

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

COLORADO CHANCE TO COMPETE ACT RULES

7 CCR 1103-9

(August 2019)

Rule 1. Statement of Purpose and Authority

- 1.1 The general purpose of these Colorado Chance to Compete Act rules is to implement the provisions of C.R.S. § 8-2-130. These rules are adopted pursuant to the Department of Labor and Employment's authority in C.R.S. § 8-2-130(5)(e).
- 1.2 If any provision of these rules or their application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of the rules shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of these rules are severable.
- 1.3 C.R.S. §§ 8-2-130, 24-4-105, and 24-4-106 (2019) are hereby incorporated by reference into this rule. Such incorporation excludes later amendments to or editions of these statutes. They are available for public inspection at the Colorado Department of Labor and Employment, 633 17th Street, Suite 600, Denver CO 80202. Copies may be obtained from the Department of Labor and Employment at a reasonable charge. They can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of them at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing them.

Rule 2. Definitions and Clarifications

- 2.1 "Aggrieved by" means a perceived violation witnessed by, suffered by, or injured by.
- 2.2 "Division" means the Division of Labor Standards and Statistics within the Colorado Department of Labor and Employment.
- 2.3 "An employer with eleven or more employees" in C.R.S. § 8-2-130 includes any employer of the requisite size, regardless of particular employees' worksites.

Rule 3. Employer Record-Keeping

- 3.1 If any written application, electronic application, or advertisement for an employment position includes any question, inquiry, or request as to any aspect of a "criminal history" as defined by C.R.S. § 8-2-130, then the employer shall maintain copies of any and all such documents for a period of eighteen months after such an application or advertisement was made available, or throughout an investigation under these rules, whichever is longer.

Rule 4. Complaints

- 4.1 A person who is aggrieved by violation of the C.R.S. § 8-2-130 may file a complaint with the division.
- 4.2 The Division will not accept complaints of violations that occurred before September 1, 2019, or more than twelve months prior to the date of the complaint.
- 4.3 Complaints shall be filed using the division-approved form. If a complaint is filed without using the division-approved form, the date the complaint is received will be the date of the complaint, then the complainant will have fourteen days to submit a division-approved form to avoid dismissal of the complaint without prejudice. The fourteen days runs from the date the division requests completion of the division-approved form, unless the deadline is extended by the division.

- 4.4 The complaint shall include a short and plain statement of its grounds. A complaint should also include or attach whichever the complainant is able to provide among the following: a link to, copy of, screen capture of, or other image of the application.
- 4.5 Anonymous complaints are accepted. If the complainant wants to remain available for participation in the investigation, be notified of the outcome of the investigation, preserve any right to appeal the division's determination, the complaint must include the complainant's name, contact information, and signature.

Rule 5. Investigations

- 5.1 The division will investigate complaints that create a reasonable inference of a violation of C.R.S. § 8-2-130 on or after September 1, 2019.
- 5.2 Immigration status is not relevant to an investigation under these rules. The division will not ask about, disclose, or retain any record of an individual's immigration status.
- 5.3 After receipt of a qualifying complaint under Rule 5.1, the division will initiate the investigation by notifying the employer via U.S. postal mail, electronic means, or personal delivery.
- 5.4 Complaints shall be assigned to division investigators. Investigatory methods utilized by the division may include, but are not limited to:
 - 5.4.1 Interviews of the employer, employee, and other parties;
 - 5.4.2 Information-gathering, fact-finding, and reviews of written submissions; and
 - 5.4.3 Any other techniques that enable the division to assess the employer's compliance with the law.

Rule 6. Determination

- 6.1 Upon completion of the investigation, the division will issue a determination in writing to both the employer and the complainant. The determination will detail:
 - 6.1.1 The employer's compliance with and/or violation of C.R.S. § 8-2-130;
 - 6.1.2 If a violation of C.R.S. § 8-2-130 has occurred, the steps the employer must take to cure the violation;
 - 6.1.3 Any civil penalties ordered pursuant to C.R.S. § 8-2-130; and
 - 6.1.4 Appeal rights and procedures.
- 6.2 Civil penalties ordered pursuant to C.R.S. § 8-2-130 will be deposited into the General Fund of the State of Colorado.

Rule 7. Appeals and Hearings

- 7.1 Either the employer or the complainant may appeal the agency's determination.
- 7.2 The appealing party is entitled to a hearing and final agency decision in conformity with the Colorado Administrative Procedure Act, C.R.S. § 24-4-105.
- 7.3 A division hearing officer will preside over the hearing.
- 7.4 The decision issued by the hearing officer is the initial decision.
- 7.5 A party to the claim may appeal the hearing officer's initial decision by filing written exceptions with the director of the division within thirty calendar days of the initial decision in accordance with C.R.S. § 24-4-105(14)(a)(II). Written exceptions may be filed via:
 - 7.5.1 Email, at cdle_ls_appeals@state.co.us;

- 7.5.2 Fax, at 303-318-8400; or
- 7.5.3 Mail or delivery, at 633 17th Street, Suite 600, Denver CO 80202.
- 7.6 If no party files written exceptions with the director of the division within thirty calendar days of the initial decision, the initial decision shall become the final agency decision.
- 7.7 The record on appeal to the director is the division's record of its investigation unless the appealing party files a designation of the record with the division within twenty calendar days of the initial decision in accordance with C.R.S. § 24-4-105(15)(a).
- 7.8 The director's decision upon review of any exceptions is the final agency decision. A party to the claim may seek judicial review of this decision in accordance with C.R.S. § 24-4-106.
- 7.9 Failure to file exceptions in accordance with rule 7.5 shall result in a waiver of the right to judicial review of the final agency decision in accordance with C.R.S. § 24-4-105(14)(c).