

LABOR & EMPLOYMENT ADVISORY

Significant Changes to Colorado's Final Equal Pay Transparency Rules



The Colorado Department of Labor and Employment Division of Labor Standards and Statistics (the Division) issued its final rules implementing the Equal Pay for Equal Work Act ([the Rules](#)). The Rules take effect January 1, 2021.

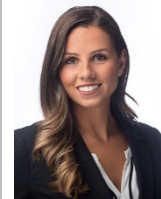
The Division promulgated the Rules to effectuate Part 2 of the Equal Pay for Equal Work Act (the Act), which is intended to promote transparency in pay and opportunities for promotion and advancement to eliminate the gender pay gap. The Rules also set forth the procedure for the filing of complaints, Division investigation, Division determinations, and appeal procedures.

Employers are required to post job openings, including promotions, and to disclose compensation and a general description of all benefits offered to the hired applicant. Postings may include compensation ranges if the ranges are based on employers' good-faith and reasonable estimations of possible compensation.

Employers must make reasonable efforts to "announce, post or otherwise make known all opportunities for promotion to current employees on the same calendar day...." The Rules define "promotional opportunity" to mean an opportunity that exists "when an employer has or anticipates a vacancy in an existing or new position that could be considered a promotion for one or more employee(s) in terms of compensation, benefits, status, duties, or access to further advancement." The Rules make clear that an employer must meet the posting and notice requirement regardless of whether the employer feels its employees are or are not qualified for the position. Postings may detail necessary qualifications, and employers may screen and reject candidates based on those qualifications.



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The Rules include new exceptions to the posting requirements that were not contained in the proposed rules:

- **Confidentiality:** Where a prospective position opening must be kept confidential because the incumbent has not been made aware they will be separated, the employer need not make the opportunity known to all employees. However, if some employees are told of the opportunity, all employees who are “substantially similar” and meet the minimum qualifications must also be advised on that same day.
- **Automatic promotion after trial period:** An employer need not post an opportunity when, by way of an initial offer letter or employer policy, the employer will automatically consider an employee for promotion to a specific position within one year.
- **Temporary, acting, or interim hires:** No posting is required for positions that must be filled on a non-permanent basis. However, the position must be posted if the hire may become permanent.

Perhaps the most significant change from the proposed rules can be found in the geographic limits of posting, as the final Rules are significantly more narrow than initially proposed. An employer is not required to make known opportunities for promotion to employees who work and reside outside of the State of Colorado, and compensation and benefits information need not be included for jobs to be performed entirely outside of Colorado or postings outside of Colorado.

While the Rules only contemplate the requirements of Part 2 of the Act, the Act imposes many complex and substantive mandates upon employers. Sherman & Howard has previously presented on the mandates of the Act. Employers must come into compliance with the Act by January 1, 2021.

(READ MORE: [Colorado's Equal Pay for Equal Work Act](#) | [Webinar Recording: "Colorado's Pay Equity Law"](#))