

## DEPARTMENT OF LABOR AND EMPLOYMENT

### Division of Labor Standards and Statistics

#### Equal Pay Transparency Rules (“EPT Rules”)

#### 7 CCR 1103-13

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As proposed Sept. 29, 2023; if adopted, effective Jan. 1, 2024.

#### Rule 1. Statement of Purpose, Authority, and Construction

- 1.1 The general purpose of these Equal Pay Transparency Rules (“EPT Rules” or “Rules”) is to exercise the authority and duty of this Division to enforce and implement Part 2 of the Equal Pay for Equal Work Act (the “Act”), Colorado Revised Statutes (“C.R.S.”), Title 8, Article 5, Part 2 (C.R.S. §§ 8-5-201 to 8-5-203) (2023) (“Transparency in Pay and Opportunities for Promotion and Advancement”). These Rules are adopted pursuant to Division authority in C.R.S. §§ 8-1-103(3), -107(2), -111, -116, -117; § 8-4-111; §§ 8-5-103, -201, -203; §§ 8-6-105, -106, -108, -117; and § 24-4-105. The Rules are intended to be consistent with the requirements of Colorado’s Administrative Procedure Act, C.R.S. § 24-4-101, et seq.
- 1.2 Incorporation by reference. Articles 1 and 4-6 of C.R.S. Title 8 are hereby incorporated by reference into this rule. Such incorporation excludes later amendments to or editions of the statutes; all cited laws are incorporated in the forms that are in effect as of the effective date of these rules. All sources cited or incorporated by reference are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. They can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of them at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing them. All Division Rules are available to the public at [www.coloradolaborlaw.gov](http://www.coloradolaborlaw.gov). Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as they are consistent with Colorado statutory and constitutional provisions.
- 1.3 These Rules are intended to remain in effect to the maximum extent possible. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of the Rules remains valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

#### Rule 2. Definitions

- 2.1 “Career development” means “a change to an employee’s terms of compensation, benefits, full-time or part-time status, duties, or access to further advancement in order to update the employee’s job title or compensate the employee to reflect work performed or contributions already made by the employee[.]” C.R.S. § 8-5-101(1.3), where such existing work or contributions:
  - (A) were part of the employee’s existing job; and
  - (B) were not within a position with a current or anticipated “vacancy” as defined in C.R.S. § 8-5-101(8.5) and these Rules.
- 2.2 “Career progression” means “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).

- 2.3 “Complaint” or “Claim” interchangeably mean a Complaint or Claim alleging violation of Part 2 of the Act. “Complainant” means a person with a Complaint or Claim.
- 2.4 “Division” means the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.
- 2.5 An “employee” is defined as “a person employed by an employer.” C.R.S. § 8-5-101(4).
- 2.6 An “employer” is defined as “the state or any political subdivision, commission, department, institution, or school district thereof, and every other person employing a person in the state.” C.R.S. § 8-5-101(4).
- 2.7 A “job opportunity” means “a current or anticipated vacancy for which the employer is considering a candidate or candidates or interviewing a candidate or candidates or that the employer externally posts.” C.R.S. § 8-5-101(5.5)(a). A job opportunity “does not include career development or career progression.” C.R.S. § 8-5-101(5.5)(b).
- 2.8 A “posting” and a “notice” of a job opportunity are interchangeable terms in these Rules; any “posting” qualifies as a “notice,” and any “notice” qualifies as a “posting.”
- 2.9 A “vacancy” means “an open position, whether as a result of a newly created position or a vacated position.” C.R.S. § 8-5-101(8.5).
- 2.10 Any other definitions set forth in the Act are hereby incorporated by reference, except where terms are defined differently in these Rules.

### **Rule 3. Complaint, Investigation, and Appeal Procedures**

- 3.1 Wage Protection Act Rules 4.1 and 4.3-4.8, 7 CCR 1103-7, regarding investigation procedures and protections, are incorporated by reference, except that as incorporated:
  - (A) all references to “wage” or “wage and hour” Complaints, Claims, rights, responsibilities, or proceedings shall include Complaints, Claims, rights, responsibilities, and proceedings within the Act; and
  - (B) in Rule 4.4.3 “§ 8-4-113(1)(b)” is replaced with “C.R.S. §§ 8-4-113(1)(b) and 8-1-140(2).”
- 3.2 Complaint filings.
  - 3.2.1 A person who is aggrieved by a violation of C.R.S. §§ 8-5-201 or 8-5-202 may file a complaint with the Division. “Aggrieved by” means witnessed, suffered, or injured by a perceived violation.
  - 3.2.2 A person who wishes to file a Complaint shall use a Division-approved form(s) and shall include the Complainant’s signature, the Complainant’s contact information, the employer’s contact information, and basis for the Complaint. If the Division does not have an applicable form publicly posted when the Complainant intends to file, then a Complainant may file a Complaint in any form, by mail or electronic mail, with the Division, and the Division may later require the Complainant to complete the Division’s Complaint form, but the filing date will remain the date of the Complainant’s original filing.
  - 3.2.3 A Complainant shall respond in a timely manner to informational or investigatory requests by the Division. Failure to comply with this Rule may result in dismissal of the Complaint. If a Complaint is dismissed before a Notice of Complaint is sent to the employer due to failure to respond to a Division request for information, the Complaint may be reopened if the Complainant provides the requested information or documentation to the Division within 35 days of the request. A Complainant may be required to file a new Complaint if the response is received more than 35 days after the request.

- 3.2.4 The Division will not accept complaints of violations that occurred before January 1, 2021.
- 3.2.5 Anonymous complaints will be accepted, but will not be investigated using the Division's administrative procedure, do not trigger any notice or participation rights for the Complainant, and will be investigated only at the discretion of the Division.
- 3.3 The Complaint shall include a short and plain statement of its grounds, and should also include or attach any relevant postings or communications the Complainant is able to provide. The employer must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. The Division will cease investigating a Complaint that, upon review, fails to raise a reasonable inference of a violation of C.R.S. §§ 8-5-201 or 8-5-202.
- 3.4 Filing, service, and deadlines.
  - 3.4.1 A Complaint or appeal is considered "filed" with the Division when it is received by the Division via mail, fax, email, online submission, or personal delivery. Any Complaint, appeal, or termination received after 11:59pm Mountain Time is considered filed the next business day.
  - 3.4.2 Deadlines in these Rules may be extended for good cause. In considering whether good cause exists, the Division will determine whether the reason is substantial and reasonable, and must take into account all available information and circumstances pertaining to the specific Complaint.
  - 3.4.3 In a Complaint investigation, the Division will send the employer a Notice of Complaint, along with any relevant supporting documentation submitted by the Complainant, via U.S. mail, electronic means, or personal delivery. The employer must respond within fourteen days after a Complaint is sent, unless an extension is granted.
  - 3.4.4 Where a claim, complaint, or investigation for violation of C.R.S. §§ 8-5-201 or -202 has been filed or commenced, the employer shall preserve all relevant documents throughout the duration and until the expiration of the statutory period within which a person aggrieved may bring a civil action.
  - 3.4.5 A Complainant may withdraw a Complaint at any time before issuance of a determination by notifying the Division in writing.
- 3.5 Determinations
  - 3.5.1 Upon conclusion of the investigation of a Complaint, the Division will issue a determination. The Division shall notify the parties on the date the determination is issued by the Division's compliance investigator by sending (A) a copy of the determination; and (B) notice of the parties' termination and appeal rights.
  - 3.5.2 The date of "issuance" of the Division's determination is the date the Division's determination is "sent." Both the termination and appeal deadlines are calculated from the date the Division's determination is originally issued and sent to the parties.
  - 3.5.3 Determinations by the Division may include the following remedies, depending on which, if any, the Division's findings support:
    - (A) order(s) to cease non-compliance and/or effectuate compliance, as authorized by C.R.S. § 8-5-203(1) and statutes on Division investigative and enforcement authority in C.R.S. Title 8, Article 1; and
    - (B) fines pursuant to C.R.S. §§ 8-1-140(2) and/or 8-5-203(4).

- 3.6 The Division may exercise its discretion to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation.
- 3.7 Appeals.
- 3.7.1 Any party to a Claim or determination may appeal the Division's determination. The provisions governing appeals under C.R.S. § 8-4-111.5 (with Rules concerning a "wage complaint" or Article 4 applicable to Complaints under the Act, and references to "employee" applicable to Complainants under the Act) and Rule 6 of the Wage Protection Act Rules, 7 CCR 1103-7, as amended and modified, shall apply to Claims and determinations under these Rules, to the maximum extent consistent with the Colorado Administrative Procedure Act, C.R.S. §§ 24-4-105, -106. Parties may not appeal the Division's decisions to dismiss a Complaint for failure to create a reasonable inference of a violation of C.R.S. §§ 8-5-201 or 8-5-202 or failure to respond to Division requests for documents or information.
- 3.7.2 An appeal may, in the discretion of the hearing officer, be sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more decisions and/or phases of the appeal.
- 3.8 A certified copy of any citation, notice of assessment, or order imposing relief or remedies may be filed with the clerk of any court having jurisdiction over the parties at any time after the entry of the order. Such a filing can be in a county or district court, and will thereby have the effect of a judgment from which execution may issue.

#### **Rule 4. Job Posting Requirements**

- 4.1 Requirements for job postings — Pre-Selection. Postings for job opportunities must include information on compensation, benefits, and application processes – as specified in Rule 4.1.1 – and employers must make reasonable efforts to notify employees, as specified in Rule 4.1.4.
- 4.1.1 Contents. Employers must include the following information in each posting (C.R.S. § 8-5-201(2)):
- (A) the hourly rate or salary compensation (or a range thereof) that the employer is offering for the position;
  - (B) a general description of any bonuses, commissions, or other forms of compensation that are being offered for the job;
  - (C) a general description of all employment benefits the employer is offering for the position, including health care benefits, retirement benefits, any benefits permitting paid days off (including sick leave, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, but not benefits in the form of minor perks;
  - (D) the date the application is anticipated to close; and
  - (E) how to apply for the job opportunity.
- 4.1.2 Pay ranges. A posted compensation range may extend from the lowest to the highest pay the employer in good faith believes it might pay for the particular job, depending on the circumstances. An employer may ultimately pay more or less than the posted range, if the posted range was the employer's good-faith and reasonable estimate of the range of possible compensation at the time of the posting.
- 4.1.3 Deadlines. Postings must include the deadline to apply, but:

- (A) if there is no deadline because the employer accepts applications on an ongoing basis, the application must say so, and a deadline need not be included; and
  - (B) a deadline may be extended as long as (1) the original deadline was a good-faith expectation or estimate of what the deadline would be, and (2) the posting is promptly updated when the deadline is extended.
- 4.1.4 Duties to notify employees. An employer is required to make “reasonable efforts” to “announce, post or otherwise make known each job opportunity to all employees on the same calendar day and prior to the date on which the employer makes a selection decision[.]” C.R.S. § 8-5-201(1).
- (A) When required. Pre-selection notices are required for any job opportunity, defined as “a current or anticipated vacancy for which the employer is considering a candidate or candidates or interviewing a candidate or candidates or that the employer externally posts.” C.R.S. § 8-5-101(5.5)(a). Exceptions:
    - (1) Career development/progression. Job opportunities do not include career progressions or career developments.
    - (2) Confidentiality. A job opportunity need not be posted to all employees if the employer has a compelling need to keep a particular opening confidential because the position is still held by an incumbent employee who, for reasons other than avoiding job posting requirements, the employer has not yet made aware they will be separated. If any employees are told of the opportunity, all employees must be told who either (a) meet the minimum qualifications or (b) have a job “substantially similar” (within the meaning of C.R.S. § 8-5-102 in the Act) to any employees being told of the opportunity. If the need for confidentiality ends before any deadline to apply for the job, the employer must then promptly comply with applicable posting requirements in the Act.
    - (3) Automatic promotion after trial period. No job opportunity posting to other employees is required for a promotion within one year of an employee being hired with a written representation (whether in an offer letter; in an agreement; or in a policy the employer publishes to employees) that the employer will automatically consider the employee for promotion to a specific position within one year based solely on their own performance and/or employer needs.
    - (4) Acting, interim, or temporary (“AINT”) hires. No immediate job opportunity posting is required to fill a position on an AINT basis for up to nine months where:
      - (a) the position necessitates immediate hire into an AINT role;
      - (b) the AINT hiring is not expected to be permanent, and if the hire may become permanent, the required job opportunity posting must be made in time for employees to apply for the permanent position; and
      - (c) the position was not held anytime in the preceding twelve months by another AINT hire for which there was no job opportunity posting.
    - (5) If an employer is only physically located outside of Colorado and has fewer than fifteen employees working in Colorado, all of whom work only

remotely, then, through July 1, 2029, the employer is only required to provide notice of remote job opportunities.

- (B) **Methods.** An employer makes “reasonable efforts” with any method(s) by which all covered employees (1) can access within their regular workplace, either online or in hard copy, and (2) are told where to find required postings or announcements. If a particular method reaches some but not all employees, such as an online posting not accessible to those lacking internet access, an alternative method shall be used for such employees.
- (C) **Qualifications.** Employers must notify all employees of all job opportunities, and may not limit notice to those employees it deems qualified for the position, but may state that applications are open to only those with certain qualifications, and may screen or reject candidates based on such qualifications.

4.2 **Requirements for job postings — Post-Selection.** After a candidate is selected for a job opportunity, employers must provide information described in Rule 4.2.1, by the processes described in Rule 4.2.2, to employees with whom the employer intends the selected candidate to regularly work.

4.2.1 **Contents.** Employers must include the following information:

- (A) The name of the candidate selected for the job opportunity;
- (B) the selected candidate’s former job title if selected while already employed by the employer;
- (C) the selected candidate’s new job title; and
- (D) information on how employees may demonstrate interest in similar job opportunities in the future, including identifying individuals or departments to whom the employees can express interest in similar job opportunities.

4.2.2 **Duties to notify employees.** Within thirty calendar days after a candidate who is selected to fill a job opportunity begins working in the position, employers must make “reasonable efforts” (as defined in Rule 4.1.4(B)) to notify the employees with whom the employer intends the selected candidate to work with regularly of the information in Rule 4.2.1.

- (A) “Work with regularly” means employees who, as part of their job responsibilities, either (1) collaborate or communicate about their work at least monthly, or (2) have a reporting relationship (i.e., supervisor or supervisee). Employers may comply by providing notice to a broader range of, or all, employees.
- (B) Employers may comply with this Rule by providing post-selection notice either (1) of each individual selection, or (2) of multiple selections, as long as the notice is provided no later than thirty days after any selection(s) in the notice.

4.3 **Geographic limits.** For compliance with the requirements to post “each job opportunity to all employees” (C.R.S. § 8-5-201(1)), and to comply with post-selection notices (C.R.S. § 8-5-201(3)) and career progression notices (C.R.S. § 8-5-201(4)):

- (A) the notice requirements – for pre-selection (§ 201(1)), post-selection (§ 201(3)), or career progression (§ 201(4)) – do not apply to employees entirely outside Colorado; and
- (B) the compensation posting requirements (§ 201(2)) do not apply to either (1) jobs to be performed entirely outside Colorado, or (2) postings entirely outside Colorado.

4.4 Career progression notices.

4.4.1 For positions with “career progression,” an employer shall disclose and make available to all eligible employees (consistent with the methods for reasonable efforts in Rule 4.1.4(B)) 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.

4.4.2 “Eligible employees” are those in the position that, when the requirements in the notice are satisfied, would move from their position to the other position listed in the notice as a “career progression.”