COLORADO
Department of
Labor and Employment

Division of Labor Standards and Statistics
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STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

State Labor Relations ("SLR") Rules, 7 CCR 1103-12, as adopted January 11, 2022.

I. BASIS. The Director ("Director") of the Division of Labor Standards and Statistics ("Division") has authority to adopt rules and regulations under the authority listed in Part II, which is incorporated into Part I as well.

II. SPECIFIC STATUTORY AUTHORITY. These rules are issued under the authority of, and as implementation and enforcement of, Colorado Revised Statutes ("C.R.S.") Title 24, Article 50 (2022) (the "Colorado Partnership for Quality Jobs and Services Act," C.R.S. § 24-50-1101 et seq.), as well as the general labor law implementation and enforcement authority of C.R.S. Title 8, Articles 1 and 3 (2022), and are intended to be consistent with the rulemaking requirements of the Administrative Procedures Act, C.R.S. § 24-4-103. These rules are promulgated pursuant to express authority including but not limited to in C.R.S. §§ 24-50-1103, -1106(4), and C.R.S. § 8-3-105.

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is 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; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

IV. SPECIFIC FINDINGS FOR ADOPTION. The amendments are to only **Rule 4.1.2**, on the statute of limitations for unfair labor practice ("ULP") charges under the Colorado Partnership for Quality Jobs and Services Act, C.R.S. § 24-50-1101 et seq. (the "Act"). The Act provides a statute of limitations for ULP charges: any controversy concerning a ULP may be submitted to the Division "in a manner and with the effect" provided in C.R.S. Title 8, Article 3. (C.R.S. § 24-50-1113(3).) The section governing unfair labor practices in Article 3 of Title 8 states that the right to proceed "shall not extend beyond six months from the date of the specific act or unfair labor practice alleged." (C.R.S. § 8-3-110(16).)

Amended Rule 4.1.2 thus simplifies and streamlines the rule on the limitations period for a ULP under the Act, reading as follows: "An unfair labor practice complaint must be received by the Division no later than six months after the date that the alleged unfair labor practice occurred." ULP complaints received by the Division will be reviewed on a case-by-case basis, to determine whether the receipt of the complaint complies with the rule, the Act, and other applicable law. Such case-by-case review may include analysis of equitable tolling principles that can apply to statutes of limitations generally, and to the most analogous other statute in particular (the National Labor Relations Act),[1] and whether a complaint filing was delayed by military service that may trigger limitations period tolling under federal law.[2] The prior version of Rule 4.1.2 provided several examples of possible circumstances in which the statute of limitations could be tolled; *e.g.*, if a charging party did not find out about an ULP when it occurred, the statute of limitations would not begin to run until the party "knew about" or "reasonably should have known about" the ULP. However, because tolling is an exercise of the

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[1] *See, e.g., R.G. Burns Elec., Inc.*, 326 NLRB 440, 446-47 (1998) ("10(b) of the [National Labor Relations] Act provides 'That no complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge'.... While the running of the limitations period can begin only when the unfair labor practice occurs, Section 10(b) is tolled until there is either actual or constructive notice of the alleged unfair labor practice. It is also firmly established that the 10(b) period commences only when a party has clear and unequivocal notice of the violation.") (citing 29 U.S.C. § 160 (providing same six-month ULP limitations period as Labor Peace Act)); *John Morrell & Co.*, 304 NLRB 896, 899 (1991) ("The 10(b) period [29 U.S.C. § 160] does not begin to run until the charging party receives clear and unequivocal notice – either actual or constructive – of the acts that constitute the alleged unfair labor practice, *i.e.*, until the aggrieved party knows or should know that his statutory rights have been violated. As a corollary … when a party deliberately misrepresents or conceals from another the operative facts concerning its actions so that the other party is unable, even through the exercise of due diligence, to discover those facts, the (10)(b) period does not begin to run until the deceived party obtains the relevant facts")) (citing 9 U.S.C. § 160); *Zipes v. TWA*, 455 U.S. 385, 395 n. 11 (1982) ("[T]he time requirement for filing an unfair labor practice charge under the National Labor Relations Act operates as a statute of limitations subject to recognized equitable doctrines ....").

[2] Servicemembers Civil Relief Act, 50 U.S.C § 3936(a) ("Tolling of statutes of limitation during military service. The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember ....").

Division's equitable power, the rule's language need not (and cannot) provide an exhaustive list describing the circumstances when tolling might be justified; indeed, such language could inadvertently and erroneously suggest that tolling can occur *only* in such circumstances. As the Colorado Supreme Court explained in *Garrett v. Arrowhead Improvement Association*:

> The purpose of a court sitting in equity is to promote and achieve justice with some degree of flexibility. Thus, the exercise of equitable jurisdiction requires an inquiry into the particular circumstances of the case… Unswerving, "mechanistic" application of statutes of limitations would at times inflict obvious and unnecessary harm upon individual plaintiffs without advancing…legislative purposes. On numerous occasions we have found "such particular circumstances as to dictate not the harsh approach of literally applying the statute of limitations but the application of the more equitable and countervailing considerations of individual justice." A "just accommodation" of individual justice and public policy requires that "in each case the equitable claims of opposing parties must be identified, evaluated and weighed."

826 P.2d 850, 855 (Colo. 1992) (internal quotation omitted). Equitable tolling is a long-established doctrine, but must remain flexible to the facts and circumstances of individual cases. *Id.*; *see also Morrison v. Goff*, 91 P.3d 1050, 1057 (Colo. 2004) ("[B]ecause tolling is an equitable remedy, its application involves an examination of the facts and circumstances of individual cases to determine when equity requires such a remedy."). Accordingly, the Division amended the rule to remove language describing examples of particular circumstances under which the Act's statute of limitations may be equitably tolled, and will continue to evaluate any ULP filings on a case-by-case basis, subject to such equitable principles.

V. EFFECTIVE DATE. These rules take effect on March 2, 2022.

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

January 11, 2022
Date