

Key Provisions of “Colorado Overtime and Minimum Pay Standards Order (COMPS Order) # 36” (US)

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COMPS Order 36 (“Order 36”) is scheduled to go into effect March 16, 2020 and makes major changes to wage regulations affecting Colorado employers. Order 36 applies both to hourly and salaried employees and requires significant compliance adjustments for employers.

The key changes of Order 36 are summarized below. Colorado employers should carefully review [Order 36](#) to verify coverage and closely evaluate whether there is any the need to modify their practices along with their policies and handbooks, postings and record keeping requirements. Ideally, this assessment should be done in a privileged setting with input from counsel.

Key Changes:

- **Expanded Coverage:** Now covers almost all Colorado private employers (per Rule 2.1), unless they fit one of the few explicit exemptions (for exemptions, please review Rules 2.2-2.4).
 - Previously, only four industries were covered by Colorado’s wage laws (retail and service, commercial support service, food and beverage, and health and medical).
 - Public employers continue to be excluded.
- **Rest Periods:** Adding to the existing requirement of 10-minute rest breaks every four hours, employers now must also pay extra wages for any missed rest periods. This extra pay is on top of the already-paid rest time. There are a few narrow exceptions (please review Rule 5.2.1). Employers should track rest periods to demonstrate compliance and avoid potential challenges; this should include a system for employees to report when a rest period was not authorized and permitted.

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- **Time-Worked**: Expands concept of time worked under federal law (please review Rule 1.9).
 - Compensation is required for certain pre- and post-shift tasks that take **more than one minute**, including: putting on or removing work clothes or gear; receiving or sharing work-related information; security or safety screenings; certain travel-related time; clocking or checking in or out; and time spent waiting for any of the above tasks.
 - Employers should make sure their processes and systems properly account for any of the above that exceed a minute; and that their records demonstrate any required compliance.
 - **Minimum Salary for Exempt Salaried Employees**: For the first time, Colorado is imposing a minimum salary requirement for salaried workers to qualify as exempt under state law.
 - **Initially**, effective July 1, 2020, unless subject to an exception, the minimum required salary is \$35,568 annually. Same as the current salary required under the federal [Fair Labor Standards Act](#) (“FLSA”) (increased this year).
 - **Annual Increases**: Unlike the FLSA, the minimum Colorado salary will increase each year — almost \$20,000 in four years — to \$55,000 by January 1, 2024. From January 1, 2025, forward, minimum salary will be adjusted consistent with the Consumer Price Index (like the annual Colorado minimum wage change).
 - **Certain Employers Have Longer Transition Time**. Nonprofits with an annual gross revenue under \$50 million and for-profit employers with annual gross revenue under \$1 million are not subject to the salary threshold requirements until Jan. 1, 2021. But, if they are already covered by the FLSA, they are already required to pay salary of \$35,568 for the federal exemption.
 - **Miscellaneous Changes**: Order 36 also adjusts language regarding: meal, lodging and tip credits; uniform deposit; regular rate calculations for non-hourly pay; requirements for a reduced wage to minors and disabled individuals; and record-keeping requirements.
 - **New Exemptions**: There are several new exemptions, including:
 - For highly technical computer-related occupations (much like the FLSA, but imposes a 50% test for the amount of time spent on the enumerated duties, as compared to the primary duty test under the FLSA).
 - For seasonal camp/outdoor education program field staff; H2-A visa range workers; certain owners or proprietors; interstate transportation workers and taxi drivers; certain in-residence workers; bona fide volunteers and work-study students; elected officials and their staff; and certain agriculture-related workers.
 - **New Posting, Acknowledgement and Translation Requirements**: Order 36 adds enhanced posting, acknowledgement and translation requirements, including requiring

acknowledgement of receiving a copy of Order 36 along with any handbook/policy acknowledgments.

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