Executive View of Colorado’s Pay Equity Law

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State of the Law Snapshot

Seventeen states have recent Pay Equity laws
  • Colorado’s has numerous requirements

Federal Law in place since 1963
  • Updated by Lilly Ledbetter Act in 2009
  • Federal Laws haven’t elicited many lawsuits
Colorado Legislative Change

Attempt to change behavior:
- No excuses for lower pay
- No system for lower pay
- Easier to gather information

New requirements:
- Limits decision making for raises
- Does not allow external pay history to inform internal pay
- Creates transparency for promotions

Effective 1/2021
Strong Remedies

- Employee may go straight to court and jury
- Employees who win get attorney’s fees
- 2 year Statute of Limitations starts with each violation – each pay period starts S/L over again
- Go back 3 years for back pay:
  Liquidated Damages = back pay for opportunity cost

Employees can get help from CCRD or from TV lawyers
Strict Construction Language

- Job Title irrelevant – “substantially similar work”
- Work = skill, effort, and responsibility (shift work a consideration)
- Pay differential ENTIRELY explained by legislative yard stick
- Stiff penalties for requesting historical pay
- Market factors do not apply

Managers’ merit increase philosophy no defense

Compression May Create Causes of Action
Limited List for Increases

- Seniority
- Merit
- Quantity or Quality of Production
- Geographic Location
- Education, Training or Experience related to the work
- Regular Travel Necessary for Work

Apply each factor “reasonably” to account for entire differential

Lockstep Merit Increase Requirements
Steps to Compliance (Eat your Veggies)

1. Chart and Create Job Descriptions
2. Compare Duties and Create Families
3. Create Compensation Plan
4. Demands Clear Process, Fully Implemented
5. Must Interject Objectivity
6. Leadership Consensus = Success

Leadership Consensus = Success
Job Description Protocol

Essential Duties

Unique Duties

KSA’s Required

Accurate Titles

Essential for Merit

Differentiate Value

Allowable Differential

Duties measured, not Titles
Promotion Documentation Necessary

- **Min. Qualifications**
- **Value of Job**
- **Hiring Range**
- **Clear Description**

- **Limit Applicant Pool**
- Articulate Value to Organization
- Range reflects promotion only
- Describe Promotional Opportunity

Employers Council
Changes for Compliance

Mathematical Evaluation of Jobs
- Standard Deviation
- Increase
- Not Decrease

New Policies and Documents
- Clarify Process
- Posting Rules
- Job Descriptions
- Strict structure with Documents
- Who What When Where
Legislates Company Policy

- Post ALL promotion opportunities – what if based on certification? Failure = 1 violation – violation = $500 to $10,000

- Posting Information = pay benefits, and bonuses

- Records must be retained – Job description and wage rate history = employment + 2 years

**New Transparency = Cultural Shift (?)**
Explain Compensation Practices

- Pay philosophy;
- Established pay ranges;
- Relationship between pay and benefits;
- Possible opportunities to increase base salary;
- If available, variable pay opportunities;
- The role of pay negotiation in the hiring process.
Conversations Right Now

- What is Your Compensation Philosophy that Meets the Law
- How to Inculcate Managers and Leaders
- Who is going to Guide the Conversations
- How Quickly can you Afford to Fix Errors
- What is your Process for Fixing Errors

Conversations are Difficult and Complex
Thank you!

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