

SB 85: Equal Pay for Equal Work Act

Frequently Asked Questions About Interaction with Colorado Anti-Discrimination Act (CADA)

OVERVIEW

Why do we need an act to address pay discrimination when the Colorado Anti-Discrimination Act exists?

The Colorado Anti-Discrimination Act (CADA) only prohibits employers from intentionally taking discriminatory employment actions based on sex. Often, pay disparities do not arise because of an intentional decision to pay women less than men. Instead, pay disparities may occur because a female employee was paid less at her prior employer, or for any number of other reasons aside from intentional discrimination.

The Equal Pay for Equal Work Act would require that employers pay women the same wages for the same work as men, regardless of the reason for the existing disparity. Evaluating whether an employer has complied with the Equal Pay for Equal Work Act is an objective analysis that does not require evaluation of the employer's intent. The bill outlines six key factors that are viable defenses for a gender-based pay disparity: seniority system; merit system; a system that measures earnings by quality or quantity of production; geographic location; education, experience or training; regular travel.

SB 85: EQUAL PAY ACT	CADA/CCRD (Colorado Civil Rights Division)
Addresses pay disparities without requiring employees to prove they arose from an intentional sexist decision	Addresses intentional pay disparities or other intentional discrimination
Burden of proof is the existence of a pay disparity	Burden of proof is an intentional pay discrimination based on sex
Statute would have jurisdiction over all pay disparity claims	Statute has jurisdiction over intentional pay discrimination; any pay disparities without ability to prove intentional discrimination would be dismissed
Statute would allow employee to file a claim within two years of learning of pay disparity.	Statute requires employee to file a claim with CCRD within six months of learning of intentional pay discrimination or lose ability to go to court later, and recovery is limited to pay that was lost within the six months before the claim was filed (at most six months, likely much less).

<p>Statute would allow employee to receive economic damages (limited to three years of back pay)</p>	<p>Statute requires CCRD to investigate the claim of intentional discrimination and provide voluntary mediation but cannot give employee economic relief. Employee would be required to file in court 90 days after CCRD investigation to pursue economic damages. Remedies for a successful case also include non-economic damages due to the high burden of proof.</p>
<p>EXAMPLES</p>	
<p>Employee A works for 5 years as a full-time non-management employee. She has no idea if her wages are similar to her peers. She gets promoted and is given a raise. Her new pay rate is actually on par with male counterparts. However, 10 months after her promotion, she is called upon to do budgeting for the next year. For the first time, she learns that all of her male peers, who had less experience and lower performance, were making 5,000 more per year than her in her prior position.</p> <p>Under CADA and Title VII, she has no remedy. She has missed all deadlines.</p> <p>Under SB 85, however, she has a claim for 3 years lost pay in that prior job.</p>	<p>Employee works for Company for 15 years. She is barely making ends meet. She asks for a raise and is repeatedly denied. She finally leaves Company and gets a new job. About one year later, she learns that Company was paying her 10k less per year than her male counterparts. She is further told that Company knew this and actually laughed about it, claiming “women just don’t work as hard.”</p> <p>Even though she has direct evidence of discrimination, she has no claim under CADA or Title VII as she has missed the administrative filing deadlines.</p> <p>She WOULD have a claim under SB 85 for 3 years of list pay.</p>
<p>Employee works for Company for 30 years. She has 6 different supervisors during that time. She finally learns that she has been making 25k less per year than her male counterparts for years. There is no way she can prove that all 6 prior supervisors were motivated by an intent to discriminate as required by CADA/Title VII. Indeed, the last 3 supervisors affirm that she got the same percentage increase as all the higher paid males. They blame the earlier supervisors and her pay history.</p>	<p>Employee is hired by Company for 35k/year. During her interview, she was asked her pay rate in her prior job. She was forced to disclose that she made 32k. Thus, the Company offered her 35k.</p> <p>At the very same time of her hire, John interviewed for the same level position. Although the two had the exact same level of experience, John was paid 41k in his prior job. Company offers him 44k and he accepts.</p>

She would never prove intentional discrimination. This is where SB 85 comes in to provide a remedy. There is a blatant pay disparity and the employer cannot prove any of the affirmative defenses.

5 years later, employee learns that John is making more money. Company defends the action by claiming it relied on her and John's prior salaries to set pay and simply offered 3k more to each. Thus, it claims it did not treat Employee any differently.

This would be a very difficult case to show intentional discrimination under CADA/Title VII. Employee relied on employer's past history and treated each the same. SB 85 provides a remedy and would preclude Employee from relying on prior pay rates.