

COLORADO DEPARTMENT OF
LABOR AND EMPLOYMENT
EMPLOYER WEBINAR SERIES

PAY & PROMOTION TRANSPARENCY IN COLORADO EQUAL PAY LAW

Division of Labor Standards & Statistics
coloradolaborlaw.gov
July 13, 2021



COLORADO
Department of
Labor and Employment



CDLE Employer Webinar Series

Next webinar topic:

How to Save Money on Your Workers' Compensation Insurance and Promote Workplace Safety

- Join PCC staff on Wednesday, August 25th at 2:00pm for an employer-centric webinar to learn more about how to become certified with the PCC Program and save on your premiums. Invite link in follow up email.

Previous webinars available on CDLE's YouTube Channel

- Unemployment Insurance Charging Statements, Premiums, Trust Fund
- Paid Sick Leave
- Unemployment Insurance Fraud
- Workers Compensation in Covid-19

ABOUT CDLE

Creating “A working economy that elevates all of Colorado” by:

- Building Colorado’s talent pipeline
- Ensuring fair labor practices
- Making investments in human capital and strategic workforce development
- Helping businesses recruit employees
- Presenting an up-to-date and accurate picture of the economy
- Protecting our communities with a variety of consumer protection and safety programs
- Ensuring benefits to injured workers
- Contributing to a stable economy by providing temporary wage replacement
- Helping individuals with disabilities obtain, maintain, or regain employment

Employer Incentives and Compliance Assistance

Incentives and Compliance Assistance

- Workers' Comp Premium Cost Containment Program
- Public Safety Programs
- Unemployment Insurance Compliance Assistance Seminars
- Voc Rehab Disability Etiquette and Workplace Accommodations
- Wage and Hour guidance

Employer Recognition Programs

- Governor's Summer Job Hunt
- Shining Stars of VR
- Workplace Safety Awards

PAY & PROMOTION TRANSPARENCY IN COLORADO EQUAL PAY LAW

- The Equal Pay for Equal Work Act, Part 2
(passed by legislature as HB 19-085; now in Colorado statutes as CRS 8-5-201 et seq.)
- The Equal Pay Transparency Rules *(7 CCR 1103-13)*
- CDLE Resources & Compliance Guidance, at **ColoradoLaborLaw.gov**

The screenshot shows the CDLE website with the URL <https://cdle.colorado.gov/dlss> in the browser address bar. The page is divided into two main sections: "Frequently Used Resources:" and "Labor Laws the Division Covers:". In the "Frequently Used Resources:" section, the "INFOs (fact sheets) & Guidance" link is circled in red and pointed to by a yellow hand icon. In the "Labor Laws the Division Covers:" section, the "Pay/Promotion Transparency per Equal Pay Act" link is circled in red and pointed to by a yellow hand icon. Other links visible include "File Complaints and Employer Responses", "Appeals & Hearing Decisions", "Recently Proposed & Adopted Rules", "COMPS (Colo. Overtime & Minimum Pay Standards)", "Posters (incl. translations)", "Español", "Contact Us", "Wage & Hour", "Paid Sick Days", "Labor Relations", "Whistleblowing & PPE", "Youth Law", "Hiring, incl. Credit/Criminal Record Screening", and "Employment Conditions". At the bottom, there are links for "All Laws & Rules", "Wage Theft Transparency Decisions", and "Public Employees' Social Security (PESS)".

<https://cdle.colorado.gov/dlss>

Frequently Used Resources:

- File Complaints and Employer Responses
- Appeals & Hearing Decisions
- Recently Proposed & Adopted Rules
- COMPS (Colo. Overtime & Minimum Pay Standards)
- INFOs (fact sheets) & Guidance
- Posters (incl. translations)
- Español
- Contact Us

Labor Laws the Division Covers:

- Wage & Hour
- Paid Sick Days
- Labor Relations
- Whistleblowing & PPE
- Youth Law
- Hiring, incl. Credit/Criminal Record Screening
- Pay/Promotion Transparency per Equal Pay Act
- Employment Conditions

[All Laws & Rules](#) [Wage Theft Transparency Decisions](#) [Public Employees' Social Security \(PESS\)](#)



Equal Pay for Equal Work Act

(SB 19-085), Effective 1/1/21 (the “Act”)

Resources: <https://cdle.colorado.gov/equalpaytransparency>
(or: on the bottom of [ColoradoLaborLaw.gov](https://coloradolaborlaw.gov), click the box,
“Pay/Promotion Transparency per Equal Pay Act”)

- **The Text of the Statute and Rules**
(Equal Pay for Equal Work Act, HB 19-085, C.R.S. § 8-5-101 et seq.)
(Equal Pay Transparency Rules, 7 CCR 1103-13)
- **Extensive Compliance Guidance:**
 - **Detailed Summary of Statute+Rules, with Guidance on Interpreting & Applying:** Interpretive Notice & Formal Opinion (INFO) #9: *Equal Pay for Equal Work Act, Part 2: Pay and Promotion Transparency*
 - **Summary Fact Sheet**
 - **Contact information**, to call or email the Division w/ questions
- **Complaint form** for Equal Pay for Equal Work Act complaints

Equal Pay for Equal Work Act

(SB 19-085), Effective 1/1/21 (the “Act”)

Who is covered?

- Employer, C.R.S. 8-5-101(5): “the state or any political subdivision, commission, department, institution, or school district thereof, and every other person employing a person in the state.”
 - Applies to any person or entity employing 1+ employees in Colorado
 - Includes state and local governments, non-profits, & individuals
 - Exclude federal government
 - Not limited by # of employees
- Employee, C.R.S. 8-5-101(4): “a person employed by an employer.”

Equal Pay for Equal Work Act

Wage Discrimination Ban | Part 1

“Wage discrimination prohibited” (C.R.S. 8-5-102)

- **Pay discrimination:** prohibits “paying an employee of one sex ... less ... for substantially similar work, regardless of job title, based on ... skill; ... effort ... ; and responsibility,” and “wage rate differential” can be based *only* on:
 1. systems based on seniority, merit, production quality or quantity
 2. geographic location
 3. education, training, or experience, if reasonably related to the work
 4. travel, if regular and necessary for the work
- **Wage history requirements**
 - can’t seek or rely on employee’s wage history to set their wage [redressing “baked in” pay disparities that can follow women across jobs]
 - can’t ban employees from disclosing/discussing their wages [already covered by 2008 Wage Transparency Act]

Equal Pay for Equal Work Act

Wage Discrimination Ban | Part 1

- **Not administered by our Division (C.R.S. 8-5-103(1))**
 - Division may create program “to accept and mediate complaints and to provide legal resources concerning alleged violations of” Part 1.
 - Not yet; Division has focused on Colorado employers’ & employees’ need to facilitate compliance with Part 2 (pay & promotion transparency), which the Division must administer
- **Remedies (C.R.S. 8-5-103):**
 1. lawsuit with no administrative exhaustion (i.e., may go straight to court without any administrative complaint);
 2. CCRD charge under Colorado Antidiscrimination Act (rights existing before the Act)



Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

8-5-201. Employment opportunities - opportunities for promotion or advancement - pay rates in job listings. (1) AN EMPLOYER SHALL 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.

(2) AN EMPLOYER SHALL DISCLOSE IN EACH POSTING FOR EACH JOB OPENING THE HOURLY OR SALARY COMPENSATION, OR A RANGE OF THE HOURLY OR SALARY COMPENSATION, AND A GENERAL DESCRIPTION OF ALL OF THE BENEFITS AND OTHER COMPENSATION TO BE OFFERED TO THE HIRED APPLICANT.



Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

8-5-202. Record keeping. AN EMPLOYER SHALL KEEP RECORDS OF JOB DESCRIPTIONS AND WAGE RATE HISTORY FOR EACH EMPLOYEE FOR THE DURATION OF THE EMPLOYMENT PLUS TWO YEARS AFTER THE END OF EMPLOYMENT IN ORDER TO DETERMINE IF THERE IS A PATTERN OF WAGE DISCREPANCY.

8-5-203. Enforcement - rules. (1) THE DIRECTOR HAS THE POWER TO ADMINISTER, CARRY OUT, AND ENFORCE ALL OF THE PROVISIONS OF THIS PART 2 AND MAY PROMULGATE RULES FOR THAT PURPOSE.

(4) UPON FINDING THAT AN EMPLOYER HAS VIOLATED THIS PART 2, THE DIRECTOR MAY ORDER THE EMPLOYER TO PAY A FINE OF NO LESS THAN FIVE HUNDRED DOLLARS AND NO MORE THAN TEN THOUSAND DOLLARS PER VIOLATION.

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

Left to Rulemaking and Division Interpretation:

(A) Pay Transparency in Job Postings:

- (1) Is Posting Required?
- (2) “Range”: Width? Binding?
- (3) “Benefits”: Which?

(B) Promotion/Advancement Transparency:

- (1) For Only Those Qualified?
- (2) Contents and Permitted Methods of Notice?
- (3) Requirements for Accepting Applications or Hiring?

(C) Both Pay & Promotion/Advancement: Jobs & Postings Outside CO?

Rules:

Equal Pay Transparency Rules (“EPT Rules”), 7 CCR 1103-13

Interpretive Guidance:

INFO #9, Equal Pay for Equal Work Act, Part 2: Pay and Promotion Transparency

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

(A) Pay Transparency in Job Postings, 8-5-201(2):

(2) AN EMPLOYER SHALL DISCLOSE IN EACH POSTING FOR EACH JOB OPENING THE HOURLY OR SALARY COMPENSATION, OR A RANGE OF THE HOURLY OR SALARY COMPENSATION, AND A GENERAL DESCRIPTION OF ALL OF THE BENEFITS AND OTHER COMPENSATION TO BE OFFERED TO THE HIRED APPLICANT.

(1) Is an external posting required? INFO #9 p. 2

No. Compensation disclosure required only if employer chooses to have an external job post.

(2) “Benefits”: Which? EPT R. 4.1.1(C): major benefits; others if tax-reported

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.

(3) Compensation “Range”: (a) Width? (b) Binding? EPT R. 4.1.2

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.

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

(A) Pay Transparency in Job Postings, 8-5-201(2) (cont'd)

(4) Range: Job-specific? EPT R. 4.1.2, INFO #9

- Must be for particular job advertised, not all in a department or category, .e.g.:

An employer cannot post a \$70,000-\$100,000 range for a *junior* accountant position just because it pays *senior* accountants at the high end of that range. But it can post \$70,000-\$100,000 for an accountant if it does not limit the posting 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.

(5) Range: Geographic location?

- Only Colorado range is required for multi-state or remote postings.
- Limit by location: postings may specify a different range for different parts of Colorado.

(6) Hyperlinks or URL to Compensation and Benefit Information? INFO #9 p. 2

- Electronic postings can use clearly-identified hyperlink or URL to comp. & benefits

(7) Employer Identity? Not required

- Anonymous job postings are fine as long as they include job title, compensation & benefits

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

(A) Pay Transparency in Job Postings, 8-5-201(2) (cont'd):

When is Posting Compensation Required? *Based on Job & Employer Location:*

	(A) Employer <u>with Colo.</u> staff at time of post	(B) Employer <u>with no Colo.</u> staff at time of post
(1) Job tied to <u>location in CO</u>	Must post comp.	Need not post comp.
(2) <u>Remote</u> job, even if “anywhere but CO”	Must post comp.	Need not post comp.
(3) Tied to <u>location out of CO</u>	Need not post comp.	Need not post comp.

Omitting compensation by posting that a remote job is for anyone, anywhere, “except Coloradans”: Not compliant with Act.

- (a) No exception, Act text: All employers w/ any CO staff
“shall disclose compensation in each posting for each job.”
- (b) Rules can't & don't add exceptions absent from the statute.
Implied exception: Truly must be done out-of-st (waiter), arguably beyond Act reach.
- (c) Posting job as “remote”: Statement that it's performable anywhere, including CO.
Can't mis-label job (as not performable in CO) to opt out of law.

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

(A) Pay Transparency in Job Postings, 8-5-201(2) (cont'd):

When is Posting Compensation Required? *Based on Job & Employer Location:*

Example: Danny Denver's Daiquiris is a sports bar with locations in Colorado and several other states. It is covered by the Act because it has Colorado employees. It posts several positions:

(1) Waiter in one of its Montana restaurants	Need not post comp. (job <u>cannot be performed</u> in CO)
(2) "Remote" tech support position that must provide occasional support at the Bozeman, MT headquarters	Need not post comp. ("remote" job <u>cannot be performed</u> in CO)
(3) "Remote" tech support position that must provide occasional support at the Boulder, CO headquarters	Must post comp.. ("remote" job <u>linked to</u> CO location)
(4) Completely remote billing administrator; job post states can be performed "anywhere except Colorado"	Must post comp. (remote job <u>can be done anywhere,</u> including CO)

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

(B) Promotion/Advancement Transparency, 201(1):

8-5-201. Employment opportunities - opportunities for promotion or advancement - pay rates in job listings. (1) AN EMPLOYER SHALL 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.

(1) Only Those “Qualified”?

- No - statute: “all current employees,” clear legislative intent

(2) What Are “Opportunities for Promotion”? (EPT R. 4.2.1; INFO #9 p. 2-3)

- an existing or new position the employer intends to fill
- “new” position created by changing title, authority, duties, or opportunities
- but not by changing pay or adding degree or certification (e.g., “CPA” or “LCSW”)
- “promotion” in terms of compensation, benefits, status, duties, or opportunities
- matters whether it would be a promotion for any employee, not whether it is a promotion/demotion/lateral move for a specific employee expected to fill position

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

(B) Promotion/Advancement Transparency, 201(1) (cont'd)

(3) Contents (EPT Rule 4.2.2):

- job title
- means by which employees may apply
- compensation and benefits as required by section 201(2)
- *may* include required qualifications and intended hire/promotee

Simple compliant example: “Jo Doe is recommended for promotion to senior accountant. Salary \$50-70,000; health insurance & 401k. Interested applicants contact S. Poe in HR.”

(4) Permitted Methods? (EPT Rule 4.2.3): Any, as long as all covered employees

- (A) can access within their regular workplace, either online or in hard copy;
- (B) are told where to find required postings or announcements; and
- (C) if a method reaches some but not all (e.g., online), use alternative for such EEs.

(5) Special Method for Regular/Automatic Promotions or Hiring (INFO #9 at 4):

Regular (at least monthly) hiring or automatic promotion into specific position upon completion of set requirements: one-time notice of the promotional opportunity in handbook, etc.

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

(B) Promotion/Advancement Transparency, 201(1) (cont'd)

(6) Exceptions (EPT Rule 4.2.5):

- (A) confidentiality from incumbent being replaced, as necessary & consistent
- (B) automatic promotion after trial period of up to a year
- (C) temporary/acting/interim hire up to 6mn; post when/if may become permanent

(7) Requirements for Receiving Applications or Hiring? EPT Rule 4.2 and INFO #9:

No restrictions on hiring process or who is hired, including

- can already know who position is intended for (but not final choice)
- may state that applications are open only those with certain qualifications
- may screen or reject candidates based on qualifications
- no set # of days before hiring decision
- no requirement that employer receives/considers applications

Equal Pay for Equal Work Act

Pay & Promotion/Advancement Transparency | Part 2

(B) Promotion/Advancement Transparency, 201(1) (cont'd)

(8) Out-of-State Jobs and Employees (EPT Rule 4.3 and INFO #9)

When is Promotion Notice Required? *Based on Job & Employer Location:*

	(A) Employer with <u>Colo. staff</u>	(B) Employer with <u>no Colo. staff</u>
(1) Job tied to <u>location in CO</u>	Notice w/ comp. required	Notice not required
(2) <u>Remote</u> job	Notice w/ comp. required	Notice not required
(3) Tied to <u>location out of CO</u>	Notice required Comp. not required	Notice not required

Equal Pay for Equal Work Act

Enforcement and Compliance

Employers are overwhelmingly complying, at an increasing rate:

(1) Division study of compliance by Colorado's 51 largest employers:

- analysis ongoing
- tentative: 1st 6 months, pay-posting compliance has risen to 80-90% of posts
→ Colorado's largest, most successful employers are complying, by posting comp.

(2) Division study of remote job postings, after news reports of posts excluding CO

- Division randomly sampled >200 Indeed.com remote job posts, by CO & non-CO employers: ~99% of remote job posts did not exclude Coloradans

(3) Division review of compliance after violations found:

- Division must investigate all complaints alleging violations
- Of violations found: 100% of employers have fixed non-compliant postings
- Employer brings posts into compliance after 1st violation ⇒ Division waives all fines

Key Goal: Further Colorado's strong progress toward posting compliance, not fines

⇒ More outreach+education coming for employers w/ non-compliant.posts, or Qs

Q&A

Question: We don't have job titles or salary ranges. How does this affect our company?

Answer:

Pay Transparency: The Act does not require an external job posting before hiring, so employers may, e.g., solicit resumes or hire through talent scouts without creating a job posting that would require disclosing compensation. If an employer *does* create a job posting, it need not have a job title, but must disclose the compensation the employer reasonably believes it will offer for the position it is seeking to fill.

Promotion Transparency: If an employer does not have job titles, it may use a description of the open position, rather than job title, when providing notice of promotional opportunities to current employees. Notice must also include compensation and benefits.

See: slides 13-14, 18; EPT Rule 4.1-4.2; & INFO #9 p. 1-3.

Q&A

Question: We host a job board available for members and non-members to post their firms' openings. As we understand: The mandate for providing salary information in job postings is for employers, however, our organization could remind employers of the Colorado Equal Pay Act requirements? Can you confirm our responsibilities as the hosting organization, and further clarify the liabilities to users of our site? Can employers be in violation if they post to our website and do not include information as required by law?.

Answer: Per INFO #9 at p. 1, “[e]ntities merely sharing or re-posting the jobs of other employers — a business operating a website that posts jobs from employers, or a government or non-profit agency that connects job-seekers with jobs, etc. — are not liable for non-compliant postings under Part 2 or the EPT Rules.” An entity hosting employer job postings may notify posting employers of the Act’s requirements, but it is not required to do so. An employer violates the Act if it causes a non-compliant posting to be displayed on a third-party website (including the job board described in this question, Indeed.com, or Connecting Colorado), but the website owner does not violate the Act by displaying the posting.

See: INFO #9 p. 1.

Q&A

Question: I inadvertently used an employment application that has salary history from the applicant. after the January 1 new law. I have since then updated our CO application to does not ask for pay/salary history. What do in the case where the applicant disclosed their rate of pay?

Answer: The Act states, "[a]n employer shall not: (a) Seek the wage rate history of a prospective employee or rely on the wage rate history of a prospective employee **to determine a wage rate.**" C.R.S. 8-5-102(2) (emphasis added). This would seem to allow an employer to solicit salary history information *if* the information was not used to determine a wage rate and applicants were not penalized for failing to disclose a wage rate. However, the Division does not enforce this portion of the Act (Part 1), and the Division's interpretation may not be in line with how courts will interpret this provision.

See: slides 8-9.

Q&A

Question: Do we have to post the wage externally, internally or both?

Can we use a pay scale such as P1, P2, P3 and have the scale available upon request and not post the actual wage?

Answer: Employers do not have to create external job postings, but if they choose to do so the posting must include compensation and benefits information. Employers must provide internal notices of promotional opportunities, and those notices must include compensation and benefits.

Employers may hyperlink or provide a URL linking compensation and benefit information in online postings, including in notices of promotional opportunity that must be accessed online (e.g. via email or online job board). Employers may not require additional steps — such as sending an email or calling a phone line — to request compensation information.

See: slide 13-14, 18; EPT Rule 4.2.2; & INFO #9 p. 2.

Q&A

Question: Isn't there a lawsuit about whether this law is unconstitutional, and is enforcement being held off until the case is decided?

Answer: Yes, such a lawsuit was filed in late December 2020, but:

- in late May 2021, the federal court rejected the request to issue a preliminary injunction (an order early in the case) to halt application or enforcement based on the lawsuit's claim that both the statute and the Division's rules were unconstitutional; and
- in July 2021, all parties agreed to a dismissal of the lawsuit.

Q&A

Question: As an employer who has employees in 22 states, does this require us to list salaries on all postings for jobs in states that are not in CO?

See slides 15-16.

Question: Are we required to post salaries for jobs that are remote (i.e. the main office is in Iowa, but we may consider an applicant from CO)?

See slides 15-16.

Question: Is there an employee number threshold below which the company becomes exempt from the requirements of this law?

See slide 7.

Question: So many employers are not listing the salary range in their job postings. What are the repercussions? Who calls them out? How do job seekers notify them? How is the state supporting this challenge and helping both job seekers and employers respect the law?

See slides 5-6 (complaint form) and 21 (compliance and education efforts).

A smiling woman with dark hair, wearing a yellow short-sleeved shirt and a grey apron, stands in a cafe. She is holding a tablet computer with both hands. The background shows a blurred interior of a cafe with tables and chairs.

Thank You!

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