Interpretive Notice & Formal Opinion ("INFO") #9B:
Restrictions on Age Information in Job Applications: the Job Application Fairness Act ("JAFA")

Overview
As of July 1, 2024, the Job Application Fairness Act ("JAFA," S.B. 23-058) restricts employers from obtaining a job applicant’s age, with limited exceptions for age requirements based on legal or safety needs.

Coverage
JAFA covers all employers in Colorado, public or private, of all sizes and in all industries. Individual persons who are “an agent, a representative, or a designee of the employer” are also covered.

What Employers May Not Do:
- Employers can’t ask applicants to disclose their age, which includes not asking their:
  - date of birth;
  - dates of attendance at an educational institution;
  - dates of graduation from an educational institution; or
  - other inquiries similarly disclosing age — for example, asking which election an applicant first voted in would, like asking when they graduated high school, give information on when they likely turned 18.

What Employers May Do:
- Employers may request additional application materials — certifications, school transcripts, etc.
  - But if employers do so, they must notify applicants that applicants may redact age-related information — dates of school attendance or graduation, etc.
- Employers may verify compliance with age requirements imposed by or pursuant to:
  - (1) a bona fide occupational qualification related to public or occupational safety;
  - (2) a federal statute or regulation; or
  - (3) a state or local statute or regulation based on a bona fide occupational qualification.
  - But an employer verifying compliance in an initial application must not ask an individual’s specific age — including age-disclosing information like date of birth, school attendance, or school graduation.

Example 1: Federal and state law disallow minors from performing certain work — including that no minor can sell or serve alcoholic beverages. A restaurant hiring someone to serve alcoholic beverages:
  - (A) may ask in an application whether the applicant will be at least 18 when they would start work; and
  - (B) may ask, after extending a job offer, the applicant to provide evidence of their specific age, like a driver’s license, without redacting age information like date of birth; but
  - (C) may not ask an applicant to disclose their specific age, or to produce evidence of their age like an unredacted driver’s license, in or with their application.

INFOS are not binding law, but are the officially approved Division opinions and notices on how it applies and interprets various statutes and rules. The Division continues to update and post new INFOS; email cdle_labor_standards@state.co.us with any suggestions. To be sure to reference up-to-date INFOS, rules, or other material, visit ColoradoLaborLaw.gov.

\(^1\) C.R.S. 8-2-131(2)(b) ("Employer’ means a person engaged in a business, industry, profession, trade, or other enterprise in the state or a unit of state or local government."). JAFA does not reach the federal government itself as an employer, but that exclusion doesn’t apply to private sector employers who are federal contractors.

\(^2\) C.R.S. 8-2-131(2)(b) ("Employer includes an agent, a representative, or a designee of the employer.").
Enforcement:

- **Filing:** Complaints may be filed with the Division (not a court) within 12 months of an alleged violation.
- **Investigation:** The Division will investigate any complaint, unless the complaint is without merit.
- **Remedies** if a violation is found include orders requiring the employer to:
  - **comply** with JAFA within 15 business days; and
  - **pay a penalty**, up to $1,000 for a second violation, or $2,500 for a later violation, if the employer either
    - failed to comply with an order requiring JAFA compliance within 15 business days, or
    - complied with an order requiring JAFA compliance, then committed another violation.

Rulemaking to Provide Further Details:

- By no later than March 31, 2024, proposed rules will be published to implement JAFA.
- Then, before final rules are adopted, input from Coloradans will be invited on the proposed rules, in both public meetings and written comments the Division will review.
- Visit the Division rules page, cdle.colorado.gov/LaborRules, for all proposed and final rules, all information on the public meetings (schedule, how to join, etc.), and how to submit comments.

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

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Each distinct job posting or application that violates JAFA is a separate violation — but each instance of an individual responding to a job posting is not a separate violation.