Engage PEO Client Alert: Colorado

Colorado Year End Round-Up and New Legislation

WHAT'S NEW: The Colorado state legislature recently enacted several new laws regulating employers and various aspects of the workplace.

WHY IT MATTERS: The following are the most notable new employment laws from this year's legislative session:

Expanded Unemployment Benefits Notification Requirement

As of May 25, 2022, employers are required to provide employees, at the time of separation, with a written notice detailing information about the availability of unemployment compensation. The notice may be provided electronically or in hard copy and must include:

- The employer's name and address;
- The employee's name and address;
- The employee's ID number or the last four digits of their social security number;
- The employee's start date, date of last day worked, year-to-date earnings, and wages for the last week the employee worked; and
- The reason the employee separated from the employer.

The Colorado Department of Labor and Employment (CDLE) has published a template form that employers may use for this purpose available **here.**

Restrictions on Non-Compete and Non-Solicitation Agreements

Colorado employers are now very limited in requiring non-compete or non-solicitation agreements. Effective August 9, 2022, based on the new law employers:

(1) can only require "highly compensated" employees (those making $101,250+ per year in 2022) to enter into a non-compete agreement, and employees earning at least 60% of the "highly compensated" annual threshold amount ($60,750 for 2022) to enter into a non-solicitation agreement, provided that the agreement is sufficiently narrowly tailored only to safeguard trade secret information, and

(2) must provide appropriate advance notice that meets the criteria of the statute. This means that before asking the employee to sign such a document they must be provided with a separate document advising them of the agreement. The employee must acknowledge this notice by signing it.

Finally, this law confirms that Colorado law governs agreements with employees who at the time of termination primarily lived and worked in Colorado, and that agreements cannot require an employee to litigate related disputes outside of Colorado.

Expanded Whistleblower Protections

Colorado's whistleblower law has been expanded to prohibit discrimination and retaliation against employees who raise a reasonable concern about workplace health or safety issues, including non-COVID related concerns. In addition, employees cannot be required to sign any agreement limiting or prohibiting them from disclosing information about workplace health and safety practices or hazards.

Colorado has also enacted the Colorado False Claims Act (the state equivalent of the federal False Claims Act) which provides further whistleblower protections for employees raising concerns, or participating in an investigation, regarding false, inaccurate or fraudulent claims or statements to government agencies.

Wage Theft Enforcement Amendments

Before making any deductions from an employee's final wages and within ten days of separation, employers must provide a written notice to terminated employees specifying any amount of money or property the employee failed to return or repay and the replacement value of the property. Employers must reimburse employees for any deducted amounts within 14 days if the employee returns the property or repays the money within 14 days after notice is provided.

Beginning January 1, 2023, employers may be subject to increased penalties and/or an administrative lien and levy by the CDLE if they fail or refuse to pay employees all wages after an employee's written demand or civil or administrative action for the past owed wages is sent to or served on the employer. Employers may be entitled to attorneys' fees and costs if, in response to an employee's demand for unpaid wages, they pay all amounts legally owed in good faith within 14 days.

This new law also now allows employees to file a civil action to recover damages if they believe that their employer discriminated or retaliated against them for filing or participating in a wage claim.

Extended Statute of Limitations for Discrimination Claims

Employees now have 300 days, instead of 180 days, to file a complaint or charge with the Colorado Civil Rights Commission for employment discrimination or harassment.

Employees alleging age discrimination are now able to recover additional damages, including punitive damages, already available to claimants alleging discrimination based on other protected classes.

WHAT EMPLOYERS SHOULD DO: In light of these upcoming changes, employers should review their policies and practices to ensure compliance. If you have any questions, please contact your Engage HR Consultant or Account Manager.