COLORADO
Department of
Labor and Employment

Division of Labor Standards and Statistics
633 17th Street, Suite 600
Denver, CO 80202-2107 | (303) 318-8441 | www.coloradolaborlaw.gov

NOTICE OF ADOPTION AS TEMPORARY OR EMERGENCY RULES

Colorado Health Emergency Leave with Pay ("Colorado HELP") Rules, 7 CCR 1103-10 (Mar. 11, 2020, as amended Mar. 26, Apr. 3, Apr. 27, and July 14, 2020)

I. Adopted Temporary Rules. As authorized by C.R.S. Title 8, Articles 1 and 6, and the Colorado Administrative Procedure Act, C.R.S. § 24-4-103, notice is hereby given of the adoption on a temporary basis of the following rules, the text of which accompanies this notice:

> Colorado Health Emergency Leave with Pay ("Colorado HELP") Rules,
> 7 CCR 1103-10 (Mar. 11, 2020, as amended Mar. 26, Apr. 3, Apr. 27, and July 14, 2020)

II. Basis, Purpose, and Specific Statutory Authority for Adoption of Temporary Rules. The Colorado HELP Rules were adopted as temporary or emergency rules on March 11, 2020. The Rules then were adopted and amended on March 26, 2020, to modify Rule 3.1 to add coverage for:

(A) an additional industry category, "retail establishments that sell groceries"; and

(B) not just those "being tested" for COVID-19 (as in the original rules), but also those "under instructions from a health care provider to quarantine or isolate due to a risk of having COVID-19."

The Rules were then adopted and amended on April 3, 2020, to modify Rule 3.1 further to add coverage for:

(C) an additional industry category, "food and beverage manufacturing."

The Rules were then adopted and amended on April 27, 2020:

(D) to modify Rule 3.1 further to

(1) add coverage in Rule 3.1 for all "retail establishments, real estate sales and leasing, offices and office work, elective medical, dental, and health services, personal care services (defined as hair, beauty, spas, massage, tattoos, pet care, or substantially similar services),"

(2) expand the required paid leave from four days to "two weeks (up to a maximum of 80 hours) of paid sick leave at two-thirds of the employee's regular rate of pay," and

(3) expand covered conditions (a) from "flu-like symptoms" to "flu-like or respiratory illness symptoms," and (b) to cover quarantine or isolation instructions from not only "a health care provider" but also an "authorized government official," and

(4) provide that a negative test result terminates the paid leave after the individual is asymptomatic for a sufficient period; and

(E) to add various non-substantive clarifications in Rules 3.2, 3.3, 3.4, 3.5, and 4.1.

The Rules now are being adopted and amended on July 14, 2020:

(F) To amend Rule 6.1 to terminate the requirements of these rules after July 14, 2020, due to the enactment into statute of similar requirements in SB 20-205, the first full effective date of which is July 15, 2020. Any claims of violations of these rules during their effective dates of March 11 through July 14, 2020, may still be filed and/or investigated thereafter, because under these rules and under SB 20-205 alike, a failure to provide paid leave qualifies as a failure to pay wages due. Accordingly, any claims of violations of these rules during their effective dates of March 11 through July 14, 2020, may still be filed and/or investigated by the Division thereafter within the deadlines and limitations periods provided by Title 8, Articles 1, 4, and 6, C.R.S., and all rules promulgated thereunder by this Division.

A Statement of Basis, Purpose, Specific Statutory Authority, and Findings accompanies this notice and is incorporated by reference.

III. Findings, Justifications, and Reasons for Adoption of Temporary Rules. The Findings, Justifications, and Reasons for Adoption as Temporary Rules, within the incorporated Statement of Basis, Purpose, Specific Statutory Authority, and Findings, are incorporated by reference.

IV. Effective Date of Adopted Temporary Rules. Pursuant to C.R.S. § 24-4-103(6), these rules were adopted and effective as temporary rules on March 11, 2020, with prior amendments adopted and effective on March 26, April 3, April 27, and the present amendments adopted and effective July 14, 2020, to terminate the requirements of these rules after July 14, 2020.

Scott Moss
Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

July 14, 2020
Date

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STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS FOR ADOPTION AS TEMPORARY OR EMERGENCY RULES

Colorado Health Emergency Leave with Pay ("Colorado HELP") Rules, 7 CCR 1103-10 (Mar. 11, 2020, as amended Mar. 26, Apr. 3, Apr. 27, and July 14, 2020)

(1) BASIS AND PURPOSE. These rules implement statutory authority to protect the health and safety of Colorado employees, Colorado businesses, and Colorado residents and visitors who need or are affected by those employees and employers. The Colorado HELP Rules were adopted as temporary or emergency rules on March 11, 2020. The Rules then were amended on March 26, 2020, to modify Rule 3.1 to add coverage for:

(A) an additional industry category, "retail establishments that sell groceries"; and

(B) not just those "being tested" for COVID-19 (as in the original rules), but also those "under instructions from a health care provider to quarantine or isolate due to a risk of having COVID-19."

The Rules were then amended on April 3, 2020, to modify Rule 3.1 further to add coverage for:

(C) an additional industry category, "food and beverage manufacturing."

The Rules were then amended on April 27, 2020:

(D) to modify Rule 3.1 further to

(1) add coverage in Rule 3.1 for all "retail establishments, real estate sales and leasing, offices and office work, elective medical, dental, and health services, personal care services (defined as hair, beauty, spas, massage, tattoos, pet care, or substantially similar services),"

(2) expand the required paid leave from four days to "two weeks (up to a maximum of 80 hours) of paid sick leave at two-thirds of the employee's regular rate of pay,"

(3) expand covered conditions (a) from "flu-like symptoms" to "flu-like or respiratory illness symptoms," and (b) to cover quarantine or isolation instructions from not only "a health care provider" but also an "authorized government official," and

(4) provide that a negative test result terminates the paid leave after the individual is asymptomatic for a sufficient period; and

(E) to add various non-substantive clarifications in Rules 3.2, 3.3, 3.4, 3.5, and 4.1.

The Rules now are being adopted and amended on July 14, 2020:

(F) to amend Rule 6.1 to terminate the requirements of these rules after July 14, 2020, due to the enactment into statute of similar requirements in SB 20-205, the first full effective date of which is July 15, 2020. Any claims of violations of these rules during their effective dates of March 11 through July 14, 2020, may still be filed and/or investigated thereafter, because under these rules and under SB 20-205 alike, a failure to provide paid leave qualifies as a failure to pay wages due. Accordingly, any claims of violations of these rules during their effective dates of March 11 through July 14, 2020, may still be filed and/or investigated by the Division thereafter within the deadlines and limitations periods provided by Title 8, Articles 1, 4, and 6, C.R.S., and all rules promulgated thereunder by this Division.

(2) SPECIFIC STATUTORY AUTHORITY. The Director of the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment promulgates regulations, and enforces laws and regulations, under authority granted by (among other sources of law) Articles 1 and 6 of Title 8, and the Administrative Procedure Act, including but not limited to the following:

- C.R.S. § 8-1-111 ("The director is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state as may be necessary adequately to ascertain and determine ... *the obedience by the employer to all laws and all lawful orders* requiring … *places of employment to be safe*, and requiring the *protection of the life, health, and safety of every employee* ... , and to *enforce all provisions* of law relating thereto.") (emphases added);

- C.R.S. § 8-6-101(1) ("The welfare of the state of Colorado demands that workers be protected from *conditions of labor that have a pernicious effect on their health* and morals, and it is therefore declared ... that inadequate wages and *unsanitary conditions of labor* exert such pernicious effect.") (emphases added);

- C.R.S. § 8-6-102 ("Whenever this article or any part thereof is interpreted by any court, it *shall be liberally construed* by such court.") (emphases added);

- C.R.S. § 8-6-104 ("It is unlawful to employ workers in any occupation within this state under *conditions of labor detrimental to their health* or morals.") (emphases added);

- C.R.S. § 8-6-106 *(*"The director shall determine the minimum wages sufficient for living wages ... [and] *standards of conditions of labor and hours of employment not detrimental to health* or morals for workers....") (emphases added);

- C.R.S. § 8-6-109(1) ("If after investigation the director is of the opinion that the *conditions of employment ... are detrimental to the health* or morals or that a substantial number of workers in any occupation are receiving wages, whether by time rate or piece rate, inadequate to supply the necessary costs of living and *to maintain the workers in health*, the director shall proceed to establish minimum wage rates ....") (emphases added);

- C.R.S. § 24-4-103(6) (Administrative Procedure Act temporary or emergency rules); and

- the State of Disaster Emergency declared on March 10, 2020, by Colorado Governor Jared Polis, as the number of identified coronavirus COVID-19 cases in Colorado and in the United States increased -- which declaration (A) announced numerous measures to protect public health and safety, including directing that immediate rulemaking be initiated to provide employees in certain industries with paid sick leave for possible coronavirus cases and testing, and (B) supported such action pursuant to executive authority statutes, including but not limited to --

  - C.R.S. § 24-33.5-704(2) ("Under this part 7, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law."),

  - C.R.S. § 24-33.5-704.5(1)(e) ("In the event of an emergency epidemic that has been declared a disaster emergency, the [expert emergency epidemic response] committee shall convene as rapidly and as often as necessary to advise the governor, who shall act by executive order, regarding reasonable and appropriate measures to reduce or prevent spread of the disease, agent, or toxin and to protect the public health."), and

  - C.R.S. § 24-33.5-711.5(2) ("The conduct and management of the affairs and property of each hospital, physician, health insurer or managed health care organization, health care provider, public health worker, or emergency medical service provider shall be such that they will reasonably assist and not unreasonably detract from the ability of the state and the public to successfully control emergency epidemics that are declared a disaster emergency. Such persons and entities that in good faith comply completely with board of health rules regarding the emergency epidemic and with executive orders regarding the disaster emergency shall be immune from civil or criminal liability for any action taken to comply with the executive order or rule.").

(3) FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION AS TEMPORARY RULES. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows:

(A) Demonstrated need exists for the rules. The specific findings in Part (4) below are hereby incorporated into this finding as well.

(B) Proper statutory authority exists for the rules. The specific statutory authority in Part (2) above is hereby incorporated into this finding as well.

(C) To the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply.

(D) The rules do not conflict with other provisions of law.

(E) Any duplicating or overlapping of the regulation is explained by the agency.

(4) SPECIFIC FINDINGS FOR ADOPTION AS TEMPORARY RULES. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows.

Coronavirus COVID-19 can affect any Coloradan, but various populations are at heightened risk of serious illness or death, including:

> "
> - Older adults
> - People who have serious chronic medical conditions like:
>   - Heart disease
>   - Diabetes
>   - Lung disease"

U.S. Centers for Disease Control and Prevention, *People at Risk for Serious Illness from COVID-19* (viewed March 9, 2020).

While some employers provide paid sick time that lets employees avoid coming to work while ill, others do not -- and many workers cannot afford to take time off work due to illness if they do not have paid sick time. The issue of employees working while ill is not new, but the coronavirus COVID-19 substantially increases the threat to the health and safety of Colorado employees, Colorado businesses, and Colorado residents and visitors who need or are affected by those employees and employers. *See* Elise Gould, *Lack of paid sick days and large numbers of uninsured increase risks of spreading the coronavirus* (Economic Policy Institute, Feb. 28, 2020). Worsening the problem, paid sick time is less common for (a) workers with low pay who cannot afford unpaid time off work, and (b) key sectors dealing with large numbers of clients and customers. *See* Elise Gould, Amid COVID-19 outbreak, the workers who need paid sick days the most have the least (Economic Policy Institute, March 9, 2020).

The problem of employees coming to work while ill poses a serious threat to the health and safety of their co-workers, others at the business, and the public generally -- because numerous of the top recommendations of the U.S. Centers for Disease Control and Prevention focus on avoiding contact with those potentially ill with COVID-19:

> "Avoid close contact with people who are sick ...
>
> [A]void touching high-touch surfaces in public places – elevator buttons, door handles, handrails, handshaking with people, etc. ...
>
> What to Do if You Get Sick
>
> - Stay home and call your doctor"

U.S. Centers for Disease Control and Prevention, *People at Risk for Serious Illness from COVID-19* (viewed March 9, 2020).

Based on these and related threats to public health and safety due to coronavirus COVID-19, on March 10, 2020, Colorado Governor Jared Polis declared a State of Disaster Emergency as the number of identified coronavirus COVID-19 cases in Colorado and in the United States increased, and announced numerous emergency measures to protect public health and safety, including paid sick leave for employees in certain industries, focusing on those who interact with (A) vulnerable populations (*e.g.*, in home health care, nursing home, and community living facilities), (B) visitors from outside the state of Colorado (*e.g.*, in the leisure and hospitality industry), and (C) large numbers of Coloradans in settings that involve many individuals having physical contact with each other and/or with the same

items (*e.g.*, in food service, child care, and education). The State of Disaster Emergency remains in effect because it has since been extended by Governor Polis.

Two changes were implemented on March 26, 2020, to the rules originally adopted on March 11, 2020. First, one additional industry category was added: "retail establishments that sell groceries." This category was added for several reasons: it parallels restaurants in "food service" in that workers physically contact a large quantity of items that the public purchases (*e.g.*, in grocery stocking, checkout, etc.); grocery workers often cannot avoid being in close proximity with purchasers (*e.g.*, such as in checkout aisles, or in passing through narrow aisles with the products they sell); and even more so than in some other covered categories (*e.g.*, restaurants in the "food service" category), members of vulnerable populations must patronize grocery establishments to purchase food and other necessities.

The second change was expanding the conditions that qualify for coverage as follows -- the addition is in italics: "an employee (A) with flu-like symptoms and (B) who is being tested for COVID-19 *or who is under instructions from a health care provider to quarantine or isolate due to a risk of having COVID-19*." The original requirement of "being tested" proved narrower than originally intended, due to limited testing capacity nationwide. Consequently, the Division learned of many situations in which an employee had clear COVID-19 symptoms, and a doctor's order to quarantine or isolate because of the risk that the employee had COVID-19, but the doctor prescribed no test due to limited testing capacity. Though testing capacity has expanded, so has the number of COVID-19 cases, yielding continued concern that paid leave under the Colorado HELP Rules was not reaching, and would not reach, many whose risk of having COVID-19 was high enough for a health care provider to order quarantine or isolation. With this change, when a health care provider's judgment is that a symptomatic employee should not go to work, that employee qualifies for paid leave under the Colorado HELP Rules.

An additional change was implemented on April 3, 2020: Adding "food and beverage manufacturing" as an industry category. Such workers have physical contact with food products like restaurant and grocery workers do, just at an earlier stage in the process of supplying food and beverages to a broad consumer base. Not all, but many, of these employees work in unavoidable proximity with other workers, due to the nature of such food and beverage manufacturing. Not all, but many, such products reach consumers' hands within days. Even when such products do not reach consumers promptly, they do promptly enter a supply chain in which the products are touched by a range of others -- transportation workers, warehouse workers, and employees who stock the goods for retailers.

Additional changes are being implemented on April 27, 2020, as follows. First, coverage in Rule 3.1 is being expanded to additional industries: all "retail establishments, real estate sales and leasing, offices and office work, elective medical, dental, and health services, personal care services (defined as hair, beauty, spas, massage, tattoos, pet care, or substantially similar services)." These are industries in which operations, including with in-person employees, are expanding as of April 27, 2020, as the prior stay-at-home order ends. Accordingly, there is a need to assure that potentially coronavirus-carrying employees in such jobs feel secure in staying away from work.

Second, the required paid leave in Rule 3.1 is being expanded from four days to "two weeks (up to a maximum of 80 hours) of paid sick leave at two-thirds of the employee's regular rate of pay." The original purpose of the four-day limit, set in the first half of March, was to cover the days between when an employee is tested to when they receive the test results. However, public health advice has confirmed an imperative need for many employees to stay quarantined/isolated for a full 14 days. Further, the paid leave required by federal law includes two weeks of either full pay or two-thirds pay (depending on the

qualifying circumstances), and Colorado sees value in matching at least the minimum amount required by the parallel federal paid leave law.

Third, the covered conditions in Rule 3.1 are being expanded in two ways. One change in covered conditions is as to qualifying *symptoms* -- which will now include not just "flu-like symptoms," but also "flu-like *or respiratory illness* symptoms" (emphasis added. The reason for this expansion of qualifying symptoms is that, by this point in late April, flu season has declined while the novel coronavirus has spread, so the advice of the Colorado State Epidemiologist is to treat respiratory illness symptoms as posing sufficient risk of indicating COVID-19. The other change in covered conditions is as to a qualifying *quarantine/isolation* -- which will now include instructions from not just a "a health care provider," but also an "authorized government official." The reason for this expansion of a qualifying quarantine/isolation is where an authorized government official orders a quarantine/isolation, that should not be treated as a lesser instruction than that of an individual health care provider.

Fourth, the conditions for a negative test result to terminate the paid leave are now stated with specificity in Rule 3.1. A negative test result will terminate the paid leave after the individual is asymptomatic for a sufficient period that conforms to recommendations by the U.S. Centers for Disease Control and the Colorado Department of Public Health and Environment: "once the employee has been fever-free for 72 hours, with other symptoms resolving as well -- but not earlier than after seven calendar days off from work (or ten calendar days for health care workers covered by these rules), and in no event with more than fourteen paid sick days."

Fifth, modifications that are non-substantive, but that aim to provide meaningfully greater clarity, are being adopted in Rule 3.2, 3.3, 3.4, 3.5, and 4.1. Rule 3.2 clarifies that an employer "may choose to provide more paid sick leave than these rules require," and also is edited to conform to the changes to Rule 3.1. Rule 3.3 is being changed non-substantively simply to improve clarity. Rule 3.4 is being expanded to provide more clarity as to what documentation employers can require from employees, and what notice of their absence employees can be required to provide employers. The reason for the Rule 3.4 amendments is that since the original adoption of these Rules, inquiries to the Division have shown an imperative need to provide more clarity on these matters, to allow employers to require notice and documentation of the employee's need for leave, while not subverting the key goal of these rules: encouraging leave-taking by employees who otherwise could spread contagion of an unprecedentedly deadly virus, while not overwhelming health care providers with documentation requirements during a pandemic requiring their full attention. Rule 3.5 clarifies that with federal law newly (since the prior version of these Rules) requiring paid leave for coronavirus-related reasons, the higher requirement of any federal, state, or local law applies, because some employees may have greater leave rights under federal law, while others may have greater rights under state law. Finally, Rule 4.1 already had adopted the anti-reprisal/interference provisions of the Colorado Overtime and Minimum Pay Standards Order ("COMPS Order"), but is now being modified simply to put text of that anti-reprisal/interference provision into Rule 4.1, rather than require a readers to reference the COMPS Order to see that provision.

Under the statutory authority detailed in Part (2) above, Colorado has made it "unlawful to employ workers in any occupation within this state under conditions of labor detrimental to their health or morals" (C.R.S. § 8-6-104), and has declared that "[t]he welfare of the state of Colorado demands that workers be protected from conditions of labor that have a pernicious effect on their health and morals, and it is therefore declared ... that inadequate wages and unsanitary conditions of labor exert such pernicious effect" (C.R.S. § 8-6-101(1)). In accord with those legislative mandates, the Division has a

range of rulemaking and enforcement authority to protect against workplace health and safety threats, including but not limited to the following:

- C.R.S. § 8-1-111 ("The director is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state as may be necessary adequately to ascertain and determine ... *the obedience by the employer to all laws and all lawful orders* requiring … *places of employment to be safe*, and requiring the *protection of the life, health, and safety of every employee* ... , and to *enforce all provisions* of law relating thereto.") (emphases added).

- C.R.S. § 8-6-106 *(*"The director shall determine the minimum wages sufficient for living wages ... [and] *standards of conditions of labor and hours of employment not detrimental to health* or morals for workers....") (emphases added).

- C.R.S § 8-6-109(1) ("If after investigation the director is of the opinion that the *conditions of employment ... are detrimental to the health* or morals or that a substantial number of workers in any occupation are receiving wages, whether by time rate or piece rate, inadequate to supply the necessary costs of living and *to maintain the workers in health*, the director shall proceed to establish minimum wage rates ....") (emphases added).

Confirming the breadth of these legislative bans, declarations, and grants of administrative authority is the following additional provision: "Whenever this article or any part thereof is interpreted by any court, it shall be liberally construed by such court." (C.R.S. § 8-6-102.) Such a rule of interpretation requires "broader interpretation" to the extent that differing interpretations of the statutory breadth are plausible. *See, e.g., Dillabaugh v. Ellerton*, 259 P.3d 550, 554 (Colo. App. 2011) ("if ambiguity exists, a broader interpretation comports with the requirement … [of] liberal interpretation").

A requirement of paid sick days parallels the longstanding, unchallenged requirement of 10-minute paid rest breaks and 30-minute unpaid meal breaks that the Division has included for over two decades in Colorado's annually issued wage orders. *See, e.g.,* Colorado Minimum Wage Order #24 (2008) (requiring 10-minute paid rest breaks and 30-minute unpaid meal breaks); Colorado Overtime and Minimum Pay Standards Order #36 (2020) (requiring same). Additionally, while the "minimum wage" is generally and most commonly understood to refer to an hourly wage, "wages" are defined much more broadly by Colorado statute: "All amounts for labor or service ... , whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating" – which includes a wide range of pay, from vacation pay to bonuses to commissions. (C.R.S. 8-4-101(14).) A requirement of paid sick days thus may be viewed as a minimum wage above the $12.00 floor set by the Colorado Constitution. Quoting the statute granting minimum wage-setting authority: The minimum "wage" that has been found necessary "to maintain the workers in health" is one that includes not just a minimum hourly pay rate, but also a minimum level of sick pay, without which wages "are detrimental to the health" of workers. (C.R.S. § 8-6-109(1).)

Further supporting the Division's authority to issue these rules is the State of Disaster Emergency declared on March 10, 2020 (and since extended), by Colorado Governor Jared Polis, as the number of identified coronavirus COVID-19 cases in Colorado and in the United States increased. The

declaration supported executive action pursuant to emergency executive authority statutes, including but not limited to:

- C.R.S. § 24-33.5-704(2) ("Under this part 7, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.");

- C.R.S. § 24-33.5-704.5(1)(e) ("In the event of an emergency epidemic that has been declared a disaster emergency, the [expert emergency epidemic response] committee shall convene as rapidly and as often as necessary to advise the governor, who shall act by executive order, regarding reasonable and appropriate measures to reduce or prevent spread of the disease, agent, or toxin and to protect the public health."); and

- C.R.S. § 24-33.5-711.5(2) ("The conduct and management of the affairs and property of each hospital, physician, health insurer or managed healthcare organization, health care provider, public health worker, or emergency medical service provider shall be such that they will reasonably assist and not unreasonably detract from the ability of the state and the public to successfully control emergency epidemics that are declared a disaster emergency. Such persons and entities that in good faith comply completely with board of health rules regarding the emergency epidemic and with executive orders regarding the disaster emergency shall be immune from civil or criminal liability for any action taken to comply with the executive order or rule.").

These rules comport with the above-detailed emergency authority, because the Governor expressly directed that immediate rulemaking be initiated to provide employees in certain industries with paid sick leave for possible coronavirus cases and testing -- which has culminated in these rules.

Given the imperative risk to health and safety, this grant of paid sick time cannot wait the several months that the normal rulemaking schedule takes. Consequently, a "temporary or emergency" rule is appropriate under the Administrative Procedure Act for up to 120 days:

> A temporary or emergency rule may be adopted without compliance with the [ordinary rulemaking] procedures … and with less than the twenty days' notice prescribed … , or where circumstances imperatively require, without notice, only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such findings and a statement of the reasons for the action shall be published with the rule. … A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than one hundred twenty days ….

(C.R.S. § 24-4-103(6)(a).) The threat posed by COVID-19 easily exceeds various justifications that have been found sufficient for "temporary or emergency" rules:

- holding that helping applicants get probationary driver's licenses, more quickly than regular rulemaking allows, was sufficient justification for a "temporary or emergency" rule in *Elizondo v. Motor Vehicle Division*, 570 P.2d 518, 523 (Colo. 1977); and

- a "budgetary emergency" was sufficient justification, even if the budget problem was known "long before," without strict need for "specific, objective data," as long as "the reasoning process that leads to the rule's adoption [was] defensible," in *Colorado Health Care Ass'n v. Dep't of Social Services*, 598 F. Supp. 1400 (D. Colo. 1984), *affirmed*, 842 F.2d 1158 (10th Cir. 1988).

(5) EFFECTIVE DATE. Pursuant to C.R.S. § 24-4-103(6), these rules were adopted and effective as temporary rules on March 11, 2020, with prior amendments adopted and effective on March 26, April 3, April 27, and the present amendments adopted and effective July 14, 2020, to terminate the requirements of these rules after July 14, 2020.

July 14, 2020

Scott Moss
Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

Date