

**Denver
Labor**



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City and County of Denver

**Denver
Auditor's
Office**

**Rules of
Procedure
for Appeals
and
Hearings**

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1. GENERAL PROVISION

1.1 Statement of authority

The Denver Labor division of the Denver Auditor's Office is responsible for enforcing three Denver ordinances: the Prevailing Wage Ordinance, D.R.M.C. § 20-76, the Minimum Wage Ordinance, D.R.M.C. §§ 58-13 through 58-16; and the Civil Wage Theft Ordinance, D.R.M.C. §§ 58-1 through 58-26 (together, the "Ordinances").

These "Rules of Procedure for Appeals and Hearings," or simply "Rules," are enacted pursuant to the Denver Auditor's Office's rulemaking authority prescribed in D.R.M.C. § 20-76 and Chapter 58. These Rules shall be adopted, published, and updated pursuant to D.R.M.C. § 2-91 through 2-100.

1.2 Purpose

These Rules are enacted to provide notice of the procedures and requirements applicable to appeals from determinations made pursuant to the Ordinances, as well as hearings over those appeals. These Rules are meant to set standards, ensure consistent practices, and provide clear guidance to parties and hearing officers.

1.3 Definitions

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

- **Civil wage theft** – Use of the term "civil wage theft" refers to any instance where a worker does not receive the wages to which they are legally entitled, as promised and required by law, including applicable local, state, and federal law, under contract, or based on any other enforceable standard.
- **Complainant** – Refers to the individual or entity making the complaint.
- **Damages** – Monetary damages for violations of the Ordinances, other than unpaid wages, that are owed to injured workers.
- **Day** – Means a calendar day unless expressly stated otherwise.
- **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 wage and hour laws for work performed in Denver, and that office's associated staff and operational functions.
- **Denver labor law** – Includes the Ordinances and any other ordinance, City Charter provision, or other legislative or ballot enactment, as well as relevant court decisions, these Rules, and any other promulgated, in-effect rules applicable to work in Denver.

- **Determination** – Any binding decision as to liability, damages, and penalties made by Denver Labor, whether or not labeled a determination, that concludes an investigation made pursuant to the Ordinances.
- **Employee** – Shall have the same meaning as defined by C.R.S Title 8, Articles 4 and the Colorado Overtime and Minimum Pay Standards Order, 7 CCR 1103-1.
- **Hearing officer** – A neutral, third-party individual retained by Denver to adjudicate appeals from determinations.
- **Investigatory file** – All documents, records, statements, and other evidence upon which Denver Labor relied in reaching its determination.
- **May** – Use of the term “may” in the Ordinances and these Rules indicates an optional choice.
- **Minimum wage** – The current Denver minimum wage as established by the Minimum Wage Ordinance.
- **Must, shall, and will** – Use of the terms “must,” “shall,” and “will” in the Ordinances and these Rules indicates a mandatory requirement.
- **Ordinances** – Refers to Denver’s Prevailing Wage, Minimum Wage, and Civil Wage Theft ordinances.
- **Parties** – Refers to any individual or entity with an interest in the outcome of an appeal or petition for review, and who has the legal right to participate in the hearing process.
- **Petitioner** – Refers to the individual or entity petitioning for review of Denver Labor’s determination.
- **Penalty** – Monetary sanctions for violations of the Ordinances that are owed to Denver.
- **Should** – Use of the term “should” in the Ordinances and these Rules indicates a preferred, albeit optional, action.

2. INTERPRETATION OF THE ORDINANCES AND THESE RULES

2.1 Authority and enforcement

The Auditor’s Office—and Denver Labor as part of the Auditor’s Office—is Denver’s only authority that enforces the Ordinances. Pursuant to those Ordinances, a party may appeal for a hearing to contest a determination reached by Denver Labor. Those appeals and any hearings and associated procedures held shall adhere to these Rules.

These rules shall apply as of their effective date, and shall apply to all appeals, hearings, and associated procedures occurring on or after their effective date. Provided, however, that by mutual agreement of all parties, the applicability of these Rules may be

modified as appropriate for a particular appeal, hearing, or associated procedure.

2.2 Other and alternate legal obligations

Neither the Ordinances nor these Rules shall reduce any party's contractual obligations, except as specifically described. In addition, no preexisting or future contractual obligation shall reduce wage requirements. A party may not limit an employer's mandatory wage and hour obligations by contract or any other instrument.

Neither the Ordinances 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; however, unless expressly adopted by those other rules, these Rules have no effect on any other city ordinance.

Enforcement of the Ordinances and these Rules does not create a relationship, contract, or other duty or liability between Denver, any worker, or any other party.

2.3 Jurisdiction and applicability not reduced by private contract

No provision in the Ordinances or in these Rules may be reduced by private contractual agreements, including but not limited to arbitration agreements, class or collective action waivers, venue selection clauses, and choice of law provisions.

2.4 Severability

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 Ordinances, such finding shall be limited as narrowly as possible, and all other parts of the Rules shall be considered valid and in effect.

2.5 Liberal construction in favor of speed, efficiency, and fairness

It is Denver Labor's obligation and intent to speedily enforce wage and hour laws within its jurisdiction with all appropriate due process. Accordingly, these Rules are to be construed with the goal of resolving appeals and holding hearings quickly and fairly, in a manner that is informal and accessible to all parties.

3. SCOPE

These Rules shall apply to all appeals from, and hearings held in relation to, appeals of determinations made by Denver Labor as provided for in the Ordinances.

4. APPEALS AND PETITIONS FOR REVIEW

4.1 Notification of determination: Civil Wage Theft Ordinance and Minimum Wage Ordinance

Upon making a determination regarding alleged violations of the Civil Wage Theft Ordinance and Minimum Wage Ordinance, Denver Labor will provide notice to all affected parties in accordance with D.R.M.C. § 58-4. Notice shall be deemed complete seven days after mailing.

4.2 Notification of determination: Prevailing Wage Ordinance

Upon making a determination regarding alleged violations of the Prevailing Wage Ordinance, Denver Labor will provide notice using any method reasonably calculated to inform a party of the determination.

4.3 Who may appeal

Any person affected by a determination may appeal that determination and petition the Auditor's Office for a hearing concerning that determination.

4.4 Timeline for appeals

Petitions for a hearing must be in writing and submitted to the Auditor's Office within 30 days of notice. Petitions and any attachments or exhibits should be submitted via e-mail to wageappeals@denvergov.org, and are deemed complete on the day they are sent. Mailed petitions are disfavored; however, parties may also send written petitions to the Auditor's Office via first-class and certified mail. Mailed petitions shall be timely if postmarked within 30 days of notice.

For the purposes of computing this 30-day timeline, the day upon which notice is actually given or deemed complete shall not be counted. Thereafter, every day shall be counted. If the thirtieth day falls on a Saturday, Sunday or City holiday, the deadline shall be extended until the next business day. For good cause, parties may also request reasonable extensions of this timeline by contacting wageappeals@denvergov.org.

Compliance with this timeline shall be a jurisdictional prerequisite for reviewing a determination and any further appeal.

4.5 Form of appeals

Written petitions must provide a short and plain statement of the basis for the appeal. At a minimum, petitioners must specifically identify alleged errors of fact or law and state why these errors warrant reversal. Failure to satisfy this requirement shall be grounds to dismiss the petition.

The Auditor's Office will create a form petition for appeal. This form will be made available to parties. This form may, but need not, be used to present the appeal to the Auditor's Office.

5. RECORD AND SCOPE OF REVIEW

5.1 Record on appeal

The record on appeal shall consist of: Denver Labor's investigatory file, subject to any limitations or exceptions described in these Rules; any newly discovered evidence admissible under Rule 5.3; and other testimony and records admitted as evidence by the hearing officer as described in these Rules.

5.2 Scope of review

Appeals shall be limited to determining whether Denver Labor erred in its determination as a matter of fact or law. Harmless errors shall not be grounds for reversal of Denver Labor's determination.

5.3 New evidence

No new evidence may be presented by an appealing party, except for newly discovered evidence that, with reasonable diligence, could not have been discovered before Denver Labor made its determination. However, any such evidence must be shared with Denver Labor at least 10 business days before the hearing so that the office may determine whether to amend its determination. If the evidence is not discovered until within 10 business days of the hearing, it must be shared with Denver Labor immediately. If a party fails to follow these requirements, it shall forfeit the right to present the new evidence.

5.4 Burden of proof

The petitioner has the burden of proof to establish by a preponderance of the evidence that Denver Labor erred in its determination.

6. HEARING OFFICERS

6.1 Assignment

Upon receiving a valid petition for review, Denver Labor will assign the case to an impartial hearing officer. This hearing officer will be a qualified individual, familiar with Denver labor law, who has been retained by Denver for the purpose of providing an unbiased and efficient hearing process.

6.2 Setting the hearing

The hearing officer will coordinate with Denver Labor and the petitioner to set a date for the hearing. Within five business days of assignment, the hearing officer shall contact the parties to determine available dates for the hearing. Parties must provide such dates within five business days of being contacted. Upon request, hearing officers may grant reasonable extensions of time for good cause.

For all hearings, written notice of the date, time, and place of the hearing shall be sent via first-class mail to parties' last known address, or if the petitioner is represented by counsel, via email to the Petitioner's attorney, at least twenty-one (21) days prior to the scheduled hearing. Written notice of the hearing shall be sent to the authorized

representative of each party, if any.

In their discretion, and for the purpose of avoiding delay, hearing officers may unilaterally set hearing schedules, and should normally do so when one party is non-cooperative or non-responsive.

6.3 Authority of hearing officers

The hearing officer has all authority necessary to administer an informal, efficient, and fair hearing, including but not limited to the power to:

- a. Administer the hearing;
- b. Determine the order in which evidence will be presented;
- c. Administer oaths and affirmations;
- d. Issue subpoenas in accordance with these Rules;
- e. Rule on procedural matters, objections, other evidentiary matters, and motions;
- f. Determine the admissibility of evidence and admit evidence into the record;
- g. Permit and set deadlines for post-hearing briefs or other issues, as appropriate;
- h. Regulate the hearing proceedings and the conduct of the parties;
- i. Question witnesses and request additional exhibits;
- j. Consolidate hearings;
- k. Allow or require joinder, as needed;
- l. Hold conferences or meetings for issue simplification or for any other purpose; and
- m. Issue a final decision on appeal.

6.4 Hearing officer independence

Hearing officers are independent. They are not subordinate to any government official or employee, and they shall operate free of interference.

6.5 Hearing officer disqualification or recusal

Any party may make a motion to disqualify or recuse the hearing officer based on a

good faith and reasonable belief that the hearing officer:

- a. Has a direct personal or financial stake in the matter, either personally or through a close family member;
- b. Is or was related to one of the parties;
- c. In the prior three years, either represented or was a business partner of a party or its representative; or
- d. Their impartiality is otherwise legitimately called into question such that there is good cause to believe they cannot render an unbiased decision.

Upon a motion to disqualify or recuse, a hearing officer may:

- a. Disqualify themselves, if they find that the reasons offered establish that their impartiality might reasonably be questioned;
- b. Reject the request, setting forth the reasons; or
- c. Reject the request and disclose any relevant relationship on the record and state a genuine conviction that the relationship will not affect their impartiality.

In deciding these issues, a hearing officer may be guided by Colorado Code of Judicial Conduct Rule 2.11.

7. LOCATION OF HEARINGS

At the discretion of the hearing officer, hearings may be in person or held via a video-conferencing platform such as Zoom or Microsoft Teams.

Hearing officers may permit parties or witnesses to participate in hearings by video conference or phone.

8. PRE-HEARING DISCOVERY

There is no pre-hearing right to discovery, subject to the following.

8.1 Denver Labor's disclosures

Denver Labor will share its investigatory file, redacted to protect applicable privilege and to comply with any worker requests for anonymity, as appropriate. This is provided, however, that Denver Labor will not share the identity of any complainant(s), unless failure to do so would materially prejudice a party.

8.2 Petitioner's disclosures

The petitioner must disclose the names and job titles of potential witnesses at least 10 business days before the hearing. If possible, the petitioner must share electronic copies of anticipated and potential exhibits before the hearing with all other parties and the hearing officer. This requirement does not apply to documents that will be used solely for impeachment or rebuttal.

8.3 New evidence

Any newly discovered evidence that the petitioner seeks to present at the hearing must adhere to the requirements of Rule 5.3.

8.4 Pre-hearing discovery discouraged

Pre-hearing discovery beyond what is described in Rules 8.1, 8.2, and 8.3 is heavily disfavored and will not normally be allowed absent exceptional circumstances. However, a hearing officer may, in their discretion, issue subpoenas to compel testimony or the production of documents.

9. PARTIES TO A HEARING

9.1 Mandatory parties

Petitioners and the Denver Auditor's Office shall be parties to a hearing. Parties have the right to be represented by an attorney of their choosing, present evidence, call witnesses, examine and cross-examine witnesses, make opening and closing statements, explain evidence offered in support of their position and rebut evidence offered in opposition, and otherwise present evidence and arguments.

9.2 Authorized Representatives

Upon request, aggrieved workers have the right to be represented by an advocate of their choosing and to fully participate as a party to the hearing. Such advocates shall be attorneys or law students practicing under the supervision of one or more attorneys. Attorneys or other representatives are not parties, but merely represent a party.

Hearing officers will normally grant requests to participate, except in rare circumstances where there is good cause to believe that doing so would significantly hinder the interests of justice and efficiency.

A party's representative on appeal may be different from their representative during Denver Labor's investigation. Denver Labor will make a form that can be used to authorize someone to represent a party to an appeal.

9.3. Order of case presentation and cross-examination

Because the petitioner bears the burden of proof, they shall present their case-in-chief first. Aggrieved workers who are not the petitioner but are participating as parties, if

any, shall present their evidence and witnesses following the close of the petitioner's case-in-chief. The Denver Auditor's Office shall present its defense next.

Aggrieved workers shall also have the first opportunity to conduct cross-examination, re-direct, or re-cross of a witness.

10. FAIRNESS

Hearings will be conducted in a manner that is fair and unbiased, both in appearance and in fact.

11. MOTIONS

11.1 Pre-hearing motions discouraged

Hearings under these Rules are intended to be informal and efficient. They should not be conducted in the style of formal litigation. Pre-hearing motions are heavily discouraged and will not normally be allowed. At the hearing officer's discretion, frivolous motions or motions that cause unnecessary delay, including those filed under Rule 11.3, may result in admonishment or sanctions.

11.2 Permission to file motions

A party seeking to file a motion must first seek permission from the hearing officer by submitting a written request, shared with all parties, that provides a brief and plain statement describing the proposed motion and the relief sought.

11.3 Motions for a final decision without a hearing

Any party may, without permission from the hearing officer, submit a pre-hearing motion seeking to have the officer render a final decision without a hearing and based only on review of the record, written briefs, and any stipulation that may be agreed upon by the parties.

12. EVIDENCE

12.1 General admissibility

All evidence, including hearsay, may be admitted if the hearing officer determines it is relevant, comes from a reasonably reliable source, and has probative value that outweighs its prejudicial effect. The Colorado Rules of Evidence do not strictly apply to hearings governed by these Rules. However, hearing officers will use them as guidance in rendering decisions over objections and admissibility, with the goal of admitting all reasonably credible evidence.

The officer may exclude evidence that is unreliable, irrelevant, immaterial, unduly repetitive, privileged, or otherwise inadmissible under these Rules.

12.2 Privileges

Rules of privilege shall apply to the extent recognized in the law of the state of Colorado.

12.3 Objections

Any objection to testimony or other evidence must state the grounds. Where one party is unrepresented, a hearing officer may reasonably exclude evidence or limit testimony on their own initiative and after providing the party offering the evidence or testimony the chance to cure the evidentiary problem. A hearing officer may reasonably exclude evidence or limit testimony on their own initiative.

12.4 Testimony

A. General rules

- i. Witnesses shall take an oath swearing to tell only the truth on penalty of perjury.
- ii. Where appropriate and feasible, and with at least five business days of notice, Denver Labor will provide interpreters for workers, whether they are parties or other witnesses, who are deaf or hard of hearing, or who do not speak English as their first language.
- iii. No person may be compelled to give testimony that they could not be compelled to give in a court of law. However, if a witness refuses to provide testimony on a given topic, the hearing officer may draw a reasonable negative inference to the extent such an inference is permissible under applicable federal, state, and local law.
- iv. The sequestration of non-party witnesses shall be permitted at the Hearing Officer's discretion.

B. Direct examination

Parties may call witnesses to provide testimony on direct examination. Testimony should be relevant and probative. Following direct testimony, hearing officers may allow reasonable breaks to allow a party to prepare its cross-examination.

C. Cross-examination

Witnesses are subject to cross-examination by other parties or their representatives, subject to the following rules:

- i. Cross-examination is limited to direct testimony subject matter; the foundations for opinions or statements; and to determine any bias, conflict of interest, or any other issue related to credibility.

- ii. The hearing officer may, upon their own initiative or in response to an objection, limit cross-examinations that are irrelevant, cumulative, unduly repetitive, cumbersome, or abusive.
- iii. Only one person representing each party may cross-examine a witness and raise objections during another party's examination of a witness.
- iv. A party may seek re-direct testimony, which shall be limited to issues raised on cross. Likewise, a party may seek re-cross, limited to issues raised on re-direct.

Hearing officers may accept sworn witness statements as evidence, according such statements appropriate evidentiary weight as is warranted by the context.

12.4 Official notice

A hearing officer may take notice of judicially cognizable facts. In addition, the officer may take notice of general, technical, or scientific facts that are within their specialized knowledge.

13. EXHIBITS

To help guarantee efficiency of the proceedings, parties, if possible, must submit electronic copies of exhibits to the hearing officer and other parties at least two business days before the start of the hearing. This Rule does not apply to documents intended only for impeachment or rebuttal.

Hearing officers may permit demonstrative exhibits and other items or props to aid a party in the presentation of its case.

14. OPENING AND CLOSING STATEMENTS

14.1 Generally

Parties may make opening and closing statements. Factual claims and arguments from party representatives are not themselves evidence.

14.2 Post-hearing briefs

In lieu of a closing statement, a party may submit to the hearing officer a written post-hearing brief within 21 calendar days of the close of the hearing. This brief must be shared with all other parties. At their discretion, a hearing officer may grant reasonable extensions of time to file post-hearing briefs.

14.3 Amicus curiae

In appropriate circumstances, hearing officers may grant leave for amicus curiae to file post-hearing briefs to address novel, unique, or emerging issues of law and/or facts.

Where such leave is granted, amicus curiae shall have access to the hearing record.

15. EXPECTED BEHAVIOR

15.1 Disruptive behavior prohibited

All persons appearing in a hearing — including the hearing officer, parties, representatives, and witnesses — must conduct themselves with dignity, civility, courtesy, and professionalism. If any person fails to do so, the hearing officer may take appropriate action, including but not limited to:

- a. Calling security officers to maintain order or take other appropriate action;
- b. Ordering that a person be removed from a hearing, who has then forfeited any right to participate in it;
- c. Continue the hearing until it may be held under circumstances that will not be disruptive; or
- d. Otherwise take action to limit disruptive behavior, including by ending a person's examination of a witness.

Crude, abusive, or profane statements shall violate this rule, unless such statements are appropriate in context for the presentation of a party's case.

15.2 Hearing officer orders shall be obeyed

Parties shall obey the orders of the hearing officer, including those that are ad hoc or not in writing.

15.3 Ex parte communications

Hearing officers shall not initiate, permit, or consider ex parte communications about a pending or impending matter except in circumstances described in the American Bar Association model rule of judicial conduct 2.9.

16. SOURCES OF LAW

In rendering decisions, hearing officers will adhere to binding legal authority. Rules formally promulgated by Denver Labor shall be binding, unless they have been amended or abrogated by a court or other order.

Hearing officers may rely on persuasive authority, including decisions by other officers.

17. CONTINUING OR REOPENING THE HEARING OR THE RECORD

17.1 Continuing a hearing

A hearing may be continued at the discretion of the hearing officer, for good cause, or by agreement of the parties. This may occur before or during a hearing. Written notice of the new date, time, and location of a continued hearing must be provided to all parties. However, if the hearing officer orders a continuance during a hearing and announces the new date, time, and location, no further notice is required.

17.2 Reopening the record

Following the close of the hearing or record, but before issuing a final decision, the hearing officer may reopen the hearing or record for good cause. If a hearing or record is reopened, parties shall have at least seven days' notice before its closing.

18. REMAND BEFORE FINAL DECISION**18.1 Ordering remand**

Before issuing a final decision, and for good cause shown, the hearing officer may remand a case to Denver Labor for further investigation or analysis if the officer determines additional necessary information or analysis has not been provided. An order to remand shall give the reason(s) for remand and describe what information or analysis must be provided and by what deadline.

18.2 Jurisdiction retained

In the event of a remand, the hearing officer shall retain jurisdiction over the case.

18.3 Responding to an order for remand

Upon receiving an order for remand, Denver Labor may withdraw, amend, or leave unchanged its determination. Denver Labor may provide a written remand response to the officer and any parties explaining the basis for its decision. A party may file a written rebuttal to this remand response. The remand response and rebuttal, if any, shall not be more than 10 pages, absent good cause and approval from the hearing officer.

After receiving a remand response, the hearing officer may reopen the hearing or issue a final decision without reopening the hearing.

19. TIMING AND DISTRIBUTION OF FINAL DECISIONS

The hearing officer will render a final decision within 30 days of receipt of the parties' post-hearing briefs or the close of the hearing or record, whichever is later. The final decision shall be distributed to each party or party's representative, and to others as required and appropriate. Delivery may be effected by any means reasonably calculated to provide notice of the decision, including by email.

A copy of the final decision and the certificate of service shall be made part of the case record.

20. TERMINATION OF JURISDICTION

The hearing officer's jurisdiction over a case is terminated on the day they issue a final decision.

21. ERRORS AND CLARIFICATIONS

Clerical mistakes in final decisions and errors arising from oversight or omission may be corrected by the hearing officer, either on their own initiative or in response to a request for clarification by a party. A request for clarification does not toll or alter the running of the time period provided by law for appealing the hearing officer's decision.

22. HEARING RECORDS

Hearing records, including the recordings of testimony, exhibits, and the investigatory file, are subject to the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.*

All written decisions issues by the hearing officer will be published electronically, with identifying information about affected workers redacted, unless good cause exists not to publish the written decision. Hearing records will be made available on the Auditor's Office website through a decisional law database.

Adopted and Promulgated

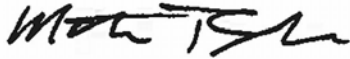


Denver Auditor

Date: 6/22/23

Approved as to form:

Kerry Tipper
City Attorney for the City and County of Denver



By: Mitch Behr, Assistant City Attorney

Date: 6/15/23

Effective Date: 6/22/23