



Date: July 21, 2021

To: Employers with postings for remote jobs that lack pay disclosure as required by Colorado law

Re: **Notice Regarding Labor Law Compliance — Route Promptly to Human Resources and/or Counsel**

Subj: The legal requirement, for all employers with any Colorado employees, to disclose the compensation to be offered in postings for all jobs, including remote jobs, under Colorado's Equal Pay for Equal Work Act

Dear Employer:

To improve pay equity by improving pay transparency, Colorado's Equal Pay for Equal Work Act (the "Act") requires all employers with any Colorado employees ("covered employers") to disclose pay and benefits in all job postings. The Act charges the CDLE Division of Labor Standards and Statistics with receiving, investigating, and issuing rulings on complaints of violations. Recently, Coloradans have filed numerous complaints that remote job postings lack required pay disclosure and exclude Coloradans from consideration — apparently on the theory that excluding Coloradans exempts a remote job from the Act. Before launching investigations into those complaints, the Division decided to undertake two other efforts. First, it researched the prevalence of such postings, and was pleased that only a small fraction of remote job postings exclude Coloradans — under 1%, in a sample of hundreds of Colorado-based and national employers' postings. But from complaints, tips, and its own research, the Division found dozens of covered employers with such postings, confirming that this situation warrants prompt action.

Because the Division understands it takes time to fully understand and implement new labor laws, the second effort it is undertaking is outreach — starting by sending this letter to all covered employers with remote job postings lacking pay disclosure and excluding Coloradans, rather than immediately launching investigations of each. Because proactive compliance is always better than adversarial investigations and consequences, the Division's top priority is compliance assistance to encourage and facilitate good labor law practices. Accordingly, this letter serves to notify employers with such postings of three key points: (1) how the Act's pay disclosure requirements apply to remote jobs; (2) how compliance requires only modest changes to job postings; and (3) how the Division is flexible on the timeframe to modify non-compliant postings, and can offer individualized assistance if desired.

(1) Remote jobs are clearly covered by the Act's pay disclosure requirement, regardless of an employer's expressed intent not to hire Coloradans. Failing to disclose pay in any remote job posting is illegal, subjecting employers to investigations that, if a violation is shown, can yield orders to cease and correct violations, as well as fines for those not correcting practices even after being informed they are unlawful.¹

Remote jobs are clearly covered by the Act's pay disclosure provision: Any employer with any Colorado staff "*shall* disclose compensation in *each* posting for *each* job"² — unambiguous language with *no exception for remote jobs*, precluding any agency or court from exempting such jobs. The sole relevant exception the Division found implied in the Act is narrow: Jobs performable *only at out-of-state sites* may be beyond the reach of Colorado law, so covered employers need *not* disclose pay for jobs at, for example, Phoenix rather than Denver stores. In contrast, covered employers posting remote work performable *anywhere*, not just at out-of-state sites, are *not* beyond the reach of Colorado law. Excluding Coloradans from a remote job is not a description of where work is performable, it is a preference among applicants — and labor law requirements are mandatory, not optional based on employer preference. Thus, when employers covered by the Act post remote jobs covered by the Act, declaring a preference not to hire Coloradans does not eliminate the Act's pay disclosure duty.

¹ The Act requires the Division to investigate and rule on complaints and, when it "find[s] that an employer has violated" pay disclosure requirements, the Act authorizes the Division not only to order the employer to cease violations, but also to "order the employer to pay a fine of no less than *five hundred* dollars and no more than *ten thousand* dollars *per violation*." Colorado Revised Statutes ("C.R.S.") 8-5-203(4) (emphasis added).

² C.R.S. 8-5-201(2) (emphasis added). For the Act text, rules, and guidance, visit cdle.colorado.gov/equalpaytransparency.

(2) Pay disclosure can be implemented flexibly, often with little change to existing practices. Because the Division appreciates and wishes to facilitate employers' good-faith compliance efforts, the Division has published extensive Colorado labor law guidance, including on the Act. A copy of our most recent detailed guidance is enclosed; below are a few key points about implementing the Act's required pay disclosures.

- *The required pay information can be brief*, just (1) the pay, or pay range, and (2) a short "general description" of available benefits. For example, adding just these two numbers and four words to a job posting would be enough: "\$50,000 - \$55,000, health insurance, and IRA."
- *A posting can be in whatever form an employer wants, or already uses.* No special form, or format, is required — as long as the posting includes the required pay and benefits information.
- *Pay information can be included or linked in a posting, if the employer prefers.* Online postings can just link pay information — including, if the employer wishes, having all job postings include the *same* link to one page with the pay and benefits for all of the employer's posted jobs.
- *If exact pay is not known in advance, a flexible range* from the lowest to the highest the employer genuinely may offer for that particular position can be posted. An out-of-range offer is allowed if the range was a good-faith expectation, but then unanticipated factors required higher or lower pay.
- *The employer's name need not be included, if it wants discretion* and is posting in a third-party site or publication — as long as the posting includes the required pay and benefits information.

This guidance, the text of the Act and its rules, and other material (including complaint form to report violations), is available at cdle.colorado.gov/equalpaytransparency, which also can be reached by clicking on "Pay/Promotion Transparency per Equal Pay Act" at the Division's homepage: ColoradoLaborLaw.gov.

Two data points corroborate that compliance need not be unduly burdensome. First, Division research into Colorado's largest employers shows that the overwhelming majority brought their job postings into compliance in early 2021 — impressively quickly for such a new labor law. Second, in these initial months of Division enforcement by investigating complaints and issuing orders redressing violations, thus far *all* employers informed of violations agreed to fix their postings promptly — and the Division happily exercised its discretion to waive *all* potential fines in each case, believing each employer to have acted in good faith. Based on this heartening information to date, the Division looks forward to this letter being received in good faith as a measure to further compliance cooperatively, rather than through investigations and enforcement.

(3) Flexibility on timeframe to modify postings, with individualized advice available if desired. The Division knows different employers have different processes for changing hiring practices, so it aims to be flexible, and work with employers, to help such change occur smoothly. Accordingly, please **reply by Tuesday, August 10, 2021, to indicate by what date all covered job postings will include the required pay and benefits disclosures.** Please send your reply to cdle_labor_standards@state.co.us, with the word "posting" anywhere in the subject line.

Key to the Division's compliance-assistance focus is welcoming questions from employers, employees, or others. The phone number and email address atop this letter will connect you with experienced staff able to answer any inquiries, which the Division prides itself on answering promptly. The Division thanks you for your attention to this important matter, and looks forward to your reply, and the Division's ongoing research, showing improved pay disclosure compliance — which, during this critical economic recovery, will not only help job-seekers compete on a level playing field, but also help employers draw as broad a talent pool as possible, without unnecessary exclusions.

Sincerely,



Scott Moss

Director, Division of Labor Standards and Statistics