

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0430.01 Kristen Forrestal x4217

SENATE BILL 19-085

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Senate Committees
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A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE "EQUAL PAY FOR EQUAL WORK**
102 **ACT" IN ORDER TO IMPLEMENT MEASURES TO PREVENT PAY**
103 **DISPARITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill removes the authority of the director of the division of labor standards and statistics in the department of labor and employment (director) to enforce wage discrimination complaints based on an employee's sex and instead permits an aggrieved person to bring a civil action in district court to pursue remedies specified in the bill.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill allows exceptions to the prohibition against a wage differential based on sex if the employer demonstrates that a wage differential is based upon one or more factors, including:

- ! A seniority system;
- ! A merit system; or
- ! A system that measures earnings by quantity or quality of production.

The bill prohibits an employer from:

- ! Seeking the wage rate history of a prospective employee;
- ! Relying on a prior wage rate to determine a wage rate;
- ! Discriminating or retaliating against a prospective employee for failing to disclose the employee's wage rate history; and
- ! Discharging or retaliating against an employee for actions by an employee asserting the rights established by the bill against an employer.

The bill requires an employer to announce to all employees employment advancement opportunities and job openings and the pay range for the openings. The director is authorized to enforce actions against an employer concerning transparency in pay and employment opportunities, including fines of between \$500 and \$10,000 per violation.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** The short title of this act is the "Equal
3 Pay for Equal Work Act".

4 **SECTION 2. Legislative declaration.** (1) The general assembly
5 hereby finds and declares that:

6 (a) In 1944, the first equal pay bill was introduced in Congress,
7 but it was not until the federal "Equal Pay Act of 1963", 29 U.S.C. sec.
8 206, became law that pay discrimination based on sex was outlawed;

9 (b) Despite policies outlawing pay discrimination and creating
10 avenues for women to bring a civil action for lost wages, women still earn
11 significantly less than their male counterparts for the same work;

12 (c) According to a report released in March 2018 by the Institute
13 for Women's Policy Research and The Women's Foundation of Colorado:

1 (I) Women in this state earn just 86 cents for every dollar men
2 earn;

3 (II) Latinas earn 53.5 cents and black women earn 63.1 cents for
4 every dollar earned by white men; and

5 (III) If the wage gap were eliminated, a working woman in
6 Colorado would earn, on average, \$7,000 more per year, which would pay
7 for 1.9 years of community college tuition or approximately 6 months of
8 child care costs;

9 (d) The effects of pay disparity compound over a woman's
10 lifetime, with women losing between \$400,000 and \$1 million over the
11 course of a lifetime due to the wage gap; and

12 (e) Equal pay would cut the poverty rate for working women in
13 half and reduce the poverty rate for employed single mothers by more
14 than 40 percent.

15 (2) It is the intent of the general assembly to pass legislation that
16 helps to close the pay gap in Colorado and ensure that employees with
17 similar job duties are paid the same wage rate regardless of sex, or sex
18 plus another protected status.

19 **SECTION 3.** In Colorado Revised Statutes, 8-5-101, **amend** the
20 introductory portion, (4), and (5); **repeal** (3) and (6); and **add** (7), (8), (9),
21 and (10) as follows:

22 **8-5-101. Definitions.** As used in this ~~article~~ ARTICLE 5, unless the
23 context otherwise requires:

24 (3) ~~"Division" means the division of labor standards and statistics~~
25 ~~in the department of labor and employment.~~

26 (4) ~~"Employee" means any individual in the employment of any~~
27 ~~A PERSON EMPLOYED BY AN employer.~~

1 (5) "Employer" means the state ~~and every county, city, town, and~~
2 ~~body corporate and politic therein and every person, corporation,~~
3 ~~partnership, and association, including those operating in a representative~~
4 ~~capacity~~ OR ANY POLITICAL SUBDIVISION, COMMISSION, DEPARTMENT,
5 INSTITUTION, OR SCHOOL DISTRICT THEREOF, AND EVERY OTHER PERSON
6 EMPLOYING A PERSON IN THE STATE.

7 (6) "~~Employment~~" ~~means any trade, occupation, job, or position~~
8 ~~in which any person may be engaged in the service of another for wages~~
9 ~~or salary, except household and domestic servants and farm and ranch~~
10 ~~laborers.~~

11 (7) "LIQUIDATED DAMAGES" MEANS DAMAGES TO COMPENSATE AN
12 EMPLOYEE FOR THE DELAY IN RECEIVING AMOUNTS DUE AS A RESULT OF
13 AN EMPLOYER'S VIOLATION OF THIS ARTICLE 5. "LIQUIDATED DAMAGES"
14 DOES NOT CONSTITUTE A PENALTY TO THE EMPLOYER.

15 (8) "SEX" MEANS AN EMPLOYEE'S GENDER IDENTITY.

16 (9) "SUBSTANTIALLY SIMILAR WORK" MEANS WORK THAT IS
17 SIMILAR BASED ON A COMPOSITE OF SKILL, EFFORT, AND RESPONSIBILITY,
18 REGARDLESS OF JOB TITLE.

19 (10) "WAGE RATE" MEANS:

20 (a) FOR AN EMPLOYEE PAID ON AN HOURLY BASIS, THE HOURLY
21 COMPENSATION PAID TO THE EMPLOYEE PLUS THE VALUE PER HOUR OF ALL
22 OTHER COMPENSATION AND BENEFITS RECEIVED BY THE EMPLOYEE FROM
23 THE EMPLOYER; AND

24 (b) FOR AN EMPLOYEE PAID ON A SALARY BASIS, THE TOTAL OF ALL
25 COMPENSATION AND BENEFITS RECEIVED BY THE EMPLOYEE FROM THE
26 EMPLOYER.

27 **SECTION 4.** In Colorado Revised Statutes, **amend** 8-5-102 as

1 follows:

2 **8-5-102. Wage discrimination prohibited.** ~~No employer shall~~
3 ~~make any discrimination in the amount or rate of wages or salary paid or~~
4 ~~to be paid his employees in any employment in this state solely on~~
5 ~~account of the sex thereof.~~ (1) AN EMPLOYER SHALL NOT DISCRIMINATE
6 BETWEEN EMPLOYEES ON THE BASIS OF SEX, OR ON THE BASIS OF SEX IN
7 COMBINATION WITH ANOTHER PROTECTED STATUS AS DESCRIBED IN
8 SECTION 24-34-402 (1)(a), BY PAYING AN EMPLOYEE OF ONE SEX A WAGE
9 RATE LESS THAN THE RATE PAID TO AN EMPLOYEE OF A DIFFERENT SEX FOR
10 SUBSTANTIALLY SIMILAR WORK, EXCEPT WHERE THE EMPLOYER
11 DEMONSTRATES EACH OF THE FOLLOWING:

12 (a) THAT THE WAGE RATE DIFFERENTIAL IS BASED ON:

13 (I) A SENIORITY SYSTEM;

14 (II) A MERIT SYSTEM; OR

15 (III) A SYSTEM THAT MEASURES EARNINGS BY QUANTITY OR
16 QUALITY OF PRODUCTION;

17 (b) THAT EACH FACTOR RELIED ON IN SUBSECTION (1)(a) OF THIS
18 SECTION IS APPLIED REASONABLY;

19 (c) THAT EACH FACTOR RELIED ON IN SUBSECTION (1)(a) OF THIS
20 SECTION ACCOUNTS FOR THE ENTIRE WAGE RATE DIFFERENTIAL; AND

21 (d) THAT PRIOR WAGE RATE HISTORY WAS NOT RELIED ON TO
22 JUSTIFY A DISPARITY IN CURRENT WAGE RATES.

23 (2) AN EMPLOYER SHALL NOT:

24 (a) SEEK THE WAGE RATE HISTORY OF A PROSPECTIVE EMPLOYEE
25 OR RELY ON THE WAGE RATE HISTORY OF A PROSPECTIVE EMPLOYEE TO
26 DETERMINE A WAGE RATE;

27 (b) DISCRIMINATE OR RETALIATE AGAINST A PROSPECTIVE

1 EMPLOYEE FOR FAILING TO DISCLOSE THE PROSPECTIVE EMPLOYEE'S WAGE
2 RATE HISTORY;

3 (c) DISCHARGE, OR IN ANY MANNER DISCRIMINATE OR RETALIATE
4 AGAINST, AN EMPLOYEE FOR INVOKING THIS SECTION ON BEHALF OF
5 ANYONE OR ASSISTING IN THE ENFORCEMENT OF THIS SUBSECTION (2);

6 (d) DISCHARGE, DISCIPLINE, DISCRIMINATE AGAINST, COERCE,
7 INTIMIDATE, THREATEN, OR INTERFERE WITH AN EMPLOYEE OR OTHER
8 PERSON BECAUSE THE EMPLOYEE OR PERSON INQUIRED ABOUT, DISCLOSED,
9 COMPARED, OR OTHERWISE DISCUSSED THE EMPLOYEE'S WAGE RATE;

10 (e) PROHIBIT, AS A CONDITION OF EMPLOYMENT, AN EMPLOYEE
11 FROM DISCLOSING THE EMPLOYEE'S WAGE RATE; OR

12 (f) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR OTHER
13 DOCUMENT THAT:

14 (I) PROHIBITS THE EMPLOYEE FROM DISCLOSING WAGE RATE
15 INFORMATION; OR

16 (II) PURPORTS TO DENY THE EMPLOYEE THE RIGHT TO DISCLOSE
17 THE EMPLOYEE'S WAGE RATE INFORMATION.

18 **SECTION 5.** In Colorado Revised Statutes, **amend** 8-5-103 as
19 follows:

20 **8-5-103. Enforcement - rules and regulations - complaints.**

21 ~~(1) The director has the power to administer, carry out, and enforce all~~
22 ~~of the provisions of this article and may promulgate rules and regulations~~
23 ~~for that purpose. Copies of the rules and regulations shall be furnished by~~
24 ~~the division to all employees and employers upon written request~~ A
25 PERSON AGGRIEVED BY A VIOLATION OF SECTION 8-5-102 MAY COMMENCE
26 A CIVIL ACTION IN DISTRICT COURT NO LATER THAN TWO YEARS AFTER THE
27 VIOLATION OCCURS. A VIOLATION OF SECTION 8-5-102 (1) OCCURS ON

1 EACH OCCASION THAT A PERSON IS AFFECTED BY WAGE DISCRIMINATION,
2 INCLUDING EACH OCCASION THAT A DISCRIMINATORY WAGE RATE IS PAID.

3 (2) A PERSON AGGRIEVED BY A VIOLATION OF SECTION 8-5-102
4 MAY OBTAIN RELIEF FOR BACK PAY FOR THE ENTIRE TIME THE VIOLATION
5 CONTINUES, NOT TO EXCEED SIX YEARS.

6 (3) IF A CIVIL ACTION IS COMMENCED UNDER THIS SECTION, ANY
7 PARTY TO THE CIVIL ACTION MAY DEMAND A TRIAL BY JURY.

8 ~~(2) Upon written complaint, duly executed and verified, by any
9 employee that any employer has, within one year from the date of such
10 complaint, violated the provisions of section 8-5-102, the director or any
11 referee of the division may proceed to hear and determine such complaint,
12 and the director may make an award upon said complaint. Judicial review
13 may be had of any award of the director under this article pursuant to
14 section 24-4-106, C.R.S.~~

15 **SECTION 6.** In Colorado Revised Statutes, **amend** 8-5-104 as
16 follows:

17 **8-5-104. Employer liability - awards - suits.** (1) An employer
18 who violates ~~the provisions of section 8-5-102~~ SECTION 8-5-102 (1) is
19 liable FOR ECONOMIC DAMAGES in an amount equal to the difference
20 between the amount ~~which he~~ THAT THE EMPLOYER paid to the
21 complaining employee and the amount ~~which~~ THAT the employee would
22 have received had there been no discrimination; and, if the director finds
23 that such discrimination was willful, the director may impose a penalty
24 upon the employer in addition thereto of not more than the amount of
25 such difference. The amount of such liability so determined by the
26 director shall constitute the award of the director. Such award shall be the
27 property of the employee but may be recovered for the employee in a suit

1 brought by the director in his name in any court in the county of the
2 residence of the employer within this state having jurisdiction of the
3 amount of the demand in the suit. The director may join in one suit all of
4 his awards against any one employer under this article VIOLATION PLUS
5 LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO THE EMPLOYEE'S
6 ECONOMIC DAMAGES. IF THE EMPLOYER DEMONSTRATES THAT THE ACT OR
7 OMISSION GIVING RISE TO THE VIOLATION WAS IN GOOD FAITH AND THAT
8 THE EMPLOYER HAS REASONABLE GROUNDS FOR BELIEVING THAT THE
9 EMPLOYER DID NOT VIOLATE SECTION 8-5-102 (1), THE COURT NEED NOT
10 AWARD LIQUIDATED DAMAGES OR MAY AWARD AN AMOUNT LESS THAN
11 THE EMPLOYEE'S ECONOMIC DAMAGES.

12 (2) AN EMPLOYER WHO VIOLATES ANY PROVISION OF SECTION
13 8-5-102 IS LIABLE FOR:

14 (a) LEGAL AND EQUITABLE RELIEF, WHICH MAY INCLUDE
15 EMPLOYMENT, REINSTATEMENT, PROMOTION, PAY INCREASE, PAYMENT OF
16 LOST WAGE RATES, AND LIQUIDATED DAMAGES; AND

17 (b) THE EMPLOYEE'S REASONABLE COSTS, INCLUDING ATTORNEY
18 FEES.

19 (3) NOTHING IN THIS SECTION PRECLUDES AN EMPLOYEE FROM
20 ASSERTING ANY OTHER AVAILABLE STATUTORY OR COMMON-LAW CLAIMS.

21 **SECTION 7.** In Colorado Revised Statutes, **repeal** 8-5-105 as
22 follows:

23 **8-5-105. Records open to inspection.** ~~When complaint is made~~
24 ~~to the division by any employee against any employer for a violation of~~
25 ~~this article, all books, records, and payrolls of such employer, material~~
26 ~~and pertinent to such complaint, shall be open for inspection by the~~
27 ~~division or any of its agents duly appointed for that purpose.~~

1 PURPOSE. THE DIRECTOR SHALL PROVIDE WRITTEN COPIES OF RULES
2 PROMULGATED PURSUANT TO THIS SECTION TO ALL EMPLOYEES AND
3 EMPLOYERS UPON WRITTEN REQUEST.

4 (2) (a) A PERSON WHO CLAIMS TO BE AGGRIEVED BY A VIOLATION
5 OF SECTION 8-5-201 OR 8-5-202 MAY FILE A WRITTEN COMPLAINT WITH
6 THE DIRECTOR WITHIN ONE YEAR AFTER THE DATE THAT THE PERSON
7 LEARNED OF THE VIOLATION. THE WRITTEN COMPLAINT MUST STATE THE
8 NAME AND ADDRESS OF THE EMPLOYER AND A DETAILED ACCOUNT OF THE
9 ALLEGED VIOLATION.

10 (b) AN EMPLOYER'S FAILURE TO COMPLY WITH SECTION 8-5-201 (1)
11 FOR ONE PROMOTIONAL OPPORTUNITY IS CONSIDERED ONE VIOLATION.

12 (c) AN EMPLOYER'S FAILURE TO COMPLY WITH SECTION 8-5-201 (2)
13 FOR ONE JOB OPENING IS CONSIDERED ONE VIOLATION REGARDLESS OF THE
14 NUMBER OF POSTINGS THAT LIST THE JOB OPENING.

15 (3) THE DIRECTOR SHALL INVESTIGATE COMPLAINTS OF
16 VIOLATIONS OF THIS PART 2 AND SHALL PROMULGATE RULES NECESSARY
17 TO GOVERN THE INVESTIGATIONS.

18 (4) UPON FINDING THAT AN EMPLOYER HAS VIOLATED THIS PART
19 2, THE DIRECTOR MAY ORDER THE EMPLOYER TO PAY A FINE OF NO LESS
20 THAN FIVE HUNDRED DOLLARS AND NO MORE THAN TEN THOUSAND
21 DOLLARS PER VIOLATION.

22 (5) IF AN EMPLOYEE BRINGING SUIT FOR A VIOLATION OF SECTION
23 8-5-102 DEMONSTRATES A VIOLATION OF THIS PART 2, AND THE COURT
24 FINDS A VIOLATION OF THIS PART 2, THE COURT MAY ORDER APPROPRIATE
25 RELIEF, INCLUDING A PRESUMPTION THAT RECORDS NOT KEPT BY THE
26 EMPLOYER IN VIOLATION OF SECTION 8-5-202 CONTAINED INFORMATION
27 FAVORABLE TO THE EMPLOYEE'S CLAIM AND AN INSTRUCTION TO THE JURY

1 THAT FAILURE TO KEEP RECORDS CAN BE CONSIDERED EVIDENCE THAT THE
2 VIOLATION WAS NOT MADE IN GOOD FAITH.

3 **SECTION 9. Act subject to petition - effective date -**
4 **applicability.** (1) This act takes effect January 1, 2020; except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within the ninety-day period after final adjournment of the general
8 assembly, then the act, item, section, or part will not take effect unless
9 approved by the people at the general election to be held in November
10 2020 and, in such case, will take effect on the date of the official
11 declaration of the vote thereon by the governor.

12 (2) This act applies to violations that occur on or after the
13 applicable effective date of this act.