

## Appendix C



### F/EA Model Frequently Asked Questions

**Created by Consumer Direct for Colorado and approved by the  
Colorado Department of Health Care Policy and Financing  
March 2021**

Regardless of the service option, In-Home Support Services (IHSS) (agency-based) or Consumer-Directed Attendant Support Services (CDASS), minimizing risk is a joint effort between the Member or Authorized Representative and Financial Management Service (FMS) provider. The Department of Health Care Policy and Financing (HCPF) contracts with the FMS provider in accordance with the State of Colorado Procurement C. R. S. 25.5-6-12 et sec. and requires that they operate within industry standards, HCPF rules and regulations, and State and federal law.

Likewise, Members and Authorized Representatives have the responsibility to follow CDASS rules, FMS policies and procedures, and employment laws. These are put in place to provide protection to the Member or Authorized Representative, Attendants, the FMS, and the State of Colorado.

This Fiscal Employer Agent (F/EA) Model Frequently Asked Questions sheet has been created to highlight the features and responsibilities associated with this model of FMS. It is intended to assist Members and Authorized Representatives to understand the protections in place and potential liability.

#### **1. Q: What happens if the FMS provider inappropriately files payroll taxes?**

**A:** Upon appointment as your fiscal agent, the FMS provider assumes responsibility for properly filing employer and Attendant related payroll taxes with the IRS and State of Colorado. Filing is based on the information submitted by the Attendant on their W-4 and employee-identified exemptions based on the employee-employer relationship status. In the event there is an issue with the tax

filings or incurred tax penalties due to FMS error, the FMS provider assumes responsibility.

The National Resource Center for Participant-Directed Services has published the following related to this topic:

*As a participant-employer who uses a Fiscal/Employer Agent (F/EA), what is my status at the IRS?*

The IRS has a special tax classification designated specifically for self-directing individuals who hire workers and use an F/EA. The IRS officially classifies these individuals as “Home Care Service Recipients,” a special type of household employer. The Internal Revenue Manual, which instructs IRS agents on how to enforce tax regulations, has detailed instructions in place for Home Care Service Recipients. The Manual directs IRS agents to handle participants’ tax matters with the greatest possible sensitivity. The Manual also makes clear to IRS agents that an F/EA is responsible for handling wages and taxes related to Home Care Service Recipients, and the F/EA should be the only point of contact about tax issues related to participants’ program activity.

In the event of a tax problem related to participation in a self-direction model, the IRS has stated publicly that they would follow up with the F/EA, not the Participant, for any taxes and penalties due. The IRS internal databases also reflect this position, as the IRS has reported that upon establishment as a Home Care Service Recipient in the IRS systems, the participant-employer’s individual filing requirements and opportunity to get notices, liens, and levies from the IRS are *removed* and instead those filing requirements and opportunities for notices, liens and levies are connected to the Fiscal/Employer Agent who has submitted an IRS Form 2678, *Employer Appointment of Agent* on the participant-employer’s behalf.

*(The National Resource Center for Participant-Directed Services uses F/EA to identify the Fiscal Management Service.)*

**2. Q: What happens if the FMS provider is unable to process and/or pay attendant payroll?**

**A: Each FMS provider was required to submit a Business Continuity plan to HCPF. In the event of technical issues, emergencies, natural disasters or similar, the plan details how the FMS provider will respond.**

Prior to contracting with the FMS providers, HCPF required the FMS providers to demonstrate they were financially solvent. Additionally, FMS providers are subject to an annual review by HCPF.

Having multiple FMS providers allows for additional assurances. In the event one FMS provider's contract is terminated or the FMS provider becomes financially insolvent, HCPF will work with Members and/or Authorized Representatives and the remaining FMS providers to ensure attendant payroll is processed and paid. The timing of payment is dependent on the timely completion of Attendant paperwork and timesheet submittal.

The National Resource Center for Participant-Directed Services has published the following related to this topic:

*What happens if my Fiscal/Employer Agent (FMS provider) goes out of business and there are unpaid taxes? Would I be liable then?*

The IRS has stated publicly that they would go after the funding source, that is, the Medicaid program, for unpaid taxes. If a Fiscal/Employer Agent in a Medicaid-funded program went out of business with unpaid taxes, the IRS policy would be to recover the amount due from the state Medicaid program, **NOT** from participants.

**3. Q: What happens if an attendant is injured?**

**A:** The FMS providers ensure workers' compensation insurance is in place in the event an Attendant is injured when "clocked in" and working with a Member. Each FMS provider has a process for reporting a workplace injury.

It is important to note that Members and Authorized Representatives play a key role and have a responsibility for creating a safe work environment.

See Question #4 for additional information on workers' compensation insurance.

**4. Q: What insurances are FMS providers required to have?**

**A:** Workers' Compensation Insurance is provided for CDASS Attendants the FMS providers. CDASS employers or their Attendants should contact their FMS provider for more detailed information about the coverage and process to file a claim.

**5. Q: How do FMS providers demonstrate they have the required insurance?**

**A:** Contract holders with the state must provide copies of insurance certificates, to HCPF.

**6. Q: What happens if an FMS provider's insurance is cancelled?**

**A:** Contract language indicates the FMS provider must notify HCPF if any change occurs in it maintaining an active Workers' Compensation Insurance policy.

**7. Q: Is it possible that an Attendant is exempt from Federal Income Taxes?**

**A:** Per IRS 2014-7 an Attendant could be exempt if the requirements of IRS 2014-7 are met. <https://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income>.

If an Attendant believes they meet this exemption, they may notify the FMS provider. The attendant should check with the FMS provider regarding their current process.

**It is important to note that attendants should seek advice from a tax professional if they have questions.**

**8. Q: What happens if I overspend my monthly allocation by 130% or more?**

**A:** If an Attendant's wages exceed 129.99% of the Member's monthly allocation, the Employer of Record would be responsible for providing payment of the difference. The FMS provider will pay up to 129.99%, if there are available allocation funds, but anything 130% and beyond is the responsibility of the employer to pay. The FMS provider or Case Manager do not have the ability to approve expenses of 130% or more, and a Member's reserve funds will not cover the expenditure beyond 129.99%.

**If you have questions about how this affects payroll taxes, talk with a tax professional.**

**9. Q: How is a family member's social security and possible eligibility for unemployment impacted?**

**A:** Per IRS Publication 15, <https://www.irs.gov/publications/p15>, if an Attendant is in one of the following relationships with the Federal Employer Identification Number (FEIN) holder, the Attendant is exempt from the employee's portion of Federal Insurance Contributions Act (FICA or Social Security and Medicare) and the employer is exempt from the employer's portion of FICA and Federal Unemployment Tax Act (FUTA) and State Unemployment Tax (SUTA).

<b>Relationship to FEIN Holder:</b>	<b>FICA</b>	<b>FUTA</b>	<b>SUTA</b>
Child employed by Parent	Exempt until 21st Birthday	Exempt until 21st Birthday	Exempt until 21st Birthday
Parent employed by Adult Child (including Adoptive or Stepparent)	Exempt	Exempt	Not Exempt
Spouse employed by Spouse	Exempt	Exempt	Exempt

Per the IRS, the Attendant or employer cannot opt out of these exemptions. It is true that the Attendant would not be earning social security credits and since the employer is exempt from paying into FUTA and SUTA, the Attendant could not collect unemployment. The Attendant should check with the FMS provider regarding their process for identifying family relationships.

**It is important to note that attendants should seek advice from a tax professional if they have questions.**

Publication 15 applies to all businesses and is not specific to the Home Care Service Recipient (HCSR), which is the designation the IRS has given to an EIN holder in an F/EA situation.

**10. Q: What does the FMS provider consider a substantial period of time for hospitalization (for example) after which they will consider the Member a**

**financial risk? In such cases, would a CDASS Member be terminated from CDASS?**

**A:** There is no financial risk to the FMS provider if the Member becomes ill. The FMS provider cannot terminate services to a CDASS Member. Additionally, a CDASS Member can only be terminated in accordance with 10 CCR 2505-10 Sections 8.510.14 and 8.510.15.

**11. Q:** In the F/EA model, if a CDASS Member is in the hospital for an extended period of time and loses their attendants, could the CDASS Member go to Consumer Direct for help finding new Attendants when they get back home? Or is the CDASS Member on their own in such cases? In other words, what support is available to hire new Attendants?

Consumer Direct hosts an Attendant Directory on their website as a tool to help connect potential Attendants with Members. You can access this directory at <http://consumerdirectco.com> and click on “CDASS Directory.”

**12. Q:** What liability does a Member have when being an employer?

**A:** Members face the same liabilities that any other employer will face. Details can be found on the IRS website at [www.irs.gov](http://www.irs.gov).

**13. Q:** Under the F/EA model, how do I get a Tax/Employer ID Number (EIN)?

**A:** The FMS provider will assist Members/Authorized Representatives in obtaining the FEIN.

The following forms are required to be completed by the Member or Authorized Representative and returned to the FMS provider to appoint the FMS provider as the agent. The FMS provider will then assist with obtaining the Federal Employer Identification Number (FEIN) and the State of Colorado unemployment and withholding accounts.

- IRS Form SS-4: Application for Employer Identification Number – Form SS-4 is used to obtain the FEIN.
- IRS Form 2678: Employer/Payroll Appointment of Agent – Form 2678 authorizes the FMS provider to act as the agent with the IRS.
- IRS Form 8821: Tax Information Authorization – Form 8821 indicates the type of taxes and corresponding forms the Agent may file on behalf of the Member or Authorized Representative.

- Colorado DR 0145: Colorado Department of Revenue – Form DR 0145 authorizes the FMS provider to act as the agent with the State of Colorado.
- Colorado UITL-100: Application for Unemployment Insurance Account and Determination of Employer Liability – Form UITL-100 is used to register the FEIN holder with the Department of Labor and Employment and create an unemployment account. Colorado CR 0100AP – Colorado Sales Tax Withholding Account Application – Form CR 0100 is used to apply for a tax withholding account with the Colorado Department of Revenue.

It is important to note that the IRS assigns Members a Home Care Service Recipient (HCSR) designation when the FMS provider applies for a Federal Employer Identification Number (FEIN). This designation indicates the Member is an employer receiving Medicaid funds and the FEIN is for the purpose of filing employer related payroll taxes. The FEIN assignment is not a business that will earn a profit or incur a loss.

#### **14. Q: Who can hold the FEIN, the Member, or the Authorized Representative?**

**A:** The FEIN should be held by whoever is directing and managing the services. In most cases this will be the Member. In cases where an Authorized Representative is directing and managing the services, the Authorized Representative should hold the FEIN.

**UPDATE (11/2015):** Per the National Resource Center for Participant-Directed Services: In self-direction programs, the individual receiving services is usually registered as the employer. But when the individual receiving services cannot perform employer duties or prefers not to do them, he/she can authorize a representative to serve as the employer and make employer decisions on his/her behalf.

A best practice is to register the person who is actually performing the majority of employer duties as the employer. Employer duties include:

- Hiring and firing workers.
- Training workers.
- Managing and scheduling workers.
- Deciding how much workers are paid.

#### **15. Q: How do the FMS providers handle situations in which the Member or**

**their Authorized Representative have a FEIN already established?**

**A:** The FMS provider would require the FEIN number of the Member or Authorized Representative to run a Taxpayer Identification Number (TIN) match. If the FEIN holder does not know their FEIN number, they would need to obtain the 147C FEIN letter from the IRS in order for the FMS to run a TIN match to ensure that the FEIN can be used for CDASS. If the FMS runs a TIN match and there is a business name set up that is different from the Employer of Record's name, the FEIN holder will be asked to reach out to the IRS and have the business changed to a Home Care Service Recipient FEIN and to drop the business name. The FMS would then need the updated 147C letter from the IRS in order to accept the FEIN.

If a FEIN is active and is being used for business purposes, the FMS cannot accept or use the FEIN. If it were just the Member in this scenario, they may need to get an Authorized Representative in place to have the Authorized Representative be the Employer of Record.

**UPDATE (3/2021):** An Attendant employed by an Authorized Representative (holding the FEIN) and working for multiple CDASS Members will receive one W-2 with applicable wages and withholdings combined. This may complicate tax filings in some cases. It is recommended that the Member and Authorized Representative determine the most appropriate holder of the FEIN prior to hiring attendants.

**16. Q: If I change FMS providers, do my attendants need to complete new employment applications?**

**A:** You are considered the Employer of Record and therefore your Attendants work directly for you regardless of which FMS provider you use as your fiscal agent.

The FMS providers will work together to transfer as much information and documentation as possible. However, additional paperwork may be required per FMS provider.

**17. Q: In F/EA who is responsible for hiring, dismissing, supervising, and training attendants?**

**A:** In the F/EA model, the Member or Authorized Representative has the sole



responsibility for day-to-day management of attendants. This includes interviewing, hiring, training, and scheduling, supervising, and terminating attendants. As an employer, the Member or Authorized Representative is responsible for ensuring employment laws are followed, such as using proper interview techniques or creating a harassment free workplace. For additional information see the Being an Employer section of the CDASS training manual at <http://consumerdirectco.com/forms>.

**18. Q: Will the Member need to purchase employer liability insurance?**

**A:** The FMS provider carries liability insurance as outlined in the FMS provider Contract and this coverage does **NOT** extend to CDASS Members. Therefore, if coverage is desired then it must be purchased at the Member's expense.

**UPDATE (01/2021):** See #4 above

**Employment Law Posters**



# NOTICE TO WORKERS

## YOU HAVE THE RIGHT TO BE:

- Properly classified as an employee or an independent contractor
- Paid accurately and timely for the services you perform

There are resources available to you if you believe you are being subject to improper classification or inaccurate payment practices by your employer. For more information, go to [WorkRight.cdle.co](http://WorkRight.cdle.co).

Employers are required to follow the law when paying hourly wages, overtime, and properly covering you for unemployment insurance and workers' compensation purposes. As a worker, you have certain rights as an *employee vs. independent contractor*.

Improper classification (often called misclassification) of employees as independent contractors and other labor law violations create many problems, both for law-abiding businesses and for workers in Colorado.

If you believe you have been **improperly classified** as an independent contractor and are really performing duties that fit the criteria of an employee, visit [colorado.gov/cdle/TipForm](http://colorado.gov/cdle/TipForm), or call us at 303-318-9100 and select Option 4. To be classified as an employee, you must meet the criteria in Colorado Revised Statute 8-70-115. You can read the law online and find out more at [coloradoui.gov/ProperClassification](http://coloradoui.gov/ProperClassification).

As an *employee*, you are entitled to unemployment insurance benefits if you become unemployed through no fault of your own. **Your employer contributes to unemployment insurance and cannot deduct this from your wages.**

If you become unemployed and wish to file for unemployment insurance benefits, go to [coloradoui.gov](http://coloradoui.gov) and click on File a Claim. If your hours of work and pay are reduced, you may be entitled to partial unemployment benefits.

If you cannot access a computer, call one of the following numbers: 303-318-9000 (Denver-metro area) or 1-800-388-5515 (outside Denver-metro area); hearing impaired 303-318-9016 (TDD Denver-metro area) or 1-800-894-7730 (TDD outside Denver-metro area).

## EMPLOYERS ARE REQUIRED BY LAW TO POST THIS NOTICE

Colorado Employment Security Act, 8-74-101(2); Regulations Concerning Employment Security 7.3.1 through 7.3.5

Employers can download copies of this poster at [coloradoui.gov/employer](http://coloradoui.gov/employer), then click on Forms / Publications.



**COLORADO**  
Department of  
Labor and Employment



**IT STARTS WITH YOU**  
Building a better Colorado

# **WARNING**

IF YOU ARE INJURED ON THE JOB, WRITTEN NOTICE OF YOUR INJURY MUST BE GIVEN TO YOUR EMPLOYER WITHIN FOUR WORKING DAYS AFTER THE ACCIDENT, PURSUANT TO SECTION 8-43-102(1) AND (1.5), COLORADO REVISED STATUTES.

IF THE INJURY RESULTS FROM YOUR USE OF ALCOHOL OR CONTROLLED SUBSTANCES, YOUR WORKERS' COMPENSATION DISABILITY BENEFITS MAY BE REDUCED BY ONE-HALF IN ACCORDANCE WITH SECTION 8-42-112.5, COLORADO REVISED STATUTES.



Colorado Minimum Wage: \$12.32 per hour, or \$9.30 for Tipped Employees, effective 1/1/2021.

- The minimum wage adjusts annually by inflation; next year’s COMPS Order and Poster will provide the 2022 minimum wage.
- The minimum wage applies to all adults and emancipated minors, whether paid hourly or any other basis (salary, commission, piecework, etc.), unless exempted by COMPS Order Rule 2. Unemancipated minors may be paid 15% below the minimum.
- The federal minimum wage (\$7.25) and any local minimum wages (including \$14.77 in Denver as of 1/1/21) may also apply. If work is covered by multiple minimum or overtime wage rules, the rule with the higher wage or standard applies.

Overtime: 1½ times the regular pay rate for hours over 40 weekly, 12 daily, or 12 consecutive.

- Hours in two or more weeks cannot be averaged in computing overtime.
- Employers may not provide time off (often called “comp time”) instead of time-and-a-half premium pay for overtime hours.

Meal Periods: 30 minutes uninterrupted and duty-free, for shifts over 5 hours.

- Employees must be completely relieved of all duties, and allowed to pursue personal activities, for meal periods to be unpaid.
- If work makes uninterrupted meal periods impractical, eating an on-duty meal must be permitted, and the time must be paid.
- To the extent practical, meal periods must be at least 1 hour after starting and 1 hour before ending shifts.

Rest Periods: 10 minutes, paid, every 4 hours.

#Work Hours:	Up to 2	>2, up to 6	>6, up to 10	>10, up to 14	>14, up to 18	>18, up to 22	>22
#Rest Periods:	0	1	2	3	4	5	6

- Rest periods need not be off-site but must not include work and should be in the middle of the 4 hours to the extent practical.
- Two 5-minute rest periods, instead of one 10-minute, are permitted if employees and employers agree voluntarily and without coercion, and if 5 minutes is enough to go back and forth to a bathroom or other place where a genuine break would be taken. Additional flexibility with 5-minute periods applies to agriculture, Medicaid home care, and collectively bargained work.
- Employers that do not authorize and permit rest periods must pay extra for the work time that would have been rest periods.

Time Worked: Time employers allow performance of labor/services for their benefit must be paid.

- All time on-premises, on duty, or at prescribed workplaces (but not just letting off-duty employees be on-premises), including:
  - putting on or removing work clothes/gear (but not clothes worn outside work), cleanup/setup, or other off-the-clock duty;
  - awaiting assignments at work, or receiving or sharing work-related information; or
  - security/safety screening, clocking/checking in or out; or
  - waiting for any of the above tasks.
- Travel for employer benefit is time worked; normal home/work travel is not. For more on travel and sleep time, see Rule 1.9.2.

Deductions, Credits, & Charges from Wages: Subject to limits in C.R.S. 8-4-105 and below.

- Tip credits of up to \$3.02 per hour (lowering minimum wages to \$9.30) are allowed for those regularly, customarily receiving over \$30 per month in tips. If hourly pay plus tips is below the full minimum wage, the employer must pay the difference.
- Meal credits are allowed for the cost or value (without employer profit) of a voluntarily accepted meal.
- Lodging deductions are allowed only if housing is voluntarily accepted by the employee, primarily for the employee’s (not employer’s) benefit, recorded in writing, and limited to \$25 or \$100 per week (depending on the housing type).
- Uniforms that are ordinary clothes, without special material or design, need not be provided; other uniforms must be provided at no cost. Employers must pay for any special cleaning required, and cannot require deposits or deduct for ordinary wear and tear.

Exemptions from the COMPS Order: All listed in Rule 2; key exemptions listed below.

- Executives/supervisors, decision-making administrative employees, and professionals (Rule 2.2.1-3) paid the exempt salary:
- | 2021     | 2022     | 2023     | 2024     | Each Year After 2024                    |
|----------|----------|----------|----------|---|
| \$40,500 | \$45,000 | \$50,000 | \$55,000 | Prior year’s salary, inflation-adjusted |
- 20% owners, or at a nonprofit the highest-paid/highest-ranked employee, if actively engaged in management (2.2.5).
  - Highly technical computer-related employees (defined in 2.2.10), if paid at least \$28.38 per hour.
  - Various in-residence workers, including property managers, range workers, and camp/outdoor education field staff (2.2.7).
  - Various, but not all, types of salespersons (2.2.4, 2.4.1, 2.4.2) and taxi drivers (2.2.6).
  - Certain medical transportation and hospital/nursing home employees have modified overtime rules (2.4.4, 2.4.5).
  - Downhill ski/snowboard employees, including on-mountain food but not lodging, are exempt from 40-hour overtime (2.4.3).
  - Agriculture (2.3) and some transportation (2.4.6) jobs are exempt from overtime and meal periods, and have more flexible rest periods (agriculture) or no (transportation) rest periods.

Complaint & Anti-Retaliation Rights.

- The Division of Labor Standards and Statistics (contact info at the bottom of this Poster) accepts complaints and tips as to violations of COMPS or other wage rights under federal, state, or local law. Alternatively, employees may file lawsuits in court.
- Parties liable for unpaid wages include the employer as an entity, and individuals with operational control over the entity.
- Employers cannot retaliate by threatening, coercing, or discriminating for purposes of reprisal, interference, or obstruction, as to actual or anticipated wage investigations, hearings, complaints, or proceedings.
- Violations of wage or anti-retaliation provisions may be reported to the Division as complaints or anonymous tips.
- Immigration status is irrelevant to wage rights. The Division will investigate and rule on complaints without asking, reporting, or considering status. Using status to interfere with rights is illegal under Wage Protection Rule 4.8 and other applicable law.

**This poster must be displayed where easily accessible to workers, included in any existing employee handbook or manual, shared with remote workers, provided in languages other than English as needed, and replaced annually.**

**This Poster summarizes key wage rules in the COMPS Order, but not all, and should not be relied upon as complete information. For the full Order, more detailed fact sheets, or for questions, information, or complaints as to wage or other labor laws, contact:**

**Division of Labor Standards and Statistics, coloradolaborlaw.gov, cdle\_labor\_standards@state.co.us, 303-318-8441 / 888-390-7936.**

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT  
DIVISION OF WORKERS' COMPENSATION

## **Colorado Workers' Compensation Information**

**Your employer has workers' compensation coverage for employees through:**

Workers' compensation is a type of insurance coverage that employers must provide to their employees. The cost of workers' compensation insurance is paid entirely by the employer and may not be deducted from an employee's wages.

If you are injured or sustain an occupational disease while at work, you may be entitled to compensation benefits as provided by law. **WRITTEN NOTICE MUST BE GIVEN TO YOUR EMPLOYER WITHIN 4 WORKING DAYS OF THE ACCIDENT.** If you don't report your injury or occupational disease promptly your benefits may be reduced.

If you are unable to work as the result of a work-related injury or occupational disease, compensation (wage replacement) benefits will be based on 2/3 of your average weekly wage up to a maximum set by law. No compensation is payable for the first 3 days' disability unless the period of disability exceeds two weeks.

You are entitled to reasonable and necessary medical treatment of compensable injuries or occupational diseases. If you notify your employer of an injury or occupational disease and are not offered medical care, you may select the services of a licensed physician or chiropractor.

You may file a Worker's Claim for Compensation with the Division of Workers' Compensation. To obtain forms or information regarding the workers' compensation system, you may call Customer Service at 303-318-8700 or toll-free at 1-888-390-7936 or visit our website at [www.colorado.gov/cdle/dwc](http://www.colorado.gov/cdle/dwc).

**COLORADO DIVISION OF WORKERS' COMPENSATION**  
**633 17<sup>th</sup> Street, Suite 400, Denver, CO 80202-3626**

**Any information provided below comes from your employer and is specific to this place of employment:**





# AVISO A LOS TRABAJADORES

## USTED TIENE EL DERECHO DE:

- Estar correctamente clasificado como un empleado o un contratista independiente.
- Ser pagado correctamente y puntualmente por los servicios que realiza.

Hay recursos disponibles para usted si cree que está sujeto a una clasificación incorrecta o prácticas de pago incorrectas por parte de su empleador. Para obtener más información, visite [WorkRight.cdle.co](http://WorkRight.cdle.co).

Los empleadores están obligados a cumplir con la ley al pagar salarios por hora, horas extras, y que lo cubra adecuadamente para propósitos del seguro de desempleo y compensación de trabajadores. Como trabajador usted tiene ciertos derechos, sea como *empleado o contratista independiente*.

La clasificación incorrecta de los empleados como contratistas independientes y otras violaciones de la ley laboral crean muchos problemas, tanto para las empresas que respetan la ley y para los trabajadores en Colorado.

Si cree que ha sido **clasificado incorrectamente** como un contratista independiente y realmente está desempeñando labores que encajan con los criterios de un empleado, visite [colorado.gov/cdle/TipForm](http://colorado.gov/cdle/TipForm), o llámenos al 303-318-9100 y presione la Opción 4. Para ser clasificado como empleado, debe cumplir con el criterio del Estatuto Revisado de Colorado (Colorado Revised Statute) 8-70-115. Puede leer la ley en línea (sólo en inglés) y obtener más información en [coloradoui.gov/ProperClassification](http://coloradoui.gov/ProperClassification).

Como *empleado*, usted tiene derecho a beneficios de seguro de desempleo al quedar sin empleo, y sin que haya sido su culpa. **Su empleador contribuye al seguro de desempleo y no puede deducirlo de su salario.**

Si se queda sin empleo y desea solicitar beneficios de seguro de desempleo, vaya a [coloradoui.gov](http://coloradoui.gov) y haga clic en File a Claim. Si sus horas de trabajo y sueldo han sido reducidas, usted puede tener derecho a beneficios parciales de desempleo.

Si no puede acceder a una computadora, llame a uno de los siguientes números: 303-318-9333 (área metropolitana de Denver) o al 1-866-422-0402 (fuera del área metropolitana de Denver); personas con dificultades auditivas 303-318-9016 (TDD Denver-metro area) o al 1-800-894-7730 (TDD fuera del área de Denver-metro).

## POR LEY EL EMPLEADOR ESTÁ OBLIGADO A PUBLICAR ESTE AVISO

Colorado Employment Security Act (Ley de Seguridad de Empleo de Colorado), 8-74-101 (2); Regulations Concerning Employment Security (Reglamentos Relativos a la Seguridad de Empleo), 7.3.1 a 7.3.5

Los empleadores pueden descargar copias de este póster en [coloradoui.gov/employer](http://coloradoui.gov/employer), luego hacer clic en Forms / Publications.



**COLORADO**  
Department of  
Labor and Employment



# **AVISO**

SI SE LASTIMA EN EL TRABAJO, DEBE DARLE UN AVISO POR ESCRITO A SU EMPLEADOR DENTRO DE CUATRO DÍAS LABORABLES DEL ACCIDENTE, SEGÚN A LA SECCIÓN DE LOS ESTATUOS REVISADOS DE COLORADO 8-43-102(1) Y (1.5).

SI EL ACCIDENTE RESULTA DEBIDO AL USO DE ALCOHOL O UNA SUSTANCIA CONTROLADA, SUS BENEFICIOS DE LA INCAPACIDAD DE LA COMPENSACIÓN DE LOS TRABAJADORES PUEDEN SER REDUCIDOS POR UN MEDIO EN ACUERDO DE LA SECCIÓN DE LOS ESTATUOS REVISADOS DE COLORADO 8-42-112.5.





Salario Mínimo de Colorado: \$12.32 por hora, o \$9.30 para empleados que reciben propinas, a partir del 1/1/2021.

- El salario mínimo se ajusta anualmente por inflación; la orden y el póster de COMPS del próximo año proveerá el salario mínimo del 2022.
- El salario mínimo aplica a todos los adultos y menores emancipados, ya sea que se les pague por hora u otra base (salario, comisión, trabajo por pieza, etc.), a menos que estén exentos de la Regla 2 de la Orden COMPS. A los menores no emancipados se les puede pagar 15% por debajo del mínimo.
- El salario mínimo federal (\$7.25) y cualquier salario mínimo local (incluyendo \$14.77 en Denver a partir del 1/1/21) también pueden aplicar. Si el trabajo está cubierto por múltiples reglas de salario mínimo o de horas extra, se aplica la regla con el salario más alto.

Tiempo Extra: 1 ½ veces del pago regular por horas sobre 40 semanales, 12 diarias, o 12 consecutivas.

- No se puede usar el promedio de horas en dos o más semanas en el cálculo de horas extras.
- Los empleadores no pueden proporcionar tiempo libre (conocido como “tiempo como compensación”) en lugar del pago de tiempo y medio por horas extras.

Períodos de Comida: 30 minutos ininterrumpidos y libres de obligaciones, para turnos de 5 horas o más.

- Los empleados deben estar completamente libres de todas las obligaciones, y se les debe permitir realizar actividades personales, para que los periodos de comida no sean pagados.
- Si el trabajo hace que los períodos de comida ininterrumpidos sean imprácticos, el consumir una comida mientras se realizan obligaciones será permitido, y ese tiempo debe ser pagado.
- En la medida de lo posible, los periodos de comida deben tener lugar por lo menos 1 hora después de comenzar y 1 hora antes de terminar el turno.

Períodos de Descanso: 10 minutos, pagados, cada 4 horas.

#Horas Trabajadas:	hasta 2	>2, hasta 6	>6, hasta 10	>10, hasta 14	>14, hasta 18	>18, hasta 22	>22
#Períodos de Descanso:	0	1	2	3	4	5	6

- Los periodos de descanso no necesitan tomar lugar fuera del sitio de trabajo, pero no pueden incluir trabajo y deben ser en medio de cada 4 horas mientras sea práctico.
- Dos períodos de descanso de 5 minutos, en lugar de 10 minutos, son permitidos si los empleados y empleadores llegan a un acuerdo voluntario y sin coerción, y si los 5 minutos son suficientes para poder ir y regresar del baño o de un lugar donde se puede tomar un descanso genuino. La flexibilidad de 5 minutos para los periodos de descanso aplica a la agricultura, cuidados en el hogar de Medicaid, y trabajos negociados colectivamente.
- Los empleadores que no autoricen y permitan los períodos de descanso deben pagar extra por el tiempo que hubiera sido parte del periodo de descanso.

Tiempo Trabajado: El tiempo en que los empleadores permiten el desempeño de trabajo para su beneficio debe ser pagado.

- Todo el tiempo en el lugar de trabajo, al servicio, o en lugares de trabajo prescritos (pero no solo permitiendo que los empleados que están libres de obligaciones estén en el lugar de trabajo), incluyendo:
  - poniéndose o quitándose el uniforme/equipo de trabajo (pero no la ropa que se usa fuera del trabajo), limpiar/preparar, o actividades sin registrar la hora de entrada o salida;
  - esperando asignación de trabajo, o recibiendo o compartiendo información relacionada con el trabajo; o
  - revisiones de seguridad, registrar la entrada o salida; o
  - esperando por cualquiera de las tareas mencionadas anteriormente.
- Tiempo de viaje para el beneficio del empleador es tiempo trabajado; el tiempo normal de viaje a casa/trabajo no es tiempo trabajado.
- Para más información sobre tiempo de viaje y tiempo para dormir, vea la Regla 1.9.2.

Este póster debe mostrarse en un lugar donde los trabajadores lo puedan accesar fácilmente, incluido en cualquier manual existente, compartido con trabajadores que trabajan remotamente, proporcionado en idiomas distintos al inglés como sea necesario, y reemplazado anualmente. Este póster resume las reglas salariales en la Orden COMPS, pero no todas, y no debe considerarse como información completa sobre las reglas salariales.

Para obtener una copia completa de la Orden, hojas de datos más detalladas, preguntas, información, o quejas de sueldos y otras leyes laborales, contacte:

Division of Labor Standards and Statistics, coloradolaborlaw.gov, cdle\_labor\_standards@state.co.us, 303-318-8441 / 888-390-7936.

Deducciones, Créditos, y Cargos de Sueldos: Sujetos a límites en C.R.S. 8-4-105 y como está detallado debajo.

- Créditos de propinas de no más de \$3.02 por hora (reduciendo el sueldo mínimo a \$9.30) serán permitidos para personas que usualmente y regularmente reciban más de \$30 en propinas al mes. Si el pago por hora más las propinas es menos del sueldo mínimo, el empleador debe pagar la diferencia.
- Créditos de comida son permitidos por el costo razonable o valor (sin ganancias al empleador) de una comida aceptada voluntariamente.
- Las deducciones de alojamiento son permitidas solamente si la vivienda es voluntariamente aceptada por el empleado, principalmente para el beneficio del empleado (no el empleador), documentado en un acuerdo escrito, y limitado a \$25 o \$100 por semana (dependiendo en el tipo de alojamiento).
- Uniformes de uso ordinario, sin material ni diseño especial, no necesitan ser proporcionados; otros uniformes deben ser proporcionados sin costo alguno. Los empleadores deben pagar por cualquier limpieza especial que se requiera, y no pueden requerir un depósito o deducción por uso y desgaste ordinario.

Exenciones de la Orden de COMPS: Todas mencionadas en la Regla 2; exenciones clave mencionadas a continuación.

- Ejecutivos/supervisores, empleados administrativos con el poder de tomar decisiones, y profesionales (Regla 2.2.1-3) que reciben el pago exento de salario:
- | 2021     | 2022     | 2023     | 2024     | Cada año después del 2024                         |
|----------|----------|----------|----------|---|
| \$40,500 | \$45,000 | \$50,000 | \$55,000 | Salario del año anterior, ajustado a la inflación |
- Propietarios de un 20%, o en alguna organización sin fines de lucro el empleado mejor pagado y con mayor rango, si participa activamente en la gerencia (2.2.5).
  - Empleados en áreas altamente técnicas de computación (definido en 2.2.10), si se les paga por lo menos \$28.38 por hora.
  - Varios trabajadores que trabajan en donde residen, incluyendo gerentes de propiedades, trabajadores de campo, y personal de campamentos o educación al aire libre (2.2.7).
  - Varios, pero no todos, los tipos de vendedores (2.2.4, 2.4.1, 2.4.2) y taxistas (2.2.6).
  - Empleados de transporte médico y hospitalario/asilos tienen reglas modificadas sobre tiempo extra (2.4.4, 2.4.5).
  - Trabajadores de esquí alpino y snowboard, incluyendo servicios de alimentos en la montaña, pero no alojamiento, están exentos de la regla de tiempo extra a partir de más de 40 horas (2.4.3).
  - Trabajos de agricultura (2.3) y algunos trabajadores de transporte (2.4.6) están exentos de la regla de tiempo extra y periodos de comida, y tienen periodos de descanso más flexibles (agricultura) o ningún periodo de descanso (transporte).

Quejas y Derechos Contra Represalias

- La División de Normas Laborales y Estadísticas (información de contacto en la parte inferior del Póster) acepta quejas por falta de pago de sueldos o tiempo extra como es requerido por leyes federales, estatales, o locales. Alternativamente, los empleados pueden presentar demandas en un tribunal.
- Las partes responsables por la falta de pago pueden incluir el empleador como una entidad, o individuos con control operativo de la entidad.
- Los empleadores no pueden tomar represalias en forma de amenazas, coerción, o discriminación con el propósito de castigar, inferir, u obstruir debido a una investigación actual o anticipada de una queja, audiencia, u otro proceso.
- Las violaciones de provisiones de sueldos o provisiones contra represalias pueden ser reportadas a la División como quejas o denuncias anónimas.
- El estatus migratorio es irrelevante para los derechos salariales. La División investigará y resolverá quejas sin preguntar, reportar, o considerar el estatus migratorio de los reclamantes. El uso del estatus para interferir con los derechos es ilegal bajo la Regla 4-8 de Protección Salarial y otras leyes aplicables.

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT  
DIVISION OF WORKERS' COMPENSATION

## **Información De Indemnización Por Accidentes Laborales De Colorado**

**Su empleador tiene cobertura de indemnización por accidentes laborales para empleados completamente:**

La indemnización por accidentes laborales es un tipo de cobertura de seguro que los empleadores deben proveer a sus empleados. El coste del seguro de indemnización por accidentes laborales es pagado completamente por el empleador y no puede ser deducido de los sueldos de un empleado.

Si usted sufrió un accidente o mantiene una enfermedad profesional en su trabajo, usted puede calificar para los beneficios de compensación. Usted tiene la obligación de NOTIFICAR POR ESCRITO A SU EMPLEADOR DENTRO DE 4 DÍAS DEL ACCIDENTE. Si usted no informa sobre su accidente o enfermedad profesional inmediatamente sus beneficios podrían ser reducidos.

Si usted no puede trabajar por el resultado de su accidente de trabajo o la enfermedad profesional, los beneficios de compensación serán pagados sobre la base de 2/3 de su sueldo semanal hasta un máximo fijado por ley. Los primeros 3 días no son cubiertos por la aseguranza.

Usted está autorizado para el tratamiento médico que sea razonable y necesario si usted sufrió lesiones en el trabajo o enfermedades profesionales. Si usted notifica a su empleador sobre una lesión o la enfermedad profesional y no le ofrecen atención médica adecuada, usted puede seleccionar los servicios de otro médico que tenga licencia o que sea quiropráctico.

Usted puede reportar su propio reclamo si su empleador no lo ha hecho. Para obtener formularios o información acerca de accidentes laborales usted puede llamar al servicio de asistencia al numero 303-318-8700 o sin costo a 1-888-390-7936 o visitar nuestro sitio web en [www.colorado.gov/cdle/dwc](http://www.colorado.gov/cdle/dwc).

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT  
633 17th St. Suite 400, Denver, CO 80202-3660

**Cualquier información proveída abajo viene directamente de su empleador y es exclusivo de este lugar del empleo:**



**COLORADO**  
**Department of Health Care**  
**Policy & Financing**

Department of Health Care Policy & Financing  
1570 Grant Street  
Denver, CO 80203

**Note from Consumer Direct**

The purpose of this letter is to help identify if you have additional CDASS responsibilities. You are not required to return it to us.

**CDASS Participant and Authorized Representative  
Travel and Overtime Responsibilities**

Are you an Authorized Representative (AR) for more than one Consumer Directed Attendant Support Services (CDASS) participant?

☐ **Yes**      ☐ **No**

Are you a CDASS participant yourself and also an AR for another CDASS participant?

☐ **Yes**      ☐ **No**

**If yes to either question, you may have a joint employer relationship according to the Department of Labor.**

Joint employment exists when an employee is employed by two (or more) employers and the employers are responsible, both individually and jointly, for following employment laws for that employee.

As a CDASS participant or an AR, you must comply with the Fair Labor Standards Act (FLSA). This means you are potentially responsible for the overtime and travel time that your attendants work. Overtime is when an attendant works over 40 hours in a week or more than 12 hours in a shift. Travel time is when an attendant completes work at one participant's home and then travels to another participant's home to work.

The U.S. Department of Labor (DOL) may consider you the employer whether you hold the Federal Employer Identification Number (FEIN) for everyone whose care you manage or not. As a CDASS participant or an AR, you manage your attendant and are responsible for:

- Managing your attendant's work hours.
- Making sure that attendants, who work for more than one CDASS participant under your management, do not work more than 40 per hours per week total. We cannot pay for overtime pay that is shared across two or more CDASS participants.

Our mission is to improve health care access and outcomes for the people we serve while demonstrating sound stewardship of financial resources.

[www.colorado.gov/hcpf](http://www.colorado.gov/hcpf)



- Attendants may be required to receive payment for travel time costs under the FLSA. We do not have a mechanism to pay for this so do not arrange your care where you would be liable for the travel costs under the FLSA.
- Making sure your attendants do not charge travel costs. We cannot pay them for travel costs that are shared across two or more CDASS participants.
- Monitoring travel time and overtime for shared attendants. There is not a system in place to split these costs among CDASS participants who share an attendant.

**Example:** You or your AR manages the care of two participants active with CDASS. These participants live 1 mile apart and share the same CDASS attendant. The CDASS attendant works 30 hours a week for one participant and 25 hours for the other participant. You have created a schedule that has the attendant working 55 hours in a week. The attendant must receive overtime pay for all hours past 40 for that week. Because the Colorado CDASS delivery option cannot reimburse for travel time or overtime across multiple participants, the attendant will not be able to get paid an overtime rate for the 15 hours worked.

We appreciate that you have volunteered to be an AR for a CDASS participant. It is the responsibility of the CDASS participant/AR to manage attendant hours with regards to the FLSA. The Department implores you to be cautious and safeguard any risk of violating the FLSA. If it is found that a joint employer relationship exists, it will be the CDASS participant and/or AR responsibility to cover the expense of overtime and travel time.

**Please note: Colorado Department of Health Care Policy and Financing is not providing you with legal advice. It is the responsibility of the CDASS participant/AR to ensure compliance with all employment laws.**

For more information about the FLSA please contact Consumer Direct Colorado at <http://consumerdirectco.com/> or 1-844-381-4433.





## **FLSA FAQ – Based on Department of Labor (DOL) Guidance**

**Created by Consumer Direct Colorado and approved by  
Colorado Department of Health Care Policy and Financing (HCPF)**

Regardless of the service option; agency-based, In Home Support Services (IHSS) or Consumer Directed Attendant Support Services (CDASS), minimizing risk is a joint effort between the client or Authorized Representative and providers. This Fair Labor Standards Act (FLSA) information sheet has been created to highlight the features and responsibilities associated with in the CDASS model. It is intended to assist clients and Authorized Representatives to understand the responsibilities and requirements to employers under the FLSA.

Likewise, clients and Authorized Representatives have the responsibility to follow CDASS rules, FMS Provider policies and procedures, and employment regulations. These are put in place to provide protection to the client or Authorized Representative, attendants, and the CDASS program.

The following Frequently Asked Questions have been compiled by Consumer Direct Colorado to assist clients and Authorized Representatives. Please note, Consumer Direct Colorado cannot provide tax advice or legal advice. Advice from a tax professional or a lawyer regarding individual situations is recommended.

### **1. Q: What is the Fair Labor Standards Act (FLSA)?**

**A:** FLSA is the Federal Law that requires employers to pay employees, minimum wage and overtime. This includes domestic services employees.

“Domestic Service Employment” means services of a household nature performed by an employee in or about a private home.

### **2. Q: What are my requirements as the employer to pay attendants for sick time, paid vacations, and holidays?**

**A:** In CDASS, clients may elect to set different rates of pay for shifts that fall on holidays, weekends etc. if they would like. CDASS budgets are not built with funds to pay for sick time, unworked holidays and paid vacations. Timesheets may only be submitted to FMS providers for hours worked.





### 3. Q: Are there any exemptions from the FLSA Overtime requirements?

**A:** There are two exemptions under FLSA an employer may claim should all of the criteria be met. These are known as “**Live-in Domestic Service Employee Exemptions**” and “**Companionship Services Exemption**”

Because CDASS is a task based service, the Companionship Exemption **DOES NOT** apply due to the definition established by DOL.

#### **Live-in Domestic Service Employee Exemptions**

To be a “live-in” home care worker, the employee must either live at the consumer’s home full-time (that-is, have no other home of their own), or spend at least 120 hours or five consecutive days or nights in the consumer’s home per week.

A live-in home care worker could be a family member of the consumer or a provider who moved into a consumer’s home as part of a shared living arrangement. Workers who come to a consumer’s home for 24-hour shifts but are not present for at least 120 hours each week or for five consecutive days or nights are not live-in workers.

Employees who do not meet this definition are not considered live-in domestic service workers and must be paid at least the federal minimum wage for all hours worked and overtime pay at one and a half times the regular rate of pay for all hours worked over 40 in a workweek.

- Workers who work temporarily for the household for only a short period of time, such as two weeks, are not considered live-in domestic service workers, because residing on the premises of the household implies more than temporary activity. The employer, in this case, cannot claim the overtime pay exemption and must pay overtime at one and a half times the regular rate of pay for all hours worked over 40 in the workweek.
- Workers who work 24-hour shifts but are not residing on the employer’s premises “permanently” or for “extended periods of time” are not considered live-in domestic service workers and, thus, the workers must be paid overtime at one and a half times the regular rate of pay for all hours worked over 40 in the workweek.

*See Wage and Hour Division Fact Sheet 79B, Live-in Domestic Service Workers Under the FLSA, for more information about live-in home care workers and how they must be paid.*

[www.dol.gov/whd/homecare/factsheets.htm](http://www.dol.gov/whd/homecare/factsheets.htm)

[http://consumerdirectco.com/wp-content/uploads/2014/12/homecare\\_guide\\_20160331.pdf](http://consumerdirectco.com/wp-content/uploads/2014/12/homecare_guide_20160331.pdf)



#### 4. Q: What is my requirement for Overtime Pay under the FLSA regarding Sleep Time for my attendants?

**A:** This can depend on many factors such as whether or not the employee is a live in caregiver or not, and how many hours are in their scheduled shift. The chart below summarizes the sleep time rules for each category of worker. Additional information about these requirements is available at [http://www.dol.gov/homecare/sleep\\_time.htm](http://www.dol.gov/homecare/sleep_time.htm).

	Live-in employee		Shifts of 24 hours or more	Shifts of fewer than 24 hours
	Extended periods of time	Permanent		
Requirements for excluding an employee's sleep time from hours worked	<ul style="list-style-type: none"> <li>• Reasonable agreement to exclude sleep time</li> <li>• Employer must provide private quarters in a homelike environment</li> </ul>		<ul style="list-style-type: none"> <li>• Employer provides adequate sleeping facilities</li> <li>• Employee can usually enjoy an uninterrupted night's sleep (5 consecutive hours)</li> <li>• Express or implied agreement to exclude sleep time</li> </ul>	Sleep time may not be excluded
Maximum number of hours that can be excluded	Up to 8 hours per night as long as the employee is paid for at least 8 hours during the 24-hour period	Up to 8 hours per night as long as the employee is paid for some other hours during the workweek	Up to 8 hours, in a fixed period, in each 24-hour shift	Sleep time may not be excluded
Limitations on exclusion on a particular night	<ul style="list-style-type: none"> <li>• Any interruption to sleep time must be paid</li> <li>• If during any night the employee does not get reasonable periods of uninterrupted sleep totaling at least 5 hours, the employer may not exclude any sleep time</li> </ul>			

Source: Fact Sheet # 79D: Hours Worked Applicable to Domestic Service Employment Under the Fair Labor Standards Act (FLSA) <https://www.dol.gov/whd/regs/compliance/whdfs79d.pdf>





### **What is HIPAA?**

HIPAA, the Health Insurance Portability and Accountability Act of 1996, is a law that keeps the identifiable health information of Members confidential. It includes what must be done to maintain this privacy and explains punishments for anyone caught violating privacy. The Office of Civil Rights of the U.S. Department of Health and Human Services is the agency authorized to enforce HIPAA's privacy regulations. The regulations took effect on April 14, 2003.

### **What is confidential?**

All information about Members is considered private or confidential, whether written on paper, saved on a computer, or spoken aloud. This includes their name, address, age, Social Security number, and any other personal information.

### **What are the consequences of breaking the law?**

The consequences will vary based on the severity of the violation. Factors considered are whether the violation was intentional or unintentional, or whether the violation indicated a pattern or practice of improper use or disclosure of identifiable health information. Depending on the violation, agencies may be fined by the government if they are found to be in non-compliance with HIPAA regulations.

### **Why are privacy and confidentiality important?**

You need to be able to trust your Attendants with some personal health information. In order for Attendants to provide quality care, they must have this information. You must know that whatever you share will be kept private.

### **What is the “Need to know” rule?**

If an Attendant needs to know your information to perform his or her job, you can share that information with the Attendant. However, every Attendant may not need to all the information about every Member. An Attendant should only have access to what is needed to perform the job.

### **What are the Member's HIPAA rights?**

As a Member, you have certain rights under the HIPAA regulations. Unless the information is needed for treatment, payment, and health care operations, it cannot be released without your written authorization. You must also give verbal/written permission to discuss information with family members. You

also have the following rights:

- To inspect and copy your medical record.
- To amend the medical record if you feel it is incorrect.
- To receive an account of all disclosures that were made, and to whom, except those necessary for treatment, payment, or health care operations.
- To restrict or limit use or access to medical information by others.
- To access confidential communications in the manner you request.
- To receive a copy of an agency's Notice of Privacy Practices.

If you feel the agency or its staff has not followed the HIPAA regulations, you can make a formal, written complaint to the agency or to the Department of Health and Human Services, Washington, DC.

## **What are ways to protect confidentiality?**

### **1. Spoken Communications:**

- Watch what you say, where you say it, and to whom.
- Close doors when discussing private information.
- Do not talk about health information matters in front of others.
- If someone asks you a question involving personal information, make sure that person has a "need to know" before answering.

### **2. Telephone Communications:**

- Do not leave messages on answering machines or voicemail with health information.
- When talking on the phone, be aware of who can overhear your conversation.

### **3. Medical Records:**

- Make sure medical records are viewed only by those who need to see them.
- Store them in an area not easily accessible to non-essential staff/others.
- Do not leave medical records lying around unattended or in an area where others can see them. Don't leave files on car seats; lock them in the trunk.

### **4. Trash:**

- Shred all papers containing personal health information.
- Put trash cans and shredders as close as possible to fax machines and desks where personal health information is used.

### **5. Fax Transmissions:**

- Do not leave papers containing private information on the fax machine.

- Pre-program frequently faxed numbers into the fax machine to reduce errors.
- If possible, notify the receiver when you are sending a fax.

## **6. Computers:**

- Develop a personal password which is hard to guess and change it as instructed.
- Position your monitor so it is not facing where someone could view identifiable health information.
- Never leave a computer unattended without logging off.
- Double-check the address before sending any e-mail.



# FactSheet

Bloodborne pathogens are infectious microorganisms present in blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV), the virus that causes AIDS. Workers exposed to bloodborne pathogens are at risk for serious or life-threatening illnesses.

### Protections Provided by OSHA's Bloodborne Pathogens Standard

All of the requirements of OSHA's Bloodborne Pathogens standard can be found in Title 29 of the Code of Federal Regulations at 29 CFR 1910.1030. The standard's requirements state what employers must do to protect workers who are occupationally exposed to blood or other potentially infectious materials (OPIM), as defined in the standard. That is, the standard protects workers who can reasonably be anticipated to come into contact with blood or OPIM as a result of doing their job duties.

In general, the standard requires employers to:

- **Establish an exposure control plan.** This is a written plan to eliminate or minimize occupational exposures. The employer must prepare an exposure determination that contains a list of job classifications

in which all workers have occupational exposure and a list of job classifications in which some workers have occupational exposure, along with a list of the tasks and procedures performed by those workers that result in their exposure.

- **Employers must update the plan annually** to reflect changes in tasks, procedures, and positions that affect occupational exposure, and also technological changes that eliminate or reduce occupational exposure. In addition, employers must annually document in the plan that they have considered and begun using appropriate, commercially-available, effective, and safer medical devices designed to eliminate or minimize occupational exposure. Employers must also document that

they have solicited input from frontline workers in identifying, evaluating, and selecting effective engineering and work practice controls.

- **Implement the use of universal precautions** (treating all human blood and OPIM as if known to be infectious for bloodborne pathogens).
- **Identify and use engineering controls.** These are devices that isolate or remove the blood- borne pathogens hazard from the workplace. They include sharps disposal containers, self-sheathing needles, and safer medical devices, such as sharps with engineered sharps-injury protection and needleless systems.
- **Identify and ensure the use of work practice controls.** These are practices that reduce the possibility of exposure by changing the way a task is performed, such as appropriate practices for handling and disposing of contaminated sharps, handling specimens, handling laundry, and cleaning contaminated surfaces and items.
- **Provide personal protective equipment (PPE), such as gloves, gowns, eye protection, and masks.** Employers must clean, repair, and

- **Make available post-exposure evaluation and follow-up to any occupationally exposed worker who experiences an exposure incident.** An exposure incident is a specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or OPIM. This evaluation and follow-up must be at no cost to the worker and includes documenting the route(s) of exposure and the circumstances under which the exposure incident occurred; identifying and testing the source individual for HBV and HIV infectivity, if the source individual consents or the law does not require consent; collecting and testing the exposed worker's blood, if the worker consents; offering post-exposure prophylaxis; offering counseling; and evaluating reported illnesses. The healthcare professional will provide a limited written opinion to the employer and all diagnoses must remain confidential.
- **Use labels and signs to communicate hazards.** Warning labels must be affixed to containers of regulated waste; containers of contaminated reusable sharps; refrigerators and freezers containing blood or OPIM; other containers used to store, transport, or ship blood or OPIM;

contaminated equipment that is being shipped or serviced; and bags or containers of contaminated laundry, except as provided in the standard. Facilities may use red bags or red containers instead of labels. In HIV and HBV research laboratories and production facilities, signs must be posted at all access doors when OPIM or infected animals are present in the work area or containment module.

- **Provide information and training to workers.** Employers must ensure that their workers receive regular training that covers all elements of the standard including, but not limited to: information on bloodborne pathogens and diseases, methods used to control occupational exposure, hepatitis B vaccine, and medical evaluation and post-exposure follow-up procedures. Employers must offer this training on initial assignment, at least annually thereafter, and when new or modified tasks or procedures affect a worker's occupational exposure. Also, HIV and HBV laboratory and production facility workers must receive specialized

initial training, in addition to the training provided to all workers with occupational exposure. Workers must have the opportunity to ask the trainer questions. Also, training must be presented at an educational level and in a language that workers understand.

- **Maintain worker medical and training records.** The employer also must maintain a sharps injury log, unless it is exempt under Part 1904 -- Recording and Reporting Occupational Injuries and Illnesses, in Title 29 of the Code of Federal Regulations.

### **Additional Information**

For more information, go to OSHA's Bloodborne Pathogens and Needlestick Prevention Safety and Health Topics web page at: <https://www.osha.gov/SLTC/bloodbornepathogens/index.html>.

To file a complaint by phone, report an emergency, or get OSHA advice, assistance, or products, contact your nearest OSHA office under the "U.S. Department of Labor" listing in your phone book, or call us toll-free at (800) 321-OSHA (6742).

This is one in a series of informational fact sheets highlighting OSHA programs, policies, or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations.

This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; the teletypewriter (TTY) number is (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



