

CHAPTER 347

LABOR AND INDUSTRY

SENATE BILL 23-105

BY SENATOR(S) Danielson and Buckner, Coleman, Cutter, Exum, Fields, Gonzales, Hinrichsen, Jaquez Lewis, Marchman, Rodriguez, Sullivan, Winter F., Bridges, Ginal, Hansen, Kolker, Moreno, Mullica, Priola, Roberts, Fenberg; also REPRESENTATIVE(S) Gonzales-Gutierrez and Bacon, Boesenecker, deGruy Kennedy, Froelich, Garcia, Jodeh, Joseph, Mabrey, Martinez, Michaelson Jenet, Ortiz, Story, Vigil, Willford, Woodrow, Amabile, Brown, Dickson, English, Hamrick, Herod, Kipp, Lieder, Lindsay, Lindstedt, McCormick, McLachlan, Parenti, Ricks, Sharbini, Sirota, Titone, Velasco.

AN ACT

CONCERNING THE IMPLEMENTATION OF MEASURES TO ENSURE EQUAL PAY FOR EQUAL WORK, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 8-5-101, **add** (1.3), (1.5), (5.5), and (8.5) as follows:

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

(1.3) "CAREER DEVELOPMENT" MEANS A CHANGE TO AN EMPLOYEE'S TERMS OF COMPENSATION, BENEFITS, FULL-TIME OR PART-TIME STATUS, DUTIES, OR ACCESS TO FURTHER ADVANCEMENT IN ORDER TO UPDATE THE EMPLOYEE'S JOB TITLE OR COMPENSATE THE EMPLOYEE TO REFLECT WORK PERFORMED OR CONTRIBUTIONS ALREADY MADE BY THE EMPLOYEE.

(1.5) "CAREER PROGRESSION" MEANS A REGULAR OR AUTOMATIC MOVEMENT FROM ONE POSITION TO ANOTHER BASED ON TIME IN A SPECIFIC ROLE OR OTHER OBJECTIVE METRICS.

(5.5) (a) "JOB OPPORTUNITY" MEANS A CURRENT OR ANTICIPATED VACANCY FOR WHICH THE EMPLOYER IS CONSIDERING A CANDIDATE OR CANDIDATES OR INTERVIEWING A CANDIDATE OR CANDIDATES OR THAT THE EMPLOYER EXTERNALLY POSTS.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) "JOB OPPORTUNITY" DOES NOT INCLUDE CAREER DEVELOPMENT OR CAREER PROGRESSION.

(8.5) "VACANCY" MEANS AN OPEN POSITION, WHETHER AS A RESULT OF A NEWLY CREATED POSITION OR A VACATED POSITION.

SECTION 2. In Colorado Revised Statutes, 8-5-103, **amend** (1) and (3) as follows:

8-5-103. Enforcement - rules - complaints. (1) (a) The director ~~is authorized to~~ SHALL:

(I) Create and administer a process to accept ~~and mediate~~ complaints and ~~to~~ provide legal resources concerning alleged violations of section 8-5-102 and ~~to~~ SHALL promulgate rules as necessary for this purpose;

(II) ON OR BEFORE JULY 1, 2024, CREATE AND ADMINISTER A PROCESS TO MEDIATE COMPLAINTS REGARDING ALLEGED VIOLATIONS OF SECTION 8-5-102 AND PROMULGATE RULES AS NECESSARY FOR THIS PURPOSE;

(III) INVESTIGATE COMPLAINTS OR OTHER LEADS CONCERNING EMPLOYER VIOLATIONS OF SECTION 8-5-102, EXCEPT IF THE COMPLAINT CONCERNS THE STATE OF COLORADO AS THE EMPLOYER, THAT, IN THE DIRECTOR'S GOOD FAITH DISCRETION AND JUDGMENT, WARRANT INVESTIGATION;

(IV) UPON FINDING OF A VIOLATION OF SECTION 8-5-102, ORDER COMPLIANCE AND RELIEF AS AUTHORIZED BY THIS PART 1; AND

(V) PROMULGATE RULES TO ENFORCE THIS ARTICLE 5.

(b) FOR THE PURPOSE OF INVESTIGATING A VIOLATION OF THIS PART 1, THE DIRECTOR MAY APPLY THE INFORMATION-GATHERING PROVISIONS OF ARTICLE 1 OF THIS TITLE 8 TO AN EMPLOYER, EMPLOYEE, OR OTHER PERSON.

(c) The process created and administered by the director, INCLUDING THE RULES FOR THE INVESTIGATION OF ALLEGED COMPLAINTS FOR VIOLATIONS OF SECTION 8-5-102 AND ANY FINES LEVIED OR CORRECTIVE ACTION TAKEN BY THE DIRECTOR, does not affect or prevent the right of an aggrieved person from commencing a civil action pursuant to subsection (2) of this section.

(3) A person aggrieved by a violation of section 8-5-102 may obtain relief for back pay for the entire time the violation continues, not to exceed ~~three~~ six years.

SECTION 3. In Colorado Revised Statutes, **amend** 8-5-201 as follows:

8-5-201. Employment opportunities - job opportunities or advancement - pay rates in job listings - rules. (1) An employer shall make reasonable efforts to announce, post, or otherwise make known ~~all opportunities for promotion~~ EACH JOB OPPORTUNITY to all ~~current~~ employees on the same calendar day and prior to ~~making a promotion decision~~ THE DATE ON WHICH THE EMPLOYER MAKES A SELECTION DECISION; EXCEPT THAT, IF AN EMPLOYER IS ONLY PHYSICALLY LOCATED

OUTSIDE OF COLORADO AND HAS FEWER THAN FIFTEEN EMPLOYEES WORKING IN COLORADO, ALL OF WHOM WORK ONLY REMOTELY, THEN, THROUGH JULY 1, 2029, THE EMPLOYER IS ONLY REQUIRED TO PROVIDE NOTICE OF REMOTE JOB OPPORTUNITIES. THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL PROMULGATE RULES FOR TEMPORARY, INTERIM, OR ACTING JOB OPPORTUNITIES THAT NECESSITATE IMMEDIATE HIRE.

(2) AN EMPLOYER MUST IN GOOD FAITH DISCLOSE THE FOLLOWING IN THE NOTIFICATION OF EACH JOB OPPORTUNITY:

(a) THE HOURLY OR SALARY COMPENSATION OR THE RANGE OF THE HOURLY OR SALARY COMPENSATION;

(b) A GENERAL DESCRIPTION OF THE BENEFITS AND OTHER COMPENSATION APPLICABLE TO THE JOB OPPORTUNITY; AND

(c) THE DATE THE APPLICATION WINDOW IS ANTICIPATED TO CLOSE.

~~(2) (3) An employer shall disclose in each posting for each job opening the hourly or salary compensation, or a range of the hourly or salary compensation, and a general description of all of the benefits and other compensation to be offered to the hired applicant.~~ MAKE REASONABLE EFFORTS TO ANNOUNCE, POST, OR OTHERWISE MAKE KNOWN, WITHIN THIRTY CALENDAR DAYS AFTER A CANDIDATE WHO IS SELECTED TO FILL A JOB OPPORTUNITY BEGINS WORKING IN THE POSITION, THE FOLLOWING INFORMATION TO, AT A MINIMUM, THE EMPLOYEES WITH WHOM THE EMPLOYER INTENDS THE SELECTED CANDIDATE TO WORK WITH REGULARLY:

(a) THE NAME OF THE CANDIDATE SELECTED FOR THE JOB OPPORTUNITY;

(b) THE SELECTED CANDIDATE'S FORMER JOB TITLE IF SELECTED WHILE ALREADY EMPLOYED BY THE EMPLOYER;

(c) THE SELECTED CANDIDATE'S NEW JOB TITLE; AND

(d) INFORMATION ON HOW EMPLOYEES MAY DEMONSTRATE INTEREST IN SIMILAR JOB OPPORTUNITIES IN THE FUTURE, INCLUDING IDENTIFYING INDIVIDUALS OR DEPARTMENTS TO WHOM THE EMPLOYEES CAN EXPRESS INTEREST IN SIMILAR JOB OPPORTUNITIES.

(4) FOR POSITIONS WITH CAREER PROGRESSION, AN EMPLOYER SHALL DISCLOSE AND MAKE AVAILABLE TO ALL ELIGIBLE EMPLOYEES THE REQUIREMENTS FOR CAREER PROGRESSION, IN ADDITION TO EACH POSITION'S TERMS OF COMPENSATION, BENEFITS, FULL-TIME OR PART-TIME STATUS, DUTIES, AND ACCESS TO FURTHER ADVANCEMENT.

(5) NOTHING IN THIS SECTION REQUIRES AN EMPLOYER TO IDENTIFY A SELECTED CANDIDATE FOR A JOB OPPORTUNITY IN ANY MANNER THAT VIOLATES THE CANDIDATE'S PRIVACY RIGHTS UNDER APPLICABLE LOCAL, STATE, OR FEDERAL LAW OR IN A MANNER THAT WOULD PLACE AT RISK THE SELECTED CANDIDATE'S HEALTH OR SAFETY.

SECTION 4. Appropriation. (1) For the 2023-24 state fiscal year, \$292,590 is appropriated to the department of labor and employment. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$250,294 for use by division of labor standards and statistics for program costs related to labor standards, which amount is based on an assumption that the department will require an additional 2.1 FTE; and

(b) \$42,296 for the purchase of legal services.

(2) For the 2023-24 state fiscal year, \$42,296 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of labor and employment under subsection (1)(b) of this section and is based on an assumption that the department of law will require an additional 0.2 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of labor and employment.

(3) For the 2023-24 state fiscal year, \$119,848 is appropriated to the department of personnel for use by the division of human resources. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$97,813 for personal services related to state agency services, which amount is based on an assumption that the department will require an additional 1.2 FTE; and

(b) \$22,035 for operating expenses related to state agency services.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2024; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Section 8-5-201, Colorado Revised Statutes, as amended in section 3 of this act, applies to job opportunities, career progressions, and career developments that take place on or after the applicable effective date of this act.

Approved: June 5, 2023