

# Denver Labor



**CITYWIDE MINIMUM WAGE RULES**

# DENVER LABOR RULES FOR CITYWIDE MINIMUM WAGE COMPLIANCE

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## GENERAL PROVISION

### Statement of Authority

In May 2019, the Colorado General Assembly passed House Bill 19-1210, which amended Colorado Revised Statute § 29-1-1401 authorizing local governments to enact laws establishing a local minimum wage within their geographic jurisdictions. In November 2019, the Denver City Council enacted Denver Revised Municipal Code (“D.R.M.C.”) § 58-16 through 58-18, which established a local minimum wage for the City and County of Denver, as well as compliance requirements and means of enforcement (“Ordinance”).

The Citywide Minimum Wage Ordinance became effective January 1, 2020.

These Denver Labor Rules for Citywide Minimum Wage Compliance (“Rules”) are enacted pursuant to the Denver Auditor’s Office’s rulemaking authority prescribed in D.R.M.C. Chapter 58. These Rules shall be adopted, published, and updated pursuant to D.R.M.C. § 2-91 through 2-100.

### Purpose

These Rules are enacted to provide notice of the presumptions, procedures, and requirements employed by the city when enforcing the Ordinance. These Rules are meant to ensure consistent compliance and provide guidance to parties impacted by the Ordinance.

### Definitions

These Rules incorporate all definitions codified in the Ordinance. In addition, these Rules shall use the following defined terms:

- **“Base pay”** – the pre-deduction portion of an employee’s compensation excluding all fringe benefits
- **“Correspondence”** – written communication from Denver Labor that informs a party of a complaint, investigation, or the information included in the communication
- **“Denver”** – refers to the City and County of Denver collectively and all property located in Denver county
- **“Denver Labor”** – an office within the Denver Auditor’s Office that enforces Denver’s citywide minimum wage, contractor minimum wage, prevailing wage, and living wage; and that office’s associated staff and operational functions
- **“Fringe Benefit”** – the nonmonetary portion of an employee’s compensation for work
- **“May”** – use of the term “may” in the Ordinance and these Rules indicates an optional requirement
- **“Minimum Wage”** – the current Denver minimum wage as established by the Ordinance
- **“Must”** – use of the term “must” in the Ordinance and these Rules indicates a mandatory requirement

- **“Shall”** – use of the term “shall” in the Ordinance and these Rules indicates a mandatory requirement
- **“Should”** – use of the term “should” in the Ordinance and these Rules indicates a preferred, albeit optional requirement
- **“Will”** – use of the term “will” in the Ordinance and these Rules indicates a mandatory requirement

## CITYWIDE MINIMUM WAGE ORDINANCE INTERPRETATION

The Auditor’s Office — and Denver Labor as part of the Auditor’s Office — is Denver’s only authorized citywide minimum wage enforcement authority. Denver Labor shall employ the Ordinance and these Rules when enforcing the Citywide Minimum Wage Ordinance. No other material or outside statements will be used during an investigation or in making a determination.

Neither the Ordinance nor these Rules shall reduce any party’s contractual obligations. In addition, no preexisting or future contractual obligation shall reduce minimum wage requirements. A party may not limit an employer’s minimum wage obligations by contract or any other instrument.

Neither the Ordinance nor these Rules modify or relieve any party’s duties and obligations under any other municipal, state, or federal law. These Rules may address issues depicted in other portions of the Denver Municipal Code related to wage and labor enforcement; however, unless expressly adopted by those other rules, these Rules have no effect on any other city ordinance. Specifically, these Rules do not affect and are not meant to affect Denver prevailing wage, contractor minimum wage, or living wage requirements. Where more than one wage requirement is applicable, the greatest compensation requirement will be enforced, and Denver Labor will use the corresponding laws and rules to enforce the wage requirement.

Enforcement of the Ordinance does not create a relationship, contract, or other duty or liability between Denver, any underpaid employee, or other party.

Nothing in the Ordinance or these Rules should be interpreted to limit or prevent any party from filing a separate private civil action, initiating criminal charges, or filing concurrent wage violation claims with a state or federal agency.<sup>1</sup>

These Rules are independent and severable. If any part of these Rules is found to violate any law or found to be invalid or in conflict with the Ordinance, such finding shall be limited as narrowly as possible and all other parts of these Rules shall be considered valid and in effect.

Any update or amendment to these Rules shall not affect prior application of the Ordinance or these Rules.

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<sup>1</sup> See D.R.M.C. § 58-16(j).

## SCOPE AND JURISDICTION

Unless expressly excluded in the Ordinance or these Rules, the Minimum Wage applies to all persons performing work within Denver's geographic boundaries.

Applicability is based on the location of where work is performed. Employers with offices or principal places of business in Denver that employ workers performing work exclusively outside Denver are not required to comply with Minimum Wage requirements for work performed outside Denver. Employers should comply with other wage and labor requirements for where such work is performed. Conversely, employers with offices or principal places of business outside Denver that employ workers performing work in Denver are subject to Minimum Wage requirements for work performed in Denver.

Denver Labor shall enforce the Ordinance for all subject work performed beginning January 1, 2020. The Ordinance does not apply to work performed before January 1, 2020. Denver Labor will not investigate, request records, or enforce citywide minimum wage requirements for work performed before January 1, 2020.

## EMPLOYER DUTIES

To comply with the Ordinance, employers have a duty to: 1) pay workers the lawful wage, 2) post or distribute notice of the citywide minimum wage requirements, and 3) maintain payroll records, as follows:

- **Payment of Lawful Wages** – Employers are required to ensure all workers performing work within Denver are paid the Minimum Wage.<sup>2</sup>
- **Notice** – Employers must post a Minimum Wage notice in an area easily accessible to their employees or if posting the notice is not feasible, provide such a notice individually to each employee in the employee's primary language.<sup>3</sup> Denver Labor may inspect the posted notice or require production of records demonstrating an employer's distribution of individual notifications.
- **Record Keeping** – Employers are required to maintain payroll records for all workers performing work for a minimum of three years.<sup>4</sup> The payroll records must include the days and hours worked for each employee, the hourly rate paid, any deductions withheld, and the net pay received.

Pursuant to the Ordinance, complainants bear the initial burden of establishing their claim. Workers should keep copies of paychecks, benefits contracts, insurance cards, and time cards, and be able to identify their employers, work locations, coworkers, and agreed-to deductions so credible complaints may be filed should an employer violate the Ordinance.

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<sup>2</sup> See D.R.M.C. § 58-16(a).

<sup>3</sup> See D.R.M.C. § 58-17(a)(3).

<sup>4</sup> See D.R.M.C. § 58-16(i).

## CITYWIDE MINIMUM WAGE CALCULATION

### Rate

Denver has prescribed the following citywide minimum wage schedule:

- \$12.85 from January 1, 2020 – December 31, 2020;
- \$14.77 from January 1, 2021 – December 31, 2021;
- \$15.87 from January 1, 2022 – December 31, 2022; and
- On January 1<sup>st</sup> in subsequent years, the Minimum Wage will increase by the prior year's increase in the regional consumer price index, if any.<sup>5</sup>

Denver Labor shall enforce the highest of the applicable wage requirements, including Minimum Wage, contractor minimum wage, prevailing wage, living wage, state or federal minimum wage, or federal Davis-Bacon Act wages.<sup>6</sup> The applicable wage requirement is determined by considering the highest applicable base pay. The rates of these wages change on different schedules. As a result, the applicable rate may change during the term of a contract, a calendar year, or an investigation. A change in rate or applicable wage requirements is not a defense for noncompliance with any wage or labor requirement.

### Base Pay and Hours

When evaluating Minimum Wage compliance, Denver Labor will only consider an employee's base pay.

The Ordinance applies to travel time from a business location to a worksite or between worksites where the destination worksite is in Denver. The Ordinance does not apply to an employee traveling from their home to a business or worksite or an employee traveling through Denver with no commercial stops, except for refueling, meals, or personal tasks unrelated to work.

Minimum Wage requirements apply to all paid breaks.

The Ordinance applies when an employee is required to be present at a business or worksite in Denver. The Ordinance does not apply to employees required to be on-call or on standby off-site. The Ordinance does not apply to "sleep time," when an employee is permitted to sleep, rest, or otherwise be at a business or worksite but is not required to be present or perform work.

Base pay during a vacation or as a payment for an accrued time benefit for a worker performing work in Denver and for vacation and accrued time earned after January 1, 2020, shall not be less than the applicable Minimum Wage at the time of payment.

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<sup>5</sup> See D.R.M.C. § 58-16(b)(2) and 58-16(b)(5).

<sup>6</sup> See D.R.M.C. § 58-18(b).

## Overtime

Employers are required to pay workers time and a half for all time worked greater than 40 hours during a seven-day period (“overtime”). Where a worker performs work both inside and outside Denver during a seven-day period, overtime shall be calculated at the rate applicable for the location where the work is performed after 40 hours. No type of work is exempt from overtime requirements.

## Fringe Benefits

When evaluating Minimum Wage compliance, Denver Labor will not consider fringe benefits. Specifically, the following fringe benefits will not be included in calculating minimum wage compliance:

- Pier diem or travel costs
- Any employee reimbursement for expenses incurred by the employee
- Uniforms, tools, or equipment — unless 1) the employee retains ownership of the uniforms, tools, and equipment after employment ends; 2) the employer does not include an increase in the associated cost; and 3) the purchasing of the uniforms, tools, and equipment from the employer is not a condition of employment
- Employer contributions to insurance, retirement, investment, or similar benefits
- Services provided by the employer, including transportation, laundry, housing, childcare, and moving — unless the service is a contracted-for benefit
- Discounts at the employer’s business
- Vacation or paid time off

An employee may voluntarily elect to purchase a benefit through or from their employer (“contracted-for benefit”) and the payment for such a purchase may be deducted from the employee’s pay. However, such a purchase must be voluntary, supported by written consent from the employee, and may not be a condition of employment.

## Deductions

An employer may deduct the following from base pay without reducing a worker’s base pay calculation:

- **Taxes** – city, state, and federal employment and income taxes;
- **Mandatory Federal Withholdings**;
- **Contracted-for Benefits** – supported by a documented agreement that specifies a rate of deduction or payment;
- **Employer Loans** – supported by a documented agreement that specifies a rate and all terms, including duration of deduction or payment; and
- **Court-Ordered Withholdings** – such as garnishments, child support, or bankruptcy obligations.

During an investigation, Denver Labor may request documentation of actual payments made to a third party to support any claimed deductions.

An employer may not deduct from a worker's pay amounts related to a prior overpayment, incorrect payment, or other amounts in connection with a civil disagreement.

## **INVESTIGATIONS**

### **Agency Neutrality**

Denver Labor does not advocate for any party or any outcome of any investigation. During an investigation, Denver Labor accepts and requests information related to an alleged violation of Denver law. Denver Labor applies that information and those allegations to the law to make a determination based on the available facts.

### **Complaint-Based Investigations**

From January 1, 2020, through December 31, 2021, Denver Labor will enforce the citywide minimum wage on a complaint-based system.

Denver Labor may initiate an investigation by notifying an employer it has assessed a complaint as credible.

When Denver Labor initiates an investigation, that investigation will not be limited to the complainant. During an investigation, Denver Labor may investigate an employer's Minimum Wage compliance for all of an employer's workers.

There is no limit as to the number of investigations involving an employer or worker. For the purpose of efficacy, Denver Labor may consolidate multiple complaints against an employer.

Investigations must be completed within three years of notifying an employer of the investigation of a credible complaint.

### **Strategic Investigations**

After January 1, 2022, Denver Labor will use complaints and data to strategically enforce city wage requirements as prescribed in D.R.M.C. § 58-16(f).

### **Complaints**

Denver Labor has discretion when investigating a complaint. When electing to investigate a complaint, Denver Labor may consider:

- The factual allegations;
- The timing of a complaint;
- The availability of the complainant;
- An alleged employer's egregious, willful, fraudulent, or criminal misconduct;

- Acts of retaliation;
- The magnitude of the alleged violation;
- Any contractual limitations that prevent or inhibit a worker's private right of action or access to the court; and
- The availability of city, Auditor's Office, and Denver Labor resources.

Any person or entity may file a complaint, including employees, agents or attorneys of employees, a city agency, community groups, or labor organizations. Complaints may be made anonymously.<sup>7</sup> Anonymous complaints will be given the same initial review as other complaints; however, anonymous complaints limit communication with the complainant and may result in limited investigations.

*Complaint requirements:*

- Complaints must be made in writing. When necessary, Denver Labor will assist the person or entity making a complaint with their written submission.<sup>8</sup>
- Complaints must be submitted within one year of the alleged violation.
- Complaints should include all information relied on by the complainant in asserting the allegation. The complaint must include sufficient information to determine credibility and initiate an investigation.

The complainant bears the initial burden of demonstrating a credible complaint.<sup>9</sup> Denver Labor may request additional information before determining a complaint is credible and/or during an investigation.

During Denver Labor's initial review of a complaint, the complaint may be determined to be credible when:

- Sufficient information is provided to initiate an investigation;
- The subject work was performed after January 1, 2020;
- The subject work was performed in Denver;
- The employer failed to pay Minimum Wage; and
- No exception exists.

During the initial complaint review, all asserted facts will be presumed to be accurate and truthful.

Neither Denver Labor, nor any Denver agency or employee, will request information regarding any party's immigration status in response to a complaint or during an investigation.

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<sup>7</sup> See D.R.M.C. 58-16(e).

<sup>8</sup> See D.R.M.C. 58-16(d).

<sup>9</sup> See D.R.M.C. 58-16(d)-(e).

## **Employer Records**

Nothing in the Ordinance or these Rules impairs an employer from paying any worker any unpaid wages at any time.

### *Access to Records*

Pursuant to the Ordinance, an employer is a person or entity who employs another a worker to perform work or a party who receives the benefit of a worker's work as the result of contracting with or employing a third party, including agents, brokers, or subcontractors. As a result, a worker may have multiple employers. All such employers bear the same duty to ensure workers are paid correctly, and they bear the same burden to cooperate with an investigation. Such duty and responsibility transfers to successor employers.

Following notification of a credible complaint, an employer shall grant Denver Labor prompt access to its retained payroll records.<sup>10</sup>

Cumbersome, burdensome, or incomplete records will not be accepted. The employer shall identify the records that are being produced and the reason the employer wants Denver Labor to consider the records.

When requested by Denver Labor, employers are required to produce certified payroll records.<sup>11</sup> Employers may provide certified payroll records electronically through the city's electronic payroll system, LCPTracker, or any successor system. Alternatively, employers may submit true and accurate payroll records with a notarized affidavit. The required affidavit form is available from Denver Labor upon request.

There is a presumed Minimum Wage violation when an employer fails to maintain or produce records within 30 days of a request for production. Such a presumption may be rebutted by production of the requested documents or other clear and convincing evidence sufficient to document compliance.<sup>12</sup> Regardless of subsequent compliance, failure to respond to requests for production may cause an employer to incur a fine.

Producing false documentation or payroll records that do not identically match supporting documentation is a violation of the Ordinance and may be subject to a fine. Unless specifically requested by Denver Labor, employers should not create new documentation in response to a notice of investigation or a request for payroll records.

### *Rebuttal Evidence*

Following notification of the investigation of a credible complaint, an employer bears the burden of demonstrating compliance with Minimum Wage requirements.

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<sup>10</sup> See D.R.M.C. 58-16(i).

<sup>11</sup> See D.R.M.C. §58-17(a)(1)-(2).

<sup>12</sup> See D.R.M.C. 58-16(i).

Denver Labor employs the same standards to review evidence to rebut a claim as to determine a complaint credible: 1) the work was performed after January 1, 2020, 2) the work was performed in Denver, 3) the employer failed to pay the Minimum Wage, and 4) no exception exists. When rebuttal evidence — including statements and affidavits — is produced, Denver Labor will determine the evidence’s authenticity and credibility. Cash payments to workers is highly discouraged. An unsupported employer statement alleging an undocumented cash payment alone is insufficient to rebut a complaint of a Minimum Wage violation.

## **Exceptions**

An employer bears the burden of establishing the facts necessary to support application of an exception to a Minimum Wage obligation. An independent admission by a worker that the conditions necessary to satisfy an exception exists is sufficient evidence to support an exception.

### *General*

Minimum Wage does not apply to workers: 1) working outside Denver, 2) working less than four hours in Denver in a week, or 3) only traveling through Denver as part of their work.<sup>13</sup>

### *Tip Credit*

Pursuant to the Ordinance, employers of food and beverage workers may reduce the employers’ Minimum Wage obligation by as much as \$3.02 per hour worked for actual tips received by a worker (“Tip Credit”).<sup>14</sup>

The Tip Credit is available only as an offset for tipped food and beverage workers who regularly receive tips. No offset is granted for tips received by non-food and beverage workers. The Tip Credit must be supported by records demonstrating the actual receipt of tips equal to or greater than the Tip Credit amount. Tips must be a gratuity — a gift given by a customer for services provided. A tip cannot be a portion of a cost is retained by an employer. The Ordinance and these Rules are not meant to permit the reduction of tips or the retention of tips by an employer.

### *Certified Youth Employment Program*

Employers of unemancipated minors performing work pursuant to a city-certified youth employment program may pay such workers no less than 15% less than the required Minimum Wage, and at least:<sup>15</sup>

- \$10.93 from January 1, 2020 – December 31, 2020;
- \$12.56 from January 1, 2021 – December 31, 2021;

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<sup>13</sup> See D.R.M.C. § 58-16(c).

<sup>14</sup> See D.R.M.C. § 58-16(b)(3).

<sup>15</sup> See D.R.M.C. § 58-16(b)(4).

- \$13.49 from January 1, 2022 – December 31, 2022; and
- On January 1st in subsequent years, 85% of the Minimum Wage, which will increase annually by the prior year’s increase in the regional consumer price index, if any.<sup>16</sup>

The Certified Youth Employment Program exception applies only to workers, who are: 1) less than 18 years old, 2) unmarried, 3) living at home with their parent or guardian, and 4) able to demonstrate they are not their sole or primary provider dependent upon their own employment.<sup>17</sup>

The Denver Economic Development & Opportunity agency (“DEDO”) will certify youth employment programs for this exception. DEDO may also enact rules and set standards for complying with certification requirements.

A youth employment program must be certified by DEDO and remain compliant with DEDO rules and standards for this exception to apply.

Both the Tip Credit and Certified Youth Employment Program exceptions may be applied together to reduce an employer’s Minimum Wage obligation.<sup>18</sup>

The Certified Youth Employment Program exception has no effect on any other city, state, or federal wage or labor requirements.

### *Volunteers*

The Ordinance does not apply to parties performing work as volunteers. A worker must admit to this exception, or an employer must produce evidence of the worker’s consent to perform work as a volunteer.

This exception may apply to students enrolled in an academic program who volunteer as part of that program.

### *Independent Contractors*

The Ordinance does not apply to independent contractors.<sup>19</sup> To demonstrate this exception, an employer must produce a contract identifying the subject worker as an independent contractor or other evidence demonstrating the subject worker is: 1) free from control and direction in the performance of the work, and 2) customarily engaged in an independent trade, occupation, profession, or business related to the service performed.<sup>20</sup>

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<sup>16</sup> See D.R.M.C. § 58-16(b)(2); 58-16(b)(4); and 58-16(b)(5).

<sup>17</sup> See D.R.M.C. § 58-16(b)(4) and 58-18(e).

<sup>18</sup> See D.R.M.C. § 58-16(b)(3)-(4).

<sup>19</sup> See D.R.M.C. § 58-18(e).

<sup>20</sup> See C.R.S. § 8-70-115(1)(b).

Evidence that will be reviewed as supportive, but not dispositive, of this exception include:

- Business documents filed with the Colorado Secretary of State depicting the subject worker as an independent contractor;
- A license to operate and documented worker ownership of the equipment used in the work performed;
- A worker's ability to set their own prices;
- Contracts or other documents demonstrating a history of the employer employing the worker as an independent contractor; and
- Documentation held by the employer and created by the worker that affirms the worker is an independent contractor.

#### *Exceptions Not Adopted*

Denver has adopted only those exceptions expressly stated in the Ordinance. Only exceptions adopted in the Ordinance will be enforced. If changes in state or federal law create or permit additional exceptions, then Denver must adopt those exceptions before they are enforced.

#### **Communications**

During an investigation, Denver Labor will communicate with complainants, workers, and employers.

Correspondence from Denver Labor shall constitute notice of the information contained in the correspondence.

#### *Required Communications*

When contact information has been provided, Denver Labor will communicate the following to identified complainants:

- When a complaint is received;
- What additional information is needed to determine whether a complaint is credible or to complete an investigation;
- The determination of whether a complaint is credible and the information, if any, that is missing from the complaint to facilitate an investigation;
- Any determination made regarding a complaint;<sup>21</sup>
- Any final determination following a complete review of all parties' evidence;
- That, in a case where restitution is owed, a judgment or complaint has been forwarded to a third-party for collections;
- That an employer has appealed a determination; and
- When a case is closed.

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<sup>21</sup> See D.R.M.C. § 58-16(d)-(e).

Anonymous complaints or complainants who fail to provide contact information will not be contacted.

Denver Labor will communicate the following to workers when a worker is not the complainant:

- That an underpayment has been determined and their employer is required to pay them restitution;
- That a determination that restitution is owed is being appealed; and
- That, in a case where restitution is owed, a judgment or complaint has been forwarded to a third-party for collections.

Denver Labor will communicate the following to employers:

- Any determination that a complaint is credible or that an investigation has been initiated (employers will not be contacted regarding complaints not determined credible);<sup>22</sup>
- Requests for records;
- Any final determination following a complete review of all parties' evidence;
- Any determination of underpayment or the imposition of fines.

A single correspondence may be sent to communicate for multiple purposes and to communicate multiple types of information. Denver Labor will include all known possible employers at the time of the correspondence. When additional employers are identified, separate and additional correspondence will be sent to the additional employers.

### *Determinations*

Before a determination is made, an employer may voluntarily pay any wages owed to any underpaid workers.

All determinations by Denver Labor are final. The communication of a determination does not need to expressly state "final determination" to be considered a final determination.

### *Outside Communication*

Denver Labor may refer complaints, including party statements and evidence, to state or federal wage and labor enforcement agencies. Denver Labor may collaborate in investigations with state or federal wage and labor enforcement agencies. Denver Labor may voluntarily or by court order provide testimony regarding an investigation. Denver Labor may share information with state or federal wage and labor enforcement agencies.

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<sup>22</sup> See D.R.M.C. § 58-16(d)-(f).

## Calculation of Underpayment

After reviewing all available evidence, Denver Labor will determine whether an employer has violated the Ordinance and the amount of underpayment owed.

### *Underpayment Calculations*

(First 40 hours worked in seven-day period x minimum wage) + (Hours worked > 40 in a seven-day period x 1.5 times the minimum wage)	<b>Based on Complaint</b>
<hr/> <b>Minimum Amount Owed for Work Performed</b>	
- The amount paid as substantiated by all parties' evidence - The amount of any applicable exception that lowers the employer's Minimum Wage obligation	<b>Based on All Parties' Evidence</b>
<hr/> <b>Underpayment Amount</b>	

If the underpayment amount is less than or equal to \$0, then no violation occurred.

When an employer has failed to respond to requests for payroll records, Denver Labor will base its underpayment determination on the evidence and allegations provided by the complainant.

Wages paid are calculated at the established period of pay.

Failure to pay one and a half times the minimum wage for hours worked greater than 40 hours in a seven-day period is a Minimum Wage violation.

### *Established Pay Period*

A pay period may start on any day of the calendar week. An established pay period is a start date and duration typically and historically used by an employer. Although an employer may use more than one pay period within a business, worker-specific pay periods may not be used to reduce minimum wage obligations or to avoid overtime. Overtime is calculated on a seven-day pay period regardless of the start date. For the purpose of citywide minimum wage enforcement, no employer may use a pay period greater than 30 days.

### *Tip Credit Calculation*

The Tip Credit shall be calculated in the aggregate of hours worked and tips received for an established period of pay.

$$\frac{\text{(Total tips received during a pay period)}}{\text{(Total hours during a pay period)}} = \text{Hourly Tip Credit (not to exceed \$3.02).}$$

### *Non-Hourly Employees*

Minimum Wage compliance is determined based on pay received for hours worked. When an employee is not paid on an hourly basis (salary, piece rate, commission, production weight, profit sharing, or any other compensation method) the same underpayment calculation will be used to determine Minimum Wage compliance.

### *Underpayment Determination*

An underpayment determination will identify unpaid wages at the time of the determination. However, if an underpayment issue is ongoing, the underpayment will continue to increase and accrue until the case is closed or the employer ends the underlying underpayment practice.

### **Fines**

Denver Labor will impose fines for violations of the Ordinance.

### *Discretionary Fines*

Denver Labor has discretion to waive the fine for an employer's first failure to pay Minimum Wage where an underpayment was made as the result of a good faith error and corrected within 30 days of receiving notice.

### *Fines*

Other fines:

- **Second and Third Failure to Pay Minimum Wage Violation** – \$10-\$75 fine per worker per day paid less than Minimum Wage and a mandatory \$1,000-\$2,500 fine
- **All Failures to Pay Minimum Wage Violations after Third Violation** – \$50-\$100 per worker per day paid less than Minimum Wage and a mandatory \$2,500-\$5,000 fine
- **Failure to Provide Certified Payroll** – \$1,000 for each instance of failing to provide certified payroll within 10 days of being provided notice of the failure
- **False Reporting** – \$1,000 for each instance of false reporting on a certified payroll that is not timely corrected
- **Failure to Pay Determination** – \$5,000 fine per worker owed more than \$50 for employer's failure to comply with determination and pay underpaid worker within 30 days or provide checks to Denver Labor within 45 days for unlocated employees after demonstrating a good faith effort to locate all such underpaid workers
- **All Other Violations** – \$1,000 fine for an employer's failure to comply with any other provision of the Ordinance

The frequency of violations for determining the size of a permissible fine is calculated during a 36-month period. False reporting occurs when: 1) certified payrolls do not provide identical

information as supporting documentation; 2) an employer admits to providing false, incomplete, or inaccurate information; or 3) payroll documentation is altered in any way or incomplete to depict or suggest compliance with Minimum Wage requirements when requirements were not met.<sup>23</sup>

Denver Labor shall return and ask for reissuance of checks not made independently negotiable to the underpaid worker and the City and County of Denver.

Fines collected are remitted to the city's general fund. Neither the Auditor's Office, nor Denver Labor, receive any funds directly from fines collected. The number of fines collected does not financially benefit the Auditor's Office.

### **Collection**

The City may employ outside counsel or a third party to collect unpaid wages and fines from employers who fail to make restitution to workers or pay city fines.

The City may employ outside counsel when an employer who fails to make restitution or pay city fines files for bankruptcy protection.

Outside counsel and third parties employed by the City seeking enforcement of the Minimum Wage and collection of unpaid wage or fines may seek and recover all additional costs and fees permitted by law.<sup>24</sup>

### **Appeals**

Any employer may appeal a determination by Denver Labor which adversely affects the employer. Petitions for appeal must be submitted to the Auditor's Office within 30 days of notice of the determination being appealed.<sup>25</sup> This administrative procedure is a prerequisite for any additional appeal or review of any determination.<sup>26</sup>

An appeal will review a determination adversely affecting an employer. A hearing officer shall be designated for appeal purposes and rendering a determination. Unless otherwise stated in the Ordinance or these Rules, the procedural rules for the appeal before an administrative hearing officer will be those prescribed by the Denver Revised Municipal Code.

Following an administrative determination, a party to the matter has no more than 15 days to file for a reconsideration.

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<sup>23</sup> See D.R.M.C. § 58-17(a)(1)-(2).

<sup>24</sup> See D.R.M.C. § 58-17(c).

<sup>25</sup> See D.R.M.C. § 58-16(h)(1).

<sup>26</sup> See D.R.M.C. § 58-16(h)(1).

## **Resolution**

### *Closed Cases*

Denver Labor may end an investigation when:

- The case is closed during an investigation by procedural or factual determination;
- The employer provides proof of complete restitution to all underpaid workers;
- The employer provides the Auditor's Office with checks for underpaid workers equal to the amount owed to all workers;
- The employer appeals a determination; or
- The employer fails to respond for 30 days to correspondence from Denver Labor or provide evidence of full restitution to affected workers.

Collection efforts may proceed even after a case is closed.

### *Settlement*

A complainant may settle a claim independent of the city and withdraw a complaint; however, withdrawal of a complaint does not relieve an employer of any mandatory fine imposed in accordance with the Ordinance.

## **Retaliation**

No employer shall prevent or assist any party in preventing anyone from exercising any right granted or protected by the Ordinance or from participating in an investigation. Adverse action against a party within 90 days of that party exercising a right granted or protected by the Ordinance is presumed retaliation. Such conduct shall be considered retaliation and subject to mandatory enforcement action. Presumed retaliation is only rebuttable by clear and convincing evidence the adverse action was taken for a lawful purpose.<sup>27</sup>

Adverse action includes all conduct described in the Ordinance and any employer's efforts to impede or prevent future employment of a worker. An employer's liability for an adverse action or retaliation extends to any acts of an employer's employees, managers, subcontractors, or agents.

Denver Labor shall consider retaliation complaints as separate and distinct from any potentially related complaint for the purpose of determining frequency of violations, fines, or other remediation. A Minimum Wage violation wage is not required for a valid retaliation claim.

## **Data**

Denver Labor may maintain data regarding complaints and investigations, including evidence provided or obtained during an investigation for use by the Auditor's Office.

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<sup>27</sup> See D.R.M.C. § 58-16(g)(1)-(4).

Regarding any data collected, Denver Labor shall comply with the Colorado Open Records Act. Any waiver of any protection afforded by the Colorado Open Records Act by the Auditor's Office is expressly limited to the party and purpose for which the data is provided and should not be interpreted as a waiver of any protection available for any data for any future purpose, party, or time.

Denver Labor may share with the public data collected and the results of investigations.

### **Outreach**

To create public awareness and assist in employer compliance, Denver Labor will produce educational materials and provide educational presentations.

Compliance is based on the Ordinance and these Rules. No other materials produced by the Auditor's Office or the city shall relieve any employer from its Minimum Wage obligations. The Auditor's Office is not bound by any other materials or statements, including educational materials and statements made during community events, other than the Ordinance, any rules promulgated by DEDO pursuant to the Ordinance, and these Rules.

Denver Labor may provide or direct parties to city resources, including economic aid, human services, and community legal services. Direction to city resources is a community service provided by Denver Labor; it does not denote an interest in the outcome of an investigation or affect any determination made pursuant to the Ordinance.