

# OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY



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## MEMORANDUM

TO: Joint Budget Committee

FROM: Nicole Myers

DATE: January 20, 2022

SUBJECT: An Overview of the "Colorado Partnership for Quality Jobs and Services Act" created in H.B. 20-1153.<sup>1</sup>

On June 3, 2020, the Colorado General Assembly enacted H.B. 20-1153 - Concerning the relationship between state employees and the state as their employer, and, in connection therewith, creating the "Colorado Partnership for Quality Jobs and Services Act", and making an appropriation. The bill was signed by Governor Polis and took effect on June 16, 2020. The following is a summary of the Colorado Partnership for Quality Jobs and Services Act (Act) as enacted in H.B. 20-1153.<sup>2</sup>

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<sup>1</sup> This memorandum results from a request made to the authoring attorney in the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. This memorandum reflects the legal analysis of the authoring attorney. This legal memorandum does not represent an official legal position of the OLLS, the General Assembly, or the State of Colorado and does not bind the members of the General Assembly. The memorandum is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

<sup>2</sup> The Act is codified as part 11 of article 50 of title 24, C.R.S., and, as of the date of this memorandum, has not been amended.

### **1. Covered Employees: § 24-50-1102, C.R.S.**

The Act requires the state and an employee organization that represents covered state employees to negotiate regarding wages, hours, and terms and conditions of employment and to cooperatively draft a mutually agreed upon written partnership agreement.<sup>3</sup> The state and an employee organization may also negotiate regarding other issues by mutual agreement.<sup>4</sup> However, neither side is required to agree to a proposal or make a concession.<sup>5</sup> For the purposes of a partnership agreement pursuant to the Act, a "covered employee" is an employee who is employed in the state personnel system, but certain employees in the state personnel system, due to the nature and responsibilities of their jobs, are not considered covered employees and therefore are not able to participate in partnership agreements.<sup>6</sup>

### **2. Duties and Responsibilities of the Division of Labor Standards and Statistics and the State Personnel Director: §§ 24-50-1103 and 24-50-1104, C.R.S.**

The Division of Labor Standards and Statistics within the Department of Labor and Employment (division) is required to enforce the Act and to promulgate rules as necessary for such enforcement. The division is authorized to adjudicate unfair labor practice charges that arise in connection with the partnership agreement process. The division is also authorized to conduct elections for employee organizations to become certified employee organizations, as discussed in more detail below. The state personnel director is required to promulgate rules in connection with any responsibility designated to the director pursuant to the Act.

### **3. Partnership Units and Certified Employee Organizations: §§ 24-50-1105 and 24-50-1106, C.R.S.**

The Act creates one partnership unit in the state that consists of all covered employees. Any partnership units that were established pursuant to Executive Order

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<sup>3</sup> § 24-50-1112 (1), C.R.S.

<sup>4</sup> § 24-50-1112 (2), C.R.S.

<sup>5</sup> § 24-50-1112 (1), C.R.S.

<sup>6</sup> Confidential employees, managerial employees, executive employees, the state personnel director, the director of the division of labor standards and statistics, the person the governor designates as the individual who will represent the state in the exercise of the state's responsibilities in connection with the Act, administrative law judges and hearing officers, state troopers, employees of the legislative branch, and temporary employees are excluded from the definition of "covered employee" pursuant to § 24-50-1102 (3), C.R.S.

D 028 07 (executive order), which preceded the Act and authorized partnership agreements, are merged into the single partnership unit. Covered employees in a partnership unit that was created by the executive order and who are represented by an employee organization that the partnership unit chose to exclusively represent it will continue to be represented by that employee organization. However, any future decisions regarding representation by an employee organization must be held pursuant to the Act and as part of the single statewide partnership unit.

An "employee organization" is a nonprofit organization that engages with the state as an employer regarding wages, hours, and terms and conditions of employment and represents or seeks to represent covered employees in a partnership unit.<sup>7</sup> An employee organization that wants to represent an unrepresented partnership unit may file a petition with the division requesting that it hold an election to determine whether covered employees want to be represented by an employee organization (representation election). An employee organization requesting a representation election is required to submit a petition to the division signed by at least 30% of the covered employees in the partnership unit. The division is required to certify the employee organization that receives the majority of votes cast by the covered employees as the certified employee organization.

The division is not allowed to hold a representation election within the 24-month period immediately following the effective date of the Act or within 12 months of another representation election. A covered employee or an employee organization may initiate a process, specified in section 24-50-1106 (3), C.R.S, to decertify a certified employee organization for a partnership unit.

#### **4. Rights of Covered Employees and Certified Employee Organizations: §§ 24-50-1107 and 24-50-1108, C.R.S.**

Covered employees have the right to self-organize, to form, join, or assist an employee organization, and to work with an employee organization and communicate with other covered employees to form a partnership agreement or to discuss other work-related issues. Covered employees also have the right to refrain from any activities in connection with employee organizations and the partnership process. The state is required to provide certain personal information to a certified employee organization pursuant to section 24-50-1111 (3), C.R.S. This information includes a covered employee's home address, home and personal cell phone numbers, and personal e-mail address. A covered employee has the right to opt-out

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<sup>7</sup> § 24-50-1102 (7).

of the state providing any of their personal information to a certified employee organization.

A certified employee organization has the right to reasonable access to covered employees at work, through e-mail, and through other forms of communication. The meaning of "reasonable access" is determined through the partnership agreement process.

#### **5. Duties of the Certified Employee Organization: § 24-50-1109, C.R.S.**

In the negotiation of a partnership agreement, a certified employee organization is required to represent the interests of all covered employees, regardless of whether a covered employee is a member of the certified employee organization. In addition, any negotiated partnership agreement is required to apply equally to all covered employees, regardless of the covered employees' membership status in the certified employee organization. Neither of these requirements limits the state and a certified employee organization from having a partnership agreement that covers department or agency-specific issues. A certified employee organization is not required to represent covered employees in certain personnel actions<sup>8</sup>.

A certified employee organization is prohibited from threatening, facilitating, supporting, or causing a strike, work stoppage, work slowdown, group sickout, or any other action that would disrupt the daily functioning of the state or any of its agencies or departments. The state, a certified employee organization, or an employee may submit a controversy concerning one of these prohibited activities to the division for review. A certified employee organization can be sanctioned, fined, or decertified for engaging in these prohibited activities. An employee who engages in such activities may be subject to disciplinary action.

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<sup>8</sup> A certified employee organization is not required to represent a covered employee in the following circumstances: A personnel action when the employee is dismissed, suspended, or otherwise disciplined by the appointing authority upon written findings of failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform job duties, or final conviction of a felony or any other offence that involves moral turpitude pursuant to Colo. Const. art. XII, § 13 (8); employee grievances pursuant to § 24-50-123, C.R.S.; when an employee is separated from employment pursuant to § 24-50-124, C.R.S.; disciplinary proceedings pursuant to § 24-50-125, C.R.S.; or discrimination appeals pursuant to § 24-50-125.3, C.R.S.

## **6. Executive and Management Rights: § 24-50-1110, C.R.S.**

Nothing contained in the employee partnership process impairs the ability of the state to determine, carry out, and administer specified existing duties and rights of the state, including:

- Rights reserved to an appointing authority, the state personnel director, or the state personnel board;
- Determining and carrying out any mission, initiative, task, agenda, policy, or program;
- Establishing an overseeing budget, finances, and accounting;
- Determining the use of technology;
- Entering into and administering contracts pursuant to law;
- Making, amending, and enforcing personal conduct rules; or
- Taking actions that may be necessary to carry out government functions during an emergency.

## **7. Duties of the State: § 24-50-1111, C.R.S.**

The state has several obligations pursuant to the Act. Not engaging in these obligations constitutes an unfair labor practice that can be subject to review by the division. The obligations include:

- Making payroll deductions for membership dues and other payments that covered employees authorize to be made to the certified employee organization and related entities;
- Providing information about every covered employee to a certified employee organization on a monthly basis, including information about the employee's job, salary, date of hire, work location, and work and personal phone numbers, e-mail addresses, and other contact information;
- Allowing a certified employee organization to meet with a newly hired covered employee;
- Allowing a certified employee organization to attend orientations for new covered employees; and
- Engaging in good faith in all aspects of the partnership process.

In addition, after the state and the certified employee organization reach a partnership agreement, the initial or supplemental budget request from the governor to the General Assembly is required to include sufficient appropriations to implement terms of the partnership agreement requiring the expenditure of money. The provisions of a

partnership agreement that require the expenditure of money are contingent on the availability of money and the specific appropriation of money by the General Assembly. If the General Assembly rejects any part of the governor's budget request, or if, while accepting the budget request, takes any action that would result in a modification of the terms of the item submitted to it, either the state or the certified employee organization may reopen negotiations concerning economic issues. The Act does not define "economic issue."

The state and its designees and agents are prohibited from:

- Taking any action or making any statement in favor of or in opposition to a covered employee's decision to participate in, select, or join an employee organization, or to refrain from these activities;
- Expending public money or resources for a negative campaign against an employee organization or providing assistance to any individual or group to engage in such a campaign;
- Interfering with, restraining, or coercing covered employees from exercising the rights granted by the Act;
- Discharging or discriminating against any covered employee because the employee filed an affidavit, or gave any information or testimony pursuant to the Act, or because the employee formed, joined, or chose to be represented by any employee organization, or refrained from any such activities;
- Refusing to participate in the partnership process once a certified employee organization is certified; and
- Refusing to participate in the partnership dispute resolution process.

It is an unfair labor practice for the state to engage in any of these activities.

#### **8. Partnership Agreements: §§ 24-50-1112 and 24-50-1114, C.R.S.**

Within certain timeframes, a certified employee organization and the state are required to begin meetings to discuss and cooperatively draft a mutually agreed upon written partnership agreement. The parties are required to bargain over wages, hours, and terms and conditions of employment for all covered employees. All other subjects are permissive and may be addressed by mutual agreement; except that the parties may not negotiate with respect to the statutory function of a department or agency of state government or regarding matters related to the Public Employees' Retirement Association. A partnership agreement is binding on the state, the certified employee organization, and covered employees after it is ratified by the certified employee organization and approved by the governor.

Certain issues are required to be negotiated between the certified employee organization and a designated employee of the governor's office. These issues include economic issues, matters that impact all covered employees, and other matters that require uniformity across all departments. Issues that impact covered employees in a single department or agency are required to be negotiated by the certified employee organization and the executive director of the applicable department. Any agreements between the certified employee organization and the executive director of a department are incorporated into the partnership agreement.

A partnership agreement is required to provide a grievance procedure to resolve disputes over the interpretation, application, and enforcement of any provision of the partnership agreement. Meetings held to negotiate a partnership agreement and grievance and arbitration proceedings are not open meetings as defined in law. In addition, records prepared or exchanged prior to submission of a final partnership agreement are not subject to the "Colorado Open Records Act<sup>9</sup>."

An existing partnership agreement continues in full force and effect until it is replaced by a subsequent partnership agreement.

#### **9. Dispute Resolution: § 24-50-1113, C.R.S.**

If disputes arise during the formation of a partnership agreement, the certified employee organization and the state are required to engage in the dispute resolution process established in section 24-50-1113, C.R.S., or in a mutually agreed upon alternate procedure. If the parties do not reach an agreement within 90 days after commencing meetings, either party may request that the matters on which the parties cannot reach agreement be sent to mediation with a mutually agreed upon mediator. If the parties do not reach an agreement on outstanding issues within 30 days of commencing mediation, the mediator is required to issue a recommendation on all of the outstanding issues. Either party may make the mediator's recommendation public. If, after mediation, the parties still cannot reach an agreement, the parties may enter into a partnership agreement on the issues on which they have reached agreement.

The state, the certified employee organization, or employees may submit any controversy concerning unfair labor practices of the state or a certified employee organization to the division for review.

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<sup>9</sup> The "Colorado Open Records Act" is created in part 2 of article 72 of title 24, C.R.S.

**10. Judicial Review: § 24-50-1115, C.R.S.**

The state or the certified employee organization may seek judicial review of the division's decisions or orders regarding the classification of covered employees, representation or decertification petitions, unfair labor practice charges, or rules or regulations issued by the division.