

LABOR & EMPLOYMENT ADVISORY

COMPS Order Now Effective, Along With Some Unexpected Changes and Enforcement Measures



As anticipated, the Colorado Overtime and Minimum Pay Standards Order (COMPS Order) #36, 7 CCR 1103-1 went into effect on Monday, March 16, 2020. The COMPS Order (the Order) supersedes previous Colorado Wage Orders and sets forth state wage and hour law. Sherman & Howard has previously presented and [issued interpretive guidance](#) on the COMPS Order, providing a general overview of its mandates.

This week, the Colorado Division of Labor Standards & Statistics (the Division), the agency tasked with enacting Colorado wage and hour regulations, revised the COMPS Order in several unexpected ways. The changes address some confusing provisions or unanswered issues, many of which were raised at our most [recent presentation](#) on the COMPS Order.

The final Order clarifies that Colorado will analyze joint employer issues using the Fair Labor Standards Act (FLSA) regulations that were in effect in May 2019. The Division is not adopting the U.S. Department of Labor's recently revised [joint employer rule](#).

The Division added an additional exemption for the 12-hour-daily overtime mandate. Direct care and direct support companions who are Medicaid-funded and work shifts lasting 24 hours or longer are now exempt from earning overtime when they work more than 12 hours in a 24-hour period (Rule 2.2.7G). Further, these employees need not receive rest breaks or additional pay for "missed rest breaks" when they are spending time in community outings with the individuals that they serve as part of day programs, supported living services, or respite or personal care.

Finally, the Order limits the amount of information to be included in employee pay stubs, i.e., in the Earnings Statements that must be distributed for each pay period (Rule 7.2-7.3).



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The COMPS Order is a monumental change, requiring employers to make comprehensive and complex changes to their payroll systems, to classification of employees, and to their employee schedules. These changes have been complicated by the current state of emergency (COVID-19). As a result, the Division also issued reassurances regarding its enforcement of the COMPS Order. The Division is required by statute to investigate employee-filed complaints alleging wage and hour violations; however, the Division has taken the position that violations will not be deemed willful if remedied by April 16, 2020. Furthermore, the Division will not launch its own self-directed investigations until after April 16, 2020. To the extent the COMPS Order requires new paperwork from employers (new posters, handbook inserts, acknowledgement forms, etc.), the Division will only require compliance after April 16, 2020. Finally, the Division will not issue "notices of claims" before April 1, 2020. A notice of claim informs an employer that a wage claim has been filed against it and starts a 14-day clock to pay any wages due in order to avoid additional penalties. This final enforcement approach is applicable to all wage claims, not just those related to the COMPS Order.

For any questions about this client advisory, please contact a member of the [Labor & Employment Group](#).