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## For Your Information<sup>®</sup>

### Colorado employers: New pay transparency rules in effect

Colorado amended its Equal Pay for Equal Work Act to add new pay transparency requirements for job postings and promotional opportunities, starting January 1. Equal Pay Transparency Rules issued by the Colorado Department of Labor and Employment clarify new employer disclosure and notice obligations.

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#### Background

Since 2021, Colorado's Equal Pay for Equal Work Act ("EPEWA") has, among other things, required employers to include compensation in job postings, notify employees of promotional opportunities, and keep job description and wage rate records. On June 5, 2023, Colorado Governor Jared Polis signed [SB-23-105](#) into law amending the EPEWA. Among other things, the amendments modified employer pay transparency obligations for job postings and promotional opportunities, effective January 1.

#### New requirements

Colorado's Department of Labor and Employment ("CDLE") recently issued [Equal Pay Transparency Rules](#) and [Interpretive Notice & Formal Opinion # 9A](#) clarifying employer obligations under the [amended law](#). Key job posting and notice requirements are highlighted below.

##### "Job Opportunity" notices

Both public and private employers with at least one employee working in Colorado must make reasonable efforts to notify all Colorado employees of each job opportunity by posting or other means before the employer makes a selection decision. The requirement extends to current and anticipated job openings for which the employer is considering or interviewing candidates, or that the employer posts externally.

With limited exception, the new law requires employers to provide their Colorado employees a job opportunity notice regardless of where the job is to be performed or whether they would be qualified for it. Through July 1, 2029, employers that are physically located out-of-state and have fewer than 15 employees working in Colorado — all of whom work remotely — need only provide notice of remote job opportunities rather than all jobs company-wide.

Notice must be in writing, which may be electronic such as an email or intranet posting. Employers can use any method to comply with the notice requirements that allows workplace access for all covered employees, either online or in hard copy, provided that employees are told where to find required postings. Where employee access to an online posting is limited, the employer must use an alternative method to ensure all employees can access the posting on the same calendar day.

### **Required disclosures**

Notices for job opportunities that are to be — or could be — performed in Colorado must include the following information:

- The hourly rate, salary, or salary range that the employer reasonably expects to pay;
- A general description of any bonuses, commissions, or other forms of compensation that are being offered for the job;
- A general description of the employee benefits the employer is offering for the job, including health care and retirement benefits, paid time off (e.g., sick or parental leave and vacation benefits), and any other benefits that must be reported for federal tax purposes; and
- How and when to apply for the job.

Where the job is performable anywhere, the posted pay range must be for Colorado hires. For jobs performable at one or more sites within the state, the posted pay must reflect the site(s) in question. Required information may be provided in the job notice itself or by including a link within the job notice to the information elsewhere (such as a company website).

### **Exceptions and limitations**

Subject to certain limitations, the amended law excepts the following hirings and promotions from the notice obligation:

1. Two kinds of noncompetitive promotions (i.e., “career progressions” and “career developments”);
2. Confidential replacements of current employees unaware of their pending separation;
3. Automatic promotion after trial period;
4. Acting, interim, or temporary (“AINT”) positions of up to nine months; and

## 5. Remote jobs for employers with no worksite and less than 15 employees in Colorado.

While the above categories are not generally considered to be job opportunities requiring notice, employers may still have notice obligations under certain circumstances. For example, employers must inform employees in positions with a defined, objective career progression (i.e., “a regular or automatic movement from one position to another based on time in a specific role or other objective metrics”) of the requirements for advancement and what their pay, benefits and duties will be if they do advance. By contrast, career development promotions do not trigger posting or notice requirements. Since they “update the employee’s job title or compensate the employee to reflect work performed or contributions already made by the employee,” there is no competitive opportunity to post.

While there is a narrow exception for confidential replacements, employers must comply with applicable notice requirements if the need for confidentiality ends before any deadline to apply for the job. Employers enjoy some leeway for AINT hires. However, other employees must be notified of the job opportunity if the same position was held by an AINT hire for seven months of the previous year or the position is not scheduled to end in nine months.

### Application deadlines

With limited exception, employers will be required to put application deadlines in their external job postings and internal promotional notices. As long as the application deadline was set in good faith, it may be extended provided the posting is updated promptly. While evergreen postings are excepted from the requirement to provide a deadline, the posting must state that the employer accepts applications on an ongoing basis.

### Post-selection notices

With limited exceptions, employers will be required to make reasonable efforts to provide post-selection notices within 30 days of every hire or promotion company wide. Any Colorado employee with whom the selected candidate will regularly work (at least monthly) must be notified of the candidate’s: (1) name; (2) former job title if selected while already employed by the company; and (3) new job title. While a selected candidate’s name and former job title may be withheld under certain circumstances, the employer is still required to disclose that the position has been filled and how current employees may demonstrate interest in similar future opportunities. Employers may furnish a separate notice after each individual selection or a notice with multiple selections as long as it is provided within 30 days of each selection.

### Out-of-state exemptions

The job opportunity notice, post-selection notice, and career progression notice requirements do not extend to employees entirely outside Colorado. The compensation and benefits disclosure requirements do not apply to postings for jobs to be performed — or physically located — entirely out-of-state.

## In closing

Employers with employees in Colorado should review their hiring and promotion protocols, pay practices and processes to ensure compliance with the state's new notice and disclosure requirements.

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