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Colorado Amends Job Posting Notice Requirements Under Equal Pay for Equal Work Act

Law and the Workplace on **June 16, 2023**

On June 5, 2023, Colorado Governor Jared Polis signed the Ensure Equal Pay for Equal Work Act (the "Amended Act") amending the Equal Pay for Equal Work Act.

The Equal Pay for Equal Work Act, which took effect on January 1, 2021, requires employers to make reasonable efforts to provide covered employees with certain notice prior to making a hiring or promotional decision. The Amended Act clarifies and updates these obligations, with changes taking effect on January 1, 2024.

Narrowed Notice Requirement for Out of State Employers

Of significance to employers who do not have a physical place of operations in Colorado, the Amended Act provides that, through July 1, 2029, employers whose physical locations are all based outside the state of Colorado and that have fewer than 15 remote employees working in Colorado need only provide such employees notice of "remote job opportunities" (with the term "job opportunities" as defined below).

Notice No Longer Required Before "Career Progression" or "Career Development" Promotions

The Amended Act provides that "a[n] employer shall make reasonable efforts to announce, post or otherwise make known ***each job opportunity*** to all employees on the same calendar day and prior to the date on which the employer makes a selection decision." This departs from the existing statute's language which requires notice for all "opportunities for promotion." Under the Amended Act, a "job opportunity" is defined as "a current or anticipated vacancy for which the employer is considering a candidate or candidates or interviewing a candidate or candidates or that the employer externally posts."

Further, the Amended Act clarifies that position changes due to “career progression” and “career development” are not “job opportunities” subject to notice requirements. “Career Progression” is defined as “a regular or automatic movement from one position to another based on time in a specific role or other objective metrics. “Career Development” is defined as a “change to an employee’s terms of compensation, benefits, full-time or part-time status duties, or access to further advancement in order to update the employee’s job title or compensate the employee to reflect work performed or contributions already made by the employee.” Thus, under the Amended Act, employers will no longer need to post or otherwise provide notice of in-line promotions meeting the above definitions before they take effect.

However, for positions eligible for “career progression” as defined by the statute, employers will be required to disclose to all eligible employees the “requirements for career progression, ”in addition to each position’s terms of compensation, benefits, full-time or part-time status, duties, and access to further advancement.”

Required Notice of End of Application Window

For “job opportunities” subject to notice requirements under the Amended Act, employers will be required to in good faith disclose not only the hourly or salary compensation and a general description of the benefits or other compensation applicable to the job opportunity, but also the date the application window is anticipated to close.

New Obligation to Notify Employees of Selected Candidates

The Amended Act imposes an new requirement that employers make reasonable efforts to announce, post, or otherwise make known the identity of the selected candidate for covered job opportunities within 30 calendar days of the selected candidate’s start date in that role. The notice must be provided, at minimum, to the employees with whom the selected candidate is intended to work and it must provide the following information:

- The name of the selected candidate;
- The selected candidate’s former title, if the selection as internal;
- The selected candidate’s new job title; and
- Information on how employees may demonstrate interest in similar job opportunities in the future, including identifying individuals or departments to whom the employees can express interest in similar job opportunities.

Expanded Recovery for Back Wages

Employees aggrieved by a violation of the Amended Act can recover back wages for violations going back up to six years, rather than the three-year limitation provided in the current statute.

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The Amended Act requires the Colorado Division of Labor Standards and Statistics to promulgate rules to enforce the provisions of the law on or before July 1, 2024.

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Related Professionals

- **Evandro C. Gigante**
  Partner
- **Laura M. Fant**
  Special Employment Law Counsel
- **Theresa Madonna**
  Associate