

LAW &amp; POLICY GROUP

**GRIST**

## COLORADO'S NEW PAY EQUITY LAW TAKES EFFECT IN 2022

*By Mercer's Fiona Webster and Stephanie Rosseau  
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Starting Jan. 1, 2022, Colorado's [Equal Pay for Equal Work Act](#) (SB 19-085) will prohibit all employers from discriminating because of sex (including gender identity) — alone or with another protected status — by paying less for substantially similar work in terms of skill, effort and responsibility. Every employer with any employees in the state will have to comply with the law.

### HIGHLIGHTS OF THE ACT

The law aims to increase pay equity and transparency, imposes new notice and recordkeeping requirements, and encourages companies to regularly self-audit their compensation practices.

#### **Pay Equity, Transparency Protections**

Employees are protected against sex-based pay discrimination for work requiring similar skill, effort and responsibility. However, the law permits pay differences arising from:

- A seniority system
- A merit system
- A system that measures earnings by quantity or quality of production
- The geographic location where the work is performed
- Education, training, or experience reasonably related to the work
- Travel that is a regular and necessary condition of the job

Employers can't prevent employees from discussing their own compensation information with other employees or require employees to sign a waiver preventing them from discussing their compensation.

The law also prohibits employers from asking about job candidates' wage history or relying on wage history to determine a wage rate. Employers can't discriminate or retaliate against a prospective employee for failing to disclose wage history.

### **Job-Posting Notices and Recordkeeping**

New notice requirements will help current and prospective employees learn about job opportunities:

- Employers will have to make reasonable efforts to “announce, post, or make known all opportunities for promotion” to all current employees on the same calendar day.
- Each job-vacancy posting will have to disclose the hourly wage or salary, or the hourly wage or salary range, along with a general description of all benefits and other compensation offered.

Employees can report posting violations to the Colorado Department of Labor and Employment within one year of learning of the violation.

Employers must keep records of job descriptions and wage history for each employee while employed and for two years after termination. Employers could face civil fines of US \$500 to \$10,000 per violation of the job-posting or recordkeeping requirements.

### **Enforcement**

The Colorado Department of Labor and Employment will enforce the law, investigate complaints and establish a voluntary mediation service. Employees can also pursue private civil actions and recover up to three years of back pay and double damages.

Employers can limit liability for damages by showing the act or omission causing the pay violation was made in good faith. In particular, employers that proactively self-evaluate their compensation practices for disparities could use those audits as a partial defense against a pay equity claim.

## **RELATED RESOURCES**

### **Non-Mercer Resources**

- [SB 19-085](#), Equal Pay for Equal Work Act (Colorado Legislature, May 22, 2019)
- [Press Release](#) on Signing of SB 85 (Colorado Governor, May 22, 2019)

### **Mercer Law & Policy Resources**

- [Maine Employers Can't Ask Job Seekers About Salary History](#) (May 1, 2019)
- [Cincinnati Adopts Salary History Ban](#) (April 8, 2019)

### Other Mercer Resources

- [Equal Pay or Equal Representation? Why the Distinction Matters](#) (April 1, 2019)
- [When First Isn't Good Enough: How To Enable All Women To Win](#) (March 4, 2019)
- [Webcast Replay: Closing Your Gender Pay Gap? What To Do Next](#) (May 24, 2018)
- [Achieving Pay Equity: How Analytics Has Evolved To Support True Progress](#) (April 2, 2018)
- [Gender Pay Equity: A Global Examination of Drivers](#) (May 11, 2017)
- [When Women Thrive](#)

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