



DEPARTMENT OF LABOR AND EMPLOYMENT
Division of Labor Standards & Statistics
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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

P R O C E E D I N G S

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2 MS. GANN: We are now recording.

3 MS. GIARRATANA: Thank you, Miki. Good
4 afternoon, everyone. My name is Ellen Giarratana. I'm the
5 Job Equity Program Manager for the Division of Labor
6 Standards & Statistics in the Colorado Department of Labor
7 and Employment. The time is 3:35 p.m., on Tuesday, April
8 16, 2024. This is a public rulemaking hearing held by this
9 Division, with participants listening and speaking by
10 internet and/or phone. A recording of the hearing will be
11 added to the administrative record. Thank you all for
12 joining us this afternoon. With me at this hearing are
13 several Division officials, including Miki Gann, the
14 Division's Rulemaking Program Assistant, Mary Donachy,
15 Manager of Strategic Enforcement Policy and Investigations,
16 Scott Jeffrey, Senior Economic Policy Advisor, and other
17 Division officials. Today, we will accept testimony for
18 the Posting, Screening, & Transparency Rules, or the POST
19 Rules, 7 C.C.R. 1103-18, proposed on Friday, March 15,
20 2024. Last year, the Job Application Fairness Act, or
21 JAFA, in Senate Bill 23-058, was enacted to limit age
22 related inquiries to initial job applications. It's
23 effective July 01, 2024, and enforced by this Division.
24 That means that the Division now covers five laws on what
25 employers can, cannot, must, or must not include in job

26 postings or applications. Collectively, those laws are
27 referred to as the Posting, Screening, & Transparency Acts,
28 or the POST Acts. To streamline the rules and enforce and
29 implement the POST Acts, the Division's newly proposed
30 rules are one rule set that combines the rules on all five
31 POST Acts. That is to provide one rule set rather than
32 five for employers and employees. This new rule set,
33 referred to as the POST rules, merges and replaces the
34 rules on the existing four POST Acts. So, that's the Equal
35 Pay Transparency Rules, 7 C.C.R. 1103-13, the Colorado
36 Chance to Compete Act (Ban the Box) Rules, 7 C.C.R. 1103-9,
37 the Social Media and the Workplace Law Rules, 7 C.C.R.
38 1103-5, and the Employment Opportunity Act or Credit
39 History Rules, which is 7 C.C.R. 1103-4. These rules also
40 add the new Job Application Fairness Act Rules. The POST
41 Rules replace existing rule sets previously noted, with no
42 substantive changes intended other than technical updates.
43 For example, assuring that the previously separate
44 complaint investigation and appeal procedures for all five
45 POST Acts are the same to the maximum extent permitted by
46 the acts and the Colorado Administrative Procedure Act.
47 Anyone may speak on any aspect of these rules in any order.
48 We will not be taking testimony on other labor law and
49 policy topics that are not a part of these proposed rules.
50 For all rules from this Division, the notice of public

51 hearing, and associated rulemaking documents were filed
52 with the Secretary of State for publication on our website
53 and in the State Register, as provided by the Colorado
54 Administrative Procedure Act. The Division then posted all
55 rulemaking documents on our website and publicized them to
56 our contact lists of several hundred stakeholders, but
57 really to thousands of stakeholders, because our
58 stakeholder list is a mix of individuals and organizations
59 whose members were believed to have potential interest in
60 our rules. For more information on any proposed rules from
61 this Division, you can visit our rulemaking page
62 cdle.colorado.gov/laborrules. If you want to pull that up,
63 Miki, just to show. You can scroll down, click on labor
64 rules, and you'll see rules and orders proposed and
65 recently adopted in that second blue box, and you'll see
66 all the documents related to the POST Rules right now.
67 Once they become permanent you'll see in the next blue box
68 below -- or I'm sorry, the first blue box, the current and
69 prior versions of the rules.

70 Before we begin, a few rules and guidelines for the
71 record. In this hearing, the Division is accepting oral
72 testimony, as well as written comment through the chat
73 window, available to anyone joining by internet. The same
74 administrative record will include all oral testimony, all
75 comments in the chat window, and all written comments

76 submitted outside of this hearing. All testimony and
77 comments are reviewed by the same Division officials, so
78 while you are free to comment or testify by any means that
79 you prefer, there is no need to repeat points in multiple
80 forms of testimony and comment submissions. The written
81 comment deadline is Monday, April 22, 2024, at noon, and
82 written comments may be submitted by the comment form,
83 which Miki is showing right now, on our labor rules
84 webpage. You can access that form through that initial
85 cdle.colorado.gov/laborrules by clicking on the third box
86 down, Rulemaking Comments and Hearings, and then you can
87 click on the form there. You can also email them to
88 cdle_laborstandardsrules@state.co.us, or if they are short,
89 you can just type them into the chat window in this Google
90 Meet and they will become part of the record. And Miki has
91 highlighted that email on the screen for you as well.
92 This hearing is for comments related to the proposed rules.
93 If instead you have individualized questions that you would
94 like the answers to, we would happy to respond outside of
95 this hearing. Email any such questions and we will route
96 them to the right person. We anticipate the time available
97 for today's hearing will be enough to hear all testimony on
98 the proposed rules. On the off chance more time is needed
99 or if we have technical difficulties, the hearing may be
100 continued to on another date, which we will announce at the

101 end of the hearing, with details posted on our webpage by
102 noon tomorrow. Thank you again for taking the time to
103 attend this public hearing and participate in our
104 rulemaking process. We will now proceed with oral
105 testimony. We will start with those who signed up to
106 testify in advance, starting with those here by computer
107 and then those here by phone, then we'll invite testimony
108 from those who did not sign up in advance, starting again
109 with those here by computer and then those by phone.
110 Before we begin, just a few instructions for the
111 participants. First, please keep your computer or phone on
112 mute. If you are testifying, still keep your phone on mute
113 until we call your name. For those who are speaking, when
114 we call on you, please do the following things. First,
115 when called upon, please unmute yourself. You can use the
116 control+D on your keyboard if you're joining via internet
117 or *6 on your phone if you're joining by phone. Second,
118 please state your full name, job, and organization, if any.
119 If you wish to exercise your right to anonymity under the
120 Wage Protection Rule 4.7, please just give a first name or
121 pseudonym, and as much of your job or role as you can. You
122 may turn your video off. Third, start by saying which
123 aspect of the POST rules you will discuss. Fourth, please
124 speak in a clear, slow voice and keep your testimony to
125 five minutes. Some may have more input than five minutes

126 of speaking can cover, and if so, please submit written
127 comments of any length that you wish. We may ask you to
128 repeat anything that you may not have been loud enough or
129 clear enough for everyone to hear, and we may ask you
130 follow up questions, which you are free to answer however
131 you wish or not at all. And then, finally, when you
132 finish, please mute yourself again. If you would like to
133 give your name and information for the record, whether or
134 not you testify, or if you are not on the Division
135 stakeholder list to be sent notices of proposed rules or
136 other Division publications, you can email us or use the
137 form on our rules page, which, again, is
138 cdle.colorado.gov/laborrules. Thank you for your interest
139 in and your participation in these important matters of
140 Colorado Labor Law and Policy. We will now invite comments
141 from those in attendance, and we start with those who are
142 RSVP'd, first by computer then by phone.

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

145 MS. KUWIK: Great. Well, thanks so much. So,
146 again, my name is Andrea Kuwik. I'm the Director of Policy
147 and Research with the Bell Policy Center, and I had
148 comments on the component with the Job Application Fairness
149 Act, and specifically on -- I think it's subsection 12.1.1,
150 and I have three general comments, and thought first, these

151 really great and we very much appreciated all the work that
152 you all put into this. And we'll also just note, was also
153 planning on submitting some written comments, so even
154 though they may be duplicative. But the general comments
155 that I had just on the subsection were just, first, around
156 the language in there that has, "An employer may request or
157 require these additional application materials," and then
158 it lists several of them. I think the first thing -- and
159 this just harkens back to the bill language itself, that
160 the bill explicitly says that an employer may request any
161 of the information if it's coming or created by a third
162 party, and we think that that's really important just to
163 kind of limit in part, which we believe was the intent of
164 that amendment around what type of additional information
165 could be requested by -- to have potentially some of that
166 identifying information, even though it could be redacted.
167 So, we think that first set is important; again, it's just
168 really that third party we think should be in there. The
169 second part around, again, just in that same subsection, is
170 that the list of additional application materials has
171 resumes, CVs, transcripts, certifications currently in the
172 draft rules, but see that as a bit too broad, again, going
173 back to the language of the bill itself, which again
174 explicitly mentions that it is -- I believe just the
175 transcripts and the certifications. And again, you know,

176 the intent as we saw it, and kind of the creation of that
177 language, was really just to narrowly included what could
178 be asked for, and then, again, folks could redact that
179 information. So, again, I think that those two components
180 are just really important to add, because, again, thinking
181 about what could be asked for. And then, just the final
182 thing, in that same vein, would, I think, like to
183 potentially see, just also just any type of rules that
184 could be added that then explicitly get to any notification
185 requirements for that information. So, saying that if you
186 are going to require -- that if you were going to ask for
187 this information, that it be clear what the applicant is
188 able to redact, and that is completely within their right.
189 And we think that that just being incredibly important for
190 potential applicants in that space. So, again, just thank
191 you so much for putting these together, and thank you so
192 much for hosting this, and again just grateful for this
193 opportunity and the work you all have done.

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

200 MS. GIARRATANA: While we are here and there is

201 nobody else who is here to comment, Andrea, if you don't
202 mind, can I ask you a question, which you don't have to
203 answer; that's totally fine. But I'd love to ask you a
204 follow up question.

205 MS. KUWIK: Yeah. No, that sounds great.
206 Thanks.

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

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

215 MS. GIARRATANA: Yeah, exactly.

216 MS. KUWIK: Yeah. And I -- I personally do, and
217 I think that the challenge with that, that we kind of had
218 from the beginning, is that if it is so broad as to what
219 somebody can request, does that -- the concern that I guess
220 we have -- I guess even just to back up, is that then that
221 creates kind of a space where someone could feel really
222 uncomfortable providing that information, where it's like,
223 yes, I want to apply for this job, I want to put this
224 information out there; I'm nervous about adding my resume
225 dates, etc., and I can redact this, yes, but the more

226 things that it is -- that folks are allowed to ask that
227 information on, I think that the more, A, it just kind of
228 circumvents the intention of the law itself, but I think
229 that it just further just allows for additional spaces
230 where someone could feel nervous about putting that on
231 there. So, I think that the broadening of what someone --
232 where someone could ask for that information just adds more
233 space for someone to feel uncomfortable with that.
234 Hopefully, that helped and made some sense.

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

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

249 MS. GIARRATANA: Understood. Thank you so much.

250 MS. GANN: Jim, you have your hand up?

251 MR. WESTCOTT: I do. I'm Jim Westcott, and I'm a
252 member of the Colorado Older Worker Policy Collaborative,
253 and my -- when I read this -- and I read the rule and that,
254 and I helped shape the original intent language for the
255 legislation, we've got to keep in mind this is for the
256 initial application. It seems to get lost somewhere along
257 the line. So, in the initial application, we wanted to
258 make sure that employers weren't asking about age-related
259 things and knocking people out because of age
260 discrimination. And in subsequent interviews, the second,
261 the third, the fourth, the fifth interview, they could ask
262 for additional information. This is for the initial
263 application. So, if we go back to then, to your rule, at
264 12.2, if there's bonified qualifications that they need
265 because of driving or serving alcohol or things like that,
266 that's different. Do you meet that or don't you meet that?
267 But it's the initial application that we're talking about
268 here. I think that's an important point to keep in mind.
269 And it seems to get lost in the discussion. Thank you.
270 Thank you for your time, and thank you for putting this
271 together.

272 MS. GANN: Thank you, Jim. Is there anyone else
273 that would like to comment? We just had someone join by
274 phone. The floor is open if you have a comment you would
275 like to make. Seeing that we have no further comments, we

276 are going to end the meeting. Again, as a reminder, if you
277 have a comment, you can make that comment on our website in
278 the comment form. The comment form closes on April 22nd,
279 at 12 p.m. And I am going to stop the recording and end
280 the meeting.

281 MS. GIARRATANA: Thanks for joining, everyone.

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301 STATE OF COLORADO)

302 CITY AND COUNTY OF DENVER)

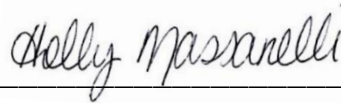
303 I hereby certify that the above and foregoing
304 constitutes a transcript of all the audible testimony taken
305 at a hearing in Denver, Colorado, on April 16, 2024, in the
306 matter of 2024 SPRING RULEMAKING PUBLIC HEARING, which
307 hearing was digitally recorded by the State of Colorado and
308 transcribed by me to the best of my ability.

309 Dated at Drummonds, Tennessee, this 21st of April,
310 2024.

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314

Holly Massanelli

315

Transcriptionist

316

Ditto Transcripts

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