

Colorado Releases Guidance on Equal Pay Transparency Rules

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Along with a host of other laws across the country,¹ Colorado's [Equal Pay for Equal Work Act](#) ("Act") went into effect on January 1, 2021. Among other measures, the Act requires all employers—*located anywhere in the United States*—with at least one employee in Colorado to: (i) provide Colorado-based employees with formal notice of internal opportunities for promotion² on the same calendar day the opening occurs, and (ii) disclose salary compensation and employee benefits in job postings for positions that are expected to be, or *can be* (e.g., remote positions), performed in Colorado.

Following the passage of the Act, the Colorado Department of Labor and Employment ("CDLE") issued [Equal Pay Transparency Rules](#) ("EPT Rules") and, subsequently, detailed guidance ([Interpretive Notice & Formal Opinion #9](#)) ("Guidance") to clarify employers' obligations under both the Act and the EPT Rules. The CDLE's decision to provide Guidance underscores the degree of difficulty employers may encounter in attempting to comply with both the Act and the EPT Rules. Understanding the full scope of an employer's legal obligations is imperative, however, since the Act (as described below) imposes significant penalties for noncompliance.

The rules for promotional opportunity notices and general job opening notices are set forth separately, as they are not subject to all the same mandates.

Requirement to Post Promotional Opportunities

Employers must make "reasonable efforts" to "announce, post, or otherwise make known" *all* opportunities for promotion to *all* Colorado employees *on the same calendar day* the opening occurs.

- **What is a "promotional opportunity"?** The Guidance instructs that "[a] vacancy is a promotional opportunity so long as the job is superior to another job held by one or more employees of the same employer in terms of compensation, benefits, status, duties, opportunities, or access to further career advancement."

¹ For more information on other laws in a number of states, including Colorado, please see our [Act Now Advisory](#).

² As noted below, the Guidance defines this term very broadly.

The Guidance further advises that a promotional opportunity may include even entry-level openings if, for example, the entry-level position provides access to advancement under a tiered promotion structure based on seniority and work performance.

- ***Does the definition include vacancies in existing positions, such as where an employee is terminated or resigns?*** Yes.
- ***Who must be notified?*** Employers must notify all Colorado employees, regardless of their qualifications for the open position.
- ***Does the geographical location of the vacancy matter?*** No, all Colorado employees must be notified of the job opening regardless of its location.
- ***How must employers notify Colorado employees of a promotional opportunity?*** The notice must be in writing and contain, at minimum:
 - the job title;
 - the hourly or salary compensation, or a range thereof, that the employer in good faith believes it will pay for the particular job;*
 - a general description of any bonuses, commissions, or other forms of compensation that are being offered for the position;*
 - a general description of employee benefits;* and
 - the means by which employees can apply for the vacancy.

*Multistate employers need not include compensation or benefits information in promotional opportunity notices to Colorado employees for positions outside of Colorado. With respect to remote jobs that could be performed anywhere, however, promotional opportunity notices must include compensation and benefits information.

To satisfy the “reasonable efforts” requirement, the notice must (i) be posted where Colorado employees can access the information within their regular workplace, either online (by intranet site or shared network drive) or in hard copy, along with information on “where to find the notice[,]” and (ii) be provided sufficiently in advance so that employees may apply and be considered for all positions included in the notice. If the employer’s method of posting information about promotional opportunities may not reach all employees, the employer must also use an alternative method “to assure that each employee is informed how to, and can, access the information.” For example, if some of the workforce is remote and some is in an office, the employer may post a physical notice at the worksite and e-mail the same notice to those working remotely.

- ***Are there any exceptions to the notice requirement?*** Yes. Employers are not required to post promotional opportunities where:

- the employer has a compelling need to keep a particular vacancy confidential because the position remains occupied and, for reasons other than avoiding job posting requirements, the employer has not yet made the incumbent employee aware of the separation;
- the vacancy is filled automatically upon an employee’s successful completion of a trial period that occurs within one year of their hire date, pursuant to an offer letter, written agreement, or company-wide policy;
- the position is temporary for up to six months and not expected to be permanent; or
- the employees in question are “entirely outside Colorado.”

The Guidance further advises that a single notice will suffice where an employer continually hires for a specific position that qualifies as a promotional opportunity for any current employee (e.g., a Level 2 sales role), or automatically promotes employees in an in-line job progression upon completion of certain requirements (e.g., minimum number of service hours). This one-time notice may be provided:

- directly to employees (e.g., via email) in a periodic notice distributed frequently enough to give employees time to apply, *but at least monthly*, or
- in a physical or intranet posting, or as part of an employee handbook, so long as it is continuously accessible to employees, employees are told the posting or handbook contains notice of promotional opportunities, and the posting or handbook is updated promptly whenever any aspect of the promotional opportunity is changed, such as compensation, benefits, qualifications, job description, or application process.

Posting Requirements for Colorado-Based or Remote Jobs

The Guidance makes clear that employers must disclose compensation and employee benefits information in each job posting for (i) positions that are to be performed in Colorado, or (ii) remote positions that *could* be performed in Colorado.

Enforcement

Individuals may file written complaints with the CDLE’s Department of Labor Standards and Statistics regarding any violations of the pay transparency requirements within one year of the alleged violation. Employers found to have violated these notice requirements may be liable for fines of between \$500 and \$10,000 per violation.

What Employers Should Do Now

All employers—nationwide—with at least one employee in Colorado should do the following:

- Conduct a comprehensive review of your current system for posting internal and external job opportunities, including the contents of job descriptions and the methods for providing notice, and revise the system as needed to ensure compliance with the Act's requirements.
- Ensure that your posting and notice practices provide written notice to all Colorado employees of any promotional opportunities (as broadly defined by the Guidance) that are available within the company, *regardless of where the position is located or whether particular employees are qualified.*
- For all Colorado and remote "work from anywhere" positions, make sure covered job postings disclose the requisite compensation and employee benefits information.

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