

STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

Posting, Screening, and Transparency Rules (“POST Rules”) 7 CCR 1103-18 (2024), as adopted May 3, 2024.

I. BASIS. The Director (“Director”) of the Division of Labor Standards and Statistics (“Division”) has the authority to adopt rules and regulations on wage-and-hour and workplace conditions, under authority listed in Part II, which is incorporated into Part I as well. These rules establish the Posting, Screening, and Transparency Rules (“POST Rules”), 7 CCR 1103-18, which implement the Equal Pay for Equal Work Act (“EPEWA”), C.R.S. §§ 8-5-101 et seq.; the Employment Opportunity Act, C.R.S. § 8-2-126; the Social Media and the Workplace Law, § 8-2-127; the Colorado Chance to Compete Act, C.R.S. § 8-2-130; and the Job Application Fairness Act (“JAFA”), C.R.S. § 8-2-131.

II. SPECIFIC STATUTORY AUTHORITY. The Director is authorized to adopt and amend rules and regulations to enforce, execute, apply, and interpret Articles 1, 2, 4–6, of Title 8, C.R.S. (2024), and all rules, regulations, investigations, and other proceedings of any kind thereunder, by the Colorado Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of C.R.S. §§ 8-1-107(2)(p), 8-1-103(3), 8-1-111, 8-2-126, 8-2-127, 8-2-130(5)(e), 8-2-131(5)(f), 8-5-103, and 8-5-203.

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is incorporated into this finding as well; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

IV. SPECIFIC FINDINGS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows.

A. Overview: Merging Existing Rule Sets, Keeping Existing Rules, and Adding New JAFA Rules

Last spring, the Job Application Fairness Act (“JAFA,” Senate Bill 23-058) was enacted to limit age-related inquiries in initial job applications, effective July 1, 2024. That means there are now **five laws** the Division enforces on what employers can, can’t, must, or must not include in job postings or applications — collectively, the Posting, Screening, & Transparency Acts (the “**POST Acts**”).

To streamline the rules that enforce and implement the POST Acts, the POST 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, the Posting, Screening, & Transparency Rules (“**POST Rules**”), 7 CCR 1103-18, merges and replaces the existing four POST Act rule sets (#1–4 below), and adds new JAFA-related rules (#5 below) — specifically:

1. The Equal Pay Transparency Rules (“EPT Rules”) (7 CCR 1103-13);
2. The Colorado Chance to Compete Act Rules (7 CCR 1103-9) (“Ban the Box” rules);
3. The Social Media and the Workplace Law Rules (7 CCR 1103-5);
4. The Employment Opportunity Act Rules (7 CCR 1103-4) (Credit History rules); and
5. New rules related to the Job Application Fairness Act (“JAFA”).

The POST Rules replace existing rule sets 1–4 above, 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.

B. New Rules on the Job Application Fairness Act

Rule 12 of the POST Rules contains the new rules related to JAFA. Rule 12.1.1, on initial application requirements, notes that employers may request or require additional application materials during an initial employment application — as defined in Rule 2.13 — so long as applicants are notified of their option to redact age-related information. Such notifications are required for any “additional application materials” including but not limited to resumes, CVs, transcripts, and certifications. While resumes and CVs are not explicitly listed in the statute, the Division finds most resumes and CVs have “dates of attendance at or graduation from an educational institution,” one of the core

pieces of age-related information in the statute. Many resumes and CVs also have the applicant’s date of birth, another core piece of age-related information. Since the statute requires notice to applicants that these pieces of age-related information may be redacted from additional application materials (if such materials are requested), and since resumes and CVs are generally understood to be additional application materials, the Division interprets the phrase “additional application materials” to include resumes and CVs. Thus, under Rule 12.1.1, employers may still request or require resumes and/or CVs, but must provide the required notice to applicants that they may redact the specified age-related information, just like for any other additional application materials.

Rule 12.1.2 clarifies specific questions that are permitted on initial employment applications, including whether an applicant is at least an age legally required to perform the job, and also whether an applicant is enrolled in a school or education program for a position that requires such enrollment.

Rule 12.2 addresses bona fide occupational qualifications. For these rules, the Division adopts existing federal regulations from the Equal Employment Opportunity Commission’s interpretation of bona fide occupational qualifications under the Age Discrimination in Employment Act, 29 C.F.R. § 1625.6(a)–(b).

C. Pre-Existing Rules on Equal Pay Transparency

The Equal Pay Transparency Rules (“EPT Rules”) (7 CCR 1103-13) are replaced by the POST Rules. However, the Division intends to make no substantive changes to the process, substance, or enforcement of equal pay transparency, except for a technical change to the appeals process. POST Rule 11 copies over the entirety of EPT Rule 4 — aside from EPT Rule 4.3, on geographic limits, which is moved into POST Rule 13. EPT Rule 3, on the process of equal pay complaints, investigations, and determinations, is also copied over with a few non-substantive changes throughout POST Rules 3, 4, 5, and 6. The appeals process of the EPT Rules has been updated in POST Rule 7 to conform with Colorado’s Administrative Procedure Act. Since the proposal of the POST Rules, the adopted POST Rule 13.1 has been updated to maintain consistency with the original EPT Rule 4.3.

D. Pre-Existing Rules on Chance to Compete, Social Media And The Workplace, and the Employment Opportunity Act

The Colorado Chance to Compete Act Rules (7 CCR 1103-9), Social Media and the Workplace Law Rules (7 CCR 1103-5); and Employment Opportunity Act Rules (7 CCR 1103-4) are also replaced by the POST Rules. Here too, the Division intends to make no changes to the process, substance, or enforcement of these rules. Each of these prior rulesets unnecessarily repeated statutory text, and the Division finds that these POST Rules simplify the rules for each statute. Rules 8, 9, and 10 simply provide clarity on what information employers and/or consumer reporting agencies may ask for or share.

E. Other Adopted Amendments

The adopted rules also include various other technical or otherwise non-substantive changes where Division review found a need for clarifications or corrections.

V. EFFECTIVE DATE. These rules take effect July 1, 2024.



Scott Moss
Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

May 3, 2024

Date