



# Interpretive Notice & Formal Opinion (“INFO”) #12D: Enforcement: Scope of Coverage; Notice of Rights; Protected Activity & Retaliation; Complaints & Remedies

This INFO covers:

- (1) **scope of coverage** — which work, employers, and employees are covered by the Agricultural Labor Rights and Responsibilities Act (“[ALRRA](#)”) and Division rules implementing the ALRRA;<sup>1</sup>
- (2) **notices of rights** that employers must provide to employees;
- (3) **protected activity and unlawful retaliation** under the ALRRA;
- (4) **how complaints of violations** can be filed, and what remedies may be ordered for violations.

## (1) SCOPE OF COVERAGE

“**Agricultural Employees**” and “**Agricultural Workers**” are workers performing “farming services or activities.”<sup>2</sup> For retaliation claims, coverage is broader: any “person employed by an agricultural employer.”<sup>3</sup>

“**Agricultural employer**” is any employer engaged in “farming services or activities” that either (1) directly and regularly hires one or more employees itself, or (2) contracts with another person who recruits, solicits, hires, employs, provides, or transports employees to perform work on its behalf (e.g., a farm contracting with a staffing company or labor broker that recruits and hires workers to perform its “farming services or activities”).<sup>4</sup>

“**Agricultural principals**” include agricultural employers, state and local government employers, and any other people or entities engaged in agricultural employment — that is, employment in farming services or activities.<sup>5</sup>

“**Farming services or activities**” include:

- cultivating and tilling soil;
- producing, cultivating, growing, or harvesting agricultural or horticultural commodities, or ginning cotton;
- raising, shearing, feeding, caring for, training, or managing livestock, bees, fur-bearing animals, or poultry;
- preparing or delivering agricultural commodities for market, or delivering them to storage or market;
- operating or maintaining ditches, canals, reservoirs, or waterways that supply or store water for farming;
- managing, conserving, improving, or maintaining a farm and its tools and equipment; and
- handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market agricultural or horticultural commodities.<sup>6</sup>

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<sup>1</sup> These rules include the [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15 (effective May 1, 2022); the Colorado Overtime and Minimum Pay Standards ([COMPS](#)) Order, 7 CCR 1103-1; and the Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ([Colorado WARNING Rules](#)), 7 CCR 1103-11 (effective Jan. 1, 2023).

<sup>2</sup> C.R.S. 8-13.5-201(3) (defining “agricultural worker”); 8-6-101.5(3) (incorporating definition).

<sup>3</sup> C.R.S. 8-2-206(1)(b) (defining “agricultural employee” for purposes of C.R.S. 8-2-206).

<sup>4</sup> C.R.S. 8-3-104(1)(a) (defining “agricultural employer”); 8-2-206 (incorporating definition) 8-13.5-201 (same). The term “agricultural employer” is to be “liberally construed for the protection of persons providing services to an employer.” C.R.S. 8-3-104(1)(b).

<sup>5</sup> C.R.S. 8-14.4-101(3) (defining “principal”); 8-13.5-201(2) (defining “agricultural employment” as employment in farming services or activities); 8-14.4-101(1) (incorporating definition).

<sup>6</sup> C.R.S. 8-2-206(1)(c) (incorporating C.R.S. 8-3-104(1)); [29 U.S.C. 203\(f\)](#); [26 U.S.C. 3121\(g\)](#).

**“Range Workers.”** As other [INFOs](#) detail, key rights and responsibilities differ for range workers, particularly that they are exempt from minimum wage and overtime, if paid a weekly salary of (in 2023) at least \$559.29.<sup>7</sup> A “range worker” is a worker “principally engaged in the range production of livestock ... on the open range”:

- “principally engaged” means one’s primary responsibility and duty, ordinarily at least 50% of their work;
- “range production” includes herding, handling, transporting, feeding, watering, caring for, branding, tagging, protecting, or otherwise helping to raise livestock, and related duties (such as fence repair);
- “livestock” include cattle, sheep, horses, goats, and other domestic animals ordinarily raised or used on the farm, but not turkeys or domesticated fowl; and
- “open range” means uncultivated land with natural forage for livestock or wild game consumption.<sup>8</sup>

The range worker exemption cover workers “during periods when they are ‘principally engaged in the range production of livestock ... on the open range’ (as defined by [the ALRRA at] C.R.S. 8-6-101.5(b)), and are provided without cost or deduction any housing, food, transport, and equipment required for H-2A visa range workers by federal regulations.”<sup>9</sup> That [ALRRA](#) section (8-6-101.5(1)(b)) limits the exemption to workers covered by the above definitions “as described in [29 C.F.R. 780.323](#) to [29 C.F.R. 780.329](#).” Those C.F.R. sections define the *federal* range worker exemption, which requires “examination of that employee’s duties and where they are performed” ([29 C.F.R. 780.323](#)), applies only “during th[e] time he is engaged in such activities” ([29 C.F.R. 780.324](#)), and explains that the worker’s “primary duty must be the range production of livestock and that this duty necessitates his constant attendance on the range, on a standby basis, for such periods of time so as to make the computation of hours worked extremely difficult.... Thus, exempt work must be performed away from the ‘headquarters.’ ... [T]his exemption was not intended to apply to feed lots or to any area where the stock involved would be near headquarters.” ([29 C.F.R. 780.329](#)) Because workers must meet “all” these conditions and definitions,<sup>10</sup> the range worker exemption doesn’t apply to weeks when a worker primarily does other work (for example, ranch work not on the open range); during any such weeks, the worker must be paid the Colorado minimum hourly wage and any overtime required for other agricultural workers.

**“Other Protected Parties.”** Individuals with certain relationships with agricultural employees (or believed to have such relationships) are protected against retaliation and interference under the ALRRA:<sup>11</sup>

- **Familial relationships include:**
  - A spouse (including by common-law, civil union, or domestic partnership);
  - Any of the following relatives by blood, marriage, or adoption: parent, grandparent, child, grandchild, sibling, stepparent, stepsibling, stepchild, uncle, aunt, niece, nephew, or cousin; or
  - Someone with whom the employee similarly has a significant personal bond.
- **Workplace relationships:** Anyone the employee regularly interacts with in the scope of employment.
- **Care or support relationships:** Any person the employee provides, or who provides the employee, care or support as to health, family, transportation, or other personal needs, or needs the employee or individual can’t do on their own (hygiene, financial or similar paperwork, or home tasks like cleaning).

Others with rights protected under the ALRRA and related rules include **key service providers**, discussed in [INFO #12B](#);<sup>12</sup> and **whistleblowers**, who provide information about potential violations of the law.<sup>13</sup>

<sup>7</sup> [COMPS Order](#), 7 CCR 1103-1, Rule 2.4.9; [20 C.F.R. 655.210](#), [655.1304](#) (H-2A visa requirements for range workers).

<sup>8</sup> C.R.S. 8-6-101.5 (incorporating federal definitions in [29 C.F.R. 780.323](#) to [29 C.F.R. 780.329](#)).

<sup>9</sup> COMPS Order, 7 CCR 1103-1, Rule 2.4.9.

<sup>10</sup> [29 C.F.R. 780.324](#); e.g., *Mencia v. Allred*, 808 F.3d 463, 469 (10th Cir. 2015) (applying federal regulations: “[Worker] spent a large majority of his time working away from the range, supervised by superiors who could have recorded his hours, performing duties that were often incidental to shepherding but were not shepherding themselves. He was a ranch hand, not a shepherd, and the FLSA exemption ... [did] not apply.”).

<sup>11</sup> See C.R.S. 8-2-206(3)(c).

<sup>12</sup> For the definition of “Key Service Providers,” see [INFO #12B](#).

<sup>13</sup> See C.R.S. 8-13.5-201(10) (defining “whistleblower”); 8-13.5-204 (discussing enforcement of rights).

## (2) NOTICES OF RIGHTS

Along with other requirements to post and/or distribute notices of labor law rights,<sup>14</sup> agricultural employers must provide workers with notice of the following rights and responsibilities:

- the requirements that employers provide —
  - an additional 5-minute, paid rest period for hand-weeding and hand-thinning work;
  - gloves and knee pads as needed for certain work;
  - transportation for employees living on-site;
  - reasonable access to visitors and key service providers;
  - protection from heat-related stress illness and injury, including basic heat precautions and those that apply in “increased risk conditions,” as well as ongoing and annual obligations;
- that employers may not interfere with access to employee residences;
- that short-handled hoe use, including the use of a modified, long-handled hoe, is prohibited;
- the restrictions on hand-weeding and hand-thinning work; and
- the right to file claims of violations of the rights described above.<sup>15</sup>

**What to Post.** Employers can comply with this notice requirement by (A) posting an up-to-date “Agricultural Labor Rights and Responsibilities Poster” published by the Division; (B) if such a poster is unavailable, providing employees an up-to-date version of [INFOs #12A-12D](#) on agricultural labor rights and responsibilities published by the Division;<sup>16</sup> or (C) providing or posting another document with the required information. The notice must be in any language that is the first language spoken by at least 5% of the employer’s workforce; if an employer requires a translation, it has 30 days to obtain it, and may ask the Division for assistance.<sup>17</sup>

**Where to Post.** When posting the notice, an employer must display it in one or more obvious places at the workplace, including in (1) employer-provided housing, and (2) any places where labor law or other informational notices are usually posted (such as in break rooms, on bulletin boards, or next to entrances/exits). Additionally, if an employer usually communicates electronically with employees, it is required to also provide such notice electronically, including by e-mail or on an intranet or internet site.<sup>18</sup>

**During a Public Health Emergency (PHE).** During an applicable PHE,<sup>19</sup> agricultural principals must also provide workers<sup>20</sup> notice and materials (“posters and pamphlets”) — in English, Spanish, and other relevant languages — providing federal and state workplace guidance about the PHE and contact information for the Colorado Legal Services Migrant Farm Worker Division. Principals can comply by providing the following at (1) the worksite, (2) in any employer-provided housing, and (3) in any places where labor law or other information

<sup>14</sup> E.g., under the [Healthy Family and Workplaces Act of 2020](#) (see [INFO #6B](#)), the [Protected Health/Safety Expression and Whistleblowing Act \(INFO #5\)](#), and the Colorado Overtime and Minimum Pay Standards (COMPS) Order ([INFO #1](#)).

<sup>15</sup> C.R.S. 8-13.5-202(3); [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 5.2 (both requiring notice); Colorado WARNING Rules, 7 CCR 1103-11, Rule 4.1 (providing requirements for notice). The rights the notice must cover are in [C.R.S. Article 13.5, Title 8, Part 2, §§ 201-204](#).

<sup>16</sup> Division publications, including posters and INFOs, are available at [www.ColoradoLaborLaw.gov](http://www.ColoradoLaborLaw.gov).

<sup>17</sup> [Colorado WARNING Rules](#), 7 CCR 1103-11, Rules 4.1.2, 4.3.

<sup>18</sup> Colorado WARNING Rules, 7 CCR 1103-11, Rule 4.1.3.

<sup>19</sup> For these provisions, a public health emergency is “a statewide public health emergency declared by executive order regarding COVID-19, the coronavirus disease caused by the severe acute respiratory syndrome coronavirus 2, also known as SARS-CoV-2, or another communicable disease ... transmissible from person to person.” C.R.S. 8-14.4-109(2). The state “disaster emergency” related to COVID-19, declared on March 11, 2020 (Exec. Order [D 2020 003](#), Mar. 11, 2020), has been continued by later declarations (as of this INFO) and was expanded on November 11, 2022, to cover not only COVID-19, but also RSV, influenza, and other respiratory illnesses. For all state PHE Orders, see <https://covid19.colorado.gov/public-health-orders-and-executive-orders>.

<sup>20</sup> As these provisions apply requirements to “principal[s] engaged in agricultural employment,” covered workers include not only employees, but also independent contractors working for such entities.

is typically posted:<sup>21</sup>

- federal and state guidance and resources on PHE safety precautions, which may be a copy (or electronic copy, if the employer typically communicates to employees that way) of up-to-date guidance from (1) the Occupational Safety and Health Administration (OSHA) (as of publication of this INFO, at <https://www.osha.gov/coronavirus/safework>), and (2) the CDPHE (as of publication of this INFO, at <https://covid19.colorado.gov/guidance-for-businesses-communities>); and
- contact information for the [Migrant Farm Worker Division of Colorado Legal Services](#), or its successor organization, where workers may receive free and confidential legal services.<sup>22</sup>

### (3) PROTECTED ACTIVITY AND UNLAWFUL RETALIATION

**Protection Against Retaliation.** It is unlawful for agricultural employers to retaliate against employees and “other protected parties” (as defined on page 2), for seeking or asserting rights protected under the ALRRA. Retaliation includes employer conduct that may not affect employment status but that may deter or interfere with an employee exercising rights or engaging in protected activity, such as threatening an employee based on their immigration status.<sup>23</sup>

If an employer takes an adverse action against a worker (for example, by firing them or cutting their hours) within 90 days of a worker’s “protected activity” (e.g., a complaint, opposing illegality, etc.), a court or the Division will assume the employer acted with retaliatory intent (there is a “rebuttable presumption” of this intent), unless the employer shows that it took the adverse action for a non-retaliatory reason.<sup>24</sup>

**Unions, Collective Bargaining, and Concerted Activity under the Labor Peace Act.** Agricultural workers aren’t covered by the federal law on union and other labor-management rights and responsibilities in the private sector.<sup>25</sup> The ALRRA expanded Colorado’s labor-management law, the [Labor Peace Act \(“LPA,” C.R.S. 8-3-101 et seq.\)](#), to cover agricultural employees and employers with LPA rights and responsibilities, including:<sup>26</sup>

- **Employee Rights:** Employees have the right to engage in (or refrain from) certain protected activities, including organizing and joining employee organizations (unions), collectively bargaining with their employers about terms and conditions of employment, and engaging in lawful concerted activity.<sup>27</sup>
- **Employee Elections:** The Division holds secret-ballot, confidential representation (or decertification) elections for agricultural employees, to decide whether they wish to be represented (or stop being represented) by a union. It also holds “all-union agreement” (AUA) elections, to decide whether employees wish to have (or revoke) an AUA in their workplace (for example, requiring payment of union dues).
- **Written Notice of Potential Strikes:** Employees who produce, harvest, or process farm or dairy products can strike, but if a strike would cause “destruction or serious deterioration” of those products, they must file a written “Notice of Intent to Strike” with the Division at least 30 days before the first day of the strike.<sup>28</sup>

<sup>21</sup> C.R.S. 8-14.4-109(1)(e); Colorado WARNING Rules, 7 CCR 1103-11, Rule 4.2.2(A)-(C). If these materials are damaged or removed, they must be replaced within 48 hours of this damage or removal (Rule 4.2.2(B)).

<sup>22</sup> C.R.S. 8-14.4-109(d)-(e); Colorado WARNING Rules, 7 CCR 1103-11, Rule 4.2.2.

<sup>23</sup> Agriculture Labor Conditions Rules, 7 CCR 1103-15, Rule 5.1 (prohibiting “retaliation for or interference with any protected activity or right under the ALRRA or these Rules, as defined by ... Rule 2.11 of the Colorado WARNING Rules”); Colorado WARNING Rules, 7 CCR 1103-11, Rule 2.11.2 (retaliation includes “acts that may not affect employment status but that may dissuade, deter, or interfere with engaging in protected activity, such as acts prohibited by Rule 4.8.2 of the Wage Protection Rules”); [Wage Protection Rules](#), 7 CCR 1103-7, Rule 4.8.2 (“Any effort to use a person’s immigration status to negatively impact the wage and hour law rights, responsibilities, or proceedings of any person or entity is an unlawful act of obstruction, retaliation, and/or extortion....”).

<sup>24</sup> C.R.S. 8-2-206(3)(b); [Colorado WARNING Rules](#), 7 CCR 1103-11, Rule 3.4.1(A).

<sup>25</sup> [29 U.S.C. 152\(3\)](#) (the federal National Labor Relations Act). For more about on union-management and related rights and responsibilities in agriculture, see [INFO #15A](#).

<sup>26</sup> C.R.S. 8-3-104(1)(a), -104(12)(a) (both defining “agricultural employer”); 8-3-104(11) (defining “employee”).

<sup>27</sup> E.g., C.R.S. 8-3-106.

<sup>28</sup> C.R.S. 8-3-113(2).

- **Unfair Labor Practices (ULPs) Unlawful:** The Division investigates and rules on ULP complaints by employees, unions, and employers — for example, interfering with union operations, discouraging union membership, striking without advance notice when required, or intimidating or retaliating against workers for LPA-protected activity (concerted activity, ULP charges, or participating in elections or investigations).<sup>29</sup>

#### **(4) COMPLAINTS**

**Wage Complaints.** Agricultural employees may file claims for wage-and-hour violations (denial of wages, required breaks, etc.) with the Division or directly in court. For more on Division wage claim complaints, processes, and remedies, see [INFO #2](#).

**Other Complaints.** Agricultural employees and other identified parties may file claims as to various of the Act's non-wage-and-hour provisions (including retaliation, equipment, hand-weeding, and service provider/visitor access violations) that seek orders requiring an employer to follow or cease violating the law, money damages (for actual loss or \$10,000, whichever is greater),<sup>30</sup> and attorney fees.<sup>31</sup> These claims also may be [filed with the Division](#) or directly in court. Employees may also file claims with the Division for violations of (1) the [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, including heat rule violations, and (2) PHE-related violations.<sup>32</sup> If the Division accepts a PHE-related housing complaint and finds a violation, remedies will depend in part on what good-faith efforts the employer has undertaken to date, the reasons for the delay in compliance, and the completion timeframe for any housing still being modified or constructed.

Unlike laws requiring Division investigation of *all* unpaid wage claims, the [ALRRRA](#) doesn't require the Division to investigate all non-wage-and-hour claims. The Division reviews such complaints and considers whether to investigate them fully, in light of Division resources and workload. The Division notifies parties whether it decides to investigate fully or not; if not, its notice authorizes the complainant to pursue the claim in court.

**For More Information:** Visit the Division [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).

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<sup>29</sup> For more on what qualifies as a ULP, see [INFO #15A](#).

<sup>30</sup> Damages won by service providers or whistleblowers will be distributed to affected workers. C.R.S. 8-13.5-204(1),(2).

<sup>31</sup> These remedies are available for retaliation and violations of Part 2 rights (involving access to key service providers).

<sup>32</sup> [Agricultural Labor Conditions Rules](#), 7 CCR 1103-15, Rule 5.3.