

Colorado's New Pay Standards Reflect the State's Rising Cost of Living

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The Colorado Department of Labor and Employment (CDLE) recently released the [2023 Publication and Yearly Calculation of Adjusted Labor Compensation Order](#) (2023 PAY CALC Order). The 2023 PAY CALC Order has increased the compensation thresholds applicable to a variety of Colorado wage-and-hour and workplace requirements.

Colorado employers are required to meet certain pay levels, such as the minimum wage threshold. To assist employers in determining pay levels, the CDLE provides a yearly PAY CALC order that lists the various pay levels required, depending on the circumstances. For example, the 2023 PAY CALC Order provides Colorado's general minimum wage rate, salary threshold for certain exempt employees, and minimum wage rate for agricultural workers.

Accordingly, employers that rely on certain pay thresholds may want to review their current operations and confirm that they meet the recently updated pay levels found within the 2023 PAY CALC Order. Three common pay levels are addressed below to demonstrate the recent changes and the impact those changes will have.

Minimum Wage

Colorado's 2023 minimum wage rate is \$13.65 per hour. This is a \$1.09 increase in the hourly minimum wage rate from 2022. For tipped employees, the minimum wage rate is \$10.63 per hour to the extent that adding tips raises total pay to the full minimum wage. This is also a \$1.09 increase from 2022.

For employers that operate in Denver, the new minimum wage rate is \$17.29 per hour. This is a \$1.42 increase from 2022.

Employers with minimum wage-earning employees may want to confirm they are paying compensation at the newly increased state and local minimum wage rates.

Exempt Salary Threshold

In Colorado, executive/supervisor, administrative, and professional (EAP) employees may be exempt from overtime and meal and rest break requirements if they meet certain job duty and salary threshold requirements. In 2023, such employees must make at least \$961.54 per week (\$50,000 yearly) to meet the salary requirement for EAP-exempt status. This is a \$96.16-per-week or a \$5,000-per-year increase from 2022.

Because these EAP exemptions are common, employers may want to review pay practices related to currently exempt EAP employees and confirm they still meet the salary requirement for 2023.

Highly Compensated Workers

The minimum salary threshold for highly compensated workers increased by \$11,250 to \$112,500 in 2023. The impact of this salary threshold reaches far beyond just overtime and meal and rest break requirements.

In Colorado, following the [enactment of House Bill 22-1317](#), a worker may be bound by a noncompetition provision for the protection of trade secrets only if the worker earns an amount equal to or greater than a highly compensated worker at the time the restrictive covenant is entered into *and at the time it is enforced*. Similarly, a worker must make at least 60 percent of the highly compensated worker salary threshold (\$67,500 in 2023) to be bound by a valid nonsolicitation of customers provision.

While the [salary threshold](#) for new restrictive covenants is fairly straightforward, employers may want to remember that the pay threshold applies not only at the time the agreement is entered into but at the time it is enforced.

Accordingly, for those workers currently bound by noncompetition provisions that were created on or after August 10, 2022, their current rate of pay must equal \$112,500 in order to enforce the noncompetition provision. For workers currently bound by nonsolicitation-of-customer provisions created on or after August 10, 2022, their current rate of pay must equal at least \$67,500 in order to enforce the nonsolicitation provisions.

Because restrictive covenants based on trade secrets are common, employers may want to review all current and relevant agreements with restrictive covenants and confirm that the restricted workers' compensation will continue to meet the salary requirement under Colorado law.

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