



Gender Pay Equity

By Luisa Altmann

This *issue brief* provides an overview of federal and state laws related to gender pay equity and a summary of past legislative efforts by the Colorado General Assembly on the topic.

Federal Data and Laws

According to the U.S. Bureau of Labor Statistics, the median weekly earnings of women who worked full-time in wage and salary positions were 82 percent of men's in 2017. However, this pay gap varies by age group, race, occupation, educational attainment, and numerous other factors. The Equal Pay Act of 1963 and the Civil Rights Act of 1964 prohibit pay discrimination based on gender for employers engaged in interstate commerce.

Equal Pay Act of 1963. The Equal Pay Act of 1963 prohibits employers from discriminating between employees on the basis of gender. Male and female employees must be paid at the same rate for equal work on jobs that require "equal skill, effort, and responsibility, and which are performed under similar working conditions." The law specifically exempts differential payments that are made under a system that is based on any other factor besides gender, including seniority, merit, and quantity or quality of production.¹

Civil Rights Act of 1964. Among many other provisions, the Civil Rights Act of 1964 prohibits employers with 15 or more employees from discriminating against any individual with respect to his or her compensation because of the individual's race, color, religion, sex, or national

origin. The Lilly Ledbetter Fair Pay Act of 2009 amended the Civil Rights Act of 1964 to specify that each discriminatory paycheck resets the 180-day limit to file a discrimination claim under the law.²

Colorado Law

Wage equality regardless of sex. In 1955, the Colorado General Assembly passed a wage equality law that prohibits employers from paying employees differently solely based on the gender of the employee.³ The director of the Division of Labor Standards and Statistics within the Colorado Department of Labor and Employment (CDLE) is responsible for the enforcement of this law.

Senate Bill 19-085. In 2019, the General Assembly passed Senate Bill 19-085, which takes effect beginning January 1, 2021. The bill expands Colorado's gender-based wage discrimination prohibition law in several ways, including:

- prohibiting employers from paying employees of different genders differently for substantially similar work, unless the difference is based on specific criteria outlined in the bill, such as a seniority or merit system;
- prohibiting employers from seeking the wage rate history of prospective employees, relying on the wage rate history of a prospective employee to determine a wage rate, and discriminating or retaliating against a prospective employee who does not disclose his or her wage rate history;

¹29 U.S.C. § 206 (d).

²42 U.S.C. § 2000e.

³Section 8-5-102, C.R.S.

- permitting employees to bring a civil action up to two years after a violation occurs; and
- requiring CDLE to create and administer a process to accept and mediate complaints of violations under the bill and to provide legal resources concerning alleged violations.

The bill also implements certain disclosure and record-keeping requirements for employers regarding promotion opportunities and wage information in job listings.

Discriminatory or unfair employment practices.

Under Colorado law it is considered to be a discriminatory or unfair employment practice for an employer to discriminate in matters of compensation against any person otherwise qualified because of disability, race, creed, color, gender, sexual orientation, religion, age, national origin, or ancestry. This section of the law also prohibits employers from negatively retaliating against any employee who inquires about, discloses, compares, or otherwise discusses the employee's wages.⁴ House Bill 17-1269 removed an exemption from this law that had previously been in place for certain employers who are exempt from the provisions of the National Labor Relations Act, including the U.S. government, Federal Reserve banks, any person subject to the Railway Labor Act, and select others.

Colorado Pay Equity Commission

The Colorado Pay Equity Commission was created in 2010 through House Bill 10-1417. Its responsibilities included educating Colorado employers about issues or practices that may contribute to pay inequity, and encouraging employers to implement equal pay best practices that the commission compiled based on working with business groups and educational institutions. The General Assembly allowed the commission to sunset on its statutory repeal date in 2015, following a sunset review during the 2014 session.

House Bill 15-1133 and Senate Bill 16-096 sought to continue the commission; however, both bills were postponed indefinitely.

Remedies

Employees who have been victims of discriminatory or unfair employment practices may seek remedies, such as back pay or compensatory damages, through various avenues depending on the circumstance. These include filing complaints with the U.S. Equal Employment Opportunity Commission or the Colorado Civil Rights Division or filing a lawsuit in court. Employment discrimination claims must be filed within certain timelines, which vary based on the avenue and circumstance.

Laws in Other States

All states, with the exception of Mississippi, have state laws that prohibit paying employees differently based solely on gender. While many state laws generally mirror the language found in federal law, several provide additional protections to employees, including prohibiting employers from reducing other employees' wages to comply with the law and requiring employers to keep records of wages.

Additional Resources

For more information about the data used by the U.S. Bureau of Labor Statistics, visit:

<https://www.bls.gov/opub/reports/womens-earnings/2017/home.htm>.

The 2014 sunset review report for the Colorado Pay Equity Commission can be found at:

<https://drive.google.com/file/d/0B8bNvcf083ydU1BodmxOZmFFMWc/view>.

⁴Section 24-34-402, C.R.S.