

EQUAL PAY FOR EQUAL WORK ACT

SUPPORT SB 19-85: EQUAL PAY FOR EQUAL WORK ACT

An Economic Opportunity for Colorado

Senators Danielson & Pettersen and Reps. Buckner & Gonzales-Gutierrez

Pay inequity is a real and persistent problem that continues to affect women and their families in Colorado. Women are the primary or co-breadwinners in three-quarters of families in Colorado, and the pay gap is a major obstacle to economic security. *Moreover, closing the pay gap is an economic opportunity for Colorado at a time where unemployment is at a historic low, and employers are fighting for talented employees.*

THE BUSINESS CASE FOR PAY EQUITY

Studies have shown that businesses perform better and achieve higher revenue with a diverse workforce. The most cost-effective way to ensure a high performing, diverse workforce is by treating existing talent equitably. *Recent data from Pipeline Equity shows that for every 7 percent in gender equity within a business there is a 3% increase in revenue.*¹ This increase is due to more efficient recruitment, higher performance and production, and most importantly increased retention.

Customers drive business decisions. With 85 percent of the household purchasing power in the US controlled by women, businesses are increasingly seeking a diverse workforce to best understand and market to their customers. The inability to attract and retain a diverse talent pool has long term financial consequences for businesses of all sizes.

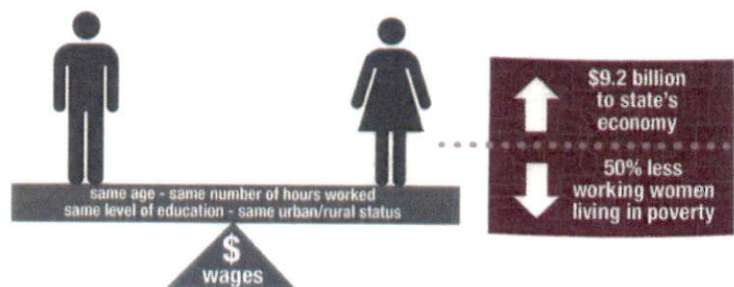
Pay equity remains elusive: if progress continues at the current rate since 1960, the state's gender wage gap will not close until the year 2057.²

THE SOLUTION

Colorado's current equal pay statute is not an effective mechanism to support gender equity. To address the pay gap, we must address the root causes of pay disparity.

- **Implement common-sense prevention and transparency measures**
 - Advertise opportunities for promotion to all current employees
 - Disclose a proposed salary range in all job listings
 - Prohibit an employer requesting an applicant's salary history, but allow an employee to offer it as a part of a negotiation
 - Keep records of job descriptions and salary history for all employees for a reasonable timeframe

If Colorado Achieved Pay Equity



¹ Pipeline Equity, "Equity for All Report", 2018

² Institute for Women's Policy Research and The Women's Foundation of Colorado, March 2018.

- **Create a Colorado solution that works for employees and employers**
 - **Ability to challenge pay disparities**
 - With employees of the opposite sex at the same employer, at any job site in Colorado in a position similar to their own
 - Within 2 years of when the disparity is discovered and recover for the full duration of the disparity not to exceed 6 years (**amended to 3 year recovery in Senate Judiciary Committee**)
 - Due to gender "plus" another status protected under the Colorado Anti-Discrimination Act
 - **Ability to challenge retaliation by employers** for good faith complaints of unequal pay
 - **Allow employers to defend against a challenge to a pay disparity** by showing it is the result of a bona fide seniority, merit or productivity-based pay system, or of education, training, experience, geographic differences, or travel requirements

SUPPORTING ORGANIZATIONS

Colorado Women's Bar Association 9-5 Colorado	The Bell Policy Center Women in Kind
Women's Foundation of Colorado Center for Legal Inclusiveness Girls, Inc. of Metro Denver Colorado Hispanic Bar Association	Colorado Black Women for Political Action Dr. Julie Seymour, The Human Joint Colorado Nonprofit Association Good Business Colorado
Denver MAMA (Mother Attorneys Mentoring Association)	One Colorado AFL-CIO
Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)	Porchlight Real Estate Sam Cary Bar Association
Colorado Plaintiff Employment Lawyers Association Colorado LGBTQ Bar Association Moms Rising Interfaith Alliance Violence Free Colorado NARAL Pro Choice Colorado	Colorado Coalition for the Homeless Colorado Children's Campaign Barre3 Denver - Cherry Creek + Highlands Square American Association of University Women of Colorado
The Women's Lobby of Colorado Women's Collaborative for Colorado United for a New Economy (UNE)	League of Women Voters of Colorado Anti-Defamation League Mountain States Region Boulder County Colorado Bar Association

For more information:

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Amendments Adopted to SB 85: Equal Pay for Equal Work Act
Senate Judiciary Committee, 2/20/19

1. Amend definition of substantially similar work: "SUBSTANTIALLY SIMILAR WORK" MEANS WORK THAT IS SIMILAR BASED ON A COMPOSITE OF SKILL, EFFORT (WHICH MAY INCLUDE CONSIDERATION OF SHIFT), AND RESPONSIBILITY, REGARDLESS OF JOB TITLE."

This addresses shift differential (day vs night shift) for restaurants, retail stores and other businesses that employ individuals in a variety of shifts.

2. Insert: "(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;"

This addresses concerns about pay differentials based on other factors than those outlined in the introduced bill, creating a comprehensive list of possible reasons for a pay differential.

3. Strike the following lines from the introduced bill "THE EMPLOYER SHALL OFFER A PROSPECTIVE EMPLOYEE A WAGE RATE WITHIN THE POSTED RANGE OR, IF NECESSARY, REPOST EACH JOB OPENING WITH AN ADJUSTED RANGE BEFORE OFFERING A PROSPECTIVE EMPLOYEE A WAGE RATE THAT IS NOT WITHIN THE ORIGINALLY POSTED WAGE RATE RANGE."

This addresses concerns about the requirement for re-posting a job for an applicant that is negotiating outside of the posted range.

4. Strike "JANUARY 1, 2020" and substitute "JANUARY 1, 2021"

This bumps back the implementation date by an additional year to allow businesses to come into compliance with the provisions of the bill, ultimately giving them two years from the present.

5. Strike "SIX YEARS" and substitute "THREE YEARS"

This addresses concerns about the time for record keeping and the look back period for which an employee could receive damages.

6. Substitute "SHALL NOT AWARD LIQUIDATED DAMAGES" in section 6 which addresses good faith efforts of employers to address pay disparities.

This addresses concerns about good faith efforts by employers to cure a pay disparity violation; clarifying that a court shall not award liquidated damages (economic damages x2) in scenario that an employer acts in good faith.

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

This addresses concerns about leaving the current administrative process for intentional gender and race based claims intact as an option for persons with a pay disparity.