



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised May 2018

1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number
g. Agency Liaison Email Address		
h. Date of Public Notice		i. Comment Period End Date
j. Public Comment URL or Email Address:		
k. Program		

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. Please provide the Chapter Numbers and Years Enacted
(eg: 2015 Session Laws Chapter 154):

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

Not Applicable.

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

_____ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

_____ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	



Mark Gordon
Governor

State of Wyoming

Department of Workforce Services

Labor Standards
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Robin Sessions Cooley
Director
Jason Wolfe
Interim Deputy Director

STATEMENT OF PRINCIPAL REASONS

Overview

Statutory authority for Labor Standards to promulgate rules regarding claims for unpaid wages is established by Wyoming Statute § 27-2-104. Labor Standards' rules establish procedures taking, investigating, and deciding claims for unpaid wages pursuant to Wyoming Statute § 27-4-502; define those sums which may be offset from an employee's wages; and set forth contested case hearing procedures.

The following administrative rule changes are necessary for a few reasons. First, the title of this chapter has been renamed to "Unpaid Wage Claims." Some definitions have been added, removed, or clarified. Other changes have been made in order to conform these rules to the Secretary of State's required format and to reduce the Rules in number and in length. Many changes to these rules simply correct grammar and punctuation, as well as better establish and explain agency procedures within the administrative rules. For many years, Labor Standards has had procedures in place which were never reduced to rule. Labor Standards believes it in the best interest of the agency and the public to increase transparency by articulating Labor Standards' expectations in administrative rules plainly. Additionally, Labor Standards' "Wage Offset Rules" have been revised to more clearly define those sums which may be offset from an employee's wages. Specifically, the proposed rules define when an employer's verified damages suffered due to an employee's theft or fraud may be withheld, as well as costs for purchases an employee makes on an employer's credit card, and costs of pre-employment drug tests and background checks. Due to the historical number of wage claims concerning these types of withholdings, Labor Standards determined the addition of these provisions was necessary and in the public's best interest. Finally, Labor Standards is eliminating its practice of issuing preliminary findings prior to issuing its Determination. This change will allow Labor Standards to streamline processes and provide timelier customer service while maintaining the parties' due process rights.

Contact Information

Questions regarding this Statement of Reasons and Labor Standards' request to promulgate rules can be directed to the agency by phone at 307-777-7261 or sent in writing to dws-wyolabor@wyo.gov

As public servants, we work hard every day to help ensure
safe and fair workplaces with qualified workers

Chapter 1

UNPAID WAGE CLAIMS

Section 1. Authority. This Chapter is promulgated by the authority of Wyoming Statute § 27-2-104(a)(v).

Section 2. Purpose. This Chapter prescribes procedures by which the Department shall carry out its mandate to enforce all laws enacted by the legislature of Wyoming relating to labor, wages, and hours of labor, as required by Wyoming Statute § 27-2-104(a)(i).

Section 3. Definitions.

(a) "Claim" means a signed written or electronic complaint filed with Labor Standards by the employee on a form provided by Labor Standards, claiming unpaid wages are due and owed to the employee pursuant to Wyoming Statute §§ 27-4-101, -104, or -507.

(b) "Claimant" means any employee submitting a claim as defined in subsection (a).

(c) "Compensation" means remuneration, pay, salary, bonus, or commission to be received by an employee for labor, services or as a result of his or her employment whether the compensation is determined on a time, task, weight, piece, hourly, chore or other basis.

(d) "Fringe Benefits" means any payments to the employee or to a fund for the benefit of the employee which are due the employee under an agreement with the employer or under a policy of the employer including but not limited to: vacation; holiday; welfare; pension; subsistence; or profit sharing.

(e) "Labor Standards" means a program within the Department of Workforce Services.

Section 4. Filing Procedures.

(a) Upon receipt of a claim, Labor Standards shall serve, by regular mail to the employer's last known address or by personal delivery, a copy of the claim together with a letter of instructions for responding to the claim.

(b) The employer shall have ten (10) days from the letterhead date to submit a response to such claim.

(c) Where the employer concedes the validity of the claim, Labor Standards shall order payment of the claimed amount.

(d) Labor Standards shall serve a copy of the employer's answer by regular mail or

personal delivery upon the claimant.

(e) The claimant shall submit a reply to the employer's answer within ten (10) days from the letterhead date.

(f) If either party fails to submit a timely response or reply, Labor Standards shall proceed with its investigation based on that information which has been filed.

Section 5. Investigation. For the purpose of determining the validity of any claim, Labor Standards may:

(a) Interview and obtain additional statements from either party;

(b) Examine, copy and inspect any relevant records or documents held by the parties or other persons;

(c) Interview and obtain written or oral statements of third persons relevant to the claim;

(d) Contact and receive relevant information from any other governmental agencies and/or officials;

(e) Make any and all relevant inquiries necessary in making a determination; and

(f) Refer the claim for an administrative hearing pursuant to Wyoming Statute § 27-4-504, should the employer fail to cooperate with the investigation.

Section 6. Wage Offset Rules. The following sums shall constitute proper offsets from wages due an employee:

(a) Any sums deducted from wages pursuant to the Internal Revenue Code or any other Federal tax provision.

(b) Any sums deducted from wages pursuant to the Social Security Administration Act or the Federal Insurance Contribution Act.

(c) Any sums deducted from wages as dues, contributions, or other fees to any labor organization or association; or as contributions for any employee's participation or eligibility in any health, welfare, insurance, retirement, or other benefit plan or program, provided:

(i) That such employee has granted written authorization for such deductions; and

(ii) That such deductions shall terminate upon the employee's written

revocation of said authorization.

(d) Any sums deducted from wages as payments, repayments, contributions, or deposits, to any credit union, banking, savings, loan, trust or other financial institution, provided:

(i) That such employee has granted written authorization for such deductions; and

(ii) That such deductions shall terminate upon the employee's written revocation of said authorization.

(e) Any sums deducted from wages as payment for any purchase of goods or services by the employee from the employer, provided:

(i) That the goods or services sold by the employer are sold in the ordinary course of his or her business;

(ii) That the employee has actual or constructive possession of the goods or services purchased; and

(iii) That the employee's purchase is evidenced by the employee's written acknowledgement.

(f) Any sums deducted from wages for damages suffered by the employer due to the employee's negligence, theft, or fraud, provided:

(i) That the employee's negligence, theft, or fraud is determined by a judicial proceeding;

(ii) That the amount of the damage suffered by the employer is determined by a judicial proceeding;

(iii) That the negligence, theft, or fraud and damages arise in the course of the employment; and

(iv) That the employer has not received payments or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages. Where the employer has received payments or any form of restitution from any insurer, assurer, surety or guaranty to cover any of the damages caused by the employee's negligence, the sum of the offset shall not exceed the amount of any applicable deductible or two hundred fifty dollars (\$250.00), whichever is less.

(g) Any sums deducted from wages pursuant to "Attachment" (Wyoming Statute §§ 1-15-201 through -212), "Garnishment" (Wyoming Statute §§ 1-15-401 through -425), or

Wyoming Statute §§ 27-4-106 through -108.

(h) Any sums deducted from wages as repayment to the employer by the employee of any cash advances, loans or payments of expenses for optional benefits such as tuition assistance, relocation and training, made to the employee by such employer, provided:

(i) That the cash advance, loan or payment of expenses to the employee occurred while said employee was in the employ of such employer; and

(ii) That the employee's receipt of such cash advance, loan or payment of expenses is evidenced by the employee's written acknowledgement.

(j) Any sums deducted from wages resulting from cash shortages, provided:

(i) That the employee gives written acknowledgement upon beginning employment that he or she shall be responsible for any such shortages;

(ii) That the employer and employee verify in writing the amount of cash that is in the register or cash box at the beginning of the employee's work period;

(iii) That the employer and employee verify in writing the amount of cash that is in the register or cash box immediately at the end of the employee's work period; and

(iv) That the employee be the sole and absolute user and have sole access to the register or cash box from the time checked in until the time checked out.

(k) Any sums deducted from wages as payment for any purchase of tools, equipment, uniforms, or other items required for the employment of the employee, provided:

(i) That the employee has actual or constructive possession of the items; and

(ii) That the employee's purchase and receipt of the item is evidenced by written acknowledgement.

(l) Any sums deducted from wages as payment for tools, equipment, uniforms, or other items assigned to the employee by the employer, provided:

(i) That such item was assigned to the employee to be used within the scope of the employee's employment;

(ii) That the employee gave written acknowledgement of the receipt of such items; and

(iii) That such items have not been returned to the employer upon

termination.

(m) Any sums deducted from wages as payment for any purchase an employee makes on an employer's credit card, provided:

(i) The employee provided written acknowledgement that the employee would be responsible for personal purchases made on the card;

(ii) The purchased items were entirely for the benefit of the employee and in no way associated with the employer's business or the employee's job; and

(iii) The employer produces an itemized receipt of all purchases at issue and also demonstrates the employee made such purchases during the period of employment.

(n) Any sums deducted from wages as repayment for any pre-employment drug test, fingerprinting, credit check, or background check, provided:

(i) Such test or check is required by law or is otherwise a bona fide requirement for the performance of the position to which the employee applied;

(ii) That the employee is made aware in writing of the cost of such tests or checks prior to undergoing them;

(iii) That the employee has provided written acknowledgement agreeing to reimburse the employer for the cost of such tests or checks; and

(iv) That the employee's responsibility to provide such reimbursement ends after a specific period of time not to exceed one year of service.

(o) Payment of Undisputed Wages. In the case of a dispute over wage offsets, the employer shall give written notice to the employee, his counsel, or Labor Standards of the amount of wages which he or she concedes to be due and shall pay such amount without condition within the time required by statute.

(p) Acceptance by the employee of any partial payment of wages made hereunder shall not constitute a release or waiver as to the balance of any claim for the remaining unpaid wages.

(q) Improper Agreements. Any agreement and/or contract, written or otherwise, between any employer and any employee or his representative, in contravention of the lawful offsets enumerated in this Chapter shall be null and void.

(r) Check Stubs Required. All lawful offsets enumerated in this Chapter shall be itemized on a statement or a detachable check stub and provided to the employee as required

by Wyoming Statute § 27-4-101(b).

(s) Enforcement. No employer shall be permitted to deduct from wages due an employee any sums not enumerated in this Chapter.

Section 7. Conference. Where Labor Standards deems appropriate or upon request of either party, and upon agreement by both parties, an informal conference may be held. The conference may be used to establish facts, narrow the issues, and attempt resolution of the claim.

Section 8. Final Determination. Upon conclusion of the investigation and all necessary inquiries, Labor Standards shall make a final determination as to the validity of the claim filed. The final determination may find the claim to be invalid, valid in the original amount claimed, or valid in an amount different from that claimed. Labor Standards shall notify the parties of the final determination by certified mail.

Section 9. Fair Hearings.

(a) Any party aggrieved by Labor Standards' final determination may request a fair hearing pursuant to Wyoming Statute §§ 27-2-109(g) or 27-4-504(b). A request for a fair hearing shall be in writing and received by Labor Standards within fifteen (15) days of receipt of the final determination.

(b) Any hearing held pursuant to this Chapter shall be conducted in accordance with the Wyoming Administrative Procedures Act, Wyoming Statute §§ 16-3-107 through -115, and the Wyoming Office of Administrative Hearings' rules for Contested Case Proceedings, which are hereby incorporated by reference and can be found at:

<https://rules.wyo.gov/Search.aspx?RefNum=270.0001.2.07202017>

(i) The rules for Contested Case Proceedings were adopted by the Wyoming Office of Administrative Hearings and in effect on July 20, 2017.

(ii) No later amendments to the rules for Contested Case Proceedings are incorporated by reference.

(c) Within thirty (30) days of the close of the hearing, the hearing officer shall issue its written decision and send a copy to each party and to Labor Standards.

Section 10. Order to Pay.

(a) In the event an employer fails to pay wages due as determined by Labor Standards and fails to request a fair hearing within fifteen (15) days of receipt of the final determination, Labor Standards shall issue an order requiring payment of wages due. The order shall be sent by certified mail. The employer shall submit the ordered amount to Labor Standards within fifteen (15) days of receipt of the order.

(b) If the hearing officer's written decision determines wages are due, Labor Standards shall issue an order requiring payment of wages due, together with any interest or fees ordered by the hearing officer pursuant to Wyoming Statute § 27-4-104(b). The order shall be sent by certified mail. The employer shall submit the ordered amount to Labor Standards within fifteen (15) days of receipt of the order.