

Overview of Colorado Employment Laws

OVERVIEW OF COLORADO EMPLOYMENT LAWS

SEXUAL HARASSMENT

Harassment that results in discrimination in employment on the basis of sex is a violation of Colorado's Anti-Discrimination Act. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Harassment is a violation of the Act when, for example, (1) submission to such conduct is made either explicitly or implicitly a requirement of employment, or, (2) the individual's response to such conduct is used as the basis for employment decisions. (3) Colo. Code. Regs. 708-1, Rule 80.11(A)).

EQUAL OPPORTUNITY EMPLOYER

Employers are prohibited from discriminating on the basis of ancestry, national origin, race or color, creed, religion, age, disability including AIDS, sex, sexual orientation, pregnancy, and marriage to a coworker (subject to specific circumstances). Employers are also prohibited from discriminating on the basis of lawful conduct of an employee during nonworking hours. The Colorado state EEO law covers all employers regardless of their size. Religious associations are exempted from this unless they are supported by money raised by taxation or public borrowing. (C.R.S. § 24-34-401).

AT-WILL EMPLOYMENT STATUS

Colorado is an at-will employment state and there is no liability for breach of contract for terminating an employee. Colorado courts have construed policy manuals (i.e. handbooks) to be implied contracts under certain circumstances. Employers also may not terminate employees for discriminatory reasons or for reasons that violate public policy (such as retaliation for filing a workers' compensation claim).

EMPLOYEE ACCESS TO PERSONNEL FILES

Colorado does not have a law about general access to personnel files. Colorado does not require access to employee personnel files in the private sector. Personnel records are the property of the employer, and whether to allow employee access to their own personnel records is up to the employer's discretion.

EMPLOYER JOB REFERENCES

Employers that provide truthful information about a current/former employee's job history/performance upon request of a prospective employer or current/former employee are generally immune from civil liability for the disclosures and their consequences. Upon request, employers must send former employees for whom they have provided a reference a copy of the information provided to the last address known to the employer, or must provide the information to the former employee during normal business hours (C.R.S. § 8-2-114).

ILLEGAL ACTIVITY

State law prohibits inquiry into arrests not resulting in a conviction. There is a prohibition against inquiry about arrests or sealed criminal records. An employer has the right to inquire about convictions substantially related to the job.

OFF-DUTY SOCIAL & RECREATIONAL ACTIVITIES

It is unlawful to discriminate against an employee based on off-duty legal conduct. Protected Activities: use of tobacco products, alcohol use, and use of all lawful products. If a lawful action affects a Bona Fide Occupational Qualification ("BFOQ") of the employee's job or creates a

conflict of interest related to the employer's business then "discrimination is permitted." (C.R.S. § 24-34-402.5).

DRUG TESTING

Colorado has no law dealing with drug testing in private employment, making such testing permissible under certain circumstances. Employers who test in Colorado must be cognizant of state cases on invasion of privacy claims. Giving employees notice of potential testing and obtaining consent to testing (both of which can be accomplished in a handbook or set of policies) are vital to protect employers from such claims.

NEW HIRE REPORTING

New hires must be reported within 20 days of hire, or by the first payroll period, or, at the election of the employer, at the time of the first regularly scheduled payroll following the date of hire if the payroll is subsequent to the expiration of the twenty-day period. If an employer reports electronically/magnetically, the employer must report by two monthly transmissions no fewer than 12 and no more than 16 days apart. The employee's name, address, and social security number, and the employer's name, address, and FEIN must be reported. (C.R.S. § 26-13-125(6); <https://newhire.state.co.us/newhire/do/>).

VERIFICATION OF EMPLOYMENT ELIGIBILITY

Within 20 days after hiring a new employee, private and public employers must affirm in a written document, called an "affirmation," that: (1) the newly-hired employee is eligible to work in the United States, as required by 8 U.S.C. § 1324a; (2) the employee's identification documents were not altered or falsified; and (3) the employer has not knowingly hired an unauthorized alien (C.R.S. § 8-2-122).

Private employers are required to retain verification documents as required by 8 U.S.C. § 1324a. Upon the request of the Director, an employer must submit documentation that demonstrates that the employer is in compliance with the specified employment verification requirements (C.R.S. §§ 8-2-122 and 8-17.5-102).

UNEMPLOYMENT INSURANCE

Unemployment Insurance is available to unemployed Colorado workers who have lost their job through no fault of their own. In order to be eligible for payments, unemployed workers must:

- Make a claim for benefits;
- Register for work and continue to report at a local employment office;
- Actively seek work; and
- Be able to work, and available to accept all suitable work.

(C.R.S. § 8-70-101).

CRIMINAL BACKGROUND CHECKS

All supervisory employees and applicants at child care facilities must undergo a criminal history check before they can be hired (C.R.S. § 26-6-107).

Criminal background checks, including fingerprinting, must now be conducted on certain specified employees and licensees, including: executive officers and directors of domestic companies applying for a certificate of authority to do business in the state; contract sellers of pre-need contracts; bail bonding agents; persons seeking gaming licenses; persons seeking a lottery sales agent license; real estate brokers; mortgage loan originators; private school employees; certain school district employees; and persons seeking to operate home care

facilities. (C.R.S. § § 10-15-103, 12-7-105.5, 12-47.1-505, 12-61-103, 12-61-903, 22-32-122, 25-27.5-106).

Criminal background checks are required of applicants for employment at nursing care facilities, which includes nursing facilities, intermediate nursing facilities for the mentally retarded, adult day care facilities, alternative care facilities, and any business that provides temporary nursing care services or provides personnel who provide such services. Applicants may be asked to submit fingerprints. C.R.S. § 25-1-124.5

Child Labor

Generally, no minor under the age of 14 is permitted to work. On school days, during school hours, no minor under the age of 16 may be permitted to work, except as granted under a school release permit. Except for baby-sitters, no minor under the age of 16 may work between the hours of 9:30 p.m. and 5:00 a.m., unless the next day is not a school day.

Minors under the age of 18 are not permitted to work more than 40 hours in a week or more than 8 hours in any 24-hour period. After school hours, no minor under the age of 16 may be permitted to work in excess of 6 hours unless the next day is not a school day. (C.R.S. § 8-12-105).

COMPANY BENEFITS

Pay Days

Wages are payable for regular pay periods of no greater duration than 1 calendar month (or 30 days, if longer), and on regular paydays no later than 10 days following the close of each pay period, unless the employer and employee agree otherwise

At least once per month, or at the time of each payment of wages, employers must provide employees with an itemized pay sheet. The pay sheet must show:

- Gross wages earned;
- All withholdings and deductions;
- Net wages earned;
- The inclusive dates of the pay period;
- The name of the employee, or the employee's social security number, and
- The name and address of the employer.

(C.R.S. § 8-4-103).

Pay upon Death of Employee

Employers should pay wages due to the appointed personal representative of a deceased employee, upon request of the representative. If no personal representative has been appointed, employers should pay wages due to the surviving spouse. If there is no surviving spouse, employers should pay wages due to the next legal heir, upon request of the heir. Employers must require proof of a claimant's relationship to the deceased employee by affidavit, and require the claimant to acknowledge receipt of payment in writing (C.R.S. § 8-4-109).

Payment Of Wages Upon Separation of Employment

Discharged employees must be paid immediately. However, if the employer's accounting unit responsible for the drawing of paychecks is not regularly scheduled to be operational, wages due must be made available no later than 6 hours after the unit's next regular workday. If the accounting unit is off the work site, the employer must deliver the check, no later than 24 hours

after the start of the accounting unit's next regular workday to one of the following locations selected by the employer: (1) the work site; (2) the employer's local office; or (3) the employee's last-known mailing address. When employees quit or go on strike, wages must be paid on the next regular payday (C.R.S. § 8-4-109).

Paid Vacation

Colorado statutes do not require nor prohibit vacation, but they do require that vacation earned by an employee in accordance with an employer's policy must be paid as wages upon separation of employment. C.R.S. § 8-4-101(8)(a)(III).

Timekeeping Procedures

Employers must keep a true and accurate timekeeping record for each employee at the business or at their principal place of business in Colorado. The record must contain the following information:

- Name, address, social security number, occupation and date of hire
- Date of birth (if under 18)
- Daily record of all hours worked
- Record of allowable credits and declared tips
- Regular rates of pay, gross wages earned, withholdings made and net amounts paid in each pay period. An itemized earnings statement of this information shall be provided to each employee after each pay period

All timekeeping records must be retained for two years from the date of entry. (C.R.S. §§ 8-4-103, 8-6-107).

Dispute over wages

If an employer disputes the amount of wages or compensation claimed by an employee, and the employer pays the amount that the employer in good faith believes is due within fourteen days, the employer will not be liable for any penalty, unless, the employee ultimately recovers a greater sum than the amount paid as a result of a successful legal action. If the employee files a legal action and does not prevail, the court may order the employee to pay the cost of the action and the employer's reasonable attorney fees incurred in such action. If the employee recovered a sum greater than the amount paid, the employer will be liable for the cost of the action and the employee's reasonable attorney fees incurred in the action (C.R.S. §§ 8-4-109 and 8-4-110(1)).

Deductions From Wages

Deductions authorized by an employee to be made by the employer for hospital, medical, stock purchases, savings, retirement plans, insurance, charities, credit unions, banks, savings and loans, or any other financial institution or other similar purpose, or for rent, board, and subsistence provided in connection with employment, are permissible if the employee authorization for deduction is revocable.

(C.R.S. § 8-9-107).

Union dues may be deducted by written agreement between employer and employee (C.R.S. § 8-9-106).

Generally, deductions for shortages or losses are allowable, if a report is filed with police and court action is pending. Also, an employer may deduct from final pay money or value of property an employee fails to return to the employer upon termination; the employer must audit accounts

and pay the employee within 10 days of termination. An employer also may deduct for loans, advances, goods, services, equipment or property provided to the employee pursuant to a written agreement that is enforceable and not in violation of law. (C.R.S. § 8-4-105).

An employer may not require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment, except those records necessary to support the applicant's statements in the application for employment (C.R.S. § 8-2-118).

Tips

It is unlawful for any employer engaged in any business where tips are customary to assert any claim to, or right of ownership in, or control over tips. All tips are the sole property of the employee, unless the employer posts in its place of business in a conspicuous place a printed card, at least 12x15 inches in size, containing a notice to the general public in letters at least one-half inch high, that all presents, tips, or gratuities are not the property of the employee, but belong to the employer. However, this does not prevent an employer from requiring employees to share or allocate presents, tips, or gratuities on a pre-established basis among the employees of the business (C.R.S. § 8-4-103(6)).

Wage Garnishments/Deductions

No employer may discharge an employee because a creditor has subjected or attempted to subject the employee's earnings to any garnishment or like proceeding directed to the employer for paying any judgment. If an employer discharges an employee because of a garnishment, the employee may bring a civil action within 91 days for the recovery of up to six weeks of wages lost as a result of the violation, costs, and reasonable attorney fees, and for an order of reinstatement (C.R.S. § 13-54.5-110, as amended by Ch. 208, Colorado Sess. Laws of 2012).

Medical Insurance

Colorado does not require employers to provide insurance for their employees. However, if an employer does provide insurance, it must be aware of specific coverage required to be included in health insurance policies and contracts. Employers must provide coverage for newborns covered at birth including congenital defects and birth abnormalities. Coverage extends to children not in the employee's custody, not residing in the insurer's service area, born out of wedlock, or not claimed as a dependent on the employee's tax return. Adoptees are covered from the time of placement until the age of 18 with no pre-existing conditions restrictions. Employers also must provide coverage for continuing care by out-of-network providers under certain circumstances, and for standing referrals to specialists. Discrimination on the basis of AIDS, physical handicap, or genetic testing is prohibited. All employers are covered. (C.R.S. § 10-16-104)

Health Insurance

Health insurance may not be denied to an individual based solely on the person's casual or nonprofessional participation in motorcycling; snowmobiling; off-highway vehicle riding; skiing; or snowboarding (C.R.S. § 10-3-1104).

A state law expands health insurance products for small employers (fewer than 51 employees). It provides that a small employer health insurance carrier may offer, in addition to basic and standard plans, a high-deductible plan that may be a traditional indemnity plan, a preferred provider plan, a health maintenance organization plan, or a point of service plan in each class of business established. High deductible plans (deductibles of at least \$1,500.00) may be offered in conjunction with a medical savings account. If a small employer offers a high-deductible plan,

the employer must provide each covered person a clear and understandable disclosure of costs in the health care agreement. (C.R.S. § 10-16-105).

Any individual or group health benefit plan that provides coverage for substance abuse treatment now must provide such coverage, if needed, whether treatment is voluntary or court-ordered. The coverage is subject to co-payment, deductible, and policy maximums and limitations. Plans may provide that benefits shall be covered only if the services are deemed medically necessary and are rendered by a provider who is appropriately designated and affiliated (C.R.S. § 10-16-104.7).

Colorado Health Insurance Continuation

In the event of termination of employment, Colorado law allows former employees and dependents to continue health care insurance with their former employer for up to 18 months in certain circumstances. However, if the employer is subject to the provisions of COBRA, the state continuation coverage requirements may be superseded.

In general, continuation is required on hospital, surgical, and medical plans for employees and dependents for a period of 18 months from the date of termination, death, or change in marital status, or until the employee or dependent becomes eligible for other group coverage, whichever occurs first. Continuation is only required if the employee was covered for the previous 6 months.

If group coverage is terminated for any reason other than termination of a group plan in its entirety, and the employee was covered for the previous 3 months, upon application by the employee, the insurer must issue a converted policy to the employee and/or any dependents, unless the employee or dependent is eligible for Medicaid or is covered by another policy. (C.R.S. § 10-16-108).

Worker's Compensation

In all cases of injury, the employer must provide a list of at least two physicians, or two corporate medical providers, or one physician and one corporate medical provider from which an injured employee may choose. The employee may change physicians one time if specified criteria are met. In addition to the one-time change physician change, and upon written request to the employer or insurance carrier, the employee may obtain permission to have a personal physician or chiropractor as the attending health care provider. If permission is not granted or refused within 20 days, permission is deemed to have been granted. If the services of a physician are not tendered at the time of injury, the employee shall have the right to select a physician or chiropractor. (C.R.S. § 8-43-404).

Every employer must keep a record of all injuries resulting in death, permanent impairment or lost time from work in excess of three shifts or calendar days or the employee's contraction of a listed occupational disease (C.R.S. § 8-43-101).

Jury Duty

Employers must pay regularly employed jurors regular wages up to \$50 per day for the first 3 days of juror service, unless a mutual agreement provides otherwise (C.R.S. § 13-71-126). Payment must be made within 30 days of receiving the juror service certificate (C.R.S. § 13-71-133). If payment of compensation would cause financial hardship, the employer may be excused from the requirement (C.R.S. § 13-71-127). The state pays jurors for the 4th day of service and thereafter, at the rate of \$50 per day (C.R.S. § 13-71-129).

Employers may not terminate employees, deprive them of benefits, or harass, threaten or coerce them because they receive a juror summons or serve as jurors. Employers may not make demands upon employees that will substantially interfere with the effective performance of juror service (C.R.S. §§ 13-71-134 and 18-8-614).

Voting Leave

Employees are entitled to time off for general and municipal elections. All eligible voters are covered. Employees are allowed 2 hours unless the employee has 3 or more consecutive, non-working hours in which to vote. Pay deductions are allowed only for periods exceeding 2 hours. Employees must request leave the day before Election Day and the employer can choose the time, but must grant time off at the start or end of shift at the employee's request. (C.R.S. § 1-7-102).

Sick Pay/Leave

Colorado law does not require nor prohibit sick pay or sick leave.

Medical Leave and Pregnancy Leave

Colorado has not enacted a medical leave or pregnancy leave law that applies to employees in the private sector, though covered employers still must comply with the Family and Medical Leave Act.

Disability

Colorado does not require paid leave for workers with disabilities.

Parental Leave

All public and private Colorado employers who have at least 50 employees must provide unpaid leave to non-supervisory and non-executive employees for the purpose of attending parent-teacher conferences or other academic activities, such as meetings related to special education services, responses to intervention, dropout prevention, attendance, truancy, or disciplinary issues. An employer may limit the ability of an employee to take leave in cases of emergency or other situations that may endanger a person's health or safety or in a situation where the absence of the employee would result in a halt of service or production. The employer and employee may also agree to allow the employee to take paid leave and then make up the work time in the same week. The leave is limited to 6 hours per month and 18 hours per academic year. Employees who work part-time are entitled to a prorated amount of leave based upon the percent of a full-time schedule which the employee works (C.R.S. § 8-13.3-103).

Adoptive Parent Leave

Parents who adopt a child are eligible for adoption leave if they work for an employer that offers childbirth leave to biological parents. However, if the spouse of a custodial parent adopts the spouse's child, he or she is not eligible for leave. Any benefits provided by the employer, such as job guarantee or pay, shall be available to both adoptive and biological parents on an equal basis. Reinstatement rights must apply to both adoptive and biological parents on an equal basis (C.R.S. § 19-5-211).

Military Leave of Absence

Discrimination in hiring or employment based on membership in state military forces or state National Guard duties is prohibited.

State National Guard or U.S. Armed Forces members can take up to 15 days unpaid leave for training. The State National Guard can take unlimited days of unpaid leave for active service. Employees must be restored to their previous or similar positions with the same status, pay and seniority. Use of military leave cannot adversely affect employee's vacation or sick leave, bonuses, advancement or any other advantage of employment. Honorably discharged employees must also be reinstated as long as they return to work within one year following their release. (C.R.S. § 28-3-609).

Disaster services leave

An employee certified as a disaster service volunteer of the American Red Cross may be granted paid leave for specialized disaster relief services. The leave may not exceed five days for a local disaster or 15 days for a national disaster in a 12-month period. Leave may not be accumulated. During this period of leave, an employee is not considered an employee for purposes of Colorado's workers' compensation law (C.R.S. § 24-50-104). This is for state employees.

Volunteer Firefighter Leave

An employer shall not terminate an employee who is a volunteer firefighter and who fails to report to work because the employee has responded to an emergency summons if the employee provides the employer with a written statement from the chief of the fire department that the employee's absence was due to the response.

An employer shall not terminate an employee who is a volunteer firefighter and who leaves work to respond to an emergency summons, if:

- The employer does not deem the employee to be essential to the operation of the employer's daily enterprise;
- The employer has previously received written documentation from the fire chief of the employee's fire department notifying the employer of the employee's status as a volunteer firefighter;
- The emergency is within the response area of the employee's fire department and is of such magnitude that the emergency summons issued by the fire chief requires all firefighters to respond; and
- The chief of the employee's fire department provides the employer with a written statement verifying the time, date, and duration of the employee's response.

An employer may deduct time lost from employment caused by a response to an emergency summons from the wages of an employee who is a volunteer firefighter (C.R.S. 11-30-1131).

Leave For Crime Victims

Employers who employ 50 or more employees must permit an employee who has been employed with the employer for 12 months or more to request or take up to three working days of leave from work in any 12-month period, with or without pay, if the employee is the victim of domestic abuse, the victim of stalking, the victim of sexual assault, or the victim of any other crime, the underlying factual basis of which has been found by a court on the record to include an act of domestic violence. The employee may only use the leave from work to protect himself or herself.

Except in cases of imminent danger, employees seeking crime victim/domestic violence leave must provide employers with appropriate advance notice and documentation, as required by employer policy. Employers must keep information related to such leave confidential.

Employees seeking crime victim/domestic violence leave must first exhaust available annual or vacation leave, personal leave and sick leave, unless the employer waives this requirement. Crime and domestic violence victim leave may be with or without pay (C.R.S. § 24-34-402.7).

Meals & Rest Breaks

Employees are entitled to an uninterrupted and "duty-free" meal period of at least 30-minutes' duration when the scheduled work shift exceeds five consecutive hours of work. The employees must be completely relieved of all duties and permitted to pursue personal activities to qualify as a non-work, uncompensated period of time. When the nature of the business activity or other circumstances exist that makes an uninterrupted meal period impractical, the employee must be permitted to consume an "on-duty" meal while performing duties. Employees must be permitted to fully consume a meal of choice "on the job" and be fully compensated for the on-duty meal period without any loss of time or compensation. (Colorado Minimum Wage Order No. 28, § 7).

Every employer must authorize and permit rest periods, which, insofar as practicable, must be in the middle of each four-hour work period. A compensated 10-minute rest period for each four hours or major fraction thereof must be permitted for all employees. Rest periods cannot be deducted from the employee's wages. Employees do not need to leave the place of employment for purposes of taking rest periods. (Colorado Minimum Wage Order No. 28, § 8).

Breastfeeding in the Workplace

Under the Workplace Accommodations for Nursing Mothers Act, an employer is prohibited from discriminating against a mother-employee who seeks to express breast milk for her nursing child for up to 2 years after the child's birth. An employer must provide reasonable unpaid break time or permit an employee to use paid break time, meal time, or both, each day to allow the employee to express breast milk for her nursing child for up to 2 years after the child's birth. In addition, the employer must make reasonable efforts to provide a room or other location in close proximity to the work area, other than a toilet stall, where an employee can express breast milk in privacy (C.R.S. § 8-13.5-104(1) & (2))

A mother may not be prohibited from breastfeeding her child in any place she has a right to be (C.R.S. § 25-6-302). The General Assembly has declared that societal boundaries placed on breastfeeding in public should be removed (C.R.S. § 25-6-301).

SMOKING

Smoking is prohibited (except in designated areas) in hospitals, clinics, nursing homes, recreation facilities, child care centers and nursery schools, public libraries, schools and school property, public transportation vehicles, elevators and any other enclosed indoor area used by the general public. Smoking is banned in all state buildings. Smoking is not allowed in restaurants, taverns, or commercial establishments. Most private workplaces are covered by the ban. Employers who employ 3 or fewer employees, and whose businesses are not open to the public are exempt. Designated smoking sections must have adequate ventilation and must be set apart from the majority of nonsmoking occupants. Employers may not discharge an employee on the basis of lawful off-duty activities, unless restriction is reasonably related to employment (C.R.S. §§ 24-14-204, 205).

Employers cannot terminate an employee for smoking off the premises during nonworking hours unless the restriction relates to a BFOQ. (C.R.S. § 24-34-402.5).