



Interpretive Notice & Formal Opinion (“INFO”) # 9A:

Transparency in Pay and Job Opportunities: The Colorado Equal Pay for Equal Work Act, Part 2

Overview: The [Equal Pay for Equal Work Act](#), Part 2 (C.R.S. Title 8, Article 5), and the [Equal Pay Transparency \(EPT\) Rules](#) (7 CCR 1103-13), require **transparency in pay and job opportunities**. Employers must:

- disclose **pay** in all job postings and notices, both internal and public;
- disclose **available job opportunities** to all employees, then disclose whom was **selected**;
- disclose how to advance through **career progressions** available to eligible employees; and
- preserve **records** of wages and job descriptions.¹

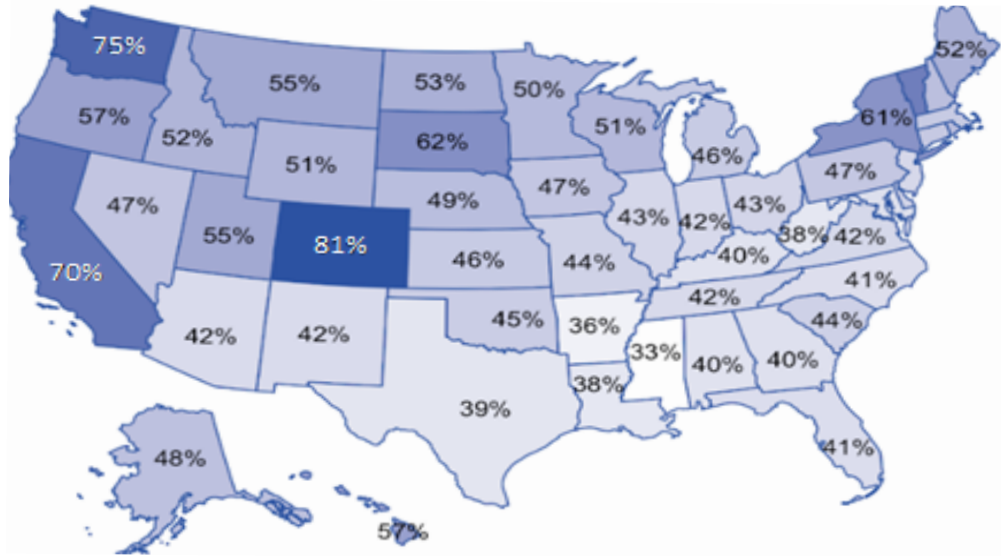
The nation’s first pay transparency law of its kind, Part 2 was enacted in a law to further “equal pay,” based on “the intent of the general assembly ... to close the pay gap in Colorado and ensure that employees with similar job duties are paid the same wage rate” — and independent research and analyses have found the following changes since the Act took effect at the start of 2021.

1) **Increased pay transparency.** Significantly more job postings disclose pay than before the Act.²

- Over time: **% of Postings Disclosing Pay:** *in late 2020:* *in late 2023:*

<i>In Colorado:</i>	<i>under 25%</i>	<i>over 80%</i>
<i>Nationally:</i>	<i>under 20%</i>	<i>over 50%</i>

- By state:



2) **More job postings.** Job postings from 2020 to 2023 **increased more in Colorado** (roughly **+40%**) than in other states (roughly **+30%** in Utah and Texas, **+10%** in California, etc.), the same research found.

3) **Pay and/or equity gains** have followed such pay transparency laws:

- Colorado’s Act, by increasing pay disclosure, “increased competition in the labor market, leading to” a 3.6% **increase in posted pay**, and a similar increase in actual pay;³ and
- transparency laws outside Colorado were found to **reduce gender pay gaps** and raise pay.⁴

¹ This INFO doesn’t cover the **ban on pay disparities by sex** in Part 1 of the Act (enforced by lawsuits or by this Division), or other Posting, Opportunities, Screening, and Transparency (“**POST**”) **laws** (which are summarized in [INFO #9](#)).

² “[Pay Transparency Is Now in a Majority of US Job Postings—With More Growth to Come](#),” *Indeed Hiring Lab* (Sept. 2023) (publicly available research on online job postings from varied sources (i.e., not just on Indeed); data through August 2023).

³ David Arnold, Simon Quach, & Bledi Taska, [The Impact of Pay Transparency in Job Postings on the Labor Market](#) (finding higher posted and paid salaries in Colorado, above inflation, due to increased pay transparency in job postings).

⁴ Zoe B. Cullen, “[Is Pay Transparency Good?](#)” (Nat’l Bur. Econ. Rsch. working paper #31060, 2023) (summarizing research).

Employers and Employees Covered

- The Act covers **all “employers,”** public or private, that employ **at least one person** in Colorado; and it covers all employees of those employers (C.R.S. § 8-5-101(4),(5)).
- The following are **not covered**, and don’t need to comply with Act requirements for job postings or notices.
 - **No employees in Colorado:** If an employer has no employees in Colorado *at the time of its hiring or promotion decision*, then it is not covered for that hiring or promotion decision, even if it considers Colorado applicants, or ultimately hires someone who would work in Colorado.
 - **Sharing another employer’s job:** Compliance isn’t required by a site or publication that, on its own or when hired by an employer with a job open, just posts another employer’s jobs. Nor is compliance required by a party (government or private) that just connects job-seekers to jobs. The Act covers only posts *an employer itself* makes, or has another party make.
 - **Having your own job re-posted by someone else:** An employer is not liable if it has a compliant posting, but then a third party, on its own initiative, re-posts that employer’s job without the required information (*i.e.*, without being hired or instructed by the employer to do so).

Example 1: LinkedDeed is a website that charges employers to post jobs, and re-posts jobs it finds online. It publishes three posts with no pay listed, for jobs at employers covered by the Act:

- A) Piper’s Rare Books pays LinkedDeed to publish a job post that Piper’s wrote without pay listed. The post was non-compliant but only Piper’s, not LinkedDeed, is in violation: the Act covers only employers’ own jobs; LinkedDeed just helped Piper’s execute its own posting.
- B) Enrico’s Calzones posts a job with pay disclosure. LinkedDeed finds that post on its own, and re-posts it with no pay listed. Neither Enrico’s nor LinkedDeed violated the Act: Enrico’s own post complied, and it isn’t responsible for a third party sharing incomplete information on its own; LinkedDeed isn’t liable because it didn’t act as an employer posting its own job.
- C) LinkedDeed posts a job at LinkedDeed without pay information. The Act was violated by LinkedDeed, because here, LinkedDeed was acting as an employer posting its own job.

Information Required in Job Postings and Notices (§ 201(2))

- **Notices/Postings Covered.** Required disclosures must be “in the **notification** of each **job opportunity**.”⁵
 - “Notices” and “postings” mean the same thing under the Act: **any notification** that the employer has a **specific job** or jobs available, or is **accepting applications** for a specific position or positions.
 - Both **external** postings (*e.g.*, public advertisements) and **internal** notices (*e.g.*, a company-wide email, or cork board posting) are covered.⁶
 - **Excluded** are notices or postings saying **generally, without specific positions** listed, that an employer is accepting applications or hiring — for example, a “Help Wanted” sign inviting emails, or a break room poster encouraging employees to consider applying for relevant promotions.
- **Contents Required.**⁷ All notices and postings must include the following three items, all detailed below.
 - 1) The **compensation to be offered**;
 - 2) The **benefits to be offered**; and
 - 3) **How and when to apply**.

⁵ C.R.S. § 8-5-201(2); EPT Rule 4.1.

⁶ C.R.S. § 8-5-101(5.5)(a), C.R.S. § 8-5-201(1); EPT Rule 4.1.

⁷ C.R.S. § 8-5-201(2); EPT Rule 4.1.

1) Compensation that must be disclosed includes:

- a) the **rate of pay** or a **range** of possible offered rates (and whether hourly, salary, or piece rate etc.); and
- b) a general description of any **other compensation** — such as bonuses, commissions, or tips.
- **Ranges** of pay are compliant if they span the lowest to highest the employer actually believes it may offer for the specific job, depending on qualifications, employer finances, or other considerations.⁸

Example 2: An employer *can't* post the same \$30,000-\$100,000 for janitor and accountant jobs, if it doesn't genuinely anticipate offering accountants the low end, or janitors the high end.

Example 3: An employer *can't* post a \$70,000-\$100,000 range for a *junior* accountant job just because it pays *senior* accountants the high end of the range. It *can* post \$70,000-\$100,000 for an accountant position if it doesn't limit the post to junior or senior accountants, and genuinely might offer as low as \$70,000 for a junior accountant, or as much as \$100,000 for a senior one.

- Ranges **can't lack a top or bottom**, like “\$30,000 **and up**” or “**up to** \$60,000.”
- An employer **may ultimately pay more or less** than a posted range — as long as the range, when posted, was what the employer genuinely believed it would be willing to pay for the job.
- If offers may **vary by state**, the pay (or range) must be for Colorado hires. If offers may **vary by local area** in Colorado, the information should let applicants reasonably estimate their pay. This requires:
 - for jobs at **one or more sites** among a larger number that the employer has, the posted pay must be included for the site(s) in question; and
 - for jobs **performable anywhere** in Colorado, to assure **local minimum wage** compliance, either
 - i) posted pay that is **at or above** the **highest** local minimum wage in Colorado, or
 - ii) if posted pay is below Colorado's highest local minimum wage, a **statement** that pay **won't be below** any applicable local minimum wage (without need to list any local minimum wage).
- **Other compensation** than pay rates (like **tips, bonuses, or commissions**) may have just a “general description” — so a posting may, but doesn't need to, **estimate the amount** (e.g., tips per hour), as long as it discloses **what the employer itself will pay**, aside from that other compensation.

Example 4: Stu's Steaks pays waitstaff \$18.00, and tips average \$5.00-\$10.00, hourly. In a posting:

- A) “\$18 per hour plus tips” is *compliant*: it includes “the hourly or salary compensation” and describes “general[ly]” the other compensation, the tips.
- B) “\$18 per hour plus \$5-\$10 hourly tips” is *compliant*: it discloses more than required.
- C) “\$23-\$28 per hour with expected tips” is *non-compliant*: by combining hourly rate with tips, the posting fails to “disclose ... the hourly ... compensation” as the Act requires.

2) Benefits that must be described include health care, retirement benefits, paid days off, and any tax-reportable benefits — but not minor perks like use of an on-site gym or employee discounts.⁹

- Employers must describe at least the nature of these benefits and what they provide, not specific details or dollar values — such as listing that the job comes with “health insurance,” without needing to detail premium costs or coverage specifics.
- Employers can't use open-ended phrases like “etc.,” or “and more,” rather than provide the required general description of “all” of the benefits.

⁸ EPT Rule 4.1.2.

⁹ C.R.S. § 8-5-201(2); EPT Rule 4.1.1(C).

3) How to Apply, and the Application Deadline,¹⁰ must be disclosed, with these exceptions:

- If the employer discloses that it accepts **ongoing applications**, no deadline is required.

Example 5: An employer is always accepting applications for waitstaff because it has so many identical positions. A compliant posting can say applications are “accepted on an ongoing basis.”

- An application **deadline may be extended** if the original deadline was a **good-faith expectation** of what the deadline would be, and the posting is promptly updated with any deadline extension.

Example 6: An employer is hiring a senior manager, with a posted application deadline of March 1. By February 28, the employer received fewer applications than expected, so it changed the deadline to March 10. This is allowed; March 1 was a deadline the employer in good faith expected.

- **If a specific person is expected to be selected**, the employer may (but isn’t required to) identify whom — as long as it still notifies all employees in time for them to apply before a decision is finalized.

Example 7: An employer expects to promote junior accountant Jo Doe to senior accountant. A job opportunity notice could be the following 30 words with all required information (pay, benefits, and how and when to apply). It adds who is expected to be hired, which is allowed but not required:

Jo Doe is recommended for promotion to senior accountant. Salary \$50-70,000; health ins.; PTO; 401k. To apply by January 1, or to express interest in similar jobs, email interest@CompanyHr.com.

Exceptions and Limitations as to Employer Posting Duties

- *No External Posting Is Required.* Employers need not post opportunities *externally*, but still must give *internal* notice of job opportunities (to all employees, with required disclosures) before the hiring decision.

Example 8: An employer decides to hire an entry-level employee with only an internal company-wide email, but no external posting. That is permissible, as long as the internal notice includes the required disclosures: compensation, benefits, and how and when to apply.

- *Linking Rather than Listing Required Information is Permitted.* An electronic posting (webpage, email, etc.) can link to, rather than list, the required disclosures — as long as:

- it clearly says the link discloses the information not in the posting (e.g., “benefits information here”); and
- the employer assures continuous functionality of links, up-to-date information, and information for each specific job — e.g., not a single pay or benefits statement for multiple jobs with different pay or benefits.

- *Postings of Out-of-State Jobs Are Excluded from § 201(2) Disclosures.* The pay, benefits, and how/when to apply disclosures are not required in postings for jobs *to be performed* entirely outside Colorado, or with only modest travel to Colorado, even if a posting is published in Colorado or available online.¹¹

- This narrow exception is for only jobs not performable in Colorado (e.g., waiters at Utah restaurant sites).
- Note that Colorado employees still must receive *job opportunity notices* for out-of-state jobs, but those notices need not include the § 201(2) disclosures (see “Geographic Requirements and Limits” below).

- *Remote Work Performable in Colorado Must Comply.* A covered employee’s remote job posting, even if it says Coloradans won’t be considered, is covered. The Act expressly covers all jobs, so work performable remotely from anywhere doesn’t meet the narrow implied exception for out-of-state worksites.¹²

- *Print or Hardcopy Out-of-State Postings Are Excluded.* Employers need not provide any required disclosures in printed or hardcopy notices posted or distributed entirely outside Colorado. For example, a local print advertisement in Iowa is excluded, but not an online advertisement.¹³

¹⁰ C.R.S. § 8-5-201(2); EPT Rule 4.1.1, 4.1.3(A)-(B).

¹¹ EPT Rule 4.3(B).

¹² Remote job opportunity notices aren’t required at employers with no site, and under 15 staff, in Colorado; see below.

¹³ EPT Rule 4.3(B).

Reasonable Effort to Notify All Employees of All Job Opportunities: § 201(1) of 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 prior to ... a selection decision.”¹⁴

● **Who Gets Notice of Job Opportunities?**

- “All employees” must receive notice of “each” job opportunity — so employers **can’t limit notice** to only certain jobs or employees based on who may be interested or qualified, which jobs are relevant, etc.

Example 9: An employer has an opening for a Sales Agent. Most of its employees are higher-paid and wouldn’t be interested. But the opening meets the “job opportunity” definition: any “vacancy for which the employer is considering a candidate or candidates” (C.R.S. § 8-5-101(5.5)). So the employer must notify “each” employee on the “same day” and “prior to” its “selection decision.”

- Employers may say applications are open to only certain **qualifications**, and screen by those criteria.¹⁵
- Employers need not notify **non-Colorado employees** of job opportunities in or outside Colorado.¹⁶

Example 10: Horace’s Hamburgers has locations in 50 states. It has a manager position open in Colorado Springs. It must notify only its Colorado staff of the opening.

● **What Is a “Job Opportunity” Requiring Notice?** An employer has a “job opportunity” that must be disclosed whenever it is at least “**considering**” filling any “current or anticipated **vacancy**.”¹⁷

- “**Considering**” filling a vacancy triggers notice duties whether the employer is considering multiple candidates (e.g., through open applications) or just one person (e.g., a promotion or material change in duties) — whether or not the employer uses a formal process (interviewing, external posting, etc.).
- “**Vacancy**” can be either of the following.
 - 1) A “**Vacated Position**” an employer intends to fill that is open, or held by a departing employee.
 - 2) A “**Newly Created Position**,” which can be either
 - a) when an **entirely new** position is created, or
 - b) when an **existing position is changed enough** to make it a **different position**:

Changes creating a different position:

- *Changing **authority, duties, or opportunities** materially, with or without title or pay changes*
- *Changing **both title and pay***

Changes not creating a different position:

- *Changing **title alone**, without changing authority, duties, or opportunities materially*
- *Changing **pay alone**, without changing authority, duties, or opportunities materially*
- *A **career development**, or a **career progression** — defined below*

● **What’s Not a Job Opportunity Requiring Notice?** Four categories, each detailed below.

- 1) **Two kinds of non-competitive** promotion: “**career progression**” and “**career development**”;
- 2) **Acting, interim, or temporary** (“**AINT**”) positions;
- 3) **Confidential replacements** of current employees **unaware of their separation**; and
- 4) **Remote jobs** for employers with **no site**, and **under 15 staff, in Colorado**.

¹⁴ C.R.S. § 8-5-201(1). EPT Rule 4.1.4(B) covers what “reasonable efforts” entail.

¹⁵ EPT Rule 4.1.4(C). See the rest of the [INFO #9](#) series for guidance on hiring and screening laws.

¹⁶ EPT Rule 4.3(A).

¹⁷ C.R.S. § 8-5-101(5.5).

1) **Two kinds of non-competitive promotion** aren't "job opportunities" requiring notice (*as of Jan. 1, 2024*):

A) **"Career progression"** promotions¹⁸ — "regular or automatic" promotions "based on time in a specific role or other objective metrics" that employees can satisfy without competition.

Example 11: An offer letter states that Bil is being hired as an Associate II and, if not subject to any disciplinary actions, will be promoted to Associate III in 12 months, then Associate IV in another 12 months. Each promotion is a career progression not requiring job opportunity notice to others: it is based on "time in a specific role or other objective metrics" (*i.e.*, zero disciplinary actions, and 12 months). However, "Career Progression Notices" (see below) to other Associates are required.

Example 12: Same as Example 11, except Bil's manager reviews each promotion as the twelfth month approaches, and decides whether to allow, reject, or postpone it. This discretion means the promotions are not based on "objective metrics," so they aren't career progressions; they're job opportunities requiring posting, because the employer is "considering" a candidate for promotion.

Example 13: Tom's Hats uses a "promotion list": a list of employees in order of whom will be promoted when a next promotion is available. As with any other promotion, whether "promotion list" use qualifies as "career progression" depends on whether the criteria are objective or subjective:

- they *are* "career progressions" if the list is based wholly on "objective metrics" — time in role, or a defined measure of sales over a defined period, etc.; but
- they *aren't* "career progressions" if the list is based partly on subjective factors — performance evaluations scores, or "sales rankings" based on varied data with no defined formula, etc.

B) **"Career development"** promotions¹⁹ "to update the employee's job title or compensate the employee to reflect work performed or contributions already made by the employee." This exception recognizes that there's no competitive "job opportunity" to post if an employee's own duties simply grew enough to change their own position. So for a promotion to qualify as "career development" exempt from posting:

- the existing work or contributions **need not be the employee's official duties** — and usually aren't, which is why the "career development" promotion is needed (as in the first example below);
- but the existing work or contributions **can't already be part of a different position** the employee is being promoted into — because then the employee is being moved into **another position's vacancy**, not just having their **own position grow** (as in Example 15 below).

Example 14: Kasir's main duties as a supermarket cashier are checking out customers, cleaning the register, and counting out the register as the day ends. There is no head cashier; all cashiers report directly to Manny, the store manager. Eventually realizing that overseeing all cashier work is too burdensome, Manny (a) tells all cashiers that they should go to Kasir with any questions, and go to Manny only if Kasir is unavailable and (b) asks Kasir to create a schedule for cashiers' shifts. Kasir remains a cashier, but these tasks [both (a) and (b)] come to take up more and more time. Eventually, Manny promotes Kasir to Head Cashier, with a raise but no other duties change.

- The new title and raise change Kasir's job enough to qualify as creating a new position. That ordinarily requires job opportunity notice. But this promotion doesn't, since it's a "career development" — not a promotion filling a vacancy, since there was no other existing position with these duties, but instead, a promotion to "reflect work performed or contributions already made."

Example 15: Same as Example 14, except there was a Head Cashier named Hedda. Then Hedda quits without notice. Unable to hire a replacement immediately, Manny promptly has Kasir take on Hedda's work. After three months, Manny announces that Kasir is officially the new Head Cashier.

- Without a job opportunity notice, Manny can promote Kasir to Head Cashier on an acting or interim basis limited to no more than nine months — see "AINT Positions" below.
- But Manny can't say that once Kasir was doing the work of a Head Cashier, Kasir could be made Head Cashier on a permanent or indefinite basis as a "career development." The duties are part of an existing position, Head Cashier, that was not Kasir's position. Once Hedda quit, the position became a "vacancy" — so filling it requires job opportunity notice.

¹⁸ C.R.S. § 8-5-101(1.5); EPT Rule 4.1.4(A)(3).

¹⁹ C.R.S. § 8-5-101(1.3); EPT Rule 2.1.

2) Acting, Interim, or Temporary (“AINT”) Positions

- Notice is not required for AINT positions of up to nine months — unless **the same position** was held by an AINT hire for seven months of the previous year.²⁰
- Other employees must be notified if an AINT hire is for a position not scheduled to end in nine months.

Example 16: A ski mountain annually hires six-month seasonal employees as AINT hires. That is permissible. But then it switches to be a ski mountain *and* late summer adventure park — so its seasonal employees start working *nine* months a year. After employing an AINT hire for *seven to nine* months, the employer can’t hire another AINT hire for those same positions the next year.

Example 17: A large law firm hires temporary secretaries for nine months each — typically one every several months, so it always has multiple AINT secretaries at any time. All are in the same entry-level “administrative assistant” job title. When an AINT secretary finishes their nine months, the law firm hires a permanent secretary to fill the position, with Act-compliant job opportunity notices. This is permissible: AINT hires of seven months or longer can’t be used to repeatedly fill the *same position*, but can be used for *different positions* with the same title, duties, etc.

3) Confidential replacements of current employees unaware of their separation²¹

- No notice is required to replace a current employee who (for reasons other than to avoid notice duties), isn’t yet aware of their coming separation — but if the confidentiality need ends (e.g., the departing employee learns of the separation), the employer must promptly comply with all notice requirements.
- If any employees are told of the job opportunity, all employees who meet the minimum qualifications *or* have jobs “substantially similar” to any employees being told of the opportunity must also be told.
- Because personnel decisions are often made collaboratively, employers may disclose planned terminations to employees with bona fide human resources, decision-making, or deliberative roles in a termination, or in hiring a replacement employee, without triggering a duty to tell other employees.

Example 18: A CEO decides to terminate the accounting director (“AD”). Before the AD is told of the termination and escorted out, the decision is known to only: (A) the CEO and their executive assistant; (B) HR staff preparing to execute the termination and start the hiring process for a new AD; and (C) Pat, one of the company’s many accountants, who is told they will be acting AD until a permanent AD is hired in 2-3 months. Other employees are told of the AD opening only *after* the termination and Pat’s acting AD appointment, and are permitted to apply for the permanent position at that time. The employer is compliant: until the termination, the employer can keep the upcoming opening confidential, as long as “employees are told of the opportunity” — which is *after* termination, because “the opportunity” requiring notice is only the *permanent AD* job, not the *acting* role.

Example 19: Same as above except, pre-termination, Pat is given the *permanent*, not acting, AD job. The employer is *not* compliant: telling Pat of the permanent job triggered a duty to tell all employees.

4) Certain remote jobs: at employers with **no Colorado site** and **under 15** staff in Colorado²² — but note that:

- the § 201(2) **disclosure** requirements (pay, benefits, and how and when to apply) **still apply** to such jobs — just not the duty to **notify employees of job opportunities**;
- **other remote jobs remain covered** by job opportunity notice — those at an employer with a Colorado site, or an employer with no Colorado site but 15 or more more Colorado remote staff; and
- this exception applies only until July 1, 2029.

²⁰ EPT Rule 4.1.4(A)(4). This rule aims to let seasonally temporary hires qualify for the AINT exception, as long as they don’t stay too long to qualify as “seasonal” — based on the seven-month length in the main “seasonal” definition in federal labor law, the Fair Labor Standards Act. The rule does allow, however, that if an AINT hire separates after seven months and before nine months, the same position may be filled without any notice, but only to finish the original nine-month term.

²¹ EPT Rule 4.1.4(A)(2); as to what jobs are “substantially similar,” see C.R.S. § 8-5-102.

²² C.R.S. § 8-5-201.

- **Manner of Notice** (EPT Rule 4.1.4(B)).

- Notice of a job opportunity to employees must be:
 - 1) in **writing** (which can be electronic, such as an email or intranet posting);
 - 2) by any **method** that **reaches all** employees and lets employees know **where to find** the notice — and if a method that doesn't reach all employees is used (like an online post inaccessible to employees without internet), then **alternate** methods must also be used to assure notice to all;²³
 - 3) to all employees on the **same calendar day**;²⁴ and
 - 4) enough in **advance** of a hiring or promotion decision that employees receiving notice may apply.

Example 20: An employer with a mix of on-site and remote staff could use an on-site bulletin board for on-site staff and electronic means (email, intranet, etc.) for remote staff. Or it could use electronic means for both remote and on-site staff, as long as all employees have internet access.

- One notice can cover multiple opportunities, if employees get it in time to express interest in any of them.

- **Timing of Notice**

- “Reasonable efforts” to notify employees of job opportunities require providing notice sufficiently in advance of the decision for employees to apply. If notice is posted rather than provided to employees, it must be posted for long enough that employees can reasonably access it.
- The requirement to notify all employees on the same calendar day doesn't prohibit employers from notifying certain employees in advance of a general notice — for example, if an employer assesses a particular employee's interest in a promotion before notifying other employees of the opportunity.
- Where an employer continuously — at least once per month — hires for a specific position that would qualify as a job opportunity, the employer may use a single notice of such opportunities, rather than a notice for each opportunity. The single notice must be given:
 - 1) directly to employees (e.g., by email) in a periodic notice frequent enough to give employees time to apply, but at least monthly; or
 - 2) in a continuously accessible posted notice (e.g., a physical or intranet post, or an employee handbook) that —
 - a) employees are told contains notice of job opportunities, and
 - b) is updated promptly whenever any aspect of the job opportunity changes (e.g., compensation, benefits, qualifications, job description, or application process).

Example 21: An employer is continuously accepting applications, and hiring at least monthly, for salespersons. The employer may send employees a monthly email, the last day each month, with notice of the job opportunity.

Example 22: An employer doesn't *continuously* accept salesperson applications, but is a large company always hiring multiple salespeople monthly to fill vacancies, with a 15-day application period from the first through the fifteenth of each month. A monthly email sent at the very end of the application period (e.g., the fifteenth of the month) would comply *if* it told employees of the *upcoming* month's application period, but not if it mentioned only the *past* application period.

²³ EPT Rule 4.1.4(B).

²⁴ C.R.S. § 8-5-201(1).

Post-Selection Notice (§ 201(3)): Notice is also required **after a candidate is hired** for a job opportunity.

- **Who must receive post-selection notice?** Employees whom the employer intends a selected candidate to work with regularly must receive post-selection notice.²⁵ But the employer can notify more, or all, employees.
 - **“Work with regularly”** means those who, as part of their job responsibilities, either: (1) communicate or collaborate about work at least monthly; or (2) have a reporting relationship, *i.e.*, supervisor/supervisee.²⁶
- **When must post-selection notices be provided?** Within 30 days of the hire, the post-selection notices must be provided. Employers may comply by sending post-selection notices individually for each hire, or grouping all hires within the past 30 days together into one post-selection notice.²⁷
- **What must post-selection notices contain?** Post-selection notices must contain:²⁸
 - 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 employees may **demonstrate interest** in similar future opportunities, including identifying individuals or departments to whom the employees can express such interest.

Example 23: After selecting Ali C. for promotion to Analyst IV, the employer sends a post-selection notice to Ali’s manager, Ali’s direct reports, and all other analysts on Ali’s team 30 days after the promotion. These are all of the employees Ali regularly works with. A compliant notice can read:

Ali C. has been promoted to Analyst IV from Analyst III. Any employee interested in similar opportunities in the future should email Human Resources at HR@company.com.

- **Can an employee opt out of having their information shared in post-selection notices?**
 - If an employee informs their employer in writing, on their own initiative, and voluntarily that they believe disclosing their name and/or former job title would put their health or safety at risk, the employer must not disclose those items.²⁹ Employees need not disclose what the risk is, or why they believe there is a risk, and employers shall not interfere with or retaliate against an employee who exercises this right.
 - If this opt-out is exercised, an employer must still provide a post-selection notice to notify employees that the position is filled and to inform employees how to express interest in future job opportunities.

Example 24: After being told they were selected for a sales manager job, Sam emails H.R. to ask that their name and former job title not be disclosed in post-selection notices, due to a possible safety risk. The employer then sends the relevant employees this notice: “The sales manager position has been filled. To express interest in future positions, email HR@company.com.” The employer has complied with its duty both *not to disclose* Sam’s information and *to still disclose* the other required post-selection notice information. That means it was required to disclose:

- A) that the managerial job is filled; *and*
- B) how to demonstrate interest in similar future job opportunities; *but*
- C) without disclosing Sam’s name or former job title.

²⁵ C.R.S. § 8-5-201(3).

²⁶ EPT Rule 4.2.2(A).

²⁷ EPT Rule 4.2.2(B).

²⁸ EPT Rule 4.2.1(A)-(D).

²⁹ EPT Rule 4.2.3. Similarly, employers may not reveal any information a court order or applicable law prohibits disclosing.

Career Progression Notice (§ 201(4)): For positions with career progression — “a regular or automatic movement from one position to another based on time in a specific role or other objective metrics” (C.R.S. § 8-5-101(1.5)) — employers must disclose to eligible employees the details of each position, including compensation, and how to advance.

- **Who must have access to career progression information?** Career progression notices must be provided to eligible employees, meaning those in the position that, when the requirements in the notice are satisfied, would move from their position to another position listed in the notice.³⁰ Employers may comply by providing this information to a broader range of, or all, employees.
- **When must career progression notices be provided?** Career progression notices should be available to eligible employees shortly after beginning any position within a career progression.
- **What must be in the career progression notices?** Career progression notices must disclose “the requirements for career progression, in addition to each position’s terms of compensation, benefits, full-time or part-time status, duties, and access to further advancement.”³¹
- **How must career progression information be provided?** So long as the required information is disclosed and available to eligible employees, either online or in hard copy, employers may choose to decide how to provide these notices. Hardcopies of the required information in an employee’s new hire packet would suffice, or a company intranet page accessible by all eligible employees.

Out-of-State Coverage Limits: Following is a summary of points covered elsewhere in this INFO on the limits, for certain **partly or fully out-of-state situations**, of the Act’s posting, notice, and disclosure requirements.³²

- 1) **Job opportunity** notice: All employees in Colorado must be notified, whether or not the job is in Colorado.
- 2) **Post-selection** notice: All employees in Colorado whom the employer intends the selected candidate will work with regularly must be notified, regardless of whether the selected candidate is in Colorado.
- 3) **Career progression** notice: All eligible employees in Colorado must be notified.
- 4) **Out-of-state** exemptions — scope:
 - a) **Employees entirely outside Colorado** are exempt from requirements to receive the above three items (job opportunity, post-selection, and career progression notices)
 - b) **Postings for job opportunities to be performed entirely outside Colorado** are exempt from the disclosure requirements of § 201(2) (compensation, benefits, and how and when to apply).
 - c) **Postings physically located outside Colorado** (and not accessible online in Colorado) are also exempt from the disclosure requirements of § 201(2).

Employer Recordkeeping Duties (§ 202):³³

- Employers must keep records of each employee’s job description and compensation, including salary or hourly wage, benefits, and all bonuses, commissions, and other compensation.
- The records kept must include any changes to job description or compensation over time.
- Employers must keep these records for the duration of the employee’s employment plus two years after.
- Employers with employees in multiple states must keep these records only for employees in Colorado; employers with no Colorado employees are exempt from this recordkeeping.

³⁰ EPT Rule 4.4.2.

³¹ C.R.S. § 8-5-201(4).

³² EPT Rule 4.3.

³³ C.R.S. § 8-5-202.

Complaints, Investigations, and Remedies

- 1) **Complaints.**³⁴ Any person aggrieved by (*i.e.* witnessed, suffered, or injured by) a perceived violation may file a complaint within one year of learning of the violation. The complaint must be on a Division form; must include a short and plain statement of its grounds, and may also include documents or other information; and may be dismissed if a complainant doesn't respond timely to Division requests.
- 2) **Investigations.**³⁵ Investigations start when the Division receives a complaint or other information that an employer may have committed a violation, or retaliated against someone for exercising rights. The Division may initiate investigations based on information received without a formal complaint (a "direct investigation"), including anonymous complaints, which the Division treats as tips it may investigate discretionarily, without mandatory complainant notice or participation. Throughout investigations, all parties must promptly notify the Division of new contact information (mail or email address, phone number, etc.).
- 3) **Employer Notice.**³⁶ The Division sends an employer a Notice of the allegations of any violation(s). After learning of an investigation (from the Notice or earlier), an employer must preserve all relevant evidence (*e.g.*, emails, letters, handbooks) for the duration of the investigation and any appeals, and until the end of the time for the filing of either any appeals or any complaint. An employer response must be received by the Division by the time specified in the Notice and any applicable rules. The response must include all requested documents and information, and anything else the employer believes should be considered. Failure to respond may result in a finding against the employer and/or fines (see below).
- 4) **Determinations and Remedies.** If the Division finds a violation, it may order the following remedies.
 - **Compliance orders** requiring employer action to
 - bring itself into **compliance**,
 - **remedy** violations, and/or
 - provide **information** to the Division or to others.
 - **Non-compliance fines, typically daily** for each day that a violation continues, may be assessed for failure to fully execute any compliance orders.³⁷
 - **Fines of \$500-\$10,000** for each violation.³⁸ For purposes of fines:
 - **each job posted** (or not posted, if it was required to be posted) is a separate violation;
 - **multiple postings of one job** (or multiple failures to post one job) are just one violation;
 - **failure to keep records** of wages or job descriptions is a separate violation for each employee.
- 5) **Appeals.** Either party may appeal Division determinations in complaint investigations; employers may appeal in direct investigations. An appealing party must explain any errors in the determination, and must ensure the Division receives the appeal within 35 calendar days of the date the determination was sent.³⁹

For More Information: Visit the Division [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

³⁴ C.R.S. § 8-5-203(2)(a); EPT Rule 3.2.1-3.2.3; [Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules \("WARNING Rules"\)](#) (7 CCR 1103-11), Rules 1.1-1.2, 3.2.1-3.2.2 (as to retaliation complaints).

³⁵ EPT Rule 3.1-3.2 (Part 2 violations); WARNING Rules, Rule 3.1-3.2 (retaliation); [Direct Investigation Rules \("DI Rules"\)](#) (7 CCR 1103-8), Rule 3.1 (in direct investigations without a formal complaint).

³⁶ EPT Rule 3.4.3-3.4.4 (Part 2); WARNING Rule 3.3.4-3.3.5 (retaliation); DI Rule 3.6 (direct investigations).

³⁷ *E.g.*, [C.R.S. § 8-1-117](#) (fine for non-compliance with information demands); [C.R.S. § 8-1-140\(2\)](#) (same, for other orders).

³⁸ C.R.S. §§ 8-5-203(1),(4); EPT Rule 3.5 (Part 2); WARNING Rule 3.5 (retaliation); DI Rule 5.1 (direct investigations).

³⁹ EPT Rule 3.7.1 (Part 2) and WARNING Rule 3.7.1 (retaliation); DI Rule 6.1.1-6.1.2 (direct investigations).