

THE MORE YOU KNOW... ABOUT THE LAW



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The Colorado Equal Pay for Equal Work Act – What Employers Need to Know Now

Colorado passed the “Equal Pay for Equal Work Act”, which went into effect January 1, 2021 and applies to all employers in the state of Colorado, regardless of size.

It is well known that under existing Colorado law, an employer is prohibited from discriminating in rate of pay based on gender. The Colorado Equal Pay for Equal Work Act significantly broadens discrimination prohibitions of every employer and creates additional requirements. Those additional prohibitions mean that every employer shall not:

1. Seek the wage rate history of a prospective employee or rely on the wage rate history of a prospective employee to determine a wage rate;
2. Discriminate or retaliate against a prospective employee for failing to disclose the prospective employee's wage rate history;
3. Prohibit, as a condition of employment, an employee from disclosing the employee's wage rate;
4. Discharge, or in any manner discriminate or retaliate against, an employee for invoking his or her rights under the Act;
5. Discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with an employee or other person because the employee or person inquired about, disclosed, compared, or otherwise discussed the employee's wage rate; or
6. Require an employee to sign a waiver or other document that prohibits the employee from disclosing wage rate information; or purports to deny the employee the right to disclose the employee's wage rate information.

The Act further prohibits employers from paying an employee of one sex less than an employee of another sex for substantially similar work unless the employer can demonstrate that the entire wage differential is based on one or more of the following:

- A seniority system,
- A merit system,
- A system that measures earnings by quantity or quality of production,
- The geographic location where the work is performed,
- Education, training, or experience relevant to the work in question, or
- Travel, if the travel is a regular and necessary condition of the work performed.

Some of the additional requirements now placed upon employers have to do with job postings and promotions. For all job postings, including promotions, employers are now required to disclose the hourly or salary compensation (including bonuses or commissions) or a range of hourly or the salary compensation, and a general description of all of the benefits (such as health care benefits, retirement benefits, any benefits permitting paid days off (including sick leave, parental leave, and paid time off or vacation benefits)) and any other compensation to be offered to the hired applicant.

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Employers are also required to make reasonable efforts to announce, post or otherwise make known all opportunities for promotion to all current employees (regardless of qualifications) on the same calendar day and prior to making a promotion decision, and must keep records of job descriptions and wage rate history for each employee for the duration of employment plus two years after the end of employment. As there are detailed requirements that pertain to promotional opportunities contained in the Act, including exceptions based on confidentiality, every employer is encouraged to read the Act in its entirety or consult your employment counsel for more information.

If an employer violates the Act, the employee can be subject to administrative enforcement, and a private cause of action brought by an employee for recovery of back pay, two times back pay as liquidated damages and attorney's fees. Liquidated damages for a violation can be avoided, however, if an employer demonstrates that its act or omission giving rise to the violation was in good faith and it had reasonable grounds for believing that it did not violate the law. In determining whether an employer's violation was in good faith, a court may consider evidence that within two years prior to the date of the commencement of the civil action, the employer completed a thorough and comprehensive pay audit of its workforce, with the specific goal of identifying and remedying unlawful pay disparities.

So what can employers do to avoid violating the Act? First and foremost, talk to your employment counsel to ensure your HR and personnel department are fully trained on the new prohibitions and requirements outlined in the Act. Employers should also review all job postings, applications, and hiring procedures to confirm compliance with the Act and should review their record retention policies to ensure proper records are kept for two years after an employee ceases employment.