

# Galvanize Law

TRADECRAFT INDUSTRIES

## LUNCH & LEARN SERIES

BY GALVANIZE LAW

**JUNE 15**

*Firing Employees Without Coming  
Under Fire: Reducing Risk in Terminations*



**YOU'RE FIRED!**



**Firing Employees  
Without Coming  
Under Fire:  
Reducing Risks  
in Terminations**



# ATTORNEY PROFILE



## ALEXIS RELLER

### Associate Attorney at Galvanize Law

Ms. Reller handles the full gamut of legal issues that business owners encounter, from contracts and financing to safety and human resources issues. She has litigated in state and federal courts as well as administrative appeals of OSHA citations. With extensive litigation experience, Ms. Reller has an eye for proactive risk management to help protect clients from future issues before they arise, so her clients can focus on running their businesses and maximizing profits.

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## ABOUT GALVANIZE LAW

### A PROGRESSIVE LAW FIRM SERVING THE CONSTRUCTION INDUSTRY

**Galvanize Law Group, LLC is a progressive law firm focused on serving the needs of the construction industry. We are passionate counselors and advocates who enjoy learning about our clients and offering them real solutions as they build their companies and navigate both simple and complex legal issues.**

**[www.galvanize.law](http://www.galvanize.law) | [@Galvanizelaw](https://www.instagram.com/Galvanizelaw)**



# Most Significant Costs of Doing Business



- **Labor:** Compensation, Benefits, Workers Comp, Unemployment
- **Overhead**
- **Outside of Your Control**
  - Materials and Supplies
  - Supply Chain Delays
  - Market Demand
  - Competitors' Prices



## Costs of an Underutilized or Unideal Employee



- Compensation and Benefits
- Insurance Premiums
- Lost Opportunity Costs
- Errors and Omissions Penalties
- Liquidated Damages or other Late Fees
- Damage to Team Morale, Toxic Work Environment for Others



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# CONSISTENCY





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## Varieties of the End of Employment

**1**

Voluntary  
Resignation or No  
Show

**2**

Termination for Cause

**3**

Termination Without  
Cause or Layoff





## Colorado Wage Claim Act



**Applies to EVERY Employer  
Regardless of Size**



**Protections for Laborers  
and Employees**



**Voluntary Resignation  
or Termination**



**Failure to Appear =  
Voluntary Resignation**



# Colorado Wage Claim Act- C.R.S. § 8-4-109

(1) (a) When an interruption in the employer-employee relationship by volition of the employer occurs, the wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of such discharge is due and payable immediately. If at such time the employer's accounting unit, responsible for the drawing of payroll checks, is not regularly scheduled to be operational, then the wages due the separated employee shall be made available to the employee no later than six hours after the start of such employer's accounting unit's next regular workday; except that, if the accounting unit is located off the work site, the employer shall deliver the check for wages due the separated employee no later than twenty-four hours after the start of such employer's accounting unit's next regular workday to one of the following locations selected by the employer:

- (I) The work site;
- (II) The employer's local office; or
- (III) The employee's last-known mailing address.

(b) When an employee quits or resigns such employee's employment, the wages or compensation shall become due and payable upon the next regular payday. When a separation of employment occurs, the employer shall make the separated employee's check for wages due available at one of the following locations selected by the employer:

- (I) The work site;
- (II) The employer's local office; or
- (III) The employee's last-known mailing address.

(c) If an employer has made the employee's wages or compensation available at the work site or at the employer's local office under paragraph (a) or (b) of this subsection (1), and the employee has not received the wages or compensation within sixty days after the wages or compensation were due, the employer shall mail the employee's check for wages or compensation due to the employee's last-known mailing address.

(2) Nothing in subsection (1) of this section shall limit the right of an employer to set off any deductions pursuant to section 8-4-105 owing by the employee to the employer or require the payment at the time employment is severed of compensation not yet fully earned under the compensation agreement between the employee and employer, whether written or oral.

(3) (a) If an employer refuses to pay wages or compensation in accordance with subsection (1) of this section, the employee, his or her designated agent, or the division may send a written demand for the payment.

(a.5) If the employer disputes the amount of wages or compensation claimed by an employee under this article and if, within fourteen days after the written demand is sent, the employer makes a legal tender of the amount that the employer in good faith believes is due, the employer shall not be liable for any penalty unless, in a legal proceeding, including a civil action or an administrative procedure under sections 8-4-111 and 8-4-111.5, the employee recovers a greater sum than the amount so tendered.

(b) If an employee's earned, vested, and determinable wages or compensation is not paid within fourteen days after the written demand is sent in the manner set forth in paragraph (d) of this subsection (3), the employer shall be liable to the employee for the wages or compensation, and a penalty of the sum of the following amounts of wages or compensation due or, if greater, the employee's average daily earnings for each day, not to exceed ten days, until such payment or other settlement satisfactory to the employee is made:

- (I) One hundred twenty-five percent of that amount of such wages or compensation up to and including seven thousand five hundred dollars; and

- (II) Fifty percent of that amount of such wages or compensation that exceed seven thousand five hundred dollars.

(c) If the employee can show that the employer's failure to pay is willful, the penalty required under paragraph (b) of this subsection (3) shall increase by fifty percent. Evidence that a judgment has, within the previous five years, been entered against the employer for failure to pay wages or compensation is admissible as evidence of willful conduct.

(d) (I) The employer shall send or deliver payment, by check, draft, or voucher in the employee's name, to the employee at the address contained in the written demand; or make the payment by direct deposit authorized under section 8-4-102 (2) if the employee has not revoked the authorization. The employer may, but is not required to, make the payment by direct deposit to an account specified by the employee in the demand, even if the employee has not previously authorized direct deposit of the employee's compensation, or make the payment by another method requested by the employee in the demand, if applicable. If the employee has not previously authorized direct deposit of compensation and the demand does not state an address to which the payment should be mailed, the employer shall make the payment as follows:

- (A) To the employee's last-known address according to the records of the employer; or

- (B) If applicable and if the employer so elects, as otherwise requested by the employee in the demand.

(II) The employee or his or her designated agent may commence a civil action to recover the penalty set forth in this subsection (3). For an action filed in a small claims court, established pursuant to part 4 of article 6 of title 13, C.R.S., if the employer has not received a written demand at least fourteen days before the employer is served with the complaint or other document commencing the action, service of the complaint or other document serves as the written demand under this subsection (3). If an employer makes a legal tender of the full amount claimed in the action within fourteen days after service of the complaint or other document commencing the action, the employee shall dismiss the action.

(4) If, at the time of the death of any employee, an employer is indebted to the employee for wages or compensation, and no personal representative of the employee's estate has been appointed, such employer shall pay the amount earned, vested, and determinable to the deceased employee's surviving spouse. If there is no surviving spouse, the employer shall pay the amount due to the deceased employee's next legal heir upon the request of such heir. If a personal representative for the employee has been appointed and is known to the employer prior to payment of the amount due to the spouse or other legal heir, the employer shall pay the amount due to such personal representative upon the request of such representative. The employer shall require proof of a claimant's relationship to the deceased employee by affidavit and require such claimant to acknowledge the receipt of any payment in writing. Any payments made by the employer pursuant to the provisions of this section shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable to the deceased employee's estate or to the deceased employee's personal representative. Any amounts received by a surviving spouse or legal heir shall be considered in diminution of the allowance to the spouse or legal heir pursuant to the "Colorado Probate Code", articles 10 to 17 of title 15, C.R.S. Nothing in this section shall create a substantive right that does not exist in any agreement between the employer and the employee.



# Colorado Wage Claim Act- C.R.S. § 8-4-105

(1) No employer shall make a deduction from the wages or compensation of an employee except as follows:

(a) Deductions mandated by or in accordance with local, state, or federal law including, but not limited to, deductions for taxes, "Federal Insurance Contributions Act" ("FICA") requirements, garnishments, or any other court-ordered deduction;

(a.5) Deductions for contributions attributable to automatic enrollment in an employee retirement plan, as defined in section 8-4-105.5, regardless of whether the plan is subject to the federal "Employee Retirement Income Security Act of 1974", as amended;

(b) Deductions for loans, advances, goods or services, and equipment or property provided by an employer to an employee pursuant to a written agreement between such employer and employee, so long as it is enforceable and not in violation of law;

(c) Any deduction necessary to cover the replacement cost of a shortage due to theft by an employee if a report has been filed with the proper law enforcement agency in connection with such theft pending a final adjudication by a court of competent jurisdiction; except that, if the accused employee is found not guilty in a court action or if criminal charges related to such theft are not filed against the accused employee within ninety days after the filing of the report with the proper law enforcement agency, or such charges are dismissed, the accused employee shall be entitled to recover any amount wrongfully withheld plus interest. In the event an employer acts without good faith, in addition to the amount wrongfully withheld and legally proven to be due, the accused employee may be awarded an amount not to exceed treble the amount wrongfully withheld. In any such action the prevailing party shall be entitled to reasonable costs related to the recovery of such amount including attorney fees and court costs.

(d) Any deduction, not listed in paragraph (a), (a.5), (b), or (c) of this subsection (1), that is authorized by an employee if the authorization is revocable, including deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, supplemental retirement plans, charities, and deposits to financial institutions;

(e) A deduction for the amount of money or the value of property that the employee failed to properly pay or return to the employer in the case where a terminated employee was entrusted during his or her employment with the collection, disbursement, or handling of such money or property. The employer shall have ten calendar days after the termination of employment to audit and adjust the accounts and property value of any items entrusted to the employee before the employee's wages or compensation shall be paid as provided in section 8-4-109. This is an exception to the pay requirements in section 8-4-109. The penalty provided in section 8-4-109 shall apply only from the date of demand made after the expiration of the ten-day period allowed for payment of the employee's wages or compensation. If, upon such audit and adjustment of the accounts and property value of any items entrusted to the employee, it is found that any money or property entrusted to the employee by the employer has not been properly paid or returned the employer as provided by the terms of any agreement between the employer and the employee, the employee shall not be entitled to the benefit of payment pursuant to section 8-4-109, but the claim for unpaid wages or compensation of such employee shall be disposed of as provided for by this article.

(2) Nothing in this section authorizes a deduction below the minimum wage applicable under the "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq.



## Wage Act Basics



- **What?**
  - All Wages that are Earned and Determinable at the time of the Termination
- **When?**
  - It's complicated.
  - Best practice: On the Spot or Within 24 Hours



## Wage Claim Act Exceptions



**Normal Withholdings**



**Company-Issued Property**



**Theft (Use Caution!)**



**No other Withholdings**



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## Colorado Wage Claim Traps

**1**

Employer's Good  
Faith Exception  
has No Teeth

**2**

One Way Statutory  
Penalties for Non-  
compliance

**3**

Employees Can be  
Awarded Attorney's  
Fees and Costs



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## Company Policy Compliance

**1**

Second only to  
Colorado Law  
Compliance

**2**

If the Company has  
a Policy in Place,  
Must Follow

**3**

Consistency!



## End of Employment Logistics: What to Protect

- Trade Secrets
- Company Property
- Physical Access
- Electronic Access
- Notifying Third Party Vendors, Clients
- Notifying Other Employees
- Exit Interview
- Documentation
- Voluntary Resignation
- Termination for Cause





## End of Employment Logistics: What to Document

- If an incident or accident precipitated the termination, the employer must document the event
- What happened?
- Any injuries or property damage?
- What third parties were impacted?
- Who witnessed?
- Who communicated the termination?
- Obtain coworker statements, save for file
- Need in case of future litigation



## Unemployment Issues

- CDLE Request for Facts About a Former Employee's Employment: Form UIB-290
- Employer is required to respond to CDLE requests
- Employees terminated for cause are not eligible for unemployment, but may still apply
- Statements made by an employer can be used against it in later disputes



## Working Backwards: Employee Personnel Files

- Under Colorado law, a personnel file is defined as “the personnel records of an employee...that are used or have been used to determine the employee’s qualifications for employment, promotion, additional compensation, or employment termination or other disciplinary action.”
- No requirement to create, maintain, or retain personnel files
- Employees can request a copy one time per year
- Employees can request one tie after termination
- No private right of action



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## Employee Personnel Files

**1**

No Requirement to Present Personnel File Information to Employee

**2**

Because of Right to Demand File, All Information Noted Should be Justifiable

**3**

Best Practice: One Repository or Location for Personnel Files



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## Employee Personnel Files

**ONCE COMPLIANCE WITH COLORADO LAW IS OBTAINED,  
NEXT STEP IS COMPLIANCE WITH COMPANY POLICY**





## Policies



**If Negative Information is Documented,  
Need to Do So CONSISTENTLY**



**Documenting Absenteeism  
/Tardiness**



**Documenting Performance Issues**



**Key Documents Should be  
Saved in More than One Place**



# Consistent Documentation is Critical to Defend Against Discrimination Allegations

## § 17:65. Disability discrimination—Colorado Anti-Discrimination Act

The Colorado Anti-Discrimination Act (CADA) prohibits Colorado employers, labor organizations and employment agencies from discriminating against:

any person otherwise qualified because of disability ...; but with regard to disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job.<sup>1</sup>

CADA also prohibits harassment on the basis of disability, defining “harassment” as:

to create a hostile work environment based upon an individual's race, national origin, sex, sexual orientation, disability, age, or religion. Notwithstanding the provisions of this paragraph (a), harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate.<sup>2</sup>



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## CONTACT US

### Learn more:

Visit Galvanize Law at [www.galvanize.law](http://www.galvanize.law)

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