



2019 Colorado Law Updates

Labor Issues

Family and Medical Leave Insurance

Senate Bill 188 by Senators Williams (D-Denver) and Winter (D-Northglenn), and Representatives Gray (D-Westminster) and Duran (D-Denver) created a state mandated Family and Medical Leave Insurance program in Colorado. This bill was introduced as one of the most progressive Family and Medical Leave programs in the country. Here are some of the highlights of the introduced version of the bill:

- Funded by a 50/50 split between the employee and the employer
- Allowed for 12-16 weeks of leave with job protection regardless of employer size
- Defined family member as immediate family, domestic partners, and any other individual who you have a significant personal bond with, regardless of legal relationship
- Employees were covered after 680 hours of work that could be split between multiple employers
- No opt out provision or exemptions
- Created a new Division of Family and Medical Leave Insurance in the Department of Labor and Employment with more than 250 employees and a nearly \$1Billion annual fiscal note in years three and four of the new program

Because this state program differed so much from the federal FMLA legislation and because of the immense burden this would have put on Colorado businesses, a group of 60+ public and private organizations, including the Colorado Restaurant Association, opposed this legislation. After many months of negotiation and multiple amendments to this bills, Senate Bill 188 was turned into a one-year study. Now, the state is required to study the impacts of a Family and Medical Leave Insurance program before any further legislation will be introduced.

Once the bill was amended into a study the CRA changed its position to neutral.

Local Minimum Wage

House Bill 1210 by Representatives Galindo (D-Greeley) and Melton (D-Aurora), and Senators Moreno (D-Commerce City) and Danielson (D-Lakewood) allow any county or municipality the ability to set their own minimum wage for workers performing work in that county or municipality's jurisdiction. This bill as introduced would have given local governments a lot of authority when it comes to enacting local minimum wage laws. The bill was amended significantly because of the work done by many business groups including the Colorado Restaurant Association. Below is a comparison between the introduced version of the bill and the final.

Introduced Version:

- Local minimum wage would cover any employee who performs work in a jurisdiction.

Final Version:

- The local minimum wage only applies to individuals who work for 4 hours or more in a jurisdiction in a given week.



- Would have allowed for the elimination of the tip credit.
- Would have allowed for multiple minimum wages to be created.
- Would have allowed for specific industries to be targeted with wage laws.
- Any jurisdiction in the State of Colorado could raise its minimum wage.
- Increases could have happened at any time for any amount.
- Implementation would have been on July 1, 2019.
- The tip credit was preserved at the same amount that is in the state constitution (currently \$3.02) and a local government can't change that.
- Only one minimum wage may be enacted by a local government.
- If a local government enacts a minimum wage it must apply to all employees in the jurisdiction.
- No more than 10% of the jurisdictions in the state can raise their minimum wage (equates to approximately 35).
- Increases can't be more than 15% of the current minimum wage or \$1.75 a year, whichever is larger and can only happen on January 1 of each year.
- Implementation was moved to January 1, 2020 so no increases would go into effect until January 1, 2021.

The CRA focused on amending this legislation because it was apparent that some form of this legislation was going to pass in 2019 and we wanted to minimize the impacts it would have on restaurants in Colorado.

In order for some of our priority amendments to be put on the bill, the CRA had to agree to be neutral on the amended version of the legislation.

Equal Pay for Equal Work Act

Senate Bill 85 by Senators Danielson (D-Lakewood) and Pettersen (D-Lakewood) and Representatives Buckner (D-Aurora) and Gonzales-Gutierrez (D-Denver) would have only allowed wage disputes to be settled in civil court and eliminate the administrative procedure option. CRA is not opposed to the concept of equal pay for equal work, however, the way the bill was introduced created many unintended consequences. Many business groups, including the CRA, worked with the sponsors and the proponents to make significant changes to the bill. Following is a comparison between the introduced version and the final version.



Introduced Version

- Only way to resolve a wage dispute was through a civil action in court.
- There was no consideration of shift or location differences when it comes to pay.
- The definition of wage includes the value of all compensation and benefits.
- Employers are required to post salary range for all new offerings and all promotions to ALL employees on the same calendar day and prior to making a decision.
- If an applicant is offered a salary outside of the posted salary range the employer must re-post the job and start hiring process over again.
- Employers can no longer seek or rely on wage history for job offers.
- There was a presumption of guilt if an employer was unable to produce pay documentation in an investigation.
- Complaints from employees can be taken to civil court up to 2 years after violation.
- A person aggrieved by a violation may obtain back pay for up to 6 years.
- Employers shall keep records of job descriptions, & wage rate history/pay records for duration of employment and 2 years after.
- Fine is between \$500 and \$10,000 per occurrence.
- Attorney's fees can only be recouped by a prevailing employee.

Final Version

- Employees can now go through the Colorado Civil Rights Division, the Colorado Department of Labor, OR a civil action in court.
- Wage disparities are allowed for geographic location, shift differences, education & training or experience related to work, and travel if it is necessary.
- The definition of wage includes the value of all compensation and benefits.
- Employers are required to post salary range for all new offerings and all promotions to ALL employees on the same calendar day and prior to making a decision.
- Employers shall make reasonable efforts to post or announce all opportunities to all employees for promotion and prior to making a decision.
- Employers can no longer seek or rely on wage history for job offers.
- There is a rebuttable presumption of guilt if an employer cannot produce wage documentation during an investigation. Also, allows employer wage audits to be an affirmative defense.
- Complaints from employees have to be filed with the Director of the Division of Labor within 1 year of the violation, but can be taken to civil court up to 2 years after violation.
- Back pay is limited to 3 years.
- Employers shall keep records of job descriptions, & wage rate history/pay records for duration of employment and 2 years after.
- Fine is between \$500 and \$10,000 per occurrence.
- Attorney's fees can only be recouped by a prevailing employee.



Although many of the concerns brought by the CRA and the business community were addressed through amendments, not all were. Many employees are still going to need to make changes to their hiring process.

Tip Sharing Signage

House Bill 1254 by Rep McLachlan (D-Durango) and Van Winkle (R-Highlands Ranch), and Senators Fields (D-Aurora) and Priola (R-Brighton) made changes to the required sign that must be posted by a restaurant if they choose to share tips with non-regularly tipped employees. If passed, a restaurant would be able to provide a notification on a menu, receipt, or table tent, describing how the business shares tips with all employees. There is no required language so the business would get to choose how they want to express this to their guests. The CRA worked with the sponsors and groups who were monitoring this legislation to make sure that other statutes about owners and managers taking control of tips were not impacted.

Regardless of which tip sharing practice you choose to implement, it is important to follow both state and federal law here.

Food Code

Retail Food Establishments Civil Penalties

House Bill 1014 by Rep Singer (D-Boulder) and Rep Bird (D-Westminster) and Senator Ginal (D-Fort Collins) makes changes to civil penalties for retail food establishments outside of Denver and changes when a local health department is required to conduct a re-inspection. This bill allows local health departments to focus their resources on the businesses that need the most help, while giving restaurants who consistently meet health code standards relief from timely and often unneeded re-inspections.

General Business

Colorado Clean Indoor Air Act

House Bill 1076 by Representatives Michaelson Jenet (D-Aurora) and Larson (R-Littleton) and Senators Priola (R-Brighton) and Donovan (D-Aspen) makes changes to the Colorado Clean Indoor Air Act to ban vaping/e-cigarettes indoors where smoking is banned. Currently, you cannot smoke within 15 feet of the main entrance to a building. This bill would extend that to 25 feet. The bill makes no changes to patios. After marijuana was legalized, the number one concern we heard from members was about not being able to detect the substances in vaping machines and e-cigarettes. The CRA worked on this legislation to mitigate potential liabilities for restaurants.