

# EMPLOYMENT LAW SUMMARY

## Colorado Minimum Wage Laws



Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). In Colorado, minimum wage is governed by both the Colorado Wage Act (CWA) and rules issued by the [Colorado Department of Labor and Employment](#) (CDLE). If an employee is covered by multiple federal, state, or local overtime wage rules, the requirement providing the higher wage or standard applies.

### Minimum Wage

Wages are defined as the entire amount of compensation an employee receives for his or her labor or services. This includes bonuses, commissions, paid sick leave (if paid under the Colorado Health Families and Workplaces Act) and vacation pay, but does not include severance pay. Wages may be fixed or based on time, task, piece, commission or other method.

Under [Colorado's Overtime and Minimum Pay Standards Order \(COMPS\) 38](#) the state's minimum wage will be adjusted and set annually under the state's Publication And Yearly Calculation of Adjusted Labor Compensation (PAY CALC). Minimum wage calculations take into account Colorado's consumer price index (CPI).

Applies to	Jan. 1, 2022	Jan. 1, 2023
State minimum wage	\$12.56 per hour	\$13.65 per hour
Tipped employee cash wage	\$9.54 per hour	\$10.63 per hour
Nonemancipated minors	\$10.68 per hour	\$11.60 per hour

The Colorado tip credit is \$3.02. Subtracting the tip credit from the state minimum wage rate yields the tipped employee cash wage. The rate for nonemancipated minors is 85% of the state minimum wage rate.

With limited exceptions and exemptions (as discussed below), state minimum wage rate generally applies to employees. State law defines "employee" as any person who performs labor or services for the benefit of an employer, including any migratory laborer.

To determine whether any individual is an "employee" employers must consider the degree of control they exercise over the person and the degree to which the individual performs work that is the primary work of the employer. Under state law, an individual is not an employee if he or she is:

- Primarily free from control and direction in the performance of the services he or she provides; and
- Customarily engaged in an independent trade, occupation, profession or business related to the service.

When calculating an employee's wages, the CWA allows employers to take credits for lodging (reasonable cost or fair market value, up to \$25 per week for a room; \$100 per week for a private residence) and meals accepted voluntarily (reasonable cost or fair market value, without profit to the employer).

### Tipped Employees

Tipped employees are individuals engaged in an occupation in which they customarily and regularly receive at least **\$30 per month in tips**. Tipped employee wages consist of a cash wage plus all the tips employees receive in the performance of their services. Tips include any amount designated as a tip by credit card customers on their charge slips.

State law allows employers to pay tipped employees a cash wage because it assumes that employee tips will make up the difference between the cash wage rate and the minimum wage rate, allowing the employee to receive wages at or above the minimum wage rate. Employers must subsidize a tipped employee's wages beyond the cash wage if, for any reason, the employee's tips fall below the tip credit.

Colorado prohibits employers from denying their tipped employees the presents, tips or gratuities that they earn through their service.

Employers can implement a tip pooling system among their employees only if they notify their patrons of that a tip pooling or sharing arrangement exists in the establishment. The notification must be in writing. Acceptable written notification forms include menu notices, table tents and receipt notices. Employers that do not provide this notice violate Colorado's minimum wage law and cannot claim to have the right to own or control any gratuities patrons give to tipped employees. In addition, employers that require their employees to participate in a tip-sharing program that involves non-tipped employees (for example, managers and food preparers) cannot count employee tips toward their employee's minimum wage.

## Minors

Minors who are authorized to work under child labor laws may receive a subminimum wage rate as low as **85 percent** of the applicable minimum wage rate, unless they are emancipated minors.

An emancipated minor's wages must be at least **equal** to the current minimum wage. An emancipated minor is an individual under 18 years of age who:

- Supports himself or herself financially;
- Is married and living away from his or her parents or guardian; and
- Is able to show that his or her well-being is substantially dependent on his or her job.

## Employees with Disabilities

On July 1, 2021, in order to promote economic justice, enhance self-sufficiency and encourage competitive integrated employment Colorado [repealed](#) a law that permitted employers to pay subminimum wage rates to employees with a disability.

As a result, employers must compensate employees with disabilities with wages that are at least equal to the minimum wage rate.

An exception still applies to employers that hold a subminimum wage certificate issued **before June 30, 2021**. Employers that hold these certificates must submit data to the [Colorado Department of Health Care Policy and Financing](#) (HCPF) regarding the employees paid under those certificates. By **June 30, 2022**, employers must submit to the HCPF a transition plan detailing how they expect to phase out all employees currently paid under a special certificate by **July 1, 2025**.

## Minimum Wage Rate Exemptions

The CWA and COMPS 38 exempt certain workers from minimum wage rate requirements. Exemptions are subject to the terms and conditions listed in the current COMPS order.

- Administrative employees
- Bona fide volunteers and work-study students
- Elected officials and their staff
- Employees in highly technical computer-related occupations
- Executives or supervisors
- In-residence workers
- Outside salespersons
- Owners and proprietors
- Professional employees
- Some agricultural workers
- Taxi cab drivers

## Notice and Posting Requirements

Employers subject to the CWA must display a [COMPS poster](#) (available [here](#)) in an area frequented by employees where it may be easily read during the work day. If a work site or other conditions make a physical posting impractical (including private residences employing only one worker, and certain entirely outdoor worksites lacking an indoor area), employers must provide a copy of the COMPS or poster to each employee within his or her first month of employment and also make it available to employees upon request.

An employer that does not comply with the posting requirements may be rendered ineligible for any employee-specific credits, deductions or exemptions in COMPS 37.

Employers must also display information regarding regular paydays and the place and time of payment.

## **Distribution and Translation**

Employers that publish or distribute employee handbooks or written posted policies must include a copy of the COMPS Order (or a COMPS Order poster) with the handbook, manual or policy. Employers that require their employees to sign any handbook, manual or policy must also have their employees sign an acknowledgement indicating they have been provided the COMPS Order or the COMPS Order poster.

In addition, employers that have any employee with limited English language ability must use a translated version of the COMPS Order and poster. The CDLE will make a Spanish version of these documents available. Employers should contact the CDLE for documents in additional languages.

## **More Information**

Contact Marsh McLennan Agency for more information on wage payment and work hour laws in Colorado.

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