

EMPLOYMENT LAW SUMMARY

Colorado Overtime Pay



Because You're Different

Federal overtime wage payment requirements are governed by the Fair Labor Standards Act (FLSA). In Colorado, these requirements are governed by the Colorado Wage Act (CWA), the Colorado Overtime and Minimum Pay Standards (COMPS) Order and Colorado's Publication And Yearly Calculation of Adjusted Labor Compensation (PAY CALC). Under these laws, employees must receive one and one-half times their regular wage rate for all overtime hours. Under the FLSA, when both state and federal law apply, employers must comply with the law that provides the greatest benefit or protection to their employees.

The [Colorado Department of Labor and Employment](#) (CDLE) enforces these overtime requirements throughout the state. If an employee is covered by multiple federal, state, or local overtime wage rules, the requirement providing a higher wage or standard applies.

Overtime Pay

Colorado law requires employers to compensate their employees at one and one-half times their regular rate of pay for any overtime hours worked.

COMPS provides three ways to calculate overtime pay. Employers must use whichever method results in the greater payment of wages. Overtime hours are hours worked in excess of:

- 40 hours in a workweek; OR
- 12 hours in a workday; OR
- 12 consecutive hours, regardless of the starting and ending time of the workday.

Under Colorado law, a workweek means any consecutive set period of 168 hours starting with the same calendar day and hour each week. The hours an employee works during one workweek may not be averaged with the hours worked during any other workweek for computing overtime.

Employers that require minors to work over eight hours in a workday during certain emergencies as permitted by Colorado law, must pay those minors one and one-half times their regular rate for each hour worked in excess of 40 hours in a week.

Affected Employees

COMPS defines "employee" as any person who performs labor or services for the benefit of an employer. This definition includes migratory laborers.

To determine whether an individual is an employee, employers must consider:

- The degree of control the employer exercises over the person; and
- The degree to which the individual performs work that is the primary work of the employer.

Under this definition, individuals are employees if they are:

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

Affected Employers

All Colorado employers are subject to COMPS, regardless of industry, unless an exemption applies. Please note that, the COMPS Order specifically includes [foreign labor contractors](#), [migratory field labor contractors](#) and crew leaders as “employers.” This inclusive approach is a departure from previous state wage orders.

Calculating the Regular Rate of Pay

Employers must calculate an employee’s regular rate of pay before they can calculate the employee’s overtime wages. An employee’s regular rate of pay is the hourly rate the employee actually receives for a standard, non-overtime workweek. This number may vary from week to week and may be different from the employee’s contractual rate of pay.

To calculate the regular rate for a specific workweek, employer's must divide the entire compensation for the workweek by the number of hours actually worked during that period. An employee’s entire compensation includes the employee's hourly rate and any shift differential, minimum wage tip credit, non-discretionary bonuses, production bonuses and commissions.

However, entire compensation does not include:

- Business expenses;
- Bona fide gifts;
- Discretionary bonuses;
- Employer investment contributions; or
- Payment for non-working hours (such as vacation, sick leave or jury duty pay).

To determine the **number of hours an employee works** during a workweek, an employer must consider any time the employee is performing labor or services for the benefit of the employer, including all time the employee is suffered or permitted to work, whether or not required to do so. This includes any time the employee is:

- Allowed to work (regardless of whether he or she is required to work);
- Waiting for a job assignment;
- Waiting to begin work;
- Cleaning or performing other “off the clock” duties; or
- Traveling under the request, control or direction of the employer (excluding normal commuting time to and from work).

The overtime wage rate for employee's working in two or more positions at different pay rates for the same employer must be calculated using the regular rate of pay for the position in which the overtime occurs or using a weighted average method as required by the FLSA.

Exemptions from Overtime Payment Laws

State law provides the following overtime exemptions. To qualify for an exemption, employees must satisfy all the terms and conditions for the exemption, as outlined in the COMPS order.

Overtime exemptions exist for:

- Administrative employees
- Bona fide volunteers and work-study students
- Certain hospital and nursing home employees
- Certain salespersons and mechanics
- Commission sales employees
- Drivers (and helpers) subject to the FMCSA
- Elected officials and staff
- Employees in highly technical computer-related occupations
- Executives or supervisors
- Highly compensated employees
- Highly technical computer employees
- In-residence workers

- Medical transportation
- Outside salespersons
- Owners and proprietors
- Professional employees
- Ski industry workers
- Some agricultural workers
- Taxi cab drivers

Salary Thresholds for Certain Exemptions

[2024 PAY CALC](#) sets the following salary thresholds for overtime exemptions. These thresholds represent one requirement employees need to satisfy to qualify for an overtime exemption.

Effective Date	Jan. 1, 2023	Jan. 1, 2024
Agricultural range workers	\$559.29 per week	\$590.61 per week
Executive, administrative and professional (EAP) employees	\$961.54 per week (\$50,000 annual equivalent)	\$1,057.69 per week (\$55,000 annual equivalent)
Highly technical computer employees	\$31.41 per hour or the EAP salary above	\$33.17 per hour or the EAP salary above
Highly compensated employees (weekly wage must be at least the EAP salary above)	\$112,500 annually and the EAP weekly salary	\$123,750 annually and the EAP weekly salary
Certain drivers and driver helpers	\$750.75 per week	\$793.10 per week
Certain seasonal camp or outdoor education field staff	Full minimum wage, or: <ul style="list-style-type: none"> • \$373.30 per week (adults) • \$287.62 per week (minors) Non-profits with up to \$25 million in revenue: <ul style="list-style-type: none"> • \$277.75 per week (adults) • \$206.35 per week (minors) 	Full minimum wage or: <ul style="list-style-type: none"> • \$405.64 per week (adults) • \$314.92 per week (minors) Nonprofits with up to \$25 million in revenue: <ul style="list-style-type: none"> • \$304.70 per week (adults) • \$229.10 per week (minors)

“EAP employees” includes certain owners or proprietors of non-profit employers and decision-making managers “at livestock employers. However, these salary threshold qualifications do not apply to **doctors, lawyers and teachers** who qualify for the professional employee exemption.

More Information

Contact Heffernan Insurance Brokers for more information on wage payment and work hour laws in Colorado.