

An Act

SENATE BILL 19-085

BY SENATOR(S) Danielson and Pettersen, Fields, Donovan, Winter, Gonzales, Court, Zenzinger, Todd, Story, Ginal, Williams A., Rodriguez, Lee, Moreno, Garcia, Fenberg, Foote, Bridges;
also REPRESENTATIVE(S) Buckner and Gonzales-Gutierrez, Benavidez, Buentello, Caraveo, Coleman, Cutter, Duran, Esgar, Exum, Galindo, Garnett, Hansen, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Lontine, McLachlan, Melton, Michaelson Jenet, Mullica, Roberts, Singer, Sirota, Sullivan, Titone, Valdez A., Weissman, Arndt, Bird, Froelich, Gray, Herod, Kraft-Tharp, McCluskie, Snyder, Tipper, Valdez D.

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

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

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

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

(a) In 1944, the first equal pay bill was introduced in Congress, but

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it was not until the federal "Equal Pay Act of 1963", 29 U.S.C. sec. 206, became law that pay discrimination based on sex was outlawed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) "WAGE RATE" MEANS:

(a) 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

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

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

8-5-102. Wage discrimination prohibited. ~~No employer shall~~

~~make any discrimination in the amount or rate of wages or salary paid or to be paid his employees in any employment in this state solely on account of the sex thereof.~~ (1) AN EMPLOYER SHALL NOT DISCRIMINATE BETWEEN EMPLOYEES ON THE BASIS OF SEX, OR ON THE BASIS OF SEX IN COMBINATION WITH ANOTHER PROTECTED STATUS AS DESCRIBED IN SECTION 24-34-402 (1)(a), BY PAYING AN EMPLOYEE OF ONE SEX A WAGE RATE LESS THAN THE RATE PAID TO AN EMPLOYEE OF A DIFFERENT SEX FOR SUBSTANTIALLY 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:

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

(I) A SENIORITY SYSTEM;

(II) A MERIT SYSTEM;

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

(IV) THE GEOGRAPHIC LOCATION WHERE THE WORK IS PERFORMED;

(V) EDUCATION, TRAINING, OR EXPERIENCE TO THE EXTENT THAT THEY ARE REASONABLY RELATED TO THE WORK IN QUESTION; OR

(VI) TRAVEL, IF THE TRAVEL IS A REGULAR AND NECESSARY CONDITION OF THE WORK PERFORMED;

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

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

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

(2) AN EMPLOYER SHALL NOT:

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

(b) DISCRIMINATE OR RETALIATE AGAINST A PROSPECTIVE EMPLOYEE FOR FAILING TO DISCLOSE THE PROSPECTIVE EMPLOYEE'S WAGE RATE HISTORY;

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

(d) 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;

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

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

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

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

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

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

~~(1) The director has the power to administer, carry out, and enforce all of the provisions of this article and may promulgate rules and regulations for that purpose. Copies of the rules and regulations shall be furnished by the division to all employees and employers upon written request~~ THE DIRECTOR IS AUTHORIZED TO CREATE AND ADMINISTER A PROCESS TO ACCEPT AND MEDIATE COMPLAINTS AND TO PROVIDE LEGAL RESOURCES CONCERNING ALLEGED VIOLATIONS OF SECTION 8-5-102, AND TO

PROMULGATE RULES AS NECESSARY FOR THIS PURPOSE. THE PROCESS CREATED AND ADMINISTERED BY THE DIRECTOR DOES NOT AFFECT OR PREVENT THE RIGHT OF AN AGGRIEVED PERSON FROM COMMENCING A CIVIL ACTION PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(2) A PERSON AGGRIEVED BY A VIOLATION OF SECTION 8-5-102 MAY COMMENCE A CIVIL ACTION IN DISTRICT COURT NO LATER THAN TWO YEARS AFTER THE VIOLATION OCCURS. A VIOLATION OF SECTION 8-5-102 (1) OCCURS ON EACH OCCASION THAT A PERSON IS AFFECTED BY WAGE DISCRIMINATION, INCLUDING EACH OCCASION THAT A DISCRIMINATORY WAGE RATE IS PAID.

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

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

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

(5) NOTHING IN THIS SECTION PREVENTS AN AGGRIEVED PERSON FROM FILING A CHARGE WITH THE COLORADO CIVIL RIGHTS DIVISION PURSUANT TO SECTION 24-34-306.

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

8-5-104. Employer liability - awards - suits. (1) (a) An employer who violates ~~the provisions of section 8-5-102~~ SECTION 8-5-102 (1) is liable FOR ECONOMIC DAMAGES in an amount equal to the difference between the amount ~~which he~~ THAT THE EMPLOYER paid to the complaining employee and the amount ~~which~~ THAT the employee would have received had there been no ~~discrimination~~; and, if the director finds that such ~~discrimination~~

~~was willful, the director may impose a penalty upon the employer in addition thereto of not more than the amount of such difference. The amount of such liability so determined by the director shall constitute the award of the director. Such award shall be the property of the employee but may be recovered for the employee in a suit brought by the director in his name in any court in the county of the residence of the employer within this state having jurisdiction of the amount of the demand in the suit. The director may join in one suit all of his awards against any one employer under this article~~ VIOLATION PLUS LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO THE EMPLOYEE'S ECONOMIC DAMAGES, EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION.

(b) (I) 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 THAT THE EMPLOYER DID NOT VIOLATE SECTION 8-5-102 (1), THE COURT SHALL NOT AWARD LIQUIDATED DAMAGES.

(II) IN DETERMINING WHETHER THE EMPLOYER'S VIOLATION WAS IN GOOD FAITH, THE FACT FINDER MAY CONSIDER EVIDENCE THAT WITHIN TWO YEARS PRIOR TO THE DATE OF THE COMMENCEMENT OF A CIVIL ACTION PURSUANT TO SECTION 8-5-103, THE EMPLOYER COMPLETED A THOROUGH AND COMPREHENSIVE PAY AUDIT OF ITS WORKFORCE, WITH THE SPECIFIC GOAL OF IDENTIFYING AND REMEDYING UNLAWFUL PAY DISPARITIES.

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

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

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

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

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

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

SECTION 8. In Colorado Revised Statutes, **add** part 2 to article 5 of title 8 as follows:

PART 2
TRANSPARENCY IN PAY AND OPPORTUNITIES FOR
PROMOTION AND ADVANCEMENT

8-5-201. Employment opportunities - opportunities for promotion or advancement - pay rates in job listings. (1) AN EMPLOYER SHALL 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.

(2) AN EMPLOYER SHALL 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.

8-5-202. Record keeping. AN EMPLOYER SHALL 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.

8-5-203. Enforcement - rules. (1) THE DIRECTOR HAS THE POWER TO ADMINISTER, CARRY OUT, AND ENFORCE ALL OF THE PROVISIONS OF THIS PART 2 AND MAY PROMULGATE RULES FOR THAT PURPOSE. THE DIRECTOR SHALL PROVIDE WRITTEN COPIES OF RULES PROMULGATED PURSUANT TO THIS SECTION TO ALL EMPLOYEES AND EMPLOYERS UPON WRITTEN REQUEST.

(2)(a) A PERSON WHO CLAIMS TO BE AGGRIEVED BY A VIOLATION OF SECTION 8-5-201 OR 8-5-202 MAY FILE A WRITTEN COMPLAINT WITH THE

DIRECTOR WITHIN ONE YEAR AFTER THE DATE THAT THE PERSON LEARNED OF THE VIOLATION. THE WRITTEN COMPLAINT MUST STATE THE NAME AND ADDRESS OF THE EMPLOYER AND A DETAILED ACCOUNT OF THE ALLEGED VIOLATION.

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

(c) 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.

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

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

(5) IF AN EMPLOYEE BRINGING SUIT FOR A VIOLATION OF SECTION 8-5-102 DEMONSTRATES A VIOLATION OF THIS PART 2, AND THE COURT FINDS A VIOLATION OF THIS PART 2, THE COURT MAY ORDER APPROPRIATE RELIEF, INCLUDING A REBUTTABLE PRESUMPTION THAT RECORDS NOT KEPT BY THE EMPLOYER IN VIOLATION OF SECTION 8-5-202 CONTAINED INFORMATION FAVORABLE TO THE EMPLOYEE'S CLAIM AND AN INSTRUCTION TO THE JURY THAT FAILURE TO KEEP RECORDS CAN BE CONSIDERED EVIDENCE THAT THE VIOLATION WAS NOT MADE IN GOOD FAITH.

SECTION 9. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2021; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect January 1, 2021, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

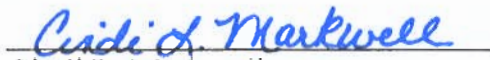
(2) This act applies to violations that occur on or after the applicable effective date of this act.



Leroy M. Garcia
PRESIDENT OF
THE SENATE



KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED May 22, 2019 at 12:39 p.m.
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO