

CO Department of Labor and Employment Adopts New Wage and Hour Rules

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What's new?

On Wednesday, January 22, 2020, the Colorado Department of Labor and Employment (“CDLE”) adopted the Colorado Overtime and Minimum Pay Standards Order (“COMPS Order”) #36, which replaces Colorado Minimum Wage Order #35. The adopted rules will go into effect on March 16, 2020.

The two most significant changes between Minimum Wage Order #35 and the new COMPS Order that will impact Colorado employers are:

1. The new COMPS Order applies to all Colorado employers, unless specifically exempted; and
2. The new order raises the minimum salary threshold required for employees to qualify for exemptions from overtime protections under Colorado law.

The new COMPS Order also makes numerous additional—albeit less significant—changes and clarifications to Colorado wage and hour rules. These include changes and clarifications relating to pre- and post-work time, tips, rest periods, and other issues.

Why care about this?

The first change listed above is highly significant, as many more Colorado employers will now be covered by the COMPS Order than were previously covered by the Minimum Wage Order. That means that if your business was not previously covered by the Minimum Wage Order, it may now be covered by the new COMPS Order going forward. The Minimum Wage Order previously only applied to private sector employers and employees in the following four industries: (1) Retail and Service; (2) Commercial Support Service; (3) Food and Beverage; and (4) Health and Medical. Under the new COMPS Order, Colorado employers in all industries will be covered, unless specifically excluded.

Assuming your business is subject to the new COMPS Order, you may need to reassess your exempt employees' salaries. Starting on July 1, 2020, the new minimum salary threshold for exempt employees in Colorado will rise to \$35,568 (which mirrors the current exempt salary threshold under federal law, which became effective on January 1, 2020). This new salary threshold will remain in effect through December 2020. Beginning on January 1, 2021, however, the minimum salary threshold for

exempt employees in Colorado will increase further, and will exceed the current federal threshold. It will increase to \$40,500 on January 1, 2021, and thereafter increase by additional amounts annually until reaching \$55,000 on January 1, 2024. The threshold will thereafter be adjusted annually for inflation.

In order to retain your Colorado employees' exempt classifications, and thus avoid the need to pay overtime, you may need to start planning now for the new exempt salary thresholds going into effect from January 1, 2021, forward. These new thresholds will exceed the current federal threshold, and Colorado employers must pay the *higher* of the state or federal thresholds in order to retain their employees' overtime exemptions. Failure to plan now for the new, higher exempt salary thresholds in Colorado could expose your business to significant wage and hour liability once the federal and state thresholds diverge, and assuming your business does not pay the new salary amounts required under Colorado law.

Who at Holland & Hart can help?

Here at Holland & Hart, we have offices across the Front Range, with a team of attorneys licensed in Colorado and experienced in wage and hour issues. Please contact one of our attorneys for advice on the newly adopted CDLE rules.

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