

# **COLORADO AGC: Colorado Labor and Employment law Changes for 2021**

Beginning 1 January 2021, a flurry of Labor and Employment laws will become effective in Colorado, creating new obligations for construction employers across the state. Next year will likely include the largest number of changes that Colorado employers have experienced, and construction employers must be ready. This document includes summaries of these new laws and suggests ways to prepare.

## **Equal Pay for Equal Work Act**

[Act](#)

[Rules](#)

[FP Article](#)

**Effective Date:** 1 January 2021

### **New Requirements**

Colorado's Equal Pay Act will prohibit an employer from:

- Paying one employee a wage rate less than the rate paid to an employee of a different sex (or sex plus another protected status) for substantially similar work.
- Asking about or relying on an applicant's salary history.
- Restricting employees from discussing their compensation with other employees.
- Requiring an employee to sign a waiver or other document that prohibits the employee from disclosing his or her wage rate.
- Discriminating or retaliating against an applicant who fails to disclose his or her wage history.

"Substantially similar work" is to be determined without regard to job title and based on a composite of skill, effort (which may include consideration of shift work), and responsibility.

Colorado's Equal Pay Act will require employers to announce to all employees any employment advancement opportunities, job openings, and the pay range for the job openings. Similarly, employers must maintain records of job descriptions and wage-rate history for current employees and — for a period of two years after the employment ends — former employees. Employers that violate Colorado's Equal Pay Act may be liable for economic damages, equitable relief, and the employee's reasonable attorneys' fees. And employers that violate the job posting requirements may be required to pay a fine of between \$500 and \$10,000 for each violation.

Concerning the job-posting requirements, the Department states that all job postings — not limited to promotions — must disclose the following information:

- The hourly or salary compensation or range of hourly or salary compensation for each position and
- A general description of all the benefits and other compensation offered to the applicant.

The hourly or salary compensation (or range) must include a general description of any bonuses, commissions, or other forms of compensation that the employer is offering for the job. A posted compensation range may extend from the lowest to the highest pay the employer in good faith believes it might pay for a job. Employers may ultimately pay more or less than the posted range if the posted range was the good-faith and reasonable estimate of the range of possible compensation at the time of the posting.

The general description of employment benefits must include “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; as well as other benefits that must be reported for federal tax purposes; but not benefits in the form of minor perks.”

The Department also discusses an employer’s obligation to make reasonable efforts to announce, post, or otherwise make known all promotional opportunities to current employees.

- A communication announcing a promotional opportunity must be in writing and include the job title, compensation and benefits, and the means by which employees may apply for the position.
- An employer makes “reasonable efforts” if it uses the employer’s regular and customary method of communication with its employees and, for any employees not reachable by that method, uses an “effective alternative method to notify those employees.”
- If the employer elects to post promotional opportunities rather than providing notice to each employee, the posting must be displayed in each establishment where employees work, in a conspicuous location frequented by employees where it may be easily read during the workday.

Employers must notify all employees of all promotional opportunities and may not limit notice to those employees it deems qualified for the position. But employers may state that applications are open to only those with certain qualifications. Employers must provide notice as follows:

- **Colorado employer with a Colorado job:** If the employer accepts applicants from outside Colorado, it must notify all its employees in any state for whom the job would be a promotion.
- **Colorado employer with a remote job:** If an employer has a job that can be performed anywhere (*g.*, a remote position that could be performed by a Coloradoan), the employer must notify all its Colorado employees for whom the job would be a promotion.
- **Colorado employer with a job outside of Colorado:** If the Colorado employer has a job that must be performed outside Colorado and the employer accepts Colorado applicants, it must notify all Colorado employees for whom the job would be a promotion.

Promotional opportunities must include the compensation and benefits in the postings unless the posting is entirely outside Colorado or the job will be performed entirely outside Colorado.

### **What you should do**

- You should review your employment policies and procedures now. The policies should include language stating that your organization does not discriminate based upon any protected category with respect to the payment of wages.

- Internal procedures should clearly state that job postings, including opportunities for promotion, must include the job title, compensation and benefits (as discussed above), and explain how employees may apply for the position. Internal procedures also might include the method of communicating promotional opportunities to employees.
- You must update all job postings to include the compensation and benefits (as discussed above). Job postings should also include a disclaimer related to the posted compensation range.

## **Healthy Families and Workplaces Act**

### [Act](#)

### [Guidance](#)

### [FP Article](#)

**Effective Date:** 1 January 2021 (earlier for COVID-19 leave)

### **New Requirements**

#### *Paid Sick Leave*

The HFWA requires employers with 16 or more employees to provide paid sick leave to their employees, accrued at one hour of paid sick leave for every 30 hours worked, up to a maximum of 48 hours. Beginning January 1, 2022, the Act applies to all employers regardless of size.

An employee:

- Begins accruing paid sick leave when the employee's employment begins
- May use paid sick leave as it is accrued and
- May carry forward and use paid sick leave in subsequent calendar years that is not used in the year in which it is accrued.

If an employer already has a more generous PTO, vacation, or sick leave policy (meaning providing at least 48 hours of sick leave), the employer does not need to provide additional leave. But the accrual must be as generous as leave that the HFWA requires, be available immediately, and apply to part-time employees.

Additionally, while the HFWA refers to paid sick leave as “wages,” it specifically provides that unused paid sick leave need not be paid out at termination. Any unused paid sick days must be reinstituted if the employee is rehired within six months of termination. The paid sick leave also carries over to any successor employer.

The HFWA only allows employers to request documentation for leave longer than four consecutive days.

#### *Public Health Emergency Paid Sick Leave*

The HFWA also requires an employer to provide its employees an additional amount of paid sick leave during a public health emergency in an amount based upon the number of hours the employee works. There is no documentation requirement for an employee to take this leave to self-isolate for a positive

diagnosis, seeking medical treatment with respect to a disease, caring for a family member or a child, or the inability to work due to pre-existing health conditions.

The HFWA also explains how the amount of leave will be calculated, which is similar the leave calculation in the Families First Coronavirus Relief Act.

#### *Anti-Retaliation Provisions*

The Act prohibits an employer from retaliating against an employee who uses the employee's paid sick leave or otherwise exercises the employee's rights under the Act. Employees who believe their rights under the Act were violated may file a charge with the Division of Labor and bring a civil action within two years if they exhaust all administrative remedies.

#### **What you should do**

- Employers must provide employees with a written notice of their rights. You should work with your counsel to develop a compliant form and train your managers on the proper use of the form. Before the new year, you should also plan to revise your policies and train your human resources staff and managers on the new requirements.
- You will also need to display a poster detailing employees' rights under the Act that the Division of Labor will release before the end of 2020.
- Employers must also retain records documenting by employee the hours worked, paid sick leave accrued, and paid sick leave used. This is a critical requirement because you must make such records available to the Division of Labor upon request.

### **COMPS #37**

#### **[Rules](#)**

**Effective Date:** 1 January 2021

#### **New Requirements**

The COMPS #37 order modifies COMPS #36 in a few ways. COMPS #37:

- Includes HFWA paid sick leave as wages and the HFWA's definition of employee, protecting employee rights to Paid Sick Leave under the HFWA.
- Revises the professional employee minimum wage exception. It expands the definition to include employees who work in fields of "invention, imagination, originality or talent in a recognized field of artistic or creative endeavor." It also specifies that any employee under this must have their primary duty involve "the consistent exercise of discretion and judgment."
- Changes the definition of Drivers and Driver's Helpers to exempt them from overtime and rest and meal period requirements, no longer requiring those employees to cross state lines to be exempt. Instead, these workers are exempt if (1) the Federal Motor Carrier Safety Act covers them and exempts them from the Fair Labor Standards Act, (2) they operate a commercial motor vehicle that requires a commercial driver's license, and (3) they are paid at least the equivalent of

50 hours at the Colorado minimum wage with overtime, i.e., \$677.60 per week in 2021, regardless of whether the pay is hourly, salaried, piece rate, or on another basis.

- Although not a change from COMPS #36, the salaried exemptions increase to \$778.85 per week (\$40,500 per year) for 2021.
- The Colorado minimum wage increases to \$12.32 an hour.

#### **What you should do**

- Review your workers that are salaried and ensure that they continue to qualify for an exemption and pay overtime and minimum wage to those who do not.
- Audit wages and pay all employees at least \$12.32 per hour.
- Consider whether the changes for drivers and creative employees exempt employees from the provisions of COMPS #37 that were not exempted before.
- Update policies to include these altered definitions and pay rates.

### **Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving (Colorado Warning”) Rules**

#### **[Rules](#)**

**Effective Date:** 1 January 2021

#### **New Requirements**

These new rules implement the whistleblower and worker PPE rights law, the Public Health Emergency Whistleblower Act, and the similar provisions that protect employee rights under the HFWA. Both laws have similar provisions on giving employees notices of rights, interference with rights, and retaliation prohibitions.

#### **What you should do**

The employer requirements focus upon the HFWA and PHEW because in addition to employee guidelines, employers must provide written notice and posters to employees:

- A poster informing all employees and workers of their rights under HFWA and PHEW must be posted, displayed, or otherwise provided by employers and principals, as required by C.R.S. § 8-13.3-408 (HFWA), and C.R.S. § 8-14.4-103 (PHEW).
- A written HFWA notice must be provided to each employee, in addition to the poster requirement.

Although these guidelines are effective beginning 1 January 2021, technically the laws already require postings. Check that you posted the required notices and post them if they are not posted. Do not discourage employees or retaliate against them for exercising the rights that Colorado laws guarantee them, especially concerning PPE and sick leave. If you have an investigation or complaint occur, remember that these rules now define the process.

## **Direct Investigation Rules and Wage Protection Rules**

**Effective Date:** 1 January 2021

### **New Requirements**

These are existing rules that were amended to include the HFWA paid sick days and other statutes.

### **What you should do**

Do not discourage employees or retaliate against them for exercising the rights that Colorado laws guarantee them. If you have an investigation or complaint occur, remember that these rules now define the process.

## **Secure Savings Program**

### **Act**

### **FP Article**

**Effective Date:** TBD 2021

### **New Requirements**

Colorado enacted the Colorado Secure Savings Program, which will require employees with 5 or more employees to sponsor a 401(k) program for employees or facilitate employee enrollment in a state program that will likely deposit 5% of employee wages into an IRA. The law does not require employers to contribute to the program but failing to comply with program requirements can result in a fine of up to \$100 per employee and up to \$5,000 total in a year.

Enforcement will be delayed for at least one year after the program's effective date. The state has not yet issued an effective date but expects that the program will begin in 2021.

### **What you should do**

- Ensure your payroll system is ready for the program. If you work with a third-party payroll administrator, begin communicating with them immediately so they are aware of this upcoming obligation.
- Consider whether implementing a retirement plan (rather than participating in the program) makes sense for your workforce.
- The program will design and distribute An “employer implementation package” (with model disclosures) and an “employee information packet” (with an explanation of how to opt out).

## **Paid Family and Medical Leave Insurance Program**

### **FP Article**

**Effective Date:** 1 January 2024

### **New Requirements**

In the 2020 election, Colorado voters passed Proposition 118 to create a state-run program that provides Paid Leave of up to 12 weeks for all employees. The law will increase payroll taxes on employees and employers with 10 or more employees to fund the program. Employers must remit taxes beginning on 1 January 2023. Leave benefits do not begin until 1 January 2024.

### **What you should do**

The new law does not require any action of employers until 2023. But you can proactively prepare by creating a timeline for implementing this new payroll tax, communicating this new policy to your employees, and providing procedures and updating policies for 2024.