



Equal Pay Legislation Q&A

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Internal Promotions/Raises

Q: Can you promote an employee without posting?

A: No, if you promote an employee, you must post the job. There are three exceptions: 1) an incumbent is in the position and you want to keep the posting confidential; 2) the employee is working in a trial period; 3) it's a temporary position. When in doubt, post.

Q: When posting an internal promotion, what does the legislation require from employees to apply for that position, specifically when posting a role where someone moves from director to senior director?

A: For Colorado employees, even if you have only one, you must post information about promotional opportunities. That includes how to apply, what the specific wage rate or wage range is, and general information on benefits available to the position, i.e. bonuses, paid time-off.

Q: When promoting an internal candidate, does the position need to be posted for a certain amount of time before moving forward with the promotion?

A: The job must be posted for a reasonable time for an employee to review and apply and before the employer makes the decision about the promotion or hire. It's recommended that this be no less than one day and as long as one to two weeks to accommodate shift workers and people on vacation.

Q: Is there flexibility with regard to posting when a department reorganization occurs? Leaders historically try to retain and align current employees across the newly created teams vs. eliminating roles.

A: The promotional opportunity posting is supposed to occur before the final decision is made and to give employees the chance to apply.

Q: What about static posting to all employees of what is needed for career progression promotions and an intranet link regarding salary and benefits for all levels? Would this be sufficient?

A: If the career progression promotion occurs at least monthly and the info is maintained, this may be acceptable.

Q: What about a lateral move, such as a job title change that isn't coming with a raise?

A: It is considered a promotional opportunity if it is superior to another job held by one or more employees in terms of compensation, benefits, status, duties, opportunities or access to further career advancement.

Q: Do in-line promotions need to be posted both externally and internally?

A: If it would be deemed a promotion opportunity for anybody in Colorado, you must post the job internally to all employees but not externally.

Q: Are internal/promotional postings required to be posted for a certain timeframe?

A: A reasonable timeframe would give employees enough time to review and apply for a position. That would mean at least 24 hours but more conservatively two to three weeks.

Q: Must increases in pay or bonuses be posted?

A: Because there's no vacancy associated with increased pay or bonuses, they do not need to be posted. However, be cautious that any bonuses do not render pay unequal.

Q: Does a promotion equal a title change?

A: It is considered a promotional opportunity if it is superior to another job held by one or more employees in terms of compensation, benefits, status, duties, opportunities or access to further career advancement.

Q: If there's only a merit reward and no open position, does the position still need to be posted?

A: If there's no vacancy, posting doesn't need to occur, but be careful to not award a merit increase that would put that employee out of line with a comparable position.

Q: What notice should we give to people that we will soon post an in-line promotional opportunity?

A: Anything that constitutes a promotion opportunity to an employee in Colorado needs to be posted and needs to be made available to Colorado employees. The posting must include job title, how to apply, salary range and generalized compensation and benefit information.

Q: Does the employer need to make the employee go through an interview process for promotions?

A: No interview is required.

Q: If a raise is based only on performance and no additional promotion, does the role have to be posted?

A: No posting is required if there's no vacancy, but be careful not to create pay disparities with the raise.

Job Posting

Q: Is there any requirement to notify applicants if they are not hired?

A: If the qualifications are listed, applicants can be dismissed without notification due to not meeting qualifications.

Q: I'm responsible for a university job board. What are my responsibilities when posting a position for another employer?

A: Third parties have no responsibility to comply with these regulations.

Q: What about opportunities to become a part owner? Does that need to be posted?

A: No, ownership roles (non-W-2 compensation) are covered by the law.

Q: What about restructures and certain roles taking on additional responsibilities or direct reports? Do those roles need to be posted?

A: If there is no vacancy, then no.

Q: What if a person comes into the company looking for a job when the company is not looking for new employees? The person is awesome and we decide to hire them. Does that new job need to be posted?

A: You can still hire that person, but if the position could be considered a promotion opportunity for an existing Colorado employee, the job needs to be posted before the hire is made.

Q: Could we leave general position postings up?

A: A job posting can stay up as long as the salary range is accurate. If it's a continuously hired position, it can be posted at all times.

Salary Range

Q: Do you have to post the exact salary or can you post a salary range, as long as you stay within it?

A: You can post a range.

Q: Some companies cap out the percentage increase that an internal candidate could receive when accepting a new position. This may result in the candidate falling below the minimum of the range. Will companies need to adjust their policies to ensure they are meeting the minimum in the salary range?

A: If the merit increase is considered a promotion opportunity, then it needs to be posted.

Q: Do you think a "merit system" must be a formalized system or can employers justify differences in pay with an individualized merit assessment?

A: If the entire pay disparity can be objectively accounted for and documented, then it's acceptable.

Q: Do you have to have a formal system to justify salary differences or can an employee's performance justify differences?

A: A more formal system is recommended in addition to documentation to support the exceptions.

Q: Can you post the start to mid-range if we typically do not pay above that or do we have to post the entire range?

A: You can post start to mid-range if that's a good-faith estimate.

Q: Do we have to offer a new candidate a pay rate within the range that is posted? What if we go higher than planned?

A: You can go higher than the range posted. If others have same job, however, the job must be posted.

Q: If you are hiring a new employee for a similar position and the pay range has increased beyond a current employee in the role, do you need to bring that employee up to meet the same pay range as the new hire?

A: Yes, unless the disparity is based on permissible factor.

Q: If an employee has the same job but different experience, i.e. value to the company, do I have to raise all employees with that job to the same rate?

A: If the differential can be justified on a permissible factor, then disparities are allowed.

Q: Can you post only the minimum or starting salary?

A: No.

Compliance

Q: Who is enforcing the law?

A: If an employee comes forward and alleges that they are not being paid the same based on gender, they can take their claim directly to court or to an administrative agency to investigate. If someone comes forward with a claim of a company not posting a job correctly, the CDLE will investigate.

Q: Any insight on when CDLE will start enforcing and how first-time violations will be handled?

A: Enforcement is likely to start any time now.

Posting Benefits

Q: What benefits are required to be posted?

A: The law requires that general information on benefits, including bonuses, paid time-off and health insurance, be posted. A website link to that information is acceptable.

Companies Operating Outside Colorado

Q: Are employers declining to open their job searches to Colorado candidates because they don't want to post ranges for Colorado?

A: There is nothing in statute that prohibits employers from restricting job postings to people outside Colorado, but this workaround isn't recommended. Out of an abundance of caution, you should post to Colorado employees. CLDE is unlikely to side in the employer's favor if they use this workaround.

Q: Would it be considered a promotional opportunity for a person in Colorado, even if the role has a primary location outside of Colorado?

A: Yes.

Notifying Employees about Law

Q: Are we required to post this law in our offices?

A: Yes, you can find the poster [here](#).