



COLORADO

Department of
Labor and Employment

NEW STATUTES, NEW RULES

Job Opening Pay & Promotion Posting: Equal Pay for Equal Work Act, SB 19-085 (1/1/21)
Paid Sick Leave: Healthy Families & Workplaces Act (HFWA), SB 20-205 (7/14/20; 1/1/21)
Colorado Overtime & Minimum Pay Standards Order (COMPS Order)

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Director, Division of Labor Standards & Statistics
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1. Equal Pay for Equal Work Act (SB 19-085: Effective 1/1/21)

Part 1: “Wage discrimination prohibited” (8-5-102) -- now broader

- “paying an employee of one sex ... less ... for **substantially similar work, regardless of job title**, based on ... skill; ... effort ... ; and responsibility” prohibited, with **only four specified exceptions**:
 - systems of **seniority, merit, or production** quality or quantity
 - geographic **location**
 - **education, training, or experience**, if related to the work
 - **travel**, if regular & necessary
- wage history -- limit practices seen as perpetuating lower wages for women:
 - can't use an employee's **wage history** to set their wage
 - can't ban employees from **disclosing/discussing** their wages

***No Part 1 rulemaking, or enforcement, by the state.**

1. Equal Pay for Equal Work Act

PART 2 TRANSPARENCY IN PAY AND OPPORTUNITIES FOR PROMOTION AND ADVANCEMENT

8-5-201. Employment opportunities - opportunities for promotion or advancement - pay rates in job listings. (1) AN EMPLOYER SHALL MAKE REASONABLE EFFORTS TO ANNOUNCE, POST, OR OTHERWISE MAKE KNOWN ALL OPPORTUNITIES FOR PROMOTION TO ALL CURRENT EMPLOYEES ON THE SAME CALENDAR DAY AND PRIOR TO MAKING A PROMOTION DECISION.

(2) AN EMPLOYER SHALL DISCLOSE IN EACH POSTING FOR EACH JOB OPENING THE HOURLY OR SALARY COMPENSATION, OR A RANGE OF THE HOURLY OR SALARY COMPENSATION, AND A GENERAL DESCRIPTION OF ALL OF THE BENEFITS AND OTHER COMPENSATION TO BE OFFERED TO THE HIRED APPLICANT.

8-5-202. Record keeping. AN EMPLOYER SHALL 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.

8-5-203. Enforcement - rules. (1) THE DIRECTOR HAS THE POWER TO ADMINISTER, CARRY OUT, AND ENFORCE ALL OF THE PROVISIONS OF THIS PART 2 AND MAY PROMULGATE RULES FOR THAT PURPOSE. THE DIRECTOR SHALL PROVIDE WRITTEN COPIES OF RULES PROMULGATED PURSUANT TO THIS SECTION TO ALL EMPLOYEES AND EMPLOYERS UPON WRITTEN REQUEST.

(2) (a) A PERSON WHO CLAIMS TO BE AGGRIEVED BY A VIOLATION OF SECTION 8-5-201 OR 8-5-202 MAY FILE A WRITTEN COMPLAINT WITH THE

1. Equal Pay for Equal Work Act, Part 2: Pay & Promotion/Advancement Transparency

(A) **Disclose Pay in Job Postings, 8-5-201(2):**

(2) AN EMPLOYER SHALL DISCLOSE IN EACH POSTING FOR EACH JOB OPENING THE HOURLY OR SALARY COMPENSATION, OR A RANGE OF THE HOURLY OR SALARY COMPENSATION, AND A GENERAL DESCRIPTION OF ALL OF THE BENEFITS AND OTHER COMPENSATION TO BE OFFERED TO THE HIRED APPLICANT.

(1) **Is a Posting Required Whenever an Employer Has a Job Opening?**

No: R. 4, Equal Pay Transparency Rules (“EPT”), 7 CCR 1103-13

- text ambiguous

- too significant a change to leave ambiguous

(2) **“Range”: (a) Width? (b) Binding? EPT R. 4.1.2**

A posted compensation range may extend from the lowest to the highest pay the employer in good faith believes it might pay for the particular job, depending on the circumstances. An employer may ultimately pay more or less than the posted range, if the posted range was the employer’s good-faith and reasonable estimate of the range of possible compensation at the time of the posting.

(3) **“Benefits”: Which? EPT R. 4.1.1(C): “wages”; major benefits; others if tax-reported**

a general description of all employment benefits the employer is offering for the position, including health care benefits, retirement benefits, any benefits permitting paid days off (including sick leave, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, but not benefits in the form of minor perks.

1. Equal Pay for Equal Work Act, Part 2: Pay & Promotion/Advancement Transparency

(B) Promotion/ Advancement Transparency, 201(1):

8-5-201. Employment opportunities - opportunities for promotion or advancement - pay rates in job listings. (1) AN EMPLOYER SHALL MAKE REASONABLE EFFORTS TO ANNOUNCE, POST, OR OTHERWISE MAKE KNOWN ALL OPPORTUNITIES FOR PROMOTION TO ALL CURRENT EMPLOYEES ON THE SAME CALENDAR DAY AND PRIOR TO MAKING A PROMOTION DECISION.

(1) Only Those “Qualified”? No

- text: “all current employees”
- legislative intent
- limits of rulemaking
- key: what’s the actual duty?

(2) Permitted Method? Any, if:

- (A) told where to access at work or online, &
- (B) use alternative if needed (e.g., no internet)

(3) Exceptions:

- (A) confidentiality if incumbent being replaced;
- (B) automatic promotion after 1yr or less; or
- (C) temp/acting/interim up to 6mn; post if going permanent

2. Healthy Families & Workplaces Act (“HFWA”), SB 20-205: In Statute

(A) As of 7/14/20: Public Health Emergency (PHE) COVID Leave

- All employers, all industries, any size. *Sole exceptions: fed gov’t; certain railroads*
- Up to 80 hrs, COVID needs *Same as fed law: sick; test; quarantine; family*
- Retaliation/Interference *Adverse action for HFWA right; can’t fire / rehire*

(B) As of 1/1/21:

(1) Accrued: 1 hour per 30 worked, max 48/yr, varied health/safety needs

- phys/mental illness/injury/condit. prevents work, incl **diagnosis/preventive**
- domestic abuse, sex assault, crim harass yields health/reloc./legal/oth need
- family member in categories (1)-(2)
- workplace or child’s school/care closed by gov’t due to PHE

(2) PHE: Same 80 if emergency in 2021 (until 4 wks after PHE)

Employers <16 employees: Exempt in ‘21 (not ‘22-), from 48-hr Accrued, not 80-hr PHE

2. HFWA, SB 20-205: New Additions to Wage Protection Rules, 7 CCR 1103-7 -- Mostly R.3.5

(C) **Accrual:** Rate: “regular rate,” pay/hrs (COMPS 1.8); benefits continue

Hours accrued: all “time worked” (COMPS 1.9), or estimate if can’t track

Rollover, year-to-year, but needn’t allow >48/yr

(D) **Use:** ER may choose **increments 1 hr** or less, else may use **6-min.**

Hours “reasonably anticipated” to work during the leave period:

- (1) **regular schedule**, w/ any **planned departure** from schedule in the period
- (2) if no # can be reasonably anticipated, most recent **month’s average** hrs

Usable immediately, but **ER can correct accrual** if finds errors in hours records

- (1) in a month, (2) in good faith & ordinary course, & (3) tells EE in writing

2. HFWA, SB 20-205: New Additions to Wage Protection Rules, 7 CCR 1103-7 -- Mostly R.3.5

(E) “Reasonable” Documentation, & Only If 4+ Consecutive Workdays EE Would’ve Worked

- Can be as soon as **reasonable after return or separation**
- **Can’t** require documentation for **PHE** (COVID-related) leave
- Any provider or legal document; if none, EE certification
- ER can’t require **specific format** (signature, notarization, etc.), but if **reasonably deem deficient::**
 - (a) notify EE within 7 days; &
 - (b) give EE 7 days to cure

(F) Employer record-keeping

- **Retain** records documenting paid leave info, **2 years**
- **On EE request**, must provide info or docs sufficient to show current paid leave EE has
 - (1) available to use, &
 - (2) already used that year
- ER, any reasonable system (online; paystubs)
- EE, requests **no more than 1/mn** (additional if leave need arises)

2. HFWA, SB 20-205: New Additions to Wage Protection Rules, 7 CCR 1103-7 -- Mostly R.3.5

(G) Overlapping Leave “Types”

- (1) **HFWA: accrued** (48hr/year) & **PHE supplemental** (up to 80 hr per PHE):
EE can use supplemental 1st
- (2) **HFWA & PTO**: PTO policy suffices to comply with HFWA if
 - (a) same amount / pay / purposes / conditions
 - (b) written notice, no extra HFWA if PTO used;
 - (c) **except: if PHE** after PTO exhausted, must still provide supplemental
- (3) **HFWA & CBA**: CBA leave suffices too, if “equivalent” paid leave to HFWA in all respects;
HFWA passage did not require “reopening” existing CBAs

(H) Notices of Rights: Posters & Individual Writing

- (1) **Poster**: conspicuous place @ each worksite; provide copy if “posting” impractical
 - (2) **Notice**: electronic or hard copy notice to each EE
- Required: in EE **language**; use **Division poster** or equiv.; not **minimized** by other posting

2. Colorado Overtime & Minimum Pay Standards Order

CO's broad set of wage & hour rules:

- who gets minimum wage & overtime
- meal & rest breaks
- deductions
- posters & notices to employees

(A) Who's Covered Overtime, Breaks, & Other Rules?

Through 2019: **About ½ of jobs**; confusing list of covered industries & jobs

(construction? manufacturing? janitors?)

Now: **All jobs, except listed exceptions** (partial or full) -- review COMPS R.2

(B) Overtime-Exempt Managers/Professionals

Minimum salary (just to be overtime-exempt):

Salary through 6/20	7/20-12/20	2021	2022	2023	2024	Each Year After 2024
Equal to at least minimum wage for all hours	\$35,568	\$40,500	\$45,000	\$50,000	\$55,000	Prior year's salary, inflation-adjusted

2. Colorado Overtime & Minimum Pay Standards Order

(C) Key Rules to Know

(1) **“Time Worked” that must be paid (R. 1.9):** unless <1 minute,

- putting on / removing required work clothes / gear (but not if worn outside work too)
- receiving or sharing work information
- security or safety screening
- clean-up or other "off the clock" duties
- clocking or checking in or out
- waiting for any of the above

(2) **Rest Breaks:** 10 min./4 hr, rounded:

Work Hrs:	≤ 2	>2 to 6	>6 to 10	>10 to 14	>14 to 18	>18 to 22	>22
#Rest Pds:	0	1	2	3	4	5	6

Paid; if no break, owe extra 10 min. pay

(3) **Meal Breaks:** 30 min. in shift >5 hr, if impractical, allow to eat on-duty


Unpaid IF “completely relieved” of duty & allowed “personal activities”


(303) 318-8441:
MWF, 8:30-4:30
Tu/Th, 8:30-12:30
cdle_labor_standards@state.co.us

Frequently Used Resources:

 File Complaints and Employer Responses

 Appeals & Hearing Decisions

 Recently Proposed & Adopted Rules

 COMPS (Colo. Overtime & Minimum Pay Standards)

 INFOs (fact sheets)

 Posters (incl. translations)

 Español

 Contact Us

Labor Laws the Division Covers:

 Wage & Hour

 Paid Sick Days

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INFO #1: COMPS Order, 7 CCR 1103-1 (2021)

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- **Lodging credits** are allowed for housing if it is: (1) voluntarily accepted by the employee; (2) primarily for the benefit and convenience of the employee and not the employer; (3) recorded in a written agreement; and (4) depending on the type of lodging, no more than \$25 or \$100 per week (or less, depending on the fair market value or actual cost to the employer).
- **Meal credits** are allowed for the cost or value (without profit) of meals that employees voluntarily accept.
- **Uniforms** need not be furnished if they are ordinary, plain, and washable clothing, and a special color, make, pattern, logo, or material is not required. But employers must pay for particular uniforms or special apparel. Employers also cannot require deposits or deduct for ordinary uniform wear and tear.



Thanks!

Questions?

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