2024 SPRING RULEMAKING PUBLIC HEARING

Date of Hearing: April 16, 2024

Appearances: Ellen Giarratana, Job Equity Program Manager
Miki Gann, Division Rulemaking Program Assistant
Mary Donachy, Manager of Strategic Enforcement Policy and Investigations
Scott Jeffrey, Senior Economic Policy Advisor

Recorded digitally and transcribed by Ditto Transcripts
MS. GANN: We are now recording.

MS. GIARRATANA: Thank you, Miki. Good afternoon, everyone. My name is Ellen Giarratana. I’m the Job Equity Program Manager for the Division of Labor Standards & Statistics in the Colorado Department of Labor and Employment. The time is 3:35 p.m., on Tuesday, April 16, 2024. This is a public rulemaking hearing held by this Division, with participants listening and speaking by internet and/or phone. A recording of the hearing will be added to the administrative record. Thank you all for joining us this afternoon. With me at this hearing are several Division officials, including Miki Gann, the Division’s Rulemaking Program Assistant, Mary Donachy, Manager of Strategic Enforcement Policy and Investigations, Scott Jeffrey, Senior Economic Policy Advisor, and other Division officials. Today, we will accept testimony for the Posting, Screening, & Transparency Rules, or the POST Rules, 7 C.C.R. 1103-18, proposed on Friday, March 15, 2024. Last year, the Job Application Fairness Act, or JAFA, in Senate Bill 23-058, was enacted to limit age related inquiries to initial job applications. It’s effective July 01, 2024, and enforced by this Division. That means that the Division now covers five laws on what employers can, cannot, must, or must not include in job
postings or applications. Collectively, those laws are referred to as the Posting, Screening, & Transparency Acts, or the POST Acts. To streamline the rules and enforce and implement the POST Acts, the Division’s newly proposed rules are one rule set that combines the rules on all five POST Acts. That is to provide one rule set rather than five for employers and employees. This new rule set, referred to as the POST rules, merges and replaces the rules on the existing four POST Acts. So, that’s the Equal Pay Transparency Rules, 7 C.C.R. 1103-13, the Colorado Chance to Compete Act (Ban the Box) Rules, 7 C.C.R. 1103-9, the Social Media and the Workplace Law Rules, 7 C.C.R. 1103-5, and the Employment Opportunity Act or Credit History Rules, which is 7 C.C.R. 1103-4. These rules also add the new Job Application Fairness Act Rules. The POST Rules replace existing rule sets previously noted, with no substantive changes intended other than technical updates. For example, assuring that the previously separate complaint investigation and appeal procedures for all five POST Acts are the same to the maximum extent permitted by the acts and the Colorado Administrative Procedure Act. Anyone may speak on any aspect of these rules in any order. We will not be taking testimony on other labor law and policy topics that are not a part of these proposed rules. For all rules from this Division, the notice of public
hearing, and associated rulemaking documents were filed with the Secretary of State for publication on our website and in the State Register, as provided by the Colorado Administrative Procedure Act. The Division then posted all rulemaking documents on our website and publicized them to our contact lists of several hundred stakeholders, but really to thousands of stakeholders, because our stakeholder list is a mix of individuals and organizations whose members were believed to have potential interest in our rules. For more information on any proposed rules from this Division, you can visit our rulemaking page cdle.colorado.gov/laborrules. If you want to pull that up, Miki, just to show. You can scroll down, click on labor rules, and you’ll see rules and orders proposed and recently adopted in that second blue box, and you’ll see all the documents related to the POST Rules right now. Once they become permanent you’ll see in the next blue box below -- or I’m sorry, the first blue box, the current and prior versions of the rules.

Before we begin, a few rules and guidelines for the record. In this hearing, the Division is accepting oral testimony, as well as written comment through the chat window, available to anyone joining by internet. The same administrative record will include all oral testimony, all comments in the chat window, and all written comments
submitted outside of this hearing. All testimony and comments are reviewed by the same Division officials, so while you are free to comment or testify by any means that you prefer, there is no need to repeat points in multiple forms of testimony and comment submissions. The written comment deadline is Monday, April 22, 2024, at noon, and written comments may be submitted by the comment form, which Miki is showing right now, on our labor rules webpage. You can access that form through that initial cdle.colorado.gov/laborrules by clicking on the third box down, Rulemaking Comments and Hearings, and then you can click on the form there. You can also email them to cdle_laborstandardsrules@state.co.us, or if they are short, you can just type them into the chat window in this Google Meet and they will become part of the record. And Miki has highlighted that email on the screen for you as well.

This hearing is for comments related to the proposed rules. If instead you have individualized questions that you would like the answers to, we would happy to respond outside of this hearing. Email any such questions and we will route them to the right person. We anticipate the time available for today’s hearing will be enough to hear all testimony on the proposed rules. On the off chance more time is needed or if we have technical difficulties, the hearing may be continued to on another date, which we will announce at the
end of the hearing, with details posted on our webpage by noon tomorrow. Thank you again for taking the time to attend this public hearing and participate in our rulemaking process. We will now proceed with oral testimony. We will start with those who signed up to testify in advance, starting with those here by computer and then those here by phone, then we’ll invite testimony from those who did not sign up in advance, starting again with those here by computer and then those by phone. Before we begin, just a few instructions for the participants. First, please keep your computer or phone on mute. If you are testifying, still keep your phone on mute until we call your name. For those who are speaking, when we call on you, please do the following things. First, when called upon, please unmute yourself. You can use the control+D on your keyboard if you’re joining via internet or *6 on your phone if you’re joining by phone. Second, please state your full name, job, and organization, if any. If you wish to exercise your right to anonymity under the Wage Protection Rule 4.7, please just give a first name or pseudonym, and as much of your job or role as you can. You may turn your video off. Third, start by saying which aspect of the POST rules you will discuss. Fourth, please speak in a clear, slow voice and keep your testimony to five minutes. Some may have more input than five minutes
of speaking can cover, and if so, please submit written comments of any length that you wish. We may ask you to repeat anything that you may not have been loud enough or clear enough for everyone to hear, and we may ask you follow up questions, which you are free to answer however you wish or not at all. And then, finally, when you finish, please mute yourself again. If you would like to give your name and information for the record, whether or not you testify, or if you are not on the Division stakeholder list to be sent notices of proposed rules or other Division publications, you can email us or use the form on our rules page, which, again, is cdle.colorado.gov/laborrules. Thank you for your interest in and your participation in these important matters of Colorado Labor Law and Policy. We will now invite comments from those in attendance, and we start with those who are RSVP’d, first by computer then by phone.

MS. GANN: Thank you, Ellen. We will go ahead and start with Andrea Kuwik.

MS. KUWIK: Great. Well, thanks so much. So, again, my name is Andrea Kuwik. I’m the Director of Policy and Research with the Bell Policy Center, and I had comments on the component with the Job Application Fairness Act, and specifically on -- I think it’s subsection 12.1.1, and I have three general comments, and thought first, these
really great and we very much appreciated all the work that
you all put into this. And we’ll also just note, was also
planning on submitting some written comments, so even
though they may be duplicative. But the general comments
that I had just on the subsection were just, first, around
the language in there that has, “An employer may request or
require these additional application materials,” and then
it lists several of them. I think the first thing -- and
this just harkens back to the bill language itself, that
the bill explicitly says that an employer may request any
of the information if it’s coming or created by a third
party, and we think that that’s really important just to
kind of limit in part, which we believe was the intent of
that amendment around what type of additional information
could be requested by -- to have potentially some of that
identifying information, even though it could be redacted.
So, we think that first set is important; again, it’s just
really that third party we think should be in there. The
second part around, again, just in that same subsection, is
that the list of additional application materials has
resumes, CVs, transcripts, certifications currently in the
draft rules, but see that as a bit too broad, again, going
back to the language of the bill itself, which again
explicitly mentions that it is -- I believe just the
transcripts and the certifications. And again, you know,
the intent as we saw it, and kind of the creation of that language, was really just to narrowly included what could be asked for, and then, again, folks could redact that information. So, again, I think that those two components are just really important to add, because, again, thinking about what could be asked for. And then, just the final thing, in that same vein, would, I think, like to potentially see, just also just any type of rules that could be added that then explicitly get to any notification requirements for that information. So, saying that if you are going to require -- that if you were going to ask for this information, that it be clear what the applicant is able to redact, and that is completely within their right. And we think that that just being incredibly important for potential applicants in that space. So, again, just thank you so much for putting these together, and thank you so much for hosting this, and again just grateful for this opportunity and the work you all have done.

MS. GANN: Thank you, Andrea. I’m gonna open the floor to anyone else that would like to speak. I think we will leave this open for five more minutes. If anyone else wants to jump in, they’re more than welcome to. Don’t forget you can also comment using the comment form on our website, and the deadline is April 22nd at 12 p.m.

MS. GIARRATANA: While we are here and there is
nobody else who is here to comment, Andrea, if you don’t mind, can I ask you a question, which you don’t have to answer; that’s totally fine. But I’d love to ask you a follow up question.

MS. KUWIK: Yeah. No, that sounds great.

Thanks.

MS. GIARRATANA: Great. I’m just curious, based on your comments, about resumes and CVs. Do you see any negative -- the potential negative impact of including resumes and CVs in the rule?

MS. KUWIK: Yeah. And so, as far as the additional information, which could be requested as far -- like that additional information, which again -- like people could ask for as long as it is redacted?

MS. GIARRATANA: Yeah, exactly.

MS. KUWIK: Yeah. And I -- I personally do, and I think that the challenge with that, that we kind of had from the beginning, is that if it is so broad as to what somebody can request, does that -- the concern that I guess we have -- I guess even just to back up, is that then that creates kind of a space where someone could feel really uncomfortable providing that information, where it’s like, yes, I want to apply for this job, I want to put this information out there; I’m nervous about adding my resume dates, etc., and I can redact this, yes, but the more
things that it is -- that folks are allowed to ask that
information on, I think that the more, A, it just kind of
circumvents the intention of the law itself, but I think
that it just further just allows for additional spaces
where someone could feel nervous about putting that on
there. So, I think that the broadening of what someone --
where someone could ask for that information just adds more
space for someone to feel uncomfortable with that.
Hopefully, that helped and made some sense.

MS. GIARRATANA: Yeah, I think so. So, are you
saying that it would be appropriate to allow folks to
include the information if they wish or not if they don’t,
essentially, on resumes and CVs?

MS. KUWIK: Yes, exactly. Like if someone
voluntarily says like, yes, I want to -- I want to provide
my graduation date, my whichever date, like yes, absolutely
fine. I think that the question then is someone able to
like require that in any way and then you can redact it.
And if there is like that permissive nature, I think that’s
-- was initially how I read it, but yes, if someone wants
to be able to like to not include that, like completely
fine, but just not having the employer ask for that
information and then say you can redact this.

MS. GIARRATANA: Understood. Thank you so much.

MS. GANN: Jim, you have your hand up?
MR. WESTCOTT: I do. I’m Jim Westcott, and I’m a member of the Colorado Older Worker Policy Collaborative, and my -- when I read this -- and I read the rule and that, and I helped shape the original intent language for the legislation, we’ve got to keep in mind this is for the initial application. It seems to get lost somewhere along the line. So, in the initial application, we wanted to make sure that employers weren’t asking about age-related things and knocking people out because of age discrimination. And in subsequent interviews, the second, the third, the fourth, the fifth interview, they could ask for additional information. This is for the initial application. So, if we go back to then, to your rule, at 12.2, if there’s bonified qualifications that they need because of driving or serving alcohol or things like that, that’s different. Do you meet that or don’t you meet that? But it’s the initial application that we’re talking about here. I think that’s an important point to keep in mind. And it seems to get lost in the discussion. Thank you.

Thank you for your time, and thank you for putting this together.

MS. GANN: Thank you, Jim. Is there anyone else that would like to comment? We just had someone join by phone. The floor is open if you have a comment you would like to make. Seeing that we have no further comments, we
are going to end the meeting. Again, as a reminder, if you have a comment, you can make that comment on our website in the comment form. The comment form closes on April 22nd, at 12 p.m. And I am going to stop the recording and end the meeting.

MS. GIARRATANA: Thanks for joining, everyone.
I hereby certify that the above and foregoing constitutes a transcript of all the audible testimony taken at a hearing in Denver, Colorado, on April 16, 2024, in the matter of 2024 SPRING RULEMAKING PUBLIC HEARING, which hearing was digitally recorded by the State of Colorado and transcribed by me to the best of my ability.

Dated at Drummonds, Tennessee, this 21st of April, 2024.

Holly Massanelli
Transcriptionist
Ditto Transcripts