

Colorado Bill Amends Equal Pay for Equal Work Act and Clarifies Employer Obligations

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On May 10, 2023, the Colorado legislature passed Senate Bill 23-105 (the “Amendment”), which amends Colorado’s Equal Pay for Equal Work Act, to clarify certain existing employer obligations and add new obligations. Governor Jared Polis is expected to sign the Amendment into law, which will take effect on January 1, 2024.

The Amendment begins by defining several new terms:

- “Job opportunity” is defined as “a current or anticipated vacancy for which the employer is considering a candidate or candidates or interviewing a candidate or candidates or that the employer externally posts,” but does not include a “career development” or “career progression.”
- “Career development” is defined as “a change to an employee’s terms of compensation, benefits, full-time or part-time status, duties, or access to further advancement in order to update the employee’s job title or compensate the employee to reflect work performed or contributions already made by the employee.”
- “Career progression” means “a regular or automatic movement from one position to another based on time in a specific role or other objective metrics.”
- “Vacancy” is defined as “an open position, whether as a result of a newly created position or a vacated position.”

The Amendment requires an employer to make reasonable efforts to “announce, post, or otherwise make known” job opportunities internally on the same calendar day as it posts job opportunities externally and, in all events, before the employer selects a candidate for the position. When announcing a job opportunity, an employer must disclose (1) the hourly or salary compensation, or range thereof, (2) a general description of the benefits or other compensation applicable to the job opportunity, and (3) the date the application window will close.

If an employer is physically located outside of Colorado and has fewer than fifteen (15) employees in Colorado who all work remotely, then the employer is required to provide notice of only remote job opportunities, an obligation that expires on July 1, 2029.

Under the Amendment, once an employer selects a candidate to fill a job opportunity, the employer must make reasonable efforts to announce to employees with whom the selected candidate is expected to work, the candidate’s: (1) name; (2) former job title, if selected while already employed by the employer; and (3) new job title. Additionally, the employer must disclose information on how these employees may demonstrate interest in similar job opportunities in the future, including identifying individuals or departments to whom the employees can express interest in similar job opportunities. This announcement must be made within thirty (30) days of that candidate beginning work in the position.

Moreover, for positions with career progression, an employer must disclose and make available to all eligible employees: (1) the requirements for career progression, and (2) each position’s terms of compensation, benefits, full-time or part-time status, duties, and access to further advancement.

The Amendment provides for back pay as damages for any violation of the Amendment, limited to a period of six (6) years.

No later than July 1, 2024, the Colorado Division of Labor Standards and Statistics must promulgate regulations to implement the Amendment. To prepare for the implementation of the Amendment, Colorado employers (as well as non-Colorado employers

with remote workers in Colorado) should evaluate their external and internal job posting process to ensure compliance with the Amendment and any forthcoming regulations.

If you have any questions about this article, please contact **Alex C. Weinstein** at aweinstein@vedderprice.com, **Gaby M. Mercurio** at gmercurio@vedderprice.com or the Vedder Price lawyer(s) with whom you normally work.

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