

New Pay Equity Law Goes Into Effect January 1, 2021

This is a reminder that on January 1, 2021, Senate Bill 19-085 will take effect. SB 085, commonly referred to as the “Equal Pay for Equal Work Act,” will become effective. Employers are encouraged to visit the Colorado Department of Labor and Employment (CDLE) website <https://cdle.colorado.gov/> for information concerning new mandates to be imposed.

The following primary provisions are:

- Makes amendments to existing law regarding the defenses for a pay discrimination complaint.
- Employers may not inquire as to an applicant's compensation history during the “recruitment” phase of the hiring process. However, employers may ask about a candidate's compensation requirements and can inform candidates of the range of compensation that the employer will pay.
- SB 085 requires all employers to make reasonable efforts to announce or post all “opportunities for promotion” to all employees before making a promotion decision. The act requires an employer to announce to all employees employment advancement opportunities and job openings and the pay range for the openings. The director is authorized to enforce actions against an employer concerning transparency in pay and employment opportunities, including fines of between \$500 and \$10,000 per violation. A “promotional opportunity” means the employer has or anticipates a “vacancy” in an existing or new position that could be considered a promotion for one or more employees in terms of compensation, benefits, status, duties, or opportunities for advancement. The announcement must be to all employees, not just qualified employees. **Employers may state that applications are open to only those with certain qualifications and may screen or reject candidates based on such qualifications.**
- The announcement must include:
 - the wage or salary rate or a compensation range;
 - a general description of bonuses, commissions and other compensation; and
 - a general description of all benefits.
- A compensation range may be from the lowest to the highest compensation the employer in good faith believes it may pay. The employer can deviate from this range as long as it has acted in good faith. There is a narrow exemption for situations in which there is a compelling need for confidentiality (other than avoiding posting requirements), such as when the employer has not informed an incumbent employee of a planned separation and is searching for a replacement.

Employers are encouraged to review the new policy carefully, and seek advice from a qualified employment law professional if any questions remain.