



Transparency in Pay Under Colorado's New Wage Equality Act

By: [Karen Spaulding](#)

With oil prices steadily on the rise in early 2021, there is a likelihood of renewed hiring of oil and gas company personnel. Now is the time to make sure your company is knowledgeable of and compliant with the Equal Pay for Equal Work Act, signed by Governor Polis in 2019 but which became the law in Colorado effective January 1, 2021 (the "Act"). This article provides an overview of the Act's requirements.

The Act has four new requirements; a violation by an employer of any one of them may have serious consequences. First and foremost, discrimination in the wage rate paid to any employee for substantially similar work, absent demonstrable exceptions, is prohibited. Second, the Act prohibits employers from requesting the wage history of a prospective employee and protects an employee who may disclose his/her current wage rate. Third, the Act contains new detailed job posting requirements for the advancement opportunities of your current employees. Last, every Colorado employer has new wage-related record keeping requirements.

Wage Discrimination Prohibited – C.R.S. § 8-5-102(1)

When substantially similar work is being performed, each employee, regardless of sex, shall be paid the same wage rate, with certain exceptions related to (i) seniority, merit, or quantity or quality of production systems; (ii) different geographic locations where the work is performed; (iii) education, training or experience reasonably related to the work; or (iv) travel, if necessary and a regular part of the work. The employer has the burden of proof that an exception applies to maintain a lower wage rate for an opposite sex worker.

Wage Rate History/Disclosure – C.R.S. § 8-5-102(2)

No employer may ask a prospective employee about prior wage rate history, nor may an employer use prior wage rates to determine the prospective employee's wage rate if hired. An employer may not take any adverse employment action against an employee for either assisting in the enforcement of this prohibition or for inquiring about, comparing, or disclosing the employee's current wage rate. Last, an employer may not prohibit an employee from disclosing the employee's wage rate either verbally or in a non-disclosure document.

Employer Liability – C.R.S. § 8-5-104

An employer that is found to have violated the wage rate payment prohibition in Section 102(1) is liable for economic damages equal to the difference in the wages actually paid and the wage rate the employee should have been paid. And in circumstances involving the employer's bad faith, which is a fact determination for the jury, the employee is entitled to liquidated damages, which is two times economic damages.

An employer that violates either the wage rate payment or the wage rate history prohibition or prohibits the disclosure of the employee's current wage rate (Section 102(1) and/or Section 102(2)) is liable for the employee's reasonable costs and attorneys' fees and potentially reinstatement, promotion, and pay increases. These fees and damages are in addition to the economic and liquidated damages referenced above if either are applicable.

Job Posting and Record Retention Requirements – C.R.S. §§ 8-5-201 and 8-5-202

The employer must announce or post every job opening that could be considered an opportunity for the promotion of a current employee to all Colorado employees on the same day and prior to making a promotion and hiring decision. In addition, the job posting must contain the reasonable range of compensation for the position, along with a general listing of the benefits and other compensation being offered.

Every employer must keep wage rate history and the job description(s) for each employee during the term of employment plus two years after the end of that person's employment.

Enforcement – C.R.S. §§ 8-5-103 and 8-5-203

Employers who engage in wage discrimination may be subject to a complaint process through the Colorado Department of Labor and Employment ("CDLE") and may be named as a defendant in a civil action. A civil action must be brought within two years after the occurrence of a Section 102 violation, and each payment of a discriminatory wage rate is a separate violation of Section 102. Recovery of back pay may accrue the entire time the violation continues but may not exceed 3 years. The aggrieved employee may also timely file a charge of discrimination at the Colorado Civil Rights Division under C.R.S. § 24-34-306.

Generally, a violation of the job posting or record keeping requirement is administered and enforced by the CDLE. The CDLE may assess fines from no less than \$500 to no more than \$10,000 per single violation. However, if an employee files a civil action alleging violation(s) of Section 102, a violation of Part 2 (the job posting and record retention requirements) may also be alleged in that civil action, and the court may award appropriate relief.

Please contact [Karen Spaulding](#) for additional information about the Act and its requirements.