

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0430.01 Kristen Forrestal x4217

SENATE BILL 19-085

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A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE "EQUAL PAY FOR EQUAL WORK**
102 **ACT" IN ORDER TO IMPLEMENT MEASURES TO PREVENT PAY**
103 **DISPARITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill removes the authority of the director of the division of labor standards and statistics in the department of labor and employment (director) to enforce wage discrimination complaints based on an employee's sex and instead permits an aggrieved person to bring a civil action in district court to pursue remedies specified in the bill.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
April 4, 2019

SENATE
Amended 2nd Reading
April 3, 2019

The bill allows exceptions to the prohibition against a wage differential based on sex if the employer demonstrates that a wage differential is based upon one or more factors, including:

- ! A seniority system;
- ! A merit system; or
- ! A system that measures earnings by quantity or quality of production.

The bill prohibits an employer from:

- ! Seeking the wage rate history of a prospective employee;
- ! Relying on a prior wage rate to determine a wage rate;
- ! Discriminating or retaliating against a prospective employee for failing to disclose the employee's wage rate history; and
- ! Discharging or retaliating against an employee for actions by an employee asserting the rights established by the bill against an employer.

The bill requires an employer to announce to all employees employment advancement opportunities and job openings and the pay range for the openings. The director is authorized to enforce actions against an employer concerning transparency in pay and employment opportunities, including fines of between \$500 and \$10,000 per violation.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** The short title of this act is the "Equal
3 Pay for Equal Work Act".

4 **SECTION 2. Legislative declaration.** (1) The general assembly
5 hereby finds and declares that:

6 (a) In 1944, the first equal pay bill was introduced in Congress,
7 but it was not until the federal "Equal Pay Act of 1963", 29 U.S.C. sec.
8 206, became law that pay discrimination based on sex was outlawed;

9 (b) Despite policies outlawing pay discrimination and creating
10 avenues for women to bring a civil action for lost wages, women still earn
11 significantly less than their male counterparts for the same work;

12 (c) According to a report released in March 2018 by the Institute
13 for Women's Policy Research and The Women's Foundation of Colorado:

1 (I) Women in this state earn just 86 cents for every dollar men
2 earn;

3 (II) Latinas earn 53.5 cents and black women earn 63.1 cents for
4 every dollar earned by white men; and

5 (III) If the wage gap were eliminated, a working woman in
6 Colorado would earn, on average, \$7,000 more per year, which would pay
7 for 1.9 years of community college tuition or approximately 6 months of
8 child care costs;

9 (d) The effects of pay disparity compound over a woman's
10 lifetime, with women losing between \$400,000 and \$1 million over the
11 course of a lifetime due to the wage gap; and

12 (e) Equal pay would cut the poverty rate for working women in
13 half and reduce the poverty rate for employed single mothers by more
14 than 40 percent.

15 (2) It is the intent of the general assembly to pass legislation that
16 helps to close the pay gap in Colorado and ensure that employees with
17 similar job duties are paid the same wage rate regardless of sex, or sex
18 plus another protected status.

19 **SECTION 3.** In Colorado Revised Statutes, 8-5-101, **amend** the
20 introductory portion, (4), and (5); **repeal** (3) and (6); and **add** (7), (8), (9),
21 and (10) as follows:

22 **8-5-101. Definitions.** As used in this ~~article~~ ARTICLE 5, unless the
23 context otherwise requires:

24 (3) ~~"Division" means the division of labor standards and statistics~~
25 ~~in the department of labor and employment.~~

26 (4) ~~"Employee" means any individual in the employment of any~~
27 ~~A PERSON EMPLOYED BY AN employer.~~

1 (5) "Employer" means the state ~~and every county, city, town, and~~
2 ~~body corporate and politic therein and every person, corporation,~~
3 ~~partnership, and association, including those operating in a representative~~
4 ~~capacity~~ OR ANY POLITICAL SUBDIVISION, COMMISSION, DEPARTMENT,
5 INSTITUTION, OR SCHOOL DISTRICT THEREOF, AND EVERY OTHER PERSON
6 EMPLOYING A PERSON IN THE STATE.

7 (6) "~~Employment~~" means ~~any trade, occupation, job, or position~~
8 ~~in which any person may be engaged in the service of another for wages~~
9 ~~or salary, except household and domestic servants and farm and ranch~~
10 ~~laborers.~~

11 (7) "LIQUIDATED DAMAGES" MEANS DAMAGES TO COMPENSATE AN
12 EMPLOYEE FOR THE DELAY IN RECEIVING AMOUNTS DUE AS A RESULT OF
13 AN EMPLOYER'S VIOLATION OF THIS ARTICLE 5. "LIQUIDATED DAMAGES"
14 DOES NOT CONSTITUTE A PENALTY TO THE EMPLOYER.

15 (8) "SEX" MEANS AN EMPLOYEE'S GENDER IDENTITY.

16 ==

17 (9) "WAGE RATE" MEANS:

18 (a) FOR AN EMPLOYEE PAID ON AN HOURLY BASIS, THE HOURLY
19 COMPENSATION PAID TO THE EMPLOYEE PLUS THE VALUE PER HOUR OF ALL
20 OTHER COMPENSATION AND BENEFITS RECEIVED BY THE EMPLOYEE FROM
21 THE EMPLOYER; AND

22 (b) FOR AN EMPLOYEE PAID ON A SALARY BASIS, THE TOTAL OF ALL
23 COMPENSATION AND BENEFITS RECEIVED BY THE EMPLOYEE FROM THE
24 EMPLOYER.

25 **SECTION 4.** In Colorado Revised Statutes, **amend** 8-5-102 as
26 follows:

27 **8-5-102. Wage discrimination prohibited.** ~~No employer shall~~

1 ~~make any discrimination in the amount or rate of wages or salary paid or~~
2 ~~to be paid his employees in any employment in this state solely on~~
3 ~~account of the sex thereof.~~ (1) AN EMPLOYER SHALL NOT DISCRIMINATE
4 BETWEEN EMPLOYEES ON THE BASIS OF SEX, OR ON THE BASIS OF SEX IN
5 COMBINATION WITH ANOTHER PROTECTED STATUS AS DESCRIBED IN
6 SECTION 24-34-402 (1)(a), BY PAYING AN EMPLOYEE OF ONE SEX A WAGE
7 RATE LESS THAN THE RATE PAID TO AN EMPLOYEE OF A DIFFERENT SEX FOR
8 SUBSTANTIALLY SIMILAR WORK, REGARDLESS OF JOB TITLE, BASED ON A
9 COMPOSITE OF SKILL; EFFORT, WHICH MAY INCLUDE CONSIDERATION OF
10 SHIFT WORK; AND RESPONSIBILITY, EXCEPT WHERE THE EMPLOYER
11 DEMONSTRATES EACH OF THE FOLLOWING:

- 12 (a) THAT THE WAGE RATE DIFFERENTIAL IS BASED ON:
- 13 (I) A SENIORITY SYSTEM;
- 14 (II) A MERIT SYSTEM;
- 15 (III) A SYSTEM THAT MEASURES EARNINGS BY QUANTITY OR
16 QUALITY OF PRODUCTION;
- 17 (IV) THE GEOGRAPHIC LOCATION WHERE THE WORK IS
18 PERFORMED;
- 19 (V) EDUCATION, TRAINING, OR EXPERIENCE TO THE EXTENT THAT
20 THEY ARE REASONABLY RELATED TO THE WORK IN QUESTION; OR
- 21 (VI) TRAVEL, IF THE TRAVEL IS A REGULAR AND NECESSARY
22 CONDITION OF THE WORK PERFORMED;
- 23 (b) THAT EACH FACTOR RELIED ON IN SUBSECTION (1)(a) OF THIS
24 SECTION IS APPLIED REASONABLY;
- 25 (c) THAT EACH FACTOR RELIED ON IN SUBSECTION (1)(a) OF THIS
26 SECTION ACCOUNTS FOR THE ENTIRE WAGE RATE DIFFERENTIAL; AND
- 27 (d) THAT PRIOR WAGE RATE HISTORY WAS NOT RELIED ON TO

1 JUSTIFY A DISPARITY IN CURRENT WAGE RATES.

2 (2) AN EMPLOYER SHALL NOT:

3 (a) SEEK THE WAGE RATE HISTORY OF A PROSPECTIVE EMPLOYEE
4 OR RELY ON THE WAGE RATE HISTORY OF A PROSPECTIVE EMPLOYEE TO
5 DETERMINE A WAGE RATE;

6 (b) DISCRIMINATE OR RETALIATE AGAINST A PROSPECTIVE
7 EMPLOYEE FOR FAILING TO DISCLOSE THE PROSPECTIVE EMPLOYEE'S WAGE
8 RATE HISTORY;

9 (c) DISCHARGE, OR IN ANY MANNER DISCRIMINATE OR RETALIATE
10 AGAINST, AN EMPLOYEE FOR INVOKING THIS SECTION ON BEHALF OF
11 ANYONE OR ASSISTING IN THE ENFORCEMENT OF THIS SUBSECTION (2);

12 (d) DISCHARGE, DISCIPLINE, DISCRIMINATE AGAINST, COERCE,
13 INTIMIDATE, THREATEN, OR INTERFERE WITH AN EMPLOYEE OR OTHER
14 PERSON BECAUSE THE EMPLOYEE OR PERSON INQUIRED ABOUT, DISCLOSED,
15 COMPARED, OR OTHERWISE DISCUSSED THE EMPLOYEE'S WAGE RATE;

16 (e) PROHIBIT, AS A CONDITION OF EMPLOYMENT, AN EMPLOYEE
17 FROM DISCLOSING THE EMPLOYEE'S WAGE RATE; OR

18 (f) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR OTHER
19 DOCUMENT THAT:

20 (I) PROHIBITS THE EMPLOYEE FROM DISCLOSING WAGE RATE
21 INFORMATION; OR

22 (II) PURPORTS TO DENY THE EMPLOYEE THE RIGHT TO DISCLOSE
23 THE EMPLOYEE'S WAGE RATE INFORMATION.

24 **SECTION 5.** In Colorado Revised Statutes, **amend** 8-5-103 as
25 follows:

26 **8-5-103. Enforcement - rules and regulations - complaints.**

27 (1) ~~The director has the power to administer, carry out, and enforce all~~

1 of the provisions of this article and may promulgate rules and regulations
2 for that purpose. Copies of the rules and regulations shall be furnished by
3 the division to all employees and employers upon written request. THE
4 DIRECTOR IS AUTHORIZED TO CREATE AND ADMINISTER A PROCESS TO
5 ACCEPT AND MEDIATE COMPLAINTS AND TO PROVIDE LEGAL RESOURCES
6 CONCERNING ALLEGED VIOLATIONS OF SECTION 8-5-102, AND TO
7 PROMULGATE RULES AS NECESSARY FOR THIS PURPOSE. THE PROCESS
8 CREATED AND ADMINISTERED BY THE DIRECTOR DOES NOT AFFECT OR
9 PREVENT THE RIGHT OF AN AGGRIEVED PERSON FROM COMMENCING A
10 CIVIL ACTION PURSUANT TO SUBSECTION (2) OF THIS SECTION.

11 (2) A PERSON AGGRIEVED BY A VIOLATION OF SECTION 8-5-102
12 MAY COMMENCE A CIVIL ACTION IN DISTRICT COURT NO LATER THAN TWO
13 YEARS AFTER THE VIOLATION OCCURS. A VIOLATION OF SECTION 8-5-102
14 (1) OCCURS ON EACH OCCASION THAT A PERSON IS AFFECTED BY WAGE
15 DISCRIMINATION, INCLUDING EACH OCCASION THAT A DISCRIMINATORY
16 WAGE RATE IS PAID.

17 (3) A PERSON AGGRIEVED BY A VIOLATION OF SECTION 8-5-102
18 MAY OBTAIN RELIEF FOR BACK PAY FOR THE ENTIRE TIME THE VIOLATION
19 CONTINUES, NOT TO EXCEED THREE YEARS.

20 (4) IF A CIVIL ACTION IS COMMENCED UNDER THIS SECTION, ANY
21 PARTY TO THE CIVIL ACTION MAY DEMAND A TRIAL BY JURY.

22 ~~(2) Upon written complaint, duly executed and verified, by any~~
23 ~~employee that any employer has, within one year from the date of such~~
24 ~~complaint, violated the provisions of section 8-5-102, the director or any~~
25 ~~referee of the division may proceed to hear and determine such complaint,~~
26 ~~and the director may make an award upon said complaint. Judicial review~~
27 ~~may be had of any award of the director under this article pursuant to~~

1 ~~section 24-4-106, C.R.S.~~

2 (5) NOTHING IN THIS SECTION PREVENTS AN AGGRIEVED PERSON
3 FROM FILING A CHARGE WITH THE COLORADO CIVIL RIGHTS DIVISION
4 PURSUANT TO SECTION 24-34-306.

5 **SECTION 6.** In Colorado Revised Statutes, **amend** 8-5-104 as
6 follows:

7 **8-5-104. Employer liability - awards - suits.** (1) (a) An
8 employer who violates ~~the provisions of section 8-5-102~~ SECTION 8-5-102
9 (1) is liable FOR ECONOMIC DAMAGES in an amount equal to the difference
10 between the amount ~~which he~~ THAT THE EMPLOYER paid to the
11 complaining employee and the amount ~~which~~ THAT the employee would
12 have received had there been no ~~discrimination; and, if the director finds~~
13 ~~that such discrimination was willful, the director may impose a penalty~~
14 ~~upon the employer in addition thereto of not more than the amount of~~
15 ~~such difference. The amount of such liability so determined by the~~
16 ~~director shall constitute the award of the director. Such award shall be the~~
17 ~~property of the employee but may be recovered for the employee in a suit~~
18 ~~brought by the director in his name in any court in the county of the~~
19 ~~residence of the employer within this state having jurisdiction of the~~
20 ~~amount of the demand in the suit. The director may join in one suit all of~~
21 ~~his awards against any one employer under this article~~ VIOLATION PLUS
22 LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO THE EMPLOYEE'S
23 ECONOMIC DAMAGES, EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS
24 SECTION.

25 (b) (I) IF THE EMPLOYER DEMONSTRATES THAT THE ACT OR
26 OMISSION GIVING RISE TO THE VIOLATION WAS IN GOOD FAITH AND THAT
27 THE EMPLOYER HAS REASONABLE GROUNDS FOR BELIEVING THAT THE

1 EMPLOYER DID NOT VIOLATE SECTION 8-5-102 (1), THE COURT SHALL NOT
2 AWARD LIQUIDATED DAMAGES.

3 (II) IN DETERMINING WHETHER THE EMPLOYER'S VIOLATION WAS
4 IN GOOD FAITH, THE FACT FINDER MAY CONSIDER EVIDENCE THAT WITHIN
5 TWO YEARS PRIOR TO THE DATE OF THE COMMENCEMENT OF A CIVIL
6 ACTION PURSUANT TO SECTION 8-5-103, THE EMPLOYER COMPLETED A
7 THOROUGH AND COMPREHENSIVE PAY AUDIT OF ITS WORKFORCE, WITH
8 THE SPECIFIC GOAL OF IDENTIFYING AND REMEDYING UNLAWFUL PAY
9 DISPARITIES.

10 (2) AN EMPLOYER WHO VIOLATES ANY PROVISION OF SECTION
11 8-5-102 IS LIABLE FOR:

12 (a) LEGAL AND EQUITABLE RELIEF, WHICH MAY INCLUDE
13 EMPLOYMENT, REINSTATEMENT, PROMOTION, PAY INCREASE, PAYMENT OF
14 LOST WAGE RATES, AND LIQUIDATED DAMAGES; AND

15 (b) THE EMPLOYEE'S REASONABLE COSTS, INCLUDING ATTORNEY
16 FEES.

17 (3) NOTHING IN THIS SECTION PRECLUDES AN EMPLOYEE FROM
18 ASSERTING ANY OTHER AVAILABLE STATUTORY OR COMMON-LAW CLAIMS.

19 **SECTION 7.** In Colorado Revised Statutes, **repeal** 8-5-105 as
20 follows:

21 **8-5-105. Records open to inspection.** ~~When complaint is made~~
22 ~~to the division by any employee against any employer for a violation of~~
23 ~~this article, all books, records, and payrolls of such employer, material~~
24 ~~and pertinent to such complaint, shall be open for inspection by the~~
25 ~~division or any of its agents duly appointed for that purpose.~~

26 **SECTION 8.** In Colorado Revised Statutes, **add** part 2 to article
27 5 of title 8 as follows:

1 PART 2

2 TRANSPARENCY IN PAY AND OPPORTUNITIES FOR
3 PROMOTION AND ADVANCEMENT

4 **8-5-201. Employment opportunities - opportunities for**
5 **promotion or advancement - pay rates in job listings.** (1) AN
6 EMPLOYER SHALL MAKE REASONABLE EFFORTS TO ANNOUNCE, POST, OR
7 OTHERWISE MAKE KNOWN ALL OPPORTUNITIES FOR PROMOTION TO ALL
8 CURRENT EMPLOYEES ON THE SAME CALENDAR DAY AND PRIOR TO
9 MAKING A PROMOTION DECISION.

10 (2) AN EMPLOYER SHALL DISCLOSE IN EACH POSTING FOR EACH JOB
11 OPENING THE HOURLY OR SALARY COMPENSATION, OR A RANGE OF THE
12 HOURLY OR SALARY COMPENSATION, AND A GENERAL DESCRIPTION OF ALL
13 OF THE BENEFITS TO BE OFFERED TO THE HIRED APPLICANT.

14 **8-5-202. Record keeping.** AN EMPLOYER SHALL KEEP RECORDS
15 OF JOB DESCRIPTIONS AND WAGE RATE HISTORY FOR EACH EMPLOYEE
16 FOR THE DURATION OF THE EMPLOYMENT PLUS TWO YEARS AFTER THE END
17 OF EMPLOYMENT IN ORDER TO DETERMINE IF THERE IS A PATTERN OF WAGE
18 DISCREPANCY.

19 **8-5-203. Enforcement - rules.** (1) THE DIRECTOR HAS THE
20 POWER TO ADMINISTER, CARRY OUT, AND ENFORCE ALL OF THE
21 PROVISIONS OF THIS PART 2 AND MAY PROMULGATE RULES FOR THAT
22 PURPOSE. THE DIRECTOR SHALL PROVIDE WRITTEN COPIES OF RULES
23 PROMULGATED PURSUANT TO THIS SECTION TO ALL EMPLOYEES AND
24 EMPLOYERS UPON WRITTEN REQUEST.

25 (2) (a) A PERSON WHO CLAIMS TO BE AGGRIEVED BY A VIOLATION
26 OF SECTION 8-5-201 OR 8-5-202 MAY FILE A WRITTEN COMPLAINT WITH
27 THE DIRECTOR WITHIN ONE YEAR AFTER THE DATE THAT THE PERSON

1 LEARNED OF THE VIOLATION. THE WRITTEN COMPLAINT MUST STATE THE
2 NAME AND ADDRESS OF THE EMPLOYER AND A DETAILED ACCOUNT OF THE
3 ALLEGED VIOLATION.

4 (b) AN EMPLOYER'S FAILURE TO COMPLY WITH SECTION 8-5-201 (1)
5 FOR ONE PROMOTIONAL OPPORTUNITY IS CONSIDERED ONE VIOLATION.

6 (c) AN EMPLOYER'S FAILURE TO COMPLY WITH SECTION 8-5-201 (2)
7 FOR ONE JOB OPENING IS CONSIDERED ONE VIOLATION REGARDLESS OF THE
8 NUMBER OF POSTINGS THAT LIST THE JOB OPENING.

9 (3) THE DIRECTOR SHALL INVESTIGATE COMPLAINTS OF
10 VIOLATIONS OF THIS PART 2 AND SHALL PROMULGATE RULES NECESSARY
11 TO GOVERN THE INVESTIGATIONS.

12 (4) UPON FINDING THAT AN EMPLOYER HAS VIOLATED THIS PART
13 2, THE DIRECTOR MAY ORDER THE EMPLOYER TO PAY A FINE OF NO LESS
14 THAN FIVE HUNDRED DOLLARS AND NO MORE THAN TEN THOUSAND
15 DOLLARS PER VIOLATION.

16 (5) IF AN EMPLOYEE BRINGING SUIT FOR A VIOLATION OF SECTION
17 8-5-102 DEMONSTRATES A VIOLATION OF THIS PART 2, AND THE COURT
18 FINDS A VIOLATION OF THIS PART 2, THE COURT MAY ORDER APPROPRIATE
19 RELIEF, INCLUDING A REBUTTABLE PRESUMPTION THAT RECORDS NOT KEPT
20 BY THE EMPLOYER IN VIOLATION OF SECTION 8-5-202 CONTAINED
21 INFORMATION FAVORABLE TO THE EMPLOYEE'S CLAIM AND AN
22 INSTRUCTION TO THE JURY THAT FAILURE TO KEEP RECORDS CAN BE
23 CONSIDERED EVIDENCE THAT THE VIOLATION WAS NOT MADE IN GOOD
24 FAITH.

25 **SECTION 9. Act subject to petition - effective date -**
26 **applicability. (1) This act takes effect January 1, 2021; except that, if a**
27 **referendum petition is filed pursuant to section 1 (3) of article V of the**

1 state constitution against this act or an item, section, or part of this act
2 within the ninety-day period after final adjournment of the general
3 assembly, then the act, item, section, or part will not take effect unless
4 approved by the people at the general election to be held in November
5 2020 and, in such case, will take effect January 1, 2021, or on the date of
6 the official declaration of the vote thereon by the governor, whichever is
7 later.

8 (2) This act applies to violations that occur on or after the
9 applicable effective date of this act.