Engage PEO Client Alert

Colorado Year End Updates

PAID FAMILY AND MEDICAL LEAVE

WHAT'S NEW: On January 1, 2024, eligible employees will qualify for benefits through the Colorado Family and Medical Leave Insurance Program. Most employers and employees began paying into the Program in 2023.

WHY IT MATTERS: Most Colorado employees, who have earned at least $2,500 in wages, will be eligible for paid family and medical leave for the following reasons:

- Parental Leave (Bonding)
- Medical Leave to Care for Oneself
- Medical Leave to Care for a Family Member
- Military Family Member Exigency leave
- Safe Leave (Domestic Violence)

Eligible employees are entitled to up to 12 weeks of leave per year. Individuals with serious health conditions caused by pregnancy complications or childbirth complications may be entitled to an additional 4 weeks for a total of 16 weeks of leave.

Employees will apply for benefits online through the My FAMLI + Portal (coming soon). Employees who take FAMLI leave and have been with an employer for at least 180 days will be entitled to return to their same or equivalent position. If an employee takes FAMLI leave, and is also eligible for FMLA leave, the two leaves may run concurrently.

WHAT EMPLOYERS SHOULD DO: Employers should update state leave policies and review their existing Federal and Company leave policies to determine how they may overlap or interact with the new state allowances and requirements.

UPDATES TO EQUAL PAY FOR EQUAL WORK ACT

WHAT'S NEW: Colorado amended its *Equal Pay for Equal Work Act* with the *Ensure Equal Pay for Equal Work Act,* adding and modifying certain requirements regarding equal pay and job posting disclosures. The new law is effective January 1, 2024.

WHY IT MATTERS: Currently**,** under the *Equal Pay for Equal Work Act*, employers are required to make reasonable efforts to ensure that all opportunities for promotion are announced, posted, or made known to all employees on the same day as they post job opportunities externally and before any selection decisions are made. In each job posting, employers must disclose the compensation, or range of compensation, and general description of all the benefits and other compensation.

The new law makes the following changes:

- **Limitations on number of employees.** Employers physically outside of Colorado that have fewer than 15 remote employees in Colorado need only provide notice of remote opportunities through July 2029.

- **Definitions of job opportunities.** Employers will be required to ensure that all job opportunities are "announced, posted or made known to all employees." A "job opportunity"

is defined as a "current or anticipated vacancy for which the employer is considering a candidate." Job opportunity no longer encompasses "career development" or "career progression." Consequently, employers will no longer be required to provide notice of promotional opportunities.

- **Added Information to be included in the posting**. Employers must add the date the application window is anticipated to close.
- **Notice to Current Employees**. Within 30 days of a candidate beginning work in a new position, the employer must make reasonable effort to announce, post or make known to employees (with whom the candidate will work), the candidate's name, former job title (if already employed by employer) and new job title. In addition, the employer must disclose information on how employees may demonstrate interest in similar opportunities in the future, identifying individuals or departments that should receive notice of interest.
- **Information on Career Progression**. In positions with career progression, employers must disclose and make available to all eligible employees the requirements for career progression, along with each position's terms of compensation, benefits, full time or part time status, duties, and access to further advancement.
- **Mediation through CDLE.** The Colorado Department of Labor and Employment will be required, on or before July 1, 2024, to create and administer a process to mediate complaints regarding violations of sex-based wage equity provision of the Equal Pay for Equal Work Act.
- **Extended Statute of Limitations.** Individuals bringing sex-based discrimination claims may seek back pay going back ***six years*** instead of ***three years***.

WHAT EMPLOYERS SHOULD DO: Employers should review their job posting and hiring procedures to ensure compliance with the new law.

PROTECTING OPPORTUNITIES AND WORKERS' RIGHTS ACT

WHAT'S NEW: This summer Colorado Governor Jared Polis signed the *Protecting Opportunities and Workers' Rights Act* (POWR Act), the provisions of which became effective in August 2023.

WHY IT MATTERS: The POWR Act makes changes to the harassment and discrimination laws in Colorado and places additional burdens on employers who may require employees to sign non-disclosure agreements. The POWR Act does the following:

- **Harassment**. Broadens the type of conduct that constitutes harassment. Harassment now includes "any unwelcome physical or verbal conduct or any written, pictorial, or visual communication." The statue explicitly rejects the long standing "severe or pervasive" standard, reducing an employee's standard of proof.
- **Limitations on Defenses**. Limits employer's defenses against claims of harassment by a supervisor, unless the employer can show that it has a program that is "reasonably designed to prevent harassment, deter future harassers, and protect employees from harassment."
- **New Protected Class**. Adds Marital Status to the list of protected classes.
- **Disability Discrimination**. In order for an employer to take an adverse action against a person with a disability, the employer must now demonstrate::

1) that there is no reasonable accommodation that the employer can make with regard to the disability that would allow the individual to perform the essential functions of the job, and

2) that the disability actually disqualifies the individual from the job.

Previously, the emphasis was on whether the disability had a significant impact on the job and not whether a reasonable accommodation would enable an employee to perform the essential functions of the job.

- **Recordkeeping.** Employer must preserve "any personnel or employment record" for a period of five years. Complaints of discriminatory or unfair employment practices must be maintained in a designated repository.
- **Non-Disclosure Agreements.** Requires that very specific language be included in any non-disclosure provisions that may limit an employee's ability to disclose underlying facts of any alleged discriminatory or unfair employment practice. The statutorily mandated language must be included in order for the provision to be enforceable.

WHAT EMPLOYERS SHOULD DO: Employers should review their EEO policies as well as harassment policies to ensure compliance. Employers should update their record retention policies and ensure legal review of all employee agreements that contain non-disclosure provisions.

JOB APPLICATION FAIRNESS ACT

WHAT'S NEW: In June, Colorado enacted the *Job Application Fairness Act* which will become effective July 1, 2024.

WHY IT MATTERS: Employers will no longer be permitted to inquire about a prospective employee's age, date of birth, and dates of attendance at or date of graduation from an educational institution on an initial application.

An employer may request an applicant to provide application materials such as transcripts and certifications, as long as the employer notifies the applicant that they may redact information that identifies their age, date of birth or dates of attendance at or graduation from an educational institution.

An employer may request an applicant to verify compliance with age requirements pursuant to or as required by: 1) a bona fide occupational qualification pertaining to public or occupational safety; 2) federal law or regulation; or 3) a state or local law or regulation based on a bona fide occupational qualification.

WHAT EMPLOYERS SHOULD DO: Employers should review job applications and procedures to ensure compliance.

Please reach out to your Engage Human Resources Consultant if you have any questions concerning this alert or other H.R.-related matters.