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COLORADO EMPLOYERS FACE INCREASED EXPOSURE TO GENDER DISCRIMINATION CLAIMS: YOUR 6-STEP ACTION PLAN

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Colorado Employers Face Increased Exposure to Gender Discrimination Claims: Your 6-Step Action Plan

A new Colorado Court of Appeals decision makes it harder for employers to fight gender-based retaliation claims. The court found that an employee who claimed she was retaliated against for complaining about her wages maintained a valid claim even though she did not allege that the pay dispute involved sex or gender discrimination. You can expect workers to rely on this ruling to bring retaliation claims whenever discipline follows a wage-related conversation, making it a good time to audit how compensation-related complaints are handled in your workplace. Here's what Colorado employers need to know about the decision and a six-step plan to reduce your risk.

Case Background

A [recent Colorado Court of Appeals decision](#) held that an employee didn't have to allege gender discrimination to bring a retaliation claim under either the Equal Pay for Equal Work Act (EPEWA) or the Colorado Anti-Discrimination Act (CADA). Both statutes broadly protect an employee's right to inquire about, disclose, compare, or otherwise discuss wages — regardless of the employee's sex or the subject matter of the discussion.

The employee in this case alleged she had been underpaid for years after a promotion required extended hours without

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corresponding overtime pay. After internal inquiries stalled, her attorney sent the employer a wage demand letter seeking substantial back pay and then filed a lawsuit.

A few months later, the employer issued her a written reprimand and a two-day unpaid suspension for alleged unprofessional conduct, which was later rescinded, but only after she had been removed from the workplace and denied pay.

She claimed her employer retaliated against her for discussing and disputing her wages in violation of EPEWA and CADA. The trial court dismissed the claims, reasoning that both statutes were meant to remedy gender-based pay discrimination and she made no allegations tying the retaliation to sex discrimination.

The appeals court said the employee had a valid claim, finding that:

- The applicable anti-retaliation provisions protect employees who inquire about, disclose, compare, or otherwise discuss their wages.
- Those protections are not tied to allegations of sex-based pay disparity or any other protected characteristic.
- Protecting wage discussions generally – not just discussions about gender pay gaps – furthers the anti-discrimination purpose behind both laws, since an open wage discussion itself can uncover pay disparities.

Consider Taking These 6 Steps Now

1. Treat any wage-related inquiry or complaint as protected activity, regardless of whether sex or gender is mentioned. Individual pay disputes, overtime and classification concerns, and internal pay comparisons now carry retaliation exposure under two separate Colorado statutes.

2. Assess the timing and documentation of discipline that follows a wage complaint. An employee may use this timing, even months later, to support a retaliation claim if a broader pattern exists.

3. Apply discipline consistently and follow standard procedures. If an employee receives harsher discipline than others or if you skip steps in the disciplinary process, a court may infer retaliation.

4. Don't assume individual managers are safe from liability.

If a complaint includes specific facts showing that a supervisor had authority over hiring, firing, pay, or recordkeeping, that supervisor could potentially face individual liability under the EPEWA. For that reason, consider including relevant supervisors in privileged review before taking disciplinary action after an employee raises a wage complaint.

5. Train supervisors and HR on both statutes

together. Make sure the right staff understand how wage complaints, retaliation, and gender discrimination claims can overlap, and ensure supervisors know who to contact before taking disciplinary action.

6. Reach out to counsel in Colorado. Your FP attorney can help you develop a compliant plan of action under EPEWA and CADA and any other applicable federal or state laws. Remember public-sector employers are not exempt. Both the EPEWA and CADA apply to state and local government employers, unlike the Colorado Wage Claim Act.

Conclusion

We will continue to monitor developments, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Denver office](#).