



COLORADO

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

In Colorado, an agreement of employment for an indefinite term is presumed to be at will. Either the employer or the employee may terminate at-will employment at any time with or without cause, and such termination generally does not give rise to a claim for relief. [Wisehart v. Meganck, 66 P.3d 124, 126 \(Colo. App. 2002\)](#).

Exceptions:

“Legislation and the common law have restricted application of the at-will doctrine to balance the interests of employers and employees. For example, certain federal and state statutes have created private claims for relief for wrongful discharge based on discrimination with respect to race, color, gender, national origin, ancestry, religious affiliation, disability, and age.” [Wisehart v. Meganck, 66 P.3d 124, 126 \(Colo. App. 2002\)](#).

Legislative provisions also permit claims against employers who terminate employees for engaging in lawful activity off-premises during nonworking hours, responding to a jury summons, and certain activities classified as whistleblowing. [Wisehart v. Meganck, 66 P.3d 124, 126 \(Colo. App. 2002\)](#).

Colorado also allows for a claim for relief for wrongful discharge in violation of public policy, which restricts an employer’s right to terminate the employee for their refusal to go against accepted and substantial public policies set by legislative declarations, professional codes of ethics, or other sources. [Rocky Mountain Hospital & Medical Service v. Mariani, 916 P.2d 519 \(Colo. 1996\)](#).

Due to the presumption of at-will employment, the burden is on the plaintiff to plead and prove circumstances that would authorize the application of one of these recognized exceptions to the doctrine. [Schur v. Storage Technology Corp., 878 P.2d 51, 53 \(Colo. App. 1994\)](#).

Colorado Anti-Discrimination Laws

It is unlawful for an employer to discharge, refuse to hire, promote or demote, harass during the course of employment, or discriminate in matters of compensation, terms, conditions, or privileges of employment against any individual otherwise qualified because of disability, race, creed, color, sex (including pregnancy, physical recovery from childbirth, and related medical conditions), sexual orientation (including transgender status), gender identity, gender expression, marital status, religion, age, national origin, or ancestry. [C.R.S. § 24-34-402](#).

The Colorado Anti-Discrimination Act (CADA) defines race to include hair texture, hair type, or a protective hairstyle that is commonly or historically associated with race. [C.R.S. § 24-34-301](#).

CADA also prohibits employers from firing or taking other adverse employment actions against applicants or employees for their lawful activity off the premises of the employer during nonworking hours, unless such a restriction relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of the employee or is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest. [C.R.S. § 24-34-402.5](#).

Right-to-Work Laws

Colorado’s Labor Peace Act provides the right for employees to join unions but does not require union membership for employees to obtain a job. [C.R.S. 8-3-106 to 109](#). The Act allows shops to go through a process to become “all union” and thus requires union membership to be an employee. *Id.* In 2021, [SB21-087](#), among other things, removed the prohibition against agricultural employees from organizing and joining labor unions.

Immigration Verification

Colorado places no additional employment verification procedures on most employers beyond Federal I-9 compliance. [8 U.S.C. 1324a](#). There is no requirement to use E-Verify under Colorado state laws for most employers.

The Colorado state legislature, through Senate Bill 199, repealed their statutory provision requiring public contractors to confirm their counterparts were not employing anyone who was unlawfully present in the United States. [SB21-199](#). The repeal became effective on July 1, 2022. [Id.](#)

Drug Testing

Colorado has no law prohibiting drug and alcohol testing by private employers. Private employers who have an established drug policy may terminate an employee as the result of a drug test showing the presence of drugs or alcohol above 0.04 percent in the employee's system during working hours. [Slaughter v. John Elway Dodge Southwest, 107 P.3d 1165, 1171 \(Colo. App. 2005\)](#); [C.R.S. 8-73-108\(5\)\(e\)\(IX.5\)](#) (indicating that drug tests are allowable and grounds for firing an employee).

In Colorado, employees' common law privacy rights do not limit an employer's right to require them to participate in drug and alcohol-testing and disclose all manner of information about their medications and medical conditions, as long as this information is kept confidential and not disseminated.

Drug testing of public employees constitutes a search under the Fourth and 14th Amendments; therefore, a public employer may not conduct drug tests without individualized suspicion of wrongdoing. [U.S. Const. amends. IV, XIV](#).

All testing must comply with the Colorado Anti-Discrimination Act and the Americans with Disabilities Act. The testing must be job-related and consistent with business necessity if it has a disparate impact on a protected class of employees or applicants.

The employer must pay the cost of required drug testing unless drug testing records are necessary to support an applicant's statements in the application for employment. [C.R.S. 8-2-118\(1\)](#).

Recreational and Medical Marijuana:

Colorado has legalized possession of recreational marijuana in small amounts, but Colorado does not require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees. [Colo. Const. art. XVIII, § 16](#).

Medical marijuana is also legal in Colorado, but Colorado does not require any employer to accommodate the medical use of marijuana at work. [Colo. Const. art. XVIII, § 14](#).

Jury Duty and Court Attendance Leave

It is unlawful for a Colorado employer to discharge, harass, threaten, or coerce an employee for any reason relating to the employee's obligation as a juror. [C.R.S. 13-71-134](#). An employer that engages in such behavior has committed willful harassment of a juror. [C.R.S. 18-8-614](#).

Colorado law requires employers to pay regular employees regular wages for up to three days of juror service, but not exceeding \$50 per day unless agreed upon by the employee and employer. [C.R.S. 13-71-126](#).

"Regular employees" include part-time employees, temporary employees, and casual employees whose hours may be determined by schedule or custom established during the three months before the employee's jury service. [Id.](#)

Voting Leave

Colorado law requires employers to allow employees a two-hour period during the time the polls are open to vote without any reduction in salary or wages. [C.R.S. 1-7-102](#). This applies to any municipal, county, state, or federal political party primary or general election. Employees who wish to leave work to vote must apply for the leave of absence before the day of the election. [Id.](#) The employer may specify the hours during which the employee may be absent, but the hours must be scheduled at the beginning or end of the work period if the employee so requests. [Id.](#) If there is at least a three-hour window of time between the opening or closing of the polls and the time the employee must report to work, the employee does not have to be provided with time to vote during work. [Id.](#)

Military Leave

Any person who is a duly qualified member of the Colorado National Guard or the reserve forces of the U.S. who leaves a position of employment (other than a temporary position) to receive military training with the armed forces of the U.S., not to exceed 15 days in any one calendar year, gives evidence of the satisfactory completion of such training and is still qualified to perform the duties of such position is entitled to be restored to their previous or similar position with the same status, pay, and seniority. [C.R.S. 28-3-609](#). Eligible employees are likewise entitled to any length of leave to engage in active service with the Colorado National Guard for state purposes. [C.R.S. 28-3-610.5](#).

Victim Protection Leave

Employees may take up to three days per 12-month period to:

- Seek a civil protection order to prevent domestic abuse;
- Obtain 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 abuse, stalking, sexual assault, or other crime involving domestic violence;
- Make their home secure from the perpetrator of the act of domestic abuse, stalking, or sexual assault or other crime involving domestic violence, or seek new housing to escape said perpetrator; or
- Seek legal assistance to address issues arising from the act of domestic abuse, stalking, sexual assault, or other crime involving domestic violence, and attend and prepare for court-related proceedings arising from said act or crime.

[C.R.S. 24-34-402.7\(1\)\(a\)](#).

This leave applies only to employers of 50 or more employees and to employees who have been employed for 12 or more months. Employees seeking domestic abuse leave must exhaust any and all annual or vacation leave, personal leave, and sick leave, if applicable, that may be available to the employee unless the employer waives this requirement.

Civil Air Patrol Mission Leave

Employees called to duty for an emergency civil air patrol mission are entitled to a leave of absence from their employment, other than from employment of a temporary nature. Leave may not exceed 15 total workdays in any calendar year, and employers may request evidence of satisfactory completion of the mission. Employers are not required to provide paid leave, but the leave shall in no way affect the employee's right to vacation, sick leave, bonuses, advancement, or other employment benefits. Employees taking such leave must be restored to the position they held before the leave. [C.R.S. 28-1-105](#).

Qualified Volunteer Service in a Disaster Leave

A qualified volunteer who is called to service by a volunteer organization for a disaster is entitled to a leave of absence for the time in which the volunteer is serving. Leave may not exceed 15 total workdays in any calendar year. The volunteer must provide proof that they are a qualified volunteer. Employers are not required to provide paid leave, but the leave shall in no way affect the employee's right to vacation, sick leave, bonuses, advancement, or other employment benefits. Employees taking such leave must be restored to the position they held before their leave. Employers are not required to grant such leave to more than 20 percent of their employees on a given workday. [C.R.S. 24-33.5-826](#).

Volunteer Firefighter Leave

An employer may not terminate an employee who is a volunteer firefighter and who fails to report to work because the employee has responded to an emergency summons if the employee provides the employer with a written statement from the chief of the fire department that the absence was due to the emergency response. An employer may not terminate an employee who is a volunteer firefighter who leaves work to respond to an emergency if the employee is not essential to the operation of the employer's daily enterprise; the employer has previously received notice of the employee's status as a volunteer firefighter; the emergency summons issued by the fire chief requires all firefighters in the employee's area to respond; and the chief of the

employee's fire department provides the employer with a written statement verifying the time, date, and duration of the employee's response. [C.R.S. 31-30-1131](#).

Parental Leave

Generally, under the Family and Medical Leave Act (FMLA), employers with 50 or more employees must provide leave, which must be clearly set out in a policy. In addition to the leave that an employee is entitled to under the FMLA, Colorado employees are entitled to FMLA leave to care for a person who has a serious health condition and is the employee's partner in a civil union or their domestic partner. [C.R.S. 8-13.3-203](#).

The Healthy Families and Workplace Act (HFWA) provides mandatory sick leave and family leave for Colorado employees. [C.R.S. 8-13.3-401](#). As of January 1, 2022, the HFWA requires all employers to provide paid sick leave to their employees, accrued at one hour of paid sick leave for every 30 hours worked, up to a maximum of 48 hours. [C.R.S. 8-13.3-403](#). The employee may carry such unused leave forward for use in subsequent calendar years. *Id.* An employer may choose to provide more paid sick leave than specified. *Id.*

Employees are allowed to use accrued paid sick leave for illnesses and health conditions; obtaining diagnoses or medical care or treatment; caring for a family member who is ill or has a health condition; absences related to domestic abuse, sexual assault, or harassment; and caring for a child when the child's school or care provider is closed due to a public health emergency. *Id.*

Employers must provide additional paid sick leave during a public health emergency. [C.R.S. 8-13.3-405](#).

Adoptive Parents' Leave

Employers who permit paternity or maternity leave for biological parents must make such time available on request for individuals adopting a child. The amount of time provided to biological parents must be the minimum amount provided to adoptive parents. This does not apply to adoption by the spouse of a custodial parent or to a second-parent adoption. [C.R.S. § 19-5-211](#).

Paid Family and Medical Leave Insurance

Colorado's new Paid Family and Medical Leave Insurance (FAMLI) program takes effect on January 1, 2024. FAMLI provides eligible employees with 12 weeks of paid family and medical leave and up to 16 weeks of FAMLI leave for pregnancy and childbirth. Leave may be taken because of birth, adoption, or placement through foster care of a child; caring for a new child during the first year after birth, adoption, or placement of that child; care for a family member with a serious health condition; the employee's serious health condition; a qualifying exigency leave; or the need for safe leave. [C.R.S. 8-13.3-504](#).

Other Leave Provisions

Colorado law does not require vacation leave or bereavement leave.

If an employee's contract includes paid vacation, the employer must pay all vacation pay earned upon separation from employment. [C.R.S. 8-4-109](#).

Smoking Laws

The Colorado Clean Indoor Air Act prohibits smoking in indoor areas and requires employers – regardless of the number of employees – to provide smoke-free work areas for each employee requesting not to breathe secondhand smoke and emissions from electronic smoking devices. [C.R.S. 25-14-204](#). Exceptions to this rule apply to private homes or vehicles unless used for child care or transporting a child; limousines under private hire; retail tobacco businesses; cigar bars; and the outdoor area of any business. [C.R.S. 25-14-205](#).

Break Time to Express Milk

Colorado law requires employers to provide reasonable unpaid break time or allow employees to use paid break time and/or meal time for the employee to express breast milk for her nursing child for up to two years after the birth of the child. [C.R.S. 8-13.5-104](#). The employer must make reasonable efforts to provide a private room, other than a toilet stall, near the work area for the nursing mother. *Id.*

Meal and Rest Breaks

The Colorado Overtime and Minimum Pay Standards Order (COMPS) requires employers to provide non-exempt employees an uninterrupted, duty-free 30-minute meal period for shifts longer than five hours. [7 CCR 1103-1-5](#). The meal break should be at least one hour after the start of the shift and one hour before the end of the shift. *Id.* The employee does not have to be compensated for the time during the meal break if the employee is relieved of all duties and allowed to engage in personal activities. *Id.* If the business does not allow for a duty-free uninterrupted break, the employee must be allowed to consume a meal while performing duties and be fully compensated for the time. *Id.*

Employees are likewise entitled to a compensated ten-minute rest period for every four hours of work, or major fractions thereof. This is for all employees, depending on the number of total hours the employee works. *Id.*

Minimum Wage, Overtime, and Wage Recordkeeping

Minimum Wage

The 2023 Colorado minimum wage is \$13.65 per hour. [7 CCR 1103-1-3](#). Employers must still comply with federal wage laws and regulations. *Id.* The employer can pay tipped employees \$10.65 per hour as long as the employee's tips bring the total hourly wage up to the state minimum wage. [7 CCR 1103-1-6](#). Local jurisdictions may have higher minimum wage rates.

For non-emancipated minors and people certified to be less efficient in the performance of their job duties due to a physical disability, the minimum wage can be reduced by 15 percent. [7 CCR 1103-1-3](#). [Senate Bill 39](#) was passed during the 2021 legislative session to slowly raise the wage of workers with disabilities or minors over the next four years to eliminate the subminimum wage by 2025.

Wage Payment

Employers must pay employees for regular pay periods of no greater than 30 days or one calendar month, whichever is longer. [C.R.S. 8-4-103](#). Every employer shall, at least monthly or at the time of each payment of wages, furnish each employee with an itemized statement in writing showing gross wages earned, all withholdings and deductions, net wages earned, inclusive dates of the pay period, name of the employee or the employee's Social Security number, and name and address of the employer.

Overtime

Generally, an employee shall be paid time and one-half the regular rate of pay if in excess of, (a) 40 hours per workweek, (b) 12 hours per workday, or (c) 12 consecutive hours without regard to the start and end time of the workday. [7 CCR 1103-1-4](#).

For more information regarding overtime and minimum wage, go to: cdle.colorado.gov/colorado-overtime-minimum-pay-standards-comps-order.

Wage Recordkeeping

An employer must keep records at the place of employment for three years of the name, address, occupation, date of hire, date of birth if under 18, a daily record of all hours worked, a record of credits claimed and of tips, regular rate of pay, gross wages earned, withholdings made, and net amounts paid each pay period. [7 CCR 1103-1-7](#).

Final Payment

When an employee voluntarily resigns, the paycheck is due on the next regular payday. [C.R.S. 8-4-109\(1\)\(b\)](#). The employee's check for wages shall be made available at the work site, the employer's local office or the employee's last-known mailing address. *Id.* When employment is terminated by volition of the employer, unpaid wages are due and payable immediately. [C.R.S. 8-4-109\(1\)\(a\)](#). The employee's check for wages shall be made available at the same locations as if the employee were to resign. *Id.*

If the accounting department is not immediately available, wages are due no later than six hours after the start of the accounting department's next workday. *Id.* If accounting is off-site, the employer must provide the wages

within 24 hours after the start of the accounting provider's next regular workday. *Id.* The employer may choose to make the final payment available at the work site, employer's local office, or employee's last known mailing address. *Id.*

Unemployment Insurance

Unemployment insurance benefits provide income to individuals from Colorado whose employment was terminated through no fault of their own. [Col. Dep't. of Lab. & Emp., Your Guide to Unemployment Benefits \(2019\)](#). The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. *Id.* Nothing is deducted from the employee's wages to pay for this coverage. *Id.*

Generally, a person who is unemployed or working fewer than 32 hours per week and earning less than the weekly benefit pay amount can file a claim for benefits. *Id.*

Unemployment benefits are approximately 55 percent of a person's average weekly wage over a 12-month period. The maximum benefit amount is \$649 per week. *Id.* In addition, a person can make up to 25 percent of their maximum benefit and be paid their full benefit payment. *Id.*

Unemployment benefits are administered by the Colorado Department of Labor and Employment. Additional information regarding the benefits may be accessed at cdle.colorado.gov/unemployment.

Workers' Compensation

The Workers' Compensation Act of Colorado, [C.R.S. 8-40-101 et seq.](#), applies to all employers with one or more employees, with additional requirements for businesses in the construction industry. By purchasing insurance in compliance with the Act, the employer assumes responsibility for work-related injuries, regardless of fault. In return, the employer and other employees are immune from tort claims brought by injured employees. Employees who suffer an injury or occupational disease arising out of, and in the course of their employment that is not intentionally self-inflicted, may be eligible to receive several types of benefits under the Act.

The Act is administered by the Colorado Department of Labor & Employment, Division of Worker's Compensation. More information can be found at cdle.colorado.gov/dwc.

Child Labor

Generally, 14 is the minimum age for employment under Colorado state law, with certain exceptions. [C.R.S. 8-12-105](#).

No minor under the age of 16 may work on school days during school hours, nor may they work more than six hours after school unless the next day is not a school day. *Id.* Generally, minors may not work more than 40 hours per week or more than eight hours in a 24-hour period. *Id.*

Further details about and discussion of Colorado youth labor laws may be found at cdle.colorado.gov/youth-law.

Gun Laws

Colorado allows a person to carry a firearm in a vehicle if its use is for lawful protection of such person's or another's person or property. [C.R.S. 18-12-105](#). Colorado law also allows a person to possess a handgun in a dwelling, place of business, or automobile. *Id.* However, when someone carries the weapon into their home, business, hotel room, etc., it must be in plain view. *Id.* Local jurisdictions may not enact laws that restrict a person's ability to travel with a weapon. *Id.*

Additional Laws and Regulations

False or Deceptive Hiring

It is illegal to persuade workers to change to a new place of employment through any false representations concerning the type of work to be done, compensation to be paid for the work, conditions of the employment, or existence of strikes. [C.R.S. 8-2-104](#).

Equal Pay

Employers cannot pay an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work, as determined by skills, effort, and responsibility. [C.R.S. 8-5-102](#). An employer can pay different rates when the difference is based on a seniority system, merit system, a system that measures earnings by quantity or quality of production, the geographic location where work is performed, training, or travel. [Id.](#)

Employers may not seek the wage rate history of a prospective employee or rely on the wage history of a prospective employee to determine a wage rate; discriminate or retaliate against a prospective employee for failing to disclose the prospective employee's wage rate history; discharge, or in any manner discriminate or retaliate against an employee for invoking rights under this provision; 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; prohibit an employee from disclosing the employee's wage rate as a condition of employment; or require an employee to sign a waiver or other document that prohibits the employee from disclosing wage rate information or purports to deny the employee the right to disclose the employee's wage rate information. [Id.](#)

Employee v. Independent Contractor

Colorado uses a "right of control" test to determine whether an individual is an independent contractor or an employee. To prove that an individual was an independent contractor, the employer must show, by a preponderance of the evidence, that the individual satisfied a number of factors enumerated in [C.R.S. 8-40-202\(2\)\(b\)\(II\)](#). If the factors indicate an individual was, in fact, under the employer's control, the courts may determine that the individual was an employee.

Non-Compete Agreements

Colorado restricts any covenant not to compete that restricts the right of any person to receive compensation for performance of skilled or unskilled labor for any employer. However, this does not apply to any contract for the protection of trade secrets, executive and management personnel, and officers and employees who constitute professional staff to executive and management personnel. [C.R.S. 8-2-113\(2\)](#). The 2023 salary threshold for a non-compete agreement is \$112,500. Other exceptions may apply above and beyond the salary.

Access to Personnel Files

Employers must permit employees to inspect and obtain a copy of their personnel files at least annually upon request of the employee. Former employees may make only one inspection of their personnel files after termination of employment. [C.R.S. 8-2-129](#).

Mini-WARN

Colorado does not have a mini-WARN Act.