



Interpretive Notice & Formal Opinion (“INFO”) #8

Equal Pay by Sex: The Colorado Equal Pay for Equal Work Act, Part 1

Overview. The Colorado [Equal Pay for Equal Work Act \(the “Act,” S.B. 19-085\)](#) aims to **close gender pay gaps** and make sure employees with **“similar job duties are paid the same wage rate regardless of sex.”** The Act requires that **all employers**, public or private, with at least one employee in Colorado:

- 1) can’t **pay an employee less** than another of a **different sex** for **substantially similar work** — unless the difference is for fair reasons (explained below);
- 2) can’t **set pay based on, or even ask about, prior pay rates** of potential hires;
- 3) can’t **restrict** employees from **discussing pay**;
- 4) can’t **fire or otherwise act against** anyone for **exercising rights** under the Act (ex: discussing pay, refusing to disclose prior pay, complaining of unequal pay, supporting others’ rights); and
- 5) must **disclose pay** in job postings, and disclose **job opportunities** to all employees.
 - Points (1)-(4) are in Part 1 of the Act (the topic of this INFO), enforced by this Division or lawsuits in court.
 - Point (5) (transparency of pay and job opportunities) is in Part 2 of the Act, and covered in INFO #9A.

1) **Ban on unequal pay.** The Act bans unequal pay (often called “pay gaps” or “pay disparities”), **intentional or not**, between employees of a **different sex** with **substantially similar work**. (C.R.S. § 8-5-102(1).)

- What is “**substantially similar work**” is based on a mix of skill, effort, and responsibility — not just job *title* — and doesn’t require that the work be identical or equal.¹
- A “**different sex**” includes a different **gender identity**, or sex **combined with another** identity — for example, unequal pay for women of a certain race, ethnicity, or religion.
- Unequal pay by sex is allowed **only** if an employer **proves all four** of these points:
 - I) That the unequal pay is based on either —
 - a) a **seniority** system,
 - b) a **merit** system,
 - c) a system that measures earnings by **quantity or quality** of production,
 - d) the **geographic location** of the work,
 - e) **education, training, or experience**, to the extent **reasonably related to the work, or travel** that is **regular and necessary** for the work; *and*
 - f) **travel** that is **regular and necessary** for the work; *and*
 - II) That the above factors were **applied reasonably**; *and*
 - III) That the above factors account for the **entire pay gap**; *and*
 - IV) That prior **wage history was not relied on** to justify the unequal pay.

¹ Federal law requires equal pay for “*equal work on jobs the performance of which requires equal skill, effort, and responsibility,*” 29 U.S.C. § 206(d)(1) — though that standard “does not require that compared jobs be *identical*, only . . . *substantially equal,*” 29 C.F.R. § 1620.13(a) (emphases added). Colorado’s Act goes further, requiring equal pay for not just “equal” work, but any “*substantially similar work, regardless of job title, based on a composite of skill; effort, . . . and responsibility.*” C.R.S. § 8-5-102(1) (emphasis added). Colorado’s adoption of a textually broader equal pay mandate comports with its explicit legislative purpose: giving Coloradans a broader right to pay equity than under existing federal law. See Colo. S. Judiciary Comm., [Bill Summary](#), Feb. 20, 2019 (“Senators Danielson and Pettersen, co-prime sponsors, presented SB19-085, concerning the equal pay for equal work act. Senator Danielson explained how women earn less than men for the same work and emphasized that pay gaps are real and tangible. Senator Pettersen noted that federal law does not go far enough for equal pay and stressed the need for this measure on a state-wide level.”).

2) Ban on asking about, or setting pay based on, prior pay rates — employers:

- **can't seek to learn prior pay rates** of a prospective employee, at their last job or an earlier one — whether in application materials, interviews, or their own research (like contacting a prior employer); or
- **can't set pay based on prior pay rates** of prospective employees.

3) Employee rights to disclose or discuss pay are protected by the Act, and employers:

- **can't prohibit employees** from disclosing or discussing pay; or
- **can't require waivers** of those rights (which would be invalid anyway).

4) No Retaliation — Current and prospective employees are protected from retaliation. Employers cannot:

- Fire, discriminate, retaliate against, discipline, or otherwise interfere with an employee's rights because
 - The employee **used their rights** under this law, **including filing a complaint**; or
 - The employee asked about, shared, compared, or otherwise **discussed pay**.
- Discriminate or retaliate against a prospective employee for **declining to disclose their pay history**.

Complaints, Investigations, and Remedies

- **Complaints.** The Division accepts Unequal Pay Complaints from any person who suffered from or witnessed a violation under Part 1 of the Act, including violations of points **(1) - (4)** listed above.²
 - A complaint must be filed **within two years** of a violation — but an unequal pay violation occurs **each time** that an employee is paid an unequal pay rate.
 - Submit an Unequal Pay Complaint on the [Division's Complaints page](#), and respond to any requests for information.
 - The Act does **not** require the Division to investigate all Unequal Pay Complaints. The Division determines which complaints to investigate based on its workload and other considerations, and it may prioritize complaints with more complete and accurate information, including supporting documents.
 - Filing an Unequal Pay Complaint with the Division doesn't prevent filing the same or a similar complaint in a court, another agency, or any other forum. However:
 - another forum may have rules about filing the same or a similar claim in multiple places; and
 - a complainant must notify the Division if they have filed, or later file, the same or a similar claim in any other forum, and the Division may, in its discretion, dismiss the complaint at the Division.
- **Investigations.** 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 launch investigations based on information received without a formal complaint (a "direct investigation") — including from **anonymous** complaints.
 - Throughout investigations, all parties **must promptly notify** the Division of any new contact information (mail or email address, phone number, etc.).

² C.R.S. § 8-5-108-5-103(1)(a)(III). Complaints of violations of Part 2 of the Act (pay and job opportunity transparency) are accepted on the [Division's Equal Pay webpage](#).

- **Remedies.** If a violation of Part 1 is found, orders of “**compliance** and **relief** as authorized by” Part 1 of the Act may be issued.³
 - **Compliance** orders may require employer action to:
 - Bring itself into **compliance**;
 - **Remedy** violations of unequal pay;
 - Provide **information** to the Division or to others; and/or
 - Pay **non-compliance fines**, usually daily for each day of failing to fully execute compliance orders.⁴
 - **Relief** for employees who experienced unequal pay may include:
 - **back pay** — the amount the employee was underpaid by — for up to **six years**;⁵
 - **double the back pay** (“liquidated damages”) if the employer fails to demonstrate they acted in good faith, with reasonable grounds to believe they weren’t in violation;⁶
 - **other money relief or orders** to make the employee whole — for example, (re)instatement or promotion, when appropriate to remedy a violation;⁷ and
 - the employee’s **reasonable costs** of pressing their complaint, including **attorney fees**.⁸
- **Mediation.** After July 1, 2024, the Division will offer mediation to help resolve complaints of unequal pay.
 - Mediation is a **voluntary option** that **doesn’t give a decision or ruling** on a complaint. Instead, a mediator facilitates a discussion between parties to help them resolve disputes, and **reach an agreed settlement**, to avoid the time, burden, and uncertainty of formal investigation or in-court litigation.
 - Updates on the Division’s mediation program will be posted here by summer 2024.

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

³ C.R.S. § 8-5-103(1)(a)(IV) (emphasis added).

⁴ C.R.S. § 8-1-117 (fine for non-compliance with information demands); C.R.S. § 8-1-140(2) (same, for other orders).

⁵ C.R.S. § 8-5-103(3).

⁶ C.R.S. § 8-5-104(1).

⁷ C.R.S. § 8-5-104(2)(a).

⁸ C.R.S. § 8-5-104(2)(b).