



Equal Pay for Equal Work Act

COLORADO

Colorado's Equal Pay for Equal Work Act ("EPEWA") is scheduled to become effective on January 1, 2021. EPEWA applies to all Colorado employers, whether public or private, and requires employers implement new policies and practices to avoid liability.

THE BASICS:

In general, EPEWA prohibits wage discrimination on the basis of sex (which includes gender identity), or on the basis of sex combined with another protected class e.g. disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry.

Key provisions of EPEWA employers need to be aware of include (1) a potential safe harbor for employers who conduct proactive pay audits, (2) a ban on inquiries related to applicants or employees salary history, (3) required promotion practices and recordkeeping, and (4) mandates on pay transparency.



PROACTIVE PAY AUDITS

Employers found to be in violation of EPEWA could face economic damages (the amount of the difference in pay) and liquidated damages (a potentially equal amount to economic damages). However, if the employer can demonstrate that the violation was in good faith, then no liquidated damages will be awarded.

One way of establishing evidence of good faith is to conduct a pay audit with the goal of identifying and remedying pay disparities. To be relevant, a pay audit must have been conducted within two years of the date of the lawsuit.

Audits should be both comprehensive and thorough. To be comprehensive the audit should look at an employer's entire workforce and to ensure an audit is thorough we recommend employers hire a third-party consultant and legal counsel.

INTERVIEW DON'TS

During the interview and applicant screening process, employer should not seek the wage rate history of a prospective employee, rely on a prior wage rate to determine a prospective employee's compensation, or discriminate against a prospective employee for failing to disclose wage rate history.

PROMOTION PRACTICES AND RECORDKEEPING

When offering a potential promotional opportunity, employers must announce, post, or otherwise make known the details of the promotional opportunity to all current employees on the same day and before a promotion decision is made.

For each employee, employers must keep a record of their job description and wage rate history. These records must be kept for the duration of the employee's employment and for two year after termination/resignation.

PAY TRANSPARENCY

For each job opening, employees must display in the posting (1) hourly or salary compensation or range, (2) a description of all benefits offered, and (3) a description of all other compensation offered.

Additionally, EPEWA prohibits employers from limiting or attempting to limit the ability of employees to compare or otherwise discuss their pay.