

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

AGRICULTURAL LABOR CONDITIONS RULES

7 CCR 1103-15

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Adopted January 31, 2022, effective May 1, 2022.

Rule 1. Statement of Purpose, Authority, and Construction.

- 1.1 The general purpose of these Agricultural Labor Conditions Rules is to exercise the authority of this Division to enforce and implement the Agricultural Labor Rights and Responsibilities Act, Colorado Senate Bill 21-087 ("ALRRA," enacted June 25, 2021), including but not limited to Part 2, "Labor Conditions for Agricultural Workers," of Article 13.5 of Colorado Revised Statutes ("C.R.S.") Title 8, and other existing Title 8 provisions and authority, including but not limited to C.R.S §§ 8-1-103(3), -107(2), -111; 8-2-206; 8-3-104; 8-6-101.5, -105, -106, -108, -117; and 8-13.5-201 to -204. The Rules are intended to be consistent with the Colorado Administrative Procedure Act, C.R.S. § 24-4-101, et seq.
- 1.2 Incorporations by Reference. Articles 1-4, 6, 13.3, 13.5, and 14.4 of C.R.S. Title 8 (2022) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at www.ColoradoLaborLaw.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as consistent with Colorado statutory and constitutional provisions.
- 1.3 Separability. These Rules are intended to remain in effect to the maximum extent possible. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of the Rules remain valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.
- 1.4 Other Requirements for Agricultural Labor. In addition to these rules on certain labor conditions for which the ALRRA requires rules from this Division: (A) the ALRRA put into effect other agricultural labor requirements that do not require any rules; (B) other ALRRA requirements are covered in other rules, such as the Colorado Overtime and Minimum Pay Standards ("COMPS") Order, 7 CCR 1103-1 (wage and hour matters); Labor Peace Act Rules and Industrial Relations Act Rules, 7 CCR 1101-1 (labor management relations); and Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving ("Colorado WARNING") Rules, 7 CCR 1103-11 (retaliation, interference, and notice); and (C) other rules cover other labor requirements not specific to, but applicable to, agriculture. All Division rules are available as per Rule 1.2.

Rule 2. Definitions Applicable to These Rules.

- 2.1 "Division" is the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.
- 2.2 "Employee" is as defined by C.R.S. § 8-6-101.5(3): "agricultural employee" or "agricultural worker" has the "same meaning as under C.R.S. § 8-13.5-201(3)" ("A worker engaged in any service or activity included in section 203(f) of the federal 'Fair Labor Standards Act of 1938', ... as amended ... or section 3121(g) of the federal 'Internal Revenue Code of 1986', as amended"). As to rights and remedies under C.R.S. § 8-2-206, "agricultural worker" means "a person employed by an agricultural employer." Unless otherwise noted, references to "employees" in these rules mean "agricultural employees."
- 2.3 "Employer" is as defined by C.R.S. § 8-2-206(1)(c): "agricultural employer" has the "same meaning provided in C.R.S. § 8-3-104(1)" ("a person that is engaged in any service or activity included in section 203(f) of the federal 'Fair Labor Standards Act of 1938', ... as amended," or engaged in "agricultural labor, as defined in section 3121 of the federal 'Internal Revenue Code of 1986'," that either (1) contracts with any person who recruits, solicits, hires, employees, furnishes, or transports agricultural employees, or (2) regularly engages the services of one or more agricultural employees). Unless otherwise noted, references to "employers" in these rules mean "agricultural employers."
- 2.4 "Locality" includes a county, city, town, village, other municipality, unincorporated local area, or other government unit or subdivision smaller than the state of Colorado.
- 2.5 "Meal period" and "rest period" are defined by and apply as stated in COMPS Order Rules 5.1-5.2 unless otherwise provided in these Rules, and are synonymous with "meal break" or "rest break," respectively.
- 2.6 "Potable water" means drinkable water safe for human consumption, and in compliance with Colorado Primary Drinking Water Regulations, 5 CCR 1002-11, if provided from a supply system subject to those rules.
- 2.7 "Provide" (or in any other form such as "provides," "provided," or "providing") means the item, service, or permission must be given at no cost, with no additional conditions, and with no deductions from compensation, except that references to "employer-provided" housing are not limited to housing provided at no cost.
- 2.8 "Range worker" is as defined by C.R.S. § 8-6-101.5(1)(b) and, as used to define agricultural employees to whom different rights and responsibilities within these rules apply, means an agricultural employee who is paid at least the minimum salary for range workers (as specified in the Publication And Yearly Calculation of Adjusted Labor Compensation ("PAY CALC") Order, 7 CCR 1103-14, for the applicable year) during periods when they are "principally engaged in the range production of livestock ... on the open range" (as defined by C.R.S. § 8-6-101.5(b)), and who is provided without cost or deduction any housing, food, transport, and equipment required for H-2A visa range workers by federal regulations.
- 2.9 Temperatures in or applicable to these rules are all on the Fahrenheit temperature scale.
- 2.10 "Workday" and "workweek" have the same meanings as COMPS Order, Rules 1.12-1.13.

Rule 3. Heat Illness and Injury Protection.

3.1 **Application of heat illness and injury protection rules.** This Rule 3 applies on days when the temperature at a worksite for agricultural work is, or is forecast to be, at least 80 degrees, except:

- (A) Rule 3.4 applies additional requirements only under the “increased risk conditions” defined in that Rule;
- (B) Rule 3 does not apply to employees working no more than fifteen minutes in any sixty-minute period in conditions that otherwise trigger Rule 3 requirements;
- (C) Rule 3 does not apply to a workday if conditions are forecasted to trigger Rule 3 requirements, but employees work only at times when conditions are not forecasted to, and do not actually, trigger those requirements — for example, if employees finish work by 11:30 a.m. on a day when the temperature is not forecasted to, and does not actually, reach 80 degrees until 12:00 p.m.; and
- (D) Rules 3.5 and 3.6 apply if, at any point in the calendar year, a worksite temperature of at least 80 degrees is reasonably expected (as defined in Rule 3.1.4), even if particular work occurs, or workdays are, under 80 degrees, or are exempt under (B) or (C) above.

3.1.1 Temperature and increased risk conditions shall be assessed on a day-to-day basis.

- (A) For outdoor worksites of agricultural work, the employer shall rely on a forecasted high temperature for the day. For indoor worksites of agricultural work, the employer shall measure the worksite temperature during the workday, and shall apply the relevant Rule 3 requirements (1) on any day when the measured temperature exceeds a Rule 3 threshold, or (2) regardless of measured temperature, on any day when the employer has reason to expect the temperature to exceed the relevant Rule 3 threshold. This includes when (a) the employer intends to cause the indoor temperature to meet the threshold, (b) outdoor weather conditions give the employer reason to expect that the indoor temperature will meet the threshold, or (c) in one of the last three workdays the indoor worksite had a high temperature that met the threshold.
- (B) The employer may rely on any forecast, from no earlier than noon the prior day, for any locality that includes the worksite (or if no such forecast is available, the nearest locality with a forecast), from any reliable daily forecast source, such as a professional weather service, mass media source, or government entity.
- (C) If it is not possible for an employer to determine whether outdoor temperatures meet a Rule 3 threshold, or to inform employees when a threshold is met (e.g., to inform range workers whose location is unknown or who lack reliable reception), then it shall rely on the prior year’s monthly average temperature for the same month in which employees are currently working (applying Rule 3.1 standards for choosing a locality and reliable forecast), to comply with:
 - (1) Rule 3 heat illness and injury prevention requirements for all days in a month with at least a 76-degree average high temperature (i.e., 95% of the 80-degree threshold); and
 - (2) Rule 3.4 increased risk conditions requirements for all days in a month with at least a 90-degree average high temperature (i.e., 95% of the 95-degree threshold).

- 3.1.2 If an employer learns of conditions that do or are expected to trigger Rule 3 requirements only after a workday starts (e.g., if a temperature exceeding a Rule 3 threshold, or any Rule 3.4 increased risk condition, appears after not being forecast), then the employer shall comply with applicable Rule 3 requirements to the maximum extent, and as soon as, possible.
 - 3.1.3 If complying with any Rule 3 requirement(s) is not possible or would make employees more unsafe, then an employer must (A) comply to the maximum extent possible, and (B) implement equivalent protective measures, recording in writing their nature and reasons.
 - 3.1.4 Where a rule is based on whether a certain temperature (e.g., 80 or 95 degrees) is “reasonably expected” in a current year, that condition is satisfied if either: (A) any days had at least that temperature in the prior year; or (B) any day in the current year is forecasted to have, or actually has, at least that temperature. Prior year temperature data may be from any reliable source for a locality that includes the worksite (or, if data for the locality is not available, for the nearest locality to the worksite), such as a professional weather service, mass media source, or government entity, including the National Weather Service (NWS) [as of publication of these rules: at www.weather.gov, select “Past Weather,” and a region, to reach the “Climate” page; then select “Monthly Summarized Data” and “Max Temp” for the relevant location and time period].
- 3.2 **Drinking Water.** Employers shall provide employees with potable water, and the opportunity to drink it, as follows:
- (A) at least 32 ounces of water per hour per employee, kept 60 degrees or cooler, by any means the employer chooses, such as providing (1) a tap or fountain supplying water in that temperature range, or (2) a supply of water kept within that temperature range as much as possible (e.g., in a refrigerator or enclosed cooler in the shade) and, if the temperature would rise out of the range, is replenished or re-cooled (e.g., by adding ice);
 - (B) from a sanitary source, whether a fountain, tap, or individual cup or container;
 - (C) with employees permitted time to drink water and use restrooms during shifts as needed, including by providing water where it is available during shifts and breaks; and
 - (D) located as close as practicable to the worksite, no further than 0.25 miles from the worksite for employees accessing the water source by foot, and not otherwise too far for employees to reasonably access.
- 3.2.1 If it is not possible to comply with any portion of Rule 3.2 for a range worker or ranch worker during periods when they spend the majority of their workday mobile (for example, riding a horse or ATV) and too distant from any fixed or mobile source of water compliant with Rule 3, then the employer shall comply to the maximum extent possible, including but not limited to by: (A) re-supplying potable water to the worker whenever the employer re-supplies or otherwise visits a location near the worker; and (B) providing equipment or resources to permit the employee to carry potable water, and to the extent that it is not possible to carry enough potable water, providing equipment or resources to permit the worker to obtain potable water from non-potable sources, such as water purification containers or other devices that render water potable.
- 3.3 **Shade.** For employee use during rest, meal, cool-down, and other breaks, employers shall provide access to adequate shade located as close as practicable to the worksite, which may be artificial or natural, but does not qualify if:

- (A) any source yields additional heat in the shaded area, such as exhaust, running machinery, heat-radiating structures, or heat in a non-air-conditioned vehicle;
- (B) the shaded area is located further than 0.25 miles from the worksite for employees accessing the shade by foot, or otherwise too far to reasonably access during rest and meal periods;
- (C) the shaded area is too small for employees to sit fully shaded in normal posture, without touching one another;
- (D) the shaded area is neither ventilated nor open to the air; or
- (E) the area has unsafe, unhealthy, unsanitary, or other conditions (e.g., noxious odor from rot or garbage) that deter or discourage accessing or using the shade.

3.3.1 If an employer can demonstrate that providing access to adequate shade is not safe or possible (e.g., during high wind), then, during at least the times when Rule 3.3 requires access to shade, it shall provide equivalent protection by alternate measures, such as an air-conditioned site (e.g., a vehicle or structure), and/or an individualized cooling item (e.g., vest, bandana, or towel) that contains or is made from material that retains a cool temperature.

3.3.2 Range workers shall be authorized and permitted to seek and use shade during rest and meal periods, and otherwise limit the impact of heat and sun exposure.

3.4 Increased Risk Conditions.

3.4.1 “Increased risk conditions” means one or more of the following conditions occur in the day, in addition to Rule 3.1 heat conditions (i.e., a temperature of at least 80 degrees), applying standards in Rule 3.1 and below for choosing a locality and a reliable forecast.

- (A) Temperature: A daily high forecast or measured worksite temperature is at least 95 degrees.
- (B) Unhealthy Air Quality: A Colorado Department of Public Health and Environment (CDPHE) Air Quality Advisory (AQA) or Action Day is in effect (for the State or a locality or other area that includes the worksite), with the exception in (1) below. [As of publication of these rules: AQA and Action Day information is available from CDPHE (888-4-THE AIR or www.colorado.gov/airquality, with sign-up for email updates), or federal agencies relying on CDPHE data (the National Weather Service (NWS) at www.weather.gov, or the Environmental Protection Agency at www.airnow.gov).]
 - (1) For Action Days based solely on ozone, this increased risk condition does not apply if an employer shows that the Air Quality Index (AQI) for its worksite location is rated “moderate” or “good” (i.e., AQI of 100 or less) based on: (a) current or forecasted AQI ozone data from NWS “Air Quality Forecast Guidance” (as of publication of these rules, at www.airquality.weather.gov); or (b) the nearest available CDPHE monitoring site, as long as it is within 50 miles of the worksite.
- (C) Long Days: An employee (other than a range worker) is scheduled or reasonably expected to work over 12 hours in the workday or shift.

- (D) Heavy Clothing or Gear Required: The employee is required, by the employer or safety protocols for their equipment or work, to wear vapor barrier clothes (i.e., clothes significantly inhibiting sweat from evaporating into outside air, such as various chemical resistant or encapsulating suits), or personal protective equipment (such as protective jackets, suits, or coveralls) requiring an additional layer over regular clothes or covering all or almost all of the head and face.
 - (E) Acclimatization: The employee is in their first four workdays for the employer (which includes their first four days of work for the employer in over a month).
- 3.4.2 Under increased risk condition, employers shall ensure that no more than two hours of work are performed before at least 10 minutes of rest are provided, by any mix of spacing out any breaks already required by these or other Rules, and/or providing additional breaks meeting the rest or meal period standards of Rule 5 of the COMPS Order; except that for range workers, employers shall encourage spacing the rest breaks provided in the COMPS Order, and other rest opportunities, to include rest every two hours to the maximum extent possible.
- 3.4.3 Before a workday or shift starts (or as soon as possible during a shift, if the employer only later learns of an increased risk condition), employers shall notify employees, by any effective means, of their rights to (1) all Rule 3 heat protections, including additional Rule 3.4 breaks, and (2) additional preventative cool-down rest under Rule 3.5.5 when needed. If an employer cannot contact an employee to provide this information, or cannot assess possible increased risk conditions, it shall provide this information if any such conditions are anticipated or forecasted to be present during that week (or lesser time period when an employee is inaccessible).
- 3.4.4 If at any point in a calendar year a worksite temperature of at least 95 degrees is reasonably expected (as defined in Rule 3.1.4), or actually occurs, then an employer shall provide employees with fans sufficient to circulate air in all sleeping quarters in employer-provided housing (e.g., bedrooms or multi-bed dormitory rooms). Qualifying fans can include air conditioning or other devices that circulate cooled air.
- 3.5 **Safety Procedures.** If at any point in the calendar year a worksite temperature of at least 80 degrees is reasonably expected (as defined in Rule 3.1.4), then an employer shall implement the following.
 - 3.5.1 Communication availability. Employers shall maintain effective communication means for employees by voice, observation, or (if area reception is reliable) electronic means, so that when necessary for health or safety, employees can contact a supervisor, other designated individual, or emergency medical services. If an employer cannot regularly communicate with employees (e.g., range workers in an area lacking reliable reception), then it shall identify and implement (including by training employees as needed) means (A) to make contact with employees to monitor their well-being, and (B) for employees to obtain medical care in emergencies, such as those detailed in federal regulations for range worker visas (which include: providing satellite or cell phones, wireless devices, or radio transmitters; arranging for employees to be located, on a regular basis, in a geographic area where electronic communication devices operate effectively; or arranging for regular, pre-scheduled, in-person employer-employee visits).
 - 3.5.2 Monitoring and receiving reports of heat illness or injury. Employers shall monitor, and receive reports of, signs or symptoms of heat illness or injury, by any of the following:
 - (A) observation of up to 20 employees by a designated individual;

- (B) a mandatory buddy system assigning each employee to observe, at periodic intervals, one or more other employees;
 - (C) regular communication with any employee working outside the presence of others, such as by radio or phone; or
 - (D) any other effective means of monitoring and receiving reports.
- 3.5.3 Response to possible heat illness or injury. Employers shall respond to signs and symptoms of heat illness or injury, when reported by anyone or when observed by a supervisor or other designated individual, promptly and appropriate to the severity, by:
- (A) promptly relieving from duty an employee showing, or reported to have, such signs or symptoms (or, for an employee outside the presence of others, permitting them to relieve themselves from duty);
 - (B) monitoring those signs or symptoms (or for employees outside the presence of others, checking in as frequently as weather, environmental, or other circumstances warrant to monitor employee health and safety) and, when warranted, ensuring that such employees are not left alone or sent home without being offered on-site first aid and/or emergency services; and
 - (C) implementing a Rule 3.5.4 emergency response for severe signs or symptoms, e.g., decreased consciousness, staggering, vomiting, disorientation, irrational behavior, convulsions, or (even after resting) an increased heart rate.
- 3.5.4 Emergency response. Employers shall:
- (A) designate at least one person at each worksite to contact emergency medical services when needed, and permit others to if that person is unavailable; and
 - (B) ensure, in an emergency, that emergency medical services are contacted, and provided all necessary information, as immediately as possible (including contact information and directions to reach the employee(s)), and that (if necessary and appropriate) employees are transported to where responders can reach them.
- 3.5.5 Preventative measures. An employer shall allow and facilitate employee preventative measures, including by reminding employees of the availability of water, shade for use during breaks, and (if an employee believes it is needed to avoid or remedy overheating) cool-down rest in shade. Preventative cool-down rest may be satisfied with rest or meal periods already required by the COMPS Order or Rule 3 (and otherwise qualifies as additional rest period time under those Rules), as long as other requirements of this Rule 3.5.5 are followed, and no preventative cool-down rest is denied or delayed based on the scheduling or use of other rest or meal periods. An employee taking a preventative cool-down rest shall:
- (A) be monitored (or if outside of the presence of others, communicated with as frequently as weather, environmental, or other circumstances warrant to monitor employee health and safety) and asked if they have signs or symptoms of heat illness or injury, and if symptoms persist after resting, the employer shall respond as these Rules require; and
 - (B) not be sent back to work until any such signs or symptoms have abated, but in no event in less than 10 minutes after the employee reaches the shade.

- 3.6 **Training.** If at any point in the calendar year a worksite temperature of at least 80 degrees is reasonably expected (as defined in Rule 3.1.4), then an employer shall implement the following training measures by April 20th of each year (except, in 2022, by May 31st), and upon hiring for new employees hired after those training measures.
- 3.6.1 Training shall be provided to all employees on the following:
- (A) environmental and personal risk factors for heat illness, including the added burden of heat on the body from exertion, clothing, and gear;
 - (B) the importance of acclimatization in the first days of work in heat, drinking water, and promptly reporting their or others' signs or symptoms of heat illness or injury;
 - (C) different types, signs, and symptoms of heat illness, including self-monitoring, and how signs or symptoms can progress from mild to serious or life-threatening;
 - (D) basic first aid (including by the employees themselves), and the available emergency responses to heat illness; and
 - (E) the requirements of Rule 3 (Heat Illness and Injury Protection) and Rule 5.1 (Retaliation and Interference Prohibited), which may be satisfied by providing a document that satisfies the Rule 5.2 requirement of posted notice of rights, as well as how the employer is complying with Rule 3 (e.g., how it is providing required water, shade, and break time, as well as its safety procedures).
- 3.6.2 Supervisors and others designated to have any roles or responsibilities to implement any requirements in these Rules shall be trained on those roles or responsibilities.
- 3.6.3 An employer may comply with this Rule 3.6 by providing site-specific information on the topics in Rules 3.6.1(E) and 3.6.2, and for the non-site-specific topics in Rule 3.6.1(A)-(D), by providing training based on any one of the following heat safety programs, or another program with comparable information:
- "Heat Illness Prevention Training Guide, A Lesson Plan for Employers," published by the federal Occupational Safety and Health Administration (as of publication of these rules, available in English at www.osha.gov/index.php/heat-exposure/resources);
 - "Heat Education and Awareness Tools (HEAT) Facilitator's Guide," published by the University of Washington Pacific Northwest Agricultural Safety and Health Center (as of publication of these rules, available in English and Spanish at www.deohs.washington.edu/pnash/heat-toolkit); or
 - "Heat Illness Prevention Employer Training Discussion Guides and Visual Aids," published by the University of California Davis Western Center for Agricultural Health and Safety (as of publication of these rules, available in English and Spanish at aghealth.ucdavis.edu/training/heat-illness).
- 3.6.4 For any employees not fluent in English, the employer shall provide, in the employee's primary language for any written or verbal content, either training, printed, or online materials accessible to the employee, covering the training content. The employer may ask the Division for help procuring materials in that language.

Rule 4. Access to Key Service Providers.

- 4.1 **Purpose.** This Rule 4 provides, in addition to the access to key service providers and (for housed employees) access to visitors and to offsite services required by statute (C.R.S. § 8-13.5-202, copied below in Appendix A, and incorporated into this Rule 4 by reference), “additional times during which an employer may not interfere with an agricultural worker’s reasonable access to key service providers, including periods during which the agricultural worker is performing compensable work, especially during periods when the agricultural worker is required to work in excess of forty hours per week and may have difficulty accessing such services outside of work hours” (C.R.S. § 8-13.5-202(1)(c)), including difficulty planning appointments with, communicating with, following up with, and reviewing information from key service providers.
- 4.2 **Communication access to off-site providers.**
- 4.2.1 Employees shall be provided and permitted to use during breaks a location with phone service and internet access that allows as much privacy and quiet as possible.
- (A) If an employee living in employer-provided housing lacks a device for phone or internet access, then the employer shall provide a device when the employee needs to use one.
- (B) If the worksite lacks phone or internet service, then the employer (1) shall permit an employee with their own transportation (as described in C.R.S. § 8-13.5-202(1)(f)) to travel to such a site with service, or (2) shall, for an employee living in employer-provided housing without transportation of their own, provide transportation to a site with service within 24 hours of the employee’s request (which may be the same transportation that satisfies the requirements of C.R.S. § 8-13.5-202(1)(e) to provide workers transportation for service provider access, if the employee is provided adequate time for the activities identified in § 202(1)(e)).
- (C) If an employer cannot provide an employee with the communication access detailed in (A) and (B), then it shall provide meaningful access to key service providers by alternate means, including at the worksite.
- 4.2.2 In any workweek of over 40 hours, an employee who requests at least 24 hours in advance shall be permitted, at least once per week, to extend a meal period or other 30-minute break to up to 60 minutes (the extra time may be unpaid) to communicate with a key service provider of their choice during the provider’s hours of operation. For range workers, an employer may require 72 hours’ notice (except for health emergency needs) before permitting up to 60 minutes for such communication with a key service provider. If an employer denies a request made less than 24 hours in advance (or less than 72 hours in advance for a range worker), the employer must allow the employee to extend a different break during that workweek or any break during the next workweek (in addition to other breaks to which the employee may be entitled).
- 4.2.3 An employer shall promptly provide an employee all mail or other communications (written, electronic, or verbal) it receives that were sent to or left for the employee.
- 4.3 **Additional break time to facilitate service provider access during long workweeks.** An employer shall provide (in addition to other rest, meal, or other breaks provided by these Rules, the COMPS Order, or other statutes or rules) to employees other than range workers one additional paid break of 60 minutes in any workweek of over 60 hours worked, and two such paid breaks in any workweek of over 70 hours.

- 4.3.1 If an employer had no reason to believe an employee would exceed 60 or 70 hours until the last day of the week, it may instead provide the additional break time the following week.
- 4.3.2 During this additional break time, employees shall be permitted to leave the worksite and to use the time either to directly support their access to a key service provider's hours of operation, or as indirect support by using the time for other needs (meals, rest, other services, etc.) that may facilitate their access to key service providers at other times.
- 4.3.3 Paid break time under this rule shall be compensated at the same rate as time worked and is governed by the COMPS Order provisions applicable to paid rest periods.

Rule 5. Enforcement.

- 5.1 **Retaliation and Interference Prohibited.** Retaliation for or interference with any protected activity or right under the ALRRA or these Rules, as defined by C.R.S. § 8-2-206 and Rule 2.11 of the Colorado WARNING Rules (7 CCR 1103-11), and pursuant to other provisions of the Colorado WARNING Rules applicable to retaliation or interference claims, is prohibited.
- 5.2 **Notice of Rights.** Employers "shall post notice of an agricultural worker's rights under [C.R.S. Title 8, Article 13.5] Part 2" (C.R.S. § 8-13.5-202(3)), in conformity with Rules 4.1, 4.3-4.4, and 4.6(A) of the Colorado WARNING Rules, 7 CCR 1103-11, which are incorporated into this Rule 5.2 by reference. This Rule 5.2 may be satisfied with (A) an up-to-date Agricultural Labor Rights and Responsibilities Poster published by the Division; (B) at any time such a poster is unavailable, an up-to-date version of an Interpretive Notice and Formal Opinion on agricultural labor rights and responsibilities published by the Division; or (C) another document with the required information. Division publications are available at www.ColoradoLaborLaw.gov.
- 5.3 **Complaints and Investigations.** The Division may investigate possible violations of these Rules. Complaints within the scope of C.R.S. §§ 8-2-206 or 8-13.5-204 of the ALRRA may be filed in court. Complaints of any violations of the ALRRA or of these Rules may be filed with the Division and shall be governed by the Colorado WARNING Rules (7 CCR 1103-11) and any other Division rules that may apply based on the type of complaint or investigation. The Division will consider any showing by the employer of good-faith effort to comply to the maximum extent possible in exercising discretion as to whether to investigate certain types of claims under these Rules or the ALRRA, and as to appropriate remedies for violations in such investigations.

Rule 6. Effective Date. The effective date of these Rules is May 1, 2022.

APPENDIX A: EXCERPTS FROM RELEVANT STATUTES REFERENCED IN THESE RULES

Colo. Rev. Stat. § 8-13.5-202. Agricultural workers - right of access to key service providers - rules.

- (1)
 - (a) An employer shall not interfere with an agricultural worker's reasonable access to visitors at the agricultural worker's employer-provided housing during any time when the agricultural worker is present at such housing.
 - (b) An employer shall not interfere with an agricultural worker's reasonable access to key service providers at any location during any time in which the agricultural worker is not performing compensable work or during paid or unpaid rest and meal breaks, and with respect to health-care providers during any time, whether or not the agricultural worker is working.
 - (c) To ensure that agricultural workers have meaningful access to services, the Director of the Division shall promulgate rules regarding additional times during which an employer may not interfere with an agricultural worker's reasonable access to key service providers, including periods during which the agricultural worker is performing compensable work, especially during periods when the agricultural worker is required to work in excess of forty hours per week and may have difficulty accessing such services outside of work hours. The rules must be proposed on or before October 31, 2021, and adopted on or before January 31, 2022.
 - (d) An employer may require visitors accessing a work site to follow protocols designed to manage biohazards and other risks of contamination, to promote food safety, and to reduce the risk of injuries to or from livestock on farms and ranches except on the open range, if the same protocols are generally applied to any other third parties who may have occasion to enter the work site.
 - (e) An agricultural employer that provides housing and transportation for agricultural workers shall, at least one day per week, provide transportation to the agricultural workers to a location where the workers can access basic necessities, conduct financial transactions, and meet with key service providers; except that transportation must be provided not less than one day every three weeks for range workers who are actively engaged in the production of livestock on the open range. This subsection (1)(e) does not limit or restrict an agricultural worker's ability to travel using the agricultural worker's own means of transportation. Nothing in this subsection (1)(e) requires an employer to violate a state or federal law or regulation.
 - (f) If an agricultural worker has access to the worker's own vehicle and is permitted to park the vehicle on the employer's property, the employer is not required to provide transportation as set forth in subsection (1)(e) of this section.
- (2) No person other than the agricultural worker may prohibit, bar, or interfere with, or attempt to prohibit, bar, or interfere with, the access to or egress from the residence of any agricultural worker by any person, either by the erection or maintenance of any physical barrier, by physical force or violence or by the threat of physical force or violence, or by any order or notice given in any manner.
- (3) An agricultural employer shall post notice of an agricultural worker's rights under this part 2:
 - (a) In a conspicuous location on the agricultural employer's premises, including in the agricultural worker's employer-provided housing; and

- (b) In all places where notices to employees, including agricultural workers, are customarily posted; and
- (c) electronically, including by e-mail and on an intranet or internet site, if the agricultural employer customarily communicates with agricultural workers by these means.

Colo. Rev. Stat. § 8-13.5-203. Extreme overwork protections - heat stress training - ... - rules.

- (1) The Director of the Division shall promulgate rules that require agricultural employers to protect agricultural workers from heat-related stress illnesses and injuries when the outside temperatures reach eighty degrees or higher, with discretion to adjust requirements based on environmental factors, exposure time, acclimatization, and metabolic demands of the job as set forth in the federal Department of Health and Human Services Centers for Disease Control and Prevention National Institute for Occupational Safety and Health 2016 Revised Publication: Criteria for a Recommended Standard, Occupational Exposure to Heat and Hot Environments. The Rules must be proposed on or before October 31, 2021, and adopted on or before January 31, 2022.

Editor's Notes

History

New rule eff. 05/01/2022.