

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Benjamin Weiss v. Walter Scott Spencer, et al.

Weiss · No. 24-cv-00959-PAB-MDB · Decided March 25, 2026

SUMMARY

The United States District Court for the District of Colorado considers defendants’ motion for summary judgment in Benjamin Weiss’s action against Affordable Services Corp., Colorado Water & Mold Restoration Corp., and Walter Scott Spencer. The court addresses claims under the Fair Labor Standards Act, Colorado Wage Act, Colorado overtime rules, theft of services, and the Colorado Pay Transparency Act, including wage-and-hour exemptions and retaliation. Based on the excerpt, the court grants summary judgment on the FLSA, Colorado Wage Act, and theft-of-services claims and finds that the retaliation claims present a triable causal-connection issue before continuing its analysis.

CASE DETAILS

COURT	United States District Court for the District of Colorado
WRITING FOR THE COURT	Philip A. Brimmer
JURISDICTION	United States District Court for the District of Colorado
DECIDED	March 25, 2026
DOCKET	24-cv-00959-PAB-MDB
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved for summary judgment on the plaintiff's claims under the Fair Labor Standards Act, Colorado Wage Act, Colorado Pay Transparency Act, and related claims.
STANDARD OF REVIEW	Summary judgment is appropriate under Federal Rule of Civil Procedure 56 when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The evidence is viewed in the light most favorable to the nonmoving party, but the nonmovant must identify specific facts showing a genuine issue for trial.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- flsa
- retaliation
- wage and hour
- summary judgment
- civil procedure

PRACTICE AREAS

employment law

wage and hour

civil procedure

QUESTIONS PRESENTED

1. Whether the FLSA and Colorado Wage Act commission-sales exemptions barred Weiss's minimum-wage and overtime claims.
2. Whether Weiss's theft-of-services claim failed because it was based on the same unpaid-wage allegations.
3. Whether Weiss presented sufficient evidence of causation and pretext to avoid summary judgment on his FLSA and Colorado Wage Act retaliation claims.
4. Whether Weiss presented sufficient evidence to proceed on his Colorado Pay Transparency Act claim based on alleged retaliation for discussing his wage rate.
5. Whether Walter Scott Spencer qualified as an employer under the FLSA, Colorado Wage Act, or Colorado Equal Pay for Equal Work Act.
6. Whether the portion of the Colorado Pay Transparency Act claim under Colorado Revised Statutes section 8-5-102(2)(f) was supported by the pleadings and evidence.

HOLDINGS

1. The commission-sales exemption under 29 U.S.C. § 207(i) applied because defendants were retail or service establishments, Weiss's regular rate exceeded one and one-half times the applicable minimum wage, and more than half of his compensation for the relevant period came from commissions.
2. The Colorado Wage Act commission-sales exemption applied because at least 50 percent of Weiss's pay was derived from commissions, his regular rate was at least one and one-half times the minimum wage, and defendants received more than 75 percent of their annual dollar volume from retail or service sales.
3. The theft-of-services claim failed because it was predicated on the same unpaid-wage allegations foreclosed by the FLSA and Colorado Wage Act exemptions.
4. Weiss presented sufficient evidence of protected activity, materially adverse action, and causation to avoid summary judgment on his FLSA and Colorado Wage Act retaliation claims.
5. Defendants met their limited burden of production by identifying alleged insubordination, refusal to follow directives, violation of the no-gossip policy, and creation of workplace dissension as reasons for termination.
6. Weiss presented sufficient evidence of pretext because the asserted reasons for termination were inextricably intertwined with his protected wage complaints, creating a fact question for the jury.
7. Summary judgment was denied on the claim under Colorado Revised Statutes section 8-5-102(2)(d) because a reasonable jury could conclude that Weiss was terminated for inquiring about, disclosing, comparing, or discussing his wage rate.
8. The portion of Claim Six under Colorado Revised Statutes section 8-5-102(2)(f) was dismissed with prejudice because the complaint did not identify a waiver or document signed by Weiss and Weiss did

not address that theory in his response.

9. Walter Scott Spencer was not an employer under the FLSA, Colorado Wage Act, or Colorado Equal Pay for Equal Work Act and was entitled to summary judgment on all claims against him.

KEY QUOTATIONS

“Summary judgment is warranted under Federal Rule of Civil Procedure 56 when the “movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”” (at 15)

“Given the Tenth Circuit’s holding that “a one and one-half month period between protected activity and adverse action may, by itself, establish causation,”” (at 17)

“these purported reasons for terminating plaintiff are “inextricably intertwined” with plaintiff’s protected activity.” (at 19)

FACTUAL BACKGROUND

Weiss worked for Affordable Services Corp. and later Colorado Water & Mold Restoration Corporation in commission-based project and mitigation-manager positions. The companies were retail or service establishments, and Weiss's regular rate of pay exceeded one and one-half times the applicable minimum wage; he was paid exclusively by commissions from January 2021 through his termination. In fall 2023, Weiss repeatedly complained to management and coworkers that he should be paid for time spent attending sales meetings. On December 8, 2023, the defendants terminated him after accusing him of violating the chain of command and a no-gossip policy by discussing those pay concerns.

PROCEDURAL HISTORY

Plaintiff Benjamin Weiss sued Affordable Services Corp., Colorado Water & Mold Restoration Corporation, Walter Scott Spencer, and other defendants. Defendants moved for summary judgment. The court granted the motion in part, dismissing the wage, theft-of-services, and claims against Spencer with prejudice, while denying summary judgment on the FLSA and Colorado Wage Act retaliation claims and the principal Colorado Pay Transparency Act retaliation claim.

DISPOSITION

other

CASES CITED

- Anderson v. Coors Brewing Co., 181 F.3d 1171, 1179 (10th Cir. 1999)
- Allen v. Muskogee, 119 F.3d 837, 839 (10th Cir. 1997)
- Bausman v. Interstate Brands Corp., 252 F.3d 1111, 1115 (10th Cir. 2001)
- Barnes v. Securitas Security Systems USA, Inc., 457 F. Supp. 2d 1244, 1251 (D. Kan. 2006)
- Carter v. Pathfinder Energy Services, Inc., 662 F.3d 1134, 1149 (10th Cir. 2011)

- Carpenter v. DIRECTV, LLC, No. 14-cv-02854-MJW, 2017 WL 4225797, at *6 (D. Colo. May 16, 2017)
- Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)
- Concrete Works of Colorado, Inc. v. City & County of Denver, 36 F.3d 1513, 1518 (10th Cir. 1994)
- E.M.D. Sales, Inc. v. Carrera, 604 U.S. 45, 48 (2025)
- Foster v. Mountain Coal Co., LLC, 830 F.3d 1178, 1194 (10th Cir. 2016)
- Gower v. IKON Office Solutions, Inc., 155 F. Supp. 2d 1268, 1274 (D. Kan. 2001)
- Gomez v. Timberline Custom Builders, LLC, No. 23-cv-01510-RMR, 2025 WL 2613741, at *3 (D. Colo. Sept. 10, 2025)
- Hart v. Digitalzone Inc., No. 23-cv-00531-GPG-SBP, 2025 WL 1927622, at *17 (D. Colo. May 30, 2025)
- Jones v. PeopleReady Inc., No. 21-cv-01688-PAB-MEH, 2022 WL 2176286, at *6 (D. Colo. June 16, 2022)
- Kimes v. Alshawy, No. 23-cv-00082-RMR-MDB, 2024 WL 2864147, at *3 (D. Colo. May 20, 2024)
- Lounds v. Lincare, Inc., 812 F.3d 1208, 1234 (10th Cir. 2015)
- McAlister v. LGI Homes Corp., LLC, No. 23-cv-03088-NYW-TPO, 2025 WL 843749, at *12 (D. Colo. Mar. 18, 2025)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Metzler v. Federal Home Loan Bank of Topeka, 464 F.3d 1164, 1170-71 (10th Cir. 2006)
- Prkic v. Sezzle, Inc., No. 24-cv-02624-PAB-NRN, 2025 WL 2918857, at *6 (D. Colo. Aug. 25, 2025)
- Ralston v. Smith & Nephew Richards, Inc., 275 F.3d 965, 973 (10th Cir. 2001)
- Richardson v. Topeka Metropolitan Transit Authority, 987 F. Supp. 887, 891 (D. Kan. 1997)
- Schlagel v. Discount Tire Co. of Colorado, Inc., No. 23-cv-02909-NYW-CYC, 2025 WL 316549, at *12, *14 (D. Colo. Jan. 28, 2025)
- Shafer v. Young Automotive Group, Inc., 2018 WL 4688342, at *2 (D. Utah Sept. 28, 2018)
- Torres v. Bodycote International, 2014 WL 11878452, at *9 (D. Kan. May 23, 2014), *aff'd sub nom.* 583 F. App'x 870 (10th Cir. 2014)
- Wright v. Abbott Laboratories, Inc., 259 F.3d 1226, 1231-32 (10th Cir. 2001)
- Zamora v. Elite Logistics, Inc., 478 F.3d 1160, 1166 (10th Cir. 2007)