

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0683.01 Kristen Forrester x4217

HOUSE BILL 18-1378

HOUSE SPONSORSHIP

Danielson,

SENATE SPONSORSHIP

Donovan and Fields,

House Committees

Finance

Senate Committees

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, AND, IN CONNECTION THEREWITH, PROMOTING
104 PAY TRANSPARENCY.

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 authorizes the director of the division of labor standards and statistics in the department of labor and employment (director) to administer and enforce the law that prohibits an employer from discriminating against an employee on the basis of sex and to issue

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.

awards to employees and impose penalties on employers for violations. The bill removes the director's enforcement authority and instead permits an aggrieved person to bring a civil action in district court to pursue remedies specified in the bill. The bill allows exceptions to the prohibition 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 or a bona fide factor other than sex.

The bill prohibits an employer from discharging or retaliating against an employee for actions by an employee asserting the rights established by the bill against an employer.

An employer is required to announce to all employees employment advancement opportunities and the pay range for the opportunities. 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 finds 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:

14 (I) Women in this state earn just 86 cents for every dollar men
15 earn; and

16 (II) Latinas earn 53.8 cents and black women earn 63.1 cents for

1 every dollar earned by white men;

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

5 (e) 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 six months
8 of childcare costs;

9 (f) Equal pay would cut the poverty rate for working women in
10 half and reduce the poverty rate for employed single mothers by more
11 than 40 percent; and

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

16 **SECTION 3.** In Colorado Revised Statutes, 8-5-101, **amend** the
17 introductory portion; **repeal** (6); and **add** (1.5), (7), and (8) as follows:

18 **8-5-101. Definitions.** As used in this article 5, unless the context
19 otherwise requires:

20 (1.5) "BUSINESS NECESSITY" MEANS AN OVERRIDING LEGITIMATE
21 BUSINESS PURPOSE SUCH THAT THE FACTOR RELIED UPON EFFECTIVELY
22 FULFILLS THE BUSINESS PURPOSE IT IS SUPPOSED TO SERVE.

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

27 (7) "SEX" MEANS AN EMPLOYEE'S GENDER IDENTITY.

1 (8) "WAGE RATE" MEANS:

2 (a) FOR AN EMPLOYEE PAID ON AN HOURLY BASIS, THE HOURLY
3 COMPENSATION PAID TO THE EMPLOYEE PLUS THE VALUE PER HOUR OF ALL
4 OTHER COMPENSATION AND BENEFITS RECEIVED BY THE EMPLOYEE FROM
5 THE EMPLOYER; AND

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

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

11 **8-5-102. Wage discrimination prohibited.** (1) ~~No employer~~
12 ~~shall make any discrimination in the amount or rate of wages or salary~~
13 ~~paid or to be paid his employees in any employment in this state solely on~~
14 ~~account of the sex thereof.~~ AN EMPLOYER SHALL NOT DISCRIMINATE
15 BETWEEN EMPLOYEES ON THE BASIS OF SEX, OR ON THE BASIS OF SEX IN
16 COMBINATION WITH ANOTHER PROTECTED STATUS AS DEFINED IN SECTION
17 24-34-402 (1)(a), BY PAYING AN EMPLOYEE OF ONE SEX A WAGE RATE
18 LESS THAN THE RATE PAID TO AN EMPLOYEE OF A DIFFERENT SEX FOR
19 SUBSTANTIALLY SIMILAR WORK, WHEN VIEWED AS A COMPOSITE OF SKILL,
20 EFFORT, AND RESPONSIBILITY AND REGARDLESS OF JOB TITLE, EXCEPT
21 WHERE THE EMPLOYER DEMONSTRATES EACH OF THE FOLLOWING:

22 (a) THAT THE WAGE DIFFERENTIAL IS BASED ON:

23 (I) A SENIORITY SYSTEM;

24 (II) A MERIT SYSTEM;

25 (III) A SYSTEM THAT MEASURES EARNINGS BY QUANTITY OR
26 QUALITY OF PRODUCTION; OR

27 (IV) A BONA FIDE FACTOR OTHER THAN SEX THAT IS JOB RELATED

1 WITH RESPECT TO THE POSITION IN QUESTION AND IS CONSISTENT WITH A
2 BUSINESS NECESSITY SUCH AS EDUCATION, TRAINING, OR EXPERIENCE.
3 THIS DEFENSE DOES NOT APPLY IF THE EMPLOYEE DEMONSTRATES THAT
4 AN ALTERNATIVE BUSINESS PRACTICE EXISTS THAT WOULD SERVE THE
5 SAME BUSINESS PURPOSE WITHOUT PRODUCING THE WAGE DIFFERENTIAL.

6 (b) THAT EACH FACTOR RELIED UPON IS APPLIED REASONABLY;
7 AND

8 (c) THAT THE FACTOR OR FACTORS RELIED UPON ACCOUNT FOR
9 THE ENTIRE WAGE DIFFERENTIAL. PRIOR SALARY DOES NOT, BY ITSELF,
10 JUSTIFY ANY DISPARITY IN COMPENSATION.

11 (2) AN EMPLOYER SHALL NOT DISCHARGE, OR IN ANY MANNER
12 DISCRIMINATE OR RETALIATE AGAINST, AN EMPLOYEE BY REASON OF AN
13 ACTION TAKEN BY THE EMPLOYEE TO INVOKE THIS SECTION ON BEHALF OF
14 ANYONE, OR ANY ACTION TAKEN BY THE EMPLOYEE TO ASSIST IN ANY
15 MANNER IN THE ENFORCEMENT OF THIS SECTION.

16 (3) AN EMPLOYER SHALL NOT:

17 (a) DISCHARGE, DISCIPLINE, DISCRIMINATE AGAINST, COERCE,
18 INTIMIDATE, THREATEN, OR INTERFERE WITH AN EMPLOYEE OR OTHER
19 PERSON BECAUSE THE EMPLOYEE OR PERSON INQUIRED ABOUT, DISCLOSED,
20 COMPARED, OR OTHERWISE DISCUSSED THE EMPLOYEE'S WAGES;

21 (b) PROHIBIT, AS A CONDITION OF EMPLOYMENT, AN EMPLOYEE
22 FROM DISCLOSING HIS OR HER WAGES; OR

23 (c) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR OTHER
24 DOCUMENT THAT PROHIBITS AN EMPLOYEE FROM DISCLOSING, OR
25 PURPORTS TO DENY AN EMPLOYEE THE RIGHT TO DISCLOSE, HIS OR HER
26 WAGE INFORMATION.

27 **SECTION 5.** In Colorado Revised Statutes, **amend** 8-5-103 as

1 follows:

2 **8-5-103. Enforcement - complaints.** (1) ~~The director has the~~
3 ~~power to administer, carry out, and enforce all of the provisions of this~~
4 ~~article and may promulgate rules and regulations for that purpose. Copies~~
5 ~~of the rules and regulations shall be furnished by the division to all~~
6 ~~employees and employers upon written request~~ A PERSON AGGRIEVED BY
7 A VIOLATION OF SECTION 8-5-102 MAY COMMENCE A CIVIL ACTION IN
8 DISTRICT COURT NOT LATER THAN TWO YEARS AFTER THE CAUSE OF
9 ACTION ACCRUES; EXCEPT THAT A CAUSE OF ACTION ARISING OUT OF A
10 WILLFUL VIOLATION OF SECTION 8-5-102 MAY BE COMMENCED NOT LATER
11 THAN THREE YEARS AFTER THE CAUSE OF ACTION ACCRUES.

12 (2) ~~Upon written complaint, duly executed and verified, by any~~
13 ~~employee that any employer has, within one year from the date of such~~
14 ~~complaint, violated the provisions of section 8-5-102, the director or any~~
15 ~~referee of the division may proceed to hear and determine such complaint,~~
16 ~~and the director may make an award upon said complaint. Judicial review~~
17 ~~may be had of any award of the director under this article pursuant to~~
18 ~~section 24-4-106, C.R.S.~~ A CAUSE OF ACTION FOR A VIOLATION OF
19 SECTION 8-5-102 ACCRUES FOR ALL WAGES PAID TO AN EMPLOYEE BY AN
20 EMPLOYER, REGARDLESS OF THE DATE THE WAGES WERE PAID, ON THE
21 DATE THE EMPLOYEE LEARNS OF THE VIOLATION, REGARDLESS OF
22 WHETHER THE EMPLOYEE REMAINS EMPLOYED BY THE EMPLOYER.

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

25 **8-5-104. Employer liability - awards.** (1) An employer who
26 violates ~~the provisions of section 8-5-102~~ (**I**) is liable FOR ECONOMIC
27 DAMAGES in an amount equal to the difference between the amount ~~which~~

1 ~~he~~ THAT THE EMPLOYER paid to the complaining employee and the
2 amount ~~which~~ THAT the employee would have received had there been no
3 discrimination; and, if the director finds that such discrimination was
4 willful, the director may impose a penalty upon the employer in addition
5 thereto of not more than the amount of such difference. The amount of
6 such liability so determined by the director shall constitute the award of
7 the director. Such award shall be the property of the employee but may be
8 recovered for the employee in a suit brought by the director in his name
9 in any court in the county of the residence of the employer within this
10 state having jurisdiction of the amount of the demand in the suit. The
11 director may join in one suit all of his awards against any one employer
12 ~~under this article~~ VIOLATION PLUS LIQUIDATED DAMAGES IN AN AMOUNT
13 EQUAL TO THE ECONOMIC DAMAGES. HOWEVER, IF THE EMPLOYER
14 DEMONSTRATES THAT THE ACT OR OMISSION GIVING RISE TO THE
15 VIOLATION WAS IN GOOD FAITH AND THAT THE EMPLOYER HAD
16 REASONABLE GROUNDS FOR BELIEVING THAT THE EMPLOYER DID NOT
17 VIOLATE SECTION 8-5-102 (1), THE COURT NEED NOT AWARD LIQUIDATED
18 DAMAGES OR MAY AWARD AN AMOUNT LESS THAN AN AMOUNT EQUAL TO
19 THE EMPLOYEE'S LOSS OF PAY.

20 (2) AN EMPLOYER WHO VIOLATES SECTION 8-5-102 IS LIABLE FOR
21 LEGAL AND EQUITABLE RELIEF, WHICH MAY INCLUDE EMPLOYMENT,
22 REINSTATEMENT, PROMOTION, PAY INCREASE, THE PAYMENT OF LOST
23 WAGES, AND LIQUIDATED DAMAGES.

24 (3) AN EMPLOYER WHO VIOLATES SECTION 8-5-102 IS LIABLE FOR
25 THE PREVAILING PARTY'S REASONABLE COSTS AND ATTORNEY FEES.

26 (4) NOTHING IN THIS SECTION PRECLUDES AN EMPLOYEE FROM
27 ASSERTING ANY OTHER AVAILABLE STATUTORY OR COMMON LAW CLAIMS.

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

3 **8-5-105. Records open to inspection.** ~~When complaint is made~~
4 ~~to the division by any employee against any employer for a violation of~~
5 ~~this article, all books, records, and payrolls of such employer, material~~
6 ~~and pertinent to such complaint, shall be open for inspection by the~~
7 ~~division or any of its agents duly appointed for that purpose.~~

8 **SECTION 8.** In Colorado Revised Statutes, **add** part 2 to article
9 5 of title 8 as follows:

10 PART 2

11 TRANSPARENCY IN PAY AND OPPORTUNITIES FOR
12 PROMOTION AND ADVANCEMENT

13 **8-5-201. Employment opportunities - opportunities for**
14 **promotion or advancement - pay rates in job listings.** (1) AN
15 EMPLOYER SHALL ANNOUNCE ALL OPPORTUNITIES FOR PROMOTION
16 SIMULTANEOUSLY TO ALL EXISTING EMPLOYEES.

17 (2) AN EMPLOYER SHALL DISCLOSE AN HOURLY PAY RATE OR
18 SALARY RANGE IN ALL JOB LISTINGS AND SHALL SELECT A SALARY WITHIN
19 THE POSTED RANGE OR, IF NECESSARY, REPUBLISH EACH JOB LISTING WITH
20 AN ADJUSTED RANGE BEFORE SELECTING AN HOURLY PAY RATE OR SALARY
21 FOR A PROSPECTIVE EMPLOYEE.

22 **8-5-202. Record keeping.** AN EMPLOYER SHALL KEEP RECORDS
23 OF JOB DESCRIPTIONS AND WAGE RATE HISTORY FOR ALL EMPLOYEES FOR
24 THE DURATION OF THE EMPLOYMENT PLUS THREE YEARS AFTER THE END
25 OF EMPLOYMENT IN ORDER TO DETERMINE IF THERE IS A PATTERN OF WAGE
26 DISCREPANCY.

27 **8-5-203. Enforcement - rules.** (1) THE DIRECTOR HAS THE

1 POWER TO ADMINISTER, CARRY OUT, AND ENFORCE ALL OF THE
2 PROVISIONS OF THIS PART 2 AND MAY PROMULGATE RULES FOR THAT
3 PURPOSE. THE DIRECTOR SHALL PROVIDE WRITTEN COPIES OF RULES
4 PROMULGATED PURSUANT TO THIS SECTION TO ALL EMPLOYEES AND
5 EMPLOYERS UPON WRITTEN REQUEST.

6 (2) THE DIRECTOR SHALL INVESTIGATE COMPLAINTS OF
7 VIOLATIONS OF THIS PART 2 AND SHALL PROMULGATE RULES NECESSARY
8 TO GOVERN THE INVESTIGATIONS.

9 (3) UPON FINDING THAT AN EMPLOYER HAS VIOLATED THIS PART
10 2, THE DIRECTOR MAY ORDER THE EMPLOYER TO PAY A FINE OF NO LESS
11 THAN FIVE HUNDRED DOLLARS AND NO MORE THAN TEN THOUSAND
12 DOLLARS PER VIOLATION.

13 (4) IF AN EMPLOYEE BRINGING SUIT FOR A VIOLATION OF SECTION
14 8-5-102 DEMONSTRATES A VIOLATION OF THIS PART 2, AND THE COURT
15 FINDS A VIOLATION OF THIS PART 2, THE COURT MAY ORDER APPROPRIATE
16 RELIEF, INCLUDING A PRESUMPTION THAT RECORDS NOT KEPT BY THE
17 EMPLOYER IN VIOLATION OF SECTION 8-5-202 CONTAINED INFORMATION
18 FAVORABLE TO THE EMPLOYEE'S CLAIM AND AN INSTRUCTION TO THE JURY
19 THAT FAILURE TO KEEP RECORDS CAN BE CONSIDERED EVIDENCE THAT THE
20 VIOLATION WAS WILLFUL.

21 **SECTION 9. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly (August
24 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
25 referendum petition is filed pursuant to section 1 (3) of article V of the
26 state constitution against this act or an item, section, or part of this act
27 within such period, then the act, item, section, or part will not take effect

1 unless approved by the people at the general election to be held in
2 November 2018 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.