

STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

Equal Pay Transparency (EPT) Rules, 7 CCR 1103-13 (2024), as proposed September 29, 2023; to be followed and replaced by a final Statement at the conclusion of the rulemaking process.

I. BASIS: These Equal Pay Transparency Rules implement and enforce Part 2 (“Transparency in Pay and Opportunities for Promotion and Advancement”) of the Equal Pay for Equal Work Act, Colorado Revised Statutes (“C.R.S.”), Title 8, Article 5 (as amended), and serve important public needs that the Director of the Division of Labor Standards and Statistics (hereinafter, “Director” and “Division,” respectively) finds are best served by these rule updates, amendments, and supplements.

II. SPECIFIC STATUTORY AUTHORITY: The Director is authorized to adopt rules and regulations to enforce, execute, implement, apply, and interpret Articles 1 and 4-6 of C.R.S. Title 8, and all rules, regulations, investigations, and proceedings thereunder, by the Administrative Procedure Act, C.R.S. §§ 24-4-103 and 105, and provisions of the above-listed Articles, including but not limited to: C.R.S. §§ 8-1-101, -103, -107, -108, -111, -116, -117, -130; 8-4-111; 8-5-103, -201, -203; 8-6-102, -104, -105, -106, -108, -109, -111, -116, -117.

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is incorporated into this finding as well; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

IV. SPECIFIC FINDINGS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows.

The Equal Pay for Equal Work Act, S.B. 19-085 (the “2019 Act”), was enacted on May 22, 2019, and effective on January 1, 2021. The Equal Pay Transparency Rules (“EPT Rules”) were promulgated in 2020, with the same effective date as the 2019 Act, to implement, interpret, and enforce the 2019 Act. Then the Ensure Equal Pay for Equal Work Act, S.B. 23-105, enacted on June 5, 2023 (the “2023 Amendments”), amended the 2019 Act in various respects. These rule amendments serve mainly to implement, interpret, and enforce the 2023 Amendments, as well as to continue to do so for the 2019 Act.

The 2023 Amendments modified the term defining what opportunities must be posted to employees. The 2019 Act used the term “opportunities for promotion.” The 2023 Amendments replace that with “job opportunity,” and codify three exceptions:

- (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 eligible 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.

The 2023 Amendments also add 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, (if any) prior title at the employer, and how and where to express interest in similar job opportunities.

Rule 2, “Definitions,” is amended to conform the definitions of terms to these changes in the 2023 Amendments, and Rule 4, “Job Posting Requirements,” is amended to conform the employer duties to these changes in the 2023 Amendments.

Rule 4 also includes several elaborations of details requested by stakeholders, including:

- flexibility for employers to post ongoing job opportunities without including a deadline, and for employers to extend already-posted deadlines;
- as to the employer duty to provide post-selection notice to all employees whom a new hire will “work with regularly,” clarification of whom will be deemed to be those a new hire will “work with regularly”;
- flexibility for post-selection notices to combine multiple new hires, and/or be posted to a broader range of employees than the Act mandates — e.g., employers can choose to send notices of all covered hires in the past 30 days to all employees, rather than send each to only specific employees a new hire will work with; and
- clarification of who qualifies as an “eligible employee” who must be provided notice of “career progression” requirements and terms.

Additionally, Rule 4.1.4(A)(4), “Acting, interim, or temporary (“AINT”) hires,” is amended to execute the statutory duty to “promulgate rules for temporary, interim, or acting job opportunities that necessitate immediate hire.” The rule aims to balance (a) the need to accommodate situations that (in the words of the statute) “necessitate immediate hire” without awaiting a posting first, with (b) the need to assure that this exception is limited to (in the words of the statute) “temporary, acting, or interim” roles that “necessitate” hiring without a posting, and is not applied so broadly as to undercut the statute’s broad mandate that job opportunities otherwise must be posted.

Finally, Rule 3.7, “Appeals,” is amended to note expressly that, to the extent applicable, appeals will be conducted in a manner consistent with the Colorado Administrative Procedure Act.

V. EFFECTIVE DATE. If adopted, these rules take effect January 1, 2024, or as soon after as rulemaking completes.



Scott Moss
Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

September 29, 2023

Date