

Publications

Colorado's Extensive Pay Equity Law is Now in Effect

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CLIENT ALERT | 1.6.2021

Colorado's new **Equal Pay for Equal Work Act (EPEWA)** prohibits gender-based pay discrimination and imposes strict requirements for job postings and equal pay transparency. It became effective on January 1, 2021, and applies to all employers in the state. The main provisions of the EPEWA are summarized below. Contact your Vorys lawyer if you have questions about ensuring your business practices comport with these new requirements.

Pay Equity Requirements

The EPEWA prohibits discrimination because of sex (including gender identity) or because of sex in combination with another protected status in the payment of wages for substantially similar work. The EPEWA provides exceptions for wage differentials based on: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; (4) geographic location; and (5) travel.

Employers may not seek an applicant's wage rate history or rely on prior wage rates to determine a current wage rate. Employers also may not discriminate or retaliate against prospective employees for failing to disclose wage history. Additionally, employers cannot prohibit employees from discussing their own compensation with their co-workers.

Employers must maintain records of job descriptions and wage rate history for each employee for two years after employment ends. Failing to do so creates a rebuttable presumption that the records not maintained contained information favorable to an employee's claim.

In addition to other remedies, liquidated damages are awarded unless the employer can show its violation was in good faith. One way an employer may do so is by having conducted a "thorough and comprehensive pay audit" with the "specific goal of identifying and remedying unlawful pay disparities" within two years before the lawsuit was filed.

Job Posting and Equal Pay Transparency Requirements

The EPEWA requires that employers announce to all employees “promotional opportunities” and job openings and their pay range. Employers must:

- Make reasonable efforts to announce, post, or otherwise make known, **all** opportunities for promotion to **all** current Colorado employees on the same day and prior to making a promotion decision; and
- For all job postings for jobs to be performed in Colorado or jobs that can be performed remotely from anywhere, including promotions, employers must include the compensation range for the position and a general description of all benefits and other incentive compensation.

Geographic Limits:

Employers need not disclose compensation for jobs to be performed entirely outside Colorado, even if the job posting is in, or reaches, Colorado. However, remote jobs are not deemed to be out-of-state jobs, and so are not excluded.

Content of Job Postings:

Postings for jobs and promotions must include the hourly rate or salary compensation (or a range); a general description of any bonuses, commissions, or other forms of compensation; and a general description of all employment benefits, including health care, retirement, paid days off, and other benefits that must be reported for federal tax purposes. In electronic postings, employers need not include such information if it is hyperlinked or accessible via a URL provided within the electronic posting.

Postings Regarding Promotional Opportunities:

An employer is required to 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.”

A “promotional opportunity” exists when an employer has or anticipates a vacancy that could be considered a promotion in terms of compensation, benefits, status, duties, or access to further advancement. An employer makes “reasonable efforts” when the notice of a promotional opportunity is made: (1) in writing; (2) by any method(s) reaching all employees; (3) to all employees for whom it may be a promotion, on the same calendar day; and (4) sufficiently in advance of the hiring or promotion decision that employees receiving notice may apply.

Employers must notify **all** employees of **all** promotional opportunities, and may not limit notice to those employees it deems qualified for the position. However, the employer may state that applications are open to only those with certain qualifications, and may screen or reject candidates based on such qualifications.

Employers are not required to post promotional opportunities: (1) where the employer has yet to inform incumbent employees that they are being separated; (2) when promotions automatically occur after a trial period within one year of being hired with a written representation to that effect; or (3) when positions are temporary for up to six months and not expected to be permanent. Further, multi-state employers are not

required to notify non-Colorado employees of promotional opportunities in Colorado or elsewhere, and need not include compensation or benefits in notices to Colorado employees for positions outside of Colorado (but must notify Colorado employees of such promotional opportunities).

Recordkeeping:

Records must be kept of employees' job descriptions and compensation for the duration of the employee's employment plus two years thereafter.

Enforcement:

Failing to list one promotional opportunity is considered one violation; failing to disclose one job opening is considered one violation regardless of the number of postings that list the job opening. Fines of between \$500 and \$10,000 may be levied per violation.

Contact your Vorys lawyer if you have questions about how the EPEWA may impact your operations.