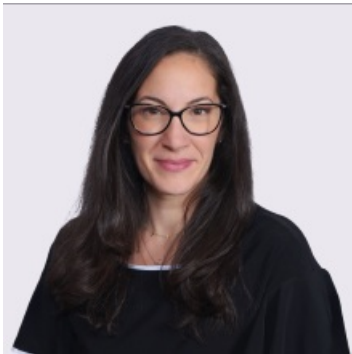


Colorado Legislature Passes the Ensure Equal Pay for Equal Work Act

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The Colorado legislature has passed the [Ensure Equal Pay for Equal Work Act](#), amending the [Equal Pay for Equal Work Act](#) (EPEW) to clarify and enhance an employer's obligations relating to announcement of a promotional opportunity (which the Act refers to as a "job opportunity").

The Act was sent to Governor Jared Polis and he is expected to sign it into law. The effective date of the new law is January 1, 2024.

Updated Definitions

The Act establishes definitions for the terms "career development," "career progression," "job opportunity," and "vacancy." The term "promotional opportunity" is not defined or used in the Act, departing from the previous language used in the EPEW.

"Job opportunity" is defined as "a current or anticipated vacancy for which the employer is considering a candidate or candidates or interviewing a candidate or candidates or that the employer externally posts." Job opportunities do not include "career development" or "career progression" (as was the case under the EPEW). A "vacancy" is "an open position, whether as a result of a newly created position or a vacated position."

"Career development" is defined as a "change to an employee's terms of compensation, benefits, full-time or part-time status, duties, or access to further advancement in order to update the employee's job title or compensate the employee to reflect work performed or contributions already made by the employee." A "career progression" means "a regular or automatic movement from one position to another based on time in a specific role or other objective metrics."

New Obligations to Announce, Post, Otherwise Make Known Job Opportunities

Under the Act, employers must make reasonable efforts to announce, post, or otherwise make known each job opportunity to all employees on the same calendar day and before the employer makes a decision. But if an employer is physically located outside of Colorado and has fewer than 15 employees in Colorado working remotely, the employer need only provide notice of remote job opportunities through July 1, 2029.

For each job opportunity, employers must disclose to employees, in good faith:

1. The hourly or salary compensation or the range of the hourly or salary compensation;
2. A general description of the benefits and other compensation applicable to the job opportunity; and
3. The date the application window is anticipated to close.

Further, within 30 days after a candidate is selected to fill a job opportunity begins working in the position, employers will need to make reasonable efforts to announce, post, or otherwise make known to *the employees with whom the selected candidate is intended to*

regularly work, at a minimum:

1. The name of the candidate selected for the job opportunity;
2. The selected candidate's former job title if selected while already employed by the employer;
3. The selected candidate's new job title; and
4. Information on how many employees may demonstrate interest in similar job opportunities in the future, including identifying individuals or departments to whom the employees can express interest in similar job opportunities.

As dissemination of this information was not mandated under the previous law, employers will need to engage in additional review, planning, and modification to existing process.

In positions with career progression, employers must disclose and make available to all eligible employees the requirements for career progression, along with each position's terms of compensation, benefits, full-time or part-time status, duties, and access to further advancement.

The Act provides that it should not be construed to require identification of a selected candidate in any way that violates privacy rights under applicable local, state, or federal law or in a manner that would place at risk the selected candidate's health or safety.

Rulemaking to Follow

Interestingly, the Act states that rules will be promulgated to enforce the Act no later than July 1, 2024, six months after the Act's January 1 effective date. Even so, receiving guidance before the effective date would assist employers in preparing for compliance.

At a minimum, the Act specifies the rules will create and administer a process to mediate complaints for violations of the Act, among other requirements. This administrative process will not affect or prevent the right of an aggrieved person to start a private civil action.

Penalties

A person aggrieved by an employer's violation of the Act may obtain relief for back pay for the entire time violations continue, not to exceed six years.

Please contact a Jackson Lewis attorney regarding any questions on the status of the Act or any other applicable pay transparency laws and, if enacted, the applicability of the Act and preparatory steps that can be taken before it becomes effective.

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