium-paying employer will have its account charged with the full amount of all regular and extended benefits that are attributable to service in its employ.

(b) (I) The premium rate for political subdivisions or their instrumentalities will be examined annually in conjunction with the employer's benefit experience and may be adjusted on a year-by-year basis as prescribed by subparagraph (I) of paragraph (a) of subsection (3) of this section.

(II) The division must notify all political subdivisions or their instrumentalities, as defined in paragraph (a) of this subsection (6), of the premium rate no later than January 1 of the year for which the rate applies.

(7) (a) A solvency surcharge will be assessed when the fund balance of the unemployment compensation fund on any June 30 is equal to or less than 0.005 multiplied by the total wages reported by experience-rated employers for the previous calendar year, or for the most recent available four consecutive quarters before the last computation date. The solvency surcharge will be assessed on all experience-rated employers beginning with the next calendar year, and the solvency surcharge is added to the employer's premium rate. The solvency surcharge rate added to the employer's premium rate will also be identified separately on the employer's premium rate notice as the solvency surcharge. The solvency surcharge remains in effect until the June 30 fund balance in the unemployment compensation fund is equal to or greater than 0.007 multiplied by the total wages reported by experience-rated employers for the calendar year, or for the most recent available four consecutive quarters:

Eligible Employers Percent of Excess	Solvency Surcharge
+20 or more	0.00100
+18 to +19	0.00150
+16 to +17	0.00150

+14 to +15	0.00150
+12 to +13	0.00150
+10 to +11	0.00175
+8 to +9	0.00275
+6 to +7	0.00375
+4 to +5	0.00475
+2 to +3	0.00725
+0 to +1	0.01100
Unrated	0.01350
-0 to -1	0.01425
-2 to -3	0.01525
-4 to -5	0.01625
-6 to -7	0.01725
-8 to -9	0.01825
-10 to -11	0.01925
-12 to -13	0.02025
-14 to -15	0.02125
-16 to -17	0.02225
-18 to -19	0.02325
-20 to -21	0.02425
-22 to -23	0.02525
-24 to -25	0.02625
More than -25	0.02700

- (b) The solvency surcharge shall not be assessed against:
 - (I) The covered employers of state and local governments;
 - (II) Nonprofit organizations that are reimbursing employers; or
 - (III) Political subdivisions electing the special rate.
- (c) Repealed.

(8) (a) Subject to the conditions stated in paragraph (b) of this subsection (8), an employer is eligible for a premium credit, as determined by the division, of a proportionate amount of the excess of the amount specified in subparagraph (IV) of paragraph (b) of this subsection (8). Each employer that qualifies for the premium credit receives a share of the total available premium credit equal to his or her proportionate share of the total chargeable wages paid by qualifying employers.

(b) An employer does not receive premium credit under this subsection (8) unless all of the following conditions are met:

(I) As of the most recent computation date, the employer has filed all required reports and paid all premiums and surcharges due under articles 70 to 82 of this title;

(II) The employer is not a negative excess employer under the table in subsection (3) of this section;

(III) The employer has not elected to make reimbursement payments in lieu of premiums; and

(IV) As of the computation date immediately preceding the calendar year for which the premium credit is to be taken, the unexpended and unencumbered surplus balance in the unemployment compensation fund created in section 8-77-101 (1) exceeded one and six-tenths percent of total wages reported by experience-rated employers. Amounts in excess of one and six-tenths percent of total covered wages are considered available for disbursement as part of the premium credit.

(9) Any premium credit remaining to an employer after the first year in which the premium credit is applied is available to the employer in subsequent calendar years.

(10) As used in subsections (8) and (9) of this section, "premium credit" means the dollar amount discount available to eligible employers under the conditions set forth in paragraph (b) of subsection (8) of this section to be applied against premiums due in any given calendar year. For purposes of computing an employer's future rate, any premium credit claimed by an employer under subsection (8) of this section is disregarded, and the premium that would otherwise be due is deemed paid.

(11) (a) The division shall maintain a separate account for each employer and shall credit the employer's account with all premiums and surcharges paid on the employer's behalf. Nothing in articles 70 to 82 of this title shall be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund, either on the employer's behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amount provided in this section, against the accounts of his or her employers in the base period in the inverse chronological order in which the employment of the individual occurred. Benefits paid to a seasonal worker during the normal seasonal periods shall be charged against the account of his or her most recent seasonal employers in the corresponding normal seasonal period of his or her base period in the inverse chronological order in which the seasonal employment of the individual occurred and prior to the charging of benefits based on nonseasonal employment.

(b) The maximum amount charged against the experience rating account of any employer pursuant to paragraph (a) of this subsection (11) may not exceed one-third of the wages paid to an individual by the employer for insured work during the individual's base period, but not more per completed calendar quarter or portion thereof than one-third of the maximum wage credits as computed in section 8-73-104. Nothing in sections 8-76-101 to 8-76-104 shall be construed to limit benefits payable pursuant to sections 8-73-101 to 8-73-106. Notwithstanding section 8-73-108 or any administrative practice that results in fund charging, a reimbursing employer shall bear the cost of all benefits paid to its former employees, with the exception of benefit overpayments. The director of the division, by general rules, shall prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time.

(c) If, by reason of fraud, mistake, or clerical error, an individual receives benefits in excess of those to which he or she is entitled and the employer's account is charged, the employer's account shall be credited an amount equal to the benefits erroneously charged to the account.

Source: L. 2011: Entire section added, (HB 11-1288), ch. 212, p. 916, § 5, effective July 1. **L. 2012:** (3)(a) and (4)(a) amended, (HB 12-1127), ch. 29, p. 116, § 1, effective March 19. **L. 2015:** (1) repealed and (2) amended, (SB 15-264), ch. 259, p. 943, § 11, effective August 5. **L. 2020:** (3)(a.5) and (7)(c) added, (SB 20-207), ch. 296, p. 1475, § 9, effective July 14. **L. 2022:** (7)(c) amended, (SB 22-234), ch. 224, p. 1618, § 6, effective May 25. **L. 2023:** (3)(a) R&RE and IP(3)(h) and (3)(h)(I) amended, (SB 23-232), ch. 141, p. 594, § 2, effective May 1. **L. 2024:** IP(3)(a)(IV) amended, (HB 24-1409), ch. 318, p. 2128, § 2, effective June 15. **L. 2025:** IP(3)(a)(IV) amended, (SB 25-242), ch. 145, p. 548, § 5, effective April 28.

Editor's note: (1) On July 18, 2012, the revisor of statutes received the written report described in subsection (1) related to the repeal of sections 8-76-102 and 8-76-103. For more information about the repeal, see House Bill 11-1288. (See L. 2011, p. 916.)

(2) Subsection (7)(c)(II) provided for the repeal of subsection (7)(c), effective January 1, 2024. (See L. 2022, p. 1618.)

Cross references: For the legislative declaration in HB 24-1409, see section 1 of chapter 318, Session Laws of Colorado 2024.

8-76-103. Future rates based on benefit experience - definitions - repeal. (Repealed)

Source: L. 36, 3rd Ex. Sess.: p. 26, § 7. L. 37: p. 1258, § 5. CSA: C. 167A, § 7. L. 39: p. 572, § 5. L. 41: p. 773, § 7. L. 43: p. 602, § 4. L. 45: p. 713, § 3. L. 49: p. 724, §§ 5, 6. L. 51: p. 808, § 5. L. 53: p. 629, §§ 4-6. CRS 53: § 82-6-3. L. 57: p. 518, § 7. L. 58: 1st Ex. Sess., p. 26, §§ 2, 3. L. 59: pp. 564, 567, §§ 5, 6, 2, 3. L. 63: p. 681, § 9. C.R.S. 1963: § 82-6-3. L. 65: p. 846, § 8. L. 69: pp. 671, 685-687, §§ 8, 1-3. L. 71: p. 935, § 12. L. 73: pp. 960, 961, §§ 8-10, 13. L. 76: (1)(b) R&RE and (3)(a) amended, p. 351, §§ 16, 17, effective October 1. L. 77: (3)(b)(II) R&RE, p. 475, § 2, effective July 1; (1)(b) amended, p. 485, § 4, effective October 1. L. 79: (3)(b)(II)(A) amended and (4) R&RE, p. 353, §§ 19, 20, effective September 30. L. 81: (1)(a), (3)(a), (3)(b)(II), (3)(d), (3)(e), (5), and (6), amended, p. 493, § 9, effective July 1; (1)(b) amended, p. 486, § 12, effective July 1. L. 83: (3)(e) R&RE, p. 430, § 7, effective June 3; (3)(a), (3)(b)(I), (3)(b)(II), and (3)(d) amended, p. 2043, § 8, effective October 1. L. 84: (3)(a)(I) and (3)(b)(I) amended, p. 318, § 10, effective July 1. L. 85: (3)(b)(IV) and (3)(d) amended and (2) repealed, pp. 373, 376, §§ 3, 8, effective July 1. L. 86: (1)(b) amended, p. 493, § 100, effective July 1; (3)(b)(II)(B) and (3)(b)(II)(C) amended, p. 544, § 10, effective July 1. L. 90: (3)(a)(III) R&RE, p. 1765, § 4, effective June 8. L. 91: (3)(a)(V) added, p. 1289, § 1, effective May 16; (3)(a)(III), (3)(b)(II)(B), and (3)(b)(II)(C) amended and (3)(b)(V) added, p. 1348, § 2, effective July 1; (3)(b)(I) amended, p. 1360, § 3, effective September 1. L. 92: (3)(a)(III)(A) and (3)(b)(V) amended, p. 1796, § 7, effective April 10. L. 94: (3)(a)(V) repealed, p. 641, § 6, effective July 1. L. 97: (3)(a)(I) amended and (3)(a)(VI) added, p. 1141, § 1, effective May 28. L. 2000: (7) added, p. 142, § 1, effective March 16. L. 2001: (3)(a)(III) amended, p. 221, § 1, effective August 8. L. 2002: (4) amended, p. 337, § 5, effective April 19; (7)(a) amended, p. 941, § 1, effective August 7. L. 2006: (3)(b)(II)(B) amended, p. 1517, § 88, effective June 1. L. 2009: (1)(a), (3)(a)(I), (3)(a)(III)(E), (3)(a)(III)(G), (3)(a)(IV), (3)(b)(II), (3)(b)(V), (3)(d), (3)(e), and (5) to (7) amended, (HB 09-1363), ch. 363, p. 1887, § 14, effective July 1; (3)(a)(III)(H) repealed, (SB 09-292), ch. 369, p. 1939, § 7, effective August 5. L. 2011: (1)(d) and (8) added,

(HB 11-1288), ch. 212, p. 925, §§ 6, 7, effective July 1; (3)(e) amended, (HB 11-1303), ch. 264, p. 1149, § 6, effective August 10. **L. 2012:** (3)(a)(III)(F) and (3)(b)(V) amended, (HB 12-1120), ch. 27, p. 105, § 15, effective June 1. **L. 2012, 1st Ex. Sess.:** (8) amended, (HB 12S-1002), ch. 2, p. 2428, § 9, effective June 1.

Editor's note: (1) Subsection (8) provided for the repeal of this section, effective December 31, 2012. (See L. 2012, p. 2428.)

(2) The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

**8-76-103.5. Transitional provisions - combined premium rate for 2012 - repeal.
(Repealed)**

Source: L. 2011: Entire section added, (HB 11-1288), ch. 212, p. 926, § 8, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective January 1, 2014. (See L. 2011, p. 926.)

8-76-104. Transfer of experience - assignment of rates - definitions.

(1) (a) An employing unit, as defined in section 8-70-113 (1)(f), that becomes an employer because it acquires all of the organization, trade, or business or substantially all of the assets of one or more employers subject to articles 70 to 82 of this title shall succeed to the entire experience rating record of the predecessor employer, and the entire separate account, including the actual premiums, benefits, and payroll experience of the predecessor employer, shall pass to the successor for the purpose of determining the premium rate for the successor.

(b) If the successor was not an employer prior to the date of acquisition, the successor's rate shall be the rate applicable to the predecessor employer in the period immediately preceding the date of acquisition if there was only one predecessor or if there were multiple predecessors with identical rates. If there were multiple predecessor employers with rates that were not identical, the successor's rate shall be the highest rate applicable to any of the predecessor employers in the period immediately preceding the date of acquisition.

(c) (I) Repealed.

(II) (A) If, at the time of transfer, a person who is not an employer under this section acquires the trade or business of an employer and the division finds that the successor acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions, the unemployment experience of the predecessor employer shall not be transferred to the successor and the division shall assign the successor the applicable new employer rate determined pursuant to section 8-76-102.5 (4).

(B) This subparagraph (II) is effective December 31, 2012.

(2) (a) Notwithstanding any other provision of sections 8-76-101 to 8-76-104, if the successor employer was an employer subject to articles 70 to 82 of this title prior to the date of acquisition and, at the time of the transfer, there is no substantial common ownership, management, or control of the two employers, the successor's premium rate for the remainder of the calendar year shall be the same as the successor's rate in the period immediately preceding the date of acquisition.

(b) If an employer transfers all or a portion of its trade or business to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the predecessor employer shall be transferred to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the trade or business. If, following a transfer experience, the division determines that the purpose of the transfer of the trade or business was solely or primarily to obtain a reduced liability for contributions, the division shall combine the experience rating accounts of the employers into a single account and shall assign a single rate to the account.

(c) If an employer transfers all or a portion of its trade or business to another employer and the division finds that the successor acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions, the experience and reserve account attributable to the predecessor employer shall not be transferred to the successor employer and shall revert to the predecessor employer.

(3) (a) Whenever an employer in any manner transfers a clearly segregable unit of the employer's business for which the predecessor employer has maintained, in such form as to be separable, continuous records of wages, premiums, and benefits paid on account of the segregable unit, the predecessor employer and successor employer may jointly request that the division transfer a proportionate share of premium, benefit, and payroll experience attributable to the unit based on the ratio of the chargeable payrolls paid during the twelve calendar quarters immediately preceding the computation date of the segregable unit to the total employer account prior to the notice to the division of the transfer. A transfer of experience may not be made under this subsection (3) unless the segregable unit has fourteen consecutive quarters of payroll

immediately preceding the computation date. If, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the predecessor employer shall be transferred to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the trade or business.

(b) The division may transfer the experience and perform all other acts required by this subsection (3). The proportionate share of the predecessor employer's reserve account attributable to the transferred unit shall pass to the successor employer.

(c) The experience rate established for the predecessor employer for all units of the business shall continue in effect for the remainder of the calendar year in which the transfer is made, and, for succeeding calendar years, it shall be computed on the experience of those units retained.

(d) If the successor was an employer prior to the effective date of the transfer, the experience rate for the calendar year in which the transfer is made shall be the same as that previously established without reference to the acquired segregable unit, and, for succeeding calendar years, it shall be computed on the combined experience of all units of the successor's business.

(e) If the successor was not an employer prior to the effective date of transfer and two or more segregable units are simultaneously transferred to the successor by a single employer, the successor's premium rate shall be computed from the combined premium, benefit, and payroll experience of the units.

(f) If the successor was not an employer prior to the effective date of transfer and two or more segregable units are simultaneously transferred to the successor by different employers, the successor's premium rate shall be the highest rate applicable to any of the units unless the rates with respect to the transferred units are identical.

(g) The transfer of experience with respect to a segregable unit shall be of no force and effect unless an application for the transfer, signed by both the predecessor employer and the successor employer, is filed with the division in the form and manner prescribed by the director by rule. The application shall be filed within sixty days after the notice of employer liability from the division is mailed or transmitted by electronic means to the successor employer. The notice shall contain information pertaining to segregable unit transfers.

(h) Whenever a predecessor employer and a successor employer jointly request that the division transfer the proportionate share of premium, benefit, and payroll experience attributable to a clearly segregable unit to the successor employer, the predecessor employer shall furnish to the division any information requested by the division for such purpose.

(4) (a) In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors that may include, without limitation, the cost of acquiring the trade or business, whether and for how

long the successor continued the business enterprise of the acquired trade or business, and whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(b) The division may void a rate determination if it finds that a successor has no business existence separate and apart from the predecessor and should not have been established as a separate employer for unemployment compensation purposes. Under the circumstances described in this paragraph (b), the experience and reserve account attributable to the predecessor employer shall not be transferred to the successor employer and shall revert to the predecessor employer.

(5) When determining whether one or more employers have common ownership, management, or control, the division may consider factors such as stock ownership, officers, employees, payroll systems, and common business interests.

(6) The division shall establish procedures to identify the transfer or acquisition of a business or trade for purposes of this section.

(7) Notwithstanding any provision of section 8-70-113 to the contrary, any subject employer whose entire reserve account has been transferred to a successor employer, as provided in subsection (1) of this section, shall immediately cease to be a subject employer and shall thereafter become a subject employer only upon any future employment experience.

(8) A transfer of experience shall not occur when a work-site employer's account is made inactive as a result of entering into a contract with an employee leasing company, as defined in section 8-70-114 (2)(a)(V), or when a contract between a work-site employer and an employee leasing company is terminated unless there is substantial common ownership, management, and control of the work-site employer and the employee leasing company. The existence of an employee leasing arrangement, without other evidence of common control, shall not constitute substantial common ownership, management, and control.

(9) When any part of the predecessor employer's trade or business utilizes the services of ninety percent or more of the total number of employees in covered employment on the payroll for each of the four pay periods immediately preceding the transfer to a successor employer, the entire separate account, including the actual premium, benefit, and payroll experience of the predecessor employer, shall pass to the successor employer for the purpose of the rate of computation of the successor.

(10) (a) If a person knowingly violates or attempts to violate any provision of this section in order to obtain a lower contribution rate, the person shall pay all owed premiums with applicable penalties and interest and may be subject to the penalties set forth in paragraph (c) of this subsection (10).

(b) If a person knowingly advises another person in a way that results in a violation of paragraph (a) of this subsection (10), the person may be subject to the penalties set forth in paragraph (c) of this subsection (10).

(c) If the person who violates this section as described in paragraph (a) or (b) of this subsection (10) is an employer, the division may assign the employer the highest contribution rate assignable under this article for the rate year during which the violation or attempted violation occurred and the next three years. If, during the rate year in which a violation occurs, the subject employer was assigned the highest contribution rate, or the amount of the rate increase would be less than two and seven-tenths percent for the rate year, the division may impose a penalty contribution rate of two and seven-tenths percent of chargeable wages for that rate year and the next three years. If the person is not an employer, the person may be subject to a civil fine of not more than five thousand dollars, which shall be deposited in the unemployment revenue fund created in section 8-77-106.

(d) In addition to any penalty imposed pursuant to subsections (10)(a), (10)(b), and (10)(c) of this section, any violation of this section may be prosecuted as a class 2 misdemeanor pursuant to section 18-1.3-501.

(11) As used in this section, unless the context otherwise requires:

(a) "Knowingly" or "willfully" means being aware that one's conduct is practically certain to cause the result or having reckless disregard for the prohibition involved.

(b) "Person" means any individual, trust, estate, partnership, association, company, corporation, joint venture, limited liability company, or other legal or commercial entity.

(c) "Trade" or "business" includes an employer's work force.

(d) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

Source: L. 41: p. 773, § 7. CSA: C. 167A, § 7. L. 43: p. 602, § 4. L. 47: p. 887, § 3. L. 51: p. 810, § 6. L. 53: p. 632, § 7. CRS 53: § 82-6-4. L. 55: pp. 530, 531, §§ 4, 5. C.R.S. 1963: § 82-6-4. L. 71: p. 936, § 13. L. 81: (1) and (2) amended, p. 496, § 10, effective July 1. L. 83: (1) amended, p. 430, § 8, effective June 3. L. 85: (1) amended and (5) added, p. 374, § 4, effective July 1. L. 90: (1) and (4) amended, p. 604, § 9, effective April 3. L. 93: (6) added, p. 707, § 2, effective May 6. L. 94: (5)(a), (5)(b), and (5)(j) amended, p. 641, § 7, effective July 1. L. 97: (6) amended, p. 210, § 3, effective April 8. L. 98: (5)(g), (5)(h), and (5)(i) amended and (7) and (8) added, p. 70, § 7, effective March 23. L. 2002: (5)(g) amended, p. 338, § 6, effective April 19. L. 2005: Entire section R&RE, p. 543, § 1, effective July 1. L. 2006: (8) amended, p. 654, § 2, effective April 24. L. 2009: (1)(a), (2)(a), (3)(a), (3)(e), (3)(f), (3)(h), (9), (10)(a), and (10)(c)

amended, (HB 09-1363), ch. 363, p. 1895, § 15, effective July 1; (8) amended, (SB 09-292), ch. 369, p. 1940, § 8, effective August 5. **L. 2011:** (1)(c) amended, (HB 11-1288), ch. 212, p. 929, § 13, effective July 1. **L. 2012, 1st Ex. Sess.:** (1)(c)(I)(B) amended, (HB 12S-1002), ch. 2, p. 2428, § 10, effective June 1. **L. 2021:** (10)(d) amended, (SB 21-271), ch. 462, p. 3143, § 96, effective March 1, 2022.

Editor's note: Subsection (1)(c)(I)(B) provided for the repeal of subsection (1)(c)(I), effective December 31, 2012. (See L. 2012, p. 2428.)

Cross references: For the legislative declaration contained in the 1997 act amending subsection (6), see section 1 of chapter 77, Session Laws of Colorado 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 2005 repeal and reenactment.

This section does not deny due process of law. Statute governing unemployment tax rate for a successor business does not deny due process of law because persons in the same situation are not treated differently. *Manpower, Inc. v. Indus. Comm'n*, 677 P.2d 346 (Colo. App. 1983).

And is not unconstitutionally vague. Provisions delineate two-pronged requirement for successor tax rate. The test is clearly stated in the statute and does not leave persons of ordinary intelligence guessing as to its meaning or differing as to its application. *Manpower, Inc. v. Indus. Comm'n*, 677 P.2d 346 (Colo. App. 1983).

This section is clear and unambiguous. *Dept. of Emp. Sec. v. Gen. Cleaners & Dyers*, 128 Colo. 298, 263 P.2d 574 (1953).

In order for a transferee of a business to acquire the payroll experience rating of his transferor, he must qualify under the provisions of this section. *Kinney v. Teets*, 141 Colo. 550, 349 P.2d 134 (1960).

Transferee of assets under a "free and clear" sale by order of the bankruptcy court was not liable for unpaid premiums on the account of the transferor. *Ouray Sportswear v. Indus. Claim Appeals Office*, 2013 COA 142, 315 P.3d 1280.

Petitioner acquired "substantially all" of the predecessor employer's assets by acquiring 90% of the physical and intangible assets of the predecessor. *Dos Almas LLC v. Indus. Claim Appeals Office*, 2018 COA 145, 434 P.3d 777.

Employee retention is irrelevant to the successor issues under the applicable "substantially all of the assets" provision of subsection (1)(a). *Dos Almas LLC v.*

Indus. Claim Appeals Office, 2018 COA 145, 434 P.3d 777.

Former provision in subsection (5)(g) that predecessor and successor employers request proportionate share of the unit's unemployment tax within 30 days of the transfer did not contain a provision excusing an untimely application upon a showing of good cause. *Boselli Invs., L.L.C. v. Div. of Employment*, 975 P.2d 204 (Colo. App. 1999).

Subsection (2) addresses only situations in which the successor/transferee employer was already a statutory employer before it acquired all or part of the predecessor/transferor employer's trade or business. Subsection (2)(b)'s language requiring that the premium rate of the successor employer be "recalculated" necessarily contemplates that the successor employer was already a statutory employer. *Keysight Tech. v. Indus. Claim Appeals Office*, 2020 COA 29, 459 P.3d 1223.

8-76-105. Period of employer's coverage.

(1) Any employing unit which is or becomes an employer subject to articles 70 to 82 of this title within any calendar year shall be deemed to be an employer during the whole of such calendar year.

(2) No employing unit shall be deemed to be an employer liable under articles 70 to 82 of this title for any period prior to five calendar years immediately preceding the calendar year in which the division determines the employing unit to be an employer as defined in section 8-70-103.

Source: L. 36, 3rd Ex. Sess.: p. 29, § 8. CSA: C. 167A, § 8. L. 41: p. 799, § 8. L. 49: p. 726, § 8. L. 51: p. 811, § 7. CRS 53: § 82-6-5. C.R.S. 1963: § 82-6-5. L. 73: p. 961, § 11.

8-76-106. Termination of employer liability.

(1) An employing unit shall cease to be an employer subject to articles 70 to 82 of this title only as of the first day of any calendar year, only if, not later than the last day of February of such year, it has filed with the division a written application for termination of coverage as an employer as of the first day of January, and the division finds that during the preceding calendar year:

(a) Such employing unit was not an employer as defined in the introductory portion to section 8-70-113 (1) and section 8-70-113 (1)(g);

(b) Such employing unit was not liable by having elected to become liable during such year;
or

(c) Such employing unit did first become liable under and by virtue of section 8-76-104 and was not liable under the introductory portion to section 8-70-113 (1) and section 8-70-113 (1)(g) or section 8-76-107.

(2) Any employer who does not employ any individual whose services are considered in employment at any time in this state for a period of one calendar year shall cease to be an employer subject to articles 70 to 82 of this title as of the thirty-first day of December of such calendar year.

(3) Any employing unit which became liable during any calendar year preceding the calendar year in which its liability by virtue of the introductory portion to section 8-70-113 (1) and section 8-70-113 (1)(g) was determined may terminate coverage effective as of the end of the first year during which such employing unit was not an employer by virtue of the introductory portion to section 8-70-113 (1) and section 8-70-113 (1)(g) if such year was prior to the date the determination was made by the division, by filing a written application to terminate coverage as an employer within thirty days of the date of such determination.

(4) For the purposes of this section, written applications shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

Source: L. 36, 3rd Ex. Sess.: p. 29, § 8. L. 37: p. 1261, § 6. CSA: C. 167A, § 8. L. 39: p. 572, § 6. L. 41: p. 779, § 8. L. 45: p. 713, § 4. L. 49: p. 726, § 8. L. 51: p. 811, § 7. CRS 53: § 82-6-6. C.R.S. 1963: § 82-6-6. L. 65: p. 846, § 9. L. 71: p. 937, § 14. L. 90: (1)(a), (1)(c), and (3) amended, p. 604, § 10, effective April 3. L. 2002: (4) added, p. 338, § 7, effective April 19.

8-76-107. Election to become liable.

(1) An employing unit, not otherwise subject to articles 70 to 82 of this title, which files with the division its written election to become an employer subject hereto for not less than two calendar years, with the written approval of such election by the division, shall become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January first of any calendar year subsequent to such two calendar years, only if such employing unit has filed with the division a written application for termination as provided in subsection (2) of this section.

(2) Any employing unit for which services that do not constitute employment are performed may file with the division a written election that all such services performed by individuals in its

employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of articles 70 to 82 of this title for not less than two calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to articles 70 to 82 of this title from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if such employing unit has filed with the division a written application for termination as provided in this section.

(3) For the purposes of this section, written applications shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

Source: L. 36, 3rd Ex. Sess.: p. 29, § 8. CSA: C. 167A, § 8. L. 41: p. 779, § 8. L. 51: p. 811, § 7. CRS 53: § 82-6-7. C.R.S. 1963: § 82-6-7. L. 2002: (3) added, p. 338, § 8, effective April 19.

8-76-108. Coverage by political subdivisions.

(1) (a) Political subdivisions are covered employers if employees employed by such political subdivisions perform services in employment as defined by section 8-70-119. Such political subdivisions may elect to pay premiums in lieu of reimbursements. Any political subdivision that makes reimbursement shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 8-70-141 (1)(d) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(b) Repealed.

(c) The amounts required to be paid in lieu of premiums by any political subdivision under this section shall be billed and payment made as provided in section 8-76-110 (3) with respect to similar payments by nonprofit organizations.

(d) An election by a contributing political subdivision to become a reimbursing employer or an election by a reimbursing political subdivision to become a contributing employer may be made by filing with the division written notice, in such form and manner as the director of the division may prescribe by rule, not later than March 1 of the calendar year in which the election is to be effective. Such election becomes effective as of the first day of the calendar year with respect to services performed after that date. Notwithstanding the effective date of any election, the political subdivision remains liable for all benefits chargeable against its account that it has not paid.

(e) Political subdivisions or their instrumentalities that are liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the full amount of all regular and extended benefits paid that are attributable to service in their employ. Political subdivisions or their instrumentalities that have elected to pay premiums as permitted by this section shall have their accounts charged with the full amount of all regular and extended benefits that are attributable to service in their employ.

(f) Any extension of unemployment insurance coverage to political subdivisions mandated by Public Law 94-566 shall again become optional in the event such mandatory coverage is declared unconstitutional or null and void by the supreme court of the United States or is repealed by an act of congress.

Source: L. 71: p. 937, § 15. C.R.S. 1963: § 82-6-8. L. 75: (1)(a) amended, p. 322, § 4, effective June 20. L. 76: (1)(a) amended, p. 361, effective April 20; (1)(a) amended, p. 351, § 18, effective October 1. L. 77: (1)(a) amended and (1)(e) and (1)(f) added, p. 467, § 20, effective July 7. L. 79: (1)(a) and (1)(d) amended and (1)(b) repealed, pp. 354, 356, §§ 21, 25, effective September 30. L. 81: (1)(e) amended, p. 486, § 13, effective July 1; (1)(a), (1)(c), and (1)(e) amended, p. 497, § 11, effective July 1. L. 82: (1)(d) amended, p. 239, § 8, effective July 1. L. 90: (1)(a) amended, p. 604, § 11, effective April 3. L. 2002: (1)(d) amended, p. 338, § 9, effective April 19. L. 2009: (1)(a), (1)(c), and (1)(e) amended, (HB 09-1363), ch. 363, p. 1896, § 16, effective July 1.

8-76-109. Payments in lieu of premiums by state hospitals and state institutions of higher education.

State hospitals and state institutions of higher education as defined in section 8-70-103 (14) and (15) may elect to make reimbursements in lieu of premiums as provided for nonprofit organizations in section 8-76-110 (1) to (3) and (5).

Source: L. 71: p. 938, § 15. C.R.S. 1963: § 82-6-9. L. 81: Entire section amended, p. 497, § 12, effective July 1. L. 2009: Entire section amended, (HB 09-1363), ch. 363, p. 1897, § 17, effective July 1.

8-76-110. Financing benefits paid to employees of nonprofit organizations.

(1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an

organization or group of organizations described in section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, which are exempt from income tax under section 501 (a) of such code.

(2) Liability for premiums and election of reimbursement.

(a) Any nonprofit organization that, pursuant to section 8-70-113 (1)(c), is or becomes subject to articles 70 to 82 of this title shall pay premiums under the provisions of section 8-76-101, unless it elects, in accordance with this subsection (2), to pay to the division for the unemployment compensation fund an amount equal to the amount of regular benefits and one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of such election.

(b) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p. 1897, § 18, effective July 1, 2009.)

(c) Any nonprofit organization that becomes subject to articles 70 to 82 of this title may elect to become liable for payments in lieu of premiums for a period of not less than the calendar year within which such subjection begins by filing a written notice of its election with the division not later than thirty days immediately following the date of the determination of such subjection. Any nonprofit organization that elects to make payments in lieu of premiums into the unemployment compensation fund as provided in this paragraph (c) shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 8-70-141 (1)(d) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(d) (Deleted by amendment, L. 2009, (HB 09-1363), ch. 363, p.1897, § 18, effective July 1, 2009.)

(e) Any nonprofit organization that makes an election in accordance with paragraph (c) of this subsection (2) will continue to be liable for payments in lieu of premiums until it files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination is first effective.

(f) Any nonprofit organization that pays premiums under articles 70 to 82 of this title may change to a reimbursing basis by filing with the division not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of premiums. Such election shall not be terminable by the organization for that and the next year. Any organization making such an election remains liable for the payment of all charges to its account and all premiums and surcharges due the division, and past due premiums and surcharges are subject to all interest and penalties as provided in articles 70 to 82 of this title.

(g) The division may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive.

(h) The division, in accordance with such rules as it may prescribe, shall notify each nonprofit organization of any determination that it may make of the status of the organization as an employer and of the effective date of any election and of any termination of such election.

(i) Notwithstanding any other provisions of articles 70 to 82 of this title, any nonprofit organization that, prior to January 1, 1969, paid premiums required by articles 70 to 82 of this title and that elects, pursuant to paragraph (d) of this subsection (2) as it existed prior to its repeal in 2009, to make payments in lieu of premiums shall not be required to make any such payment on account of any regular or extended benefits paid and attributable to wages paid for service performed in its employ for weeks of unemployment that begin on or after the effective date of such election until the total amount of such benefits equals the amount by which the premiums paid by such organization with respect to a period before such election exceed benefits paid for the same period and charged to the experience rating account of such organization, as of the effective date of such election.

(3) Reimbursement payments.

(a) Payments in lieu of premiums shall be made in accordance with the provisions of this subsection (3).

(b) At the end of each calendar quarter, the division shall bill each nonprofit organization, or group of such organizations, that has elected to make payments in lieu of premiums for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(c) Payment of any bill rendered under paragraph (b) of this subsection (3) shall be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with paragraph (e) of this subsection (3).

(d) Payments made by any nonprofit organization under the provisions of this subsection (3) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division setting forth the grounds for such application. The division shall promptly review and reconsider the items specified and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. The amount due on the specified items in

such redetermination shall become due and payable not later than thirty days following the date of mailing of the redetermination. All other charges specified on the original bill are due and payable within thirty days as provided by paragraph (c) of this subsection (3).

(f) Past-due payments of amounts in lieu of premiums shall be subject to the same interest and penalties that, pursuant to sections 8-79-101 and 8-79-104, apply to past-due premiums and surcharges.

(4) Provision of bond or other security.

(a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of premiums shall be required, within fifteen days after the effective date of its election, to execute and file with the division a surety bond approved by the division, or it may elect instead to deposit with the division money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this subsection (4).

(b) The amount of bond or deposit required by this subsection (4) shall be equal to three times the sum of the amount of regular benefits plus one-half the extended benefits paid, if any, that are attributable to service in the employ of the nonprofit organization during the previous calendar year or the sum of said payments during the three previous calendar years, whichever is greater, but shall not exceed three and six-tenths percent nor be less than one-tenth of one percent of the total covered payroll of such organization for the preceding calendar year. If the employer has not been subject to articles 70 to 82 of this title for a sufficient period of time to acquire three calendar years' experience, then the bond shall be an amount computed by multiplying the total covered payroll for the previous calendar year, or the equivalent thereof, by two and seven-tenths percent. Any organization that, under the provisions of paragraph (i) of subsection (2) of this section, is not required to make payments in lieu of premiums will not be required to file a surety bond or make a surety deposit with the division as provided in this paragraph (b) until such time as said organization is required to make payments in lieu of premiums.

(c) Any bond deposited under this subsection (4) shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the division, at such times as the division may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of premiums. The division shall require such adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within fifteen days after the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of premiums when due, together with any applicable interest and penalties provided for in paragraph (f) of subsection (3) of this section, shall render the surety liable on said bond to the extent of the bond, as though the surety were such organization.

(d) Any deposit of money or securities in accordance with this subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this subsection (4). The division may deduct from the money deposited under this paragraph (d) by a nonprofit organization or sell the securities a nonprofit organization has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of premiums and any applicable interest and penalties provided for in paragraph (f) of subsection (3) of this section. The division shall require the organization, within fifteen days following any deduction from a money deposit or sale of deposited securities under the provisions of this paragraph (d), to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The division may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within fifteen days after written notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of state law.

(e) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this subsection (4), the division may terminate the organization's election to make payments in lieu of premiums, and the termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective, but the division may, for good cause, extend the applicable filing, deposit, or adjustment period by not more than fifteen days.

(f) If any nonprofit organization is delinquent in making payments in lieu of premiums as required under subsection (2) of this section, the division may terminate the organization's election to make payments in lieu of premiums as of the beginning of the next calendar year, and the termination shall be effective for that and the next calendar year.

(5) Allocation of benefit costs.

(a) A political subdivision that is liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the full amount of all regular and extended benefits paid that are attributable to service in the employ of such employer. A nonprofit organization liable for payments in lieu of premiums shall pay to the division for the unemployment compensation fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of premiums, the amount payable to the fund by

each employer that is liable for such payments shall be determined in accordance with the provisions of paragraph (b) or (c) of this subsection (5).

(b) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of premiums and on wages paid by one or more employers that are liable for premiums, the amount of benefits payable by each employer that is liable for payments in lieu of premiums shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his or her base period employers.

(c) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of premiums, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his or her base period employers.

(6) **Group accounts.** Two or more employers that are liable for payments in lieu of premiums, in accordance with the provisions of subsection (2) of this section and sections 8-76-108 and 8-76-109, may file a joint application with the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection (6). Upon its approval of the application, the division shall establish a group account for the employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the division or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of premiums with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in that quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in that quarter bear to the total wages paid during that quarter for service performed in the employ of all members of the group. The division shall prescribe rules as necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subsection (6); for addition of new members to, and withdrawal of active members from, such accounts; and for the determination of the amounts that are payable under this subsection (6) by members of the group and the time and manner of such payments.

(7) Repealed.

(8) For the purposes of this section, applications, filings, and notices of election shall be filed in such form and manner as the director of the division may prescribe by rule, including in person, by mail, by telephone, or by electronic means.

Source: L. 71: p. 937, § 15. C.R.S. 1963: § 82-6-10. L. 77: (2)(c) amended and (7) repealed, pp. 468, 471, §§ 21, 27, effective July 7. L. 81: (2)(a) to (2)(f), (2)(i), (3)(a), (3)(b), (3)(f), (4), (5), and (6) amended, p. 498, § 13, effective July 1; (5)(a) amended, p. 487, § 14, effective July 1. L. 83: (2)(f) amended, p. 431, § 9, effective June 3. L. 85: (2)(d) and (3)(e) amended, p. 375, § 5, effective July 1. L. 90: (2)(a) and (2)(c) amended, p. 604, § 12, effective April 3. L. 2000: (1) and (2)(d) amended, p. 1839, § 6, effective August 2. L. 2002: (8) added, p. 339, § 10, effective April 19. L. 2009: (2), (3)(a), (3)(b), (3)(f), and (4) to (6) amended, (HB 09-1363), ch. 363, p. 1897, § 18, effective July 1.

ANNOTATION

Applicability of subsection (2)(d). Only those employers that elect reimbursable coverage prior to January 31, 1972, are entitled to use account excess and are exempt from the surety bond requirement

until the excess is depleted. Division of Emp. v. Parkview Episcopal Hospital, 725 P.2d 787 (Colo. 1986); Division of Emp. v. Indus. Comm'n, 725 P.2d 793 (Colo. 1986).

8-76-111. Coverage of state employees.

(1) (a) The state of Colorado hereby elects, effective January 1, 1976, with respect to all services performed in the employ of this state or any branch or department thereof or any instrumentality thereof which is not otherwise an employer subject to this title, to become a reimbursing employer subject to this title, and all services performed in the employ of this state or any branch or department or instrumentality thereof shall constitute employment. This election does not apply to political subdivisions of this state.

(b) Repealed.

(2) As used in this section, prior to January 1, 1978, "services performed in the employ of this state" means employment in the state personnel system of this state as defined in section 13 of article XII of the state constitution and article 50 of title 24, C.R.S., regular full-time employment in the legislative branch of this state, and employment in the judicial department of this state; but such employment shall not include employees of the legislative branch who serve only for the period that the general assembly is in session or judges and justices within the judicial department.

(3) Repealed.

(4) The amounts required to be paid in lieu of premiums by the state under this section shall be billed and payment made as provided in section 8-76-110 (3) with respect to similar payments by nonprofit organizations.

(5) Repealed.

(6) This state or any branch or department thereof or any instrumentality thereof shall pay to the division for the unemployment compensation fund the amount of regular benefits plus the amount of one-half of extended benefits paid through December 31, 1978, and the full amount of all regular and extended benefits paid beginning January 1, 1979, that are attributable to service in their employ.

Source: **L. 75:** Entire section added, p. 326, § 1, effective January 1, 1976. **L. 77:** (1)(a) and (2) amended and (5) and (6) added, p. 468, § 22, effective July 7. **L. 79:** (3) repealed, p. 1632, § 4, effective July 19; (1)(b) and (5) repealed, p. 356, § 25, effective September 30. **L. 81:** (4) amended, p. 502, § 14, effective July 1. **L. 2009:** (4) amended, (HB 09-1363), ch. 363, p. 1902, § 19, effective July 1.

8-76-112. Political subdivisions - security for collection of premiums or reimbursable payments.

(1) In the event of default in payment of premiums or surcharges due or reimbursements of benefit costs, the state treasurer, upon the request of the division, shall set aside state funds otherwise payable to the political subdivision as security to ensure payment of the funds due from the political subdivision to the unemployment trust fund.

(2) Funds which may be used for this purpose include any funds in the possession of the state treasurer which are allocated to the political subdivision for any purpose, with the exception of funds earmarked for a specific purpose.

(3) The division may not request the state treasurer to set aside funds to cover obligations of the political subdivision until at least six months have elapsed since the due date for payment of the premium or surcharge or reimbursable obligation.

Source: **L. 77:** Entire section added, p. 469, § 23, effective July 7. **L. 81:** (1) and (3) amended, p. 502, § 15, effective July 1. **L. 2009:** (1) and (3) amended, (HB 09-1363), ch. 363, p. 1902, § 20, effective July 1.

8-76-113. Protest - appeal - filed by an employer.

(1) Any employer who wishes to appeal a determination of liability for premiums or surcharges, a determination of coverage under the provisions of articles 70 to 82 of this title, or a seasonality determination pursuant to section 8-73-106 may file a written notice of appeal with the division in such form and manner as the director of the division may prescribe by rule, including in person, by mail, or by electronic means. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless the notice of appeal has been received by the division within twenty calendar days after the date the notice of such determination is mailed or transmitted by the division to the employer in accordance with such rules as the director of the division may promulgate.

(2) Any employer who wishes to protest an assessment of premiums or surcharges, a notice of premium rate, a recomputation of premium rate, or any notice of correction of any matter set forth in this subsection (2) shall file a request for redetermination with the division, in accordance with rules promulgated by the director of the division. The division shall thereafter promptly notify the employer of its redetermination decision. Any employer who wishes to appeal from a redetermination decision may file a written notice of appeal with the division. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless notice of appeal has been received by the division within twenty calendar days after the date the notice of such redetermination is mailed or transmitted by the division to the employer in accordance with such rules as the director of the division may promulgate.

(3) Any determination or redetermination from which appeal may be taken pursuant to subsection (1) or (2) of this section shall be final and binding upon the employer unless a notice of appeal is filed in accordance with the time limits set forth in subsections (1) and (2) of this section or unless the employer establishes to the satisfaction of the division that he had good cause for failure to file a timely notice of appeal. Guidelines for determining what constitutes good cause shall be established by the director of the division.

(3.5) Any administrative appeal pursuant to this section shall be conducted by a referee or hearing officer of the division.

(4) In connection with any appeal proceeding conducted pursuant to this section, the referee may, upon application by any party or upon his own motion:

(a) Convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters which may simplify further proceedings;

(b) Permit the parties to engage in prehearing discovery, insofar as practicable, in accordance with the Colorado rules of civil procedure and, in connection therewith, to shorten or extend any applicable response time; and

(c) Permit or require the filing by the parties of briefs, arguments of law, or statements of position.

(5) In matters involving a pending claim for benefits, the referee shall give due regard to the rights of the claimant to a speedy and informal hearing and may impose such limitations upon discovery as he deems reasonable.

(6) Repealed.

Source: **L. 77:** Entire section added, p. 469, § 23, effective July 7. **L. 79:** Entire section R&RE, p. 354, § 22, effective September 30. **L. 81:** (1) and (2) amended, p. 502, § 16, effective July 1. **L. 86:** (2) and (3) amended and (3.5) and (6) added, p. 494, § 101, effective July 1. **L. 86, 2nd Ex. Sess.:** (2) amended and (6) repealed, p. 56, §§ 3, 5, effective August 15. **L. 2002:** (1) and (2) amended, p. 339, § 11, effective April 19. **L. 2007:** (1) and (2) amended, p. 804, § 7, effective August 3. **L. 2009:** (1) and (2) amended, (HB 09-1363), ch. 363, p. 1902, § 21, effective July 1.

8-76-114. Local government advisory council. (Repealed)

Source: **L. 77:** Entire section added, p. 469, § 23, effective July 7. **L. 81:** Entire section repealed, p. 488, § 17, effective July 1.

8-76-115. Coverage of Indian tribes.

(1) Indian tribes or tribal units, including all subdivisions or subsidiaries of, and business enterprises wholly owned by, such Indian tribes, subject to the provisions of articles 70 to 82 of this title shall pay premiums and surcharges under the same terms and conditions under sections 8-76-101 and 8-76-102.5 as apply to other premium-paying employers unless an election is made, in the same manner provided in section 8-76-108 (1)(d), to make payments in lieu of premiums into the unemployment compensation fund in amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes shall determine if payments in lieu of premiums will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. Two or more

individual tribal units may apply with the division for the establishment of a group account in the same manner and subject to the same terms as set forth in section 8-76-110 (6).

(3) Indian tribes or tribal units electing to make payments in lieu of premiums shall be billed for the full amount of benefits attributable to service in the employ of said Indian tribes or tribal units, and payment shall be made with respect to said billings in the manner provided in section 8-76-108 (1)(c).

(4) The division may require any Indian tribe or tribal unit that elects to become liable for payments in lieu of premiums to execute and file with the division a surety bond or to deposit money or securities in the manner provided in section 8-76-110 (4).

(5) (a) Failure of the Indian tribe or tribal unit to make required payments pursuant to subsection (3) of this section, to pay premiums pursuant to sections 8-76-101 and 8-76-102.5, to pay assessments of interest and penalties pursuant to sections 8-79-101 and 8-79-104, or to execute and file a surety bond or deposit money or other security pursuant to section 8-76-110 (4) within ninety days after receipt of a delinquency notice by the division shall cause the Indian tribe to lose the option to make payments in lieu of premiums effective with the beginning of the following calendar year unless a division-approved payment plan is established or payment in full is received within the ninety-day period.

(b) The division shall notify the United States internal revenue service and the United States department of labor of failures by the Indian tribe or tribal unit to comply with this subsection (5).

(6) Any Indian tribe that loses the option to make payments in lieu of premiums due to late payment or nonpayment, as described in subsection (5) of this section, shall have such option reinstated effective with the beginning of the following calendar year if, by March 1 of said year, all contributions have been timely made and no premiums or surcharges, payments in lieu of premiums for benefits paid, penalties, or interest remain outstanding.

(7) (a) Failure of the Indian tribe or any tribal unit thereof to make any payment required by subsection (5) of this section, after all collection activities deemed necessary by the division have been exhausted, shall cause services performed for such tribe to not be treated as "employment" for purposes of section 8-70-125.5.

(b) The division may determine that any Indian tribe that loses coverage under the provisions of this subsection (7) may have services performed for such tribe again included as "employment" for purposes of section 8-70-125.5 if all premiums and surcharges, payments in lieu of premiums, penalties and interest, or surety bond or payment of other money or security have been paid.

(8) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information stating that failure to make full payment within the prescribed time period:

(a) Shall cause the Indian tribe to be liable for taxes under the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.;

(b) Shall cause the Indian tribe to lose the option to make payments in lieu of premiums; and

(c) May cause the Indian tribe to be excepted from the definition of "employer" as provided in section 8-70-113 (1)(k) and may cause services in the employ of the Indian tribe, as provided in section 8-70-125.5, to be excepted from "employment".

(9) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe in the manner provided in section 8-76-108 (1)(e).

Source: **L. 2001:** Entire section added, p. 1548, § 5, effective December 21, 2000. **L. 2009:** (1) to (4), (5)(a), (6), (7)(b), and (8)(b) amended, (HB 09-1363), ch. 363, p. 1903, § 22, effective July 1. **L. 2015:** (1) and (5)(a) amended, (SB 15-264), ch. 259, p. 943, § 12, effective August 5.

Editor's note: The federal "Consolidated Appropriations Act, 2001", Pub.L. 106-554, which became law on December 21, 2000, required all states to amend their laws regarding how Indian tribes are treated for unemployment insurance purposes. The 2001 act enacting this section provided for an effective date of December 21, 2000. (See L. 2001, p. 1550.)

8-76-116. Power to levy bond assessments - definition.

(1) As used in this section, "fund" means the unemployment compensation fund created in section 8-77-101 (1).

(2) Upon receiving the certifications specified in section 8-71-103 (2), the division, in addition to the other powers granted by articles 70 to 82 of this title 8, has power to levy certain bond assessments as follows:

(a) All bonds and notes issued pursuant to this section are limited obligations of the division, payable solely from revenues generated through the levy by the authority of a bond assessment against each employer, as defined in section 8-70-113, subject to an experience rating under articles 70 to 82 of this title 8, in an aggregate amount sufficient to satisfy subsection (2)(c) of this section or from revenues generated through the levy by the division of a bond assessment under section 8-71-103 (2)(d); from payments from the division or money applied by the division under section 8-77-101 (1); from proceeds derived from the sale of bonds and notes issued under this section and from the earnings on those proceeds; and from all money and securities in all special accounts created by and under the control of the division under this section. The division

shall collect and administer the bond assessment in substantially the same manner as other employer premiums and surcharges required under articles 70 to 82 of this title 8. Subject to articles 70 to 82 of this title 8, the assessment does not apply to the covered employers of the state and local governments, to those nonprofit organizations that are reimbursable employers, or to political subdivisions electing the special rate.

(b) The division may deposit all or any portion of money collected from assessments for principal-related bond repayment costs into the fund. The portion of these revenues deposited into the fund constitutes part of each employer's unemployment insurance contributions, and the division shall pay amounts from these revenues for the repayment of the principal of bonds issued under this section or section 8-71-103 (2)(d).

(c) The levy must be at a rate or rates that, when applied against the taxable wages of those employers subject to the bond assessment, will produce an amount sufficient to pay all costs associated with or otherwise relating to bonds and notes issued pursuant to this subsection (2), including the principal of, and interest and premium, if any, on, the bonds and notes, the costs of bond issuance and administration, other related fees and costs of the division, and reserves therefor;

(d) Employers shall submit bond assessments described in this subsection (2) associated with nonprincipal-related bond repayment costs in a different manner than the employer's normal premiums and surcharges paid under articles 70 to 82 of this title 8, as determined by the division, and the assessments are a lien upon the real and personal property of an employer in the manner and to the extent set forth in section 8-79-103. The division shall deposit the assessments into the unemployment bond repayment account created in section 8-77-103.5, and shall, after offsetting the division's costs for collecting and administering the bond assessments, use this money only for payment from time to time to one or more special accounts created by and under the control of the issuer of the bonds. The issuer of the bonds shall use all money accruing in a special account only to pay nonprincipal-related bond repayment costs described in subsection (2)(c) of this section, and the issuer of the bonds shall pay any money remaining in such an account and not be required to pay nonprincipal-related bond repayment costs to the division for deposit in the fund.

(e) Employers shall submit bond assessments described in this subsection (2) associated with principal-related bond repayment costs in the same manner as the employer's normal premiums and surcharges paid under articles 70 to 82 of this title 8, and the assessments are a lien upon the real and personal property of an employer in the manner and to the extent set forth in section 8-79-103. The division may deposit all or any portion of the assessments into the fund. The portion of the assessments deposited into the fund constitutes part of each employer's unemployment insurance contributions. Bond assessments described in this subsection (2) associated with principal-related bond repayment costs are available for payment from time to time to one or more special accounts created by and under the control of the issuer of the bonds. All money

accruing in a special account for principal-related bond repayment costs can be used by the issuer of the bonds only to pay the principal costs of the bonds.

(3) The division shall not issue its bonds and notes until the monthly balance in the fund is equal to or less than nine-tenths of one percent of the total wages reported by ratable employers for the calendar year, or the most recent available four consecutive quarters prior to the last computation date, and the governor, the state treasurer, and the executive director of the department of labor and employment have each certified in writing to the division:

(a) That other funding alternatives to the issuance of bonds and notes have been considered and that the issuance of such bonds and notes is the most cost-effective means for the division to maintain adequate balances in the fund or to repay money advanced to the state pursuant to 42 U.S.C. sec. 1321;

(b) The amount of money required to maintain adequate balances in the fund or to repay money advanced to the state pursuant to 42 U.S.C. sec. 1321, or both;

(c) The amount of bonds and notes required for the purposes described in subsection (2) of this section; and

(d) The bond assessment rate or rates, or a formula or other procedure for determining such rate or rates, that will produce an amount sufficient, together with any other money available or expected to be available, to pay all costs associated with or otherwise relating to bonds and notes issued pursuant to subsection (2) of this section, including the principal of, and interest and premium, if any, on, the bonds and notes, the costs of bond issuance and administration, and any other related fees and costs of the division, and reserves therefor.

Source: L. 2022: Entire section added, (SB 22-234), ch. 224, p. 1618, § 7, effective May 25.

ARTICLE 77

Unemployment Compensation and Revenue Funds

8-77-101.	Unemployment compensation fund - state treasurer custodian.	compensation fund - legislative declaration.
8-77-101.5.	CARES act funds - administration - transfer - unemployment	8-77-102. Collection and transmittal of receipts - clearing account - refunds - transfers.

8-77-103.	Advances from federal unemployment trust fund - Title XII repayment fund.	8-77-106.	Unemployment revenue fund.
8-77-103.5.	Issuance of unemployment revenue bonds and notes - unemployment bond repayment account - creation.	8-77-107.	Appropriation of administrative costs.
8-77-104.	Benefit account - requisitions - payment of benefits.	8-77-108.	Federal advance interest repayment fund.
8-77-105.	Discontinuance of unemployment trust fund.	8-77-109.	Employment support fund - unemployment insurance program support fund - created - uses - repeal.
		8-77-110.	Office of future work - study - report. (Repealed)

8-77-101. Unemployment compensation fund - state treasurer custodian.

(1) (a) There is hereby established the unemployment compensation fund, which is a special fund administered by the division exclusively for the purposes of articles 70 to 82 of this title. The state treasurer is the custodian of the fund and is liable under his or her official bond for the faithful performance of all his or her duties in connection with the fund. The state treasurer shall establish and maintain within the fund the accounts specified in this article and such other accounts as may be necessary to reflect the administration of the fund by the division. Notwithstanding any other law, in lieu of or in addition to the assessment described in section 29-4-710.7, C.R.S., the division may pay amounts necessary and appropriate from the unemployment compensation fund to the Colorado housing and finance authority for the repayment of the principal of bonds issued under section 29-4-710.7, C.R.S., and may apply amounts necessary and appropriate from the unemployment compensation fund to the repayment of principal of bonds issued under section 8-71-103 (2)(d).

(b) The unrestricted year-end balance of the unemployment compensation fund, created pursuant to paragraph (a) of this subsection (1), for the 1991-92 fiscal year shall constitute a reserve, as defined in section 24-77-102 (12), C.R.S., and, for purposes of section 24-77-103, C.R.S.:

(I) Any moneys credited to the unemployment compensation fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year; and

(II) Any transfers or expenditures from the unemployment compensation fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(2) The state treasurer, as treasurer and custodian of the unemployment compensation fund, is hereby authorized and directed to cancel of record and refuse to honor warrants or checks issued against any of the accounts established with the unemployment compensation fund which have not been presented for payment within one calendar year from the date of issue.

Source: L. 36, 3rd Ex. Sess.: p. 31, § 9. CSA: C. 167A, § 9. L. 41: p. 780, § 9. L. 43: p. 605, § 5. L. 51: p. 811, § 8. CRS 53: § 82-7-1. C.R.S. 1963: § 82-7-1. L. 73: p. 965, § 1. L. 86: Entire section amended, p. 546, § 11, effective May 28. L. 93: (1) amended, p. 1506, § 4, effective June 6. L. 2012: (1)(a) amended, (HB 12-1120), ch. 27, p. 105, § 16, effective June 1. L. 2012, 1st Ex. Sess.: (1)(a) amended, (HB 12S-1002), ch. 2, p. 2428, § 11, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

ANNOTATION

Law reviews. For note, "The Unemployment Compensation Recipient — Should He Accept a Job?", see 44 Den. L.J. 147 (1967).

must be made by employers who come within the provisions of the act. Cottrell Clothing Co. v. Teets, 139 Colo. 558, 342 P.2d 1016 (1959).

This section creates the unemployment compensation fund to which contributions

8-77-101.5. CARES act funds - administration - transfer - unemployment compensation fund - legislative declaration.

(1) The general assembly finds that:

(a) On March 27, 2020, the federal government enacted the "Coronavirus Aid, Relief, and Economic Security Act" ("CARES Act"), Pub.L. 116-136, pursuant to which Colorado received approximately one billion six hundred seventy-four million dollars from the federal coronavirus

relief fund to use for necessary expenditures incurred due to the current COVID-19 public health emergency;

(b) The public health emergency caused by COVID-19 caused a historic increase in unemployment in the state and this has caused a dramatic increase in the number of claims for benefits from the unemployment compensation fund created in section 8-77-101;

(c) As a result, it is estimated that the unemployment compensation fund, created in section 8-77-101, will have a deficit of approximately two billion dollars by the end of fiscal year 2020-21;

(d) These costs will not be reimbursed by the federal government, nor are they accounted for in the budget approved as of March 27, 2020;

(e) The United States department of treasury has stated that payments to the state unemployment compensation fund, created in section 8-77-101, are an allowable use of the money from the federal coronavirus relief fund, under section 42 U.S.C. sec. 801 (d); and

(f) The transfer of money from the "CARES Act" to the state unemployment compensation fund, created in section 8-77-101, is a necessary expenditure incurred due to the public health emergency with respect to COVID-19.

(2) If, as of December 30, 2020, there is any unexpended money that the state received through section 42 U.S.C. sec. 801 (d) of the "CARES Act", then just prior to the close of business on December 30, 2020, the state treasurer shall transfer the unexpended amount of federal funds to the unemployment compensation fund created in section 8-77-101.

Source: L. 2020: Entire section added, (SB 20-207), ch. 296, p. 1475, § 10, effective July 14.

8-77-102. Collection and transmittal of receipts - clearing account - refunds - transfers.

(1) The division or its agent shall collect or receive all premiums, surcharges, payments in lieu of premiums, fines, and penalties provided for in articles 70 to 82 of this title, all interest on delinquent premiums and surcharges provided for in section 8-79-101, and all other moneys accruing to the fund from the federal government or any other source whatsoever and shall transmit all such moneys to the state treasurer, who shall cause the same to be deposited in a clearing account in his or her name in a state or national bank doing business in this state.

(2) Repealed.

(3) As instructed by the division, the state treasurer shall transfer from the clearing account to the employment security administration fund all amounts received pursuant to the provisions

of section 8-72-110 (5). All interest collected by the division pursuant to the provisions of section 8-79-101, all penalties collected by the division pursuant to sections 8-79-104 (1)(a) and (1)(c) and 8-81-101 (4)(a)(II), and all investigative costs collected by the division pursuant to section 8-81-101 (4)(a)(III) shall be paid into the unemployment revenue fund.

(4) All amounts remaining in the clearing account after payment of refunds and the transfers provided for in subsection (3) of this section shall be paid to the secretary of the treasury of the United States for credit to the account of the state of Colorado in the federal unemployment trust fund established and maintained pursuant to section 904 of the federal "Social Security Act", as amended.

Source: L. 36, 3rd Ex. Sess.: p. 31, § 9. L. 37: p. 1262, § 7. CSA: C. 167A, § 9. L. 41: p. 780, § 9. L. 43: p. 605, § 5. L. 51: p. 811, § 8. CRS 53: § 82-7-2. C.R.S. 1963: § 82-7-2. L. 71: p. 943, § 16. L. 73: p. 965, § 2. L. 80: (3) amended, p. 791, § 33, effective June 5. L. 81: (1) amended, p. 503, § 18, effective July 1. L. 85: (2) repealed, p. 376, § 8, effective July 1. L. 2000: (3) amended, p. 814, § 1, effective July 1. L. 2009: (1) amended, (HB 09-1363), ch. 363, p. 1904, § 23, effective July 1.

Cross references: For section 904 of the "Social Security Act", see 42 U.S.C. § 1104.

8-77-103. Advances from federal unemployment trust fund - Title XII repayment fund.

(1) The division may apply for advances to the state of Colorado from its account in the federal unemployment trust fund and accept responsibility for repayment of advances in accordance with the conditions specified in Title XII of the "Social Security Act", as amended, in order to secure to this state the advantages available under the federal act.

(2) (a) Advances from the federal unemployment trust fund which are interest-bearing shall have such interest cost together with all associated administrative costs assessed against each employer subject to experience rating. This interest assessment shall not apply to the covered employers of state and local government nor to those nonprofit organizations that are reimbursable. This interest assessment shall not apply to the political subdivisions electing the special rate.

(a.1) The interest cost assessment provided for in paragraph (a) of this subsection (2) shall not apply to any employer whose benefit-charge account balance is zero or to any employer with a positive excess of plus seven percent or more.

(b) Using the most recently available data to the division, the total covered wages of all employers subject to the interest assessment, as found for the calendar quarter nearest to the quarter in which a trust fund deficit occurred, shall be summed. This sum shall be divided into the amount of interest due on the advance. The percent resulting from this calculation shall contain four significant figures. The percent shall be applied by the employer to the total covered wages reported on the next contribution report received or that contribution report indicated in the notification of the percent sent to the employer by the division. The amount resulting shall be submitted in the same manner as normal contributions, but as a separate payment, to the division. Each interest-bearing advance may be treated separately.

(c) The amounts received as a result of paragraph (b) of this subsection (2) shall be segregated and collected in the federal advance interest repayment fund.

(3) (a) The Title XII repayment fund, referred to in this subsection (3) as the "fund", is hereby created in the state treasury. The fund consists of money transferred by the state treasurer pursuant to section 24-75-227 (3.7) and any other money that the general assembly may appropriate or transfer to the fund.

(b) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(c) Money in the fund is continuously appropriated to the division to repay federal advances received pursuant to this section, any costs associated with bonds or notes issued pursuant to section 8-71-103 or 8-77-103.5, and any interest owing on federal advances, bonds, or notes, as permitted by the federal "American Rescue Plan Act of 2021", Pub.L. 117-2, as the act may be subsequently amended, and by any other applicable federal law.

(d) The repayment of federal advances, and interest on such advances, is an allowable use of the money received by the state under the federal "American Rescue Plan Act of 2021", Pub.L. 117-2, as specified in 31 CFR 35.6 (b)(3)(ii)(A)(10)(i) and 31 CFR 35.6 (b)(3)(ii)(A)(10)(ii).

(e) The division shall comply with the compliance, reporting, record-keeping, and program evaluation requirements established by the office of state planning and budgeting and the state controller in accordance with section 24-75-226 (5).

Source: L. 36, 3rd Ex. Sess.: p. 31, § 9. L. 37: p. 1262, § 7. CSA: C. 167A, § 9. L. 41: p. 780, § 9. L. 51: p. 811, § 8. CRS 53: § 82-7-3. C.R.S. 1963: § 82-7-3. L. 73: p. 966, § 3. L. 82: Entire section amended, p. 239, § 9, effective July 1. L. 84: (2)(a) and (2)(a.1) amended, pp. 324, 330, § 4, effective July 1. L. 85: (2)(a) amended, p. 376, § 6, effective July 1; (2)(a) amended, p. 1359, § 5, effective July 1. L. 2012: (1) amended, (HB 12-1120), ch. 27, p. 106, § 17, effective June 1. L. 2022: (3) added, (SB 22-234), ch. 224, p. 1620, § 8, effective May 25. L. 2023: (3)(c) amended, (SB 23-232), ch. 141, p. 601, § 3, effective May 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

Cross references: (1) For the federal advance interest repayment fund, see § 8-77-108.

(2) For Title XII of the "Social Security Act", see 42 U.S.C. §§ 1321 to 1324.

8-77-103.5. Issuance of unemployment revenue bonds and notes - unemployment bond repayment account - creation.

(1) The executive director of the department of labor and employment is authorized to request the state treasurer to act as advisor to the division. The division may also request the Colorado housing and finance authority act as issuing manager, to issue such bonds and notes as are necessary to maintain adequate balances in the unemployment compensation fund or to repay money advanced to the state from the federal unemployment trust fund, or both. Such requests shall be made in accordance with the provisions of section 24-36-121 or 29-4-710.7.

(2) There is hereby created the unemployment bond repayment account, which shall be credited with bond assessments for nonprincipal-related bond costs collected on behalf of the division under section 24-36-121 or the Colorado housing and finance authority under section 29-4-710.7 or by the division under section 8-71-103. After the division's costs have been deducted from the bond repayment account, money in the fund shall be paid to the account or accounts maintained by the state treasurer under section 24-36-121 or the Colorado housing and finance authority under section 29-4-710.7 or by the division with respect to bonds issued under section 8-71-103.

Source: L. 91: Entire section added, p. 717, § 3, effective July 1. **L. 2012, 1st Ex. Sess.:** (2) amended, (HB 12S-1002), ch. 2, p. 2429, § 12, effective June 1. **L. 2022:** Entire section amended, (SB 22-234), ch. 224, p. 1620, § 9, effective May 25.

8-77-104. Benefit account - requisitions - payment of benefits.

(1) The benefit account shall consist of moneys requisitioned by the division from the account of the state of Colorado in the federal unemployment trust fund. Expenditures from the

benefit account shall be made by the division solely for payment of benefits provided in articles 70 to 82 of this title, in accordance with regulations prescribed by the director of the division. Such expenditures shall not be subject to any provisions of law requiring specific appropriations for payment thereof.

(2) From time to time the division shall requisition from such account such amounts as it deems necessary to provide for payment of benefits for a reasonable future period of time. Upon receipt of such requisitioned amounts, the state treasurer shall cause the same to be deposited in an account in the name of the division in some state or national bank doing business in this state.

(3) The division is authorized to make all lawful benefit payments by checks drawn against said bank account. The state treasurer shall have no responsibility whatsoever with respect to such benefit payments, nor shall he be responsible for any amounts requisitioned as provided in subsection (2) of this section other than to deposit the same in said bank account.

(4) Any unexpended balance remaining in the benefit account after the expiration of the period of time for which amounts were requisitioned may be used by the division for payment of benefits during a subsequent period of time, or deducted from the amount of a subsequent requisition, or, at the discretion of the division, redeposited with the secretary of the treasury of the United States for credit to the account of the state of Colorado in the federal unemployment trust fund.

(5) Benefits shall be deemed to be due and payable under the provisions of articles 70 to 82 of this title, only to the extent provided for in said articles, and only to the extent that moneys are available in the unemployment compensation fund, and neither the state nor the division shall be liable for payments in excess of the amount of such available moneys.

Source: L. 36, 3rd Ex. Sess.: p. 31, § 9. CSA: C. 167A, § 9. L. 41: p. 780, § 9. L. 51: p. 811, § 8. CRS 53: § 82-7-4. C.R.S. 1963: § 82-7-4. L. 73: p. 966, § 4. L. 86: (1) amended, p. 494, § 102, effective July 1.

8-77-105. Discontinuance of unemployment trust fund.

The provisions of sections 8-77-101 to 8-77-104, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If such unemployment trust fund ceases to exist, or such separate book account is no longer maintained,

all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the director of the division in accordance with provisions of articles 70 to 82 of this title. Such moneys shall be invested in readily marketable classes of securities as now provided by law with respect to public moneys of the state. Such investment, at all times, shall be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the director of the division.

Source: L. 39: p. 588, § 1. L. 41: p. 782, § 9. CSA: C. 167A, § 9. L. 43: p. 607, § 6. L. 51: p. 811, § 8. CRS 53: § 82-7-5. C.R.S. 1963: § 82-7-5. L. 86: Entire section amended, p. 494, § 103, effective July 1.

8-77-106. Unemployment revenue fund.

(1) There is hereby created the unemployment revenue fund, to which shall be credited all interest collected by the division on delinquent premiums or surcharges pursuant to the provisions of section 8-79-101, all penalties collected by the division pursuant to sections 8-79-104 (1)(a) and (1)(c) and 8-81-101 (4)(a)(II), all remaining moneys in the federal advance interest repayment fund after all known interest charges and associated administrative costs pursuant to section 8-77-103 have been paid pursuant to section 8-77-108 (3), and all investigative costs collected by the division pursuant to section 8-81-101 (4)(a)(III).

(2) All moneys accruing to the unemployment revenue fund in any manner whatsoever shall be maintained in a separate account by the state treasurer and shall be annually appropriated by the general assembly to the division for the purpose of enforcing compliance with the "Colorado Employment Security Act". Moneys in the unemployment revenue fund shall first be used to make refunds of interest erroneously collected under the provisions of section 8-79-101.

(3) and (4) Repealed.

(5) Prior to the beginning of any fiscal year in which the department requests an allocation diversion from the unemployment revenue fund, the joint budget committee in conjunction with the state auditor shall certify that the department has met the goals and time lines established in the work plans submitted the previous year. No additional money shall be appropriated until all such prior conditions of the work plan are satisfied.

(6) Of the moneys appropriated to the department for allocation to the division for administrative services, not less than fifty percent shall be used to fund enforcement activities.

None of the remaining moneys shall be allocated to services which compete directly with services available in the private sector.

(7) Repealed.

Source: L. 36, 3rd Ex. Sess.: p. 49, § 18. CSA: C. 167A, § 18. L. 41: p. 801, § 18. CRS 53: § 82-7-6. C.R.S. 1963: § 82-7-6. L. 73: p. 967, § 5. L. 77: (2) amended, p. 470, § 24, effective July 7. L. 79: (1) amended, p. 355, § 23, effective September 30. L. 81: (1) amended, p. 503, § 19, effective July 1. L. 87: (3) amended, p. 414, § 1, effective June 20. L. 90: (2) amended and (5) and (6) added, p. 1765, § 6, effective June 8; (3) and (4) repealed, p. 1766, § 8, effective June 8. L. 2000: (1), (2), and (5) amended, p. 814, § 2, effective July 1. L. 2009: (1) amended, (HB 09-1363), ch. 363, p. 1904, § 24, effective July 1. L. 2020: (7) added, (HB 20-1406), ch. 178, p. 811, § 3, effective June 29. L. 2021: (7) repealed, (SB 21-266), ch. 423, p. 2795, § 4, effective July 2.

Editor's note: The provisions of the "Colorado Employment Security Act" are contained in articles 70 to 82 of this title 8.

8-77-107. Appropriation of administrative costs.

(1) Moneys credited to the account of the state of Colorado in the federal unemployment trust fund pursuant to section 903 of the federal "Social Security Act" may be requisitioned only for payment of the costs incurred by the division for administration of the provisions of articles 70 to 82 of this title, and for benefits. Such administrative costs shall be expended only pursuant to specific appropriations made by the general assembly and only if such costs are incurred and requisitions made therefor after enactment of an appropriation act.

(2) Any appropriation act enacted shall:

(a) Specify the amount of money appropriated and the purpose for which appropriated; and

(b) (Deleted by amendment, L. 2003, p. 2047, § 1, effective May 22, 2003.)

(c) Limit the amount which may be obligated during any twelve-month period beginning on July 1 and ending on the following June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to such unemployment trust fund pursuant to section 903 of the federal "Social Security Act" during the same twelve-month period and the thirty-four preceding twelve-month periods exceeds the aggregate of the amounts paid out for benefits and obligated for administrative costs during such thirty-five twelve-month periods.

(3) Amounts credited to the unemployment trust fund pursuant to section 903 of the federal "Social Security Act" which are obligated for payment of administrative costs or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administrative costs during any twelve-month period specified in subsection (2) of this section may be charged against any amount credited during any twelve-month period earlier than the thirty-fourth twelve-month period preceding such period.

(4) Moneys appropriated as provided in subsection (2) of this section for payment of administrative costs shall be requisitioned from time to time by the division as required for payment of such costs as incurred, and upon receipt shall be credited to an appropriately designated account to which all payments shall be charged. Any unexpended portion of moneys appropriated for payment of administrative costs shall be returned for credit to the account of the state of Colorado in the federal unemployment trust fund.

Source: L. 73: p. 967, § 6. C.R.S. 1963: § 82-7-7. L. 83: (2)(c) and (3) amended, p. 436, § 6, effective April 12. L. 2003: (2)(a) and (2)(b) amended, p. 2047, § 1, effective May 22.

Cross references: For section 903 of the "Social Security Act", see 42 U.S.C. § 1103.

8-77-108. Federal advance interest repayment fund.

(1) There is hereby created the federal advance interest repayment fund, to which shall be credited all assessments collected by the division on total wages pursuant to the provisions of section 8-77-103 (2).

(2) All moneys accruing to the fund in any manner whatsoever shall be maintained in a separate account by the state treasurer; except that all funds in the fund are hereby appropriated to the division for use in repayment of interest due and associated administrative costs pursuant to section 8-77-103.

(3) After all known interest charges and associated administrative costs pursuant to section 8-77-103 have been paid, any remaining moneys in the fund may be transferred to the unemployment revenue fund. Interest required to be paid under section 8-77-103 shall not be paid, directly or indirectly, from amounts in the unemployment compensation fund.

Source: L. 82: Entire section added, p. 240, § 10, effective July 1. L. 85: (2) and (3) amended, p. 376, § 7, effective July 1.

Cross references: For the unemployment revenue fund, see § 8-77-106; for the unemployment compensation fund, see § 8-77-101.

8-77-109. Employment support fund - unemployment insurance program support fund - created - uses - repeal.

(1) (a) Repealed.

(b) There is established the employment support fund. The fund consists of eleven percent of the support surcharge rate assessed annually as part of each employer's support surcharge rate payments paid and dedicated to the employment support fund in accordance with section 8-76-102.5 (3)(a)(IV) and other money credited to the fund.

(2) (a) (I) (A) Except as set forth in subsection (2)(a)(II) of this section and except as provided in subsection (2)(a)(I)(B) of this section, the state treasurer shall credit the money collected pursuant to this section to the employment support fund created in subsection (1) of this section.

(B) To the extent allowed by the United States department of labor employment and training administration, the state treasurer shall credit fifteen percent of each employer's annual support surcharge rate determined pursuant to section 8-76-102.5 (3)(a)(IV) to the benefit recovery fund, up to a maximum of fifteen million dollars each year.

(II) (A) At the end of the 2024-25 state fiscal year, and at the end of each state fiscal year thereafter, the state treasurer shall credit any money collected pursuant to this section that would cause the balance in the employment support fund to exceed three million five hundred thousand dollars, as adjusted annually by an amount equal to the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars and excluding any gifts, grants, or donations, to the unemployment compensation fund created in section 8-77-101 (1).

(B) Repealed.

(C) Any amount credited to the unemployment compensation fund pursuant to this subsection (2)(a)(II) is not included in the calculation of an employer's annual experience rate.

(III) The general assembly shall appropriate the money in the employment support fund annually to the department of labor and employment:

(A) To be used to offset funding deficits for program administration, including information technology initiatives, under the provisions of articles 70 to 83 of this title 8 and to further support programs to strengthen unemployment fund solvency; and

(B) To fund labor standards, labor relations, and the Colorado works grievance procedure under the provisions of articles 1 to 6, 9, 10, 12, and 13 of this title 8 and section 26-2-716 (3)(b).

(a.5) (Deleted by amendment, L. 2003, p. 2181, § 1, effective June 3, 2003.)

(a.7) and (a.8) Repealed.

(a.9) (I) Repealed.

(II) (A) The unemployment insurance program support fund, referred to in this subsection (2)(a.9) as the "fund", is created in the state treasury. Notwithstanding any provision of this subsection (2) to the contrary, the state treasurer shall credit fifty-four percent of each employer's annual support surcharge rate under section 8-76-102.5 (3)(a)(IV) to the fund. At the end of the 2024-25 state fiscal year, and at the end of each state fiscal year thereafter, the state treasurer shall credit any money collected pursuant to this section that would cause the balance in the fund to exceed twenty-five million dollars, as adjusted annually by an amount equal to the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars and excluding any gifts, grants, or donations, to the unemployment compensation fund. Money in the fund shall be used for administrative costs of the division, including technology and staffing costs, and other costs to support the unemployment insurance program as determined by the director of the division. Money in the fund is subject to annual appropriation by the general assembly for the purposes of this subsection (2)(a.9) and shall not revert to the general fund or any other fund at the end of any state fiscal year. The money in the fund is exempt from section 24-75-402. At any time, the money in the unemployment insurance program support fund may be appropriated by the general assembly to the unemployment compensation fund or allocated to the unemployment compensation fund at the discretion of the executive director of the department of labor and employment.

(B) Repealed.

(C) This subsection (2)(a.9) is repealed, effective June 30, 2031.

(b) The unexpended and unobligated moneys in the employment support fund shall not revert to the general fund at the end of any fiscal year, and any unobligated amounts remaining in the fund at the end of any fiscal year shall be retained in the employment support fund for purposes of this subsection (2).

(c) On and after July 1, 2001, moneys from the statewide indirect cost allocation agreement with the federal government may be used to supplement moneys in the employment support fund, in a manner that is consistent with the provisions of this subsection (2).

(d) (Deleted by amendment, L. 2002, p. 207, § 1, effective August 7, 2002.)

(3) (Deleted by amendment, L. 99, p. 974, § 2, effective May 28, 1999.)

(4) and (5) Repealed.

(6) (a) The portion of each employer's support surcharge rate that the employer paid and that is dedicated to the employment support fund pursuant to section 8-77-109 (1)(b), to the benefit recovery fund pursuant to section 8-73-116, to the workforce development fund pursuant to section 8-83-107, and to the unemployment insurance program support fund pursuant to subsection (2)(a.9)(II)(A) of this section:

(I) Is not included in the calculation of the employer's annual experience rate and credit under the "Federal Unemployment Tax Act", 26 U.S.C. sec. 3301 et seq.; and

(II) Must be immediately deposited, upon payment, into a separate account, unrelated to the unemployment compensation fund.

(b) Any money transferred or credited from the employment support fund, the benefit recovery fund, the workforce development fund, the unemployment insurance program support fund, or support surcharge rate payments to the unemployment compensation fund pursuant to this section is not used in calculating the employer's experience rate or percent of excess for the standard premium rate schedule.

Source: **L. 90:** Entire section added, p. 1766, § 7, effective June 8. **L. 92:** (3) amended, p. 1796, § 8, effective April 10. **L. 96:** (1) amended, p. 996, § 2, effective May 23; (4) repealed, p. 1229, § 47, effective August 7. **L. 99:** (1), (2), and (3) amended, p. 974, § 2, effective May 28. **L. 2001:** (2) amended, p. 1218, § 1, effective June 5. **L. 2002:** (2)(a.5) added, p. 151, § 3, effective March 27; (2)(a)(II) and (2)(d) amended, p. 207, § 1, effective August 7. **L. 2003:** (2)(a.7) added, p. 455, § 5, effective March 5; (2)(b) amended, p. 1540, § 2, effective May 1; (2)(a)(II)(B), (2)(a.5), and (2)(c) amended, p. 2181, § 1, effective June 3. **L. 2009:** (2)(a.8) added, (SB 09-208), ch. 149, p. 619, § 4, effective April 20; (1) amended and (2)(a.9) added, (SB 09-076), ch. 409, p. 2252, §§ 2, 3, effective July 1; (1) and (2)(a.9) amended, (HB 09-1363), ch. 363, p. 1904, §§ 25, 26, effective July 1. **L. 2011:** (1) and (2)(a.9) amended, (HB 11-1288), ch. 212, p. 929, § 14, effective July 1. **L. 2012:** IP(2)(a) and (2)(a)(I) amended, (HB 12-1120), ch. 27, p. 106, § 18, effective June 1. **L. 2012, 1st Ex. Sess.:** (1)(a)(II), (1)(b)(I), and (2)(a.9)(I)(B) amended, (HB 12S-1002), ch. 2, p. 2429, § 13, effective June 1. **L. 2020:** (2)(a)(II)(C) added, (HB 20-1415), ch. 276, p. 1356, § 2, effective July 11; (1)(b) amended and (2)(a.7) and (2)(a.8) repealed, (SB 20-207), ch. 296, p. 1474, § 8, effective July 14. **L. 2021:** (2)(a.9)(II) amended, (SB 21-218), ch. 62, p. 250, § 1, effective April 27. **L. 2022:** (1)(b) and IP(2)(a) amended and (5) added, (SB 22-234), ch. 224, p. 1621, § 10, effective May 25. **L. 2023:** (1)(b), (2)(a), and (2)(a.9)(II)(A) amended, (5) repealed, and (6) added, (SB 23-232), ch. 141, p. 601, § 4, effective May 1. **L. 2024:** (1)(b), (2)(a)(I)(B), (2)(a)(II)(A), (2)(a.9)(II)(A), IP(6)(a), and (6)(b) amended and (2)(a)(II)(B) repealed, (HB 24-1409), ch. 318, p. 2128, § 3, effective June 15. **L. 2025:** (1)(b), (2)(a)(I)(B),

(2)(a)(II)(A), (2)(a.9)(II)(A), IP(6)(a), and (6)(b) amended, (SB 25-242), ch. 145, p. 546, § 3, effective April 28.

Editor's note: (1) Amendments to subsection (1) by Senate Bill 09-076 and House Bill 09-1363 were harmonized.

(2) The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

(3) Subsections (1)(a)(II) and (2)(a.9)(I)(B) provided for the repeal of subsections (1)(a) and (2)(a.9)(I), effective December 31, 2012. (See L. 2012, p. 2429.)

(4) Subsection (2)(a.9)(II)(B) provided for the repeal of subsection (2)(a.9)(II)(B), effective December 31, 2021. (See L. 2021, p. 250.)

(5) Subsection (2)(a)(II)(C) provided for the repeal of subsection (2)(a)(II)(C), effective July 1, 2022. (See L. 2020, p. 1356.)

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (4), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration in HB 24-1409, see section 1 of chapter 318, Session Laws of Colorado 2024.

8-77-110. Office of future work - study - report. (Repealed)

Source: **L. 2020:** Entire section added, (SB 20-207), ch. 296, p. 1476, § 11, effective July 14. **L. 2022:** Entire section amended, (SB 22-140), ch. 357, p. 2562, § 5, effective July 1. **L. 2023:** Entire section repealed, (SB 23-051), ch. 37, p. 133, § 2, effective March 23.

Cross references: For the office of future of work, see article 15.8 of this title 8.

ARTICLE 78

Employment Security Administration Fund

8-78-101. Establishment of
administration fund.

8-78-103. Deposit and disbursement.

8-78-104. Reimbursement of fund.

8-78-102. Protection against loss.

8-78-101. Establishment of administration fund.

There is hereby created in the state treasury a special fund to be known as the employment security administration fund. All money deposited or paid into this fund shall be continuously available to the division for expenditure in accordance with the provisions of articles 70 to 82 of this title, and shall not lapse at any time or be transferred to any other fund. The fund shall consist of all money received from the United States of America, or any agency thereof; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment security administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of articles 70 to 82 of this title.

Source: L. 36, 3rd Ex. Sess.: p. 42, § 13. CSA: C. 167A, § 13. L. 39: p. 577, § 10. L. 41: p. 792, § 13. L. 49: p. 727, § 9. L. 51: p. 818, § 12. CRS 53: § 82-8-1. L. 54: p. 138, § 2. C.R.S. 1963: § 82-8-1.

8-78-102. Protection against loss.

Such money shall be secured by the depository in which it is held to the same extent and in the same manner as required by the general depository law of this state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security administration fund provided under this article. The liability imposed under this section shall exist in addition to any liability upon any separate bond existent on March 15, 1951, or which may be given in the future.

Source: L. 36, 3rd Ex. Sess.: p. 43, § 13. CSA: C. 167A, § 13. L. 51: p. 818, § 12. CRS 53: § 82-8-2. C.R.S. 1963: § 82-8-2.

8-78-103. Deposit and disbursement.

All money in the employment security administration fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other special funds in the state treasury. All money in this fund shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the employment security program; except that moneys received pursuant to the federal "Social Security Act", as amended, which constitute this state's share of the excess remaining in the federal unemployment account on July 1 of any fiscal year shall be disbursed solely for the purposes and in the amounts found necessary for the proper and efficient administration of articles 70 to 82 of this title, as determined and mutually agreed upon by the director of the division, the controller, and the governor.

Source: L. 51: p. 818, § 12. CSA: C. 167A, § 13. CRS 53: § 82-8-4. C.R.S. 1963: § 82-8-4. L. 76: Entire section amended, p. 352, § 19, effective October 1.

Cross references: For the "Social Security Act" generally, see 42 U.S.C. § 301 et seq.

8-78-104. Reimbursement of fund.

If any money received in the employment security administration fund, which is not a part of this state's share of the excess remaining in the federal unemployment account on July first of any fiscal year, is found by the secretary of labor, because of any action or contingency, to have been lost or to have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the employment security program, it is the policy of this state that such money shall be replaced by money appropriated for such purpose from the general funds of this state to the employment security administration fund for expenditures as provided in section 8-78-103 or by those funds which constitute this state's share of the excess remaining in the federal unemployment account on July first of any fiscal year. Upon receipt of such a finding by the secretary of labor, the division shall promptly report the amount required for such replacement to the governor, and the governor, at the earliest opportunity, shall submit to the general assembly a request for the appropriation of such amount.

Source: L. 51: p. 818, § 12. CSA: C. 167A, § 13. CRS 53: § 82-8-5. C.R.S. 1963: § 82-8-5.

ARTICLE 79

Collection of Contributions, Penalties, Interest

8-79-101.	Interest on past-due premiums and surcharges.	8-79-104.	Failure to file true report - penalty.
8-79-102.	Collection of premiums and surcharges, benefit overpayments, penalties, and interest - rules.	8-79-105.	Levy on property - sale.
		8-79-106.	No indemnity bond required.
		8-79-107.	Immediate assessment - when.
8-79-103.	Premiums, surcharges, and assessments a lien on property.	8-79-108.	Refunds.

8-79-101. Interest on past-due premiums and surcharges.

Premiums or surcharges unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of eighteen percent per annum or one and one-half percent per month or any portion thereof on and after such date until payment plus accrued interest is received by the division. Interest collected pursuant to this section shall be paid into the unemployment revenue fund.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. CSA: C. 167A, § 14. L. 41: p. 794, § 14. L. 45: p. 715, § 7. L. 51: p. 820, § 13. CRS 53: § 82-9-1. C.R.S. 1963: § 82-9-1. L. 76: Entire section amended, p. 352, § 20, effective October 1. L. 81: Entire section amended, p. 503, § 20, effective July 1. L. 83: Entire section amended, p. 2045, § 9, effective October 1. L. 86: Entire section amended, p. 495, § 104, effective July 1. L. 2009: Entire section amended, (HB 09-1363), ch. 363, p. 1905, § 27, effective July 1.

Editor's note: Section 10 of chapter 510, Session Laws of Colorado 1983, provides that the section of the act amending this section is effective October 1, 1983, but the governor did not approve the act until October 14, 1983.

ANNOTATION

Law reviews. For article, "Collecting Pre- and Post- Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from

8-79-102. Collection of premiums and surcharges, benefit overpayments, penalties, and interest - rules.

(1) The division shall institute such practices and procedures as it deems necessary to collect any money due the division in the form of delinquent premiums, surcharges, or overpaid benefits, including all penalties and interest thereon. In the case of overpaid benefits, the division may, in addition to instituting collection procedures, withhold subsequent benefit payments to which the claimant is or becomes entitled and apply the amount withheld as an offset against the overpayment. However, any amount withheld shall not exceed twenty-five percent of a claimant's benefit payments except in those cases where overpayments have occurred on an established current claim or as a result of false representation or willful failure to disclose a material fact.

(2) Repealed.

(3) If, after due notice, any employer or claimant defaults in any payment of premiums or surcharges, the repayment of overpaid benefits, or the payment of any interest or penalties thereon, the amount due may be collected by civil action, which shall include the right of attachment in the name of the division. Court costs shall not be charged to the division, but any employer or claimant against whom judgment is taken shall be charged with all costs of such action. All costs collected by the division shall be paid into the registry of the court.

(4) The collection efforts of the division shall be in accordance with subsection (1) of this section; except that, in instances involving willful violation of any provision of articles 70 to 82 of this title, or if deemed appropriate by the director of the division, the division may seek relief under subsection (3) of this section.

(5) (a) Notwithstanding any other provision of this title, the division shall charge an employer's account for an improper payment from the unemployment compensation fund if the division determines that:

(I) The payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the division for information relating to the claim for compensation; and

(II) The employer or agent has established a pattern of failing to respond timely or adequately to such requests.

(b) The division shall promulgate rules to specify what factors and frequency constitute a pattern of failing to respond timely or adequately for purposes of enforcing this subsection (5).

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. CSA: C. 167A, § 14. L. 39: p. 578, § 11. L. 41: p. 794, § 14. CRS 53: § 82-9-2. C.R.S. 1963: § 82-9-2. L. 81: Entire section amended, p. 504, § 21, effective July 1. L. 83: Entire section R&RE, p. 431, § 10, effective June 3. L. 85: (1) amended, p. 368, § 6, effective July 1. L. 2009: (1) and (3) amended, (HB 09-1363), ch. 363, p. 1905, § 28, effective July 1. L. 2013: (5) added, (HB 13-1124), ch. 97, p. 312, § 1, effective August 7. L. 2021: (2) repealed, (SB 21-055), ch. 12, p. 75, § 6, effective March 21; (4) amended, (SB 21-266), ch. 423, p. 2795, § 5, effective July 2.

ANNOTATION

The amount that may be assessed against a person by this section is a collection fee and thus dischargeable in bankruptcy. In re O'Brien, 110 B.R. 27 (Bankr. D. Colo. 1990).

Once the department of labor and employment determined that it had overpaid benefits and that the bankruptcy debtor had obtained those overpayments by false representation and/or willful failure to disclose material facts, subsection (1) allowed it to withhold subsequent benefit payments to which the claimant became entitled and apply the amount withheld as an offset against the overpayment in addition to instituting collection procedures. In re Adamic, 291 B.R. 175 (Bankr. D. Colo. 2003).

The department's determination that the debtor had received overpayments circumscribed, or limited, any future claims for benefits, permitting outright denial of benefits and a recoupment of the amount of the overpayments. In re Adamic, 291 B.R. 175 (Bankr. D. Colo. 2003).

The department is entitled to recoup earlier overpayments from debtor's current claim for benefits without violating an automatic stay. In re Adamic, 291 B.R. 175 (Bankr. D. Colo. 2003).

Overpaid unemployment compensation obtained by "false pretenses, a fraudulent representation, or actual fraud" are nondischargeable under 11 U.S.C. § 523(a)(2)(A) of the federal bankruptcy code. In re Wine, 558 B.R. 438 (Bankr. D. Colo. 2016).

And penalties arising from the overpaid unemployment compensation obtained by false pretenses, a fraudulent representation, or actual fraud are nondischargeable under 11 U.S.C. § 523(a)(2)(A) to the same extent as the restitutionary debt for overpaid unemployment compensation. In re Wine, 558 B.R. 438 (Bankr. D. Colo. 2016).

A collection fee under subsection (2) is not "a fine, penalty, or forfeiture", therefore, it is dischargeable under 11 U.S.C. § 523 (a)(7). It is compensation for

8-79-103. Premiums, surcharges, and assessments a lien on property.

(1) The premiums and surcharges imposed by sections 8-76-101 to 8-76-104 and any assessments imposed pursuant to section 29-4-710.7, C.R.S., shall be a first and prior lien upon the real and personal property of any employer subject to articles 70 to 82 of this title, except as to the lien of general property taxes and except as to valid liens existing at the time of the filing of the notice provided for in section 8-79-105, and shall take precedence over all other liens or claims of whatsoever kind or nature. Any employer that sells, assigns, transfers, conveys, loses by foreclosure of a subsequent lien, or otherwise disposes of its business, or any part thereof, shall file with the division such reports as the director of the division, by rule, may prescribe within ten days after the date of any such transaction. The employer's successor shall be required to withhold from the purchase money an amount of money sufficient to cover the amount of premiums or surcharges and assessments due and unpaid until such time as the former owner produces a receipt from the division showing that the premiums, surcharges, or assessments have been paid or a certificate that no premiums, surcharges, or assessments are due. Any successor that fails to comply with this subsection (1) shall be personally liable for the payment of any premiums, surcharges, or assessments due and unpaid.

(2) When the business or property of any employer is placed in receivership, seized under distraint for property taxes, or assigned for the benefit of creditors, all premiums, surcharges, assessments, penalties, and interest imposed by articles 70 to 82 of this title and section 29-4-710.7, C.R.S., shall be a prior and preferred claim against all of the property of said employer, except as to the lien of general property taxes, and as to valid liens existing at the time of the filing of the notice provided for in section 8-79-105, and as to claims for wages of not more than two hundred fifty dollars to each claimant earned within six months after the commencement of the proceeding. No sheriff, receiver, assignee, or other officer shall sell the property of any employer under process or order of court in such cases without first ascertaining from the division the amount of any premiums, surcharges, or assessments due and payable under articles 70 to 82 of this title and section 29-4-710.7, C.R.S. If any premiums, surcharges, or assessments are due, owing, and unpaid, it is the duty of such sheriff, receiver, assignee, or other officer to first pay the outstanding amount of premiums, surcharges, or assessments out of the proceeds of the sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings. In the event of an employer's being subject to an order for relief, judicially confirmed extension proposal, or composition under the federal bankruptcy code of 1978, title 11 of the United States Code, premiums, surcharges, or assessments then or thereafter due shall be entitled to such priority as is provided in section 507 of that code for taxes due the state of Colorado.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. CSA: C. 167A, § 14. L. 39: p. 578, § 11. L. 41: p. 794, § 14. CRS 53: § 82-9-3. C.R.S. 1963: § 82-9-3. L. 80: (2) amended, p. 782, § 2, effective June 5. L. 81: Entire section amended, p. 504, § 22, effective July 1. L. 86: (1) amended, p. 495, § 105, effective July 1. L. 91: Entire section amended, p. 718, § 4, effective July 1. L. 2009: Entire section amended, (HB 09-1363), ch. 363, p. 1906, § 29, effective July 1.

ANNOTATION

Lessor not liable for lessee's unpaid employment contributions. Where a lessee abandons the business premises without notice, and the lessor operates the business until arrangements are made for a new lessee to take over, the lessor is not liable for the lessee's unpaid unemployment contributions. Only when a successor pays

for the business and fails to withhold from the purchase price enough money to satisfy unpaid unemployment contributions is that successor personally liable for the contributions. *Mountain's Shadow Inn, Inc. v. Colo. Dept. of Labor & Emp.*, 672 P.2d 522 (Colo. 1983).

8-79-104. Failure to file true report - penalty.

(1) (a) (I) Repealed.

(II) (A) It is the responsibility of each employer subject to articles 70 to 82 of this title 8 to file true and accurate reports, whether or not premiums or surcharges are due, and to pay all premiums and surcharges when due. Whenever an employer fails to furnish wage reports required by the division by the due date, the division shall assess against the employer a penalty of fifty dollars for each occurrence; except that an "employer newly subject" as defined by section 8-76-102.5 (4) shall be assessed a penalty of ten dollars for each occurrence during the first four quarters of coverage. Each subsequent quarter in which the employer continues the failure to file the wage reports shall be considered a separate occurrence. Penalties collected by the division pursuant to this subsection (1)(a)(II)(A) shall be paid into the unemployment revenue fund.

(B) This subparagraph (II) is effective December 31, 2012.

(b) If any employer fails or neglects to make and file such reports, as required by articles 70 to 82 of this title or by the rules of the division pursuant thereto, or willfully makes a false or fraudulent report, the division may make an assessment of the premiums or surcharges due from its own knowledge and from such information as it can obtain through testimony or otherwise.

(c) An employer who is delinquent in paying premiums or surcharges on the computation date shall have a penalty assessed by the division. The amount of the penalty shall be the amount of delinquent premiums or surcharges; except that the penalty shall not exceed an amount equal to one percent of the employer's chargeable wages paid that were subject to unemployment insurance in the preceding calendar year. The amount of the penalty for an employer that was not subject to the provisions of articles 70 to 82 of this title in the preceding calendar year shall be the amount of delinquent premiums or surcharges. Such penalty shall be in addition to any payments and interest due under articles 70 to 82 of this title. The penalty shall be payable in four quarterly installments during the current calendar year and shall be remitted to the division with the employer's quarterly report. Penalties collected by the division pursuant to this paragraph (c) shall be paid into the unemployment revenue fund.

(d) Any penalty imposed pursuant to this subsection (1) shall be waived if good cause is shown for failing to pay the premiums or surcharges or to make wage reports, as prescribed by rule of the division. Penalties under this subsection (1) that are unpaid on the date on which they are due shall bear interest at the same rate and in the same manner as unpaid premiums and surcharges under articles 70 to 82 of this title 8. The provisions of section 13-80-108 (9) shall be used for determining when an offense is committed for the purposes of this subsection (1).

(2) Any assessment so made and certified by the division shall be prima facie good and sufficient for all legal purposes. Notice and demand for premiums or surcharges plus any interest and penalties imposed by articles 70 to 82 of this title shall be made upon forms as prescribed by the division, and the notice and demand shall become final fourteen calendar days after the date of delivery of the notice and demand to the employer in person or after the date of the transmittal by electronic means or by registered mail to the employer's last-known address or place of business. The employer may file a request for review or modification of the assessment with the division within the fourteen days in the manner and form prescribed by the division. The division, on the basis of evidence submitted by the employer disclosing the correct amount of premiums or surcharges, may amend or otherwise modify its previous assessments.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. CSA: C. 167A, § 14. L. 39: p. 578, § 11. L. 41: p. 794, § 14. L. 43: p. 609, § 10. CRS 53: § 82-9-4. C.R.S. 1963: § 82-9-4. L. 81: Entire section amended, p. 505, § 23, effective July 1. L. 84: (1) amended, p. 319, § 11, effective July 1. L. 86: (1) amended, p. 703, § 9, effective May 23; (1) amended, p. 496, § 106, effective July 1. L. 91: (1) amended, p. 1359, § 1, effective September 1. L. 96: (1)(a) amended, p. 384, § 11, effective January 1, 1997. L. 2000: (1)(a) and (1)(c) amended, p. 815, § 3, effective July 1. L. 2002: (2) amended, p. 339, § 12, effective April 19. L. 2009: Entire section amended, (HB 09-1363), ch. 363, p. 1907, § 30, effective July 1. L. 2011: (1)(a) amended, (HB 11-1288), ch. 212, p. 931, § 15, effective July 1. L. 2012, 1st Ex. Sess.: (1)(a)(I)(B) amended, (HB 12S-1002), ch. 2, p. 2430,

§ 14, effective June 1. **L. 2023:** (1)(a)(II)(A) and (1)(d) amended, (SB 23-232), ch. 141, p. 603, § 5, effective May 1.

Editor's note: Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), effective December 31, 2012. (See L. 2012, p. 2430.)

8-79-105. Levy on property - sale.

(1) If any premiums, surcharges, penalties, or interest imposed by articles 70 to 82 of this title, as shown by reports filed by the employer or as shown by assessment duly made as provided in section 8-79-104 or 8-79-107, are not paid within five days after they are due and demand is made therefor, the division may issue a notice setting forth the name of the employer, the amount of the premiums, surcharges, penalties, and interest, the date of the accrual thereof, and a statement that the division claims a first and prior lien therefor, except as provided in this article. Such notice shall be on forms prepared by the division and shall be verified by any duly qualified representative of the division and may be filed or recorded in the office of the county clerk and recorder of any county in the state in which the employer owns property. After such notice has been filed or recorded, the division may issue a warrant under its official seal directed to the sheriff of any county of the state or any duly authorized agent of the division commanding him or her to levy upon, seize, and sell such of the real and personal property of the employer found within his or her county necessary for the payment of the amount due, together with interest and penalties, as provided by law.

(2) It is the duty of any county clerk and recorder to whom such notices are sent to file or record the same without cost. Upon the payment of all premiums, surcharges, penalties, and interest, a lien for such premiums, surcharges, penalties, and interest, as shown upon the records of the county clerk and recorder, shall be released by the division in the same manner as judgments are released.

(3) The sheriff, or any duly authorized agent of the division, shall forthwith levy upon the property of the employer, and personal property so levied upon shall be sold in all respects with like effect and in the same manner as prescribed by law with respect to executions of distraint warrants issued by a county treasurer for the collection of taxes levied upon personal property. Real property shall be levied upon and sold in the same manner as prescribed by law with respect to executions against property upon judgment of a court of record. The sheriff shall be entitled to such fees for executing such warrants as are allowed by law for similar services.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. CSA: C. 167A, § 14. L. 39: p. 578, § 11. L. 41: p. 794, § 14. CRS 53: § 82-9-5. C.R.S. 1963: § 82-9-5. L. 77: (1) amended, p. 470, § 25, effective July 7. L. 81: (1) and (2) amended, p. 505, § 24, effective July 1. L. 2009: (1) and (2) amended, (HB 09-1363), ch. 363, p. 1908, § 31, effective July 1.

8-79-106. No indemnity bond required.

In any action of whatever nature brought under articles 70 to 82 of this title, no bond shall be required of the division, nor shall any sheriff or agent of the division require from said division an indemnifying bond for executing the writs of attachment and warrants provided for in this article. No sheriff or agent of the division shall be liable in damages to any person when acting in accordance with such writs and warrants.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. CSA: C. 167A, § 14. L. 39: p. 578, § 11. L. 41: p. 794, § 14. CRS 53: § 82-9-6. C.R.S. 1963: 82-9-6. L. 64: p. 288, § 219. L. 73: p. 1410, § 66.

8-79-107. Immediate assessment - when.

If the division believes that the collection of any premiums, surcharges, penalties, or interest under the provisions of articles 70 to 82 of this title will be jeopardized by delay, whether or not the time otherwise prescribed by articles 70 to 82 of this title or any rules issued pursuant thereto for making reports and paying such premiums or surcharges has expired, it may immediately assess such premiums and surcharges, together with all penalties and interest, the assessment of which is provided for by articles 70 to 82 of this title. Such premiums, surcharges, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the division for the payment thereof.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. CSA: C. 167A, § 14. L. 39: p. 578, § 11. L. 41: p. 794, § 14. CRS 53: § 82-9-7. C.R.S. 1963: § 82-9-7. L. 81: Entire section amended, p. 506, § 25, effective July 1. L. 2009: Entire section amended, (HB 09-1363), ch. 363, p. 1908, § 32, effective July 1.

8-79-108. Refunds.

(1) An employing unit may file an application for the refund of money paid erroneously in such form and manner as the director of the division may prescribe by rule, including in person,

by mail, by telephone, or by electronic means. If the division determines that such payment, or any portion thereof, was paid erroneously, the division shall either issue to the employing unit a credit memo therefor, or make a refund thereof, in either event without interest thereon. Where no application is received, and the division determines that premiums or surcharges have been paid erroneously, the division may, at its option, correct any erroneous payments. Any such correction, if it involves less than one hundred dollars, may be by credit memo. In no event may an employing unit recover money paid erroneously, or otherwise, that has been paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application for refund. If such application for refund is refused, or if no final action is taken thereon within six months, an employing unit may commence an action in the district court for the city and county of Denver for the collection thereof. In the event of court action, no recovery of any money paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application shall be allowed. For like cause and for the same period, a recovery, as above indicated, may be allowed on the division's own initiative.

(2) Repealed.

(3) Refunds of interest that was paid into the unemployment compensation fund shall be paid from the unemployment compensation fund, and refunds of interest that was paid into the unemployment revenue fund shall be paid from the unemployment revenue fund. All refunds of premiums and surcharges shall be made from the unemployment compensation fund.

Source: L. 36, 3rd Ex. Sess.: p. 44, § 14. CSA: C. 167A, § 14. L. 39: p. 578, § 11. L. 41: p. 794, § 14. L. 43: p. 609, § 10. L. 49: p. 729, § 10. CRS 53: § 82-9-9. C.R.S. 1963: § 82-9-9. L. 81: (2) and (3) amended, p. 506, § 26, effective July 1. L. 83: (1) amended, p. 432, § 11, effective June 3. L. 88: (1) amended, p. 396, § 1, effective July 1. L. 2001: (2) repealed, p. 58, § 1, effective August 8. L. 2002: (1) amended, p. 340, § 13, effective April 19. L. 2009: (1) and (3) amended, (HB 09-1363), ch. 363, p. 1908, § 33, effective July 1.

ANNOTATION

Red Cross entitled to refund. As an instrumentality of the United States government, the Red Cross is exempt from taxation under § 8-70-101 and is entitled to judgment against the defendants for the amounts which it and its various chapters have paid under the employment security

act, but the Red Cross is not entitled to recover any interest thereon. *Am. Nat'l Red Cross v. Dept. of Emp.*, 263 F. Supp. 581 (D. Colo. 1965), *aff'd sub nom. Dept. of Emp. v. United States*, 385 U.S. 355 (1966).

Employer not entitled to interest on overpayment of unemployment

compensation tax resulting from an erroneous delinquency assessment by the Division of Employment and Training. Statutory term "paid erroneously" refers to

payment made as a result of either the taxpayer's or the division's error. *Martin Marietta v. Div. of Emp. & Training*, 784 P.2d 850 (Colo. App. 1989).

ARTICLE 80

Protection of Rights and Benefits

8-80-101. Waiver of rights void.

8-80-103. Assignment of benefits void - exemptions.

8-80-102. Limitation of fees.

8-80-101. Waiver of rights void.

Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under articles 70 to 82 of this title 8 shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's premiums or surcharges required under articles 70 to 82 of this title 8 from the employer shall be void. No employer shall directly or indirectly make, require, or accept any deduction from wages to finance the employer's premiums or surcharges required from him or her or require or accept any waiver of any rights under articles 70 to 82 of this title 8 by any individual in his or her employ. Any employer or officer or agent of any employer who violates this section commits a class 2 misdemeanor.

Source: L. 36, 3rd Ex. Sess.: p. 45, § 15. L. 37: p. 1269, § 11. CSA: C. 167A, § 15. L. 41: p. 799, § 15. CRS 53: § 82-10-1. C.R.S. 1963: § 82-10-1. L. 81: Entire section amended, p. 506, § 27, effective July 1. L. 2009: Entire section amended, (HB 09-1363), ch. 363, p. 1909, § 34, effective July 1. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3143, § 97, effective March 1, 2022.

ANNOTATION

Requirements for waiver. Waiver in the strict legal sense requires a showing of intent and knowledge of material facts on the part of one surrendering his rights. *Mtn. States Tel. & Tel. Co. v. Dept. of Labor &*

Emp., 38 Colo. App. 298, 559 P.2d 252 (1976).

Agreement contrary to public policy. An agreement having the effect of a waiver or which would permit the employer and

employee to construe the terms of the unemployment compensation statute is contrary to public policy. *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 38 Colo. App. 298, 559 P.2d 252 (1976).

A leave of absence agreement which did not contain any explicit relinquishment of claimant's rights to unemployment benefits did not by its terms contravene the prohibition of this section since there was no evidence that claimant intended to forego unemployment benefits, or that she knew

her "leave of absence" status would preclude such a claim. *Mtn. States Tel. & Tel. Co. v. Dept. of Labor & Emp.*, 38 Colo. App. 298, 559 P.2d 252 (1976).

The fact that claimant agreed and understood that his employment would end at the expiration of a fixed term is not a basis for denying him benefits under the Colorado employment security act. *Intermountain Jewish News, Inc. v. Indus. Comm'n*, 39 Colo. App. 258, 564 P.2d 132 (1977).

8-80-102. Limitation of fees.

No individual claiming benefits shall be charged fees of any kind in any proceeding under articles 70 to 82 of this title 8 by the division or its representatives or by any court or any officer thereof; except that any party appealing the decision of a referee shall be assessed the actual costs of preparing a transcript according to rules promulgated by the director of the division except if the appellant is successful the cost of preparing the transcript will be refunded. Any person who violates this provision commits a class 2 misdemeanor. Any individual claiming benefits in any proceeding before the division or a court may be represented by counsel. Unless approved by the division, no lien shall be allowed or suit brought for attorney fees, contingent or otherwise, for services rendered for the collection of any individual's claim for benefits.

Source: L. 71: p. 943, § 17. **C.R.S. 1963:** § 82-10-2. **L. 83:** Entire section amended, p. 432, § 12, effective June 3. **L. 86:** Entire section amended, p. 496, § 107, effective July 1. **L. 2021:** Entire section amended, (SB 21-055), ch. 12, p. 76, § 7, effective March 21; entire section amended, (SB 21-271), ch. 462, p. 3143, § 98, effective March 1, 2022.

Editor's note: Amendments to this section by SB 21-055 and SB 21-271 were harmonized, effective March 1, 2022.

8-80-103. Assignment of benefits void - exemptions.

Any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under articles 70 to 82 of this title 8 are void. Except as provided in the "Colorado Child Support Enforcement Procedures Act", article 14 of title 14, such rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by any individual are exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to the individual, the individual's spouse, or the individual's dependents during the time when the individual was unemployed or child support debt or arrearages as specified in article 14 of title 14. Any waiver of any exemption provided for in this section is void.

Source: L. 36, 3rd Ex. Sess.: p. 45, § 15. L. 37: p. 1269, § 11. CSA: C. 167A, § 15. L. 41: p. 799, § 15. CRS 53: § 82-10-3. C.R.S. 1963: § 82-10-3. L. 85: Entire section amended, p. 587, § 2, effective July 1. L. 2022: Entire section amended, (SB 22-086), ch. 74, p. 380, § 8, effective April 7.

Cross references: For the legislative declaration in SB 22-086, see section 1 of chapter 74, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

The only exception to this section which prohibits the satisfaction of judgments out of unemployment compensation benefits is for

necessities of the recipient or his dependents required during the period of unemployment and only after the recipient has in fact received unemployment benefits. Colo. Division of Employment v. Wells, 693 P.2d 1027 (Colo. App. 1984).

ARTICLE 81

Penalties and Enforcement

8-81-101.	Penalties.	8-81-103.	Representation in court.
8-81-102.	Penalties in prior law continue in force.		

8-81-101. Penalties.

(1) (a) Any person who makes false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, with intent to defraud by obtaining or increasing any benefit under articles 70 to 82 of this title 8 or under an employment security law of any other state, of the federal government, or of a foreign government, either for himself, herself, or for any other person commits a class 2 misdemeanor.

(b) Any person who, in the opinion of the division, has received a benefit to which he was not entitled by reason of his false representation or failure to disclose a material fact with intent to obtain or increase any benefit for himself or any other person and his trial by court is prevented by the inability of the court to establish its jurisdiction over said person shall be ineligible to receive any benefits under articles 70 to 82 of this title from the date of the discovery of the said act until such time as he makes himself available to the court for trial.

(c) If any employer makes or causes to be made a false statement as to the reason for a claimant's separation from employment or makes or causes to be made a false offer of work to a claimant, which statement or offer shall result in a delay in the payment of benefits to any such claimant, such employer shall be penalized by having his account charged with one and one-half times the amount of benefits due during the period of the delay and with one hundred percent of all other benefit payments paid to the claimant thereafter during his current benefit year, any other provisions of articles 70 to 82 of this title to the contrary notwithstanding, and the claimant shall be compensated by being paid one and one-half times his weekly benefit amount for the period of the delay. "The period of delay" as used in this section shall be determined by the division, and such determination shall be binding upon all parties affected and shall not be subject to review. The penalty imposed by this paragraph (c) shall be in addition to and not in lieu of any other penalty, civil or criminal, provided in articles 70 to 82 of this title.

(2) Any employing unit, or any officer or agent of an employing unit, or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact either to cause an individual to receive benefits to which such individual is otherwise not entitled or to defraud an individual by preventing or reducing the payment of benefits to which such individual would otherwise be entitled, or to avoid becoming or remaining a subject employer, or to avoid or reduce any premium, surcharge, or other payment required from an employing unit under articles 70 to 82 of this title 8 or under the employment security law of any other state, the federal government, or a foreign government or any such employing unit, officer or agent, or other person who willfully fails or refuses to pay any such premiums or surcharges or make any other payment, or to furnish any reports required under section 8-72-107, or to produce or permit the inspection or copying of records as required under section 8-72-107 commits a class 2 misdemeanor. Each false statement or representation or

failure to disclose a material fact and each day such failure or refusal continues shall constitute a separate offense.

(3) Any person who willfully violates any provision of articles 70 to 82 of this title 8 or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of articles 70 to 82 of this title 8 and for which a penalty is neither prescribed in this article 81 nor provided by any other applicable statute commits a petty offense.

(4) (a) (I) Any person who has received any sum as benefits under articles 70 to 82 of this title 8 to which the person was not entitled may be required to repay such amount to the division for the fund. Such sum shall be collected in the manner provided in section 8-79-102; except that the division may waive the repayment of an overpayment if the division determines such repayment to be inequitable. Repayment is inequitable when:

(A) The person who received the overpayment is receiving or has received any of the following public assistance benefits in the twelve months prior to the division providing notice to the person of the overpayment: Federal supplemental nutrition assistance program benefits, temporary assistance to needy families benefits, federal supplemental security income, social security disability benefits received after any unemployment insurance benefits were paid, means-tested legal aid services, benefits from the low-income energy assistance program created in section 26-2-122.5, federal or state earned income tax credits, free or reduced-price school lunch benefits, public or subsidized housing benefits, medicaid benefits under the medical assistance program, articles 4 to 6 of title 25.5, or medicare benefits;

(B) The person's household income, exclusive of public assistance benefits, during the three months prior to the overpayment determination, was at or below four times the federal poverty guidelines determined by the United States department of health and human services under the authority of 42 U.S.C. sec. 9902 (2);

(C) The person needs much of the person's current income to meet ordinary and necessary living expenses and liabilities, including housing, food, school loans, child care, outstanding loan and credit card balances, transportation, and medical expenses;

(D) Due to the notice that the benefit payment would be made or because of the incorrect payment the person either relinquished a valuable right or changed positions for the worse, including if: The person incurred a financial obligation, such as a lease, based on benefit payments that the person received; the person relied on the benefit payment and took out a loan, in which the person has already invested the benefit payment received and repayment of the overpayment will cause the person to default on the loan, resulting in criminal or civil actions; or the person declined other financial assistance because the person received benefits under articles 70 to 82 of this title 8 and thought the person would not need additional financial assistance from other sources;

(E) The overpayment was caused, at least in part, by an error by the division or by the person's reliance on the division's publicized information or guidance that was later determined to be erroneous; or

(F) Any other reason the division finds sufficient to establish that repayment would be inequitable.

(I.5) The division shall, to the extent possible, review and waive the repayment of an overpayment at the time the overpayment is determined if the division has sufficient information to determine that the repayment would be inequitable. If the division does not have sufficient information in its possession to make such a determination, the division shall notify the person of the right to request a waiver of the overpayment and the process for such a request. The division shall accept copies of relevant bills, receipts, award letters, bank statements, and all other reasonable forms of proof that repayment would be inequitable. If a person cannot provide documentation, the division may accept as sufficient proof a written statement signed by the person seeking to waive the overpayment attesting to the facts at issue.

(II) If any person receives an overpayment because of the person's false representation or willful failure to disclose a material fact, inequity must not be a consideration in any civil, administrative, or criminal action, and the person shall pay to the division the total amount of the overpayment plus a sixty-five percent monetary penalty. Of the monetary penalty, the division shall pay twenty-three percent into the unemployment compensation fund, created in section 8-77-101, and the remainder into the unemployment revenue fund, created in section 8-77-106. In addition, the person may be denied benefits, when otherwise eligible, for a four-week period for each one-week period in which the person filed claims for or received benefits to which the person was not entitled. The provisions of section 13-80-108 (9) shall be used for determining when an offense is committed for the purposes of this subsection (4)(a)(II). For purposes of this subsection (4)(a)(II), a person has not received an overpayment because of the person's false representation or willful failure to disclose a material fact if: The person provided all information requested by the division correctly, but the division failed to take appropriate action with that information or took delayed action when determining or redetermining eligibility; the person provided incorrect information due to conflicting, changing, or confusing information or instructions from the division; the person was unable to reach the division despite the person's best efforts to inquire or clarify what information the person needed to provide, or experienced other similar barriers, including that it was the person's first time applying for or receiving unemployment benefits, or the person experienced language, education, or literacy barriers; or the person's employer provided the person with incorrect or untimely information or did not timely report facts.

(III) All investigative costs awarded by the court and collected by the division in connection with the conviction, in any criminal action, of a person who has received any overpayment

because of his or her false representation or willful failure to disclose a material fact shall be paid into the unemployment revenue fund.

(IV) The penalties associated with an overpayment pursuant to subparagraph (II) of this paragraph (a) shall be made known to individuals upon filing an unemployment claim as defined in section 8-70-112.

(b) Pursuant to rules and regulations promulgated by the director of the division, the division may write off all or a part of the amount of any overpayment which it finds to be uncollectible or the recovery of which it finds to be administratively impracticable. Amounts which remain uncollected for more than five years, or seven years for overpayments due to false representation or willful failure to disclose a material fact, may be written off as uncollectible.

(c) Any person aggrieved by a determination of the division made under this subsection (4) may appeal that determination and obtain a hearing before a hearing officer with the right to further appeal as provided by article 74 of this title. The initial appeal must be received within twenty calendar days after the date of notification of such determination by the division; otherwise, the determination shall be final.

(d) Upon final determination pursuant to paragraph (c) of this subsection (4), repayment of an overpayment that is a result of the individual's false representation or willful failure to disclose a material fact pursuant to subparagraph (II) of paragraph (a) of this subsection (4) shall be made within thirty days.

(e) The division shall not attempt to recover an overpayment until there is a final determination that the debt is in fact owed and all appeals are exhausted. The division shall not attempt to recover an overpayment when there is a pending waiver application until there is a final determination that the person is not eligible for a waiver and all appeals are exhausted.

Source: L. 36, 3rd Ex. Sess.: p. 47, § 16. CSA: C. 167A, § 16. L. 39: p. 581, § 12. L. 41: p. 800, § 16. L. 51: p. 821, § 14. CRS 53: § 82-11-1. L. 63: p. 682, § 10. C.R.S. 1963: § 82-11-1. L. 65: p. 847, § 10. L. 67: p. 73, §§ 1, 2. L. 69: p. 671, § 10. L. 77: (1)(a) amended, p. 478, § 3, effective July 1; (4)(b) R&RE, p. 478, § 4, effective July 1; (4)(c) added, p. 479, § 5, effective July 1. L. 79: (4)(a) and (4)(c) amended, p. 355, § 24, effective September 30. L. 81: (2) and (4)(a)(I) amended, p. 507, § 28, effective July 1; (4)(a)(I) and (4)(b) amended, p. 487, § 15, effective July 1. L. 83: (4)(a) amended, p. 433, § 13, effective June 3; (4)(d) added, p. 438, § 1, effective June 15. L. 84: (2) amended and (4) R&RE, pp. 319, 320, §§ 12, 13, effective July 1. L. 86: (4)(a)(II) amended, p. 703, § 10, effective July 1; (4)(b) and (4)(c) amended, p. 496, § 108, effective July 1. L. 86, 2nd Ex. Sess.: (4)(c) amended, p. 56, § 4, effective August 15. L. 90: (4)(a)(II) amended, p. 608, § 6, effective April 16. L. 92: (4)(b) amended, p. 1796, § 9, effective April 10. L. 2000: (4)(a)(II) amended and (4)(a)(III) added, p. 815, § 4, effective July 1. L. 2002:

(4)(c) amended, p. 340, § 14, effective April 19. **L. 2007:** (4)(c) amended, p. 805, § 8, effective August 3. **L. 2009:** (2) amended, (HB 09-1363), ch. 363, p. 1909, § 35, effective July 1. **L. 2011:** (4)(a)(IV) and (4)(d) added, (HB 11-1288), ch. 212, p. 932, §§ 16, 17, effective July 1. **L. 2013:** (4)(a)(II) amended, (HB 13-1124), ch. 97, p. 312, § 2, effective August 7. **L. 2021:** (1)(a), (2), and (3) amended, (SB 21-271), ch. 462, p. 3144, § 99, effective March 1, 2022. **L. 2022:** (4)(a)(I) and (4)(a)(II) amended and (4)(a)(I.5) and (4)(e) added, (SB 22-234), ch. 224, p. 1621, § 11, effective May 25.

ANNOTATION

This section is constitutional. The general assembly provided guidelines for application of the penalty provisions by directing that principles of equity determine whether improperly paid benefits are to be repaid or set off against future benefits. *Duenas-Rodriguez v. Indus. Comm'n*, 199 Colo. 95, 606 P.2d 437 (1980).

A state statutory scheme conditioning receipt of current benefits on recovery of prior overpayments is expressly authorized by Congress, as is denial of claims for benefits where state eligibility requirements have not been met. In re *Adamic*, 291 B.R. 175 (Bankr. D. Colo. 2003).

Knowledge of section presumed of claimant. A claimant who has requested benefits pursuant to the unemployment compensation statutes must be presumed to have knowledge of § 8-74-109 and this section, which specifically provide for recovery of benefits paid in error. *Paul v. Indus. Comm'n*, 632 P.2d 638 (Colo. App. 1981).

Culpable mental state that must be established by state to prove unlawful receipt of benefits is "knowingly" under

subsection (4)(a)(II). *Div. of Emp. & Training v. Indus. Comm'n*, 706 P.2d 433 (Colo. App. 1985).

Before an employee who is discharged for falsifying his employment application may be denied unemployment compensation benefits, the false statements on the employment application must be found to be material to the employee's ability to perform properly the duties for which he was employed. *Casias v. Indus. Comm'n*, 38 Colo. App. 261, 554 P.2d 1357 (1976).

Representations as to material fact. Inquiry regarding any circumstance, including school attendance, which has a bearing upon eligibility conditions is not only proper, but is required in the efficient administration of the act. The answers and representations made by the claimant as to school attendance are representations of material facts. *Indus. Comm'n v. Bennett*, 166 Colo. 101, 441 P.2d 648 (1968).

Admission based upon material false information declared void ab initio. Where the evidence supported the referee's finding that claimant supplied materially false information upon which his employer

and its insurer relied in filing an admission of liability, the referee was justified in declaring the admission void ab initio. Vargo v. Colo. Indus. Comm'n, 626 P.2d 1164 (Colo. App. 1981).

Because the conduct prohibited by subsection (1)(a) of this section is distinct from the conduct prohibited by § 18-4-401, prosecution under one such statute as opposed to the other does not violate a defendant's constitutional rights. People v. Chesnick, 709 P.2d 66 (Colo. App. 1985).

Because conduct prohibited by § 18-5-102 is distinguishable from conduct prohibited by subsection (1)(a), charging a defendant under the former did not violate his or her right to equal protection of the laws. People v. Clanton, 2015 COA 8, 361 P.3d 1056.

The general assembly did not intend to preclude prosecution for forgery where the conduct underlying the charge also arguably violates subsection (1)(a) of this section. People v. Clanton, 2015 COA 8, 361 P.3d 1056.

This section is not intended to penalize an employer where the grounds assigned for discharge are ample if believed by the employer, even though given a contrary construction by others. Indus. Comm'n v. Emerson W. Co., 149 Colo. 529, 369 P.2d 791 (1962).

And it is immaterial that an employer does not choose to elaborate on the reasons for discharge or support them with additional testimony at the hearing, and such lack of elaboration is not proof that what had

been reported was not the reason for the discharge. Indus. Comm'n v. Emerson W. Co., 149 Colo. 529, 369 P.2d 791 (1962).

Where the statements furnished by an employer are not willfully or deliberately false, they are not such as come within the penal terms of this section. Indus. Comm'n v. Emerson W. Co., 149 Colo. 529, 369 P.2d 791 (1962).

And without intent to falsify being shown, an employer cannot be held liable for making a false statement. Indus. Comm'n v. Emerson W. Co., 149 Colo. 529, 369 P.2d 791 (1962).

By virtue of subsection (4)(a), the division has authority to demand repayment of benefits mistakenly paid, or may have such overpayments credited to any future benefits to which the claimant may be entitled, if equity and good conscience so require. The division may also waive collection if it deems collection to be administratively impracticable. Gatewood v. Russell, 29 Colo. App. 11, 478 P.2d 679 (1964).

The monetary penalty under subsection (4)(a)(II) from overpayment is mandatory when the claimant knowingly fails to disclose earnings from employment, regardless of financial hardship. Woollems v. Indus. Claim Appeals Office, 43 P.3d 725 (Colo. App. 2001).

The statutory fifty percent penalty applied against defendant pursuant to this section was not properly included in the amount of restitution owed because the prosecution did not demonstrate that the

amount of the penalty equaled the costs actually incurred by the department of labor and employment in enforcing compliance with the Colorado Employment Security Act (CESA). *People v. Welliver*, 2012 COA 44, 317 P.3d 1192; *People v. Russell*, 2013 COA 121, 310 P.3d 284 (decided prior to 2013 amendment).

The CESA authorizes the imposition of a "four-for-one" penalty for each week that a person received benefits to which he or she was not entitled. The statute requires recovery of the overpayments and imposition of a 50 percent monetary penalty. The repayment and monetary penalty provisions are mandatory. The provisions concerning recovery of past overpayments by withholding current benefits are permissive. In *re Adamic*, 291 B.R. 175 (Bankr. D. Colo. 2003).

The public policy behind the 40-week penalty is to protect the integrity of the unemployment insurance system by deterring the filing of false or misleading claims for unemployment benefits. In *re Adamic*, 291 B.R. 175 (Bankr. D. Colo. 2003).

The amount that may be assessed against a person by this section is a penalty and thus not dischargeable in bankruptcy. In *re O'Brien*, 110 B.R. 27 (Bankr. D. Colo. 1990).

Penalties arising from overpaid unemployment compensation obtained by "false pretenses, a fraudulent representation, or actual fraud" are nondischargeable under 11 U.S.C. § 523(a)(2)(A) to the same extent as the

restitutionary debt for overpaid unemployment compensation. In *re Wine*, 558 B.R. 438 (Bankr. D. Colo. 2016).

The sixty-five percent monetary penalty in subsection (4)(a)(II) is nondischargeable under 11 U.S.C. § 523(a)(7) because it is a "fine, penalty, or forfeiture" within the meaning of that section. In *re Martinez*, 609 B.R. 351 (Bankr. D. Colo. 2019).

And, under 11 U.S.C. § 523(a)(7), penalties may be nondischargeable even if there is no other underlying nondischargeable debt. In *re Martinez*, 609 B.R. 351 (Bankr. D. Colo. 2019).

A governmental unit may satisfy a debtor's pre-petition obligation for receiving overpayments of unemployment benefits by offsetting or applying post-petition benefits to the outstanding debt. An automatic stay in a voluntary Chapter 13 bankruptcy proceeding does not preclude the governmental entity from recouping unemployment benefit overpayments made prior to debtor's bankruptcy filing. In *re Adamic*, 291 B.R. 175 (Bankr. D. Colo. 2003).

Because the debtor is not entitled to receive unemployment compensation under state law as a result of his prior fraud and/or failure to disclose a material fact, he never "acquired" the post-petition payments and those payments do not constitute "earnings for services performed". Accordingly, weekly unemployment payments to which the debtor is not entitled under the CESA cannot be property of the estate; and the department's exercise of its right to withhold the post-petition benefits is not an act to

collect, assess, or recover a pre-petition claim against the debtor. In re Adamic, 291 B.R. 175 (Bankr. D. Colo. 2003).

The phrase "against equity and good conscience", as used in subsection (4)(a), means that adjustment or recovery of an incorrect payment will be considered inequitable if an individual, because of a notice such payment would be made or by reason of the incorrect payment, relinquished a valuable right or changed his position for the worse. Duenas-Rodriguez v. Indus. Comm'n, 199 Colo. 95, 606 P.2d 437 (1980).

And this definition remains applicable, even though the phrase has been amended from "against equity and good conscience" to "not inequitable", because there is no substantial difference between the meaning of the phrases. Mugrauer v. Indus. Comm'n, 709 P.2d 47 (Colo. App. 1985).

Regarding the phrase "against equity and good conscience", to the extent that Mugrauer v. Indus. Comm'n is construed as having interpreted Duenas-Rodriguez v. Indus. Comm'n to require that this statute carry the same meaning as a similar provision in the federal Social Security Act, that construction is rejected and it is held that the federal act is not the sole means by which inequity is measured under this section. Hesson v. Indus. Comm'n, 740 P.2d 526 (Colo. App. 1987).

Waiver of right of recovery of overpayment. The commission is not required to determine that recovery of an overpayment is impossible or impractical in order to waive its right to recovery of that

overpayment. Schmidt v. Indus. Comm'n, 42 Colo. App. 253, 600 P.2d 76 (1979).

Setoffs applied to benefits of illegal alien. Where an illegal alien, not legally entitled to work in this country at the time he was receiving benefits to compensate him for being unemployed, presented no evidence that he relinquished any valuable right or changed his position for the worse because he received such benefits, no equitable reason was found for allowing him to avoid setoffs from future benefits to which he may become entitled. Duenas-Rodriguez v. Indus. Comm'n, 199 Colo. 95, 606 P.2d 437 (1980).

Failure to consider financial condition of claimant requesting waiver of overpayment of benefits pursuant to subsection (4)(a) constituted error. Kalkbrenner v. Indus. Claim Appeals Office, 801 P.2d 545 (Colo. 1990).

Failure to address issue of claimant's having spent the overpaid funds on basic necessities or her impoverished status at the time of the repayment hearing constitutes error. Munoz-Navarette v. Indus. Claim App. Off., 833 P.2d 827 (Colo. App. 1992).

Applied in Bullers v. Indus. Comm'n, 37 Colo. App. 412, 547 P.2d 945 (1976); Nesbit v. Indus. Comm'n, 43 Colo. App. 398, 607 P.2d 1024 (1979); Johnson v. Indus. Comm'n, 652 P.2d 1109 (Colo. App. 1982); Zadel v. Indus. Comm'n, 701 P.2d 1270 (Colo. App. 1985); City and County of Denver v. Indus. Comm'n, 707 P.2d 1008 (Colo. App. 1985).

8-81-102. Penalties in prior law continue in force.

Any penalty, forfeiture, or liability, either civil or criminal, which has been incurred in former statutes relating to unemployment compensation shall be held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of such penalty, forfeiture, or liability which are now pending, or which may hereafter be commenced within the time provided by law for the commencement of such actions, suits, proceedings, and prosecutions, as well as for the purpose of sustaining any judgment, decree, or order which has been or which may be entered or made in such actions, suits, proceedings, or prosecutions.

Source: L. 41: p. 813, § 23. CSA: C. 167A, § 22. CRS 53: § 82-11-2. C.R.S. 1963: § 82-11-2.

8-81-103. Representation in court.

(1) In any civil action to enforce the provisions of articles 70 to 82 of this title, the division and the state shall be represented by the attorney general. Such assistant attorneys general shall be appointed as are necessary for this purpose.

(2) All criminal actions for violation of any provision of articles 70 to 82 of this title, or of any rules issued pursuant to those articles, must be prosecuted by the attorney general of the state or, at his or her request and under his or her direction, by the district attorney of the judicial district in which the employer has a place of business or the violator resides.

Source: L. 36, 3rd Ex. Sess.: p. 49, § 17. CSA: C. 167A, § 17. L. 41: p. 801, § 17. CRS 53: § 82-11-3. C.R.S. 1963: § 82-11-3. L. 2016: (2) amended, (HB 16-1094), ch. 94, p. 265, § 5, effective August 10.

ANNOTATION

Applied in *In re Lowery v. Indus. Comm'n*, 666 P.2d 562 (Colo. 1983).

ARTICLE 82

Acquisition of Lands and Buildings

8-82-101.	Nonprofit corporation - authorization and purposes.	8-82-103.	Purchase and leasehold by division - terms.
8-82-102.	Anticipation warrants - issuance and investment.	8-82-104.	Tax exemption - when.
		8-82-105.	Judicial remedies.

8-82-101. Nonprofit corporation - authorization and purposes.

For the purpose of performing the functions required under the provisions of the "Colorado Employment Security Act", articles 70 to 82 of this title, the division is hereby authorized to create a nonprofit corporation or authority under the laws of this state and, in the name of such nonprofit corporation or authority, to purchase land and cause to be erected thereon a building or buildings suitable for offices, or for housing equipment, or for both such purposes. Any land so purchased or buildings so constructed may be thereafter sold or exchanged when, in the determination of the directors of the corporation or authority, the division no longer has need for such property, and any funds or proceeds obtained from such sale or exchange shall be the sole property of the division and distributed by it as required by the terms of articles 70 to 82 of this title.

Source: L. 55: p. 535, § 1. CRS 53: § 82-12-1. C.R.S. 1963: § 82-12-1. L. 77: Entire section amended, p. 470, § 26, effective July 7. L. 93: Entire section amended, p. 1797, § 103, effective June 6.

8-82-102. Anticipation warrants - issuance and investment.

For the purpose of defraying the cost of land and for the construction of the proposed buildings, the nonprofit corporation or authority is authorized, with the approval of the governor, to issue and sell anticipation warrants in an amount not to exceed one million eight hundred fifty thousand dollars at an interest rate of not more than four percent per annum. Any state trust funds, and only such funds as may be available for permanent investment, may be used to purchase said anticipation warrants. Such anticipation warrants shall be redeemed and the interest thereon paid in the manner and from the funds enumerated in section 8-82-103.

Source: L. 55: p. 535, § 2. L. 56: p. 160, § 1. CRS 53: § 82-12-2. C.R.S. 1963: § 82-12-2.

8-82-103. Purchase and leasehold by division - terms.

The divisions of employment and training and unemployment insurance may enter into rental or leasehold agreements with a nonprofit corporation or authority created pursuant to section 8-82-101. The agreements must provide that the particular division acquire title to the land or buildings, or both, upon the payment of stipulated aggregate annual rentals. The plans, specifications, bids, and contracts for the buildings and the terms of all leasehold or rental agreements are not valid until approved by the governor, the director of the division of employment and training or the director of the division of unemployment insurance, as appropriate, and the director of the office of state planning and budgeting. The rentals must be paid solely out of the employment security administration fund, the unemployment revenue fund, or both, or the funds of any other state agency if any part of the buildings are made available to other state agencies. The obligation to pay the rentals does not constitute an indebtedness of the state and must not be paid out of any other funds. The division that enters an agreement pursuant to this section shall include the rental in its annual budgets and shall certify, audit, and pay the rentals in the same manner as all other accounts and expenditures payable out of those funds.

Source: L. 55: p. 536, § 3. L. 56: p. 160, § 2. CRS 53: § 82-12-3. C.R.S. 1963: § 82-12-3. L. 75: Entire section amended, p. 819, § 7, effective July 18. L. 83: Entire section amended, p. 969, § 20, effective July 1, 1984. L. 86: Entire section amended, p. 1215, § 5, effective May 30. L. 2012: Entire section amended, (HB 12-1120), ch. 27, p. 106, § 19, effective June 1.

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012).

8-82-104. Tax exemption - when.

Property acquired or occupied pursuant to this article shall be exempt from taxation so long as it is used for the purposes of the division or other public purposes.

Source: L. 55: p. 536, § 4. CRS 53: § 82-12-4. C.R.S. 1963: § 82-12-4.

8-82-105. Judicial remedies.

Purchase or leasehold agreements entered into by the division pursuant to this article shall be enforceable in any court of competent jurisdiction.

Source: L. 55: p. 536, § 5. **CRS 53:** § 82-12-5. **C.R.S. 1963:** § 82-12-5.

EMPLOYMENT AND TRAINING

ARTICLE 83

Workforce Development

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PART 1
DIVISION OF EMPLOYMENT AND TRAINING

8-83-101. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Department" means the department of labor and employment created in section 24-1-121, C.R.S.
- (2) "Director" means the director of the division.
- (3) "Division" means the division of employment and training in the department.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 79, § 6, effective June 1.

8-83-102. Division of employment and training created - director.

There is hereby created a division of employment and training within the department of labor and employment, the head of which is the director of the division of employment and training.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 79, § 6, effective June 1.

8-83-103. Powers, duties, and functions - acceptance of money.

(1) The functions of the division comprise all administrative functions of the state in relation to the administration of this article 83. The division and the director of the division are **type 2** entities, as defined in section 24-1-105, and exercise their powers and perform their duties and functions as prescribed under this article 83 under the direction and supervision of the executive director of the department. Any vacancy in the office of director is filled in the manner provided by law.

(2) The division may accept and expend moneys from intergovernmental partnerships, gifts, grants, donations, and other contributions for the purposes for which the division is authorized.

(3) Repealed.

(4) The division shall contribute education and workforce data beginning in the 2025-26 state fiscal year, as necessary, to the Colorado statewide longitudinal data system consistent with the governance practices established by the Colorado statewide longitudinal data system governing board pursuant to section 24-37.5-125 (4).

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 79, § 6, effective June 1. **L. 2015:** (2) amended, (HB 15-1276), ch. 225, p. 836, § 2, effective May 26; (3) added, (HB 15-1230), ch. 226, p. 844, § 2, effective August 5. **L. 2022:** (1) amended, (SB 22-162), ch. 469, p. 3385, § 93, effective August 10. **L. 2024:** (4) added, (HB 24-1364), ch. 238, p. 1560, § 9, effective May 23.

Editor's note: Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2020. (See L. 2015, p. 844.)

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

8-83-104. State employment service.

(1) The Colorado state employment service is established as a section in the division. The division, through the section, shall establish and maintain free public employment offices in the number and locations as may be necessary for the proper administration of this article and for the purposes of performing the duties that are within the purview of the act of congress entitled "An Act To provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes.", approved June 6, 1933 (48 Stat. 113; 29 U.S.C. sec. 49 (c)), as amended, and referred to in this section as the "federal act".

(2) The division shall:

(a) Cooperate with any official or agency of the United States having powers or duties under the provisions of the federal act, as amended, or under such other federal acts as may be created for similar purposes;

(b) Cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities; and

(c) Perform all acts necessary to secure to this state the benefits of the federal act, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The state accepts the provisions of the federal act, as amended, in conformity with section 4 of the federal act, and this state will observe and comply with the requirements of the federal act. The division is designated as the agency of this state for the purposes of the federal act. The division shall appoint such officers and employees of the Colorado state employment service as necessary for the proper administration of this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 80, § 6, effective June 1.

Editor's note: This section is similar to former § 8-71-106 as it existed prior to 2012.

8-83-105. Personnel.

Subject to other provisions of this article and the state personnel system regulations, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The division may delegate to any person so appointed such power as it

deems reasonable and proper for the effective administration of this article. In its discretion, the division may bond any person handling moneys or signing checks under this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 80, § 6, effective June 1.

8-83-106. Division - offer waiver of confidentiality for employment purposes.

Notwithstanding the confidentiality requirements in section 8-72-107 (1), the division may offer veterans and other persons seeking employment the opportunity to waive the confidentiality of certain information including the person's name, address, telephone number, and email address so that the division may make available the waived information to bona fide employers seeking employees.

Source: L. 2013: Entire section added, (HB 13-1123), ch. 148, p. 475, § 2, effective August 7.

Cross references: For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 148, Session Laws of Colorado 2013.

8-83-107. Workforce development enterprise - creation - powers and duties - enterprise fund - fee - legislative declaration - definitions.

- (1) The general assembly finds and declares that:
 - (a) Employers in Colorado pay unemployment insurance premiums pursuant to state law;
 - (b) Unemployment insurance premiums fund unemployment insurance benefits paid to Colorado workers who have become unemployed through no fault of their own and are able and available to work;
 - (c) Paying unemployment benefits depletes Colorado's unemployment compensation fund, which is funded exclusively by employer premiums;
 - (d) Providing workforce development services benefits employers throughout Colorado by:
 - (I) Helping Colorado workers more quickly regain employment, thereby reducing their need for unemployment benefits and keeping employers' unemployment premiums lower;

(II) Developing a more qualified workforce that can better meet the needs of Colorado's businesses;

(III) Connecting Colorado employers with potential employees; and

(IV) Maintaining employers' customer bases by keeping the greatest number of people steadily employed and able to purchase goods and services;

(e) The workforce development enterprise created in this section provides valuable business services to employers by ensuring Colorado workers have access to workforce development services and access to Colorado's workforce development centers' services;

(f) By providing these services, the enterprise engages in an activity conducted in the pursuit of a benefit, gain, or livelihood;

(g) Consistent with the determination of the Colorado supreme court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), the power to impose taxes is inconsistent with enterprise status under section 20 of article X of the state constitution, and, therefore, it is the conclusion of the general assembly that the revenue collected by the workforce development enterprise is generated by fees, not taxes, because the money credited to the enterprise is:

(I) For the specific purpose of allowing the enterprise to defray the costs of providing the services specified in this section; and

(II) Collected at rates that are reasonably calculated based on the costs of the services provided by the enterprise; and

(h) So long as the enterprise qualifies as an enterprise for purposes of section 20 of article X of the state constitution, the enterprise's revenue is not state fiscal year spending, as defined in section 24-77-102 (17), or state revenues, as defined in section 24-77-103.6 (6)(c), and does not count against either the state fiscal year spending limit imposed by section 20 of article X of the state constitution or the excess state revenues cap, as defined in section 24-77-103.6 (6)(b).

(2) As used in this section:

(a) "Enterprise" means the workforce development enterprise created in subsection (3) of this section.

(b) "Fund" means the workforce development fund created in subsection (4) of this section.

(3) The workforce development enterprise is created in the division. The business purpose of the enterprise is to ensure Colorado workers have access to workforce development services and access to Colorado's workforce development centers. The workforce development enterprise constitutes an enterprise for purposes of section 20 of article X of the state constitution, so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total annual revenue in grants from all Colorado state and local governments combined. So long as it

constitutes an enterprise pursuant to this subsection (3), the enterprise is not subject to section 20 of article X of the state constitution.

(4) The workforce development fund is created in the state treasury. Money in the fund shall be used by the workforce development enterprise to engage in and support employment and training workforce initiatives throughout Colorado. The workforce development enterprise may deposit or permit others to deposit other money into the workforce development fund. The workforce development fund consists of the following:

(a) Twenty percent of the support surcharge collected pursuant to section 8-76-102.5 (3)(a)(IV);

(b) Any money appropriated to the fund by the general assembly;

(c) Any money granted to the enterprise from a federal agency for workforce development purposes;

(d) Any money from bonds issued pursuant to subsection (6) of this section; and

(e) Any gifts, grant, donations, or other money received by the enterprise.

(5) The enterprise may engage the services of contractors and consultants, including the department of labor and employment and the attorney general's office, for professional and technical assistance and advice and to supply other services related to conducting the affairs of the enterprise.

(6) (a) The enterprise is authorized to issue revenue bonds for the expenses of the enterprise, which bonds may be secured by any revenues of the enterprise. Revenue from the bonds issued pursuant to this subsection (6)(a) shall be deposited into the fund.

(b) The board of directors for the enterprise is as follows:

(I) The executive director of the department or the executive director's designee;

(II) The director of the Colorado workforce development council or the director's designee; and

(III) Ten members, one representing each local workforce council, appointed by the executive director of the department.

(c) The board has the following powers and duties:

(I) To supervise the enterprise;

(II) To issue revenue bonds;

(III) To acquire, hold title to, and dispose of real and personal property as necessary in the exercise of the board's powers and performance of the board's duties;

(IV) To enter into agreements with the department;

(V) To request the state treasurer to act as advisor to the fund to issue such bonds and notes as are necessary to maintain adequate balances in the fund; and

(VI) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers and duties granted by this section.

(7) Except as provided in subsection (9) of this section, the state treasurer shall credit all interest and income derived from the deposit and investment of money in the workforce development fund to the fund. Money in the fund shall not be credited or transferred to the general fund or any other fund at the end of the fiscal year.

(8) The general assembly shall appropriate the money in the workforce development fund annually to the enterprise.

(9) (a) (Deleted by amendment, L. 2025.)

(b) At the end of the 2024-25 state fiscal year, and at the end of each state fiscal year thereafter, the state treasurer shall credit any money collected pursuant to this section that would cause the balance in the fund to exceed six million eight hundred thousand dollars, as adjusted annually by an amount equal to the change in the average weekly earnings prescribed in section 8-73-102, rounded to the nearest one hundred dollars and excluding any gifts, grants, or donations, to the unemployment compensation fund created in section 8-77-101 (1).

Source: L. 2024: Entire section added, (HB 24-1409), ch. 318, p. 2129, § 4, effective June 15.
L. 2025: (4)(a) and (9) amended, (SB 25-242), ch. 145, p. 548, § 6, effective April 28.

Cross references: For the legislative declaration in HB 24-1409, see section 1 of chapter 318, Session Laws of Colorado 2024.

PART 2

CAREER ADVANCEMENT ACT

8-83-201. Short title.

The short title of this part 2 is the "Colorado Career Advancement Act".

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 81, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 627, § 3, effective May 19.

Editor's note: This section is similar to former § 8-71-201 as it existed prior to 2012.

8-83-202. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) Passage of the federal "Workforce Innovation and Opportunity Act", 29 U.S.C. sec. 3101 et seq., gives the state a unique opportunity to develop a work force program and employment system designed to meet the needs of employers, job seekers, and those who want to further their careers;

(b) The federal act requires that training and employment programs be designed and managed at the local government level, where the needs of businesses and individuals are best understood;

(c) The federal act requires the involvement of business, both to provide information and leadership and to play an active role in ensuring that the system prepares people for current and future jobs;

(d) Passage of the federal act provided local governments with the control and flexibility to carry out the federal act's purposes, subject to the final authority and approval of the governor; and

(e) Therefore, it is in the state's best interest to adopt the Colorado work force development program set forth in this part 2.

(2) The general assembly recommends that:

(a) To the extent possible, counties or multicounty areas integrate their work force development program sources of funding to maximize the resources available at the local level to provide the services authorized under this part 2; and

(b) As the responsibility for implementing work force programs continues to be devolved to local governments, Title I moneys identified for state administration of programs implemented at the local level be as specified in Title I of the federal "Workforce Investment Act of 1998".

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 81, § 6, effective June 1. **L. 2016:** (1)(a), (1)(e), and (2)(a) amended, (HB 16-1302), ch. 183, p. 627, § 4, effective May 19.

Editor's note: This section is similar to former § 8-71-202 as it existed prior to 2012.

8-83-203. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Colorado work force development program" or "work force development program" means the program of work force development created in this part 2.

(2) "Department" means the department of labor and employment created in section 24-1-121, C.R.S., or any other state agency specified by the governor through executive order or otherwise.

(3) "Federal act" means the federal "Workforce Innovation and Opportunity Act", 29 U.S.C. sec. 3101 et seq.

(4) "Local elected officials" means the boards of county commissioners of the county or counties operating work force development programs; except that, in the case of a city and county, "local elected officials" means the mayor.

(5) "Local plan" means a plan, developed and executed by a work force development board and subarea board, that outlines the functions and responsibilities for delivery of services within a work force development area.

(6) "National program grant" means a grant under subtitle D of Title I.

(7) "One-stop operator" means the entity selected by a work force board, with concurrence by the local elected officials, to operate the one-stop career center in a local area.

(8) "One-stop partner" means a person or organization described in section 8-83-216.

(9) "Planning region" means a single local area or multiple local areas that have been designated by the state as a planning region for the purposes of developing a regional plan.

(10) "Rural consortium local elected officials board" means the local elected officials appointed by each subarea board in the rural consortium work force development area to serve as the local elected official for the rural consortium work force development area.

(11) "Rural consortium work force development area" or "rural consortium area" means an area designated by the governor as a federal work force development area for which the

department is the grant recipient. A rural consortium work force development area may contain one or more subareas.

(12) "Rural consortium work force development board" or "rural consortium board" means the work force board appointed by the rural consortium local elected officials board. The rural consortium work force development board serves, on behalf of the subarea boards in the rural consortium area, as the work force development board for specific functions under the federal act.

(13) "State council" means the state work force development council created in section 24-46.3-101, C.R.S.

(14) "State plan" means a plan, developed by the governor with the assistance of the state council and based upon local plans, for the delivery of services statewide under the federal act.

(15) "Student" means an individual who is eighteen years of age or older and is enrolled in an adult education program or postsecondary education program through an institution of higher education, a technical college, a private occupational school, or an employer-sponsored training program.

(16) "Subarea board" means the optional work force advisory board of a subarea within the rural consortium work force development area.

(17) "Title I" means Title I of the federal act.

(18) "Title I money" means money distributed pursuant to Title I.

(19) "Wagner-Peyser Act" means the federal "Wagner-Peyser Act", 29 U.S.C. sec. 49a et seq.

(20) "Wagner-Peyser funds" means federal moneys received by the department pursuant to the "Wagner-Peyser Act".

(21) "Work force board" means either a local work force development board or a subarea board.

(22) "Work force development area" means a county, municipality, city and county, or group of counties, municipalities, or cities and counties that have banded together through an intergovernmental agreement to provide a work force development program and is designated by the governor as a federal work force development area. The rural consortium is a work force development area.

(23) "Work force development board" means the work force development board for a federally designated work force development area.

(24) "Work force development subarea" or "subarea" means a county or group of counties within the rural consortium that work together for the purpose of implementing programs authorized under the federal act and has a subarea board.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 81, § 6, effective June 1. L. 2016: Entire section R&RE, (HB 16-1302), ch. 183, p. 627, § 5, effective May 19.

Editor's note: This section is similar to former § 8-71-203 as it existed prior to 2012.

8-83-204. Work force development program - legislative declaration - purposes.

(1) The general assembly finds, determines, and declares that this part 2 is adopted pursuant to the requirements of the federal act and is intended to comply with the federal act's express requirements for participants in the operation of work force development programs.

(2) The purposes of this part 2 are to:

(a) Establish a central, coordinated delivery system at the local or regional level through which any citizen may look for a job, explore work preparation and career development services, and access a range of employment, training, and occupational education programs offering their services through local or regional work force development programs;

(b) Develop strategies and policies that encourage job training, education and literacy, and vocational programs;

(c) Consolidate and coordinate programs and services to ensure a more streamlined and flexible work force development system at the local or regional level;

(d) Establish single contact points for employers; and

(e) Allow counties increased responsibility for the administration of the work force development program, including determination of any expenditures of TANF funds for the purpose of cash contributions to infrastructure of the one-stop delivery system or delivery contracts. Counties are encouraged to include all the partners outlined in the federal act.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 83, § 6, effective June 1. L. 2016: (1), (2)(a), and (2)(e) amended, (HB 16-1302), ch. 183, p. 629, § 6, effective May 19.

Editor's note: This section is similar to former § 8-71-204 as it existed prior to 2012.

Cross references: "TANF", referenced in this section, is the temporary assistance for needy families program. For more information regarding this program, see article 2 of title 26.

8-83-205. Work force development program - creation - administration - merit system - Wagner-Peyser funded employment services.

(1) Under authority of the governor, the department shall cooperate with the state council to help establish and operate a network of work force development areas as set forth in this part 2.

(2) Work force development areas may be established at a local government level or at a multi-government level through intergovernmental agreements reached by the applicable local elected officials of the work force development area and subject to approval by the governor.

(3) Local elected officials shall govern the operation of local work force development areas with policy guidance from work force boards appointed by the local elected officials. At the option of the local elected officials and the work force board, work force development programs may be operated by a county, the department, other governmental agencies, nonprofit or not-for-profit organizations, or private entities; except that Wagner-Peyser funds shall not be used to award contracts to nonprofit or not-for-profit organizations or private entities. Beginning July 1, 2017, the one-stop operator must be selected in accordance with the federal act and local policy in the work force development area. An entity that applies to become a one-stop operator and is not selected may appeal the decision through any available appeal process of the applicable local governmental entity.

(3.5) If no qualified one-stop operator responds to the procurement process in a local work force development area, the local elected officials for that area may designate the one-stop operator.

(4) If federal or state financial support for the provision of employment and training services is eliminated or is reduced by an amount that is considered substantial by the local elected officials, the local elected officials are not required to continue funding or operating work force development programs.

(5) The state council shall ensure that a local work force development area may function as a federally designated work force development area in applying for available national program grants under the federal act. Each work force board may apply for a grant for its own area in the manner it deems most appropriate. A work force board may apply for a grant for its own area and

receive any corresponding money awarded exclusively or may apply through other means and with other work force areas. Any grant money awarded to a work force development area is a direct pass-through from the federal government to the applicable work force development area.

(6) A local work force development area created pursuant to this part 2 is authorized to operate with the same authority and functions as if the area were a federally designated work force development area.

(7) A data system that is used to administer a program pursuant to this article 83 must not link or collect data systems maintained by education entities serving children under eighteen years of age.

(8) (a) (I) A county that is seeking to use county employees to deliver employment services funded by Wagner-Peyser funds shall:

(A) Create a merit system for the selection, retention, and promotion of county employees who provide those services; or

(B) If the county already has a system in place, update the county's current system to comply with this subsection (8).

(II) The merit system must comply with federal laws, regulations, and standards for a merit system of personnel administration for employees authorized under the federal "Intergovernmental Personnel Act of 1970", 42 U.S.C. sec. 4701 et seq. Each county shall certify to the department that the merit system of personnel administration used by the county is in compliance with federal standards and that the employees paid by Wagner-Peyser funds act as an extension of the state in delivering employment services.

(b) Each county shall ensure that its merit system:

(I) Requires the county to recruit, select, and advance employees on the basis of the applicant's or employee's relative abilities, knowledge, and skills, including during the recruitment and selection of qualified applicants for initial appointments to positions with the county;

(II) Compensates each employee equitably and adequately;

(III) Requires the county to train employees as needed to assure high quality performance;

(IV) Requires the county to:

(A) Retain an employee on the basis of the adequacy of the employee's performance;

(B) Correct an employee's inadequate performance; and

(C) Separate an employee from employment when an employee's inadequate performance cannot be corrected;

(V) Requires the fair treatment of applicants and employees, including compliance with all federal and state equal opportunity and nondiscrimination laws, in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age, or disability and with proper regard for the privacy and constitutional rights of the applicants and employees as citizens; and

(VI) Protects each employee against coercion for partisan political purposes and prohibits each employee from using the employee's official authority for the purpose of interfering with or affecting the results of an election or a nomination for office.

Source: **L. 2012:** Entire article added with relocations, (HB 12-1120), ch. 27, p. 83, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 630, § 7, effective May 19. **L. 2023:** (8) added, (SB 23-233), ch. 80, p. 286, § 1, effective August 7.

Editor's note: This section is similar to former § 8-71-205 as it existed prior to 2012.

8-83-206. Local elected officials - function - authority.

The local elected officials shall maintain a strong role in all phases and levels of implementation of the federal act. The local elected officials of a work force development area, upon favorable recommendation of the work force board, are authorized to award contracts for the administration, implementation, or operation of any aspect of the work force development program to any appropriate public, private, or nonprofit entity in accordance with applicable county regulations and federal law; except that Wagner-Peyser funds shall not be used to award contracts to private or nonprofit entities.

Source: **L. 2012:** Entire article added with relocations, (HB 12-1120), ch. 27, p. 84, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 631, § 8, effective May 19.

Editor's note: This section is similar to former § 8-71-206 as it existed prior to 2012.

8-83-207. Local work force development boards - authority - functions.

Local work force development boards are subject to this part 2 and the federal act. Local work force development boards operate for a federally designated work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 84, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 631, § 9, effective May 19.

Editor's note: This section is similar to former § 8-71-207 as it existed prior to 2012.

8-83-208. Implementation - local plans.

(1) (a) The Colorado work force development program shall be administered according to the state four-year plan prepared in accordance with the local plans created pursuant to this section. Each local work force development area shall submit a plan that meets the requirements of this section to the governor for approval.

(b) The rural consortium work force development board shall develop a local plan that consists of a compilation of local plans submitted by each subarea board. The rural consortium work force development board shall ensure that the local plan for the consortium area, in total, meets the requirements specified in this section and shall submit such plan to the governor for approval. Subarea boards within the rural consortium work force development area shall submit local plans to the rural consortium work force development board for approval.

(c) The details of the local plans must be in accordance with federal law.

(d) Beginning January 1, 2026, any modified or new local plan must incorporate the tactical plans created pursuant to section 24-48.5-704 (2)(a)(V).

(2) to (4) Repealed.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 85, § 6, effective June 1. **L. 2016:** (1) amended and (2) to (4) repealed, (HB 16-1302), ch. 183, p. 632, § 10, effective May 19. **L. 2024:** (1)(d) added, (HB 24-1365), ch. 478, p. 3352, § 6, effective August 7.

Editor's note: This section is similar to former § 8-71-208 as it existed prior to 2012.

Cross references: For the legislative declaration in HB 24-1365, see section 1 of chapter 478, Session Laws of Colorado 2024.

8-83-209. State work force development plan.

(1) In accordance with the federal act, the governor shall submit to the federal government a state plan that outlines a four-year strategy for the Colorado work force development program that meets the requirements of the federal act. In addition to the plan requirements specified in the federal act, the state plan must be based upon and consistent with the local plans submitted to the governor pursuant to section 8-83-208. The details of the state plan must be in accordance with federal law.

(2) and (3) Repealed.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 87, § 6, effective June 1. **L. 2016:** (1) amended and (2) and (3) repealed, (HB 16-1302), ch. 183, p. 634, § 11, effective May 19.

Editor's note: This section is similar to former § 8-71-209 as it existed prior to 2012.

8-83-210. Work force boards - membership.

(1) There shall be established, in each local work force development area of the state, a work force board, which the local elected officials of the local work force development area shall appoint to oversee the one-stop operator, one-stop career center, or local work force development programs in that county or area. Work force boards operate in partnership with and subject to the approval of the local elected officials for the work force development area. Such boards are authorized to operate only with the approval of the local elected officials. Subject to requirements under the federal act, the local elected officials shall determine the membership and functions of the boards.

(2) Membership of each such board must include, at a minimum:

(a) Repealed.

(b) Representatives of local educational entities, which may include public schools, boards of cooperative educational services, private occupational schools, and private or charter schools;

(c) Repealed.

(d) Representatives of community-based organizations, at least one of whom may represent the needs of persons with disabilities; and

(e) Representatives of economic development agencies, including private sector economic development entities.

(f) Repealed.

(3) Members of the work force board who represent organizations, agencies, or other entities must be individuals with optimum policy-making authority within such organizations, agencies, or entities.

(4) A majority of the members of each work force board must be business representatives specified in paragraph (a) of subsection (2) of this section.

(5) Each work force board shall elect a chairperson for the board from among the business representatives specified in paragraph (a) of subsection (2) of this section.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 89, § 6, effective June 1. L. 2016: (1) amended and (2)(a), (2)(c), and (2)(f) repealed, (HB 16-1302), ch. 183, p. 636, § 12, effective May 19.

Editor's note: This section is similar to former § 8-83-210 as it existed prior to 2012.

8-83-211. Functions of work force boards.

(1) Each work force board shall, in partnership with and subject to the approval of the local elected officials for the work force development area, conduct the following functions:

(a) Develop the local plan;

(b) Designate and certify one-stop operators and certify and oversee work force development programs;

(c) Select one-stop operators to operate the one-stop career center in a local area;

(d) Authorize grants for youth services;

- (e) Identify eligible providers of intensive services, if one-stop operators do not provide such services, and training services;
 - (f) Develop and enter into memorandums of understanding with work force partners specified in section 8-83-216 (1);
 - (g) Develop a budget for the purpose of carrying out the duties of the work force board;
 - (h) Negotiate local performance measures;
 - (i) Oversee and assist in statewide employment statistics systems;
 - (j) Coordinate and develop employer linkages with work force development activities carried out in the local area, including coordination of economic development strategies;
 - (k) Promote participation of private employers with the work force development program while ensuring the effective provision, through the work force system, of connecting, brokering, and coaching activities through intermediaries such as the one-stop operator in the local area or through other organizations to assist such employers in meeting their hiring needs; and
 - (l) Fulfill other functions outlined in the federal act.
- (2) The work force board shall not provide training services; except that the governor may waive this prohibition annually if the work force board is a qualified provider of training that is in demand and in short supply for that county or area.
- (3) Work force boards are authorized to operate only with the approval of the local elected officials and governor.

Source: **L. 2012:** Entire article added with relocations, (HB 12-1120), ch. 27, p. 90, § 6, effective June 1. **L. 2016:** IP(1), (1)(b), (1)(j), and (1)(k) amended and (1)(l) added, (HB 16-1302), ch. 183, p. 636, § 13, effective May 19.

Editor's note: This section is similar to former § 8-71-211 as it existed prior to 2012.

8-83-212. Youth council. (Repealed)

Source: **L. 2012:** Entire article added with relocations, (HB 12-1120), ch. 27, p. 91, § 6, effective June 1. **L. 2016:** Entire section repealed, (HB 16-1302), ch. 183, p. 637, § 14, effective May 19.

Editor's note: This section is similar to former § 8-71-212 as it existed prior to 2012.

8-83-212.5. Work force development board standing committees.

(1) A work force development board may designate standing committees that include work force development board members and members of the public with appropriate experience, as follows:

(a) A standing committee that includes representatives of one-stop partners to provide information and assist with operational and other issues relating to the one-stop delivery system as established in section 121 of the federal act;

(b) A standing committee that includes representatives of community-based organizations with a demonstrated record of success in serving youth to provide information and assist with planning, operational, and other issues relating to the provision of services to youth;

(c) A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to compliance with 29 U.S.C. sec. 3248, and applicable sections of the "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., regarding programmatic and physical access to the services, programs, and activities of the one-stop delivery system and appropriate training for staff concerning the provision of support or accommodation to, and finding employment opportunities for, individuals with disabilities; and

(d) Any additional standing committees that the work force development board deems necessary.

(2) This section does not prohibit another entity from addressing the issues specified in subsection (1) of this section.

Source: L. 2016: Entire section added, (HB 16-1302), ch. 183, p. 638, § 15, effective May 19.

8-83-213. Rural consortium work force development board.

(1) The rural consortium local elected officials board in the rural consortium work force development area shall establish and appoint a rural consortium work force development board. At a minimum, the membership of the rural consortium board must consist of representatives who are members of subarea boards. The rural consortium board shall meet the membership requirements under the federal act for a work force board for each subarea of the rural

consortium area; except that members, as appropriate, may represent more than one entity specified by the federal act for the purpose of meeting subarea board membership requirements. The rural consortium board shall develop its own operational procedures.

(2) **Functions of rural consortium board - delegation to subarea boards.** Unless otherwise specified in this section and subject to federal law, the rural consortium board may delegate to the subarea boards, where they have been established, in the rural consortium area such subarea board authority and functions specified under this part 2 and the federal act. Authority and functions of the rural consortium board are limited to the following:

(a) Meeting the federal membership requirements for a local work force development board for the local work force subareas;

(b) Negotiating with, and approving local plans submitted by, subarea boards;

(c) Compiling and consolidating each approved local plan of the consortium area into one local plan for the consortium area and ensuring that the plan meets the requirements under the federal act for a local plan;

(d) Submitting the local plan to the governor for approval;

(e) Negotiating with the governor for performance standards for the consortium area;

(f) Making recommendations to the governor concerning procedures to temporarily replace or correct a development area that is out of compliance with its local plan, as appropriate;

(g) Facilitating and coordinating work force subarea grant applications, as appropriate;

(h) Ensuring that any grant money awarded to a work force development area is a direct pass-through from the federal government to the eligible work force development area;

(i) Establishing standing committees pursuant to section 8-83-212.5;

(j) Subject to federal law, delegating to the subarea boards in the rural consortium area duties and functions specified in the federal act and in section 8-83-216 outlining requirements for one-stop partners.

(3) **Work force development subarea boards.**

(a) To the extent possible and as outlined in the applicable local plan, each work force development subarea board shall function as set forth in the federal act. In carrying out its duties, the work force development subarea board shall operate in partnership with, and be subject to the approval of, the local elected officials for the local work force development area.

(b) **Membership.** Notwithstanding section 8-83-210 (3), the local elected officials shall appoint members of each work force development subarea board. Membership, to the extent possible, must meet the requirements of the federal act.

(c) **Functions.** Notwithstanding section 8-83-211, at a minimum, functions of the work force development subarea board must be as set forth in this part 2 and the federal act. In addition, each subarea board shall:

(I) Upon the approval of and in partnership with the local elected officials, develop a comprehensive four-year local plan for its work force development subarea and submit the local plan for approval to the rural consortium work force development board. The plan must include a description of those requirements under the federal act that the work force development subarea board determines cannot be reasonably met while still fulfilling the intent and purposes of the federal act.

(II) Apply for federal grants. Each work force development subarea board may apply for national program grants on behalf of the subarea or in partnership with any other work force development area. Any national program grant money awarded to a work force development subarea is a direct pass-through from the federal government to the applicable work force development subarea.

(III) To the extent possible and as outlined in the local plan, with the agreement of the local elected officials and notwithstanding section 8-83-216, designate or certify the one-stop partners; and

(IV) (Deleted by amendment, L. 2016.)

(V) Oversee the one-stop system in the work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 92, § 6, effective June 1. L. 2016: (1), IP(2), (2)(a), (2)(b), (2)(f) to (2)(j), and (3) amended, (HB 16-1302), ch. 183, p. 638, § 16, effective May 19.

Editor's note: This section is similar to former § 8-71-213 as it existed prior to 2012.

8-83-214. Rural consortium local elected officials board.

(1) In order to satisfy requirements under the federal act for the role of local elected officials in a work force area, there shall be a rural consortium local elected officials board for the rural consortium work force development board. The rural consortium local elected officials board consists of one local elected official appointed by each work force development area in the consortium. Membership is for a term of two years, which term may be renewable.

(2) Functions of the rural consortium local elected officials board are to appoint members to the rural consortium work force development board and ensure that the rural consortium work force development board meets federal requirements for membership and delegate fiscal responsibility and contractual responsibility to the local elected officials of work force development areas. The rural consortium local elected officials board shall develop its own operational procedures.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 94, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 640, § 17, effective May 19.

Editor's note: This section is similar to former § 8-71-214 as it existed prior to 2012.

8-83-215. Designation of local work force development areas.

(1) Subject to section 106 of chapter 2 of the federal act concerning designation of work force development areas, on an annual basis, any county, municipality, city and county, or combination may petition the governor to form a new work force development area.

(2) (Deleted by amendment, L. 2016.)

(3) Subject to the governor's approval, counties, municipalities, or a city and county may choose, through intergovernmental agreements, to band together to form a work force development area for an area consisting of more than one county, municipality, or city and county or may choose to operate a work force development area as a single unit. If the proposed work force development area meets the minimum federal requirements for an area as set forth in the federal act, the governor should not unreasonably withhold approval of the work force development area.

(4) (a) The governor may authorize and approve as a federally designated work force development area any area that applies and qualifies as specified in subsection (1) of this section.

(b) and (c) (Deleted by amendment, L. 2016.)

(5) (a) The governor shall designate an additional federally designated work force development area for the state, specified as the "rural consortium work force subarea", which consists of all approved work force development subareas. Such decision shall be allowed on an annual basis, with notice to be given by February 1, for any designation to go into effect for the subsequent program year by July 1 of the same year.

(b) Any approved work force development area in the rural consortium work force development area shall operate with the same authority as, and function as if it were, a local work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 94, § 6, effective June 1. L. 2016: Entire section amended, (HB 16-1302), ch. 183, p. 641, § 18, effective May 19.

Editor's note: This section is similar to former § 8-71-215 as it existed prior to 2012.

8-83-215.5. Designation of planning regions.

(1) In accordance with 29 U.S.C. sec. 3121, every two years the state council, in consultation with local elected officials, shall conduct a process to identify planning regions. A local area must not be placed in a planning region without the support and agreement of the work force development board and the chief elected official.

(2) Local chief elected officials may review the regional planning area designation every two years before an updated state plan is submitted.

Source: L. 2016: Entire section added, (HB 16-1302), ch. 183, p. 642, § 19, effective May 19.

8-83-216. Required and optional partners of work force boards.

(1) **Required partners.** Each work force board, with the agreement of the local elected officials, is authorized to designate or certify partners outlined in the federal act for purposes of participating in the delivery of services for the one-stop system or work force development program in the local work force development area:

- (a) Repealed.
- (b) Adult education and literacy programs;
- (c) Welfare-to-work programs;
- (d) Programs under the federal "Carl D. Perkins Vocational and Applied Technology Education Act", 20 U.S.C. sec. 2301 et seq.;

- (e) Community service block grants;
- (f) Unemployment insurance;
- (g) "Wagner-Peyser Act" services;
- (h) Vocational rehabilitation programs;
- (i) Programs under the federal "Older Americans Act of 1965";
- (j) Programs under the federal "Trade Adjustment Assistance Reform and Extension Act of 1986";
- (k) Programs under 38 U.S.C. sec. 4100 et seq., concerning local veterans' employment representatives and disabled veterans' outreach programs; and

(l) Employment and training programs administered by the federal department of housing and urban development.

(2) Repealed.

(3) **Functions of required partners.** All required one-stop partners shall perform the following functions:

(a) Make available to participants through the one-stop system the core services that are required of and applicable to the partner's programs;

(b) Serve as representatives on the work force board;

(c) Use a portion of moneys, personnel, and other available resources to create and maintain a one-stop system; except that, to the extent such use would violate federal law or lead to a loss of federal moneys, this paragraph (c) does not apply; and

(d) Enter into a memorandum of understanding with the work force board relating to the operation of the one-stop career center, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals of individuals.

(4) **Functions of optional partners.**

(a) Optional one-stop partners shall perform the following functions:

(I) Make available to participants through the one-stop system the core services that are required of and applicable to the partner's programs;

(II) Participate in the operation of such one-stop system, consistent with the terms of the memorandum of understanding approved by the work force board and with the requirements of

the federal act in which the program is authorized, if the work force board and local elected official approve such participation.

(b) If an optional partner is designated or certified pursuant to subsection (1) of this section, its functions and responsibilities are the same as those of a required partner as set forth in subsection (3) of this section.

Source: **L. 2012:** Entire article added with relocations, (HB 12-1120), ch. 27, p. 95, § 6, effective June 1. **L. 2016:** IP(1) amended and (1)(a) and (2) repealed, (HB 16-1302), ch. 183, p. 642, § 20, effective May 19.

Editor's note: This section is similar to former§ 8-71-216 as it existed prior to 2012.

Cross references: For the "Wagner-Peyser Act", see 29 U.S.C. § 49 et seq.; for the "Older Americans Act of 1965", see 42 U.S.C. § 3001 et seq.; for the "Trade Adjustment Assistance Reform and Extension Act of 1986", see Pub.L. 99-272.

8-83-217. Memorandum of understanding - one-stop partners.

(1) (a) The work force board, with the agreement of the local elected officials, shall develop and enter into a memorandum of understanding between the work force board and the one-stop partners concerning the provision of services in the one-stop system in the local area.

(b) Each memorandum of understanding must contain provisions describing:

(I) The services to be provided through the one-stop system;

(II) How the costs of such services and the operating costs of the system will be funded;

(III) Methods for referral of individuals between the one-stop operator and one-stop partners for the appropriate services and activities;

(IV) The duration of the memorandum of understanding and the procedures for amending the memorandum of understanding during the term of the memorandum of understanding; and

(V) Such other provisions, consistent with the federal act, as the parties to the agreement determine to be appropriate.

(2) Repealed.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 97, § 6, effective June 1. **L. 2016:** (2) repealed, (HB 16-1302), ch. 183, p. 643, § 21, effective May 19.

Editor's note: This section is similar to former § 8-71-217 as it existed prior to 2012.

8-83-218. Core services.

(1) The work force investment program, as implemented through one-stop career centers, shall provide a core set of services, as defined by the federal act, to individuals who are adults or dislocated workers, including, at a minimum, access for job seekers to a comprehensive array of services and information, which may include:

- (a) Registration into the centralized computer system;
- (b) Career center operations;
- (c) Education and training program information;
- (d) A multimedia resource library providing access to internet-based services;
- (e) Labor market information;
- (f) Skill assessment services that are designed to determine each participant's employability, aptitudes, abilities, and interests, by means of individual interviews whenever possible;
- (g) Job referral and placement;
- (h) Self-help resume preparation resources;
- (i) Referral services for community and social services, including welfare-to-work programs, employment programs for persons with disabilities, employment programs for older workers, community-based organizations, vocational rehabilitation, adult literacy, supportive services, and youth programs and services;
- (j) Veterans' benefits and services information, subject to the availability of Wagner-Peyser funds and to the following:
 - (I) Any one-stop career center receiving Wagner-Peyser funds or housing Wagner-Peyser Act staff shall provide veterans with priority employment and training services in accordance with chapter 41 of title 38, U.S.C.;
 - (II) In one-stop career centers that have been assigned disabled veteran outreach program and local veteran employment representative positions, such positions must be held by state

employees and are in addition to, and do not supplant, Wagner-Peyser staff in providing priority employment and training services; and

(III) All one-stop career centers shall make the full array of core services available to veterans in the following order of priority: Disabled veterans, Vietnam-era veterans, veterans, and other eligible persons.

(2) Work force boards are encouraged to consider and determine, at a minimum, the feasibility of providing access for employers to a comprehensive array of services and information, which may include:

- (a) Professional account representatives and management;
- (b) Assistance in individual and mass recruiting;
- (c) Referrals of skilled applicants;
- (d) Labor market information;
- (e) Education and training program information;
- (f) Access to internet-based services;
- (g) Information and referral for community and social services;
- (h) Layoff assistance; and
- (i) Other employment-related services and information.

(3) At the option of the local elected officials, other services for job seekers and employers may be offered to meet the needs of a work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 98, § 6, effective June 1. **L. 2016:** (3) amended, (HB 16-1302), ch. 183, p. 644, § 22, effective May 19.

Editor's note: This section is similar to former § 8-71-218 as it existed prior to 2012.

8-83-219. Intensive services - training services - individual training accounts.

(1) Access to intensive services, as specified in the federal act, must be available to individuals who are adults or dislocated workers who are unemployed, unable to obtain employment through core services, and have been determined by a one-stop operator to be in need of more intensive services to obtain employment or who are employed but are determined

by a one-stop operator to be in need of such services. Such services may include diagnostic testing, individual or group counseling and career planning, case management and follow-up services, and training services specified in subsection (2) of this section.

(2) Participants who have met the eligibility requirements for intensive services, are unable to obtain or retain employment through such services, are determined by the one-stop operator to be in need of such services, and are eligible for such services as specified in the federal act must have access to training services, as specified in the federal act. Such training services include occupational skills training, on-the-job training, and training programs operated by the private sector.

(3) The one-stop system shall provide training services authorized under this section to eligible individuals through the use of individual training accounts, as specified in the federal act. Exceptions to the use of individual training accounts, as set forth in the federal act, include customized training, training services not provided by a training provider within the work force area, or training services that are offered by community-based organizations or other private organizations that serve such special populations that face multiple barriers to employment.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 100, § 6, effective June 1.

Editor's note: This section is similar to former § 8-71-218.5 as it existed prior to 2012.

8-83-220. Encouragement of in-demand programs - legislative declaration.

(1) The state work force development council shall encourage work force development programs and work force development areas to enroll individuals in educational programs related to industries that are in demand in that work force development area. The general assembly finds that Colorado is facing a shortage in several different industries and that having local areas encouraging individuals to follow a career path in a marketable industry in that area further benefits Colorado residents.

(2) The general assembly finds, determines, and declares that educating individuals eligible to receive moneys from welfare-to-work or temporary assistance to needy families will benefit such individuals. In addition, the general assembly finds, determines, and declares that Colorado is facing a shortage of licensed practical nurses and that encouraging individuals to follow such a career path further benefits Colorado and its residents.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 100, § 6, effective June 1. **L. 2016:** (1) amended, (HB 16-1302), ch. 183, p. 644, § 23, effective May 19.

Editor's note: This section is similar to former § 8-71-218.7 as it existed prior to 2012.

8-83-221. Title I and Title III allocation.

The local elected officials or their designee shall serve as the local grant recipient for the Title I and Title III money allocated to the work force development area by the governor for the purposes of a work force development area's administration and implementation of the work force investment program pursuant to the allocation formula described in section 8-83-223. The department shall contract directly with each local work force investment area board. In order to assist in the administration of Title I and Title III money, the local elected officials may designate an entity to serve as a local grant sub-recipient for the money or as a local fiscal agent. Except when the designee is the department, a designation does not relieve the local elected officials of the liability for any misuse of grant money.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 221, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 644, § 24, effective May 19.

Editor's note: This section is similar to former § 8-71-219 as it existed prior to 2012.

8-83-222. County distribution formula - use of money.

Subject to available appropriations by the general assembly, the department shall allocate Title I and Title III money to each work force development area for the operation of the work force development program in that work force development area.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 101, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 644, § 25, effective May 19.

Editor's note: This section is similar to former § 8-71-220 as it existed prior to 2012.

8-83-223. Allocation process.

Subject to federal law and available appropriations, within thirty days after receipt of the federal appropriation from the United States department of labor, the local elected officials from each work force development area in the state shall recommend an allocation formula for Title I and Title III money for each work force development area to be implemented in the following program year. Development of the allocation formula by the local elected officials must be facilitated through a statewide association of county commissioners. The statewide association of county commissioners shall ensure that the local elected officials from each work force development area have an opportunity to participate in the development and final approval of the recommendations for allocation formulas. The department and the state council shall provide technical assistance to the statewide association of county commissioners. The local elected officials shall recommend the allocation formula to be applied to each allocation for adult, youth, and dislocated worker services under Title I and employment services under Title III. The statewide association of county commissioners shall forward the local elected officials' recommendations to the state council pursuant to section 8-83-224 (2)(f) for review and comment. The state council shall then submit such recommendations, together with the state council's comments, to the joint budget committee of the general assembly for review and comment before forwarding such recommendations to the governor for final determination and United States department of labor approval. If the local elected officials cannot agree on an allocation, the local elected officials shall prepare, with comment, alternatives and the statewide association of county commissioners shall submit the alternatives to the state council for review and comment and submission to the joint budget committee, which shall select one alternative and forward it to the governor for final determination and United States department of labor approval. The local elected officials and the statewide association of county commissioners shall develop their own operational procedures. Any money received by the state under Title I and Title III of the federal act, together with any associated state full-time equivalent personnel positions, is subject to appropriation by the general assembly.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 101, § 6, effective June 1. **L. 2016:** Entire section amended, (HB 16-1302), ch. 183, p. 645, § 26, effective May 19.

Editor's note: This section is similar to former § 8-71-221 as it existed prior to 2012.

8-83-224. State council - duties.

(1) The state council shall function as, and is intended to meet the requirements for, the state work force development board referred to in the federal act. In addition to performing the functions set forth in subsection (2) of this section and the federal act, the state council shall serve in an advisory role to the governor for those areas specified by the federal act and shall serve as a conduit for information to local work force development areas, including facilitation of grant applications and assistance to work force development areas to enable work force development areas to successfully implement programs under the federal act.

(2) The state council shall assist the governor in the following:

(a) Development of the comprehensive five-year state plan as specified in section 8-83-209;

(b) Development and continuous improvement of a statewide system of activities that are funded pursuant to the federal act or carried out through a one-stop system as set forth in this part 2 that receives Title I moneys. Such improvement shall include the development of linkages in order to ensure coordination and prevent duplication among the programs and activities authorized in this part 2.

(c) Review of local plans submitted by the work force development boards and the rural consortium work force development board;

(d) Designation of local work force development areas;

(e) Commenting at least once annually on the measures taken pursuant to the federal "Carl D. Perkins Vocational and Applied Technology Education Act", 20 U.S.C. sec. 2301 et seq.;

(f) Review and comment on, and submission to the joint budget committee for review and comment on, allocation formulas for the distribution of Title I moneys for adult employment and training activities and youth activities to work force investment areas in accordance with the process established in section 8-83-223;

(g) Preparation of the annual report to the secretary of the United States department of labor;

(h) Development of the statewide employment statistics system described in the "Wagner-Peyser Act";

(i) Development of an application for an incentive grant authorized pursuant to the federal act;

(j) Any other functions as requested by the governor; and

(k) Other duties outlined in the federal act.

(3) The state council shall work in partnership with the business community, local work force area representatives, and other state and local partners to convene a state-level work group

to address branding, marketing, and outreach to the public about the opportunities available in the work force development areas throughout the state. The work group shall convene not later than July 31, 2016. On or before January 15, 2017, the work group shall make recommendations for adoption into the biannual state plan regarding the updating of existing statutes and policies to ensure consistency and advancement in the work force program throughout the state.

Source: **L. 2012:** Entire article added with relocations, (HB 12-1120), ch. 27, p. 101, § 6, effective June 1. **L. 2016:** (1), (2)(c), (2)(d), (2)(i), and (2)(j) amended and (2)(k) and (3) added, (HB 16-1302), ch. 183, p. 645, § 27, effective May 19.

Editor's note: This section is similar to former § 8-71-222 as it existed prior to 2012.

8-83-225. Colorado department of labor and employment - functions.

(1) The department shall serve as the administrative entity for Title I money received and money received pursuant to Title III of the federal act. The department also is responsible for:

(a) Administering the statewide labor market information and fiscal systems to the extent such systems pertain to activities under the federal act;

(b) Assisting in the establishment and operation of one-stop career centers as requested by a local work force area;

(c) Disseminating lists of eligible training providers;

(d) Contracting and administering Title I moneys appropriated by the general assembly in accordance with the federal act;

(e) With input from the applicable work force development areas, continuing the centralized computer system that links work force development programs and includes training and technical support. A description of the state centralized system and procedures for developing, maintaining, and training must be included in the state plan required in section 8-83-209.

(f) Providing staff development and training services and technical assistance to work force development areas.

(2) The department shall provide ongoing consultation and technical assistance to each work force development area for the operation of work force investment programs.

(3) The department shall encourage work force investment areas to inform individuals of the career possibilities in the field of nursing and the availability of practical nursing education programs.

(4) The department shall contribute education and workforce data beginning in the 2025-26 state fiscal year, as necessary, to the Colorado statewide longitudinal data system consistent with the governance practices established by the Colorado statewide longitudinal data system governing board pursuant to section 24-37.5-125 (4).

Source: **L. 2012:** Entire article added with relocations, (HB 12-1120), ch. 27, p. 102, § 6, effective June 1. **L. 2016:** IP(1), (1)(e), (1)(f), and (2) amended, (HB 16-1302), ch. 183, p. 646, § 28, effective May 19. **L. 2024:** (4) added, (HB 24-1364), ch. 238, p. 1560, § 10, effective May 23.

Editor's note: This section is similar to former § 8-71-223 as it existed prior to 2012.

8-83-226. Responsibilities of governor.

- (1) The governor shall perform the following functions, as specified in the federal act:
 - (a) Appoint members to the state council in accordance with section 24-46.3-101 (2), C.R.S.;
 - (b) Establish criteria for local elected officials to use in appointing members of local work force investment boards;
 - (c) Designate federal work force development areas in consultation with the local elected officials, including local work force investment areas requesting to be a part of the federal work force investment area comprising a consortium of work force areas;
 - (d) Designate, modify, and terminate work force investment areas in the state, including temporary designation, and establish an appeal process for review of such decisions;
 - (e) Certify designated work force investment boards and the local consortium work force development board;
 - (f) Negotiate with the federal department of labor concerning the contents of the state plan; and
 - (g) Carry out such other duties and functions as may be required under the federal act.

Source: L. 2012: Entire article added with relocations, (HB 12-1120), ch. 27, p. 103, § 6, effective June 1. **L. 2016:** (1)(c) and (1)(e) amended, (HB 16-1302), ch. 183, p. 647, § 30, effective May 19.

Editor's note: This section is similar to former § 8-71-224 as it existed prior to 2012.

8-83-227. Additional funding for workforce development activities - state funding not subject to federal law limitations.

(1) The department may receive and expend money from the general fund or any other state source appropriated by the general assembly or passed through another entity for purposes of distributing state funds to workforce development areas to implement workforce development activities, including the functions, activities, and services authorized pursuant to this part 2.

(2) Any limitations or requirements imposed on the use of money received pursuant to the federal act or the Wagner-Peyser Act do not apply to state money appropriated or passed through to the department pursuant to this section.

(3) For any appropriation made by the general assembly or pass-through of money from another entity pursuant to this section, the division, in partnership with the state council, shall determine the use of, and any limitations on the use of, the money for workforce development activities to address the economic and labor market conditions.

Source: L. 2021: Entire section added, (HB 21-1264), ch. 308, p. 1858, § 1, effective June 23.

Cross references: For the legislative declaration in HB 21-1264, see section 2 of chapter 308, Session Laws of Colorado 2021.

PART 3

APPRENTICESHIPS

8-83-301. Short title. (Repealed)

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 828, § 1, effective May 26.

Editor's note: Section 8-83-307.5 provided for the repeal of this section, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-302. Legislative declaration. (Repealed)

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 828, § 1, effective May 26.

Editor's note: Section 8-83-307.5 provided for the repeal of this section, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-303. Definitions. (Repealed)

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 829, § 1, effective May 26. **L. 2018:** (2.5) added, (HB 18-1316), ch. 241, p. 1498, § 1, effective May 24. **L. 2021:** (2) amended, (HB 21-1007), ch. 309, p. 1891, § 4, effective July 1.

Editor's note: (1) Subsection (2) was amended in HB 21-1007, effective July 1, 2021. For the amendments in HB 21-1007 in effect from July 2, 2021, to September 30, 2021, see chapter 309, Session Laws of Colorado 2021. (L. 2021, p. 1891.)

(2) Section 8-83-307.5 provided for the repeal of this section, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-304. Skilled worker outreach, recruitment, and key training grant program - creation - award criteria. (Repealed)

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 830, § 1, effective May 26. **L. 2017:** (1)(b)(I) and (2) amended and (1)(d) added, (HB 17-1357), ch. 360, p. 1887, § 1, effective June 5. **L. 2018:** (1)(b)(I), (1)(d), and (2) amended, (HB 18-1316), ch. 241, p. 1498, § 2,

effective May 24. **L. 2020:** (2) and (5) amended, (HB 20-1395), ch. 137, p. 592, § 1, effective June 26.

Editor's note: Section 8-83-307.5 provided for the repeal of this section, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-305. Skilled worker outreach, recruitment, and key training grant review committee - creation - membership - duties - grant award recommendations. (Repealed)

Source: **L. 2015:** Entire part added, (HB 15-1276), ch. 225, p. 833, § 1, effective May 26. **L. 2018:** IP(1), (1)(i), and (2)(c) amended, (HB 18-1316), ch. 241, p. 1499, § 3, effective May 24. **L. 2020:** (2)(c) amended, (HB 20-1395), ch. 137, p. 592, § 2, effective June 26.

Editor's note: Section 8-83-307.5 provided for the repeal of this section, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-306. Reports. (Repealed)

Source: **L. 2015:** Entire part added, (HB 15-1276), ch. 225, p. 835, § 1, effective May 26. **L. 2017:** IP(2) amended, (HB 17-1357), ch. 360, p. 1888, § 2, effective June 5. **L. 2018:** IP(2) amended and (3) added, (HB 18-1316), ch. 241, p. 1500, § 4, effective May 24. **L. 2020:** (2) amended, (HB 20-1395), ch. 137, p. 593, § 3, effective June 26.

Editor's note: Section 8-83-307.5 provided for the repeal of this section, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-307. Skilled worker outreach, recruitment, and key training grant program fund - creation. (Repealed)

Source: L. 2015: Entire part added, (HB 15-1276), ch. 225, p. 836, § 1, effective May 26. **L. 2017:** (3) amended, (HB 17-1357), ch. 360, p. 1888, § 3, effective June 5. **L. 2018:** (1)(b), (3), and (5) amended, (HB 18-1316), ch. 241, p. 1500, § 5, effective May 24. **L. 2020:** (3)(a) and (5) amended, (HB 20-1395), ch. 137, p. 594, § 4, effective June 26.

Editor's note: Section 8-83-307.5 provided for the repeal of this section, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-307.5. Repeal. (Repealed)

Source: L. 2020: Entire section added, (HB 20-1395), ch. 137, p. 594, § 5, effective June 26.

Editor's note: This section provided for the repeal of this section, effective September 30, 2021. (See L. 2020, p. 594.)

8-83-308. Colorado state apprenticeship resource directory - collection of apprenticeship program information - promotion of public awareness - definitions.

(1) The department shall maintain the Colorado state apprenticeship resource directory, referred to in this section as the "directory". The directory must include, for each apprenticeship program listed in the directory, the information collected by the department pursuant to this subsection (1). At least annually, the department shall update the information in the directory. The department shall require apprenticeship programs to provide the following information to the department for inclusion in the directory:

- (a) Program name and United States department of labor registration number;
- (b) Program contact information, including primary mailing address, and website address, if any;
- (c) A brief description of the industry for which the program provides workforce training;
- (d) A statement describing:
 - (I) The name of the occupation and certificate of completion as issued by the United States department of labor or the state apprenticeship agency;

(II) If applicable, additional credits, diplomas, degrees, certifications, industry certificates, interim credentials, or licenses that all participants receive upon the successful completion of the program; and

(III) If applicable, other optional credits, diplomas, degrees, certifications, industry certificates, interim credentials, or licenses that participants may be prepared for or earn as part of the program;

(e) The total number of months required or allowed to complete the program, the total number of hours an enrollee must complete, and, of the total hours an enrollee must complete, a breakdown of the number of on-the-job hours and other training hours an enrollee must complete;

(f) The total number of individuals enrolled in the program in the previous year and the anticipated attendance and enrollee tuition for the current year;

(g) The percentage of enrollees who completed the program in the previous year; the percentage of enrollees who completed the program in the previous year and who are currently working in the industry for which the program provides workforce training; and, if known, these percentages for each of the previous five years the program has been offered;

(h) The lowest journeyworker wage and highest journeyworker wage; and

(i) A brief description of the application process, selection criteria, and required or preferred prerequisites for enrollment.

(1.5) (a) On or before January 1, 2021, the department shall include in the directory the name and contact information for at least one designated apprenticeship training program contact for every school district and public high school. The contact information must include, at a minimum, the contact's mailing address, email address, telephone number, and high school or school district that the contact represents.

(b) The department shall cooperate with the department of education, created and existing pursuant to section 24-1-115, to receive and annually update the information required pursuant to subsection (1.5)(a) of this section no later than September 1 of each year.

(c) As used in this subsection (1.5), unless the context otherwise requires:

(I) "Designated apprenticeship training program contact" means a designee of a school district or public high school that is the preferred point of contact for students, parents, or apprenticeship programs to interface with the school districts and high schools on matters related to apprenticeship training opportunities and workforce training.

(II) "Public high school" means a public school as defined in section 22-1-101, including a district charter school or an institute charter school that covers any grade from ninth through twelfth.

(III) "School district" means a school district authorized by section 15 of article IX of the state constitution and organized pursuant to article 30 of title 22. "School district" also includes a board of cooperative services created pursuant to article 5 of title 22 if it is operating a public high school.

(2) The department shall promote public awareness of the directory by, at a minimum:

(a) Prominently posting the directory on the department's website;

(b) Notifying work force development boards, as defined in section 8-83-203 (23), when the directory is first posted on the department's website and each time an annual revised directory is posted. The department shall provide each board with information on how to access the full directory and shall require each board to include a link to the directory information on the board's website.

(c) Identifying and informing the appropriate contact persons at Colorado educational institutions of the availability of the directory. The educational institutions include high school guidance offices, community colleges, state colleges and universities, and private higher education institutions.

(d) Informing relevant private industry and business associations of the availability of the directory and requesting that the associations promote the directory to association members;

(e) Conducting annual outreach, including providing:

(I) Technical assistance on how to update program information and standards for accuracy of information; and

(II) Resources to promote apprenticeship openings to the public.

(3) As used in this section, unless the context otherwise requires:

(a) "Apprenticeship program" means a Colorado-based apprenticeship training program that is registered with the United States department of labor's office of apprenticeship or an apprenticeship program as defined in section 8-15.7-101 (4).

(b) "Industry" means either one or more individual employers or an industry association.

(c) "Journeyworker" means either:

(I) A worker who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation; or

(II) A mentor, technician, specialist, or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.

(d) "State apprenticeship agency" means the state apprenticeship agency created in section 8-15.7-102.

(4) The directory must include information from the program's registration information and registered apprenticeship program standards.

Source: **L. 2019:** Entire section added, (SB 19-171), ch. 317, p. 2958, § 1, effective August 2. **L. 2020:** (3) added, (HB 20-1395), ch. 137, p. 594, § 6, effective June 26; (1.5) added, (SB 20-081), ch. 33, p. 108, § 1, effective September 14. **L. 2021:** (3)(a) amended, (HB 21-1007), ch. 309, p. 1891, § 5, effective July 1. **L. 2023:** IP(1), (1)(d), (1)(g), and (1)(h) amended and (2)(e), (3)(c), (3)(d), and (4) added, (SB 23-146), ch. 71, p. 268, § 1, effective August 7.

PART 4

EMPLOYMENT SUPPORT AND JOB RETENTION SERVICES PROGRAM

Editor's note: (1) This part 4 was added in 2019. For amendments to this part 4 prior to its repeal in 2026, consult the 2025 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) (a) For the amendments to § 8-83-407 in HB 26-1383 in effect from June 1, 2026, to July 1, 2026, see chapter 282, Session Laws of Colorado 2026. (L. 2026, p. 1565.)

(b) Section 8-83-407 provided for the repeal of this part 4, effective July 1, 2026. (See L. 2026, p. 1565.)

(3) For the amendments to § 8-83-406 in HB 26-1383 in effect from June 1, 2026, to July 1, 2026, see chapter 282, Session Laws of Colorado 2026. (L. 2026, p. 1565.)

8-83-401 to 8-83-407. (Repealed)

PART 5

JUST TRANSITION SUPPORT FOR COAL-RELATED JOBS

8-83-501. Legislative declaration.

(1) The general assembly hereby:

(a) Finds that:

(I) Coal provides more than half of Colorado's net power generation. There were approximately one thousand three hundred workers employed in Colorado coal mines at the end of 2018, and half of the domestic consumption of Colorado's mined coal is for power generation within the state.

(II) Colorado's power sector, and the nation's, is moving away from coal as a fuel source based on consumer demand for cleaner power and the declining cost of natural gas and renewable resources. Electricity generated from renewable sources has doubled since 2010 to approximately twenty-five percent of Colorado's power generation in 2017.

(b) Determines that:

(I) In addition to the changing economics of power generation, there is a scientific consensus that greenhouse gas emissions, which are primarily the result of fossil fuel combustion, must be reduced in order to mitigate the worst effects of climate change. These effects are already being experienced by Coloradans in forms that include more extreme weather, snow pack melt, and higher temperatures.

(II) The effects of coal plant closures on workers and communities have the potential to be significant if not managed correctly. The closure of coal-fired plants nationwide is also likely to have a serious impact on employment in the state's coal mines and the transportation and logistics supply chains that move coal from mine to market. Many of these jobs provide family-supporting wages and benefits. The communities that host retiring power plants may lose principal contributors to their tax base and revenue for vital local government services. The enactment of this part 5 will help alleviate these impacts.

(III) While Colorado companies and policymakers have worked to drive new investment from the clean energy economy into transitioning communities and rural parts of the state, there does not exist at the state or federal level sufficient resources to assist workers and communities impacted by changes in Colorado's coal economy, and there does not exist sufficient coordinated leadership within Colorado's state government to align and deliver assistance to these coal communities and workers; and

(c) Declares that:

(I) A strong and comprehensive policy is also needed to invest new financial resources in coal communities that are seeking to diversify and grow their local and regional economies in a manner that is both sustainable and equitable; and

(II) Colorado must ensure that the clean energy economy fulfills a moral commitment to assist the workers and communities that have powered Colorado for generations, as well as the disproportionately impacted communities who have borne the costs of coal power pollution for decades, and to thereby support a just and inclusive transition.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2987, § 1, effective May 28.

8-83-502. Definitions.

As used in this part 5, unless the context otherwise requires:

(1) "Coal transition community" means a Colorado municipality, county, or region where a coal transition facility or a center for the manufacturing or transportation supply chain of a coal transition facility was or is located.

(1.5) "Coal transition facility" means a Colorado coal-fueled electrical power generating plant that was in operation at any time in 2017, or a Colorado coal mine that was actively producing at any time in 2017.

(2) "Coal transition worker" means a Colorado resident who works or worked in a coal transition facility or in the manufacturing or transportation supply chain of a coal transition facility.

(2.5) "Coal transition workforce assistance program account" or "account" means the coal transition workforce assistance program account created in section 8-83-504.5.

(3) "Director" means the director of the office.

(4) "Disproportionately impacted community" has the meaning set forth in section 24-4-109 (2)(b)(II).

(5) "Eligible entity" means the following entities that serve a coal transition community and that may apply for a grant:

- (a) An economic development district;
- (b) A county, municipality, city and county, or other political subdivision of the state;
- (c) An Indian tribe;

(d) An apprenticeship program that is registered with the United States department of labor or a state apprenticeship agency recognized by the United States department of labor;

(e) An institution of higher education; and

(f) A public or private nonprofit organization or association.

(5.5) "Executive director" means the executive director of the department of labor and employment.

(6) "Fund" means the just transition cash fund created in section 8-83-504.

(7) "Just transition plan" means the plan, in draft or final form, prepared by the just transition advisory committee as outlined in section 8-83-503 (6) and submitted by the director as outlined in section 8-83-503 (4), or any subsequent version of the plan developed through a similar process.

(8) "Office" means the just transition office created in section 8-83-503 (1).

(9) "Tier one coal transition worker" means a coal transition worker who was laid off on or after January 1, 2017, or who the director determines is reasonably likely to be laid off in the future, from employment in a coal transition facility or the manufacturing or transportation supply chain of a coal transition facility if the proximate cause of the actual or anticipated loss of employment is either the closure or conversion of a coal-fueled electrical power generating plant in Colorado or a contiguous state or what the director determines to be a sustained and likely permanent decline in broader coal markets due to similar closures or conversions nationally and globally.

(10) "Tier one transition community" means a coal transition community that the director, with the concurrence of the executive directors of the department and the department of local affairs, determines has already experienced or is at risk of experiencing significant economic disruption, the proximate cause of which is either the closure or conversion of a coal-fueled electrical power generating plant in Colorado or a contiguous state or a sustained and likely permanent decline in broader coal markets due to similar closures or conversions nationally and globally.

(11) "Tier two coal transition worker" means a coal transition worker who is not a tier one coal transition worker.

(12) "Tier two transition community" means a coal transition community that the director, with the concurrence of the executive directors of the department and the department of local affairs, determines has not yet met the criteria required to be a tier one transition community.

(13) "Wage differential benefit" means supplemental income covering all or part of the difference between an individual's previous employment in a coal mine, coal-fueled electrical

power generating plant, or the manufacturing and transportation supply chains of either and new employment or supplemental income during job retraining.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2988, § 1, effective May 28. **L. 2021:** (1), (2), and (9) amended and (1.5), (10), (11), (12), and (13) added, (HB 21-1290), ch. 400, p. 2651, § 1, effective June 30. **L. 2022:** (2.5) added, (HB 22-1193), ch. 11, p. 116, § 1, effective March 7; (9) amended, (SB 22-212), ch. 421, p. 2966, § 18, effective August 10. **L. 2023:** (5)(d) amended, (SB 23-051), ch. 37, p. 143, § 13, effective March 23; (4) amended, (HB 23-1233), ch. 245, p. 1331, § 15, effective May 23. **L. 2024:** (5.5) added and (7) amended, (HB 24-1410), ch. 319, p. 2135, § 1, effective May 31.

Cross references: For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of Colorado 2023.

8-83-503. Just transition office - advisory committee - repeal.

(1) The just transition office is created in the office of the executive director. The just transition office is a **type 2** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department of labor and employment.

(2) The executive director shall appoint the director of the office. The director shall manage the operations of the office.

(3) It is the purpose of the office to:

(a) Identify or estimate, to the extent practicable, the timing and location of facility closures and job layoffs in coal-related industries and their impact on affected workers, businesses, and coal transition communities and regularly consult with the just transition advisory committee created in subsection (6) of this section on issues related to addressing these impacts in a manner that best ensures continued economic stability and prosperity for impacted workers and communities during and after the transition away from coal as an economic driver;

(a.5) Develop and implement plans to maximize the economic stability and prosperity of coal workers and communities through a variety of strategies outlined in or consistent with this part 5, giving strong consideration to strategies recommended by the just transition advisory committee;

(b) Provide administrative, logistical, research, and policy support to the just transition advisory committee's work as outlined in subsection (6) of this section;

(c) Participate in the department's presentation to the general assembly during the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" hearings, held pursuant to part 2 of article 7 of title 2, regarding requirements for financing components of the just transition plan, the administration of this part 5, and the expected results; and

(d) Report to the annual "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" hearings, held pursuant to part 2 of article 7 of title 2, of the senate local government and housing committee and the house transportation, housing, and local government committee, or their successor committees, about the grants awarded by the office during the preceding fiscal year, their recipients, and the purpose for which they were awarded.

(4) Based primarily on the advice of and recommendations from the just transition advisory committee, and with the approval of the executive director of the department and the executive director of the department of local affairs, on or before December 31, 2020, the director shall submit to the governor and the general assembly a just transition plan for Colorado. The director shall submit updates to the plan as needed. This plan, and any updates to the plan, must include, at a minimum:

(a) Benefits, grants, and other components that the office, the department, or the department of local affairs shall coordinate and implement under existing authority;

(b) Benefits, grants, and other components that require additional legislative authority to implement;

(c) Sources of funding that may be accessed from federal, state, local, and other sources without additional legislative authority or approval; and

(d) Sources of funding that require legislative or voter approval.

(5) To further the purposes of the office created in this part 5, the director shall engage in relevant administrative proceedings, such as matters before the public utilities commission and the air quality control commission.

(6) (a) There is created the just transition advisory committee to develop and recommend a just transition plan for the state of Colorado and to advise the office of just transition concerning the office's role in implementing this part 5.

(b) Repealed.

(c) In advising and making recommendations to the office of just transition, the advisory committee shall consider options to:

(I) Align and target local, state, and federal resources and leverage additional resources to invest in communities and workers whose coal-related industries are subject to significant economic transition;

(II) Align and target existing local, state, and federal programming and establish additional programming to support communities and workers whose coal-related industries are subject to significant economic transition;

(III) Establish benefits for coal transition workers, including consideration of:

(A) Benefits similar in type, amount, and duration to federal benefits available pursuant to 20 CFR 617.20 to 617.49; and

(B) Wage differential benefits for affected workers, including consideration of eligibility and the duration of the benefits;

(IV) Educate dislocated workers, in collaboration with employers of dislocated workers and relevant labor unions, regarding how to apply for just transition benefits; and

(V) Establish and structure a grant program and other potential programmatic support for coal transition communities and organizations that support coal transition communities, including eligible entities.

(d) In developing the advisory committee's advice and recommendations, the advisory committee shall identify and consider:

(I) The projected short-term and long-term costs and benefits to the state of each plan component, including worker benefits, grant programs, and other supports;

(II) Potential sources for sustainable short-term and long-term funding for a just transition plan and its components;

(III) The potential fiscal, economic, workforce, and other implications of extending components of the just transition plan to other sectors and industries affected by similar economic disruptions; and

(IV) Which components of the just transition plan can be implemented by the departments under existing authority and which require additional legislation.

(e) The advisory committee consists of the following members:

(I) Ex officio members as follows:

(A) The executive director of the department of labor and employment or a designee;

(B) The director of the office of economic development or a designee;

(C) The director of the Colorado energy office or a designee;

- (D) The executive director of the department of local affairs or a designee; and
- (E) A representative of the office of the governor;
- (II) One member of the senate, appointed by the president of the senate, and one member of the house of representatives, appointed by the speaker of the house of representatives; and
- (III) The following members appointed by the director:
 - (A) Five representatives of coal transition workers, at least one of whom must work at a coal mine and at least one of whom must work at an electric utility;
 - (B) Three representatives from coal transition communities;
 - (C) Two representatives with professional economic development or workforce retraining experience;
 - (D) Two representatives of disproportionately impacted communities; and
 - (E) Two representatives of utilities that, on May 28, 2019, operated a coal-fueled electric generating unit.
- (e.5) The director shall ensure that the composition of the advisory committee described in subsection (6)(e) of this section is as geographically diverse as possible, including members from each tier one transition community.
- (f) The term of appointment or designation is four years; except that the initial term of members appointed pursuant to subsection (6)(e)(II) of this section is two years and the initial term of members appointed pursuant to subsection (6)(e)(III) of this section is three years. Each legislative member is entitled to receive payment of a per diem and reimbursement for actual and necessary expenses as authorized in section 2-2-326, appointed members are entitled to the same per diem and expense reimbursement, and ex officio members are entitled to the same expense reimbursement; except that all payments authorized by this subsection (6)(f) are at a rate fifty percent less than that authorized by law.
- (g) The advisory committee shall elect a chair from among its members to serve for a term not to exceed two years, as determined by the advisory committee. The advisory committee shall meet at least once every quarter. The chair may call such additional meetings as are necessary for the advisory committee to complete its duties.
- (h) The advisory committee may engage additional nonvoting members or advisors to provide additional expertise as needed.
- (i) This subsection (6) is repealed, effective September 1, 2030. Before the repeal, this subsection (6) is scheduled for review in accordance with section 2-3-1203.

(7) The office, in consultation with the advisory committee, shall develop a proposed long-term budget to adequately finance the just transition plan. The office shall submit the proposed budget to the executive director of the department no later than July 1, 2022. The budget must include financing options from state, federal, and other sources. The department shall consider the proposed budget as part of its budget proposal for state fiscal year 2023-24.

Source: **L. 2019:** Entire part added, (HB 19-1314), ch. 323, p. 2989, § 1, effective May 28. **L. 2021:** (7) added, (HB 21-1266), ch. 411, p. 2750, § 19, effective July 2. **L. 2024:** (1), (2), and IP(4) amended, (HB 24-1410), ch. 319, p. 2135, § 2, effective May 31. **L. 2025:** (3)(b) and (3)(c) amended and (3)(d) added, (SB 25-037), ch. 364, p. 1975, § 1, effective June 3; (3)(a), IP(4), (6)(a), IP(6)(c), IP(6)(d), (6)(e)(III)(A), and (6)(i) amended, (3)(a.5) and (6)(e.5) added, and (6)(b) repealed, (SB 25-181), ch. 323, p. 1696, § 2, effective August 6.

Cross references: (1) Subsection (6)(c)(III)(A) refers to 20 CFR 617.20 to 617.49. The United States department of labor promulgated a rule consolidating 20 CFR 617, 20 CFR 618, and 20 CFR 90 into 20 CFR 618, effective September 21, 2020.

(2) For the short title ("Environmental Justice Act") and the legislative declaration in HB 21-1266, see sections 1 and 2 of chapter 411, Session Laws of Colorado 2021.

8-83-504. Just transition cash fund - transfer from general fund - transfer from account - use of money - definition.

(1) (a) The just transition cash fund is created in the state treasury. The fund consists of money credited to the fund in accordance with section 39-29-108 (2)(d) and any other money that the general assembly may appropriate or transfer to the fund. Subject to annual appropriation by the general assembly, the office may expend money from the fund and the department may expend money from the coal transition workforce assistance program account of the fund created in section 8-83-504.5 (1) for purposes specified in this part 5, including paying for the office's direct and indirect costs in administering this part 5. Any unexpended and unencumbered money in the fund at the end of any fiscal year remains in the fund and shall not be credited or transferred to the general fund.

(b) (I) For state fiscal years commencing on or before July 1, 2024, the state treasurer shall credit all interest and income derived from the deposit and investment of money in the just transition cash fund to the just transition cash fund.

(II) Notwithstanding subsection (1)(a) of this section, for state fiscal years commencing on or after July 1, 2025, in accordance with section 24-36-114 (1), the state treasurer shall credit all

interest and income derived from the deposit and investment of money in the just transition cash fund to the general fund.

(III) Repealed.

(2) The general assembly may appropriate money from the general fund for the purposes specified in this part 5. The office may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this part 5.

(3) Each construction project financed through the fund must comply with sections 24-92-115 and 24-92-201.

(4) (a) (I) (A) On June 30, 2021, the state treasurer shall transfer eight million dollars from the general fund to the fund.

(B) On March 7, 2022, the state treasurer shall transfer two million dollars from the account to the fund.

(C) On July 1, 2022, the state treasurer shall transfer five million dollars from the general fund to the fund.

(II) Subject to annual appropriation by the general assembly, the office shall expend the money transferred to the fund pursuant to this subsection (4)(a) to implement the just transition plan for Colorado prepared as required by section 8-83-503 (4), to provide supplemental funding for existing state programs that the office identifies as the most effective vehicles for targeted investment in coal transition communities, and to provide grants and other support directly to coal transition communities and other eligible entities. In expending money from the fund, the office shall place a heavy emphasis on investment in tier one and tier two coal transition communities and shall prioritize communities experiencing socioeconomic impacts of coal closures, opportunities for economic diversification, local community input, feasibility studies of specific proposed projects, and needs assessments. The office shall support programs and base funding decisions on factors that:

(A) Support targeted economic development, including expansion assistance for existing local businesses, programs expanding private financial investment, and site selector and technical assistance engagements;

(B) Assist with regional capacity for coordination of economic development programs and worker assistance programs;

(C) Support infrastructure projects and workforce development programs;

(D) Are consistent with the goals and strategies outlined in the just transition plan; or

(E) For money appropriated to the fund after July 1, 2025, support targeted investment in coal transition communities by collaborating with coal transition communities and eligible

entities, state and regionally recognized governmental and economic development entities, employee organizations that represent coal transition workers, and workers who are not affiliated with employee organizations to implement effective projects and programs for those communities consistent with this part 5.

(II.5) (A) The office shall establish a timeline for reviewing project proposals and applications and shall promptly notify applicants of any deficiencies or incompleteness that may be remedied prior to a final funding determination. Applicants must be allowed fifteen days to make changes or add supplementary documentation.

(B) Project funding decisions must be issued within ninety days of receiving a final project proposal. If a decision is not possible within ninety days, the office shall provide a status update to the applicant at that time. All funding decisions must be publicly accessible with published reasons for denial of a project proposal along with recommendations for improvement.

(C) At the earliest regularly scheduled meeting of the joint budget committee following the close of a fiscal year, the office shall report to the joint budget committee about the grants awarded by the office during the preceding fiscal year, their recipients, and the purpose for which they were awarded and make the same presentation at the annual SMART Act hearings of the senate local government and housing committee and the house transportation, housing, and local government committee.

(III) Repealed.

(b) In addition to the requirements set forth in subsection (4)(a) of this section, the office shall expend money transferred to the fund pursuant to subsection (4)(a) of this section in accordance with the following requirements and limitations:

(I) The office shall consult with the just transition advisory committee on expenditure decisions and prioritize the expenditure of the money in a manner consistent with the final just transition plan and the level of support for any given proposed expenditure from coal transition communities and state action teams formed to assist with the development of rural economic diversification and transition roadmaps as set forth in the final just transition plan.

(II) The office may provide for the transfer of money from the fund to other state agencies only if the transfer is approved by the director, the executive director of the department, the executive director of the department of local affairs, and the director of the Colorado office of economic development.

(III) The office shall expend or encumber the money transferred to the fund pursuant to this section by the close of state fiscal year 2029-30.

(IV) The department is authorized to use up to five percent of the money in the fund to fund operational support for the office's expenditure of the money, including funding for the compensation of existing office employees.

(c) Subject to the requirements of this subsection (4) and notwithstanding any other law, the office may expend money from the fund to make grants to any eligible entity, and a state agency to which a transfer of money from the fund is made pursuant to this subsection (4) may expend the money transferred to make grants to any eligible entity.

(5) (a) Notwithstanding any other provision of this section, for the 2021-22 state fiscal year, the general assembly shall appropriate one hundred fifty thousand dollars from the fund to the department of higher education for use by the board of trustees of the Colorado school of mines to expand the CORE-CM initiative in the Greater Green river and Wind river basins.

(b) As used in this subsection (5), "CORE-CM initiative" means the Carbon Ore, Rare Earth, and Critical Minerals Initiative for U.S. Basins, an initiative through the office of fossil energy in the federal department of energy, the purpose of which is to develop and catalyze regional economic growth, job creation, and associated technology innovation across basins throughout the country.

Source: **L. 2019:** Entire part added, (HB 19-1314), ch. 323, p. 2993, § 1, effective May 28. **L. 2021:** (1) amended and (4) added, (HB 21-1290), ch. 400, p. 2652, § 2, effective June 30; (1) amended, (HB 21-1312), ch. 299, p. 1798, § 14, effective July 1. **L. 2022:** IP(4)(a) amended and (5) added, (HB 22-1193), ch. 11, p. 116, § 2, effective March 7; (1), (4)(a), (4)(b)(II), (4)(b)(III), and (4)(b)(IV) amended, (HB 22-1394), ch. 437, p. 3074, § 1, effective June 8. **L. 2024:** (1), (4)(a)(II), and (4)(b)(III) amended and (4)(a)(III) repealed, (HB 24-1410), ch. 319, p. 2136, § 3, effective May 31. **L. 2025:** (1) amended, (SB 25-317), ch. 385, p. 2142, § 7, effective June 3; IP(4)(a)(II), (4)(a)(II)(C), and (4)(a)(II)(D) amended and (4)(a)(II)(E) and (4)(a)(II.5) added, (SB 25-037), ch. 364, p. 1976, § 2, effective June 3.

Editor's note: (1) Amendments to subsection (1) by HB 21-1290 and HB 21-1312 were harmonized.

(2) Subsection (1)(b)(III)(B) provided for the repeal of subsection (1)(b)(III), effective July 1, 2026. (See L. 2025, p. 2142.)

Cross references: For the legislative declaration in HB 21-1312, see section 1 of chapter 299, Session Laws of Colorado 2021. For the legislative declaration in SB 25-317, see section 1 of chapter 385, Session Laws of Colorado 2025.

8-83-504.5. Additional coal transition workforce assistance program funding - coal transition workforce assistance program account.

(1) (a) (I) The coal transition workforce assistance program account is hereby created in the fund.

(II) (A) On June 30, 2021, the state treasurer shall transfer seven million dollars from the general fund to the account.

(B) On July 1, 2022, the state treasurer shall transfer ten million dollars from the general fund to the account.

(III) Subject to annual appropriation by the general assembly, the department shall expend money from the account for coal transition workforce assistance programs that directly assist coal transition workers, their family members, and other household members, including those coal transition workers, their family members, and their household members who are members of a disproportionately impacted community, including programs that:

(A) Establish or expand existing apprenticeship programs, the training capacity of such programs, and the placement of coal transition workers into such programs, prioritizing programs that are recognized as registered apprenticeship programs by the department or a state apprenticeship agency recognized by the United States department of labor;

(B) Aid implementation of the just transition plan;

(C) Provide tuition assistance;

(D) Provide job search assistance;

(E) Provide career planning services and financial counseling;

(F) Support child care assistance;

(G) Support housing assistance;

(H) Support health-care and behavioral health assistance;

(I) Support retirement assistance;

(J) Provide business start-up assistance;

(K) Provide other services authorized by the federal "Workforce Innovation and Opportunity Act", Pub.L. 113-128, such as on-the-job training, subsidized employment, and other strategies that aid in the implementation of individual transition plans; or

(L) Test innovative coal transition work support programs through a pilot program. The department is encouraged to limit any pilot program to no more than forty total participants who are coal transition workers, coal transition worker family members, coal transition worker households, or a combination of coal transition workers, family members, and households.

(IV) Repealed.

(b) and (c) Repealed.

(d) The department is authorized to use up to five percent of the money to fund operational support for the activities authorized by this section including funding for the compensation of one additional full-time equivalent employee.

(e) The department shall expend or encumber the money transferred to the account pursuant to subsection (1)(a)(II)(B) of this section by the close of state fiscal year 2029-30.

(f) Any unexpended and unencumbered money in the account at the end of any fiscal year remains in the account and shall not be credited or transferred to the general fund.

(2) Subject to the requirements of subsection (1) of this section, the office may expend money from the account to make grants to any eligible entity.

(3) On March 7, 2022, the state treasurer shall transfer two million dollars from the account to the fund.

Source: L. 2021: Entire section added, (HB 21-1290), ch. 400, p. 2654, § 3, effective June 30. **L. 2022:** IP(1), IP(1)(a), (1)(a)(V), and (2) amended, (1)(a)(VII), (1)(a)(VIII), and (3) added, and (1)(b) and (1)(c) repealed, (HB 22-1193), ch. 11, p. 117, § 3, effective March 7; IP(1) and (1)(a) amended and (1)(e) and (1)(f) added, (HB 22-1394), ch. 437, p. 3076, § 2, effective June 8. **L. 2023:** (1)(a)(III)(A) amended, (SB 23-051), ch. 37, p. 143, § 14, effective March 23. **L. 2024:** (1)(a)(III) amended and (1)(a)(IV) repealed, (HB 24-1410), ch. 319, p. 2137, § 4, effective May 31. **L. 2025:** (1)(e) amended, (SB 25-037), ch. 364, p. 1977, § 3, effective June 3.

8-83-505. Utility workforce transition plans - reemployment of affected workers.

(1) Within thirty days after the approval to accelerate retirement of a generating unit by the utility's governing body and in no case less than six months before the retirement of an electric coal-fueled generating unit that has a nameplate capacity of at least fifty megawatts, the owner or operating agent of that unit shall submit to the office and to the affected community a workforce transition plan.

(2) To the extent practicable, a workforce transition plan must include estimates of:

(a) The number of workers employed by the electric utility or a contractor of the utility at the coal-fueled electric generating facility, which number must include all workers that directly deliver coal to the electric utility;

(b) The total number of workers whose existing jobs, as a result of the retirement of the coal-fueled electric generating facility:

(I) Will be retained; and

(II) Will be eliminated;

(c) With respect to the workers whose existing jobs will be eliminated due to the retirement of the coal-fueled electric generating facility, the total number and the number by job classification of workers:

(I) Whose employment will end without them being offered other employment;

(II) Who will retire as planned, be offered early retirement, or leave on their own;

(III) Who will be retained by being transferred to other electric generating facilities or offered other employment by the electric utility; and

(IV) Who will be retained to continue to work for the electric utility in a new job classification; and

(d) If the electric utility is replacing the coal-fueled electric generating facility being retired with a new electric generating facility, the number of:

(I) Workers from the retired coal-fueled electric generating facility who will be employed at the new electric generating facility; and

(II) Jobs at the new electric generating facility that will be outsourced to contractors or subcontractors.

(3) This section does not apply to an electric coal-fueled generating unit owned in whole or in part by a qualifying retail utility for which the qualifying retail utility, as that term is used in section 40-2-124, has submitted a workforce transition plan in an electric resource plan filed with the public utilities commission.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2993, § 1, effective May 28.

8-83-506. Report - recommendations.

(1) Repealed.

(2) (a) Between September 1 and November 15, 2022, and between September 1 and November 15 of each year thereafter, the director shall present a report to the joint budget committee of the general assembly on the history of expenditures from the fund and the account and the purposes for which the money in the fund and in the account has been expended or encumbered in the immediately preceding state fiscal year, specifying the programs described in sections 8-83-504 and 8-83-504.5 for which money has been expended, encumbered, or otherwise allocated. The report must include information about the grants awarded by the office during the preceding fiscal year, their recipients, and the purpose for which they were awarded.

(b) Notwithstanding section 24-1-136 (11)(a)(I), the reporting requirement specified in subsection (2)(a) of this section continues indefinitely.

Source: L. 2019: Entire part added, (HB 19-1314), ch. 323, p. 2994, § 1, effective May 28. **L. 2022:** Entire section amended, (HB 22-1394), ch. 437, p. 3077, § 3, effective June 8. **L. 2025:** (2)(a) amended, (SB 25-037), ch. 364, p. 1977, § 4, effective June 3.

Editor's note: Subsection (1)(b) provided for the repeal of subsection (1), effective September 1, 2025. (See L. 2022, p. 3077.)

8-83-507. Hiring preference - coal transition workers - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Coal transition community" means a Colorado municipality, county, or region where a coal transition facility or a center for the manufacturing or transportation supply chain of a coal transition facility was or is located.

(b) "Coal transition worker" means an individual who works or has worked in a Colorado coal transition facility or in the manufacturing or transportation supply chain of a coal transition facility.

(c) "Covered business" means a business entity operating in a coal transition community that is engaged in the business of constructing or operating railroads, utilities, energy generation facilities, or advanced manufacturing facilities. A "covered business" does not include the state government or a local government.

(d) "Hiring preference" means a first and preferred opportunity for available employment in a coal transition community.

(e) "Qualified coal transition worker" means a coal transition worker who meets the qualifications for an employment position with a covered business.

(2) (a) On and after January 1, 2027, a covered business shall provide a hiring preference for a qualified coal transition worker to a prospective new employee.

(b) A covered business may hire an individual who is not a qualified coal transition worker only if:

(I) A qualified coal transition worker did not apply to be employed by a covered business;

(II) Each qualified coal transition worker to whom the covered business extends an offer of employment declines the offer; or

(III) A qualified coal transition worker's qualifications did not meet the qualifications of other candidates for the same job.

(3) A covered business shall consult with the just transition office, operators of existing coal-fueled generation facilities scheduled for retirement, and organizations representing qualified coal transition workers to identify qualified coal transition workers.

(4) If a qualified coal transition worker applies for employment with a covered business, then a covered business shall report annually to the just transition office the following information regarding the prior year:

(a) The title of any position filled by a qualified coal transition worker;

(b) The number of qualified coal transition workers who filled positions at the covered business;

(c) The number of individuals who are not qualified coal transition workers who filled positions at the covered business; and

(d) Efforts undertaken by the covered business to recruit qualified coal transition workers.

(5) A covered business shall make good faith efforts to comply with this section.

(6) The executive director or their designee shall develop policies and procedures for the implementation of this section.

(7) A hiring preference does not apply if a covered business places an existing employee in another employment position with the covered business or to the extent that a hiring preference conflicts with the terms of a collective bargaining agreement that applies to the relationship between a covered business and its employees.

Source: L. 2026: Entire section added, (SB 26-052), ch. 3, p. 9, § 2, effective March 9.

Cross references: For the legislative declaration in SB 26-052, see section 1 of chapter 3, Session Laws of Colorado 2026.

PART 6

EXPERIENTIAL LEARNING

Cross references: For the legislative declaration in SB 22-140, see section 1 of chapter 357, Session Laws of Colorado 2022.

8-83-601. Definitions.

As used in this part 6:

(1) "Commission" means the business experiential-learning commission in the department created by executive order B 2015 004, which works in partnership with the office of economic development and the work force development council, or a subsequent entity established for the same or similar purpose.

(2) "Digital equity" means the condition in which individuals and communities have access to the information technology that is needed for full participation in society and the economy of the United States.

(3) (a) "Digital inclusion" means the activities that are necessary to ensure that all individuals in the state have access to, and the use of, affordable information and communication technologies, such as:

(I) Reliable fixed and wireless broadband internet service;

(II) Internet-enabled devices that meet the needs of the user; and

(III) Applications and online content designed to enable and encourage self-sufficiency, participation, and collaboration.

(b) "Digital inclusion" includes the ability to obtain:

(I) Access to digital literacy training;

(II) Quality technical support; and

(III) Basic awareness of measures to ensure online privacy and cybersecurity.

(4) "Digital literacy" means the skills associated with using technology that enable users to find, evaluate, organize, create, disseminate, and communicate information.

(4.5) Repealed.

(5) "Incentive program" means the work-based learning incentive program created in section 8-83-602.

(5.5) "K-12 teacher" or "teacher in a K-12 classroom" means a teacher teaching in a public school in the state.

(5.7) "Local education provider" means a school district, a board of cooperative services that operates a school, a district charter school, or an institute charter school.

(6) "Next-skilling" means activities to develop future-ready skills necessary for employment in the twenty-first century and includes the focus areas of human skills, digital skills, business skills, growth mindset, and a lifelong learning mindset.

(7) "Office" means the office of future of work created in section 8-15.8-103.

(8) "Office of economic development" means the Colorado office of economic development created in section 24-48.5-101.

(9) "Office of new Americans" means the office created in section 8-3.7-103.

(10) "Program" means the statewide digital navigator program created in section 8-83-603.

(10.5) "Public school" means a school in the state that enrolls students in any of grades kindergarten through twelfth grade, including a traditional public school of a school district, as described in section 22-1-101 (1); a charter school, as defined in section 22-30.5-103 (2); or an institute charter school, as defined in section 22-30.5-502 (6).

(11) (a) "Reskilling" means activities to:

(I) Support unemployed and underemployed individuals who need or want to change industries in order to return to full-time work or who need or want to obtain more appropriate work-based skills; and

(II) Help unemployed and underemployed individuals achieve economic self-sufficiency.

(b) "Reskilling" may include technical training for new positions and new careers and entrepreneurial training for individuals who wish to pursue self-employment and business ownership.

(12) "Skills-based hiring" means hiring a person based on the person's knowledge, skills, and abilities that are specific to the job for which the person is being considered.

(12.5) "STEM" means the combination of the disciplines of science, technology, engineering, and mathematics.

(13) "Target populations" includes:

(a) Any household with an income that is not more than one hundred fifty percent of the federal poverty level, as determined by the most current federal poverty guidelines issued by the United States department of health and human services;

(b) Individuals who are fifty years of age or older;

(c) Individuals who are or were incarcerated;

(d) Veterans;

(e) Individuals with disabilities;

(f) Individuals who have recently immigrated to the United States and reside in this state;

(g) Individuals who are English language learners;

(h) Individuals with low levels of literacy;

(i) Individuals who primarily reside in rural areas;

(j) Individuals experiencing homelessness; and

(k) Youth.

(14) "Upskilling" means activities to increase the skill levels of an employee so the employee is able to retain employment and advance within a company.

(15) (a) "Work-based learning" means learning that occurs, in whole or in part, in the workplace that provides youth and adults, including teachers in K-12 classrooms, with hands-on, real-world experience and training for skills development.

(b) "Work-based learning" includes activities such as job shadowing, internships, externships, pre-apprenticeships, apprenticeships, residencies, and incumbent-worker training.

(c) "Work-based learning" also includes externships in STEM or STEM-related fields tailored to provide K-12 teachers with knowledge to improve classroom curriculum.

(16) "Work-based learning intermediary" means an entity selected by the department pursuant to section 8-83-602 (3).

(17) "Work force development council" means the state work force development council created in section 24-46.3-101.

(18) "Youth" means an individual eligible to be educated in the public school system pursuant to section 2 of article IX of the state constitution.

Source: L. 2022: Entire part added, (SB 22-140), ch. 357, p. 2548, § 2, effective July 1. **L. 2023:** (7) amended, (SB 23-051), ch. 37, p. 143, § 15, effective March 23; (4.5), (5.5), (5.7), (10.5), and (12.5) added and (15) amended, (HB 23-1198), ch. 239, p. 1286, § 1, effective August 7. **L. 2026:** (4.5) repealed, (SB 26-169), ch. 311, p. 1798, § 6, effective August 12.

8-83-602. Work-based learning incentive program - creation - rules - appropriation.

(1) Work-based learning incentive program.

(a) On or before January 1, 2023, the department, in consultation with the commission, the office of economic development, the department of education, the department of higher education, the state board for community colleges and occupational education, local district colleges, the work force development council, and area technical colleges, as defined in section 23-60-103, shall establish a work-based learning incentive program to provide monetary incentives to selected employers to create high-quality, work-based learning opportunities that benefit adults and youth.

(b) In administering the incentive program, the department shall strive to create an equal proportion of work-based learning opportunities for youth and adults and to select employers and work-based learning intermediaries with the goal of increasing the number of youth and adults participating in work-based learning. The department shall select work-based learning intermediaries that:

(I) Demonstrate expertise in and a continued commitment to connecting, educating, and coaching employers regarding work-based learning opportunities for adults and youth, such as a chamber of commerce, a nonprofit entity, an industry association, a local workforce area, a registered apprenticeship program, or a local government entity;

(II) Work within and across the state to partner with multiple employers; local education providers, institutions of higher education, or other educational entities; and other public and private entities to facilitate work-based learning experiences;

(III) Support employers in implementing work-based learning in collaboration with the commission and in alignment with the work-based learning quality expectations developed in subsection (5) of this section; and

(IV) Support employers in learning about the work-based learning quality expectations and share best practices for meeting the work-based learning quality expectations developed in subsection (5) of this section.

(2) **Department responsibilities.** The department shall:

(a) Through an application process, select employers and at least two work-based learning intermediaries to participate in the incentive program with the goal of maximizing regional diversity and engaging the optimum number of employer participants in high-demand industries as determined by the annual Colorado talent report prepared pursuant to section 24-46.3-103 (3);

(b) For the purpose of providing incentives to employers to provide work-based learning opportunities to youth and adults, allocate money directly to employers and to work-based learning intermediaries;

(c) Outline performance expectations for work-based learning intermediaries and employers participating in the incentive program that include the authority of the department to discontinue an entity's participation in the incentive program if the entity fails to meet the expectations;

(d) Outline a scale for the amount of money awarded to an employer based on criteria such as the duration of work-based learning experiences, the number of participants, geography, business size, and other factors;

(e) Collect data concerning the incentive program that includes:

(I) The work-based learning intermediaries participating in the incentive program;

(II) The number of employers participating in the incentive program;

(III) The number of work-based learning opportunities provided by employers and the number of work-based learning hours completed;

(IV) The number of work-based learning opportunities that led to a job in the respective industry;

(V) The number of youth and adult participants in the incentive program, including employees, interns, apprentices, or other individuals who participated in the incentive program;

(VI) The de-identified demographic information of the individuals participating in the incentive program, including race, geographic region or zip code, and whether the individuals meet low-income criteria as determined by the department; and

(VII) Any outcomes and data to measure the success of the incentive program, including outcomes related to employers that participated in the incentive program and subsequently adopted work-based learning as a business practice beyond the incentive program's duration;

(f) Ensure that youth and adults are made aware of opportunities for them to learn in the workplace at the same time as earning an income through the incentive program;

(g) Provide technical assistance and planning assistance to employers and work-based learning intermediaries regarding the work-based learning quality expectations developed in subsection (5) of this section; and

(h) Beginning in 2023 and each year thereafter, submit a report compiling the data collected pursuant to subsection (2)(e) of this section to the senate business, labor, and technology committee and the house of representatives business affairs and labor committee, or their successor committees, during the hearings held under the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act", part 2 of article 7 of title 2.

(3) **Selection as a work-based learning intermediary.** In order to be considered by the department for selection as a work-based learning intermediary, the entity shall submit an application to the department in a form and manner established by the department, which must be a simplified application designed to maximize employer participation. In the application, the entity shall:

(a) Demonstrate the entity's record of connecting employers with local education providers, institutions of higher education, or other training providers such as registered apprenticeship programs;

(b) Outline how the entity plans to bring employers, local education providers, institutions of higher education, or other training providers such as registered apprenticeship programs together to accomplish the purposes of the incentive program;

(c) Outline how the entity will meet or exceed the quality expectations for work-based learning established by the office pursuant to subsection (5) of this section; and

(d) Submit any other information deemed appropriate by the department, including an attestation of a commitment to diversity, equity, and inclusion in the workplace.

(4) **Responsibilities of work-based learning intermediaries.** A work-based learning intermediary shall directly facilitate work-based learning opportunities with employers through incentive payments made directly to employers for technical assistance, business coaching, and other types of support. Work-based learning intermediaries and employers may use incentive payments for:

(a) Start-up management costs for employers to create work-based learning programs, including training for employers to establish and manage a work-based learning program;

(b) Developing and providing personalized participant supports, including transportation assistance, and partnering with other entities to provide access to or referrals for supportive

services, learning supports, financial advising, and other types of support to ensure adults and youth can participate in work-based learning;

(c) Educating employers on how to work with local education providers and institutions of higher education to create career-connected learning partnerships;

(d) Training costs, including enrollment, registration, and course fees for participation in classroom training and certifications aligned with work-based learning;

(e) Providing incentives for employers who participate in the delivery of education services;

(f) Any services, resources, and support identified by employers to support work-based learning that align with the purposes of this section, including fostering regional partnerships by sector or industry and hiring a business coach or other individual to act as a liaison between a work-based learning intermediary and employers receiving incentive payments; and

(g) Ensuring alignment with and avoiding duplication of existing programs and, where practicable, leveraging existing resources.

(5) **Work-based learning quality expectations.** The office, in consultation with the department, the commission, the office of economic development, the department of education, the department of higher education, the state board for community colleges and occupational education, area technical colleges, and the work force development council, shall:

(a) On or before September 15, 2022, develop work-based learning quality expectations for youth and adults, taking into consideration:

(I) How the expectations align with employer needs;

(II) Evidence-based practices;

(III) The potential outcomes of work-based learning opportunities for youth and adults;

(IV) Opportunities to award educational credit or payment for work-based learning experiences;

(V) Alignment with the minimum standards set by the federal department of labor or the state apprenticeship agency, where applicable; and

(VI) Graduation and completion rates of the programs, where applicable; and

(b) Review and revise the work-based learning quality expectations every five years, including consideration of:

(I) The relevance of and innovations in work-based learning;

(II) Whether work-based learning is dynamic and responsive to the needs of business and education partners;

(III) How the work-based learning experiences align with employer expectations for adults and youth in high-wage, high-demand jobs; and

(IV) The quality of work-based learning provided to participants in the incentive program.

(6) **Appropriation.** For the 2022-23 state fiscal year, the general assembly shall appropriate three million dollars from the general fund to the department for the purposes of this section. Any unexpended money remaining at the end of the 2022-23 state fiscal year:

(a) Does not revert to the general fund or any other fund;

(b) May be used by the department in the 2023-24 state fiscal year without further appropriation; and

(c) Shall not be used for any purpose other than the purposes set forth in this section.

(7) **Rules.** The executive director of the department may promulgate rules to implement this section.

Source: L. 2022: Entire part added, (SB 22-140), ch. 357, p. 2550, § 2, effective July 1.

8-83-602.5. Teacher externship program - creation - rules - repeal. (Repealed)

Source: L. 2023: Entire section added, (HB 23-1198), ch. 239, p. 1287, § 2, effective August 7.

Editor's note: Subsection (9) provided for the repeal of this section, effective September 1, 2025. (See L. 2023, p. 1287.)

8-83-603. Statewide digital navigator program - office of future of work - rules - appropriation.

(1) On or before January 1, 2023, the office shall create a statewide digital navigator program. The purpose of the program is to address digital inequities that prevent youth and adults from securing employment. To address digital inequities, the program may provide services and supports, including access to digital technology, computer and technology skills training, and affordable internet service through the employment of digital navigators. The office

shall, through an application process, select at least one administering entity to administer the digital navigator program. The digital navigator program will deploy digital navigators to:

(a) (I) Conduct outreach to target populations in need of internet access, hardware, software, and digital skills;

(II) Provide technology and literacy support to target populations; and

(III) Connect target populations to resources in order to remove barriers to training and employment;

(b) Make referrals to and facilitate enrollment of target populations in:

(I) Digital literacy classes and workshops;

(II) Reskilling, upskilling, and next-skilling opportunities;

(III) Support services;

(IV) Basic literacy or numeracy instruction or tutoring;

(V) Workforce development services; and

(VI) Work-based learning opportunities, including work-based learning opportunities created in section 8-83-602;

(c) Connect target populations to low-cost internet programs and resources;

(d) Identify and help distribute the necessary technologies to target populations;

(e) Provide ad hoc basic digital skills support to target populations, including:

(I) Setting up a computer;

(II) Connecting a device to the internet; and

(III) Assisting people in completing a job search, creating a profile through the my Colorado journey platform administered by the work force development council, creating an account with the connecting Colorado students grant program created in article 103 of title 23, and applying for public benefits through online applications;

(f) Serve as on-the-ground data collectors to provide a detailed picture of Colorado community needs to inform the office and its partners described in subsection (3) of this section on where additional resources should be invested; and

(g) Align and coordinate with other navigator programs and service providers.

(2) In order to be considered by the office for selection as the administering entity of the digital navigator program, an entity shall submit an application to the office, in a form and manner established by the office, that:

(a) Demonstrates the entity's record of conducting outreach to a target population or multiple target populations;

(b) Outlines how the entity plans to partner with community organizations that include a public school, a public or multifamily housing authority, a library, a health-care provider, a community college or other institution of higher education, a state library agency, a public workforce center, and any other nonprofit or governmental community support organization, as applicable, to accomplish the purposes of the program; and

(c) Describes the entity's administrative capacity to successfully administer the program.

(3) The office shall work collaboratively with other offices and divisions in the department, the department of higher education, the department of education, the Colorado broadband office created in section 24-37.5-903, the department of human services, the office of e-health innovation in the governor's office, and the office of economic development to identify and support diverse partners and employers.

(4) (a) The office shall share outcomes of the program with partners described in subsection (3) of this section and collect data concerning the program that includes:

(I) The outreach activities conducted;

(II) The number of individuals served by the navigators and the de-identified demographics of those individuals, including race, geographic region or zip code, and whether the individuals meet low-income criteria as determined by the department; and

(III) Any outcomes and data to measure the success of the program, including skills attainment and employment attainment.

(b) The office shall include the outcomes shared and the data collected pursuant to this subsection (4) in the presentations required by section 8-83-602 at the hearings held under the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act", part 2 of article 7 of title 2.

(5) For the 2022-23 state fiscal year, the general assembly shall appropriate two million dollars from the general fund to the department for use by the office for the purposes of this section. Any unexpended money remaining at the end of the 2022-23 state fiscal year:

(a) Does not revert to the general fund or any other fund;

(b) May be used by the department in the 2023-24 state fiscal year without further appropriation; and

- (c) Shall not be used for any purpose other than the purposes set forth in this section.
- (6) The executive director of the department may promulgate rules to implement this section.

Source: L. 2022: Entire part added, (SB 22-140), ch. 357, p. 2554, § 2, effective July 1.

PART 7

CONSTRUCTION REGISTERED APPRENTICESHIP GRANT PROGRAM

Cross references: For the legislative declaration in HB 23-1246, see section 1 of chapter 199, Session Laws of Colorado 2023.

8-83-701. Construction registered apprenticeship grant program - created - reports - appropriation - definitions.

(1) (a) There is created in the office within the department of labor and employment the construction registered apprenticeship grant program to provide grants to registered apprenticeship programs in the building and construction trades that provide training at no cost to apprentices.

(b) The office shall consult with the office of economic development, the department of education, the department of higher education, the state board for community colleges and occupational education, local district colleges, the work force development council, and area technical colleges in the development and administration of the grant program to ensure alignment with, and reduce duplication of, related programs and initiatives.

(2) (a) The office shall create a competitive application process through which it selects registered apprenticeship programs in the building and construction trades as grant recipients. A grant recipient must satisfy, at a minimum, the following criteria:

- (I) Train apprentices in the building and construction trades;
- (II) As a part of its grant application, demonstrate how it will use the grant award to provide training to apprentices at no cost to the apprentices;
- (III) As a part of its grant application, demonstrate how it will use the grant award to directly provide training to, or remove barriers to accessing training for, persons from target populations;
- (IV) As a part of its grant application, commit to diversity, equity, and inclusion in its registered apprenticeship program; and

(V) As part of its grant application, provide any other criteria or additional information determined necessary by the department of labor and employment.

(b) The office shall develop performance expectations for grant recipients. The office may terminate a registered apprenticeship program's participation in the grant program if the registered apprenticeship program fails to satisfy the performance expectations.

(c) The office shall develop a scale for the amount of money to be awarded to grant recipients based upon factors including the number of apprentices in the registered apprenticeship program and the location of the registered apprenticeship program.

(3) (a) The office shall require grant recipients to annually report data to the office. At a minimum, the grant recipients must report:

(I) The number of apprentices awarded funds pursuant to the grant program, in total and disaggregated by any factors determined by the office;

(II) If available, the number of apprentices awarded funds pursuant to the grant program who completed a registered apprenticeship program, in total and disaggregated by any factors determined by the office;

(III) If available, employment and earnings outcomes for apprentices awarded funds pursuant to the grant program, in total and disaggregated by any factors determined by the office; and

(IV) A detailed statement of the allocation of funds for the grant program, including costs incurred to administer the grant program.

(b) Beginning in 2025 and each year thereafter, the office shall submit a report compiling the data collected pursuant to subsection (3)(a) of this section to the senate business, labor, and technology committee and the house of representatives business affairs and labor committee, or their successor committees, during the hearings held pursuant to the "SMART Act", part 2 of article 7 of title 2.

(4) For the 2023-24 state fiscal year, the general assembly shall appropriate to the department of labor and employment for allocation by the office one million four hundred thousand dollars from the general fund for purposes of this section. Any unexpended money remaining at the end of the 2023-24 state fiscal year from the appropriation listed in this subsection (4):

(a) Does not revert to the general fund or any other fund; except that, on or before June 30, 2025, two hundred twenty-two thousand seven hundred one dollars reverts to the general fund;

(b) May be used by the office in the 2024-25 or 2025-26 state fiscal year without further appropriation; and

- (c) Must not be used for any purpose other than the purposes set forth in this section.
- (5) As used in this section, unless the context otherwise requires:
 - (a) "Grant program" means the construction registered apprenticeship grant program created in subsection (1) of this section.
 - (b) "Office" means the office of future of work created in section 8-15.8-103.
 - (c) "Registered apprenticeship program" has the same meaning as defined in section 8-15.7-101 (13).
 - (d) "Target populations" has the same meaning as defined in section 8-83-601 (13).

Source: L. 2023: Entire part added, (HB 23-1246), ch. 199, p. 1015, § 3, effective May 16. **L. 2024:** (5)(b) amended, (HB 24-1450), ch. 490, p. 3406, § 14, effective August 7. **L. 2025:** (4)(a) amended, (SB 25-243), ch. 120, p. 484, § 1, effective April 25.

8-83-702. Repeal of part.

This part 7 is repealed, effective July 1, 2027.

Source: L. 2023: Entire part added, (HB 23-1246), ch. 199, p. 1018, § 3, effective May 16.

PART 8

APPRENTICESHIP NAVIGATOR PILOT PROGRAM

8-83-801. Definitions.

As used in this part 8, unless the context otherwise requires:

- (1) "Department" means the department of labor and employment created in section 24-1-121.
- (2) "Office" means the office of future of work created in section 8-15.8-103.
- (3) "Program" means the apprenticeship navigator pilot program created by the office of future of work in section 8-83-802.

(4) "Rural school district" means a school district that the department of education determines is rural, based on the geographic size of the school district and the distance of the school district from the nearest large, urbanized area.

(5) "School district" means a school district authorized by section 15 of article IX of the state constitution and organized pursuant to article 30 of title 22. "School district" also includes a board of cooperative services created pursuant to article 5 of title 22 if it is operating a public high school and includes the state charter school institute established in section 22-30.5-503.

Source: L. 2023: Entire part added, (HB 23-1212), ch. 197, p. 1002, § 1, effective August 7.

8-83-802. Apprenticeship navigator pilot program - navigator positions - report.

(1) On or before January 1, 2024, the office shall create a two-year apprenticeship navigator pilot program. The purpose of the program is to increase awareness of registered apprenticeship programs among graduating high school students and to increase participation by individuals who are eighteen years of age and older but under twenty-six years of age in registered apprenticeship programs.

(2) (a) The office shall create two apprenticeship navigator positions within the program as follows:

(I) One apprenticeship navigator must be assigned to a rural school district, to be selected by the office, that does not have an established public or private apprenticeship navigator position; and

(II) One apprenticeship navigator must be assigned to a school district that is not a rural school district, to be selected by the office, that does not have an established public or private apprenticeship navigator position.

(b) Each apprenticeship navigator is a full-time employee of the office.

(3) The navigators shall:

(a) Develop informational materials regarding registered apprenticeship programs to distribute to students, parents, and school staff; and

(b) Hold events for parents and high school students in the navigator's assigned school district to raise awareness about registered apprenticeship program opportunities.

(4) To further the purpose of the program, the office shall:

(a) Utilizing the Colorado state apprenticeship resource directory established pursuant to section 8-83-308, create and maintain on the office's public website a job board for apprenticeships and quality preapprenticeships that is marketed toward and accessible to high school students; and

(b) Explore ways to incorporate registered apprenticeship programs into the state's career planning tools, including the department of education's individual career and academic plans governed by rules established by the state board of education created and existing pursuant to section 1 of article IX of the state constitution and the my Colorado journey platform administered by the state work force development council created in section 24-46.3-101.

(5) Upon completion of the program, the department shall provide a detailed report of the direct and indirect costs for the operation and administration of the program to the house of representatives education committee and the senate education committee, or their successor committees, to allow the general assembly to evaluate the efficacy of the program and its potential for broader application in the state.

Source: L. 2023: Entire part added, (HB 23-1212), ch. 197, p. 1003, § 1, effective August 7.

8-83-803. Rules.

The department may promulgate rules as necessary to implement this part 8.

Source: L. 2023: Entire part added, (HB 23-1212), ch. 197, p. 1004, § 1, effective August 7.

8-83-804. Repeal of part.

This part 8 is repealed, effective January 1, 2027.

Source: L. 2023: Entire part added, (HB 23-1212), ch. 197, p. 1004, § 1, effective August 7.

PART 9

WORKFORCE TRANSITIONS STUDY

Editor's note: (1) This part 9 was numbered as part 7 in HB 23-1074 but was renumbered on revision for ease of location.

(2) This part 9 was added in 2023. For amendments to this part 9 prior to its repeal in 2025, consult the 2024 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(3) Section 8-83-903 provided for the repeal of this part 9, effective September 1, 2025. (See L. 2023, p. 1001.)

8-83-901 to 8-83-903. (Repealed)

PART 10

APPRENTICESHIP INTERNATIONAL STANDARDS

Cross references: For the legislative declaration in SB 24-143, see section 1 of chapter 162, Session Laws of Colorado 2024.

8-83-1001. Definitions.

As used in this part 10, unless the context otherwise requires:

(1) "International standard classification of education" or "ISCED" means a comprehensive framework for organizing education and training programs that applies uniform and internationally agreed-upon classifications to facilitate comparisons of education and training programs across countries.

(2) "Office" means the office of future of work created in section 8-15.8-103.

Source: L. 2024: Entire part added, (SB 24-143), ch. 162, p. 767, § 3, effective August 7.

8-83-1002. Apprenticeship program alignment with international standards.

(1) Beginning January 1, 2026, and annually thereafter, the office, in coordination with the department of education, the department of higher education, the department of labor and employment, and the career and technical education division within the Colorado community college system, shall collaborate with the state apprenticeship agency to determine ISCED equivalency levels for each apprenticeship program registered on or after July 31, 2025. In making ISCED equivalency level determinations, the office shall:

(a) Apply the process recommended pursuant to section 23-5-145.8 (3)(b); and

(b) Require posting of the determined ISCED level alongside the apprenticeship program on all issued apprenticeship certificates of completion and in all public listings, including, but not limited to, the eligible training provider lists disseminated by the department of labor and employment pursuant to section 8-83-225 (1)(c) and the Colorado state apprenticeship resource directory created pursuant to section 8-83-308.

(2) On or before January 1, 2027, the office shall determine ISCED equivalency levels for each apprenticeship program registered before July 31, 2025. After making ISCED equivalency level determinations, the office shall require posting of the determined ISCED level alongside the apprenticeship program on all issued apprenticeship certificates of completion and in all public listings, including, but not limited to, the eligible training provider lists disseminated by the department of labor and employment pursuant to section 8-83-225 (1)(c) and the Colorado state apprenticeship resource directory created pursuant to section 8-83-308.

Source: L. 2024: Entire part added, (SB 24-143), ch. 162, p. 767, § 3, effective August 7.

ARTICLE 84

Vocational Rehabilitation

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PART 2

VENDING FACILITIES IN STATE BUILDINGS - BUSINESS ENTERPRISE PROGRAM

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PART 3

EMPLOYMENT FIRST FOR PERSONS WITH DISABILITIES

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8-84-303. Employment first advisory
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PART 1

VOCATIONAL REHABILITATION PROGRAMS

8-84-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Department" means the department of labor and employment created in section 24-1-121, C.R.S.

(2) "Person with a disability" means a person who has a physical or mental impairment that constitutes or results in a substantial impediment to employment, and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(3) "Vocational rehabilitation services" means those services described in section 103 of the federal "Rehabilitation Act of 1973", Public Law 93-112, as amended.

Source: L. 2015: Entire section added with relocations, (SB 15-239), ch. 160, p. 478, § 2, effective July 1, 2016.

Editor's note: Subsection (2) was originally numbered as § 26-8-105 (2), and the amendments to it by House Bill 15-1188 were further amended by Senate Bill 15-239 and relocated to subsection (2) of this section, effective July 1, 2016.

Cross references: For the federal "Rehabilitation Act of 1973", see also 29 U.S.C. § 701 et seq.

8-84-102. Rehabilitation programs.

In carrying out the provisions of this article, the department shall coordinate and strengthen the programs of rehabilitation for persons with disabilities to the end that they may attain or maintain their maximum potential in employment, self-sufficiency, and independent living. Nothing in this article is to be construed as an eligibility-based entitlement to a vocational rehabilitation service provided by the state.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 478, § 2, effective July 1, 2016.

Editor's note: Section 8-84-102 was originally numbered as § 26-8-101, and the amendments to it by House Bill 15-1188 were further amended by Senate Bill 15-239 and relocated to this section, effective July 1, 2016.

8-84-103. Personnel.

Subject to the availability of duly appropriated funds, the executive director of the department may appoint necessary personnel to administer rehabilitation programs in accordance with this article.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 479, § 2, effective July 1, 2016.

Editor's note: This section is similar to § 26-8-102 (1) as it existed prior to 2016.

8-84-104. Functions of the department.

(1) The department shall manage, control, and supervise all rehabilitation programs provided in this article, including:

- (a) Repealed.
- (b) All duties and functions previously assigned to the division of rehabilitation for the blind;
- (c) All duties and functions regarding vocational rehabilitation programs previously assigned to the division of vocational rehabilitation in the department of human services or any other duties and functions relating to vocational rehabilitation previously assigned to the department of human services; and
- (d) Repealed.
- (e) Other duties and functions assigned by this article.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 479, § 2, effective July 1, 2016. **L. 2016:** (1)(a) and (1)(d) repealed and (1)(c) amended, (SB 16-182), ch. 255, p. 1048, § 2, effective July 1.

Editor's note: This section is similar to former § 26-8-103 as it existed prior to 2016.

8-84-105. Administration - rules.

- (1) The department shall:
 - (a) Adopt rules governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, the investigation and determination of eligibility for vocational rehabilitation services, procedures for fair hearings, and other rules as necessary to carry out the purposes of this article;
 - (b) Certify, in accordance with rules, disbursements of funds available for carrying out the purposes of this article;

(b.5) Accept and expend money from governmental and nongovernmental entities to carry out the division's authorized powers and duties;

(c) Accept and use gifts, grants, or donations made unconditionally, by will or otherwise, for carrying out the purposes of this article. The department may accept and expend gifts, grants, or donations made under conditions that the executive director determines are proper and consistent with this article and shall hold, invest, reinvest, and use the gifts, grants, or donations in accordance with the conditions.

(d) Contribute education and workforce readiness data beginning in the 2025-26 state fiscal year, as necessary, to the Colorado statewide longitudinal data system consistent with the governance practices established by the Colorado statewide longitudinal data system governing board pursuant to section 24-37.5-125 (4).

Source: **L. 2015:** Entire article added with relocations, (SB 15-239), ch. 160, p. 479, § 2, effective July 1, 2016. **L. 2016:** (1)(a) amended and (1)(b.5) added, (SB 16-182), ch. 255, p. 1049, § 3, effective July 1. **L. 2024:** (1)(b.5) amended and (1)(d) added, (HB 24-1364), ch. 238, p. 1560, § 11, effective May 23.

Editor's note: This section is similar to former § 26-8-104 as it existed prior to 2016.

8-84-106. Rehabilitation of persons with disabilities - vocational rehabilitation services - rules.

(1) Except as otherwise provided by law, the department shall provide rehabilitation services to persons with disabilities who the department determines are eligible for the services.

(2) The department shall:

(a) Cooperate with other departments, agencies, and institutions, both public and private, in:

(I) Providing the services authorized by this article to persons with disabilities;

(II) Studying the problems involved in providing the services; and

(III) Establishing, developing, and providing, in conformity with the purposes of this article, programs, facilities, and services that are necessary;

(b) Enter into collaborative agreements with other states, in accordance with applicable federal law and regulations, to provide services authorized by this article;

(c) Repealed.

(d) Operate through contract and supervise the operation of vending stands and other small businesses, established pursuant to this article and in accordance with the requirements of the federal government for the receipt of federal funds, to be conducted by individuals with severe disabilities, particularly the blind;

(e) Repealed.

(f) Provide home teaching of and teachers for the adult blind; and

(g) Provide medical, diagnostic, physical restoration, training, and other rehabilitation services as needed to enable persons with disabilities to attain the maximum degree of self-sufficiency.

(3) (a) The department shall provide vocational rehabilitation services directly or through public or private instrumentalities to or for the benefit of an applicant or eligible person with a disability.

(b) The department shall:

(I) Complete a comprehensive assessment and work with the person with a disability to develop an employment outcome or goal based on the person's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(II) Authorize those services that are appropriate and necessary to address the rehabilitation needs of the person with a disability, based on their documented disabilities and impairments, so that they might achieve their employment outcome or goal;

(III) Give preference to cost-effective services provided in the state of Colorado, but the department may authorize payment for out-of-state services on a case-by-case basis. The department shall not pay for any services provided outside the United States.

(III.5) (A) Promulgate rules in conjunction with the state medical services board, no later than July 1, 2019, requiring all vendors of supported employment services, including supported employment professionals who provide individual competitive integrated employment outcomes, and excluding those professionals exclusively providing group or other congregate services, to obtain a nationally recognized supported employment training certificate or nationally recognized supported employment certification. The department's rules must include time frames for compliance with the training or certification requirement for existing staff and for newly hired staff and requirements for supervision of newly hired staff until the staff member has completed the training or certification. The time frames established in the department's rules must provide for training to be completed over a five-year period, subject to the availability of appropriations for reimbursement of vendors pursuant to subsection (3)(b)(III.5)(B) of this section.

(B) The training or certification requirement in subsection (3)(b)(III.5)(A) of this section is contingent upon appropriations to the department of health care policy and financing for reimbursement to vendors of supported employment services for the cost of training and certification pursuant to section 25.5-10-204.

(IV) Establish a fee schedule for goods and services that is designed to ensure reasonable cost to the program. The fee schedule established by the department must include the discovery process, as defined in section 8-84-301, as an alternative assessment pursuant to subsection (3)(b)(I) of this section.

(V) Limit payment for services to Colorado in-state tuition or the equivalent for all education and vocational schooling; except that, if the department finds, through its comprehensive assessment, that the person with a disability needs specialized education outside of Colorado to address their barriers to employment, the department may authorize payment for out-of-state tuition on a case-by-case basis;

(VI) Establish reasonable time frames within each employment plan for individuals to attain the established employment outcomes or goals;

(VII) Close the record of services in a timely manner and in accordance with federal guidelines for a person with a disability who has achieved their employment outcomes or goals; and

(VIII) Establish a review process to allow for exceptions to the requirements of subparagraphs (I) to (VII) of this paragraph (b) in unique cases, in accordance with federal regulations.

(c) (I) Except as provided in subsection (3)(c)(II) of this section, the department shall provide goods or services to a person with a disability without consideration of financial need.

(II) The department may determine it is necessary to consider financial need prior to the provision of vocational rehabilitation services during a period of cost containment to prevent or manage a wait list for services due to insufficient financial resources. The department shall ensure financial need testing complies with federal law. The department shall engage persons with disabilities, community partners, and members of the public prior to implementing a financial need test. If a financial need test is implemented, the department shall provide the following services at public cost without consideration of financial need:

(A) Diagnostic and related assessments, including transportation necessary to obtain the assessment, that are required to determine eligibility for services and the nature and scope of the services to be provided;

(B) Vocational rehabilitation counseling and guidance;

(C) Referral;

- (D) Personal assistance services;
 - (E) Auxiliary aids or services, including interpreter and reader services;
 - (F) Job search and placement assistance;
 - (G) Job-related services;
 - (H) Disability-related skills training, including training in the use of rehabilitation technology;
 - (I) Pre-employment transition services; and
 - (J) Services identified as exempt from financial participation in department rules.
- (d) (I) (A) (Deleted by amendment, L. 2025.)
- (B) If the person with a disability has been determined eligible for social security benefits under Title II or XVI of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., or 42 U.S.C. sec. 1381 et seq., as amended, they are not required to further contribute to the costs of any services provided.
- (II) (Deleted by amendment, L. 2025.)
- (4) To the extent that the department determines that any goods or services received by the person with a disability were acquired through misrepresentation, fraud, collusion, or criminal conduct, payment for those goods and services may be recovered by the department from the person with a disability.

Source: **L. 2015:** Entire article added with relocations, (SB 15-239), ch. 160, p. 480, § 2, effective July 1, 2016. **L. 2016:** (2)(b), (2)(g), (3)(a), (3)(b)(VIII), and (3)(c)(II) amended and (2)(c) and (2)(e) repealed, (SB 16-182), ch. 255, p. 1049, § 4, effective July 1; IP(3)(b), (3)(b)(III), (3)(b)(V), (3)(d)(I), and (4) amended, (SB 16-189), ch. 210, p. 755, § 11, effective July 1. **L. 2018:** (3)(b)(III.5) added and (3)(b)(IV) amended, (SB 18-145), ch. 215, p. 1369, § 2, effective August 8. **L. 2022:** (3)(c)(II)(F), (3)(c)(II)(G), and (3)(d) amended and (3)(c)(II)(H) to (3)(c)(II)(J) added, (SB 22-217), ch. 378, p. 2686, § 12, effective August 10. **L. 2025:** (3)(a), (3)(b)(II), (3)(b)(V), (3)(b)(VII), (3)(c)(I), IP(3)(c)(II), and (3)(d) amended, (HB 25-1018), ch. 88, p. 366, § 1, effective August 6.

Editor's note: (1) Section 26-8-105 (3)(a), (3)(h), (4), and (5), and the amendments to them by House Bill 15-1188, were further amended by Senate Bill 15-239 and relocated to subsections (2), (3), and (4) of this section, effective July 1, 2016.

(2) The provisions of this section are similar to several former provisions of § 26-8-105 as they existed prior to 2016. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: (1) For Title II of the federal "Social Security Act", see 42 U.S.C. § 401 et seq.; for Title XVI of the federal "Social Security Act", see 42 U.S.C. § 1381 et seq.

(2) For the legislative declaration in SB 18-145, see section 1 of chapter 215, Session Laws of Colorado 2018.

8-84-107. Cooperation with federal government.

The department shall cooperate with the federal government in carrying out the purposes of any federal statutes pertaining to the purposes of this article, including the licensing of blind persons to operate vending stands on federal property. The department may adopt by rule methods of administration that are reasonably required by the federal government for the proper and efficient operation of the agreements with the federal government and to comply with the conditions necessary to secure the full benefits of the federal statutes.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 483, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8-106 as it existed prior to 2016.

8-84-108. Transfer of functions - transition plan - report.

(1) (a) On and after July 1, 2016, the powers, duties, and functions of the department of labor and employment include the powers, duties, and functions regarding vocational rehabilitation programs, including the business enterprise program, that were formerly vested in the department of human services prior to that date.

(b) By July 1, 2016, the department of labor and employment shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations regarding vocational rehabilitation programs, including the business enterprise program, that are transferred to the department pursuant to this article.

(c) By July 1, 2016, the officers and employees of the department of human services prior to that date whose duties and functions concerned the duties and functions transferred to the department pursuant to this article and whose employment in the department is deemed necessary by the executive director to carry out the purposes of this article are transferred to the department and become employees of the department. The employees retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services are deemed to be continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(d) By July 1, 2016, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of human services prior to that date pertaining to the duties and functions transferred to the department pursuant to this article are transferred to the department and become the property of the department.

(e) (I) On and after July 1, 2016, whenever the functions of the department of human services or the division of vocational rehabilitation in the department of human services relating to vocational rehabilitation programs or services, including the business enterprise program, are referred to or designated by a contract or other document in connection with the duties and functions transferred to the department pursuant to this article, the reference or designation is deemed to apply to the department.

(II) All contracts entered into by the department of human services prior to July 1, 2016, in connection with the duties and functions transferred to the department pursuant to this article are hereby validated, with the department succeeding to all the rights and obligations of the contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to those contracts are transferred and appropriated to the department for the payment of those obligations.

(2) (a) Starting on July 1, 2016, the department shall begin working with partners, stakeholders, and respective staff from both departments to transition vocational rehabilitation programs, including the business enterprise program, from the department of human services to the department of labor and employment. In addition to preparing and presenting a detailed transition plan as required by paragraph (b) of this subsection (2), starting in September 2015, the department shall present quarterly reports to the joint budget committee on the status of the transition of vocational rehabilitation programs, including the business enterprise program, from the department of human services to the department of labor and employment.

(b) By December 1, 2015, the department of human services and the department of labor and employment shall prepare a detailed transition plan, including statutory and budgetary recommendations, to be presented to the joint budget committee and the oversight standing committees for each department on any additional statutory changes that may be necessary to

effectuate the transfer of vocational rehabilitation programs, including the business enterprise program, to the department of labor and employment and ensure the protection of vocational rehabilitation clients. In developing the transition plan, the departments shall include input and recommendations from interested stakeholders, including the state rehabilitation council.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 483, § 2, effective May 8. **L. 2022:** (1)(a) amended, (SB 22-162), ch. 469, p. 3385, § 94, effective August 10.

Editor's note: This article took effect July 1, 2016; however, this section, as enacted by section 2 of Senate Bill 15-239, took effect May 8, 2015.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

PART 2

VENDING FACILITIES IN STATE BUILDINGS - BUSINESS ENTERPRISE PROGRAM

8-84-201. Short title.

This part 2 shall be known and may be cited as the "Business Enterprise Program Act".

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 484, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8.5-100.1 as it existed prior to 2016.

8-84-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Person who is blind" means a person who has not more than 20/200 central visual acuity in the better eye with correcting lenses or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees.

(2) "Satisfactory site" means an area determined by the department to have sufficient space, electrical and plumbing outlets, and other facilities as prescribed by department rule for the location and operation of a vending facility or other business operated by a person who is blind.

(3) "State property" means any building, land, or other real property owned, leased, or occupied by any department or agency of the state of Colorado. "State property" does not include any property owned, leased, or occupied by any institution of higher education, the Auraria higher education center established in article 70 of title 23, C.R.S., or the board of commissioners of the Colorado state fair authority.

(4) "Vending facility" means automatic vending machines, a cafe, a cafeteria, a restaurant, a snack bar, a concession stand, or any other facility at which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are regularly sold.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 484, § 2, effective July 1, 2016. **L. 2016:** (2) amended, (HB 16-1048), ch. 146, p. 437, § 1, effective July 1.

Editor's note: This section is similar to former § 26-8.5-101 as it existed prior to 2016.

8-84-203. Priority for persons who are blind - licensing.

The department shall issue licenses to persons who are blind and who are qualified to operate vending facilities, in accordance with the criteria used for the licensing of operators of vending facilities on federal property pursuant to section 8-84-107 and the federal "Randolph-Sheppard Vending Stand Act", as amended. In addition, the department may issue licenses to persons who are blind and who are qualified to own, operate, or own and operate a business other than a vending facility. In authorizing vending facilities or other businesses on state property, the department shall give priority to persons who are blind and who are licensed by the department in order to enlarge the economic opportunities of persons who are blind by providing remunerative employment and to stimulate persons who are blind to greater efforts in striving to make themselves self-supporting.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 485, § 2, effective July 1, 2016. L. 2016: Entire section amended, (HB 16-1048), ch. 146, p. 437, § 2, effective July 1.

Editor's note: This section is similar to former § 26-8.5-102 as it existed prior to 2016.

Cross references: For the federal "Randolph-Sheppard Vending Stand Act", see 20 U.S.C. sec. 107 et seq.

8-84-204. Satisfactory sites for vending facilities - other businesses operated by persons who are blind.

(1) (a) A department or agency of the state of Colorado shall not construct, acquire by ownership, rent, lease, or other means, or undertake to substantially alter or renovate, in whole or in part, a building unless, after consultation with the department of labor and employment, it is determined that the building will include a satisfactory site or sites for the location and operation of a vending facility by a person who is blind.

(b) Before a state department or agency constructs, acquires, rents, leases, or otherwise undertakes to alter or renovate a state property, the state department or agency shall consult with the department of labor and employment to determine if the state property can include a satisfactory site for the location and operation of a business, other than a vending facility, that is owned, operated, or owned and operated by a person who is blind.

(2) Each department or agency shall provide notice to the department of labor and employment of its plans for the occupation, acquisition, construction, alteration, or renovation of a building adequate to permit the department of labor and employment to determine whether the building includes a satisfactory site for a vending facility or other business that can be operated by a person who is blind and is licensed pursuant to section 8-84-203.

(3) This section does not apply when the department of labor and employment determines that the number of people using the building will be insufficient to support a vending facility or other business.

(4) The department of labor and employment shall not be charged for:

- (a) The use of state-furnished space;
- (b) Maintenance or janitorial services;

(c) Repair of the building structure in and adjacent to the vending facility or other business area, including any necessary initial and periodical painting and decorating;

(d) Utilities required to operate vending facilities and vending machines or equipment required for other businesses operated by persons who are blind; or

(e) Repairing and replacing floor coverings, cleaning windows, or providing other related building services in accordance with the normal level of building service applicable to the state building in which the vending facility or other business is located.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 485, § 2, effective July 1, 2016. **L. 2016:** Entire section amended, (HB 16-1048), ch. 146, p. 438, § 3, effective July 1.

Editor's note: This section is similar to former § 26-8.5-103 as it existed prior to 2016.

8-84-205. Vending machines - income.

One hundred percent of all commission income from vending machines on state property accrues to the department of labor and employment, which shall disburse the income in accordance with the rules of the department. The office of state planning and budgeting shall notify the department of the location of all vending machines on state property, and the department shall collect and provide an accounting of income from these vending machines.

Source: L. 2015: Entire section added with relocations, (SB 15-239), ch. 160, p. 486, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8.5-104 as it existed prior to 2016.

8-84-206. Cooperation - locations - rules.

(1) The heads of all state departments and agencies shall negotiate and cooperate in good faith to accomplish the purposes of this article relating to vending facilities and other businesses operated by persons who are blind.

(2) If the department determines that the operation of a vending facility or other business on state property by a person who is blind would adversely affect the operations or functions of the state property, the office of state planning and budgeting may authorize another person to operate the vending facility or other business.

(3) When no person is immediately available on the premises for the management of vending machines or other businesses, the commission income from the machines shall be given to the department in accordance with section 8-84-205.

(4) The department shall operate the program authorized by this part 2 in accordance with its rules and in accordance with federal guidelines under the federal "Randolph-Sheppard Vending Stand Act", as amended.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 486, § 2, effective July 1, 2016. **L. 2016:** Entire section amended, (HB 16-1048), ch. 146, p. 439, § 4, effective July 1.

Editor's note: This section is similar to former § 26-8.5-105 as it existed prior to 2016.

Cross references: For the federal "Randolph-Sheppard Vending Stand Act", see 20 U.S.C. sec. 107 et seq.

8-84-207. Status of existing contracts.

This part 2 does not extend to existing contracts until the expiration of those contracts.

Source: L. 2015: Entire article added with relocations, (SB 15-239), ch. 160, p. 487, § 2, effective July 1, 2016.

Editor's note: This section is similar to former § 26-8.5-106 as it existed prior to 2016.

8-84-208. Business enterprise program cash fund - creation.

There is hereby created in the state treasury the business enterprise program cash fund, referred to in this section as the "fund", which consists of moneys accruing to the department from assessments against the net proceeds of each vending facility operator consistent with this part 2, any income from vending machines on federal or state property that accrues to the department, and any federal moneys that may become available. Any moneys currently attributed to the business enterprise program and any reserves shall be transferred to this fund for future use consistent with this part 2. The moneys in the fund are subject to annual appropriation by the general assembly for the direct and indirect costs associated with the administration of this part 2. The state treasurer may invest any moneys in the fund not expended for the purposes of this part 2 as provided in sections 24-36-109, 24-36-112, and 24-36-113. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

Source: **L. 2015:** Entire article added with relocations, (SB 15-239), ch. 160, p. 487, § 2, effective July 1, 2016. **L. 2025:** Entire section amended, (SB 25-300), ch. 428, p. 2439, § 5, effective August 6.

Editor's note: This section is similar to former § 26-8.5-107 as it existed prior to 2016.

8-84-209. Working group to address expanding opportunities for blind vendors - report - repeal. (Repealed)

Source: **L. 2016:** Entire section added, (HB 16-1048), ch. 146, p. 439, § 5, effective May 4.

Editor's note: Subsection (5) provided for the repeal of this section, effective September 1, 2017. (See L. 2016, p. 439.)

PART 3

EMPLOYMENT FIRST FOR PERSONS WITH DISABILITIES

Cross references: For the legislative declaration in SB 16-077, see section 1 of chapter 360, Session Laws of Colorado 2016.

8-84-301. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Agency partners" means the department, the department of health care policy and financing, the department of education, the department of higher education, the department of human services, the Colorado office of employment first, JFK partners within the department of pediatrics of the university of Colorado school of medicine, and the university of Colorado Anschutz medical campus.

(2) "Career development planning" means a person-centered process that identifies the individual's employment goals and objectives; the services and supports needed to achieve those goals and objectives; the persons, agencies, and providers assigned to assist the individual in attaining the goals; and the obstacles faced by the individual working in competitive integrated employment. Career development planning reflects a presumption that all persons with disabilities are capable of working in a competitive integrated employment setting.

(3) "Competitive integrated employment" means work paid directly by employers at the greater of the state or federal minimum wage or prevailing wage with commensurate benefits, occurring in a typical work setting where the employee with a disability interacts or has the opportunity to interact continuously with coworkers without disabilities, not including supervisory personnel or individuals who are providing services to the employee with a disability, and the employee with a disability has an opportunity for advancement or job mobility, and is engaged, preferably, in full-time work.

(4) "Discovery process" means a process to discover already existing information about a job seeker that is based on information obtained from a person's entire life and not from short instances of job performance. The information is gathered from the job seeker and others to determine the job seeker's interests, skills, and preferences related to potential employment that guide the development of a customized job.

(5) "Employment first" means a framework for change in the provision of services that is centered on the premise that all persons, including persons with significant disabilities, are capable of full participation in competitive integrated employment and community life. Under this framework, in providing publicly funded services, employment in the general workforce is

the first and preferred outcome for all working-age persons with disabilities, regardless of the level of disability. Publicly funded agencies and systems align policies, service delivery practices, funding, and reimbursement structures in order to achieve competitive integrated employment.

(6) "Employment first advisory partnership" or "partnership" means the partnership described in section 8-84-303.

(7) "Persons with intellectual and developmental disabilities" has the same meaning as "person with an intellectual and developmental disability" as set forth in section 25.5-10-202, C.R.S.

(8) "State employment leadership network" means the joint partnership between the national association of state directors of developmental disabilities services and the institute for community inclusion at the university of Massachusetts Boston or another similar organization that facilitates collaboration with other states to share effective solutions to increase employment outcomes for persons with disabilities.

Source: L. 2016: Entire part added, (SB 16-077), ch. 360, p. 1500, § 2, effective July 1. **L. 2021:** (1) amended, (SB 21-095), ch. 403, p. 2681, § 5, effective September 1.

Cross references: For the legislative declaration in SB 21-095, see section 1 of chapter 403, Session Laws of Colorado 2021.

8-84-302. Duties of the department.

(1) Pursuant to its statutory authority and available appropriations, the department shall:

(a) Review and make recommendations for amendments, if necessary, to Colorado's combined plan for execution of workforce development activities developed in accordance with the federal "Workforce Innovation and Opportunity Act", Pub.L. 113-128, as amended, to ensure that persons with intellectual and developmental disabilities are supported in achieving employment;

(b) Develop practices that reflect a presumption that all persons with disabilities are capable of working in competitive integrated employment if they choose to do so, and ensure that options for competitive integrated employment with appropriate supports are explored before consideration of segregated activities;

(c) Promote youth transitions that focus on public-private collaboration, and employer engagement that emphasizes free-market solutions;

(d) Provide department input and assistance to the employment first advisory partnership described in section 8-84-303 in carrying out its duties; and

(e) Present the reports and recommendations of the employment first advisory partnership to the department's legislative committee of reference pursuant to section 8-84-303 (7).

Source: L. 2016: Entire part added, (SB 16-077), ch. 360, p. 1501, § 2, effective July 1.

8-84-303. Employment first advisory partnership - memorandum of understanding - reporting.

(1) The employment first advisory partnership is hereby established as a partnership of existing entities including the state rehabilitation council, established by the department, the state work force development council, created in article 46.3 of title 24, C.R.S., and the employment first state leadership mentoring program core state advisory group, established by the department. The partnership shall also consult with the state leadership employment network for best practices in developing employment first policies and increasing competitive integrated employment for persons with disabilities. The state rehabilitation council shall serve as the lead agency to coordinate cross-departmental and inter-agency collaboration within the department and among the agency partners and to make recommendations to the general assembly and agency partners relating to employment first policies.

(2) On or before December 30, 2016, each agency partner shall identify the staff member or members within the agency charged with providing agency input and assistance relating to the memorandum of understanding pursuant to subsection (3) of this section and the duties of the partnership set forth in section 8-84-304.

(3) On or before January 30, 2017, the state rehabilitation council shall convene a meeting or meetings of the partnership and agency partners to develop a memorandum of understanding for the partnership relating to the duties of the partnership set forth in section 8-84-304. At a minimum, the memorandum of understanding shall include the responsibilities of each member of the partnership and each agency partner and a plan for completing the work of the partnership, including time frames.

(4) It is the intent of the general assembly that, through the employment first advisory partnership, employment first policies are considered and recommended that reflect not only the perspective of the agency partners but also persons with disabilities, advocates, service providers, employers, and members of the community. Therefore, unless provided through the

membership of the partnership, the partnership shall seek stakeholder participation from, at a minimum:

(a) Representatives of a national association of persons supporting the implementation of employment first policies;

(b) Advocates for persons with intellectual and developmental disabilities;

(c) Persons with disabilities who have secured or are seeking competitive integrated employment; and

(d) Members of the community who are not connected to any service agency.

(5) At its discretion, the partnership may form subgroups comprised of members and stakeholders to consider specific issues relating to the strategic plan and the recommendations of the partnership.

(6) The partnership shall meet as often as necessary to complete its duties but shall meet at least once every quarter.

(7) (a) The agency partners shall present the initial report of the strategic plan and recommendations developed pursuant to section 8-84-304 to the legislative committees of reference for the agency partners as part of each agency's annual presentation made pursuant to section 2-7-203 during the interim between November 1, 2017, and the start of the 2018 regular legislative session. Thereafter, each agency partner shall inform the legislative committee of reference of revisions to the strategic plan and the implementation of employment first policies as part of the agency's annual presentation made pursuant to section 2-7-203.

(b) After the presentation of the initial report of the strategic plan, the employment first advisory partnership shall continue to meet, as necessary, to work on the duties set forth in section 8-84-304; to consider revisions to the plan; and to provide advice and expertise relating to the subsequent implementation of the plan.

(8) Repealed.

Source: L. 2016: Entire part added, (SB 16-077), ch. 360, p. 1502, § 2, effective July 1. **L. 2017:** (7)(a) amended, (HB 17-294), ch. 264, p. 1385, § 9, effective May 25. **L. 2021:** (8) repealed, (SB 21-039), ch. 380, p. 2547, § 3, effective July 1; (8) repealed, (SB 21-095), ch. 403, p. 2681, § 2, effective September 1.

Cross references: For the legislative declaration in SB 21-095, see section 1 of chapter 403, Session Laws of Colorado 2021.

8-84-304. Duties of the employment first advisory partnership - strategic plan - report.

(1) (a) After considering the duties set forth in subsection (2) of this section, the employment first advisory partnership shall develop a strategic plan to expand competitive integrated employment outcomes for persons with disabilities through employment first policies and practices. The strategic plan must include recommendations to the general assembly and the relevant policy-making boards concerning any changes to state statutes or rules necessary to implement the strategic plan, along with a fiscal analysis of implementation costs, where practicable.

(b) The employment first advisory partnership shall prepare an initial report of the strategic plan no later than November 1, 2017, and shall revise the strategic plan as the partnership considers additional issues described in subsection (2) of this section.

(2) In developing the strategic plan to expand competitive integrated employment outcomes for persons with disabilities through employment first policies and practices, and in formulating the recommendations of the employment first advisory partnership, the employment first advisory partnership shall:

(a) Make recommendations to ensure that, in providing publicly funded services, competitive integrated employment is the primary objective and preferred outcome for all working-age persons with disabilities, regardless of the level of disability;

(b) Identify the barriers to competitive integrated employment for persons with disabilities, including policy, procedural, financial, educational, transportation, service delivery, and other barriers;

(c) Identify unnecessary, inefficient, or conflicting agency rules and regulations that make it more difficult for employers to hire persons with disabilities;

(d) Identify training and knowledge gaps among agency staff, agency vendors, and individuals with disabilities and their families that may create obstacles and perceived obstacles for persons with disabilities, including significant disabilities, to participating in competitive integrated employment;

(e) Identify the data available and the gaps in data collection that prohibit the measurement of Colorado's progress towards compliance with the United States supreme court's decision in *Olmstead v. L.C.*; and

(f) Make recommendations relating to prevocational services to ensure that, in compliance with federal law, the services are time limited and reasonably lead to competitive integrated employment. The employment first advisory partnership's consideration shall include the average time currently spent in preemployment services by persons through the home- and community-

based services intellectual and developmental disabilities waiver combined with the time previously spent in sheltered workshops.

(3) The employment first advisory partnership may consider employment first issues and make recommendations on issues that are not described in subsection (2) of this section, which issues may include career development planning and the discovery process. The partnership may also prioritize its work on the issues, including deciding not to pursue an issue, in order to achieve an efficient use of the employment first advisory partnership's time and resources.

(3.5) and (4) Repealed.

Source: **L. 2016:** Entire part added, (SB 16-077), ch. 360, p. 1503, § 2, effective July 1. **L. 2018:** (4) added, (SB 18-145), ch. 215, p. 1371, § 4, effective August 8. **L. 2021:** (3.5) added and (4) repealed, (SB 21-039), ch. 380, p. 2547, § 4, effective July 1; (4) repealed, (SB 21-095), ch. 403, p. 2681, § 3, effective September 1.

Editor's note: Subsection (3.5)(c) provided for the repeal of subsection (3.5), effective July 1, 2022. (See L. 2021, p. 2547.)

Cross references: (1) For the legislative declaration in SB 16-077, see section 1 of chapter 360, Session Laws of Colorado 2016. For the legislative declaration in SB 18-145, see section 1 of chapter 215, Session Laws of Colorado 2018. For the legislative declaration in SB 21-095, see section 1 of chapter 403, Session Laws of Colorado 2021.

(2) For the *Olmstead v. L.C.* case referenced in subsection (2)(e), see 527 U.S. 581 (1999).

INDEPENDENT LIVING SERVICES

ARTICLE 85

Independent Living Services

8-85-101.	Legislative declaration.	8-85-104.	Written plan - consumer choice.
8-85-102.	Definitions.		
8-85-103.	Functions of office - functions of department - appropriations - rules.	8-85-105.	Rules.
		8-85-106.	State plan.

8-85-107.	Approval of independent living centers - evaluation standards.	8-85-108.	Acceptance of federal grants.
		8-85-109.	Transfer of functions - transition plan - report.

8-85-101. Legislative declaration.

The general assembly recognizes omissions in the delivery of independent living services to individuals with disabilities and desires to remedy such inadequacies in the delivery system through services at the community level. The general assembly finds that independent living centers pave the pathways to full participation in professional and community life for all individuals with disabilities. To advance and support the independence of individuals with disabilities and to assist those individuals to live outside of institutions, the general assembly hereby enacts this article.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 126, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-101 as it existed prior to 2016.

8-85-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Base amount" means the equal amount of funding an independent living center would receive to provide the five independent living core services throughout its service catchment area, regardless of any other factors.

(2) "Cross-disability" means, with respect to an independent living center, that the center provides independent living services to individuals representing a range of disabilities.

(3) "Department" means the department of labor and employment created in section 24-21-121, C.R.S.

(4) "Executive director" means the executive director of the department of labor and employment.

(5) "Independent living center" means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that is designated as an eligible agency under Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended, and that:

- (a) Is designed and operated within a local community by individuals with disabilities; and
 - (b) Provides required independent living core services and programs and an array of expanded services.
- (6) "Independent living core services" means:
- (a) Information and referral services;
 - (b) Independent living skills training;
 - (c) Peer counseling, including cross-disability peer counseling;
 - (d) Individual and systems advocacy; and
 - (e) Transition services or diversion from nursing homes and institutions to home- and community-based living, or upon leaving secondary education.
- (7) "Independent living services" means:
- (a) Independent living core services; and
 - (b) Other services and assistance as defined by federal regulations.
- (8) "Individual with a disability" means an individual:
- (a) With a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (b) With a record of such an impairment; or
 - (c) Regarded as having such an impairment.
- (9) "Office" means the office of independent living services created pursuant to section 8-85-103 within the department.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 126, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-102 as it existed prior to 2016.

8-85-103. Functions of office - functions of department - appropriations - rules.

(1) There is hereby created within the department the office of independent living services. The purpose of the office is to oversee the contracts with independent living centers pursuant to this article.

(2) (a) Subject to available appropriations, the office may contract with independent living centers for independent living core services.

(b) The executive director shall review expenditures in accordance with the standards for independent living services set by the office pursuant to section 8-85-105 and the evaluation standards prescribed in section 8-85-107. The office may withhold state funds if the executive director determines that the programs of such independent living centers do not comply with said standards.

(3) For purposes of allocating money under this article, each independent living center shall submit to the office a proposed budget, which must include proposed expenditures, including proposed expenditures for services that the center intends to provide.

(4) On or before July 1, 2016, the department shall promulgate a rule for the block distribution of state money to independent living centers. The rule must include at least:

(a) A base amount of not less than six hundred thousand dollars; and

(b) Other factors agreed to by the independent living centers, which may include a per capita adjustment, a per county adjustment, or other adjustments.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 128, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-103 as it existed prior to 2016.

8-85-104. Written plan - consumer choice.

Each independent living center shall maintain an individual consumer service record indicating the consumer's choice of services, including an individualized independent living plan regarding the consumer's choice of services or a written waiver of such plan.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 128, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-104 as it existed prior to 2016.

8-85-105. Rules.

The department shall promulgate rules setting forth standards for levels and types of core services. The rules and standards must comply with federal rules as defined in Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended. The department shall also adopt rules that set standards for certification of independent living centers and shall require that any center must be designated as an eligible agency under Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended, and must meet all federal requirements for independent living centers.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 129, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-105 as it existed prior to 2016.

8-85-106. State plan.

The statewide independent living council created pursuant to the federal "Rehabilitation Act of 1973", as amended, shall develop and revise the state plan for independent living to reflect the provisions of this article.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 129, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-106 as it existed prior to 2016.

8-85-107. Approval of independent living centers - evaluation standards.

(1) Each independent living center must meet the following requirements as a condition of the approval of its program:

(a) The program must be under the control and direction of a board of directors or trustees of a nonprofit corporation. The members must be persons with a demonstrated interest in programs for persons with disabilities and fifty-one percent or more of the members of the board must be persons with disabilities.

(b) The independent living center must be staffed with fifty-one percent or more of persons with disabilities.

(c) The independent living center must comply with all of the provisions of this article and the rules promulgated thereunder.

(2) In addition to the requirements of subsection (1) of this section, each independent living center, as a condition of approval of its program by the state department, must agree to comply with the following evaluation standards:

(a) **Philosophy.** The independent living center shall promote and practice the independent living philosophy of:

(I) Consumer control of the center regarding decision-making, service delivery, management, and establishment of the policy and direction of the center;

(II) Self-help and self-advocacy;

(III) Development of peer relationships and peer role models;

(IV) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(V) Promoting equal access of individuals with all types of significant disabilities to all services, programs, activities, resources, and facilities in the community, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) **Provision of services.** The independent living center shall provide independent living services to individuals with a range of significant disabilities. The independent living center shall provide independent living services on a cross-disability basis. The independent living center shall determine eligibility for independent living services and shall not exclude eligibility on the presence of any one specific significant disability.

(c) **Independent living goals.** The independent living center shall facilitate the development and achievement of independent living goals selected by individuals with significant disabilities who seek assistance in the development and achievement of independent living goals from the center.

(d) **Community options.** The independent living center shall conduct outreach and activities to increase the availability and improve the quality of community options for independent living to facilitate the development and achievement of independent living goals by individuals with significant disabilities.

(e) **Independent living core services.** The independent living center shall provide independent living core services and, as appropriate, a combination of any of the other independent living services referred to in Title VII, section 725, standards and assurances, of the federal "Rehabilitation Act of 1973", as amended.

(f) **Activities to increase community capacity.** The independent living center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) **Resource development activities.** The independent living center shall conduct resource development activities to obtain funding from sources other than federal and state sources.

(3) The independent living center shall submit annually to the office a performance report that provides evidence that the center has met the evaluation standards set forth in subsection (2) of this section.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 129, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-107 as it existed prior to 2016.

8-85-108. Acceptance of federal grants.

The executive director is authorized to accept, on behalf of the state, any grants of federal funds made available for any purposes consistent with the provisions of this article. As indicated in the general appropriations act, the executive director, with the approval of the governor, has the power to direct the disposition of any such grants so accepted in conformity with the terms and conditions under which given.

Source: L. 2016: Entire article added with relocations, (SB 16-093), ch. 54, p. 130, § 1, effective March 23.

Editor's note: This section is similar to former § 26-8.1-108 as it existed prior to 2016.

8-85-109. Transfer of functions - transition plan - report.

(1) On and after July 1, 2016, the powers, duties, and functions of the department of labor and employment include the powers, duties, and functions regarding independent living services that were formerly vested in the department of human services prior to that date.

(2) On and after March 23, 2016, the department of labor and employment shall prepare to execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations regarding independent living services that are transferred to the department of labor and employment pursuant to this article.

(3) Effective July 1, 2016, the officers and employees of the department of human services whose duties and functions prior to that date concerned the duties and functions transferred to the department of labor and employment pursuant to this article and whose employment in the department of labor and employment is deemed necessary by the executive director to carry out the purposes of this article are transferred to the department of labor and employment and become employees of the department of labor and employment. The employees retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services are deemed to be continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(4) Effective July 1, 2016, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of human services prior to that date pertaining to the duties and functions transferred to the department of labor and employment pursuant to this article are transferred to the department of labor and employment and become the property of the department of labor and employment.

(5) (a) On and after July 1, 2016, whenever the functions of the department of human services relating to independent living services is referred to or designated by a contract or other document in connection with the duties and functions transferred to the department of labor and employment pursuant to this article, the reference or designation is deemed to apply to the department of labor and employment.

(b) All contracts entered into by the department of human services prior to July 1, 2016, in connection with the duties and functions transferred to the department of labor and employment pursuant to this article are hereby validated, with the department of labor and employment succeeding to all the rights and obligations of the contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to those contracts are transferred

and appropriated to the department of labor and employment for the payment of those obligations.

(c) All rules adopted by the department of human services prior to July 1, 2016, concerning independent living services continue to be effective until revised, amended, or nullified pursuant to law.

Source: **L. 2016:** Entire article added with relocations, (SB 16-093), ch. 54, p. 131, § 1, effective March 23. **L. 2022:** (1) amended, (SB 22-162), ch. 469, p. 3385, § 95, effective August 10.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

ARTICLE 86

Study of Transportation Access for People with Disabilities

8-86-101 to 8-86-106. (Repealed)

Editor's note: (1) This article 86 was added in 2017 and was not amended prior to its repeal in 2018. For the text of this article 86 prior to 2018, consult the 2017 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 8-86-106 provided for the repeal of this article 86, effective July 1, 2018. (See L. 2017, p. 190.)

HEALTH-CARE WORKFORCE

ARTICLE 87

International Medical Graduates Pathway to Health-care Workforce

8-87-101. Definitions.

8-87-102.	IMG assistance program - creation - services - report.	8-87-104.	Report to the general assembly.
8-87-103.	Clinical readiness program - creation - administration - required components - participant qualifications - report.	8-87-105.	Funding for programs - gifts, grants, and donations - implementation contingent on receipt of funding.

8-87-101. Definitions.

As used in this article 87, unless the context otherwise requires:

- (1) "ACGME" means the Accreditation Council for Graduate Medical Education, an organization that sets and monitors the professional educational standards for physicians, or any successor accrediting entity.
- (2) "Assistance program" means the IMG assistance program established in section 8-87-102.
- (3) "Clinical program" means the clinical readiness program established in section 8-87-103.
- (4) "Colorado medical board" means the Colorado medical board created in section 12-240-105.
- (5) "Department" means the department of labor and employment.
- (6) "Executive director" means the executive director of the department or the executive director's designee.
- (7) "International medical graduate" or "IMG" means a physician who received a basic medical degree or qualifications from a medical school outside of the United States or Canada.
- (8) "Program participant" means an IMG participating in the assistance program or the clinical program.
- (9) "Third-party administrator" or "third party to administer" means the grantee selected by the executive director pursuant to section 8-87-102 (1) to administer the assistance program, including receiving grant funds and taking on the obligations of the assistance program, which includes providing direct services to program participants and reporting to the executive director.
- (10) "USMLE" means the United States Medical Licensing Examination, a three-step examination for medical licensure in the United States.

Source: L. 2022: Entire article added, (HB 22-1050), ch. 379, p. 2690, § 2, effective June 7.

8-87-102. IMG assistance program - creation - services - report.

(1) The IMG assistance program is established in the department to provide direct services to international medical graduates wishing to reestablish their medical careers in this state. The executive director shall contract with a third party to administer the assistance program and shall comply with the "Procurement Code", articles 101 to 112 of title 24, in selecting and contracting with the third-party administrator.

(2) The assistance program must provide the following direct services to program participants:

(a) Review the background, education, training, and experience of program participants in order to recommend appropriate steps to enable program participants to integrate into the state's health-care workforce as physicians or to pursue an alternative health-care career;

(b) Provide technical support and guidance to program participants through the credential evaluation process, including preparing for the USMLE and other applicable tests or evaluations;

(c) Provide scholarships or access to scholarships or funds for certain program participants to help cover or offset the cost of the medical licensure process, including the costs of the credential evaluation process, preparing for the USMLE and other applicable tests or evaluations, the residency application process, and other costs associated with returning to a career in health care;

(d) In partnership with community organizations working with IMGs, develop:

(I) A voluntary roster of IMGs interested in entering the state's health-care workforce as physicians, in order to assist in assistance program planning and administration, including making available summary reports that show the aggregate number and distribution, by geographic location and specialty, of IMGs in the state; and

(II) A voluntary roster of IMGs seeking alternative health-care careers in order to support those IMGs in their integration into nonphysician health-care roles; and

(e) Provide guidance to IMGs to apply for medical residency programs or other pathways to licensure.

(3) The executive director shall determine, with input from stakeholders and after considering relevant research of the needs of the workforce and IMGs in Colorado, the eligibility criteria for participation in the program, any limits on the amount of direct services provided to an individual program participant, any caps on scholarship amounts available under the assistance program, and any other matters regarding the assistance program that the executive director deems necessary.

(4) (a) Within one year after implementation of the program and annually thereafter, the third-party administrator shall submit a report to the executive director regarding the operation of the assistance program, including:

- (I) The number of IMGs who participated in the program and their demographics;
 - (II) The specific services provided to program participants, including the number of program participants that received the service and the cost of providing the service;
 - (III) The total amount awarded to or accessed as scholarships or other funds by program participants, including the amount of each scholarship or other funds awarded or accessed and the origination of the scholarship or funds;
 - (IV) The total cost of providing direct services under the assistance program; and
 - (V) Any other information the third-party administrator deems appropriate or the executive director requests.
- (b) The report must not include any personally identifying information about program participants.
- (c) The executive director shall include the report as part of its report pursuant to section 8-87-104.

Source: L. 2022: Entire article added, (HB 22-1050), ch. 379, p. 2691, § 2, effective June 7.

8-87-103. Clinical readiness program - creation - administration - required components - participant qualifications - report.

(1) The clinical readiness program is established in the department to assist IMGs admitted to the clinical program in building the skills necessary to become successful residents in the United States medical system. By January 1, 2023, the executive director shall contract with a Colorado-based medical school or ACGME-accredited residency program to serve as the program administrator responsible for developing, implementing, and administering the clinical program. The executive director shall comply with the "Procurement Code", articles 101 to 112 of title 24, in selecting and contracting with a Colorado medical school or residency program to serve as the program administrator.

(2) (a) The program administrator must develop and implement the clinical program by January 1, 2024. In developing and implementing the clinical program, the program administrator may consult and coordinate with stakeholders, including representatives from:

- (I) State agencies, including:

- (A) The Colorado medical board;
- (B) The department of regulatory agencies;
- (C) The department of higher education;
- (D) The department of labor and employment;
- (E) The department of public health and environment;
- (F) The department of health care policy and financing; and
- (G) The office of new Americans created in section 8-3.7-103;
- (II) The health-care industry, including:
 - (A) Hospitals;
 - (B) Community providers; and
 - (C) Medical residency programs;
- (III) Community-based organizations, including a community-based organization serving immigrants and refugees;
- (IV) Higher education institutions; and
- (V) The IMG community.
- (b) The clinical program must include at least the following elements:
 - (I) A mechanism for processing and assessing program applications;
 - (II) Program curriculum, including curriculum:
 - (A) Pertaining to the practice of one or more primary care specialties; and
 - (B) That provides inpatient and outpatient training opportunities combined with community and classroom-based components to prepare program participants to match into and succeed in a United States residency program; and
 - (III) An assessment system to assess the clinical readiness of program participants to serve in a United States residency program, including clinical readiness for the practice of one or more primary care specialties and additional assessments as resources are available.
- (3) (a) The program administrator shall designate a program director, who must be a physician licensed to practice medicine in this state.
- (b) The program director shall:
 - (I) Develop an operating plan and budget for the clinical program;

(II) Develop and implement the curriculum for and assessments of program participants for clinical readiness, except as provided in subsection (3)(c) of this section;

(III) Work with residency programs in the state to address barriers IMGs face in securing residency positions in the state, including evaluating other methods for testing an IMG's clinical readiness, exploring alternatives to the requirement that an applicant for a residency position be a recent graduate of medical school, and developing rigorous clinical assessments and opportunities for IMGs to obtain in-depth clinical experience in the United States; and

(IV) Make reports and recommendations as required by subsection (7) of this section.

(c) The program director may contract with an independent entity or a state agency to conduct assessments of the clinical readiness of program participants.

(4) To qualify to participate in the clinical program, an applicant must:

(a) Be an IMG whose medical degree or qualifications have been evaluated by a credentialing agency approved by the Colorado medical board and determined to be equivalent to a medical degree from an accredited medical school in the United States or Canada or a state or country with which Colorado has a reciprocal license agreement; and

(b) Have achieved a passing score on the USMLE step one and step two examinations.

(5) Once a program participant completes the curriculum for the clinical program, the program director or an entity with whom the program director contracts shall assess the program participant for clinical readiness for a residency program. If the program participant passes the assessment, the program director shall:

(a) Issue the program participant an industry-recognized credential of clinical readiness; and

(b) Submit a report and recommendation to the administrator of the assistance program and the department regarding the program participant.

(6) The program administrator shall allow an IMG who successfully completes the clinical program to interview for a position in the program administrator's residency program.

(7) (a) By January 1, 2025, and by each January 1 thereafter, the program director, in consultation with the Colorado medical board and other stakeholders, shall submit a report regarding the clinical program to:

(I) The executive director; and

(II) The executive director of the department of regulatory agencies.

(b) The report must include:

(I) Information about the operations of the clinical program, including the number of IMGs who participated in and completed the clinical program; and

(II) Recommendations regarding:

(A) Changes to professional licensure requirements that promote the increased utilization of IMGs in the state's health-care workforce; and

(B) The creation of a certification recognized by the department, the department of higher education, or the United States department of labor.

(c) The report must not include any personally identifying information about any program participant.

(d) The executive director shall include the report as part of its report pursuant to section 8-87-104.

Source: L. 2022: Entire article added, (HB 22-1050), ch. 379, p. 2693, § 2, effective June 7.

8-87-104. Report to the general assembly.

The executive director shall report on the assistance program and the clinical program as part of the department's annual reporting under the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act", part 2 of article 7 of title 2. The executive director shall include in the report pursuant to this section information included in the reports submitted to the executive director pursuant to sections 8-87-102 (4) and 8-87-103 (7) and information regarding any progress made pursuant to section 8-87-103 (3)(b)(III) in addressing barriers international medical graduates face in securing positions in medical residency programs.

Source: L. 2022: Entire article added, (HB 22-1050), ch. 379, p. 2695, § 2, effective June 7.

8-87-105. Funding for programs - gifts, grants, and donations - implementation contingent on receipt of funding.

(1) The general assembly may appropriate money from the general fund or any other source to the department for the purposes of implementing and administering the assistance program and the clinical program pursuant to this article 87.

(2) The department may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of implementing and administering the assistance program and the clinical program pursuant to this article 87.

(3) (a) Unless the department receives an amount of appropriations, gifts, grants, and donations sufficient to cover the costs of the assistance program, the department shall not implement the assistance program.

(b) Unless the department receives an amount of appropriations, gifts, grants, and donations sufficient to cover the costs of the clinical program, the department shall not implement the clinical program.

Source: L. 2022: Entire article added, (HB 22-1050), ch. 379, p. 2696, § 2, effective June 7.

SUPPORT OF COLORADANS WITH DISABILITIES

ARTICLE 88

Support of Coloradans with Disabilities

PART 1 COLORADO DISABILITY OPPORTUNITY OFFICE		8-88-104.	Disability support fund - registration number account - repeal.
8-88-101.	Definitions - repeal.	8-88-105.	Sale of registration numbers for license plates - license to buy and sell - market for - royalty payment - administration - third- party contracting entity.
8-88-102.	Colorado disability opportunity office - creation - duties - legislative intent.		
8-88-102.5.	Comprehensive community integration plan for individuals with disabilities - review and assessment.		PART 2 DISABILITY SUPPORT
8-88-103.	Appropriation - gifts, grants, and donations.	8-88-201.	Short title.
		8-88-202.	Colorado disability funding committee - powers and duties.

8-88-203.	Program to assist individuals to obtain disability benefits.	PART 3 COLORADO DISABILITY FUNDING AUTHORITY	
8-88-204.	Program to investigate, fund, and pilot projects or programs to benefit individuals with disabilities.	8-88-301.	Colorado disability funding authority - creation - board.
8-88-205.	Disability support fund. (Repealed)	8-88-302.	Colorado disability funding authority - powers and duties.
8-88-206.	Sale of registration numbers for license plates - license to buy and sell - market for - royalty payment - administration - third-party contracting entity. (Repealed)	8-88-303.	Program to assist individuals with disabilities - assistance to obtain disability benefits - rules.
8-88-207.	Sunset review - repeal of part.	8-88-304.	Program to investigate, fund, and pilot projects or programs to benefit individuals with disabilities - rules.
		8-88-305.	Disabled parking education program - rules.
		8-88-306.	Annual performance and financial audit - report.

PART 1

COLORADO DISABILITY OPPORTUNITY OFFICE

8-88-101. Definitions - repeal.

As used in this article 88:

- (1) "CDOO" means the Colorado disability opportunity office created in section 8-88-102.
- (2) (a) "Committee" means the Colorado disability funding committee created in section 8-88-202.
- (b) This subsection (2) is repealed, effective July 1, 2027.

(3) "Contract entity" means an entity the CDOO contracts with pursuant to section 8-88-105 (4)(d) to implement section 8-88-105.

(3.5) "Colorado disability funding authority" or "authority" means the Colorado disability funding authority created in part 3 of this article 88.

(3.7) "Colorado disability funding authority board" or "authority board" means the Colorado disability funding authority board created in section 8-88-301 (2).

(4) "Department" means the department of labor and employment created in section 24-1-121.

(4.5) "Department of revenue" has the meaning set forth in section 42-1-102 (24).

(5) "Disability" has the same meaning as set forth in section 24-34-301 (7).

(6) "Disability benefits" means the following services provided to an individual with a disability:

(a) Cash payments from social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended;

(b) Cash payments made by the federal government to persons who are aged, blind, or disabled under Title XVI of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended;

(c) Aid to the needy disabled pursuant to section 26-2-119;

(d) Medical care, including long-term care under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, and the home care allowance program administered pursuant to section 26-2-122.3;

(e) Tax filing assistance;

(f) Rebates for property tax, rent, and heat;

(g) Earned income tax credits and state tax credits applicable to individuals with disabilities; and

(h) Any other federal, state, or local benefits that improve the quality of life and independence of individuals with disabilities as determined by the committee.

(7) "Full societal integration" means inclusive living in the community of an individual's choosing, with options to work, live, recreate, learn, travel, and receive services.

(8) "Fund" means the disability support fund created in section 8-88-104.

(9) "Nonprofit entity" means an entity incorporated under the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, or a tax-exempt entity under 26 U.S.C. sec. 501 (c)(3) of the federal "Internal Revenue Code of 1986".

(10) "Recipient" means a person who receives disability benefits.

(11) "Registration number" means the unique combination of letters and numbers assigned to a vehicle by the department of revenue under section 42-3-201 and required to be displayed on a license plate by section 42-3-202.

(12) "Vehicle" means a vehicle required to be registered pursuant to part 1 of article 3 of title 42.

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2154, § 2, effective July 1. **L. 2026:** (3) and (8) amended and (3.5), (3.7), and (4.5) added, (HB 26-1382), ch. 301, p. 1698, § 1, effective June 2; (2)(b) added by revision, (HB 26-1382), ch. 301, pp. 1698, 1715, §§ 1, 20.

Editor's note: This section is similar to former § 24-30-2202 as it existed prior to 2024.

8-88-102. Colorado disability opportunity office - creation - duties - legislative intent.

(1) (a) (I) There is created in the department the Colorado disability opportunity office, the head of which is the director of the Colorado disability opportunity office. The executive director of the department, in consultation with the office of the governor, shall appoint the director of the CDOO.

(II) The CDOO is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department.

(III) The director of the CDOO has regular access to the office of the governor and shall collaborate with state agencies.

(b) The director of the CDOO shall staff the CDOO in order to effectively meet the goals and intentions set forth in this article 88 and to meet the future needs of Colorado's disability community. In order to successfully carry out the CDOO's purpose, it is the general assembly's intent that lived experience as an individual with a disability be considered when hiring decisions are made for the CDOO staff. The CDOO shall serve as a resource for state agencies, private and nonprofit organizations, and the public about the full spectrum of disability issues in Colorado.

(2) To ensure the CDOO's disability integration goals are met, the CDOO shall:

(a) Convene and coordinate a disability technical advisory committee comprised of representatives from the department, the office of information technology, the department of human services, the department of health care policy and financing, the department of local affairs, the department of transportation, the department of early childhood, the department of education, the department of higher education, the behavioral health administration, the department of military and veterans affairs, the department of public safety, the department of corrections, the department of public health and environment, and the department of personnel to:

(I) Discuss and make recommendations to the CDOO on cross-agency efforts, including reports from agencies, impacting Coloradans with disabilities;

(II) Understand the issues impacting state agencies' ability to best serve individuals with disabilities; and

(III) Obtain the recommendations of individuals with disabilities on how to address agency issues;

(b) Coordinate with the disability technical advisory committee to develop, maintain, and make publicly available on the CDOO website a collection of resources available to Coloradans with disabilities and links to the agencies or other bodies that administer those resources;

(c) Collaborate with state agencies and the statewide equity office created in section 24-50-146 to create and maintain an individuals with disabilities equity plan for the development of shared dashboards that measure performance against shared goals within those plans that achieve the shared goals and vision of the CDOO;

(d) Collaborate with stakeholders from the disability community, including representatives from boards and commissions that advise on disability issues; except that the CDOO shall not collaborate with any board or commission that exercises quasi-judicial authority in relation to disability discrimination complaints, including any state agency that conducts, and any state agency personnel who conduct, investigative or other activities related to a board's or commission's quasi-judicial authority in relation to disability discrimination complaints. The collaboration must be on a recurring basis to allow the CDOO and the disability technical advisory committee to understand the issues Coloradans with disabilities want prioritized and their recommendations on how to address those issues.

(e) Collaborate with the state office on aging in the department of human services and advocates for the aging population and make recommendations for addressing aging and disability intersecting issues to ensure coordination with the disability technical advisory committee;

(f) Consider recommendations made in relevant reports and audits, including:

(I) The task force on the rights of Coloradans with disabilities, created in section 24-34-1003;

(II) The final report of the community living advisory group, created in the office of community living pursuant to the governor's executive order D 2012-027;

(III) The Colorado community living plan;

(IV) The report issued by the employment first advisory partnership in accordance with section 8-84-303 (7); and

(V) The strategic action planning group on aging final report; and

(g) Act as lead coordinator on multiagency reports and plans focused on Coloradans with disabilities by coordinating with all relevant agencies and stakeholder groups.

(3) The CDOO shall provide guidance to the office of the governor and state agencies on matters related to Coloradans with disabilities to:

(a) Implement a statewide strategy to facilitate full societal integration by investing in the success of individuals with disabilities in Colorado;

(b) Foster enhanced inclusion for individuals with disabilities;

(c) Ensure equitable opportunities and access to services for individuals with disabilities;

(d) Eliminate barriers to prosperity for individuals with disabilities; and

(e) Coordinate with and make recommendations to the governor and state agencies on ways to improve policies, programs, and operations to support full societal integration of individuals with disabilities across the state.

(4) As funding allows, the CDOO shall promote full societal integration of individuals with disabilities, with the goal of implementing disability support through community-based initiatives and nonprofit organizations through which individuals with disabilities and their families can access formal and informal support to promote their health, economic well-being, and full societal integration. The promotion must include:

(a) Implementing studies, symposia, and research and the review of factual reports in coordination with other state agencies to gather insight and to formulate and present recommendations to the governor and state agencies related to issues of concern and importance to individuals with disabilities in Colorado;

(b) Analyzing economic and demographic trends in order to make policy and programmatic recommendations to the governor and state agencies;

(c) Creating economic opportunities, such as:

- (I) Workforce development, skills recognition, and barrier reduction;
- (II) Initiatives that increase economic stability; and
- (III) Entrepreneurship and higher education attainment;
- (d) Connecting individuals with disabilities to local, state, and federal resources and to other resources as they are available or relevant, to meet their individual needs; and
- (e) Educating and reaching out to people in the state by:
 - (I) Promoting and celebrating the success and contributions of Colorado's disability community; and
 - (II) Engaging with the community as a whole in order to foster inclusivity and integration by building awareness, promoting mutual understanding, and increasing social bridging opportunities.
- (5) On or before November 1, 2025, and on or before November 1 each year thereafter, the director of the CDOO, or the director's designee, shall submit a report to the governor. The report must include a review and summary of the activity of, information on, and data on the programs that the CDOO administered during the prior state fiscal year.

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2155, § 2, effective July 1.

8-88-102.5. Comprehensive community integration plan for individuals with disabilities - review and assessment.

- (1) On or before September 1, 2028, CDOO shall serve as the lead agency responsible for developing a comprehensive community integration plan, referred to in this section as the "plan", for implementing the state's commitment to providing individuals with disabilities opportunities to live, work, and be served in the least restrictive settings possible. In developing the plan, CDOO shall collaborate with the department of health care policy and financing, the department of human services, the department of local affairs, other state agencies impacted by the plan, and stakeholders. The plan must include:
 - (a) An analysis of the extent to which the state is providing services in the most integrated setting;
 - (b) Concrete commitments to expand integrated opportunities for individuals with disabilities;

(c) Specific and reasonable time frames, measurable goals, and benchmarks for which the state is held accountable;

(d) Funding sources to support the plan, which may come from reallocating existing service money; and

(e) Commitments concerning how the state will meet its goals for each group of individuals with disabilities who are unnecessarily segregated.

(2) The CDOO shall review and update the plan every three years, beginning on September 1, 2031. Part of the review must be an assessment of whether the time frames, goals, and benchmarks set pursuant to subsection (1)(c) of this section have been met. If the benchmarks were not met, the updated plan must include a description of the barriers to implementation and how those barriers will be addressed.

(3) Money for the CDOO to develop, review, and update the plan is limited to the money in the fund, and the general assembly shall not appropriate any money from the general fund for that purpose.

Source: L. 2025: Entire section added, (HB 25-1017), ch. 231, p. 1091, § 1, effective August 6. **L. 2026:** (3) amended, (HB 26-1382), ch. 301, p. 1699, § 2, effective June 2.

8-88-103. Appropriation - gifts, grants, and donations.

The general assembly shall appropriate money from the fund or from any other available source to the department for use by the CDOO for the purposes specified in this part 1. The CDOO may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this part 1.

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2158, § 2, effective July 1. **L. 2026:** Entire section amended, (HB 26-1382), ch. 301, p. 1699, § 3, effective June 2.

8-88-104. Disability support fund - registration number account - repeal.

(1) (a) The disability support fund is created in the state treasury. The fund consists of gifts, grants, or donations credited to the fund and any other money that the general assembly may appropriate or transfer to the fund for the purpose of implementing this article 88.

(b) There is created the registration number account within the fund, which consists of revenue collected from the sale of uniquely valuable registration numbers pursuant to section 8-88-105. The money in the registration number account is:

(I) Continuously appropriated to the CDOO to pay the contracting entity for their services in implementing section 8-88-105; and

(II) Subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this part 1.

(2) The money in the fund is subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this article 88. The state treasurer shall credit all interest and income derived from the investment and deposit of money in the fund to the fund.

(3) (a) Notwithstanding any provision of subsection (2) of this section to the contrary, for state fiscal year 2026-2027, subject to annual appropriation by the general assembly, the department may expend money from the fund for vocational rehabilitation pursuant to article 84 of this title 8.

(b) This subsection (3) is repealed, effective July 1, 2027.

(4) (a) Notwithstanding any provision of subsection (2) of this section to the contrary, on June 30, 2026, the state treasurer shall transfer twenty-one million dollars from the fund to the general fund.

(b) This subsection (4) is repealed, effective July 1, 2027.

(5) (a) By October 1, 2026, the state treasurer shall issue a warrant in the amount of five hundred twenty-three thousand three hundred forty-three dollars to the Colorado disability funding authority created in section 8-88-301, to be paid from the fund.

(b) This subsection (5) is repealed, effective January 1, 2027.

Source: L. 2026: Entire section added with relocations, (HB 26-1382), ch. 301, p. 1699, § 4, effective June 2.

Editor's note: This section is similar to former § 8-88-205 as it existed prior to 2026.

8-88-105. Sale of registration numbers for license plates - license to buy and sell - market for - royalty payment - administration - third-party contracting entity.

(1) (a) The state or a person may sell, and the state or a person may purchase, the exclusive right to use a registration number selected by the CDOO under subsection (2) of this section for the purpose of registering a vehicle under article 3 of title 42.

(b) The right to use a registration number is a license, the use of which is subject to compliance with this section. The duration of the license is determined by the CDOO.

(2) (a) The CDOO shall raise money by selling to a buyer the right to use valuable letter and number combinations for a registration number.

(b) (I) The CDOO shall select registration numbers and request the department of revenue to verify whether plates with the registration numbers are currently issued. The CDOO and the department of revenue shall enter into an agreement establishing a process for requesting registration numbers, including specifying the frequency of these requests.

(II) Upon receiving the CDOO's request, the department of revenue shall verify whether the plates are currently issued. For purposes of this subsection (2)(b), a plate that expires due to the operation of section 42-3-115 (5)(a) is considered currently issued until the expiration of the right of the owner of the motor vehicle to which the expired plate was affixed to apply to use the registration number of the expired plate when registering another motor vehicle. If the plate is not currently issued, the department of revenue shall reserve the registration number until the CDOO notifies the department of revenue to release the registration number.

(III) The CDOO shall establish a process for determining the value of all configurations of registration numbers reserved by the CDOO. The pricing and manner of sale must follow the established process.

(IV) If a registration number is not currently issued, the CDOO may sell the right to use the registration number in a manner calculated to bring the highest price; except that the department of revenue may deny the sale or use of a registration number that is offensive or inappropriate.

(3) (a) The CDOO shall raise revenue by creating a market, which may include an online site, for the resale of license plate configurations of registration numbers using methods that are commercially reasonable, account for expenditures, and ensure the collection of the state's approval and transfer royalty.

(b) The royalty for the state's approval and transfer of the right to use a registration number is twenty-five percent of the sale price of the transfer. At the time of sale, the purchaser shall pay the royalty to the CDOO. This payment is in addition to and not in lieu of the normal registration fees, sales or use taxes, or specific ownership tax.

(c) A person shall not sell a registration number, and the department of revenue shall not assign a registration number, as a result of the right to use the number being sold to a vehicle unless the registration number was sold using the market created pursuant to this section.

(4) (a) The CDOO shall notify the department of revenue when the right to use a registration number has been sold and the CDOO has collected the state's sale proceeds or approval and transfer royalty. Upon receiving the notice, the department of revenue shall create a record in Colorado DRIVES, created in section 42-1-211, containing the name of the buyer; the vehicle identification number, if applicable; and the corresponding registration number.

(b) If the registration number consists of a combination of letters and numbers that is not within the normal format of a license plate currently produced for the department of revenue, the department of revenue shall issue the plates as personalized plates under section 42-3-211; except that, notwithstanding section 42-3-211, the CDOO may sell, and the buyer or any subsequent buyer may use:

(I) A registration number or letter of one position; or

(II) Any symbol on the standard American keyboard or approved by the CDOO.

(c) The CDOO shall transfer the money collected pursuant to this section to the state treasurer, who shall credit the money to the registration number account within the fund; except that, if the CDOO contracts with one or more public or private entities pursuant to subsection (4)(d) of this section to implement and perform any of the CDOO's duties pursuant to this section, the CDOO may use the money collected pursuant to this section to pay the contracting entity for their services.

(d) The CDOO may contract with one or more public or private entities to implement this section and perform any of the duties assigned to the CDOO pursuant to this section.

(e) Except as provided in subsection (4)(c) of this section, any revenue received by the CDOO from the sale of registration numbers must be deposited in the fund.

(5) The sale of uniquely valuable registration numbers authorized by this section is a property sale and, therefore, revenue received due to this sale of property does not constitute state fiscal year spending, as defined in section 24-77-102 (17), for purposes of section 20 of article X of the state constitution.

Source: L. 2026: Entire section added with relocations, (HB 26-1382), ch. 301, p. 1700, § 5, effective June 2.

Editor's note: This section is similar to former § 8-88-206 as it existed prior to 2026.

PART 2

DISABILITY SUPPORT

8-88-201. Short title.

The short title of this part 2 is the "Laura Hershey Disability Support Act".

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2159, § 2, effective July 1.

Editor's note: This section is similar to former § 24-30-2201 as it existed prior to 2024.

8-88-202. Colorado disability funding committee - powers and duties.

(1) (a) On and after July 1, 2024, the rights, powers, duties, and functions regarding the Colorado disability funding committee vested in the department of personnel prior to said date are transferred from the department of personnel to the Colorado disability opportunity office within the department of labor and employment.

(b) (I) On and after July 1, 2024, unless otherwise specified, whenever any provision of law refers to the department of personnel in connection with the duties and functions transferred to the CDOO, such law must be construed as referring to the CDOO.

(II) As of July 1, 2024, all rules and orders of the department of personnel adopted in connection with the powers, duties, and functions transferred to the CDOO continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(III) As of July 1, 2024, whenever the department of personnel is referred to or designated by any contract or other document in connection with the duties and functions transferred to the CDOO, such reference or designation is deemed to apply to the CDOO. All contracts entered into by the department of personnel prior to July 1, 2024, in connection with the duties and functions are hereby validated, with the CDOO succeeding to all rights and obligations under such contracts. As of July 1, 2024, any cash funds, custodial funds, trusts, grants, and appropriations of funds from prior state fiscal years open to satisfy obligations incurred under such contracts are transferred and appropriated to the department for allocation to the CDOO for the payment of such obligations.

(c) The committee consists of thirteen members appointed by the governor, the majority of whom are individuals with disabilities, individuals with immediate family members who are

individuals with disabilities, or individuals who are caregivers to a family member who is an individual with a disability. In making the appointments, the governor shall ensure that the committee has members with experience in or knowledge of:

- (I) Business and business management;
 - (II) Nonprofit entities and managing nonprofit entities;
 - (III) Advocacy for individuals with disabilities;
 - (IV) The practice of medicine, with experience working with individuals with disabilities;
- and
- (V) The practice of law, with experience working with individuals with disabilities.

(2) Members of the committee serve three-year terms; except that the terms shall be staggered so that no more than five members' terms expire in the same year. The governor shall not appoint a member for more than two consecutive terms.

(3) An act of the committee is void unless a majority of the appointed members has voted in favor of the act.

(4) The committee shall implement this part 2 using the fund.

(5) The committee is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this part 2; except that the committee shall not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this part 2 or part 13 of article 75 of title 24 regarding the status of gifts, grants, and donations made to state agencies.

(6) The committee has the following duties and powers:

- (a) To sue and be sued and otherwise assert or defend the committee's legal interests;
- (b) To prepare and sign contracts;
- (c) To have and exercise all rights and powers necessary or incidental to, or implied from, the specific powers granted in this part 2;
- (d) To fix the time and place at which meetings may be held;
- (e) To adopt and use a seal and to alter the same at its pleasure;
- (f) To make business decisions to implement this part 2;
- (g) To create incentives for holders to turn in currently issued registration numbers if any actual costs are reimbursed to the state from the sale;
- (h) To authorize and sell license plates made of alternative materials if approved by the department of revenue; and

(i) To sell the right to use additional license plate options, such as historically issued backgrounds, for a fee if the option is approved by the department of revenue and the Colorado state patrol.

(7) (a) The committee may contract for the services of professional advisors to conduct meetings or carry out its administrative functions for meetings and committee business.

(b) The department may hire employees to handle the administrative aspects of supporting the committee.

(8) The attorney general is the legal counsel for the committee.

(9) Committee members do not receive compensation for performing official duties of the committee but may receive a per diem or reimbursement for travel and other reasonable and necessary expenses for performing official duties of the committee. The per diem or reimbursement is paid from the fund.

(10) The department of public safety may prohibit any action of the committee or its agents that concerns the sale of license plates or registration numbers if the decision would affect the policy of the state of Colorado as it relates to the use or display of license plates or registration numbers.

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2159, § 2, effective July 1.

Editor's note: This section is similar to former § 24-30-2203 as it existed prior to 2024.

8-88-203. Program to assist individuals to obtain disability benefits.

(1) The committee shall invite nonprofit entities, county departments of human services, and county departments of social services to submit proposals for programs to aid individuals with disabilities in accessing disability benefits. To qualify for consideration under subsection (2) of this section, a nonprofit organization must be based in Colorado and:

(a) Be governed by a board:

(I) That is composed of persons with a demonstrated commitment to improving the lives of recipients with disabilities;

(II) That includes members who understand a range of disabilities; and

(III) A majority of the members of which are individuals with disabilities, individuals with immediate family members who are individuals with disabilities, or individuals who are caregivers to a family member who is an individual with a disability; or

(b) Have a contract with an organization that meets the criteria in subsection (1)(a) of this section to assume the disability perspective approved by the committee.

(1.5) To qualify for consideration under subsection (2) of this section, a county department of human services or a county department of social services must meet the requirement of subsection (1)(b) of this section.

(2) (a) (I) The committee shall review the proposed programs and shall award a contract or grant to one or more of the entities that best meet the requirements of this section. A contract or grant awarded pursuant to this section must be completed by July 1, 2027.

(II) The term of each contract or grant is up to three years. The committee shall include evaluation criteria in the contract with metrics that must be met at least once a year to continue funding.

(b) The committee shall not award a contract or grant unless the proposal includes:

(I) A system for evaluating whether an individual with a disability is reasonably able to navigate the application process to obtain disability benefits, health care, and employment;

(II) A system for prioritizing the need of applicants based upon the evaluations;

(III) A plan for assisting individuals with disabilities in navigating the processes of obtaining and retaining disability benefits, health care, and employment;

(IV) A plan for establishing working relationships with state agencies, county departments of human or social services, health-care providers, the United States social security administration, and the business community;

(V) A policy of preferential hiring of individuals with disabilities;

(VI) Reasonable standards for accounting control of expenditures; and

(VII) Metrics to evaluate the program's quality and cost-effectiveness.

(c) The committee shall not discriminate against an applicant based on the applicant's advocacy concerning individuals with disabilities.

(d) To the greatest extent possible, the committee shall ensure, through one or more contracts or grants pursuant to this section, that individuals with disabilities are served statewide.

(3) An entity awarded a contract or grant under this section shall make quarterly reports of expenditures to the committee. The committee shall include in the contract or grant a method and format for making the reports.

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2161, § 2, effective July 1. **L. 2026:** (2)(a)(I) amended, (HB 26-1382), ch. 301, p. 1702, § 6, effective June 2.

Editor's note: This section is similar to former § 24-30-2204 as it existed prior to 2024.

8-88-204. Program to investigate, fund, and pilot projects or programs to benefit individuals with disabilities.

(1) When adequate funding is available, the committee shall accept and review proposals to fund projects or programs, or both, that study or pilot new and innovative ideas that will lead to an improved quality of life or increased independence for individuals with disabilities. Proposals may be accepted throughout the year, and grants may be made by the committee at its regular meetings. The fund is the sole source of money for any grants made pursuant to this section. A contract or grant awarded pursuant to this section must be completed by July 1, 2027.

(2) To be eligible for funding pursuant to this section, a project or program must:

(a) Demonstrate a capability to be self-sustaining or otherwise be able to develop long-term independent funding; and

(b) (I) Have a governing body, a board, or ownership that is composed of individuals with a demonstrated commitment to improving the lives of individuals with disabilities, the majority of whom are individuals with disabilities, individuals with immediate family members who are individuals with disabilities, or individuals who are caregivers to a family member who is an individual with a disability;

(II) For organizations that do not meet the governance requirements of subsection (2)(b)(I) of this section, have a grant oversight committee approved by the committee, that is responsible for all oversight of the grant and is comprised of individuals with a demonstrated commitment to improving the lives of individuals with disabilities, the majority of whom are individuals with disabilities, individuals with immediate family members who are individuals with disabilities, or individuals who are caregivers to a family member who is an individual with a disability; or

(III) In the case of a sole proprietorship, have an owner who:

(A) Is an individual with a disability, an individual with an immediate family member who is an individual with a disability, or an individual who is a caregiver to a family member who is an individual with a disability; and

(B) Has demonstrated commitment to improving the lives of individuals with disabilities.

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2162, § 2, effective July 1. **L. 2026:** (1) amended, (HB 26-1382), ch. 301, p. 1702, § 7, effective June 2.

Editor's note: This section is similar to former § 24-30-2204.5 as it existed prior to 2024.

8-88-205. Disability support fund. (Repealed)

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2163, § 2, effective July 1. **L. 2025:** Entire section amended, (HB 25-1017), ch. 231, p. 1096, § 3, effective August 6. **L. 2026:** Entire section repealed, (HB 26-1382), ch. 301, p. 1703, § 8, effective June 2.

Editor's note: (1) Prior to its repeal, this section was similar to former § 24-30-2205.5 as it existed prior to 2024.

(2) This section was relocated to § 8-88-104 in 2026.

8-88-206. Sale of registration numbers for license plates - license to buy and sell - market for - royalty payment - administration - third-party contracting entity. (Repealed)

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2164, § 2, effective July 1. **L. 2026:** Entire section repealed, (HB 26-1382), ch. 301, p. 1703, § 8, effective June 2.

Editor's note: (1) Prior to its repeal, the provisions of this section were similar to several former provisions of §§ 24-30-2206, 24-30-2208, 24-30-2209, and 24-30-2210, as they existed prior to 2024. For a detailed comparison, see HB 24-1360, L. 2024, p. 2164.

(2) This section was relocated to § 8-88-105 in 2026.

8-88-207. Sunset review - repeal of part.

This part 2 is repealed, effective July 1, 2027.

Source: L. 2024: Entire article added, (HB 24-1360), ch. 324, p. 2166, § 2, effective July 1. **L. 2026:** Entire section amended, (HB 26-1382), ch. 301, p. 1703, § 9, effective June 2.

Editor's note: This section is similar to former § 24-30-2212 as it existed prior to 2024.

PART 3

COLORADO DISABILITY FUNDING AUTHORITY

8-88-301. Colorado disability funding authority - creation - board.

(1) There is created the Colorado disability funding authority. The Colorado disability funding authority is a special purpose authority, as defined in section 24-77-102 (15), which is a body corporate and a political subdivision of the state. The authority is not an agency of state government and is not subject to administrative direction by any department, commission, board, bureau, or agency of the state.

(2) (a) (I) The authority is governed by the Colorado disability funding authority board, which consists of thirteen members appointed by the governor. The majority of authority board members are individuals with disabilities, individuals with immediate family members with disabilities, or individuals who are caregivers to a family member with a disability.

(II) In making the appointments, the governor shall ensure that the authority board has members with experience in or knowledge of:

- (A) Business and business management;
- (B) Nonprofit entities and managing nonprofit entities;
- (C) Advocacy for individuals with disabilities;
- (D) The practice of medicine, with experience working with individuals with disabilities; and
- (E) The practice of law, with experience working with individuals with disabilities.

(III) In addition to the requirements set forth in subsection (2)(a)(II) of this section, when making appointments to the authority board, the governor shall make reasonable efforts to

appoint authority board members who reflect the geographic and demographic diversity of the state, including authority board members from rural and urban areas of the state and from diverse socioeconomic statuses and political, racial, ability, and cultural groups.

(IV) Members of the authority board serve three-year terms; except that the terms must be staggered so that no more than five members' terms expire in the same year. The governor shall not appoint a member for more than two consecutive terms.

(b) (I) The governor shall appoint the initial authority board members on or before September 15, 2026. In making the initial appointments, the governor shall indicate the initial term length of each initial authority board member to ensure that the terms of the authority board members are staggered as required by subsection (2)(a)(IV) of this section.

(II) The governor shall designate one of the initial authority board members to serve as the initial chair of the authority board. The initial chair of the authority board may establish and administer matters related to the initial start up of the authority, including staffing, legal services, and coordination with the CDOO. Any contracts entered into by the initial chair of the authority board must have an initial term ending on or before September 1, 2027, and must be reviewed by the authority board at its first meeting.

(c) A member may be removed from the authority board by:

(I) Majority vote of the authority board for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless notice and a public hearing are expressly waived in writing by the member at risk of being removed; or

(II) The governor for cause.

(d) (I) Within thirty days of the governor's initial appointments to the authority board pursuant to subsection (2)(b) of this section, the initial chair of the authority board as designated by the governor shall set dates for the first and second meetings of the authority board. The authority board shall hold the first and second meetings on or before December 31, 2026. The authority board may elect a new chair at either its first or second meeting. If the authority board does not elect a new chair, the initial chair as designated by the governor shall serve in that role until the first meeting of the authority board in calendar year 2028.

(II) The authority board shall elect a chair and a vice-chair at its first meeting of each calendar year, beginning in calendar year 2028. The chair shall schedule the meetings of the authority board.

(III) The authority board may elect one or more members as secretary and treasurer and elect or appoint other officers as the authority board may determine and provide for their duties and terms of office.

(e) Members of the authority board serve without compensation but may be reimbursed for actual and reasonable expenses incurred in the performance of their duties, upon approval of the authority board after providing documentation supporting the reimbursement.

(f) Members of the authority board may participate in any authority board meeting and may vote using a telecommunications device, including a conference telephone, video conference, or similar communications equipment. A member of the authority board who participates in an authority board meeting using a telecommunications device is considered present at the meeting.

(g) (I) The authority board shall adopt its own rules of procedure and keep a record of all proceedings and acts.

(II) (A) All authority board meetings are open to the public and the authority board shall comply with the open meetings requirements of a state public body as set forth in section 24-6-402.

(B) All public records of the authority board are subject to the "Colorado Open Records Act", part 2 of article 72 of title 24.

(III) Every legislative act of the authority board of a general or permanent nature must be by resolution. All resolutions of the authority board must be recorded and authenticated by the signature of the chair, vice-chair, or secretary of the authority board.

(h) Any authority board member, or employee, agent, or advisor of the authority who has a direct or indirect interest in any contract, grant, transaction, or proposal before the authority or any direct or indirect interest in an entity that submits a proposal to the authority shall disclose their interest to the authority. The authority board member, or employee, agent, or advisor of the authority who has the direct or indirect interest shall not participate in the decision to approve, authorize, or fund the relevant contract, grant, transaction, or proposal.

(i) An act of the authority is void unless a majority of the appointed members of the authority board has voted in favor of the act.

(3) The attorney general is the legal advisor of and counsel to the authority.

(4) Employees of the authority are exempt from the state personnel system but are, by acceptance of employment, subject to the provisions of article 51 of title 24. The authority shall provide for the deduction of employer and employee contributions from salary and for payment to the public employees' retirement association, created pursuant to section 24-51-201, of deductions and any other payments that would be due from a state employer.

(5) The authority shall not discriminate based on race, creed, color, national origin, ancestry, religion, sex, gender, sexual orientation, gender identity, gender expression, marital status, familial status, military status, or disability.

(6) (a) The income, revenue, and interest thereon of the authority and all property at any time owned by the authority are exempt from income taxation, real and personal property taxation, and all other taxation and assessments in the state. The purchase and use of property by or for the benefit of the authority is exempt from sales and use taxes imposed by the state, a county, a city and county, a city, any other political subdivision of the state, or local governmental entity. The authority may agree to make payments in lieu of property or sales and use taxes to the state, a county, a city and county, a city, any political subdivision of the state, or local governmental entity.

(b) A gift, donation, or contribution to or for the use of the authority for use in connection with the activities of the authority is treated as a gift to a political subdivision of the state made exclusively for public purposes.

(7) The authority and its corporate existence continues until terminated by law; except that no such law may take effect so long as the authority has obligations outstanding, unless adequate provision has been made for the payment of the obligations. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations pass to and are vested in the state.

Source: L. 2026: Entire part added, (HB 26-1382), ch. 301, p. 1703, § 10, effective June 2.

8-88-302. Colorado disability funding authority - powers and duties.

(1) The authority has and may exercise all rights and powers necessary or incidental to, or implied from, the specific powers granted in this part 3, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 3. In addition to any other powers granted to the authority in this part 3, the authority has the duties, privileges, immunities, rights, liabilities, and disabilities of a body corporate and political subdivision of the state and the duties and powers to:

- (a) Have perpetual existence and succession;
- (b) Adopt, have, and use a seal and to alter the seal at its pleasure;
- (c) Sue and be sued and otherwise assert or defend the authority's legal interests;
- (d) Fix the time and place at which meetings may be held;
- (e) Make business decisions to implement this part 3;
- (f) Make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the authority pursuant to this part 3;

(g) Purchase, lease, lease with an option to purchase, trade, exchange, or otherwise acquire, maintain, hold, improve, mortgage, encumber, and dispose of real property and personal property, whether tangible or intangible, and any interest, including easements and rights-of-way, without restriction or limitation;

(h) Acquire office space, equipment, services, supplies, and insurance necessary to carry out the purposes of this part 3;

(i) Appoint or contract with agents, employees, and professional advisers, as may from time to time be necessary in the authority's judgment to accomplish the purposes of this part 3, and to fix the compensation and establish the duties of such agents, employees, and advisers;

(j) Deposit any money of the authority in any banking institution or in any depository authorized pursuant to section 24-75-603, and to appoint, for the purpose of making such deposits, one or more individuals to act as custodians of the authority's money; and

(k) Contract for and to seek and accept any gifts, grants, or donations and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, any other public or private source, or any combination thereof, and to comply, subject to the provisions of this part 3, with the terms and conditions of such contracts or the acceptance of such items.

(2) (a) The authority may accept one-time and annual donations for eligibility for a license plate in a retired style pursuant to section 42-3-206.5. For the purpose of minimizing compliance costs for individuals and administrative costs for the authority, the department of revenue shall collect the donations on behalf of the authority. The department of revenue shall not transmit the collected donations to the state treasurer for deposit to any state fund but shall instead remit the donations collected to the authority in accordance with the process developed pursuant to this subsection (2). One-time and annual donations collected and remitted to the authority do not constitute state fiscal year spending, as defined in section 24-77-102 (17), for purposes of section 20 of article X of the state constitution.

(b) The authority shall maintain an account in a financial institution to which all money collected for the license plates in a retired style pursuant to section 42-3-206.5 is deposited. The authority shall work with the department of revenue to develop a process that ensures that the department of revenue is able to deposit all donations collected directly into the account or otherwise remit such donations to the authority.

(c) The authority may use money in the account for the authority's direct and indirect expenses in administering the requirements of this part 3 and any other related work that is completed to advance the authority's mission.

Source: L. 2026: Entire part added, (HB 26-1382), ch. 301, p. 1706, § 10, effective June 2.

8-88-303. Program to assist individuals with disabilities - assistance to obtain disability benefits - rules.

(1) (a) The authority shall invite nonprofit entities, independent living centers as defined in section 8-85-102 (5), county departments of human services, county departments of social services, and other state and county agencies to submit proposals for programs to aid individuals with disabilities in accessing disability benefits.

(b) To qualify for consideration under this section, a nonprofit organization must be based in the state and:

(I) Be governed by a board:

(A) That is composed of persons with a demonstrated commitment to improving the lives of recipients with disabilities;

(B) That includes members who understand a range of disabilities; and

(C) A majority of the members of which are individuals with disabilities, individuals with immediate family members with disabilities, or individuals who are caregivers to a family member with a disability; or

(II) Have a contract with an organization that meets the criteria in subsection (1)(b)(I) of this section.

(c) To qualify for consideration under this section, a county department of human services, a county department of social services, or another state or county agency must have a contract with an organization that meets the criteria in subsection (1)(b)(I) of this section.

(2) (a) (I) The authority shall review the proposed programs and, beginning on July 1, 2027, shall award a contract or grant to one or more of the entities that best meet the requirements of this section.

(II) The term of each contract or grant is up to three years. The authority shall include evaluation criteria in the contract with metrics that must be met at least once a year to continue funding.

(b) In awarding a contract or grant, the authority shall consider whether the proposal includes:

(I) A system for evaluating whether an individual with a disability is reasonably able to navigate the application process to obtain disability benefits, health care, and employment;

- (II) A system for prioritizing the need of applicants based upon the evaluations;
 - (III) A plan for assisting individuals with disabilities in navigating the processes of obtaining and retaining disability benefits, health care, and employment;
 - (IV) A plan for establishing working relationships with state agencies, county departments of human or social services, health-care providers, the United States social security administration, and the business community;
 - (V) A plan for encouraging individuals with disabilities to apply for open positions and a plan for retaining employees with disabilities;
 - (VI) Reasonable standards for accounting control of expenditures; and
 - (VII) Metrics to evaluate the program's quality and cost-effectiveness.
- (c) The authority shall not discriminate against an applicant based on the applicant's advocacy concerning individuals with disabilities.
- (d) To the greatest extent possible, the authority shall ensure, through one or more contracts or grants pursuant to this section, that individuals with disabilities are served statewide.
- (3) An entity awarded a contract or grant under this section shall make quarterly reports of expenditures to the authority. The authority shall include in the contract or grant a method and format for making the reports.
- (4) The authority shall establish rules to ensure money received from a contract or grant pursuant to this section is used for the purposes specified in this section.

Source: L. 2026: Entire part added, (HB 26-1382), ch. 301, p. 1708, § 10, effective June 2.

8-88-304. Program to investigate, fund, and pilot projects or programs to benefit individuals with disabilities - rules.

- (1) When adequate funding is available, the authority shall accept and review proposals to fund projects or programs, or both, that study or pilot new and innovative ideas that will lead to an improved quality of life or increased independence for individuals with disabilities. The authority may accept proposals throughout the year and may make grants at the authority's regular meetings on and after July 1, 2027.
- (2) To be eligible for funding pursuant to this section, a project or program must:
- (a) Demonstrate a capability to be self-sustaining or otherwise be able to develop long-term independent funding; and

(b) (I) Have a governing body, a board, or ownership that is composed of individuals with a demonstrated commitment to improving the lives of individuals with disabilities, the majority of whom are individuals with disabilities, individuals with immediate family members with disabilities, or individuals who are caregivers to a family member with a disability;

(II) For organizations that do not meet the governance requirements of subsection (2)(b)(I) of this section, have a grant oversight committee approved by the authority that is responsible for all oversight of the grant and that is comprised of individuals with a demonstrated commitment to improving the lives of individuals with disabilities, the majority of whom are individuals with disabilities, individuals with immediate family members with disabilities, or individuals who are caregivers to a family member with a disability; or

(III) In the case of a sole proprietorship, have an owner who:

(A) Is an individual with a disability, an individual with an immediate family member with a disability, an individual who is a caregiver to a family member with a disability, or an individual with a proposal that is designed to provide a positive impact in the disability community; and

(B) Has demonstrated commitment to improving the lives of individuals with disabilities.

(3) The authority shall establish rules to ensure money received from a grant pursuant to this section is used for the purposes specified in this section.

Source: L. 2026: Entire part added, (HB 26-1382), ch. 301, p. 1709, § 10, effective June 2.

8-88-305. Disabled parking education program - rules.

(1) When adequate funding is available, beginning on July 1, 2027, the authority may:

(a) Make grants to support, or develop, implement, or deliver, education programs concerning:

(I) Eligibility standards for reserved parking that is available to an individual with a disability affecting mobility;

(II) Appropriate use of the reserved parking that is available to an individual with a disability affecting mobility;

(III) The legal standards and violations contained in sections 42-3-204 and 42-4-1208; and

(IV) The advantages of creating a volunteer enforcement program for reserved parking that is available to an individual with a disability affecting mobility; and

(b) Create or make available a training program to assist professionals in understanding the standards that need to be met to obtain an identifying license plate or placard for the use of reserved parking that is available to an individual with a disability affecting mobility.

(2) Education programs funded pursuant to this section are intended to provide education to:

(a) Peace officers;

(b) Local governments;

(c) Entities that provide parking;

(d) Entities that provide private parking enforcement, including tow operators;

(e) Medical providers;

(f) Drivers; and

(g) Individuals with disabilities.

(3) The authority shall establish rules to ensure money received from a grant pursuant to this section is used for the purposes specified in this section.

Source: L. 2026: Entire part added, (HB 26-1382), ch. 301, p. 1710, § 10, effective June 2.

8-88-306. Annual performance and financial audit - report.

(1) (a) On or before December 1, 2027, and on or before each December 1 thereafter, the authority shall prepare and submit a financial and performance report to the joint budget committee of the general assembly. At a minimum, the report must include:

(I) How much money was collected in donations and deposited in the authority's account as required by section 8-88-302 (2)(a) in the preceding fiscal year;

(II) A description of every expenditure made by the authority in the preceding fiscal year, including grant or contract expenses and administrative costs, such as staff salaries and operating expenses;

(III) The total amount of grant or contract awards made in the preceding fiscal year and a description of the types of programs and services funded by those grant or contract awards;

(IV) The total number and value of grants or contracts that remain open for reimbursement in the current fiscal year; and

(V) The total of anticipated expenditures in the current fiscal year.

(b) The authority shall present the December 2027 and December 2028 annual reports in person at a meeting of the joint budget committee of the general assembly. Beginning with the December 2029 annual report and for each annual December report thereafter, the authority shall submit a written report but is not required to present the report in person.

(2) In addition to the annual report required by subsection (1) of this section, the state auditor shall, upon the affirmative vote of a majority of the members of the legislative audit committee created pursuant to section 2-3-101, conduct or cause to be conducted postaudits of the authority pursuant to section 2-3-103 (1)(b).

Source: L. 2026: Entire part added, (HB 26-1382), ch. 301, p. 1711, § 10, effective June 2.