

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

Equal Pay Transparency Rules (“EPT Rules”)

7 CCR 1103-13

As proposed on September 29, 2020; if adopted, to be effective Jan. 1, 2021.

Rule 1. Statement of Purpose, Authority, and Construction

- 1.1 The general purpose of these Equal Pay Transparency Rules (“EPT Rules” or “Rules”) is to exercise the authority and duty of this Division to enforce and implement Part 2 of the Equal Pay for Equal Work Act (the “Act”), Colorado Revised Statutes (“C.R.S.”), Title 8, Article 5, Part 2 (C.R.S. §§ 8-5-201 to 8-5-203) (2021) (“Transparency in Pay and Opportunities for Promotion and Advancement”). These Rules are adopted pursuant to Division authority in C.R.S. §§ 8-1-103(3), -107(2), -111, -116, -117; § 8-4-111; § 8-5-203; §§ 8-6-105, -106, -108, -117; and § 24-4-105. The Rules are intended to be consistent with the requirements of Colorado’s Administrative Procedures Act, C.R.S. § 24-4-101, et seq.
- 1.2 Incorporation by reference. Articles 1 and 4-6 of C.R.S. Title 8 are hereby incorporated by reference into this rule. Such incorporation excludes later amendments to or editions of the statutes; all cited laws are incorporated in the forms that are in effect as of the effective date of these rules. All sources cited or incorporated by reference are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. They can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of them at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing them.
- 1.3 These rules are intended to remain in effect to the maximum extent possible. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of the rules remains valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

Rule 2. Definitions

- 2.1 “Complaint” or “Claim” interchangeably mean a Complaint or Claim alleging violation of Part 2 of the Act. “Complainant” means a person with a Complaint or Claim.
- 2.2 “Division” means the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.
- 2.3 An “employee” is defined as “a person employed by an employer.” C.R.S. § 8-5-101(4).
- 2.4 An “employer” is defined as “the state or any political subdivision, commission, department, institution, or school district thereof, and every other person employing a person in the state.” C.R.S. § 8-5-101(4).
- 2.5 Any other definitions set forth in the Act are hereby incorporated by reference, except where terms are defined differently in these Rules.

Rule 3. Complaint, Investigation, and Appeal Procedures

- 3.1 Wage Protection Act Rules 4.1 and 4.3-4.8, 7 CCR 1103-7, regarding investigation procedures and protections, are incorporated by reference, except that as incorporated:
- (A) all references to “wage” or “wage and hour” Complaints, Claims, rights, responsibilities, or proceedings shall include Complaints, Claims, rights, responsibilities, and proceedings within the Act; and
 - (B) in Rule 4.4.3 “§ 8-4-113(1)(b)” is replaced with “C.R.S. §§ 8-4-113(1)(b) and 8-1-140(2).”
- 3.2 Complaint filings.
- 3.2.1 A person who is aggrieved by a violation of C.R.S. §§ 8-5-201 or 8-5-202 may file a complaint with the Division. “Aggrieved by” means witnessed, suffered, or injured by a perceived violation.
 - 3.2.2 A person who wishes to file a Complaint shall use a Division-approved form(s) and shall include the Complainant’s signature, the Complainant’s contact information, the employer’s contact information, and basis for the Complaint. If the Division does not have an applicable form publicly posted when the Complainant intends to file, then a Complainant may file a Complaint in any form, by mail or electronic mail, with the Division, and the Division may later require the Complainant to complete the Division’s Complaint form, but the filing date will remain the date of the Complainant’s original filing.
 - 3.2.3 A Complainant shall respond in a timely manner to informational or investigatory requests by the Division. Failure to comply with this Rule may result in dismissal of the Complaint. If a Complaint is dismissed before a Notice of Complaint is sent to the employer due to failure to respond to a Division request for information, the Complaint may be reopened if the Complainant provides the requested information or documentation to the Division within 35 days of the request. A Complainant may be required to file a new Complaint if the response is received more than 35 days after the request.
 - 3.2.4 The Division will not accept complaints of violations that occurred before the later of: January 1, 2021, or more than twelve months prior to the date of the complaint.
 - 3.2.5 Anonymous complaints will be accepted, but will not be investigated using the Division’s administrative procedure, do not trigger any notice or participation rights for the Complainant, and will be investigated only at the discretion of the Division.
- 3.3 The Complaint shall include a short and plain statement of its grounds, and should also include or attach any relevant postings or communications the Complainant is able to provide. The employer must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. The Division will cease investigating a Complaint that, upon review, fails to raise a reasonable inference of a violation of C.R.S. §§ 8-5-201 or 8-5-202.
- 3.4 Filing, service, and deadlines.
- 3.4.1 A Complaint or appeal is considered “filed” with the Division when it is received by the Division via mail, fax, email, online submission, or personal delivery. Any Complaint, appeal, or termination received after 11:59pm Mountain Time is considered filed the next business day.
 - 3.4.2 Deadlines in these Rules may be extended for good cause. In considering whether good cause exists, the Division will determine whether the reason is substantial and reasonable, and must take into account all available information and circumstances pertaining to the specific Complaint.

- 3.4.3 In a Complaint investigation, the Division will send the employer a Notice of Complaint, along with any relevant supporting documentation submitted by the Complainant, via U.S. mail, electronic means, or personal delivery. The employer must respond within fourteen days after a Complaint is sent, unless an extension is granted.
 - 3.4.4 Where a claim, complaint, or investigation for violation of C.R.S. §§ 8-5-201 or -202 has been filed or commenced, the employer shall preserve all relevant documents throughout the duration and until the expiration of the statutory period within which a person aggrieved may bring a civil action.
 - 3.4.5 A Complainant may withdraw a Complaint at any time before issuance of a determination by notifying the Division in writing.
- 3.5 Determinations
- 3.5.1 Upon conclusion of the investigation of a Complaint, the Division will issue a determination. The Division shall notify the parties on the date the determination is issued by the Division's compliance investigator by sending (a) a copy of the determination; and (b) notice of the parties' termination and appeal rights.
 - 3.5.2 The date of "issuance" of the Division's determination is the date the Division's determination is "sent." Both the termination and appeal deadlines are calculated from the date the Division's determination is originally issued and sent to the parties.
 - 3.5.3 Determinations by the Division may include the following remedies, depending on which, if any, the Division's findings support:
 - (A) order(s) to cease non-compliance and/or effectuate compliance, as authorized by C.R.S. § 8-5-203(1) and statutes on Division investigative and enforcement authority in C.R.S. Title 8, Article 1; and
 - (B) fines pursuant to C.R.S. §§ 8-1-140(2) and/or 8-5-203(4).
- 3.6 The Division may exercise its discretion to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation.
- 3.7 Appeals.
- 3.7.1 Any party to a Claim or determination may appeal the Division's determination. The provisions governing appeals under C.R.S. § 8-4-111.5 (with rules concerning a "wage complaint" or Article 4 applicable to Complaints under the Act, and references to "employee" applicable to Complainants under the Act) and Rule 6 of the Wage Protection Act Rules, 7 CCR 1103-7, as amended and modified, shall apply to Claims and determinations under these Rules. Parties may not appeal the Division's decisions to dismiss a Complaint for failure to create a reasonable inference of a violation of C.R.S. §§ 8-5-201 or 8-5-202 or failure to respond to Division requests for documents or information.
 - 3.7.2 An appeal may, in the discretion of the hearing officer, be sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more decisions and/or phases of the appeal.
- 3.8 A certified copy of any citation, notice of assessment, or order imposing relief or remedies may be filed with the clerk of any court having jurisdiction over the parties at any time after the entry of the order. Such a filing can be in a county or district court, and will thereby have the effect of a judgment from which execution may issue.

Rule 4. Job Posting Requirements

- 4.1 All job postings, including but not limited to promotions: An employer is required to “disclose in each posting for each job the hourly or salary compensation, or a range of hourly or the salary compensation, and a general description of all of the benefits and other compensation to be offered to the hired applicant.” C.R.S. § 8-5-201(2).
- 4.1.1 Employers must include the following compensation and benefits information in each posting: (1) the hourly rate or salary compensation (or a range thereof) that the employer is offering for the position, including any bonuses, commissions, or other forms of compensation that are being offered for the job; and (2) a general description of all employment benefits the employer is offering for the position, including health care benefits; retirement benefits; any benefits permitting paid days off, including sick leave, parental leave, and paid time off or vacation benefits; as well as any other benefits that must be reported for federal tax purposes; but not benefits in the form of minor perks.
- 4.1.2 A posted compensation range may extend from the lowest to the highest pay the employer in good faith believes it might pay for the particular job, depending on the circumstances. An employer may ultimately pay more or less than the posted range, if the posted range was the employer’s good-faith and reasonable estimate of the range of possible compensation at the time of the posting.
- 4.2 Opportunities for promotion: An employer is required to make “reasonable efforts” to “announce, post or otherwise make known all opportunities for promotion to all current employees on the same calendar day and prior to making a promotion decision.” C.R.S. § 8-5-201(1).
- 4.2.1 A communication announcing, posting, or otherwise making a promotional opportunity known must be in writing and include at least (A) job title, (B) compensation and benefits per Rule 2.2, and (C) means by which employees may apply for the position.
- 4.2.2 An employer makes “reasonable efforts” if it (A) uses the employer’s regular and customary method of communication with its employees and, (B) for any employees not reachable by that method, uses an effective alternative method to notify those employees. If employers have no or multiple regular and customary method(s) of communicating with any employee, “reasonable efforts” require advance written notice to such employee of the location and/or means by which promotional opportunities will be announced, posted, or made known.
- 4.2.3 If an employer elects to post promotional opportunities rather than providing notice to each employee, the posting must be displayed in each establishment where employees work, in a conspicuous location frequented by employees where it may be easily read during the workday — such as in break rooms, on employee bulletin boards, and/or adjacent to time clocks, department entrances, and facility entrances.
- 4.2.4 Employers must notify all employees of all promotional opportunities, and may not limit notice to those employees it deems qualified for the position, but may state that applications are open to only those with certain qualifications.
- 4.3 The following particular cases as to C.R.S. §§ 8-5-201(1)-(2) require notice as follows.
- 4.3.1 Colorado employer with a Colorado job, wherever advertised. If an employer with one or more employees in Colorado has a job to be performed in Colorado:
- (A) Under C.R.S. § 8-5-201(1), if the employer accepts applicants from outside Colorado, it must notify all of its employees in any state for whom the job would be a promotion.

- (B) Under C.R.S. § 8-5-201(2), if the employer posts the job outside Colorado, it must include compensation and benefits in such job postings.
- 4.3.2 Colorado employer with remote job. If an employer with one or more employees in Colorado has a job that can be performed anywhere, *e.g.*, a remote position that could be performed by a Coloradan because the job has no requirement or preference for the employee to reside in a particular area:
- (A) Under C.R.S. § 8-5-201(1), the employer must notify all of its Colorado employees for whom the job would be a promotion.
 - (B) Under C.R.S. § 8-5-201(2), if the employer posts the job in Colorado or by electronic means accessible in Colorado (*e.g.*, on a website), it must include compensation and benefits in such job postings.
- 4.3.3 Colorado employer with job outside of Colorado. If an employer with one or more employees in Colorado has a job that it requires or prefers to be performed outside Colorado, and if the employer accepts applicants from locales at least as distant as Colorado:
- (A) Under C.R.S. § 8-5-201(1), it must notify all of its Colorado employees for whom the job would be a promotion.
 - (B) Under C.R.S. § 8-5-201(2), if the employer posts the job in Colorado or by electronic means accessible in Colorado (*e.g.*, on a website), it must include compensation and benefits in such job postings.
- 4.3.4 Non-Colorado employer: An employer with no current employees in Colorado has no obligations under C.R.S. § 8-5-201(1)-(2) until it employs an employee in the state of Colorado.