

Insights, News & Events

WHAT A DIFFERENCE AN ELECTION MAKES: COLORADO PASSES SLATE OF NEW EMPLOYMENT LAWS

Insights
May 28, 2019

The 2018 Colorado state elections resulted in a Democratic House, Senate, and governor, smoothing the way for the 2019 legislature to pass six new employment bills. Some of these pieces of legislation had been proposed in various forms in previous sessions but failed to pass – until now. While a few still await Governor Jared Polis’s signature, they are all expected to be signed and soon should be state law.

These new laws address sex discrimination in pay, criminal history inquiries, felony convictions for wage violations, garnishments, local governments setting minimum wages, and a family and medical leave insurance program study.

EQUAL PAY FOR EQUAL WORK AND PRIOR WAGE HISTORY

SB19-085, signed into effect on May 22, prohibits an employer from discriminating between employees on the basis of sex, or on the basis of sex plus another protected status, by paying one employee a wage rate less than the rate paid to an employee of a different sex for substantially similar work. “Substantially similar work” is to be determined without regard to job title and based on a composite of skill, effort, and responsibility. It may include consideration of shift work.

Exceptions allow a different rate to be paid when it is based on a seniority system; a merit system; a system that measures earnings by quantity or quality of production; the geographic location where the work is performed; education, training or experience; or travel.

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Importantly, prior wage history may not be relied upon to justify a disparity in current wage rates. The law also prohibits employers from seeking prior wage history or discriminating on the basis of a prospective employee's failure to disclose wage history. Also, employers may not prohibit an employee from discussing their wage rate.

Employers who violate the law are liable for back pay for up to three years, plus liquidated damages in an equal amount to compensate the employee for the delay in receiving amounts due. The law provides a defense against liquidated damages if a pay disparity was made in good faith as shown by a comprehensive pay audit performed within the previous two years.

The law takes effect January 1, 2021. In the meantime, employers should conduct pay audits and take steps to remedy any pay disparities found between employees performing substantially similar work unless those disparities are explained by one of the exceptions.

CRIMINAL HISTORY INQUIRIES

HB19-1025 prohibits employers from stating in an advertisement or on any application form for an employment position that a person with a criminal history may not apply for the job. The law further provides that an employer may not inquire into or require disclosure of an applicant's criminal history on an initial application form.

Inquiries may be made later in the hiring process, and employers may still obtain a job applicant's publicly available criminal background report at any time.

There are three exceptions to these new requirements: (1) when a law prohibits a person who has a particular criminal history from being employed in a particular job; (2) when the employer designates a position for participation in a program to encourage employment of people with criminal histories; and (3) when the employer is required by law to conduct a criminal history record check for a particular position.

The governor had not signed the legislation at the time this article was published. If signed, the law will take effect for employers of 11 or more employees on September 1, 2019. All employers, regardless of size, will become subject to the law on September 1, 2021. Employers should prepare by

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eliminating criminal history questions from their application forms and reviewing their job advertisements for compliance.

CRIMINAL PENALTIES FOR WAGE VIOLATIONS

As discussed in [our recent legal alert](#), an employer who willfully refuses to pay a wage claim or falsely denies the validity of a wage claim in an amount over \$2,000 may be liable for felony theft effective January 1, 2020. The penalty for theft ranges from \$50 to \$1 million, depending upon the circumstances of the crime and the amount stolen.

This provision applies to the same employers that are covered by the federal Fair Labor Standards Act (generally employers that have an annual dollar volume of sales or business done of at least \$500,000 or are engaged in interstate commerce). HB19-1267 has been signed by the governor.

WAGE GARNISHMENT REFORM

Another bill already signed by the governor, HB19-1189, changes the amount subject to garnishment from 25 percent to 20 percent of the individual's disposable weekly earnings, and from 30 times to 40 times the amount an individual's disposable earnings for a week exceed the state or federal minimum wage.

Currently, the cost of court-ordered health insurance for a child provided by an individual is deducted from the individual's disposable earnings subject to garnishment. Under this new law, any health insurance that is provided by the individual's employer and voluntarily withheld from the individual's earnings may also be deducted from their disposable earnings subject to garnishment. The new law applies to all writs of garnishment issued on or after January 1, 2020.

LOCAL GOVERNMENT MINIMUM WAGES

Some employers may find themselves paying the same minimum-wage-employees different rates for the same work, or employees who work across the street from each other different rates for the same work, if the governor signs HB19-1210. This bill permits local governments to set local

minimum wages for employees expected to perform four or more hours of work in any given week physically within the local government's jurisdiction.

Local minimum wage rates may exceed the state minimum rate (currently \$11.10 per hour) by up to \$1.75 or 15 percent each year. If 10 percent of local governments enact a higher rate, additional increases are prohibited pending action by the legislature. If signed, the law would take effect January 1, 2020.

FAMILY AND MEDICAL LEAVE

Finally, a bill to create a state family and medical leave insurance program, SB19-188, garnered a great deal of attention and was amended multiple times during legislative negotiations. But in the face of pressure from business organizations and questions from the governor, the Democratic leadership scrapped the effort to pass the bill in favor of further study and the appointment of a task force to report to the legislature by January 8, 2020. The bill as passed retains the original bill's timeline for the program to be funded by 2023 and benefits to be paid starting in 2024. It is yet to be signed by the governor.

CONCLUSION

If you have any questions, please contact your Fisher Phillips attorney or any attorney in our [Denver](#) office.

This Legal Alert provides an overview of specific state laws. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.