



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

### The Equal Pay for Equal Work Act: Part 1 (*pay disparities by sex*) & Part 2 (*transparency – disclosing pay in job postings, & job opportunities to employees*)

**Overview.** INFO #9 covers the [Equal Pay for Equal Work Act \(S.B. 19-085\), C.R.S. Title 8, Article 5](#) (“the Act”).

- **Part 1** of the Act (§§ 101-104) bans “**pay disparities ... on the basis of sex**,” enforced by:
  - lawsuits in court filed by employees; or
  - (as of 2024) complaints to, or investigations launched by, this Division — which may
    - investigate and order remedies for violations (back pay, changes to practices, etc.),
    - offer guidance on filing a lawsuit, and/or
    - offer mediation to the parties (as of summer 2024).
- **Part 2** of the Act (§§ 201-203) requires **pay and job opportunity transparency**, enforced by complaints to, or investigations by, this Division — which may order changes to practices, and fines. Employers must:
  - disclose pay in job postings, and preserve wage and job description records; and
  - disclose job opportunities to all of their employees.
- **2024 Amendments.** A law passed in 2023, effective January 1, 2024 ([Ensure Equal Pay for Equal Work Act, S.B. 23-105](#)), adds Division enforcement of Part 1 (above), and these Part 2 transparency changes:
  - **New exceptions** to the otherwise continuing **duty to notify employees of job opportunities**.
    - 1) “Career progression” promotions — “regular or automatic” promotion “based on time in ... role or other objective metrics” that an employee can satisfy without competition —
      - a) need not be disclosed for each individual employee;
      - b) but employers must notify all employees of any position’s career progression requirements, as well as the pay, benefits, full-/part-time status, duties, and access to advancement.
    - 2) “Career development” promotions — which “reflect work performed or contributions already made” by one specific employee, without competition — need not be disclosed.
    - 3) At employers with no Colorado site, and under 15 remote staff in Colorado:
      - a) in-person (non-remote) job opportunities need not be disclosed through July 1, 2029;
      - b) but postings for such jobs still must disclose pay.
  - **New post-selection notice duties.** 30 days after filling a job opportunity (but not a career development or progression), employers must notify those the hiree will regularly work with of: hiree name, title, and (if any) prior title at the employer; and how and where to express interest in similar job opportunities.
- **Upcoming 2024 Rules.** The rest of this INFO covers the original Act, before the 2024 Amendments (with no changes from the prior version of this INFO, other than this first page). A later updated INFO will cover the 2024 Amendments in detail — after upcoming rulemaking to implement the 2024 Amendments:
  - **Topics:** The rulemaking in fall 2023 is limited to Part 2 transparency changes in the 2024 Amendments. Rulemaking on the new Part 1 enforcement and mediation will follow, continuing into early 2024.
  - **Schedule:** Proposed rules will be published by late September 2023, and input from Coloradans will be invited — in public meetings and written comments — before final rules are adopted by late fall 2023.
  - Visit [cdle.colorado.gov/LaborRules](http://cdle.colorado.gov/LaborRules) for rules, meetings, hearings, or how to submit comments or questions.

**Coverage**

The Act covers all “employers,” public or private, that employ at least one person in Colorado, and all employees of those employers.<sup>1</sup> The following are *not* covered, and don’t need to comply with the requirements for job postings or promotion notices in the Act or the EPT Rules.

- Employers with 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.
- A party just sharing or re-posting 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.
- An employer whose job is re-posted by a third party on its own: 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 both charges employers to post jobs and re-posts jobs it finds online. It publishes three postings with no pay information, for jobs at employers covered by the Act:

- (A) Piper’s Rare Books pays LinkedDeed to publish a job posting, with no pay information, that Piper’s wrote. The posting was non-compliant, but only Piper’s, not LinkedDeed, violated the Act. The Act covers only an employer’s own jobs; LinkedDeed was just helping Piper’s execute its own posting.
- (B) Enrico’s Calzones posts a job on its website with pay information. LinkedDeed finds that post on its own, and re-posts it without pay information. 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 wasn’t acting 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.

**Disclosing Compensation in Job Postings: § 201(2) of the Act**

**Covered Job Postings.** The Act requires disclosing compensation and benefits “in each posting for each job.”<sup>2</sup> A “posting” is any electronic or hard copy communication that the employer has any specific job(s) available or is accepting job applications for any particular position(s).

What Are (✓) and Aren’t (X) Job Postings that the Act Covers:

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|--|---|
| ✓ work <i>tied to</i> a Colorado site at a covered employer  | X work performable at <i>only non-Colorado</i> sites <sup>3</sup>   |
| ✓ work <i>capable</i> of being performed in Colorado, including remote work, and work performable at multiple sites, including a Colorado site | X a <i>help wanted</i> sign or similar communication stating only generally (i.e., without listing specific positions) that an employer is hiring |

**Compensation and Benefits to Disclose.** Employers must include in each job posting (1) the rate of compensation (or a range thereof), including salary and hourly, piece, or day rate compensation; (2) a general description of any bonuses, commissions, or other compensation; and (3) a general description of all benefits the employer is offering for the position.<sup>4</sup> Benefits that must be generally 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.<sup>5</sup> At a minimum, employers must describe 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 cannot use an open-ended phrase such as “etc.,” or “and more,” rather than provide the required “general description of *all* of the benefits.”<sup>6</sup>

**Example 2:** “\$50,000, health insurance, 401K” is compliant; “\$50,000 with competitive benefits” is not.

<sup>1</sup> C.R.S. § 8-5-101(4).(5).

<sup>2</sup> C.R.S. § 8-5-201(2); [EPT Rule 4.1](#).

<sup>3</sup> See “Out-of-State Jobs Are Excluded,” below.

<sup>4</sup> C.R.S. § 8-5-201(2); [EPT Rule 4.1.1](#).

<sup>5</sup> EPT Rule 4.1.1(C).

<sup>6</sup> C.R.S. § 8-5-201(2) (emphasis added).

**Posting a “Range.”** An employer may post compensation as a range from the lowest to the highest pay it actually believes it might pay for the particular job, depending on circumstances such as employee qualifications, employer finances, or other operational considerations.<sup>7</sup> If the pay might be different inside and outside Colorado, the range should be what the employer would pay *in Colorado*. A range’s bottom and top cannot include open-ended phrases like “\$30,000 *and up*” (with no top of the range), or “*up to* \$60,000” (with no bottom). An employer may ultimately pay more or less than a posted range, as long as the range, at the time of posting, was what the employer genuinely believed it would be willing to pay for the job.<sup>8</sup>

**Example 3:** An employer *can’t* post the same \$30,000-\$100,000 range for janitor and accountant jobs alike, if it does not genuinely anticipate offering an accountant the low end, or a janitor the high end.

**Example 4:** An employer *can’t* post a \$70,000-\$100,000 range for a *junior* accountant position just because it pays *senior* accountants the high end of that range. But 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.

**Tipped Work.** For jobs that earn tips, the Act requires “the hourly or salary compensation” the employer will pay be included in the job posting. The Act also requires only “a general description of all ... other” compensation. A posting does not need to, but may, give an estimated amount of tips, as long as the posting still specifies what the employer itself will pay, aside from any tips.

**Example 5:** Al’s Steaks pays waitstaff \$18.00, and tips average \$5.00-\$10.00, per hour. In a posting:

- (A) “\$18.00 per hour plus tips” is *compliant*, because it includes “the hourly or salary compensation” and describes “general[ly]” the other compensation, the tips.
- (B) “\$18.00 per hour plus \$5.00-\$10.00 per hour in tips” is also *compliant*, because it includes more information than the Act requires.
- (C) “\$23.00-\$28.00 per hour with expected tips” is *non-compliant*, because by combining the hourly rate with tips, the posting fails to “disclose ... the hourly ... compensation” as the Act requires.

### Exceptions and Limitations as to Employer Duties to Post Compensation and Benefits.

*Hiring Can Occur Without a Job Posting.* Employers are *not* required to post jobs, or have job postings, except as needed to notify existing employees of promotional opportunities (covered below). Compensation and benefits must be disclosed only if an employer *chooses* to have a job posting.

**Example 6:** An employer has four staff, all gardeners with the same job and duties. The owner hires a fifth gardener without ever having any job posting. That is allowed. The Act does not require the employer to have a posting — only that *if* it makes a posting, it must disclose the compensation.

**Example 7:** The same gardening employer decides to hire a gardener supervisor. It does not need to post the job in any way *other than* notifying its existing staff of the promotional opportunity.

*Electronic Postings May Link Compensation and Benefit Information.* Electronic postings (e.g., webpages or emails), need not include all required compensation and/or benefits, *if* they link to such information — as long as the posting makes clear that the link gives access to compensation and benefits for each specific job posted. It is the employer’s responsibility to assure continuous compliance with functionality of links, up-to-date information, and information that applies to the specific job posting (e.g., not a single pay “range,” or identical benefits, for multiple jobs for which the actual pay ranges or benefits would be different).

*Out-of-State Jobs Are Excluded.* Employers need not disclose compensation for jobs *to be performed* entirely outside Colorado (including non-Colorado jobs that may include modest travel to Colorado), even if the job posting is published in Colorado (or is an online posting that reaches Colorado).<sup>9</sup> The out-of-state exception is narrow, and applies only to jobs tied to non-Colorado worksites (e.g., waitstaff at restaurant sites in other states). Remote work performable in Colorado or elsewhere for a covered employer must comply with the Act

<sup>7</sup> EPT Rule 4.1.2.

<sup>8</sup> EPT Rule 4.1.2.

<sup>9</sup> [EPT Rule 4.3\(B\)](#).

and Rules. A remote job posting, even if it states that the employer will not accept Colorado applicants, remains covered by the Act and Rules. The Act expressly covers all jobs, so a Colorado-covered employer's posting of work performable anywhere is not within the narrow implied exception for out-of-state worksites to which Colorado law is arguably inapplicable.

*Printed or Hardcopy Out-of-State Postings Are Excluded.* Employers need not disclose compensation in printed or hardcopy job postings posted or distributed entirely outside Colorado.<sup>10</sup> For example, compensation and benefits need not be included in a printed advertisement or posting entirely in another state, but must be included in an online posting, because online postings are accessible by Colorado residents.

### **Reasonable Effort to Notify All Current Employees of All Promotional Opportunities: § 201(1) of the Act**

Employers must “make reasonable efforts to announce, post, or otherwise make known all opportunities for promotion to all current employees on the same calendar day and prior to making a promotion decision.”<sup>11</sup>

**When a Promotional Opportunity Exists.** A promotional opportunity exists “when an employer has or anticipates a vacancy in an existing or new position that could be considered a promotion for one or more employee(s) in terms of compensation, benefits, status, duties, or access to further advancement.”<sup>12</sup>

**Example 8:** An employer has a vacancy for a Customer Service Representative (“CSR”). While not *all* CSR jobs pay more than Administrative Assistant jobs, *most* CSR jobs are paid more. The CSR job would be considered a promotional opportunity for Administrative Assistants.

**Example 9:** An employer plans to restructure a team to give an employee a supervisory role, without any pay increase. The higher title and authority create a new position that is a promotional opportunity.

**Example 10:** An employer has an entry-level vacancy in its accounting division. Unlike other divisions at the employer, accounting has a tiered promotion track, which gives employees scheduled promotions based on seniority and satisfactory performance. Because the entry-level accounting job gives more access to advancement, it would qualify as a promotional opportunity for employees in other divisions.

*Vacancy in an Existing Position.* An employer “has or anticipates a vacancy” when an existing position that the employer intends to fill is open or is held by a departing employee. For example, an employer anticipates a vacancy when an employee gives notice of resignation, and the employer intends to hire a replacement.

*Vacancy in a New Position.* A vacancy in a new position exists when an employer (1) adds a position or (2) gives an existing employee a new position, by either changing their title *and* pay, *or* materially changing their authority, duties, or opportunities. A vacancy does *not* exist if the employer changes an employee's title *only* or pay *only*:

#### What Job Changes Do (✓) or Don't (X) Trigger Promotion-Notice Duties:

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| ✓ Changing their <b>authority, duties, or opportunities</b> in material ways, with or without a title or pay change | X Changing their <b>title alone</b> , without changing their pay, or their authority, duties, or opportunities |
| ✓ Changing <b>both</b> their <b>title</b> and their <b>pay</b>  | X Changing their <b>pay alone</b> , without changing their title, or their authority, duties, or opportunities |

A vacancy in a new position thus includes a lateral job change, or a promotion along a fixed, in-line career trajectory, for which a current employee is eligible.

**Example 11:** An employer automatically advances every Apprentice 1 to an Apprentice 2 when the employee passes a competency test. An Apprentice 2 has more advanced duties, higher pay, and access to future promotions unavailable to an Apprentice 1. This advancement is a promotion to a new position because the employer is creating an Apprentice 2 position each time it advances an Apprentice 1. However, if the promotion is promised in writing upon hiring in conformity with [EPT Rule 4.2.5\(B\)](#), it may be exempt from the duty to provide notice of the promotional opportunity to other employees.

<sup>10</sup> EPT Rule 4.3(B).

<sup>11</sup> [C.R.S. § 8-5-201\(1\)](#). EPT Rule 4.2 covers what “reasonable efforts” entail.

<sup>12</sup> EPT Rule 4.2.1.



**Contents of Notice.** All notices of promotional opportunities are considered “job postings” and therefore must include the compensation and benefit information required for any job posting.<sup>13</sup> Notices must also include the job title or a description of the position, and the means by which employees may apply for it.<sup>14</sup> A notice may — but isn’t required to — identify that the position is expected to be filled by a specific employee, as in the case of a planned promotion, so long as the employer has not made a final decision regarding who will fill the vacancy.

**Example 12:** An employer expects to promote junior accountant Jo Doe to senior accountant. A compliant notice of promotional opportunity could read:

*J. Doe is recommended for promotion to senior accountant. Salary \$50-70,000; health insurance; 401k. Employees interested in this or a similar opportunity, email interest@OurCompanyHr.com.*

This 25-word notice gives all required information: title; pay range; description of major benefits; and how to apply or express interest. It also permissibly specifies who is expected to fill the job.

**Manner of Notice.** Notice of a promotional opportunity must be: (1) in writing (which can be electronic, such as an email or intranet posting); (2) by any method(s) reaching all employees;<sup>15</sup> (3) to all employees for whom it may be a promotion, on the same calendar day;<sup>16</sup> and (4) sufficiently in advance of the hiring or promotion decision that employees receiving notice may apply. No particular manner of notice is required, as long as the employer chooses a method by which all covered employees can access the promotional opportunity notice within their regular workplace and tells employees where to find the notice.<sup>17</sup> If a particular method reaches some but not all employees, like an online posting not accessible to those lacking internet access, alternate methods must be used as needed to assure that all employees are told how to, and can, access notices.<sup>18</sup>

**Example 13:** 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.

Employers must notify all employees for whom a vacant position would be a promotion, and may not limit notice to those it deems qualified for the position.<sup>19</sup> However, employers may state that applications are open to only those with certain qualifications, and they may screen or reject applicants by those qualifications.<sup>20</sup>

One notice can combine multiple promotion opportunities, as long as employees get the notice in time to express interest in promotion based on any of the positions in the notice.

**Timing of Notice.** “Reasonable efforts” to notify employees of promotional opportunities require providing notice sufficiently in advance of the promotion 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 does not prohibit an employer from notifying certain employees in advance of a general notice, such as where an employer assesses a particular employee’s interest in a promotion before providing notice of this promotional opportunity to other employees.

Where an employer continuously — at least once per month — either (A) hires for a specific position that would qualify as a promotional opportunity for any current employees, or (B) automatically promotes employees in an in-line job progression upon completing set requirements (e.g., a certification or number of service hours), the employer may use a single notice of such promotional opportunities, rather than a notice for each individual promotion. 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 promotional opportunities and (b) is updated promptly whenever any aspect of the promotional opportunity changes (e.g., compensation, benefits, qualifications, job description, or application process).

<sup>13</sup> [EPT Rules 4.1, 4.2.2.](#)

<sup>14</sup> EPT Rule 4.2.2.

<sup>15</sup> EPT Rules 4.2.1-4.

<sup>16</sup> [C.R.S. § 8-5-201\(1\).](#)

<sup>17</sup> EPT Rule 4.2.3.

<sup>18</sup> EPT Rule 4.2.3.

<sup>19</sup> [EPT Rule 4.2.4.](#)

<sup>20</sup> EPT Rule 4.2.4.

**Example 14:** An employer can promote Junior Haberdashers to Senior Haberdashers upon completing 500 hats. The employer includes in its employee handbook a notice of this promotional opportunity (including compensation and benefits, and how Junior Haberdashers apply for the promotion by indicating that they completed 500 hats), notifies current and new employees that a promotional opportunity notice is in their handbook, and updates the handbook promptly upon any change to the Senior Haberdasher pay, qualifications (e.g., a change to 510 hats), or application process (e.g., a change to how Junior Haberdashers report hat statistics that qualify for promotion).

**Example 15:** An employer is continuously accepting applications, and hiring at least monthly, for salespersons — a position that would be a promotion for some of its employees. The employer may send employees a monthly email, the last day each month, with notice of the promotional opportunity.

**Example 16:** An employer does not *continuously* accept salesperson applications, but is a large company that always hires multiple salespeople each month 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.

### Exceptions and Limitations to Employer Duties to Notify Employees of Promotional Opportunities.

*Temporary, Acting, or Interim Positions (Rule 4.2.5(C)).* Notice is not required for temporary, acting, or interim positions lasting up to six months.<sup>21</sup> Before hiring someone to hold the position for more than six months, the employer must give other employees notice of the promotional opportunity in time to apply.<sup>22</sup>

*Automatic Consideration for Promotion Within One Year (Rule 4.2.5(B)).* No notice is required where consideration for the promotion automatically follows a trial period of one year or less, and the commitment to consider the employee for promotion is memorialized from the start in a writing (e.g., offer letter, contract, or employer handbook) and based solely on the employee's own performance and/or the employer's needs.<sup>23</sup>

*Promotions to Replace Current Employees Unaware of Their Separation (Rule 4.2.5(A)).* No promotional opportunity notice is required to replace a current employee who, for reasons other than avoiding job posting requirements, is not yet aware of their coming separation.<sup>24</sup> Once the need for confidentiality ends (e.g., if the departing employee learns of the separation), the employer must then promptly comply with all notice and posting requirements. If any employees are told of the opportunity, all employees who either meet the minimum qualifications or have jobs "substantially similar" to any employees being told of the opportunity must also be told.<sup>25</sup> 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 of a replacement employee, without triggering a duty to tell other employees.

**Example 17:** 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 18:** 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 other employees.

<sup>21</sup> EPT Rule 4.2.5(C).

<sup>22</sup> EPT Rule 4.2.5(C).

<sup>23</sup> EPT Rule 4.2.5(B).

<sup>24</sup> [EPT Rule 4.2.5\(A\)](#).

<sup>25</sup> EPT Rule 4.2.5(A). What jobs are "substantially similar" is defined by [C.R.S. § 8-5-102](#).

*Employees Outside Colorado.* Multi-state employers are not required to notify non-Colorado employees of promotional opportunities, whether those opportunities are inside or outside Colorado.<sup>26</sup>

**Example 19:** 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.

*Jobs Performed Outside Colorado.* Multi-state employers must notify Colorado employees of promotional opportunities outside Colorado, but need not include compensation or benefits in those notices.<sup>27</sup> As with job postings generally (see the above section, "Out-of-State Jobs Are Excluded," on the scope of the out-of-state exemption also applicable here) remote jobs that can be performed anywhere do not qualify for this exclusion; promotional opportunity notices for such jobs must include compensation and benefits.

### **Employer Recordkeeping Obligations**

For each employee, an employer must keep records of the employee's job description and compensation, including salary or hourly wage, benefits, and all bonuses, commissions, and other compensation received; those records must include any changes to job description or compensation over time.<sup>28</sup> The employer must maintain these records for the duration of the employee's employment plus two years thereafter.<sup>29</sup> Employers with employees in multiple states must keep these records only for employees in Colorado; and as noted above, employers with no employees in Colorado are exempt, including from these recordkeeping duties.

### **Complaints, Investigations, and Remedies**

**(1) Complaints.** 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.<sup>30</sup> The complaint must be on a Division form, with a short and plain statement of its grounds; it may also include documents or other information.<sup>31</sup> A complaint may be dismissed if a complainant doesn't respond timely to Division requests.<sup>32</sup>

**(2) Investigations.** Investigations start when the Division receives a complaint<sup>33</sup> or other information<sup>34</sup> that an employer may have violated the Act or Rules, or retaliated against someone for exercising their rights.<sup>35</sup> 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.<sup>36</sup> Throughout investigations, all parties must promptly notify the Division of any new contact information (mail or email address, phone number, etc.).<sup>37</sup>

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<sup>26</sup> EPT Rule 4.3(A).

<sup>27</sup> EPT Rule 4.3(B).

<sup>28</sup> C.R.S. § 8-5-202 (employers must keep records of employees' "job descriptions and wage rate history").

<sup>29</sup> C.R.S. § 8-5-202.

<sup>30</sup> C.R.S. § 8-5-203(2)(a); EPT Rule 3.2.1; Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("WARNING Rules") (7 CCR 1103-11), [Rules 1.1](#) and [1.2](#) (as to retaliation complaints).

<sup>31</sup> EPT Rules 3.2.2 (Part 2); WARNING Rule 3.2.1 (retaliation).

<sup>32</sup> [EPT Rule 3.2.3](#) (Part 2); [WARNING Rule 3.2.2](#) (retaliation).

<sup>33</sup> EPT Rule 3.2 (Part 2 violations); WARNING Rules", Rule 3.2 (retaliation).

<sup>34</sup> [Direct Investigation Rules \("DI Rules"\) \(7 CCR 1103-8\), Rule 3.1](#) (in direct investigations without a formal complaint).

<sup>35</sup> Complaint investigations under Part 2 are governed by the EPT Rules; retaliation complaint investigations are governed by the WARNING Rules. Direct (*i.e.*, non-complaint-based) investigations of both types are governed by the DI Rules.

<sup>36</sup> EPT Rule 3.2.5 (Part 2); WARNING Rule 3.2.3 (retaliation); DI Rule 3.1 (direct investigations).

<sup>37</sup> EPT Rule 3.1 (Part 2) and WARNING Rule 3.1 (retaliation), both incorporating the requirement to ensure the Division has current contact information from Wage Protection Rule 4.6; DI Rule 3.12 (direct investigations).

**(3) Employer Notice.** The Division starts an investigation by sending an employer a “Notice,” either a “Notice of Complaint” (in a complaint investigation) or “Notice of Investigation” (in a direct investigation).<sup>38</sup> After learning of an investigation (whether by receiving 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 either of any appeals or of a complaint by an aggrieved person.<sup>39</sup> The employer’s response must be received by the Division (not just sent) within 14 days of when the Notice was sent, or 28 days in a retaliation investigation,<sup>40</sup> unless an extension is granted. The response must include all requested documents and information, and anything else the employer believes should be considered. An employer’s failure to respond may result in a finding against it and/or fines.<sup>41</sup>

**(4) Determinations and Remedies.** After reviewing all relevant evidence, if the Division finds a violation, it may order: (1) employer actions to bring itself into compliance and remedy the violation, and/or (2) fines of \$500 to \$10,000 for each violation of Part 2.<sup>42</sup> Failure to include compensation and benefit information in one or more postings for a job (under § 201(2)) is one violation regardless of the number of postings listing the job. Failure to notify employees of one promotional opportunity (under § 201(1)) is one violation regardless of how many employees were not notified. Failure to keep records of employee job descriptions and wage rate history (under § 202) is one violation per employee. Other fines may apply for non-compliance with Division orders or information demands.<sup>43</sup> The Division may waive or reduce particular fines for good cause shown.

**(5) Appeals.** Either party may appeal Division determinations in complaint investigations; employers may appeal in direct investigations.<sup>44</sup> An appealing party must explain the error(s) in the determination,<sup>45</sup> and must ensure that the Division receives the appeal within 35 calendar days of the date the determination was sent.<sup>46</sup>

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

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<sup>38</sup> EPT Rule 3.4.3 (Part 2); WARNING Rule 3.3.4 (retaliation); DI Rule 3.6 (direct investigations).

<sup>39</sup> EPT Rule 3.4.4 (Part 2); WARNING Rule 3.3.5 (retaliation).

<sup>40</sup> EPT Rule 3.4.3 (Part 2 investigations); WARNING Rule 3.3.4 (retaliation investigations).

<sup>41</sup> See [C.R.S. § 8-1-140\(2\)](#).

<sup>42</sup> [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).

<sup>43</sup> E.g., [C.R.S. § 8-1-117](#) (fine for non-compliance with information demands); [C.R.S. § 8-1-140\(2\)](#) (fine for non-compliance with other orders).

<sup>44</sup> EPT Rule 3.7.1 (determinations under Part 2); WARNING Rule 3.7.1 (retaliation); DI Rule 6.1 (direct investigations).

<sup>45</sup> EPT Rule 3.7.1 (Part 2) and WARNING Rule 3.7.1 (retaliation), both incorporating the requirement to describe a clear error from [Wage Protection Rule 6.1.1 \(7 CCR 1103-7\)](#); DI Rule 6.1.1.

<sup>46</sup> EPT Rule 3.7.1 (Part 2), incorporating 35-day appeal deadline in [C.R.S. § 8-4-111.5\(1\)](#) and Wage Protection Rule 6.1.2; WARNING Rule 3.7.1 (retaliation), incorporating same in Wage Protection Rule 6.1.2; DI Rule 6.1.2 (direct investigations).