

## **NEW LAW: Colorado Passes New Pay Equity Law Including Salary History Ban**

On May 22, 2019, Colorado Governor Jared Polis signed [SB 19-085 \(the Equal Pay for Equal Work Act\)](#) into law. With this new law, Colorado is the latest state to prohibit employers from inquiring into a job applicant's salary history. The new law goes into effect on January 1, 2021.

Once this law goes into effect, Colorado employers will be prohibited from paying an employee of *one sex* at a rate of compensation that is less than the rate paid to an employee who is of the opposite for substantially similar work.

The new law requires equal pay (or a justified differential in pay) between employees who perform "substantially similar work." As defined under the law, substantially similar work is not based on job title, but is determined by looking at the combined skill, effort, and responsibility involved in the work. Shift work may also be taken into consideration.

A different rate of compensation may be paid to employees of different protected classes who perform substantially similar work if the employer demonstrates each of the following:

1. That the pay differential is based on:
  - a. A seniority system;
  - b. A merit system;
  - c. A system that measures earnings by quantity or quality of production;
  - d. The geographic location where the work is performed;
  - e. Education, training, or experience to the extent that they are reasonably related to the work in question; or
  - f. Travel, if the travel is a regular and necessary condition of the work performed
2. That each of the above factors were applied reasonably
3. That each of the above factors accounts for the entire wage differential
4. That prior wage rate history was not relied on to justify a disparity in current wage rates.

The law also makes clear that an employer may not prior wage history may not be relied upon to justify a disparity in current wage rates.

In addition to the pay equity requirements, the new law also prohibits employers from

1. Seeking the wage rate history of a prospective employee
2. Relying on the wage rate history of a prospective employee to determine a wage rate
3. Retaliating against a prospective employee for failing to disclose the prospective employee's wage rate history
4. At time of hire, prohibiting, as a condition of employment, an employee from disclosing the employee's wage rate
5. Requiring employees to sign a waiver that
  - a. Prohibits the employee from disclosing wage rate information; or
  - b. Denies the employee the right to disclose the employee's wage rate information.

Finally, the new law also contains a requirement that employers announce opportunities for advancement to employees.

Under this requirement, employers must make "reasonable efforts" to announce all opportunities for promotion to all current employees on the same calendar day and prior to making a promotion decision. In addition, employers will be required to disclose in a job announcement the hourly or salary compensation, or a range of the hourly or salary compensation for the position and provide a general description of all of the benefits and other compensation to be offered to the successful candidate.

Employers will also be required to 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.