

Colorado Employers Face a Bevy of New State Laws

Alert

03.12.2020

Colorado's legislature has been busy implementing new laws that impact Colorado employers. Employers should review their policies and practices to come into compliance, and plan for future changes to keep pace with the law.

The new Colorado laws include:

- New Overtime and Minimum Pay Standards Order #36 – Effective March 16, 2020
 - New Minimum Salary Threshold for White Collar Exempt Employees – Effective January 1, 2021
- Equal Pay for Equal Work – Effective January 1, 2021
- Ban the Box – Effective September 1, 2019 or September 1, 2021
- New Tip Pooling Notice Requirements – Effective August 2, 2019

WAGE AND HOUR RULES

Beginning on March 16, 2020, significant wage and hour rule changes will take effect in Colorado. The Colorado Overtime and Minimum Pay Standards Order #36 (COMPS #36) is considered a dramatic change from previous wage orders and imposes significant new obligations and restrictions on employers. It impacts all private sector employers unless they are specifically exempted. Thus, virtually all private employees in all industries will be covered by the new rules, whereas previous wage orders only impacted workers in certain industries. It is also important to remember that the definitions of "employee" and "employer" were expanded in the Colorado Wage Act.

The 2020 minimum wage for non-exempt employees is \$12.00 (effective January 1, 2020). An employer's failure to pay minimum wage is a misdemeanor, and the Colorado wage theft law has been incorporated into the COMPS #36. An employer who has willfully denied payment of wages may be found guilty of theft and, depending upon the amount of unpaid wages, could be charged with a felony and fined as much as \$1

Colorado Employers Face a Bevy of New State Laws

million.

Also under the rules, the new minimum salary threshold for exempt employees is \$35,568 (which mirrors the current exempt salary threshold under federal law, and became effective on January 1, 2020). Beginning January 1, 2021 the minimum salary threshold for exempt employees in Colorado will increase to \$40,500 and thereafter increase annually until reaching \$55,000 on January 1, 2024. The threshold will thereafter be adjusted annually for inflation. This means Colorado employers of “white collar” exempt employees must keep pace with the salary increases or consider whether to re-classify the employees as non-exempt, in which case they will have to be paid overtime (and keeping proper records of hours worked becomes imperative).

The new rules also require overtime to be paid at 12 hours in a workday or 12 consecutive hours regardless of the workday, in addition to the 40+ hour per week federal requirement.

The new rules also establishes specific requirements for paid breaks, with some exceptions for employees under collective bargaining agreements and those providing Medicaid-funded, residential in-home services. Employers are still required to provide an unpaid and uninterrupted 30-minute meal period within a shift of more than five hours, which should normally not occur in the first or last hour of a shift. Notably, the wage order requires employers to pay additional wages if employees are not provided the required paid rest periods.

Employers are also subject to new posting requirements, and should display a COMPS order poster, as well as provide a copy of the poster or order to employees within the first month of employment. The order must also be included in handbooks, manuals or policies that are published or distributed to employees, and the order must be referenced in handbook acknowledgments. Spanish-language versions of the COMPS order and poster must be used in some instances as well.

The new rules will require big changes for most Colorado employers. COMPS #36 is much more than a minimum wage rule and includes material obligations regarding employee breaks, as well as changes in overtime and record keeping requirements. Colorado employers can decrease their chances of liability by enlisting outside help to audit the company’s policies and procedures.

EQUAL PAY FOR EQUAL WORK

Colorado’s new pay equity law becomes effective January 1, 2021. The law prohibits employers from citing wage rate history to justify wage differentials based on sex. Employers must base wage differentials on other non-discriminatory factors. The law also allows individuals to bring a civil action against an employer for wage discrimination based on sex. A private right of action did not previously exist under Colorado law.

Colorado Employers Face a Bevy of New State Laws

Employers must keep records of job descriptions and wage rate history for each employee while employed and for two years after the employment ends. Failure to maintain these records creates a rebuttable presumption in a lawsuit concerning sex-based wage discrepancies in favor of the employee's claim. An employer could be liable for economic damages in an amount equal to the difference in pay, plus liquidated damages equal to the economic damages, plus the employee's costs and attorneys' fees.

The new law further requires employers to notify all employees of any employment advancement opportunities or job openings and the pay range for the openings. Failure to do so may lead to a fine up to \$10,000 per violation. Pay audits conducted to identify and remedy unlawful pay disparities provide a good faith defense, and can help reduce an employer's risk.

BAN THE BOX

"Ban the Box" is a Colorado law that limits employers from asking applicants about criminal history on employment applications. The law was effective September 1, 2019 for employers with 11 or more employees. For employers with fewer than 11 employees, the requirements of the law apply as of September 1, 2021.

Employers may no longer advertise or state in a job application that a person with a criminal history may not apply for a position, nor may an employer ask about a person's criminal history on an initial application. The law does not prohibit an employer from obtaining a person's publicly available criminal background report at any time.

Exceptions to the prohibition against seeking applicants' criminal history exist where:

- Another law bans certain people with a criminal history from being employed in a particular job
- The employer participates in a program to encourage employment of people with criminal histories
- Another law requires a criminal history record check for the particular position

If an employer violates "Ban the Box," the Department of Labor and Employment may issue warnings, order compliance or impose civil penalties. However, there is no private cause of action or ability to create a protected class under employment anti-discrimination laws. Employers should review all advertising, job positions and job applications to ensure none request a prospective employee's criminal history, and should train HR representatives and managers conducting employment interviews to comply with the law.

TIP POOLING NOTICE REQUIREMENTS

Beginning on August 2, 2019, Colorado employers requiring tip pooling must comply with new customer notice requirements. Under the new law, tips are the sole property of the employee receiving them unless employers publish a notice on menus, tables, or receipts advising their customers that gratuities will be

Colorado Employers Face a Bevy of New State Laws

shared by employees. Employers are expressly permitted to pool their employees' tips, so long as the notice requirements are met. It is no longer enough to just post a specific sign in a conspicuous place.

CONTACTS

Alisa Nickel Ehrlich

Stephanie N. Scheck

Sara E. Welch

RELATED CAPABILITIES

Labor, Employment & Benefits

STINSON

STINSON LLP \ STINSON.COM