## Colorado Employment Alert! Colorado Equal Pay for Equal Work Act

March 16, 2021

Colorado's new pay equity law took effect as of January 1, 2021, and addresses wage discrimination affecting women by outlawing certain pay disparities and implementing new requirements related to disclosure, record-keeping, and transparency. The law covers all employers with at least one Colorado employee or which are advertising positions to Colorado residents (even if the position is for employment partially based outside of Colorado). Any companies operating in the state of Colorado or simply posting job openings within the Colorado market should be aware of the impact of the Equal Pay for Equal Work Act (Equal Pay Act). The most important obligations and prohibitions that employers should be cognizant of are discussed below.

### Permitted and Prohibited Pay Disparities

Employers are prohibited from paying employees of one sex a "wage rate" that is less than the wage rate paid to employees of a different sex for substantially similar work.

**Pay differences arising from certain conditions are permitted, including:**

1. a seniority system;
2. a merit system;
3. a system that measures earnings by quantity or quality of production;
4. the geographic location where the work is performed;
5. education, training, or experience reasonably related to the work; or
6. travel that is a regular and necessary condition of the job.

### Transparency and Privacy Requirements

**Employers cannot:**

1. prevent employees from discussing their own compensation information with other employees;

2. seek the wage rate history of a prospective employee or require disclosure of wage rate as a condition of employment;
3. rely on wage history to determine a wage rate; or
4. discriminate or retaliate against a prospective employee for failing to disclose wage history.

### Disclosure and Record-Keeping Requirements

**Employers must:**

1. disclose the hourly wage or salary, or the hourly wage or salary range, along with a general description of all benefits and other compensation offered for each job-vacancy posting. This applies to any Colorado-based job posting or remote-based job posting that could be performed in Colorado. The only exceptions are those jobs that would be performed entirely outside of the state of Colorado;
2. make reasonable efforts to "announce, post, or make known all opportunities for promotion" to all current employees on the same calendar day. Such disclosures are required to be made to any employee who performs any amount of work while physically present in Colorado and applies to promotional opportunities outside of the state of Colorado. Opportunities that must be disclosed include any promotion in compensation, benefits, status, duties, title or other advancement within the company; and
3. keep records of job descriptions and wage history for each employee while employed and for two years after employment ends. Failure to do so creates a rebuttable presumption, in a lawsuit alleging wage discrimination based on sex, that the records not maintained contained information favorable to the employee's claim.

### Fines, Damages, and Best Practices

Employers could face civil fines of US $500 to $10,000 per violation of the job posting or recordkeeping requirements. The Equal Pay Act also provides a private right of action for employees to sue for up to three years of back pay for unlawful pay disparities. Employers can limit liability for damages by showing the act or omission causing the pay violation was made in good faith. It is recommended that employers proactively self-evaluate or audit their compensation practices for disparities as such internal controls could be used as a partial defense against a pay equity claim.

The Hall Estill Employment Team has experience handling these issues and is ready to assist you. If you need any assistance or have any questions regarding other issues, please contact your Denver Hall Estill Attorney directly.

## Practices

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