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STATE

Littler on

Colorado Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Colorado employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Colorado, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

Colorado has entered into a partnership with the U.S. Department of Labor, Wage and Hour Division to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts to reduce instances of misclassification of employees as independent contractors.[5]

Rebuttable Presumption of an Independent Contractor Relationship

Colorado Workers' Compensation Act (WCA). The WCA recognizes that parties can create a rebuttable presumption of an independent contractor relationship.[6] The WCA definition of *employee* provides in relevant part:

> [A]ny individual who performs services for pay for another shall be deemed to be an employee, irrespective of whether the common-law relationship of master and servant exists, unless such individual is free from control and direction in the performance of the service, both under the contract for performance of service and in fact and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed.[7]

This definition encompasses criteria "A" (control) and "C" (customarily engaged) of the ABC test. The WCA sets forth nine factors that are relevant to proving an individual is free from control (criterion A) by a preponderance of the evidence.[8] To prove independence, it must be shown that the person for whom the services are performed does not:

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[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] The Memorandum of Understanding is available at https://www.dol.gov/whd/workers/MOU/co.pdf and an amendment at https://www.dol.gov/whd/workers/MOU/co_1.pdf.

[6] COLO. REV. STAT. § 8-40-202(2)(a).

[7] COLO. REV. STAT. § 8-40-202(2)(a).

[8] COLO. REV. STAT. § 8-40-202(b)(I).

1. require the individual to work exclusively for the person from whom services are performed, except that the individual may choose to work exclusively for such person for a finite period of time specified in the document;
2. establish a quality standard for the individual, except that the person may provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;
3. pay a salary or at an hourly rate instead of at a fixed or contract rate;
4. terminate the work of the service provider during the contract period unless such service provider violates the terms of the contract or fails to produce a result that meets the specifications of the contract;
5. provide more than minimal training for the individual;
6. provide tools or benefits to the individuals, except that materials and equipment may be supplied;
7. dictate the time of performance, except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established;
8. pay the service provider personally instead of making checks payable to the trade or business name of such service provider; and
9. combine the business operations of the person for whom service is provided in any way with the business operations of the service provider instead of maintaining all such operations separately and distinctly.[9]

A written agreement may be used to create a rebuttable presumption of independent contractor status by demonstrating the existence of the applicable factors set forth above.[10] The agreement must be signed by both parties and notarized, and must disclose in large, bold, or underlined font a statement that the independent contractor is not entitled to workers' compensation benefits and is obligated to pay federal and state income tax on any moneys earned pursuant to the contractual relationship.[11] The Colorado Division of Workers' Compensation cautions that "even a contract does not determine if someone is an independent contractor or employee. The actual working conditions are what matter."[12]

Colorado Employment Security Act (CESA). The CESA similarly recognizes that parties can create a rebuttable presumption of independent contractor relationship. The CESA definition of *employment* is nearly identical to the definition in the WCA and encompasses criteria "A" (control) and "C" (customarily engaged) of the ABC test.[13] The CESA sets forth nine factors that parallel those in the WCA (listed above) and that are relevant to proving an individual is free from control (criterion A) by a preponderance of the

[9] COLO. REV. STAT. § 8-40-202(b)(II) (noting that "[t]he existence of any one of these factors is not conclusive evidence that the individual is an employee"). Further, the Colorado Court of Appeals has held that independent contractor status does not require all of the nine listed criteria to be proven. Instead, the nine criteria are evaluated using a balancing test. *Nelson v. Industrial Claim Appeals Office of Colo.*, 981 P.2d 210, 211-12 (Colo. App. 1998).

[10] COLO. REV. STAT. § 8-40-202(b)(III).

[11] COLO. REV. STAT. § 8-40-202(2)(b)(IV).

[12] Colorado Dep't of Labor & Emp't, Div. of Workers' Comp., *Employer Guide*, at 17 (2020), *available at* https://codwc.app.box.com/v/EmployerGuide.

[13] COLO. REV. STAT. § 8-70-115(1)(b).

evidence.[14] A written agreement may be used to create a rebuttable presumption of independent contractor status by demonstrating the existence of the applicable nine factors.[15] The agreement must be signed by both parties and must disclose in large, bold, or underlined font a statement that the independent contractor is not entitled to unemployment insurance benefits unless coverage is provided by the independent contractor, and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contractual relationship.[16]

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	Colorado Department of Regulatory Agencies, Civil Rights Division	There are no relevant statutes or court decisions concerning independent contractor status.
Income Taxes	Department of Revenue, Income Tax Division	Internal Revenue Service (IRS) test used as guidance.[17]

[14] COLO. REV. STAT. § 8-70-115(1)(c); *see also Industrial Claim Appeals Office v. Softrock Geological Servs., Inc.*, 325P.3d 560, 564-65 (Colo. 2014) (holding that the question of whether an individual is "customarily engaged" is a question of fact based on a totality of the circumstances and that the nine factors set forth in the CESA do not constitute a test, but rather provide guidance that should be considered along with other information about the working relationship); *Visible Voices, Inc. v. Industrial Claim Appeals Office*, 328P.3d307, 310-12 (Colo. App. 2014) (holding that "a multi-factor approach is the proper framework for determining whether a worker is customarily engaged in an independent trade, occupation, profession, or business," that no one factor in the statute is dispositive, and that "[t]he statute does not limit what factors are relevant to the inquiry").

[15] COLO. REV. STAT. § 8-70-115(1)(c)-(d)(1)(2).

[16] COLO. REV. STAT. § 8-70-115(d)(2).

[17] *Wages* are given the same meaning as under section 3401 of the federal Internal Revenue Code. COLO. REV. STAT. § 39-22-604(2)(c). Thus, to determine whether federal wages (and thus Colorado wages and employer/employee status exist), persons for whom services are provided must look to federal income tax case law and Internal Revenue Service (IRS) guidance for determining whether a service provider is an employee. Under Colorado tax law, *employee* is defined, in part, as:

every individual who is a resident or domiciled in the state of Colorado performing services for an employer, either within or without or both within and without the state of Colorado, or any individual performing services within the state of Colorado, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee…

COLO. REV. STAT. § 39-22-604(2)(a). The definition also includes officers of corporations and individuals, including elected officials, performing services for the U.S. government, the state of Colorado, or any county, city, municipality, or political subdivision thereof. Individuals who are not a resident or domiciled in the state of Colorado and those who participate in a motion picture, television production, or television commercial for less than 120 days during any calendar year are excluded from the definition. COLO. REV. STAT. § 39-22-604(2)(a). *Employer* is defined as an individual "transacting business in or deriving any income from sources within [Colorado] for whom an individual performs or performed any services… who has control of the payment of wages for such services or is the officer, agent, or employee of the person having control of the payment of wages." COLO. REV. STAT. § 39-22-604(2)(b).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Unemployment Insurance: Colorado Employment Security Act	Department of Labor and Employment, Division of Unemployment Insurance	Statutory test. Test focuses on right to control and whether the individual is customarily engaged in an independent trade, occupation, profession, or business (criteria "A" and "C" of the ABC test).[18] As discussed above, a rebuttable presumption of independent contractor relationship may be created if the parties execute a written agreement demonstrating the existence of the relevant factors showing independence by a preponderance of the evidence.[19]
Wage & Hour Laws: Colorado Wage Claim Act	Department of Labor and Employment, Division of Labor	Statutory test focusing on the right to control and whether the individual is customarily engaged in an independent trade, occupation, profession, or business (criteria "A" and "C" of the ABC test).[20]
Workers' Compensation	Department of Labor and Employment, Workers' Compensation Division	Statutory test focusing on the right to control and whether the individual is customarily engaged in an independent trade, occupation, profession, or

[18] COLO. REV. STAT. § 8-70-115(1)(b). The Division of Unemployment Insurance has published guidance on ensuring proper worker classification. This guidance is available at https://www.colorado.gov/pacific/cdle/ensure-proper-worker-classification and https://www.colorado.gov/pacific/cdle/independent-contractors.

[19] COLO. REV. STAT. § 8-70-115(1)(c)-(d)(1)(2).

[20] The Colorado Wage Claim Act defines an *employee* as any person, including a migratory laborer, performing labor or service for an employer's benefit. To determine whether a worker is an employee, relevant factors include: (1) the degree of control the employer may or does exercise over the person; and (2) the degree to which the person performs work that is the employer's primary work. However, an individual primarily free from control and direction in performing the service – both under the contract and in fact – who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an employee. COLO. REV. STAT. § 8-4-101(5). Thus, under the Act, the definition of independent contractor is conjunctive: the contractor must be free from control and direction (traditionally "A" under the ABC test) and the contractor must be customarily engaged in an independent trade, occupation, profession, or business (traditionally "C" under the ABC test). Despite the statute's conjunctive definition however, in *Hyland v. Pikes Peak Capital Corp.*, the Colorado Court of Appeals focused on "control" without any discussion of whether the independent contractor was "customarily engaged in" any other activity in determining that a real estate salesman was an independent contractor. 714 P.2d 914, 916 (Colo. App. 1985). Although the statutory groundwork underlying this case has shifted since it was decided, the Colorado Court of Appeals's analysis is still instructive.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		business (criteria "A" and "C" of the ABC test).[21] As discussed above, a rebuttable presumption of independent contractor relationship may be created if the parties execute a written agreement demonstrating the existence of the relevant factors showing independence by a preponderance of the evidence.[22]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Colorado does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the

[21] COLO. REV. STAT. § 8-40-202(2)(a)-(b)(I), (II).

[22] COLO. REV. STAT. § 8-40-202(2)(a)-(b).

simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[23]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[24] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[25]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Private Employers*

Colorado employers should follow federal law requirements regarding employment eligibility and verification. Effective August 10, 2016, Colorado eliminated its state-mandated employment verification standards, including all of its state affirmation and retention requirements. The legislature determined that the requirements were redundant because employers are already required to ensure each employee's eligibility via Form I-9 under federal law.[26]

Employers that obtain copies of identity documents in Colorado must comply with the federal retention requirements (see **3.1(b)(i)** for the federal record-keeping and retention requirements). The Colorado Department of Labor and Employment (CDLE) is authorized to request documentation demonstrating compliance with the federal employment verification requirements under Form I-9.[27] The Department may also conduct random audits to ensure compliance with the I-9 obligations.

1.2(b)(ii) *State Contractors*

Effective July 1, 2022, Colorado eliminated its state-mandated employment verification standards for state contractors.[28]

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[23] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

[24] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[25] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

[26] COLO. REV. STAT. § 8-2-122.

[27] COLO. REV. STAT. § 8-2-122(3) (citing 8 U.S.C. § 1324a(b)).

[28] S.B. 21-199 (COLO. 2021), repealing COLO. REV. STAT. §§ 8-17.5-101 *et seq.*

1.2(b)(iii) *State Enforcement, Remedies & Penalties*

Private Employers. An employer that is not in compliance with the federal employment verification requirements that all new hires conform with the I-9 requirements[29] or that is unable to prove compliance, must repay all money received as an economic development incentive within 30 days of receiving a notice of noncompliance from the Economic Development Commission.[30]

While additional state-level fines remain in the regulations, they conform to the old employment verification law repealed in August 2016. Moreover, the 2016 amendment eliminated the CDLE's authority to issue fines.[31]

State Contractors. Effective July 1, 2022, Colorado eliminated its state-mandated employment verification standards for state contractors.[32]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[33] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

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[29] 8 U.S.C. § 1324a(b).

[30] COLO. REV. STAT. § 24-46-105.3. The economic development incentive is a fund available to both public and private persons and entities. COLO. REV. STAT. § 24-46-105.

[31] H.B. 16-1114, 70th Gen. Assembly, 2d. Reg. Sess. (Colo. 2016).

[32] S.B. 21-199 (COLO. 2021), repealing COLO. REV. STAT. §§ 8-17.5-101 *et seq.*

[33] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Colorado places no statutory restrictions on a private employer's use of arrest records. However, the Colorado Civil Rights Division (CCRD) has published agency guidance stating that employers may not ask questions about arrests that are not strictly job-related because questions in this area may lead to a discriminatory inference.[34] As discussed under the ban-the-box content, however, Colorado has enacted the Chance To Compete Act, which will prohibit pre-hire inquiries into an applicant's criminal history, including arrest records, subject to very limited exceptions.[35]

There are certain situations where employers are specifically authorized or even required by law to check the criminal history of applicants. For example, public or private nonprofit or volunteer organizations may use fingerprints to access, through the Colorado Bureau of Investigation, records concerning the indictment or conviction for certain crimes of persons who seek employment or volunteer work if such work involves or may involve the unsupervised access to children, the elderly, or individuals with disabilities for whom the organization provides care. Businesses may conduct criminal records checks before hiring private security guards, and nursing care facilities are required to check the arrest and conviction records of all job applicants.[36]

Additionally, it is an unfair labor practice for an employer to require a potential employee to provide pre-employment application information regarding their *record of civil or military disobedience*, unless the record resulted in a plea of guilty or a conviction by a court of competent jurisdiction.[37] An employer may be held civilly liable for damages for causing injury to any person because of an unfair labor practice.[38]

Ban-the-Box Law. Colorado's Chance To Compete Act applies to all employers.

An employer is prohibited from:

- stating in an advertisement for an employment position that a person with a criminal history may not apply for the position;
- stating on any form of job application, including an electronic application, that a person with a criminal history may not apply for the position; or

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[34] Colorado Dep't of Regulatory Agencies, Colo. Civil Rights Div., *Pre-employment Inquiries*, *available at* https://drive.google.com/file/d/0B2RqMM3zUzjtNTdZdklGV2tDS3c/view.

[35] COLO. REV. STAT. § 8-2-130. The Colorado Chance to Compete Act specifically "does not create a protected class under [Colorado's Anti-Discrimination Act]." COLO. REV. STAT. § 8-2-130(5).

[36] *See* COLO. REV. STAT. §§ 24-33.5-415.4, 24-72-305.3, and 25-1-124.5.

[37] COLO. REV. STAT. § 8-3-108(1)(m).

[38] COLO. REV. STAT. § 8-3-121.

- inquiring into or requiring disclosure of an applicant's criminal history on an initial written or electronic application form.[39]

Criminal history means the record of arrests, charges, pleas, or convictions for any misdemeanor or felony at the federal, state, or local level.[40]

An employer may obtain a publicly available criminal background report on an applicant at any time.[41]

The Act sets forth some limited exceptions to the prohibitions on seeking information on an applicant's criminal history records. These prohibitions do not apply to a position being offered or advertised if:

- federal, state, or local law or regulation prohibits employing a person with a specific criminal history for that position;
- the employer has designated the position to participate in a federal, state, or local government program to encourage the employment of people with criminal histories; or
- the employer is required by federal, state, or local law or regulation to conduct a criminal history record check for that position, regardless of whether the position is for an employee or an independent contractor.[42]

1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

Colorado places no statutory restrictions on a private employer's use of conviction records. However, as discussed in **1.3(a)(ii)**, the Chance To Compete Act prohibits pre-hire inquiries into an applicant's criminal history, including both arrest and conviction records. In addition, the CCRD cautions that it is only permissible for employers to inquire about actual convictions that are substantially related to an applicant's ability to perform a specific job, and any such question must be addressed to all applicants. Otherwise, the inquiry may lead to a discriminatory inference.[43]

1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

A Colorado employer is prohibited from requiring an applicant to disclose any information contained in a sealed or expunged record in any application, interview, or in any other way. An employer may not deny any application solely because an applicant has refused to disclose criminal records information that has been sealed.[44]

A job applicant need not, in answer to any question concerning criminal records information or conviction records that have been sealed or expunged, include a reference to or information concerning the sealed

[39] COLO. REV. STAT. § 8-2-130(3)(a).

[40] COLO. REV. STAT. § 8-2-130(1)(a).

[41] COLO. REV. STAT. § 8-2-130(3)(a).

[42] COLO. REV. STAT. § 8-2-130(4).

[43] Colorado Dep't of Regulatory Agencies, Colo. Civil Rights Div., *Pre-employment Inquiries*, *available at* https://drive.google.com/file/d/0B2RqMM3zUzjtNTdZdklGV2tDS3c/view.

[44] COLO. REV. STAT. §§ 24-72-702(1)(f)(I), 24-72-703(4)(d)(I).

information and may state that no such action has ever occurred.[45] A person whose criminal records have been sealed or expunged may properly respond to inquiries by stating that no such records exist.[46]

Juvenile Records. An individual whose juvenile records have been expunged may properly indicate that no such records exist.[47]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[48] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[49] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Pre-employment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify*

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[45] COLO. REV. STAT. §§ 24-72-702(1)(f)(I), 24-72-703(4)(d)(I).

[46] COLO. REV. STAT. §§ 24-72-702(d), 24-72-703(4)(b).

[47] COLO. REV. STAT. § 19-1-306(1).

[48] 15 U.S.C. §§ 1681 *et seq*.

[49] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[50]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Consumer Credit Reporting Act. Colorado has enacted a mini-FCRA law. Under the Colorado Consumer Credit Reporting Act,[51] prior to requesting a credit report, an employer must:

1. inform the applicant or employee that a credit report may be requested in connection with their application for employment; and
2. obtain the individual's written consent.[52]

Employment Opportunity Act. Colorado's Employment Opportunity Act,[53] which applies to private-sector employers with four or more employees, also restricts an employer's use of credit information and history in taking adverse action against an applicant or employee.

If an employer wholly or partly relies on credit information to take adverse action against an applicant or employee whose information was obtained, the employer must disclose that fact and the particular information relied upon to the applicant or employee. For an applicant, *adverse action* means denial of employment. For applicants, the disclosure should be made in the same medium in which the application was made.[54]

Employers are also restricted in their ability to use "consumer credit information"[55] for *employment purposes*, which is defined broadly to include "evaluating a person for employment, hiring, promotion, demotion, reassignment, adjustment in compensation level, or retention as an employee" unless use of the information is limited to the narrow category of positions set forth in the statute.[56] An employer cannot use consumer credit information for employment purposes unless it is "substantially related to the employee's current or potential job."[57]

An employer or its agent, representative, or designee cannot require, as a condition of employment, that an employee, which includes an applicant for employment, consent to a request for a credit report that contains information about the employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers unless:

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[50] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

[51] COLO. REV. STAT. §§ 5-18-101 *et seq*.

[52] COLO. REV. STAT. § 5-18-104.

[53] COLO. REV. STAT. § 8-2-126.

[54] COLO. REV. STAT. § 8-2-126(2)(a)(I), (4).

[55] *Consumer credit information* means a written, oral, or other communication of information bearing on an applicant's or employee's "creditworthiness, credit standing, credit capacity, or credit history" or an individual's credit score. However, the term does not include the "address, name, or date of birth of an employee associated with a social security number." COLO. REV. STAT. § 8-2-126(2)(b). The Colorado Department of Labor and Employment's regulations to implement the Employment Opportunity Act explain that consumer credit information also excludes income or work history verification. 7 COLO. CODE REGS. § 1103-18 (r. 2.6).

[56] COLO. REV. STAT. § 8-2-126(2)(f), (3)(a).

[57] COLO. REV. STAT. § 8-2-126(3)(a)(III).

1. the employer is a bank or financial institution, in which case the law does not limit the categories of employees whose credit can be checked;
2. the report is required by law, in which case the employer may check the credit of any employee covered by the applicable legal requirement; or
3. the report is substantially related to the employee's current or potential job and the employer has a *bona fide* purpose for requesting or using the information that is substantially related to the employee's current or potential job as is disclosed in writing to the employee.[58]

Substantially related to the employee's current or potential job is defined in the Employment Opportunity Act as "the information contained in a credit report is related to the position for which the employee who is the subject of the report is being evaluated because the position is one of two specific types."[59] The first type of position is defined as "executive or management personnel or officers or employees who constitute professional staff to executive and management personnel."[60] The law permits a credit check only if the position involves one or more of the following: (1) setting the direction or control of a business, division, unit, or an agency of a business; (2) a fiduciary responsibility to the employer; (3) access to the personal or financial information of a customer, employee, or the employer (other than information customarily provided in a retail transaction); or (4) the authority to issue payments, collect debts, or enter into contracts.[61] The second class of positions for which employers are permitted to broadly use consumer credit information for employment purposes are those that involve contracts with defense, intelligence, national security, or space agencies of the federal government.[62]

When consumer credit information is substantially related to the employee's current or potential job, an employer can, but is not required to, inquire further of the employee to give him/her an opportunity to explain any unusual or mitigating circumstances where the information may not reflect money management skills, but rather is attributable to some other factor, including a layoff, error in credit information, act of identity theft, medical expense, military separation, death, divorce or separation in the employee's family, student debt, or a lack of credit history.[63]

1.3(b)(iii) *State Enforcement, Remedies & Penalties*

Employment Opportunity Act. Colorado's Employment Opportunity Act allows an applicant or employee to file a complaint with the Colorado Division of Labor, which will investigate, conduct a hearing, and issue findings. The Division of Labor has the authority to award to the aggrieved individual civil penalties in an amount not to exceed $2,500. The statute does not create a private right of action.[64]

[58] COLO. REV. STAT. § 8-2-126; 7 COLO. CODE REGS. § 1103-4 (r. 2.9).

[59] COLO. REV. STAT. § 8-2-126(2)(g)(I).

[60] COLO. REV. STAT. § 8-2-126(2)(g)(I).

[61] COLO. REV. STAT. §§ 8-2-126(2)(g)(I)(A)-(D).

[62] COLO. REV. STAT. § 8-2-126(2)(g)(II).

[63] COLO. REV. STAT. § 8-2-126(3)(b).

[64] COLO. REV. STAT. § 8-2-126(5), (6).

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Under Colorado law, an employer cannot:

- suggest, request, require, or cause an employee or applicant to disclose any username, password, or other means for accessing the individual's personal account or service through the individual's personal electronic communications device ("a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices");
- compel an employee or applicant to add anyone, including the employer or its agent(s), to the individual's social media account contacts list; or
- require, request, suggest, or cause an employee or applicant to change a personal social networking account's privacy settings.[65]

Additionally, an employer cannot fail or refuse to hire an applicant, or threaten to or actually discharge, discipline, or otherwise penalize an employee, for refusing to:

- disclose any username, password, or other means for accessing the individual's personal account or service through the individual's personal electronic communications device;
- add anyone, including the employer or its agent(s), to the individual's social media account contacts list; or

[65] COLO. REV. STAT. § 8-2-127(2)(a).

- change a social networking account's privacy settings.[66]

Exceptions. With respect to both applicants and employees, an employer may access information about employees and applicants that is publicly available online.[67]

In addition, exceptions applicable only to current employees include that an employer is allowed to:

- conduct an investigation to ensure compliance with applicable securities or financial law or regulatory requirements if it receives information about the use of a personal website, internet website, web-based account, or similar account by an employee for business purposes;[68]
- investigate an employee's electronic communications if it receives information about the employee's unauthorized downloading of the employer's proprietary information or financial data to a personal website, internet website, web-based account, or similar account by an employee;[69]
- require an employee to disclose a username, password, or other means for accessing nonpersonal accounts or services that provide access to the employer's internal computer or information systems;[70]
- enforce existing personnel policies that do not conflict with the law;[71] and
- access information about employees and applicants that is publicly available online.[72]

1.3(c)(iii) *State Enforcement, Remedies & Penalties*

An aggrieved individual can file a written or electronic complaint with the Colorado Department of Labor and Employment, which must investigate the complaint and issue findings 30 days after a hearing. Employers that violate the law may be subject to fines of up to $1,000 for the first offense, and up to $5,000 for each subsequent offense. [73]

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[74] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

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[66] COLO. REV. STAT. § 8-2-127(3).

[67] 7 COLO. CODE REGS. § 1103-18 (r. 9).

[68] COLO. REV. STAT. § 8-2-127(4)(a).

[69] COLO. REV. STAT. § 8-2-127(4)(b).

[70] COLO. REV. STAT. § 8-2-127(2)(b).

[71] COLO. REV. STAT. § 8-2-127(6).

[72] 7 COLO. REV. STAT. § 8-2-127(5).

[73] COLO. REV. STAT. § 8-2-127(5).

[74] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Colorado law contains no express provisions regulating polygraph examinations for applicants or employees.

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[75] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[76] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

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[75] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[76] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Colorado law contains no express provisions regulating preemployment drug or alcohol screening by private employers. See **3.2(b)(ii)** for guidance provided by Colorado courts on drug and alcohol testing of current employees.

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *State Restrictions on Job Application Fees, Deductions, or Other Charges*

Employers cannot require employees or job applicants to pay the cost of medical examinations or the cost of furnishing any records required by the employer as a condition of employment, except when the examinations or medical records are necessary to support statements made on application.[77]

No employer, employer agency, or labor organization may suggest or require that applicants submit their photographs prior to their employment or placement, unless the requirement is based on a bona fide occupational qualification (BFOQ).[78]

1.3(f)(ii) *Restrictions on Salary History Inquiries*

The Colorado Equal Pay for Equal Work Act prohibits employers from:

- seeking the wage rate history of a prospective employee or relying on the wage rate history of a prospective employee to determine a wage rate;
- discriminating or retaliating against a prospective employee for failing to disclose the prospective employee's wage rate history; and
- using prior wage rate history to justify a disparity in current wage rates.[79]

An employer must also disclose in each posting for each job opening the hourly or salary compensation, or a range of the hourly or salary compensation, and a general description of all of the benefits and other compensation to be offered to the hired applicant.[80]

1.3(f)(iii) *Restrictions on Age-Related Inquiries*

Colorado's Job Application Fairness Act (JAFA), effective July 1, 2024, prohibits employers from inquiring about a job applicant's age during the hiring process. Specifically, JAFA forbids employers from inquiring about an applicant's (1) age; (2) date of birth; and (3) dates of attendance at or graduation from an educational institution. If employers request that applicants provide application materials—such as transcripts or graduation certificates—employers must notify applicants that they may redact information that identifies their age, date of birth, or dates of school attendance or graduation. Notably, these restrictions apply only at the time of an initial employment application.

JAFA does permit employers to request that an applicant verify compliance with age requirements in an initial employment application, but only under limited circumstances where:

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[77] COLO. REV. STAT. § 8-2-118.

[78] 3 COLO. CODE REGS. § 708.1:20.3.

[79] COLO. REV. STAT. § 8-5-102.

[80] COLO. REV. STAT. § 8-5-201.

- age is a bona fide occupational qualification pertaining to public or occupational safety;
- the information is required under federal law or regulation; or
- the information is required under a state or local law or regulation based on a bona fide occupational qualification.

These verification requests must not, however, require disclosure of an individual's specific age, date of birth, or dates of attendance at or date of graduation from an educational institution on the initial employment application.[81]

1.3(f)(iv) *Restrictions on the use of Artificial Intelligence Tools in Hiring and Employment*

Colorado law recognizes liability for artificial intelligence (AI) algorithmic discrimination in employment. The law's scope is limited to machine-based algorithms that use inferential techniques to produce predictions, recommendations, decisions, or content more generally. An in-scope AI tool is "high-risk," and thus subject to regulation, if it either "makes," or is a "substantial factor" in making, "a decision that has a material legal or similarly significant effect on the provision [,] denial [,] cost or terms" of hiring and employment in general, among other things. The law's definition of "substantial factor" is not clear, however, stating only that the AI tool meets that standard if it "assists in making" the decision at issue and is "capable of altering the outcome." The law requires certain notice to be provided to individuals subject to the use of a high-risk AI tool that will be a substantial factor in making a consequential decision about the individual.[82]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section

[81] COLO. REV. STAT. § 8-2-131.

[82] COLO. REV. STAT. §§ 6-1-105, 6-1-1701 – 1707. For more information, see Niloy Ray, Zoe M. Argento, Philip L. Gordon, and Kellen M. Shearin, *Colorado's Landmark AI Legislation Would Create Significant Compliance Burden for Employers Using AI Tools*, Littler Insight (May 16, 2024), available at https://www.littler.com/publication-press/publication/colorados-landmark-ai-legislation-would-create-significant-compliance.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	36B of the Internal Revenue Code of 1986[83] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[84] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[85] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[86]
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[87] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[88]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the

[83] 26 U.S.C. § 36B.

[84] 42 U.S.C. § 18071.

[85] 29 U.S.C. § 218b.

[86] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

[87] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[88] 29 C.F.R. § 2590.606-1.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	general notice to each new employee upon hiring.[89] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[90] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[91]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[92] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[93]
Uniformed Services Employment and Reemployment Rights	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers

[89] 29 C.F.R. § 825.300(a).

[90] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[91] 29 C.F.R. § 825.300(a).

[92] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[93] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Act (USERRA) Documents	may meet the notice requirement by posting notice where employers customarily place notices for employees.[94]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[95]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Healthy Families and Workplaces Act	Covered employers must notify employees that they are entitled to paid sick leave, specifying the amount of paid sick leave available and the terms of its use, and also informing employees about retaliation and enforcement provisions. An employer complies with this requirement by displaying a poster and supplying each employee who would not have access to the poster (*i.e.* teleworkers, outdoor workers) with a written notice, within the first month of employment, containing the information described above in English and in any language that is the first language spoken by at least 5% of the employer's workforce.[96]
Benefits & Leave Documents: Paid Family and Medical Leave	Employers must provide the state-created notice regarding the Paid Family and Medical Leave law, created by Proposition 118. The notice will detail the program requirements, benefits, claims process, payroll deduction requirements, the right to job protection and benefits continuation under section 8-13.3-409, protection against retaliatory personnel actions or other discrimination, and other pertinent information. Each employer shall post the program notice in a prominent location in the workplace and notify its employees of the program, in writing, upon hiring and upon learning of an employee

[94] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[95] 29 C.F.R. § 531.59.

[96] COLO. REV. STAT. § 8-13.3-408. Employers may use the "Colorado Paid Leave and Whistleblower Poster" available at https://cdle.colorado.gov/sites/cdle/files/Poster%2C Paid Leave %26 Whistleblower.pdf.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	experiencing an event that triggers eligibility. Employers and employees began paying in to the program on January 1, 2023. Col. Rev. Stat. § 8-13.3-411..[97]
Benefits & Leave Documents: Paid Family and Medical Leave Act Private Plans	This law covers private plans only. An employer must deliver a written notice of its election and approval by the Division to offer a private plan in lieu of participating in the state plan. For an employee whose start date is later than thirty (30) days before the effective date of an approved private plan, an employer must deliver the written notice to the employee immediately upon hire. The notice must be in English, Spanish, and in any language that is the first language spoken by at least five percent of the employer's Colorado workforce. The notice may be delivered electronically, in person, or via mail. The written notice must include: • the effective date of the approved private plan; • a description of the private plan's wage replacement benefits; • a description of the private plan's leave and employment protection benefits; • a description of how employee eligibility is determined; • a description of how any employee contributions are calculated and collected; • a description of how an employee may file a claim for benefits under the approved private plan; • a notification to the employee of the employee's appeal rights pursuant to the FAMLI Act, and if applicable, of the employee's optional alternative to appeal a benefits determination to the private plan administrator; • contact information for the FAMLI Division; and • a notification to the employee which explicitly lists and explains all of the employee's rights under C.R.S. 8-13.3-509.[98]
Fair Employment Practices Documents: Pregnancy Discrimination & Accommodation	When employment starts, employers must provide new employees written notice of the right to be free from discriminatory or unfair practices under the statute governing reasonable accommodation of pregnancy, childbirth, and related health conditions.[99]
Restrictions on Noncompetition and	Either before a new worker accepts an offer of employment, or 14 days before the effective date of the restriction or change in conditions of

[97] COLO. REV. STAT. § 8-13.3-511. Employers may use the model notice provided by the Colorado Department of Labor and Employment at https://famli.colorado.gov/resources/famli-toolkit.

[98] 7 COLO. CODE REGS. § 1107-5.

[99] COLO. REV. STAT. § 24-34-402.3. This notice is available in English at https://drive.google.com/file/d/1DzCt-JBN0zMdaet0MQrWTIz7TEOOYQV-/view?usp=sharing and in Spanish at https://cdle.colorado.gov/posters.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Nonsolicitation Agreements	employment for current workers, employers must give notice of any permissible covenant imposed and its terms. The required notice must be in clear and conspicuous terms in the language in which the worker and the employer communicate. The notice must be signed by the worker. A worker may request an additional copy of the covenant not to compete once each calendar year.[100]
Tax Documents	An employee may complete a Colorado Employee Withholding Certificate (form DR 0004)), but it is not required. If an employee completes form DR 0004, the employer must calculate Colorado withholding based on the amounts the employee entered. If an employee does not complete form DR 0004, the employer must calculate Colorado withholding based on IRS form W-4.[101]
Unemployment Insurance: Temporary Employees	At the time of hire as a temporary employee, employers must give the employee notice that the employee must contact or notify the employer upon completing an assignment and to be available to work, as agreed upon at the time of hire, during a specified period of time, on specified dates, or upon call by the employer on an as-needed basis.[102]
Wage & Hour Documents	No notice requirement located.

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[103] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;

[100] COLO. REV. STAT. § 8-2-113.

[101] Form DR 004 is available at https://tax.colorado.gov/sites/tax/files/documents/DR0004_2021.pdf. For more information about the withholding calculation, see the Colorado Withholding Worksheet For Employers (form DR 1098) on the Withholding Tax Forms page: https://tax.colorado.gov/withholding-forms. Additional frequently asked questions about the DR 0004 can be found here: https://tax.colorado.gov/withholding-FAQ.

[102] COLO. REV. STAT. § 8-73-105.3. This requirement relates to unemployment benefits because it concerns when a temporary employee is deemed to have voluntarily terminated employment.

[103] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[104]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

[104] 42 U.S.C. § 653a.

Table 4. Multistate Employer New Hire Information	
Contact By Mail or Fax	**Contact Online**
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[105] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Colorado's new hire reporting law.[106]

Who Must Be Reported. Employees newly hired or rehired after a separation of at least 60 consecutive days must be reported.

Report Timeframe. Colorado employers must submit new hire information for employees within 20 days after their hiring date. Employers submitting magnetically or electronically must report new employees, if any, at least twice per month no fewer than 12 days and no more than 16 days apart.

Information Required. The information required to be reported includes the employee's name, address, and Social Security number. The report must also include the employer's name, address, and federal tax identification number.

Form & Submission of Report. The information should be submitted via a W-4 form or its equivalent, completed by the employer. Reports may be submitted by fax, mail, over the internet, electronically, or magnetically.

Location to Send Information.

Colorado State Directory of New Hires
PO Box 13089
Sacramento, CA 95813-3089 (303) 297-2849
(800) 696-1468
(303) 297-2595 (fax)
newhire.state.co.us

[105] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[106] COLO. REV. STAT. § 26-13-125.

Multistate Employers. An employer that has employees employed in two or more states and that transmits reports magnetically or electronically may designate one state to which the employer must submit reports. Any multistate employer that elects to transmit all reports to one state must notify the secretary of the federal HHS, in writing, which state the employer has designated for purposes of reporting.

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[107] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Under Colorado's Restrictive Employment Agreement Law, most noncompetes in Colorado are void. Specifically, noncompete agreements are void unless the agreement is with a "highly compensated" worker for the protection of trade secrets and is no broader than reasonably necessary to protect the employer's legitimate interest in protecting the trade secrets.[108] For a noncompete to fit within the

[107] 18 U.S.C. §§ 1832 *et seq.*

[108] COLO. REV. STAT. § 8-2-113.

exception for "highly compensated" workers, the employee must earn $123,750 annually, or the state "highly compensated" amount in effect when the covenant is executed in the future.

Customer nonsolicitation agreements are also void under the Restrictive Employment Agreement law unless necessary to protect the employer's legitimate interest in trade secrets and the worker must earn at least 60% of the "highly compensated" annual threshold amount when the agreement is entered into. For 2024, that amount is $74,250.

The law does not prohibit restrictive covenants for the sale of a business or its assets. Employers are also still able to recover reasonable training expenses, if the training is distinct from normal, on-the-job training. In order for a contractual provision providing for the recovery of the reasonable costs of educating and training a worker to be enforceable, the provision must also satisfy any other relevant requirement determined by the state attorney general regarding the transferability of the training or credentialing in question.[109]

In addition to the restrictions on noncompete agreements themselves, the law also imposes notices provisions. Either before a new worker accepts an offer of employment, or 14 days before the effective date of the restriction or change in conditions of employment for current workers, employers must give notice of the covenant and its terms. The required notice must be in "in clear and conspicuous terms in language in which the worker and the employer communicate," and must be signed by the worker (separately from the signature on the restrictive covenant agreement itself).[110]

Colorado law provides for criminal penalties for anyone who uses force, threats, or other means of intimidation to prevent any person from engaging in any lawful occupation at any place the person sees fit.[111] Employers are prohibited from entering into, presenting, or attempting to enforce any covenant that is void. Violators could be liable for actual damages and a $5,000 penalty per worker or prospective worker harmed by the conduct, and may be subject to 120-days imprisonment. Either the state attorney general or a harmed worker may pursue injunctive relief and the penalties, plus costs and attorneys' fees.[112]

For agreements entered into prior to August 10, 2022, noncompete agreements are against public policy and presumptively void unless the agreement falls within one of four enumerated statutory exceptions:

1. any contract for the purchase and sale of a business or the assets of a business;
2. any contract for the protection of trade secrets;
3. any contractual provision providing for recovery of the expenses of educating and training an employee who has served an employer for a period of less than two years, where the training is distinct from normal on-the-job training; or
4. executive and management personnel and officers and employees who constitute professional staff to executives and management.[113]

[109] COLO. REV. STAT. § 8-2-113.

[110] COLO. REV. STAT. § 8-2-113.

[111] COLO. REV. STAT. § 8-2-113.

[112] COLO. REV. STAT. § 8-2-113.

[113] COLO. REV. STAT. § 8-2-113.

Noncompete agreements that fit into one of the four statutory exceptions must still be reasonable in geographic scope and duration.[114] A noncompete agreement that is silent as to both time and geographic scope is void.[115]

Enforcement of noncompete agreements are most typically sought under the "protection of trade secrets" and "executive and management personnel" exceptions. For an agreement to be for the "protection of trade secrets," the stated purpose of the agreement must be the protection of trade secrets, not just a broad restriction on competition.[116] While the statute does not define "management personnel," case law provides some guidance on which employees will fall into that category. A manager may include an employee who supervises other employees, had decision-making authority for the company, and operated with some degree of autonomy.[117]

The Colorado Court of Appeals, in *Phoenix Capital Inc. v. Dowell*, ruled that an agreement not to solicit customers is governed by the same statute that governs covenants not to compete.[118] The court reasoned that the core policy underlying the unenforceability of a noncompetition provision is a prohibition on an employee's right to make a living by working somewhere else. To make a living, former sales employees benefit heavily from being able to solicit former customers.[119] On the other hand, agreements not to solicit former coworkers do not directly impair a former employee's ability to make a living. Thus, the court concluded that the noncompete statute was not meant to apply to agreements not to solicit former coworkers.[120]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

Assuming an agreement is permitted under one of the statutory exceptions, it is still only enforceable if there is adequate consideration.[121] In *Lucht's Concrete Pumping, Inc. v. Horner*, the Colorado Supreme Court determined that continued employment was sufficient consideration for an otherwise enforceable noncompete agreement.[122] The court found that because an employer may terminate an at-will employee at any time during the employment relationship as a matter of right, its forbearance from terminating

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[114] *Keller Corp. v. Kelley*, 187 P.3d 1133 (Colo. App. 2008); *National Graphics, Co. v. Dilley*, 681 P.2d 546, 547 (Colo. App. 1984).

[115] *National Graphics Co.*, 681 P.2d at 547.

[116] *Harvey Barnett, Inc. v. Shidler*, 338 1125, 1133 (10th Cir. 2003); *see also Gold Messenger v. McGuay*, 937 P.2d 907, 910 (Colo. App. 1997).

[117] *DISH v. Altomari*, 224 P.3d 362 (Colo. App. 2009).

[118] 176 P.3d 835 (Colo. App. 2007).

[119] 176 P.3d at 844.

[120] 176 P.3d at 844.

[121] *Freudenthal v. Espey*, 102 P. 280, 283–84 (1909).

[122] 255 P.3d 1058, 1061 (Colo. 2011).

that employee is the forbearance of a legal right.[123] Moreover, an employee's acceptance of at-will employment at the time of initial employment is adequate consideration for a noncompetition agreement.[124]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

In Colorado, a court has discretion to reform contract terms governing the duration of the restrictive covenant and the geographic scope of the restrictive covenant. However, the court cannot modify other terms of an unenforceable agreement to render it enforceable.[125] Courts are not required to modify an otherwise unenforceable agreement in order to render it enforceable.[126]

2.3(b)(iv) *State Trade Secret Law*

Colorado law provides means for employers to protect themselves from a recently departed employee's misuse of proprietary information acquired from the employer. Trade secrets, which are partially defined by Colorado statutes, can be protected in a variety of ways. As a starting point, the employer must determine whether the information that qualifies as a protected trade secret.

Colorado has adopted, with some revisions, the Uniform Trade Secrets Act. Colorado defines a *trade secret* as:

> the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession which is secret and of value. To be a "trade secret" the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.[127]

In addition, the Colorado courts examine numerous factors to determine whether a trade secret exists. These factors include:

- the extent to which the information is known outside the business;

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[123] *Lucht's Concrete Pumping, Inc.*, 255 P.3d at 1061.

[124] *Lucht's Concrete Pumping, Inc.*, 255 P.3d at 1062.

[125] *See National Graphics, Co. v. Dilley*, 681 P.2d 546, 547 (Colo. App. 1984).

[126] *23 LTD v. Herman*, 457 P.3d 754, 760 (Colo. App. 2019).

[127] COLO. REV. STAT. § 7-74-102(4).

- the extent to which it is known to those inside the business (i.e., by employees);
- the precautions taken by the holder of the trade secret to guard the secrecy of the information;
- the savings effected and the value to the holder in having the information as against competitors;
- the amount of effort or money expended in obtaining and developing the information; and
- the amount of time and expense it would take for others to acquire and duplicate the information.[128]

In Colorado, an owner of a trade secret must take "measures to prevent the secret from becoming available."[129] Although an employer is not required to engage in extreme or unduly expensive procedures to protect its trade secrets, at a minimum, an employer must take reasonable precautions to maintain the secrecy of its trade secrets including, but not limited to, restricting access to the trade secret on a need-to-know basis and advising employees of the confidential nature of the information. These precautions must be more than normal business procedures.[130]

However, not all information deemed confidential by an employer falls within the ambit of the Colorado Uniform Trade Secrets Act. Information that is common knowledge in the industry or is easily accessible cannot be protected as a trade secret.[131] Moreover, the skills, ability, and experience that an employee brings to the job or acquires during the individual's employment generally are not trade secrets or property belonging to the employer.[132]

Finally, the failure to establish all of the factors that would support a finding of a trade secret may convince a court that no trade secret exists. For example, the Colorado Court of Appeals has ruled that a confidential ranking system used by an employer to rank its employees on a scale of 1 to 4 was not a trade secret, notwithstanding that the employer kept the rankings under lock and key and did not disclose them to the employees who were ranked. According to the court, "information subject to arguably normal business precautions," without more, "does not necessarily constitute a trade secret . . . ."[133]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Inventions and ideas developed or generated by employees during the course of their employment involve a combination of the law of contracts, the statutory protection of trade secrets, and the general

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[128] *Porter Indus., Inc. v. Higgins*, 680 P.2d 1339, 1342 (Colo. App. 1984).

[129] COLO. REV. STAT. § 7-74-102(4).

[130] *Harvey Barnett, Inc. v. Shidler*, 143 F. Supp. 2d 1247, 1252 (D. Colo. 2001) (citing *Colorado Supply Co. v. Stewart*, 797 P.2d 1303, 1306 (Colo. App. 1990)). *But see Computer Assoc. Int'l, Inc. v. American Fundware, Inc.*, 831 F. Supp. 1516, 1524-25 (D. Colo. 1993) (software licensor adequately protected trade secrets by including nondisclosure and nonduplication provisions in its licensing agreement).

[131] *Hertz v. Luzenac Group*, 576 F.3d 1103 (10th Cir. 2009).

[132] *Mulei v. Jet Courier Serv., Inc.*, 739 P.2d 889, 892 (Colo. App. 1987), *rev'd on other grounds*, 771 P.2d 486 (Colo. 1989).

[133] *Atmel Corp. v. Vitesse Semiconductor Corp.*, 30 P.3d 789, 795 (Colo. App. 2001), *abrogated in part on other grounds by Ingold v. AIMCO/Bluffs, L.L.C.*, 159 P.3d 116 (Colo. 2007) (citing *Colorado Supply Co.*, 797 P.2d 1303).

statutory prohibitions against noncompete agreements. Since there is virtually no case law in Colorado that deals directly with the assignability of employee inventions and ideas, employers must tread carefully when seeking to acquire and/or protect inventions or ideas developed by employees.

In *Scott Systems v. Scott*, one of the few Colorado cases discussing employee inventions and ideas, the defendants left the employ of their father's business.[134] Although the sons each served as officers and directors, neither had a written employment agreement. After leaving the business, one of the sons refused to assign to the business the patent rights to an invention he had developed while he was an employee, director, and officer. The court first noted that the right, if any, an employer has to the inventions of an employee "is determined primarily by the contract of employment."[135] The court also observed, however, that the absence of an employment contract is not necessarily fatal to an employer's claim to its ex-employee's patent. "If an employee's job duties include the responsibility for inventing or for solving a particular problem that requires invention, any invention created by that employee during the performance of those responsibilities belongs to the employer."[136] The court also ruled that a fiduciary obligation exists on the part of "an officer or director to assign a patent to the corporation if the invention was developed while he or she was employed by the corporation and it is related to the corporation's business."[137]

The Colorado Court of Appeals's decision in *Scott Systems* instructs that a carefully drafted assignment, implemented in conformity with the Uniform Trade Secrets Act and the common law of contracts, should survive judicial scrutiny. Even without a contract, however, an employer's right to a patent may nevertheless survive.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[138]

[134] 996 P.2d 775 (Colo. App. 2000).

[135] 996 P.2d at 778.

[136] 996 P.2d at 778.

[137] 996 P.2d at 779.

[138] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[139]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[140]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[141]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[142]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[143]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[144]

[139] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[140] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[141] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

[142] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[143] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[144] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[145]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[146] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[147]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[148]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[149]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is

[145] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[146] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[147] 41 C.F.R. §§ 60-300.44, 60-741.44.

[148] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[149] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	visible to prospective employees and all employees who are verified through the system.[150]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[151]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[152]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[153]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[154] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing

[150] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[151] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[152] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[153] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[154] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[155]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[156]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[157]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

[155] 29 C.F.R. § 13.5.

[156] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[157] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Benefits & Leave Documents: Healthy Families and Workplaces Act	Covered employers must notify employees that they are entitled to paid sick leave, specifying the amount of paid sick leave available and the terms of its use and also informing employees about retaliation and enforcement provisions. An employer complies with this requirement by supplying each employee with a written notice containing the information described above in English and in any language that is the first language spoken by at least 5% of the employer's workforce and displaying a poster.[158]
Benefits & Leave Documents: Paid Family and Medical Leave	Employers must post a state-created poster in a prominent location in the workplace. The notice will detail the program requirements, benefits, claims process, payroll deduction requirements, the right to job protection and benefits continuation under section 8-13.3-409, protection against retaliatory personnel actions or other discrimination, and other pertinent information. Each employer shall post the program notice in a prominent location in the workplace and notify its employees of the program, in writing, upon hiring and upon learning of an employee experiencing an event that triggers eligibility.[159]
Fair Employment Practices: Denver	Denver employers (employing 20 or more employees) must post a workplace poster available online from the Denver Anti-Discrimination Office.[160]
Fair Employment Practices: Pregnancy, Childbirth & Related Conditions	All employers (except religious organizations or associations not supported in whole or in part by money raised by taxation or public borrowing) must conspicuously post a notice in accessible locations summarizing employees' right to be free from discriminatory or unfair practices under the statute governing reasonable accommodation of pregnancy, childbirth, and related health conditions.[161] The employer is also required to include a separate notice of pregnancy accommodation rights in a handbook or other written policy.

[158] COLO. REV. STAT. § 8-13.3-408. Employers may use the "Colorado Paid Leave and Whistleblower Poster" available at https://cdle.colorado.gov/sites/cdle/files/Poster%2C Paid Leave %26 Whistleblower.pdf.

[159] COLO. REV. STAT. § 8-13.3-511. Employers may use the model notice provided by the Colorado Department of Labor and Employment provided at https://famli.colorado.gov/resources/famli-toolkit.

[160] DENVER, COLO., REVISED MUN. CODE § 28-104. *See* https://www.denvergov.org/content/denvergov/en/human-rights-and-community-partnerships/our-offices/anti-discrimination.html.

[161] COLO. REV. STAT. § 24-34-402.3. This notice is available at https://www.colorado.gov/pacific/cdle/posters (included in Anti-Discrimination poster).

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Restrictions on Noncompetition and Nonsolicitation Agreements	Either before a new worker accepts an offer of employment, or 14 days before the effective date of the restriction or change in conditions of employment for current workers, employers must give notice of any permissible covenant imposed and its terms. The required notice must be in clear and conspicuous terms in the language in which the worker and the employer communicate. The notice must be signed by the worker. A worker may request an additional copy of the covenant not to compete once each calendar year.[162]
Unemployment Compensation: Colorado Employment Security Act	All employers must conspicuously post and maintain notices at or near work locations informing employees of their rights under the unemployment compensation law and how to file for benefits.[163]
Wages, Hours & Payroll: Colorado Minimum Wage Order	All employers with employees covered by the minimum wage provisions of the FLSA or the current Colorado Minimum Wage Order must display notice of the minimum wage and related topics. If the worksite or other physical conditions make posting impractical, employers must provide a copy of the poster to each employee within their first month of employment and also make it available upon request. If an employer has an employee with limited English language abilities, it must request a copy of the wage order and poster in the appropriate language(s) from the Department of Labor. Additionally, if an employer publishes or distributes any handbook, manual, or written or posted policies, it must include the current wage order or poster within. If the employer requires employees to sign any of the foregoing, it must have the employee sign a receipt of acknowledgement of being provided the wage order or poster.[164]
Wages, House & Payroll: Earned Income Tax Credit and Child Tax Credit	Effective August 7, 2023, employers must provide written notice to all employees of the availability of these tax credits at least once per year, for income tax years beginning on or after January 1, 2023. The notice may be provided electronically, including by email or text message. It must be in English or another language that the employer typically uses to communicate with the employee receiving the notice. It must also include any other content that the state revenue department prescribes as necessary.[165]

[162] COLO. REV. STAT. § 8-2-113.

[163] COLO. REV. STAT. § 8-74-101; 7 COLO. CODE REGS. § 1101-2 (r. 7.3). This poster is available at https://www.colorado.gov/pacific/cdle/posters.

[164] COLO. REV. STAT. § 8-6-111; 7 COLO. CODE REGS. § 1103-1 (r. 21); 7 COLO. CODE REGS. § 1103-1 (7.4.1). This poster is available at https://www.colorado.gov/pacific/cdle/posters.

[165] COLO. REV. STAT § 39-22-604

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Wages, Hours & Payroll: Tip Pooling Arrangements	An employer in any business where patrons customarily provide employees gratuities cannot assert any claim to, or right of ownership in, or control over these gratuities. These gratuities are the employee's sole property unless employers notify each patron in writing - including a notice on a menu, table tent, or receipt - that gratuities are shared by employees.[166]
Wages, Hours & Payroll: Wage Payment Law	All employers must post a notice specifying regular paydays and the time and place of payment.[167]
Workers' Compensation	All employers must conspicuously post notice describing workers' compensation insurance and instructing employees how to file a claim.[168]
Workplace Safety: Notice to Employer of Injury	All employers must post notice instructing employees of their obligation to notify employers in writing of any injury on the job.[169]
Workplace Safety: Smoking Area & No Smoking Signs	A business owner or manager of may (but is not required to) post signs stating that smoking on the premises is prohibited. There are signage requirements for retail tobacco stores.[170]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and	At least 3 years from the date of entry.

[166] COLO. REV. STAT. § 8-4-103.

[167] COLO. REV. STAT. § 8-4-107; 7 COLO. CODE REGS. § 1103-7 (r. 7.1). This poster is available at https://www.colorado.gov/pacific/cdle/posters.

[168] COLO. REV. STAT. §§ 8-40-101 *et seq*. This poster is available at https://www.colorado.gov/pacific/cdle/posters.

[169] COLO. REV. STAT. § 8-43-102. This poster is available at https://www.colorado.gov/pacific/cdle/posters.

[170] COLO. REV. STAT. § 25-14-206,

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• compensation earned each week.[171]	
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[172]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[173]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[174]	At least 1 year from the date the records were made, or from the date of the personnel action involved,

[171] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[172] 29 C.F.R. § 1627.3(b).

[173] 29 C.F.R. § 1627.3(b).

[174] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[175]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[176]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution,	At least 3 years following the date on which the polygraph examination was conducted.

[175] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[176] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[177]	
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[178]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[179]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[180]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins;	3 years from the last day of entry.

[177] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[178] 29 U.S.C. § 1027.

[179] 29 C.F.R. § 1620.32(a).

[180] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[181] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the	

[181] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[182]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees, and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[183]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and	At least 3 years from the last effective date.

[182] 29 C.F.R. § 516.28.

[183] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• sales and purchase records.[184]	
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[185]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:*	At least 3 years.

[184] 29 C.F.R. § 516.5.

[185] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[186]	

[186] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[187]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[188]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.

[187] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[188] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[189]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[190]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[191]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:*	At least 4 years after the later of the date the tax

[189] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[190] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[191] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[192]	is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a	At least 30 years.

[192] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[193]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[194]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information	At least 30 years.

[193] 29 C.F.R. § 1910.1020(d).

[194] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
and Exposure Records	collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[195]	
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[196]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[197]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not have a contract

[195] 29 C.F.R. § 1910.1020(d).

[196] 29 C.F.R. §§ 1904.33, 1904.44.

[197] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[198]	of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[199]	Until final disposition of the complaint, compliance review or action.

[198] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[199] 41 C.F.R. §§ 60-1.12, 60-741.80.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[200]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee	During the course of the covered contract as well as after the end of the contract.

[200] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[201]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[202]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage;	At least 3 years from the completion of the work records

[201] 29 C.F.R. § 13.25.

[202] 29 C.F.R. § 5.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[203]	containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[204]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Consumer Protections for Interactions with Artificial Intelligence Act (effective	A deployer (a person doing business in the state of Colorado that deploys a high-risk artificial intelligence system) must maintain the most recently completed impact assessment for a high-risk artificial intelligence system: • all records concerning each impact assessment; and	At least 3 years following the final deployment of the high-risk artificial

[203] 29 C.F.R. § 4.6.

[204] 41 C.F.R. § 50-201.501.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
February 1, 2026)	• all records concerning all prior impact assessments, if any.[205]	intelligence system.
Fair Employment Practices	*If a complaint of discrimination has been filed with the state agency, employers must maintain all relevant records, including:* • personnel or employment records relating to the complainant and to all employees holding similar positions to the one complainant held or sought; • application forms or test papers of all candidates for the position; and • registration records, offers, leases, contracts, correspondence, business records, etc.[206]	Final disposition of the complaint, defined as when the statutory time periods for all appeals have expired.
Fair Employment Practices: Equal Pay Act	Employers must keep records of job descriptions and wage rate history for each employee in order to determine if there is a pattern of wage discrepancy.[207]	For the duration of employment plus two years after employment ends.
Fair Employment Practices: Chance to Compete Act	Employers must maintain copies of any and all written applications, electronic applications, or advertisements for an employment position that includes any question, inquiry, or request as to any aspect of a criminal history.	18 months after the application or advertisement was made available, or throughout an investigation, whichever is longer.[208]
Income Tax	Employers must keep and preserve all books, accounts, and records that may be necessary to determine amount of tax liability.[209]	4 years after the due date of the return or payment of income tax. The

[205] COLO. REV. STAT. § 6-1-1703(3).

[206] 3 COLO. CODE REGS. § 708-1 (r. 20.5).

[207] COLO. REV. STAT. § 8-5-202.

[208] 7 COLO. CODE REGS. 1103-9:3.

[209] COLO. REV. STAT. § 39-21-113 (Questions and Answers).

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		state Department of Revenue notes, however, that there are many reasons why the statute of limitations may remain open longer than 4 years, and recommends that tax filings and back-up documentation be retained for 6 years.
Private Plan Insurance	Employers must keep and maintain records of any premium contributions collected from employees. Additional retention requirements apply to plan administrators.[210]	Minimum of 6 years.
Paid Family and Medical Leave Insurance Act	Employers must keep records of premium plans contributions collected from employees.[211]	Minimum of 6 years. **Effective January 1, 2024**, this requirement is reduced to 4 years.
Private Plan Insurance	Employers must keep and maintain records of any premium contributions it collected from employees. Additional retention requirements apply to plan administrators as listed below. Beginning January 1, 2025, private plan administrators must annually submit a private plan summary of the previous calendar year's plan to the Division. The summary must be submitted by February 28th immediately following the end of the calendar year, and must contain the following information: • total number of benefits applications received;	**Effective January 1, 2024**, 4 years.

[210] 7 COLO. CODE REGS. §1107-5.

[211] COLO. REV. STAT. § 8-13.3-506

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total number of benefits applications approved, pending, denied or closed; • total benefits amounts paid; • total number of employees covered under the private plan; • employer zip code; • the purpose for approved leave; • the gender, race, ethnicity and preferred language of individuals for whom leave was approved, and for whom leave was denied in whole or in part; • the average weekly wage of individuals for whom leave was approved; • if leave was taken to care for a family member, the relationship of the family member to the beneficiary; • total number of appeals received; and • total number of appeals affirmed, reversed, modified or withdrawn.	
Protecting Opportunities and Workers' Rights Act	Employers must retain "any personnel or employment record" the employer made or received and with regard to complaints of discriminatory or unfair employment practices, to maintain those records in a designated repository. "Personnel and employment records" include: • requests for accommodation; • employee complaints of discriminatory or unfair employment practices (all written and oral complaints, including date of complaint, the identity of the complaining party if known, the identity of the alleged perpetrator and the substance of the complaint); • application forms submitted by applicants for employment; • other records related to hiring, promotion, demotion, transfer, termination, rates of pay or other terms of compensation; and • selection for training or apprenticeship. and records of training provided to or facilitated to employees.[212]	At least 5 years.
Unemployment Insurance	*Employers must keep true and accurate records as needed to verify compliance with the unemployment law. Records must include, for each pay period:* • beginning and ending dates of the period;	Not less than 5 years.

[212] COLO. REV. STAT. §24-34-408.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total wages payable during the period and date paid; • the date in each calendar week on which the largest number of workers was employed and the number of such workers; and • a reporting pay period of not to exceed one month if any established payroll period is longer than one month. *Records must include, for each employee:* • name, state of residence, and Social Security number; • date of hire, rehire, or return to work after temporary layoff; • date and reason for separation; • state or states in which services are performed (if services were performed outside the state, the worker's base of operations or place from which services were directed); • if employee worked less than customary hours, the specific amount of time lost and the reasons for the loss; • wages paid each period showing separately, money wages, value of noncash wages, amounts paid that exceed actual business expenses, and tips and service charges; • if paid on a salary basis, wage rate and period covered; • if paid on a fixed hourly basis, the hourly rate and customary scheduled days per week; • if paid on a fixed daily basis, the daily rate and customary scheduled days per week; • if paid on a piece rate or other variable pay basis, the method wages are computed; and • if paid by tips, whether in whole or part.[213]	
Wages, Hours & Payroll: Field Labor Contractors	Field labor contractors must keep records of wage rates offered, wages earned, number of hours worked or, in the case of contractual or piecework, aggregate amount earned, and all amounts withheld from each migrant worker.[214]	3 years.
Wages, Hours & Payroll: General Register	Every employer must keep a register of the names, ages, dates of employment, and residence addresses of all employees.[215]	None specified.

[213] COLO. REV. STAT. § 8-72-107; 7 COLO. CODE REGS. § 1101-2 (rr. 7.1.2 *et seq.*).

[214] COLO. REV. STAT. § 8-4-103(5).

[215] COLO. REV. STAT. § 8-6-107.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Wages, Hours & Payroll: Paystubs	*Employers must issue and maintain paystubs with the following information:* • gross wages earned; • all withholdings and deductions; • net wages earned; • inclusive dates of the pay period; • name of the employee or the employee's social security number; and • name and address of the employer.[216]	At least 3 years after the wages were due and for the duration of any pending wage claims pertaining to the employee.
Wages, Hours & Payroll: Paystubs under current Colorado Minimum Wage Order	*The Colorado Minimum Wage Order also requires that employers issue and maintain paystubs (at the place of employment or at the employer's principal place of business in Colorado) with the following information:* • name, address, Social Security number, occupation, and date of hire; • date of birth if under 18; • daily records of all hours worked; • record of allowable credits and declared tips; • regular rate of pay, gross wages earned, withholdings made, and net amounts paid each pay period. Itemized earning statement of this information must be provided to each employee each pay period.[217]	3 years after wages are due.
Workers' Compensation	*Employers must keep records of all occupational diseases contracted by employees, as well as all injuries to employees that result in:* • fatality; • permanent physical impairment; or • loss of time from work in excess of three shifts or calendar days.[218]	None specified.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

[216] COLO. REV. STAT. § 8-4-103.

[217] 7 COLO. CODE REGS. 1103-1(12); 7 COLO. CODE REGS. § 1103-1 (7); Colo. Min. Wage Order.

[218] COLO. REV. STAT. § 8-43-101(1).

3.1(c)(ii) *State Guidelines on Personnel Files*

Employees or former employees may make a request to inspect their personnel file. Employers must permit employees to inspect and copy their personnel files on an annual basis, if requested by the employee. Employers must permit employees to inspect and copy their personnel files at the employer's office at a convenient time to both the employer and the employee. Terminated employees may inspect their personnel files only once after their employment is terminated. The law does not apply to financial institutions chartered and supervised under state or federal law, such as banks, trust companies, savings institutions, and credit unions.[219]

Under the statute, a *personnel file* is the personnel records of the employee, collected and maintained by the employer, that are used or have been used to determine the employee's qualifications for employment, promotion, additional compensation, employment termination, or other disciplinary action. A *personnel file* does not include:

- documents or records that must be placed in a separate file from the regular personnel file under federal or state law or rule;
- documents related to confidential reports from a previous employer of the employee;
- documents related to an active investigation, whether criminal, disciplinary, or one conducted by a regulatory agency; or
- information in a document or record that identifies any person who made a confidential accusation against the employee.[220]

State workers' compensation law requires self-insured employers to maintain employee mental health records under restricted access, separate from personnel files. Employers must have clear policies and training that ensure the protection of employee privacy.[221]

Wage and Hour Records. Employers must also maintain certain wage and hour records and provide employees access to them. See 3.7(b)(iv).

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see 1.3.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see 1.3.

[219] COLO. REV. STAT. § 8-2-129.

[220] COLO. REV. STAT. § 8-2-129.

[221] COLO. REV. STAT. § 8-47-203.2.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Colorado does not regulate drug testing of employees by statute. However, the Colorado Court of Appeals has provided some guidance on drug testing by private employers.

The appellate court ruled, in *Slaughter v. John Elway Dodge Southwest/Auto Nation*, that firing an at-will employee who refuses to submit to a drug test does not violate Colorado public policy.[222] In *Slaughter*, the car dealership tested a hair sample for drug use when it hired plaintiff, but overlooked the positive test result. One year later, the employee agreed to give a second hair sample, but the test was inconclusive. When the employee refused to give a third sample, the car dealership fired her. The trial court dismissed plaintiff's claim for discharge in violation of public policy. Affirming, the Colorado Court of Appeals found no public policy against dismissing an employee in these circumstances. In reaching this conclusion, the court relied on a Colorado statute that prohibits employers from being charged for unemployment compensation benefits where an employee is terminated for testing positive under a preexisting drug testing program. The court reasoned that this statute "recognizes an employer's right to conduct drug testing."[223]

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[224]

3.2(c)(ii) *State Guidelines on Marijuana*

In Colorado, both the medical and recreational use of marijuana is permitted.[225] Notwithstanding, an employer is not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace. An employer can have policies restricting the use of marijuana by employees. Moreover, an employer that occupies, owns, or controls a property

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[222] 107 P.3d 1165 (Colo. App. 2005).

[223] 107 P.3d at 1170. While the court of appeals has sanctioned drug testing in the private sector, the Colorado Supreme Court has indicated disapproval of random testing in the public sector absent an important government interest. *Trinidad Sch. Dist. No. 1 v. Lopez*, 963 P.2d 1095 (Colo. 1998) (suspicionless drug testing of students who wished to enroll in band class and marching band constituted unreasonable search under federal and state constitutions); *University of Colo. v. Derdeyn*, 863 P.2d 929 (Colo. 1993) (a showing of a threat to public safety or national security usually needs to be present to overcome the presumption of unreasonableness of suspicionless drug testing). On the other hand, the Colorado Supreme Court has held that drug testing based on reasonable suspicion in the public sector is not facially unconstitutional. *See City & Cty. of Denver v. Casados*, 862 P.2d 908 (Colo. 1993); s*ee also Stamm v. City & Cty. of Denver*, 856 P.2d 54 (Colo. App. 1993) (upholding Executive Order that prohibited being under the influence or impaired by alcohol while performing city business).

[224] 21 U.S.C. §§ 811-12, 841 *et seq*.

[225] COLO. CONST. art. XVIII, § 14; Colo. Const. art. XVIII, § 16.

can prohibit or otherwise regulate the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.[226]

Further, Colorado law does not include antidiscrimination provisions protecting an employee's marijuana use. In *Coats v. Dish Network, L.L.C.*, the Colorado Supreme Court considered whether it was discriminatory to fire an employee based on the employee's "lawful activity" under the Colorado code.[227] The court held that, under the plain language of the state's "lawful activities statute,"[228] the term "lawful" refers only to activities that are lawful under both state and federal law. Therefore, employees who engage in an activity like medical marijuana use that is permitted by state law, but unlawful under federal law, are not protected by the statute.[229]

In a similar, but unpublished case, a federal court in Colorado held that disability discrimination laws were not violated when an employee was fired after testing positive for marijuana, which violated his employer's written drug policy.[230] The court found that, "[the plaintiff's] allegation that he was terminated because of using medical marijuana to treat medical conditions does not pass muster because a positive test for marijuana, whether from medical or any other use, is a legitimate basis for discharge under Colorado law."[231] The court also dismissed the plaintiff's privacy claims. Citing to the Colorado Court of Appeals' *Slaughter* decision (discussed in **3.2(b)(ii)**), the court upheld the employer's right to conduct drug testing and noted "that amendments to the Colorado Constitution or new statutes concerning medical marijuana do not render tortious an employer's policies concerning marijuana."[232] The court also upheld the drug screens on the alternative grounds that the tests are not offensive to a reasonable person, as "there [was] no allegation suggesting that the mouth swab test was anything other than minimally intrusive."[233]

In *Benoir v. Industrial Claim Appeals Office of the State of Colorado & Service Group, Inc.*, the Colorado Court of Appeals considered whether unemployment benefits were properly denied after an employee tested positive for marijuana in violation of his employer's zero-tolerance drug policy. The court held that even though the employee's medical use of marijuana was permitted under state law, the employer had the unfettered right to have a zero-tolerance drug policy. The medical marijuana amendment does not

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[226] COLO. CONST. art. XVIII, § 16. Additionally, the Colorado Clean Indoor Air Act's smoking prohibitions and restrictions provide that smoking means inhaling, exhaling, burning or carrying any lighted or heated plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form; includes using an electronic smoking device. *See, e.g.*, COLO. REV. STAT. § 25-14-204.

[227] *Coats v. Dish Network*, 350 P.3d 849 (Colo. 2015).

[228] COLO. REV. STAT. § 24-34-402.5.

[229] *Coats*, 350 P.3d 849.

[230] *Curry v. MillerCoors, Inc.,* 2013 WL 4494307 (D. Colo. Aug. 21, 2013); *see also Steele v. Stallion Rockies, Ltd.*, 106 F. Supp. 3d 1205, 1212 (D. Colo. 2015) (citing *Curry*, court granted employer's motion to dismiss, holding termination due to medical marijuana use did not constitute discrimination under the Americans with Disabilities Act (ADA) and Colorado Anti-Discrimination Act (CADA)).

[231] 2013 WL 4494307 , at *3 (citing *Slaughter v. John Elway Dodge Southwest/Auto Nation*, 107 P.3d 1165, 1170 (Colo. App. 2005)).

[232] *Curry*, 2013 WL 4494307, at *5.

[233] 2013 WL 4494307, at *5.

give its users the right to violate an employer's policies and practices regarding use of controlled substances.[234]

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[235]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[236]

3.2(d)(ii) *State Data Security Breach Guidelines*

Colorado law requires that when a covered entity becomes aware of a potential breach, it must conduct a good faith, prompt investigation to determine the likelihood that "personal information" has been or will be misused. If a breach has occurred, notice is required. However, a covered entity is not required to disclose a breach of the security system if, after a reasonable investigation, it determines that the misuse of information about a Colorado resident has not occurred and is not reasonably likely to occur.[237]

Personal information means a Colorado resident's first name or first initial and last name in combination with any one or more of the following: (1) Social Security number; (2) driver's license number or identification card number; (3) account number or credit or debit card number in a combination with any security code, access code, or password that would permit access to the account; (4) student, military, or passport identification number; (5) medical information; (6) health insurance identification number; (7)

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[234] 262 P.3d 970 (Colo. Ct. App. 2011).

[235] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[236] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

[237] COLO. REV. STAT. § 6-1-716.

biometric data; or (8) a username or email address, in combination with a password or security question and answer that would permit access to an online account.[238] Personal information does not include data that is encrypted, redacted, or secured by any other method which renders the data unreadable or unusable or information which is lawfully available publicly through federal, local, or state government records or widely distributed media.

Covered Entities. Individuals and commercial entities that conduct business in Colorado and maintain, own, or license personal identifying information in the course of that person's business, vocation, or occupation about a resident of Colorado are covered under the statute.[239]

Content & Form of Notice. Notice may be in one of the following formats:

- written notice to the postal address listed in the records of the covered entity;
- telephonic notice;
- electronic notice, if it is the primary means of communication by the covered entity with the Colorado resident, or is consistent with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $250,000;
  - the affected class of persons to be notified exceeds 250,000; or
  - the covered entity does not have sufficient contact information.[240]

Substitute notice must consist of all of the following:

- email notice when the covered entity has an email address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media.

The notice must include the following:

- the date, estimated date, or estimated date range of the security breach;
- a description of the acquired personal information;
- contact information for the covered entity;
- toll-free numbers, addresses, and websites for consumer reporting agencies (CRAs) and the Federal Trade Commission (FTC);
- a statement that the resident can obtain information from the FTC and CRAs about fraud alerts and security freezes; and
- if the acquired data included a username or email address in combination with a password or security questions and answers for an online account, a statement directing the person to

[238] COLO. REV. STAT. § 6-1-716(1)(d).

[239] COLO. REV. STAT. § 6-1-716(2).

[240] COLO. REV. STAT. § 6-1-716(1)(c).

promptly change the password and security questions or answers or to take other steps appropriate to protect online accounts that use the same username or email address.

A covered entity is compliant with this statute if it maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information. The policy must afford the same or greater protection to the affected individuals as the data security breach statute. Additionally, any person that complies with the notification requirements or security breach procedures of their primary or functional federal regulator is compliant with the statute.[241]

Timing of Notice. Notice must be given in the most expedient time possible and without unreasonable delay, but not later than 30 days after the date of determination that the breach occurred. However, notification may be delayed if:

- a law enforcement agency indicates that notification will impede a criminal investigation;
- a covered entity needs time to determine the nature and scope of the breach; or
- a covered entity needs time to restore the reasonable integrity of the data system.[242]

Additional Provisions. If more than 500 Colorado residents must be notified, the covered entity must also notify the Colorado Attorney General.

If more than 1,000 Colorado residents will be notified, then the covered entity must also notify all nationwide consumer reporting agencies of the anticipated date of the notification and the approximate number of residents who are to be notified. This provision does not require that the covered entity disclose names or other personal information of affected Colorado residents. This provision does not apply to any person that is subject to and complies with title V of the Gramm-Leach-Bliley Act.[243]

Any covered entity that maintains paper or electronic documents that contain personal identifying information must develop a written policy for the destruction of those documents once the documents are no longer needed, by shredding, erasing, or otherwise modifying the personal identifying information so that it's unreadable or indecipherable. Further, any covered entity or third-party service provider must implement and maintain reasonable security procedures to prevent unlawful access to personal identifying information. These security measures must be appropriate to the nature of the personal identifying information and reasonably designed to protect the information from unauthorized access, use, modification, disclosure, or destruction.[244]

3.2(e) *Additional State Privacy Protections*

3.2(e)(i) *State Guidelines on Biometric Privacy*

The Colorado Privacy Act ("CPA") applies to protect consumers' personal information and specifically excludes employees and employee data.[245] **Effective July 1, 2025**, the CPA will impose obligations on employers collecting and processing employees' biometric identifiers and biometric data. *Biometric identifiers* are defined as data generated by the technological processing, measurement, or analysis of a

[241] COLO. REV. STAT. § 6-1-716(3).

[242] COLO. REV. STAT. § 6-1-716(2).

[243] COLO. REV. STAT. § 6-1-716(2)(d).

[244] COLO. REV. STAT. § 6-1-716.

[245] COLO. REV. STAT. §§ 6-1-1303(6), 6-1-1304(2)(k).

consumer's biological, physical, or behavioral characteristics, which data can be processed for the purpose of uniquely identifying an individual. It includes a fingerprint; a voice print; a scan or record of an eye retina or iris; a facial map, geometry, or template; or unique biological, physical, or behavioral patterns or characteristics. *Biometric data* means one or more biometric identifier that are used or intended to be used, singly or in combination with each other or with other personal data, for identification purposes. Unless used for identification purposes, biometric data does not include a digital or physical photograph, an audio or voice recording, or data generated from a photograph or recording.[246]

Prior to collecting and processing employees' biometric identifiers and data, employers must adopt a written policy that addresses the retention and deletion of biometric identifiers and data, and a protocol for responding to a data security incident involving biometric identifiers and data, and notifying individuals affected by the incident. If the policy applies only to current employees or is used solely by employees and agents of the data controller, the written policy is not required to be made publicly available.[247]

In addition to the written policy, the employer must obtain valid and freely given consent from the employee for the collection and processing of biometric identifiers. In the following limited circumstances, the employer can require the employee or a job applicant to consent as a condition of employment:

- To permit access to secure physical locations and secure electronic hardware and software applications. An employer, however, cannot require the employee to consent to the employer's retention of biometric data used to track the employee's location or to monitor time spent using the hardware or software application.
- To record the beginning and end of the employee's full work day, including meal and rest breaks in excess of 30 minutes.
- To improve or monitor workplace safety or security, ensure employee safety or security, or improve or monitor public safety or security in the event of an emergency or crisis situation.[248]

For any other use, the employer must obtain the employee's consent, may not require that consent as a condition for employment, and is prohibited from retaliation against an employee or job applicant for refusing consent. Notwithstanding these requirements, an employer can collect and process biometric identifiers where their use would be reasonably expected by an employee based on the employee's job description or role, or by a job applicant based on a reasonable background check, application, or identification requirements in accordance with the new law.[249]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work

[246] COLO. REV. STAT. § 6-1-1303(2.2), (2.4) (effective Jul. 1, 2025).

[247] COLO. REV. STAT. § 6-1-1314(2) (effective Jul. 1, 2025).

[248] COLO. REV. STAT. § 6-1-1314(6) (effective Jul. 1, 2025)

[249] COLO. REV. STAT. § 6-1-1314(6) (effective Jul. 1, 2025).

on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[250] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[251]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[252]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[253]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[254] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

When resolving any question about an employee's wages, Colorado employers must consider their obligations under state law in addition to an employer's minimum wage and overtime obligations under federal law. Colorado regulates these obligations under the state labor law and through wage orders issued by the Colorado Department of Labor and Employment.

3.3(b)(i) *State Minimum Wage*

As of January 1, 2024, the minimum wage in Colorado is $14.42 per hour for most nonexempt employees. The minimum wage is adjusted every January 1st based on the increase in the cost of living, e.g., on January 1, 2025, it will increase to $14.81.[255]

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[250] 29 U.S.C. § 218(a).

[251] 29 U.S.C. § 206.

[252] 29 U.S.C. §§ 203, 206.

[253] 29 U.S.C. § 3(m)(2)(B).

[254] 29 U.S.C. § 207.

[255] COLO. CONST. art. XVIII, § 15; 7 COLO. CODE REGS. § 1103-1(3.1). Although technically the 2025 rate is "proposed," based on what we have seen in prior years, we anticipate the "final" number to match.

3.3(b)(ii) *Tipped Employees*

No more than $3.02 per hour in tip income may be used to offset the minimum wage obligation owed to *tipped employees* (employees who regularly and customarily receive more than $1.64 per hour in tips).[256] If an employee does not make $3.02 in tips per hour, an employer must make up the difference between the wage actually made, and the minimum wage. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[257]

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

In Colorado, employees whose physical disability has been certified by the Director of the Division of Labor Standards to significantly impair their ability to perform the duties involved in the employment may be paid 15% below the current minimum wage less any applicable lawful credits, for all hours worked by employers with special certificates issued on or before June 30, 2021. However, this subminimum wage will be phased out by 2025. An employer may also pay this same subminimum wage rate to unemancipated minors under the age of 18.[258]

The following types of employees are exempt from the state's minimum wage and overtime provisions, subject to certain exceptions:

- companions, casual babysitters, and domestic employees employed by households or family members to perform duties in private residences;
- property managers;
- interstate drivers, driver helpers, and loaders or mechanics of motor carriers;
- taxi drivers;
- *bona fide* volunteers;
- students employed by sororities, fraternities, college clubs, or dormitories;
- students employed in a work experience study program; and
- employees working in laundries of charitable institutions which pay no wages to workers and inmates, or workers in institutional laundries.[259]
- administrative employees, executives or supervisors, professional employees, and outside salespersons;
- owners and proprietors;
- interstate transportation workers (Drivers and drivers' helpers are exempted in certain situations, and whether they cross state lines is immaterial. Additionally, loaders and mechanics or motor carriers, and drivers and drivers' helpers of certain passenger vehicles are exempted)[260] and taxi cab drivers;

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[256] COLO. CONST. art. XVIII, § 15; 7 COLO. CODE REGS. § 1103-1(1.10, 6.2.3).

[257] 7 COLO. CODE REGS. § 1103-1(6.2.3).

[258] 7 COLO. CODE REGS. § 1103-1(3), COLO. REV. STAT. § 8-6-108.7.

[259] 7 COLO. CODE REGS. § 1103-1(5).

[260] 7 COLO. CODE REGS. § 1103-2.4.6.

- in-residence workers;
- range workers;
- field staff of seasonal camps or seasonal outdoor education programs;
- bona fide volunteers and work study students;
- elected officials and their staff;
- employees in highly technical computer-related occupations; and
- certain agricultural workers.[261]

The following types of employees are exempt from state overtime requirements, subject to exceptions:

- certain salespersons and mechanics;
- commissioned salespersons;
- ski industry employees;
- medical transportation employees; and
- hospital or nursing home employees on an "8 and 80 rule" schedule.[262]

For those exemptions that require a salary, the FLSA's rules generally apply. However, the employee's salary must be at least the following:

- January 1, 2024: $1,057.69 per week, $55,000 per year.
- January 1, 2025: $1,086.25 per week, $56,485per year.
- January 1, 2026: The 2025 salary adjusted by the same CPI as the Colorado Minimum Wage.[263]

3.3(b)(iv) *Local Minimum Wage Ordinances*

The City of Denver, City of Edgewater, and County of Boulder have enacted minimum wage ordinances that establish a local minimum wage rate that may differ from the state's minimum wage rate. Local minimum wage ordinances often include their own notice, record-keeping, and wage statement requirements, so employers with operations in those localities must be aware of their overlapping state and local compliance obligations.

Under the City of Denver's minimum wage ordinance, covered employees must receive a minimum wage of $18.29 per hour as of January 1, 2024.[264] Annually, on January 1, the city will adjust the minimum wage rate based on changes to the Consumer Price Index. For example, on January 1, 2025, the minimum wage will be $18.81 per hour. For covered tipped employees, employers may apply a tip credit up to $3.02 per hour. Employers must prominently post a city-approved notice concerning the minimum wage to be paid

[261] 7 COLO. CODE REGS. § 1103-2.2, 2.3.

[262] 7 COLO. CODE REGS. § 1103-2.4.

[263] 7 COLO. CODE REGS. § 1103-2.5. Although technically the 2025 rate is "proposed," based on what we have seen in prior years, we anticipate the "final" number to match.

[264] DENVER, COLO., REVISED MUN. CODE §§ 58-13 *et seq.* ("Minimum Wage"), 58-1 *et seq*. ("Wages") and 58-22 *et seq*. ("Civil Wage Theft").

and that complaints related to any alleged violations may be submitted to the city auditor. There are additional record-keeping requirements.

Denver has also established civil penalties for wage theft. Under the ordinance, *civil wage theft* refers to any instance where a worker does not receive wages to which they are legally entitled, as promised and required by law, under contract, or any other enforceable standard. The ordinance requires employers to ensure that all workers performing work in the city are paid all earned wages at the highest applicable rate, subject to certain exceptions. The ordinance applies to all persons who work in Denver, regardless of an employer's location, and includes notice and recordkeeping obligations.[265]

Under the City of Edgewater's minimum wage ordinance, covered employees must receive a minimum wage of $15.02 per hour as of January 1, 2024, and the following rates on January 1 in subsequent years: $16.52 (2025); $18.17 (2026); $19.99 (2027); $21.99 (2028). In 2029 and subsequent calendar years, the minimum wage will be adjusted based on changes to the consumer price index or to align with the minimum wage in Denver if that rate is higher. For covered tipped employees, employers may apply a tip credit up to $3.02 per hour. Employers must prominently post a notice concerning the minimum wage to be paid and that complaints related to any alleged violations may be submitted to the city. There are additional record-keeping requirements.

Under the County of Boulder's minimum wage ordinance, covered employees must receive a minimum wage of $15.69 per hour as of January 1, 2024. In future years, on January 1, the minimum wage will increase as follows: $16.57 (2025); $17.99 (2026); $19.53 (2027); $21.21 (2028); $23.03 (2029); and $25.00 (2030). In 2031 and subsequent calendar years, the minimum wage will be adjusted based on changes to the consumer price index. For covered tipped employees, employers may apply a tip credit up to $3.02 per hour. Employers must prominently post a notice concerning the minimum wage to be paid. There are additional record-keeping requirements.

3.3(c) *State Guidelines on Overtime Obligations*

Nonexempt employees must be paid one-and-one-half times their regular rate for all hours worked in excess of: (1) 40 hours per workweek; (2) 12 hours per workday; or (3) 12consecutive hours without regard to starting and ending time of the workday, whichever calculation results in the greatest payment of wages.[266] In calculating when 12 consecutive hours are worked, compliant meal periods may be subtracted.[267]

3.3(d) *State Guidelines on Overtime Exemptions*

The following types of employees are exempt from the state's minimum wage and overtime provisions:

- administrative employees, executives or supervisors, professional employees, outside salespersons, and, certain highly compensated employees;
- owners and proprietors;

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[265] The rules and approved notice are available at https://denvergov.org/files/assets/public/auditor/documents/denver-labor/2023/civil-wage-theft-rules.3.14.23.pdf.

[266] COLO. CONST. art. XVIII, § 15; 7 COLO. CODE REGS. § 1103-1(4.1.1, 4.1.2).

[267] 7 COLO. CODE REGS. § 1103-1(4.1.5).

- interstate transportation workers and taxi cab drivers;
- in-residence workers;
- range workers;
- field staff of seasonal camps or seasonal outdoor education programs;
- bona fide volunteers and work study students;
- elected officials and their staff;
- employees in highly technical computer-related occupations; and
- certain agricultural workers.[268]

The following types of employees are exempt from state overtime requirements, subject to exceptions:

- certain salespersons and mechanics;
- commissioned salespersons;
- ski industry employees;
- medical transportation employees; and
- hospital or nursing home employees on an "8 and 80 rule" schedule.[269]

3.3(d)(i) *Executive Exemption*

Under Colorado law, an employee is covered by the executive exemption if the individual meets all the following requirements:

- paid a salary at a level that is sufficient for the minimum wage for all hours in a workweek and that is at a level set by state law. As of January 1, 2024, that figure is $1,057.69 per week and $55,0000 annually. Beginning in 2025, and each subsequent year, the state will adjust the amounts based on consumer price index changes, *e.g.*, on January 1, 2025, the rates will increase to $1,086.25 and $56,485, respectively.
- supervises the work of at least two full-time employees;
- has the authority to hire and fire, or to effectively recommend hiring and firing; and
- spends a minimum of 50% of the workweek in the duties directly related to supervision of employees.[270]

3.3(d)(ii) *Administrative Exemption*

Under Colorado law, an employee is covered by the administrative exemption if the individual meets all the following requirements:

- paid a salary at a level that is sufficient for the minimum wage for all hours in a workweek and that is at a level set by state law. As of January 1, 2043, that figure is $1,057.69 per week and

[268] 7 COLO. CODE REGS. § 1103-2.2, 2.3.

[269] 7 COLO. CODE REGS. § 1103-2.4.

[270] 7 COLO. CODE. REGS. § 1103-1(2.2.2, 2.5.1). Although technically the 2025 rate is "proposed," based on what we have seen in prior years, we anticipate the "final" number to match.

$55,000 annually. Beginning in 2025, and each subsequent year, the state will adjust the amounts based on consumer price index changes, *e.g.*, on January 1, 2025, the rates will increase to $1,086.25 and $56,485, respectively.

- directly serves the executive;
- regularly performs duties important to the decision-making process of the executive;
- the executive and employee must regularly exercise independent judgment and discretion in matters of significance; and
- primary duty must be nonmanual in nature and directly related to management policies or general business operations.[271]

3.3(d)(iii) *Professional Exemption*

Under Colorado law, an employee is covered by the professional exemption if the individual meets all the following requirements:

- paid a salary at a level that is sufficient for the minimum wage for all hours in a workweek and that is at a level set by state law. As of January 1, 2024, that figure is $1,057.69 per week and $55,000 annually. Beginning in 2025, and each subsequent year, the state will adjust the amounts based on consumer price index changes, *e.g.*, on January 1, 2025, the rates will increase to $1,086.25 and $56,485, respectively.
  - The salary basis requirement does not apply to doctors, lawyers, or teachers.[272]
- employed in a field of endeavor with knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study; and
- employed in the field in which the individual is trained to be considered a professional employee.[273]

3.3(d)(iv) *Computer Employees Exemption*

The computer employee exemption applies to an employee:

- paid the required salary (see above) or hourly compensation (see below);
- who is a skilled worker employed as a computer systems analyst, computer programmer, software engineer, or other similarly highly technical computer employee;
- who has knowledge of an advanced type, customarily acquired by a prolonged course of specialized formal or informal study; and
- spends a minimum of 50% of the workweek in any combination of the following duties:

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[271] 7 COLO. CODE. REGS. § 1103-1(2.2.1, 2.5.1). Although technically the 2025 rate is "proposed," based on what we have seen in prior years, we anticipate the "final" number to match.

[272] 7 COLO. CODE. REGS. § 1103-1(2.5.2).

[273] 7 COLO. CODE. REGS. § 1103-1(2.2.3, 2.5.1). Although technically the 2025 rate is "proposed," based on what we have seen in prior years, we anticipate the "final" number to match.

- the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
- the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or
- the design, documentation, testing, creation, or modification of computer programs related to machine operating systems.

Employees in highly technical computer-related occupations must receive at least the lesser of the applicable salary or hourly pay that is at least $33.17 in 2024. The state will annually adjust the hourly rate based on consumer price index changes, *e.g.*, on January 1, 2025, it will increase to $34.07.[274]

3.3(d)(v) *Commissioned Sales Exemption*

Overtime provisions do not apply to sales employees of retail or service industries paid on a commission basis if:

- 50% of their total earnings in a pay period are derived from commission sales; and
- their regular rate of pay is at least 1.5 times the state minimum wage.[275]

The exemption only applies to employees of retail or service employers that receive in excess of 75% of their annual dollar volume from retail or service sales.

3.3(d)(vi) *Outside Sales Exemption*

Colorado's overtime provisions do not apply to an *outside salesperson*, defined as: (1) an employee working primarily away from the employer's place of business or enterprise for the purpose of making sales or obtaining orders or contracts for any commodities, articles, goods, real estate, wares, merchandise, or services; and (2) who spends a minimum of 80% of the workweek in activities directly related to their own outside sales.[276]

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[277] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees

[274] 7 COLO. CODE. REGS. § 1103-1(2.5.2). Although technically the 2025 rate is "proposed," based on what we have seen in prior years, we anticipate the "final" number to match.

[275] 7 COLO. CODE. REGS. § 1103-1(2.4.2).

[276] 7 COLO. CODE. REGS. § 1103-1(2.2.4).

[277] 29 C.F.R. § 785.19.

be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[278]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[279] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[280] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[281] Exemptions apply for smaller employers and air carriers.[282]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[283] Lactation is considered a related medical condition.[284] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[285] For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

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[278] 29 C.F.R. § 785.18.

[279] 29 U.S.C. § 218d.

[280] 29 U.S.C. § 218d(b)(2).

[281] 29 U.S.C. § 218d(a).

[282] 29 U.S.C. § 218d(c), (d).

[283] 42 U.S.C. § 2000gg–1.

[284] 29 C.F.R. § 1636.3.

[285] 29 C.F.R. § 1636.3.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

Meal Periods. Employees are entitled to an unpaid meal period of at least 30-minute duration when the scheduled work shift exceeds five consecutive hours of work. A meal period must be uninterrupted and "duty-free" to qualify as unpaid. If the nature of the job or circumstances makes an uninterrupted meal period impracticable, the employee is entitled to an on-duty meal period without any loss of time or compensation. Meal periods should, to the extent practical, be at least one hour after the start and one hour before the end of the shift.[286]

Rest Periods. An employer must authorize and permit 10-minute rest periods for each four hours worked or major fraction thereof. Breaks should be scheduled in the middle of the work period insofar as practicable and must be paid. It is not necessary that the employee leave the premises for the break. Employers and employees can agree in writing to have two five-minute rest periods, as long as five minutes is sufficient time to go back and forth to a bathroom, or other location where a break may be taken. Additional conditions will apply to collective bargaining units and certain employees providing Medicaid-funded in-home services.[287]

Exempt Employees. *Bona fide* administrative, executive, and supervisory, professional, and outside sales employees, among others, are exempt from the state Minimum Wage Order, which includes the meal and rest period requirements.[288]

3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no independent meal period requirements for minor employees in Colorado—the adult standards apply.

3.4(b)(iii) *Lactation Accommodation Under State Law*

Under Colorado law, a mother may breast feed in any place she has a right to be.[289] State law also requires employers to provide lactation accommodation. An employer must make "reasonable efforts" to provide a room in close proximity to the work area, other than a toilet stall, where an employee may express breast milk in privacy.[290] *Reasonable efforts* means "any effort that would not impose an undue hardship on the operation of the employer's business."[291] *Undue hardship* means any action that requires significant difficulty or expense when considered in light of such factors as the size and financial resources of the business, or the nature and structure of its operations.[292]

Employers must provide a nursing mother with reasonable unpaid break time to express breast milk for her nursing child, or permit the employee to use paid break time, paid meal time, or both, for this purpose. A nursing mother has a right to express break milk in the workplace for up to two years after a child's

[286] 7 COLO. CODE REGS. § 1103-1(5.1).

[287] 7 COLO. CODE REGS. § 1103-1(5.2).

[288] 7 COLO. CODE REGS. § 1103-1(5).

[289] COLO. REV. STAT. § 25-6-302.

[290] COLO. REV. STAT. § 8-13.5-104.

[291] COLO. REV. STAT. § 8-13.5-103(2).

[292] COLO. REV. STAT. § 8-13.5-103(3).

birth. An employer that makes reasonable efforts to accommodate an employee who chooses to express breast milk in the workplace will comply with the lactation accommodation and break requirements.

The statute does not set forth penalties for a violation of its terms, but it appears to permit a private right of action. However, the statute expressly states that before an employee may seek litigation for a violation of the lactation accommodation requirements, she and the employer must engage in nonbinding mediation.[293]

3.4(b)(iv) *Lactation Accommodation Under Local Law*

The city of Denver also requires an employer to provide lactation accommodation. Employers of 10 or more employees are required to provide reasonable accommodations to an applicant or employee with a condition related to pregnancy, childbirth, or a related medical condition, including but not limited to the need to express breast milk for a nursing child, unless the employer can demonstrate that providing accommodation would impose an undue hardship on the employer's program, enterprise, or business. *Reasonable accommodation* includes but is not limited to providing a private, nonbathroom space for expressing breast milk.[294]

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[295] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[296]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

In Colorado, *time worked* is defined as time during which an employee is performing labor or services for the benefit of the employer, including all the time the employee is suffered or permitted to work

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[293] COLO. REV. STAT. § 8-13.5-104.

[294] DENVER, COLO. REV. MUNI. CODE §§ 28-93(b), 28-96(b).

[295] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[296] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

regardless of whether the employee is required to work. In addition, any time when an employer requires or permits employees to remain at the worksite waiting for the employer's decision on a job assignment or when to begin work, or to perform clean up, or other duties off the clock is also considered time worked. This includes any time when an employer requires or permits employees to remain at the worksite, on duty, or at a prescribed workplace, including the following: putting on or removing required work clothes or gear, receiving or sharing work-related information, security or safety screening, waiting for the employer's decision on a job assignment or when to begin work, to perform clean up or other duties off the clock, clocking or checking in and out, or waiting for any of the preceding activities, is also considered time worked. Whether an employer must compensate activities that take less than one minute to perform depends on several factors such as the difficult of recording or estimating the time, the aggregate amount of time, and whether the activity is performed on a regular basis.[297]

There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. Colorado law addresses on-call time and travel time and views them as compensable time.

On-Call Time. Requiring or permitting employees to remain at the place of employment awaiting a decision on job assignment or when to begin work or to perform clean up or other duties "off the clock" is considered time worked and must be compensated.[298]

Travel Time. All travel time spent at the control or direction of an employer, excluding time spent commuting between home and work, is compensable. Other travel, such as travel to and from a work station entirely on an employer's premises, is not compensable unless it is considered "time worked" as defined in the regulations, after compensable time starts or before compensable time ends under the regulations, or travel in employer-mandated transportation that materially prolongs commute time or where employees are subject to heightened physical risk as compared to an ordinary commute.[299] The Colorado Department of Labor and Employment issued an Interpretive Notice and Formal Opinion, (INFO) that clarifies what constitutes travel and sleep time that is considered hours worked and therefore compensable.[300]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[301] Additional latitude is also granted where minors are employed by their parents.

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[297] 7 COLO. CODE REGS. § 1103-1(1.9.1).

[298] 7 COLO. CODE REGS. § 1103-1(1.9)

[299] 7 COLO. CODE REGS. § 1103-1(1.9.2)

[300] Interpretive Notice and Formal Opinion #20C; https://cdle.colorado.gov/sites/cdle/files/INFO %2320 Summary Time Worked That Must Be Paid under Colorado Law 12.8.23 %5Baccessible%5D.pdf.

[301] 29 C.F.R. §§ 570.36, 570.50.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[302] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

The general purpose of the Colorado Youth Employment Opportunity Act[303] is to ensure that minors are not employed in an occupation or manner detrimental to their health, safety, or well-being. A *minor* is defined as any individual under 18 years of age, except a person who has received a high school diploma or passing score on the General Educational Development (GED) examination.[304]

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. The Colorado Youth Employment Opportunity Act places restrictions on the types of jobs and hours minors may work. Table 9 details the restrictions on type of employment by age.

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under 18	*Children under the age of 18 are precluded from working in, about, or in connection with:* • operation of any high-pressure steam boiler or high temperature water boiler; • manufacturing, transporting, or storing of explosives; • mining, logging, oil drilling, or quarrying; • exposure to radioactive substances; • operation of various power-driven machinery (*e.g.*, bakery machines, woodworking machines); • the slaughter of livestock and rendering and packaging of meat; • manufacture of bricks or other clay construction products; • wrecking or demolition; • roofing; • excavations; or • the risk of falling from any elevated place 10 feet or move above the ground.[305]
Aged 16 & Older	In addition to the permitted occupations for minors aged 14 and older (see below), minors age 16 or older *may* work in occupations that involve the use of a motor vehicle if licensed to operate a motor vehicle for legal purposes.[306]

[302] 29 C.F.R. § 570.6.

[303] COLO. REV. STAT. §§ 8-12-101 *et seq.*

[304] COLO. REV. STAT. § 8-12-103(5).

[305] COLO. REV. STAT. § 8-12-110.

[306] COLO. REV. STAT. § 8-12-109.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Aged 14 & Older	*Minors age 14 or older may work in any of the following occupations:* • nonhazardous occupations in manufacturing; • nonhazardous construction and nonhazardous repair work; • operation of automatic enclosed freight and passenger elevators; • janitorial and custodial service, including the operation of vacuum cleaners and floor waxers; • occupations in retail food service; • office work and clerical work, including the operation of office equipment; • errands by foot, bicycle, and public transportation; • warehousing and storage, including unlading and loading of vehicles; • occupations in gasoline service establishments, including but not limited to: dispensing oil and gasoline, courtesy service, car cleaning, washing, and polishing, the use of hoists where supervised, changing tires (*except* no minor may inflate or change any tire mounted on a rim equipped with a removable retaining ring); • occupations in retail stores, including cashiering, selling, price marking by hand or machine, assembling orders, packing and shelving, or bagging and carrying out customers' orders; • occupations in restaurants, hotels, motels, or other public accommodations (*except* the operation of power food slicers and grinders); • occupations in retail food service; • occupations related to parks and recreation; and • other similar occupations not specifically prohibited by law.[307]
Under Age 14	In Colorado, minors under age 14 *cannot* be employed, subject to limited exceptions. Minors age 12 or older may, however, be employed in limited occupations, *e.g.*, babysitting, lawn care. Also, there are permitted occupations for minors age nine or older, *e.g.*, shoe shining, golf caddying.[308]

Restrictions on Selling or Serving Alcohol. Colorado law sets forth the following guidelines on minors selling or serving alcohol or working in an establishment that sells or serves alcohol:

- Individuals under age 21 cannot sell or dispense malt, vinous, or spirituous liquors unless supervised by a person who is at least age 21 and on the premises.
- Individuals under age 21 cannot sell malt, vinous, or spirituous liquors at a licensed tavern that does not regularly serve meals, or at a retail liquor store.
- Individuals under age 18 cannot sell or dispense alcoholic beverages.

[307] COLO. REV. STAT. § 8-12-108.

[308] COLO. REV. STAT. §§ 8-12-105 to 8-12-107.

- Individuals under age 18 cannot sell or dispense fermented malt beverages and wine, check age identification, or make deliveries beyond the customary parking area for the customers of the retail outlet.
- Individuals under age 18 that are under the supervision of a person on the premises over age 18 may work in a business where fermented malt beverages and wine are sold at retail in containers for off-premises consumption.
- During the normal course of such employment, any person under age 21 may handle and otherwise act with respect to fermented malt beverages and wine in the same manner as that person does with other items sold at retail. A person under age 21 shall not deliver fermented malt beverages and wine, in sealed containers to customers under certain conditions.[309]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

Under Age18. In Colorado, minors under 18 that have not received a high school diploma or GED passing score *cannot* work over eight hours in any 24-hour period, or more than 40 hours in a week, unless authorized when there is a business emergency and such hours are paid subject to the overtime provisions.

Exemptions exist for school work and supervised educational activities; home chores; work done for a parent or guardian (except where the parent or guardian receives payment for the work); newsboys and newspaper carriers; and minors employed as actors, models, or performers. Additionally, the state labor department may grant exemptions if doing so would be in the minor's best interests.[310]

Under Age 16. In Colorado, minors under the age of 16 *cannot* work:

- during school hours;
- more than six hours after school hours (unless the next day is not a school day or the minor obtains a school release permit); or
- between 9:30 P.M. and 5:00 A.M. (except babysitters) unless the next day is not a school day.[311]

Age 14 & Older. In Colorado, minors age 14 or older who are seasonally employed for the culture, harvest, or care of perishable products where wages are paid on a piece basis, may be permitted to work hours in excess of the "Under Age 16 restrictions," but in no case can they work more than 12 hours in any 24-hour period, nor more than 30 hours in any 72-hour period. However, minors age 14 and 15 may work more than eight hours per day on only 10 days in any 30-day period. Overtime wage provisions do not apply.[312]

Under Age14. Minors under 14 cannot work, subject to limited exceptions.[313]

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[309] COLO. REV. STAT. §§ 44-4-106 as amended by Prop. 125 (Colo. 2022), 44-3-901.

[310] COLO. REV. STAT. §§ 8-12-104, 8-12-105.

[311] COLO. REV. STAT. §§ 8-12-105, 8-12-113.

[312] COLO. REV. STAT. § 8-12-105.

[313] COLO. REV. STAT. §§ 8-12-105 to 8-12-107.

3.6(b)(iii) *State Child Labor Exceptions*

Colorado's child labor laws do not apply to a minor who has received a high school diploma or a passing score on the GED. Additionally, specific exemptions may be granted on a case-by-case basis. Exemptions may be requested by an employer, minor, minor's parent, or guardian, school official, or youth employment specialist.[314]

3.6(b)(iv) *State Work Permit or Waiver Requirements*

There are no general work permit requirements in Colorado for minors under age 18. However, for minors age 14 and 15 to work on school days during school hours, a school release permit is required. A school release permit may be granted only if the parent or guardian consents and the issuing officer believes that granting a permit will be in the minor's best interests.

Employers may obtain age certificates for minors, which are issued by the applicable school superintendent. Employers that obtain age certificates must keep them for the duration of the minor's employment, where they may be readily examined by an agent of the state labor department. Upon termination of employment and upon request, the certificate must be returned to the minor.[315]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

Persons or employers that violate the Colorado Youth Employment Opportunity Act are subject to conviction for a misdemeanor, punishable by a fine not less than $20, but no more than $100 for each offense (effective January 1, 2025, these amounts increase to not less than $250, but no more than $1,000 for each offense.)[316] Additionally, effective January 1, 2025, if an employer violates the Act by employing a minor in a prohibited hazardous occupation, they will be required to pay a fine of not less than $2,000 but not more than $4,000. However, if an employer commits a willful violation when employing a minor in a prohibited hazardous occupation, or it is a second or subsequent violation within five years after their most recent violation, the employer will be required to pay a fine of not less than $5,000 but not more than $10,000.[317] A willful violation of the Act, excluding violations regarding employing minors in prohibited hazardous occupations, or a second or subsequent violation of excluding violations regarding employing minors in prohibited hazardous occupations within five years of the employer's most recent violation, will incur a fine of not less than $500 but not more than $4,000. [318] In addition to the penalties, an employer that knowingly violates or knowingly fails to comply with any of the provisions of the Act commits a misdemeanor. If convicted of a misdemeanor, the employer will be punished by a fine of not less than $500 but not more than $2,000.[319]

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[314] COLO. REV. STAT. §§ 8-12.103, 8-12-104.

[315] COLO. REV. STAT. §§ 8-12-111, 8-12-113.

[316] COLO. REV. STAT. § 8-12-116, as amended by H.B. 1095 (Colo. 2024).

[317] COLO. REV. STAT. § 8-12-116, as amended by H.B. 1095 (Colo. 2024).

[318] COLO. REV. STAT. § 8-12-116, as amended by H.B. 1095 (Colo. 2024).

[319] COLO. REV. STAT. § 8-12-116, as amended by H.B. 1095 (Colo. 2024).

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[320]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[321]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[322]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[323] The "prepaid rule" regulation—defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[324]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that

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[320] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[321] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

[322] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[323] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[324] 12 C.F.R. § 1005.2(b)(3)(i)(A).

must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[325] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[326]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[327]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[328]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

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[325] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[326] 12 C.F.R. § 1005.18.

[327] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[328] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[329] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[330] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[331] tools and equipment,[332] and business transportation and travel.[333] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[334]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[335]

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[329] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[330] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[331] 29 U.S.C. § 203(m); 29 C.F.R. §§531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[332] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage &Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[333] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[334] 29 C.F.R. § 778.217.

[335] 29 C.F.R. § 531.38.

- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[336]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[337]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[338]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[339] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[340]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[341]

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[336] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15U.S.C. §§ 1671 *et seq*.

[337] 29 C.F.R. § 531.40.

[338] 29 C.F.R. § 531.40.

[339] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[340] 29 C.F.R. § 825.213.

[341] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[342] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[343]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[344]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[345]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[346]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

In Colorado, *wages* or *compensation* include:

- All amounts for labor or service performed by employees, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculating the same or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the

[342] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[343] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[344] 29 C.F.R. § 531.36.

[345] 29 C.F.R. § 531.37.

[346] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

performance of labor or service if the labor or service to be paid for is performed personally by the person demanding payment.

  - An amount is *not* considered wages or compensation until it is earned, vested, and determinable, at which time it is payable to the employee.

- Bonuses or commissions earned for labor or services performed in accordance with the terms of any agreement between an employer and employee.
- Vacation pay earned in accordance with the terms of any agreement.
  - If an employer provides paid vacation for an employee, when employment ends it must pay all vacation pay earned and determinable in accordance with the terms of the agreement.

Wages or compensation does not include severance pay.[347]

Authorized Instruments. Wages may be paid by cash, order, check, draft, note, memorandum, or other acknowledgement of indebtedness, or voluntary direct deposit in an institution of the employee's choice.

Paychecks and other acknowledgements of indebtedness must be payable upon demand without discount at a bank organized under Colorado or U.S. banking law, or at a business establishment in the state. The name and address of the drawee must appear on face of the check or other acknowledgement. Whatever method of payment is chosen, it must be convertible to cash at the employee's demand without cost to the employee. Wages may *not* be paid using scrip, coupons, cards, or other things redeemable in merchandise unless such things may be redeemed in cash when due.[348]

Direct Deposit. Mandatory direct deposit is not permitted in Colorado. However, an employer may deposit wages in a "financial institution" of the employee's choice with the employee's voluntary consent. Financial institutions include banks, savings, and loan associations, credit unions, and other institutions authorized by the federal or a state government to receive deposits. The state labor department has informally advised that there is no specific requirement that consent be in writing, but written consent is advisable.[349]

Payroll Debit Card. An employer may deposit an employee's wages on a paycard provided the employee: (1) is provided free means of access to the entire amount of net pay at least once per pay period; or (2) may choose to use another authorized method of wage payment. *Paycard* is defined as an access device that employees use to receive their payroll funds from their employer.[350]

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[347] COLO. REV. STAT. § 8-4-101; 7 COLO. CODE REGS. § 1103-1 (r. 2).

[348] COLO. REV. STAT. § 8-4-102; Colorado Dep't of Labor and Emp't, Div. of Labor, *Advisory Bulletins & Resource Guide*, *Methods of Payment, 1(I)* (Mar. 31, 2012).

[349] COLO. REV. STAT. § 8-4-102; Colorado Dep't of Labor and Emp't, Div. of Labor, *Advisory Bulletins & Resource Guide*, *Methods of Payment, 1(I)* (Mar. 31, 2012); Telephone conversation, Peter Wingate, Deputy Director, Div. of Labor, Colorado Dep't of Labor & Emp't (June 25, 2014).

[350] COLO. REV. STAT. § 8-4-102; Colorado Dep't of Labor and Emp't, Div. of Labor, *Advisory Bulletins & Resource Guide*, *Methods of Payment, 1(I)* (Mar. 31, 2012).

3.7(b)(ii) *Frequency of Payment Under State Law*

Colorado law requires employers to pay wages at least once every calendar month or 30 days, whichever is longer. This requirement does not apply to payments under a profit-sharing plan, pension plan, or similar deferred compensation plans. Regular paydays may occur no later than 10 days following the close of each pay period. An employer and employee may agree mutually on any other alternative period of wage or salary payment.[351] An employer may also elect to pay its employees on a semi-monthly basis, provided that regular paydays are no later than 10 days following the close of each pay period.[352]

3.7(b)(iii) *Final Payment Under State Law*

If an employee quits, final wages must be paid by the next regular payday.[353]

When an employer fires or lays off an employee, all earned, vested, determinable, and unpaid wages are due immediately. If an employee is terminated at a time when the accounting unit is closed, an employer has six hours from the time it reopens to issue the check. If the accounting unit is located offsite, an employer must deliver an employee's final paycheck no later than 24 hours after the start of the accounting unit's next regular workday.[354]

If an employer made the employee's final pay available at the worksite or its local office and the employee has not received it within 60 days after being due, the employee's paycheck must be mailed to the employee's last known mailing address.[355]

Striking employees must be paid all wages and compensation earned by the next regular payday, without abatement or reduction.[356]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

For each pay period, an employer must furnish to each employee an itemized pay statement showing the following information:

- the employer's name;
- the employee's name;
- total hours worked in the pay period;
- record of credits claimed and of tips; and
- regular rates of pay, gross wages earned, withholdings made, and net amounts paid each pay period.

Each employer must provide each employee access to the employee's name, address, occupation, and date of hire, as well a daily record of all hours worked in any of the following forms it chooses:

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[351] COLO. REV. STAT. § 8-4-103.

[352] COLO. REV. STAT. § 8-4-103.

[353] COLO. REV. STAT. § 8-4-109.

[354] COLO. REV. STAT. § 8-4-109.

[355] COLO. REV. STAT. § 8-4-109.

[356] COLO. REV. STAT. § 8-4-108.

- provide the information with the regular earnings statements;
- provide each employee with access to a functioning electronic portal that shows the information – but this method is permissible only if the employer knows an email address of the employee; or
- provide each employee the information for the entire calendar year by January 31 the following year and, if addition, provide the information to an employee upon a request that an employee may make once per year.[357]

Employers must keep records reflecting the above information for at least three years after wages were due.[358] An employer can be fined up to $250 per employee per month (with a maximum fine of $7,500) for violating certain wage statement requirements.

3.7(b)(v) *Wage Transparency*

The Colorado Anti-Discrimination Act prohibits an employer from discharging, disciplining, discriminating against, coercing, intimidating, threatening, or interfering with any employee or other person because the employee inquired about, disclosed, compared, or otherwise discussed their wages. Further, an employer cannot require nondisclosure of wages as a condition of employment, or require an employee to sign a waiver or other document that purports to deny an employee the right to disclose the employee's wage information.[359]

An employee alleging a violation of the statute must first exhaust administrative remedies by filing an administrative complaint with the Colorado Civil Rights Commission within 300 days of the alleged violation. Following the exhaustion of administrative remedies, an employee may file a civil action.[360]

The Colorado Equal Pay for Equal Work Act also encourages wage transparency by making it unlawful for an employer to:

- discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with an employee or other person because the employee or person inquired about, disclosed, compared, or otherwise discussed the employee's wage rate;
- prohibit, as a condition of employment, an employee from disclosing the employee's wage rate; or
- require an employee to sign a waiver or other document that prohibits the employee from disclosing wage rate information or purports to deny the employee the right to disclose the employee's wage rate information.[361]

[357] 7 COLO. CODE REGS. § 1103-1

[358] COLO. REV. STAT. § 8-4-103.

[359] COLO. REV. STAT. § 24-34-402(1).

[360] COLO. REV. STAT. §§ 24-34-306, 24-34-403 as amended by H.B. 1367 (Colo. 2022).

[361] COLO. REV. STAT. § 8-5-102.

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

Changing Regular Paydays. Employers must conspicuously post a notice about payday and time and place of payment changes at the place of work (if practicable), where it can be seen as employees come or go, or at the office or nearest agency for payment kept by the employer.[362]

Changing Pay Rate. There are no general notice requirements. However, it is recommended that employers provide advance written notice before a change occurs.

3.7(b)(vii) *Paying for Expenses Under State Law*

In Colorado, there is no general obligation to indemnify an employee for business expenses, although the state does have provisions addressing the cost of uniforms, tools, and equipment.

Uniforms. If wearing a particular uniform or special apparel is a condition of employment, the employer must pay the cost of purchases, maintenance, and cleaning of the uniforms or special apparel. However, clothing that is ordinary street wear, and ordinary white or any light colored plain and washable uniform, need not be furnished by the employer unless a special color, make, pattern, logo, or material is required. This applies to any plain and washable uniform. Further, if the uniform is plain and washable and does not need or require special care (*e.g.*, ironing, dry cleaning, pressing), an employer need not maintain or pay for cleaning.

Tools & Equipment. An employer may make deductions from an employee's wages for equipment or property provided by an employer to the employee pursuant to a written agreement between the parties, if the agreement is enforceable and not contrary to legal requirements.

An employer can deduct the property's value from final wages if the employee failed to properly return it. An employer has 10 calendar days after an employee is terminated to audit and adjust the property value of any items entrusted to the employee before the employee's wages or compensation must be paid. However, the deduction cannot cause the employee's pay to fall below the federal minimum wage.[363]

Note that a provision in an employment agreement allowing the employer to recover reasonable training expenses, if the training is distinct from normal, on-the-job training, is not a prohibited non-compete agreement in Colorado. The employer's recovery is limited to the reasonable costs of the training and must decrease over the course of the two years subsequent to the training proportionately based on the number of months that have passed since the completion of the training. The contractual provision must also satisfy any other relevant requirement determined by the state attorney general regarding the transferability of the training or credentialing in question.[364] See **2.3(b)(i)** on the state's restrictive covenant law for additional details.

3.7(b)(viii) *Wage Deductions Under State Law*

Requirements for Deductions. In Colorado, an employer cannot make a deduction from the wages or compensation of an employee unless deductions are:

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[362] COLO. REV. STAT. § 8-4-107.

[363] COLO. REV. STAT. § 8-4-105.

[364] COLO. REV. STAT. § 8-2-113.

- required by or in accordance with local, state, or federal law (includes the withholdings under the Federal Insurance Contributions Act (FICA), garnishments, or any other court-ordered deduction);
- contributions attributable to automatic enrollment in an employee retirement plan, regardless of whether the plan is subject to the federal Employee Retirement Income Security Act (ERISA);
- for loans, advances, goods, or services, and equipment or property provided by an employer to an employee pursuant to a written agreement between such employer and employee, if it is enforceable and does not violate the law;
- necessary to cover the replacement cost of a shortage due to theft by an employee if a report has been filed with the proper law enforcement agency in connection with such theft pending a final adjudication by a court of competent jurisdiction. However, if the accused employee is found not guilty in a court action or if criminal charges related to such theft are not filed against the accused employee within 90 days after the filing of the report with the proper law enforcement agency, or such charges are dismissed, the accused employee is entitled to recover any amount wrongfully withheld plus interest. If an employer acts without good faith, in addition to the amount wrongfully withheld and legally proven to be due, the accused employee may be awarded an amount not to exceed three times the amount wrongfully withheld. In any such action the prevailing party is entitled to reasonable costs related to the recovery of such amount, including attorneys' fees and court costs;
- not listed here, but authorized by an employee if the authorization is revocable (includes deductions for hospitalization and medical insurance, other insurance, savings plans, stock purchases, supplemental retirement plans, charities, and deposits to financial institutions); or
- for the amount of money or the value of property that the employee failed to properly pay or return to the employer in the case where a terminated employee was entrusted during their employment with the collection, disbursement, or handling of such money or property(this deduction is discussed further below).

However, any deduction cannot cause the employee's pay to drop below the federal minimum wage.[365]

Other Permissible Deductions. An employer may take a credit for room and board. The reasonable cost or fair market value for lodging furnished by an employer and used by an employee may be considered part of the minimum wage, but the credit can be no greater than the smaller of the reasonable and actual cost to the employer in providing the housing, the fair market value of the housing, or $25 per week (room in shared residence, dormitory, or hotel), or $100 per week (private residence). The lodging must be accepted voluntarily and without coercion, and must be primarily for the benefit or convenience of the employee. The arrangement must be recorded in a written agreement that states the fact and amount of the credit. The reasonable cost or fair market value for meals provided to an employee may be considered part of the minimum wage. Moreover, the meal must be consumed before a deduction is permitted. However, employer profits for meals cannot be included. The meal need not be consumed, but the employee acceptance of a meal must be voluntary and uncoerced.[366]

[365] COLO. REV. STAT. § 8-4-105; 7 COLO. CODE REGS. § 1103-1.

[366] 7 COLO. CODE REGS. § 1103-1(6.2).

An employer commits an unfair labor practice if it deducts labor organization dues or assessments from an employee's earnings, unless the employee personally provides signed authorization for the deduction, which must be terminable at any time by the employee upon 30 days' written notice.[367]

Under certain circumstances, an employer may be able to deduct the amount of premiums it paid for an employee's group health benefits. Colorado does not have a family and medical leave law applicable to all employees. However, its Family Care Act applies to employers covered under the federal Family and Medical Leave Act (FMLA), and FMLA-eligible employees in civil unions or domestic partnerships. Accordingly, the FMLA will control whether an employer may recover group health care premiums paid for an employee's benefit during a leave of absence. See **3.7(a)(vii)** for additional information.

If the deduction does not cause an employee's wage to fall below the federal minimum wage, an employer can deduct for equipment or property provided by an employer to an employee pursuant to a written agreement between such employer and employee—if it is enforceable and does not violate the law. Additionally, a deduction is permitted to recoup the value of property an employee failed to properly return to the employer in the case where a terminated employee was entrusted during their employment with handling of such property.

An employer has 10 calendar days after employment is terminated to audit and adjust the property value of any items entrusted to the employee before the employee's wages or compensation must be paid. If, upon such audit and adjustment of the property value of any items entrusted to the employee, it is found that any property entrusted to the employee by the employer has not been properly returned to the employer as provided by the terms of any agreement between the employer and the employee, the employee is not entitled to the benefit of payment, but the claim for unpaid wages or compensation must still be paid.[368] Within 10 days after employment is terminated, employers deducting the value of unreturned property or money from an employee's final wages must provide an employee notice which includes:

- a written accounting specifying the amount of money or specific property the employee failed to return;
- the replacement value of the property;
- when the money or property was provided to the employee, if known; and
- when the employee should have returned the money or property.

Employees who return the money or property within 14 days of receiving a notice of deduction from final wages or compensation must be paid the deducted amount within 14 days of returning the money or property to the employer.[369]

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Colorado permits garnishment of wages in child support cases and where a judgment regarding a consumer credit sale, consumer lease, or consumer loan has been entered.

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[367] COLO. REV. STAT. § 8-3-108.

[368] COLO. REV. STAT. § 8-4-105.

[369] COLO. REV. STAT. § 8-4-105.

Child Support. Colorado law authorizes the garnishment of wages pursuant to a court order for the payment of child support.[370] Employers may not discharge an employee solely because that employee's earnings are subject to garnishment under state child support enforcement procedures.[371] Employers that violate this section are liable for damages. Specifically, an employee may sue for reinstatement within 90 days of termination and may receive up to six weeks' lost wages.[372]

Consumer Debt. After a court enters judgment against a debtor for a debt arising from a consumer credit transaction, the creditor may garnish the unpaid earnings of the debtor. The amount that may be garnished is the lesser of 20% of disposable earnings for a week, the amount by which disposable earnings in a week exceed 40 times the federal minimum hourly wage under the Fair Labor Standards Act (FLSA), or the amount by which disposable earnings in a week exceed 40 times the state minimum wage.[373] Employers are prohibited from discharging employees whose wages have been garnished pursuant to a judgment arising from a consumer credit sale, consumer lease, or consumer loan.[374]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

The Colorado Department of Labor and Employment's Division of Labor enforces the state's wage and hour laws. The Director of the Division of Labor must inquire diligently into any violation of Colorado law regarding wages and institute enforcement actions at their discretion.[375] Moreover, county and city district attorneys may, in their discretion or at the request of the Director, prosecute actions for violations of the statute.[376] Employees may file a complaint with the Division of Labor to assert claims that they were paid less than the rate established in Amendment 42 or the current Wage Order.[377]

Following an employee's separation from employment, employers that fail to pay final wages and/or withheld wages during employment without a good-faith legal justification are liable for the amount earned and unpaid, plus an automatic penalty of the greater of two times the amount of the unpaid wages or $1,000; or, if an employee shows that the employer's failure or refusal to pay wages was willful, the employer is subject to penalties equal to the greater of three times the amount of unpaid wages or $3,000.[378] An employer's second or subsequent failure or refusal to pay wages of the same or similar type within the five years preceding a claim is considered per se willful.[379] To establish entitlement to the wage penalties, an employee must make a written demand for payment of wages within 60 days from the employee's date of separation, indicating where such payment can be sent, and the employer must then

[370] COLO. REV. STAT. §§ 14-14-101 *et seq.*

[371] COLO. REV. STAT. § 14-14-105(2).

[372] COLO. REV. STAT. § 14-14-105(2).

[373] COLO. REV. STAT. § 5-5-106(2).

[374] COLO. REV. STAT. § 5-5-107.

[375] COLO. REV. STAT. § 8-4-111(1).

[376] COLO. REV. STAT. § 8-4-111(2).

[377] COLO. REV. STAT. § 8-6-119.

[378] COLO. REV. STAT. § 8-4-109(3), as amended by S.B. 161(Colo. 2022); *see also Hernandez v. Ray Domenico Farms, Inc.*, 414P.3d 700 (Colo. 2018) (COLO. REV. STAT. § 8-4-109 covers final wages and wages that were underpaid during employment if claim brought within the applicable statute of limitations for the during-employment violation).

[379] COLO. REV. STAT. § 8-4-109(3), as amended by S.B. 161(Colo. 2022).

fail to remit payment within 14 days of the date it received the demand. Employees may maintain a civil action to recover the wages due and owing, along with the statutory penalties.[380]

Current and former employees may bring a civil action or an administrative claim to recover wages and penalties.[381] In addition to the recovery of wages and penalties, the employee, in a civil action, may recover reasonable costs and attorneys' fees when the employee recovers a sum greater than the amount tendered by the employer.[382] In an administrative claim, the Division of Labor may award an employee reasonable costs incurred when the employee recovers a sum that is greater than the amount the employer tendered, and, if the employee recovers more than $5,000 in unpaid wages, the Division of Labor may also award the employee attorney fees.[383] If the employer fails or refuses to make a tender within 14 days after the demand, then such failure or refusal must be treated as a tender of no money.[384] Employees are not required to exhaust any administrative remedies that may be available to them before filing a lawsuit.[385] Individual managers and officers may not be held personally liable for unpaid wages.[386]

If an employer fails to pay an employee past-due wages within 60 days after the determination in favor of the employee, the following may be recovered: attorney fees incurred in pursuing a civil action to enforce the Division of Labor's determination or the hearing officer's decision; an additional fine of 50% of the amount of past-due wages; and a penalty of the greater of 50% of past-due wages or $3,000.[387] In addition, the Division of Labor, either on its own initiative or within 60 days after receiving a written request from an employee, is authorized to issue a notice of administrative lien and levy when an employer fails to pay past-due wages, fines, or penalties, which attaches to the employer's real or personal property.[388]

The Wage Claim Act also provides for criminal penalties. Any employer or agent of an employer that is able and under a duty to pay, but willfully refuses to do so, is guilty of a misdemeanor punishable by imprisonment for up to 30 days and a fine of up to $300. Any employer or agent of an employer that willfully refuses to pay wages or compensation has committed theft.[389]

Actions to recover wages and penalties must be brought within two years. In the case of willful violations, the statute of limitations is extended to three years.[390] Note that other courts have applied two- or six-year statutes of limitations in the past.[391] Any agreement, written or oral, that waives or modifies rights

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[380] COLO. REV. STAT. § 8-4-109(3).

[381] COLO. REV. STAT. §§ 8-4-110(2), 8-6-118.

[382] COLO. REV. STAT. § 8-4-110(1)(b), as amended by S.B. 161(Colo. 2022).

[383] COLO. REV. STAT. § 8-4-110(1)(b), as amended by S.B. 161(Colo. 2022).

[384] COLO. REV. STAT. § 8-4-110(1)(c), as amended by S.B. 161(Colo. 2022).

[385] COLO. REV. STAT. § 8-4-110(2).

[386] *Leonard v. McMorris*, 63P.3d 323 (Colo. 2003).

[387] COLO. REV. STAT. § 8-4-112(1)(f), as amended by S.B. 161(Colo. 2022).

[388] COLO. REV. STAT. § 8-4-113(4), as amended by S.B. 161(Colo. 2022).

[389] COLO. REV. STAT. § 8-4-114.

[390] COLO. REV. STAT. § 8-4-122. *See Hernandez v. Ray Domenico Farms, Inc.*, 414P.3d 700 (Colo. 2018) (statute of limitations begins to run when wages become due and payable, not upon termination).

[391] *Sobolewski v. Boselli & Sons, Ltd. Liab. Co.*, 342 F. Supp. 3d 1178 (D. Colo. 2018) (using a six-year statute of limitation Colo. Rev. Stat. § 13-80-103.5); *Román v. Morconava Grp. LLC,* 2023 U.S. Dist. LEXIS 127170 (D. Colo.

in violation of the statute is void.[392] However, on November 16, 2023, the Colorado Court of Appeals ruled that the Colorado Wage Claim Act specifically includes a 2- or 3-year statute of limitations, but legislators did not include such language from the Colorado Minimum Wage Act. The Court explained that the statutes' plain language is ambiguous and controls. Therefore, the six-year statute of limitation applies to the Colorado Minimum Wage Act.[393]

Employers are prohibited from intimidating, threatening, discharging, or discriminating against employees who have instituted any proceeding under the Wage Claim Act or who have given testimony on behalf of themselves or another.[394] Employers are also prohibited from retaliating against employees.[395] Violations subject the employer to conviction of a misdemeanor, punishable by a fine up to $500 and imprisonment for up to 60 days.[396] Employers are also prohibited from falsely denying the amount of a wage claim or the validity of such a wage claim "with intent to annoy, harass, oppress, hinder, coerce, delay, or defraud the person to whom such indebtedness is due[.]"[397] In addition to criminal liability, violation of this section can give rise to civil liability via a claim for wrongful termination in violation of public policy.[398]

Employers are prohibited from using a person's immigration status to negatively impact any person or entity's wage and hour law rights, responsibilities, or proceedings.[399]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[400] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[401] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state

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July 24, 2023) (using a two-year statute of limitations in Colo. Rev. Stat. § 13-80-102(1)(i) applied to claims under the Colorado Minimum Wage Act and the Colorado Overtime and Minimum Pay Standards Order).

[392] COLO. REV. STAT. § 8-4-121.

[393] *Perez v. By the Rockies*, 2023 WL 780721 (Co. App. Ct. 2023).

[394] COLO. REV. STAT. § 8-4-120.

[395] COLO. REV. STAT. § 8-4-120, as amended by S.B. 161(Colo. 2022).

[396] COLO. REV. STAT. § 8-4-120.

[397] COLO. REV. STAT. § 8-4-114(2).

[398] *See Hoyt v. Target Stores*, 981 P.2d 188, 192(Colo. App. 1998) (employee stated a claim for wrongful termination in violation of public policy by alleging she was terminated in retaliation for a dispute she had with her supervisor over her entitlement to travel time pay).

[399] 7 COLO. CODE REGS. § 1103-7 (r. 4.8).

[400] 29 U.S.C. § 1002.

[401] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[402]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Colorado law does not require an employer to offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. However, once an employer establishes a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

In Colorado, the definition of wages or compensation includes vacation pay earned in accordance with the terms of any agreement.[403] Per revised corresponding rules, "vacation pay" is not limited to a paid leave benefits labelled "vacation" and would more broadly include, regardless of name (*e.g.*, PTO), a paid leave benefit with vacation-like characteristics; however, this would not include paid leave benefits employees can use only for specific events, *e.g.*, medical need, caretaking, bereavement, or holidays.[404] Per the rules,[405] the "earned and determinable in accordance with the terms" language allows agreements on matters such as, whether there is any vacation pay at all, the amount of vacation pay per year or other period, and whether vacation pay accrues all at once, proportionally each week, month, or other period. Also, employers can have agreements on matters such as whether there is an accrual cap of one year's worth (or more) of vacation pay. Employers may have policies that cap employees at a year's worth of vacation pay, but that do not forfeit any of that year's worth.

The rules provide the following example: An agreement for 10 vacation days per year may cap employees at 10 days:

- may provide that employees can accrue more than 10 days, but allowing carryover of vacation from year to year;
- may cap employees at 10 days; but
- cannot diminish an employee's number of days (other than due to use by the employee).

Littler contacted the state labor department about whether and how employers may implement use-it-or-lose-it policies while complying with the rules. The representative informally confirmed[406] the below was an accurate representation concerning how the law works. However, he cautioned that policy language will be crucial to determining whether a policy in fact complies with the law, especially when it comes to frontloading (*i.e.*, must frontload all earned leave at the beginning of the year, not merely

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[402] 490 U.S. 107, 119(1989).

[403] COLO. REV. STAT. § 8-4-101.

[404] *See also, e.g.*, Colorado Department of Labor & Employment, Interpretive Notice & Formal Opinion ("INFO") #3E: Payment of Earned Vacation upon Separation of Employment (July 11, 2023), *available at* https://cdle.colorado.gov/sites/cdle/files/INFO %233E Payment of Earned Vacation upon Separation of Employment 5.29.2024 %5Baccessible%5D.pdf.

[405] 7 COLO. CODE REGS. § 1103-7(2.15).

[406] Phone conversation, Eric Yohe, Outreach Manager, Colorado Division of Labor Standards and Statistics (Dec. 20, 2019).

distribute or make available at the beginning of the year leave that employees will earn throughout the year). Accordingly, before rolling out a use-it-or-lose-it policy, we strongly recommend that employers consult knowledgeable counsel.

- If a frontloading system is used;
  - An employer need not carry over any vacation at year end if each year it frontloads a year's worth of vacation, *e.g.*, using the Division's 10-day example, if an employer frontloads 10 vacation days each year, frontloaded vacation from year 1 that remains unused at year end need not carry over into year 2.
- If an accrual-based system is used;
  - An employer must allow vacation up to the annual cap to carry-over and can prohibit further accrual in subsequent years until vacation is used (at this point accrual resumes, up to the annual cap), *e.g.*, using the Division's 10-day example, if an employee accrues 10 vacation days in year 1, and carries those over into year 2, unless an employee uses some vacation in year 2, no further accrual of vacation is required in that year and the employee's vacation balance remains 10 days; but
  - If an employer allows further accrual after carrying over into the subsequent year vacation from the preceding year (up to the annual cap), it cannot "claw back" (so to speak) any vacation other than by implementing an overall accrual cap, *i.e.*, using the Division's 10-day example:
    - **Prohibited:** An employer allows 10 days to carry over from year 1 to year 2 and allows a further 10 days to accrue in year 2. Assuming none is used, a policy cannot say only 10 of the 20 vacation days carries over to year 3.
    - **Permitted:** An employer allows 10 days to carry over from year 1 to year 2. It implements a 15-day overall accrual cap. Unless an employee uses at least 5 vacation days in year 2, the most vacation that can accrue in year 2 is 5 days (10 days from year 1 plus 5 additional days, at which point the overall cap is hit).

In later-issued guidance, the state labor department opined that a policy would violate Colorado law if the amount of leave an employee can carry-over into the next year is less than the amount of leave an employee can accrue in a year; however, it also opined that a lower carry-over amount would comply if the employer requires employees to use time before the end of the year or cashes out vacation hours in excess of the carry-over cap.[407]

Colorado law provides that if an employer provides paid vacation for an employee, when employment ends it must pay all vacation pay earned and determinable in accordance with the terms of the agreement.[408] Per corresponding rules, forfeiture of earned (accrued) vacation pay is prohibited.

[407] Colorado Department of Labor & Employment, Interpretive Notice & Formal Opinion ("INFO") #3E: Payment of Earned Vacation upon Separation of Employment (July 11, 2023), *available at* https://cdle.colorado.gov/sites/cdle/files/INFO %233E Payment of Earned Vacation upon Separation of Employment 5.29.2024 %5Baccessible%5D.pdf.

[408] COLO. REV. STAT. § 8-4-101.

Moreover, the Colorado Supreme Court held, in *Nieto v. Clark's Mkt., Inc.*,[409] that a former employee was entitled to payout of unused vacation when employment ended. Per the court:

> "[A]lthough the [Colorado Wage Claim Act] does not entitle an employee to vacation pay, when an employer chooses to provide it, such pay is no less protected than other wages or compensation and, thus, cannot be forfeited once earned. Accordingly, under the CWCA, all vacation pay that is earned and determinable must be paid at the end of the employment relationship and any term of an agreement that purports to forfeit earned vacation pay is void."

Conversely, at least one federal court ruled, on a motion to dismiss, that an employee was not entitled to payout of sick leave when employment ended because the policy expressly provided that leave would be forfeited unless an employee had worked a specific amount of years, or had accrued a specific amount of leave, and the employee satisfied neither condition.[410]

In addition to the above statute, rules, and caselaw, Colorado's Department of Labor and Employment provides detailed guidance on numerous facets of vacation pay. [411] More specifically, Interpretive Notice & Formal Opinion ("INFO") #3E discusses how employers can establish accrual rates, annual accrual caps, overall accrual caps, and use caps. The guidance also addresses permitted and prohibited actions concerning carry-over of unused vacation at the end of a year. Notably, INFO #3E addresses whether and when paid leave benefits other than vacation qualify as "vacation" for Colorado Wage Act purposes. Additionally, the guidance addresses how, notwithstanding employers' ability to develop certain vacation policies and practices, such as requiring employees to use vacation and/or cashing out vacation during employment, there will be practical limits if an employer uses this paid leave benefit to meet its paid sick leave obligations under the Colorado Healthy Families and Workplaces Act. INFO #3E also addresses the rate of pay at which employers must pay out vacation when employment ends, and how that amount might differ, for certain vacation hours, if during employment an employer reduces an employee's rate of pay. Finally, while acknowledging that, ordinarily, employers need not payout at termination so-called "unlimited" vacation, that, depending on how an employer structures an "unlimited" plan, it might not actually be "unlimited," thereby requiring a payout when employment ends.

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Colorado does not require employers to provide employees with a day of rest each week, or compensate employees at a premium rate for work performed on the seventh consecutive day of work or on holidays.

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[409] 488 P.3d 1140, 1141-42 (Colo. 2021).

[410] *Gomez v. Children's Hosp. Colo.*, 2018 WL 3303306 (D. Colo. July 8, 2018).

[411] Colorado Department of Labor & Employment, Interpretive Notice & Formal Opinion ("INFO") #3E: Payment of Earned Vacation upon Separation of Employment (July 11, 2023), *available at* https://cdle.colorado.gov/sites/cdle/files/INFO %233E Payment of Earned Vacation upon Separation of Employment 5.29.2024 %5Baccessible%5D.pdf.

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[412] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[413] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[414] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

In Colorado, two unmarried adults, regardless of sex, can enter into a civil union. A party to a civil union has the same rights, benefits, protections, duties, obligations, responsibilities, and other incidents under law that are granted or imposed on married spouses.[415] A civil union, domestic partnership, or substantially similar relationship entered into in another state is deemed to be a civil union under Colorado law.[416]

With respect to employee benefits, effective for plans issued, renewed, or delivered after January 1, 2014, insurance coverage provided by a health coverage plan must include the ability to cover a party to a civil union as a dependent.[417] Similarly, Colorado's mini-COBRA statute provides that every group policy must contain a provision that permits covered employees whose employment is terminated to elect to continue coverage for themselves and their dependents if coverage continues for other employees. The definition of dependents includes parties to a civil union.[418]

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[412] 29 U.S.C. § 1144.

[413] 29 U.S.C. § 1161.

[414] 29 U.S.C. § 1167(3).

[415] COLO. REV. STAT. §§ 14-15-101, 14-15-104.

[416] COLO. REV. STAT. § 14-15-116.

[417] COLO. REV. STAT. § 14-15-107(5)(γ)(I), (II).

[418] COLO. REV. STAT. §§ 10-16-102(14), (40), and 10-16-108.

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[419]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[420]
- to take medical leave when the employee is unable to work because of a serious health condition;[421]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[422] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[423] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Although there are no state provisions applicable to employers and employees generally, the Colorado Family Care Act (FCA) requires that federal FMLA-covered employers provide FMLA leave to an FMLA-eligible employee so the individual can care for a civil union partner or domestic partner with a serious health condition.

The employer may require the employee to provide reasonable documentation or a written statement of a family relationship.[424] A civil union partner is defined under state law and a domestic partner must be

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[419] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[420] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

[421] 29 C.F.R. §§ 825.112, 825.113.

[422] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[423] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[424] COLO. REV. STAT. § 8-13.3-203.

either registered with the municipality or state where the employee resides, or be recognized by the employer as the employee's domestic partner.[425]

The FCA states that such leave "runs concurrently with leave taken under the FMLA."[426] The FCA also states that such leave does not increase the total leave under the FMLA in a 12-month period. However, as state law cannot deny an employee rights under the FMLA, employers should exercise caution when calculating FMLA and FCA leave. It may be possible for an employee to take FMLA leave first, and then later in the 12-month period request FCA leave. Employers may be required to grant both leaves under the law.[427]

Family and Medical Leave Insurance Act (FAMLI). In 2020, Colorado voters approved Proposition 118, which will provide paid family and medical leave to eligible employees in the state. On January 1, 2023, employers and employees began paying into the program, and covered individuals began taking leave on January 1, 2024.

Coverage. The law covers all employers that employ at least one person for each working day during each of 20 or more workweeks in the current or preceding calendar year, or has paid wages of at least $1,500 during any calendar quarter in the previous year. Covered employees are those who meet the statutory requirements and earned at least $2,500 in wages during the person's base period. Covered family members are children, parents, spouses, domestic partners, grandparents, grandchildren, siblings, or, as shown by the covered employee, any other individual with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

Reasons for Leave. Leave may be taken for the birth, adoption, or placement through foster care of a child, or caring for a new child during the first year after its birth, adoption, or placement; to care for a family member with a serious health condition; for the employee's own serious health condition; for a qualifying military exigency; or if there is a need for safe leave.

Duration of Leave and Payment. Leave may be taken for up to 12 weeks in an application year, but an additional four weeks is available to covered employees with a serious health condition related to pregnancy or childbirth complications. Leave may be taken intermittently, in increments of either one hour or shorter if it's consistent with the increments the employer typically uses. An employee's weekly benefit amount is determined as follows:

- the portion of the covered individual's average weekly wage that is equal to or less than 50% of the state average weekly wage is replaced at a rate of 90%; and
- the portion of the covered individual's weekly wage that is more than 50% of the state average weekly wage is replaced at a rate of 50%.

Employees must make a reasonable effort to schedule their leave so as not to unduly disrupt their employer's operations. If the leave is foreseeable, employees must provide notice to their employer no less than 30 days before the date the leave is to begin, or as soon as practicable.

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[425] COLO. REV. STAT. § 8-13.3-203.

[426] COLO. REV. STAT. § 8-13.3-203(3).

[427] COLO. REV. STAT. § 8-13.3-203.

Employment Protections. Employees that have been employed with their current employer for at least 180 days prior to using paid family and medical leave must be restored to their same, or an equivalent position once leave is over. However, seniority and other benefits do not accrue during the period of leave. Employers must maintain the employee's health care benefits from the date the leave begins until the date the paid benefits terminate. Employer interference and retaliation is prohibited.

Notice and Posting Requirements. Employers must post a state-developed poster about the law, and must provide notice to employees, in writing, upon hiring and upon learning that an employee has experienced an event that triggers eligibility.[428]

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[429] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Colorado's enacted Healthy Families and Workplaces Act (HFWA) is a paid leave law with three components.[430] The first, emergency paid sick leave, existed from July 15 through December 31, 2020.

The other programs include paid sick and safe time, and public health emergency leave. Both currently apply to all employers. The paid sick and safe time provisions took effect on January 1, 2021 for employers with 16 or more employees and on January 1, 2022 for all other employers. On December 23, 2020, the state labor department issued emergency regulations stating the public health emergency leave requirements would apply to all employers on January 1, 2021.[431] To determine business size, Colorado will look to standards under the federal Family and Medical Leave Act apply:

- employer must employ the requisite number of employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;
- any employee whose name appears on the employer's payroll is considered employed each working day of the calendar week, and must be counted whether or not any compensation is received for the week;
- employees on paid or unpaid leave, including sick or medical leave, leaves of absence, disciplinary suspension, etc., are counted if the employer has a reasonable expectation the employee will later return to active employment;
- a corporation is a single employer rather than its separate establishments or divisions; and

[428] COLO. REV. STAT. §§ 8-13.3-503 *et seq.*

[429] 80 Fed. Reg. 54,697-54,700 (Sept.10, 2015).

[430] COLO. REV. STAT. §§ 8-13.3-401 *et seq.*; 7 COLO. CODE. REGS. 1103-7.

[431] 7 COLO. CODE. REGS. 1103-7, §§ 2.11, 3.5(C), (C)(1).

- count employees only in the U.S. (District of Columbia and any U.S. state, territory, or possession).

Covered Employers & Employees. The HFWA applies to all private employers. Under the law, a covered employee is any person performing labor or services for an employer's benefit, though the law excludes independent contractors and employees the federal Railroad Unemployment Insurance Act covers. The state labor department interprets the law to apply to employees covered by a collective bargaining agreement (CBA), notwithstanding the law stating:

- The law does not apply to employees covered by a CBA in effect on the law's effective date that provides paid sick leave equal to, or more generous than, what the law requires.
- If parties initially enter into, or renegotiate, a CBA after the law's effective date, the law will not apply to CBA-covered employees if the CBA waives the law's requirements and provides paid sick equal to, or greater than, what the law requires.

According to the state labor department, these provisions function like "using existing policies" provisions in which employers can use their existing leave benefits and need not provide additional paid leave if certain conditions are met. Per corresponding rules, a CBA provides equivalent or more generous paid sick leave if it does not diminish any employee protections under the law, including but not limited to:

- accrual and carryover;
- use and its conditions (*e.g.*, documentation and notice to employers); and
- protection and effectuation of paid sick leave rights through notice to employees and prohibitions against retaliation based on, or interference with, protected activity.

Using Existing Policies to Comply with Paid Sick & Safe Time and Public Health Emergency Leave. Employers with a paid leave policy need not provide additional paid sick leave to employees if they make available an amount of paid leave sufficient to meet the paid sick and safe time (PSST), and public health emergency leave (PHEL), requirements and allow employees to use paid leave for the same purposes and under the same conditions as the law requires. To do so, however, in a writing distributed in advance of an actual or anticipated leave request, an employer must make clear to employees that:

- The leave policy provides an amount of leave that satisfies the law's requirement (including PHEL), paid at the law's rate of pay, that can be used for all the law's purposes under the same conditions the law requires (not stricter or more onerous conditions (including but not limited to matters such as accrual, use, payment, annual carryover of unused accrued leave, notice and documentation requirements, and anti-retaliation and anti-interference rights)); and
- Additional leave will not be provided when employees use all their available leave for non-covered purposes (*e.g.*, vacation) unless a public health emergency is declared after employees use some or all available leave for the year, in which case the employer will supplement their current total of unused leave (PHEL).

Paid Sick & Safe Time (PSST)

Accrual & Carry-Over. Otherwise, when employment begins, employees must accrue at least one hour of leave for every 30 hours they work, up to a maximum of 48 hours per year. Overtime-exempt employees accrue based on a 40-hour workweek, or their regular workweek if it involves fewer hours. Alternatively, at the beginning of the year, employers can provide an amount of leave that meets or exceeds the law's requirements. Up to 48 hours of accrued, unused leave hours carries forward to a subsequent year. Via

guidance issued on June 24, 2022, the state labor department stated that leave an employee carries over into the next year counts against the amount of leave an employee can accrue in the subsequent year, *e.g.*, if an employee carries over 40 hours of unused leave into the following year, per the state labor department the employee can only accrue up to eight hours in the subsequent year, at which point the employee will have accrued 48 hours.[432] Note that, informally, the state labor department has said that annually frontloading 48 hours effectively moots the carry-over requirement.[433]

Covered Uses. Employees may use leave as it accrues, up to 48 hours in a year unless an employer allows them to use more. Employees must use leave in hourly increments unless their employer permits or requires them to use leave in smaller increments; however, if an employer does not specify the minimum increment in writing, employees can use leave in six-minute increments (or greater). Employees can use leave for the following "sick" time purposes: (1) mental or physical illness, injury, or health condition of the employee or family member; (2) medical diagnosis, care, or treatment related to an employee's or family member's illness, injury, or condition; or (3) preventive medical care. Additionally, if an employee or family member is the victim of domestic abuse, sexual assault, or harassment, employees can use leave for the following "safe" time purposes: (4) seeking medical attention to recover from a mental or physical illness, injury, or health condition caused by the domestic abuse, sexual assault, or harassment; (5) obtaining services from a victim services organization; (6) obtaining mental health or other counseling; (7) seeking relocation due to the domestic abuse, sexual assault, or harassment; or (8) seeking legal services, including preparing for or participating in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment. Finally, employees can use leave for "other" reasons: due to a public health emergency, or if a public official orders the closure of an employee's place of business or the school or place of care of an employee's child and the employee needs to care for the child. Additionally, effective August 7, 2023, employees can use leave if they need to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arises after the death of a family member, they need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, heating or water, or other unexpected occurrence or event that results in the closure of the individual's school or place of care, and/or they need to evacuate their place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate their residence.

The HWFA's family member definition is very broad. It includes an employee's immediate family member (a person related by blood, marriage, civil union, or adoption), a child to whom the employee stands *in loco parentis*, a person who stood *in loco parentis* to the employee when the employee was a minor, and a person for whom the employee is responsible for providing or arranging health- or safety-related care.

Requesting & Documenting Leave. Employers must allow employees to use leave upon an employee's request, which employees can make orally, in writing, electronically, or by any other means acceptable to the employer, and, when possible, must include the absence's expected duration. When leave use is foreseeable, employees must make a good faith effort to provide notice of the need for leave in advance, and must make a reasonable effort to schedule leave in a manner that does not unduly disrupt the employer's operations. An employer may provide a written policy that contains reasonable procedures

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[432] Colorado Department of Labor & Employment, *Interpretive Notice & Formal Opinion ("INFO") # 6B: Paid Leave under the Healthy Families and Workplaces Act ("HFWA")* (rev. Jan. 19, 2023), *available at* https://cdle.colorado.gov/infos.

[433] Email response, Elizabeth Funk, Director, Colorado Division of Labor Standards & Statistics (Nov. 18, 2020).

for employees to provide notice for foreseeable absences, but cannot deny leave based on noncompliance with the policy.

For leave lasting four or more consecutive workdays, an employer may require reasonable documentation that the employee used leave for a covered purpose, which employees must provide when they return from leave. If an employer reasonably deems an employee's documentation deficient, before denying leave, it must notify the employee within seven days of either receiving the documentation or the employee's return to work and provide the employee an opportunity to cure the deficiency within seven days of being notified that the employer deems the existing documentation inadequate.

Payment. Employers must pay leave at the same hourly rate or salary and with the same benefits—including health care benefits—as the employee normally earns during hours worked. Per the state labor department,[434] employers comply with the "same benefits" requirement by keeping access to the same benefits as when an employee works, *e.g.*, health-related benefits and access to benefit funds like health savings accounts, 401(k) investing, etc. Additionally, employer must keep contributing and supporting benefits based on employees earning wages or being "on the books," but they do not need to make contributions that are based on time worked because employees do not "work" when they use paid sick leave.

As of April 1, 2024, employers must calculate the pay rate based upon the employee's pay over the 30 calendar days prior to taking leave or, at the employer's option, any full pay period, or consecutive full pay periods or workweeks, totaling 28 to 31 days. Within this calculation employers must include any set hourly or salary rates, shift differentials, tip credits, and commissions. If an employee has not yet worked the full 30-day duration or other duration from 28 to 31 days, employers must use the employee's period of employment.

Employers must pay commission-only employees no less than the applicable minimum wage, whereas employees paid an hourly, weekly, or monthly wage and paid on a commission basis are paid their hourly, weekly, or monthly wage or the applicable minimum wage, whichever is greater. Note, however, that as of January 1, 2023, revised regulations suggest employers must use the above-referenced 30-day (or less) lookback period and include commissions in the calculation. Currently, it is unclear whether courts will defer to the state labor department's rules on pay rate calculation or instead apply the calculation in the statute.

Tip-credit employees must be paid the full minimum wage.

Employers must pay employees for paid leave used on the same schedule as they pay regular wages.

End of Employment & Reemployment. Employers need not cash out unused PSST when employment ends, with one narrow exception: if retaliatory personnel action prevented the individual from using leave, the aggrieved employee may recover such leave. If an employee separates from employment but is rehired within six months, employers must reinstate the employee's previously unused PSST.

[434] Colorado Department of Labor & Employment, Interpretive Notice & Formal Opinion ("INFO") # 6B: Paid Leave under the Healthy Families and Workplaces Act ("HFWA") (rev. Jan. 19, 2023), *available* at https://cdle.colorado.gov/infos.

Public Health Emergency Leave (PHEL)

In addition to paid sick and safe time, on the date a public health emergency is declared, January 1, 2021, or the employee's first date of employment, whichever is later, all employers – even if not yet required to provide paid sick and safe time – must immediately provide a one-time supplement to an employee's paid sick and safe time to ensure the employee may take the following amounts of leave:

- For employees who normally work 40 hours or more per week: 80 hours.
- For employees who normally work fewer than 40 hours in a week: The greater of either the amount of time the employee is scheduled to work in a 14-day period or the amount of time the employee actually works during an average 14-day period. Note, however, that the corresponding rules use slightly different language: The greater of the amount of time the employee is scheduled to work or paid leave in the 14-day period after the leave request or the amount of time the employee actually worked on average in a 14-day period before the public health emergency or the leave request, whichever is later.

Employers may count an employee's unused paid sick and safe time toward public health emergency leave the law requires. The HWFA provides that employees are eligible for public health emergency leave in the above amount only once during the entirety of a public health emergency, even if it is amended, extended, restated, or prolonged. Employees may use PHEL until 4 weeks after the official termination or suspension of the public health emergency. Additionally, the corresponding rules clarify that employees can use PSST they accrued before the public health emergency for any PSST reason and PHEL for any PHEL reason, and, during a public health emergency, can use PHEL before using PSST if the absence qualifies as PSST and PHEL.

The HFWA defines a *public health emergency* to be: (A) an act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly fatal infectious act, for which: (1) a disaster emergency is declared by the governor; or (2) an emergency is declared by a federal, state, or local public health agency; (B) a highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the governor.

Employees can use PHEL for any of the following reasons: (1) to self-isolate and care for oneself (or a family member who is self-isolating) because the employee (or family member) is diagnosed with, or experience symptoms of, the communicable illness that is the cause for the PHE; (2) to seek or obtain (or care for a family member who needs) medical diagnosis, care, or treatment if experiencing symptoms associated with a communicable illness that is the cause of the PHE; (3) to seek (for oneself or a family member) preventive care concerning a communicable illness that is the cause of the PHE; (4) if the individual's presence on the job or in the community would jeopardize the health of others because of the individual's exposure to the communicable illness or because the employee is exhibiting symptoms of the communicable illness (regardless of diagnosis), as determined by local officials with such authority or the employee's or covered relation's employer; (5) to care for a child or other family member when the child's care provider is unavailable due to a PHE, or if the child's or family member's school or place of care has been closed by a local, state, or federal public official or at the discretion of the school or place of care due to a PHE, including if a school or place of care is physically closed but providing instruction remotely; or (6) if an employee is unable to work because the employee has a health condition that may increase susceptibility to or risk of communicable illness that is the cause of the PHE. An employee may use public health emergency leave until four weeks after the official termination or suspension of the public health emergency.

Employees must notify their employer of the need for leave as soon as practicable when the need for leave is foreseeable and the employer's place of business has not been closed. Employees need not supply documentation to take leave.

Notice, Posting & Recordkeeping. Employers must notify employees they are entitled to paid sick leave under the HWFA. The notice must: (1) specify the amount of paid sick leave to which employees are entitled and the terms of its use under the law; and (2) notify employees that employers cannot retaliate against them for requesting or using paid sick leave and that they have the right to file a complaint or bring a civil action if paid sick leave is denied or suffer retaliation. Employers must supply each employee a written notice, and consciously display a state-labor-department-created poster containing the above information in English and in any language that is the first language spoken by at least five percent of the employer's workforce. If an employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, the employer must provide the notice-poster through electronic communication or a conspicuous posting in the web-based platform. If an employer's business is closed due to a public health emergency or a disaster emergency due to a public health concern, however, the notice-posting requirement is waived for the period during which the business is closed.

Although the law does not contain an express paystub requirement, paystubs are an option to comply with a recordkeeping provision. Upon an employee's request, an employer must provide, in writing or electronically, documents sufficient to show, or a dated statement containing, the then-current amount of paid leave the employee has available for use and that was used during the current year (including PSST and PHEL provided and used). Employees may make a request once per month (and an additional request when a need for leave arises). Employers may choose a reasonable system for responding, including but not limited to listing information on each paystub, using an electronic system where employees can access their information, or providing the information as a letter or electronic communication.

For a two-year period, employers must retain records for each employee documenting hours worked, paid sick leave accrued, and paid sick leave used under the HFWA. If an issue arises as to an employee's right to paid sick leave and the employer has not maintained or retained adequate records, or does not allow the CDLE reasonable access to such records, the employer is presumed to have violated the law unless it demonstrates compliance by a preponderance of the evidence.

Prohibitions. Any agreement by an employee to waive the employee's rights under the law is void as against public policy (except for CBA waivers, presumably). Employers cannot require, as a condition of providing paid sick leave, that an employee search for or find a replacement worker to cover their absence.

Employers cannot count paid sick leave as an absence that may lead to, or result in, discipline, discharge, demotion, suspension, or any other retaliatory personnel action against the employee. However, after an employee has exhausted all leave required by the law, an employer can apply an absence or attendance policy to any absences taken by the employee.

Additionally, employers cannot retaliate or discriminate against an employee or former employee because the person exercised, attempted to exercise, or supported the exercise of, protected rights, which include the right to: (1) request or use paid sick leave; (2) file a complaint with the CDLE or court or inform any person about an alleged violation; (3) participate in an investigation or proceeding or cooperate with the CDLE; or (4) inform any person of the their potential rights under the HWFA. Protections also apply to any person who in good faith, but mistakenly, alleges a violation. Retaliatory

personnel action is broadly defined and includes, *e.g.*, reducing hours, threatening to report the suspected citizenship or immigration status of an employee or employee's family member, and sanctions against employees who are public benefits recipients.

Penalties, Damages & Enforcement. Employees can file a complaint with the state labor department or a private lawsuit. Before they can file suit, however, employees must submit a complaint to the department or make a written demand for compensation or other relief to the employer. The employer has 14 days to respond after receiving the written demand or receiving notice from the department of a complaint.

In terms of penalties, the HWFA expressly includes a civil fine payable to the state of up to $100 for willful notice and/or posting violations; for the former, it is a fine for each separate violation. Damages available include back pay, legal and equitable relief—such as employment reinstatement, promotion, pay increase, payment of lost wage rates, and liquidated damages—and an employee's reasonable costs, including attorneys' fees. Under the HWFA, if an investigation of retaliation or interference yields a determination that multiple employees' rights were violated, the violation against each employee is a separate violation for purposes of fine, penalties, or other remedies. If a violation costs an employee their job or pay, a determination may include an order to reinstate the employee, to pay the employee's lost pay up to reinstatement or for a reasonable period if reinstatement is not feasible, or both.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[435] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow women with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because she is pregnant, as long as she is able to perform her job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for her own serious health condition, such as severe morning sickness.[436] FMLA

[435] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[436] 29 C.F.R. § 825.202.

leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[437] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant women, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery are, for job-related purposes, temporary disabilities and must be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or temporary disability insurance or sick leave plan must be applied to disabilities due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.[438]

The state of Colorado requires that employers provide reasonable accommodations for pregnancy or childbirth, which is discussed in **3.11(c)(ii)**.

3.9(c)(iii) *Local Guidelines on Pregnancy Leave*

Denver. The city's fair employment practices ordinance prohibits employers of 10 or more employees from treating disabilities caused or contributed to by pregnancy, miscarriage, childbirth, or recovery therefrom differently than other temporary disabilities under any health or temporary disability insurance or sick leave plan available in connection with employment. An employer must afford pay, tenure, benefits, seniority, and reinstatement for medically necessary pregnancy-related absences in the same manner as for other medically necessary absences.[439]

Covered employers are also required to provide reasonable accommodations for an applicant's or employee's condition related to pregnancy, childbirth, or a related medical condition, unless doing so would impose an undue hardship on the employer's program, enterprise, or business. Potential

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[437] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

[438] 3 COLO. CODE REGS. § 708-1 (r. 80.6).

[439] DENVER, COLO. REV. MUNI. CODE § 28-93(b)(2).

accommodations include to time off to recover from childbirth. However, an employer cannot require an employee to take leave if another reasonable accommodation can be provided.[440]

The city of Denver requires that employers provide reasonable accommodations for pregnancy or childbirth, which is discussed in **3.11(c)(ii)**.

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Under Colorado law, an employer that provides maternity or paternity time off to biological parents must, upon request, make the same time off available to employees who adopt a child.[441] Requests for additional leave due to the adoption of an ill child or child with a disability must be considered on the same basis as comparable cases of complications accompanying the birth of a child. Any other benefits provided by the employer (*e.g.*, job guarantee or pay) must be available to both adoptive and biological parents on an equal basis.

The above provisions do not apply to an adoption by the spouse of a custodial parent or to a second-parent adoption.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Colorado law does not address school activities leave for private-sector employees.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

In Colorado, there is no statutory requirement that private sector employers provide a leave of absence for organ, bone marrow, or blood donation. However, an employer that provides a paid leave of absence to an employee for the purpose of organ donation may be eligible for a tax credit. For any income tax year beginning on or after January 1, 2020 but before January 1, 2025, an employer may claim a tax credit in an amount of 35% of the employer's expenses incurred:

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[440] DENVER, COLO. REV. MUNI. CODE §§ 28-93(b)(2), (b)(3).

[441] COLO. REV. STAT. § 19-5-211.

- by paying an employee during a leave of absence period for organ donation; and
- for the cost of temporary replacement help, if any, during the employee's leave of absence period.[442]

Leave of absence period means a period not exceeding 10 working days or the hourly equivalent of 10 working days per employee, during which an employer provides a paid leave of absence for organ donation. The term does not include a period during which the employee uses any annual leave or sick days provided by the employer.[443]

An employer cannot claim this tax credit for any employee to whom the employer pays wages of $80,000 or more during the tax year.[444]

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

In Colorado, employees who are eligible to vote at an election, and who do not have three or more hours between the opening and closing of the polls to vote because they are required to be on the job during those hours, are eligible for up to two hours of *paid* time off when the polls are open. Employees must apply for leave prior to election day. An employer may specify when employees may take time off, but, if requested, time off must occur at the shift's beginning or end of the work period. Employers may not deduct wages from employees' usual salary or wages, or penalize employees for taking time off to vote.[445]

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Colorado employers may not prohibit employees from running for office or engaging in political activity.[446] Violations of the law are punishable by a fine of up to two thousand dollars and imprisonment of one year. The law also authorizes private suits by individuals. The statute, however, does not provide for paid or unpaid leave to participate in political activities.

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[442] COLO. REV. STAT. § 39-22-540.

[443] COLO. REV. STAT. § 39-22-540.

[444] COLO. REV. STAT. § 39-22-540.

[445] COLO. REV. STAT. §§ 1-7-102 (general, primary, or congressional vacancies), 31-10-603 (municipal elections).

[446] COLO. REV. STAT. § 8-2-108.

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[447] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[448] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. An employer must not deprive an employee of any incidents or benefits of employment, or discharge, harass, threaten, or coerce an employee because the employee exercises their right to serve on a jury. Nor may an employer make demands upon any employee which would substantially interfere with employee's effective performance of juror service.

Regular employees serving on a jury must be *paid* their regular wages, not to exceed $50 a day unless otherwise agreed to by the employer and the employee, during the first three days of jury service. Regular employment includes part-time, temporary, and casual employment if the individual's employment hours may be determined over the three-month period preceding the juror's service. An employee seeking compensation must present their employer with a juror service certificate received from the court as soon as practical.

A court may excuse an employer from compensating employees serving on a jury upon a showing of extreme financial hardship. A court hearing to determine an employer's extreme financial hardship must occur no later than 30 days after the tender of the juror service certificate to the employer. The request for a court hearing must be made in writing to the jury commissioner.

If another employee of an employer with five or fewer full-time employees (or their equivalent) has been summoned to appear during the same period, the jury commissioner must postpone and reschedule the jury service upon notice from the employee.[449]

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[447] 28 U.S.C. § 1875.

[448] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[449] COLO. REV. STAT. §§ 13-71-116.5, 13-71-126, 13-71-127, 13-71-132, 13-71-133 (failure to compensate juror), and 13-71-134.

Leave to Comply with a Subpoena or to Testify. An eligible employee may take time off from work to respond to a subpoena to testify in a criminal proceeding or to participate in the preparation of a criminal proceeding.[450] There is no requirement that the employee be compensated for the time off.

An employee is eligible for time off if:

- the employee is a victim of the crime at issue in the proceedings; or
- the employee is the victim's spouse, child by birth or adoption, stepchild, parent, stepparent, sibling, legal guardian, or significant other (someone in a family-type living arrangement with a victim and who would constitute the spouse of the victim if they were married); or
- the victim is deceased or incapacitated, and the employee is the victim's spouse, parent, child, sibling, grandparent, significant other, or other lawful representative.[451]

An employee who is accountable for the crime or for a crime arising from the same conduct or plan is not eligible for time off.

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Colorado law provides that an eligible employee may take up to three days of leave from work in any 12-month period to protect themself by:

- seeking a civil protection order to prevent domestic abuse;
- obtaining medical care and/or mental health counseling for the employee's children to address physical or psychological injuries resulting from the act of domestic abuse, stalking or sexual assault, or other crime involving domestic violence;
- making their home secure from the perpetrator of the crime or seeking new housing to escape the perpetrator; or
- seeking legal assistance to address issues arising from the crime, and attending and preparing for court-related proceedings arising the act or crime.[452]

To be eligible for leave, the employee must:

- work for an employer that has 50 or more employees;

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[450] COLO. REV. STAT. § 24-4.1-303(8) (prohibiting an employer from discharging or disciplining any victim or a member of a victim's immediate family for honoring a subpoena or participating in the preparation of a criminal proceeding).

[451] COLO. REV. STAT. § 24-4.1-302(4), (5), and (6).

[452] COLO. REV. STAT. § 24-34-402.7.

- be employed by the employer for at least 12 months; and
- be a victim of domestic abuse, stalking, sexual assault, or any other crime the underlying factual basis of which has been found by a court to include an act of domestic violence.[453]

Except in cases of imminent danger to the health or safety of the employee, an employee seeking leave from work must provide the employer with the appropriate advance notice of such leave as required by the employer's policy, along with the documentation required by the employer. The employer must keep confidential of all information related to the employee's leave.[454]

An employee does not have greater rights to continued employment or to other benefits and conditions of employment than if the employee was not entitled to leave. The law does not limit the employer's right to discipline or terminate any employee for any reason, including but not limited to reductions in work force or termination for cause or for no reason at all, other than exercising their rights under the law.[455]

There is no requirement that the employee be compensated for absences taken pursuant to the statute. The employee must first exhaust any and all available annual or vacation leave, personal leave, and sick leave, if applicable, unless the employer waives this requirement.[456]

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see **LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES**.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[457]

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[453] COLO. REV. STAT. § 24-34-402.7.

[454] COLO. REV. STAT. § 24-34-402.7.

[455] COLO. REV. STAT. § 24-34-402.7.

[456] COLO. REV. STAT. § 24-34-402.7.

[457] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[458] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.[459] Notably, leave is only available for covered relatives of military members called to active *federal* service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

National Guard & Reserves Leave. Colorado law provides that a permanent employee who belongs to the state National Guard or the U.S. armed forces reserves is entitled to up to three weeks of unpaid leave in any one calendar year for training with the U.S. armed forces. Although the leave is unpaid, employees are entitled to use any paid leave available to them for the period of their absence for military training.[460] Permanent employees who are members of the National Guard or the U.S. armed forces reserves are also entitled to a protected leave of absence of an unspecified length to engage in active service for the state.[461]

Leave is unpaid and must not affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his/her employment normally to be anticipated in his/her particular position.[462] An employee must be reinstated to the employee's previous nontemporary job, or a job with similar status, pay, and seniority, and with full retention of benefits, provided the individual gives evidence of satisfactory completion of service and is still qualified to perform the duties of the job.[463]

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(2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[458] 29 C.F.R. § 825.126(a).

[459] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

[460] COLO. REV. STAT. § 28-3-609.

[461] COLO. REV. STAT. § 28-3-610.5.

[462] COLO. REV. STAT. §§ 28-3-610, 28-3-610.5.

[463] COLO. REV. STAT. § 28-3-609.

Further, employers may not discriminate against employees because they are members of the state National Guard or prevent a National Guard member from performing a required military duty.[464]

Civil Air Patrol Leave. A permanent employee who is a member of the Civil Air Patrol and who is called to duty for a civil air patrol mission is entitled to a leave of absence from private employment, other than employment of a temporary nature, for the time when the member is engaged in the civil air patrol mission.[465] No more than fifteen days of leave per calendar year may be used for this purpose.

The leave may be unpaid; however, any leave must not affect the employee's right to vacation, sick leave, bonus, advancement, or other employment benefits or advantages. The employer must, upon the member's completion of the mission, restore the member to the position the member held prior to the leave of absence or to a similar position.[466]

An employer also may not discriminate against or terminate an employee due to the employee's membership in the Civil Air Patrol or for taking a leave of absence to serve in the Civil Air Patrol.[467]

Other Military-Related Protections: Spousal Unemployment. Although not a specific leave requirement, a spouse of a member of the armed services separated from a job will receive a full award of benefits for any of the following reasons:

- a business closure because employer was called to active military duty;
- a spouse relocating as a result of the transfer of the individual's spouse to a new place of residence, either within or outside Colorado; or
- a spouse relocating to a new place of residence from which it is impractical to commute because the individual's spouse, who was stationed in Colorado, is killed in combat.[468]

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

Qualified Volunteer Leave. A qualified volunteer who is called into service by a volunteer organization for a disaster is entitled to a leave of absence from employment (other than temporary employment) for the time the volunteer is serving, but the total leave must not exceed 15 work days in a calendar year, and leave is only provided if the volunteer is called into service for a disaster and provides proof of their qualified volunteer status.

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[464] COLO. REV. STAT. § 28-3-506.

[465] COLO. REV. STAT. § 28-1-105.

[466] COLO. REV. STAT. § 28-1-105.

[467] COLO. REV. STAT. § 28-1-103.

[468] COLO. REV. STAT. § 8-73-108(p), (s), (t).

The leave may be unpaid; however, any leave may not affect the employee's vacation, sick leave, bonus, or similar benefits.[469]

An individual is deemed a qualified volunteer if:

- the volunteer organization in which the employee is a member is included on the qualified volunteer organization lists created and maintained by the Colorado Department of Local Affairs;
- the volunteer is called to service through the organization under the authority of the county sheriff, local government, local emergency planning committee, or state agency to volunteer in a disaster; and
- the volunteer receives the appropriate verification from the Executive Director of the Department of Local Affairs.[470]

Volunteer Firefighters. Colorado law prohibits employers from terminating an employee that is a volunteer firefighter who has failed to report to work because the employee has responded to an emergency summons, provided the employee provides the employer with a written statement from the fire department chief that the absence was due to the response. Specifically, employers are prohibited from terminating such individuals that leave to respond to an emergency summons if:

- the employer does not deem the employee to be essential to the daily operation of the employer's daily enterprise;
- the employee previously received written verification of the employee's volunteer statute from the fire chief;
- the emergency is within the response area of the employee's fire department and is of such magnitude that all firefighters must respond; and
- the chief of the employee's fire department provides written verification of the time, date, and duration of the employee's response to the emergency.

Additionally, if a volunteer firefighter is called to an emergency, the above provision concerning Qualified Volunteer Leave applies to the absence or leave from work.[471]

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[472] Employers are also required to comply with all applicable occupational safety and health

[469] COLO. REV. STAT. § 24-33.5-826.

[470] COLO. REV. STAT. § 24-33.5-824.

[471] COLO. REV. STAT. § 31-30-1131.

[472] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for

standards.[473] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[474] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Colorado's Occupational Safety and Health statute[475] was repealed effective April 13, 1980. Nevertheless, Colorado employers have a common-law duty "to exercise ordinary care in seeing that the employee is provided with a reasonably safe place in which to work."[476]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

Colorado has enacted laws concerning the use of mobile phones while driving. These laws apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, these statutes.

In Colorado, a driver may not operate a motor vehicle while using a mobile electronic device. "Use" or "using" a mobile electronic device includes:

- physically holding a mobile electronic device in the driver's hand or pinning a mobile electronic device to a driver's ear to conduct voice-based communication;
- watching a video or movie on a mobile electronic device, other than watching data related to the navigation of the motor vehicle; or
- writing, sending, or reading text-based communication, including a text message, instant message, e-mail, or internet data, on a mobile electronic device.

Use does not include situations in which an individual may use a speaker or other listening device that is built into protective headgear or a device or portion of a device that only covers all or a portion of one

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the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[473] 29 U.S.C. § 654(a)(2).

[474] 29 U.S.C. § 667(c)(2).

[475] COLO. REV. STAT. §§ 8-11-100.1 *et seq.* (repealed 1980).

[476] *Gordon v. Clotsworthy*, 257 P.2d 410, 411 (Colo. 1953).

ear and that is connected to a wireless handheld telephone. Additionally, text-based communication does not include:

- a voice-based communication that is automatically converted by the mobile electronic device to be sent as a message in written form; or
- communication concerning the navigation of a motor vehicle.

Individuals may operate a motor vehicle while using a hands-free accessory. "Hands-free accessory" means an accessory with a feature or function that enables an individual to use a mobile electronic device without using either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

The law contains exceptions for using a mobile electronic device in certain emergency or safety situations.[477]

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Firearms in the Workplace. Colorado law states that nothing must be construed to limit, restrict, or prohibit in any manner the existing rights of a private property owner, private tenant, private employer, or private business entity in conjunction with the right to carry concealed handguns. Presumably the "existing rights" referenced include the basic right of a private property owner to exclude from the premises individuals carrying concealed handguns.[478]

Firearms in Company Parking Lots. Parking lots are not specifically addressed by statute in Colorado; however, presumably the "existing rights" referenced above also includes the basic right of a private property owner to exclude from the premises individuals carrying concealed handguns in parking lots.[479]

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

Smoking is prohibited in indoor places of employment and 25 feet from any window, ventilation intake, or entrance to a workplace.[480] *Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, electronic smoking device, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or form.

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[477] COLO. REV. STAT. §§ 42-4-239, 42-4-1411.

[478] COLO. REV. STAT. § 18-12-214(5).

[479] COLO. REV. STAT. § 18-12-214(5).

[480] COLO. REV. STAT. §§ 25-14-201 *et seq*.

Any employee working in an establishment that is exempted from the smoking prohibition may request to work in a smoke-free environment. Every employee shall have a right to work in an area free of environmental tobacco smoke.

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Colorado law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

In Colorado, if a judge or magistrate finds that an imminent danger exists to the employees of a business entity, the judge may issue a civil protection order in the name of the business for the protection of the employees. An employer will not be liable for failing to obtain a civil protection order for the protection of the employees and patrons.[481] Colorado also offers procedures for individuals to obtain emergency protection orders, as well as temporary and permanent civil protection orders, to prevent harm from such actions as domestic abuse, assault, stalking, sexual assault or abuse.[482] To be eligible for a protection order, the petitioner does not need to show that the individual has reported the act that is the subject of the complaint to law enforcement, that charges have been filed, or that the petitioner is participating in the prosecution of a criminal matter.[483]

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[484] (2) the Americans with Disabilities Act (ADA);[485] (3) the Age

[481] COLO. REV. STAT. § 13-14-104.5(7)(b). Instructions for obtaining a protection order are available on Colorado form JDF 400. *See* https://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=24.

[482] COLO. REV. STAT. §§ 13-14-101 *et seq.*, 13-14-104.5(1).

[483] COLO. REV. STAT. § 13-14-104.5(1)(b).

[484] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[485] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

Discrimination in Employment Act (ADEA);[486] (4) the Equal Pay Act;[487] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[488] (6) the Civil Rights Acts of 1866 and 1871;[489] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[490]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[491] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[492]

3.11(a)(ii) *State FEP Protections*

Generally, the Colorado Anti-Discrimination Act provides that it is a discriminatory or unfair employment practice for employers and others subject to the Act to refuse to hire, discharge, promote, or demote, harass, or discriminate in matters of compensation against any person otherwise qualified because of:

- disability;
- race (includes hair texture, hair length, hair type, or protective hairstyles that are commonly or historically associated with race, such as braids, locks, twists, tight coils or curls, cornrows, bantu knots, afros, and headwraps);

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[486] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[487] 29 U.S.C. § 206(d).Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[488] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[489] 42 U.S.C. §§ 1981, 1983.

[490] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[491] The EEOC's website is available at http://www.eeoc.gov/.

[492] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29C.F.R. § 1626.7.

- creed;
- color;
- sex (includes discrimination against unmarried mothers and married women, but not married men);
- sexual orientation (actual or perceived; includes transgender status; identity, or another individual's perception thereof, in relation to gender or genders to which the individual is sexually or emotionally attracted and the behavior or social affiliation that may result from the attraction. This includes an individual's innate sense of their own gender, which may or may not correspond to their assigned sex at birth);
- gender identity (This means an individual's innate sense of their own gender, which may or may not correspond to their assigned sex at birth);
- gender expression (This means an individual's way of reflecting and expressing the individual's gender to the outside world, typically demonstrated through appearance, dress and behavior);
- marital status;
- religion;
- age (40+);
- national origin;
- ancestry; and
- pregnancy, childbirth, and related conditions (and reasonable accommodations for such conditions), which protections apply to both employees and applicants.[493]

An employer may not request or require an individual to include their age, date of birth, or dates of attendance at or graduation from an educational institution on an initial employment application. Some exceptions apply.[494]

Most protections under the Colorado Anti-Discrimination Act generally apply to all employers employing persons within Colorado, except for religious organizations or associations. The religious exception does not apply, however, to religious organizations or associations supported wholly or partially by taxation or public borrowing.[495]

Additional FEP Protections. Colorado law includes additional antidiscrimination provisions within its FEP statute. Table 10 breaks these down by size of employer.

[493] COLO. REV. STAT. §§ 24-34-301, 24-34-401, 24-34-402, and 24-34-402. 3 COLO. CODE REGS. § 708-1 (rr. 40.1 to 70.3, 80.1 to 85.1).

[494] COLO. REV. STAT. § 8-2-131.

[495] COLO. REV. STAT. § 24-34-401.

Table 10. Additional State FEP Protections	
Covered Employers	**Protection**
Applies to every person employing persons within Colorado	*The following additional protections apply:* • private employers may not discriminate against qualified applicants who did not apply through a private employment agency; • unless permitted by federal law, employers may not: (1) discharge, discipline, discriminate, or otherwise interfere with any employee or other person because they inquired about, disclosed, compared, or otherwise discussed the employee's wages; (2) require, as a condition of employment, nondisclosure of employee's wages; or (3) require an employee to sign a waiver or other document purporting to deny the employee right to disclose the employee's wage information; • employers may not terminate any employee due to the employee's engagement in lawful activity off-premises during nonworking hours (see **3.11(a)(iv)**); • employers may not discriminate against employees because they are members of the state National Guard or the Civil Air Patrol, prevent such employees from performing required military duties, or discriminate against them for taking leaves of absence to serve [496] and • employers may not intimidate, threaten, coerce or in any manner discriminate or retaliate against or take any adverse action against an employee who is, or becomes a living organ donor.[497]
Applies to employers with 26 or more employees	Colorado law prohibits an employer with 26 or more employees from discharging an employee or to refusing to hire a person who is married to or plans to marry another employee of the employer.[498]
Applies to employers with 50 or more employees	Colorado law prohibits larger employers from discharging or in any other manner discriminating against a covered employee exercising rights to leave, if the employee is a victim of domestic abuse, stalking, or sexual assault, or the parent of a victim.[499]

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

The Colorado Anti-Discrimination Act contains a comprehensive administrative procedure to implement and enforce its provisions. The Colorado Civil Rights Commission (CCRC) is empowered to investigate charges of discrimination and issue orders to eliminate discriminatory practices. The CCRC is also empowered to hold hearings itself or to appoint an administrative law judge to conduct the hearings, to

[496] COLO. REV. STAT. §§ 24-34-401, 24-34-402, 24-34-402.5, 28-1-103, and 28-3-506.

[497] COLO. REV. STAT. § 25-15-103.

[498] COLO. REV. STAT. § 24-34-402.

[499] COLO. REV. STAT. § 24-34-402.7.

subpoena witnesses, to compel attendance at hearings and production of documents, and to administer oaths and take testimony. The CCRC's function is to make findings of fact whether an employer has acted to discriminate against an employee because of disability, race, creed, color, sex, sexual orientation, national origin ancestry, marital status, religion, or age. A decision by the Commission may be reviewed by a district court, but the court is bound by the CCRC's findings if they are supported by substantial evidence.[500]

In general, a civil action may not be filed in district court based on allegations of discrimination without first exhausting procedures and remedies with the CCRC.[501] There are several exceptions to this rule, including claims that seek relief at common law.

The time to file is 300 days after the alleged discriminatory conduct occurred.[502]

Procedures. A person who claims to have been the subject of unfair or discriminatory practices may file a charge of discrimination naming the respondent employer that is alleged to have committed a discriminatory or unfair practice. After the charge of discrimination is filed, the director of the CCRC conducts an investigation and may subpoena witnesses and compel testimony and the production of books, papers, and records pertaining to the charge of discrimination.[503]

Following the investigation, the CCRC must determine whether probable cause exists for crediting the allegation. If not, the charge is dismissed. If probable cause does exist, the charging party and the respondent are required to participate in mediation. If the mediation does not produce a settlement, the CCRC may issue a written complaint to the respondent and require the respondent to answer the charges of discrimination at a formal hearing.[504] After a hearing has been conducted, if the CCRC determines after hearing that the respondent has not engaged in discriminatory or unfair practices, the complaint will be dismissed.

If the CCRC determines that the respondent has engaged in discriminatory practices, it has the power to issue to the respondent a cease-and-desist order and may issue orders relating to:

- back pay;
- rehiring;
- reinstatement;
- upgrading of employees (with or without back pay);
- in case of employment agencies, referring applicants for employment;
- in case of labor organizations, restoring membership;

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[500] *Industrial Comm'n v. Moffat County Sch. Dist. RE No. 1*, 732 P.2d 616, 620 (Colo. 1987), *overruled on other grounds by Rantz v. Kaufman*, 109P.3d 132 (Colo. 2005).

[501] COLO. REV. STAT. § 24-34-306(14).

[502] COLO. REV. STAT. § 24-34-403.

[503] COLO. REV. STAT. § 24-34-306(2)(a).

[504] COLO. REV. STAT. § 24-34-306(4).

- admission to or continuation in enrollment in apprenticeship program or the job training program;
- making reports regarding employment;
- requiring an employee to post notices relating to antidiscrimination issues; or
- requiring respondent to prepare periodic reports regarding compliance with statutes and any cease-and-desist orders that have been issued.[505]

Note that defining the standard harassment, Colorado has removed the "severe and pervasive" standard and has defined harassment as conduct or communications which are "subjectively offensive to a reasonable individual who is a member of the same protected class."[506]

3.11(a)(iv) *Additional Discrimination Protections*

Lawful Activities. Under the Colorado Anti-Discrimination Act, it is a discriminatory or unfair employment practice for an employer to terminate the employment of an employee for engaging in lawful activities during nonworking hours.[507] The Act provides the following exceptions to an employer that can demonstrate that restricting the off-duty activity:

- is necessary to avoid a conflict of interest;
- is "reasonably and rationally related" to employment activities and responsibilities of the particular employee; or
- relates to a "*bona fide* occupational requirement."[508]

This statutory provision was added in 1990 and specifically provides that the sole remedy for a person claiming to have a cause of action under this section is to bring a civil action for damages in district court. It is not necessary to file a charge of discrimination with the CCRC or otherwise exhaust administrative remedies under the Act.[509] Claimants who prevail at trial may recover damages for all past wages and benefits that would have been due up to the date of judgment, but for the discriminatory action of the employer. However, the statute includes a specific provision obligating the claimant to mitigate their damages. This section of the statute also provides that the prevailing party, either employee or employer, may recover court costs and reasonable attorneys' fees.

Political Activities. It is also unlawful for an employer to prevent employees from forming, joining, or belonging to any lawful labor organization, union, society, or political party. Nor may an employer coerce employees by discharging or threatening to discharge them because of their connection to the labor organization, union, society, or political party.[510] Likewise, it is unlawful for any employer to make, adopt, or enforce any rule, regulation, or policy forbidding or preventing any employees from engaging or

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[505] *Red Seal Potato Chip Co. v. Colorado Civil Rights Comm'n*, 618 P.2d 697, 700 n.2 (Colo. App. 1980).

[506] COLO. REV. STAT. § 24-34-402 (1.3) (a).

[507] COLO. REV. STAT. § 24-34-402.5; *see also Watson v. Public Serv. Co.*, 207P.3d 860 (Colo. App. 2008) (holding that Colorado Revised Statutes section 24-34-402.5 applies to lawful, off-duty conduct, whether or not work-related, such as the plaintiff's off-duty complaint to the Occupational Safety and Health Administration).

[508] COLO. REV. STAT. § 24-34-402.5.

[509] *Galieti v. State Farm Mut. Auto. Ins. Co.*, 840 F. Supp. 104 (D. Colo. 1993).

[510] COLO. REV. STAT. § 8-2-102.

participating in politics or from becoming a candidate for public office or being elected to and entering upon the duties of any public office.[511]

Organ Donor Rights. Colorado law protects employees who are or become living organ donors. The law prohibits employers from taking any adverse action against the employee donor during the "prohibited period," defined as the 30-day period before an employee's organ donation recovery operation and the 90-day period after an employee has the operation. There is a presumption of adverse action if an employer takes adverse action against the employee donor during the prohibited period. The employer can rebut the presumption only by clear and convincing evidence that the prohibited act was taken for a lawful reason. An employer is not required to allow the employee donor to take any unpaid leave that the employee has not already accrued under the employer's existing policies applicable to similarly situated employees, or that is not required under any applicable law.[512]

3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Boulder, Denver, or Fort Collins are subject to local fair employment practices ordinances.

Boulder. Employers (any person employing any other person in any capacity) must extend antidiscrimination protections on the basis of: race; creed; color; sex; sexual orientation; gender expression; gender identity; genetic characteristics; marital status; religion; religious expression; national origin; ancestry; age (40 years or older); mental or physical disability.; immigration status; and source of income[513] An aggrieved individual may file a written complaint under oath with the City Manager's Office within 180 days of any alleged violation.[514]

Denver. Protected categories include: race; color; national origin; religion; age (over40); gender (including pregnancy, childbirth, or related medical conditions such as lactation and the need to express breastmilk for a nursing child); sexual orientation; gender expression; gender identity; marital status; military status; disability; ethnicity; citizenship; immigration status; and protective hairstyle of any individual. The antidiscrimination protections apply to employers (and their agents) employing 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.[515] Employers are required to post a workplace poster.[516] An individual may file a complaint of a violation with the Denver Human Rights and Community Partnerships Anti-Discrimination Office within 180 days of the occurrence of the discriminatory practice.[517]

Fort Collins. Employers (any person employing any other person in any capacity other than domestic service in the employer's own home) are subject to the following antidiscrimination protections: race;

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511 COLO. REV. STAT. § 8-2-108.

512 COLO. REV. STAT. § 8-2-132.

513 BOULDER, COLO., MUN. CODE §§ 12-1-1 (definitions), 12-1-3 (exceptions include for religious organizations).

514 BOULDER, COLO., MUN. CODE § 12-1-8.

515 DENVER, COLO., REVISED MUN. CODE §§ 28-92 (definitions), 28-93 (exceptions for religious organizations and associations, *bona fide* classifications, and certain job training programs for persons with disabilities).

516 DENVER, COLO., REVISED MUN. CODE § 28-104.

517 DENVER, COLO., REVISED MUN. CODE §§ 28-106, 28-107.

color; religion; national origin; sex; sexual orientation; gender identity; gender expression; marital status; age (between 40 and 70 years of age); and physical or mental impairment.[518] Any person may file a complaint with the City Manager within 60 days of the alleged violation.[519]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs "the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[520] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[521]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

Under Colorado's equal pay statute, an employer cannot discriminate in the amount or rate of wages or salary paid to employees solely on the basis of an employee's sex. The statute does not specify any exceptions to this rule. An employee alleging a violation of the statute may file an administrative complaint with the Colorado Division of Labor Standards and Statistics within one year of the alleged violation.[522] The Division may also file suit on behalf of an employee or multiple employees, but there is no private right of action to file suit.[523] Further, as noted in **3.7(b)(v)**, under Colorado's Anti-Discrimination Act, an employer cannot restrict employees from disclosing their wages or inquiring about other employees' wages.

Pay Equity Requirements. Colorado employers are prohibited from discriminating between employees on the basis of sex, or on the basis of sex in combination with another protected class, by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially

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[518] FORT COLLINS, COLO., MUN. CODE §§ 13-16 (definitions), 13-17 (exceptions for religious organizations and *bona fide* occupational qualifications).

[519] FORT COLLINS, COLO., MUN. CODE § 13-22.

[520] 29 U.S.C. § 206(d)(1).

[521] 42 U.S.C. § 2000e-5.

[522] COLO. REV. STAT. § 8-5-103.

[523] COLO. REV. STAT. § 8-5-104.

similar work, regardless of job title, based on a composite of skill; effort, which may include consideration of shift work; and responsibility, except where the employer demonstrates each of the following:

- that the wage rate differential is based on:
  - 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 to the extent that they are reasonably related to the work in question; or
  - travel, if the travel is a regular and necessary condition of the work performed;
- that each factor relied on is applied reasonably;
- that each factor relied on accounts for the entire wage rate differential; and
- that prior wage rate history was not relied on to justify a disparity in current wage rates.[524]

Sex means an employee's gender identity. *Wage rate* means:

- for an employee paid on an hourly basis, the hourly compensation paid to the employee plus the value per hour of all other compensation and benefits received by the employee from the employer; and
- for an employee paid on a salary basis, the total of all compensation and benefits received by the employee from the employer.[525]

Pay Transparency. An employer must disclose in each posting for each job opening the hourly or salary compensation, or a range of the hourly or salary compensation, and a general description of all of the benefits and other compensation to be offered to the hired applicant. The employer must keep records of job descriptions and wage rate history for each employee for the duration of the employment plus two years after the end of employment in order to determine if there is a pattern of wage discrepancy.[526]

An employer must also make reasonable efforts to announce, post, or otherwise make known all opportunities for promotion to all current employees on the same calendar day and prior to making a promotion decision. Employers must notify all employees of all promotional opportunities, and may not limit notice to those employees it deems qualified for the position, but may state that applications are open to only those with certain qualifications, and may screen or reject candidates based on those qualifications. A promotional opportunity exists when an employer has or anticipates a vacancy in an existing or new position that could be considered a promotion for one or more employee(s) in terms of compensation, benefits, status, duties, or access to further advancement. A promotional opportunity need not be posted to all employees if the employer has a compelling need to keep a particular opening confidential because the position is still held by an incumbent employee whom, for reasons other than avoiding job posting requirements, the employer has not yet made aware they will be separated. If any

[524] COLO. REV. STAT. § 8-5-102.

[525] COLO. REV. STAT. § 8-5-101.

[526] COLO. REV. STAT. §§ 8-5-201 - 85-5-202.

employees are told of the opportunity, all employees must be told who either (1) meet the minimum qualifications or (2) have a job substantially similar within the meaning of the Act to any employees being told of the opportunity. If the need for confidentiality ends before any deadline to apply for the job, the employer must then promptly comply with applicable posting requirements in the Act.[527]

No promotion posting to other employees is required:

- for a promotion within one year of an employee being hired with a written representation (whether in an offer letter; in an agreement; or in a policy the employer publishes to employees) that the employer will automatically consider the employee for promotion to a specific position within one year based solely on their own performance and/or employer needs;
- to fill a position on a temporary basis for up to six months where the hiring is not expected to be permanent, *e.g.*, an acting or interim position. If the hire may become permanent, the required promotion posting must be made in time for employees to apply for the permanent position; or
- for employees entirely outside Colorado.[528]

Beginning in January 2024,[529] the provisions requiring an employer to notify current employees of promotional opportunities are greatly expanded. An employer must make reasonable efforts to announce, post, or otherwise make known each job opportunity (not just promotional opportunities) to all employees on the same calendar day and prior to the date on which the employer makes a selection decision for the job. If the employer is only physically located outside of Colorado and has fewer than 15 employees working in Colorado, all of whom work remotely, the employer is required only to provide notice of remote job opportunities through July 1, 2029.

The employer must disclose in good faith the following information in each notification of a job opportunity:

- the hourly or salary compensation or the range of hourly or salary compensation;
- a general description of the benefits and other compensation applicable to the job opportunity; and
- the date the application window is anticipated to close.

Within 30 calendar days of the date the selected candidate for a job opportunity begins working in the position, the employer must make reasonable efforts to announce, post, or otherwise make known the following information to, at minimum, the employees with whom the selected candidate will regularly work:

- the name of the selected candidate;
- the selected candidate's former job title (if an internal hire);

[527] 7 COLO. CODE. REGS. 1103-13, §§ 4.1 - 4.2.

[528] 7 COLO. CODE. REGS. 1103-13, §§ 4.1 - 4.2.

[529] COLO. REV. STAT. § 8-5-201 (as amended by S.B. 105 (Colo. 2023)).

- the selected candidate's new job title; and
- information on how employees may demonstrate interest in similar job opportunities in the future, including identification of individuals or departments to whom employees can express interest;

For positions with career progression, the employer must also disclose the requirements for career progression and each positions terms of compensation, benefits, full-time or part-time status, job duties, and access to further advancement.

An employer is not required to identify a selected candidate for a job opportunity in any manner that violates the candidate's privacy rights under local, state, and federal law or in a manner that would put the candidate's health or safety at risk.

Enforcement. An individual alleging a violation of the Equal Pay for Equal Work Act may file an administrative charge with the Colorado Civil Rights Division or may file a civil action no later than two years after the violation occurs. A violation occurs on each occasion that a person is affected by wage discrimination, including each occasion that a discriminatory wage rate is paid.[530] An individual alleging a violation of sections 8–5–201 or 8–5–202 may file an administrative complaint within one year after the date that the person learned of the violation. An employer's failure to comply with section 8–5–201(1) for one promotional opportunity is considered one violation, and an employer's failure to comply with section 8–5–201(2) for one job opening is considered one violation regardless of the number of postings that list the job opening.[531]

An employer found to be in violation of the Act is liable for economic damages in an amount equal to the difference between the amount the employer paid to the complaining employee and the amount that the employee would have received had there been no violation, plus liquidated damages in an amount equal to the employee's economic damages. If the employer demonstrates that the act or omission giving rise to the violation was in good faith and that the employer has reasonable grounds for believing there was no violation, the court will not award liquidated damages. In determining whether the employer's violation was in good faith, the court may consider evidence that within two years prior to the date of the commencement of the civil action, the employer completed a thorough and comprehensive pay audit of its workforce, with the specific goal of identifying and remedying unlawful pay disparities.[532]

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

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[530] COLO. REV. STAT. § 8-5-103.

[531] COLO. REV. STAT. § 8-5-203.

[532] COLO. REV. STAT. § 8-5-104.

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[533]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[534]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[535] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[536] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot

[533] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[534] 29 C.F.R. § 1636.3.

[535] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[536] 29 C.F.R. § 1636.3.

perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[537]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[538]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[539]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

[537] 29 C.F.R. § 1636.4.

[538] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[539] 29 C.F.R. § 1636.3.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Colorado. In Colorado, an employer must provide reasonable accommodations to an applicant or employee for health conditions related to pregnancy or the physical recovery from childbirth, at the applicant or employee's request. Employers must provide these accommodations unless it would impose an undue hardship on the employer's operations.[540] Additionally, if an employer offers leave for other temporary impairments, it must consider an impairment resulting from pregnancy, miscarriage, abortion, childbirth, and recovery therefrom to be a justification for a leave of absence for a female employee. The terms and conditions of pregnancy-related impairment leaves of absence may not be more restrictive, but need not be more generous, than those applied to impairment leaves for other purposes.[541]

Reasonable accommodations may include:

- more frequent or longer break periods and more frequent restroom, food, and water breaks;
- obtaining or modifying equipment or seating;
- lifting limitations;
- temporary transfer to a less strenuous position, if available;
- job restructuring;
- light duty, if available;
- assistance with manual labor; and
- modified work schedules.

In providing reasonable accommodation, an employer is not required to:

- hire new employees that the employer would not otherwise have hired;
- discharge an employee;
- transfer another employee with more seniority;
- promote another employee who is not qualified for the job; or
- create a light duty position, unless doing so would be provided for another equivalent employee.

The law requiring reasonable accommodations neither increases nor decreases employees' rights under any other law with respect to paid or unpaid leave in connection with an employee's pregnancy.[542]

When an applicant or employee requests an accommodation, the employer must engage in a timely, good faith interactive process to determine an effective accommodation.[543] Additionally, an employer may

[540] COLO. REV. STAT. §§ 24-34-401, 24-34-402.3.

[541] 3 COLO. CODE REGS. § 708-1 (r. 80.6).

[542] COLO. REV. STAT. § 24-34-402.3.

[543] COLO. REV. STAT. § 24-34-402.3.

require an employee or applicant who requests a reasonable accommodation to provide a note from a licensed health care provider stating the necessity of the accommodation.[544]

3.11(c)(iii) *Local Guidelines on Pregnancy Accommodation*

Denver. The Denver fair employment practices ordinance requires an employer of 10 or more employees to reasonably accommodate an applicant's or employee's condition related to pregnancy, childbirth, or a related medical condition, including the need to express breast milk for a nursing child.[545] An employer must provide reasonable accommodation unless doing so would present an undue hardship on a program, enterprise, or business. The fact that an employer provides or is required to provide similar accommodation to other classes of employees in need, such as those who are injured on the job or have disabilities, creates a rebuttable presumption that the accommodation does not impose an undue hardship.[546]

Reasonable accommodations include, but are not limited to:

- additional or longer breaks;
- time off to recover from childbirth;
- acquisition or modification of equipment;
- seating;
- temporary transfer to a less strenuous or hazardous position;
- job restructuring;
- light duty;
- private, nonbathroom space for lactation;
- assistance with manual labor; or
- modified work schedules.[547]

In providing reasonable accommodation, an employer is not required, unless the employer takes these actions for other classes of employees who need accommodation, to:

- create additional employment that would not have been created otherwise;
- discharge an employee;
- transfer another employee with more seniority; or
- promote another employee who is not qualified for the job.[548]

However, an employer is cannot require an applicant or employee to accept an accommodation, or require an employee to take leave if another reasonable accommodation can be provided. In addition, an

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[544] COLO. REV. STAT. § 24-34-402.3.

[545] DENVER, COLO. REV. MUNI. CODE § 28-93(b)(2)(b).

[546] DENVER, COLO. REV. MUNI. CODE §§ 28-93(b)(2)(b), 28-93(b)(3)(f).

[547] DENVER, COLO. REV. MUNI. CODE § 28-93(b)(2)(a).

[548] DENVER, COLO. REV. MUNI. CODE § 28-93(b)(2)(a).

employer is prohibited from denying employment opportunities to an applicant or employee, if the denial is based on the employer's refusal to reasonably accommodate the individual's condition related to pregnancy, childbirth, or related medical condition.[549]

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[550] Multiple decisions of the U.S. Supreme Court[551] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[552] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in Colorado. However, the Colorado Sex Discrimination Rules, as adopted by the CCRC, "encourage" employers to take all necessary steps to prevent sexual harassment from occurring; this includes informing employees of their rights, as well as expressing strong disapproval, affirmatively raising the subject with employees, and sensitizing employees regarding issues relating to sexual harassment.[553]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected

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[549] DENVER, COLO. REV. MUNI. CODE § 28-93(b)(2)(a).

[550] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[551] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526(1999).

[552] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

[553] See 3 COLO. CODE REGS. § 708-1 (rr. 20.6, 85.1).

activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

Colorado's False Claims Act (CFCA) provides protections for whistleblowers raising concerns with false claims. The CFCA covers several types of fraud, including the submission of false or fraudulent claims to state or local governments and the falsification of records material to false claims. The scope of CFCA could include not only false or incomplete claims for payment, but also false statements incident to an obligation to pay the state or a political subdivision. The CFCA includes broad anti-retaliation provisions, as well as a private right of action for alleged violations.[554]

Health care providers are prohibited from terminating or otherwise disciplining health care workers who report or disclose concerns related to patient safety or quality of patient care.[555] Protected disclosures include concerns regarding compliance with applicable laws, regulations, professional licensure requirements, or generally accepted standards of care. To qualify for protection under these provisions, the health care worker must: (1) be licensed, registered or certified; (2) make the disclosure in good faith and without malice or personal benefit; (3) have reasonable cause to believe the concern is true; and (4) follow the internal reporting procedures of the health care provider before disclosing the concern externally.[556]

Like health care providers, private employers under contract with any state agency are also prohibited from retaliating against whistleblowers.[557] Specifically, such employers may not take any disciplinary action against an employee who reports any policy, practice, or procedure that endangers public health, safety, or welfare, or that would result in the waste of public funds if not disclosed. An employee is not entitled to protection if the employee reports: (1) information that the employee knows to be false; (2) information without regard to its truth or falsity; or (3) legally confidential information.[558] Additionally, an employee seeking whistleblower protection must make a good-faith effort to provide—to the employee's supervisor or appointing authority or to a member of the general assembly—the information to be disclosed prior to its disclosure.[559]

Termination of employment for certain types of whistleblowing may also give rise to a tort claim for wrongful discharge in violation of public policy.

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[560] and the Railway Labor Act (RLA)[561] are the two main federal laws governing

[554] COLO. REV. STAT. §§ 24-31-1201 *et seq.*

[555] COLO. REV. STAT. § 8-2-123.

[556] COLO. REV. STAT. § 8-2-123.

[557] COLO. REV. STAT. §§ 24-114-101, -102.

[558] COLO. REV. STAT. § 24-114-102(1).

[559] COLO. REV. STAT. §§ 24-114-101(2).

[560] 29 U.S.C. §§ 151 to 169.

[561] 45 U.S.C. §§ 151 *et seq*.

employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Colorado's Industrial Relations Act. Colorado's Industrial Relations Act[562] established the Division of Labor in the Colorado Division of Labor and Employment. While many of its provisions pertain to workers' compensation proceedings, the Industrial Relations Act vests the Director of the Division of Labor with the power and jurisdiction to have supervision of every employment and place of employment in the state.[563] However, the Director has rarely used this power to intervene in labor disputes.

Labor Peace Act. Colorado does not have a right-to-work law. The Colorado Labor Peace Act[564] governs labor relations in the State of Colorado to the extent not preempted by federal labor law or other statutory provisions governing public employers. For these reasons, few reported cases exist interpreting its provisions. The most significant aspect of the Labor Peace Act concerns union security agreements, which have been held to be within the reach of state law.

The Labor Peace Act and its rules of procedure permit unions and employers to enter into collective bargaining agreements requiring union members as a condition of employment to pay union dues, provided an "all-union election" has been held pursuant to the Act. The law also permits revocation of these union security agreements.[565] An all-union agreement means a contractual provision between an

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[562] COLO. REV. STAT. §§ 8-1-101 to 8-1-151.

[563] COLO. REV. STAT. § 8-1-111.

[564] COLO. REV. STAT. §§ 8-3-101 to 8-3-123.

[565] Several provisions of the Labor Peace Act have been reviewed by courts and the NLRB on possible preemption issues. *See, e.g.*, *Communications Workers of America v. Western Electric Co.*, 551 P.2d 1065 (Colo. 1976) (Taft-Hartley Act did not preempt the provisions of the Labor Peace Act regulating union security agreements); *Albertson's/Max Food Warehouse & Tuxhorn*, 329 N.L.R.B. 410(1999) (Labor Peace Act's deauthorization procedures, which limit when employees may seek to rescind an existing union security clause, are preempted by the NLRA); *Ruff v. Kezer*, 606 P.2d 441 (Colo. 1980) (plaintiffs' claims seeking copies of employee lists and use of bulletin boards by their employer were preempted by the NLRA, even though the allegation arose out of an election involving union security agreements); *Mercury Warehouse & Delivery Serv.*, 327 N.L.R.B. 458 (1999) (union violated section 8(b)(1)(A) of the NLRA when it: (1) charged a union member for nonrepresentational functions after the nonmember's objection to those expenditures; (2) upon receiving the employee's objection, failed to

employer or group of employers and a collective bargaining unit. It includes, but is not limited to, agreements for a union shop, modified union shop, agency shop, modified agency shop, pre-hire agreement, maintenance of dues, or maintenance of membership.[566] An all-union agreement is terminated if, pursuant to the petition filed, there is not an affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater. When an election is held to approve or revoke an all-union agreement, the results of the election are construed as granting or denying authorization for the employer and the labor organization to enter into any form of all-union agreement as defined in the Labor Peace Act. Such election is not to be construed as approving or revoking only the specific contract terms proposed or agreed upon. That means if a union shop provision is voted out, an agency shop or other union security agreement may not be substituted in its place.

The Labor Peace Act makes it an unfair labor practice to coerce or intimidate an employee in the enjoyment of their legal rights, or to intimidate the employee's family or any family member, picket their domicile, or injure the person or property of such employee or of the employee's family.[567] The Colorado Supreme Court reviewed the question of whether a blanket prohibition against residential picketing violates the First Amendment and the Equal Protection Clause of the U.S. Constitution when it reviewed the case of *CF&I Steel*, *L.P. v. United Steelworkers of America*, ultimately concluding that the injunction against peaceful residential picketing violated the First Amendment and the Equal Protection Clause.[568]

The Labor Peace Act contains several examples of unfair labor practices and defines what actions do not constitute unfair labor practices. Many unfair labor practice charges will arise in factual settings arguably covered by federal labor law, and therefore will be preempted by the NLRA. Unfair labor practices by employers are similar to those in section 8(a) of the NLRA. Unfair labor practices by employees include engaging in a strike without giving proper notice or going out on strike without the majority vote of employees in the bargaining unit. Any person suffering injury as a result of an unfair labor practice may bring a private civil suit.[569]

The Director of the Division of Labor has the power to order arbitration or mediation of labor disputes, including those involving the State of Colorado and any board, commission, agency, or instrumentality of the state.[570] This power has been sparingly invoked. Quasi-public agencies, such as transit districts, are most often involved in these disputes.

provide him with information setting forth the union's major expenditures for the previous accounting year and distinguishing between representational and nonrepresentational functions; and (3) failed to notify other nonmember unit employees of their rights not to be charged for functions not germane to collective bargaining).

[566] COLO. REV. STAT. § 8-3-104.

[567] COLO. REV. STAT. § 8-3-108.

[568] 23 P.3d 1197 (Colo. 2001).

[569] COLO. REV. STAT. §§ 8-3-103, 8-3-121.

[570] COLO. REV. STAT. §§ 8-3-112, 8-3-113.

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[571] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[572] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

Colorado does not have a mini-WARN statute requiring advance notice to employees of a plant closing.

4.1(c) *State Mass Layoff Notification Requirements*

Colorado does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff.

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under federal law.

Table 11. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[573] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or

[571] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[572] 20 C.F.R. §§ 639.4, 639.6.

[573] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

Table 11. Federal Documents to Provide at End of Employment	
Category	**Notes**
	• the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[574]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 12 lists the documents that must be provided when employment ends under state law.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	The employer must notify the employee in writing of the employee's right to continue health care coverage upon termination from employment. A written communication signed by the employee or a notice postmarked within 10 days after termination mailed by the employer to the last known address of the employee is sufficient. The notification must inform the employee of: • the employee's right to elect to continue the existing coverage at the applicable rate; • the amount the employee must pay monthly to the employer to retain the coverage, which payment includes the employer's contribution for the employee in addition to the employee's own contribution; • the manner in which, and the office of the employer to which, the employee must submit the payment to the employer; • the date and time by which the employee must submit the payments to the employer to retain coverage; and • the fact that the employee will lose the coverage if the employee does not timely submit the payment to the employer. If the employer fails to notify an eligible employee of the right to elect to continue the coverage, the employee has the option to retain coverage if, within 60 days after the date the employment is terminated, the

[574] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
	employee makes the proper payment to the employer to provide continuous coverage.[575]
Payroll Deduction Notice	An employer must give notice to an employee, within 10 days after the employment terminates, before deducting from wages or compensation any amount of money or property the employee failed to return or repay upon termination of employment. The notice must include: • a written accounting specifying the amount of money or specific property that the employee failed to pay or return; • the replacement value of the property; and • to the extent known, when the money or property was provided to the employee and when the employer believes the employee should have paid the money or returned the property to the employer.[576]
Unemployment Notice	**Generally.** Upon an employee's separation, an employer must give the employee a written notice of rights regarding the availability of unemployment compensation benefits. The information may be provided in electronic or hard copy and must include: • a statement that UI benefits are available to eligible unemployed workers; • contact information to file a claim; • information the worker will need to file a claim; and • contact information to inquire about the status of the claim after it is filed. • the employer's name and address; • the employee's name and address; • the employee's identification number or the last four digits of the employee's social security number; • the employee's start date, date of last day worked, year-to-date earnings, and wages for the last week the employee worked; and • the reason the employee separated from the employer.[577] **Multistate Workers.** Whenever an individual is separated from employment, an employer must again notify the individual of the elected jurisdiction under whose law services have been covered. If the individual is not in the elected jurisdiction when separated from employment, an employer must give the individual information concerning procedures to follow in filing interstate claims. In addition to

[575] COLO. REV. STAT. § 10-16-108.

[576] COLO. REV. STAT. § 8-4-105.

[577] COLO. REV. STAT. § 8-74-101; 7 COLO. CODE REGS. § 1101-2 (r. 7.3); 7 COLO. CODE REGS. 1101-2, § 7.3.2; *see* Colorado Dep't of Labor and Emp't, Employee/Employer Separation Form *available at* https://cdle.colorado.gov/sites/cdle/files/documents/Employer-Separation-Form-22-234-fillable.pdf.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
	this notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.[578]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

Colorado provides that an employer is immune from civil liability for imparting a fair and unbiased opinion of a former employee when solicited to do so by a prospective employer.[579] The employer's presumption of good faith may be rebutted by showing the information disclosed was knowingly false, deliberately misleading, disclosed for malicious purpose, or in violation of a civil right of the employee. The employee must also receive a copy of the reference.

Colorado's blacklisting law also prohibits the maintenance or use of blacklists in order to protect employees from retribution and harassment in the pursuit of their lawful activities.[580] Because the General Assembly determined that prohibitions against blacklisting had in some instances been abused or used as a shield, it acted to exempt certain categories of employees, including:

- **Financial Institutions.** Colorado permits a bank, savings, and loan association, credit card or travel and entertainment card company, industrial bank, trust company, credit union, or other state or federally chartered lending institution to provide a written employment reference upon request from another bank, savings, and loan association, credit card or travel and entertainment card company, industrial bank, trust company, credit union, or other state or federally chartered lending institution that advises the requesting organization of any involvement by the subject for which the request for reference is made in a theft, embezzlement, misappropriation, or other defalcation.[581] No liability attaches for providing such information if given in good faith.
- **Health Care Employers.** Similarly, Colorado provides a statutory provision exempting health care employers from liability under Colorado's blacklisting statutes when they disclose information about health care workers pertaining to drug violations or affecting patient safety.[582] *Health care worker* is defined broadly to include various licensed professionals or "any person who interacts directly with a patient or assists with the patient care process."[583] Employers may only disclose information *known* about a health care worker's involvement in

[578] 7 COLO. CODE REGS. § 1101-2 (r. 13.3.5.2).

[579] COLO. REV. STAT. § 8-2-114.

[580] COLO. REV. STAT. §§ 8-2-110, 8-2-111.

[581] COLO. REV. STAT. § 8-2-111.5.

[582] COLO. REV. STAT. § 8-2-111.6.

[583] COLO. REV. STAT. § 8-2-111.6(5).

drug diversion, drug tampering, patient abuse, violation of drug or alcohol policies of the employer, or crimes of violence. Further, information may only be provided in response to a request by a prospective or current employer of a health care worker. If good-faith disclosures are made under those conditions, employers are exempt from liability. Employers are presumed to have acted in good faith, and liability is excused, unless the former employee can show by a preponderance of the evidence that: (1) the information was false; and (2) the employer knew or reasonably should have known that the information was false.[584]

Caregivers. The same statutory exemptions as for those for health care employers apply to an employer, when acting in good faith, that discloses information known about any involvement in the mistreatment, exploitation, neglect, or abuse of persons with intellectual and developmental disabilities by a caregiver.[585] A *caregiver* is an individual employed to work with a person with an intellectual and developmental disability or a person who "provides host home services by contract as part of residential services."[586]

[584] COLO. REV. STAT. § 8-2-111.6(3).

[585] COLO. REV. STAT. § 8-2-111.7.

[586] COLO. REV. STAT. § 8-2-111.7(5).