

COLORADO'S PAY TRANSPARENCY LAWS

March 9, 2023

Colorado's Equal Pay for Equal Work Act ("EPEWA") requires employers to include compensation and benefits information in all job postings and notifications of promotional opportunities.^[1]

COVERED EMPLOYERS

The EPEWA covers all employers, public or private, that employ at least one person in Colorado. Employees of covered employers must also comply with the pay transparency requirements of the EPEWA.

The EPEWA does not apply to employers with no employees in Colorado. If an employer has no employees in Colorado at the time of its hiring or promotion decision, then the requirements of the EPEWA do not apply to the employer for that hiring or promotion decision, even if it considers Colorado applicants, or ultimately hires someone who would work in Colorado.

The EPEWA does not apply to a third-party that shares or re-posts another employer's job. An employer is not liable for violation of the EPEWA if it has a compliant posting, but then a third party, without being hired or instructed by the employer, re-posts the employer's job without the required information.

COVERED JOB ADVERTISEMENTS

Employers are not required to advertise job openings, or have job postings, except as needed to notify existing employees of promotional opportunities. Compensation and benefits must be disclosed only if an employer chooses to have a job posting. If an employer advertises or posts a job opening, the employer must disclose compensation and benefits information in each posting for each job posted. A job posting includes any electronic or hard copy communication that the employer has any specific job(s) available or is accepting job applications for a particular position.

Employers do not need to disclose compensation and benefits information in job postings for jobs that will be performed entirely outside of Colorado (including non-Colorado jobs that may include modest travel to Colorado), even if the job posting is published in Colorado (or is an online posting that reaches Colorado).

Remote work performable in Colorado or elsewhere for a covered employer must comply with the EPEWA. A remote job posting, even if it states that the employer will not accept Colorado applicants, remains covered by the EPEWA.

Employers do not need to disclose compensation and benefits information in printed or hardcopy job postings that are posted or distributed entirely outside of Colorado. For example, compensation and benefits need not be included in a printed advertisement or posting entirely in another state, but must be included in an online posting, because online postings are accessible by Colorado residents.

An employer does not need to disclose compensation or benefit information in a help wanted sign or similar communication stating only generally (i.e., without listing specific positions) that an employer is hiring.

JOB ADVERTISEMENT DISCLOSURE REQUIREMENTS

Employers must include in each job posting (1) the rate of compensation (or a range thereof), including salary and hourly, piece, or day rate compensation; (2) a general description of any bonuses, commissions, or other compensation; and (3) a general description of all benefits the employer is offering for the position.

Benefits that must be generally described include health care, retirement benefits, paid days off, and any tax-reportable benefits, but not minor “perks” like use of an on-site gym or employee discounts. At a minimum, employers must describe the nature of these benefits and what they provide, not specific details or dollar values — such as listing that the job comes with “health insurance,” without needing to detail premium costs or coverage specifics. Employers cannot use an open-ended phrase such as “etc.,” or “and more,” rather than provide the required “general description of all of the benefits.”

An employer may post compensation as a range from the lowest to the highest pay it actually believes it might pay for the particular job, depending on circumstances such as employee qualifications, employer finances, or other operational considerations. If the pay might be different inside and outside Colorado, the range should be what the employer would pay in Colorado. A range’s bottom and top cannot include open-ended phrases like “\$30,000 and up” (with no top of the range), or “up to \$60,000” (with no bottom). An employer may ultimately pay more or less than a posted range, as long as the range, at the time of posting, was what the employer genuinely believed it would be willing to pay for the job.

For jobs that earn tips, the Act requires “the hourly or salary compensation” the employer will pay be included in the job posting. A posting does not need to, but may, give an estimated amount of tips, as long as the posting still specifies what the employer itself will pay, aside from any tips.

Electronic postings (e.g., webpages or emails), need not include all required compensation and/or benefits, if they link to such information — as long as the posting makes clear that the link gives access to compensation and benefits for each specific job posted. It is the employer's responsibility to assure continuous compliance with functionality of links, up-to-date information, and information that applies to the specific job posting (e.g., not a single pay "range," or identical benefits, for multiple jobs for which the actual pay ranges or benefits would be different).

RECORDKEEPING REQUIREMENTS

For each employee, an employer must keep records of the employee's job description and compensation (including salary or hourly wage, benefits, and all bonuses, commissions, and other compensation received). Records must include any changes to job description or compensation over time.

Employer must maintain these records for the duration of the employee's employment plus two years thereafter. This recordkeeping requirement only applies to employees in Colorado.

If a court finds that an employer failed to comply with record keeping requirements an employee is entitled to a rebuttable presumption that the records contained information favorable to the employee's claim. The employee is also entitled to a jury instruction that the employer's failure to keep records can be considered evidence that the violation was not made in good faith.

PENALTIES AND FEES FOR VIOLATIONS

Any person aggrieved by (i.e., witnessed, suffered, or injured by) a perceived violation may file a complaint with the Colorado Department of Labor ("CDOL") within one year of learning of the violation. A person may file an anonymous tip with the CDOL. The CDOL may also initiate its own investigation based on information received without a formal complaint.

If the CDOL determines a violation has occurred, it may issue a fine of \$500 to \$10,000 for each violation. Failure to include compensation and benefit information in one or more postings for a job is one violation regardless of the number of postings listing that job. The CDOL may waive or reduce particular fines for good cause.

Currently, the CDOL is prioritizing proactive outreach and education over penalties. Accordingly, when it receives a complaint or information about a potential violation it has offered employers an opportunity to cure the violation before it initiates a formal investigation that could result in fines. It is uncertain how long the CDOL will continue the practice of offering an opportunity to cure a violation.

No civil action is available. However, if an employee brings a claim for wage discrimination based on sex and the court finds that the employer violated the EPEWA's pay transparency requirements, then the court may order "appropriate relief."

[1] According to the United States Government Accountability Office, in 2021, the U.S. Census Bureau reported that women earned about \$0.82 for every dollar men earned (an overall pay gap of 18 cents on the dollar), with White women earning about \$0.79, Black women earning about \$0.63 and Hispanic women earning about \$0.58 for every dollar White men earned.

MEET THE TEAM



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